

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-95 – DA2021/01256
<b>PROPOSAL</b>	Subdivision of 1 lot into 138 lots with roads and associated infrastructure
<b>ADDRESS</b>	Lot 30 DP870411 – 198 Lenaghans Dr, Black Hill & Lot 4 DP847676 – 202B Lenaghans Dr, Black Hill
<b>APPLICANT</b>	Black Hill Industrial Pty Ltd
<b>OWNER</b>	Black Hill Industrial Pty Ltd (Lot 30 DP870411) and Hunter Water Corporation (Lot 4 DP847676)
<b>DA LODGEMENT DATE</b>	29 September 2021
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30 Million
<b>CIV</b>	\$33,524,786 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Not Applicable
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Resilience &amp; Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	<p>The proposal was publicly notified in accordance with the City of Newcastle's (CN) Community Participation Plan and the provisions of <i>Environmental Planning and Assessment Regulations 2000</i>. The notification period was from 20 October to 5 November 2021 and no submissions were received.</p> <p>One late submission was received on 7 September 2022.</p>

<p><b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b></p>	<p>Environmental Impact Statement (15 Sept. 2021) and associated studies and reports as follows:</p> <p>2013 Concept Approval Instrument of Approval</p> <p>2021 Stage 1 Industrial Subdivision Instrument of Approval</p> <p>2021 Stage 1 Approved Subdivision Plans</p> <p>2020 HWC Owner's Consent Lot 4 DP847626</p> <p>2021 Stages 2 to 7 DA Subdivision Plans (Superseded)</p> <p>2021 Stages 2 to 7 DA Engineering Design Report</p> <p>2021 Stages 2 to 7 DA Landscape Plans</p> <p>2021 Adopted Staging Plan</p> <p>2018 Adopted Urban Design Guidelines</p> <p>2018 Biodiversity Certification Order</p> <p>2021 Vegetation Management Plan</p> <p>2019 Aboriginal Heritage Cultural Management Plan (ACHMP)</p> <p>2018 Remediation Action Plan (RAP) (Superseded)</p> <p>2021 HWC Formal Requirements</p> <p>2018 Electrical and Communications Infrastructure Report</p> <p>2021 Electrical and Communications Infrastructure Report Addendum</p> <p>2021 Stages 2 to 7 Subdivision Traffic Assessment (Superseded)</p> <p>2021 SEE Stage 1 SEE Supplement</p> <p>2011 Geotechnical and Mine Subsidence Part 1</p> <p>2011 Geotechnical and Mine Subsidence Part 2</p> <p>2011 Geotechnical and Mine Subsidence Part 3</p> <p>2014 Validation Certificate Old Boral Site</p> <p>2018 Groundwater Management Plan (GMP)</p> <p>2018 Mine Subsidence Impact Assessment (MSIA)</p> <p>2021 Stages 2 to 7 Bushfire Assessment Report</p> <p>2021 Satisfactory Arrangements Certificate IRF21/4040</p> <p>The following additional or amending information submitted in response to Council's Request for Further Information letters:</p> <p>2022 Part Response to Request for Further Information letter dated 22/07/2022</p> <p>2022 Cardno Mine Impact Review</p> <p>2022 Construction Environmental Management Plan</p> <p>2022 Stages 2 to 7 DA Combined Subdivision and Civil Engineering Plans (Rev 2)</p> <p>2022 Traffic Impact Report (Bitzios, July 2022)</p> <p>2022 Acid Soils Management Plan</p> <p>2022 Remediation Action Plan (Stantec, V3)</p>
<p><b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b></p>	<p>Yes – Refer Satisfactory Arrangements Certificate dated 09 November 2021 (Ref. IRF21/4040)</p>
<p><b>RECOMMENDATION</b></p>	<p>Approval</p>

<b>DRAFT CONDITIONS TO APPLICANT</b>	The applicant was provided with the draft conditions after the lodgement of the report with the Panel.
<b>SCHEDULED MEETING DATE</b>	10 November 2022
<b>PREPARED BY</b>	Brian Cameron Senior Development Officer (Engineering)
<b>DATE OF REPORT</b>	3 November 2022

## EXECUTIVE SUMMARY

Black Hill Industrial Pty Ltd (the Applicant) has lodged an application for '*Subdivision of 1 lot into 138 lots with roads and associated infrastructure*' in six stages (Stages 2 to 7) on part of Lot 30 DP 870411 (198 Lenaghans Drive, Black Hill) in accordance with Concept Plan approval (MP10\_0093) issued by the NSW Planning Assessment Commission in 2013.

A small component of the development, part of the entrance road off John Renshaw Drive, crosses Lot 4 DP 847676 owned by the Hunter Water Corporation (HWC) and containing the Chichester water supply pipeline. HWC have provided owners consent in support of the application.

The development is *regionally significant development* pursuant to Section 2.19(1) of SEPP (Planning Systems) 2021 as it satisfies the criteria in *Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30 Million*. Accordingly, the Hunter and Central Coast Regional Planning Panel (the Panel) is the consent authority for the application.

Part of Lot 30 DP 870411 is already the subject of a development consent (DA2020/01497) to construct Stage 1 (62 lots), which includes approval for the clearing of vegetation from land within the footprint of roads and allotments within proposed Stages 2 to 7.

Schedule 2 '*Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act*' of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* confirms that the approved Concept Plan is considered to be a Transitional Part 3A project and, therefore, the terms of the Concept Plan approval issued by the NSW Planning and Assessment Commission on 19 November 2013 continue to apply.

In accordance with the terms of the Concept Plan approval, an Updated Indicative Lot Layout and Staging Plan was prepared in consultation with officers of Council and Transport for NSW (TfNSW) and approved by resolution of the Council in June 2021. DA2021/01256 is considered to be generally consistent with this approved plan.

Updated urban design guidelines (the Black Hill Employment Lands Urban Design Guidelines) (BHELUDG) have been provided in accordance with the terms of the Concept Plan. The BHELUDG is intended to assist, in association with Council's Development Control Plan 2012 (NDCP 2012) to guide future development on the site. DA2021/01256 is considered to be generally consistent with the BHELUDG.

The development site is also identified as part of the emerging Black Hill catalyst area in the Greater Newcastle Metropolitan Plan 2036, and aligns with the vision and goals of the Hunter Regional Plan 2036.

DA2021/01256 was lodged on 29 September 2021 and statutory referrals and public exhibition in accordance with the relevant State Environmental Planning Policies and the Regulations commenced on 20 October 2021. Exhibition occurred after clarification that the Capital Investment Value exceeded the \$30 million threshold for regional development.

Since then, the Panel has received a 'Kick-Off' briefing from the Applicant (10 November 2021) and completed individual site inspections. As there were minimal 'key issues' identifiable at the time of the 'Kick-off' briefing, a Preliminary Assessment Briefing was not given by the Council. Instead, targeted briefings were given by TfNSW to the Panel on 2 March 2022 and 27 May 2022 in relation to potential off-site traffic impacts and modelling works being completed by the Applicant in consultation with, and to the requirements of, TfNSW.

The main planning instruments, approvals and guidelines that are relevant to the proposal include:

- Concept Plan (MP\_0093) approval dated 19 November 2013
- Subsequent approved Updated Indicative Lot Layout and Staging Plan
- Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* applies
- *Schedule 6 'Savings, transitional and other provisions' of Environmental Planning and Assessment Regulation 2021* confirms that *Environmental Planning and Assessment Regulation 2000 (2000 Regulation)* as in force immediately before its repeal on 1 March 2022 applies
- State Environmental Planning Policy (Biodiversity & Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience & Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Newcastle Local Environmental Plan 2012
- Black Hill Employment Land Urban Design Guidelines
- Newcastle Development Control Plan 2012

A number of pre-conditions/jurisdictional prerequisites are required to be satisfied prior to the granting of consent. These are listed in the following table and are considered to have been satisfactorily addressed by the documentation submitted.

Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017	Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' <ul style="list-style-type: none"> <li>• Cl. 3B)(2)(d) – a consent authority <b>must not</b> grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan.</li> </ul>
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala Habitat Protection 2021 <ul style="list-style-type: none"> <li>• <b>Clause 4.9(2)</b> - whether the development is likely to have any impact on koalas or koala habitat</li> </ul>



State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>• <b>Section 4.6</b> - A Remediation Action Plan has been prepared for the development site and the proposal is satisfactory subject to conditions.</li> </ul>
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> <li>• <b>Section 2.48(2)</b> (Determination of development applications—other development) – electricity transmission</li> <li>• <b>Section 2.122(4)</b> - Development that is of a specified size or capacity and/or that has direct vehicular or pedestrian access to a classified road.</li> </ul>
Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> <li>• <b>Clause 2.3</b> – Zone Objectives and Land Use Table</li> <li>• <b>Clause 4.1</b> – Minimum subdivision lot size</li> <li>• <b>Clause 5.1/5.1A</b> – Land acquisition</li> <li>• <b>Clause 5.10</b> – Consideration of Aboriginal and non-aboriginal heritage</li> <li>• <b>Clause 5.21</b> – Consideration of flood impacts</li> <li>• <b>Clause 6.1</b> – Consideration of Acid Sulfate Soils</li> <li>• <b>Clause 6.2</b> – Consideration of earthworks</li> <li>• <b>Clause 8.1</b> – Arrangements for State public infrastructure</li> <li>• <b>Clause 8.2</b> – Public utility infrastructure</li> <li>• <b>Clause 8.3</b> – Development Control Plan (Urban Release Area)</li> </ul>

The proposed development is characterised and defined as '*Subdivision*' and is permissible with consent in the relevant land zones (IN2) – Light Industrial and (C2) – Environmental Conservation under Newcastle Local Environmental Plan 2012 (NLEP2012).

The application was referred to Ausgrid and Transport for NSW in accordance with cl 45 and 103 of SEPP (Infrastructure) 2007 (now repealed and replaced with SEPP (Transport and Infrastructure) 2021). No concerns or objections were raised by Ausgrid. Transgrid have advised that, having regard to the existing high voltage overhead transmission lines and associated easement that traverse the site, the proposed development is satisfactory subject to compliance with their recommended conditions of consent.

TfNSW have assessed the potential off-site traffic impacts on the neighbouring classified road network and have advised that they do not object to the proposed development subject to a suite of recommended conditions. The conditions include limiting the timing for release of certain stages of the development until other off-site road upgrades, including the planned M1 to Raymond Terrace motorway extension are operational.

Any issues of concern identified during the assessment of the application were identified in the three Request for Further Information (RFI) letters issued by Council and have been satisfactorily resolved by the Applicant's responses or have been addressed in the recommended conditions of consent.

The 'key issues' arising from CN's assessment of the proposal include 'general consistency' with the Concept Plan, off-site traffic impacts, biodiversity, land contamination, mine subsidence and

flooding which have been satisfactorily addressed or are resolved by the recommended draft conditions.

No unique public submissions were made during the 14-day public exhibition period (20 October 2021 to 5 November 2021). However, one late submission was received from Barr Planning on 7 September 2022 after having reviewed the updated Traffic Impact Report by Bitzios (July 2022). While not objecting to the development per se, Barr Planning expressed concern that the Bitzios report made no assumption for traffic generation from the IN2 Light Industrial zoned land (known as the Broaden Group land) adjacent to the western site boundary and within the Cessnock LGA and alleges TfNSW have erred in not requiring inclusion of the Broaden land in the traffic generation assumptions within the micro-simulation traffic modelling completed by Bitzios.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act and the provisions of the relevant State Environmental Planning Policies, the proposal is considered to be generally consistent with the terms of the Concept Plan, to be in the Public Interest and is supported.

Pursuant to Section 4.16(1)(a) of the EP&A Act, DA 2021/01256 is recommended for approval subject to the conditions of consent contained at **Attachment A** of this report.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

The subject property comprises Lot 30 in DP 870411, No.198 Lenaghans Drive Black Hill owned by Black Hill Industrial Pty Ltd and Lot 4 DP847676 – 202B Lenaghans Dr, Black Hill owned by Hunter Water Corporation. (See **Figure 1**)



**FIGURE 1 (Source – SEE Figure 3)**

The site is located between the M1 Pacific Motorway to the east, the Local Government boundary adjoining Cessnock City Council to the west, John Renshaw Drive to the north and C4 Environmental Living zoned land to the south with a total area of approximately 183 hectares. The neighbouring land to the north of John Renshaw Drive and to the west of the site is zoned IN2 (Light Industrial).

Adjoining the site on the southern boundary are two large C4 (Environmental Living) zoned allotments. The general form of these properties is rural bushland with older style structures. The eastern allotment is an equestrian complex with a dwelling located approximately 90m to the south of the site boundary, outbuildings and stables and the western allotment is a small school with the buildings located approximately 825m south of the site boundary.

To the southeast of the site and on the eastern of the M1 Motorway is a 'rural/residential' type estate consisting of large lot C4 Environmental Living zoned allotments.

The northern boundary of the site is separated from John Renshaw Drive by a narrow strip of land (Lot 4 DP 847676) owned by Hunter Water Corporation (HWC), in which the Chichester Pipeline is located. The HWC land will be crossed by a proposed access road to the development. HWC have given owners consent to the application and agree that, if development consent is given, that part of Lot 4 DP 847676 required for construction of the new entrance road off John Renshaw Drive will be dedicated as public road. This lot has been included in the development application.

Levels over the site vary from 11 metres AHD in the northern portion to 42 metres AHD in the southern portion. The site is bisected by Viney Creek, which runs south to north across the site. Dense vegetation is located either side of the creek. Isolated clearings and easements for high voltage overhead electricity infrastructure traverse the western and northern parts of the site.

The site has been the subject of underground mining activity associated with the Abel Mine between 2011 and 2012. Mining activity has ceased on site and no further mining activities are anticipated.

A former Boral asphalt plant also existed in the northeast corner of the site between 1980 and 2014/15 before it was decommissioned, demolished and the associated land remediated.

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

### **2.1 The Proposal**

The proposal seeks development consent for *Subdivision of one (1) lot into 138 industrial lots with roads and associated infrastructure* in six Stages (Stages 2-7) and represents the subdivision of the residue of the site remaining after the Stage 1 consent granted by DA2020/01497.

More specifically, the proposal involves:

- 138 industrial allotments ranging in size from 2,004 m<sup>2</sup> to 44,750m<sup>2</sup>
- One new 'Left in only' intersection with John Renshaw Drive
- One road crossing across Viney Creek connecting with Stage 1
- Associated roads, drainage, landscaping, bulk earthworks, site remediation and services.



**Figure 2** below shows the extent of the proposed Stages 2 to 7 in red (this DA) and the approved Stage 1 (DA2020/01497) in yellow.



**FIGURE 2 (Development Extent - Source – CN Mapping)**

## **2.2 Background**

The subject site has a Concept Plan (10\_0093) approved under Part 3A (repealed) of the EP&A Act, 1979 by the NSW Planning Assessment Commission on 19 November 2013 (**refer to Attachment C**).

Project Approval was also granted by the Planning Assessment Commission under the same instrument, but only for the subdivision of land to affect the subdivision and dedication of conservation land to the State government. The approved project has been completed and has the effect of activating the Concept Plan approval.

DA2021/01256 was received via the NSW Planning Portal on 16 September 2021 but not formally made until fees were paid on **29 September 2021**.

A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 1: Chronology of the DA**

DATE	EVENT
29 September 2021	Development application DA2021/01256 formally made.
20 October 2021	Public exhibition of the application commenced including notification to Cessnock City Council. Exhibition period closed on 5 November 2021.
20 October 2021	DA referred to external agencies (Ausgrid and TfNSW - cl 45 and 103 of SEPP (Infrastructure) 2007), Transgrid and Subsidence Advisory NSW
10 November 2021	Applicant's 'Kick-Off' Briefing to the Panel
2 March 2022	Panel briefing by TfNSW and CN
10 March 2022	Request for Further Information letter sent regarding traffic modelling
11 April 2022	Further Request for Further Information letter sent
27 May 2022	Council met with TfNSW and Applicant to discuss revised traffic modelling
25 August 2022	Applicant's partial response to Request for Further Information (11 April 2022) received
16 September 2022	TfNSW referral response received
21 September 2022	Applicant's response to Request for Further Information (10 March 2022) received
7 October 2022	Applicant's response to Request for Further Information (11 April 2022) received
19 October 2022	Request for Further Information letter sent regarding land contamination
28 October 2022	Amended Remediation Action Plan received

## 2.3 Site History

In 2007 the site was the subject of a regional forum and design charette, commissioned by the then owner, Coal and Allied, which ultimately resulted in an application for a Concept Plan approval being lodged with the Department of Planning in 2010 under Part 3A (repealed) of the EP&A Act, 1979. In 2013, the NSW Planning Assessment Commission granted consent to the Concept Plan (MP10\_00093) for the development of the 183 hectare site as employment lands and the dedication of 545 hectares of Conservation Lands.

Part of the land, generally to the west of Viney Creek, has previously been mined for coal. An asphalt manufacturing plant was operated by Bitupave in the northeast part of the site up until it's decommissioning and removal in 2011/2012.

The development site is also identified as part of the emerging Black Hill catalyst area in the Greater Newcastle Metropolitan Plan 2036 and aligns with the vision and goals of the Hunter Regional Plan 2036.

In 2018, DA2018/00714 was lodged seeking approval to subdivide of the entire 183 hectare development site into approximately 180 industrial allotments in seven Stages. This DA was the subject of a Class 1 appeal (deemed refusal) in the LEC (#2018/00377424) that was ultimately dismissed by the Court and the DA refused.

A subsequent development application (DA2020/01497) was approved by Council on 12 August 2021 for Stage 1 (62 lots) and includes approval for the clearing of vegetation from land within (future) Stages 2- 7 of the overall development site.

A Subdivision Work Certificate has been issued under DA2020/01497 for the removal of vegetation within Stage 1 and preparatory works have commenced on site. A further Subdivision Work Certificate application has been lodged for the civil construction works associated with Stage 1 but is undetermined.

The applicant for DA2020/01497 is corresponding with Transport for NSW (TfNSW) regarding detailed design and construction approval (Works Authorisation Deed or 'WAD') for works within the Classified Road network external to the site.

In accordance with the requirements of the Concept Plan approval, updated [Urban Design Guidelines](#) (UDG) (**refer to Attachment D**) have been prepared by the Applicant in consultation with CN and these have been approved by the delegate for the Planning Secretary at the Department of Planning. These guidelines represent a refinement of the UDG's submitted with the concept plan and are intended to further guide subdivision and subsequent development on the land.

Also in accordance with the Concept Plan approval, in June 2021 CN resolved to endorse an updated Staging Plan and Updated Indicative Lot Layout ([Item 57 of Ordinary Council meeting 29 June 2021](#)) (**refer to Attachment E**).

### 3. STATUTORY CONSIDERATIONS

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#### 3.1 RELEVANT COMMONWEALTH LEGISLATION

Environment Protection and Biodiversity Conservation Act 1999	No referral was necessary under <i>Environment Protection and Biodiversity Act 1999 (EPBC Act)</i> as the proposal did not constitute a <i>controlled action</i> .
Native Title Act 1993	The subject site is not affected by any native title or Indigenous Land Use agreements under the provisions of the Native Title Act 1993 (NT Act) and its associated registers (The National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements).

#### 3.2 RELEVANT STATE (NSW) LEGISLATION

In addition to the *Environmental Planning and Assessment Act 1979*, the following State (NSW) legislation has been considered. Where relevant, further detailed assessment of the proposed development against the various Acts is included throughout this report.

<i>Biodiversity Conservation Act 2016</i> (BC Act)	<p>On 26 October 2018 the Director, Regional Assessments at the Department of Planning and Environment certified under clause 34(A)3 of the <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i> that the proposed development is part of a Concept Plan approval for which biodiversity impacts have been satisfactorily addressed and that appropriate conservation offset measures have been secured. It is further noted that land clearing within the footprint of this application (Stages 2 to 7) has previously been assessed and granted consent in association with DA2020/01497 (Stage 1).</p>
<i>National Park and Wildlife Act 1974</i> (NP&W Act)	<p>Part 6 of the NP&amp;W Act relates to Aboriginal heritage. An Aboriginal heritage cultural impact assessment report (<i>Lower Hunter Lands Development Heritage Impact Assessment – Black Hill &amp; Tank Paddock, November 2010</i>) was prepared in association with the Concept Plan. An Aboriginal Cultural Heritage Management Plan (ACHMP) (March 2019) was also prepared for the development site.</p> <p>Two sites having Aboriginal cultural significance, both containing isolated surface artefacts, have been identified adjacent to the sites eastern boundary. Both sites may potentially be disturbed as a result of vegetation clearing (approved under DA2020/01497) or bulk earthworks associated with this application.</p> <p>An Aboriginal Heritage Impact Permit (AHIP) will be required for proposed impacts to Aboriginal site AHIMS #38-4-1336 and #38-4-1337.</p>



<p><i>Roads Act 1993</i> (Roads Act)</p>	<p>The proposal requires construction work within John Renshaw Drive and Weakleys Drive both of which are classified roads within the Newcastle LGA.</p> <p>Road works are not proposed or required within the M1 Motorway.</p> <p>A road occupancy licence is required for any activity likely to impact on traffic flow, even if that activity takes place off-road. Notwithstanding that Council is the Road Authority for Weakleys Drive and John Renshaw Drive, TfNSW has advised that they intend assuming the role of Road Authority for all works under s87 (traffic lights) and s138 (connection of road and construction of work or structures), road occupancy licences and Work Authorisation Deeds (WAD's) associated with the classified roads.</p>
<p><i>Contaminated Land Management Act 1997</i> (CLM Act)</p>	<p>There is a risk that construction within the EIS area of the proposal may encounter potentially contaminated land during construction. The Applicant has completed appropriate investigations and assessment of potentially contaminated land and any required remediation.</p>
<p><i>Protection of the Environment Operations Act 1997</i> (POEO Act)</p>	<p>The proposal would not trigger the requirement for an Environmental Protection Licence under the POEO Act.</p> <p>Notwithstanding, the POEO Act requires proponents to manage and limit the potential to cause water, noise, air pollution and potential waste streams during construction.</p>
<p><i>Crown Land Management Act 2016</i> (CLM Act)</p>	<p>The proposal does not impact on any Crown land.</p>
<p><i>Water Management Act 2000</i> (WM Act)</p>	<p>It is considered that the proposed riparian corridor setbacks to Viney Creek are appropriate and are consistent with the Concept Plan, NSW Office of Water Guidelines for Controlled Activities (refer FEAR1.13) and land use zones.</p> <p>The proposal will require a controlled activity approval under Section 91(2) given that there will be works within 40 metres of waterfront land.</p> <p>The proposal is unlikely to encounter or intercept groundwater of significant quantity.</p>

<p><i>Biosecurity Act 2015</i> (Biosecurity Act)</p>	<p>Under Section 21 of the <i>Biosecurity Act</i>, any person who deals with any plant, who knows (or ought to know) of any biosecurity risk, has a duty to ensure the risk is prevented, eliminated or minimised as is reasonably practicable.</p> <p>The <i>Biosecurity Act</i> and Regulations provide specific legal requirements for high-risk activities and State level priority weeds.</p> <p>If present, priority weeds on the site would need to be assessed and controlled to fulfil the General Biosecurity Duty and minimise biosecurity risks. A Vegetation Management Plan has been prepared by the applicant that includes provisions for weed removal and management.</p>
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### 3.3 Part 4 Environmental Planning and Assessment Act, 1979 (NSW)

#### **Matters for Consideration - general (Section 4.15)**

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

- (a) *the provisions of -*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

It is noted that the proposal requires concurrence referral (s4.13) and is not integrated development (s4.46).

### **Integrated Development (Section 4.46)**

The Department of Planning and Environment has previously advised that, in accordance with section 75P(2)(b) of the *Environmental Planning and Assessment Act 1979*, development applications lodged subsequent to the Concept Plan approval (MP10\_0093) are not Integrated Development for the purposes of section 91 (now section 4.46) of that Act.

Notwithstanding this, the applicant acknowledges that subsequent approvals and permits will, or may, need to be obtained under Acts such as the *Protection of the Environment Operations Act 1997*, the *National Parks and Wildlife Act 1974* and the *Water Management Act 2000*.

### **3.4 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

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

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

It is noted the application, Statement of Environmental Effects and associated reports were prepared prior to 2 December 2021, being the date on which the NSW Government published 11 new thematic SEPP's as part of a consolidation process to simplify the State's planning policies.

On 1 March 2022, 11 new State Environmental Planning Policies (SEPPs) commenced, which re-organised and repealed 45 former SEPPs. With no savings and transitional provisions, these new SEPPs apply to the assessment and determination of pending development applications.

Section 30A of the *Interpretation Act 1987* which applies to the transfer of provisions states that the transfer “does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred”. This section applies subject to any amendments made to the provision in the new instrument. Accordingly, the operation and meaning of the transferred provisions has not changed, unless modified (none have been identified during this assessment) in the new SEPPs.

Accordingly, the following instruments are applicable to this application.

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Newcastle Local Environmental Plan 2012*

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

**Summary of Applicable Environmental Planning Instruments**  
(Preconditions in **bold**)

<b>EPI</b>	<b>MATTERS FOR CONSIDERATION</b> ( <i>BRIEF SUMMARY</i> )	<b>COMPLY</b> (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas <ul style="list-style-type: none"> <li>Clause 2.14 – does not apply in this instance as consent is being sought for removal of vegetation.</li> </ul> Chapter 4: Koala Habitat Protection 2021 <ul style="list-style-type: none"> <li><b>Clause 4.9(2)</b> - whether the development is likely to have any impact on koalas or koala habitat</li> </ul>	Yes  Yes
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 4 of Schedule 6 as it comprises General Development over \$30 Million.</li> </ul>	Yes
State Environmental Planning Policy (Resilience & Hazards) 2021	Chapter 4: Remediation of Land <ul style="list-style-type: none"> <li><b>Section 4.6</b> – A Remediation Action Plan has been prepared for the development site and the proposal is satisfactory subject to conditions.</li> </ul>	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> <li><b>Section 2.48(2)</b> (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li><b>Section 2.122(4)</b> - Development that is of a specified size or capacity and/or that has direct vehicular or pedestrian access to a classified road.</li> </ul>	Yes  Yes
Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020 (refer to <b>Attachment F</b> )	Explanation of Intended Effects – July 2021 <ul style="list-style-type: none"> <li>This Explanation of Intended Effects proposes the protection of the Lower Hunter Freight Corridor under this SEPP in a similar manner to the existing protected corridors in Greater Sydney.</li> </ul>	Yes
Proposed amendment of State Environmental Planning Policy (Transports and Infrastructure) 2021 and consequential amendments to EP&A Regulation 2021 (refer to <b>Attachment G</b> )	Explanation of Intended Effects – August 2022 <ul style="list-style-type: none"> <li>This Explanation of Intended Effect seeks to provide flexibility for areas that are undergoing land use change by proposing additional provisions to facilitate the temporary use of corridor land (including the proposed Lower Hunter Freight Corridor) whilst still meeting the protection objectives of the Transport and Infrastructure SEPP.</li> </ul>	Yes

Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> <li>• <b>Clause 2.3</b> – Zone Objectives and Land Use Table</li> <li>• Clause 4.1 – Minimum subdivision lot size</li> <li>• <b>Clause 5.1/5.1A</b> – Land acquisition</li> <li>• <b>Clause 5.10</b> – Consideration of Aboriginal and non-aboriginal heritage</li> <li>• <b>Clause 5.21</b> – Consideration of flood impacts</li> <li>• <b>Clause 6.1</b> – Consideration of Acid Sulfate Soils</li> <li>• <b>Clause 6.2</b> – Consideration of earthworks</li> <li>• <b>Clause 8.1</b> – Arrangements for State public infrastructure</li> <li>• <b>Clause 8.2</b> – Public utility infrastructure</li> <li>• <b>Clause 8.3</b> – Development Control Plan (Urban Release Area)</li> </ul>	Yes
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The proposed development is not declared State significant development or infrastructure under Chapter 2 of State Environmental Planning Policy (Planning Systems) 2021. The proposed development is also not in a declared Precinct under State Environmental Planning Policy (Precincts – Regional) 2021.

Consideration of the relevant SEPP's is outlined below.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The proposal has been assessed, having regard to Clause 4.9, as partly extracted below:

#### **4.9 Development assessment process—no approved koala plan of management for land**

(1) *This section 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."*

On 26 October 2018 the Director, Regional Assessments at the Department of Planning and Environment certified under clause 34(A)3 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* that the proposed development is part of a Concept Plan approval for which biodiversity impacts have been satisfactorily addressed and that appropriate conservation offset measures have been secured.

The Ecological Assessment Report for the Black Hill site prepared by RPS and considered by the Department of Planning during the assessment of the Concept Plan included an

assessment of koalas and koala habitat (under SEPP 44 – Koala Habitat Protection) and concluded that *"Field studies concluded that despite the occurrence of Koala feed tree species including Eucalyptus punctata (Grey Gum) and Eucalyptus grandis (Flooded Gum) within the site, there were no direct observations of Koalas or secondary evidence suggesting that Koalas might have used the site recently. Furthermore, records for Koalas are limited to relatively distant off-site areas to the south and southwest of the site and there are no recent records of this species within the site or its vicinity."*

*Due to the presence of Koala feed and browse trees the site can be regarded as 'Potential Koala Habitat' according to the provisions of SEPP 44. However, despite the occurrence of 'Potential Koala Habitat' within the site, the lack of indications within the site suggest that Koalas are not using the site as part of the range of a local population. As such, it is considered that no further provisions of this policy apply to the site and that it does not constitute "Core Koala Habitat".*

Council is not aware of any recorded koala sightings in this area since the RPS report.

It is further noted that clearing of all vegetation from the proposed allotments within Stages 2 to 7, other than the vegetation within the required 20m landscape, has been given conditional consent under DA2020/01497 (Stage 1) and such work has commenced.

It is therefore considered that the proposed development is acceptable in terms of the provisions of Clause 4.9 of the SEPP.

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

### Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is general development having a capital investment value of more than \$30 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**

### Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Initial Investigations over the site area identified the main contaminating sources are associated with the former operations of the Boral plant site in the northeast, the "Ironbark Colliery" in the west (some surface mining infrastructure was installed, but this was never developed into a productive facility) and fly tipping along access tracks across the site. Some data gaps have

been identified in sampling coverage in heavily vegetated, and therefore inaccessible areas of the site. The Boral plant site (which was decommissioned circa 2014/2015) has subsequently undergone extensive detailed assessment, the development of a Remediation Action Plan (RAP) and remediation and validation works. Approximately 16,000m<sup>3</sup> of material which contained exceedances of ecological investigation levels was retained on site in engineered fill area and fill placement areas. This material was isolated from sensitive ecological receptors. At the completion of remediation works in 2014, a Site Audit statement was provided certifying that the site was suitable for industrial / commercial use.

A RAP for the overall site has been prepared to support the development (Stantec 2022). The RAP describes the additional investigations to be undertaken, as well as preferred remediation options consisting of a combination of off-site disposal of contaminated material and on-site consolidation and isolation through engineered barrier containment. The remediation strategy for the material previously placed in retention areas at the former Boral site will be excavation and consolidation into the existing easement for overhead electricity traversing proposed Lot 211.

Across the remainder of the site, sampling will be conducted to address any data gaps. The RAP includes procedures for an unexpected finds protocol in the event that any additional concerns are identified during works.

Consent conditions are provided to ensure a process where suitability of the land for the intended land use is confirmed by a Site Audit Statement for each stage prior the issue of the subdivision certificate for that stage. While the site is generally considered suitable, this approach will:

- address any uncertainty associated with the data gaps
- provide specific and consolidated contamination / remediation information for each stage
- allow for the existing Site Audit statement for the former Boral land to be superseded, and
- ensure all contamination is addressed, remediated and validated within each development stage.

Consent conditions allow two pathways to achieve the required final Site Audit Statement for each development stage. These are:

- a) prior to the issue of a Subdivision Works certificate obtain and submit a Site Audit Statement certifying that the relevant stage is suitable for all intended land uses. This would require completion of all additional investigation and any remediation and validation works in accordance with the Stantec 2022 RAP and prior to any other subdivision works for that stage; Or,
- b) prior to the issue of a Subdivision Works Certificate obtain and submit a Site Audit Statement certifying that the land can be made suitable if the site is remediated in accordance with a Stage-specific RAP. The Stage-specific RAP must be consistent with the preferred remediation options described in the Stantec 2022 RAP. This approach would allow concurrent subdivision and remediation works to occur. It would then require completion of all remediation and validation works and preparation of the final site Audit Statement certifying that the land is suitable for all intended land uses prior to the issue of a Subdivision Certificate.



Both pathways contain provision for unexpected variations in remediation procedures to be addressed and incorporated into the auditor's assessment prior to the issue of the final Site Audit Statement.

In this way, approval may be granted with confidence that the land will be suitable for the purpose for which the development is proposed and the provisions of SEPP (Resilience and hazards) 2021 have been satisfied.

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

### **Chapter 2: Infrastructure**

The SEPP (Transport and Infrastructure) 2021 applies under both the following sections:

- Section 2.48(2) - Development involving penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower, near substations or within 5m of exposed overhead electricity power lines.

The application was referred to both Ausgrid and Transgrid.

Ausgrid advises that they do not have any infrastructure within this development site but who noted that any alterations or adjustments to Ausgrid's assets is Contestable Works and are required to be funded by the proponent. There may be existing Ausgrid assets in the classified road network that might be impacted by the external road upgrade works, however this will be dealt with by TfNSW under the relevant s138 (Roads Act) approval(s).

Transgrid have advised that, having regard to the existing high voltage overhead transmission lines and associated easement that traverse the site, the proposed development is satisfactory subject to compliance with their recommended conditions of consent.

- Section 2.122(2)(b) - Development that is of a relevant size or capacity (Column 3 of the Table to Schedule 3) with access to a classified road.

Column 3 of the Table to schedule 3 of the SEPP identifies subdivisions of '50 or more allotments' is of a relative size or capacity with access to a classified road to trigger a referral to Transport for NSW (TfNSW).

The proposed development seeks approval for a subdivision of land creating 138 new industrial allotments and a new road connection giving direct access to a classified road (John Renshaw Drive). Accordingly, on 25 October 2021 the application was referred to TfNSW for comment.

On 16 September 2022, TfNSW advised that no objection was made to the proposal subject to consideration of the following comments and the imposition of a number of recommended conditions (refer to **Attachment H** for a full copy of the TfNSW advice):

*"Road work is not proposed or required within the M1 Motorway and TfNSW is not required to issue General Terms of Approval as an integrated DA approval under s. 138 of the Roads Act 1993. TfNSW consent is required under s. 138 of the Roads Act for the works proposed on classified (State)*

roads, being John Renshaw Drive and Weakleys Drive.

- Lower Hunter Freight (rail) Corridor

TfNSW notes there is currently a draft amendment to the SEPP (Transport and Infrastructure) underway to preserve land for the future Lower Hunter Freight Corridor (LHFC), including a small portion of the subject site. Council should consider impacts on the proposed subdivision layout under s. 4.15(1)(a)(ii) of the EP&A Act 1979. TfNSW has no specific concerns or requirements to note as landform changes are expected to be accommodated within the nominally 60m wide preservation corridor.

<https://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies/Corridor-Protection-SEPP>

- Road freight

TfNSW notes that John Renshaw Drive and nearby main roads are likely to be assessed by the NSW Government for suitability to accommodate PBS (Performance Based Standards – National Heavy Vehicle Regulator) Level 3 (nominally up to 36.5m) truck combinations in the medium term. The developer may wish to consider designing internal road and subdivision infrastructure to cater for these higher productivity vehicles.

- Public and Active Transport

Council should consider public and active transport links required to facilitate mode choice in accessing the development. Lack of proximity of good infrastructure is a key deterrent for adoption of these transport modes, which can significantly reduce the number of private vehicles on the network."

The comments made by TfNSW are considered in more detail below in this report.

Overall, the proposal is acceptable in terms of SEPP (Transport and Infrastructure) 2021.

**Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020**

The proposed amendment of SEPP (Major Infrastructure Corridors) 2020 is supported by an Explanation of Intended Effects (July 2021).

This Explanation of Intended Effects proposes the protection of a Lower Hunter Freight Corridor under this SEPP in a similar manner to the existing protected corridors in Greater Sydney.

After several years of preliminary investigations, between 12 July 2021 and 27 September 2021 TfNSW undertook community consultation for the proposed freight rail corridor between Fassifern and Hexham.

**Figure 3** below shows (in the inset) the overall extent of the full extent of the proposed rail corridor and the main plan shows the corridor passing through the locality of Black Hill.

# Recommended Lower Hunter Freight Corridor

Black Hill



- Recommended Lower Hunter Freight Corridor
- Impacted Property
- Property Boundary

0 0.25 0.5 0.75 1  
Kilometers

1:20000



Aerial imagery (January 2021) © Nearmap

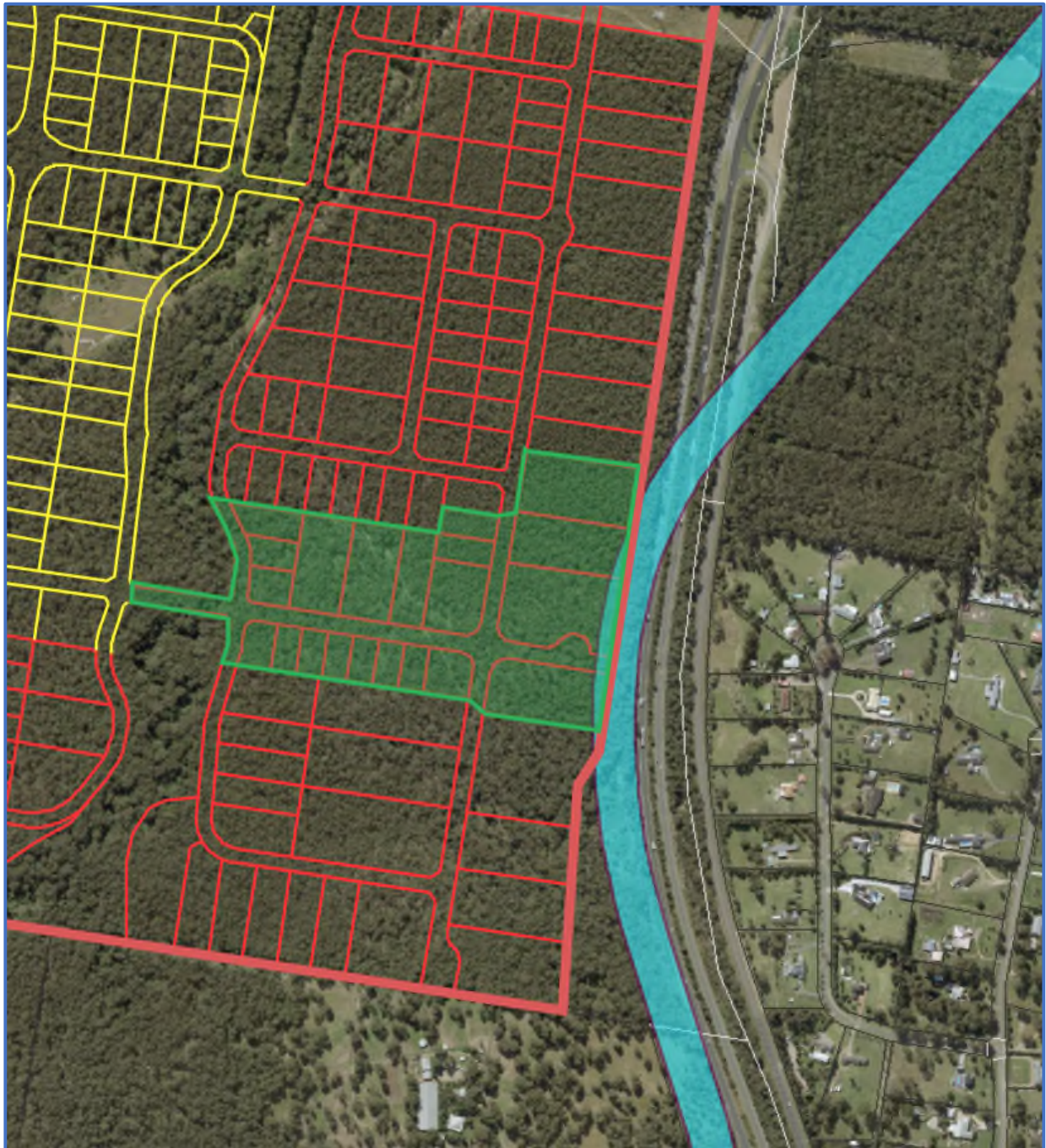


**FIGURE 3 (Lower Hunter Freight Corridor - Source – TfNSW publication)**



**Figure 4** below shows in some greater detail an approximation of the relationship between the possible freight rail corridor and proposed subdivision. It can be seen that the possible freight rail corridor (shown blue) encroaches into the development site, impacting on 4 lots within proposed Stage 4 (highlighted green) and 1 lot within proposed Stage 5.

Further discussion on the impact of Stage 4 when considering the proposed amendment of *SEPP (Transport and Infrastructure) 2021* and consequential amendments to the *EP&A Regulation 2021* and the associated 'Explanation of Intended Effects (August 2022)' is included below.'



**FIGURE 4 (Lower Hunter Freight Corridor overlay on proposal - Source – CN Mapping)**

## ***Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020***

The proposed amendment of SEPP (Transport and Infrastructure) 2021 and consequential amendments to the EP&A Regulation 2021 is supported by an *Explanation of Intended Effects* (August 2022).

This Explanation of Intended Effect sets out proposed additional provisions for land identified as a future infrastructure corridor under Chapter 4 of the SEPP (Transport and Infrastructure). The proposed provisions will facilitate the temporary use of a corridor where it is considered that the development will not impact on the timing or cost of future infrastructure delivery.

The proposed SEPP amendments is also expected to establish the relationship with other Environmental Planning Instruments and matters to be considered by applicants, consent authorities and the infrastructure agency regarding the temporary use of the land within the infrastructure corridor.

TfNSW, in their letter dated 16 September 2022, noted that "...there is currently a draft amendment to the SEPP (Transport and Infrastructure) underway to preserve land for the future Lower Hunter Freight Corridor (LHFC), including a small portion of the subject site. Council should consider impacts on the proposed subdivision layout under s. 4.15(1)(a)(ii) of the EP&A Act 1979. TfNSW has no specific concerns or requirements to note as landform changes are expected to be accommodated within the nominally 60m wide preservation corridor."

The potentially affected lots within Stage 4 (Lots 410 to 413) range in size from 12,079m<sup>2</sup> to 17,571m<sup>2</sup> and Lot 519 in Stage 5 has an area of 22,057m<sup>2</sup>. At the location where the impact of the proposed corridor is at its widest (approximately 26m), the resulting lots would still have a depth of approximately 141m measured from internal road frontage.

Therefore, it is considered that the proposed infrastructure corridor, once established by the infrastructure agency, will not make these lots unviable with ample space outside of the infrastructure corridor in which non-temporary uses and structures can be located while still meeting the approved *Black Hill Employment Lands Urban Design Guidelines* (Ver. 4 dated 21 June 2018) applicable to the land.

However, to allow for the possible future LHFC, and to achieve the objective of the Concept Plan to have a continuous 20m wide vegetated buffer to the eastern boundary of the development site, it is considered appropriate to include conditions of consent that would restrict the clearing of native vegetation and earthworks from within that part of the site affected by the draft LHFC (as determined by any *Environmental Planning Instrument* or otherwise by TfNSW or other relevant infrastructure agency); and a further 20m of land within the rear of the abovementioned affected lots within Stages 4 and 5 as measured from the western edge of the draft LHFC.

One such proposed condition seeks to utilise the power conferred on a consent authority pursuant s4.17(1)(b) of the *Environmental Planning and Assessment Act, 1979* to impose a condition on this consent (DA2021/01256) that modifies the terms of another consent (DA2020/01497 – Stage 1) granted under this Act.

### 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, 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 economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle by encouraging employment and economic growth.

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

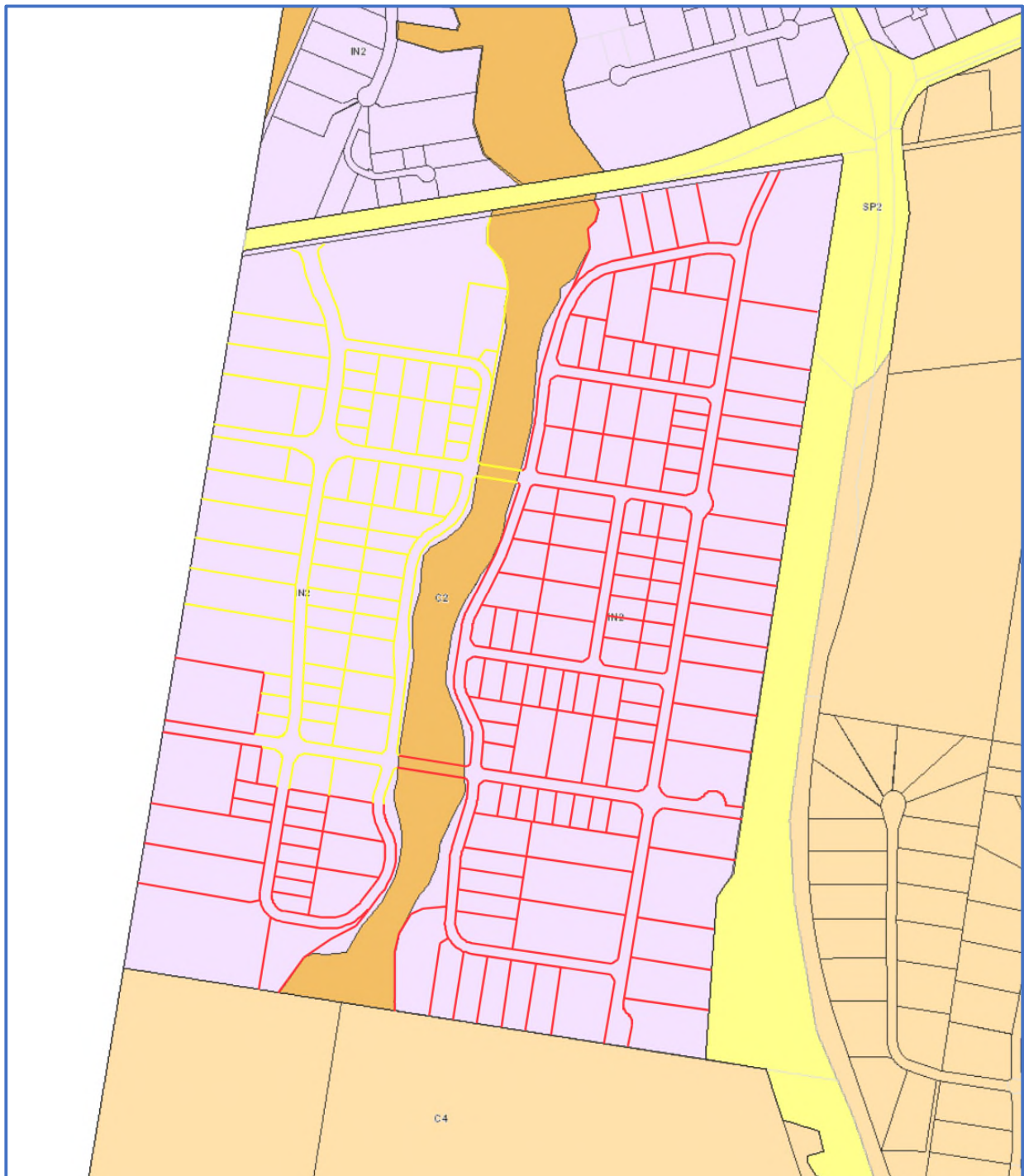
The proposal is located within the following land use zones pursuant to Clause 2.3 of the Newcastle Local Environmental Plan 2012 (NLEP2012).

- C2 – Environmental Conservation; and
- IN2 – Light Industrial

According to the definitions in Clause 4 (contained in the Dictionary), the proposed riparian crossings satisfies the definition of Road which is a permissible use with consent in the Land Use Table in Clause 2.3 for the C2 – Environmental Conservation zone. The proposal is otherwise permissible in the IN2 – Light Industrial zone.



**Figure 5** below shows the extent of the proposed Stages 2 to 7 in red (this DA) and the approved Stage 1 (DA2020/01497) in yellow overlain on the NLEP 2012 land zonings.



**FIGURE 5 (Source – CN Mapping)**



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

Zone	Objectives of zone
C2 - Environmental Conservation	<ul style="list-style-type: none"> <li>o To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> <li>o To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> <li>o 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>o To provide for the conservation, enhancement and protection of the Hexham Wetlands.</li> </ul>
IN2 – Light Industrial	<ul style="list-style-type: none"> <li>o To provide a wide range of light industrial, warehouse and related land uses.</li> <li>o To encourage employment opportunities and to support the viability of centres.</li> <li>o To minimise any adverse effect of industry on other land uses.</li> <li>o To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</li> <li>o To support and protect industrial land for industrial uses.</li> </ul>

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

- The proposal will, except for the road crossing across Viney Creek (which are permissible in the zone) not result in development works within the zone that could destroy or unreasonably damage the riparian corridor.
- The proposal will not unreasonably impact on ecological, cultural and aesthetic values.
- The proposal will not unreasonably increase risk to life and property within the Hunter River Floodplain.
- The proposal will not unreasonably impact on the conservation, protection, enhancement or protection of the Hexham Wetland or Woodberry Swamp.
- The proposal will result in the creation of new industrial allotments and facilitate future light industrial, warehouse and related uses and allow other facilities or services ancillary to the primary use.
- The proposal will encourage employment opportunities.

*General Controls and Development Standards (Part 2, 4, 5 and 6) and Additional local provisions – urban release areas (Part 8)*

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

#### Consideration of the LEP Controls

CONTROL	REQUIREMENT	PROPOSAL	COMPLY
Subdivision – Consent requirements	The land may only be subdivided with development consent	The application seeks consent for the subdivision of land	Yes

Minimum subdivision lot size (CI 4.1)	The size of any resulting lot is not to be less than the minimum shown on the Lot Size Map.	<p>The land is identifiable on the Minimum Lot Size map but is shown to not have a specified minimum lot area.</p> <p>Instead, minimum lot size is governed by the adopted Urban Design Guidelines.</p>	Yes
Land acquisition (CI 5.1/5.1A)	Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.	The proposal does not involve any land reserved for acquisition	Yes
Heritage (CI 5.10)	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	<p>No items of State or Local heritage significance are located on or in the vicinity of the development site.</p> <p>Two sites having Aboriginal cultural significance, both containing isolated surface artefacts, have been identified adjacent to the sites eastern boundary. Both sites are likely to be disturbed as a result of vegetation clearing (approved under DA2020/01497) or bulk earthworks associated with this application.</p> <p>An Aboriginal Heritage Impact Permit (AHIP) will be required for proposed impacts to Aboriginal site AHIMS #38-4-1336 and #38-4-1337.</p> <p>Refer to the detailed heritage considerations below in this report.</p>	Yes
Flood planning (CI 5.21)	<p>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—</p> <p><i>(a) is compatible with</i></p>	Comprehensive flood modelling undertaken by the Applicant indicates that the development, with the proposed flood mitigation measures, is not expected to have any noticeable adverse impacts on flood behaviour or increase risk to life or property.	Yes

	<p><i>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</i></p>	<p>Refer to the detailed flood considerations below in this report.</p>	
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	<p><i>evacuation of people in the event of a flood,</i></p> <p><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></p>		
Acid sulphate soils (CI 6.1)	<p>Development consent must not be granted under this clause for the carrying out of works 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.</p>	<p>The land is classified as being within a Class 5 zone under the LEP Acid Sulphate Soils Map.</p> <p>Reference to the Beresfield Acid Sulphate Soil Risk Map prepared by the Department of Land &amp; Water Conservation indicates that there is no known occurrence of acid sulphate soils at the site.</p> <p>As part of the Preliminary Geotechnical, Contamination and Mine Subsidence Assessment (Douglas Partners, 2011), the likelihood of Acid Sulphate Soils being encountered was assessed.</p> <p>Coastal, low-lying alluvial soils generally below RL 5 (and occasionally up to RL 10 (AHD)) can contain pyrite or other sulphides. Surface elevations at the site range from RL10 to greater than RL 30.</p> <p>The abovementioned report concluded that acid sulfate soils on the land is, therefore, highly unlikely to be encountered.</p> <p>Notwithstanding, the Applicant has prepared an Acid Sulfate Soils Management Plan which will be included in the Construction Environmental Management Plan to be prepared prior to construction commencing for each stage.</p> <p>Appropriate conditions of consent are proposed.</p>	Yes

<p>Earthworks (CI 6.2)</p>	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p> <p>(d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>(e) <i>the source of any fill material and the destination of any excavated material,</i></p> <p>(f) <i>the likelihood of disturbing relics,</i></p> <p>(g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p>(h) <i>any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p>	<p>Traditionally, industrial land uses such as warehouses, transport logistic operations and other light industrial developments etc require large, primarily level sites.</p> <p>The submitted engineering design report, which includes detailed cut/fill diagrams, has been informed by a series of investigations and studies that include future land use considerations, geotechnical, site contamination, flooding, stormwater, groundwater and mine subsidence investigations.</p> <p>The proposed earthworks are intended to deliver reasonably level allotments and to achieve a balance of cut to fill across the site. It is not anticipated that any material will be exported or imported to the site.</p> <p>There are no known relics on the land that would be affected by the proposed earthworks.</p> <p>The proposed earthworks are also generally consistent with the updated Urban Design Controls approved by the Secretary at DPIE under Condition 1.8 of the Concept Plan approval.</p> <p>It is considered that the earthworks can be conducted without significant environmental impact.</p> <p>The proposed earthworks will not have any adverse impacts on neighbouring properties or classified roads, are unlikely to intercept groundwater and will not impact on drinking water catchments.</p> <p>The quality of any fill material to be imported to the site and management of erosion and sedimentation will be controlled</p>	<p>Yes</p>
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		by appropriate conditions of consent.	
Designated State public infrastructure (Cl. 8.1)	Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.	On 9 September 2021 the Secretary of the Department of Planning, Industry and Environment certified that, in regard to DA2021/01256, satisfactory arrangements have been made to contribute to the provision of State public infrastructure.	Yes
Public utility infrastructure (Cl. 8.2)	Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.	The Applicant has consulted with the relevant authorities for the provision of water, sewer, electricity and telecommunication services for the proposed lots. Augmentation of the respective utilities will be undertaken by the developer during construction of each stage.	Yes
Development Control Plan (Cl. 8.3)	<p>(1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.</p> <p>(2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides</p>	Condition 1.8 of the Concept Plan approval required the Applicant to revise the Urban Design Guidelines submitted in association with the Concept Plan to adopt a range of provisions from Council's DCP and to address some other intended site-specific development controls. The updated Urban Design Guidelines were to be prepared in consultation with Council, in a form that could be adopted by Council as a DCP and be approved by the Secretary at DPIE.	Yes

	<p>for the matters specified in subclause (3) has been prepared for the land.</p> <p>(3) The development control plan must provide for all of the following—</p> <ul style="list-style-type: none"> <li>(a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing</li> <li>(b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists</li> <li>(c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain</li> <li>(d) a network of active and passive recreation areas</li> <li>(e) stormwater and water quality management controls</li> <li>(f) amelioration of natural and environmental</li> </ul>	<p>The revised Urban Design Guidelines (V4) (<b>refer Attachment D</b>) were subsequently approved by DPIE in Jul 2018.</p> <p>Condition 1.10 of the Concept Plan approval also required the proponent to prepare a staging plan inclusive of an updated indicative lot layout for approval by the Council.</p> <p>The updated staging plan and indicative lot layout (<b>refer Attachment E</b>) was prepared in consultation with CN and TfNSW before being approved at an Ordinary meeting of Council held 29 June 2021.</p>	
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	<p>hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected</p> <p>(g) detailed urban design controls for significant development sites</p> <p>(h) measures to encourage higher density living around transport, open space and service nodes</p> <p>(i) measures to accommodate and control appropriate neighbourhood commercial and retail uses</p> <p>(j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.</p>		
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The proposal is assessed to be generally consistent with the LEP based on the above and the following additional considerations.

## **Clause 5.10 - Heritage conservation**

### **Aboriginal cultural heritage**

In accordance with FEAR 1.20 of the Concept Plan approval, the Applicant has prepared an Aboriginal Cultural Heritage Management Plan (ACHMP) to guide management of Aboriginal cultural heritage at the site. The ACHMP has been prepared with consultation of Aboriginal parties and in accordance with heritage management protocols.

Two sites having Aboriginal cultural significance (AHIMS #38-4-1336 and #38-4-1337), both containing isolated surface artefacts, have been identified adjacent to the sites eastern boundary.

Additional information was requested by CN's Heritage Officer to clarify whether avoidance of impact to the previously recorded sites had been investigated in the design development. The

Applicant's response notes that the extent of impact to the recorded sites will not be determined until construction stage, and that the proposed development will follow the recommendations of the ACHMP, including appropriate fencing and avoidance of the recorded AHIMS sites until any ground disturbing works are known that may impact these sites, and an AHIP has been obtained.

It is also noted that both sites may potentially be disturbed as a result of vegetation clearing (approved under DA2020/01497) and that the site shown below in Figure 6 as "Black Hill 2" may also be impacted by the proposed Lower Hunter Freight Rail Corridor.

**Figure 6** below shows the approximate location of the two identified AHIMS and **Figures 7** and **8** show the artefacts located at the two sites.



**FIGURE 6 (Source – Extract from ACMP Figure 2)**



FIGURE 7 (Source – Extract from ACMP Figure 3)



FIGURE 8 (Source – Extract from ACMP Figure 4)

The ACHMP states that *"In consultation with the Aboriginal representatives, the site was classified as having a low potential for further Aboriginal objects to be present at (each of) the location."*

It is considered that the proposed development is unlikely to have a significant impact on Aboriginal cultural heritage subject to the works being completed in accordance with the ACHMP and any associated AHIPS (if required). These management measures are reinforced in the proposed conditions of consent.

### **European heritage**

There are no listed Local items within or in close proximity to the development site.

There are also no items listed on the State Heritage Register within or in close proximity to the development site.

There are no Section 170 (*Heritage Act 1977*) within or in close proximity to the development site.

There are no identified archaeological 'relics' within or in close proximity to the development site.

Accordingly, the proposed development is not expected to have any adverse effect on European heritage in the locality.

### **Clause 5.21 – Flood planning**

FEAR 1.20 of the Concept Plan approval requires each development application to include a revised flood assessment.

A comprehensive flood assessment (Northrop, 2018) was undertaken in association with the first proposed development application in 2018 (DA2018/00714) for the whole of the land. The purpose of this investigation was to: assess and set preliminary road and allotment levels above the peak 1% AEP event (including required freeboard depths); provide preliminary sizing for significant culvert infrastructure; assess the impact of the development on upstream and downstream flood behaviour; and investigate the need for stormwater detention infrastructure to mitigate potential upstream and downstream drainage impacts.

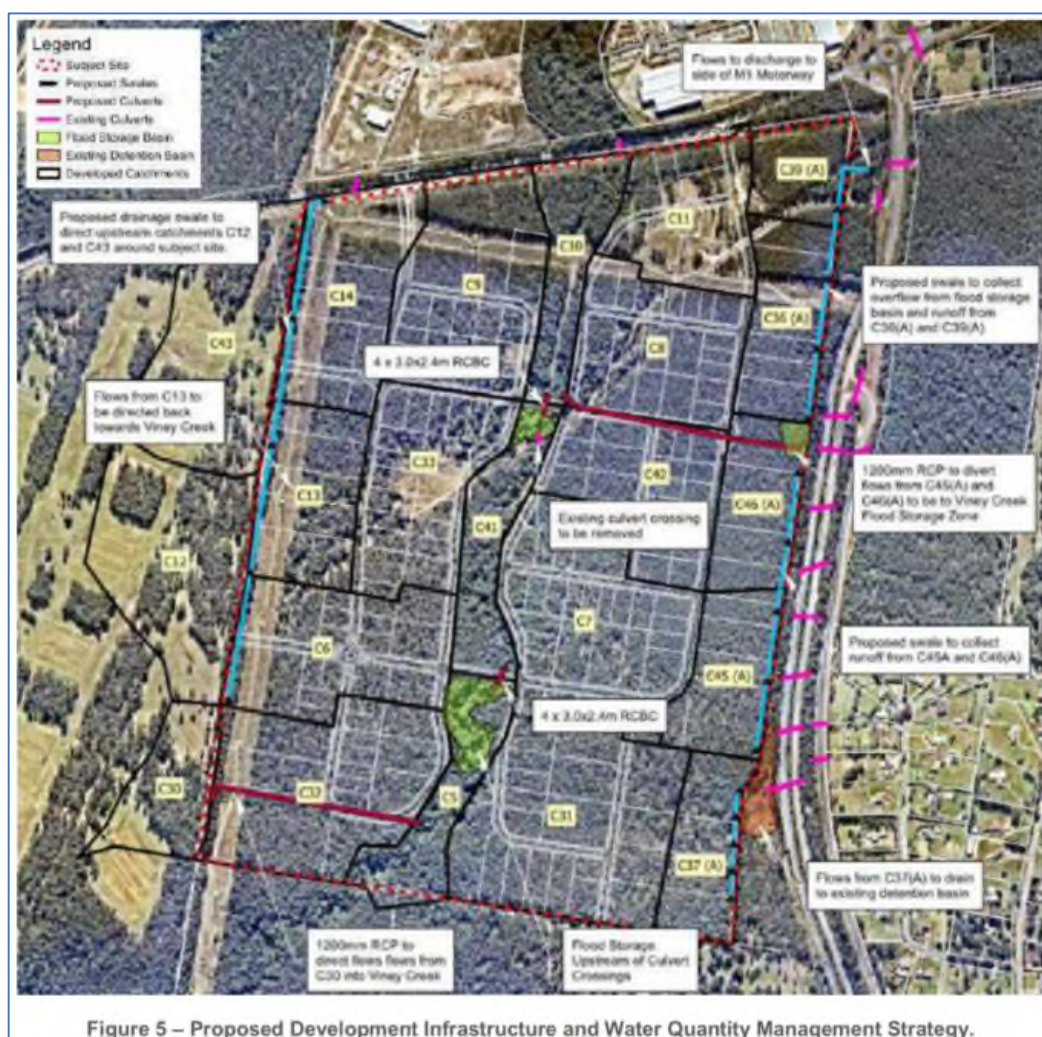
The 2018 report was further reviewed (the Northrop, 2019 report) as part of the development application for Stage 1 (DA2020/01497- approved) but, again, included an analysis of the full site development outcome. Similarly, the flood assessment has again been reviewed by Northrop to confirm the appropriateness of modelling and flood mitigation approach having regard to the current proposed development and is included within the Engineering Design Report.

**Figure 9** below shows the modelled extent of 1% AEP flood extents contained to the retained Viney Creek riparian corridor.





**Figure 10** below shows (pale green colour) the modelled extent of flood storage generated within Viney Creek by the two road crossings in the critical storm event for the 1% AEP flood.



**FIGURE 10 (Source – Extract from Engineering Design Report – Figure 5)**

The Engineering Design Report concludes that:

*"The Flood assessment confirmed the proposed development has no significant impact on upstream and downstream properties and is satisfactory for development.*

*The provision of onsite detention has the potential to increase flood levels downstream of the subject site (refer to the Northrop 2019 report in Appendix C), and alternatively, stormwater retention has been proposed with a retention target of 19mm per square meter of developed area. This combined with the on-line flood storage provides a total effective volume of 30.5mm per square meter of developed area is proposed. This exceeds the retention requirements suggested by Figure 1 of Section 7.06.02 part (c) of Councils Development Control Plan. I note this is the same approach that was proposed as part of the previous applications and the Northrop 2019 report.*

*Based on our investigations and preliminary designs, we expect the proposed development (stages 2, 3, 4, 5, 6 and 7) can adequately manage and address sediment and erosion control, internal access, stormwater management, site grading, and flooding impacts; and we commend our findings to Council for assessment."*

It is considered that the overall approach to stormwater management, being future 'on-lot' controls in association with future developments on the lots and the on-line flood storage generated by the three road crossings of Viney Creek (John Renshaw Drive, Stage 1 and Stage 4) is appropriate and adequate to mitigate the impacts of stormwater runoff during flooding events.

In addition, it is noted that the flood impacted land is also predominantly limited to the riparian corridor within the site. The proposed road levels and industrial allotments are set above the 1% Annual Exceedance Probability (one in a hundred-year flood event).

#### **(b) 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. Those relevant to the proposal, include the following:

- *Draft Remediation of Land SEPP*

A proposed *Remediation of Land State Environmental Planning Policy* ('Remediation of Land SEPP'), which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed Remediation of Land SEPP is intended to repeal and replace the provisions of SEPP 55 (now Chapter 4 of SEPP (Resilience and Hazards) 2021) and *Contaminated Land Planning Guidelines*, and seeks to provide a state-wide planning framework to guide the remediation of land, including; outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly list remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

The *Remediation of Land SEPP* is aimed at improving the assessment and management of land contamination and its associated remediation practices. The modified proposal is consistent with the draft provisions and is considered to be acceptable subject to conditions of consent having been assessed in detail against the current provisions of SEPP (Resilience and Hazards) 2021.

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

In accordance with condition 1.8 of the Concept Plan approval of the Urban Design Guidelines for the Black Hill Employment Lands were revised and on 28 June 2018 the Director, Regional Assessments of the DPIE, as delegate of the Secretary, approved the Black Hill Employment Lands Urban Design Guidelines (Ver. 4 dated 21 June 2018) (the BHELUDG – **Refer Attachment D**).

Also as required by condition 1.8, the BHELUDG have been prepared in a form which can be adopted as site specific controls within the Newcastle Development Control Plan 2012 (NDCP 2012) at some stage in the future.

In accordance with condition 1.10 of the Concept Plan approval, prior to the first development application for subdivision on the land, the Applicant prepared a Staging Plan inclusive of an updated indicate lot layout, a schedule for delivery of infrastructure and contributions and proposed management arrangements for the Viney Creek riparian corridor. This Staging Plan was considered and approved by Council at an Ordinary Meeting held 29 June 2021.

In the event of any inconsistency between the NDCP 2012 or any environmental planning instrument and the Concept Approval, the Concept Approval will prevail to the extent of the inconsistency, and as such the BHELUDG will also prevail to the extent of the any inconsistency with the NDCP 2012.

The relevant clauses of the BHELUDG which are considered alongside the relevant sections of NDCP 2012 are discussed below:

- **Black Hill Employment Lands Urban Design Guidelines**

- A. Layout

- The subdivision layout of this site is generally consistent with the approved Staging Plan and all lot sizes are in excess of the minimum 1000m<sup>2</sup> specified under required under the BHELUDG.

- The resulting lots are also considered to be in accordance with NDCP 2012 – 3.01 Subdivision and 3.13 Industrial Development.

- B. Road Network

- The proposed road network within Stages 2 to 7 is in accordance with the approved indicative lot layout and staging plan and the location of the new 'left-in' access from John Renshaw Drive has been agreed by TfNSW.

- Road carriageway widths are consistent with NDCP 2012 – 7.04 Movement Networks.

- The subdivision layout accommodates access for B-double trucks (PBS Level 2 – up to 30m in length) and the lot sizes are adequate to allow onsite manoeuvring of large vehicles on each of the allotments. In this regard, the comments received from TfNSW included a suggestion that the developer consider designing the internal local roads to accommodate PBS Level 3 (up to 36.m long) heavy vehicles to align with the vehicle types anticipated to be using the neighbouring classified roads. Noting that the development consent issued for Stage 1 (DA2020/01497) has a specific condition requiring the internal roads to be designed to accommodate PBS Level 2 vehicles in the design, the Applicant was asked to consider

amending the Stage 1 approval to accommodate PBS Level 3 vehicles. However, after checking the impacts on the existing consent, this suggestion was declined by the Applicant. It is considered unreasonable to require the roads within only Stages 2 to 7 to accommodate PBS Level 3 vehicles as the roads within Stage 1 must be traversed to exit the estate and these are required to accommodate up to PBS Level 2 vehicles only.

An internal road is also proposed, consistent with the approved Staging Plan, that will provide a second connecting road (Stage 6) between the proposed subdivision and the industrial zoned land to the west on the adjacent parcel of land within the Cessnock LGA.

The internal road network also includes road reserves extending to eastern (Stage 4) and southern (Stage 5) site boundaries. The Stage 4 road was provided at the request of TfNSW during the preparation of the overall Staging Plan because, at that time, investigations were ongoing as to the potential future need for a southern connection to/from the M1 Motorway. This potential road in Stage 4 is not required to service the adjoining allotments (Lots 412 and 413) as both lots can be accessed from the primary road frontage. Given there is some doubt as to whether or not TfNSW will require this road in the future, a condition of consent has been included that removes the obligation on this developer to construct that road but does still require the developer to dedicate the road reserve such that TfNSW could make a future road connection to the roundabout (as shown) if required at some time in the future.

#### C. Public Transport and Cycleway Network

The collector road within the subdivision is of sufficient size to accommodate a bus route, if and when demand requires TfNSW to implement a service.

A network of pedestrian paths and off-road and on-road cycle provision will be required throughout the industrial estate under the proposed conditions of consent consistent with the approach taken in approved Stage 1.

#### D. Earthworks and Clearing

As discussed above, the Concept Plan approval assessed the potential for broad scale land clearing and required appropriate biodiversity conservation offset lands to be dedicated to the State government. This land dedication has been completed and biodiversity offsetting provisions certified under cl. 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

The BHELUDG approved by the delegate for the Planning Secretary, in accordance with Condition 1.8 of the Concept Plan approval, contains objectives to permit the clearing of vegetation from the proposed industrial allotments while protecting the required 20m wide landscape buffer to the northern, eastern and southern site boundaries and the vegetation within the C2 Environmental Conservation zoned land.

Also, as previously mentioned, the consent issued for Stage 1 (DA2020/01497) gave approval for clearing of vegetation from the proposed industrial allotments, other than within the required 20m wide landscape buffer and from within the C2 Environmental Conservation zoned land.

Some minor clearing of vegetation is also expected external to the development site in association with the required upgrades to the classified road network. The applicant has assessed the scale of these works and the extent of vegetation clearing is considered minor (when also considering the off-site works approved under Stage 1) and most affected



vegetation is relatively new growth in areas previously heavily disturbed by works associated with earlier upgrades to these roads and the existing traffic signalised intersection.

The proposed earthworks and any minor additional vegetation clearing proposed under this application are considered to be commensurate with the scale of development, future intended uses of the land and generally consistent with the Concept Plan approval and the subsequent BHELUDG.

#### E. Riparian Corridor

As much as is practicable, the Viney Creek Riparian Corridor is protected from development. Mitigation measures will be implemented with necessary sediment and erosion controls and water quality management devices to protect the natural Viney Creek riparian corridor and downstream watercourses during and after construction.

The Vegetation Management Plan recommends an eight year establishment and maintenance program for the riparian corridor to be undertaken by the developer prior to the responsibility for ongoing maintenance becoming Council's.

#### F. Cultural Heritage

As discussed above, there are two registered Aboriginal Sites recorded on the land. These sites are located in the eastern part of the site.

In accordance with condition 1.20 of the Concept Approval an Aboriginal Cultural Heritage Management Plan has been submitted with the application and will be implemented with the development of the land. The cultural heritage values of the development site are considered to have been adequately addressed.

#### G. Geotechnical / Contamination

Assessments relating to contamination, mine subsidence, acid sulfate soils and groundwater have been completed and are considered acceptable and the associated impacts can be reasonably managed to limit the impact on the development, human health and the environment.

#### H. Noise Mitigation

Construction noise associated with the subdivision works will be addressed via a detailed Construction Environmental Management Plan to be prepared in association with each application for a Subdivision Works Certificate.

Noise associated with future developments on the created lots will be appropriately mitigated within each lot, if necessary, when the end use of each lot is known.

#### I. Infrastructure and Utilities

Each lot within the subdivision will be serviced with water, electricity, communications, and sewerage with all internal site service reticulation provided underground.

## J. Water Management

An Engineering Design Report has been provided detailing the stormwater management strategy for the site in accordance with NDCP 2012 – 7.06 Stormwater.

Stormwater runoff from the proposed road reserves are to be managed on a subdivision scale by gross pollutant traps (GPTs) adjacent to drainage outlets as well as bio-filtration basins strategically located along the perimeter of the riparian corridor. Stormwater runoff, including any pollutants, from the future industrial developments on the allotments created will be managed on each lot and assessed as part of each future Development Application and do not form part of this application for subdivision.

Beyond the initial obligations on the developer, the ownership and maintenance obligations will lie with Council for the subdivision scale treatment of infrastructure that is to be located on public land.

The likely impact the development will have on the wetting and drying cycle of the downstream wetland at Woodberry Swamp has been assessed and it has been determined that the development is unlikely to have an unreasonable adverse impact.

The stormwater management strategy is considered to be acceptable.

## K. Construction Management

A Construction Environmental Management Plan (CEMP) has been submitted with the application and will form the basis of site specific CEMP's to be prepared in association with each application for Subdivision Work Certificates.

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

Council, at its meeting of 27 September 2022, adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

In addition to the development controls within the BHELUDG the main planning requirements of relevance in the NDCP 2012, as it applied to the proposal at the time of lodgement, are discussed below.

### **Section 4.01 Flood Management**

As discussed above, the impacts of the proposed subdivision have been properly considered and the development is not expected to result in detrimental increases of potential flood

affectation on the surrounding area or other properties subject to implementation of the recommended mitigation strategies for in-stream flood storage and future on-lot retention.

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

The development site is located on land mapped as being bushfire prone on the certified Bush Fire Prone Land map.

Subdivision of land for a non-residential or Special Fire Protection purpose is not integrated development (notwithstanding that these provisions were turned off by the Minister) and, therefore, the application was not referred to the NSW Rural Fire Service.

Council's assessment, instead, relies on the Bushfire Assessment report dealing with the Stage 2 to 7 subdivision prepared by a Bushfire Planning and Design (BPAD) accredited practitioner (Building Code and Bushfire Hazard Solutions Pty Ltd - BPAD 9400) submitted by the applicant. The Bushfire Assessment Report assesses the risk to the proposed subdivision of land and future industrial building (and occupants) and recommends a range of bushfire safety measures (Asset Protection Zones, utilities design and access controls) and concludes that the development will be provided with a reasonable and satisfactory level of bushfire protection.

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

The development site is affected by former mining activities and mine subsidence.

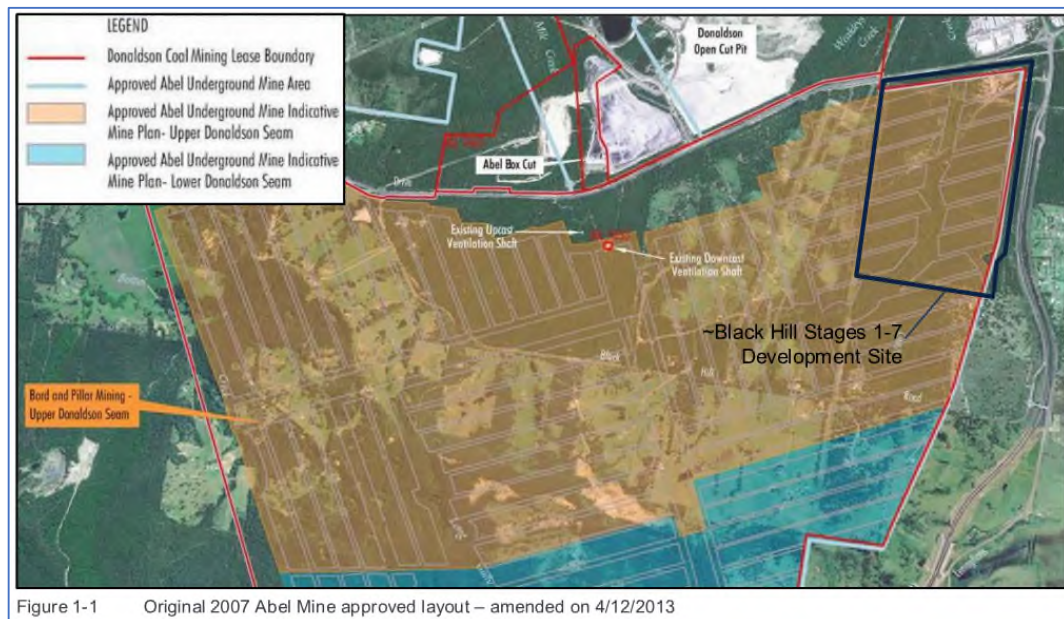
Notwithstanding that integrated development provisions were turned off by the Minister, the application was referred to Subsidence Advisory NSW (SANSW) for review and comment. Subsequent to this referral, the Applicant, having reviewed the terms of the approval issued by SANSW for Stage 1 (DA2020/01497) provided a supplementary Mine Impact Review (Stantec dated 04 February 2022) that addressed original, current and future mining activities affecting the land.

In summary, the supplementary review found that:

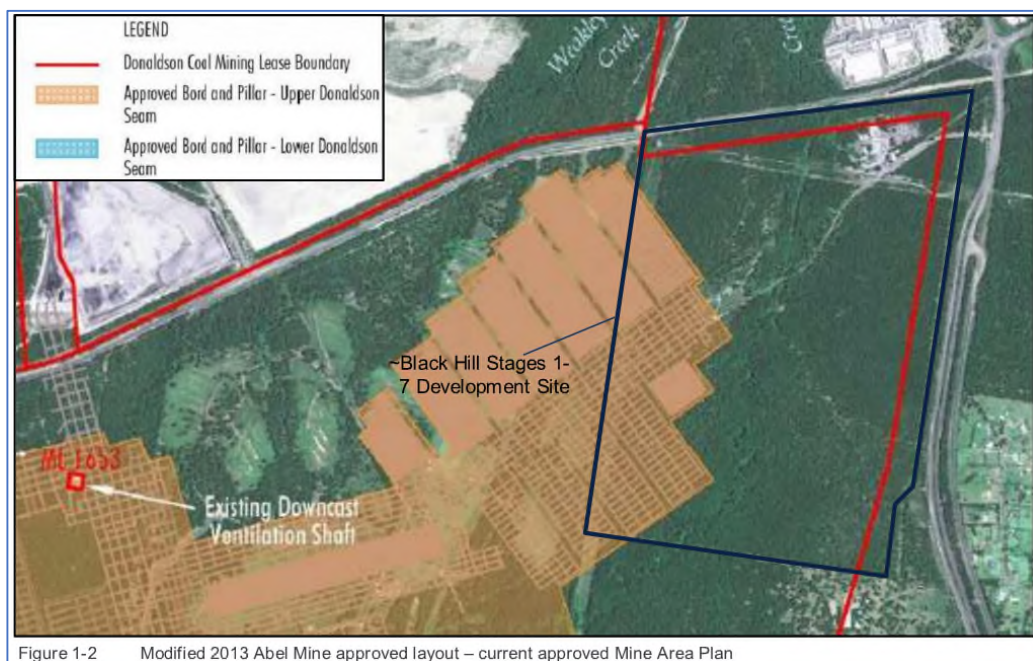
- "There is an active mining lease within the site until 31 December 2030 (modified Project Approval 05\_0136).
- The modified Project Approval, including the amended layout does not permit workings outside of existing mined areas shown on Figure 1 attached, which have been defined based on Abel Mine plans and terrain survey data.
- There are several geological restrictions to mining within the site, including Viney Creek running roughly south to north through the site (a Schedule 2 stream), and a reverse fault running north west to south east through the site (both shown on Figure 1 attached).
- Following the 2013 approval modification and change in site ownership, approval from the owner is required for further mining.
- The BHI site is now located in a Proclaimed Mine Subsidence District, and the relevant provision of the *Coal Mine Subsidence Compensation Act 2017* applies.
- As such, further mining would not proceed at the site, given the current land owner

BHI would not approve further mining. The geological restrictions noted would likely make further mining within the site footprint unviable in any case, which is supported by the modified layout proposed."

**Figures 11 and 12** below show the extent of the original mine approval in 2007 and as modified in 2013, and show how the underground mining extent have now been limited to only the western side of Viney Creek. It is noted that several conditions of the Concept Plan approval were included to address potential impacts of mining that, at that time, may potentially have occurred beneath Viney Creek and resulted in a lowering of the creek invert. With avoidance of mining under Viney Creek, these considerations are no longer relevant.



**FIGURE 11 (Approved mine extent (2007) - Source – Supplementary Mine Impact Review - Figure 1-1)**



**FIGURE 12 (Amended mine extent (2013) - Source – Supplementary Mine Impact Review - Figure 1-2)**

Following further discussions with SANSW, the Applicant submitted a further Mine Subsidence Desktop Study (Stantec, 10 April 2022).

On 20 April 2022 SANSW issued General Terms of Approval for the proposed development which are included in the recommended conditions in **Attachment A**.

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

The subdivision layout relies on a grid pattern and does not include any cul-de-sacs. The subdivision layout has adequately considered the principles of Crime Prevention Through Environment Design (CPTED) guidelines and is acceptable.

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

The social and economic benefits of subdividing the land for future light industrial purposes were assessed as part of the Concept Approval. The subdivision works will provide direct business and employment benefits and once complete, the serviced industrial land will facilitate business growth and on-going employment and economic activity within the defined catalyst area.

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

Appropriate consideration of the significant land disturbance proposed as part of this development has been completed and is addressed in detail throughout this report.

Appropriate measures will be addressed under a Construction Environmental Management Plan to be submitted and approved prior to the release of the respective Subdivision Works Certificate.

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

Land contamination has been investigated and is considered suitable as detailed under SEPP (Resilience and Hazards) 2021 within the report above.

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

#### **Section 5.03 Vegetation Management**

The impacts on existing vegetation have been comprehensively considered within this report as part of the biodiversity assessment and ongoing management of the Viney Creek riparian corridor.

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

#### **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.

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

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

A concept landscaping plan has been submitted with the application and is generally acceptable. Impacts on visual amenity were assessed as part of the Concept Plan approval and, in accordance with the subsequently approved staging plan indicative lot layout a 20m vegetated buffer has been shown within the site to the boundaries of the M1 Motorway, John Renshaw Drive and C4 Environmental Living zoned land to the south.

There are no areas of passive or active open space proposed. The Viney Creek riparian corridor will be protected primarily as a watercourse but roads adjacent will have pedestrian pathways to encourage walking by employees within the estate.

Street tree planting will occur within all proposed roads within the development.

Appropriate conditions of consent are included requiring full details of landscaping works to be provided with each relevant application for Subdivision Works Certificates.

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

The approved Stage 1 (DA2020/01497) includes requirements for:

- the construction of a new traffic control signalised intersection with John Renshaw Drive
- duplication of John Renshaw Drive across the frontage of the entire development site
- upgraded lane configurations associated with existing signalised intersection at the junction of the M1 Motorway/Weakleys Dr/John Renshaw Dr.
- Stage 1 also includes one internal road giving future road connection to the land within Cessnock LGA.

The current proposal for Stages 2 to 7 includes a new 'left-in' only access of John Renshaw Drive, a second internal road connection to the Cessnock LGA land and potential future road extensions to the M1 Motorway (from Stage 4, subject to TfNSW requirement) and to the C4 Environmental Living zoned to the south.

No direct vehicular or pedestrian access will be permitted from any lot to or from John Renshaw Drive or the M1 Motorway.

The internal road network is consistent with the staging plan and updated indicative lot layout approved by CN in accordance with Condition 1.10 of the Concept Plan approval. The network consists of a collector road that connects both site access points and provides a clear circuit through the estate with roundabout controlled intersections at all major junctions on this circuit. Smaller local industrial roads then feed off this collector road and generally form a grid type pattern, considered preferable in industrial estates. The resulting road network is considered appropriate to safely and effectively distribute traffic throughout the estate.

Appropriate provisions for cyclists and pedestrians are also accommodated within the proposed road reserves and the roads are capable of sustaining public transport measures if implemented by TfNSW in the future.



In accordance with Condition 1.15 of the Concept Plan approval, a revised traffic and transport assessment, inclusive of micro-simulation modelling was undertaken by Bitzios Consulting (Bitzios, 21 July 2022) in consultation with, and to the requirements of TfNSW.

At the request of TfNSW, traffic impact modelling was undertaken at 25%, 50%, 75% and 100% of the full (Stages 1 – 7) development by making assumptions as to the likely Gross Floor Area yields achieved per hectare of developable land. The 100% development year has been assumed as 2036 with a typical impact assessment horizon of 2046.

Modelling was then undertaken for the above-mentioned ranges of development with and without various potential off site road upgrades, including the upgrade works required under Stage 1 and the M1 to Raymond Terrace (M12RT) motorway extension currently being planned by TfNSW and expected to be completed by 2028/2029 to determine what external road work mitigation measure may be required, and when.

**Figure 13** below shows an extract from TfNSW publications on the preferred alignment of the M1 to Raymond Terrace motorway extension project.



**FIGURE 13 (Part of M12RT Project - Source – Project EIS July 2021)**

Critically, the traffic impact assessment agreed by TfNSW shows that Stages 1 to 3 are expected to contribute approximately 60% of development traffic, beyond which current modelling indicates the Black Hill flyover and motorway extension would need to be operational to relieve pressure on the John Renshaw Drive / Weakleys Drive signalised intersection.

On 7 September 2022 a written submission was received from Barr Planning after having only recently had an opportunity to review the final Bitzios report. While not objecting to the development per se, Barr Planning expressed concern that the Bitzios report made no assumption for traffic generation from the IN2 Light Industrial zoned land (known as the Broaden Group land) adjacent to the western site boundary and within the Cessnock LGA. A development application to subdivide the Broaden Group land was previously refused by the Panel and a subsequent Class 1 Appeal lodged against that decision was dismissed by the LEC. A copy of the submission by Barr Property was provided to TfNSW on 8 September 2022. The Barr Planning submission is discussed in more detail below under Community Consultation.

On 16 September 2022, TfNSW advised "*In response to the SEPP s 2.122 referral, TfNSW does not object to the proposal subject to the advice offered at Annexure A and generally in accordance with the staging plan and strategic designs shown at Annexure B.*" (Refer to **Attachment H** for a full copy of the TfNSW advice).

Annexure A of the TfNSW letter contains a number of recommended conditions of consent that seek to limit the issuing of subdivision certificates for various stages the development until appropriate mitigation measures are in place on the external classified road network. In summary:

**Prior to the Stage 2 subdivision certificate**

- Complete Stage 1 road upgrades including the new signalised intersection and duplication of John Renshaw Drive;
- Complete the new 'left-in' only access from John Renshaw Drive; and
- Have made satisfactory arrangements with TfNSW for construction of additional approach/departure/turn lanes and associated works required to upgrade the John Renshaw Drive/ M1 Motorway / Weakleys Drive intersection.

**Prior to any of Stages 3 to 7 subdivision certificates**

- The required upgrades to the John Renshaw Drive/ M1 Motorway / Weakleys Drive intersection are to be completed and open to traffic.

**Prior to any of Stages 4 to 7 subdivision certificates**

- The section of the M12RT between the Black Hill interchange and the Tarro Interchange and including the flyover, currently under construction by TfNSW, is to be completed and open to traffic.

It is understood that the above limitations on the issuing of subdivision certificates were prepared in consultation with, and agreed by, the Applicant.

Appropriate conditions of consent, including those recommended by TfNSW, are proposed.

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

#### **Section 7.04 Movement Networks**

The proposed development includes internal collector and local roads that meet the minimum requirements of this section of the DCP having regard to road carriageway, on-street parking and pedestrian and cyclist provisions.

Upgrades required to the sub-arterial and arterial classified roads (John Renshaw Drive and Weakleys Drive) will be to the requirements of TfNSW.

#### **Section 7.06 Stormwater**

As discussed above it is assessed that the impact of the proposed subdivision and future light industrial developments have been properly considered and that the stormwater quantity and quality management measures proposed for the development are satisfactory subject to appropriate conditions of consent.

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

#### **Section 7.08 Waste Management**

Appropriate measures will be included in the Construction Environmental Management Plan to deal with waste generated during construction of the subdivision.

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

The following Local Infrastructure 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 (Update commenced 1 January 2022) (NLICP)*

Section 1.6 of the NLICP does not provide for an exemption or any reduction to contributions levied for this nature of development and a condition has been recommended for the payment of contributions.

#### **(e) 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 in relation to DA2021/01256.

However, it is noted that two planning agreements have previously been entered into with the State Government in relation to dedication of biodiversity conservation offsets land and State Infrastructure Contributions. Neither of these planning agreements involve CN.

Further, while not a formal planning agreement under s7.4 of the EP&A Act, it is noted that the proponent has committed to delivery of a \$2 million fund, in addition to any Council Development Contributions Plan and State infrastructure contribution and which does not

include any contributions which would be otherwise required to mitigate the impacts of the development. This fund is to be administered by the proponent over the life of the development in accordance with the schedule for delivery approved by Council pursuant to condition 1.10 of the Concept Plan approval.

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

**Environmental Planning and Assessment Regulation 2000**

*Schedule 6 'Savings, transitional and other provisions' of Environmental Planning and Assessment Regulation 2021 confirms that Environmental Planning and Assessment Regulation 2000 (2000 Regulation) as in force immediately before its repeal on 1 March 2022 continues to apply to DA2021/01256.*

The following relevant matters contained in the 2000 Regulation **must** be taken into consideration by a consent authority in determining a development application:

- Matters contained in Clause 92(1) including:
  - If demolition of a building proposed – the 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).
- Matters contained in Clause 92A(1) including the *Wagga Wagga Special Activation Precinct Master Plan* published by the Department in May 2021.
- Matters in Clause 93 where the consent authority must be satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use (CI 93(3)).
- Matters in Clause 94 where the consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.

These prescribed matters have been considered and been found to not be applicable to the proposed development.

**Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017**

*Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' applies to the development. Under Schedule 2, the following clauses are of particular relevance.*

- Cl. 2(1)(b) – the approved Concept Plan is considered to be a Transitional Part 3A project and, therefore, the terms of the Concept Plan approval issued by the NSW Planning and Assessment Commission on 19 November 2013 continue to apply.
- Cl. 3B(2)(a) – the development is taken to be development that may be carried out with development consent under Part 4.

- **Cl. 3B(2)(d)** – a consent authority **must not** grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the Concept Plan.
- Cl. 3B(2)(f) - the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the Concept Plan.

A summary of the Further Environmental Assessment Requirements (FEARS) contained within Part D of the Concept Plan approval (MP10\_0093) issued by the NSW Planning and Assessment Commission on 19 November 2013, and a summary response to each by the applicant is found in Table 2 of the Statement of Environmental Effects.

As assessed throughout this report, it is considered that DA2021/01256 complies with the provisions of Schedule 2 and is 'generally consistent' with the terms of the Concept Plan approval.

### **3.5 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 generally consistent with the context of the site, in that the proposed development is in an area occupied by other light industrial developments.
- **Access and traffic** – The location of access points to the proposed internal road network and the likely impacts of traffic generated by future developments on the lots created has been comprehensively considered by TfNSW who do not object to the development, subject to a number of conditions of consent being imposed requiring certain off-site road upgrades to be undertaken and limiting the timing for release of latter stages of the development until the M12RT extension is operational.
- **Public Domain** – The proposed development will not result in loss of any existing area of public domain.
- **Utilities** – Water, sewer, electricity and telecommunication utilities will be provided to all lots within the development to the requirements of the respective public utility authority.
- **Heritage** – The proposal does not impact on any listed item of European heritage identified on any Local or State register.

Two isolated sites relating to Aboriginal cultural heritage have been located on the development site. If avoidance of these sites is not possible when preparing detailed design or during construction works, an application for an AHIP will be required.

- Other land resources – It has been confirmed that no further underground coal mining activities are proposed on the development site.
- Water/air/soils impacts - Contamination and remediation has been appropriately considered and the proposal is satisfactory subject to conditions. Air quality impacts associated with developing the land for light industrial purposes was considered in association with the Concept Plan. Condition 1.31 of the Concept Plan approval requires further consideration of the impacts of the development during construction on air, water and soils, including erosion and sedimentation, and these will be appropriately managed by the mitigation measures proposed within the submitted Construction Environmental Management Plan and appropriate conditions of consent.
- Flora and fauna impacts - The impacts on flora and fauna have been assessed within this report and are considered to be acceptable.
- Natural environment – The development proposes large scale changes to the natural landform through regrading and reshaping works to facilitate large, useable industrial allotments, as envisaged by the Concept Plan. These works do not have any significant impact on the natural environment in the retained Viney Creek riparian corridor being preserved through the site.
- Noise and vibration – There is potential for adverse impacts during construction on some existing neighbouring residential properties (closest is approximately 250m away) located on the eastern side of the M1 Motorway reserve. These temporary construction impacts will be managed by the preparation and implementation of a Construction Environmental Management Plan.
- Natural hazards –The site is affected by bushfire, land contamination, mine subsidence and flooding across a range of rainfall events, however, the impact of this on the proposed development, and on proposed users of the road, is considered to be acceptable.
- Safety, security and crime prevention – The proposed development is considered acceptable having regard to CPTED Principles.
- Social impact – The proposed development is assessed as having no significant adverse impacts on the health and safety of the community, sense of place, community facilities or interactions between the new development and the community.
- Economic impact – The proposal is assessed as providing significant positive economic benefits resulting from the release of new light industrial zoned allotments in a location with significant transport logistic benefits.
- Site design and internal design – The proposed subdivision layout is generally consistent with the Staging Plan and Updated Indicative Lot Layout approved by Council as required under Condition 1.8 of the Concept Plan approval.
- Construction – Potential and likely impacts during the construction phase have been appropriately considered and are acceptable subject to the preparation and implementation of a Construction Environmental Management Plan.



- Cumulative impacts – The proposed development is considered to be generally consistent with the Concept Plan approval applicable to the site and, on balance, is expected to have an overall public benefit.

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

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

The site is considered suitable for the land clearing and subdivision works for the following reasons:

- The development is consistent with the objectives and permissible under the applicable land use zonings under Newcastle LEP 2012.
- The development is generally consistent with the Concept Plan approval, including the further environmental assessment requirements for subdivision of the site.
- The proposed development is in accordance with the indicative lot layout and staging plan.
- The development is consistent with the provisions of the Greater Newcastle Future Transport Plan and the Greater Newcastle Metropolitan Plan 2036 as applying to the Land, which includes the land in the development of a Beresfield-Black Hill freight and logistics hub, with complementary manufacturing and light industrial activity.
- The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulphate soils, mine subsidence and heritage. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

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

These submissions are considered in Section 4.3 of this report.

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

The development is considered to be in the public interest and is likely to result in significant employment and economic benefits.

## **4. REFERRALS AND SUBMISSIONS**

### **4.1 Agency Referrals**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act, the Concept Plan approval and as outlined below.

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

AGENCY	CONCURRENCE/ REFERRAL TRIGGER	COMMENTS (ISSUE, RESOLUTION, CONDITIONS)	RESOLVED
<b>Concurrence Requirements</b> (s4.13 of EP&A Act)			
Water NSW	Section 8.9(1) of the Biodiversity and Conservation SEPP (Chapter 8 – Sydney Drinking Water Catchment)		N/A
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>		N/A
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	No formal adoption has been made of a preferred rail corridor for the possible Lower Hunter Freight Rail Corridor project.	N/A
<b>Referral/Consultation Agencies</b>			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Ausgrid have advised that the proposal is satisfactory subject to conditions.	Yes
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	TfNSW have advised that they do not object to the proposal, subject to the imposition of a number of conditions of consent.	Yes
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
		The Department of Planning and Environment has previously advised that, in accordance with section 75P(2)(b) of the <i>Environmental Planning and Assessment Act 1979</i> , development applications lodged	N/A

		subsequent to the Concept Plan approval (MP10_0093) are not Integrated Development for the purposes of section 91 (now section 4.46) of that Act.  Refer to discussions within this report on mine subsidence, Aboriginal cultural heritage, bushfire and water management.	
<b>Designated Development (CI 77 of the EP&amp;A Reg)</b>			
		No part of the proposal constitutes 'designated development'	N/A

## 4.2 Council Officer Referrals

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

OFFICER	COMMENTS	RESOLVED
Environmental	Council's Senior Environment Protection Officer reviewed the submitted reports and additional information relating to contamination, Acid Sulfate Soils and construction impacts and considered that the proposal is satisfactory subject to conditions of consent	Yes (conditions)
Public Domain/ Assets	Council's Asset Services team reviewed the application and considered that the proposal is satisfactory subject to conditions of consent.	Yes (conditions)
Heritage	Council's Heritage Officer reviewed the submitted reports relating to Aboriginal cultural heritage and considered that the proposal is satisfactory subject to conditions of consent.	Yes (conditions)

## 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan and cl. 78 of the EP&A Regulation 2000 from 20 October 2021 until 05 November 2021. The notification included the following:

- notification letters were sent to adjoining and adjacent properties including land in the Cessnock LGA and to Cessnock City Council.
- Notification on the Council's website.

No submissions were received during this notification period.

The amended or additional information received on 25 August 2022, 21 September 2022 and 7 October 2022 were made 'publicly viewable' on Council's website (DA Tracker) however a second formal public notification period was not made.

On 15 August 2022 correspondence was received from Barr Planning enquiring as to the status of traffic impact assessments relating to the proposal.

In response, on 22 August 2022, CN informed both Barr Planning and Cessnock City Council of the recently finalised Bitzios traffic impact assessment and gave both parties until 7 September to review and make a written submission to CN if they so choose.

On 7 September 2022 a written submission was received from Barr Planning.

No submission was received from Cessnock City Council.

The Barr Planning submission opens with the statement that *"The following submission is not an objection to the development however it is a strong objection to the traffic assessment that was provided to the council from the applicant, prepared by Bitzios Consulting, for the final submission."*

The submission then expands on concerns that the Bitzios traffic impact assessment does not include any assumptions for possible traffic generation from the Broaden site and states that *"This is in direct contrast with the first traffic assessment lodged with the application, prepared by Colston Budd Rogers and Kafes Pty Ltd, which used the SMEC report prepared by TfNSW as the basis of the assessment. The SMEC report assumes that traffic will be generated from both sites within the precinct."*

*We note that the reason for not including the adjoining land, the Broaden Site, in the assessment was "at the time of commencing the study, the status of the Broaden development was unknown and it was agreed with TfNSW to exclude it from consideration in this assessment"*

The submission also includes a chronology of correspondence between Barr Planning and TfNSW spanning 12 October 2021 and 14 July 2022 regarding traffic modelling requirements for any future DA on the Broaden site and states *"Based on the above (chronology), it is very difficult to believe that, according to the traffic report, that TfNSW did not know what was happening with the Broaden site. As a result using this as a reason for excluding the Broaden site for assessment holds no validity."*

In relation to the Broaden site, the submission notes:

- *"The site was identified as part of an industrial precinct more than 15 years*
- *The site has been rezoned for Industrial land to allow development to occur*
- *A DCP has been adopted on the site outlining the final outcome including staging, road layout and detail design of the site*
- *Multiple DAs have been lodged on the site, including a concept plan, 38 lot industrial subdivision DA, 2 separate 2 lot subdivision plans, a DA for an industrial building*
- *An extended time in the Land and Environment Court contesting the proposed subdivision.*
- *There is an agreed pathway forward for the assessment of traffic for the site."*

Essentially, the submission relies on previous advice from TfNSW that have sought to require the Broaden site to consider the cumulative impacts of development within the entire Emerging

Black Hill Precinct catalyst area, inclusive of the development on the subject site, and takes the view that TfNSW have taken different approaches toward modelling the traffic impacts from each development site. The Barr Planning submission concludes that:

- *We do not support the position that TfNSW did not know what was happening with the Broaden site. This invalidates the reasons for making the assumptions that are the basis of the traffic report prepared to support the traffic application for BHI.*
- *The Broaden site is likely to have development approved on it in the future, this traffic has not been considered in the assessment and as a result the likely impacts of the development are not known in relation to the road network.*
- *Further the assessment assumes that no traffic will come from the Broaden site at any time during the development of the BHI site. This is counter to all advice and assessment by TfNSW in the last 5 years. By not considering the adjoining development, the catalyst precinct cannot be developed in an orderly and economic way."*

Having been provided the first letter from Barr Planning dated 11 August 2022 which pre-empted similar statements to those above, on 18 August 2022 the Director Development Services at TfNSW advised CN that TfNSW *"requirements for any development in regard to traffic assessment, is that one must give rise to what is certain and known. BHI (Black Hill Industrial in relation to DA2021/01256) at this time do not have to give rise to traffic from the neighbouring site (the Broaden site) as there is nothing certain and known from that site. Zoning or a DCP does not make something certain and known."*

TfNSW have also confirmed that they continue to have dialogue with the proponents of both potential development sites in the Catalyst Area.

A search of the Cessnock Council DA on-line tracker done 18 October 2022 found that there is currently no active or undetermined development applications relating to the Broaden site.

Having had regard to the Concept Plan approval, the two recent letters from Barr Planning and other meetings and correspondence between TfNSW and Barr Planning in respect of the Broaden site, on 16 September 2022 TfNSW advised CN *"In response to the SEPP s 2.122 referral, TfNSW does not object to the proposal subject to the advice offered at Annexure A and generally in accordance with the staging plan and strategic designs shown at Annexure B."*

Noting that Barr Planning *'do not object to the development'* only the methods and assumptions used in the traffic impact assessment it is considered reasonable to rely on the conditional support given to this proposed development (DA2021/01256) by TfNSW as the eminent authority when considering the possible and likely impacts on the existing and future classified road network.

It is further assumed that TfNSW will continue to have dialogue with any proponent for development of the Broaden site.

## **5. KEY ISSUES**

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail.

## **5.1 Concept Plan approval (MP10\_00093)**

This matter is discussed in more detail throughout the report above.

Resolution: It is considered that DA2021/01256 complies with the relevant provisions of Schedule 2 and is 'generally consistent' with the terms of the Concept Plan approval.

## **5.2 Off-site traffic Impact (Classified Road network)**

This matter is discussed in more detail above under SEPP (Transport and Infrastructure) 2021, NDCP 2012 Sections 7.03 and 7.04 and Community Consultation.

Resolution: The proposed development has been assessed having regard to the objectives and pre-conditions contained within the SEPP (Resilience and Hazards) 2021 and, subject to the recommended conditions of consent received from TfNSW, is considered satisfactory.

## **5.3 Impact of the proposed Lower Hunter Freight (Rail) Corridor**

This matter is discussed in more detail above in section 3.4 under the heading of *Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020*.

Resolution: It is considered that the proposed development is acceptable having regard to the proposed SEPP amendment subject to inclusion of appropriate conditions of consent to limit works within the proposed infrastructure corridor and to enable the establishment of the continuous 20m wide vegetated buffer along the sites eastern boundary.

## **5.4 Biodiversity**

This matter is discussed in more detail above under the *Biodiversity Conservation Act 2016*.

Resolution: On 26 October 2018 the Director, Regional Assessments at the Department of Planning and Environment certified under clause 34(A)3 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* that the proposed development is part of a Concept Plan approval for which biodiversity impacts have been satisfactorily addressed and that appropriate conservation offset measures have been secured.

It is further noted that land clearing within the footprint of this application (Stages 2 to 7) has previously been assessed and granted consent in association with DA2020/01497 (Stage 1). As such, DA2021/01256 only includes minor vegetation loss associated with TfNSW required upgrades within the classified road reserves.

The proposed development is considered to be acceptable subject to appropriate conditions of consent.



## 5.5 Contamination

This matter is discussed in more detail above under SEPP (Resilience and Hazards) 2021.

Resolution: A RAP for the overall site has been prepared to support the development (Stantec 2022). The RAP describes the additional investigations to be undertaken, as well as preferred remediation options consisting of a combination of off-site disposal of contaminated material and on-site consolidation and isolation through engineered barrier containment. The remediation strategy for the material previously placed in retention areas at the former Boral site will be excavation and consolidation into the existing easement for overhead electricity traversing proposed Lot 211.

Conditions of consent are proposed that require Site Auditor involvement in each stage of the development to ensure the land is, or will be, suitable for the future intended land use.

The proposed development is considered to be acceptable subject to appropriate conditions of consent.

## 5.6 Mine subsidence

This matter is discussed in more detail above under Section 4.03 of the NDCP 2012.

Resolution: It has been determined that mining activities on the land have ceased and are no further mining activities are anticipated. On 20 April 2022 SANSW issued General Terms of Approval for the proposed development.

The proposed development is considered to be acceptable subject to appropriate conditions of consent.

## 5.7 Flood planning

This matter is discussed in detail above under NLEP 2012 – Clause 5.21.

Resolution: A comprehensive flood assessment is included within the submitted Engineering Design Report.

The flood impacts of the development, assuming future light industrial uses on the lots created, is predominantly limited to the riparian corridor within the site. The proposed road levels and industrial allotments are set above the 1% Annual Exceedance Probability (one in a hundred-year flood event).

The Engineering Design Report concludes that:

*"The Flood assessment confirmed the proposed development has no significant impact on upstream and downstream properties and is satisfactory for development."*

The proposed development is considered to be acceptable subject to appropriate conditions of consent.

## 6. 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, terms of the Concept Plan approval issued on the land, issues raised in submissions and the key issues identified in this report, it is considered that the application is generally consistent with the Concept Plan approval and can be supported.

It has been assessed that the site is suitable for the proposed development which is considered to be compatible with the locality and the strategic vision for this Catalyst Area. Key issues of the development have been satisfactorily addressed or are resolved by the recommended draft conditions at **Attachment A**.

## 7. RECOMMENDATION

That the Development Application DA No 2021/01256 for '*Subdivision of 1 lot into 138 lots with roads and associated infrastructure*' at Lot 30 DP870411 – 198 Lenaghans Drive, Black Hill and Lot 4 DP847676 – 202B Lenaghans Dr, Black Hill, NSW 2322 be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

## 8. ATTACHMENTS

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Staging Plan and Proposed Lot Layout (DA2-C01.21 Rev 6 – 30/08/2022)
- Attachment C: Concept Plan approval (19 November 2013)
- Attachment D: Black Hill Employment Lands Urban Design Guidelines (**BHELUDG**) (approved July 2018)
- Attachment E: Staging Plan and Updated Indicative Lot Layout (approved 29 June 2021)
- Attachment F: Explanation of Intended Effects (July 2021) – Proposed amendments to *SEPP (Major Infrastructure Corridors) 2020*
- Attachment G: Explanation of Intended Effects (August 2022) – Proposed amendments to *SEPP (Transports and Infrastructure) 2021* and consequential amendments to *EP&A Regulation 2021*
- Attachment H: TfNSW advice dated 16 September 2022

# Attachment A

**ANNEXURE A**  
**PROPOSED CONDITIONS - DA2021/01256**  
**BLACKHILL INDUSTRIAL ESTATE STAGES 2 TO 7**

**SCHEDULE NO 1**

**PART A**

Any reference in this consent to guidelines, technical directions, specifications, policies or plans or a like document (Document), is to be construed as a reference to the version of the Document applicable at the time that an obligation or requirement under a condition of this consent arises for consideration. For avoidance of doubt, where such a Document has been repealed or replaced, but not by a Document of the same name, the reference extends to any Document, in the opinion of the consent authority, that contains like or similar requirement.

**GENERAL CONDITIONS**

- A.1 Pursuant to Section 4.17(1)(b) of the *Environmental Planning and Assessment Act, 1979* the development consent granted for DA2020/01497 (Stage 1) is modified to remove the approval for the clearing of vegetation from that part of the development site within Lots 410 to 413 (Stage 4) and Lot 519 (Stage 5) and defined by the extent of the proposed Lower Hunter Freight (Rail) Corridor (as determined by any Environmental Planning Instrument (including any draft instrument) or otherwise by TfNSW or other relevant infrastructure agency) or within 20m, generally to the west, of the western boundary of the draft Lower Hunter Freight (Rail) Corridor.
- A.2 The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

Plan No / Supporting Document	Prepared by	Reference_Version	Dated
Amended Staging Plan	Northrop	NL166552-DA2-C01.01.21 Revision 6	30/08/2022
Concept Engineering Plans	Northrop	Ref: NL166552 DA2-C01.01 Rev 2 DA2-C02.01 Rev 2 DA2-C03.01 Rev 3 DA2-C03.11 Rev 3 DA2-C03.12 Rev 3 DA2-C03.13 Rev 3 DA2-C03.41 Rev 1 DA2-C03.51 Rev 1 DA2-C03.52 Rev 1 DA2-C04.01 Rev 1 DA2-C04.11 to 19 Rev 1	27/04/2021 27/04/2022 02/09/2022 02/09/2022 02/09/2022 27/04/2022 19/07/2021 19/07/2021 19/07/2021 19/07/2021 19/07/2021

		DA2-C04.20 Rev 2 DA2-C04.51 to 62 Rev 1 DA2-C06.11 Rev 1 DA2-C07.01 to 02 Rev 1	27/04/2022 19/07/2021 19/07/2021 27/04/2022
Engineering Design Report (excluding the Engineering Drawings in Appendix A)	Northrop	NL166552 Revision A	21/07/2021
Landscape Plans	Paul Scrivener	Ref: 20/2220 Sheets 1 to 24 Rev B	09/08/2021
Traffic Modelling and Upgrades Assessment	Bitzios	P5510.002R	21/07/2022
M1 Intersection Upgrade plan (as referenced in TfNSW letter dated 16/09/2022)	Northrop	Ref: NL166552 SD2-C01.41 Rev 3 SD2-C01.21 Rev 2	29/08/2022 19/08/2022
Construction Environmental Management Plan	Northrop	NL166552 Rev 2	13/04/2022
Acid Sulphate Management Plan	Northrop	NL166552 Rev A	19/10/2022
Groundwater Management Plan	Cardno	82218039-002.2	08/05/2018
Bushfire Assessment Report	Building Code and Bushfire Hazard Solutions	181048C Rev 2	12/08/2021
Vegetation Management Plan	Ecological	17750 Rev V0e	15/09/2021
Aboriginal Cultural Heritage Management Plan	Yancoal	Black Hill, NSW	05/03/2019
Remediation Action Plan	Stantec (formerly Cardno)	82218039 Rev 3	28/10/2022

- A.3 Construction of the proposed subdivision taking place generally in the consecutive manner indicated on the approved Staging Plan (refer Condition A.1) except as otherwise provided by the conditions of this consent or as agreed in writing by Council. Consecutive stages may be constructed concurrently.
- A.4 Prior to the issue of a Subdivision Works Certificate for a particular Stage all relevant general conditions of Schedule 1 (Part A) and all relevant conditions within Schedule 1 (Part B) as required by Subsidence Advisory NSW (SANSW) and all relevant conditions within Schedule 1 (Part C) as required by Transport for NSW (TfNSW) for the particular Stage are to be complied with.
- A.5 Prior to the endorsement of a Subdivision Certificate for a particular Stage, all relevant general conditions of Schedule 1 (Part A) and all relevant conditions within Schedule 1 (Part B) as required by Subsidence Advisory NSW (SANSW) and all relevant conditions within Schedule 1 (Part C) as required by Transport for NSW (TfNSW) for the particular Stage (if applicable) are to be complied with.
- A.6 The Developer is responsible for all costs associated with this development, unless otherwise agreed by Council as being 'works-in-kind' as specifically identified in Council's applicable section 7.12

- A.7 For clarity, this development consent does not authorise the clearing and grubbing of vegetation or harvesting and propagation of native seed stock associated with preliminary site works within Stages 2 to 7. Such works are to be undertaken in accordance with the terms of the development consent issued for DA2020/01497.

<b>CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE FOR STAGES 2 TO 7</b>
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- A.8 Prior to the issuing of any Subdivision Works Certificate for Stage 2 (in whole or part), the Developer is to provide to the Registered Certifier and the Council:
- a) Written evidence of a Works Authorisation Deed executed with Transport for NSW (TfNSW); and
  - b) A copy (in pdf format) of design drawings approved by TfNSW for all works within any classified road reserve or proposed road reserve widening associated with that Stage. The approved design drawings are to include sufficient detail to confirm consistency with the detailed construction plans submitted with an application for the Subdivision Works Certificate.
- A.9 For each stage of the development a NSW Environment Protection Authority (EPA) accredited Site Auditor is to review the Stantec 2022 Remediation Action Plan (**RAP**) (Ref: 82218039 Revision 3 dated 28 October 2022) and all related reports, and is to prepare and issue to the Certifier and Council, either:
- a) a Site Audit Statement (SAS) and Site Audit Report (SAR) certifying that all detailed investigation, remediation and validation has been carried out and the relevant stage of development is suitable for all the intended land uses [i.e. a Section (A) SAS]; or
  - b) a Site Audit Statement (SAS) and Site Audit Report (SAR) certifying the land within the relevant stage can be made suitable for all the intended land uses if the site is remediated in accordance with a Stage-specific RAP [i.e. a Section (B5) SAS]. The Stage-Specific RAP must be consistent with the preferred remediation options described in the Stantec 2022 RAP. For avoidance of doubt, the Stage-specific RAP must include any additional requirements that the Site Auditor may impose.
- A.10 The Developer is to identify all locations and extents of any existing and/or proposed stockpiles of surplus virgin excavated natural material (VENM) resulting from previous or current proposed subdivision works. Full details, including associated ongoing environmental management measures, are to be included in the detailed design drawings provided to Council for a Subdivision Works Certificate application.
- A.11 All subdivision and associated works are to be designed and constructed in accordance with the following documents or current equivalent document at the time of application.
- a) Relevant Austroads publications
  - b) Associated Transport for NSW (TfNSW) (formerly the Roads and Maritime Services (RMS)) supplements and Technical Directions
  - c) Council's Development Control Plan
  - d) The Newcastle City Council – Engineering Specifications for Development Design and Construction.
- A.12 Road infrastructure including intersection treatments, road pavement, foot/cycle/shared paths, kerb and gutter, stormwater drainage, services, landscaping (including street trees), street lighting, signage



and markings is to be provided for each Stage of the subdivision, generally in accordance with the approved plans or as otherwise detailed in this consent. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application.

- A.13 Each Subdivision Works Certificate application for road and drainage construction works is to be accompanied by a comprehensive MUSIC model demonstrating that the proposed works will achieve the water quality reduction targets specified by Council's Development Control Plan.
- A.14 Detailed design drawings prepared in association with Subdivision Works Certificate applications for Stages 4 and 5 must take into account the retention and preservation of vegetation and limitations on earthworks in the vicinity of the proposed Lower Hunter Freight (Rail) Corridor and the amended location and extent of the 20m wide vegetation buffer as required under the terms of this consent.
- A.15 Stormwater Management and associated Water Sensitive Urban Design (WSUD) measures are to be designed and constructed in accordance with Council's Development Control Plan and Standard Drawings that are current when making each application for Subdivision Works Certificate and in accordance with the following additional requirements:
- a) Upright kerb and gutter shall be provided to both sides of all roads.
  - b) All roads shall be provided with a crown on the pavement centreline and 2-way crossfall (3 %) toward the respective kerb and gutter.
  - c) All footway and verge areas are to have 2.5 % crossfall toward the respective kerb and gutter.
  - d) Trafficable all-weather maintenance vehicle access tracks are to be provided from the public road to all basins, pits and headwalls.
  - e) Bio-retention basins shall initially be constructed with a separate sacrificial layer of Bidum A64 or approved equivalent laid over the surface of the filter media prior to the laying of a temporary full width/length turf cover.  
(Note: The Developer is responsible for removing all temporary and sacrificial measures and completing the construction and planting of the Bio-retention basins in accordance with the terms of this consent.)
  - f) Proprietary gross pollutant traps (GPT's) proposed upstream of all Bio-retention basins shall be centrifugal type with removable capture baskets such as 'Rocla CDSTM' or products with a similar function, as agreed by Council with an offline capture chamber.
  - g) All GPT's are to be provided with hardstand maintenance pads to the requirements of Council.
- A.16 Designs for flexible road pavements associated with the development shall be in accordance with Council's Development Control Plan, relevant Austroad and Transport for NSW (TfNSW) publications and the following additional requirements. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application or application under s138 (*Roads Act, 1993*), as appropriate.
- a) Shall be accompanied by a .pdf copy of a pavement design report prepared and certified by a practising geotechnical engineer.
  - b) All roads to be Benkleman Beam tested prior to prime sealing with a maximum permissible deflection of 1.0 mm being allowed for all internal Local roads. New pavements associated with works on any Classified Road shall have a maximum permissible deflection of 0.8 mm.
  - c) All roads to be primer sealed (7mm) prior to asphaltting.
  - d) The minimum wearing surface of all internal roads is a 50 mm compacted thickness layer of asphaltic concrete (AC 14).
- A.17 Intersections associated with the development shall be in accordance with Council's Development Control Plan, relevant Austroad and Transport for NSW (TfNSW) publications and the following additional requirements. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application or application under s138 of the *Roads Act, 1993*, as appropriate.

- a) The proposed intersection with John Renshaw Drive is to comply with the requirements of TfNSW.
- b) The standard design vehicle for all proposed Local roads shall be a Performance Based Standards (PBS) Level 1 vehicle up to 20m in length as defined by the National Heavy Vehicle Regulator (NHVR).
- c) All proposed Local road intersections are also to be capable of catering for PBS Level 2 vehicles up to 30 m in length as defined by the NHVR without encroachment onto kerbs, medians, footways or verges.

A.18 Concrete footway paving and shared paths are to be provided to the development in accordance with the following requirements. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application or application under s138 of the Roads Act, 1993, as appropriate.

- a) A minimum 2.5 m wide reinforced concrete shared path within the eastern footway of proposed Road MCL01 from the intersection of Road MCL03 to John Renshaw Drive.
- b) A minimum 2.5 m wide reinforced concrete shared path around all kerb returns associated with each proposed roundabout. These shared paths shall extend in length until satisfactory on-road provision exists for cyclists on the respective road.
- c) A minimum 1.2 m wide reinforced concrete footpath is to be provided to both sides of proposed Roads MCL01 and MCL03 except where a shared path is provided in accordance with a) and b) above.
- d) A minimum 1.2 m wide reinforced concrete footpath is to be provided to at least one side of all other proposed Roads not specified in a), b) or c) above.
- e) Appropriate on and off ramps, holding rails and signage are to be provided for in association with any shared path.
- f) Appropriate kerb ramps are to be provided at all intersections for pedestrians.

A.19 All footways containing a shared path are to be widened to a minimum 5.0m and appropriate amendments made to proposed road reserve boundaries and the proposed boundaries of affected lots. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application or application under s138 of the *Roads Act* 1993, as appropriate.

A.20 The approaches and circulating road pavement for all roundabouts is to be steel reinforced concrete designed and certified by a suitably qualified engineer as being in accordance with the RMS's '*Concrete Roundabout Pavements: A Guide to their Design and Construction*' or as agreed by Council. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application or application under s138 (*Roads Act, 1993*), as appropriate.

A.21 All splitter islands associated with each roundabout are to include pedestrian refuges in accordance with relevant Austroad and Transport for NSW (TfNSW) publications. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application or application under s138 of the *Roads Act 1993*, as appropriate.

A.22 In addition to the regulatory line marking and sign posting associated with the roundabouts and any requirements of TfNSW, the following additional regulations on traffic and parking are to be shown on the relevant in the detailed design drawings for a Subdivision Works Certificate application or application under s138 of the *Roads Act 1993*;

- a) Stage 2 – 'No Exit', 'Left Only' and 'Wrong Way Go Back' signage to prevent drivers from attempting to use Road MCL01 to exit onto John Renshaw Drive.
- b) Stage 2 - 'No Stopping' restrictions to the western side of Road MCL01 from John Renshaw Drive to Road MCL10.
- c) Stage 2 - 'No Stopping' restrictions on the eastern side of Road MCL01 from John Renshaw Drive to the southern edge of the landscape buffer where it crosses Road MCL01.

- d) Stage 2 - 'No Parking' restrictions across the frontage of proposed Lot 201 to Road MCL01 from the southern extent of b) above to Road MCL10.
  - e) Stage 2 – 'Stop' controls on Roads MCL09 and MCL10 at the intersection with Road MCL03.
  - f) Stage 4 – 'Stop' controls on Roads MCL08 and MCL09 at the intersection with Road MCL01.
  - g) Stage 4 – 'Stop' controls on Roads MCL04 and MCL05 (in Stage 1) at the intersection with Road MCL01.
  - h) Stage 4 - 'No Stopping' restriction to both sides Road MCL01 between Road MCL09 and approved Stage 1.
- A.23 Temporary culdesac turning heads are to be provided at the following locations. The turning heads are to be constructed having full depth road pavement with the exception that the final asphaltic concrete seal may be replaced with a two-coat bitumen spray seal.
- a) Stage 6 in the vicinity of proposed Lot 701.
- A.24 Prior to making application for a Subdivision Works Certificate for each Stage the Developer is to submit to Council and obtain approval for all proposed road names within that Stage and the approved road names are to be shown on the submitted documentation accompanying the Subdivision Works Certificate.
- A.25 No clearing of native vegetation or earthworks are to occur in the 20m wide Vegetated Buffer unless such works are necessary for the construction of stormwater infrastructure or the installation of underground services.
- A.26 All disturbed, regraded or exposed areas outside of development lots are to be stabilised and suitably revegetated. All revegetation is to be undertaken using native plants propagated from local native seed from on-site or a nearby seed source. Propagation material is to be sourced from areas to be cleared in preference to areas that will be retained as bushland. Full details are to be included in documentation for a Subdivision Works Certificate application.
- A.27 Detailed Landscape Plans and Specifications being prepared for each Stage by a Landscape Architect or similar qualified professional practising at the membership level of Registered Landscape Architect of the Australian Institute of Landscape Architects and is also to comply with the following requirements. Full details to be included in the detailed design drawings for a Subdivision Works Certificate application.
- a) Existing trees on the site, which are to be retained, are to have no cut or fill under their canopy areas and the location of these trees is to be clearly identified on the Landscape Management Plan and Engineering Plans.
  - b) Areas of restricted access and fence detail to be erected during construction and areas proposed for storage/stockpile of plant and materials are to be identified.
  - c) To specify
    - The use of plant stock propagated from seed harvested in accordance with DA2020/01497 (Stage 1).
    - Establishment methods for all new plantings.
    - Maintenance scheduling for all new plantings.
    - Guidelines for formative pruning of street trees.
    - Weed eradication program.
    - Reporting methods.
  - d) Street tree species are to be agreed by Council's City Greening Services.
  - e) All street trees are to be selected and certified by the supplier to comply with the current NATSPEC guide with respect to root development, height, trunk diameter and branch structure and balance (refer to *Specifying Trees, Construction Information Systems Australia PL, Clark, R 2003*).
  - f) For all internal Local roads street trees are to be a minimum 75 litre pot size, or as otherwise approved by Council, planted at a maximum spacing of 12m.

- g) All street trees are to be protected with tree guards to Council's requirements.
- h) No turf is to be installed between the road and riparian zone. A continuous double line of *Lomandra* species is to be installed in lieu of weed control and territorial enforcement.
- i) For all batters which will remain or adjoin public land; and
  - More native species are included in the planting schedule. No single species to exceed 15% of the total species mix. No non-native species.
  - Type, diversity and density of native species to replicate structure of adjacent Vegetation Types (see VMP list).
  - Taller longer-lived plants are required on the lower third of batters.
  - Lomandra to be limited to interfaces eg between turf and natives.
  - Measures to increase the resilience of riparian corridor for example retention of habitat logs; use of vines, midstory and longer-lived canopy species to out compete weeds.
- j) Where cul-de-sacs adjoin 20m vegetation buffers, Landscape Plans are to include measures to stop illegal vehicle access into vegetated buffer zones and include installation of continuous, large non-uniform rock walls >800 mm high; rocks >400 mm in minimum dimension and placed at the back of the nominal footway area.

- A.28 A copy of a current Aboriginal Heritage Impact Permit issued by the NSW Office of Environment and Heritage, pursuant to *National Parks and Wildlife Act 1974*, is to be included in the documentation for each Subdivision Works Certificate application where land containing an identified Aboriginal object or site will be impacted.
- A.29 The Developer is to obtain all necessary approval(s) issued pursuant the *Water Management Act, 2000*, unless subject to an exemption, and keep all such approval(s) current for the duration of the respective works. A pdf copy of such approval(s) is to be provided to the Accredited Certifier prior to the issuing of the respective Subdivision Works Certificate.
- A.30 Water, electricity and gas installations are to comply with Section 4.1.3 of the NSW Rural Fire Service document '*Planning for Bushfire Protection 2006*' (or as updated). Full details to be included in documentation for a Subdivision Works Certificate application.
- A.31 No permanent or temporary Asset Protection Zones (APZ's) are to be located in any part of the Drainage Reserve intended to be dedicated to Council or in any part of land identified as a Vegetated Buffer 20m wide.

<p><b>CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE FOR STAGES 2 TO 7</b></p>
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- A.32 Site Specific Environmental Management Plans (SSEMPs) are to be prepared for each of the Stages 2 to 7 such to be designed and implemented to manage all environmental aspects associated with the clearing, earthworks (including contaminated land remediation and mine subsidence) and construction works. A copy of each SSEMP is to be provided in .pdf format to the Principal Certifier and Council and the SSEMP is to be maintained on site during all site works and be made available to Authorised Officers upon request. The SSEMP is to include but not be limited to:
- a) A statement of compliance together with detailed justification(s) for any diversions from the overarching Construction Environmental Management Plan (Northrop, NL166552 Rev 2 13/04/2022), including all appendices and subplans (the CEMP) that demonstrate how such diversions meet the stated objectives of the CEMP.
  - b) The Flora and Fauna Management Plan prepared for Stage 1 in accordance with DA2020/01497.
  - c) The Vegetation Management Plan prepared for Stage 1 in accordance with DA2020/01497.
  - d) Archaeological and Aboriginal heritage.

- e) Acid sulfate soils management.
- f) Mine subsidence.
- g) A site management strategy, identifying and addressing issues such as environmental health and safety, site access and security, 'no-go' zones and traffic/pedestrian/cyclist management.
- h) A Construction Traffic Management Plan approved by TfNSW and Council pursuant to Condition C.15.
- i) Site office, compounds and parking locations.
- j) A soil and water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water and groundwater. Procedures should be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.
- k) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.
- l) A noise management strategy detailing measures to minimise the impact of the construction phase on the amenity of the locality, in accordance with Australian Standard AS 2436, 1981 '*Guide to Noise control on Construction, Maintenance and Demolition Sites*'. Noise monitoring during the construction phase should be incorporated into the program.
- m) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material including felled trees and other vegetation.
- n) A community relations plan that aims to inform local residents and other local stakeholders of the proposed nature and timeframes for construction activities together with contact details for site management.

A.33 The development is to be undertaken in accordance with the Heritage Management Protocols and Heritage Contingency Protocols set out in the Aboriginal Cultural Heritage Management Plan prepared by Yancoal (5/9/2019).

A.34 Prior to works commencing, all contractors and sub-contractors are to undergo a site induction provided by a suitably qualified heritage professional, which is to include the significance of the site and the relevant obligations under the *Heritage Act 1977* and the *National Parks and Wildlife Act 1974*, and the protocols set out in the Aboriginal Cultural Heritage Management Plan prepared by Yancoal (5/9/2019).

A.35 An Aboriginal Heritage Impact Permit (AHIP) is required to be obtained from Heritage NSW under Part 6 of the *National Parks and Wildlife Act 1974* prior to the commencement of ground disturbance works within any Stage of the development known to contain Aboriginal objects or sites. The AHIP is to include provision for the completion of Aboriginal archaeological investigations in the form of test excavations and (if required) further salvage activities.

During any excavation work, in the event that any Aboriginal objects are identified within the area of works, works within the immediate vicinity of the Aboriginal object should cease and Heritage NSW should be contacted so that appropriate management strategies can be identified.

In the unlikely event that a potential burial site or potential human skeletal material is exposed, work in the vicinity of the remains is to halt immediately to allow assessment and management. If the remains are suspected to be human, it will be necessary to contact NSW Police, Heritage NSW and the Heritage Division to determine an appropriate course of action.

A.36 If unanticipated suspected Aboriginal heritage objects are uncovered at any time throughout the life of the project, excavation or disturbance of the area is to stop immediately and Heritage NSW is to be notified in accordance with Section 89A of the *National Parks and Wildlife Act 1974* (NPW Act). Aboriginal objects in NSW are protected under the NPW Act. Unless the objects are subject to a valid Aboriginal Heritage Impact Permit, work must not recommence until approval to do so has been provided by Heritage NSW.

A.37 No permanent keeping place or re-burial of Aboriginal objects is to occur on any land owned by

Council or intended to be dedicated to Council.

- A.38 Contamination assessment and/or validation reports subject to site auditor review in accordance with Conditions A.9, A.76 and A.77 must demonstrate that any land to be dedicated to Council does not contain any concentrations of contaminants exceeding soil investigation levels or waste criteria set out in Table 1 of the Newcastle Contaminated Land Management Technical Manual.
- A.39 Remediation must be carried out in accordance with the Stantec 2022 RAP or the relevant Stage-specific RAP approved by the Site Auditor pursuant to Condition A.9.
- A.40 A suitably qualified and experienced Environmental Consultant certified under a scheme approved by the NSW EPA must be employed to supervise the implementation of the contaminated sites aspects of the development in accordance with the Stantec 2022 RAP or the relevant Stage-specific RAP approved by the Site Auditor pursuant to Condition A.9, for each Stage of the development.
- A.41 Any new information discovered during the construction or remediation work that, in the opinion of the Environmental Consultant, has the potential to alter previous conclusions about site contamination must be immediately notified in writing to Council, the Principal Certifier and the Site Auditor. The Environmental Consultant must develop a strategy and methodology to satisfactorily address the contamination, and the Site Auditor must confirm in writing to the Council and the Principal Certifier that the requirements of Condition A.9 can be met by the revised strategy and methodology.
- A.42 No changes to the remediation strategy approved by the Site Auditor pursuant to Condition A.9, shall be undertaken without prior written approval from the Site Auditor.
- A.43 Written approval is to be obtained from the Road Authority for all proposed temporary changes to traffic conditions or traffic regulations on any existing Public Road as a result of the development. The Developer shall be responsible for all costs associated with any public notification and implementation of the proposed temporary changes.
- A.44 Closed Circuit Television (CCTV) digital recordings is to be undertaken of all pipes constructed in any existing or proposed public road and any proposed drainage reserve and copies are to be provided to the Principal Certifier and Council.

To facilitate the issuing of Asset Identification Numbers the Developer is to provide the Council with a Works as Executed plans (Electronic and Hardcopy format) of the completed stormwater drainage network a minimum of 5 business days prior to the commencement of the CCTV investigation. A Council Asset inspection officer will be available on site at the commencement of the CCTV investigation (minimum 2 days notification required Ph. 4974 2613). The CCTV recordings and reporting of defects is to be in accordance with the Specifications at Appendix 10 and Appendix 11 of Council's *'Stormwater and Water Efficiency for Development Technical Manual\_July 2017'* (or equivalent as amended by Council) and be provided to the Principal Certifier and Council within one week of the completion of inspection work. Council's Asset section will review the CCTV footage and report and advise acceptance or otherwise of the stormwater conduits.

Prior to Practical Completion being achieved for the respective Subdivision Works Certificates and/or prior to the finalisation of the respective Works Authorisation Deed issued by the Road Authority for all works granted consent under section 138 of the *Roads Act 1993*, any defects identified by Council are to be repaired by the Developer and further CCTV footage and reports provided demonstrating that the repairs have been satisfactorily completed.

- A.45 All required landscape works are to be implemented by members of the Landscape Contractors



Association of NSW and/or similar qualified contractors and under the direction and supervision of a Landscape Architect or similar qualified professional practising at the membership level of Registered Landscape Architect of the Australian Institute of Landscape Architects.

- A.46 A Landscape Practical Completion Report is to be submitted to the Principal Certifier prior to achieving Practical Completion for each respective Stage of the development. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were approved under the respective Subdivision Works Certificate and/or all works granted consent under section 138 of the *Roads Act, 1993* and is to verify that an effective maintenance program has been commenced.
- A.47 All required bushland vegetation management works within the proposed Drainage Reserve are to be undertaken by suitably qualified and experienced bush regeneration contractors who are members of the Australian Association of Bush Regenerators or fulfil the membership criteria and under the direction and supervision of a team Leader having, as a minimum, a Certificate III in Conservation & Land Management or equivalent. A copy of the contractor's qualifications is to be submitted to Council and an initial site inspection is to be undertaken in the company of an appointed Council representative prior to undertaking any work identified in the VMP.
- A.48 Council's 'PREVENT POLLUTION' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.
- Note: The sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter, Wallsend Library or the Master Builders Association Newcastle.
- A.49 A copy of the Notice of Determination and relevant Subdivision Works Certificates, including associated approved plans, is to be kept on-site at all times during construction works.
- A.50 The project manager nominating a community contact person and advising adjoining owners and Council of the name of the nominated contact person, along with a contact telephone number. The contact person is to be available at all times for the duration of the construction work.
- A.51 Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
- Monday to Friday, 7:00 am to 6:00 pm and
  - Saturday, 8:00 am to 1:00 pm.
- No noise from construction/demolition work is to be generated on Sundays or public holidays.
- A.52 Mechanical rock breaking is to be confined to between 9.00am to 3.30pm Monday to Friday excluding any Public Holiday. Rock breaking methods must not include blasting.
- A.53 The Developer ensuring services and vehicular access are maintained at all times to all existing properties and buildings adjoining the development site.
- A.54 Compaction of earthworks is to be carried out under Level 1 supervision as per AS 3798-1996 "*Guidelines on earthworks for commercial and residential developments*".
- A.55 The removal of any asbestos material found during the works is to be undertaken in accordance with the requirements of the WorkCover Authority of NSW.
- A.56 Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure

that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.

- A.57 Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*, including the EPA 'Waste Classification Guidelines' or the conditions of a relevant Resource Recovery Order.
- A.58 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 *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*.
- A.59 Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifier on request.
- A.60 Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:
- a) control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins; and
  - b) controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition – Vol. 1 (the 'Blue Book') published by Landcom, 2004.
- A.61 All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
- a) restricting topsoil removal;
  - b) regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion; and
  - c) alter or cease construction work during periods of high wind.
- A.62 Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW).
- A.63 Plans of any proposed traffic management devices, line marking and signposting works on existing or proposed public roads being submitted to Council and approved by the Newcastle City Traffic Committee prior to those works being undertaken.
- A.64 The routes for import of any fill material or export of any spoil is to be submitted to and agreed to by the Road Authority prior to the commencement of haulage. Any deterioration or failures within public roads that can reasonably be attributable to such operations are to be restored to the requirements of, and at no cost to, the Road Authority.
- A.65 Toilet facilities being provided at or in the vicinity of the site on which work is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. The required toilet facilities are to be in place and operational prior to any other work being undertaken on the site.

<b>CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE</b>
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- A.66 Prior to the issue of any Subdivision Certificate in respect of the Stages 2 to 7 inclusive the following must occur:
- (i) Details of the cost of carrying out the respective Stage of the development calculated in accordance with City of Newcastle's *Section 7.12 Development Contributions Plan 2021* must be submitted to the City of Newcastle.
  - (ii) A development contribution, calculated in accordance with the City of Newcastle's *Section 7.12 Development Contributions Plan (the Plan)* must be paid to the Council. The contribution is to be calculated as a proportion of the cost of carrying out the development determined in accordance with (i) above. The proportions are to be paid as follows:

<b>Proposed cost of the development</b>	<b>%of the levy</b>
Up to \$100,000	NIL
\$100,001-\$200,000	0.5%
More than \$200,000	1.0%
  - (iii) If the contribution is not paid within the same financial quarter that the cost report is prepared in, the contribution payable will be adjusted in accordance with the provisions of the Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment.
- A.67 Prior to making application for a Subdivision Certificate for each Stage the Developer is to obtain from Council the required street addresses and show such addresses on the respective Administration Sheet.
- A.68 All subdivision works, road works granted consent under s138 of the *Roads Act 1993* and public utility installations associated with a particular Stage are to be completed, prior to issue of the relevant Subdivision Certificate
- A.69 A Final Inspection Report (or equivalent as determined by the Road Authority) is to be issued by the Road Authority for any works granted consent under section 138 of the *Roads Act 1993* in association with the respective Stage of the development.
- A.70 A Final Inspection Report, which is in addition to any Practical Completion certificate, is to be issued by the Principal Certifier for any works approved under a Subdivision Works Certificate in association with the respective Stage of the development.
- A.71 The Developer making good any damage caused to a public road or associated structures, including drains and kerb and gutter, as well as to private property, and revegetating any disturbed areas resulting from the works.
- A.72 Prior to the issuing of the Subdivision Certificate for each Stage of the development, the Developer is to submit to Council (in .pdf format) a Statement of Account detailing all actual and projected contribution expenditure made from the \$2 million allocation referred to in the Concept Approval MP

A.73 Prior to the issuing of a Subdivision Certificate for each Stage all approved remediation work is to be completed in accordance with the Stantec 2022 RAP or the relevant Stage-specific RAP approved by the Site Auditor pursuant to Condition A.9 for the respective Stage.

A.74 Where the subject land has already been certified by a Site Auditor as suitable for the intended land uses by way of SAS and SAR in accordance with Condition A.9(a) and no additional remediation or validation is required, an Environmental Consultant certified under a scheme approved by the NSW EPA must certify in writing that no environmental conditions have changed that affect the suitability of the land and a copy of the certification must be provided to the Principal Certifier and to Council prior to the issuing of a Subdivision Certificate. Where this certification is provided, Conditions A.76 and A.77 will not apply.

A.75 Prior to the issuing of a Subdivision Certificate for each Stage, a Validation Report must be prepared by, or reviewed and approved by, an Environmental Consultant certified under a scheme approved by the NSW EPA and a copy of the Validation Report must be provided to the Site Auditor, the Principal Certifier and to Council.

The Validation Report must verify that the land is suitable for all the intended uses and that the remediation and validation of the site has been undertaken in accordance with the approved remediation strategy described in the Stantec 2022 RAP or the relevant Stage-specific RAP approved by the Site Auditor pursuant to Condition A.9(b). The Validation Report must detail all locations where remediation has occurred.

A.76 A NSW EPA accredited Site Auditor must review the Validation Report and any new contamination information discovered during implementation of the Stage-specific RAP.

A.77 Prior to the issuing of a Subdivision Certificate for each Stage, a final Site Audit Statement and a final Site Audit Report prepared by the Site Auditor certifying that the relevant Stage of the development is suitable for all the intended land uses within the relevant Stage of the development must be provided to the Principal Certifier and Council.

A.78 A Subdivision Certificate Application is to be submitted to the Principal Certifier in respect of each Stage of the development, accompanied by the appropriate fee. Each application is to be supported .pdf copies of the following documentation, together with any other documentation required under the conditions of this consent:

- a) The plan of subdivision prepared by a Registered Surveyor.
- b) The instrument prepared under s88B of the *Conveyancing Act, 1919* as appropriate.
- c) Copies of NATSPEC certification in respect to tree plantings.
- d) A geotechnical assessment prepared by a suitably qualified geotechnical engineer that:
  - i) indicates any areas of potential slip or subsidence which may influence future road and building design requirements.
  - ii) indicates the location, extent and suitability of any fill placed on the site.
  - iii) provides a report on all earthworks carried out under Level 1 supervision as per AS 3798-1996 '*Guidelines on earthworks for commercial and residential developments*'; and
  - iv) provides testing results for each phase of construction in relation to earthworks and road works.
- e) A statement from a registered surveyor verifying that:
  - i) no survey control marks were interfered with during site work; or
  - ii) that the requirements of the Department of Lands had been obtained in respect of any marks which were destroyed and that such requirements have been complied with.

- f) A statement from the Ecologist who supervised the implementation of the Flora and Fauna Management Plan (FFMP) verifying that any vegetation removal works were undertaken in accordance with the FFMP and detailing any injuries, deaths or relocations of fauna and providing detail on the number, type and location (GPS coordinates) of any nest boxes installed.

A.79 The appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act, 1919* and submitted to the Principal Certifier setting out the terms of easements (including easements in gross) and/or rights of carriageway and/or restrictions as to user required for the subdivision, in respect of the following where applicable:

- a) Interallotment drainage lines in favour of upstream properties utilising the lines.
- b) Rights of carriageway in favour of the property serviced.
- c) Easements for services in favour of the property serviced and /or the appropriate utility provider.
- d) Vegetated Buffers (20m wide).
- e) Restricting access to the M1 Motorway and John Renshaw Drive.
- f) Temporary Asset Protection Zones (APZ).
- g) Public stormwater drains, existing and proposed stormwater outlets, overland flow paths and any temporary culdesac heads or turning facilities in favour of Council.

- (Note: i) Council in addition to the owner of any land benefited by the easement is to be a party whose consent is needed to release or vary easements or positive covenants.  
ii) Council advises that it will not withhold consent to release the Positive Covenants or Easements in respect of temporary culdesac heads or turning facilities or Temporary APZ's subject to adequate alternate measures being provided in lieu.)

A.80 The Subdivision Certificate application for Stage 2 must include appropriate notation placed on the respective plan of subdivision and an instrument under Section 88B of the *Conveyancing Act, 1919* for a 'restriction on use of land' such to prevent the removal of native vegetation and prevent the altering of the ground surface levels within that part of the site affected by the proposed Lower Hunter Freight (Rail) Corridor (as determined by any Environmental Planning Instrument, including any draft instrument, or otherwise by TfNSW or other relevant infrastructure agency) or within 20m, generally to the west, of the western boundary of the draft Lower Hunter Freight (Rail) Corridor. Council is to be nominated as the Prescribed Body having benefit of the 'restriction on use of land'.

A.81 Appropriate documentation is to be submitted with the Subdivision Certificate application for each respective Stage such to provide for the release of any easement, right of carriageway or restriction as to user, including those affecting proposed public roads, made redundant by that particular Stage of the development.

A.82 Written evidence from Subsidence Advisory NSW (SANSW) that they are satisfied that all mine subsidence remediation works for a particular Stage of the development have been satisfactorily completed is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of that Stage.

A.83 Written evidence of arrangements made with the Hunter Water Corporation Limited, or other approved supplier, for the provision of individual water supply and sewerage services to all lots within each Stage, is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of that Stage.

A.84 Written evidence of arrangements made with Ausgrid, or other approved supplier, for the provision of underground electricity supply to all lots and street lighting within each Stage, is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of that Stage.

(Note: Any required transformers are to be located in reserves or private property, with appropriate easements being created, and are not to be installed in road reserves.)

- A.85 Written evidence of arrangements made with the NBN Co. Ltd, or other approved supplier, for the provision of underground National Broadband Network services to all lots within each Stage. The evidence is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of that Stage.
- A.86 Written evidence of consultation with and any resulting arrangements made with the Telstra for the provision of underground broadband and/or telecommunication services to all lots within each Stage. The evidence is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of that Stage.
- A.87 Written evidence of any arrangements made with Jemena, or other approved supplier, for the provisioning of underground natural gas services is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of each Stage of the development.
- A.88 Written evidence from the Secretary of the NSW Department of Planning, Industry and Environment that the Developer has satisfied, in full or for the respective Stage, the Secretary's Certificate dated 09 November 2021 (Ref. IRF21/4040) regarding Satisfactory Arrangements for designated State public infrastructure for DA2021/01256, is to be submitted to the Principal Certifier prior to certification of the Subdivision Certificate in respect of that Stage.
- A.89 Certified works-as-executed (WAE) plans being lodged in .pdf format with the Principal Certifier and with Council immediately after having achieved Practical Completion of works for each Stage. The WAE plans are also to be registered with Council in digital form via Council's on-line lodgement portal and in accordance with the 'A-Spec'<sup>TM</sup> Digital data Specification or as otherwise specified by the Council and are to include:
- a) Details of any alterations made to the approved plans.
  - b) The location and type of service conduits.
  - c) The location and extent of any temporary Asset Protection Zones and Fire Trails.
  - d) Details of all kerbs and gutters, pits and pipelines, stormwater management devices and drainage swales.
  - e) Certification by a Registered Surveyor that all pipes, services and access driveways within proposed lots are totally within their respective easements.

Where the WAE plans indicate variations between the works as installed and the approved plans, the Principal Certifier is to determine whether the works are acceptable or require reconstruction.

- A.90 A six-month defect liability period applying in respect of each Subdivision Works Certificate issued for Stages 2 to 7 of the development, prior to Council accepting maintenance responsibility for subdivision infrastructure, with the exception of the proposed landscaping. Each defect liability period is to commence at the date of registration of the respective plan of subdivision.

In this regard, a cash bond or bank guarantee in an amount equivalent to 5.0% of the final construction value of the subdivision works for which Council is accepting maintenance responsibility for, with the exception of the proposed landscaping, or an alternative lesser amount as may be agreed to by Council, is to be submitted to Council prior to certification of the Subdivision Certificate in respect of each Stage of the development.

- (Note: i) A further inspection of the subdivision infrastructure will be undertaken by Council at the cessation of the Defect Liability period.  
ii) Any defects identified by Council are to be rectified by the developer prior to Council's acceptance of maintenance responsibility and the release of the bond.

- iii) In the event that the developer fails to rectify defects notified by Council within one month of notification, Council may elect to call on the bond to affect the required repairs.
- iv) A Final Inspection will be undertaken by Council at the completion of the specified maintenance period.

A.91 A 12 month maintenance period applying in respect of Stages 2 to 7 of the development, prior to Council accepting maintenance responsibility for any proposed landscape works (including plants, mulch, street trees and guards). Each defect liability period is to commence at the date of registration of the respective plan of subdivision. A lesser maintenance period for individual elements may be agreed to by Council.

In this regard, a cash bond or bank guarantee in an amount equivalent to 25% of the value for the supply, installation and associated maintenance of the landscaping that Council is to accept maintenance responsibility for, or an alternative lesser amount as may be agreed to by Council, together with the required Landscape Establishment report, is to be submitted to Council prior to certification of the Subdivision Certificate in respect of each Stage of the development.

- (Note: i) A further two inspections (six month intervals) of the landscaping will be undertaken by Council officers in accordance with the terms of this consent.
- ii) Any defects or maintenance requirements identified by Council are to be rectified by the developer prior to Council's acceptance of maintenance responsibility and the release of the bond.
  - iii) In the event that the Developer fails to undertake such maintenance within one month of notification, Council may elect to call on the bond to affect the required repairs or maintenance.
  - iv) A Final Inspection will be undertaken by Council at the completion of the specified maintenance period.)

A.92 The Developer shall prepare and submit to Council, for approval, a Five Year Water Sensitive Urban Design Management Plan, inclusive of estimated costings for the regular maintenance and cleaning of the Gross Pollutant devices and any pit basket inserts and regular maintenance, cleaning and full reconstruction (worst case scenario) of all drainage media, subsoil drainage and temporary Bidum and turf cover associated with the Bio-retention basins within the respective Stage of the development.

In this regard, a cash bond or bank guarantee for 50% of the combined value of these works, as agreed by Council, over the 5 year period, or an alternative lesser amount as may be agreed to by Council, is to be submitted to Council prior to certification of the Subdivision Certificate in respect of each Stage of the development.

- (Note: i) A further five inspections (twelve month intervals) of the associated devices and infrastructure will be undertaken by Council officers in accordance with the terms of this consent.
- ii) Any defects or maintenance requirements identified by Council are to be rectified by the developer prior to Council's acceptance of maintenance responsibility and the release of the bond.
  - iii) In the event that the Developer fails to undertake such maintenance within one month of notification, Council may elect to call on the bond to affect the required repairs or maintenance.
  - iv) A Final Inspection will be undertaken by Council at the completion of the specified maintenance period.)

A.93 A cash bond or bank guarantee in an amount equivalent to 100% of the contract price for the works to be completed by the Developer under the Vegetation Management Plan (VMP), or an alternative



lesser amount as may be agreed to by Council, is to be submitted to Council prior to certification of the Subdivision Certificate in respect of Stage 7 of the development.

The Developer may make written request to Council to 'draw down' the amount of security on an annual basis upon acceptance by Council of the works completed and identified in the respective annual report. The amount of each 'draw down' shall be agreed by Council (Council fees apply for reducing or replacing bonds and bank guarantees).

- (Note: i) As a minimum, Council officers will inspect the condition of the proposed Drainage Reserve on an annual basis following receipt of the annual report.
- ii) Any maintenance requirements identified by Council are to be addressed by the Developer within one month of notification and are to be completed to Council's satisfaction prior to Council's acceptance of maintenance responsibility and the ultimate release of the bond.
- iii) In the event that the Developer fails to undertake such maintenance within one month of notification, Council may elect to call on the bond to affect the required repairs or maintenance.
- iv) A Final Inspection will be undertaken by Council at the completion of the respective 8 year establishment and maintenance period.)

<b>CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE OF THE DEVELOPMENT</b>
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- A.94 No estate entry features, billboards, promotional/sale signage or bunting are to be located on existing land owned by Council or on land or road reserves proposed to be dedicated to Council or within the proposed 20m wide Landscape Buffer
- A.95 The Developer shall undertake regular maintenance of all Bio-retention basins, Gross Pollutant devices and pit basket inserts and any other temporary erosion and sedimentation control basins and devices for a 5 year maintenance period. The 5 year period commences from the date of registration of the plan of subdivision for that Stage at the NSW Land Registry Services or until all lots within the respective Stage have been sold, whichever is the later at which time the Developer shall be responsible for removing any gross pollutants, accumulated sediment, all temporary controls and fully landscaping the Bio-retention basins with appropriate native grass and sedge species selected from Appendix 4 of the Stormwater and Water Efficiency for Development Technical Manual (April 2019) or as updated and to the requirements and satisfaction of Council.

During the maintenance period in this condition the Developer shall record the sediment volumes removed from the devices until the end of the abovementioned maintenance period. A copy of this record is to be made available to Council to assist in determining a suitable maintenance schedule for the respective devices.

The Developer shall also ensure that the controls are cleaned and operating at maximum function immediately prior to the end of the maintenance period.

- A.96 The entire proposed Drainage Reserve, generally being the land described as Lot 2 on '3 Lot Subdivision Plan' (Ref. HD15, Dwg 3 Lot, Revision 9-1, dated 06/11/2022) approved under DA2020/01497 (Stage 1), is to be continuously established, managed and maintained by the Developer in accordance with the Vegetation Management Plan (VMP) for a minimum of 8 years commencing on the date of registration of the plan of subdivision for Stage 7.

The Developer is to submit annual reports (.pdf format) to Council detailing works undertaken, the results of such work, identifying future works programs and any making any necessary recommendations to enhance the VMP.

- A.97 The registered title for all land proposed as Drainage Reserve, generally being the land described as Lot 2 on '3 Lot Subdivision Plan' (Ref. HD15, Dwg 3 Lot, Revision 9-1, dated 06/11/2022) approved under DA2020/01497 (Stage 1), is to be transferred to Council, and at no cost to Council, within 28 days of Council providing written notice to the Developer that satisfactory completion of the eight-year Vegetation Management Plan has been achieved.
- A.98 The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services.
- A.99 The developer being responsible for all adjustments to and/or relocation of public utilities. Any necessary alterations are to be at the Developer's expense and to the requirements of the appropriate Authorities.
- A.100 A six-monthly Landscape Establishment Report (.pdf format) is to be submitted to Council for the term of a twelve month landscape defect and maintenance period commencing from the date of registration of the relevant Subdivision Certificate in respect of each Stage, verifying that satisfactory maintenance of the landscape works including street trees, re-vegetation and weeding, has been undertaken in accordance with the approved Landscape Plans and Vegetation Management Plan and any necessary rectification measures have been carried out to a high professional standard.
- A.101 It being the responsibility of the Developer to meet all expenses incurred in undertaking the development including expenses incurred in complying with conditions imposed under the terms of this consent.

## ADVISORY MATTERS

- Prior to commencing any subdivision works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* (the Act) are to be complied with:
  - a) A Subdivision Works Certificate is to be obtained; and
  - b) Council is to be appointed as the Principal Certifier for the subdivision works (consistent with Section 6.5(3) of the Act); and
  - c) Council is to be given at least two days' notice of the date intended for commencement of subdivision works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- If archaeological deposits or relics not considered in the supporting documents for this consent are discovered, work must cease in the affected area(s) and the Heritage Council of NSW notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Heritage Council of NSW can be contacted on 02 9873 8500 or [heritagemailbox@environment.nsw.au](mailto:heritagemailbox@environment.nsw.au). A 'relic' is any deposit, object or material evidence that relates to the settlement of New South Wales, not being Aboriginal settlement, and is of State or local significance. It is an offence under the provisions of the *Heritage Act 1977* (NSW) for a person to disturb or excavate any land on which the person has discovered a relic except in accordance with a gazetted exemption or an excavation permit issued by the Heritage Council of NSW.

## PART B

### CONDITIONS IMPOSED TO THE REQUIREMENTS OF SUBSIDENCE ADVISORY NSW

#### GENERAL

##### Plans, Standards and Guidelines

- |            |  |
|------------|--|
| <b>B.1</b> | These General Terms of Approval (GTAs) only apply to the subdivision development described in the plans and associated documentation relating to <b>DA2021/01256</b> and provided to Subsidence Advisory NSW.<br>Any amendments or subsequent modifications to the development may render these GTAs invalid.<br>If the proposed development is amended or the development consent modified, Subsidence Advisory NSW must be notified to determine if any variations to these GTAs are required. |
| <b>B.2</b> | This approval expires 5 years after the date the approval was granted if construction work has not physically commenced.   |
| <b>B.3</b> | Subsidence Advisory NSW is to be notified of any changes to lot numbering and the registered DP number.  |

#### GENERAL

- |                                       |  |                                 |         |                              |          |                                       |          |                  |        |                                 |       |
|---------------------------------------|--|---------------------------------|---------|------------------------------|----------|---------------------------------------|----------|------------------|--------|---------------------------------|-------|
| <b>B.4</b>                            | <p><b>For areas of the site that are affected by existing mine workings</b></p> <p>The proposed structure(s) associated with subdivision works shall be designed to be “<i>safe, serviceable and readily repairable</i>” using the subsidence parameters outlined below:</p> <table style="margin-left: 40px;"> <tr> <td>a) Maximum Vertical Subsidence:</td> <td>60 mm/m</td> </tr> <tr> <td>b) Maximum Tensile Strains :</td> <td>0.5 mm/m</td> </tr> <tr> <td>c) Maximum Compressive Strains (+/-):</td> <td>0.7 mm/m</td> </tr> <tr> <td>d) Maximum Tilt:</td> <td>2 mm/m</td> </tr> <tr> <td>e) Minimum Radius of Curvature:</td> <td>25 Km</td> </tr> </table> <p>Final plans are to be submitted prior to the commencement of construction which include certification by a qualified engineer to the effect that the subdivision works will remain “<i>safe, serviceable and readily repairable</i>” taking into consideration the mine subsidence parameters outlined above.</p> <p>The following is to be done prior to, or during subdivision construction:</p> <ul style="list-style-type: none"> <li>Remediate any mining features that pose a risk to improvements or persons such as tension cracks.</li> <li>Locate and eliminate the risk of subsidence from the Ironbark drift(s) / shaft(s).</li> <li>No construction is to occur within 5m of any drifts or shafts.</li> </ul> <p>Provide certification for Subsidence Advisory NSW’s acceptance remediation has been completed.</p> | a) Maximum Vertical Subsidence: | 60 mm/m | b) Maximum Tensile Strains : | 0.5 mm/m | c) Maximum Compressive Strains (+/-): | 0.7 mm/m | d) Maximum Tilt: | 2 mm/m | e) Minimum Radius of Curvature: | 25 Km |
| a) Maximum Vertical Subsidence:       | 60 mm/m  |                                 |         |                              |          |                                       |          |                  |        |                                 |       |
| b) Maximum Tensile Strains :          | 0.5 mm/m   |                                 |         |                              |          |                                       |          |                  |        |                                 |       |
| c) Maximum Compressive Strains (+/-): | 0.7 mm/m   |                                 |         |                              |          |                                       |          |                  |        |                                 |       |
| d) Maximum Tilt:                      | 2 mm/m   |                                 |         |                              |          |                                       |          |                  |        |                                 |       |
| e) Minimum Radius of Curvature:       | 25 Km  |                                 |         |                              |          |                                       |          |                  |        |                                 |       |

<b>B.5</b>	Approval under Clause 22 of the <i>Coal Mine Subsidence Compensation Act 2017</i> is also required for the erection of all improvements on the land. As a guide, improvements shall comply with Subsidence Advisory NSW nominated Surface Development Guidelines, or otherwise assessed on merit.
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### **Dispute Resolution**

If you are dissatisfied with the determination of this application, an appeal may be formally submitted with the Chief Executive Officer (Subsidence Advisory NSW) for an independent internal review. The application must be made in writing and must provide reasons why the determination should be changed.

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## PART C

### CONDITIONS IMPOSED TO THE REQUIREMENTS OF TRANSPORT FOR NSW (TfNSW)

#### John Renshaw Drive upgrades

- C.1 Prior to any Subdivision Certificate for any of Stages 2-7, the signal controlled access and the duplication of John Renshaw Drive to four lanes required under Stage 1 DA/2020/1497 shall be deemed practically complete by TfNSW in writing and opened to traffic.
- C.2 Prior to any Subdivision Certificate for any of Stages 2-7, the westbound 'left-turn in only' intersection towards the east end of site generally in accordance with Northrop Plan NL 166552 Drawing No. CSK91 Rev 2 shall be deemed practically complete by TfNSW in writing and opened to traffic.

#### John Renshaw Drive / M1 Motorway / Weakleys Drive intersection upgrades

- C.3 Prior to any Subdivision Certificate for Stage 2, obtain confirmation in writing from TfNSW that satisfactory arrangements (see condition (C.4) below) have been made to upgrade the John Renshaw Drive / M1 Motorway / Weakleys Drive intersection generally in accordance with Northrop drawings attached at Annexure B, being NL166552 C01.21 Rev 2 (typical sections) and C01.41 Rev 3 (overview plan), to:
- a. Provide both new right turn lanes required as part of Stage 1 DA/2020/1497 at the intersection:
    - i. An additional right turn bay on the Weakleys Drive (northern) approach, to turn west to JRD.
    - ii. An additional right turn bay on the JRD (eastern) approach, to turn north to Weakleys Drive.
  - b. Provide a second right turn lane on the Weakleys Drive northern approach turning west to John Renshaw Drive, with both right turn lanes to be increased to 120m in length plus tapers.
  - c. Provide an additional (second) John Renshaw Drive west approach channelised right turn lane toward the M1 Motorway with 120m length, plus tapers,
  - d. Provide all ancillary works to the satisfaction of TfNSW including but not limited to lane realignments on approach and departure, reconfiguration and addition of signals, pedestrian crossings, drainage, shoulders, medians, line markings and signage.

*Advice: The intent of this condition is to enable the consent holder to upgrade the intersection under both DAs as a single WAD package. Formal modification of DA/2020/1497 may also be required to enable Stage 1 works at this intersection to be deferred for completion after release of the Stage 1 Subdivision Certificate. TfNSW may support such a modification request (if supported by Council as the consent and roads authority) generally on similar terms to those set out below. Please refer any modification application to TfNSW under s 2.122 of the TISEPP for a final response.*

- C.4 For the purpose of the above condition (C.3) 'satisfactory arrangements' shall include completion of (but details shall not be limited to, in TfNSW sole discretion) all the following:

- a. Lodgement with TfNSW of a refundable bond security for the full value of the construction works (100%) including all project management, finance, traffic management, mobilisation / demobilisation and other reasonable costs which TfNSW would reasonably incur if it were to complete construction in lieu of the developer. The cost estimate is to be based on a report prepared by an independent and experienced civil construction quantity surveyor who holds certification with an Australian peak professional body such as the AIQS. Bond terms and conditions are to be set out in the Works Authorisation Deed. TfNSW may request separate guarantees in different amounts adding up to 100% to enable progressive release of securities at practical completion and upon discharge of any defects liability period obligations. The developer must have entered into a Works Authorisation Deed with TfNSW to finance and construct the ultimate John Renshaw Drive / M1 Motorway / Weakleys Drive intersection works (turn lanes on west, north and east approaches and all ancillary works), and the detailed engineering designs must be approved by TfNSW for construction.
  - b. If any WAD design approval has been issued by TfNSW for only the Stage 1 DA intersection works (north and east approaches) it shall be revoked and replaced by the combined ultimate works design (west, north and east approaches).
  - c. The principal constructor must have substantially mobilised and commenced works onsite, and proof of payment of the constructor's progress claims amounting to at least 20% of the total value of the ultimate intersection works (west, north and east approaches) shall be provided to the TfNSW Developer Works representative or a generally equivalent milestone may be accepted by TfNSW Manager Developer Works or higher authorised person.
- C.5 Prior to any Subdivision Certificate for any of Stages 3 to 7, the John Renshaw Drive / M1/ Weakleys Drive intersection upgrades detailed above must be deemed by TfNSW as practically complete and opened to public traffic. Nothing in this condition affects the rights of TfNSW under the Works Authorisation Deed to require rectification of any outstanding works or defects or hold onto bond securities.

#### **M1 to Raymond Terrace project**

- C.6 Prior to any Subdivision Certificate for any of Stages 4 to 7, generally as depicted in the staging plan (Northrop, NL166552, drawing DA2-C01.21 Rev 6, excerpt attached at Annexure B), the section of the M1 to Raymond Terrace (M1RT) project between Black Hill Interchange and Tarro Interchange and including the flyover, currently under construction by TfNSW, shall be practically completed and opened to public traffic.

*Advice: Stages 1 to 3 are expected to contribute approximately 60% of development traffic, beyond which current modelling indicates the Black Hill flyover and motorway extension would need to be operational to relieve pressure on the John Renshaw Drive / Weakleys Drive signalised intersection.*

#### **Restrictions on site access to and from M1 Motorway and John Renshaw Drive**

- C.7 Any existing access between site and the M1 Motorway or John Renshaw Drive, other than the two (2) public road intersections approved under Stage 1 DA/2020/1497, shall be physically and legally closed and the road verge reinstated by the Developer to Transport for NSW (TfNSW) and Council requirements. Works are required to be completed prior to any Subdivision Certificate being issued for the development.



- C.8 As part of each Subdivision Certificate, a restriction as to user must be registered (or remain) on the title of each lot prohibiting direct vehicular access between the subject land and the M1 Motorway or John Renshaw Drive. For lots that will no longer have direct frontage to either road corridor following the subdivision, such restrictions can be released without obtaining the concurrence of TfNSW.

### **Vegetated Buffer**

- C.9 A 20m wide vegetated buffer is to be provided and maintained to the satisfaction of Council and at no cost to TfNSW or Council, within the site along each of the M1 Motorway and John Renshaw Drive frontages generally consistent with DA/2020/1497.

### **General**

- C.10 Each local road interconnection between stages and between the adjacent property to the west must be constructed prior to any Subdivision Certificate for the stage it falls within the boundary of. This includes the culvert crossings of the central Viney Creek as part of or before Stages 2 and 4, and the local road connection to the adjacent property as part of Stage 6.

*Advice: Local road connections are necessary to minimise the burden of local area traffic demand on nearby State roads.*

- C.11 The Developer must:

- a. Obtain Roads Act 1993 consent from TfNSW for all works within the classified State road reserves in the form of a Works Authorisation Deed (WAD).
- b. Dedicate any land if required for the purpose of the State road works at no cost to TfNSW or Council, prior to a practical completion certificate for the works.
- c. Design and construct State road works in accordance with Austroads Guidelines, Australian Standards and TfNSW Supplements to the satisfaction of TfNSW and Council and at no cost to TfNSW or Council.

As State road works are required the developer must enter into a Works Authorisation Deed (WAD) with TfNSW. TfNSW would exercise its powers and functions of the road authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Roads Act, as applicable, for all works under the WAD.

The developer is advised that the Conditions of Consent do not guarantee TfNSW final consent to the specific road work, traffic control facilities and other structures or works, for which it is responsible, on the road network. TfNSW must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work.

The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is suggested that the developer work through this process as soon as possible with the TfNSW.

- C.12 The developer is to design works and provide any information required to satisfy Council that discharged stormwater from the development shall not exceed the capacity of either the M1 Motorway or John Renshaw Drive stormwater drainage systems. No increase in surface flooding or discharge

rates onto the road carriageway shall occur in any event up to and including the critical 1% Annual Exceedance Probability (AEP) event.

- C.13 Prior to the issue of any Subdivision Works Certificate, the Developer must satisfy Council that drainage from the site will be appropriately managed and obtain all required approvals from Council and TfNSW including under the Roads Act 1993 for any adjustments to the existing public drainage system that are required. Any required adjustments are to be at no cost to TfNSW or Council.
- C.14 The intersection works shall include new road lighting, designed by a qualified and experienced professional to achieve at least V3 illumination category for all new pavement surfaces, in accordance with AS/NZS 1158.1.1. The Developer must ensure that appropriate traffic measures are in place during the construction phase of the development to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity of the site.
- C.15 The proponent must obtain a Road Occupancy Licence (ROL) prior to any work with potential to impact State road traffic operations, or traffic signal operations on any road, including use of temporary traffic management devices and signage. Proponents must allow a minimum 10 working days for processing from the date of receipt. As a minimum, applications must be submitted with a Traffic Management Plan (TMP) including applicable Traffic Guidance Schemes (TGS). The TMP and TGS must comply with AS 1742.3 and be prepared by a qualified person who holds the Prepare Work Zone Traffic Management Plan SafeWork accreditation (PWZTMP). The TMP is to describe the activities being proposed, their impact on the general area (including public transport passengers, cyclists, pedestrians, motorists and commercial operations), and how these impacts, including identified risks will be addressed. Further information on Applying for a Road Occupancy Licence can be found online at <https://roads-waterways.transport.nsw.gov.au/business-industry/road-occupancy-licence/index.html> and your asset number to be quoted in the online application is: NTH22/00307.

## **SCHEDULE 2: Reasons For The Determination and Consideration Of Community Views**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development, subject to the recommended conditions, is generally consistent with the terms of the Concept Approval.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

### **Reasons Why The Conditions Have Been Imposed**

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.

## **SCHEDULE 3: Rights of Review and Appeal**

### **Review of Determination**

- You have the right to request a review of this determination under the Section 8.2 of the EP&A Act 1979 provided that this determination is not made in respect of designated or crown development. Any application for a review must be submitted on the NSW planning portal, no later than 28 days after the determination.

### **Rights Of Appeal**

- If you are dissatisfied with the determination of Council (including a determination on a review under the EP&A Act 1979) you may appeal to the Land and Environment Court within 6 months after the date on which you receive notice of the determination of the application or review. Otherwise, the right to appeal is exercisable in accordance with the rules of the Land and Environment Court.
- The EP&A Act 1979 does not give a right of appeal against this determination to an objector.

If you are considering exercising your rights of appeal or lodging a request for a review, it is advisable to obtain legal advice regarding the interpretation of your rights in relation to the matter.

## SCHEDULE 4: Dictionary

**Approved plans and documents** means the plans and documents endorsed by the consent authority, a copy of which is included with this notice of determination.

**AS** means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

**Building work** means any physical activity involved in the erection of a building.

**Certifier** means a council or a person that is registered to carry out certification work under the Building and Development Certifiers Act 2018.

**Council** means NEWCASTLE CITY COUNCIL.

**Court** means the NSW Land and Environment Court.

**EPA** means the NSW Environment Protection Authority.

**EP&A Act** means the Environmental Planning and Assessment Act 1979.

**EP&A Regulation** means the Environmental Planning and Assessment Regulation 2021.

**Subdivision certificate** means a certificate that authorises the registration of a plan of subdivision under Part 23 of the Conveyancing Act 1919.

**Subdivision work** means any physical activity authorised to be carried out in connection with a subdivision under the conditions of a development consent for the subdivision of land.

**Subdivision works certificate**—a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

**Principal certifier** means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

**Public road** means—

- (a) any road that is opened or dedicated as a public road, whether under the Roads Act, 1993 or any other Act or law, and
- (b) any road that is declared to be a public road for the purposes of the Roads Act, 1993.

**Site work** means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

# Attachment B



VERIFIER: A. BROWN  
JOB MANAGER: J. HOEY  
DESIGNED: P. BURL  
DRAWN: R. GREVE

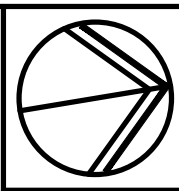
DATE: 31.08.2022 11:50 AM  
PLOT: 11/08/2022  
PROJECT: Y1 YEAR 2019 J060N1665520 - Drawing/Civil/CAD/DA2/STAGES 2-7 FOR DA2/166552/DA2/01.21 STAGING PLAN.dwg

REVISION	DESCRIPTION	ISSUED	VER'D	APP'D	DATE
1	ISSUED FOR APPROVAL	RG	AB	AB	19.07.21
2	REISSUED FOR APPROVAL	JK	AB	AB	27.04.22
3	REISSUED FOR APPROVAL	RG	AB	AB	18.08.22
4	REISSUED FOR APPROVAL	RK	AB	AB	30.08.22
5	REISSUED FOR APPROVAL	RG	AB	CP	30.08.22
6	REISSUED FOR APPROVAL	RG	AB	CP	30.08.22



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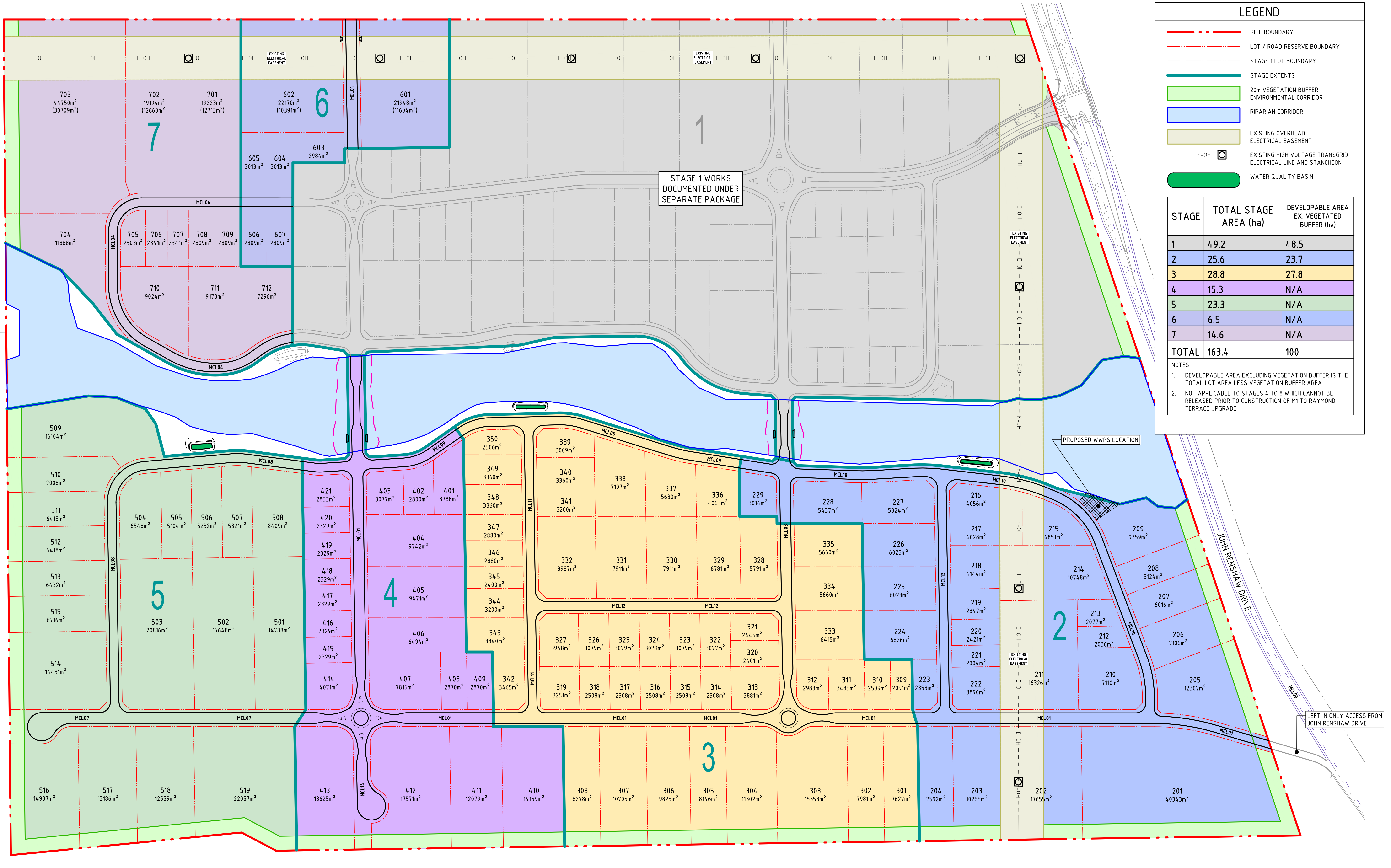
**NORTHROP**  
Newcastle  
Level 1, 215 Pacific Hwy, Charlestown NSW 2290  
Ph (02) 4943 1777 Email newcastle@northrop.com.au  
ABN 81 094 433 100

PROJECT  
**PROPOSED SUBDIVISION  
JOHN RENSHAW DRIVE  
BLACK HILL NSW 2322**  
  
**STAGES 2-7**

DRAWING TITLE  
**CIVIL ENGINEERING PACKAGE**  
  
**STAGING PLAN**

JOB NUMBER <b>NL166552</b>	
DRAWING NUMBER <b>DA2-C01.21</b>	REVISION <b>6</b>
DRAWING SHEET SIZE = A1	

**NOT FOR CONSTRUCTION**



**LEGEND**

- SITE BOUNDARY
- LOT / ROAD RESERVE BOUNDARY
- STAGE 1 LOT BOUNDARY
- STAGE EXTENTS
- 20m VEGETATION BUFFER ENVIRONMENTAL CORRIDOR
- RIPARIAN CORRIDOR
- EXISTING OVERHEAD ELECTRICAL EASEMENT
- EXISTING HIGH VOLTAGE TRANSGRID ELECTRICAL LINE AND STANCHION
- WATER QUALITY BASIN

STAGE	TOTAL STAGE AREA (ha)	DEVELOPABLE AREA EX. VEGETATED BUFFER (ha)
1	49.2	48.5
2	25.6	23.7
3	28.8	27.8
4	15.3	N/A
5	23.3	N/A
6	6.5	N/A
7	14.6	N/A
TOTAL	163.4	100

- NOTES
- DEVELOPABLE AREA EXCLUDING VEGETATION BUFFER IS THE TOTAL LOT AREA LESS VEGETATION BUFFER AREA
  - NOT APPLICABLE TO STAGES 4 TO 8 WHICH CANNOT BE RELEASED PRIOR TO CONSTRUCTION OF M1 TO RAYMOND TERRACE UPGRADE



# Attachment C

# Concept Approval

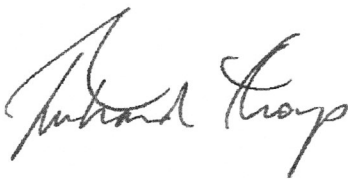
## Section 75O and 75P of the *Environmental Planning and Assessment Act 1979*

As delegates of the Minister for Planning and Infrastructure under delegation executed on 14 September 2011, pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 (the Act), the NSW Planning Assessment Commission determines:

- (a) to approve the concept plan referred to in Schedule 1, subject to the terms of approval and modifications in Schedule 2,
- (b) under section 75P(2)(c) of the EP&A Act, where development is subject to Part 4 of the Act (other than complying development), that development is subject to the further environmental assessment requirements specified in Schedule 2, Part D of this approval.
- (c) under section 75P(1)(c) of the Act, the subdivision of land that gives effect to the transfer of lands to a public authority or a Minister of the Crown requires no further environmental assessment and approve the development under section 75J of the Act (subject to the conditions set out in Schedule 3 of this approval); and
- (d) under section 75P(1)(b) of the Act, development the subject of the Concept Plan is subject to Part 4 or Part 5 of the Act, whichever is applicable.

The modification and further assessment requirements are required to:

- Encourage the orderly future development of the site; and
- Ensure adequate mitigation of environmental impacts of future development.



Richard Thorp  
**Member of the Commission**



Donna Campbell  
**Member of the Commission**

Sydney,

19 November 2013

---

## SCHEDULE 1

<b>Application No:</b>	10_0093
<b>Proponent:</b>	Coal & Allied Industries Ltd
<b>Approval Authority:</b>	Minister for Planning and Infrastructure
<b>Land:</b>	<p>Lot 30 in DP 870411, John Renshaw Drive, Black Hill in the Newcastle Local Government Area</p> <p>Lot 1 in DP 1007615, Tank Paddock in the Newcastle Local Government Area</p> <p>Lot 101 in DP 881099, Lot 2 in DP 877416, Lot 79 in DP 755260, Lot 1 in DP 877416, Lot 4 in DP877416 (listed as Black Hill), Lot 3 in DP 877416 (listed as Black Hill) and Pt Lot 13/DP1078246, Stockrington in Cessnock Local Government Area.</p>
<b>Local Government Area:</b>	Newcastle and Cessnock
<b>Concept Plan:</b>	<p>Concept plan for:</p> <ul style="list-style-type: none"><li>• employment lands development of a 183 ha development site</li><li>• dedication of 545 hectares of Conservation Lands</li><li>• conceptual road, pedestrian and cycleway network;</li><li>• conceptual lot layout; and</li><li>• associated infrastructure.</li></ul>

---

## SCHEDULE 2

### PART A – DEFINITIONS

<b>Act, the</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>APZ</b>	Asset Protection Zone
<b>Council</b>	City of Newcastle Council
<b>Department, the</b>	Department of Planning & Infrastructure
<b>Director-General, the</b>	Director-General of the Department of Planning & Infrastructure (or delegate)
<b>Minister, the</b>	Minister for Planning & Infrastructure
<b>NOW</b>	NSW Office of Water
<b>Proponent</b>	Coal & Allied Industries Ltd, or its successors or any person who acts on this approval, in title
<b>RMS</b>	Roads and Maritime Services
<b>Site</b>	Land to which Concept Plan Application 10_0093 applies
<b>Stage</b>	The six stages identified in Figure 7 – Indicative Staging Plan of the Concept Plan Environmental Assessment.
<b>Subdivision Application</b>	An application for a Subdivision Certificate

## PART B – ADMINISTRATIVE CONDITIONS

- 1.1 The Proponent shall ensure that all development on site is carried out generally in accordance with the:
- a) Concept Plan Application 10\_0093;
  - b) *Black Hill Concept Plan* (including accompanying appendices) prepared by Urbis dated February 2011;
  - c) *Black Hill Preferred Project Report*, dated May 2011 prepared by Urbis;
  - d) Correspondence, with attachments, entitled "Preferred Project Report Submission - Coal & Allied Northern Estates: Black Hill (MP10\_0093)"; and
  - e) Correspondence, with attachments, entitled dated 20 May 2011, and "Preferred Project Report Submission - Coal & Allied Northern Estates: Black Hill (MP10\_0093)" and dated 16 June;
  - f) Statement of Commitments; and
  - g) this approval.
- 1.2 In the event of an inconsistency between:
- a) the modifications of this approval and any document listed from clause 1.1 a) to 1.1 f) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
  - b) any document listed from condition 1.1a) to 1.1e) inclusive, the most recent document shall prevail to the extent of the inconsistency.

### Limits of Approval

- 1.3 This concept approval shall lapse 5 years after the date on which it is granted, unless an application is submitted to carry out a development for which concept approval has been given.
- 1.4 To avoid any doubt, this concept approval does not permit the subdivision or construction of any aspect of the proposal which will be subject to separate approvals.

### Determination of Future Applications

- 1.5 The determination of future applications for development on the Site under Part 4 of the Act, for which Council is the consent authority, is to be generally consistent with the terms of this approval.

### Dispute resolution

- 1.6 Any dispute between the proponent and Council over the interpretation, or application of the modifications and/or further environmental assessment requirements is to be settled by the Director-General. Any decision of the Director-General shall be final and not subject to further dispute resolution.

## **PART C - MODIFICATIONS TO THE CONCEPT**

### **Urban Design & Built Form**

1.7 The indicative lot layout is not approved.

1.8 Prior to the first application for subdivision, the Proponent shall revise the Urban Design Guidelines to:

- a) Adopt provisions in Council's DCP relating to:
  - Industrial development;
  - Parking rates including rates required for bicycle parking / storage, motorbike delivery and service vehicles parking;
  - road types and dimensions;
  - stormwater management including requirements for on-site detention on lots and pollutant reduction targets;
  - Tree management and Landscaping; and
  - Outdoor advertising;
- b) Address the following additional issues:
  - cut, fill and earthworks;
  - increasing the Visual Buffer to the northern boundary (fronting John Renshaw Drive) from 10 metres to 20 metres; and
  - controls to manage interaction between potential internal land-use conflicts, such as where childcare is located adjacent to industrial uses.

The revised Guidelines must be prepared in consultation with Council, and to the approval of the Director-General. The guidelines are to be in a form which could be adopted as site specific controls within the Council's development control plan at some stage in the future. The final approved copy is to be submitted to Council prior to lodgement of any development application on the site.

### **Commercial / retail development**

1.9 The Concept Plan is to be modified to remove:

- the proposed retail/commercial component, known as the Core Supporting Facilities Area, intended to accommodate 1300m<sup>2</sup> of retail space, and
- the following proposed additional permitted uses: business premises, health consulting rooms, hotel accommodation, medical centre, restaurant, and retail premises.

## PART D - FURTHER ENVIRONMENTAL ASSESSMENT REQUIREMENTS

### Infrastructure Provision

- 1.10 Prior to the first subdivision application, the Proponent must prepare a staging plan for Council's approval. The plan must provide for:
- An updated indicative lot layout, identifying how the development of the site would be staged;
  - the schedule for delivery (and dedication where relevant) of the following:
    - provision of roads, stormwater and other service infrastructure;
    - items identified for Black Hill in the \$2 million allocated to the Coal & Allied Northern Estates;
    - contributions in accordance with Newcastle City Council Section 94A Development Contribution Plan 2009. The passive recreational space to be provided along the creek as referred to in the Statement of Commitments is to be additional to the contributions required under this Plan and the management of that passive open space is to be agreed to by Council;
    - State Infrastructure Contributions; and
  - the management arrangements for the Viney Creek riparian corridor, recreation infrastructure, stormwater detention basins and Asset Protection Zones (the dedication of this infrastructure to Council is not approved).

For contributions made under the \$2 million allocation, the plan must demonstrate that the contributions are over and above section 94A Development Contributions Plan 2009 and State infrastructure contribution requirements, and do not include any contributions which would be otherwise required to mitigate the impacts of the proposed development. Any contributions or dedications to a council, public authority, or community group require the agreement of that organisation. Any contributions which are deemed unsuitable must be re-allocated to alternative infrastructure and initiatives.

Note: In relation to section 94A contributions any works in kind or dedication of land in lieu of monetary contributions required under Council's Section 94A Development Contributions Plan 2009 Plan must be agreed to by Council.

### Urban Design

- 1.11 Each subdivision application shall be consistent with the Urban Design Guidelines for the site and include details on the following:
- strategy for retention of trees on the site;
  - proposed public domain treatments; and
  - proposed landscaping of all public domain areas including swales, detention basins, and roadside verges.

Any such details would be carried into landscaping plans and public domain plans to be completed in consultation with Council, prior to commencement of subdivision works on site.

### Flora and Fauna

- 1.12 Whilst it is recognised that the biodiversity impacts associated with the proposal have been offset through dedication of 545 hectares of conservation lands to the NSW Government, any subdivision application shall provide:
- details on strategies to minimise clearing or disturbance of vegetation and retain mature and/or hollow bearing trees where possible, including through design of roads and stormwater devices, having regard to the recommendations of the Ecological Assessment Report (RPS 2011);
  - management measures for minimising impacts on fauna during subdivision works including the employment of an appropriate qualified ecologist to advise and supervise



- any clearing of vegetation, and the implementation of appropriate tree clearing protocols;  
and
- c) details of erosion and sediment control measures that would be implemented to protect vegetation within the riparian corridor.

Any procedures and strategies identified must be carried into a Vegetation Management Plan to be completed prior to commencement of any works on site.

### **Viney Creek Riparian Corridor**

- 1.13 The first subdivision application for the site must include a fully costed rehabilitation plan for Viney Creek riparian corridor that sets out the following:
- survey of the creek bed by both an appropriately qualified ecologist and a geotechnical engineer (reviewing any potential subsidence issues);
  - removal of waste material;
  - measures to revegetate areas to be rehabilitated such as plant material, densities and species mix;
  - management measures to prevent damage to the corridor during any future development of the site;
  - weed management measures; and
  - a plan for the monitoring and management of the corridor.
- 1.14 Each subdivision application must demonstrate that any works within riparian corridors and road and services crossing meet the requirements of the NSW Office of Water Guidelines for Controlled Activities (August 2010).

### **Traffic and Transport**

- 1.15 Any subdivision application must include a revised traffic and transport impact assessment that:
- a) has been prepared in consultation with Council and RMS;
  - b) details traffic generation from each stage of the development;
  - c) demonstrates that the site access would accommodate traffic from all stages of the development, and if required, provide details of alternative access arrangements that may be required;
  - d) intersection analysis and micro simulation modelling including details of any offsite road upgrades that would be required to accommodate the proposal.
- 1.16 The first subdivision application for the site must include detailed design for a signal controlled intersection at the western access to the site on John Renshaw Drive that has been prepared in accordance with RMS requirements.
- 1.17 Any subdivision application must demonstrate that all local roads, including provision for bicycle and pedestrian paths, have been designed in accordance with Council requirements.
- 1.18 With each subdivision application, the Proponent must demonstrate that opportunities have been investigated to extend or provide for an additional bus route to service the proposed development, and must provide details of the proposed location of bus stops and pedestrian access to bus stops. Where the bus route is proposed to travel through the development area the proponent is to demonstrate the associated roads are designed to accommodate bus movements. These requirements are to be carried out in consultation with Council, Transport for NSW, and relevant bus companies, prior to the lodgement of any Development Application.
- 1.19 Prior to the lodgement of the first development application for subdivision a comprehensive public transport, cycle way and pedestrian network plan must be prepared which addresses the following:

- Identify all pedestrian and cycle ways to be provided within the proposed development site, and how these link to the surrounding existing and proposed cycle network;
- Demonstrate that the pedestrian and cycle network links with existing and proposed access points to, and pathways as provided for in Councils Cycling Strategy & Action Plan;
- Identifies any off site pedestrian and/or cycle ways which are proposed to be provided by the proponent by way of local infrastructure contributions or the \$2 million allocation;
- Considers and addresses any relevant aspects of Councils' Cycling Strategy & Action Plan; and
- Demonstrate the proposed bus routes, cycle way and pedestrian network links key destinations including open space, recreation and community infrastructure.

This plan is required to be prepared to the satisfaction of the Director-General in consultation with Newcastle Council, Transport for NSW, Office of Environment & Heritage, and relevant private bus companies.

## **Aboriginal Heritage**

- 1.20 The proponent shall develop a Cultural Heritage Management Plan for the project area. The CHMP is to be developed and implemented in full consultation with the registered local Aboriginal stakeholders and Council. The plan is to include, but limited to:
- a) procedures for ongoing Aboriginal consultation and involvement;
  - b) details of the responsibilities of all stakeholders;
  - c) procedures for the management of any recorded sites within the project area;
  - d) procedures for providing opportunities for registered local Aboriginal stakeholders to monitor any initial ground disturbance works associated with sites 'Black Hill 1' and 'Black Hill 2' and in the areas immediately adjacent to these sites (50m buffer), and in those areas identified as 'Moderate Archaeological Potential';
  - e) procedures for the identification, management and registration of previously unrecorded sites (excluding human remains);
  - f) stop work procedures in the event human remains are located at the site;
  - g) identification and management of any proposed cultural heritage conservation area(s);
  - h) details of an appropriate keeping place agreement with local Aboriginal community representatives for any Aboriginal objects salvaged through the development process;
  - i) details of an Aboriginal cultural heritage education program for all contractors and personnel associated with construction activities;
  - j) details of proposed mitigation and management strategies for sites identified to be impacted within the project area; and
  - k) compliance procedures including for the unlikely event that non-compliance with the CHPM is identified.

## **Stormwater Management**

- 1.21 Any subdivision application must include:
- a) the detailed design of all stormwater management devices to the satisfaction of Council and accordance with any relevant Council policies and NOW Guidelines for Controlled Activities;
  - b) an assessment of the impacts of the proposal on the hydrology of the site and of receiving waters;
  - c) maintenance and management arrangements for public stormwater facilities during and after construction. These arrangements are to be negotiated with Council; and
  - d) a water quality and hydrological monitoring plan which includes:
    - monitoring against relevant water quality standards, with baseline data collected prior to commencement of works;
    - monitoring of changes in hydrology caused by the development to ensure no detrimental impact on the water quality of Viney Creek.

- details on mechanisms and responsibilities for the management and reporting of the results;
- identification of remedial actions to be implemented in the event of a discrepancy between the actual and predicted performance of the water quality controls; and
- a program to report monitoring results to Council and NSW Office of Water.

### **Flooding and Climate Change**

- 1.22 Each subdivision application must include a revised flood assessment that takes into account mine subsidence and that details:
- a) changes to the flood behaviour as a result of the proposal;
  - b) rise times and flash floods;
  - c) revised flood planning levels; and
  - d) procedures for evacuation in the event of a flash flood.

Each application must demonstrate that buildings would be located above the flood planning levels for the site.

### **Contamination**

- 1.23 Any subdivision application must be prepared in consultation with council and contain a remediation action plan, which includes:
- a) Consideration of the requirements of *State Environmental Planning Policy 55 – Remediation of Land* and associated guidelines;
  - b) characterisation of the nature and extent of contamination;
  - c) details of the proposed remediation process, including treatment methodologies and processes;
  - d) justification of the proposed treatment and remediation criteria;
  - e) details of proposed remediation management measures;
  - f) a site validation plan; and
  - g) details of compliance with the *Contaminated Land Management Act 1997*.

### **Groundwater**

- 1.24 Any subdivision application prepared under this concept approval must provide details of:
- a) depth of excavations and proposed works likely to intercept groundwater including any proposed groundwater extraction;
  - b) proposed method of disposal of any groundwater intercepted;
  - c) impacts on any groundwater dependent ecosystems in the area; and
  - d) management of any water seepage from mine workings.

Note: An authorisation under the *Water Act 1912* or the *Water Management Act 2000* is to be obtained from the NSW Office of Water with the appropriate purpose identified for any activity relating to the taking of or interception of groundwater prior to that activity commencing

### **Mine subsidence**

- 1.25 Each subdivision application must demonstrate that:
- a) the risk of mine subsidence has been eliminated from land to which Concept Plan Application 10\_0093 applies (excluding the Tank Paddock and (part of) Stockrington the subject of the offset areas) and managed by suitable means to shallow mined workings and other areas affected by subsidence features;
  - b) where appropriate, development has been restricted over capped mine, shafts and tunnel entries;
  - c) the requirements of the Mine Subsidence Board have been met and addressed; and

- d) the site has been declared suitable for its intended use.

### Noise

- 1.26 The first subdivision application must include a Noise Management Plan for the site which:
- a) identifies noise limits for industrial developments during construction and operation;
  - b) criteria that onsite sensitive receivers must meet;
  - c) measures to mitigate and manage potential noise sources; and
  - d) measures to manage potential land use conflicts within the site.

### Bushfire Protection

- 1.27 Any subdivision application must:
- a) demonstrate that the development complies with *Planning for Bushfire Protection 2006*;
  - b) demonstrate that the location, layout and management arrangements for APZs has been negotiated, and agreed to, with Council and the RFS;
  - c) provide a map showing the composition of APZs, including the inner and outer protection zones, and their relationship to the proposed building footprints; and
  - d) outline proposed arrangements for management of bushfire hazard and APZs during the development process.

### Infrastructure and Utilities

- 1.28 Any subdivision application must include details of consultation with relevant service providers and demonstrate that their requirements have been addressed, particularly relating to water and wastewater servicing and proposed works within and across easements.
- 1.29 Any subdivision application is to demonstrate that all utility infrastructure has been located outside riparian corridors where possible. Crossings of riparian corridors for utility infrastructure should be co-located with road crossings where possible.

### Bulk Earthworks

- 1.30 Each subdivision application shall include an assessment of the proposed civil works including final contour plans. The assessment shall include details of the suitability of any externally sourced fill and any associated impacts.

### Construction Impacts

- 1.31 Any subdivision application must include a Construction Management Plan, which shall include (but not limited to):
- a Construction noise management plan including a construction noise assessment in accordance with the Office of Environment and Heritage's 'Interim Construction Noise Guideline';
  - confirmation that all construction works undertaken on site will be undertaken in accordance with the EPA's Environmental Noise Control Manual and must not give rise to an 'offensive noise' as defined under the Protection of the Environment Operations Act 1997 and accompanying Regulations;
  - a Construction vibration management plan including assessment of potential vibration impacts vibration in accordance with the Office of Environment and Heritage's 'Assessing vibration: a technical guideline'. The assessment should include potential vibration impacts from mine subsidence remediation works;
  - an air quality and dust management plan;
  - a Flora and fauna management plan, including tree clearing protocols and strategies for retention of mature or hollow bearing trees, wherever possible;
  - a soil and water management plan, prepared in accordance with Landcom's *Managing Urban Stormwater: Soils and Construction guidelines*;
  - a vegetation management plan;

- a waste management plan;
- a construction traffic management plan;
- an archaeological management plan which provides for the monitoring of works and contingency plans should previously unidentified archaeological deposits be discovered;
- a pre-construction dilapidation report of public infrastructure in the vicinity of the site. The dilapidation report is to be submitted to the Council and the RTA;
- a post-construction dilapidation report at the completion of the construction works. This report is to ascertain whether the construction works created any structural damage to adjoining public infrastructure and roads. The dilapidation report is to be submitted to the Council and the RTA;
- measures to address interface issues between the construction site and the conservation areas;
- any other plans that that may be required as a result of the environmental assessment of potential impacts; and
- a complaints management plan detailing the procedures that would be implemented to receive, handle, respond to, and record, any complaints that are received.

## SCHEDULE 3

### CONDITIONS OF PROJECT APPROVAL

#### PART A – ADMINISTRATIVE CONDITIONS

##### Development Description

Project Approval is granted only to carrying out the subdivision of lands specified in Schedule 1, to enable the transfer of lands to a public authority or the Minister of the Crown.

##### Development in Accordance with Plans and Documentation

The Proponent shall carry out the project generally in accordance with the:

- The *Proposed Subdivision of Lot 13 DP 1078246 Stockrington*, Revision 2, prepared by Monteath & Powys and dated 17 January 2011, and provided as Appendix R to *Black Hill & Tank Paddock Concept Plan* prepared by Urbis and dated February 2011; and
- Conditions of this approval.

If there is any inconsistency between the above documents, the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this approval shall prevail to the extent of any inconsistency.

##### Lapsing of Approval

This approval shall lapse if the Proponent does not physically commence the proposed development associated with this approval within 5 years of the date of this approval.

#### PART B – PRIOR TO SUBDIVISION CERTIFICATE

##### Planning Agreement

The Proponent must enter into a planning agreement in accordance with the letter of offer dated 12 August 2011.

##### Easements

Easements for services, drainage, maintenance access or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over those lots pursuant to the *Conveyancing Act 1919*.

##### Documentary evidence of restrictions on title

Prior to the issuing of the subdivision certificate, the Proponent is to provide documentary evidence of the proposed easements to the accredited certifier or Council.

##### Costs to be borne by the Applicant

All costs associated with the preparation and registration of any covenant or restriction on title, whether directly or indirectly, will be borne solely by the Proponent.

## **PART C – ADVISORY NOTES**

### **Requirements of Public Authorities for Connection to Services**

The applicant shall comply with the requirements of any public authorities (e.g. Integral Energy, Hunter Water, Telstra Australia, AGL etc.) in regard to the connection, relocation and/or adjustment of the services affected by the development. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Subdivision Certificate.

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# Attachment D

## 6.16 – Black Hill Employment Lands

### Relationship with Concept Approval MP 10\_0093

Concept Approval MP 10\_0093 for the development of the site was issued by the Minister for Planning and Infrastructure on 19 November 2013 under the provisions of Section 75O and 75P of the Environmental Planning and Assessment Act 1979.

Section 1.8 of the Concept Approval requires that future development of the Black Hill Employment Lands is to comply with the Urban Design Guidelines (UDGs) which generally reflect Newcastle Development Control Plan. The UDG are to be presented in a form to be adopted as site specific controls within Council's DCP. This DCP section provides revised 'Urban Design Guidelines' consistent with the Concept Approval and supporting documents, and as amended in accordance with the relevant conditions of approval.

The Concept Approval provides for the following:

- Staged development of a 183 hectares site for an employment lands development;
- Dedication of 545 hectares of conservation lands;
- Conceptual road, pedestrian and cycleway network;
- Conceptual lot layout;
- Indicative staging; and
- Associated infrastructure.

In the event of any inconsistency between this DCP section or any environmental planning instrument and the Concept Approval, the terms of the approval will prevail to the extent of the inconsistency.

## Amendment history

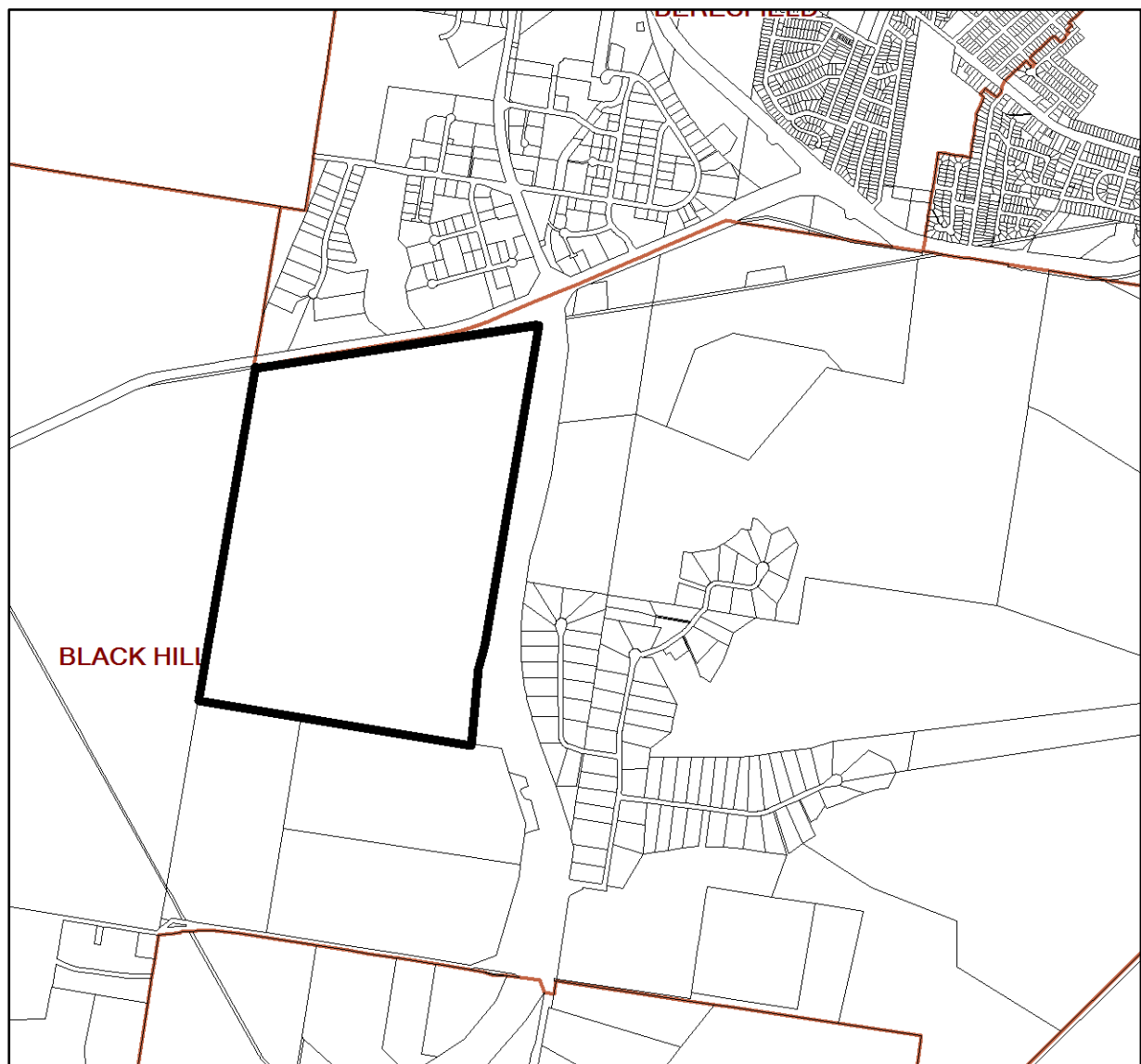
Version Number	Date Adopted by Director General NSW Planning & Environment	Commencement Date	Amendment Details
V1			Draft lodged with NCC 4 April 2017
V2			Draft comments provided to Stevens Group 26 May 2017
V3			Amended following consultation with Department of Planning & Environment on 13 June 2018
V4			Amended following consultation with Department of Planning & Environment on 21 June 2018

Date Adopted

### Land to which this section applies

This section applies to all land within the heavy line marked on **Map 1** – Black Hill Employment Lands

### **Map 1: Black Hill Employment Land**



## Development (type/s) to which this section applies

This section applies to all development within the Black Hill Employment Lands requiring development consent.

## Applicable environmental planning instruments and legislation

The provisions of the following listed environmental planning instruments also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012

In the event of any inconsistency between this DCP section and the above listed environmental planning instrument, the environmental planning instrument will prevail to the extent of the inconsistency.

## Related Sections

The following sections of this DCP **will** apply to development to which this section applies:

- 3.01 Subdivision
- 3.13 Industrial Development
- 7.02 Landscape open space and visual amenity
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks
- 7.06 Storm Water
- 7.07 Water Efficiency
- 7.09 Outdoor Advertising and Signage

The following sections of this DCP **may** apply to development to which this section applies, noting the above paragraphs with respect to any inconsistencies that may arise.

- Any applicable land use specific provision under Part 3.00;
- 4.01 Flood Management - all land which is identified as flood prone under the Newcastle Flood Policy or within a PMF or area likely to flood.
- 4.02 Bush Fire Protection - within a mapped bush fire area/zone.
- 4.03 Mine Subsidence - within mine subsidence area
- 4.04 Safety and Security - development with an accessibility to general public, access to laneways and/or communal areas.
- 4.05 Social Impact - where required for site specific developments under 'Social Impact Assessment Policy for Development Applications', 1999;
- 5.01 Soil Management
- 5.02 Land Contamination
- 5.03 Tree Management - within 5 m of a development footprint or those trees likely to be affected by the development
- 5.04 Aboriginal Heritage - known/likely Aboriginal heritage item/site and/or potential soil disturbance.
- 5.05 Heritage Items - known heritage item or in proximity to a heritage item
- 5.06 Archaeological Management - know/likely archaeological site or potential soil disturbance.
- 7.05 Energy Efficiency;
- 7.08 Waste Management;
- 8.00 Public Participation; and
- 9.00 Glossary

## **Additional information**

- Concept Plan Application MP 10\_0093

## **Definitions**

A word or expression used in this development control plan has the same meaning as it has in *Newcastle Local Environmental Plan 2012*, unless otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9.00 - Glossary of this plan.

## **Aims of this section**

1. To ensure that the Black Hill Employment land is developed generally in accordance with the Concept Approval (MP10\_0093) for the site.
2. To provide for the development employment land to support a range of employment generating activities and associated support facilities and infrastructure.
3. To ensure the timely and efficient release of land that makes provision for the staging of necessary infrastructure whilst maximising employment land yields.
4. To provide for industrial buildings and development which is both functional to meet the user's needs, as well as contributing to a good quality streetscape when viewed from public places.
5. To provide a flexible design layout and a simple and safe road network to cater for a range of future uses including large scale industrial development.
6. To ensure the ongoing management of Viney Creek riparian corridor is achieved by incorporating best practice environmental management and water sensitive urban design methods.
7. To provide employment lands directly accessible to major transportation corridors, incorporating public transport networks that link bus services with the rail system to promote public transport as an alternative and effective transport choice.
8. To create additional employment opportunities locally and regionally, in an established employment node.
9. To provide a visual buffer along the transport corridors to encourage a green entry.

## **6.16.01 Subdivision Design**

### **A. Layout**

#### ***Objectives***

1. To provide for the subdivision of land in response to the opportunities and constraints of the site.
2. To provide a variety of lot sizes and configurations to enable a range of industrial and ancillary activities to be undertaken to accommodate a functional and desirable mix of development.
3. To provide a reasonable site area for buildings, manoeuvring, parking and landscaping.
4. To ensure adequate provision is made for green buffer zones between major road corridors and development.

#### ***Controls***

1. Development applications for subdivision shall be generally in accordance with the Black Hill Concept Plan Approval (10\_0093) and the indicative road and lot layout approved by Council in accordance with Condition 1.10 of the Concept Approval.
2. All industrial lots are to be a minimum of 1000m<sup>2</sup> in area, with a minimum frontage of 20m.
3. The staging plan shall provide for the schedule of delivery and dedication, where relevant, of the provision and management of infrastructure and servicing, including roads, stormwater, open space, and asset protection zones.
4. Vegetated Buffer zones are to be provided or retained as follows:
  - Northern boundary (John Renshaw Drive) – 20m
  - Eastern boundary (M1/F3 Freeway) – 20m, supplementing the Green Buffer Zone on the RMS land along the road corridor.
  - Southern boundary (private landowners) – 20m
5. A landscape plan is to be submitted to Council in accordance with Section 7.02 of the Newcastle DCP 2012.

## **B. Road Network**

### ***Objectives***

1. To provide direct access and egress from both the M1 and John Renshaw Drive in accordance with the requirements of the RMS.
2. To ensure connectivity through the site by the establishment of a clear and easily identifiable road hierarchy and a network of open space, cyclist and pedestrian routes.
3. To design an effective road network consistent with Council's Standard Drawing Register
4. To minimise the number of road crossings of Viney Creek.
5. To ensure appropriate access and egress for bushfire protection and fire fighting.

### ***Controls***

1. The road network comprises a flexible layout which will provide the foundation for the future subdivision of the Black Hill Employment Lands and create good traffic circulation.
2. The roads are to be designed to cater for large articulated vehicles including B-Doubles.
3. Detailed design for the access locations to be determined in consultation with the RMS and shall include the staged construction of the works as required as a consequence of the development for each stage.
4. Ensure that vehicular and pedestrian circulation is clearly identified and separated.
5. A traffic and transport impact study shall be submitted with each precinct-based (stage) subdivision application, updating the traffic model based on current movements and having regard to any improvements to existing intersections and the road network that may have been undertaken and alternative access arrangements that may be required.
6. No direct property access to individual lots is permitted to or from John Renshaw Drive or the M1 Motorway.
7. Provision for access shall be provided to allow for the future extension of the road network into lands to the south and to the west.
8. The internal road network for each stage, including provisions for on-road cycleways, shall have regard to the overall hierarchy of the road network and the intended future use of the land.
9. On-road cycleways will be provided on industrial collector roads only. Shared off-road pathways are not required within the Black Hill Employment Lands.
10. All bridge structures must accommodate SM 1600 loading.



## **C. Public Transport and Cycleway Network**

### ***Objectives***

1. To ensure connectivity through the site by the establishment of a safe and easily identifiable network of and cycleway routes.
2. To promote the integration of cycling infrastructure within the site and links to existing and proposed infrastructure in the wider region.
3. To facilitate the provision of public transport connections to and throughout the Black Hill Employment Lands.

### ***Controls***

1. Provide for a safe and convenient cycleway network along collector roads throughout the site.
2. Cycling infrastructure is to be designed and integrated with public transport facilities and the regional cycling network.
3. The road network is to be designed to provide for a clear and convenient bus route throughout the site, including the provision of bus shelters and seating as required.
4. Provide details with the subdivision application for each stage, demonstrating consultation with the relevant bus company and the demand to extend or provide an additional bus route throughout the development including the proposed location of bus stops to service the development.
5. A network plan is to be prepared to meet the requirements of condition 1.19 of the Concept Approval.

## **D. Earthworks and Clearing**

### ***Objectives***

1. To enable the clearing of land to facilitate the development of the Black Hill Employment Lands.
2. To enable bulk earthworks to be undertaken on site and managed in a co-ordinated approach to minimise the necessity for future site specific earthworks.
3. To encourage the design of the subdivision having regard to the protection of the riparian corridor and retention of visual buffers along the site boundaries/road frontages.
4. To minimise and manage any impacts on mature and hollow bearing trees and fauna within the site during clearing.

## **Controls**

1. Clearing for the purposes of providing access or service infrastructure within the riparian corridor and where required within the visual buffer areas is permitted.
2. Prepare a management strategy to provide for the staged clearing of land, addressing measures to minimise any impacts on fauna including appropriate tree clearing protocols for the removal of trees containing suitable habitat hollows, the treatment and relocation of displaced fauna, and the identification and protection of any trees to be retained outside of the subdivision footprint.
3. Provide details of erosion and sediment control measures that should be implemented to protect vegetation within the riparian corridor and within any buffer areas.
4. Provide a bulk earthworks plan identifying proposed cut and fill and finished final contours.
5. Provide details of the suitability of any externally sourced fill, if required.

## **E. Riparian Corridor**

### **Objectives**

1. To recognise the importance of Viney Creek as a significant watercourse.
2. To encourage the protection and rehabilitation of the Viney Creek riparian corridor.
3. Ensure the integrity of the riparian corridor is maintained and protected.
4. To ensure future development protects and enhances these environmental attributes.
5. To ensure that open spaces areas can be easily managed and maintained.
6. To preserve the character and habitat value of the corridor and maintain a vegetated setting.

### **Controls**

1. The riparian corridor is reflected by the E2 Environmental Conservation zoning and includes the buffer zones endorsed by the Concept Approval.
2. Restrict pedestrian access to the core riparian corridor by limiting any pedestrian network to the road crossings, to protect and maintain the integrity and biodiversity value of the site.
3. Install appropriate nutrient and sediment control measures for each stage of subdivision outside of the riparian corridor to ensure on-going water quality and management of direct and potential indirect impacts to the site and downstream environs.
4. Retain riparian vegetation, as far as practicable, to provide a wildlife corridor and filter stormwater runoff.
5. Preparation of a rehabilitation plan for the Viney Creek riparian corridor in conjunction with the subdivision application, identifying management measures for the removal of any waste, revegetation, weed management and on-going monitoring and management of the corridor including costs.

6. Best practice water sensitive urban design measures will be utilised in accordance with Section 7.06 of Council's DCP.
7. Works within the riparian corridors, including the approved road and services crossing, are to be designed in accordance with the requirements of the NSW Office of Water.

<b>Note:</b> A 20m buffer zone to Viney Creek has been endorsed by the Concept Approval.
--

## **F. Cultural Heritage**

### **Objectives**

1. To identify and manage any potential impacts on Aboriginal cultural heritage.

### **Controls**

1. An Aboriginal Cultural Heritage Management Plan (ACHMP) shall be prepared for the site in consultation with the Registered Aboriginal Parties and in accordance with OEH guidelines and the Preferred Project Report – Final Heritage Impact Statement (prepared by ERM, June 2011).
2. A copy of the ACHMP shall be submitted to Council prior to the commencement of works on site.
3. Development of the site shall be undertaken in accordance with the recommendations of the ACHMP prepared for the site.
4. The ACHMP shall be implemented prior to the commencement of any construction works on site for each stage.

## **G. Geotechnical / Contamination**

### **Objectives**

1. To identify and manage any potential impacts on future development as a result of mine subsidence, contamination or groundwater.
2. To ensure the safety of future users of the site.
3. Provide durable infrastructure to ensure it is not affected by mine subsidence

### **Controls**

1. A remediation action plan is to be prepared with each precinct-based (stage) subdivision application in accordance with the relevant guidelines and the Preliminary Geotechnical, Contamination and Mine Subsidence Assessment prepared by Douglas Partners, February 2011, should the likelihood of contamination be identified, including details of the staging of remediation works where necessary.
2. Any remediation of the site is to be staged in line with the future development and undertaken prior to use for its intended industrial purpose.
3. A site validation plan is to be submitted to Council prior to issue of a subdivision certificate for that part of the site identified as requiring remediation.
4. Identification of any potential risks and proposed management measures associated with mine subsidence within the site, where relevant for each stage of subdivision.
5. Any bulk earthworks plan is to identify the depth of excavation works proposed and address the likelihood of the interception of groundwater.
6. If groundwater is likely to be encountered during works, an appropriate dewatering permit is to be obtained from the NSW Office of Water prior to that activity commencing.

7. The potential management of any water seepage likely to occur from mine workings within the site is to be addressed, if identified.
8. The potential management of any water seepage likely to occur from mine workings within the site is to be addressed, if identified.

## **H. Noise Mitigation**

### ***Objectives***

1. To manage and mitigate any potential noise impacts during construction and operation of industrial developments.
2. To minimise any potential land use conflicts within the site.
3. To minimise external noise between unlike land uses.

### ***Controls***

1. Prepare a Noise Management Plan for the site in conjunction with the subdivision of the land.
2. All works should be undertaken generally in accordance with the Noise Management Plan prepared for the site.
3. Noise attenuation for buildings are to be addressed primarily through the placement of uses and then the design of the built form.

## **I. Infrastructure and Utilities**

### ***Objectives***

1. To ensure the adequate provision of infrastructure and utilities to service the development.
2. To ensure legal access is available to infrastructure for maintenance purposes.

### ***Controls***

1. Provide for the provision of utility infrastructure to service the development including, but not limited to, electricity, water, sewer, and communication services (NBN Policy).
2. Details of consultation with relevant service providers shall be submitted for each precinct-based (stage) subdivision application, demonstrating satisfactory arrangements can be made available for the provision of services and infrastructure.
3. Crossings of riparian corridors for utility infrastructure are to be co-located with road crossings.
4. New services within the precinct are to be provided underground.
5. Provide for the creation of suitable easements for utility services that encroach onto private land.

## **J. Water Management**

### **Objectives**

1. To ensure stormwater is managed on site to minimise the potential impacts of development and to protect the quality of receiving waters;
2. To apply the principles of water sensitive urban design;
3. To ensure stormwater infrastructure is identified on site and can be appropriately managed and maintained.
4. To ensure stormwater infrastructure to be dedicated to Council is completed in accordance with DCP Section 7.06 and associated Technical Manual.

### **Controls**

1. All stormwater management devices are to be designed in accordance with the NSW Office of Water (NOW) guidelines for Controlled Activities, and any relevant Council policies.
2. The subdivision and development of the site is to be designed in accordance Section 7.06 of DCP.
3. Details of the maintenance and management arrangements for public stormwater facilities, where relevant, are to be provided to Council for approval.
4. Pipe network is to be inspected (via CCTV) prior to handover of infrastructure to Council in accordance with DCP Section 7.06 and associated Technical Manual.
5. Preparation of a revised flood assessment of the site with consideration to the impacts of mine subsidence on the site, detailing the following:
  - a) Changes to the flood behaviour as a result of the proposal;
  - b) Rise times and flash floods;
  - c) Revised flood planning levels; and
  - d) Procedures for evacuation in the event of a flash flood.
6. Each Development Application is to demonstrate that buildings would be located above the flood planning levels for the site.

<b>Note:</b> A revised flood assessment is required to reflect updated data as at the time of detailed subdivision design.
--

## **K. Construction Management**

### **Objectives**

1. To ensure that the construction of the land is adequately managed to minimise any potential impacts on the built or natural environment, or the amenity of the locality.

### **Controls**

1. A Construction Management Plan is to be prepared and submitted to Council in conjunction with each stage of the development of the site.

## **6.16.02 Site and Building Elements**

### **A. Site Coverage and Design**

#### **Objectives**

1. To ensure that sites are developed to a level that maintains their efficient operation.
2. To ensure development responds positively to the particular environmental attributes and constraints affecting the site, including:
  - Geotechnical constraints (subsidence)
  - Flooding and riparian zones
3. To ensure the safety of future users of the site.

#### **Controls**

1. Proposals are to clearly define spaces for pedestrians, utilities, service, parking and storage areas;
2. Buildings are to be orientated towards the primary street frontage within the site;
3. Buildings are to provide outdoor seating where possible;
4. Proposals locate the majority of service areas, refuse and mechanical services behind buildings and/or screened from key streets and public open space;
5. Future development is to comply with the requirements of the Bushfire Management Plan and the Planning for Bushfire Protection 2006 Guidelines (as amended).
6. Future buildings are not to encroach within the designated APZ areas.
7. Visual buffers and Asset Protection Zones (APZs) required for bushfire protection purposes are to be located and maintained within each individual site.

### **B. Setbacks**

#### **Objectives**

1. To ensure that adequate area is available at the front of buildings to accommodate satisfactory landscaping, access and manoeuvring of vehicles.
2. To reduce the visual impact of industrial development on the streetscape and surrounding development.

#### **Controls**

1. Development is to be setback 5m from the front property boundary, however, this setback may be reduced by up to 50% for half the width of the site provided that:
  - (a) the remaining portion of the development is setback a distance equivalent to the concession taken;
  - (b) the building design contributes to the enhancement of the streetscape;
  - (c) the setback area is landscaped;
  - (d) the front setback does not have any car parking spaces.
2. For corner lots, a secondary setback of 2m – 5m should be provided.

3. Buildings, external work and storage areas are to be setback a minimum of 6m from side and rear boundaries on sites of 10,000m<sup>2</sup> or more.

## **C. Car Parking, Access and Loading**

### **Objectives**

1. To locate and design any car parking, driveways and servicing areas so that they are efficient, safe, convenient and easily identified.
2. To ensure adequate areas are set aside on site to allow for the safe and efficient manoeuvring of delivery and service vehicles.
3. To ensure car parking areas are of suitable dimensions/layout to allow for vehicle manoeuvring.
4. To provide sufficient off-street car parking facilities that do not detract from the overall visual amenity and character of developments when viewed from the street.

### **Controls**

1. Provide an appropriate level of landscaping to minimise the visual impact of loading and car parking areas from the street. For sites with less than 20 spaces, visual planting to the perimeter of the car park shall be sufficient. For sites with more than 20 spaces, tree bays should be incorporated at one bay for every 20 spaces where practicable, except where bays abut rear or side walls of buildings.
2. Driveways are to be designed to enable vehicles to enter and leave the site in a forward direction.
3. Loading docks are to be located such that they minimise conflicts between other vehicles accessing the site.
4. Parking is to be provided in accordance with DCP Section 7.03.
5. Parking requirements for other uses are to be determined by reference to the Newcastle City Council or RMS car parking requirements.
6. Car parking is not permitted within the front setback.
7. Provision of appropriate end of trip facilities for developments such as motor bike and bicycle parking.



## **D. Design and Appearance of Development**

### ***Objectives***

1. To promote industrial development that is both functional and attractive in the context of its local environment through appropriate design.
2. The building facade design should enhance the pedestrian comfort of the streetscape.
3. To encourage sustainable design in the future development of the industrial precinct.

### ***Controls***

1. Elevations of buildings which are visible from a public area are to be constructed using glass, brick, masonry, pre-coloured metal cladding, 'tilt-slab' concrete or a combination of these materials.
2. Ancillary offices, staff amenities and other low-scale building elements are to be, wherever practicable, located at the front of the premises and constructed in brick or masonry materials to enhance the appearance of the development.
3. Roofing materials are to consist of low-reflective materials.
4. Building facade treatment reflects the activities carried out within the building.
5. Open work and storage areas are to be located at the rear of industrial developments and screened from view by the use of landscaping and screen fencing.
6. Security fencing should be visually unobtrusive and, except in special circumstances, should be located behind the landscape setback area.

## **E. Waste Management**

### ***Objectives***

1. To promote efficient waste management.
2. To minimise waste transfer.

### ***Controls***

1. Future developments should optimise on-site recycling and reduce waste production.
2. Individual waste storage and collection areas are required for developments, which are appropriately screened and accessible.
3. A waste management plan is to be prepared for each development application in accordance with Council's requirements.

## **F. Landscaping**

### ***Objectives***

1. To enhance the visual amenity of Black Hill Employment Lands.
2. To encourage a high standard of landscaping to enhance the streetscape and amenity of Black Hill Employment Lands.

3. To minimise landscape maintenance requirements.

### **Controls**

1. Areas required to be landscaped:
  - The front building setback;
  - Secondary setbacks where visible from a public place;
  - Areas adjacent to building entrances and pedestrian access points;
  - The perimeter of all approved open storage areas and staff/visitor parking areas. Large car parking areas should be interspersed with internal planting bays to reduce the visual impact of large areas of paved surfaces;
2. An unobstructed root area 1m deep and 20 – 40m<sup>2</sup> is to be provided around each tree (no building or pavements permitted in this area).
3. Passive watering techniques are to be utilised as part of the road drainage system.
4. A landscape plan is to be prepared for all future development applications, which includes details of both hard and soft landscaping.

## **G. Stormwater Management**

### **Objectives**

1. To ensure integrated water cycle management best practices are utilised throughout the Estate.
2. To protect the natural environment from the effects of stormwater run-off.
3. To manage stormwater on an individual lot basis.
4. To maximise use of recycled water within the Estate.
5. Future buildings should demonstrate a commitment to Ecologically Sustainable Development (ESD) principles, with particular regard to water re-use and management.

### **Controls**

1. Development of the site is designed in accordance with Section 7.06 of the DCP.
2. A Stormwater Management Plan is to be prepared for the development of each individual allotment.
3. Each lot should provide water quality treatment.
4. On site detention may be provided in the form of landscaped swale/depression, subterranean detention tanks or above ground water tanks (with surrounding landscaping to minimise visual impact).
5. All water leaving a site to be treated for the removal of sediments, heavy metals and other contaminants.
6. Best practice water sensitive urban design measures will be utilised in accordance with Section 7.06 of Council's DCP.



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# Attachment E

# **Staging Plan**

## **Industrial Subdivision**

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**Lot 30 in DP 870411 known as 198 Lenaghans Drive, Black Hill – City of Newcastle**

**April 2021**

**Prepared by**

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## 1.0 Introduction

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### 1.1. Background

This Staging Plan document has been prepared to support the “Indicative Lot Layout and Staging Plan” for the industrial subdivision of Lot 30 in DP 870411, known as 198 Lenaghans Drive Black Hill (the Land). The Land has a total area of approximately 183 hectares. See Figure 1 below.

The Land is mainly zoned Light Industrial under the Newcastle Local Environmental Plan 2012. A central riparian corridor (Viney Creek) is protected by a Conservation zone. Under the Greater Newcastle Metropolitan Plan 2036, the Land is part of an “Emerging Black Hill Precinct” that is included within a larger Beresfield-Black Hill freight and logistics hub, with complementary manufacturing and light industrial activity.

The Land’s development is subject to a Concept Approval pursuant to the former Part 3A of the Environmental Planning and Assessment Act, 1979. The Concept Approval allows for employment lands development of the Land and addresses the basis for biodiversity impacts offsets; Urban Design Guidelines; indicative lot layout; and further environmental assessment requirements for subdivision.

A copy of the Concept Approval is included in Appendix 1.



**Figure 1– Lot 30 DP 870411 outlined over aerial photograph**

(Source: ePlanning Spatial Viewer 2020\_11\_23)

## **1.2. Purpose of this document**

Apart from including the “Indicative Lot Layout and Staging Plan” for the Land, this document also includes how the infrastructure items covered by the Concept Approval (Part D 1.10 Infrastructure Provision) are to be staged along with the physical development staging.

The Purpose of this document is to be a single point of reference for the application of Infrastructure Provision related conditions of Development Consent by the consent authority.

## 2.0 Concept Approval 10\_0093

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On 19 November 2013, delegates of the Minister for Planning and Infrastructure issued a Concept Approval affecting the Land, subject to conditions and modifications, pursuant to the former Part 3A of the *Environmental Planning and Assessment Act, 1979* (EP&A Act). The Concept Approval (Ref 10-0093) (included in Appendix 1) allows for employment lands development of the Land and addresses the basis for biodiversity impacts offsets; Urban Design Guidelines; indicative lot layout; and further environmental assessment requirements for subdivision.

Given that certain works including investigations on the Land and dedication of Conservation Lands covered by the Concept Approval have been physically commenced, the Concept Approval remains in force and therefore will not lapse.

### 2.1. Condition 1.10 Infrastructure Provision

Condition 1.10 of the Concept Approval requires that a “staging plan” be prepared for Council approval.

The (staging plan) is to include:

1. An updated indicative lot layout, identifying how development of the site would be staged;
2. A schedule for the delivery of the following -
  - a. Provision of roads, stormwater and other service infrastructure;
  - b. Items identified for Black Hill in the \$2 million allocated to the Coal and Allied Northern Estates;
  - c. Contributions in accordance with the relevant Newcastle Contributions Plan;
  - d. Management arrangements for the Viney Creek riparian corridor, recreation infrastructure, stormwater detention basins and Asset Protection Zones.

At the time of assessment of any Development application for a Stage or Stages of development of the Land, it will be determined that no contributions or allocations overlap.

### 3.0 Indicative Lot Layout and Staging Plan

The Concept Approval (Part C Condition 1.7) did not approve the indicative lot layout for subdivision of the Land. At that time the layout was as shown below (Figure 2).

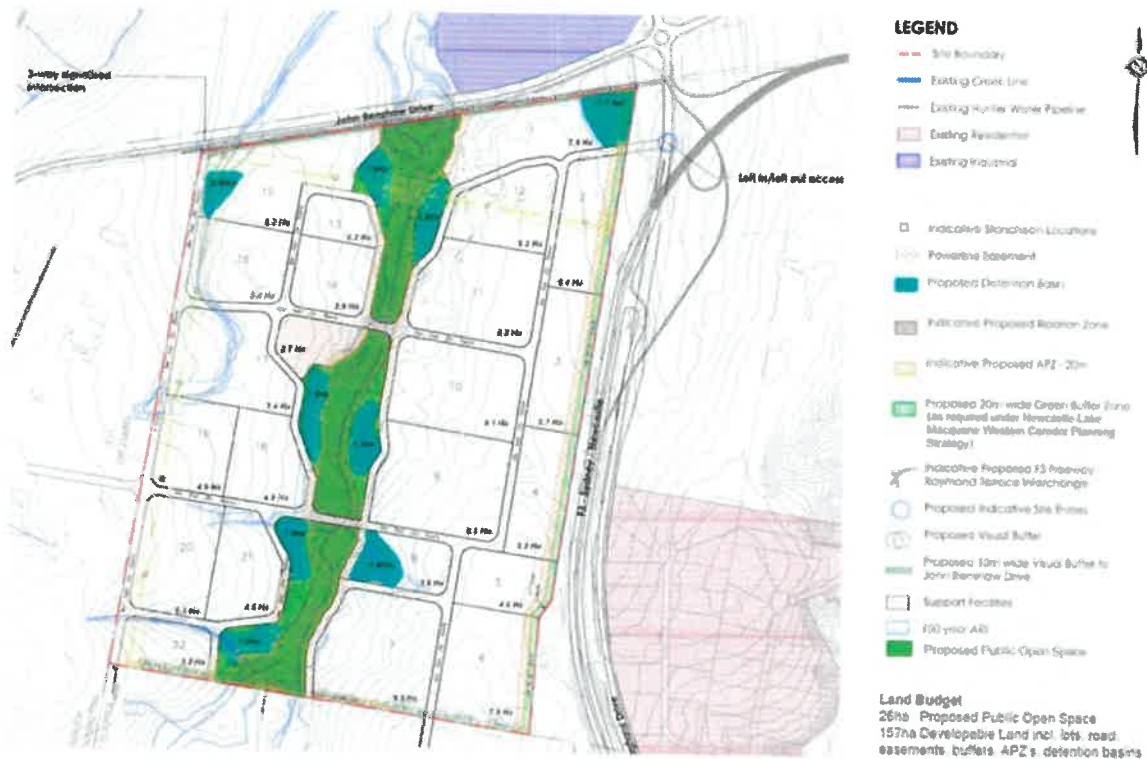


Figure 2 – Original (Unapproved) Indicative Lot Layout Lot 30 DP 870411

(Source: RPS JMD 2011)

#### 3.1. Details of the updated Indicative Lot Layout and Staging Plan

A copy of the updated Indicative Lot Layout and Staging Plan is included in Appendix 2.

The updated Plan includes the location of the existing high voltage transmission easement and the Viney Creek conservation corridor; and shows the proposed - vehicular accesses to John Renshaw; potential road connections to adjoining properties; the internal arrangement of internal roads, road widths and intersections; industrial lots; and the proposed 20m wide vegetation retention buffers along the north, east and southern boundaries.

The Plan shows a total of 200 lots to be constructed in 8 stages.

## **4.0 Roads, Stormwater and Service Infrastructure Staging**

---

### **4.1. Roads and Intersections**

This Staging Plan was prepared in consultation with Council and other authorities including Transport for NSW (TfNSW).

In Stage One it is proposed to construct a major intersection with John Renshaw Drive that will eventually service the entire subdivision. This will be a signalised intersection, allowing movements in / out, left /right.

In Stage Three, a left in only intersection with John Renshaw Drive is proposed. Stage Three, when constructed will be linked to Stages 1 and 2 and the major intersection across the Viney Creek Corridor. Stage 4 will also utilise this connection.

In Stage 5 an additional crossing of Viney Creek will be installed to improve connectivity.

Eventually, Stages 6, 7 and 8 – located in the southern area of the Land will be released.

#### **4.1.1. Roadworks off site not covered by this Staging Plan**

Off-site mitigation road works and traffic and transport impacts will be reviewed as part of future Development Applications (DA) on the site.

### **4.2. Proposed Drainage Reserve Staging**

The proposed Viney Creek Drainage Corridor Reserve will be managed for the most part as a natural watercourse but will contain stormwater quality control devices and eventually two public road crossings. A Construction Management Plan for the Corridor will be prepared prior to construction of any approved Stage or Stages of subdivision development on the site.

The Viney Creek Drainage Corridor Reserve is intended to be transferred to City of Newcastle's (CoN) care and control. This dedication could occur progressively through staging of the development or at completion of the overall development, according to CoN's requirements. However, for the purpose of this Staging Plan, it is noted that CoN has not yet made a determination to accept dedication of the Reserve. In the event this dedication is not accepted, alternative management/tenure arrangements will be arranged.

The dedication of land for the Viney Creek Drainage Reserve is not to be used as an in-kind offset to contributions levied under any Contributions Plan of Council. In accordance with the Concept Approval, any passive recreational space that is provided along Viney Creek is to be additional to any contributions required under any Contributions Plan and the management of that passive open space is to be agreed to by Council.

### **4.3. Other Services Staging**

Servicing strategies for the overall site have been developed in consultation with Hunter Water for water and wastewater. However, any such strategies and any contributions by the developer to upgrading of the networks will be reviewed / assessed as part of future Development Applications (DA) for any Stage or Stages of subdivision development on the Land. Similarly, upgrading of electricity, lighting, telecommunications networks and connections will also be assessed.

## 5.0 Black Hill Allocation

As part of the Concept Approval, a \$2million allocation by the proponent intended to assist with social infrastructure was approved. The initiatives proposed under this allocation are included in an extract from the Department of Planning and Infrastructure's Assessment in Appendix 3 and covered in the Concept Approval (Appendix 1) in Conditions 1.10 (b) and 1.19.

### 5.1. Black Hill Allocation Payment Schedule

Schedule 1 – \$2m Allocation for Black Hill			
Stage / Description	Stage Contribution (@\$10,000 Per Lot Contribution)	Progressive Contribution Total	
1 - 31 lots	\$310,000	\$310,000	
2 - 31 lots	\$310,000	\$620,000	
3 – 29 lots	\$290,000	\$910,000	
4 – 40 lots	\$400,000	\$1,310,000	
5 – 31 lots	\$310,000	\$1,620,000	
6 – 19 lots	\$190,000	\$1,810,000	
7 – 7 lots	\$70,000	\$1,880,000	
8 – 12 lots	\$120,000	\$2,000,000	
<b>GRAND TOTAL</b>	<b>\$2,000,000</b>		

## 5.2. Black Hill Allocation Schedule

The Black Hill allocations are separate to any other community contributions provided by the developer as part of the DA approval process, such as those covered by Council's Contribution Plan and any State Infrastructure Contribution.

As outlined in section 3.0 above, the Concept Approval requires a schedule for delivery of these initiatives as part of this Staging Plan. This Schedule is included below.

Schedule 2 – \$2m Allocation for Black Hill		
Infrastructure / Initiative	Cost	Stage of Provision
Scheme for community bus / subsidy for bus services in initial stages (additional to any Council / NSW Transport levies)	\$500,000	Bus scheme to be commence when 50,000 sqm of building area occupied
Sponsorship of local sporting teams	\$100,000	Contributions to commence after Stage 1 Contribution paid
Contribute to providing a community facility in proximity to the Black Hill	\$750,000	Provide after Stage 5 Contribution paid
Upgrade rural fire service (Benwerrin)	\$250,000	Contributions to commence after Stage 1 Contribution paid
Funding towards Aboriginal education	\$85,000	Contributions to commence after Stage 1 Contribution paid
Sub-regional review of cycling/walkways strategy	\$315,000	Contributions to commence after Stage 6 Contributions paid
<b>GRAND TOTAL</b>	<b>\$2,000,000</b>	

## 5.3. Administration of the \$2m Allocation

A contribution to the \$2 million allocation will be levied by a development consent condition applying to the approval of any Stage or Stages of industrial subdivision of the Land.

Money to be allocated will be held in a Trust Fund administered at the expense of the applicant. The payment applicable to each Stage will be placed in the Trust Fund prior to certification of the plan of subdivision.

Allocations will take place in accordance with Schedule 2. The Trust Fund will be subject to annual Audit and such Audit will be provided annually to Council.



## **6.0 Newcastle Local Infrastructure Contributions Plan**

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Contributions in accordance with the relevant Contributions Plan will be levied and paid in accordance with the provisions of industrial subdivision applicable at the time of determination of any Development Application for a Stage or Stages.

In accordance with the Concept Approval, any passive recreational space that is provided along Viney Creek is to be additional to any contributions required under any Contributions Plan and the management of that passive open space is to be agreed to by Council.

## **7.0 Management Arrangements for Viney Creek Riparian Corridor**

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### **7.1. Introduction**

Viney Creek, including the Riparian Corridor (the Corridor) defined by the proposed Drainage Reserve in the Indicative Lot Layout and Staging Plan (included in Appendix 2) will be managed for the most part as a natural watercourse following the recommendations of its Vegetation Management Plan (VMP) (EcoLogical 2018).

The Reserve will contain stormwater quality control devices and eventually two public road crossings as described in the Engineering Design Report (Northrop December 2020).

Specialist investigations that have been undertaken and which contain findings and recommendations that may be relevant to the management of the Corridor are :

- Bushfire Assessment Report Black Hill Industrial Park (Building Code & Bushfire Hazard Solutions Pty Limited (181048B) 2020)
- Remediation Action Plan – Proposed Commercial Development – Black Hill Estate (Cardno (NSW/ACT) Pty Ltd (82218039-001.1) May 2018)
- Groundwater Management Plan – Proposed Commercial Development – Black Hill (Cardno (NSW/ACT) Pty Ltd Estate (82218039-002.2) May 2018)
- Aboriginal Cultural Heritage Management Plan Black Hill, NSW Yancoal Australia 2019
- Landscaping designs (in stages)

Note: Each of the above reports (or updates of them) will be submitted with Development Applications for each Stage or Stages of subdivision development of the Land. They are therefore Referenced but not Appended to this document.

### **7.2. Management and Staging of the Works**

1. Following the approval of the initial Development Application for a Stage or Stages of subdivision of the Land, a review will be undertaken of the Vegetation Management Plan in the context of the approved proposed Stage or Stages in the context of –
  - a. Any proposed engineering works within or in proximity to the Corridor;
  - b. Any recommendations of the Bushfire Assessment Report;
  - c. Any recommendations of the Remediation Action Plan;
  - d. Any recommendations of the Groundwater Management Plan;
  - e. Any recommendations of the Aboriginal Cultural Heritage Management Plan; and
  - f. Approved landscaping designs.
2. After the above review, the schedule of works relevant to the approved Stage or Stages that impact on the Corridor will be subject to a Controlled Activity Approval (CAA) application to the Natural Resource Access Regulator for work in the watercourse, including rehabilitation, water quality basins and road crossings (if applicable).
3. The approved works will be carried out according with a Construction Management Plan.
4. Items 1 – 3 are to be repeated for each subsequent Stage or Stages approved by the consent authority.

## **8.0 State Infrastructure Contributions**

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Satisfactory Arrangements Certificate will be sought from the Department of Planning, Industry and Environment for each of the DA stages and payment will be in accordance with the requirements.

## 9.0 References

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- ADW Johnson *Water Servicing Strategy Black Hill Development Site* 2018
- ADW Johnson *Wastewater Servicing Strategy Black Hill Development Site* 2018
- Building Code & Bushfire Hazard Solutions Pty Limited *Bushfire Assessment Report Black Hill Industrial Park (181048B)* 2020
- Cardno (NSW/ACT) Pty Ltd *Remediation Action Plan – Proposed Commercial Development – Black Hill Estate (82218039-001.1)* May 2018
- Cardno (NSW/ACT) Pty Ltd *Groundwater Management Plan – Proposed Commercial Development – Black Hill Estate (82218039-002.2)* May 2018
- Cardno (NSW/ACT) Pty Ltd *Mine Subsidence Impact Assessment – Proposed Employment Area Black Hill (82218039-004)* May 2018
- Colston Budd Rogers and Kafes (CBRK) *Black Hill Industrial Stage 1 Subdivision Traffic Assessment* 14<sup>th</sup> December 2020
- Douglas Partners *Report on Geotechnical, Contamination and Mine Subsidence Assessment Proposed Employment Lands Development Black Hill* 2011
- Eco Logical *Black Hill Industrial Park Vegetation Management Plan* 2018
- Northrop *Black Hill Engineering Design Report* December 2020
- NSW Government *Hunter Regional Plan 2036*
- NSW Government *Greater Newcastle Metropolitan Plan 2036*
- NSW Government *Six Maps*, 2020
- NSW Rural Fire Service *Planning for Bushfire Protection. A Guide for Councils, Planners, Fire Authorities and Developers* 2019
- Power Solutions *Electrical & Communications Infrastructure DA Report Black Hill Industrial Area* 2018
- Power Solutions *Electrical & Communications Infrastructure DA Report Black Hill Industrial Area Addendum* 2020
- RPS JMD *Black Hill Concept Plan Design Guidelines* 2011
- SMEC *Black Hill Traffic Modelling Traffic Analysis Report* September 2020
- Yancoal Australia *Aboriginal Cultural Heritage Management Plan Black Hill, NSW* 2019
- City of Newcastle *Newcastle Local Environmental Plan 2012*
- City of Newcastle *Newcastle Development Control Plan 2012*

## **10.0 List of Appendices**

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1. 2013 Concept Approval Instrument of Approval
2. 2021 Indicative Lot and Staging Plan
3. DPI Assessment Report Extract

## 1. 2013 Concept Approval Instrument of Approval

# Concept Approval

## Section 75O and 75P of the *Environmental Planning and Assessment Act 1979*

As delegates of the Minister for Planning and Infrastructure under delegation executed on 14 September 2011, pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 (the Act), the NSW Planning Assessment Commission determines:

- (a) to approve the concept plan referred to in Schedule 1, subject to the terms of approval and modifications in Schedule 2,
- (b) under section 75P(2)(c) of the EP&A Act, where development is subject to Part 4 of the Act (other than complying development), that development is subject to the further environmental assessment requirements specified in Schedule 2, Part D of this approval.
- (c) under section 75P(1)(c) of the Act, the subdivision of land that gives effect to the transfer of lands to a public authority or a Minister of the Crown requires no further environmental assessment and approve the development under section 75J of the Act (subject to the conditions set out in Schedule 3 of this approval); and
- (d) under section 75P(1)(b) of the Act, development the subject of the Concept Plan is subject to Part 4 or Part 5 of the Act, whichever is applicable.

The modification and further assessment requirements are required to:

- Encourage the orderly future development of the site; and
- Ensure adequate mitigation of environmental impacts of future development.



Richard Thorp  
Member of the Commission



Donna Campbell  
Member of the Commission

Sydney,

19 November 2013

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## **SCHEDULE 1**

<b>Application No:</b>	10_0093
<b>Proponent:</b>	Coal & Allied Industries Ltd
<b>Approval Authority:</b>	Minister for Planning and Infrastructure
<b>Land:</b>	Lot 30 in DP 870411, John Renshaw Drive, Black Hill in the Newcastle Local Government Area Lot 1 in DP 1007615, Tank Paddock in the Newcastle Local Government Area Lot 101 in DP 881099, Lot 2 in DP 877416, Lot 79 in DP 755260, Lot 1 in DP 877416, Lot 4 in DP877416 (listed as Black Hill), Lot 3 in DP 877416 (listed as Black Hill) and Pt Lot 13/DP1078246, Stockrington in Cessnock Local Government Area.
<b>Local Government Area:</b>	Newcastle and Cessnock
<b>Concept Plan:</b>	Concept plan for: <ul style="list-style-type: none"><li>• employment lands development of a 183 ha development site</li><li>• dedication of 545 hectares of Conservation Lands</li><li>• conceptual road, pedestrian and cycleway network;</li><li>• conceptual lot layout; and</li><li>• associated infrastructure.</li></ul>

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## SCHEDULE 2

### PART A – DEFINITIONS

<b>Act, the</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>APZ</b>	Asset Protection Zone
<b>Council</b>	City of Newcastle Council
<b>Department, the</b>	Department of Planning & Infrastructure
<b>Director-General, the</b>	Director-General of the Department of Planning & Infrastructure (or delegate)
<b>Minister, the</b>	Minister for Planning & Infrastructure
<b>NOW</b>	NSW Office of Water
<b>Proponent</b>	Coal & Allied Industries Ltd, or its successors or any person who acts on this approval, in title
<b>RMS</b>	Roads and Maritime Services
<b>Site</b>	Land to which Concept Plan Application 10_0093 applies
<b>Stage</b>	The six stages identified in Figure 7 – Indicative Staging Plan of the Concept Plan Environmental Assessment.
<b>Subdivision Application</b>	An application for a Subdivision Certificate

## **PART B – ADMINISTRATIVE CONDITIONS**

- 1.1 The Proponent shall ensure that all development on site is carried out generally in accordance with the:
- a) Concept Plan Application 10\_0093;
  - b) *Black Hill Concept Plan* (including accompanying appendices) prepared by Urbis dated February 2011;
  - c) *Black Hill Preferred Project Report*, dated May 2011 prepared by Urbis;
  - d) Correspondence, with attachments, entitled "Preferred Project Report Submission - Coal & Allied Northern Estates: Black Hill (MP10\_0093)"; and
  - e) Correspondence, with attachments, entitled dated 20 May 2011, and "Preferred Project Report Submission - Coal & Allied Northern Estates: Black Hill (MP10\_0093)" and dated 16 June;
  - f) Statement of Commitments; and
  - g) this approval.
- 1.2 In the event of an inconsistency between:
- a) the modifications of this approval and any document listed from clause 1.1 a) to 1.1 f) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
  - b) any document listed from condition 1.1a) to 1.1e) inclusive, the most recent document shall prevail to the extent of the inconsistency.

### **Limits of Approval**

- 1.3 This concept approval shall lapse 5 years after the date on which it is granted, unless an application is submitted to carry out a development for which concept approval has been given.
- 1.4 To avoid any doubt, this concept approval does not permit the subdivision or construction of any aspect of the proposal which will be subject to separate approvals.

### **Determination of Future Applications**

- 1.5 The determination of future applications for development on the Site under Part 4 of the Act, for which Council is the consent authority, is to be generally consistent with the terms of this approval.

### **Dispute resolution**

- 1.6 Any dispute between the proponent and Council over the interpretation, or application of the modifications and/or further environmental assessment requirements is to be settled by the Director-General. Any decision of the Director-General shall be final and not subject to further dispute resolution.

## **PART C - MODIFICATIONS TO THE CONCEPT**

### **Urban Design & Built Form**

1.7 The indicative lot layout is not approved.

1.8 Prior to the first application for subdivision, the Proponent shall revise the Urban Design Guidelines to:

- a) Adopt provisions in Council's DCP relating to:
  - Industrial development;
  - Parking rates including rates required for bicycle parking / storage, motorbike delivery and service vehicles parking;
  - road types and dimensions;
  - stormwater management including requirements for on-site detention on lots and pollutant reduction targets;
  - Tree management and Landscaping; and
  - Outdoor advertising;
- b) Address the following additional issues:
  - cut, fill and earthworks;
  - increasing the Visual Buffer to the northern boundary (fronting John Renshaw Drive) from 10 metres to 20 metres; and
  - controls to manage interaction between potential internal land-use conflicts, such as where childcare is located adjacent to industrial uses.

The revised Guidelines must be prepared in consultation with Council, and to the approval of the Director-General. The guidelines are to be in a form which could be adopted as site specific controls within the Council's development control plan at some stage in the future. The final approved copy is to be submitted to Council prior to lodgement of any development application on the site.

### **Commercial / retail development**

1.9 The Concept Plan is to be modified to remove:

- the proposed retail/commercial component, known as the Core Supporting Facilities Area, intended to accommodate 1300m<sup>2</sup> of retail space, and
- the following proposed additional permitted uses: business premises, health consulting rooms, hotel accommodation, medical centre, restaurant, and retail premises.

## **PART D - FURTHER ENVIRONMENTAL ASSESSMENT REQUIREMENTS**

### **Infrastructure Provision**

1.10 Prior to the first subdivision application, the Proponent must prepare a staging plan for Council's approval. The plan must provide for:

- a) An updated indicative lot layout, identifying how the development of the site would be staged;
- b) the schedule for delivery (and dedication where relevant) of the following:
  - provision of roads, stormwater and other service infrastructure;
  - items identified for Black Hill in the \$2 million allocated to the Coal & Allied Northern Estates;
  - contributions in accordance with Newcastle City Council Section 94A Development Contribution Plan 2009. The passive recreational space to be provided along the creek as referred to in the Statement of Commitments is to be additional to the contributions required under this Plan and the management of that passive open space is to be agreed to by Council;
  - State Infrastructure Contributions; and
- c) the management arrangements for the Viney Creek riparian corridor, recreation infrastructure, stormwater detention basins and Asset Protection Zones (the dedication of this infrastructure to Council is not approved).

For contributions made under the \$2 million allocation, the plan must demonstrate that the contributions are over and above section 94A Development Contributions Plan 2009 and State infrastructure contribution requirements, and do not include any contributions which would be otherwise required to mitigate the impacts of the proposed development. Any contributions or dedications to a council, public authority, or community group require the agreement of that organisation. Any contributions which are deemed unsuitable must be re-allocated to alternative infrastructure and initiatives.

**Note:** In relation to section 94A contributions any works in kind or dedication of land in lieu of monetary contributions required under Council's Section 94A Development Contributions Plan 2009 Plan must be agreed to by Council.

### **Urban Design**

1.11 Each subdivision application shall be consistent with the Urban Design Guidelines for the site and include details on the following:

- a) strategy for retention of trees on the site;
- b) proposed public domain treatments; and
- c) proposed landscaping of all public domain areas including swales, detention basins, and roadside verges.

Any such details would be carried into landscaping plans and public domain plans to be completed in consultation with Council, prior to commencement of subdivision works on site.

### **Flora and Fauna**

1.12 Whilst it is recognised that the biodiversity impacts associated with the proposal have been offset through dedication of 545 hectares of conservation lands to the NSW Government, any subdivision application shall provide:

- a) details on strategies to minimise clearing or disturbance of vegetation and retain mature and/or hollow bearing trees where possible, including through design of roads and stormwater devices, having regard to the recommendations of the Ecological Assessment Report (RPS 2011);
- b) management measures for minimising impacts on fauna during subdivision works including the employment of an appropriate qualified ecologist to advise and supervise

- any clearing of vegetation, and the implementation of appropriate tree clearing protocols; and
- c) details of erosion and sediment control measures that would be implemented to protect vegetation within the riparian corridor.

Any procedures and strategies identified must be carried into a Vegetation Management Plan to be completed prior to commencement of any works on site.

### **Viney Creek Riparian Corridor**

- 1.13 The first subdivision application for the site must include a fully costed rehabilitation plan for Viney Creek riparian corridor that sets out the following:
- survey of the creek bed by both an appropriately qualified ecologist and a geotechnical engineer (reviewing any potential subsidence issues);
  - removal of waste material;
  - measures to revegetate areas to be rehabilitated such as plant material, densities and species mix;
  - management measures to prevent damage to the corridor during any future development of the site;
  - weed management measures; and
  - a plan for the monitoring and management of the corridor.
- 1.14 Each subdivision application must demonstrate that any works within riparian corridors and road and services crossing meet the requirements of the NSW Office of Water Guidelines for Controlled Activities (August 2010).

### **Traffic and Transport**

- 1.15 Any subdivision application must include a revised traffic and transport impact assessment that:
- a) has been prepared in consultation with Council and RMS;
  - b) details traffic generation from each stage of the development;
  - c) demonstrates that the site access would accommodate traffic from all stages of the development, and if required, provide details of alternative access arrangements that may be required;
  - d) intersection analysis and micro simulation modelling including details of any offsite road upgrades that would be required to accommodate the proposal.
- 1.16 The first subdivision application for the site must include detailed design for a signal controlled intersection at the western access to the site on John Renshaw Drive that has been prepared in accordance with RMS requirements.
- 1.17 Any subdivision application must demonstrate that all local roads, including provision for bicycle and pedestrian paths, have been designed in accordance with Council requirements.
- 1.18 With each subdivision application, the Proponent must demonstrate that opportunities have been investigated to extend or provide for an additional bus route to service the proposed development, and must provide details of the proposed location of bus stops and pedestrian access to bus stops. Where the bus route is proposed to travel through the development area the proponent is to demonstrate the associated roads are designed to accommodate bus movements. These requirements are to be carried out in consultation with Council, Transport for NSW, and relevant bus companies, prior to the lodgement of any Development Application.
- 1.19 Prior to the lodgement of the first development application for subdivision a comprehensive public transport, cycle way and pedestrian network plan must be prepared which addresses the following:



- Identify all pedestrian and cycle ways to be provided within the proposed development site, and how these link to the surrounding existing and proposed cycle network;
- Demonstrate that the pedestrian and cycle network links with existing and proposed access points to, and pathways as provided for in Councils Cycling Strategy & Action Plan;
- Identifies any off site pedestrian and/or cycle ways which are proposed to be provided by the proponent by way of local infrastructure contributions or the \$2 million allocation;
- Considers and addresses any relevant aspects of Councils' Cycling Strategy & Action Plan; and
- Demonstrate the proposed bus routes, cycle way and pedestrian network links key destinations including open space, recreation and community infrastructure.

This plan is required to be prepared to the satisfaction of the Director-General in consultation with Newcastle Council, Transport for NSW, Office of Environment & Heritage, and relevant private bus companies.

### **Aboriginal Heritage**

1.20 The proponent shall develop a Cultural Heritage Management Plan for the project area. The CHMP is to be developed and implemented in full consultation with the registered local Aboriginal stakeholders and Council. The plan is to include, but limited to:

- a) procedures for ongoing Aboriginal consultation and involvement;
- b) details of the responsibilities of all stakeholders;
- c) procedures for the management of any recorded sites within the project area;
- d) procedures for providing opportunities for registered local Aboriginal stakeholders to monitor any initial ground disturbance works associated with sites 'Black Hill 1' and 'Black Hill 2' and in the areas immediately adjacent to these sites (50m buffer), and in those areas identified as 'Moderate Archaeological Potential';
- e) procedures for the identification, management and registration of previously unrecorded sites (excluding human remains);
- f) stop work procedures in the event human remains are located at the site;
- g) identification and management of any proposed cultural heritage conservation area(s);
- h) details of an appropriate keeping place agreement with local Aboriginal community representatives for any Aboriginal objects salvaged through the development process;
- i) details of an Aboriginal cultural heritage education program for all contractors and personnel associated with construction activities;
- j) details of proposed mitigation and management strategies for sites identified to be impacted within the project area; and
- k) compliance procedures including for the unlikely event that non-compliance with the CHPM is identified.

### **Stormwater Management**

1.21 Any subdivision application must include:

- a) the detailed design of all stormwater management devices to the satisfaction of Council and accordance with any relevant Council policies and NOW Guidelines for Controlled Activities;
- b) an assessment of the impacts of the proposal on the hydrology of the site and of receiving waters;
- c) maintenance and management arrangements for public stormwater facilities during and after construction. These arrangements are to be negotiated with Council; and
- d) a water quality and hydrological monitoring plan which includes:
  - monitoring against relevant water quality standards, with baseline data collected prior to commencement of works;
  - monitoring of changes in hydrology caused by the development to ensure no detrimental impact on the water quality of Viney Creek.

- details on mechanisms and responsibilities for the management and reporting of the results;
- identification of remedial actions to be implemented in the event of a discrepancy between the actual and predicted performance of the water quality controls; and
- a program to report monitoring results to Council and NSW Office of Water.

### **Flooding and Climate Change**

1.22 Each subdivision application must include a revised flood assessment that takes into account mine subsidence and that details:

- a) changes to the flood behaviour as a result of the proposal;
- b) rise times and flash floods;
- c) revised flood planning levels; and
- d) procedures for evacuation in the event of a flash flood.

Each application must demonstrate that buildings would be located above the flood planning levels for the site.

### **Contamination**

1.23 Any subdivision application must be prepared in consultation with council and contain a remediation action plan, which includes:

- a) Consideration of the requirements of *State Environmental Planning Policy 55 – Remediation of Land* and associated guidelines;
- b) characterisation of the nature and extent of contamination;
- c) details of the proposed remediation process, including treatment methodologies and processes;
- d) justification of the proposed treatment and remediation criteria;
- e) details of proposed remediation management measures;
- f) a site validation plan; and
- g) details of compliance with the *Contaminated Land Management Act 1997*.

### **Groundwater**

1.24 Any subdivision application prepared under this concept approval must provide details of:

- a) depth of excavations and proposed works likely to intercept groundwater including any proposed groundwater extraction;
- b) proposed method of disposal of any groundwater intercepted;
- c) impacts on any groundwater dependent ecosystems in the area; and
- d) management of any water seepage from mine workings.

Note: An authorisation under the *Water Act 1912* or the *Water Management Act 2000* is to be obtained from the NSW Office of Water with the appropriate purpose identified for any activity relating to the taking of or interception of groundwater prior to that activity commencing

### **Mine subsidence**

1.25 Each subdivision application must demonstrate that:

- a) the risk of mine subsidence has been eliminated from land to which Concept Plan Application 10\_0093 applies (excluding the Tank Paddock and (part of) Stockrington the subject of the offset areas) and managed by suitable means to shallow mined workings and other areas affected by subsidence features;
- b) where appropriate, development has been restricted over capped mine, shafts and tunnel entries;
- c) the requirements of the Mine Subsidence Board have been met and addressed; and

- d) the site has been declared suitable for its intended use.

### **Noise**

- 1.26 The first subdivision application must include a Noise Management Plan for the site which:
- a) identifies noise limits for industrial developments during construction and operation;
  - b) criteria that onsite sensitive receivers must meet;
  - c) measures to mitigate and manage potential noise sources; and
  - d) measures to manage potential land use conflicts within the site.

### **Bushfire Protection**

- 1.27 Any subdivision application must:
- a) demonstrate that the development complies with *Planning for Bushfire Protection 2006*;
  - b) demonstrate that the location, layout and management arrangements for APZs has been negotiated, and agreed to, with Council and the RFS;
  - c) provide a map showing the composition of APZs, including the inner and outer protection zones, and their relationship to the proposed building footprints; and
  - d) outline proposed arrangements for management of bushfire hazard and APZs during the development process.

### **Infrastructure and Utilities**

- 1.28 Any subdivision application must include details of consultation with relevant service providers and demonstrate that their requirements have been addressed, particularly relating to water and wastewater servicing and proposed works within and across easements.
- 1.29 Any subdivision application is to demonstrate that all utility infrastructure has been located outside riparian corridors where possible. Crossings of riparian corridors for utility infrastructure should be co-located with road crossings where possible.

### **Bulk Earthworks**

- 1.30 Each subdivision application shall include an assessment of the proposed civil works including final contour plans. The assessment shall include details of the suitability of any externally sourced fill and any associated impacts.

### **Construction Impacts**

- 1.31 Any subdivision application must include a Construction Management Plan, which shall include (but not limited to):
- a Construction noise management plan including a construction noise assessment in accordance with the Office of Environment and Heritage's 'Interim Construction Noise Guideline';
  - confirmation that all construction works undertaken on site will be undertaken in accordance with the EPA's Environmental Noise Control Manual and must not give rise to an 'offensive noise' as defined under the Protection of the Environment Operations Act 1997 and accompanying Regulations;
  - a Construction vibration management plan including assessment of potential vibration impacts vibration in accordance with the Office of Environment and Heritage's 'Assessing vibration: a technical guideline'. The assessment should include potential vibration impacts from mine subsidence remediation works;
  - an air quality and dust management plan;
  - a Flora and fauna management plan, including tree clearing protocols and strategies for retention of mature or hollow bearing trees, wherever possible;
  - a soil and water management plan, prepared in accordance with Landcom's *Managing Urban Stormwater: Soils and Construction guidelines*;
  - a vegetation management plan;



- a waste management plan;
- a construction traffic management plan;
- an archaeological management plan which provides for the monitoring of works and contingency plans should previously unidentified archaeological deposits be discovered;
- a pre-construction dilapidation report of public infrastructure in the vicinity of the site. The dilapidation report is to be submitted to the Council and the RTA;
- a post-construction dilapidation report at the completion of the construction works. This report is to ascertain whether the construction works created any structural damage to adjoining public infrastructure and roads. The dilapidation report is to be submitted to the Council and the RTA;
- measures to address interface issues between the construction site and the conservation areas;
- any other plans that that may be required as a result of the environmental assessment of potential impacts; and
- a complaints management plan detailing the procedures that would be implemented to receive, handle, respond to, and record, any complaints that are received.

## **SCHEDULE 3**

### **CONDITIONS OF PROJECT APPROVAL**

#### **PART A – ADMINISTRATIVE CONDITIONS**

##### **Development Description**

Project Approval is granted only to carrying out the subdivision of lands specified in Schedule 1, to enable the transfer of lands to a public authority or the Minister of the Crown.

##### **Development in Accordance with Plans and Documentation**

The Proponent shall carry out the project generally in accordance with the:

- The *Proposed Subdivision of Lot 13 DP 1078246 Stockrington*, Revision 2, prepared by Monteath & Powys and dated 17 January 2011, and provided as Appendix R to *Black Hill & Tank Paddock Concept Plan* prepared by Urbis and dated February 2011; and
- Conditions of this approval.

If there is any inconsistency between the above documents, the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this approval shall prevail to the extent of any inconsistency.

##### **Lapsing of Approval**

This approval shall lapse if the Proponent does not physically commence the proposed development associated with this approval within 5 years of the date of this approval.

#### **PART B – PRIOR TO SUBDIVISION CERTIFICATE**

##### **Planning Agreement**

The Proponent must enter into a planning agreement in accordance with the letter of offer dated 12 August 2011.

##### **Easements**

Easements for services, drainage, maintenance access or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over those lots pursuant to the *Conveyancing Act 1919*.

##### **Documentary evidence of restrictions on title**

Prior to the issuing of the subdivision certificate, the Proponent is to provide documentary evidence of the proposed easements to the accredited certifier or Council.

##### **Costs to be borne by the Applicant**

All costs associated with the preparation and registration of any covenant or restriction on title, whether directly or indirectly, will be borne solely by the Proponent.

## **PART C – ADVISORY NOTES**

### **Requirements of Public Authorities for Connection to Services**

The applicant shall comply with the requirements of any public authorities (e.g. Integral Energy, Hunter Water, Telstra Australia, AGL etc.) in regard to the connection, relocation and/or adjustment of the services affected by the development. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Subdivision Certificate.

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## 2. 2021 Indicative Lot and Staging Plan





Proposed Stage 1  
Intersection treatment - Traffic Lights  
John Renshaw Drive

STAGE	LOT NUMBER	YIELD
1	101 - 131	31 LOTS
2	201 - 231	31 LOTS
3	301 - 329	29 LOTS
4	401 - 440	40 LOTS
5	501 - 531	31 LOTS
6	601 - 619	19 LOTS
7	701 - 707	7 LOTS
8	801 - 812	12 LOTS
Total		200 LOTS*

\*EXCLUDES DRAINAGE RESERVE

Proposed stage 3  
left in off John  
Renshaw Drive

Existing Industrial

ONE WAY ROAD  
TO INTERSECTION

M1

20m VEGETATED BUFFER

M1 - Sydney - Newcastle

NOTE:

ALL DIMENSIONS, AREAS AND EASEMENTS  
ARE SUBJECT TO FINAL SURVEY

TITLE PROPOSED SUBDIVISION  
JOHN RENSHAW DRIVE BLACK HILL

BLACKHILL INDUSTRIAL PARK

STEVENS GROUP

High Definition  
Design Pty Ltd

Hunter  
LAND

Date:	27.06.17	Scale:	1:5000 A3	Project No:	HD15
Cad Ref:	HD15 r11	Designed:	KU	Drawn:	HD01
Revised:	29.12.17	Revised:	KU	Revised:	11
11	COASTAL EROSION	11	ROAD ACCESS AND ADJACENT LANDS	11	
12	ROAD ACCESS AND ADJACENT LANDS	12		12	
No		Amendment		Drawn	Date

### 3. DPI Assessment Report Extract

- **Parking:**
  - Provisions of Council's Parking DCP should apply to the proposal, unless it can be demonstrated that the proposed design guidelines would result in a better outcome;
  - Council's DCP requires the submission of a green travel plan for major development such as that proposed for Black Hill; and
- Council seeks to clarify whether the UDGs and EA will replace Council's DCP.

#### Department's Consideration

The Department supports provisions in the UDGs relating to open space, bushfire management, flooding and stormwater, visual assessment and development controls. However, the Department considers that the UDGs should be written in a manner that allows the guidelines to be incorporated into NCC's DCP as 'locality based industrial provisions', similar to the existing *'Element 7.03 South Beresfield industrial precinct 11 October 2005'*. In addition, the Department agrees with Council that the UDGs require additional provisions to ensure orderly development of the site.

Consequently the Department considers that the UDGs be revised, in consultation with Council, prior to the submission of any subdivision DA and should be revised to:

- Adopt provisions in Council's DCP relating to:
  - Industrial development
  - Parking rates including rates required for bicycle parking / storage, motorbike delivery and service vehicles parking
  - Tree management and Landscaping;
  - Outdoor advertising;
- Address the following additional issues:
  - cut, fill and earthworks
  - Road types and dimensions (see Section 6.4.2).
  - stormwater management including requirements for on-site detention on lots and pollutant reduction targets; and
  - controls to manage interaction between potential internal land-use conflicts, such as where childcare is located adjacent to industrial uses.

## **6.2 Infrastructure Contributions**

### **6.2.1 State Infrastructure Contributions**

The Proponent has committed to paying State infrastructure contributions and/or carry out works in kind, as per the draft *Lower Hunter Special Infrastructure Contributions Plan*, at the rate current at the time of future development applications, and to negotiate these contributions with the Department once the Concept Plan has been approved.

#### Department's Consideration

The Department supports the proposed approach to the payment of contributions as proposed by the Proponent. As such, the recommended instrument of approval requires the Proponent to prepare a staging plan prior to the submission of the first subdivision application detailing the schedule for the delivery of contributions associated with the proposal, including State infrastructure contributions.

### **6.2.2 Local Contributions**

Through its Statement of Commitments, the Proponent has committed to paying contributions in accordance with Council's *Newcastle City Council (NCC) Section 94A Development Contributions Plan 2006* (currently 1% of development cost). The Statement of Commitments states that the total monetary amount of contribution will comprise dedication of land free of costs, payment of contribution, or works in kind, or a combination of these methods. This includes dedication to Council of passive recreational open space along Viney Creek, in lieu of a cash contribution. The Proponent has also committed to managing and maintaining the space for a 5 year period.

Council's advice states that riparian corridors and road widening areas are not acceptable as offset for active open space. Furthermore, Council is opposed to it taking ownership, and responsibility for the maintenance, of such spaces and its preference is for the establishment of a community title arrangement for the maintenance and management of these areas. However, Council has stated that, should it take ownership of the areas, the Proponent should be required to maintain the areas for a minimum of 5 years post construction.

#### Department's Consideration

Noting that Section 94 contributions cannot be levied at concept plan stage, the Department supports the proposed arrangements relating to payment of local contributions. The implementation of Council's Section 94 Plan will be carried out by Council, at Development Application stage and as such any works in kind or land dedications would need to be agreed to by Council at that stage.

The recommended instrument of approval therefore includes the requirement for a staging plan, which would include details of the delivery of Section 94 contributions, to be prepared and approved by the Director-General prior to subdivision. Under the recommended terms of approval, any works in kind or land dedication in lieu of monetary contributions required under Council's Section 94 Plan must be negotiated with Council and formalised through an appropriate legal mechanism, such as a Deed of Agreement (which is included as a Statement of Commitment), or VPA. Additionally, the staging plan must detail management arrangements for open space and the detention basins in the event that this infrastructure is not dedicated Council.

The Department is satisfied that Section 94 contributions have been suitably addressed through the Proponent's Statement of Commitments and the requirements of the recommended instrument of approval.

#### **6.2.3 Local Contributions - \$2 Million Allocation**

The proponent has allocated \$2 million for the delivery of social infrastructure and initiatives for the project. This contribution is not proposed to be offset against the section 94 contribution requirements. Priorities for funding under the \$2million allocation were identified through a design charette process held in 2007 with community representatives and organisations, and State and local government agencies. Table 3 outlines the initiatives and infrastructure proposed to be funded under the \$2 million allocation.

**Table 3 – Initiatives Proposed under the \$2 Million Allocation**

Infrastructure / Initiative	Proposed timing	Cost
<i>Grant Scheme</i>		
<ul style="list-style-type: none"> <li>Scheme for 'community bus/subsidy for bus services in initial stages (additional to any council / Transport for NSW levies)</li> </ul>	Allocation to be agreed with relevant agencies with funding scaled over a 5 year period commencing when 50,000m <sup>2</sup> of building area is occupied	\$500,000
<i>Community</i>		
<ul style="list-style-type: none"> <li>Sponsorship of local sporting teams</li> </ul>	Funding over 5 years and commencing at the first stage of industrial construction	\$100,000
<i>Community Infrastructure/Sustainability</i>		
<ul style="list-style-type: none"> <li>Contribute to providing a community facility in close proximity to the church</li> </ul>	Prior to the completion of Stage 1	\$750,000
<ul style="list-style-type: none"> <li>Upgrade rural fire service (Benwerrin)</li> </ul>	Prior to the completion of Stage 1.	\$250,000
<i>European Heritage</i>		
<ul style="list-style-type: none"> <li>Funding of non-indigenous heritage studies and publications.</li> </ul>	Commence allocation to agreed studies following dedication of conservation land.	\$10,000
<i>Indigenous Heritage</i>		



Infrastructure / Initiative	Proposed timing	Cost
<ul style="list-style-type: none"> <li>Funding towards indigenous heritage studies and publications to be agreed with traditional owners</li> </ul>	Commence allocation to agreed studies following dedication of conservation land.	\$25,000
<ul style="list-style-type: none"> <li>Funding towards Aboriginal education person</li> </ul>	Funding of \$10,000 per annum for five years from dedication of conservation land.	\$50,000
<b>Traffic/Access</b>		
<ul style="list-style-type: none"> <li>Subregional review of strategy for cycling/walkways, subject to discussions with Department of Planning &amp; Infrastructure with respect to the Western Corridors Strategy</li> </ul>	Funds to be allocated Stage 1 of industrial development post the first industrial building construction commencement	\$315,000
<b>TOTAL</b>		<b>\$2,000,000</b>

The Department supports the \$2 million allocation in principle. However, it is considered that the funding of non-indigenous and indigenous studies would be required to be undertaken to mitigate any impacts of the development of the land. Consequently the Department considers that the Proponent should be required to reallocate these funds (total of \$35,000) in consultation with Council and to the satisfaction of the Department prior to the lodgement of the first subdivision application. This requirement has been incorporated into the recommended instrument of approval.

### 6.3 Flora and Fauna

The site is highly vegetated. The proposed development will require the clearing of the majority of the 183ha site while retaining only the Viney Creek riparian corridor. As such, the proposed development has potential to impact on flora and fauna.

#### *Flora*

The Proponent's ecological assessment identified one Endangered Ecological Community (EEC), the Lower Hunter Spotted Gum Ironbark Forest (LHSGIF), which occurs on 132.92ha, or 72% of the development site (see Figure 6). It is proposed to clear the majority of this species to facilitate the development.

# Attachment F

# Protection of the Lower Hunter Freight Corridor

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Explanation of Intended Effects on the proposed  
amendment to State Environmental Planning Policy  
(Major Infrastructure Corridors) 2020

**JULY 2021**





# Acknowledgement of Country

The Department of Planning, Industry and Environment acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

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Published by NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Protection of the Lower Hunter Freight Corridor

Artwork (left) by Nikita Ridgeway

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# Introduction

## Lower Hunter Freight Corridor

Transport for NSW has released a recommended alignment for the Lower Hunter Freight Corridor for public comment. The exhibition material identifies the recommended future location of a freight rail line. If the recommended corridor is adopted, it is proposed that it is appropriately zoned under the planning system to protect the land for its future use. This will advise the community of the location and potential future operation of the freight rail and will safeguard the corridor for infrastructure delivery.

If adopted, the corridor will support a dedicated freight rail line between Fassifern and Hexham. At present, the Main North Railway Line through Newcastle is a shared passenger and freight line. The corridor will allow future freight services to bypass inner suburbs of Newcastle and alleviate pressure on the Main North Railway Line between Sydney and Newcastle.

The corridor has an identified width of 60 metres, excluding sections in tunnel. The design of the future infrastructure will be subject to further development assessment under the NSW planning system. This Explanation of Intended Effects describes the proposed protection of the recommended alignment under *State Environmental Planning Policy (Major Infrastructure Corridors) 2020*.

## Corridor protection

Corridor protection involves the early identification and protection of land for future infrastructure. The term 'protection' refers to a planning intervention (such as a rezoning or application of development controls) so that the future delivery of infrastructure is not compromised as a result of land being 'built out' or the

alignment being no longer suitable due to incompatible land uses in or around the corridor.

When an infrastructure corridor is protected, land uses that were permitted under the former zoning remain permissible subject to development consent and consideration of the compatibility of the development with the future infrastructure. Through the development assessment process, corridor protection seeks to manage any new development so that it is compatible with future infrastructure. The intention is to provide greater certainty and enhanced planning outcomes for infrastructure agencies and the community. Protecting corridors also aims to minimise social disruption when infrastructure is delivered in developed areas.

The process of corridor protection involves collaboration between infrastructure and planning systems to manage land uses around road and rail to optimise infrastructure use and avoid land use conflicts. Three major infrastructure corridors in Greater Sydney have been protected under *State Environmental Planning Policy (Major Infrastructure Corridors) 2020*. This Explanation of Intended Effects proposes the protection of the Lower Hunter Freight Corridor under this SEPP in a similar manner to the existing protected corridors in Greater Sydney.

Corridor protection is a separate planning phase to the infrastructure delivery. The infrastructure delivery phase involves detailed design and engineering work, allowing a detailed assessment of the impacts associated with construction and operation of the infrastructure. The future delivery of the Lower Hunter Freight Line will be subject to a future State Significant Infrastructure development approvals process under the NSW planning system.



#### KEY

##### Short List Option

- Pink Option
- Tunnel

##### Environment

- NSW National Park and Wildlife Service Estate
- Lands acquired under National Parks and Wildlife Act
- Other Parks

##### Infrastructure

- Existing Rail Network
- Freight Sidings
- Major Road Network
- Proposed M1 Pacific Motorway extension to Raymond Terrace
- Disused Richmond Vale Railway

Note: Stylised representation, corridor widths may not be to scale

Figure: Transport for NSW Recommended Alignment. Source: Transport for NSW, 2021

## About the proposed SEPP amendment

The proposed amendment to *State Environmental Planning Policy (Major Infrastructure Corridors) 2020* will:

- Identify the Lower Hunter Freight Corridor to be protected and the land that will be affected
- Reserve land within the corridor for a future infrastructure corridor through the rezoning of land
- Change the planning controls that apply to the land within the corridor, including identifying development that will be permissible within the corridor
- Maintain the structural integrity of the land for future infrastructure by requiring additional consideration for certain excavation works on adjacent land.
- Identify Transport for NSW as the relevant authority to acquire any land within the future infrastructure corridor, if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991.

## About this Explanation of Intended Effects

This Explanation of Intended Effects sets out the proposed protection of the Lower Hunter Freight Corridor and identifies the proposed amendments to State Environmental Planning Policy (Major Infrastructure Corridors) 2020. This will allow the public to provide feedback and comment on the proposed changes to development controls in and adjacent to the recommended alignment.

Part A describes the strategic importance of protecting the corridor for future freight infrastructure and identifies the proposed alignment. Part B explains the objectives and the intended effect of the proposed amendments to the SEPP. The Explanation of Intended Effects also details next steps and provides a map of the recommended corridor proposed by Transport for NSW.





# Part 1 – Protecting land for the Lower Hunter Freight Corridor

## Supporting growing demand for freight services

The freight network underpins our access to essential goods, including food, fuel, everyday products and construction supplies. Efficient freight services ensure that everyday products are stocked in our local shops and that home deliveries arrive efficiently.

Freight is also a vital industry within our economy. At a state level, freight activities contribute \$66 billion to the NSW economy each year, equating to 13% of the Gross State Product.<sup>1</sup> The freight transport industry directly employs 200,000 workers across the state.

Within the Hunter Region, the number of weekly rail freight services transporting coal on the existing shared freight and passenger corridor has grown by approximately 150% since 2013.<sup>2</sup> The Hunter Regional Plan 2036 highlights the importance of freight to the Hunter's economy and establishes a direction to enhance interregional linkages to support economic growth. The Hunter Regional Plan 2036 maps the Lower Hunter Freight Corridor as a freight rail bypass under investigation. The Lower Hunter Freight Corridor will play an important role in supporting the operations of Newcastle Port, which is Australia's third largest port by trade volume.<sup>3</sup> Connectivity to the State's three main ports— Port Botany, Port Kembla and Port of Newcastle – and to the wider freight network will facilitate quick, safe and cost-effective freight movements.

Once the infrastructure is delivered, the number of freight services travelling

through urban areas of Newcastle will be significantly reduced. This will improve urban amenity in built up areas surrounding the existing Main North Rail Line.

## The recommended alignment

The recommended alignment has been identified by Transport for NSW and is on public exhibition. Alongside the maps identifying the recommended alignment, a draft Strategic Environmental Assessment report, prepared by Transport for NSW, provides the justification for the identification of the recommended alignment. The report identifies the original corridor study area and the opportunities and constraints of this area. It also provides an account of the assessment outcomes of the short-listed corridor options.



<sup>1</sup> Transport for NSW 2018, NSW Freight and Ports Plan 2018-2023

<sup>2</sup> Transport for NSW 2021, Strategic Environmental Assessment Report

<sup>3</sup> Transport for NSW 2018, Greater Newcastle Future Transport Plan

## Part 2 – About the proposed SEPP amendment

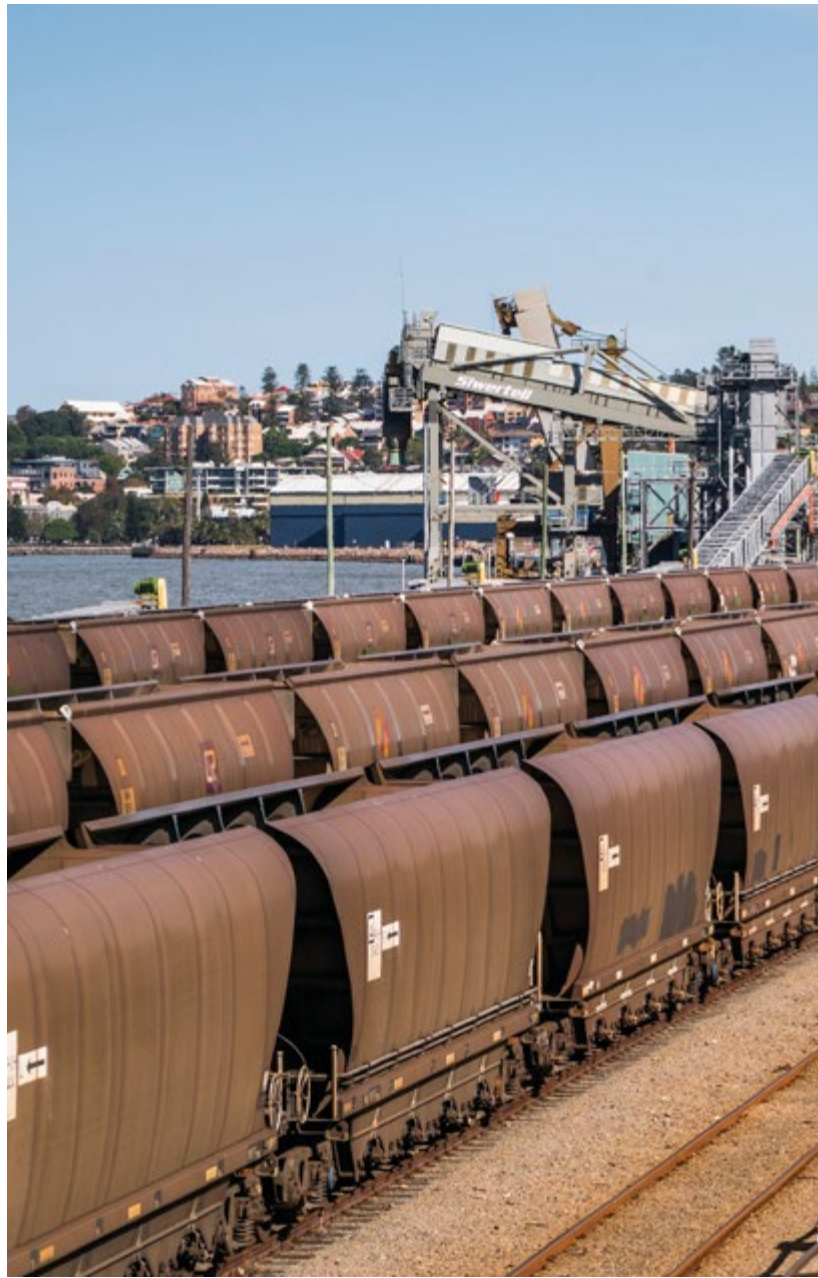
### Purpose

The proposed amendment to *State Environmental Planning Policy (Major Infrastructure Corridors) 2020* will identify land required for the future delivery of the Lower Hunter Freight Corridor and reserve that land for a public purpose as per section 3.14(1) (c) of the *Environmental Planning and Assessment Act 1979* (the Act). The land proposed by Transport for NSW to be reserved by the *State Environmental Planning Policy (Major Infrastructure Corridors) 2020*, is identified in Attachment A of this Explanation of Intended Effects.

Once the corridor is finalised by Transport for NSW and the amendment to the SEPP is made, land will be rezoned SP2 Infrastructure – Future Infrastructure Corridor and new planning controls will apply. This will ensure that new development will not inhibit the delivery of the freight line in the future.

In doing so, the proposed amendments will apply a land use planning framework that will:

- identify the land for the future freight line
- allow landowners to continue to use their land as they do now and lodge development applications for uses that are permissible under the zoning in place prior to the application of the SP2 Infrastructure – Future Infrastructure Corridor zone, provided that the proposed development does



- not compromise or interfere with the future use of the land for infrastructure
- manage development within the vicinity of the corridors so that future delivery of infrastructure is not compromised, and supportive land uses are encouraged, for example, locating freight-related services close to future freight infrastructure corridors
- identify the land acquisition authority for land in the reserved infrastructure corridors





## Proposed provisions of the SEPP Amendment

### Land zoning

Land within the Lower Hunter Freight Corridor is to be rezoned to SP2 Infrastructure – Future Infrastructure Corridor, as shown in **Attachment A**.

### Permissible land uses

Under the proposed amendment, development that is currently permissible on land within the identified future infrastructure corridor will continue to be permitted with consent. For example,

works relating to an existing dwelling, such as construction of a pool or granny flat, will remain permissible where the works were permissible under the previous zoning subject to a requirement for development consent.

However, when assessing a development application for development within the SP2 Infrastructure – Future Infrastructure Corridor, the consent authority must consider whether the proposed development will compromise, restrict or otherwise prevent the future use of the land for infrastructure.





The proposed amendment will require any development over a capital investment value of \$200,000 to be subject to concurrence from Transport for NSW. The capital investment value of a development is defined under the *Environmental Planning and Assessment Regulation 2000* and relates to all project costs, including design and construction. In providing a concurrence, Transport for NSW must consider:

- The nature and context of the proposed development, including the need to carry out the proposed development
- The timing of carrying out the proposed development and the proposed timing for constructing infrastructure
- The likely additional costs of delivering the infrastructure in the future resulting from the carrying out of the proposed development.

Under some complying development codes within *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, complying development cannot be undertaken on land reserved for a public purpose, such as land within the SP2 Infrastructure – Future Infrastructure Corridor. Therefore, such works that could once be undertaken as complying development, would require a development application within the corridor.

### **Prohibited development**

The proposed amendment will not allow subdivision of land within the protected corridor as this could hinder infrastructure delivery and increase the number of landowners that will be impacted by the delivery of the future infrastructure. However, changes to property boundaries such as minor corrections to boundary alignments, may still be permitted with consent within and adjacent to the protected infrastructure corridor if Transport for NSW confirms that the changes will not result in any additional landowners being affected by the corridor.

## Excavation within and adjacent to the corridor

To protect land in the SP2 Infrastructure – Future Infrastructure Corridor, the proposed amendment will require the consent authority to refer any development application or modification application to Transport for NSW that involves the penetration of ground to a depth of two or more metres below the existing ground level on land:

- within a reserved infrastructure corridor; or
- within 25 metres, measured horizontally, of a reserved infrastructure corridor.

In deciding whether to grant concurrence, Transport for NSW must consider the potential effects of the proposed development on the safety, structural integrity and operation of the future infrastructure. Where appropriate, Transport for NSW may include conditions for excavation similar to those in effect through the *State Environmental Planning Policy (Infrastructure) 2007* for rail corridors.

## Acquisition authority

Land within the Lower Hunter Freight Corridor may need to be acquired at some point in the future. The proposed amendment will include a land acquisition map that identifies the land to be acquired. Transport for NSW will be nominated as the acquisition authority.

Under Division 3 of Part 2 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#), landowners may initiate a request for acquisition in cases of hardship. Any questions regarding land acquisitions should be directed to Transport for NSW.

## Surrounding land uses

As well as the proposed amendment, additional guidance on appropriate land use surrounding the corridors will be provided, likely through future strategic plans such as the Hunter Regional Plan 2036 and its future update. This will make sure that potential impacts from the future infrastructure are considered when new land uses are being planned adjacent to the corridors – meaning that future infrastructure integrates with its surrounds.

## Mitigation of potential future operational impacts

The assessment of proposals to rezone land surrounding the corridor for sensitive uses (for example, residential uses) is to consider the future infrastructure and apply best practise planning principles to mitigate future operational impacts. Development applications and planning proposals should be prepared with consideration to compatible land uses, site planning, building orientation, room layout and acoustic treatments to mitigate against noise and vibration impacts. The Department of Planning, Industry and Environment will consult with local councils, the community and relevant stakeholders regarding this requirement as it is developed.

## Other issues

### Relationship to existing environmental plans and policies

The proposed amendment will supersede relevant controls and land use zones stipulated in the relevant local environmental plans.



## Next Steps

The Department of Planning, Industry and Environment will consider any feedback, comments or submissions provided regarding the proposed amendments to the State Environmental Planning Policy (Major Infrastructure Corridors) 2020 received through the exhibition period.

Once Transport for NSW has finalised the alignment for the Lower Hunter Freight Corridor, a formal request will be made to the Minister for Planning and Public Spaces to protect the corridor.

The Department will consider this request, review the Strategic Environmental Assessment and provide a recommendation to the Minister, and if required, an amendment to State Environmental Planning Policy (Major Infrastructure Corridors) 2020.

Transport for NSW will then notify relevant landowners of the protection of the Lower Hunter Freight Rail Corridor.





## Have your say

For the ease of landowners and the community, submissions can be made through the one portal on the Transport for NSW website. Visit the website for more information on the recommended Transport for NSW corridor [transport.nsw.gov.au/LHFC](https://transport.nsw.gov.au/LHFC) including an interactive online map to see the location of the corridor and to provide your feedback.

Attend an online community information session to be hosted by Transport for NSW, with Department representatives attending, on the 28 July 2021. The link can be found on the Transport for NSW website.



Email: **[corridors@transport.nsw.gov.au](mailto:corridors@transport.nsw.gov.au)**



Write:

**Corridor Investigation Office  
Transport for NSW  
PO BOX K659  
Haymarket NSW 1240**

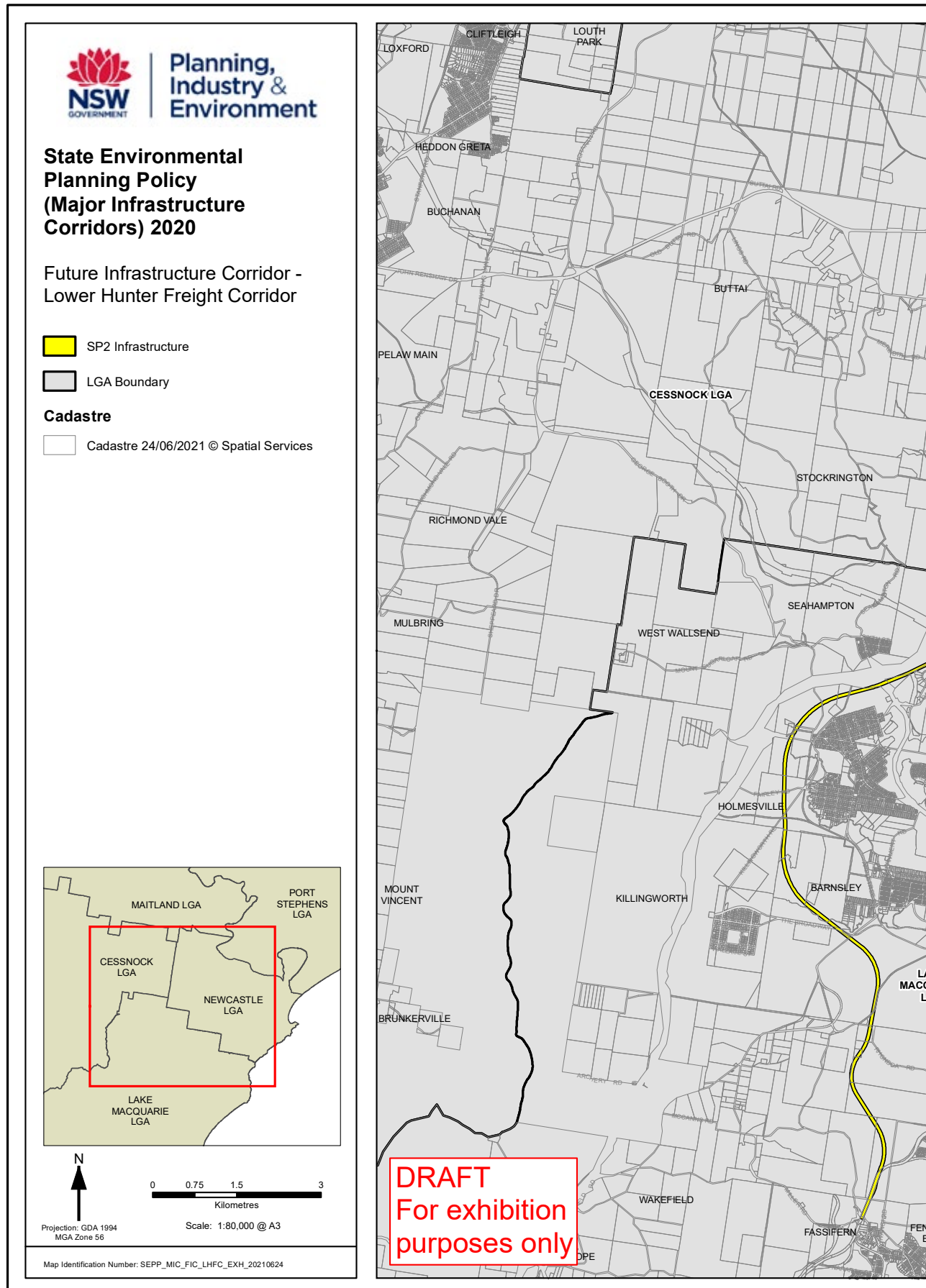


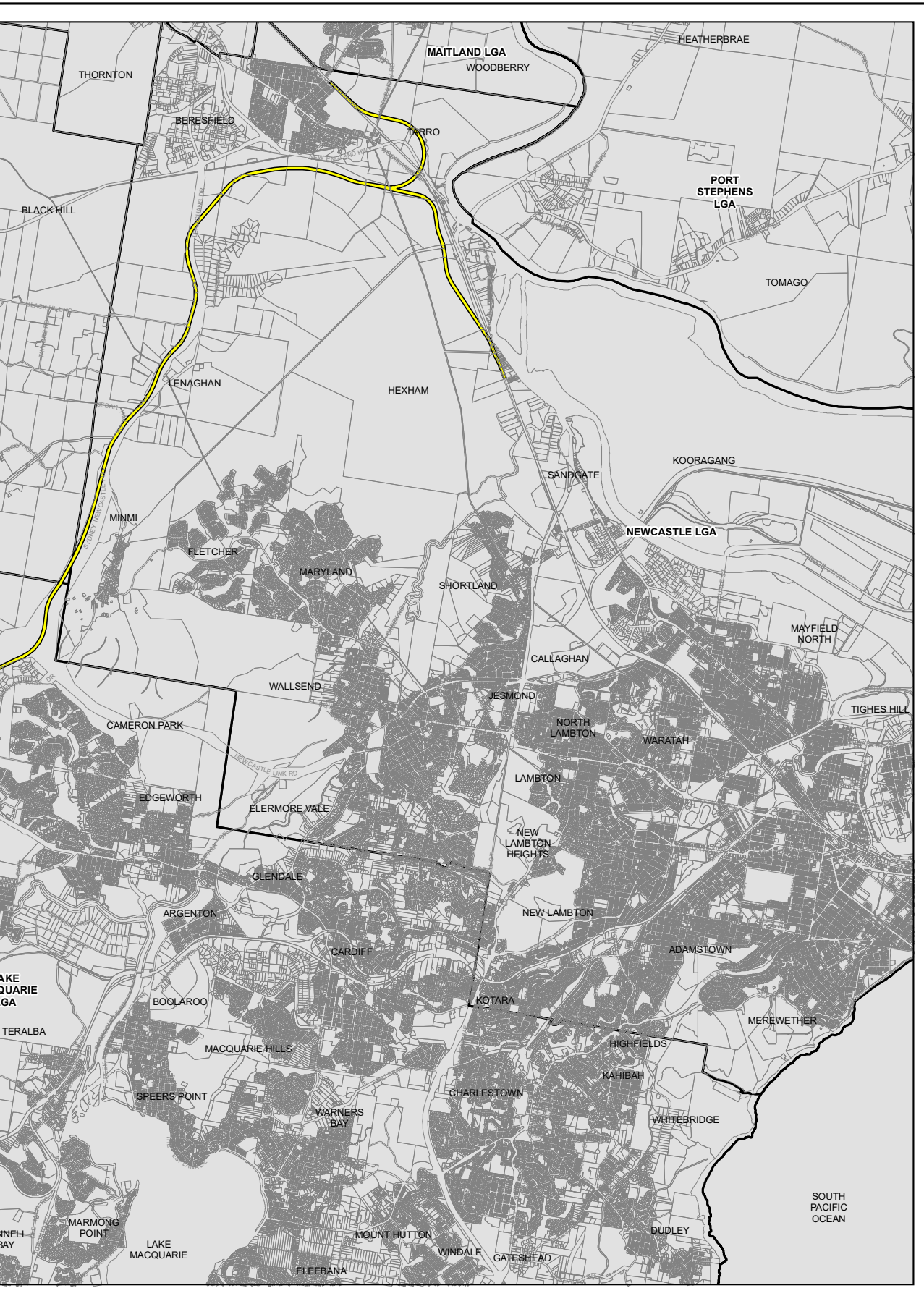
To speak to a member of the Transport for NSW team call  
**1800 837 511**





## Attachment A: Proposed Future Infrastructure Corridor Map







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[dpie.nsw.gov.au](https://dpie.nsw.gov.au)

# Attachment G

# Facilitating temporary uses in Future Infrastructure Corridors

Explanation of Intended Effect of the proposed amendment of *State Environmental Planning Policy (Transport and Infrastructure) 2021* and consequential amendments to the *Environmental Planning and Assessment Regulation 2021*

August 2022



# Acknowledgement

The Department of Planning and Environment acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future. We recognise Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and rich contribution to society.

Aboriginal people take a holistic view of land, water and culture and see them as one, not in isolation from each other. This document is based on the premise upheld by Aboriginal people that if we care for Country, it will care for us.

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Published by NSW Department of Planning and Environment

Facilitating temporary uses in Future Infrastructure Corridors

First published: August 2022

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Artwork (left) by Nikita Ridgeway



# Introduction

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## Facilitating the temporary use of Major Infrastructure Corridors

Corridor protection uses the planning system to safeguard land for the future delivery of major infrastructure. Protecting land for future infrastructure facilitates delivery in the right place and at the right time to support future jobs and housing. For many projects, corridors that are protected today will facilitate the delivery of infrastructure in 10 to 20 years. Identifying the location of future infrastructure also enables appropriate land use planning around corridors, equating to a cohesive approach to infrastructure and land use planning.

Chapter 4 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (the Transport and Infrastructure SEPP) identifies and protects land for future infrastructure corridors. At the time of preparing this Explanation of Intended Effect, the Department of Planning and Environment (the Department) has protected the Western Sydney Freight Line (Stage 1), North South Rail Line and South West Rail Link extension under the Transport and Infrastructure SEPP and is considering the consultation outcomes of a separate Explanation of Intended Effect (exhibited between 12 July and 27 September 2021) seeking to protect land for the Lower Hunter Freight Corridor.

The existing provisions of the Transport and Infrastructure SEPP facilitate the continued use of land consistent with uses that were permissible prior to the protection of a corridor. Whilst these provisions benefit locations where there are no planned changes in land use character, additional provisions are required that allow an adaptive response to surrounding land uses changes in areas that will undergo change during the time that a corridor is protected. Some corridors will remain protected for 10-20 years prior to infrastructure delivery. In some cases, the land uses surrounding a corridor will change over this period of time. It's important that land within corridors can be used in the interim in ways that are appropriate to the surrounding land

at a particular point in time while still maintaining deliverability of the future infrastructure.

Additional flexible provisions will facilitate interim economic, urban design and place making opportunities of a temporary nature for land within major infrastructure corridors prior to the delivery of infrastructure.

It is also proposed that the Transport and Infrastructure SEPP clarify the relationship between Chapter 4 of the instrument and *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP), to confirm which complying development codes under the Codes SEPP apply to land identified as a future infrastructure corridor. The intent of this amendment is to streamline the approvals process for minor works, where the provisions under Chapter 4 of the Transport and Infrastructure SEPP are considered unnecessary due to the nature of specified minor works as considered low risk on impacting the viability of the corridor. For example, the construction of a new awning for an existing shop.

This Explanation of Intended Effect seeks to provide flexibility for areas that are undergoing land use change by proposing additional provisions to facilitate the temporary use of corridor land whilst still meeting the protection objectives of the Transport and Infrastructure SEPP.

## Corridor protection

Corridor protection involves the early identification and safeguarding of land to facilitate the future delivery of infrastructure. The term 'protection' involves using the planning system to manage land use outcomes. The purpose of protection is to ensure that the future delivery of infrastructure is not compromised as a result of land being 'built out' or the alignment no longer suitable due to incompatible land uses in or around the corridor.

The early protection of an infrastructure corridor provides greater certainty and enhanced planning outcomes for infrastructure agencies and the community. Protecting corridors also aims to minimise



social disruption when infrastructure is delivered in developed areas.

The process of corridor protection involves collaboration between infrastructure and planning agencies and the community to manage land uses around an infrastructure corridor to optimise future infrastructure use and avoid land use conflicts. Corridor protection is a separate planning phase to the infrastructure delivery phase. The infrastructure delivery phase involves detailed design and engineering work, allowing a detailed assessment of the impacts associated with construction and operation of the infrastructure.

## About the proposed SEPP amendment

The proposed amendment to the Transport and Infrastructure SEPP will:

- Establish additional provisions under Chapter 4 of the Transport and Infrastructure SEPP that expand on the ability to use and develop land identified as a major infrastructure corridor, where that development is temporary in nature and compatible with surrounding land uses
- Establish matters to be considered by the consent authority and the infrastructure agency responsible for the delivery of future infrastructure in relation to the temporary use of a future infrastructure corridor
- Require the consent authority to consider a plan of management prepared by the proponent, which will reflect input from the relevant infrastructure agency and deal with matters such as the duration of the temporary use and the appropriate restoration of the land by the proponent at the end of the temporary use period
- Clarify the relationship between Chapter 4 of the Transport and Infrastructure SEPP and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) and confirm which complying development codes under the Codes SEPP are available to land identified as a future infrastructure corridor. Complying development codes that allow minor works considered as non-threatening to the future delivery of infrastructure will be specified as available, for example Part 4 Housing alterations code and Subdivision 1 Building alterations (internal) of Part 5 Industrial and business alterations code (this is not a conclusive list).

- Clarify that the proposed temporary use pathway under the SEPP will not switch off any existing temporary use pathways under clause 2.8 of the *Standard Instrument—Principal Local Environmental Plan* (the Standard Instrument), where this clause has been adopted under the relevant Local Environmental Plan and the temporary development meets the provisions of the relevant Local Environmental Plan.

It is proposed that these provisions will apply to all land identified as a future infrastructure corridor and zoned SP2 Infrastructure under Chapter 4 of the Transport and Infrastructure SEPP. The proposed provisions will be additional to all existing provisions under the Transport and Infrastructure SEPP which relate to the use and development of land.

It is also proposed to amend the *Environmental Planning and Assessment Regulation 2021* to give effect to this proposed pathway to:

- require any development application for the proposed temporary use to be accompanied by a plan of management prepared by the proponent, and
- prescribe, as conditions of development consent, the use of the land in accordance with a plan of management.

## About this Explanation of Intended Effect

This Explanation of Intended Effect sets out proposed additional provisions for land identified as a future infrastructure corridor under Chapter 4 of the Transport and Infrastructure SEPP. The proposed provisions will facilitate the temporary use of a corridor where it is considered that the development will not impact the timing or cost of future infrastructure delivery.

The consultation of this Explanation of Intended Effect will allow the public to provide feedback and comment on the proposed additional provisions relating to future infrastructure corridors.

Part 1 describes intentions of the amendment to balance and manage development outcomes prior to infrastructure delivery. Part 2 explains the objectives and the intended effect of the proposed SEPP and the next steps.

# Part 1

# Managing development outcomes prior to infrastructure delivery

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## Balancing protection and interim land use outcomes

The purpose of corridor protection is to manage land from development that would otherwise be incompatible with the delivery of future major infrastructure. Corridor protection seeks to mitigate against scenarios where the optimal location for infrastructure is 'built out', or where land around the optimal location for infrastructure is developed for uses that are incompatible with the future operation of the infrastructure. These scenarios can cause delays to delivery, or even risk the delivery of infrastructure entirely due to the cost prohibitive nature of acquiring corridor land that is built up or more impactful due to incompatible development. The consequences of not securing the optimal corridor can result in infrastructure demand going unmet.

Corridor protection involves identifying the optimal location for future infrastructure early. In some cases, protection can occur 10 to 20 years before the intended delivery timeframe. An important aspect of corridor protection is facilitating the continued use and development of a corridor in the interim, prior to infrastructure delivery. The intent of corridor protection is not to sterilise land, but to manage it so that the nature and scale of temporary development will not contribute considerably to the cost or constructability of infrastructure.

## Existing provisions for previously permissible development

Major infrastructure corridors are identified and zoned SP2 Infrastructure under Chapter 4 of the Transport and Infrastructure SEPP. Provisions under the Transport and Infrastructure SEPP allow landowners to lodge development applications for land uses that were permissible under the former zoning that

applied to the land immediately before it was rezoned for a future infrastructure corridor.

The Transport and Infrastructure SEPP establishes a framework for assessing development applications under these provisions. Where development has a capital investment value of more than \$200,000, Transport for NSW are to provide concurrence before the consent authority can determine the application. In deciding whether to grant concurrence, Transport for NSW must consider the need to carry out the proposed development on the land, the timing of carrying out the development and proposed timing of infrastructure delivery, and the likely additional costs of constructing the infrastructure resulting from carrying out the proposed development.

The provisions for previously permissible uses are useful in locations that will retain a consistent land use character during the period of protection. However, an adaptive response is required where land surrounding a corridor is likely to undergo changes prior to infrastructure delivery. A flexible approach is required for considering the temporary use of a corridor in response to a change in land use character of a broader area.

Additional provisions will allow temporary uses to remain relevant and appropriate to an area at any given time.

Under the proposed amendment, the existing provisions will remain in place for the corridors that are protected under the SEPP. The proposed additional provisions apply a flexible approach for allowing temporary development in corridors that is appropriate and relevant to the context of the surrounding land.

# Part 2

## About the proposed SEPP amendment

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### Purpose

The proposed amendment to Chapter 4 of the Transport and Infrastructure SEPP will include additional provisions to allow the temporary use of corridor land. The amendment will facilitate economic, urban design and place making outcomes on corridor land prior to infrastructure delivery.

Part 1 of this Explanation of Intended Effect describes the existing provisions under the Transport and Infrastructure SEPP that facilitate development for uses that were previously permissible prior to the protection of the corridor. The purpose of this amendment is to provide additional flexibility in response to the changing land uses character of an area between the time that a corridor is protected and when the infrastructure is delivered.

In areas where land surrounding a corridor is changing in character due to new zoning and development provisions, the existing provisions under the Transport and Infrastructure SEPP can fall short of facilitating interim outcomes for corridor land. This is because the land uses facilitated under section 4.7 Development in future infrastructure corridor for previously permitted uses of land of the Transport and Infrastructure SEPP are reflective of the zoning prior to protection. Depending on the time of protection, these provisions won't always reflect the changing character and vision for land surrounding the corridor. The amendment seeks to address this issue by proposing additional provisions to facilitate the temporary use of corridor land whilst still meeting the protection objectives of the Transport and Infrastructure SEPP. A scenario of changing land use character surrounding a corridor is depicted in Figure 1.

The objectives of the new provision are to:

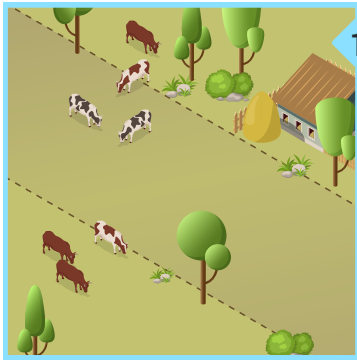
1. Maintain protection of future infrastructure corridors so that temporary development does not compromise future delivery of city shaping infrastructure or contribute to delivery costs to government
2. Facilitate development outcomes on land that is transitioning prior to the delivery of future infrastructure

The amendment will overcome land use permissibility issues by providing a merit-based approach for determining appropriate temporary land uses. To ensure the ongoing protection of the corridor, appropriate timeframes for the use will be informed by the infrastructure agency. The onus to remove any temporary structure or land disturbance and restore the corridor land to its original state, falls on the development proponent.

The purpose of the amendment is also to clarify the relationship between Chapter 4 of the Transport and Infrastructure SEPP and:

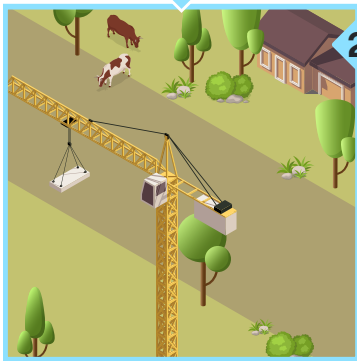
- Codes SEPP - the proposed amendment will clarify which complying development codes under the Codes SEPP are available to land that is identified as a future infrastructure corridor.
- Clause 2.8 of the Standard Instrument – temporary development can be undertaken under clause 2.8 of a relevant Local Environmental Plan in circumstances where this clause has been adopted and the proposed development is consistent with the temporary development provisions in the relevant Local Environmental Plan.

**Figure 1:** Scenario depicting changing land use character around a corridor



1

A passenger rail corridor is identified and protected in a rural area. The corridor is protected approximately 10-20 years prior to the delivery of the infrastructure.



2

The area is identified for urban growth and change to support strategic planning priorities. The area will transition over time for urban use.



3

The interim use provisions facilitate temporary uses in the corridor that support surrounding land use changes. Temporary uses provide interim economic, urban design and place making opportunities that respond to local needs at a particular point in time.



4

The temporary uses are removed from the corridor and the passenger rail is delivered to support new jobs and housing in the planned growth area.

10-20 years



## Proposed effect

### Application of temporary use provisions

It is proposed that the new temporary use provisions will apply to all land within a future infrastructure corridor under the Transport and Infrastructure SEPP. New development under these provisions will be subject to a development application to determine the merits of the proposed land use, as well as specific arrangements for the temporary uses and any structures, and the duration for which the temporary use will be permitted. Any approval under the temporary use provisions will be required to consider the timeframe for future infrastructure delivery and any access to the land necessary to undertake investigations to inform the delivery of the future infrastructure.

### Permissible land uses

The new provisions will not specify whether a specific land use is permissible or prohibited in the corridor, as each section of a corridor is likely to have a different land use context. Temporary uses that are appropriate in one section of a corridor may not be appropriate in another. The appropriateness of a use may also change over time in response to changes in a local area. In determining the appropriateness of a use, consideration should be given to meeting the zoning objectives of the land immediately surrounding the corridor. The purpose of this approach is to facilitate temporary uses that are complementary and considerate of neighbourhood character and amenity.

This approach also provides flexibility for scenarios where land use zones immediately surrounding a future infrastructure change overtime, prior to infrastructure delivery.

### Temporary structures

Any structures proposed under the temporary provisions are to be temporary in nature and removed at the proponent's cost. Through the development application process, the proponent is to demonstrate the removal arrangements for any built form or structures.

The proposed temporary use is not to be relied upon to meet permanent or long-term site or building requirements for development adjacent to the future infrastructure corridor.



Examples of temporary structures



## Matters to be considered in a Plan of Management

To benefit from the proposed temporary use pathway in the Transport and Infrastructure SEPP, applicants will be required to prepare a Plan of Management outlining the temporary use of land. It should address matters relating to the ongoing protection of a corridor and the timely delivery of future infrastructure. The Plan of Management is to accompany any development application for a temporary use, with specific arrangements to be conditioned as part of any development consent. It is proposed to amend the EP&A Regulation to facilitate this.

A draft Plan of Management template is provided at Appendix A of this Explanation of Intended Effect (note the ultimate form and content of this Plan is subject to change).

As illustrated in Appendix A, the key matters to be considered in the Plan of Management include:

- Duration of the temporary use
- Servicing
- Removal of structures and restoration of land, including timing
- Operational and management details for the temporary use

## Development assessment

Development applications will be assessed in accordance with the requirements of section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is noted that this includes an evaluation of the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The amendment will make it clear that temporary development can also be assessed under the provisions of clause 2.8 of the relevant Local Environmental Plan (where this clause has been adopted). Clause 2.8 of the Standard Instrument provides a similar merit-based assessment framework for considering temporary development across all land to which the Local Environmental Plan applies. It applies a maximum time period per year for temporary development. Where a proposed temporary use complies with the relevant Local Environmental Plan provisions, a development application can be lodged under these provisions, without requiring the concurrence of the relevant infrastructure agency under the Transport and Infrastructure SEPP temporary use provisions. It is noted that all other concurrence provisions under the Chapter 4 of the Transport and Infrastructure SEPP would apply, for example, where excavation greater than 2 metres is proposed.

## Complying development

It is proposed that the amendment will clarify the relationship between Chapter 4 of the Transport and Infrastructure SEPP and the Codes SEPP and confirm which complying development codes under the Codes SEPP can be accessed on land identified as a future infrastructure corridor. The intent of this amendment is to streamline the approvals process for minor works, where the provisions under Chapter 4 of the Transport and Infrastructure SEPP are considered unnecessary and where the works would not threaten the degree of protection over a corridor.

Examples of minor works that can otherwise be undertaken as complying development (subject to the provisions of the Codes SEPP) and would not reduce the degree of protection over the corridor, include the construction of a new awning of an existing shop or the change of use of a temporary development from an approved shop to a business premises. It is noted that development that requires concurrence under an Environmental Planning Instrument cannot be undertaken as complying development.



# Next steps

## Have your say



This Explanation of Intended Effect is available on the Department of Planning and Environment's website:

[www.planning.nsw.gov.au/onexhibition](http://www.planning.nsw.gov.au/onexhibition)

**You can make a submission online at the website or you can write to:**



Manager, Corridor Protection  
Infrastructure Partnerships and Agreements  
NSW Department of Planning and Environment  
Locked Bag 5022  
Parramatta  
NSW 2124

All submissions received will be made public in line with the Department of Planning and Environment's objective to promote an open and transparent planning system.

If you would like the Department of Planning and Environment to delete your personal information before publication, please make this clear in your submission. Before making a submission, please read our privacy statement at [www.planning.nsw.gov.au/privacy](http://www.planning.nsw.gov.au/privacy)

The Department of Planning and Environment will consider any feedback, comments or submissions provided regarding the proposed amendment to the Transport and Infrastructure SEPP received through the exhibited period.



Example of temporary markets



# Appendix A

## Plan of Management Template

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### Part 1: Proposed temporary use

- Identify the site and locality, including the surrounding land use context
- Details of the proposed land uses and structures, inclusive of plans identify the locations of structures
- Detail the proposed duration of temporary use and associated structures\*
- Account of engagement undertaken with relevant Infrastructure Agency

### Part 2: Installation and removal of temporary structures

- Detail access arrangement to the site for the installation of temporary structures
- Identify the servicing arrangements and locations of servicing
- Detail the arrangements for the removal of any structures and identify where the restoration of land will be required\*\*
- Public signage and communications regarding the temporary nature of the development and any proposed arrangements for the relocation of the use following the temporary use period

### Part 3: Operation and management of temporary use

- Detail the proposed operational aspects of the temporary use as relevant. For example, hours of operation, event capacity limits, etc
- Detail the management arrangements for the use, including where relevant:
  - Noise management
  - Waste management
  - Traffic management
  - Security management.\*\*\*

\*Note: This is to consider anticipated timing of infrastructure delivery, as well as the timing of any early works or investigations to support the delivery of infrastructure (such as site testing etc).

\*\* Note: sufficient details should be provided to enable the infrastructure agency to assess any conflicts between site servicing and any early works associated with infrastructure delivery.

\*\*\*Note: The proposed day to day operation and management of a temporary use will be subject to the consideration of relevant Local Council Policies, such as the relevant Development Control Plan.

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## Planning and Environment

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[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Postal Address:  
Department of Planning  
and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Street Address:  
4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150



# Attachment H

16 September 2022

File No: NTH22/00307/02 and HTR08/00003  
Your Ref: DA2021/01256 and CNR-30112

General Manager  
Newcastle City Council  
PO Box 489  
NEWCASTLE NSW 2300

**Attention: Brian Cameron, Principal Development Officer (Engineering)**

**JOHN RENSHAW DRIVE (MR588): DA/2021/01256, TORRENS TITLE SUBDIVISION OF ONE (1) LOT INTO 133 LOTS WITH ROADS AND ASSOCIATED INFRASTRUCTURE, BHI STAGES 2-7, LOT: 30 DP: 870411, 198 LENAGHANS DRIVE BLACK HILL**

I refer to the abovementioned Development Application referred to Transport for NSW (TfNSW) on 20 October 2021 for comment in accordance with Section 2.122 / Schedule 3 of the *SEPP (Transport and Infrastructure) 2021* (traffic generating development). TfNSW has been working closely with the proponent and received the latest traffic modelling report (Bitzios, 21 July 2022) to inform external road work mitigations for Stages 2-7, along with an updated staging plan and strategic design drawings.

TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with Future Transport Strategy 2056.

The M1 Pacific Motorway (Road 6003), John Renshaw Drive (MR588) and Weakleys Drive (HW9) are classified State roads. TfNSW is the roads authority for the M1 Motorway and Council is the roads authority for other public roads in the area generally, in accordance with Section 7 of the Roads Act 1993.

In response to the SEPP s 2.122 referral, TfNSW does not object to the proposal subject to the advice offered at **Annexure A** and generally in accordance with the staging plan and strategic designs shown at **Annexure B**.

On Council's determination of this matter, please forward a copy of the Notice of Determination to TfNSW for our records. Should you require further information please contact Timothy Chapman, Development Services Case Officer, on 1300 207 783 or 0412 274 356 or by emailing [development.north@transport.nsw.gov.au](mailto:development.north@transport.nsw.gov.au).

Yours faithfully



**Damien Pfeiffer**  
Director Development Services  
Community & Place  
Regional & Outer Metropolitan

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## **Annexure A - TfNSW Response to DA/2021/01256**

Road work is not proposed or required within the M1 Motorway and TfNSW is not required to issue General Terms of Approval as an integrated DA approval under s. 138 of the *Roads Act 1993*. TfNSW consent is required under s. 138 of the *Roads Act* for the works proposed on classified (State) roads, being John Renshaw Drive and Weakleys Drive.

### **Lower Hunter Freight (rail) Corridor**

TfNSW notes there is currently a draft amendment to the *SEPP (Transport and Infrastructure)* underway to preserve land for the future Lower Hunter Freight Corridor (LHFC), including a small portion of the subject site. Council should consider impacts on the proposed subdivision layout under s. 4.15(1)(a)(ii) of the *EP&A Act 1979*. TfNSW has no specific concerns or requirements to note as landform changes are expected to be accommodated within the nominally 60m wide preservation corridor.

<https://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies/Corridor-Protection-SEPP>

### **Road freight**

TfNSW notes that John Renshaw Drive and nearby main roads are likely to be assessed by the NSW Government for suitability to accommodate PBS Level 3 (nominally up to 36.5m) truck combinations in the medium term. The developer may wish to consider designing internal road and subdivision infrastructure to cater for these higher productivity vehicles.

### **Public and Active Transport**

Council should consider public and active transport links required to facilitate mode choice in accessing the development. Lack of proximity of good infrastructure is a key deterrent for adoption of these transport modes, which can significantly reduce the number of private vehicles on the network.

### **Background – Stage 1 conditions**

Stages 1A and 1B of the industrial subdivision development on the subject site were approved under separate DA/2020/1497 in July 2021. The approval was for 49.2ha of development (approx. 30% of the full development). Conditions relating to road upgrade works required to be completed prior to the issue of any subdivision certificate included:

- Construct the proposed signal controlled access for the industrial subdivision on John Renshaw Drive (JRD).
- Upgrade JRD to four lanes (two each way) between the proposed signal controlled access and the JRD / M1 Motorway / Weakleys Drive intersection.
- Upgrade the intersection of the JRD / M1 Motorway / Weakleys Drive to provide:
  - An additional right turn bay on the Weakleys Drive (northern) approach, to turn west to JRD.
  - An additional right turn bay on the JRD (eastern) approach, to turn north to Weakleys Drive.

### **TfNSW Recommended Conditions for Stages 2-7**

#### **John Renshaw Drive upgrades**

1. Prior to any Subdivision Certificate for any of Stages 2-7, the signal controlled access and the duplication of John Renshaw Drive to four lanes required under Stage 1 DA/2020/1497 shall be deemed practically complete by TfNSW in writing and opened to traffic.

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2. Prior to any Subdivision Certificate for any of Stages 2-7, the westbound 'left-turn in only' intersection towards the east end of site generally in accordance with Northrop Plan NL 166552 Drawing No. CSK91 Rev 2 shall be deemed practically complete by TfNSW in writing and opened to traffic.

**John Renshaw Drive / M1 Motorway / Weakleys Drive intersection upgrades**

3. Prior to any Subdivision Certificate for Stage 2, obtain confirmation in writing from TfNSW that satisfactory arrangements (see condition (4) below) have been made to upgrade the John Renshaw Drive / M1 Motorway / Weakleys Drive intersection generally in accordance with Northrop drawings attached at **Annexure B**, being NL166552 C01.21 Rev 2 (typical sections) and C01.41 Rev 3 (overview plan), to:
  - a. Provide both new right turn lanes required as part of Stage 1 DA/2020/1497 at the intersection:
    - i. An additional right turn bay on the Weakleys Drive (northern) approach, to turn west to JRD.
    - ii. An additional right turn bay on the JRD (eastern) approach, to turn north to Weakleys Drive.
  - b. Provide a second right turn lane on the Weakleys Drive northern approach turning west to John Renshaw Drive, with both right turn lanes to be increased to 120m in length plus tapers.
  - c. Provide an additional (second) John Renshaw Drive west approach channelised right turn lane toward the M1 Motorway with 120m length, plus tapers,
  - d. Provide all ancillary works to the satisfaction of TfNSW including but not limited to lane realignments on approach and departure, reconfiguration and addition of signals, pedestrian crossings, drainage, shoulders, medians, line markings and signage.

*Advice: The intent of this condition is to enable the consent holder to upgrade the intersection under both DAs as a single WAD package. Formal modification of DA/2020/1497 may also be required to enable Stage 1 works at this intersection to be deferred for completion after release of the Stage 1 Subdivision Certificate. TfNSW may support such a modification request (if supported by Council as the consent and roads authority) generally on similar terms to those set out below. Please refer any modification application to TfNSW under s 2.122 of the TISEPP for a final response.*

4. For the purpose of the above condition (3) 'satisfactory arrangements' shall include completion of (but details shall not be limited to, in TfNSW sole discretion) all the following:
  - a. Lodgement with TfNSW of a refundable bond security for the full value of the construction works (100%) including all project management, finance, traffic management, mobilisation / demobilisation and other reasonable costs which TfNSW would reasonably incur if it were to complete construction in lieu of the developer. The cost estimate is to be based on a report prepared by an independent and experienced civil construction quantity surveyor who holds certification with an Australian peak professional body such as the AIQS. Bond terms and conditions are to be set out in the Works Authorisation Deed. TfNSW may request separate guarantees in different amounts adding up to 100% to enable progressive release of securities at practical completion and upon discharge of any defects liability period obligations.

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- b. The developer must have entered into a Works Authorisation Deed with TfNSW to finance and construct the ultimate John Renshaw Drive / M1 Motorway / Weakleys Drive intersection works (turn lanes on west, north and east approaches and all ancillary works), and the detailed engineering designs must be approved by TfNSW for construction.
  - c. If any WAD design approval has been issued by TfNSW for only the Stage 1 DA intersection works (north and east approaches) it shall be revoked and replaced by the combined ultimate works design (west, north and east approaches).
  - d. The principal constructor must have substantially mobilised and commenced works onsite, and proof of payment of the constructor's progress claims amounting to at least 20% of the total value of the ultimate intersection works (west, north and east approaches) shall be provided to the TfNSW Developer Works representative or a generally equivalent milestone may be accepted by TfNSW Manager Developer Works or higher authorised person.
5. Prior to any Subdivision Certificate for any of Stages 3 to 7, the John Renshaw Drive / M1 / Weakleys Drive intersection upgrades detailed above must be deemed by TfNSW as practically complete and opened to public traffic. Nothing in this condition affects the rights of TfNSW under the Works Authorisation Deed to require rectification of any outstanding works or defects or hold onto bond securities.

#### **M1 to Raymond Terrace project**

6. Prior to any Subdivision Certificate for any of Stages 4 to 7, generally as depicted in the staging plan (Northrop, NL166552, drawing DA2-C01.21 Rev 6, excerpt attached at **Annexure B**), the section of the M1 to Raymond Terrace (M1RT) project between Black Hill Interchange and Tarro Interchange and including the flyover, currently under construction by TfNSW, shall be practically completed and opened to public traffic.

*Advice: Stages 1 to 3 are expected to contribute approximately 60% of development traffic, beyond which current modelling indicates the Black Hill flyover and motorway extension would need to be operational to relieve pressure on the John Renshaw Drive / Weakleys Drive signalised intersection.*

#### **Restrictions on site access to and from M1 Motorway and John Renshaw Drive**

7. Any existing access between site and the M1 Motorway or John Renshaw Drive, other than the two (2) public road intersections approved under Stage 1 DA/2020/1497, shall be physically and legally closed and the road verge reinstated by the Developer to Transport for NSW (TfNSW) and Council requirements. Works are required to be completed prior to any Subdivision Certificate being issued for the development.
8. As part of each Subdivision Certificate, a restriction as to user must be registered (or remain) on the title of each lot prohibiting direct vehicular access between the subject land and the M1 Motorway or John Renshaw Drive. For lots that will no longer have direct frontage to either road corridor following the subdivision, such restrictions can be released without obtaining the concurrence of TfNSW.

#### **Vegetated Buffer**

9. A 20m wide vegetated buffer is to be provided and maintained to the satisfaction of Council and at no cost to TfNSW or Council. within the site along each of the M1 Motorway and John Renshaw Drive frontages generally consistent with DA/2020/1497.

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## **General**

10. Each local road interconnection between stages and between the adjacent property to the west must be constructed prior to any Subdivision Certificate for the stage it falls within the boundary of. This includes the culvert crossings of the central Viney Creek as part of or before Stages 2 and 4, and the local road connection to the adjacent property as part of Stage 6.

*Advice: Local road connections are necessary to minimise the burden of local area traffic demand on nearby State roads.*

11. The Developer must:
  - a. Obtain Roads Act 1993 consent from TfNSW for all works within the classified State road reserves in the form of a Works Authorisation Deed (WAD).
  - b. Dedicate any land if required for the purpose of the State road works at no cost to TfNSW or Council, prior to a practical completion certificate for the works.
  - c. Design and construct State road works in accordance with Austroads Guidelines, Australian Standards and TfNSW Supplements to the satisfaction of TfNSW and Council and at no cost to TfNSW or Council.

As State road works are required the developer must enter into a Works Authorisation Deed (WAD) with TfNSW. TfNSW would exercise its powers and functions of the road authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Roads Act, as applicable, for all works under the WAD.

The developer is advised that the Conditions of Consent do not guarantee TfNSW final consent to the specific road work, traffic control facilities and other structures or works, for which it is responsible, on the road network. TfNSW must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work.

The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is suggested that the developer work through this process as soon as possible with the TfNSW.

12. The developer is to design works and provide any information required to satisfy Council that discharged stormwater from the development shall not exceed the capacity of either the M1 Motorway or John Renshaw Drive stormwater drainage systems. No increase in surface flooding or discharge rates onto the road carriageway shall occur in any event up to and including the critical 1% Annual Exceedance Probability (AEP) event.
13. Prior to the issue of any Subdivision Works Certificate, the Developer must satisfy Council that drainage from the site will be appropriately managed and obtain all required approvals from Council and TfNSW including under the *Roads Act 1993* for any adjustments to the existing public drainage system that are required. Any required adjustments are to be at no cost to TfNSW or Council.
14. The intersection works shall include new road lighting, designed by a qualified and experienced professional to achieve at least V3 illumination category for all new pavement surfaces, in accordance with AS/NZS 1158.1.1.

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15. The Developer must ensure that appropriate traffic measures are in place during the construction phase of the development to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity of the site.
16. The proponent must obtain a Road Occupancy Licence (ROL) prior to any work with potential to impact State road traffic operations, or traffic signal operations on any road, including use of temporary traffic management devices and signage. Proponents must allow a minimum 10 working days for processing from the date of receipt. As a minimum, applications must be submitted with a Traffic Management Plan (TMP) including applicable Traffic Guidance Schemes (TGS). The TMP and TGS must comply with AS 1742.3 and be prepared by a qualified person who holds the Prepare Work Zone Traffic Management Plan SafeWork accreditation (PWZTMP). The TMP is to describe the activities being proposed, their impact on the general area (including public transport passengers, cyclists, pedestrians, motorists and commercial operations), and how these impacts, including identified risks will be addressed. Further information on Applying for a Road Occupancy Licence can be found online at <https://roads-waterways.transport.nsw.gov.au/business-industry/road-occupancy-licence/index.html> and your asset number to be quoted in the online application is: **NTH22/00307.**

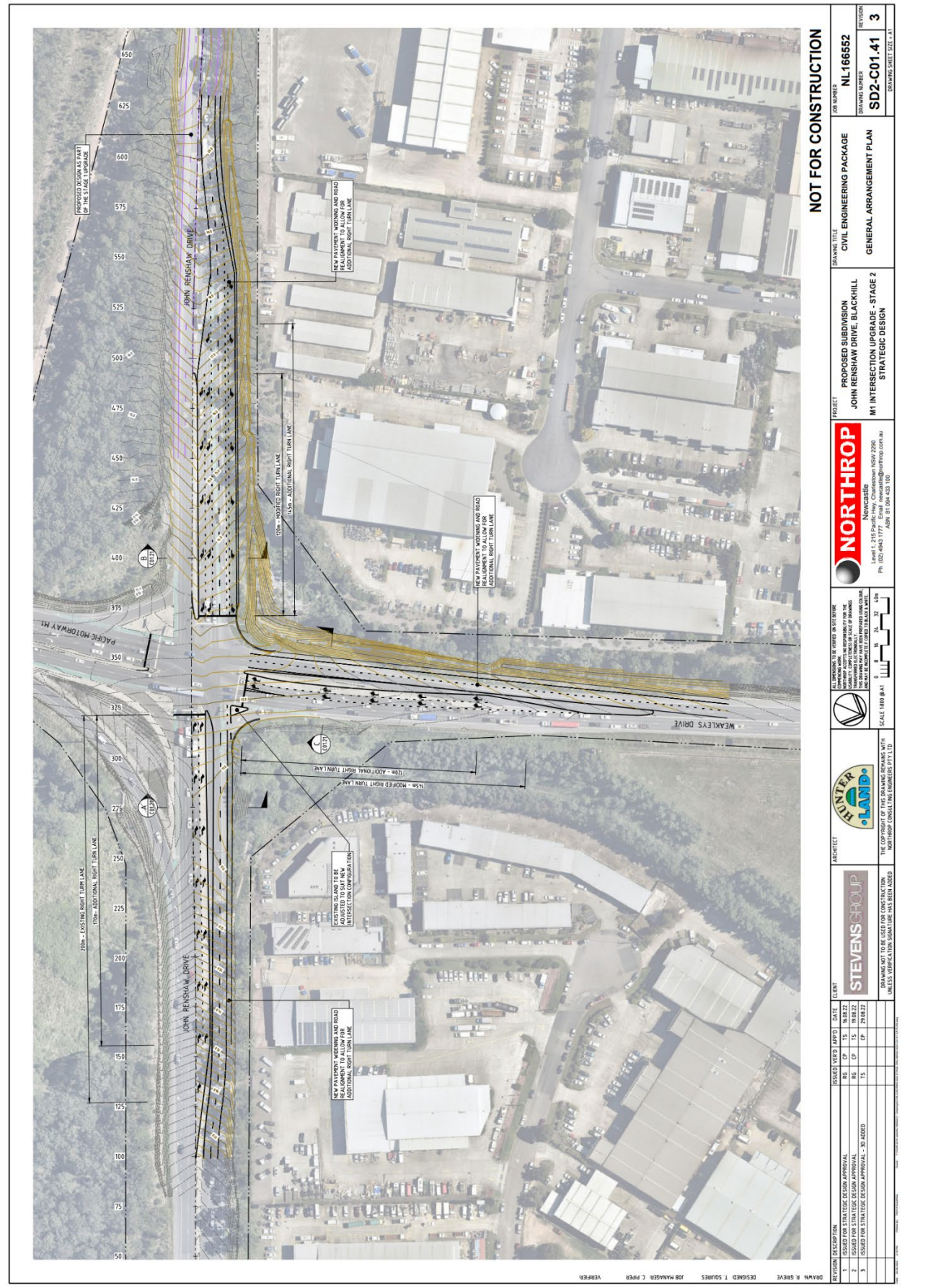
(End of Annexure A)

**Exhibit 1: Staging Plan, Northrop. NL166552, drawing DA2-C01.21 Rev 6**





Exhibit 2: John Renshaw Drive / M1 Motorway / Weakleys Drive ultimate intersection upgrade concept arrangement, Northrop, NL166552, drawing SD2-C01.41 Rev 3

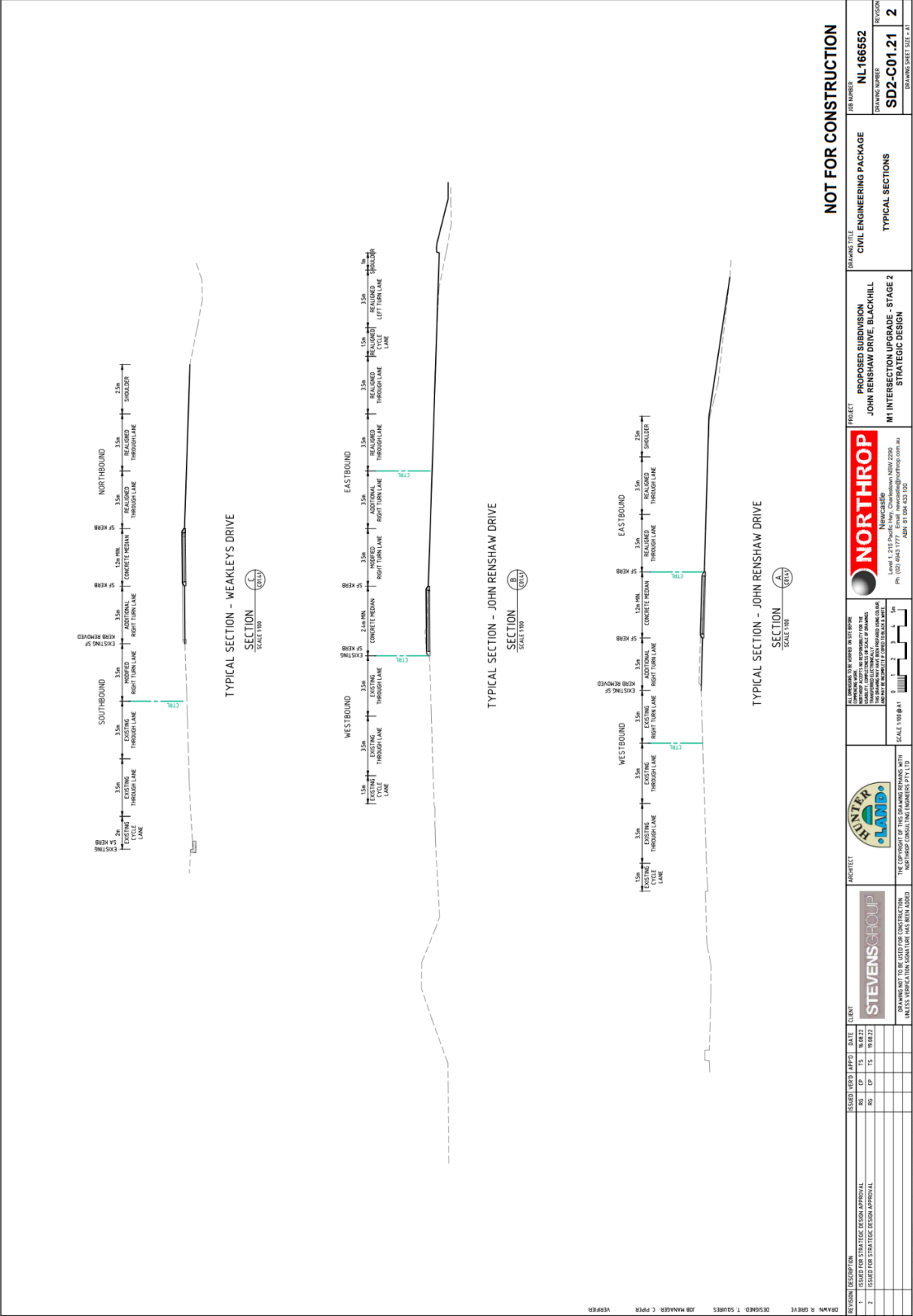


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[transport.nsw.gov.au](http://transport.nsw.gov.au)

Exhibit 3: John Renshaw Drive / M1 Motorway / Weakleys Drive ultimate intersection upgrade concept typical sections, Northrop, NL166552, drawing SD2-C01.21 Rev 2



(End of Document)