



***Black Hill Employment Lands
Concept Plan MP10_0093***

Proposed by Coal & Allied



**Director-General's Environmental
Assessment Report
Section 75I of the *Environmental Planning and
Assessment Act 1979***

August 2013

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1 EXECUTIVE SUMMARY

Overview

On 7 July 2010, the Minister for Planning agreed that development of the Black Hill site be considered as a Major Project under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act) and authorised the submission of a Concept Plan for the site. The Minister also agreed to consider the Black Hill site as a potential State significant site (SSS) under Schedule 3 of the *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP).

This is a report on a concept plan application to guide future development of the Black Hill site as employment lands, pursuant to Part 3A of the Act. Future development applications, submitted in respect of the site, will need to be consistent with any concept plan approval. A separate State Significant Site listing report, prepared under Section 37 of the Act, assesses the rezoning of the site.

The Proposal

Coal and Allied (the Proponent) is seeking Concept Plan approval for the future development of 183 hectares of employment lands at Black Hill and dedication of 545 hectares of conservation land at Tank Paddock and Stockrington to the NSW Government.

The Concept Plan proposal seeks approval for the following on the Black Hill site:

- An indicative lot layout
- Indicative development staging
- Employment generating uses
- 'Core supporting facilities', comprising retail facilities for the future Black Hill workforce
- Provision of associated infrastructure
- Urban design guidelines

The Proponent is not seeking approval for subdivision, a specific lot layout or to physically commence any stage of the Concept Plan. Future development would be subject to further assessment and approval under the Act.

Donaldson Coal Pty Ltd's existing Abel underground mining consent over the Black Hill site will defer development of the site until the mining and associated subsidence is complete, which must be prior to 30 June 2013.

Future development of the Black Hill site will generate approximately 3,600 full time equivalent positions when completed.

The Proponent has also submitted a State significant site (SSS) study requesting an amendment to Schedule 3 of the Major Development SEPP. The following zones were proposed:

- IN1 – General Industrial Zone for the Black Hill lands
- E1 – National Parks and Nature Reserves for the Tank Paddock and Stockrington lands

In response to this request, on 9 August 2013, the Minister approved the rezoning of the lands for the following:

- IN2 – Light Industrial for the Black Hill lands (166.39ha)
- E2 – Environmental Conservation to protect the Viney Creek riparian corridor (16.41ha)
- E1 – National Parks and Nature Reserves for the Tank Paddock and Stockrington Lands (545ha).

Rather than amend the Major Development SEPP, the rezoning was implemented by amending the Newcastle LEP 2012 and the Cessnock LEP 2011 to include the new zoning for the lands.

Consultation

The Environmental Assessment and the State Significant Site study were exhibited for 31 days from 2 March 2011 to 1 April 2011

A total of 25 submissions were received in relation to the proposal, 17 from agencies and 8 from the local community. Of these, 6 public submissions objected to the proposal. Key issues raised through the consultation process include impacts on the following:

- mine subsidence and future resource extraction
- vegetation corridors
- conservation lands
- riparian corridors/biodiversity
- indigenous heritage
- consultation with local community and aboriginal community
- proposed zoning and proposed permitted uses
- bushfire management
- site servicing
- access/traffic and public transport
- groundwater, water quality, stormwater management, flooding and water supply
- future management/maintenance of open space/riparian corridors/detention basins
- remediation
- air quality
- visual impact
- rural amenity

Preferred Project Report

In response to submissions received during the exhibition period, the Proponent submitted a Preferred Project Report (PPR) on 20 May 2011.

The PPR outlines proposed amendments to the proposal, provides additional assessment of key issues and includes a revised Statement of Commitments for the Concept Plan. The proposed amendments include:

- Revised Statement of Commitments
- Revised Riparian Plan, showing dimensions of the riparian zone
- Revised State Significant Site Listing Report, removing 'extractive industries' from the land uses permissible within the IN1 zone, and referencing provisions of *SEPP (Mining, Petroleum Production and Extractive Industries) 2007*.

The PPR was made publicly available on 1 June 2011 and was referred to DECCW, Hunter Water Corporation, Newcastle City Council and the RTA for comment.

An addendum to the PPR was submitted on June 16 2011, comprising a revised Heritage Impact Statement (HIS) which provided additional information on community consultation with registered Aboriginal Stakeholders.

Voluntary Planning Agreement

A Voluntary Planning Agreement has been prepared to facilitate the transfer of the conservation lands to the NSW Government. The VPA was entered into by the Minister for Planning and Infrastructure, the Minister for Environment and the proponent on 6 Jun 2013, prior to determination of the concept plan and SSS application. This is the subject of a separate submission.

Advice from Planning Assessment Commission

It is noted that the State significant site rezoning application, voluntary planning agreement (VPA) and a draft of the Director General's environmental assessment report for the Black Hill employment lands for the Concept Plan was referred to the Planning Assessment Commission (PAC) for advice on 2 April 2012. On 14 May 2012, the PAC advised that it considered the proposal to be reasonable. The advice has been taken into consideration in the Department's assessment of the Concept Plan proposal.

Assessment and Recommendation

The Department has assessed the merits of the proposal and is satisfied that the impacts of the proposed development have been addressed via the proponent's preferred project report and response to submissions, the Statement of Commitments and the Department's recommendations. The concept plan, with recommended modifications, is supported because it is generally consistent with the objectives of the *Lower Hunter Regional Strategy*, is an identified employment lands area and contributes to the employment targets for the subregion.

The proposal adequately addresses the Director-General Requirements for the project. On these grounds, the Department is satisfied that the site is suitable for the proposed development and that the project will provide environmental, social and economic benefits to the region, subject to modifications to the concept plan. All statutory requirements have been met.

In determining the concept plan, the Department recommends that the Torrens title subdivision to enable the transfer to conservation lands requires no further assessment and that project approval be granted for this aspect of the proposal in conjunction with the concept plan.

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2 INTRODUCTION

2.1 Site Location and Context

Coal and Allied (the Proponent) is seeking Concept Plan approval for the development of a 728 hectare (ha) site in the Lower Hunter (see Figure 1) to provide for the following:

- 183 ha of industrial land at Black Hill (the development site);
- conservation of 545ha of environmentally significant lands (the conservation lands); and
- conceptual lot layout, urban design and access arrangements for the industrial land.

The development site, located at Black Hill, is within the Newcastle LGA and is located on the western side of the F3 Sydney-Newcastle Freeway and the southern side of John Renshaw Drive, approximately 20 kilometres west of the centre of Newcastle, and 150 kilometres north of Sydney.

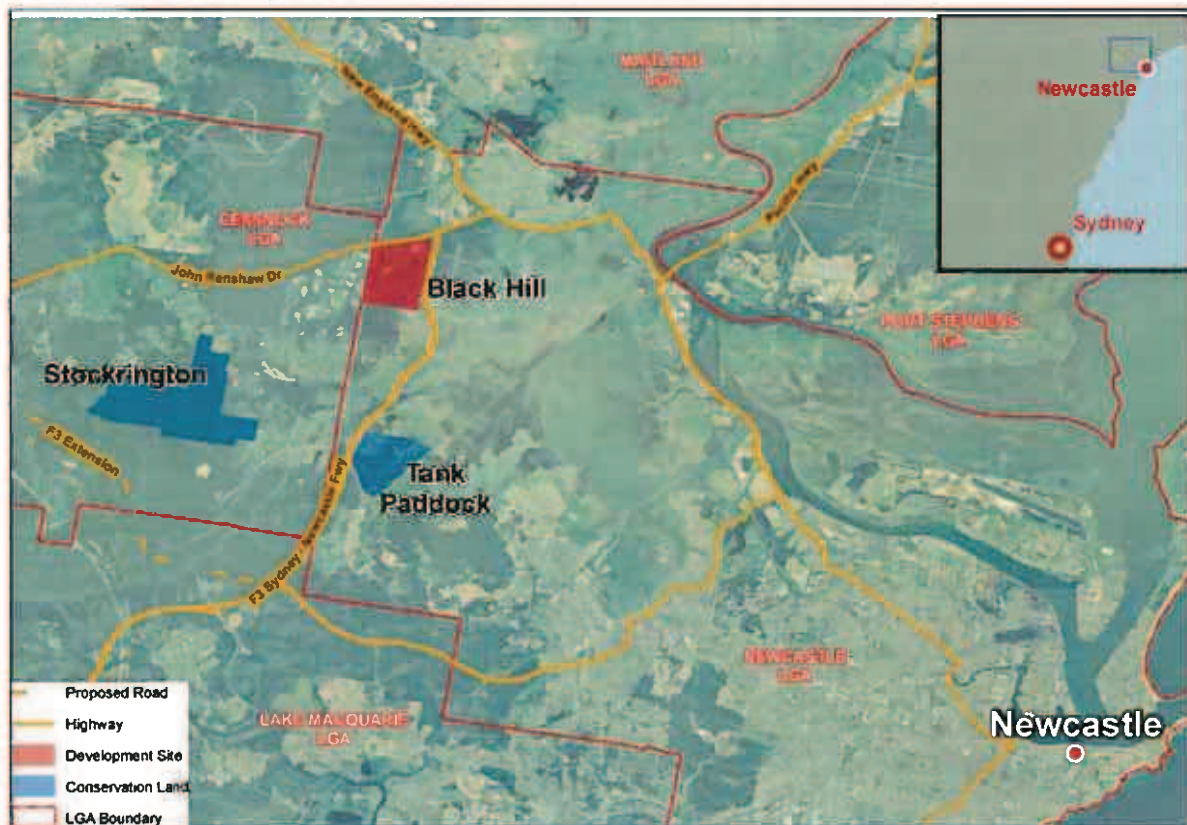


Figure 1 – Regional Context

It is proposed that the conservation lands will be dedicated to the NSW Government comprising of:

- Tank Paddock which has an area of 147 hectares and is located approximately 4kms to the south of Black Hill, on the eastern side of the F3 Freeway within the Newcastle LGA; and
- 398 hectares is to be dedicated at Stockkrington, located to the south-west of Black Hill and within Cessnock LGA.

2.2 Site Description

The development site at Black Hill slopes downwards towards the northwest. Overall, the development site comprises moderately undulating slopes with areas of significant disturbance, including an operating asphalt plant, a TransGrid 330kv electricity easement

and past clearing (refer to Figure 2). Located on the north-eastern portion of the site, the asphalt plant is currently leased to Boral Asphalt. A Hunter Water pipeline runs adjacent to the northern boundary along John Renshaw Drive.

The remainder of the development site is predominately comprised of medium to heavy density Ironbark Forest. Viney Creek dissects the site north-south, before flowing under John Renshaw Drive and eventually discharging into Woodberry Swamp, a wetland system of the Hunter River estuary (refer to Figure 2). The riparian zone is comprised of Alluvial Tall Moist Forest, which has been impacted by significant invasion by weed species.

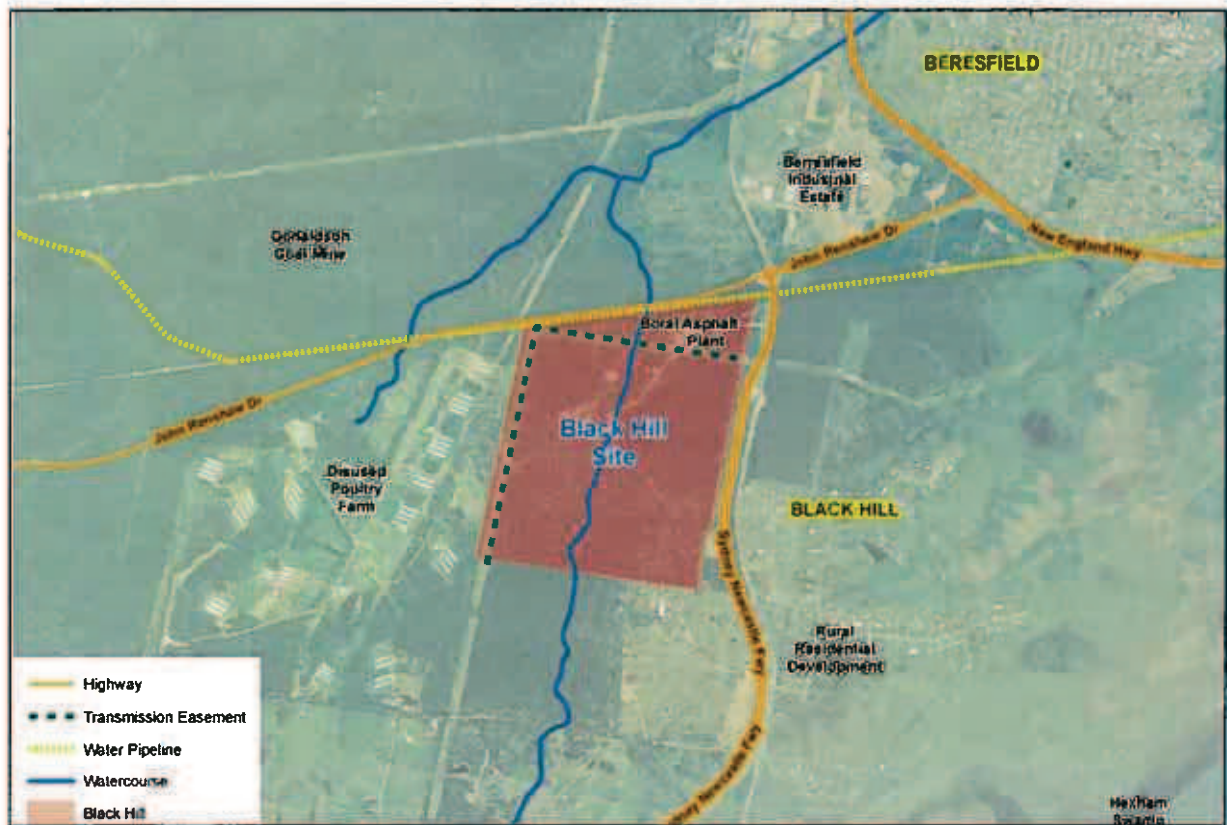


Figure 2 – Site Conditions and Surrounding Land Uses

In 2007, the Department approved an application from Donaldson Coal Pty Ltd for Abel Coal Mine (application 05_0136), an underground mine. The approval includes consent to carry out underground mining operations below the Black Hill site (see Figure 2, and Section 6.8). The project approval includes requirements to ensure that any subsidence caused by undermining had been 'effectively been completed' within 6 years of the approval, i.e., by 30 June 2013. As such, no development can take place before this date. The Proponent stated that development of the site was to be deferred until after this date.

The Stockrington conservation lands site is located within the Cessnock LGA. The conservation lands are predominantly densely vegetated with some cleared areas and parts of the site are remote with restricted access. Both the Tank Paddock and (part of) Stockrington conservation lands are located within the Watagan Ranges to Stockton conservation corridor (see Figure 1).

2.3 Site History

Prior to European settlement, the Pambalong people (a sub-group of the Awabakal people) inhabited the Hexham Swamp region. The natural resources of Hexham Swamp were extensively utilised by the Pambalong people and later by the settlers in the Hexham district. Pambalong territory was progressively modified by mining in the region from the mid 19th

century. The Pambalong ceremonial ground featured rock shelves and small caves and later became known as Stockrington.

The Black Hill site was owned by Thomas Walker throughout the early to mid 1900s, during which time a 40 foot wide easement was resumed for the Newcastle and Hunter District Pipeline (running east-west, along the northern boundary of the site, see Figure 2).

In the mid 1960s, the alignment of Viney Creek was altered and in the mid 1970s the north-west portion of the site was cleared. A mining development (Ironbark Colliery) was proposed by Coal & Allied in the 1970s. Although underground mining operations were never undertaken, construction of some infrastructure was carried out. No colliery infrastructure remains on the site.

The Boral Asphalt plant commenced operations in 1980, further modifications of Viney Creek were undertaken in the mid 1980s and related activities continue today.

2.4 Surrounding Land Uses

The Black Hill site is situated adjacent to a disused poultry farm to the west, Donaldson open cut coal mine to the north-west and Beresfield Industrial Area to the north (refer to Figure 2). To the east is rural residential development, separated from the site by the F3 Sydney-Newcastle Freeway. Lands to the south are predominantly heavily vegetated, but include a cleared area surrounding the Hunter Valley Equestrian Centre and some isolated rural settlements further to the south, accessed via Black Hill Road.

Abel Underground Mine is located underneath the site and extends west and south, as discussed above.

The site is located approximately 1km west of Hexham Swamp nature reserve and 2km south-west of Woodberry Swamp, both of which are part of the Lower Hunter barrier estuary (refer to Figure 2).

3 PROPOSED DEVELOPMENT

3.1 The Proposed Development

The Proponent is seeking concept approval to guide future development of the Black Hill site as industrial lands. Key components of the proposal are detailed in

Table 1 and depicted in Figure 3. The Concept Plan also includes Urban Design Guidelines for future development of the Black Hill site, including; minimum lot size and dimensions; site coverage; setbacks; car parking, access and loading; design and appearance of general buildings, fencing, open storage and work areas; landscaping; site water management; and waste management.

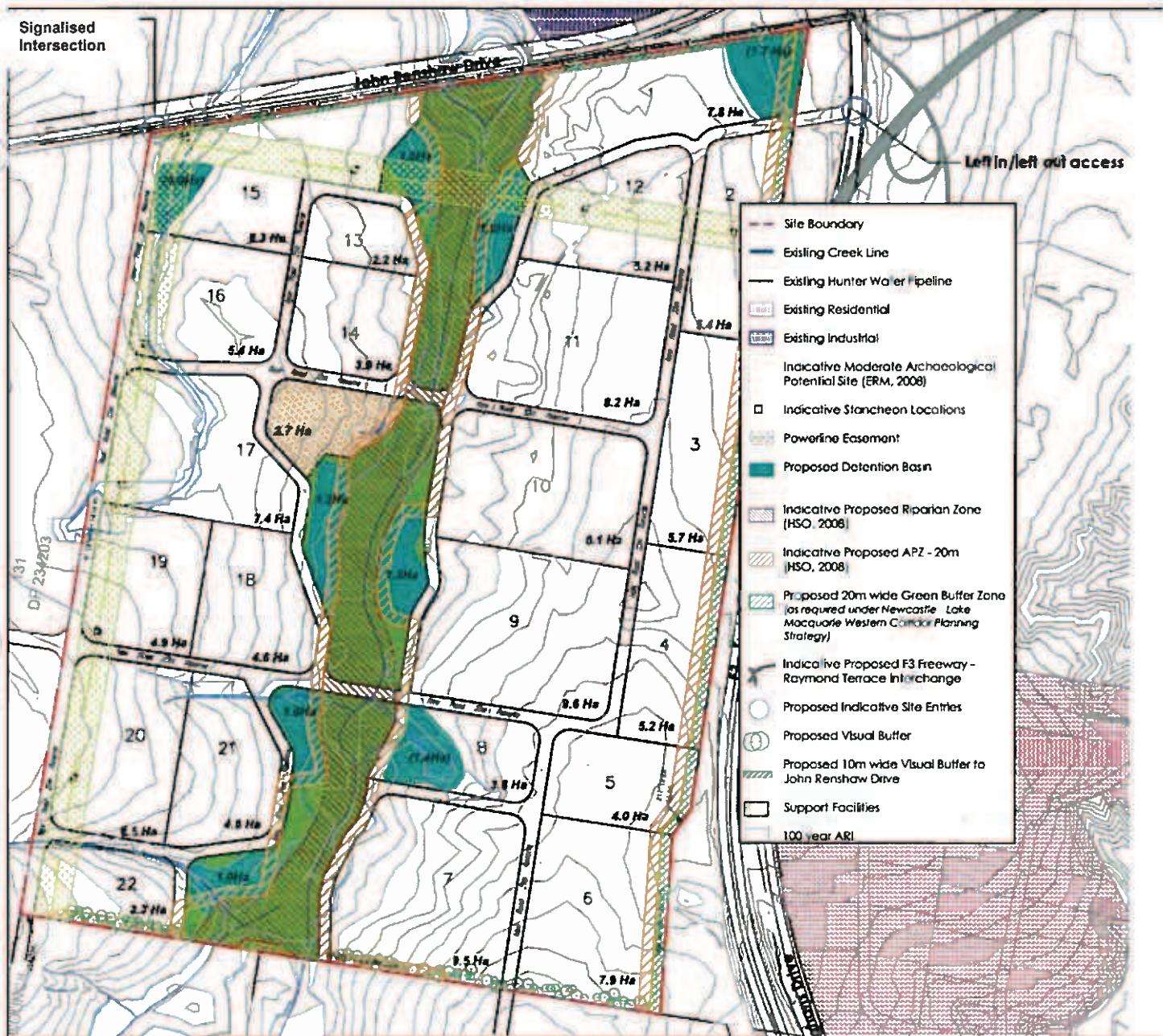


Figure 3 - Indicative Site Layout

Table 1 - Major components of the Black Hill Industrial Proposal

| Aspect | Description |
|---|--|
| <i>Proposed Land Uses</i> | <ul style="list-style-type: none"> • employment generating uses (e.g. light industrial, bulky goods, warehouse/distribution centre, depots, freight transport facilities, neighbourhood shops, office premises and, information and education facilities); • 'Core Supporting Facilities Area', to include social infrastructure uses to service the daily needs of workers, such as food and drink premises, hotel accommodation, childcare centre, petrol station and recreation; • additional permitted uses, such as business premises, child care centre, community facility, health consulting rooms, hotel accommodation, medical centre, recreation area and recreation facility (indoor), restaurant and retail premises |
| <i>Indicative Layout</i> | The Proponent is not seeking approval for subdivision, a specific lot layout or to physically commence any stage of the concept plan. However, an indicative layout has been provided. |
| <i>Access, Road Upgrades and Internal Roads</i> | <p>Access and road infrastructure proposals comprise:</p> <ul style="list-style-type: none"> • a left in/left out to/from the F3 Freeway; and • full access on John Renshaw Drive via a signalised T junction. <p>The proposal does not include the construction of internal roads. However, an indicative internal road layout has been provided.</p> |
| <i>Infrastructure</i> | Details of stormwater management systems are proposed. All other infrastructure (water, sewer, electricity, gas and telecommunications) would be provided through the augmentation and/or extension of existing services and will be subject to approval at detailed design stage. |
| <i>Capital Investment</i> | \$724.5 million |
| <i>Employment</i> | 3,600 once fully operational |

The Proponent has indicated that development on the site would be undertaken in six stages, moving progressively south from John Renshaw Drive (see Figure 4). Future development would be subject to further assessment and approval under the Act.

3.2 Voluntary Planning Agreement

A voluntary planning agreement (VPA) has been prepared to facilitate the transfer of approximately 545 hectares of land to the NSW Government for conservation purposes and associated remediation and reserve establishment works.

The draft VPA was publicly exhibited with the concept plan and SSS study. However, the VPA was subsequently amended to include provisions for further security in the form of bank guarantees. There were no changes from the previously notified draft VPA to the level or nature of the contributions sought to be provided. The amended draft VPA was notified from 17 August 2011 to 16 September 2011.

The VPA was executed by the proponent, the Minister for the Environment and the Minister for Planning and Infrastructure on 6 June 2013, prior to determination of the SSS and concept plan proposals. This is the subject of a separate report.

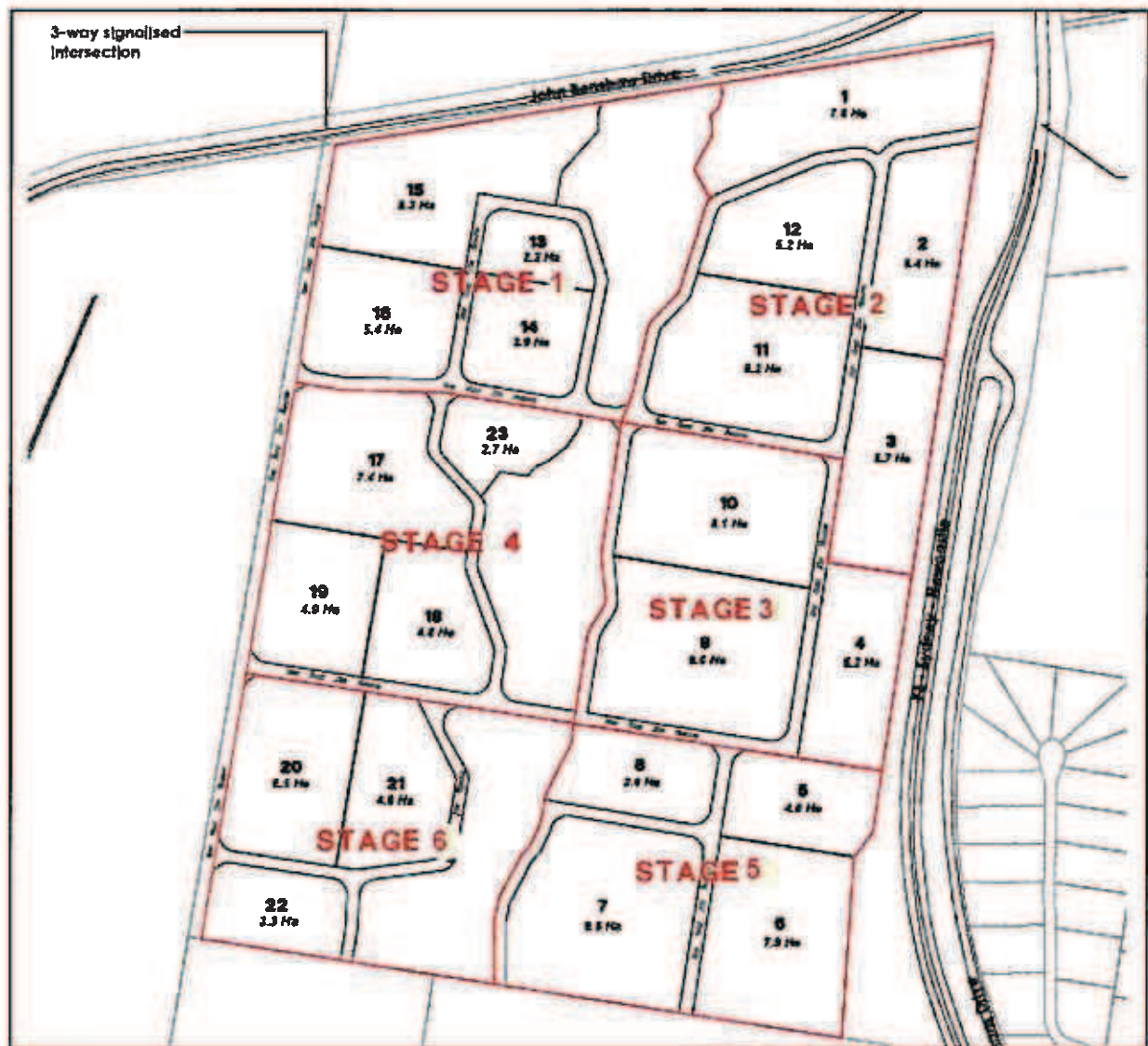


Figure 4 - Proposed Staging Plan

3.3 Project Need and Justification

The Lower Hunter Regional Strategy has been prepared by the NSW Government to guide growth in the Lower Hunter to 2031. The strategy identifies future development areas, settlement patterns and conservation outcomes. The Black Hill lands are identified under the Strategy as employment lands, the development of which would support the proposed freight hub. The Concept Plan proposal will contribute to achieving the *Strategy's* target of 66,000 new jobs, which are projected to be required to meet expected demand in the region to 2031.

The proposed dedication of conservation lands to the NSW Government will contribute to the protection and management of the Watagan Ranges to Stockton (which includes Port Stephens) conservation corridor and consolidation of the Watagans to Stockton habitat linkage, which is a key focus of the Lower Hunter Regional Strategy and the companion Lower Hunter Regional Conservation Plan. The proposed offset lands, to be dedicated as part of the Concept Plan proposal, represent a significant contribution in achieving the link.

The proposed Concept Plan is also consistent with the *Newcastle–Lake Macquarie Western Corridor Planning Strategy*, which sets out planning principles, development criteria and infrastructure requirements necessary to implement the actions identified in the Regional Strategy for the western corridor area.

The corridor strategy:

- identifies 500ha of employment lands at Black Hill;
- identifies access arrangements to the Black Hill employment lands from John Renshaw Drive and limits direct access off the F3.
- identifies a new zone substation at Black Hill.
- states that public transport is required for new residents and employment areas.

The proposed development is consistent with the following planning principles, identified in the Newcastle–Lake Macquarie Western Corridor Planning Strategy:

- Jobs available locally and regionally, reducing the demand for transport services;
- Conservation land in and around the development sites, to help protect biodiversity and provide open space for recreation; and
- Has the potential to assist in providing public transport networks that link frequent buses into the rail system.

4 STATUTORY CONTEXT

4.1 Major Project

On 7 July 2010, the former Minister for Planning declared, by way of an order under Section 75B(1) of the *Environmental Planning and Assessment Act 1979* (the Act), that the proposed development is development to which Part 3A of the Act applies (being development of State and regional environmental planning significance), and authorised the submission of a concept plan.

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A to the Act, continues to apply to transitional Part 3A projects. Director-General's environmental assessment requirements (DGRs) have been issued in respect of this proposal and the environmental assessment report was lodged prior to 1 October 2011. The project is therefore a transitional Part 3A project.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the carrying out of the project under section 75P of the Act.

4.2 Permissibility

The subject lands were rezoned on 9 August 2013, for the following

- IN2 – Light Industrial for the Black Hill lands (166.39ha)
- E2 – Environmental Conservation to protect the Viney Creek riparian corridor (16.41ha)
- E1 – National Parks and Nature Reserves for the Tank Paddock and Stockrington Lands (545ha).

Rather than amend the Major Development SEPP, the rezoning was implemented by amending the Newcastle LEP 2012 and the Cessnock LEP 2011 to include the new zoning for the lands.

The proposed development is permissible under the above rezoning, in the IN2 zone of the Newcastle LEP 2012, with the exception of proposed additional uses.

4.3 State Significant Site

The Black Hills development site and conservation lands (Tank Paddock and part of Stockrington) was subject to a separate, but concurrent, rezoning process.

On 7 July 2010, the former Minister for Planning agreed to consider the Black Hill site, and Tank Paddock and (part of) Stockrington lands as a potential State significant site (SSS) under Schedule 3 of the *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP).

The Proponent prepared a State Significant Site study which sought to establish new land use zones and development controls (in the form of proposed Urban Design Guidelines) for the Site. The State Significant Site study recommended that the Site be listed in Schedule 3 of the Major Development SEPP. Listing the site in Schedule 3 was sought by the Proponent to enable the provision of new zonings for the site that reflect the proposed employment generating development.

The State Significant Site study was prepared in accordance with Clause 8 of the Major Development SEPP and was submitted and exhibited with the EA.

On 9 August 2013, the lands were zoned as follows:

- the Black Hill development site was zoned IN2 – Light Industrial Zone (166.39ha),

- the Viney Creek riparian corridor was protected by being zoned E2 Environmental Conversation, and
- the Tank Paddock and (part of) Stockrington conservation lands, to be dedicated to the NSW Government, were zoned E1 – National Parks and Nature Reserves.

These zones are based on the Department's gazetted *Standard Instrument (Local Environmental Plans) Order 2006*. Rather than list the site in Schedule 3 of the Major Development SEPP, the Newcastle LEP 2012 and the Cessnock LEP 2011 were amended to include the new zoning for the lands.

The proposed rezoning is the subject of a separate report.

4.4 Objects of the EP&A Act 1979

The objects of any statute provide an overarching framework that informs the purpose and intent of the legislation and gives guidance to its operation. The Minister's consideration and determination of a project application under Part 3A of the Act must be informed by the relevant provisions of the Act, consistent with the objects of the Act.

The Department is satisfied that the proposal is consistent with the objectives of the Act.

4.5 Ecologically Sustainable Development Principles

The Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of the following principles:

Integration Principle

The Department's assessment has duly considered all issues raised by the community and public authorities. The proposed development will result in long term economic and social benefits through contributing to supply of jobs to support a sustainable population growth in the lower Hunter region.

The proposed dedication in perpetuity of 545 hectares of land with high biodiversity significance, for conservation purposes, will result in both short and long term environmental and social benefits. Potential environmental impacts have been considered and can be managed. Recommended management requirements are outlined in the Statement of Commitments and recommended in this report.

Precautionary Principle

The environmental assessment is supported by technical and environmental reports which conclude that the proposal's impacts can be successfully mitigated. Potential environmental impacts have been identified and addressed. No irreversible or serious environmental impacts have been identified. The concept plan approval requires additional information at each stage of development to ensure the proposal's extent and nature is fully documented and opportunities are provided for proposed mitigation and management measures to minimise the impact of the development.

Inter-Generational Principle

It is considered that the development of this site will have positive social, economic and environmental impacts and as a result will maintain the environment for the benefit of future generations. The proposal will result in sustainable development of the site.

Biodiversity Principle

The conservation of biological diversity and ecological integrity was a fundamental consideration in assessment of the Concept Plan. The proposal will result in dedication of 545 hectares of land to the NSW Government to be protected and managed in perpetuity.

This represents a positive biodiversity conservation outcome for the Watagan to Stockton habitat linkage. The lands to be dedicated contain similar habitat and ecological features to the lands to be developed and, as such, generally offset the potential biodiversity impacts from development.

Valuation Principle

It is difficult to assign a monetary value to the environment of a locality, or environmental resources not exploited for commercial use. A monetary value could not be placed against the greatest proportion of environmental attributes of the site which may be affected. The more appropriate approach adopted for this project is to manage environmental impacts by identifying appropriate safeguards to mitigate adverse environmental impacts. This cost of implementing these safeguards is included in the total project cost as a means of pricing the protection of the environmental attributes of the site.

4.6 Statement Of Compliance

In accordance with section 75I of the Act and clause 8 of the *Environmental Planning and Assessment Regulation 2000* the Department is satisfied that the Director-General's environmental assessment requirements have been complied with.

4.7 Other Relevant Legislation and Environmental Planning Instruments

0 sets out the relevant consideration of legislation (including other Acts) and environmental planning instruments as required under Part 3A of the Act. They include the following:

- *State Environmental Planning Policy – (Infrastructure) 2007*;
- *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007*;
- *State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44)*;
- *State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)*;
- *Newcastle LEP 2003*; and
- *Cessnock LEP 2011*.

4.8 Commonwealth Legislation

The Proponent determined that the proposal could have a significant impact on a matter of national environmental significance. Accordingly, the proposal was referred to the then Commonwealth Department of the Environment, Water, Heritage and the Arts under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Commonwealth Department of the Environment, Water, Heritage and the Arts determined that the proposed development is not a controlled action under the EPBC Act, and as such does not require further assessment by the Minister for Environment, Heritage and the Arts.

5 CONSULTATION AND ISSUES RAISED

5.1 Public Exhibition

Section 75H(3) of the Act requires that after the Environmental Assessment (EA) has been accepted by the Director-General, the Director-General must, in accordance with any guidelines published in the Gazette, make the EA publicly available for at least 30 days.

In addition, Section 93G(1) of the Act requires that the draft Voluntary Planning Agreement (the draft VPA) cannot be entered into unless public notice has been given of the proposed agreement and the proposed agreement has been publicly available for at least 28 days.

The EA, and accompanying draft VPA and SSS study were placed on public exhibition from 2 March 2011 until 1 April 2011 (32 days). Copies of the documentation were placed on the Department's website, and made available for inspection at the following locations:

- Department's offices in Sydney and Newcastle; and
- Newcastle City Council.

The Department also advertised the public exhibition in the Sydney Morning Herald and Newcastle Herald on 2 March 2011 and notified landholders, and relevant State and local government authorities in writing.

A total of 25 submissions were received regarding the Black Hill Concept Plan EA, including 17 submissions from government agencies and 8 submissions from the local community. The public submissions comprised 6 objections and 2 letters of support.

An amended VPA was notified from 17 August 2011 to 16 September 2011, with copies made available for inspection at the Department's offices in Sydney and Newcastle.

5.2 Agency and Public Authority Submissions

The Department received 17 submissions from the following agencies and public authorities in response to the public exhibition of the project:

- the former Department of Environment, Climate Change and Water (DECCW, now the Environment Protection Authority);
- the former Department of Industry & Investment (DI&I, now the Department of Primary Industries);
- Transport NSW;
- Department of Education and Training (now the Department of Education and Communities);
- the former NSW Roads and Traffic Authority (RTA, now the Roads and Maritime Service);
- NSW Office of Water (NOW);
- Mine Subsidence Board;
- Hunter Water Corporation;
- Newcastle Port Corporation;
- Hunter-Central Rivers Catchment Management Authority;
- Ausgrid;
- TransGrid;
- NSW Rural Fire Service;
- Newcastle City Council (Council);
- NSW Health;
- Ambulance Service NSW; and
- NSW Police.

A copy of the submissions is located in 0.

Council supports the proposal in principles but has raised concerns about a number of aspects of the proposal.

Issues raised by Council and other agencies relate to:

- Mine subsidence and future resource extraction;
- Provision of health facilities on site;
- Biodiversity impacts, proposed offset lands and linkages between vegetation corridors and consistency with Lower Hunter Regional Conservation Plan;
- Protection of riparian corridors;
- Aboriginal heritage including adequacy of Aboriginal community consultation;
- Water delivery and wastewater transportation and treatment;
- Traffic impact, access and road infrastructure upgrades;
- Proposed permitted additional uses and Core Supporting Facilities Area;
- Contamination and Remediation;
- Noise impacts;
- Air quality impacts;
- Visual impact;
- Water Sensitive Urban Design, Flooding and Stormwater Management;
- Adequacy of the Urban Design Guidelines; and
- Groundwater impacts.

Submissions received from a number of agencies outlined conditions which they consider should be imposed on any concept plan approval, as discussed in Section 6 of this report.

5.3 Public Submissions

A total of 8 public submissions were received in relation to the public exhibition of the Concept Plan EA and draft VPA. Of these, 6 objected to the proposal and 2 offered support.

Issues raised in the public submissions related to:

- the misleading nature of documentation,
- lack of community consultation,
- justification for proposal,
- consideration of alternative uses and sites,
- noise, amenity, lifestyle, transport impacts,
- protection of rural, scenic and recreational character of the areas,
- piecemeal development,
- oversupply of industrial land,
- urban/industrial sprawl,
- future access to surrounding lands and
- inadequacy of the *Lower Hunter Regional Strategy*

Copies of the public submissions are located at 0.

5.4 Preferred Project Report / Submissions Report

On 20 May 2011, the Proponent provided a response to submissions and additional information on key issues. In addition, the Proponent amended the Project Application via a Preferred Project Report (PPR) in response to the issues raised in submissions made during the exhibition period (see 0).

The PPR contained amendments to the original proposal and additional information, comprising:

- The Proponent's response to issues raised in public and agency submissions;
- Revised Riparian Plan, showing the range of widths of the proposed Riparian Corridor;
- Revised Statement of Commitments; and

- Revised SSS study, which removed 'extractive industries' from the land uses permissible within the proposed IN1 zone, and references provisions of *SEPP (Mining, Petroleum Production and Extractive Industries) 2007*.

As the changes were not considered to be significant, the proposal was not re-exhibited but was placed on the Department of Planning and Infrastructure's website in accordance with the Act and was referred to Hunter Water Corporation, the former DECCW, the RTA and Council for comment.

Comments on the PPR were received from the former DECCW, former RTA and Council. Issues raised by the agencies in respect of the PPR were similar to those raised in previous submissions and each of these issues is discussed in more detail in Section 6.

5.5 Referral to Planning Assessment Commission

On 2 April 2012, the Department referred documentation relating to the proposed State significant site rezoning application for Black Hill, the draft Black Hill voluntary planning agreement (VPA) and an unendorsed draft of the Director General's environmental assessment report for the Black Hill employment lands Concept Plan to the Planning Assessment Commission (PAC) for advice under s.23D(1)(b)(ii) of the Act.

On 14 May 2012, the PAC advised that it considered the proposal to be reasonable. The advice has been taken into consideration in the Department's assessment of the Concept Plan proposal.

6 ASSESSMENT

After consideration of the environmental assessment, submissions, preferred project report and response to submissions, the Department has identified the following key environmental issues associated with the proposal:

- Land use and urban design;
- Biodiversity;
- Traffic and Access
- Infrastructure contributions and local services;
- Soils and water including stormwater management, flooding and contamination; and
- Aboriginal Heritage.

The Department's consideration of other issues is discussed in Section 6.8.

6.1 Land Use and Urban Design

This concept plan is seeking approval to develop the site for a range of industrial uses including uses to support the employment/industrial lands (e.g., business premises, child care, recreation facilities etc), and open space. In addition, a set of Urban Design Guidelines (UDGs) has been prepared, comprising controls for issues such as open space, building design, landscaping, flooding, and access and road layout.

The appropriateness of the proposed land uses and UDGs, having regard to permitted uses (existing and proposed) in nearby industrial lands and Council's development controls for industrial lands, is discussed below.

6.1.1 Zoning and Proposed Permitted Uses

The employment and industrial uses proposed by the Proponent are generally consistent with permitted uses in industrial zones proposed in *Newcastle Local Environmental Plan 2012*, and the Department considers that these uses are appropriate. It is noted that rezoning approval amended the Newcastle LEP 2012 to include the Black Hill development site as IN2 – Light Industrial, the Viney Creek riparian corridor as E2 Environmental Conversation, and the Tank Paddock and (part of) Stockrington conservation lands as zoned E1 – National Parks and Nature Reserves.

The concept plan seeks approval for additional permitted uses in the development site (the rezoned IN2 zone), and for provision to allow a maximum of 1300 sqm of net lettable floor space of retail space. Such uses are proposed to be accommodated within a proposed 'Core Supporting Facilities Area' (CSFA) (see Figure 5).

These additional permitted uses include business premises; child care centre; community facility; health consulting rooms; hotel accommodation; medical centre; recreation area; recreation facility (indoor); restaurant; and retail premises. While some of these uses are permitted in industrial zones, some are not consistent with uses permitted under the standard instrument template.

The Proponent justifies the proposed CSFA / additional permitted uses on the basis that they would provide for basic convenience needs of employees on site. According to the Proponent, the CSFA would be centrally located within the site and, by being within walking distance of employees, would reduce car-dependency and promote self-containment within the site.

The Proponent also proposes to dedicate Viney Creek riparian corridor to Newcastle City Council (NCC). However, it is noted that the indicative layout for the development site

contains lots fronting the riparian corridor whose design allows for flexibility in determining the future ownership of the corridor.

Through its submission, Council raised the following concerns in relation to the proposed land uses including the CSFA and additional permitted uses:

- Council does not oppose the industrial land uses proposed and considers that supporting facilities such as such as neighbourhood shops, childcare centres, community facilities, recreation area, recreation facilities (indoor); recreation facilities (major), take away food and drink premises and kiosks which are permitted in industrial zones under the Standard Instrument template are appropriate. However, it does not support the remaining additional permitted uses.
- the CSFA with the additional permitted uses represents a new business and retail centre that would undermine the existing centres hierarchy;
- a regional economic impact assessment is required to justify the CSFA. Should such a centre be approved, it would be more appropriately zoned B4;
- the quantity of retail space required to service the site (1300sqm) is excessive and not justified by the retail analysis in the Social Infrastructure Study and would be inconsistent with the draft *Centres Policy: Planning for Retail and Commercial Development Policy*;
- a medical centre should be provided, as part of a multi-purpose community centre, on site; and the open space (i.e., the riparian corridor) and recreation areas/facilities will only support the employees of the estate and that it is highly unlikely that people will visit this isolated site with the sole intent of utilising the open space areas for general recreation. For this reason, NCC considers that there is no public benefit in this land being forcibly dedicated to Council.

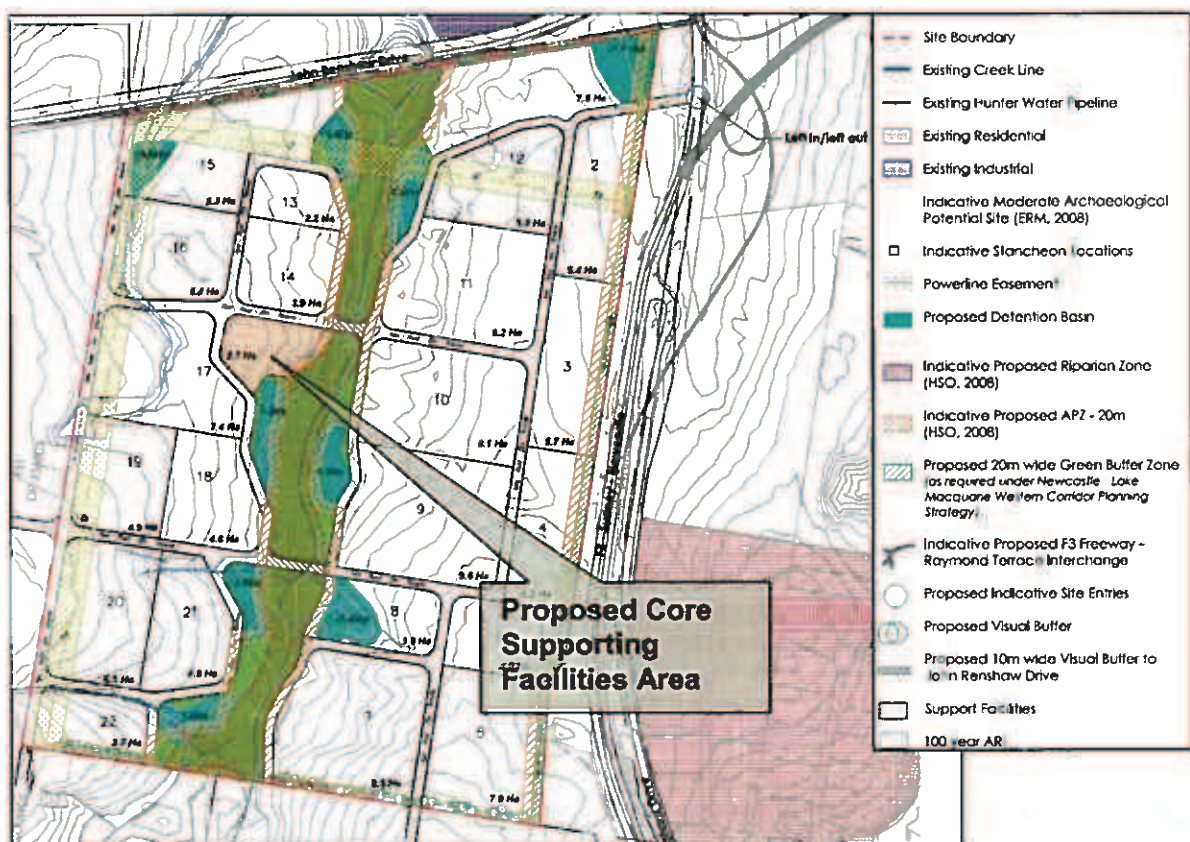


Figure 5 - Proposed Core Supporting Facilities Area

Department's Consideration

The Department considers that the industrial land uses proposed by the Proponent are generally appropriate. However, the Department shares the concerns expressed by Council regarding the potential of the CSFA, and the proposed additional permitted uses, to undermine existing centres in the region. There is an existing local centre located at Beresfield, 6kms to the north-east of the site, which is zoned B2 Local Centre.

While land uses that are ancillary to and/or supportive of industrial generating uses or provide facilities to meet the day to day needs of workers are supported by both Council and the Department, the proposal for 1300 sqm of net lettable retail/commercial floor-space in an industrial zone is considered to be excessive and is not supported. The proposed CSFA and 1300 sqm of retail floor-space effectively constitute a commercial/retail sub-zone that could potentially exceed the preferred ancillary role identified for commercial/retail uses in industrial zones and, thus, have a negative impact on the established centres hierarchy in the region.

'Neighbourhood Shops' with a maximum GFA of 150sqm are proposed as a 'permitted with consent' use on the site. The Department is satisfied that such a use will more than adequately cater for convenience retail needs of employees within the site. Consistent with the Department's assessment of a nearby industrial site (i.e., Freeway North, Beresfield), and permitted land uses in industrial zones under Newcastle's LEP, business premises; health consulting rooms; hotel accommodation; medical centres; restaurants; and retail premises are considered inappropriate in this location.

Additionally these uses are inconsistent with the Lower Hunter Regional Strategy (LHRS) which reinforces Newcastle as the Regional City. The LHRS has the specific action in relation to Centres and Corridors whereby:

"local environmental plans and other statutory planning controls: do not permit retail and commercial offices outside commercial centres other than where consistent with adopted State Policies such as 'The Right Place for Business'."

The Department's Policy 'The Right Place for Business' reinforces that *"offices, where not ancillary to industry, should be located in existing centres where they can benefit from proximity to services, be accessible by public transport and provide for more equitable access to employment opportunities."*

Further, the Newcastle Industrial Lands and Employment Study (2005) identified that additional industrial land is required for the city. Should Black Hill include non-industrial facilities such as hotels, retail and commercial offices, then the available industrial land would not be fully utilised. The Department's position on the proposed land uses is summarised in Table 2.

Table 2 – Assessment of Proposed Permitted Additional Uses

| Proposed Uses | | Department's Position |
|-----------------|---|---|
| Industrial Uses | Range of uses including depot, freight, transport facility, hazardous storage establishment, industry, industrial retail outlets, light industry, passenger transport facility, service station, standard industry, transport depot, truck depot, vehicle repair station, warehouse or distribution centre. | Appropriate land uses, consistent with the Standard Instrument template and Newcastle's LEP. |
| | Extractive Industries | <i>State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007</i> applies to the site |

| | | |
|----------------------------------|---|---|
| | Food and drink premises | Inappropriate use for an industrial area. Take away food and drink premises is considered a more suitable land use consistent with the Standard Instrument template and Newcastle's LEP |
| | Office premises (that are ancillary to development for another permitted purpose) | Appropriate land use |
| | Standard industry | This use is not a described use in the Standard Instrument. |
| | Timber and Building Supplies | Appropriate land use. However, this use is not a described use in the Standard Instrument and will be replaced by 'Timber Yards'. |
| Additional Permitted Uses | Business Premises | This use is not considered appropriate for an industrial zone. |
| | Childcare centre | Already permitted within proposed zone |
| | Community facility | Already permitted within proposed zone |
| | Health consulting rooms Hotel accommodation Medical Centre | Inconsistent with the Standard Instrument template and Newcastle's LEP. These uses are not considered appropriate for an industrial zone. |
| | Recreation area; | Already permitted within proposed zone |
| | Recreation facility (indoor) | Already permitted within proposed zone |
| | Restaurant | Inappropriate use for an industrial area. Take away food and drink premises is considered a more suitable land use consistent with the Standard Instrument template and Newcastle's LEP |
| | Retail Premises | This use is inappropriate in an industrial zone, and could potentially undermine existing centres in the region. |

In relation to the dedication of open space and recreation infrastructure to Council, should Council be unwilling to take ownership or responsibility for management of these areas and facilities the Proponent would need to consider alternative management arrangements. The Department considers that the first subdivision application for the development site should detail future ownership and management arrangements for open space and recreation infrastructure. This requirement has been incorporated into the recommended instrument of approval.

6.1.2 Urban Design Guidelines

As part of its concept plan, the proponent has prepared urban design guidelines (UDGs), which include provisions relating to visual impact, conceptual landscape treatments, open space and built form design and parking. The proponent's Statement of Commitments includes a requirement that future development is to comply with the urban design guidelines.

Issues relating to the UDGs proposals for an indicative road layout, typical sections of roads, and pedestrian/cyclist infrastructure are discussed in Section 5.3 of this report. Council's submission identifies the following issues:

- the Guidelines lack the level of detail contained in Council's DCPs. However, should the UDGs be used, Council considers it more appropriate that the UDGs be adopted as an amendment to the DCP 2005;

- 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"> Scheme for 'community bus/subsidy for bus services in initial stages (additional to any council / Transport for NSW levies) | Allocation to be agreed with relevant agencies with funding scaled over a 5 year period commencing when 50,000m ² of building area is occupied | \$500,000 |
| <i>Community</i> | | |
| <ul style="list-style-type: none"> Sponsorship of local sporting teams | 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"> Contribute to providing a community facility in close proximity to the church | Prior to the completion of Stage 1 | \$750,000 |
| <ul style="list-style-type: none"> Upgrade rural fire service (Benwerrin) | Prior to the completion of Stage 1. | \$250,000 |
| <i>European Heritage</i> | | |
| <ul style="list-style-type: none"> Funding of non-indigenous heritage studies and publications. | 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"> Funding towards indigenous heritage studies and publications to be agreed with traditional owners | Commence allocation to agreed studies following dedication of conservation land. | \$25,000 |
| <ul style="list-style-type: none"> Funding towards Aboriginal education person | Funding of \$10,000 per annum for five years from dedication of conservation land. | \$50,000 |
| <i>Traffic/Access</i> | | |
| <ul style="list-style-type: none"> Subregional review of strategy for cycling/walkways, subject to discussions with Department of Planning & Infrastructure with respect to the Western Corridors Strategy | Funds to be allocated Stage 1 of industrial development post the first industrial building construction commencement | \$315,000 |
| TOTAL | | \$2,000,000 |

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.

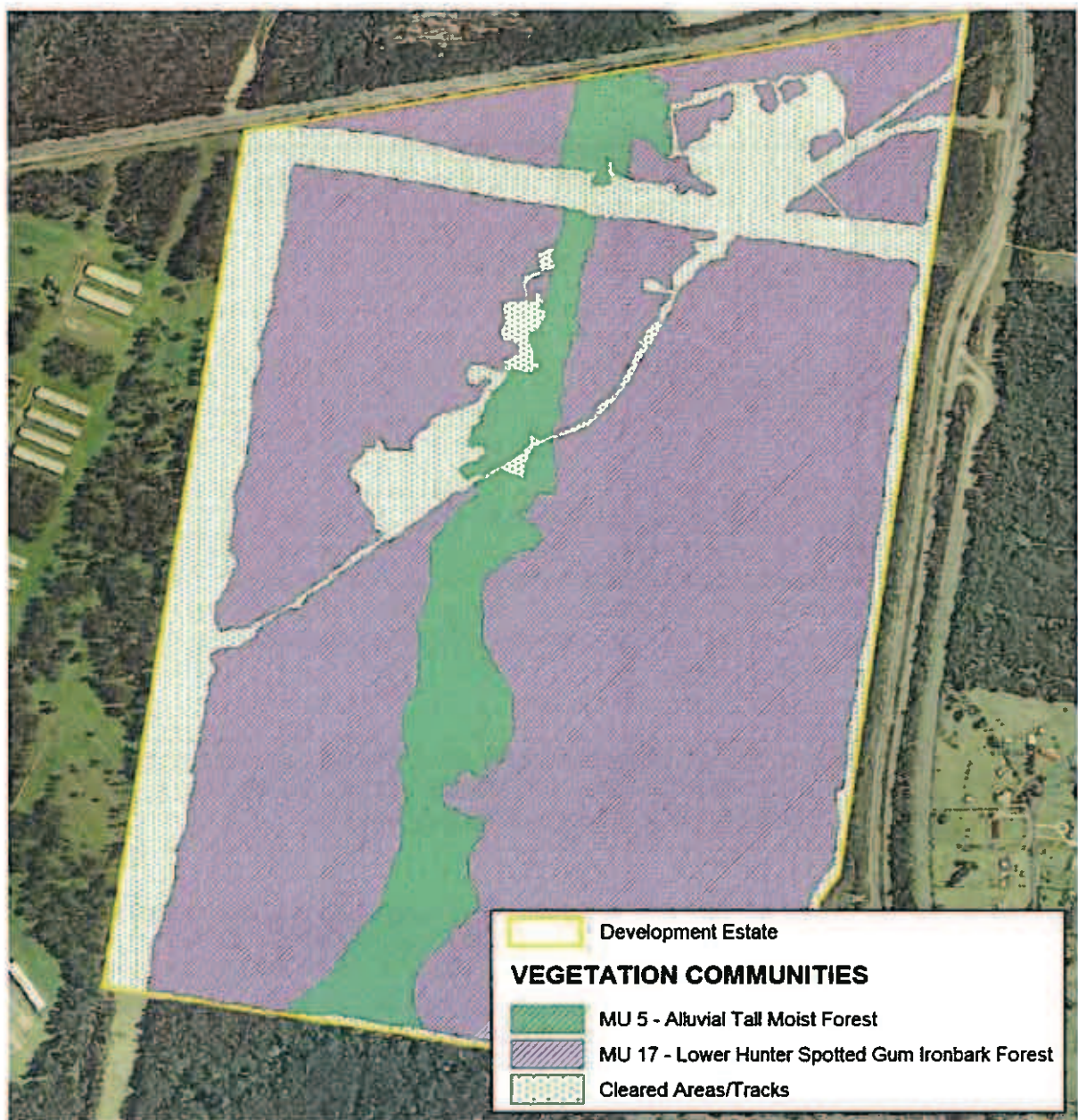


Figure 6 - Location of Vegetation Communities on the Development Site

In addition, the assessment identified two other vegetation communities on site:

- Alluvial Tall Moist Forest, occurring along Viney Creek, on 17.61ha, which will be largely retained in the proposed riparian zones; and
- Weeds and Cleared Areas, located at infrastructure access ways and underneath power transmission lines, covering 32.97ha. The existing transmission easement will mean these areas will remain largely unchanged.

The ecology report states that suitable habitat was recorded on the site for the following threatened flora species:

- *Diuris praecox* (Newcastle Doubletail);
- *Caladenia tessellata* (Thick Lip Spider Orchid);
- *Callistemon linearifolius* (Netted Bottlebrush);
- *Grevillea parviflora* subsp. *parviflora* (Small Flowered Grevillea); and
- *Rutidosis heterogama* (Heath Wrinklewort).

Fauna

The ecological assessment identified 58 threatened fauna species, located within 10km of the subject site. The site contains suitable habitat for 38 of these species. The following threatened fauna species were recorded on the site:

- *Ninox strenua* (Powerful Owl),
- *Tytonovaehollandiae* (Masked Owl),
- *Pteropus poliocephalus* (Grey-headed Flying-fox) and
- *Miniopterus australis* (Little Bentwing-bat).

The ecological report states that there is a 'moderate or greater opportunity' that an additional 11 threatened fauna species may occur on the site, as a result of the presence of suitable habitat, including one species listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as Endangered. These species include:

- Gang-Gang Cockatoo
- Grey-crowned Babbler
- Black-chinned Honeyeater
- Swift Parrot (also listed as endangered under the EPBC Act)
- Squirrel Glider
- Eastern Bentwing - Bat
- Eastern Freetail - Bat
- Yellow-bellied Sheath-tail - Bat
- Eastern False Pipistrelle
- Large-eared Pied Bat
- Greater Broad-Nosed Bat

Their presence was not, however, recorded during targeted surveys. The Proponent considers that despite the loss of suitable habitat for the above fauna species on the development site, the species will continue to use the proposed riparian corridor to a limited extent, and, to a greater extent, the large areas of suitable habitat located in the conservation lands.

Management of Potential Impacts

The Proponent's assessment also made a number of recommendations to mitigate ecological impacts of the proposed development being:

- Pre-clearing inspections with an ecologist to supervise tree removal during the construction phase to recover any native fauna that are potentially displaced;
- retention of mature or hollow bearing trees, where possible;
- implementation of appropriate clearing protocols;

- appropriate species selection for future landscaping;
- that any earthworks should be undertaken during dry weather conditions; and
- the erection of nutrient and sediment control measures to protect vegetation within the riparian corridors during construction.

Issues Raised in Submissions

Public submissions have raised the following issues relating to flora and fauna:

- Black Hill Environmental Protection Group and Buttai Community Development Group's submission states that greater consideration be given to 'regional conservation value' of the site, including the high concentration of endangered *Lower Hunter Spotted Gum Ironbark Forest*, and to relationships between the site and adjacent rural/conservation lands;
- Black Hill site should be retained as conservation lands, as part of the Stockton to Wattagan conservation corridor;
- proposal contradicts the UN Treaty on Biodiversity;
- the documentation is misleading in terms of the conservation priorities and regional value of the site; and
- need to consider alternative sites with less impact on biodiversity; and
- the Concept Plan should be assessed independently of the VPA, to avoid the proposed offsets influencing the decision

Concerns have been raised by agencies in relation to the potential impact on native vegetation on site and the adequacy of the proposed conservation offset lands.

The Council raised the following issues:

- the impact of the proposal on the Lower Hunter Spotted Gum Ironbark Forest (LHSGIF) EEC; The offset ratio for the LHSGIF (~1:1) is inadequate and a ratio of at least 1:3 is required to achieve a net improvement of the LHSGIF in order to comply with DECCW's offsetting principles;
- fragmented nature of the offset lands will limit their ability to function as an effective wildlife corridor;
- proposal will result in the loss of retainable trees; and
- the majority of the proposed conservation lands for dedication are located outside of the Newcastle LGA.

Hunter Central Rivers Catchment Management Authority (HCRMA) state that linkages between local vegetation corridors across the site and surrounding land have not been addressed and have recommended an offset ratio of 1:5, not 1.3:6, as a result of the presence of the Powerful Owl. HCRMA recommend the provision of:

- vegetation corridors within the site to promote connectivity;
- linkages between local corridors across the site and surrounding land; and
- additional corridors through the LHSGIF.

The former DECCW consider that the potential impact on the LHSGIF to be localised in nature and is satisfied that the proposed offset lands at Tank Paddock and (part of) Stockrington will provide adequate 'like for like' offsets for this particular vegetation community. The former DECCW's assessment considered the proposed conservation lands to be consistent with the DECCW offsetting principles identified in the Lower Hunter Regional Conservation Plan; be appropriately located, provide conservation outcomes in perpetuity; provide 'like for like' offsets for impacted vegetation communities and threatened species; be strategically located to strengthen the existing conservation reserve network; and to have similar characteristics to the subject site in terms of biodiversity and ecology.

Department's Consideration

As previously discussed the conservation lands, comprising Tank Paddock and (part of) Stockrington (see Figure 7), form part of the Stockton to the Watagans conservation corridor.

The corridor is identified in the Lower Hunter Regional Strategy and Lower Hunter Conservation Plan as a key conservation priority. As such, the Department considers the proposed transfer of these lands to NSW government ownership in perpetuity to represent a significant opportunity to establish a functional corridor of regional significance and realise an identified State government conservation objective.

Other vegetation communities on site are located within the proposed riparian zones and infrastructure easements, which will not be subject to development. In addition, the Department concurs with the former DECCW that impacts resulting from the proposed development on threatened species, adjoining conservation areas, water quality and flooding, contaminated land, odour and noise have been adequately addressed by the proponent. The Department is satisfied that the proposed conservation lands will adequately offset the potential impacts on flora and fauna of the proposed development.

In relation to Council's concerns regarding urban forest management and the loss of retainable trees, the Department takes a state-wide perspective on conservation. Therefore, while Council views the clearing of Black Hill in negative terms, Department considers that the conservation gains achieved through the dedication of the offset lands to state government stewardship in perpetuity to be adequate compensation for the loss of vegetation on site.

The Department is also satisfied that the measures proposed by the Proponent to manage impacts on flora and fauna during the development of the site are appropriate, and these measures have been reflected in the recommended instrument of approval.

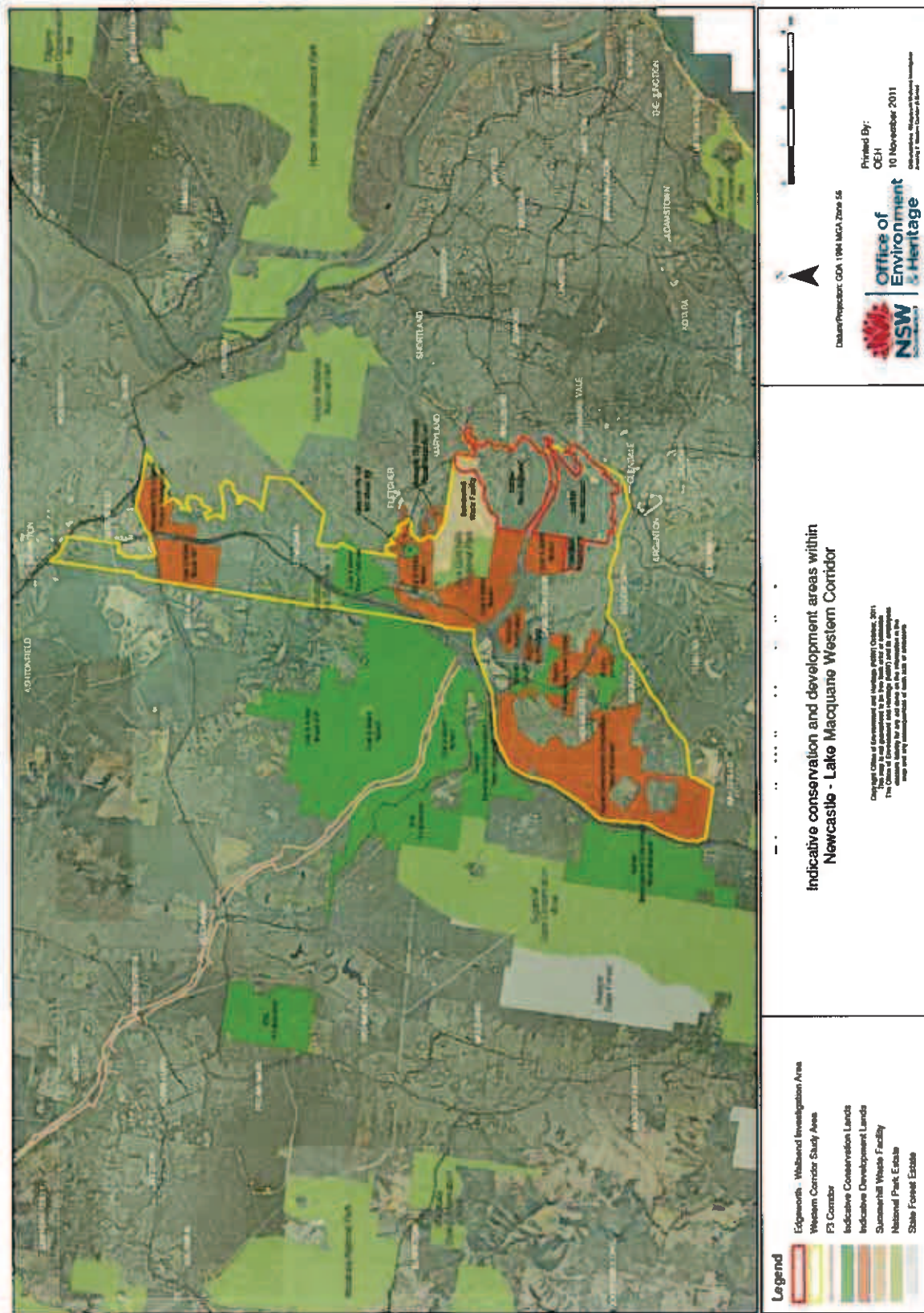


Figure 7 – Location of Identified Urban Release Areas and Proposed and Existing Conservation Lands in the Western Corridor

6.3.1 Riparian Corridors

Viney Creek is a third order stream (i.e., a defined channel where water flows intermittently or permanently) and the proposed corridor width of between 58 and 140 m is consistent with NSW Office of Water (NOW) guidelines. It is proposed that minor tributaries of the Viney Creek would be incorporated into the stormwater management system for the site (see Figure 15 in Section 6.6.2). The Proponent has committed to managing the riparian corridor for 5 years or until the adjacent development is completed, whichever the later, after which the corridor would be dedicated to Council.

Council's submission raised concerns about the section of the Viney Creek catchment which is filled with waste material. Council recommends that the riparian zone around the filled watercourse be restored and maintained in accordance with best practice guidelines. Additionally, Council considers that the concept plan should be modified to include riparian buffer zones for another watercourse identified in the north-west area of the development site and a identified tributary to Viney Creek.

Hunter Central Rivers Catchment Management Authority (HCRCMA) considers that Viney Creek should be rehabilitated and a weed management plan prepared for the creek catchment, while NOW has provided recommendations in relation to watercourse crossings for roads and other infrastructure and services.

Department's Consideration

The Department concurs with NOW that the riparian corridor identified by the Proponent is adequate and that additional riparian corridors are not required. The Department is also in agreement with Council and HCRCMA regarding the need to rehabilitate the watercourse. The Department considers that, as part of any application for subdivision, a full costed rehabilitation plan is to be prepared in consultation with NOW and HCRCMA and is to be submitted to Council setting out proposals for rehabilitation of the creek and its riparian zone. The plan should include removal of waste material and weed management measures. A requirement has been included in the recommended instrument of approval to this effect.

Additionally, NOW requirements for roads and other infrastructure and services that cross the riparian corridor and Viney Creek have also been incorporated into the recommended instrument of approval.

It is noted that the Proponent considers that the alignment of Viney Creek may be subject to change due to mine subsidence. Development of the site would not commence until after mining and associated subsidence has been completed and the Department therefore considers that the first subdivision application should include a survey of the creek bed with the location of the Viney Creek riparian corridor to be adjusted accordingly and in accordance with NOW's guidelines. This requirement has been incorporated into the recommended instrument of approval.

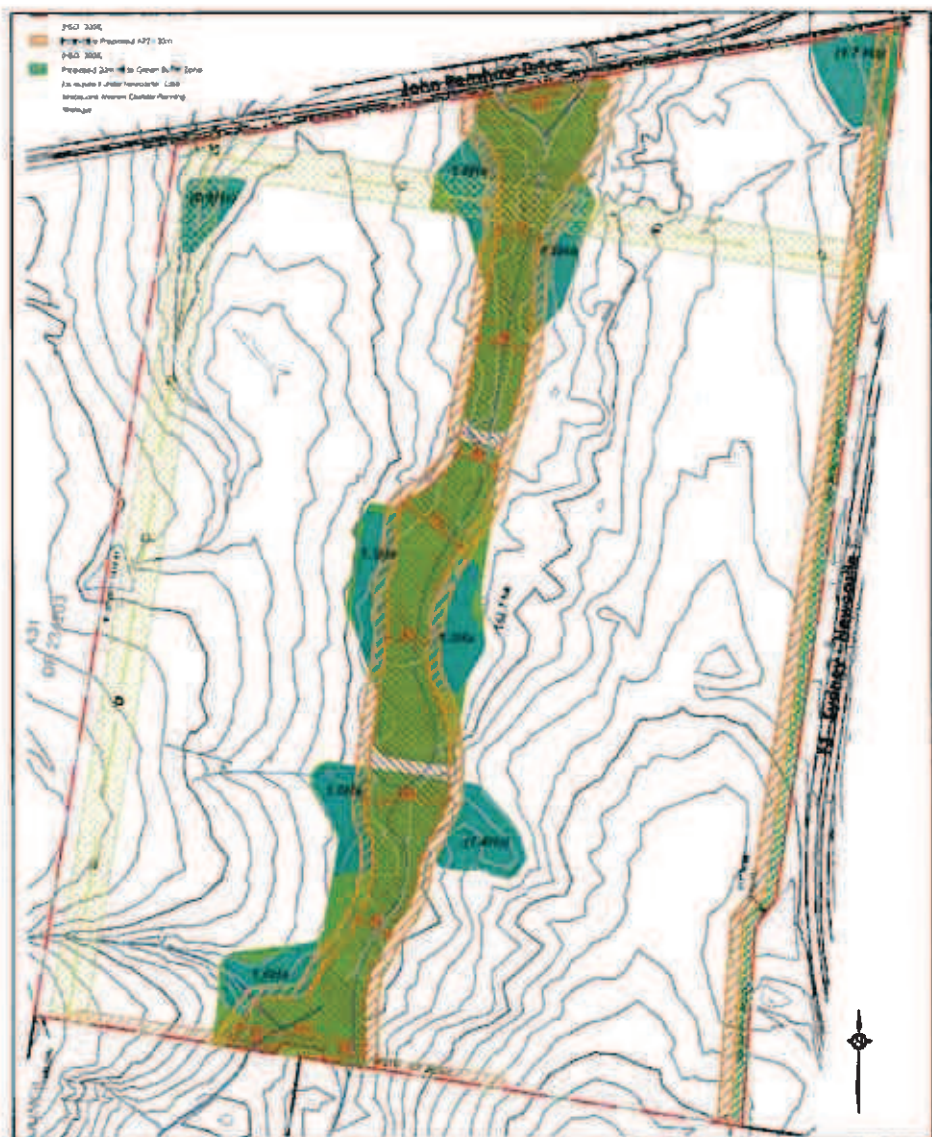


Figure 8 – Riparian Corridor, showing range of corridor widths

6.4 Traffic and Transport

The subject site is serviced by a regional road network that includes the F3 Sydney-Newcastle Freeway to the east, Weakley's Drive, which links the F3 Freeway to the New England Highway to the north and John Renshaw Drive to the north. Black Hill Road, to the south of the site, provides an alternative link between the F3 Freeway to John Renshaw Drive. To the east, Lenaghan Drive provides access from the F3 to Lenaghan and other suburbs to the south-east of Black Hill, including Minmi (see Figure 9).

Current access to the site comprises a road running from the existing Boral Asphalt plant, in the north of the site, to a T-intersection with the F3 Freeway, to the north-east. Access from John Renshaw Drive is limited to an entrance providing access to a Transgrid easement, which runs west-east along the northern boundary, and a cleared area used for parking located at the intersection of John Renshaw Drive and the F3 Freeway in the north-east of the site, which has access points from both roads (see Figure 9).



Figure 9 - Road Network around the site

6.4.1 State / Regional Roads

The proposed main access points to and from Black Hill would comprise (see Figure 10):

- a left in/left out to/from the F3 Freeway; and
- a full access onto John Renshaw Drive via a signalised T junction.

The Proponent has forecasted the impacts of the proposed development on key roads and intersections servicing the site and in the locality, stating that:

- Based on traffic generation rates supplied by the RTA for the proposal, 4,640 AM peak hour trips and 5,600 PM peak hour trips would be generated by the proposed development. However, the Study states that the RTA's proposed trip rates for Black Hill are 23-25% higher than trip generation rate estimated from existing business parks in the Hunter region.
- The proposed signalised T junction on John Renshaw Drive would provide sufficient capacity for 500,000 sqm of gross leasable floor area (GLFA) on site.
- The Level of Service (LoS) at the John Renshaw Drive intersection would be between B and D during AM and PM peak hours respectively.
- The completion of the Hunter Expressway will reduce traffic on the F3 Freeway and enable the provision of an additional egress from the site onto the F3 Freeway. The study suggests that the current access to the Boral plant be considered for such an egress until the design of the F3 to Raymond Terrace Link is finalised.

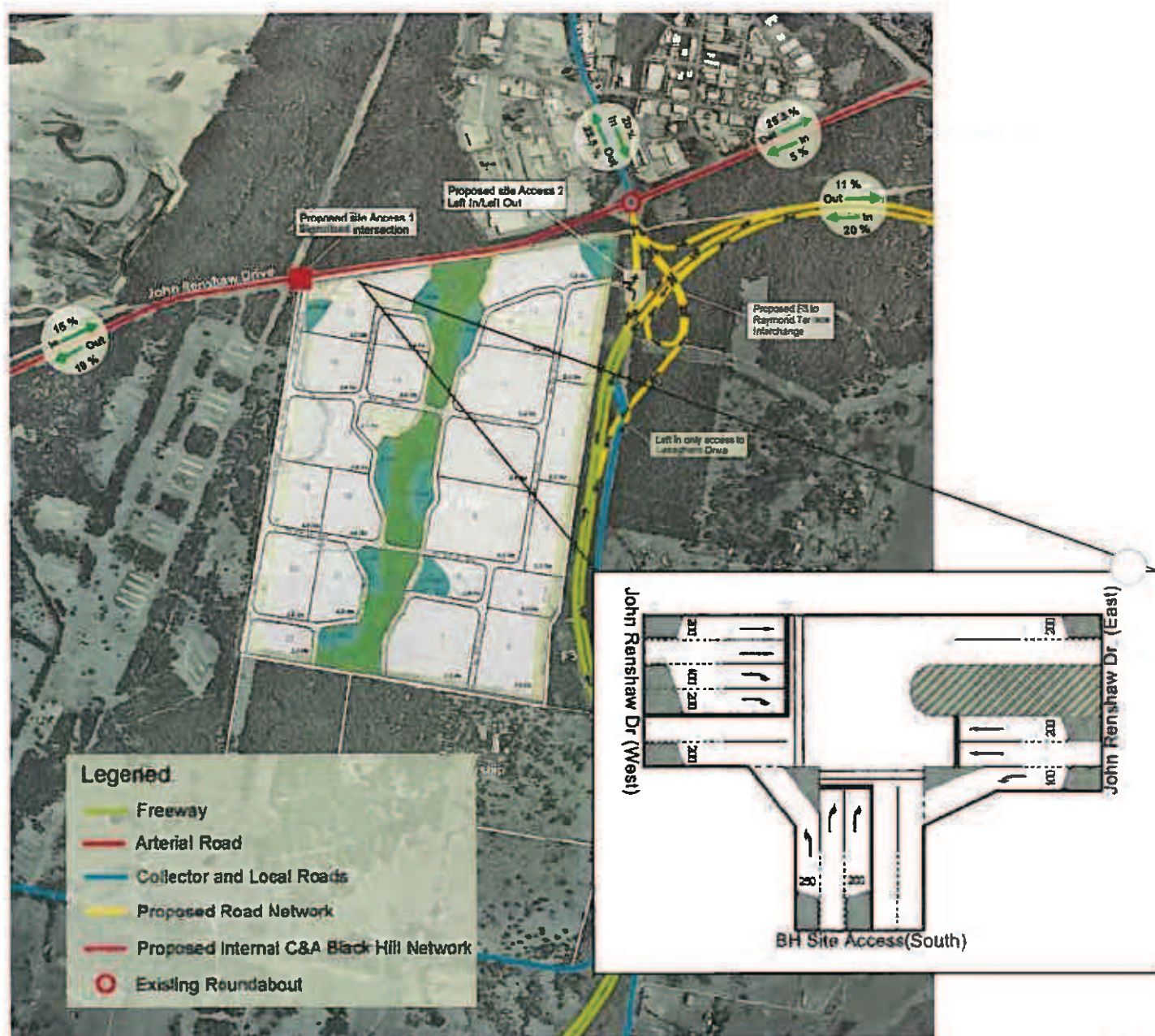


Figure 10 – Proposed Access Arrangements

The Proponent considers that should more than 500,000 sqm of GLFA be provided on site, the following is required:

- one additional egress on to the F3 Freeway; and
- one eastbound lane, 400m in length, on John Renshaw Drive to accommodate right turning vehicles accessing the site.

The RTA raised the following issues:

- assumptions used in the model (i.e., trip generation rates, area of developable area and percentage of traffic that would be heavy vehicles) may not accurately reflect the traffic that would be generated by the proposal and consequently the model should be updated;
- a new traffic signal controlled intersection is required at the western access on John Renshaw Drive;
- upgrade of John Renshaw Drive to dual carriageway between the proposed new western intersection and the existing Weakleys Drive / John Renshaw Drive intersection

may be required and an assessment of mid-block capacity of John Renshaw Drive between access to the site and Weakleys Drive needs to be undertaken at each stage to determine the need for the duplication;

- the existing Weakleys Drive / John Renshaw Drive intersection may need to be upgraded to a traffic signal controlled intersection if the roundabout is unable to adequately cater for the increase in traffic;
- no modification to the grade separated interchange proposed by the RTA, connecting the proposed F3 extension to John Renshaw Drive, will be permitted and any modelling for the Black Hill site should exclude the F3 extension;
- RTA may consider a left in access only to the Boral Asphalt site from the F3 depending on the future alignment and requirements for the F3 to Raymond Terrace Bypass have been investigated;
- RTA would support a second access, restricted to left in / left out onto John Renshaw Drive between the proposed signalised intersection and Weakleys Drive;
- no direct property access should be permitted to / from John Renshaw Drive. Access to all individual properties to be via the local road network;
- requirement for a Transport Management and Accessibility Plan (TMAP) to be prepared for the site; and
- further analysis of impacts on John Renshaw Drive/Weakleys Drive intersection is required.

Council's comments concurred with the RTA's requirements in relation to the upgrading of the 1.3km long section of John Renshaw Dr to dual carriageway.

Department's Consideration

The Department has reviewed the assumptions of the traffic modelling in light of other industrial developments of similar size in regional and metropolitan areas, and considers that the assumption used in relation to trip generation rates and the net developable area are likely to represent an over-estimation of the potential traffic generated by the development of the site. That is, the assessment undertaken by the Proponent represents a worse case scenario.

Nonetheless, discussions with RTA indicate that the site access arrangements from John Renshaw Drive would not change significantly if the traffic model was adjusted to address RTA's concerns. As such, the Department is satisfied that the proposed access to the site is appropriate. The Department therefore recommends that the detailed design for the access is submitted with the first subdivision application for RTA's approval.

In relation to the need for a second access to the site off John Renshaw Drive and offsite road upgrades that may be required as a result of the proposal, such as the duplication of a section of John Renshaw Drive and any upgrades required to the Weakely's Drive/John Renshaw Drive intersection, the Department considers that these matters should be resolved at the time the first subdivision application is lodged. This will allow for:

- the traffic model to be updated to more accurately reflect the traffic that would be generated by each stage of the proposal as the detailed design of the site is refined; and
- any improvements to existing intersections resulting from RTA works, such as the Hunter Expressway and the proposed F3 to Raymond Terrace Bypass, to be taken into account.

Consequently, the Department considers that the subdivision application for each stage should include:

- a revised traffic study that assesses the impacts of each stage together with the impacts of the development of the site once fully operational;

- 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; and
- on-site and off-site road upgrades required as a result of each stage including funding arrangements.

These requirements have been incorporated into the recommended instrument of approval.

The Department considers that a TMAP is not necessary in this instance as future subdivision application(s) will need to address potential traffic impacts and road upgrades required as result of the proposal as discussed above.

6.4.2 Local Roads

The proposal includes a conceptual super-lot subdivision layout, which includes an indicative internal road layout (see Figure 11). More detailed proposals relating to the proposed internal road network are set out in the Urban Design Guidelines (UDGs).

According to the UDGs, the road network will comprise two road types - 21m wide Local Industrial Streets and 23m wide Industrial Collector Roads. Typical sections of these road types are provided in Figure 12 and Figure 13. The indicative future road network includes provision for road access to adjoining lands to west, south and east. It is proposed that an Industrial Collector Road provides direct access to the F3 freeway at the north-east of the site and the wider regional road network.

The Proponent's traffic study concentrates on the impacts on the regional road network and contains limited discussion in relation to any future internal road layout. However, it does state that roads, including the internal road layout, will seek to 'design access and the internal road network for heavy vehicles associated with freight movement in accordance with the Council and RTA standards'.

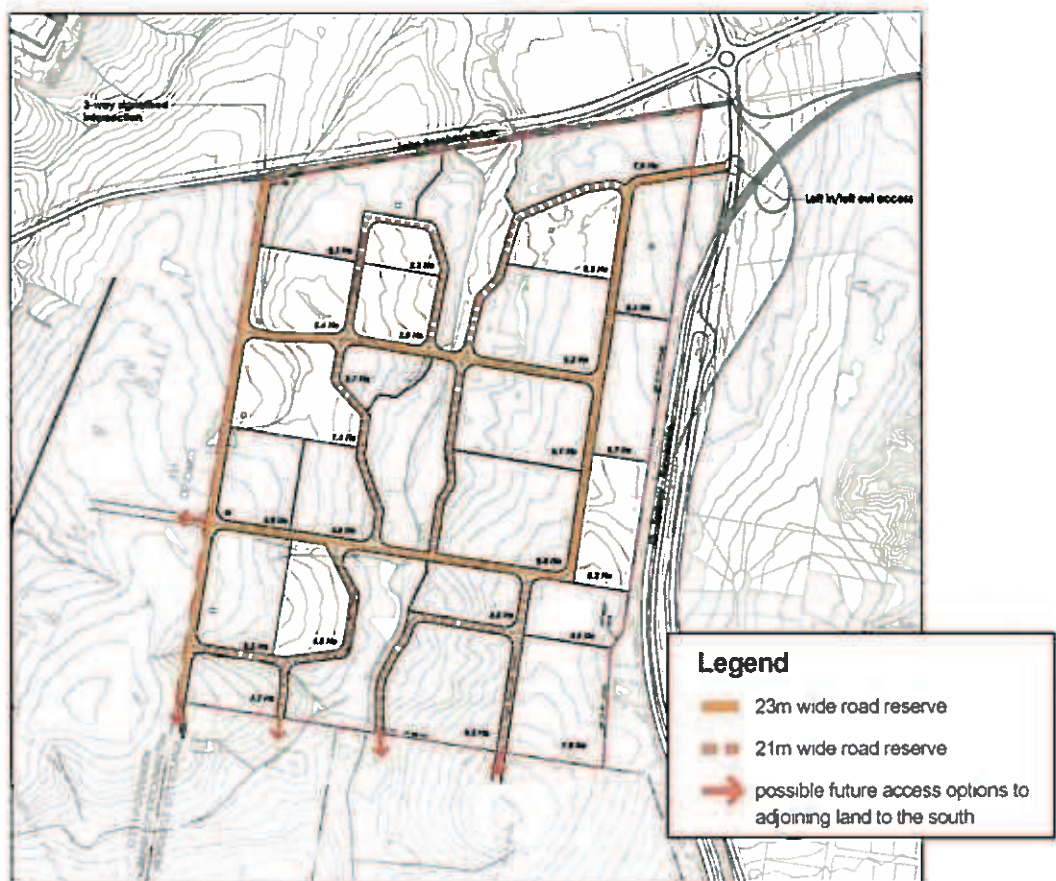


Figure 11 – Indicative Internal Road Layout



Figure 12 – Typical Local Industrial Road (21m in width)



Figure 13 – Typical Industrial Collector Roads (23m wide)

Council's initial advice stated that the traffic study does not assess the internal road layout. Council is concerned that, due to the likely size of the super-lots and likelihood of further subdivision in future, the road layout may develop in an inefficient piecemeal fashion and could result in an unacceptable number of intersections along the collector road and unnecessary cul-de-sacs. Council requests that more detailed design guidelines are provided to ensure a functional road hierarchy. In particular the Council considers:

- the UDGs should be revised to include recommendations on road reserve and carriageway widths for each type of road and intersection alignment and controls;
- that more detailed design guidelines are required for superlot subdivision to demonstrate an effective road network; and
- the proposed North-South road adjacent to lots 5 and 6 to be modified to Collector Road status to allow for any future extension of this road into lands to the south.

A submission from the Southern Owners Group, which owns lands adjoining the development site to the south, requested that future access be provided to lands to south and advised that the existing access to Boral Asphalt site is inadequate for peak traffic.

Department's Consideration

The Department considers that details regarding the proposed road network should be resolved with subdivision applications for each stage when the layout for lots has been finalised. As such, the recommended instrument of approval includes a requirement for the internal road network, including adequate provision for bicycles and pedestrian paths, to be agreed with Council, prior to lodgement of any development application.

6.4.3 Public Transport / Cycling & Walking Infrastructure

Public Transport

The site is currently not serviced by bus or rail. To the south-east, a bus route services Wallsend, providing links to Newcastle and the University of Newcastle. Beresford rail station, located approximately 6kms to the north-east, provides access to the Hunter Line, with links to Muswellbrook/Dungog to the north and Newcastle to the south-east.

The Statement of Commitments includes proposals to provide bus stop infrastructure once NSW Transport provides bus routes to and from the development site, or the provision of a peak hour shuttle bus service from the site to Beresfield rail station.

Council considers that the Proponent should discuss public transport provision with Transport NSW and to liaise with local bus operators, including Rover Coaches and Hunter Valley Buses, to prepare submissions to Transport NSW for increased improvements.

NSW Transport supports the Proponent's commitment to providing bus stops and associated necessary infrastructure in the event that bus routes are formed to and from Black Hill, however, advised that the Proponent should:

- prepare a feasibility study for the provision of a peak hour shuttle bus service for employees from Beresfield train station to Black Hill;
- liaise with NSW Transport regarding the appropriate integration with bus networks can be achieved including further consultation with bus operators to determine the need for any changes to current bus services and potential future bus routes, timing of delivery, and possible bus stop infrastructure for the site; and
- prepare a Workplace Travel Plan (WTP) to encourage more sustainable patterns of transport use and increase the shift from vehicular modes of transport.

Department's Consideration

The Department agrees with Council and NSW Transport that provision of public transport is a key component to the development. In relation to public transport infrastructure and the provision of new or extended bus routes to serve the subject site and a study to assess the potential viability of a shuttle bus service between the site and nearby rail stations, the Department considers that these issues should be addressed, in consultation with Council and NSW Transport, prior to the lodgement of the first subdivision application for the site. This requirement had been incorporated into the recommended instrument of approval.

In relation to NSW Transport requirement for a WTP to be prepared, the Department considers that the need to prepare a WTP should be considered at the development application stage for individual buildings as each industry that is established at the site will have different transport needs and requirements. It is noted that the recommended concept plan approval includes further assessment requirements for subdivision applications only, and issues to be addressed as part of any development application for individual buildings will need to be issued by the relevant consent authority.

Cycling and Walking Infrastructure

The proposal includes a network of on and off road shared pedestrian/cycle pathways through the development site as well as an allocation of \$315,000 to fund the staged provision of cycleways, to connect the site with the regional cycle network in consultation with the relevant Councils, DP&I, the former DECCW and NSW Transport.

Additionally the Proponent is seeking approval for a range of additional permitted uses on site to provide convenience goods and facilities for employees on site, and thus reduce the need for travel outside the Black Hill development. The Department's consideration of these uses has been discussed previously in Section 6.1.1.

Council supports the provision of pedestrian and cycle network on site as well as the allocation of funds to the regional network and has requested to be further consulted on this matter. However, Council considers that the need for and location of any proposed pathway in the open space/riparian corridor should be assessed against Crime Prevention through Environmental Design (CPTED) principles and NSW Police should be consulted on its location. It is Council's preference that shared pathways are within the footway area of all roads flanking the central riparian corridor to minimise any increase in the risk of crime.

Council has also provided its requirements for shared pathways on site and requested that the access to the site from the F3 cater for cyclists.

Department's Consideration

The Department supports the measures to promote and allocate funding for the integration of walking and cycling infrastructure proposed within the site with existing and proposed infrastructure in the wider region.

However, the Department considers that details regarding issues, such as width of proposed cycle/pathways and linkages to the regional network, are more suitably addressed at the development application stage. As such, the recommended instrument of approval requires the provision of walking and cycling infrastructure to;

- be carried out in consultation with Council, NSW Transport, and NSW Police prior to the lodgement of each subdivision application; and
- to be integrated with public transport facilities and the regional cycling network.

6.5 Heritage

The Heritage Impact Statement (HIS) (ERM, November 2010) provides an assessment of the heritage values associated with the site that would be impacted upon by the development and sets out measures to mitigate any potential impacts.

The HIS states that the site contains no items of State heritage significance and identifies areas with moderate, low and no Aboriginal archaeological potential and sets out specific mitigation measures are recommended for these areas. Additionally, a survey of the site identified two sites (known as Black Hill 1 and Black Hill 2) with archaeological potential.

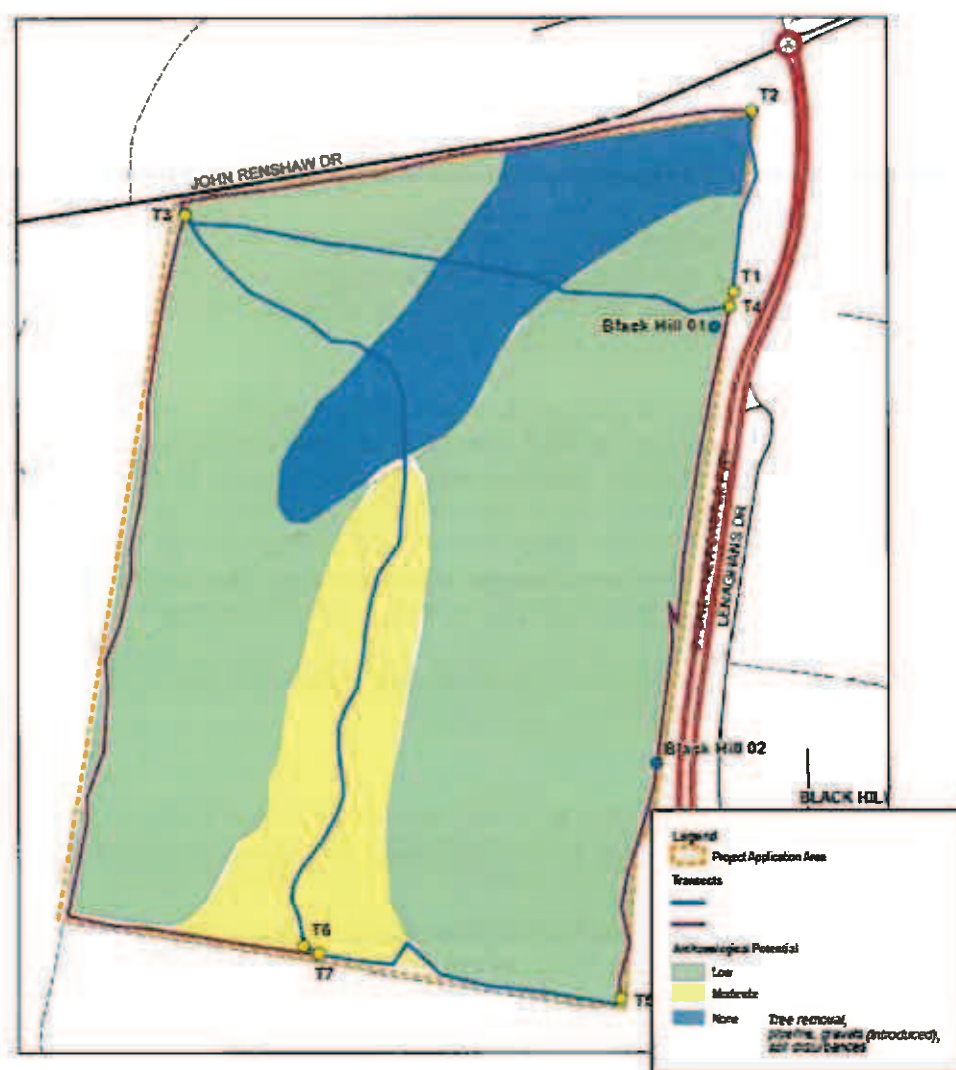


Figure 14 – Areas of Aboriginal Significance

The Proponent considers that while the site has low archaeological potential, the site has high cultural significance to the Aboriginal Community. A summary of these findings presented in the HIS is provided in Table 4, below.

Table 4 – Summary of the Finding of the HIS

| Site/Area | Archaeological Potential | Archaeological Significance | Aboriginal Significance |
|---|--------------------------|-----------------------------|-------------------------|
| Black Hill 1 | Low | Low | High |
| Black Hill 2 | Low | Low | High |
| Area with No Archaeological Potential | None | None | N/A |
| Area with Low Archaeological | Low | Low | High |
| Area with Moderate Archaeological Potential | Moderate | Moderate, possibly High | High |
| Historical Heritage | None | None | N/A |

The submission from the former DECCW raised concerns regarding consultation with local Aboriginal communities. In particular, DECCW requested evidence to demonstrate that the views of registered Aboriginal stakeholders had been taken into consideration regarding the assessment of Aboriginal heritage significance undertaken, the mitigation measures recommended, and the proposed Aboriginal Cultural Heritage Management Plan. DECCW raised additional concerns regarding the inadequacy of the assessment of Aboriginal cultural significance and incomplete registration of identified Aboriginal sites.

The Proponent subsequently provided a revised HIS which included detailed consultation logs and advice from registered Aboriginal stakeholders. Additionally, the Proponent has committed to:

- the preparation of an Aboriginal Cultural Heritage Management Plan (ACHMP) prior to gaining approval for any works commencing on site. The plan would include procedures for further investigations, storage and conservation of artefacts collected from the site, an interpretation strategy for the onsite provision of interpretation and ongoing consultation with the Aboriginal community;
- providing the Aboriginal community with the opportunity to collect artefactual material from the Black Hill 1 and 2 sites and to supervise works within a 50m radius of the sites;
- an archaeologist and Aboriginal representatives to inspect areas of moderate archaeological potential and for further assessment to be undertaken in the event additional sites are identified in this area; and
- a Chance Find Protocol.

Council supports the commitments made by the Proponent for the management of Aboriginal heritage provided that:

- It does not commit Council to ownership or management or regulatory function without the written agreement of Council;
- any repository for the safekeeping of artefacts and protocols for management should be negotiated with Aboriginal stakeholders, with any repository located locally; and
- it provides for an on-site interpretation strategy and a set of actions for the developer to implement at each stage of the development.

The former DECCW is satisfied that the measures proposed by the Proponent are appropriate but considers that ongoing consultation with the Aboriginal community is required. The former DECCW provided its requirements for the ACHMP and ongoing involvement of the Aboriginal community during the development of the site.

It is noted that responses to the revised HIS from Aboriginal groups were included with the revised document. However, a submission was also received by the Department from the Awabakal Descendants Traditional Owners Aboriginal Corporation (ADTOAC). ADTOAC raised concerns relating to the lack of consultation as part of the process and methodology used to survey the site. ADTOAC consider that the site represents a significant part of the Pambalong clan's heritage and are concerned that development of the site would impact on undiscovered sites. To address this issue ADTOAC, have recommended that further investigations are undertaken at the time of development and that any artefacts and midden sites that are identified are appropriately protected and preserved in consultation with the Aboriginal community. ADTOAC support the preparation of the ACHMP and requested that:

- workers are provided with cultural awareness training;
- Aboriginal community is consulted during the development of the proposal and particularly in the event that sites/artefacts are discovered; and
- consideration be given to interpretative signage, artwork, street/place names to demonstrate the Aboriginal significance of the site.

Department's Consideration

The Department concurs with the former DECCW that the mitigation measures proposed by the Proponent are appropriate and is satisfied that the proponent has met the requirement to

consult with Aboriginal stakeholders regarding the proposed concept plan, and that consultation will be ongoing.

The Department considers that the proposed ACHMP will be important in ensuring potential impacts of future development of the site of Aboriginal heritage are mitigated and managed. The requirements for this management plan, and for further archaeological investigations, Aboriginal heritage interpretation, as well as ongoing consultation with the Aboriginal community have been addressed in the recommended Instrument of Approval.

6.6 Soils and Water

The impacts of the proposal on soils and water within the site, and adjacent lands and water bodies, are examined in the following section. Sensitive environments located in the vicinity of the site include Woodberry Swamp, located to the east, into which Viney Creek discharges. Issues requiring consideration include management of stormwater from the site, changes to flooding behaviour as a result of the proposal, effects of climate change on the proposal and the potential for contamination.

6.6.1 Stormwater Management

The Proponent's Hydrology report (GHD January 2011) sets out a Water Sensitive Urban Design (WSUD) Strategy for the site that includes measures to address on-lot treatment of stormwater and detention basins and the identification of flood planning levels.

The salient aspects of the proposed WSUD Strategy are as follows:

- Runoff would be detained (achieved using roof water tanks, landscape measures and/or retention devices) and treated on individual lots, before being discharged to the street drainage system;
- Runoff from roads would be treated using vegetated infiltration swales and detention basins discharging to Viney Creek riparian corridors. The basins would provide both detention (i.e. for the street drainage system) and water quality treatment function. Nine detention basins are proposed, the majority of which are located adjacent to the Viney Creek riparian corridor; and
- Gross pollutant traps and other structural measures would be provided throughout critical locations as required.

The Proponent's statement of commitments outlines that details of the bio-retention basins, bio swales and swales are to be submitted with the stage 1 construction certificate application. The Proponent has committed to preparing a maintenance program for this infrastructure, and will manage these facilities for a five year period or until all lots are sold in the relevant development precinct.

Modelling of the quantity and quality of the stormwater generated by the proposal indicates that the proposed WSUD strategy would ensure:

- that Council's stormwater quality targets are met and consequently stormwater would be treated to an acceptable level prior to discharge; and
- post development stormwater flows from the site would be generally similar to or less than pre-development flows.

The former DECCW and NOW are supportive of the proposed WSUD Strategy, provided that further detail is provided at the development application stage for their consideration. NOW has provided its requirements for stormwater management associated with any future development application for the site.

In its submission, Council advised that the Proponent is to take responsibility for:

- ongoing maintenance and removal of all erosion and sedimentation control structures and devices.
- ongoing monitoring, sampling and reporting program for the life of the development. Any underperformance is to be addressed in consultation with Council.

Council opposes the proposed dedication of 9 detention basins to Council. Council prefers 'at source' controls or the introduction of a Community Scheme, with the basins located within land owned and managed under community title on behalf of landowners.

Council also raised concerns that the Proposed WSUD measures will need to be designed and positioned to avoid damage from heavy vehicles accessing the industrial lots. Furthermore, Council raised concern that the predicted differential settlement pattern, consequent to subsidence, has the potential to break underground pipes, change the direction of falls, alter critical weir and pipe levels and change design parameters.

Department's Consideration

The Department concurs with NOW and the former DECCW that the measures proposed by the Proponent to managed stormwater on site are appropriate. However, the detailed design of the stormwater management system should be resolved with the first application for subdivision, along with a program for the maintenance and monitoring of infrastructure. These requirement have been incorporated into the recommended instrument of approval.

The proposed detention basins must be managed and maintained on an ongoing basis. Council's opposition to taking ownership of these assets is noted. However, a scenario whereby detention basins are located within individual private lots may lead to uncoordinated management, and possibly neglect, with a corresponding negative impact on water quality in the area. Consequently, the Department considers that management arrangements for the detention basins should also be resolved prior to the first application for subdivision. This requirement has been incorporated into the recommended instrument of approval.

6.6.2 Flooding and Climate Change

According to the Proponent's hydrology report (GHD January 2010), areas associated with inundation under the 1 in 100 year annual recurrence interval are primarily associated with the Viney Creek riparian corridor and its tributaries (see Figure 15). Additionally, under the 100-year future climate (2100) scenario in a 100-year ARI event, flood levels adjacent to the site will increase by less than 0.3 m.

Furthermore, mine subsidence may cause the floodplain adjacent to the creek to be lowered. Therefore, floor levels may need to be raised in some instances.

In its submission, Council requested the hydrological assessment to be revised to include more accurate mapping for flood simulations, details on rise times and flash floods and details regarding the flood planning levels. Council also raised concern that evacuation measures in the event of flash flooding have not been addressed.

The Proponent's PPR states that the flood mapping data was the most accurate data available at the time and more accurate mapping will be provided at detail design stage. The PPR also agrees that more detail will be provided at DA stage regarding evacuation issues.

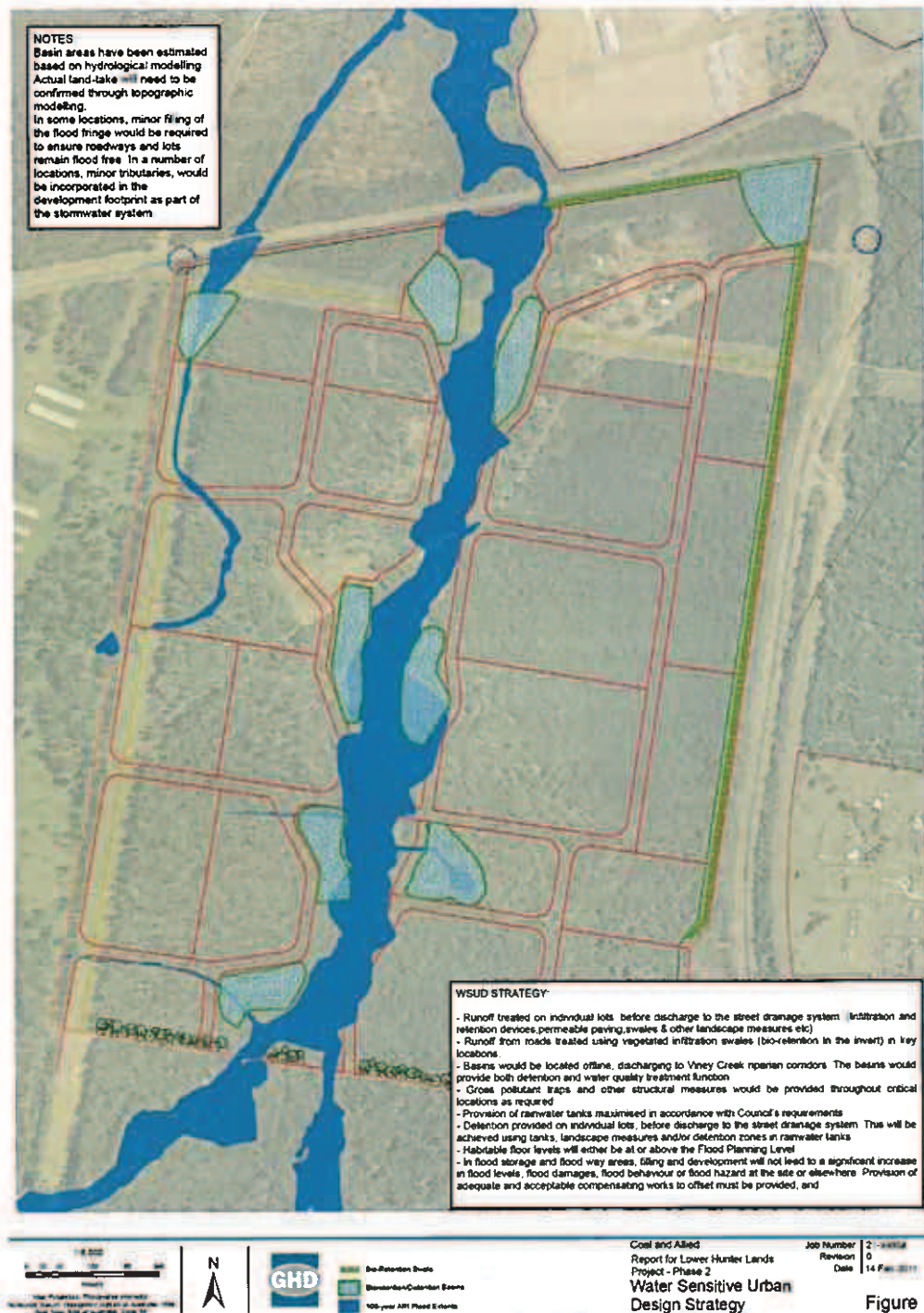


Figure 15 – Water Sensitive Urban Design and Flood Hazard

Department's Consideration

The Department is satisfied that the proposed flood planning levels are sufficient to address any projected sea level rise due to Climate Change. However, it is recommended that planning levels, particularly those levels relating to land located adjacent to the creek, are to be determined once mine subsidence has been completed.

All such levels, along with accurate mapping for flood simulations, details on rise times and flash floods are to be submitted as part of future development applications. Consequently, the Approval includes a requirement to enforce this.

6.6.3 Contamination / Remediation

The Proponent's *Preliminary Geotechnical, Contamination and Mine Subsidence Assessment*, prepared by Douglas Partners, identified a range of contaminants present on the site generally (associated with illegal dumping, fill and former industrial uses on site) and also contamination that is specifically related to the Boral Asphalt site. While soil analysis indicated that contamination present on site did not exceed health based criteria for commercial/industrial land as well as residential use, no subsurface investigations were undertaken at the Boral site and groundwater was not tested for contamination. The report recommends further investigation, particularly in the southern part of the site, under the site when the mining lease ceases and along the creek, following clearing of dense vegetation and the preparation of a Remediation Action Plan (RAP). The Proponent has committed to carry out further contamination assessment and remediation work with each subdivision application, prior to the issue of the subdivision certificate, to ensure that the site would be suitable for future proposed uses.

Council has requested that in preparing the RAP, the Proponent must take into consideration the uses proposed as part of the Concept Plan, which include industrial, commercial and supporting facilities, such as child care facilities.

It is noted that the VPA includes requirements for the remediation of areas within the conservation lands. The former DECCW considers that contamination issues within the conservation lands would be addressed by the VPA.

Department's Consideration

The Department agrees with Council's views and the recommendations of the Geotechnical report, which sets out the parameters of future assessment of on-site contamination and remediation. The recommended instrument of approval requires further assessment of contamination and the preparation of RAPs in accordance with relevant guidelines prior to the lodgement of any subdivision applications, which takes into account future permissible uses on the site, including any sensitive receivers. The recommended instrument of approval would therefore ensure that the suitability of the land would be further assessed at the development application stage, and that the land would be remediated before it is used for industrial and related purposes.

The Department is also satisfied that the necessary remediation works within the conservation lands have been addressed by the VPA.

6.6.4 Groundwater

NOW has raised concerns that issues relating to impacts on and protection of groundwater have not been addressed in the EA. NOW has provided a series of requirements comprising mitigation measures relating to these issues, to be carried out as part of future development applications.

The Mine Subsidence Board has also advised that mine workings may be charged with water and water seepage may occur at seam outcrops and drifts. Consequently water emanating from mine workings may need to be managed.

The Proponent has indicated that impacts on groundwater will be assessed prior to the submission of any DA and any potential impacts identified will be mitigated against. The Proponent also acknowledges that localised seepage may occur following rainfall and this can be managed using sump pumps with no overall impact on the groundwater regime.

Consideration

The Department considers that further assessment of groundwater including potential seepage from mine workings should be undertaken during the detailed design to identify groundwater levels and to establish any management measures that may be required to minimise impacts on groundwater.

It is noted that where excavations intercept groundwater, a licence under Part 5 of the *Water Act 1912* is required. The Department has therefore incorporated requirements into the recommended instrument of approval to ensure that the full extent of potential groundwater impacts are considered as part of any subdivision application.

6.7 Visual Impact

The following screening is set out in the Urban Design Guidelines:

- retention of a 10m wide visual buffer along the northern boundary;
- provision of a 20m wide 'green buffer zone' along the eastern boundary; and
- provision of a 20m visual buffer along the southern boundary.

The site is exposed to the west by virtue of the proposed road along the boundary and the existing cleared electricity easement. The Proponent states that the road will be lined with trees and that the effective setback requirement for industrial building envelopes would be 83m, comprising the proposed road and existing Transgrid easement, which will minimise visual impact to lands to the west. Existing views into the site in the north are created by the electricity easement.

Council considers the proposed 10m buffer along the northern boundary (John Renshaw Drive) should be increased to 20m to cater for incremental loss over time, and that further measures are required to minimise visual impacts on lands to the west given that the extent of planting would be limited within the electricity Transgrid easement. Council also provided requirements for street plantings.

Submissions from the local community are concerned that the proposal will impact negatively on the visual amenity and lifestyle of local residents, and consider that there should be a 100m vegetated buffer around the site to protect amenity.

Department's Consideration

The Department considers that the Concept Plan area will be appropriately screened on the northern, southern and eastern boundaries. While the adjoining land to the west is zoned for rural residential (including compatible land uses), the Department notes that this land is identified for employment uses under the *Lower Hunter Regional Strategy*. In the interim, the Department is satisfied that the width of the existing easement on the subject site, in combination with the existing vegetation on the adjoining lands to the west, would mitigate the visual impact of the Black Hill site from to the west.

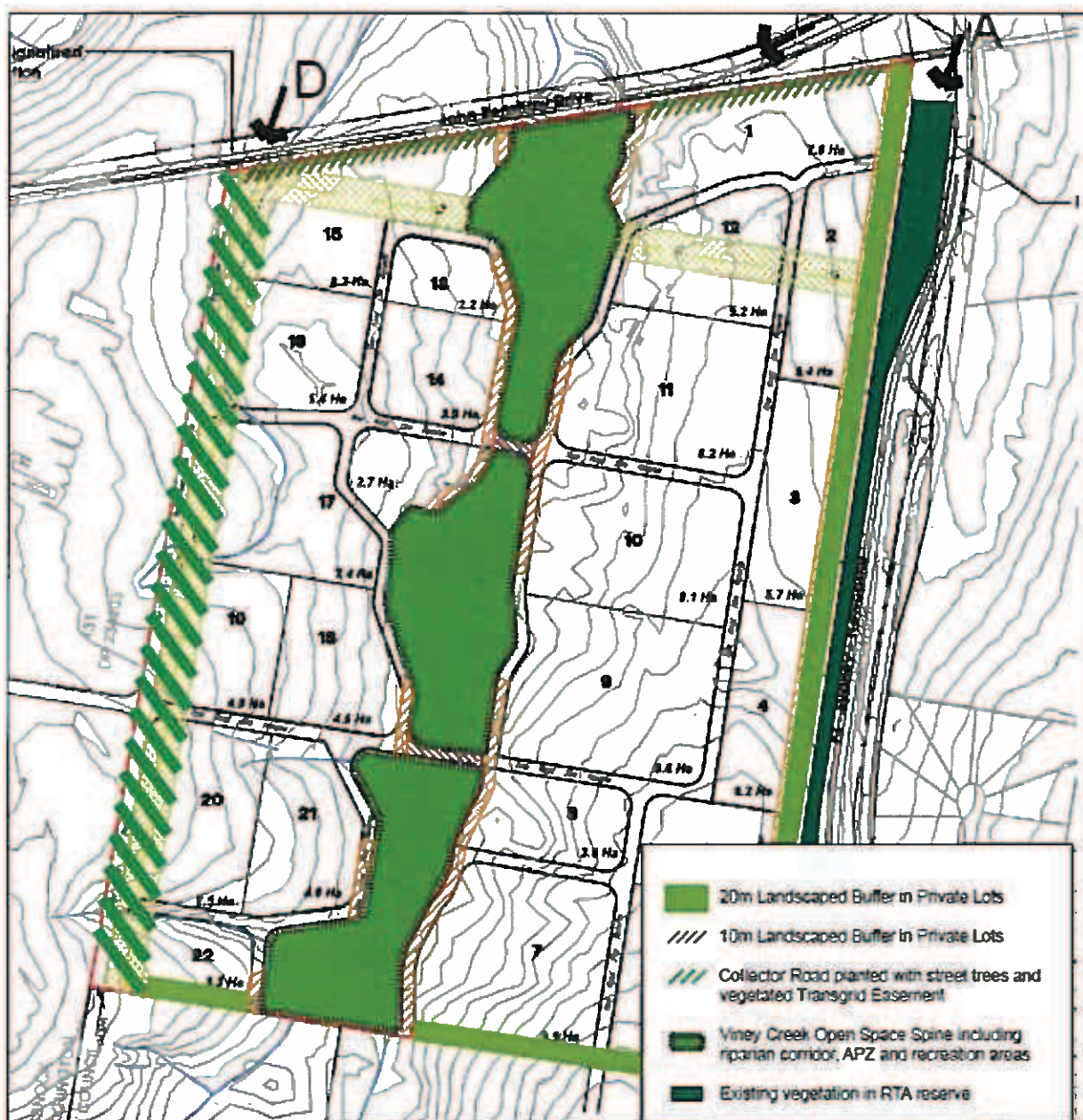


Figure 11 – Proposed Measures to Reduce Visual Impact

6.8 Mining and Geotechnical Issues

The majority of the site is located within a mining lease ML1618 (Abel Mine), held by Donaldson Coal. The Black Hill and Stockrington sites are undermined, but they are not located within a proclaimed mine subsidence district. The Proponent considers the site has a 'low to moderate risk of slope instability with respect to the natural topography'.

The Proponent committed that development would not commence at Black Hill prior to June 2013, when all subsurface mining was projected to have been completed. On 17 September, Donaldson Coal advised that subsurface mining at the site was complete with the exception of Panel 19A, located in the south-west of the site. A survey of Panel 19A undertaken on 14 September 2013 indicated that minimal movement associated with subsidence (<20mm) had occurred since a survey was undertaken in June 2013. Donaldson advised that it would liaise with the NSW Department of Trade and Investment (the former Department of Industry and Investment, DI&I) to verify the completion of subsidence.

Department's Consideration

The former DI&I and Mine Subsidence Board do not oppose the development provided that coal mining is completed prior to the commencement of development. Additionally, DI&I consider that impacts of the development on future mining have been adequately addressed. The Mine Subsidence Board has also provided recommendations for the management of the risk of mine subsidence.

The Department is satisfied that the proposed development will not negatively impact on future coal mining at the Black Hill site. Nonetheless, subsidence associated with under-mining must be assessed and managed at the development application stage. The approval therefore includes a requirement that each subdivision must demonstrate that the risk of mine subsidence has been eliminated or managed in accordance with the Mine Subsidence Board's requirements.

6.9 Other Issues

The following Table 6 provides a discussion of additional issues raised in the submissions.

Table 6: Other Issues

| Aspect | Issue | Consideration and Recommendation |
|------------------------|---|--|
| Noise | <ul style="list-style-type: none">• The Proponent's assessment of the potential noise impacts of the proposal indicates that land uses within the development will not exceed acceptable noise levels, with the exception of night-time operations and that such impacts can be tempered, through measures such as screening or other design interventions.• The Proponent proposes to locate sensitive receiving uses in the central portion of the site, to separate uses such as childcare facilities from noise-generating industrial uses.• The Proponent has committed to preparing a Construction Noise and Vibration Management Plan, as well as an Acoustic Statement with each development application associated with the proposal that details measures to reduce the impact of noise from the estate on surrounding land uses and measures to reduce the impact of noise from external noise sources upon future land uses within the site, where required.• Council raised concern that the proposal makes no commitments to install measures to mitigate noise from industrial / commercial uses and that the assessment fails to examine the noise impact on supporting facilities, for example, childcare facilities.• Public submissions identified potential noise impacts from industrial development as a key issue to be mitigated should the proposal proceed, to protect the local lifestyle. | <ul style="list-style-type: none">• The Department is satisfied that potential noise impacts on existing sensitive receivers can be managed through appropriate location of development that has the potential to generate noise on site, as well as through building design.• However, the Department considers that potential conflicts between industrial development and sensitive receivers that may occur on site (e.g., child care facilities) need to be managed.• Consequently the Department recommends that a Noise Management Plan is prepared for the site which:<ul style="list-style-type: none">- identifies noise limits for industrial developments during construction and operation;- criteria that onsite sensitive receivers must meet;- measures to mitigate and manage potential noise sources; and- measures to manage potential land use conflicts within the site. |
| Community Consultation | <ul style="list-style-type: none">• Community consultation has been inadequate. Ongoing consultation is required to address the needs and aspirations of the local community | <ul style="list-style-type: none">• Issues raised in the consultation exercise have informed the Department's assessment of the proposal.• The Department considers that the community would have further input to the development of the site as the Proponent would be required to consult with the community as part of any future |

| Aspect | Issue | Consideration and Recommendation |
|---|---|---|
| <i>Air Quality</i> | <p>Council requested further assessment</p> <ul style="list-style-type: none"> • to determine potential air quality impacts on residential receivers on surrounding lands; and • of future vehicle emissions associated with the proposed employment lands. | <p>development applications for the site.</p> <ul style="list-style-type: none"> • The Department considers that air quality emissions can be adequately assessed and mitigated at detailed design stage with each development application lodged when proposed land uses are known. |
| <i>Consideration of Alternatives/ Piecemeal Development</i> | <p>The community raised concerns that:</p> <ul style="list-style-type: none"> • alternative sites have not been considered, that sufficient land exists north of John Renshaw Drive, and more widely in the Newcastle and Lake Macquarie LGAs for industrial development; and • the proposal represents piecemeal development. | <p>The development site is identified in the Lower Hunter Regional Strategy (LHRS) for employment lands, and the proposal is consistent with the LHRS. Additionally the Department is satisfied that the concept plan allows for the large scale coordinated development of the 183ha site.</p> |
| <i>Utilities and Infrastructure</i> | <ul style="list-style-type: none"> • The Proponent has committed to the funding and delivery of all on-site infrastructure and services including: <ul style="list-style-type: none"> - Electricity from existing network and construction of a separate zone substation or extension of high voltage mains to the service the site, if required. - Water and sewer, following further investigations with Hunter Water Corporation as to the most appropriate options for provision. - Provision of a communication service complying with the NBN Policy - Locating new utility services underground. • Ausgrid has advised that there is currently insufficient zone substation capacity to service the site and has provided its requirements for further analysis to be undertaken to determine the scope of works required. However, Ausgrid is satisfied that its network can be augmented to service the site. • Hunter Water has advised that it intends to relocate the Chichester Trunk Gravity Main, located along the northern boundary of the site, below the surface and suggested that the Proponent contribute to its construction to withstand a future traffic crossing. • Hunter Water also requested that the Proponent prepare a developer-funded servicing strategy, in consultation with Hunter Water, to include proposals for wastewater and water delivery servicing proposals for the site, including an assessment of impacts on existing infrastructure and identification of any improvement works required. • Transgrid easements are located along the northern and western boundary of the site, and Transgrid has provided its requirements for works within and adjacent to the easement, including requirements for ongoing access to the easements during construction. | <p>The Department is satisfied that the proposed commitments will ensure the site is adequately serviced. Nonetheless, the first subdivision application should demonstrate that the Proponent has consulted with service providers and that their requirements have been incorporated into the detailed design of the subdivision.</p> <p>In relation to Hunter Water's request for contributions to the relocation Chichester Trunk Gravity Main pipeline, it is noted that the relocation of this pipeline is not included in the draft Special Infrastructure Plan for the Lower Hunter and therefore cannot be levied as such. Consequently any funding arrangements will need to be negotiated between Hunter Water and the Proponent directly.</p> |

*Bushfire
Management*

- The site is classified as bushfire prone, with surrounding vegetation representing a potential threat to the proposal.
 - The concept plan has been designed to accommodate 20m Asset Protection Zones (APZ) to the south and east of the site and abutting the Viney Creek riparian corridor. No APZ are required to the north and west due to proximity to John Renshaw Drive (to the north) and the cleared electricity easement on the western boundary of the development site.
 - The Proponent has committed to preparing a bushfire management plan in accordance with RFS guidelines for each stage of the development including details of the location, establishment and maintenance of APZs, the retention and removal of vegetation and fuel management plan.
 - The NSW Rural Fire Service (RFS) has provided its requirements for the future development of the site.
 - Council recommends the APZ be established outside of the core riparian zone and not be included within riparian zone calculations.
 - The Department considers that the APZs and associated measures proposed by the Proponent adequately meet the requirements of Planning for Bushfire Management. However, the Department considers that management arrangements of the APZs should be resolved prior to the lodgement of the first application for subdivision.
 - RFS requirements have been incorporated into the recommended instrument of approval.
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7 CONCLUSION

The Department has assessed the EA, PPR and the Addendum to the PPR for the proposed employment lands and duly considered advice from public authorities as well as the issues raised in general submissions in accordance with Section 75I(2) and 75N of the Act. All the relevant environmental issues associated with the proposal have been extensively assessed. The key issues relating to the development are proposed land uses, impacts on fauna and flora, traffic and access, , stormwater management and hydrology, Aboriginal heritage, and infrastructure contributions.

The Proponent has committed (through Statements of Commitment) to a number of measures to ensure the development proceeds in an orderly manner and does not adversely impact on the environment, local amenity and landscapes adjacent on the site. The Department is recommending further modifications to the project application and conditions of approval to augment the commitments made by the Proponent.

The Department considers that the proposal is in the public interest as it: provides development of an appropriate scale; provides the dedication of large areas of conservation land to the NSW Government; and is consistent with the objectives of the *Lower Hunter Regional Strategy* and the *Lower Hunter Regional Conservation Plan*. Along with the proposed recommended instrument of approval, including modifications, management plans and other mitigation measures to be prepared and implemented, it is considered that the site is suitable for the proposed development.

The Department recommends that the subdivision to enable the transfer to conservation lands requires no further assessment and that project approval is granted for the subdivision of conservation lands in conjunction with the concept plan.

Consequently, the Department recommends that the proposed concept plan be approved, subject to the proposed modifications and further assessment requirements outlined at **Appendix B**.

8 RECOMMENDATION

It is recommended that the Planning and Assessment Commission:

- (A) **consider** findings and recommendations of this report;
- (B) **approve** the Concept Plan application, subject to modifications, under Section 75O and 75P of the *Environmental Planning and Assessment Act, 1979* having considered all relevant matters in accordance with (A) above;
- (C) **determine** the future environmental assessment requirements for subsequent project or development applications associated with the Concept Plan (Tag A);
- (D) **determine** no further environmental assessment is required for the transfer of conservation lands and grant project approval; and
- (E) **sign** the Instrument of Approval (**Tag A**)

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11/10/2013