

ATTACHMENTS UNDER SEPARATE  
COVER

ORDINARY COUNCIL MEETING  
22 FEBRUARY 2022



**PORT STEPHENS**  
C O U N C I L



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**ITEM 1 - ATTACHMENT 6      8 FEBRUARY 2022 - ORDINARY COUNCIL MINUTES.****MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022**

Mayor Ryan Palmer vacated the chair and left the meeting at 6:45pm. Deputy Mayor, Cr Steve Tucker chaired the meeting.  
Councillor Chris Doohan left the meeting at 6:45pm.  
General Manager left the meeting at 6.45pm.

**ITEM NO. 1**

**FILE NO: 21/327548**  
**EDRMS NO: 16-2017-524-1**

**DEVELOPMENT APPLICATION 16-2017-524-1 (EARTHWORKS - FILL) AT 52, 52A AND 40 CABBAGE TREE ROAD, WILLIAMTOWN (LOT: 7 DP 1059398, LOT: 7 DP: 4831, LOT: 3DP: 1106651)**

REPORT OF: KATE DRINAN - DEVELOPMENT AND COMPLIANCE SECTION  
MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse DA No. 16-2017-524-1 for Earthworks – Fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651) for the reasons contained in **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING - 8 FEBRUARY 2022  
MOTION**

<b>014</b>	<b>Councillor Steve Tucker</b> <b>Councillor Peter Kafer</b>  It was resolved that Council defer DA No. 16-2017-524-1 for Earthworks – Fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651) for a period of 2 weeks.
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Cr Arnott foreshadowed a motion that the recommendation be adopted.

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Matthew Bailey, Glen Dunkley, Peter Kafer and Steve Tucker.

Those against the Motion: Crs Leah Anderson, Giacomo Arnott, Peter Francis and Jason Wells.

The motion was carried on the casting vote of the Chairperson.

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The purpose of this report is to present Development Application (DA) No. 16-2017-524-1, for Earthworks – Fill, to Council for determination. The DA is being referred to Council in accordance with the Call to Council Policy (**ATTACHMENT 4**).

The DA was reported to Council at its meeting of 11 September 2018 (**ATTACHMENT 5**) with a recommendation for refusal. The refusal recommendation by Council staff was as a result of key issues arising through the assessment of the DA, including impacts to flooding, ecology and rural character.

At the September 2018 meeting, Council resolved to defer consideration of the DA for a site inspection. Subsequent to that meeting, the applicant has provided additional information relating to the development characteristics, earthworks, flooding and ecology.

The application was not immediately reported back to Council to allow for a Planning Proposal associated with the site and the Williamstown Special Activation Precinct (SAP) Masterplan to progress through assessment and determination.

The Planning Proposal associated with the site was rejected at the Gateway determination stage. A subsequent rezoning review was conducted by the Joint Regional Planning Panel (now Hunter and Regional Planning Panel) at the request of the applicant in 2020. The Gateway review by the Panel rejected the Planning Proposal, determining that the proposal did not have strategic merit. It is anticipated the Williamstown SAP Masterplan will be placed on public exhibition in the first quarter of 2022.

Since the September 2018 deferral, Council staff identified that earthworks, even if utilising clean fill, are classified as 'waste management works'. Clause 32 within Schedule 3 of the Environmental Planning and Assessment Regulation states that waste management works (earthworks), where not ancillary to any other development activity, is Designated Development when located on a floodplain, an area of high water table and within 250m of a dwelling not associated with the development. As a result, Council staff cannot support the proposal without the applicant obtaining the Secretary's Environmental Assessment Requirements (SEARs) from the Department of Planning, Industry and Environment (DPIE) and preparing an Environmental Impact Statement. On this basis, the application is invalid.

The applicant has been requested to withdraw the application on a number of occasions however, to date, no withdrawal request has been received.

Further details regarding the statutory framework for designated development and other key issues relating to the DA are detailed in the Planners Assessment Report contained in (**ATTACHMENT 2**).

A summary of the DA and property details is provided below:

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## MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022

Subject land:	52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651)
Total area:	7.5ha
Zoning:	RU2 – Rural Landscape
Permissibility:	Earthworks are permissible under Clause 7.2 of PSLEP 2103
Submissions:	7
Key issues:	<p><u>Designated Development Requirements</u> - The DA is classified as Designated Development. Designated Development applications require an Environmental Impact Statement (EIS) and consultation with Department of Planning, Industry and Environment through obtaining SEARs. As a result, Council staff are unable to support the DA without the applicant obtaining the Secretary's Environmental Assessment Requirements (SEARs) from the Department of Planning, Industry and Environment (DPIE) and preparing an Environmental Impact Statement. On this basis, the application is invalid.</p> <p><u>Impacts to Rural Character</u> – The DA will impact on the rural landscape character of the site and surrounding context, and is consequently inconsistent with the RU2 zone objectives.</p>

A locality plan is provided at **(ATTACHMENT 1)**.

#### Proposal

The DA is seeking consent for earthworks comprising the placement of fill in a single stockpile on the subject site to achieve the Flood Planning Level (FPL) of 4.0 metres Australian Height Datum (AHD). The proposed storage of fill is intended for the future use and development of the site in relation to business and airport related development, contingent upon a future rezoning occurring as part of the Williamtown SAP, or rezoning via a Planning Proposal.

The DA comprises:

- Delivery of fill on-site over a 5 year timeframe (maximum 50 movements per day)
- Maximum height of fill up to 4.0 metres (measured from existing ground level)
- Stockpile surface area is 16,223m<sup>2</sup>
- Fill volume approx. 53,698m<sup>3</sup>
- Batter at a 1:4 gradient with the following setbacks to property boundaries:
  - Eastern side boundary - varied setback of 10 metres to 26.7 metres.
  - Western side boundary - over 40 metres.
  - South-western boundary (adjacent No. 50 Cabbage Tree Road) – varied setback of 15.6 metres and 22.7 metres.

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- Proposed access road to be setback 43.22 metres from the existing dwelling located at No. 50 Cabbage Tree Road
- Fill material will comprise Virgin Excavated Natural Material (VENM) and/or Excavated Natural Material (ENM).

Site Description

The site consists of 3 lots with a combined area of 7.5 hectares and is located adjacent to the Defence and Airport Related Employment Zone (DAREZ) and identified within the Williamstown SAP investigation area. Vehicular access to the site is proposed via 40 Cabbage Tree Road. The site is constrained by environmental and neighbouring operational factors, including: flooding, contamination (PFAS), RAAF Base operations, ecology and bushfire. The site is currently vacant, partly cleared of vegetation, with the northern section containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

The site is surrounded by rural land to the east, west and south. To the north, the site adjoins an approved 103 lot special purpose subdivision for Defence and airport related employment development, adjacent the Newcastle Airport, known as the 'Astra Aerolab'. A small lot, containing a single storey dwelling is located at the Cabbage Tree Road frontage, adjacent the subject site between 52 and 40 Cabbage Tree Road.

Key issues

The key issues that arose during the DA assessment related to the classification of the proposed works as Designated Development, rural character and visual amenity impacts, as outlined in further detail below. A detailed assessment of the development is provided in the Planners Assessment Report contained in **(ATTACHMENT 2)**.

Designated Development

The application is classified as Designated Development in accordance with Clause 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as the development is categorised as a waste management facility located on a floodplain, an area of high water table and dwellings within 250m not associated with the development in accordance with Schedule 3, Clause 32 of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

Section 4.12(8) of the EP&A Act 1979 stipulates that a DA for Designated Development is to be accompanied by an Environmental Impact Statement (EIS) prepared in the form prescribed by the regulations, which includes a written application to the DPIE to obtain SEARs. There is no opportunity to obtain SEARs and prepare an EIS through an amendment to this current application.

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The applicant has not correctly classified the DA as Designated Development, nor has the applicant sought SEARs from DPIE or prepared an EIS. As a result, the DA does not meet the minimum application requirements of the EP&A Act 1979.

Rural Character and Visual Impacts

The subject site is zoned RU2 Rural Landscape and the objectives of the zone encourage sustainable primary industry production by maintaining and enhancing the natural resource base, maintain the rural landscape character of the land and provide for a range of compatible land uses, including extensive agriculture.

Given the DA includes fill that extends to heights up to 4.0 metres, the development will be highly visible from Cabbage Tree Road and surrounds across Williamstown. A landscape plan was submitted with the amended application to demonstrate the visual impact of the development. This plan identifies the establishment of native plant layers to screen the proposed stockpile, by planting taller species at the base of the mound and graduating to small species such as turf at the top. However, the proposed visual screening will take time to achieve as vegetation will need to reach maturity. Through the progressive delivery of new fill on-site, seedlings and vegetation are likely to be disrupted or destroyed, which could result in a failure to achieve mature height and subsequent visual impact mitigation.

The applicant has failed to demonstrate a nexus for which the DA would be required to support any current permissible land use within the current RU2 Rural Landscape zone and as a result, the visual and rural character impacts are not considered appropriate or suitable for the site. Subsequently, the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

Williamstown SAP Master Plan

The Williamstown SAP Master Plan has not been publically exhibited and accordingly there is no strategic or economic purpose for which the proposed earthworks would warrant support. Moreover, the establishment of an isolated and unplanned fill pad may compromise flood modelling and infrastructure planning for potential future works under the SAP.

For the above reasons, the DA does not adequately consider the impacts on the rural landscape character of the site and surrounding context and therefore is inconsistent with the zone objectives.

Conclusion

Based on the assessment by Council staff, the DA is inconsistent with the following legislation and policies:

- Environmental Planning and Assessment Act 1979 – Section 1.3 (Objects of Act), Section 4.12 (Application), Section 4.15(1)(b) (The likely impacts of the



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development), Section 4.15(1)(c) (Site Suitability), Section 4.14(1)(e) (Public Interest).

- Port Stephens Local Environmental Plan 2013 (PSLEP 2013) – Clause 2.3 (Zone Objectives) and Clause 7.2 (Earthworks).

A detailed assessment of the DA has been undertaken, and with consideration to the inconsistencies identified against the Environmental Planning and Assessment Act 1979 and PSLEP 2013, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

**FINANCIAL/RESOURCE IMPLICATIONS**

The application could be potentially challenged in the Land and Environment Court. Defending Council's determination could have financial implications.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act and PSLEP 2013.

Detailed assessment against these requirements are contained within the assessment report provided at **(ATTACHMENT 2)**.

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<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is supported, there is a risk that Council's decision will be ultra vires as the application requirements for Designated Development under Clause 4.12 of the Environmental Planning and Assessment Act 1979 have not been met.	High	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendation.	Yes
If the DA is approved, a third party may appeal the determination.	Low	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The establishment of an isolated and unplanned fill pad may compromise flood modelling and infrastructure planning for potential future works under the SAP. This would have detrimental social, environmental and economic implications.

The applicant has failed to demonstrate a nexus for which the proposed earthworks would be required to support any current permissible land use within the current RU2 Rural Landscape zone and as a result, the disturbance created by the works and associated vehicle movements are not considered appropriate or suitable for the site. Furthermore, the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the locality.

Accordingly, through the assessment of the DA, it is considered the development will result in negative social, economic and environmental outcomes.

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Consultation was undertaken with internal officers, including; Engineering, Natural Systems (Ecology and Weeds), Strategic Planning, and Environmental Health. The referral comments from these officers were considered as part of the assessment contained at **(ATTACHMENT 2)**. Following the submission of additional information, no objections were made, with the exception of the Strategic Planning, which highlighted that the land has not yet been rezoned for commercial or business related development.

External

Consultation with the Environment Protection Agency (EPA) was undertaken during the course of assessment. Subject to recommended conditions of consent being imposed with respect to landfill, the EPA did not object to the development. The EPA did however, object to the removal of any fill once placed on the site, noting that the fill would likely become contaminated by PFAS, if inundated during flood event. Based on this advice, the applicant's previous proposal to remove the fill from the site if the land is not rezoned in the future was not supported.

Public Exhibition

The application was originally notified for a period of 14 days between 9 August 2017 and 22 August 2017. During this time, 4 submissions were received with 5 signatories.

As a result of modifications made to the development, the application was re-notified for a period of 14 days between 9 January 2019 and 23 January 2019. During this time, 3 submissions were received with 5 signatories. The key issues raised within the submissions included; drainage, spread of contaminated water, ecological impacts, flooding, visual impact, traffic management and lack of information supporting the development application. These issues have been addressed in detail within the detailed assessment report contained at **(ATTACHMENT 2)**. The assessment has acknowledged some of these concerns are insurmountable and therefore, the application is recommended for refusal.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Planners Assessment Report.

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- 3) Reasons for Refusal.
- 4) Call to Council Form.
- 5) Ordinary Council Minutes - 11 September 2018.

**COUNCILLORS ROOM**

- 1) Development Plans.
- 2) Unredacted submissions.

Note: Any third party reports referenced in this report can be inspected upon request.

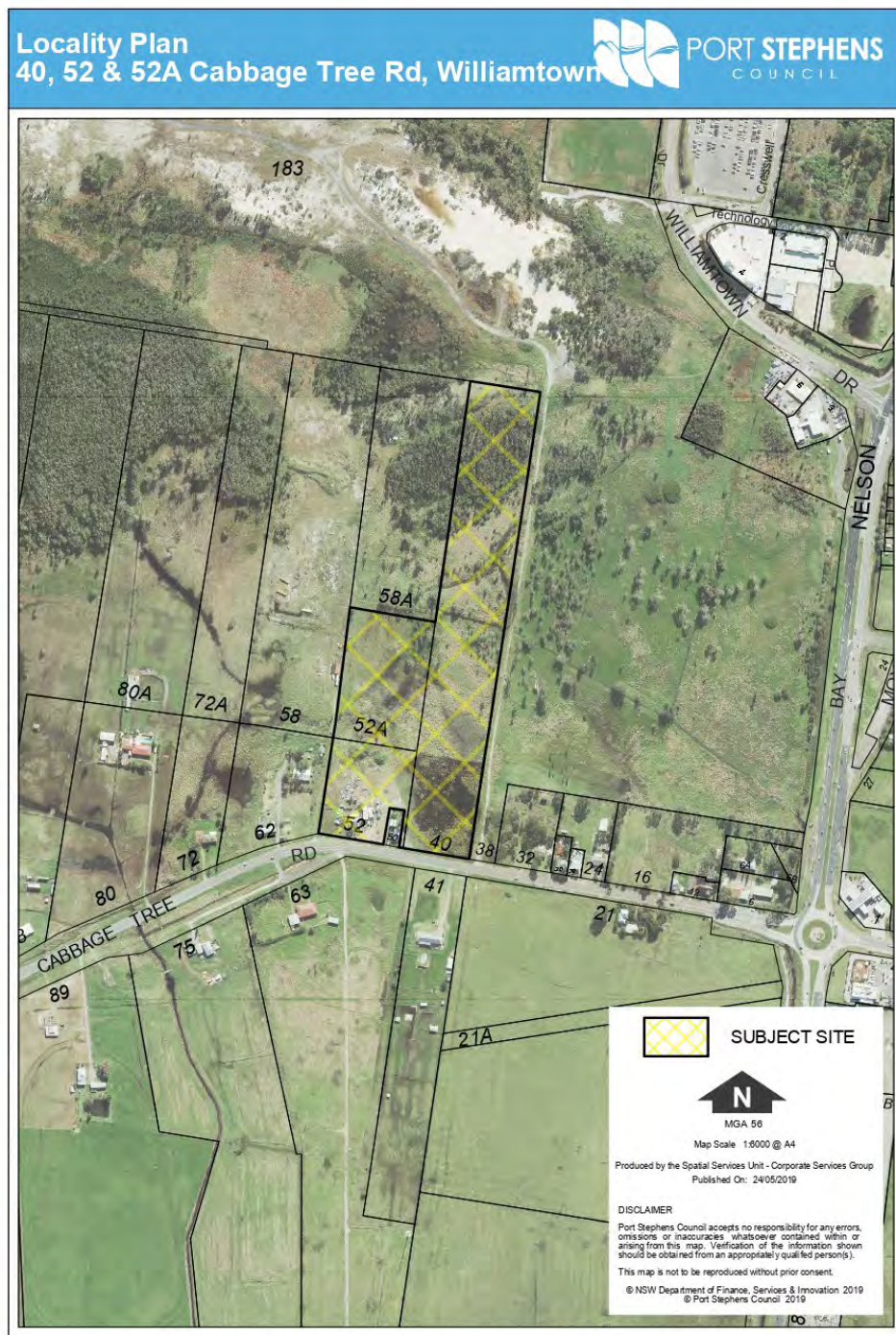
**TABLED DOCUMENTS**

Nil.

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ITEM 1 - ATTACHMENT 1      LOCALITY PLAN.





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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESMENT REPORT.



## APPLICATION DETAILS

Application Number	16-2017-524-1
Development Description	Earthworks - fill
Applicant	Land Development Solutions
Date of Lodgement	03/08/2017
Value of Works	\$20,000.00

**Background**

The development application (DA) was reported to Council at its meeting of 11 September 2018 with a recommendation for refusal. The recommendation of refusal by Council staff was as a result of key issues arising through the assessment, namely impacts to flooding, ecology and rural character. In this regard, the development was found to be inconsistent with the Environmental Planning and Assessment 1979 (EP&A Act), Port Stephens Local Environmental Plan (LEP2013), Port Stephens Development Control Plan 2014 (DCP2014), Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005.

At the September 2018 meeting, Council resolved to defer consideration of this item for a site inspection. Subsequent to that meeting, the applicant has provided additional information relating to the development characteristics, including earthworks, flooding and ecology.

The application was not immediately reported back to Council to allow for both a Planning Proposal lodged on the site and the Williamstown Special Activation Precinct (SAP) Masterplan to progress through assessment and determination.

The Planning Proposal was rejected at the Gateway determination stage. A subsequent rezoning review was conducted by the Joint Regional Planning Panel (now Hunter and Regional Planning Panel) at the request of the applicant in 2020. The Gateway review by the Panel rejected the Planning Proposal, determining that the proposal did not have strategic merit. It is anticipated the Williamstown SAP Masterplan will be placed on public exhibition in the first quarter of 2022.

Furthermore, since the September 2018 deferral, Council staff identified that earthworks, even if utilising clean fill, is classified as "waste management works". Clause 32 within Schedule 3 of the Environmental Planning and Assessment Regulation states that waste management works (earthworks), where not ancillary to any other development activity, is Designated Development when located on a floodplain, an area of high watertable and within 250m of a dwelling not associated with the development. As a result, Council staff cannot support the proposal without the applicant obtaining the Secretary's Environmental Assessment Requirements (SEARs) from the Department of Planning, Industry and Environment (DPIE) and preparing an Environmental Impact Statement. On this basis, the application is invalid.

The assessment below provides further details regarding the statutory framework for designated development and includes the assessment of the application that has already occurred.

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Development proposal

The applicant seeks approval for earthworks (waste management works) comprising the placement of fill in a single stockpile on the subject site to achieve the Flood Planning Level (FPL) of 3.0 metres Australian Height Datum (AHD) for the future use and development of the site in relation to business and airport related development, contingent upon a future rezoning occurring as part of the Williamstown SAP, or spot rezoning via a Planning Proposal.

The proposed development comprises:

- Delivery of fill on-site over a five year timeframe (maximum 50 movements per day);
- Maximum height of fill up to 4.0 metres (measured from existing ground level);
- Stockpile surface area is 16,223m<sup>2</sup>;
- Fill volume approx. 53,698m<sup>3</sup>;
- Batter at a 1:4 gradient with the following setbacks to property boundaries:
  - Eastern side boundary - varied setback of 10 metres to 26.7 metres.
  - Western side boundary - over 40 metres.
  - South-western boundary (adjacent No. 50 Cabbage Tree Road) – varied setback of 15.6 metres and 22.7 metres.
- Proposed access road to be setback 43.22 metres from the existing dwelling located at No. 50 Cabbage Tree Road; and
- Fill material will comprise Virgin Excavated Natural Material (VENM) and / or Excavated Natural Material (ENM).

An extract of the site plan is provided at **Figure 1** below.



Figure 1: Site plan

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESMENT REPORT.

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## PROPERTY DETAILS

Property Address	52A Cabbage Tree Road WILLIAMTOWN, 52 Cabbage Tree Road WILLIAMTOWN, 40 Cabbage Tree Road WILLIAMTOWN
Lot and DP	LOT: 7 DP: 4831, LOT: 7 DP: 1059398, LOT: 3 DP: 1106651
Current Use	Vacant land
Zoning	RU2 RURAL LANDSCAPE
Site Constraints	<ul style="list-style-type: none"> <li>• Acid Sulfate Soils – Class 3;</li> <li>• Koala Habitat – Preferred;</li> <li>• Endangered Ecological Communities – Swamp Sclerophyll Forest;</li> <li>• RAAF Base Williamtown – ANEF 30-35;</li> <li>• RAAF Base Williamtown – Height Trigger;</li> <li>• RAAF Base Williamtown – Bird Strike Class C;</li> <li>• RAAF Base Williamtown – Extraneous Light;</li> <li>• Alligator Weed Affected Land;</li> <li>• Bushfire Prone Land – Category 3;</li> <li>• Flooding – High Hazard Storage;</li> <li>• Flooding – High Hazard Floodway;</li> <li>• Flooding – Low Hazard Storage;</li> <li>• Flooding – Low Hazard Fringe;</li> <li>• Williamtown PFAS Contamination Management Area – Primary Management Zone; and</li> <li>• Planning Strategy – DAREZ Business Park (adjoining the site).</li> </ul>

**Site Description**

The subject site consists of three lots known as 40, 52 and 52A Cabbage Tree Road, Williamtown, with a combined area of 7.5 ha and is located adjacent to the Defence and Airport Related Employment Zone ('DAREZ'). The subject site is identified in **Figure 2** below. Vehicular access to the site is proposed via 40 Cabbage Tree Road (Lot 3 DP: 1106651). The site is heavily constrained by environmental and neighbouring operational factors, including: flooding, contamination by per- and poly-fluoroalkyl substances (PFAS), RAAF Base operations, ecology and bushfire.

The site is currently vacant, partly cleared of vegetation, with the northern section containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

The site is surrounded by rural land to the east, west and south. To the north, the site adjoins an approved 103 lot industrial subdivision, adjacent the Newcastle Airport, known as the 'Astra Aerolab'. A small lot, containing a single storey dwelling is located at the Cabbage Tree Road frontage, adjacent the subject site between 52 and 40 Cabbage Tree Road.

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**Figure 2: Aerial extent of subject site****Site History**

The subject site has a history of agricultural activities. A current compliance matter is being investigated by Council relating to the placement of demountable structures on-site. This is however outside of the area affected by the proposed development, and has no bearing on the assessment of the current application.

A Planning Proposal to rezone the land from RU2 Rural Landscape to B7 Business Park was previously lodged with Council but did not progress to Gateway determination. A rezoning review conducted by the Joint Regional Planning Panel in 2020 determined that the proposal did not have site specific merit.

**Site Inspection**

A site inspection was carried out on **31 July 2018**. The subject site is depicted in the below images.

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**ITEM 1 - ATTACHMENT 2      PLANNERS ASSESMENT REPORT.**

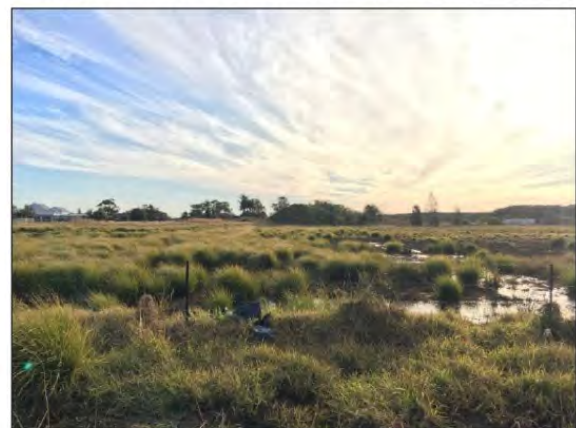
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**Image 1:** 40 Cabbage Tree Road (looking west)



**Image 2:** 40 Cabbage Tree Road (looking north-west)



**Image 3:** 40 and 52 Cabbage Tree Road (looking west)

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Image 4: 40 Cabbage Tree Road (looking west)



Image 5: 40 Cabbage Tree Road (looking west)

ASSESSMENT SUMMARY

<b>Designated Development</b>	The application is Designated Development in accordance with Clause 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as the development is classified as a waste management facility located on a floodplain, an area of high water table and dwellings within 250m not associated with the development in accordance with Schedule 3, Clause 32 of the Environmental Planning and Assessment Regulation 2000 (the Regulations).
<b>Integrated Development</b>	The application does not require additional approvals listed under Section 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

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**Concurrence**

The application does not require the concurrence of another body

**Internal Referrals**

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the Section 4.15 Matters for Consideration of the EP&A Act below.

**Engineering Services**

On 5 December 2018, a revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) was submitted to Council. Amended plans were also received on 5 February 2018, which relocated the proposed fill 10 metres from the eastern boundary to minimise the offsite impact. The revised flood assessment and amended plans were referred to Council's Development Engineering Section for assessment.

The assessment of the amended information identified that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, that the proposed fill pad does not substantially alter the existing flood characteristics of the local area. As such, the proposed development is consistent with the LEP 2013, DCP 2014, the NSW Floodplain Development Manual 2005, and Council's existing Flood Study or Floodplain Risk Management Plan. In this regard, the proposed development was recommended for approval, subject to conditions.

**Traffic Engineer**

The application, including amended plans, was referred to Council's Traffic Engineer for assessment. The application was supported, subject to recommended conditions relating to the preparation of a Traffic Management Plan, Roads Act approval, restriction of vehicle movement and numbers to and from the site, and implementation of measures to ensure material is not transported off the subject site.

**Strategic Planning**

A Planning Proposal (PP) was lodged on 21 December 2018 that seeks to rezone the subject site from RU2 Rural Landscape to B7 Business Park was previously lodged with Council. The PP did not progress to Gateway approval as previously mentioned in this report.

**Natural Resources**

On 5 December 2018, an amended ecological report prepared by Kleinfelder (ref: NCA18L86696 and dated 4 December 2018) was submitted to Council. Further commentary was received on 5 February 2019 relating to the assessment of significance and Environmental Planning and Biodiversity Conservation Act 1999.

The amended / additional information was referred to Council's Natural Resources Section for assessment. In summary, the ecology assessment found the following:

- The buffer between the development and the drainage channel to the north increased from 16.5m to 40m.
- Two habitat trees (with hollows) are required to be removed within the proposed development footprint.
- Additional surveys and details on the Wallum Froglet were completed, concluding that no Wallum Froglets were identified on-site.

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- Assessment of potential impacts to natural flow regimes, inclusive of hydrology description, dynamics of the vegetation community and potential groundwater interactions was completed, concluding that minimal impact will occur and all drains will be untouched by the fill.
- Details on potential pollution and water quality impacts from proposed fill were provided. The improved sediment control measures and water quality management system offers substantially more protection and it is considered that potential pollution and water quality impacts can be adequately addressed to avoid any significant impact to surrounding wetland and swamp forest, or to downstream coastal wetlands. A revised buffer from the drainage channel to the north (as noted above) that flows into the mapped watercourse was provided to ensure that sufficient protection is available in the event of a small bank collapse.
- Additional consideration of the impacts on Alligator Weed located on-site was provided.
- Additional consideration of mitigation measures, including potential offset measures for the loss of hollow bearing trees or procedures for vegetation removal was provided.
- Sufficient information has been provided to justify that a significant environmental impact is unlikely.
- Sufficient information has been provided to justify that a significant impact on Matters of National Environmental Significance is unlikely.
- Information was provided confirming that the proposal is unlikely to have a significant impact on the koala.

It was determined that the proposed development will not result in unacceptable environmental impact, subject to conditions, in the event the application is supported.

Weeds Officer

The application was referred to Council's Weeds Officer to assess the impact of development on notifiable noxious weeds as the site is located within an area identified as containing Mother of Millions and Alligator Weed. It is noted that once the fill is placed it is not intended to be transported or distributed off site in the future. A condition requesting the preparation of a weed management plan was recommended, in the event the application is supported.

External Referrals

The proposed development was referred to the following external agencies for comment:

Environment Protection Authority (EPA)

The subject site is located within the Williamstown Investigation Zone and as the EPA is the lead authority investigating the contamination issues in the area, the application was referred to the EPA for comment and/or conditions. Following submission of additional information by the applicant, a response was received from the EPA on 5 February 2018, which provided recommended conditions of consent, which relate to; the implementation of a Quality Assurance / Quality Control Plan for the importation, certification and supervision of fill and requirements for resource recovery orders to which an exemption applies.

Further comment was sought from EPA in May 2019 in relation to the implications of imposing a time limited consent, requiring the removal of all material from the site within seven years to address concerns relating to long-term visual impacts associated with the proposal. In response to the referral, EPA noted that due to the site being located on flood prone land, the fill may be inundated by floodwaters and consequently contaminated with per- and poly-fluoroalkyl substances (PFAS). EPA further advised that should the fill become contaminated the fill may

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require disposal at a solid waste landfill or a hazardous waste facility, however disposal of large quantities of contaminated soil should be avoided.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 ASSESSMENT****Section 4.10 – Designated Development**

The application is classified as Designated Development in accordance with Clause 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as the development is classified as a waste management facility located on a floodplain, an area of high water table and residential dwellings within 250m not associated with the development in accordance with Schedule 3, Clause 32 of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

**Section 4.12 – Application**

Section 4.12(8) provides that a development application for designated development is to be accompanied by an Environmental Impact Statement (EIS) prepared in the form prescribed by the regulations, which includes a written application to the DPIE to obtain SEARs.

The applicant has not identified that the application is Designated Development and has not sought SEARs from DPIE. As a result, the proposal does not comply with Section 4.12 of the EP&A Act.

**Section 4.15 – Matters for Consideration****s4.15(1)(a)(i) – The provisions of any EPI****State Environmental Planning Policies****State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP 44 applies by virtue of savings provisions as the application was lodged and not determined before the commencement of State Environmental Planning Policy Koala 2020.

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala population decline. The Ecology Assessment Report prepared by Wildthing Environmental Consultants (dated April 2018, ref: 12326) and ecological report prepared by Kleinfelder (ref: NCA18L86696 and dated 4 December 2018) submitted with the development application found the study area contained portions of 'preferred' habitat with linkages over cleared vegetation, as shown on the Koala Habitat Planning Map within the Port Stephens Council Comprehensive Koala Plan of Management (PSCKPoM). Based on the field surveys, no preferred koala habitat or habitat buffers were found. Conversely, the study area was found to contain 1.74 ha of supplementary koala habitat and no habitat linking areas. All other vegetation within the study area was classified as mainly cleared.

The proposed development will not require the removal of supplementary vegetation, and will be restricted to the designated footprint. A condition could be included requiring the inclusion of boundary fencing and vegetation removal requirements. Overall, the impact on koala habitat is low and the aims of SEPP 44 have been satisfied.

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

The subject site is located within the Williamstown Environmental Investigation Area (Primary Management Zone), which is identified as possibly containing per- and poly-fluoroalkyl substances

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(PFAS) within the soil, ground water and surface water. The proposed development does not incorporate any building works, change of use or excavation. The subject site has a history of land fill and agricultural activities and is not nominated within Council's records as being contaminated. However, the site is potentially contaminated given the possible presence of PFAS on the site. No site investigation or contamination report was submitted with the application.

A referral was sent to the EPA to review the application given the site is located within the Williamstown Environmental Investigation Area. Advice and general conditions were provided from the EPA relating to quality of fill and works within the investigation area. These conditions were provided on the basis that the fill storage was only for temporary purpose, whereby it is not proposed to remove the material from the site, although may be stockpiled or stored on different parts of the site until finally placed. EPA did not support removal of any material once placed on site.

State Environmental Planning Policy (Activation Precincts) 2020 (Activation Precincts SEPP)

The Activation Precincts SEPP facilitates a new planning framework for Special Activation Precincts (SAPs) in regional NSW, streamlining planning processes and guiding the delivery of the Precincts.

The site is located within the investigation area of the Williamstown Special Activation Precinct (SAP). The Department of Planning, Industry and Environment (DPIE) is currently conducting technical studies of an area south of Newcastle Airport and the Williamstown RAAF base. The technical studies include topics such as environment and heritage, sustainability and infrastructure, flooding and drainage, to help inform the final size and location of the Williamstown Precinct area.

Whilst the Master Plan is yet to be finalised or exhibited, the establishment of an isolated 4.0m high waste storage facility in the vicinity of the RAAF Base could potentially compromise the SAP planning process, particularly for flooding and infrastructure planning.

Local Environmental Plan

Port Stephens Local Environmental Plan 2013 (LEP)

**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as "earthworks" and is permissible with consent in accordance with Clause 7.2 Earthworks of the LEP. The subject site is zoned RU2 Rural Landscape and the objectives of the zone encourage sustainable primary industry production by maintaining and enhancing the natural resource base, maintain the rural landscape character of the land and provide for a range of compatible land uses, including extensive agriculture.

Given the proposed fill extends to heights up to 4.0 metres, the development will be highly visible from Cabbage Tree Road and surrounds across Williamstown. A landscape plan was submitted with the amended application to demonstrate the visual impact of the development. This plan identifies the establishment of native plant layers to screen the proposed stockpile, by planting taller species at the base of the mound and graduating to the small species such as turf at the top. However, the proposed visual screening will take time to achieve as vegetation will need to reach maturity. Through the progressive delivery of new fill on-site, seedlings and vegetation are likely to be disrupted or destroyed, which could result in a failure to achieve mature height and subsequent visual impact mitigation.

The application provides consideration of the objectives of the zone, concluding that the proposed development is broadly consistent with the zone objectives. In review of this and subsequent further information requesting this be expanded upon, it is concluded that the proposed

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development does not adequately consider the impacts on the rural landscape character of the site and surrounding context and therefore, remains inconsistent with the zone objectives. The establishment of a sizeable waste storage facility in a rural setting is considered non-confirming with the zone objectives.

**Clause 5.10 – Heritage**

Studies of the DAREZ area by GHD and surrounding land have identified that the subject site is not located within an area identified as being of Aboriginal Cultural Heritage significance and contains low archaeological potential. A AHIMS search (25 March 2018) has also been undertaken in respect of the subject site, which confirmed that no recorded Aboriginal items are located on or near the subject site.

The proposed earthworks shall be located within the southern portion of the subject site and will be largely contained within an area, which has been disturbed by heavy grazing for a long period of time. As such, the proposed development is not likely to result in adverse impacts to Aboriginal Cultural Heritage and is therefore satisfactory having regard to clause 5.10.

**Clause 7.1 – Acid Sulfate Soils**

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is identified as containing class 3 acid sulfate soils. Development consent is required for the carrying out of works more than 1 metre below the natural ground surface, or works by which the water table is likely to be lowered more than 1 metre below the natural ground surface.

The proposed development includes earthworks by means of landfill, not excavation. In this regard, the disturbance or risk of exposing acid sulfate soils is unlikely, and an acid sulfate soil management plan would not be required.

**Clause 7.2 – Earthworks**

The objective of Clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental planning instrument; therefore require consent from Council.

In response to the objective of Clause 7.2, the proposed landfill is satisfactory against the following matters for consideration under Clause 7.2(3), as it:

- Will not significantly disrupt or have a detrimental effect on drainage patterns and soil stability in the locality of the development;
- Will be restricted to fill which is VENM, ENM or any other waste-derived material the subject of a resource recovery exemption;
- Will include restrictions and/or quality assurance requirements relating to the source of fill material;
- Has a low likelihood of disturbing relics; and
- Has a low likelihood of adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

Despite this, the visual impacts of the proposal are anticipated to have detrimental impact to the existing and likely amenity of neighbouring properties. Given the proposed fill extends to heights of up to 4.0 metres, the development will be highly visible from adjoining properties. The landscape plan submitted with the amended application, while providing some visual screening of the development, does not provide sufficient short or long-term mitigation of visual impacts to adjoining properties. The proposed vegetation screening is expected to take considerable time to

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reach maturity and through the progressive delivery of new fill on-site, seedlings and vegetation are likely to be disrupted or destroyed, resulting in a limited ability to achieve mature height. In consideration of the matters contained under Clause 7.2(3), the proposed development is not satisfactory and consent should not be granted.

**Clause 7.3 – Flood Planning**

Clause 7.3 was repealed and replaced by Clause 5.21 of the PSLEP on 14 July 2021, however, as the development was lodged before the commencement of Clause 5.21, saving provisions apply and Clause 7.3 remains the relevant clause for consideration.

The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard – Flood Storage, High Hazard – Floodway, Low Hazard – Flood Storage and Low Hazard – Flood Fringe. Clause 7.3 therefore applies.

The Applicant has provided a flood study prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) which demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the proposed fill pad does not substantially alter the existing flood characteristics of the local area. In response to the objectives of Clause 7.3, the proposed landfill is considered to be satisfactory as it:

- Is compatible with the flood hazard of the land;
- Will not significantly adversely affect flood behavior resulting in detrimental increases in the potential flood affectation of other development or properties;
- Incorporates appropriate measures to manage risk to life from flood;
- Will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; and
- Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

To this extent, it is considered that development consent can be granted in accordance with Clause 7.3 of the LEP as the consent authority is satisfied that matters outlined in Clause 7.3(3) have been addressed.

**s4.15(1)(a)(ii) – Any draft EPI**

There are no draft EPI's relevant to the proposed development.

**s4.15(1)(a)(iii) – Any DCP****Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

**Section A.12 – Notification and advertising**

In accordance with the requirements of chapter A.12, the DA was originally notified for a period of 14 days from 9 August 2017 to 22 August 2017. Upon review and submission of revised documentation, the DA was re-notified for a period of 14 days between 9 January 2019 and 23 January 2019. During the latest round of exhibition three submissions were received with five signatories. The submissions are addressed in detail elsewhere within this report.

**Section B2 – Natural resources**

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The subject site has been subject to agricultural land use and largely cleared of remnant vegetation, and has been identified as containing the endangered ecological community ('EEC') Swamp Sclerophyll Forest towards the north. The vegetation located within proximity to the low lying area around the waterways and/or drains throughout the site may also provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has been known to occur within the locality. Threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation may also be present within the area, including; a RAMSAR listed wetland, key fish habitat (as listed under the *Fisheries Management Act 1994*) and preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM).

An ecological report prepared by Kleinfelder (ref: NCA18L86696 and dated 4 December 2018) was submitted to Council for review that adequately demonstrates that the proposed development will not result in a significant environmental impact. Two habitat trees (*Melaleuca quinquenervia*), one containing a large hollow (> 20 cm diameter entrance) and the other containing a medium-sized hollow (8 – 20 cm entrance) and three small hollows (<8 cm diameter entrance) will need to be removed as they occur within the stockpile footprint. Eleven other hollow-bearing trees (all *M. quinquenervia*) will not be impacted by the proposal. Accordingly, subject to recommended conditions, which relate to; NSW State Government permits, licences and statutory requirements relating to vegetation and fauna management, stormwater controls, weed removal and suppression and replacement of tree-hollows or implementation of nest boxes, the proposed development is considered satisfactory in respect to this matter.

**Section B4 – Drainage and water quality**

The proposed development does not require any specific water quality improvement measures. The submitted plans have demonstrated that the fill would be surrounded by sediment fencing and a "raingarden sediment trap", which satisfies sediment and water quality measures as required by Section B4. Further, sediment control during construction can be adequately addressed subject to recommended conditions. In this regard, the requirements of Section B4 have been satisfied.

**Section B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. As detailed within the assessment of Clause 7.3 of the LEP 2013 above, the proposed development is acceptable with respect to flood impacts. Accordingly, Section B5 is satisfied.

**Section B8 – Road network and parking**

To ensure that the impacts of the proposed development are considered and that the existing level of service of the road network (Cabbage Tree Road) is maintained, the provisions of Section B8 are required to be addressed.

It is noted that the delivery of fill material will occur over a period of five years depending on quantities available from local extractive industries, through the use of rigid trucks with dog trailer combinations not exceeding a Gross Combination Mass (GCM) of 42.5 tonnes. The total fill volume of 53,698m<sup>3</sup> proposed equates to 80,286 tonnes. If each truck has a GCM of 42.5 tonnes, this equates to 1895 trips required to fill the site to capacity, which is approximately 379 trips per year over five years. The applicant has proposed the maximum number of vehicle movements to include 50 per day. It is anticipated that the deliveries will be made from Monday to Friday between the hours of 9am and 7pm, and aims to capitalise on existing empty truck movements going past the site. A driveway access will be provided via 40 Cabbage Tree Road, which requires an application under Section 138 of the Roads Act 1993 to be conditioned under any consent. A 'shaker hump' is proposed within the access to ensure safe vehicle ingress and egress.

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The noise and dust generated by the proposed vehicle movements are considered significant for the rural landscape of the locality. The fill storage is also without purpose at this time, given that the Planning Proposal to rezone the site has been rejected and the Williamstown SAP master planning process, including design for fill and earthworks is still being undertaken by DPIE.

If Council resolved to support the application, conditions could be included to restrict vehicle movements to 50 per day, require the preparation of a Traffic Management Plan, Roads Act approval, restriction of vehicle movements to left in left out of the site only, and implementation of measures to ensure material is not transported off the subject site.

**s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4**

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

**s4.15(1)(a)(iv) – The regulations**

As discussed against Section 4.10 of the EP&A Act 1979 above, Schedule 3 of the EP&A Regulations includes the relevant triggers for Designated Development. Schedule 3, Clause 32 – Waste management facilities or works under the Regulations is applicable to the development as earthworks, whether comprising ENM or VENM are considered a type of “waste management works”. Clause 32 provides that waste management facilities or works are designated development when located within or in proximity to certain environmental constraints, including a floodplain, high watertable area and residential dwellings within 250m. The proposed development is located on Flood Prone Land (High Hazard Storage, High Hazard Floodway, Low Hazard Storage and Low Hazard Fringe) and therefore in accordance with Clause 32(1)(d) the proposal is Designated Development. The application submitted in its current form is invalid through the absence of an EIS prepared in accordance with SEARs.

**s4.15(1)(b) – The likely impacts of the development**

The subject site is located within a strategic economic precinct due to its location within the Williamstown SAP investigation area. Despite this, the Williamstown SAP Master Plan has not been publically exhibited and accordingly there is no strategic or economic purpose for which the proposed earthworks would warrant support. Moreover, the establishment of an isolated and unplanned fill pad may compromise flood modelling and infrastructure planning for potential future works under the SAP.

In addition, the applicant has failed to demonstrate a nexus for which the proposed earthworks would be required to support any current permissible land use within the current RU2 Rural Landscape zone and as a result, the disturbance created by the works and associated vehicle movements are not considered appropriate or suitable for the site. Furthermore, the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

**s4.15(1)(c) – The suitability of the site**

Based on the information provided, the proposed development is likely to have an adverse impact in respect to the visual amenity and rural character of the site and surrounding locality. Furthermore, the assessment has determined that the site is not suitable as the development:

- Is inconsistent with the objectives of the RU2 Rural Landscape zone applied to the land;

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- Results in unacceptable visual impacts that are anticipated to have detrimental impact to the existing amenity of neighbouring properties.
- The Planning Proposal to rezone the land was rejected at Gateway determination;
- The Williamstown SAP Master Plan has not been exhibited. Accordingly, there is currently no strategic purpose for which the proposed earthworks would warrant support; and
- The applicant has failed to demonstrate reasons for which the proposed earthworks would be required to support a permissible land use within the current RU2 Rural Landscape zone.

**s4.15(1)(d) – Any submissions**

The application was originally notified for a period of 14 days between 9 August 2017 and 22 August 2017. During this time, four submissions were received with 5 signatories.

As a result of modifications made to the development, the application was notified for a period of 14 days between 9 January 2019 and 23 January 2019. During this time, three submissions were received with five signatories. The concerns raised regarding the development during this period are summarised below:

	Submission Summary	Submission Response
1	<p>Submission objects to the proposal, based on concerns relating to:</p> <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li> <li>• Ongoing management of dust from proposed fill stockpiles.</li> </ul>	<ul style="list-style-type: none"> <li>• The revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the proposed fill pad does not substantially alter the existing flood characteristics of the local area.</li> <li>• The EPA have provided recommended conditions to manage the development within the Williamstown Investigation Area.</li> <li>• The fill is to be top dressed and seeded with fast growing native grasses and ground cover at all times to manage dust impacts.</li> <li>• Despite this, it is considered that the disturbance created by the works are without purpose at this time, given that there is no certainty of outcome relating to the Williamstown SAP.</li> </ul>
2	<p>Submission objects to the proposal, based on concerns relating to:</p> <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> </ul>	<ul style="list-style-type: none"> <li>• The revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the</li> </ul>

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	<ul style="list-style-type: none"> <li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li> <li>• Increase in truck movements and how they would access the subject site, and the associated impacts on the surrounding road network.</li> <li>• Disturbance of contaminated site due to large machinery and trucks.</li> <li>• Quality of the proposed fill.</li> </ul>	<p>proposed fill pad does not substantially alter the existing flood characteristics of the local area.</p> <ul style="list-style-type: none"> <li>• The EPA have provided recommended conditions to manage the development within the Williamstown Investigation Area.</li> <li>• A driveway is proposed over 40 Cabbage Tree Road to ensure safe delivery of fill and egress of vehicles. Impacts to the surrounding road network have been assessed and found to be negligible.</li> <li>• No excavation is proposed, therefore high disturbance of contaminated land is unlikely.</li> <li>• Fill material will comprise Virgin Excavated Natural Material (VENM) and / or Excavated Natural Material (ENM).</li> <li>• Despite this, it is considered that the disturbance created by the works are without purpose at this time, given that there is no certainty relating to the Williamstown SAP Master Plan.</li> </ul>
3	<p>Submission objects to the proposal, based on concerns relating to:</p> <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Potential impact of proposed development on flood characteristics of neighbouring land, particularly regarding ground and surface water.</li> <li>• There is no access to the property that would allow truck movements so one would need to be built. Cabbage Tree Road is already busy with truck movements.</li> <li>• Ongoing management of dust from proposed fill stockpiles.</li> <li>• Spread of alligator weed from large machinery and trucks.</li> <li>• Impact on native flora and fauna, particularly the Wallum Froglet.</li> <li>• Artist impression of mound inaccurate due</li> </ul>	<ul style="list-style-type: none"> <li>• The revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the proposed fill pad does not substantially alter the existing flood characteristics of the local area.</li> <li>• A driveway is proposed over 40 Cabbage Tree Road to ensure safe delivery of fill and egress of vehicles. Impacts to the surrounding road network have been assessed and found to be negligible.</li> <li>• The fill mound is to be top dressed and seeded with fast growing native grasses and ground cover at all times to manage dust impacts.</li> <li>• In the event the application is supported, a condition is recommended requiring the preparation of a weed management plan, to ensure the existing infestation of Alligator Weed is contained during works.</li> <li>• Additional surveys and details on the</li> </ul>

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to intended use of the site.	<p>Wallum Froglet were completed concluding that no Wallum Froglets were identified on-site.</p> <ul style="list-style-type: none"> <li>The application does not adequately demonstrate that visual impacts as a result of the development have been appropriately mitigated.</li> <li>It is considered that the disturbance created by the works are without purpose at this time, given that there is no certainty of outcome relating to the Williamtown SAP.</li> </ul>
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**Comments**

A response to each of the comments received from submission makers has been made in this report. The assessment has acknowledged some of these concerns cannot be overcome and therefore the application is recommended for refusal.

**s4.15(1)(e) – The public interest**

The application has not demonstrated that the development is consistent with the adopted statutory planning provisions and strategies that seek to promote the appropriate development of land. The DA provides minimal public benefit, given that the works are not related to a permissible land use within the current RU2 Rural Landscape zone. The fill would be highly visible from Cabbage Tree Road and adjoining properties, resulting in adverse impacts to visual amenity and rural landscape character. Further, the disturbance created by the works and associated vehicle movements are considered to be without merit at this time, given that there is no certainty relating to the Williamtown SAP Master Plan. Accordingly, the DA is not considered to be satisfactory in terms of the public interest on this basis.

**ITEM 1 - ATTACHMENT 6      8 FEBRUARY 2022 - ORDINARY COUNCIL MINUTES.**

**MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022**

**ITEM 1 - ATTACHMENT 3      REASONS FOR REFUSAL.**



**REASONS FOR REFUSAL**

1. The proposed development is inconsistent with the objectives contained in Section 1.3 of the Environmental Planning and Assessment (EP&A) Act 1979, as it fails to promote the orderly and economic use and development of land (s.1.3(c) of the EP&A Act 1979).
2. The proposed development is not supported by the necessary Environmental Impact Statement required for Designated Development under Section 4.12 of the EP&A Act 1979 (s.4.12(8) of the EP&A Act 1979).
3. The proposed development fails to satisfy Clause 2.3 (zone objectives) and Clause 7.2 (earthworks) of the Port Stephens Local Environmental Plan 2013 (LEP2013) as the development will result in unacceptable visual impacts and is likely to detract from the rural character of the locality (s.4.15(1)(b) of the EP&A Act 1979).
4. The proposed development is not considered to be suitable for the site (s.4.15(1)(c) of the EP&A Act 1979).
5. The DA is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land (s.4.15(1)(e) of the EP&A Act 1979).

ITEM 1 - ATTACHMENT 6 8 FEBRUARY 2022 - ORDINARY COUNCIL MINUTES.

MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022

ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Councillor Steve Tucker  
require Development Application Number 2017-524  
for Earthworks - Temporary Fill  
at 40 Cottage Tree Road Willawong

to be subject of a report to Council for determination by Council.

**Reason:**


The reason for this call-up to Council is this D.A. submitted on 3/8/2017 is a precursor to proposed future development and access to Newcastle Airport.

**Declaration of Interest:**

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? ~~Yes~~/No (delete the response not applicable).

If yes, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

Signed:  Date: 30/1/2018



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Councillor Chris Doohan left the meeting at 6:13pm.  
Councillor Jaimie Abbott left the meeting at 6:14pm.

**ITEM NO. 1**

**FILE NO: 18/172131**  
**EDRMS NO: 16-2017-524-1**

**DEVELOPMENT APPLICATION 16-2017-524-1 (EARTHWORKS - FILL) AT 52, 52A AND 40 CABBAGE TREE ROAD WILLIAMTOWN (LOT: 7 DP: 1059398, LOT: 7 DP: 4831, LOT: 3 DP: 1106651)**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse the development application 16-2017-524-1 for Earthworks - fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651) for the reasons contained in **(ATTACHMENT 4)**.

**ORDINARY COUNCIL MEETING - 11 SEPTEMBER 2018  
MOTION**

281	<p><b>Councillor Steve Tucker</b> <b>Councillor Giacomo Arnott</b></p> <p>It was resolved that Council defer item 1 for site inspection of development application 16-2017-524-1 for Earthworks - fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Giacomo Arnott, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Ryan, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to present development application (DA) No.16-2017-524-1, for earthworks - fill, to Council for determination. The development application was called to Council as detailed in **(ATTACHMENT 1)**.

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The subject DA relates to land located at 52, 52A and 40 Cabbage Tree Road, Williamstown, legally identified as LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651 (the 'subject site'). A locality plan is provided at **(ATTACHMENT 2)**.

Proposal

The applicant seeks approval for earthworks comprising the placement of fill in a single stockpile on the subject site, as follows and detailed in **(ATTACHMENT 3)**.

- The total stockpile surface area and volume are unspecified, however it is noted that the stockpile varies between 3 m and 4.5 m in height with a batter at a 1:4 gradient.
- The proposed batter extends to the eastern side boundary with an approximately 0 m setback, whilst setbacks to the western side boundary exceed 40 metres.
- The fill is proposed to comprise virgin excavated natural material (VENM) and/or excavated natural material (ENM).

It is noted that the end purpose of the fill has not been specified by the applicant, with statements that the fill is required for 'future use and development of the site'. The applicant was requested to provide further information regarding the proposed end use, however this was not received.

Site Description

The subject site consists of three lots with a total area of 7.5 ha and is located adjacent to the Defence and Airport Related Employment Zone (DAREZ). Vehicular access to the site is available via 52 Cabbage Tree Road. The site is constrained by environmental and neighbouring operational factors, including: flooding, contamination (PFAS), RAAF Base operations, ecology and bushfire.

The site is currently vacant, partly cleared of vegetation, with the northern section containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

Key Issues

The key issues resulting in the recommendation to refuse the application are outlined below. A detailed assessment of the development is contained at **(ATTACHMENT 3)**.

Flood impacts

The subject site is mapped as being within the flood planning area and falls within multiple flood categories as follows; High Hazard (Flood Storage), High Hazard (Floodway), Low Hazard (Flood Storage) and Low Hazard (Flood Fringe). The proposed earthworks are located primarily within land identified as High Hazard (Flood Storage). Council's Development Control Plan 2014 (DCP2014) Chapter B5

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requires that a flood study be provided with development applications proposing fill within the High Hazard (Flood Storage) area.

The applicant provided a flood assessment (prepared by Forum Consulting dated 26 March 2018) in support of their application. The flood assessment did not provide sufficient information to enable a detailed assessment of the impacts of the proposed earthworks upon adjacent properties, particularly along Cabbage Tree Road. In addition the flood assessment did not adequately address the flood hazard, including consideration of depth of inundation, flow velocity, or required warning time for local catchment flooding.

It is noted that Clause 7.3 of Council's Local Environmental Plan 2013 (LEP2013) applies to the subject site as it is land at or below the flood planning level. Clause 7.3(3) provides that development consent must not be granted to development on land to which the clause applies unless the consent authority is satisfied of certain preconditions including that; the development is compatible with the flood hazard of the land (cl. 7.3(3)(a)) and that the development will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties (cl. 7.3(3)(b)).

The proposed earthworks are not considered to be compatible with the flood hazard of the land as the applicant has failed to demonstrate that the proposed development will not adversely affect flood behaviour or impact adjoining properties. On this basis, the development is considered to fail the 'test' set out within Clause 7.3(3) and accordingly Council as the consent authority is unable to grant consent to the proposal.

Ecological impacts

Whilst the subject site has been subject to agricultural land use and largely cleared of remnant vegetation, it has been identified as containing the endangered ecological community (EEC) Swamp Sclerophyll Forest towards the north. The vegetation located within proximity to the low lying area around the waterways and/or drains throughout the site may also provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has been known to occur within the locality. Threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation may also be present within the area, including; a RAMSAR listed wetland, key fish habitat (as listed under the *Fisheries Management Act 1994*) and preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM).

An ecological report undertaken by Wildthing Environmental Consultants (dated April 2018) was submitted to Council. However, the report has limited consideration of the impacts of alteration to natural flow regimes, stating that the proposed development is unlikely to significantly alter the flow of the ephemeral drainage lines. The importation of fill and placement of this fill into these low lying areas will alter the hydrology of the site, which could alter the dynamics of the vegetation community

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existing onsite. Furthermore, the ecological report was considered to be unsatisfactory as identified in **(ATTACHMENT 3)**.

The information provided by the applicant has failed to provide a clear or accurate depiction of the impacts of the proposed development on the environmental characteristics of the land, therefore the application cannot be supported.

Rural character

The subject site is zoned RU2 Rural Landscape under Clause 2.3 of the LEP 2013 and the objectives of the zone include to maintain the rural landscape character of the land. The information provided with the application did not adequately consider the impacts on the rural landscape character of the area. Concern is raised that the height of the proposed fill will result in adverse visual impacts to locality and adjoining properties. Due to the height and scale of the proposed fill it is considered that mitigation measures would be unlikely to ameliorate the potential impact.

Conclusion

The development is inconsistent with the relevant environmental planning instruments applicable to the site, including:

- *Environmental Planning and Assessment Act 1979*, including Section 4.15(1)(c) regarding the suitability of the site.
- Port Stephens LEP2013; Clause 2.3 (Zone objectives), Clause 7.2 (Earthworks), and Clause 7.3 (Flood Planning).
- Port Stephens DCP2014; Chapter B2 (Natural Resources) and Chapter B5 (Flooding).
- Council's Floodplain Risk Management Policy.
- NSW Government Floodplain Development Manual 2005.

The key issues arising through the assessment of the application that have not been able to be overcome by the applicant (as discussed above) and for these reasons the proposed development is recommended for refusal for the reasons contained within **(ATTACHMENT 4)**.

**COMMUNITY STRATEGIC PLAN**

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live.	Provide land use plans, tools and advice that sustainably support the community. Enhance public safety, health and liveability through use of Council's regulatory controls and services.

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The application could be potentially challenged in the Land and Environment Court. Defending Council's determination could have financial implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Development Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is inconsistent with the relevant planning instruments, flood development guidelines and studies including the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Port Stephens Local Environmental Plan 2013* (LEP 2013), *Port Stephens Development Control Plan 2014* (DCP 2014), *Local Government Act 1993* (LG Act 1993), Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005. Detailed assessment against these requirements are contained within the assessment report provided at **(ATTACHMENT 3)**.

In addition, Section 733 of the *Local Government Act 1993* (LG Act) provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005.

The approval of the subject DA is considered to be inconsistent with the principles contained within the NSW Floodplain Development Manual 2005 and may negate the good faith immunity provisions in the LG Act. As such, individual Councillors may be personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim, Council's insurers may determine not to cover Council should the application be approved, contrary to the recommendation of Council staff.

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<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources ?</b>
There is a risk if the application is approved that Council's decision will be ultra vires as Clause 5.10, Clause 7.3, Clause and Clause 7.5 of the LEP 2013 are preconditions to the granting of consent and have not been satisfied.	Medium	Determine the application in line with the recommendation.	Yes
There is a risk that if the application is approved, that Council may be liable for any damage or consequences to approving a development located on a site with a known flood risk.	Medium	Determine the application in line with the recommendation.	Yes
There is a risk the proposal will expose people and property to risk of damage and death as a consequence of approving fill in a site with a known flood and contamination risk.	High	Determine the application in line with the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The subject site is located within a strategic economic precinct due to its proximity to DAREZ and is currently zoned RU2 Rural Landscape and it is important to note that there are currently no planning proposals lodged with Council seeking to rezone the land. Accordingly there is no strategic or economic purpose for which the proposed earthworks would merit support.

In addition, the applicant has failed to identify a purpose for the extent of proposed fill and has not demonstrated reasons for which the proposed earthworks would be required to support a permissible land use within the current RU2 Rural Landscape zone. Furthermore, in its current form the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

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As outlined in an above section of this report the applicant has failed to appropriately identify and mitigate the impacts to the environment including; flooding and ecology. As a result the environmental impacts of the development are unknown and the proposal cannot be supported.

**CONSULTATION**Internal referral

Consultation was undertaken with internal officers, including; Engineering, Natural Resources (Ecology and Weeds), Strategic Planning, and Environmental Health. The referral comments from these officers were considered as part of the assessment contained at **(ATTACHMENT 3)** and accordingly the DA is recommended for refusal for the reasons contained within **(ATTACHMENT 4)**.

External agency

Consultation with the Environment Protection Agency (EPA) was undertaken during the course of assessment. Subject to recommended conditions of consent being imposed with respect to landfill the EPA did not object to the development **(ATTACHMENT 4)**.

Public exhibition

In accordance with Council's notification requirements the DA was notified for a period of 14 days from 9 August 2017 to 22 August 2017. During the exhibition period four submissions were received. The key issues raised within the submissions included; drainage, spread of contaminated water, ecological impacts, flooding, visual impact, traffic management and lack of information supporting the development application. These issues have been addressed in detail within the detailed assessment report contained at **(ATTACHMENT 3)**. The assessment has acknowledged many of these concerns cannot be overcome and therefore the application is recommended for refusal.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Call to Council Form.
- 2) Locality Plan.
- 3) Assessment Report.
- 4) Reasons for Refusal.

## ORDINARY COUNCIL - 22 FEBRUARY 2022 - ATTACHMENTS

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COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

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PORT STEPHENS COUNCIL

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PORT STEPHENS COUNCIL

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ITEM 1 - ATTACHMENT 1 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Councillor Steve Tucker  
require Development Application Number 2017-524  
for Earthworks - Temporary Fill  
at 40 Cabbage Tree Road Willawong

to be subject of a report to Council for determination by Council.

Reason:

The reason for this call-up to Council is this D.A. submitted on 3/8/2017 is a precursor to proposed future development and access to Newcastle Airport.

Declaration of Interest:

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? Yes/No (delete the response not applicable).

If yes, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

Signed: [Signature] Date: 30/1/2018

## ORDINARY COUNCIL - 22 FEBRUARY 2022 - ATTACHMENTS

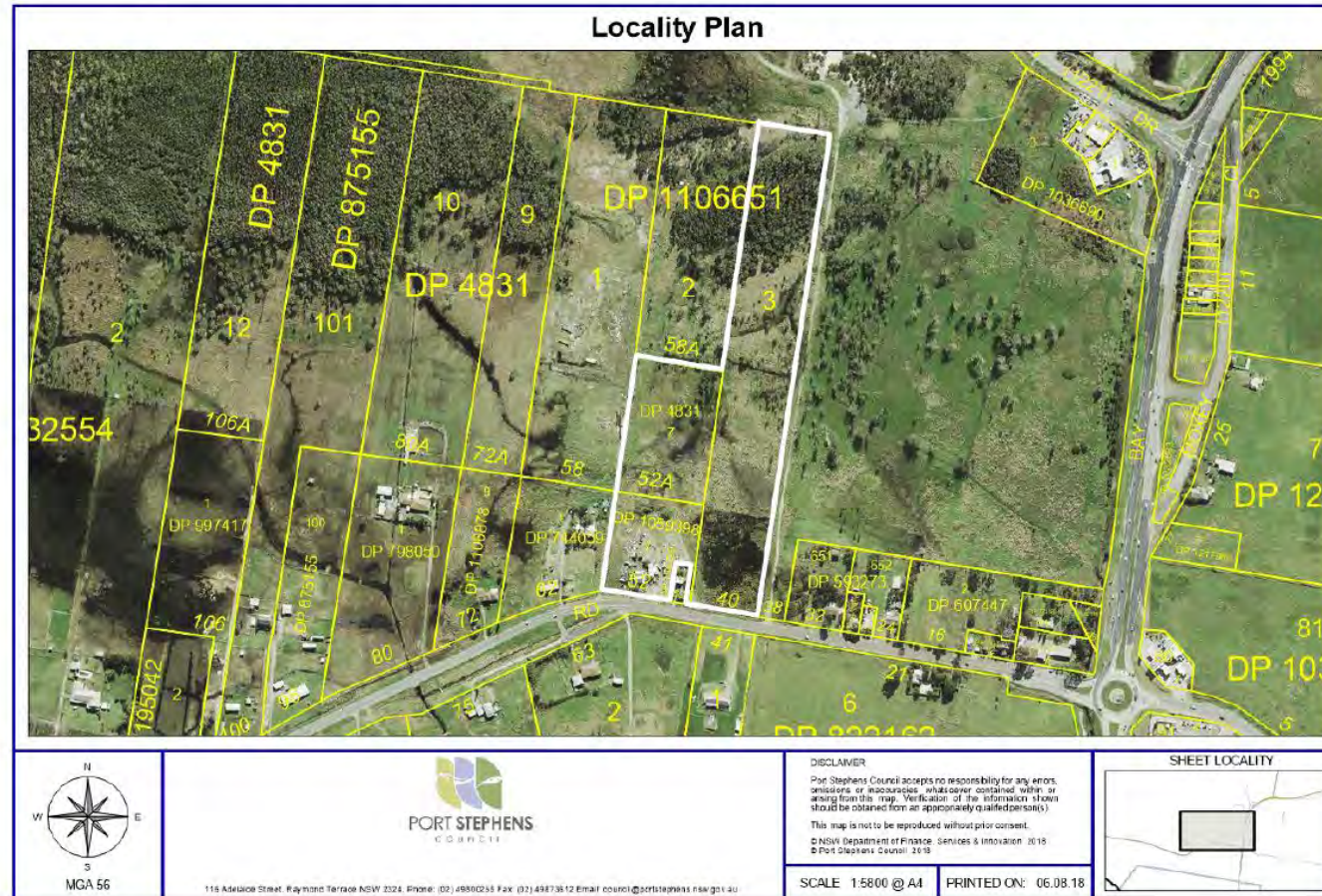
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### ITEM 1 - ATTACHMENT 2 LOCALITY PLAN.



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ITEM 1 - ATTACHMENT 3 ASSESSMENT REPORT.



APPLICATION DETAILS

Application Number	16-2017-524-1
Development Description	Fill and associated earthworks
Applicant	UNTAPPED PLANNING
Date of Lodgement	03/08/2017
Value of Works	\$20,000.00

Development Proposal

The applicant seeks approval for earthworks comprising the placement of fill in a single stockpile on the subject site, as follows:

- The total stockpile surface area and volume are unspecified, however it is noted that the stockpile varies between 3 m and 4.5 m in height with a batter at a 1:4 gradient.
- The proposed batter extends to the eastern side boundary with an approx. 0 m setback, whilst setbacks to the western side boundary exceed 40 metres.
- The fill is proposed to comprise virgin excavated natural material ('VENM') and / or excavated natural material ('ENM').

It is noted that the end purpose of the fill has not been specified by the applicant, the applicant states that the fill is required for 'future use and development of the site'. The applicant was requested to provide further information regarding the proposed end use, however this was not received. An extract of the site plan is provided at figure 1 below.



Figure 1: Site plan

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PROPERTY DETAILS	
Property Address	52A Cabbage Tree Road WILLIAMTOWN, 40 Cabbage Tree Road WILLIAMTOWN, 52 Cabbage Tree Road, WILLIAMTOWN
Lot and DP	LOT: 7 DP: 4831, LOT: 3 DP: 1106651, LOT: 7 DP: 1059398
Current Use	Vacant land
Zoning	RU2 RURAL LANDSCAPE
Site Constraints	<ul style="list-style-type: none"> <li>• Acid Sulfate Soils – Class 3;</li> <li>• Koala Habitat – Preferred;</li> <li>• Endangered Ecological Communities – Swamp Sclerophyll Forest;</li> <li>• RAAF Base Williamtown – ANEF 30-35;</li> <li>• RAAF Base Williamtown – Height Trigger;</li> <li>• RAAF Base Williamtown – Bird Strike Class C;</li> <li>• RAAF Base Williamtown – Extraneous Light;</li> <li>• Alligator Weed Affected Land;</li> <li>• Bushfire Prone Land – Category 3;</li> <li>• Flooding – High Hazard Storage;</li> <li>• Flooding – High Hazard Floodway;</li> <li>• Flooding – Low Hazard Storage;</li> <li>• Flooding – Low Hazard Fringe;</li> <li>• Williamtown PFAS Contamination Management Area – Primary Management Zone; and</li> <li>• Planning Strategy – DAREZ Business Park (adjoining the site).</li> </ul>

Site Description

The subject site consists of three lots with a total area of 7.5 ha and is located adjacent to the Defence and Airport Related Employment Zone ('DAREZ'). Vehicular access to the site is available via 52 Cabbage Tree Road. The site is constrained by environmental and neighbouring operational factors, including: flooding, contamination (PFAS), RAAF Base operations, ecology and bushfire.

The site is currently vacant, partly cleared of vegetation, with the northern section of containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.



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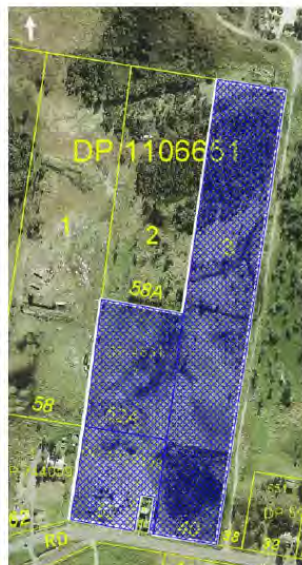


Image 1: Aerial extent of subject site

Site History

Compliance action associated with unauthorised land fill has occurred historically at the site (circa 2005), however this matter was resolved and has no bearing on the assessment of the current application.

Site Inspection

A site inspection was carried out on 31 July 2018. The subject site is depicted in the below images.

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Image 2: 40 Cabbage Tree Road (looking west)



Image 3: 40 Cabbage Tree Road (looking north-west)

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Image 4: 40 and 52 Cabbage Tree Road (looking west)



Image 5: 40 Cabbage Tree Road (looking west)

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**Image 6:** 40 Cabbage Tree Road (looking west)**ASSESSMENT SUMMARY**

<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application requires additional approvals listed under Section 4.46 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) and requires assessment by the Environmental Protection Agency under Section 43 the <i>Protection of the Environment Operations Act 1997</i> (POEO Act).
<b>Concurrence</b>	The application does require the concurrence of another body

**Internal Referrals**

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the Section 4.15 Matters for Consideration of the EP&A Act below.

**Engineering Services**

Additional information was requested on 15 September 2017 outlining the requirements for further detail on the proposed water quality measures (including erosion and sediment control measures), proximity of the proposed fill to the First Order stream passing through each lot and provision of a flood report to adequately address the impact of the proposed fill on the flood characteristics and arrangements of the land.

On 16 November 2017 a flood assessment prepared by Forum Consulting (Ref: 71520 and dated 14 November 2017) and response to the additional requirements was received. Amended plans



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were also received, which relocated the proposed fill a minimum of 40m from waterfront land to negate a referral to DPI – Water and requirement for a controlled activity permit under the *Water Management Act 2000* (WMA Act).

A review of the information, inclusive of the flood assessment provided on 16 November 2017 identified inadequacies and inconsistencies with the Port Stephens Council Development Control Plan 2014 (DCP 2014), the NSW Floodplain Development Manual 2005, and Council's existing Flood Study or Floodplain Risk Management Plan for the subject site in relation to numerical flood modelling, flood characteristics, flood planning level(s), flood storage impacts, velocity (including direction) and hazard and hydraulic categories. In addition, no information on the location of the 'future' redistribution of the proposed fill on-site was provided, therefore long term flooding impacts could not be considered.

On 30 January 2018, the applicant was requested to provide further information on the impacts on the flood characteristics of the land in line with the above comments. A response was received from the applicant on 20 April 2018, including an amended flood assessment, prepared by Forum Consulting (ref: 71520 and dated 26 March 2018). The information was reviewed by Council's Flood Advisory Review Panel at its meeting of 3 July 2018, however, the level of detail in the updated flood assessment was not sufficient enough to make an assessment on the impacts of flooding on adjacent properties. The application is yet to adequately consider the flood hazard, including consideration of depth of inundation, flow velocity and warning time for local catchment flooding and the impact of the proposal on the local residents, particularly along Cabbage Tree Road.

The application in its current form is not supported, and consequently recommended for refusal.

Strategic Planning

The statement of environmental effects submitted with the application noted that the objective of the development is to stockpile clean fill on the site for the future use and development of the site. The site is located within the DAREZ. In relation to the future use of the site, Strategic Planning have commented that the State government supports the expansion of aerospace and other compatible adjoining land uses at Williamstown. Direction 7 of the Hunter Regional Plan also contains actions to 'facilitate development opportunities on land surrounding Newcastle Airport to cluster emerging high-technology industry, defence and aerospace activities'.

Further, the draft Greater Newcastle Metropolitan Plan requires Council to align local plans to provide for high tech land uses and aerospace related industries to manage environmental constraints (including remediation) to plan for the staged release of land to facilitate the future expansion of DAREZ.

A pre-lodgement meeting was held with the applicant of the subject DA on 31 July 2018 in relation to the lodgement of a planning proposal that would seek to rezone the subject site (and, it is understood, other surrounding land) as part of the second stage of the development of the DAREZ precinct. Council advised that any planning proposal would need to address the environmental constraints including flooding, drainage, ecology, contamination, bushfire, and traffic and also the economic impacts of the proposal, including consideration of the staging of the DAREZ precinct and the existing development consent for Stage 1 DAREZ (construction of Stage 1 has not been finalised), as well as consistency with the Newcastle Airport Masterplan in relation to a proposed second access road.

A number of studies have been carried out looking at drainage in Williamstown, including the Commonwealth Defence Drainage Study currently being undertaken. Generally studies show the Williamstown/Fullerton Cove Drainage Catchment is at capacity as a result of approved developments, including the Stage 1 DAREZ. The studies have considered options to improve drainage in the area and to increase the drainage capacity in order to support the development of

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Williamstown and Council continues to be involved with State agencies in working towards solutions for improving drainage in the area to facilitate future development in accordance with the directions and actions in the Hunter Regional Plan and draft Greater Newcastle Metropolitan Plan. No planning proposal has been lodged with Council, and thus cannot be considered as part of the assessment of the subject application.

Building Surveyor

No objections were made, application is supported unconditionally.

Natural Resources

Additional information was requested on 11 September 2017 requiring the provision of an ecology assessment in accordance with the provisions of Section B2 of the DCP 2014. A response was received on 14 November 2017, noting that under the *Local Land Services Act 2013* (LLS Act), the rear of the site is mapped as being Category 2 – Sensitive Regulated Land. The proposed location of the fill was amended to avoid these areas and any waterways on the site. The remainder of the site was considered as Category 1 – Exempt Land, whereby clearing of native vegetation is not regulated under Part 5 of the LLS Act. An ecology report, as requested, was not provided by the applicant.

A review of this information was carried out by Council's Natural Resource Section. A second request for the provision of an ecology report occurred on 30 January 2018. Whilst it was acknowledged that the subject site has been subject to agricultural land use and largely cleared of remnant vegetation, the site has ecological values associated not only with the Swamp Sclerophyll Forest located towards the rear of the site but also with the low lying area around the waterways and/or drains throughout the site. These latter areas may provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has known to occur on the subject site and in the area immediately to the north of the site. The site is also known to support threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation. It is within the catchment of key fish habitat as mapped under the *Fisheries Management Act 1994*, *State Environmental Planning Policy (Coastal Management) 2018* and an internationally important RAMSAR listed wetland. The site also supports preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM) and is at the outer edge of a current generational persistence area for the koala. Demonstration of how the proposed development complies with the performance criteria of the PS CKPoM was requested.

An ecology report was submitted to Council on 20 April 2018, prepared by Wildthing Environmental Consultants (dated April 2018, ref: 12326). Through a review of this report, Council's Natural Resource Section recommended refusal, unless additional information was received relating to:

- a) The exact fill boundary in relation to habitat trees;
- b) Additional surveys and details on the Wallum Froglet;
- c) Assessment of potential impacts to natural flow regimes, inclusive of hydrology description, dynamics of the vegetation community and potential groundwater interactions;
- d) Details on potential pollution and water quality impacts from proposed filling including erosion and sedimentation;
- e) Additional consideration of the impacts on Alligator Weed located on-site;
- f) Additional consideration of mitigation measures, including potential offset measures for the loss of hollow bearing trees or procedures for vegetation removal;

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- g) Consideration of the future management or tenure of the site to protect the remaining ecological attributes of the site;
- h) Further information against the 'assessment of significance' to demonstrate that no significant impact will be likely;
- i) Justification for the determination that the proposal is unlikely to have a significant impact on Matters of National Environmental Significance in accordance with the associated guidelines;
- j) Further assessment on the impact on koala habitat; and
- k) Assessment of the cumulative impacts of the proposed development.

The provision of information on two occasions has not provided a clear or accurate depiction on the impacts of the proposed development on the environmental characteristics of the land. Based on the information provided, and known likely impacts, the application is recommended for refusal.

Environmental Health

Additional information was requested to outline and clarify the purpose and intended future use of the fill. In response to the information provided, the Environmental Health team made note to defer consideration of the application to the EPA in accordance with Section 43 of the POEO Act.

Weeds Officer

Additional information was requested on 15 August 2017 to clarify the impact of development on notifiable noxious weeds. The site is located within an area identified as containing the notifiable noxious weed infestation including Mother of Millions and Alligator Weed. Any VENM/ENM classified soil transported to the site would void the 'clean' fill classification, which will limit the potential transportation of fill to other sites. The application is unclear with respect to whether the proposal involves the temporary storage of fill for future removal to different sites or temporary filling of the identified areas for redistribution on site at a later stage. Additional information was received on 30 August 2017 noting that the intent of the fill is to utilise it on site in the future, so the fill is not intended to leave the site to be utilised elsewhere. A condition requesting the preparation of a weed management plan was recommended, in the event the application is supported.

External Referrals

The proposed development was referred to the following external agencies for comment:

Environment Protection Agency (EPA)

The application was referred to the EPA as integrated development under Section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to complete an assessment under Section 43 the POEO Act. Following submission of additional information by the applicant the EPA provided a response on 5 February 2018 which provided recommended conditions of consent.

**MATTERS FOR CONSIDERATION – SECTION 4.15****s4.15(1)(a)(i) – The provisions of any EPI**Port Stephens Local Environmental Plan 2013 (LEP 2013)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as "earthworks" and is permissible with consent as an innominate use and under Clause 7.2 Earthworks of the LEP 2013.

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The subject site is zoned RU2 Rural Landscape. The application provided a basic consideration of the objectives of the zone, concluding that the proposed development is broadly consistent with the zone objectives. In review of this and subsequent further information requesting this be expanded upon, it is concluded that the proposed development does not adequately consider the impacts on the rural landscape character of the site and surrounding context. Given the proposed fill extends to heights of 3.5m to 4m, the development will likely be visible from Cabbage Tree Road and surrounds across Williamtown. No visual impact assessment been undertaken to demonstrate consistency with the objectives of the RU2 zone and therefore remains inconsistent with the zone objectives.

**Clause 5.10 – Heritage**

The Williamtown Defence and Airport Related Zone (DAREZ) Land Use Development Strategy prepared by GHD in December 2007 identified Aboriginal objects and Aboriginal places recorded on the land immediately adjacent (to the north) of the subject site. In accordance with Clause 2(3), additional information was requested from the applicant to investigate the potential for Aboriginal Heritage on the subject site and associated impacts of the proposed development. In response, the applicant noted that in March 2008, McCardle Cultural Heritage Pty Ltd undertook an Indigenous Archaeological Desk Top Assessment of the Airport/ Defence related employment zone at Williamtown to accompany the DAREZ rezoning which included the subject site. The study concluded that *'the area of highest archaeological potential is that in the northern portion of the study area. Within this area, it is suggested that sites will be artefact scatters and middens within the dunal and ridge formations as they are located to well-resourced areas and also provide excellent viewpoints'*. The applicant noted that while included in the study area, the subject site is located south of the area identified as being of significance and that no further investigation was required.

In response to this, a copy of the McCardle findings was requested to enable further comprehensive assessment of heritage impacts. A screenshot of the study area from the report was provided, indicating that the subject site were of low archaeological potential. An AHIMS search was also carried out on 25 March 2018, which determined that no artefacts or items of interest are located on or near the subject site. The applicant has also noted that the fill is to be located to the south of the subject site, which has been disturbed by heavy grazing for a long period of time.

The information provided with the application is sufficient to enable assessment of the application against Clause 5.10 and subject to conditions of consent with respect to this matter the development is considered to be satisfactory.

**Clause 7.1 – Acid Sulfate Soils**

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is identified as containing class 3 acid sulfate soils. Development consent is required for the carrying out of works more than 1 metre below the natural ground surface, or works by which the water table is likely to be lowered more than 1 metre below the natural ground surface. It is noted that the proposed development includes earthworks by means of landfill, not excavation. However, there is a risk of exposing potential acid sulfate soils through the movement of soils on-site to facilitate the development. A geotechnical report would be required, if development consent was granted in order to comply with the requirements of this clause.

**Clause 7.2 – Earthworks**

The objective of Clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental

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planning instrument; therefore require consent from Council, and consideration of the matters specified under Clause 7.2(3).

The flood assessment submitted with the application outlines that the earthworks are not anticipated to impact adjoining properties. Soil stability conditions would be incorporated into any conditions of consent issued to ensure scour protection, which would include but not limited to landscaping. The use of clean fill would also be conditioned.

As discussed under Clause 5.10 of this report, the likelihood of disturbing relics as a result of the proposed development is unknown. Economically, the proposed development could increase the use of the land for agricultural purposes or the expansion of DAREZ in the future, however as no planning proposal has been lodged for this purpose, the impacts are unknown.

Measures to avoid, minimise or mitigate the impacts of the development have not been widely assessed or considered within the documentation submitted as part of the development application.

In consideration of the matters contained under Clause 7.2(3), the proposed development is not satisfactory and consent should not be granted.

**Clause 7.3 – Flood Planning**

The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard – Flood Storage, High Hazard – Floodway, Low Hazard – Flood Storage and Low Hazard – Flood Fringe. Clause 7.3 therefore applies.

As noted under the internal referrals section above, the level of detail in the updated flood assessment was not sufficient enough to make an assessment on the impacts of flooding on the subject land or adjacent properties. The proposed development has not responded to the objectives of Clause 7.3, and development consent should not be granted as the documentation submitted with the development application has not demonstrated that the proposed landfill:

*a) Is compatible with the flood hazard of the land;*

As noted in the flood assessment prepared by Forum Consulting Engineers (dated 26 March 2018, ref: 71520), the location of the proposed landfill is clear of any floodway issues and is wholly located in the area marked as High Hazard – Flood Storage. Through the provision of a detailed flood report, compatibility with the flood hazard of the land may be determined, however based on the information provided, it has been determined that the proposed development is not compatible with the flood hazard.

*b) Will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties;*

As noted under the internal referrals section above, the level of detail in the updated flood assessment was not sufficient enough to make an assessment on the impacts of flooding on the subject land or adjacent properties.

*c) Incorporates appropriate measures to manage risk to life from flood;*

No measures have been proposed to manage risk to life from flood.

*d) Will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses;*

The requirements of subclause (d) have partially been addressed. The flood assessment prepared by Forum Consulting Engineers (dated 14 November 2017, ref: 71520), outlined that the location of the landfill is a minimum of 40m from any identified water course. Soil stability conditions would be incorporated into any conditions of consent issued to ensure

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scour protection, which would include but not limited to landscaping. The use of clean fill would also be conditioned. The ecology report prepared by Wildthing Environmental Consultants (dated April 2018, ref: 12326) has limited consideration of the impacts of alteration to natural flow regimes, stating that the proposed development is unlikely to significantly alter the flow of the ephemeral drainage lines. The importation of fill and placement of this fill into these low lying areas will alter the hydrology of the site, which could significantly alter the dynamics of the vegetation community existing onsite.

- e) *Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The social and economic impacts of flooding are well documented local and State wide. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposed development has limited consideration of the social and economic costs to the community as a result of offset flooding and cumulative flood impacts on other development or properties that are likely to occur in the same floodplain.

To this extent, it is considered that development consent cannot be granted in accordance with Clause 7.3 of LEP2013 – Flood Planning as the consent authority is not satisfied that matters outlined in Clause 7.3(3) are satisfied.

**s4.15(1)(a)(ii) – Any draft EPI**

There are no draft EPI's relevant to the proposed development.

**s4.15(1)(a)(iii) – Any DCP**

**Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was notified for a period of fourteen (14) days from 9 August 2017 to 22 August 2017.

**Section B2 – Natural Resources**

As noted above whilst the subject site has been subject to agricultural land use and largely cleared of remnant vegetation, it has been identified as containing the endangered ecological community ('EEC') Swamp Sclerophyll Forest towards the north. The vegetation located within proximity to the low lying area around the waterways and/or drains throughout the site may also provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has been known to occur within the locality. Threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation may also be present within the area, including: a RAMSAR listed wetland, key fish habitat (as listed under the *Fisheries Management Act 1994*) and preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM).

An ecological report undertaken by Wildthing Environmental Consultants (dated April 2018) was submitted to Council. However, the report has limited consideration of the impacts of alteration to natural flow regimes, stating that the proposed development is unlikely to significantly alter the flow of the ephemeral drainage lines. The importation of fill and placement of this fill into these low lying areas will alter the hydrology of the site, which could significantly alter the dynamics of the vegetation community existing onsite. Furthermore, the ecological report was considered to be unsatisfactory as it failed to provide the information necessary for Council's Natural Resource section to complete a detailed assessment.

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**Section B4 – Drainage and Water Quality**

Council's Development Engineering Section noted that landfill and earthworks isolated from the use of land or impervious area increase does not trigger any specific water quality measures. The proposed plans have indicated that the landfill would be surrounded by sediment fencing and a "raingarden sediment trap" which satisfies sediment and water quality measures. However, sediment control during construction would still need to be addressed. In this regard, the requirements of Section B4 have been satisfied.

**Section B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against Clause 7.3 of the LEP 2013 above, the proposed development is not acceptable in this regard.

**s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4**

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

**s4.15(1)(a)(iv) – The regulations**

There are no clauses of the regulations relevant to the proposed development.

**s4.15(1)(a)(v) – Any coastal management plan**

There are no coastal management plans applicable to the proposed development.

**s4.15(1)(b) – The likely impacts of the development**

The subject site is located within a strategic economic precinct due to its proximity to DAREZ and is currently zoned RU2 Rural Landscape and it is important to note that there are currently no planning proposals lodged with Council seeking to rezone the land. Accordingly there is no strategic or economic purpose for which the proposed earthworks would merit support.

In addition, the applicant has failed to identify a purpose for the extent of proposed fill and has not demonstrated reasons for which the proposed earthworks would be required to support a permissible land use within the current RU2 Rural Landscape zone. Furthermore, in its current form the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

As outlined in an above section of this report the applicant has failed to appropriately identify and mitigate the impacts to the environment including; flooding and ecology. As a result the environmental impacts of the development are unknown and the proposal cannot be supported.

**s4.15(1)(c) – The suitability of the site**

Based on the information provided, the proposed development is likely to have adverse impact particularly in respect to the flood characteristics and ecological value of the site. Furthermore, the assessment has determined that the site is not suitable as the development:

- Encourages the improper management, development and conservation of the natural and artificial resources of agricultural land;

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- Is inconsistent with the objectives of the RU2 Rural Landscape zone applied to the land;
- May result in unacceptable and potentially irreversible impact to the natural environment by way of altering the flood characteristics of the subject and neighbouring sites; and
- Will incur and unacceptable and potential irreversible impact on the natural environment by way of altering the existing hydrology and fauna and flora characteristics of the land.

**s4.15(1)(d) – Any submissions**

Four submissions have been received in relation to the proposed development during the notification period and are summarised below:

Submission Summary	
1	<p>Submission objects to proposal, based on concerns relating to:</p> <ul style="list-style-type: none"><li>• Disruption of existing drainage flows and spread of contaminated water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li><li>• Ecological impacts on lower section of site, containing birds of prey and nesting locations.</li><li>• Flood impacts of proposed fill on broader Tomago area and cumulative impacts if fill is used to manage flooding across neighbouring sites. Any approval of fill activities may create a precedent for managing flood impacts through placement of fill.</li><li>• Visual impacts of proposal with fill dimensions reaching height 6m may create undesirable impacts on tourism value of broader Port Stephens.</li><li>• Ongoing management of dust from proposed fill stockpiles.</li></ul>
2	<p>Submission objects to proposal, based on concerns relating to:</p> <ul style="list-style-type: none"><li>• Disruption of existing drainage flows and spread of contaminated water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li><li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li><li>• Increase in truck movements and how they would access the subject site, and the associated impacts on the surrounding road network.</li><li>• Quality of the proposed fill.</li></ul>
3	<p>Submission objects to proposal, based on concerns relating to:</p> <ul style="list-style-type: none"><li>• Disruption of existing drainage flows and spread of contaminated water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li><li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li><li>• There is no access to the property that would allow truck movements so one would need to be built. Cabbage Tree Road is already busy with truck movements.</li><li>• Demolition of house or disturbance of existing asbestos containing fill pile should not be permitted.</li></ul>
4	<p>Submission objects to proposal, based on concerns relating to:</p> <ul style="list-style-type: none"><li>• The permissibility of land filling in the zone where not ancillary to a permitted land</li></ul>



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	use.
	<ul style="list-style-type: none"><li>• The lack of clarity on what the proposal entails.</li><li>• How the development responds to known environmental constraints.</li><li>• The long term objectives and management of the site.</li><li>• Impact on Aboriginal Cultural Heritage of the site.</li><li>• The 'preloading' will result in the migration of contaminated groundwater from the site.</li><li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li><li>• Truck movements and road safety, inclusive of number of movements and timeframes.</li><li>• Impact on threatened vegetation located on the site.</li></ul>

**Comments**

A response to each of the comments received from submission makers has been made in this report. The assessment has acknowledged many of these concerns cannot be overcome and therefore the application is recommended for refusal.

**s4.15(1)(e) – The public interest**

The proposed development is not considered to be in the public interest as it is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land.

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**ITEM 1 - ATTACHMENT 4      REASONS FOR REFUSAL.**



**REASONS FOR REFUSAL**

1. The proposed development fails to satisfy Clause 2.3 (zone objectives) and Clause 7.2 (earthworks) of the Port Stephens Local Environmental Plan 2013 (LEP2013) as the development will result in unacceptable visual impacts and is likely to detract from the rural character of the locality (s.4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* (*EP&A Act*);
2. The proposed development fails to satisfy Clause 7.3 (Flood Planning) of LEP2013 as insufficient information has been provided to demonstrate that the development is compatible with the flood characteristics of the site, including potential impacts to adjoining properties (s.4.15(1)(a)(i) of the *EP&A Act*);
3. The development fails to comply with the controls contained within Port Stephens Development Control Plan (Chapter B2 Natural Resources and Chapter B5 Flooding) (s.4.15(1)(a)(i) *EP&A Act 1979*);
4. Insufficient information has been provided to demonstrate that the site is suitable for the development given the flood characteristics and ecological value of the land (s.4.15(1)(c) of the *EP&A Act*); and
5. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land (s.4.15(1)(e) of the *EP&A Act*).