



# **AGENDA**

## **Extraordinary Council Meeting**

**Date: Monday, 11 March 2024**

**Time: 4.30pm**

**Location: Cowra Council Chambers  
116 Kendal Street, Cowra**

**Paul Devery  
General Manager**

**Order Of Business**

**1 Introduction.....3**

1.1 Recording & Publishing..... 3

1.2 Acknowledgement of Country..... 3

1.3 Apologies and Applications for Leave of Absence by Councillors..... 3

1.4 Disclosures of Interest..... 3

1.5 Presentations..... 3

1.6 Public Forum ..... 3

**2 Director-Environmental Services .....4**

2.1 Development Application No. 57/2020, Lot 2 DP 557714, Lot 1 DP 1201417,  
Lot 10 DP 1107219 & Lot 3905 DP 1200283, 2-4 Kite Street Cowra, continued  
use of, and proposed upgrades to landscaping material supplies, lodged by  
Buzzree Pty Ltd..... 4

**3 Late Reports.....294**

Nil

**I INTRODUCTION****I.1 Recording & Publishing**

In accordance with the Local Government Act (1993), Cowra Council is recording this meeting and will upload the recording to Council's website. By speaking at this meeting, you agree to being recorded and having that recording published in the public domain. Please ensure that when you speak at Council meetings you are respectful to others and use appropriate language at all times. Cowra Council accepts no liability for any defamatory or offensive remarks or gestures made during the course of this meeting.

**I.2 Acknowledgement of Country**

We acknowledge the traditional custodians of the land on which we gather, the Wiradjuri people, and pay our respects to elders both past and present.

**I.3 Apologies and Applications for Leave of Absence by Councillors**

List of apologies for the meeting.

**I.4 Disclosures of Interest**

Councillors and staff please indicate in relation to any interests you need to declare:

- a. What report/item you are declaring an interest in?
- b. Whether the interest is pecuniary or non-pecuniary?
- c. What is the nature of the interest?

**I.5 Presentations****I.6 Public Forum**

I invite any member of the public wishing to speak on an item in the agenda to please come to the lectern, introduce yourself, state the item you wish to speak on and allow time for any councillor or member of staff if they have declared an interest in the item to manage that conflict which may include them leaving the chamber during your presentation.

## 2 DIRECTOR-ENVIRONMENTAL SERVICES

- 2.1 Development Application No. 57/2020, Lot 2 DP 557714, Lot 1 DP 1201417, Lot 10 DP 1107219 & Lot 3905 DP 1200283, 2-4 Kite Street Cowra, continued use of, and proposed upgrades to landscaping material supplies, lodged by Buzzree Pty Ltd

File Number: D24/307

Author: Larissa Hackett, Director Environmental Services

### RECOMMENDATION

1. That Council notes that the reason for the decision is that the proposal largely complies with Section 4.15 of the Environmental Planning and Assessment Act 1979. The application was publicly notified and no submissions were received; and
2. That Development Application No. 57/2020, for the continued use of, and proposed upgrades to landscaping material supplies on Lot 2 DP 557714, Lot 1 DP 1201417, Lot 10 DP 1107219 & Lot 3905 DP 1200283, 2-4 Kite Street Cowra be approved subject to the following conditions:

### GENERAL TERMS OF APPROVAL – NSW DEPARTMENT OF PLANNING AND ENVIRONMENT – WATER

3. Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Department of Planning and Environment-Water, and obtained, for a controlled activity approval under the Water Management Act 2000.
4. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application DA 57/2020 provided by Council to Department of Planning and Environment-Water.
5. A. The application for a controlled activity approval must include the following plan(s):
  - a) Site plans
  - b) Soil and water management plan
  - c) Erosion and sediment control plans
  - d) Construction stormwater drainage outlet plan
  - e) Vegetation management plan
  - f) Construction detailed basin design plans
- B. The plan(s) must be prepared in accordance with Department of Planning and Environment-Water's guidelines located on the website <https://www.dpie.nsw.gov.au/water/licensing-and->

[trade/approvals/controlled-activity-approvals/what/guidelines](https://www.transport.nsw.gov.au/industry/asset-standards-authority/find-a-standard/airspace-and-external-developments-1)

## CONDITIONS OF CONSENT – TRANSPORT FOR NSW

6. The applicant must comply with the requirements of T HR CI 12090 ST Airspace and External Developments (Link: <https://www.transport.nsw.gov.au/industry/asset-standards-authority/find-a-standard/airspace-and-external-developments-1> ) and Development Near Rail Corridors and Busy Roads- Interim Guidelines (Link development-near-rail-corridors-and-busy-roads-interimguideline-2008.ashx (nsw.gov.au). Please note that State Environmental Planning Policy (Infrastructure) 2007 referred in the above documents has been superseded by State Environmental Planning Policy (Transport and Infrastructure) 2021.
7. The applicant must ensure its employees and all other persons do not enter any parts of the rail land other than the licenced premises unless otherwise permitted in writing in advance.
8. Prior to the commencement of works, if required the applicant shall provide certification/document from a qualified Geotechnical and Structural Engineers stating that the proposed works are to have no negative impact on the rail corridor and associated rail infrastructure. The applicant must consult and obtain written approval from UGLRL and TfNSW regarding any works involving penetration of ground if the excavation depth is greater than 2m depth with 25m of the rail corridor.
9. Prior to the commencement of works, the applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of UGLRL on behalf of TfNSW.
10. Prior to the commencement of works, the applicant must acquire written approval from UGLRL and TfNSW to its stormwater management plan to confirm post-development flows should be equal or less than that of pre-development flows (or post-development flows should not exceed pre-development flows) and to ensure that the development is not directed to railway land and had no adverse impact on the rail corridor.
11. Prior to the commencement of works, appropriate fencing must be placed between the proposed development site, and the remainder of the rail corridor to prevent unauthorised access. Before installing any fencing work, the applicant must obtain approval from TfNSW. The applicant is advised to contact UGLRL's third party works via [thirdpartyworks@uglregionallinx.com.au](mailto:thirdpartyworks@uglregionallinx.com.au) for more information.
12. Prior to the commencement of any work – cranes and equipment:
  1. If required, the applicant must submit an application to UGLRL for approval of TAHE prior to any use of cranes and equipment (Equipment) in the air space over the rail corridor.
  2. If required, the applicant is required to provide a safety assessment of the works necessary for the development assessing any potential impact or

intrusion on the Danger Zone (as defined in the UGLRL Network Rules and Procedures and that any works are undertaken by a qualified Protection Officer.

3. The use of Equipment must be in accordance with the AS 2550 series of Australian Standards, Cranes, Hoist and Winches, including AS2550 15-1994 Cranes – Safe Use - Concrete Placing Equipment.

**GENERAL CONDITIONS**

13. Development is to be in accordance with approved plans.

The development is to be implemented in accordance with the plans and supporting documents stamped and approved and set out in the following table except where modified by any conditions of this consent.

<b>Plan No./ Supporting Document</b>	<b>Prepared by/Reference Details</b>	<b>Cowra Shire Council Reference</b>
Existing Project Site Layout Figure A	RW Corkery & Co December 2023	Received 21 December 2023 Stamped No. 57/2020(A)
Proposed Project Site Layout Figure 2.1	RW Corkery & Co December 2023	Received 21 December 2023 Stamped No. 57/2020(A)
Statement of Environmental Effects Ref 983/06	RW Corkery & Co December 2023	Received 21 December 2023 Stamped No. 57/2020(A)

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

14. The applicant shall comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the Environmental Planning and Assessment Regulation 2021 (see attached Advisory Note).
15. The applicant shall obtain the written agreement (and any associated permits, leases or purchases required) from Cowra Council for the use of road reserves within the existing project site and two Council owned lots within the site, being Lot 1 DP 1201417 and Lot 10 DP 1107219.
16. Approved hours of operation are as follows:

<b>Landscaping Materials</b>	<b>Monday to Friday</b>	<b>7:00am to 5:00pm</b>
	<b>Saturday</b>	<b>7:00am to 12:00pm</b>

<b>Delivery and Supply</b>	<b>Sunday &amp; Public Holidays</b>	<b>No Operations</b>
<b>Emergency Maintenance</b>	<b>All Days</b>	<b>24 hours</b>

17. **No advertising sign and/or structure other than that which is permitted under this development approval or permissible without consent (exempt development) is to be erected as part of the approved development until a formal application has been submitted to Council and a development consent has been issued.**
18. **All traffic movements in and out of the development are to be in a forward direction.**
19. **The emission of noise from the premises must be in accordance with the recommendations of the Noise and Vibration Impact Assessment prepared by Spectrum Acoustics Pty Ltd and the Noise Policy for Industry published by the NSW Environment Protection Authority (2017).**
20. **The Applicant must obtain a Whole Occupation Certificate issued from the Principal Certifier appointed for the subject development. An Occupation Certificate Application must be lodged via the NSW Planning Portal to the Principal Certifier accompanied by the relevant fee prior to arranging an inspection. If Cowra Council is the Principal Certifier appointed for the subject development an inspection for the Occupation Certificate can be arranged by contacting Environmental Services on (02) 6340 2040.**

#### **CONDITIONS TO BE COMPLIED WITH PRIOR TO THE COMMENCEMENT OF WORKS**

21. **The Applicant is to submit to Cowra Shire Council, at least two days prior to the commencement of any works, a 'Notice of Commencement of Building or Subdivision Works' and 'Appointment of Principal Certifier'.**
22. **Prior to the commencement of works, the applicant shall provide to the Principal Certifier evidence of the agreement reached with Cowra Council referenced in condition 13.**
23. **Prior to the commencement of works, a car parking plan is to be provided for the approval of the Principal Certifier that includes the provision of one disabled parking space at the office to be constructed and/or line-marked in accordance with AS2890.6 – Off-street parking for people with disabilities.**
24. **Prior to the commencement of work on the site, all erosion and sediment control measures shall be implemented and maintained prior to, during and after the construction phase of the development. The erosion and sediment control measures are to comply with the Soil and Water Management Plan prepared by Strategic Environmental and Engineering Consulting Pty Ltd and Part B of Cowra Shire Council Development Control Plan 2021 at all times.**
25. **Prior to the construction of the footings a 'peg-out' survey plan is to be submitted to the Principal Certifier which establishes the position of the property boundary**

and demonstrates that the development will be constructed entirely within the boundaries of the property.

**CONDITIONS TO BE COMPLIED WITH DURING CONSTRUCTION**

26. Any damage caused to footpaths, roadways, utility installations and the like by reason of construction operations shall be made good and repaired to a standard equivalent to that existing prior to commencement of construction. The full cost of restoration/repairs of property or services damaged during the works shall be met by the Applicant.
27. All storage of goods and building materials and the carrying out of building operations related to the development proposal shall be carried out within the confines of the property. All vehicles must be parked legally and no vehicles are permitted to be parked over the public footpath. The unloading of building materials over any part of a public road by means of a lift, hoist or tackle projecting over the footway will require separate approval under Section 68 of the Local Government Act 1993.
28. Building activities and excavation work involving the use of electric or pneumatic tools or other noisy operations shall be carried out only between 7.00 am and 6.00 pm on weekdays and 8.00 am and 1.00 pm on Saturdays. No work on Sundays or Public Holidays is permitted.
29. The applicant must obtain any approvals required under Section 68 of the Local Government Act 1993 for water supply work, sewerage and stormwater drainage work or the disposal of liquid waste into Council's sewer.

**CONDITIONS TO BE COMPLIED WITH PRIOR TO THE ISSUE OF A WHOLE OCCUPATION CERTIFICATE**

30. Prior to the issue of a Whole Occupation Certificate, evidence is to be provided to the Principal Certifier that the disturbed areas encroaching on land controlled by Transport for NSW (on Lot 3905 DP 1200283) not covered by the licence agreement has been remediated to the satisfaction of TfNSW.
31. Prior to the issue of a Whole Occupation Certificate, the 10m wide Vegetated Riparian Zone is to be established along the southern boundary of the site in accordance with the species mix and methodology outlined in the Statement of Environmental Effects. Ringlock wire fencing is to be erected to delineate the revegetated area and to prevent accidental access to the revegetated area by site personnel and customers. Regular watering is to be undertaken for a minimum of 2 months following establishment.
32. Prior to the issue of a Whole Occupation Certificate, stormwater infrastructure is to be completed in accordance with the Soil and Water Management Plan prepared by Strategic Environmental and Engineering Consulting Pty Ltd.
33. Prior to the issue of a Whole Occupation Certificate, carparking is to be constructed and/or line-marked in accordance with the approved plan.
34. Prior to the issue of a Whole Occupation Certificate the applicant is required to enter into a lease agreement for the continued use of Council land identified as



**Lot 1 DP 1201417, Lot 10 DP 1107219 and the road reserve at the corner of Kite Street and River Street.**

## ADVICE

If, during work, an Aboriginal object is uncovered then **WORK IS TO CEASE IMMEDIATELY** and the Office of Environment & Heritage is to be contacted urgently on (02) 6883 5300. Under the National Parks and Wildlife Act 1974 it is an offence to harm an Aboriginal object or place without an 'Aboriginal heritage impact permit' (AHIP). Before making an application for an AHIP, the applicant must undertake Aboriginal community consultation in accordance with clause 80C of the NPW Regulation.

## INTRODUCTION

Development Application No. 57/2020 proposes the continued use of, and proposed upgrades to landscaping material supplies on Lot 2 DP 557714, Lot 1 DP 1201417, Lot 10 DP 1107219 & Lot 3905 DP 1200283, 2-4 Kite Street Cowra. The application was lodged with Council by Buzzree Pty Ltd on 29 June 2020. It has since been subject to one major amendment (discussed below) and required re-exhibition and re-referral to two government agencies.

The application is being reported to Council because it involves two lots and some road reserve areas that are owned by Cowra Council. In accordance with Council's Code of Planning Practice – Development Applications, where applications involve Council interests the application is to be reported to Council for determination.

A copy of the development plans of the proposed continued use of are included in Attachment '1' to this report and a copy of the Statement of Environmental Effects is included in Attachment '2'.

## Description of Site

The subject land covers an area of approximately 2.9ha. A landscape materials yard has been operating from the site since the early 1970's. Prior to this, the site formed part of a gravel extraction operation involving the extraction of gravel from the bed and banks of the adjacent Lachlan River.

Features adjacent to the subject land include the Lachlan River to the south and west, agricultural land to the west and northwest, and light industrial, residential, and business zones to the north, northeast, and east.

Lot & DP	Owner	Zone
Lot 2 DP 557714	Applicant	RUI
Lot 1 DP 1201417	Cowra Council	SP2
Lot 10 DP 1107219	Cowra Council	RUI
Lot 3905 DP 1200283	NSW Government	SP2
Unformed road reserves associated with Lee and River Streets.	Cowra Council	RUI

The subject land includes land within Lot 3905 DP1200283 which is occupied by the disused Cowra to Eugowra Railway. A licence agreement between the Applicant and Rail Corporation

NSW for the continued use of the section of the Project Site within Lot 3905 DP1200283 was granted on 17 February 2020.

The Applicant proposes to seek an agreement in relation to access and continued use of land within the Project Site owned by Cowra Council.

The subject land is accessed by a concrete driveway on the corner of Kite Street and River Street and is intersected by the disused Cowra to Eugowra Railway.

The subject land is occupied by a Landscaping Materials Yard adjacent to the upper bank of the Lachlan River, with the southwestern and western boundaries defined by a combination of a concrete block walls and an earth bunds. Infrastructure which forms part of the existing Landscaping Material Yard includes the following.

- Two concrete pad work areas, including one with an adjacent unlined sump used for truck washout and water storage.
- Material bunkers constructed using concrete blocks and panels.
- Various material stockpiles.
- Surface water management infrastructure including earth bunds and concrete block walls along the southern and western perimeter of the Project Site.
- A concrete-sealed driveway and level crossing.

A location map is included in Attachment '3' and an aerial photograph is included in Attachment '4' to this report.

### **Description of Proposal**

The application was initially submitted as Designated Development seeking consent for the continued use of a concrete batching plant including manufacture of precast concrete products and concrete waste recycling. Continued use was also sought for the sales of small quantities of landscaping and other materials.

Following lodgement, a thorough review of Council records discovered historical approval for the existing concrete batching operation but not for landscaping materials supplies. The application was subsequently amended for this component only. There is also no existing formal authorisation for the use of Council land.

The applicant's principal objectives for the proposal are to:

- Obtain the necessary development consent and rectify issues associated with the use of land controlled by Council and Transport for NSW;
- Continue to service the construction and landscaping material market in the Cowra region;
- Undertake modification to the existing site layout to ensure that environmental risks are minimised to the maximum extent practicable; and
- Undertake all activities in a manner to ensure compliance with conditional requirements of all approvals, reasonable community expectations and, to the extent practicable, the objectives of the Cowra LEP.

The proposal includes the following key activities:

- Modifications to the project site layout, including the construction of a concrete sealed work area including truck washout bays and bunding and relocation of some concrete bunkers;
- The establishment of a range of surface water management infrastructure (including a sediment basin) to ensure improved environmental management of the project site;
- Continued sale of small quantities of landscaping and other materials to the general public and small business;
- Recycling of limited quantities of returned concrete material from the applicant's adjacent concrete batching operations;
- Ancillary activities, including management of surface water and storage of equipment.
- Remediation of a section of the rail corridor
- Establishment of a vegetated riparian zone

The hours of operation for the existing and proposed Landscaping Materials Yard are as follows:

<b>Activity</b>	<b>Period</b>	<b>Hours of Operation</b>
Landscaping Materials Delivery and Supply	Monday to Friday	7:00am to 5:00pm
	Saturday	7:00am to 12:00pm
	Sunday	No Operations
Emergency Maintenance	All Days	24 hours

The Applicant currently employs five full-time employees.

The table below lists mobile equipment that would be used for day-to-day operations, together with the likely use of each piece of equipment.

<b>Equipment</b>	<b>No.</b>	<b>Function</b>
Front-end Loader	2	Loading trucks and trailers within the Landscaping Materials Yard. Stockpile management activities. Washout bay clean-out.
Agitator Trucks <sup>1</sup>	3 - 5	Enter and exit the Project Site, washing at the Concrete Sealed Work Area
Note 1: Agitator trucks associated with the Applicant's adjacent concrete batching operations would only enter the Project Site for truck washout purposes.		

No site office or amenities are present within the boundary of the Landscaping Materials Yard as facilities available at the Applicant's adjacent concrete batching plant are used instead (not the subject of this DA). Those site amenities are connected to Council's reticulated sewage system.

## Occupation Certificate

The applicant is seeking consent for the continued use of the premises and proposed upgrades to landscaping material supplies business. While it is acknowledged that the use of the premises has been in operation for many years, Council will still require compliance with conditions of a development consent. As such a “Whole Occupation certificate” is required to be applied for by the applicant to confirm that all conditions of the consent have been complied with. The whole occupation certificate will not be issued unless all required works have been undertaken, a fire safety certificate has been issued and all conditions of consent have been complied with to the satisfaction of the Principal Certifier.

## Environmental Impact Assessment

In determining a development application, a consent authority is to take into consideration such of the matters as are of relevance to the development in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The following section provides an evaluation of the relevant Section 4.15 Matters for consideration for DA 57/2020:

### **S4.15(1)(a)(i) Any Environmental Planning Instrument**

The application is classified as Non-Designated, Local Development as it does not meet the relevant thresholds for Designated, Regionally Significant or State Significant Development.

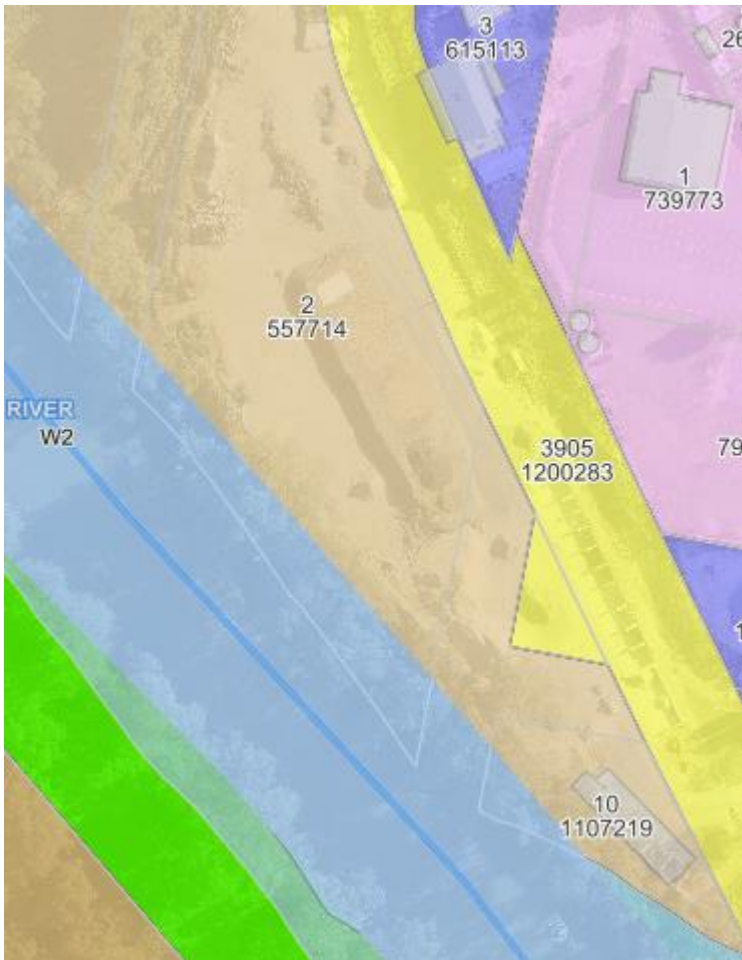
The proposal is classified as Integrated Development under Section 4.46 of the EP&A Act as a controlled activity approval for activities within 40m of waterfront land Under the *Water Management Act 2000* is required. This has been issued and is discussed elsewhere in this report along with the necessary licence from Transport for NSW for the use of rail corridor land.

A Section 138 Permit from Council for the ongoing use of the unformed sections of road reserves associated with Lee Street and River Street would also be required.

### Cowra Local Environmental Plan 2012

The subject land is zoned RUI Primary Production and SP2 Rail Infrastructure Facilities under the provisions of the *Cowra Local Environmental Plan 2012 (LEP)*.

Landscaping material supplies are permitted with consent in the RUI zone (which is what the land west of the railway line is zoned), however are prohibited in the SP2 zone (the former railway lands). Clause 5.3 of the LEP (development near zone boundaries) can be used in this instance to utilise the RUI zone provisions within 100m of the zone boundary, with respect to permissibility.



Clause 2.3(2) of the Cowra LEP 2012 requires that “The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone”.

### **Zone RUI Primary Production**

#### *1 Objectives of zone*

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

#### *2 Permitted without consent*

*Environmental protection works; Extensive agriculture; Home occupations; Intensive plant agriculture*

#### *3 Permitted with consent*

*Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Camping grounds; Cellar door premises; Cemeteries; Community facilities; Correctional centres; Depots; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities;*

*Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Function centres; General industries; Heavy industries; Helipads; Home-based child care; Home businesses; Home industries; Home occupations (sex services); Industrial training facilities; Information and education facilities; Intensive livestock agriculture; Jetties; **Landscaping material supplies**; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Rural workers’ dwellings; Secondary dwellings; Signage; Transport depots; Veterinary hospitals; Water recreation structures; Water supply systems*

**4 Prohibited**

*Any development not specified in item 2 or 3*

<b>Objective</b>	<b>Response</b>
<i>• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i>	The land is not used for primary production and has historically been used for landscape materials supplies.
<i>• To encourage diversity in primary industry enterprises and systems appropriate for the area.</i>	The land is not suitable or capable for primary industry enterprises.
<i>• To minimise the fragmentation and alienation of resource lands.</i>	The land is already fragmented.
<i>• To minimise conflict between land uses within this zone and land uses within adjoining zones.</i>	The continuation of the land use is considered acceptable with respect to the minimising potential conflict with neighbouring land uses. The proposed hours of operation are acceptable and mitigation measures proposed in the SEE are reasonable to ensure that any impacts are acceptable.

**Zone SP2 Infrastructure**

*1 Objectives of zone*

- To provide for infrastructure and related uses.*
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

*2 Permitted without consent*

*Roads*

*3 Permitted with consent*

*Aquaculture; The purpose shown on the [Land Zoning Map](#), including any development that is ordinarily incidental or ancillary to development for that purpose*

**4 Prohibited**

Any development not specified in item 2 or 3

Objective	Response
<ul style="list-style-type: none"> <li>To provide for infrastructure and related uses.</li> </ul>	<p>The land is no longer utilised for the purposes of a rail line. TfNSW has no objections to the proposed development on this land (Lot 3905).</p>
<ul style="list-style-type: none"> <li>To prevent development that is not compatible with or that may detract from the provision of infrastructure.</li> </ul>	<p>Lot 3905 has been used for landscape materials supplies for a considerable period of time and the applicant has a licence in place with TfNSW to use it for this purpose.</p>

### 5.3 Development near zone boundaries

(1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

(2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 100 metres.

(3) This clause does not apply to—

(a) land in Zone RE1 Public Recreation, Zone C1 National Parks and Nature Reserves, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone W1 Natural Waterways, or

(b) land within the coastal zone, or

(c) land proposed to be developed for the purpose of sex services or restricted premises.

Note—

When this Plan was made it did not include Zone W1 Natural Waterways.

(4) Despite the provisions of this Plan relating to the purposes for which development may be carried out, development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that—

(a) the development is not inconsistent with the objectives for development in both zones, and

(b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

(5) This clause does not prescribe a development standard that may be varied under this Plan.

#### Comments

The following provides consideration of Clause 5.3:

#### **Sub-clause 1**

The applicant is seeking to utilise clause 5.3 to allow for the landscape materials supplies development on the SP2 Rail Infrastructure part of the subject land as it adjoins the RUI zoned land where landscape materials supplies are permitted with consent. The clause is designed to provide flexibility in such a situation.

**Sub-clause 2**

The entirety of the SP2 zoned land is within 100 metres of the RUI Primary Production land-use zone meaning the entire site can be utilised in the proposed development which is permitted to within 100 metres of a neighbouring zone. The development is consistent with sub-clause 2.

**Sub-clause 3**

The land is zoned SP2 which is not listed as being specifically excluded, nor is the land mapped within a coastal zone and the proposed use is not listed as specifically excluded from its operation. The development is consistent with sub-clause 3.

**Sub-clause 4**

The proposed landscape materials supplies is not considered inconsistent with the zone objectives of the SP2 and RUI zones in this instance. Refer to previous assessment against the zone objectives. The development is consistent with the planning controls of Sub-clause 4(a).

The proposed development is considered compatible with the area and is desirable as the area has sufficient capacity of infrastructure to cater for a landscape materials supplies business without over-burdening any public utility, consistent with Sub-clause 4(b).

**Sub-clause 5**

This proposed development does not vary any prescribed development standard within the LEP.

The proposed landscape materials supplies development in the environmental context of the subject land can be developed consistent the provisions of clause 5.3 without variation and may be approved.

**5.21 Flood Planning**

Clause 5.21 of the Cowra LEP identifies the following objectives with regards to flood planning.

- “To minimise the flood risk to life and property associated with the use of land.
- To allow development on the land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change.
- To avoid adverse or cumulative impacts on flood behaviour and the environment.
- To enable the safe occupation and efficient evacuation of people in the event of a flood”.

A review of Cowra LEP 2012 Flood Planning Map Sheet FLD\_002C confirms that the Project Site is located within the nominated flood planning area.





While noting the potential for flooding is limited to extreme rainfall conditions, the proposal has been designed so as to minimise both flood risk to property and adverse effects on flood behaviour.

The Applicant contends that structures and activities within these areas would not impact on flood behaviour or be inconsistent with the Cowra LEP or DCP for the following reasons:

- *All structures have been designed to minimise impacts on flood behaviour, including the following.*
  - *The existing material bunkers have been constructed in the most elevated section of the Landscaping Material Yard, with the openings of these bunkers on the downslope side, permitting entry and exit of flood waters with minimal obstruction.*
  - *The concrete wash out bays and water storage cell would be recessed into the ground and lined with concrete, permitting the free passage of flood waters over the tops of these structures and not obstructing flood waters.*
  - *All structures extending above the ground surface within the Flood Planning Area would be earth bunds or would be constructed using concrete blocks. In the event that these structures are subjected to high velocity flood waters, the concrete blocks may be displaced*

*short distances, but would not form debris that would result in damage downstream of the Project Site.*

- *The Applicant would relocate as much landscaping materials from lower sections of the Project Site to higher sections in advance of potential flooding. This would limit the potential for that material to be entrained in flood waters.*

These measures are considered reasonable. The development is assessed to be compatible with the flood function and behaviour on the land and will not adversely affect flood behaviour or the safe occupation and evacuation of people. Projected changes to flood behaviour as a result of climate change are unknown. Landscaping products can be relocated if the surrounding area is impacted by flooding. It is assessed that the proposed development is satisfactory with regard to the considerations contained in Clause 5.21.

### **7.3 - Terrestrial Biodiversity**

Clause 7.3 of the Cowra LEP identifies the following objective with regards to terrestrial biodiversity, which is to maintain terrestrial biodiversity by:

- “protecting native flora and fauna,
- protecting the ecological processes necessary for their continued existence; and
- encouraging the conservation and recovery of native fauna and flora and their habitats”.

A review of Cowra LEP 2012 Terrestrial Biodiversity Map confirms that the Project Site is partially located on land identified as ‘Biodiversity’ which is the riparian vegetation located on the banks of the Lachlan River.

Section 3.9 of the submitted SOEE provides information on biodiversity-related impacts associated with the Proposal to allow for consideration against Clause 7.3(3) and (4) of the Cowra LEP.

No vegetation removal is proposed – accordingly no negative impacts have been identified.

### **7.4 - Riparian Lands and Watercourses**

Clause 7.4 of the Cowra LEP identifies the following objectives with regards to riparian lands and watercourses, namely to protect and maintain:

- “water quality within watercourses,
- the stability of the bed and banks of watercourses,
- the aquatic and riparian habitats; and
- ecological processes within watercourses and riparian areas.”

A review of Cowra LEP 2012 Wetlands Map Groundwater Vulnerability Map Riparian Lands and Watercourses Map confirms that the project is located adjacent to an identified watercourse, namely the Lachlan River.

Additionally, Clause 7.4 of the Cowra LEP applies to “all land that is within 40 metres of the top of the bank of each watercourse” as identified on the aforementioned map.

The application includes a number of management and mitigation measures aimed at minimising impacts on surface water and flooding and improving water quality. DPE-Water have provided their General Terms of Approval (Water Management Act 2000) which are included in the recommended conditions of consent. The application is satisfactory with regard to the considerations of Clause 7.4.

### **7.6 - Groundwater Vulnerability**

Clause 7.6 of the Cowra LEP identifies the following objectives with regards to groundwater vulnerability.

- “To maintain the hydrological functions of key groundwater systems.
- To protect vulnerable groundwater resources from depletion and contamination as a result of development.”

A review of Cowra LEP 2012 Wetlands Map Groundwater Vulnerability Map Riparian Lands and Watercourses Map Sheet confirms that the Project Site is located on land identified as ‘Groundwater Vulnerable’.

The application includes the following assessment of potential impacts:

Potential groundwater-related impacts and constraints include the following:

- Interception or extraction of groundwater from an aquifer. No groundwater would be extracted or intercepted and therefore no aquifer interference or other groundwater approval or licence is required. As a result, this issue poses a negligible constraint.
- Contamination of groundwater through the discharge of high pH or contaminated water. Truck wash out activities would be undertaken in areas of the Project Site which are concrete sealed to prevent infiltration of potentially contaminated water. The Applicant would ensure that potentially contaminated water would drain to the concrete-lined water storage cell which would be constructed to ensure that contaminated water does not seep through to reach the water table. Assuming that these measures are implemented, this issue is likely to pose a minor constraint.
- Contamination of groundwater from hydrocarbon leaks or spills. The Applicant would implement appropriate hydrocarbon management procedures. As a result, this issue is likely to pose a negligible constraint.
- Impacts on groundwater dependent ecosystems. On the basis that groundwater would not be affected by the Proposal, groundwater dependent ecosystems would not be impacted, and so this issue is likely to pose a negligible constraint.

Given the water management measures outlined in Section 2.2.4 and Appendix 2, it is not anticipated that the Proposal would have any impact on groundwater resources and is therefore consistent with the objectives of the Cowra LEP.

## 7.8 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

### Comments

The site is connected to all available services. There is an existing access onto the site.

### State Environmental Planning Policies

The following State Environmental Planning Policies are considered relevant to Council's consideration:

### **State Environmental Planning Policies**

<b>SEPP</b>	<b>COMMENTS</b>
SEPP (Housing) 2021	Not applicable
SEPP (Primary Production) 2021	Not applicable
SEPP (Resources and Energy) 2021	Not applicable
SEPP (Resilience and Hazards) 2021	Includes the former SEPP 55 – Remediation of Land. See comments below
SEPP (Industry and Employment) 2021	Not applicable
SEPP (Transport and Infrastructure) 2021	Not applicable
SEPP (Biodiversity and Conservation) 2021	Not applicable. No vegetation requires removal.
SEPP (Planning Systems) 2021	Not applicable
SEPP (Precincts – Eastern Harbour City) 2021	Not applicable
SEPP (Precincts – Central River City) 2021	Not applicable
SEPP (Precincts – Western Parkland City) 2021	Not applicable
SEPP (Precincts - Regional) 2021	Not applicable
SEPP (Building Sustainability	Not applicable

Index: BASIX)	
SEPP 65—Design Quality of Residential Apartment Development	Not applicable
SEPP (Exempt and Complying Development Codes) 2008	Not applicable

- **SEPP (RESILIENCE AND HAZARDS) 2021**

Under Clause 4.6 a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose

It is assessed that the proposal would not be classified as offensive or potentially offensive development as it would not have a significant adverse impact on the locality. The site has been subject to long-term industrial use.

Following a suspected pollution incident, on 30 June 2020 Council issued a Notice of Intention to the Applicant to issue a Clean-up Direction under Section 92 of the Protection of the Environment Operations Act 1997. A further direction was issued by Council on 17 August 2022 requiring the Applicant to complete a contamination assessment at the site. Details of the contamination assessment are included in Section 3.6 of the Statement of Environmental Effects (SEE). In summary, the contamination assessment concluded that the suspected pollution incidents had not resulted in unacceptable impacts to soil or groundwater at the site which was therefore suitable for continued commercial/industrial use. The SEE contains proposed surface water controls which would prevent future pollution as a result of truck washout activities.

The land is presently used as a landscape materials supplies business – no change is proposed other than seeking approval for its continued use. No further investigation is required in accordance with the NSW Managing Land Contamination Planning Guidelines.

#### **4.15(1)(a)(ii) Any draft Environmental Planning Instrument**

There are no draft Environmental Planning Instruments that apply to the development.

#### **S4.15(1)(a)(iii) Any Development Control Plan (DCP)**

#### **Cowra Shire Council Development Control Plan 2021**

**Relevant Plan sections:**

#### **PART A – PLAN INTRODUCTION**

Consent is required for the proposed development.

## **PART B – LAND MANAGEMENT**

Appropriate soil and water management controls are to be implemented in accordance with the approved documentation.

## **PART I – INDUSTRIAL DEVELOPMENT**

The landscaping materials supplies component including product bunkers and stockpile areas has minimal road frontage and visibility from public spaces. Streetscape landscaping is not considered necessary. Hours of operation, noise emission limitations and waste management controls are included in the application and in the recommended conditions of consent. The proposal is designed appropriately in consideration of the requirements of Part I.

## **PART K – LAND USE BUFFERS**

### **Cowra Airport Obstacle Limitation Surface**

The subject land is located outside of the OLS and all other buffers under Part K.

## **PART O – ENVIRONMENTAL HAZARD MANAGEMENT**

The subject land is partially mapped as flood prone as discussed previously in this report. It is assessed that the proposal has been satisfactorily designed so as to minimise both flood risk to property and adverse effects on flood behaviour.

The subject land is not mapped as bushfire prone.

A contamination assessment has concluded that the site is suitable for continued commercial/industrial use.

## **PART P – CPTED PRINCIPLES**

The proposal does not include any substantial built form. A CPTED Assessment is not considered necessary.

### **S4.15(1)(a)(iiia) Any Planning Agreement**

There is no planning agreement that has been entered into under Section 7.4 of the Environmental Planning and Assessment Act 1979 by the applicant in relation to the development proposal. Similarly, the applicant has not volunteered to enter into a draft planning agreement for the development proposal.

### **S4.15(1)(a)(iv) The EP & A Regulations**

Section 4.15(1)(a)(iv) requires Council to also consider Clauses 92, 93, 94 and 94A of the Environmental Planning and Assessment Regulation. The following provides an assessment of the relevant clauses of the Regulation:

- Clause 92 – The Government Coastal Policy does not apply to Cowra Shire and therefore Clause 92(1)(a) and (b) are not applicable to this development proposal. The proposal does not involve demolition of a building and therefore the requirements of AS 2601 do not need to be considered in accordance with Clause 92(2).

- Clause 93 – The proposal does not involve the change of a building use for an existing building, or the use of an existing building as a place of public entertainment and therefore the requirement to consider fire safety and structural adequacy of buildings in accordance with Clause 93 is unnecessary.
- Clause 94 – The proposal does not involve the rebuilding, alteration, enlargement or extension of an existing building or place of public entertainment and therefore the requirement to consider the upgrading of buildings into total or partial conformity with the Building Code of Australia.
- Clause 94A – The proposal does not involve the erection of a temporary structure and therefore the requirements to consider fire safety and structural adequacy is unnecessary.

#### **S4.15(C)(1)(b) The Likely Impacts of the Development**

Section 4.15(C)(1)(b) requires the Council to consider the likely impacts of the development, including environmental impacts on both the natural and built environments as well as the social and economic impacts in the locality. The following provides an assessment of the likely impacts of the development:

##### Context and Setting

The area is characterised by a range of commercial and residential land uses. The proposal is assessed as being consistent with the character of the locality and is appropriate given its local context and setting.

##### Access, Transport and Traffic

Site access is via an existing concrete driveway located at the corner of Kite Street and River Street. The applicant states that the landscaping materials yard typically requires two material delivery trucks to access the site each week. The proposal does not include any changes to the existing traffic environment. Temporary parking for customers is available in the landscaping materials yard.

##### Public Domain

The proposal will not have a negative impact on public recreational opportunities or public spaces in the locality.

##### Utilities

The site is connected to all necessary utilities.

##### Heritage

There are no Aboriginal or European heritage items on the subject land or adjoining lands.

##### Stormwater, Water and Sewerage

The application will not impact on water or sewer services. A soil and water management plan (SWMP) has been submitted as part of the application and assessed as satisfactory.

### Soils

Minimal impact on soils. The SWMP mitigates potential soil erosion and sedimentation issues.

### Air and Microclimate

There is potential for dust to be emitted from the site in association with vehicle movements and product stockpiles. There may also be a temporary increase during the proposed upgrades to site infrastructure. The Statement of Environmental Effects proposes a range of control measures to minimise dust and particulate emissions. This includes monitoring dust generation, wetting surfaces and stockpiles and ensuring construction activities are not undertaken in windy conditions. Water will be applied to the revegetated riparian corridor areas for the first two months following seed or hydromulch application.

### Flora and Fauna

No native vegetation exists on the site and the continued use of the development will not require the removal of any trees. Revegetation of the adjacent riparian vegetation is proposed as part of the application. The applicant has proposed to establish a 10m wide vegetated riparian zone delineated by a fence. The vegetation community selected will reflect existing remnant riparian vegetation in the locality. The proposal is unlikely to adversely affect threatened species, communities or their habitats.

### Waste

Any construction waste will be removed from the site and appropriately recycled or catered for at a licensed waste management facility.

### Energy

A BASIX Certificate is not required for this application.

### Noise and Vibration

The development application does not propose any additional activities to those already being undertaken on the site which has been operating since the 1970's. Nevertheless, the applicant has submitted an acoustic assessment which contains the following noise management measures:

- Ensure that the operation of the sprinkler system is restricted to daytime periods (i.e. 7:00am to 6:00pm, Monday to Saturday).
- Comply with the approved hours of operation.
- Actively engage with the surrounding community and neighbours to ensure that any concerns over noise or vibration are identified and addressed.

It is noted that neither the Applicant or Council has received any noise complaints regarding the operation of the facility.

### Natural Hazards

The site is partially subject to flooding as previously discussed in this report. There are no habitable buildings proposed as part of the application. It is assessed that suitable measures are



proposed to address the flood hazard and the proposed development will not impact adversely on flood behaviour.

#### Technological Hazards

Site assessment has confirmed that there are no technological hazards rendering the site unsuitable for the continued use of the landscaping materials supplies.

#### Safety, Security and Crime Prevention

This development will not generate any activity likely to promote any safety or security problems to the subject land or surrounding area.

#### Social and Economic Impacts on the locality

The proposed development will not result in any identified negative social or economic impacts.

#### Site Design and Internal Design

The design of the development is satisfactory for the site and without any identified adverse impacts.

#### Construction

There are proposed minor structures for product storage and surface water management that can be constructed without adverse impacts on neighbours or the environment.

#### Cumulative impacts

The proposal is not expected to generate any ongoing negative cumulative impacts.

### **S4.15(1)(c) The Suitability of the Site for the Development**

The development is consistent with the zone objectives and consideration has been given to the impacts the development will have within the locality. It is considered that the proposed development will not create adverse impacts within its local setting. Appropriate services for water, waste disposal and other utilities are available to the site. It is assessed that the development will not impact upon any existing services. The development site is not identified as being unsatisfactorily constrained by natural features. The site is considered suitable for the development subject to the imposition of appropriate conditions of consent.

### **S4.15(1)(d) Any Submissions Received**

#### Public Consultation

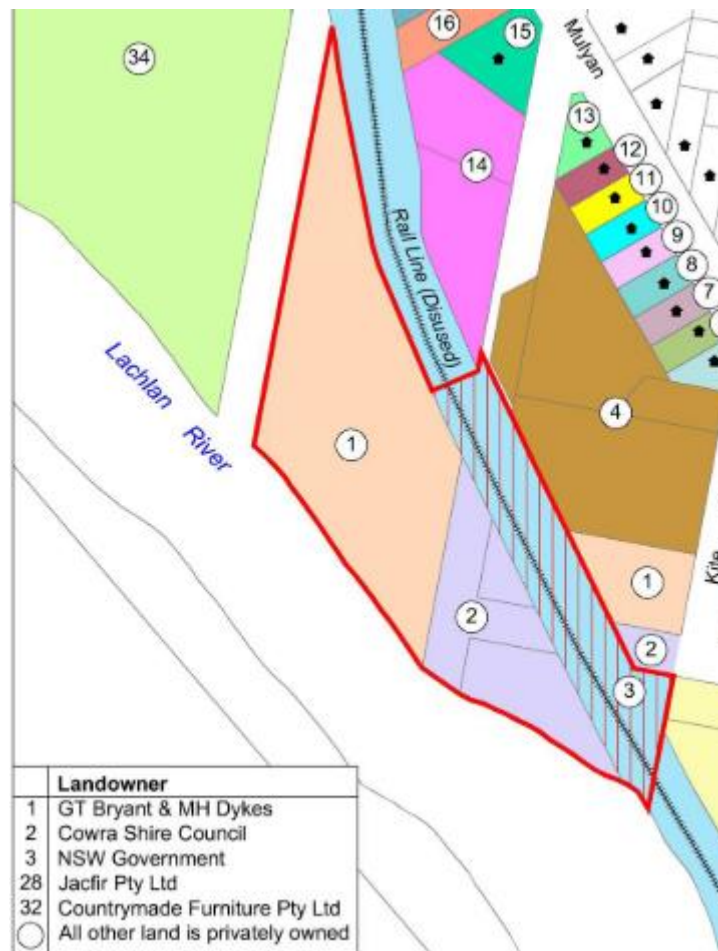
The subject Development Application was advertised and notified to adjoining owners in writing from 25 May 2021 to 23 June 2021, in accordance with Cowra Community Participation Plan 2020. No submissions were received in relation to the proposed development.

#### Public Authority Consultation:

The Applicant required and has received land-owner's consent and a licence from Transport for NSW (TfNSW) for the use of land within the disused rail corridor. TfNSW has requested the

application of a number of conditions of consent which have been included in the recommended conditions.

The applicant seeks to negotiate suitable agreements with Council regarding the use of some unformed road reserve land within the existing project site and two Council owned lots within the site, being Lot 1 DP 1201417 (560m<sup>2</sup>) and Lot 10 DP 1107219 (2,326m<sup>2</sup>). A recommended condition of consent notes this requirement. On the map extract below the boundaries of the project site are shown in red and the Council owned areas referenced above are labelled no.2 and highlighted in purple.



The application also represents Integrated Development requiring a Controlled Activity approval under the Water Management Act 2000. The responsible agency is the NSW Department of Planning and Environment (DPE) – Water. Council received the General Terms of Approval (GTA’s) from NSW DPE-Water on 2 November 2023. The GTA’s are included in the recommended conditions of consent.

**S4.15(1)(d) The Public Interest**

Community Interest

The proposed development is permissible on the subject land and is not expected to adversely impact on the community interests of the area. The proposed development has been considered in terms of the context and setting of the locality in previous sections to this report. The proposed development will not impose any identified adverse economic or social impacts on the local community.

### **S7.12 Fixed development consent levies**

The development is of insufficient estimated cost to trigger the requirement for development contributions under Cowra Council S94A Contributions Plan 2016.

#### **Conclusion**

Development Application No. 57/2020 proposes the continued use of, and proposed upgrades to landscaping material supplies on Lot 2 DP 557714, Lot 1 DP 1201417, Lot 10 DP 1107219 & Lot 3905 DP 1200283, 2-4 Kite Street Cowra. The application was lodged with Council by Buzzree Pty Ltd on 29 June 2020. It has since been subject to one major amendment and required re-exhibition and re-referral to two government agencies.

The application was supported by a Statement of Environmental Effects and development plans prepared by the applicant, which provide sufficient information to allow assessment of the proposal.

The proposed development has been assessed to be consistent with the requirements of Cowra Local Environmental Plan 2012, relating to development in the RUI & SP2 zones and is consistent with the existing land-use activities of the locality.

The development application was notified in accordance with Cowra Community Participation Plan 2020. No submissions were received following the consultation process.

Having considered the documentation supplied by the applicant, the findings of site inspection(s) and the comments made from consultation, it is assessed that the impacts of the proposal and the likely environmental interactions between the proposed development and the environment are such that Council should not refuse the development application. Accordingly, a recommendation of conditional approval is listed in the recommendation.

#### **ATTACHMENTS**

1. DA 57/2020 - Development Plans [↓](#)
2. DA 57/2020 - Statement of Environmental Effects [↓](#)
3. DA 57/2020 - Location map [↓](#)
4. DA 57/2020 - Aerial view [↓](#)























































































































































































































































































































































































































































































































































































































**3 LATE REPORTS**

Nil