

1 August 2022

2190777

Mr Michael Cassel
Secretary
Department of Planning and Environment
12 Darcy Street
Parramatta, NSW 2150

Attention: Megan Fu, Principal Planner, Social and Infrastructure Assessments

**SECTION 4.55(1A) MODIFICATION APPLICATION – SSD 9351535
JOHN HUNTER HEALTH AND INNOVATION PRECINCT, LOOKOUT DRIVE, NEW LAMBTON HEIGHTS**

This application has been prepared by Ethos Urban on behalf of Health Infrastructure NSW (HI) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 9351535 relating to the John Hunter Health and Innovation Precinct (herein referred to as JHHIP).

This modification seeks approval for tree clearance in a portion of the site that always required to be cleared of vegetation to support approved construction works.

This modification application identifies the consent proposed to be modified, describes the proposed modifications, and provides a planning assessment of the relevant matters for consideration contained in Section 4.55(1A) of the EP&A Act and is accompanied by the following reports:

- Revised Architectural Plans prepared by BVN Architects (**Attachment A**).
- Revised Landscape Plans prepared by Urbis (**Attachment B**).
- Biodiversity Development Assessment Report (BDAR) prepared by Umwelt (**Attachment C**).
- Transport for NSW correspondence (**Attachment D**).
- Environmental Biodiversity and Conservation Advice prepared by Umwelt (**Attachment E**).
- Bushfire Advice prepared by Blackash Bushfire Consulting (**Attachment F**).

In light of the following assessment, we therefore recommend that the proposed modification is supported by DPE.

Yours sincerely,



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1.0 Introduction

This application has been prepared by Ethos Urban on behalf of HI pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 9351535 relating to John Hunter Health and Innovation Precinct, at Lookout Road, New Lambton.

This modification application identifies the consent proposed to be modified, describes the proposed modifications, and provides a planning assessment of the relevant matters for consideration contained in section 4.55(1A) of the EP&A Act.

1.1 Background and Consent Proposed to be Modified

SSD 9351535 – John Hunter Health and Innovation Precinct

State Significant Development Consent (SSD 9351535) was granted by the Minister for Planning and Public Spaces on the 30 November 2021 for the redevelopment of the JHHIP campus in accordance with Part 4 of the EP&A Act. Specifically, approval was granted for the following:

- Construction and operation of an eleven storey Acute Services Building, including four levels of semi-basement parking and a rooftop helipad.
- Refurbishment of existing John Hunter Hospital buildings.
- Construction of new road infrastructure and improvements to existing drop-off facilities.
- Temporary construction access road.
- New pedestrian connections to the new Acute Services Building and a link bridge to the Hunter Medical Research Institute.
- Upgrade existing car parking facilities.
- Landscape and public domain works.
- Mines grouting remediation works.
- Building services works and utility adjustments.
- Stormwater drainage.
- Signage.
- Site preparation, including bulk earthworks and tree removal.

This modification application seeks to amend SSD 9351535 and represents the second modification to this consent.

SSI 6888 – NICB Rankin Park to Jesmond Bypass

State Significant Infrastructure Approval (SSI 6888) was approved by the then Minister for Planning on 15 February 2019 for the construction of a section of the Newcastle Inner City Bypass of approximately 3.4 kilometres in length between Rankin Park and Jesmond. This SSI is managed by Transport for NSW (TfNSW). Specifically, approval was granted for the following:

- A northern interchange providing access to Newcastle Road and the existing Jesmond to Shortland section of the Newcastle Inner City Bypass.
- A full interchange providing access between the John Hunter Hospital precinct and the Newcastle Inner City Bypass.
- A southern interchange providing access to Lookout Road and the existing Kotara to Rankin Park section of the Newcastle Inner City Bypass.
- Tie in and upgrades to connecting roads, including Lookout Road, McCaffrey Drive and Newcastle Road.
- Structures along the road to allow for drainage, animal and pedestrian access.
- Pedestrian and cycling facilities, including a shared path bridge, over Newcastle Road and grade separation of the existing east-west Jesmond Park shared path at the northern interchange.
- Operational noise mitigation measures.
- Permanent operational water quality treatment measures.

Interface Area between SSD 9351535 and SSI 6888

The JHHIP and RP2J projects share a project boundary, generally located along the western boundary of the JHHIP site area, where both projects are required to carry out works. HI and TfNSW have established a joint Governance Framework and are working collaboratively to manage this interface. This interface area is shown in **Figure 1** below and will accommodate the JHHIP car park extension and access road for interchange connection to RP2J project.

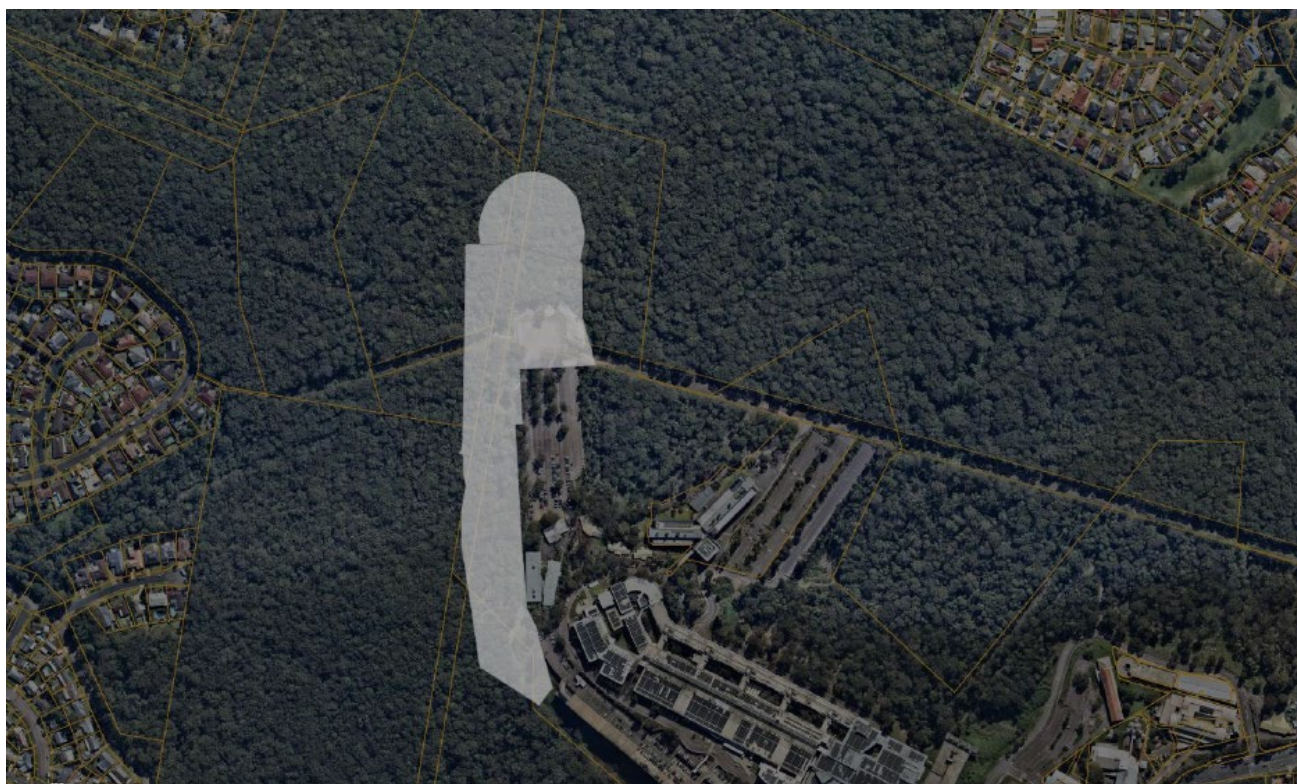


Figure 1 Project Interface between SSI 6888 and SSD 9351535

Source: Nearmap

In this portion of interface, the existing vegetation was approved to be cleared by TfNSW under the RP2J approval, which has been subject to detailed assessment. Under SSD 9351535, HI was then subsequently going to complete the necessary construction works to deliver the access road and associated car parking within the interface area.

TfNSW have made minor refinements to the RP2J project resulting in a minor amendment of the project footprint. As such:

- The relevant tree clearing in the area identified within **Figure 2** is now not being undertaken for the purpose of the RP2J project. However, the tree clearing is required to enable the works approved in the JHHIP SSD. The modification seeks to allow clearance of this area for the approved purpose, being works for the JHHIP project.
- TfNSW have undertaken a "consistency test" of their SSI approval, confirming that a modification of the SSI approval is not required.

This JHHIP modification application therefore seeks to incorporate tree removal and environmental clearing of the interface area under SSD 9351535, which means tree and environmental clearing that is the subject of this JHHIP modification application no longer form part of the RP2J project.

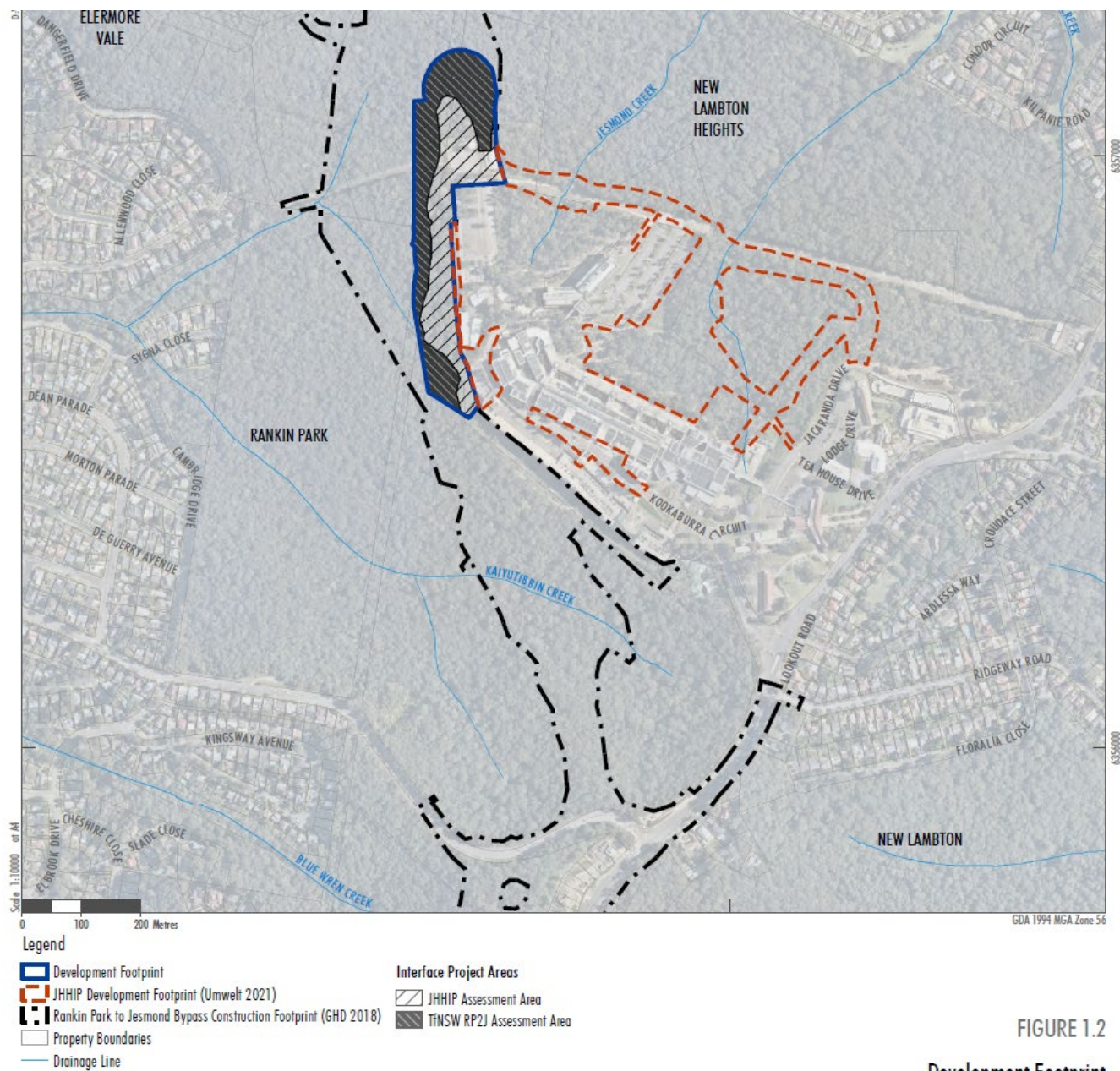


FIGURE 1.2

Development Footprint

Figure 2 Tree clearing removed from RP2J project
Source: Umwelt

3.0 Description of Modification

Tree Clearing

The Acute Services Building and refurbishment of hospital facilities at JHHIP (SSD 9351535) included two phases of vegetation clearing (being Phase 1 and 2). This modification seeks to include an additional area to the west of the existing approved area, which represents the interface between the JHHIP project and RP2J (herein referred to as Phase 3) to allow Health Infrastructure to clear this vegetation.

The area subject to clearing is approximately 5.45 ha in area. **Figure 4** and **Figure 5** below shows the tree clearing proposed between SSI 6888 and SSD 9351535. Revised Architectural Drawings and Landscape Drawings are provided at **Attachment A** and **B** respectively.

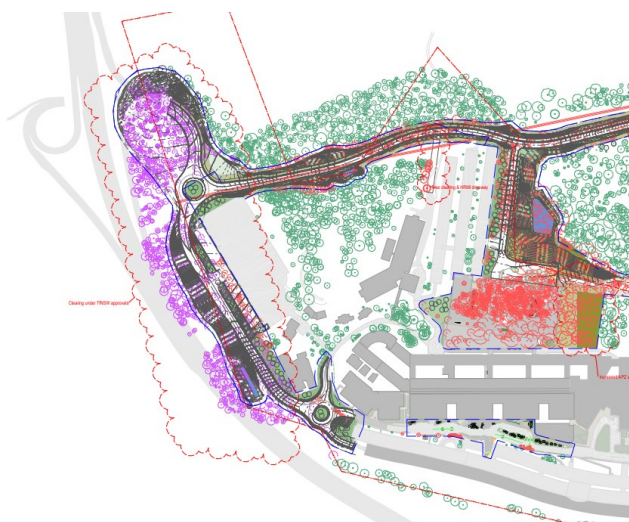


Figure 4 The extent of clearing previously approved in the SSI 6888 consent (purple) within the interface area.

Source: Urbis



Figure 5 The extent of clearing proposed to be incorporated into the SSD 9351535 consent (blue) within the interface area.

Source: Urbis

Biodiversity Credits

The area of tree clearing proposed under this modification was subject to a biodiversity assessment under the SSI 6888 approval, and a number of biodiversity credits were obtained and retired for this area. **Figure 6** below shows the area of the clearing for which equivalent credits have already been retired by TfNSW (titled as 'TfNSW RP2J Assessment Area'). Therefore, HI propose only retire biodiversity credits for the remaining 'JHHIP Assessment Area' (Phase 3) to prevent the unnecessary duplication of biodiversity offsets.



Figure 6 Biodiversity credits already retired by TfNSW (TfNSW RP2J Assessment Area) and area for which credits are proposed to be retired by HI (JHHIP Assessment Area).
Source: Umwelt

3.1 Modification to Conditions

The following conditions are proposed to be modified to give effect to the proposed modification.

Terms of Consent

A2. The development may only be carried out:

(d) in accordance with the approved plans in the table below.

Architectural Drawings prepared by BVN Architects			
DWG No.	Rev	Name of Plan	Date
AR_C0-A22 NL-X0	8 9	Proposed Site Plan - North Road East Phase	11/05/2022 16/06/2022
AR_C0-A22 NL-X1	7 8	Proposed Site Plan – Initial Phase	11/05/2022 16/06/2022
Landscape Drawings prepared by Urbis			
LD_C0-01 NL-01	G H	Sheet Split Site Related	13/05/2022 16/06/2022
LD_C0-B60 NL-X1	E F	Site Wide Landscape Plan	13/05/2022 16/06/2022
C0-B20 NL-X0	G H	Overall Zonal Plan	13/05/2022 16/06/2022
LD_C0-B20 NL-X1	E F	Tree Removal Plan	13/05/2022 16/06/2022

It is proposed to give effect to the proposed modification by way of the insertion of following condition.

BIODIVERSITY

B26(a) The number and classes of ecosystem credits and species credits (like-for-like) required for Phase 3 as set out in the Biodiversity Development Assessment Report prepared by Umwelt (Australia) Pty Ltd, revision 4, dated 1 August 2022, must be retired prior to the commencement of construction of Phase 3 of the development.

Reason: To include a consent condition that references the credits required to be retired in the interface area.

4.0 Strategic and Statutory Context

Section 4.55(3) of the EP&A Act requires a consent authority to take into consideration such of the matters referred to in section 4.15(1) as are relevant to the development subject of this application and the reasons given by the consent authority for the grant of the original consent.

The proposed modification remains consistent with the provisions of the relevant planning policies identified in both the SEARs for the JHHIP.

The relevant legislation and environmental planning instruments are addressed in **Table 2** below.

Table 2 Relevant statutory legislation and environmental planning instruments

Instrument	Assessment	
EP&A Act	Section 4.55 – Modifications of consents – generally	The proposed modification relates to SSD 9351535 which was approved as State Significant Development in accordance with Part 4 of the EP&A Act. As such, the modification application is required to be assessed under Section 4.55 of the EP&A Act. An assessment of the relevant requirements under Section 4.55 is provided in Section 7.0 of this report below.
EP&A Regulations	Section 98 – Modification applications for development	Section 98 of the EP&A Regulations outlines that any modification application undertaken by a public authority does not require landowners consent, as long as the owner of the land is notified of the modification prior to the modification application being made. All relevant landowners affected by this modification have been notified, as discussed further at Section 5.0 .
Coal Mine Subsidence Compensation Act 2017	The site is identified as being located within a mine subsidence district. However, as no changes are proposed to the approved buildings and infrastructure under SSD 9351535 or SSI 6888, there are no additional impacts expected in relation to mine subsidence.	
Biodiversity Conservation Act 2016	Section 7.17(2)(c) of the Biodiversity and Conservation Act (BC Act) notes that further biodiversity development assessment reports are not required to be submitted with a modification application if the authority determining the application for modification is satisfied that the modification will not increase the impact on biodiversity values. Given that TfNSW have already retired a substantial portion of credits for the area proposed to be cleared by HI, no additional biodiversity impact is expected to arise beyond that already assessed and retired by TfNSW in the area shown as 'TfNSW RP2J Assessment Area' in Figure 6 . Therefore, this modification only considers the biodiversity impact of the area where biodiversity offset credits are still required to be retired (shown as 'JHHIP Assessment Area' in Figure 6). A Biodiversity Development Assessment Report (BDAR) has been prepared by Umwelt (Attachment C) in accordance with Section 7.17 of the BC Act for this 'JHHIP Assessment Area'. The BDAR includes calculation of the Biodiversity Assessment Methodology (BAM) credit requirements for Phase 3.	
State Environmental Planning Policy (Planning Systems) 2021	This SEPP identifies development that is SSD and SSI. Pursuant to this SEPP, hospitals with a CIV of more than \$30 million are considered SSD. The approved JHHIP SSD 9351535 had a CIV of more than \$30 million and therefore was declared SSD. Accordingly, this application seeks to modify this SSD approval.	
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Under the original JHHIP SSD assessment, the then <i>State Environmental Planning Policy (Koala Protection) 2021</i> (now Biodiversity and Conservation SEPP) was assessed, and the JHHIP campus footprint was not identified as core koala habitat, as no koalas were recorded within the footprint. Further, koalas have not been recorded nearby (within 2.5 kilometres in the Central Coast Koala Management Area) within the last 18 years, indicating that koalas are not expected to be located on the site. No further provisions of the Biodiversity and Conservation SEPP apply. Therefore, no further assessment is required.	

Instrument	Assessment
Newcastle Local Environmental Plan 2012	The assessment previously undertaken against the Newcastle Local Environmental Plan 2012 (Newcastle LEP) under both SSD 9351535 and SSI 6888 remains relevant and the development is consistent with this assessment. As the proposal does not seek approval for any new clearing that has not already been assessed under SSI 6888, no new assessment against the Newcastle LEP is required.

5.0 Engagement

Engagement with all relevant stakeholders and landowners relevant to this modification application has been undertaken to inform this modification. This consultation has outlined in **Table 3** below.

Table 3 Summary of engagement

Agency/Stakeholder	Consultation
Transport for NSW	<p>As the proponent of the adjoining RP2J approval, as well as an adjoining landowner of the location where approved tree clearing is located, engagement with TfNSW has been ongoing. Several meetings were held between HI and TfNSW prior to the preparation of the modification to confirm the appropriate planning pathway for this modification.</p> <p>A letter of support for the modification prepared by TfNSW is included at Attachment D. This letter states that no clearing for the purpose of the RP2J project is occurring in the interface area. The modification has the support of TfNSW.</p>
Department of Planning and Environment (DPE)	<p>A meeting was held with the DPE on the 27 April 2022, where DPE were informed of the intention of the modification and the proposed planning pathway strategy. Further meetings were held on 10 and 16 June 2022.</p> <p>The key issues raised by DPE in relation to the modification was the relationship between State Significant Infrastructure and State Significant Development, and whether works were able to be captured under both SSD and SSI approvals.</p> <p>As outlined at Section 1.1, TfNSW no longer intend to clear the subject trees and have removed the subject trees from their consent ensuring there is no inconsistency or overlap in relation to the Phase 3 tree clearing.</p>
City of Newcastle Council	<p>The City of Newcastle Council (Council) own Lot A, DP 344454, of which a small portion of the approved clearing relates to. Council were formally notified of HI's intention to modify the consent on 13 May 2022. Further discussions have since occurred through May and June. Council informed HI that they were in support of the modification.</p>
Biodiversity Conservation Division, Department of Planning and Environment	<p>A meeting was held with the Newcastle Biodiversity Conservation Division (BCD) of the DPE on the 11 May 2022 and 28 June 2022. The BCD were informed of the intention of the modification and the proposed planning pathway strategy, and did not raise any issues or concerns with the approval strategy, as long as all of the necessary biodiversity offsets were achieved prior to clearing.</p>

6.0 Assessment of Impacts

As discussed above, this modification seeks to include an area of tree clearing into the JHHIP consent.

Biodiversity

A BDAR has been prepared by Umwelt (see **Attachment C**), which assesses the biodiversity values of the Phase 3 clearing footprint and calculates the relevant offset requirements that appropriately compensates for the unavoidable removal of biodiversity values as a result of the Phase 3 clearing.

Following the BAM assessment in the BDAR, Umwelt have identified the following biodiversity credits are required to offset the impacts of the Phase 3 clearing:

- PCT 1619 - 59 credits
- PCT 1627 – 5 credits
- Black-eyed Susan (*Tetralochea juncea*) – 50 credits
- Squirrel glider (*Petaurus norfolcensis*) – 86 credits.

Health Infrastructure (HI) is committed to delivering biodiversity offsets that appropriately compensate for the unavoidable removal of biodiversity values as a result of the Project. The biodiversity offsets will be secured in consultation with the Biodiversity and Conservation Trust (BCT) and the BCD, and based on the following offset options available under the BC Act and Biodiversity Conservation Regulation:

- Securing required credits through the open credit market and/or
- Payments to the Biodiversity Conservation Fund.

The BDAR includes recommendations for a range of measures to minimize and mitigate biodiversity impacts as a result of the Phase 3 clearing, including in relation to preclearance surveys, tree-felling supervision, weed management, fencing, and erosion and sediment control. These mitigation measures are consistent with those already required to be implemented as part of the JHHIP clearing works, pursuant to existing Condition B16(d) of the SSD 9351535 consent and will also be implemented in relation to the proposed Phase 3 clearing.

In addition to the BDAR prepared, an assessment against the Matters of National Environmental Significance as per the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) has been undertaken by Umwelt (**Attachment E**). This assessment has identified that there are 150 threatened and/or migratory entities that have been recorded in the locality and/or are predicted to occur within the locality. Of these 150 identified species, two are identified as potentially requiring further consideration, being the grey-headed flying fox and the black eyed Susan.

Umwelt's assessment concluded that the works proposed in this modification are unlikely to result in a significant impact on an important population of either of these species. As such, given the small-scale impacts and this conclusion reached by Umwelt, referral to the Minister under the EPBC Act is not required for biodiversity matters.

Bushfire

Bushfire advice has been prepared by Blackash and is included at **Attachment F**. This advice confirms that, as this modification seeks to include the clearing of vegetation already approved under the RP2J approval, there are no new environmental impacts expected to result from the modification, including any changes to bushfire considerations.

7.0 Justification of modified project

7.1 Substantially the same development

Section 4.55(1A)(a) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The primary use of the site as a hospital, health and innovation precinct is not proposed to be amended as a result of this application.
- SSD 9351535 anticipated that the portion of the site to which this modification relates was going to be cleared as a result of the approved RP2J works, and always required this portion of the site to be cleared of vegetation to support approved construction works.
- The proposed development does not result in different environmental impacts to those previously considered for the area to which the tree clearing relates.
- The proposal does not alter the approved access road infrastructure between the future bypass and the JHHIP campus.

The proposed amendments to SSD 9351535 are negligible, and only relate to the inclusion of additional tree clearing previously approved under the SSI 6888 approval, to allow for HI to undertake clearing in the interface area that exists between the overlapping SSI and SSD project boundaries. All environmental impact were previously assessed under SSI 6888, and as a result, the environmental impacts have already been previously considered. Therefore, the development, as proposed to be modified, can be considered substantially the same as that originally approved.

7.2 Minimal environmental impact

Pursuant to section 4.55(1A)(a) of the EPA Act, a consent may be modified under Section 4.55(1A) where the consent authority *“is satisfied that the proposed modification is of minimal environmental impact”*. As this application seeks to clear an area previously identified for removal, the environmental impacts have previously been accounted for. Notwithstanding, this modification proposes a technical assessment for new tree impacts can be considered minor. Therefore, the consent authority may be satisfied that this modification application is of minimal environmental impact.

7.3 Reasons given for granting consent

The Minister for Planning and Public Spaces determination report sets out the following reasons for granting consent for the approval of SSD 9351535:

- The project would provide a range of benefits for the region and the State as a whole, including a significant investment which would support the delivery of 1,613 jobs during the construction phase and 210 new operational jobs.
- The project is permissible with development consent and is consistent with NSW Government policies, including the NSW Premier's Priorities, Infrastructure NSW's State Infrastructure Strategy 2018 – 2038 Building the Momentum, the Hunter Regional Plan 2036, Greater Newcastle Metropolitan Plan 2036 and Newcastle Council's Local Strategic Planning Statement.
- The impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards. The Department is satisfied the traffic generated by the proposal can be accommodated on the surrounding road network, subject to the completion of the adjoining Newcastle Inner City Bypass (NICB). In that regard, the Department has included conditions requiring the implementation of management measures to minimise traffic impacts if the hospital is delivered prior to the completion of the NICB. The Department is also satisfied the proposal adequately seeks to avoid and minimise biodiversity impacts and delivers a biodiversity offset strategy that appropriately compensates for the unavoidable loss of ecological values on the site. The Department has included conditions requiring the Applicant to

investigate minimising biodiversity impacts associated with the future road access to the eastern part of the hospital campus.

- The issues raised in agency submissions have been considered and adequately addressed through the recommended conditions of consent.
- Weighing all relevant considerations, the project is in the public interest.

The proposed modifications seek to ensure the timely delivery of the wider health campus, in response to the timing discrepancies arising with the delivery of the approved RP2J project. Further, the JHHIP project will continue to maintain biodiversity values on the site, in accordance with the conditions of the SSD 9351535 consent. Therefore, the proposed modification remains consistent with the approved intent of the development.

8.0 Conclusion

This modification seeks approval for tree clearance in a portion of the site that was always required to be cleared of vegetation to support approved construction works. The proposed modification is intended to facilitate the clearing in a timely manner to support the JHHIP project whilst ensuring that appropriate biodiversity offsets are still secured prior to the clearing.

In accordance with section 4.55(1A) of the EP&A Act, the Department may modify the consent as:

- The consent, as proposed to be modified, is substantially the same development as that originally approved.
- SSD 9351535 anticipated that the portion of the site to which this modification relates was going to be cleared as a result of the approved RP2J works, and always required this portion of the site to be cleared of vegetation to support approved construction works.
- The proposed development does not result in any additional environmental impacts to those already considered for the area to which the tree clearing relates.
- There are no changes proposed to all other elements of the approved SSD, including the buildings, height, FSR and footprint of the built form.
- The development continues to provide for a health and innovation precinct, and the uses across the site remain unchanged.

In light of the above, we therefore recommend that the proposed modification is supported by DPE.