

**ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

2 September 2021

Director – Industry Assessments – Planning and Assessment
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124
Att: Katelyn Symington

Dear Katelyn,

SUBMISSION | STATE SIGNIFICANT DEVELOPMENT APPLICATION | SSD-10412

1. INTRODUCTION

This submission has been prepared by Urbis Pty Ltd on behalf of Besmaw Pty Ltd (**Besmaw**), in relation to the development application for State significant development (**SSD DA**) (Application No. SSD-10412), prepared for Breen Resources Pty Ltd (**the applicant**). The SSD DA relates to land at 330 Captain Cook Drive, Kurnell (**the site**). The area subject to the proposed resource recovery facility and the waste disposal facility (referred to as a Resource Management Facility) is limited to the eastern part of the site, being Lot 5 and part of Lot 6 in DP1158267 and is referred to as the Proposal Site. The Proposal Site relevant to the broader applicant's landholding is shown in **Figures 1 and 2** below.

Besmaw is the owner of the adjacent property to the east identified as Lot 2 in Deposited Plan 1030269 and Lot 2 in Deposited Plan 559922 and Nos. 251 and 280-282 Captain Cook Drive, Kurnell Peninsula. Site context is provided in **Figure 1** below.

This submission has been prepared following a review of the environmental impact statement (**EIS**) and appended technical reports which accompanies the SSD DA. The submission identifies that the proposal as presented is not permissible on the site. Further, even if it was a permissible development or capable of being approved as a prohibited development that the use of the site for a Resource Management Facility as proposed, is not a suitable land use for the site or the locality.

This submission reflects on the current operations on the site, the purpose of the current activities for the rehabilitation of the land and delivery of open space and recreational facilities, compliance with relevant environmental protection licence (**EPLs**) and demonstrates that there is no adequate justification presented in the EIS for the proposal to proceed. Further, a review of the current operations indicate that there have been historical and ongoing deviations from the planning approvals relating to the onsite activities giving rise to concern over current and ongoing environmental risks.

The material presented in the EIS does not address these present risks nor provide adequate mitigation to prevent future environmental harm in a location adjacent to environmentally significant ecosystems.

Our review of the EIS and appended technical reports identifies a range of errors. Importantly the EIS does not present a comprehensive identification and assessment of the potential environmental

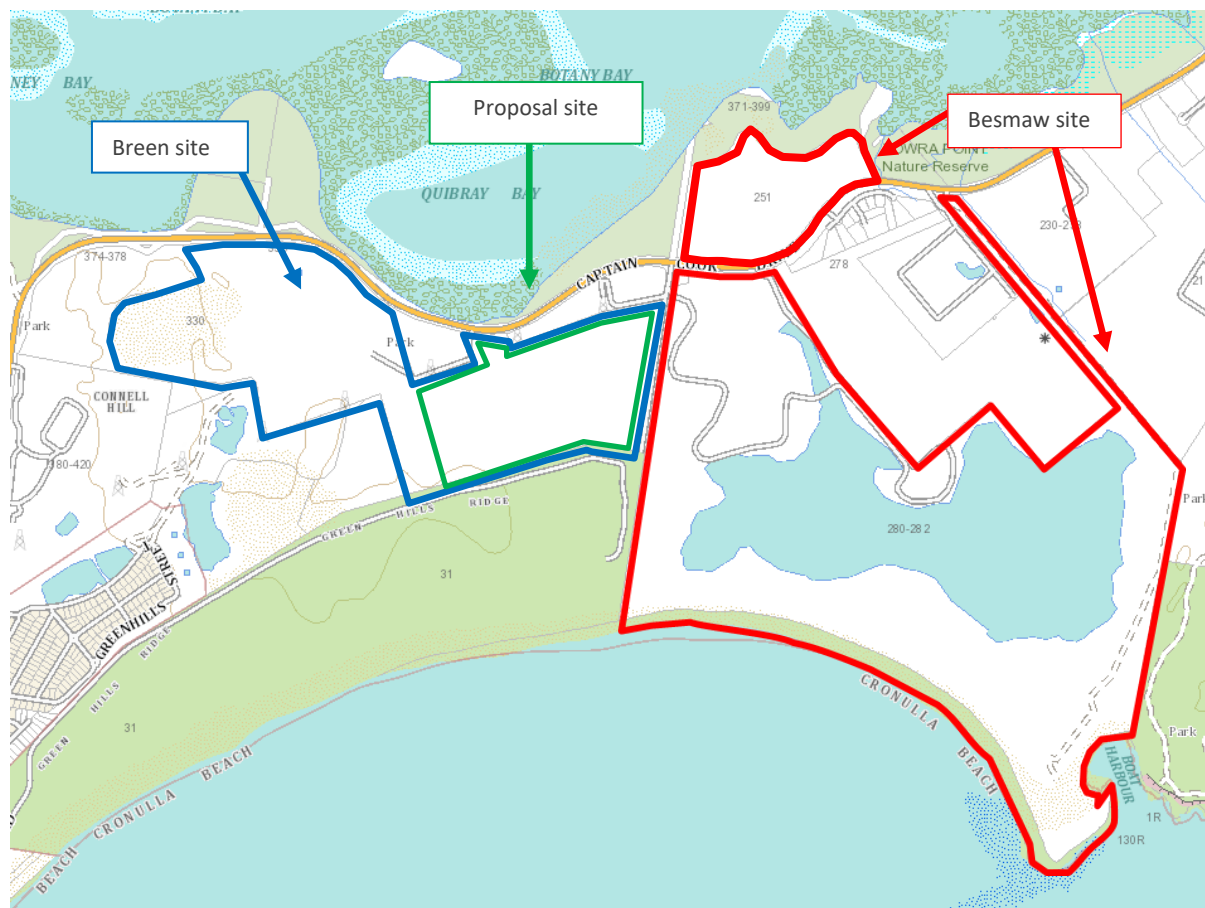
impacts that will be occasioned by the proposal and ignores the environmental attributes of Kurnell Peninsula and the emerging character of the area. The EIS does not satisfy the SEARs for the proposal and has failed to meet the requirements of the EIS Guidelines.

This submission demonstrates that the development as proposed:

- is not permissible and there is no power to approve the development as proposed
- is inconsistent with the objectives of the 7(b) Special Development zone applying to the site
- is incompatible with the desired future character of Kurnell, including the recently established and emerging sporting and community hub located immediate to the sites east, south and western boundaries,
- is incompatible with and poses a real risk to the surrounding natural environment

The proposal's linking of the obligation to deliver open space and recreation facilities to the development of the site as a Resource Management Facility is flawed and cannot be supported.

Figure 1 – Site Location Plan



Source: Six Maps

Figure 2: Proposed site plan



Source: Ahrens

2. PERMISSIBILITY AND JUSTIFICATION

2.1. THE PROPOSAL

The proposal presented under the SSD DA is identified as State significant development pursuant to clause 23 of Schedule 1 of State Environmental Planning Policy (State and Regional Development) 2011 (**State and Regional Development SEPP**)

The EIS identifies that development consent is sought for:

- Construction and operation of a Resource Management Facility, comprising:
 - A Resource Recovery Facility on Lot 5 to process up to 650,000 tonnes per annum (tpa) of construction and demolition (C&D) waste and non-putrescible commercial and industrial (C&I) waste, including consolidation of existing waste management activities within this part of the Proposal Site and
 - A waste disposal facility being the landfilling, land rehabilitation operations and contouring of the landform of the larger Breen landholding by permanent application of some of the residual waste materials from the proposed Resource Recovery Facility on Lot 5.
- Demolition and/or relocation to Lot 5 (as required) of the existing Breen Resources Facility on Lots 1122, 1123 and 6 (this includes those parts of Lots 1122, 1123 and 6 that are to be provided as future playing fields).
- Water usage and management across the entirety of the site and adjacent playing fields;
- Ongoing long-term monitoring of the former landfill site

The primary purpose of the proposal is the establishment of a Resource Management Facility. The EIS seeks to link this new land use to the current obligation on the applicant to deliver a series of

playing fields as required under an executed planning agreement relating to the rezoning and development of land for residential purposes to the west of the site. It also seeks to link any enduring responsibility to manage any environmental monitoring and impact of the current landfill operations to the proposal. There is no link. These obligations are current and enduring and do not rely on nor are they related to the proposed Resource Management Facility. These obligations flow from the benefit received from the rezoning of industrial land for residential purposes and the nature of the land rehabilitation undertaken to deliver the community benefit in the form of the playing fields and recreation facilities.

In simple terms the SSD DA is seeking development consent to:

- Process 650,000 tpa of C&D and C&I waste, which will include crushing, sorting and storage of material in the open and in partially enclosed processing sheds on Lot 5. The design and layout of the proposal means that initial sorting of the waste material will be undertaken in the open, on unsealed ground and with only limited dust or noise mitigation. Storage and loading of trucks for export will also take place in the open, again with limited mitigation in place to prevent dust and noise impacts;
- Placement of approximately 25,000 tpa of residual material in a waste cell to enable the use of the remainder of the applicants land for waste disposal purposes for a period of up to 60 years;
- Increase in height and volume of an existing waste cell to accommodate the proposed residual waste volumes within lot 5;
- Increase the number of truck movements from 585 per day to 1070 per day on weekdays (above the current weekday levels) for an indefinite period of time.
- Introduce a new site access on Lindum Road at a pinch point with a key pedestrian access to Wanda Beach.

2.2. ZONE AND DEVELOPMENT OBJECTIVES

State Environmental Planning Policy (Kurnell Peninsula) 1989 (SEPP Kurnell) is the primary environmental planning instrument applying to the site. The site is zoned 7(b) Special Development under SEPP Kurnell.

Clause 9 of SEPP Kurnell provides a list of land uses that are permitted (with or without development consent) and those that are prohibited. It also presents a series of objectives to be considered by a consent authority in determining a development application.

The objectives for the 7(b) Special Development zone are

- (a) *to provide flexible planning controls which permit a broad range of land uses subject to compliance with environmental performance criteria,*
- (b) *to ensure that development is compatible with the unique ecological and landscape attributes of the Kurnell Peninsula, especially the wetland areas and their environs,*
- (c) *to ensure that sand mining is controlled and to facilitate the progressive phasing out of sand mining and the rehabilitation of degraded lands,*
- (d) *to promote the orderly and economic development of land within the zone subject to the provision of adequate water and sewerage services and the disposal, in an environmentally sensitive manner, of all wastes and stormwater from the land,*
- (e) *to promote, enhance and utilise the development potential of the zone primarily for tourism, recreation or industrial parks, where this is consistent with the conservation of the unique, ecological and landscape attributes of the Kurnell Peninsula, and*
- (f) *to promote the sharing of the responsibility for environmental planning by creating a broad framework of controls and requiring the Council to adopt development control codes or design and management guidelines applying to development in the zone.*



These zone objectives are to be read together and are cumulative in nature. Relevantly clause 9(3) states that:

*(3) Except as otherwise provided by this Policy, the consent authority shall not grant consent to the carrying out of development on land to which this Policy applies unless it is of the opinion that the carrying out of the **development is consistent with the aims and objectives of the Policy and the objectives of the zone within which the development is proposed** to be carried out.*

The aims and objectives of SEPP Kurnell are primarily focussed on the conservation of the environmental and cultural significance of the area and the promotion of commercial, industrial and tourist development that is consistent with the conservation of the unique ecological and landscape attributes of the Kurnell Peninsula.

The EIS **has not** demonstrated that the proposal can be carried out without impacting the natural environment of the Kurnell Peninsula, will promote the unique ecological and landscape attributes of the Kurnell Peninsula, or through the operations for up to 60 years protect the health, well-being and safety of the local community.

The EIS seeks to argue that the proposal is consistent with the objectives of this zone as it will not change the land use on Lot 5. This is clearly incorrect. As will be demonstrated in **section 2.5** below there has been no development consent issued for the construction and operation of a Resource Management Facility on site and as such the proposal will not only introduce a new land use to the site but a land use that is clearly inconsistent with the zone and plan objectives.

The EIS claims that the proposal will facilitate the rehabilitation of Lots 1122 and 1123 and Lot 6. However, these lots are required to be rehabilitated and developed for sports fields, under the conditions of the existing development consent relating to the site and a planning agreement between the applicant and Sutherland Shire Council (**Council**). Those works are to be delivered, irrespective of this SSD DA. As demonstrated in this submission the proposal is inconsistent with zone objectives (b) and (e) and the proposal is not required in order for the applicant to complete the rehabilitation of the degraded lands within the site.

The zone objectives clearly set out the intent for the zone and the manner in which permissible land uses are to be developed. The EIS fails to address the particulars of the zones objectives which primarily relate to:

- land use compatibility;
- the orderly and economic development of land...in an environmentally sensitive way; and
- the use of land primarily for tourism, recreation or industrial park, **where this is consistent with the conservation of the unique, ecological and landscape attributes.**

As discussed in Section 3 of this submission, the proposed Resource Management Facility is not compatible with the emerging community hub of sporting and recreation facilities (sensitive land uses) nor does it conserve the unique, ecological and landscape attributes of Kurnell (environmentally sensitive land) by locating the proposal adjacent to environmentally significant and sensitive wetlands and parklands and proposing the significant increase in the height and volume of waste cells which will impose on the landscape quality of the Kurnell Peninsula.

Sensitive land uses are described as being building, amenity areas or outdoor recreation areas involving large numbers of people, where humans may be adversely affected by adjacent industrial-type land uses. The nature of the operations to be carried out in the proposed Resource Management Facility which is to be constructed immediately adjacent to recreation fields and environmentally sensitive land, will result in a direct conflict between sensitive land uses and one which will introduce dust, noise, traffic, and leachate for a prolonged period of time.

While the proposal is industrial in nature it cannot be considered an industrial park as envisaged by the land uses table and zone objectives.

The zone and SEPP Kurnell objectives are critical considerations in determining the suitability of the site to accommodate the proposal. The EIS fails to demonstrate how the proposal achieves and importantly is consistent with, the objectives of the zone and of SEPP Kurnell.

2.3. PERMISSIBILITY

The 7(b) Special Development zone allows for development with consent for *...any purpose other than a purpose included in Item 4...* of the land use table.

Item 4 identifies land uses that are prohibited in the zone and includes:

*Dwelling-houses; extractive industries (other than sand mining); hazardous industry or storage establishments; junk yards; mines; offensive industries; places of public worship; residential flat buildings (other than those used only for holiday or other non-permanent residential accommodation); stock and sale yards; toxic industries; transport terminals; units for aged persons; **waste disposal**.*

The proposal is most appropriately characterised as **waste disposal** under the land uses definitions provided in SEPP Kurnell. Waste disposal is defined as:

- (g) the use of a building or place for the purpose of treating, storing or disposing of any waste, as defined by the Waste Disposal Act 1970, other than a building or place used for the treatment, storage or disposal of waste resulting from any other activity carried out on the same land, or for the purposes of a depot registered with the Environment Protection Authority for the receipt of natural excavated material and demolition materials as approved by that Authority, and*
- (h) the use of any bore or excavation that is connected with the underlying shallow groundwater system for disposal of wastes.*

The EIS nominates the proposed land use as a *New Resource Recovery Facility* and a *Waste Disposal Facility*.

The EIS acknowledges that the proposed Resource Management Facility is **prohibited** in the zone and relies on clause 8(2) of State and Regional Development SEPP and section 4.36 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to demonstrate either permissibility or the power for a consent authority to grant consent to the proposal.

The logic presented in the EIS is flawed. We note that page 72 of the EIS states:

As explained in Section 5.2.1 above, pursuant to Section 4.38 of the EP&A Act development consent can still be granted for SSD that is partly permissible and partly prohibited. As such, because the Proposal is for SSD and is partly (and in fact largely) permissible, development consent can be granted for the Proposal.

The EIS states that the current waste disposal operations have been approved on the existing active area. Those parts of the site that are being filled to create landforms for future open space are shown on the GHD plan extracted as **Figure 3** below. This figure designates the landfill cells as nominated by the applicant. As discussed in **section 2.5** below development consent DA269/90 approved the construction and use of **a depot for land restoration**. Not the use of the land as a waste disposal facility. If the applicant is or has been conducting a waste disposal activity on the site then this falls outside the boundaries of the current development consent and past activities clearly cannot be relied upon or be the foundation for the introduction of a prohibited land use.

The central element of the proposal presented under the SSD DA 10412, the establishment and operation of a Resource Management Facility on Lot 5, is a new land use. A land use that is prohibited in the zone and a land use that is not consistent with the zone objectives of the objectives of SEPP Kurnell Peninsula.

The EIS claim that the proposed land use is consistent with the objectives of this zone as it will not change the land use on Lot 5 is flawed and should carry no weight.

The issue is explored in further detail in a separate submission prepared on behalf of Besmaw by Minter Ellison lawyers.

Figure 3: Site plan illustrating the "existing active area" outlined in red



Source: GHD

2.4. DELIVERY OF EMBELLISHED PUBLIC OPEN SPACE

The EIS identifies the ...*Delivery of activated community space in the form of the Embellished Marang Parklands on Lots 1122, 1123 and Lot 6* as a key integrated component of the Proposal. Those parklands are identified in the EIS as the Embellished Marang Parklands.

The EIS identifies that a voluntary planning agreement was entered into between Breen Holdings Pty Ltd (subsequently novated to Breen Property), Australand Kurnell Pty Ltd (now renamed Frasers Property Australia Limited) and Sutherland Shire Council in June 2010 which requires:

- A staged transfer of 91 ha of land to public ownership for the purpose of environmental conservation and public open space.
- Construction of regional recreation facilities, including 10 playing fields, a skate park, 3 amenities buildings, walking and cycling tracks, picnic facilities and associated parking for over 400 cars.
- Rehabilitation and landscaping of degraded land previously dredged for sand mining to support an ecological 'green corridor' stretching from the Towra Point Nature Reserve to the ocean at Wanda Beach.

The extent of the land to be dedicated to the Council under the 2010 VPA is shown on **Figure 4** below and the nature of the works and embellishment for active (sports fields) and passive open space, and revegetation and environmental plantings is shown in **Figure 5** below.

The land which is referred to as the proposed Embellished Marang Parklands and the nature of the works to be undertaken is shown in **Figure 6** below. It is relevant to note that embellishment works to create the Marang Parklands is to be undertaken in an area that under the 2010 VPA is required to be delivered:

- as elevated open grass land with views over the heritage dune and Bate Bay,
- as elevated open grass land with views over Botany and Quibray Bay, and
- landscape and rehabilitation areas.

Figure 3 shows the general contours of the land to be achieved to enable these elevated viewing area and integrated landscape and rehabilitation areas which would provide a natural setting adjacent to the Wanda Reserve and Heritage Dune and a backdrop to the sporting field complex.

The proposal does not include any additional land to be dedicated beyond that provided for in the 2010 VPA rather it introduces and seeks development consent for the embellishment of land to achieve an alternative recreational outcome.

The embellishment work for the Marang Parklands may require development consent however that consent can be sought separate to and independent of the establishment of a Resource Management Facility on the site. The obligation to dedicate embellished open space is an integral part of the 2010 VPA, the SSD DA does not change that obligation. The applicant's proposal to deliver an alternative form of embellishment and altered landform is most appropriately dealt with as either a new local development application and variation to the executed VPA (if required) or modification to the development consent DA269/90 that enabled the rehabilitation of the site.

The delivery of open space, sporting fields and revegetated natural landforms as required under the executed VPA was in association with the rezoning and residential development of the residential precincts of Greenhills and Shearwater Cove to the west of the site, a benefit that has already been realised by the parties to the VPA.

It appears that the only quantifiable additional public benefit that is proposed under the SSD DA is the delivery of an alternate form of embellishment to land that is to be dedicated to the Council. It is unclear from the information provided with the EIS the basis on which this public benefit offering would balance out the significant environmental impacts associated with the proposal

The EIS at page 32 states that the proposal will *...deliver the planned development of the Embellished Marang Parklands in an efficient and cost effect way (by using recovered materials from the New Resource Recovery Facility in the construction and ongoing maintenance phases).*

It is unclear how the use of residual waste material represents a benefit to the public. This infers a greater benefit to the applicant than it does to the public by enabling the placement of residual waste material on the land, to create landforms for the parkland, waste which would otherwise be required to be disposed of at a licenced waste facility. It is disingenuous to convey a message to the community (through the EIS and current promotional material) that the Marang Parkland is a new community benefit that will be delivered as a direct result of the proposed works.

The premise of the EIS that that the proposal is necessary for the delivery of publicly accessible open space, which the proponent has already committed to as part of the current planning agreement, is flawed. There is an existing obligation to deliver an area of embellished parkland under the executed VPA. The proponent has chosen to alter the nature of the embellishment works to seek to justify the proposal.

Figure 5: 2010 Breen Dedications Areas with Embellishment



Figure 6: 2021 VPA Embellishment works



While the proposal is premised on the delivery of the Embellished Marang Parkland there is a question as to the timing of delivery. The EIS at page xx states that *Subject to obtaining the necessary government agency consents and approvals, Breen is committing to deliver the following elements of work that relate to the VPA within the provided timeframes:*

- Practical Completion of the Embellished Marang Parkland – November 2024.
- Completion of the works required to enable delivery of the Playing Fields (i.e. the Owners Works as defined above) for Stage 2 and 3 of the Playing Fields – November 2024.

Breen will formalise these commitments with Sutherland Shire Council as part of a proposed New VPA offer made to Council. This proposal will include the dates that Breen are able to commit to, and recognise the construction, consent and approvals risk that exists with this Proposal.

While the EIS presents a target timeframe for the completion of playing fields and the embellishment of the parklands there is no clarity on the completion of the new landfill cell on Lot 5 which based on the quantum of residual waste of 25,000tpa would take in the order of 60 years to complete. The significant increase in landfill is illustrated in the engineering plans submitted by the applicant and has been appended to this submission at **Appendix A**.

2.5. BREEN DEVELOPMENT CONSENT HISTORY

2.5.1. Overview

The EIS seems to rely on current activities on site and historic approvals as to the basis of permissibility of the proposed Resource Management Facility or to demonstrate suitability of the site for such use and consistency of such use with zone and SEPP Kurnell objectives. As is demonstrated in **Table 1** below and the following discussion while a number of development applications have been approved over the Breen site, they do not approve the use of the site for waste disposal. The modification application noted below which was withdrawn proposed a similar development outcome as that presented under the SSD DA.

Table 1: Development Consent History

Development Application Reference	Description	Decision
DA269/90	Establishment of a Depot for receipt of excavated materials and selected demolition materials and land restoration.	Approved 6 September 1990
DA10/0538 (and as modified)	Torrens title subdivision of one (1) existing lot into two (2) Lots	Approved 23 September 2010
DA11/0665 *DA relating to VPA	Staged Development – Concept Masterplan for 10 sporting fields, skate park and associated parking, lighting and amenities building, green and golden bell frog habitat and stormwater treatment facilities.	Approved 23 April 2012
MA19/0026	Section 4.55(2) modification of DA269/90 - Replacement of existing development and relocation of site access point to the east. Amendments to	6 March 2020 Withdrawn

Development Application Reference	Description	Decision
	Conditions 1, 3, 4, 6, 11 and 13 of development consent.	

Each of the above development applications will be examined below

The EIS identifies a range of development consent that have been issued for development on the site including for the construction of playing fields in accordance with VPA. DA11-0665 is a staged development consent for the embellishment of the land to be dedicated, and subsequent detailed approvals enabling construction ... *were provided under the following related consents:*

- DA11-0941 for bulk earthworks.
- DA12-0083 for Stage 2 playing fields and the roads, services and landscaping for Stage 1B.
- DA12-0439 for Stage 3 playing fields.
- DA12-1066 for Stage 1A skate park.

Following this process it appears that a detailed approval is required for the embellishment work now proposed to create what the EIS is identifying as the Marang Parklands. This approval should logically be sought through a detailed local development application submitted to the Council in the same way other local development applications have been submitted for embellishment works within the site.

2.5.2. Development Consent No. 269/90

2.5.2.1. Land Use

On 6 September 1990, the Council granted development consent to development application No. 269/90 for:

“Establishment of a Depot for receipt of excavated materials and selected demolition materials and land restoration.”

on Lots 1122, 1123 and 1124 in Deposited Plan 79414, 330 Captain Cook Drive Kurnell.

Development consent was granted under *Sydney Regional Environmental Plan No. 17 – Kurnell Peninsula (SREP 17)* the former EPI relevant to the site. This EPI is now referred to as *State Environmental Planning Policy (Kurnell Peninsula) 1989*

The elements of the approved development are defined under SEPP Kurnell as follows:

Depot means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

‘Excavated material’ or ‘selected demolition waste’:

SREP 17 does not define ‘excavated material’ or ‘selected demolition material’. Breen’s letter to Council dated 26 April 1990 and submitted as part of the development application, states:

The organisation’s phrase ‘selected demolition materials’ means non-metallic building products, suitable for the highest quality land-fill, and includes brick, mortar and concrete – the principle three. Metallic and plastics load constituents will be recycled where possible, otherwise such will be removed from the site, or rejected for



acceptance. Shreddable timber products will be used as mulch in landscaping restoration.

Development consent was granted for the establishment and operation of a Depot for the receipt of excavated material and selected demolition waste **for the purpose land restoration**. These activities were being carried out on land that had been previously subject to sand extraction operations. As noted in the correspondence the materials received would be suitable for the highest quality land-fill. Unsuitable products such as plastic or some metal were to be rejected, removed from site or recycled where possible.

The SSD DA seeks to surrender this development consent and consolidate the approved development so that it is captured under and so has a relationship with the proposed Resource Management Facility. In other words, the EIS is seeking development consent to introduce a new long-term Resource Management Facility on site where the primary activity will be the sorting, crushing and recycling of 650,000 tpa of C&D and C&I waste material which will then be exported from the site with the residual waste material of approximately 25,000 tpa used for land restoration.

This residual waste material cannot be considered to be suitable for the highest quality landfill for the delivery of open space and recreation facilities as originally proposed and approved.

2.5.2.2. Environmental considerations for approval

In granting consent DA269/90, Council approved the restoration of the site (following earlier sand extraction operations) through the placement of excavated materials and selected demolition materials on the basis that the following environmental considerations were to be complied with in the establishment and operation of the proposed Depot and land restoration project:

- Not result in the removal or disturbance of indigenous vegetation;
- A watering system capable of preventing air pollution from dust generated;
- Would not cause a sound level in excess of 5dbA above the background at any point in time along the site boundaries and not give rise to offensive noise;
- That approved filling and compaction levels were being attained;
- A continuous vegetated mound a minimum of 2m height was to be constructed along road frontages; and
- Erosion and sediment control measures must be complied with.

The proposed SSD DA will result in environmental impacts that are inconsistent with the above environment considerations. This includes the removal of endemic vegetation, acoustic impacts from sorting and crushing operations carried out either within a partially enclosed shed or external to that shed and the associated generation of dust and air pollution. The discussion in section 6.2.3 below would suggest that the current operations are failing to meet the above criteria this should not provide justification for the proposal to be approved.

Historical activity on site resulted in the approved filling levels being exceeded. Recent activity being undertaken to rectify this has done without adequate environmental controls in place. An example of this being the storage of waste on open ground without cover to minimise leachate.

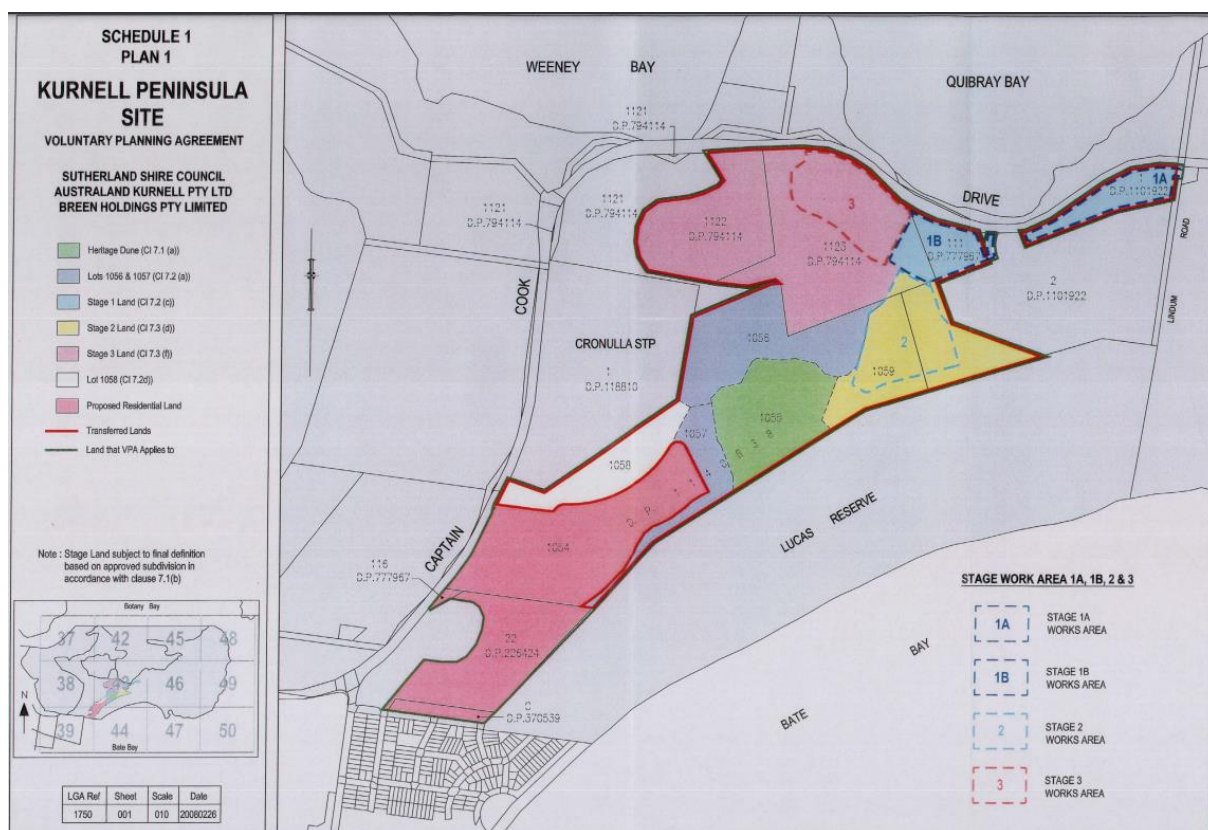
2.5.3. Development Consent No.: DA10/0538

DA No. 10/0538 resulted in the subdivision of Lot 2 in DP1101922 into two lots, lot 5 and 6 in DP1158627. The land configuration prior to the subdivision is shown in **Figure 7** below.

Lots 5 and 6 are the Proposal Area under the SSD DA, Lot 5 for the establishment of the proposed Resource Management Facility and expansion of a waste cell to take residual waste material and the nomination of Lot 6 as part of the proposed Embellished Marang Parklands.

As identified in **Figures 4 and 5** above, Lot 6 was to be dedicated to Council as a rehabilitated natural area. That is not dissimilar to what is shown in **Figure 6** above.

Figure 7: Lot layout, prior to subdivision



Source: 2010 VPA

2.5.4. Development Consent No.: DA11/0665

Development Application No. DA11/0665 granted consent to the 'Green Hills Parklands' which are the developer works required under the 2010 VPA.

This consent has been activated and works to deliver the obligations under the VPA are currently underway as noted in section 2.5.1 above. It is noted that this development consent does not relate to Lot 5.

2.6. EPA LICENCES

Since development consent DA269/90 was granted, additional waste materials (beyond that identified in the Breen correspondence) have been received under NSW EPA Environmental Protection Licences (EPLs) (referred to as D254: LN/AM), as outlined below:

- **14 May 1992:** to the EPL permitted the receipt of waste materials generated from the construction and reconstruction of a road; and waste materials generated from the demolition or construction of a building or structure, in particular:
 - *Natural excavated materials, brick, mortar, concrete, bitumen, timber, glass, ceramics, roof tiles, Masonite, particle boarding, plywood, laminated wood, branches, plastering matting, plasterboard, cardboard, paper, plastic, furniture, turf, marble, polystyrene, foam rubber, sandpaper, metal, shade cloth.*
- **22 May 1992:** EPL amended to permit receipt of plasterboard
- **22 June 1992:** EPL amended to permit receipt of wastes (including concrete slurry, marble wash, bottle tops)
- **2017:** EPL 4608 was obtained for receipt of the following material
- Immobilised wastes able to be landfilled; virgin excavated natural material; waste tyres; glass, plastic, rubber, plasterboard, ceramics, bricks, concrete or metal; building and demolition waste; Asphalt waste (including asphalt resulting from road construction and waterproofing works); ferric sludge; dredge spoil; soils.
- 2018: EPL 20697 was obtained for receipt of the following material:
 - Grit; wood waste; cured concrete waste; synthetic fibre waste; sediment, litter and gross pollutants collected in, and removed from, stormwater treatment devices or stormwater management systems, that has been dewatered so that it does not contain free liquids; waste collected by or on behalf of local councils from street sweeping; household waste from municipal clean-up that does not contain food waste; waste tyres; soils; asphalt waste; building and demolition waste; glass, plastic, rubber, plasterboard, ceramics, bricks, concrete or metal; paper or cardboard; virgin excavated natural material.

The EIS states on page 69:

- *As described above, the Proposal Site is the subject of the existing EPLs 4608 and 20697 under the POEO Act. EPLs 4608 and 20697 will continue to apply in relation to the ongoing waste management activities, however, will need to be varied as a result of the Proposal. This Proposal will therefore be referred to the EPA for its concurrent assessment of the EPL variations.*

The current EPA licences permit the receipt of waste on the site other than that which is authorised under the development consent 269/90. The existing operations are inconsistent with the uses approved under the development consent and this SSD DA is by default is seeking to regularise that inconsistency.

The EIS at page 59 states that

It is also highlighted that the management of groundwater remains inextricably linked across the entire Proposal Site, being the Former Landfill Area on Lots 1122, 1123 and 6 (which will comprise the Embellished Marang Parklands and be transferred to Council) and Lot 5 (which will comprise the New Resource Recovery Facility and which is to stay in Breen ownership). These areas have been historically operated, managed and regulated as a single landfill operation under DA269/90 and a single Environment Protection Licence since 1990, including for the management and regulation of groundwater and leachate. In particular, the assessment of groundwater discharge to the Towra Point Reserve is based on a site-wide management regime, and the proposed leachate management system for the Embellished Marang Parklands requires ongoing collection with treatment occurring on Lot 5 as part of the Lot 5 leachate treatment system that will be detailed in the landfill closure plan under the relevant Environment Protection Licence.



This confirms an enduring obligation held by the applicant to manage leachate from the landfilling operations carried out on the site. This obligation however cannot form the basis for the establishment of a Resource Management Facility on Lot 5 as proposed under the SSD DA.

3. NO JUSTIFICATION FOR THE PROJECT

3.1. OVERVIEW

The applicants justification for the proposal is summarised at page 68 of the EIS which is extracted below. The argument presented is flawed as discussed below.

All components of the Proposal are highly integrated and are necessarily interconnected and critically reliant on each other at an operational and commercial level to achieve the overall project objectives. As such, integration of the components into a single development application is critical in ensuring that the proposed development and use of the land is orderly and economic, and to ensure the timely and efficient delivery of high quality activated recreational space and publicly accessible parklands. In particular:

The close proximity and direct connectivity of the Resource Management Facility to the Embellished Marang Parklands will ensure that the delivery of the parklands is timely, efficient and cost effective, and that off-site environmental impacts are minimised.

The New Resource Recovery Facility has been specifically designed to service the Embellished Marang Parklands in terms of the balance of waste streams and operational plant and equipment for processing the waste streams. The Embellished Marang Parklands therefore underpin to the economic viability of the New Resource Recovery Facility.

The resource recovery opportunities available as a result of the Embellished Marang Parklands component of the Proposal will ensure that Breen can maximise the efficiency of the New Resource Recovery Facility, enabling high levels of beneficial reuse of waste materials and minimising the need to dispose of residual materials. In this way, scarce landfill capacity will be optimally used for residual unrecoverable materials.

The Former Landfill Area on Lots 1122, 1123 and 6 have been historically operated, managed and regulated as a single landfill operation under DA269/90 and a single Environment Protection Licence since 1990, including for the management and regulation of groundwater and leachate. The proposed leachate management system for the Former Landfill Area of the Embellished Marang Parklands requires ongoing collection with treatment occurring on Lot 5 as part of the Lot 5 leachate treatment system that will be detailed in the landfill closure plan under the relevant Environment Protection Licence. As such it would not be orderly or economic to separate the management and regulation of groundwater and leachate in the Former Landfill Area from the ongoing management system that will be retained for the ongoing active landfill areas on Lot 5. If the New Resource Recovery Facility proceeds independently of the Embellished Marang Parklands or not at all, the groundwater management system will lose important operational synergies resulting in a less efficient and effective system. It may result in groundwater for the Embellished Marang Parklands being managed on Lots 1122, 1123 and 6, introducing added unnecessary complexities into the design of the Embellished Marang Parklands.

Separation of the these highly integrated components into multiple development applications would undermine their integration through forcing separate administrative, land management and environmental management processes and procedures being enforced by different consent and regulatory authorities on different parts of the Proposal Site. This would result in the Proposal being delivered in an uncoordinated and inefficient way, ruining the beneficial synergies across the Proposal, and affecting the economic viability of the entire development.

The Proposal seeks to carry out development which is partly SSD (being the New Resource Recovery Facility as explained in Section 5.3.1 to 5.3.3 below) and which is partly prohibited (being certain components of the resource recovery activities that comprise 'waste disposal' under the Kurnell SEPP, explained further at Section 5.3.1). Under Section 4.38 of the EP&A



Act development consent can still be granted for SSD that is partly permissible and partly prohibited.

The components of the proposal cannot be considered to be integrated and necessarily interconnected.

The Resource Recovery Facility will continue for an extended timeframe after the delivery of the Parklands. The Parklands can be delivered without a Resource Recovery Facility, in accordance with the VPA.

The Economic viability of the resource recovery facility should not be used as justification for its approval, the Parklands can be delivered without the facility. Hypothetically, any resource recovery facility can operate without parklands.

Leachate and groundwater can continue to be monitored in accordance with the operational EPLs and consents. A Resource Recovery Facility is not required for this to occur. The EIS has not demonstrated why the Resource Management Facility is reliant on the embellishment of the parklands for its operations.

No justification has been provided for the proposed location, management of groundwater and leachate can continue from the current location and are synergised with waste disposal by the current EPLs and development consent.

3.2. CURRENT OPERATIONS

As demonstrated above, the claim in the EIS that the individual element of the proposal are integrated and interconnected is not correct and as such the historic and current site activities and historic obligation to deliver embellished parklands cannot be used to justify the establishment of a Resource Management Facility on Lot 5. The discussion below provides an overview of the current Breen operations as observed by Besmaw.

Potential for Ongoing Leachate Management Issues

Breen's current leachate management practices within Lot 5, is a major environmental concern. Lot 5 is presently being used area for recycling activities (screening, sorting and stockpiling waste materials) in open paddock conditions. The waste material stockpiles have not been placed on concrete hardstands or other suitable membrane containments. There are no obvious stormwater or surface water control mechanisms to prevent general runoff waters mixing with general solid waste (**GSW**) materials to prevent generation of leachate material. There is concern for ongoing uncontrolled flow of leachate into the local environment, potentially percolating and migrating into the surrounding soil and substrata, impacting local aquifer.

This is demonstrated in the EIS which states on Page 19 *"There will be a large overall reduction in the generation of leachate associated with the Proposal relative to existing conditions"*. This suggests leachate has infiltrated the groundwater network and with the potential to contaminate the surrounding locality. Separate to and independent of the proposal to establish a Resource Management Facility on lot 5 it is important to understand the current leachate management measures that are in place. The existing operations should demonstrate:

- With reference to *NSW EPA Environmental Guidelines: Solid Waste Landfills* – that a Groundwater Contamination Remediation Plan been developed for the site and the current operations
- That any leachate management proposals are supported by water balance calculations. Reference is made to *NSW EPA Environmental Guidelines: Solid Waste Landfills – Part B – Minimum standards for landfills: 2.3 Conducting a water balance*.

The establishment of a Resource Management Facility as proposed under the SSD DA cannot be the basis to manage or control leachate from a landfill that has been in operation since the early 1990s.



It is understood that a HDPE lined leachate storage pond (non-enclosed and subject to adverse weather conditions) has been constructed on Lot 5. The EIS describes the construction design as a holding and evaporating system. Besmaw noted that during the recent wet weather events the leachate storage pond was observed to be at maximum storage level with the concern further heavy rainfall could have caused the leachate pond level to rise to the point of overspill onto uncontained surrounding ground resulting in environmental degradation. Concern is raised over an insufficient freeboard and overall management principles for the control of leachate from the current and historic operations.

The EIS outlines that ... *The entire Existing Breen Resources Facility site, including the landfill, is currently operated pursuant to EPLs 4608 and 20967. The newest landfill cell (known as B11 Stage B under EPL 4608) is lined with a geosynthetic clay liner, whilst the older former cells are understood to be clay lined...* It is unclear from this assessment whether the original landfill cells are compliant and what level of leachate control might be necessary to protect the environment from the outcomes of the historic landfill operations. At a minimum the landfill cells should have been constructed to a standard design that incorporates a leachate barrier system to contain leachate and prevent contamination of groundwater.

This integrated water management activity is required independent of any proposal to establish a Resource Management Facility on Lot 5.

4. UNSUITABLE SITE AND INCONSISTENT WITH THE CHARACTER AND ENVIRONMENTAL ATTRIBUTES OF KURNELL PENINSULA

4.1. SURROUNDING LAND USES

The assessment report by Council for DA269/90 detailed a number of potential impacts associated with the establishment and operation of the proposed depot for receipt of excavated materials and selected demolition materials and land restoration. This included noise and vibration to which the report outlined that *“the proposed operation is removed from any residential use and it is considered that it should not pose any problems in this regard.”*

Since consent was granted for the original land restoration program, the surrounding context has evolved. This includes the establishment of the:

- Residential developments at Greenhills Beach south west of the site;
- Greenhills Skate Park directly north of the site;
- Hockey fields north-west of the site;
- Soccer field north of the site; and
- Pedestrian pathway along the eastern boundary of the site providing pedestrian access to Bate Bay.

Approved and proposed land uses surrounding the site have substantially changed since DA269/90 was approved in 1990. Relocating the current operations and the to the north-eastern portion of Lot 5 and the establishment of a Resource Management Facility would mean the waste management facility is situated immediately adjacent to sports fields and active pedestrian paths and the Besmaw land. The Besmaw land is capable of being developed for a range of sensitive land uses including tourist and visitor accommodation and residential accommodation used in conjunction with recreation activities within the Besmaw land.

The significant increase in the volume of waste to be received, processed on site, exported from the site and the proposed increase in height, bulk and scale of the approved waste cells, would result in larger and visually prominent waste cells being located approximately 250 metres west of Lindum Road. The operational area for receipt, sorting and dispatch of materials on and from the site would be immediately adjacent to Lindum Road and the Besmaw land.

This would result in unacceptable environmental impacts on the community and adjoining public and private landholdings, including the newly established and soon to be completed public recreation land and sports fields adjacent to these proposed operations.

Besmaw is working with DPIE to amend SEPP Kurnell Peninsula in order to translate the current land use zones as they apply to the Besmaw lands into Standard Instruments zones. This will deliver a long-term end land use that would include business, residential, recreational, tourism and employment generating land uses on the Besmaw lands. Uses that are consistent with both the SEPP objectives as well as the evolving land uses on the Kurnell Peninsular, since the SEPP Kurnell was gazetted.

Figure 8: Proposed operations on the Breen Site in relation to the Besmaw Land and adjacent heritage items



4.2. DESIRED FUTURE CHARACTER

Kurnell has been identified in the Local Strategic Planning Statement as a tourist destination. This recognition is largely based on the unique and highly valued environmental and historic attributes of the Peninsula.

The Federal and State Government have invested over \$50 million into the Kamay-Botany Bay National Park and works are underway to reinstate the Kamay Ferry Terminal. The vision includes a connected pedestrian pathway, linking Kamay-Botany Bay National Park to Sutherland and beyond.

The only single vehicular access route to Kamay-Botany Bay is via Captain Cook Drive.

The proposal includes the creation of a waste cell of up to RL30, some 25m higher than the level of Captain Cook Drive. This will be visually exposed and create an eyesore when viewed from Captain Cook Drive.

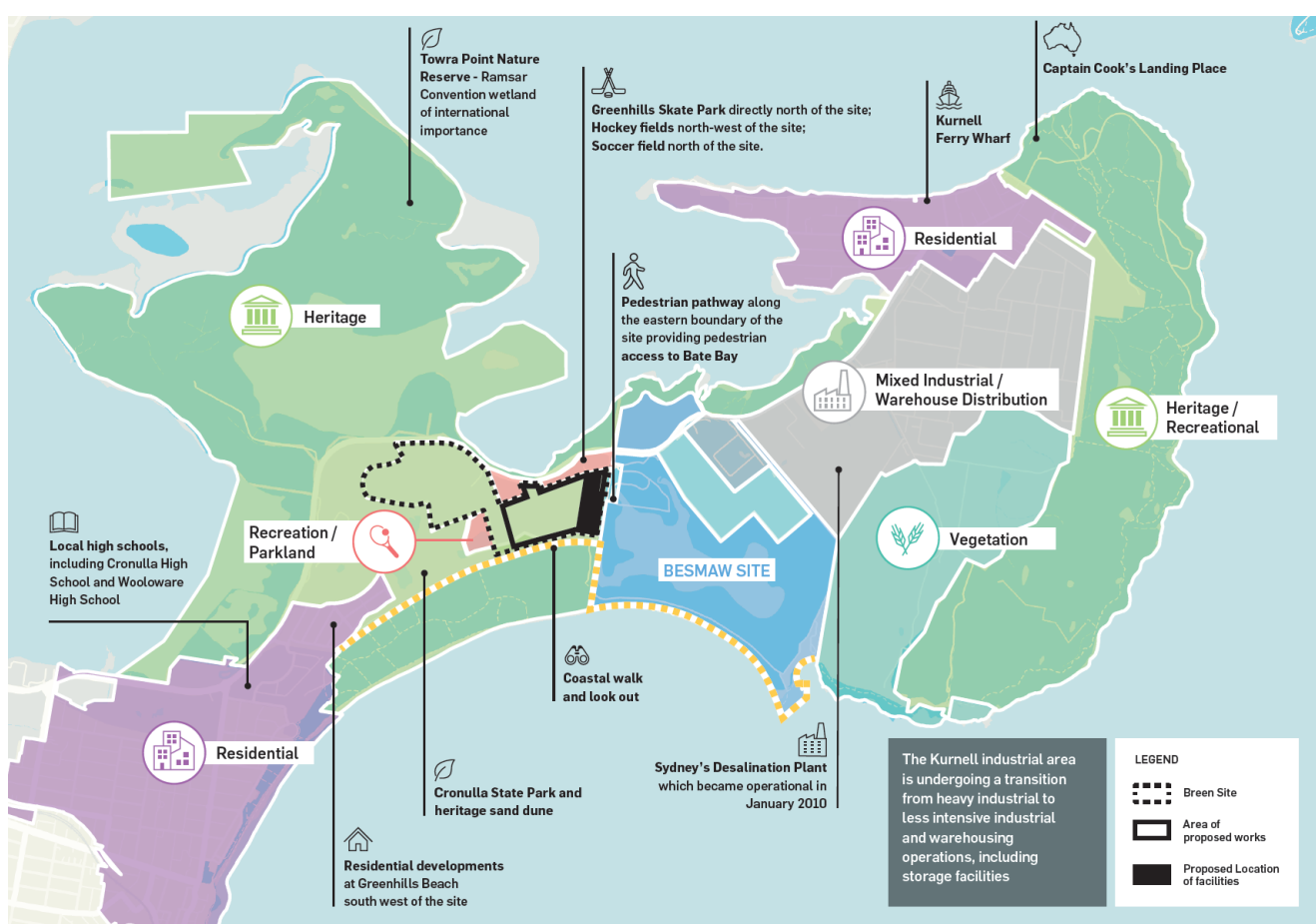
There is a clear disparity between the proposed use of the land as a waste facility and the desired future character of Kurnell. The relocation and thus continued long term operation of the current activities on the site represents a significant shift away from the current strategic direction and long term vision for Kurnell.

Consequently, it will have detrimental impacts on the environment, being located within the vicinity of the Towra Point Wetlands, recreational land uses including Greenhills Beach, Cronulla State Park, Heritage sand dune and the playing fields to be delivered and already completed on Breen Lands.

It was also envisaged that the approved Depot would be demolished and in its place would be the new sports fields and rehabilitated landform. It was never envisaged that these two incompatible land uses would operate side by side.

The below character map demonstrates a movement away from industrial land uses. The Kurnell industrial area is undergoing a transition from heavy industrial to less intensive industrial and warehousing operations, including storage facilities. This is complemented by the Sutherland LSPS, further discussed in this submission, which prioritises the area as a 'Coastal Destination Area', providing residential, tourist, visitor and recreational opportunities. This will continue to be realised through the State Government's \$80 million investment in a walk from Royal National Park to Kamay Botany Bay National Park. The proposed walk follows Bate Bay on the beach frontage and provides an opportunity for increased investment in tourist, residential and recreational land uses. The proposed resource recovery facility will result in a direct conflict with this emerging character and the recent State Government initiatives.

Figure 9: Kurnell Peninsula Character



Source: Urbis

5. INCONSISTENT WITH STRATEGIC PLANNING OBJECTIVES

5.1. GREATER SYDNEY REGION PLAN – A METROPOLIS OF THREE CITIES

Objective 13 Environmental Heritage is identified, conserved and enhanced

The proposal is inconsistent with this objective as:

- The EIS identifies that “*the Proposal Site is presently considered to detract from view scapes to and from the heritage-listed dune and beach landscape to the immediate south-southwest.*”
- The site is surrounded by a number of heritage items. This includes the Cronulla sand dune and Wanda Beach coastal landscape’ (SLEP Item No. 2502). The EIS identifies that it has both a historical and contemporary cultural significance for the Aboriginal community, as well as an historic, scientific, cultural and natural significance as a site of early European contact with indigenous Australians. This facility will detract from surrounding heritage items.

Objective 27. Biodiversity is protected, urban bushland and remnant vegetation is enhanced

The proposal is inconsistent with this objective as:

- It will result in the removal of significant native vegetation including Coastal Sand Littoral Forest and 1.65 hectares of Coastal foredune wattle scrub.
- No offsets are proposed despite the removal of this vegetation of importance to the coastal ecosystem.
- The proposal will also directly impact on the endangered Green and Golden Bell Frog species, which has been historically observed within the site.

Objective 28. Scenic and cultural landscapes are protected

The proposal is inconsistent with this objective as:

- The EIS states “*At a certain viewpoint, the landform proposed by the Proposal will dominate the view.*” This proposal fails to protect scenic and cultural landscapes and enhance and protect views of scenic and cultural landscapes from the public realm.
- The proposal represents an increase of approximately 20% compared to the filling volume on Lot 5 approved under DA/269/90 and fill levels increasing to RL30m compared to the previous RL15m, impacting heritage sand dunes and views to Bate Bay and Quibray Bay, inconsistent with this objective.

Objective 31. Public open space is accessible, protected and enhanced

The proposal is inconsistent with this objective as:

- The Resource Recycling Facility will reduce the amenity of nearby public open space already delivered including noise and air quality impacts as discussed in this submission.
- The proposal will inhibit access to the foreshore and beach frontage via Lindum Road and the existing pedestrian access.

5.2. SOUTH DISTRICT PLAN

Planning Priority S10 – Retaining and managing industrial and urban services land

The Breen land is not identified as being zoned for industrial purposes, nor is it located within an Employment Land Precinct.



Planning Priority S11 – Supporting growth of targeted industry sectors

The proposal is inconsistent with this planning priority as:

- it does not 'consider opportunities to implement place-based initiatives to attract more visitors, improve visitor experiences and ensure connections to transport at key tourist attractions', rather the facility will be in direct conflict with the parklands to be delivered in accordance with the VPA and the broader tourist visitation sought for the Kurnell Peninsula.
- The proposal will impact opportunities to provide tourist accommodations both on the Besmaw site and surrounding area (inconsistent with this objective).

5.3. SUTHERLAND LOCAL STRATEGIC PLANNING STATEMENT

Planning Priority 7 Respect Local Character

The proposed land use is not consistent with the emerging character of the area:

- The LSPS identifies the area as focused on tourism and recreational opportunities, and the introduction of a resource recover facility and long term waste management facility is in direct conflict with this vision.
- The recreation facilities are to be delivered in accordance with the VPA and in accordance with DA269/90. The proposed land use and introduction of additional fill will expand operations beyond that of previous consents and is inconsistent with the emerging local character.

Planning Priority 11 Attractive and distinctive Centres and Places

The proposal is inconsistent with this planning priority as:

- The LSPS identifies the site and surrounding area as the "Coastal Destination Area".
- This area is the primary focus of recreation and visitation in Sutherland Shire and includes the beaches, bays, bushland and foreshore parks of the Kurnell Peninsula.
- The proposed resource management facility is inconsistent with the vision for the Coastal Destination Area as it is offensive industry, limits accessibility to Bate Bay and results in visual impacts towards Quibray Bay.
- Playing fields were to be constructed when the depot was demolished, there was no intention to operate a resource recovery facility and long term waste management facility immediately adjacent and in direct conflict with key recreational land uses.

6. ERRORS AND INADEQUATE ASSESSMENT

6.1. ERRORS AND INADEQUATE INFORMATION

A number of errors have been identified within the EIS. A proper assessment cannot be undertaken, as the EIS is relying on these inconsistencies, to justify the proposal. This includes:

6.1.1. Sutherland LSPS

The EIS on page 30 states that planning priority 20 of the LSPS “...*makes specific mention of the Besmaw land at Kurnell which is adjacent to the Proposal Site to the east, as a land development opportunity for waste recycling facilities. Taken more broadly, Council envisages Kurnell as containing large strategic sites that are suitable for locating new integrated waste management technologies*”.

This is factually incorrect. The EIS refers to the wrong planning priority (it should refer to Planning Priority 22), and the LSPS outlines that “...*large strategic precincts provide opportunities to pursue low-carbon high efficiency initiatives, allowing new technologies to be adopted and integrated. Large redevelopment sites and precincts include ANSTO, the Toyota site at Woollooware and the Besmaw land at Kurnell.*”

It makes no specific reference to ‘waste management technologies’ on Besmaw land.

6.1.2. Kurnell Peninsula SEPP

The EIS on page 80 states “*According to the Greater Sydney Commission, the area is not suitable for residential development due to noise and the need to protect the 24-hour freight corridor along the main southern approach to Sydney Airport. Residential development in the location is currently prohibited by the Kurnell SEPP and Sutherland Shire Council LEP.*”

The proposal represents a more compatible use with existing local and state government priorities for Kurnell, including to retain and manage industrial land, and to enhance and expand public open space.”

This is incorrect. Neither the site nor the adjacent Besmaw lands are zoned as industrial land and therefore the ‘retain and manage’ objective is not applicable. Whilst, residential accommodation is prohibited on parts of the Kurnell Peninsula, a number of similar uses are permitted which have not been considered in the EIS including holiday or other non-permanent residential accommodation as well additional land uses under *Clause 33 Development for certain additional purposes of SEPP Kurnell Peninsula*, including hotels and condominiums. Besmaw is currently completing sand extraction and rehabilitation to allow the suitable development of appropriate land uses, including recreation, tourism, residential and commercial consistent with the emerging character of the Kurnell Peninsula.

6.1.3. Previous VPA and this Proposal

As has been outlined in this submission, it is a significant error to include the delivery of the parklands as justification for the resource recycling facility. On numerous occasions the EIS outlines that “*Another key feature of the Proposal is the delivery of the Embellished Marang Parklands*” and provides an assessment of the delivery of the parklands as justification for the new land uses, including the Resource Recycling Facility, and the relocation of current operational infrastructure. The parklands are to be delivered in accordance with the VPA and should not be used as justification to establish a resource recovery facility and a waste management facility on the site.

6.1.4. Proposed Filling

The EIS states *“The proposal therefore represents an increase of approximately 20% compared to the filling volume on Lot 5 approved under DA/269/90”*. The EIS incorrectly attempts to justify this significant increase by stating *“there has been a reduction in landfill capacity in other parts of the Proposal Site”*. It is incorrect to justify a 20% increase in fill volumes based off previous changes, noting that no consent was granted for these changes and would not be in accordance with the VPA.

The changes underway in other parts of the Breen site is to rectify work that had exceeded approved levels. There has not been a reduction in capacity elsewhere on site but a regularisation of past activities.

6.1.5. Proposed Resource Recovery Facility

The proposal fails to address light spill of the resource recovery facility which is proposed to operate 24 hours a day. The Visual Impact Analysis, in response to the SEARs states *“Ensure that the design of lighting seeks to reduce light spill”*. The EIS fails to provide an assessment. A detailed assessment of this must be provided noting the sensitive land uses surrounding the site including residential areas.

6.1.6. Consultation

The EIS incorrectly identifies the findings of the Consultation. The EIS does not recognise the ongoing dispute resolution with Council relating to Clause 7.9 of the VPA, in which the parklands were to be delivered by 31 December 2020. Rather, the EIS proposes an extended timeframe for delivery, not addressing this unresolved matter.

Furthermore, no attempt has been to recognise the concerns raised by Besmaw. In particular, the length of time the Resource Recovery Facility will operate and Besmaw’s vision for its site.

6.2. INADEQUATE ENVIRONMENTAL ASSESSMENT

6.2.1. Visual Impact

Inadequacies:

The Visual Impact Analysis (VIA) prepared by Clouston Associate fails to address the SEARs. The SEARs required the following:

- *a detailed design analysis of the proposed development with reference to the building form, height, setbacks, bulk and scale in the context of the immediate locality, the wider area and the desired future character of the area, including views, vistas, open space and the public domain*
- *a detailed assessment (including photomontages and perspectives) of the facility (buildings and storage areas) including height, colour, scale, building materials and finishes, signage and lighting, particularly from nearby public receivers and significant or important vantage points of the broader public domain*
- *consideration of the layout and design of the development having regard to the surrounding vehicular, pedestrian and cycling networks*

The VIA does not assess the following:

- The desired future character of area noting a transition away from high impact and intrusive industries.

- A detailed assessment of the proposed Resource Recovery Facility including the colour, scale, building materials and finishes, signage and lighting. Currently, the proposed development is demonstrated wholly as 'white' and has no further details no materials, finishes or signage is provided on the photomontages. The VIA acknowledges the facility will operate with significant lighting contributing to spill in the surrounding area, however, no assessment of this has been provided.
- Does not include view impacts from every important vantage point in the nearby vicinity including:
 - Boat Harbour Drive
 - Don Lucas Reserve
 - Greenhills Beach and Boat Harbour - Breen met with Councillor Marie Simone, Councillor Kent Johns and Ian Drinnan (Principal Environmental Scientist) on 17 September 2020. Councillors raised concerns about "the landscaping treatment visible from Greenhills Beach". This has not been addressed in the VIA.
- No specific assessment of the impact of the landform on views to and from the adjoining heritage listed dunes. It has significant potential to impact on this aesthetically distinctive landmark.
- The view analysis photos do not confirm the heights of the existing or proposed contours and therefore it is unclear if these images are capturing the full extent of the change to the proposed waste cells (i.e. heights of RL30+).

Impacts:

Figure 10 and 11 below use the viewpoints prepared by Clouston Associates of existing and proposed landforms. The extent of impact and significant increase in the bulk of the landform is clear in these images, specifically viewpoint 3 and 7. The VIA provides the following assessment of viewpoint 3, from the existing soccer playing field:

Due to proximity, the proposed buildings will be highly visible from this view. The associated mounding and planting on the New Resource Recovery Facility boundary will reduce visual impacts the most when the trees are fully mature. In effect the visual impacts will be slightly higher until they grow, but this difference would not be sufficient to warrant a change of rating. The mounding and larger shrubs will achieve the bulk of the impact reduction within a short period of planting.

As detailed in the VIA, significant visual impacts will occur from the existing soccer fields, a key recreational facility which is utilised by children, families and sporting teams. View impacts would also result from the pedestrian trails in the adjacent Cronulla State Park. Viewing Platforms are located in this area and as demonstrated in the VIA views would be significantly inhabited towards Botany Bay and the Sydney CBD. This is a significant attraction for the Sutherland Shire community and views will be destroyed as result in the significant increase in fill, demonstrated in the engineering plans at **Appendix A**, previously submitted with the EIS.

It is noted that the landscape plans do not show the significant trees that are depicted in the VIA. As such, the VIA is inconsistent with the trees that are proposed on the periphery of the site. Nevertheless, full maturity of trees is unlikely to occur in the short to medium term when significant operations would be occurring. The trees are likely to reach maturity in 20+ years as such it is unreasonable to demonstrate these full maturity trees in the photomontages.

Figure 10 Viewpoint 3



Existing View 3 (Note - Panels in the foreground is temporary)



Proposed View 3

Source: Clouston Associates

Figure 11 Proposed Visual Impacts



Existing View 7



Proposed View 7

Source: Clouston Associates

6.2.2. Access and Traffic

The application proposes to construct and extend a portion of Lindum Road to enable a vehicular access point within the north-eastern corner of the site. The SEE and the submitted Traffic Impact Assessment (TIA) Report does not consider the cumulative traffic impacts that this will have on Captain Cook Drive and the risks associated with increase traffic at this junction.

The current access from Captain Cook Drive is a fundamental element of DA269/90 and the relocation to Lindum Road is a significant change. Below is a discussion of inadequacies in the application and impacts of the proposed development.

Inadequacies:

- The application does not adequately assess the conflict between the existing pedestrian pathway and the extension to Lindum Road, which will require the trucks to traverse the pedestrian pathway.
- The TIA does not acknowledge the approved Boat Harbour Access point (Application No. RDA18/1172) on the Besmaw site which has been constructed and is utilised by the general public. The EIS states it is 'yet to be completed' which is incorrect and as a result the forecast modelling is not consistent with the current usage of Boat Harbour Drive.
- A cumulative assessment of the traffic utilising this junction has not been provided. Truck volumes are expected to almost double as result of the new resource recovery facility. This has not been discussed in detail with the EIS. The TIA states there is an expected increase in daily traffic movements from 585 to 1070 two-way vehicles on weekdays, and from 227 to 422 two-way vehicles on Saturdays. There will be a forecast increase 53 two-way vehicles during the morning peak from 8:30am to 9:30am and 34 trips on Saturdays. When combined with the Besmaw land, the Boat Harbour Drive vehicle movements and the existing and proposed playing fields, this will have substantial flow on effects for Captain Cook Drive and wider Sutherland Shire network, including significant queue lengths.
- The applicant has failed to assess the cumulative impacts associated with the existing vehicular movements into the Besmaw site, the traffic associated with vehicles accessing Boat Harbour Drive (approved and in use), the vehicular movements associated with the hockey field, skate park and walkway, and the additional traffic entering the Breen site.
- Detailed Civil Engineering plans showing the internal car and truck parking, road dimensions, long and cross sections have not been provided. This includes the new entry point connecting to Lindum Road. To understand the operation of this access point and the likely future conflicts further detailed information must be provided on how it will be constructed.

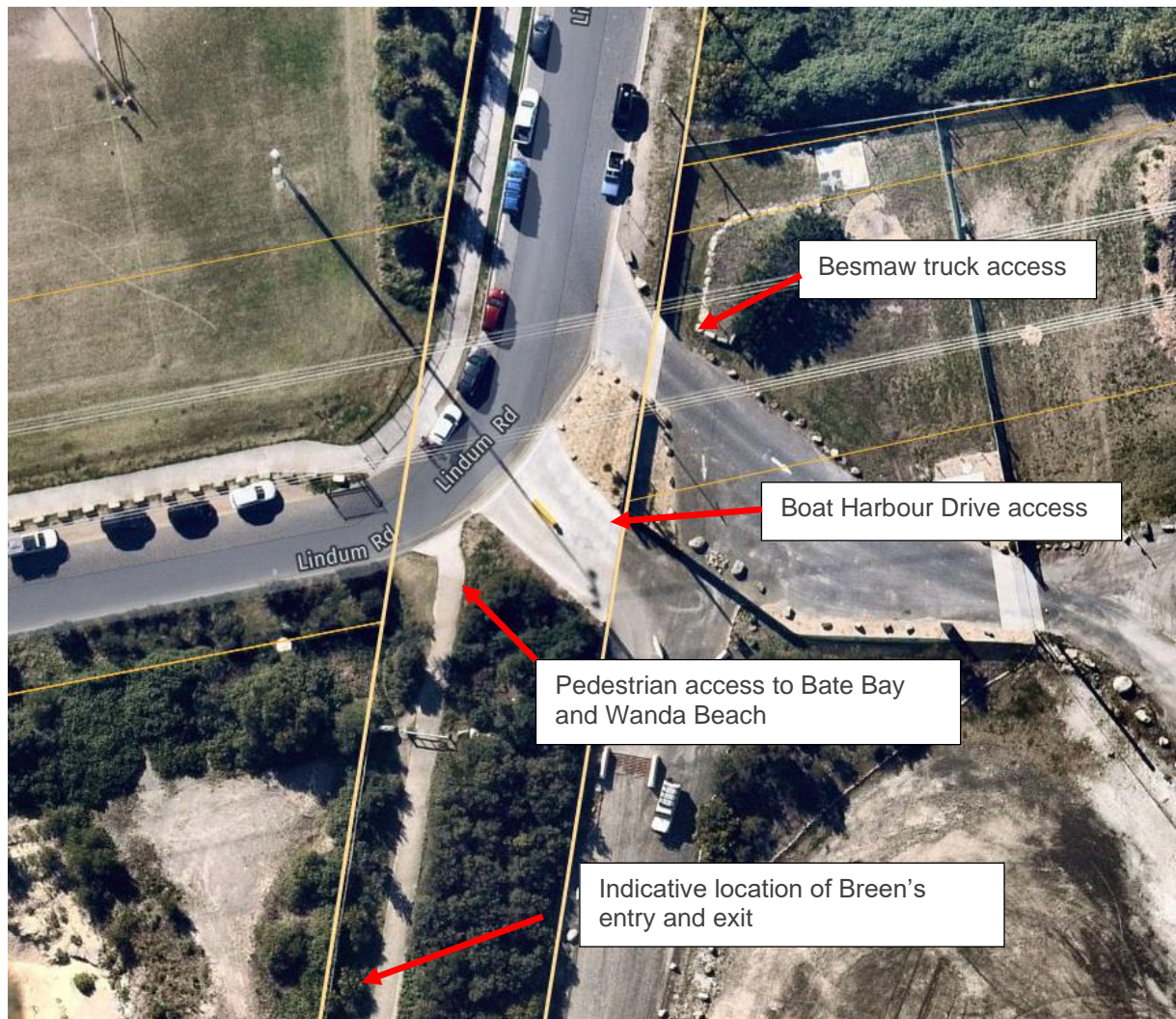
Impacts:

- The existing pedestrian pathway off Lindum Road is frequently used by members of the public to access Wanda Beach. This has increased as a result of COVID-19. It is the only entry point to the beach within 5km. Vehicles regularly park next to the soccer field and skate park and use this pathway. The proposed entrance on the eastern side and extension to Lindum Road will result in this pathway being diverted and will be in direct conflict with trucks and commercial vehicles entering the site. This presents a safety issue to the users of the pedestrian path and has not been appropriately addressed in the Traffic Report (**Figure 12**).
- The approved Boat Harbour vehicle access was proposed to facilitate the orderly continuation of the approved extraction and rehabilitation operations on the Besmaw site and to maintain a safe

and separate access to Boat Harbour. Private vehicles using the approved vehicle access off Lindum Road will be in direct conflict with commercial trucks entering the proposed Breen waste management facility at this junction (**Figure 12 and 13**).

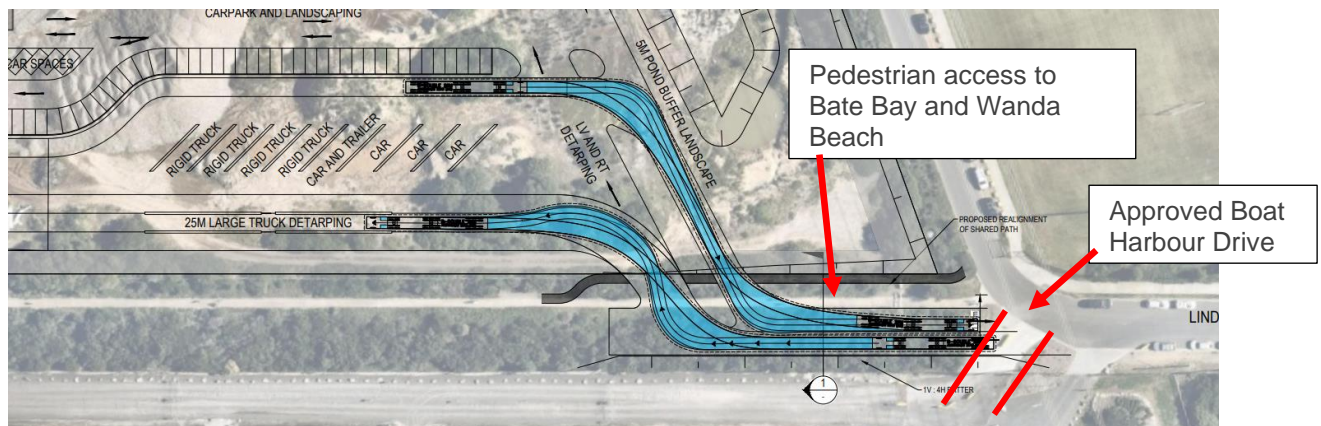
- The TIA notes that “The future potential export from the Proposal site is expected to be some 3.6 times greater than the recorded 2017/18 year”, rising from 166,838 tonnes to 600,000 tonnes. This is a significant increase which will have major ramifications for truck movements on Captain Cook Drive, in which it is expected that “large vehicle capacities will be used to move the different product types.”
- The addition of commercial trucks will increase traffic pressure on Lindum Road and Captain Cook Drive. The current length of Lindum Road to the pedestrian pathway and approved Boat Harbour access is approximately 95m. The proposal will almost double the amount of trucks entering and existing Breen’s site. Additional commercial trucks will result in delays on both Lindum Road and in Captain Cook Drive.
- Alternate locations must be explored o remove the significant conflict at this pinch point. The proposal includes a high volume of truck movements which need to cross a regularly trafficked pedestrian pathway (including young children) accessing Bate Bay. There is also a conflict with the existing Boat Harbour Drive access as well as it being entry point for trucks entering Besmaw’s site. The proposed location of the truck access (two way traffic) combined with the projected volumes, will create a choke point, presenting a pedestrian and traffic hazard that is not appropriate.
- A swept path analysis has not been provided to determine if in-going and outgoing trucks can bypass one another without resulting in a loss of on street carparking.

Figure 12 – Approved Boat Harbour Drive access



Source: Besmaw

Figure 13 – Proposed Lindum Road extension which traverses the existing pedestrian pathway and fails to consider the Boat Harbour Drive access resulting in a conflicting access points



6.2.3. Noise

The proposed relocation of the waste management facility will have significant increased external environment impacts. It is no additional surveys have been undertaken May 2018 and no change to the receivers.

The site is not located within an industrial zone and therefore the EPA's Noise Policy for Industry cannot be reasonably applied. Considerations needs to be given to the adjoining land use zone which permits tourism and residential development as well as the approved playing fields which are located directly north of the proposed resource recovery facility.

Inadequacies:

- Noise levels of 58dBA at the soccer & hockey fields represent exceedances of the recommended amenity noise levels of 55dBA.
- The previous Noise Assessment was undertaken by Wilkinson Murray dated April 2019 conducted noise impacts of the soccer and hockey field separately. It indicated exceedances at both locations. Due to the different locations this should be undertaken as part of the SSD DA. The EIS does not comment on these exceedances or provide any further mitigation measures.
- A previous Noise assessment by Wilkinson Murray dated April 2019 recommended a five metre high buffer along the northern boundary to reduce the impacts of the noise exceedances at the soccer & hockey fields. While a 4m wide bund wall is proposed and is considered in the acoustic assessment, the noise exceedance still exists at soccer field. A landscape buffer is not an adequate mitigation measure to address noise generation issues created by the development.
- Approval is sought for the New Resource Recovery Facility to operate on a 24-hour basis as required. This only considers Kurnell and Greenhills Beach, the permissible land uses on Besmaw site, including tourist and visitor accommodation and residential must also be considered. The previous Noise Assessment considered potential uses on Besmaw Lands which demonstrated exceedances.
- The Noise Assessment fails to assess the potential impact of the operations on future land uses on the Besmaw site which may include sensitive land uses such as tourist and visitor accommodation, residential, education, medical and health.

- The Operational Noise Contour Plot is insufficient as it is unclear where activities will be occurring on the site. Sorting, screening, crushing of excavated and demolition materials is undertaken within and outside of a partially enclosed building. If the activities and equipment are moved around in response to site operations and completion and commencement of fill cells, the noise contours are likely to significantly differ and may lead to greater impacts.

Impacts:

- The exceedances at the soccer and hockey field results will result in a loss of amenity and noise pollution at these community facilities that are regularly used by children and families. These exceedances extend to the Besmaw land. Appropriate mitigation measures are limited and not sufficiently addressed in the application.
- The process of crushing materials via crushing plant will create noise impacts for sensitive receivers.
- Operational Noise Contour Plot, both during Calm Meteorology and Noise Enhancing Meteorology demonstrate significant noise impacts on Besmaw lands and soccer fields. A Noise level of 55 to 60 dBA is demonstrated and is above what is quantified in other sections of the report.

6.2.4. Air Quality

Inadequacies

- The Air Quality Impact Assessment is reliant upon data from a site in Randwick to estimate air quality at the site. This has no relevance to the existing air quality conditions at this site. The EIS notes that “there is no readily available site-specific monitoring data for TSP and deposited dust”.
- The air quality impacts cannot be determined without the collection of site specific data and this should be undertaken. It is noted that the assumptions of the relationship between TSP and PM₁₀ may be relevant if applied to data specific to this site, but as they have been applied to data from another non representative site, the results have even less relevance to this site.
- The current operations on site could be used as a basis for setting a baseline for the assessment.
- Exceedances of criteria are predicted at nearby sporting fields, including the haul road from the New Resource Recovery Facility to the Embellished Marang Parklands would be the major contributor of dust and particulate matter at the hockey field. However, no assessment of health impacts from exceedances has been considered, noting the fields are regularly used by families and children.
- Dust control will be implemented in disturbed areas such as access and haul roads, however, there is no consideration of the active tip face or stockpiles, which are a major potential source of dust.
- The EIS states *“the soil and concrete processing buildings would be fully covered with partially enclosed walls in order to minimise dust and noise emissions. External areas would be used or stockpiling, but no waste processing would take place outside of the buildings.”* Concrete processing building designed with partially enclosed walls, raises concerns for dust and air quality impacts.
- There is no mention of how waste stream such as gypsum material will be processed and stored, gypsum is an extremely dusty product to manage if not stored appropriately. The EIS remains silent on control measures (if any) to be implemented for processing gypsum.

- The EIS states “*stockpiles will be sheltered from prevailing wind conditions and water-based dust suppression to be applied to stockpiles*” thereby raising concerns of dust creation in suitable weather conditions. In addition the proposed water-based dust suppression would very likely create silt run-off. It is not evident how this would be controlled.
- The EIS and Air Quality Impact Assessment does not provide an assessment of Besmaw’s lands.
- This represents unacceptable planning outcome and should not result in any increased impact on adjoining land.
- No meaningful mitigation measures are proposed as part of the SSD DA.

Impacts

- The assessment only recommends monitoring to measure PM10 concentrations during operation in which “notifications when levels exceed certain threshold values” would be provided. This is unacceptable considering the regular use of soccer and hockey fields where exceedances exist. This ‘reactive management’ does not consider the impacts prior to determination of the SSDA.
- Despite insufficient data being collected, the Air Quality Impact Assessment confirms that the relocation of the site facilities and new site activities will result in exceedances of the 24-hour average impact assessment criteria for PM_{2.5} and PM₁₀ at the nearby sporting fields and commercial receptors and exceedance of the annual average impact assessment criteria for PM_{2.5} at the soccer field.
- The EIS outlines that “the concrete processing and soil processing areas would receive source separated materials from external customers and materials from the recycling plant (at the waste processing building). Waste would be transferred between processing buildings by heavy mobile plant” It is unclear whether waste materials will be tarped when transferred between buildings to prevent litter or dust, particularly during high wind events.
- Concrete crushing processing produces high levels of dust, particularly as it is proposed in only partially enclosed buildings. Unless encapsulated within a fully enclosed building there is a high expectancy that dust particles will be blown externally. Therefore, the current proposal is not considered an acceptable work practice, particularly, when considering Breen’s EPL condition O3 Dust. O3.1 Activities must be carried out in a manner that minimises generation of dust.
- At the closest point of Besmaw’s site to the Breen site, the level of dust and particulate matter is the same as at the soccer field (which is an exceedance). The application considers the soccer field and Besmaw’s site as similar receptors which is incorrect.
- The application fails to consider future development on Besmaw’s site and the air quality impacts of this.

6.2.5. Contamination

In response to the SEARs, GHD have prepared a Groundwater Impact Assessment and a Contamination Status Report. In addition to those reports, Consulting Earth Scientists have undertaken an assessment of leachate from the site.

Generally, these reports assess the impacts of the current operations, identify that the site is contaminated and that leachate is likely to have migrated beyond the site boundary in groundwater, in excess of the adopted criteria, potentially having offsite impacts. Given there is connectivity of the groundwater underlying the site and the Towra Point Aquatic Reserve, this is a critical concern.

There are gross inadequacies regarding the management and mitigation measures relating to the proposed development and site operations. Given the focus of these reports predominately relates to the existing site operations, an assessment of the environmental impacts of the proposed development is limited in nature.

Contamination

Inadequacies

- The contamination report identifies a number of gaps, which “*primarily relate to the potential for minor localised contamination to be present from Proposal Site operations, the potential for asbestos to be present, and the potential for contaminants other than those specified in EPL 4608 to be present in leachate (PCBs, TBT and PFAS).*” Given that PFAS is a known presence in landfill leachates and is “*an emerging contaminants with uncertainty in response of environmental effects,*” a full assessment of potential contaminants is required to understand the impacts.
- A full assessment of potential contaminants should be undertaken, irrespective of the proposal, as part of the applicants ongoing site management responsibilities.
- The site plan indicates “tip and spread locations” that are exposed to the elements (not within enclosed structures). Insufficient information has been provided to determine whether the waste material will be tipped directly onto exposed soil. If that is the case, there is a high potential for contamination to infiltrate the soil, as well as airborne contamination.
- The architectural plans identified large waste operation areas. Inadequate information has been provided to determine the size of these areas or the setbacks to the boundary. Page 43 of the EIS identifies the “waste operations areas” as an exposed area that would stock pile material, including *VENM, ENM, brick, concrete, tiles, rocks, asphalt, soil, road base, bedding sand, recovered fines, timber, aggregate and other products.*
- Inadequate information has been provided to determine the volume of the stockpiles, with the EIS stating that “*the size would comply with health and safety requirements.*” Page 43 of the EIS further states that “*all stockpiles would be managed with water sprays to minimise dust emissions, and subject to the implementation of dust monitoring and reactive management system to ensure dust impacts associated with the Proposal would be acceptable.*” Page 47 of the EIS states that “*stockpiles will be sheltered from prevailing wind conditions.*”

Insufficient information has been provided to determine whether this management approach is acceptable in mitigating the associated environmental impacts and the water usage required to manage this operation. This is a requirement of the SEARs.

- Page 59 of the EIS states that “*surface water and leachate management for the Landfill would continue in accordance with current practices with particular emphasis on separation between surface water, waste materials and leachate.*”
- No soil sample has been undertaken of the eastern portion of the site, noted as the Proposal site. The report states that “*anecdotally only virgin excavated natural materials have been used to fill the former pond.*” In order to understand the baseline contamination data, the SEARs require testing of the Proposal site.
- The contamination report notes that *potential ground gas impacts are not well understood.* No further information is provided on this and therefore the environmental impacts are unclear.

Impacts

- The current management of contamination on the site and the mitigation measures applied to reduce any offsite impacts provides baseline evidence into the way in which the facility may operate into the future. The fact that there has been recorded exceedances of ammonia, methane and carbon dioxide concentrations, in excess of the environmental guidelines provides evidence that the current management practices are inadequate.
- The proposed development site includes a large waste organisation stockpile area adjacent to the site's eastern boundary. No details have been provided regarding the volume of the stockpile and a management plan has not been provided in relation to this. The eastern boundary adjoins the pedestrian access route to Boat Harbour beach.
- The waste operation areas and the "tip and spread" locations appear to be exposed to the elements (not within enclosed structures) and will be placed directly on what has been identified as "uncontaminated soil". Insufficient information has been provided to determine whether the waste material will be tipped directly onto exposed soil. If that is the case, there is a high potential for contamination to infiltrate the soil, as well as airborne contamination. This poses a serious environmental risk.
- The mitigation measures provided in the contamination report are limited in nature and do not address on site contamination and how this will be mitigated, managed and contained as part of the proposed development.
- The testing of bore holes confirms that contamination is exceeding the trigger levels however, this is no discussion on how this is being addressed or what the long term impacts are of this. The proposed development seeks to intensify the volume of waste accepted on the site (650,000 tpa and expanding the nature of the material received), with the waste cell increasing in size. The surrounding area will be established with playing fields and parklands, increasing patronage within the immediate vicinity of the site. As the surrounding character of the locality continues to evolve, more people will be attracted to the area and therefore the impacts associated with the intensification of the site need to be clearly understood.

Ground water

Inadequacies

- The groundwater report states that *"while there does not appear to be a direct link between leachate impacts (most notably ammonia, but also to a lesser extent heavy metals) in groundwater at the Proposal Site with offsite surface water, the data suggests that leachate from the Proposal Site is likely to have migrated beyond the northern Proposal Site boundary in groundwater in excess of adopted criteria. This issue has been, and will continue to be, discussed with the EPA."*
- Page 68 of the EIS states that *"if the New Resource Recovery Facility proceeds independently of the Embellished Marang Parklands or not at all, the groundwater management system will lose important operational synergies resulting in a less efficient and effective system."* Inadequate information has been provided to understand how the new resource recovery facility will improve existing groundwater management systems for the current operations, given that when the existing site operations was approved, it was never envisaged that the resource recovery facility would be developed.
- Any obligation to manage impacts from historical operations remains and cannot be the justification for the establishment of a Resource Management Facility on the site.

- In 2018, the EPA raised concerns with Breen regarding the integrity of the landfill liner and the containment of leachate on the site. Insufficient information has been provided to ascertain how this is being addressed and how it will be mitigated under the proposed development scenario.
- Groundwater monitoring is stated to be undertaken on a quarterly and yearly basis, however the records provided in the GHD report indicate that this is not the case, with ground water monitoring occurring at yearly intervals and with substantial gaps in the data.

Impacts

- Groundwater monitoring samples consistently show exceedance above the relevant trigger values, including arsenic concentrations, copper concentrations and ammonia. The Proposal Site is located in close proximity to the Towra Point Nature Reserve which is a RAMSAR Wetland located immediately north of Captain Cook Drive.
- Groundwater dependant ecosystems are identified as medium to high, immediately adjoining the sites northern boundary, in proximity to BH10B. The groundwater report states that “the highest concentrate of ammonia currently migrating off-set are in wells along the north western boundary (between BH12A and BH10B). The EIS does not state how this is being addressed or what mitigation measures are proposed to resolve this.
- The ground water report states that “*while there are concentrations of contaminants present in on-site leachate and groundwater above adopted ecological, aquaculture and human health the impacts at down gradient receptors are not clearly discernible from those associated with the wider urban and industrial environment.*” The current urban environment is changing. The cessation of the waste facility in the western portion of the site and the construction of the parklands will significantly increase patronage to this area.
- The report does not establish how the concentrations of contaminations is being addressed or managed as part of the proposal and future site operations. Given that the waste cell and facility has an expected life cycle of 15 years (at a minimum) and it will be co-located within an urban environment, it is critical that this be addressed.

The report states that groundwater will improve as a result of the proposal, but given that the source of the contamination has not been verified, the true extent unknown due to limited testing and details pertaining the management of groundwater contamination have not been provided, it is unclear on how this will be improved

6.2.6. Operational Risk

- The EIS on page 107 states “soil material and smaller aggregate materials would be size reduced, separated and washed to produce soils, recovered fines and recovered aggregate”. It is unclear what processing plant will be utilised to separate and wash materials to produce soils. In addition, it is also unknown if the process is contained within building, what water source will be used and what sediment control measures to be implemented.
- The EIS states “all incoming loads would be inspected at the weighbridge and at the tipping and inspection areas at each processing area to ensure that hazardous materials such as asbestos and any non-permitted wastes are not concealed within loads”. It is unclear if pre-processing of incoming waste streams is to be contained within fully sealed building to control potential asbestos fibres harmful to human health into environment. Specifically, where and how are hazardous waste materials contained and managed onsite?

- Concern is raised for high risk exposure to Crystalline Silica. Crystalline silica is most dangerous to health when dust is generated, becomes airborne and then inhaled. Breen's mechanical crushing activities will be producing airborne dust particles. Crystalline silica is found in waste products (recovered concrete, brick & mortar, rock) that Breen's are proposing to crush in processing plant.

6.2.7. Landfill Gas Management

Landfill air monitoring practices are strategic requirements that assist in determining whether the landfill mass is emitting harmful gases into the atmosphere. The EIS states that *...Landfill gas monitoring at the Proposal Site includes quarterly monitoring of subsurface landfill gas...*

It is common practice within the waste industry (landfills) to undertake surface gas emission monitoring of landfill areas (capped or intermediate cover) to demonstrate cover materials are controlling landfill gas emissions. This should be considered and assessed in EIS generally but also having regard to the sensitive nature of the surrounding land and the existing and proposed embellished open space.

6.3. FAILURE TO IDENTIFY AND ASSESS REAL ALTERNATIVES

An essential element of an EIS is to identify and evaluate alternatives to the proposal. This has not occurred. Section 3.4 of the EIS identifies 'Analysis of Alternatives', however, no design alternative or land use alternatives have been investigated, as required for State Significant Development.

The assessment in Section 3.4 outlines there is no alternative, and the delivery of parklands would not proceed without the proposal. This is incorrect as the parklands were agreed to under the VPA and must be provided regardless of this proposal. The applicant has simply nominated an alternative embellishment outcome.

It is also incorrect to justify the resource recycling facility to enable the delivery of the parklands. The EIS states as part of the 'Do-nothing scenario' that *"The security of a consent to enable the delivery of the Embellished Marang Parklands"*, this is factually incorrect as both the VPA and DA/269/90 enabled the delivery of the parklands and further consent is not required.

The EIS specifies this in 'Alternative Use' section, stating *"If the proposed New Resource Recovery Facility does not proceed on this eastern part of Lot 5, then the land will be subject of filling pursuant to DA/269/90"*, this admission demonstrates the "do nothing scenario" is achievable and consistent with current operating consents, and there is no plausible reason for this not to occur.

The justification in the EIS that it *"is not considered to be the most economic use of the land in the current land use context"*, fails to realise the emerging land use context towards recreation and residential and movement away from industrial land uses on the Kurnell Peninsula. The EIS states, it is *"The most economic use of land"*, economic reasoning and the ability to obtain profit from a land use should not be used as planning justification for a proposed development and does not provide a real alternative.

The EIS states that by delaying the proposal the parklands would not be delivered in a timely manner. Again, the parklands are to be delivered in accordance with the VPA and sit outside of the SSDA. The *"additional improvements, embellishments and community facilities"* can occur without the new land use and is unrelated to the resource recovery facility.

The EIS demonstrates that there would be no impact on the delivery of the parklands if the resource recovery facility was delayed or did not proceed. The required filling could occur from the existing facility location in accordance with the current consent, and as such no reasonable justification has been provided for its relocation to the western portion of the site which has a number of constraints as discussed in this submission. The proposed location was previously not supported by Council

(MA19/0026) and hence further analysis of viable alternatives must be explored. The current justification within Section 3.4 Analysis of Alternatives is not sufficient.

6.4. LACK OF MEANINGFUL CONSULTATION

The EIS outlines a meeting occurred with Besmaw in September 2020 to discuss the proposal. The EIS states that Besmaw:

- General support for the parkland and remediation components of the Proposal

Besmaw were clear during this meeting that they wanted to see rehabilitation concluded and the Marang Parklands delivered, as required. It is noted that a dispute resolution with Council is continuing. The parklands were to be delivered by 31 December 2020, this timeframe has not been met.

- Uncertainty of the Proposal is impacting Besmaw's ability to plan for their own development and remediation.

The implication that certainty was more important than an appropriate outcome is misleading. Besmaw is committed in ensuring the most appropriate outcomes for the Kurnell Peninsula are achieved. The proposal is inconsistent with the vision for the Kurnell Peninsula as a Coastal Destination Zone as illustrated in the LSPS.

- Risk of the Breen's facility being divested, and an alternative operator creating uncertainty for Besmaw

This commentary was made by Besmaw in relation to the lack of committed timeframe and the open-ended nature of the proposal which would be in conflict with the future vision for the Kurnell Peninsula.

- Resource recovery facility is inconsistent with Besmaw's vision for their site

Again, the proposal is not just inconsistent with Besmaw's vision for their site but the Kurnell Peninsula as a whole. It is envisaged in the LSPS as a Coastal Destination Zone which prioritises tourist and recreational land uses. Recent development of residential land uses on the Peninsula including Shearwater and Greenhills also demonstrate a shift away from industrial. The Resource Recovery Facility will be inconsistent with the Embellished Marang Parklands to be delivered by Breen, including the current soccer and hockey fields as well as the nearby walking trails regularly used by the Sutherland Shire community.

- Traffic volumes at Lindum Rd roundabout that is shared with Besmaw's facility and other recreational users.

As has been detailed in this submission, this issue has not been addressed in the EIS or supporting documentation. There has been no information provided on the detailed design of the proposed access point and its conflict with the Lindum Road pedestrian access to Wanda Beach, Boat Harbour Drive and Besmaw's truck access point.

In summary, the issues raised by Besmaw at the meeting with Breen on 18 September 2020 have not been documented or addressed within the EIS. The issues remain unresolved, and it is evident that sufficient consultation has not occurred with Besmaw, as neighbouring land owners.

7. CONCLUSION

A State Significant Development Application (SSD-10412) has been lodged over land at 330 Captain Cook Drive.

This submission has outlined the fundamental concerns that our client has with regard to the proposal. These issues are summarised below:

- **Permissibility:** The proposed land use is most appropriately defined as a waste disposal. The site is zoned 7(b) Special Development under SEPP Kurnell. Waste disposal is expressly prohibited in the zone.

The applicant relies on the use Section 4.38(3) of the EP&A Act, which states that development consent may be granted despite the development being partly prohibited.

The proposed waste disposal facility has the capacity to accept 650,000 tpa of waste. This is the predominant land use and is not considered ancillary to the proposed alternate embellishment outcome of the parklands to be delivered under the 2010 VPA.

- **Inconsistent with the objectives of the zone and SEPP Kurnell:** Clause (9)(3) of SEPP Kurnell expressly states that consent shall not be granted unless the development is consistent with the aims and objectives of the zone. The EIS fails to demonstrate how consistency is achieved.

The aims and objectives of SEPP Kurnell are primarily focussed on the conservation of the environmental and cultural significance of the area and the promotion of commercial, industrial and tourist development that is consistent with the conservation of the unique ecological and landscape attributes of the Kurnell Peninsula.

The EIS **has not** demonstrated that the proposal can be carried out without impacting the natural environment of the Kurnell Peninsula, will promote the unique ecological and landscape attributes of the Kurnell Peninsula, or through the operations for up to 60 years protect the health, well-being and safety of the local community. Further, the EIS fails to demonstrate how the proposal can promote, enhance and utilise the development potential of the zone primarily for tourism, recreation or industrial parks, where this is consistent with the conservation of the unique, ecological and landscape attributes of the Kurnell Peninsula.

- **Suitability of the site for the development:** The Kurnell Peninsula has been transitioning over the years from the former industrial area to one that is more focused on celebrating the unique, natural attributes of the Peninsula. This is acknowledged at a State level, with the Kurnell Peninsula now identified as a tourist destination zone.

The very nature of the proposal and environmental impacts of the waste facility make it abundantly clear that the development is incompatible with the desired future character of the Kurnell Peninsula and results in a direct conflict.

The volume of waste proposed to be processed on the site, the increased in truck movements and the location of the waste cells and exposed waste sorting areas, results in unacceptable environmental impacts on the community and adjoining public and private landholdings, including the newly established and soon to be completed public recreation land and sports fields adjacent to the proposed operations.

- **Unacceptable environmental impacts:** The documentation submitted with the EIS confirms that the site is contaminated, and that leachate is permeating the groundwater and resulting in offsite impacts. The site is located directly adjacent to the RAMSAR wetlands. Insufficient information has

been provided which details how the environmental impacts of the current and historical operations are to be managed.

The EIS and technical advice notes an expected increase in daily traffic movements from 585 to 1070 two-way vehicles on weekdays. This is a significant increase in truck movements. The proposed new access results in a direct conflict with the pedestrian corridor, which provides access to Bate Bay and Wanda Beach.

- **No justification for the proposal:** The EIS places significant importance on the proposed delivery of the Embellished Marang Parklands as the primary justification for and to demonstrate the interrelationship with the Resource Management Facility.

The embellishment of the Parklands is already required to be delivered under a 2010 Planning Agreement. That agreement was related to the rezoning of significant landholdings of the Applicant private parties to the agreement from industrial to residential. The dedication and embellishment of the land under the Planning Agreement was to provide a public benefit in recognition of the benefits delivered under the rezoning.

The only apparent difference between the embellishment works described in 2010 planning agreement and the works described in the SSD DA is to enable a different embellishment outcome. While the EIS seeks to link the embellishment work to the proposed Resource Management Facility it is clear that there is no relationship, and that the embellishment works are required and can be carried out independent of the Resource Management Facility.

We would welcome the opportunity to meet with the Department to discuss the contents of this submission and clarify any of the points raised.

Yours sincerely,

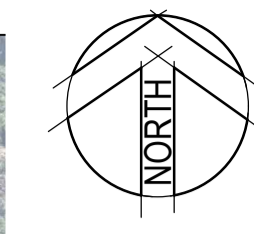
A handwritten signature in black ink, appearing to read "Clare Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Clare Brown
Director
+61 2 8233 7678
cbrown@urbis.com.au



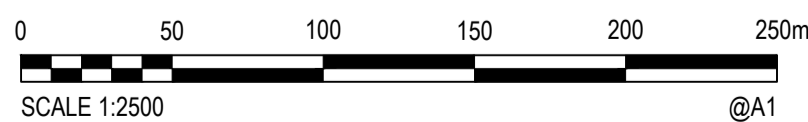
APPENDIX A – ENGINEERING FILL PLANS SUBMITTED

DATE PLOTTED: 18 December 2020 12:47 PM BY: HAYDEN DAVENPORT



SBL to FSL DEPTH RANGES			
-99.00000 to	-3.00000	m	
-3.00000 to	-2.50000	m	
-2.50000 to	-2.00000	m	
-2.00000 to	-1.50000	m	
-1.50000 to	-1.00000	m	
-1.00000 to	-0.50000	m	
-0.50000 to	0.00000	m	
0.00000 to	0.50000	m	
0.50000 to	1.00000	m	
1.00000 to	1.50000	m	
1.50000 to	2.00000	m	
2.00000 to	2.50000	m	
2.50000 to	3.00000	m	
3.00000 to	99.00000	m	

Rev.	Date	Description	Des.	Verif.	Appd.
1	17/12/2020	ISSUED FOR INFORMATION			



© Cardno Limited All Rights Reserved.
This document is produced by Cardno Limited solely for the benefit of and use by the client in accordance with the terms of the retainer. Cardno Limited does not and shall not assume any responsibility or liability whatsoever to any third party arising out of any use or reliance by third party on the content of this document.

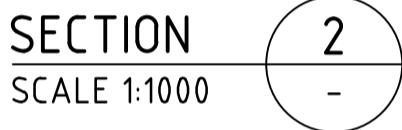
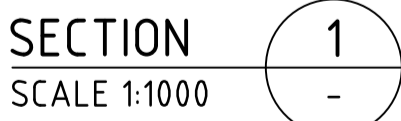


Cardno (NSW/ACT) Pty Ltd | ABN 95 001 145 035
Level 9, The Forum, 203 Pacific Highway
St Leonards, NSW 2065
Tel: 02 9496 7700 Fax: 02 9439 5170
Web: www.cardno.com.au

Drawn	HLD	Date	17/12/2020
Checked	MWZ	Date	18/12/2020
Designed	HLD	Date	16/10/2020
Verified	MWZ	Date	18/12/2020
Approved	HLD	Date	18/12/2020

Client	BREEN RESOURCES
Project	KURNELL RESOURCE RECOVERY FACILITY EIS
Title	LANDFILL VOLUMES DEPTH RANGE PLAN SBL TO FSL

Status	FOR INFORMATION ONLY			
NOT TO BE USED FOR CONSTRUCTION PURPOSES				
Datum	Date	Scale	Size	
AHD	DEC'20	1:2500		A1
Drawing Number				Revision
80221001-001-SK027				1



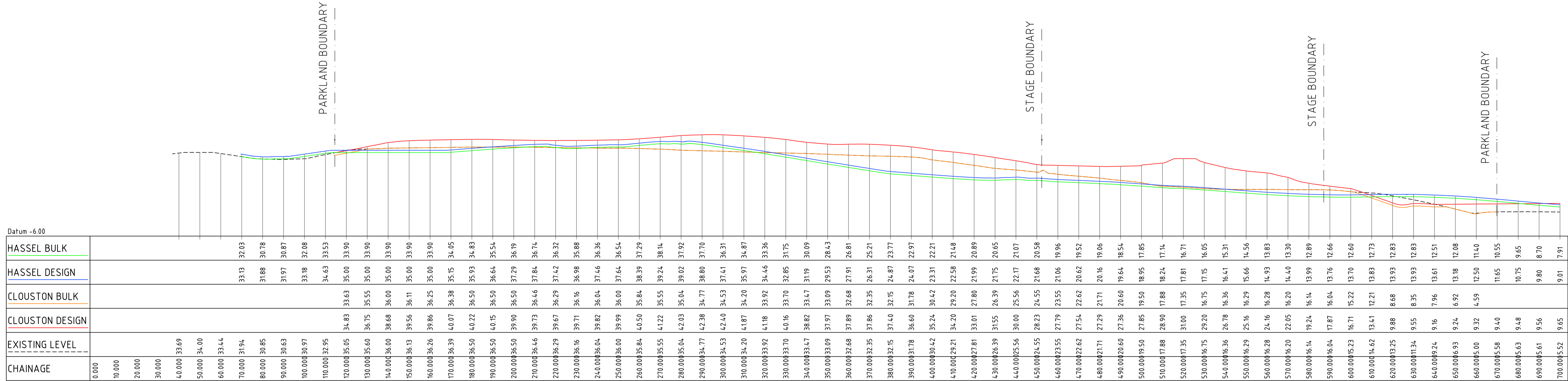
Drawn HLD	Date 26/10/2020	Client BREEN RESOURCES				
Checked MWZ	Date 18/12/2020	Project KURNELL RESOURCE RECOVERY	Status FOR INFORMATION ONLY	NOT TO BE USED FOR CONSTRUCTION PURPOSES		
Designed HLD	Date 16/10/2020	Title LANDFILL VOLUMES SITE SECTIONS SHEET 1 OF 8	Datum AHD	Date OCT'20	Scale AS SHOWN	Size A1
Verified MWZ	Date 18/12/2020		Drawing Number 80221001-001-SK017			
Approved			Revision 2			
HLD	18/12/2020					

2	17/12/2020	ISSUED FOR INFORMATION			
1	26/10/2020	ISSUED FOR INFORMATION			
Rev.	Date	Description	Des.	Verif.	Appd.

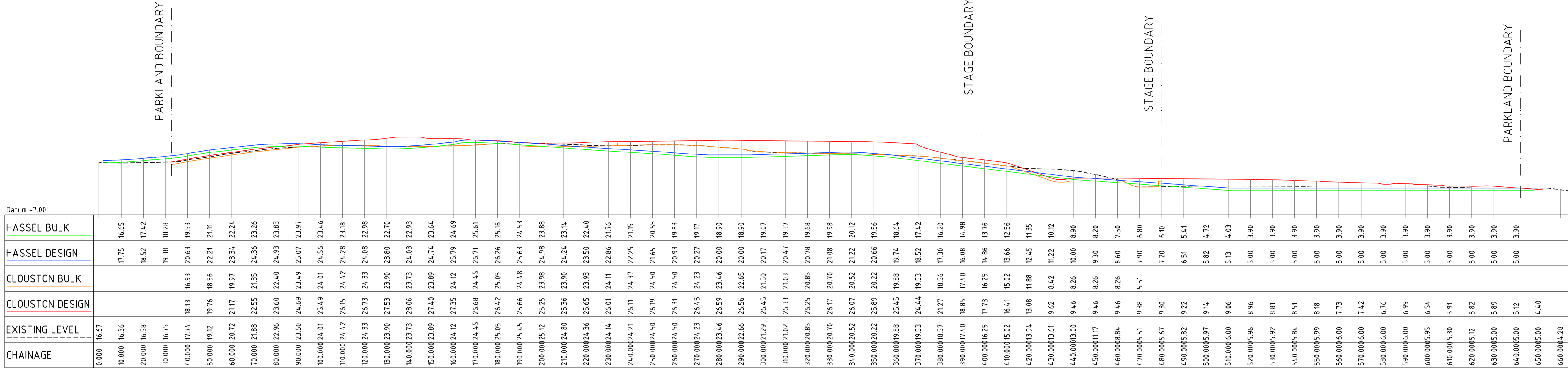
Drawn	Date
HLD	26/10/2020
Checked	Date
MWZ	18/12/2020
Designed	Date
HLD	16/10/2020
Verified	Date
MWZ	18/12/2020
Approved	
HLD	18/12/2020

Client	BREEN RESOURCES
Project	KURNELL RESOURCE RECOVERY
Title	LANDFILL VOLUMES SITE SECTIONS SHEET 2 OF 8

Status		<div>FOR INFORMATION ONLY</div> <div>NOT TO BE USED FOR CONSTRUCTION PURPOSES</div>			
Datum	Date	Scale	Size		
AHD	OCT'20	AS SHOWN	A1		
Drawing Number				Revision	
80221001-001-SK018				2	

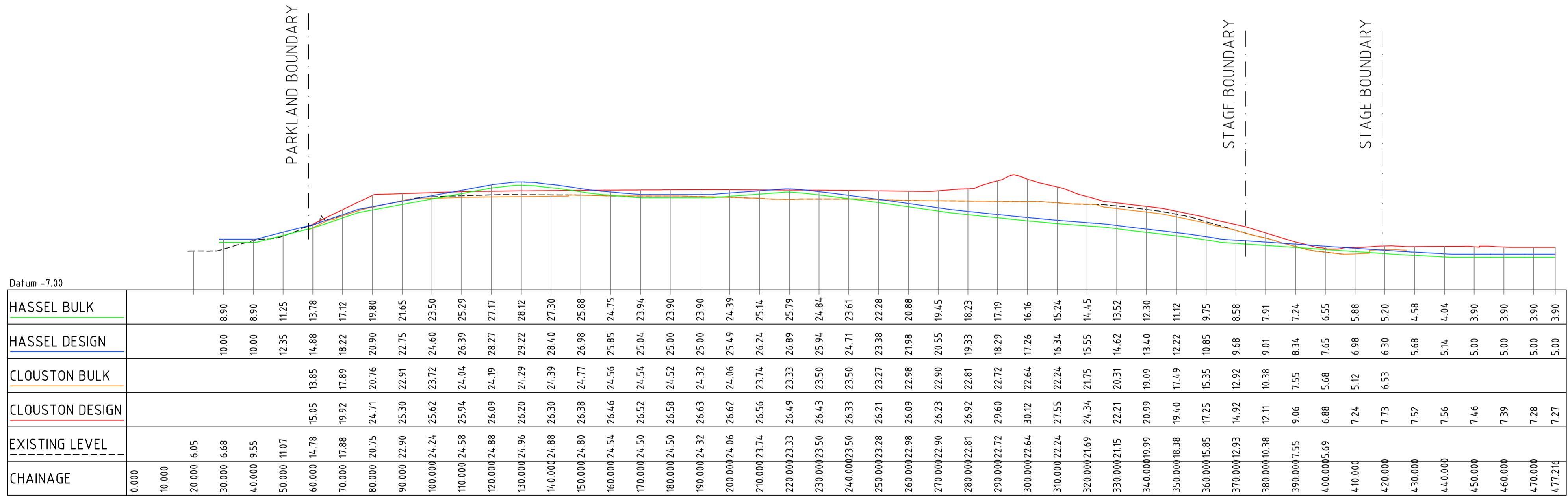


SECTION
SCALE 1:1000



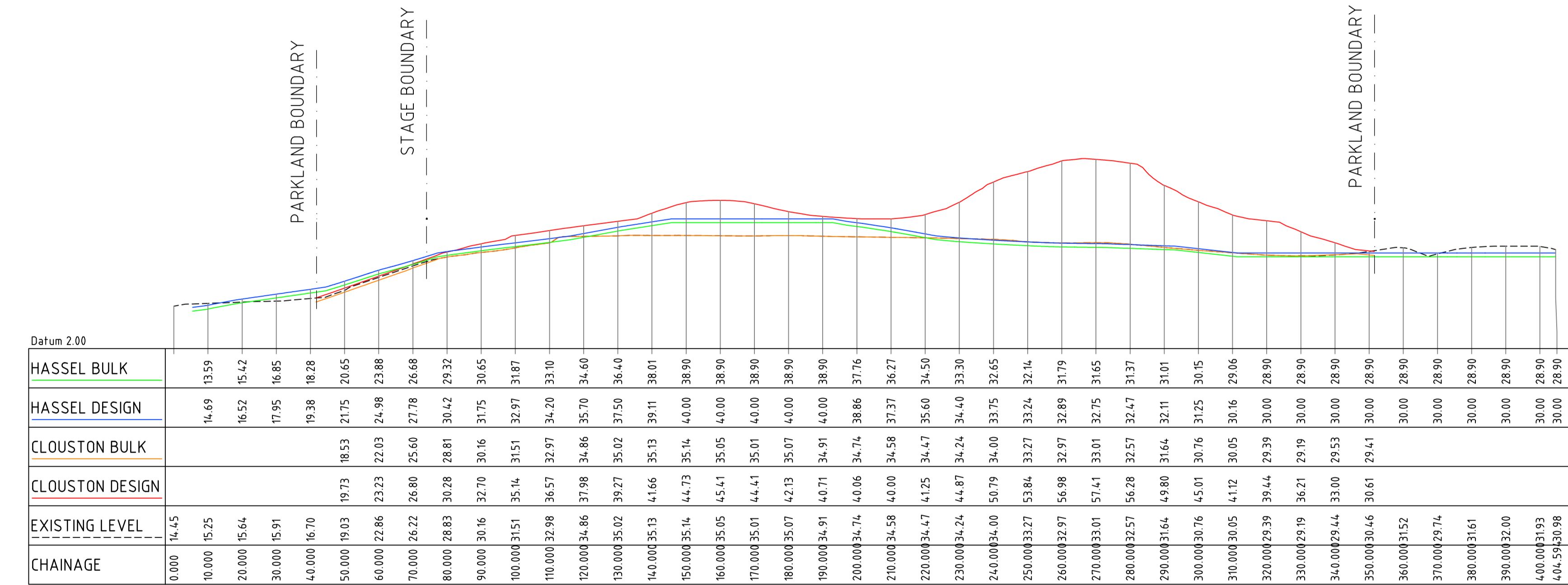
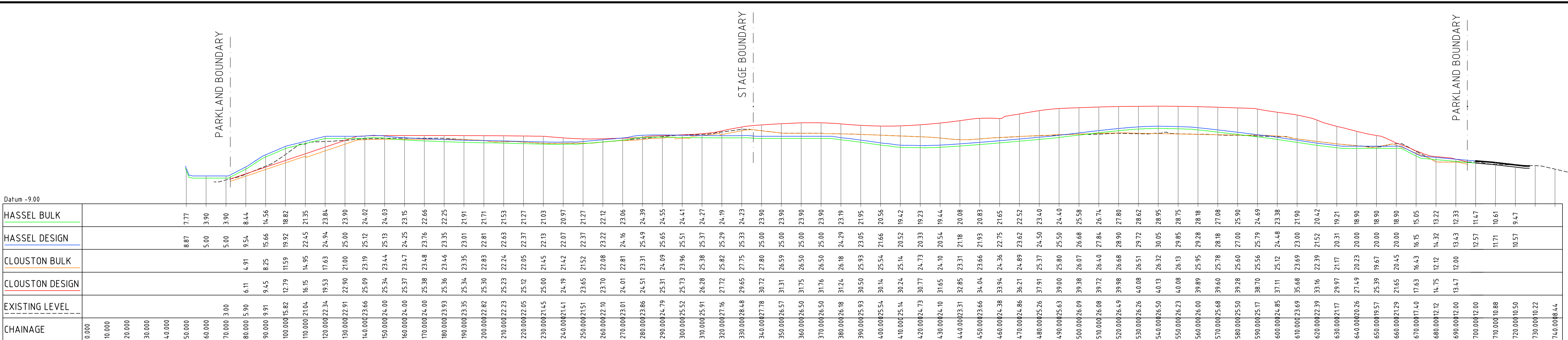
SECTION
SCALE 1:1000




$$\frac{6}{-}$$
$$\frac{5}{-}$$

Drawn	Date
HLD	26/10/2020
Checked	Date
MWZ	18/12/2020
Designed	Date
HLD	16/10/2020
Verified	Date
MWZ	18/12/2020
Approved	
HLD	18/12/2020

Status				FOR INFORMATION ONLY			
NOT TO BE USED FOR CONSTRUCTION PURPOSES							
Datum		Date		Scale		Size	
AHD		OCT'20		AS SHOWN		A1	
Drawing Number						Revision	
80221001-001-SK019						2	



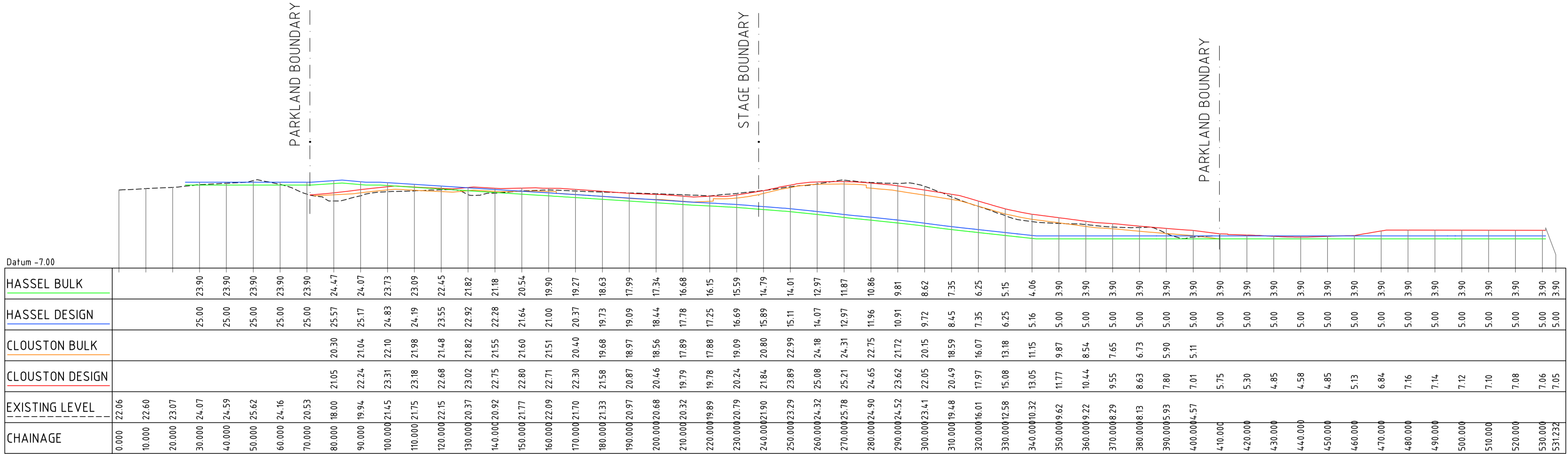
$$\begin{array}{r} 7 \\ - \end{array}$$

2	17/12/2020	ISSUED FOR INFORMATION				
1	26/10/2020	ISSUED FOR INFORMATION				
Rev.	Date	Description	Des.	Verif.	Appd.	

Drawn HLD	Date 26/10/2020	Client BREEN RESOURCES				
Checked MWZ	Date 18/12/2020	Project KURNELL RESOURCE RECOVERY	Status	FOR INFORMATION ONLY		
Designed HLD	Date 16/10/2020		NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Verified MWZ	Date 18/12/2020		Datum	Date	Scale	Size
Approved			AHD	OCT'20	AS SHOWN	A1
		Title LANDFILL VOLUMES SITE SECTIONS SHEET 4 OF 8	Drawing Number		Revision	
HLD	18/12/2020		80221001-001-SK020		2	

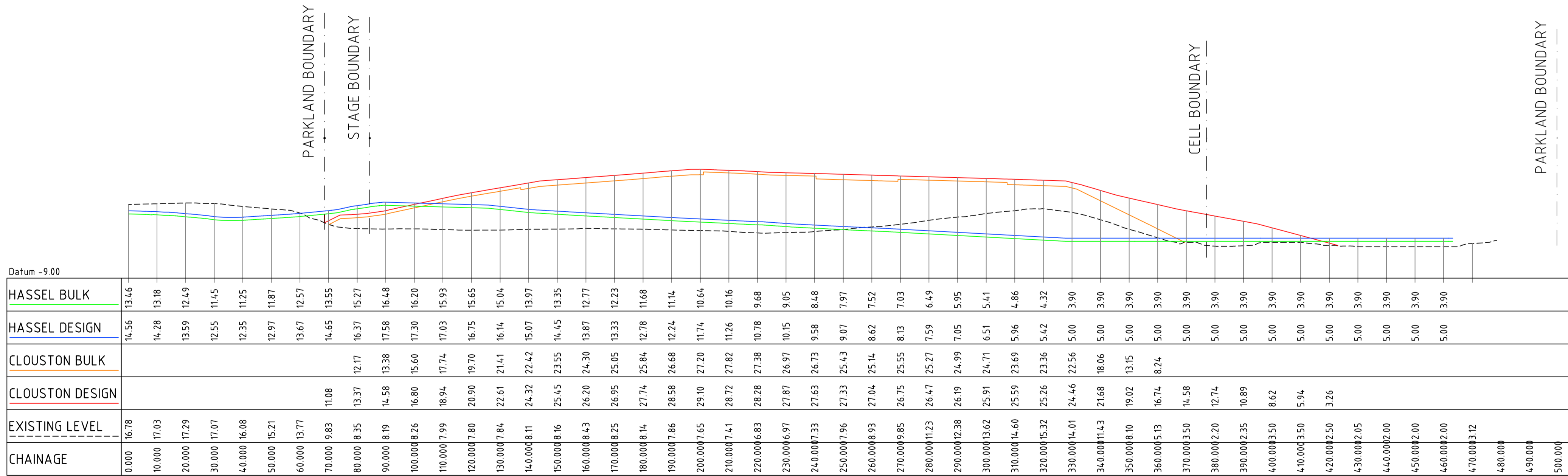
2	17/12/2020	ISSUED FOR INFORMATION				
1	26/10/2020	ISSUED FOR INFORMATION				
Rev.	Date	Description	Des.	Verif.	Appd.	

Drawn HLD	Date 26/10/2020	Client BREEN RESOURCES				
Checked MMW	Date 18/12/2020	Project KURNELL RESOURCE RECOVERY	Status	FOR INFORMATION ONLY		
Designed HLD	Date 16/10/2020		NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Verified MMW	Date 18/12/2020		Title	AHD	OCT20	A1
Approved						
HLD	18/12/2020	LANDFILL VOLUMES SITE SECTIONS SHEET 5 OF 8	Drawing Number 80221001-001-SK021		Revision 2	



SECTION 11
SCALE 1:1000

Drawn HLD	Date 26/10/2020	Client BREEN RESOURCES				
Checked MWZ	Date 18/12/2020	Project KURNELL RESOURCE RECOVERY	Status	FOR INFORMATION ONLY		
Designed HLD	Date 16/10/2020		NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Verified MWZ	Date 18/12/2020		Datum	Date	Scale	Size
Approved			AHD	OCT20	AS SHOWN	A1
HLD	18/12/2020	Title	Drawing Number		Revision	
		LANDFILL VOLUMES SITE SECTIONS SHEET 6 OF 8	80221001-001-SK022		2	



SECTION 13
SCALE 1:1000

Drawn	Date
HLD	26/10/2020
Checked	Date
MWZ	18/12/2020
Designed	Date
HLD	16/10/2020
Verified	Date
MWZ	18/12/2020
Approved	
HLD	18/12/2020

Status FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Date AHD	Date OCT'20	Scale AS SHOWN	Size A1
Drawing Number 80221001-001-SK023			Revision 2



Drawn HLD	Date 26/10/2020	Client BREEN RESOURCES			
Checked MWZ	Date 18/12/2020	Project KURNELL RESOURCE RECOVERY		Status FOR INFORMATION ONLY	
Designed HLD	Date 16/10/2020	NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Verified MWZ	Date 18/12/2020	Title LANDFILL VOLUMES SITE SECTIONS SHEET 8 OF 8		Datum AHD	Date OCT'20
Approved				Scale AS SHOWN	Size A1
HLD	18/12/2020	Drawing Number 80221001-001-SK024			Revision 2