

<b>Technical Report</b>			
<b>TRIM Number:</b>	<b>PA21/1168</b>	<b>Synergy Number:</b>	<b>PA21/1168</b>
<b>Lodgement Date:</b>	<b>24 November 2021</b>	<b>DAU Date:</b>	
<b>Address:</b>	<b>L10 Gossage Road, Oldbury</b>		
<b>Proposal:</b>	<b>Retrospective Fill</b>		
<b>Land Use:</b>	<b>N/A</b>	<b>Permissibility:</b>	<b>N/A</b>
<b>Owner:</b>	<b>SV Partners WA Pty Ltd</b>		
<b>Applicant:</b>	<b>SV Partners WA Pty Ltd</b>		
<b>Zoning:</b>	<b>Rural</b>	<b>Density Code:</b>	<b>R2</b>
<b>Delegation Type:</b>	<b>12.1.1</b>	<b>Officer:</b>	
<b>Site Inspection:</b>	<b>No</b>		
<b>Advertising:</b>	<b>Yes</b>		
<b>Outstanding Internal Referrals:</b>	<b>No</b>		
<b>External Referrals:</b>	<b>No</b>		
<b>Within a Bushfire Prone Area:</b>	<b>Yes – N/A</b>		

### Assessment Purpose

The purpose of this assessment is for Council to consider a retrospective development application for the works, which have involved placement of 500mm of fill for the construction of internal access roads and the raising of existing firebreaks to address seasonal inundation at Lot 10 Gossage Road, Oldbury.

The application is presented to Council as the application seeks to vary provisions of Local Planning Policy 4.7 - Placement of Fill in Non-Urban Areas and as an objection was received during the advertising process. The objection relates to dust and traffic impacts of the retrospective fill.

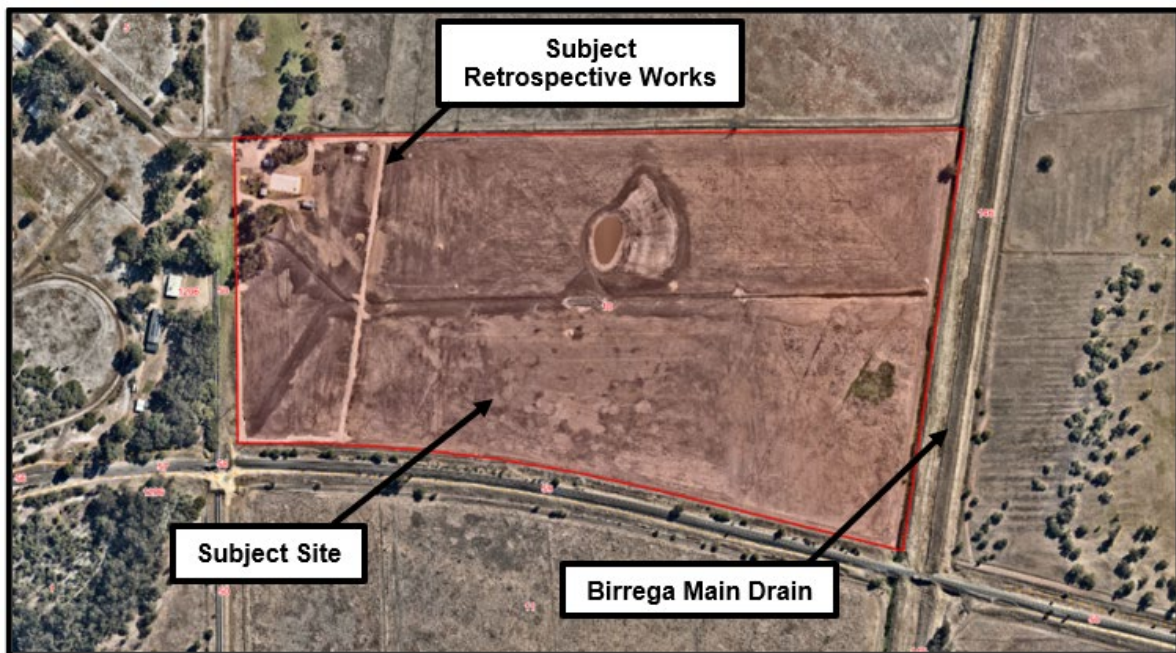
Officers do not have delegated authority to determine development applications where objections cannot be addressed by way of amendments or through the imposition of planning conditions, or whereby a proposal seeks to vary policy provisions in accordance with Delegated Authority 12.1.1 - Determination of Development Applications.

For the reasons outlined in the report, Officers recommend that Council approve the retrospective development application subject to conditions.

### Background

#### Existing Development

The subject site is a 23.24ha block within the rural area of Oldbury. Land use within the immediate locality consists of low-density residential development and typical rural uses such as grazing, cropping for hay etc. The site is developed with several small shed structures. Another shed was recently approved at the site associated with a 'Rural Use' land use on 20 July 2021. The block is bordered by the Birrega Main Drain along its eastern boundary, the freight rail line to the south boundary and land with pipe infrastructure owned by Water Corporation to the west boundary.



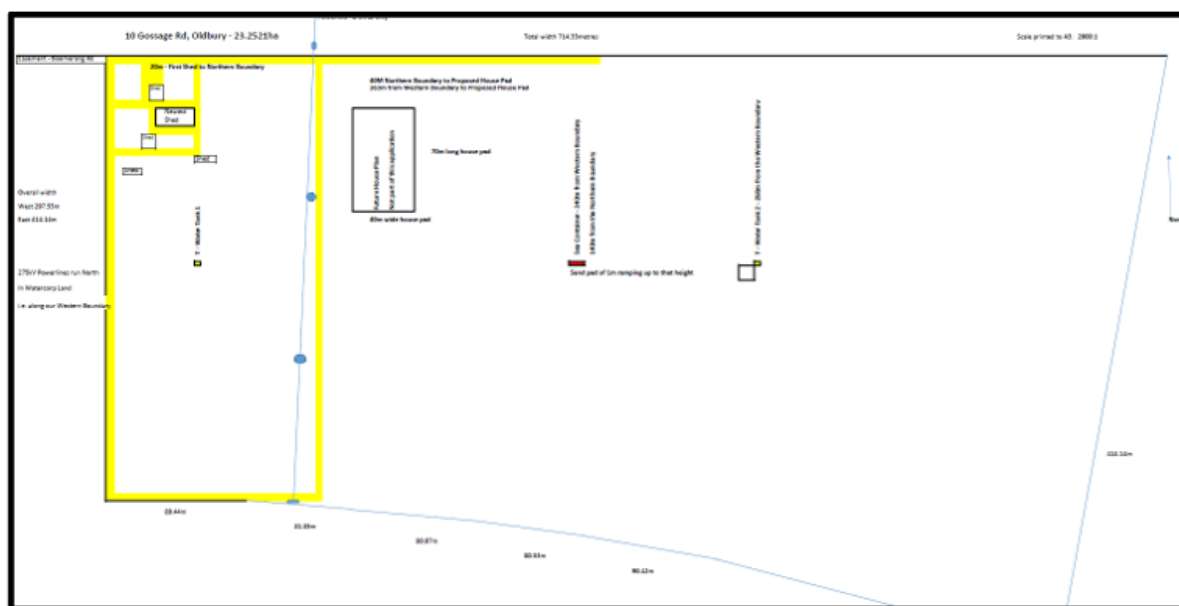
**Figure 1: Aerial imagery**

The land is generally flat, with only slight undulation. The general area is very low lying, mapped as a floodplain and prone to waterlogging or shallow overland flooding during winter. The site comprises mostly of a 'Multiple Use' category wetland, with a small portion of a 'Resource Enhancement' category wetland in the north-west corner of the site.

A dam has since been constructed on the property of which does not form part of this retrospective development application. The applicant will be required to submit a separate retrospective development application for assessment for this physical works. The dam works are thus being dealt with currently as a compliance matter.

#### Retrospective Development

The application seeks retrospective approval for the placement of fill for the purpose of ensuring firebreaks are trafficable all year round and the construction of internal access tracks due to seasonal inundation. The fill is a maximum 500mm height and is positioned along the whole western boundary (290m), sections of the north (180m) and south (110m) boundaries, and also run internally within the site. The applicant advises that the purpose for the works is to provide a trafficable surface to traverse the site during winter months, due to inundation from surface water gathering.



## Community / Stakeholder Consultation

Nature of Concern	Officer Comment
<p><b>Nature of Fill</b> - The fill is contaminated and unclean and therefore a risk to the environment.</p>	<p>The Shire has required a certificate of the fill and evidence of the commercial source. This is discussed further in the 'Nature of Fill' section of the report.</p>
<p><b>Traffic</b> - The vehicles delivering the fill caused damage to the shared driveway.</p>	<p>In this instance the works are acknowledged to have taken place, being retrospective in nature. Officers consider no further impact would occur from works by way of traffic or dust.</p>
<p><b>Dust Management</b> - The dust from the retrospective works resulted in an unsafe and unhealthy environment.</p>	
<p><b>Driveway Damage</b> – The trucks delivering the fill have resulted in damage to the neighbour's driveway.</p>	<p>Officers note that both properties take access from Boomerang Road and then through an 'access road' created in 1925, which was part of a historic subdivision approval. Though the concern of the objector is damages to the driveway, which is located within his property. There is a legal 'right-of-way' agreement in place between these neighbour's and Water Corp. This permits access to the subject site over the objector's land. The legal agreement provides the</p>

	requirements for management and works within this 'right-of-way' area.
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### Department of Biodiversity, Conservation and Attractions

The fill is placed partially within a 'Resource Enhancement' wetland area. Therefore, the Shire referred the application to DBCA for a period of 42 days, who manage and provide advice regarding the wetland. The following response was provided:

*"A portion of the western end of the property is currently mapped as a Resource Enhancement wetland on the Geomorphic wetlands (Swan Coastal Plain) dataset (UFI 14862).*

*The Department of Biodiversity Conservation and Attractions (DBCA) and the Department of Water and Environmental Regulation have recently undertaken a review of the environmental values of the wetlands currently mapped in the Geomorphic Wetlands of the Swan Coastal Plain (GWSCP) dataset using available data. While this dataset is unpublished, the draft revised mapping identifies that the portion of UFI 14862 on Lot 10 has values commensurate with a Multiple Use wetland.*

*Thank you for the opportunity to provide comment. DBCA has no comments on the application."*

Based on this advice, Officers consider the proposal is unlikely to impact upon the values of the wetland.

## **Statutory Environment**

### Legislation

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015*

### Local Planning Framework

- Shire of Serpentine Jarrahdale Town Planning Scheme No. 2
- Draft Shire of Serpentine Jarrahdale Local Planning Scheme No. 3
- Shire of Serpentine Jarrahdale Local Planning Strategy
- Local Planning Policy 1.4 - Public Consultation for Planning Matters
- Local Planning Policy 4.7 - Placement of Fill

## **Planning Assessment**

Clause 67 of the Deemed Provisions lists matters to be considered in the determination of development applications.

### Town Planning Scheme No. 2

The proposal seeks approval for works which have been undertaken. The application does not seek approval for an associated land use.

### Local Planning Policy 4.7 – Placement of Fill in Non-Urban Areas:

LPP4.7 sets out requirements for the placing of fill in non-urban areas. The objectives of the policy are to ensure that the filling of land does not adversely impact on the amenity or the environment and to ensure visual impact is minimised on neighbouring properties.

The policy includes a Development Standards table, which is a guide in determining the impacts associated with the fill. The proposal has been addressed in full against the criteria of the policy as follows:

LPP4.7 – Placement of Fill Table 1: Development Standards Assessment			
Criteria	Result	Description	Officer Comment
Nature of Fill	Performance Based	Uncontaminated fill (as defined by DWER) - further tests and certification will be required to be submitted.	Refer to the Nature of Fill section
Drainage	Performance Based	Fill has a minor impact on existing drainage patterns in the locality but is managed in a comprehensive manner.	Refer to the Drainage section
Traffic	Acceptable Development	Low/No impact on surrounding road network.	This fill is retrospective and the works have already occurred.
Environmental	Unacceptable Development	Fill is located within or in close proximity to environmental features such as watercourses, wetlands and floodplains. Insufficient justification has been provided to demonstrate their protection.	Refer to the Environment section
	Acceptable Development	No clearing required Fill does not occur within the dripline of existing vegetation.	No tree clearing has been proposed in relation to the fill. No fill within the dripline of trees.
Amenity	Performance Based	Moderate visual impact on surrounding land and street that can be managed taking into account cumulative impacts (Landscaping Plan and street elevations are required)	Refer to the Amenity section
	Acceptable Development	Dust is controlled, therefore risks to health and safety are minimal.	The works are retrospective, already being undertaken and therefore there is no dust impacts.
Purpose of Fill	Acceptable Development	Fill required for the purposes of a permitted or approved land use.	The works are not considered to be associated with a land use. The application is being considered on a works base alone.

In summary, the proposal is considered to fall within the 'performance based' category in relation to the 'Nature of Fill', 'Drainage' and 'Amenity' sections. The proposal also falls within the 'unacceptable development' category for the 'Environmental' criteria. According to LPP4.7, these areas will need to demonstrate appropriate management to ensure consistency with the objectives of the policy. Consideration of these categories, as well as areas of concern raised in the neighbour objection, have been undertaken below.

### Nature of Fill

Regarding the nature of the fill, the relevant objective of LPP4.7 is to, *"ensure that the filling of land does not adversely impact on the amenity or environment of the locality in which it is being undertaken"*. The neighbour has raised concern about the contents of the fill within their objection.

The applicant has provided confirmation of the source of the fill, being from Capital Recycling, which is a DWER approved fill provider. The fill composition ranges from uncontaminated recycled concrete and construction rubble to uncontaminated road base. Testing samples of the material from the source were provided as part of the application for Officers to assess the composition of the fill and its potential associated risks. An Officer's assessment of the submitted testing samples concluded that the composition of the fill falls within the category of 'Uncontaminated Fill' in accordance with the DWER Guidelines.

The DWER's Guidelines permit the use of uncontaminated fill at any location as it is unlikely that such fill would increase the risk to human health or the environment. With the declassification of the wetland, the position expressed by DBCA also indicates an acceptance to the placement of the fill within the currently mapped REW extent on the subject land.

### Drainage

The extent of the fill has the potential to have a minor impact on natural drainage patterns of the locality. Therefore, the proposal falls within the 'performance based' category of LPP4.7 for this provision. The fill is 290m in length along the western lot boundary and raised up to a maximum height of 500mm. The length, height, and position of the fill along the western boundary has the potential to result in the displacement water or obstructing natural flow.

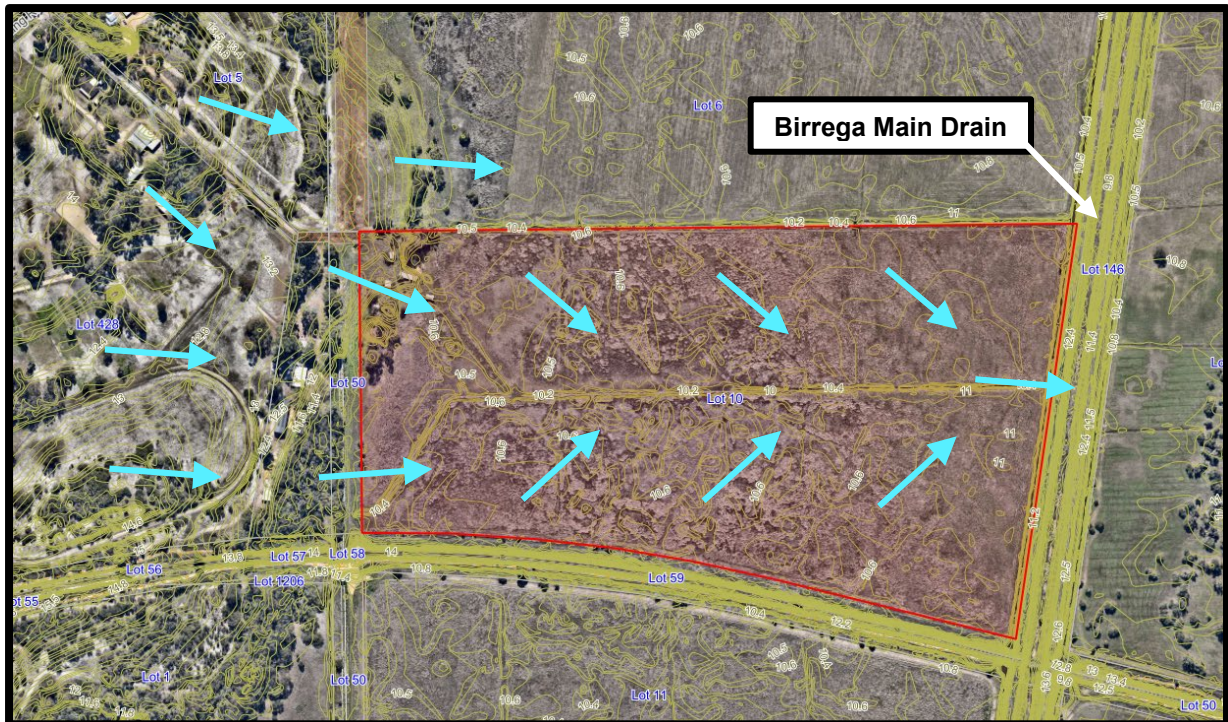
The relevant objective of LPP4.7 in this instance is to:

*"Ensure that drainage is appropriately managed"*.

To address this objective, Officers consider that measures should be in place to ensure the fill does not impact upon pre-development surface water flows. This is to ensure that water is not displaced onto neighbours, nor adversely impact the environment.

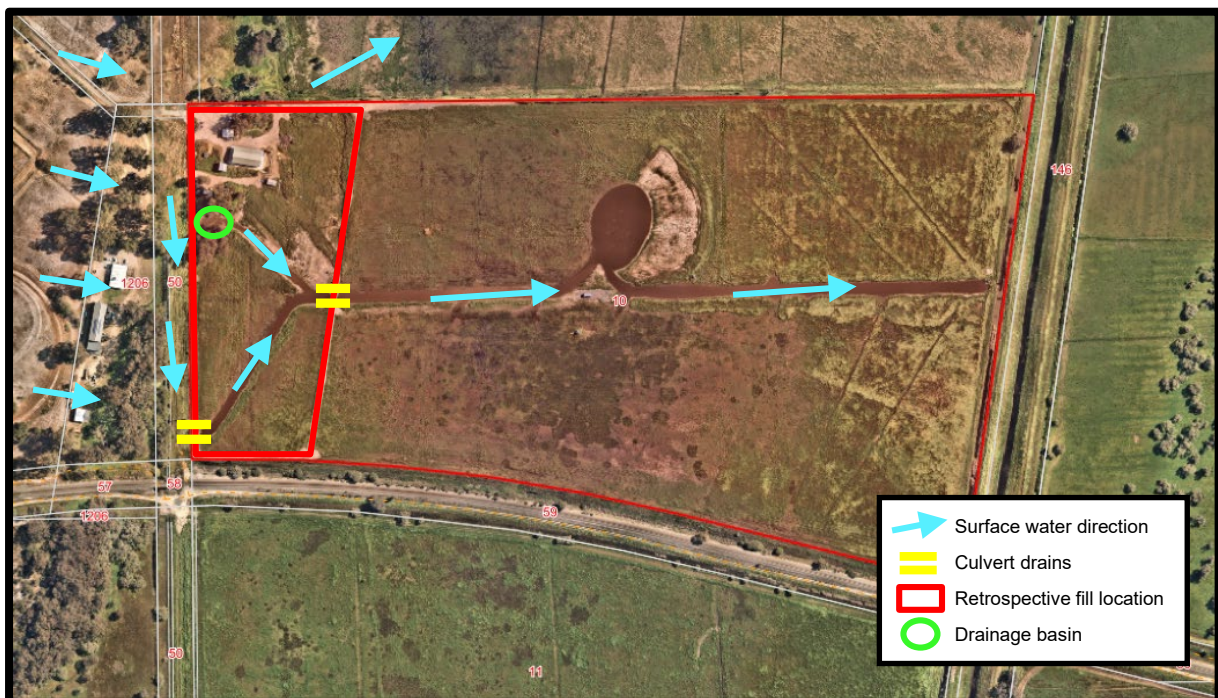
Many of the Shire's rural areas are flood prone in nature, sitting within a low-lying section of the Swan Coastal Plain. Winter surface water typically moves towards low points in the landscape, which are predominantly drains and water courses. In this instance, pre-development surface water movements within the locality are in a slow and gradual west to east direction. This is towards the Birrega Main Drain as shown in the below figure.





**Figure 3: Pre-development Drainage Flows**

To address the objective and importantly ensure pre-development surface water flows are maintained, the applicant has prepared a Surface Water Management Plan (SWMP) to demonstrate the merits of the proposal. The SWMP shows the water movement and drainage infrastructure associated with the development as detailed in the below image:

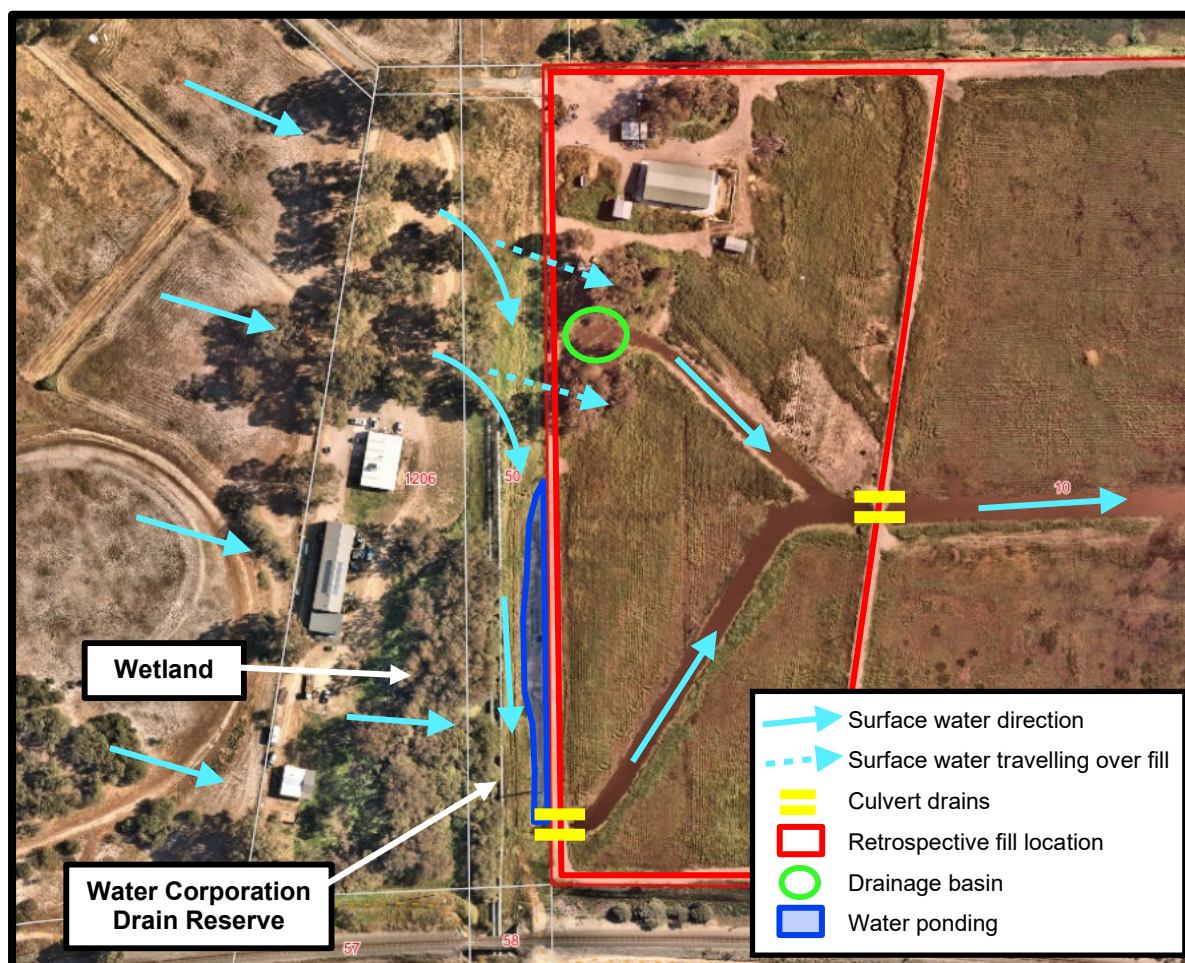


**Figure 4: Drainage patterns associated with the proposed fill**



It demonstrates that surface water in the broader locality gradually moves eastward and meets the fill on the western lot boundary of the subject site. It is then directed south to the culvert drain, where it would continue its gradual flow to the east. Water then slowly moves in an eastward direction. In significant rainfall events, the SWMP indicates that surface water travels eastwards directly over the fill to the adjacent drainage basin which has been in place since 1950. This is aimed to slow the volume of water moving through the landscape to reflect pre-development flow rates, before being directed into the drainage channels eastwards towards the Birrega Main Drain.

The SWMP does indicate a minor degree of water ponding is likely to occur to the west of the fill as it moves south to the culvert drain. This would not impact pre-development surface water movement as water naturally ponds in the wetland and Water Corporation site to the west prior to moving gradually east through the culvert drain.



**Figure 5: A minor degree of ponding occurs on the west side of the fill, within the Water Corporation Drain Reserves as it naturally moves east**

In summary, the SWMP indicates that the development will not impact upon the pre-development surface water flows as a result of the existing southern culvert and drains within the site, and that appropriate management of flooding risk is demonstrated.

#### Environmental

Environmental considerations within LPP4.7 include whether the subject fill would be positioned within a wetland or environmentally sensitive area. In this case, the fill is partly within a 'Resource Enhancement' wetland, in the north-west corner of the property.



As mentioned, Officers referred the application to DBCA who are the State Government department that manage wetlands in Western Australia. DBCA advised that they have conducted a review of the classification of the specific wetland and will be re-categorised to a 'Multiple Use' wetland which is a lower category wetland. They raise no objections in this regard to the fill works.

### Amenity

Officers consider that the proposal falls within the 'performance based' criteria for 'amenity'. This is due to the presence of the fill extending 290m along the western lot boundary, bearing a moderate visual impact. The relevant objective of LPP4.7 in this instance, is to *"ensure visual impact is minimised on neighbouring properties and the streetscape."* The block is at the rear of a battle-axe and so there is no impact posed to the streetscape.

Regarding visual impact to the neighbouring properties, it is noted that to the south there is a railway to which there is no adverse impact. To the east there is a Water Corporation drain, and to the west Water Corporation utility corridor and beyond that an adjoining property. Officers consider it is commonplace in the rural areas of the Shire for firebreaks and access tracks to be built up to create trafficable surfaces. The development is also only pertaining to access tracks and does not result in a widescale filling or excavating of the ground level of the whole site. A large portion of the property will remain at its existing level, intended for rural use. Officers therefore consider the works would be visually consistent with expected development in a rural setting and not impact the visual amenity of neighbouring properties or locality.

Officers advise that as the works have been completed, no further dust or traffic impacts would result from the approval of this development.

### **Options and Implications:**

Option 1: Council may resolve to approve the application subject to conditions.

Option 2: Council may resolve to refuse the application subject to reasons.

Option 1 is recommended.

### **Conclusion:**

The application seeks retrospective development approval for the placement of fill. The fill is considered reasonable in purpose, to provide internal access and firebreaks due to the flood prone locality. The proposal is recommended for support, considering that in line with the provided SWMP from the applicant that pre-development surface water flow is able to be maintained. It is recommended that Council approve the application subject to conditions.

### **Attachments:**

Deemed Provisions – CI 67 Matters to be considered by local Government

## Land Use:

a) The aims and provisions of this Scheme and any other local planning scheme operating within the area	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to TPS2 section</b>			

b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting of approving	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: The property would remain zoned 'Rural' under LPS3 and so would not adversely impact its implementation.</b>			

c) any approved State planning policy	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d) –	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment:</b>			

e) any policy of the Commission	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

f) any policy of the State	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

g) any local planning policy for the Scheme area	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to LPP4.7 section</b>			

h) any structure plan, activity centre plan or local development plan that relates to the development	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
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<b>Comment:</b>			

i) any report of the review of the local planning scheme that has been published under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

## Development:

k) the built heritage conservation of any place that is of cultural significance	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

l) the effect of the proposal on the cultural heritage significance of the area in which the development is located	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to amenity section</b>			

n) the amenity of the locality including the following – I. Environmental impacts of the development II. The character of the locality III. Social impacts of the development	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to Planning assessment</b>			

o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to drainage section</b>			

p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to drainage section</b>			

r) the suitability of the land for the development taking into account the possible risk to human health or safety	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Refer to Planning assessment</b>			

s) the adequacy of – I. The proposed means of access to and egress from the site; and II. Arrangements for the loading, unloading, manoeuvring and parking of vehicles	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Retrospective works, vehicle movements have already occurred</b>			

t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity off the road system in the locality and the probable effect on traffic flow and safety	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

u) the availability and adequacy for the development of the following – I. Public transport services II. Public utility services III. Storage, management and collection of waste IV. Access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities) V. Access by older people and people with disability	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			



w) the history of the site where the development is to be located	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			

y) any submissions received on the application	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: 1 objection received</b>			

Za) the comments or submissions received from any authority consulted under clause 66	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>Comment: Comments from DBCA considered</b>			

Zb) any other planning consideration the local government considers appropriate	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>N/A</b> <input checked="" type="checkbox"/>
<b>Comment:</b>			