

Planning, Transport & Regulation. SCahill/PMilles
Reference No: PP2019/00006.01
Phone: 4974 2250



26 May 2023

Kingston Minmi Road Pty Ltd
C/- Barr Property & Planning
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Email: kwalker@barrplanning.com.au

Dear Sir/Madam

**REQUEST TO AMEND NEWCASTLE LEP 2012 - 505 MINMI ROAD FLETCHER -
REZONING FROM C4 ENVIRONMENTAL LIVING TO R2 LOW DENSITY RESIDENTIAL
AND C2 ENVIRONMENTAL CONSERVATION FOR UP TO 140 LOTS**

City of Newcastle (CN) writes in response to the amended planning proposal (PP) submitted on 29 March 2023. The matters outlined in Attachment 1 consider the Department of Planning and Environment's (DPE) Gateway determination of 10 January 2023 and subsequent public authorities' responses (outlined in our letter 2 March 2023). These matters need to be addressed by the PP and supporting documentation prior to public exhibition.

CN has assessed the new information submitted and the agency responses in the context of the Gateway determination and the Hunter and Central Coast Regional Planning Panel decision. The outcome of our assessment is provided in Attachment 1. CN's comments raise significant matters, and addressing these adequately is necessary to meet the Gateway determination conditions. These matters align with the requirements of the Hunter Regional Plan 2041 (HRP), the Biodiversity Conservation Division's (BCD) preliminary biodiversity assessment and CN policies, plans and strategies. CN's advice aligns with HRP strategies including having a focus on 15-minute neighbourhoods, greater infill development, higher density, increased building heights and improved biodiversity and ecological outcomes.

Addressing these matters is likely to influence the PP significantly. To assist in planning a way forward Attachment 2 suggests alternative site opportunities for your consideration.

Should you wish to discuss this further or have any questions, please contact Peter Milles, Senior Urban Planner on 4974 2250 or pmilles@ncc.nsw.gov.au.

Yours faithfully,

A handwritten signature in black ink that reads "Shane Cahill".

Shane Cahill
URBAN PLANNING SECTION MANAGER

Attachment 1

The matters outlined below need to be addressed before public exhibition. Including biodiversity, land use efficiency and strategy. Further information request items have been listed and these generally align with the Gateway determination conditions.

Biodiversity

CN's assessment of the amended Planning Proposal (PP) found the proposed development footprint does not adequately address biodiversity and ecological matters. BCD's authority response dated 15 February 2023 supports this stating key issues remain around avoidance of impacts to high value biodiversity. The BCD found, amongst other matters, that further regard is necessary to adequately meet requirements for the avoidance of impacts to high value biodiversity and providing sufficient habitat connectivity.

The site is one of the largest forested north-south biodiversity linkages left in the southwest part the Newcastle Local Government Area (LGA) that is zoned C4 Environmental living. This site is important to the HRP Objective 6 for Biodiversity conservation planning and corridor linkage at a landscape scale. It provides a direct non-gapped link to the south to a forested area of the Summerhill Waste Management Centre, Blue Gum Hills Regional Park and conservation zoned bushland towards the Link Road at West Wallsend.

While relatively narrow (less than 100m wide) the link north across Minmi Road to land zoned C2 Environmental Conservation (associated with the Hexham Wetlands) provides one of the few remaining lesser cleared links in this area. It connects the wetlands in the north to existing forest in the south. This link is part of the Watagans to Stockton Biodiversity Corridor and is a key corridor link and patch under the HRP. This corridor is particularly important over the long term as previously grazed parts of the southern Hexham Wetlands regenerate and/or receive rehabilitation.

The proposed development footprint includes areas of high biodiversity values and the areas proposed to be conserved are largely fragmented habitat. The Biodiversity Offsets Scheme (BOS) is based on the 'avoid, minimise, offset' hierarchy. Using this, proponents must:

- first consider whether the development can avoid a negative impact on the environment
- next consider whether the development can minimise any negative impacts that cannot be avoided
- once all reasonable steps to avoid or minimise environmental impacts have been exhausted, consider whether any remaining impacts can be offset.

The hierarchical criteria need to be met. Amongst other considerations, the proposed zoning boundaries primarily reflect topographical limitations of the site. This approach is documented in the amended PP page 80:

The Urban Design Study to provide an indicative subdivision lot layout has taken into consideration land stability, topography and slope analysis in determining the future development of the site including consideration to:

- *Land within the site > than a slope of about 15%, is to be conserved in its natural bushland state and has been excluded from the area proposed for residential subdivision.*
- *Land within the site, with flatter slopes of 15% or less has been considered for the residential component of the site*

Therefore, the majority of the steepest portion of the site is to be conserved in its natural bushland state and located in the proposed Environmental Conservation C2 zoning.

The R2 Low Density Residential zone proposed is on the easier to develop parts of the site and the proposed C2 Environmental Conservation zone is on the steeper, harder to develop parts of the site. It appears economic and engineering considerations rather than biodiversity values have led the proposal.

The Gateway determination conditions require updating the PP so the zone boundary configuration and development controls achieve more optimal density and diversity of housing typologies up to four storeys, if this will lead to an increase in the amount of the site reserved for conservation. This aligns with the Hunter and Central Coast Regional Planning Panel decision (RR-2021-70 section 4.1) that the panel was not satisfied ecological considerations informed the proposed zone boundaries.

The amended PP does not comply with Strategy 6.3 of the HRP, nor does it demonstrate how the performance outcomes under the HRP's Objective 6 will be achieved, and therefore consistency with ministerial direction 3.1 Conservation Zones remains unresolved.

As outlined in the DPE Biodiversity Certification Fact Sheet No. 3, Biodiversity Certification scheme applications without CN support are discouraged by BCD and certification is unlikely.

Community title vs public ownership of conservation lands

CN assessed the PP's 'net public benefit' including the potential public ownership of the proposed C2 Environmental Conservation zoned land and the HRP's Objective 6. Consistent with the 'avoid, minimise and offset' hierarchy, CN's preference is to have the proposed C2 Environmental Conservation zoned lands dedicated as public lands. Such lands would be subject to an assessment for dedication considering maintenance cost, risks to public safety, contamination, titling and the like to determine if the asset is suitable.

The PP does not include details on any proposed biodiversity conservation mechanisms. CN have general concerns with natural areas managed under community title for biodiversity values relating to weed infestation, canopy loss, trail and watercourse erosion. Public ownership is preferred for conserving the environmental values of this site in perpetuity.

Dwelling yield and Infrastructure needs

The HRP identifies the site's C4 Environmental Living zone as within a Hunter UDP area (page 94). Further, the land is within the *National Pinch Point regionally significant growth area*. The HRP identifies regionally significant growth areas as those underpinning the ability to meet the regional plan's vision and objectives over the plan's life. The adopted version of HRP was not considered by the planning panel as part of the rezoning review.

The HRP's implied dwelling projections to 2041 include 17,850 dwellings, consistent with CN's LSPS and LHS forecasts. The HRP's Objective 5 plans for nimble neighbourhoods and diverse housing. The number of greenfield dwellings to meet the guidance targets for dwelling projections and housing benchmarks align with CN's dwelling assumptions in CN's Section 7.11 Western Corridor Development Contributions Plan. The contribution plan's *Table 3.1 Expected (planned future) development in the Western Corridor* identifies 110 dwellings, noting the contributions plan does not convey developable rights.

The amended PP is for up to 170 residential lots which exceeds the current infrastructure plan dwelling assumptions. However, the R2 Low Density Residential zone is not restricted to the subdivision of the site, as multi dwelling housing at higher densities could be delivered instead. This could see a doubling of the ultimate dwelling yield which was not considered in the supporting studies or infrastructure demand assumptions.

As a greenfield site, a proposal that exceeds the contribution plans Table 3.1 dwelling assumptions is not essential to CN achieving the HRP Objective 5 guidance for the greenfield and infill development mix and Table 6: Required Dwellings to 2041. The demand for more homes is to be balanced with the creation of great places and the retention of important ecological habitat in accordance with Housing Priority 1 of the LHS. The proposed dwelling yield should be revised and reduced to align with the HRP and CN policies, plans and strategies at 110 total dwellings.

Density, housing mix and height of building

The amended PP for 140 lots proposes a lower density than we would like to see for the efficient use of this land. The Fletcher-Minmi area would benefit from more diverse housing choice given the predominance of single detached dwellings and attached dual occupancies. To align with State and local housing policy and strategy such as the Newcastle Local Housing Strategy's (LHS) Housing Priority 2 and the HRP, CN would like to see greater diversity of housing types.

A higher dwelling density would be supported as the site has access to existing local centres along Minmi Road to the east, and a future local centre zoned along Minmi Road to the west as part of the staged concept approval and subsequent Winten subdivision DA2015/10393. The site is considered an inner suburban context area and should align with optimum density sought via Objective 5 of the HRP, on a dwellings per hectare rate.

CN acknowledge the site's characteristics will influence residential housing delivery. The HRP focus for mid rise housing diversity of up to 4 storeys is reflected in Gateway determination Condition 4 that refers to an increase in building height leading to opportunity to increase the area of the site reserved for conservation. DPE advice (ref: IRF23/12) from Daniel Thompson, Acting Executive Director Local and Regional Planning 10 January 2023 to CN states:

'Particularly, as this may lead to an overall improvement in public benefit for the community and conservation'.

The amended PP suggests the R2 Low Density Residential zone could experience infill development after its initial subdivision to achieve desired density. The Fletcher case study put forward is presented for development types of combined subdivision of land from one lot and creation of two Torrens title lots and Dual Occupancy, and Dual Occupancy. This case study put forward as justification for this PP does not show that the optimum density requirement will be achieved. This approach enables a low density outcome that may or may not experience further infill. As subdivision is enduring this is unlikely to meet an efficient use of the land into the longer term. The amended PP promotes that future infill development is likely based on the proposed 450m² lot size, whilst promoting detached housing as the most likely outcome. The justification is that the 450m² lots could be subdivided further to 200m² lots as has occurred in the case study is possible, but uncertain. At 450m² lots for the majority of the PP site area, density is calculated at 13 dwellings per hectare in accordance with the HRP and not 22 dwellings as represented in the PP report. The proposed density falls well short of optimum density as outlined in the Gateway determination.

Strategic merit considers planning for development over the planning horizon. Relying on possible future infill development post PP and post development application does not provide for orderly and efficient development of land and is not supported.

CN considers the density minimums of the inner suburban context area of 40 dwellings a hectare achievable through a diversity of lot sizes, typologies and building heights. Planning for a mix of housing typologies at the PP stage provides for more orderly and efficient use of land, meeting the Principles of Planning Priority 12 of the Newcastle Local Strategic Planning Statement (LSPS) and Housing Priority 2 of the Newcastle LHS.

Affordable Housing

CN is committed to increasing the supply of affordable housing. Council's Housing Policy sets an overall affordable housing target of 15 percent across the City aligning with priorities in the Newcastle 2040 Community Strategic Plan (CSP), LSPS and LHS. The PP notes "the supply of additional land for housing provides greater opportunity to increase the supply of affordable rental housing". Without appropriate intervention in the market, the supply of land is unlikely to contribute to the increase of affordable rental housing across the city. The PP is to provide greater detail on how the rezoning will contribute to the supply of affordable rental housing.

Open space and recreation

Infrastructure needs are to be met in line with CN Section 7.11 Western Corridor Local Infrastructure Contribution Plan. This plan requires local infrastructure including:

- open space and recreation facilities, such as local and district sporting facilities, local parks and playgrounds;
- community facilities, such as multi-purpose community centres; and
- traffic and transport management facilities, such as upgraded roads, intersections, and cycle paths.

Infrastructure contributions are calculated based on the sites expected development of 110 dwellings. As the PP relies on existing infrastructure to service the future community, CN reiterates the importance of reducing the proposed dwelling yield to ensure existing and planned infrastructure can meet future demand. Given the reliance on existing services, greater emphasis on street amenity is required including providing adequate provision for shared paths, connections and street trees throughout.

Information request items

The proponent is to submit the following for assessment to address the Gateway determination and matters raised in this information request:

Urban design

1. A revised Urban Design Study that guides the proposed changes to Newcastle Local Environmental Plan 2012 (NLEP) and the site specific Development Control Plan (DCP) is to address the following:
 - a. Revised zone boundaries that:
 - i. are informed by the opportunities and constraints of the site
 - ii. demonstrates an appropriate level of avoidance in accordance with the biodiversity mitigation hierarchy.
 - b. Indicative lot sizes and layouts that:
 - i. achieve the density, dwelling yield and typology mix requirements as outlined in this information request below. This may require testing and analysing various scenarios
 - ii. maximise environmental linkages and tree retention.
 - c. Revised access and movement networks that:
 - i. identifies a transport movement hierarchy showing the major circulation routes and connections. Your attention is drawn to previous comments made regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east)
 - ii. promote passive and active recreation through street design.
 - d. Interface principles and transitional building heights
 - e. Planning Panel direction 4.2.1 for locating local open spaces within 400m of dwellings. C2 Environmental Conservation zone land is not considered appropriate as local open space.
 - f. Relocated asset protection zones (APZ) outside of C2 Environmental Conservation zoned land.
2. The Urban Design Study is to address Gateway Condition 4 and investigate appropriate zoning of land area for buildings of 3 to 4 storeys.
3. The Urban Design Study concept masterplan is inconsistent with the Strategic bushfire assessment, MJD Environmental, December 2021. This needs to be resolved.

Dwelling yield

4. To achieve the best planning outcome for the site, CN recommend the PP and associated studies consider a reduced dwelling yield with a maximum of 110 dwellings.

5. Given the NLEP R2 Low Density Residential zone facilitates a range of housing types including residences such as attached dwellings, multi dwelling housing and residential flat buildings, provide details of mechanisms that ensures the delivery of a development yield that aligns with yields planned for as part of any supporting studies.

Density

6. Evidence of achieving an optimum density for the site; an inner suburban context area of 40 dwellings per hectare will create a vibrant new urban neighbourhood. At present, the PP does not demonstrate how an appropriate minimum density will be achieved to satisfy Condition 4 of the Gateway determination and CN's local planning documents.

Mix of typologies

7. A mix of typologies through a combination of proposed NLEP amendments and DCP controls that is informed by the Urban Design Study.
8. The site specific DCP is to be amended to include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).

Height of building

9. Increase the amended PP height of building of 8.5m to up to 4 storeys at appropriate locations across the development footprint area. Have regard to:
 - a. HRP Objective 5 for 3 to 4 storeys adjoining or within walking distance of public open space adjoining the C2 Environmental Conservation zone.
 - b. Planning Panel urban design interface direction with transitioning building heights to a suitable built form and scale adjoining existing residential areas.

Biodiversity

Note: Comments raised below cannot yet be complete until CN has a finalised version of the biodiversity certification assessment report (BCAR) once notified by BCD.

10. The amended PP is to remove approximately 70% of the site's 10.65 ha of the threatened community Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. This does not demonstrate adequate avoidance or minimisation of impacts on this threatened ecological community and other threatened biodiversity matters that have been recorded on the site.
11. The proposed link road between the proposed eastern and western residential zoned precincts would seriously compromise the integrity of the existing forested south-north corridor on the site for all but the most mobile species. It will also act as a threat to many species (including highly mobile species such as Large Forest Owls) from increased risk of vehicle impacts, as well as provide additional edge effects. While the BCAR states this risk as minimal this is not evidenced, including published research to justify this statement. The east to west road between link intersecting the C2 Environmental Conservation zoned land should be removed.
12. The targeted species credit flora species surveys should meet the *NSW Guide to Surveying Threatened Plants and Their Habitats (DPIE), April 2020* in terms of methodology and seasonal requirements, for some species e.g. *Tetratheca juncea* this has not occurred. The required parallel field traverses do not appear to all be parallel and there are some gaps as shown in Figure 4 of the BCAR. We recommend surveys for relevant species be completed in accordance with the guidelines. For *Tetratheca juncea* this should be during the required September-October survey period.
13. The Large-eared Pied Bat (*Chalinolobus dwyeri*) was potentially detected via ultrasonic acoustic survey (Anabat) while the Eastern Cave Bat (*Vespadelus troughtoni*) was probably detected via same method. According to the '*Species credit' threatened bats and their habitats – NSW survey guide for the Biodiversity Assessment Method* (OEH, 2018 p.15) regarding the Large-eared Pied Bat and Eastern Cave Bat: 'Acoustic detectors may be used; however, this method does not allow for reproductive status to

be identified. If acoustic detectors are the only survey method used and the target species is detected, breeding must be assumed and mapped in accordance with Table 2' of the guidelines. While no breeding habitat (caves, overhangs etc) was identified on the site for either species, Table 2 of the guidelines requires that all habitat for each species should also be mapped if present (i.e. including that described in Table 1). Table 1 of the guidelines states that in regard to features to include in species polygon for both species: 'All habitat on the subject land where the subject land is within 2km of caves, scarps, cliffs, rock overhangs and disused mines. Use high resolution aerial imagery and topographic maps to identify potential roost habitat features on the subject land when it is within 2km caves, scarps, cliffs etc. Species polygon boundary should align with Plant Community Types (PCTs) on the subject land the species is associated with (listed in the threatened biodiversity data collection) that are within 2km of identified potential roost habitat features.' The BCAR does not appear to comply with these requirements and does not assume presence of either species although Section 10.1, page 19 of the BCAR states the Large-eared Pied Bat forages on the site .

14. The BCAR does not provide sufficient data on impacts to hollow bearing trees (HBT). For example, a road is proposed close to 27 HBT shown in figure 3 potentially impacting the structural root zone. This impact was not identified or included in the offset requirements at figure 12. The BCAR should include a table of all HBT with sufficient information to justify their impact classification.
15. The BCAR lists several indirect impacts of the PP but does not consider the indirect impacts of increased predation by domestic dogs and cats, garden and other waste dumping, vehicle impacts, increased incidence of illegal fires and removal of vegetation for recreation purposes (cubby houses, informal bike tracks etc).
16. The BCAR incorrectly assumes the PP will have no indirect impact on water quality within drainage line and waterbody identified as Southern Myotis habitat. Indirect impacts of changed hydrology, nutrification, erosion and sedimentation are probable over the long term.
17. Poor weather conditions recorded on some of the survey dates (e.g. 26 November 2019, 23 November 2021, 19 January 2022, 2 February 2022, 22 April 2022, 9 March 2022, 22 April 2022, 25 May 2022, 11 July 2022, 15 July 2022, 28 March 2023) were not conducive to detection of many of the target fauna species.
18. Survey time for Little Eagle (*Hieraaetus morphnoides*) was outside the required survey period in Bionet Threatened Biodiversity Data Collection. Additional surveys within the specified survey period are required.
19. Condition classes assigned to the vegetation zones are inaccurate in some cases. All vegetation zones are assigned a condition of low or moderate, despite some having relatively high vegetation integrity scores. We recommend condition descriptions be updated to better describe the broad condition of the vegetation zones.
20. Consideration of cumulative impacts is required considering cumulative impacts of the proposed certification on the long-term viability of corridors and avoided areas in the context of approved and potential future development in the vicinity of the site.
21. The BCAR states "vegetation within the subject land appears to have been historically cleared for grazing and the harvesting of mine pit props" (MJD, 2023, p. 12). CNs historical aerial photography shows the site as mostly uncleared. Please evidence this statement, including the extent of clearing and location of clearing that occurred.
22. The PP is to be updated to remove reference to the possibility of establishing a Biodiversity Stewardship Agreement over proposed C2 Environmental Conservation land in accordance with the findings of the BCAR (MJD, 2023, p. 95).
23. The PP is to be updated to include further detail on the mechanism for biodiversity conservation for C2 Environmental Conservation zoned land. CN will consider dedication of environmental conservation land including drainage corridors at no cost after subdivision works are done, and where a Vegetation Management Plan has been established and maintained for a specified period to CN's satisfaction. Where CN is not in a position to accept then the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

Aboriginal cultural heritage

24. The site is known to contain Aboriginal objects and its location within a cultural landscape (Burragihnbihng – Hexham Swamp) means it is likely to contain further Aboriginal objects yet to be known/discovered. CN agrees with the recommendations of the Heritage Now report of 28 March 2023 for an archaeological test excavation. The testing must be brought forward to ensure it is done before submitting any development application, rather than before construction. This would inform development proposals enabling design changes to facilitate the protection and conservation of Aboriginal objects in-situ, rather than their destruction. If archaeological test excavations cannot be done under the NSW Government's Code of practice for Archaeological Investigation of Aboriginal Objects in NSW 2010 or the proposed activity will result in harm to Aboriginal objects, an Aboriginal Heritage Impact Permit is required from the relevant State Government Authority under the NSW *National Parks & Wildlife Act 1974* prior to commencement of this activity.

Traffic

25. Section 4.2 of the Traffic Impact Assessment (TIA) by Stantec describes the PP's 'main access road' in and out of the site as being the road from the north west corner of the site where it is proposed to share an intersection with the approved adjoining development by Winten under DA2015/10393. The TIA seeks to defer investigations of this western access to 'a later stage'. CN do not support this. For the following reasons it should be amended:
- i. The Minmi Rd intersection associated the Winten development is in the last stage of the approved development and timing for the construction of this intersection is unknown.
 - ii. The Winten intersection is 'left in/left' only and cannot readily accommodate traffic coming from the west which will depend on traversing approximately 700m of (yet to be constructed) local roads internal to the Winten development.
 - iii. Eastbound vehicles would need to use the same 700m of internal local roads within the Winten development, exiting to Minmi Rd at the future traffic control signals (a round trip of approximately 1.3km) or turn left onto Minmi Rd at the shared intersection and travel westbound approximately 900m in order to turn around at the roundabout currently under construction by Winten (Stage1), a round trip of approximately 1.8km.
 - iv. Provision of a right turn lane at this western intersection is not feasible without impacting Winten's approved lot layout, approved road upgrades on Minmi Road, and will require further extension to culverts already approved for the Winten development and will adversely impact the existing eastbound transport stop in this location.
26. As previously advised through the PP process, Kingfisher Drive was constructed to permit, if development ever occurred on 505 Minmi Road, a future extension of Kingfisher Drive through to Minmi Road at the existing intersection of Brookfield Avenue (east). Brookfield Avenue has been constructed with allowance for a future single circulating lane roundabout. This existing intersection location should be the primary access point for ingress/egress from the proposed development land for the following reasons and the PP is to be amended to suit:
- i. It provides direct, all direction ingress and egress.
 - ii. It provides for an extension of the existing bus route on Kingfisher Drive without back-tracking to Britannia Boulevard.
 - iii. It negates the need to use the emergency bushfire egress from Kingfisher Drive to Hebrides Road (required to permit Minmi East Stage 1A (by Winten) to proceed).
 - iv. It provides connectivity between the development land and land to the northern side of Minmi Road. The proposed intersection with the Winten development in the new corner of the site then also provides secondary vehicular access and

connectivity to the adjoining estate, and planned recreation and commercial facilities to the west.

27. The TIA is to be amended to reflect:
 - i. The ultimate dwelling yield that is to be achieved through the PP
 - ii. In addition to development sites shown in the TIA's Section 6.6, the assessment is to account for the 100+ additional dwellings yet to be constructed in Stage 10 of the approved Outlook Estate, opposite the site, at 302 Minmi Rd, Fletcher.
28. The TIA is to consider:
 - i. TIA's completed for DA2015/10393 (Minmi East Stage 1B - approved) and DA2018/01351 (Minmi Precincts 3, 4 & 5 – undetermined) for assumptions on background growth, trip generation, trip distribution and required road or intersection upgrades in lieu of making broad assumptions.
 - ii. The CN *Western Corridor Traffic and Transport Study*, prepared by Bitzios, 2019 and used in preparation of the current s7.11 Western Corridor Local Infrastructure Contributions Plan 2013 (2020 update).
29. Proposed pedestrian connectivity from the south west corner of the site would depend on paths and bridging structures not planned for in the adjoining Winten development. To inform pedestrian connectivity further detail on how this is to be achieved is required.

Public Utility Servicing

30. Update the Infrastructure servicing report prepared by ADW Johnston to account for an ultimate dwelling yield that is to be achieved through the PP.
31. The reference to the Infrastructure servicing report, ADW Johnston, November 2021 on page 6 of the Post Gateway Planning Proposal – Final Report is to be updated to reflect the February 2022 report as referenced elsewhere in the document.

Bushfire

32. A preliminary assessment of the subject site and surrounds by the Rural Fire Service (RFS) identifies that steeper effective slopes exist beneath the hazard compared to the slopes assessed in the submitted Strategic Bush Fire Study, MJD Environmental, 2021. Due to the significant variation in the effective slopes identified, a revised subdivision layout may be required for the proposed lots to achieve compliance with Planning for Bush Fire Protection (PBP) 2019.
33. The RFS note proposed bush fire asset protection zones are within C2 Environmental Conservation zone land and that perimeter roads are not proposed for each residential lot adjacent to the hazard. This is inconsistent with C2 Environmental Conservation zone objectives and section 4.02.01(2) of the Newcastle Development Control Plan as it will require clearing and impacts on the conservation area and/or will reduce the total area of the proposed conservation zone to accommodate required bushfire protection measures. Amend the PP and supporting strategies accordingly.

Flooding

34. The submitted Appendix 13 – Flood advice letter, prepared by Northrop dated 22 March 2023 addresses the Ministerial Directions in a general sense without flood modelling. This does not address the Gateway determination's Condition 2, that requires an analysis of the Probable Maximum Flood (PMF) flood event.
35. A detailed flood study is required by an appropriately qualified flood specialist. The study is to include modelling of pre and post-development flow regimes for the following events: 20% Annual Exceedance Probability (AEP), 10% AEP, 5% AEP, 2% AEP, 1% AEP and PMF.
36. Flood modelling results are to include flood levels, depth, velocity, hazard mapping and comparisons of pre-development scenarios and post-development scenarios. Modelling shall be used to demonstrate that the proposed development is suitable for

the site regarding risk to life and property as well as ensure flood levels, velocity and hazard are not made worse for surrounding properties or infrastructure.

37. The flood study should include a section that specifically addresses the Gateway determination, dated December 2022, including addressing the Ministerial direction 4.1 Flooding and Condition 2 of the Gateway, having regards to the modelling results.

Open Space and Recreation

38. If an outcome is achieved for a reasonable increase in C2 Environmental Conservation lands in the south / west of the site, CN would support a strip of land to the west of the eastern entrance road from Kingfisher Drive becoming multipurpose public managed land. This could be designed to accommodate:
 - Landscaped areas such as turf which can be readily managed to meet APZ requirements
 - Well placed stormwater quality treatment assets; dry flood detention assets and associated maintenance access
 - Cycleways
 - Crime Prevention Through Environmental Design (CPTED) compliant pedestrian access
 - Passive and Active Recreation 'managed' open space.
39. The interface between multipurpose land and retained native vegetation on C2 Environmental Conservation land needs careful consideration to reduce the maintenance burden required to protect the environmental values of those lands.

Site specific Development Control Plan

40. Attachment 3 provides CN comments on the proposed site specific development controls, Barr Planning, 2022. The PP is to be updated to reflect these comments.

Gateway determination

41. CN's assessment does not consider the amended PP has met Condition 1(a), 1(b), 2, 3 and 4 for the reasons outlined above. These conditions are to be met prior to the PP proceeding to public exhibition.

Attachment 2 - Investigate alternative site opportunities

CN officers continue to be committed to working with you to achieve a suitable planning outcome for the site. We welcome discussion on the following alternative opportunities.

We have not received a Biodiversity Certification scheme referral notice under the *Biodiversity Conservation Act 2016* (BC Act). We are likely to need to provide comment on biodiversity matters once we have. Based on the information available now post Gateway determination on biodiversity, CN suggests the proponent investigate other opportunities e.g. providing the site as a National Park (by requesting the NSW Government to include it as part of the National Park Estate).

The contributions plan (which does not convey developable rights) as outlined by the Planning Panel identifies residential development assumptions of 110 dwellings appropriate in the context of infrastructure servicing, but subject to all other matters of planning consideration. This yield could achieve the inner suburban context area minimum density target potentially using residential typologies up to four storeys, with suitable building height transitions to the site edges.

A focus on this dwelling yield and density may support efforts towards avoiding and minimising the impacts to biodiversity. Denser more appropriately located development could limit edge effects, avoid habitat fragmentation for biodiversity corridors and water courses of the Blue and Green Grids.

The amended PP includes residential in the northeast portion of the site, subject to CN Biodiversity Certification scheme assessment. This location facilitates the bus collector connection. NLEP amendments to clauses and maps could potentially facilitate and accomplish this approach.


Attachment 3 – CN comment on Site specific development controls, Barr Planning, 2022

The PP seeks to amend the Urban Release Areas map to include the proposed residential component of the subject land as an urban release area. Clause 8.3 of the Newcastle Local Environmental Plan 2012 (NLEP) states:

8.3 Development control plan

- 1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.*
- 2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.*
- 3) The development control plan must provide for all of the following—*
 - a. a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
 - b. an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
 - c. an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
 - d. a network of active and passive recreation areas,*
 - e. stormwater and water quality management controls,*
 - f. amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
 - g. detailed urban design controls for significant development sites,*
 - h. measures to encourage higher density living around transport, open space and service nodes,*
 - i. measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
 - j. suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*
- 4) Subclause (2) does not apply to any of the following developments—*
 - a. a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
 - b. a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,*
 - c. a subdivision of land in a zone in which the erection of structures is prohibited,*
 - d. proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

The following assessment is based on the submitted PP and masterplan. This assessment should be used as a guide to assist in the development of a more refined site specific DCP. The site specific DCP is to be guided by the Urban Design Study and supporting documentation. CN advises the objectives and controls suggested as part of this assessment be considered and included where relevant following the revised Urban Design Study.

Proposed DCP Chapter	CN Comments
<p data-bbox="102 337 510 370">Land to which this section applies</p> <p data-bbox="102 410 1104 472">This section applies to all land within the heavy line marked on Map 1 – 505 Minmi Road</p>  <p data-bbox="489 964 732 989"><i>Map 1: 505 Minmi Road</i></p>	<ul data-bbox="1186 337 1955 427" style="list-style-type: none"> - Mapping to be updated to remove reference to zones. - The proponent should consider if a staging plan is required, and if so, clearly identify proposed stages.
<p data-bbox="102 1055 714 1088">Development (type/s) to which this section applies</p> <p data-bbox="102 1128 1073 1255">This section applies to all development within Minmi requiring development consent. The primary purpose is to guide development for the purposes of subdivision (and associated works) on the site, and to also provide guidance for other development types permissible on this land</p>	<ul data-bbox="1186 1052 1927 1114" style="list-style-type: none"> - This section should be consistent with DCP chapters that apply to surrounding urban release areas

Related sections

The following sections of this DCP will also apply to development to which this section applies:

- Any applicable land use specific provision under Part 3.00
 - o *Note: Any inconsistency between the locality specific provision and a land use specific provision, the locality specific provision will prevail to the extent of the inconsistency.*
- 4.02 Bush Fire Protection – within mapped bushfire area/zone
- 4.03 Mine Subsidence – within mine subsidence area
- 5.01 Soil Management – works resulting in any disturbance of soil and/or cut and fill.
- 5.02 Land Contamination – land on register/where risk from previous use
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks – where new roads, pedestrian or cycle paths are required.
- 7.05 Energy Efficiency
- 7.07 Water Efficiency
- 7.08 Waste Management.

The following sections of this DCP **may** also apply to development to which this section applies:

- 4.04 Safety and Security – development with - accessibility to general public, access to laneways, communal areas, or residential with three or more dwellings
- 4.05 Social Impact – where required under ‘Social Impact Assessment Policy for Development Applications’, 1999
- 5.03 Vegetation Management – trees within 5m of a development footprint or those trees likely to be affected by a development.
- 5.04 Aboriginal Heritage – known/likely Aboriginal heritage item/site and/or potential soil disturbance.
- 5.05 Heritage Items – known heritage item or in proximity to a heritage item.
- 5.06 Archaeological Management – known/likely archaeological site or potential soil disturbance

- Related sections of the current DCP must be included

<p>Additional information</p> <p>Urban Design Study – 505 Minmi Road, Fletcher (Moir Landscape Architects, 2024) - Amend</p> <p>Strategic Bushfire Study – 505 Minmi Road, Fletcher (MJD Environmental, 2024) - Amend</p>	<ul style="list-style-type: none"> - These documents contain indicative road and lot layouts that need to be revised and provided.
<p>Strategic overview</p> <p>The site is situated on the southern side of Minmi Road opposite existing residential development to the north, and immediately adjoining existing residential development to the east and proposed residential development to the west. A corridor of conservation-zoned land separates the site from residential land to the southeast and the Summerhill Waste Management Centre to the south. Future development of the site will be clustered into an Eastern and Western precinct, connected by a local road. Development will be screened from Minmi Road by retention of a vegetated buffer area. A large area centrally located within the site will be rehabilitated and maintained as a conservation area.</p>	<ul style="list-style-type: none"> - This section needs to be revised as this is not a strategic overview it is a site context description. The strategic overview should provide a synopsis of the site's strategic merit as an urban release area. - Strategic overview is not to contain reference to Community title
<p>Definitions</p> <p>A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless otherwise defined in this development control plan.</p> <p>Other words and expressions referred to within this section are defined within Part 9.00 - Glossary of this plan.</p>	<ul style="list-style-type: none"> - If applicable, please include definitions of any other words and expressions referred to within this section that has not otherwise been defined in the NLEP or within Part 9.00 – Glossary of the current DCP

Aims of this section

1. To ensure urban release land is developed to maximises the efficiency of existing infrastructure.
2. To ensure urban release land is developed to achieve optimal density and diversity of housing typologies.
3. To ensure that development of the site occurs in a manner which is sensitive to the environmental characteristics of the site and surrounding land uses.
4. To ensure the ongoing management of C2 Environmental Land is achieved by incorporating best practice environmental management and water sensitive urban design methods.
5. To ensure that the development of the site is integrated into the local road network.
6. To provide attractive streetscapes which promote passive and active recreation.
7. To provide a visual landscaped buffer along Minmi Road.

- Please outline the aims of this section, noting CN's suggestions.

Indicative lot and building typologies plan

Objective

1. To achieve the desired inner suburban dwelling density of 40 dwellings/ha
2. To achieve a diversity of housing types

Controls

- Please include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).
- Controls are to be informed by the Urban Design Study

Access and movement network

Objective

1. Ensure the subdivision is designed to integrate with surrounding residential development and makes efficient use of existing road networks.
2. Neighbourhood streets are designed to prioritise pedestrians and promote active and passive recreation.

Controls

C1. Subdivision layout is to incorporate a collector road extending Kingfisher Drive to the intersection at Minmi Rd/ Brookfield Avenue (east).

C2. Subdivision works are to include road upgrades for access including a roundabout at the Intersection at Minmi Rd/ Brookfield Avenue (east), and kerb, gutter and footpath extension from existing infrastructure adjacent to 311 Minmi Road.

C3. The new roundabout at the intersection of Minmi Road and Kingfisher Drive is to incorporate pedestrian and cycle facilities.

C4. All proposed future lots are to be serviced by internal roads. No driveway access points are permitted onto Minmi Road.

C5. Roads are to be designed to provide adequate provision for shared paths, connections and street trees.

C6. A continuous footpath is provided within the APZ along the perimeter of the central conservation area.

- Please provide a transport movement hierarchy showing major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists in accordance with 8.3(3)(b) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Note previous comments regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east) intersection which has been designed with allowance for a 4-leg, single-lane roundabout. Kingfisher Drive was designed to allow a bus route and services (after having passed through 505 Minmi Rd) to continue onto Brookfield Avenue and service the 'Outlook Estate' on the northern side of Minmi Rd.
- The proposed access to Minmi Road on the western boundary of the site is not supported given the proximity to the approved left in/left out intersection and other upgrade works on Minmi Road, as required under the approved Minmi East Stage 1B development (DA2015/10393)

Performance Outcome	Benchmark Solution
Avoid or minimise new intersections onto Minmi Road	<div>1. Vehicular access to the Eastern precinct is obtained via Kingfisher Drive.</div> <div>2. Vehicular access to the Western residential precinct is obtained from Minmi Road utilising an intersection shared with the adjoining approved subdivision.</div>

Provide traffic permeability within the site	Subdivision of the site includes a connecting road between the Eastern and Western residential precincts.
Development minimises visual impacts on Minmi Road	A minimum 10-metre wide strip of land is retained as a vegetation buffer between Minmi Road and residential allotments within the Eastern precinct. (This buffer strip would form part of community association land).

Landscaping

Objective

1. To ensure the new development respects and enhances the local character and amenity.
2. Ensure significant landscape elements are retained and protected.
3. Ensure the visual amenity is maintained to nearby residential development.

Controls

C1. A Minimum 10-metre-wide strip of native vegetation land fronting Minmi Road is to be retained to maintain the landscape character and local amenity. Existing mature native vegetation is to be prioritised for retention.

C2. Streetscape elements utilise regional materiality such as sandstone, hardwood and steel and are detailed in the landscape plan. These elements will weave through the entry signage, fencing, street tree planting, furniture elements, paving and wayfinding signage to create a site wide character that integrates within and reflects the surrounding landscape and character.

- Please provide site specific landscaping controls in accordance with 8.3(3)(c) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Landscape presentation to Minmi Road is a direction of the Planning Panel RR-2021-70.

Biodiversity

Objective

1. To preserve and enhance the biodiversity values of C2 Environmental Conservation lands adjoining the residential zoned land.

Controls

C1. A Vegetation Management Plan (VMP) is to be prepared by a suitably qualified person for approval. The VMP shall be prepared in accordance with CN's specifications and include, but not be limited to, the following:

- a. Meets the Urban Forest Policy goals and objectives
- b. A site assessment detailing vegetation communities present and management objective for the vegetation
- c. Management zones including bushfire asset protection zones.
- d. Site management including weed management, bushfire asset protection zone management and bush regeneration activities.
- e. Hydrological characteristics and flood probability for riparian areas and downstream wetlands
- f. Location of stormwater detention structures or water –sensitive urban design works
- g. Full list of existing plant species for revegetation work
- h. Maintenance periods and timeframe for implementation of the VMP
- i. Monitoring, performance criteria and reporting for the VMP.

C2. Roads resulting in fragmentation of conservation land will not be supported.

C3. Road batters are not to encroach into C2 Environmental Conservation land.

C4. An Urban Interface Area (UIA) will be required for on land that contains and/or adjoins significant vegetation.

C5. CN will consider dedication of environmental conservation land and drainage corridor at no cost after the subdivision works have been carried out and the VMP established and maintained for a specified period of time to CN's satisfaction. CN may not accept the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

- A UIA is a buffer to minimise both biotic (impacts of drainage infrastructure, weed invasion, nutrient increase etc.) and abiotic (noise, wind, dust, light, litter etc.) edge effects on land adjoining a proposed development site, thereby mitigating environmental impacts. Please include plan and section drawing in this section that illustrates how the UIA will be achieved.
- The VMP is to include on-going maintenance and management of the UIA.
- The VMP is to address ongoing land ownership and how this land will be managed in perpetuity.
- Walking trails are not appropriate within the C2 Conservation zone without confirmation from BCD.
- Roads resulting in further fragmentation of the biodiversity corridor are not supported.

Open space

Objective

1. Development provides passive and active recreation opportunities.

Controls

C1. Open space for the purpose of passive and active recreation is to be located entirely within residential zoned land.

Performance Outcome	Benchmark Solution
Subdivision allows safe and convenient pedestrian/cycle access to Minmi Road	A straight inter-allotment shared pathway is provided in the north-east corner of the Eastern precinct linking to the existing footpath adjacent 344 Minmi Road, Fletcher
Convenient pedestrian access is provided to the proposed neighbourhood centre and local park on Minmi to the west of the site	A pathway is provided from the south west corner of the Western precinct across the open space and creek line to the west and linking to the proposed perimeter road within the Winton development
Proposed community association land provides opportunity for recreation.	<ul style="list-style-type: none">— A continuous footpath is provided within the APZ along the perimeter of the central conservation area.— Walking trails are provided within conservation zoned land.

- Walking trails are not appropriate within the C2 Environmental Conservation zone without support from BCD.
- Should BCD support walking trails through C2 land, they should be limited in number, width and aligned to reduce habitat fragmentation and track erosion.
- Controls relating to shared paths or movement are more appropriately listed under access and movement networks.

Bush fire protection

Objective

1. Ensure risks associated with bush fire, including projected increase in the occurrence and severity of hazards as a result of climate change, are appropriately and successfully managed through effective and innovative design, as well as in connection with the preservation of the ecological values of the site and adjoining lands.

Controls

C1. All bushfire Asset Protection Zones are to be located outside C2 Environmental Conservation Zones

C2. Road batters within Asset Protection Zones need to be configured so their grade and length supports ready maintenance and reduces weed ingress into C2 Environmental Conservation land.

Performance Outcome	Benchmark Solution
All residential allotments achieve a Bushfire Attack Level (BAL) rating of BAL 29 or less.	Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.
Perimeter roads are provided at all interfaces with bushfire-prone vegetation	Subdivision of the site includes perimeter roads along the western and southern extent of the Eastern precinct and along the eastern and southern extent of the Western precinct.

Stormwater and water quality management

Objective

1. To provide direction with regard to CN's requirements for the management of both the quality and quantity of stormwater runoff.

Controls

C1. Proposed site discharge points to waterways consider site acceptance criteria for CN's Standard Rock Outlet for Headwalls.

C2. Water-sensitive urban design elements are incorporated into the subdivision, utilising land within Asset Protection Zones where possible and is not included in C2 Conservation zoned land

- Please provide site specific provisions for stormwater and water quality management in accordance with 8.3(3)(e) of the NLEP

Aboriginal cultural heritage

Objective

1. Manage Aboriginal cultural heritage values to ensure enduring conservation outcomes.
2. Preserve known Aboriginal cultural heritage sites.

Controls

C1. Development will identify any areas of Aboriginal cultural heritage value that are within or adjoining the area of the proposed development, including any areas within the development site that will be retained and protected (and identify the management protocols for these).

C2. Development is to be carried out in accordance with the recommendations of <insert> report.

- Required as outlined in this information request.

Environmental conservation and landscape character

Objective

- Development of the site is consistent with the surrounding landscape character
- Development of the site achieves long-term biodiversity conservation outcomes

Performance Outcome	Benchmark Solution
Landscaping makes a positive contribution to the surrounding landscape character	Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.
Stormwater is managed in a way that improves environmental and amenity outcomes	Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation
Land zoned for environmental conservation is managed in perpetuity such that the biodiversity values of the land are protected	Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation
Road design facilitates habitat connectivity for local native species	The connecting road between the Eastern and Western precincts is designed in consultation with a qualified ecologist to provide fauna crossing opportunities through retention of canopy trees either side of the road where possible and using supplementary planting.

- These controls are more appropriately captured elsewhere in this section or do not satisfy the direction of this information request letter.