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| **PANEL ASSESSMENT BRIEFING REPORT**HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL |

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| PANEL REFERENCE & DA NUMBER | PPSHCC-172DA/2087/2018/REV |
| PROPOSAL  | 3 into 1,079 Lot Torrens Title Subdivision |
| ADDRESS | Lot 2 DP 877349, Lot 1 DP 1156243, Lot 100 DP 1252590 and Lot 22 DP 81611310 and 10C Woodford Street, Cameron ParkM1 Pacific Motorway, Lake Macquarie |
| APPLICANT | Winten (No 21) Pty Ltd |
| OWNER | Winten (No 21) Pty LtdTransport for NSW |
| DA LODGEMENT DATE | 22 November 2018 |
| REVIEW LODGEMENT DATE | 2 February 2023 |
| REGIONALLY SIGNIFICANT CRITERIA | Clause 2, Schedule 7 of the SRD SEPP – General development over $30 million  |
| CIV | $116 million (excluding GST) |
| TOTAL & UNIQUE SUBMISSIONS  | Notification under the original application:* 5 December 2018 – 14 January 2019
* 6 October 2020 – 26 October 2020
* 30 July 2021 – 20 August 2021
* 3 June 2022 – 28 June 2022

Notification under the review application:* 6 February 2023 – 28 February 2023

Council have received eight unique objections to the original rounds of notification. One objection was received in response to the recent notification under the review. |
| PREVIOUS BRIEFINGS | Briefings held for the original application:* 21 August 2019
* 11 August 2021
* 1 December 2021
* 26 April 2022

This meeting will be the first briefing held with respect to the review application. |
| KEY ISSUES | * Biodiversity
* Traffic and transport
* Contamination
* Mine subsidence
* Earthworks
* Odour impacts from Summerhill Waste Management Centre
* Local park design / size
* Residual LMCC land in City of Newcastle
* Waste servicing and Concept Approval
* Bushfire
* Vegetation and Habitat Management Plan
* Acoustic attenuation
* VPA
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| STATUS OF ASSESSMENT | Under assessment |
| PREPARED BY | Jonathan Ford, Principal Development Planner |

1. **The proposal**

The proposal seeks consent for subdivision of two lots into:

* 1058 residential lots

 Comprising 938 standard lots ranging from 450m2 to 1.9 hectares and 120 small lots ranging between 379m2 and 450m2.

* 4 future development lots

 Lots 1736 and 1930 are identified for future residential development.

 Lot 1201 is split zoned residential/local centre and shares its northern boundary with City of Newcastle (CN) Local Government Area (LGA) boundary.

 Lot 2046 is identified for a potential school site.

* 16 public/drainage reserves

 Lots 1851 and 2547 are identified for local parks.

Lot 3050 will be created as a landscape buffer to the existing unformed road reserve which is intended to provide future access to the Summerhill Waste Management Centre (SWMC).

All reserves will be dedicated to Council for ongoing management.

* Clearing;
* bulk earthworks
* roads;
* stormwater infrastructure, including bioretention basins and swales, to be dedicated to Council;
* utilities;
* landscaping to public domain areas, including street tree planting, bioretention planting and planting of batters/embankments.

Additional works associated with servicing the lots are also proposed, relocation of electricity infrastructure, sewer and water infrastructure, traffic upgrades, recreation facilities and existing road network upgrades.

The development is proposed to be constructed over 21 stages. The stage numbering is not consecutive and some stages may be completed concurrently.

The development application relates to a majority of Stage 5 of the Concept Approval, with the remainder of Stage 5 contained within the CN LGA and subject of a concurrent development application being considered by the Hunter and Central Coast Regional Planning Panel (RPP).

1. **Background**

**2.1 DA chronology**

| **Date** | **Event** |
| --- | --- |
| 22 November 2018 | Original application lodgement date  |
| 13 December 2022 | RPP determination decision - refusal |
| 2 February 2023 | Lodgement of Section 8.2 review application with LMCC |
| 6 February – 28 February 2023 | Notification of review application |
| 6 February 2023 | Internal and external referrals issued |
| 5 April 2023 | Further information submitted by applicant regarding ‘uplisted’ flora and fauna species and public domain landscaping. |
| 17 May 2023 | Advice received from applicant of agreement with TfNSW to resolve regional traffic requirements for the development. |
| 22 May 2023 | Partial RFI issued for matters arising from internal engineering referral. |

**2.2 Status of Assessment**

The applicant has submitted further information in response to the reasons for refusal identified on the Panel’s determination letter. This information is currently under assessment by Council. Further information has been requested with regard to:

* Sufficiency of flora and fauna surveys for up-listed species, namely Koalas and Scrub Turpentine;
* Identification of suitable dwelling locations for certain lots;
* Responsibility and timeframes for road network upgrades;
* Consistency of APZs across plans and documentation;
* Additional construction impacts arising from SANSW requirements;
* Sufficiency of the air quality assessment;

A full assessment has not been conducted at this stage as key referral responses are outstanding.

1. **Referrals and submissions**

**3.1 Agency referrals and concurrence**

External referrals were issued for matters which were unresolved under the original application. The below table outlines the status of referrals to external agencies under the original and review applications.

| **Agency** | **Referral trigger** | **Comments**  | **Resolved** |
| --- | --- | --- | --- |

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| SA NSW | Condition 1.30 of Concept Approval | The applicant has liaised with SANSW directly to resolve outstanding matters for the referral. The applicant has advised an agreement has been reached. Confirmation from SANSW is being awaited.  | TBC |
| TfNSW | Condition 1.31 of Concept Approval | The applicant has liaised with TfNSW directly to resolve outstanding matters for the referral. Council understands that an agreement with TfNSW has been reached.  | TBC |
| Clause 104 – Infrastructure SEPP – traffic generating development |
| Biodiversity and Conservation Division (DPIE) (OEH) | Condition 1.20 of Concept Plan Approval | BCD are generally supportive of the application, subject to incorporation of recommendations to mitigate construction impacts. | TBC |
| Ausgrid | Cl 45 – Infrastructure SEPPDevelopment near electrical infrastructure | Ausgrid endorsement was obtained under the original application and confirmed under the review. | Yes |
| Department of Planning Secretary (DPIE) | Condition 1.16 of Concept Plan Approval | This matter was satisfied under the original application and does not require further referrals. | Yes |
| Heritage NSW | Condition 1.35 of Concept Approval | This matter was satisfied under the original application and does not require further referrals. | Yes |
| Condition 1.36 of Concept Approval |
| Condition 1.37 of Concept Approval |
| Condition 1.38 of Concept Approval |
| NSW RFS | Condition 1.45 of Concept Approval | The review application was forwarded to NSW RFS, who specified the previous General Terms of Approval continue to apply. | TBC |
| Transgrid | Condition 1.47 of Concept Approval | Transgrid endorsement was obtained under the original application and confirmed under the review. | Yes |

**3.2 Council referrals**

The review application has been referred to various Council officers for technical review as outlined below.

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| Officer | Comments | Resolved |
| Ecology | Several referrals have been initiated to resolve flora and fauna matters for the application. Further information has been requested regarding the sufficiency of survey efforts for koalas and scrub turpentine. A referral response is currently being awaited.The application is considered otherwise satisfactory regarding ecological impacts. | No |
| Engineer | Referral response received identifying several matters requiring additional information. This has been requested from the applicant. | No |
| Traffic | Awaiting referral response | TBC |
| Environmental management (contamination, acoustic impact) | Confirmation has been obtained that the proposed remediation works are satisfactory, subject to imposition of a condition requiring a site audit.Further comment is being awaited with regard to noise assessment | TBC |
| Air quality | Further information has been requested from the applicant regarding the assessment methods for the air quality report. | No |
| Asset Management – Parks and Community Land | Awaiting referral response | TBC |
| Landscape Architect | Awaiting referral response | TBC |

* 1. **Community consultation**

The original application was notified in accordance with the Council’s Development Control Plan and Community Participation Plan for the following dates:

* 5 December 2018 – 14 January 2019 (three submissions)
* 6 October 2020 – 26 October 2020 (one submission)
* 30 July 2021 – 20 August 2021 (two submissions)
* 3 June 2022 – 28 June 2022 (two submissions)

Eight unique submissions have been received. The issues raised in these submissions include the following:

* Lack of pedestrian, cycleway and public transport links (private landowner)
* Lack of provision of recreation facilities within the development footprint in the Lake Macquarie LGA (CN).
* Impacts of the proposed development on the operation of the adjacent Summerhill Waste Management Centre (SWMC) (CN).
* The development is not consistent with Condition 1.34 if the Concept Approval requiring demonstration keys roads linking Minmi Boulevarde and the SWMC had been designed to accommodate waste removal vehicles (CN).
* Impacts on the adjacent Blue Gum Hills Regional Park (BGHRP) (NPWS).

The review application was notified from 6 February 2023 to 28 February 2023. One submission was received in response to the review notification. The response was from CN, reiterating the concerns raised under their previous submissions.

1. **Key issues**
	1. **Biodiversity**

Assessment under the original application resolved that the development does not trigger any further assessment requirements for those species previously assessed under the 34A certification. For species that have been listed since the certification, further assessment is required. This includes Scrub Turpentine (Rhodamnia rubescens) and the up-listed species Koala (Phascolarctos cinereus).

The applicant has submitted an updated ecological assessment for the above species. For the Koala survey, the applicant submits that the assessment requirements under the prior and up-listed circumstances are identical, and statutory obligations have been met on that basis.

Council’s Flora and Fauna Officer has raised concerns with this approach, for the following reasons:

* Despite the provisions of SEPP 44 and SEPP (2020) being performatively identical, the implementation of the 2020 SEPP may have still triggered a requirement to undertake a new assessment at the time it was enforced;
* It is not sufficient to equate the historic and current requirements, the up-listing necessitates the assessment be revisited;
* It is unclear as to whether there would be any difference in application of the assessment methods provided under the TSC Act / Regulation;
* Even if the methodology under the TSC Act would be the same, whether the application of Clause 31 of the BC (SaT) Regulation 2017 necessitates revisiting the assessment because the circumstances for the species / site have changed.

Council is continuing to liaise with the applicant, the opinion of the Panel on this aspect of the assessment would be appreciated.

* 1. **Traffic and transport**

The applicant has engaged with TfNSW directly to resolve regional traffic implications for the development. Tentative confirmation has been obtained indicating that a resolution has been reached with TfNSW through an offer to amend Winten’s Planning Agreement with the NSW Minister for Planning SVPA-2017-8779. The amendment requires Winten to provide an additional monetary contribution for the upgrade of the Newcastle Link Road and Minmi Road intersection.

Amendment to the planning agreement is contingent on an amendment to the condition imposed on the link road south development application (DA/1936/2016), relating to survey and upgrade requirements for the intersection. Council understands that lodgement of the modification application for DA/1936/2016 is imminent.

A referral response from Council’s Traffic Engineer is being awaited with regard to local road impacts.

* 1. **Contamination**

Council’s Environmental Health Officer has reviewed the Remediation Action Plan and confirmed that the remediation strategies are sufficient to make the land suitable for the proposed use, including accounting for unexpected finds. A condition of consent requiring a Site Audit to be carried out by an EPA accredited site auditor is recommended.

The applicant has also provided a response to the Panel’s earlier comments regarding the location proposed for burying and capping contaminated material found on site. The RAP has been updated to identify the primary location for a contamination cell as being under the commercial use land (Lot 1201), and if another location is required (due to unexpected finds) than under Lot 2716 as well. The contamination cell is no longer proposed under public roads.

* 1. **Mine subsidence**

The applicant has engaged directly with SANSW to satisfy outstanding matters from the authority’s assessment. The applicant submits that an agreement has been reached and SANSW’s conditional approval should be imminently received by Council. The approval has not been received at this time but will be followed up by Council.

* 1. **Earthworks**

Updated civil plans have been submitted depicting the extent of earthworks across the development site. The proposed development includes significant cut and fill in areas which is required in order to achieve an appropriate residential subdivision, with compliant road grades and terracing of lots, across a generally steep terrain.

The typical external interface wall has been identified on the engineering plans and landscape plans as being a stacked rock retaining wall following the Panel’s earlier comments.



There remains some uncertainty as to the impacts of proposed retaining walls on trees nominated for retention. Further information will be requested from the applicant to address this.

* 1. **Odour impacts from Summerhill Waste Management Centre**

Council had raised concerns under the original application with the assumptions and methodology employed under the submitted odour assessment. The applicant submitted an addendum report under the review application, indicating the original assessment catered for ‘worst case’ scenarios negating the need for further assessment. Council’s Air Quality Officer maintains further verification is required for the proposed assessment methods, and a request for information has been issued to the applicant.

* 1. **Local park design / size**

Further information has been provided regarding the size and design of the proposed local parks, including landscape concept plan.

The information has been referred to Council’s Recreation Land Use Planner for consideration, and a response has not yet been received.

* 1. **Residual LMCC land in City of Newcastle**

Following the previous RPP briefing, it is understood the residual LMCC land in the City of Newcastle DA will need to be submitted as part of the LMCC DA.

The application now provides lot 4003 as part of the LMCC application.



It is noted a mixture of zones apply to lot 4003, including R2, C2 and SP2. The C2 zoned land is affected by a 40ha minimum lot size, which is not achieved by the 22.5ha proposed lot. It is understood that the minimum lot size requirements under LMLEP are not applicable to the extent to which they are inconsistent with the provisions of the concept approval.

* 1. **Waste servicing and Concept Approval**

Condition 1.34 of the Concept Approval require the applicant to demonstrate that key link roads from Minmi Boulevard to the Summerhill Waste Management Centre can accommodate waste removal vehicles. This link is predominately made by collector roads, to road MC84, and therefore garbage trucks are accommodated. An indicative connection from road MC84 to SWMC has been provided.

In general, the applicant submits the internal road network achieves the waste servicing requirements as included in the condition.

Council’s Development Engineer has specified that the plan is not a realistic connection to SWMC, and not likely to the City of Newcastle’s requirements, however it does demonstrate a suitable access with appropriate grades can be made in the future.

* 1. **Bushfire**

NSW RFS have provided a response under the review application indicating their original conditional approval stands. It is noted that a subdivision BAL plan by Bushfire Planning Australia does not exactly match the BAL plan in the bushfire management report. The BAL plan in the bushfire management plan shows an APZ in the road reserve which is not supported. Further information has been requested in this regard.

* 1. **Vegetation and Habitat Management Plan**

The NSW Biodiversity Conservation Division (BCD) are generally supportive of the amended application and have recommended that some aspects of the Vegetation and Habitat Management Plan be amended to reflect best practice. The majority of these recommendations have been accepted by Winten with the exception of:

* Scheduling the clearing works for a time of year to avoid the breeding seasons of identified potential threatened species that may breed on site; and
* Tree clearing not being conducted above 35°C for the interests of animal welfare.
* A pre-clearance management plan be prepared to the satisfaction of BCD by a suitably qualified fauna ecologist

Winten submits that the above requirements are unreasonable, and moreover, there is no statutory basis to impose them as they have meet associated obligations under the concept approval. Council acknowledges that BDC’s comments have been conveyed as recommendations rather than requirements.

The Panel’s guidance is requested on this element of the assessment.

* 1. **Acoustic attenuation**

An updated acoustic report has been provided under the review application in response to the associated comments under the Panel’s reasons for refusal for the original application.

The report is under assessment by Council’s Environmental Health Officer but a referral response has not been received to date.

* 1. **VPA**

Council is in the process of seeking endorsement from the LMCC Elected Council for the letter of offer submitted by Winten for the provision of recreation facilities for the proposal. The matter is scheduled to be considered by Council on 19 June.

A final draft of the full VPA is being prepared in the meantime.

1. **Recommendation**

Assessment of the review application will progress upon receipt of all outstanding referral responses and direction from the Panel.