

COUNCIL ASSESSMENT BRIEFING REPORT TO PANEL

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-192 Section 8.2(1) Review of DA2018/01351 (CN application Ref RE2023/00003)
PROPOSAL	<p>Sec 8.2(1) Review of DA2018/01351 - Subdivision of 6 lots into 858 residential lots, 7 development lots for future residential development; 14 Local Centre Lots; 1 Neighbourhood Centre Lot; 3 Residue Lots; and 21 lots for road widening, public reserves and drainage reserves plus associated works</p> <p>and including</p> <p>the modification of DA2015/10393 pursuant to Section 4.17(1) of the Act to be Subdivision of 2 lots into 292 lots, 7 large redevelopment lots (super lots), 4 drainage reserves, 3 public reserves and 2 residual lots, plus associated works</p>
ADDRESS	<p>Lot 100 DP1252590 Lot 5 DP 1230960 Lot 48 DP115128 Part Lot 1 DP1156243 Lot 4 DP1253716 Part Lot 3 DP 1230960 (Lot 2 & 3 in DP1230960 associated with modification of DA2015/01351)</p> <p>144 & 177 Woodford Street Minmi NSW 2287 & 610 Minmi Road Minmi NSW 2287</p>
APPLICANT	Winten (No. 21) Pty Ltd
OWNER	Winten (No. 21) Pty Ltd
DA REVIEW LODGEMENT DATE	6 April 2023

APPLICATION TYPE	Local Development
REGIONALLY SIGNIFICANT CRITERIA	<p>Original application subject to Clause 2 of Schedule 7 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> which declares the proposal regionally significant development as the development has a capital investment value of more than \$30 million.</p> <p>This is also consistent with Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> which declares the proposal regionally significant development as the development has a capital investment value of more than \$30 million.</p>
CIV	\$113,000,000 (excluding GST) – Note: subject to submission of an updated cost report.
TOTAL & UNIQUE SUBMISSIONS	Approximately 213 submissions received (comprising approximately 100 unique submissions and 113 pro forma submissions)
KEY ISSUES	<ul style="list-style-type: none"> • Concept Approval compliance • Traffic (regional road network) • Noise and vibration • Biodiversity • Land contamination • Mine subsidence • Earthworks • Flood planning • Stormwater management and Water Quality • Bushfire protection • Heritage • Modification to DA2015/10393 - Land for Recreation Facilities (Stage 1B amendment)
DOCUMENTS SUBMITTED FOR CONSIDERATION	Nil - Briefing report only
PREVIOUS BRIEFINGS	2 June 2023
PLAN VERSION	N/A
ASSESSMENT STATUS	Under assessment
PREPARED BY	Steven Masia – Engineering Assessment Coordinator
DATE OF REPORT	25 July 2023

1. THE SITE AND LOCALITY

1.1 The Site

The subject site includes the following properties:

- 144 & 177 Woodford Street Minmi NSW 2287
- 610 Minmi Road Minmi NSW 2287

The development site is generally bounded by the existing Minmi township to the north, the M1 Motorway to the west, the Newcastle City Council (NCC)/Lake Macquarie City Council (LMCC) LGA boundary to the south and the Blue Gum Hills Regional Park to the east.

The existing Minmi township sits predominantly in the northern part of the site and is categorised by R2 Low Density Residential land, a small area of E1 Local Centre zoned land and five parcels of Council owned RE1 Public Recreation zoned land. Minmi township also contains a small public school.

The southern portion of the site is predominately bushland, with clearings for access tracks and overhead electrical infrastructure. Cleared areas of the site have been fenced off to create paddocks, used for agistment.

One existing dwelling and associated outbuildings exists on the site and these are proposed to be demolished.

A total of 19 other isolated lots, not owned by the applicant, are scattered within the broader site boundaries. Vehicular access tracks traverse the site, providing informal access to these isolated lots.

The site comprises highly variable terrain, ranging from gentle slopes to steep topography. In the cleared areas, the site terrain has in parts been modified by past mining activities. A locally prominent ridgeline trending north-northeast along the alignment of Woodford Street separates the western and eastern sides of the site. Localised steep slopes occur on the site in the order of 15 to 20 degrees.

Several watercourses run through the site, eventually draining to Hexham Swamp Wetland. The main channel is Minmi Creek, flowing west of the existing Minmi township. Back Creek, a major tributary of Minmi Creek, rises on the Link Road North Precinct and flows north on the eastern side of the township, before entering Minmi Creek just prior to discharging to Hexham Swamp.

Site elevations range from approximately RL 4m (AHD) to RL 10m in the lower-lying northern section of the site. Elevations in other areas generally range from RL 10m to RL 20m in the creek beds, up to RL 50m to 64m on the crests of hills and spurs.

The suburb of Minmi can potentially be affected by flooding during major flood events from both local catchment flooding (associated within Minmi Creek and Back Creek) and flooding from the Hunter River system via Hexham Wetland.

The site has a history of both open cut and underground coal mining and is subject to mine subsidence risk at varying degrees up to and including a high risk of potholes and/or subsidence. The site also contains a number of former mine shafts.

The development site contains significant coverage of native vegetation comprising a number of vegetation communities, including Endangered Ecological Communities, with some clearings as a result of past mining and grazing uses.

The land is subject to a number of environmental constraints including the presence of waterfront land and riparian corridors, Endangered Ecological Communities, mine subsidence, geotechnical stability, acid sulphate soils, land contamination, bushfire threat, flooding, ground water, dispersible soils and Aboriginal (potential) and European heritage.

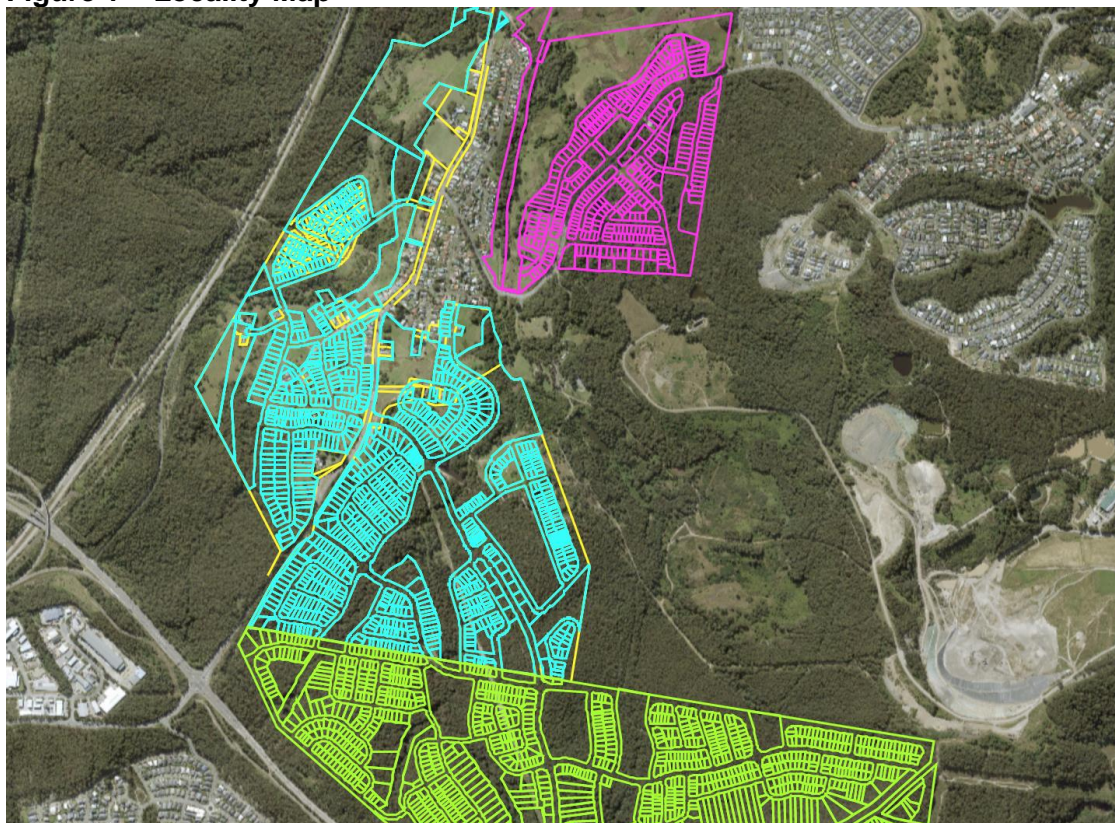
1.2 The Locality

- Located within an urban release area.
- Adjoining residential subdivisions to the east (Fletcher) consisting of predominantly low density residential.
- M1 Motorway to the west
- Newcastle Link Road to the south (beyond LMCC DA).
- Blue Gum Hills National Park to the east, with Summerhill Waste Management Centre beyond.

Refer Figure 1 below for locality

- **Cyan** – current proposed development – review of determination.
- **Pink** – modification to DA2015/10393, included in the current application.
- **Yellow** – refused DA2018/01351 (Note: layout as at time of determination of DA2018/01351 – 13 December 2022)
- **Green** – LMCC DA (Note: layout as at time of determination of DA2018/01351)

Figure 1 – Locality Map



2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for subdivision.

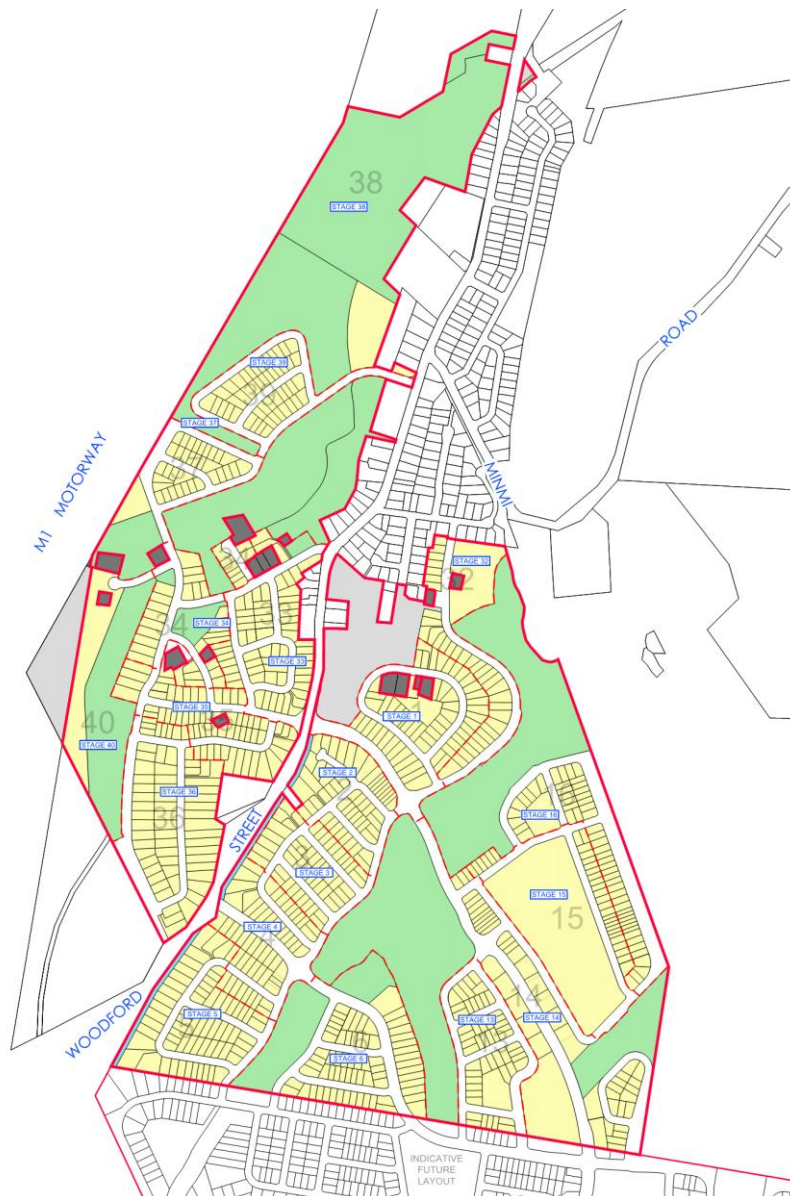
Specifically, the proposal involves:

Subdivision of 6 Lots into: 858 residential lots, 7 development lots for future residential development; 14 Local Centre Lots; 1 Neighbourhood Centre Lot; 3 Residue Lots; and 21 lots for road widening, public reserves and drainage reserves (proposed to be dedicated to Council), plus associated roads, infrastructure, utilities, open space, clearing, demolition, remediation, bulk earthworks and retaining walls.

and

The modification of DA2015/10393 pursuant to Section 4.17(1) of the Act to be Subdivision of Lot 2 in DP 1230960 and Lot 3 in DP1230960 into 292 lots, 7 large redevelopment lots (super lots), 4 drainage reserves, 3 public reserves and 2 residual lots, plus associated roads, infrastructure, bulk earthworks, open space and signage.

Figure 2 – Proposed subdivision



2.2 Background

The review of determination application was lodged on 6 April 2023.

On 13 Dec 2022, development consent was refused to Development Application (DA) DA2018/01351 by the Hunter and Central Coast Regional Planning Panel to carry out the following development on the subject property:

Subdivision of 6 Lots into: 874 residential lots; 7 development lots for future residential development; 14 Local Centre Lots; 1 Neighbourhood Centre Lot; 2 Residue Lots; and 20 lots for road widening, public reserves and drainage reserves (proposed to be dedicated to Council)

and

The modification of DA2015/10393 pursuant to Section 4.17(1) of the Act to be Subdivision of Lot 2 in DP 1230960 and Lot 3 in DP1230960 into 292 lots, 7 large redevelopment lots (super lots), 4 drainage reserves, 3 public reserves and 2 residual lots, plus associated roads, infrastructure, bulk earthworks, open space and signage.

An Application for Review of Determination was submitted to CN on 06 April 2023 by the Applicant. As part of the application the proposal has been amended to carry out the following development on the subject property:

Subdivision of 6 Lots into: 858 residential lots, 7 development lots for future residential development; 14 Local Centre Lots; 1 Neighbourhood Centre Lot; 3 Residue Lots; and 21 lots for road widening, public reserves and drainage reserves (proposed to be dedicated to Council), plus associated roads, infrastructure, utilities, open space, landscaping, clearing, demolition, remediation, bulk earthworks and retaining walls.

and

The modification of DA2015/10393 pursuant to Section 4.17(1) of the Act to be Subdivision of Lot 2 in DP 1230960 and Lot 3 in DP1230960 into 292 lots, 7 large redevelopment lots (super lots), 4 drainage reserves, 3 public reserves and 2 residual lots, plus associated roads, infrastructure, bulk earthworks, open space and signage.

A chronology of the current review of determination application since lodgement is outlined in **Table 2**.

Table 1: Chronology of the DA

Date	Event
8 May 2023	Exhibition of the application
8 May 2023	DA referred to external agencies
2 June 2023	Panel briefing

2.3 Site History

The development is associated with Concept Approval MP10_0090, which was issued by the NSW Planning and Assessment Commission on 6 August 2013 under Part 3A of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

The proposed subdivision forms Precincts 3, 4 and part 5 of the development concept approved under MP10_0090. The remainder of Precinct 5 is located within the LMCC LGA and is subject to a separate DA2087/2018 (lodged with LMCC on 22 November 2018). These two DA's represent the balance of the development under the Concept Approval.

This application has been prepared in accordance with the provisions of Part 4 of the EP&A Act, as well as the transitional provisions associated with Part 3A projects.

3. PLANNING CONTROLS

Concept Approval MP10_0090

On 1 March 2013 re-zoning of the development lands occurred upon the making of the *State Environmental Planning Policy Amendment (Minmi-Link Road) 2013*. These zonings are now reflected in the *Newcastle Local Environmental Plan 2012*.

On 6 August 2013 the Planning Assessment Commission of NSW, pursuant sections 75O and 75P of the *Environmental Planning and Assessment Act, 1979*, determined to approve MP10_0090. In summary, the Concept Approval provided for a five-stage development of up to 3,300 dwellings and two commercial centres across the 520-hectare development site, including associated infrastructure. In addition to the development outcomes, the Concept Approval also secured the dedication of approximately 1,561 hectares of nearby conservation lands to the NSW Government.

On 21 December 2016 the Planning Assessment Commission of NSW, determined as approved an application (MP10_0090 MOD1) made pursuant s75W of the *Environmental Planning and Assessment Act, 1979* to modify several conditions of the Concept Approval.

On 16 November 2018 the Director, Regional Assessments of the Department of Planning and Environment, as delegate of the Secretary, approved the *Minmi Precinct Development Guidelines (ADW Johnson 9/11/2018) (MPDG)*.

On 18 October 2018 the Director, Regional Assessments of the Department of Planning and Environment certified under clause 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* that;

the proposed development is part of a concept plan approval for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and

that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.

Schedule 2 'Transferred transitional arrangements on repeal of Part 3A—former Schedule 6A' of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* applies as the proposal is a Transitional Part 3A project.

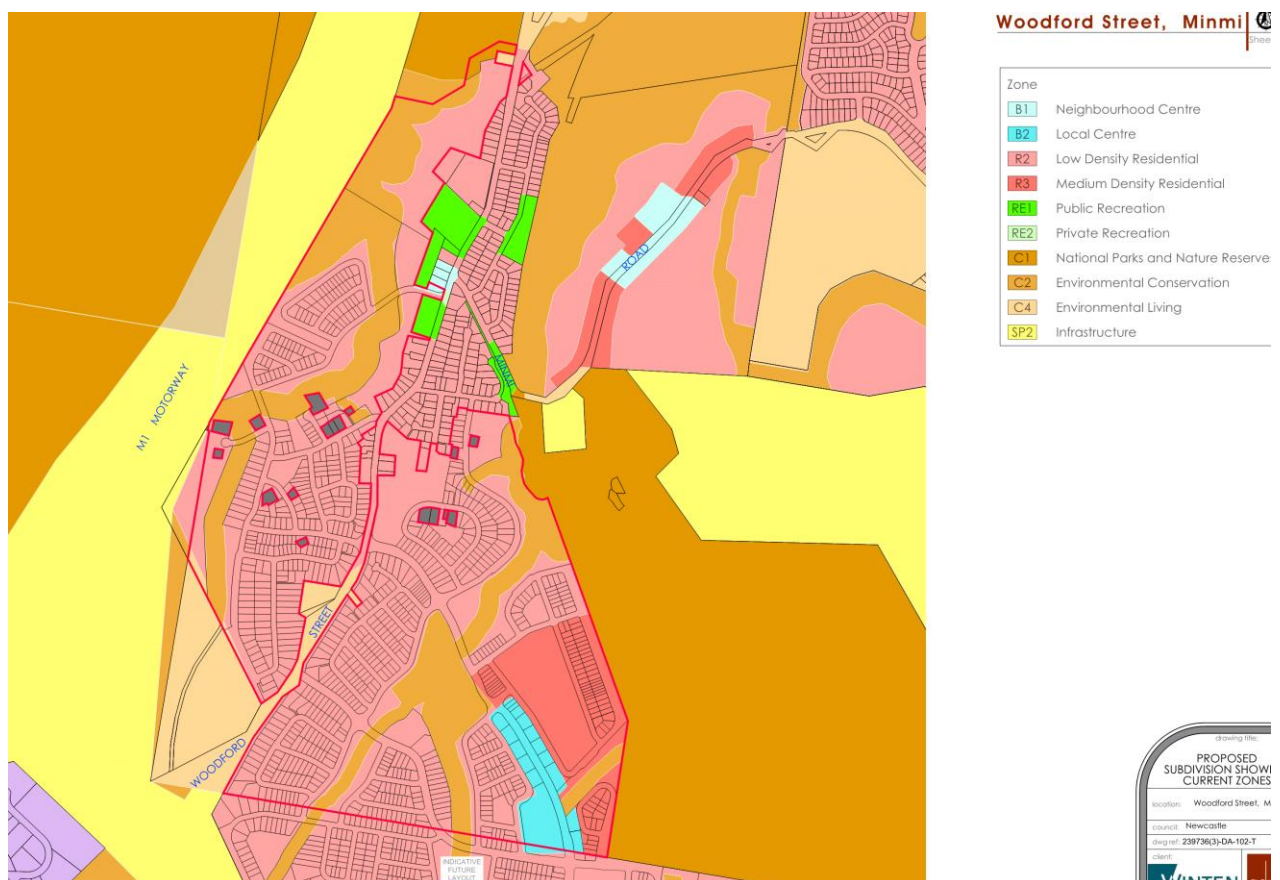
The Department of Planning and Environment has advised that, in accordance with section 75P(2)(b) of the *Environmental Planning and Assessment Act 1979*, development applications lodged subsequent to MP 10_0090 are not Integrated Development for the purposes of section 91 of that Act.

Newcastle Local Environmental Plan 2012

Under the Newcastle Local Environmental Plan 2012 the land is zoned;

- R2 Low Density Residential
- R3 Medium Density Residential
- E1 Local Centre
- C1 National Parks and Nature
- C2 Environmental Conservation
- C4 Environmental Living
- SP2 Infrastructure

Figure 3 – Land Zoning with Proposed Development



NB: The key to the map references previous zones prior to amendment to legislation

A summary of the key matters for consideration from the relevant EPIs are outlined in **Table 3**.

Table 2: Summary of Key Matters in the Relevant EPIs

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Chapter 3: Koala Habitat Protection 2020 Chapter 4: Koala Habitat Protection 2021	TBC
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6. 	Yes
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management Chapter 4: Remediation of Land	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Section 2.118(2) - Development with frontage to classified road Section 2.119(2) Impact of road noise or vibration on non-road development Section 2.121(4) - Traffic-generating development 	Further clarification required

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The Department of Planning and Environment has previously advised that, in accordance with Section 75P(2)(b) of the *Environment Planning and Assessment Act 1979*, development applications lodged subsequent to the Concept Plan approval (MP10_0090) are not Integrated Development for the purposes of Section 91 (now Section 4.46) of that Act.

Subsequent approvals and permits will or may need to be obtained under Acts such as the *Roads Act 1993*, the *Protection of the Environment Operations Act 1997*, the *National Parks and Wildlife Act 1974* and the *Water Management Act 2000*.

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and Concept Approval (Further Environmental Assessment Requirements (FEARs)) and outlined below in **Table 4**.

Table 3: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Ausgrid	Impact on infrastructure – SEPP (transport and Infrastructure) 2021 – Clause 2.48	Response received, dated 20 June 2023. Support and require confirmation of electricity supply issued by Ausgrid prior to release of each Subdivision Certificate.	Y
Transgrid	Impact on infrastructure – SEPP (transport and Infrastructure) 2021 – Clause 2.48	No response to date	TBC
Hunter Water Corporation	Public Utility Servicing	Response received, dated 21 June 2023. No objection noting applicant will need to update water and wastewater strategies. Any consent issued would be conditioned to include confirmation of water and sewer prior to release of any Subdivision Certificate.	Y
NSW Rural Fire Service	FEAR 1.45 of Concept Approval requires bushfire management to be to the satisfaction of the RFS.	Response received, dated 24 May 2023, which support the proposal subject to conditions. Further consideration of RFS conditions against other planning considerations to be carried out.	Y
Transport for NSW	SEPP (Transport & Infrastructure) 2021 – Clause s2.121 Traffic Generating Development	Response received, dated 30 May 2023. Conditions recommended including monetary payment to State via amended VPA for upgrade to Newcastle Link Rd/Minmi Road intersection and range of additional road upgrades. Clarification in writing will be required as to the basis of the for the recommended upgrades to ensure there is a clear planning	TBC

		nexus and to assist assessment of off-site impacts. Also clarity required as to whether Newcastle Link Rd/Minmi Road intersection must occur prior to any development occurring.	
Transport for NSW	<p>FEAR 1.31 of Concept Approval requires micro simulation traffic modelling to TfNSW requirements.</p> <p>FEAR 1.33 of Concept Approval requires public transport to be provided to TfNSW requirements.</p>	<p>Response received, dated 30 May 2023.</p> <p>Clarification in writing will be required as to the traffic assessment basis for the recommended upgrades to the regional road network to ensure there is a clear planning nexus and to assist assessment of off-site impacts.</p>	TBC
National Parks and Wildlife Service	Aboriginal heritage and impacts on Blue Gum Hills Regional Park	<p>Response received, dated 13 June 2023. No objection to proposal subject to recommended conditions.</p> <p>The site contains no known Aboriginal heritage sites.</p>	Y
Subsidence Advisory NSW	<p>FEAR 1.30 of Concept Approval.</p> <p>Mine Subsidence Compensation Act 1961</p>	Response received, dated 25 May 2023. Supported subject to conditions including conditions requiring additional reports for approval by SA NSW prior to commencing works.	Y
Department of Planning and Environment – Water (Licencing and Approvals)	FEAR 1.22 and 1.25 - Potential impacts on groundwater and waterfront lands.	Response received, dated 2 June 2023. Supported.	Y
Department of Education	Neighbouring property	Response received, dated 7 June 2023. No objection subject to appropriate consideration of construction management (Construction Management Plan recommended), noise and vibration and air quality impacts,	Y

		sustainable transport (bus, pedestrian and cycling), bushfire risk.	
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4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 5**.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Assets	Seeking advice on assets proposed to be dedicated to Council such as riparian corridors, roads (including retaining walls) – under assessment	TBC
Environmental Services	Noise – further information relating to noise impacts associated with off-site road upgrades is required.	No
Parks and Recreation	Seeking advice on open space – under assessment	TBC
Flood and stormwater	Consultant engaged – under assessment	TBC
Biodiversity	Consultant engaged – initial advice received. Further information/clarity required around: <ul style="list-style-type: none"> adequacy of assessment of road upgrades adequacy of assessments and surveys for newly listed species 	No
Heritage	Heritage – under assessment	TBC

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 8 May 2023 until 5 June 2023. A total of approximately 213 submissions have been received, comprising approximately 100 unique submissions and 113 pro forma submissions.

The main issues include inadequate consultation, loss of rural amenity and local character, mine subsidence, traffic, loss of green corridor, construction impacts, environmental impacts on creeks and riparian corridors, flora and fauna impacts, bushfire risk and lack of capacity in local school.

5. KEY ISSUES

The following key issues are relevant having considered the relevant planning controls and preliminary review of the application to date, including having regards to the reasons for refusal of the original DA:

- Concept Approval compliance
- Traffic (regional road network) – TfNSW issued advice, dated 30 May 2023.
 - Clarification in writing from TfNSW as to what information was relied upon for the traffic assessment to ensure an informed assessment of the planning nexus can be undertaken.
 - Clarification regarding staging of development, particularly whether the upgrade to Newcastle Link Road/Minmi Road intersection will be required prior to release of any lots.
 - Update the State VPA for the additional monetary contribution – planning nexus. Clarification on this process as part of the application.
- Noise and vibration – further assessment required for offsite works.
- Biodiversity – Appears two main issues:
 - The proposed road upgrades and the adequacy of assessment for those upgrades.
 - The requirements to carry out necessary assessments and survey for newly listed species.
- Land contamination – Acceptable subject to conditions.
- Mine subsidence – advice received from Subsidence Advisory NSW, dated 25 May 2023. SA NSW have supported the development subject to conditions.
- Earthworks – further consideration of the extent of earthworks is required considering the reasons of refusal. The extent of retaining walls in land proposed to be dedicated within Stages 37 and 39 requires further consideration including further advice from CN Assets Section.
- Flood planning – amendments to lot layout and updated flood report submitted. CN has engaged an external flood specialist and assessment is underway.
- Stormwater management and Water Quality - CN has engaged an external water specialist and assessment is underway.
- Bushfire protection – advice received from RFS, dated 24 May 2023, which support the proposal subject to conditions. Further consideration of RFS conditions against other planning considerations to be carried out.
- Heritage – under consideration by CN Heritage Officer.

6. RECOMMENDATION

The Panel receive the briefing report.

To ensure a robust assessment it is recommended that the Panel consider providing legal direction to both Council's on:

- Appropriateness and legality of imposing a Grampian style condition for road upgrades (timing, certainty), including what level of environmental assessment is required in relation to informing the overall environmental impacts of the development.
- Clarification of the required biodiversity assessment framework for the development covered by the Concept Approval and also assessment requirements for off-site works.

7. ATTACHMENTS

- Nil