

## COUNCIL ASSESSMENT BRIEFING REPORT TO PANEL

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-192  Section 8.2(1) Review of DA2018/01351 (CN application Ref RE2023/00003)
<b>PROPOSAL</b>	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
<b>ADDRESS</b>	<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 &amp; 3 in DP1230960 associated with modification of DA2015/01351)</p> <p>144 &amp; 177 Woodford Street Minmi NSW 2287 &amp; 610          Minmi Road Minmi NSW 2287</p>
<b>APPLICANT</b>	Winten (No. 21) Pty Ltd
<b>OWNER</b>	Winten (No. 21) Pty Ltd
<b>DA REVIEW LODGEMENT DATE</b>	6 April 2023
<b>APPLICATION TYPE</b>	Local Development
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	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

	<p>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>
<b>CIV</b>	\$128,474,907 (excluding GST)
<b>TOTAL &amp; UNIQUE SUBMISSIONS</b>	Approximately 213 submissions received (comprising approximately 100 unique submissions and 113 pro forma submissions)
<b>KEY ISSUES</b>	<ul style="list-style-type: none"> <li>• Concept Approval compliance</li> <li>• Traffic (regional road network)</li> <li>• Recreation - FEAR 1.16</li> <li>• Noise</li> <li>• Biodiversity</li> <li>• Flood planning</li> <li>• Stormwater management and Water Quality</li> </ul>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Nil - Briefing report only
<b>PREVIOUS BRIEFINGS</b>	9 October 2023
<b>PLAN VERSION</b>	N/A
<b>ASSESSMENT STATUS</b>	Under assessment
<b>PREPARED BY</b>	Steven Masia – Engineering Assessment Coordinator
<b>DATE OF REPORT</b>	28 November 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.

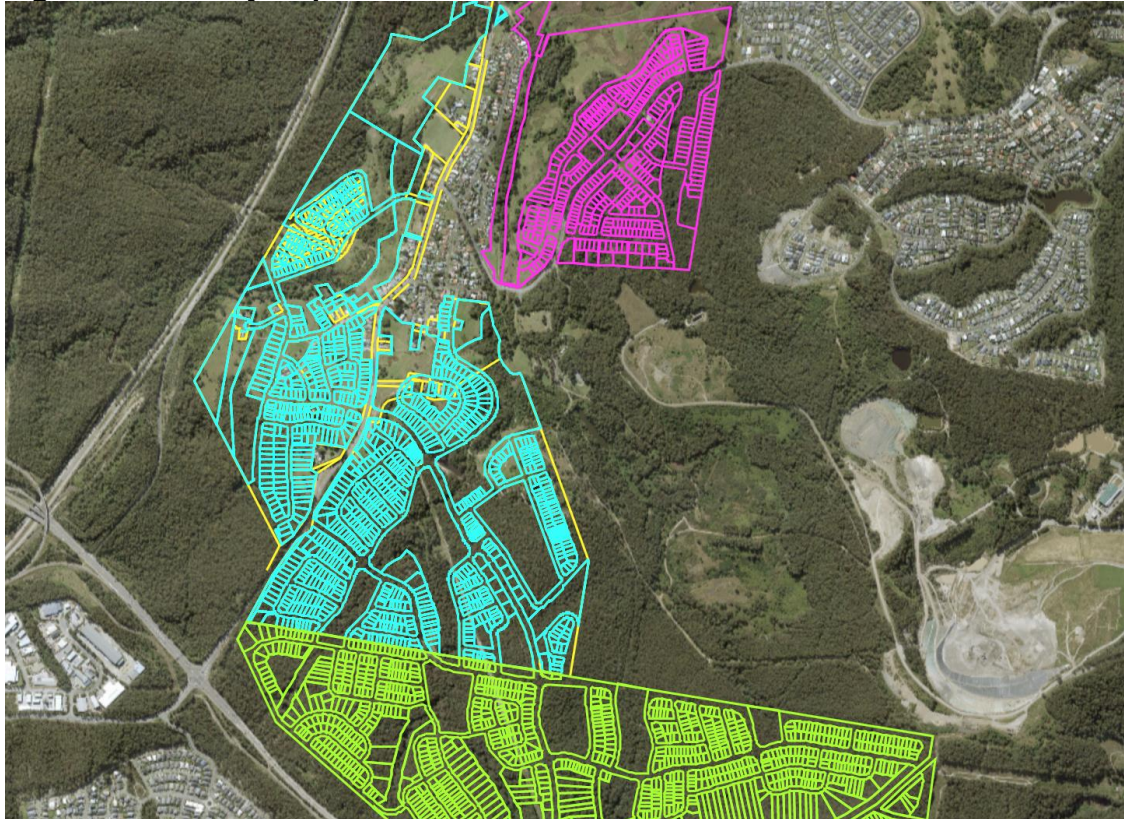
## **1.2 The Locality**

- 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** – Stage 1B - previous proposed modification to DA2015/10393.
- **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**

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### **2.1 The Proposal**

The proposal seeks consent for subdivision.

Specifically, the proposal involves:

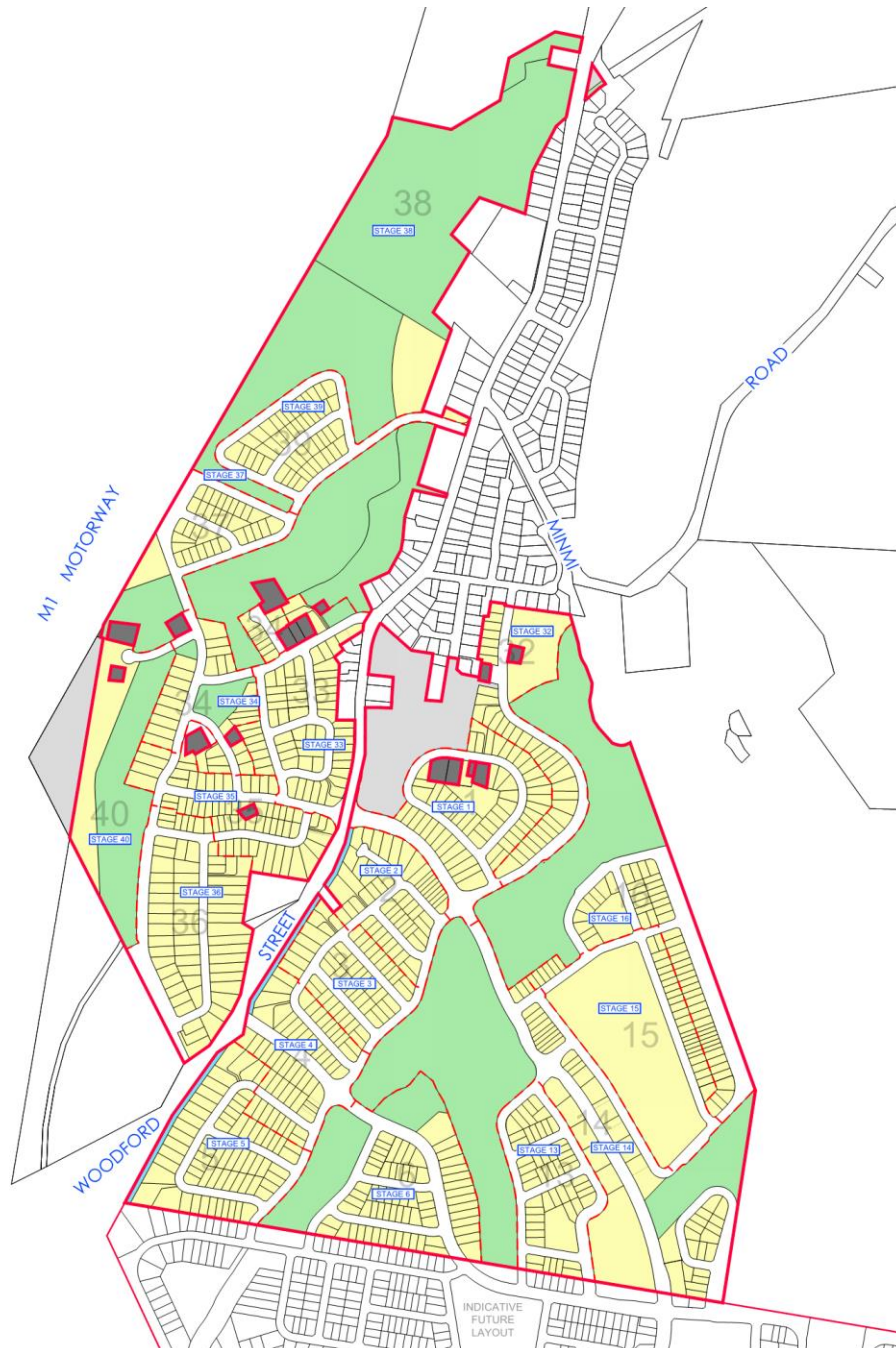
Subdivision of 6 Lots into: 858 residential lots, 7 development lots for future residential development; 14 Local Centre Lots; 1 Neighbourhood Centre Lot; 3 Residue Lots; and 21 lots for road widening, public reserves and drainage reserves (proposed to be dedicated to Council), plus associated roads,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

On 7 November 2023 the applicant has requested that the application be amended to remove the following from the application:



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.

However, on the 7 November 2023 the applicant has sought to amend their application to delete the modification of DA2015/10393.

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
25 July 2023	Panel briefing
15 Aug 2023	CN issued request for further information
31 Aug 2023	CN issued additional request for further information
15 Sept 2023	Applicant submitted comprehensive response to RFI
9 Oct 2023	Panel Briefing
7 Nov 2023	Applicant submitted amendment to application to remove modification to DA2015/10393 (Stage 1B)
22 Nov 2023	CN issued additional request for further information

### **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**

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### **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.

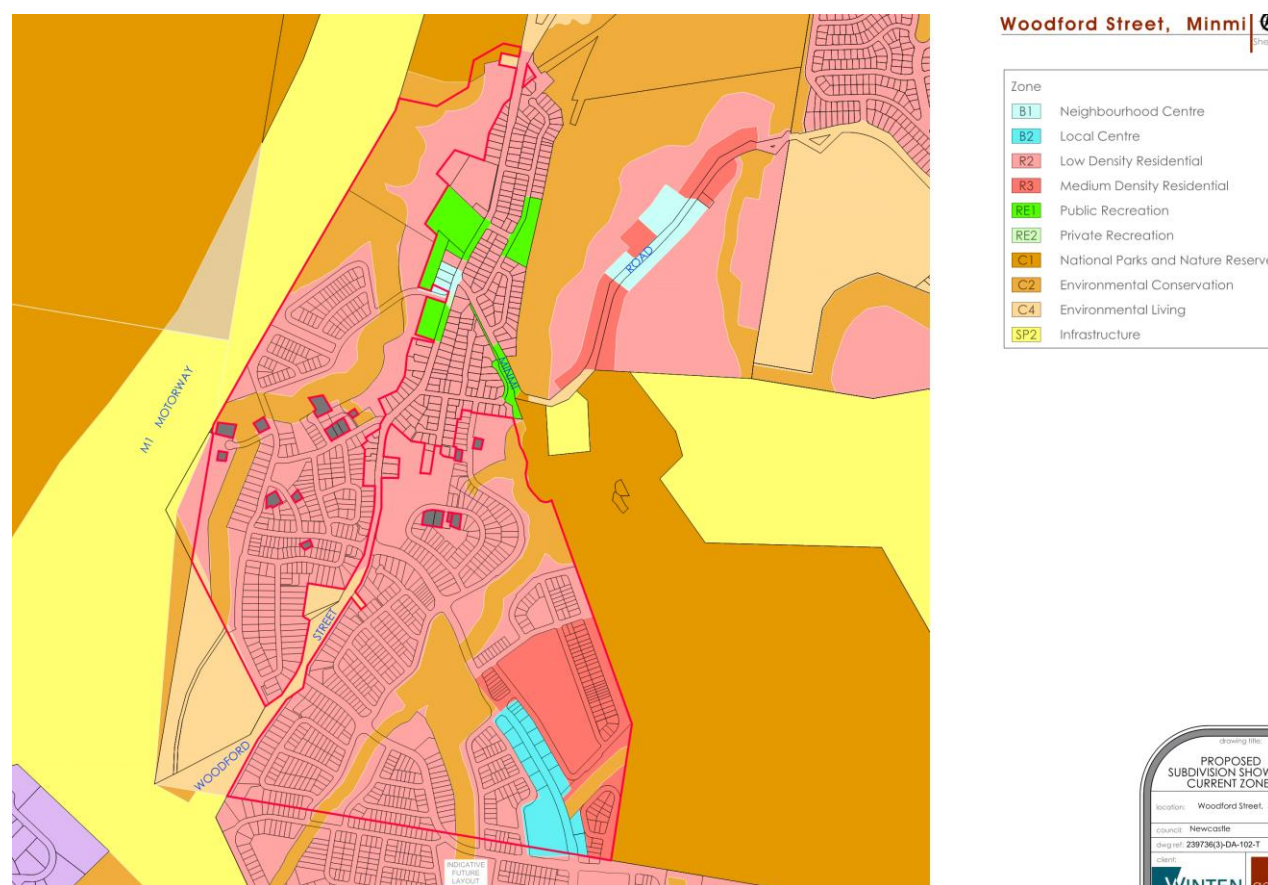
## **Newcastle Local Environmental Plan 2012**

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 2**.

**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	<b>Chapter 2: State and Regional Development</b> <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.</li> </ul>	Yes

SEPP (Resilience & Hazards)	<b>Chapter 2: Coastal Management</b> <b>Chapter 4: Remediation of Land</b>	Yes  (subject to CN condition)
State Environmental Planning Policy (Transport and Infrastructure) 2021	<b>Chapter 2: Infrastructure</b> <ul style="list-style-type: none"> <li>• <b>Section 2.48(2)</b> (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li>• <b>Section 2.118(2)</b> - Development with frontage to classified road</li> <li>• <b>Section 2.119(2)</b> Impact of road noise or vibration on non-road development</li> <li>• <b>Section 2.121(4)</b> - Traffic-generating development</li> </ul>	Further clarification required from TfNSW on state network upgrades

## 4. REFERRALS AND SUBMISSIONS

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### 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 3**.

**Table 3: Concurrence and Referrals to agencies**

<b>Agency</b>	<b>Concurrence/ referral trigger</b>	<b>Comments (Issue, resolution, conditions)</b>	<b>Resolved</b>
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 11 September 2023.  Further clarification from TfNSW is required as to timing of upgrades should CN and LMCC DAs be progressed independently.	TBC
Transport for NSW	FEAR 1.31 of Concept Approval requires micro simulation traffic modelling to TfNSW requirements.	Response received, dated 11 September 2023.  Further clarification from TfNSW is required as to timing of	TBC

	FEAR 1.33 of Concept Approval requires public transport to be provided to TfNSW requirements.	upgrades should CN and LMCC DAs be progressed independently.	
National Parks and Wildlife Service	Aboriginal heritage and impacts on Blue Gum Hills Regional Park	Response received, dated 13 June 2023. No objection to proposal subject to recommended conditions.  The site contains no known Aboriginal heritage sites.	Y
Subsidence Advisory NSW	FEAR 1.30 of Concept Approval.  Mine Subsidence Compensation Act 1961	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, sustainable transport (bus, pedestrian and cycling), bushfire risk.	Y

## 4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 4**.

**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  Clarification received they are satisfied	Y
Environmental Services	Noise – further information relating to noise impacts associated with off-site road upgrades is required.  Submitted information of 15 September 2023 under assessment	TBC
Parks and Recreation	FEAR 1.16 not satisfied	No
Flood and stormwater	Consultant engaged  RFI issued 30 August 2023 outlining continued concern with impacts on adjoining lands and risk associated with creek crossings in larger flood events.  Submitted information of 15 September 2023 under assessment	TBC
Biodiversity	Consultant engaged –  RFI issued 15 August 2023.Submitted information of 15 September 2023 under assessment. It is likely that further off-site assessment of the Newcastle link Road/Woodford Street intersection will be required if reintroduced in TfNSW conditions.	TBC
Heritage	Heritage – acceptable	Y

## 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

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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:

Two comprehensive RFI's issued 15 and 30 August (the later being restricted to just flood and stormwater). Detailed response for the applicant was submitted 15 September 2023. A further RFI has been issued 22 November 2023 in relation to recreation facilities FEAR 1.16 and need to resolve traffic matters surrounding State Road network.

The key issues are:

- **Concept Approval compliance**
- **Traffic (regional road network)**

TfNSW have provided advice dated 11 September 2023, that they now support the proposal subject to conditions. The TfNSW advice includes an Appendix A, which recommends a suite of upgrades to the State Road network. Condition A.2 Newcastle Link Road/Minim Road Upgrade is required to be in place prior to release of any residential lot. In effect this would enable approximately 50% of the CN DA to be released. Condition A.3 Other upgrades to the State Road network, requires the Newcastle Link Road/Lake Road intersection to be upgraded prior to release of additional lots, essentially the later 50% of the CN DA.

TfNSW have also supported the LMCC DA/2087/2018/REV, in separate advice to LMCC also dated 11 September 2023. While the advice also requires the Newcastle Link Road/Minmi Road upgrade prior to release of any residential lot it otherwise contains different upgrades to the State Road network as the development progresses. For example, the conditions require a separate upgrade being the Newcastle Link Road/Woodford Street intersection but do not include upgrades to Newcastle Link Road/Lake Road intersection

The rationale relied upon by TfNSW to apportion the recommended upgrades between the two DA's is unclear. It is also unclear how the upgrades would be appropriately implemented should one or the other DAs be progressed singularly and in isolation of the other in terms of land release.

For example, under the current TfNSW conditions all of the approved Precinct 2 development in LMCC and the entire proposed LMCC DA could be developed as well as up to 50% of the CN DA (a combined total of around 2,200 dwellings) without the Lake Road/Link Road upgrades being in place, whereas such upgrade would have been deemed necessary only when approximately 50% development of the CN DA alone was developed.

Likewise, the Newcastle Link Road/Woodford Street upgrade would not be triggered at all should the CN DA be progressed and the first 50% of the LMCC DA be delayed or deferred, whereas such is required at only 50% development of the LMCC DA alone. It is noted that the CN DA and other existing users of Woodford Street would rely on this Woodford Street intersection as the sole connection to Newcastle Link Road because the Minmi Boulevard, that also connect the CN DA to the upgraded Link Road/Minmi Road intersection, would not provide a second connecting road unless the full length of Minmi Boulevard within the LMCC DA was completed. This could place significant strain on the Newcastle Link Road/Woodford Street intersection devoid of any mitigating upgrade requirements.

While the final suite of all State Road upgrades recommended by TfNSW for the total CN and LMCC DA may ultimately be acceptable, it is apparent that the current recommended TfNSW conditions do not appropriately consider or deal with these developments as stand-alone applications.

The applicants Regional Traffic and Transport Assessment, in so far as it relates to impacts on the State Road network, has not been fully accepted by TfNSW and seemingly has not been relied upon to assess the proposal and there are currently apparent issues with the recommended conditions by TfNSW. CN has recently met with representatives from TfNSW and it is understood that TfNSW will be revisiting and reissuing their advice to address these issues. Until this is resolved with TfNSW it is recommended that neither the CN DA or the LMCC DA be determined.

- **Traffic (Minmi Road and Main Road in LMCC LGA)**

The TfNSW advice dated 11 September 2023 to LMCC also notes that upgrades to Minmi Road (local road) and Main Road (State Road) are also likely to be required due to increased traffic generation (assumed to be due to the LMCC DA) but the letter from TfNSW to CN does not address the need for these potential upgrades as a result of the trips generated by the CN DA.

It is difficult to understand how this could be the case noting the potential for significant additional trips generated by the CN DA alone. It may be worth noting that the applicants Regional Traffic and Transport Assessment (SCT, 2021) recommends a suite of similar upgrades as being appropriate in relation to the CN DA alone and when also adding in possible generation by the LMCC.

To assist, Figure 1 below diagrammatically represents the potential additional land release that could occur based on the current TfNSW recommended conditions before intersection upgrades are triggered.

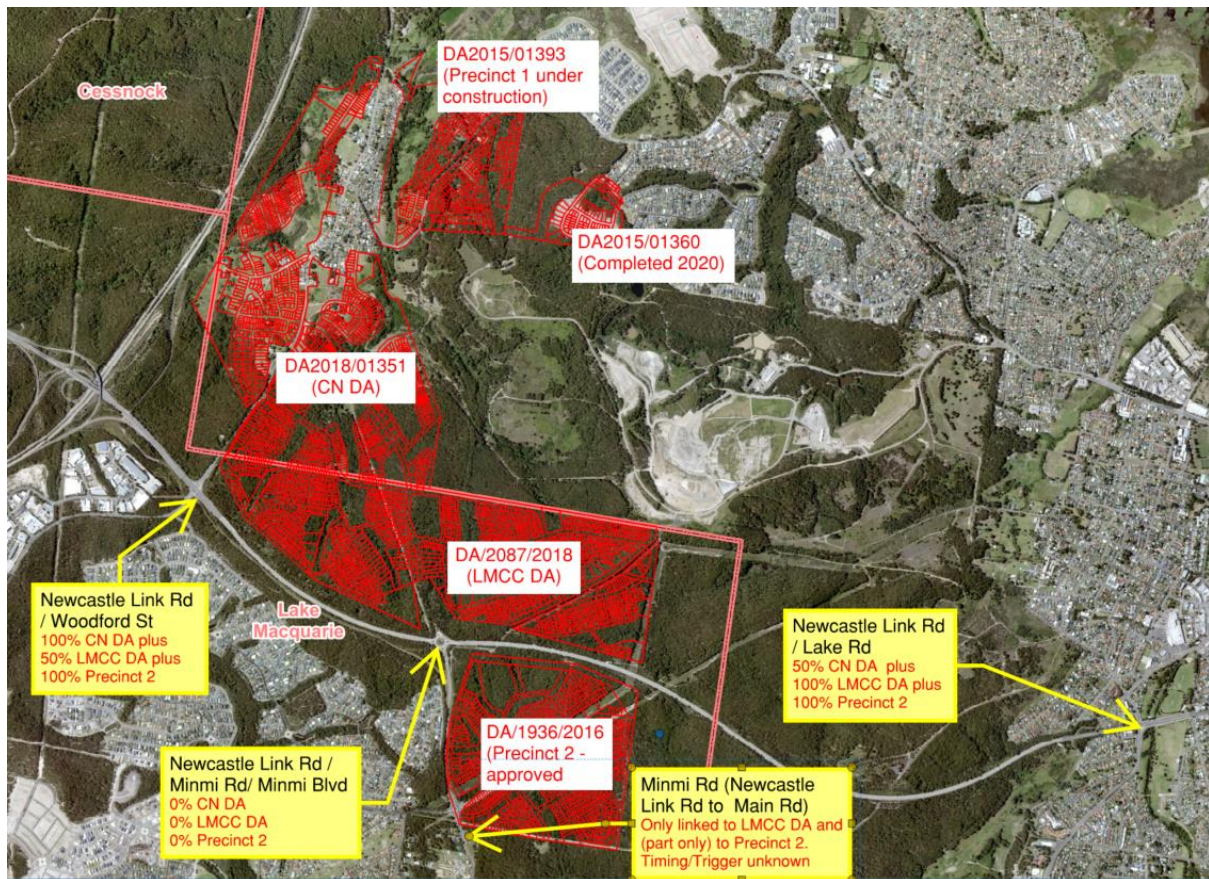


FIGURE 1 – Regional Road Upgrades per TfNSW conditions 11 September 2023

- **Recreation facilities**

Under FEAR 1.16 (see below) of Concept Approval MP10\_0090 (MOD1), suitable land for the recreation facilities within the development area or alternative arrangements in general proximity to the site are to be approved by the now Planning Secretary of the NSW Department of Planning and Environment (DPE).

- 1.16 Prior to the determination lodgement of the development application for subdivision of Stage 3, 4 or 5 (whichever occurs first) as defined by the Indicative Staging Plan contained in the Minmi/Link Road Appendix A, Concept Plan Design Guidelines (May 2014), following Stage 4 the arrangements for provision of recreation facilities to meet demand for development within all stages including the skate park are to be identified. Suitable land for these facilities is to be identified within the development area, unless alternative arrangements can be made to accommodate these facilities within general proximity to the development site through negotiations with the relevant council(s). The location of the recreation facilities or alternative arrangements are to be submitted to the Director-General for approval within 2 years of concept plan the approval or before the lodgement of the second stage development application whichever occurs first prior to determination.

A letter from DPE (as nominee of the Planning Secretary) to Winten dated 19 October 2023 has been issued outlining that approval has been granted for alternative arrangements for recreation facilities for the development proposed in the LMCC local government area (DA/2087/2018), noting that these arrangements were still to be considered by the LMCC elected Council at the time of writing this briefing report.

The DPE letter also states that:

*"I approved the location of recreation facilities for development within the Newcastle LGA in a letter to Winten Property Group dated 18 May 2021."*

However, the former DPE approval of 18 May 2021 under FEAR 1.16 was based on a tripartite agreement between CN, LMCC and Winten, which has now been changed by the DPE letter of 19 October 2023. CN has been placed in a position of needing to reconsider the recreation planning outcome for the CN DA alone. The CN DA alone generates a need for two playing fields and three hardcourts. CN's further consideration for recreational facilities has included the most appropriate location for the required three hardcourts. The land that contains two existing playing fields at 96 Woodford Street Minmi, owned by CN and previously identified as land and which could, at significant expense to CN, be made suitable to accommodate all hardcourts under the locations arrangement of 18 May 2021 (six hardcourts in total), is no longer considered to be a viable option given the extensive works that would still be required to now accommodate only three hardcourts. As owner, CN advised the applicant that the land at 96 Woodford Street is no longer available for the purpose of locating the hardcourts. It is noted that while the previous location arrangements of 18 May 2021, identified land as opposed to specific location/design for the hardcourts, it was CN's opinion that positioning to the western end of the existing soccer fields was the only acceptable option at that time and also contingent upon this enabling all the recreation facilities to be accommodated within the Newcastle LGA.

Given the current circumstances, to satisfy FEAR 1.16, alternate land within the development area will need to be identified to accommodate the three CN hardcourts. This process would involve identifying suitable land, approval by the Planning Secretary and amendments to the subject application, including notification.

As FEAR 1.16 is no longer satisfied 'within all stages', CN is of the opinion that consents cannot be lawfully given to either RE2023/0003 (CN DA) or DA/2087/2018/REV (LMCC DA) at this time.

- **Noise and vibration**

Additional information was submitted 15/09/2023 and generally accepted in relation to traffic noise impacts on residential receivers both existing and proposed and also Minmi Public School. Further consideration of how the required attenuation treatments will be implemented for future residential dwellings will need to occur. Could be conditioned.

- **Biodiversity**

CN will likely need to consider further the assessment for the Newcastle Link Road/Woodford Street upgrade if this is reintroduced to the TfNSW upgrade requirements for the CN DA.

- **Land contamination**

Acceptable subject to appropriate CN condition, requiring Site Auditor.

- **Mine subsidence**

Advice received from Subsidence Advisory NSW, dated 25 May 2023. SA NSW have supported the development subject to conditions.

- **Flood planning**

Amendments to lot layout and updated flood report were submitted with the review application. CN engaged an external flood specialist to review. An RFI was issued 30 August 2023 outlining concerns with impacts on adjoining land and risk associated with creek crossings in larger flood events. Additional information was submitted 15/09/2023 and is under assessment.

- **Stormwater management and Water Quality**

CN engaged an external water specialist. An RFI was issued 30 August 2023 which outlined a number of issues to address and clarify. Amended information received 15/09/2023 which is under assessment.

- **Bushfire protection**

Advice received from RFS, dated 24 May 2023, which support the proposal subject to conditions.



## **6. RECOMMENDATION**

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- 1) The Panel receive the briefing report.
- 2) The Panel not determine the subject application RE2023/00003 for review of determination DA2018/01351, until the outstanding matters are resolved. Having regards to the outstanding matters, it is advised that CN will not be in a position to report the subject application to the HCCRPP for determination this year.
- 3) Prior to determination of either the CN DA or LMCC DA:
  - Panel seek its own legal advice as to whether the CN DA and LMCC DA could lawfully be determined separately having regards to FEAR 1.16, noting alternative locations for CN recreation facilities need to be approved in accordance with the requirements of FEAR 1.16.
  - Clarification is received from TfNSW by way of updated advice as to the timing of required State Road upgrades in the event the CN and LMCC DAs progress independently of the other in terms of staging, but still on the basis that they were to be approved concurrently. This is to address, but may not be limited to:
    - Whether the Newcastle Link Road/Woodford Street intersection is required to be upgraded, in addition to the Newcastle Link Road/Lake Road intersection, should the CN DA be progressed independently of the LMCC DA.
    - Whether the Newcastle Link Road/Lake Road intersection is required to be upgraded, in addition to the Newcastle Link Road/Woodford Street intersection, should the LMCC DA be progressed independently of the CN DA.

In addition, if the Panel were to consider determination of the LMCC DA entirely independently of the CN DA then additional close consideration would also need to be given to whether the LMCC development could function entirely independently without the CN development. This should have particular regards to traffic impacts. The current TfNSW advice is based upon the entire development occurring, whereby connecting streets (eg proposed Minmi Boulevard) would enable internal distribution of traffic across the LGA boundary. Additional clarification from TfNSW would likely be required:

- Whether the Newcastle Link Road/Minmi Road intersection can accommodate the full extent of LMCC DA alone noting that:
  - this intersection would be the only access point for the entire LMCC development north of the Newcastle Link Road.
  - current TfNSW advice requires upgrade of the Newcastle Link Road/Woodford Street intersection at approximately 50% development of the LMCC DA, however without the CN DA being approved there would be no internal access achieved to Woodford Street to enable internal traffic distribution through the Woodford Street intersection.
- Whether the Newcastle Link Road/Lake Road intersection is required to be upgraded for the LMCC DA alone.

## **7. ATTACHMENTS**

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- Nil

