

COUNCIL ASSESSMENT REPORT

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	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.
ADDRESS	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 condition of DA2015/10393) 144 & 177 Woodford Street Minmi NSW & 610 Minmi Road Minmi NSW
APPLICANT	Winten (No. 21) Pty Ltd
OWNER	Winten (No. 21) Pty Ltd
DA LODGEMENT DATE	<ul style="list-style-type: none"> DA lodgment date - 3 December 2018 Application for review lodgment 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	\$128,474,907 (excluding GST)
CLAUSE 4.6 REQUESTS	Not Applicable
KEY SEPP/LEP/DCP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • State Environmental Planning Policy (Koala Habitat Protection) 2020 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience & Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Newcastle Local Environmental Plan 2012 • Newcastle Development Control Plan 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>The proposal has been publicly notified in accordance with the City of Newcastle's (CN) Community Participation Plan, and the provisions of <i>Environmental Planning and Assessment Regulations 2000</i> and <i>Environmental Planning and Assessment Regulations 2021</i> (as appropriate) on two separate occasions with a total of 226 submissions received.</p> <p>The two notifications comprised of:</p> <ul style="list-style-type: none"> • The review application received on 6 April 2023 was notified in accordance with CN's Community Participation Plan from 8 May 2023 until 5 June 2023. A total of 95 unique submissions have been received, and two separate proforma submissions (55 individual households and 58 individual households). • On the 7 November 2023 the applicant sought to amend their application to delete the modification of DA2015/10393. A second public notification was undertaken in accordance with the CN's Community Participation Plan from 5 February 2024 until 19 February 2024. A total of 18 unique submissions were received.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Statement of Environmental Effects - ADWJ (Rev J, 23/01/2024) • Appendix A - DPE Correspondence • Appendix B - Plan of Proposed Subdivision - ADWJ (Rev T, 03/03/2023) • Appendix C - Concept Engineering Plans - ADWJ (Rev X, 08/09/2023) • Appendix D - Stormwater Management Report - Martens Consulting Engineers (Rev 8, 29/03/2023) • Appendix E - Landscape Masterplan Report - Moir Landscape Architecture (Rev I, 15/03/2023) • Appendix F - Landscape Plans - Moir Landscape Architecture (Rev I, 15/03/2023) • Appendix G - Bushfire Management Plan - Bushfire Planning Australia (Rev 3, 23/11/2018)

	<p>Bushfire Management Plan Addendum Advice - Bushfire Planning Australia (25/05/2019)</p> <p>Bushfire Letter of Advice - Bushfire Planning Australia (16 March 2023)</p> <p>Subdivision BAL Plan - Bushfire Planning Australia (Rev F, 16/03/2023)</p> <ul style="list-style-type: none"> • Appendix H - Preliminary Geotechnical Assessment - Qualtest (Rev 0, 22/11/2018) • Appendix I - Detailed Contamination Assessment - Qualtest (23/08/2019) <p>Supplementary Contamination Assessment - Qualtest (12/02/2020)</p> <p>Contamination Cover Letter - Qualtest (03/03/2023)</p> <p>Monitoring Report - Qualtest (19/02/2021)</p> <p>RAP Addendum - Qualtest (02/03/2021)</p> <p>RAP Clarification Letter - Qualtest (22/04/2021)</p> <p>Remediation Action Plan - Qualtest (V4, 12/02/2020)</p> <ul style="list-style-type: none"> • Appendix J - Aboriginal Heritage Cultural Management Plan - McCardle Cultural Heritage (17/11/2015) • Appendix K - Clause 34a Certification (18/10/2018) • Appendix L - Conservation Management Plan - ERM (22/08/2017) • Appendix M - Flood Impact Assessment - BMT (Rev 12, 21/07/2022) • Appendix N - Newcastle DCP Checklist - ADWJ (21/09/2020) • Appendix O - Additional Ecological Assessment - MJD Environmental (V2, 22/11/2018) <p>Ecological Assessment Addendum Advice - MJD Environmental (08/05/2019)</p> <ul style="list-style-type: none"> • Appendix P - Heritage Interpretation Strategy - RPA / McCardle Cultural Heritage (22/11/2018) • Appendix Q - Noise Impact Assessment - Muller Acoustic Consultants (11/09/2020) • Appendix R - Hydrogeological Assessment - Martens Consulting Engineers (Rev 3, 06/05/2020) • Appendix S - Traffic Impact Assessment (Local) - Intersect Traffic (Rev L, 11/09/2020) • Appendix T - Concept Approval Response - ADWJ (12/09/2023) • Appendix U - Crime Risk Assessment - ADWJ (27/05/2019) • Appendix V - Dam Safety Committee Correspondence - (28/05/2019) • Appendix W - WSUD Strategy - Martens Consulting Engineers (Rev 5, 24/03/2023) • Appendix X - Satisfactory Arrangements Certificate - (23/04/2019) • Appendix Y - Bushfire Safety Authorities (DA2018/01351 and DA2015/10393) • Appendix Z - Infrastructure Staging Plan and Report - ADWJ (14/09/2023) • Appendix AA - Proposed Conditions - ADWJ (21/03/2023)
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	<ul style="list-style-type: none"> • Appendix AB - Vegetation Habitat Management Plan - MJD Environmental (V7, 20/08/2020) • Appendix AC - Soil & Water Management Plan - ADWJ (Rev F, 11/08/2020) • Appendix AD - Construction Environmental Management Plan - ADWJ (Rev F, 20/08/2020) • Appendix AE - Acid Sulfate Soils Management Plan - Qualtest (Rev 0, 24/09/2019) • Appendix AF - Regional Traffic & Transport Assessment - SCT (25/02/2021) • Appendix AG - DPIE Letter - Fear 1.16 (18/05/2021) • Appendix AH - DPE Letter - Fear 1.16 (19 October 2023) • Appendix AI - Sewer Servicing Strategy Documents - HWC and GCA (November 2016) • Appendix AJ - Water Servicing Strategy Documents - HWC and GCA (December 2016) • Appendix AK - GDE Advice - MJD Environmental (25/11/2020) • Appendix AI - Applicant Response to Reasons for Refusal - Winten Property Group (14/09/2023) • Appendix AM - Review of Statement of Commitments (09/06/2022) • Appendix AN - Embankment Breach Analysis - BMT (29/07/2022) • Appendix AO - Supplementary Flood Report - Martens Consulting Engineers (Rev 1, 03/04/2023) • Appendix AP - Floodplain Management Plan - Martens Consulting Engineers (Rev 6, 03/04/2023) • Appendix AQ - Garden House Park Earthworks Plan - ADWJ (27/02/2023) • Appendix AR - Additional Heritage Information, Duckenfield Rail Line and Workshops - GBA Heritage (Rev B, 27/06/2022) • Appendix AS - SA NSW Correspondence (25/05/2023) • Appendix AT - Supplementary Road Traffic Noise Assessment - Muller Acoustic Consulting (10/03/2023 24/08/2023) • Appendix AU - Microsimulation Advice - SCT Consulting (10/06/2022) • Appendix AV - Preliminary Environmental Assessment - Da/2018/01351: State Road Upgrades ADWJ (11/03/2023) • Appendix AW - Offsite Works Preliminary Ecological Advice - Intersection Upgrades - MJD Environmental (31/05/2022) Preliminary Ecological Assessment – External Road Upgrades – MJD Environmental (30/08/2023) • Appendix AX - State Road Upgrades Concept Designs - ADWJ (Rev C, 30/05/2022) • Appendix AY - Link Road / Woodford Street / Cameron Park Drive Engineering Sketch – ADWJ (Rev B 11/09/2023) • Appendix AZ - Ecological Report (MJD Environmental, 13/09/2023)
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	<ul style="list-style-type: none"> • Appendix BA - Duckenfield Pathway Plan - ADWJ (27/04/2022) • Appendix BB - Sloping Lot Plan - ADWJ (Rev D 15/03/2023) • Appendix BC - EPBC Referral Decision (23/12/2008) • Appendix BD - Withdrawn - Da/2015/10393 Modification Documentation Not Used • Appendix BE - Proposed Residential Subdivision, Woodford Street, Minmi and Cameron Park (Douglas Partners, 02/12/2023) • Appendix BF - Report on Mine Subsidence Assessment, Proposed Residential Subdivisions, Woodford Street, Minmi and Cameron Park (Douglas Partners, December 2022) • Appendix BG - Mine Subsidence Assessment for the Proposed Minmi Subdivision, Link Road, Minmi (Ditton Geotechnical Services, September 2022) • Appendix BH - Supplementary Response – Flood Related Issues (Martens, 13/09/2023) • Appendix BI - Offsite Works Acoustic Assessment (Muller Acoustic Consulting, 11/09/2023) • Appendix BJ- Design Certification (Adwj 14/09/2023) • Appendix BK - Senior Counsel Advice: Off Site Works (Jason Lazarus SC, 10/07/2023 and 24/08/2023) <p>Additional reports and information have also been considered as discussed throughout this report.</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Yes – Refer Satisfactory Arrangements Certificate dated 23 April 2019 (Ref. IRF19/966)
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	25 March 2024
PREPARED BY	Steven Masia Engineering Assessment Section Manager
DATE OF REPORT	18 March 2024

EXECUTIVE SUMMARY

Background

DA2018/01351 was originally lodged with CN on 3 December 2018 seeking consent for a *'Demolition of dwelling, 5 into 962 lot subdivision including roads, open space, stormwater, utilities and bulk earthworks'*.

On 18 January 2019, the Applicant filed a Class 1 Appeal in the NSW Land and Environment Court (LEC) against CN's deemed refusal of the application. This Appeal continued through multiple days of s34 conciliation conferencing, multiple adjournments and two formal amendments before the s34 conciliation was terminated on 1 September 2020 and hearing dates set for May 2021. Immediately before the hearing was scheduled to commence, the Appeal was discontinued by the Applicant. The application was subsequently returned to CN for assessment and determination by the Hunter and Central Coast Regional Planning Panel (HCCRPP).

On 21 July 2021, the Applicant lodged an amended DA with CN pursuant Cl. 55 of the *EP&A Regulation 2000* (now Cl. 37 of the *EP&A Regulation 2021*) and sought to include considerations of the modification of DA2015/10393 be brought into DA2018/01351.

DA2018/01351 was refused by the HCCRPP on 13 December 2022. Winten (No. 21) Pty Ltd (**the Applicant**) subsequently lodged an application for the review of determination (refusal) of DA2018/01351 with the City of Newcastle (**CN**).

The development is *regionally significant development* pursuant to Section 2.19(1) of SEPP (Planning Systems) 2021 as it satisfies the criteria in *Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30 Million*. Accordingly, the NSW Government Hunter and Central Coast Regional Planning Panel is the consent authority for the application.

The development is on land to which a Concept Plan approval (MP10_0090), issued by the NSW Government Planning Assessment Commission (6 August 2013) under Part 3A (repealed) of the EP&A Act, is in force and enacted. The Concept Plan envisages:

- *'A five stage development with up to 3,300 dwellings across the 520 hectare development site at Minmi, Newcastle Link Road.*
- *Urban design guidelines subject to further modifications.*
- *Supporting commercial / retail development of up to a total of 8,000 sqm within the village centre and high street centre.*
- *Dedication of approximately 1,561 hectares of conservation lands to the NSW Government.*
- *Indicative staging.*
- *Associated infrastructure.*
- *Torrens title subdivision to enable dedication of the conservation lands by the creation of two separate lots, one for the conservation lands and the other being for the development.*

Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* confirms that the approved Concept Plan is considered to be a Transitional Part 3A project and, therefore, the terms of the 2013 approved Concept Plan approval issued by the NSW Government Planning and Assessment Commission on 6 August 2013 (as modified by MOD1 on 21 December 2016) continue to apply to both developments.

In accordance with FEAR 1.13 of the NSW Government's Concept Plan approval, updated urban design guidelines (the Minmi Precinct Design Guidelines) (MPDG) have been prepared by the applicant and approved by the Planning Secretary. The MPDG is intended to assist, in conjunction with CN's Development Control Plan to guide future development on the site the subject of DA2018/01351 which is the application subject to this review. DA2018/01351 is considered to be generally consistent with the MPDG except for the integration of isolated properties, not owned by the applicant, that are scattered across the development site. This is addressed later in the report. The MPDG has recently been adopted by CN as Section E10 'Minmi extension, Village Centre and Link Road north precinct' in CN's Development Control Plan 2023.

DA2015/10393 was approved by the Land and Environment Court on 19 December 2017. It is known as Minmi East Precinct 1B and is described as 'Subdivision of Lot 2 in DP 1230960 and Lot 3 in DP1230960 into 295 lots, 7 super lots, 4 drainage reserves, 2 public reserves and 3 residual lots, plus associated roads, infrastructure, bulk earthworks, open space and signage', is also owned by Winten (No. 21) Pty Ltd.

Precinct 1B, which is currently under construction, is covered by the Minmi East Urban Design Guidelines (MEUDG), which was approved by the NSW Government Planning Secretary. Precinct 1A, also covered by the MEUDG, has been completed.

Precinct 2 is approved in Lake Macquarie City Council LGA, however construction has not yet commenced.

It is important to note that the NSW Government's HCCRPP was also the consent authority for DA/2087/2018 in the Lake Macquarie City Council (LMCC) LGA which was approved on 22 December 2023 for consent for subdivision resulting in approximately 1,079 new residential allotments on land between the location of DA2018/01351 and the Newcastle Link Road.

DA2018/01351 is consistent with the provisions of the *Greater Newcastle Metropolitan Plan 2036* and aligns with the vision and goals of the *Hunter Regional Plan 2041*. The land is also identified as an Urban Release Area under the Newcastle Local Environmental Plan 2012 (NLEP2012).

There have been no planning agreements entered into and there are no draft planning agreements being proposed involving CN and directly relating to DA2018/01351.

Two planning agreements have previously been entered into with the NSW Government in relation to dedication of biodiversity conservation offsets land and State Infrastructure Contributions. Neither of these planning agreements involve CN. A summary of the Voluntary Planning Agreements (VPA) is provided below.

- Environmental Offsets

A VPA was entered into between the land owner (Minmi Land Pty Ltd and Coal & Allied Operations Pty Ltd) and the NSW Government on 3 October 2012 as part of the Concept Plan application.

The VPA secured the environmental conservation land contribution of approximately 1,561 hectares of land and associated remediation and reserve establishment works, for the purposes of offsetting the ecological impacts associated with the Minmi Link Road development.

The environmental offset lands were transferred to the NSW Government on 28 October 2016.

- State Infrastructure Contributions (SIC)

A second VPA was entered into between Winten (No 21) Pty Ltd, Minmi Land Pty Ltd and the Minister for Planning on 26 September 2018 for the provision of contributions for designated State infrastructure.

The development contributions secured by the VPA equate to the draft SIC rate (at the time) of \$81,994 per hectare of net developable area. In short, the VPA comprised the following:

- The payment of a monetary contribution to the Minister
- Dedication of education lands
- Dedication of regional open space

Another offer to enter into a planning agreement has been made by the applicant to Lake Macquarie City Council (LMCC) in regard to provision of recreation facilities in relation to the satisfaction of FEAR 1.16 of the Concept Plan approval but has yet to be formalised, exhibited or executed by LMCC. CN expressed significant concern to the Department, LMCC and the applicant, that CN was not consulted or involved in these discussions when the location of the recreation facilities would have such a profound impact on the future residents, given it is unlikely that residents will use facilities to the south of Newcastle Link Rd. In effect, it means that community infrastructure funded by Newcastle ratepayers will be relied upon by residents living in the neighbouring Lake Macquarie LGA.

A Biodiversity Conservation order was issued by NSW Government Minister for Planning on 18 October 2018 pursuant Cl. 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* which certifies that:

- The proposed development is part of a concept approval for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017; and
- That conservation measures to offset residual impacts on the proposed development on biodiversity values after measures required to be taken to avoid and minimise those impacts (being the approximately 1,561 hectares of land and associated remediation and reserve establishment works mentioned above) have been secured into the future.

It is also noted in the report there are several references to the NSW Government Planning Agency, with the current name being the Department of Planning, Housing and Infrastructure. The Department has had several name changes throughout the course of the history of the proposed subdivision, such as Department of Planning Infrastructure and Environment and Department Planning and Environment and all references need to be considered as interchangeable.

Review application

The application for review of determination was lodged on 6 April 2023. A chronology of assessment of the review application is contained below.

The review application is for:

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 on 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 conditioning of DA2015/10393) - 144 & 177 Woodford Street Minmi & 610 Minmi Road Minmi.

It is noted that the proposal has been amended as part of the review application to address the reasons for the refusal. This has resulted in different lot numbers to the original application and these changes are possible under the legislation and have resulted in an amended development description, from that which was refused on 13 December 2022.

The main planning instruments, approvals and guidelines that are relevant to the proposal include:

- Concept Plan (MP_0090) approval dated 16 August 2013
- Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*
- *Schedule 6 'Savings, transitional and other provisions' of Environmental Planning and Assessment Regulation 2021* confirms that *Environmental Planning and Assessment Regulation 2000* (2000 Regulation) as in force immediately before its repeal on 1 March 2022
- State Environmental Planning Policy (Biodiversity & Conservation) 2021
- State Environmental Planning Policy (Koala Habitat Protection) 2020
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience & Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020
- Newcastle Local Environmental Plan 2012
- Minmi Precinct Design Guidelines
- Newcastle Development Control Plan 2012
- Newcastle Development Control Plan 2023

A number of pre-conditions/jurisdictional prerequisites are required to be satisfied prior to the granting of consent. These are listed in the following table:

Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017	<p>Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act'</p> <ul style="list-style-type: none"> • Cl. 3B)(2)(d) – a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is 'generally consistent' with the terms of the approval of the Concept Plan.
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> • Section 4.6 - A Remediation Action Plan has been prepared for the development site.
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission • Section 2.119(2) requires that development on land that has frontage to a classified road must where practicable and safe access the land by a road other than the classified road, and ensure the safety, efficiency and ongoing operation of the classified road. • Section 2.122(4) - Development that is of a specified size or capacity and/or that has direct vehicular or pedestrian access to a classified road.
Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> • Clause 2.3 – Zone Objectives and Land Use Table • Clause 2.6 - Subdivision consent requirements • Clause 4.1 – Minimum subdivision lot size • Clause 4.1AA - Minimum subdivision lot size for community title schemes • Clause 4.1B - Minimum subdivision lot sizes for certain split zones • Clause 4.6 - Exceptions to development standards • Clause 5.1/5.1A – Land acquisition • Clause 5.3 - Development near zone boundaries • Clause 5.10 – Consideration of Aboriginal and non-aboriginal heritage • Clause 5.21 – Consideration of flood impacts • Clause 6.1 – Consideration of Acid Sulfate Soils • Clause 6.2 – Consideration of earthworks • Clause 8.1 – Arrangements for State public infrastructure • Clause 8.2 – Public utility infrastructure • Clause 8.3 – Development Control Plan (Urban Release Area)

The proposal is located within the following land use zones pursuant to Clause 2.3 of the Newcastle Local Environmental Plan 2012 (NLEP2012). The proposed development is characterised and defined as '*Subdivision*' and is permissible with consent.

- R2 Low Density Residential
- R3 Medium Density Residential
- E1 Local Centre
- C1 National Parks and Nature Reserves (previously E1)
- C2 Environmental Conservation (previously E2)
- C4 Environmental Living (previously E4)
- SP2 Infrastructure

The application was referred to Ausgrid and TfNSW in accordance with Sections 2.48 and 2.121 of SEPP (Transport and Infrastructure) 2021. Both agencies have advised they are satisfied with the proposal, with TfNSW in their final advice of 5 December 2023 outlining their support for the proposal on transport considerations and recommending a broad suite of upgrades to the regional road network to support the development as conditions of consent.

The 'key issues' arising from CN's assessment of the proposal are detailed in Section 5 of this report under following headings:

- 6.1 Traffic
- 6.2 Noise and Vibration
- 6.3 Biodiversity
- 6.4 Land contamination
- 6.5 Mine subsidence
- 6.6 Earthworks
- 6.7 Flood planning
- 6.8 Stormwater Management and Water Quality
- 6.9 Bushfire
- 6.10 European Heritage
- 6.11 Infrastructure Staging Plan
- 6.12 Recreation

The proposal has been publicly notified in accordance with the CN's Community Participation Plan, and the provisions of *Environmental Planning and Assessment Regulations 2000* and *Environmental Planning and Assessment Regulations 2021* (as appropriate) on two separate occasions.

On each occasion the notification included the following:

- Notification letters were sent to all adjoining and adjacent properties including all properties within the existing Minmi Village and those properties surrounding Precinct 1B.
- Lake Macquarie City Council, National Parks and Wildlife Service, Hunter Water Corporation, School Infrastructure NSW.

- Notification on CN's website.

The review application received on 6 April 2023 was notified in accordance with CN's Community Participation Plan from 8 May 2023 until 5 June 2023. A total of 95 unique submissions were received, and two separate proforma submissions (55 individual households and 58 individual households).

On the 7 November 2023 the applicant sought to amend their application to delete the modification of DA2015/10393. A second public notification was undertaken in accordance with CN's Community Participation Plan from 5 February 2024 until 19 February 2024. A total of 18 unique submissions were received.

It is acknowledged that significant community concern has been raised in relation to the development. It is apparent that residents have a strong connection with the existing Minmi village, with the majority of submissions citing the existing heritage, bushland and semi-rural outlooks as features that would be detrimentally impacted by the proposed development. CN largely agrees with these concerns. However, the development is on land to which a Concept Plan approval (MP10_0090), issued by the NSW Government Planning Assessment Commission on 6 August 2013 under Part 3A (repealed) of the EP&A Act, is in force and enacted. As outlined above the Concept Plan envisages up to 3,300 dwellings across the broader 520 hectare development site at Minmi, Newcastle Link Road. This approved concept development from 2013 represents a development outcome that would result in substantial change to the existing character of Minmi. It is unfortunately considered that for the purposes of assessment of the subject application that the HCCRPP need to consider whether the proposed development is generally consistent with the terms of the Concept Approval as opposed to revisiting the merits of the Concept Approval itself.

The Concept Approval was approved by the NSW Government more than ten years ago and assessment of large subdivisions in the current planning framework has significantly changed for the better. More rigour is provided to impacts on native flora and fauna and riparian corridors. In addition, densities and housing typologies within new greenfield estates have been increased and encouraged to minimise urban sprawl with greater thought being made to future infrastructure needs, transport connections and sustainability. Given the concept approval has already been approved by the NSW Government, CN is unable to enforce contemporary planning principles as the parameters for the future development of this land with their approval of the Concept Approval. It is CN's strong hope that as the development progresses the applicant will consider more contemporary planning principles to reduce urban sprawl and reduce footprints, noting that this would also require an amendment to the concept approval.

The applicant has recently confirmed two locations available to meet the recreational demands of the CN DA, being Location 2 and 3 as per the 'request for Locations Agreement' (issue G) dated 17 September 2020. As the applicant is now making available both locations to CN, CN is satisfied the FEAR 1.16 is met. Condition of consent has been recommended in relation to the two areas.

The applicant has agreed for CN to utilise the provision of s4.17(1) of the EP&A Act, to have conditions of consent imposed in association with DA2018/01351 that would modify the terms of the existing approval for DA2015/10393 (Minmi East Precinct 1B) to dedicate residual land

being Lot 601 as public reserve to satisfy CN in relation to FEAR 1.16 of the Concept Approval providing land for future recreation facilities.

The application for review of determination has been assessed having regard to the relevant matters for consideration under the provisions of Division 8.2(1) Reviews – Section 8.2 and 8.3 of EP&A Act 1979. In addition the development application has been considered with regard to the relevant matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979* and associated *Regulations, Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* and the provisions of the relevant *State Environmental Planning Policies*.

It is considered that the application has now addressed the relevant Further Environmental Assessment Requirements (FEARS) within Schedule 2 of the Concept Plan approval (MP10_0090), as discussed within this report and a compliance summary at **Attachment D**.

The application has adequately addressed the previous reasons for refusal of 13 December 2022, as summarised below and in greater detail under **Attachment E**:

Reason for Refusal	Comment
<i>1. The development is not generally consistent with the terms of the approval of the concept plan (MP10_0090) dated 6 August 2013. [Clause 3B(2)(d) in Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017].</i>	Satisfactory The proposal is now considered to be generally consistent with the terms of the Concept Plan as detailed throughout the report.
<i>2. The development does not satisfy the requirements of FEAR 1.31.</i>	Satisfactory TfNSW have supported the proposal subject to a range of road upgrades. Refer to Section 6.1 of the report.
<i>3. The development fails to demonstrate that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land or the nature, volume or frequency of vehicles using the classified road to gain access to the land. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].</i>	Satisfactory Refer to Section 6.1 of report. TfNSW now support the proposal subject to condition road network upgrades.
<i>4. The development is contrary to the public interest as it has not been demonstrated that there will be no impacts on traffic safety, efficiency or ongoing operation of the classified or wider regional road network or that any impacts can be appropriately</i>	Satisfactory Refer to Section 6.1 of report. TfNSW have now supported the proposal subject to a recommended range of road upgrades.

<i>mitigated to the satisfaction of Transport for NSW. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].</i>	
<i>5. The application does not include sufficient information to demonstrate the impact on the natural or built environment resulting from works associated with any road upgrades to mitigate the impacts of the development on traffic safety, efficiency or ongoing operation of the classified or wider regional road network. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].</i>	<p>Satisfactory</p> <p>Refer to Section 6.3 of report.</p> <p>It is considered that there is a reasonable degree of certainty of required road upgrades when having regards to the advice of TfNSW of 5 December 2023, noting that further detailed modelling may be required at the time.</p> <p>The applicant has provided additional information to reasonably assess likely impacts in relation to road noise and biodiversity. This information has been reviewed and it is considered that the off-site works would be unlikely to result in unreasonable impacts, noting that more detailed environmental assessment would need to occur at the time the upgrades were proposed.</p> <p>TfNSW have supported the proposal.</p>
<i>6. The application does not contain sufficient information to consider the provisions of Clause 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021.</i>	<p>Satisfactory</p> <p>Refer to Section 6.1 of the report. The final advice from TfNSW dated 5 December 2023, provides specific required road upgrades and support for the proposal. Appropriate triggers have been included to provide certainty that upgrades would be in place to support the development at that stage.</p>
<i>7. The application does not include a sufficient basis for considering whether public interests in the allocation and timing of costs of future regional network upgrades are addressed in relation to this development.</i>	<p>Satisfactory</p> <p>Refer to Section 6.1 of the report. The final advice from TfNSW dated 5 December 2023, provides specific required road upgrades and support for the proposal. Appropriate triggers have been included to provide certainty that upgrades would be in place to support the development at that stage.</p>
<i>8. The development fails to comply with the requirements of Clause 5.21 'Flood Planning' of the Newcastle Local Environmental Plan 2012. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].</i>	<p>Satisfactory</p> <p>Refer Section 6.7 of the report for detailed discussion and also Section 4.4 Environmental Planning Instruments under LEP controls table. Additional information was provided and flood risk has been</p>

	adequately assessed and now considered acceptable.
9. <i>The development is not in the public interest having regard to the modelled future flood impacts and resulting overtopping of proposed public roads in Stages 37, 39 and 40 and the associated risks to the public during flood events. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].</i>	Satisfactory Refer to Section 6.7 of the report. Risk posed by road overtopping is considered acceptable due to very rare occurrence and impacts on other land acceptable.
10. <i>The application has not provided sufficient information to determine that the risk of mine subsidence can be eliminated or mitigated to the requirements of Subsidence Advisory NSW and the impact on the natural and built environment of any works required to meet the requirements of Subsidence Advisory NSW have not been adequately demonstrated. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].</i>	Satisfactory, subject to conditions. Refer to Section 6.5 of the report. SANSW support the proposal subject to conditions.
11. <i>The application has not provided sufficient information to demonstrate that there will be no significant adverse impacts on sensitive noise receivers in regard to road traffic noise or sufficient details provided on how any proposed mitigation measures are to be implemented. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].</i>	Satisfactory, subject to conditions requiring restriction on future lots to alert owners of acoustic requirements. Refer to Section 6.2 of the report.
12. <i>The development is not in the public interest having regard to the proposed twin pipe stormwater drainage diversion of the western watercourse coming from under the M1 Motorway in the vicinity of Stage 37 due to the loss of continuous riparian corridor and the unreasonable financial burden placed on City of Newcastle associated with maintenance of the proposed twin pipe stormwater drainage diversion. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].</i>	Satisfactory Refer to Section 6.8 of report. The pipe diversion has been removed from the proposal in favour of a naturalised open channel.
13. <i>The application does not contain sufficient information for an assessment of the biodiversity impacts of the proposed development required under saved provisions of the Environmental Planning and Assessment Act 1979 as provided by the</i>	Satisfactory Refer to Section 6.3 of the report and Section 4.4 Environmental Planning Instruments. Uplisted species since approval of Concept Plan have been appropriately considered. This has included Scrub Turpentine and also

<i>Biodiversity Conservation (Savings and Transitional) Regulation 2017.</i>	resurvey of Koala which has confirmed the site has not become core Koala Habitat since Concept Plan approval.
<i>14. The presentation and height of proposed retaining walls at public interfaces has not been adequately documented.</i>	<p>Satisfactory. Sufficient justification has been provided for proposed earthworks and adequate details of how this would be constructed. Interface with the LMCC DA could be adequately resolved through construction timing noting the LMCC DA is now approved.</p> <p>The proposal is generally consistent with the Concept Approval.</p> <p>Refer Section 6.6 of report.</p>
<i>15. There is insufficient information to understand the extent of earthworks and retaining walls on steeply sloping site and satisfy FEAR 1.14.</i>	<p>Satisfactory. Sufficient justification has been provided for proposed earthworks and adequate details of how this would be constructed. Interface with the LMCC DA could be adequately resolved through construction timing noting the LMCC DA is now approved.</p> <p>The proposal is generally consistent with the Concept Approval.</p> <p>Refer Section 6.6 of report.</p>

CN is now satisfied that the proposed development is 'generally consistent' with the approved Concept Plan.

CN is satisfied that the likely impacts on the natural and built environments are known and or can be appropriately mitigated, including off-site works.

Having regards to the above the proposal is generally consistent with the Concept Plan approved by the NSW Government.

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) and Section 8.2(1) of the *EP&A Act*, subject to the recommended conditions contained at **Attachment A** and should be approved.

1. RECOMMENDATION

CN recommends that the Hunter and Central Coast Regional Planning Panel review the determination of DA2018/01351 dated 13 December 2022 and change the original determination to approval, with approval being granted for:

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,

pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the recommended conditions attached to this report at **Attachment A**.

2. THE SITE AND LOCALITY

2.1 The Site

The subject development site for DA2018/01351 comprises the following land owned by Winten (No. 21) Pty Ltd. (See **Figure 1**)

- Lot 100 DP1252590 – 144 Woodford St, Minmi
- Lot 5 DP 1230960 – 144 Woodford St, Minmi
- Lot 48 DP 115128 – 144 Woodford St, Minmi
- Part Lot 1 DP1156243 – 144 Woodford St, Minmi
- Lot 4 DP1253716 – 177 Woodford St, Minmi
- Part Lot 3 DP1230960 – 610 Minmi Rd, Minmi



FIGURE 1 – The subject site for DA2018/01351 is shown in yellow (Source – CN Mapping)

Part of Lot 100 DP1252590 is located outside of the western boundary of the Local Government Area (LGA) boundary between City of Newcastle and Lake Macquarie City Council. It is understood that this part of the site has now also been included in DA/2087/2018 by LMCC.

Lot 1 DP1156243, shown within the site and also extending as two small ribbons of land into the LMCC LGA, is as a result of the former closure of unformed Crown road reserves in 2010 and is now owned by Winten (No. 21) Pty Ltd. The relevant parts of this lot are included in the respective DAs being considered by CN and LMCC.

The current Lot 101 DP1252590, originally formed part of DA2018/01351 but has subsequently been excised from the site. It is intended to be transferred to the NSW Government as a 'School Expansion Lot' associated with Minmi Public School in accordance with a Planning Agreement previously executed with the NSW Government on 26 September 2018.

The resulting total area of the subject land under DA2018/0135 is approximately 172 hectares.

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 CN owned RE1 Public Recreation zoned land. Minmi township also contains a small public school.

The M1 Motorway is located to the west of the site. To the north (Stockrington Conservation Land) and east (Blue Gum Hills Regional Park (BGHRP)) is land owned and managed by the National Parks and Wildlife Service.

Land generally to the south of the development site is located within the LMCC LGA. This land is also under the same Concept Plan approval as the subject application. A concurrent subdivision application by 'Winten' was assessed by LMCC (DA/2087/2018) and approved by the HCCRPP on 20 December 2023.

One existing dwelling and associated outbuildings exist on the site (Lot 5 DP1230960 – 144 Woodford Street, Minmi) and both are proposed to be demolished.

The site comprises highly variable terrain, ranging from gentle slopes to steep topography. In the cleared areas, the site terrain is reflective of land that has 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 Wetland. The main channel is Minmi Creek, which flows in a northerly direction to the west of the existing Minmi township. Back Creek, a major tributary of Minmi Creek, rises on the Link Road North Precinct and flows in a generally northly direction on the eastern side of the township, before entering Minmi Creek just prior to its discharge to the Hexham Wetland.

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 with the flooding of Minmi Creek and Back Creek) and from backwater 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, agistment 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 (EECs), mine subsidence, geotechnical stability, acid sulphate soils, land contamination, bushfire threat, flooding, ground water, dispersible soils and Aboriginal and European heritage.

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. While these lots are not in Winten (No 21) Pty Ltd ownership, and therefore do not formally form part of the DA, consideration has been given to this land through the subdivision design.

These lots are detailed in the table below, with a brief summary of their land use:

Lot / DP	Land Use
Lot 200 DP 785009	Water pump station (Hunter Water owned)
Lot 38 DP 115128	Dwelling
Lot 39 DP 115128	Dwelling
Lot 40 DP 115128	Dwelling
Lot 41 DP 115128	Dwelling
Lot 42 DP 115128	Dwelling
Lot 43 DP 115128	Dwelling
Lot 45 DP 115128	Dwelling
Lot 46 DP 115128	Dwelling
Lot 47 DP 115128	Dwelling
Lot 49 DP 115128	Dwelling
Lot 101 DP 1032684	Dwelling
Lot 1 DP 730659	Former Court House
Lot 25 DP 115128	Dwelling
Lot 26 DP 115128	Dwelling
Lot 34 DP 115128	Dwelling
Lot 3 DP 1253716	Dwelling
Lot 21 DP 793953	Dwelling
Lot 147 DP 840897	Vacant land (HWC owned)

The approved development under DA2015/10393, described as ‘Subdivision of Lot 2 in DP 1230960 and Lot 3 in DP1230960 into 295 lots, 7 super lots, 4 drainage reserves, 2 public reserves and 3 residual lots, plus associated roads, infrastructure, bulk earthworks, open space and signage’, also owned by Winten (No. 21) Pty Ltd. Is located to the east (See **Figure 2**), comprising land:

- Lot 2 DP1230960 – 605 Minmi Rd, Minmi
- Lot 3 DP1230960 – 610 Minmi Rd, Minmi

Construction of Precinct 1B-1 (DA2015/10393) of the approved development has commenced and is ongoing.

Stage 1A (DA2015/10360), partially visible in the lower right hand corner of **Figure 2**, has been completed.



FIGURE 2 – This shows the land subject to DA2015/10393 - Precinct 1B (Source – CN Mapping)

Figure 3 below shows the locality of the area.

- **Cyan** – current proposed development – review of determination.
- **Pink** – Precinct 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)

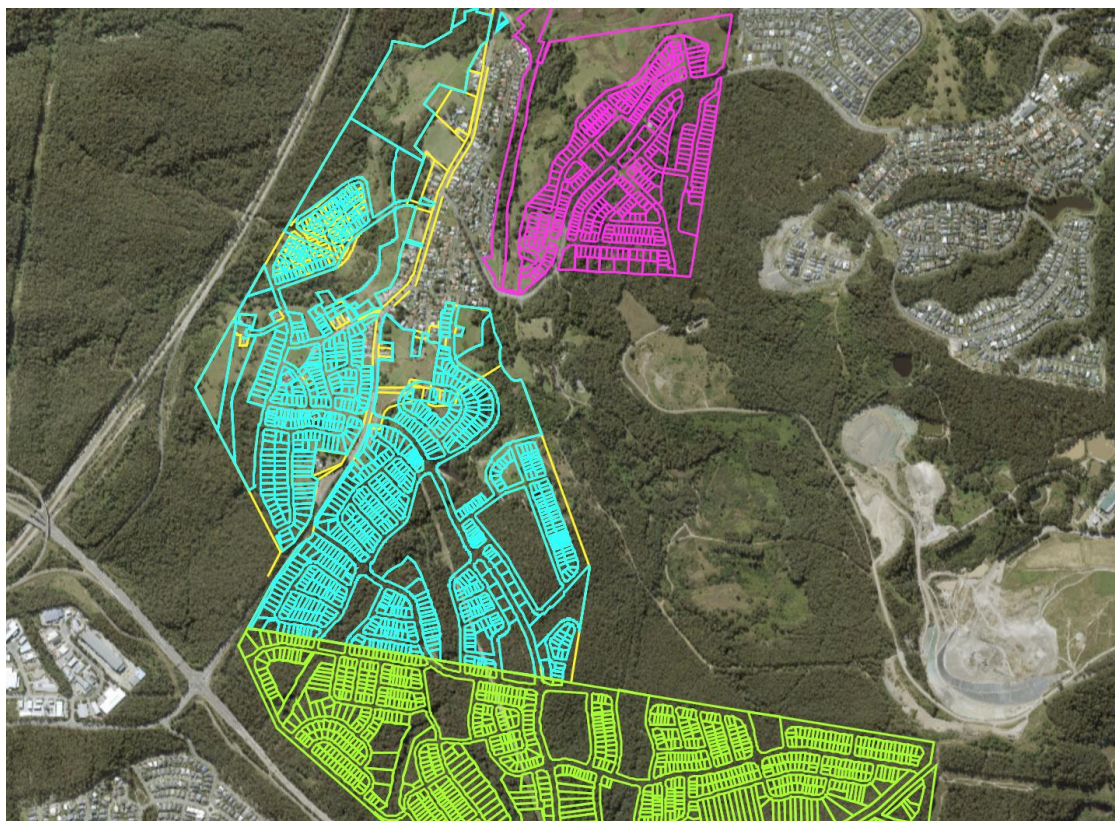


FIGURE 3 – DA2018/01351, DA2015/10393 and DA/2087/2018 - (Source – CN Mapping)

3. THE PROPOSAL AND BACKGROUND

3.1 The Proposal

Winten (No. 21) Pty Ltd (**the Applicant**) has lodged an application for the review of determination (refusal) of DA2018/01351 with the City of Newcastle (**CN**). The application the subject of the review application is for:

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.

Figure 4 below shows the overall staging plan for DA2018/01351 subject of this review application (refer to **Attachment B** for a complete set of the Proposed Subdivision Plans). It is noted that the Applicant does not propose to undertake the development in any specific stage sequence and this is discussed below in the report.

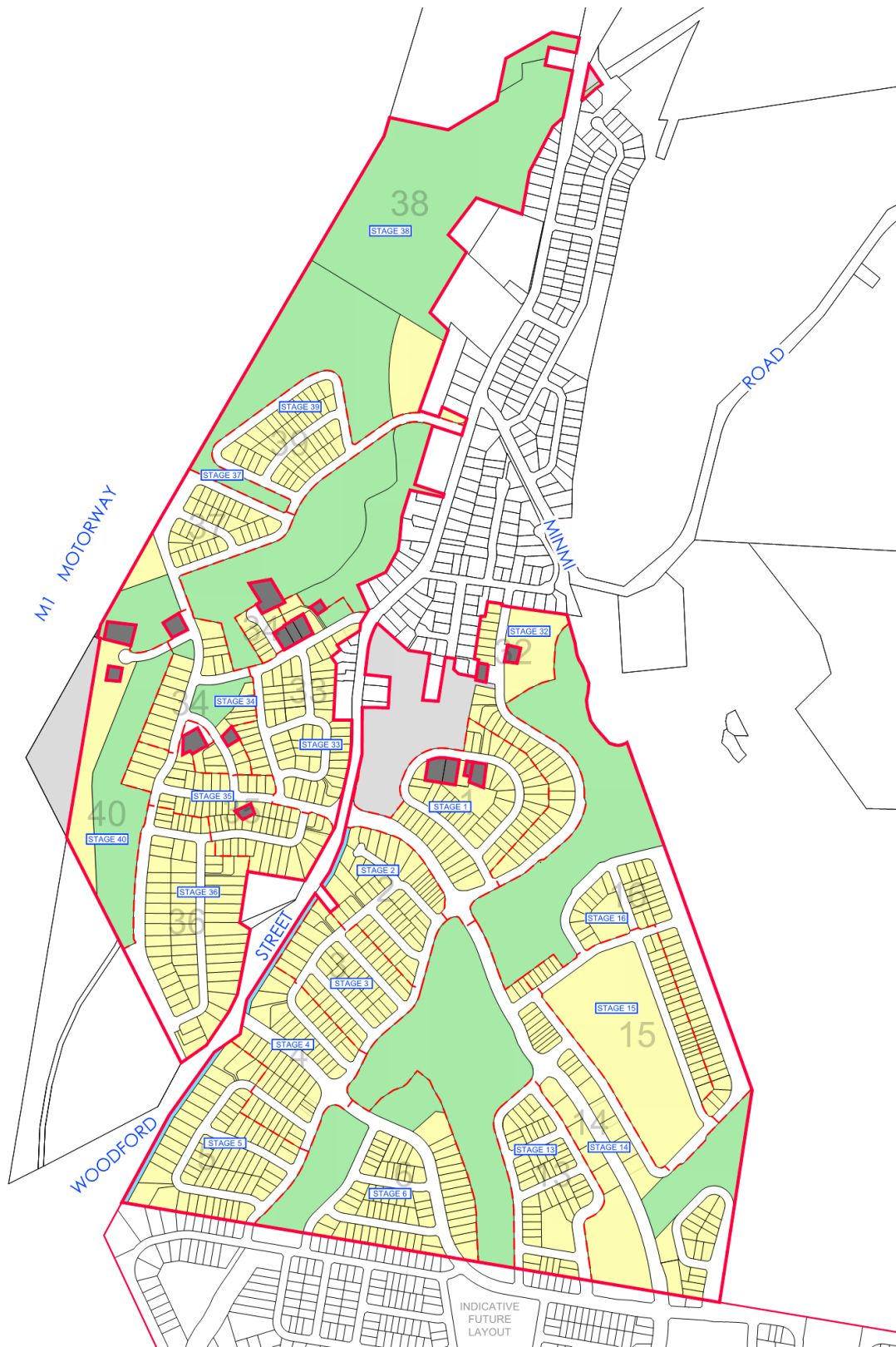


FIGURE 4 – Staging Plan (Source – Proposed Subdivision Plan)

The proposal includes the following mix of residential lot typology as specified in the Minmi Precinct Design Guidelines (MPDG) approved by the Planning Secretary at the Department of Planning on 16 November 2018 in response to FEAR 1.13 of the Concept Plan approval:

- 28 Terrace / Townhouse Lots

- 143 Small Courtyard Lots
- 19 Large Courtyard Lots
- 559 Traditional Lots
- 109 Lifestyle Lots

(Total 858 lots)

In addition, the following lots are also proposed:

- 7 development lots for future residential development
- 14 Local Centre Lots
- 1 Neighbourhood Centre Lot
- 3 Residue Lots
- 21 lots for road widening, public reserves, and drainage reserves (proposed to be dedicated to Council).

The applicant has provided an updated cost estimate for the project of \$128,474,907 (excluding GST).

3.2 Background

The subject site has a Concept Plan (10_0090) approved under Part 3A (repealed) of the *EP&A Act 1979* by the NSW Government's Planning Assessment Commission (PAC) on 6 August 2013. On 21 December 2016, the PAC approved a modification (MOD1) to the Concept Plan. CN have repeatedly raised concerns over the approved Concept Plan and the various amendments, to the Department over many years. These concerns include (but are not limited to) traffic impacts and required road upgrades, recreation facilities, vegetation loss, impacts on the Summerhill Waste Management Facility and the proposed design guidelines. A copy of the Notice of Modification and the original Concept Plan approval are at **Attachment C**.

A Project Approval was also granted by the Planning Assessment Commission under the same instrument (06/08/2013), but only for the subdivision of land to affect the subdivision and dedication of conservation land to the NSW Government. The approved project has been completed with registration of the plan of subdivision creating the conservation land occurring in February 2014, thereby enacting the Concept Plan approval.

DA2018/01351 was originally lodged with CN on 3 December 2018 seeking consent for a '*Demolition of dwelling, 5 into 962 lot subdivision including roads, open space, stormwater, utilities and bulk earthworks*'. The application was referred to the HCCRPP on 10 January 2019 and the first briefing meeting was held on 21 August 2019.

On 18 January 2019, the Applicant filed as Class 1 Appeal in the NSW Land and Environment Court (LEC) against CN's deemed refusal of the application. This Appeal continued through multiple days of s34 conciliation conferencing, multiple adjournments and two formal amendments before the s34 conciliation was terminated on 1 September 2020 and hearing dates set for May 2021. Immediately before the hearing was scheduled to commence, the Appeal was discontinued by the Applicant. The application was subsequently returned to CN for assessment and determination by the HCCRPP.

On 21 July 2021, the Applicant lodged an amended DA with CN pursuant Cl. 55 of the *EP&A Regulation 2000* (now Cl. 37 of the *EP&A Regulation 2021*).

On 13 Dec 2022, development consent was refused to DA2018/01351 by the HCCRPP 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.

The application was refused as it was inconsistent with the terms of the Concept Plan and the potential impact the development may have on the regional road network and planning considerations. The proposal did not provide sufficient information to determine the impacts on the natural or built environment, traffic, flooding, mine subsidence, stormwater, biodiversity and earthworks.

An Application for Review of Determination was submitted to CN on 6 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.

There has been a decrease in residential lots in stages 37 and 39 from the refused application. This has occurred in response to CN's concerns over flooding and stormwater which has resulted in amended lot layouts in these stages.

On 7 November 2023 the applicant requested that the review 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.

A chronology of the current review of determination application since lodgement is outlined in **Table 1**.

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 and site inspection
13 June 2023	Applicant filed a Class 1 Appeal in the NSW Land and Environment Court (LEC) against the refusal of DA2018/01351 by the Hunter & Central Coast Regional Planning Panel (Note: Sec 34 conference currently scheduled for commencement 18 April 2024).
25 July 2023	HCCRPP 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	HCCRPP Panel Briefing
7 Nov 2023	Applicant submitted amendment to application to remove modification to DA2015/10393 (Precinct 1B)
22 Nov 2023	CN issued additional request for further information
24 Nov 2023	Applicant submitted response to RFI
28 Nov 2023	HCCRPP Panel Briefing
5 Dec 2023	CN issued additional request for further information
9 Jan 2024	Applicant submitted response to RFI
19 Jan 2024	CN issued additional request for further information
23 Jan 2024	Applicant submitted response to RFI - updated documentation included amended SEE in relation to withdrawal of modification to DA2015/10393 (Precinct 1B)
05 Feb 2024	Exhibition of the amended application

3.3 Site History

In 2007 the site was the subject of a regional forum and design workshop (i.e. '*charette*'), commissioned by the then owner, Coal and Allied, which ultimately resulted in an application for a Concept Plan approval being lodged with the Department of Planning in 2010 under Part 3A (repealed) of the *EP&A Act 1979*.

On 6 August 2013, the NSW Planning Assessment Commission granted consent to the Concept Plan (MP10_00090) for:

- *'A five stage development with up to 3,300 dwellings across the 520 hectare development site at Minmi, Newcastle Link Road.*
- *Urban design guidelines subject to further modifications.*
- *Supporting commercial / retail development of up to a total of 8,000 sqm within the village centre and high street centre.*
- *Dedication of approximately 1,561 hectares of conservation lands to the NSW Government.*
- *Indicative staging.*
- *Associated infrastructure.*
- *Torrens title subdivision to enable dedication of the conservation lands by the creation of two separate lots, one for the conservation lands and the other being for the development'*

It is noted that the terms of the Concept Plan approval did not approve a road or lot layout.

The development site is identified as a potential 'Growth Area' area in the Hunter Regional Plan 2036 (and Hunter Regional Plan 2041) and aligns with the vision and goals of Greater Newcastle Metropolitan Plan 2036 for delivery of housing supply.

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. This former mining activity has also resulted in the site being identified as contaminated land.

Sometime after mining operations ceased, parcels of land were identified to contain a number of isolated dwellings that were scattered across the site, resulting in the 19 isolated properties. Also, since that time, much of the residue of the site has been used for agistment (e.g. primarily horses).

A number of items of heritage significance are listed in the Newcastle Local Environmental Plan 2012 (NLEP2012) as a result of the former mining activities on the site and in association with the Minmi village.

In accordance with the requirements of the Concept Plan approval, updated Urban Design Guidelines (UDG), referred to as the Minmi Precinct Design Guidelines (MPDG) (refer to **Attachment D**) have been prepared by the Applicant and were approved by the NSW Government Planning Secretary at the Department of Planning on 16 November 2018. These guidelines represent a refinement of the UDG's submitted with the Concept Plan and are intended to further guide subdivision and subsequent development on the land. The MPDG has recently been adopted as Section E10 'Minmi extension, Village Centre and Link Road north precinct' in CN's Development Control Plan 2023 (NDCP 2023). All future developments on the land must be generally consistent with Concept Approval and NDCP 2023. A condition of consent is recommended that any future development is to be generally consistent with the MPDG should the application be approved.

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 and approved by the HCCRPP on 20 December 2023). These two DA's represent the balance of the development under the Concept Approval. The Lake Macquarie DA is for a large residential subdivision at 10 and 10C Woodford St, comprising of 1064 residential lots on 21 stages, 13 public reserves, 3 super lots, residue lots and associated works including landscaping, road and stormwater facilities and the installation of utility services.

CN made several submissions (dated 2 August 2022 and 27 February 2023) objecting to the Lake Macquarie DA2087/2018, due to the proximity of the development to the Summerhill Waste Management Centre. A verbal submission was also made to the Panel in December 2023 at the determination meeting. The importance of the facility to the wider Hunter region and State and Commonwealth waste objectives cannot be understated. Further specific concerns were raised about the need for a 1000m buffer due to landfill gas and the need for an appropriate southern access road to the facility. The access is critical to enable the strategic objectives of waste diversion, reduction in travel times and reduction in heavy vehicles originating from Sydney, the Central Coast and parts of the Hunter, mixing with residential traffic. CN requested that FEAR 1.34 of the Concept Plan be met in that key roads leading to the facility be designed to accommodate waste removal vehicles for this facility. The development was approved by the NSW Government's HCCRPP without CN concerns being addressed.

The Panel are advised that there is a current Class 1 appeal in the Land and Environment Court, Lake Macquarie Council v Winten (No 21) Pty Ltd which was in relation to the refusal of DA2087/2018. This appeal was lodged before the application was approved by the HCCRPP. CN have sought an order to be joined to the proceedings pursuant to s8.15(2) of the EPA Act 1979 and rule 6.24 of the Uniform Civil Procedure Rules 2005. The joinder application was heard on the 29 February 2024 and a decision has yet to be made on the application.

This application for review of determination 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.

4. STATUTORY CONSIDERATIONS

4.1 RELEVANT COMMONWEALTH LEGISLATION

<i>Environment Protection and Biodiversity Conservation Act 1999</i>	The <i>EPBC Act</i> was considered during the preparation of the Concept Plan. The proposal was referred to the Federal Department of Environment & Energy (formerly the Department of Environment, Water, Heritage and Arts - DEHWA) in November 2008 for consideration. DEHWA confirmed on 23 December 2008 that the proposed action <u>was not</u> considered a controlled action, and as such did not require assessment and approval under the EPBC Act before it could proceed.
<i>Native Title Act 1993</i>	The subject site is not affected by any native title or Indigenous Land Use agreements under the provisions of the <i>Native Title Act 1993</i> (NT Act) and its associated registers (The National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements).

4.2 RELEVANT STATE (NSW) LEGISLATION

In addition to the *Environmental Planning and Assessment Act 1979*, the following State (NSW) legislation has been considered. Where relevant, further detailed assessment of the proposed development against the various Acts is included throughout this report. All relevant state legislation has been adequately addressed and supported by the relevant NSW Government agency.

<i>Biodiversity Conservation Act 2016</i> (BC Act)	<p>On 18 October 2018 the Director, Regional Assessments at the Department of Planning and Environment certified under clause 34(A)3 of the <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i> that the proposed development is part of a Concept Plan approval for which biodiversity impacts have been satisfactorily addressed and that appropriate biodiversity conservation measures to offset the residual impacts of the approved Concept Plan have been secured.</p> <p>However, former Part 5A of the <i>Environmental Planning and Assessment Act 1979</i> needs to be considered for subsequent DAs.</p>
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<p><i>National Park and Wildlife Act 1974</i> (NP&W Act)</p>	<p>Part 6 of the NP&W Act relates to Aboriginal heritage.</p> <p>An Aboriginal Cultural Heritage Management Plan (ACHMP) – 'Minmi Development Site' was prepared in 2015 and addresses Aboriginal cultural heritage across both the CN and LMCC LGA components of the Concept Plan area.</p> <p>The ACHMP confirms there are no known sites or artefacts of Aboriginal significance on the proposed development site. The ACHMP includes recommendations and protocols for unexpected finds and acknowledges the need to obtain the requisite Aboriginal Heritage Impact Permit (AHIP) under this Act if items are found and will be impacted by the development.</p>
<p><i>Roads Act 1993</i> (Roads Act)</p>	<p>The proposal requires works associated with traffic control signals (s87) and construction work (s138) within a number of local and classified State roads within both the CN and LMCC LGA's. Road works are not proposed within the M1 Motorway.</p> <p>Part 8 Division 2 applies to the development proposal regarding the proposed regulation of traffic on the public roads within CN and LMCC LGA's including the Newcastle Link Road. As discussed in Section 6.1 of this report, TfNSW have supported the proposed development, subject to a range of upgrades to the regional road network.</p> <p>Actions required under Part 8 Division 2 have not commenced and would need to be completed post approval should the application be approved. This independent process does raise some uncertainty around final road works and to this effect conditions should be applied in a cautious manner to hold development until all necessary road approvals are in place.</p> <p>A road occupancy licence is required for any activity likely to impact on traffic flow, even if that activity takes place off-road.</p> <p>Notwithstanding that each Council is the Road Authority for the roads within their respective LGA, it is likely that TfNSW will assume the role of Road Authority for all works under s87 (traffic lights) and s138 (connection of road and construction of work or structures), road occupancy licences and Work Authorisation Deeds (WAD's) associated with the Newcastle Link Road and associated intersections.</p>

<p><i>Contaminated Land Management Act 1997</i> (CLM Act)</p>	<p>There is a risk that construction within the development area may encounter potentially contaminated land during construction or that the land may not be suitable in its current state for the intended uses of the land. The applicant has, given the scale of the development, completed appropriate preliminary investigations and assessment of potentially contaminated land and any required remediation.</p>
<p><i>Protection of the Environment Operations Act 1997</i> (POEO Act)</p>	<p>The proposal would not trigger the requirement for an Environmental Protection Licence under the POEO Act.</p> <p>Notwithstanding this, the POEO Act requires proponents to manage and limit the potential to cause water, noise, air pollution and potential waste streams during construction.</p>
<p><i>Crown Land Management Act 2016</i> (CLM Act)</p>	<p>The proposal does not impact on any Crown land.</p>
<p><i>Water Management Act 2000</i> (WM Act)</p>	<p>It is considered that the proposed riparian corridor setbacks to Back Creek, Minmi Creek (Third order streams) as well as to the other smaller (unnamed) tributaries (First and Second order streams) to these creeks are appropriate and are consistent with the Concept Plan, NSW Office of Water Guidelines for Controlled Activities (refer FEAR 1.22) and land use zones.</p> <p>A number of groundwater tests and monitoring have been undertaken across the site. These show the potential to encounter groundwater in some parts of the site at depths between 1.3m and 3.3m and the Preliminary Geotechnical Assessment has considered the implications of the development, including the proposed earthworks, on groundwater. No concerns were raised by the Department of Planning and Environment - Water (formally Natural Resource Access Regulator (NRAR)) in their advice of 2 June 2023, with regard to interception of groundwater or impact on any aquifer.</p> <p>The proposal will require relevant controlled activity approvals under Section 91 of this Act given that there will be works within 40 metres of waterfront land and, in any instance, where an activity might unexpectedly interfere with an aquifer.</p>
<p><i>Biosecurity Act 2015</i> (Biosecurity Act)</p>	<p>Under Section 21 of the <i>Biosecurity Act</i>, any person who deals with any plant, who knows (or ought to know) of any biosecurity risk, has a duty to ensure the risk is prevented, eliminated or minimised as is reasonably practicable.</p>

	<p>The <i>Biosecurity Act</i> and Regulations provide specific legal requirements for high-risk activities and State level priority weeds.</p> <p>If present, priority weeds on the site would need to be assessed and controlled to fulfil the General Biosecurity Duty and minimise biosecurity risks. A Vegetation Habitat Management Plan (VHMP) has been prepared by the applicant that includes provisions for weed removal and management.</p>
<i>Rural Fires Act 1997</i>	The NSW Rural Fire Service (NSWRFS) has issued a new Bushfire Safety Authority (BFSA) under the review application for DA2018/01351 (dated 24 May 2023).
<i>Heritage Act 1977</i>	There are no items listed on the State Heritage Register within or in close proximity to the development site.
<i>Local Government Act 1993</i>	<p>No activities are proposed under this application that would require approval under s68 of the <i>Local Government Act, 1993</i>.</p> <p>An appropriate classification and Plan of Management will be applied, by CN, following the dedication of any land proposed to be so dedicated following subdivision of the land.</p>
<i>Fisheries Management Act 1994</i>	No part of the proposal is expected to cause an obstruction to or block the passage of fish.

4.3 Part 4 Environmental Planning and Assessment Act, 1979 (NSW)

Matters for Consideration - general (Section 4.15)

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of -*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

It is noted that the proposal requires concurrence referral (s4.13) but is not integrated development (s4.46).

Integrated Development (Section 4.46)

The Department of Planning and Environment has previously advised that, in accordance with section 75P(2)(b) of the *Environmental 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.

Notwithstanding this, the applicant acknowledges that 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*.

4.4 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulations are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

On 1 March 2022, 11 new State Environmental Planning Policies (SEPPs) commenced, which re-organised and repealed 45 former SEPPs. With no savings and transitional provisions, these new SEPPs apply to the assessment and determination of pending development applications.

Section 30A of the *Interpretation Act 1987*, which applies to the transfer of provisions, states that the transfer “*does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred*”. This section applies, subject to any amendments made to the provision in the new instrument. Accordingly, the operation and meaning of the transferred provisions has not changed, unless modified (none have been identified during this assessment) in the new SEPPs.

Accordingly, the following instruments are applicable to this application.

- *State Environmental Planning Policy (Koala Habitat Protection) 2020* (refer to discussion below).
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Newcastle Local Environmental Plan 2012*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in the table below and considered in more detail below.

Summary of Environmental Planning Instruments
(Preconditions in **bold**)

EPI	MATTERS FOR CONSIDERATION (BRIEF SUMMARY)	COMPLY (Y/N)
State Environmental Planning Policy (Koala Habitat Protection) 2020	<p>Part 2 Development control of koala habitats</p> <ul style="list-style-type: none"> • Clause 8 - Is the land potential koala habitat The land was considered as potential Koala habitat. • Clause - Is the land core Koala habitat The land was found to not be core Koala habitat. 	Yes
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2: Vegetation in non-rural areas</p> <ul style="list-style-type: none"> • Clause 2.14 – does not apply in this instance as consent is being sought for removal of vegetation. <p>Chapter 3: Koala habitat protection 2020</p> <p>Chapter 3 does not apply to the proposal due to the provisions of Clause 3.3 as the proposal is not on land zoned RU1 Primary Production, RU2 Rural Landscape or RU3 Forestry or any equivalent zones.</p> <p>Chapter 4: Koala Habitat Protection 2021</p> <p>Chapter 4 does not apply to the proposal due to the provisions of Clause 4.4(3)(c) as the proposal is on land on which biodiversity certification has been conferred, and is in force, under Part 8 of the <i>Biodiversity Conservation Act 2016</i> by virtue of the certification made by the Director, Regional Assessments at the Department of Planning and Environment on 18</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> • Clause 2.3 – Zone Objectives and Land Use Table • Clause 2.6_ - Subdivision—consent requirements • Clause 4.1 – Minimum subdivision lot size • Clause 4.1AA - Minimum subdivision lot size for community title schemes • Clause 4.1B - Minimum subdivision lot sizes for certain split zones • Clause 4.6 - Exceptions to development standards • Clause 5.1/5.1A – Land acquisition • Clause 5.3 - Development near zone boundaries • Clause 5.10 – Consideration of Aboriginal and non-aboriginal heritage • Clause 5.21 – Consideration of flood impacts • Clause 6.1 – Consideration of Acid Sulfate Soils • Clause 6.2 – Consideration of earthworks • Clause 8.1 – Arrangements for State public infrastructure • Clause 8.2 – Public utility infrastructure • Clause 8.3 – Development Control Plan (Urban Release Area) 	Yes
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The proposed development is not declared State significant development or infrastructure under Chapter 2 of *State Environmental Planning Policy (Planning Systems) 2021*. The proposed development is also not in a declared Precinct under *State Environmental Planning Policy (Precincts – Regional) 2021*.

Consideration of the relevant SEPP's is outlined below. Where a more comprehensive assessment of these SEPP's is warranted it is undertaken in **Section 6** of this report.

State Environmental Planning Policy (Koala Habitat Protection) 2020

At the time the original DA2018/01351 was lodged in November 2018, SEPP 44 (Koala Habitat Protection) was in force.

However, the applicable State Environmental Planning Policy in relation to consideration of Koala habitat is complex due to a raft of changes to State Environmental Planning Policies concerning protection of Koala habitat since lodgement of the original application.

The submitted SOEE at Section 4.2.3 provides a detailed outline of the legislative changes. In summary as the DA was made in November 2018 and has not been determined (noting determination is undergoing the subject review under Section 8.2 of the EP&A Act), SEPP 2020 (being the version for 30 November 2020 to 16 March 2021) applies to this DA. It is noted that SEPP 2020 largely replicates the provisions of the former SEPP 44.

The SOEE notes that:

The ecological assessment by RPS (Ecological Assessment Report - Lower Hunter Lands, Minmi Link Road, RPS January 2011) to inform the Concept Plan determined that although the overall Minmi Link Road development site comprised Potential Koala Habitat, the lack of secondary indications during searches within the Development Estate suggest that there is no extant population.

Accordingly, it was not deemed to be Core Koala Habitat.

Having regard to the two-step process outlined in Part 2 of SEPP 2020, reference is made to Section 6.4.3 of the RPS report, and summarised below:

- **Step 1 (Clause 8) - Is the land potential koala habitat?** *Yes, the site contains potential koala habitat, which is defined under Clause 4 as areas of native vegetation where trees listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. As such, the development must comply with Clause 9 (Step 2).*
- **Step 2 (Clause 9) - Is the land core Koala habitat?** *No, the site is not identified as core koala habitat, which is defined under Clause 4 as an area of land with a resident population of koalas, evidenced by attributes such as breeding females with young, and recent sightings of and historical records of a population.*

The NSW Government Planning Assessment Commission at the time accepted that the land was not core koala habitat in its assessment and approved the Concept Plan.

In terms of current status of Koala the SOEE outlines the findings of an updated Ecological assessment (Appendix AZ of the SOEE - Ecological Report - Minmi Link Road 144 Woodford Street Minmi by MJD Environmental, dated 13 September 2023). This report outlines additional survey work that was performed for Koalas. The SOEE states:

New Koala surveys have been undertaken to confirm that the development site, which was not core koala habitat at the time of the Concept Plan, has not become core koala habitat in the intervening years. As the definition of "core koala habitat" that applies for the purposes of this development application remains the same definition that applied at the time of approval of the Concept Plan, this involved a determination of whether the development site now contains a resident population of Koalas.

It has been confirmed by MJD Environmental that there is no evidence that the site has become core koala habitat in the years since approval of the Concept Plan. In this regard, the consent authority can be satisfied that the land is not core koala habitat, and is therefore not prevented, because of the policy, from granting consent to the DA.

As the site is not identified as core Koala habitat there is no requirement under the SEPP to establish a Plan of Management. The development is therefore considered acceptable in relation to impact on Koalas when assessed against the provisions of SEPP (Koala Habitat Protection) 2020.

To avoid any doubt as to whether the proposal is acceptable in relation to impacts on Koala an assessment of the current *State Environmental Planning Policy (Biodiversity and Conservation) 2021* is included below, even though it is agreed with the applicant that the applicable legislation is *SEPP (Koala Habitat Protection) 2020*.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 3: Koala habitat protection 2020

Chapter 3 does not apply to the proposal due to the provisions of Clause 3.3 as the proposal is not on land zoned RU1 Primary Production, RU2 Rural Landscape or RU3 Forestry or any equivalent zones.

Chapter 4: Koala Habitat Protection 2021

Chapter 4 does not apply to the proposal due to the provisions of Clause 4.4(3)(c) as the proposal is on land on which biodiversity certification has been conferred by the NSW Government, and is in force, under Part 8 of the *Biodiversity Conservation Act 2016* by virtue of the certification made by the Director, Regional Assessments at the Department of Planning and Environment on 18 October 2018 pursuant Clause 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation, 2017*.

Notwithstanding that Chapters 3 and 4 SEPP (Biodiversity and Conservation) 2021 do not apply, it is noted that the ecological assessment carried out by RPS (*Ecological Assessment Report – Lower Hunter Lands, Minmi Link Road, RPS January 2011*) to inform the Concept Plan determined that although the overall Minmi Link Road development site comprised Potential Koala Habitat, the lack of secondary indications during searches within the study area suggest that Koalas are not using the development site as part of the range within a local population. It was considered that any Koala activity in the locality would be representative of a low-density population.

As outlined above updated survey was also conducted in 2023 and detailed under Appendix AZ of the SOEE - Ecological Report - Minmi Link Road 144 Woodford Street Minmi by MJD Environmental, dated 13 September 2023. This additional survey work did not identify any resident populations that would deem the site to be core Koala habitat.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development*, pursuant to Section 2.19(1), as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP, as the proposal is general development having a capital investment value of more than \$30 million. Accordingly, the Hunter and Central Coast Regional Planning Panel are the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

No part of the land under DA2018/01351 is in or within proximity of land mapped as a Coastal Wetland.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Remediation of land is discussed in detail within Section 6.4 of this report.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

The SEPP (Transport and Infrastructure) 2021 applies under both the following sections:

- **Section 2.48(2)** - Development involving penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower, near substations or within 5m of exposed overhead electricity power lines.

The review application was referred to both Ausgrid and Transgrid.

Transgrid have confirmed under the original application that they do not have any infrastructure within the development site.

Ausgrid have advised in their advice of 20 August 2022 (unchanged for the review application) as follows.

Electricity Infrastructure

"Ausgrid has overhead lines that are within the proposed subdivision. The connectivity and rating of these overhead lines are required by Ausgrid. During the staging of this development, Ausgrid may require these overhead lines to be relocated underground within the footpath area of the proposed road reserve. This relocation work is generally at the developers cost."

Electricity Supply

"Electricity reticulation systems in new residential subdivisions must be installed underground in accordance with Ausgrid's Network Standard NS110. The developer is responsible for the design, supply of materials and construction of electricity reticulation systems in new residential subdivisions."

These works are classified as Contestable Works and funded by the Developer. Before each stage commences, the developer will need to submit NECF-01 form "Preliminary Enquiry" available on Ausgrid's website."

Existing Electricity Easements

"A title search of the development site should be completed to check for existing electricity easements. If easements are present, Ausgrid must assess the proposed activity within the easement."

While Ausgrid have confirmed overhead lines pass through the development site, no existing easement has been identified for this infrastructure.

- **Section 2.119(2)** requires that development on land that has frontage to a classified road must:

- "(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road."*

In regard to Cl. 2.119(2)(a) and (b)(ii), CN is satisfied that the vehicular access to the land is proposed from a road other than a classified road (M1 Motorway and Newcastle Link Road) and that the development is unlikely to emit smoke or dust in any quantity that would impact on the safety, efficiency and ongoing operation of those roads.

In regard to Cl. 2.119(2)(b)(i) and (iii), as discussed in **Section 6.1.2** of this report, TfNSW are now supportive of the development as currently presented and deem the classified roads in the area will not be adversely impacted. Accordingly, CN is able to confirm that the safety, efficiency and ongoing operation of the classified roads in the area will not be adversely impacted by the proposed development.

- **Section 2.120** - It is noted that this section applies only to 'residential accommodation', 'a place of public worship', 'a hospital' or 'an educational establishment or 'centre-based childcare facility' proposed on land in or adjacent to the road corridor of a freeway, tollway or transitway or any other road having an annual average daily traffic volume (AADT) of greater than 20,000 vehicles.

Whilst this clause does not technically apply, the proposed subdivision may result in one or more of the abovementioned development types being proposed on the allotments that would be created by the subdivision. An assessment of noise and vibration has been undertaken and is included in **Section 6.2** of this report.

- **Section 2.122(2)(b)** - Column 2 of the Table to schedule 3 of the SEPP identifies development for subdivision of land creating '200 or more allotments where the subdivision includes the opening of a public road' is of a relative size or capacity with access to a road to be considered 'Traffic Generating Development' and trigger a referral to Transport for NSW (TfNSW).

The proposed development seeks approval for the subdivision of land creating more than 200 new allotments including the opening of new public roads. Accordingly, the application was referred to TfNSW for consideration.

The impacts of this traffic generating development is discussed in detail within **Section 6.1** of this report.

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the Newcastle Local Environmental Plan 2012 (NLEP2012). The aims of the NLEP2012 under Clause 1.2(2) include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
- (b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
- (c) to contribute to the economic wellbeing of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services, to facilitate the development of building design excellence appropriate to a*

regional city.

The proposal is consistent with these aims as the proposal will contribute to the economic wellbeing of the community in a socially and environmentally responsible manner and will strengthen the regional position of Newcastle by encouraging new housing, employment and economic growth.

Zoning and Permissibility (Part 2)

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.

The proposal is located within the following land use zones pursuant to Clause 2.3 of the Newcastle Local Environmental Plan 2012 (NLEP2012).

- R2 Low Density Residential
- R3 Medium Density Residential
- E1 Local Centre
- C1 National Parks and Nature Reserves (previously E1)
- C2 Environmental Conservation (previously E2)
- C4 Environmental Living (previously E4)
- SP2 Infrastructure

According to section 6.1 of the *EP&A Act 1979*, 'subdivision' of land means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.

According to clause 2.6(1) of the NLEP2012, land to which the NLEP2012 applies may be subdivided but only with development consent. The proposal is, therefore, permissible in each of the abovementioned land use zones.

According to the definitions in Clause 1.4 (contained in the Dictionary) the proposed riparian crossings satisfy the definition of 'Road' which is a permissible use with consent in each of the Land Use Zones listed above.

Figure 5 below shows the extent of the proposed DA2018/01351 in blue (this DA) and the full extent of the Precinct 1B (DA2015/10393) in red overlain on the NLEP2012 land zonings. Boundaries shown in white represent the existing cadastre. It is noted that the subject review application no longer includes a proposed modification to DA2015/10393.

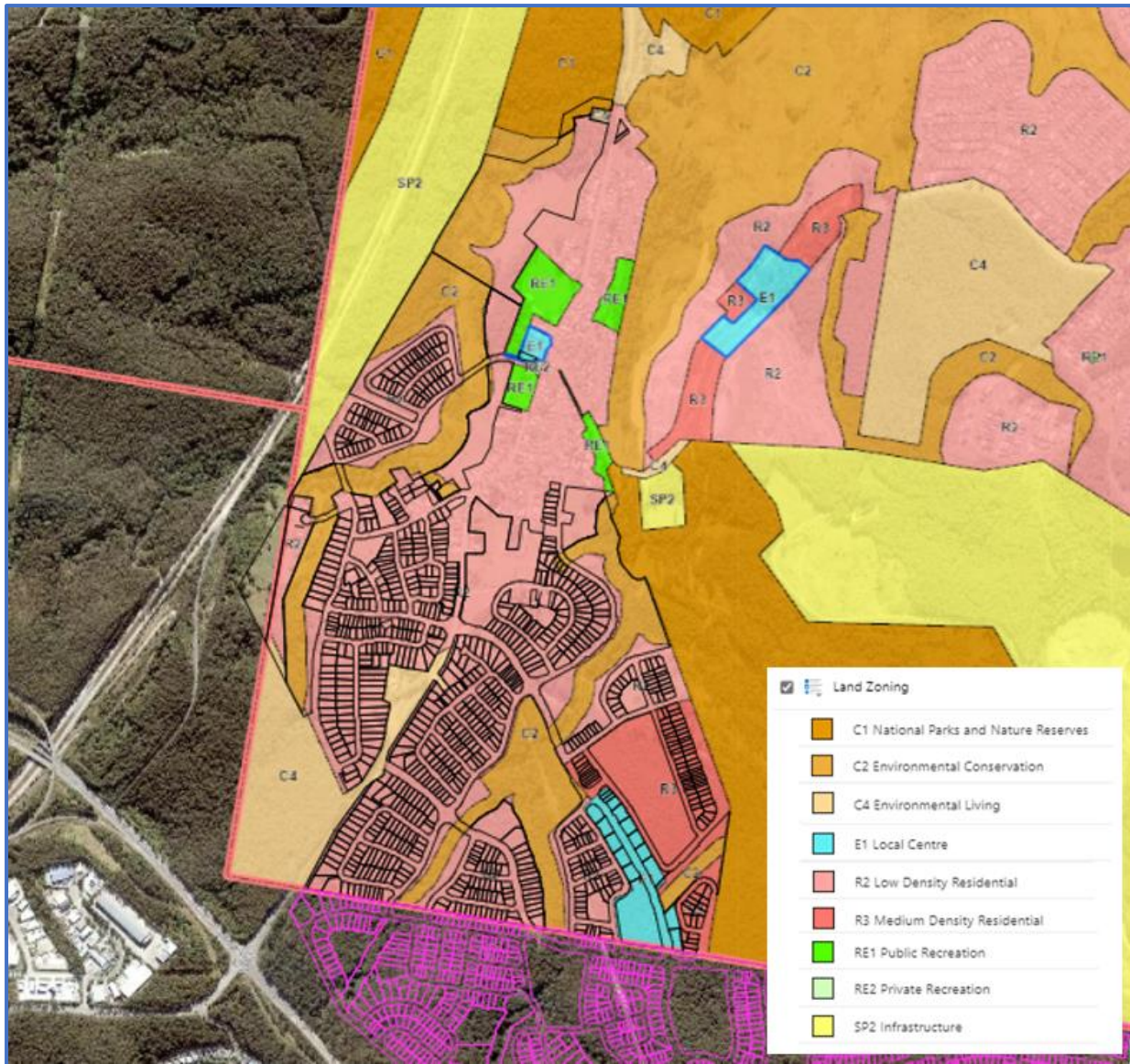


FIGURE 5 – Land Zoning (source CN mapping)

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

Zone	Objectives of zone
R2 – Low Density Residential	<ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.
R3 – Medium Density Residential	<ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To allow some diversity of activities and densities if— <ul style="list-style-type: none"> (i) the scale and height of proposed buildings is compatible with the character of the locality, and

	<ul style="list-style-type: none"> (ii) there will be no significant adverse impact on the amenity of any existing nearby development. • To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development— <ul style="list-style-type: none"> (i) has regard to the desired future character of residential streets, and (ii) does not significantly detract from the amenity of any existing nearby development.
E1 – Local Centre	<ul style="list-style-type: none"> • To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area. • To encourage investment in local commercial development that generates employment opportunities and economic growth. • To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area. • To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. • To maintain the hierarchy of commercial centres throughout the City of Newcastle, ensuring the scale of development is appropriate with the surrounding area and does not prejudice the viability of the Newcastle City Centre or other centres. • To provide development that maintains an active street frontage that positively contributes to the safety and vibrancy of the pedestrian environment.
C1 – National Parks and Nature Reserves	<ul style="list-style-type: none"> • To enable the management and appropriate use of land that is reserved under the <i>National Parks and Wildlife Act 1974</i> or that is acquired under Part 11 of that Act. • To enable uses authorised under the <i>National Parks and Wildlife Act 1974</i>. • To identify land that is to be reserved under the <i>National Parks and Wildlife Act 1974</i> and to protect the environmental significance of that land.
C2 – Environmental Conservation	<ul style="list-style-type: none"> • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. • To provide for the management of the majority of the Hunter River floodplain by restricting the type and intensity of development to that compatible with the anticipated risk to life and property. • To provide for the conservation, enhancement and protection of the Hexham Wetlands.
C4 Environmental Living	<ul style="list-style-type: none"> • To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. • To ensure that residential development does not have an adverse effect on those values. • To conserve the rural or bushland character and the biodiversity or other conservation values of the land. • To provide for the development of land for purposes that will not, or will be unlikely to, prejudice its possible future development for urban purposes or its environmental conservation.

In the northern section of the site there is approximately 6,016m² of land zoned C1 National Parks and Nature Reserves. It is unclear why this land was excluded from the previous subdivision of land to facilitate the transfer of land to the NSW Government in 2014 in accordance with the Project Approval and subsequent Planning Agreement. Notwithstanding this, CN raised concern and through discussions with CN, the applicant has agreed to create Lot 3807 (in Stage 38) and transfer that lot to the NSW Government for consolidation with the adjoining Stockrington State Conservation Area. **Figure 6** below shows the relationship of proposed Lot 3807 and the C1 zoned land.

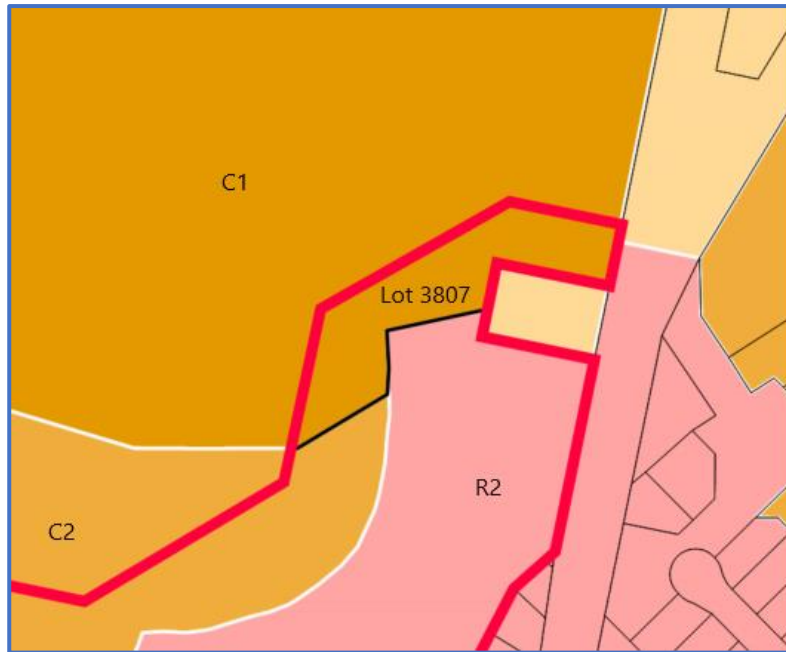


FIGURE 6 – Lot 3807 – Proposed transfer to NPWS (Source – CN Mapping)

On the eastern side of the development, within Stage 32, there is an area where the C2 Environmental Conservation Land extends into 5 proposed residential lots (Lots 3221, 3222 & 3224). The applicant's ecologist has undertaken additional environmental studies of this land (refer SEE – Appendix O) and assessed the land as containing Cleared Areas/Tracks. The ecologist stated *"Given the area contained disturbed environs and therefore lacked significant ecological and habitat values, the area was mapped as a low condition (per Figure 4-6 of the ecological assessment). Additionally, no ground water dependant ecosystems or threatened flora and fauna were recorded in the immediate area."* See **Figure 7** below showing the proposed subdivision layout, overlain on the land use zone boundaries and aerial photo.



FIGURE 7 – C2 Zoned land encroaching Lots 3220-3224 (Source – SEE – Appendix O)

Noting that residential development is permitted within the C2 zoned land, it is considered that the proposed subdivision and future development within Lots 3221 – 3223 is unlikely to destroy, damage, or otherwise have an adverse effect on the ecological values of the C2 zoned area, as the current ecological values of the cleared/ disturbed pasture and road verge are not significant, either to threatened flora or fauna species or to the ecological character (connectivity, ecological function) of the surrounding landscape and, therefore, is not inconsistent with the objectives of the C2 zone.

The proposed road and lot layout also results in a preferred outcome to that indicatively shown on the Concept Plan in that the proposed layout will achieve a perimeter road in this locality enabling better management of the residential/conservation land interface.

There are several other areas around the perimeter of the C2 zoned land where strict compliance with the land use zone boundaries is not achieved. These have also been assessed and are considered to be acceptable, as the land has been found in these instances to represent low environmental value, despite the land zoning.

In addition to the above considerations, it is noted that Cl. 4.1B – *'Minimum subdivision lot sizes for certain split zones'* of the NLEP2012 would usually apply to the consideration of subdivision of land in a residential, business or industrial zone, and land in the C2 Environmental Conservation zone, C3 Environmental Management zone and C4 Environmental Living zone.

However, advice obtained when assessing the original application confirmed that Cl. 4.1B does not apply in the instances described above as the objective of Cl. 4.1B(1)(a) states *"(a) to provide for the subdivision of lots that are within more than one zone but that cannot be subdivided under clause 4.1"*.

Cl. 4.1 – *'Minimum subdivision lot size'* applies to a subdivision of any land shown on the Lot Size Map (see **Figure 8** below) and requires *'The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.'*

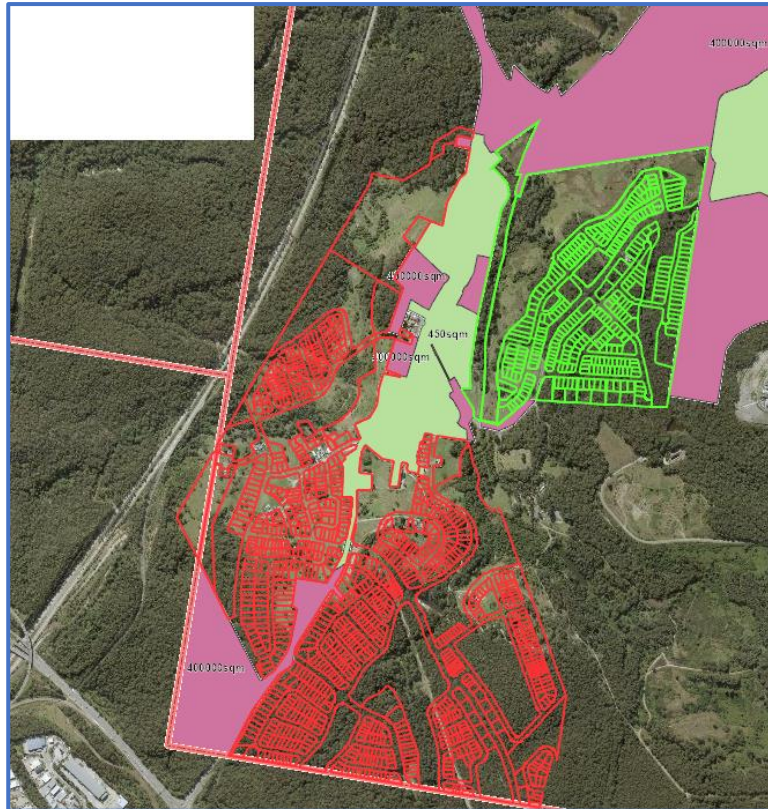


FIGURE 8 – NLEP2012- Lot Size Map – (Source – CN Mapping)

The land that is subject to the Concept Plan approval is shown on the Lot Size Map above. That map does not specify a minimum lot size and, therefore, subdivision of land within the Concept Plan approval is permissible under Cl. 4.1, and thus Cl. 4.1(B) does not apply.

In the southwest corner of the development site, a number of seemingly unintentional discrepancies exist between the cadastral boundaries and land zone boundaries gazetted under both the NLEP2012 and the Lake Macquarie Local Environmental Plan 2014 (LMLEP2014). These discrepancies are evident in **Figure 9** below.

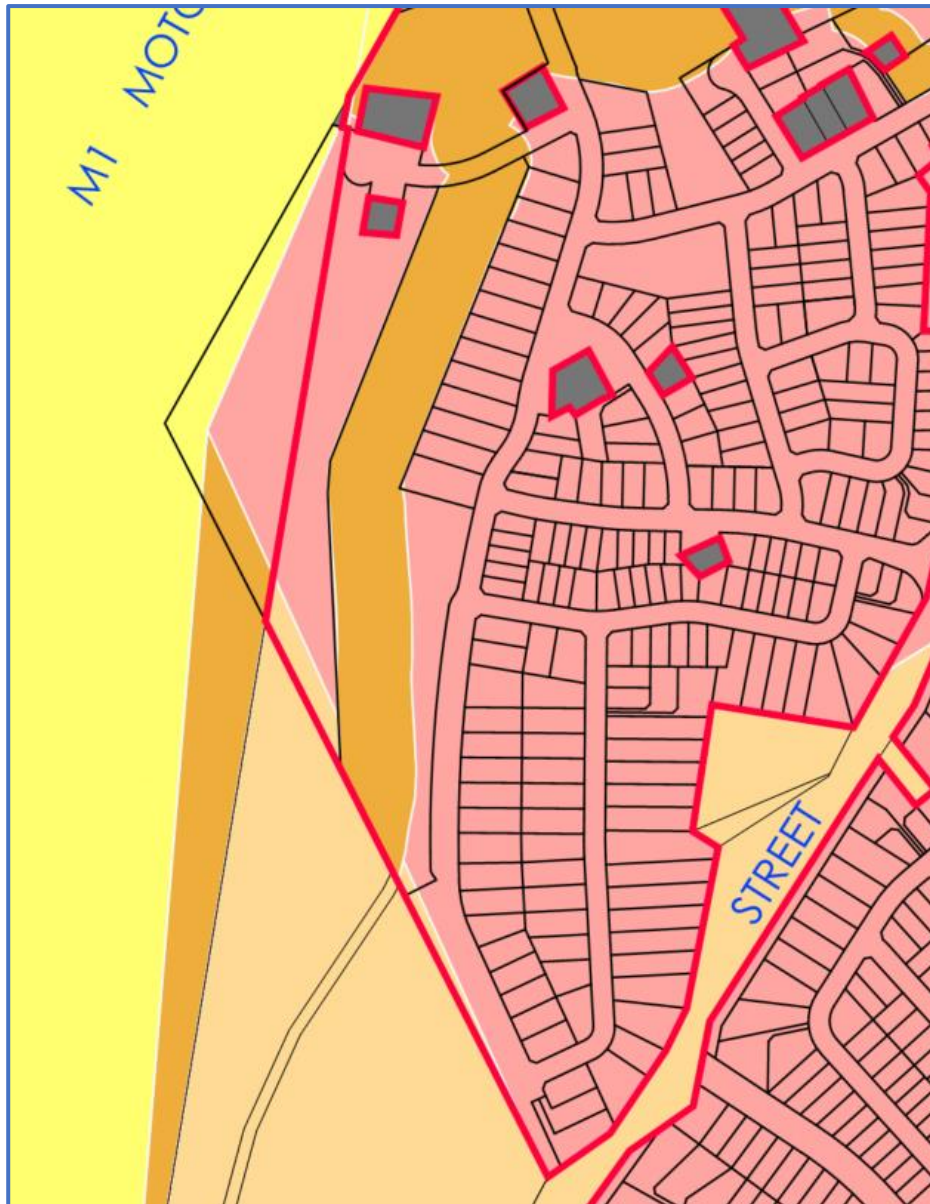


FIGURE 9 – Possible Land Zoning Discrepancies – South-West Area (Source – SEE Figure 10)

Investigations undertaken by CN suggest the discrepancy may have resulted from the LEP maps being prepared based on the Digital Cadastral Database relied on by the DPE 'Spatial Viewer' and not based on actual boundaries derived from deposited plans.

While it is noted that the Concept Plan approval expressly omits approval of a road and lot layout, documentation submitted with the Concept Plan (Refer **Figure 10** below) clearly shows an intention to develop the land in this southwestern area, other than that land zoned C2 Environmental Conservation, for residential subdivision purposes.

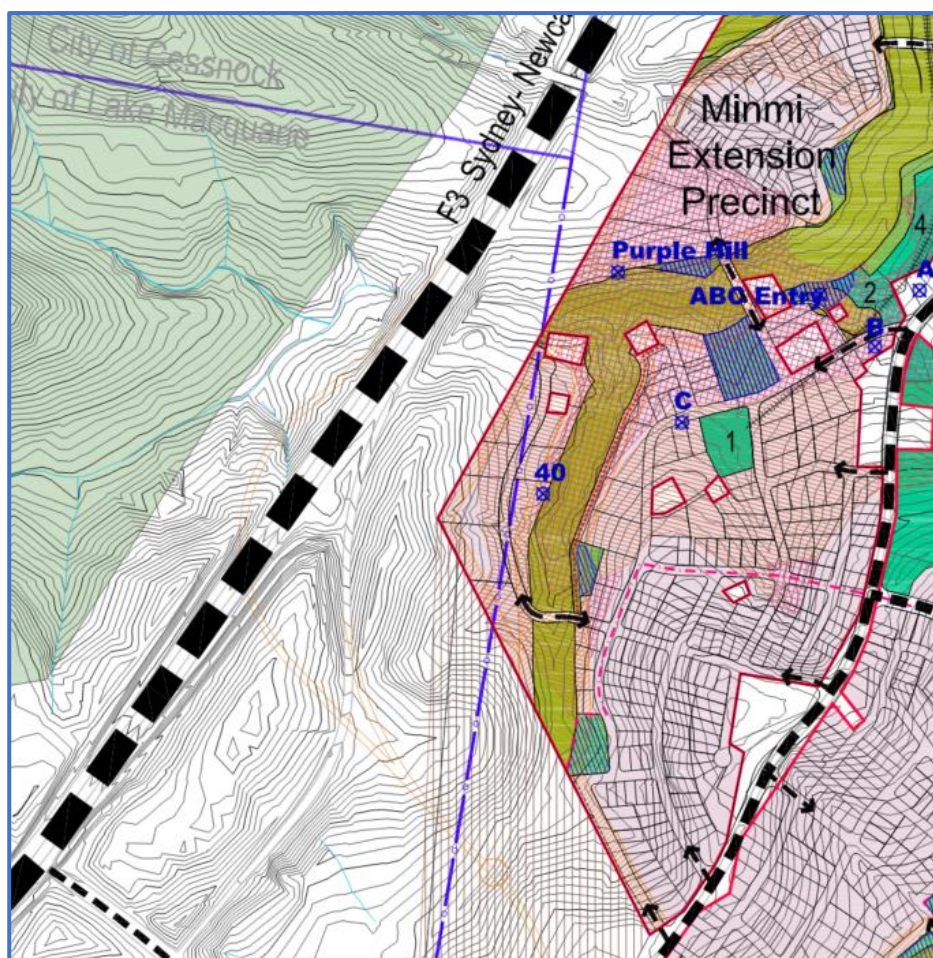


FIGURE 10 – Extract from Concept Plan Preferred Project Report (Source – RPS Plan 24311-35 Rev E)

For reasons similar to that explained above regarding the application of C. 4.1 and C. 4.1(B) of NLEP2012, it is considered that the proposed road and allotment boundaries in this southwest corner, insofar as they relate to land within the CN LGA, are acceptable.

In terms of consideration of DA2018/01351, the current proposal to extend a new public road to give access to this triangular piece of residue land, as part of Stage 40 subdivision works, is considered appropriate.

The proposal is considered to be consistent with the various zone objectives for the following reasons:

- The proposal will provide for a range of allotment sizes that will provide for the housing, retail, business, facilities and recreational needs of the community.
- The proposal will create an allotment allowing the transfer of C1 zoned land to the National Parks and Wildlife Service.
- The proposal will, except for the various road crossings (which are permissible in the zone) through the riparian corridors will not result in development works within the C2 zone that could destroy or unreasonably damage the riparian corridor.
- The proposed subdivision will not unreasonably impact on ecological, cultural and aesthetic values beyond those already considered and approved by the Concept Plan approval.
- The proposal will not unreasonably increase risk to life and property within the Hunter River Floodplain.

- The proposal will not unreasonably impact on the conservation, protection, enhancement or protection of the Hexham Wetland.
- The proposal will encourage employment opportunities.

General Controls and Development Standards (Part 2, 4, 5 and 6) and Additional local provisions – urban release areas (Part 8)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in the table below.

Consideration of the LEP Controls

CONTROL	REQUIREMENT	COMMENT	COMPLY
Subdivision – Consent requirements (CI 2.6)	The land may only be subdivided with development consent	The application seeks consent for the subdivision of land.	Yes
Minimum subdivision lot size (CI 4.1)	The size of any resulting lot is not to be less than the minimum shown on the Lot Size Map.	The land is shown on the Minimum Lot Size map but is shown to not have a specified minimum lot area. Instead, minimum lot size is governed by the adopted Minmi Precinct Design Guidelines (MPDG). Minimum lot sizes are consistent with MPDG.	Yes
Minimum subdivision lot size for Community Title schemes (CI 4.1AA)	This clause applies to a subdivision (being a subdivision that requires development consent) under the <i>Community Land Development Act 2021</i> of land in any of the zones so specified	The proposed development does not propose any subdivision under the <i>Community Land Development Act, 2021</i> .	Not Applicable
Minimum subdivision lot sizes for certain split zones (CI 4.1B)	The objectives of this clause are as follows- (a) to provide for the subdivision of lots that are within more than one zone but that cannot be subdivided under clause 4.1 (b) to ensure that the subdivision occurs in a manner that	As discussed in greater detail above, the proposal would create a number of lots that are within more than one zone, however, as these can lawfully be provided under Clause 4.1, Clause 4.1B does not apply.	Yes

	promotes suitable land use and development while protecting environmental attributes of the land.		
Exceptions to development standards (CI 4.6)	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	The application does not propose any exception to a development standard.	Not Applicable
Land acquisition (CI 5.1/5.1A)	Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.	The proposal does not involve any land reserved for acquisition.	Yes
Development near zone boundaries (CI 5.3)	To provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.	The proposal does not seek to rely on this clause.	Not Applicable
Heritage (CI 5.10)	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on	This matter is discussed in detail in Section 5.10 of this report.	Yes

	the heritage significance of the item or area concerned.		
Flood planning (CI 5.21)	<p>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p><i>(a) is compatible with the flood function and behaviour on the land, and</i></p> <p><i>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p><i>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</i></p> <p><i>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</i></p> <p><i>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</i></p> <p><i>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must</i></p>	<p>Specific comment is below against each subclause.</p> <p><i>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</i></p> <p><i>(f) is compatible with the flood function and behaviour on the land, and</i></p> <p>Comment - proposed lots are located above 1% AEP and acceptable risk to life and property.</p> <p><i>(g) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p>Comment - while some existing lots and off-site impacts occur the impacts are considered acceptable.</p> <p><i>(h) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</i></p> <p>Comment - the previous concerns regarding water crossings have been considered closely and now considered acceptable as inundation of roads would only occur in very rare flood events.</p> <p><i>(i) incorporates appropriate measures to manage risk to life in the event of a flood, and</i></p> <p>Comment - lots are located above 1% AEP and future dwellings could readily address risk.</p> <p><i>(j) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of</i></p>	Yes

	<p><i>consider the following matters—</i></p> <p><i>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</i></p> <p><i>(b) the intended design and scale of buildings resulting from the development,</i></p> <p><i>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</i></p> <p><i>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</i></p>	<p><i>riparian vegetation or a reduction in the stability of river banks or watercourses.</i></p> <p>Comment - flood impacts can be adequately managed and would be acceptable in this regard.</p> <p><i>(4) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</i></p> <p><i>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</i></p> <p>Comment - climate change has been considered in flood modelling. The development itself would not impact climate change.</p> <p><i>(b) the intended design and scale of buildings resulting from the development,</i></p> <p>Comment - no buildings are proposed however it is considered that future buildings could readily address property and life risk.</p> <p><i>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</i></p> <p>Comment - the previous concerns regarding water crossings have been considered closely and now considered acceptable as inundation of roads would only occur in very rare flood events.</p> <p><i>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</i></p> <p>Comment - not applicable.</p>	
Acid sulphate soils (CI 6.1)	Development consent must not be granted under this clause for the carrying out of works unless an	The vast majority of the land is classified as being within a Class 5 zone under the LEP Acid Sulphate Soils Map.	Yes

	<p>acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.</p>	<p>A small part of the site in the northeast corner is classified as being within a Class 3 zone. No works are proposed in this area under this application and the land containing the Class 3 zone is proposed to be subdivided and transferred to the NPWS for consolidation with the Stockrington State Conservation Land or to CN for future recreation uses.</p> <p>The Applicant has prepared an Acid Sulfate Soils Management Plan which demonstrates that acid sulfate soils can be appropriately managed during the development.</p>	
Earthworks (CI 6.2)	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p> <p>(d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>(e) <i>the source of any fill material and the destination of any excavated material,</i></p> <p>(f) <i>the likelihood of</i></p>	<p>This matter is discussed in detail in Section 6.6 of this report.</p>	Yes

	<p><i>disturbing relics,</i></p> <p><i>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p><i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p>		
Designated State public infrastructure (Cl. 8.1)	<p>Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.</p>	<p>On 23 April 2019 (Ref: IRF19/966) the Deputy Secretary of the Department of Planning, Industry and Environment certified that, in regard to DA2018/01351, satisfactory arrangements have been made to contribute to the provision of State public infrastructure by virtue of Planning Agreement No. 2017/8779.</p> <p>Further it is noted that the applicant has offered to amend the existing State Voluntary Planning Agreement to include a contribution of \$20 million towards the upgrade to the intersection of Newcastle Link Road and Minmi Road intersection. TfNSW in their advice of 5 December 2023 has provided a condition requiring:</p> <p><i>Prior to the issue of any Subdivision Works Certificate, the developer must enter into an amended Planning Agreement with the Minister for Planning in accordance with:</i></p> <p><i>(a) Division 7.1 of Part 7 of the EP&A Act; and</i></p> <p><i>(b) The terms of the developer's offer to contribute to the upgrade of the Newcastle Link Road/Minmi Road intersection, dated 17 May 2023 (as amended 21 August 2023).</i></p>	Yes

		<p>Such a condition places certainty that the development could not proceed unless such a Planning Agreement was in place.</p> <p>Email advice received from the Panel Secretariat of the HCCRPP on 20 October 2023 to both CN and LMCC confirmed that a condition can be imposed on a consent that requires <i>"a planning agreement to be entered into but only if it requires a planning agreement that is in the terms of an offer made by the developer"</i>. This is considered applicable in this case and there would be no impediment to the HCCRPP granting consent subject to the above condition.</p>	
Public utility infrastructure (Cl. 8.2)	Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.	The Applicant has consulted with the relevant authorities for the provision of water, sewer, electricity and telecommunication services for the proposed lots. Augmentation of the respective utilities would be undertaken by the developer during construction of each stage.	Yes
Development Control Plan (Cl. 8.3)	<p>(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.</p> <p>(2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides</p>	<p>FEAR 1.13 of the Concept Plan approval required the Applicant, before lodging a development application for a particular stage, to revise the Urban Design Guidelines approved in association with the Concept Plan and prepare updated detailed Urban Design Guidelines for each relevant stage in consultation with Council and in a form that could be adopted by Council as a DCP and be approved by the Secretary at DPIE.</p> <p>The revised Minmi Precinct Design Guidelines were subsequently approved by DPIE on 16 November 2018 and meet the requirements stated above, in that they are in a</p>	Yes

	<p>for the matters specified in subclause (3) has been prepared for the land.</p> <p>(3) The development control plan must provide for all of the following—</p> <ul style="list-style-type: none"> (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 	<p>form that can be adopted by Council as a DCP.</p>	
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	<p>management controls</p> <p>(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</p> <p>(g) detailed urban design controls for significant development sites</p> <p>(h) measures to encourage higher density living around transport, open space and service nodes</p> <p>(i) measures to accommodate and control appropriate neighbourhood commercial and retail uses</p> <p>(j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.</p>		
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The proposal is assessed to be generally consistent with the LEP based on the considerations detailed throughout this report.

Clause 5.10 - Heritage conservation

Aboriginal cultural heritage

In accordance with FEAR 1.38 of the Concept Plan approval, the Applicant has prepared an Aboriginal Cultural Heritage Management Plan (ACHMP) to guide management of Aboriginal cultural heritage at the site. The ACHMP has been prepared with consultation of Aboriginal parties and in accordance with heritage management protocols.

The ACHMP contains a Statement of Significance prepared by the Awabakal people that confirms the project area and the surrounds are within the Traditional Lands of the Awabakal People and notes that the Minmi and Hexham Wetlands areas are generally of great cultural significance to the Awabakal People.

The ACHMP identifies that no known sites having Aboriginal cultural significance have been located within the development site. Notwithstanding, given some parts of the site have low visibility due to dense vegetation growth, the ACHMP contains protocols to deal with unexpected finds.

It is considered that the proposed development is unlikely to have a significant impact on Aboriginal cultural heritage subject to the works being completed in accordance with the ACHMP and any associated Aboriginal Heritage Impact Permit (AHIPs) if required for any unexpected finds.

European heritage

The potential impacts of the proposed development on items of European heritage are discussed in detail within **Section 6.10** of this report.

Clause 5.21 – Flood planning

Flood impacts associated with proposed development are discussed in detail within **Section 6.7** of this report.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

Newcastle Development Control Plan 2023 came into effect 1 March 2024.

DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. There are several chapters of the DCP that do not have savings provisions, however they are not relevant to this application. Any development application lodged before its commencement will be assessed in accordance with any previous development control plan (DCP). The former Newcastle DCP 2012 is the applicable DCP and is discussed throughout this report.

There are several proposed instruments which have been the subject of public consultation under the *EP&A Act*. Those relevant to the proposal, include the following:

- *Draft Remediation of Land SEPP*

A proposed *Remediation of Land State Environmental Planning Policy* ('Remediation of Land SEPP'), which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed Remediation of Land SEPP is intended to repeal and replace the provisions of SEPP 55 (now Chapter 4 of SEPP (Resilience and Hazards) 2021) and *Contaminated Land Planning Guidelines*, and seeks to provide a state-wide planning framework to guide the remediation of land, including; outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly list remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

The *Remediation of Land SEPP* is aimed at improving the assessment and management of land contamination and its associated remediation practices. The modified proposal is consistent with the draft provisions and is considered to be acceptable subject to conditions of consent having been assessed in detail against the current provisions of SEPP (Resilience and Hazards) 2021.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

In accordance with Condition 1.12 of Part C and FEAR 1.13 of Part D of the Concept Plan approval, the Urban Design Guidelines prepared with the Concept Plan were revised. On 16 November 2018 the Planning Secretary at the Department of Planning approved the Minmi Precinct Design Guidelines (the MPDG – Refer **Attachment D**).

Also as required by FEAR 1.13, the MPDG has been prepared in a form which can be adopted as site specific controls within the Newcastle Development Control Plan 2012 (NDCP2012) at some stage in the future.

In the event of any inconsistency between the NDCP 2012 or any environmental planning instrument and the Concept Approval, the Concept Approval will prevail as legislated, to the extent of the inconsistency, and as such the MPDG will also prevail to the extent of any inconsistency with the NDCP2012. It is noted that future development on the proposed lots will also be subject to the provisions of the MPDG. A condition of consent has been recommended that ensures any future development is to be in accordance with the MPDG should the application be approved.

The relevant clauses of the MPDG which are considered alongside the relevant sections of NDCP2012 are discussed below.

- **Minmi Precinct Design Guidelines (MPDG)**

1. Character Statement

The proposed subdivision layout and lot typologies discussed below are assessed as being consistent with the MPDG and the three defined precinct characteristics.

2. Subdivision Design and Layout

Section 2 sets out the following five objectives:

1. To ensure the subdivision of the precincts are undertaken in a coordinated manner that reinforces the desired future character for each precinct.
2. To provide land capable of supporting future residential and commercial land uses.
3. Within the context of Objective 2 above, undertake earthworks that respond to the natural topography of the site, while identifying opportunities for the retention of vegetation particularly within land zoned E2 (now Zone C2) Environmental Conservation.
4. To provide opportunities for choice in housing to cater for changing demographics within the community.
5. To consider and incorporate the existing scattered isolated lots and dwellings into the subdivision layout.

The proposed subdivision is considered to be generally consistent with these objectives with the exception of how Objective 5 has been applied to the existing isolated lots.



FIGURE 11 – Showing Isolated Properties (Source – Subdivision Plans, Rev. T, 3/02/2023)

There are a number of isolated lots whereby the adjacent lots 'wrap around' the frontage thereby continuing to isolate these existing lots from the road reserve with only a Right of Carriageway (ROC) providing access. This is considered to not meet the objective of the MPDG. CN and the Geographical Names Board generally require all lots to have road frontage wherever possible as this assists with house numbering, property identification and aids emergency services when responding to emergency callouts. This is not achieved by a ROC. Furthermore, the current proposal creates irregular lot shapes contrary to the MPDG lot typology and NDCP 2012 Section 3.01 Subdivision guidelines that require generally rectilinear shaped allotments and would also result in difficult management of the land portion that sits between the isolated lot and road frontage and will have a significant adverse impact on the amenity and access currently enjoyed.

While the applicant's response of 15 September 2023 has clarified some aspects regarding the isolated lots the following are still considered unacceptable.

- Lot 46 DP115128 – dwg ref – 239736(3)-DA-118-T (Stage 35) – has ROC through proposed Lot 3550 but has no direct frontage to either Road MC47 or MC50.



The road reserve should encompass all land to front boundary, to both roads MC47 & MC50.

- Lot 49 DP115128 – dwg ref – 239736(3)-DA-118-T (Stage 35) – has ROC through proposed Lot 3534 but has no direct frontage to Road MC88.



Road reserve should encompass land to front boundary.

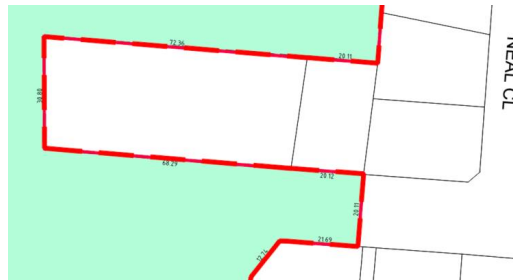
- Lot 43 & 45 DP115128 - dwg ref – 239736(3)-DA-123-T (Stage 40) – has ROC to both Lot 43 & 45 but no frontage to Road MC102.



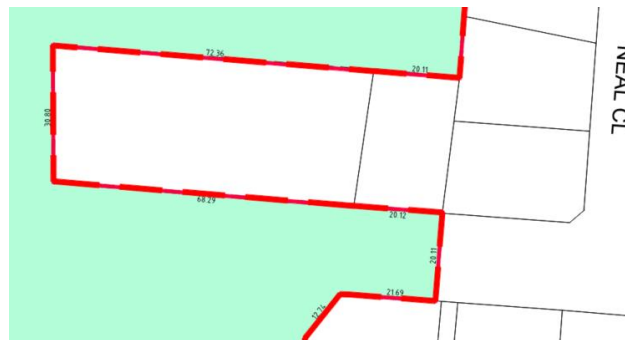
Road reserve should connect to front boundaries.

Another two isolated lots exist at the end of Church Street that have not been appropriately integrated.

- Lot 101 DP1032684 (known as 38 Church Street) – dwg ref – 239736(3)-DA-115-T (Stage 32) – does not have any road frontage. While it appears that there is an existing ROC, the Church Street road reserve should be extended to provide actual road frontage (ie into proposed residual Lot 3236), particularly noting adjacent No. 40 Church Street also needs frontage.



- Lot 1 DP 730659 (known as 40 Church Street) – dwg ref – 239736(3)-DA-115-T (Stage 32) - does not have any road frontage or a ROC proposed. The Church Street road reserve should be extended to provide frontage (ie into proposed residual Lot 3236) and cul-de-sac to enable kerb side waste collection vehicles and the like to turn.



While the above subdivision design is unacceptable in relation to treatment of these isolated lots it could be addressed by an appropriate condition of consent. A condition has therefore been recommended to address this issue should the application be approved.

Section 2 also contains 22 controls to guide subdivision of the land in a manner that will then sustain future development on the resulting lots that are generally consistent with Section 3 – *'Development other than Subdivision'* of the MPDG.

The 22 controls mentioned above reinforce the intended urban structure and may be grouped into the following themes.

a) Urban Structure

The proposed development will deliver an urban structure that is generally consistent with Figure 1 of the MPDG. The only notable departure is in the northern part of the site (Stage 38) where amendments have been made to accommodate the provision of recreation land in accordance with approval issued by the Planning Secretary at DPE on 18 May 2021 in satisfaction of FEAR 1.16.

That amendment resulted in the deletion of the residential areas in the northern part of the site and necessitated a revision of the road layout and a new intersection with Woodford St adjacent the existing local parkland.

The resulting urban structure is consistent with the Concept Approval and as a result is appropriate and acceptable.

b) Movement and access (including access controls)

The proposed road layout and hierarchy is generally consistent with the *Figure 2 – Indicative Movement and Access Principles Plan* in the MPDG and NDCP 2012 – 7.04 Movement Networks. Again, the only notable departure is in association with the provision of recreation lands as described above.

Proposed intersection controls associated with the local road network have been assessed and are considered appropriate.

Generally, appropriate provision has been made for the establishment (or extension) of bus routes and for pedestrian and cyclist movements via a network of on and off road facilities. These facilities are further detailed in the Concept Engineering Plans and Infrastructure Staging Plan Report but require further refinement by way of amended plans or appropriate conditions, if consent was to be granted to the development.

c) Lot typology, sizing and siting

Lot typology is generally consistent with *Figure 3 – Indicative Lot Type and Diversity Principles Plan* in the MPDG. Again, the only notable departure is in association with the provision of recreation lands as described above.

Lot typology, and the apportionment of each lot typology, is guided by Tables 1 and 2 of the MPDG which are replicated in **Figures 12 and 13** below.

Appropriate lot controls and lot typologies have been applied for the various precincts and meet the intent of the Structure Plan and will provide a range of allotments capable of sustaining a range of future dwelling sizes and styles.

Table 1: Controls for Residential Lot Types

Residential Lot Type	Frontage Range	Typical Frontage	Typical Lot Size Range (m ²)
Terrace / Townhouse Lot	7m – 10.4m	8.5m	200 – 300
Small Courtyard Lot	10.5m – 13.4m	12.5m	300 – 375
Large Courtyard Lot	13.5m – 14.9m	14m	375 – 450
Traditional Lot	15m – 19.9m	15 – 17m	450 – 800
Lifestyle Lot	20m +	20m	800 +
Heritage Character Lot	N/A	N/A	600 +
Multi-Dwelling Housing Super Lot	18m	Variable	1000+

Notes:

- Allotment frontage is the primary variable to determine an allotment classification for setbacks;
- Where an allotments depth results in a larger than typical total lot area, the frontage will still be the determining factor to classify setbacks and building type, unless otherwise agreed by Council;
- Heritage Character Lots are controlled by area rather than frontage, refer to Control 7.
- To be classified as a Lifestyle Lot, the allotment must meet both the Minimum Lot Size and Minimum Frontage controls;
- Battle-axe allotment classification is determined by width. The measurement for the front boundary is to be made at the useable part of the lot.

FIGURE 12 – Residential Lot controls (Source – Table 1 MPDG)

Table 2: Guide for Lot Variety per Precinct for Residential Land

Figure 3 Lot Mix	Minimum % of Lot Typology by Precinct			
	Lot Type	Village Centre Precinct	Link Road North Precinct	Minmi Extension Precinct
Small Urban Lot Mix	Townhouse / Terrace Lots	5	0	N/A – no Blue Area within Minmi Extension Precinct
	Small Courtyard Lots	10	10	
	Large Courtyard Lots	0	0	
	Traditional Lots	30	60	
	Lifestyle Lots	0	0	
Traditional Lot Mix	Townhouse / Terrace Lots	N/A – no Pink Area within Village Centre Precinct	0	0
	Small Courtyard Lots		5	5
	Large Courtyard Lots		0	0
	Traditional Lots		70	90
	Lifestyle Lots		0	0
Large Lifestyle Lot Mix	Townhouse / Terrace Lots	N/A – no Brown Area within Village Centre Precinct	N/A	N/A
	Small Courtyard Lots		N/A	N/A
	Large Courtyard Lots		N/A	N/A
	Traditional Lots		0	0
	Lifestyle Lots		80	80

Notes:

- Council may impose a restriction as to the use of the land (at the time of subdivision) on Super Lots proposed for an intended lot / dwelling type;
- A percentage target of 0% denotes that there is no minimum target for the particular lot typology in the Lot Mix Area. It should not be interpreted to mean that lots of this type are not permissible in that particular Lot Mix Area;
- Lifestyle Lots are permissible in any Lot Mix Area where site constraints necessitate a larger lot type. For example, additional area required to accommodate slope or APZ; and
- Super Lots may be provided for future permissible development in the zone.

FIGURE 13 – Residential Lot Typology (Source – Table 2 MPDG)

The overall lot typology mix achieved is as per the following table:

Lot Typology	Lot Count
Townhouse / Terrace	3%
Small Courtyard	16.6%
Large Courtyard	2.2%
Traditional	65%
Lifestyle	12.8%

Figure 14 below shows the allocation and location of the various lot typologies across the development.

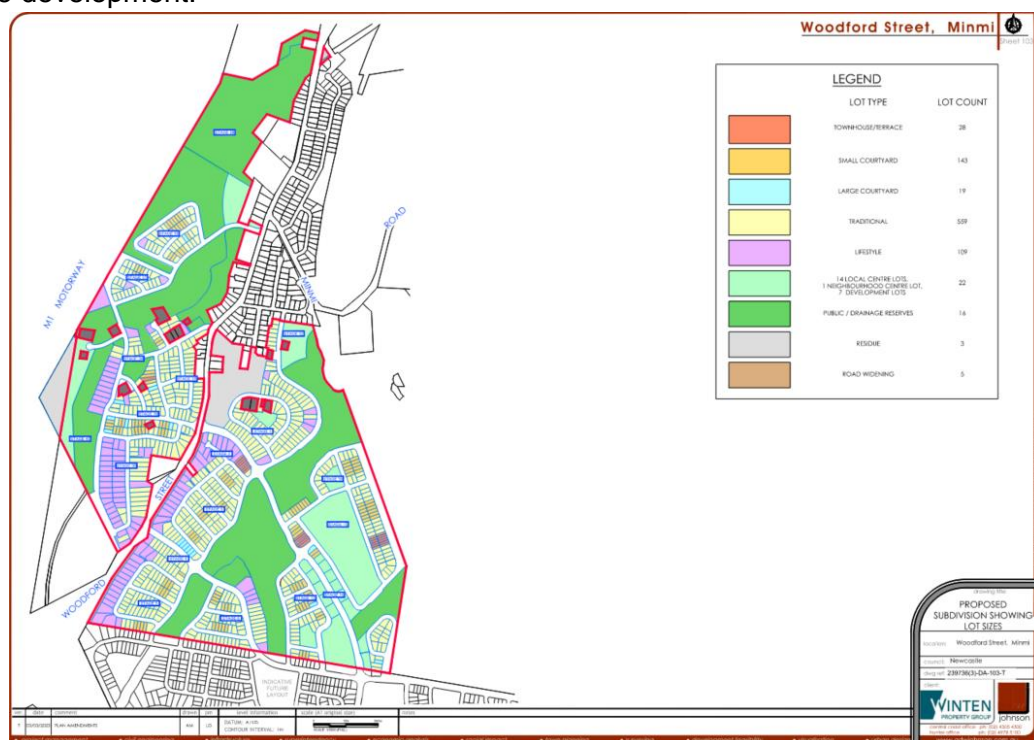


FIGURE 14 –Lot Typology and Allocations (Source – Subdivision Plans, Sht 3)

d) Earthworks (including lot benching and retaining structures)

Earthworks associated with the proposed development are discussed in detail within **Section 5.6** of this report.

e) Protection of core natural watercourses and associated riparian zones

The proposed development minimises works within the C2 zoned land. For the most part, the riparian corridors will be retained throughout the subdivision, with subdivision works predominately limited to road crossings and shared pathways.

In land zoned C2, but outside of the core riparian corridors, subdivision works are also limited. However, some of these areas will contain subdivision infrastructure such as bio-retention basins, as well as shared pathways and seating.

It is considered that the proposal is consistent with the relevant MPDG controls.

f) Public open space and connections to the neighbouring Blue Gum Hills Regional Park (BGHRP)

The proposed areas for public open space have been considered having regard to the MPDG, heritage values and Council's s7.11 Development Contributions Plan methods for calculating the demand for active and passive open space considering the estimated population projections.

The proposed public open space is generally consistent with Figure 6 (replicated as **Figure 15** below) and Table 5 of the MPDG. As per the MPDG, the following areas of open space are proposed:

- One local park within Stage 6
- Workshop Park within Stage 34
- One lineal park containing the areas identified as Coke Oven Park and Minmi Edge Park, as well as the Duckenfield Shared Path. This forms an extension to, and permit augmentation of, the existing Minmi Park located at 96 Woodford St, Minmi.

It is proposed to dedicate the above parks to CN, which is agreed.

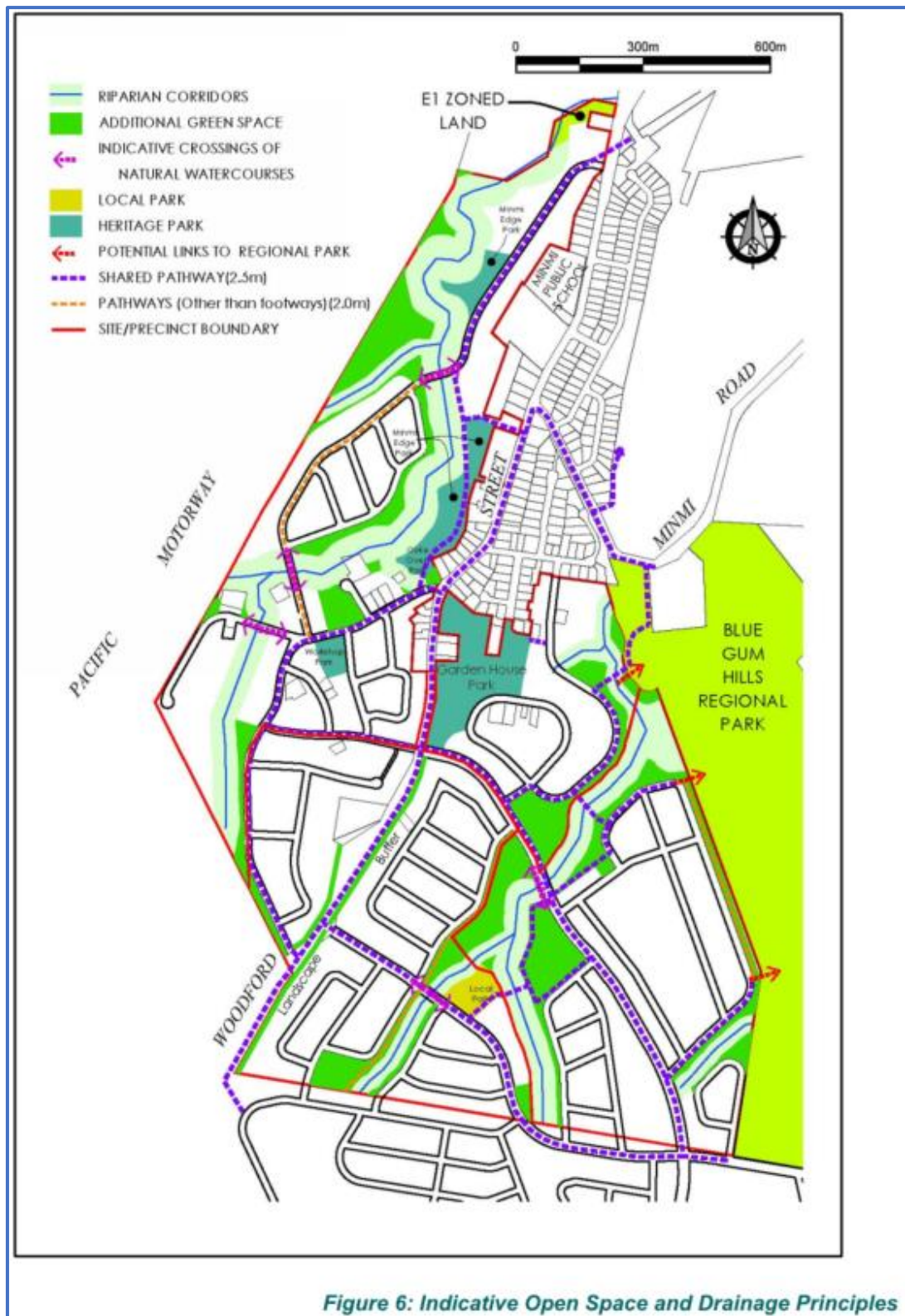


FIGURE 15 – Indicative Open Space Features (Source – MPDG, Figure 6)

Figure 6 and Table 5 of the MPDG also refers to what is now proposed to be Lot 3236 as 'Garden House Park'. The area shown as Garden House Park is also shown as a 'Feature Park' on the Concept Plan approval with the accompanying documentation, noting the NLEP2012 listed heritage significance of the former 'Garden House Site' that occupies part of the land and the lands value in protecting the curtilage and views of the

adjacent heritage listed Former Police Station and Court House at 40 Church Street, Minmi.

The application proposes to create Lot 3236 as a 'Residue Lot'.

Notwithstanding that the Garden House Park is not required to meet the minimum open space demands for the projected population (based upon the current proposed lot yield), it is CN's preference that Lot 3236 (Garden House Park) be included with the other areas of public open space intended to be dedicated to Council consistent with the intent of the Concept Plan and MPDG.

The applicant has not agreed at this stage to dedicate the land, outlining under the SEE a number of reasons including that *"There is no requirement for the Applicant to nominate a specific land use for this land as part of the proposed subdivision"* and that *"It would be unlawful to impose a condition of consent requiring dedication of land for a park which is over and above the open space needs generated by the development, as this would breach the limitations on power to require the dedication of land that are set out under s7.11 of the EP&A Act."*

It is acknowledged that there is no specific use proposed for this lot under the current application. CN maintains that this area is identified as Garden House Park under the MPDG and that any future use would need to be consistent with the MPDG. However, for the purposes of this application it is considered acceptable to leave Garden House Park (Lot 3236) as a residual lot.

The note to Figure 1 of the MPDG acknowledges that at the time the MPDG's were approved by DPE, no decision had been made, in satisfaction of FEAR 1.16, that identified suitable land for future recreation (sporting) needs to support the incoming population resulting from all stages of the Concept Plan.

As mentioned above in a), on 18 May 2021 the delegate to the Planning Secretary at DPE approved part of the land in the northern part of the development site (proposed Lot 3806 in Stage 38) and part of proposed Lot 601 in approved DA2015/10393 (Minmi East Precinct 1B) as 'suitable land' on which to deliver future recreation facilities.

Accordingly, the resulting departures between the current proposed development and the MPDG, as they relate to satisfaction of FEAR 1.16, are considered appropriate.

In regard to connections between the proposed development and other off-site recreation facilities, it is noted that the development appropriately includes the following:

- Stage 16 - includes two proposed combined pedestrian/cycle/fire trail connections to the Blue Gum Hills Regional Park to the east.
- Stage 32 – includes a pedestrian/cycle connection to the north, through existing streets, providing more direct connection to the approved Minmi East Precinct 1B.
- Pedestrian/cycle facilities on Woodford St toward the Newcastle Link Road.

It is also proposed to dedicate Lot 3809 in the northern portion of the development. This would enable continuing the approved (December 2021) Richmond Vale Rail Trail shared path through to Woodford Street to provide better connection to the proposed shared path on the alignment of the former Duckenfield Colliery No. 1 Railway Branch Line (referenced in Condition 1.10 of Part C of the Concept Plan approval). This connection is a positive outcome and is supported.

Winten have also agreed to dedicate recreation land in location 2 (part of proposed Lot 601 in approved DA2015/10393 (Minmi East Precinct 1B)) to CN. This is an improved outcome that has been facilitated by the changes resulting from the LMCC DA whereby the proposal was amended to remove recreation facilities from being located within the CN LGA and proposing a Voluntary Planning Agreement to locate these facilities within other areas of the Lake Macquarie LGA. A condition of consent has been recommended for land dedication for location 2 to CN if the application is to be approved.

The proposed active and passive open space requirements are generally considered to be appropriately met by the proposal and are consistent with the Concept Plan approval and MPDG.

g) Provision of a landscape buffer to Woodford Street

A landscape buffer has been incorporated along Woodford Street (south of the intersection with Road MC01 (in Stage 1)). This buffer will comprise any vegetation retained within existing road reserve following completion of the required pavement widening and footway construction as well as a further 10m wide strip of proposed road widening that also contains existing vegetation along most of its length. **Figure 16** is taken from the submitted Landscape Plans and shows generally how this would be achieved.



FIGURE 16 – Woodford Street Landscaped Buffer (Source – Landscape Plans, Sht LP06)

Fencing to the rear of the adjacent allotment boundaries is also proposed to be provided along this road frontage as part of subdivision works to ensure a consistent streetscape is presented.

The MPDG requires subdivision for vacant townhouse/terrace, small courtyard or large courtyard lots to nominate any mandatory and optional built to boundary walls. It's requested to defer this to SC stage. This is considered appropriate considering the further design refinement that would be required.

- **Newcastle Development Control Plan 2012 (NDCP2012)**

The Newcastle Development Control Plan (NDCP) 2023 commenced 1 March 2024, which repealed NDCP 2012. NDCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with NDCP 2012. There are three sections in the NDCP 2023 that do not have savings provisions. However, these relate to commercial development, Tighes Hill and Kotara character areas and are not relevant to this application.

Notwithstanding, as the NDCP 2023 has been publicly exhibited and adopted by Council, the provisions have been considered within the assessment of this application as a relevant matter for consideration.

In addition to the development controls within the MPDG the main planning requirements of relevance in the NDCP2012, as it applied to the proposal at the time of lodgement, are discussed below.

Section 3.01 Subdivision

The MPDG also contains controls relating to the subdivision of the land that take precedent, to the extent of any inconsistency, over the controls within Section 3.01 and these are discussed above in this report. The proposed subdivision and resulting allotments are, therefore, considered to be satisfactory having regard to NDCP2012, other than the lots that wrap around the isolated lots. As discussed previously these lots result in irregular geometry rather than the controls for residential lots that require lots that are "*generally rectangular in shape*". This issue can be addressed as per the recommended conditions.

Section 4.01 Flood Management

The impacts of the proposed subdivision have been properly considered and the development is not expected to result in detrimental increases of potential flood affectation on the surrounding urban area or other existing residential or commercial properties subject to implementation of the recommended mitigation strategies for in-stream flood storage, future on-lot retention volumes contained within rainwater tanks and their associated discharge controls as is required under Section 7.06 – Stormwater of the NDCP2012.

Flooding is discussed in greater detail under **Section 6.7** of this report.

Section 4.02 Bush Fire Protection

The development site is located on land mapped as being bushfire prone on the certified Bush Fire Prone Land map.

Bushfire threat assessment, protection and management are discussed in detail in **Section 6.9** of this report and is considered to be satisfactory having regard to NDCP2012.

Section 4.03 Mine Subsidence

The development site is affected by former mining activities and mine subsidence.

Mine subsidence is discussed in detail in **Section 6.5** of this report.

Safety and Security - Section 4.04

The subdivision layout appropriately relies on a pattern of connecting roads and minimises reliance on cul-de-sacs. The subdivision layout has adequately considered the principles of Crime Prevention Through Environment Design (CPTED) guidelines and is acceptable.

Section 4.05 Social Impact

The social and economic benefits of subdividing the land for future residential (including aged care), commercial (including employment), active and passive recreation and educational purposes were assessed as part of the Concept Approval. The subdivision works will provide direct business and employment benefits and once complete, the serviced residential, commercial and recreation land will facilitate a mix of different lot sizes to support a range of dwelling styles and size, business growth and on-going employment and economic activity within the locality.

Section 5.01 Soil Management

Appropriate consideration of the significant land disturbance proposed as part of this development has been completed and is addressed in detail throughout this report.

A Construction Environmental Management Plan and a Soil and Water Management Plan have been prepared by the applicant which are adequate to support the development application. However, appropriate conditions of consent would be required to further refine and implement these documents during the subdivision works stage.

Section 5.02 Land Contamination

Contaminated land management is discussed in detail in **Section 6.4** of this report.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

Section 5.03 Vegetation Management

As stated in the MPDG, Section 5.03 of the NDCP2012 applies to developments on the site but only in relation to development other than subdivisions.

Section 5.04 Aboriginal Heritage,

This matter has been addressed under Clause 5.10 of the NLEP 2012 above.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

Section 5.05 Heritage Items

The impact on heritage items is discussed in detail in **Section 6.10** of this report.

Section 5.06 Archaeological Management

Archaeological management is discussed in detail in **Section 6.10** of this report.

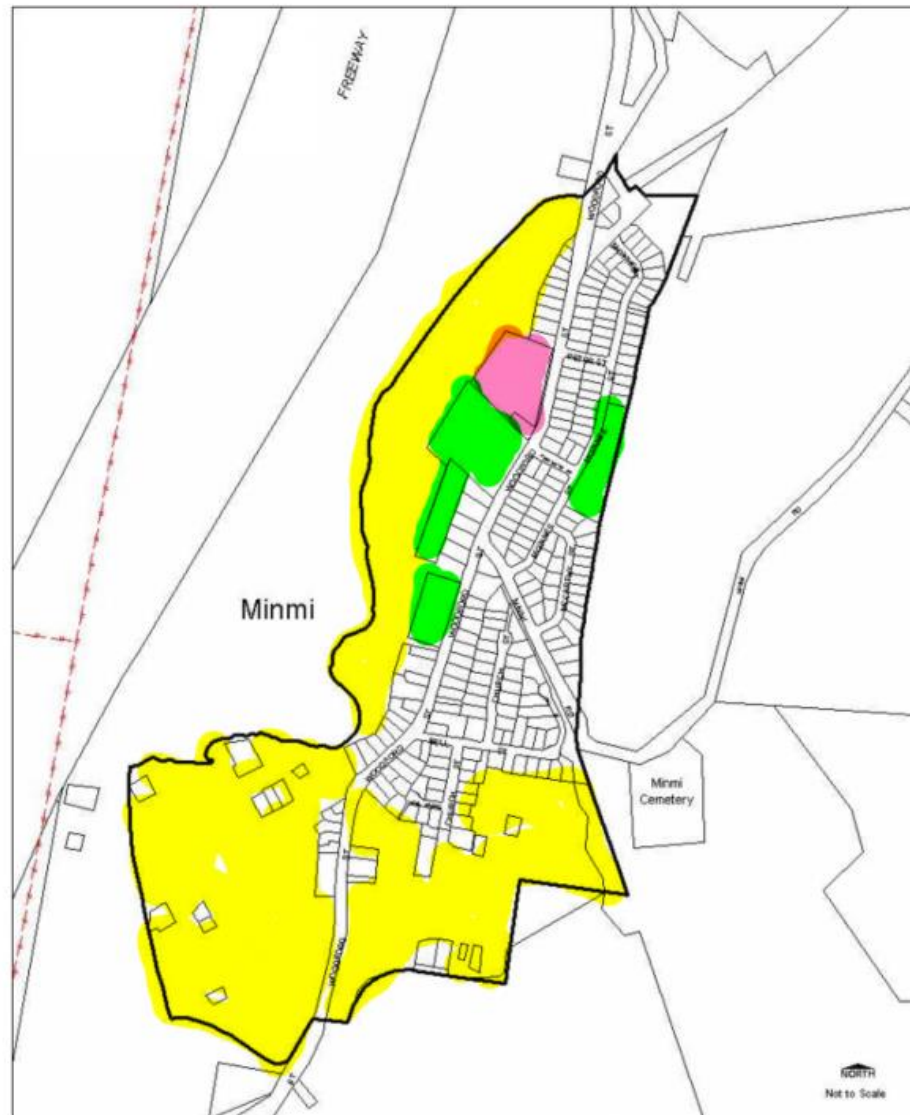
Section 6.12 Minmi

Section 6.12 – Minmi is premised on retaining and protecting the village 'context' and 'character' of Minmi whilst centralising services around the small area of existing shops.

The following map (**Figure 17**), taken from Section 6.12, has been highlighted (yellow) to show the area of land covered by the Section 6.12 but also now covered by the Concept Plan approved by the NSW Planning Assessment Commission in 2013 and subsequent MPDG approved by the Planning Secretary in November 2018. Areas shaded green are existing public reserve and the area shaded pink is Minmi Public School.

As mentioned above, in the event of any inconsistency between the NDCP2012 or any environmental planning instrument and the Concept Approval, the Concept Approval is required to prevail to the extent of the inconsistency, and as such the MPDG will also prevail to the extent of the any inconsistency with Section 6.12.

Map 1: Minmi area



Newcastle Development Control Plan 2012

6.12 Minmi

**FIGURE 17 – Showing land overlapping between Concept Plan and DCP Section 6.12
(Source – CN Mapping)**

Section 7.02 Landscape, Open Space and Visual Amenity

The proposed subdivision and resulting future development on the lots created will result in a change to the landscape and visual amenity of the locality. This impact was considered during the assessment of the Concept Plan and was determined to be acceptable by the NSW Government, resulting in the land being zoned to support the proposed development and the land identified as an Urban Release Area.

The application is supported by a Vegetation Management Plan, Landscape Masterplan Report and concept Landscape Plans that adequately address FEAR 1.15 of the Concept Plan approval and this Section of the NDCP2012.

These plans generally provide for the retention and embellishment of vegetation within riparian areas, a landscaped buffer along the currently vegetated section of Woodford Street, which sits partly atop a ridge line, and street tree planting within all new roads.

An appropriate level of open space is proposed within the development when considering the demand generated by the existing population of Minmi and the increased population that would occur as a result of this development. This demand has been calculated using the provision standards contained within CN's Western Corridor Development Contributions Plan.

Demand for developed open space will be met through the following:

- Dedication of land for a local park in Stage 6 (Lot 669) with approximately 0.5034ha of useable land for developed passive open space;
- Dedication of land for Workshop Park in Stage 34 (Lot 3438), with an area of approximately 0.5ha; and
- Dedication of land to enable the expansion and improvement of the existing Minmi Park (95 Woodford Street), which will result in a total of 0.7168 ha of useable passive open space.

Other appropriate conditions of consent would be required to further refine and implement the abovementioned vegetation and landscape plans during the subdivision works stage.

Section 7.03 Traffic, Parking and Access

It is considered that the aims of this Section have been appropriately addressed through the design of the proposed subdivision and the proposed development is considered to be acceptable in terms of the above Section of the NDCP2012.

Refer to **Section 6.1** below for discussion on the likely traffic impact the proposed development will have on the existing local, classified and broader regional road network.

Section 7.04 Movement Networks

The proposed development includes internal collector and local roads, with appropriate intersection controls, that meet the minimum requirements of this Section of the DCP having regard to road carriageway, on-street parking and pedestrian and cyclist provisions.

Refer to **Section 6.1** below for discussion on the likely traffic impact the proposed development will have on the existing local, classified and broader regional road network.

Section 7.06 Stormwater

Refer to **Section 6.8** below for discussion on the management of stormwater quantity and quality.

The previous proposal was considered unacceptable in relation to the proposed methods of diversion of the western watercourse coming from under the M1 Motorway and impacting on Stage 37. However, this has now been addressed with the current design whereby the existing open watercourse is primarily retained. The proposal is satisfactory or could be made to be satisfactory in terms of the above Section of the NDCP2012 through the imposition of appropriate conditions of consent.

Section 7.08 Waste Management

Appropriate measures will be included in the Construction Environmental Management Plan to deal with waste generated during construction of the subdivision.

All proposed roads are capable of servicing the local waste collection needs of the future developments on the proposed allotments.

The proposed development is considered to be acceptable in relation to the applicable Sections and provisions of NDCP 2012.

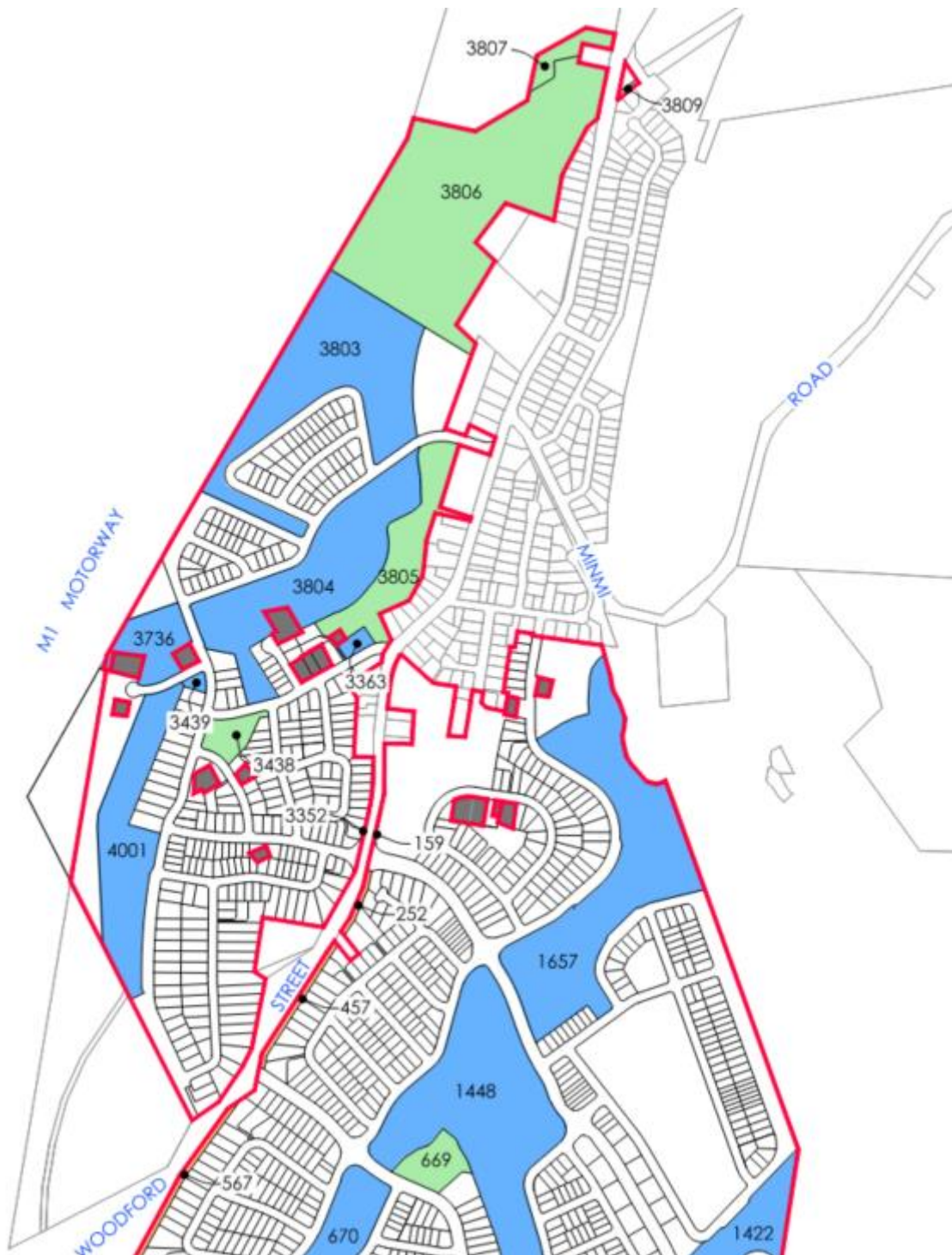
(d) Section 7.12 Newcastle Local Infrastructure Contribution Plan 2019 (Update December 2020)

The following Local Infrastructure Contributions Plans are relevant pursuant to Section 7.18 of the EP&A Act:

- *Section 7.11 Western Corridor Local Infrastructure Contribution Plan 2013 (Update commenced 27 February 2020) (WCLICP2013)*

Section 2.9 of the WCLICP2013 does not provide for an exemption or any reduction to contributions levied for this nature of development.

The WCLICP2013 includes contributions that will allow CN to acquire land for public reserve to support the increase in population anticipated under that plan. This would extend to proposed Lots 669, 3438, 3805 and 3806 as identified on the plan titled 'Proposed Public Reserve and Park Areas' prepared by ADW Johnson (Ref: 239736(3)-DA-124 (Rev. T dated 3/03/2023) contained within the Subdivision Plans, extract below for reference of these locations shown in green.



(e) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed involving CN and directly relating to DA2018/01351.

Two planning agreements have previously been entered into with the NSW Government in relation to dedication of biodiversity conservation offsets land and State Infrastructure Contributions. Neither of these planning agreements involve CN. A summary of the Voluntary Planning Agreements (VPA) is provided below.

- Environmental Offsets

A VPA was entered into between the landowner (Minmi Land Pty Ltd and Coal & Allied Operations Pty Ltd) and the NSW Government on 3 October 2012 as part of the Concept Plan application.

The VPA secured the environmental conservation land contribution of approximately 1,561 hectares of land and associated remediation and reserve establishment works, for the purposes of offsetting the ecological impacts associated with the Minmi Link Road development.

The environmental offset lands were transferred to the NSW Government on 28 October 2016.

- State Infrastructure Contributions (SIC)

A second VPA was entered into between the Winten (No 21) Pty Ltd, Minmi Land Pty Ltd and the Minister for Planning on 26 September 2018 for the provision of contributions for designated State infrastructure.

The development contributions secured by the VPA equate to the draft SIC rate (at the time) of \$81,994 per hectare of net developable area. In short, the VPA comprised the following:

- The payment of a monetary contribution to the Minister;
- Dedication of education lands; and
- Dedication of regional open space.

Further it is noted that the applicant has offered to amend the existing State Voluntary Planning Agreement to include a contribution of \$20 million towards the upgrade to the intersection of Newcastle Link Road and Minmi Road intersection. TfNSW in their advice of 5 December 2023 has provided a condition requiring this to occur:

Prior to the issue of any Subdivision Works Certificate, the developer must enter into an amended Planning Agreement with the Minister for Planning in accordance with:
(a) Division 7.1 of Part 7 of the EP&A Act; and
(b) The terms of the developer's offer to contribute to the upgrade of the Newcastle Link Road/Minmi Road intersection, dated 17 May 2023 (as amended 21 August 2023).

Such a condition provides certainty that the development could not proceed unless such a Planning Agreement was in place.

Email advice received from the Panel Secretariat of the HCCRPP on 20 October 2023 to both CN and LMCC confirmed that a condition can be imposed on a consent that requires "a *planning agreement to be entered into but only if it requires a planning agreement that is in the terms of an offer made by the developer*". This is considered applicable in this case and there would be no impediment to the HCCRPP granting consent.

Further, while not a formal planning agreement under s7.4 of the *EP&A Act*, it is noted that the proponent has committed to delivery of a \$8 million fund, in addition to any Council Development Contributions Plan and State Infrastructure Contribution and which does not include any contributions which would be otherwise required to mitigate the impacts of the development. This fund is to be administered by the proponent over the life of the development in accordance with FEAR 1.10 of the Concept Plan approval. If consent is granted to DA2018/01351, an appropriate condition of consent requiring the applicant to provide a Statement of Account detailing all actual and projected contribution expenditure made from the \$8M in a report to CN on a yearly basis, has been recommended.

In section 2.10 of the Statement of Environmental Effects, the applicant acknowledged that up to \$555,000 of the \$8 million fund toward the creation of cycleway linkages is already made under Condition F.2 of DA2015/10393 (Minmi East Precinct 1B) and, therefore no other funds are likely to be expended on cycleways from that fund. As such, the applicant will be responsible for constructing all pedestrian and shared paths necessary to connect the development to Minmi and the Newcastle Link Road in accordance with the Infrastructure Staging Plan discussed in **Section 6.11** of this report.

(f) Section 4.15(1)(a)(iv) - Provisions of Regulations

Environmental Planning and Assessment Regulation 2000

Schedule 6 'Savings, transitional and other provisions' of Environmental Planning and Assessment Regulation 2021 confirms that *Environmental Planning and Assessment Regulation 2000 (2000 Regulation)* as in force immediately before its repeal on 1 March 2022 continues to apply to DA2018/01351.

The following relevant matters contained in the 2000 Regulation **must** be taken into consideration by a consent authority in determining a development application:

- Matters contained in Clause 92(1) including:
 - If demolition of a building proposed – the provisions of AS 2601.
 - If on land subject to subdivision order under Schedule 7, provisions of that order and any development plan.
 - Dark Sky Planning Guideline if applicable.
 - *Low Rise Housing Diversity Design Guide for Development Applications* (July 2020) if for manor house or multi dwelling housing (terraces).
- Matters contained in Clause 92A(1) including the *Wagga Wagga Special Activation Precinct Master Plan* published by the Department in May 2021.
- Matters in Clause 93 where the consent authority must be satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use (CI 93(3)).
- Matters in Clause 94 where the consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.

These prescribed matters have been considered and been found to not be applicable to the proposed development.

Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Schedule 2 *'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act'* applies to the development. Under Schedule 2, the following clauses are of particular relevance.

- Cl. 2(1)(b) – the approved Concept Plan is considered to be a Transitional Part 3A project and, therefore, the terms of the Concept Plan approval issued by the NSW Planning and Assessment Commission on 6 August 2013 (as amended by MOD1 on 21 December 2016) continue to apply.
- Cl. 3B(2)(a) – the development is taken to be development that may be carried out with development consent under Part 4.
- Cl. 3B(2)(d) – a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the Concept Plan.
- Cl. 3B(2)(f) - the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the Concept Plan.

A summary of the Further Environmental Assessment Requirements (FEARS) contained within Part D of the Concept Plan approval (MP10_0090) issued by the NSW Planning and Assessment Commission on 6 August 2013 (as modified by MOD1), and a summary response to each of the FEARS by the applicant and CN can be found in **Attachment D**.

4.5 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP, the Concept Plan approval and associated MPDG and NDCP2012 controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed development is generally consistent with the approved Concept Plan and will deliver allotments for low density residential housing in areas closest to the existing dwellings within Minmi village and higher density development in parts of the site where no immediate impact on the Minmi village is expected.
- Access and traffic – The location of access points to the proposed internal road network and the likely impacts of traffic generated by future developments on the lots created has been comprehensively considered by CN and supported by TfNSW.

Refer to **Section 6.1** below for discussion on the likely traffic impacts, the proposed development will have on the existing local road network as well as the broader, regional road network. It is noted in these sections that Transport for NSW (TfNSW) now support the proposed development.

- Public Domain – The proposed development will not result in loss of any existing area of public domain. The proposal will increase areas of publicly accessible land through dedication of active and passive recreation areas and via new connections to the neighbouring Blue Gum Hills Regional Park.
- Utilities – Water, sewer, electricity and telecommunication utilities will be provided to all lots within the development to the requirements of the respective public utility authority.
- Heritage – The proposal does not impact on any listed item of European heritage identified on the State Heritage register.

The proposed development is however on land containing, or in proximity to, a number of items of local significance as listed in the NLEP2012. The potential impact on these listed items is discussed in **Section 6.10** of this report.

No sites relating to Aboriginal cultural heritage have been located on the development site. If unexpected finds occur during construction works, an Aboriginal Heritage Impact Permit (AHIP) will be required.

- Other land resources – No further coal mining activities are proposed on the development site.
- Water/air/soils impacts - Contamination and remediation has been appropriately considered and the proposal is satisfactory subject to conditions. FEAR 1.46 of the Concept Plan approval requires further consideration of the impacts of the development during construction on air, water and soils, including erosion and sedimentation, and these could be appropriately managed by the mitigation measures generally proposed within the submitted Construction Environmental Management Plan and appropriate supporting conditions of consent.
- Flora and fauna impacts - The impacts on flora and fauna have been assessed within this report and are acceptable in regard to the works proposed within the development site. It is now satisfied that the impacts of 'off-site' road upgrades that are required to mitigate the impact of the proposed development on regional traffic safety, efficiency and effectiveness is sufficiently known, and that adequate information has been provided by the applicant to make an informed assessment and that the impact is acceptable.
- Natural environment – As determined by the NSW Government approved Concept Plan, the development requires large scale changes to the natural landform through broad scale vegetation removal and regrading/reshaping works to deliver the new roads and allotments. These works do not have any significant impact on the natural environment in the retained riparian corridors being preserved through the site, other than when road crossings or pathway connections are necessary.

- Noise and vibration – There are potential for adverse impacts during construction on the existing neighbouring residential and commercial properties. These temporary construction impacts would be managed by the preparation and implementation of stage specific Construction Environmental Management Plans.

There is also potential for adverse noise impacts on sensitive noise receivers as a result of the increased traffic expected to be generated by the development. This is discussed in detail in **Section 6.2** of this report.

- Natural hazards –The site is affected by bushfire, land contamination, mine subsidence and flooding across a range of rainfall events, however, the impact of these on the proposed development is considered to be acceptable.
- Safety, security and crime prevention – The proposed development is considered acceptable having regard to CPTED Principles.
- Social impact – The proposed development is assessed as having no significant adverse impacts on the health and safety of the community, sense of place, community facilities or interactions between the new development and the community.

It is also anticipated that the future developments on lots within the E1 Local Centre zoned land will include a range of retail and other support services which will benefit the incoming population and provide greater opportunity and local support for the existing community.

- Economic impact – The proposal is assessed as providing significant positive economic benefits resulting from the release of new residential and commercial allotments of varying sizes. The resulting increased population as a result of the proposal is also likely to increase patronage of the few existing businesses currently in Minmi.
- Site design and internal design – The proposed subdivision layout is generally consistent with the Concept Plan approval and MPDG. However, there is exception with the treatment of isolated lots which is not supported. This was discussed in detail within this report when addressing the MPDG, however, it is considered feasible for this matter to be dealt with by an appropriate condition of consent as recommended.
- Construction – Potential and likely impacts during the construction phase have been appropriately considered and are acceptable subject to the preparation and implementation of stage specific Construction Environmental Management Plans.
- Cumulative impacts – in relation to traffic impacts TfNSW is now supportive of the development subject to a raft on regional road upgrades. The application has been supported by sufficient ecological information to assess that the on-site and off-site impacts to flora and fauna are acceptable. The previously identified issues surrounding flooding have also now been resolved.

4.6 Section 4.15(1)(c) - Suitability of the site

The site is considered suitable for the land clearing and subdivision works for the following reasons:

- The development is consistent with the objectives and is permissible under the applicable land use zonings under NLEP2012.
- The development is consistent with the Concept Plan approval, including the further environmental assessment requirements for subdivision of the site.
- The development is located within an Urban Release Area and proposes a development that is intensively for urban purposes.
- The proposed development is generally in accordance with the NSW Government approved Minmi Precinct Design Guidelines.
- The development is consistent with the provisions of the *Greater Newcastle Metropolitan Plan 2036* as applying to the land.
- The proposal is consistent with the *Lower Hunter Regional Conservation Plan* (DECCW, 2009). In particular, the development site sits to the south of the 'green corridor' that is being established between the Watagan Ranges and Port Stephens/Stockton Beach area, partly by the dedication of conservation offset lands that has occurred under the Concept Plan approval.
- The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulphate soils, mine subsidence and heritage. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.
- The proposal now has adequate land identified to meet the recreational demand from the resident population being Location 2 and 3 as identified under the 'request for Locations Agreement' (issue G) dated 17 September 2020. Location 3 is Lot 3806 on the proposed subdivision plans. Location 2 is Lot 601 under DA2015/10393.
- The traffic impacts can be appropriately mitigated through upgrades, noting that TfNSW now support the proposal.
- The site is generally suitable for the nature of development proposed based upon the strategic framework and Concept Approval.

4.7 Section 4.15(1)(d) - Public Submissions

Public submissions are considered in **Section 5.3** of this report.

4.8 Section 4.15(1)(e) - Public interest

The proposed development is considered to be generally in the public interest based upon the NSW Government approved strategic framework and Concept Approval.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals

The development application has been referred to various agencies for comment/concurrence/referral as required by the *EP&A Act*, the Concept Plan approval and as outlined below.

As noted below, Transport for NSW (TfNSW) now supports the proposal as it currently stands. This is further discussed in **Section 6.1** of this report.

Also as noted below, Subsidence Advisory NSW now support the proposal as it currently stands. This is further discussed in **Section 6.5** of this report.

There are no other outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions (if any) provided by the relevant agency.

AGENCY	CONCURRENCE/ REFERRAL TRIGGER	COMMENTS (ISSUE, RESOLUTION, CONDITIONS)	RESOLVED
Concurrence Requirements (s4.13 of EP&A Act)			
Water NSW	Section 8.9(1) of the Biodiversity and Conservation SEPP (Chapter 8 – Sydney Drinking Water Catchment)		Not applicable
Environment Agency Head (Environment, Energy & Science Group within DPE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	On 18 October 2018 the Director, Regional Assessments at the Department of Planning and Environment certified under clause 34(A)3 of the <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i> that the proposed development is part of a Concept Plan	Not applicable

		approval for which biodiversity impacts have been satisfactorily addressed and that appropriate biodiversity conservation measures to offset the residual impacts of the approved Concept Plan have been secured.	
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Site is not affected by the Lower Hunter Freight Rail Corridor project.	Not applicable
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Ausgrid have advised in their response of 20 June 2023 that the proposal is satisfactory subject to conditions requiring confirmation of electricity supply issued by Ausgrid prior to release of each Subdivision Certificate. Transgrid did not respond to the review application but had previously advised under the original application that overhead transmission lines would need to be relocated underground by the developer.	Yes
Transport for NSW (TfNSW)	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	TfNSW have advised that they support the proposal subject to conditions.	Yes

DPE Water – Licencing and Approvals (formerly Natural Resource Access Regulator (NRAR)	FEAR 1.22 and 1.25	DPE Water has advised that the proposal is acceptable subject to compliance with the <i>Water Management Act 2000</i> and the future detailed designs complying with the <i>Guidelines for Controlled Activities on Waterfront Land</i> .	Yes
NSW Rural Fire Service (NSWRFS)	FEAR 1.45	NSWRFS have issued a Bushfire Safety Authority (BFSA) 24 May 2023 for DA2018/01351 pursuant to s100B of the <i>Rural Fires Act 1997</i> .	Yes
Subsidence Advisory NSW (SANSW)	FEAR 1.30	SANSW have advised that they support the development subject to conditions.	Yes
Hunter Water Corporation	Public Utility Servicing	Response received, dated 21 June 2023. No objection noting applicant will need to update water and wastewater strategies. Note: Any consent issued would be conditioned to include confirmation of water and sewer prior to release of any Subdivision Certificate.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
		The Department of Planning and Environment has previously advised that, in accordance with section 75P(2)(b) of the <i>Environmental Planning and Assessment Act 1979</i> , development applications lodged subsequent to the Concept Plan approval (MP10_0090) are not Integrated Development for the purposes	N/A

		<p>of section 91 (now section 4.46) of that Act.</p> <p>Refer to discussions within this report on mine subsidence, Aboriginal cultural heritage, bushfire and water management.</p>	
Designated Development (CI 77 of the EP&A Reg)			
		No part of the proposal constitutes 'designated development'.	N/A

5.2 Council Officer Referrals

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

OFFICER	COMMENTS	RESOLVED
Environmental	<p>CN's Senior Environmental Protection Officer had previously reviewed the submitted reports and additional information relating to contamination, Acid Sulfate Soils and construction impacts and considered that the proposal is or can be made to be satisfactory subject to conditions of consent.</p> <p>Additional information was requested in relation to road noise impacts and is now considered acceptable subject to conditions, including an appropriate condition requiring lots to have a positive covenant to alert future owners of the need to include noise attenuation measure in future dwellings. All existing properties are acceptable in relation to traffic noise.</p>	Yes
Parks & Recreation	<p>Consultation has been undertaken with Council's Recreation Planning Section. Local Parks proposed to be dedicated are acceptable. The satisfaction of FEAR 1.16 is considered in greater detail under Section 5.12 of the report. The Applicant's 'request for Locations Agreement' (issue G) dated 17 September 2020' for two locations for future recreation facilities. Location 3 had been previously nominated as the preferred location for CN facilities with the purchase of such being funded through CN's s7.11 Local Infrastructure Contributions Plan. In addition, the applicant has also recently agreed to dedicate Location 2 to CN as Public Reserve. Consultation with the CN's Recreation Planning team has</p>	Yes

	<p>been undertaken to confirm that locating recreation facilities at a combination of Location 2 and 3 as per the Applicant's 'request for Locations Agreement' (issue G) dated 17 September 2020' is a positive outcome.</p>	
Public Domain/ Assets	<p>CN's Asset Services team reviewed submitted reports and additional information relating to ownership and maintenance of the residual riparian lands and considered that the proposal is satisfactory or can be made to be satisfactory subject to conditions of consent.</p> <p>It is noted that the previously proposed twin-pipe stormwater drainage arrangement for the watercourse diversion proposed in Stage 37 that was not supported has been replaced with an open channel which is now supported.</p>	Yes
Heritage	<p>CN's Heritage Officer reviewed the submitted reports relating to European heritage and Aboriginal cultural heritage and maintains that the proposal subject of the review application is satisfactory subject to conditions of consent.</p>	Yes
Flooding and Stormwater Management (External consultant)	<p>CN engaged the services of an appropriately qualified and experienced consulting firm to provide advice on flooding, stormwater quantity and stormwater quality aspects of the proposal.</p> <p>The proposal is generally acceptable with some outstanding matters to be dealt with by the imposition of appropriate conditions of consent.</p>	Yes
Contaminated Land (External consultant)	<p>CN engaged the services of an appropriately qualified and experienced consulting firm to provide advice on contaminated land remediation aspects of the proposal.</p> <p>This review has recommended that the proposal can be made to be satisfactory subject to conditions of consent.</p>	Yes
Biodiversity	<p>CN engaged the services of an appropriately qualified and experienced ecologist to provide advice on biodiversity (flora and fauna).</p> <p>The Concept Approval itself has a biodiversity offset in place. The purpose of further assessment was to ensure that additional listed species since Concept Approval were considered and ensure currency of information.</p>	Yes

	During assessment additional information was requested in relation to survey within the site, including Koala. Information was also requested in relation to offsite impacts associated with regional road upgrades, namely the Newcastle Link Road/Woodford Street intersection. The applicant submitted additional information, including a 7 part test for the off-site ecology impacts. The expert upon review accepts that the development is acceptable with requirements of the 7 part test and would not be likely to have an unreasonable impact on flora and fauna noting the biodiversity certification which is in place for the subject site.	
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5.3 Community Consultation

The proposal has been publicly notified in accordance with the CN's Community Participation Plan, and the provisions of *Environmental Planning and Assessment Regulations 2000* and *Environmental Planning and Assessment Regulations 2021* (as appropriate) on two separate occasions which overall received 226 submissions.

On each occasion the notification included the following:

- Notification letters were sent to all adjoining and adjacent properties including all properties within the existing Minmi Village and those properties surrounding Precinct 1B.
- Lake Macquarie City Council, National Parks and Wildlife Service, Hunter Water Corporation.
- Notification on CN's website.

The review application received on 6 April 2023 was notified in accordance with CN's Community Participation Plan from 8 May 2023 until 5 June 2023. A total of 95 unique submissions have been received, and two separate proforma submissions (including 55 individual households and 58 individual households).

On the 7 November 2023 the applicant sought to amend their application to delete the modification of DA2015/10393. A second public notification was undertaken in accordance with CN's Community Participation Plan from 5 February 2024 until 19 February 2024. A total of 18 unique submissions were received.

The range of resident concerns are largely consistent with those raised against the original proposal. The following table groups and summarises, in no particular order, these unique and proforma submissions and provides a brief comment for each group. When appropriate, the issues raised have been discussed in greater detail throughout this report.

Summary of Submissions	Comment
<p>1. Inadequate consultation - Concern raised that little changes to the development have been made from the application that was refused by the HCCRPP in December 2022 and that residents concerns have not been properly incorporated into the revised development subject to the review application.</p>	<ul style="list-style-type: none"> • While encouraged, there is no statutory obligation on a developer to consult with adjoining or potentially affected neighbours prior to lodging a development application. • CN has undertaken the public notification of the application, in various amended forms, on two separate occasions since lodgement. On each occasion, this occurred in accordance with CN's relevant adopted Community Participation Plan. • CN's public notification letters contain relevant details on how to access the supporting DA documentation and provide the contact details of the Assessing Officer who is available to assist with any enquires about the development or to assist with locating and interpreting the DA documentation. • The usual procedures for a public determination meeting convened by the NSW Government Hunter and Central Coast Regional Planning Panel affords the opportunity for the community to speak directly to the Panel, for or against a particular development proposal. • The application has sought to address reasons for refusal, including additional ecological assessment such as confirming that the site is still not deemed to be core Koala habitat. In relation to traffic it is noted that TfNSW are now supportive of the development subject to appropriate road upgrades.
<p>2. Character/Heritage</p> <p>a) Concern that the existing character of Minmi based upon heritage and semi-rural outlooks will be negatively impacted.</p> <p>b) Specific concern was also raised in relation to impacts on specific items including former Courthouse, including potential construction impacts.</p>	<ul style="list-style-type: none"> • Impact upon the general character is a matter that was considered under the Concept approval that was issued in 2013 by the NSW Government. The proposed development is consistent with the development pattern envisaged under the Concept Approval. • As discussed in Section 6.10 of this report a comprehensive assessment has been undertaken of the likely impacts of the development on all heritage items listed in NLEP2012 or as otherwise identified in the Concept Plan approval (i.e proposed Workshop Park). • The Courthouse sits outside of the development site but was considered in the assessment of the Concept Plan resulting in specific controls being adopted in the MPDG to guide appropriate development in the vicinity of that heritage item. If any physical damage were to occur to the building during construction activities then this would be a private matter between the property owner and the developer, as would be the case with any private property. • The controls on maximum dwelling numbers, minimum allotment sizes and lot (dwelling) typology is governed by the Concept Plan approval and MPDG's. • An Aboriginal Cultural Heritage Management Plan has been prepared and has not identified any known or listed sites of Aboriginal cultural significance. (Note, these reports are typically not publicly exhibited as they can hold sensitive Aboriginal cultural heritage information).
<p>3. Risk</p> <p>a) Mine subsidence - Concern raised that significant mine</p>	<ul style="list-style-type: none"> • The application has been referred to Subsidence Advisory NSW (SANSW) which has advised that the proposal is supported subject to conditions requiring appropriate

<p>subsidence issues which do not create confidence in the development.</p> <p>b) Bushfire - Slow evacuations due to increased congestion. Impact of traffic on emergency services access</p> <p>c) Flood - concern was raised that flood impacts may be increased.</p> <p>d) Contamination - concern raised that the land is contaminated and that remediation activities may expose residents to contaminants.</p>	<p>remediation. Mitigation measures will need to be implemented to eliminate the risk of mine subsidence from the land to make it suitable for the intended uses.</p> <ul style="list-style-type: none"> • The bushfire threat risk and proposed bushfire protection measures have been assessed by the NSWRFs and found to be acceptable subject to conditions of consent. • The roads are of adequate size and have capacity to permit safe and effective operations by emergency services and evacuation. • The application was supported by a Flood Impact Assessment, which demonstrates flood risk on existing properties is not unreasonably increased. • The application has been supported by a comprehensive contamination report. The remediation of the site to meet the applicable health requirements for the proposed land use is considered a positive benefit to the community. It is noted that the recommended conditions require a Site Auditor to verify the remediation process which will ensure the methods meet best practice at the time.
<p>4. Traffic</p> <p>a) Concern regarding increased congestion on roads that are already congested, resulting in delays during peak hours.</p> <p>b) Specific concern regarding Woodford Street and effectiveness of intersection upgrades at the Newcastle Link Road and also congestion on Minmi Road.</p> <p>c) Increase in traffic noise – existing noise is unacceptable</p>	<ul style="list-style-type: none"> • A comprehensive Traffic Impact Assessment has been included with the application. Consideration has been given that the traffic counts were undertaken in 2015 and 2016 to inform the TIA. However, the report builds on these by adopting 1.5% background traffic as per usual modelling techniques. No other significant development has occurred in this vicinity beyond that known to be occurring in Fletcher. • As discussed below in Section 6.1.1, while a noticeable increase in local traffic is expected, the volume does not exceed the maximum operating capacity for the existing or proposed local roads and an adequate level of service is expected to be achieved at full development subject to appropriate road and intersection upgrades as recommended in this report. • As discussed in Section 6.1.2, TfNSW have now confirmed that they are supportive of the proposal subject to a raft of road upgrades, including key intersections along the Newcastle Link Road. • Any uptake in student numbers at the existing Minmi Public School that would result in increased traffic or demand for parking is a matter for the Department of Education to resolve. • As discussed in Section 6.2, an assessment of the likely impacts of additional traffic noise and possible mitigation measures has been appropriately assessed in accordance with industry guidelines.
<p>5. Environment</p> <p>a) Inadequate or outdated wildlife studies</p> <p>b) Vegetation loss</p> <p>c) Green corridors eroded</p> <p>d) Species compression, wildlife protection/preservation</p> <p>e) Displaced wildlife</p> <p>f) Impact on Climate Change</p>	<ul style="list-style-type: none"> • As discussed in Section 6.3 a comprehensive investigation of flora/fauna and biodiversity was undertaken by the Department of Planning and Environment and NSW Office of Environment and Heritage in 2011 to 2013 when considering and approving the Concept Plan. The biodiversity conservation offsets determined by the Department were again certified as being adequate by the Ministers' delegate in 2018 under the <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>. Further assessment has been made of any newly listed items of threatened or endangered species and has

<p>g) Impacts on Riparian Corridors and downstream Hexham Wetland</p>	<p>been found to be acceptable.</p> <ul style="list-style-type: none"> • Vegetation / Riparian / Wildlife corridors to be retained are defined by the C1 and C2 zoning of the land in the NLEP2012 imposed by the Minister for Planning in 2013, the Concept Plan approval (2013) and further addressed in the MPDG. • A Vegetation Habitat Management Plan has been prepared to guide activities within the development site and includes measures for detecting and relocating displaced fauna during vegetation clearing activities. • The impact of climate change was considered during assessment of the Concept Plan and again in consideration of likely flood impacts associated with development and found to be acceptable on both accounts. • A comprehensive assessment of stormwater runoff and water quality has been completed. This is discussed in Sections 6.7 and 6.8 and has found to be acceptable, or could be made acceptable, subject to conditions of consent.
<p>6. Amenity</p> <ul style="list-style-type: none"> a) Construction impacts (air, dust, noise, traffic)– duration, policing, health concerns b) Retention of 'all previously identified green corridors c) Loss of sense of community and 'rural' or 'heritage' village atmosphere d) Impact on quality of life e) Loss of open space areas f) Undeveloped land to the south of Neal Close commonly referred to as Garden House Park (Residue Lot 3236) should be parkland. Concern that R2 zoning would not preclude future development. 	<ul style="list-style-type: none"> • It is not considered feasible for construction of the development to have zero adverse impacts on existing properties in the locality, considering the Concept Plan approval over the site. A Construction Environmental Management Plan has been prepared and is considered acceptable subject to appropriate conditions of consent that would require further refinement of the CEMP on a site-specific level for each stage of the development as construction progressively rolls out. • The Vegetation / Riparian / Wildlife corridors to be retained are defined by the C1 and C2 zoning of the land in the NLEP2012 imposed by the Minister for Planning in 2013, the Concept Plan approval (2013) and further addressed in the MPDG. • The social and amenity impacts that the proposed development would have on the existing Minmi village was considered by the Department of Planning and Environment and Planning Assessment Commission when determining the application for the Concept Plan. The controls on maximum dwelling numbers, minimum allotment sizes and lot (dwelling) typology is governed by the Concept Plan approval and MPDG's. • The undeveloped land to the south of the Neal Street properties is shown as proposed Lot 3236 Stage 32, and nominated by the applicant as a 'residue lot'. Any further applications regarding the ultimate use of this land (also identified as 'Garden House Park' in the Concept Plan approval and subsequent approved MPDG would need to have consideration to that planning context.
<p>7. Recreation</p> <p>The NPWS raised concern that the active recreation facilities were unlikely to cater for resident population and that may place additional strain on utilisation of BGHRP that is intended for passive recreation only. NPWS welcomed working with both</p>	<ul style="list-style-type: none"> • The subject application provides for sufficient recreational land as required to meet demands of the resident population from the subject application within the Newcastle LGA as outlined in the Concept Approval. Within such land CN would need to provide, through developer contributions, two playing fields and two hardcourts to meet recreational needs in accordance with CN's s7.11 Local Infrastructure Contributions Plan. • CN has expressed concern throughout the assessment of the DA that these facilities may not be sufficient to also cater for resident population within the LMCC LGA that due to the barrier

<p>CN and LMCC in collaboration to explore opportunities to improve recreation outcomes within the BGHRP.</p>	<p>posed by the Newcastle Link Road may be discouraged from seeking recreation opportunities within the LMCC located south of the Newcastle Link Road, thereby seeking to also utilise the CN facilities.</p> <ul style="list-style-type: none"> • However, on 19 October 2023 the Planning Secretary of the NSW Department of Planning and Environment, in accordance with FEAR 1.16 approved alternate arrangements for the LMCC DA, for provisions of facilities south of the Newcastle Link Road. • For the purposes of the subject review application the assessment of adequacy of recreational facilities is restricted to the demand from the CN DA only. In this regard the recreation land as provided is generally considered acceptable. • The applicant has recently agreed that Location 2, formally considered for the LMCC facilities, can be transferred to CN. This is considered to provide for additional land that could assist providing active recreation opportunities, • There would be no restriction on CN and LMCC Council's working further with NPWS in the future to explore further passive recreation outcomes within the BGHRP.
<p>8. Infrastructure/Services</p> <p>a) Concern existing infrastructure cannot cater for additional population, including schools and roads.</p> <p>b) Adequacy of paths and cycleways, particularly for access to school.</p>	<ul style="list-style-type: none"> • A needs analysis was undertaken to inform the Concept Plan as a whole. This spans both LGA's and has resulted in identification of recreation lands, business zones, seniors housing and a school site to accommodate the expected population growth as a result of delivering the Concept Plan as approved. • Local playgrounds and the sporting fields will be designed by CN as the development rolls out in consideration of CN's s7.11 Local Infrastructure Contributions Plan and other CN requirements. • A 'school expansion lot' has already been created at the rear of Minmi Public School and a further new school allotment is proposed within the LMCC DA in accordance with State VPA. Timing for delivery of school infrastructure on these lands is a matter for the Department of Education and is unknown by CN at this time. • Appropriate shared pedestrian pathways are proposed along Woodford St linking the proposed development to Minmi Public School and to the Newcastle Link Rd.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail.

6.1 Traffic Impact

The relevant provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP) and FEAR's 1.31, 1.32 and 1.33 of the Concept Pan approval have been considered in the assessment of the development application.

6.1.1 Local Traffic

The two most significant existing local roads giving access to the development site are Minmi Road (in CN LGA) and Woodford Street. These roads are generally two lane (one lane in each direction) with kerb side (or verge) parking along most of their length. These roads typically have 50km/h speed limits within the existing Minmi village but increase to 60km/h and 80km/h (Woodford St only) as you move away from Minmi village. The intersection of Minmi Rd and Woodford St is controlled by a set of traffic control signals (TCS). Minmi Road and Woodford Street would be classed as 'sub-arterial' roads. Other roads within Minmi village are minor local roads.

A number of other (unformed) tracks give access to some of the isolated properties scattered throughout the development area. These tracks are not dedicated 'public roads' but the isolated properties are currently afforded access rights by '*implied easements of necessity*' as confirmed by Coal and Allied in a letter to CN dated 31 August 2016. As mentioned above in this report, the proposed subdivision layout generally accommodates these existing isolated lots into the subdivision layout, but as previously discussed there are a number of situations where these lots are not afforded direct public road frontage which is considered unacceptable. This can be addressed as a condition of consent should the application be approved.

Other than the proposed additional local roads, the proposal includes the construction of a new 'sub-arterial' shown as proposed Road MC01 in the documentation but also occasionally referred to as Minmi Boulevarde (Note: this name is used for reference below but would not be acceptable as the final road name).

Minmi Boulevarde is proposed to intersect with Woodford Street before passing through the E1 Local Centre zoned commercial land and then into the LMCC LGA (through DA2087/2018), passing a site proposed for a new school and intersecting with the Newcastle Link Road at Minmi Road (in LMCC LGA). Minmi Boulevard is also proposed to be a bus route.

A Traffic Impact Assessment (TIA) has been prepared by Intersect Traffic September 2020) that addresses the local (internal) road network, both existing and proposed. The TIA takes into consideration existing traffic, future background growth, as well the anticipated traffic generated by this development (using the RMS (TfNSW) '*Guide to Traffic Generating Developments*' and associated Technical Directions) and the cumulative effect of the proposed subdivision development being considered by LMCC (DA/2087/2018) on the adjoining land to the south. The TIA also includes assumptions for traffic generation likely to occur as result of the future development of the commercial allotments, seniors housing allotment (Lot 1532 in Stage 15) and the new school allotment (in LMCC LGA).

The TIA relies on the following traffic distribution previously adopted in the original traffic and transport report for the Concept Plan application titled *Coal and Allied Industries Ltd, Lower Hunter Lands Project – Minmi Link Road & Stockrington* (January 2011) and a follow up report titled *The City of Newcastle – Western Corridor – Traffic and Transport Study – Stage 2 report* (November 2013). The traffic distribution assumptions made in the TIA include:

- About 40% of Coal & Allied traffic is forecast to travel via Minmi Boulevard Road and Newcastle Link Road to access Newcastle and Greater Lake Macquarie areas.

- About 15% traffic is forecast to travel via Minmi Road (through Edgeworth) and Main Road (MR527) to access Glendale.
- About 10% traffic is forecast to travel via Hunter Expressway to access Cessnock/Kurri Kurri and the Upper Hunter.
- About 10% traffic is forecast to use the M1 Freeway.
- Minor traffic is expected to use Cameron Park Drive (about 6%).
- Minor traffic is expected to use Minmi Road through Fletcher (about 7%).
- About 12% of traffic is forecast to use Lenaghans Drive to access Black Hill and Beresfield.
- Traffic distribution to new intersection connections based on use of closest intersection.
- AM peak traffic distributed as 80% outbound and 20% inbound.
- PM peak distributed as 30% outbound and 70% inbound.
- Equal share of traffic between Newcastle Link Road / Woodford Street and Newcastle Link Road / Minmi Boulevard.

The following Table extracted from the TIA shows existing conditions (based on 2015 and 2016 traffic counts) and the anticipated impact of just background growth (no development). The TIA has found that the existing traffic volumes on Minmi Road and Woodford Street are and will continue to operate well below the maximum mid-block capacity of 2,200 vehicle trips per hour (vtph) of a two-way (single travel lane in each direction) road if no development occurred.

Table 1 – Existing peak hour traffic volumes.

Road	Section	Existing Counts (2015 & 2016)		2019		2029		2040	
		AM (vtph)	PM (vtph)	AM (vtph)	PM (vtph)	AM (vtph)	PM (vtph)	AM (vtph)	PM (vtph)
Newcastle Link Road	East of Woodford Street	3979	4015	4099	4136	4757	4800	6601	6661
Newcastle Link Road	West of Woodford Street	4275	4266	4404	4395	5111	5101	7092	7077
Woodford Street	North of Newcastle Link Rd	566	624	583	643	677	746	809	892
Woodford Street	South of Minmi Road	646	679	666	700	772	812	923	971
Woodford Street	North of Minmi Road	435	403	448	415	520	482	622	576
Minmi Road	East of Woodford Street	779	814	803	839	931	973	1114	1164

The TIA has then considered the future capacity and effectiveness of the existing and proposed local road network if development progressively occurred. The TIA has found that, while a significant and noticeable increase in vtph is expected, the operating capacity and efficiency of the final local road network is capable of supporting the proposed development, subject to new and upgraded intersection controls and other progressive changes to road infrastructure. The Table below is extracted from the TIA and shows the local road network, at full development in 2040 and can be used to draw a comparison in vtph between the 'no development' and 'full development' scenarios. It can also be seen that at 'full development' Minmi Road and Woodford Street continue to operate below the mid-block capacity of a two-way (single travel lane in each direction) road.

Table 2A – Two-way mid-block traffic volumes post development (adopting NCC interpretation)

Road	Section	2019		2029		2040		Mid Block Capacity (vtph) two-way
		AM (vtph)	PM (vtph)	AM (vtph)	PM (vtph)	AM (vtph)	PM (vtph)	
Newcastle Link Road	East of Woodford Street	4871	4898	5529	5562	7373	7423	4,400
Newcastle Link Road	West of Woodford Street	4752	4769	5459	5475	7440	7451	4,400
Woodford Street	North of Newcastle Link Rd	1355	1405	1449	1508	1581	1654	2,200
Woodford Street	South of Minmi Road	1438	1462	1544	1574	1695	1733	2,200
Woodford Street	North of Minmi Road	657	641	729	708	831	802	2,200
Minmi Road	East of Woodford Street	924	970	1052	1104	1235	1295	2,200

Safe access to the development is provided by a range of intersection controls, including adjustments to existing intersections when appropriate.

Modelling (Sidra) has been completed for the main (existing and proposed) intersections within Minmi and the proposed development. This modelling confirmed that, except for the existing TCS at the Minmi Road / Woodford Street intersection, at full development (modelled as 2040) will operate at an appropriate level of service.

The intersection of Minmi Road / Woodford Street is identified to undergo predominantly lane configuration changes to increase turning lane and through lane capacity to accommodate the modelled increase in vehicle queue lengths resulting from both background and development traffic increases.

As there is no certainty under DA2018/01351 as to if or when Minmi Boulevard (as proposed through the LMCC LGA (DA/2087/2019)) would be established the TIA has considered how many allotments under DA2018/01351 could be established before unacceptable impacts on Woodford Street and the Minmi Road / Woodford Street intersection would occur.

This assessment concluded that up to 352 new dwellings could be developed prior to both the upgrading of the Woodford Street / Minmi Road traffic signals and the connection of Minmi Boulevard to the Newcastle Link Road.

This assessment also concluded that up to 580 dwellings could be developed prior to the connection of Minmi Boulevard to the Newcastle Link Road provided that the Woodford Street / Minmi Road traffic signals had been upgraded.

Development that would yield more than 580 dwellings would require the upgrading of the Woodford St / Minmi Road traffic signals, the upgrading of the Newcastle Link Road / Woodford Street traffic signals and (subject to DA/2087/2018 being approved) the connection of Minmi Boulevard to the Newcastle Link Road.

The road network in Stage 14 has also been designed to allow for servicing of the commercial allotments from the rear, while allowing some kerb side parking along both sides of Minmi Boulevard as it passes through the middle of the Local Centre. However, pedestrian safety could be further enhanced in this area by inclusion of appropriate conditions requiring additional pedestrian and public domain measures.

In general, adequate measures are included within the proposal for public transportation, walking and cycling and the proposal also includes a scheme for installation of traffic calming devices in locations determined in consultation with CN.

Noting that, given the overlapping of issues and inter-reliance of the CN and LMCC DAs on the other, for DA2018/01351 to be approved to achieve a development yield in excess of 580 lots, DA/2087/2018 (LMCC DA) must also be approved (as is now the case), and the Woodford Street / Minmi Road intersection (CN LGA) must be upgraded and the full length of Minmi Boulevard must be constructed and opened to public traffic in accordance with DA/2087/2018 (LMCC DA).

If DA2018/01351 was to be approved but DA/2087/2018 (LMCC DA) had not been, the consent for DA2018/01351 would have needed to be limited to not more than 580 residential use allotments outright, provided the Woodford Street / Minmi Road traffic signals had been upgraded as described in the TIA. This outright limitation is no longer required given the LMCC DA has been approved but Minmi Boulevarde needs to be in place to achieve this higher yield.

It is important to also understand that, in addition to the above, in order to achieve any development under DA2018/01351 (whether or not DA/2087/2018 had been approved), additional upgrade works are necessary on the Newcastle Link Road, Minmi Road (Cameron Park and Edgeworth) and Main Road (Edgeworth) as detailed in the Regional Traffic and Transport Assessment (RTTA). This is discussed in detail below in Section 6.1.2.

6.1.2 Regional Traffic

The Newcastle Link Road is a heavily trafficked arterial road that provides a desired path of travel between the M1 Motorway and the Hunter Expressway and the wider CN LGA and the northern parts of LMCC LGA. Parts of the Newcastle Link Road, particularly the current activated intersections along its length, are subject to heavy vehicle congestion in both the AM and PM peak periods.

The primary vehicular access points to/from the proposed development site are via Woodford Street and the proposed Road MC01 (Minmi Boulevarde). Both of these roads intersect with Newcastle Link Road at locations where there are two existing intersections.

The Newcastle Link Road / Woodford Street / Cameron Park Drive intersection was upgraded from a roundabout to traffic control signals a number of years ago in association with the opening of the Hunter Expressway.

The Newcastle Link Road / Minmi Road / Minmi Boulevarde (Proposed) intersection currently exists as a functioning three-leg roundabout with an unutilised fourth leg to the north toward the land subject of DA/2087/2018 (the LMCC DA).

As mentioned above in this report, DA2018/01351 (and DA/2087/2018) are of sufficient size to trigger a referral to Transport for NSW (TfNSW) as 'traffic generating development(s)' under the provisions of Cl. 2.122 of the Transport and Traffic SEPP. Accordingly, DA2018/01351 (as amended in July 2021), was referred to TfNSW for their assessment and comment.

In addition to the SEPP requirements FEAR 1.31 of the Concept Plan approval requires:

The first development application for subdivision within each stage of the proposed development is to include a revised traffic and transport impact assessment prepared in consultation with Transport for NSW and the relevant council(s). Each traffic assessment must include:

- *Details of traffic generation and distribution from all land uses proposed within that stage including retail, sporting facilities and education facilities.*
- *Intersection analysis and micro-simulation modelling to determine the impact of the proposal on the existing regional and local road network.*

- *Proposed timing for upgrades of key intersections, in particular Newcastle Link Road / Woodford Street / Cameron Park Drive and Newcastle Link Road / Minmi Road in accordance with RMS requirements.*
- *Details of any proposed upgrades to the road network, including timing and funding arrangements, to accommodate the proposed development. This is to include identification of suitable pedestrian and cycle links across Minmi Road and Newcastle Link Road.*

The application was accompanied by a Regional Traffic and Transport Assessment (RTTA) prepared by SCT Consulting (SCT_00087, dated 25 February 2021), prepared in response to FEAR 1.31, and the following draft of condition of consent proposed by the applicant.

- B. Prior to the issue of a subdivision certificate for any lot the subject of this application, the Developer must, at its own expense, design and construct the following upgrades to the State road network to the satisfaction of TfNSW:*
- The intersection of Cameron Park Drive/Woodford Street and Newcastle Link Road is to be upgraded with grade separation and any required upgrades for at-grade Traffic Control Signal;*
 - The intersection of Minmi Road and Newcastle Link Road is to be upgraded with grade separation and any required upgrades for at-grade intersection including Traffic Control Signal/s;*
 - The intersection of Lake Road and Newcastle Link Road is to be upgraded with grade separation and any required upgrades for at-grade Traffic Control Signal;*
 - The intersection of Minmi Road and Main Road is to be upgraded with any required upgrades for at-grade Traffic Control Signal;*
 - Triplication of the Newcastle Link Road between the intersection of Cameron Park Drive/Woodford Street and Newcastle Link Road and the intersection of Lake Road and Newcastle Link Road; and*
 - Suitable pedestrian and cyclist links is to be incorporated within each of the identified State Road Network upgrades.*

The upgrades to the State road network must be in consultation with Council and the Transport for NSW; and in accordance with the current Austroads Guide to Road Design (or its latest version) and any other relevant supplementary document, unless otherwise agreed by the Transport for NSW; and in accordance with the specific requirements of the Transport for NSW and to the satisfaction of the Transport for NSW.

All relevant State Road network upgrades infrastructure must be dedicated as public road under the Roads Act 1993.

The Developer must procure any dedication of any land required for the purpose of the State Road network upgrades at no cost to TfNSW or Council.

Advisory note: The Developer will need to fund these works itself and will need to enter into a Works Authorisation Deed (WAD) with Transport for NSW in relation to the works, as well as obtaining all relevant development consents and approvals including Roads Act approvals. In the event that any of the works are completed by others, the Developer may make a modification application to amend this condition to delete that part of the works. As part of satisfying the WAD requirements and detail design process pursuant to the WAD microsimulation modelling will be required. The Developer should commence this process well in advance of commencing the development.

The applicant's recommended conditions, based on the recommendations of the RTTA were not previously accepted or agreed by TfNSW, under the original DA. A number of the reason for refusal of the original DA in December 2022, were therefore on the basis that the application had not adequately addressed potential impacts upon the regional road network. Reasons for refusal included:

The development does not satisfy the requirements of Further Environmental Assessment Requirements (FEAR) 1.31.

Also

The development fails to demonstrate that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land or the nature, volume or frequency of vehicles using the classified road to gain access to the land. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].

The subject review application was again referred to TfNSW for comment in relation to FEAR 1.31 and also in accordance with SEPP (Transport and Infrastructure) 2021 and in response the FEAR 1.31.

On 30 May 2023 TfNSW provided a referral response that they now support the proposal subject to a range of recommended upgrades to the regional road network.

Council sought clarification from TfNSW as to what traffic assessment information did TfNSW rely upon in forming their advice, including any applicant reports and TfNSW own modelling. Council also sought clarity around some of the recommended conditions.

TfNSW subsequently reissued advice on 11 September 2023 and have advised Council in their cover letter to updated advice of 11 September 2023 that they have relied upon their own modelling to assess the proposal, advising; *"TfNSW's assessment was informed by the Aimsun modelling undertaken by TfNSW as part of the MR82 Newcastle Link Road/Minmi Road Intersection Upgrade Strategic Business Case investigations for the upgrade of Minmi Road/Newcastle Link Road intersection including subsequent information supplied by the proponent."*

Council queried TfNSW over apparent issues and/or deficiencies within their recommended conditions of 11 September 2023, in that it did not address the scenario of the CN and LMCC DAs progressing independently of the other, including not addressing the upgrade of the Newcastle Link Road/Woodford Street/Cameron Park Drive intersection, as required by FEAR 1.31, point i). TfNSW subsequently issued updated advice on 5 December 2023. This latter advice of 5 December 2023 includes a greater suite of upgrades and accounts for the possibility that the CN and LMCC DAs might be progressed independently of the other, by essentially requiring the same suite of works for both DAs that are triggered at certain development threshold points. The recommendations now also include an upgrade to the Newcastle Link Road/Woodford Street/Cameron Park Drive intersection.

The TfNSW advice of 5 December 2023, recommends the following conditions, including road network upgrades:

Appendix A

A.1 Planning Agreement

Prior to the issue of any Subdivision Works Certificate, the developer must enter into an amended

Planning Agreement with the Minister for Planning in accordance with:

- (a) *Division 7.1 of Part 7 of the EP&A Act; and*
- (b) *The terms of the developer's offer to contribute to the upgrade of the Newcastle Link Road/Minmi Road intersection, dated 17 May 2023 (as amended 21 August 2023).*

A.2 Newcastle Link Road/Minmi Road Upgrade

Prior to the issue of a subdivision certificate for any residential lot the following upgrades to the State Road network must be in place:

- *The intersection of Minmi Road and Newcastle Link Road is to be upgraded to include traffic control facilities to the satisfaction of TfNSW.*

A.3 Other upgrades to the surrounding road network

Prior to the issue of a subdivision certificate for any residential lot in stages 33, 34, 35, 36, 37, 39, or 40, the following upgrades to the State Road network must be in place:

- (a) *Minmi Road from Newcastle Link Road to Transfield Avenue widened to four lanes total, including a roundabout at Transfield Avenue, or such other upgrades to this road as may be considered appropriate by Lake Macquarie City Council.*
- (b) *Newcastle Link Road / Woodford Street:*
 - (i) *Additional turning bays to achieve dual right turn movements on west and east approaches, including widening on exits to allow for safe merging.*
 - (ii) *Left turn bay on Newcastle Link Road (west approach).*
 - (iii) *Additional right turn bay on the southern and northern approaches.*
 - (iv) *Addition of new short through lanes on the northern and southern sides of Newcastle link Road at Cameron Park Dr and Woodford St.*

- (c) *Minmi Road / Northlakes Drive: Line marking changes to allow a dual right turn on the western approach or such other upgrades to this road as may be considered appropriate by Lake Macquarie City.*
- (d) *Minmi Road from Transfield Avenue to Sedgwick Avenue: Widening to a total of four lanes and appropriate tie-in works at the roundabout at Transfield Avenue or such other upgrades to this road as may be considered appropriate by Lake Macquarie City.*
- (e) *Minmi Road / Main Road:*
 - (i) *Conversion of the kerbside parking lane and cycle path into a general traffic lane or such other upgrades to this road as may be considered appropriate by Lake Macquarie City Council and TfNSW.*
 - (ii) *Line marking changes to permit dual left turn lane from Minmi Road (north approach) into Main Road or other such upgrades to this road as may be considered appropriate by Lake Macquarie City Council and TfNSW.*
- (f) *Newcastle Link Road / Lake Road:*
 - (i) *Addition of a new right turn bay on Lake Road (north approach).*
 - (ii) *Addition of a new left turn bay on Lake Road (south approach).*
 - (iii) *Extension of the left turn bay on Thomas Street.*

The Applicant is responsible for constructing the upgrades listed at (b) to (f) above at its own cost and must consult with the relevant roads authority in relation to the design of the works and obtain all necessary approvals prior to carrying out the works. The Applicant may be required to enter into an agreement with the relevant roads authority in relation to the upgrades listed at (b) to (f) (including a Works Authorisation Deed where TfNSW is the relevant roads authority) prior to the issue of a Subdivision Works Certificate for the first residential lot in any relevant stage (i.e. Stages 33, 34, 35, 36, 37, 39, or 40).

An updated traffic assessment, including microsimulation modelling, may be required by the relevant roads authority prior to its approval of any upgrade works.

The roads authority may agree to works that differ from the above list of works, if those alternative works are considered more appropriate at the time based on the updated traffic assessment.

A.4 Agreement with roads authority prior to the issue of a Subdivision Works Certificate for stages 33, 34, 35, 36, 37, 39, or 40

Prior to the issue of any subdivision works certificate for stages 33, 34, 35, 36, 37, 39, or 40 (excluding any certificate relating only to bulk earthworks or remediation), the Applicant must enter into any required agreement with the relevant roads authority in relation to the upgrades referred to in condition A.3, including a Works Authorisation Deed where TfNSW is the relevant roads authority.

A.5 Other conditions:

- a) *Discharged stormwater from the development must not exceed the capacity of the State Road network stormwater drainage system.*
- b) *Prior to the issue of any Subdivision Works Certificate, the Developer must satisfy TfNSW and Council that drainage from the site will be appropriately managed and obtain all required approvals, including under the Roads Act 1993, from the Council and TfNSW for any adjustments to the existing system that are required. Any required adjustments will be at the cost of the Developer.*
- c) *The Developer must ensure that appropriate traffic measures are in place during the construction phase of the development to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity of the site. Prior to carrying out any works, a Construction Traffic Management Plan is to be provided to the satisfaction of Council and TfNSW. A Road Occupancy Licence (ROL) must also be obtained for any works in the road reserve during the construction phase of the development, including for construction accesses to the development. TfNSW Hunter Traffic Operations must be contacted to obtain a Road Occupancy Licence prior to the closure of any lane or erection of any structures within the road reserve. (<https://www.rms.nsw.gov.au/business-industry/road-occupancylicence/index.html>).*

It is noted that the conditions include the requirement that:

An updated traffic assessment, including microsimulation modelling, may be required by the relevant roads authority prior to its approval of any upgrade works.

The roads authority may agree to works that differ from the above list of works, if those alternative works are considered more appropriate at the time based on the updated traffic assessment.

This approach is considered appropriate to ensure the adequacy of required upgrades can remain current, given the potential longer delivery timeframes of a development of this scale.

Given that TfNSW is now satisfied with the proposal in relation to impacts upon the regional road network, subject to the above recommend upgrades, the requirements of FEAR 1.31 are considered to have been satisfied.

Similarly, having regard to the objectives of Cl. 2.119 and Cl. 2.119(2)(b)(i) and (iii) of the SEPP (Transport and Infrastructure) 2021, it can be determined that the safety, efficiency and ongoing operation of the classified road(s) network will not be adversely affected by the development, subject to implementation of the recommendations from TfNSW by imposition of consent conditions.

6.2 Noise and Vibration

The relevant provisions of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('the *Transport and Infrastructure SEPP*') and FEAR's 1.41 to 1.43 – Traffic Noise, of the Concept Plan approval have been considered in the assessment of the development application.

These FEARS require:

- A strategy to mitigate the impacts of traffic noise on future residents, including that from increased traffic associated with all stages of the Minmi, Newcastle Link Road development (FEAR 1.41).
- Assess the impact of increased traffic noise on all existing residential areas, including within Minmi village and other areas within the vicinity of the site and identify appropriate mitigation measures where impacts exceed the relevant criteria (FEAR 1.42).
- Any proposed acoustic barriers (along the F3 Freeway (aka M1 Motorway)) to be identified and managed (FEAR 1.43).

Part of the development is proposed to be undertaken on land immediately adjacent the eastern boundary of the M1 Motorway corridor. The development is also within reasonable proximity to the Newcastle Link Road. Both of these roads are classified State roads.

A reason for refusal of the original application was:

The application has not provided sufficient information to demonstrate that there will be no significant adverse impacts on sensitive noise receivers in regard to road traffic noise or sufficient details provided on how any proposed mitigation measures are to be implemented. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979]

Under the review application the applicant has provided a two-part response to the reason for refusal, which has been reviewed by CN's Environmental Services Unit.

The previous *Road Traffic Noise Assessment (RTNA) – Proposed Minmi Estate Development Stage3, Stage 4 and Part of Stage 5*, by Muller Acoustic Consulting (MAC), dated 14 March 2022, required correction and has been updated (10 March 2023) and resubmitted. This assessment revisited assumptions and corrected an error in the interpretation of the NSW EPA guidelines. The report now corrected the criteria used that was in error in the previous report. It now states that based on the new assumptions and predictions, there will be no exceedances of the criteria and no noise mitigation measures required for existing residential receivers.

Upon review it is agreed that they have corrected the criteria and accept their conclusion that no mitigation measures are required to the existing residential receivers.

In relation to future residential dwellings, the RTNA of 10 March 2023 assessment includes in Appendix 1 and 2, three categories of treatments to satisfy internal noise levels. Details of how these treatments work are provided in the earlier report (September 2020) but were not repeated in the later report. It would make sense to repeat the details of the proposed treatment in the current report.

The applicant was requested to provide a further updated report to clearly detail future required attenuation methods for future dwellings. In addition, it was identified that under the original assessment that noise impacts on Minmi Public School as a sensitive receiver had not been fully considered noting that there is some ambiguity in the requirements of the Concept Plan requirements in this regard.

The applicant submitted the MAC Supplementary Road Traffic Noise Assessment (24 Aug 2023) which now includes:

- the Management Zone Plans (Attachment A)
- Noise Management Zone - Schedule of Lots (Attachment B)
- Acoustic Treatment of Residences (Attachment C)

This addresses the request CN made to have this information included in the RTNA report.

The MAC (24 Aug 2023) report also includes an assessment of future road traffic noise on the Minmi Public School. The report shows the modelled results which predicts are under the external noise level criteria. The report states that the internal noise levels will also comply with the criteria. This is on the assumption that the school buildings will achieve a noise reduction of 20dB(A) which is stated as the equivalent noise reduction of a light framed building with windows closed. On these assumptions, the MAC report concludes that the future traffic noise should comply with the relevant internal noise criteria.

It can therefore also be concluded that the traffic noise levels for the school would exceed the internal noise levels with the windows open for both scenarios. However, it should also be noted that the MAC report only predicts a maximum increase in noise impact of 0.5 dB by the end of the project (2032) and assuming complete development of LMCC and CN DAs.

The school currently would therefore need to close windows to meet the internal noise criteria and this will also be the same at the end of the project. As the report states the road traffic noise will satisfy the criteria (with windows closed) it does not propose any specific treatments. It is agreed that this is a reasonable requirement and that no specific attenuation measures would need to be installed.

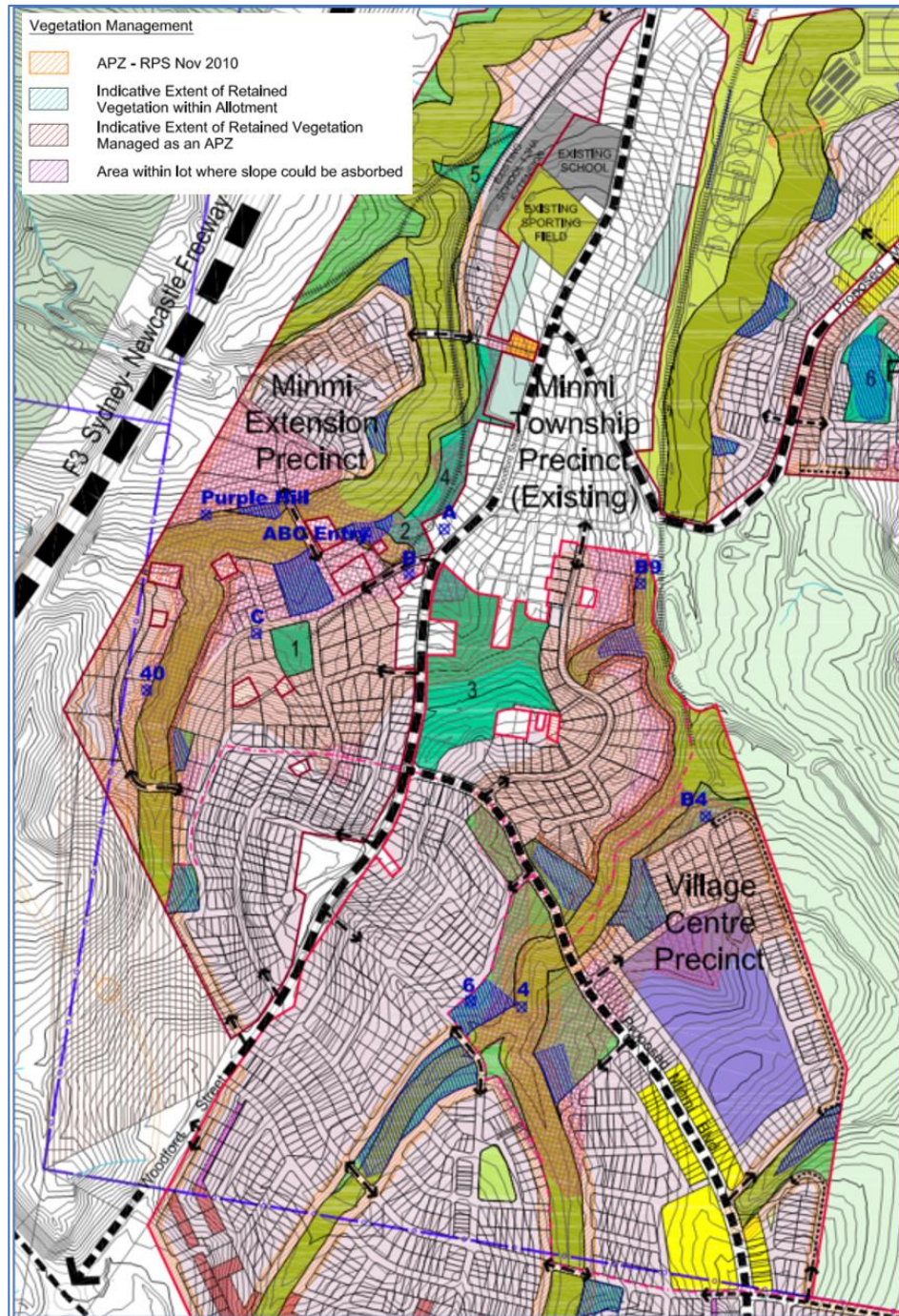
It is considered appropriate that, if consent is granted to DA2018/01351, an appropriate condition for a 'restriction on the use of land' be imposed on any proposed new residential allotments identified on the updated RTNA report of 23 August 2023 identified as requiring mitigation measures to mitigate any anticipated RTN exceedances.

With regard to RTN implications associated with off-site road and intersection upgrades proposed by the applicant, CN has been provided with sufficient information on which to make a reasonable assessment that impacts would also be acceptable.

6.3 Biodiversity

The relevant provisions of the *Biodiversity Conservation Act, 2016* (BC Act), *Biodiversity Conservation (Savings and Transitional) Regulation, 2017* (S&T Regulation), State Environmental Planning Policy (Biodiversity and Conservation) 2021 ('the Biodiversity and Conservation SEPP') and FEAR's 1.20, 1.21 and 1.22 - *Biodiversity* of the Concept Plan approval have been considered in the assessment of the development application.

Figure 18 below is extracted from plans associated with the Concept Plan approval and shows that minimal areas of the development site within the footprint of proposed residential or commercial allotments were identified to contain retained vegetation. **Figure 5** above shows the zoning applied to the land to support the Concept Plan and depicts that land intended to be protected, maintained or managed for environmental purposes.



**FIGURE 18 - Indicative extent of retained vegetation under Concept Plan
(Source –Concept Plan MP10_0090)**

Section 5.3 of the Director-General's assessment report (April 2013) to the NSW Planning Assessment Commission in relation to MP10/0090 sets out the Department's consideration of the impact of the Concept Plan on biodiversity having regard to the ecological assessment prepared in support of the Concept Plan application.

The Director-General's assessment report (pg33) notes that:

"Seven native vegetation communities have been identified across the development site, covering around 73% of the development site. This includes three endangered ecological communities (EECs) which comprise around 26% of the development site. The remainder

of the development site (27%) was classified as either weeds and cleared areas, or dams.

The proposed conservation lands are predominantly densely vegetated comprising the same vegetation communities as the development site, as well as one additional EEC."

The area of EECs within the proposed development site, and proposed to be protected within the conservation lands is outlined in Table 8, and illustrated at Figure 8. (Figure 19 below)

Table 8: Summary of endangered ecological communities

Vegetation type	Total Area (ha)	Development site (ha)	Conservation lands (ha)
Lower Hunter Spotted Gum Ironbark Forest (EEC)	318.46	136.80 (43%)	181.66 (57%)
Hunter Lowland Redgum Forest (EEC)	12.19	0.39 (3%)	11.80 (97%)
Freshwater Wetland Complex (EEC)	0.37	0.37 (100%)	0
Subtropical Rainforest (EEC)	11.53	0	11.53 (100%)
Total	342.55	137.56 (40%)	204.99 (60%)

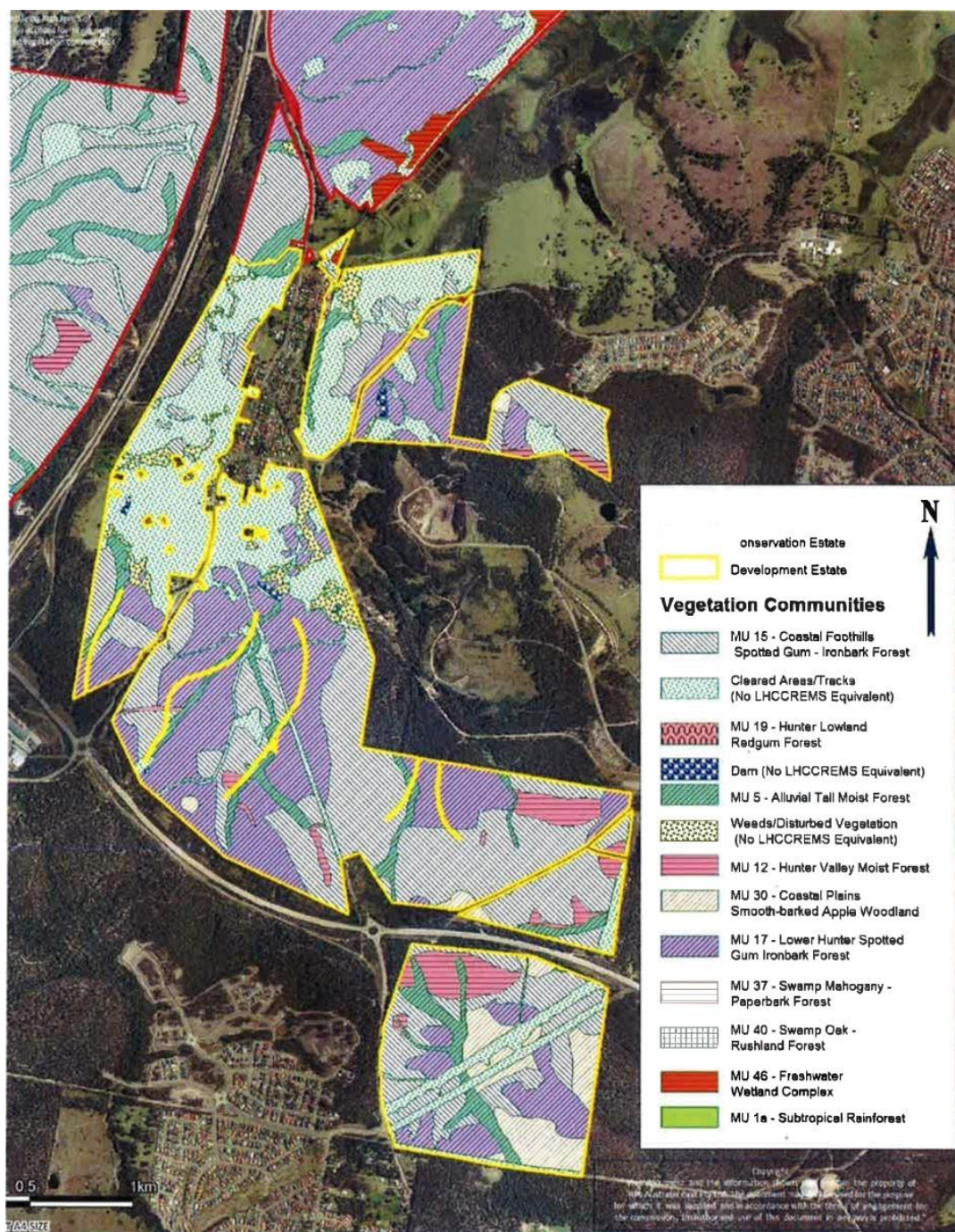


Figure 19. Vegetation communities within the proposed development site

The report (Ecological Assessment Report prepared by RPS (EAR2011) noted that the majority, if not all, of the Lower Hunter Spotted Gum Iron Bark Forest (136.80ha) and the Hunter Lowland Redgum Forest (0.39ha) within the development site would be removed as a result of the proposal. The report noted that whilst the Freshwater Wetland Complex which is located at the northern extent of the development site would be retained there is potential for adverse impacts as a result of residential development to the south east. However, the report concluded that this could be mitigated through provision of appropriate sediment and erosion controls during the construction phase.

One threatened flora species was identified during targeted surveys being *Tetratheca juncea*. A total of ten *Tetratheca juncea* plant clumps were identified within the development site, all of which would be removed as a result of the development.

However, 350 plant clumps were identified which would be retained within the conservation lands.

Five threatened fauna species were identified during the targeted surveys being: Koala, Squirrel Glider, Grey-headed Flying-fox, Little Bentwing-bat, and the East Coast Freetail-bat. A further 12 threatened fauna species are considered to have a moderate or greater opportunity of occurring within the site on at least an intermittent basis due to existence of potential habitat. The assessment concluded that the impact of the proposed development on these threatened fauna species would be minimal as large areas of potential habitat would be retained with the conservation area, with only small areas of habitat to be cleared within the development site.

The proponent also carried out an assessment of State Environmental Planning Policy No. 44 — Koala Habitat Protection (SEPP 44). As a result of a single koala being observed during the fauna survey, further targeted surveys were carried out, however no further sightings or secondary indications of koalas was recorded. The assessment concluded that the site is considered to be potential koala habitat, but that it is not core koala habitat as it was considered that the koala sighted is not part of a significant koala population."

The report also notes that the then NSW Office of Environment and Heritage (OEH) had advised that;

"the proposal is satisfactory in terms of meeting the requirements for biodiversity, and the proposed offsets proposed are in compliance with the OEH's offsetting principles as set out in the Lower Hunter Regional Conservation Plan."

The Director-General's report then states that, in consideration of the likely impacts the Concept Plan would have on biodiversity;

"The Department concurs with the OEH's position that the dedication of the proposed conservation lands will adequately offset potential impacts on flora and fauna arising from the proposal. It would also contribute to the protection of the Stockton to Watagan conservation corridor identified in the Lower Hunter Regional Conservation Plan. As such the Department is satisfied that the proposal would not significantly impact upon threatened species, communities and populations listed under the Threatened Species Conservation Act 1995." (emphasis added)

The proposed offsets' and 'proposed conservation lands' mentioned above relate to the 1,561 hectares (approximate) of conservation land now dedicated to the NSW Government in accordance with the VPA entered into with the Concept Plan.

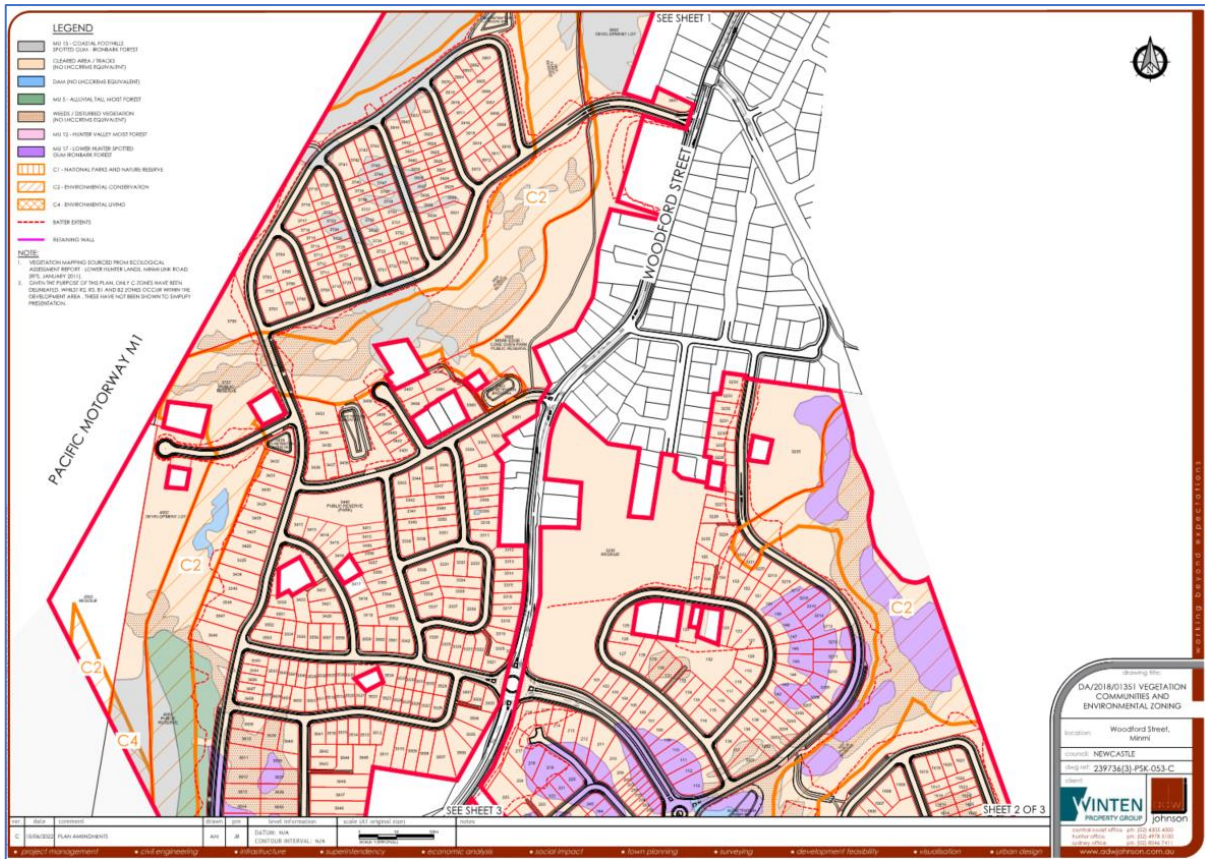
Concept Plan (10_0090) was subsequently approved under Part 3A (repealed) of the *EP&A Act 1979* by the NSW Planning Assessment Commission (PAC) on 6 August 2013.

On 18 October 2018 the Director, Regional Assessments at the Department of Planning and Environment certified under clause 34(A)3 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* that the proposed development is part of a Concept Plan approval for which biodiversity impacts have been satisfactorily addressed and that appropriate conservation offset measures have been secured.

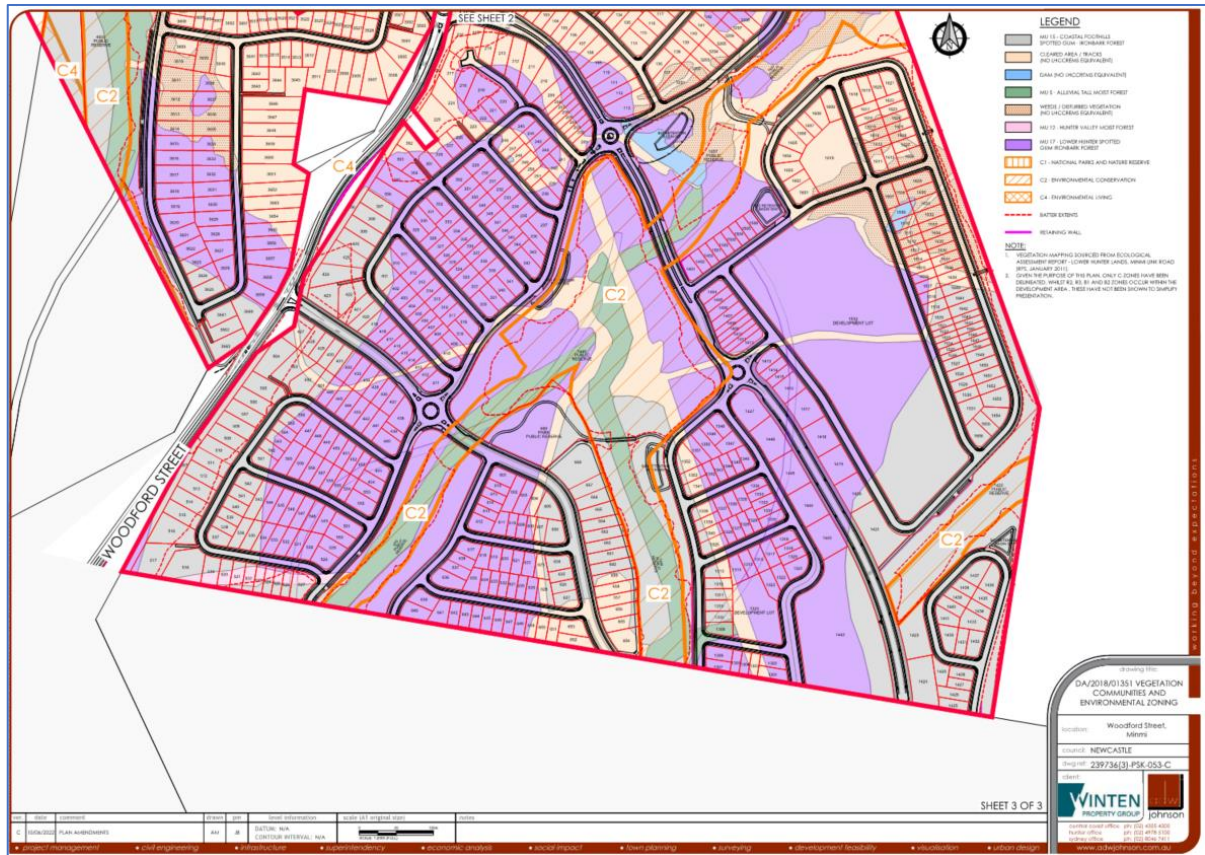
The applicant has also mapped the vegetation communities and land zones on maps showing the proposed subdivision layout and at a scale more appropriate for this development application. (See **Figures 20, 21** and **22** below).



FIGURE 20 – Vegetation Communities and Land Zones
(Source – Attachment 13 – Vegetation Mapping, Sht 1)



**FIGURE 21 – Vegetation Communities and Land Zones
(Source – Attachment 13 – Vegetation Mapping, Sht 2)**



**FIGURE 22 – Vegetation Communities and Land Zones
(Source – Attachment 13 – Vegetation Mapping, Sht 3)**

6.3.1 Biodiversity Conservation (statutory framework)

The *Biodiversity Conservation Act 2016* (BC Act) commenced in August 2017 and changed the way biodiversity impacts are assessed for proposed development.

Transitional arrangements are provided by Clause 34A, *Biodiversity Conservation Savings & Transition Regulation (S&T Regulation)* to recognise past offsetting agreements secured as part of a concept plan approval or a relevant planning arrangement.

Clause 34A(3) certification applies if the Secretary of the Department or their delegate is satisfied that:

- The biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of a Concept Plan approval or relevant planning arrangement, and
- The conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) 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.

The Biodiversity Offsets Scheme (BOS) under Part 7 of the BC Act does not apply to proposed developments certified under clause 34A.

If a clause 34A certification has been granted, the biodiversity impacts of development are assessed as they would have been before the introduction of the BC Act. This includes considering whether there is likely to be a significant impact on threatened species, populations or ecological communities or their habitats in accordance with the now repealed section 5A of the *EP&A Act* (7-part test).

When a planning authority determines that there is likely to be a significant impact, the proponent must prepare a species impact statement (SIS). When a clause 34A certification has been granted, the SIS requirements are regulated by Part 6 Division 2 (109 – 113) of the (now repealed) *Threatened Species Conservation Act 1995* (TSC Act). This includes a request to the Secretary of the Department of Planning and Environment for the SIS environmental assessment requirements. These are known as the Chief Executive Requirements (CERs).

When an SIS has been requested under a clause 34A certification, concurrence will continue to be regulated by the now repealed section 79B of the *EP&A Act*. A Department assessment of the SIS will address the statutory 'heads of consideration' to determine whether to grant concurrence or not.

This assessment may also consider previous voluntary offsets and how those conservation measures have significantly benefited threatened species. In some cases, the Department may recommend further conservation actions, including avoidance or mitigation strategies, as part of a conditional concurrence under s79B(8A) of the *EP&A Act*.

The determination of the original application on 13 December 2022 includes two reasons for refusal in relation to biodiversity:

The application does not include sufficient information to demonstrate the impact on the natural or built environment resulting from works associated with any road upgrades to mitigate the impacts of the development on traffic safety, efficiency or ongoing operation of the classified or wider regional road network. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].

This reason related to a lack of information to properly assess potential biodiversity impacts of off-site works.

The application does not contain sufficient information for an assessment of the biodiversity impacts of the proposed development required under saved provisions of the Environmental Planning and Assessment Act 1979 as provided by the Biodiversity Conservation (Savings and Transitional) Regulation 2017.

This reason related to a lack of information to properly assesses potential biodiversity impacts of on-site works.

To assist with Biodiversity assessment CN engaged a consultant ecologist. The following matters are based upon the advice of the consultant ecologist.

6.3.2 On-site works

The environmental assessments undertaken at the time of the NSW Government's 2013 Concept Approval are considered sound for the time and is unfortunately not able to be revisited. The key consideration as part of assessment of the subject review application is to ensure any newly listed threatened species since the Concept Approval are appropriately considered.

The applicant's response dated 13 September 2023 contained the following summary threatened species assessment carried out by their ecologists MJD, throughout the project history, from Concept Approval through to current Review Application.

A s 5A assessment of significance has been carried out by MJD for the following species: Species that were listed as of the date of the Environmental Assessment Requirements (EAR) in 2011 (see Appendix 3 of the November 2018 MJD report, which is Appendix O of the SEE):

- a. Black-eyed Susan (Tetratheca juncea)*
- b. Gang-gang Cockatoo (Anthochaera phrygia)*
- c. Glossy Black Cockatoo (Calyptorhynchus lathami)*
- d. Little Eagle (Hieraaetus morphnoides)*
- e. Little Lorikeet (Glossopsitta pusilla)*
- f. Regent Honeyeater (Anthochaera phrygia)*
- g. Swift Parrot (Lathamus discolor)*
- h. Varied Sittella (Daphoenositta chrysoptera)*
- i. Barking Owl (Ninox connivens)*
- j. Masked Owl (Tyto novaehollandiae)*
- k. Powerful Owl (Ninox strenua)*
- l. Sooty Owl (Tyto tenebricosa)*
- m. Koala (Phascolarctos cinereus)*

- n. Squirrel Glider (*Petaurus norfolcensis*)
- o. Grey-headed Flying Fox (*Pteropus poliocephalus*)
- p. Eastern Bentwing-bat (*Miniopterus schreibersii* subsp. *oceanensis*)
- q. Large-eared Pied Bat (*Chalinolobus dwyeri*)
- r. Little Bentwing-bat (*Miniopterus australis*)
- s. Eastern Freetail-bat (*Mormopterus norfolkensis*)
- t. Eastern False Pipistrelle (*Falsistrellus tasmaniensis*)
- u. Greater Broad-nosed Bat (*Scoteanax rueppellii*)
- v. Southern Myotis (*Myotis macropus*)

Species that were listed between the date of the EAR and lodgement of the DA (see Appendix 3 of the November 2018 MJD report, which is Appendix O of the SEE):

- w. Little Eagle (*Hieraaetus morphnoides*)
- x. Scarlet Robin (*Petroica boodang*)
- y. Varied Sittella (*Daphoenositta chrysoptera*)

Species listed between the date of lodgement of the DA and today (see Appendix AZ of the enclosed updated SEE):

- z. White-bellied Sea Eagle (*Haliaeetus leucogaster*)
- aa. Greater Glider (*Petauroides volans*)
- bb. Scrub Turpentine (*Rhodamnia rubescens*)
- cc. Native Guava (*Rhodomyrtus psidiodes*)

Upon review of the Ecological Report by MJD, dated November 2018 CN sought additional information relating to appropriateness of survey methodology. A further Ecological Report - Minmi Link Road 144 Woodford Street Minmi by MJD, dated 13 September 2023, was submitted in response, that covered the period from original DA lodgement through to 13 September 2023.

This MJD report of 13 September 2023, was again reviewed by CN's consultant ecologist who identified that it appropriately addressed outstanding matters, being:

- Provided an overview of the methods and additional information
- Provided new survey data for Koala
- Provided a new method for the Rhodamnia (scrub Turpentine) survey, including species habitat modelling – none of which was provided in the original documentation.

The seven-part tests (s5A EP&A Act under the former planning provisions) have been further applied to all newly listed threatened species.

The MJD report of 13 September 2023 additionally assessed against the *State Environmental Planning Policy (Koala Habitat Protection) 2020* for Koala habitat. It is noted that assessment of Koala has been discussed previously within this report under the relevant *State Environmental Planning Policy (Koala Habitat Protection) 2020* and found to be acceptable.

CN's consultant ecologist accepts the findings of the MJD ecological assessments, and it is considered that sufficient information has been provided to make an informed decision. It is accepted that the development is not likely to have a significant impact on any newly listed threatened species, since the Concept Approval in 2013.

6.3.3 Off-site works

CN requested additional ecological assessment for off-site works associated with the regional road network as per the TfNSW conditions (5 December 2023).

The Newcastle Link Road/Minmi Road intersection upgrade is acknowledged to be a project that TfNSW will be completing in the future. The applicant is required to amend their VPA with the State to contribute funds towards that upgrade. It is accepted that environmental assessment would be carried out by TfNSW at the time.

The Newcastle Link Road/Lake Road intersection upgrade would be accommodated within the existing road reserve. Other than some minor tree removal it is accepted that the ecological impact would be minimal. The applicant has provided an acoustic report that demonstrates the noise impacts on adjacent residential receivers would be acceptable.

The key upgrade that had been considered deficient in information was the required intersection upgrade of Newcastle Link Road/Woodford Street. Upon request the applicant provided updated concept plans of the upgrade by ADW Johnson dated 11 September 2023, that are considered to adequately detail a likely construction footprint. They also submitted an ecology report by MJD Environmental dated 30 August 2023 - RE: 7-Part Assessment of Significance - Cameron Park Drive/Woodford Street Intersection Upgrade. Based upon the information provided, the impacts to potential newly listed threatened species habitat are unlikely to be significant.

The remaining required upgrades are generally contained within existing road reserves devoid of any significant vegetation and are considered to pose minimal environmental impact.

In addition to above it is noted that all off-site works would be subject to further environmental assessment at the time. In summary the ecological impacts associated with off-site works has now been appropriately addressed and would be unlikely to result in any unreasonable impacts.

In summary CN's assessment of whether the proposed works within the development site is likely to be a significant impact on threatened species, populations or ecological communities or their habitats has taken into consideration the following and it is considered that the proposed development is unlikely to significantly impact upon threatened flora and fauna species, communities and populations.

- In approving the Concept Plan (MP10_0090) in 2013, the Director-General, OEH and the PAC decided that if further development (under Part 4 of the EP&A Act) proceeded in a manner generally consistent with Concept Plan approval that 'there would not significantly impact upon threatened species, communities and populations listed under the *Threatened Species Conservation Act 1995*.'
- The Biodiversity Conservation order issued by the Minister for Planning on 18 October 2018 pursuant Cl. 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* which certifies that:
 - The proposed development is part of a concept approval for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25

August 2017; and

- That conservation measures to offset residual impacts on the proposed development on biodiversity values after measures required to be taken to avoid and minimise those impacts have been secured into the future.
- The dedication, on 28 October 2016, of approximately 1,561 hectares of land to the NSW Government and associated remediation and reserve establishment works, for the purposes of offsetting the ecological impacts associated with the Concept Plan approval and in accordance with the associated VPA.
- The additional Ecological information provided by MJD consultants which builds on the original Ecological Assessment Report (EAR2011) and determines that "*no significant impact would occur as a result of the proposal*".
- As assessed elsewhere in this report:
 - The reasonable efforts of the applicant to avoid and minimise clearing and disturbance of vegetation where possible (FEAR 1.20(a)).
 - Management measures for minimising impacts on fauna during subdivision works (FEAR 1.20 (b)).
 - Management of the interface between the development and the Blue Gum Hills Regional Park (FEAR 1.20(c)).
 - The proposed dedication of riparian corridors for management in perpetuity (FEAR 1.21).
 - The proposed works within the riparian corridor are or can be made to meet the requirements of relevant NSW Office of Water guidelines (FEAR 1.22).

The proposal is therefore acceptable in relation to biodiversity impacts.

6.4 Land Contamination

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (*the Resilience and Hazards SEPP*), Section 5.02 – Land Contamination of the NDCP2012 and FEAR 1.29 of the Concept Plan approval have been considered in the assessment of the development application.

Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The amended development application lodged in July 2021 embodied substantially the same documentation relating to land contamination that existed immediately prior to the applicant discontinuing the Class 1 LEC Appeal in May 2021.

To assist CN in the further consideration of land contamination associated with the amended application, CN (re)engaged the services of the same Principal Environmental Consultant used by CN to provide expert evidence during that LEC Appeal. The same consultant has again been utilised for the review application.

The amended application relied on the following documentation relating to land contamination.

- Preliminary Contamination and Geotechnical Assessment – DOUGLAS PARTNERS (15/02/2011)
- Detailed Contamination Assessment – QUALTEST (23/08/2019)
- Supplementary Contamination Assessment – QUALTEST (12/02/2020)
- Remediation Action Plan (RAP) – QUALTEST (V4, 12/02/2020)
- Contamination Cover Letter – QUALTEST (11/09/2020)
- Monitoring Report – QUALTEST (19/02/2021)
- RAP Addendum – QUALTEST (02/03/2021)
- RAP Clarification Letter – QUALTEST (22/04/2021)
- Appendix AA – Proposed Conditions (21/07/2021)

The site has had a long history of mining both underground and open cut that has resulted in large tracts of disturbed land and considerable volumes of fill. Pit top operations were extensive and included coal washery, coking ovens, engineering and maintenance sheds plus railway infrastructure. Underground mining and pit top operations has not occurred on the site for many years. The area has also been impacted by illegal dumping of wastes, ranging from household domestic refuse to car bodies and asbestos.

The size of the study area has meant that the sampling has only targeted the four Areas of Environmental Concern (AEC's) identified during from a site walkover and previous preliminary contamination assessment. These AEC included the previous use of fill materials in mounds and backfilling of mine shafts and open cut pits; Illegally dumped waste; potential former pit top mine infrastructure; and surface water in onsite dams and creeks.

Sampling frequency adopted to the assessed risk of contamination, i.e. a higher sampling density was adopted for AECs with a higher risk of contamination. The site has been characterised in regard to the nature of contamination. Characterisation of the extent of contamination requires additional assessment in some areas, which is anticipated to be carried out in stages as the development progresses. In addition, the typical nature of the contamination (illegally dumped waste, fill material containing asbestos and other waste) means that during vegetation clearing and earthworks additional contamination is likely to be identified and will be managed under an Unexpected Finds Procedure.

According to the Detailed Contamination Assessment (QUALTEST: 23/08/2019) the main findings of the field investigations and the laboratory results were:

"Soil Contamination

<i>Stage 3 Mounded Fill North</i>	<i>Concentration of TRH >C16-C34 (petroleum based) exceeded the Ecological Screening Level (ESL) in one location (3MFN14) at about 1.0m depth. The material around location 3MFN14 1.0m depth will require remediation/management. This area has not been delineated.</i> <i>Asbestos was detected in an ACM fragment collected from the surface of location DP80. The asbestos containing materials will require management/remediation, and the surface of the site in the area around DP80 will require an asbestos clearance.</i>
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	<p><i>Delineation DP59 - Zinc exceeded the Ecological Investigation Level (EIL) in DP59 at 0.0-0.15m depth. The location DP59 (less than 1m x 1m x 0.15m deep) will require remediation/management.</i></p>
<p><i>Stage 3 Mounded Fill South</i></p>	<p><i>Concentrations of benzo(a)pyrene exceeded the ESL in two surface soil locations (3MFS4 and 3MFS5), and benzo(a)pyrene TEQ slightly exceeded the HIL in one surface soil location (3MFS5). 95% UCL calculations were not completed for these locations, as the dataset was too small for statistical analysis. Further assessment will allow a more robust statistical analysis, potentially removing the need for remediation/management of these soils.</i></p>
<p><i>Stage 3 Disturbed Areas North</i></p>	<p><i>Delineation DP67 - Asbestos was detected in a soil sample and ACM fragment from location DP67 at depths of 0.3-0.5m and 0.5-0.6m respectively. The asbestos containing materials will require excavation followed by management/ remediation, and the excavation will require validation.</i></p>
<p><i>Stage 3 Former Mine Infrastructure North</i></p>	<p><i>Concentrations of TRH >C10-C16, F2, and TRH>C16-C34 exceeded the Health Screening Level (HSL) and/or ESL in each sample tested in this area. Silica-gel clean-up tests indicated the TRH was petroleum based.</i></p> <p><i>The fill material in this area will require remediation/management. Further assessment could be completed to assist in defining the area requiring remediation/management.</i></p> <p><i>Delineation DP75 - Concentrations of TRH>C16-C34 exceeded the ESL in two of the delineation samples. Silica-gel clean-up tests indicated the TRH was petroleum based.</i></p> <p><i>Delineation DP77 – Concentrations of TRH >C10-C16, F2, and TRH >C16- C34 exceeded the HSL and/or ESL at 0.0-0.1m, and the silica-gel clean- up test indicated the TRH was petroleum based. Large amounts of ACM sheeting were found in the two of the delineation test pits.</i></p> <p><i>The fill materials and surface soils (0.0-0.1m) in the former mine infrastructure north area will require remediation/management due to the presence of TRH.</i></p> <p><i>The asbestos containing materials in and around DP77 will require excavation followed by management/ remediation, and validation.</i></p>

<p>Stage 3 Former Mine Infrastruc ture South</p>	<p>Concentrations of TRH >C16-C34 above the ESL in one sample and zinc above the EIL in one sample. The data set was too small for calculation of the 95% UCL. Further assessment will allow more robust statistical analysis, potentially removing the need for remediation/management of these soils.</p> <p>Delineation DP7 - Concentrations of copper, lead, and zinc exceeded the Health Investigation Level (HIL) and EIL in each sample at 0.0-0.1m. The samples tested at 0.4-0.5m showed concentrations below the HIL/EIL. The fill materials at 0.0-0.1m around DP7 will require remediation/management due to the presence of copper, lead and zinc. This area has not been delineated horizontally.</p> <p>Delineation DP9 - Concentrations of copper, lead, and zinc above the HIL and/or EIL in samples from 0.0-0.1m and 0.4-0.5m. The fill materials around DP9 to at least 0.5m will require remediation/management due to the presence of copper, lead and zinc. This area has not been delineated.</p>
<p>Stage 4 - Open Cut Pit – Central (Young Wallsend Seam)</p>	<p>Delineation DP42 - DP42 encountered fill materials with hydrocarbon odours, staining and possible coal tar coated timber pile. The delineation test pits around DP42 did not encounter coal tar coated timber piles, and laboratory analysis reported concentrations below the adopted criteria. It is considered likely that other timber piles coated in coal tar may be encountered in this area during earthworks, and will require management.</p> <p>Delineation DP47 - DP47 encountered fill with hydrocarbon/PAH odours, and zinc exceeded the EIL. The delineation samples around DP47 encountered fill with hydrocarbon odours and staining, including oily rags. Concentrations of TRH>C10-C16 and TRH >C16-C34 exceeded the HSL and/or ESL. The fill materials around DP47 to at least 1.1m will require remediation/management. This area has not been delineated.</p>
<p>Stage 4 & 5 Disturbed Areas – Access Tracks</p>	<p>Concentrations of lead exceeded the HIL in one surface soil location (DATSS12). The leachability testing indicated the lead is leachable and probably unsuitable for onsite containment. The soil classifies as hazardous waste.</p> <p>This location was sampled from surface soils immediately below waste materials comprising tyres, car parts, fabric, metals, and wood crates. Following removal of the waste material, the underlying soil could be disposed to an appropriately licensed facility, or immobilised (i.e. blended with cement) and contained on site. Delineation sampling could be carried out, to assess volumes, prior to remediation/management.</p>

<p>Stage 5 Disturbed Areas – South East</p>	<p>Concentrations of lead slightly exceeded the HIL (310mg/kg) in one surface soil location (DASE1), and TRH >C16-C34 exceeded the ESL in two surface soil locations (DASE1 and DASE2). The data set was too small for calculation of the 95% UCL. Further assessment will allow more robust statistical analysis, potentially removing the need for remediation/management of these soils. Otherwise they will require remediation/ management.</p>
<p>Stage 3, 4 & 5 - Disturbed Areas – South in Stage 3, North West in Stage 4 and North in Stage 5</p>	<p>Concentrations of lead and zinc exceeded the HIL and/or EIL in one surface soil location (DAS39), and exceeded the EIL in two surface soil locations (DP15 and DSS16). Concentrations of benzo(a)pyrene and benzo(a)pyrene TEQ exceeded the ESL and/or HIL in surface soils in two locations (DSS15 and DSS16).</p> <p>The surface soils around DP15, DAS39, DSS15 and DSS16 will require remediation/management.</p> <p>Delineation DP6 - Concentrations of lead exceeded the HIL in the duplicate (R5) of DP6 at 0.25m. The delineation samples reported concentrations below the adopted criteria. The fill materials from 0.0m to at least 0.25m depth around DP6 (assumed 1m x 1m) will require remediation/management due to the presence of lead.</p> <p>Delineation DP15 - Concentrations of benzo(a)pyrene TEQ exceeded the HIL, and benzo(a)pyrene, zinc and TRH >C16-C34 exceeded the EIL/ESL in one sample (DP15 0.2m). The delineation samples reported concentrations below the adopted criteria. The fill materials from 0.0m to at least 0.2m depth around DP15 (assumed 1m x 1m) will require remediation/management due to the presence of benzo(a)pyrene TEQ.</p> <p>Delineation DP23 - DP23 showed fill to >2.0m, which included bricks and glass to 1.0m, and timber, brick, glass inclusions and “slight hydrocarbon colouration” to >2.0m. The laboratory analysis for DP23 0.1m reported concentrations below the adopted criteria. The four delineation test pits showed fill to 0.5m depth. The fill generally comprised materials from coal mining operations (overburden and some coal chitter) with some glass, iron bars, tiles, and bricks. The delineation samples reported lead above the HIL in two test pits at 0.0-0.1m, 0.4-0.5m, and 0.9-1.0m. Zinc exceeded the EIL in two samples at 0.0-0.1m and 0.4-0.5m.</p> <p>Concentrations of benzo(a)pyrene exceeded the ESL in each delineation sample tested, and benzo(a)pyrene TEQ exceeded the HIL in one sample at 0.9-1.0m depth. The fill materials in the area of DP23 will require further assessment and/or remediation/management due to the presence of metals and benzo(a)pyrene</p>

Groundwater

Groundwater beneath the site was expected to be greater than 10m bgs (below ground surface) in the higher elevation areas of the site, and about 5m bgs in the lower areas of the site (typically creek valleys) which have an elevation of about 10m AHD. Based on the top-down mode of contamination and clay sub soil, a complete exposure pathway for contamination to enter groundwater was not considered to exist for the majority of the site.

In the area of the former mine shafts and backfilled open cut pits, if contaminated soil was present, there was a potential for a complete pathway to exist to groundwater. Sampling of the material in backfilled open cut pits showed the material generally comprised overburden and coal chitter from the mining operations, and contamination was generally not identified.

Sampling of the fill material in the former mine shafts was not carried out as part of this assessment due to safety concerns with drilling/excavating on top of a mine shaft where subsidence could occur. It is considered likely that the mine shafts were backfilled with materials from the former open cut mines to the north, including overburden and coal chitter. Based on this it is considered that the potential for groundwater under the site to be adversely impacted by site activities is low.

Surface Water

The results of the surface water sampling of Minmi Creek showed concentrations below the adopted criteria, with the exception of copper and zinc slightly exceeding the criteria in the up-gradient location. It is noted that Minmi Creek was almost dry in up-gradient locations at the time of sampling, and the up-gradient sample was collected from ponded water in a tributary to the creek. As this sample was in an up-gradient location, the sample was collected from ponded water, and the exceedances were slight, it is considered unlikely this would adversely impact surface water quality on site.

Back Creek was dry at the time of sampling, and therefore no surface water samples were collected from Back Creek. Sampling of Minmi Creek and Back Creek is recommended during times of heavier rainfall when the creeks are flowing in up-gradient and down-gradient locations. Onsite dams were not sampled at this stage. The water in the dams will need to be monitored (pH, odour, sheen etc.) and managed during future construction and earthworks on the site.

Waste Classification

The topsoil and fill materials have been preliminary classified as General Solid Waste (non-putrescible). Locations where asbestos has been detected would be classified as General Solid Waste (managed as Asbestos Waste).

The surface soil impacted by the wastes encountered at sample location DATSS12 would classify as hazardous waste due to the concentrations of lead and the leachability results. It has been assumed that the area of contamination was confined to surface soils immediately beneath the overlying waste material.

The residual soils and weathered rock classify as VENM, in accordance with the NSW EPA (2014) Waste Classification Guidelines. It is noted that if any topsoil or fill material is mixed with the residual soil and weathered rock, then the VENM classification would no longer apply. Should any soil/fill materials require disposal off-site, confirmation of the waste classification would be required.

Combustibility

The results of the combustibility testing on the coal chitter encountered, show combustible content above the adopted guidelines in numerous locations. The combustible material will need to be managed to reduce the potential for spontaneous combustion, which could

include blending the combustible material with non-combustible material, or placing it in locations/conditions that are not amenable to combustion."

The outcome of the initial review of the amended application was relayed to the applicant in CN's first Request for Further Information letter dated 14 January 2022. A response to the matters raised was received from the applicant on 10 June 2022.

The following Table includes a summary of the matters raised by CN, the response from the applicant and the final consideration taking into account that response.

Issue from RFI	Winten response	Final Consideration
<p><u>Sufficiency of contamination assessment</u></p> <p>RFI paragraph 2 states <i>"The contamination assessment is considered insufficient to determine the suitability of any particular stage of the development for its intended land use(s), but is considered sufficient to determine an appropriate remediation strategy"</i>.</p> <p>RFI paragraph 5 states that <i>"the requirements of the Concept Approval FEAR 1.29 are considered to have substantially been addressed ... to a level which is considered appropriate for this stage of approval (i.e. to enable the consent authority to be satisfied that the land will be suitable after remediation ...), <u>subject to Conditions of Consent that utilise the Site Auditor process</u>" [emphasis added].</i></p>	<p>Winten items 10.1 and 10.2 note that CN has accepted, in its RFI, that sufficient documentation has been provided to enable the consent authority to be satisfied that the site can be made suitable for its proposed use.</p> <p>Winten item 10.3 notes that Winten is concerned that requiring a site auditor to certify this on a precinct-by-precinct basis undermines this, and notes that this has previously been the subject of discussion and agreement between the parties' lawyers and barristers.</p>	<p>Winten items 10.1 and 10.2 do not specifically acknowledge the "subject to..." which is underlined in column 1 of this table.</p> <p>This is a key proviso of Council being satisfied, and the basis for the amended conditions relating to the site audit requirements, as discussed below.</p> <p>Hence this proviso should be clearly kept in mind in considering the acceptability of Winten's response in relation to the site audit requirements.</p> <p>Notwithstanding Winten item 10.3, Winten item 10.5 acknowledges that Council would like to ensure that the future precinct specific RAPs are fit for purpose and approved by a site auditor, and they are happy to delete the option for interim audit advice.</p>
<p><u>Site audit requirements</u></p> <p>As noted in RFI paragraph 3, Council does not support the proposed option that would permit the Site Auditor to issue IAA in lieu of a SAS and SAR. Accordingly, Council's amended condition B (see Attachment 1 to this letter) requires (prior to issue</p>	<p>Winten Item 10.4 states that notwithstanding Remediation Principle 6 in RAP4, it would be inappropriate to require a section B5 Site Audit Statement (confirming that the site can be made suitable for the proposed use) in circumstances where the consent authority has already confirmed its</p>	<p>In regard to "...the consent authority [having] already confirmed its satisfaction that the site can be made suitable..." Winten Item 10.4 does not account for the <i>"subject to Conditions of Consent that utilise the Site Auditor process"</i> discussed above and in column 1 of this table.</p> <p>Apart from deleting the option for Interim Audit Advice, Winten item 10.5 requests that all of Council's</p>

<p>of a Subdivision Works Certificate for any particular stage of the subdivision) the issue of a SAS and SAR certifying that:</p> <ol style="list-style-type: none"> the site (or relevant Stage(s) of Development) is suitable for all the intended land uses; or the Precinct-specific RAP is based on the Qualtest 2020 RAP, and is consistent with the Remediation Principles described in the Qualtest 2020 RAP <u>[i.e. a Section (B2) SAS]</u>; and is appropriate for the purpose of-ensuring that the land within the relevant Precinct can be made suitable for all the intended land uses (including but not limited to residential and commercial allotments, public areas, reserves and roads, as relevant to the Precinct) if the site is remediated in accordance with the Precinct-specific RAP <u>[i.e. a Section (B5) SAS]</u>. For avoidance of doubt, implementation of the Precinct- specific RAP must include any additional requirements that the Site Auditor may impose. <p><u>(Amendments to Winten's Proposed Contamination Conditions 21/07/2021 (from Appendix AA of SoEE Amended 21/07/2021) are shown in red underline or strike-through).</u></p>	<p>satisfaction that the site can be made suitable for the proposed use.</p> <p>Winten item 10.5 considers Council can be assured that the future precinct specific RAPs are fit for purpose and approved by a site auditor by requiring a section B2 Site Audit Statement. As noted above, Winten is happy to delete the option for interim audit advice, but request that the rest of draft condition B be reinstated to its previous iteration.</p>	<p>amendments to condition B (as shown in column 1 of this table) be reinstated to its previous iteration.</p> <p>Winten's request should be rejected for the following reasons:</p> <ol style="list-style-type: none"> As noted above, Winten items 10.1 and 10.2 do not acknowledge the "subject to" proviso to Council being satisfied that the land will be suitable after remediation. Council's satisfaction with information provided to date is based in part on Principle 6 in RAP4, which Winten proposes to discard. Winten has accepted the requirement for Site Auditor certification of a Precinct-specific RAP, with their request relating in part to the form of the SAS. Council's amendments clarify that the Precinct- specific RAP must be certified in two respects (as indicated in the proposed amendments). The first is for consistency with the Qualtest 2020 RAP (including the Remediation Principles, of which Principle 6 is one), and the second is that the subject area of the site can be made suitable if remediated in accordance with the Precinct-specific RAP. The latter is part of Council's obligation under SEPP-55 (now incorporated in Chapter 4 of the SEPP (Resilience and Hazards) 2021). As the Precinct-specific RAP will be more specific to the subject area of the site than the Qualtest 2020 RAP, it is reasonable to require that Council be satisfied that the subject area can be made suitable on the basis of the Precinct-Specific RAP (i.e. a Section B5 SAS). Provided the Precinct-specific RAP is indeed appropriate in both respects (which is the reason for the amended condition), requiring a Site
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		<p>Auditor to complete a SAS for purpose B5 as well as B2 should not impose any significant additional burden on the audit process.</p> <p>e. There is a subtle difference between certifying that the Precinct- specific RAP “<i>is appropriate for the purpose of ensuring that the land within the relevant Precinct can be made suitable for all the intended land uses</i>” and certifying that the land within the relevant Precinct “<i>can be made suitable for all the intended land uses (...) if the site is remediated / managed in accordance with the [Precinct-specific RAP]</i>”. The latter purpose provides more certainty in accordance with Clause 7 (1) (b) of SEPP-55 [Clause 4.6 (1) (b) of SEPP (Resilience and Hazards) 2021], which states “<i>A consent authority must not consent to the carrying out of any development on land unless – if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out...</i>”. This latter purpose also clearly incorporates provision for additional requirements in the EPA’s SAS template for B5: “SUBJECT to compliance with the following condition(s):”</p> <p>f. Winten’s proposed reinstatement of the previous iteration does not include specific recognition that any additional requirements the Site Auditor may impose must be implemented. This amendment was added to facilitate the Site Auditor’s approval if the Precinct-specific RAP is appropriate but warrants some additional particular requirement(s) (i.e. is subject to</p>
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		<p>compliance with conditions). In addition, the Site Auditor may impose some additional requirements (consistent with common auditor practice) regardless of whether this is incorporated in the Condition, but without specific mention in Condition B, subsequent conditions referring back to Condition B will not have the full effect of enforcing these requirements.</p> <p>g.</p>
<p><u>Volumes of contaminated material exceeding highest criteria or is otherwise unable to be accommodated on site, and likely impacts of transporting this material for off-site disposal.</u></p>	<p>Winten items 10.6 to 10.8 provide estimated volumes of contaminated material (including an allowance for unexpected finds), and accounting for variability. Item 10.9 estimates that 730 m3 to 1,860 m3 of contaminated material may need to be transported off-site to be disposed of at a licensed facility. Item 10.10 calculates this would result in an approximate maximum 372 truck trips, progressively removed as identified on a stage-by-stage basis over the life of the project (i.e. approximately 10 years). Items 10.11 – 10.13 assess the likely impacts and mitigation measures relating to transport of these materials.</p>	<p>It should be noted that the volumes from the RAP do not include general rubbish, such as noted in AEC 2C and AEC 2D, nor potentially combustible material, for which disposal is listed as a possible contingency remedial option (if blending and re-use cannot be achieved). Capping on site is also listed as a possible contingency remedial option for potentially combustible material. Winten's response appears to address CN's request and is consistent with documentation previously reviewed for the project. Provided the RAP strategy of re-using contaminated material exceeding residential criteria within commercial areas can be implemented, the volumes of material requiring off-site transport and disposal are relatively low and can be appropriately managed with good transportation practices.</p>

Because data gaps have been identified in sampling coverage within heavily vegetated and other inaccessible areas of the site, additional sampling will be required to be conducted to address these data gaps. Further, the proposed development is of a scale and likely to be developed over a timeframe for which it is impractical to complete contamination assessment and remediation planning to a level of detail which provides certainty that all contamination has been identified and will be appropriately addressed. Also, current land contamination guidelines may change over the course of the development.

Given the above, the requirements of the Concept Approval FEAR 1.29 are considered to have substantially been addressed by the documentation provided by the Applicant, to a level which is considered appropriate for this stage of approval (i.e. to enable the consent authority to be satisfied that the land will be suitable after remediation for the purposes for which the development is proposed to be carried out, in accordance with *'Resilience and Hazards SEPP'*), subject to Conditions of Consent that utilise the Site Auditor process, as provided for in the *Managing Land Contamination Planning Guidelines SEPP 55- Remediation of Land (DUAP/EPA 1998)*. The Site Audit process is considered an appropriate mechanism to provide the consent authority with confidence that contamination at the site will be appropriately addressed.

Such conditions of consent would be based generally those provided by the applicant within Appendix AA (relevant to land contamination) but with further amendments to satisfy the consent authority that the relevant provisions of the *'Resilience and Hazards SEPP'* have been addressed.

These conditions would also ensure a process where suitability of the land for the intended land use is confirmed by a Site Audit Statement for each stage prior the issue of the subdivision certificate for that particular stage. This approach will:

- address any uncertainty associated with the data gaps
- provide specific and consolidated contamination / remediation information for each stage
- ensure all contamination is addressed, remediated and validated within each development stage
- provide, where appropriate, for Long Term Management Plans to be prepared and implemented.

These conditions would allow two pathways to achieve the required final Site Audit Statement for each development stage. These are:

- a) prior to the issue of a Subdivision Works certificate obtain and submit a Site Audit Statement certifying that the relevant stage is suitable for all intended land uses. This would require completion of all additional investigation and any remediation and validation works in accordance with the QUALTEST RAP and RAP Addendum and prior to any other subdivision works for that stage; or,
- b) prior to the issue of a Subdivision Works Certificate obtain and submit a Site Audit Statement certifying that the land can be made suitable if the site is remediated in accordance with a Stage-specific RAP. The Stage-specific RAP must be consistent with the preferred remediation options described in the QUALTEST RAP and RAP Addendum. This approach would allow concurrent subdivision and remediation works to occur. It would then require completion of all remediation and validation works and preparation of the final Site Audit Statement certifying that the land is suitable for all intended land uses prior to the issue of a Subdivision Certificate.

Both pathways contain provision for unexpected variations in remediation procedures to be addressed and incorporated into the auditor's assessment prior to the issue of the final Site Audit Statement.

In this way, the consent authority may be confident that the land will be suitable for the purpose for which the development is proposed and that the provisions of *Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021*, Section 5.02 – Land Contamination of the NDCP2012 and FEAR 1.29 of the Concept Plan approval have been satisfied.

Under the review application CN's Principal Environmental Consultant reviewed the following documents, that supported the application:

- Summary of Appendices to the Statement of Environmental Effects (file RE2023_00003 S8.2 DA Documentation Appendices List Updates Summary)
- Qualtest letter dated 3 March 2023, Proposed Residential Subdivision – Woodford Street, Minmi NSW (DA2018/01351), Comment on Changes to Subdivision Layout Plans in Relation to Contamination, Recommendations and Remediation Strategy
- ADW Johnson Drawings 239736(3)-DA-101-T to -104T, Proposed Subdivision of Lot 100 D.P.1252590, Lot 5 D.P.1230960, Lot 1 D.P.1156243, Lot 4 D.P.1253716, Lot 48 D.P.115128 & Lot 3 D.P.1230960 Woodford Street, Minmi Development Application
- Proposed Conditions 21/03/2023 (file Appendix AA_Proposed Contamination Conditions – 144 Woodford Street, Minmi)

CN's Principal Environmental Consultant provided the following advice.

The change to the subdivision layout plans does not affect previous advice given in regard to contamination issues and recommended conditions of consent. The Site Audit approach and associated recommended conditions of consent are still considered appropriate to address such changes, including the ones that have been outlined in the Qualtest 3 March 2023 letter.

In regard to appropriate conditions of consent, I recommend that the Proposed Conditions 21/03/2023 are not accepted, but rather the amended conditions included in Table 1 in Attachment 1 to this letter be adopted, consistent with my previous advice.

The conditions recommended are included in the recommended conditions of consent (**Attachment A**).

Concern was raised in submissions that transportation of contaminants off-site may expose residents impacting health. The SEE provided the following commentary in this regard:

For transport and disposal of asbestos waste (any waste containing any amount of asbestos), an Asbestos Removal Control Plan (ACRP) is required to be prepared by a suitably qualified person/consultant, and implemented during the works. The ACRP would include measures to prevent the release of asbestos fibres (for example dampening loads, covering loads, decontamination of vehicle tyres).

For potentially contaminated dust, the risks will also be managed through dampening of loads, and covering of loads (required by TfNSW for all loads regardless of type). For the heavy-fraction hydrocarbons, odours noted during sampling were considered to be slight to moderate, and therefore it is considered unlikely that odours would pose a health risk or a nuisance to the general public during transport. If stronger odours are noted, these can be managed using de-odourisers such as bio-solve.

Noting the above, it is considered that the impact of transporting the material (that exceeds residential criteria) offsite is low given it will be limited to the construction phase only (short-term) and can be appropriately managed with good transportation practices.

It is agreed that transportation of contaminants could be appropriately managed and on balance is considered a positive long-term outcome to remove those contaminants that exceed health standards entirely from the site.

6.5 Mine subsidence

The requirements of FEAR 1.30 of the Concept Plan approval and Section 4.03 – Mine Subsidence of NDCP2012 have been considered in the assessment of the development application.

The following summary of former mining activities is taken from the *Report on Mine Subsidence Risk Assessment – Proposed Residential Development Minmi and Link Road Minmi* prepared by Douglas Partners in February 2011 in support of the Concept Plan application.

The site is underlain by coal mine workings in two seams, the Young Wallsend and the Borehole seams.

Underground mining in Minmi commenced with the A, B and C pits starting about 1853. The workings were in the Borehole Seam and comprised bord and pillar workings. The workings extended below much of the West Minmi and South Minmi areas. The mining was discontinued in 1871 due to flooding of the workings.

Browns Colliery was subsequently opened in 1876, with the pit top located on the northern parts of Minmi South area. Workings of the Browns Colliery extended under most of Minmi South as well as Link Road North. The workings were bord and pillar with some pillar extraction on the southern parts of the site.

The eastern section of the Minmi East area is underlain by the following workings in the Borehole Seam: The workings were undertaken in the late 1800s and comprised bord and pillar workings. Numerous shafts and entries were associated with these workings.

- *Co-Operative Colliery – RT 527;*
- *Cramp Colliery – RT 282;*
- *Wentworth Colliery – RT 305.*

Workings in the Young Wallsend seam were undertaken by the Wallsend Borehole Colliery under the southern parts of Minmi West and most of Minmi South. The Link Road South and North are underlain by workings of the Gretley Colliery. Record traces indicate workings on the northern parts of the site continued into the 1970's. The workings comprised bord and pillar workings, typically with 5 m wide bords, and pillar extraction in some areas.

Four open cut pits have been identified on the site as follows:

Purple Hill Open Cut: Located on the central western parts of the Minmi West area and continues to the west of the site. The cut was in the Borehole Seam, with the mining undertaken in the period 1948 to 1954. Underground workings were broken into on the south side of the cut.

Back Creek Open Cut: This is located on the north eastern boundary of Minmi South. The cut was in the Borehole Seam and was undertaken in 1949. The open cut continues to the south and east of the site

Old Workings in Young Wallsend Seam: There are two smaller open cuts shown on the central parts of the Minmi South area, where there were workings of the Young Wallsend Seam. The workings were undertaken in 1953.

Browns Colliery: A continuation of the Back Creek open cut extended to encroach onto the south western part of Minmi East. The workings were in the Borehole Seam and were undertaken in 1950 and 1951. The workings broke into the Browns Colliery underground workings.

Wallsend Borehole Colliery (Young Wallsend Seam): Open cut workings of the Wallsend Borehole Colliery extended onto the eastern part of the Minmi East area. The workings were undertaken in 1984 and did not extend to the outcrop.

Figure 23 below shows the extent and risk profile of mine subsidence constraints as mapped by Douglas Partners in 2011.

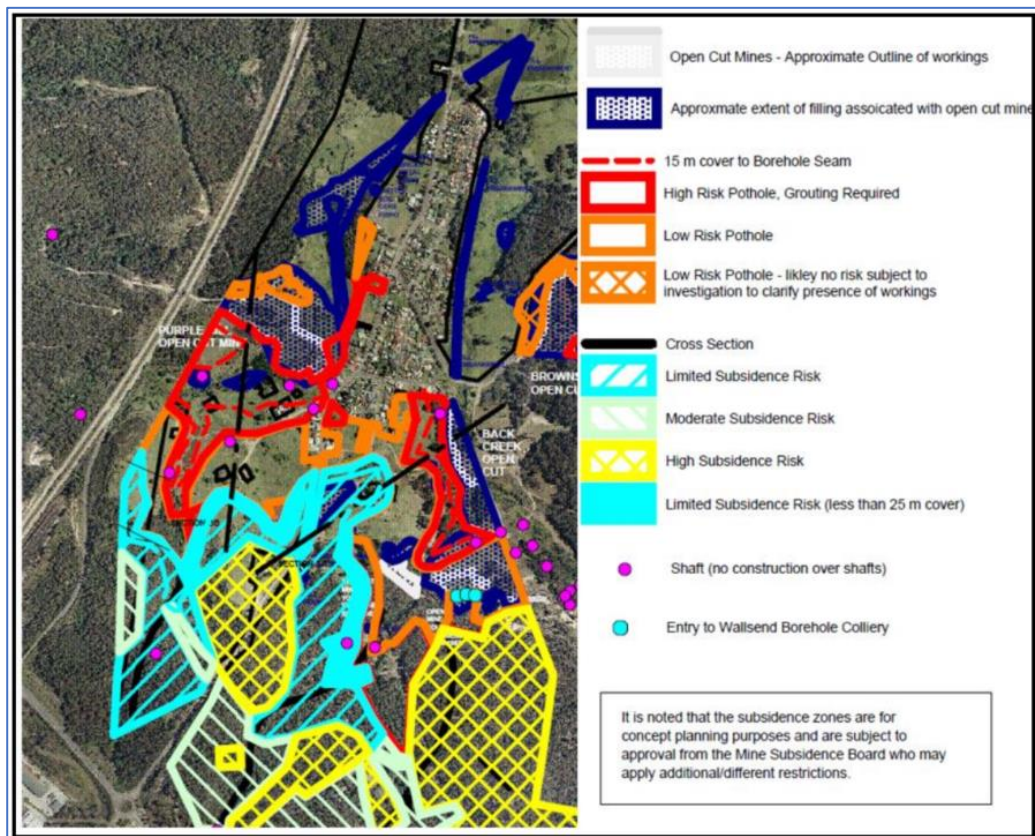


FIGURE 23 - Mine Subsidence Constraints (Source – Douglas Partners, Feb 2011)

FEAR 1.30 states as follows,

1.30 *'Prior to the issuing of any subdivision certificate for development, the proponent is to submit geotechnical investigations in accordance with any requirements of the Mine Subsidence Board to demonstrate that the risk of mine subsidence can be removed and/or managed within the development site by suitable means or demonstrate that the works are long term stable and there is no risk of subsidence, as appropriate to the intended future use of the land. This is to include consideration of options for grouting to ensure that mine subsidence risk is eliminated for all types of development proposed, including larger floor plate structures.'*

One of the reasons for refusal for the original application was:

The application has not provided sufficient information to determine that the risk of mine subsidence can be eliminated or mitigated to the requirements of Subsidence Advisory NSW and the impact on the natural and built environment of any works required to meet the requirements of Subsidence Advisory NSW have not been adequately demonstrated. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].

Notwithstanding that integrated development provisions were turned off by the Minister for Planning, the application was again referred to Subsidence Advisory NSW (SANSW) for review and comment.

SANSW have reconsidered the merits of the proposal and in their advice of 25 May 2023 now support the development subject to detailed conditions including that areas identified as exhibiting a high pothole risk submit a further proposal to SANSW for acceptance prior to commencement of works to remove the risk of mine subsidence by a suitable means, such as grouting.

The development subject to these conditions is considered acceptable in relation to managing mine subsidence risk.

6.6 Earthworks

The provisions of the *Water Management Act, 2000*, FEAR's 1.13, 1.14 and 1.15 of the Concept Plan approval, Cl. 6.2 of NLEP2012 and Section 2 of the MPDG have been considered in the assessment of the development application.

A reason for refusal of the original DA was:

There is insufficient information to understand the extent of earthworks and retaining walls on steeply sloping site and satisfy FEAR 1.14.

Figure 24 below is extracted from plans associated with Concept Plan approval and shows an analysis of the slope of land within the development site. The colours represent relatively gentle slopes of up to 6% (1V:16H or 1m rise over 16m horizontal distance) shown pale yellow to land with slope of at least 25% (1V:4H) shown as vibrant red.

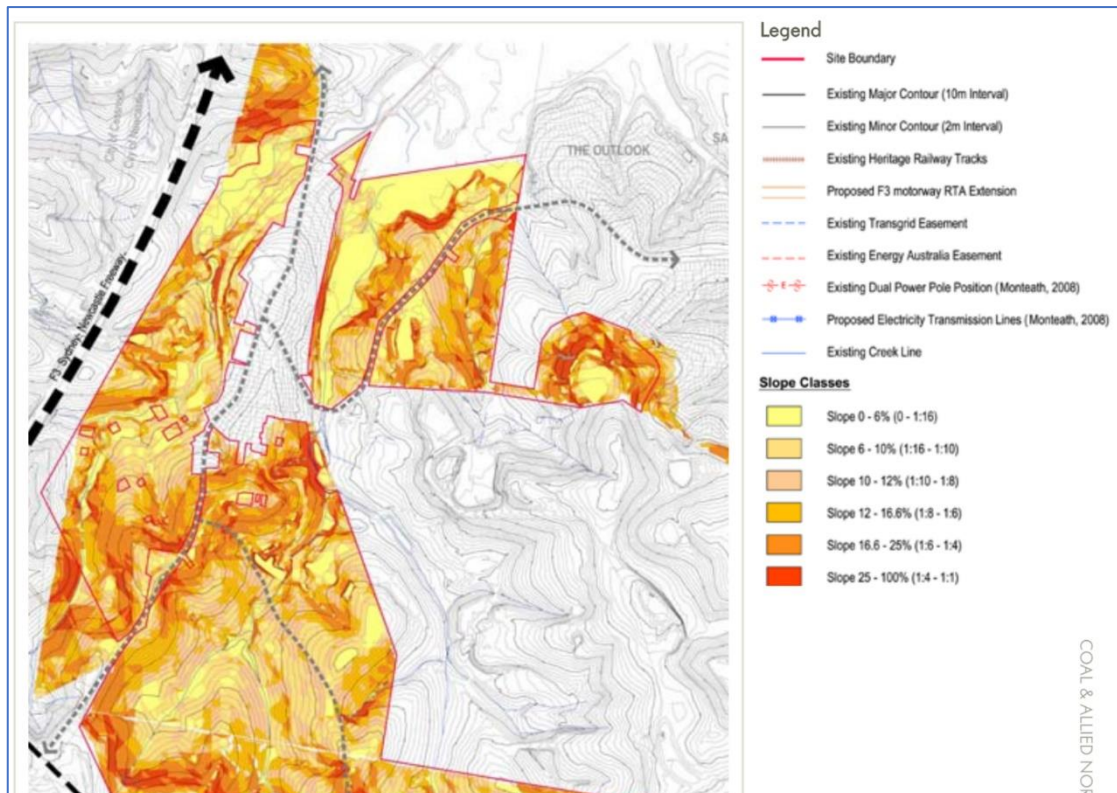


FIGURE 24 - Slope Analysis (Source – Appendix A to Concept Plan Design Guidelines)

The MPDG, prepared in response to FEAR1.13 – *Urban Design and Built Form*, acknowledges the challenging site topography and past mining constraints and identifies a strategy and principles to guide the use of earthworks and retaining wall structures in association with subdivision of the land and attempts to deliver the targeted density of lots which are physically capable of development and have appropriate levels of amenity and access.

Some earthworks are also proposed in the vicinity of some of the existing isolated properties scattered throughout the development site, against the boundary with the neighbouring Blue Gum Hills Regional Park, however, none of the earthworks proposed are within those other lands.

The MPDG envisages the use of targeted bulk earthworks together with site benching and integrated retaining wall structures to achieve proposed access roads to CN's NDCP2012 requirements and the proposed allotments in a coordinated manner.

The SEE outlined the following in response to the MPDG, which is also considered applicable to NDCP2012 considerations:

The site presents a range of design constraints in relation to subdivision works. This includes:

- *Natural and modified site topography;*
- *Previous land uses resulting in uncontrolled fill, for example former open cut mines;*
- *Riparian corridors;*
- *Existing dwellings within or adjoining the development area, but not part of the Proponent's landholding; and*
- *Design standards for features such as roads, building pads and asset protection zones.*

Key principles in designing the layout include:

- *The desire to retain vegetated riparian corridors;*
- *Establish residential lots that minimize retaining wall heights or, as a minimum, achieve building pads on steeper lands;*
- *Achieve appropriate road grades and satisfy sight distance requirements; and*
- *On steeper parts of the site, achieve road grades between 8% and 12%, to enable lot benching and encourage walkability throughout all parts of the Estate.*

In order to achieve the desired outcomes consistent with the Concept Plan approval, it will be necessary to undertake earthworks across the site. In steeper areas, a greater level of cut and fill will be required to facilitate the subdivision, irrespective of the desired outcomes.

The Concept Engineering Plans detail the extent of cut and fill across the site (refer to Appendix C).

Following earthworks, the majority of the lots will be at a grade that allows benching to occur, using retaining walls less than 1.5m in height. As an example, a 15-metre-wide lot on a 10% slope would require a 1.5 m high retaining wall to produce a level lot. Steeper lots, on the other hand, will require drop edge beams or slope to be accommodated through the building design.

It is preferred to undertake benching as part of the subdivision works to avoid uncoordinated earthworks by individual landowners in the future.

It is considered that the proposed design represents a balance of retaining vegetation within the C2 corridors, whilst facilitating the construction of the residential subdivision.

Generally, the earthworks will be limited to the areas zoned R2 except where earthworks will be necessary within areas zoned C2 primarily for the purposes of road crossings and stormwater infrastructure.

Following earthworks, the majority of the lots will be at a grade that allows benching to occur, using retaining walls less than 1.5m in height. It is agreed with the applicant that it is a preferred approach to undertake benching as part of the subdivision works to avoid uncoordinated earthworks by individual landowners in the future.

The proposed development includes broad scale cut and fill, lot benching and use of integrated retaining wall structures across most parts of the development site that is zoned for residential or commercial uses and on a scale that is considered to be commensurate with that necessary to deliver the proposed road and lot layout and to facilitate future intended uses of the land in a manner that is generally consistent with the Concept Plan approval and the subsequent MPDG.

Given that the LMCC DA has been approved it is considered that any interface issues at the southern LGA boundary could be resolved by coordinating works between the two approvals.

The proposed earthworks are considered to be acceptable.

6.7 Flood planning

The provisions of FEAR's 1.23 and 1.24 of the Concept Plan approval, Clause 5.21 of the NLEP2012 and Section 4.01 – Flood Management of the NDCP2012 have been considered in the assessment of the development application.

FEAR's 1.23 and 1.24 of the Concept Plan approval requires each development application to include revised flood modelling that considers the flood impacts associated with the development and taking into consideration potential sea level rise and climate change.

The revised flood modelling is required to demonstrate that each proposed lot can accommodate a dwelling above the determined Flood Planning Level (FPL) and that safe evacuation can be achieved from all dwellings and public land below the probable maximum flood (PMF).

The refusal of the original application in December 2022, included the following two reasons for refusal relating to flooding.

The development fails to comply with the requirements of Clause 5.21 'Flood Planning' of the Newcastle Local Environmental Plan 2012. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].

and

The development is not in the public interest having regard to the modelled future flood impacts and resulting overtopping of proposed public roads in Stages 37, 39 and 40 and the associated risks to the public during flood events. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].

The SEE states:

A flood impact assessment has been undertaken to determine the impact of the proposed development with regard to Hunter River, ocean and local catchment flooding. The flood impact assessment has been updated since the lodgement of the DA to correspond with the current proposed subdivision layout.

It is noted that the flood model has been developed to take into account the remaining areas of the Minmi Link Road Development, and in this regard, looks at the development holistically, rather than in isolation.

The assessment found the following:

- All proposed development lots will be located outside of the 1% AEP flood extent, and will therefore achieve the minimum habitable floor levels associated with the flood planning level (FPL);*
- The vast majority of the proposed development lots are outside of the Probable Maximum Flood (PMF) extent. However, there are a small proportion of the development lots that are located within the PMF flood extent under post-development catchment conditions. These lots are primarily classed as L2 life hazard and generally have flood free land available on-lot during the PMF. The L2 classification allows normal light frame residential buildings, with floodwaters in these areas navigable by wading or with the use of heavy vehicles;*

- *Changes to peak flood level distributions as a result of the proposed development footprint will occur within the existing flood inundation extent (largely associated with the proposed detention areas). The area impacted will be confined to the drainage corridors, with no impact to the proposed development lots; and*
- *The assessment of flood detention has demonstrated that the required storage is available to manage post-development flood flows on site.*

Based on the flood impact assessment, it is evident that flood impacts can be managed appropriately on site and does not present a constraint to the proposed development. It is therefore considered that FEARs 1.23 and 1.24 of the Concept Approval have been met.

It is agreed that sufficient information has been provided to determine that flood risk is generally acceptable in relation to Clause 5.21 of NLEP 2012, and NDCP 2012, noting that all proposed development lots are outside the 1% AEP flood level with the majority also not flood affected by even the PMF event.

However, as was the case with the original application, special attention has been given to the area around what is now Stages 37 and 39, which under the original assessment was considered unsatisfactory resolved in relation to flood impact and risk posed. It was on this basis that the original application was not supported on flood planning grounds.

The proposal has been fundamentally altered from a flooding perspective from that of the refused application in that the previous proposal to pipe the existing creek line between Stages 37 and 39 has been amended to an open naturalised channel. As elsewhere stated in this report this approach is supported as a preferable outcome from CN Assets Services.

To assist CN in the further consideration of flood impacts and flood management associated with the amended application, CN (re)engaged the services of the same Principal Flood/Stormwater Consultant, used by CN to provide expert evidence during the discontinued LEC Appeal.

In support of the review application the applicant has submitted a number of updated documents in relation to flood assessment and management. In response to FEAR's 1.23 and 1.24 and seeking to address the reasons for refusal.

- Supplementary Flood Report - Martens Consulting Engineers (Rev 1, 03/04/2023)
- Floodplain Management Plan - Martens Consulting Engineers (Rev 6, 03/04/2023)
- Supplementary flood advice by Martens & Associates (MA) dated 13 September 2023
- Supplementary flood advice by Martens & Associates (MA) dated 12 March 2024

The Supplementary Flood Report and Floodplain Management Plan, both dated 3 April 2023 sought to address the reasons for refusal. The assessment of flooding impacts and risks identified six key issues that were required to be addressed having regards to these documents. The applicant's consultant Martens and Associates (MA) has provided a further two supplementary flood advice, on 13 September 2023 and 12 March 2024, in response to further requests for information.

The six key flood issues are outlined below, with relevant discussion. These relate to the area depicted below in **Figure 25** and involve impacts upon existing Lot 38 and TfNSW land west of the site, along with risk associated with three water crossings (WC19, WC20 & WC21), providing access to stages 37 and 39.

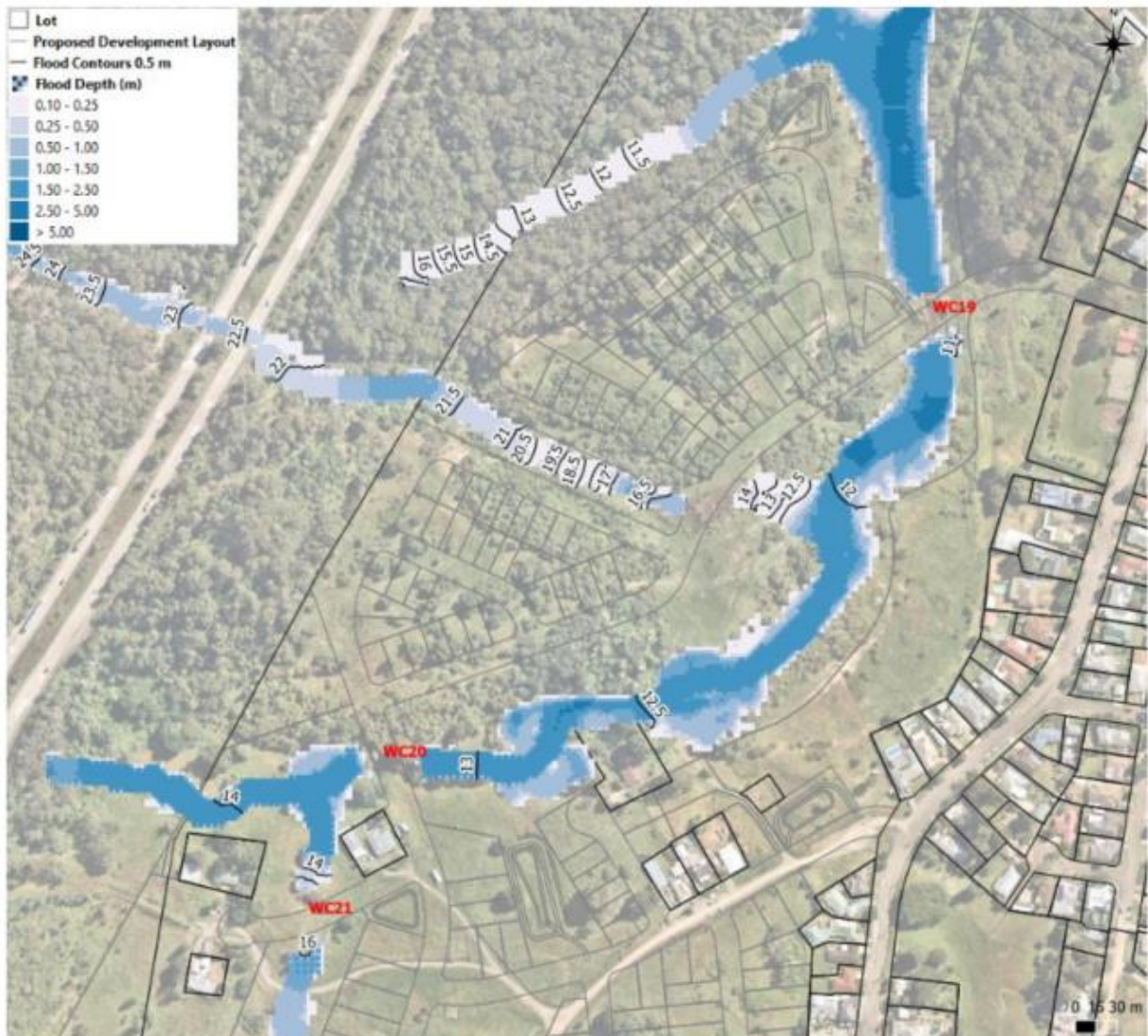


Figure 25 – Water crossing locations and 1%AEP (20% blockage) flood depths and levels (Source MA Supplementary flood advice - 12 March 2024, Figure 1)

Item 1 Application of blockage in the analysis of flooding to existing culverts located in the drainage system upstream of Stage 37 and 39 of the development

CN's consultant when reviewing the MA supplementary report of 13 September 2023 and 12 March 2024 advised:

As outlined by MA in its letter dated 13 September 2023, blockage was not applied to existing culverts because all of the existing culverts that were modelled by BMT as part of the original Flood Impact Assessment are located upstream of Stages 37 and 39 of the development. MA argued that applying blockage to these culverts would decrease the peak flow arriving at the site, thereby reducing the depth of flooding along the creek lines that drain through the site. Accordingly, the decision for no blockage to be assumed for the existing culverts located upstream from Stages 37 and 39 is considered to provide a conservative assessment of flooding within the site.

I accept the justification provided by MA and on that basis advise that this issue is resolved.

Item 2 Risk to life associated with potential for overtopping of roads

CN's consultant when reviewing the MA supplementary report of 13 September 2023 advised:

In its response dated 13 September 2023, MA acknowledges that overtopping of roads at waterway crossings WC19, WC20 and WC21 (refer ADW Johnson drawings 126, 121, and 117) will occur in the Probable Maximum Flood (PMF).

However, this was understood from previous documentation and the RFI actually sought information that would identify the frequency of flooding that would initiate overtopping of each of these crossings. MA has not provided this information. Instead, MA has focussed on providing a response which seeks to argue that the risk to life associated with the roads being overtopped in a PMF can be managed by the installation of flood depth indicators at each creek crossing and by the future residents of the subdivision employing a shelter-in-place response during storms that would cause elevated flood levels.

The response provided by MA is considered unacceptable for the following reasons.

- (i) While the installation of depth indicators as a measure for understanding flood affectation at a road crossing of a watercourse may be acceptable for existing roads, it is not an acceptable management measure for new residential development, particularly where the roads that could be overtopped are the only pathways for vehicular access.*
- (ii) Depth indicators may provide an indication of the depth of water over a road crossing, but they will not indicate the velocity of overtopping floodwaters or serve to “manage” the potential for motorists to drive through floodwaters at the crossing. These two unknowns are considered to be the most significant factors that present as the greatest risk for loss of life. Due to the size of the upstream catchment and the likely rapid response to the types of rainfall events that could cause overtopping of the roads, there will be insufficient time for State Emergency Services (SES) or other agencies including City of Newcastle Council, to implement road closures before motorists may attempt to drive through the flooded road. As a result, the hazard cannot be effectively managed and the risk sufficiently mitigated.*
- (iii) While residents may be able to safely shelter-in-place at home because their homes are sited on land that is above the predicted peak level of the PMF, this will not prevent them from making inappropriate but understandable decisions that lead them to drive through floodwaters at one or a number of the crossings listed above. For example, if a storm that causes road crossing overtopping coincides with the typical school pick up time between 2:30 and 4:30 pm on any given weekday afternoon, it is plausible that many parents will opt to drive to pick up their children from school and in doing so, will need to drive through floodwaters should the road crossings be overtopped. The risk of this occurring is also linked to understanding the frequency of the event that will initiate overtopping. As noted above, this information has not been supplied by MA.*

The MA response of 12 March 2024 can be summarised as:

This issue is related to road crossings WC19, WC20, and WC21 overtopping in rare flood events less frequent than the 1% Annual Exceedance Probability (AEP) event. In summary, we consider that the road crossings do not pose an unacceptable risk to life because:

1. The crossings are not overtopped in the 1% AEP event (with 20% blockage).
2. The estimated frequency of overtopping is extremely rare, being 1 in 1,100 years, 1 in 5,600 years and 1 in 10,200 years for crossings WC19, WC20 and WC21 respectively.
3. Any residual risk can be managed by provision of flood depth indicators and warning signage to motorists not to enter flood waters.
4. The crossing designs comply with the requirements of Austroads *Guide to Bridge Technology Part 8: Hydraulic Design of Waterway Structures* (2018).

CN's consultant when reviewing the MA supplementary report of 12 March 2024 advised:

In its response dated 12 March 2024, MA provides the requested information detailing the estimated frequency of overtopping of roads at waterway crossings WC19, WC20 and WC21 (refer ADW Johnson drawings 126, 121, and 117). The estimated frequency of overtopping is 1 in 1,100 years, 1 in 5,600 years and 1 in 10,200 years for crossings WC19, WC20 and WC21, respectively.

MA argue that the that the potential for overtopping of these roads crossings in a major storm does not pose an unacceptable risk because the frequency of overtopping is extremely rare. This is further justified by consideration of the frequency of the event required to generate a depth of overtopping of 0.15 m which is considered to be the depth at which crossing would become unsafe. The depth of overtopping and associated frequency of the event required to cause the corresponding depth are listed in Table 1 of the MA submission (refer page 2).

While this information is helpful and provides a basis for assessing the risk, the statements made in the paragraph that follows Table 1 of the MA submission dated 5 March 2024 are not correct. In this paragraph, MA states that:

"The results show that the most flood-affected crossing, WC19, overtops approximately every 1,100 years, and becomes unsafe to cross approximately every 1,600 years."

This statement misrepresents the data presented in Table 1 of the MA letter and the additional analysis undertaken by MA. The correct conclusion that can be drawn from the analysis is that probability of crossing WC19 overtopping once in any given year is 1 in 1,100. There is the same probability that it could overtop in the following year and in each year thereafter. A better way to understand the risk of overtopping is to apply a statistical analysis over a specified timeframe. I have done this and can advise that there is a 6.2% chance that crossing WC19 will be exceeded at least once at some time in the next 70 years. The same approach can be used to determine the risk of overtopping to a depth of 0.15 m which indicates that there is a 4.3% chance that a depth of 0.15 m at crossing WC19 will be exceeded at least once at some time in the next 70 years.

Notwithstanding the error in interpretation of the results, I acknowledge that the additional analysis undertaken by MA serves to confirm that the risk of overtopping of the road crossings at WC19, WC20 and WC 21 is very rare and that on this basis the design elevations for the road crossing are considered acceptable.

Item 3 Unacceptable off-site increases in peak flood levels

CN's consultant when reviewing the MA supplementary report of 13 September 2023 advised:

In its response dated 13 September 2023, MA acknowledges that the off-site increase in peak 1% AEP flood level along the northern boundary of Lot 38 in DP 115128 is 0.03 m. MA argues that an increase of this magnitude is considered to be negligible at this location because the existing depth of flooding is 1.4 m and because the increased area of affectation would be less than 2% of the existing area of flood affectation.

MA advises that the increase in floodwater depth during the 20% AEP event is 0.5 m. This is even greater than for the 1% AEP event and although not specified would likely indicate a greater extent of increased flood affectation in an event of 20% AEP frequency. Moreover, it indicates that the impact of the development would be to cause increased nuisance flooding of the adjoining land.

The NSW Flood Prone Land Policy indicates that proposed development should not result in an adverse impact on adjoining properties. An adverse impact can be interpreted as an increase in peak flood level, an increase in flood flow velocity or an increase in the duration of inundation. Any increase in peak flood level caused by a development also indicates that the development is causing an increased frequency of inundation, which manifests to mean that there is adverse impact to the adjoining property(s). In principle, for a development to conform to the requirements of the policy it needs to be demonstrated that the off-site impact is negligible.

There is often debate regarding what is a "negligible" impact, particularly where comparisons are being made between results derived from the flood modelling of post-development and pre-development conditions. The debate relates to acceptable tolerances in the calculations undertaken in the modelling and in the accuracy or reliability of the data on which the model(s) is based.

In my experience, the maximum increase in depth of flooding on adjoining properties due to a development that can be considered to be within this acceptable tolerance for it to be considered to be a "negligible" impact is 0.01 to 0.02 m. However, there is caselaw from judgements made in the NSW Land and Environment Court (LEC) which have determined matters based on a need for the increase in peak flood level as derived from flood modelling, to be zero.

In its response to Item 3, MA states that the affected land "will not experience more frequent flooding than it already does as a consequence of the proposed development". However, if the development causes the 20% AEP flood level to increase by 0.05 m, it follows that the present day 20% AEP event will equate to something more frequent like perhaps the 50% AEP event under post-development conditions. Hence, the proposed development will cause more frequent flooding along the northern boundary of Lot 38, which is contrary to the conclusion drawn by MA.

A similar conclusion can be drawn from assessment of the 0.03 m increase in the 1% AEP flood level that will occur on Lot 38 as a result of the development.

In my opinion, MA needs to demonstrate that the impact of the increased flood affectation determined from its analysis does not manifest to adversely impact on existing uses of the land or potential future uses and does not result in more frequent inundation.

The MA response of 12 March 2024 can be summarised as:

This issue is related to predicted increases in peak flood levels within Lot 38 DP 115128 (Lot 38). In summary, the increases in 1% AEP within Lot 38 are acceptable because:

1. The increase in the extent of flooding is around 6.4m² and is contained within the riparian zone and therefore the existing and future use of the land will not be detrimentally affected.
2. The increase in the extent of flooding does not affect the dwelling, site shed or the access to Lot 38.
3. The floor level of the existing dwelling in Lot 38 will not be affected and the dwelling will maintain at least 1.55 m freeboard.
4. In the absence of DCP threshold requirements, the proposed development complies with criteria set out in the Flood Impact and Risk Assessment, Flood Risk Management Guideline LU01 (2023).
5. The proposed development satisfies the provisions of cl 5.21 of Newcastle LEP 2012 in that it will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and it will not adversely affect the safe occupation and efficient evacuation of people.

CN's consultant when reviewing the MA supplementary report of 12 March 2024 advised:

In its response dated 12 March 2024, MA provides a more extensive commentary on the nature and extent of the off-site increase in peak 1% AEP flood levels along the northern boundary of Lot 38. In particular, MA confirms the areal extent where the increase occurs on adjoining land to be less than 10 m².

While the predicted increase in peak flood level at this location is greater than the threshold value normally accepted in the assessment of modelling results undertaken for flood impact assessment, I consider the increase to be acceptable in this instance for the following reasons:

- (i) The increase is only just greater than the typically threshold value of 0.02 m*
- (ii) The increase occurs over a relatively small area.*
- (iii) The flood level of the existing dwelling at Lot 38 will not be affected and the dwelling will maintain at least 1.55 m of freeboard above the 1% AEP flood level.*
- (iv) For the reasons listed in (i), (ii) and (iii), the proposed development will not materially increase the flood damages that could be incurred by the owners of Lot 38 and will not serve to adversely impact on the development potential of the land.*

Item 4 Off-site increases in peak flood levels along creek channels of > 0.1 m

CN's consultant when reviewing the MA supplementary report of 13 September 2023 advised:

In its response dated 13 September 2023, MA maintains that the off-site increases in peak flood levels for each of the 10%, 5% and 1% AEP events are acceptable because the increases are either, limited to the confines of the channel, or do not inundate land which would not otherwise be inundated in these events. Neither of these reasons align with the intent or requirements of the NSW Flood Prone Land Policy as articulated in the Flood Risk Management Manual (2023).

The primary objective of the Flood Prone Land Policy (FPLP) is “to reduce the impacts of flooding and flood liability on communities and individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods, utilising ecologically positive methods wherever possible”. The Manual lists four bullet points that articulate how this objective is to be achieved (refer to “Policy Statement” on page 2 of the FRMM 2023).

MA argues that because the described impacts are contained within creek channels and “do not impact developed areas”, then the predicted impacts are in accordance with the objectives of the FPLP. In so doing, MA selectively quotes only part of the second of the four bullet points referred to above which relates to how the policy is to be applied when considering existing development that may be exposed to flooding. MA conveniently ignores bullet points three and four under “Policy Statement” on page 2 of the FRMM 2023, which outline how the objectives of the Policy can be achieved for new development. As the proposed development of Stages 37 and 39 are new development it follows that these criteria need to be followed in order to meet the objectives of the Policy.

In my opinion, MA has not done this and therefore, has not shown that the flood level increases that are predicted and shown in Map FL36 of its report are acceptable.

The MA response of 12 March 2024 can be summarised as:

This issue is related to increases in 1% AEP peak flood levels upstream of the development along Minmi Creek. In summary, the increases in peak flood levels along creek channels are acceptable because:

1. The increases in peak flood levels are contained within riparian zones and will not affect existing or future land use.
2. Flow velocities are predicted to reduce and therefore the risk of creek bank erosion will reduce.
3. The increase in flood levels within the creek channel, do not raise any inconsistencies with the objectives of the NSW Flood Prone Land Policy from the Flood Risk Management Manual (2023).

CN's consultant when reviewing the MA supplementary report of 12 March 2024 advised:

In its response dated 12 March 2024, MA provides further justification for why the reported off-site increases in peak flood levels for each of the 10%, 5% and 1% AEP events are acceptable along Minmi Creek. While I do not accept that increases of the magnitude reported “do not raise any inconsistencies with the objectives of the NSW

Flood Prone Land Policy”, I acknowledge that the additional commentary provided by MA serves to provide greater clarity regarding the extent of the predicted impacts and their potential to manifest to adversely affect existing or future land use along the Minmi Creek corridor. For this reason, I am accepting of the more detailed justification provided by MA and believe that this is can be considered resolved.

Item 5 Off-site increases in peak flood levels of >1 m that are described by MA as “artefacts of the modelling”

CN's consultant when reviewing the MA supplementary report of 13 September 2023 advised:

In its response dated 13 September 2023, MA maintains that large increases in peak flood level reported at Lot 38 are due to “modelling artefacts” and provides some explanation of the cause of the reported artefact. Based on that explanation, it appears that the increase in flood extent indicated by the “Was Dry, Now Wet” cells at the provided cross-sections is primarily related to some function of the 5 m TUFLOW model grid size. Irrespective, it remains unclear why MA reports increases in peak flood level at this location of greater than 1 m. In my opinion, increases of this magnitude cannot be explained away as an artefact and need to be resolved. In that regard, it is noted that results from a 5m TUFLOW grid model would typically be output at a 2.5 m resolution. If the difference mapping were based on a 2.5 m resolution it would help to better resolve any expected changes in flood extent and or flood level. It is suggested that MA undertake this work to confirm its suspicions as to the cause of the reported increases in peak flood levels.

The MA response of 12 March 2024 can be summarised as:

This issue is related to mapped large increases in the 1% AEP plus 20% climate change peak flood levels at Lot 38. In summary, these impacts are not representative of the actual flood level increase that this lot will experience during this event because:

1. The impacts have been re-mapped at a higher resolution which shows that the increase in flood extents across the site is minimal in this event, increasing flood affectation by around 6.3m² within the existing riparian zone, but not affecting any structure or floor levels.
2. The impact at both the upstream and downstream sides of the site is less than or equal to the impact in the 1% AEP event with 20% blockage (no climate change), being 0.03 m.
3. The previously mapped increases are a result of the model grid relative to the steepness of the channel adjacent to Lot 38. This has been resolved by more detailed mapping.

CN's consultant when reviewing the MA supplementary report of 12 March 2024 advised:

This issue is related to mapped large increases in the 1% AEP plus 20% climate change peak flood levels at Lot 38. In its response dated 12 March 2024, MA provides further information to explain why the impacts presented in the mapping are not representative of the actual flood level increase that this lot will experience during this event. This further information includes re-mapping of the modelling results at a higher resolution which shows that the increase in flood extents across the site is minimal in this event, increasing flood affectation by around 6.3 m² within the existing riparian zone, and not affecting any structure.

The results now show that the impact at both the upstream and downstream sides of the site is less than or equal to the impact in the 1% AEP event with 20% blockage (no climate change), being 0.03 m. This additional analysis and re-mapping of the results serves to confirm that the previously mapped increases are a result of the model grid relative to the steepness of the channel adjacent to Lot 38.

On this basis, and in consideration of my response above to Item 3, I consider this issue to now be resolved.

Item 6 Acceptable flood level impact thresholds

CN's consultant when reviewing the MA supplementary report of 13 September 2023 advised to refer to their August 2023 raised issues, which they indicated had not been addressed. These were as follows:

An assessment of the potential impact of the amended subdivision layout and landform for Stages 37 and 39 on flood characteristics is detailed in MA's Supplementary Flood Assessment Report dated April 2023. My comments on the assessment undertaken by MA are detailed above.

Additional assessment of the impact of the proposed development is provided in Section 3.3 of MA's April 2023 Floodplain Management Plan report. The report provides a commentary on MA's determination of "Impact Thresholds" (refer Section 3.3.2). The impact thresholds proposed by MA for off-site increases in 1% AEP flood level in areas outside the development site are detailed in Section 3.3.2 under points 1b and 1c. Thresholds for flood velocity changes are detailed in the same section under points 2b and 2c.

The impact thresholds proposed by MA suggest that increases in off-site 1% AEP flood levels of up to 300 mm should be accepted where valleys are relatively confined and up to 100 mm where valleys are wider and the floodplain more extensive. This criteria is not consistent with the tenets of the NSW Flood Prone Land Policy and is not aligned with the requirements of Newcastle DCP 2012. The off-site flood level increase thresholds proposed by MA are an order of magnitude greater than is typically considered acceptable. Accordingly, the argument presented by MA in Section 3.3.4 to justify the off-site increases in peak 1% AEP flood level due to the amended design for Stages 37 and 39 cannot be accepted.

The MA response of 12 March 2024 referred to their response to Issue 4.

CN's consultant when reviewing the MA supplementary report of 12 March 2024 advised that this issue is considered resolved.

Having regards to the provisions of FEAR's 1.23 and 1.24 of the Concept Plan approval, Clause 5.21 of the NLEP2012 and Section 4.01 – Flood Management of the NDCP2012 the development is now considered acceptable in relation to flooding, in that cumulative impacts are acceptable and risk to life and property can be appropriately managed. A condition has still been recommended for installation of flood depth indicators at the road crossings to provide additional risk management for road users.

6.8 Stormwater Management and Water Quality

The provisions of FEAR's 1.25 and 1.26 of the Concept Plan approval and Section 7.06 – Stormwater of the NDCP2012 have been considered in the assessment of the development application.

To assist CN in the further consideration of stormwater management and water quality associated with the amended application, CN (re)engaged the services of the same Principal Stormwater/Flood Consultant, used by CN to provide expert evidence during the discontinued LEC Appeal.

The key documents considered were:

- *Concept Stormwater Management Plan: Residential Subdivision Precincts 3, 4 and 5, Minmi, NSW*, prepared by Martens and Associates and dated March 2023
- *Precincts 3, 4 and 5 Proposed Subdivision Concept Engineering Plans Lots 4 and 5 DP 1230960, Lot 4 DP 1253716, Lot 1 DP 1156243 and Lot 48 DP 115128, Woodford Street, Minmi*, prepared by ADW Johnson and dated March 2023 (Revision W)
- *Proposed Subdivision of Lot 4 DP 1230960, Lot 5 DP 1230960, Lot 1 DP 1156243, Lot 4 DP 1253716, and Lot 48 DP 115128, Woodford Street, Minmi – Basin Detail Plan (Sheet 1 to 7) and Stormwater Details*, DWG No 239736(3)-ESK-068 to 075, prepared by ADW Johnson and dated June 2022 (Revision B)

The consultant found that the new information submitted with the review application had generally resolved all previously identified stormwater design issues under the original application (which in itself was still considered acceptable subject to conditions). Some minor issues were identified upon review, such as the detailed design of Bioretention basins in terms of inlet/outlet levels. It was requested that the applicant submit a design verification report to confirm that designs could effectively operate which has since been submitted and confirmed by the consultant as acceptable.

Having regards to the provisions of FEAR's 1.25 and 1.26 of the Concept Plan approval and Section 7.06 – Stormwater of the NDCP2012 the stormwater management and water quality impacts have been comprehensively considered and are acceptable subject to conditions.

A key issue with the previous proposal was that CN's Asset Services do not support a proposed twin-pipe stormwater drainage arrangement for the watercourse diversion proposed in Stage 37/39. Asset Services preferred that the existing watercourse approaching the site from the M1 Motorway corridor to the west continue to flow in an appropriately designed open naturalised channel. This would greatly reduce the risk of blocking and the maintenance burden as well conform to CN's overarching stormwater management philosophy of maintaining major flow routes as open, naturalised channels. An open channel design has now been incorporated into the proposal subject of the review application and has been supported by CN Asset Services.

It is noted that the submission received from the National Parks and Wildlife Service (NPWS) dated 13 June 2023, maintains a recommendation to include a number of recommended conditions, some of which are to address their concerns that the resulting increase in stormwater runoff and construction activities may adversely impact on the natural watercourses that pass

from the development site, through the adjacent Blue Gum Hills Regional Park. The NPWS conditions have been included in the final recommended conditions of consent.

It is therefore considered that the overarching approach to stormwater management and water quality is acceptable. It is further considered that the remaining elements of the proposed development that provide further refinement against DCP provisions could be addressed following the preparation and assessment of amended Concept Engineering Plans and Subdivision Plans, which is addressed by the recommended conditions.

6.9 Bushfire

The provisions of FEAR's 1.45 of the Concept Plan approval and Section 4.02 – Bush Fire Protection of the NDCP2012 have been considered in the assessment of the development application.

Subdivision of land or development for a Special Fire Protection purpose is normally integrated development under section 4.46 of the *EP&A Act 1979*. However, as discussed above in this report the Integrated Development provisions were 'turned off' by the Minister and, therefore, the application was not formally referred to the NSW Rural Fire Service as integrated development.

However, FEAR 1.45 requires that *"each development application for subdivision must be accompanied by a Bushfire Management Plan that demonstrates that the development complies with the Planning for Bush Fire Protection 2006 and to the satisfaction of the RFS..." (emphasis added).*

The applicant has submitted the following documentation all prepared by an Accredited Bushfire Practitioner (BPAD -26202).

- BUSHFIRE MANAGEMENT PLAN - BUSHFIRE PLANNING AUSTRALIA (REV 3, 23/11/2018)
- BUSHFIRE MANAGEMENT PLAN ADDENDUM ADVICE - BUSHFIRE PLANNING AUSTRALIA (25/05/2019)
- BUSHFIRE LETTER OF ADVICE - BUSHFIRE PLANNING AUSTRALIA (16 MARCH 2023)
- SUBDIVISION BAL PLAN - BUSHFIRE PLANNING AUSTRALIA (REV F, 16/03/2023)

The New South Wales Rural Fire Service (NSW RFS), confirming their 'satisfaction' as required by FEAR 1.45, has advised in the letter of advice of 24 May 2023 that:

The New South Wales Rural Fire Service (NSW RFS) advises that the Subdivision Bushfire Attack Level (BAL) Masterplan prepared by Bushfire Planning Australia (Titled: Northern Estate Newcastle, Job Number 1825-NCC. Ref: Newcastle_Fig_13_BALS_OVERALL_230308 v9, Dated 16 March 2023, Sheets 1-4 Revision F) is satisfactory, and therefore NSW RFS would be prepared to grant a Bushfire Safety Authority (BFSAI under section 100B of the Rural Fires Act 1997 for the development the subject of the Development Application (Proposed Development), subject to the following conditions:

In addition, the proposal includes a fire trail (registered) within proposed Lots 654 to 668 (Stage 6) and, at the request of NPWS, two fire trail connections between the eastern perimeter road in Stage 16 and existing fire trails located within the Blue Gum Hills Regional Park.

In the event that consent was granted to this proposal, the conditions provided by NSW RFS relevant to ongoing bushfire management would be imposed, along with the recommended conditions by NPWS for new fire trails.

6.10 European heritage

The provisions of NLEP2012 Clause 5.10 Heritage Conservation and associated Schedule 5, Condition 1.10 of Schedule 2 Part C – Modifications to the Concept, FEAR's 1.35 to 1.39 of the Concept Plan approval, the MPDG and Section 5.06 – Archaeological Management of the NDCP2012 have been considered in the assessment of the development application.

A review of the original application was undertaken by CN's Development Officer (Heritage). The same heritage officer has also considered the review application and advised that they did not identify any further heritage issues with the review that were not addressed in the previous DA assessment. Therefore, the heritage assessment of the original application is considered sound and contained under.

There are also no items listed on the State Heritage Register within or in close proximity to the development site.

There are no Section 170 (*Heritage Act 1977*) within or in close proximity to the development site.

The site covers a broad area in the Minmi region. NLEP2012 (LEP) listed heritage items either directly impacted by, or in the vicinity of, the proposed development consists of:

Item	Address	Listing No. (NLEP2012)
Duckenfield Colliery No. 1 Branch Line	Minmi	LEP Item 325
Duckenfield Colliery Railway (relics)	Minmi	A14 (LEP archaeological item)
Minmi Coal Carriage	56 Woodford Street, Minmi	LEP Item 342
Minmi Public School (Foundation Stones and Bell)	56 Woodford Street, Minmi	LEP Item 341
Minmi Train Carriage	300 Woodford Street, Minmi	LEP Item 346
Minmi Hotel	156 Woodford Street, Minmi	LEP Item 344
Former Police Station and Courthouse	40 Church Street, Minmi	LEP Item 328
Cemetery	27 Minmi Road, Minmi	LEP Item 334
Minmi Reservoir Site	15 Reservoir Road, Minmi	LEP Item 335
Former Reservoir Residence	17 Reservoir Road, Minmi	LEP Item 336

Residence	129 Woodford Street, Minmi	LEP Item 343
St Andrews Presbyterian Church	19 Church Street, Minmi	LEP item 327
Former Minmi Public School and Residence	196 Woodford Street, Minmi	LEP Item 345
Former Railway Cuttings	East of McInnes Street	LEP Item 331
Garden House Site	177 Woodford Street, Minmi	A4 (LEP archaeological item)

In addition to the above listings in the NLEP2012, an historical analysis has been completed by RPS (November 2018) of the study area in and around Minmi. **Figure 26** below shows the location of the items identified during that analysis, including the NLEP listed items above.

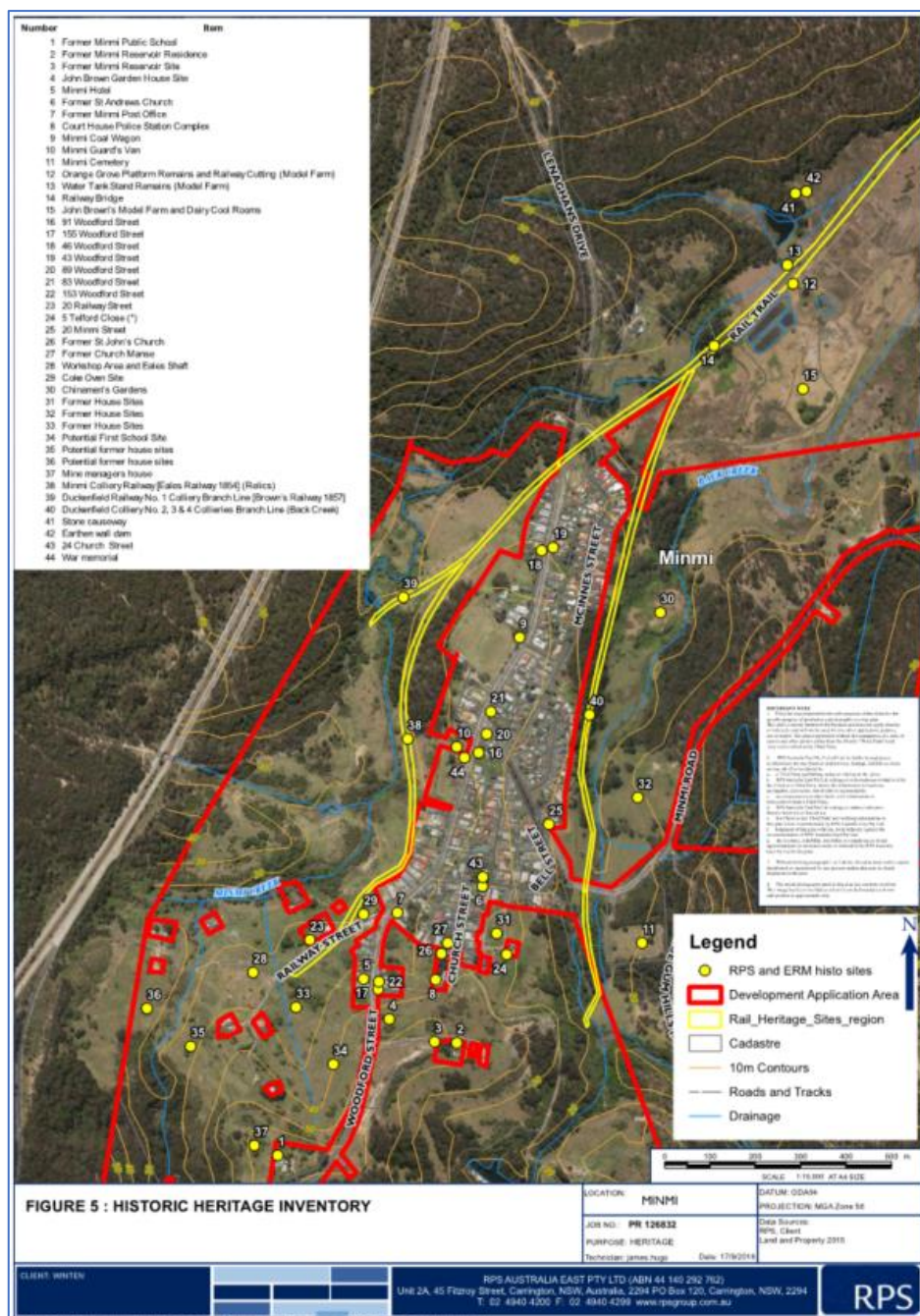


FIGURE 26 - Historical Heritage Inventory (Source – Figure 5 Heritage Interpretation Strategy, RPS 2018)

6.10.1 Concept Plan (10_0090)

Part C of the Concept Approval includes the following conditions relevant to the assessment of heritage matters at the study area and which modified the Concept Plan as originally proposed.

- *Condition 1.10 - The concept plan is to be modified to retain the entire alignment of the Duckenfield Colliery No 1 Branch Line within the development area and extend the pedestrian/cycle path along the rail line through to the proposed workshop park.*

The submitted subdivision plan does not retain the entire alignment of the former branch line for the reasons described below.

The proposed shared path deviates from the alignment around existing houses at the intersection of Woodford Street and Railway Street, and at the northern end of the development area to facilitate future sporting fields, agreed upon by DPIE, CN and the Applicant.

To accommodate future recreation facilities on the 'suitable land' approved by the Planning Secretary in accordance with FEAR 1.16 it is highly likely that the continuation of the shared path from within the subdivision will also need to deviate from the original alignment of the former branch line.

It is considered that on balance the benefits of retaining a small section of the shared pathway along the original branch line alignment do not outweigh the substantial benefits of additional community facilities. The small deviation around the future playing fields can still interpret the heritage significance of the rail alignment and re-join the alignment at Woodford Street.

A Heritage Interpretation Plan will be required to demonstrate clear historical interpretation to guide path users and reflect the original alignment and would be required by an appropriate condition of consent.

FEAR 1.35 - A Conservation Management Plan, prepared by ERM, has been submitted with the development application. Compliance with the management policies set out in the CMP is recommended as a condition of consent.

FEAR 1.36 - A Heritage Interpretation Strategy has been submitted, prepared by RPS and McCardle Cultural Heritage. The Interpretation Strategy identifies historical themes and interpretation options for future inclusion in the development area, including Aboriginal interpretation strategies, display of moveable heritage, landscape design, retention of existing historic features, railway corridor utilisation etc.

The next phase for delivering effective heritage interpretation is the requirement for a Heritage Interpretation Plan (HIP) which develops detailed design and content for implementation in the development of individual parcels.

Preparation of a HIP could be included as a condition of consent, to be approved prior to the release of a Construction Certificate and implemented prior to the release of a subdivision certificate.

FEAR 1.37- This requires that *'Prior to commencing the proposed further European archaeological investigations the proposed archaeological research design is to be completed in consultation with the relevant council(s) and to the approval of the OEH (Heritage Branch).'*

The Workshop Park area is one of the places nominated in documentation accompanying the Concept Plan that should be subject to 'further' archaeological investigations. CN holds the view that the intent of completing this 'further' investigation is to assist in determining if the proposed Workshop Park (Lot 3438 in Stage 34) is of an appropriate size and location to best reflect the former workshops precinct. The applicant does not agree and the updated heritage report by GBA Heritage states:

'There is no requirement in the Concept Approval that the archaeological investigations must be completed as part of the planning process to prepare road and lot layouts as part of the Development Application stage. The approved ERM Heritage Impact Assessment (2011) states very clearly that with such a complex, crowded and layered historic mining township as Minmi, there will inevitably be impacts on areas of remaining archaeological potential. The processes set up within the approved Concept Plan and current DA documentation aim primarily at mitigation of heritage impact through research, verification and interpretation.'

Given that the Concept Approval is based on the principle that only relatively small portions of any surviving archaeological relics associated with historic features of the mines, railways and overall township need to be physically retained in situ, there is no direct connection to be made or relied upon on the finalisation of the urban and open space subdivision of the Link Road project area. Any archaeological material found beyond planned retention-for-display locations will be investigated and cleared and/or utilised as appropriate within relevant interpretation programmes across the area.'

The establishment of suitable boundaries for Workshop Park has evolved over time and through the preparation of a series of reports, each of which attempted to identify a reasonable footprint that would accommodate some potential revealed archaeological evidence with active interpretation based on the extensive documentary sources available.'

Although no archaeological assessment has been provided, additional research and analysis has been undertaken regarding the likely original layout of the former workshop precinct. The report by GBA Heritage proposes an amended lot layout for Workshop Park which includes the whole of the former brick workshop building, boilers and C Pit. The amended layout achieves a more orderly configuration compared to the previously proposed park layout, which bisected the former workshop building and boilers.

Subject to conditions, the amended park layout, being the result of additional research conducted by GBA Heritage, is considered to be a reasonable outcome. The park will provide the opportunity for an expansive heritage interpretation programme. **Figures 27** and **28** below show a comparison between the previous and current proposed Workshop Park extents overlaid on the locations determined for the former workshop buildings and structures.

A condition of consent could also be included to reinforce the need to undertake further archaeological investigations in consultation with CN and to the requirements of OEH. It is noted that the CMP also sets out policies for the management of archaeological heritage, and compliance with the CMP should also be included as a condition of consent.

FEAR 1.38 - An Aboriginal Cultural Heritage Management Plan (ACHMP), prepared by McCardle Cultural Heritage, has been submitted. The ACHMP sets out mandatory heritage management protocols in relation to Aboriginal heritage and unexpected finds. Compliance with the ACHMP should be reinforced by inclusion of a condition of consent.

FEAR 1.39 - Clarification was requested of the applicant in this regard. Additional information provided indicates that all known Aboriginal sites are located outside of the development site and within the LMCC LGA. Notwithstanding, conditions of consent are recommended to address unexpected finds and to ensure compliance with the submitted AHMP.

6.10.2 Minmi Precinct Development Guidelines (MPDG)

The proposed development appears generally consistent with the Minmi Precinct Development Guidelines, with the exception of the proposed residue Lot 3236 in the vicinity of the 'Garden House' archaeological site.

The Concept Plan approval and the MPDG indicate this area as being 'Garden House Park' and being of historical importance.

As previously discussed in this report it is acknowledged that there is no specific use proposed for this lot under the current application. CN maintains that this area is identified as Garden House Park under the MPDG and that any future use would need to be consistent with the MPDG. However, for the purposes of this application it is considered acceptable to leave Garden House Park (Lot 3236) as a residual lot.

6.10.3 NDCP2012 – Section 5.05 Heritage Items

The site contains numerous heritage items either directly impacted by, or in the vicinity of, the proposed development, listed above.

The following comments are made in relation to the objectives of this section:

- An understanding of the heritage significance of the impacted heritage items has been demonstrated by the numerous studies and reports conducted over the life of the project, including the recent additional analysis set out in the GBA Heritage response submitted in June 2022, which provides more certainty around the original branch line alignment and layout of the former workshops.
- Adaptive reuse of the Duckenfield Colliery No. 1 Branch Line (Item 325) as a shared path is considered to be a good outcome to facilitate the retention and celebration of the former railway. Adaptation of redundant railway alignments is a common and very successful way to provide recreational and interpretive use of such corridors. Adaptive reuse of the nearby Minmi to Hexham Railway, approved in 2021, will link up with the proposed shared path to provide an effective means of interpreting the regions' rail and mining history.

- The setting of heritage items in the vicinity, particularly those within the Minmi township (former Post Office; Minmi Hotel; former Police Station) will be irreversibly impacted by the proposed development. However, these impacts were considered and approved under the Concept Approval, which maintains buffer zones to listed heritage items outside the development area to protect setting and views.

6.10.4 NDCP2012 – Section 5.06 Archaeological Management

- The application is generally consistent with the relevant provisions of this section. Archaeological sites are to be managed in accordance with the requirements of the *Heritage Act 1977*.
- The significance of potential archaeological resource at the study area has been assessed in the Conservation Management Plan (CMP). The CMP sets out management policies for archaeological sites in accordance with best practice and the requirements of the Heritage Act.
- Compliance with the policies set out in the CMP is recommended to be included as a condition of consent.

6.11 Infrastructure Staging Plan Report

FEAR's 1.17 of the Concept Plan approval has been considered in the assessment of the development application.

According to the Section 2.9 of the Statement of Environmental Effects:

It is anticipated that the development will be undertaken over 19 construction stages. Each stage will generally comprise approximately 50 – 60 lots. Construction of some stages may be undertaken concurrently.

Staging has been determined based on a range of factors including:

- *Utility servicing;*
- *Traffic and access considerations;*
- *Bulk earthworks balance;*
- *Market; and*
- *Infrastructure constructed as part of LMCC DA.*

A master staging plan is contained in Appendix B, which was prepared having regard to the development of the Link Road North Precinct (DA/2087/2018) hence the stage numbering of this DA is not sequential.

The Applicant seeks an element of flexibility in construction staging, noting the scale of the project. The Applicant proposes to create broader Development Precincts to enable some flexibility in sequencing portions of the development, whilst providing Council certainty that factors such as connectivity, servicing, bushfire, s7.11 items and public transport, will be managed logically and appropriately.

Six (6) Development Precincts are proposed. Each Development Precinct will contain a number of Construction Stages. The intent is that Development Precincts may be constructed in any order; however, the Construction Stages within that Development Precinct must be carried out sequentially.

Further details, including plans, are contained within the Infrastructure Staging Plan Report contained in Appendix Z, which has been prepared in consultation with Council.

The intent of the Infrastructure Staging Plan Report (ISPR) prepared by ADW Johnson has been amended and dated 14 September 2023 and the associated Infrastructure Staging Plan (**ISP**) (Rev P, dated 3 March 2023) also prepared by ADW Johnson is to satisfy FEAR 1.17 and to assist with determining the appropriate time or trigger for delivery of certain roads and stormwater infrastructure in order to ensure the development is properly supported with infrastructure, services, bushfire protection, public transport, recreation and public amenity as the development is progressively completed.

Figure 29 below shows the various road improvements (shown as R), shared paths (shown as C), community and recreation facilities (shown as P) and critical drainage infrastructure (shown as B or WC).

The ISPR is considered to be satisfactory with the exception that:

- a) Cycleways need to be constructed from new stages to provide access to local school and Minmi centre, including recreation facilities.
- b) Provision for shared pedestrian and cycling facilities in Woodford Street for each new stage is to be provided, including connection through to recreation facilities and school and back to the south, connecting with the Newcastle Link Road, being constructed earlier to provide safety and amenity to new residents.
- c) Road MC47 and Road MC88 from Stage 35 constructed with Stage 34 to provide safer, more direct access to the roundabout on Woodford St, noting this roundabout is the only means for these vehicles to access southbound lanes on Woodford St.

Appropriate conditions of consent are proposed to achieve the above recommended changes to the ISPR and ISP.

6.12 - Recreation

Under FEAR 1.16 of Concept Approval MP10_0090 (MOD1) (see below), suitable land for the recreation facilities or alternative arrangements 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.

On 18 May 2021 DPE approved Locations 2 and 3 identified within the Applicant's 'request for Locations Agreement' (issue G) dated 17 September 2020 as suitable land on which the recreation facilities to support all development within the CN DA as well as the LMCC DA.

On 19 October 2023 DPE issued a further letter approving land within LMCC LGA as alternate arrangements. The purpose of this further approval was that LMCC proposed to pursue new and upgraded facilities within the LMCC LGA to satisfy recreational demand of their DA DA/2087/2018 rather than the previous approach of utilising land within the CN LGA (Location 2) for required playing fields. DA/2087/2018 has now been approved by the NSW Government's HCCRPP on that basis. The previously proposed modification to DA2015/10393 (Precinct 1B), that was to enlarge a residual lot to accommodate two playing fields, is no longer required and the applicant has removed the proposed modification from the subject application.

For the purpose of the subject review application the demand for active recreation land for only the CN DA needs to now be considered. The demand in accordance with CN's s7.11 Contributions Plan is for two playing fields and three hardcourts.

As part of the 19 October 2023 approval DPE advised:

I note the changes only relate to development within the Lake Macquarie local government area (LGA), and that the proposed location of recreation facilities for development within the Newcastle LGA is unchanged. I approved the location of recreation facilities for development within the Newcastle LGA in a letter to Winten Property Group dated 18 May 2021.

CN had raised concern with DPE that CN should have been consulted over the alternative arrangements for recreation facilities. CN wrote to DPE on 21 November 2023 seeking clarification on Secretary approval for recreation facilities for the CN DA, however no response has been provided to date, in addition to the DPE letter of 19 October 2023 issued to the applicant regarding the LMCC DA, which states CN recreation lands remain satisfied under the 21 May 2021 Secretary approval. Whilst it is disappointing that CN has not received a response from DPE, it can only be taken from this lack of communication that the 21 May 2021 approval stands. As the DPE letter of 19 October 2023 did not alter the 'request for Locations Agreement' (issue G) dated 17 September 2020, it is considered that at this point there are still two locations available to meet the recreational demands of the CN DA, being Location 2 and 3 as per the 'request for Locations Agreement' (issue G) dated 17 September 2020.

The DPE approval of the alternate arrangements for the LMCC DA materially changes the potential outcome for some recreation facilities associated with the CN DA in respect of the locations for three hardcourts. The deletion of the three LMCC hardcourts from the location shown at the western edge of the existing Minmi Sports Grounds, where they were to be co-located with CN's three hardcourts, now means it is not in the public interest to undertake the extensive earthworks required to support just three hardcourts in this topographically challenging location.

CN has given consideration to locating the three hardcourts to the southern end of the rectangular fields within Location 3, however this is considered unsuitable and inappropriate due to the remoteness of this location to future car parking and amenities. All other previously suggested locations for hardcourts have also been found to be unsatisfactory. It was concluded that Location 3 alone was not suitable to meet the recreation needs of the future CN population.

Investigations were undertaken by CN to determine if the hardcourts could instead be located at Location 2, that was previously earmarked for the LMCC playing fields. It was identified that the residual Lot 601 under DA2015/10393 is capable of accommodating the hardcourts, and potential expansion in the future should CN desire, even with DA2015/10393 in an unmodified form.

The applicant has agreed for a condition of consent to be included on the subject application DA2018/01351 that would modify the existing consent conditions of DA2015/10393, pursuant to s4.17(1)(b) of the *EPA Act*, to dedicate the residual Lot 601 (Location 2) as public reserve.

This is considered a positive recreation outcome for CN and the future residents, by providing not only sufficient land area, but also flexibility to accommodate the future recreational needs across two separate locations.

On this basis it is considered that FEAR 1.16 has been satisfied.

Preliminary environmental assessment occurred during the approval process for the 'request for Locations Agreement' (issue G) dated 17 September 2020 which found the Location 2 & 3 sites were capable of supporting the future facilities. It is noted that further environmental assessments for construction of the recreation facilities would need to occur at the time with the facilities being funded through Section 7.11 contributions.

7. CONCLUSION

The application for review of determination has been assessed having regard to the relevant matters for consideration under the provisions of Division 8.2(1) Reviews – Section 8.2 and 8.3 of EP&A Act 1979. In addition the development application has been considered with regard to the relevant matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979* and associated *Regulations, Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* and the provisions of the relevant *State Environmental Planning Policies*.

It is considered that the application has now addressed the relevant Further Environmental Assessment Requirements (FEARS) within Schedule 2 of the Concept Plan approval (MP10_0090), as discussed throughout this report and summarised at **Attachment D**.

The application has adequately addressed the previous reasons for refusal of 13 December 2022, as summarised below and in greater detail under **Attachment E**.

Reason for Refusal	Comment
<i>1. The development is not generally consistent with the terms of the approval of the concept plan (MP10_0090) dated 6 August 2013. [Clause 3B(2)(d) in Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017].</i>	Satisfactory. The proposal is now considered to be generally consistent with the terms of the Concept Plan as detailed throughout the report.
<i>2. The development does not satisfy the requirements of FEAR 1.31.</i>	Satisfactory. TfNSW have supported the proposal subject to a range of road upgrades. Refer to Section 6.1 of the report.
<i>3. The development fails to demonstrate that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land or the nature, volume or frequency of vehicles</i>	Satisfactory Refer to Section 6.1 of report. TfNSW now support the proposal subject to condition road network upgrades.

<i>using the classified road to gain access to the land. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].</i>	
<i>4. The development is contrary to the public interest as it has not been demonstrated that there will be no impacts on traffic safety, efficiency or ongoing operation of the classified or wider regional road network or that any impacts can be appropriately mitigated to the satisfaction of Transport for NSW. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].</i>	<p>Satisfactory</p> <p>Refer to Section 6.1 of report. TfNSW have now supported the proposal subject to a recommended range of road upgrades.</p>
<i>5. The application does not include sufficient information to demonstrate the impact on the natural or built environment resulting from works associated with any road upgrades to mitigate the impacts of the development on traffic safety, efficiency or ongoing operation of the classified or wider regional road network. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].</i>	<p>Satisfactory</p> <p>Refer to Section 6.3 of report.</p> <p>It is considered that there is a reasonable degree of certainty of required road upgrades when having regards to the advice of TfNSW of 5 December 2024, noting that further detailed modelling may be required at the time.</p> <p>The applicant has provided additional information to reasonably assess likely impacts in relation to road noise and biodiversity. This information has been reviewed and it is considered that the off-site works would be unlikely to result in unreasonable impacts, noting that more detailed environmental assessment would need to occur at the time the upgrades were proposed.</p>
<i>6. The application does not contain sufficient information to consider the provisions of Clause 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021.</i>	<p>Satisfactory</p> <p>Refer to Section 6.1 of the report. The final advice from TfNSW dated 5 December 2023, provides specific required road upgrades. Appropriate triggers have been included to provide certainty that upgrades would be in place to support the development at that stage.</p>
<i>7. The application does not include a sufficient basis for considering whether public</i>	<p>Satisfactory</p> <p>Refer to Section 6.1 of the report. The final advice from TfNSW dated 5 December 2023, provides specific required road upgrades.</p>

<i>interests in the allocation and timing of costs of future regional network upgrades are addressed in relation to this development.</i>	Appropriate triggers have been included to provide certainty that upgrades would be in place to support the development at that stage.
<i>8. The development fails to comply with the requirements of Clause 5.21 'Flood Planning' of the Newcastle Local Environmental Plan 2012. [Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979].</i>	Satisfactory Refer Section 6.7 of the report for detailed discussion and Section 4.4 Environmental Planning Instruments under LEP controls table. Flood risk has been adequately assessed and now considered acceptable.
<i>9. The development is not in the public interest having regard to the modelled future flood impacts and resulting overtopping of proposed public roads in Stages 37, 39 and 40 and the associated risks to the public during flood events. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].</i>	Satisfactory Refer to Section 6.7 of the report. Risk posed by road overtopping is considered acceptable due to very rare occurrence and impacts on other land acceptable.
<i>10. The application has not provided sufficient information to determine that the risk of mine subsidence can be eliminated or mitigated to the requirements of Subsidence Advisory NSW and the impact on the natural and built environment of any works required to meet the requirements of Subsidence Advisory NSW have not been adequately demonstrated. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].</i>	Satisfactory, subject to conditions. Refer to Section 6.5 of the report. SANSW support the proposal subject to conditions.
<i>11. The application has not provided sufficient information to demonstrate that there will be no significant adverse impacts on sensitive noise receivers in regard to road traffic noise or sufficient details provided on how any proposed mitigation measures are to be implemented. [Section 4.15(1)(b) Environmental Planning and Assessment Act 1979].</i>	Satisfactory, subject to conditions requiring restriction on future lots to alert owners of acoustic requirements. Refer to Section 6.2 of the report.
<i>12. The development is not in the public interest having regard to the proposed twin pipe stormwater drainage diversion of the western watercourse coming from under the M1 Motorway in the vicinity of Stage 37 due to the loss of continuous riparian corridor and</i>	Satisfactory Refer to Section 6.8 of report. The pipe diversion has been removed from the proposal in favour of a naturalised open channel.

<i>the unreasonable financial burden placed on City of Newcastle associated with maintenance of the proposed twin pipe stormwater drainage diversion. [Section 4.15(1)(e) Environmental Planning and Assessment Act 1979].</i>	
<i>13. The application does not contain sufficient information for an assessment of the biodiversity impacts of the proposed development required under saved provisions of the Environmental Planning and Assessment Act 1979 as provided by the Biodiversity Conservation (Savings and Transitional) Regulation 2017.</i>	Satisfactory Refer to Section 6.3 of the report and Section 4.4 Environmental Planning Instruments. Uplisted species since approval of Concept Plan have been appropriately considered. This has included Scrub Turpentine and also resurvey of Koala which has confirmed the site has not become core Koala Habitat since Concept Plan approval.
<i>14. The presentation and height of proposed retaining walls at public interfaces has not been adequately documented.</i>	Satisfactory. Sufficient justification has been provided for proposed earthworks and adequate details of how this would be constructed. Interface with the LMCC DA could be adequately resolved through construction timing noting the LMCC DA is now approved. Refer Section 6.6 of report.
<i>15. There is insufficient information to understand the extent of earthworks and retaining walls on steeply sloping site and satisfy FEAR 1.14.</i>	Satisfactory. Sufficient justification has been provided for proposed earthworks and adequate details of how this would be constructed. Interface with the LMCC DA could be adequately resolved through construction timing noting the LMCC DA is now approved. Refer Section 6.6 of report.

CN is now satisfied that the proposed development is 'generally consistent' with the NSW Government's approved Concept Plan.

CN is satisfied that the likely impacts on the natural and built environments are known and or can be appropriately mitigated, including off-site works.

Having regards to the above, and being consistent with the approved Concept Plan, CN can now be satisfied that the proposed development is not contrary to the public interest.

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) and Section 8.2(1) of the *EP&A Act*, subject to the recommended conditions contained at **Attachment A**, and should be approved.

8. RECOMMENDATION

CN recommends that the Hunter and Central Coast Regional Planning Panel review the determination of DA2018/01351 dated 13 December 2022 and change the original determination to approval, with approval being granted for: 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

pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the recommended conditions attached to this report at **Attachment A**.

9. ATTACHMENTS

The following attachments are provided:

- Attachment A: Draft conditions of consent
- Attachment B: Proposed Subdivision Plans (Revision T)
- Attachment C: Minmi Precinct Design Guidelines (MPDG)
- Attachment D: Further Environmental Assessment Requirement (FEAR) summary compliance table
- Attachment E: Assessment against reasons for refusal of 13 December 2022
- Attachment F: Conditional Bush Fire Safety Authority from NSW RFS for DA2018/01351

Attachment A

Attachment B

Attachment C

Attachment D

Attachment E

Attachment F