



<b>DATE OF DETERMINATION</b>	13 December 2022
<b>DATE OF PANEL DECISION</b>	12 December 2022
<b>DATE OF PANEL MEETING</b>	5 December 2022
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Chris Wilson, John Brockhoff, Peta Winney-Baartz and John Mackenzie
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Sandra Hutton declared a conflict of interest as her recent employer, ADW Johnson, has been involved with these DAs. Juliet Grant has declared a conflict of interest as her employer, Gyde Consulting, is undertaking work for the applicant in relation to another site.

Public meeting held by teleconference on 5 December 2022, opened at 3:35pm and closed at 5:35pm.

#### **MATTER DETERMINED**

PPS-2019HCC006 – Newcastle City Council – DA2018/01351 at 144 Woodford St, Minmi – subdivision (as described in Schedule 1).

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel has had the benefit of a number of briefings from Council, the Applicant and TfNSW, over the assessment period. The Panel has also had the benefit of a comprehensive site inspection including the surrounding areas.

The application has a high level of complexity given it is a Part 4 Application arising from a Part 3A Concept Approval granted in 2013. It is the subject of two (2) Voluntary Planning Agreements for Environmental Offsets and State Infrastructure Contributions. The site benefits from a s34A(3) Certificate under the Biodiversity Conservation (Savings and Transitional) Regulation 2017.

The application has been under assessment for five (5) years. The application has been amended over the assessment period to respond to Further Environmental Assessment Requirements (FEARs) of the Concept Approval, Statement of Commitments, jurisdictional requirements and responses to requests for further information.

The application is one (1) of two (2) applications being considered by the Panel under the Concept Approval. The other application is within the Lake Macquarie Local Government Area and adjoins this application to the south (PPS-2019HCC021). The applications are inherently linked. For this reason, the Panel has considered these matters at the same meeting.

The strategic framework for this application is found in the Concept Approval and the zoning of the land. Given the scale of the development it will significantly change the character of the Minmi Village.

This application is required to address the detailed requirements of the FEARs and various matters including, but not limited to, contamination, biodiversity, engineering design, traffic impacts and urban design considerations, typical of any subdivision application. The size of the subdivision proposed has required extensive and detailed documentation.

The Panel recognises the importance of the site to deliver much needed housing for the growing regional community and the economic benefits arising from the development of a new suburb.

However, the Panel is required to be satisfied of the merits or otherwise of the application before it.

The Council Assessment Report recognises a number of issues that with further information and amended documentation may be able to be resolved, but has ultimately recommended refusal of the application.

One of the fundamental elements of this application is the potential impact the development may have on the regional road network.

FEAR 1.31 of the Concept Approval is required to be met by the first development application for each stage. It requires details of traffic generation and distribution, intersection analysis and microsimulation modelling to determine impact, proposed timing of up-grades of key intersections, and timing and funding arrangements of proposed upgrades to the road system.

The applicant contends that they have provided sufficient documentation for the Panel to be satisfied of the impacts, and impose a "Grampian" style condition to ensure that works are in place before release of lots at specified times.

TfNSW, the authority responsible for the regional road network, contends that the Panel and TfNSW does not have sufficient information to assess the impacts of the development. TfNSW says it is inappropriate to impose a condition where the impacts of the proposed development cannot be assessed because of the absence of appropriate modelling. This is required to inform appropriate mitigation measures and conditions. TfNSW says that FEAR 1.31 has not been met.

The Panel has received clarification that TfNSW has reviewed all traffic related material formally lodged with the application.

Having regard to the information in front of the Panel, it is the Panel's view that there is inadequate information to assess the traffic impacts of the development including works that arise from and are required by the proposal to mitigate and manage traffic impacts.

The Panel cannot be satisfied about:

- What works are required;
- When works are needed;
- Who is responsible for the works; and
- Impacts arising from works specifically required by this development.

It is understood that no works can occur without upgrades to the regional network occurring.

For this reason, the Panel considers that FEAR 1.31 has not been satisfied. The Panel is also of the view that a resolution of what the impacts are to the regional road network, upgrades required and assessment of impacts, and a funding mechanism, are matters that will not be finalised in a timely manner.

A further implication of FEAR 1.31 not being satisfied is that there is not 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.

The Panel agrees with the need for further information outlined in the report. The Panel agrees that a greater level of detail around mines subsidence is required noting that Subsidence Advisory NSW is not satisfied with the documentation to date.

The Panel notes that nine (9) years after the issue of Concept Approval and five (5) years into a DA assessment process, the regional traffic requirements for this development to proceed have not been satisfactorily resolved.

The solution to regional traffic upgrades requires a government lead, strategic approach and cannot be addressed on a DA by DA basis – given the extent of works required.

The lack of a strategic transport solution and funding mechanism for regional transport upgrades is preventing the delivery of housing to the market.

The Panel in its deliberation has considered the matters required to be considered in the determination of the development application under section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The Panel considered the applicant's request to defer the determination of the application, but given the length of time the application has been under assessment and the timeframes involved in resolving the traffic and transport impacts, upgrades required and funding mechanisms, it sees no purpose in delaying the determination.

The Panel is of the view that the application should be refused.

### **Development application**

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

### **REASONS FOR THE DECISION**


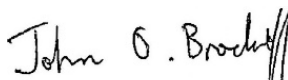



The Panel determined to refuse the application for the reasons at Schedule 2.

### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Traffic.
- Infrastructure/services.
- Heritage.
- Environment.
- Amenity.
- Development controls.
- Risk.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

<b>PANEL MEMBERS</b>	
 Alison McCabe (Chair)	 John Brockhoff
 Chris Wilson	 John Mackenzie
 Peta Winney-Baartz	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2019HCC006 – Newcastle City Council – DA2018/01351
2	PROPOSED DEVELOPMENT	<p>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</p> <p>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.</p>
3	STREET ADDRESS	<p>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</p>
4	APPLICANT/OWNER	<p>Winten (No 21) Pty Ltd          Winten (No 21) Pty Ltd</p>
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments:             <ul style="list-style-type: none"> <li>○ Environmental Planning and Assessment (Savings, Transitional and Other Provisions 2017)</li> <li>○ State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Resilience &amp; Hazards) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ Newcastle Local Environmental Plan 2012</li> </ul> </li> <li>• Draft environmental planning instruments: Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2022</li> <li>• Development control plans:             <ul style="list-style-type: none"> <li>○ Newcastle Development Control Plan 2012</li> <li>○ Minmi East Urban Design Guidelines</li> </ul> </li> <li>• Previous Planning Agreements with the NSW State Government in relation to dedication of biodiversity offsets land and State Infrastructure Contributions.</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>:             <ul style="list-style-type: none"> <li>○ Clause 92(1) demolition</li> <li>○ Clause 93 fire safety</li> <li>○ Clause 94 Building Code of Australia</li> </ul> </li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> </ul>

		<ul style="list-style-type: none"> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>TfNSW advice: 2 November 2022</li> <li>Council Assessment Report: 28 November 2022</li> <li>Written submission from applicant received: 2 December 2022</li> <li>Various email exchanges between applicant and TfNSW</li> <li>Written submissions during public exhibition: 203</li> <li>Legal advice – privileged</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Jeremy Bath, Alissa Jones, Michael Head, Elizabeth Adamczyk, Kathleen White, Ronnie O’Leary (statement read by Kathleen White), Brian Purdue on behalf of Green Corridor Coalition, Geraldine Furphy, Christine Baker on behalf of the residents and Delilah Welland</li> <li>On behalf of the applicant – Christina Renner, Alex Biscan and Bill Sarkis</li> </ul> </li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Briefing: 11 August 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, Jason Pauling (Lake Macquarie LGA only), Roberta Ryan (Lake Macquarie LGA only), John MacKenzie (Newcastle LGA only) and Peta Winney-Baartz (Newcastle LGA only)</li> <li><u>Lake Macquarie City Council assessment staff</u>: David Pavitt, Amy Regado and Elizabeth Lambert</li> <li><u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Tracey Webb and Olivia Magrath</li> <li><u>Department staff</u>: Leanne Harris, Jane Gibbs and Lisa Foley</li> </ul> </li> <li>Site inspection and applicant briefing: 1 December 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), John Brockhoff, Chris Wilson (briefing only), Jason Pauling (briefing only - Lake Macquarie LGA only) and Roberta Ryan (briefing only - Lake Macquarie LGA only),</li> <li><u>Lake Macquarie City Council assessment staff</u>: David Pavitt and Amy Regado</li> <li><u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Paul McMurray, Ian Gregson (consultant – part of briefing) and Olivia Magrath (part of briefing)</li> <li><u>Transport for NSW</u>: Damien Pfeiffer, Marg Johnston and Liz Smith (part of briefing)</li> <li><u>Applicant representatives</u>: Bill Sarkis, Alex Biscan, Lincoln Gibbs and Jessica Bailey</li> <li><u>Department staff</u>: Leanne Harris and Jane Gibbs</li> </ul> <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> </li> <li>Site inspection and applicant briefing: 26 April 2022 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, John Brockhoff, Jason Pauling (Lake Macquarie LGA only) and Roberta Ryan (Lake Macquarie LGA only),</li> <li><u>Lake Macquarie City Council assessment staff</u>: Glen Mathews, David Pavitt and Amy Regado</li> <li><u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Damian Jaeger, Steven Masia and Olivia Magrath</li> </ul> </li> </ul>

- Applicant representatives: Bill Sarkis, Christine Renner, Alex Biscan, Lincoln Gibbs and Jessica Bailey
- Department staff: Leanne Harris, Carolyn Hunt and Lisa Foley

Note: Applicant briefing was requested to provide the Panel with clarification and to respond to issues

- Applicant Briefing: 3 August 2022
  - Panel members: Alison McCabe (Chair), Chris Wilson, John Brockhoff, Roberta Ryan (Lake Macquarie LGA only), Peta Winney-Baartz (Newcastle LGA only) and John Mackenzie (Newcastle LGA only)
  - Lake Macquarie City Council assessment staff: Glen Mathews, David Pavitt and Amy Regado
  - City of Newcastle Council assessment staff: Brian Cameron, Priscilla Emmett and Steven Masia
  - 
  - Department staff: Leanne Harris, Jane Gibbs, Carolyn Hunt and Lisa Foley

Note: Applicant briefing was requested to provide the Panel with clarification and to respond to issues

- Applicant briefing: 13 September 2022
  - Panel members: Alison McCabe (Chair), John Brockhoff, Chris Wilson, Jason Pauling (Lake Macquarie LGA only), Peta Winney-Baartz (Newcastle LGA only) and John Mackenzie (Newcastle LGA only)
  - Lake Macquarie City Council assessment staff: Glen Mathews and Elizabeth Lambert
  - City of Newcastle Council assessment staff: Brian Cameron, Priscilla Emmett, Steven Masia and Michelle Bisson
  - Transport for NSW: Damien Pfeiffer and Marg Johnston
  - Applicant representatives: David Rothwell, Bill Sarkis, Christina Renner, Alex Biscan, Jessica Bailey and Lincoln Gibbs
  - Department staff: Jane Gibbs, Carolyn Hunt and Lisa Foley

Note: Applicant briefing was requested to provide the Panel with clarification and to respond to issues

- Final briefing to discuss Council's recommendation: 5 December 2022
  - Panel members: Alison McCabe (Chair), John Brockhoff, Chris Wilson, Peta Winney-Baartz (Newcastle LGA only), John Mackenzie (Newcastle LGA only), Roberta Ryan (Lake Macquarie LGA only) and Jason Pauling (Lake Macquarie LGA only)
  - Newcastle City Council assessment staff: Brian Cameron, Ian Gregson (Consultant), Chris Thomas (Consultant), Roland Payne, Steven Masia, Michelle Bisson, Damian Jaeger, Paul McMurray, Priscilla Emmett
  - Lake Macquarie City Council assessment staff: Amy Regado and David Pavitt
  - Department Staff: Leanne Harris, Kate McKinnon and Lisa Foley

9	<b>COUNCIL RECOMMENDATION</b>	Refusal
10	<b>DRAFT CONDITIONS</b>	Not provided

Schedule 2

REASONS FOR REFUSAL

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*].
2. The development does not satisfy the requirements of FEAR 1.31.
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*].
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*].
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*].
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*.
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.
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*].
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*].
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*].
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*].

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 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].
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.
14. The presentation and height of proposed retaining walls at public interfaces has not been adequately documented.
15. There is insufficient information to understand the extent of earthworks and retaining walls on steeply sloping site and satisfy FEAR 1.14.