

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 06/12/22 - NOTIFICATION OF 144 WOODFORD STREET, MINMI –
DA2018/01351 – DEMOLITION OF DWELLING, 962 LOT
SUBDIVISION INCLUDING ROADS, OPEN SPACE, STORMWATER,
UTILITIES AND BULK EARTHWORKS**

PAGE 3	ITEM-30	Attachment A:	CN Assessment Report
PAGE 166	ITEM-30	Attachment B:	CN Recommended Reasons for Refusal
PAGE 169	ITEM-30	Attachment C:	LMCC Assessment Report and Recommendations
PAGE 215	ITEM-30	Attachment D:	Copy of Summerhill Submission to LMCC DA

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– DA2018/01351 – DEMOLITION OF DWELLING, 962 LOT
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UTILITIES AND BULK EARTHWORKS**

ITEM-30 **Attachment A:** CN Assessment Report

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COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPS-2019HCC006– DA2018/01351
PROPOSAL	<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);</p> <p>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>
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>
APPLICANT	Winten (No. 21) Pty Ltd
OWNER	Winten (No. 21) Pty Ltd
DA LODGEMENT DATE	<ul style="list-style-type: none"> • 03 December 2018 • 21 July 2021 (amended pursuant Cl. 55 of EP&A Reg, 2000, now cl37 of EPA Regulations 2021)
APPLICATION TYPE	Development Application (DA)
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30 Million
CIV	\$106,555,026 (excluding GST) (at 3/12/2018)
CLAUSE 4.6 REQUESTS	Not Applicable

<p>KEY SEPP/LEP</p>	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • 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
<p>TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</p>	<p>The proposal has been publicly notified in accordance with the City of Newcastle's (CN) Community Participation Plan, the provisions of <i>Environmental Planning and Assessment Regulations 2000</i> and <i>Environmental Planning and Assessment Regulations 2021 (as appropriate)</i> on four separate occasions. The most recent notification period was from 5 August 2022 to 19 August 2022 during which 17 submissions were received.</p> <p>180 late submissions were received on 25 October 2022 in the form of individually signed, but pro-forma style, letters.</p>
<p>DOCUMENTS SUBMITTED FOR CONSIDERATION</p>	<ul style="list-style-type: none"> • Amended Application Cover Letter (21/07/2021) • Amended Statement of Environmental Effects (21/07/2021) • Appendix A - DPE Correspondence • Appendix B - Subdivision Plans • Appendix C - Concept Engineering Plans • Appendix D - Stormwater Management Plan • Appendix E - Landscape Master Plan Report • Appendix F - Landscape Plans • Appendix G - Addendum to Bushfire Management Plan • Appendix G - Bushfire Management Plan • Appendix G - Newcastle Subdivision BAL Plan • Appendix H - Preliminary Geotechnical Assessment • Appendix I - Contamination Cover Letter • Appendix I - Detailed Contamination Assessment • Appendix I - Monitoring Report • Appendix I - RAP Clarification Letter • Appendix I - Remediation Action Plan • Appendix I - Remediation Action Plan Addendum • Appendix I - Supplementary Contamination Assessment • Appendix J - Aboriginal Cultural Heritage Management Plan • Appendix K - Section 34A Exemption Letter • Appendix L - Conservation Management Plan • Appendix M - Flood Impact Assessment • Appendix N - NCC DCP Checklist • Appendix O - Additional Ecological Assessment • Appendix O - Ecology Advice Lots 3221, 3222 & 3223 • Appendix P - Heritage Interpretation Strategy • Appendix Q - Noise Impact Assessment • Appendix R - Hydrogeological Assessment • Appendix S - Traffic Assessment Local • Appendix T - Concept Approval Response • Appendix U - Crime Prevention Comment • Appendix V - Dam Safety Committee Advice • Appendix W - WSUD Strategy • Appendix X - Satisfactory Arrangements Certificate • Appendix Y - Previous RFS Approval • Appendix Z - Infrastructure Staging Plan Report • Appendix AA - Proposed Conditions

- Appendix AB - Vegetation Habitat Management Plan
- Appendix AC- Soil & Water Management Plan
- Appendix AD - Construction Environmental Management Plan
- Appendix AE – Acid Sulfate Soils Management Plan
- Appendix AF - Regional Traffic and Transport Report
- Appendix AG - Letter from Secretary Condition 1.16
- Appendix AH - Lot 601 Plans 239736(3)-PSK-103-B
- Appendix AH - Lot 601 Plans 239736(3)-PSK-104-B
- Appendix AH - Lot 601 Plans 239736(3)-SSK-002-B
- Appendix AI - Minmi Sewer Strategy Approval Nov 2016
- Appendix AJ - Minmi Water Strategy Approval Dec 2016
- Appendix AK – Groundwater Dependent Ecosystem Clarification

The following additional or amending information submitted in response to Council's Request for Further Information letters:

- Applicant Response to RFI dated 10/06/2022
- Applicant Supplementary Response to RFI dated 30/06/2022
- Applicant Supplementary Response to RFI dated 29/07/2022
- Attachment 1 - Duckenfield Pathway Plan
- Attachment 2 – Statement of Environmental Effects and Appendices relating to DA2015/10393 (Stage 1B)
 - Appendix 1 - DPE Correspondence
 - Appendix 2 - Minmi AHIP C0004209
 - Appendix 3 - AHIMS Search Result
 - Appendix 4 - Plan of Proposed Subdivision
 - Appendix 5 - Concept Engineering Plans
 - Appendix 6 - Landscape Plan
 - Appendix 7 - Bushfire Assessment Report
 - Appendix 8 - Updated MUSIC Advice
 - Appendix 9 - Letter from Secretary Condition 1.16
 - Appendix 10 - BC Act Section 34A Exemption Letter
 - Appendix 11 - Flood Impact Assessment
 - Appendix 12 - VPA Letter of Offer to Lake Macquarie City Council
- Attachment 3 - Proposed Road Upgrade Conditions
- Attachment 4 - Microsimulation Traffic Modelling Advice
- Attachment 5 - Preliminary Environmental Assessment - State Road Upgrades
- Attachment 6 - Offsite Works Preliminary Ecological Advice - Intersection Upgrades
- Attachment 7 - State Road Upgrades_CoN_Concept Designs
- Attachment 8 - Mine Subsidence Development Strategy
- Attachment 9 - Mine Subsidence Peer Review
- Attachment 10 - SA NSW Letter 24/02/17
- Attachment 11 - SA NSW Letter 16/04/18
- Attachment 12 - Email Correspondence re original Biodiversity Conservation Offset land extents
- Attachment 13 - Vegetation Mapping
- Attachment 14 - Sloping Lots Plan
- Attachment 15 - Road Traffic Noise Assessment
- Attachment 16 - VPA Letter of Offer to LMCC
- Attachment 17 - Proposed Precincts Plan
- Attachment 18 - Infrastructure Delivery Plan
- Attachment 19 - Review of Statement of Commitments
- Attachment 20 - Submissions Response
- Attachment 21 - Lot 49 Access Plan
- Attachment 22 - Garden House Earthworks Plan
- Attachment 23 - Stage 37 39 Amendment

	<ul style="list-style-type: none"> • Attachment 24 - Proposed Subdivision Plans • Attachment 25 - Basin and Stormwater Details • Attachment 26 - Concept Stormwater Management Plan • Attachment 27 - DPIE Correspondence Part C Modifications • Attachment 28 - Additional Heritage Information • Attachment 29 - Minmi Railway C Pit Workshops Line Estimated Alignment • Attachment 30 - Minmi Heritage Features (Workshop and Duckenfield) • Attachment 31 - Duckenfield Pathway with Recreation Facilities • Attachment 32 - Workshop Park Alternative Layout • Attachment 35 - Flood Assessment Report • Attachment 36 - Floodplain Management Plan • Attachment 37 - Embankment Break Analysis • Applicant Supplementary Response to Mine Subsidence Matters dated 30/09/2022 • Mine Subsidence Memorandum of Advice (Douglas Partners) dated 29/09/2022 • Applicant response to public submissions (Aug 2022) dated 01/11/2022
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Yes – Refer Satisfactory Arrangements Certificate dated 23 April 2019 (Ref. IRF19/966)
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	5 December 2022
PREPARED BY	Brian Cameron Senior Development Officer (Engineering)
DATE OF REPORT	28 November 2022

EXECUTIVE SUMMARY

Winten (No. 21) Pty Ltd (**the Applicant**) has lodged an application with the City of Newcastle (**CN**) for '*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)*' on 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 and Part Lot 3 DP1230960 – 610 Minmi Rd, Minmi.

The applicant is also seeking 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 Stage 1B) 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.*'

Both developments are on land to which a Concept Plan approval (MP10_0090), issued by the NSW 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

The purpose of the requested modification to DA2015/10393 is to support a decision of a delegate for the Planning Secretary at the Department of Planning, Industry and Environment to approve land within that part of the Concept Plan area (as well as land within the development site for DA2018/01351) as 'suitable land' for recreation facilities in accordance with Further Environmental Assessment Requirement (**FEAR**) 1.16 of the Concept Plan approval.

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 Hunter and Central Coast Regional Planning Panel (the Panel) is the consent authority for the application.

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 Concept Plan approval issued by the NSW 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 Concept Plan approval updated urban design guidelines (the Minmi Precinct Design Guidelines) (**MPDG**) have been prepared by the applicant and approved by a delegate for the Planning Secretary. The MPDG is intended to assist, in association with Council's Development Control Plan 2012 (**NDCP 2012**) to guide future development on the site the subject of DA2018/01351. DA2018/01351 is considered to be generally consistent with the MPDG except for the integration of one of 19 existing and isolated properties, not owned by the applicant, that are scattered across the development site.

DA2015/10393 is covered by the Minmi East Urban Design Guidelines, also approved by a delegate Planning Secretary.

It is also important to note that the Panel is also the consent authority for DA/2087/2018 in the Lake Macquarie City Council LGA which seeks consent for subdivision resulting in approximately 1,063 new residential allotments on land between 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 2036*. The land is also identified as an Urban Release Area under the Newcastle Local Environmental Plan 2012 (**NLEP2012**).

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*) and sought to include considerations of the modification of DA2015/10393 also brought into DA2018/01351.

Since then, the Panel has requested several further briefings from Council, sometimes attended by the applicant, Transport for NSW (TfNSW) and LMCC planning staff as and when considered appropriate by the Panel. A chronology of DA2018/01351 since it was amended in July 2021 is contained below in the report.

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* applies
- 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 applies
- State Environmental Planning Policy (Biodiversity & Conservation) 2021
- 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

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	Schedule 2 'Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act' <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	Chapter 4: Remediation of Land <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)

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 State 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 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.

Another offer to enter into a planning agreement has been made by the applicant to Lake Macquarie City Council (LMCC) in regard to that part of the developer contributions payable to LMCC under the relevant LMCC contributions plan associated with provision of recreation land and facilities. This offer stemmed from discussions and negotiations between CN, LMCC, the applicant and DPE 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.

A Biodiversity Conservation order was issued by the delegate for 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 (being the approximately 1,561 hectares of land and associated remediation and reserve establishment works mentioned above) have been secured into the future.

The proposed development is characterised and defined as '*Subdivision*' and is permissible with consent in the following relevant land zones under Newcastle Local Environmental Plan 2012 (NLEP2012).

- R2 Low Density Residential
- R3 Medium Density Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- C1 National Parks and Nature Reserves (previously E1)
- C2 Environmental Conservation (previously E2)
- C4 Environmental Living (previously E4)

The application was referred to Ausgrid and TfNSW in accordance with Sections 2.48 and 2.121 of SEPP (Transport and Infrastructure) 2021). No concerns or objections were raised by Ausgrid. Transgrid have advised that they do not have overhead transmission lines or easements that traverse the site.

TfNSW have assessed the potential off-site traffic impacts on the neighbouring classified and regional road network and have advised that they do not agree with the microsimulation traffic modelling and associated Regional Transport and Traffic Assessment presented by the applicant.

Issues of concern identified during the assessment of the application were identified in the two Request for Further Information (RFI) letters issued by Council on 14 January 2022 and 18 March 2022. The Applicant's responses were received in three parts on 10 June 2022, 30 June 2022 and 29 July 2022.

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

- 5.1 Traffic
- 5.2 Noise and Vibration
- 5.3 Biodiversity
- 5.4 Land contamination
- 5.5 Mine subsidence
- 5.6 Earthworks
- 5.7 Flood planning
- 5.8 Stormwater management and Water Quality
- 5.9 Bushfire
- 5.10 European Heritage
- 5.11 Infrastructure Staging Plan
- 5.12 Modification to DA2015/10393
- 5.13 Inconsistency in documentation

The proposal has been publicly notified in accordance with the City of Newcastle's (CN) Community Participation Plan, and the provisions of *Environmental Planning and Assessment Regulations 2000* and *Environmental Planning and Assessment Regulations 2021* (as appropriate) on four separate occasions since it was first lodged in 2018.

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.
- Lake Macquarie City Council, National Parks and Wildlife Service, Hunter Water Corporation and Hunter Valley Buses.
- Notification on CN's website.

The amended development application received in July 2021 was publicly exhibited for a period of 14 days between 11 August 2021 and 25 August 2021. Six unique submissions were received.

The most recent notification period, after CN had received the applicants comprehensive Response to Request for Further Information package, was held from 5 August 2022 to 19 August 2022 and during which 17 unique public submissions were received one of which was received from the NPWS as an owner of adjacent lands. 180 late submissions were also received on 25 October 2022 in the form of individually signed, but pro-forma style, letters.

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 DA2018/01351 has addressed the relevant Further Environmental Assessment Requirements (FEARS) within Schedule 2 of the Concept Plan approval (MP10_0090).

However, as a result a detailed assessment of the documentation submitted by the applicant in response to the FEARS and the provisions of the relevant *State Environmental Planning Policies*, it is further considered that unless the unsatisfactory or unresolved matters detailed in this assessment report are addressed by the submission of further additional or amending information and assessed by CN and other relevant State agencies as being satisfactory;

- CN cannot be satisfied that the proposed development is 'generally consistent' with the approved Concept Plan.
- CN cannot be satisfied that the likely impacts on the natural and built environments are known and or can be appropriately mitigated
- CN cannot be satisfied that the land is suitable for the proposed development
- CN cannot be satisfied that the proposed development is not contrary to the public interest

CN therefore recommends to the Hunter and Central Coast Regional Planning Panel that;

- *Development Application No. 2018/01351 for '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 request to modify the terms of the Development Consent for DA2015/10393 pursuant to Section 4.17(1) of the Act, in association with the determination of DA2018/01351, 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;*

is REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the draft reasons of refusal attached to this report at **Attachment A**.

1. THE SITE AND LOCALITY

1.1 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 (LMCC). It is understood that this part of the site has now also been included in DA/2087/2018 being assessed 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 DA's being considered by CN and LMCC.

What is now Lot 101 DP1252590, originally formed part of DA2018/01351 but has subsequently been excised from the land and is intended to be transferred to the State Government as a 'School Expansion Lot' associated with Minmi Public School in accordance with a Planning Agreement previously executed with the State 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 B1 Neighbourhood Centre zoned land and five parcels of Council 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' is being assessed by LMCC (DA/2087/2018 –undetermined).

One existing dwelling and associated outbuildings exist on the site (Lot 5 DP1230960 – 144 Woodford Street, Minmi) and these 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 (HWC 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', for which a modified consent is being sought under this determination, still comprises the following land, also owned by Winten (No. 21) Pty Ltd. (See **Figure 2**)

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

Refer to **Section 5.12** of this report for detailed assessment of the modification sought to DA2015/10393.

The total area of these lots is 64.87 hectares, however, the approved development (DA2015/10393) only has a development footprint of approximately 47 hectares with the remaining 17.87 hectares comprising the residual C2 Environmental Conservation zoned land.

This development site is located east of the Minmi Township and straddles either side of Minmi Road which continues into the predominantly residential suburb of Fletcher.

That part of the land to the southeast of Minmi Road is unaffected by the proposed modification to DA2015/10393.

The land to the northwest of Minmi Road generally falls away from Minmi Road toward Back Creek and the low-lying lands associated with, and adjacent to, the Hexham Wetland.

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

Construction of Stage 1B-1 (DA2015/10393) of the approved development has commenced and is ongoing with an anticipated completion date in late 2023.

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 - (Source – CN Mapping)

Figure 3 below shows the locality and the relationship between DA2018/01351 (shown in red), DA2015/10393 (shown in green) and the development proposed within the LMCC LGA (DA/2087/2018 shown in cyan).



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

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks, under DA2018/01351, development consent for '*Subdivision of six lots into 876 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).*'

The proposal also seeks the imposing of conditions, pursuant to Section 4.17(1) of the EP&A Act, that would modify DA2015/10393 to be '*Subdivision of 2 lots into 292 lots, 7 super lots, 4 drainage reserves, 3 public reserves and 2 residual lots, plus associated roads, infrastructure, bulk earthworks, open space and signage.*'

Figure 4 below shows the overall staging plan for DA2018/01351 (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.

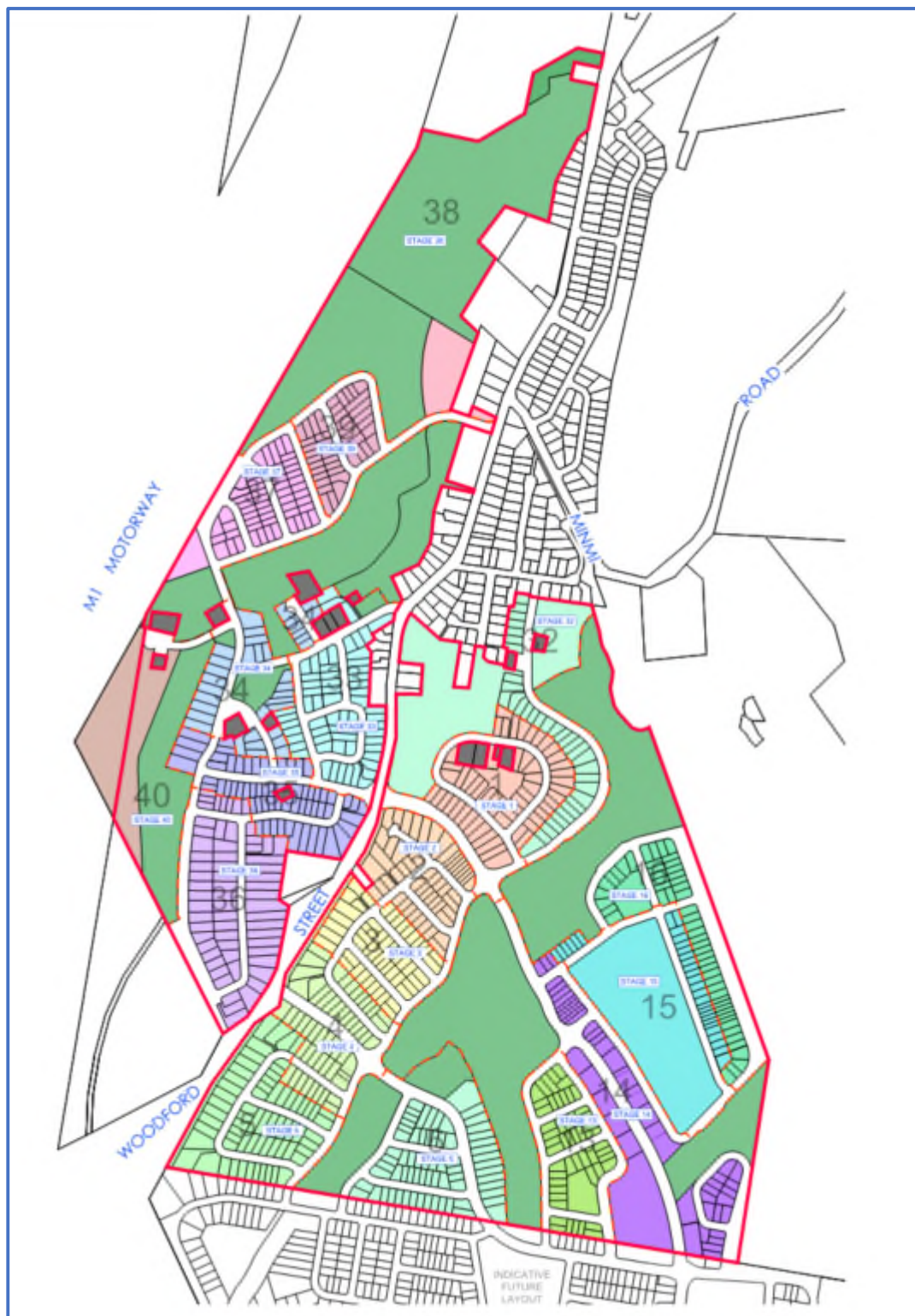


FIGURE 4 – Staging Plan (Source – Proposed Subdivision Plan)

The proposal includes the following mix of residential lot typology as specified in the Minmi Precinct Design Guidelines (**MPDG**) approved by the delegate for 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
- 155 Small Courtyard Lots
- 21 Large Courtyard Lots
- 562 Traditional Lots
- 108 Lifestyle Lots

In addition, the following lots are also proposed:

- 14 lots are proposed for future commercial (B2 Zone)
- 7 large redevelopment lots ('super lots') for future residential development
- 1 lot within the existing neighbourhood centre (B1 Zone)
- 5 lots for road widening/landscape buffer along Woodford Street
- 15 public / drainage reserve lots for parks/open space, riparian corridors and drainage infrastructure
- 2 residue lots (subject of separate applications for their future use)

2.2 Background

The subject site has a Concept Plan (10_0090) approved under Part 3A (repealed) of *the EP&A Act 1979* by the NSW Planning Assessment Commission (**PAC**) on 6 August 2013. On 21 December 2016, the PAC approved a modification (**MOD1**) to the Concept Plan. A copy of the Notice of Modification and the original Concept Plan approval are below 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*).

A chronology of the development application since 21 July 2021 is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 1: Chronology of the DA (since 21 July 2021)

DATE	EVENT
21 July 2021	Amended development application for DA2018/1351 made pursuant Cl. 55 of the <i>EPA Regulations 2000</i> (now Cl. 37 of the <i>EP&A Regulation 2021</i>).
11 August 2021	Panel briefing by CN
11 August 2021	Public exhibition of the application commenced including notification to Lake Macquarie City Council. Exhibition period closed on 25 August 2021.
20 October 2021	DA referred to external agencies (Transport for NSW (TfNSW), Ausgrid, Transgrid, Hunter Water Corporation (HWC), Department Planning and Environment, Water (Natural Resources Access Regulator (NRAR)), NSW Rural Fire Service (NSWRFS) and Subsidence Advisory NSW) (SANSW)
1 December 2021	Site visit and Panel briefing by CN and TfNSW
14 January 2022	Request for Further Information (partial) letter sent
18 March 2022	Request for Further Information (residue) letter sent
26 April 2022	Panel briefing update by CN and Applicant
10 June 2022	Applicant's partial response to Request for Further Information received
30 June 2022	Applicant's partial response to Request for Further Information received
29 July 2022	Applicant's final response to Request for Further Information received
30 June 2022	Panel briefing update by CN and TfNSW
3 August 2022	Panel briefing update by CN
5 August 2022	Public exhibition of the amended application commenced including notification to Lake Macquarie City Council. Exhibition period closed on 19 August 2021.
13 September 2022	Panel briefing update by CN and TfNSW

2.3 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 intentionally 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 draft 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 identified above. 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 in consultation with CN and were approved by the delegate for the 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.

3. STATUTORY CONSIDERATIONS

3.1 RELEVANT COMMONWEALTH LEGISLATION

<p><i>Environment Protection and Biodiversity Conservation Act 1999</i></p>	<p>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.</p>
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<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).
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3.2 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.

<i>Biodiversity Conservation Act 2016</i> (BC Act)	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.
<i>National Park and Wildlife Act 1974</i> (NP&W Act)	<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>
<i>Roads Act 1993</i> (Roads Act)	<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 5.1.2 of this report, TfNSW have not supported the proposed development, based on the available traffic impact assessments prepared by the Applicant. Actions required under Part 8 Division 2 have not commenced due to the uncertainties about what traffic regulating works or structures may be required.</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>Contaminated land management is discussed in detail in Section 5.4 of this report.</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 Natural Resource Access Regulator (NRAR) 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>
<p><i>Rural Fires Act 1997</i></p>	<p>The NSW Rural Fire Service (NSWRFS) has issued a Bushfire Safety Authority (BFSA) for DA2018/01351 (dated 22 November 2022) and issued an updated BFSA (dated 22 November 2022) in relation to the amendments sought to DA2015/10393 (Minmi East Stage 1B) in association with the proposed development.</p>
<p><i>Heritage Act 1977</i></p>	<p>There are no items listed on the State Heritage Register within or in close proximity to the development site.</p>
<p><i>Local Government Act 1993</i></p>	<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>
<p><i>Fisheries Management Act 1994</i></p>	<p>No part of the proposal or the modification sought to DA2015/10393 is expected to cause an obstruction to or block the passage of fish.</p>

3.3 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*.

3.4 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

It is noted the application, Statement of Environmental Effects and associated reports were prepared prior to 2 December 2021, being the date on which the NSW Government published 11 new thematic SEPP's as part of a consolidation process to simplify the State's planning policies.

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 (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*
- Proposed amendment of *State Environmental Planning Policy (Major Infrastructure Corridors) 2020*
- *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 (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas <ul style="list-style-type: none"> • Clause 2.14 – does not apply in this instance as consent is being sought for removal of vegetation. 	Yes
	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.	Yes
	Chapter 4: Koala Habitat Protection 2021 <ul style="list-style-type: none"> • 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 October 2018 pursuant Clause 34A(3) of the <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>. 	Yes
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises General Development over \$30 Million.	Yes
State Environmental Planning Policy (Resilience & Hazards) 2021	Chapter 2: Coastal Management <ul style="list-style-type: none"> • Section 2.8(1) - Development on land in proximity to coastal wetlands or littoral rainforest (relates to DA2015/10393 only) 	Not Applicable

	<ul style="list-style-type: none"> • Section 2.13 - Development in coastal zone generally - coastal management programs to be considered (relates to DA2015/10393 only) <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 and the proposal is satisfactory subject to conditions. 	Yes
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 - the proposal is satisfactory subject to conditions. • Section 2.119(2) – development on land that has frontage to a classified road • Section 2.120 - Impact of road noise or vibration on non-road development • 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. 	Yes Yes Not Applicable Yes
Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020 (refer to Attachment E)	<p>Explanation of Intended Effects – July 2021</p> <ul style="list-style-type: none"> • This Explanation of Intended Effects proposes the protection of the Lower Hunter Freight Corridor under this SEPP in a similar manner to the existing protected corridors in Greater Sydney. 	Yes
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

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 briefly outlined below. Where a more comprehensive assessment of these SEPP's is warranted it is undertaken in **Section 5** of this report.

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, 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.

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 within or within proximity of land mapped as a Coastal Wetland.

However, the approved DA2015/10393, as is being sought to be modified in association with DA2018/01351, does involve land currently mapped as Coastal Wetland. This is discussed in more detail in **Section 5.12** of this report.

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 5.4** 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 application was referred to both Ausgrid and Transgrid.

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

Ausgrid have advised 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 5.1.2** of this report, TfNSW are not supportive of the development as currently presented due to them being unsatisfied with micro-simulation traffic modelling assessment completed for the classified and wider local road network. Accordingly, CN is unable 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 child care 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 5.2** 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 comment.

The impacts of this traffic generating development is discussed in detail within **Section 5.1** of this report.

Proposed amendment of State Environmental Planning Policy (Major Infrastructure Corridors) 2020

The proposed amendment of *SEPP (Major Infrastructure Corridors) 2020* is supported by an *Explanation of Intended Effects (July 2021)*.

This Explanation of Intended Effects proposes the protection of a Lower Hunter Freight Corridor under this SEPP in a similar manner to the existing protected corridors in Greater Sydney.

After several years of preliminary investigations, between 12 July 2021 and 27 September 2021 TfNSW undertook community consultation for the proposed freight rail corridor between Fassifern and Hexham.

Figure 5 below shows (in the inset) the overall extent of the full extent of the proposed rail corridor and the main plan shows the corridor passing to the western side of the proposed development. No part of the subject development site is required for the proposed rail corridor.

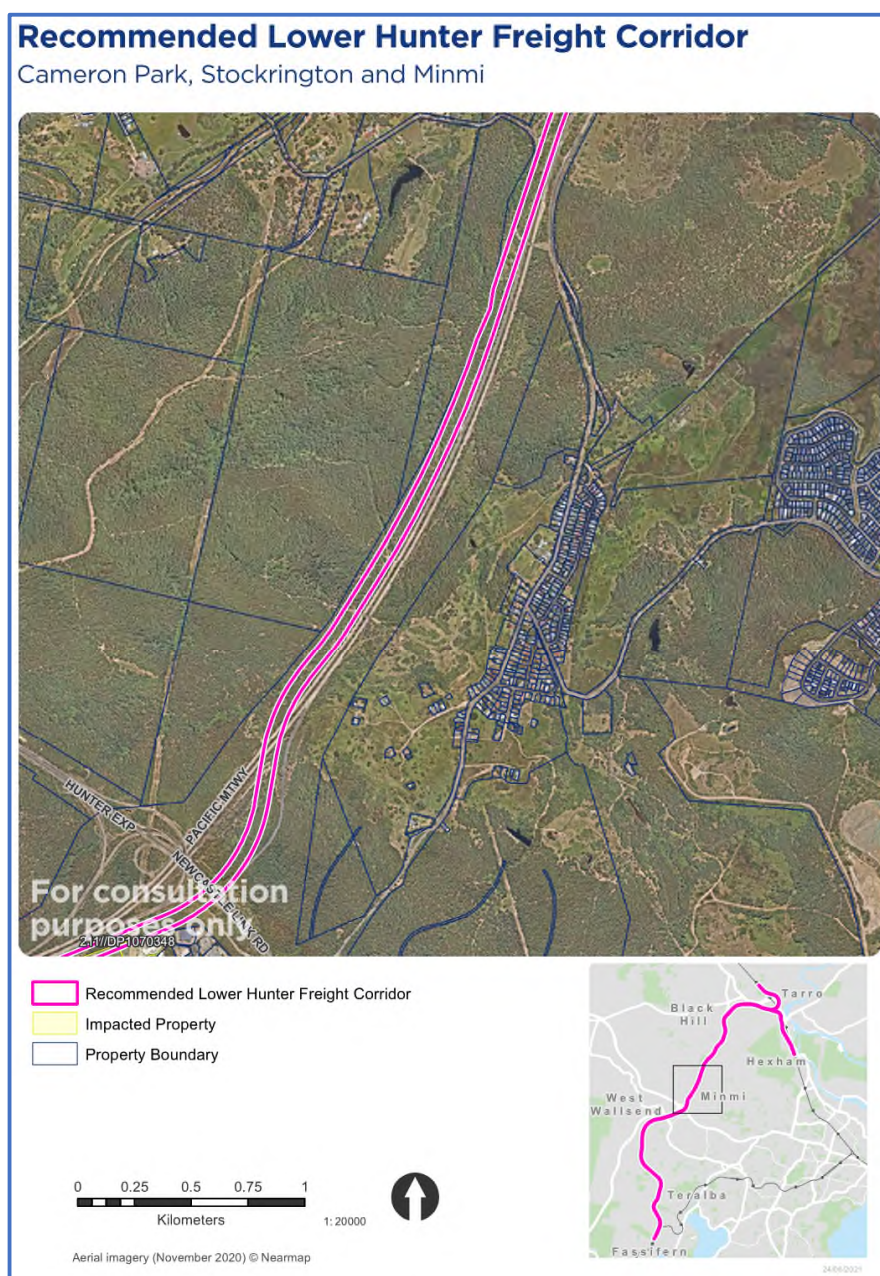


FIGURE 5 Lower Hunter Freight Corridor – (Source – TfNSW publication)

According to the *Lower Hunter Freight Corridor – Draft Strategic Environmental Assessment (pp50 TfNSW, July 2021) (DSEA)* the preferred 'Pink Option' shown above, in relation to the locality around Minmi, has a number of key advantages including;

- *"Use of the western side of the M1 Pacific Motorway minimises property, noise and visual impacts at Lenaghan as much as possible and the more densely populated areas around Minmi and Fletcher.*
- *Allows for planned residential and commercial development to occur into the future at Minmi, Fletcher and Black Hill with minimal impacts resulting from delivery of the infrastructure."*

When considering potential noise impacts of the Lower Hunter Freight Corridor (LHFC), the DSEA states that *"For residential receivers on the eastern side of the M1 Pacific Motorway between Minmi and Black Hill, proximity of the M1 Pacific Motorway between the corridor and residential receivers would mean that the motorway would be the dominant source of impacts (including noise, visual, air quality and other amenity impacts)".*

However, the DSEA also states "The recommended corridor has been located so as to maximise distances from the largest number of sensitive receivers, however the strategic noise impact analysis identified that there would likely be some noise mitigation required. Noise mitigation may be required where future infrastructure within the recommended corridor is in proximity to sensitive receivers including existing and future residential dwellings at West Wallsend, Barnsley, Minmi, Lenaghan, Black Hill and Tarro." and "However, the type of noise mitigation is indicative only, and would be further investigated in the next phase of project development and detailed in the supporting environmental impact assessment."

The DSEA, in relation to noise impacts then, in part, concludes that *"At the southern and central end of Minmi, the corridor moves progressively away from residences and at-source mitigation measures would be considered as priority. Property treatments may be required. No mitigation is required for northern areas of Minmi given the location of the corridor along the western side of the M1 Pacific Motorway."*

The DSEA does not raise any issue with potential vibration impacts on the locality around Minmi.

It is evident that the DSEA considers both the existing and future proposed residential areas around Minmi and acknowledges that some future impacts as a result of the proposed LHFC may require the LHFC project to implement mitigation measures to protect the amenity of existing and future residential properties in this locality.

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 well being 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 well being of the community in a socially and environmentally responsible manner and will strengthen the regional position of the 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
- B1 Neighbourhood Centre
- B2 Local Centre
- C1 National Parks and Nature Reserves (previously E1)
- C2 Environmental Conservation (previously E2)
- C4 Environmental Living (previously E4)

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 6 below shows the extent of the proposed DA2018/01351 in blue (this DA) and the full extent of the Stage 1B as proposed to be modified (DA2015/10393) in red overlain on the NLEP2012 land zonings. Boundaries shown in white represent the existing cadastre.

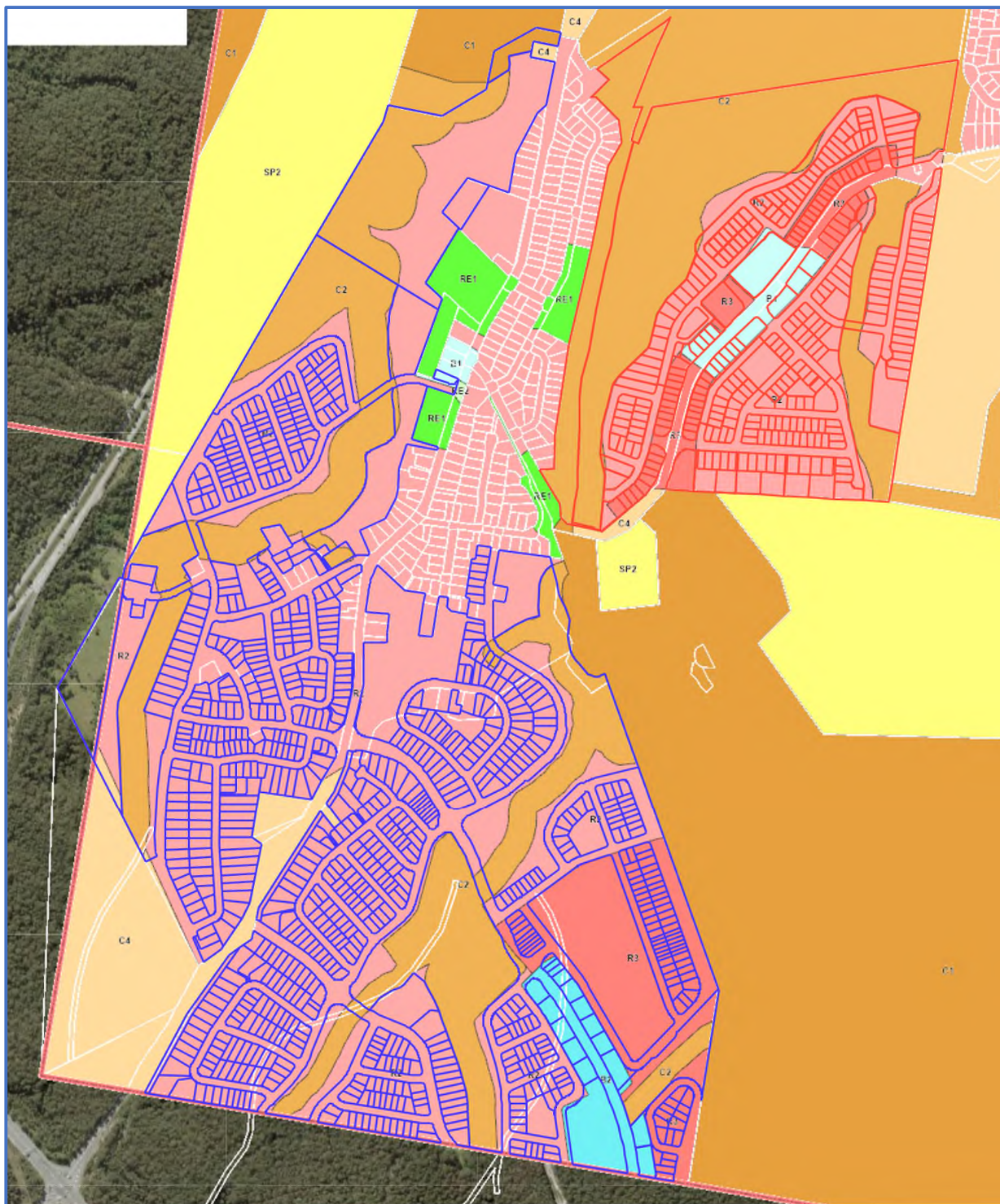


FIGURE 6 – Land Zoning (Source – SEE Figure 10)

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 (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.
B1 – Neighbourhood Centre	<ul style="list-style-type: none"> • To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood. • To provide for residential development that maintains active retail frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment. • To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of centres within Zone B2 Local Centre or Zone B3 Commercial Core.
B2 – Local Centre	<ul style="list-style-type: none"> • To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. • To encourage employment opportunities in accessible locations. • To maximise public transport patronage and encourage walking and cycling. • To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment. • To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.
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, 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 7** below shows the relationship of proposed Lot 3807 and the C1 zoned land.

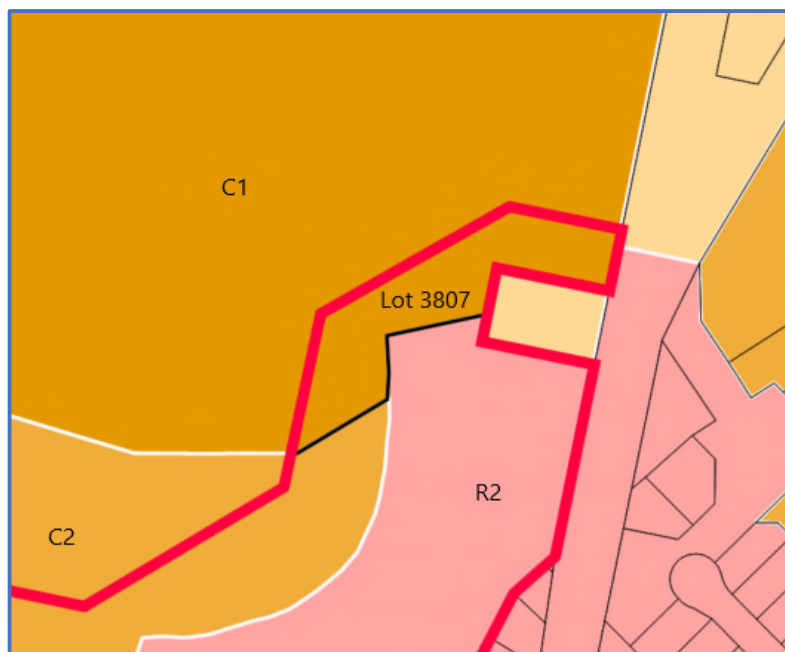


FIGURE 7 – Lot 3807 – Proposed transfer to NPWS (Source – CN Mapping)

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 3220 to 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 8** below showing the proposed subdivision layout, overlain on the land use zone boundaries and aerial photo.



FIGURE 8 – 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 3220 – 3224 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 permitter 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.

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 was obtained from CN's Lawyer that confirms 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 9** 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.'*

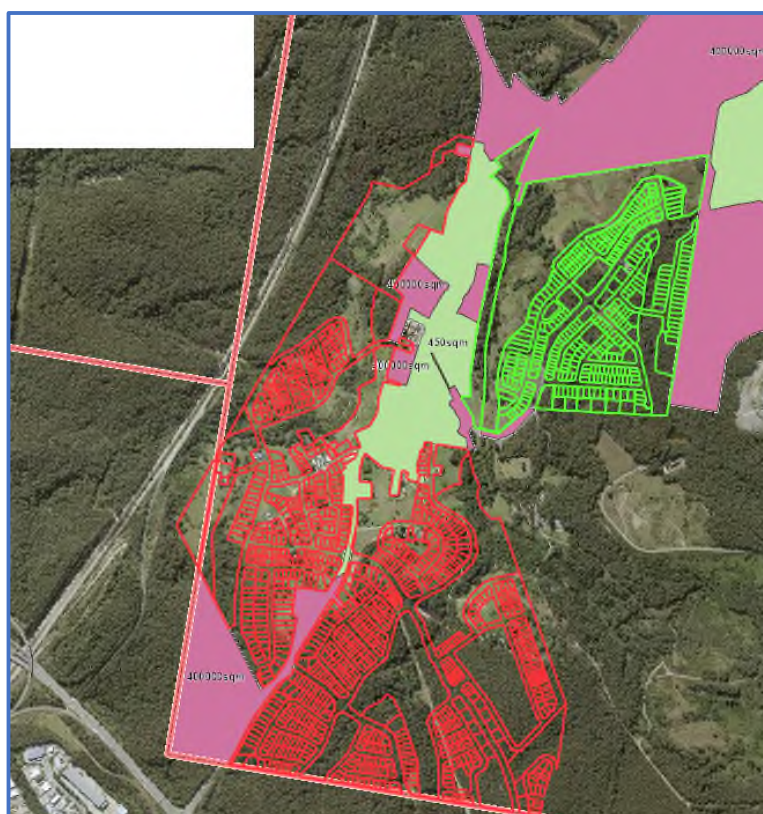


FIGURE 9 – NLEP2012- Lot Size Map – (Source – CN Mapping)

CN's Lawyer has advised that the land that is subject to the Concept Plan approval is shown on the Lot Size Map, 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 10** below.

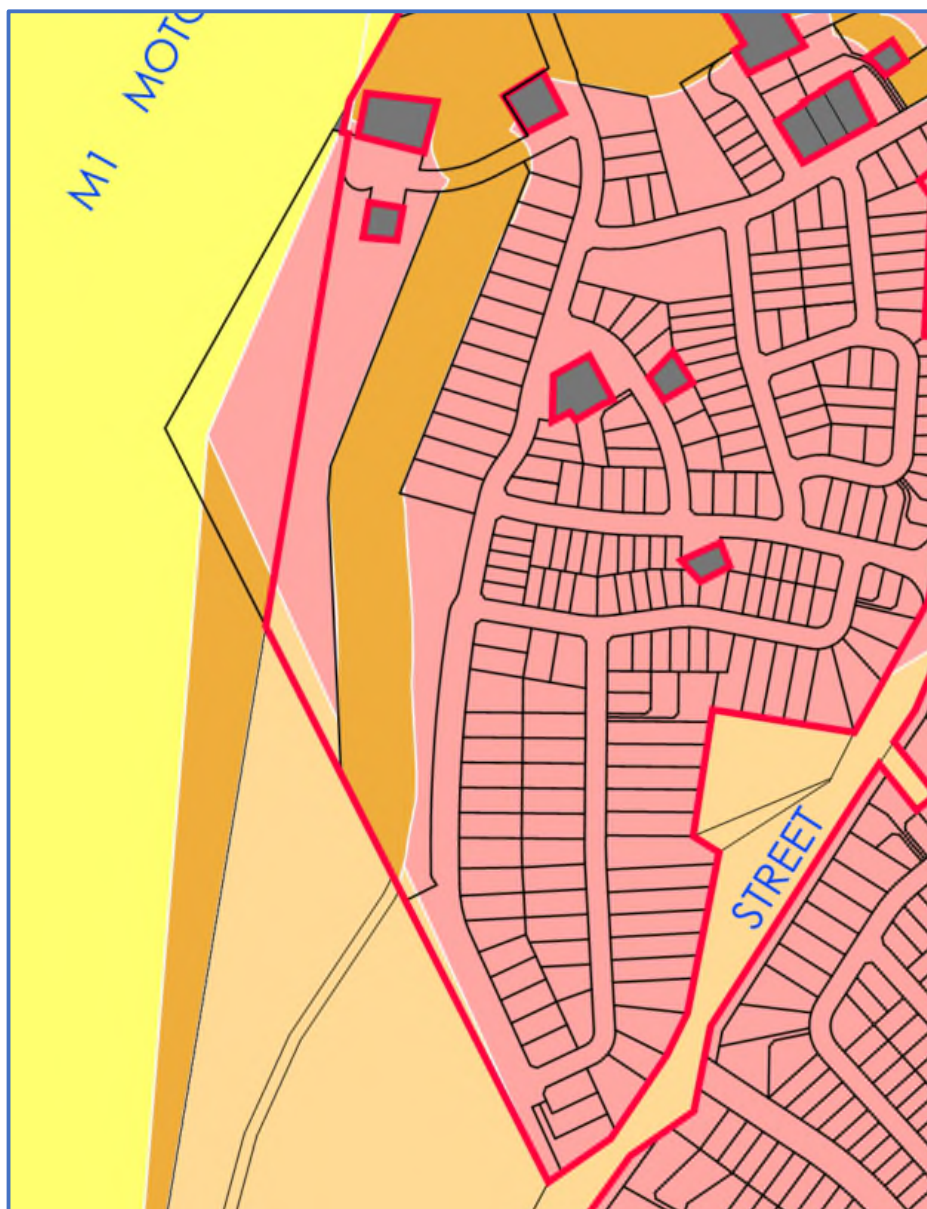


FIGURE 10 – Possible Land Zoning Discrepancies – South-West Area (Source – SEE Figure 10)

Investigations undertaken by CN and the applicant 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 11** below) clearly shows an intention to develop all of the land in this southwestern area, other than that land zoned C2 Environmental Conservation, for residential subdivision purposes.

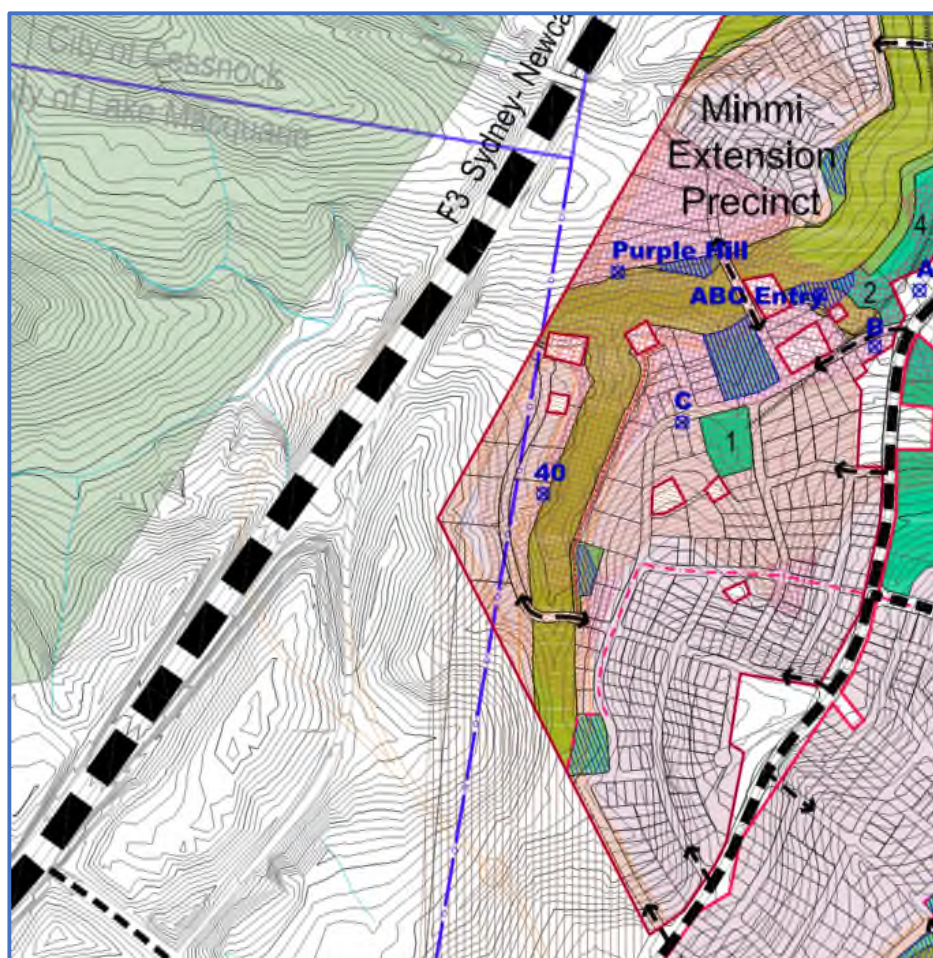


FIGURE 11 – Extract from Concept Plan Preferred Project Report (Source – RPS Plan 24311-35 Rev E)

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.

However, it is noted that the land under the LMLEP2014, may have different provisions applying to that under the NLEP2012. It is understood that the applicant has now included this triangular part of Lot 100 DP1252590 in DA/2087/2018 being assessed by LMCC and it would be appropriate for consideration of land use zones within this triangular area to be considered under that application. 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 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 promotes suitable land use and development while protecting environmental attributes of the land.	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

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 the heritage significance of the item or area concerned.	This matter is discussed in detail in Section 5.10 of this report.	Yes
Flood planning (CI 5.21)	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	This matter is discussed in detail in Section 5.7 of this report.	No

	<p>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 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</i></p>		
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	<p><i>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>		
Acid sulphate soils (CI 6.1)	<p>Development consent must not be granted under this clause for the carrying out of works unless an 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>The vast majority of the land is classified as being within a Class 5 zone under the LEP Acid Sulphate Soils Map.</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>	Yes
Earthworks (CI 6.2)	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p><i>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p><i>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p> <p><i>(d) the effect of the development on the existing and likely amenity of adjoining</i></p>	<p>This matter is discussed in detail in Section 5.6 of this report.</p>	Yes

	<p><i>properties,</i></p> <p><i>(e) the source of any fill material and the destination of any excavated material,</i></p> <p><i>(f) the likelihood of 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)	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.	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.	Yes
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

<p>Development Control Plan (Cl. 8.3)</p>	<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 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> <p>(a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing</p> <p>(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</p> <p>(c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent</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 (refer Attachment D) were subsequently approved by DPIE on 16 November 2018 and meet the requirements stated above, in that they are in a form that can be adopted by Council as a DCP.</p>	<p>Yes</p>
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	<p>locations, and detailed landscaping requirements for both the public and private domain</p> <p>(d) a network of active and passive recreation areas</p> <p>(e) stormwater and water quality 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 with the exception of Clause 5.21 – Flood Planning as is discussed in detail in Section 5.7 of 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 how 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 AHIPS (if required).

European heritage

The potential impacts of the proposed development on items of European heritage are discussed in detail within **Section 5.10** of this report.

Clause 5.21 – Flood planning

Flood impacts associated with proposed development are discussed in detail within **Section 5.7** of this report.

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

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 and on 16 November 2018 and the delegate for 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 to the extent of the inconsistency, and as such the MPDG will also prevail to the extent of the any inconsistency with the NDCP2012.

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 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 Lot 49 DP115128 (64 Railway Street, Minmi).

Figures 12 and 13 below show how the integration of Lot 49 subdivision layout was proposed to be achieved in the documentation (Subdivision Plans, Revision R dated 24 May 2021) submitted with application to amend DA2018/01351 in July 2021. It can be seen that Lot 49 was originally proposed to have an irregular width road reserve across the full northern boundary of the lot in an approach similar to that being employed by the applicant to accommodate the other isolated lots similar to Lot 49. Lot 49 can be seen in Stage 35 and the use of irregular widened road reserves to accommodate other existing properties is evident in Stages 1, 32, 33, 34 and 40.



FIGURE 12 – Showing integration of Isolated Properties (Source – Subdivision Plans, Rev. R, May 2021)



FIGURE 13 – Showing integration of Lot 49 DP115128 (Source – Subdivision Plans, Rev. R, May 2021)

The further amended Subdivision Plans received by CN on 10 June 2022 titled '*Lot 49 in DP 115128 – Proposed Access Sketch*' (Ref: 239736(3)-ESK-067, Revision C dated 10 June 2022) and on 6 July 2022 titled Subdivision Plan Stage 35 (Ref.239736(3)-DA-118 Revision S, dated 25 June 2022) show a reconfiguration of the road and lot layout across the northern frontage of Lot 49 such that it now has no legal road frontage to the proposed public road but is instead wholly enveloped by proposed new allotments. This can be seen in **Figure 14** below which shows access to only be provided by a proposed Right of Carriageway 4m wide over proposed Lot 3534.

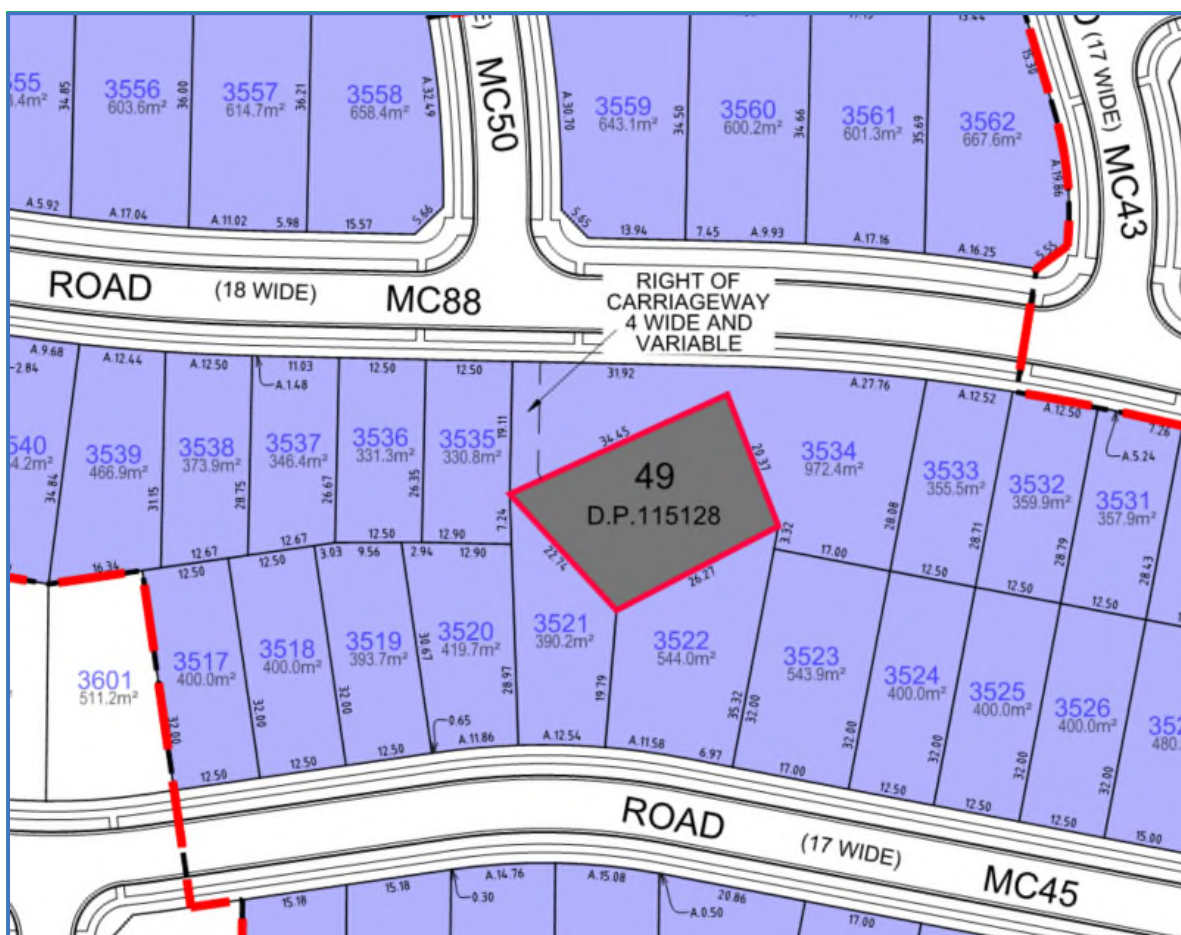


FIGURE 14 – Showing integration of Lot 49 DP115128 (Source – Subdivision Plans, Rev. S, June 2022)

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 Right of Carriageway.

Entirely enveloping Lot 49 with other residential allotments will have a significant adverse impact on the amenity and access currently enjoyed by Lot 49 and is not supported.

Lot 3534, as it was proposed in July 2021, had a frontage of 28.68m to Road MC88 and a site area of 612.6 m² which was and is considered acceptable by CN.

It is therefore recommended that, if consent is to be granted to DA2018/01351, an appropriate condition of consent is imposed that would require proposed Lot 3535 and the proposed road reserve for Road MC088, insofar as it relates to Lot 49 DP 115128, to be modified to reflect the road and allotment boundaries shown on Subdivision Plan (Ref.239736(3)-DA-118 Revision R, dated 24 May 2021).

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 delegate to 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 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.

However, it is understood that the application for the adjoining DA/2087/2018 (being assessed by LMCC) now includes, at the request of LMCC, a traffic control signalised (TCS) intersection at the first intersection on proposed Road MC01 located just inside the LMCC LGA due to the proximity of proposed retail and school environments. The submitted Concept Engineering Plan (ADWJ 239736(3)-CENG-104 Rev U dated 22/06/2021) continues to show a roundabout configuration at that intersection. Accordingly, it is not possible to determine what impact the reconfiguration of this intersection for TCS might have on the road or lot layout being considered under DA2018/01351.

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 would still 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 15** and **16** 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 15 – 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 16 – 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	28
Small Courtyard	155
Large Courtyard	21
Traditional	562
Lifestyle	108
Local Centre / Neighbourhood Centre / Future Development (Super Lots)	22
Public / Drainage Reserves	15
Residue Lots	2
Road Widening	5

Figure 17 shows the allocation and location of the various lot typologies across the development.

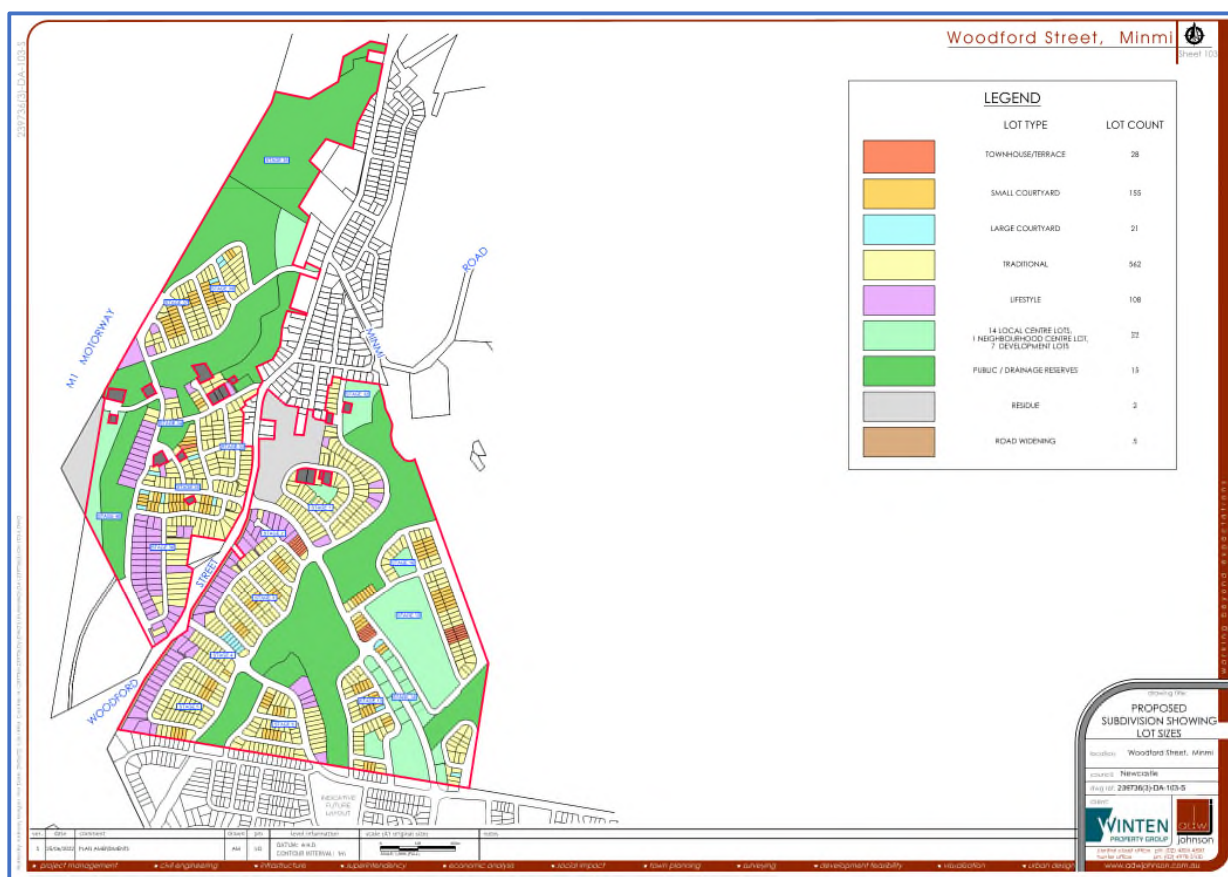


FIGURE 17 –Lot Typology and Allocations (Source – Subdivision Plans, Sht 3)

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 18** 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.

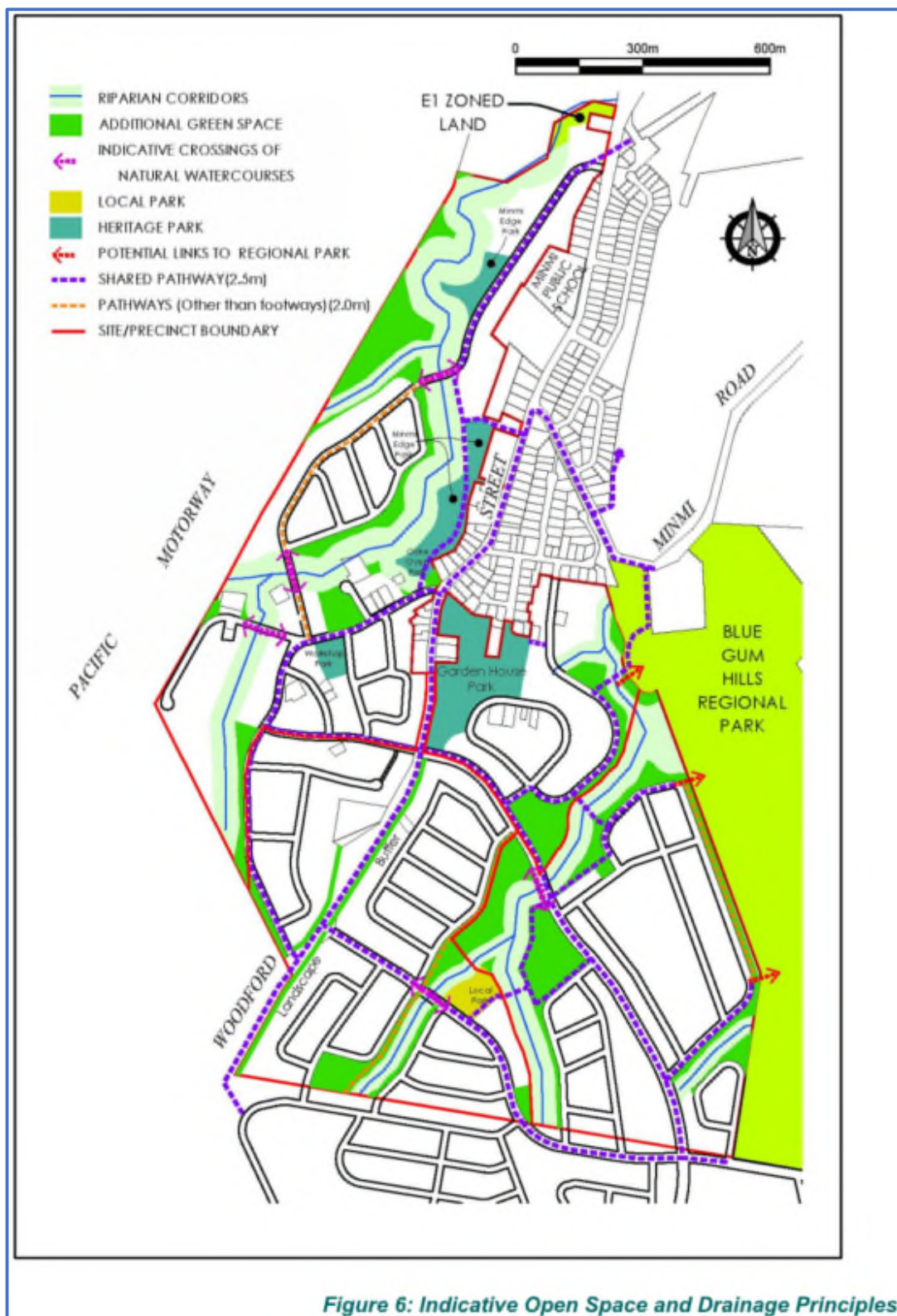


FIGURE 18 – Indicative Open Space Features (Source – MPDG, Figure 6)

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 (1 of 2) 'Residue Lot' that according to the SEE "...will be subject to separate applications for their future use".

Notwithstanding that the Garden House Park is not required to meet the minimum open space demands for the projected population, 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.

In this regard, and again noting the application does not propose such dedication, CN considers it would be appropriate to include a condition of consent (if consent is to be granted to DA2018/01351) that would require such dedication to occur in association with the Subdivision Certificate for the relevant stage of the development.

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 Stage 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 Stage 1B.
- Pedestrian/cycle facilities on Woodford St toward the Newcastle Link Road.

In addition, and in response to concerns raised by CN about the disconnect between 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) and the approved (Dec. 2021) Richmond Vale Rail Project, the applicant's letter dated 10 June 2022 confirms an intention to also dedicate part of Lot 3 DP 1230960 as public reserve "...for the purposes of continuing the Richmond Vale Rail Trail shared path through to Woodford Street". This intention is supported.

Other than the suggested inclusion of a condition requiring the further dedication of the Garden House Park allotment to be included in any consent issued for DA2018/01351, the proposed active and passive open space requirements are generally considered to be appropriately met by the proposal and are generally 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 19** is taken from the submitted Landscape Plans and shows generally how this would be achieved.

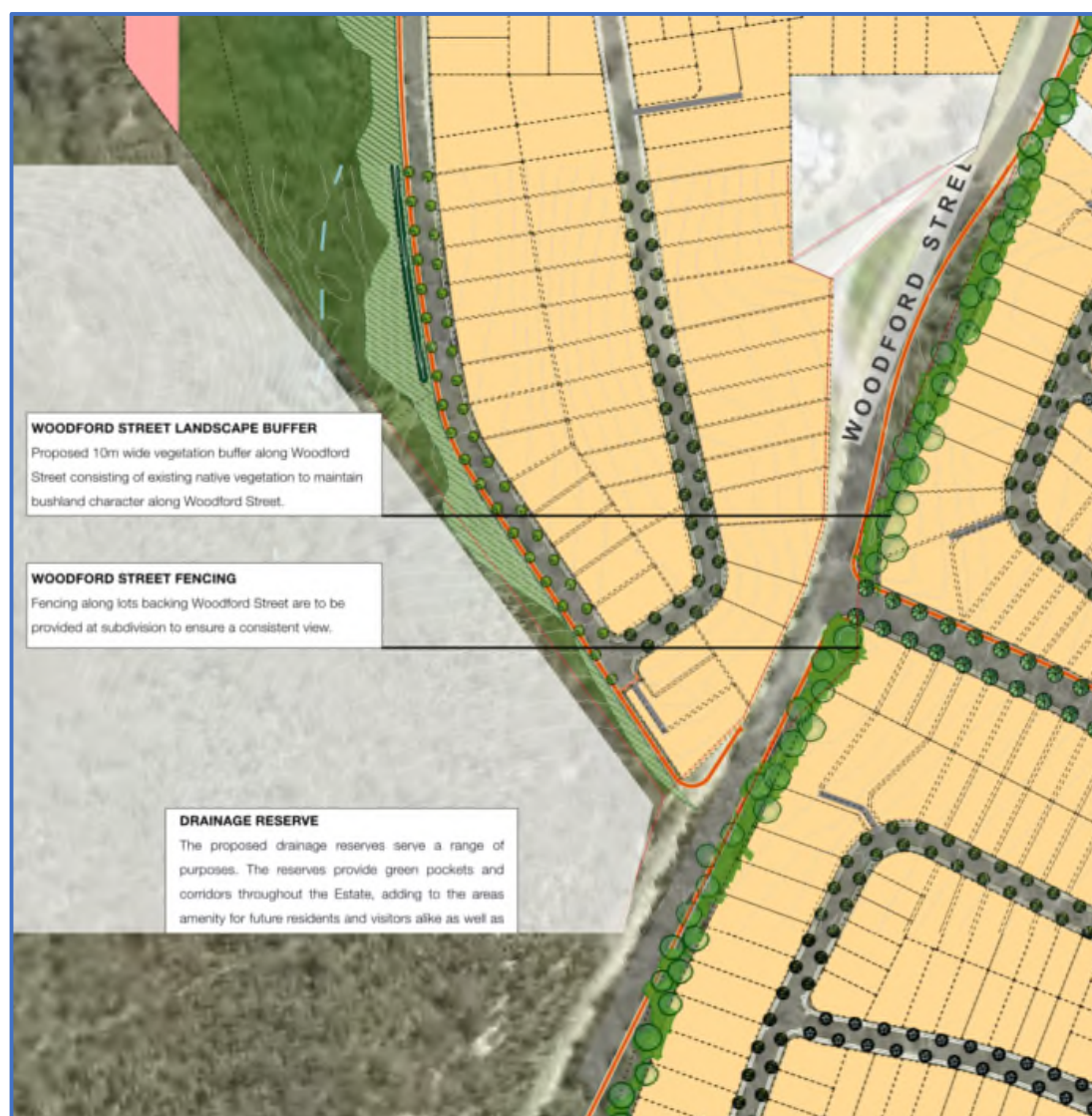


FIGURE 19 – Woodford Street Landscaped Buffer (Source – Landscape Plans, Sht LP06)

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.

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

Council, at its meeting of 27 September 2022, adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access. Also at this meeting, Council resolved to retain Section 6.12 Minmi of the NDCP2012.

The above amendment came into effect on 1 November 2022 and the adopted NDCP2012 chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.'

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below 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.

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.

However, as discussed in detail in **Section 5.7** of this report, concern has been raised regarding potential increase in flood impacts on small sections of the M1 Motorway road reserve adjacent Stages 37 and 40. Concerns are also raised regarding the impact of modelled future flood depths where they have been determined to be overtopping all roads that services Stages 37, 39 and 40. This would result in these stages being isolated raising public safety concerns for any person attempting to access or evacuate from these Stages during flood events.

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 5.9** 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 5.5** 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 5.4** 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 5.10** of this report.

Section 5.06 Archaeological Management

Archaeological management is discussed in detail in **Section 5.10** 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 19**), 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 PAC 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 will 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.

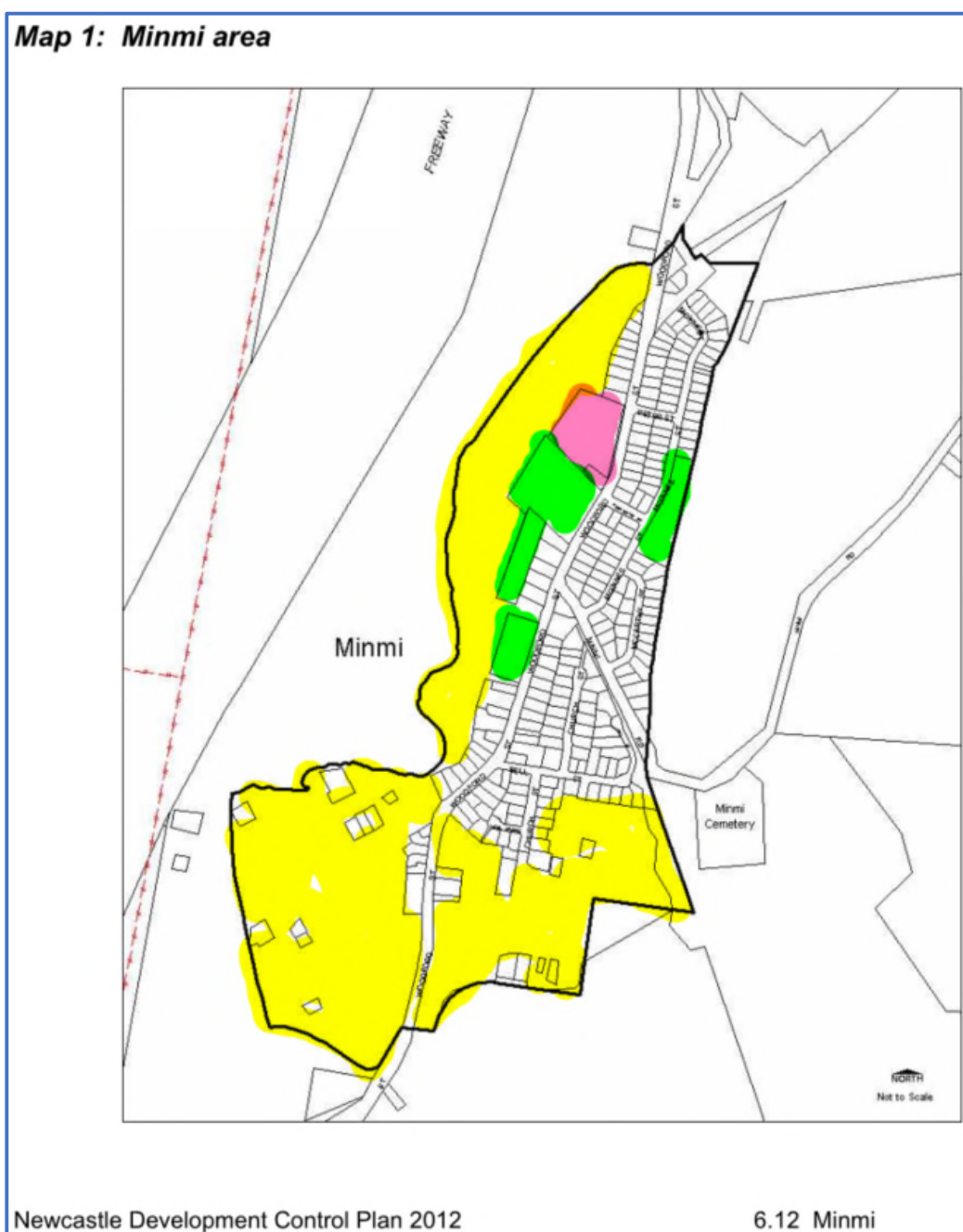


FIGURE 19 – Showing land overlapping between Concept Plan and DCP Section 6.12 (Source – CN Mapping)

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 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 3440), with an area of approximately 0.5ha; and
- 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.

As discussed above under consideration of the MPDG, proposed Lot 3236 contains the area referred to as the 'historically important Garden House Park'. While this land is not required to meet the minimum open space demands for the projected population, it is CN's preference that Lot 3236 be included with the other areas of public open space intended to be dedicated to Council consistent with the Concept Plan and MPDG.

In this regard, and again noting the application does not propose such dedication, CN considers it would be appropriate to include a condition of consent (if consent is to be granted to DA2018/01351) that would require such dedication to occur in association with the Subdivision Certificate for the relevant stage of the development.

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

An updated version of Section 7.03 commenced on 1 November 2022, however, savings provisions are provided such that any development application lodged but not determined at that date is to be determined as though the provisions of the updated Section did not apply. Notwithstanding this, the controls applicable to the proposed development remain largely the same.

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 5.1** 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 5.1** 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 5.8** below for discussion on the management of stormwater quantity and quality.

With the exception of the proposed methods of diversion of the western watercourse coming from under the M1 Motorway and impacting on Stage 37, 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 waste collection needs of the future developments on the proposed allotments.

The proposed development is considered to be acceptable in terms of the above Section of the 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. S dated 25 June 2022) contained within the Subdivision Plans and proposed Lot 3236 (Garden House Park) as is recommended within this report.

(e) Section 4.15(1)(a)(iiia) – 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 State 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 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.

Another offer to enter into a planning agreement has been made by the applicant to Lake Macquarie City Council (LMCC) in regard to that part of the developer contributions payable to LMCC under the relevant LMCC contributions plan associated with provision of recreation land and facilities.

This offer stemmed from discussions and negotiations between CN, LMCC, the applicant and DPE in relation to the satisfaction of FEAR 1.16 which, as modified (MOD1) requires;

- 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 1~~ 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.

While this offer for a VPA does not directly involve CN, the offer does generally propose the following:

- "1. *A monetary contribution toward the capital cost of constructing sports fields and hard courts within the Newcastle LGA to meet the demands created by the population under the Link Road North DA. At this stage an amount of \$8,256,999 is proposed (which would be \$7,804.35 per lot for the 1,058 lots). It is understood that Lake Macquarie Council may either construct the facilities itself, or may provide this money to Newcastle City Council for it to construct the facilities. If the actual costs associated with construction of the sports fields and hard courts is less than this amount, Council can retain the balance to spend on other open space and recreational facilities at Council's discretion.*
2. *Dedicate, to either Lake Macquarie City Council, or its nominee (which we note may be Newcastle City Council), proposed lot 601 as well as the hard courts land, as shown on the attached plans, being the land upon which the sports fields and hard courts are to be constructed, with an estimated value of \$8,274,450.*
3. *Embellish and dedicate to Council 2 local parks with play grounds, in the approximate locations shown on the Park Plans, with a combined estimated value of approximately \$4,000,000. We confirm that both parks will have a minimum useable area of 5,000 m2 that meets the functional purpose of a park.*
4. *Construct and dedicate to Council approximately 800m of shared path along the new Minmi Boulevard from Newcastle Link Road to the Lake Macquarie/Newcastle LGA border, with an estimated capital value of \$400,000.*
5. *Provide a monetary contribution of \$14,145,713.92 (being \$13,370.24 for each of the 1,058 residential lots) to be spent on other public works within the Lake Macquarie LGA, at Council's discretion.*

We note that it is an issue for Council as to whether it wishes to construct and own the recreational facilities which will service the Link Road North population (and potentially other Lake Macquarie residents) but which will be located within the Newcastle LGA. As it is agreed that the Link Road North population will require 2 sports fields and 3 hard courts, we propose that the land on which these facilities will be located may be dedicated either to Council, or its nominee. We note that this is common practice, for example, in state planning agreements, where the Minister for Planning often nominates another government Minister or authority, such as the Minister for Education, who is not a party to the planning agreement, as the person to whom certain land is to be dedicated."

CN officers has previously supported, in principle, this offer to enter into a VPA and await the exhibition of the formal Voluntary Planning Agreement which we understand is being drafted by LMCC. If the VPA is acceptable to CN and is executed by Winten and LMCC, then CN is anticipating a further agreement to be prepared and implemented between the two Council's to define the operational and ongoing aspects relating to land ownership, timing, expenditure of funds and maintenance.

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 audit and report to CN on the spending of these funds should be imposed.

In section 8.10 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 Stage 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 5.11** 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 F**.

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

The likely impacts of that 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 TfNSW.

Refer to **Section 5.1** 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) do not currently 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 5.10** 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. However, CN is not satisfied that the impacts of any 'off-site' road upgrades that may be required to mitigate the impact of the proposed development on regional traffic safety, efficiency and effectiveness is sufficiently known in order to make an informed assessment.
- Natural environment – As envisaged by the 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 is 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 5.2** of this report where some deficiencies in the information provided are identified.

- 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 B1 and B2 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 one location in Stage 35, involving the relationship between proposed Lot 3534 and existing Lot 49 DP115128 where the impacts of the lot layout are not supported. This is discussed in detail within this report when addressing the **MPDG**, however, it is considered feasible for this matter to be dealt with by the further amendment of the proposed Subdivision Plans or by an appropriate condition of consent.

Changes to the proposed subdivision layout may also be necessary in Stages 37 and 39 to address the concerns raised by CN's Asset Services in relation to how the diversion of the watercourse coming from the M1 Motorway corridor is currently proposed to be addressed. This is discussed in detail in **Section 5.8** of this report. CN considers that it would be inappropriate to require these amendments to be addressed by way of a condition of consent and, instead, is of the opinion that amended plans should be prepared.

Changes to the proposed subdivision layout may also be necessary in Stage 14 to address the inclusion of a traffic control signalised intersection within the neighbouring LMCC DA (DA2087/2018) in lieu of the roundabout controlled intersection shown on the drawings submitted with DA2018/01351. However, it is considered feasible for this matter to be dealt with by the further amendment of the proposed Subdivision Plans or by an appropriate condition of consent.

- 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 – CN cannot make a final statement as to whether or not the cumulative impacts of DA2018/are satisfactory until the unsatisfactory or unresolved matters identified in this assessment report are addressed by the submission of further additional or amending information and assessed by CN and other State agencies as being satisfactory.

3.6 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 generally 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 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 site is generally suitable for the nature of development proposed based upon the strategic framework and Concept Approval however, CN cannot confirm the site is suitable for the development proposed unless the unsatisfactory or unresolved matters identified in this assessment report are addressed by the submission of further additional or amending information and assessed by CN and other State agencies as being satisfactory.

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

Public submissions are considered in **Section 4.3** of this report.

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

The proposed development is considered to be generally in the public interest based upon the strategic framework and Concept Approval however, CN cannot confirm that the development in its entirety is suitable unless the unsatisfactory or unresolved matters identified in this assessment report are addressed by the submission of further additional or amending information and assessed by CN and other State agencies as being satisfactory.

4. REFERRALS AND SUBMISSIONS

4.1 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) does not support the proposal as it currently stands. This is further discussed in **Section 5.1** below.

Also as noted below, Subsidence Advisory NSW does not support the proposal as it currently stands. This is further discussed in **Section 5.5** below.

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>		Not applicable
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	No formal adoption has been made of a preferred rail corridor for the possible 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 that the proposal is satisfactory subject to conditions.	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 do not support the proposal.	No
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

		In regard to DA2015/10393, DPE Water noted that the proposed modification seeks to reduce the development footprint in proximity of Back Creek.	
NSW Rural Fire Service (NSWRFS)	FEAR 1.45	NSWRFS have issued a Bushfire Safety Authority (BFSA) for DA2018/01351 and an updated BFSA for DA2015/10393 pursuant to s100B of the <i>Rural Fires Act 1997</i> .	Yes
Subsidence Advisory NSW (SANSW)	FEAR 1.30	SANSW have advised that the submission of a geotechnical investigation (in accordance with Attachment B of the SA NSW Subdivision Assessment Policy (2018)) is required prior to the issuing of a conditional development consent.	No
Integrated Development (S 4.46 of the EP&A Act)			
		<p>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 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>	N/A
Designated Development (CI 77 of the EP&A Reg)			
		No part of the proposal constitutes 'designated development'.	N/A

4.2 Council Officer Referrals

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

OFFICER	COMMENTS	RESOLVED
Environmental	<p>Council's Senior Environmental Protection Officer 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>However, concerns are still raised over the adequacy of the submitted documentation in relation to traffic noise and the potential impacts on biodiversity resulting from off-site road upgrade works.</p>	Partly
Public Domain/ Assets	<p>Council'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>However, Asset Services do not support the proposed twin-pipe stormwater drainage arrangement for the watercourse diversion proposed in Stage 37.</p>	Partly
Heritage	<p>Council's Heritage Officer reviewed the submitted reports relating to European heritage and Aboriginal cultural heritage and considered that the proposal is satisfactory subject to conditions of consent.</p>	Yes (conditions)
Flooding and Stormwater Management (External consultant)	<p>Council 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>As a result of the initial review a comprehensive list of items that required further investigation or clarification were identified in CN's request for Further Information letters.</p> <p>A review of the additional and amending information submitted in association with the applicant's Response to Request for Further Information has identified a number of technical discrepancies in the concept engineering design regarding stormwater management that would need to be addressed by either amended plans or reports with only some matters being able to be dealt with by the imposition of appropriate conditions of consent.</p>	No
Contaminated Land (External consultant)	<p>Council 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 (conditions)

4.3 Community Consultation

The proposal has been publicly notified in accordance with the City of Newcastle's (CN) Community Participation Plan, and the provisions of *Environmental Planning and Assessment Regulations 2000* and *Environmental Planning and Assessment Regulations 2021* (as appropriate) on four 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.
- Lake Macquarie City Council, National Parks and Wildlife Service, Hunter Water Corporation and Hunter Valley Buses.
- Notification on CN's website.

The amended development application received in July 2021 was publicly exhibited for a period of 14 days between 11 August 2021 and 25 August 2021. Six unique submissions were received.

The most recent notification period, after CN had received the applicants comprehensive Response to Request for Further Information package, was held from 5 August 2022 to 19 August 2022 and during which 17 unique public submissions were received one of which was received from the NPWS as an owner of adjacent lands.

On 4 October 2022, a resident of Minmi handed CN a petition that sought to have the development renotified for a further 14 days on the basis some residents had not received their notification letter until after the commencement of the 14-day notification period or that there was insufficient time to review the exhibited documentation. The petition was considered by CN and it was determined that CN had initiated the public notification in accordance with the Community Participation Plan and, in CN's opinion, had allowed sufficient days for mail delivery to occur. CN did, however, advise this resident that late submissions would be accepted up until the time the report to the Panel was being finalised.

Subsequently, 180 late submissions were received on 25 October 2022 in the form of individually signed, but pro-forma style, letters.

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
1. Traffic <ol style="list-style-type: none"> a. Traffic report is outdated b. Roads unable to cope with increased traffic volume c. 'Terrible' congestion on Newcastle Link Road d. Existing heavy congestion on Minmi Rd heading east through Fletcher etc e. Insufficient parking on Minmi Road (Boulevarde ?) and the retail precinct f. School Zone congestion in peak times at Minmi Public School 	<ul style="list-style-type: none"> • Traffic counts were undertaken in 2015 and 2016 to inform the TIA. 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. Since the onset of the COVID19 pandemic in early 2021, reliable traffic counting has not been possible until very recently due to lock-downs and changed work practices (EG. work from home). • As discussed below in Section 5.1.1, 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 recommend in this report. • As discussed in Section 5.1.2, TfNSW have not accepted or

<p>g. Increase in traffic noise – existing noise is unacceptable</p>	<p>agreed with the microsimulation traffic modelling completed by the applicant and the suite of any required Regional road upgrades is not yet known or agreed.</p> <ul style="list-style-type: none"> Proposed Road MC01 (Minmi Boulevarde) will be provided with kerb side parking to both sides when developed. Additional parking associated with future commercial or business developments proposed within the B2 Local Centre zone will be considered with those applications. 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. As discussed in Section 5.2, an assessment of the likely impacts of additional traffic noise and possible mitigation measures has been appropriately assessed in accordance with industry guidelines.
<p>2. Infrastructure/Services</p> <p>a. Many roads do not have kerb and gutter</p> <p>b. Coordination between CN and LMCC developments to determine appropriate facilities</p> <p>c. Street trees should be endemic species</p> <p>d. Intent for embellishment of open space areas should be documented</p> <p>e. Timing for delivery of new school</p> <p>f. Inadequate pathways on Woodford St</p>	<ul style="list-style-type: none"> All proposed new roads will be provided with kerb and gutter. Some existing roads, such as Woodford St, will also have kerb and gutter and associated footway areas provided in appropriate locations. 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. An appropriate mix of street tree species will be chosen by CN's City Greening section. Local endemic species will be used when appropriate for a roadside setting. Local playgrounds and the sporting fields will be designed by CN at a later time in consideration of CN's s7.11 Local Infrastructure Contributions Plan and other CN requirements. A 'school expansion lot' has been created at the rear of Minmi Public School and a further new school allotment is proposed within the LMCC LGA 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.
<p>3. Heritage</p> <p>a. Heritage section outdated</p> <p>b. Courthouse is outside the study area for heritage interpretation</p> <p>c. Impact of former Minmi railway station</p> <p>d. 862 houses on small, denuded allotments is inappropriate in the context of the historic village of Minmi</p> <p>e. Aboriginal heritage has not been considered</p>	<ul style="list-style-type: none"> As discussed in Section 5.10 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. 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>4. Environment</p> <p>a. Inadequate or outdated wildlife studies</p> <p>b. Vegetation loss</p>	<ul style="list-style-type: none"> As discussed in Section 5.3 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

<p>c. Inadequate wildlife corridors</p> <p>d. Species compression, wildlife protection/preservation</p> <p>e. Displaced wildlife</p> <p>f. Impact on Climate Change</p> <p>g. Can threatened/endangered species be used in landscape works?</p> <p>h. Conflicts with CN's strategic goals set around protection of nature</p> <p>i. Impacts on / Prioritise health of Hexham Wetland</p> <p>j. High water flow and nutrient impacts on watercourses in Blue Gum Hills Regional Park (BGHRP)</p>	<p>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 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. • Local seed will progressively be sourced from the development area prior to vegetation clearing commencing for each stage. This seed will be utilised for growing of revegetation stock and street trees if appropriate for roadside settings. • The hierarchy of planning controls applicable to the site mean that the NLEP2012 and Concept Plan approval will take precedent over a CN Policy to the extent of any discrepancy. • A comprehensive assessment of stormwater runoff and water quality has been completed. This is discussed in Sections 5.7 and 5.8 and has found to be acceptable, or could be made acceptable, subject to conditions of consent. • The additional concerns raised by NPWS regarding watercourses in BGHRP have been considered and further consideration of the conditions of consent suggested by the NPWS would need to be made to ensure the conditions are reasonable, lawful and actionable. Refer to NPWS written submission for details on these suggested conditions.
<p>5. Amenity</p> <p>a. Construction impacts (air, dust, noise, traffic)– duration, policing, health concerns</p> <p>b. Negative impacts on Minmi Hotel (patronage and vistas)</p> <p>c. Insufficient 'green areas' within the development or surrounding Minmi Village</p> <p>d. Retention of 'all previously identified green zones, corridors and reserves</p> <p>e. Loss of sense of community and 'rural' or 'country town' atmosphere</p> <p>f. Impact on quality of life</p> <p>g. Loss of open space areas</p> <p>h. Undeveloped land to the south of Neal Close (Residue Lot 3236) should be parkland</p> <p>i. Impacts on existing Lot 49 DP115128 (64 Railway St, Minmi)</p>	<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. 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. • As mentioned above, the zoning of land for residential purposes around the existing Minmi Hotel was completed in 2013 in conjunction with the approval of the Concept Plan. It is also possible that patronage of the only remaining hotel in Minmi might increase as population increases. • As mentioned above, 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

	<p>applicant as a 'residue lot' that will be subject to further applications regarding the ultimate use of this land. The land is also identified as 'Garden House Park' in the Concept Plan approval and subsequent approved MPDG. This matter is discussed throughout this report and CN has made a recommendation that, if consent is granted to DA2018/01351, that a condition of consent should be included to require Lot 3236 to be dedicated to CN as public reserve as intended in the Concept Plan approval and MPDG.</p> <ul style="list-style-type: none"> • No. 64 Railway Street, Minmi is one of the 19 existing isolated properties scattered throughout the development site. It is confirmed that no earthworks or tree removal is proposed within this property however such works are proposed to occur around all sides of the property. However, CN does not support how the integration of this property's northern boundary into the subdivision layout is currently proposed. This is discussed in detail in the MPDG parts of this report
<p>6. Development Controls</p> <ol style="list-style-type: none"> a. Size and scale of the development conflicts with existing Minmi village b. R3 zoning is unnecessary and should be R2 c. Minimum lot size should be to CN minimum d. 20% of dwellings are small/town house which is disproportionate to the character of Minmi e. 862 houses on small, denuded allotments 	<ul style="list-style-type: none"> • As discussed throughout this report, the controls that generally govern the number, area and scale of the proposed allotments (the typology), the locations and apportionment of the differing lot typologies and associated future dwelling types are dictated by the Concept Plan approval and MPDG as approved by the NSW Planning Assessment Commission and Department of Planning and Environment. • DA2018/01351 does not propose to make any changes to the current land zones imposed in 2013. • The Concept Plan and MPDG envisage broad scale vegetation loss and bulk earthworks necessary at the time of subdivision to accommodate the future dwellings.
<p>7. Risk</p> <ol style="list-style-type: none"> a. Fire trail to the west from Stage 37 b. Bushfire risk (Slow evacuations) c. Impact of traffic on emergency services access d. Mine subsidence 	<ul style="list-style-type: none"> • The fire trail to the west from Stage 37 toward the M1 Motorway, as requested by NPWS, is depicted on the Subdivision Plan (Stage 37) Concept Engineering plan amendments for Stages 37/39 and the Updated BAL Plan. The 'tie-in' location at the property boundary aligns with existing and as no works are proposed (or permitted) within the M1 Motorway reserve, tie in to existing will occur at the boundary. Detailed design for the fire trail connection within the development site will need to be compliant with Planning for Bushfire Protection guidelines. If upgrading of that part of the trail in the M1 Motorway is required NPWS should pursue this through discussion with TfNSW. • The bushfire threat risk and proposed bushfire protection measures have been assessed by the NSWRFPS 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. • Mitigation measures (yet to be approved by SANSW) will need to be implemented to eliminate the risk of mine subsidence from the land to make it suitable for the intended uses.
<p>8. Other</p> <ol style="list-style-type: none"> a. Lack of community engagement b. Insufficient time to comment c. Minmi East Stage 1B is example of unacceptable total land clearing and inadequate regulatory compliance d. Cessation of all works on and adjacent to creeks and 	<ul style="list-style-type: none"> • Several of the submissions compare the community engagement undertaken during the preparation and assessment of DA2018/01351 to that undertaken by Coal and Allied prior to and during the assessment of the Concept Plan. • While encouraged, there is no obligation on this 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 four separate occasions since lodgement in 2018. On each occasion, this occurred in accordance with CN's relevant adopted Public Participation

<p>riparian corridors (assumed to mean Minmi East Stage 1B)</p> <p>e. Fundamental right for people to be given just representation as to 'how their environment is shaped'</p>	<p>DCP or Community Participation Plan.</p> <ul style="list-style-type: none"> • 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 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. • Construction activities associated with the approved DA2015/10393 (Minmi East Stage 1B) have been underway for several months and involve significant land clearing and bulk earthworks. These works have the requisite approvals in place as issued by CN, NSW Water (NRAR) etc under relevant legislation. CN is not aware of any grounds on which the construction activity should be stopped.
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5. 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.

5.1 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 Plan approval have been considered in the assessment of the development application.

5.1.1 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 and has, or can, provide each of these existing lots with frontage to a public road.

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 Boulevard (Note: this name is used for reference below but would not be acceptable as the final road name).

Minmi Boulevard is proposed to intersect with Woodford Street before passing through the B2 zoned commercial land in Stage 14 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 F3 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 very noticeable increase in vtpm 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 vtpm 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 (vtpm) two-way
		AM (vtpm)	PM (vtpm)	AM (vtpm)	PM (vtpm)	AM (vtpm)	PM (vtpm)	
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 reduce 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 each DA on the other, the Hunter and Central Coast Regional Planning Panel (the Panel) is intending on assessing the two DA's concurrently. This seems to present the Panel with three main options for determining DA2018/01351 having regard only to local traffic impacts.

- Option 1 – Refuse DA2018/01351 for reasons there is insufficient capacity in Woodford St and Minmi Road to cater for the full development as proposed.
- Option 2 – If DA2018/01351 is to be approved but DA/2087/2018 is not, the consent for DA2018/01351 could be limited to not more than (say) 580 residential use allotments provided the Woodford Street / Minmi Road traffic signals had been upgraded as described in the TIA.

It is considered, however, that to achieve this option would require further assessment by CN to consider those lots that the developer may seek to have approved (and omitted) and ensure these can be appropriately supported by adequate infrastructure and services.

- Option 3 – For DA2018/01351 to be approved to achieve a development yield in excess of 580 lots, DA/2087/2018 must also be approved in the current form, 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.

It is important to understand that, in addition to the above, in order to achieve any development under DA2018/01351 (whether or not DA/2087/2018 has been approved), additional upgrade works are expected to be 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 5.1.2.

5.1.2 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 Boulevard). 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 Boulevard (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.

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 July 2021 submission 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:*
- i. 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;*
 - ii. 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;*
 - iii. 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;*

- iv. *The intersection of Minmi Road and Main Road is to be upgraded with any required upgrades for at-grade Traffic Control Signal;*
- v. *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*
- vi. *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.

On 26 November 2021, TfNSW advised CN that "...there is not an agreed regional traffic model and assessment report (emphasis added), and through the Land and Environment Court process, the Applicant put forward draft consent conditions to address the traffic and transport impacts of the development. TfNSW and the Applicant agreed to these conditions in May 2021." A copy of those conditions was included in the TfNSW response letter and replicate the Applicant's proposed Condition B above.

Significant upgrades to the classified State road network are proposed in the abovementioned condition. However, on the basis of TfNSW's advice that 'there is not an agreed regional traffic model and assessment report' and the fact that the suggested upgrades are not modelled, assessed or recommended in the submitted RTTA, significant concern was expressed to the applicant over the validity of the proposed condition having regard to the principles of the Newbury Test (*Newbury District Council v Secretary of State for the Environment* [1981] AC 578).

In order to demonstrate that these upgrades to the State road network have a planning purpose and nexus that fairly and reasonably relates to DA2018/01351, on 14 January 2022 CN requested the RTTA to be updated to include, as is required by Concept Approval FEAR 1.31, intersection analysis and micro-simulation modelling that demonstrates the impacts of the proposed development and the warrant for and appropriateness of the proposed condition. CN also requested that after this revised modelling is completed and accepted by TfNSW, concept designs for the proposed road upgrades are to be prepared to prove their feasibility and footprint and the impact these works will have on the natural and built environments (such as noise, earthworks, vegetation and biodiversity, flooding and

stormwater, lighting, land ownership etc) is to be addressed by further amendments to the relevant studies and reports.

In response, on 10 June 2022 the applicant confirms that the RTTA complies with the requirement of FEAR 1.31 "...on the basis that:

- a. *It has been prepared in consultation with TfNSW;*
- b. *It contains details of traffic generation and distribution from all land uses (refer to Section 5.1 of the RTTA);*
- c. *It is supported by intersection analysis and microsimulation modelling, with the base model having been previously agreed with TfNSW (refer to Section 2 of the RTTA);*
- d. *The report outlines the timing for upgrades of key intersections (refer to Section 6.2.1 and 6.2.2 of the RTTA). Any upgrade works on the Newcastle Link Road, for which TfNSW (formerly RMS) is the roads authority, will be undertaken in accordance with the requirements of TfNSW;*
- e. *It outlines details of the proposed upgrades to the road network to accommodate the development, including timing and funding arrangements and identifies suitable pedestrian and cycle links across Minmi Road / Newcastle Link Road (Section 6.9 and Section 6.10 of the RTTA).*

The applicant also stated that "...the (abovementioned) condition that has been agreed with TfNSW, and proposed in the DA, represents a compromise position reached during the court process, at the suggestion of the Chief Judge of the Land and Environment Court. It is not a condition that arises from FEAR 1.31 or the outcomes of the SCT Consulting Regional Traffic and Transport Assessment" (emphasis added) and maintains that:

- 4.9 *"This condition is aimed at addressing the significant traffic impacts of the development. This is a legitimate planning purpose and falls within s 4.15 of the EP&A Act.*
- 4.10 *It is for a proper purpose and not an ulterior purpose.*
- 4.11 *It has been agreed with TfNSW that the proposal's adverse impacts on the regional road network can safely be avoided if the key intersections are subject to a number of robust upgrades.*
- 4.12 *The intent behind the identification of these upgrades is to ensure that sufficient additional capacity is added to the road network to mitigate the adverse impact that the development would otherwise have on the network.*
- 4.13 *Because the existing road network is already essentially at capacity, and the piecemeal implementation of successive road upgrades is inefficient, from both a time and cost perspective, the applicant proposes that the identified upgrades should be in place before it adds any further traffic to the network.*
- 4.14 *The proposed condition is not manifestly unreasonable. Although it is not necessarily fair to make one developer bear the full cost of these works, Winten also acknowledges that it cannot add its traffic to the existing road network without causing it to fail completely. The condition recognises that some, or all,*

of this work may be completed by others.

- 4.15 *It is a matter for the applicant whether it wishes to proceed with its development before the existing road network is upgraded, and bear the cost of the upgrade works itself. Presumably this will be determined by market forces.*
- 4.16 *It is also possible that further microsimulation modelling will be undertaken in the future, with less uncertainty, resulting in improved accuracy and the development of a more refined set of upgrade works and staging of those works, in which case the applicant may seek to modify the proposed condition of consent.*
- 4.17 *However, if the Panel remains concerned with the legality of the proposed condition, Winten is content to proceed with an alternative condition, which includes a staged implementation of road upgrades, based on the findings of the SCT Consulting Regional Traffic and Transport Assessment. This proposed alternative condition is included as **Attachment 3** to this response."*

The applicants Attachment 3, contains several proposed conditions that attempt to deal with scenarios under which only DA2018/01351 might be approved or if both DA2018/01351 and DA/2087/2018 (LMCC DA) are approved and reflect the similarly worded recommendations in Tables 6-47 and 6-48 in Section 6.10 'Infrastructure Summary and Staging' in the RTTA. Tables 6-47 and 6-48 are shown below The applicant's Attachment 3 can be found at **Attachment G** to this report.

These tables include allowances for the first 369 lots approved under DA2015/10360 (Minmi East Stage 1A) and DA2015/10393 (Minmi East Stage 1B). Thus, a reference to the 370th dwelling (or lot) is a reference to the first lot resulting from DA2018/01351.

(Table 6-47 from RTTA) Proposed infrastructure and staging – City of Newcastle approved

Level of development	Upgrades required	Funding
369 dwellings in City of Newcastle LGA	– Nil required as already approved	N/A
Before more than 370 dwellings are delivered in City of Newcastle LGA	Signalisation of Newcastle Link Road / Minmi Road, including the provision of additional eastbound lane on Newcastle Link Road for through traffic.	Draft Special Infrastructure Contribution Levy
	Minmi Road from Newcastle Link Road to Transfield Avenue widened to four lanes total by 2026, including a roundabout at Transfield Avenue	Section 7.11 – Lake Macquarie Council
	Minmi Road / Northlakes Drive: – Line marking changes to allow a dual right turn on the western approach	Applicant
	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.	Applicant
	Minmi Road / Main Road: – Conversion of the kerbside parking lane and cycle path into a general traffic lane. – Line marking changes to permit dual left turn lane from Minmi Road (north approach) into Main Road.	Applicant
	1 km shared path provided on Minmi Road	Applicant
Before more than 619 dwellings are delivered in City of Newcastle LGA	Newcastle Link Road / Minmi Road upgrade, including: – Grade separation of north-south movements – Provide a northern approach with five lanes total – Provide right turn bay of length 170m from Newcastle Link Road into Minmi estate – Provide westbound merge lane and continuous left turn	Draft Special Infrastructure Contribution Levy
	Newcastle Link Road / Cameron Park Drive: – Additional turning bay to achieve dual right turn movements on west approach, including widening on exit to allow for safe merging	Applicant
Within five years of completion of 1,355 dwellings	Newcastle Link Road / Cameron Park Drive: – Additional turning bay to achieve dual right turn movements on east approach, including widening on exit to allow for safe merging. – Left turn bay on the western approach	Applicant
Variations	This table may be varied subject to the agreement of both TfNSW and the landowner.	N/A

(Table 6-48 from RTTA) Proposed infrastructure and staging – Lake Macquarie and City of Newcastle approved

Level of development	Upgrades required	Funding
369 dwellings in City of Newcastle LGA	– Nil required as already approved	N/A
Works must be completed: – Before any dwellings in Lake Macquarie LGA – Before more than 369 dwellings are completed in City of Newcastle LGA	Signalisation of Newcastle Link Road / Minmi Road, including: <ul style="list-style-type: none"> – Additional turning bays to achieve dual right turn movements on the west approach – Additional turning lane on eastern approach for a left turn into Minmi Road – Widening on the southern approach to allow for a dual right turn and dedicated left turn 	Draft Special Infrastructure Contribution Levy
	Minmi Road from Newcastle Link Road to Transfield Avenue widened to four lanes total by 2026, including a roundabout at Transfield Avenue	Section 7.11 – Lake Macquarie Council
	Newcastle Link Road / Woodford Street: <ul style="list-style-type: none"> – Additional turning bays to achieve dual right turn movements on west and east approaches, including widening on exits to allow for safe merging 	Applicant
	Minmi Road / Northlakes Drive: <ul style="list-style-type: none"> – Line marking changes to allow a dual right turn on the western approach 	Applicant
	Minmi Road from Transfield Avenue to Sedgwick Avenue: <ul style="list-style-type: none"> – Widening to a total of four lanes and appropriate tie-in works at the roundabout at Transfield Avenue. 	Applicant
	Minmi Road / Main Road: <ul style="list-style-type: none"> – Conversion of the kerbside parking lane and cycle path into a general traffic lane. – Line marking changes to permit dual left turn lane from Minmi Road (north approach) into Main Road. 	Applicant
	1 km shared path provided on Minmi Road	Applicant
Works must be completed: – Before more than 250 dwellings are completed	Newcastle Link Road / Minmi Road upgrade, including: <ul style="list-style-type: none"> – Grade separation of the north-south movements – Walking and cycling underpass/overpass over Newcastle Link Road – Turn bay lengthening for right turn on the southern approach – Merge lanes on Newcastle Link Road on eastern and western sides 	Draft Special Infrastructure Contribution Levy

<p>in Lake Macquarie LGA</p> <p>– Before more than 619 dwellings are completed in City of Newcastle LGA</p>		
<p>Works must be completed:</p> <p>– Before more than 875 dwellings are completed in Lake Macquarie LGA</p> <p>– Before more than 1,244 dwellings are completed in City of Newcastle LGA</p>	<p>Newcastle Link Road / Woodford Street:</p> <ul style="list-style-type: none"> – Left turn bay on Newcastle Link Road (west approach) 	Applicant
	<p>Newcastle Link Road / Woodford Street:</p> <ul style="list-style-type: none"> – Additional right turn bay on the southern and northern approaches – Addition of new short through lanes on the northern and southern sides of Newcastle link Road at Cameron Park Dr and Woodford St 	Applicant
	<p>Newcastle Link Road / Lake Road:</p> <ul style="list-style-type: none"> – Addition of a new right turn bay on Lake Road (north approach) – Addition of a new left turn bay on Lake Road (south approach) – Extension of the left turn bay on Thomas Street 	Applicant
	<p>Minmi Road / Main Road:</p> <ul style="list-style-type: none"> – Conversion of the short left turn lane at Callan Street to a through and left, enabling three through lanes (line marking change) on Main Road westbound to Minmi Road 	Applicant
<p>Variations</p>	<p>This table may be varied subject to the agreement of both TfNSW and the landowner.</p>	N/A

On 1 July 2022, having received two of the applicant's three Response to Request for Further Information letter and amended or additional documentation, CN again referred the application to TfNSW for further assessment and comment.

On 21 July 2022, TfNSW wrote to CN advising that *"TfNSW has reviewed the additional regional transportation documents and does not support the latest proposal to reduce the scope of development works. Your attention is directed towards a previous correspondence dated 26 November 2021 that outlined suitable conditions that should be included as part of any development approval."*

Further, while CN is aware that the applicant has been issued a Satisfactory Arrangements Certificate in regards DA2018/01351 and the contributions toward State public infrastructure, CN is not aware of any commitments made by the NSW Government or TfNSW to fully fund the design and construction of the proposed upgrade to the Newcastle Link Road / Minmi

Road intersection as previously identified in Schedule 2 of the Draft Hunter Region Special Infrastructure Contribution. Although it is understood that some funds have been provided to TfNSW for preliminary investigations works only. As such, CN can have no certainty as to when this intersection may be commenced or completed.

It is assessed that:

- a) The application was referred to TfNSW as a 'traffic generating development pursuant Cl. 2.120 of the Transport and Traffic SEPP.
- b) The applicant has prepared microsimulation traffic modelling and a traffic assessment (the RTTA) in a manner generally consistent with FEAR 1.31.
- c) The resulting microsimulation traffic modelling and RTTA is not accepted or agreed by TfNSW.
- d) The applicant's amended conditions (their Attachment 3), based on the recommendations of the RTTA are not accepted or agreed by TfNSW.
- e) The raft of significant upgrade works suggested by Condition B as being necessary to mitigate the impacts of the proposed development(s) does not appear to have been modelled, identified or recommended in the RTTA.
- f) In the absence of microsimulation traffic modelling and associated RTTA that demonstrates the warrant for the road upgrades proposed in Condition B, CN cannot be satisfied that there is a proper planning purpose and nexus that fairly and reasonably relates to DA2018/01351 on which to rely in imposing Condition B or the like.
- g) There appears to be no firm commitment to date by the NSW Government or TfNSW to timing for construction of the upgrades to the Newcastle Link Road / Minmi Road intersection as previously identified in Schedule 2 of the Draft Hunter Region Special Infrastructure Contribution.
- h) As identified within this report, the environmental impacts of the road upgrade works required to mitigate the impacts of the development(s) cannot be studied or assessed until the scope of works is known and agreed .

Accordingly, having regard to Cl. 2.119(2)(b)(i) and (iii) of the Transport and Traffic SEPP, CN is not satisfied that the safety, efficiency and ongoing operation of the classified road(s) will not be adversely affected by the development as a result of;

- the design of the vehicular access to the land, being the two primary intersections with the Newcastle Link Road (Cl. 2.119(2)(b)(i)); and
- the nature, volume or frequency of vehicles using the classified road network, in particular the Newcastle Link Road, to gain access to the land will not be adversely affected by the development as proposed, (Cl. 2.119(2)(b)(iii)).

5.2 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.

According to the *Road Traffic Noise Assessment (RTNA2020) – Proposed Minmi Estate Development Stage3, Stage 4 and Part of Stage 5* (Muller Acoustic Consulting, Sept. 2020) in 2018, TfNSW traffic data showed the M1 Motorway to have an Annual Average Daily Traffic (AADT) volume of approximately 34,281 and the Newcastle Link Road (either side of Woodford St) to have an AADT of between 41,650 and 44,040 vehicles. In 2018, Woodford Street, north of the Newcastle Link Road had an AADT of approximately 6,320 vehicles.

The RTNA2020 takes into account further background traffic growth on the M1 Motorway and the Newcastle Link Road and also accounts for projected increases in traffic associated with a fully developed scenario for DA2018/01351. The RTNA2020 has also considered a fully developed scenario including the traffic expected to be generated by the adjoining development proposal in the LMCC LGA (DA/2087/2018) as determined in the Traffic Impact Assessment (TIA) by Intersect Traffic.

CN undertook a review of the RTNA2020 and identified that:

"In relation to FEAR 1.41, the MAC report (the RTNA2020) has assessed the potential impact of traffic noise on future residents and has made recommendations. The assessment has considered relevant guidelines and assessed the monitored and modelled noise levels against these guidelines. The assessment indicates that the majority of future dwellings will meet the guideline criteria with standard building materials (light frame residence with single glazing). However, it also notes that to meet the guideline criteria, some residences will need to have their windows closed to meet the internal criteria, and alternative means of internal ventilation would be required.

In relation to FEAR 1.41 the MAC report also recommends that several future dwellings on lots adjacent to Woodford Street and the proposed Minmi Boulevard (which would exceed the internal criteria) should consider a higher standard of construction materials to improve attenuation.

In relation to FEAR 1.42 the MAC report has measured the existing traffic noise as well as calculated the future project traffic noise impact on the existing residential receivers in Woodford Street. The calculated worst case noise level for residents within 10 m of the centre line of Woodford Street is predicted to be 74.4 dB(A) LAeq(15 hr) compared to the daytime criteria of 60, and 68.8 dB(A) LAeq (9 hr) compared to the night time criteria of 55. The criteria referenced for this part of the assessment is from the NSW Road Noise Policy prepared by the Department of Environment, Climate Change and Water NSW (March 2011).

The MAC report then goes on to apply a Table 3 (Increase Criteria for Residential Land Uses) which refers to a +12 dB (external) increase for both the daytime and night time criteria.

As the increase predicted total increase for Woodford St in the MAC report (Table 7) is 5.0 for day time and 7.8 for night time which is less than 12 dB, the report states that no mitigation to existing residences in the vicinity of the project site is necessary.

However, it is noted that the application of the NSW RNP criteria does not appear to be correct. Further direction on the application of this criteria is found on the NSW EPA web page – Applying the NSW RNP Application notes. In accordance with this guidance note which states 'The relative increase criteria are primarily intended to protect existing quiet areas, being areas that are 12 dB or more below the relevant noise assessment criterion that applies day or night, from excessive changes in amenity due to noise from additional traffic.'

In the case of Woodford Street, the existing traffic noise level is stated in the Table 7 of the MAC report as already exceeding the day and night time criteria. In this regard, it is considered that this criteria does not then apply to Woodford Street."

The RTNA2020 should have, for the purpose of FEAR 1.42, continued in their assessment of road traffic noise impacts, feasible and reasonable mitigation measures as outlined in section 3.4 of the *NSW Road Noise Policy (RNP)*.

In this regard, it is noted that an increase of up to 2 dB represents a minor impact, however the predicted increase for Woodford Street, as mentioned above was determined to be 5.0 for day time and 7.8 for night time.

The RTNA2020 includes two Figures (6 and 7) which outline noise management zones with three categories (yellow, green and red) corresponding to noise control treatments to achieve an acoustic performance if applied to dwellings constructed in these zones. The report states that "*dwellings constructed in the noise management zones should have their construction materials reviewed against Appendix C of the guidelines.*"

Accordingly, CN requested the applicant obtain and submit further acoustic advice to address the NSW RNP including the application notes provided by the NSW EPA and make recommendations for how and when any mitigation measure for existing properties are to be implemented. It was also recommended that the above-mentioned Figures 6 and 7 of the RTNA2020 be reviewed in association with the revised modelling to confirm they remain appropriate or require updating.

Further, in order to ensure that recommended construction material review occurs for any future dwellings or applications for alteration and additions to existing residences, CN requested that Figures 6 and 7 are sufficiently accurate and detailed (including cadastral identification) and of an appropriate scale to inform this review and to be enforced by way of future conditions of consent (if appropriate).

CN also requested this revised modelling and report take into account the objections received by CN as a result of the initial public exhibition period for the amended DA.

In reply, the applicant agreed that the application of the 12dB criteria was not suitable for this development application and submitted a supplementary RTNA (**RTNA2022**) (Muller Acoustic Consulting, 14 March 2022).

The RTNA2022 now takes into account the assessment of road traffic noise impact and feasible and reasonable mitigation measures as outlined in section 3.4 of the NSW Road Noise Policy.

In summary:

- a) Because the existing road traffic noise levels already exceed the relevant noise limits, the RTNA2022 for existing residences on Woodford Street has been revised to adopt a 2dB increase criteria above that of the corresponding 'no build option', in accordance with the NSW RNP.
- b) The RTNA2022 provides a further breakdown of the +5.0dB (Day) and +7.8dB (Night) figures to distinguish the increase in road traffic noise as a result of background growth (i.e. the 'no-build option'), development traffic ('build option') and projected directionality of traffic flows.
- c) Consideration has been given to two scenarios, being DA2018/01351 being approved on its own and DA2018/01351 and DA/2087/2018 (LMCC DA) being approved.
- d) For existing dwellings north of proposed Road MC01, road traffic noise levels are anticipated to increase by approximately 1.43dB for the nearest residences on Woodford Street relative to the no build scenario, if both the LMCC and CN DAs are approved. As additional traffic noise will remain below the +2dB increase criterion, no noise mitigation is required for existing residences north of proposed Road MC01.
- e) For existing dwellings south of proposed road MC01, road traffic noise levels are anticipated to increase by 2.24dB (relative to the no-build scenario) for the existing residence at 193 Woodford Street if CN DA is approved, and 3.82dB (relative to the no-build scenario) if both NCC and LMCC DAs are approved. It is noted that exceedance of the +2dB is not anticipated until 2039 in the CN DA scenario, or 2031 in the CN and LMCC DA scenario.
- f) Accordingly, the only existing dwelling that qualifies for consideration of noise mitigation measures is 193 Woodford Street, Minmi.

With respect to 193 Woodford Street, the RTNA2022 lists 'potential' mitigation measures that could be adopted to mitigate end-of-project road traffic noise (RTN) including;

- i. *"road design and traffic management;*
- ii. *quieter pavement surfaces (i.e. open graded asphalt compared to chip seal could reduce RTN by up to 9dB);*
- iii. *in-corridor noise barriers/mounds; and/or*
- iv. *at-property treatments or localised barriers/mounds.*

To achieve a reduction of up to 2.24dB, as per the RTN increase for the CN DA, at-property treatments may include upgrading windows to 6mm monolithic glass with full perimeter seals and installation of mechanical ventilation systems.

To achieve a reduction of up to 3.82dB, as per the RTN increase for the combined CN DA and LMCC DA, at-property treatments may include upgrading windows to 6.38mm laminated glass with full perimeter seals and installation of mechanical ventilation systems."

However, the RTNA2022 and other plans and documentation supporting the development application remain silent on the applicant's preferred or recommended method(s) to ensure appropriate mitigation is achieved.

CN is not supportive of mitigation measure i), ii and iii).

The submitted documentation is also silent with regard to any discussions the applicant may have had with the owner of 193 Woodford St regarding how or when any 'at-property' mitigation measures (glazing, ventilation or barriers etc) would be installed.

Accordingly, as the application currently stands, CN cannot be confident that measures will be implemented to mitigate the identified RTN impact on 193 Woodford St, Minmi.

With regard to CN's request for Figures 6 and 7 of the RTNA2020 to be updated, in their first Response to RFI letter dated 10 June 2022 the applicant agreed to provide these to CN "once the final layout is known, noting that there are likely to be changes to the broader layout as a result of other (unrelated) matters raised by Council". No such updated plans were received in the two subsequent Response to RFI letters dated 30 June 2022 or 29 July 2022.

Figures 6 ((L_{Aeq}(15hr)(Daytime)) and 7 ((L_{Aeq}(9hr) (Night)) from the RTNA2020 are replicated below as **Figures 20** and **21** respectively. The location of 193 Woodford St is identified by the red circle.

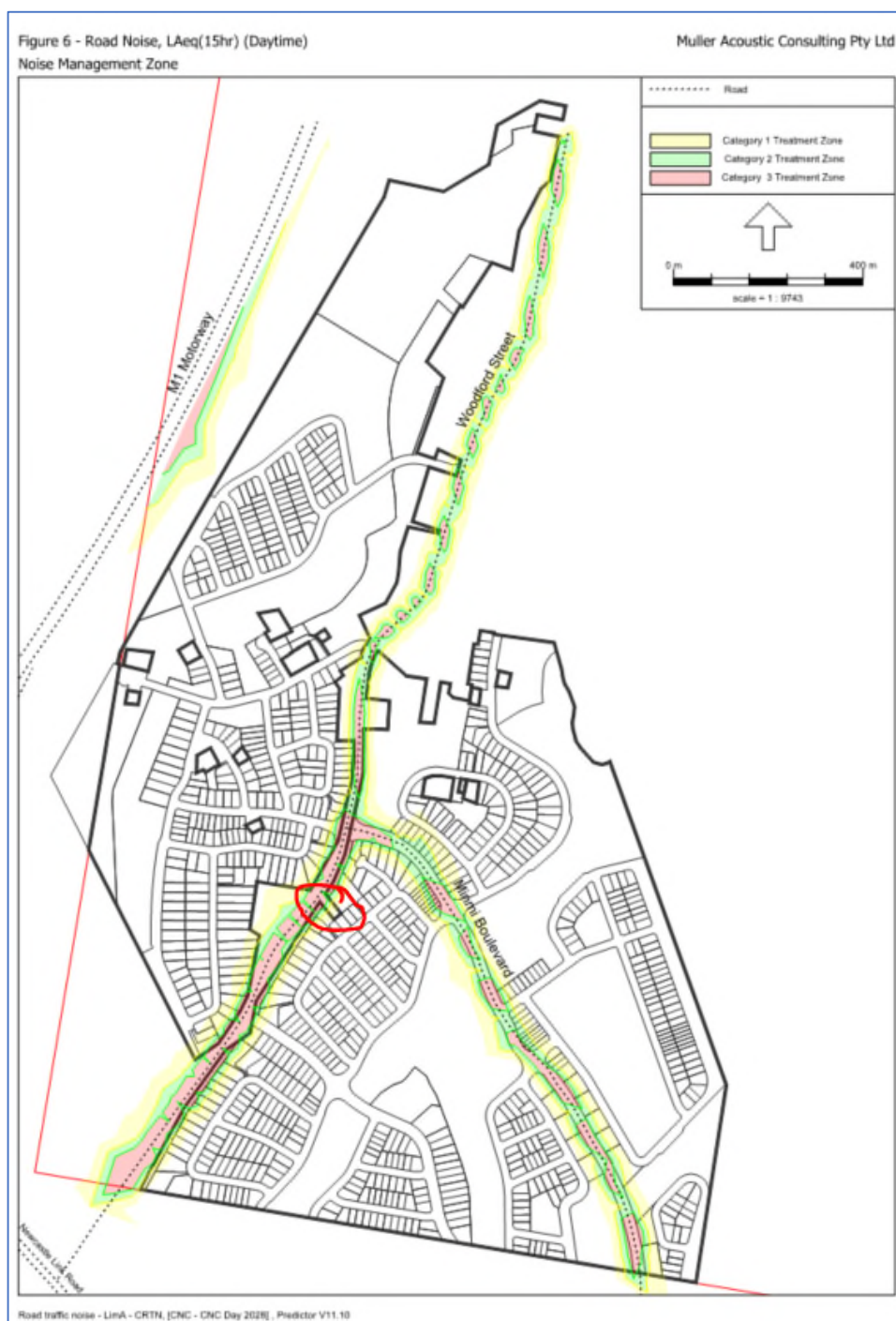


FIGURE 20 – Road Noise Daytime ((L_{Aeq}(15hr)(Daytime)) (Source – RTNA2020)

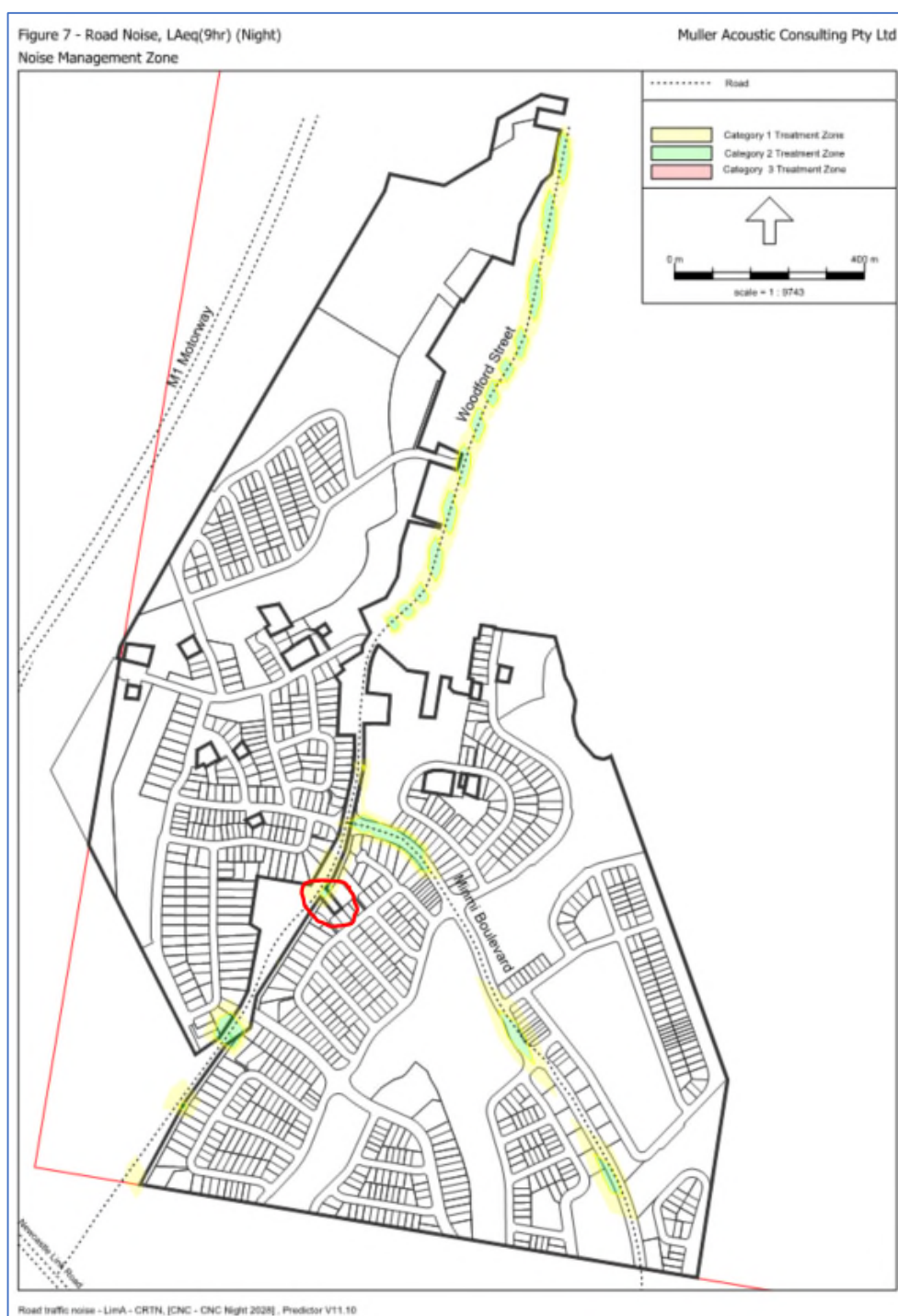


FIGURE 21 – Road Noise Night ((LAeq(9hr)(Night)) (Source – RTNA2020)

It is also considered appropriate that, if consent is granted to DA2018/01351, an appropriate 'restriction on the use of land' be imposed on any proposed new allotments identified on the updated Figures 6 and 7 identified as requiring mitigation measures to mitigate any anticipated RTN exceedances.

In addition to the assessment of the likely impacts of RTN on existing and future residences within the CN LGA, it is noted that other significant road upgrade works are proposed 'off-site' and within the LMCC LGA. These works are identified in the applicant's Regional Traffic and Transport Assessment (RTTA). Such recommended upgrades include works associated with:

- the intersection of the Newcastle Link Road and Woodford St
- the intersection of the Newcastle Link Road and Minmi Road
- Minmi Road from the Newcastle Link Road to Main Road in Edgeworth
- the intersection of Minmi Road, Main Road and associated works on Main Road
- the intersection of Newcastle Link Road and Lake Rd in Wallsend.

It is further noted that TfNSW have advised CN the regional microsimulation traffic modelling completed by the applicant is not satisfactory to TfNSW and, therefore, CN can have no confidence that the recommended suite of road upgrades listed in the RTTA is acceptable, necessary or adequate. This matter is assessed in detail in **Section 5.1.2** of this report.

In response to a request for further information on the likely impact of these off-site works, the applicant has provided simple plan layouts of the upgrades but has not provided any concept engineering plans allowing an assessment to be made of the actual extent of these work. The applicant has also provided a Preliminary Environmental Assessment (ADWJ, 8 June 2022) and Preliminary Ecological Advice (MJD Environmental, 31 May 2022) as part of a "*high level consideration of the likely environmental impacts and constraints.*"

No apparent effort has been made to undertake an acoustic assessment of the potential RTN implications of these works on existing or proposed properties other than to note there is an existing masonry wall in the vicinity of the Newcastle Link Road and Lake Road intersection which they presume to be for noise mitigation purposes.

Accordingly, CN has no information currently available to ascertain what RTN impacts may result, or what or where measures may be required to mitigate the impact of road traffic noise resulting from these recommended upgrades.

As mentioned above in this report, the *Lower Hunter Freight Corridor (LHFC) – Draft Strategic Environmental Assessment* has considered both the existing and future proposed residential areas around Minmi and acknowledges that some future impacts as a result of the proposed LHFC may require the LHFC project to implement mitigation measures to protect the amenity of existing and future residential properties in this locality.

There is also potential for adverse impacts during construction on the existing neighbouring residential and commercial properties. These temporary construction impacts, which have been identified as concerns by a number of existing residents, would be managed by the preparation and implementation of stage specific Construction Environmental Management Plan (CEMP) inclusive of controls around the days and times that construction activities may be undertaken. It must be understood that implementation of the mitigation measures identified in the CEMP will not eliminate these impacts and some disturbance can be expected until subdivision and subsequent building works are completed. This may take several years after commencement of initial subdivision works.

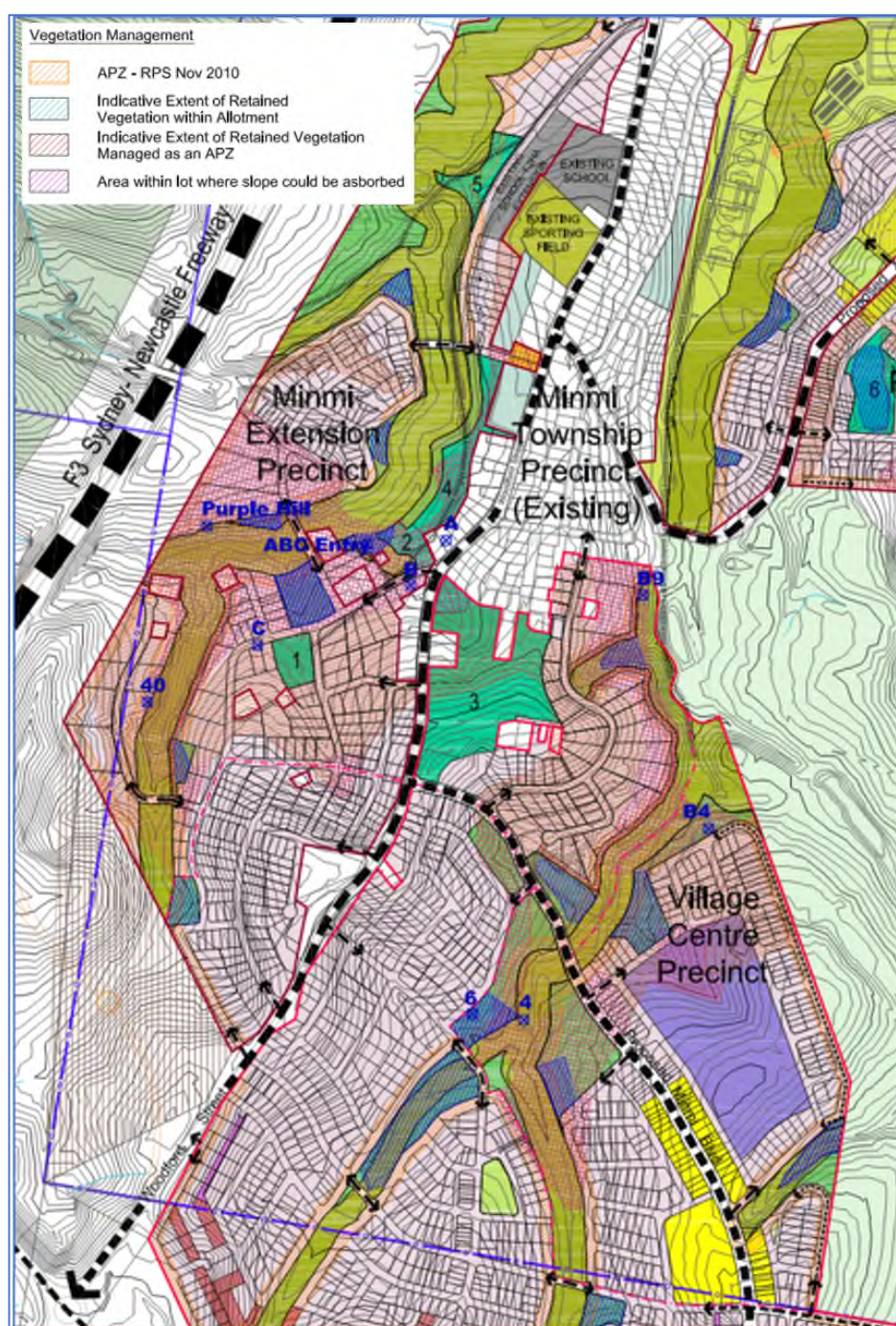
In summary, CN is confident that the impacts of RTN is well understood in relation to existing and proposed properties within or immediately adjacent the development site, however we do not have an understanding of what specific mitigation measure are proposed, or how these are to be implemented in regard to the impacted property at 193 Woodford St, Minmi.

With regard to RTN implications associated with off-site road and intersection upgrades proposed by the applicant, CN has been provided with insufficient information on which to make a proper assessment.

5.3 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 22 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 6** 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 22 - 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.

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%)

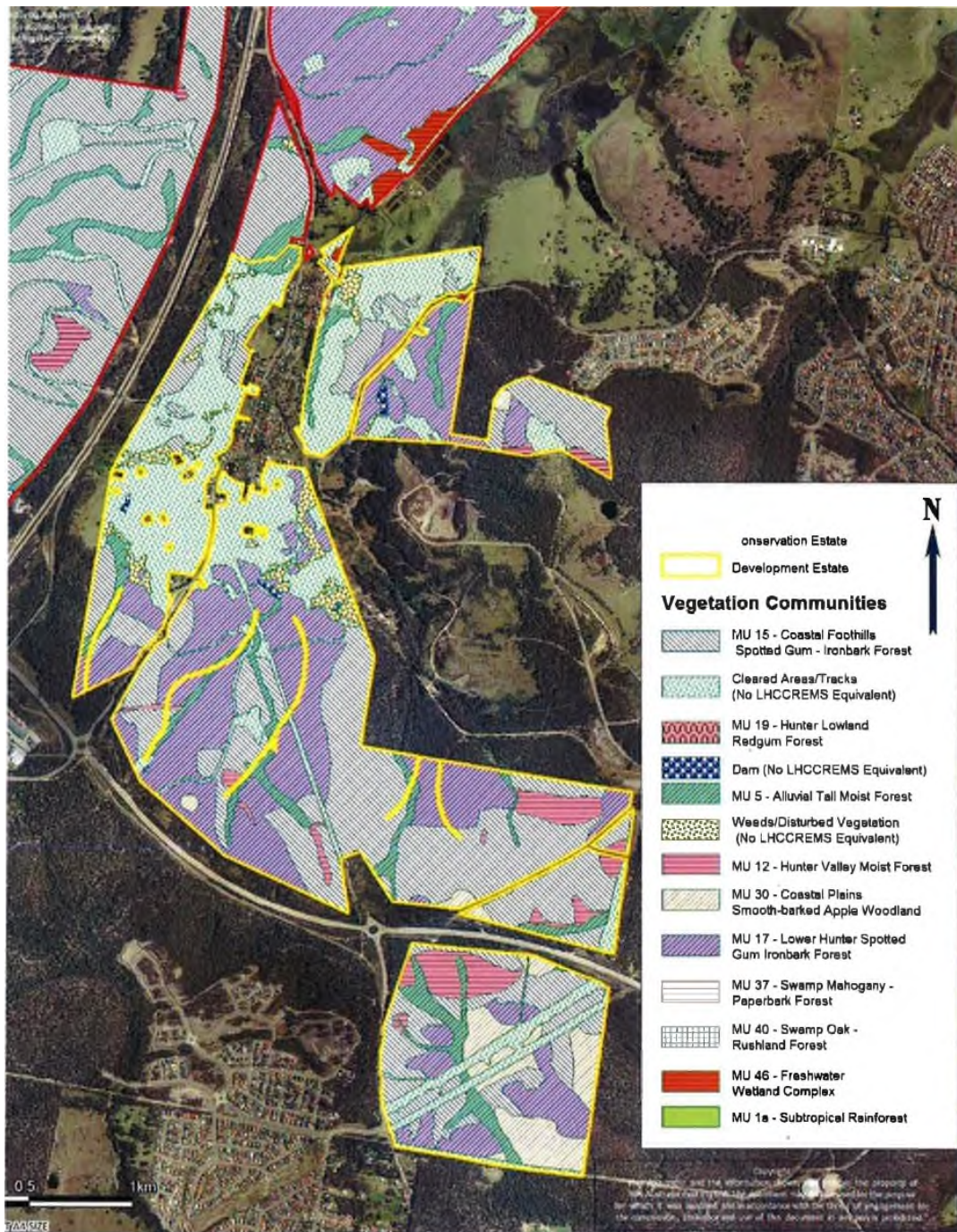


Figure 8. Vegetation communities within the proposed development site

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.

In support of DA2018/01351 the applicant has submitted an *Additional Ecological Information and Ecological Assessment (AEIEA) Woodford Street, Minmi (MJD Environmental, No. 2018* which builds on the original EAR2011.

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 23 24** and **25** below).

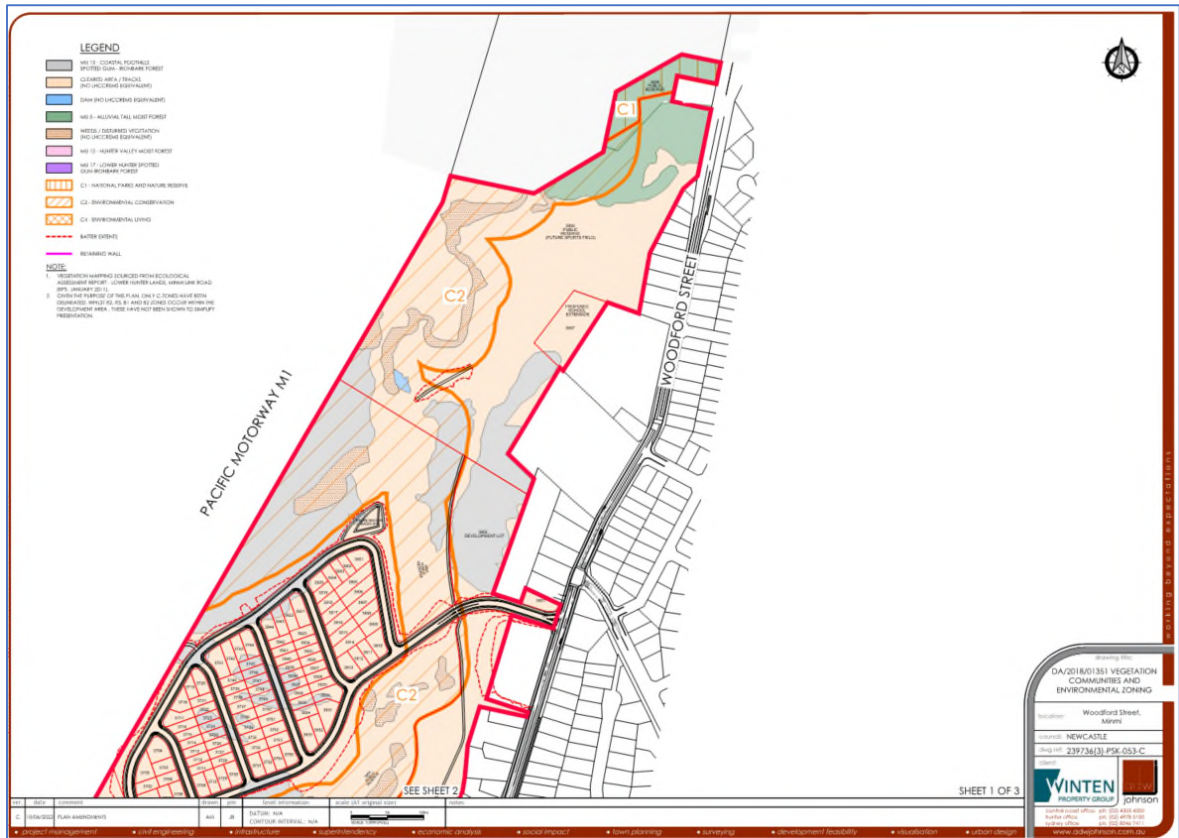


FIGURE 23 – Vegetation Communities and Land Zones (Source – Attachment 13 – Vegetation Mapping, Sht 1)

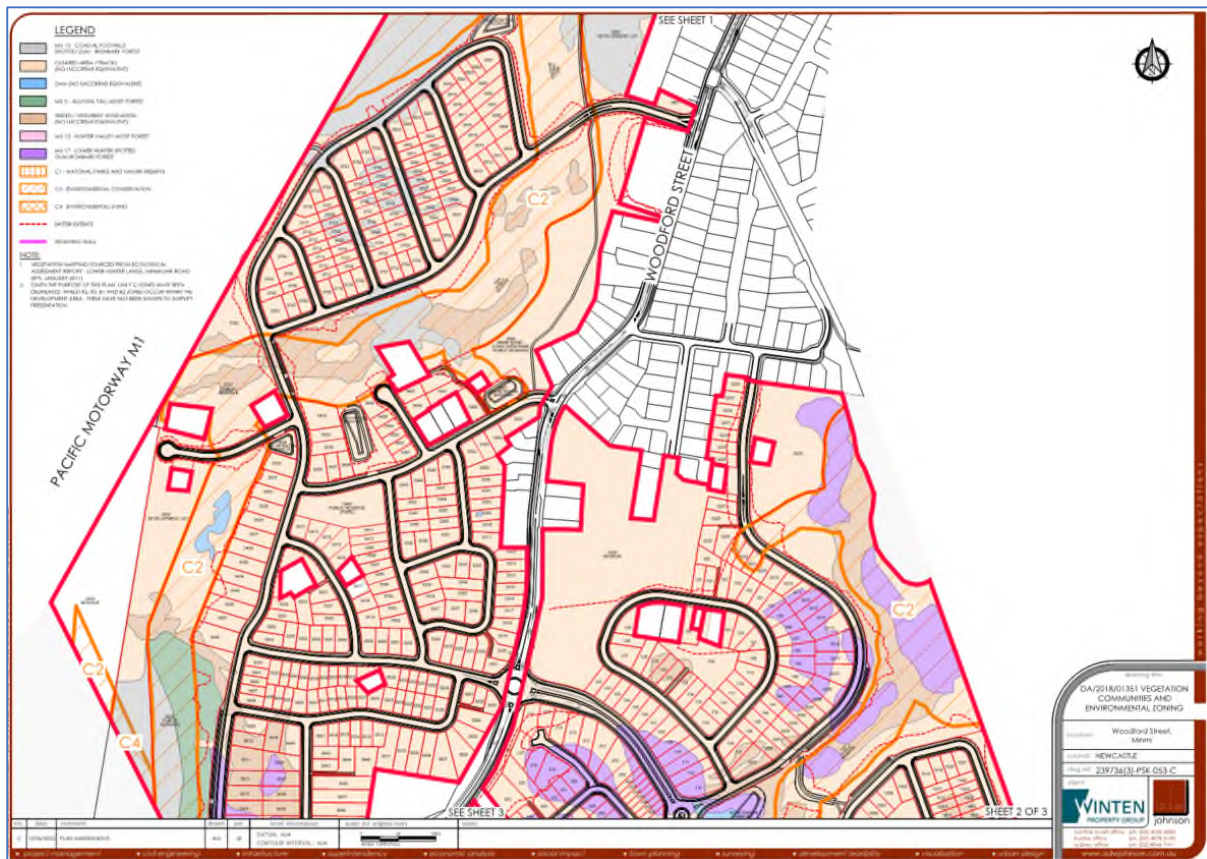
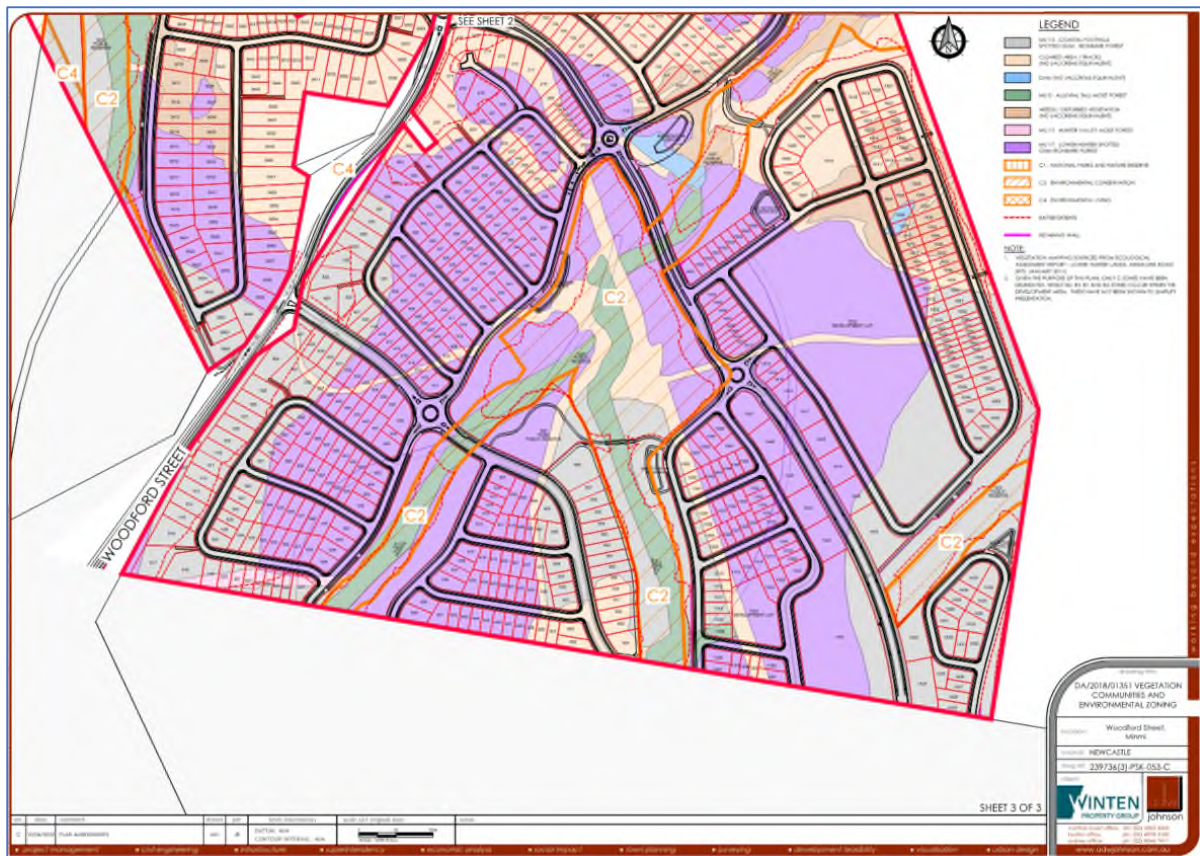


FIGURE 24 – Vegetation Communities and Land Zones (Source – Attachment 13 – Vegetation Mapping, Sht 2)



**FIGURE 25 – Vegetation Communities and Land Zones
(Source – Attachment 13 – Vegetation Mapping, Sht 3)**

The AEIEA comprises two sections:

- Section 1 addressing the relevant FEARS in the Concept Plan approval and additional threatened entities (flora and fauna) that have been listed since that approval, and
- Section 2 to assess the impact of construction of a diversion channel to redirect water from the M1 road reserve to a tributary of Minmi Creek (west of the main residential parts of the project area). These works were not specifically shown on the original Link Road Concept Plan but will be necessary as part of the Concept approval delivery.

Section 1

The 'update' of ecological data consisted of:

- the identification of threatened flora and fauna species (refer to Table 1 of the AEIEA for full details) that have been gazetted and recorded within 10 kilometres of the development site since the production of the initial EAR2011 and an assessment of that species likelihood to occur on the site and the potential for impact from the proposed development, and
- an assessment of significance for identified potential impacts (the 7-part test) on those species that were identified as being likely to be impacted by the proposal.

An assessment of significance was conducted for the *Dusky Woodswallow*, *Varied Sittella*, *Little Eagle* and *Scarlet Robin*.

This additional assessment determined that no significant impact would occur as a result of the proposal.

Section 2

The proposed waterway diversion and rectification works within the M1 corridor no longer form part of the proposed development and, therefore, have not been further considered in this report.

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*.

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 delegate for 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 and Ecological Assessment (AEIEA) Woodford Street, Minmi (MJD Environmental, No. 2018* 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 (emphasis added) (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).

However, in response to a request for further information on the likely impact of the nominated off-site works identified within the Regional Traffic and Transport Assessment (RTTA), the applicant has provided simple plan layouts of the upgrades but has not provided any concept engineering plans allowing an assessment to be made of the actual extent of these works. The applicant has also provided a Preliminary Environmental Assessment (ADWJ, 8 June 2022) and Preliminary Ecological Advice (MJD Environmental, 31 May 2022) as part of a "*high level consideration of the likely environmental impacts and constraints*."

It is acknowledged that the proposed upgrades at the intersection of the Newcastle Link Road and Lake Road at Wallsend and the intersection of Minmi Road and Main Road at Edgeworth are within existing urbanised locations and are unlikely to result in vegetation loss other than perhaps street trees.

It is also noted that the applicant considers the intersection upgrade works required at the intersection of Newcastle Link Road and Minmi Road to be a project for which TfNSW are

responsible and therefore, the above preliminary environmental assessments have excluded these works.

Figure 26 below shows the simple plan layout for the intersection of Newcastle Link Road / Woodford Street / Cameron Park Drive for the 2036 traffic modelling scenario for DA018/01351 only (excluding impacts of DA/2087/2018 – LMCC DA).



FIGURE 26 – Conceptual Plan of Road Upgrade – Intersection Newcastle Link Road and Woodford St - 2036 (Source – Attachment 7 – State Road Upgrades (CN DA), Sht 8)

This plan does not clearly show where, or how much, new pavement widening is required to accommodate the additional turning lanes nor does it give any indication as the extent of new road embankments or associated vegetation clearing.

While the Preliminary Ecological Advice includes preliminary investigations of existing vegetation biodiversity in proximity to the intersection of Newcastle Link Road / Woodford Street / Cameron Park Drive, the Preliminary Environmental Assessment simply makes the following generalised statement:

"No threatened flora or fauna species were observed at the site. No habitat trees were observed within the site boundaries.

While a proportion of the works can be confined to disturbed land (such as existing pavement or cleared road verge), some road widening works will require removal of some vegetation categorised as MU17 – Lower Hunter Spotted Gum – Ironbark Forest (EEC), MU15 – Coastal Foothills Spotted Gum – Ironbark Forest and regenerating shrubs / native plantings, all of which occur at the edge of the existing road verge.

Once the final configuration and footprint of the intersection is known, consideration will need to be given to managing impacts particularly on the vegetation identified as EEC."

It is noted that the previous biodiversity conservation offsets secured under the VPA and certified under CI 34A of the *S&T Regulation* associated with the Concept Plan only accounted for possible works within the development site and did not take into account any vegetation removal or loss of biodiversity associated with any off-site works, such as the regional traffic upgrade works.

It is further noted that TfNSW have advised CN the regional microsimulation traffic modelling completed by the applicant is not satisfactory to TfNSW and, therefore, CN can have no confidence that the recommended suite of road upgrades listed in the RTTA is acceptable, necessary or adequate. This matter is assessed in detail in **Section 5.1.2** of this report.

Accordingly, CN has insufficient information currently available to ascertain what 'off-site' road upgrades may be required or what vegetation removal may result because of these works, or what or where measures may be required to mitigate the impact of the works on biodiversity.

5.4 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 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

<p>Stage 3 Mounded Fill North</p>	<p>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.</p> <p>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.</p> <p>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.</p>
<p>Stage 3 Mounded Fill South</p>	<p>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.</p>
<p>Stage 3 Disturbed Areas North</p>	<p>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.</p>
<p>Stage 3 Former Mine Infrastruc ture North</p>	<p>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.</p> <p>The fill material in this area will require remediation/management. Further assessment could be completed to assist in defining the area requiring remediation/management.</p> <p>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.</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><i>Stage 3 Former Mine Infrastruc ture South</i></p>	<p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>
<p><i>Stage 4 - Open Cut Pit – Central (Young Wallsend Seam)</i></p>	<p><i>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.</i></p> <p><i>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.</i></p>
<p><i>Stage 4 & 5 Disturbed Areas – Access Tracks</i></p>	<p><i>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.</i></p> <p><i>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.</i></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 (RFI) 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 in the RFI, 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 ...), subject to Conditions of Consent that utilise the Site Auditor process</i>” [emphasis added].</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 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 [i.e. a Section (B2) SAS]; and is appropriate for the purpose of ensuring 	<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 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>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 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

<p>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) <u>if the site is remediated in accordance with the Precinct-specific RAP [i.e. a Section (B5) SAS]. For avoidance of doubt, implementation of the Precinct- specific RAP must include any additional requirements that the Site Auditor may impose.</u></p> <p>(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).</p>		<p>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).</p> <p>d. Provided the Precinct-specific RAP is indeed appropriate in both respects (which is the reason for the amended condition), requiring a Site 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 "is appropriate for the purpose of ensuring that the land within the relevant Precinct can be made suitable for all the intended land uses" and certifying that the land within the relevant Precinct "can be made suitable for all the intended land uses (...) if the site is remediated / managed in accordance with the [Precinct-specific RAP]". 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 "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</p>
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		<p><i>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...". 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):"</i></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 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><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</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 Council'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</p>

	materials.	can be appropriately managed with good transportation practices.
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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.

5.5 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 27 below shows the extent and risk profile of mine subsidence constraints as mapped by Douglas Partners in 2011.

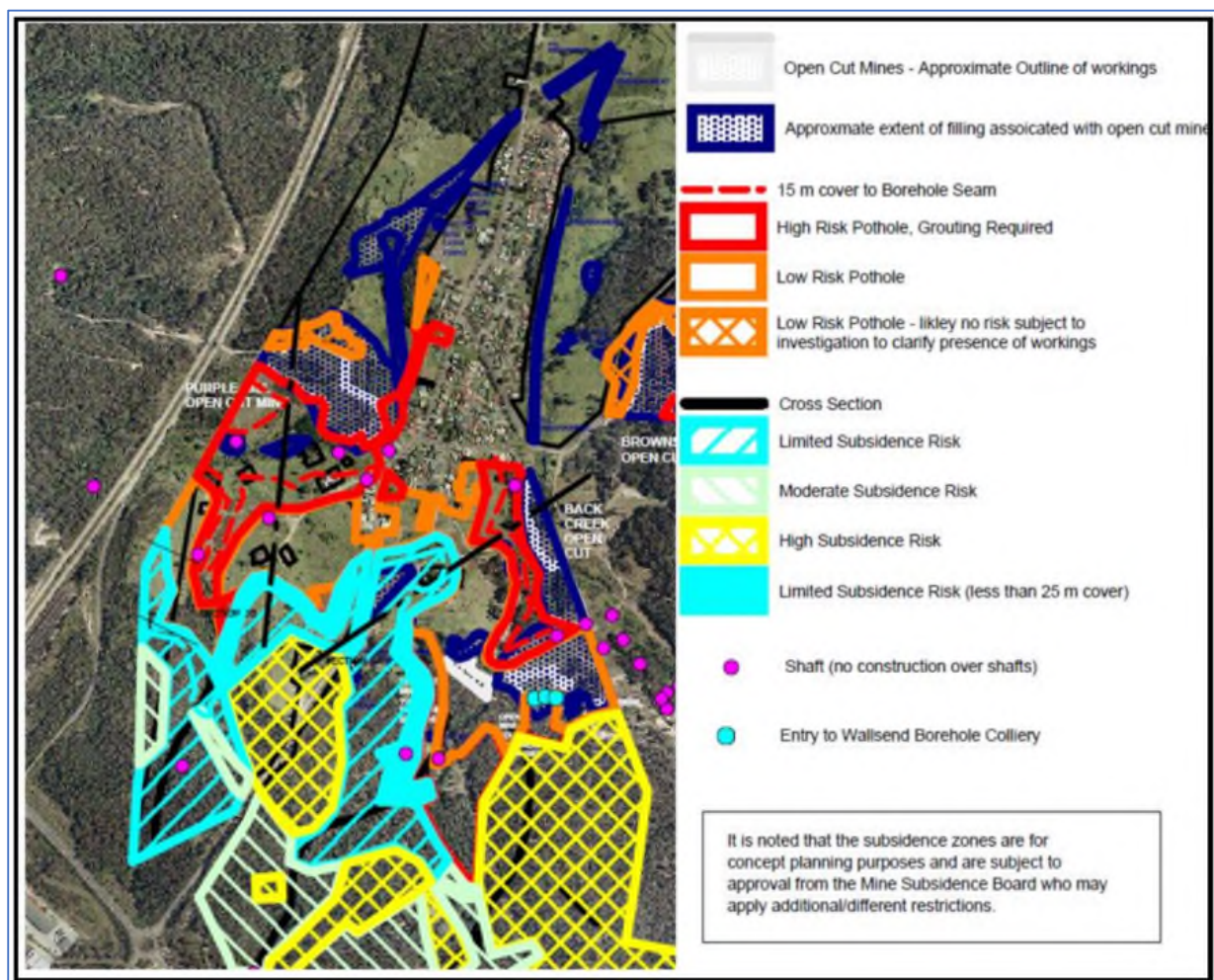


FIGURE 27 - Mine Subsidence Constraints (Source – Douglas Partners, Feb 2011)

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.'*

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

On 12 August 2021, SANSW advised that *"The proposed development encompasses a broad area with differing magnitudes of mine subsidence risk. Our records indicate the presence of a number mine openings and areas encompassed by shallow workings. These areas are prone to sinkhole formation. Under our current merit assessment/subdivision policies, we will require the hazard posed by abandoned mine openings and sinkhole prone areas to be eliminated."*

The SA NSW letter also stated that *"Engineered measures will also be required to mitigate against assessed through (sic) subsidence impact. Any design mitigation measures must be accepted and approved by SA NSW prior to construction works being carried out. This is to ensure future land purchasers will not be adversely impacted by mine subsidence."*

A copy of the SANSW letter was provided to the applicant on 14 January 2022 with a request for further information. That requested noted the existing FEAR 1.30 but advised:

"In order to enable a full and proper assessment of the impacts of these works on the natural and built environment it is considered necessary for the full details of any proposed mine subsidence mitigation strategies to be documented and assessed prior to the determination of this development application."

Such an approach is not inconsistent with terms of FEAR 1.30 as this would still ensure that the geotechnical investigations, design mitigation measures and resulting works are addressed 'prior to the issuing of any subdivision certificate' and also satisfy the timing requirements of SA NSW.

This approach would also permit an assessment of the area and volume of the proposed grouting to be done and, thereby, identifying any owners consents to be obtained from any other properties under which the grouting may extend..."

On 10 June 2022 the applicant provided a response to the request for further information including documents a *'Preliminary Subsidence Framework'* (GHD, 28 Nov 2016), a *'Report on Peer Review of DgS Subsidence Report'* (Douglas Partners, Oct2017) and correspondence from SANSW dated 24 February 2017 and 16 April 2018.

The applicant also confirmed that they believed that to bring forward the assessment and determination of subsidence mitigation strategies was more onerous, and therefore, inconsistent the intent of FEAR 1.30.

Notwithstanding the applicant advised that they would be agreeable to a condition of consent that read:

'Prior to the issuing of any subdivision works certificate for the development, the proponent is to submit geotechnical investigations in accordance with any requirements of SA NSW 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 mine subsidence risk is eliminated for all types of development proposed, including larger floor plate structures.'

This additional information was forwarded by CN to SANSW for further review and consideration. Having reviewed the additional information SANSW convened a meeting held 2 September 2022 with CN, LMCC and the applicant to discuss the concerns and position held by SANSW.

On 30 September 2022, in response to the advice given by SANSW at that meeting, provided a *Supplementary Response to Mine Subsidence Matters* (Winten, 30 September 2022) and *Summary of Changes to Mine Subsidence Risk Assessments, Cameron Park and Minmi* (Douglas Partners, 29 September 2022)

These supplementary documents were also forwarded to SANSW for their assessment and consideration.

On 16 November 2022 SANSW wrote to CN advising:

"As noted in our meeting on 2 September 2022, Subsidence Advisory NSW (Subsidence Advisory) has requested an overall assessment of the site to be completed prior to issuing General Terms of Approval for the proposal. Subsidence Advisory is unable to determine the nature and extent of mitigatory works prior to the required assessments being completed and is therefore unable to specify detailed conditions of approval.

Proposed remediation strategies must be developed and accepted by Subsidence Advisory prior to construction works being carried out. This is to ensure future land purchasers will not be adversely impacted by mine subsidence."

Noting that the above advice made reference to 'GTA's' and a statement that 'Proposed remediation strategies must be developed and accepted by Subsidence Advisory prior to construction works being carried out' which was not the advice given at the meeting held 2 September 2022, CN requested, by email on 17 November 2022, further clarification from SANSW.

CN noted that GTA's were not required as the 'Integrated Development' provisions of the EP&A Act, 1979 had been 'turned off' and sought clarification as to the stage of development (i.e prior to consent/prior to subdivision works, or prior to subdivision certificate') that SANSW considered it appropriate to determine the nature and extent of subsidence risk mitigatory works.

On 23 November 2022, SANSW provided further clarification to CN which confirmed that in SANSW's opinion:

"...the submission of a geotechnical investigation (in accordance with Attachment B of the SA NSW Subdivision Assessment Policy (2018)) is required prior to the issuing of a conditional development consent. Dependant on the investigation findings, a strategy to remove the risk of mine subsidence or other conditions may also be required for the proposed subdivision. This is confirmed in our response issued on 16 November 2022, following our meeting held on 2 September 2022.

The requirements ensure that the mine subsidence risks for the site are appropriately assessed and managed."

In the absence a geotechnical assessment and strategy for subsidence risk mitigatory works agreed and approved by SANSW, CN cannot fully assess or determine what impact these yet unknown works may have on the natural and built environments in this locality.

Further, CN remains of the opinion that to bring forward these investigative works and to develop a plan for mitigating the risk of subsidence within the development site does not cause an inconsistency with FEAR 1.30 and such work would still be occurring '*prior to the issuing of any (the first) subdivision certificate for the development...*'.

5.6 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.

Figure 28 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.

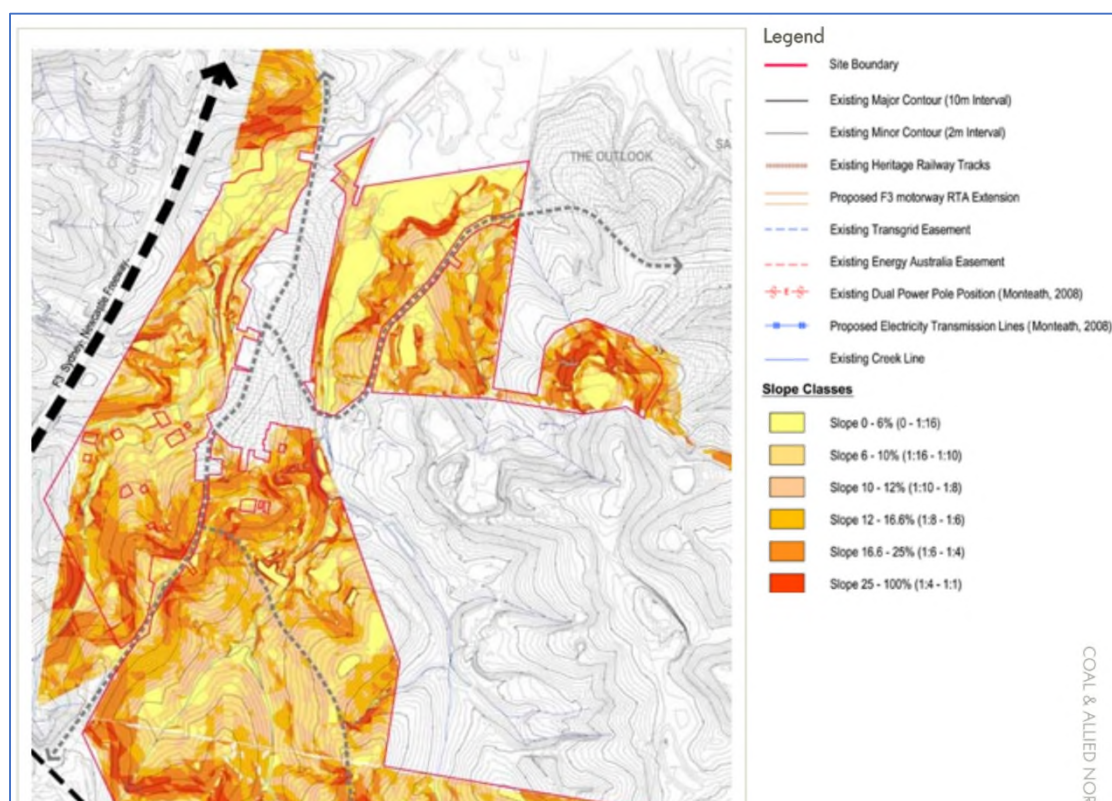


FIGURE 28 - Slope Analysis (Source – Appendix A to Concept Plan Design Guidelines)

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.

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.

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.

Figure 29 shows, as an example, the extent of bulk earthworks proposed in one part of the development. It can be seen that, 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. It can also be seen how bulk earthworks and benching is being avoided on the lots adjacent to the eastern side of Woodford St (refer Lots 504 to 516 for example). Refer to Sheets 501 to 509 of the Concept Engineering Plans for full extent of bulk earthworks proposed.

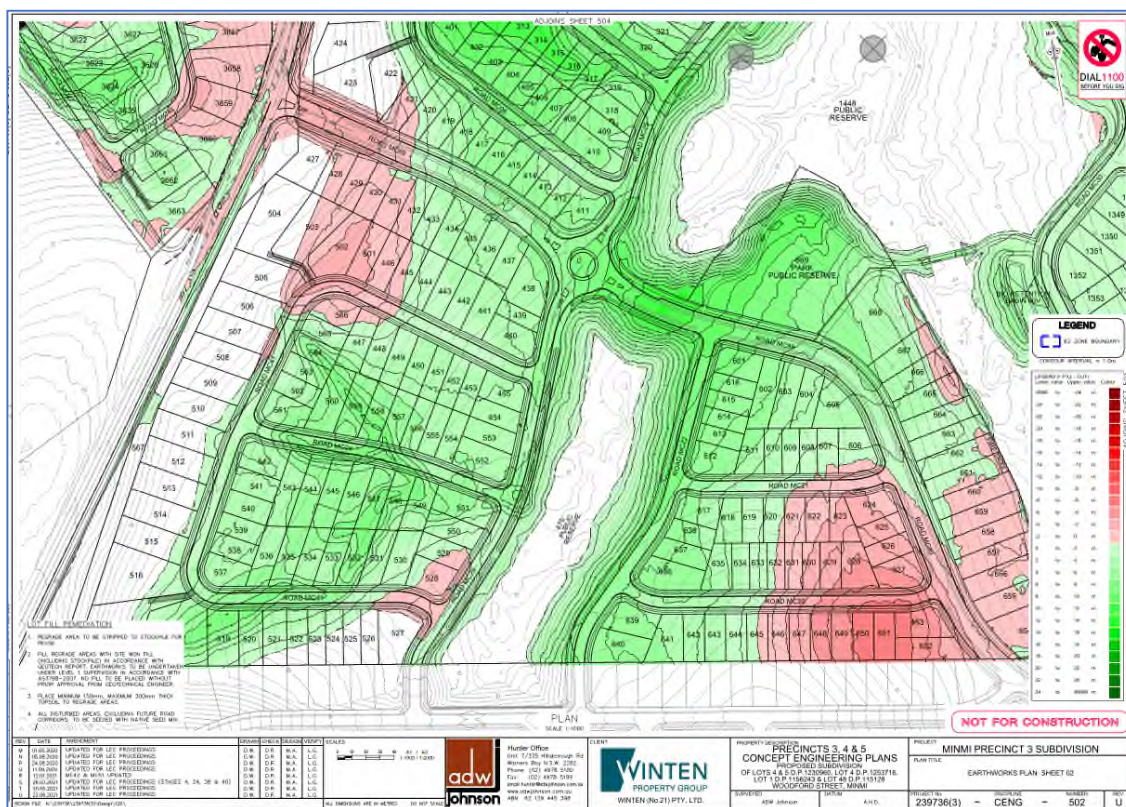


FIGURE 29 (Example of Bulk Earthworks (Source – Concept Engineering Plan Sht 502))

As can also be seen in **Figure 29**, significant earthworks are also proposed adjacent the southern boundary interface with land in LMCC LGA. Where this is at its most significance, is the southeast part of the development site in Stage 14 where Drawing Sht. 501 of the Concept Engineering Plans indicates a cut depth of approximately 9m. The application is silent on how these earthworks are to be achieved in a sustainable manner without impact on neighbouring lands in LMCC LGA.

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 15m-wide lot on a 10% slope would require a 1.5m 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 the applicant's preference to undertake benching as part of the subdivision works to avoid uncoordinated earthworks by individual landowners in the future.

Figure 30 shows the extent of proposed lot benching across most of the development site.

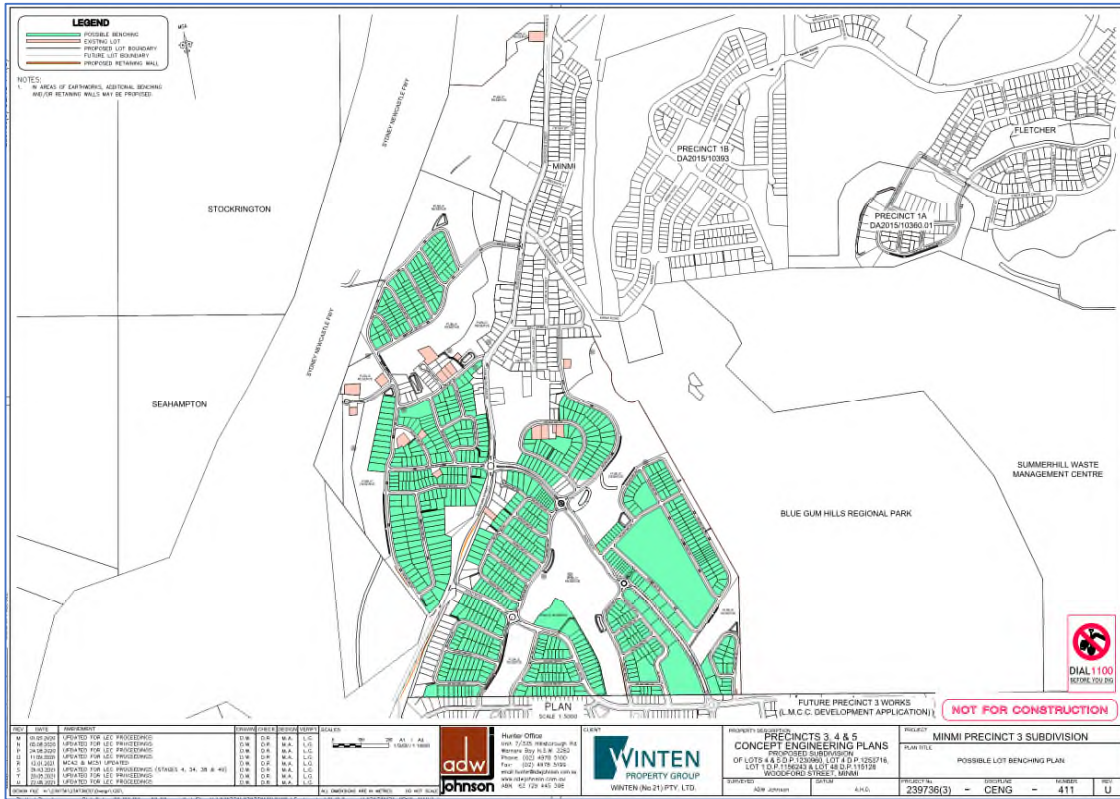


FIGURE 30 - Extent of Lot Benching (Source – Concept Engineering Plan Sht 411)

Figure 31 shows how retaining walls will be employed on these benched lots. The exact location and extents of retaining walls associated with the above benching will not be known until detailed design is undertaken of each respective stage of the development.

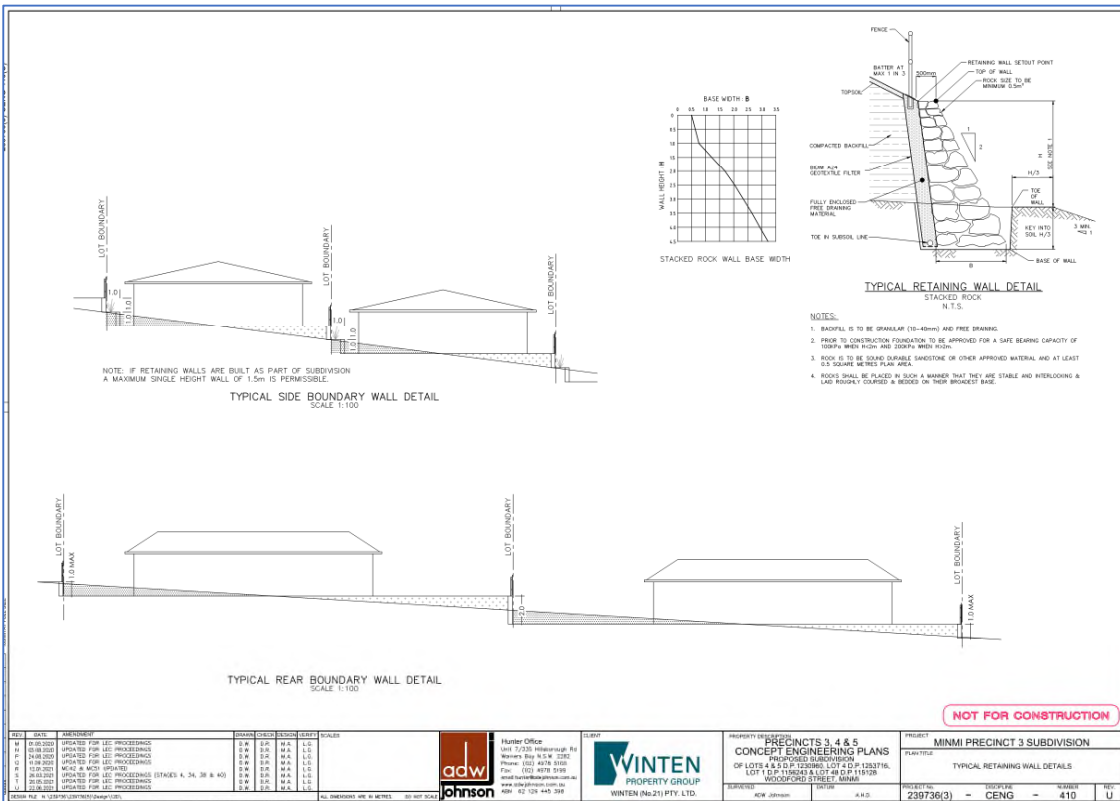


FIGURE 31 (Typical Sections Lot Benching (Source – Concept Engineering Plan Sht 410)

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.

However, it remains unclear how the applicant proposes to undertake the earthworks proposed under this application, and adjacent to the southern site boundary, without impacting on adjacent land.

5.7 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**).

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 Consultant, NSW Practice Lead – Water Resources used by CN to provide expert evidence during the discontinued LEC Appeal.

In response to FEAR's 2.23 and 1.24 the applicant has prepared the following;

- *Minmi Estate Flood Assessment – Stage 1B (Minmi East Precinct), Stage 3 (Minmi Extension Precinct), Stage 4 (Village Centre Precinct) and Stage 5 (Link Road North Precinct)*, prepared by BMT and dated 21 July 2022 (Revision 12) (**the BMT report**)
- *Floodplain Management Plan: Residential Subdivision Precincts 3, 4 and 5, Minmi, NSW*, prepared by Martens and Associates and dated July 2022 (**the MA report**)

The initial review undertaken by CN's consultant of the amended development application lodged in July 2021 identified a significant array of matters for which additional information was sought from the applicant.

The additional or amending plans and reports submitted in response in June and July 2022 have satisfactorily addressed the majority of those initial concerns however several concerns still remain which are discussed on more detail below.

The BMT report has studied the impact of the proposed development regarding local catchment flooding of Minmi Creek, Back Creek and Maryland Creek, as well as mainstream flooding of the broader Hunter River system. The BMT report has detailed hydrologic and hydraulic models of the local catchment that were developed for the assessment in order to establish existing and developed flood conditions.

The BMT report provides the following summary of the key flood related development controls appropriate to the proposed development site and potential flood impacts.

- a) *"Peak Flood Levels – Peak 1% AEP flood levels indicate that the majority of the proposed development lots are situated outside the developed scenario 1% AEP flood extent. It is predicted that six (6) properties are flood affected; two (2) within CN and four (4) within LMCC. Additionally, there is one (1) existing property that is flood affected, however is also subjected to similar inundation under the existing conditions. There is also one (1) lot within LMCC that is recreational land.*
- b) *Flood Planning Area and Level – The flood planning area (FPA) and level (FPL) is derived from the peak 1% AEP flood level for local catchment flooding plus a 0.5 m freeboard allowance. This provides the minimum habitable floor levels required for the proposed development. This will be achieved for a majority of the proposed development lots as they are situated outside of the 1% AEP developed scenario flood extent (refer Section 5.2) and FPA (refer Section 5.2.1). Only a small number of properties have minor inundation along the property boundary. It was predicted that eighteen (18) lots are located within the FPA extent, including nine (9) within CN and nine (9) within LMCC.*
- c) *For each proposed lot that is affected in a 1% AEP event and FPA under the developed conditions, a summary of the location and horizontal encroachment (in m) are provided in Table D-1 and mapping in Appendix D. Winten provided commentary about the proposed development for each proposed lot within the 1% AEP flood extent and/or FPA, which is summarised as follows:*
- *As the DCP's for both LGAs require a rear boundary setback of 4 m, it is not expected that any building or structure would be constructed in these areas where the horizontal encroachment is less than 4 m if this setback requirement is satisfied.*
 - *A number of flood affected proposed lots are within the proposed 19 m wide bushfire Asset Protection Zone (APZ) — refer to Appendix D for information on these proposed lots.*
 - *A number of affected proposed lots are not currently subject to the current CN DA and will have mitigation options designed (i.e. basins) under separate DAs.*
 - *Proposed lot is within recreational land.*
- d) *Flood Classification - As a majority of the proposed development lots are located outside of the 1% AEP flood extent (refer Section 5.2), they are situated outside of designated floodway and flood storage areas. For the small number of properties within the 1% AEP flood that are affected under the design scenario conditions, three lots are subjected to a floodway, although one is an existing lot and is classified as floodway under existing conditions. The remaining lots are flood storage or flood fringe.*
- e) *Flood Impact Categories - The proposed development lots are mostly located outside the developed scenario hydraulic impact categories and 1% AEP flood extent, with only a few properties having minor inundation along the property boundary closest to the designated waterway. It is predicted that three (3) lots are within the floodway, although one (1) is an existing lot and is classified as floodway under existing conditions. The remaining flood affected lots are within the designated flood storage and flood fringe.*
- f) *Risk to Property - The flood 1% AEP flood extent is primarily classified as P2 to P4 property hazard under the proposed developed scenario, with some localised areas of P5 upstream of waterway crossings. Within flood affected proposed development lots, the property hazard is classified as P1 to P3.*
- g) *Risk to Life – The vast majority of the proposed development lots are located outside of the PMF extent. However, there are a small number of the development lots that are located within the PMF extent under the developed scenario catchment conditions and are primarily classed as L2 life hazard. The L2 classification allows normal light frame residential buildings as floodwaters in these areas are likely to be navigable by wading or heavy vehicles. There are also localised areas of L4 and L5 that encroach on*

proposed development lots, within the footprint of the proposed detention basins and on the upstream side of the proposed road crossings. These lots may be subject to stringent planning provisions such as structural reinforcement or provision of suitable area above the peak PMF level in order to manage risk to life (refer to Section 5.2 for further discussion).

- h) Flood Impacts (local catchment flooding) – The flood impact assessment has indicated changes to peak flood level and velocity distributions as a result of the waterway crossings, and minor encroachments of the proposed development landform into the existing flood inundation extent (such as the sportsfields). The majority of area impacted is within the existing flood inundation extents and typically confined within the existing riparian corridors.*
- i) Flood Impacts (coincident flooding) – The flood impact assessment for the 1% AEP local catchment flooding with a 1% AEP Hunter River tailwater (3.8 m AHD) results in increased flood levels along the flood fringe in the lower portion of the catchment. These increases are observed to reach 120 m upstream of the sportsfield within Back Creek. There are not predicted flood impacts within the proposed development lots, however some localised impacts are predicted within the sportsfield."*

Flood Impacts (general)

The predicted impact of the development on peak flood levels is presented in Figure 5-4 of the BMT report for the 1% AEP flood with a 1 m AHD tailwater level. The impacts are presented as thematic mapping of the predicted change in peak flood level along each tributary that drains through the development site. As the figure is a single A4 sheet that covers the entire development precinct it is difficult to interpret the extent and magnitude of the predicted increase or decrease in peak flood level. It would be more appropriate to present the impacts as a series of larger scale figures showing the impacts along specified reaches of the creek system. It is also noted that the thematic mapping of the flood level impact is based on a "change in flood level" that does not vary uniformly; that is, each incremental change in level in the legend is not the same. This can lead to a misinterpretation of the visual representation of the flood impacts which is the primary objective of presenting them as thematic mapping.

It is noted that additional mapping of the predicted flood impacts is presented in Appendix C of the BMT report. However, this additional mapping only presents the results from the simulation of other design events and does not improve the level of detail in the vicinity of areas where the impacts are more significant.

Tables 5-2 and 5-3 of the BMT report provide a comparison of pre and post development flood levels and flow velocities at "key locations" for the range of design events that were modelled. There is no commentary detailing how these locations were determined or why they are considered to be "key", and the only way they can be identified is via numbering presented on Figure 5-4.

The commentary that is provided indicates that the results of the modelling show "*the proposed development has some localised impact on existing flood levels*". Inspection of Table 5-2 of the BMT report indicates that increases in peak 1% AEP flood level at the key locations range from 0.01 to 3.2 m, with many locations exposed to increase in excess of 0.2 m. Increases of this magnitude cannot be construed to be "localised impacts" or be considered acceptable without further and appropriate justification.

Figure 32 shows the Peak Flood Depth for the local catchment under existing 1% AEP conditions.

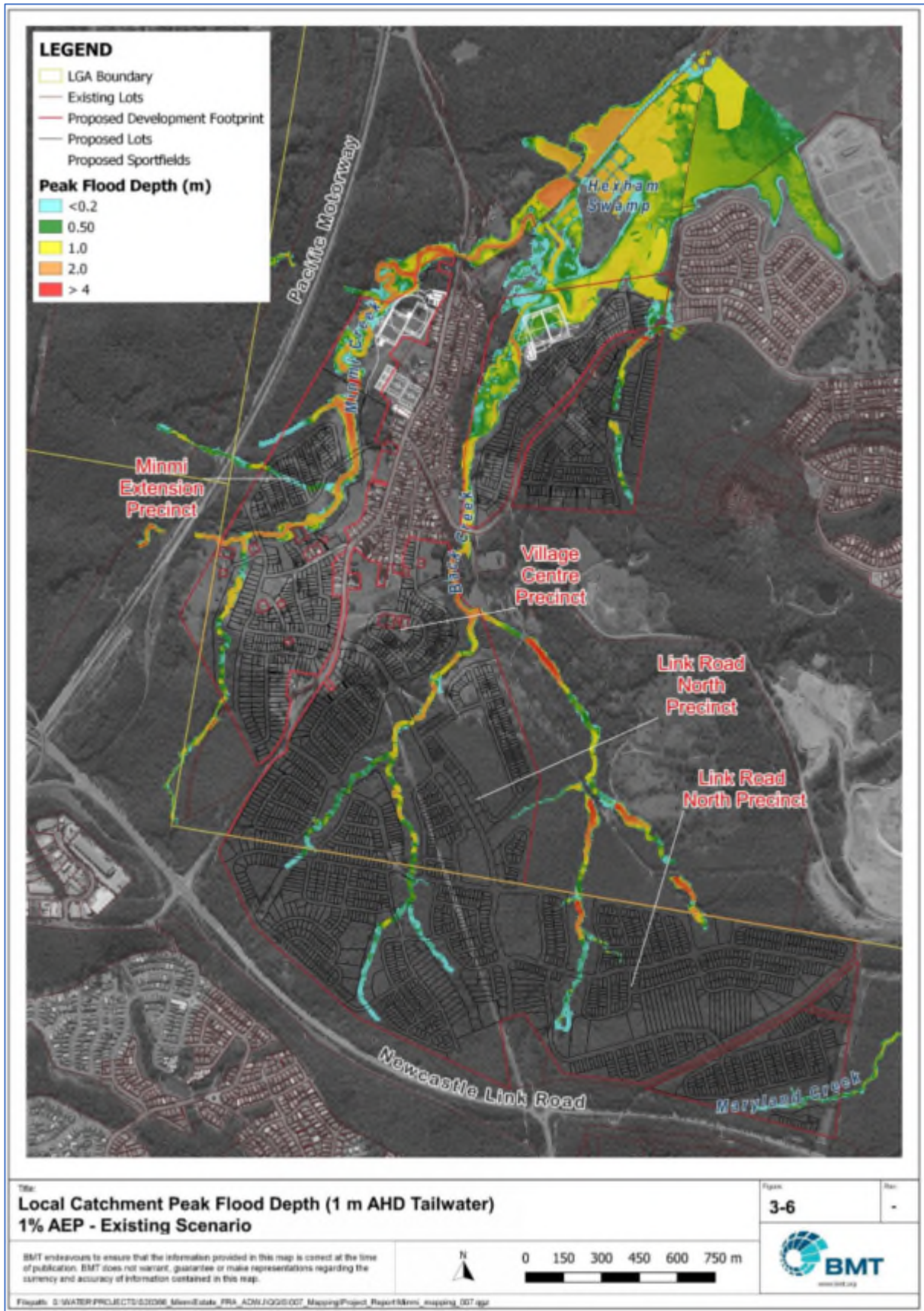


Figure 32 – Existing Peak Flood Depth 1%AEP with 1m AHD Tailwater (Source BMT Report, Figure 3-8

Figure 33 shows the Peak Flood Depth for the local catchment under 1% AEP fully developed conditions.

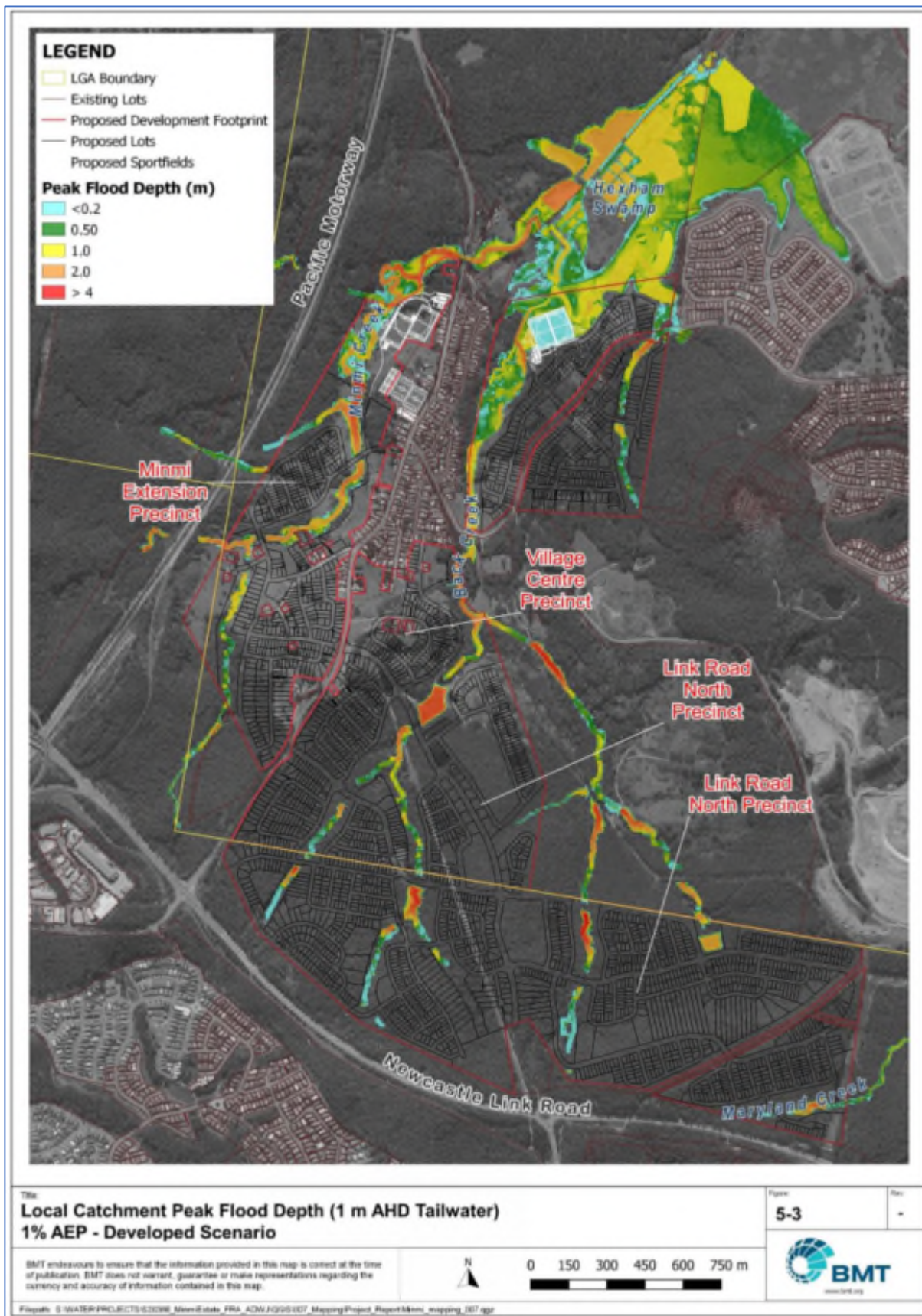


Figure 33 – Developed Peak Flood Depth 1%AEP with 1m Tailwater (Source BMT Report, Figure 5-3)

Figure 34 shows the Risk to Life categories for the local catchment under Probable Maximum Flood (PMF) fully developed conditions.

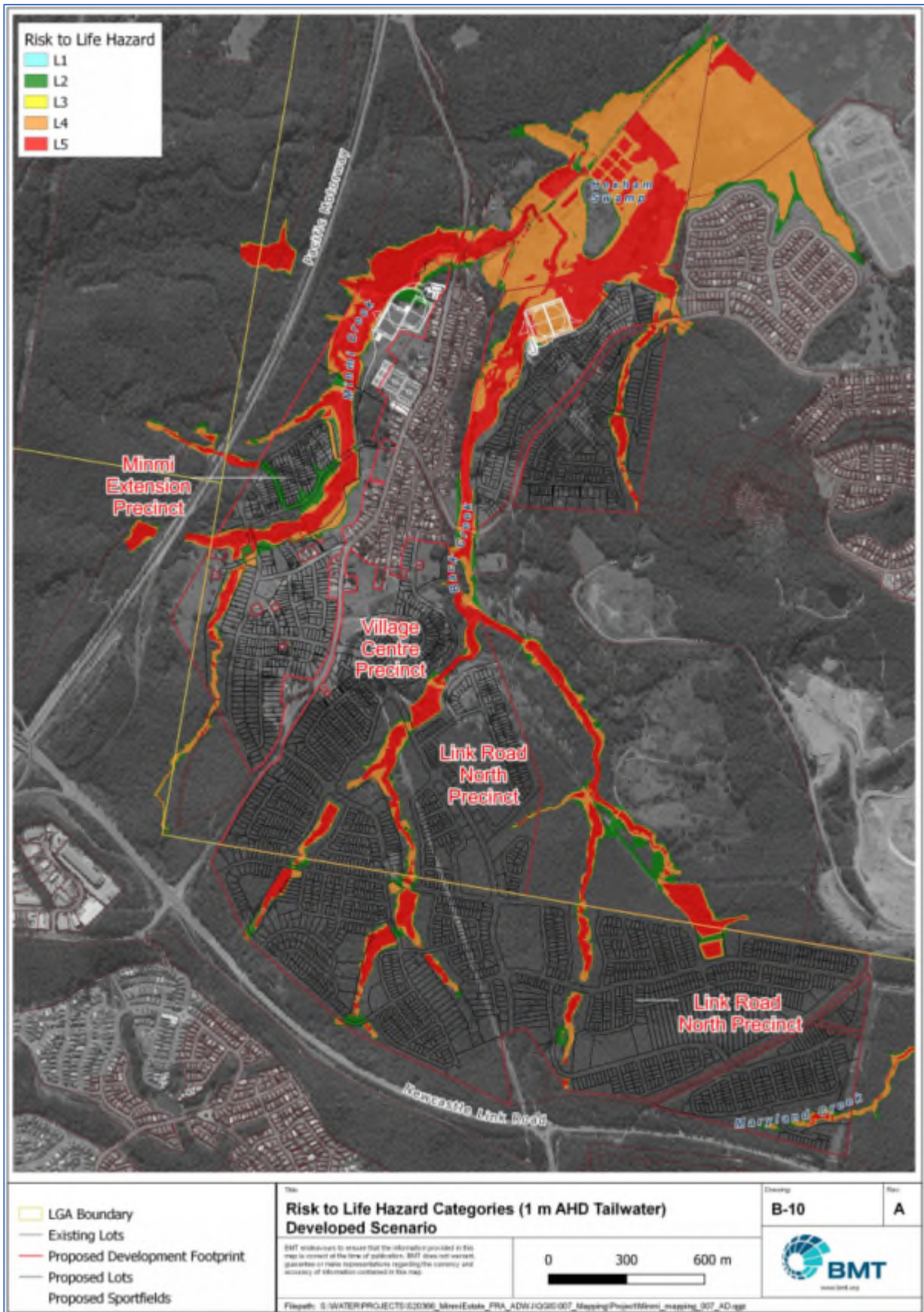


Figure 34 – Developed Peak Flood Depth PMF with 1m Tailwater (Source BMT Report, Figure B-08)

Save evacuations in Probable Maximum Flood (PMF)

Safe evacuation routes or flood refuge locations are required when the risk to life hazard category is determined to be L4 or L5.

NDCP2012 Section 4.01 - Flood Management defines a Flood Refuge as 'an area free of flooding. It can be either higher ground or it could be in the form of an area of the building, either constructed specifically for the purpose or as an intrinsic part of the building'.

On-site refuge is to be provided for all development where the life hazard category is L4 unless the proposed development is less than 40m from the perimeter of the PMF extent and the higher ground is accessible. Refuges are not required for L1 to L3 zones. Habitable development is generally not permissible in L5 zones.

As can be seen above, all of the proposed allotments appear outside of the L5 zone and evacuation or other specific refuge provisions would not be necessary. Any existing or proposed dwelling shown to be within the L4 zone will require on-site flood refuge, however the NDCP2012 also permits dwellings within the L4 zone if proposed development is less than 40m from the perimeter of the PMF extent and the higher ground is accessible.

Accordingly, CN is satisfied that all existing and proposed dwellings or activated public lands are safe, or can be safely evacuated to nearby higher ground, or can be provided with suitable flood refuge provisions included in designs for future dwelling or structures.

Flood impacts (specific locations)

Interrogation of Figures 5-4 and 5.6 of the BMT report indicates that the proposed development will cause increases in 1% AEP flood levels in areas outside the boundaries of the site. Locations where this is evident are as follows. See **Figure 35** below showing the extent of increased flood depth (level) in the 1% AEP developed scenario assuming 100% blockage factor (see discussion below on blockage).

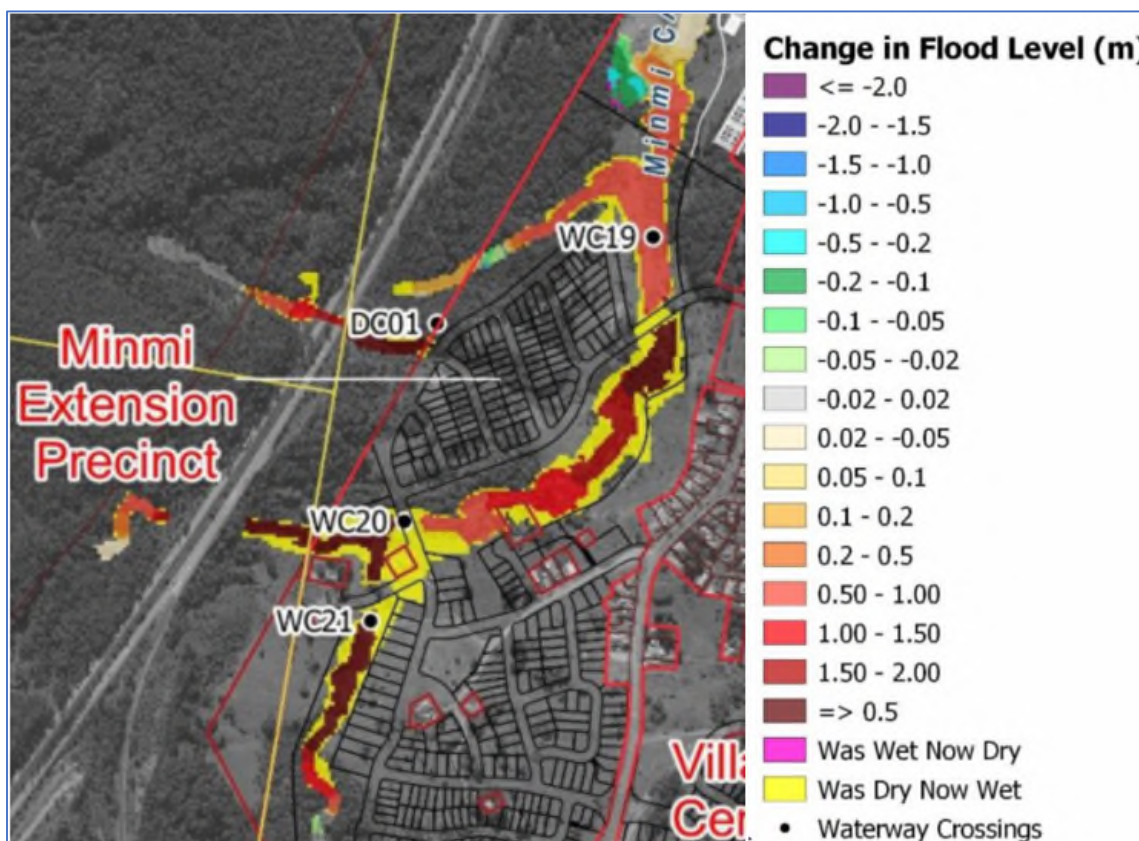


Figure 35 – Increase in Peak Flood Depth 1%AEP, 1m tailwater, 100% blockage (Source BMT Report, Figure 6-4)

- Along the tributary of Minmi Creek that intersects the Minmi Extension Precinct and which is proposed as part of the development to be diverted via a diversion channel (ID DC01). The mapping in Figure 5-4 of the BMT report indicates that 1% AEP flood levels are predicted to increase in the adjoining property to the west for about 200 m and by up to 0.5 m. This is a significant impact and indicates that the development proposal does not conform to the requirements of the NSW Government's Flood Prone Land Policy as outlined in the Floodplain Development Manual (2005). Also, the extent and increase in changed flood level in this location may be further altered by the position taken by CN within this report not to support the proposed arrangements for the diversion channel (ID DC01) and the recommendation that this diversion be constructed as an appropriately sized open channel.
- Along a tributary of Minmi Creek extending upstream from waterway crossing WC20 in Figure 5-6 of the BMT report which drains the area to the west of the site. The mapping in Figure 5-4 of the BMT report indicates that 1% AEP flood levels are predicted to increase in the adjoining property to the west for a distance of about 200 m and by up to 0.5 m. This is a significant impact and indicates that the development proposal does not conform to the requirements of the NSW Government's Flood Prone Land Policy as outlined in the Floodplain Development Manual (2005).
- There may be other areas where off-site impacts occur due to the proposed development. However, due to the issues with the scale of the mapping and the thematic (colour) grading presented in Figure 5-4 of the BMT report, it is difficult to identify the magnitude of these. The modelling results would need to be made available for review to confirm that off-site impacts were limited to the two locations outlined above.

Figure 36 shows a closer image of existing conditions in the vicinity of the existing dwellings located off Railway Street.



Figure 36 – Existing Peak Flood Depth 1%AEP with 1%AEP Tailwater – Vicinity of existing Railway Street properties (Source BMT Report, Figure 3-8)

Figure 37 also shows a closer image of the fully development conditions in the vicinity of the existing dwellings located off Railway Street.

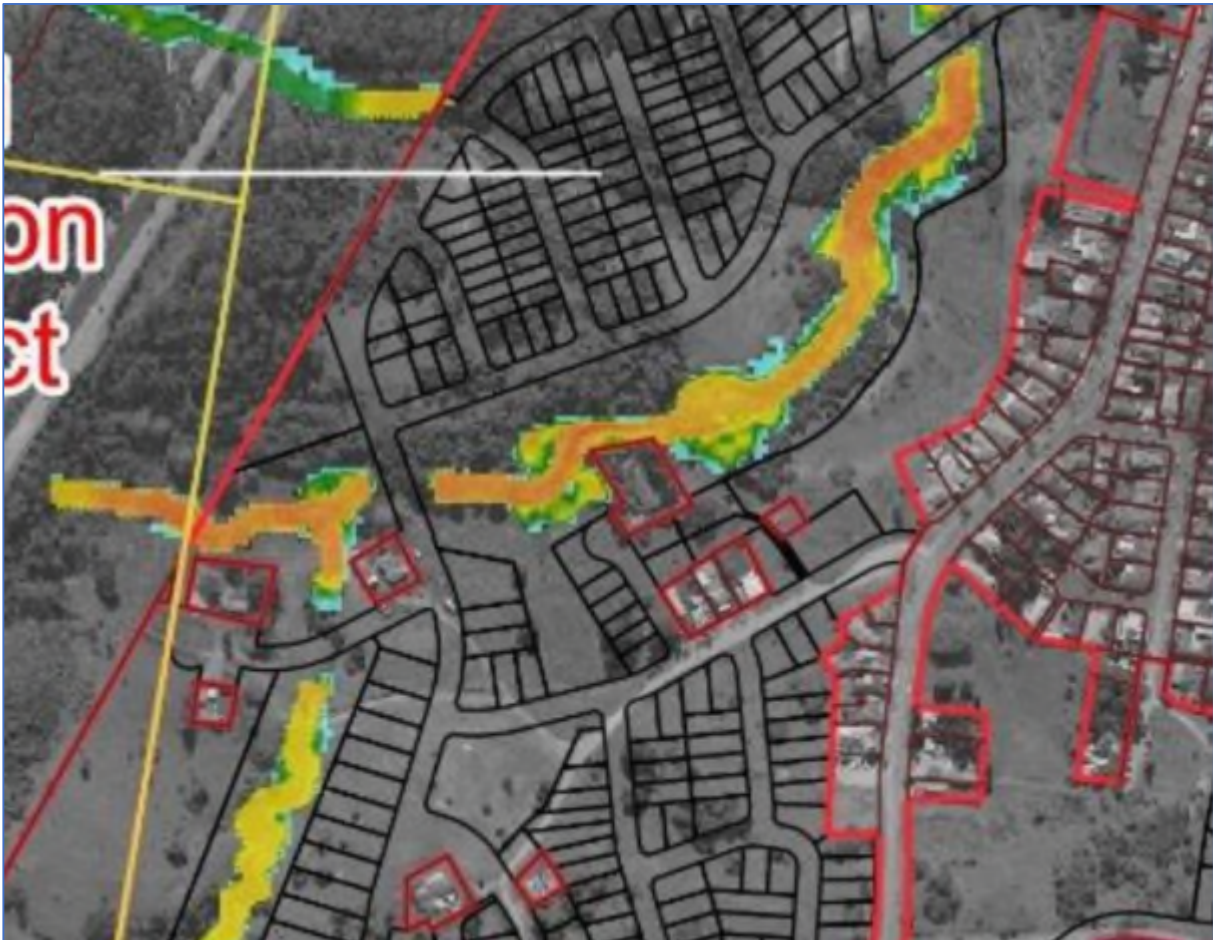


Figure 37 – Developed Peak Flood Depth 1%AEP with 1m Tailwater (Source BMT Report, Figure 5-3)

Flood Planning Area

Flood Planning Area (FPA) mapping has been provided in the BMT Report (see extracts of FPA in **Figure 38** below). The mapping is accompanied by commentary that identifies the lots within the proposed subdivision that will fall within the FPA. This commentary indicates that for most of the residential lots that fall within the FPA, the extent of the lot impacted is at the rear of the lot, and that development in the affected area would be restricted by other planning controls such as rear boundary set back criteria. Accordingly, it can be concluded that residential development will not occur in areas below the Flood Planning Level.

Of the lots identified in conclusion b) of the BMT report only two are within the bounds of DA2018/01351 (14 Railway St (existing) and proposed Lot 665 in Stage 6).

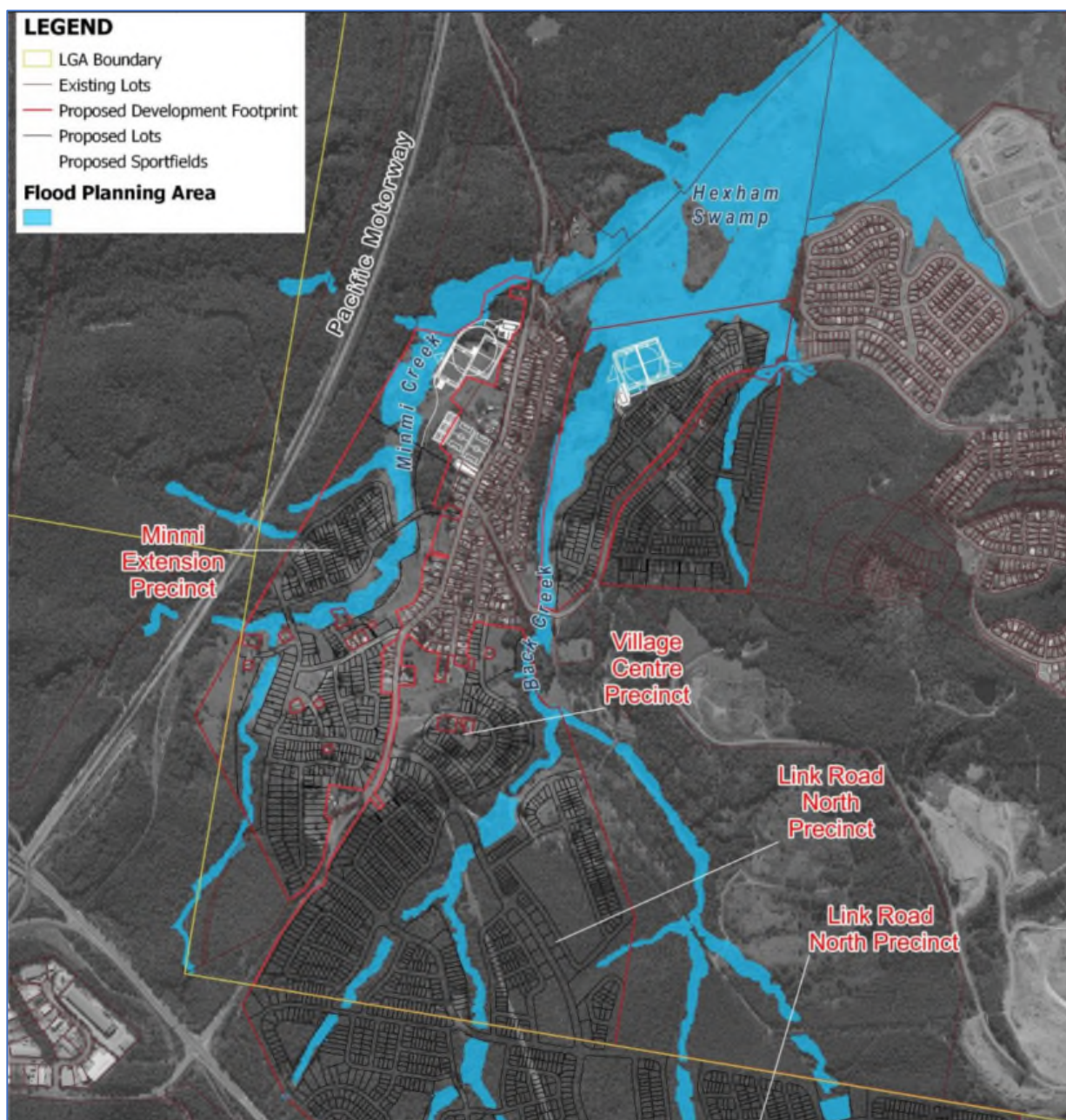


Figure 38 – Flood Planning Area Developed Scenario (Source BMT Report, Figure 5-8)

Of the lots identified in conclusion b) of the BMT report only two proposed lots are within the bounds of DA2018/01351. Another five are existing approved lots under DA2015/10393 (Minmi East Stage 1B) and the remaining two are proposed drainage or public reserves.

In relation to DA2018/01351 the residential lots are identified.

- Location 1 - 14 Railway St (existing) (see **Figure 39** below)
- Location 11 - proposed Lot 665 in Stage 6 (see **Figure 40** below)
- Location 21 - proposed Lot 3362 (Stage 33) (see **Figure 39** below)

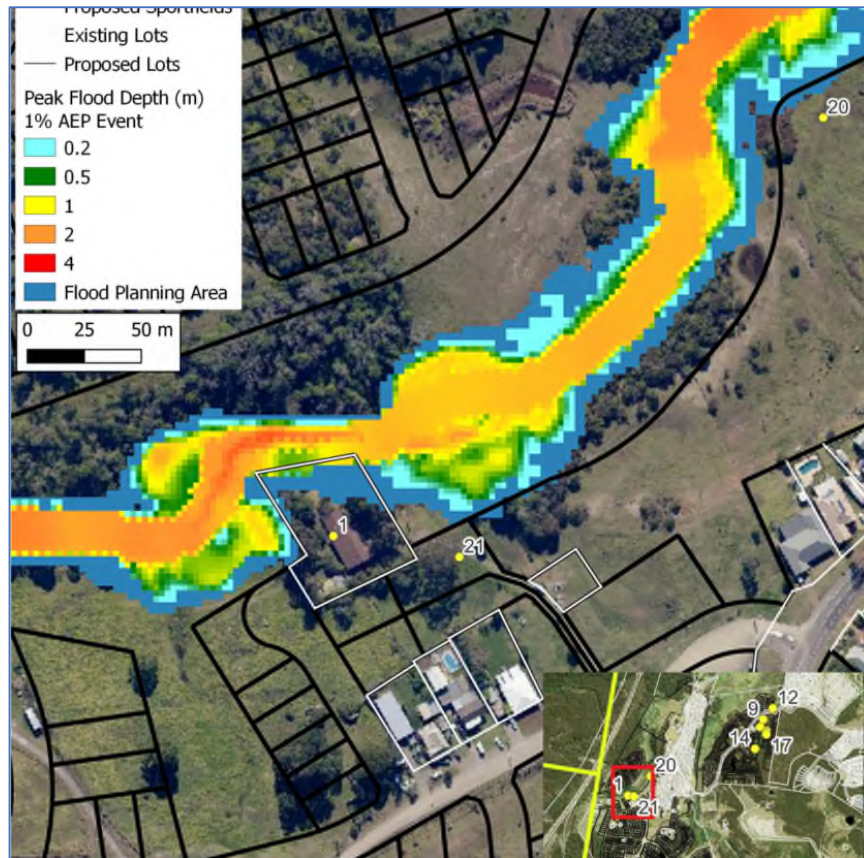


Figure 39 – Flood Planning Area Developed Scenario (Source BMT Report, Figure D1)

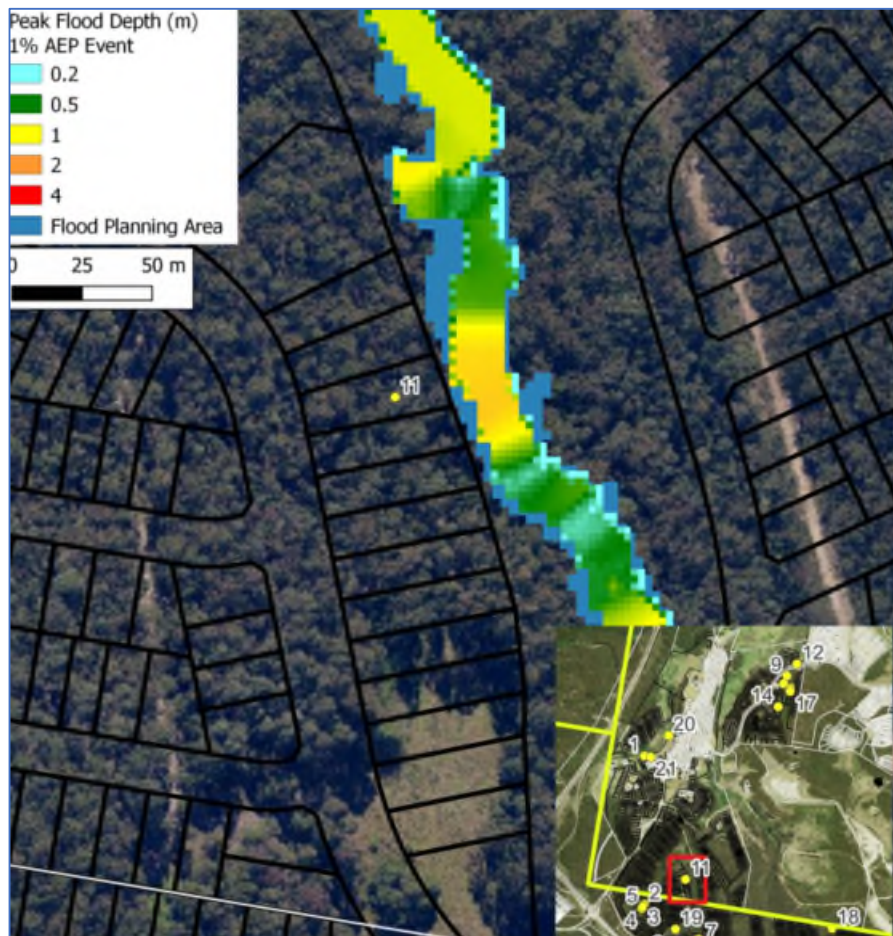


Figure 40 – Flood Planning Area Developed Scenario (Source BMT Report, Figure D6)

Structure blockage sensitivity

As part of its Flood Assessment for the development, BMT documents the findings from a sensitivity assessment of structure blockage. This relates to the potential for debris to block hydraulic structures such as culverts and bridges leading to increases in predicted peak flood levels. This is considered to be important due to the number of “on-line” water management structures and the number of road crossings of the creek system proposed by the road network and lot layout.

In completing its analysis, BMT applied blockage guidelines outlined in Australian Rainfall & Runoff 2019 (ARR 2019) and determined that there was potential for 100% blockage of all structures (refer page 72). This scenario was modelled, and the results established that “the change in flood level and flood extent could be significant” and infers that there is an increased risk to life and property a result of structure blockage. In that regard, BMT goes on to state:

“The blockage sensitivity shows that whilst the catchment conditions are sensitive to structure blockage, the allotment layout and design mitigates the risk to life and property which may occur as a result of structure blockage”

This conclusion is focussed on the risk that a structure blockage scenario will increase flood levels and the potential for the increased flood levels to result in inundation of dwelling lots proposed as part of the development. While it is recognised that the creek system is incised and the allotment design is such that there is substantial freeboard between predicted flood levels and the likely minimum floor levels that would be adopted for most sites, and that this freeboard would be sufficient to accommodate the increases in peak flood levels predicted under a structure blockage scenario, it does not offset the increased risk that such a scenario would present to vehicles negotiating roadways immediately downstream of each 'blocked' structure.

The analysis completed by BMT highlights the risk that structure blockage could cause significant overtopping of roadways that cross the creek system immediately downstream.

Table 6-4 of the BMT report identifies three waterway crossings within DA2018/01351 that are of concern to CN based on the determined (H2) hazard category. The depth of flood flows overtopping the roadways at these locations exceed the minimum depth at which a car can float. See **Figure 41** below for the approximate locations of these waterway crossing structures.

- WC19 – Road MC53 in Stage 39 (assumed as it is not graphically associated with the road but no other crossing is proposed in this location)
- WC20 – Road MC51 in Stage 37
- WC21 – Road MC102 in Stage 37



Figure 41 – Waterway Crossing Locations WC19, WC20 and WC21 (Source BMT Report, Figure D6)

Roads MC51 and MC53 are the only roads in and out of Stages 37 and 39. Road MC102 is the only road in and out of Stage 40. Noting that each of these structures would be impacted by the same flash flood event and likely to become impassable resulting in Stages 37, 39 and 40 being isolated for a period of time. While this duration may not be lengthy, the possibility of a driver attempting to negotiate the flooded roadway during this time is likely and the risk of the vehicle floating or being washed off the roadway is real.

Accordingly, CN does not support the current design outcome for these structures and the applicant should be asked to address this by way of alternate road designs. CN would also be interested to see the results and risk analysis of a lower sensitivity test for blockage on all proposed structures. In this regard, to enable a thorough assessment CN would require sensitivity testing to be provided for 50% and 75 % blockage in addition to the current 100%.

In summary, CN does not support the findings of the BMR report based on the unsatisfactory outcomes in the vicinity of Stages 37 and 40 relating to increased flood depth on off-site lands and unsatisfactory public safety risk associated with overtopping of roadways. Also, noting that CN does not support diversion channel DC01 as proposed and further concept engineering design and flood modelling will need to occur, that are likely to result in further amendments to the subdivision layout, CN is of the opinion it would be inappropriate to try and address these unsatisfactory matters by conditions of consent.

5.8 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

Consultant, NSW Practice Lead – Water Resources used by CN to provide expert evidence during the discontinued LEC Appeal.

Stormwater management and water quality impacts have been comprehensively considered within the following documentation.

- *Concept Stormwater Management Plan: Residential Subdivision Precincts 3, 4 and 5, Minmi, NSW*, prepared by Martens and Associates and dated June 2022
- *Minmi Estate Flood Assessment – Stage 1B (Minmi East Precinct), Stage 3 (Minmi Extension Precinct), Stage 4 (Village Centre Precinct) and Stage 5 (Link Road North Precinct)*, prepared by BMT and dated 21 July 2022 (Revision 12)
- *Floodplain Management Plan: Residential Subdivision Precincts 3, 4 and 5, Minmi, NSW*, prepared by Martens and Associates and dated July 2022
- *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, drawing no. 239736(3)-ESK-068 to 075*, prepared by ADW Johnson and dated June 2022 (Revision B)
- *Stage 37/39 Updated Layout - Sheets 1 and 2* prepared by ADW Johnson (Ref: 239736(3)-SK-038 Revision D) and dated 29 June 2022
- *Hydrogeological Assessment: Proposed Residential Subdivision at Lot 4 DP 1230960, Minmi, NSW* prepared by Martens and Associates and dated May 2020
- *Water Sensitive Urban Design Strategy, Residential Subdivision Precincts 3, 4 & 5, Minmi, NSW* prepared by Martens and Associates and dated May 2020
- *Soil and Water Management Plan* prepared by ADW Johnson and dated August 2020
- Correspondence from the *NSW Dam Safety Committee – DA2018/01351 – Minmi Precincts 3, 4 & 5* and dated 28 May 2019
- *Concept Engineering Plans* prepared by ADW Johnson (Ref. 239736(3)-CENG-001 to 701 Revision U dated 22/06/2021). It is noted that these drawings have not been further updated to reflect the changes made to the subdivision layout or the above-mentioned reports dated June and July 2022.

The initial review undertaken by CN's consultant of the amended development application lodged in July 2021 identified a significant array of matters for which additional information was sought from the applicant.

The additional or amending plans and reports submitted in response in June and July 2022 have satisfactorily addressed the majority of those initial concerns including ensuring that flow rates within natural watercourses are not increased or decreased beyond acceptable limits, the wetting and drying cycle of the downstream Hexham Wetland and surrounds will not be significantly altered and that appropriate 'at-source' and on-line' water quality treatment measure are included.

The remaining concerns relate to functionality checks of the concept designs provided and the ability for those works to 'tie in' with other works proposed or the natural surface and do not relate to the overall approach to stormwater management that has been proposed. This may be as a result of the Concept Engineering Plans not being updated to reflect the other more recent documentation.

For example:

- a) On the drawing titled *Minmi Precinct 3 Subdivision – Detail Plan: Sheet 26 (Rev U)* (Drawing no. 239736(3) – CENG – 126), the downstream end of the outlet pipe from Bioretention Basin 00R is shown as having an invert level of 13 m Australian Height Datum (AHD). The inlet pipe to the basin is shown crossing contour level 12 m AHD. Therefore, it is assumed that at the basin the invert level of the inlet pipe will be less than 12 m AHD. This means that the outlet pipe invert level is higher than the inlet pipe invert level and as a result the basin will not operate as intended.

Accordingly, it is recommended that the concepts for all inlet and outlet pipework associated with upstream and downstream infrastructure for the various treatment systems be revisited and checked to ensure that they can function as intended. Alternatively, to give confidence that the design is appropriate as conceptually detailed, verification of functionality could be supported by a signed statement from the designer guaranteeing that this has been achieved.

- b) On the drawing titled *Basin Detail Plan: Sheet 1 (Rev B)* (Drawing no. 239736(3)-ESK-068), the GPT is shown to be positioned with its top at a level of about 26.6 m AHD (i.e., matching the ground surface). The distance from the top of a Gross Pollutant Trap (GPT) down to the outlet pipe of the GPT does vary from unit to unit. A GPT with a similar treatable flow rate to that adopted in the modelling for the project is a CDS 2018 unit (treatable flow rate = 0.55 m³/s). The outlet invert level of this CDS unit is 1.75 m below the top of the unit. This would mean that the invert level of the outlet pipe would be at about 24.85 m AHD. This level is lower than the top of the filter media of the basin. Hence, the outlet pipe as designed, will not discharge to the surface of the filter media as is the normal arrangement for a bioretention basin. Instead, the outlet pipe will discharge to within the filter media layer of the basin.

Accordingly, it is recommended that the concepts for all inlet and outlet pipework associated with upstream and downstream infrastructure for the various treatment systems be revisited and checked to ensure that they can function as intended. Alternatively, to give confidence that the design is appropriate as conceptually detailed, verification of functionality could be supported by a signed statement from the designer guaranteeing that this has been achieved.

Also, as identified within this report, CN's Asset Services do not support the proposed twin-pipe stormwater drainage arrangement for the watercourse diversion proposed in Stage 37/39. Asset Services consider 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.

Key considerations through the design of this channel would be to effectively manage and contain design flow with provision for emergency or major overland flow route, careful selection of channel material and size (appropriately sized and durable rockwork would likely be suitable), assessing the longitudinal grade with respect to scour protection and bank stability, as well as ensuring the design is reviewed and agreed by a geomorphologist.

Redesigning this drainage management structure would also likely impact on the current road and lot layout within Stage 37 and perhaps Stage 39.

It is further noted that the submission received from the National Parks and Wildlife Service (NPWS) continues to hold concern 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 submission contains a number of suggested conditions of consent that could be imposed to address these concerns to NPWS's satisfaction.

It is therefore considered that the overarching approach to stormwater management and water quality is acceptable. It is further considered that the remaining unsatisfactory elements of the proposed development described above could be addressed following the preparation and assessment of amended Concept Engineering Plans and Subdivision Plans.

5.9 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 a *Bushfire Assessment Report, Bushfire Management Plan (and Addendum)* and a *Bushfire Attack Level (BAL) Masterplan* all prepared by an Accredited Bushfire Practitioner (BPAD -26202).

In summary, the Bushfire Assessment Report recommends the following key development controls or management measures.

1. *"The entire site; excluding areas zoned C2, shall be managed as an Inner Protection Area (IPA) as outlined within Appendix 4 of PBP 2019 and the RFS document Standards for asset protection zones;*
2. *A temporary APZ shall be provided up to 100m (excluding land zoned C2 Environmental Conservation) as each stage is completed and contained to within the development footprint as shown on Figure 16;*
3. *Access shall be provided in accordance with Section 4.1.3 of PBP 2006. This will require the provision of a minimum of two (2) separate road access points provided from the development site to the northwest directly onto Minmi Road, and south into Stage 2 to ensure safe evacuation for all residents;*
4. *4. Any temporary turning heads shall be constructed in accordance Appendix A3.3 of PBP 2019;*
5. *Vegetation within road verges (including swales) to be consistent with a grassland*

vegetation classification with tree canopy less than 10% at maturity (and considered unmanaged);

6. *The provision of water, electricity and gas must comply with the requirements of Table 5.3c of PBP 2019;*
7. *All future dwellings to be constructed on the proposed lots shall have due regard to the specific considerations given in the National Construction Code: Building Code of Australia (BCA) which makes specific reference to Australian Standard AS3959-2018 Construction of buildings in bushfire prone areas (AS3959-2018) and the NASH Standard Steel Framed Construction in Bushfire Prone Areas;*
8. *All new lots are to be connected to a reliable water supply network and that suitable fire hydrants are located throughout the development site that are clearly marked and provided for the purposes of bushfire protection. Fire hydrant spacing, sizing and pressure shall comply with AS2419.1 2005 and section 5.3.3 of PBP 2019; and*
9. *Consideration should be given to landscaping and fuel loads within residential lots to decrease potential fire hazards on site."*

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.

NPWS have requested consideration be given to providing a bush fire/maintenance vehicle connection to the Stockrington State Conservation Area in the north. CN is agreeable to considering this connection when detailed design for future recreation facilities on Lot 3806 is being planned.

NPWS have also requested consideration be given to providing a bush fire/maintenance vehicle connection to the west (from Stage 37) that would provide connection, to the C1 zoned land administered by the NPWS to the west of the M1 Motorway via a current culvert/underpass. While such a connection is shown to be proposed in association with Stage 37 (refer applicant's *Attachment 23 – Stage 37 & 39 Amendments* (July 2022)), as considered within this report, CN is not satisfied that the current proposal for diversion of the natural watercourse in this area is appropriate.

The New South Wales Rural Fire Service (NSW RFS), confirming their 'satisfaction' as required by FEAR 1.45, has advised that "*the Subdivision Bushfire Attack Level (BAL) Masterplan prepared by Bushfire Planning Australia (Titled: Northern Estates Newcastle, Job Number 1825 – NCC, Ref: Newcastle_Fig 13_BALs_OVERALL_220712 v9, Dated 12 July 2022, Sheets 1-4, Revision E) is satisfactory, and therefore NSW RFS would be prepared to grant a Bush Fire Safety Authority (BFSA) under section 100B of the Rural Fires Act 1997 for the development the subject of the Development Application (Proposed Development), subject to...*" a number of proposed conditions of consent.

Refer to **Attachment H** for a full copy of the NSW RFS advice and their recommended conditions of consent. In the event that consent was granted to this proposal, conditions relevant to ongoing bushfire management would be imposed.

5.10 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 application has been undertaken by CN's Development Officer (Heritage).

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 42** below shows the location of the items identified during that analysis, including the NLEP listed items above.

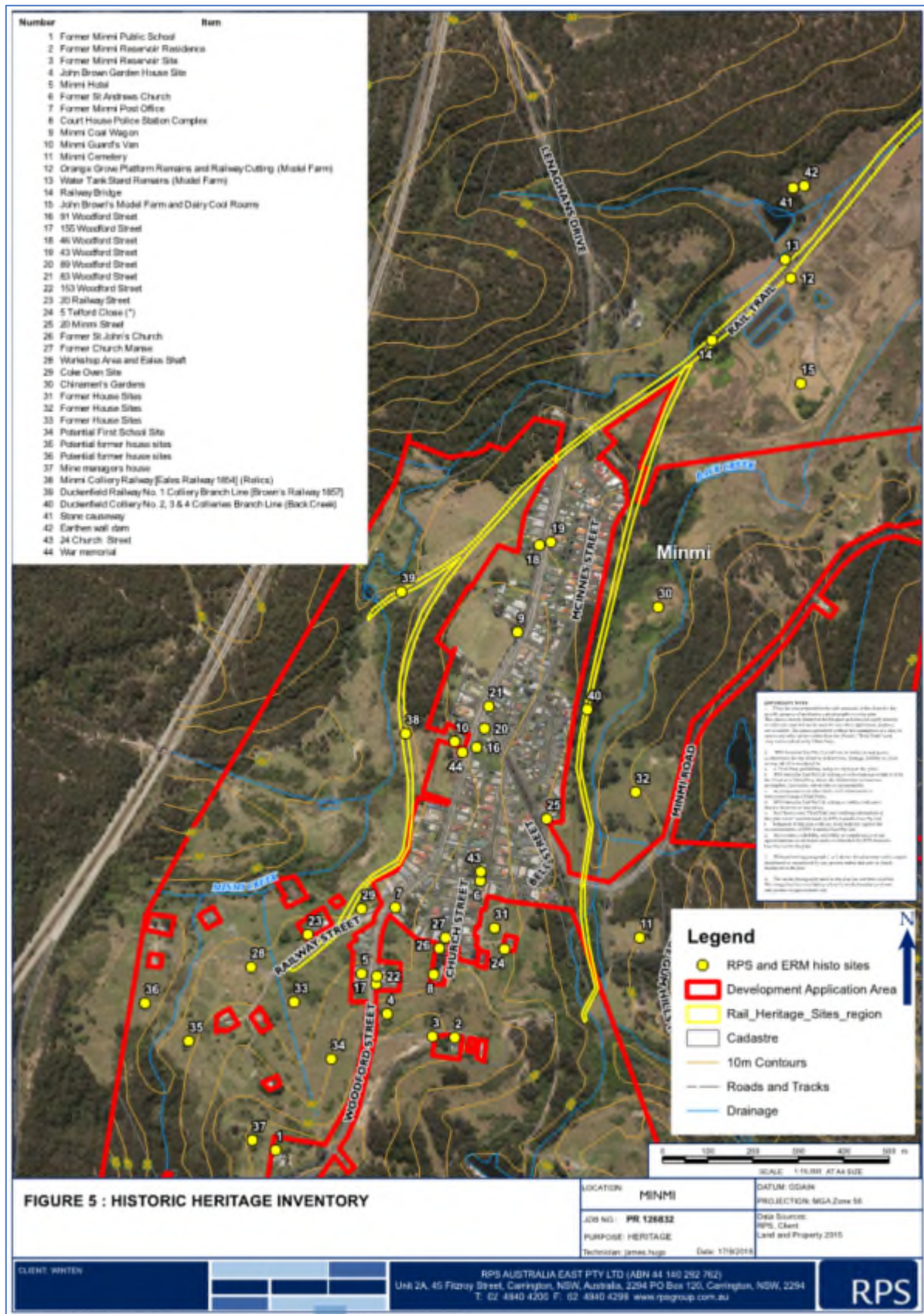


FIGURE 42 - Historical Heritage Inventory (Source – Figure 5 Heritage Interpretation Strategy, RPS 2018)

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, Council 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 43** and **44** 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.

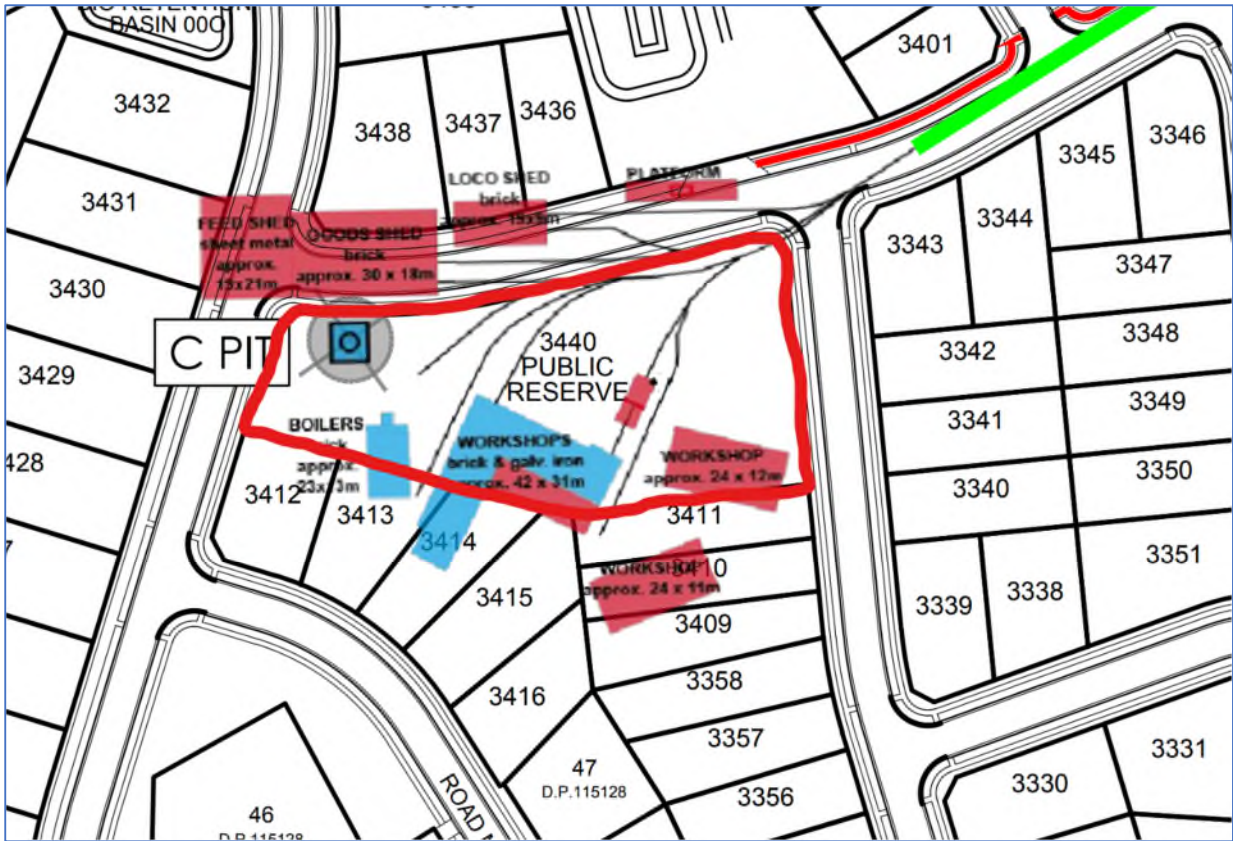


Figure 43 - Previously proposed boundaries of Workshop Park (outlined in red). The park boundaries bisected the workshop and boilers.



Figure 44 - Proposed amended boundaries of the future Workshop Park (Source GBA Heritage Report, June 2022).

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.

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 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. It is noted that the Landscape Masterplan Report (2018) provides an indicative landscaping proposal for this site.

The current subdivision plans indicate this area as a residue lot and does not propose the dedication of this area as a park, which does not comply with the MPDG. It has been confirmed by the applicant that no works are proposed in this area.

The proposed development does not preclude establishment of the Garden House Park in the future. However, it is CN's preference that the Garden House Park is included with the other areas of public open space to be dedicated to Council consistent with the intent of the Concept Plan and MPDG.

In this regard, and again noting the application does not propose such dedication, CN considers it would be appropriate to include a condition of consent (if consent is to be granted to DA2018/01351) that would require such dedication to occur in association with the Subdivision Certificate for the relevant stage of the development.

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.

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.

5.11 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 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 and dated 15 July 2021 and the associated Infrastructure Staging Plan (**ISP**) (Rev M, dated 8 June 2021) also prepared by ADW Johnson and dated 15 July 2021 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 45 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).

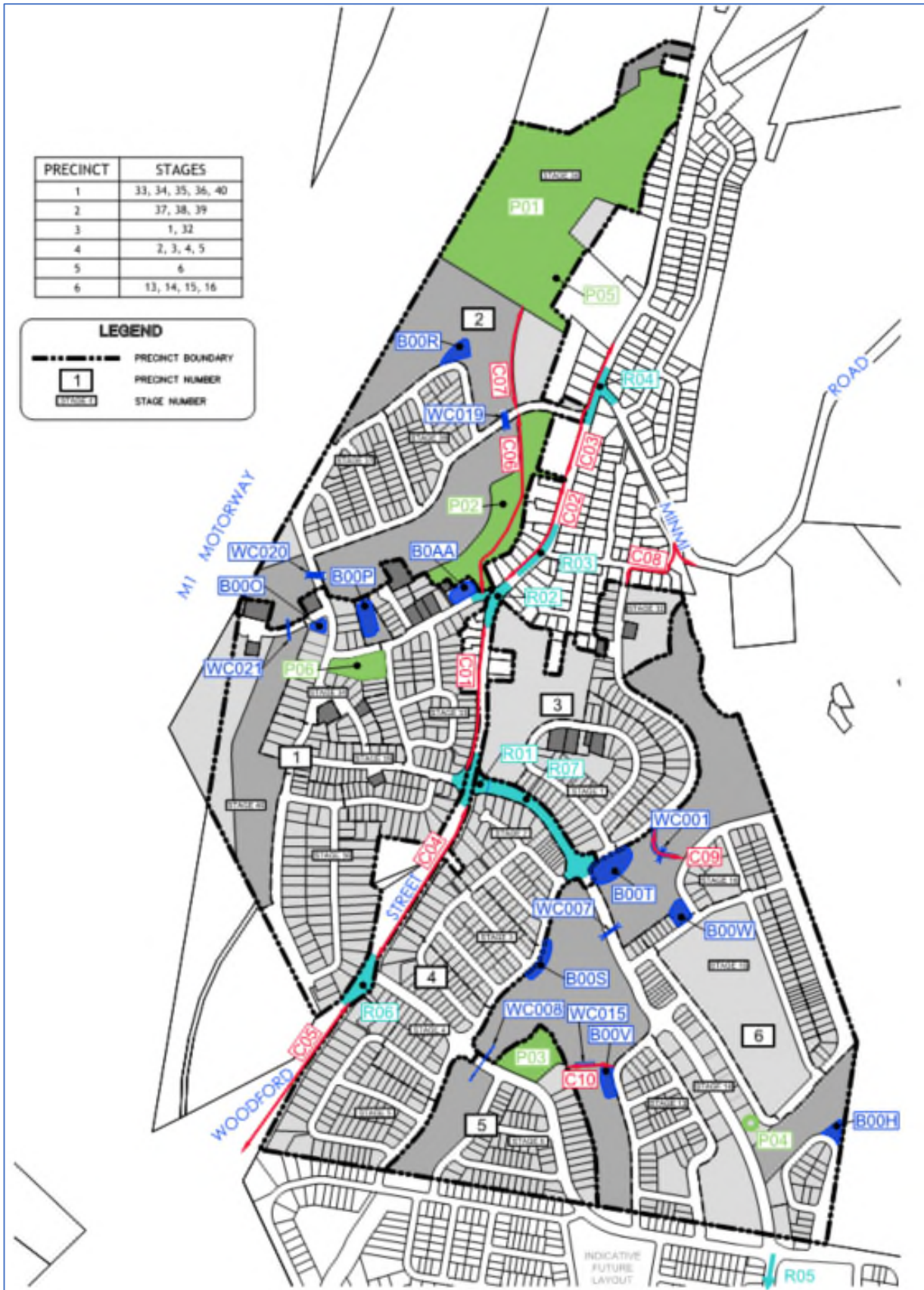


Figure 45 - Extract from Infrastructure Staging Plan

The ISPR considered to be satisfactory with the exception that:

- a) The ISPPR suggests (as was discussed during the discontinued LEC Appeal) that a condition of consent could require the applicant to engage an accredited Road Safety Auditor to undertake a Concept Design Audit of the Concept Engineering Plans and the ISPR and make recommendations on the timing for construction of a number of proposed shared pedestrian/cycle pathways.

CN recommends that the subject shared pathways nominated as C02 and C03 are established in conjunction with the first stage release because road infrastructure R02 and R03 will remove any on-road cycle provision on this part of Woodford St and the only off-road facility is the existing 1.2m wide concrete path on the eastern footway which is not suitable for cyclists. Using the eastern footway would also require an extension to the 1.2m path across No.s 129 and 131 Woodford St and the construction of the pedestrian refuge on Woodford St at Railway St intersection. To access the existing school, local shops and recreation facilities at Location 3 and P02 would require residents from Precincts 3 to 6 crossing Woodford St three times instead of once and residents from Precinct 1, instead of never having to cross Woodford St, would have to cross Woodford St on two occasions. This is introducing an increased number of pedestrians and cyclists to unnecessary and avoidable risk.

- b) Woodford Street, South of Railway St has no existing infrastructure for pedestrians or cyclists. Because Stages 4 and 5 in Precinct 4 cannot occur first (and may actually be the last two stages constructed of the entire development) this is introducing an increased number of pedestrians and cyclists to unnecessary and avoidable risk. CN recommends constructing shared pathways C04 and C05 at an early stage of the development as this would provide safer passage for cyclist and pedestrians to access the traffic signalised intersection of the Newcastle Link Road / Woodford Street /Cameron Park Drive. This intersection already has pedestrian crossing facilities across all movements and gives direct access to on-road cycle facilities provided on the classified road network.
- c) It is noted that the ISPR makes references to completing regional road upgrades in accordance with the RTTA (SCT, 25 February 2021) however, as discussed in this report TfNSW have not accepted to findings of the microsimulation traffic modelling and RTTA and thus the extent of Regional road upgrades is not yet known.
- d) There is a discrepancy between Note 6 on the ISP which reads 'ROADS MC50 AND MC88 (BETWEEN LOTS 3559 AND 3562) ARE TO BE CONSTRUCTED PRIOR TO THE RELEASE OF STAGE 37 (PRECINCT 2), IF NOT ALREADY CONSTRUCTED AS PART OF STAGE 35 (PRECINCT 1)' and the Subdivision Plans which show those parts of proposed Roads MC50 and MC88 described above as already being contained within Stage 33 of Precinct 1.

In accordance with Note 5 of the ISP, Stages 33 and 34 in Precinct 1 must be constructed prior to Stage 37 in Precinct 2. Noting that the intersection of Railway Street (Road MC42) and Road MC53 with Woodford Street are proposed as 'left-in'/left-out' only, unless Stage 35 is constructed before Stage 37, it will require all vehicles exiting Stages 33, 34, 37 and 39 that wish to travel south along Woodford Street to the Local Centre, new school site (in LMCC) and the Newcastle Link Road will have no choice but to traverse through Stage 33 via Road MC43 which, having a carriageway width of 8m is intended to perform only as a local residential street.

The remainder of Road MC88, contained within Stage 35, has been designed with the intent of being the collector road servicing all vehicles from Stages 33, 34, 25, 26, 37, 39 and 40 with destinations to the south, Local Centre or future school.

CN recommends that all of Stage 35 (CN's preference), or at least those roads (MC88 and MC47) within Stage 35 that link to Stage 34, to be constructed and opened to traffic prior to Stages 37 and 39 (Precinct 2) being constructed. It is noted that the latter option (building just the roads) would come at cost to the developer without achieving the residential allotments within Stage 35 that front these two roads.

Appropriate conditions of consent could be imposed to achieve the above recommended changes to the ISPR and ISP.

5.12 DA2015/10393 – Proposed amendments to approved Minmi East Stage 1B

DA2015/10393 was approved under orders of the NSW Land and Environment Court on 14 December 2017, pursuant to a s34 agreement reached between the parties.

The development, as originally approved, was described as;

'Subdivision of Lot 2 in DP 1230960 and Lot 3 in DP 1230960 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'

DA2015/10393 has since been modified on two occasions pursuant s4.55(1A) of the EP& Act.

- MA2021/00438 – approved 15 March 2022 - to make modifications to the remediation strategy
- MA2022/00053 – approved 28 July 2022 – to make changes to the staging plan and associated conditions

No changes were made to the approved road or lot layout under the above modifications.

A copy of the current approval incorporating the above two modifications may be found at **Attachment I**

The proposed modifications sought to the approved DA2015/10393 would make minor amendments to the approved subdivision layout for the Minmi East Precinct Stage 1B, generally in the vicinity of Construction Stage 4 of that consent. The need for the modification arises as a result of arrangements being made in accordance with FEAR 1.16 of the Concept Plan approval to accommodate future recreation facilities that would otherwise occur partially within the development footprint of the approved Minmi East Precinct (Stage 1B) subdivision.

While the proposed amendment relates to development approved under DA2015/10303, the proposed layout amendment forms part of the development proposed under DA2018/01351, currently under assessment. This is on the basis that it is proposed to modify DA2015/10393 by imposing a condition under section 4.17(1)(b) of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

To enable reliance on section 4.17(1)(b) to modify DA2015/10393 it is noted that Lot 3 DP 1230960 is now included in DA2018/01351.

It must be stressed that the Panel is not required to consider or determine the viability or appropriateness of the recreation facilities or the suitability of the land for such purpose. The Panel need only consider and determine if the proposed modifications to the subdivision layout for DA2015/10393 are acceptable.

FEAR 1.16 of the Concept Plan approval (MP10_0090), as amended by MOD1 on 21 December 2016, requires;

- 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 a delegate for the Planning Secretary at the Department of Planning, Industry and Environment advised Winten Property Group that;

"I am writing to you in relation to Future Environmental Assessment Requirement 1.16 of the Minmi Link Road concept approval (MP 10_0090).

The Department has considered the suitability of the proposed locations for the recreation facilities, as set out in the "Request for Location Agreement" prepared by ADW Johnson, dated 17 September 2020 (issue G).

I, as the nominee of the Planning Secretary, approve the suitability of Location 2 and Location 3 (identified in the above document) as general locations for the recreation facilities.

I note that the exact boundaries, layout and detailed design of the proposed recreation facilities will be subject to development consent, having regard to a detailed assessment of the planning merits of the proposed locations. My approval of the suitability of these general locations does not in any way fetter the consent authority from requiring amendments or mitigation measures to the general location in order to avoid, reduce or mitigate potential planning impacts as a result of the development."

Section 2.2 of the submitted Statement of Environmental Effects – Stage 1B Amendment prepared by ADW Johnson (Ref: 239736-3, dated 10 June 2022) states that *"This modification is only required if DA/2087/2018 in the Lake Macquarie LGA is approved."* This is as a result of the 'in principle' agreement reached between Winten, CN and LMCC during the abovementioned LEC Appeal's in relation to FEAR 1.16 and the determination of 'suitable land' for recreation facilities to serve the future populations arising from both DA2018/01351 and DA/2087/2018. That agreement is premised on the offer to enter into a Voluntary Planning Agreement made by Winten to LMCC and If execution of that VPA does not occur then the 'in principle' agreement will fail and the basis for satisfaction of FEAR 1.16 will need to be revisited.

In simple terms, the basis for the 'in principle' agreement between Winten, CN and LMCC was that the recreational needs demanded by each of DA2018/01351 and DA/2087/2018 were essentially equal given they both propose roughly the same amount proposed dwellings and, therefore similar populations. Location 2 is proposed Lot 601 in DA2015/10393 (as proposed to be modified) and is intended to be dedicated to LMCC. Location 3 is proposed Lot 3806 and is intended to be dedicated to CN under DA2018/01351.

Under the Letter of Offer, the land for the sports fields (Lot 601) is required to be dedicated to LMCC (or its nominee), which could be CN, prior to the issue of a subdivision certificate for the

250th residential lot in the Link Road North Precinct (within Lake Macquarie LGA – DA/2087/2018).

Figure 46 below is extracted from the 'Request for Locations Agreement' (Issue G, dated 17 Sept. 2019) and shows a possible layout for the recreation facilities in Locations 2 and 3 and the subdivision layout that would be required to make the required land for recreation facilities available.



Figure 46 - Extracts from Request for Locations Agreement – Minmi Link Road Development – Recreation Facilities (ADW Johnson, Sept. 2020)

Figure 47 below shows a comparison between the existing approved subdivision layout (in black) and the proposed subdivision layout (in red). It can be seen that the footprint of the road and lot layout, inclusive of the road batter (dashed lines) is less than that currently approved under DA2015/10393.

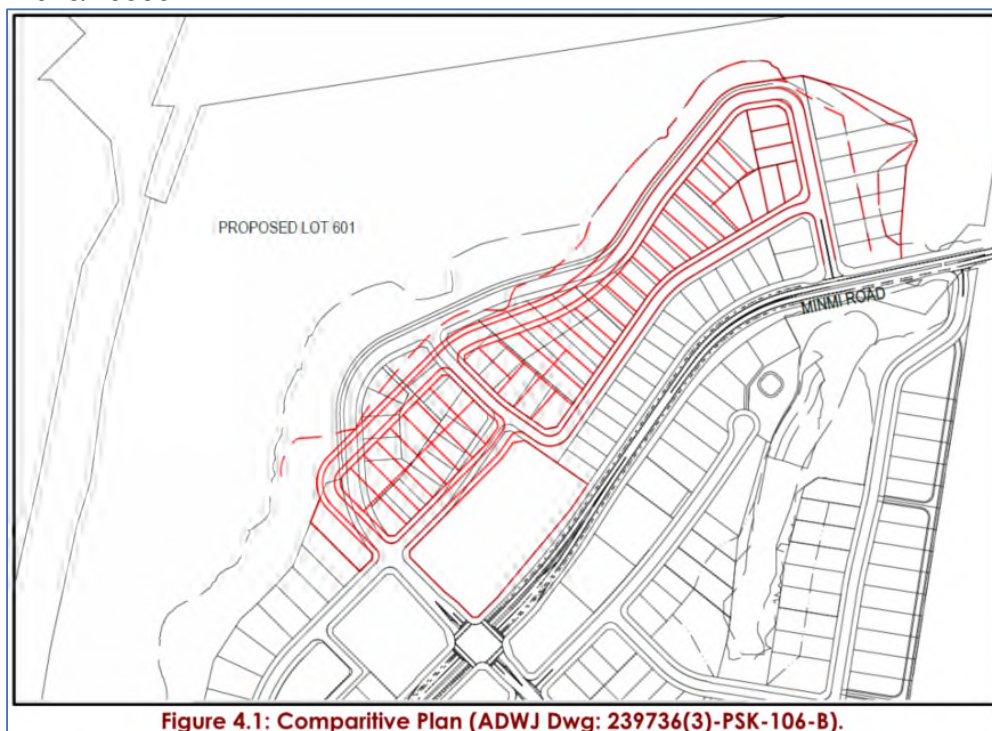


Figure 47 - Comparison between approved and proposed subdivision layout DA2015/10393 (Source SEE – Modification of DA2015/10393, ADW Johnson, June 2022)

CN has given consideration to the proposed modified road and lot layout and is satisfied that the modified layout is acceptable and remains generally consistent with the Concept Plan approval and the Minmi East Precinct Design Guidelines (MEPDG) approved by the delegate for the Planning Secretary on 18 December 2014.

The amended subdivision layout has been supported by updated concept engineering plans, landscape plans, water quality assessment, bushfire assessment report and an Aboriginal Heritage Impact Permit issued in respect of the current approved footprint.

The update bushfire assessment report was referred to the NSW Rural Fire Service who, on 22 November 2022, have issued a conditional updated Bushfire Safety Authority for DA2015/10393 based on the requested modification.

It is important to note that at the time of approval for DA2015/10393, the *Coastal Management SEPP* (now repealed) and *SEPP (Resilience and Hazards) 2021* did not exist. *SEPP 14 – Coastal Wetlands* was the applicable instrument in relation to coastal wetlands. Under *SEPP 14*, the nearest coastal wetland was located approximately 1.3km from the site.

The *Coastal Management SEPP* introduced new mapping, which extended the mapped Coastal Wetland into Lot 3 DP 1230960. The new mapping encroaches the development footprint already approved under DA/2015/10393.

Chapter 2 of *SEPP (Resilience and Hazards) 2021* replaced the *Coastal Management SEPP* in March 2022. Section 2.7(1) and (2) of this Chapter essentially provides that development may be carried out on land mapped as Coastal Wetlands only with development consent, and unless the development is for the purpose of environmental protection works, then it is declared designated development.

Although a Coastal Wetland is mapped in the development footprint, it is noted that this proposed amendment does not propose any new or changed works on land mapped as a Coastal Wetland. Any works within the Coastal Wetland have already been approved under DA2015/10393 and could be undertaken in accordance with the existing approval.

As can be seen in **Figure 48** the proposed modification to DA2015/10393 will result in no change to the development approved within the Coastal Wetland and that a reduction in the scope of works proposed in what is now mapped as 'proximity to Coastal Wetland' land will occur.

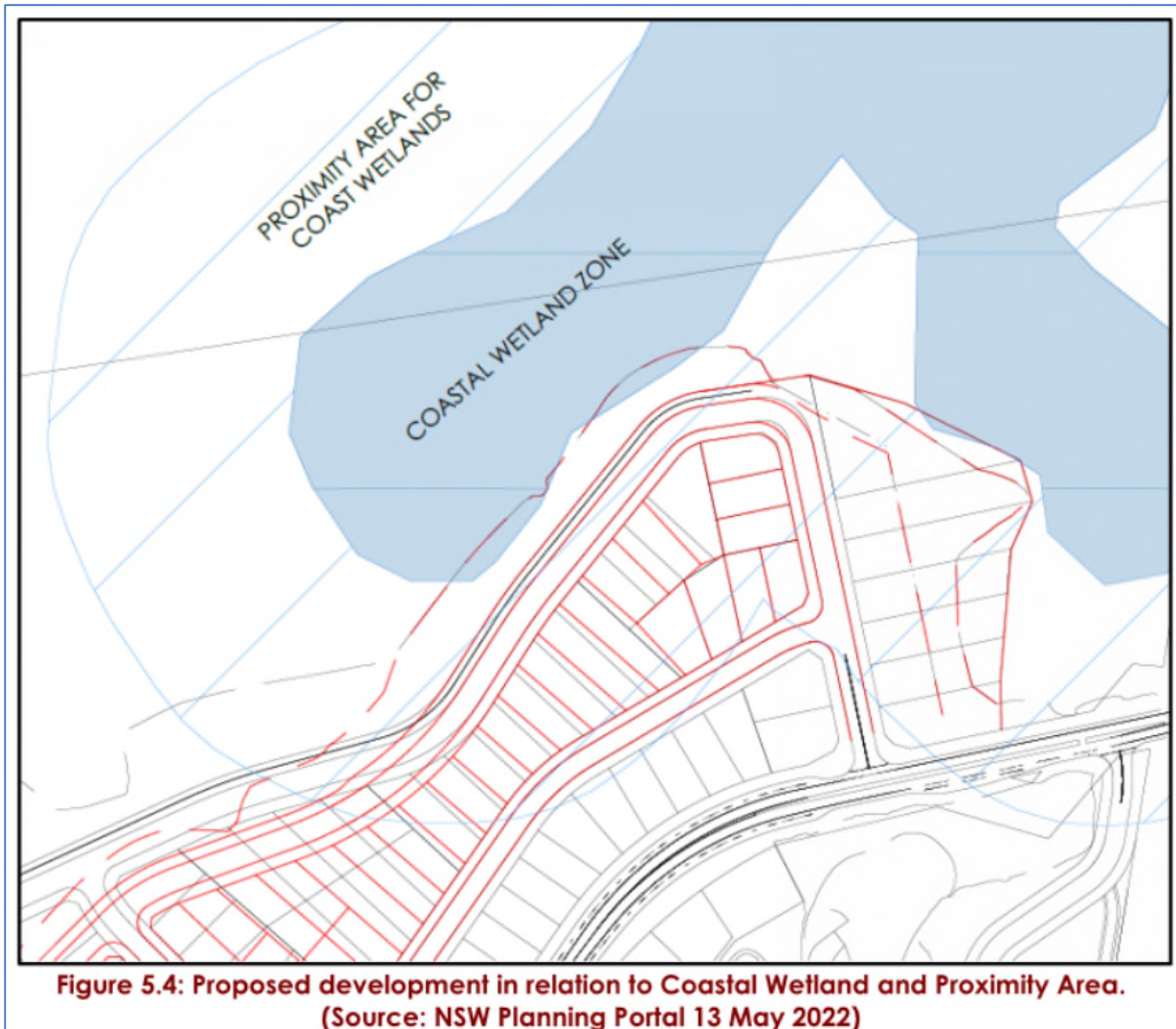


Figure 48 - Relationship of DA2015/10393 to current Coastal Wetland mapping
 (Source SEE – Modification of DA2015/10393, ADW Johnson, June 2022)

Accordingly, CN is of the opinion that the modification to DA2015/10393, requested by the applicant to be considered in association with DA2018/01351, are satisfactory in that it would result in less environmental impact than the current approved development and could be approved subject to conditions imposed on DA2018/01351 (s4.17(1)(b)) to make the necessary modifications to existing consent conditions of DA2015/10393..

However, on the basis that the final recommendation contained below that DA2018/01351 is not supported in its current form, and that the proposed modification to DA2015/10393 has been made in association with DA2018/01351 (and not under s4.55 of the EP&A Act), CN cannot recommend approval of the modification proposed to DA2015/10393 at this time.

It is, of course, open to the applicant to seek the same proposed modification to DA2015/10393 under s4.55 of the EP&A Act without any direct connection to DA2018/01351.

5.13 Inconsistency in documentation

Concept Engineering Plans and Landscape Plans relating to DA2018/01351 have not been updated to reflect the further amendments made by the applicant in the Response to Request for Further Information submissions received by CN in June and July 2022 and remain, in some parts, inconsistent with the other documentation submitted in support of DA2018/01351.

6. CONCLUSION

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 DA2018/01351 has addressed the relevant Further Environmental Assessment Requirements (FEARS) within Schedule 2 of the Concept Plan approval (MP10_0090).

However, as a result a detailed assessment of the documentation submitted by the applicant in response to the FEARS and the provisions of the relevant *State Environmental Planning Policies*, it is further considered that unless the unsatisfactory or unresolved matters detailed in this assessment report are addressed by the submission of further additional or amending information and assessed by CN and other relevant State agencies as being satisfactory;

- CN cannot be satisfied that the proposed development is 'generally consistent' with the approved Concept Plan.
- CN cannot be satisfied that the likely impacts on the natural and built environments are known and or can be appropriately mitigated
- CN cannot be satisfied that the land is suitable for the proposed development
- CN cannot be satisfied that the proposed development is not contrary to the public interest

7. RECOMMENDATION

CN recommends that;

- *Development Application No 2018/01351 for '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 request to modify the terms of the Development Consent for DA2015/10393 pursuant to Section 4.17(1) of the Act, in association with the determination of DA2018/01351, 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;*

is REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the draft reasons of refusal attached to this report at **Attachment A**.

8. ATTACHMENTS

The following attachments are provided:

- Attachment A: Draft Reasons for Refusal
- Attachment B: Proposed Subdivision Plans (Revision S)
- Attachment C: Notice of Modification and the original Concept Plan approval (includes map)
- Attachment D: Minmi Precinct Design Guidelines (**MPDG**)
- Attachment E: Explanation of Intended Effects (July 2021) – Proposed amendments to *SEPP (Major Infrastructure Corridors) 2020*
- Attachment F: Further Environmental Assessment Requirement (FEAR) summary compliance table
- Attachment G: Applicant's Amended Proposed Regional Road Upgrade Conditions
- Attachment H: Conditional Bush Fire Safety Authority from NSWRFSA for DA2018/01351 and DA2015/10393
- Attachment I: Notice of Determination for DA2015/10393 (as modified by MA2022/00053)

Attachment A

Attachment B

Attachment C

Attachment D

Attachment E

Attachment F

Attachment G

Attachment H

Attachment I



ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 06/12/22 - NOTIFICATION OF 144 WOODFORD STREET, MINMI –
DA2018/01351 – DEMOLITION OF DWELLING, 962 LOT
SUBDIVISION INCLUDING ROADS, OPEN SPACE, STORMWATER,
UTILITIES AND BULK EARTHWORKS**

ITEM-30 Attachment B: CN Recommended Reasons for Refusal

DISTRIBUTED UNDER SEPARATE COVER



RECOMMENDED REASONS FOR REFUSAL

RECOMMENDED REASONS FOR REFUSAL PPS-2019HCC006 - DA2018/01351 – Minmi Precincts 3, 4 and 5

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. Transport for New South Wales opposes the development as it 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]
3. 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]
4. 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 determined as appropriate by Transport for NSW 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]
5. 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]
6. 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]
7. 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]
8. 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]
9. 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]



ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 06/12/22 - NOTIFICATION OF 144 WOODFORD STREET, MINMI –
DA2018/01351 – DEMOLITION OF DWELLING, 962 LOT
SUBDIVISION INCLUDING ROADS, OPEN SPACE, STORMWATER,
UTILITIES AND BULK EARTHWORKS**

ITEM-30 Attachment C: LMCC Assessment Report and Recommendations

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COUNCIL ASSESSMENT REPORT

Hunter and Central Coast Planning Panel

PANEL REFERENCE & DA NUMBER	PPS-2019HCC021 DA/2087/2018
PROPOSAL	Subdivision Two lots into 1079 residential lots, five future development lots, one development lot for a future school, and associated infrastructure including two parks.
ADDRESS	10, 10C and 144 Woodford Street, Cameron Park M1 Pacific Motorway, Lake Macquarie Lot 2 DP 877349, Lot 1 DP 1156243, Part Lot 100 DP 1252590, Lot 22 DP 816113
APPLICANT	Winten (No 21) Pty Ltd
OWNER	Winten (No 21) Pty Ltd Lake Macquarie City Council Transport for NSW
DA LODGEMENT DATE	22 November 2018
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of the Planning Systems SEPP – General development over \$30 million
CIV	\$116 million (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	Concept Plan MP10_0090 – Minmi, Link Road North and South Residential Development (Northern Estates)
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Notified: <ul style="list-style-type: none"> • 5 December 2018 – 14 January 2019 • 6 October 2020 – 26 October 2020 • 30 July 2021 – 20 August 2021 • 3 June 2022 – 28 June 2022 Council have received eight unique objections.

ATTACHMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Attachment A: Concept Approval assessment • Attachment B: Urban Design Guidelines assessment
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Yes, refer to section 3.5.3
RECOMMENDATION	Defer for resolution of outstanding issues
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	5 December 2022
PREPARED BY	Amy Regado, Section Manager Development
DATE OF REPORT	28 November 2022

EXECUTIVE SUMMARY

The proposal seeks consent for a subdivision of two into 1079 lots, comprising 1063 residential lots, five future development/residual lots including school site, 16 public/drainage reserves. The application also includes site preparation works including earthworks, clearing of vegetation, contamination remediation and subsidence mitigation works, construction of roads, drainage and utility infrastructure, landscaping to streets, drainage reserves and public reserves and intersection and road network upgrades.

The site forms part of Concept Plan MP10_0090 which was approved by the Planning Assessment Commission in 2013 for a five-stage development of up to 3,300 dwellings and two commercial centres across the 520-hectare site, including associated infrastructure, which straddles the Lake Macquarie City Council and City of Newcastle Local Government Area boundary.

The application relates to a majority of Stage 5 of the Concept Approval.

The application was lodged on 22 November 2018. A deemed refusal appeal was lodged in the Land and Environment Court by the applicant in January 2019. Court proceedings, including conciliation and a hearing occurred throughout 2019, 2020 and 2021 and the proceedings were discontinued by the applicant during hearing in June 2021.

Additional information was lodged to Council for the application in July 2021. The application has continued assessment since this time.

There are several key issues associated with the application including:

- Concept Approval consistency
- Aboriginal heritage
- acoustic impact
- biodiversity
- bushfire protection

- contamination
- earthworks
- mine subsidence
- stormwater management and flooding
- Summerhill Waste Management Centre impacts
- traffic impact
- urban design
- utilities and servicing

Key matters that have been resolved include:

- Aboriginal heritage
- acoustic impact
- bushfire protection
- stormwater management and flooding
- urban design

Key matters that remain unresolved include:

- Concept Approval consistency
- biodiversity
- traffic impact
- earthworks
- contamination
- mine subsidence
- Summerhill Waste Management Centre impacts
- odour impact
- utilities and servicing

The application is recommended to be deferred to enable the submission of further information to address the outstanding matters as identified above.

Alternatively, the application could be refused based upon this matter not being satisfactorily addressed.

1. THE SITE AND LOCALITY

1.1 Site context and locality

The site is located in the suburb of Cameron Park, within the Lake Macquarie City Council (LMCC) local government area (LGA).

The northern boundary of the site adjoins the LGA boundary between LMCC and City of Newcastle (CN). Approximately half of the northern boundary of this site is shared with other

lands that are owned by the same developer and are subject to an application for subdivision with CN (DA/20918/01351).

The other main portion of the northern boundary is shared with Blue Gum Hills Regional Park (BGHRP). This Park is administered by the National Parks and Wildlife Service (NPWS). The remaining part of northern boundary is shared with Summerhill Waste Management Centre (SWMC) which is owned and operated by CN.

To the east is a large landholding that was formally owned by a mining company. This land is now owned by a developer and is commonly known as Eden Estates. Both LMCC and CN are in discussions with this developer in regard to rezoning of the land and a significant residential subdivision on this land.

To the west of the site is Woodford Street and Transport for NSW (TfNSW) land holdings. The Cameron Park Drive industrial estate and the Newcastle Link Road / Pacific Motorway interchange are also to the west.

The southern boundary of the site is a ridgeline of which the Newcastle Link Road runs east-west along. The Cameron Park residential estate is located on the southern side of the road, which includes the undeveloped Link Road South development owned by the developer proposing this development.

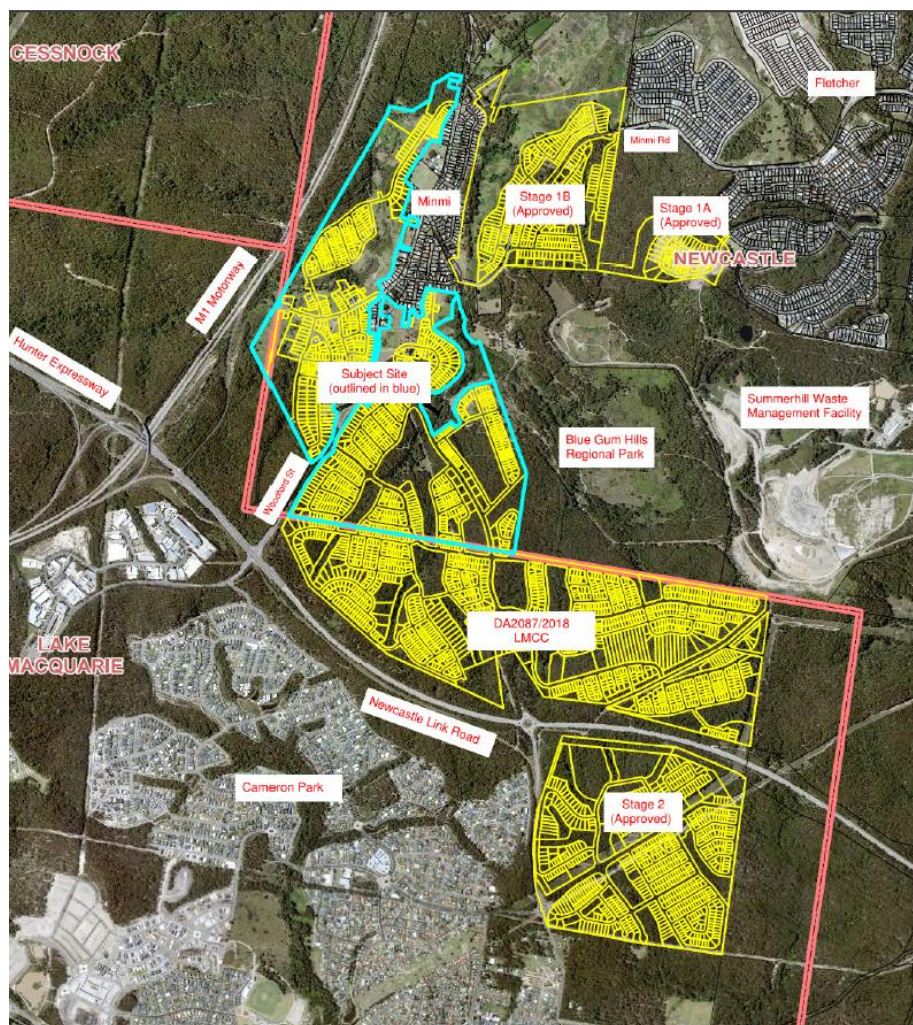


Figure 1: Site context

1.2 Site background

The site forms part of Concept Plan MP10_0090 which was approved by the Planning Assessment Commission in 2013 for a five-stage development of up to 3,300 dwellings and two commercial centres across the 520-hectare site, including associated infrastructure.

The Concept Approval also required the dedication of 1,561 hectares of conservation lands. A Voluntary Planning Agreement (VPA) was entered into with the State Government for the environmental conservation land contribution of the 1,561 hectares. This land was transferred to the State Government in October 2016.

The Concept Approval was modified on 21 December 2016 to adjust the timing of the provision of certain documents.

A second VPA was entered into with the Minister for Planning in 2018 for the provisions of contributions for designated state infrastructure including monetary contribution, dedication of education lands, and dedication of regional open space. Monetary contributions have been paid, and dedication of land will occur as part of the development process.

Consent has been issued for Stage 1 (within CN LGA) known as Link Road South and works have commenced. Stage 2 was approved by the Land and Environment Court (LEC) in December 2017 for 617 lots and works have not commenced as the consent is effectively being held in abeyance pending resolution of traffic matters to satisfaction of TfNSW.



Figure 2: Minmi / Link Road Concept Approval (MP10_0090)

1.3 The site

The site is generally rectangular in shape (approximately 2500m x 800m) with an area of 160 hectares. The land is densely vegetated native bushland, with some cleared areas for fire trails and tracks.

An unformed public road is located in the eastern part of the site, providing a link between Newcastle Link Road and SWMC and the privately owned lands to the east. This connection was previously a Crown Road and was transferred to LMCC as a public road in 2008.

The site is traversed by three overhead transmission lines. An easement on the eastern boundary of the site contains a TransGrid 330KV transmission line. An Ausgrid transmission line is situated within the unformed public road reserve, while the other connects via the road at Newcastle Link Road towards Minmi township.

Topographically, a prominent ridgeline defines the southern boundary, with the site generally falling to the north. The site drains south to north via four main flow paths. The flow paths are ephemeral tributaries of Back Creek. Approximately 20% of the eastern portion of the site drains to the east into Maryland Creek. The higher portions of the site contain slopes over 25%.

The site is bushfire prone from adjacent bushland surrounding the site and from bushland on the site. The site is not flood prone but will experience a level of flooding from on-site ephemeral creek lines.

The site has a history of underground coal mining and is subject to mine subsidence. No surface workings occurred on the site but the site did contain shafts down to underground workings. Some contamination, such as coal chitter contained in fill used to cap shafts and possible debris from a demolished former mine building, remain on the site from those mining operations. Other contamination exists due to opportunistic dumping of household and building waste.

Several Aboriginal sites were identified within the site in 2011 but subsequent attempts to find these sites were unsuccessful and only one site adjacent to the northern boundary remains.

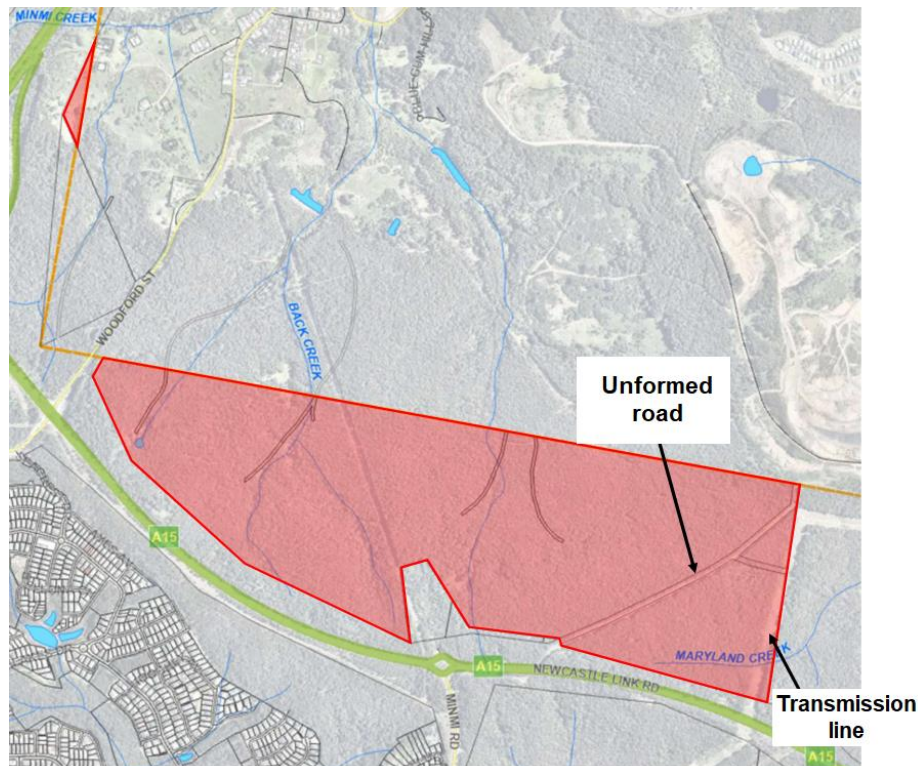


Figure 3: The site

2. THE PROPOSAL

2.1 The proposal

The proposal seeks consent for a subdivision of two into 1079 lots, comprising the following:

- 1063 residential lots

Comprising 944 standard lots ranging from 450m² to 1.9 hectares and 119 small lots ranging between 379m² and 450m².

- 5 future development/residual lots

Lots 1736, 1930 and 4003 are identified for future residential development.

Lot 1201 is split zoned residential/local centre and shares its northern boundary with CN LGA boundary.

Lot 2046 is identified for a potential school site.

- 16 public/drainage reserves
- site preparation works including earthworks, clearing of vegetation, contamination remediation and subsidence mitigation works
- construction of roads, drainage and utility infrastructure
- landscaping to streets, drainage reserves and public reserves
- intersection and road network upgrades.

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

The application relates to a majority of Stage 5 of the Concept Approval.

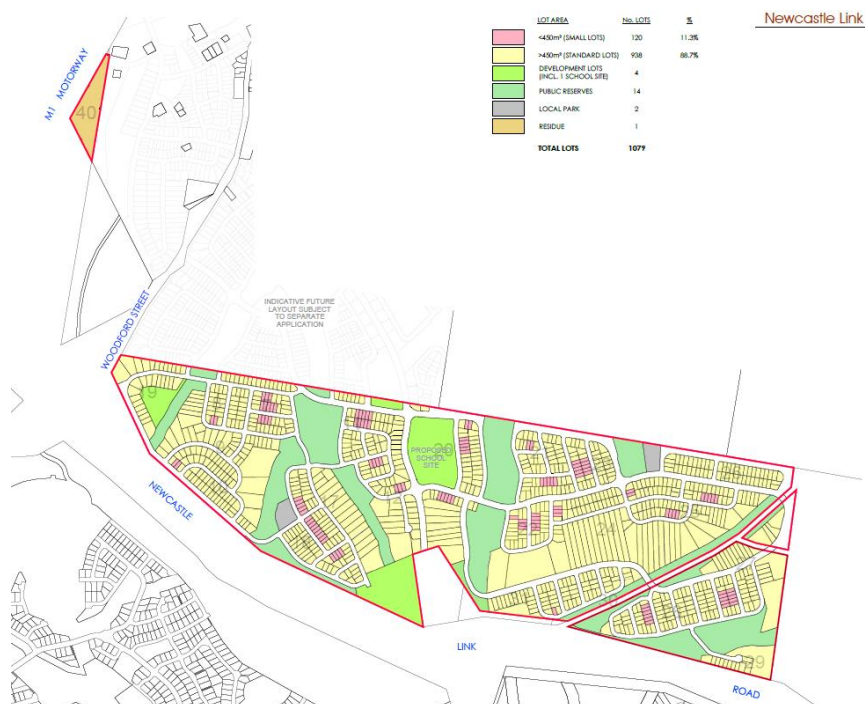


Figure 4: Proposed subdivision

2.2 Development application

The development application was lodged on 22 November 2018. A chronology of the development application since lodgement is outlined below.

Table 1: Chronology of the DA

Date	Event
22 November 2018	Lodgement date
5 December 2018	Exhibition of the application
5 December 2018	DA referred to external agencies (RFS, TfNSW)
18 January 2019	Appeal lodged with LEC Note, CN, TfNSW, NSW RFS, NPWS, and DPIE also joined proceedings
22 February 2019	DA referred to external agencies (TransGrid, Ausgrid)
23 April 2019	Satisfactory arrangements certification received from DPIE
21 August 2019	RPP briefing
30 September 2019	Section 34 Conferencing commenced Conferencing held on three separate occasions in 2019 and 2020
31 August 2020	Section 34 Conferencing terminated
18 May 2021	Correspondence received from DPIE stating DPIE are satisfied with the locations set aside for recreation facilities
May and June 2021	LEC Court Hearing scheduled for multiple days in late May / early June. Appeal withdrawn by applicant in early June
21 July 2021	Amended plans lodged with Council for development application Full resubmission of documentation received including updates to reflect discussion held with parties during Section 34 Conferencing

30 July 2021	Exhibition of the application
30 July 2021	Referrals to external agencies commenced (TfNSW, RFS, OEH, SA NSW, Ausgrid, TransGrid)
11 August 2021	RPP briefing
1 December 2021	RPP site inspection and briefing (joint with CN)
15 March 2022	RFI issued to applicant
26 April 2022	RPP briefing
1 June 2022	Amended plans and documentation lodged with Council
3 June 2022	Exhibition of the application
June 2022	DA referred to external agencies (SA NSW, TfNSW)
30 June 2022	RPP briefing
3 August 2022	RPP briefing
13 September 2022	RPP briefing

3. STATUTORY CONSIDERATIONS

3.1 Environmental Planning and Assessment Act 1979

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)* including:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (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.*

These matters are further considered throughout the report.

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

The development is classified as a transitional Part 3A project in accordance clause 2(1)(b) of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (the Transitional Regulations). Part 3A of the Act, as in force immediately before the repeal of that part, continues to apply to the project in accordance with clause 3(1) of the Transitional Regulations.

Section 3B(2)(d) of Schedule 2 notes a consent authority must not grant consent under Part 4 unless it is satisfied the development is generally consistent with the terms of the approved Concept Plan.

Section 3B(2)(f) of Schedule 2 notes the provision of any environmental planning instrument or development control plan do not have effect to the extent of any inconsistency with the terms of the Concept Approval.

The application has not demonstrated the development is generally consistent with the terms of the approved Concept Plan, and LEP controls, with several matters still requiring resolution.

The application is recommended to be deferred to enable the submission of further information to address the outstanding matters.

3.3 Biodiversity Conservation Act (Savings and Transitional) Regulation 2017

The provisions of clause 34A of the *Biodiversity Conservation Act (Savings and Transitional) Regulation 2017* apply to the development and requires consideration of impacts to biodiversity under the former planning provisions, being the *Threatened Species Conservation Act 1995 (TSC Act)*.

Whilst certification under clause 34A(3) of the *Savings and Transitional Regulation* has been provided, advice has been provided from the Panel Secretariat that the former planning provisions apply and assessment is required to be undertaken to determine whether a species impact statement (SIS) needs to be submitted.

Council's Ecologist has reviewed the biodiversity reports submitted and identified further information was needed for newly listed species. The applicant was requested to provide this information however has not provided the information as it is their understanding the identified species were not listed under the previous planning provisions and is not subject to an assessment of significance.

Insufficient information has therefore been provided to enable Council and the Panel to assess section 5A of the *EPA Act* and determine if the development will or will not have a significant effect on threatened species, populations or ecological communities, or their habitats, and whether a SIS is required.

It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

Refer to section 4.4 of this report for detailed assessment.

3.4 Provisions of Environmental Planning Instruments - state environmental planning policies

The following state environmental planning policies (SEPPs) are relevant to the application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

A summary of the key matters for consideration arising from these SEPPs is outlined in Table 2 and considered in more detail below.

The majority of SEPPs that apply to the development are consolidated SEPPs which replaced previous SEPPs that applied. The consolidated SEPPs commenced on 1 March 2022. Previous provisions from the repealed SEPPs have been transferred to the consolidated SEPPs, and under section 1.4 of each SEPP it is identified that section 30A of the *Interpretation Act 1987* is taken to apply to provisions transferred.

Table 2: Summary of applicable State Environmental Planning Policies

EPI	Matters for consideration	Comply
Planning Systems SEPP 2021	The development is regionally significant development as per clause 2, Schedule 6 of the Planning Systems SEPP – General development over \$30 million.	Y
SEPP Transport and Infrastructure 2021	<p>Clause 2.122 - traffic-generating development – subdivision of 200 or more residential lots</p> <p>Referral sent to Transport for NSW who are not satisfied with proposal.</p> <p>A response from TfNSW in respect to the SEPP has not been received.</p> <p>It is recommended the application be deferred to enable the submission of further information to address this matter.</p>	N
	Clause 2.48 – a response to the notice sent to Ausgrid has been received which identifies their requirements for the development, which can be achieved through conditions of consent (upgrading of existing infrastructure to cater for development).	Y
SEPP Biodiversity and Conservation 2021	<p>Part 3.2 (clauses 3.5 – 3.9) of the SEPP applies as the land is greater than one hectare and an assessment must be made as to whether the land is potential or core koala habitat.</p> <p>Land was determined to not be core Koala habitat, however further information has been requested to address the up-listing of the species.</p> <p>The applicant has not provided this information as it is their understanding the identified species were not listed under the previous planning provisions and is not subject to an assessment of significance.</p> <p>It is recommended the application be deferred to enable the submission of further information to address this matter.</p>	N

SEPP Resilience and Hazards	<p>Clause 4.6 requires (insert) / a Remediation Action Plan and review by a NSW EPA accredited Site Auditor has been submitted, which confirms the land can be made suitable for the proposed residential use with the proposed remediation strategies.</p> <p>A Remediation Action Plan has been submitted with the application, and does not conclusively identify the location of proposed capping. Insufficient information has been submitted to demonstrate if the site can be made suitable for its intended use.</p> <p>A request for this information has not been made to the applicant due to the outstanding fundamental site planning and threshold issues. A request for this information can made following the resolution of these fundamental issues, as it is likely the development can achieve this requirement through submission of further information.</p> <p>It is recommended the application be deferred to enable the submission of further information to address this matter.</p>	N
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The development is subject to Schedule 2(3B) of the *Transitional Regulations* whereby any environmental planning instrument (EPI) provision that is inconsistent with the Concept Approval has no effect, and any requirement for a master plan under an EPI does not restrict the granting of consent.

The majority of the SEPPs that apply to the development are consolidated SEPPs which replaced previous SEPPs that applied. The consolidated SEPPs commenced on 1 March 2022. Previous provisions from the repealed SEPPs have been transferred to the consolidated SEPPs, and under section 1.4 of each SEPP it is identified section 30A of the *Interpretation Act 1987* is taken to apply to provisions transferred.

3.4.1 State Environmental Planning Policy (Planning Systems) 2021

The proposal is identified as regionally significant development under clause 2, Schedule 6 of the Planning Systems SEPP – General development over \$30 million.

The Hunter and Central Coast Regional Planning Panel are the consent authority for the application.

3.4.2 State Environmental Planning Policy (Transport and Infrastructure) 2021

3.4.2.1 Traffic Generating Development

The development is traffic generating development under clause 2.122 and Schedule 3 of the SEPP, as the application proposes more than 200 residential lots. As traffic generating development, the consent authority is required to give written notice to TfNSW and take into consideration any response.

The application has been referred to Transport for NSW (TfNSW) on several occasions, and TfNSW are not satisfied with the modelling, and therefore the impact of the development cannot be identified.

Refer to section 4.11.3 of this report for detailed assessment.

3.4.2.2 Development likely to affect electricity transmission or distribution network

The development requires the consent authority to give written notice to the electricity supply authority (Ausgrid) before determining the application under clause 2.48 of the SEPP, as the development is within and adjacent to an easement for electricity purposes.

A response has been received from Ausgrid which identifies their requirements for the development, which can be achieved through conditions of consent (upgrading of existing infrastructure to cater for development).

3.4.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Part 3.2 (clauses 3.5 – 3.9) of the SEPP applies as land is greater than one hectare and an assessment must be made as to whether the land is potential or core koala habitat.

The biodiversity assessment submitted with the application has undertaken an assessment of koala habitat potential at the site and determined the site to be potential Koala habitat but not core Koala habitat. Further assessment was carried out and determined the site is not core koala habitat as no koalas were observed at the site, and no secondary evidence was found (i.e. scratches on tree trunks, scent markings, scat, tracks in soil, etc).

Council's Ecologist has reviewed the biodiversity reports submitted and identified further information was needed to assess the recently up-listed species *Koala (Phascolarctos cinereus)*. The applicant was requested to provide this information in June 2022, which was further supported by the Panel in the 30 June 2022 briefing. The applicant has not provided the information.

Insufficient information has therefore been provided to enable Council and the Panel to assess the impact of the development to potential koala habitat. It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

Refer to section 4.4.2 of this report for detailed assessment.

3.4.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if the land is contaminated, it is satisfied 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.

Assessment of potential contamination has been submitted with the application, including a Remediation Action Plan (RAP). The assessments identify the site contains contamination from historical land uses, illegally dumped waste, and potential for landfill gases emanating from the adjoining SWMC.

The application, via the RAP submitted, proposes to cap and contain contaminated material on-site. The RAP does not conclusively identify the location of proposed capping.

Insufficient information has been submitted to demonstrate if the site can be made suitable for its intended use.

A request for this information has not been made to the applicant due to the outstanding fundamental site planning and threshold issues. A request for this information can be made following the resolution of these fundamental issues, as it is likely the development can achieve this requirement through submission of further information.

It is recommended the application be deferred to enable the submission of further information to address this matter.

Refer to section 4.6 of this report for detailed assessment.

3.5 Provisions of Environmental Planning Instruments – local environmental plan - Lake Macquarie Local Environmental Plan 2014

3.5.1 Zoning and permissibility

The site is zoned R2 Low Density Residential, C2 Environmental Conservation, and B2 Local Centre.

The application proposes subdivision, which is permitted with development consent in any zone pursuant to clause 2.6.

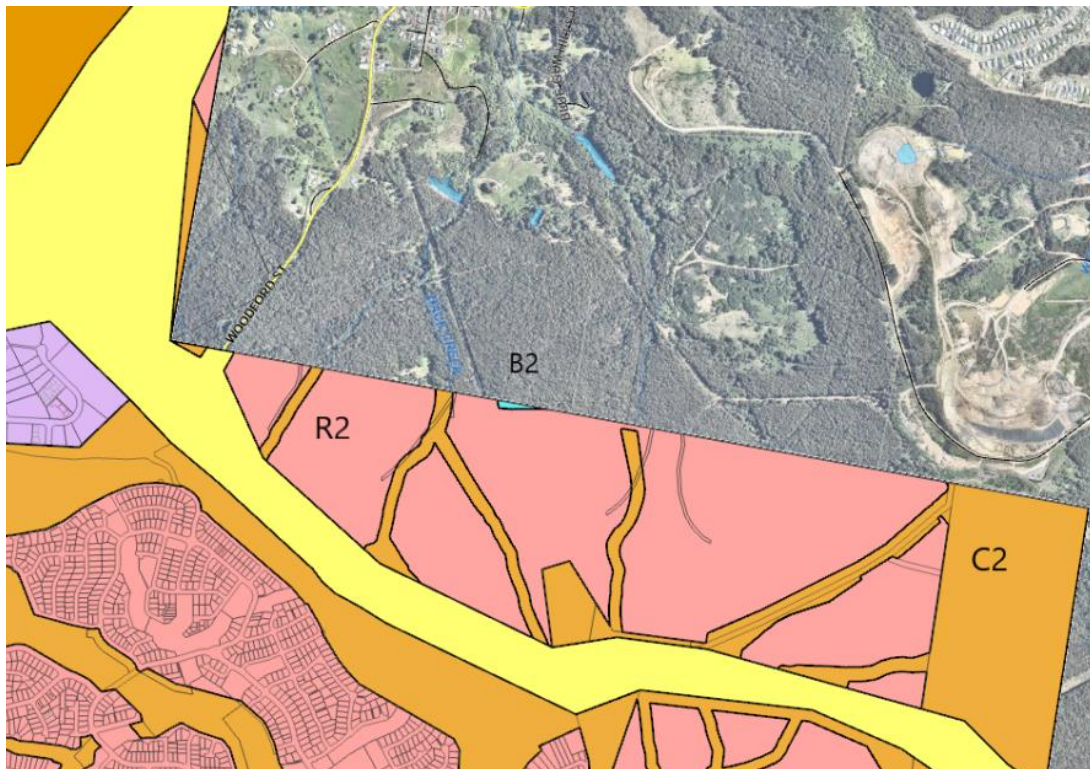


Figure 5: Zoning map extract (R2 shown in pink, C2 shown in brown, and B2 shown in blue)

3.5.2 Minimum subdivision lot size

The minimum lot sizes for each zone, and consideration of the development are detailed in Table 3.

Table 3: Minimum lot size consideration

LEP minimum lot size	Proposed lot size	Comply
Cl 4.1 - R2 zoned land - 450m ²	All standard residential lots have a minimum area of 450m ² or more.	Y
Cl 4.1B enables subdivision of land that creates 10 or more lots and at least 10% but no more than 50% of those lots to have area equal to or greater than 300m ² but not greater than 450m ² and	A total of 113 lots (which equates to 10%) are proposed which have areas equal to or greater than 300m ² but not greater than 450m ² .	Y

<p>be for the purposes of a dwelling house or semi-detached dwelling.</p>		
<p>CI 4.1C corner lots requires corner lots to have an area of at least 500m² in R2 zone.</p>	<p>All corner lots, except the following meet the minimum corner lot size.</p> <p>Nine corner lots do not meet the minimum LEP lot size (lots 1710, 1711, 1811, 1812, 1821, 1843, 2438, 3007 and 3138) having areas ranging from 419m² to 497m², however the provisions of an EPI do not have effect to the extent it is inconsistent with the terms of the Concept Plan approval.</p> <p>As the Concept Plan and subsequent Link Road North Urban Design Guidelines provide minimum lot size controls that permit lots smaller than 450m², clause 4.1 does not have effect in this instance.</p>	<p>N</p>
<p>CI 4.1C battle-axe lots requires battle-axe lots to have an area of at least 600m² in the R2 zone.</p>	<p>Two battle-axe lots are proposed (Lot 1205 and 2912) which have area of 683m² approximately 1000m².</p>	<p>Y</p>
<p>CI 4.1D - Exceptions to minimum subdivision lot sizes for certain split zones C2 zoned land – 40ha</p>	<p>The application proposes to create 13 conservation zoned lots.</p> <p>Twelve lots do not achieve the minimum lot size and range from 2292m² to 33293m².</p> <p>Lot 3050 has an area of 41 476m² and achieves the minimum lot size.</p> <p>All C-zoned lots are for public or drainage reserves.</p> <p>Subdivision of C2 zone land is permitted as exempt development under Subdivision 38 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</p> <p>The SEPP permits the subdivision of land for the purpose of creating a public reserve (including drainage reserves), and no minimum lot size applies.</p> <p>Whilst the lots do not achieve the prescribed minimum lot size in the C2 zone,</p>	<p>Y</p>

	the proposed subdivision is permitted as outlined above.	
CI 4.1 - B2 zoned land – no minimum lot size	Lot 1201 has an area of approximately 3600m ² which is considered sufficient to provide for its future development for commercial/business.	Y

Part Lot 4003 is located in the LMCC LGA and has an area of 22.572ha. The zone boundary for the lot is not fully understood and includes R2 zoned land, and may include a portion of C2 and SP2 zoned land. This is due to inconsistencies in the cadastral plan and exhibited LEP land use zone maps.

To date, insufficient information has been submitted to enable a detailed assessment of this matter. It is recommended the application be deferred to enable the submission of further information to address this matter.

3.5.3 Arrangements for designed State public infrastructure

Pursuant to clause 6.1, 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 part of an urban release area, unless the Secretary has certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.

Satisfactory arrangements have been received from the Department of Planning and Environment on 23 April 2019.

3.5.4 Public utility infrastructure

Pursuant to clause 6.2, development consent in an urban release area cannot be issued unless the consent authority is satisfied suitable arrangements for public utility infrastructure (water, sewer and electricity).

Public utility infrastructure is available to the development. Refer to section 4.13 of this report for detailed assessment.

3.5.5 Development control plan

Pursuant to clause 6.3, development consent must not be issued for development on land in an urban release area unless a development control plan (DCP) has been prepared for the land.

Urban Design Guidelines (UDG) have been adopted for the development in association with the Concept Approval. These guidelines are the equivalent of a DCP for the site.

All land, except Lot 4003 is subject to the Link Road North Area Plan (the adopted UDG for LMCC). Lot 4003 is subject to the Minmi Precinct Development Guidelines UDG however no controls under the UDG are relevant as the lot is proposed as a future development lot.

The proposal is generally consistent with the UDG, except for the insufficient information regarding earthworks and fencing to roadway outcomes. Refer to Attachment B for detailed assessment of the UDG.

3.5.6 Earthworks

Pursuant to clause 7.2, development consent is required for earthworks.

The application proposes earthworks across the site for remediation of the site from contamination and mine subsidence, construction of roads, stormwater facilities and utility services, establishment of APZs, regrading to achieve maximum APZ grades, and regrading of residential lots to establish lots suitable for future dwellings. Retaining walls within the site range between 1-5m in height for roads and boundaries. Retaining to residential lots has not been demonstrated, however is discussed in the application documentation.

The extent of earthworks associated with remediation of the site from contamination and mine subsidence is not conclusive.

Further details are required to identify the design, location and set back of retaining walls, particularly where adjoining site boundaries and future public reserves and potential vegetation impacts may arise.

If the application is deferred, a request for this information can be made, as it is likely the development can achieve this requirement through submission of further information.

Refer to section 4.6, 4.7 and 4.8 of this report for detailed assessment.

3.5.7 Flood planning

Pursuant to clause 7.3 (now clause 5.10), development consent must not be granted to land that is flood prone unless the consent authority is satisfied the development is compatible with the flood hazard of the land, will not significantly adversely affect flood behaviour, incorporates appropriate measures to manage risk to life from flood, and not have adverse environmental impacts.

The site is not identified as flood prone, however localised flooding is experienced from catchments within the site.

A flood impact assessment has been submitted with the application which identifies the development will not be adversely impacted by flooding, or cause adverse flooding impacts. The report identifies all residential lots and park lots are located outside of the 100 year flood event, all road crossings are located outside of, or above the 100 year flood level, and safe evacuation is achievable, and stormwater management facilities have been designed to demonstrate peak flows leaving the site to be similar or less than those leaving the site currently during storm events, and not having adverse impacts.

Refer to section 4.9.1 of this report for detailed assessment.

3.5.8 Development on sensitive Aboriginal landscape areas

Pursuant to clause 7.7, for development located on land identified as sensitive Aboriginal landscape area, the consent authority may require an Aboriginal Heritage Impact Statement.

The site maintains one Aboriginal site, which is located in a riparian corridor and proposed to be protected in situ. Documentation addressing impact of the development to Aboriginal cultural heritage has been submitted with the application, demonstrating the development will not have adverse impacts.

Refer to section 4.2 of this report for detailed assessment.

3.5.9 Essential services

Pursuant to clause 7.21, development consent must not be granted to development unless the consent authority is satisfied water, electricity, sewer, stormwater drainage and vehicle access is available or adequate arrangements have been made to make them available.

All essential services are available to the development. Refer to section 4.13 of this report for detailed assessment.

3.6 Provisions of any proposed instruments

There are several instruments, including draft SEPPs that were draft instruments during the assessment period of the application, however have since been adopted.

3.7 Provisions of any Development Control Plan

Ordinarily, the Lake Macquarie Development Control Plan 2014 (LM DCP 2014) would apply, however the Link Road North Area Plan and Minmi Precinct Development Guidelines, which act as UDG, have been adopted for the development in association with the Concept Approval.

A summary of the key matters for consideration arising from the UDG are outlined in Table 3. Refer to Attachment B for detailed assessment of the UDG. Note, no controls under the Minmi Precinct Development Guidelines UDG are relevant to Lot 4003 as the lot is proposed as a future development lot.

Table 4: Summary of UDG controls

Control	Consideration	Comply
Subdivision design and layout	The development includes a layout that is generally consistent with the UDG	Y
Road design	Road design is generally consistent with the UDG	Y
Lot configuration	All lots meet the required minimum area and dimension	Y
Cut and fill	Sufficient information to enable detailed assessment of this matter has not been provided.	N

3.8 Planning agreements under Section 7.4 of the EP&A Act

3.8.1 Concept Approval planning agreement

A planning agreement was entered into under Section 93F (now Section 7.4) of the *EP&A Act* by the landowners (Winten (No 21) Pty Ltd and Minmi Land Pty Ltd and the State, in September 2018.

The Planning Agreement applies to the entirety of the Minmi Lands covered by the Concept Approval.

The planning agreement provides for a total contribution valued at \$18,284,662 (which equates to \$81,994 for each hectare of net developable area) and is broken down as follows:

- Monetary Contribution of \$519,662 - a monetary contribution paid to the Minister on signing of the planning agreement
- Education contribution of \$4,565,000 - the transfer of a new primary school site (Lot 2046) to the Minister or their nominee (valued at \$3,200,000), or the payment of a monetary contribution of \$3,200,000 in the event the Minister does not require the new primary school site

- Education contribution - the transfer of land to comprise an extension to the existing Minmi Public School of not more than 1.3 hectares (valued at \$1,365,000), or the payment of a monetary contribution of \$1,365,000 in the event the Minister does not require the school site.
- Environmental offset lands - dedication of 1,561 hectares of conservation lands valued at \$13,200,000 that was transferred to the Minister administering the *National Parks and Wildlife Act 1974*. The land was transferred prior to the signing of the planning agreement).

Obligations of the planning agreement that are still to be fulfilled are:

- Transfer of Lot 2046 for a school site, and land for Minmi Public School extension

Conditions can be imposed requiring evidence these matters have been satisfied prior to the release of the relevant Subdivision Certificate (SC).

For Lot 2046, conditions can be imposed requiring the transfer of the lot prior to the release of the SC that creates the 600th lot.

The Minmi Public School extension is located within the CN LGA and is subject to a separate development application.

3.8.2 Development application proposed planning agreement

The applicant has offered to enter into a draft planning agreement under Section 7.4 of the *EP&A Act*.

In lieu of monetary contributions under s7.11 the planning agreement proposes:

- Monetary contribution toward the capital cost of constructing sports fields and outdoor courts to meet the demand generated by the LMCC population for this application, with these facilities located in the CN LGA
- Dedication of land to LMCC (or its' nominee) for the abovementioned sports fields and outdoor courts
- Embellish and dedicate two local parks with playgrounds (being Lots 1851 and 2547)
- Construct and dedicate approximately 800m of shared pathway along proposed MC01
- Provide monetary contribution to be spent on other public works within the LMCC LGA, at LMCC discretion.

A draft planning agreement has recently been prepared by LMCC however has not been provided to the applicant for review, nor exhibited or reported to the elected Council. The agreement has not been provided to the applicant due to the outstanding fundamental site planning and threshold issues. A request for review can be made following the resolution of these fundamental issues, as it is likely an outcome can be achieved for the planning agreement.

It is recommended the application be deferred to enable the submission of further information to address this matter.

3.9 Provisions of Regulations

The *Environmental Planning and Assessment Regulation (EPA Reg)* contains matters that must be taken into consideration by a consent authority in determining a development application.

No additional matters are relevant to the proposed development.

3.10 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 have been considered as outlined above and the key issues section below.

The likely impacts of the development are not resolved. The application is recommended to be deferred to enable the submission of further information to address the outstanding matters as identified in this report.

3.11 Suitability of the site

The likely impacts of the development, and therefore suitability of the site have not been resolved. The application is recommended to be deferred to enable the submission of further information to address the outstanding matters as identified in this report.

3.12 Public submissions

The proposal was notified in accordance with the Council's *LMDCP 2014* and Council's Community Participation Plan on the following three occasions:

- 5 December 2018 – 14 January 2019
- 6 October 2020 – 26 October 2020
- 30 July 2021 – 20 August 2021
- 3 June 2022 – 28 June 2022

Eight unique submissions, all in objection to the proposal were received.

Three submissions were received following the first notification period

One submission was received following the second notification period.

Two submissions were received following the third notification period.

One submission was received during the fourth notification period.

One submission was received following the fourth notification period.

The issues raised in these submissions are considered in Table 5.

Table 5: Community submissions

Issue	No of submissions	Council comments
Impact to operations of the Summerhill Waste Management Centre as a regional waste facility.	3	<p>Objections have been received from CN regarding the potential impact of the development to the operation of the facility, and particularly the future southern access road which provides an opportunity for a new entry/exit to the facility.</p> <p>Objections are requesting a suitable buffer is implemented to ensure the future access is not compromised from adjacent residential development.</p>

		<p>Objections are requesting a 1000m buffer is implemented to ensure the future operations of the landfill, potentially up to a further 80-130 years, is not comprised from adjacent residential development, odour, acoustic, gas impacts.</p> <p>The application has demonstrated the development will not be adversely impacted by noise generated from the facility.</p> <p>Further information is required to demonstrate if odour impacts are acceptable.</p> <p>The development does not compromise the ability for a future access road to be provided.</p> <p>Refer to section 4.3.1 and 4.10 of this report for detailed assessment.</p> <p>The applicant has also provided a detailed response to the submission which addresses how the development has addressed any future access road.</p>
Inconsistency with Concept Approval condition 1.34	1	<p>Objections have been received regarding the interpretation of 'waste servicing vehicles' specified in condition 1.34 of the Concept Approval.</p> <p>The submitter argues the condition caters for up to B-Double sized vehicles.</p> <p>The submitter argues the condition reference to 'relevant council' means City of Newcastle.</p> <p>Council considers the condition to be satisfied with the collector road network within the subdivision being suitable for waste servicing vehicles.</p> <p>Refer to section 4.10.2 of this report for detailed assessment.</p> <p>The applicant has also provided a detailed response to the submission which responds to the submitter's concerns of heavy vehicles on the key route proposed.</p>
Impact to Blue Gum Hills Regional Park	2	<p>Objections have been received from NPWS about impacts of the development, which is adjacent to and upstream to the park.</p> <p>Specific concerns relate to impacts of earthworks and retaining near the park boundary, and impact to vegetation within the park due to the earthworks, and the vegetation and habitat management plan.</p> <p>Following submission of additional information, NPWS are satisfied with the latest VHMP.</p>

		<p>NPWS remain concerned about impacts of earthworks and retaining near the park boundary, and impact to vegetation within the park due to the earthworks.</p> <p>It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.</p> <p>Refer to section 4.7 of this report for detailed assessment.</p>
Lack of pedestrian and cycle facilities that connect to existing networks	1	<p>The development appears to lack pedestrian and cycle facilities that connect to existing networks.</p> <p>Pedestrian and cycle paths are incorporated throughout the subdivision and provide internal connectivity, as well as connections to BGHRP and other stages of the development.</p> <p>Refer to section 4.11.3 of this report for detailed assessment.</p>
Lack of public transport network in the development	1	<p>The development appears to lack public transport connections.</p> <p>The internal road network has been designed to accommodate a bus route throughout the estate.</p> <p>Refer to section 4.11.2 of this report for detailed assessment.</p>

3.13 Agency referrals and concurrence

The development is not integrated development as the terms of the Concept Approval apply.

The Concept Approval requires the following requirements to be met:

- Condition 1.16 – Department of Planning Secretary to be satisfied as to recreation facilities arrangements.
- Condition 1.20 – Office of Environment and Heritage – management procedures for interface to Blue Gum Hills Regional Park and riparian land.
- Condition 1.30 - Subsidence Advisory NSW – requirement for mine subsidence / pothole risk assessment.
- Condition 1.31 – Transport for New South Wales – traffic assessments and intersection upgrades.
- Condition 1.35 – Office of Environment and Heritage – conservation management plan.
- Condition 1.36 – Office of Environment and Heritage – heritage interpretation strategy

- Condition 1.37 – Office of Environment and Heritage – European archaeological investigations.
- Condition 1.38 – Office of Environment and Heritage – Aboriginal heritage management plan.
- Condition 1.45 - NSW Rural Fire Service – requirement for a Bushfire Management Plan to the satisfaction of the RFS.
- Condition 1.47 – TransGrid – requirement to show any requirements in relation to Newcastle – Tomago 330kV transmission line have been met.

The development application has been referred to the various agencies for as outlined below in Table 6. Further details are also included in Attachment A, with respect to the relevant Concept Approval condition.

Table 6: Referrals to agencies

Agency	Referral trigger	Comments	Resolved
Department of Planning Secretary (DPIE)	Condition 1.16 of Concept Plan Approval	Response received from DPIE (May 2021) confirming approving suitable locations for recreational facilities.	Y
Biodiversity and Conservation Division (DPIE) (OEH)	Condition 1.20 of Concept Plan Approval	The application has been referred to OEH (now Biodiversity and Conservation Division (BCD)) for review of the Vegetation Habitat Management Plan (VHMP). BCD raised no objection to the development and recommended some aspects of the VHMP be amended to reflect best practice. The applicant has reviewed these recommendations and provided a response requesting further consideration to times and temperatures for clearing. These matters are resolvable and can be achieved through further consultation with BCD and imposition of appropriate conditions of consent, if the application is deferred.	N
SA NSW	Condition 1.30 of Concept Approval	The application was referred to SA NSW who have requested updated geotechnical assessments in accordance with their current guidelines. This information has not been provided.	N

TfNSW	Condition 1.31 of Concept Approval	The application has been referred to Transport for NSW (TfNSW) on several occasions, and TfNSW are not satisfied with the modelling, and therefore the impact of the development cannot be identified.	N
	Clause 104 – Infrastructure SEPP – traffic generating development	A response from TfNSW in respect to the SEPP has not been received.	N
Heritage NSW	Condition 1.35 of Concept Approval	Response received from Heritage NSW confirming they are satisfied with the development, noting the site does not contain any European heritage items, and recommended conditions regarding unexpected finds.	Y
	Condition 1.36 of Concept Approval		
	Condition 1.37 of Concept Approval		
	Condition 1.38 of Concept Approval	Response received from Heritage NSW confirming they are satisfied with the development, and recommended conditions of consent regarding AHIP applications, if required.	Y
NSW RFS	Condition 1.45 of Concept Approval	The application was referred to NSW RFS who raised no objection to the development and recommended conditions regarding BAL levels, APZs, road construction, utility provision and landscaping.	Y
TransGrid	Condition 1.47 of Concept Approval	The application was referred to TransGrid who raised no objection to the development and recommended conditions regarding construction related matters.	Y

The application was also referred to Ausgrid under clause 2.48 of the Transport and Infrastructure SEPP. Ausgrid raised no objection to the development and recommended conditions for upgrading of existing infrastructure to cater for development.

3.14 Public interest

The likely impacts of the development have not been resolved, and therefore consideration of public interest has not been satisfied. The application is recommended to be deferred to enable the submission of further information to address the outstanding matters as identified in this report.

4. 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.

4.1 Concept Approval

There are several conditions of the Concept Approval that have not been addressed including traffic and access, earthworks, contamination and remediation, mine subsidence mitigation, odour impact, waste servicing, staging plan, vegetation and habitat management plan, landscaping to public domain and fencing, construction environment management plan, and contributions and dedication.

Details of the assessment of the Concept Approval are included in Attachment A.

4.2 Aboriginal heritage

The site maintains one Aboriginal site, which is located in a riparian corridor and proposed to be protected in situ. All other five sites identified during the Concept Approval assessment have since been updated to having been destroyed following multiple attempts to locate the sites in preparation for the application.

Condition 1.36 of the Concept Approval requires a heritage interpretation strategy to be provided that addresses interpretation of Aboriginal heritage throughout the development, including identifying opportunities for long term storage and display of archaeological relics. The strategy is to be prepared in consultation with the Office of Environment and Heritage (OEH) (now Heritage NSW), and Council.

A heritage interpretation plan, prepared by a conservation practitioner has been submitted with the application. The plan includes a detailed history of the whole Concept Approval site and includes Aboriginal heritage interpretation strategies. The application has been referred to OEH (now Heritage NSW) who raised no objection to the development and recommended conditions of consent relating to Aboriginal heritage impact permit (AHIP).

Condition 1.39 of the Concept Approval requires the application to demonstrate all reasonable effort has been made to avoid impacting Aboriginal cultural heritage. Where impacts are unavoidable, requirements for legislative approvals are to be addressed, and mitigation measures are to be negotiated with the local Aboriginal community, and all sites impacted must have an OEH Aboriginal Heritage Site Recording form completed and submitted to OEH within three month of completion of the Aboriginal cultural heritage works.

An Aboriginal cultural heritage management plan (ACHMP) has been submitted with the application, which was undertaken in consultation with the Registered Aboriginal Parties and OEH. The report demonstrates the proposal has been designed to avoid impact to the registered site and recommends works in proximity to the site are avoided. This outcome can be addressed through the imposition of an appropriate condition of consent.

Condition 1.40 requires an Aboriginal Cultural Education Program be developed and implemented in consultation with the local Aboriginal Community, for the induction of all personnel and contractors involved in the construction activities on site, prior to commencement of works. This outcome can be addressed through the imposition of an appropriate condition of consent.

The statement of commitments also requires prior to commencement of works, development of a procurement policy in conjunction with the indigenous community, for works during construction and ongoing maintenance, which incorporates initiatives to encourage local employment opportunities, including Aboriginals for the duration of the project. This outcome can be addressed through the imposition of an appropriate condition of consent.

The statement of commitments also requires prior to commencement of works an Aboriginal heritage plan of management (PoM) to be submitted in accordance with the heritage mitigation measures outlined in the heritage impact statement submitted with the Concept Approval, and include consultation with local Aboriginal stakeholder groups during the preparation of the Cultural Heritage Management Plan (CHMP) and throughout the development program, an updated AHIMS search to ensure all newly identified sites are included, ensure appropriate information, stop work, recording, and corrective action procedures are in place during construction, and implementation of heritage interpretation strategy. This outcome can be addressed through the imposition of an appropriate condition of consent.

It is noted an Aboriginal heritage management plan is already in place for the development, as was required by Condition 1.38 of the Concept Approval prior to the approval of any development application.

4.3 Acoustic impact

Condition 1.41 of the Concept Approval requires each application to outline strategies for impact of traffic noise on future residents, and restricts the use of acoustic barriers to Newcastle Link Road.

Condition 1.42 of the Concept Approval requires each application to assess the impact of increased traffic noise on all existing residential areas.

The statement of commitments requires an acoustic statement detailing measures to reduce road traffic noise for development along the Newcastle Link Road.

A traffic noise assessment has been submitted with the application. The report considers future residents, as well as the existing residences in the vicinity of the site and details the following acoustic outcomes:

- The majority of future dwellings will not be adversely affected by traffic noise and can achieve relevant internal noise criteria when constructed of standard building materials
- No mitigation is required as a result of traffic noise from the Newcastle Link Road.
- Several lots adjoining Woodford Street and the internal boulevard will exceed the relevant internal noise criteria, as shown in Figure 6.

Lots adjoining Woodford Street and on the eastern side of the internal boulevard are not expected to require acoustic attenuation to future dwellings, as the noise criteria is only exceeded for the rear of these lots where rear setbacks apply.

As a precautionary measure, conditions of consent could be imposed to address any residential building within the affected portion of these lots.

Lots on the western side of the internal boulevard require attenuation features that include:

- thickened (minimum 4mm) monolithic glass (openable) and standard weather seals (category 1)
- thickened (minimum 6mm) monolithic glass (openable) and full perimeter acoustic seals (category 2)
- thickened (minimum 6mm) laminated glass (openable) and full perimeter acoustic seals (category 3)

This outcome can be achieved through the imposition of appropriate conditions of consent requiring a covenant on these lots.

- Noise assessment of existing traffic volumes identifies exceedance of the relevant noise criteria to existing residents for day and night periods. Traffic generated by the development will not increase existing levels by more than 12dB, which is consistent with the relevant noise policy for both day and night assessment periods, and no noise mitigation to existing residences is required.



Figure 6: Acoustic attenuation plan

4.3.1 Summerhill Waste Management Centre acoustic impact

An acoustic assessment has been submitted with the application that addresses potential noise from the adjoining SWMC (i.e. reverse alarms, truck and plant movement within the facility). The report identified the measured noise was below the default Noise Policy for Industry (NPI) criteria. No mitigation measures are required to attenuate noise generated by the SWMC.

Objections have been received from CN requesting a suitable buffer (1000m is suggested) to ensure the SWMC is not compromised from adjacent residential development. The assessment demonstrates no mitigation measures are required.

4.4 Biodiversity

Following approval of the Concept Approval, the Department of Planning Industry and Environment (DPIE) (now Department of Planning and Environment) provided certification in 2019 under clause 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* certifying the development has appropriately considered and mitigated biodiversity impacts associated with the development up until 25 August 2017.

During the assessment of the development application, advice in relation to the s34A(3) Biodiversity Certification was provided from the Panel Secretariat regarding the extent of further flora and fauna investigation to meet the legislative framework. The advice confirmed Part 4, including former sections 5A, 78A, 79B and 79C, of the *EP&A Act* applies and assessment is required to be undertaken to determine whether a SIS needs to be submitted. In applying 5A of the *EP&A Act*, the consent authority must consider not only the factors

under that section but also the VPA (dedication of 1,561 hectares of conservation lands) and the conditions of the Concept Plan Approval.

The application proposes to clear approximately 150 hectares of vegetation, minus vegetation within riparian corridors zoned conservation, and retain vegetation on lands with steeper slope. Clearing is primarily as a result of earthworks for construction of roads, stormwater facilities and utility services, establishment of APZs, regrading to achieve maximum APZ grades, and regrading of residential lots to establish lots suitable for future dwellings. Where APZs do not require regrading, selective thinning will occur to enable vegetation to be retained within residential lots.

Council's Ecologist has reviewed the biodiversity reports submitted and identified further information was needed for species listed under the *Threatened Species Conservation Act 1995* after the s34A date, which includes *Rhodamnia rubescens* (Scrub Turpentine) and recently up-listed species *Koala (Phascolarctos cinereus)*.

The applicant was requested to provide this information in June 2022, which was further supported by the Panel in the 30 June 2022 briefing. The applicant has not provided the information as it is their understanding the identified species were not listed under the previous planning provisions and is not subject to an assessment of significance.

Insufficient information has therefore been provided to enable Council and the Panel to assess section 5A of the *EPA Act* and determine if the development will or will not have a significant effect on threatened species, populations or ecological communities, or their habitats, and whether a SIS is required.

It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

4.4.1 Concept Approval condition 1.20 and statement of commitments

Condition 1.20 of the Concept Approval requires each application to include details of strategies to avoid and minimise clearing and disturbance of vegetation where possible, management measures for minimising impacts on fauna during subdivision works including the implementation of appropriate tree clearing protocols, details regarding the management of the interface between the site and the conservation lands, Blue Gum Hills Regional Park and riparian land, with management procedures to be prepared in consultation with OEH and be carried into a VHMP.

The statement of commitments also requires trees of significance and trees within riparian corridors to be protected, wherever feasible.

The application has minimised clearing and disturbance of vegetation, to the extent possible, and proposes to retain vegetation within riparian corridors zoned conservation, and retain vegetation on lands with steeper slope. Clearing is primarily as a result of earthworks for construction of roads, stormwater facilities and utility services, establishment of APZs, regrading to achieve maximum APZ grades, and regrading of residential lots to establish lots suitable for future dwellings. Where APZs do not require regrading, selective thinning will occur to enable vegetation to be retained within residential lots.

The application has been referred to OEH (now Biodiversity and Conservation Division (BCD)) who raised no objection to the development and recommended some aspects of the VHMP be amended to reflect best practice. The applicant has reviewed these recommendations and provided a response requesting further consideration to times and temperatures for clearing. These matters are resolvable and can be achieved through further consultation with BCD and imposition of appropriate conditions of consent, if the application is deferred.

The statement of commitments requires prior to any works on site commencing, a VHMP is to be implemented requiring direction and supervision be provided by suitably qualified persons associated with vegetation removal, recovery of any native fauna that are potentially displaced, clearing protocol, selection of species to locally occurring native species for future landscaping works and seed stock for revegetation, completion of earthworks and works in the vicinity of drainage lines undertaken during appropriate weather conditions to minimise potential erosion impacts, and implementation of nutrient and sediment control devices. This outcome can be addressed through the imposition of an appropriate condition of consent.

4.4.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Koala habitat

Part 3.2 (clauses 3.5 – 3.9) of the SEPP applies as the land is greater than one hectare and an assessment must be made as to whether the land is potential or core koala habitat.

The biodiversity assessment submitted with the application has undertaken an assessment of potential koala habitat at the site. The assessment identified the site comprises potential koala habitat due to the presence of feed tree species.

Further assessment was carried out and determined the site is not core koala habitat as no koalas were observed at the site, and no secondary evidence was found (i.e. scratches on tree trunks, scent markings, scat, tracks in soil, etc).

Council's Ecologist has reviewed the biodiversity reports submitted and identified further information was needed to assess the recently up-listed species *Koala (Phascolarctos cinereus)*.

The applicant was requested to provide this information in June 2022, which was further supported by the Panel in the 30 June 2022 briefing. The applicant has not provided the information.

Insufficient information has therefore been provided to enable Council and the Panel to assess the impact of the development to potential koala habitat. It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

4.5 Bushfire protection

Condition 1.45 of the Concept Approval requires a bushfire management plan to be submitted that demonstrates the development complies with the *Planning for Bush Fire Protection 2006 (PBP)* and to the satisfaction of the NSW Rural Fire Service (RFS), and provides detailed arrangements for a road network and lot layout appropriate to evacuation purposes, property access roads which allow for the safe access, egress and defensible spaces for emergency services, location and composition of all Asset Protection Zones (APZs), ongoing maintenance requirements for APZs, fire trails and access tracks, and staged approach to management of bushfire hazard and APZs during the development process.

A bushfire assessment in the form of a bushfire management plan has been submitted with the application. The report details the following range of bushfire protection measures to be included in the subdivision:

- Perimeter roads throughout the subdivision, connections to existing fire trail network, and road network design that provides for defensible spaces, evacuation and safe access/egress
- Provision of APZs within residential lots or within the road reserve.

APZs within residential lots will be identified on title through an appropriate easement. Where lots contain an APZ, the lots have been designed to ensure an adequate building envelope can be achieved.

No APZs are located on lands to be dedicated to Council for reserve purposes.

- Access to reticulated water supply, including fire hydrants
- Subdivision Building Attack Level (BAL) plan detailing the specific layout and protection measures for future development on the lots
- Strategically designed planting palette for public domain areas containing a combination of fire-resistant species.
- An APZ soil stability management plan has been submitted to demonstrate APZs in escarpment areas or on slopes greater than 15 degrees, can be treated and maintained safely and without compromising slope stability
- Temporary APZs will be provided during construction of the development over the proposed stages comprising a 100m buffer

The application, including bushfire management plan was referred to the NSW RFS who support the proposal and recommended conditions in relation to BALs, APZs, road and fire trail construction, utility provision, and landscaping.

In accordance with clause 273B of the *EPA Reg 2000*, *PBP* remains the relevant prescribed document for all development applications made (but not determined) before 1 March 2020. The RFS have acknowledged this in their response to the application.

The statement of commitments also requires a bushfire management plan prior to works commencing for each stage and be certified by a qualified consultant as complying with *PBP* and any requirements of the RFS. The plan is to address location of APZs (permanent and temporary), road and access design, building construction levels, location of habitat trees to be retained, areas of vegetation to be removed, retained or replaced, access to services and utilities, plant species, and preparation of fuel management plan. These matters have been assessed (i.e. APZs) or can be addressed through the imposition of an appropriate condition of consent.

4.6 Contamination

Clause 4.6 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* requires the consent authority to consider whether the land is contaminated, and if the land is contaminated, it is satisfied 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.

Condition 1.29 of the Concept Approval requires a remediation action plan to be provided with each subdivision development application which includes characterisation of the nature and extent of contaminated material within the subdivision area, details of the remediation strategy and management measures to ensure the land is suitable for the proposed land use, a validation plan, details of compliance with the *Contaminated Land Management Act 1997*.

Three assessments relating to contamination have been undertaken and submitted with the application including:

- Preliminary Contamination Assessment (PCA) (assessed the entire Concept Approval) in 2011
- Detailed Contamination Assessment (DCA) (assessed the LMCC site) in 2018

planning and threshold issues. A request for this information can be made following the resolution of these fundamental issues, as it is likely the development can achieve this requirement through submission of further information.

The RAP also incorporated an asbestos management plan. Council's Environmental Management Officer has reviewed the plan and identified further information is required to be included in the plan (i.e. keeping of log, updating plan as asbestos is removed, etc). These matters can be addressed through the imposition of an appropriate condition of consent and submission prior to the issue of the Construction Certificate (CC).

The statement of commitments also requires prior to the issue of the SC for each stage detailed contamination assessment, a remediation action plan verified through the site auditor process, remediation conducted to remove identified contaminants, removal of deleterious materials, validation testing and verification, and waste classification of any materials disposed off-site. These matters can be addressed through the imposition of an appropriate condition of consent.

It is recommended the application be deferred to enable the submission of further information, as detailed above.

4.7 Earthworks

Condition 1.14 of the Concept Approval requires lots on land with greater than 25% slope to have an adequate area for a dwelling to be constructed on land which is not greater than 25% slope, and that vehicular access to the dwelling can be provided at a grade of not greater than 25%, and all lots on land with slope greater than 20% are at least 1,000m² in area.

The *Lake Macquarie Local Environmental Plan 2014 (LM LEP)* requires consideration to be given to the likely impact of earthworks to drainage patterns and soil stability in the locality of the development, the effect of the development on the future use of the land and adjoining properties, the source and quality of fill, impacts to environmentally and cultural areas, and measures to mitigate impacts.

The UDG requires cut and fill to be responsive to the design constraints associated with the site topography. The UDG acknowledges significant earthworks will be required to accommodate required subdivision works including roads, drainage, detention basins and utility infrastructure.

The application proposes earthworks across the site for remediation of the site from contamination and mine subsidence, construction of roads, stormwater facilities and utility services, establishment of APZs, regrading to achieve maximum APZ grades, and regrading of residential lots to establish lots suitable for future dwellings. Retaining walls within the site range between 1-5m in height for roads and boundaries. Retaining to residential lots has not been demonstrated, however is discussed in the application documentation.

Further details are required to identify the design, location and set back of retaining walls, particularly where adjoining site boundaries and future public reserves and potential vegetation impacts may arise. NPWS, as the adjoining land owner of BGHRP, have also provided submissions to the impact of earthworks and retaining near the park boundary, and potential impact to vegetation within the park due to the earthworks.

Sufficient information to enable detailed assessment of this matter has not been provided, including resultant residential lot slopes, and impacts to vegetation to adjoining land and BGHRP. A request for this information has not been made to the applicant due to the outstanding fundamental site planning and threshold issues. A request for this information can be made following the resolution of these fundamental issues, as it is likely the

development can achieve this requirement through existing site design or incorporation of measures such as retaining walls (designed and located appropriately).

It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

4.8 Mine subsidence

Stage 5 of the development comprises areas identified as having limited, moderate and high subsidence risks. The site does not contain any pothole risk areas.

Three capped mine shafts have been identified on-site. Two of the mine shafts are proposed within residential lots (Lot 1913 and 2458) and the third mine shaft is proposed within land a public reserve (Lot 3146). The residential lots containing the capped mine shafts have been created as larger lots to enable suitable building areas to still be available on them. Covenants will also be placed on these lots to identify the shafts and restrictions on building.

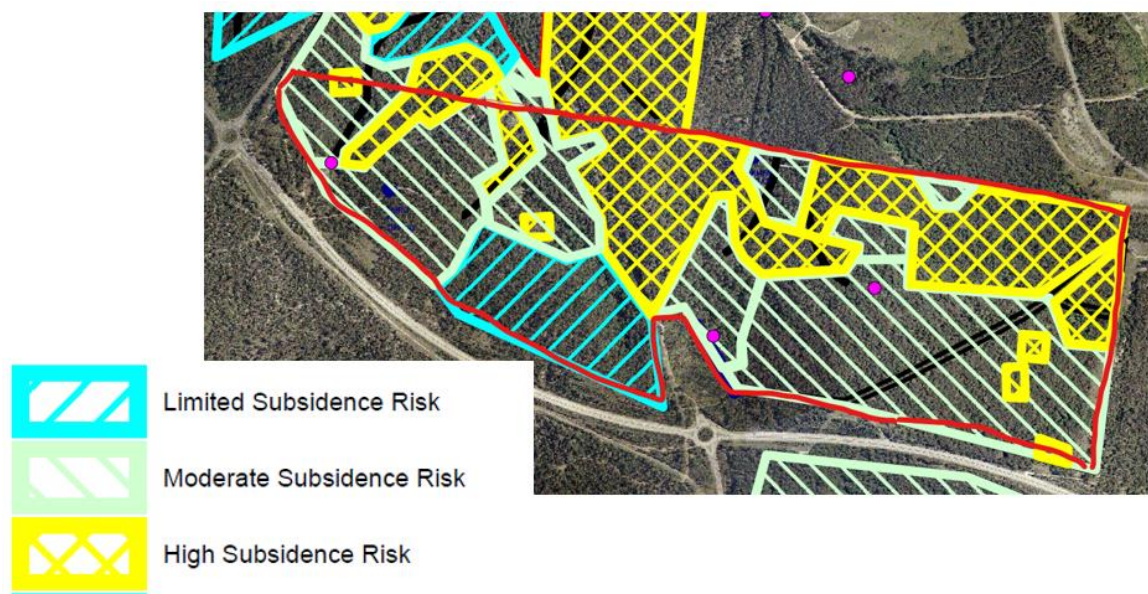


Figure 8: Mine subsidence risk mapping (capped mine shafts shown by purple dot)

Condition 1.30 of the Concept Approval requires geotechnical investigations to be submitted prior to issuing of any subdivision certificate, in accordance with the Mine Subsidence Board requirements (now Subsidence Advisory NSW (SA NSW)) to demonstrate 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.

The statement of commitments requires additional investigations to address pothole risk, grouting, and depth of covering to workings, and ongoing consultation with SA NSW for each stage and/or lot.

Due to the potential impacts arising from these works and the final site layout and environmental outcomes, consideration of this matter is required to be undertaken and resolved during the assessment of the application.

The application proposes to manage subsidence risk through building design restrictions. No grouting works are proposed. The applicant proposes to address the requirements of Condition 1.30 at SC stage.

The application was referred to SA NSW who have requested additional information be provided in order to assess the risk of mine subsidence at the site. SA NSW have identified

the geotechnical reports submitted have been prepared prior to the current SA NSW subdivision assessment policy, and SA NSW have requested updated geotechnical assessments that reflect the requirements of the current policy. Due to the presence of mine openings and areas affected by shallow workings, SA NSW's current policy requires the subsidence hazard to be eliminated, and sufficient information to demonstrate this has not been provided.

Additional information was submitted to Council in late September, that did not include updated geotechnical assessment to address SA NSW's request. This information has not been re-referred to SA NSW due to the outstanding fundamental site planning and threshold issues, and limited change in information submitted. A request for this information / re-referral can be made following the resolution of the other fundamental issues, as mine subsidence risk mitigation is a resolvable issue.

The statement of commitments also requires restrictions on building height and construction, management of land containing shafts, plan of management for shallow mined areas, and detailed road design. These matters can be addressed through the imposition of an appropriate condition of consent.

4.9 Stormwater management and flooding

Condition 1.25 of the Concept Approval requires a water sensitive urban design (WSUD) strategy to be provided to consider how impacts from stormwater infrastructure are minimised on riparian corridors and waterways. The strategy is to be a strategic level document and demonstrate where possible stormwater infrastructure will be located off-line and outside of the identified riparian corridor (having regard for relevant NSW Office of Water guidelines relating to works within riparian corridors).

A WSUD strategy has been submitted with the application. The report provides guidance to inform the layout of the development to minimise impacts to the riparian corridors, design and location of permanent stormwater management facilities, guidance on mitigation of flooding impacts as a result of the development, and guidance on the design of temporary erosion and sedimentation during construction.

The NSW Office of Water guidelines recommend an average 10m vegetated riparian zone (VRZ) for 1st order watercourses and 20m for 2nd order watercourses. The site contains 1st and 2nd order watercourses, all of which are located within the conservation zoned land. Works such as road crossings and stormwater facilities, including basins are permitted in VRZs.

The application proposes to protect watercourses by:

- minimising the number of road crossings over watercourses, and inclusion of retaining walls (instead of batters) to road crossings
- including widened conservation corridors to include adjacent residential land to ensure earthworks and APZs do not impact the VRZ and conservation zoned lands where watercourses are located
- locating stormwater management facilities off-line from the adjacent watercourse.

Condition 1.26 of the Concept Approval requires detailed design that is consistent with Council's requirements and the WSUD strategy for stormwater management infrastructure and devices. The statement of commitments also requires, as relevant, preparation of a groundwater management strategy and maintenance regime, lot detention for housing lots, mosquito risk and management assessment.

A stormwater management plan and associated civil engineering plans have been submitted with the application, which incorporates the WSUD strategy and provides detailed analysis

to inform the sizing and design of stormwater management facilities throughout the development, including pit and pipe network throughout the subdivision, future rainwater tanks to residential lots, gross pollutant traps, infiltration systems and bioretention basins. The report demonstrates the range of stormwater management facilities will mitigate the impact of the quality and quantity of stormwater runoff from the development to levels that are consistent with Council's guidelines and industry standards.

The mosquito risk and management assessment is not relevant to the LMCC application.

Condition 1.27 of the Concept Approval requires management arrangements to be provided for public stormwater facilities, during and after construction, prior to being dedicated to the relevant Council.

The statement of commitments also requires details on the proposed bio-retention basins, bio swales and swales, maintenance program for bio-swales, public stormwater system/basins, and transfer program to be submitted with the CC application.

The stormwater management plan and associated civil engineering plans provide details of the stormwater management facilities, which are consistent with Council's requirements. Council has standard conditions and management guidelines to ensure facilities to be dedicated are constructed and managed appropriately and will be acceptable as public assets after the initial maintenance period. These matters can be addressed through the imposition of an appropriate condition of consent.

4.9.1 Flooding

The site is not identified as flood prone, however localised flooding is experienced from catchments within the site.

Condition 1.23 and 1.24 of the Concept Approval requires the application to include flood modelling which addresses terrain information (i.e. digital elevation model), identifies any flooding effects associated with the Hunter River and ocean levels including any impacts associated with sea level rise, consideration of impacts on climate change on flood hazard, consideration of flooding impacts associated with the proposed development, and each lot can accommodate dwellings located above the flood planning level (100 year flood plus 0.5 metre free board with fill limited to the 0.5 metre free board only), safe evacuation can be provided from all dwellings and public land below the probable maximum flood level, through consultation with the relevant Council and State Emergency.

The statement of commitments also requires stormwater management measures to be included to manage flood risk according to the NSW Floodplain Development Manual.

A flood impact assessment has been submitted with the application. The report identifies all residential lots and park lots are located outside of the 100 year flood event. Only the public reserves containing watercourse corridors are impacted by the flood event. All road crossings are located outside of, or above the 100 year flood level, and safe evacuation is achievable.

The assessment also demonstrates the development will result in the peak flows leaving the site to be similar or less than those leaving the site currently during storm events, due to the design of the stormwater management facilities.



Figure 9: Extent of flood inundation during 100 year flood event (post development)

4.10 Summerhill Waste Management Centre

4.10.1 Odour impacts

Concept Approval condition 1.44 requires each development application for subdivision to consider odour impacts associated with the SWMC, and identify appropriate mitigation measures to manage these impacts.

Objections have also been received from CN requesting a suitable buffer (1000m is suggested) to ensure the SWMC is not compromised from adjacent residential development.

An odour assessment has been submitted with the application. The report identified the following:

- observed odour associated with the SWMC to be 255m from the boundary
- the Environmental Impact Statement for SWMC requires a minimum 400m buffer between on-site potentially odour generating activities and sensitive land uses, with the retention of the vegetated buffer zone. The facility currently has an active landfill cell closer than 400m to the boundary of the subdivision site
- 430m buffer from an active cell/s would be sufficient to mitigate the potential for odour at the boundary of the subdivision site.

Council's Environmental Systems Officer has reviewed the report and identified further information is needed to confirm the recommended 430m buffer zone will address odour impacts from the SWMC. This includes further assessment in different climatic conditions and times of day, and assessment of all waste activities undertaken at the site.

Should the 430m buffer be confirmed, conditions of consent would be needed to ensure the subdivision staging is constructed to ensure the buffer is maintained.

Insufficient information has therefore been provided to enable Council and the Panel to assess the potential odour impacts from SWMC to the development, and any mitigation measures required.

It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

4.10.2 Concept Approval condition 1.34

Condition 1.34 of the Concept Approval requires the application to demonstrate that key roads linking Minmi Boulevard and the waste management centre have been designed to accommodate waste removal vehicles in accordance with any requirements of the relevant Council, unless otherwise agreed to by that Council.

Objections have been received from CN regarding the interpretation of 'waste servicing vehicles' specified in condition 1.34 of the Concept Approval. CN argue the condition caters for up to B-Double sized vehicles, which could not be accommodated within the subdivision road network.

CN also argue the condition reference to 'relevant council' means City of Newcastle.

The applicant proposes to satisfy the condition as follows:

- Road MC58 is the key road that links Minmi Boulevard (Road MC01) and the SWMC
- Road MC01 and MC58 have been designed as collector roads, and can therefore accommodate all general vehicles up to a 19m semi-trailer. This includes waste removal vehicles, which has been taken to mean a vehicle purpose-built or adapted for waste removal.



Figure 10: Proposed waste removal vehicle route

Council concur with the applicant's interpretation of the condition and the condition relates to typical garbage trucks which can move through the subdivision. The collector road network, which also is a bus route, provides for waste removal vehicles. Civil engineering plans have been submitted which demonstrate the internal road network can cater for waste servicing vehicles.

Insufficient information has been provided to demonstrate the connection of MC58 to the boundary of the site and SWMC. The subdivision plans adjacent to Lots 2632-2634 do not demonstrate how the future connection will be achieved. It is understood this is a resolvable matter following the submission of additional concept plans. The application is recommended to be deferred to enable the submission of further information to address this.

The relevant Council is interpreted to apply to the Council of which the land is located within, being LMCC in this instance.

4.10.3 Southern access to SWMC

Objections have been received from CN regarding the impact of the development to a future southern access road for light and heavy vehicles, within the unformed road corridor, which will provide an opportunity for a new entry/exit to the facility.

The road corridor is located within the LMCC LGA and is currently not formed. The corridor comprises the road reserved owned by LMCC, and TfNSW land. Forming of the roadway through an appropriate planning pathway and assessment, could provide vehicle access to the southern boundary of SWMC.

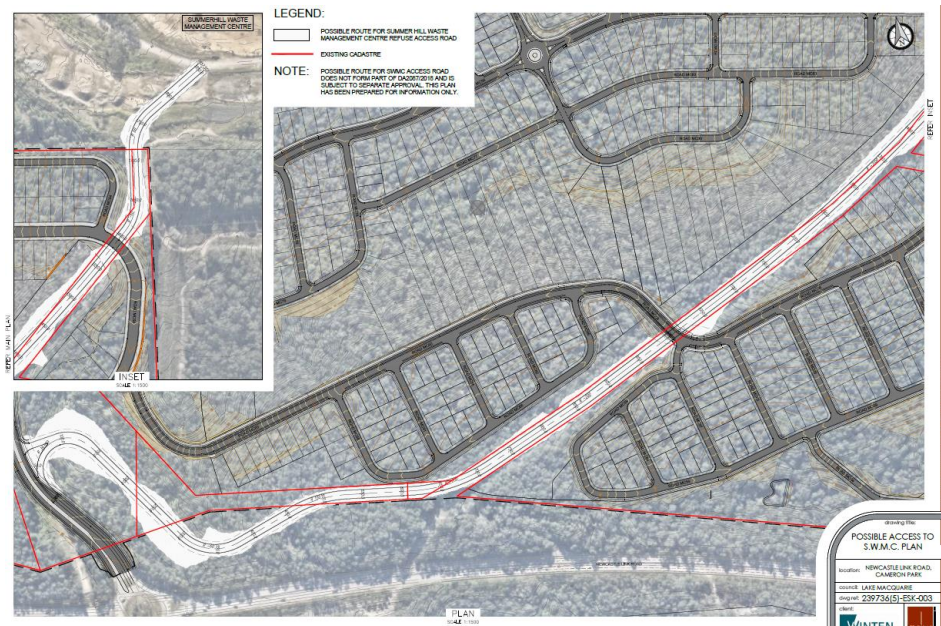


Figure 11: Indicative southern access to SWMC

The application has demonstrated a future southern access road to SWMC within the unformed LMCC road corridor will not be compromised by the development. The development provides a public reserve buffer to the road corridor. The roads within the subdivision that intersect with the road corridor, have been designed to go underneath any future access road, with an access road designed and constructed to be grade separated above. Environmental impacts, such as acoustic, visual, etc, would be considered during the planning assessment of the access road, which is likely to be a Part 5 assessment.

4.11 Traffic impact

4.11.1 Access and road network

Access to the development is provided by a new connection to the existing roundabout on Newcastle Link Road. Northern access is proposed via two connections to the proposed subdivision development in CN, which both provide connection to Woodford Street.



**Figure 12: Access locations to development
(Link Road access shown in blue and northern access shown in orange)**

Lots within the development will be accessed via the internal road network. No direct access from residential lots is proposed to the Newcastle Link Road, or the proposed boulevard on the internal road network (Minmi Boulevard).

Condition 1.32 of the Concept Approval requires all aspects of the local road layout and design meet the requirements of the relevant Council.

Civil engineering plans have been submitted with the application, which demonstrate a logical hierarchy for the road system, with local and collector roads in a modified grid layout proposed. The road grades, carriageway widths, intersection locations and configuration is consistent with Council's requirements.

The application proposes a signalised intersection adjacent to the school site (Lot 2046) and commercial zoned land. Civil engineering plans demonstrating the intersection design has been submitted. The design will require minor adjustment to several of the lots adjoining the intersection. Revised subdivision lot plans to account for the intersection design have not been submitted.

A request for this information has not been made to the applicant due to the outstanding fundamental site planning and threshold issues. A request for this information can be made following the resolution of these fundamental issues, as it is likely the development can achieve this requirement through submission of further information.

It is recommended the application be deferred to enable the submission of further information to address this matter.

4.11.2 Public transport

The internal road network has been designed to accommodate a bus route throughout the estate. Two options are proposed as a collector route, as demonstrated in Figure 13.

Consultation has been undertaken with the bus service provider (Hunter Valley Buses) and TfNSW. TfNSW are supportive of either of the two options proposed



Figure 13: Bus route options

4.11.3 Pedestrian and cycle facilities

Pedestrian and cycle paths are incorporated throughout the subdivision and provide internal connectivity, as well as connections to BGHRP and other stages of the development.

These facilities have been incorporated into the road reserve widths demonstrated on the subdivision plans.

4.11.4 Concept Approval condition 1.31

Condition 1.31 of the Concept Approval requires the first development application for subdivision within each stage to include a revised traffic and transport impact assessment prepared in consultation with TfNSW 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 Road 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 links across Minmi Road and Newcastle Link Road

A regional traffic and transport assessment and traffic impact assessment have been submitted with the application. The reports have undertaken microsimulation modelling that assesses the impact of the development's traffic at years 2026, 2031 and 2036, and proposed road and intersection upgrades, staged as required, to be implemented to ensure

the road network will operate at a satisfactory level of service during, and at the completion of, the development.

The modelling identifies the following upgrades are required:

- upgrade from roundabout to signalised intersection of Newcastle Link Road / Minmi Road
- widening of Minmi Road from Newcastle Link Road to Transfield Avenue from two to four lanes
- installation of new roundabout at Minmi Road / Transfield Avenue
- widening from two lanes to four lanes of Minmi Road from Transfield Avenue to Sedgwick Avenue
- installation of additional turning lanes to Newcastle Link Road / Woodford Street
- line marking changes to Minmi Road / Northlakes Drive
- upgrade to Minmi Road / Main Road intersection to replace parking lane with traffic lane and link marking changes
- upgrade Newcastle Link Road / Lake Road signalised intersection

The application proposes that some of the works are to be delivered by the developer, with others to be delivered by TfNSW and LMCC. TfNSW and LMCC have not confirmed they will deliver the upgrades allocated to them as identified by the applicant.

The application was referred to TfNSW on several occasions for consideration of traffic impacts. TfNSW initially identified they are supportive of the extensive upgrades originally proposed, however it is understood the Panel have sought advice and there is no nexus and power for the Panel to impose the upgrade requirements upon the development. The applicant has submitted revised documentation outlining a reduced scale of works, and implementation of staging, which TfNSW remain unsatisfied. It is understood the key concern of TfNSW relates to insufficient modelling being completed, and therefore the impact of the development and upgrading works to mitigate the impact associated with the development cannot be identified. This matter remains unresolved.

The applicant proposes the road upgrades to be conditioned via a Grampian condition. It is understood the Panel have sought legal advice regarding this matter and will determine the legal ability to impose a Grampian condition for the application.

Should a Grampian condition be supported, it is recommended the application be deferred to enable the submission of further modelling.

4.11.5 Statement of commitments

The statement of commitments also requires traffic studies being updated prior to commencement of each stage of development to reflect actual traffic yields, upgrades to intersection with collector roads as required by TfNSW/LMCC/CN, implementation of local traffic management measures where required, provision of bus stops, shelters and pedestrian refuges, provision of appropriate acoustic measures as agree with LMCC / CN, constructed and embellished of areas to be dedicated to council in accordance with the specifications of the Concept Plan and construction specifications of the appropriate Council.

These matters can be addressed through the imposition of an appropriate condition of consent.

The statement of commitments also requires CPTED principles to be addressed for each development application. The design and layout of the subdivision provides for casual surveillance throughout lot and road layout, and space management through appropriate landscaping of public assets. Access control, territorial reinforcement and space management will be achieved through the future residential development of the land where fencing, landscaping and access will be provided to individual lots.

4.11.6 Transport and Infrastructure SEPP

Clause 2.122 - traffic-generating development of the Transport and Infrastructure SEPP, requires subdivision application with 200 or more residential lots to be sent to TfNSW.

A referral has sent to TfNSW, in conjunction with the referral for condition 1.31 of the Concept Approval. TfNSW are not satisfied with proposal, and a response from TfNSW in respect to the SEPP has not been received.

4.12 Urban design

Condition 1.14 of the Concept Approval requires each application for subdivision to demonstrate lots on land with greater than 25% slope have an adequate area for a dwelling to be constructed on land which is not greater than 25% slope, and that vehicular access to the dwelling can be provided at a grade of not greater than 25%, and all lots on land with slope greater than 20% are at least 1,000m² in area. Sufficient information to enable detailed assessment of this matter has not been provided. A request for this information has not been made to the applicant due to the outstanding fundamental site planning and threshold issues. A request for this information can be made following the resolution of these fundamental issues, as it is likely the development can achieve this requirement through existing site design or incorporation of measures such as retaining walls (designed and located appropriately).

Condition 1.15 of the Concept Approval requires each development application for subdivision to include a landscaping and public domain plan for the relevant stage, which demonstrates proposed open space, proposed treatments for open space and public domain, strategy for tree retention, landscaping of swales, detention basins, roadside verges and other public domain areas, management and ownership arrangements, and identification of appropriate landscaping species.

Landscaping reports and plans have been submitted demonstrating landscaping to public domain areas, including street tree planting, bioretention planting and planting of batters/embankments. Council's Landscape Architect has reviewed the documentation and is not satisfied with the outcomes. A request for this information has not been made to the applicant (however was flagged in a request for information as a future matter to be considered) due to the outstanding fundamental site planning and threshold issues. A request for this information can be made following the resolution of these fundamental issues, as landscaping outcomes are reasonable resolvable.

The statement of commitments also requires future development to be carried out generally in accordance with the UDGs. Refer to Attachment B for detailed assessment of the UDG.

The statement of commitments also requires landscape plans to be provided prior to CC demonstrating retention of existing vegetation, to the extent reasonably possible, collection of seed so indigenous species are used in landscaping of parks, and use of recycled water in public parks, if feasible. These matters have been assessed (i.e. APZs) or can be addressed through the imposition of an appropriate condition of consent.

4.13 Utilities and servicing

Clause 6.2 and 7.21 of *LM LEP* require public utility infrastructure and essential services to be provided to the development (or made available).

The statement of commitments also requires water and sewer, underground power and NBN conduits to be provided.

The development includes the following utility and servicing infrastructure works:

- Water and sewer
- Electrical infrastructure
- Gas infrastructure
- Communications (i.e. NBN)
- Road / intersection upgrades

Within the subdivision, utility services including water, sewer (including wastewater pump stations and rising mains), electrical infrastructure (including underground power, kiosks), gas, and telecommunications will be installed and connected to each residential lot. Utilities will be located within the road reserves. Street lighting will also be installed throughout the subdivision.

4.13.1 Water and sewer

A water and sewer strategy has been provided and approved by the Hunter Water Corporation (HWC). The strategy demonstrates water and sewer is located primarily within the site.

Connection to existing reticulated networks is required and the strategy demonstrates the connection to be south west of the site. Given the works are inextricably linked to the development, further environmental assessment is required.

It is recommended the application be deferred to enable the submission of further information to address this matter, as it is resolvable.

4.13.2 Electrical infrastructure

The site is traversed by three overhead transmission lines. An easement on the eastern boundary of the site contains a TransGrid 330KV transmission line. An Ausgrid transmission line is situated within the unformed public road reserve, while the other connects via the road at Newcastle Link Road towards Minmi township.

The development will involve the relocation of the existing Ausgrid transmission line. The application was referred to Ausgrid as per clause 2.48 of the Transport and Infrastructure SEPP. Ausgrid support the proposal and have provided a response that details the requirements for the development, which can be achieved through conditions of consent (upgrading of existing infrastructure to cater for development).

The application was referred to TransGrid as per condition 1.47 of Concept Approval. TransGrid raised no objection to the development and recommended conditions regarding construction related matters.

4.13.3 Road / intersection works

Several intersection upgrades will be required to facilitate the development. As per section 4.11.4 of this report, the extent of these upgrades is not resolved.

Should the extent of upgrades be resolved, further information will be required to consider the works required to achieve the upgrades, and the environmental impacts given these works are inextricably linked to the development.

5 CONCLUSION AND RECOMMENDATION

The application is recommended to be deferred to enable the submission of further information to address the outstanding matters as listed below.

- Concept Approval consistency
- biodiversity
- traffic impact
- earthworks
- contamination
- mine subsidence
- Summerhill Waste Management Centre impacts
- odour impact
- utilities and servicing

Alternatively, the application could be refused based upon this matter not being satisfactorily addressed.



ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 06/12/22 - NOTIFICATION OF 144 WOODFORD STREET, MINMI
– DA2018/01351 – DEMOLITION OF DWELLING, 962 LOT
SUBDIVISION INCLUDING ROADS, OPEN SPACE, STORMWATER,
UTILITIES AND BULK EARTHWORKS**

ITEM-30 Attachment D: Copy of Summerhill Submission to LMCC DA

DISTRIBUTED UNDER SEPARATE COVER



Chief Executive Office
Phone:02 4974 2000

2 August 2022

Ms Morven Cameron
Chief Executive Officer
Lake Macquarie City Council
126-138 Main Rd
SPEERS POINT NSW 2284

By Email: council@lakemac.nsw.gov.au

Dear Ms Cameron

**DEVELOPMENT APPLICATION NO.2087/2018
10 WOODFORD STREET, CAMERON PARK**

Reference is made to Development Application No 2087/2018 for the subdivision of 1063 lots at 10 Woodford Street, Cameron Park.

City of Newcastle (CN) has significant concerns with the proposal as stated previously in the submission dated 14 September 2021, due to the proximity of the development to the Summerhill Waste Management Centre (SWMC).

SWMC is a key asset in the delivery of waste management services to CN and the broader region. CN investment at SWMC into cells, the resource recovery centre, organics recycling facility, material recovery facility, landfill gas-capture, environmental site management, onsite power generation, and a 5MW solar farm is transforming SWMC as a resource recovery hub and green energy precinct. The importance of this facility to CN, the wider Hunter region and State and Commonwealth waste objectives cannot be understated.

The encroachment of residential development at the boundary of the facility will impact on the future operation of SWMC and a 1000m buffer needs to be in place to minimise any amenity impacts on future residents of the subdivision as well as allowing for the continuation of this critical piece of regional infrastructure. Significant objection is raised to the lack of consideration for a southern access point into the SWMC and the requirements of the approved Concept Plan, specifically condition 1.34.

This letter is in response to issues raised by Winten Pty (No. 21) Ltd (the Applicant) in their letter to Lake Macquarie City Council (LMCC) dated 31 May 2022. The attachments to this letter provide an overview of the background of SWMC, the future direction of the facility and a detailed response to the issues raised by the Applicant.

If you require further information or a meeting to discuss the issues included in this submission, please contact Alissa Jones, Director and Interim Manager Waste Services on 4974 2145 or ajjones@ncc.nsw.gov.au.

Yours faithfully



Ken Liddell
ACTING CHIEF EXECUTIVE OFFICER

Attachment 1 - Summerhill Waste Management Centre

1. Overview of Summerhill Waste Management Centre (SWMC)

CN owns and operates the second largest landfill in the State, Summerhill Waste Management Centre (SWMC). SWMC is a major landfill at Wallsend, 14 kilometres west of the Newcastle CBD and within the CN boundaries. SWMC is operated as a community and commercial facility and is the only major putrescible landfill in the Hunter region. SWMC operates to receive kerbside collection vehicles as well as members of the public and commercial operators.

SWMC currently undertakes the following key operations on site:

- Weighbridge operations.
- Landfill operations.
- Small vehicle recovery centre.
- Resource processing area – including the processing of both green waste and recycled materials.
- Stormwater management system – including leachate ponds, stormwater ponds and detention basins.
- Ancillary and support services.
 - Office and administration, including operations support centre.
 - Leachate management systems.
 - Maintenance sheds and staff amenities.
 - Gas management system.

Core operations at the site are administered by Environmental Protection License (EPL) No. 5897 which permits resource recovery (Activity 34 under Schedule 1 of the Protection of the Environment Operations Act 1997), waste disposal (Activity 39), and waste storage (Activity 42) at the SWMC. EPL No. 13059 also permits generation of up to 0 -250 GWh per annum of electrical power otherwise than from coal, diesel or gas (Activity 17).

The EPL license allows the facility to receive up to 364,000 tonnes per annum of waste. This limit is related to several factors, a key one being the ability of the existing road network to manage traffic, particularly noise related to sensitive receptors at the current entrance of the SWMC.

- Approximately 37,000 tonnes of the material received at SWMC is diverted from landfill.
- 60% of material received is from commercial customers.
- Around 61% of current tonnage arrives from the west via the Newcastle Link Rd in heavy vehicles up to semi-trailer, with these vehicles travelling via local roads through Wallsend to the SWMC. These vehicles are typically carrying residual waste which has already been processed and includes waste from other Councils.

No end date has been defined in the SWMC's approval although changes in the waste types and management methods already implemented and planned will likely see operations in the order of 80-130 years.

2. SWMC Capacity

SWMC has up to 17M cubic meters of airspace available. The consumption of this airspace is dependent on two key factors, the volume of waste received per annum, and the level of diversion of waste from landfill.

Considering CN's own kerbside tonnage alone, the facility has a life with current diversion exceeding 80 years. The importance of SWMC as a regional facility is further emphasised by the limited capacity at landfills within the Port Stephens and Maitland local government areas.

3. Efficient access to transport networks

Increased diversion will require good access not only for materials entering the SWMC, but for transporting material off site to other processing facilities and markets.

There are limitations to the SWMC's current road access that have presented since the opening in around 1993, including:

- There are capacity limits on the road network (limited to Semi-trailers).
- Minmi Road through Wallsend and Maryland is a 5 Tonne load limit road. The entry is within a local but growing road network already suffering significant local traffic congestion.
- The weighbridge entry and its interface with internal traffic is already experiencing significant customer delays.

In consideration of these limits and constraints CN has recently obtained Concept DA consent to permit traffic to enter and leave the SWMC via routes other than Minmi Road at Wallsend.

4. Strategic and Legislative framework of Summerhill Waste Management Centre

CN's approach to waste management and resource recovery is guided by a framework of international, national, and state goals and policies that drive decision making. These are summarised in **Error! Reference source not found.** below. Key actions for local government that have arisen from these strategic documents are:

- Avoiding the generation of waste.
- Improving resource recovery.
- Recognising that waste is a valuable resource.
- Taking responsibility for the waste we generate and managing it in accordance with its highest value.

The operation of SWMC is underpinned by the City's Waste and Resource Recovery Policy which describes the following commitment:

"CN are intent on being a considerate user of the limited resources we have on our planet. We are committed to empowering our organisation and community to view their 'waste' differently - as resources and materials that can have another life outside of a landfill. The more materials recirculate in the economy the greater their value. This will produce greater prosperity for our people and our planet. All materials have an embedded value which can be either put to good use and back in the economy via reuse, recycling, or recovery, or, be disposed of forever"

Table 1: Summary of relevant policies

International	Regional
United Nations – Sustainable Development Goals	Hunter / Central Coast Waste Avoidance and Resource Recovery Strategy
National	Hunter Resource Recovery Group
National Waste Policy & Action Plan	Hunter Joint Organisation
National Food Waste Strategy	City of Newcastle

National Plastics Plan	Newcastle 2040 Community Strategic Plan
State	Climate Action Plan
NSW Waste & Sustainable Materials Strategy 2024	Economic Development Strategy
NSW Plastics Action Plan	Waste and Resource Recovery Policy
NSW Circular Economy Policy Statement	Draft Our Sustainable Waste Strategy
NSW EPA Waste Avoidance & Resource Recovery Strategy (Dec 2017)	
NSW Environmental Protection Agency	
Independent Pricing and Regulatory Tribunal	

4.1 Waste & Environment Levy

NSW's major economic instrument for waste, the Waste and Environment Levy (the Levy), was reviewed in 2005 and 2012. An outcome of both reviews has been staged increases in the Levy to provide stronger incentives to reduce waste to landfill and to encourage increased resource recovery and recycling. Higher disposal costs are intended to help make innovative recycling and recovery waste processing options more attractive and competitive for potential investors and existing companies within the waste collection and reprocessing sectors. The Levy also funds a substantial range of environmental programs, including an annual performance payments scheme for local government in the leviable area; to reward waste reduction and help deliver improved waste service performance standards. The EPA's Waste Avoidance and Resource Recovery Strategy 2014-2022 set the following targets for 2021–22:

- Avoiding and reducing the amount of waste generated per person in NSW.
- Increasing recycling rates to:
 - 70% for municipal solid waste
 - 70% for commercial and industrial waste
 - 80% for construction and demolition waste
 - increasing waste diverted from landfill to 75%
- Managing problem wastes better, establishing 86 drop-off facilities and services across NSW.
- Reducing litter, with 40% fewer items (compared to 2012).
- Combatting illegal dumping, with 30% fewer incidents (compared to 2011).

4.2 NSW Waste and Materials Sustainable Material Strategy 2041 and Draft Hunter Regional Plan 2041

The NSW Waste and Materials Sustainable Material Strategy 2041 indicates that NSW is running out of space to deal with waste. The current rate of waste generation and recycling, show that putrescible landfills servicing Greater Sydney are likely to reach capacity in the next 15 years and capacity at some regional landfills will be reached this decade. If these facilities reach capacity, rural and regional communities will experience significant issues for the disposal of waste which will be cost prohibitive.

The Strategy states that the Hunter has a need for an additional 300,000+ tpa or a medium scale energy recovery facility by 2040. In addition, there are constraints on hazardous waste treatment and there is a target for 80% of waste diverted from landfill.

SWMC plays an important role in servicing the Hunter Region, which may exasperate if other regional facilities reach capacity. CN put in a submission to the Department of Planning and Environment on the 6 May 2022 requesting that SWMC be considered in the Draft Hunter Regional Plan 2041, as it plays an important role to the function of the region

and offers opportunities to allow transition to a circular economy in the future.

The development, operation, and optimisation of SWMC to efficiently and effectively service CN and the Hunter Region is seen by CN as critical infrastructure. SWMC is also required to deliver cost-effective waste management and resource recovery solutions meeting the needs of the Newcastle and Hunter communities now and into the future.

4.3 The Newcastle 2040 Community Strategic Plan

In September 2015, 193 countries committed to the United Nations sustainable development goals. These goals provide a global roadmap for all countries to work towards a better world for current and future generations. The Newcastle 2040 Community Strategic Plan (Newcastle 2040) has 17 sustainable development goals, aligning with the United Nations. There are two specific goals that relate to waste management which are listed below.

- Goal 11 is to 'make cities and human settlements inclusive, safe, resilient and sustainable'.
- Goal 12 is to 'ensure sustainable consumption and production patterns'.

The priorities and objectives of Newcastle 2040 include the promotion of a circular economy through designing out waste and adopting sustainable procurement supply chains. Designing out waste includes establishing resource recovery industries and the creation of circular economy precincts, such as increased recycling and productive reuse or organics. There are specific targets identified in the Strategy such as 80% diversion of waste from landfill. The Draft Hunter Regional Plan 2041 has also adopted the United Nations sustainable development goals and recognises waste as an economic resource and the importance of the circular economy.

The Hunter Joint Organisation, with funding from the NSW Government, is rethinking waste and resource recovery in the Hunter and Central Coast.

4.4 Economic Development Strategy 2021

City of Newcastle's Economic Development Strategy recognises SWMC as a key asset in the delivery of waste management services to CN and the broader region. CN investment at SWMC into Cell 9, the resource recovery centre, organics processing facility, material recovery facility, landfill gas-capture and onsite power generation, and a 5MW solar farm is transforming SWMC as a resource recovery hub and green energy precinct. SWMC forms the sixth site in the Newcastle Innovation Arc with the potential to drive new jobs creation in growth areas including circular economy, energy innovation, advanced manufacturing and reprocessing, and development of secondary material and by-product markets.

4.5 Newcastle Lake Macquarie Western Corridor Planning Strategy

The Newcastle Lake Macquarie Western Corridor Planning Strategy (July 2010) identifies key planning principles and known infrastructure requirements that will guide future urban expansion and conservation in the western corridor. This corridor applies to land from Beresfield to Killingworth including Minmi, Cameron Park, West Wallsend and Edgeworth.

The Strategy contains several principles for urban release areas with an outcome that:

'future residential development shall be located and designed taking into consideration existing infrastructure and land uses that have the potential to create odour, noise and vibration issues'.

It also includes an action that:

'detailed acoustic and odour assessments will determine the required setback/buffers to the existing Summer Hill Waste Management Facility and nearby mining operations. To expand the Summer Hill Waste Management Centre it will be necessary to assess the potential noise and odour impacts. It will be necessary to maintain an acceptable level of amenity to residential areas'.

This action focusses on maintaining existing residential amenity rather than protecting the future operations of SWMC. The location of future residential development needs to take into account detailed acoustic, odour and gas assessments.

5. Investment and future of Summerhill Waste Management Centre

CN is transforming SWMC as a resource recovery hub and green energy precinct, and is actively investing significant capital in SWMC, with the following projects listed in Table 1 in concept, planning and active development stages. The significant capital investment value that CN is placing on the site highlights the long-term vision for the site and enhances the need to consider the site as a piece of critical infrastructure for the Hunter Region.

A site master plan has also been in development since 2020 which aims to support the strategy of a regional resource recovery hub and the issues and opportunities.

Table 1 – Key Capital Projects in SWMC

Status	Project	Details and purpose
Complete and operational	5MW solar farm	14,500 solar panels installed on the site to significantly reduce CN's electricity bill and assist with renewable energy goals. The farm will produce enough electricity to run the equivalent of 1300 households.
Development Application DA2021/00459 Approved on 12 May 2021	Concept Approval for internal road network	<p>The Concept DA proposes to realign the internal road network to make provision for a future access road that will link SWMC to the Newcastle Link Road/Minmi Road intersection via the key roads required to be identified under FEAR 1.34 of the Concept Approval (MP10_0090) for the Minmi/Link Road North concept plan and in association with DA 2087/2018.</p> <p>The Concept DA was required as the existing access road network, as approved under the initial consent DA 1993/0506, did not make provision for the future access road as part of the internal road network. Proceeding with the amended internal road network and second access point for SWMC will support the significant current and future operational needs of the facility.</p>

		<p>The amended internal road network proposed under this Concept DA is intended to facilitate a future access road as a link to service the larger bulk, commercial and regional customers.</p> <p>Refer to stamped plans attached.</p>
Concept	New landfill cells	Enable continued acceptance of landfill waste from red bins, the commercial, building and construction sector and other Councils.
Planning	Southern Access Road	<p>Ensure separation of light and heavy vehicles on site and support increased landfill volumes and reduce transport times.</p> <p>The future access road connection from the SWMC to the Newcastle Link Road/Minmi Road intersection, which will be wholly within the Lake Macquarie LGA and will be the subject of a future application for an activity approval under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i>. In this respect, the Part 5 activity approval pathway is triggered by the route of the future access road comprising Road Reserve R8139-1603. This Road Reserve appears in a survey dated 1904. It links the SWMC site to the Newcastle Link Road but is not a formed public road, existing only as a fire trail at present.</p> <p>CN has also sought and obtained in-principle written support from both LMCC and TfNSW to this future access road.</p>
Planning	Internal road upgrades	Ensure separation of heavy and light vehicles internally and alternative access to Materials Recovery Facility and Organics processing facility. The development application for the Organics Processing Facility has been lodged.
<p>Planning</p> <p>Pre lodgement meeting held 23 June 2022</p> <p>SEARS issued 8 April 2022</p>	Materials Recovery Facility (MRF)	<p>Construction of a Materials Recovery Facility. The purpose of the proposal is to provide cost efficient recyclables collections and processing and maximise resource recovery.</p> <p>The proposal would involve vegetation clearing, earthworks and grouting of former mine workings prior to construction of the MRF.</p>

<p>DA lodgment is imminent</p>		<p>The construction of the MRF would comprise construction of a concrete pad and shed, installation of plant, sealing of surfaces and rehabilitation of disturbed areas.</p> <p>NB: Designated development – HCCRPP is the determining authority.</p> <p>The establishment of a southern access road with connection to the Newcastle Link Road is essential to achieving the maximum environmental and economic benefits this facility can provide.</p>
<p>Development Application under assessment</p> <p>DA2022/00420</p>	<p>Bioenergy Facility – additions</p>	<p>The BioEnergy Facility has been operating at the site since 2009 and has combusted approximately 1.36 million m³ of gas produced at the nearby landfill. This gas is converted to electricity by the existing generators.</p> <p>As waste filling continues at the landfill, gas production at the landfill, increases over time, along with the need to provide appropriately sized combustion equipment. In order to make efficient use of this gas, LMS (the applicant) proposes to install an additional 780kW generator for a total of 3.03MW, ancillary to the existing facility and equipment. This aligns with best practice waste management principles ensuring highest order use of the gas.</p> <p>CN is not the Applicant. CN have a Landfill Gas Agreement with LMS Energy Pty LTD in relation to the BioEnergy Facility. CN have provided landowners consent for the lodgment of the application.</p> <p>NB: Development approval for the Summerhill BioEnergy Energy Facility was granted on 26 September 2006 (DA2005/2070).</p>
<p>Development Application under assessment</p> <p>DA2022/00468 Lodged 6 May 2022</p>	<p>Relocation of material processing operation</p>	<p>The purpose of the relocation is to facilitate continuation of the materials processing operations (green waste) and recyclables bulk up transfer station while allowing for site preparation works to be undertaken for a future Organics Processing Facility (OPF). This DA is one of three that will facilitate the efficient delivery of the OPF.</p>

		<p>The material processing operation involves mulching of green waste. The recyclables bulk up transfer station involves the stockpiling of paper, cardboard and mixed recycling before they are transported off site for processing. These operations will be carried out in the new location until such time as SWMC constructs a Materials Recovery Facility (MRF) and Organics facility, the planning for which is underway.</p>
<p>Development Application under assessment</p> <p>DA2022/00469 Lodged 6 May</p>	<p>Earthworks and site preparation</p>	<p>This DA is one of three to be submitted that propose works to facilitate the future delivery of an Organics Processing Facility (OPF) within the SWMC. The DA is for site preparation works including earthworks, removal of recycling container shelters, installation of amenities blocks, six car spaces, critical infrastructure, vegetation removal and mine grouting works.</p>
<p>Development Application under assessment</p> <p>DA2022/00572 Lodged 27 May 2022</p>	<p>Organics processing facility (OPF)</p>	<p>The proposal comprises the construction of an organics processing facility designed to receive, process and compost food and garden organics. All activity will occur within the fully enclosed structure which comprises four connected single storey shed like structures.</p> <p>Ancillary works will be required to service the facility including new internal roads, a stormwater management system, parking areas and staff facilities.</p> <p>NB: Designated development – HCCRPP is the determining authority.</p>

Attachment 2 – Response to Winten's Development Proposal

The following is in response to issues raised by Winten Pty (No. 21) Ltd (the Applicant) in their letter to LMCC dated 31 May 2022.

Further, SWMC objects to Winten's attempt to downgrade the intent of FEAR 1.34 to mean only 'Waste Servicing' for the reasons given below.

The numbering below relates to the response provided by Winten in the letter dated 31 May with Winten's comments being in italics.

10. Waste servicing

In relation to the matters raised specifically in the RFI, we have included below, at paragraphs 10.1 to 10.33, our previous response to this matter which was provided by email from Bill Sarkis (dated 21 April 2022).

Relevance of Condition 1.6 of Concept Approval

- 10.1 *As a preliminary matter, we note that you have queried whether condition 1.6 of the Concept Approval may apply to the disputed interpretation of FEAR 1.34.*
- 10.2 *We are of the view that condition 1.6 does not apply.*
- 10.3 *The dispute resolution process established by condition 1.6 only applies to disputes between the proponent and the relevant council. Newcastle City Council (NCC) is not the relevant council for the purposes of FEAR 1.34 (or this DA generally), it is merely an objector who happens to also be a council. Condition 1.6 therefore does not apply.*
- 10.4 *Our below detailed response to the SWMC submission in relation to FEAR 1.34 addresses, in detail, at paragraphs 23-30, NCC's claim that it is the "relevant council" for the purpose of this FEAR – a claim which is clearly incorrect. The term "relevant council" is used extensively throughout the Concept Approval and it is clearly intended to mean the council in whose LGA the land the subject of the relevant development application is located.*

CN Response

Part A of Schedule 2 of the Concept Approval provides definitions to be relied upon in reading the determination and FEARS. No definition is provided for "relevant Council" and it is therefore appropriate that it be read in the proper context of the relevant use of that term.

It is without question that FEAR 1.34 was imposed by the PAC in direct response to CN's written submissions and unresolved planning investigations of a suitable road linking the SWMC to the Newcastle Link Road as part of the Concept Plan. As LMCC has no role in relation to the operational requirements of the SWMC, it is entirely reasonable and appropriate to read "*the requirements of the relevant Council*" to mean the requirements of City of Newcastle in the proper context and obvious intent of FEAR 1.34.

Accordingly, we believe it remains open to utilise the dispute resolution provisions of Condition 1.6 to seek clarification from the Planning Secretary as to the intent, interpretation and application of FEAR 1.34.

SWMC Southern Access Road

- 10.6 *The submission refers to a “recent approval for Southern Access” and claims that SWMC has an approval “to allow operational access to the site from the South”. Unfortunately, these statements are highly misleading. The approval which was obtained, in May 2021, was simply a concept DA from NCC (ie. itself) to reorganise the SWMC internal access roads in anticipation of one day obtaining consent for a southern access. In approving this development application, the submission lodged by Winten was ignored, with the assessment report stating that no submissions had been received, despite Winten receiving an acknowledgement of receipt of its submission, which was lodged within time.*
- 10.7 *As any future southern access to SWMC would be over land within the Lake Macquarie LGA, the southern access itself cannot be approved by NCC and must be the subject of a separate future approval, for which consent has not yet been sought. As SWMC submit a desire for B-Double access, this future southern access road would be a major piece of infrastructure, requiring careful environmental assessment and an EIS.*

Email - Existing Access Arrangements: *There are no approvals in place that would enable SWMC physical vehicular access via its southern boundary. The EIS confirmed that ‘Currently, access to the Centre is provided from Minmi Road, Wallsend. All vehicles would continue to use the current access and no change to the current access is proposed’ (SWMC EIS, Section 5.6.1). That is, the current SWMC operation was approved on the basis that no secondary access was required to support it – the existing northern access arrangements were sufficient.*

CN Response

In 1993, when SWMC was approved, the eastern access road to Minmi Road was considered to be sufficient to support operations at that time.

Presently, SWMC generates between 110,000 and 130,000 waste transactions per annum. This averages out to around 300 to 600 transactions per day. Approximately 11% of waste tonnage arrives via small domestic customs; 28% from CN's kerbside services; and 61% from larger commercial bulk customers.

Currently around 75% of tonnage processed at the SWMC enters Newcastle along the Newcastle Link Road and travels through Wallsend onto Minmi Road before proceeding to the waste centre. The southern access road, as is required to be identified under FEAR 1.34 and before development consent could be given to DA/2087/2018, will significantly decrease travel times, reduce heavy vehicle movements on local roads, and assist with SWMC's transition to becoming a more efficient and effective operation and allow it to better address the various State and Commonwealth Government objectives and targets around waste minimisation, re-use and diversion.

The amended internal road network within SWMC and approved under Concept DA2021/0459 removes previous limitations on access and is intended to facilitate a future access road to the Newcastle Link Road to service the larger bulk customers and regional waste received from the south, west and north of the City of Newcastle. The future access road will be designed to cater for up to B-Double sized vehicles to reduce the total traffic vehicle movements. It is anticipated that the road will accommodate around 60 to 120 mainly heavy vehicles per day, reducing congestion and vehicle movements along Newcastle Link Rd, Thomas St, Longworth Ave and Minmi Rd (including the intersection at Newcastle Rd, Thomas St and Longworth Ave) improving traffic conditions and road safety for local

residents and the classified road network

A southern access road to SWMC from the Newcastle Link Road would result in approximately 16 km in saved travel distance (per return trip) for vehicles travelling eastbound along the Newcastle Link Road. As noted elsewhere in this advice, with a possible operational lifespan now in the order of 80 to 130 years, this could equate broadly to savings in the order of 60 million kilometres (based on 2022 vehicle estimates alone). The environmental and economic benefits of this saving are obvious.

A southern access connection to the Newcastle Link Road would also negate the need for these heavy vehicles to negotiate (currently) 6 sets traffic control signalised intersections, 4 roundabouts, pass schools, health facilities, childcare centres, places of worship, and the many residential properties that have direct frontage and minimal setbacks to Thomas St, Longworth Avenue and Minmi Road.

SWMC's preferred alignment for the southern access road would not pass across the frontage of any of the abovementioned sensitive land uses. Again, the environmental and amenity benefits of this are obvious.

Conversely, Winten's proposed alignment seeks to force these heavy vehicles past a proposed school site and a significant number of residential properties. As is addressed below, this outcome has already been rejected by the Department of Planning and the Planning Assessment Commission when assessing and determining the Concept Plan and can in no way be considered to be generally consistent with FEAR 1.34.

FEAR 1.34

- 10.8 *FEAR 1.34 of the Concept Approval requires the following: Each development application for the Link Road North precinct is to demonstrate that key roads linking Minmi Boulevard and the waste management centre have been designed to accommodate waste removal vehicles in accordance with the requirements of the relevant council, unless otherwise agreed to by that council.*
- 10.9 *The SWMC submission in relation to this FEAR relies on the following fundamentally flawed assumptions:*
- a. *That "waste removal vehicle" is an extremely broad term which encompasses class 2 restricted heavy vehicles including freight carrying vehicles such as B Doubles;*
 - b. *That the FEAR either requires the provision of:*
 - i. *an access road to SWMC for restricted access vehicles, including B Doubles, through residential streets; or*
 - ii. *A separate dedicated access road to SWMC that contains adequate buffers to residential uses, and which is clearly therefore not for use by residential traffic;*
 - c. *That the reference to "relevant council" in the FEAR refers to NCC, as the owner of SWMC, and not to Lake Macquarie City Council (LMCC), as the assessing authority for the DA, and the future roads authority for the roads included in the DA.*
- 10.10 *We explain below why each of these assumptions are fundamentally incorrect. "Waste Removal Vehicle" 10.11 The term waste removal vehicle is reasonably interpreted as a vehicle purpose-built.*

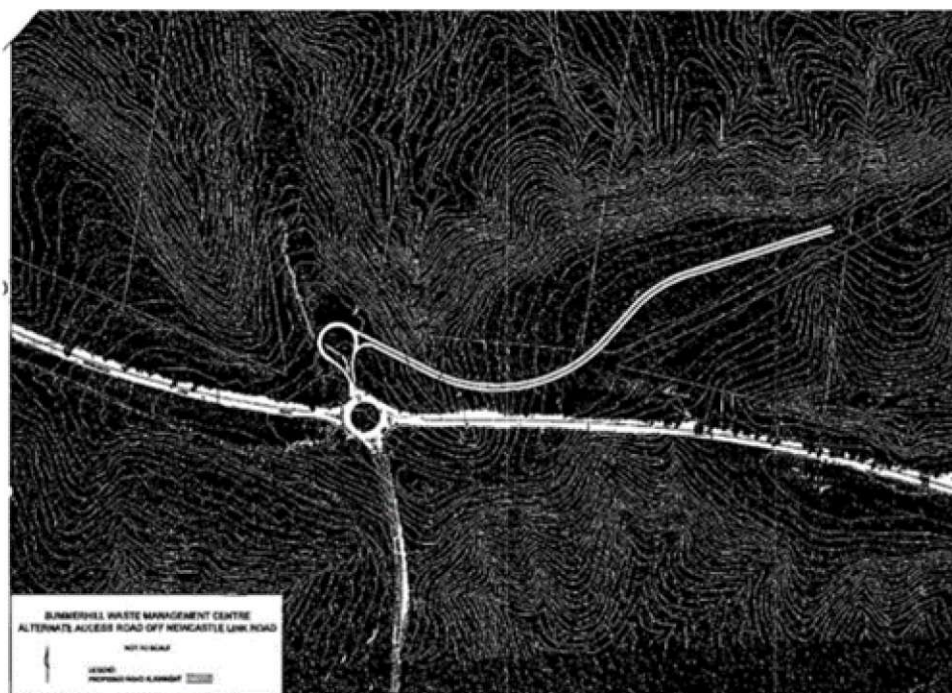
CN Response

SWMC has been operational since 1993. The Newcastle Link Road was in a state of planned construction by this time and operational by 1996.

The purpose of re-defining access into SWMC has been envisaged since the original masterplan document was prepared for NCC by BBC Planners (Summerhill Landuse Strategy September 1996) in recognition of the significant opportunities and advantages presented by the Newcastle Link Road. All documents provided to date reference the importance of the southern access route in securing a suitable future for the SWMC. (GHD Site Master Planning and Access Study 2012), (GTA Consultants January 2021), (CPSD Concept Plan 2020; RTA letter dated 15 July 2004; Summerhill Alternative Access report by SKM dated 23/07/2004).

It cannot be disputed that a future southern access to SWMC has long been identified as paramount to future operations of the SWMC, well before the inception of the Concept Plan and associated rezonings. (ref Summerhill Land Use Strategy Final Report by BBC Planners Sep 1996; RTA letter dated 15 July 2004; Summerhill Alternative Access report by SKM dated 23/07/2004). A copy of these reports is attached for information except for the CPSD Concept Plan 2020 which remains Commercial in Confidence at this time.

The RTA letter to SWMC in 2004 provided support for the below route for a southern access road to the Newcastle Link Road in accordance with the Summerhill Alternate Access Report (SKM 23/07/2004) commissioned by CN.

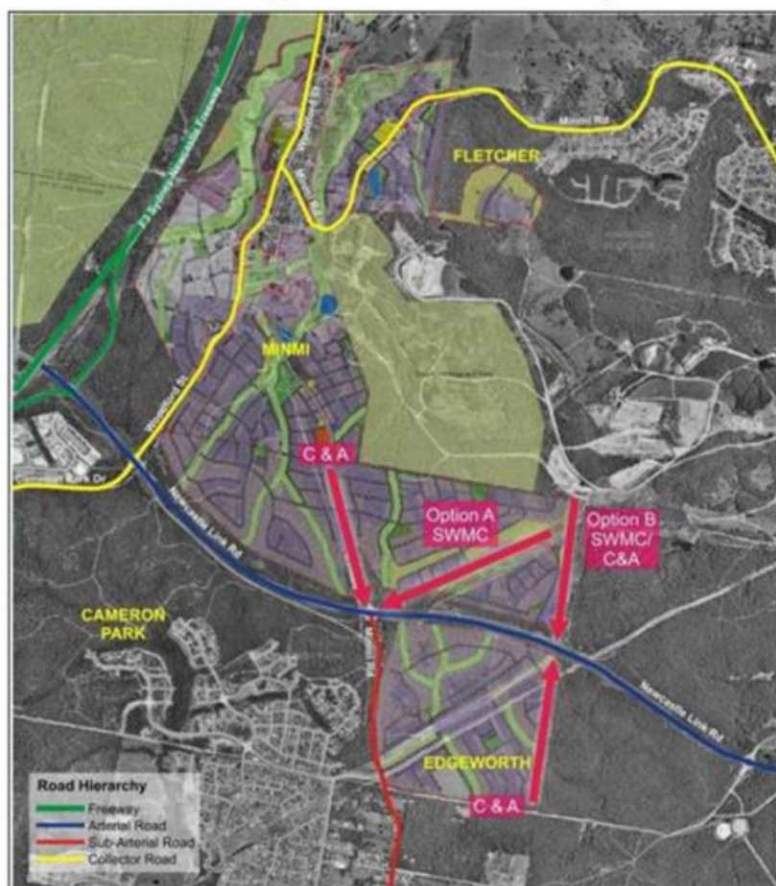


Acknowledgement of the need to properly plan for a southern access road connection to SWMC is again evidenced by the inclusion of considerations of this access route in the SEARs issued for the Minmi/Link Road North project which required:

- (4) Assess the impact of the proposal on future access arrangements to the Summerhill Waste Management Centre.

This is further evidenced in the subsequent Environmental Impact Statement that was submitted with the Concept Plan. Reference to the assessment report part 6.1.3 and Appendix M – the traffic report, only two options were outlined, both provided a direct link to the link road. The applicant discounted both of these based on a discussion with the RTA (now TfNSW) and did not consider any further access options. The extract of the EIS diagram is provided below.

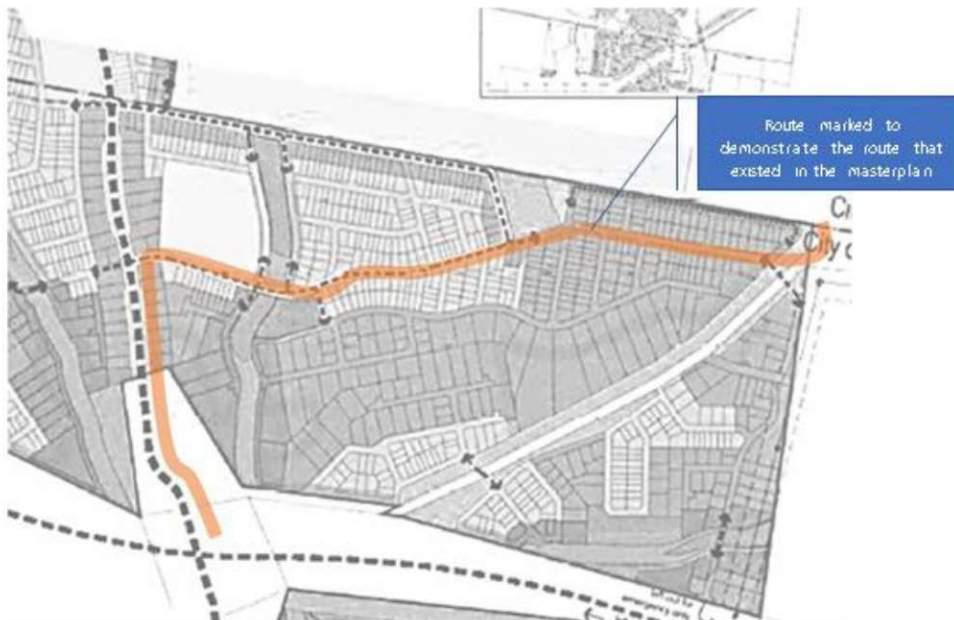
RTA did not support either of these two access options.



Throughout the entire application process for the Part 3A Concept Approval reference MP10_0090, it was clear that the importance of a link road from the southern boundary of SWMC to the Newcastle Link Road in that:

- a. CN showed clear and consistent intent during the entire assessment process to protect the opportunity to provide a heavy vehicle access road from the Newcastle Link Road into the SWMF.
- b. This intent was conveyed clearly to the applicant from the project's early phases
- c. Access to the SWMC was nominated within the SEARs letter to the applicant.
- d. Notwithstanding that CN requested the concept design be amended prior to determination, the applicant did not provide suitable or detailed evidence of identifying a suitable link road solution during the preparation or assessment of the application.
- e. The requirement remained as an unsatisfied aspect of the development proposal and was reported on as such in the Secretary's Planning Assessment Report to the Planning Assessment Commission.
- f. The Planning Assessment Commission imposed FEAR1.34 to specifically ensure the requirements of CN, the relevant Council, would be addressed and satisfied at the DA stage.

Minor changes are apparent in the proposed subdivision layout between the concept masterplan and the proposed detailed layout in this development application. Of particular note, is that the route identified by the applicant for the access road is in fact following an almost identical road alignment that existed in the proposed Concept Masterplan as can be seen in the following comparison figures.



Route proposed and rejected during assessment of the Concept Plan



Almost identical route proposed under DA/2087/2018

It remains unclear to SWMC why the applicant continues to propose the same alignment previously rejected by the Planning Secretary and Planning Assessment Commission in their assessment and determination of the Concept Plan.

Further, any consent authority considering the application of FEAR 1.34 could not reasonably reach a conclusion that the applicant's current proposed alignment, previously considered and rejected by the Planning Secretary and the PAC, is now somehow appropriate and consistent with the intent of FEAR 1.34.

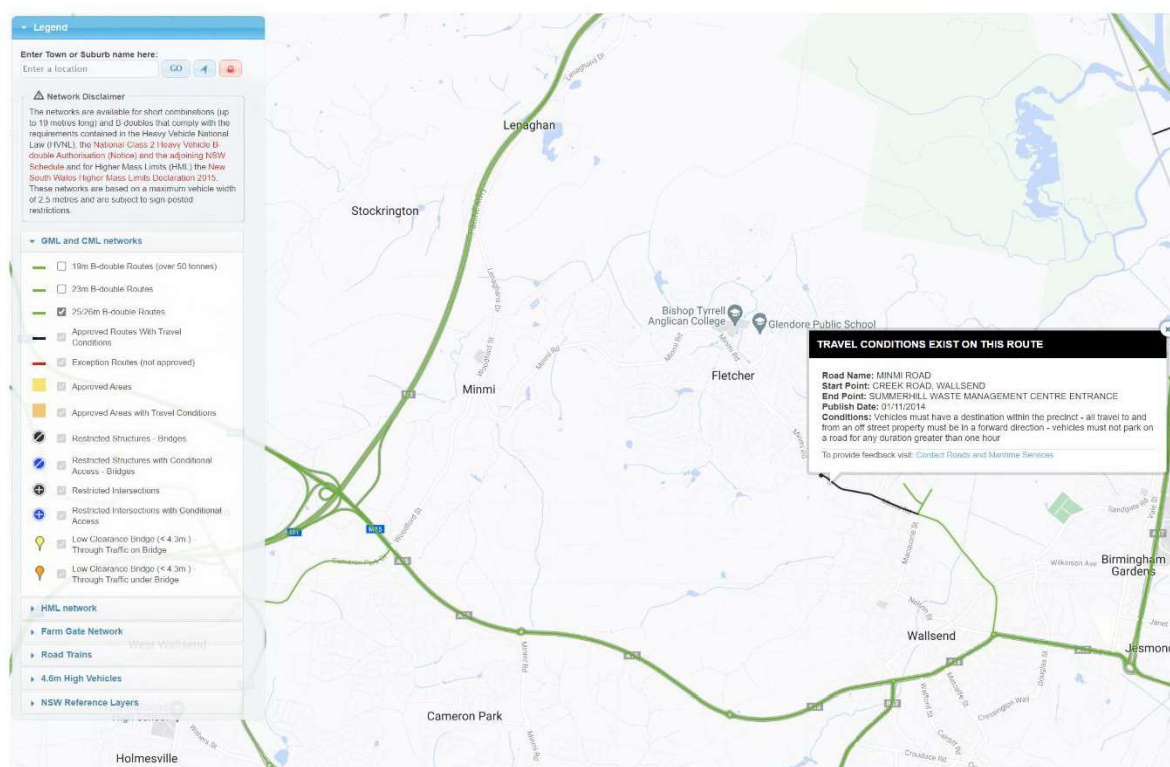
Waste Removal Vehicle

- 10.11 *The term waste removal vehicle is reasonably interpreted as a vehicle purpose-built or adapted for waste removal; that is, general kerbside collection. A B-Double is not built or adapted for this purpose.*
- 10.12 *Austrroads Guide to Traffic Management, specifically Part 12 – Integrated Transport Assessments for Development (extract provided as Attachment 18), is a primary reference document used by practitioners undertaking traffic impact assessments. For access and design purposes, Section 4.2.3 of this confirms that the type of heavy vehicles requiring access to a 'rubbish tip' are 'garbage trucks and large waste transfer trucks' (design single-unit truck / bus 12.5m long; prime mover and semi-trailer, 19.0m overall length).*
- 10.13 *Unlike other land uses (such as mines and factories), the Austrroads Guide does not list a B-Double as a vehicle generally requiring access to a rubbish tip. While this does not mean that B-Doubles cannot or do not access rubbish tips (provided the relevant approvals are in place), it supports the view that the term "waste removal vehicle" would not include a B-Double, as B-Doubles are not a standard vehicle type used in the planning and design of access routes to a rubbish tip.*
- 10.14 *A B-Double is a heavy, restricted access vehicle, typically used for freight carrying purposes (see Attachment 19, being a summary of heavy vehicle classes by the National Heavy Vehicle Regulator). The term "waste removal vehicle" cannot sensibly be interpreted as including vehicles so large that, because of their size, they are considered by national laws to have significant potential to endanger public safety, damage road infrastructure, and affect public amenity, such that they are prohibited from using any road other than in accordance with a special approval issued by the National Heavy Vehicle Regulator.*

CN Response

Section 4.2.3 of Part 12 of the Austrroads Guide to Traffic Management provides "examples" of types of vehicles associated with some classes of developments. In no way are those 'examples' intended to be a definitive and exhaustive list. In fact, if Section 4.2.3 is read in full and in context it clearly states that *"It is important to identify the type and size of heavy vehicles that will need to gain access to the development. This will help in determining the appropriate design vehicle and checking vehicle to be used in the development's design."*

Confirming the evolving nature of operations at the SWMC, and in response to changes in waste handling, minimisation and diversion and greater reliance on large waste transportation vehicles, since at least 2014, Minmi Road between Creek Road and the entrance to SWMC has been an approved B-Double route with conditions imposed by the National Heavy Vehicle Regulator specifically referencing SWMC as the only permissible destination when B-Double vehicles traverse this length of Minmi Rd, Wallsend. This clearly dispels the Applicant's suggestion that a B-Double sized vehicle would not be used in association with the removal of waste to and from the SWMC. Please refer to the figure below.



Type of Road Required

10.15 To suggest that the intention of FEAR 1.34, being a FEAR that relates to a residential subdivision, would require an applicant to design roads potentially through its residential subdivision to accommodate restricted access vehicles is irrational.

10.16 Alternatively, if SWMC contends that the developer of a residential subdivision should be required to construct a separate road purely for access to a neighbouring land use, this is also irrational – such a condition would clearly be unlawful. The requirement for a developer of a residential subdivision to design and / or construct a major piece of infrastructure, or adapt the proposed residential road network (e.g. Proposed Roads MC01 and MC58) in a manner that would be antipathetic to the future residential uses of the land (by allowing restricted access vehicles to transit through residential streets), for the sole purpose of servicing the possible future needs of a neighbouring landowner, clearly would not fairly and reasonably relate to the residential development. This could not have been the Department’s intention and the condition should be read in such a way as to make it a lawful condition, where such an interpretation is reasonably available, which it is (see below, at paragraph 10.21).

10.17 Once it is accepted that “waste removal vehicle” cannot sensibly be interpreted to include heavy freight carrying vehicles such as B Doubles, then it must be accepted that the FEAR simply requires that any key roads linking Minmi Boulevard and SWMC must be designed to accommodate a standard heavy rigid vehicle, which are general access vehicles that can use the normal road network (subject to the proviso that the road design must also be in accordance with the requirements of the relevant council, which we address below at paragraphs 10.23 – 10.30).

- 10.18 *The SWMC submission also suffers from the misconception that FEAR 1.34 requires further assessment of the road connection by the residential developer for matters such as traffic generation, traffic noise or other amenity issues associated with future possible SWMC operations, even though the FEAR itself only relates to road design. Such assessment will be the responsibility of SWMC as part of any future development application, once it has determined the specific details of that proposal and its impacts are known and can be quantified. It is not reasonable to require the Applicant to make an assessment and assumptions about a possible future development by a neighbouring landowner, as this would be purely 20 hypothetical. In this regard, the SWMC assertion that FEAR 1.34 places an onus on the residential developer to manage conflicting land uses, where there is no existing or approved southern access to SWMC, cannot be correct.*
- 10.19 *The amenity impacts that may arise as a result of SWMC amending its access arrangements or expanding its operations in the future are the responsibility of SWMC to both assess and manage.*
- 10.20 *It is not the responsibility of a residential developer to provide an access road, or even a road access corridor, for a secondary access for an adjoining landowner.*
- 10.21 *FEAR 1.34 merely acknowledges that the adjoining land use is a waste management centre and therefore allows for the possibility for waste removal vehicles to directly access the waste management centre from the residential subdivision. Because the residential subdivision approved by the Concept Plan (which straddles both Newcastle and Lake Macquarie LGAs) will generate the need for domestic waste removal, and it is likely that a significant proportion of this waste will be disposed of at the adjoining waste management centre in the future, there is a clear nexus between the residential subdivision approved by the Concept Plan and a condition requiring that any key roads between Minmi Boulevard and SWMC must be designed to accommodate waste removal vehicles. This is a sensible, and lawful, interpretation of FEAR 1.34.*
- 10.22 *The development application complies with FEAR 1.34, because:*
- a. *A road linkage has been provided between Minmi Boulevard and SWMC, being via Proposed MC01 (Minmi Boulevard) and MC58;*
 - b. *These roads have been designed to a Collector Road standard, which accommodate design vehicles up to a 19m semi-trailer. This design vehicle captures typical waste removal vehicles;*
 - c. *The roads have been designed in accordance with LMCC DCP Part 8 – Subdivision (Section 3.21 Road Design), Precinct Area Plan – Link Road North (Section 2, Figure 3 and Table 1), and Engineering Design Guidelines (Part 1 – Design Specification Section D1.17 Intersections and D1.18 Roundabouts). As such, the design achieves the requirements of the relevant Council.*

CN Response

As demonstrated above, and in accordance with Section 4.2.3 of Part 12 of the Austroads Guide to Traffic Management, SWMC has identified that B-Double sized trucks are already, and will continue to be, required to access the site. It was on this basis that City of Newcastle's written submissions to the Department were made during the consideration of the Concept Plan and which directly resulted in the Planning Assessment Commission imposing a specific FEAR (1.34) to ensure proper consideration was given to the requirements of the relevant Council, being the City of Newcastle (as the owner and operator of SWMC) during detailed design and assessment of development applications

within the Minmi Link Road Precinct.

At no time has SWMC or City of Newcastle requested or even suggested that the Applicant should be responsible for constructing the southern access road to the SWMC. Of course, if the Applicant continues to suggest that the preferred 'key roads linking Minmi Boulevards and the SWMC' should be the internal local residential streets intended to support the proposed subdivision, then the obligation would rest with the Applicant.

However, the fact remains that it is SWMC's strong preference to not be forced to mix heavy vehicle traffic unnecessarily with local residential and school traffic, but to have a separate, purpose built and access-controlled road.

The "Relevant Council"

10.23 SWMC interprets the term 'relevant council' to mean NCC on the basis SWMC is owned and managed by NCC. SWMC therefore submits that any key roads linking Minmi Boulevard and SWMC, which are located within the Lake Macquarie LGA and for which LMCC is both the assessment authority, and the future roads authority, must be designed in accordance with any requirements that NCC might have.

10.24 This interpretation is so nonsensical as to barely warrant a response. However, in order to conclusively dismiss this interpretation, a detailed response is provided below.

10.25 The term 'relevant council' in Condition 1.34 is clearly a reference to the consent authority, not the landowner of SWMC, who just so happens to currently be a council.

10.26 References to the 'relevant council' are used throughout the Concept Approval, and it is clear that this term is used to refer to the consent authority for the particular development application, noting that the Concept Plan extends across two local government areas and that development applications would be lodged with either NCC or LMCC moving forward. For example: Condition 1.6, FEARs 1.13, 1.14, 1.15, 1.17, 1.21, 1.24, 1.26, 1.27, 1.31, 1.32, 1.35, 1.36, 1.37, 1.38 and 1.45 of the Concept Approval.

10.27 Further enforcing this view is the fact that FEAR 1.32 requires that all aspects of the local road layout and design meet the requirements of the relevant council. It is clear that the relevant council must be the council in whose area the roads and subdivision are located. The notion that NCC could dictate the design of roads within the Lake Macquarie LGA through FEAR 1.34, usurping LMCCs role as both relevant council and road authority, is illogical and contradicts FEAR 1.32.

10.28 The use of the generic term 'relevant council' in FEAR 1.34 instead of specifically identifying the relevant council by name is consistent with the other terms of the Concept Approval. Use of the generic term would also have made sense given the uncertainty that existed at the time of approval of the Concept Plan in relation to a proposed adjustment of the LGA boundaries. The LGA boundary adjustment would have resulted in the Link Road North Precinct being fully contained within the Newcastle LGA. Had the LGA boundary adjustment occurred, the 'relevant council' for the purpose of FEAR 1.34 would have been NCC. However, as the LGA boundary change did not occur, LMCC remains the relevant council.

- 10.29 SWMC is a commercial waste management operation. It just so happens that the facility is owned and managed by a local council. If NCC was to sell the SWMC to a private operator, it would not be possible to even attempt to argue that 'relevant council' could be read as 'owner of SWMC', allowing a private operator to dictate its access requirements upon both the Applicant and LMCC.
- 10.30 For the reasons above, it is entirely unreasonable to interpret the reference to 'relevant council' in FEAR 1.34 as a reference to NCC, simply because NCC happens to be the owner of SWMC.
- 10.31 SWMC is an adjoining landowner and the issues raised by SWMC are objector issues only. FEAR 1.34 does not provide SWMC with the right to secure a secondary access road as part of the residential subdivision.
- 10.32 Although there was consideration of a potential location for a southern access road to SWMC as part of the assessment of the Concept Approval, this was in the context of resolving an objector issue only, and in circumstances where the objector enjoyed the elevated status of also being a local council within whose LGA a substantial proportion of the residential subdivision would be located. It is not surprising, therefore, that the proponent of the concept plan took the additional step of trying to resolve this objector issue by identifying a separate road access corridor that could be suitable for this potential future access road, although it was under no obligation to do so, and could not lawfully be required to provide such a secondary access road or corridor (absent a compulsory acquisition of its land for this purpose).
- 10.33 Similarly, as part of this DA, Winten has gone to great lengths to attempt to resolve NCC's desire to conserve its ability to develop a major secondary southern access road to SWMC, by demonstrating to NCC that the paper Crown road can be used for this purpose (although this concept design does not in any way form part of this DA), and by minimising its crossings of this paper road to reduce the potential for future conflict, should this secondary access to SWMC one day be approved and constructed. However, Winten is under no obligation to either reserve any access corridor for SWMC, or to design this future access road. FEAR 1.34 does not, and could not lawfully, require this.

CN Response

As outlined throughout this submission, in the absence of a defined term for 'relevant Council' each condition and FEAR imposed by the Planning Assessment Commission must be read in the proper content of that particular condition and having regard to the purpose for which the PAC imposed the condition.

For clarity, we again say that it would be nonsensical for LMCC to determine the requirements for the 'key roads linking Minmi Boulevard and the SWMC' without first consulting the City of Newcastle as the 'relevant Council' with regards to the 'type and size of heavy vehicles that will need to gain access to the development' in accordance with Section 4.2.3 of Part 12 of the Austroads Guide to Traffic Management.

Even if the Applicant is correct, and we say they are not, it must also be noted that the NSW Land and Environment Court found in favour of City of Newcastle application to become joindered to the Class 1 Appeal lodged (now discontinued) by the Applicant against LMCC's deemed refusal of this DA. The decision by Froh R to allow CN to be joindered to the appeal confirms the appropriateness of the involvement of CN (and therefore SWMC) in decisions being made in regard to the satisfaction of FEAR 1.34 (and other FEARS). A copy of the decision by Froh R is attached.

In regard to the statement made above by the Applicant that they “have gone to great lengths to attempt to resolve NCC’s desire...”, it is unclear as to what is meant given that the development application as submitted makes no real attempt to address FEAR 1.34 other than to re-propose a road alignment previous rejected by both the Department and the Planning Assessment Commission. Perhaps the Applicant is making reference to the significant work done ‘without prejudice’ during the LEC Appeal, lodged and discontinued by the Applicant, but there is no suggestion or evidence of this within the submitted DA documentation.

Additional Response

10.34 Further to the issues raised expressly in the request for information, we note that the issue of access to SWMC was discussed at the Regional Planning Panel briefing on 26 April 2022. There was a suggestion that the Applicant may need to design and construct its road crossings along the unformed road-reserve to suit a future road to SWMC.

10.35 In response to this, our position is that the imposition of such as requirement would be entirely unreasonable, particularly as there is no planning approval in place for a road along this corridor or a planning approval that allows SWMC to change its arrangements for external vehicular access. That is, approved vehicular access to SWMC is via Minmi Road, Wallsend, only. Any change to SWMC external vehicular access arrangements, such as a connection to the Newcastle Link Road via the unformed road reserve, would need to be supported by an assessment and approval under Part 4 and/or Part 5 of the EP&A Act, with SWMC as the applicant. There is no guarantee that approval will be granted, and even if it is, there is no sufficient certainty as to what conditions or design requirements may be imposed by the consent authority that may affect the road design.

10.36 With regard to this development application, our proposal includes the construction of two roads crossing across the unformed road reserve. In terms of the design philosophy, proposed road MC58 forms a major part of the development layout, and has been designed as a Collector Road with 13m width pavement within a 23m road reservation. This road forms part of the proposed bus route, and as such, is subject to geometric road standards to suit.

10.37 Lake Macquarie Council Engineering Design Guidelines (July 2016) adopts maximum road grades from Austroads Guide to Road Design Part 3 (AGRD): Geometric Design Table 8.3. Table 8.3 requires that roads within a Mountainous Terrain, which this site would be considered at an operating speed of 60km/h, is a general maximum grade of 9 - 10%. The AGRD provides for steeper than nominated grades subject to considerations, one of which is “where absolute numbers of heavy vehicles are generally low.” Given that this road forms a key loop road to the development and is a bus route, it was considered appropriate that 10% was adopted as the maximum grade.

10.38 In order to achieve compliance with the relevant design requirements, the proposed road crossings will be lower than the current levels within the unformed road corridor. Even so, this design does not compromise the ability for a road to be constructed along the corridor at a later date to SWMC, which could involve an overpass or underpass for example. SWMC is welcome to propose an alternative arrangement; however, in the absence of an approved road (or approval for a southern access to SWMC, generally), Winten cannot be expected to design and construct its road crossings (such as the inclusion

overpasses or underpasses) to cater for the possible future operations of SWMC.

10.39 We have designed a road appropriate for the proposed development, being a residential subdivision, and at the same time, one that does not preclude SWMC from constructing its own road to service its own needs, if it wishes to do so in future. In this regard, we consider that any suggestion that Winten should modify its road crossings for the purpose of facilitating a possible future SWMC access road which has not yet been designed, yet alone assessed or approved, is unreasonable and unjustified.

CN Response

As the Applicant is fully aware, and as is reiterate in this advice, it is SWMC's strong preference that a separate, purpose built and access-controlled access road in complete isolation of the local residential streets.

The Applicant is also fully aware that SWMC are prepared to ensure this separated road can be constructed without any impact on the Applicant's proposed road or lot design and have given assurances that if the preferred alignment for the SWMC was available, SWMC would (at significant additional expense) make provision in the design of the access road to ensure grade separation at the two proposed road crossing points.

To achieve the optimum road design, including, separation between both proposals, SWMC simply seeks and requires access to the residual land adjacent to the existing unformed road reserve (proposed Lot 3050) for which the Applicant has no identified use or requirement beyond the construction of the two local streets that cross it.

Further, it would seem that the Applicant is of the opinion the Department of Planning and the NSW Planning Assessment Commission erred or overstepped their powers in regard to imposing FEAR1.34 in the Concept Approval. It is noted that the Applicant has previously made application (MOD 4) to the Planning Secretary seeking the modification of a number of FEARS including FEAR 1.34. It is noted that the Applicant also appealed the Minister's 'deemed refusal' of their application but, at the last minute, opted to discontinue the Appeal in the days before the appeal was to be heard.

If the Applicant is of a strong belief that errors were made in imposing FEAR 1.34 there are appropriate avenues available to them to pursue this.

However, in the absence of such approach, FEAR 1.34 remains and must be fully and properly considered by LMCC and the Hunter and Central Coast Regional Planning Panel when determining DA/2087/2018.

Possible Resolution Pathway

As mentioned above, significant 'without prejudice' work was done between LMCC, CN and the Applicant during the s34 conferencing and in the lead up to the hearing (discontinued) for the LEC appeal against LMCC and we were astounded and disappointed when the amended DA package was re-submitted with no effort by the Applicant to include this previous work, but, instead, returned the application to the same position it was in 2018-2019 leaving CN no option but to be joindered to the appeal in order to protect and achieve what is expected to be achieved by FEAR 1.34.

This substantial body of work should not be wasted, and we are of the opinion that a similar approach still exists that would satisfactorily address FEAR 1.34 in a manner that could reasonably be supported by both LMCC and the Hunter and Central Coast Regional

Planning Panel.

Consistent with our written submission to the Department during the assessment of the Concept Plan, and as is referenced on page 52 of the Director-General's assessment report "*Newcastle Council has noted that it would be willing to work with the proponent to identify an alternate access road to the waste management centre through the proposed residential area that could manage conflicts between heavy vehicles and residential traffic and residents*".

We would welcome any such opportunity to discuss this with LMCC and the Applicant.

14. ODOUR IMPACTS FROM SUMMERHILL WASTE MANAGEMENT CENTRE

- 14.1 An odour impact assessment has been prepared by Northstar Air Quality Pty Ltd, which is provided as Attachment 23.*
- 14.2 Based on its assessment, Northstar recommends that a separation of 430m between the active cell and future residential properties would be a sufficient for the purposes of managing odour impacts associated with SWMC operations.*
- 14.3 As outlined in Section 5.13 of the SOEE, Winten agrees to accommodate this temporary buffer on its land.*
- 14.4 However, as the development application previously proposed a 400m buffer, the plan contained in Appendix AJ of the SOEE has been updated to reflect a 430m buffer in line with Northstar Pty Ltd advice. Please refer to Attachment 24 which is intended to replace Appendix AJ*

CN Response

The NSW Environment Protection Authority's 'Environmental Guidelines: Solid Waste Landfills (2016)' provides 'minimum standards' to assist the EPA in assessing applications for new or varied landfill licences under the *Protection of the Environment Operations Act 1997* and to assess issues that arise during the operational and post-closure periods of landfills. The guidelines provide 'locational criteria' for selecting new landfill sites relative to existing residential areas (including a minimum 1000m buffer for large putrescible waste landfills), but do not consider other forms of waste processing and resource recovery.

On this basis, the most relevant and current guidelines that are applicable to this site recommend a buffer of 1000m. CN request that a 1000m buffer be imposed as previously requested in the submission prepared on behalf of CN by Valley Planning on the 14 September 2021. This buffer is required to minimise sensitive residential land uses from odour, noise and other impacts associated with putrescible waste landfills.

Other General comments in response to Winten's concerns over the use of the site

The SWMC site commenced operations in the mid-1990s with an initial life of 20 years. Since this time more than 40 development consents have been issued for the site. This includes consents for key operations at the site, administrative consents and consents that have since lapsed.

The original consent (DA1992/0506) as modified specified an operational expiry date of 20 years and only permitted the SWMC facility to receive waste from the Newcastle LGA and commercial and industrial waste from Lower Hunter LGAs. The current consent ('Stage 2'- DA2010/1319) as modified allows for the landfilling of up to 364,000 tonnes of general waste per annum. It does not specify an operational expiry date or provide for any new origins of

waste. Please refer to a copy of the consent attached.

At current rates, the landfill facility has a projected life of more than 80 years and is predicted to generate approximately significant revenue over its life. Resource recovery operations currently undertaken at the site include a small vehicle resource recovery facility, landfill gas renewable energy facility, garden waste processing, and a solar farm.

Site operations are supported by a range of infrastructure, including internal access roads, a weighbridge and gatehouse, and a truck rinse and wheel wash station; a stormwater drainage system; stockpile areas, leachate storage ponds, sedimentation basins and environmental monitoring wells; a site workshop and caretaker's house; and office and administration areas, amenities and car parking.

It is not reasonable to consider that the site will stop operation after significant financial investment in the site and when the main development consent is not time limited. The life expectancy of the site was a prediction at the time of the original development application, and as previously stated there are no conditions that state that the consent expires after a certain time period.

The NSW Waste and Materials Sustainable Material Strategy 2041 indicates that NSW is running out of space to deal with waste. The current rate of waste generation and recycling, show that putrescible landfills servicing Greater Sydney are likely to reach capacity in the next 15 years and capacity at some regional landfills will be reached this decade. If these facilities reach capacity, rural and regional communities will experience significant issues for the disposal of waste which will be cost prohibitive.

The Strategy states that the Hunter has a need for an additional 300,000+ tpa or a medium scale energy recovery facility by 2040. In addition, there are constraints on hazardous waste treatment and additional targets to reduce 80% of waste diverted from landfill.

Summerhill plays an important role in servicing the Hunter Region, which may exasperate if other regional facilities reach capacity. This facility needs to be considered in the Regional Strategy, as it plays an important role to the function of the region and offers opportunities to allow transition to a circular economy in the future. This transition will not occur overnight, highlighting that this asset is a critical piece of infrastructure now and in the future. Based on this, there maybe some move away from the volume of putrescible waste in land cells and movement into more sustainable forms of waste management in the future. As can be seen by the current development applications that have been lodged, CN is exploring and planning for these options now and the future use of the site for a variety of waste recovery options is feasible and real. CN is able to submit new applications on the site and propose alternative vehicle movements and access proposals, which will be assessed on their merits and consideration will be made to any impacts on surrounding uses and a thorough environmental assessment will need to occur.