

6 August 2013

**NSW Planning Assessment Commission's Determination Report on the
Concept Plan application for site at Minmi, Newcastle Link Road and Stockrington.**

1. Delegation to the Commission

The concept plan proposal has been referred to the Commission for determination under the Minister's delegation date 14 September 2011. The reason for referral is because Lake Macquarie City Council and Newcastle City Council objected to the concept plan.

The Commission constituted to determine the matter consists of Jan Murrell (chair) and David Johnson.

2. Background

The subject site was rezoned on 1 March 2013 by way of amendments to the *Cessnock Local Environment Plan 2011*, *Lake Macquarie Local Environment Plan 2004* and *Newcastle Local Environment Plan 2012*. The zonings include: 520 hectares for residential purposes 8,000 sqm for commercial purposes and 1,562 hectares for conservation.

A purpose of the concept plan for the site is to provide guidelines for development to take place in accordance with the above rezonings.

3. Concept Plan Proposal

Coal & Allied (the proponent) is seeking concept plan approval that includes the following:

- Urban Design Guidelines for the whole site and more detailed guidelines for Stage 1 Minmi East Precinct;
- Torrens title subdivision to create two separate lots, one for the conservation lands and the other, the development site. This enables the dedication of the conservation lands to the NSW Government;
- Up to 3,300 dwellings in five stages within the 520 hectare development site, comprised of a mix of dwelling types;
- The provision of supporting commercial/retail development of up to 8,000sqm;
- A 3 hectare site to accommodate a new primary school and a 1.3 hectare site to accommodate an expansion of the existing Minmi Public School;
- A 24 hectare site for recreation facilities; and
- Development of associated infrastructure.

4. Department of Planning and Infrastructure's Assessment

The Director-General's Environmental Assessment Report containing the recommendations is publicly available on the Department's website. This report has been referred to the Planning Assessment Commission for determination.

The assessment report discusses the following key issues:

- Land use, urban design and built form;
- Infrastructure contributions;
- Biodiversity;

- Soils and water;
- Mine subsidence;
- Traffic and access;
- Heritage;
- Noise and odour;
- Bushfire management;
- Subdivision of conservation lands;
- Utility infrastructure; and
- Access to local facilities.

The Department has recommended the concept plan, as amended and shown in the preferred project report, be approved, subject to the following modifications:

- The removal of the sports and recreation park and a requirement that the proponent identifies an alternative location for additional sports and recreation facilities as part of the staging plan for Stage 3;
- Modifications to the proposed allocation of \$8million towards local initiatives and facilities;
- Retention of the Duckenfield Colliery No.1 Railway Branch Line heritage item; and
- Exclusion of the proposed urban design guidelines and a requirement that the proponent prepares\ updated urban design guidelines.

5. Site Visit and Meetings

On Thursday 11 July 2013 the Commission with the proponent carried out an inspection of the site and the surrounding area. The Commission viewed the five precincts along with the Summerhill Waste Management Centre, the fire trail access for Minmi East Precinct, the proposed area for the sports and recreation facilities, the site of the former Chinese Gardens, the Blue Gum Regional Park and Cameron Park.

Matters raised by the proponent at the site inspection include:

- Staging and location of the provision of the recreational facilities;
- Charrette process already undertaken for the \$8million allocation;
- Timing of the provision of information at construction certificate stage as opposed to subdivision approval; and
- The condition that requires the entire alignment of the Duckenfield Colliery No.1 Railway Branch Line to be retained.

The Commission has the benefit of submissions made by Lake Macquarie City Council and Newcastle City Council as contained in the Department's report. In addition, Lake Macquarie City Council met with Commission and a teleconference was held with Newcastle City Council on Friday 12 July 2013 and in summary the following matters were raised:

Meeting with Lake Macquarie City Council

- The changes made through the *Preferred Project Report* addressed some of council's concerns;
- With respect to condition 1.17 council requested that recreational (sporting) facilities be identified prior to the development of Stage 1 to ensure suitable land is made available, rather than Stage 3 as recommended by the Department;
- Council noted the need for the recreation facilities to be located within the general proximity of the development;
- Council advised that the boundary between the two council's may change in the near future which would remove part of the development site from Lake Macquarie City council's jurisdiction to Newcastle City Council;

- The width of the riparian corridors are a concern to council, and a minimum of 40m wide corridors with a 10m buffer either side was requested;
- Council is concerned about future development proposed on steep slopes;
- Council considers the perimeter roads and asset protection zones should be included within the development site as it is not council's responsibility to maintain the APZ;
- Council requested a 100m wide corridor along the northern boundary of the Link Road;
- Council seeks the provision for a proportion of Lower Hunter Spotted Gum Ironbark Forest; and
- The concept plan satisfies the need to prepare a Development Control Plan (DCP) therefore urban design guidelines required at concept plan approval stage.

A further comment by e-mail was received wherein council requests an approval role for the urban design guidelines.

Teleconference with Newcastle City Council

- By excluding the urban design guidelines as recommended in the Department's Assessment Report the purpose of the concept plan is uncertain as it lacks details as to how the lands will be developed; and
- Council objects to the location of the proposed recreation (sporting) facilities and further concern was raised in relation to available space for these facilities as the remaining areas are zoned for residential or commercial purposes. Council noted that while the sporting facilities have been deleted from the flood liable lands by the Department there has been no further investigations carried out to identify suitable lands for recreation purposes.

Following the meeting Newcastle City Council submitted comments regarding:

- The location of recreation facilities and requested that four playing fields or six fields in three groups be provided and that the recreation facilities location meet the *NSW Department of Planning's Recreation and Open Space Planning Guidelines of Local Government (2010)*;
- Under the transitional provision for part 3A matters concept plans are deemed to substitute for development control plans;
- The need for more detailed controls for: residential development on steep slopes; lots within buffer areas for Summerhill Waste Management Facility; lots adjoining the F3 Freeway, lots adjoining riparian corridors; and lots affected by mine subsidence; and
- The future management of how and for what purpose money is allocated from the \$8million developer's fund.

Meeting with the Department

The Commission met with the Department on Tuesday 23 July 2013 and the Commission held a teleconference with the proponent on this day. Matters discussed in these meetings are outlined below:

- The need for flexibility in the sequencing of the stages in order to respond to the market;
- The need for the urban design guidelines to be amended/ supplemented with additional environmental assessment requirements to form part of the concept plan approval to provide a level of certainty;
- The mechanism to enable the dedication of the conservation lands;

- The appropriate stage to identify the location for recreational facilities given the topography;
- The requirement for perimeter roads and the APZ to be contained within the development area and outside of riparian buffers;
- The location of buffers from the development to the Summerhill Waste Management Centre and major roads;
- The need to limit the level of fill in flood affected areas;
- The minimum allotment size for residential lots on steep slopes;
- The management of the proponent's \$8million contribution; and
- Where residential lots are impacted by mine subsidence issues the appropriate stage for carrying out works should be prior to the issuing of the subdivision certificate.

Teleconference with the Proponent

- The staging of the development site;
- The concept plan to make provision for the urban design guidelines to be amended and supplemented with further additional assessment requirements;
- A requirement for recreational facilities to be identified earlier than the third stage and outside flood affected areas;
- Perimeter roads to be included in the development area;
- The need for flood modelling and limitations on fill in flood affected areas
- Dwellings on steep slopes – proponent advised that lots on land with a slope greater than 20% will be of an area greater than 1,000 square metres;
- The location of Community facilities within Minmi; and
- The stage and responsibility for mine subsidence issues to be resolved.

6. Commission's Consideration

The Commission has carefully considered the Department's Assessment Report and recommendations, other relevant documents, written submissions and views expressed by the proponent, the councils and the Department. The Commission also has the benefit of conducting a site inspection. The key issues that emerged for the Commission are discussed in more detail below.

The Commission generally accepts the recommendations of the Department. However, it has determined that the concept plan approval should include the urban design guidelines, subject to further modifications. In its determination the Commission has also made some amendments to the recommended conditions of approval to address certain concerns raised by council or to clarify issues.

6.1 Concept Plan - lot and road layout, subdivision and staging

The Commission notes the concept plan shows only an indicative lot and road layout and as recommended by the Department approval is not granted for the indicative lot and road layout.

The Commission notes that the concept plan is for a five stage development of up to 3,300 dwellings. This approval requires Stage 1 to be developed first and development is to be in accordance with the Urban Design Guidelines to be modified and submitted for the Director-General's approval within 4 months of this concept plan consent. However, the Commission acknowledges that market forces may have a bearing on the appropriate sequence of the development stages and therefore the approval does not require the development to take place in the numerical order of the stages.

The Commission supports the torrens title subdivision of the land into separate parcels and this will enable the dedication of the conservation lands

6.2 Urban Design Guidelines

The Commission notes that a provision was included in the Lake Macquarie and Newcastle local environmental plans requiring the preparation of a Development Control Plan (DCP). However, under the part 3A provisions s.75M of the *Environmental Planning and Assessment Act 1979* (the Act) any concept plan approval would satisfy the obligation to prepare a DCP. Discussions with the Department have clarified the fact that the urban design guidelines as contained in the concept plan should be modified and supplemented to include amongst other matters the issues identified in the Department's Assessment Report. The Commission endorses this course of action as opposed to excluding the urban design guidelines as initially recommended by the Department. This is also consistent with the Director-General's advice that the urban design guidelines be amended to ensure they address the DCP requirements.

The councils also raised the need for urban design guidelines prior to approval of the concept plan. The Commission is satisfied that the urban design guidelines in the concept plan should be approved subject to the additional requirements set out in Part D of the Instrument of Approval. These modified guidelines for subsequent stages are to be prepared in consultation with the relevant council(s) and submitted to the Director-General for approval prior to the lodgement for any future stage applications.

However, with respect to Stage 1 Minmi East Precinct the urban design guidelines in the concept plan contained more detailed provisions and these are to be amended and submitted to the Director-General for approval within 4 months of this consent.

Following discussions with the Department the Commission's determination contains a condition that the Urban Design Guidelines contained in the concept plan at Appendix A and B are to be supplemented with further assessment requirements for the approval of the Director-General.

The Commission notes that the guidelines of the concept plan are provided in two parts:

- Appendix A is for the five stage development showing only indicative lot layout and topologies, building heights and proposed character areas.
- Appendix B is for the *Stage 1 Minmi East Precinct* and incorporates more detailed provisions on access and movement, parks and open spaces as well as private domain guidelines.

The Commission also accepts the Department's assessment that the proposed distribution of land uses within the development site is satisfactory and considers that there is an appropriate mix of lot sizes to provide housing choice.

6.3 Recreation Facilities

Both Lake Macquarie City Council and Newcastle City Council raised concerns about the proposed location of the recreation facilities (sporting fields) on flood liable land within Minmi East Precinct (Stage 1) and concern about the timing of identifying an alternative site.

The Commission notes the sporting fields in this location are subject to flooding impacts with the exception of an area west of Back Creek and concurs with the Department's recommendation to remove the facilities to an alternative location to be identified. The

Commission agrees with Newcastle City Council and the Department that the proposed location is not suitable.

The Commission notes that Newcastle City Council considers that there are existing recreational facilities to meet the needs of Stages 1 and 2. However, the council is concerned that appropriate lands for the future recreation needs should be identified prior to the first stage of development rather than Stage 3 as recommended by the Department. The Commission is of the opinion that, having regard to the inclusion of Stage 1 in the concept plan, that the question of timing for the identification of land for these facilities should be prior to the second stage and at least within 2 years of this concept plan approval and to be approved by the Director-General. On balance this position provides sufficient certainty, in the context of both timing and location.

6.4 Community Facilities

The Commission supports the proponent's position for the staging plan to have regard to the proximate location of open space and community facilities for the benefit of the existing and future Minmi/Link Road residents. Accordingly, the Commission has amended the relevant condition.

With respect to Newcastle City Council's concern regarding the management of the \$8 million contribution the Commission understands that the allocation of these funds has been guided by previous consultations with the community. Furthermore, this contribution is to be over and above section 94 contributions and is contained in the proponent's Statement of Commitments. As such it is not a matter for the Commission in its determination.

6.5 Riparian Corridor

The Commission notes Lake Macquarie City Council's request regarding riparian corridors. However, the riparian corridors are zoned at variable widths. The Commission accepts that any works within the riparian corridors must meet the requirements of the relevant NOW guidelines and this position is consistent with the recommendations made by the Department.

With respect to works in the riparian zoned land the Commission agrees that perimeter roads and asset protection areas be contained within the development site and not encroach into the riparian zone. Furthermore, where practicable riparian zones should be adjoined by roads rather than having a boundary with residential lots. Accordingly, these issues are reflected in the conditions of approval.

6.6 Topography

Both Lake Macquarie City Council and Newcastle City Council raised concern about development on steep slopes. The Department has recommended controls be identified for buildings on steep slopes and a condition that requires lots on land with slopes greater than 20% are at least 450 square metres in area. However, the Commission is of the opinion that to ensure dwellings and ancillary structures can be accommodated on steep slopes a minimum lot size of 1,000 square metres is imposed on land with slopes greater than 20%.

6.7 Flooding

The Commission notes that approximately 100 lots are affected by the 100 year flood level. The Commission agrees with the Department's condition which requires further flood modelling to be conducted and that all dwellings must be located above the flood planning level plus 0.5m freeboard. In addition, the Commission requires that all lots must contain

sufficient land area to accommodate a building platform above the flood affected area and that fill be limited to the 0.5m free board area only.

6.8 Mine Subsidence

The Commission notes that parts of the development site is underlain by coal mine workings within two seams. The Department has recommended that geotechnical investigations be carried out to demonstrate that any risk of mine subsidence has been removed as appropriate to ensure the intended use of the land is achievable. It is noted that the village centre would require consideration of options for grouting to ensure that mine subsidence risks are eliminated for all types of development proposed in this area.

The Commission has clarified and strengthened the condition relating to mine subsidence to ensure that for all residential lots the necessary geotechnical investigations and grouting or works are carried out prior to the issuing of the subdivision certificate. This ensures purchasers of future lots do not individually incur the costs associated with making each lot suitable for the intended residential use.

6.9 Summerhill Waste Management Centre, Major Roads and Other Matters

The Commission is satisfied that the condition as recommended by the Department is appropriate regarding noise and odour in relation to the Summerhill Waste Management Centre and major roads. The Commission is of the opinion councils concerns about these matters would be addressed in future development applications to council. Similarly, for other issues of concern to the councils including vegetation and conservation issues the Commission considers these are more appropriately matters for future applications.

7. Commission's Determination

The Commission has carefully considered the Director-General's Environmental Assessment Report and recommendations, as well as the submissions received, and the proposal has been considered in its context. The Commission notes that the concept plan is generally consistent with the objectives of the LEP zonings and the *Lower Hunter Regional Strategy*.

Accordingly the Commission has determined that approval be granted to the Concept Plan application subject to further modifications and the prescribed detailed requirements for future development applications on the site as contained in the attached *Instrument of Approval*.



Jan Murrell
Member of the Commission



David Johnson
Member of the Commission