

8 July 2024

Jeremy Gray  
Director, Hunter and Northern Region  
Local Planning and Council Support  
Department of Planning, Housing and Infrastructure  
6 Stewart Avenue,  
**NEWCASTLE WEST NSW 2300**

Dear Mr Gray

**PP-2021-2262 – 505 MINMI ROAD, FLETCHER – REQUEST MATTER NOT PROCEED**

City of Newcastle (CN), as the planning proposal authority requests that, the Minister for Planning (or delegate) determine the planning proposal mentioned above (PP-2021-2262) not proceed.

On 8 January 2024 CN requested the Minister determine it not proceed under s.3.35(4) *Environmental Planning and Assessment Act 1979* (**Attachment A**). This request was based on the proponent's failure to address the gateway determination. In response, the department altered the gateway determination's timing for LEP completion by 23 November 2024 and directed CN to begin the planning proposal exhibition process.

Consequently, the planning proposal exhibition opened on 21 April 2024, during which, the NSW Environment Protection Authority (EPA) provided comments. Their letter of 22 May 2024 (**Attachment B**), raised land use conflict concerns, noting the site's proximity to Summerhill Waste Management Centre.

The EPA recommends additional assessment of the impacts from existing land uses to inform appropriate future land uses, transitional zonings, buffer distances, and design choices. CN anticipates a timeframe of a minimum of 12 months or more to meet assessment requirements under the relevant EPA guidelines including *Consultants reporting on contaminated land: Contaminated Land Guidelines (EPA 2020)* and the *Assessment and management of hazardous ground gases: Contaminated Land Guidelines (EPA 2020)*. Completing the LEP by 23 November 2024 is not possible.

As a result of the issues raised by the EPA and time required to address these matters, together with the reasons detailed in our correspondence dated 8 January 2024, CN formally requests that you determine the proposal not proceed under s.3.35(4) *EP&A Act* given the lack of certainty around these matters.

Should you wish to discuss this matter further, or have any questions please contact Jonathon Christie, Senior Strategic Planner on [REDACTED] or [REDACTED]

Yours faithfully

[REDACTED]  
**Michelle Bisson**  
**EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT**

*Attachment A - Letter to Minister for Planning - 8 January 2024*

*Attachment B - Letter from NSW Environment Protection Agency - 22 May 2024*

8 January 2024

The Honorary Paul Scully MP  
Minister for Planning and Public Spaces  
Ministerial Office  
52 Martin Place  
**SYDNEY NSW 2302**

Email: [office@scully.minister.nsw.gov.au](mailto:office@scully.minister.nsw.gov.au)

Dear Minister

**PP-2021-2262 – 505 MINMI ROAD, FLETCHER – REQUEST MINISTER DECISION THAT PLANNING PROPOSAL DOES NOT PROCEED**

City of Newcastle (CN), as the planning proposal authority (PPA) is requesting the Minister not proceed with planning proposal PP-2021-2262 (the proposal) for land at 505 Minmi Road, Fletcher. The request not to proceed is due to the proponent not having satisfied the Department of Planning and Environment's (DPE) Gateway Determination conditions.

The assessment of the proposal has been ongoing, since the Gateway Determination was issued in 2021, and CN has spent significant time and resources working with the proponent since this time. On 26 May 2023 CN again requested further information to satisfy the outstanding conditions of Gateway Determination with a focus on land use efficiency and avoiding areas of the site with high environmental value to improve biodiversity outcomes. The request for further information included a revised Urban Design Study investigating various housing typologies to demonstrate an appropriate level of avoidance under the *Biodiversity Conservation Act 2016*.

To date, this request has not been adequately addressed, and the proponent has not demonstrated consideration of appropriate zone boundary options to address matters raised in Gateway Determination. Without adequate information on biodiversity and density options, both Ministerial Direction 3.1 and Gateway Determination Condition 3, are not satisfied. On this basis there are sound planning grounds for the proposal not to be supported, and until such time that adequate information addressing these matters is provided, the assessment of the proposal cannot be finalised. Given the length of time and limited progress made by the proponent to date, this outstanding information is not likely to be forthcoming in a reasonable timeframe.

It is noted that the proponent has submitted correspondence to DPE (dated 18 December 2023), which requests the appointment of an alternative PPA and erroneously suggests that CN has not undertaken the assessment of the proposal in a satisfactory manner. Please be advised that CN takes its role as PPA seriously and have afforded the proponent with sufficient time and opportunity to adequately respond to the outstanding matters raised in the Gateway Determination. Any decision to appoint an alternative PPA would not be supported by CN, nor considered to be a reasonable decision on planning grounds, particularly given the inadequacy of the information submitted with the proposal to date.

Under Section 3.35 of the *Environment Planning & Assessment Act 1979 (EP&A Act)*, a PPA may vary proposals (S3.35(1) *EP&A Act*) or request the Minister determine the matter not proceed (S3.35(4) *EP&A Act*). I note that the option to vary the proposal has been

carefully considered, however without the requested revised Urban Design Study, and adequate biodiversity information, there is insufficient information to vary the proposal. Therefore, the most appropriate action for CN as PPA is to request the Minister determine the matter not to proceed pursuant to section 3.35(4) *EP&A Act*.

CN is currently on track to exceed its projected 17,850 required dwellings by 2041 as outlined in the Hunter Regional Plan 2041. The Broadmeadow Place Strategy and State led rezoning will be finalised this year and will unlock strategically located land capable of accommodating approximately 20,000 dwellings. In addition, the DPE recently released a suite of proposals focused on in-fill development to encourage more low mid-rise housing options which will provide additional housing capacity in well-located areas across Newcastle. Accordingly, the proposed approximately 140 lots under the subject proposal are not critical in CN exceeding the LGAs housing targets. It is therefore appropriate that the Minister make the decision not to proceed with PP-2021-2262 and the proponent be advised to re-locate at a future date when they are able to provide the required information.

On this basis, it is formally requested that the Minister determine that the planning proposal does not proceed pursuant to s.3.35(4) *EP&A Act*. For further information and background please see the enclosed Council Report.

CN is willing to meet and discuss this matter further with DPE prior to any decision being made if it would assist. Further, should you wish to discuss this further or have any questions, please contact Michelle Bisson, Executive Director Planning and Environment on [REDACTED] or [REDACTED]

Yours faithfully

[REDACTED]  
**Jeremy Bath**  
**CHIEF EXECUTIVE OFFICER**

CC: Daniel Simpkins, Regional Director Department of Planning, Industry and Environment via email [REDACTED]

*Enclosed*

- *Council report CCL 12/12/23 – REQUEST THE MINISTER DETERMINE NOT TO PROCEED WITH THE PLANNING PROPOSAL FOR LAND AT 505 MINMI ROAD, FLETCHER*
- *Attachments B, C, D, E - CCL - 12/12/2023 - REQUEST THE MINISTER DETERMINE PLANNING PROPOSAL PP-2021-2262 FOR LAND AT 505 MINMI ROAD, FLETCHER 2287 NOT PROCEED*

**SUBJECT: CCL 12/12/23 – REQUEST THE MINISTER DETERMINE NOT TO PROCEED WITH THE PLANNING PROPOSAL FOR LAND AT 505 MINMI ROAD FLETCHER**

**REPORT BY: PLANNING AND ENVIRONMENT**  
**CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION**

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## **PURPOSE**

To provide an update on the planning proposal for 505 Minmi Road Fletcher to rezone the land from C4 Environmental Living zone to part R2 Low Density Residential and part C2 Environmental Conservation zones (see **Attachment A**).

## **RECOMMENDATION**

That Council:

- 1 Notes, as the planning proposal authority, City of Newcastle (CN) will be requesting the Minister not to proceed with the planning proposal for land at 505 Minmi Road Fletcher.
- 2 Notes CN's statutory obligations for this planning proposal are met.
- 3 Notes the request not to proceed is due to the proponent not having satisfied the Department of Planning and Environment's (DPE) Gateway determination conditions.

## **KEY ISSUES**

- 4 CN resolved to not support the 505 Minmi Road Fletcher planning proposal in 2020. Following this decision, the proponent submitted it for review to the Hunter and Central Coast Regional Planning Panel (the panel).
- 5 The panel review found the planning proposal demonstrated strategic and site-specific merit and could be submitted for Gateway determination. The panel did not endorse the proposed zone boundaries, as they were not satisfied, onsite biodiversity values had informed them (see **Attachment B**).
- 6 CN accepted the planning proposal authority (PPA) role and submitted the planning proposal to DPE for Gateway determination in May 2022.
- 7 DPE issued the planning proposal Gateway determination on 10 January 2023 allowing it to proceed subject to conditions relating primarily to biodiversity, density, and timeframe requirements (see **Attachment C**).
- 8 CN has continued to work with the proponent as required as PPA. However, the pre-exhibition conditions are not met or close to resolution. In particular, the biodiversity and density matters are not adequately addressed.

- 9 As the proponent has failed to provide the required information to facilitate the assessment, it is now not possible to meet DPE's timeframe to complete the LEP by 20 January 2024. It is appropriate to request the planning proposal be withdrawn before the timeframe expires.
- 10 As PPA, CN found the proponent's revised planning proposal of 4 May 2023 has not met the Gateway determination conditions as follows:
- **Condition 1(e)** requiring an updated Aboriginal cultural heritage assessment.
  - **Condition 3** requiring public authority and government agency consultation and/or to comply with the requirements of the applicable directions of the Minister under the *Environmental Planning and Assessment Act 1979* (EP&A Act).
  - **Condition 4** requiring (once agency comments received) consideration of an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.
- 11 On 26 May 2023 CN requested further information to satisfy these conditions with a focus on land use efficiency and avoiding areas of the site with high environmental value to improve biodiversity outcomes (see **Attachment D**).
- 12 CN's further information request aligns with the Biodiversity Conservation Division's (BCD) advice 15 February 2023 (see **Attachment E**). This included:
- The planning proposal's inconsistency with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation.
  - The planning proposal's failure to take all appropriate avoidance and minimisation measures for Biodiversity Conservation Act 2016 (Biodiversity Act) listed endangered ecological community (EEC) Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. To adhere to the Biodiversity Act, BCD advised further consideration be given to ensure this EEC is sufficiently avoided or impacts minimised.
- 13 CN requested (item 1 of **Attachment E**) a revised Urban Design Study to investigate various housing typologies to demonstrate an appropriate level of avoidance under the Biodiversity Act.
- 14 To date the proponent has not demonstrated consideration of appropriate zone boundaries options to address matters raised in Gateway determination Condition 4 (**Attachment C**). Without adequate information on biodiversity and

density options Ministerial Direction 3.1 and Gateway determination condition 3 are not addressed (**Attachment C**).

- 15 Under Section 3.35 of the EP&A Act, a PPA may vary proposals (S3.35(1)) or request the Minister determine the matter not proceed (S3.35(4)).
- 16 The option to vary the proposal has been considered, however without the requested revised Urban Design Study, and adequate biodiversity information, there is insufficient information to vary the proposal. Therefore, the most appropriate action for CN as PPA is to request the Minister determine the matter not to proceed pursuant to section 3.35(4).

## **FINANCIAL IMPACT**

- 17 The proponent's planning proposal fees are in accordance with CN's Fees and Charges 2020/21.

## **NEWCASTLE 2040 ALIGNMENT**

- 18 A request to the Minister to determine the planning proposal not proceed is consistent with strategic directions of Newcastle 2040 Community Strategic Plan.

### **Liveable**

- 1.1 ***Enriched neighbourhoods and places***
  - 1.1.1 Great spaces
  - 1.1.2 Well-designed places
  - 1.1.3 Protected heritage places
- 1.2 ***Connected and fair communities***
  - 1.2.1 Connected communities
  - 1.2.2 Inclusive communities
  - 1.2.3 Equitable communities
  - 1.2.4 Healthy communities
- 1.3 ***Safe, active and linked movement across the city***
  - 1.3.1 Connected cycleways and pedestrian networks
  - 1.3.2 Road networks
  - 1.3.4 Effective public transport

### **Sustainable**

- 2.1 ***Action on climate change***
  - 2.1.3 Resilient urban and natural areas
- 2.2 ***Nature-based solutions***
  - 2.2.1 Regenerate natural systems
  - 2.2.2 Expand the urban forest

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 19 Not proceeding with the planning proposal will ensure its amendments to the Newcastle LEP 2012 are not inconsistent with CN's planning priorities and objectives of its Local Strategic Planning Statement, Local Housing Strategy, and Newcastle Environment Strategy.

## **RISK ASSESSMENT AND MITIGATION**

- 20 The Minister has the power to remove CN as PPA if, in the Minister's opinion, CN failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner.
- 21 CN has complied with its obligations under the EP&A Act, working with the proponent including monthly meetings and providing advice in the lead up to exhibition deadline. CN provided further advice in the information request dated 26 May 2023. The advice outlined what was required from the proponent to satisfy the conditions of the Gateway determination.
- 22 CN allowed additional time for the proponent to undertake further studies and amend its' proposal accordingly in response to both BCD's recommendations and CN's advice.

## **RELATED PREVIOUS DECISIONS**

### **2009 Planning Proposal**

- 23 At the Council Meeting held on 18 December 2012, Council resolved to forward a planning proposal for 505 Minmi Road to the Minister for Planning and Infrastructure for Gateway determination.
- 24 Council resolved at its meeting on 25 August 2015, to publicly exhibit the draft Planning Agreement for the offsite environmental land offset for 505 Minmi Road, Fletcher for 28 days.
- 25 Council resolved at its meeting on 8 December 2015, not to proceed with the planning proposal for the site and requested the Minister for Planning and Environment allow CN to discontinue the proposed amendments.

### **2020 Planning Proposal**

- 26 Council resolved at its meeting on 8 December 2020, not to endorse the planning proposal to rezone 505 Minmi Road Fletcher and maintain current zoning for the site (E4 Environmental Living) as per the Newcastle LEP 2012.

## **CONSULTATION**

- 27 The Gateway determination required consultation with the following public authorities and government agencies:
  - Transport for NSW;
  - Biodiversity and Conservation Division (BCD);
  - Ausgrid;
  - Heritage NSW;

- NSW Rural Fire Service;
- Subsidence Advisory NSW;
- Awabakal Local Aboriginal Land Council; and
- Department of Education.

28 Consultation with the BCD is ongoing. Their initial assessment found the planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. Their advice was that to adhere to the Biodiversity Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.

## **BACKGROUND**

29 On 1 May 2020 CN formally accepted lodgment of a proposal to rezone land at 505 Minmi Road Fletcher from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation.

30 On 8 December 2020 Council resolved to not support the proposal for Gateway determination. Following this, the proponent requested an independent review. The Hunter Central Coast Regional Planning Panel (the panel) performed this function.

31 On 23 September 2021 DPE advised CN, the panel's review found that the planning proposal demonstrated strategic and site specific merit and could be submitted for Gateway determination.

32 DPE issued Gateway determination on 10 January 2023 subject to conditions, including LEP timeframes. The planning proposal is to be exhibited within 90 days of Gateway Determination with the LEP completed by 20 January 2024.

## **OPTIONS**

### **Option 1**

33 Note the recommendation as at Paragraph 1 to 3. This is the recommended option.

### **Option 2**

34 The recommendations as at Paragraph 1 to 3 are not noted. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**



**Attachment A:** Proposed Zones Map – May 2023  
**Attachment B:** Rezoning Review Decision – September 2021  
**Attachment C:** Gateway determination – January 2023  
**Attachment D:** CN Information Request – May 2023  
**Attachment E:** Biodiversity and Conservation Division  
Recommendations – February 2023

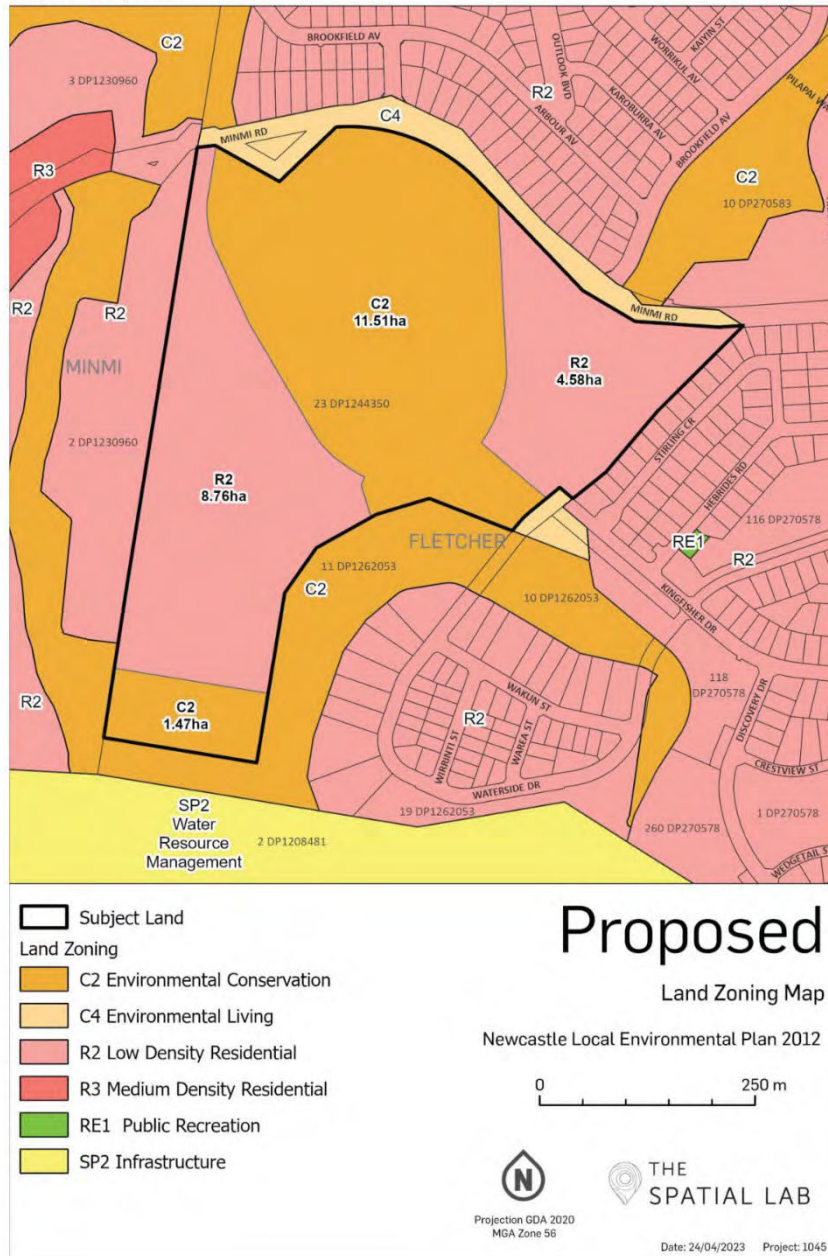
**Attachments B - E distributed under separate cover**

Attachment A



LEP Amendment Request – 505 Minmi Road, Fletcher – May 2023

Map 7 – Proposed Zones



## ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

### **CCL - 12/12/2023 - REQUEST THE MINISTER DETERMINE PLANNING PROPOSAL PP-2021-2262 FOR LAND AT 505 MINMI ROAD FLETCHER 2287 NOT PROCEED**

- |             |                      |  |
|-------------|----------------------|--|
| <b>8.10</b> | <b>Attachment B:</b> | Rezoning Review Decision – September 2021                              |
| <b>8.10</b> | <b>Attachment C:</b> | Gateway determination – January 2023                                   |
| <b>8.10</b> | <b>Attachment D:</b> | CN Information Request – May 2023                                      |
| <b>8.10</b> | <b>Attachment E:</b> | Biodiversity and Conservation Division Recommendations – February 2023 |

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<b>DATE OF DECISION</b>	20 September 2021
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Sandra Hutton's employer, ADW Johnson, historically provided planning advice and reporting relating to the site and for the purposes of seeking rezoning. Ms Hutton therefore excluded herself to avoid a perceived conflict of interest.

**REZONING REVIEW**

RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:

- The Council has notified the proponent that the request to prepare a planning proposal has not been supported
- The Council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- should not** be submitted for a Gateway determination because the proposal has:
  - not demonstrated strategic merit
  - has demonstrated strategic merit but not site specific merit

The decision was unanimous.

**REASONS FOR THE DECISION**

**1.0 Overview**

The Panel has been requested to review the decision of Newcastle City Council regarding the Planning Proposal for 505 Minmi Road, Fletcher.

The Planning Proposal seeks to rezone the site from E4 Environmental Living to R2 Low Density Residential and E2 Environmental Conservation and include minimum lot sizes of 300m<sup>2</sup>, 1,000m<sup>2</sup> and 40 hectares, and a height of building standard of 8.5 metres. The site would also be identified as an urban release area.

The Panel notes the site has had a detailed and complex history which is documented in the DPIE Report.

The Hunter and Central Coast Regional Planning Panel considered a similar request in November 2017 to rezone the site and determined the proposal at that point in time had strategic merit but not site specific merit.

Newcastle City Council considered this current Planning Proposal in December 2020. An independent report was presented to the Council recommending that the matter could proceed to Gateway. The Council resolved not to support the Planning Proposal and also resolved to remove the site from the recently adopted Local Strategic Planning Statement (LSPS).

The LSPS was amended and uploaded to the Planning Panel Portal. The Panel notes the site's removal from the LSPS was not exhibited and that Council has also subsequently removed the site as an urban release area from the adopted Local Housing Strategy. The site is still included in the Local Contribution Plan.

The Panel notes point 2 of the Council's resolution is as follows:

*"Prior to being presented with any further planning proposal for this site, requires all required environment studies and analysis to be undertaken to: address the inherent constraints and hazards of the land and the interdependent analysis of these constraints (as these studies) may result in significant amendments to the Planning Proposal".*

The Panel have inspected the site and had the benefit of a briefing from DPIE, Council officers and the proponent, as well as access to the Council report, independent report and the documentation lodged with the Planning Proposal.

The Panel had the benefit of a further supplementary report from Council which provided additional information addressing specific matters raised by the Panel arising from an initial review of material.

The Strategic Merit Test and Site Specific Merit Test for Planning Proposals is outlined in PS18-012 dated 14 December 2018.

## **2.0 Strategic Merit Test**

The Panel understands that:

- The site is not listed as an urban release area in the Local Strategic Planning Statement; and
- Is not included in Figure 8 Housing Opportunities of the Greater Newcastle Metropolitan Plan.

The Panel notes a previous Panel in November 2017 – a time that pre-dates these documents, concluded that the site had strategic merit.

In considering the strategic merit the Panel notes that the proposal is consistent with:

- Hunter Regional Plan: Direction D14 - Protect Council Natural Areas; Direction 21 - Create and Connect a Compact Settlement; Direction 23 - Growth Centres and Renewal; Direction 25- Housing and Employment Supply and Demand;
- Greater Newcastle Metropolitan Plan: Strategy 16 - Prioritise the delivery of in-fill housing opportunities within existing urban areas; and Strategy 17- Unlock Housing Supply through infrastructure co-ordination and delivery.

The site is surrounded to the north, east and west by urban development. Immediately south of the site is the Newcastle Council Waste and Resource Management Facility and the Blue Gum Hills Regional Park – providing a clear limitation on urban development to the south.

The site is within the Newcastle-Lake Macquarie Western Corridor Strategy 2010 – a planning strategy to identify key planning principles and provide a broad strategic land use framework to future urban expansion and conservation outcomes. The site is identified as an investigation area under this strategy.

Notwithstanding the late removal of the site from the Housing Strategy and LSPS – the site's location and alignment with the Hunter Regional Plan and Lake Macquarie Western Corridor Study and location as essentially an urban infill site means that there is utility in considering the site for urban development.

The Panel notes the broad nature of regional and metropolitan strategic plans and LSPS do not necessarily identify all areas that may be suitable for consideration for urban development.

The Panel has formed the view that the site has Strategic Merit.

### **3.0 Site Specific Merit**

The site is surrounded by urban development. It is recognised the site is heavily vegetated, currently zoned E4 Environmental Living and supports threatened ecological communities.

A consideration of the matters in the PS18-012 are outlined as follows:

#### *3.1 The natural environment (including known significant environmental values, resources, or hazards)*

The key planning considerations arising from the natural environment that remain unresolved relate to biodiversity conservation and bushfire management.

The Panel recognises the site is heavily vegetated and that a change in zoning would result in a loss of vegetation. However, having regard to the natural environment, the Panel considers that part of the land is suitable for development but there is a need for further detailed studies to delineate the extent of suitability. In the absence of any adopted biodiversity corridors or policies applying specifically to the site, the consistency of the proposal against current biodiversity planning methods is a key consideration in determining the appropriateness of any loss of vegetation and any mitigation requirements arising.

It is noted that the documentation available to the Panel does not reflect current bushfire planning practice standards or the detail required for ecological studies. However, this does not lead to a conclusion that the site cannot meet current bushfire planning practice requirements although this may result in a reduced yield.

#### *3.2 The existing uses, approved uses, and likely future uses of land in the vicinity of the land subject to the proposal*

The site is effectively surrounded by existing or future urban development, interspersed with environmental conservation lands. The Panel is satisfied the proposal is generally consistent with this context, though further work is recommended to ensure urban design / interface issues align with those already within or planned within adjoining properties.

#### *3.3 The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision*

The Panel accepts the requisite services and infrastructure are already accessible to the site or can be readily connected to the site. Additional efforts are required to confirm sufficient capacity is available and detail any arrangements required to make those services and infrastructure available to the site. Recommendations for further work are detailed later in the Panel's response.

On balance the Panel considers the proposal does have site specific merit provided the constraints are able to be addressed through additional information and further assessment. Accordingly, the Panel understands this may potentially result in a different zone boundary configuration and approach to density across the site.

The Panel does not currently endorse the proposed lot boundaries, minimum lot size and location or the indicative subdivision layout. By extension, the Panel does not currently endorse the proposed ecological outcomes. Key issues that require additional detailed investigation and /or information are discussed in the following sections.

### *4.1 Biodiversity*

The Panel is not satisfied the zone boundaries have been informed by a combination of urban design consideration and ecological considerations.

It is the Panel's view the zone boundaries should be informed by the onsite biodiversity values and the location of adjacent E2 zoned land through which the most viable biodiversity linkages can be maintained.

The Panel recommends the following be demonstrated prior to submission for a gateway determination:

- the manner in which the proposed zone boundaries have been informed by the biodiversity values of the site including, but not limited to, the presence and extent of threatened ecological communities, threatened species and their habitat.
- the manner in which the zone boundaries have been informed by the location of adjacent and nearby E2 zoned land to maintain the most viable biodiversity linkages to the remaining areas of native vegetation adjacent to the site and in the locality.

The Panel notes the likely requirement for additional biodiversity studies to meet the requirements of the *Biodiversity Assessment Method 2020* (BAM 2020). Whilst it is not expected that the full requirements of BAM 2020 are satisfied prior to submission for a gateway determination, the information used to support the proposed zoning boundaries should be sufficiently detailed and up to date so as to minimise any subsequent changes to the zoning boundaries.

### *4.2 Urban Design*

The Panel is of the view that while a proposed R2 Low Density Residential zone and E2 Conservation zone is acceptable – further work is required to inform the actual zone boundaries, urban form and layout, lot sizes and landscape treatment. Lands at boundary interfaces need to respond to the adjoining lands.

Environmental considerations and bushfire constraints, need to be reflected in the proposed lot layouts.

The frontage to Minmi Road should retain its landscape character and feel. Consideration should be given to how conservation lands can be used as a link and passive open space, as well as areas for local parks. The character of the proposed area needs to be established through the choice of underlying controls.

#### *4.2.1 Urban design and interface principles*

The Panel's view is that any future development should appropriately interface with the form and scale of the existing and proposed low density residential environment surrounding the site and be designed to respond to the specific environmental characteristics of the site.

Accordingly, the development controls, particularly minimum lot size and lot layout, need to be informed by an urban design study and analysis of the site constraints.

The Panel recommends the following urban design and interface principles should be addressed prior to submission for a Gateway determination:

- Access and connectivity principles to guide safe and convenient pedestrian and vehicular access to local services and recreation facilities, including the proposed adjoining Winten subdivision.
- Indicative lot sizes and layouts that maximise environmental linkages and tree retention.



- Location of local open spaces within 400 metres of dwellings.
- Location and treatment of the APZ within the proposed R2 zoned land.
- Street frontage / landscape presentation to Minmi Road.

This work and the environmental review will inform zone boundaries.

This work should form the basis of site-specific development controls to be exhibited with the Planning Proposal.

#### 4.3 *Bushfire*

The Panel concurs with the recommendation of the Independent Report to Council and agrees that a strategic Bushfire Assessment is required.

#### 4.4 *Servicing and Access*

Details of servicing is required including whether or not the existing contributions plans need to be updated – noting that they assumed a particular yield.

#### 4.5 *Mechanism for Biodiversity Outcomes*

The Panel notes the proponent seeks a Community Title subdivision of the site, including the proposed E2 Environmental Conservation.

The Panel also notes Council's position that these lands would create future demand on Council's resources particularly in relation to the future control and maintenance of the proposed E2 Environmental Conservation land. In short, Council will not accept dedication.

A Vegetation Management Plan to guide and manage the proposed E2 Environmental Conservation land will ultimately be required. This must include, but is not limited to:

- The proposed access arrangements to the E2 Environmental Conservation land; principally whether the land will be available to the general, public or just those with legal access through the Community Title subdivision,
- Measures to protect the integrity and biodiversity of the land and maintain the natural landscape,
- Ongoing maintenance program to ensure the future protection and conservation of the land,
- Conservation of places, objects and features of cultural value,
- Any improvements such as walking tracks, seating, signage, fencing of the land.

The Panel considers it is necessary to fully understand how proposed E2 Environmental Conservation land will be owned and managed in perpetuity. Therefore, the Planning Proposal package needs to include the statutory mechanisms to ensure the recommended environmental outcomes are fulfilled. This may mean either a VPA or specific clauses mandating community title subdivision.

## **5.0 Conclusion and Decision**

The Planning Proposal seeks to adopt different zones and zone boundaries; development standards for subdivision and height; and to identify the site as an urban release area which provides a mechanism to levy state infrastructure contributions.

The Panel does not support the proposed zone boundaries and development standards and indicative lot yields.

The zone boundaries and development standards need to be informed by detailed urban design analysis that includes the outcomes of ecological recommendations to avoid and minimise habitat loss and accommodate bushfire constraints. The Planning Proposal needs to demonstrate how it integrates with the surrounding neighbourhood. Based on the additional work identified, the Panel anticipates a lesser lot yield and amended zone boundaries more closely reflecting the environmental constraints.

The Planning Proposal can proceed to Gateway provided the following information is included in the submission and is timely, adequately researched and reflects standards relevant at the time of preparation:

1. A Strategic Bushfire Assessment.
2. Updated Ecological Assessment to meet BAM 2020.
3. Urban Design Study incorporating points 1 and 2 and addressing the information at section 4.0
4. Revised zone boundaries and development standards reflecting the outcome of the Urban Design Study.
5. Preparation of site specific development controls (for inclusion in existing DCP).
6. Detail of the mechanisms for delivery of biodiversity outcomes – i.e. management and ownership of any proposed E2 zoned lands
7. Updated Infrastructure Information including mechanism for delivery.

<b>PANEL MEMBERS</b>	
Alison McCabe (Chair)	Juliet Grant
Graham Brown	Amanda Wetzel
Evelyn Craigie	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher
2	LEP TO BE AMENDED	Newcastle Local Environmental Plan 2012
3	PROPOSED INSTRUMENT	<p>The proposal seeks to facilitate the delivery of 150 low density residential lots and 10.8ha of land to be rezoned for environmental conservation. Specifically, the following amendments are proposed:</p> <ul style="list-style-type: none"> <li>• Rezoning of the site from E4 Environmental Living to Part R2 Low Density Residential and Part E2 Environmental Conservation.</li> <li>• Reduce the minimum lot size from 40 hectares to 300m<sup>2</sup> and 1,000m<sup>2</sup> for the R2 zoned portion of the land to provide 150 residential lots.</li> <li>• Introduce an 8.5 metre height of building standard for the R2 zoned portion of land,</li> <li>• Designate the site as an urban release area.</li> </ul>
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Rezoning review request documentation</li> <li>• Briefing report from Department of Planning, Industry and Environment</li> </ul>
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• <b>Site inspection: 13 May 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant and Graham Brown</li> <li>○ Department of Planning, Industry and Environment (DPIE) staff in attendance: Kylie Dorsett</li> <li>○ Applicant representatives: Andrew Donald</li> </ul> </li> <li>• <b>Site inspection: 29 June 2021</b> <ul style="list-style-type: none"> <li>○ Panel member in attendance: Amanda Wetzel</li> </ul> </li> <li>• <b>Briefing with Department of Planning, Industry and Environment (DPIE): 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Kylie Dorsett, Daniel Simpkins, Leanne Harris and Lisa Foley</li> </ul> </li> <li>• <b>Briefing with Council: 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Leanne Harris and Lisa Foley</li> <li>○ Council representatives in attendance: Patricia McCarthy and Michelle Bisson</li> </ul> </li> <li>• <b>Briefing with Proponent: 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Leanne Harris and Lisa Foley</li> <li>○ Proponent representatives in attendance: Stephen Barr, Andrew Donald and Matthew Doherty</li> </ul> </li> </ul>



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## Gateway Determination

### ***Planning proposal (Department Ref: PP-2021-2262): Rezoning at 505 Minmi Road, Fletcher***

I, the A/Executive Director, Local and Regional Planning at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Newcastle Local Environmental Plan 2012* to facilitate residential development should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
  - (a) remove assessment against the Hunter Regional Plan 2036 and Newcastle – Lake Macquarie Western Corridor Planning Strategy and replace it with assessment against the *Hunter Regional Plan 2041*;
  - (b) clarify inconsistencies in the planning proposal and supporting documents for the area of the site proposed to be zoned R2 Low Density Residential and C2 Environmental Conservation;
  - (c) confirm whether or not the section 7.11 Western Corridor Local Infrastructure Contributions Plan 2013 needs to be updated;
  - (d) confirm if the submitted site specific planning controls will be included in a relevant development control plan; and
  - (e) include an updated Aboriginal cultural heritage assessment.
  
2. Prior to approving for finalisation, the planning proposal should clarify the probable maximum flood event peak flood depths and level contours as well as peak flood velocities and volumetric check analysis of potential loss of flood storage where fill is proposed.
  
3. Consultation is required prior to exhibition with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
  - Transport for NSW;
  - Biodiversity and Conservation Division;
  - Ausgrid;
  - Heritage NSW;
  - NSW Rural Fire Service;
  - Subsidence Advisory NSW;
  - Awabakal Local Aboriginal Land Council; and
  - Department of Education.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

4. Following consultation with relevant public authorities listed in Condition 3, consider an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.
5. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 28 days;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021); and
  - (c) exhibition must commence within 90 days following the date of the gateway determination.
6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is on or before 20 January 2024.

Dated 10<sup>th</sup> day of January 2023.

**Daniel Thompson**  
**A/Executive Director, Local and**  
**Regional Planning**  
**Department of Planning and**  
**Environment**

**Delegate of the Minister for Planning**



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Planning, Transport & Regulation. SCahill/PMilles  
Reference No: PP2019/00006.01  
Phone: 4974 2250



26 May 2023

Kingston Minmi Road Pty Ltd  
C/- Barr Property & Planning  
92 Young Street  
**Carrington NSW 2294**

Dear Sir/Madam

**REQUEST TO AMEND NEWCASTLE LEP 2012 - 505 MINMI ROAD FLETCHER -  
REZONING FROM C4 ENVIRONMENTAL LIVING TO R2 LOW DENSITY RESIDENTIAL  
AND C2 ENVIRONMENTAL CONSERVATION FOR UP TO 140 LOTS**

City of Newcastle (CN) writes in response to the amended planning proposal (PP) submitted on 29 March 2023. The matters outlined in Attachment 1 consider the Department of Planning and Environment's (DPE) Gateway determination of 10 January 2023 and subsequent public authorities' responses (outlined in our letter 2 March 2023). These matters need to be addressed by the PP and supporting documentation prior to public exhibition.

CN has assessed the new information submitted and the agency responses in the context of the Gateway determination and the Hunter and Central Coast Regional Planning Panel decision. The outcome of our assessment is provided in Attachment 1. CN's comments raise significant matters, and addressing these adequately is necessary to meet the Gateway determination conditions. These matters align with the requirements of the Hunter Regional Plan 2041 (HRP), the Biodiversity Conservation Division's (BCD) preliminary biodiversity assessment and CN policies, plans and strategies. CN's advice aligns with HRP strategies including having a focus on 15-minute neighbourhoods, greater infill development, higher density, increased building heights and improved biodiversity and ecological outcomes.

Addressing these matters is likely to influence the PP significantly. To assist in planning a way forward Attachment 2 suggests alternative site opportunities for your consideration.

Should you wish to discuss this further or have any questions, please contact Peter Milles, Senior Urban Planner on [REDACTED]

Yours faithfully,

**Shane Cahill**  
**URBAN PLANNING SECTION MANAGER**



## Attachment 1

The matters outlined below need to be addressed before public exhibition. Including biodiversity, land use efficiency and strategy. Further information request items have been listed and these generally align with the Gateway determination conditions.

### Biodiversity

CN's assessment of the amended Planning Proposal (PP) found the proposed development footprint does not adequately address biodiversity and ecological matters. BCD's authority response dated 15 February 2023 supports this stating key issues remain around avoidance of impacts to high value biodiversity. The BCD found, amongst other matters, that further regard is necessary to adequately meet requirements for the avoidance of impacts to high value biodiversity and providing sufficient habitat connectivity.

The site is one of the largest forested north-south biodiversity linkages left in the southwest part the Newcastle Local Government Area (LGA) that is zoned C4 Environmental living. This site is important to the HRP Objective 6 for Biodiversity conservation planning and corridor linkage at a landscape scale. It provides a direct non-gapped link to the south to a forested area of the Summerhill Waste Management Centre, Blue Gum Hills Regional Park and conservation zoned bushland towards the Link Road at West Wallsend.

While relatively narrow (less than 100m wide) the link north across Minmi Road to land zoned C2 Environmental Conservation (associated with the Hexham Wetlands) provides one of the few remaining lesser cleared links in this area. It connects the wetlands in the north to existing forest in the south. This link is part of the Watagans to Stockton Biodiversity Corridor and is a key corridor link and patch under the HRP. This corridor is particularly important over the long term as previously grazed parts of the southern Hexham Wetlands regenerate and/or receive rehabilitation.

The proposed development footprint includes areas of high biodiversity values and the areas proposed to be conserved are largely fragmented habitat. The Biodiversity Offsets Scheme (BOS) is based on the 'avoid, minimise, offset' hierarchy. Using this, proponents must:

- first consider whether the development can avoid a negative impact on the environment
- next consider whether the development can minimise any negative impacts that cannot be avoided
- once all reasonable steps to avoid or minimise environmental impacts have been exhausted, consider whether any remaining impacts can be offset.

The hierarchical criteria need to be met. Amongst other considerations, the proposed zoning boundaries primarily reflect topographical limitations of the site. This approach is documented in the amended PP page 80:

*The Urban Design Study to provide an indicative subdivision lot layout has taken into consideration land stability, topography and slope analysis in determining the future development of the site including consideration to:*

- *Land within the site > than a slope of about 15%, is to be conserved in its natural bushland state and has been excluded from the area proposed for residential subdivision.*
- *Land within the site, with flatter slopes of 15% or less has been considered for the residential component of the site*

*Therefore, the majority of the steepest portion of the site is to be conserved in its natural bushland state and located in the proposed Environmental Conservation C2 zoning.*

The R2 Low Density Residential zone proposed is on the easier to develop parts of the site and the proposed C2 Environmental Conservation zone is on the steeper, harder to develop parts of the site. It appears economic and engineering considerations rather than biodiversity values have led the proposal.

The Gateway determination conditions require updating the PP so the zone boundary configuration and development controls achieve more optimal density and diversity of housing typologies up to four storeys, if this will lead to an increase in the amount of the site reserved for conservation. This aligns with the Hunter and Central Coast Regional Planning Panel decision (RR-2021-70 section 4.1) that the panel was not satisfied ecological considerations informed the proposed zone boundaries.

The amended PP does not comply with Strategy 6.3 of the HRP, nor does it demonstrate how the performance outcomes under the HRP's Objective 6 will be achieved, and therefore consistency with ministerial direction 3.1 Conservation Zones remains unresolved.

As outlined in the DPE Biodiversity Certification Fact Sheet No. 3, Biodiversity Certification scheme applications without CN support are discouraged by BCD and certification is unlikely.

### **Community title vs public ownership of conservation lands**

CN assessed the PP's 'net public benefit' including the potential public ownership of the proposed C2 Environmental Conservation zoned land and the HRP's Objective 6. Consistent with the 'avoid, minimise and offset' hierarchy, CN's preference is to have the proposed C2 Environmental Conservation zoned lands dedicated as public lands. Such lands would be subject to an assessment for dedication considering maintenance cost, risks to public safety, contamination, titling and the like to determine if the asset is suitable.

The PP does not include details on any proposed biodiversity conservation mechanisms. CN have general concerns with natural areas managed under community title for biodiversity values relating to weed infestation, canopy loss, trail and watercourse erosion. Public ownership is preferred for conserving the environmental values of this site in perpetuity.

### **Dwelling yield and Infrastructure needs**

The HRP identifies the site's C4 Environmental Living zone as within a Hunter UDP area (page 94). Further, the land is within the *National Pinch Point regionally significant growth area*. The HRP identifies regionally significant growth areas as those underpinning the ability to meet the regional plan's vision and objectives over the plan's life. The adopted version of HRP was not considered by the planning panel as part of the rezoning review.

The HRP's implied dwelling projections to 2041 include 17,850 dwellings, consistent with CN's LSPS and LHS forecasts. The HRP's Objective 5 plans for nimble neighbourhoods and diverse housing. The number of greenfield dwellings to meet the guidance targets for dwelling projections and housing benchmarks align with CN's dwelling assumptions in CN's Section 7.11 Western Corridor Development Contributions Plan. The contribution plan's *Table 3.1 Expected (planned future) development in the Western Corridor* identifies 110 dwellings, noting the contributions plan does not convey developable rights.

The amended PP is for up to 170 residential lots which exceeds the current infrastructure plan dwelling assumptions. However, the R2 Low Density Residential zone is not restricted to the subdivision of the site, as multi dwelling housing at higher densities could be delivered instead. This could see a doubling of the ultimate dwelling yield which was not considered in the supporting studies or infrastructure demand assumptions.

As a greenfield site, a proposal that exceeds the contribution plans Table 3.1 dwelling assumptions is not essential to CN achieving the HRP Objective 5 guidance for the greenfield and infill development mix and Table 6: Required Dwellings to 2041. The demand for more homes is to be balanced with the creation of great places and the retention of important ecological habitat in accordance with Housing Priority 1 of the LHS. The proposed dwelling yield should be revised and reduced to align with the HRP and CN policies, plans and strategies at 110 total dwellings.

### **Density, housing mix and height of building**

The amended PP for 140 lots proposes a lower density than we would like to see for the efficient use of this land. The Fletcher-Minmi area would benefit from more diverse housing choice given the predominance of single detached dwellings and attached dual occupancies. To align with State and local housing policy and strategy such as the Newcastle Local Housing Strategy's (LHS) Housing Priority 2 and the HRP, CN would like to see greater diversity of housing types.

A higher dwelling density would be supported as the site has access to existing local centres along Minmi Road to the east, and a future local centre zoned along Minmi Road to the west as part of the staged concept approval and subsequent Winten subdivision DA2015/10393. The site is considered an inner suburban context area and should align with optimum density sought via Objective 5 of the HRP, on a dwellings per hectare rate.

CN acknowledge the site's characteristics will influence residential housing delivery. The HRP focus for mid rise housing diversity of up to 4 storeys is reflected in Gateway determination Condition 4 that refers to an increase in building height leading to opportunity to increase the area of the site reserved for conservation. DPE advice (ref: IRF23/12) from Daniel Thompson, Acting Executive Director Local and Regional Planning 10 January 2023 to CN states:

*'Particularly, as this may lead to an overall improvement in public benefit for the community and conservation'.*

The amended PP suggests the R2 Low Density Residential zone could experience infill development after its initial subdivision to achieve desired density. The Fletcher case study put forward is presented for development types of combined subdivision of land from one lot and creation of two Torrens title lots and Dual Occupancy, and Dual Occupancy. This case study put forward as justification for this PP does not show that the optimum density requirement will be achieved. This approach enables a low density outcome that may or may not experience further infill. As subdivision is enduring this is unlikely to meet an efficient use of the land into the longer term. The amended PP promotes that future infill development is likely based on the proposed 450m<sup>2</sup> lot size, whilst promoting detached housing as the most likely outcome. The justification is that the 450m<sup>2</sup> lots could be subdivided further to 200m<sup>2</sup> lots as has occurred in the case study is possible, but uncertain. At 450m<sup>2</sup> lots for the majority of the PP site area, density is calculated at 13 dwellings per hectare in accordance with the HRP and not 22 dwellings as represented in the PP report. The proposed density falls well short of optimum density as outlined in the Gateway determination.

Strategic merit considers planning for development over the planning horizon. Relying on possible future infill development post PP and post development application does not provide for orderly and efficient development of land and is not supported.

CN considers the density minimums of the inner suburban context area of 40 dwellings a hectare achievable through a diversity of lot sizes, typologies and building heights. Planning for a mix of housing typologies at the PP stage provides for more orderly and efficient use of land, meeting the Principles of Planning Priority 12 of the Newcastle Local Strategic Planning Statement (LSPS) and Housing Priority 2 of the Newcastle LHS.

### **Affordable Housing**

CN is committed to increasing the supply of affordable housing. Council's Housing Policy sets an overall affordable housing target of 15 percent across the City aligning with priorities in the Newcastle 2040 Community Strategic Plan (CSP), LSPS and LHS. The PP notes "the supply of additional land for housing provides greater opportunity to increase the supply of affordable rental housing". Without appropriate intervention in the market, the supply of land is unlikely to contribute to the increase of affordable rental housing across the city. The PP is to provide greater detail on how the rezoning will contribute to the supply of affordable rental housing.

## Open space and recreation

Infrastructure needs are to be met in line with CN Section 7.11 Western Corridor Local Infrastructure Contribution Plan. This plan requires local infrastructure including:

- open space and recreation facilities, such as local and district sporting facilities, local parks and playgrounds;
- community facilities, such as multi-purpose community centres; and
- traffic and transport management facilities, such as upgraded roads, intersections, and cycle paths.

Infrastructure contributions are calculated based on the sites expected development of 110 dwellings. As the PP relies on existing infrastructure to service the future community, CN reiterates the importance of reducing the proposed dwelling yield to ensure existing and planned infrastructure can meet future demand. Given the reliance on existing services, greater emphasis on street amenity is required including providing adequate provision for shared paths, connections and street trees throughout.

## Information request items

The proponent is to submit the following for assessment to address the Gateway determination and matters raised in this information request:

### *Urban design*

1. A revised Urban Design Study that guides the proposed changes to Newcastle Local Environmental Plan 2012 (NLEP) and the site specific Development Control Plan (DCP) is to address the following:
  - a. Revised zone boundaries that:
    - i. are informed by the opportunities and constraints of the site
    - ii. demonstrates an appropriate level of avoidance in accordance with the biodiversity mitigation hierarchy.
  - b. Indicative lot sizes and layouts that:
    - i. achieve the density, dwelling yield and typology mix requirements as outlined in this information request below. This may require testing and analysing various scenarios
    - ii. maximise environmental linkages and tree retention.
  - c. Revised access and movement networks that:
    - i. identifies a transport movement hierarchy showing the major circulation routes and connections. Your attention is drawn to previous comments made regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east)
    - ii. promote passive and active recreation through street design.
  - d. Interface principles and transitional building heights
  - e. Planning Panel direction 4.2.1 for locating local open spaces within 400m of dwellings. C2 Environmental Conservation zone land is not considered appropriate as local open space.
  - f. Relocated asset protection zones (APZ) outside of C2 Environmental Conservation zoned land.
2. The Urban Design Study is to address Gateway Condition 4 and investigate appropriate zoning of land area for buildings of 3 to 4 storeys.
3. The Urban Design Study concept masterplan is inconsistent with the Strategic bushfire assessment, MJD Environmental, December 2021. This needs to be resolved.

### *Dwelling yield*

4. To achieve the best planning outcome for the site, CN recommend the PP and associated studies consider a reduced dwelling yield with a maximum of 110 dwellings.

5. Given the NLEP R2 Low Density Residential zone facilitates a range of housing types including residences such as attached dwellings, multi dwelling housing and residential flat buildings, provide details of mechanisms that ensures the delivery of a development yield that aligns with yields planned for as part of any supporting studies.

#### *Density*

6. Evidence of achieving an optimum density for the site; an inner suburban context area of 40 dwellings per hectare will create a vibrant new urban neighbourhood. At present, the PP does not demonstrate how an appropriate minimum density will be achieved to satisfy Condition 4 of the Gateway determination and CN's local planning documents.

#### *Mix of typologies*

7. A mix of typologies through a combination of proposed NLEP amendments and DCP controls that is informed by the Urban Design Study.
8. The site specific DCP is to be amended to include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).

#### *Height of building*

9. Increase the amended PP height of building of 8.5m to up to 4 storeys at appropriate locations across the development footprint area. Have regard to:
  - a. HRP Objective 5 for 3 to 4 storeys adjoining or within walking distance of public open space adjoining the C2 Environmental Conservation zone.
  - b. Planning Panel urban design interface direction with transitioning building heights to a suitable built form and scale adjoining existing residential areas.

#### *Biodiversity*

*Note: Comments raised below cannot yet be complete until CN has a finalised version of the biodiversity certification assessment report (BCAR) once notified by BCD.*

10. The amended PP is to remove approximately 70% of the site's 10.65 ha of the threatened community Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. This does not demonstrate adequate avoidance or minimisation of impacts on this threatened ecological community and other threatened biodiversity matters that have been recorded on the site.
11. The proposed link road between the proposed eastern and western residential zoned precincts would seriously compromise the integrity of the existing forested south-north corridor on the site for all but the most mobile species. It will also act as a threat to many species (including highly mobile species such as Large Forest Owls) from increased risk of vehicle impacts, as well as provide additional edge effects. While the BCAR states this risk as minimal this is not evidenced, including published research to justify this statement. The east to west road between link intersecting the C2 Environmental Conservation zoned land should be removed.
12. The targeted species credit flora species surveys should meet the *NSW Guide to Surveying Threatened Plants and Their Habitats (DPIE), April 2020* in terms of methodology and seasonal requirements, for some species e.g. *Tetratheca juncea* this has not occurred. The required parallel field traverses do not appear to all be parallel and there are some gaps as shown in Figure 4 of the BCAR. We recommend surveys for relevant species be completed in accordance with the guidelines. For *Tetratheca juncea* this should be during the required September-October survey period.
13. The Large-eared Pied Bat (*Chalinolobus dwyeri*) was potentially detected via ultrasonic acoustic survey (Anabat) while the Eastern Cave Bat (*Vespadelus troughtoni*) was probably detected via same method. According to the '*Species credit' threatened bats and their habitats – NSW survey guide for the Biodiversity Assessment Method (OEH, 2018 p.15)* regarding the Large-eared Pied Bat and Eastern Cave Bat: 'Acoustic detectors may be used; however, this method does not allow for reproductive status to

be identified. If acoustic detectors are the only survey method used and the target species is detected, breeding must be assumed and mapped in accordance with Table 2' of the guidelines. While no breeding habitat (caves, overhangs etc) was identified on the site for either species, Table 2 of the guidelines requires that all habitat for each species should also be mapped if present (i.e. including that described in Table 1). Table 1 of the guidelines states that in regard to features to include in species polygon for both species: 'All habitat on the subject land where the subject land is within 2km of caves, scarps, cliffs, rock overhangs and disused mines. Use high resolution aerial imagery and topographic maps to identify potential roost habitat features on the subject land when it is within 2km caves, scarps, cliffs etc. Species polygon boundary should align with Plant Community Types (PCTs) on the subject land the species is associated with (listed in the threatened biodiversity data collection) that are within 2km of identified potential roost habitat features.' The BCAR does not appear to comply with these requirements and does not assume presence of either species although Section 10.1, page 19 of the BCAR states the Large-eared Pied Bat forages on the site .

14. The BCAR does not provide sufficient data on impacts to hollow bearing trees (HBT). For example, a road is proposed close to 27 HBT shown in figure 3 potentially impacting the structural root zone. This impact was not identified or included in the offset requirements at figure 12. The BCAR should include a table of all HBT with sufficient information to justify their impact classification.
15. The BCAR lists several indirect impacts of the PP but does not consider the indirect impacts of increased predation by domestic dogs and cats, garden and other waste dumping, vehicle impacts, increased incidence of illegal fires and removal of vegetation for recreation purposes (cubby houses, informal bike tracks etc).
16. The BCAR incorrectly assumes the PP will have no indirect impact on water quality within drainage line and waterbody identified as Southern Myotis habitat. Indirect impacts of changed hydrology, nitrification, erosion and sedimentation are probable over the long term.
17. Poor weather conditions recorded on some of the survey dates (e.g. 26 November 2019, 23 November 2021, 19 January 2022, 2 February 2022, 22 April 2022, 9 March 2022, 22 April 2022, 25 May 2022, 11 July 2022, 15 July 2022, 28 March 2023) were not conducive to detection of many of the target fauna species.
18. Survey time for Little Eagle (*Hieraaetus morphnoides*) was outside the required survey period in Bionet Threatened Biodiversity Data Collection. Additional surveys within the specified survey period are required.
19. Condition classes assigned to the vegetation zones are inaccurate in some cases. All vegetation zones are assigned a condition of low or moderate, despite some having relatively high vegetation integrity scores. We recommend condition descriptions be updated to better describe the broad condition of the vegetation zones.
20. Consideration of cumulative impacts is required considering cumulative impacts of the proposed certification on the long-term viability of corridors and avoided areas in the context of approved and potential future development in the vicinity of the site.
21. The BCAR states "vegetation within the subject land appears to have been historically cleared for grazing and the harvesting of mine pit props" (MJD, 2023, p. 12). CNs historical aerial photography shows the site as mostly uncleared. Please evidence this statement, including the extent of clearing and location of clearing that occurred.
22. The PP is to be updated to remove reference to the possibility of establishing a Biodiversity Stewardship Agreement over proposed C2 Environmental Conservation land in accordance with the findings of the BCAR (MJD, 2023, p. 95).
23. The PP is to be updated to include further detail on the mechanism for biodiversity conservation for C2 Environmental Conservation zoned land. CN will consider dedication of environmental conservation land including drainage corridors at no cost after subdivision works are done, and where a Vegetation Management Plan has been established and maintained for a specified period to CN's satisfaction. Where CN is not in a position to accept then the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

*Aboriginal cultural heritage*

24. The site is known to contain Aboriginal objects and its location within a cultural landscape (Burragihnbihng – Hexham Swamp) means it is likely to contain further Aboriginal objects yet to be known/discovered. CN agrees with the recommendations of the Heritage Now report of 28 March 2023 for an archaeological test excavation. The testing must be brought forward to ensure it is done before submitting any development application, rather than before construction. This would inform development proposals enabling design changes to facilitate the protection and conservation of Aboriginal objects in-situ, rather than their destruction. If archaeological test excavations cannot be done under the NSW Government's Code of practice for Archaeological Investigation of Aboriginal Objects in NSW 2010 or the proposed activity will result in harm to Aboriginal objects, an Aboriginal Heritage Impact Permit is required from the relevant State Government Authority under the NSW *National Parks & Wildlife Act 1974* prior to commencement of this activity.

*Traffic*

25. Section 4.2 of the Traffic Impact Assessment (TIA) by Stantec describes the PP's 'main access road' in and out of the site as being the road from the north west corner of the site where it is proposed to share an intersection with the approved adjoining development by Winten under DA2015/10393. The TIA seeks to defer investigations of this western access to 'a later stage'. CN do not support this. For the following reasons it should be amended:
- i. The Minmi Rd intersection associated the Winten development is in the last stage of the approved development and timing for the construction of this intersection is unknown.
  - ii. The Winten intersection is 'left in/left' only and cannot readily accommodate traffic coming from the west which will depend on traversing approximately 700m of (yet to be constructed) local roads internal to the Winten development.
  - iii. Eastbound vehicles would need to use the same 700m of internal local roads within the Winten development, exiting to Minmi Rd at the future traffic control signals (a round trip of approximately 1.3km) or turn left onto Minmi Rd at the shared intersection and travel westbound approximately 900m in order to turn around at the roundabout currently under construction by Winten (Stage1), a round trip of approximately 1.8km.
  - iv. Provision of a right turn lane at this western intersection is not feasible without impacting Winten's approved lot layout, approved road upgrades on Minmi Road, and will require further extension to culverts already approved for the Winten development and will adversely impact the existing eastbound transport stop in this location.
26. As previously advised through the PP process, Kingfisher Drive was constructed to permit, if development ever occurred on 505 Minmi Road, a future extension of Kingfisher Drive through to Minmi Road at the existing intersection of Brookfield Avenue (east). Brookfield Avenue has been constructed with allowance for a future single circulating lane roundabout. This existing intersection location should be the primary access point for ingress/egress from the proposed development land for the following reasons and the PP is to be amended to suit:
- i. It provides direct, all direction ingress and egress.
  - ii. It provides for an extension of the existing bus route on Kingfisher Drive without back-tracking to Britannia Boulevard.
  - iii. It negates the need to use the emergency bushfire egress from Kingfisher Drive to Hebrides Road (required to permit Minmi East Stage 1A (by Winten) to proceed).
  - iv. It provides connectivity between the development land and land to the northern side of Minmi Road. The proposed intersection with the Winten development in the new corner of the site then also provides secondary vehicular access and

connectivity to the adjoining estate, and planned recreation and commercial facilities to the west.

27. The TIA is to be amended to reflect:
  - i. The ultimate dwelling yield that is to be achieved through the PP
  - ii. In addition to development sites shown in the TIA's Section 6.6, the assessment is to account for the 100+ additional dwellings yet to be constructed in Stage 10 of the approved Outlook Estate, opposite the site, at 302 Minmi Rd, Fletcher.
28. The TIA is to consider:
  - i. TIA's completed for DA2015/10393 (Minmi East Stage 1B - approved) and DA2018/01351 (Minmi Precincts 3, 4 & 5 – undetermined) for assumptions on background growth, trip generation, trip distribution and required road or intersection upgrades in lieu of making broad assumptions.
  - ii. The CN *Western Corridor Traffic and Transport Study*, prepared by Bitzios, 2019 and used in preparation of the current s7.11 Western Corridor Local Infrastructure Contributions Plan 2013 (2020 update).
29. Proposed pedestrian connectivity from the south west corner of the site would depend on paths and bridging structures not planned for in the adjoining Winten development. To inform pedestrian connectivity further detail on how this is to be achieved is required.

#### *Public Utility Servicing*

30. Update the Infrastructure servicing report prepared by ADW Johnston to account for an ultimate dwelling yield that is to be achieved through the PP.
31. The reference to the Infrastructure servicing report, ADW Johnston, November 2021 on page 6 of the Post Gateway Planning Proposal – Final Report is to be updated to reflect the February 2022 report as referenced elsewhere in the document.

#### *Bushfire*

32. A preliminary assessment of the subject site and surrounds by the Rural Fire Service (RFS) identifies that steeper effective slopes exist beneath the hazard compared to the slopes assessed in the submitted Strategic Bush Fire Study, MJD Environmental, 2021. Due to the significant variation in the effective slopes identified, a revised subdivision layout may be required for the proposed lots to achieve compliance with Planning for Bush Fire Protection (PBP) 2019.
33. The RFS note proposed bush fire asset protection zones are within C2 Environmental Conservation zone land and that perimeter roads are not proposed for each residential lot adjacent to the hazard. This is inconsistent with C2 Environmental Conservation zone objectives and section 4.02.01(2) of the Newcastle Development Control Plan as it will require clearing and impacts on the conservation area and/or will reduce the total area of the proposed conservation zone to accommodate required bushfire protection measures. Amend the PP and supporting strategies accordingly.

#### *Flooding*

34. The submitted Appendix 13 – Flood advice letter, prepared by Northrop dated 22 March 2023 addresses the Ministerial Directions in a general sense without flood modelling. This does not address the Gateway determination's Condition 2, that requires an analysis of the Probable Maximum Flood (PMF) flood event.
35. A detailed flood study is required by an appropriately qualified flood specialist. The study is to include modelling of pre and post-development flow regimes for the following events: 20% Annual Exceedance Probability (AEP), 10% AEP, 5% AEP, 2% AEP, 1% AEP and PMF.
36. Flood modelling results are to include flood levels, depth, velocity, hazard mapping and comparisons of pre-development scenarios and post-development scenarios. Modelling shall be used to demonstrate that the proposed development is suitable for



the site regarding risk to life and property as well as ensure flood levels, velocity and hazard are not made worse for surrounding properties or infrastructure.

37. The flood study should include a section that specifically addresses the Gateway determination, dated December 2022, including addressing the Ministerial direction 4.1 Flooding and Condition 2 of the Gateway, having regards to the modelling results.

#### *Open Space and Recreation*

38. If an outcome is achieved for a reasonable increase in C2 Environmental Conservation lands in the south / west of the site, CN would support a strip of land to the west of the eastern entrance road from Kingfisher Drive becoming multipurpose public managed land. This could be designed to accommodate:
- Landscaped areas such as turf which can be readily managed to meet APZ requirements
  - Well placed stormwater quality treatment assets; dry flood detention assets and associated maintenance access
  - Cycleways
  - Crime Prevention Through Environmental Design (CPTED) compliant pedestrian access
  - Passive and Active Recreation 'managed' open space.
39. The interface between multipurpose land and retained native vegetation on C2 Environmental Conservation land needs careful consideration to reduce the maintenance burden required to protect the environmental values of those lands.

#### *Site specific Development Control Plan*

40. Attachment 3 provides CN comments on the proposed site specific development controls, Barr Planning, 2022. The PP is to be updated to reflect these comments.

#### *Gateway determination*

41. CN's assessment does not consider the amended PP has met Condition 1(a), 1(b), 2, 3 and 4 for the reasons outlined above. These conditions are to be met prior to the PP proceeding to public exhibition.

## **Attachment 2 - Investigate alternative site opportunities**

CN officers continue to be committed to working with you to achieve a suitable planning outcome for the site. We welcome discussion on the following alternative opportunities.

We have not received a Biodiversity Certification scheme referral notice under the *Biodiversity Conservation Act 2016* (BC Act). We are likely to need to provide comment on biodiversity matters once we have. Based on the information available now post Gateway determination on biodiversity, CN suggests the proponent investigate other opportunities e.g. providing the site as a National Park (by requesting the NSW Government to include it as part of the National Park Estate).

The contributions plan (which does not convey developable rights) as outlined by the Planning Panel identifies residential development assumptions of 110 dwellings appropriate in the context of infrastructure servicing, but subject to all other matters of planning consideration. This yield could achieve the inner suburban context area minimum density target potentially using residential typologies up to four storeys, with suitable building height transitions to the site edges.

A focus on this dwelling yield and density may support efforts towards avoiding and minimising the impacts to biodiversity. Denser more appropriately located development could limit edge effects, avoid habitat fragmentation for biodiversity corridors and water courses of the Blue and Green Grids.

The amended PP includes residential in the northeast portion of the site, subject to CN Biodiversity Certification scheme assessment. This location facilitates the bus collector connection. NLEP amendments to clauses and maps could potentially facilitate and accomplish this approach.


### **Attachment 3 – CN comment on Site specific development controls, Barr Planning, 2022**

The PP seeks to amend the Urban Release Areas map to include the proposed residential component of the subject land as an urban release area. Clause 8.3 of the Newcastle Local Environmental Plan 2012 (NLEP) states:

#### **8.3 Development control plan**

- 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.*
- 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.*
- 3) *The development control plan must provide for all of the following—*
  - a. *a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
  - b. *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
  - c. *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
  - d. *a network of active and passive recreation areas,*
  - e. *stormwater and water quality management controls,*
  - 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,*
  - g. *detailed urban design controls for significant development sites,*
  - h. *measures to encourage higher density living around transport, open space and service nodes,*
  - i. *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
  - j. *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*
- 4) *Subclause (2) does not apply to any of the following developments—*
  - a. *a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
  - b. *a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,*
  - c. *a subdivision of land in a zone in which the erection of structures is prohibited,*
  - d. *proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

The following assessment is based on the submitted PP and masterplan. This assessment should be used as a guide to assist in the development of a more refined site specific DCP. The site specific DCP is to be guided by the Urban Design Study and supporting documentation. CN advises the objectives and controls suggested as part of this assessment be considered and included where relevant following the revised Urban Design Study.

Proposed DCP Chapter	CN Comments
<p>Land to which this section applies</p> <p>This section applies to all land within the heavy line marked on Map 1 – 505 Minmi Road</p>  <p><i>Map 1: 505 Minmi Road</i></p>	<ul style="list-style-type: none"> <li>- Mapping to be updated to remove reference to zones.</li> <li>- The proponent should consider if a staging plan is required, and if so, clearly identify proposed stages.</li> </ul>
<p>Development (type/s) to which this section applies</p> <p>This section applies to all development within Minmi requiring development consent. The primary purpose is to guide development for the purposes of subdivision (and associated works) on the site, and to also provide guidance for other development types permissible on this land</p>	<ul style="list-style-type: none"> <li>- This section should be consistent with DCP chapters that apply to surrounding urban release areas</li> </ul>

### Related sections

The following sections of this DCP will also apply to development to which this section applies:

- Any applicable land use specific provision under Part 3.00
  - o *Note: Any inconsistency between the locality specific provision and a land use specific provision, the locality specific provision will prevail to the extent of the inconsistency.*
- 4.02 Bush Fire Protection – within mapped bushfire area/zone
- 4.03 Mine Subsidence – within mine subsidence area
- 5.01 Soil Management – works resulting in any disturbance of soil and/or cut and fill.
- 5.02 Land Contamination – land on register/where risk from previous use
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks – where new roads, pedestrian or cycle paths are required.
- 7.05 Energy Efficiency
- 7.07 Water Efficiency
- 7.08 Waste Management.

The following sections of this DCP **may** also apply to development to which this section applies:

- 4.04 Safety and Security – development with - accessibility to general public, access to laneways, communal areas, or residential with three or more dwellings
- 4.05 Social Impact – where required under ‘Social Impact Assessment Policy for Development Applications’, 1999
- 5.03 Vegetation Management – trees within 5m of a development footprint or those trees likely to be affected by a development.
- 5.04 Aboriginal Heritage – known/likely Aboriginal heritage item/site and/or potential soil disturbance.
- 5.05 Heritage Items – known heritage item or in proximity to a heritage item.
- 5.06 Archaeological Management – known/likely archaeological site or potential soil disturbance

- Related sections of the current DCP must be included

Additional information

- ~~— Urban Design Study — 505 Minmi Road, Fletcher (Moir Landscape Architects, 2024) - Amend~~
- ~~— Strategic Bushfire Study — 505 Minmi Road, Fletcher (MJD Environmental, 2024) - Amend~~

- These documents contain indicative road and lot layouts that need to be revised and provided.

Strategic overview

~~The site is situated on the southern side of Minmi Road opposite existing residential development to the north, and immediately adjoining existing residential development to the east and proposed residential development to the west. A corridor of conservation zoned land separates the site from residential land to the southeast and the Summerhill Waste Management Centre to the south. Future development of the site will be clustered into an Eastern and Western precinct, connected by a local road. Development will be screened from Minmi Road by retention of a vegetated buffer area. A large area centrally located within the site will be rehabilitated and maintained as a conservation area.~~

- This section needs to be revised as this is not a strategic overview it is a site context description. The strategic overview should provide a synopsis of the site's strategic merit as an urban release area.
- Strategic overview is not to contain reference to Community title

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9.00 - Glossary of this plan.

- If applicable, please include definitions of any other words and expressions referred to within this section that has not otherwise been defined in the NLEP or within Part 9.00 – Glossary of the current DCP

#### Aims of this section

1. To ensure urban release land is developed to maximises the efficiency of existing infrastructure.
2. To ensure urban release land is developed to achieve optimal density and diversity of housing typologies.
3. To ensure that development of the site occurs in a manner which is sensitive to the environmental characteristics of the site and surrounding land uses.
4. To ensure the ongoing management of C2 Environmental Land is achieved by incorporating best practice environmental management and water sensitive urban design methods.
5. To ensure that the development of the site is integrated into the local road network.
6. To provide attractive streetscapes which promote passive and active recreation.
7. To provide a visual landscaped buffer along Minmi Road.

- Please outline the aims of this section, noting CN's suggestions.

#### Indicative lot and building typologies plan

##### **Objective**

1. To achieve the desired inner suburban dwelling density of 40 dwellings/ha
2. To achieve a diversity of housing types

##### **Controls**

- Please include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).
- Controls are to be informed by the Urban Design Study

## Access and movement network

### Objective

1. Ensure the subdivision is designed to integrate with surrounding residential development and makes efficient use of existing road networks.
2. Neighbourhood streets are designed to prioritise pedestrians and promote active and passive recreation.

### Controls

C1. Subdivision layout is to incorporate a collector road extending Kingfisher Drive to the intersection at Minmi Rd/ Brookfield Avenue (east).

C2. Subdivision works are to include road upgrades for access including a roundabout at the Intersection at Minmi Rd/ Brookfield Avenue (east), and kerb, gutter and footpath extension from existing infrastructure adjacent to 311 Minmi Road.

C3. The new roundabout at the intersection of Minmi Road and Kingfisher Drive is to incorporate pedestrian and cycle facilities.

C4. All proposed future lots are to be serviced by internal roads. No driveway access points are permitted onto Minmi Road.

C5. Roads are to be designed to provide adequate provision for shared paths, connections and street trees.

C6. A continuous footpath is provided within the APZ along the perimeter of the central conservation area.

Performance Outcome	Benchmark Solution
Avoid or minimise new intersections onto Minmi Road	<ol style="list-style-type: none"> <li>1. <del>Vehicular access to the Eastern precinct is obtained via Kingfisher Drive.</del></li> <li>2. <del>Vehicular access to the Western residential precinct is obtained from Minmi Road utilising an intersection shared with the adjoining approved subdivision.</del></li> </ol>

- Please provide a transport movement hierarchy showing major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists in accordance with 8.3(3)(b) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Note previous comments regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east) intersection which has been designed with allowance for a 4-leg, single-lane roundabout. Kingfisher Drive was designed to allow a bus route and services (after having passed through 505 Minmi Rd) to continue onto Brookfield Avenue and service the 'Outlook Estate' on the northern side of Minmi Rd.
- The proposed access to Minmi Road on the western boundary of the site is not supported given the proximity to the approved left in/left out intersection and other upgrade works on Minmi Road, as required under the approved Minmi East Stage 1B development (DA2015/10393)



Provide traffic permeability within the site	Subdivision of the site includes a connecting road between the Eastern and Western residential precincts.
Development minimises visual impacts on Minmi Road	A minimum 10 metre wide strip of land is retained as a vegetation buffer between Minmi Road and residential allotments within the Eastern precinct. (This buffer strip would form part of community association land).

## Landscaping

### Objective

1. To ensure the new development respects and enhances the local character and amenity.
2. Ensure significant landscape elements are retained and protected.
3. Ensure the visual amenity is maintained to nearby residential development.

### Controls

C1. A Minimum 10-metre-wide strip of native vegetation land fronting Minmi Road is to be retained to maintain the landscape character and local amenity. Existing mature native vegetation is to be prioritised for retention.

C2. Streetscape elements utilise regional materiality such as sandstone, hardwood and steel and are detailed in the landscape plan. These elements will weave through the entry signage, fencing, street tree planting, furniture elements, paving and wayfinding signage to create a site wide character that integrates within and reflects the surrounding landscape and character.

- Please provide site specific landscaping controls in accordance with 8.3(3)(c) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Landscape presentation to Minmi Road is a direction of the Planning Panel RR-2021-70.

## Biodiversity

### Objective

1. To preserve and enhance the biodiversity values of C2 Environmental Conservation lands adjoining the residential zoned land.

### Controls

C1. A Vegetation Management Plan (VMP) is to be prepared by a suitably qualified person for approval. The VMP shall be prepared in accordance with CN's specifications and include, but not be limited to, the following:

- a. Meets the Urban Forest Policy goals and objectives
- b. A site assessment detailing vegetation communities present and management objective for the vegetation
- c. Management zones including bushfire asset protection zones.
- d. Site management including weed management, bushfire asset protection zone management and bush regeneration activities.
- e. Hydrological characteristics and flood probability for riparian areas and downstream wetlands
- f. Location of stormwater detention structures or water –sensitive urban design works
- g. Full list of existing plant species for revegetation work
- h. Maintenance periods and timeframe for implementation of the VMP
- i. Monitoring, performance criteria and reporting for the VMP.

C2. Roads resulting in fragmentation of conservation land will not be supported.

C3. Road batters are not to encroach into C2 Environmental Conservation land.

C4. An Urban Interface Area (UIA) will be required for on land that contains and/or adjoins significant vegetation.

C5. CN will consider dedication of environmental conservation land and drainage corridor at no cost after the subdivision works have been carried out and the VMP established and maintained for a specified period of time to CN's satisfaction. CN may not accept the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

- A UIA is a buffer to minimise both biotic (impacts of drainage infrastructure, weed invasion, nutrient increase etc.) and abiotic (noise, wind, dust, light, litter etc.) edge effects on land adjoining a proposed development site, thereby mitigating environmental impacts. Please include plan and section drawing in this section that illustrates how the UIA will be achieved.
- The VMP is to include on-going maintenance and management of the UIA.
- The VMP is to address ongoing land ownership and how this land will be managed in perpetuity.
- Walking trails are not appropriate within the C2 Conservation zone without confirmation from BCD.
- Roads resulting in further fragmentation of the biodiversity corridor are not supported.

## Open space

**Objective**

1. Development provides passive and active recreation opportunities.

**Controls**

C1. Open space for the purpose of passive and active recreation is to be located entirely within residential zoned land.

<b>Performance Outcome</b>	<b>Benchmark Solution</b>
<del>Subdivision allows safe and convenient pedestrian/cycle access to Minmi Road</del>	A straight inter-allotment shared pathway is provided in the north-east corner of the Eastern precinct linking to the existing footpath adjacent 344 Minmi Road, Fletcher
<del>Convenient pedestrian access is provided to the proposed neighbourhood centre and local park on Minmi to the west of the site</del>	A pathway is provided from the south west corner of the Western precinct across the open space and creek line to the west and linking to the proposed perimeter road within the Winton development
<del>Proposed community association land provides opportunity for recreation.</del>	<ul style="list-style-type: none"> <li>— A continuous footpath is provided within the APZ along the perimeter of the central conservation area.</li> <li>— Walking trails are provided within conservation zoned land.</li> </ul>

- Walking trails are not appropriate within the C2 Environmental Conservation zone without support from BCD.
- Should BCD support walking trails through C2 land, they should be limited in number, width and aligned to reduce habitat fragmentation and track erosion.
- Controls relating to shared paths or movement are more appropriately listed under access and movement networks.

## Bush fire protection

### Objective

1. Ensure risks associated with bush fire, including projected increase in the occurrence and severity of hazards as a result of climate change, are appropriately and successfully managed through effective and innovative design, as well as in connection with the preservation of the ecological values of the site and adjoining lands.

### Controls

C1. All bushfire Asset Protection Zones are to be located outside C2 Environmental Conservation Zones

C2. Road batters within Asset Protection Zones need to be configured so their grade and length supports ready maintenance and reduces weed ingress into C2 Environmental Conservation land.

Performance Outcome	Benchmark Solution
<b>All residential allotments achieve a Bushfire Attack Level (BAL) rating of BAL 29 or less.</b>	Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.
<b>Perimeter roads are provided at all interfaces with bushfire prone vegetation</b>	Subdivision of the site includes perimeter roads along the western and southern extent of the Eastern precinct and along the eastern and southern extent of the Western precinct.

Stormwater and water quality management

**Objective**

1. To provide direction with regard to CN’s requirements for the management of both the quality and quantity of stormwater runoff.

**Controls**

- C1. Proposed site discharge points to waterways consider site acceptance criteria for CN’s Standard Rock Outlet for Headwalls.
- C2. Water-sensitive urban design elements are incorporated into the subdivision, utilising land within Asset Protection Zones where possible and is not included in C2 Conservation zoned land

- Please provide site specific provisions for stormwater and water quality management in accordance with 8.3(3)(e) of the NLEP

Aboriginal cultural heritage

**Objective**

1. Manage Aboriginal cultural heritage values to ensure enduring conservation outcomes.
2. Preserve known Aboriginal cultural heritage sites.

**Controls**

- C1. Development will identify any areas of Aboriginal cultural heritage value that are within or adjoining the area of the proposed development, including any areas within the development site that will be retained and protected (and identify the management protocols for these).
- C2. Development is to be carried out in accordance with the recommendations of <insert> report.

- Required as outlined in this information request.

## Environmental conservation and landscape character

### Objective

- Development of the site is consistent with the surrounding landscape character
- Development of the site achieves long term biodiversity conservation outcomes

Performance Outcome	Benchmark Solution
<del>Landscaping makes a positive contribution to the surrounding landscape character</del>	<del>Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.</del>
<del>Stormwater is managed in a way that improves environmental and amenity outcomes</del>	<del>Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation</del>
<del>Land zoned for environmental conservation is managed in perpetuity such that the biodiversity values of the land are protected</del>	<del>Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation</del>
<del>Road design facilitates habitat connectivity for local native species</del>	<del>The connecting road between the Eastern and Western precincts is designed in consultation with a qualified ecologist to provide fauna crossing opportunities through retention of canopy trees either side of the road where possible and using supplementary planting.</del>

- These controls are more appropriately captured elsewhere in this section or do not satisfy the direction of this information request letter.



Your ref: PP-2021-2262  
Our ref: DOC23/35422

Andrew Donald  
Barr Property and Planning  
92 Young Street  
Carrington, NSW 2294

Dear Andrew

**505 Minmi Road, Fletcher Planning Proposal (PP-2021-2262)**

I refer to the Planning Proposal for 505 Minmi Road, Fletcher submitted on 18 January 2023. The proposal relates to the rezoning of Lot 23 DP 1244350 under the Newcastle Local Environment Plan 2012 (NLEP 2012). The proposal seeks to rezone approximately 26.2 hectares (ha) of E4 Environmental Living to a combination of R2 Low Density Residential and C2 Environmental Conservation.

Biodiversity and Conservation Division (BCD) has reviewed the planning proposal, dated January 2020 and the Biodiversity Inventory Reports (BIR), dated January 2020 and December 2021.

BCD recommendations are provided in **Attachment A** and detailed comments are provided in **Attachment B**. If you have any further questions about this issue, please contact Steven Crick, Senior Team Leader Planning on [REDACTED] or at [huntercentralcoast@environment.nsw.gov.au](mailto:huntercentralcoast@environment.nsw.gov.au)

Yours sincerely

**LUCAS GRENADIER**  
**A/Director**  
**Hunter Central Coast Branch**  
**Biodiversity and Conservation Division**

15 February 2023

Enclosure: Attachments A and B





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## BCD's recommendations

### Planning Proposal for 505 Minmi Road, Fletcher

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1. The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.
2. The planning proposal should be amended to be consistent with BIR dated December 2021.
3. The planning proposal should display further avoidance of *Biodiversity Conservation Act 2016* (BC Act) listed endangered ecological community (EEC) *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*.
4. Provide adequate justification in accordance with the determination made by the Threatened Species Committee to exclude BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment.
5. All threatened species surveys should be conducted in accordance with relevant guidelines and Threatened Biodiversity Data Collection (TBDC). Justification must be provided for excluding species from targeted survey efforts.
6. Additional evidence such as photography or genetic report required to confirm presence of sugar glider (*Petaurus breviceps*) and absence of squirrel glider (*Petaurus norfolcensis*).
7. Further information should be provided regarding habitat features in accordance with section 3 and section 4 of BAM 2020.
8. It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of BAM 2020.
9. The proposed C2 zone should be protected and managed through a secondary mechanism such as a Biodiversity Stewardship Agreement.
10. The proponent has not demonstrated that the proposal is consistent with Ministerial Direction No.4.3(5) Flood Prone Land

## BCD's detailed comments

### Planning Proposal for 505 Minmi Road, Fletcher

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#### Biodiversity

1. The planning proposal is inconsistent with Section 9.1 Ministerial Direction 3.1

Ministerial Direction 3.1 (1) issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* requires that a planning proposal include provisions that facilitate the protection and conservation of environmentally sensitive areas. This direction applies to all relevant planning authorities when preparing a planning proposal. The ecological assessment is incomplete; however, does identify High Environmental Values (HEV) on site, including:

- *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* Endangered Ecological Community (EEC)
- 45 Hollow-bearing Trees
- *Myotis macropus* habitat

The planning proposal is inconsistent with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation. Furthermore, land identified as *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* EEC is proposed to be rezoned as R2.

#### Recommendation 1

The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.

2. The planning proposal is not consistent with the most current Biodiversity Inventory Report

On February 2022, Department of Planning and Environment (DPE) received the BIR dated December 2021, which includes Biodiversity Assessment Method 2020 (BAM 2020) amendments and additional survey effort conducted in 2021. Appendix E of the Planning Proposal includes the BIR dated January 2020 and does not include BAM 2020 amendments or additional survey effort conducted in 2021.

#### Recommendation 2

The planning proposal should be amended to be consistent with the BIR dated December 2021.

3. Avoidance of BC Act listed endangered ecological community (EEC) *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*

The planning proposal would result in the removal of up to 11.77 ha of *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* EEC. Pursuant to section 6.4(1) of the BC Act, the applicant must firstly demonstrate appropriate and sufficient steps have been taken to avoid or minimise impacts to areas with vegetation mapped with

biodiversity values, and only then if satisfied, the relevant biodiversity conservation measures should be considered to offset or compensate any impacts such as from clearing.

The planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. In order to adhere to the BC Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.

### Recommendation 3

The planning proposal should display further avoidance of BC Act listed EEC *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*.

#### 4. Additional information is required to exclude BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment

The BIR identifies PCT 1589: *Spotted Gum – Broad-leaved Mahogany – Grey Gum grass – shrub open forest on Coastal Lowlands of the Central Coast* within the proposal site. BioNet Vegetation Classification indicates PCT 1589 is commensurate with *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* EEC. However, section 4.2 of the BIR states the PCT is not a threatened ecological community (TEC).

An assessor must consider information in the final determination made by the NSW Threatened Species Scientific Committee, and either list or exclude the TEC from the site. The determination for this ecological community states:

*The ecological community has been recorded from the local government areas of Pittwater and Gosford, within the Sydney Basin Bioregion, and may occur elsewhere in the Bioregion.*

### Recommendation 4

The BIR should provide adequate justification in accordance with the determination made by the Threatened Species Committee for the exclusion of the BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment.

#### 5. Additional information is required to demonstrate compliance with threatened species target survey requirements

Section 1.3 of the BIR prepared by MJD dated December 2021 states the BIR is updated to address the BCD letter dated 10 September 2019 which recommends that an assessment under Stage 1 and Stage 2 of the BAM should be undertaken for planning proposals that are likely to result in biodiversity impacts. This requires all threatened species assumed moderate or likely to occur within the proposal site to be surveyed as per relevant guidelines and the Threatened Biodiversity Data Collection (TBDC). Sufficient evidence should be provided within the assessment to demonstrate compliance with relevant guideline and the TBDC, including dates, timing and weather conditions. It is recommended additional information is provided or additional surveys are conducted for the following species:

- brush-tailed phascogale (*Phascogale tapoatafa*)
- common planigale (*Planigale maculata*)
- koala (*Phascolarctos cinereus*)
- powerful owl (*Ninox strenua*) (breeding)
- masked owl (*Tyto novaehollandiae*) (breeding)

- gang-gang cockatoo (*Callocephalon fimbriatum*) (breeding)
- glossy black-cocktaoo (*Calyptorhynchus lathami*) (breeding)
- pale-headed snake (*Hoplocephalus bitorquatus*)
- green and golden bell frog (*Litoria aurea*)

Evidence-based justification as per section 5.2.3 (2) of BAM 2020 is required to exclude species from targeted survey. Additional information to support exclusion of the following species is required:

- leafless tongue orchid (*Cryptostylis hunteriana*)
- rough doubletail (*Diuris praecox*)
- pokolbin mallee (*Eucalyptus pumila*)
- grove's paperbark (*Melaleuca groveana*)
- singleton mint bush (*Prostanthera cineolifera*)
- wallum froglet (*Crinia tinnula*)
- green-thigh frog (*Litoria brevipalmata*)
- mahony's toadlet (*Uperoleia mahonyi*)

#### Recommendation 5

The BIR should be consistent with the requirements of the BAM Threatened species surveys should be conducted in accordance with relevant guidelines and TBDC. Justification must be provided for excluding species from targeted survey efforts.

#### 6. Additional evidence required to differentiate sugar glider (*Petaurus breviceps*) and squirrel glider (*Petaurus norfolcensis*)

The BIR identifies the sugar glider on site. Sugar gliders (*Petaurus breviceps*) and squirrel gliders (*Petaurus norfolcensis*) are similar in appearance and can be difficult to distinguish between. Due to numerous records of squirrel glider (*Petaurus norfolcensis*) within and adjacent to the proposal site, further information is required to confidentially establish absence of squirrel glider (*Petaurus norfolcensis*) on site. Data such as photographs displaying scale or genetics should be included as an appendix. If evidence cannot be provided, it is recommended squirrel glider (*Petaurus norfolcensis*) presence is assumed and the BIR adjusted accordingly.

#### Recommendation 6

Additional evidence such as photography or genetic report should be provided to confirm presence of sugar glider (*Petaurus breviceps*) and absence of squirrel glider (*Petaurus norfolcensis*).

#### 7. Provide further information should be provided for habitat features

Section 3.1.3 of the BAM 2020 requires the assessor to identify and map the following:

- rivers, streams, estuaries and wetlands

- karst, caves, crevices, cliffs, rocks and other geological features of significance
- connectivity of different areas of habitat

The BIR mentions rocky outcrops, however, does not provide mapped locations or photographs of the outcrops. The BIR should be amended to be consistent with *BAM 2020* requirements.

Section 4.3.4 (9) of *BAM 2020* requires the assessor to provide specifics such as dimensions and height above ground during a hollow-bearing tree assessment. It is recommended hollow-bearing tree data and labelled figure displaying location of hollow-bearing trees are included as an appendix.

### Recommendation 7

Further information should be provided in the BIR regarding habitat features in accordance with section 3 and section 4 of *BAM 2020*.

## 8. Impacts to habitat connectivity should be considered

Large intact bushland exists to the north and south of the proposal site. Vegetation within the east and west of the proposal site form part of a corridor.

Section 1.4 of the Biodiversity Conservation Regulation 2017 (BC Regulation) notes habitat connectivity as a prescribed additional biodiversity impact. For all proposals, prescribed impacts must be assessed as per clause 1.6 of the *BC Regulation*.

It is recommended that the assessment considers impacts to connectivity as per section 6.1.3 and section 8.2 of *BAM 2020*.

### Recommendation 8

It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of *BAM 2020*.

## 9. Additional security should be provided to proposed C2 Environmental Conservation Zone

The BIR states proposed C2 land will be conserved as a corridor, however, the planning proposal marks this zone as a conservation/open space which will include:

*Innovative ways can be incorporated into the use of the land, to be retained within the site as open space, by the owners of individual residential lots for maintenance and embellishment of this area of land and also for permissible recreation and associated purposes for the future residents of the site.*

A conservation corridor cannot serve as recreational space for landowners. The planning proposal does not provide for protection of the corridor or another mechanism which would ensure it is appropriately protected or managed. A second mechanism such as a Biodiversity Stewardship Agreement will be required to ensure the proposed C2 zone is managed in perpetuity for conservation.

### Recommendation 9

The proposed C2 zone should be protected and managed through a secondary mechanism such as a Biodiversity Stewardship Agreement.

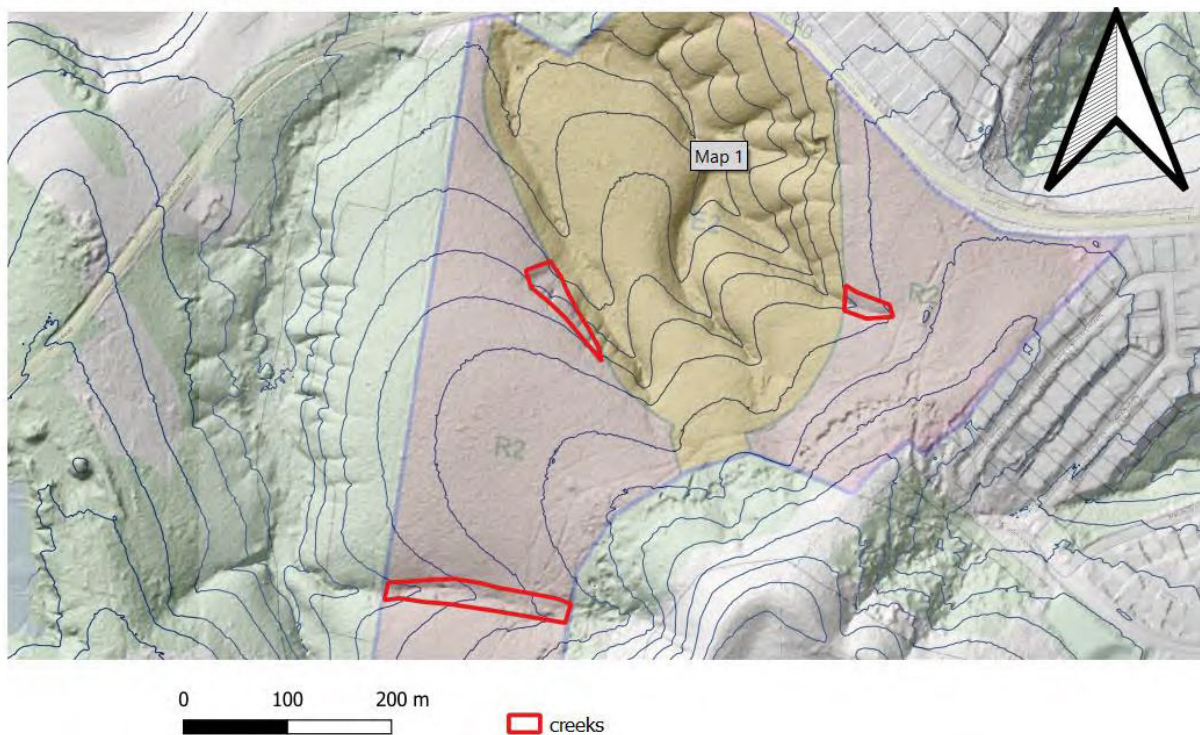
## Flooding and flood risk

10. The proponent has not demonstrated that the proposal is consistent with Ministerial Direction No.4.3(5) Flood Prone Land

The rezoning proposal has not satisfactorily demonstrated consistency with the 9.1 Ministerial Directions on flooding.

Ministerial Direction No. 4.3(5) Flood Prone Land, issued in July 2021 under section 9.1(2), of the *Environmental Planning and Assessment Act 1979* states that land must not be rezoned from Recreation, Rural, Special Purpose or Environmental Protection Zones to Residential uses if it is within the flood planning area.

Creeks within the Proposed Residential Rezoning Extents



Local catchment flooding has not been assessed by the proponent. The site's topography shows several creek lines within the proposed R2 Residential rezoning extents. However, the flood planning area (which is typically 500mm above the 1% AEP flood level) for these creek lines has not been assessed.

### Recommendation 10

BCD recommends that the proponent assesses local catchment flooding to determine the extents of the current flood planning area. And the proposed C2 Environmental Conservation zoning is extended to include all area below the flood planning level.



DOC24/362098-5

Jonathon Christie  
Newcastle City Council

Via email: [jchristie@ncc.nsw.gov.au](mailto:jchristie@ncc.nsw.gov.au)

27 May 2024

**EPA response – Gateway Determination of Planning Proposal  
Proposed rezoning at 505 Minmi Road Fletcher (PP-2021-2262)**

Dear Mr Christie,

The NSW Environment Protection Authority (EPA) would like to thank Newcastle City Council (Council) for providing us the opportunity to comment on the draft planning proposal to amend Newcastle Local Environment Plan 2012 (NLEP 2012) (Proposal).

The EPA understand that the Proposal is in the latter stages of the planning process, however our feedback on this, and similar planning proposals within the vicinity of Summerhill Waste Management Centre (SWMC), has not been previously sought. We are interested in this proposal because we regulate SWMC under environment protection licence 5897 (EPL 5897) for the activities of landfilling and resource recovery of waste.

The EPA understands the Proposal is for the rezoning of land from C4 environmental living to R2 low density residential and C2 environmental conservation zone at 505 Minmi Road, Fletcher NSW 2287. If approved, it would enable the development of approximately 150 residential dwellings.

From our review, the Proposal:

- will locate residential receivers in proximity to SWMC, a landfill and resource recovery facility managed by Newcastle City Council (Council) and regulated by the EPA under (EPL 5897). This facility generates odour, sub-surface landfill gas, noise and air emissions.
- did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

SWMC provides an important waste management service for the community of Newcastle. Waste management facilities like SWMC emit odour, sub-surface gas, noise and air emissions. Controls are used to mitigate these issues, but even with these in place, it can be difficult to prevent adverse impacts beyond the boundary. Thus, locating residential receivers in close proximity to SWMC may lead to community complaint, increase regulatory oversight and pressure on the operator of SWMC to mitigate adverse impacts.

The EPA has considered details of the Proposal as provided by the proponent and include comments, including recommended actions and studies for Newcastle City Council (Council) to consider on odour, air, noise, water and contaminated land, in **Attachment A**.

Additionally, the EPA acknowledges the Traditional Custodians of Fletcher, the Awabakal people. We encourage meaningful engagement with the Aboriginal community in developing and

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NSW 2124 Australia

NSW 2150 Australia



implementing the proposed amendment to the NLEP 2012. The Proposal would be strengthened by considering ways to achieve this in greater detail.

If you have any further questions about this issue, please contact Kim Stuart, Senior Environmental Planning & Assessment Officer, Strategic Planning Unit on [REDACTED] or email [environmentprotection.planning@epa.nsw.gov.au](mailto:environmentprotection.planning@epa.nsw.gov.au).

Yours sincerely

[REDACTED]

**JACQUELINE INGHAM**  
**Unit Head**  
**Strategic Planning Unit**

## Attachment A

### Land use conflict and required studies

The Hunter Regional Plan 2041 (Regional Plan) is a 20-year land use plan consisting of 9 objectives with associated performance outcomes to ensure planning proposals for the Hunter region appropriately consider and manage growth.

Strategy 1.5 under performance outcome 5 of Objective 1 of the Regional Plan states that local strategic planning should consider existing waste management centres and ensure sensitive land uses do not encroach on these areas or limit their future expansion.

The Proposal acknowledged that SWMC was within the broader vicinity of the proposed residential development but considered Objective 1 of the Regional Plan did not apply because:

- of its distance from the proposed residential development; and
- the strict environmental controls that it operates under.

As such, noise, air and odour assessments were not undertaken nor were the risks associated with the sub-surface gas generated by SWMC considered within the contamination assessment.

From our review, the proposed residential development will be located within approximately 140 metres of the boundary of SWMC. Table 1 of NSW Department of Planning and Environment's EIS Practice Guideline: Landfilling (1996) (EIS Guideline) states that locating residential development within 250 metres of a landfill boundary is inappropriate. This is a position supported by the EPA and referred to within EPA's Environmental Guidelines, Solid waste landfills (second edition, 2016) (Landfill Guideline).

Locating sensitive receivers close to landfills, can result in impacts to amenity and cause land use conflict. Addressing impacts retrospectively following development can be challenging, expensive and lead to community complaints.

To consider the impacts from existing land uses (such as SWMC) and inform appropriate land use, transitional zonings, buffer distances and design choices, the EPA recommends the following actions and studies be undertaken by the proponent:

#### 1. Land uses be informed by current and future operations of the SWMC

The proponent should consult with the section within Council responsible for managing SWMC about current and proposed operations at the landfill and demonstrate how this has been considered in the proposed land uses.

#### 2. Noise and vibration assessment

A noise and vibration assessment should be prepared in accordance with the NSW Noise Policy for Industry (EPA, 2017).

#### 3. Air quality and impact assessments

Air quality and odour impact assessments should be prepared in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA 2022) and Technical framework: Assessment and management of odour from stationary sources in NSW (DEC, 2003). The air quality and odour impact assessments should include:

- an air and odour dispersion modelling to predict any potential air quality and odour impacts.
- odour surveys to evaluate and ground truth the results of the air and odour modelling.
- the results of the odour surveys and air and odour modelling to identify air quality mitigation measures that can be applied to prevent and manage air and odour related land-use conflicts.

#### 4. An updated contaminated land assessment

The EPA understands that a preliminary contamination assessment completed for the Proposal found that it would be suitable for residential development. However, the assessment is over 10 years old, and it did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

SWMC is a large putrescible and non-putrescible landfill located within approximately 140 metres of the Proposal area. The facility's putrescible landfill cells are located over 1 kilometre southeast of the Proposal area, and a capped construction and demolition landfill cell is located within approximately 300 metres.

Subsurface gas monitoring results from the capped construction and demolition landfill cell dated from February 2024 showed elevated levels of carbon dioxide ranging from 9.5% to 13.7%. Council has advised that the capped cell was previously subjected to coal mining and the presence of sub-surface gases are from coal seam sources not the landfill. Regardless of the source of the gas, carbon dioxide is an asphyxiant and a toxic gas that is significantly denser than air. Toxic effects may become noticeable at 2% v/v and severe at 5% v/v, so further consideration of carbon dioxide is required prior to rezoning.

Given the proximity to the landfill, including this capped construction and demolition landfill cell, the EPA recommends that, prior to finalising a decision on the proposed rezoning, Council require the Proponent to submit an updated preliminary site investigation (PSI) for contamination which covers the entire Proposal area. The PSI should:

- consider the presence of SWMC and any mine workings in the area and investigate any risks associated with hazardous sub-surface gas at the Proposal area.
- consider any recent activities that may have impacted the Proposal area (including illegal dumping or migration of contaminants from adjacent sites).
- be drafted in accordance with the *Consultants reporting on contaminated land - Contaminated Land Guidelines* (EPA, 2020) and other relevant guidelines made or approved by the EPA under section 105 of the *Contaminated Land Management Act* (CLM Act).
- be written by, or reviewed and approved by, a consultant certified by either the Environment Institute of Australia and New Zealand Certified Environmental Practitioner (Site Contamination) (CEnvP (SC)) or Soil Science Australia - Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) schemes.

We note that under the Newcastle Development Control Plan 2012, The Technical Manual Contaminated Land Management for Newcastle City Council, and any relevant updated documents, Council may consider the engagement of an auditor, should the findings of the PSI indicate that there is sufficient contamination risk to warrant a Detailed Site Investigation and a site audit.

Other considerations:

- for future development applications, Council should ensure that the processes outlined in the State Environmental Planning Policy (Resilience and Hazards) 2021 are followed to assess the suitability of the land and any remediation required in relation to the proposed use.
- persons undertaking development on the Proposal area must ensure that any development does not result in a change of risk in relation to any pre-existing contamination at the Proposal area so as to result in significant contamination (note that this would render the Applicant the 'person responsible' for the contamination under section 6(2) of the CLM Act).
- the EPA should be notified under section 60 of the CLM Act for any contamination identified which meets the triggers in the *Guidelines for the Duty to Report Contamination* (EPA, 2015).

## 5. Water management strategy

Stormwater discharges from areas of increased residential density have the potential to impact on local surface water and groundwater quality. A water management strategy should be prepared for the Proposal to:

- demonstrate how the Proposal will be designed and operated to protect the NSW Water Quality and River Flow Objectives (Objectives) for receiving waters where they are currently being achieved or contribute towards achievement of the Objectives over time where they are not being achieved (see Hunter River Table of Contents).
- propose practical, reasonable and cost-effective measures to further minimise and mitigate impacts from land-use activity having regard to the above document and Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZG, 2018) the Risk-Based Framework for Considering Waterway Health Outcomes in Strategic Land-Use Planning Decisions (OEH and EPA, 2017).
- assess and mitigate any stormwater related impacts during construction having regard to the Managing Urban Stormwater: Soils and Construction (Landcom, 2004).
- provide a long-term strategy for the management of surface water and groundwater.

8 January 2024

The Honorary Paul Scully MP  
Minister for Planning and Public Spaces  
Ministerial Office  
52 Martin Place  
**SYDNEY NSW 2302**

Email: [office@scully.minister.nsw.gov.au](mailto:office@scully.minister.nsw.gov.au)

Dear Minister

**PP-2021-2262 – 505 MINMI ROAD, FLETCHER – REQUEST MINISTER DECISION THAT PLANNING PROPOSAL DOES NOT PROCEED**

City of Newcastle (CN), as the planning proposal authority (PPA) is requesting the Minister not proceed with planning proposal PP-2021-2262 (the proposal) for land at 505 Minmi Road, Fletcher. The request not to proceed is due to the proponent not having satisfied the Department of Planning and Environment's (DPE) Gateway Determination conditions.

The assessment of the proposal has been ongoing, since the Gateway Determination was issued in 2021, and CN has spent significant time and resources working with the proponent since this time. On 26 May 2023 CN again requested further information to satisfy the outstanding conditions of Gateway Determination with a focus on land use efficiency and avoiding areas of the site with high environmental value to improve biodiversity outcomes. The request for further information included a revised Urban Design Study investigating various housing typologies to demonstrate an appropriate level of avoidance under the *Biodiversity Conservation Act 2016*.

To date, this request has not been adequately addressed, and the proponent has not demonstrated consideration of appropriate zone boundary options to address matters raised in Gateway Determination. Without adequate information on biodiversity and density options, both Ministerial Direction 3.1 and Gateway Determination Condition 3, are not satisfied. On this basis there are sound planning grounds for the proposal not to be supported, and until such time that adequate information addressing these matters is provided, the assessment of the proposal cannot be finalised. Given the length of time and limited progress made by the proponent to date, this outstanding information is not likely to be forthcoming in a reasonable timeframe.

It is noted that the proponent has submitted correspondence to DPE (dated 18 December 2023), which requests the appointment of an alternative PPA and erroneously suggests that CN has not undertaken the assessment of the proposal in a satisfactory manner. Please be advised that CN takes its role as PPA seriously and have afforded the proponent with sufficient time and opportunity to adequately respond to the outstanding matters raised in the Gateway Determination. Any decision to appoint an alternative PPA would not be supported by CN, nor considered to be a reasonable decision on planning grounds, particularly given the inadequacy of the information submitted with the proposal to date.

Under Section 3.35 of the *Environment Planning & Assessment Act 1979 (EP&A Act)*, a PPA may vary proposals (S3.35(1) *EP&A Act*) or request the Minister determine the matter not proceed (S3.35(4) *EP&A Act*). I note that the option to vary the proposal has been

carefully considered, however without the requested revised Urban Design Study, and adequate biodiversity information, there is insufficient information to vary the proposal. Therefore, the most appropriate action for CN as PPA is to request the Minister determine the matter not to proceed pursuant to section 3.35(4) *EP&A Act*.

CN is currently on track to exceed its projected 17,850 required dwellings by 2041 as outlined in the Hunter Regional Plan 2041. The Broadmeadow Place Strategy and State led rezoning will be finalised this year and will unlock strategically located land capable of accommodating approximately 20,000 dwellings. In addition, the DPE recently released a suite of proposals focused on in-fill development to encourage more low mid-rise housing options which will provide additional housing capacity in well-located areas across Newcastle. Accordingly, the proposed approximately 140 lots under the subject proposal are not critical in CN exceeding the LGAs housing targets. It is therefore appropriate that the Minister make the decision not to proceed with PP-2021-2262 and the proponent be advised to re-locate at a future date when they are able to provide the required information.

On this basis, it is formally requested that the Minister determine that the planning proposal does not proceed pursuant to s.3.35(4) *EP&A Act*. For further information and background please see the enclosed Council Report.

CN is willing to meet and discuss this matter further with DPE prior to any decision being made if it would assist. Further, should you wish to discuss this further or have any questions, please contact Michelle Bisson, Executive Director Planning and Environment on [REDACTED] or [REDACTED]

Yours faithfully

[REDACTED]  
**Jeremy Bath**  
**CHIEF EXECUTIVE OFFICER**

CC: Daniel Simpkins, Regional Director Department of Planning, Industry and Environment via email [REDACTED]

*Enclosed*

- *Council report CCL 12/12/23 – REQUEST THE MINISTER DETERMINE NOT TO PROCEED WITH THE PLANNING PROPOSAL FOR LAND AT 505 MINMI ROAD, FLETCHER*
- *Attachments B, C, D, E - CCL - 12/12/2023 - REQUEST THE MINISTER DETERMINE PLANNING PROPOSAL PP-2021-2262 FOR LAND AT 505 MINMI ROAD, FLETCHER 2287 NOT PROCEED*

**SUBJECT: CCL 12/12/23 – REQUEST THE MINISTER DETERMINE NOT TO PROCEED WITH THE PLANNING PROPOSAL FOR LAND AT 505 MINMI ROAD FLETCHER**

**REPORT BY: PLANNING AND ENVIRONMENT**  
**CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION**

---

## **PURPOSE**

To provide an update on the planning proposal for 505 Minmi Road Fletcher to rezone the land from C4 Environmental Living zone to part R2 Low Density Residential and part C2 Environmental Conservation zones (see **Attachment A**).

## **RECOMMENDATION**

That Council:

- 1 Notes, as the planning proposal authority, City of Newcastle (CN) will be requesting the Minister not to proceed with the planning proposal for land at 505 Minmi Road Fletcher.
- 2 Notes CN's statutory obligations for this planning proposal are met.
- 3 Notes the request not to proceed is due to the proponent not having satisfied the Department of Planning and Environment's (DPE) Gateway determination conditions.

## **KEY ISSUES**

- 4 CN resolved to not support the 505 Minmi Road Fletcher planning proposal in 2020. Following this decision, the proponent submitted it for review to the Hunter and Central Coast Regional Planning Panel (the panel).
- 5 The panel review found the planning proposal demonstrated strategic and site-specific merit and could be submitted for Gateway determination. The panel did not endorse the proposed zone boundaries, as they were not satisfied, onsite biodiversity values had informed them (see **Attachment B**).
- 6 CN accepted the planning proposal authority (PPA) role and submitted the planning proposal to DPE for Gateway determination in May 2022.
- 7 DPE issued the planning proposal Gateway determination on 10 January 2023 allowing it to proceed subject to conditions relating primarily to biodiversity, density, and timeframe requirements (see **Attachment C**).
- 8 CN has continued to work with the proponent as required as PPA. However, the pre-exhibition conditions are not met or close to resolution. In particular, the biodiversity and density matters are not adequately addressed.

- 9 As the proponent has failed to provide the required information to facilitate the assessment, it is now not possible to meet DPE's timeframe to complete the LEP by 20 January 2024. It is appropriate to request the planning proposal be withdrawn before the timeframe expires.
- 10 As PPA, CN found the proponent's revised planning proposal of 4 May 2023 has not met the Gateway determination conditions as follows:
- **Condition 1(e)** requiring an updated Aboriginal cultural heritage assessment.
  - **Condition 3** requiring public authority and government agency consultation and/or to comply with the requirements of the applicable directions of the Minister under the *Environmental Planning and Assessment Act 1979* (EP&A Act).
  - **Condition 4** requiring (once agency comments received) consideration of an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.
- 11 On 26 May 2023 CN requested further information to satisfy these conditions with a focus on land use efficiency and avoiding areas of the site with high environmental value to improve biodiversity outcomes (see **Attachment D**).
- 12 CN's further information request aligns with the Biodiversity Conservation Division's (BCD) advice 15 February 2023 (see **Attachment E**). This included:
- The planning proposal's inconsistency with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation.
  - The planning proposal's failure to take all appropriate avoidance and minimisation measures for Biodiversity Conservation Act 2016 (Biodiversity Act) listed endangered ecological community (EEC) Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. To adhere to the Biodiversity Act, BCD advised further consideration be given to ensure this EEC is sufficiently avoided or impacts minimised.
- 13 CN requested (item 1 of **Attachment E**) a revised Urban Design Study to investigate various housing typologies to demonstrate an appropriate level of avoidance under the Biodiversity Act.
- 14 To date the proponent has not demonstrated consideration of appropriate zone boundaries options to address matters raised in Gateway determination Condition 4 (**Attachment C**). Without adequate information on biodiversity and



density options Ministerial Direction 3.1 and Gateway determination condition 3 are not addressed (**Attachment C**).

- 15 Under Section 3.35 of the EP&A Act, a PPA may vary proposals (S3.35(1)) or request the Minister determine the matter not proceed (S3.35(4)).
- 16 The option to vary the proposal has been considered, however without the requested revised Urban Design Study, and adequate biodiversity information, there is insufficient information to vary the proposal. Therefore, the most appropriate action for CN as PPA is to request the Minister determine the matter not to proceed pursuant to section 3.35(4).

## **FINANCIAL IMPACT**

- 17 The proponent's planning proposal fees are in accordance with CN's Fees and Charges 2020/21.

## **NEWCASTLE 2040 ALIGNMENT**

- 18 A request to the Minister to determine the planning proposal not proceed is consistent with strategic directions of Newcastle 2040 Community Strategic Plan.

### **Liveable**

- 1.1 ***Enriched neighbourhoods and places***
  - 1.1.1 Great spaces
  - 1.1.2 Well-designed places
  - 1.1.3 Protected heritage places
- 1.2 ***Connected and fair communities***
  - 1.2.1 Connected communities
  - 1.2.2 Inclusive communities
  - 1.2.3 Equitable communities
  - 1.2.4 Healthy communities
- 1.3 ***Safe, active and linked movement across the city***
  - 1.3.1 Connected cycleways and pedestrian networks
  - 1.3.2 Road networks
  - 1.3.4 Effective public transport

### **Sustainable**

- 2.1 ***Action on climate change***
  - 2.1.3 Resilient urban and natural areas
- 2.2 ***Nature-based solutions***
  - 2.2.1 Regenerate natural systems
  - 2.2.2 Expand the urban forest

## **IMPLEMENTATION PLAN/IMPLICATIONS**

- 19 Not proceeding with the planning proposal will ensure its amendments to the Newcastle LEP 2012 are not inconsistent with CN's planning priorities and objectives of its Local Strategic Planning Statement, Local Housing Strategy, and Newcastle Environment Strategy.

## **RISK ASSESSMENT AND MITIGATION**

- 20 The Minister has the power to remove CN as PPA if, in the Minister's opinion, CN failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner.
- 21 CN has complied with its obligations under the EP&A Act, working with the proponent including monthly meetings and providing advice in the lead up to exhibition deadline. CN provided further advice in the information request dated 26 May 2023. The advice outlined what was required from the proponent to satisfy the conditions of the Gateway determination.
- 22 CN allowed additional time for the proponent to undertake further studies and amend its' proposal accordingly in response to both BCD's recommendations and CN's advice.

## **RELATED PREVIOUS DECISIONS**

### **2009 Planning Proposal**

- 23 At the Council Meeting held on 18 December 2012, Council resolved to forward a planning proposal for 505 Minmi Road to the Minister for Planning and Infrastructure for Gateway determination.
- 24 Council resolved at its meeting on 25 August 2015, to publicly exhibit the draft Planning Agreement for the offsite environmental land offset for 505 Minmi Road, Fletcher for 28 days.
- 25 Council resolved at its meeting on 8 December 2015, not to proceed with the planning proposal for the site and requested the Minister for Planning and Environment allow CN to discontinue the proposed amendments.

### **2020 Planning Proposal**

- 26 Council resolved at its meeting on 8 December 2020, not to endorse the planning proposal to rezone 505 Minmi Road Fletcher and maintain current zoning for the site (E4 Environmental Living) as per the Newcastle LEP 2012.

## **CONSULTATION**

- 27 The Gateway determination required consultation with the following public authorities and government agencies:
  - Transport for NSW;
  - Biodiversity and Conservation Division (BCD);
  - Ausgrid;
  - Heritage NSW;

- NSW Rural Fire Service;
- Subsidence Advisory NSW;
- Awabakal Local Aboriginal Land Council; and
- Department of Education.

28 Consultation with the BCD is ongoing. Their initial assessment found the planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. Their advice was that to adhere to the Biodiversity Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.

## **BACKGROUND**

29 On 1 May 2020 CN formally accepted lodgment of a proposal to rezone land at 505 Minmi Road Fletcher from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation.

30 On 8 December 2020 Council resolved to not support the proposal for Gateway determination. Following this, the proponent requested an independent review. The Hunter Central Coast Regional Planning Panel (the panel) performed this function.

31 On 23 September 2021 DPE advised CN, the panel's review found that the planning proposal demonstrated strategic and site specific merit and could be submitted for Gateway determination.

32 DPE issued Gateway determination on 10 January 2023 subject to conditions, including LEP timeframes. The planning proposal is to be exhibited within 90 days of Gateway Determination with the LEP completed by 20 January 2024.

## **OPTIONS**

### **Option 1**

33 Note the recommendation as at Paragraph 1 to 3. This is the recommended option.

### **Option 2**

34 The recommendations as at Paragraph 1 to 3 are not noted. This is not the recommended option.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Proposed Zones Map – May 2023  
**Attachment B:** Rezoning Review Decision – September 2021  
**Attachment C:** Gateway determination – January 2023  
**Attachment D:** CN Information Request – May 2023  
**Attachment E:** Biodiversity and Conservation Division  
Recommendations – February 2023

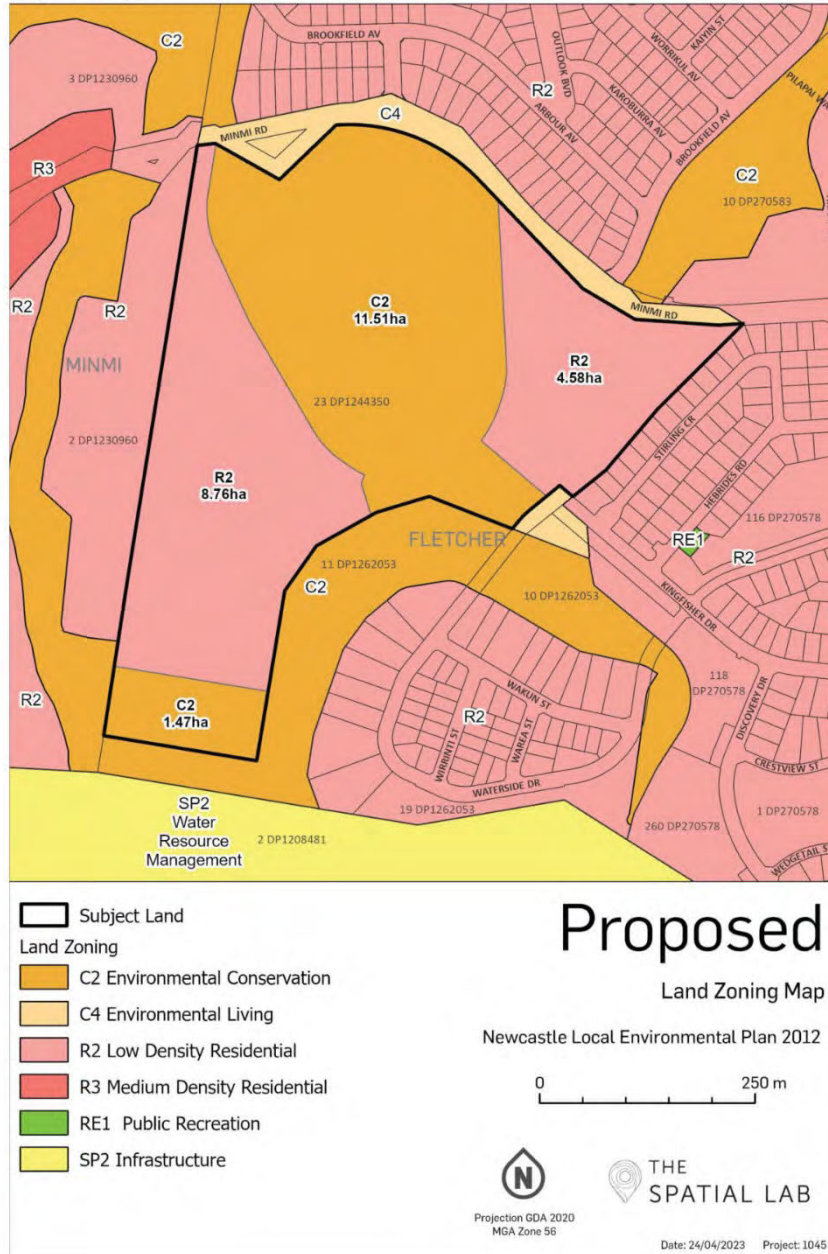
**Attachments B - E distributed under separate cover**

Attachment A



LEP Amendment Request – 505 Minmi Road, Fletcher – May 2023

Map 7 – Proposed Zones



## ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

### **CCL - 12/12/2023 - REQUEST THE MINISTER DETERMINE PLANNING PROPOSAL PP-2021-2262 FOR LAND AT 505 MINMI ROAD FLETCHER 2287 NOT PROCEED**

- |             |                      |  |
|-------------|----------------------|--|
| <b>8.10</b> | <b>Attachment B:</b> | Rezoning Review Decision – September 2021                              |
| <b>8.10</b> | <b>Attachment C:</b> | Gateway determination – January 2023                                   |
| <b>8.10</b> | <b>Attachment D:</b> | CN Information Request – May 2023                                      |
| <b>8.10</b> | <b>Attachment E:</b> | Biodiversity and Conservation Division Recommendations – February 2023 |

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<b>DATE OF DECISION</b>	20 September 2021
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Sandra Hutton’s employer, ADW Johnson, historically provided planning advice and reporting relating to the site and for the purposes of seeking rezoning. Ms Hutton therefore excluded herself to avoid a perceived conflict of interest.

**REZONING REVIEW**

RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:

- The Council has notified the proponent that the request to prepare a planning proposal has not been supported
- The Council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- should not** be submitted for a Gateway determination because the proposal has:
  - not demonstrated strategic merit
  - has demonstrated strategic merit but not site specific merit

The decision was unanimous.

**REASONS FOR THE DECISION**

**1.0 Overview**

The Panel has been requested to review the decision of Newcastle City Council regarding the Planning Proposal for 505 Minmi Road, Fletcher.

The Planning Proposal seeks to rezone the site from E4 Environmental Living to R2 Low Density Residential and E2 Environmental Conservation and include minimum lot sizes of 300m<sup>2</sup>, 1,000m<sup>2</sup> and 40 hectares, and a height of building standard of 8.5 metres. The site would also be identified as an urban release area.

The Panel notes the site has had a detailed and complex history which is documented in the DPIE Report.

The Hunter and Central Coast Regional Planning Panel considered a similar request in November 2017 to rezone the site and determined the proposal at that point in time had strategic merit but not site specific merit.



Newcastle City Council considered this current Planning Proposal in December 2020. An independent report was presented to the Council recommending that the matter could proceed to Gateway. The Council resolved not to support the Planning Proposal and also resolved to remove the site from the recently adopted Local Strategic Planning Statement (LSPS).

The LSPS was amended and uploaded to the Planning Panel Portal. The Panel notes the site's removal from the LSPS was not exhibited and that Council has also subsequently removed the site as an urban release area from the adopted Local Housing Strategy. The site is still included in the Local Contribution Plan.

The Panel notes point 2 of the Council's resolution is as follows:

*"Prior to being presented with any further planning proposal for this site, requires all required environment studies and analysis to be undertaken to: address the inherent constraints and hazards of the land and the interdependent analysis of these constraints (as these studies) may result in significant amendments to the Planning Proposal".*

The Panel have inspected the site and had the benefit of a briefing from DPIE, Council officers and the proponent, as well as access to the Council report, independent report and the documentation lodged with the Planning Proposal.

The Panel had the benefit of a further supplementary report from Council which provided additional information addressing specific matters raised by the Panel arising from an initial review of material.

The Strategic Merit Test and Site Specific Merit Test for Planning Proposals is outlined in PS18-012 dated 14 December 2018.

## **2.0 Strategic Merit Test**

The Panel understands that:

- The site is not listed as an urban release area in the Local Strategic Planning Statement; and
- Is not included in Figure 8 Housing Opportunities of the Greater Newcastle Metropolitan Plan.

The Panel notes a previous Panel in November 2017 – a time that pre-dates these documents, concluded that the site had strategic merit.

In considering the strategic merit the Panel notes that the proposal is consistent with:

- Hunter Regional Plan: Direction D14 - Protect Council Natural Areas; Direction 21 - Create and Connect a Compact Settlement; Direction 23 - Growth Centres and Renewal; Direction 25- Housing and Employment Supply and Demand;
- Greater Newcastle Metropolitan Plan: Strategy 16 - Prioritise the delivery of in-fill housing opportunities within existing urban areas; and Strategy 17- Unlock Housing Supply through infrastructure co-ordination and delivery.

The site is surrounded to the north, east and west by urban development. Immediately south of the site is the Newcastle Council Waste and Resource Management Facility and the Blue Gum Hills Regional Park – providing a clear limitation on urban development to the south.

The site is within the Newcastle-Lake Macquarie Western Corridor Strategy 2010 – a planning strategy to identify key planning principles and provide a broad strategic land use framework to future urban expansion and conservation outcomes. The site is identified as an investigation area under this strategy.

Notwithstanding the late removal of the site from the Housing Strategy and LSPS – the site's location and alignment with the Hunter Regional Plan and Lake Macquarie Western Corridor Study and location as essentially an urban infill site means that there is utility in considering the site for urban development.

The Panel notes the broad nature of regional and metropolitan strategic plans and LSPS do not necessarily identify all areas that may be suitable for consideration for urban development.

The Panel has formed the view that the site has Strategic Merit.

### **3.0 Site Specific Merit**

The site is surrounded by urban development. It is recognised the site is heavily vegetated, currently zoned E4 Environmental Living and supports threatened ecological communities.

A consideration of the matters in the PS18-012 are outlined as follows:

#### *3.1 The natural environment (including known significant environmental values, resources, or hazards)*

The key planning considerations arising from the natural environment that remain unresolved relate to biodiversity conservation and bushfire management.

The Panel recognises the site is heavily vegetated and that a change in zoning would result in a loss of vegetation. However, having regard to the natural environment, the Panel considers that part of the land is suitable for development but there is a need for further detailed studies to delineate the extent of suitability. In the absence of any adopted biodiversity corridors or policies applying specifically to the site, the consistency of the proposal against current biodiversity planning methods is a key consideration in determining the appropriateness of any loss of vegetation and any mitigation requirements arising.

It is noted that the documentation available to the Panel does not reflect current bushfire planning practice standards or the detail required for ecological studies. However, this does not lead to a conclusion that the site cannot meet current bushfire planning practice requirements although this may result in a reduced yield.

#### *3.2 The existing uses, approved uses, and likely future uses of land in the vicinity of the land subject to the proposal*

The site is effectively surrounded by existing or future urban development, interspersed with environmental conservation lands. The Panel is satisfied the proposal is generally consistent with this context, though further work is recommended to ensure urban design / interface issues align with those already within or planned within adjoining properties.

#### *3.3 The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision*

The Panel accepts the requisite services and infrastructure are already accessible to the site or can be readily connected to the site. Additional efforts are required to confirm sufficient capacity is available and detail any arrangements required to make those services and infrastructure available to the site. Recommendations for further work are detailed later in the Panel's response.

On balance the Panel considers the proposal does have site specific merit provided the constraints are able to be addressed through additional information and further assessment. Accordingly, the Panel understands this may potentially result in a different zone boundary configuration and approach to density across the site.

The Panel does not currently endorse the proposed lot boundaries, minimum lot size and location or the indicative subdivision layout. By extension, the Panel does not currently endorse the proposed ecological outcomes. Key issues that require additional detailed investigation and /or information are discussed in the following sections.

#### 4.1 Biodiversity

The Panel is not satisfied the zone boundaries have been informed by a combination of urban design consideration and ecological considerations.

It is the Panel's view the zone boundaries should be informed by the onsite biodiversity values and the location of adjacent E2 zoned land through which the most viable biodiversity linkages can be maintained.

The Panel recommends the following be demonstrated prior to submission for a gateway determination:

- the manner in which the proposed zone boundaries have been informed by the biodiversity values of the site including, but not limited to, the presence and extent of threatened ecological communities, threatened species and their habitat.
- the manner in which the zone boundaries have been informed by the location of adjacent and nearby E2 zoned land to maintain the most viable biodiversity linkages to the remaining areas of native vegetation adjacent to the site and in the locality.

The Panel notes the likely requirement for additional biodiversity studies to meet the requirements of the *Biodiversity Assessment Method 2020* (BAM 2020). Whilst it is not expected that the full requirements of BAM 2020 are satisfied prior to submission for a gateway determination, the information used to support the proposed zoning boundaries should be sufficiently detailed and up to date so as to minimise any subsequent changes to the zoning boundaries.

#### 4.2 Urban Design

The Panel is of the view that while a proposed R2 Low Density Residential zone and E2 Conservation zone is acceptable – further work is required to inform the actual zone boundaries, urban form and layout, lot sizes and landscape treatment. Lands at boundary interfaces need to respond to the adjoining lands.

Environmental considerations and bushfire constraints, need to be reflected in the proposed lot layouts.

The frontage to Minmi Road should retain its landscape character and feel. Consideration should be given to how conservation lands can be used as a link and passive open space, as well as areas for local parks. The character of the proposed area needs to be established through the choice of underlying controls.

##### 4.2.1 Urban design and interface principles

The Panel's view is that any future development should appropriately interface with the form and scale of the existing and proposed low density residential environment surrounding the site and be designed to respond to the specific environmental characteristics of the site.

Accordingly, the development controls, particularly minimum lot size and lot layout, need to be informed by an urban design study and analysis of the site constraints.

The Panel recommends the following urban design and interface principles should be addressed prior to submission for a Gateway determination:

- Access and connectivity principles to guide safe and convenient pedestrian and vehicular access to local services and recreation facilities, including the proposed adjoining Winten subdivision.
- Indicative lot sizes and layouts that maximise environmental linkages and tree retention.

- Location of local open spaces within 400 metres of dwellings.
- Location and treatment of the APZ within the proposed R2 zoned land.
- Street frontage / landscape presentation to Minmi Road.

This work and the environmental review will inform zone boundaries.

This work should form the basis of site-specific development controls to be exhibited with the Planning Proposal.

#### 4.3 *Bushfire*

The Panel concurs with the recommendation of the Independent Report to Council and agrees that a strategic Bushfire Assessment is required.

#### 4.4 *Servicing and Access*

Details of servicing is required including whether or not the existing contributions plans need to be updated – noting that they assumed a particular yield.

#### 4.5 *Mechanism for Biodiversity Outcomes*

The Panel notes the proponent seeks a Community Title subdivision of the site, including the proposed E2 Environmental Conservation.

The Panel also notes Council's position that these lands would create future demand on Council's resources particularly in relation to the future control and maintenance of the proposed E2 Environmental Conservation land. In short, Council will not accept dedication.

A Vegetation Management Plan to guide and manage the proposed E2 Environmental Conservation land will ultimately be required. This must include, but is not limited to:

- The proposed access arrangements to the E2 Environmental Conservation land; principally whether the land will be available to the general, public or just those with legal access through the Community Title subdivision,
- Measures to protect the integrity and biodiversity of the land and maintain the natural landscape,
- Ongoing maintenance program to ensure the future protection and conservation of the land,
- Conservation of places, objects and features of cultural value,
- Any improvements such as walking tracks, seating, signage, fencing of the land.

The Panel considers it is necessary to fully understand how proposed E2 Environmental Conservation land will be owned and managed in perpetuity. Therefore, the Planning Proposal package needs to include the statutory mechanisms to ensure the recommended environmental outcomes are fulfilled. This may mean either a VPA or specific clauses mandating community title subdivision.

## **5.0 Conclusion and Decision**

The Planning Proposal seeks to adopt different zones and zone boundaries; development standards for subdivision and height; and to identify the site as an urban release area which provides a mechanism to levy state infrastructure contributions.

The Panel does not support the proposed zone boundaries and development standards and indicative lot yields.

The zone boundaries and development standards need to be informed by detailed urban design analysis that includes the outcomes of ecological recommendations to avoid and minimise habitat loss and accommodate bushfire constraints. The Planning Proposal needs to demonstrate how it integrates with the surrounding neighbourhood. Based on the additional work identified, the Panel anticipates a lesser lot yield and amended zone boundaries more closely reflecting the environmental constraints.

The Planning Proposal can proceed to Gateway provided the following information is included in the submission and is timely, adequately researched and reflects standards relevant at the time of preparation:

1. A Strategic Bushfire Assessment.
2. Updated Ecological Assessment to meet BAM 2020.
3. Urban Design Study incorporating points 1 and 2 and addressing the information at section 4.0
4. Revised zone boundaries and development standards reflecting the outcome of the Urban Design Study.
5. Preparation of site specific development controls (for inclusion in existing DCP).
6. Detail of the mechanisms for delivery of biodiversity outcomes – i.e. management and ownership of any proposed E2 zoned lands
7. Updated Infrastructure Information including mechanism for delivery.

<b>PANEL MEMBERS</b>	
Alison McCabe (Chair)	Juliet Grant
Graham Brown	Amanda Wetzel
Evelyn Craigie	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher
2	LEP TO BE AMENDED	Newcastle Local Environmental Plan 2012
3	PROPOSED INSTRUMENT	<p>The proposal seeks to facilitate the delivery of 150 low density residential lots and 10.8ha of land to be rezoned for environmental conservation. Specifically, the following amendments are proposed:</p> <ul style="list-style-type: none"> <li>• Rezoning of the site from E4 Environmental Living to Part R2 Low Density Residential and Part E2 Environmental Conservation.</li> <li>• Reduce the minimum lot size from 40 hectares to 300m<sup>2</sup> and 1,000m<sup>2</sup> for the R2 zoned portion of the land to provide 150 residential lots.</li> <li>• Introduce an 8.5 metre height of building standard for the R2 zoned portion of land,</li> <li>• Designate the site as an urban release area.</li> </ul>
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Rezoning review request documentation</li> <li>• Briefing report from Department of Planning, Industry and Environment</li> </ul>
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• <b>Site inspection: 13 May 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant and Graham Brown</li> <li>○ Department of Planning, Industry and Environment (DPIE) staff in attendance: Kylie Dorsett</li> <li>○ Applicant representatives: Andrew Donald</li> </ul> </li> <li>• <b>Site inspection: 29 June 2021</b> <ul style="list-style-type: none"> <li>○ Panel member in attendance: Amanda Wetzel</li> </ul> </li> <li>• <b>Briefing with Department of Planning, Industry and Environment (DPIE): 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Kylie Dorsett, Daniel Simpkins, Leanne Harris and Lisa Foley</li> </ul> </li> <li>• <b>Briefing with Council: 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Leanne Harris and Lisa Foley</li> <li>○ Council representatives in attendance: Patricia McCarthy and Michelle Bisson</li> </ul> </li> <li>• <b>Briefing with Proponent: 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Leanne Harris and Lisa Foley</li> <li>○ Proponent representatives in attendance: Stephen Barr, Andrew Donald and Matthew Doherty</li> </ul> </li> </ul>



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## Gateway Determination

### ***Planning proposal (Department Ref: PP-2021-2262): Rezoning at 505 Minmi Road, Fletcher***

I, the A/Executive Director, Local and Regional Planning at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Newcastle Local Environmental Plan 2012* to facilitate residential development should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
  - (a) remove assessment against the Hunter Regional Plan 2036 and Newcastle – Lake Macquarie Western Corridor Planning Strategy and replace it with assessment against the *Hunter Regional Plan 2041*;
  - (b) clarify inconsistencies in the planning proposal and supporting documents for the area of the site proposed to be zoned R2 Low Density Residential and C2 Environmental Conservation;
  - (c) confirm whether or not the section 7.11 Western Corridor Local Infrastructure Contributions Plan 2013 needs to be updated;
  - (d) confirm if the submitted site specific planning controls will be included in a relevant development control plan; and
  - (e) include an updated Aboriginal cultural heritage assessment.
  
2. Prior to approving for finalisation, the planning proposal should clarify the probable maximum flood event peak flood depths and level contours as well as peak flood velocities and volumetric check analysis of potential loss of flood storage where fill is proposed.
  
3. Consultation is required prior to exhibition with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
  - Transport for NSW;
  - Biodiversity and Conservation Division;
  - Ausgrid;
  - Heritage NSW;
  - NSW Rural Fire Service;
  - Subsidence Advisory NSW;
  - Awabakal Local Aboriginal Land Council; and
  - Department of Education.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.



4. Following consultation with relevant public authorities listed in Condition 3, consider an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.
5. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 28 days;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021); and
  - (c) exhibition must commence within 90 days following the date of the gateway determination.
6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is on or before 20 January 2024.

Dated 10<sup>th</sup> day of January 2023.

**Daniel Thompson**  
**A/Executive Director, Local and**  
**Regional Planning**  
**Department of Planning and**  
**Environment**

**Delegate of the Minister for Planning**



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Planning, Transport & Regulation. SCahill/PMilles  
Reference No: PP2019/00006.01  
Phone: 4974 2250



26 May 2023

Kingston Minmi Road Pty Ltd  
C/- Barr Property & Planning  
92 Young Street  
**Carrington NSW 2294**

Dear Sir/Madam

**REQUEST TO AMEND NEWCASTLE LEP 2012 - 505 MINMI ROAD FLETCHER -  
REZONING FROM C4 ENVIRONMENTAL LIVING TO R2 LOW DENSITY RESIDENTIAL  
AND C2 ENVIRONMENTAL CONSERVATION FOR UP TO 140 LOTS**

City of Newcastle (CN) writes in response to the amended planning proposal (PP) submitted on 29 March 2023. The matters outlined in Attachment 1 consider the Department of Planning and Environment's (DPE) Gateway determination of 10 January 2023 and subsequent public authorities' responses (outlined in our letter 2 March 2023). These matters need to be addressed by the PP and supporting documentation prior to public exhibition.

CN has assessed the new information submitted and the agency responses in the context of the Gateway determination and the Hunter and Central Coast Regional Planning Panel decision. The outcome of our assessment is provided in Attachment 1. CN's comments raise significant matters, and addressing these adequately is necessary to meet the Gateway determination conditions. These matters align with the requirements of the Hunter Regional Plan 2041 (HRP), the Biodiversity Conservation Division's (BCD) preliminary biodiversity assessment and CN policies, plans and strategies. CN's advice aligns with HRP strategies including having a focus on 15-minute neighbourhoods, greater infill development, higher density, increased building heights and improved biodiversity and ecological outcomes.

Addressing these matters is likely to influence the PP significantly. To assist in planning a way forward Attachment 2 suggests alternative site opportunities for your consideration.

Should you wish to discuss this further or have any questions, please contact Peter Milles, Senior Urban Planner on [REDACTED]

Yours faithfully,

**Shane Cahill**  
**URBAN PLANNING SECTION MANAGER**

## Attachment 1

The matters outlined below need to be addressed before public exhibition. Including biodiversity, land use efficiency and strategy. Further information request items have been listed and these generally align with the Gateway determination conditions.

### Biodiversity

CN's assessment of the amended Planning Proposal (PP) found the proposed development footprint does not adequately address biodiversity and ecological matters. BCD's authority response dated 15 February 2023 supports this stating key issues remain around avoidance of impacts to high value biodiversity. The BCD found, amongst other matters, that further regard is necessary to adequately meet requirements for the avoidance of impacts to high value biodiversity and providing sufficient habitat connectivity.

The site is one of the largest forested north-south biodiversity linkages left in the southwest part the Newcastle Local Government Area (LGA) that is zoned C4 Environmental living. This site is important to the HRP Objective 6 for Biodiversity conservation planning and corridor linkage at a landscape scale. It provides a direct non-gapped link to the south to a forested area of the Summerhill Waste Management Centre, Blue Gum Hills Regional Park and conservation zoned bushland towards the Link Road at West Wallsend.

While relatively narrow (less than 100m wide) the link north across Minmi Road to land zoned C2 Environmental Conservation (associated with the Hexham Wetlands) provides one of the few remaining lesser cleared links in this area. It connects the wetlands in the north to existing forest in the south. This link is part of the Watagans to Stockton Biodiversity Corridor and is a key corridor link and patch under the HRP. This corridor is particularly important over the long term as previously grazed parts of the southern Hexham Wetlands regenerate and/or receive rehabilitation.

The proposed development footprint includes areas of high biodiversity values and the areas proposed to be conserved are largely fragmented habitat. The Biodiversity Offsets Scheme (BOS) is based on the 'avoid, minimise, offset' hierarchy. Using this, proponents must:

- first consider whether the development can avoid a negative impact on the environment
- next consider whether the development can minimise any negative impacts that cannot be avoided
- once all reasonable steps to avoid or minimise environmental impacts have been exhausted, consider whether any remaining impacts can be offset.

The hierarchical criteria need to be met. Amongst other considerations, the proposed zoning boundaries primarily reflect topographical limitations of the site. This approach is documented in the amended PP page 80:

*The Urban Design Study to provide an indicative subdivision lot layout has taken into consideration land stability, topography and slope analysis in determining the future development of the site including consideration to:*

- *Land within the site > than a slope of about 15%, is to be conserved in its natural bushland state and has been excluded from the area proposed for residential subdivision.*
- *Land within the site, with flatter slopes of 15% or less has been considered for the residential component of the site*

*Therefore, the majority of the steepest portion of the site is to be conserved in its natural bushland state and located in the proposed Environmental Conservation C2 zoning.*

The R2 Low Density Residential zone proposed is on the easier to develop parts of the site and the proposed C2 Environmental Conservation zone is on the steeper, harder to develop parts of the site. It appears economic and engineering considerations rather than biodiversity values have led the proposal.

The Gateway determination conditions require updating the PP so the zone boundary configuration and development controls achieve more optimal density and diversity of housing typologies up to four storeys, if this will lead to an increase in the amount of the site reserved for conservation. This aligns with the Hunter and Central Coast Regional Planning Panel decision (RR-2021-70 section 4.1) that the panel was not satisfied ecological considerations informed the proposed zone boundaries.

The amended PP does not comply with Strategy 6.3 of the HRP, nor does it demonstrate how the performance outcomes under the HRP's Objective 6 will be achieved, and therefore consistency with ministerial direction 3.1 Conservation Zones remains unresolved.

As outlined in the DPE Biodiversity Certification Fact Sheet No. 3, Biodiversity Certification scheme applications without CN support are discouraged by BCD and certification is unlikely.

### **Community title vs public ownership of conservation lands**

CN assessed the PP's 'net public benefit' including the potential public ownership of the proposed C2 Environmental Conservation zoned land and the HRP's Objective 6. Consistent with the 'avoid, minimise and offset' hierarchy, CN's preference is to have the proposed C2 Environmental Conservation zoned lands dedicated as public lands. Such lands would be subject to an assessment for dedication considering maintenance cost, risks to public safety, contamination, titling and the like to determine if the asset is suitable.

The PP does not include details on any proposed biodiversity conservation mechanisms. CN have general concerns with natural areas managed under community title for biodiversity values relating to weed infestation, canopy loss, trail and watercourse erosion. Public ownership is preferred for conserving the environmental values of this site in perpetuity.

### **Dwelling yield and Infrastructure needs**

The HRP identifies the site's C4 Environmental Living zone as within a Hunter UDP area (page 94). Further, the land is within the *National Pinch Point regionally significant growth area*. The HRP identifies regionally significant growth areas as those underpinning the ability to meet the regional plan's vision and objectives over the plan's life. The adopted version of HRP was not considered by the planning panel as part of the rezoning review.

The HRP's implied dwelling projections to 2041 include 17,850 dwellings, consistent with CN's LSPS and LHS forecasts. The HRP's Objective 5 plans for nimble neighbourhoods and diverse housing. The number of greenfield dwellings to meet the guidance targets for dwelling projections and housing benchmarks align with CN's dwelling assumptions in CN's Section 7.11 Western Corridor Development Contributions Plan. The contribution plan's *Table 3.1 Expected (planned future) development in the Western Corridor* identifies 110 dwellings, noting the contributions plan does not convey developable rights.

The amended PP is for up to 170 residential lots which exceeds the current infrastructure plan dwelling assumptions. However, the R2 Low Density Residential zone is not restricted to the subdivision of the site, as multi dwelling housing at higher densities could be delivered instead. This could see a doubling of the ultimate dwelling yield which was not considered in the supporting studies or infrastructure demand assumptions.

As a greenfield site, a proposal that exceeds the contribution plans Table 3.1 dwelling assumptions is not essential to CN achieving the HRP Objective 5 guidance for the greenfield and infill development mix and Table 6: Required Dwellings to 2041. The demand for more homes is to be balanced with the creation of great places and the retention of important ecological habitat in accordance with Housing Priority 1 of the LHS. The proposed dwelling yield should be revised and reduced to align with the HRP and CN policies, plans and strategies at 110 total dwellings.

### **Density, housing mix and height of building**

The amended PP for 140 lots proposes a lower density than we would like to see for the efficient use of this land. The Fletcher-Minmi area would benefit from more diverse housing choice given the predominance of single detached dwellings and attached dual occupancies. To align with State and local housing policy and strategy such as the Newcastle Local Housing Strategy's (LHS) Housing Priority 2 and the HRP, CN would like to see greater diversity of housing types.

A higher dwelling density would be supported as the site has access to existing local centres along Minmi Road to the east, and a future local centre zoned along Minmi Road to the west as part of the staged concept approval and subsequent Winten subdivision DA2015/10393. The site is considered an inner suburban context area and should align with optimum density sought via Objective 5 of the HRP, on a dwellings per hectare rate.

CN acknowledge the site's characteristics will influence residential housing delivery. The HRP focus for mid rise housing diversity of up to 4 storeys is reflected in Gateway determination Condition 4 that refers to an increase in building height leading to opportunity to increase the area of the site reserved for conservation. DPE advice (ref: IRF23/12) from Daniel Thompson, Acting Executive Director Local and Regional Planning 10 January 2023 to CN states:

*'Particularly, as this may lead to an overall improvement in public benefit for the community and conservation'.*

The amended PP suggests the R2 Low Density Residential zone could experience infill development after its initial subdivision to achieve desired density. The Fletcher case study put forward is presented for development types of combined subdivision of land from one lot and creation of two Torrens title lots and Dual Occupancy, and Dual Occupancy. This case study put forward as justification for this PP does not show that the optimum density requirement will be achieved. This approach enables a low density outcome that may or may not experience further infill. As subdivision is enduring this is unlikely to meet an efficient use of the land into the longer term. The amended PP promotes that future infill development is likely based on the proposed 450m<sup>2</sup> lot size, whilst promoting detached housing as the most likely outcome. The justification is that the 450m<sup>2</sup> lots could be subdivided further to 200m<sup>2</sup> lots as has occurred in the case study is possible, but uncertain. At 450m<sup>2</sup> lots for the majority of the PP site area, density is calculated at 13 dwellings per hectare in accordance with the HRP and not 22 dwellings as represented in the PP report. The proposed density falls well short of optimum density as outlined in the Gateway determination.

Strategic merit considers planning for development over the planning horizon. Relying on possible future infill development post PP and post development application does not provide for orderly and efficient development of land and is not supported.

CN considers the density minimums of the inner suburban context area of 40 dwellings a hectare achievable through a diversity of lot sizes, typologies and building heights. Planning for a mix of housing typologies at the PP stage provides for more orderly and efficient use of land, meeting the Principles of Planning Priority 12 of the Newcastle Local Strategic Planning Statement (LSPS) and Housing Priority 2 of the Newcastle LHS.

### **Affordable Housing**

CN is committed to increasing the supply of affordable housing. Council's Housing Policy sets an overall affordable housing target of 15 percent across the City aligning with priorities in the Newcastle 2040 Community Strategic Plan (CSP), LSPS and LHS. The PP notes "the supply of additional land for housing provides greater opportunity to increase the supply of affordable rental housing". Without appropriate intervention in the market, the supply of land is unlikely to contribute to the increase of affordable rental housing across the city. The PP is to provide greater detail on how the rezoning will contribute to the supply of affordable rental housing.

## Open space and recreation

Infrastructure needs are to be met in line with CN Section 7.11 Western Corridor Local Infrastructure Contribution Plan. This plan requires local infrastructure including:

- open space and recreation facilities, such as local and district sporting facilities, local parks and playgrounds;
- community facilities, such as multi-purpose community centres; and
- traffic and transport management facilities, such as upgraded roads, intersections, and cycle paths.

Infrastructure contributions are calculated based on the sites expected development of 110 dwellings. As the PP relies on existing infrastructure to service the future community, CN reiterates the importance of reducing the proposed dwelling yield to ensure existing and planned infrastructure can meet future demand. Given the reliance on existing services, greater emphasis on street amenity is required including providing adequate provision for shared paths, connections and street trees throughout.

## Information request items

The proponent is to submit the following for assessment to address the Gateway determination and matters raised in this information request:

### *Urban design*

1. A revised Urban Design Study that guides the proposed changes to Newcastle Local Environmental Plan 2012 (NLEP) and the site specific Development Control Plan (DCP) is to address the following:
  - a. Revised zone boundaries that:
    - i. are informed by the opportunities and constraints of the site
    - ii. demonstrates an appropriate level of avoidance in accordance with the biodiversity mitigation hierarchy.
  - b. Indicative lot sizes and layouts that:
    - i. achieve the density, dwelling yield and typology mix requirements as outlined in this information request below. This may require testing and analysing various scenarios
    - ii. maximise environmental linkages and tree retention.
  - c. Revised access and movement networks that:
    - i. identifies a transport movement hierarchy showing the major circulation routes and connections. Your attention is drawn to previous comments made regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east)
    - ii. promote passive and active recreation through street design.
  - d. Interface principles and transitional building heights
  - e. Planning Panel direction 4.2.1 for locating local open spaces within 400m of dwellings. C2 Environmental Conservation zone land is not considered appropriate as local open space.
  - f. Relocated asset protection zones (APZ) outside of C2 Environmental Conservation zoned land.
2. The Urban Design Study is to address Gateway Condition 4 and investigate appropriate zoning of land area for buildings of 3 to 4 storeys.
3. The Urban Design Study concept masterplan is inconsistent with the Strategic bushfire assessment, MJD Environmental, December 2021. This needs to be resolved.

### *Dwelling yield*

4. To achieve the best planning outcome for the site, CN recommend the PP and associated studies consider a reduced dwelling yield with a maximum of 110 dwellings.

5. Given the NLEP R2 Low Density Residential zone facilitates a range of housing types including residences such as attached dwellings, multi dwelling housing and residential flat buildings, provide details of mechanisms that ensures the delivery of a development yield that aligns with yields planned for as part of any supporting studies.

#### *Density*

6. Evidence of achieving an optimum density for the site; an inner suburban context area of 40 dwellings per hectare will create a vibrant new urban neighbourhood. At present, the PP does not demonstrate how an appropriate minimum density will be achieved to satisfy Condition 4 of the Gateway determination and CN's local planning documents.

#### *Mix of typologies*

7. A mix of typologies through a combination of proposed NLEP amendments and DCP controls that is informed by the Urban Design Study.
8. The site specific DCP is to be amended to include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).

#### *Height of building*

9. Increase the amended PP height of building of 8.5m to up to 4 storeys at appropriate locations across the development footprint area. Have regard to:
  - a. HRP Objective 5 for 3 to 4 storeys adjoining or within walking distance of public open space adjoining the C2 Environmental Conservation zone.
  - b. Planning Panel urban design interface direction with transitioning building heights to a suitable built form and scale adjoining existing residential areas.

#### *Biodiversity*

*Note: Comments raised below cannot yet be complete until CN has a finalised version of the biodiversity certification assessment report (BCAR) once notified by BCD.*

10. The amended PP is to remove approximately 70% of the site's 10.65 ha of the threatened community Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. This does not demonstrate adequate avoidance or minimisation of impacts on this threatened ecological community and other threatened biodiversity matters that have been recorded on the site.
11. The proposed link road between the proposed eastern and western residential zoned precincts would seriously compromise the integrity of the existing forested south-north corridor on the site for all but the most mobile species. It will also act as a threat to many species (including highly mobile species such as Large Forest Owls) from increased risk of vehicle impacts, as well as provide additional edge effects. While the BCAR states this risk as minimal this is not evidenced, including published research to justify this statement. The east to west road between link intersecting the C2 Environmental Conservation zoned land should be removed.
12. The targeted species credit flora species surveys should meet the *NSW Guide to Surveying Threatened Plants and Their Habitats (DPIE), April 2020* in terms of methodology and seasonal requirements, for some species e.g. *Tetratheca juncea* this has not occurred. The required parallel field traverses do not appear to all be parallel and there are some gaps as shown in Figure 4 of the BCAR. We recommend surveys for relevant species be completed in accordance with the guidelines. For *Tetratheca juncea* this should be during the required September-October survey period.
13. The Large-eared Pied Bat (*Chalinolobus dwyeri*) was potentially detected via ultrasonic acoustic survey (Anabat) while the Eastern Cave Bat (*Vespadelus troughtoni*) was probably detected via same method. According to the '*Species credit' threatened bats and their habitats – NSW survey guide for the Biodiversity Assessment Method (OEH, 2018 p.15)* regarding the Large-eared Pied Bat and Eastern Cave Bat: 'Acoustic detectors may be used; however, this method does not allow for reproductive status to



be identified. If acoustic detectors are the only survey method used and the target species is detected, breeding must be assumed and mapped in accordance with Table 2' of the guidelines. While no breeding habitat (caves, overhangs etc) was identified on the site for either species, Table 2 of the guidelines requires that all habitat for each species should also be mapped if present (i.e. including that described in Table 1). Table 1 of the guidelines states that in regard to features to include in species polygon for both species: 'All habitat on the subject land where the subject land is within 2km of caves, scarps, cliffs, rock overhangs and disused mines. Use high resolution aerial imagery and topographic maps to identify potential roost habitat features on the subject land when it is within 2km caves, scarps, cliffs etc. Species polygon boundary should align with Plant Community Types (PCTs) on the subject land the species is associated with (listed in the threatened biodiversity data collection) that are within 2km of identified potential roost habitat features.' The BCAR does not appear to comply with these requirements and does not assume presence of either species although Section 10.1, page 19 of the BCAR states the Large-eared Pied Bat forages on the site .

14. The BCAR does not provide sufficient data on impacts to hollow bearing trees (HBT). For example, a road is proposed close to 27 HBT shown in figure 3 potentially impacting the structural root zone. This impact was not identified or included in the offset requirements at figure 12. The BCAR should include a table of all HBT with sufficient information to justify their impact classification.
15. The BCAR lists several indirect impacts of the PP but does not consider the indirect impacts of increased predation by domestic dogs and cats, garden and other waste dumping, vehicle impacts, increased incidence of illegal fires and removal of vegetation for recreation purposes (cubby houses, informal bike tracks etc).
16. The BCAR incorrectly assumes the PP will have no indirect impact on water quality within drainage line and waterbody identified as Southern Myotis habitat. Indirect impacts of changed hydrology, nitrification, erosion and sedimentation are probable over the long term.
17. Poor weather conditions recorded on some of the survey dates (e.g. 26 November 2019, 23 November 2021, 19 January 2022, 2 February 2022, 22 April 2022, 9 March 2022, 22 April 2022, 25 May 2022, 11 July 2022, 15 July 2022, 28 March 2023) were not conducive to detection of many of the target fauna species.
18. Survey time for Little Eagle (*Hieraaetus morphnoides*) was outside the required survey period in Bionet Threatened Biodiversity Data Collection. Additional surveys within the specified survey period are required.
19. Condition classes assigned to the vegetation zones are inaccurate in some cases. All vegetation zones are assigned a condition of low or moderate, despite some having relatively high vegetation integrity scores. We recommend condition descriptions be updated to better describe the broad condition of the vegetation zones.
20. Consideration of cumulative impacts is required considering cumulative impacts of the proposed certification on the long-term viability of corridors and avoided areas in the context of approved and potential future development in the vicinity of the site.
21. The BCAR states "vegetation within the subject land appears to have been historically cleared for grazing and the harvesting of mine pit props" (MJD, 2023, p. 12). CNs historical aerial photography shows the site as mostly uncleared. Please evidence this statement, including the extent of clearing and location of clearing that occurred.
22. The PP is to be updated to remove reference to the possibility of establishing a Biodiversity Stewardship Agreement over proposed C2 Environmental Conservation land in accordance with the findings of the BCAR (MJD, 2023, p. 95).
23. The PP is to be updated to include further detail on the mechanism for biodiversity conservation for C2 Environmental Conservation zoned land. CN will consider dedication of environmental conservation land including drainage corridors at no cost after subdivision works are done, and where a Vegetation Management Plan has been established and maintained for a specified period to CN's satisfaction. Where CN is not in a position to accept then the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

*Aboriginal cultural heritage*

24. The site is known to contain Aboriginal objects and its location within a cultural landscape (Burragihinbihng – Hexham Swamp) means it is likely to contain further Aboriginal objects yet to be known/discovered. CN agrees with the recommendations of the Heritage Now report of 28 March 2023 for an archaeological test excavation. The testing must be brought forward to ensure it is done before submitting any development application, rather than before construction. This would inform development proposals enabling design changes to facilitate the protection and conservation of Aboriginal objects in-situ, rather than their destruction. If archaeological test excavations cannot be done under the NSW Government's Code of practice for Archaeological Investigation of Aboriginal Objects in NSW 2010 or the proposed activity will result in harm to Aboriginal objects, an Aboriginal Heritage Impact Permit is required from the relevant State Government Authority under the NSW *National Parks & Wildlife Act 1974* prior to commencement of this activity.

*Traffic*

25. Section 4.2 of the Traffic Impact Assessment (TIA) by Stantec describes the PP's 'main access road' in and out of the site as being the road from the north west corner of the site where it is proposed to share an intersection with the approved adjoining development by Winten under DA2015/10393. The TIA seeks to defer investigations of this western access to 'a later stage'. CN do not support this. For the following reasons it should be amended:
- i. The Minmi Rd intersection associated the Winten development is in the last stage of the approved development and timing for the construction of this intersection is unknown.
  - ii. The Winten intersection is 'left in/left' only and cannot readily accommodate traffic coming from the west which will depend on traversing approximately 700m of (yet to be constructed) local roads internal to the Winten development.
  - iii. Eastbound vehicles would need to use the same 700m of internal local roads within the Winten development, exiting to Minmi Rd at the future traffic control signals (a round trip of approximately 1.3km) or turn left onto Minmi Rd at the shared intersection and travel westbound approximately 900m in order to turn around at the roundabout currently under construction by Winten (Stage1), a round trip of approximately 1.8km.
  - iv. Provision of a right turn lane at this western intersection is not feasible without impacting Winten's approved lot layout, approved road upgrades on Minmi Road, and will require further extension to culverts already approved for the Winten development and will adversely impact the existing eastbound transport stop in this location.
26. As previously advised through the PP process, Kingfisher Drive was constructed to permit, if development ever occurred on 505 Minmi Road, a future extension of Kingfisher Drive through to Minmi Road at the existing intersection of Brookfield Avenue (east). Brookfield Avenue has been constructed with allowance for a future single circulating lane roundabout. This existing intersection location should be the primary access point for ingress/egress from the proposed development land for the following reasons and the PP is to be amended to suit:
- i. It provides direct, all direction ingress and egress.
  - ii. It provides for an extension of the existing bus route on Kingfisher Drive without back-tracking to Britannia Boulevard.
  - iii. It negates the need to use the emergency bushfire egress from Kingfisher Drive to Hebrides Road (required to permit Minmi East Stage 1A (by Winten) to proceed).
  - iv. It provides connectivity between the development land and land to the northern side of Minmi Road. The proposed intersection with the Winten development in the new corner of the site then also provides secondary vehicular access and

connectivity to the adjoining estate, and planned recreation and commercial facilities to the west.

27. The TIA is to be amended to reflect:
  - i. The ultimate dwelling yield that is to be achieved through the PP
  - ii. In addition to development sites shown in the TIA's Section 6.6, the assessment is to account for the 100+ additional dwellings yet to be constructed in Stage 10 of the approved Outlook Estate, opposite the site, at 302 Minmi Rd, Fletcher.
28. The TIA is to consider:
  - i. TIA's completed for DA2015/10393 (Minmi East Stage 1B - approved) and DA2018/01351 (Minmi Precincts 3, 4 & 5 – undetermined) for assumptions on background growth, trip generation, trip distribution and required road or intersection upgrades in lieu of making broad assumptions.
  - ii. The CN *Western Corridor Traffic and Transport Study*, prepared by Bitzios, 2019 and used in preparation of the current s7.11 Western Corridor Local Infrastructure Contributions Plan 2013 (2020 update).
29. Proposed pedestrian connectivity from the south west corner of the site would depend on paths and bridging structures not planned for in the adjoining Winten development. To inform pedestrian connectivity further detail on how this is to be achieved is required.

#### *Public Utility Servicing*

30. Update the Infrastructure servicing report prepared by ADW Johnston to account for an ultimate dwelling yield that is to be achieved through the PP.
31. The reference to the Infrastructure servicing report, ADW Johnston, November 2021 on page 6 of the Post Gateway Planning Proposal – Final Report is to be updated to reflect the February 2022 report as referenced elsewhere in the document.

#### *Bushfire*

32. A preliminary assessment of the subject site and surrounds by the Rural Fire Service (RFS) identifies that steeper effective slopes exist beneath the hazard compared to the slopes assessed in the submitted Strategic Bush Fire Study, MJD Environmental, 2021. Due to the significant variation in the effective slopes identified, a revised subdivision layout may be required for the proposed lots to achieve compliance with Planning for Bush Fire Protection (PBP) 2019.
33. The RFS note proposed bush fire asset protection zones are within C2 Environmental Conservation zone land and that perimeter roads are not proposed for each residential lot adjacent to the hazard. This is inconsistent with C2 Environmental Conservation zone objectives and section 4.02.01(2) of the Newcastle Development Control Plan as it will require clearing and impacts on the conservation area and/or will reduce the total area of the proposed conservation zone to accommodate required bushfire protection measures. Amend the PP and supporting strategies accordingly.

#### *Flooding*

34. The submitted Appendix 13 – Flood advice letter, prepared by Northrop dated 22 March 2023 addresses the Ministerial Directions in a general sense without flood modelling. This does not address the Gateway determination's Condition 2, that requires an analysis of the Probable Maximum Flood (PMF) flood event.
35. A detailed flood study is required by an appropriately qualified flood specialist. The study is to include modelling of pre and post-development flow regimes for the following events: 20% Annual Exceedance Probability (AEP), 10% AEP, 5% AEP, 2% AEP, 1% AEP and PMF.
36. Flood modelling results are to include flood levels, depth, velocity, hazard mapping and comparisons of pre-development scenarios and post-development scenarios. Modelling shall be used to demonstrate that the proposed development is suitable for

the site regarding risk to life and property as well as ensure flood levels, velocity and hazard are not made worse for surrounding properties or infrastructure.

37. The flood study should include a section that specifically addresses the Gateway determination, dated December 2022, including addressing the Ministerial direction 4.1 Flooding and Condition 2 of the Gateway, having regards to the modelling results.

#### *Open Space and Recreation*

38. If an outcome is achieved for a reasonable increase in C2 Environmental Conservation lands in the south / west of the site, CN would support a strip of land to the west of the eastern entrance road from Kingfisher Drive becoming multipurpose public managed land. This could be designed to accommodate:
- Landscaped areas such as turf which can be readily managed to meet APZ requirements
  - Well placed stormwater quality treatment assets; dry flood detention assets and associated maintenance access
  - Cycleways
  - Crime Prevention Through Environmental Design (CPTED) compliant pedestrian access
  - Passive and Active Recreation 'managed' open space.
39. The interface between multipurpose land and retained native vegetation on C2 Environmental Conservation land needs careful consideration to reduce the maintenance burden required to protect the environmental values of those lands.

#### *Site specific Development Control Plan*

40. Attachment 3 provides CN comments on the proposed site specific development controls, Barr Planning, 2022. The PP is to be updated to reflect these comments.

#### *Gateway determination*

41. CN's assessment does not consider the amended PP has met Condition 1(a), 1(b), 2, 3 and 4 for the reasons outlined above. These conditions are to be met prior to the PP proceeding to public exhibition.

## **Attachment 2 - Investigate alternative site opportunities**

CN officers continue to be committed to working with you to achieve a suitable planning outcome for the site. We welcome discussion on the following alternative opportunities.

We have not received a Biodiversity Certification scheme referral notice under the *Biodiversity Conservation Act 2016* (BC Act). We are likely to need to provide comment on biodiversity matters once we have. Based on the information available now post Gateway determination on biodiversity, CN suggests the proponent investigate other opportunities e.g. providing the site as a National Park (by requesting the NSW Government to include it as part of the National Park Estate).

The contributions plan (which does not convey developable rights) as outlined by the Planning Panel identifies residential development assumptions of 110 dwellings appropriate in the context of infrastructure servicing, but subject to all other matters of planning consideration. This yield could achieve the inner suburban context area minimum density target potentially using residential typologies up to four storeys, with suitable building height transitions to the site edges.

A focus on this dwelling yield and density may support efforts towards avoiding and minimising the impacts to biodiversity. Denser more appropriately located development could limit edge effects, avoid habitat fragmentation for biodiversity corridors and water courses of the Blue and Green Grids.

The amended PP includes residential in the northeast portion of the site, subject to CN Biodiversity Certification scheme assessment. This location facilitates the bus collector connection. NLEP amendments to clauses and maps could potentially facilitate and accomplish this approach.


### **Attachment 3 – CN comment on Site specific development controls, Barr Planning, 2022**

The PP seeks to amend the Urban Release Areas map to include the proposed residential component of the subject land as an urban release area. Clause 8.3 of the Newcastle Local Environmental Plan 2012 (NLEP) states:

#### **8.3 Development control plan**

- 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.*
- 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.*
- 3) *The development control plan must provide for all of the following—*
  - a. *a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
  - b. *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
  - c. *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
  - d. *a network of active and passive recreation areas,*
  - e. *stormwater and water quality management controls,*
  - 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,*
  - g. *detailed urban design controls for significant development sites,*
  - h. *measures to encourage higher density living around transport, open space and service nodes,*
  - i. *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
  - j. *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*
- 4) *Subclause (2) does not apply to any of the following developments—*
  - a. *a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
  - b. *a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,*
  - c. *a subdivision of land in a zone in which the erection of structures is prohibited,*
  - d. *proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

The following assessment is based on the submitted PP and masterplan. This assessment should be used as a guide to assist in the development of a more refined site specific DCP. The site specific DCP is to be guided by the Urban Design Study and supporting documentation. CN advises the objectives and controls suggested as part of this assessment be considered and included where relevant following the revised Urban Design Study.

Proposed DCP Chapter	CN Comments
<p>Land to which this section applies</p> <p>This section applies to all land within the heavy line marked on Map 1 – 505 Minmi Road</p>  <p><i>Map 1: 505 Minmi Road</i></p>	<ul style="list-style-type: none"> <li>- Mapping to be updated to remove reference to zones.</li> <li>- The proponent should consider if a staging plan is required, and if so, clearly identify proposed stages.</li> </ul>
<p>Development (type/s) to which this section applies</p> <p>This section applies to all development within Minmi requiring development consent. The primary purpose is to guide development for the purposes of subdivision (and associated works) on the site, and to also provide guidance for other development types permissible on this land</p>	<ul style="list-style-type: none"> <li>- This section should be consistent with DCP chapters that apply to surrounding urban release areas</li> </ul>

### Related sections

The following sections of this DCP will also apply to development to which this section applies:

- Any applicable land use specific provision under Part 3.00
  - o *Note: Any inconsistency between the locality specific provision and a land use specific provision, the locality specific provision will prevail to the extent of the inconsistency.*
- 4.02 Bush Fire Protection – within mapped bushfire area/zone
- 4.03 Mine Subsidence – within mine subsidence area
- 5.01 Soil Management – works resulting in any disturbance of soil and/or cut and fill.
- 5.02 Land Contamination – land on register/where risk from previous use
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks – where new roads, pedestrian or cycle paths are required.
- 7.05 Energy Efficiency
- 7.07 Water Efficiency
- 7.08 Waste Management.

The following sections of this DCP **may** also apply to development to which this section applies:

- 4.04 Safety and Security – development with - accessibility to general public, access to laneways, communal areas, or residential with three or more dwellings
- 4.05 Social Impact – where required under ‘Social Impact Assessment Policy for Development Applications’, 1999
- 5.03 Vegetation Management – trees within 5m of a development footprint or those trees likely to be affected by a development.
- 5.04 Aboriginal Heritage – known/likely Aboriginal heritage item/site and/or potential soil disturbance.
- 5.05 Heritage Items – known heritage item or in proximity to a heritage item.
- 5.06 Archaeological Management – known/likely archaeological site or potential soil disturbance

- Related sections of the current DCP must be included



Additional information

- ~~— Urban Design Study — 505 Minmi Road, Fletcher (Moir Landscape Architects, 2024) - Amend~~
- ~~— Strategic Bushfire Study — 505 Minmi Road, Fletcher (MJD Environmental, 2024) - Amend~~

- These documents contain indicative road and lot layouts that need to be revised and provided.

Strategic overview

~~The site is situated on the southern side of Minmi Road opposite existing residential development to the north, and immediately adjoining existing residential development to the east and proposed residential development to the west. A corridor of conservation zoned land separates the site from residential land to the southeast and the Summerhill Waste Management Centre to the south. Future development of the site will be clustered into an Eastern and Western precinct, connected by a local road. Development will be screened from Minmi Road by retention of a vegetated buffer area. A large area centrally located within the site will be rehabilitated and maintained as a conservation area.~~

- This section needs to be revised as this is not a strategic overview it is a site context description. The strategic overview should provide a synopsis of the site's strategic merit as an urban release area.
- Strategic overview is not to contain reference to Community title

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9.00 - Glossary of this plan.

- If applicable, please include definitions of any other words and expressions referred to within this section that has not otherwise been defined in the NLEP or within Part 9.00 – Glossary of the current DCP

#### Aims of this section

1. To ensure urban release land is developed to maximises the efficiency of existing infrastructure.
2. To ensure urban release land is developed to achieve optimal density and diversity of housing typologies.
3. To ensure that development of the site occurs in a manner which is sensitive to the environmental characteristics of the site and surrounding land uses.
4. To ensure the ongoing management of C2 Environmental Land is achieved by incorporating best practice environmental management and water sensitive urban design methods.
5. To ensure that the development of the site is integrated into the local road network.
6. To provide attractive streetscapes which promote passive and active recreation.
7. To provide a visual landscaped buffer along Minmi Road.

- Please outline the aims of this section, noting CN's suggestions.

#### Indicative lot and building typologies plan

##### **Objective**

1. To achieve the desired inner suburban dwelling density of 40 dwellings/ha
2. To achieve a diversity of housing types

##### **Controls**

- Please include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).
- Controls are to be informed by the Urban Design Study

## Access and movement network

### Objective

1. Ensure the subdivision is designed to integrate with surrounding residential development and makes efficient use of existing road networks.
2. Neighbourhood streets are designed to prioritise pedestrians and promote active and passive recreation.

### Controls

C1. Subdivision layout is to incorporate a collector road extending Kingfisher Drive to the intersection at Minmi Rd/ Brookfield Avenue (east).

C2. Subdivision works are to include road upgrades for access including a roundabout at the Intersection at Minmi Rd/ Brookfield Avenue (east), and kerb, gutter and footpath extension from existing infrastructure adjacent to 311 Minmi Road.

C3. The new roundabout at the intersection of Minmi Road and Kingfisher Drive is to incorporate pedestrian and cycle facilities.

C4. All proposed future lots are to be serviced by internal roads. No driveway access points are permitted onto Minmi Road.

C5. Roads are to be designed to provide adequate provision for shared paths, connections and street trees.

C6. A continuous footpath is provided within the APZ along the perimeter of the central conservation area.

Performance Outcome	Benchmark Solution
Avoid or minimise new intersections onto Minmi Road	<ol style="list-style-type: none"> <li>1. Vehicular access to the Eastern precinct is obtained via Kingfisher Drive.</li> <li>2. Vehicular access to the Western residential precinct is obtained from Minmi Road utilising an intersection shared with the adjoining approved subdivision.</li> </ol>

- Please provide a transport movement hierarchy showing major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists in accordance with 8.3(3)(b) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Note previous comments regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east) intersection which has been designed with allowance for a 4-leg, single-lane roundabout. Kingfisher Drive was designed to allow a bus route and services (after having passed through 505 Minmi Rd) to continue onto Brookfield Avenue and service the 'Outlook Estate' on the northern side of Minmi Rd.
- The proposed access to Minmi Road on the western boundary of the site is not supported given the proximity to the approved left in/left out intersection and other upgrade works on Minmi Road, as required under the approved Minmi East Stage 1B development (DA2015/10393)

Provide traffic permeability within the site	Subdivision of the site includes a connecting road between the Eastern and Western residential precincts.
Development minimises visual impacts on Minmi Road	A minimum 10 metre wide strip of land is retained as a vegetation buffer between Minmi Road and residential allotments within the Eastern precinct. (This buffer strip would form part of community association land).

## Landscaping

### Objective

1. To ensure the new development respects and enhances the local character and amenity.
2. Ensure significant landscape elements are retained and protected.
3. Ensure the visual amenity is maintained to nearby residential development.

### Controls

C1. A Minimum 10-metre-wide strip of native vegetation land fronting Minmi Road is to be retained to maintain the landscape character and local amenity. Existing mature native vegetation is to be prioritised for retention.

C2. Streetscape elements utilise regional materiality such as sandstone, hardwood and steel and are detailed in the landscape plan. These elements will weave through the entry signage, fencing, street tree planting, furniture elements, paving and wayfinding signage to create a site wide character that integrates within and reflects the surrounding landscape and character.

- Please provide site specific landscaping controls in accordance with 8.3(3)(c) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Landscape presentation to Minmi Road is a direction of the Planning Panel RR-2021-70.

## Biodiversity

### Objective

1. To preserve and enhance the biodiversity values of C2 Environmental Conservation lands adjoining the residential zoned land.

### Controls

C1. A Vegetation Management Plan (VMP) is to be prepared by a suitably qualified person for approval. The VMP shall be prepared in accordance with CN's specifications and include, but not be limited to, the following:

- a. Meets the Urban Forest Policy goals and objectives
- b. A site assessment detailing vegetation communities present and management objective for the vegetation
- c. Management zones including bushfire asset protection zones.
- d. Site management including weed management, bushfire asset protection zone management and bush regeneration activities.
- e. Hydrological characteristics and flood probability for riparian areas and downstream wetlands
- f. Location of stormwater detention structures or water –sensitive urban design works
- g. Full list of existing plant species for revegetation work
- h. Maintenance periods and timeframe for implementation of the VMP
- i. Monitoring, performance criteria and reporting for the VMP.

C2. Roads resulting in fragmentation of conservation land will not be supported.

C3. Road batters are not to encroach into C2 Environmental Conservation land.

C4. An Urban Interface Area (UIA) will be required for on land that contains and/or adjoins significant vegetation.

C5. CN will consider dedication of environmental conservation land and drainage corridor at no cost after the subdivision works have been carried out and the VMP established and maintained for a specified period of time to CN's satisfaction. CN may not accept the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

- A UIA is a buffer to minimise both biotic (impacts of drainage infrastructure, weed invasion, nutrient increase etc.) and abiotic (noise, wind, dust, light, litter etc.) edge effects on land adjoining a proposed development site, thereby mitigating environmental impacts. Please include plan and section drawing in this section that illustrates how the UIA will be achieved.
- The VMP is to include on-going maintenance and management of the UIA.
- The VMP is to address ongoing land ownership and how this land will be managed in perpetuity.
- Walking trails are not appropriate within the C2 Conservation zone without confirmation from BCD.
- Roads resulting in further fragmentation of the biodiversity corridor are not supported.

## Open space

**Objective**

1. Development provides passive and active recreation opportunities.

**Controls**

C1. Open space for the purpose of passive and active recreation is to be located entirely within residential zoned land.

<b>Performance Outcome</b>	<b>Benchmark Solution</b>
<del>Subdivision allows safe and convenient pedestrian/cycle access to Minmi Road</del>	A straight inter-allotment shared pathway is provided in the north-east corner of the Eastern precinct linking to the existing footpath adjacent 344 Minmi Road, Fletcher
<del>Convenient pedestrian access is provided to the proposed neighbourhood centre and local park on Minmi to the west of the site</del>	A pathway is provided from the south west corner of the Western precinct across the open space and creek line to the west and linking to the proposed perimeter road within the Winton development
<del>Proposed community association land provides opportunity for recreation.</del>	<ul style="list-style-type: none"> <li>— A continuous footpath is provided within the APZ along the perimeter of the central conservation area.</li> <li>— Walking trails are provided within conservation zoned land.</li> </ul>

- Walking trails are not appropriate within the C2 Environmental Conservation zone without support from BCD.
- Should BCD support walking trails through C2 land, they should be limited in number, width and aligned to reduce habitat fragmentation and track erosion.
- Controls relating to shared paths or movement are more appropriately listed under access and movement networks.

## Bush fire protection

### Objective

1. Ensure risks associated with bush fire, including projected increase in the occurrence and severity of hazards as a result of climate change, are appropriately and successfully managed through effective and innovative design, as well as in connection with the preservation of the ecological values of the site and adjoining lands.

### Controls

C1. All bushfire Asset Protection Zones are to be located outside C2 Environmental Conservation Zones

C2. Road batters within Asset Protection Zones need to be configured so their grade and length supports ready maintenance and reduces weed ingress into C2 Environmental Conservation land.

Performance Outcome	Benchmark Solution
<b>All residential allotments achieve a Bushfire Attack Level (BAL) rating of BAL 29 or less.</b>	Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.
<b>Perimeter roads are provided at all interfaces with bushfire prone vegetation</b>	Subdivision of the site includes perimeter roads along the western and southern extent of the Eastern precinct and along the eastern and southern extent of the Western precinct.



Stormwater and water quality management

**Objective**

1. To provide direction with regard to CN’s requirements for the management of both the quality and quantity of stormwater runoff.

**Controls**

- C1. Proposed site discharge points to waterways consider site acceptance criteria for CN’s Standard Rock Outlet for Headwalls.
- C2. Water-sensitive urban design elements are incorporated into the subdivision, utilising land within Asset Protection Zones where possible and is not included in C2 Conservation zoned land

- Please provide site specific provisions for stormwater and water quality management in accordance with 8.3(3)(e) of the NLEP

Aboriginal cultural heritage

**Objective**

1. Manage Aboriginal cultural heritage values to ensure enduring conservation outcomes.
2. Preserve known Aboriginal cultural heritage sites.

**Controls**

- C1. Development will identify any areas of Aboriginal cultural heritage value that are within or adjoining the area of the proposed development, including any areas within the development site that will be retained and protected (and identify the management protocols for these).
- C2. Development is to be carried out in accordance with the recommendations of <insert> report.

- Required as outlined in this information request.

Environmental conservation and landscape character

**Objective**

- Development of the site is consistent with the surrounding landscape character
- Development of the site achieves long term biodiversity conservation outcomes

<b>Performance Outcome</b>	<b>Benchmark Solution</b>
<del>Landscaping makes a positive contribution to the surrounding landscape character</del>	<del>Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.</del>
<del>Stormwater is managed in a way that improves environmental and amenity outcomes</del>	<del>Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation</del>
<del>Land zoned for environmental conservation is managed in perpetuity such that the biodiversity values of the land are protected</del>	<del>Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation</del>
<del>Road design facilitates habitat connectivity for local native species</del>	<del>The connecting road between the Eastern and Western precincts is designed in consultation with a qualified ecologist to provide fauna crossing opportunities through retention of canopy trees either side of the road where possible and using supplementary planting.</del>

- These controls are more appropriately captured elsewhere in this section or do not satisfy the direction of this information request letter.



Your ref: PP-2021-2262  
Our ref: DOC23/35422

Andrew Donald  
Barr Property and Planning  
92 Young Street  
Carrington, NSW 2294

Dear Andrew

**505 Minmi Road, Fletcher Planning Proposal (PP-2021-2262)**

I refer to the Planning Proposal for 505 Minmi Road, Fletcher submitted on 18 January 2023. The proposal relates to the rezoning of Lot 23 DP 1244350 under the Newcastle Local Environment Plan 2012 (NLEP 2012). The proposal seeks to rezone approximately 26.2 hectares (ha) of E4 Environmental Living to a combination of R2 Low Density Residential and C2 Environmental Conservation.

Biodiversity and Conservation Division (BCD) has reviewed the planning proposal, dated January 2020 and the Biodiversity Inventory Reports (BIR), dated January 2020 and December 2021.

BCD recommendations are provided in **Attachment A** and detailed comments are provided in **Attachment B**. If you have any further questions about this issue, please contact Steven Crick, Senior Team Leader Planning on [REDACTED] or at [huntercentralcoast@environment.nsw.gov.au](mailto:huntercentralcoast@environment.nsw.gov.au)

Yours sincerely

**LUCAS GRENADIER**  
A/Director  
Hunter Central Coast Branch  
**Biodiversity and Conservation Division**

15 February 2023

Enclosure: Attachments A and B



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## BCD's recommendations

### Planning Proposal for 505 Minmi Road, Fletcher

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1. The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.
2. The planning proposal should be amended to be consistent with BIR dated December 2021.
3. The planning proposal should display further avoidance of *Biodiversity Conservation Act 2016* (BC Act) listed endangered ecological community (EEC) *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*.
4. Provide adequate justification in accordance with the determination made by the Threatened Species Committee to exclude BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment.
5. All threatened species surveys should be conducted in accordance with relevant guidelines and Threatened Biodiversity Data Collection (TBDC). Justification must be provided for excluding species from targeted survey efforts.
6. Additional evidence such as photography or genetic report required to confirm presence of sugar glider (*Petaurus breviceps*) and absence of squirrel glider (*Petaurus norfolcensis*).
7. Further information should be provided regarding habitat features in accordance with section 3 and section 4 of BAM 2020.
8. It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of BAM 2020.
9. The proposed C2 zone should be protected and managed through a secondary mechanism such as a Biodiversity Stewardship Agreement.
10. The proponent has not demonstrated that the proposal is consistent with Ministerial Direction No.4.3(5) Flood Prone Land

## BCD's detailed comments

### Planning Proposal for 505 Minmi Road, Fletcher

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#### Biodiversity

#### 1. The planning proposal is inconsistent with Section 9.1 Ministerial Direction 3.1

Ministerial Direction 3.1 (1) issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* requires that a planning proposal include provisions that facilitate the protection and conservation of environmentally sensitive areas. This direction applies to all relevant planning authorities when preparing a planning proposal. The ecological assessment is incomplete; however, does identify High Environmental Values (HEV) on site, including:

- *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* Endangered Ecological Community (EEC)
- 45 Hollow-bearing Trees
- *Myotis macropus* habitat

The planning proposal is inconsistent with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation. Furthermore, land identified as *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* EEC is proposed to be rezoned as R2.

#### Recommendation 1

The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.

#### 2. The planning proposal is not consistent with the most current Biodiversity Inventory Report

On February 2022, Department of Planning and Environment (DPE) received the BIR dated December 2021, which includes Biodiversity Assessment Method 2020 (BAM 2020) amendments and additional survey effort conducted in 2021. Appendix E of the Planning Proposal includes the BIR dated January 2020 and does not include BAM 2020 amendments or additional survey effort conducted in 2021.

#### Recommendation 2

The planning proposal should be amended to be consistent with the BIR dated December 2021.

#### 3. Avoidance of BC Act listed endangered ecological community (EEC) *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*

The planning proposal would result in the removal of up to 11.77 ha of *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions* EEC. Pursuant to section 6.4(1) of the BC Act, the applicant must firstly demonstrate appropriate and sufficient steps have been taken to avoid or minimise impacts to areas with vegetation mapped with

biodiversity values, and only then if satisfied, the relevant biodiversity conservation measures should be considered to offset or compensate any impacts such as from clearing.

The planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. In order to adhere to the BC Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.

### Recommendation 3

The planning proposal should display further avoidance of BC Act listed EEC *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*.

#### 4. Additional information is required to exclude BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment

The BIR identifies PCT 1589: *Spotted Gum – Broad-leaved Mahogany – Grey Gum grass – shrub open forest on Coastal Lowlands of the Central Coast* within the proposal site. BioNet Vegetation Classification indicates PCT 1589 is commensurate with *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* EEC. However, section 4.2 of the BIR states the PCT is not a threatened ecological community (TEC).

An assessor must consider information in the final determination made by the NSW Threatened Species Scientific Committee, and either list or exclude the TEC from the site. The determination for this ecological community states:

*The ecological community has been recorded from the local government areas of Pittwater and Gosford, within the Sydney Basin Bioregion, and may occur elsewhere in the Bioregion.*

### Recommendation 4

The BIR should provide adequate justification in accordance with the determination made by the Threatened Species Committee for the exclusion of the BC Act Listed EEC *Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion* from assessment.

#### 5. Additional information is required to demonstrate compliance with threatened species target survey requirements

Section 1.3 of the BIR prepared by MJD dated December 2021 states the BIR is updated to address the BCD letter dated 10 September 2019 which recommends that an assessment under Stage 1 and Stage 2 of the BAM should be undertaken for planning proposals that are likely to result in biodiversity impacts. This requires all threatened species assumed moderate or likely to occur within the proposal site to be surveyed as per relevant guidelines and the Threatened Biodiversity Data Collection (TBDC). Sufficient evidence should be provided within the assessment to demonstrate compliance with relevant guideline and the TBDC, including dates, timing and weather conditions. It is recommended additional information is provided or additional surveys are conducted for the following species:

- brush-tailed phascogale (*Phascogale tapoatafa*)
- common planigale (*Planigale maculata*)
- koala (*Phascolarctos cinereus*)
- powerful owl (*Ninox strenua*) (breeding)
- masked owl (*Tyto novaehollandiae*) (breeding)

- gang-gang cockatoo (*Callocephalon fimbriatum*) (breeding)
- glossy black-cocktaoo (*Calyptorhynchus lathami*) (breeding)
- pale-headed snake (*Hoplocephalus bitorquatus*)
- green and golden bell frog (*Litoria aurea*)

Evidence-based justification as per section 5.2.3 (2) of BAM 2020 is required to exclude species from targeted survey. Additional information to support exclusion of the following species is required:

- leafless tongue orchid (*Cryptostylis hunteriana*)
- rough doubletail (*Diuris praecox*)
- pokolbin mallee (*Eucalyptus pumila*)
- grove's paperbark (*Melaleuca groveana*)
- singleton mint bush (*Prostanthera cineolifera*)
- wallum froglet (*Crinia tinnula*)
- green-thigh frog (*Litoria brevipalmata*)
- mahony's toadlet (*Uperoleia mahonyi*)

#### Recommendation 5

The BIR should be consistent with the requirements of the BAM Threatened species surveys should be conducted in accordance with relevant guidelines and TBDC. Justification must be provided for excluding species from targeted survey efforts.

#### 6. Additional evidence required to differentiate sugar glider (*Petaurus breviceps*) and squirrel glider (*Petaurus norfolcensis*)

The BIR identifies the sugar glider on site. Sugar gliders (*Petaurus breviceps*) and squirrel gliders (*Petaurus norfolcensis*) are similar in appearance and can be difficult to distinguish between. Due to numerous records of squirrel glider (*Petaurus norfolcensis*) within and adjacent to the proposal site, further information is required to confidentially establish absence of squirrel glider (*Petaurus norfolcensis*) on site. Data such as photographs displaying scale or genetics should be included as an appendix. If evidence cannot be provided, it is recommended squirrel glider (*Petaurus norfolcensis*) presence is assumed and the BIR adjusted accordingly.

#### Recommendation 6

Additional evidence such as photography or genetic report should be provided to confirm presence of sugar glider (*Petaurus breviceps*) and absence of squirrel glider (*Petaurus norfolcensis*).

#### 7. Provide further information should be provided for habitat features

Section 3.1.3 of the BAM 2020 requires the assessor to identify and map the following:

- rivers, streams, estuaries and wetlands



- karst, caves, crevices, cliffs, rocks and other geological features of significance
- connectivity of different areas of habitat

The BIR mentions rocky outcrops, however, does not provide mapped locations or photographs of the outcrops. The BIR should be amended to be consistent with *BAM 2020* requirements.

Section 4.3.4 (9) of *BAM 2020* requires the assessor to provide specifics such as dimensions and height above ground during a hollow-bearing tree assessment. It is recommended hollow-bearing tree data and labelled figure displaying location of hollow-bearing trees are included as an appendix.

### Recommendation 7

Further information should be provided in the BIR regarding habitat features in accordance with section 3 and section 4 of *BAM 2020*.

## 8. Impacts to habitat connectivity should be considered

Large intact bushland exists to the north and south of the proposal site. Vegetation within the east and west of the proposal site form part of a corridor.

Section 1.4 of the Biodiversity Conservation Regulation 2017 (BC Regulation) notes habitat connectivity as a prescribed additional biodiversity impact. For all proposals, prescribed impacts must be assessed as per clause 1.6 of the *BC Regulation*.

It is recommended that the assessment considers impacts to connectivity as per section 6.1.3 and section 8.2 of *BAM 2020*.

### Recommendation 8

It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of *BAM 2020*.

## 9. Additional security should be provided to proposed C2 Environmental Conservation Zone

The BIR states proposed C2 land will be conserved as a corridor, however, the planning proposal marks this zone as a conservation/open space which will include:

*Innovative ways can be incorporated into the use of the land, to be retained within the site as open space, by the owners of individual residential lots for maintenance and embellishment of this area of land and also for permissible recreation and associated purposes for the future residents of the site.*

A conservation corridor cannot serve as recreational space for landowners. The planning proposal does not provide for protection of the corridor or another mechanism which would ensure it is appropriately protected or managed. A second mechanism such as a Biodiversity Stewardship Agreement will be required to ensure the proposed C2 zone is managed in perpetuity for conservation.

### Recommendation 9

The proposed C2 zone should be protected and managed through a secondary mechanism such as a Biodiversity Stewardship Agreement.

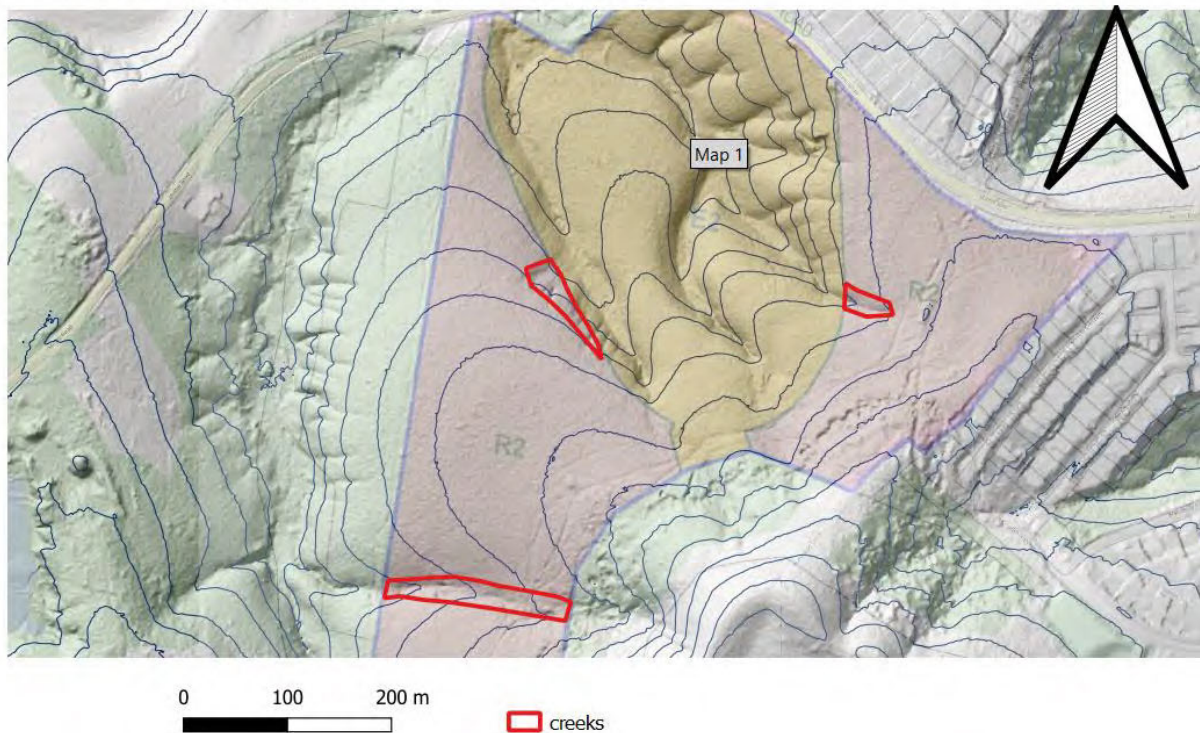
## Flooding and flood risk

10. The proponent has not demonstrated that the proposal is consistent with Ministerial Direction No.4.3(5) Flood Prone Land

The rezoning proposal has not satisfactorily demonstrated consistency with the 9.1 Ministerial Directions on flooding.

Ministerial Direction No. 4.3(5) Flood Prone Land, issued in July 2021 under section 9.1(2), of the *Environmental Planning and Assessment Act 1979* states that land must not be rezoned from Recreation, Rural, Special Purpose or Environmental Protection Zones to Residential uses if it is within the flood planning area.

Creeks within the Proposed Residential Rezoning Extents



Local catchment flooding has not been assessed by the proponent. The site's topography shows several creek lines within the proposed R2 Residential rezoning extents. However, the flood planning area (which is typically 500mm above the 1% AEP flood level) for these creek lines has not been assessed.

### Recommendation 10

BCD recommends that the proponent assesses local catchment flooding to determine the extents of the current flood planning area. And the proposed C2 Environmental Conservation zoning is extended to include all area below the flood planning level.



DOC24/362098-5

Jonathon Christie  
Newcastle City Council

Via email: [REDACTED]

27 May 2024

**EPA response – Gateway Determination of Planning Proposal  
Proposed rezoning at 505 Minmi Road Fletcher (PP-2021-2262)**

Dear Mr Christie,

The NSW Environment Protection Authority (EPA) would like to thank Newcastle City Council (Council) for providing us the opportunity to comment on the draft planning proposal to amend Newcastle Local Environment Plan 2012 (NLEP 2012) (Proposal).

The EPA understand that the Proposal is in the latter stages of the planning process, however our feedback on this, and similar planning proposals within the vicinity of Summerhill Waste Management Centre (SWMC), has not been previously sought. We are interested in this proposal because we regulate SWMC under environment protection licence 5897 (EPL 5897) for the activities of landfilling and resource recovery of waste.

The EPA understands the Proposal is for the rezoning of land from C4 environmental living to R2 low density residential and C2 environmental conservation zone at 505 Minmi Road, Fletcher NSW 2287. If approved, it would enable the development of approximately 150 residential dwellings.

From our review, the Proposal:

- will locate residential receivers in proximity to SWMC, a landfill and resource recovery facility managed by Newcastle City Council (Council) and regulated by the EPA under (EPL 5897). This facility generates odour, sub-surface landfill gas, noise and air emissions.
- did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

SWMC provides an important waste management service for the community of Newcastle. Waste management facilities like SWMC emit odour, sub-surface gas, noise and air emissions. Controls are used to mitigate these issues, but even with these in place, it can be difficult to prevent adverse impacts beyond the boundary. Thus, locating residential receivers in close proximity to SWMC may lead to community complaint, increase regulatory oversight and pressure on the operator of SWMC to mitigate adverse impacts.

The EPA has considered details of the Proposal as provided by the proponent and include comments, including recommended actions and studies for Newcastle City Council (Council) to consider on odour, air, noise, water and contaminated land, in **Attachment A**.

Additionally, the EPA acknowledges the Traditional Custodians of Fletcher, the Awabakal people. We encourage meaningful engagement with the Aboriginal community in developing and

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(from outside NSW)

NSW 2124 Australia

NSW 2150 Australia

implementing the proposed amendment to the NLEP 2012. The Proposal would be strengthened by considering ways to achieve this in greater detail.

If you have any further questions about this issue, please contact Kim Stuart, Senior Environmental Planning & Assessment Officer, Strategic Planning Unit on [REDACTED] or email [environmentprotection.planning@epa.nsw.gov.au](mailto:environmentprotection.planning@epa.nsw.gov.au).

Yours sincerely

[REDACTED]  
**JACQUELINE INGHAM**  
Unit Head  
Strategic Planning Unit

## Attachment A

### Land use conflict and required studies

The Hunter Regional Plan 2041 (Regional Plan) is a 20-year land use plan consisting of 9 objectives with associated performance outcomes to ensure planning proposals for the Hunter region appropriately consider and manage growth.

Strategy 1.5 under performance outcome 5 of Objective 1 of the Regional Plan states that local strategic planning should consider existing waste management centres and ensure sensitive land uses do not encroach on these areas or limit their future expansion.

The Proposal acknowledged that SWMC was within the broader vicinity of the proposed residential development but considered Objective 1 of the Regional Plan did not apply because:

- of its distance from the proposed residential development; and
- the strict environmental controls that it operates under.

As such, noise, air and odour assessments were not undertaken nor were the risks associated with the sub-surface gas generated by SWMC considered within the contamination assessment.

From our review, the proposed residential development will be located within approximately 140 metres of the boundary of SWMC. Table 1 of NSW Department of Planning and Environment's EIS Practice Guideline: Landfilling (1996) (EIS Guideline) states that locating residential development within 250 metres of a landfill boundary is inappropriate. This is a position supported by the EPA and referred to within EPA's Environmental Guidelines, Solid waste landfills (second edition, 2016) (Landfill Guideline).

Locating sensitive receivers close to landfills, can result in impacts to amenity and cause land use conflict. Addressing impacts retrospectively following development can be challenging, expensive and lead to community complaints.

To consider the impacts from existing land uses (such as SWMC) and inform appropriate land use, transitional zonings, buffer distances and design choices, the EPA recommends the following actions and studies be undertaken by the proponent:

#### 1. Land uses be informed by current and future operations of the SWMC

The proponent should consult with the section within Council responsible for managing SWMC about current and proposed operations at the landfill and demonstrate how this has been considered in the proposed land uses.

#### 2. Noise and vibration assessment

A noise and vibration assessment should be prepared in accordance with the NSW Noise Policy for Industry (EPA, 2017).

#### 3. Air quality and impact assessments

Air quality and odour impact assessments should be prepared in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA 2022) and Technical framework: Assessment and management of odour from stationary sources in NSW (DEC, 2003). The air quality and odour impact assessments should include:

- an air and odour dispersion modelling to predict any potential air quality and odour impacts.
- odour surveys to evaluate and ground truth the results of the air and odour modelling.
- the results of the odour surveys and air and odour modelling to identify air quality mitigation measures that can be applied to prevent and manage air and odour related land-use conflicts.

#### 4. An updated contaminated land assessment

The EPA understands that a preliminary contamination assessment completed for the Proposal found that it would be suitable for residential development. However, the assessment is over 10 years old, and it did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

SWMC is a large putrescible and non-putrescible landfill located within approximately 140 metres of the Proposal area. The facility's putrescible landfill cells are located over 1 kilometre southeast of the Proposal area, and a capped construction and demolition landfill cell is located within approximately 300 metres.

Subsurface gas monitoring results from the capped construction and demolition landfill cell dated from February 2024 showed elevated levels of carbon dioxide ranging from 9.5% to 13.7%. Council has advised that the capped cell was previously subjected to coal mining and the presence of sub-surface gases are from coal seam sources not the landfill. Regardless of the source of the gas, carbon dioxide is an asphyxiant and a toxic gas that is significantly denser than air. Toxic effects may become noticeable at 2% v/v and severe at 5% v/v, so further consideration of carbon dioxide is required prior to rezoning.

Given the proximity to the landfill, including this capped construction and demolition landfill cell, the EPA recommends that, prior to finalising a decision on the proposed rezoning, Council require the Proponent to submit an updated preliminary site investigation (PSI) for contamination which covers the entire Proposal area. The PSI should:

- consider the presence of SWMC and any mine workings in the area and investigate any risks associated with hazardous sub-surface gas at the Proposal area.
- consider any recent activities that may have impacted the Proposal area (including illegal dumping or migration of contaminants from adjacent sites).
- be drafted in accordance with the *Consultants reporting on contaminated land - Contaminated Land Guidelines* (EPA, 2020) and other relevant guidelines made or approved by the EPA under section 105 of the *Contaminated Land Management Act* (CLM Act).
- be written by, or reviewed and approved by, a consultant certified by either the Environment Institute of Australia and New Zealand Certified Environmental Practitioner (Site Contamination) (CEnvP (SC)) or Soil Science Australia - Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) schemes.

We note that under the Newcastle Development Control Plan 2012, The Technical Manual Contaminated Land Management for Newcastle City Council, and any relevant updated documents, Council may consider the engagement of an auditor, should the findings of the PSI indicate that there is sufficient contamination risk to warrant a Detailed Site Investigation and a site audit.

Other considerations:

- for future development applications, Council should ensure that the processes outlined in the State Environmental Planning Policy (Resilience and Hazards) 2021 are followed to assess the suitability of the land and any remediation required in relation to the proposed use.
- persons undertaking development on the Proposal area must ensure that any development does not result in a change of risk in relation to any pre-existing contamination at the Proposal area so as to result in significant contamination (note that this would render the Applicant the 'person responsible' for the contamination under section 6(2) of the CLM Act).
- the EPA should be notified under section 60 of the CLM Act for any contamination identified which meets the triggers in the *Guidelines for the Duty to Report Contamination* (EPA, 2015).

## 5. Water management strategy

Stormwater discharges from areas of increased residential density have the potential to impact on local surface water and groundwater quality. A water management strategy should be prepared for the Proposal to:

- demonstrate how the Proposal will be designed and operated to protect the NSW Water Quality and River Flow Objectives (Objectives) for receiving waters where they are currently being achieved or contribute towards achievement of the Objectives over time where they are not being achieved (see Hunter River Table of Contents).
- propose practical, reasonable and cost-effective measures to further minimise and mitigate impacts from land-use activity having regard to the above document and Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZG, 2018) the Risk-Based Framework for Considering Waterway Health Outcomes in Strategic Land-Use Planning Decisions (OEH and EPA, 2017).
- assess and mitigate any stormwater related impacts during construction having regard to the Managing Urban Stormwater: Soils and Construction (Landcom, 2004).
- provide a long-term strategy for the management of surface water and groundwater.

12 July 2024

Newcastle City Council  
Attn: Jonathon Christie  
Planning, Transport and Regulation  
City Significant and Strategi Planning

Submitted via email: [REDACTED]

Dear Jonathon,

505 Minmi Road, Fletcher

**Response to EPA Submission to the Public Exhibition of Planning Proposal PP2021-2262**

Barr Planning received a request for further information from City of Newcastle (CN) dated 14 June 2024, and your advice via email dated 6 June 2024 that the response to submissions was required to be received by 25 July 2024. The request sought a response to the submission made by the NSW Environmental Protection Authority (EPA) with respect to the Planning Proposal to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation at 505 Minmi Road, Fletcher (Lot 23 DP 1244350). As noted, if approved this would enable the development of up to 150 residential dwellings. It was identified by the EPA, that in their review, the proposal:

- will locate residential receivers in proximity to SWMC, a landfill and resource recovery facility managed by Newcastle City Council (Council) and regulated by the EPA under (EPL 5897). This facility generates odour, sub-surface landfill gas, noise and air emissions.
- did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

The EPA submission notes:

*Controls are used to mitigate these issues, but even with these in place, it can be difficult to prevent adverse impacts beyond the boundary. Thus, locating residential receivers in close proximity to SWMC may lead to community complaint, increase regulatory oversight and pressure on the operator of SWMC to mitigate adverse impacts.*

It is the responsibility of the operator and the regulator of the facility to ensure adverse impacts are mitigated to ensure the safety of the community.

Figure 1 below demonstrates the extent of residential receivers that adjoin the Summerhill Waste Management Centre (SWMC). Approximately 2,855m of the 3,148m northern boundary of the SWMC adjoins



residences or residentially zoned land that enables future residences. The subject land, 505 Minmi Road, Fletcher, does not adjoin the boundary of the SWMC. Furthermore, the proposal rezones the southern portion of the site to C2 Environmental Conservation ensuring that the minimum distance residences may be located to the boundary of the SWMC is 150m. If the EPA is concerned with residential development being located 150m from the boundary of the SWMC, it raises more concern for the existing residences that adjoin the boundary of the facility.

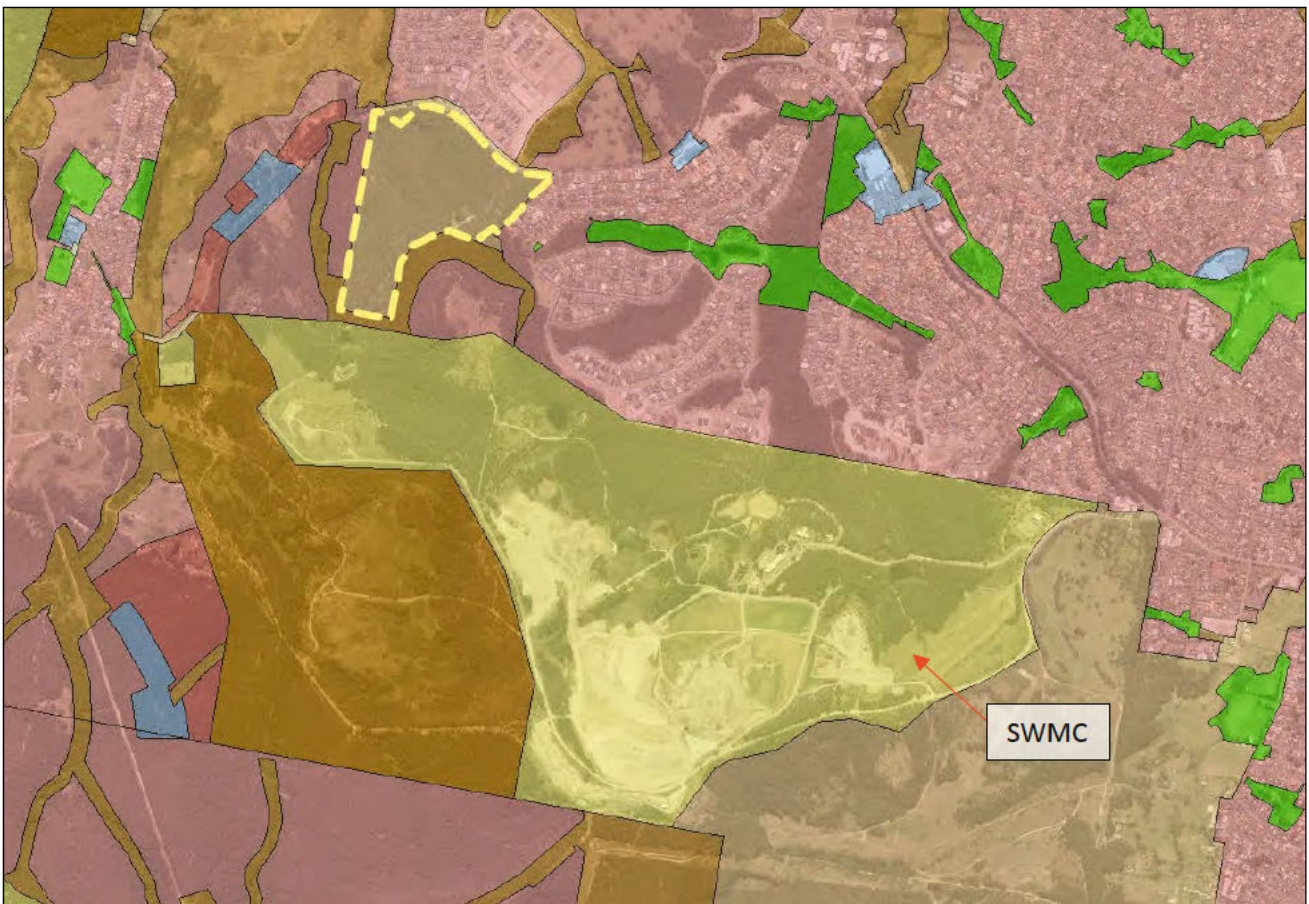


Figure 1: Extent of residential land adjoining the Summerhill Waste Management Centre (shaded yellow). Source: ePlanning spatial viewer, June 2024

The EPA submission requested the proponent complete the following to address potential land use conflict between the residential land and the boundary of the SWMC:

1. Consult with the section within Council responsible for managing SWMC about current and proposed operations at the landfill and demonstrate how this has been considered in the proposed land uses.
2. A Noise and Vibration Assessment
3. An Air quality and Impact Assessment
4. An updated Contaminated Land Assessment, and
5. A Water Management Strategy.

The NSW EPA publication 'Environmental Guidelines, Solid Waste Landfills' (2016) (EPA Guidelines) provide guidance on the environmental management of landfills in NSW by specifying a number of minimum standards relating to siting, design, construction, operation, monitoring and reporting. It is noted that 'these guidelines do not contain express buffer distances or locational requirements'. The EPA Guidelines note that inappropriate landfilling includes sites located:

- *within 250 metres of a residential zone or dwelling, school or hospital not associated with the facility; or*
- *in the case of large putrescible waste landfills (more than 50,000 tonnes of putrescible waste per year), buffers of at least 1000 metres should be provided where practicable to residential zones, schools and hospitals to protect the amenity of these land uses from odour, noise and other impacts.*

(EGSWL, 2016, pg.4)

The Environmental Impact Statement (EIS) prepared by GHD (August 2010) to support the Development Application 10/1319 for the continued operation and expansion of the SWMC identified the site was an appropriate landfill site under the *EIS Guidelines for Landfilling* (1996) and was deemed compatible with surrounding land uses as described in the 1996 guidelines, in particular the EIS states:

*The Proposal would have an appropriate buffer zone and would be compatible with surrounding land uses as detailed in the EIS Guideline for Landfilling (DUAP, 1996).*

*EIS - Pg. 206*

The EIS assessed the potential impacts of the Stage II expansion on nearby sensitive receivers within 800m of the proposed expansion area including residential subdivision yet to be constructed, as depicted in Figure 2 below, highlighted in red. The EIS determined:

*No environmentally sensitive landuses, as detailed by the EIS Guideline for Landfilling (Department of Urban Affairs and Planning (DUAP), 1996), were identified to be impacted by the Proposal as described in Section 2.4. The Proposal would have an appropriate buffer zone and would be compatible with surrounding land uses as detailed in the EIS Guideline for Landfilling (DUAP, 1996).*

*EIS - Pg. 206*

The EIS further stated that the operation of the facility *'would not result in significant environmental impacts ... [and] the proposal would maintain long term air, noise and water quality objectives of the area'* (pg.xi, EIS, GHD, 2010). To this extent, the appropriateness of the landfill location and residential development adjoining the boundary of the SWMC was deemed suitable provided that the SWMC was managed in accordance with conditions of consent and environmental protection licence 5897 (EPL 5897). Accordingly, residential development with an extended buffer (at a minimum of 150m from the boundary) remains suitable based on the above.

If the EPA considers the Planning Proposal results in a land use conflict, assessment of the impact is required by the operator of the facility for the existing residences along the 2,855m northern boundary which adjoins

residential land. Compensation should be provided to these residences should it be determined that residential development within 250m of the boundary is not suitable.

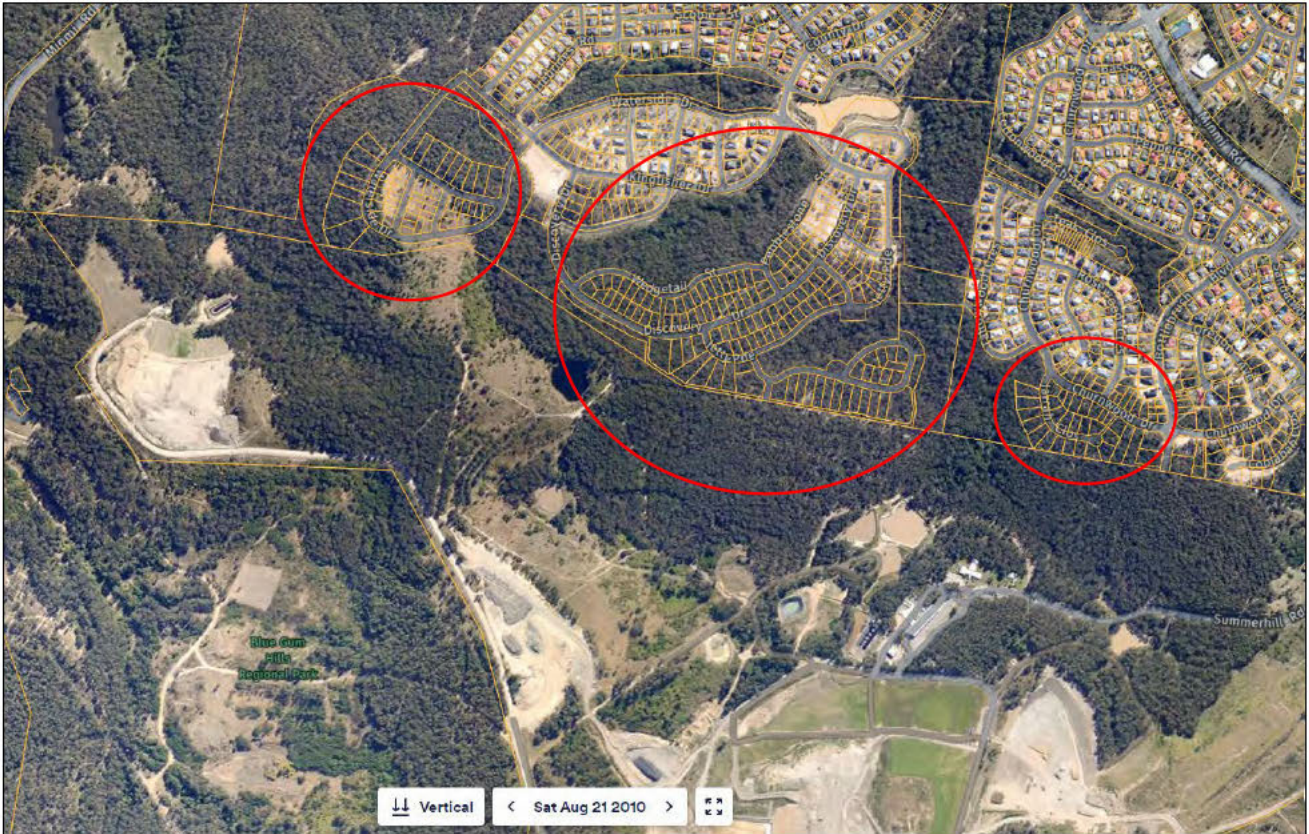


Figure 2: Not yet constructed residential development in proximity to SWMC, NearMaps, 2010

The EPA submission raised concern regarding release land fill gas and results from sub-surface gas monitoring from capped construction and demolition landfill cell (February 2024) which showed elevated levels of carbon dioxide ranging from 9.5% to 13.7%. Council advised that the capped cell was previously subjected to coal mining and the presence of sub-surface gases are from coal seam sources not the landfill. In accordance with the EPA Guidelines the threshold levels for further investigation and corrective action are detection of methane at concentrations above 1% (volume/volume) and carbon dioxide at concentrations of 1.5% (volume/volume) above established natural background levels. Accordingly, if concentration levels of carbon dioxide is above 1.5% v/v of background levels, it is the responsibility of CN to investigate and implement corrective action to address the elevated levels. Further evidence should be provided to demonstrate whether corrective action is required and whether the carbon dioxide emissions are in fact the result of mining operations when the EIS states:

*Previous sources of air emissions would have been associated with past mining activities. As the mining activity has ceased, no emissions from mining sources currently affect the area.*

EIS – Pg.130

The EPA requested that an updated Preliminary Site Investigation 'consider the presence of SWMC and any mine workings in the area and investigate any risks associated with hazardous sub-surface gas at the Proposal area. The JRPP Assessment Report associated with DA-10/1319 identifies the following with respect to Hazard and Risk including production of landfill gas and potential explosion:

*The EIS submitted with the application outlines the many practices currently employed to reduce safety issues arising from operation of the current centre. These will continue to be implemented and will reduce the risk of workplace injury and/or death. A consent condition will ensure compliance with the recommendations outlined in the EIS covering this aspect.*

*JRPP Report - Page 14*

The EIS associated with the extended operation of the SWMC stated:

*The proposed continuation of the landfill is not expected to increase the risk of fires or explosions of the current landfill operations. Current landfill gas monitoring procedures have been successful in minimising the risk of methane accumulation through early detection. Landfill gas would be captured and processed in the Summerhill Renewable Energy Facility to generate electricity. This would reduce the amount of methane in the atmosphere and hence reduce the potential for fire and explosive hazards.*

Accordingly, if the management of the facility is occurring in accordance with the consent for DA-10/1319 and EPL 5897, the risks associated with residential receivers adjoining the SWMC boundary should be suitably managed. There is significant concern raised that if sub-surface gas monitoring is required at the Proposal site for risk of SWMC related landfill gas or resulting from historical mining workings, there is considerable risk for the existing residences adjoining the SWMC. As raised at the start of this response, CN and the EPA have a duty of care to investigate this matter if there is a legitimate risk of sub-surface gas is likely to be present at 505 Minmi Road, Fletcher. We draw Council's attention to Foxglove Oval case study in the Hornsby Shire Council which required remediation works to be completed to keep the community safe from elevated landfill gas emissions.



In conclusion, given the matters raised for potential future residential development 150m from the boundary of the SWMC, there would appear to be greater concern for the safety of the existing residences that adjoin the SWMC northern boundary. To this end, if there is no safety risk to existing residences that adjoin the SWMC, there would be less risk to future residences which are located 150m away from the same boundary. Considering the assessment associated with, and approval of DA-10/1319 the request for additional studies is unreasonable and unnecessary if the management of the SWMC is being conducted in accordance with the environmental EPL 5897 and the conditions of consent issued under DA-10/1319.

If you have any queries regarding this information, please do not hesitate to contact Stephen Barr on [REDACTED] or [REDACTED]

Yours sincerely,

[REDACTED]

Rebecca Johnston  
Director

**From:** [Jonathon Christie](#)  
**To:** [Stephen Barr](#); [Katrina Walker](#)  
**Cc:** [Shane Cahill](#)  
**Subject:** RE: [External email] Public Exhibition 505 Minmi Road  
**Date:** Tuesday, 14 May 2024 2:56:00 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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Hi Steve,

The EPA has the right to comment on a planning proposal that is on public exhibition as does any other public authority who wish to comment. This was a courtesy email to inform you CN will be accepting a late submission from the EPA. It is in the public interest the EPA is given time to respond.

CN did not directly seek comment from the EPA.

Kind Regards,

**Jonathon Christie (he/him) | Senior Strategic Planner**  
City of Newcastle | Planning & Environment  
Planning, Transport & Regulation | City Significant & Strategic Planning  
E: [REDACTED] | T: [REDACTED]



*City of Newcastle acknowledges the Traditional Custodians of the land of the Newcastle LGA, the Awabakal and Worimi peoples.*

---

**From:** Stephen Barr [REDACTED]  
**Sent:** Tuesday, May 14, 2024 2:49 PM  
**To:** Jonathon Christie [REDACTED]; Katrina Walker [REDACTED]  
**Cc:** Shane Cahill [REDACTED]  
**Subject:** RE: [External email] Public Exhibition 505 Minmi Road

Jonathon,

Thanks for your email.

I'm surprised that the EPA is responding given that they are not one of the authorities that were required to be consulted with under the gateway.

I am also surprised that after many years of working on this project with NCC, the panel and Department of Planning, consulting with the EPA has not been raised until now, and they have been granted an extension.

I can only assume that NCC has actively sought comment from the EPA, despite being outside of the requirements of the gateway determination.

The site has no history of previous land use and no issues with contamination which requires a response from the EPA.

I presume then that NCC has sought comment from the EPA in regard to the proximity of the site to Councils land fill. This issue has previously been responded to by us and also I understand the Winten project. That consideration did not align with the requirements of the EPA and also raised questions about the management of the land fill in accordance with the issued consent in relation to the existing houses and residential areas in the vicinity of the land fill.

Could you please let me know who you are dealing with at the EPA?

I will also be making a complaint to the Department of Planning regarding the above, as it is clear that NCC is engaging in matters outside of the gateway requirements and raising new issues which is further delaying the progress of the LEP amendment and potentially frustrating the delivery of housing on the site.

Regards,  
Steve

**STEPHEN BARR**  
DIRECTOR



[REDACTED]  
[REDACTED]  
[BARRPLANNING.COM.AU](http://BARRPLANNING.COM.AU)  
[NEWCASTLE OFFICE](#) | [SYDNEY OFFICE](#)  
[STEPHENBARR](#)

---

**From:** Jonathon Christie [REDACTED]  
**Sent:** Tuesday, 14 May 2024 1:20 PM  
**To:** Katrina Walker [REDACTED]  
**Cc:** Stephen Barr [REDACTED] Shane Cahill [REDACTED]  
**Subject:** [External email] Public Exhibition 505 Minmi Road [Filed 14 May 2024 13:37]

Hi Katrina,

The EPA have requested an extension to the submission period. CN have granted an additional 7 days for them to provide comment.

Kind Regards,


**Jonathon Christie (he/him) | Senior Strategic Planner**

**City of Newcastle | Planning & Environment**

Planning, Transport & Regulation | City Significant & Strategic Planning

E: [REDACTED] | T: [REDACTED]



 *City of Newcastle acknowledges the Traditional Custodians of the land of the Newcastle LGA, the Awabakal and Worimi peoples.*

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## Jonathon Christie

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**From:** Kate Campbell [REDACTED]  
**Sent:** Tuesday, 18 June 2024 2:35 PM  
**To:** Jonathon Christie  
**Cc:** Shane Cahill; Craig Diss  
**Subject:** 505 Minmi Road, Fletcher - PP-2021-2262

Good afternoon Jonathon,

Reference is made to the abovementioned planning proposal and our recent discussions regarding options for the Gateway considering the advice received from the NSW EPA.

As you're aware, the EPA's correspondence noted that the proposal does not consider the risks associated with sub-surface landfill gases generated by the Summerhill Waste Management Centre or gases associated with coal mine workings. To address this issue, the EPA recommends that a number of additional assessments be submitted including an updated contaminated land assessment. Contamination is considered to be a fundamental consideration for a planning proposal and it is understood that the preparation of updated assessments could take between 6 and 12 months.

Due to the uncertainty over the timing and outcome that this issue has created, Council may wish to consider withdrawing the planning proposal until such time as information that satisfies the EPA's correspondence and confirms that the land is suitable for its intended future use can be prepared.

I tried calling this afternoon to discuss this matter but unfortunately wasn't able to reach you. Should you have any questions please contact me.

Kind regards,  
Kate

### **Kate Campbell**

Senior Planning Officer

Hunter & Northern Region | Local Planning and Council Support | Department of Planning, Housing and Infrastructure

T [REDACTED] | E [REDACTED]  
155-157 Marius Street, Tamworth NSW 2340 | PO Box 949, Tamworth NSW 2340  
[dphi.nsw.gov.au](http://dphi.nsw.gov.au)

**Working days** Monday, Tuesday and Thursday



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Planning, Transport & Regulation. SCahill/PMilles  
Reference No: PP2019/00006.01  
Phone: 4974 2250



26 May 2023

Kingston Minmi Road Pty Ltd  
C/- Barr Property & Planning  
92 Young Street  
**Carrington NSW 2294**

Email [REDACTED]

Dear Sir/Madam

**REQUEST TO AMEND NEWCASTLE LEP 2012 - 505 MINMI ROAD FLETCHER -  
REZONING FROM C4 ENVIRONMENTAL LIVING TO R2 LOW DENSITY RESIDENTIAL  
AND C2 ENVIRONMENTAL CONSERVATION FOR UP TO 140 LOTS**

City of Newcastle (CN) writes in response to the amended planning proposal (PP) submitted on 29 March 2023. The matters outlined in Attachment 1 consider the Department of Planning and Environment's (DPE) Gateway determination of 10 January 2023 and subsequent public authorities' responses (outlined in our letter 2 March 2023). These matters need to be addressed by the PP and supporting documentation prior to public exhibition.

CN has assessed the new information submitted and the agency responses in the context of the Gateway determination and the Hunter and Central Coast Regional Planning Panel decision. The outcome of our assessment is provided in Attachment 1. CN's comments raise significant matters, and addressing these adequately is necessary to meet the Gateway determination conditions. These matters align with the requirements of the Hunter Regional Plan 2041 (HRP), the Biodiversity Conservation Division's (BCD) preliminary biodiversity assessment and CN policies, plans and strategies. CN's advice aligns with HRP strategies including having a focus on 15-minute neighbourhoods, greater infill development, higher density, increased building heights and improved biodiversity and ecological outcomes.

Addressing these matters is likely to influence the PP significantly. To assist in planning a way forward Attachment 2 suggests alternative site opportunities for your consideration.

Should you wish to discuss this further or have any questions, please contact Peter Milles, Senior Urban Planner on [REDACTED] or [REDACTED]

Yours faithfully,

[REDACTED]

**Shane Cahill**  
**URBAN PLANNING SECTION MANAGER**

## Attachment 1

The matters outlined below need to be addressed before public exhibition. Including biodiversity, land use efficiency and strategy. Further information request items have been listed and these generally align with the Gateway determination conditions.

### Biodiversity

CN's assessment of the amended Planning Proposal (PP) found the proposed development footprint does not adequately address biodiversity and ecological matters. BCD's authority response dated 15 February 2023 supports this stating key issues remain around avoidance of impacts to high value biodiversity. The BCD found, amongst other matters, that further regard is necessary to adequately meet requirements for the avoidance of impacts to high value biodiversity and providing sufficient habitat connectivity.

The site is one of the largest forested north-south biodiversity linkages left in the southwest part the Newcastle Local Government Area (LGA) that is zoned C4 Environmental living. This site is important to the HRP Objective 6 for Biodiversity conservation planning and corridor linkage at a landscape scale. It provides a direct non-gapped link to the south to a forested area of the Summerhill Waste Management Centre, Blue Gum Hills Regional Park and conservation zoned bushland towards the Link Road at West Wallsend.

While relatively narrow (less than 100m wide) the link north across Minmi Road to land zoned C2 Environmental Conservation (associated with the Hexham Wetlands) provides one of the few remaining lesser cleared links in this area. It connects the wetlands in the north to existing forest in the south. This link is part of the Watagans to Stockton Biodiversity Corridor and is a key corridor link and patch under the HRP. This corridor is particularly important over the long term as previously grazed parts of the southern Hexham Wetlands regenerate and/or receive rehabilitation.

The proposed development footprint includes areas of high biodiversity values and the areas proposed to be conserved are largely fragmented habitat. The Biodiversity Offsets Scheme (BOS) is based on the 'avoid, minimise, offset' hierarchy. Using this, proponents must:

- first consider whether the development can avoid a negative impact on the environment
- next consider whether the development can minimise any negative impacts that cannot be avoided
- once all reasonable steps to avoid or minimise environmental impacts have been exhausted, consider whether any remaining impacts can be offset.

The hierarchical criteria need to be met. Amongst other considerations, the proposed zoning boundaries primarily reflect topographical limitations of the site. This approach is documented in the amended PP page 80:

*The Urban Design Study to provide an indicative subdivision lot layout has taken into consideration land stability, topography and slope analysis in determining the future development of the site including consideration to:*

- *Land within the site > than a slope of about 15%, is to be conserved in its natural bushland state and has been excluded from the area proposed for residential subdivision.*
- *Land within the site, with flatter slopes of 15% or less has been considered for the residential component of the site*

*Therefore, the majority of the steepest portion of the site is to be conserved in its natural bushland state and located in the proposed Environmental Conservation C2 zoning.*

The R2 Low Density Residential zone proposed is on the easier to develop parts of the site and the proposed C2 Environmental Conservation zone is on the steeper, harder to develop parts of the site. It appears economic and engineering considerations rather than biodiversity values have led the proposal.

The Gateway determination conditions require updating the PP so the zone boundary configuration and development controls achieve more optimal density and diversity of housing typologies up to four storeys, if this will lead to an increase in the amount of the site reserved for conservation. This aligns with the Hunter and Central Coast Regional Planning Panel decision (RR-2021-70 section 4.1) that the panel was not satisfied ecological considerations informed the proposed zone boundaries.

The amended PP does not comply with Strategy 6.3 of the HRP, nor does it demonstrate how the performance outcomes under the HRP's Objective 6 will be achieved, and therefore consistency with ministerial direction 3.1 Conservation Zones remains unresolved.

As outlined in the DPE Biodiversity Certification Fact Sheet No. 3, Biodiversity Certification scheme applications without CN support are discouraged by BCD and certification is unlikely.

### **Community title vs public ownership of conservation lands**

CN assessed the PP's 'net public benefit' including the potential public ownership of the proposed C2 Environmental Conservation zoned land and the HRP's Objective 6. Consistent with the 'avoid, minimise and offset' hierarchy, CN's preference is to have the proposed C2 Environmental Conservation zoned lands dedicated as public lands. Such lands would be subject to an assessment for dedication considering maintenance cost, risks to public safety, contamination, titling and the like to determine if the asset is suitable.

The PP does not include details on any proposed biodiversity conservation mechanisms. CN have general concerns with natural areas managed under community title for biodiversity values relating to weed infestation, canopy loss, trail and watercourse erosion. Public ownership is preferred for conserving the environmental values of this site in perpetuity.

### **Dwelling yield and Infrastructure needs**

The HRP identifies the site's C4 Environmental Living zone as within a Hunter UDP area (page 94). Further, the land is within the *National Pinch Point regionally significant growth area*. The HRP identifies regionally significant growth areas as those underpinning the ability to meet the regional plan's vision and objectives over the plan's life. The adopted version of HRP was not considered by the planning panel as part of the rezoning review.

The HRP's implied dwelling projections to 2041 include 17,850 dwellings, consistent with CN's LSPS and LHS forecasts. The HRP's Objective 5 plans for nimble neighbourhoods and diverse housing. The number of greenfield dwellings to meet the guidance targets for dwelling projections and housing benchmarks align with CN's dwelling assumptions in CN's Section 7.11 Western Corridor Development Contributions Plan. The contribution plan's *Table 3.1 Expected (planned future) development in the Western Corridor* identifies 110 dwellings, noting the contributions plan does not convey developable rights.

The amended PP is for up to 170 residential lots which exceeds the current infrastructure plan dwelling assumptions. However, the R2 Low Density Residential zone is not restricted to the subdivision of the site, as multi dwelling housing at higher densities could be delivered instead. This could see a doubling of the ultimate dwelling yield which was not considered in the supporting studies or infrastructure demand assumptions.

As a greenfield site, a proposal that exceeds the contribution plans Table 3.1 dwelling assumptions is not essential to CN achieving the HRP Objective 5 guidance for the greenfield and infill development mix and Table 6: Required Dwellings to 2041. The demand for more homes is to be balanced with the creation of great places and the retention of important ecological habitat in accordance with Housing Priority 1 of the LHS. The proposed dwelling yield should be revised and reduced to align with the HRP and CN policies, plans and strategies at 110 total dwellings.

## **Density, housing mix and height of building**

The amended PP for 140 lots proposes a lower density than we would like to see for the efficient use of this land. The Fletcher-Minmi area would benefit from more diverse housing choice given the predominance of single detached dwellings and attached dual occupancies. To align with State and local housing policy and strategy such as the Newcastle Local Housing Strategy's (LHS) Housing Priority 2 and the HRP, CN would like to see greater diversity of housing types.

A higher dwelling density would be supported as the site has access to existing local centres along Minmi Road to the east, and a future local centre zoned along Minmi Road to the west as part of the staged concept approval and subsequent Winten subdivision DA2015/10393. The site is considered an inner suburban context area and should align with optimum density sought via Objective 5 of the HRP, on a dwellings per hectare rate.

CN acknowledge the site's characteristics will influence residential housing delivery. The HRP focus for mid rise housing diversity of up to 4 storeys is reflected in Gateway determination Condition 4 that refers to an increase in building height leading to opportunity to increase the area of the site reserved for conservation. DPE advice (ref: IRF23/12) from Daniel Thompson, Acting Executive Director Local and Regional Planning 10 January 2023 to CN states:

*'Particularly, as this may lead to an overall improvement in public benefit for the community and conservation'.*

The amended PP suggests the R2 Low Density Residential zone could experience infill development after its initial subdivision to achieve desired density. The Fletcher case study put forward is presented for development types of combined subdivision of land from one lot and creation of two Torrens title lots and Dual Occupancy, and Dual Occupancy. This case study put forward as justification for this PP does not show that the optimum density requirement will be achieved. This approach enables a low density outcome that may or may not experience further infill. As subdivision is enduring this is unlikely to meet an efficient use of the land into the longer term. The amended PP promotes that future infill development is likely based on the proposed 450m<sup>2</sup> lot size, whilst promoting detached housing as the most likely outcome. The justification is that the 450m<sup>2</sup> lots could be subdivided further to 200m<sup>2</sup> lots as has occurred in the case study is possible, but uncertain. At 450m<sup>2</sup> lots for the majority of the PP site area, density is calculated at 13 dwellings per hectare in accordance with the HRP and not 22 dwellings as represented in the PP report. The proposed density falls well short of optimum density as outlined in the Gateway determination.

Strategic merit considers planning for development over the planning horizon. Relying on possible future infill development post PP and post development application does not provide for orderly and efficient development of land and is not supported.

CN considers the density minimums of the inner suburban context area of 40 dwellings a hectare achievable through a diversity of lot sizes, typologies and building heights. Planning for a mix of housing typologies at the PP stage provides for more orderly and efficient use of land, meeting the Principles of Planning Priority 12 of the Newcastle Local Strategic Planning Statement (LSPS) and Housing Priority 2 of the Newcastle LHS.

## **Affordable Housing**

CN is committed to increasing the supply of affordable housing. Council's Housing Policy sets an overall affordable housing target of 15 percent across the City aligning with priorities in the Newcastle 2040 Community Strategic Plan (CSP), LSPS and LHS. The PP notes "the supply of additional land for housing provides greater opportunity to increase the supply of affordable rental housing". Without appropriate intervention in the market, the supply of land is unlikely to contribute to the increase of affordable rental housing across the city. The PP is to provide greater detail on how the rezoning will contribute to the supply of affordable rental housing.

## Open space and recreation

Infrastructure needs are to be met in line with CN Section 7.11 Western Corridor Local Infrastructure Contribution Plan. This plan requires local infrastructure including:

- open space and recreation facilities, such as local and district sporting facilities, local parks and playgrounds;
- community facilities, such as multi-purpose community centres; and
- traffic and transport management facilities, such as upgraded roads, intersections, and cycle paths.

Infrastructure contributions are calculated based on the sites expected development of 110 dwellings. As the PP relies on existing infrastructure to service the future community, CN reiterates the importance of reducing the proposed dwelling yield to ensure existing and planned infrastructure can meet future demand. Given the reliance on existing services, greater emphasis on street amenity is required including providing adequate provision for shared paths, connections and street trees throughout.

## Information request items

The proponent is to submit the following for assessment to address the Gateway determination and matters raised in this information request:

### *Urban design*

1. A revised Urban Design Study that guides the proposed changes to Newcastle Local Environmental Plan 2012 (NLEP) and the site specific Development Control Plan (DCP) is to address the following:
  - a. Revised zone boundaries that:
    - i. are informed by the opportunities and constraints of the site
    - ii. demonstrates an appropriate level of avoidance in accordance with the biodiversity mitigation hierarchy.
  - b. Indicative lot sizes and layouts that:
    - i. achieve the density, dwelling yield and typology mix requirements as outlined in this information request below. This may require testing and analysing various scenarios
    - ii. maximise environmental linkages and tree retention.
  - c. Revised access and movement networks that:
    - i. identifies a transport movement hierarchy showing the major circulation routes and connections. Your attention is drawn to previous comments made regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east)
    - ii. promote passive and active recreation through street design.
  - d. Interface principles and transitional building heights
  - e. Planning Panel direction 4.2.1 for locating local open spaces within 400m of dwellings. C2 Environmental Conservation zone land is not considered appropriate as local open space.
  - f. Relocated asset protection zones (APZ) outside of C2 Environmental Conservation zoned land.
2. The Urban Design Study is to address Gateway Condition 4 and investigate appropriate zoning of land area for buildings of 3 to 4 storeys.
3. The Urban Design Study concept masterplan is inconsistent with the Strategic bushfire assessment, MJD Environmental, December 2021. This needs to be resolved.

### *Dwelling yield*

4. To achieve the best planning outcome for the site, CN recommend the PP and associated studies consider a reduced dwelling yield with a maximum of 110 dwellings.

5. Given the NLEP R2 Low Density Residential zone facilitates a range of housing types including residences such as attached dwellings, multi dwelling housing and residential flat buildings, provide details of mechanisms that ensures the delivery of a development yield that aligns with yields planned for as part of any supporting studies.

#### *Density*

6. Evidence of achieving an optimum density for the site; an inner suburban context area of 40 dwellings per hectare will create a vibrant new urban neighbourhood. At present, the PP does not demonstrate how an appropriate minimum density will be achieved to satisfy Condition 4 of the Gateway determination and CN's local planning documents.

#### *Mix of typologies*

7. A mix of typologies through a combination of proposed NLEP amendments and DCP controls that is informed by the Urban Design Study.
8. The site specific DCP is to be amended to include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).

#### *Height of building*

9. Increase the amended PP height of building of 8.5m to up to 4 storeys at appropriate locations across the development footprint area. Have regard to:
  - a. HRP Objective 5 for 3 to 4 storeys adjoining or within walking distance of public open space adjoining the C2 Environmental Conservation zone.
  - b. Planning Panel urban design interface direction with transitioning building heights to a suitable built form and scale adjoining existing residential areas.

#### *Biodiversity*

*Note: Comments raised below cannot yet be complete until CN has a finalised version of the biodiversity certification assessment report (BCAR) once notified by BCD.*

10. The amended PP is to remove approximately 70% of the site's 10.65 ha of the threatened community Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. This does not demonstrate adequate avoidance or minimisation of impacts on this threatened ecological community and other threatened biodiversity matters that have been recorded on the site.
11. The proposed link road between the proposed eastern and western residential zoned precincts would seriously compromise the integrity of the existing forested south-north corridor on the site for all but the most mobile species. It will also act as a threat to many species (including highly mobile species such as Large Forest Owls) from increased risk of vehicle impacts, as well as provide additional edge effects. While the BCAR states this risk as minimal this is not evidenced, including published research to justify this statement. The east to west road between link intersecting the C2 Environmental Conservation zoned land should be removed.
12. The targeted species credit flora species surveys should meet the *NSW Guide to Surveying Threatened Plants and Their Habitats (DPIE), April 2020* in terms of methodology and seasonal requirements, for some species e.g. *Tetratheca juncea* this has not occurred. The required parallel field traverses do not appear to all be parallel and there are some gaps as shown in Figure 4 of the BCAR. We recommend surveys for relevant species be completed in accordance with the guidelines. For *Tetratheca juncea* this should be during the required September-October survey period.
13. The Large-eared Pied Bat (*Chalinolobus dwyeri*) was potentially detected via ultrasonic acoustic survey (Anabat) while the Eastern Cave Bat (*Vespadelus troughtoni*) was probably detected via same method. According to the '*Species credit' threatened bats and their habitats – NSW survey guide for the Biodiversity Assessment Method (OEH, 2018 p.15)* regarding the Large-eared Pied Bat and Eastern Cave Bat: 'Acoustic detectors may be used; however, this method does not allow for reproductive status to

be identified. If acoustic detectors are the only survey method used and the target species is detected, breeding must be assumed and mapped in accordance with Table 2' of the guidelines. While no breeding habitat (caves, overhangs etc) was identified on the site for either species, Table 2 of the guidelines requires that all habitat for each species should also be mapped if present (i.e. including that described in Table 1). Table 1 of the guidelines states that in regard to features to include in species polygon for both species: 'All habitat on the subject land where the subject land is within 2km of caves, scarps, cliffs, rock overhangs and disused mines. Use high resolution aerial imagery and topographic maps to identify potential roost habitat features on the subject land when it is within 2km caves, scarps, cliffs etc. Species polygon boundary should align with Plant Community Types (PCTs) on the subject land the species is associated with (listed in the threatened biodiversity data collection) that are within 2km of identified potential roost habitat features.' The BCAR does not appear to comply with these requirements and does not assume presence of either species although Section 10.1, page 19 of the BCAR states the Large-eared Pied Bat forages on the site .

14. The BCAR does not provide sufficient data on impacts to hollow bearing trees (HBT). For example, a road is proposed close to 27 HBT shown in figure 3 potentially impacting the structural root zone. This impact was not identified or included in the offset requirements at figure 12. The BCAR should include a table of all HBT with sufficient information to justify their impact classification.
15. The BCAR lists several indirect impacts of the PP but does not consider the indirect impacts of increased predation by domestic dogs and cats, garden and other waste dumping, vehicle impacts, increased incidence of illegal fires and removal of vegetation for recreation purposes (cubby houses, informal bike tracks etc).
16. The BCAR incorrectly assumes the PP will have no indirect impact on water quality within drainage line and waterbody identified as Southern Myotis habitat. Indirect impacts of changed hydrology, nitrification, erosion and sedimentation are probable over the long term.
17. Poor weather conditions recorded on some of the survey dates (e.g. 26 November 2019, 23 November 2021, 19 January 2022, 2 February 2022, 22 April 2022, 9 March 2022, 22 April 2022, 25 May 2022, 11 July 2022, 15 July 2022, 28 March 2023) were not conducive to detection of many of the target fauna species.
18. Survey time for Little Eagle (*Hieraaetus morphnoides*) was outside the required survey period in Bionet Threatened Biodiversity Data Collection. Additional surveys within the specified survey period are required.
19. Condition classes assigned to the vegetation zones are inaccurate in some cases. All vegetation zones are assigned a condition of low or moderate, despite some having relatively high vegetation integrity scores. We recommend condition descriptions be updated to better describe the broad condition of the vegetation zones.
20. Consideration of cumulative impacts is required considering cumulative impacts of the proposed certification on the long-term viability of corridors and avoided areas in the context of approved and potential future development in the vicinity of the site.
21. The BCAR states "vegetation within the subject land appears to have been historically cleared for grazing and the harvesting of mine pit props" (MJD, 2023, p. 12). CNs historical aerial photography shows the site as mostly uncleared. Please evidence this statement, including the extent of clearing and location of clearing that occurred.
22. The PP is to be updated to remove reference to the possibility of establishing a Biodiversity Stewardship Agreement over proposed C2 Environmental Conservation land in accordance with the findings of the BCAR (MJD, 2023, p. 95).
23. The PP is to be updated to include further detail on the mechanism for biodiversity conservation for C2 Environmental Conservation zoned land. CN will consider dedication of environmental conservation land including drainage corridors at no cost after subdivision works are done, and where a Vegetation Management Plan has been established and maintained for a specified period to CN's satisfaction. Where CN is not in a position to accept then the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.



### *Aboriginal cultural heritage*

24. The site is known to contain Aboriginal objects and its location within a cultural landscape (Burragihinbihng – Hexham Swamp) means it is likely to contain further Aboriginal objects yet to be known/discovered. CN agrees with the recommendations of the Heritage Now report of 28 March 2023 for an archaeological test excavation. The testing must be brought forward to ensure it is done before submitting any development application, rather than before construction. This would inform development proposals enabling design changes to facilitate the protection and conservation of Aboriginal objects in-situ, rather than their destruction. If archaeological test excavations cannot be done under the NSW Government's Code of practice for Archaeological Investigation of Aboriginal Objects in NSW 2010 or the proposed activity will result in harm to Aboriginal objects, an Aboriginal Heritage Impact Permit is required from the relevant State Government Authority under the NSW *National Parks & Wildlife Act 1974* prior to commencement of this activity.

### *Traffic*

25. Section 4.2 of the Traffic Impact Assessment (TIA) by Stantec describes the PP's 'main access road' in and out of the site as being the road from the north west corner of the site where it is proposed to share an intersection with the approved adjoining development by Winten under DA2015/10393. The TIA seeks to defer investigations of this western access to 'a later stage'. CN do not support this. For the following reasons it should be amended:
- i. The Minmi Rd intersection associated the Winten development is in the last stage of the approved development and timing for the construction of this intersection is unknown.
  - ii. The Winten intersection is 'left in/left' only and cannot readily accommodate traffic coming from the west which will depend on traversing approximately 700m of (yet to be constructed) local roads internal to the Winten development.
  - iii. Eastbound vehicles would need to use the same 700m of internal local roads within the Winten development, exiting to Minmi Rd at the future traffic control signals (a round trip of approximately 1.3km) or turn left onto Minmi Rd at the shared intersection and travel westbound approximately 900m in order to turn around at the roundabout currently under construction by Winten (Stage1), a round trip of approximately 1.8km.
  - iv. Provision of a right turn lane at this western intersection is not feasible without impacting Winten's approved lot layout, approved road upgrades on Minmi Road, and will require further extension to culverts already approved for the Winten development and will adversely impact the existing eastbound transport stop in this location.
26. As previously advised through the PP process, Kingfisher Drive was constructed to permit, if development ever occurred on 505 Minmi Road, a future extension of Kingfisher Drive through to Minmi Road at the existing intersection of Brookfield Avenue (east). Brookfield Avenue has been constructed with allowance for a future single circulating lane roundabout. This existing intersection location should be the primary access point for ingress/egress from the proposed development land for the following reasons and the PP is to be amended to suit:
- i. It provides direct, all direction ingress and egress.
  - ii. It provides for an extension of the existing bus route on Kingfisher Drive without back-tracking to Britannia Boulevard.
  - iii. It negates the need to use the emergency bushfire egress from Kingfisher Drive to Hebrides Road (required to permit Minmi East Stage 1A (by Winten) to proceed).
  - iv. It provides connectivity between the development land and land to the northern side of Minmi Road. The proposed intersection with the Winten development in the new corner of the site then also provides secondary vehicular access and

connectivity to the adjoining estate, and planned recreation and commercial facilities to the west.

27. The TIA is to be amended to reflect:
  - i. The ultimate dwelling yield that is to be achieved through the PP
  - ii. In addition to development sites shown in the TIA's Section 6.6, the assessment is to account for the 100+ additional dwellings yet to be constructed in Stage 10 of the approved Outlook Estate, opposite the site, at 302 Minmi Rd, Fletcher.
28. The TIA is to consider:
  - i. TIA's completed for DA2015/10393 (Minmi East Stage 1B - approved) and DA2018/01351 (Minmi Precincts 3, 4 & 5 – undetermined) for assumptions on background growth, trip generation, trip distribution and required road or intersection upgrades in lieu of making broad assumptions.
  - ii. The CN *Western Corridor Traffic and Transport Study*, prepared by Bitzios, 2019 and used in preparation of the current s7.11 Western Corridor Local Infrastructure Contributions Plan 2013 (2020 update).
29. Proposed pedestrian connectivity from the south west corner of the site would depend on paths and bridging structures not planned for in the adjoining Winten development. To inform pedestrian connectivity further detail on how this is to be achieved is required.

#### *Public Utility Servicing*

30. Update the Infrastructure servicing report prepared by ADW Johnston to account for an ultimate dwelling yield that is to be achieved through the PP.
31. The reference to the Infrastructure servicing report, ADW Johnston, November 2021 on page 6 of the Post Gateway Planning Proposal – Final Report is to be updated to reflect the February 2022 report as referenced elsewhere in the document.

#### *Bushfire*

32. A preliminary assessment of the subject site and surrounds by the Rural Fire Service (RFS) identifies that steeper effective slopes exist beneath the hazard compared to the slopes assessed in the submitted Strategic Bush Fire Study, MJD Environmental, 2021. Due to the significant variation in the effective slopes identified, a revised subdivision layout may be required for the proposed lots to achieve compliance with Planning for Bush Fire Protection (PBP) 2019.
33. The RFS note proposed bush fire asset protection zones are within C2 Environmental Conservation zone land and that perimeter roads are not proposed for each residential lot adjacent to the hazard. This is inconsistent with C2 Environmental Conservation zone objectives and section 4.02.01(2) of the Newcastle Development Control Plan as it will require clearing and impacts on the conservation area and/or will reduce the total area of the proposed conservation zone to accommodate required bushfire protection measures. Amend the PP and supporting strategies accordingly.

#### *Flooding*

34. The submitted Appendix 13 – Flood advice letter, prepared by Northrop dated 22 March 2023 addresses the Ministerial Directions in a general sense without flood modelling. This does not address the Gateway determination's Condition 2, that requires an analysis of the Probable Maximum Flood (PMF) flood event.
35. A detailed flood study is required by an appropriately qualified flood specialist. The study is to include modelling of pre and post-development flow regimes for the following events: 20% Annual Exceedance Probability (AEP), 10% AEP, 5% AEP, 2% AEP, 1% AEP and PMF.
36. Flood modelling results are to include flood levels, depth, velocity, hazard mapping and comparisons of pre-development scenarios and post-development scenarios. Modelling shall be used to demonstrate that the proposed development is suitable for

the site regarding risk to life and property as well as ensure flood levels, velocity and hazard are not made worse for surrounding properties or infrastructure.

37. The flood study should include a section that specifically addresses the Gateway determination, dated December 2022, including addressing the Ministerial direction 4.1 Flooding and Condition 2 of the Gateway, having regards to the modelling results.

#### *Open Space and Recreation*

38. If an outcome is achieved for a reasonable increase in C2 Environmental Conservation lands in the south / west of the site, CN would support a strip of land to the west of the eastern entrance road from Kingfisher Drive becoming multipurpose public managed land. This could be designed to accommodate:
  - Landscaped areas such as turf which can be readily managed to meet APZ requirements
  - Well placed stormwater quality treatment assets; dry flood detention assets and associated maintenance access
  - Cycleways
  - Crime Prevention Through Environmental Design (CPTED) compliant pedestrian access
  - Passive and Active Recreation 'managed' open space.
39. The interface between multipurpose land and retained native vegetation on C2 Environmental Conservation land needs careful consideration to reduce the maintenance burden required to protect the environmental values of those lands.

#### *Site specific Development Control Plan*

40. Attachment 3 provides CN comments on the proposed site specific development controls, Barr Planning, 2022. The PP is to be updated to reflect these comments.

#### *Gateway determination*

41. CN's assessment does not consider the amended PP has met Condition 1(a), 1(b), 2, 3 and 4 for the reasons outlined above. These conditions are to be met prior to the PP proceeding to public exhibition.

## **Attachment 2 - Investigate alternative site opportunities**

CN officers continue to be committed to working with you to achieve a suitable planning outcome for the site. We welcome discussion on the following alternative opportunities.

We have not received a Biodiversity Certification scheme referral notice under the *Biodiversity Conservation Act 2016* (BC Act). We are likely to need to provide comment on biodiversity matters once we have. Based on the information available now post Gateway determination on biodiversity, CN suggests the proponent investigate other opportunities e.g. providing the site as a National Park (by requesting the NSW Government to include it as part of the National Park Estate).

The contributions plan (which does not convey developable rights) as outlined by the Planning Panel identifies residential development assumptions of 110 dwellings appropriate in the context of infrastructure servicing, but subject to all other matters of planning consideration. This yield could achieve the inner suburban context area minimum density target potentially using residential typologies up to four storeys, with suitable building height transitions to the site edges.

A focus on this dwelling yield and density may support efforts towards avoiding and minimising the impacts to biodiversity. Denser more appropriately located development could limit edge effects, avoid habitat fragmentation for biodiversity corridors and water courses of the Blue and Green Grids.

The amended PP includes residential in the northeast portion of the site, subject to CN Biodiversity Certification scheme assessment. This location facilitates the bus collector connection. NLEP amendments to clauses and maps could potentially facilitate and accomplish this approach.

### **Attachment 3 – CN comment on Site specific development controls, Barr Planning, 2022**

The PP seeks to amend the Urban Release Areas map to include the proposed residential component of the subject land as an urban release area. Clause 8.3 of the Newcastle Local Environmental Plan 2012 (NLEP) states:

#### **8.3 Development control plan**

- 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.*
- 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.*
- 3) *The development control plan must provide for all of the following—*
  - a. *a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
  - b. *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
  - c. *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
  - d. *a network of active and passive recreation areas,*
  - e. *stormwater and water quality management controls,*
  - 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,*
  - g. *detailed urban design controls for significant development sites,*
  - h. *measures to encourage higher density living around transport, open space and service nodes,*
  - i. *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
  - j. *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*
- 4) *Subclause (2) does not apply to any of the following developments—*
  - a. *a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
  - b. *a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,*
  - c. *a subdivision of land in a zone in which the erection of structures is prohibited,*
  - d. *proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

The following assessment is based on the submitted PP and masterplan. This assessment should be used as a guide to assist in the development of a more refined site specific DCP. The site specific DCP is to be guided by the Urban Design Study and supporting documentation. CN advises the objectives and controls suggested as part of this assessment be considered and included where relevant following the revised Urban Design Study.

Proposed DCP Chapter

CN Comments

Land to which this section applies

This section applies to all land within the heavy line marked on Map 1 – 505 Minmi Road



Map 1: 505 Minmi Road

- Mapping to be updated to remove reference to zones.
- The proponent should consider if a staging plan is required, and if so, clearly identify proposed stages.

Development (type/s) to which this section applies

This section applies to all development within Minmi requiring development consent. The primary purpose is to guide development for the purposes of subdivision (and associated works) on the site, and to also provide guidance for other development types permissible on this land

- This section should be consistent with DCP chapters that apply to surrounding urban release areas

## Related sections

The following sections of this DCP will also apply to development to which this section applies:

- Any applicable land use specific provision under Part 3.00
  - o *Note: Any inconsistency between the locality specific provision and a land use specific provision, the locality specific provision will prevail to the extent of the inconsistency.*
- 4.02 Bush Fire Protection – within mapped bushfire area/zone
- 4.03 Mine Subsidence – within mine subsidence area
- 5.01 Soil Management – works resulting in any disturbance of soil and/or cut and fill.
- 5.02 Land Contamination – land on register/where risk from previous use
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks – where new roads, pedestrian or cycle paths are required.
- 7.05 Energy Efficiency
- 7.07 Water Efficiency
- 7.08 Waste Management.

The following sections of this DCP **may** also apply to development to which this section applies:

- 4.04 Safety and Security – development with - accessibility to general public, access to laneways, communal areas, or residential with three or more dwellings
- 4.05 Social Impact – where required under ‘Social Impact Assessment Policy for Development Applications’, 1999
- 5.03 Vegetation Management – trees within 5m of a development footprint or those trees likely to be affected by a development.
- 5.04 Aboriginal Heritage – known/likely Aboriginal heritage item/site and/or potential soil disturbance.
- 5.05 Heritage Items – known heritage item or in proximity to a heritage item.
- 5.06 Archaeological Management – known/likely archaeological site or potential soil disturbance

- Related sections of the current DCP must be included

Additional information

- ~~Urban Design Study 505 Minmi Road, Fletcher (Moir Landscape Architects, 2024) - Amend~~
- ~~Strategic Bushfire Study 505 Minmi Road, Fletcher (MJD Environmental, 2024) - Amend~~

- These documents contain indicative road and lot layouts that need to be revised and provided.

Strategic overview

~~The site is situated on the southern side of Minmi Road opposite existing residential development to the north, and immediately adjoining existing residential development to the east and proposed residential development to the west. A corridor of conservation zoned land separates the site from residential land to the southeast and the Summerhill Waste Management Centre to the south. Future development of the site will be clustered into an Eastern and Western precinct, connected by a local road. Development will be screened from Minmi Road by retention of a vegetated buffer area. A large area centrally located within the site will be rehabilitated and maintained as a conservation area.~~

- This section needs to be revised as this is not a strategic overview it is a site context description. The strategic overview should provide a synopsis of the site's strategic merit as an urban release area.
- Strategic overview is not to contain reference to Community title

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9.00 - Glossary of this plan.

- If applicable, please include definitions of any other words and expressions referred to within this section that has not otherwise been defined in the NLEP or within Part 9.00 – Glossary of the current DCP



Aims of this section

1. To ensure urban release land is developed to maximises the efficiency of existing infrastructure.
2. To ensure urban release land is developed to achieve optimal density and diversity of housing typologies.
3. To ensure that development of the site occurs in a manner which is sensitive to the environmental characteristics of the site and surrounding land uses.
4. To ensure the ongoing management of C2 Environmental Land is achieved by incorporating best practice environmental management and water sensitive urban design methods.
5. To ensure that the development of the site is integrated into the local road network.
6. To provide attractive streetscapes which promote passive and active recreation.
7. To provide a visual landscaped buffer along Minmi Road.

- Please outline the aims of this section, noting CN's suggestions.

Indicative lot and building typologies plan

**Objective**

1. To achieve the desired inner suburban dwelling density of 40 dwellings/ha
2. To achieve a diversity of housing types

**Controls**

- Please include an indicative lot and building typologies plan which includes a map and associated controls (i.e., minimum lot size and width based on each residential building type).
- Controls are to be informed by the Urban Design Study

Access and movement network

**Objective**

1. Ensure the subdivision is designed to integrate with surrounding residential development and makes efficient use of existing road networks.
2. Neighbourhood streets are designed to prioritise pedestrians and promote active and passive recreation.

**Controls**

- C1. Subdivision layout is to incorporate a collector road extending Kingfisher Drive to the intersection at Minmi Rd/ Brookfield Avenue (east).
- C2. Subdivision works are to include road upgrades for access including a roundabout at the Intersection at Minmi Rd/ Brookfield Avenue (east), and kerb, gutter and footpath extension from existing infrastructure adjacent to 311 Minmi Road.
- C3. The new roundabout at the intersection of Minmi Road and Kingfisher Drive is to incorporate pedestrian and cycle facilities.
- C4. All proposed future lots are to be serviced by internal roads. No driveway access points are permitted onto Minmi Road.
- C5. Roads are to be designed to provide adequate provision for shared paths, connections and street trees.
- C6. A continuous footpath is provided within the APZ along the perimeter of the central conservation area.

- Please provide a transport movement hierarchy showing major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists in accordance with 8.3(3)(b) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Note previous comments regarding the eastern road network and CN's desire to extend Kingfisher Drive to roundabout intersection at Minmi Rd/ Brookfield Avenue (east) intersection which has been designed with allowance for a 4-leg, single-lane roundabout. Kingfisher Drive was designed to allow a bus route and services (after having passed through 505 Minmi Rd) to continue onto Brookfield Avenue and service the 'Outlook Estate' on the northern side of Minmi Rd.
- The proposed access to Minmi Road on the western boundary of the site is not supported given the proximity to the approved left in/left out intersection and other upgrade works on Minmi Road, as required under the approved Minmi East Stage 1B development (DA2015/10393)

Performance Outcome	Benchmark Solution
Avoid or minimise new intersections onto Minmi Road	<ol style="list-style-type: none"> <li>1. <del>Vehicular access to the Eastern precinct is obtained via Kingfisher Drive.</del></li> <li>2. <del>Vehicular access to the Western residential precinct is obtained from Minmi Road utilising an intersection shared with the adjoining approved subdivision.</del></li> </ol>

Provide traffic permeability within the site	Subdivision of the site includes a connecting road between the Eastern and Western residential precincts.
Development minimises visual impacts on Minmi Road	A minimum 10 metre wide strip of land is retained as a vegetation buffer between Minmi Road and residential allotments within the Eastern precinct. (This buffer strip would form part of community association land).

## Landscaping

### **Objective**

1. To ensure the new development respects and enhances the local character and amenity.
2. Ensure significant landscape elements are retained and protected.
3. Ensure the visual amenity is maintained to nearby residential development.

### **Controls**

C1. A Minimum 10-metre-wide strip of native vegetation land fronting Minmi Road is to be retained to maintain the landscape character and local amenity. Existing mature native vegetation is to be prioritised for retention.

C2. Streetscape elements utilise regional materiality such as sandstone, hardwood and steel and are detailed in the landscape plan. These elements will weave through the entry signage, fencing, street tree planting, furniture elements, paving and wayfinding signage to create a site wide character that integrates within and reflects the surrounding landscape and character.

- Please provide site specific landscaping controls in accordance with 8.3(3)(c) of the NLEP. This should be incorporated into the DCP section and not referenced under additional information.
- Landscape presentation to Minmi Road is a direction of the Planning Panel RR-2021-70.

## Biodiversity

### Objective

1. To preserve and enhance the biodiversity values of C2 Environmental Conservation lands adjoining the residential zoned land.

### Controls

C1. A Vegetation Management Plan (VMP) is to be prepared by a suitably qualified person for approval. The VMP shall be prepared in accordance with CN's specifications and include, but not be limited to, the following:

- a. Meets the Urban Forest Policy goals and objectives
- b. A site assessment detailing vegetation communities present and management objective for the vegetation
- c. Management zones including bushfire asset protection zones.
- d. Site management including weed management, bushfire asset protection zone management and bush regeneration activities.
- e. Hydrological characteristics and flood probability for riparian areas and downstream wetlands
- f. Location of stormwater detention structures or water –sensitive urban design works
- g. Full list of existing plant species for revegetation work
- h. Maintenance periods and timeframe for implementation of the VMP
- i. Monitoring, performance criteria and reporting for the VMP.

C2. Roads resulting in fragmentation of conservation land will not be supported.

C3. Road batters are not to encroach into C2 Environmental Conservation land.

C4. An Urban Interface Area (UIA) will be required for on land that contains and/or adjoins significant vegetation.

C5. CN will consider dedication of environmental conservation land and drainage corridor at no cost after the subdivision works have been carried out and the VMP established and maintained for a specified period of time to CN's satisfaction. CN may not accept the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

- A UIA is a buffer to minimise both biotic (impacts of drainage infrastructure, weed invasion, nutrient increase etc.) and abiotic (noise, wind, dust, light, litter etc.) edge effects on land adjoining a proposed development site, thereby mitigating environmental impacts. Please include plan and section drawing in this section that illustrates how the UIA will be achieved.
- The VMP is to include on-going maintenance and management of the UIA.
- The VMP is to address ongoing land ownership and how this land will be managed in perpetuity.
- Walking trails are not appropriate within the C2 Conservation zone without confirmation from BCD.
- Roads resulting in further fragmentation of the biodiversity corridor are not supported.

Open space

**Objective**

1. Development provides passive and active recreation opportunities.

**Controls**

C1. Open space for the purpose of passive and active recreation is to be located entirely within residential zoned land.

<b>Performance Outcome</b>	<b>Benchmark Solution</b>
<del>Subdivision allows safe and convenient pedestrian/cycle access to Minmi Road</del>	A straight inter-allotment shared pathway is provided in the north-east corner of the Eastern precinct linking to the existing footpath adjacent 344 Minmi Road, Fletcher
<del>Convenient pedestrian access is provided to the proposed neighbourhood centre and local park on Minmi to the west of the site</del>	A pathway is provided from the south west corner of the Western precinct across the open space and creek line to the west and linking to the proposed perimeter road within the Winton development
<del>Proposed community association land provides opportunity for recreation.</del>	<ul style="list-style-type: none"> <li>— A continuous footpath is provided within the APZ along the perimeter of the central conservation area.</li> <li>— Walking trails are provided within conservation zoned land.</li> </ul>

- Walking trails are not appropriate within the C2 Environmental Conservation zone without support from BCD.
- Should BCD support walking trails through C2 land, they should be limited in number, width and aligned to reduce habitat fragmentation and track erosion.
- Controls relating to shared paths or movement are more appropriately listed under access and movement networks.

## Bush fire protection

### Objective

1. Ensure risks associated with bush fire, including projected increase in the occurrence and severity of hazards as a result of climate change, are appropriately and successfully managed through effective and innovative design, as well as in connection with the preservation of the ecological values of the site and adjoining lands.

### Controls

C1. All bushfire Asset Protection Zones are to be located outside C2 Environmental Conservation Zones

C2. Road batters within Asset Protection Zones need to be configured so their grade and length supports ready maintenance and reduces weed ingress into C2 Environmental Conservation land.

<b>Performance Outcome</b>	<b>Benchmark Solution</b>
<b>All residential allotments achieve a Bushfire Attack Level (BAL) rating of BAL 29 or less.</b>	Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.
<b>Perimeter roads are provided at all interfaces with bushfire prone vegetation</b>	Subdivision of the site includes perimeter roads along the western and southern extent of the Eastern precinct and along the eastern and southern extent of the Western precinct.

Stormwater and water quality management

**Objective**

1. To provide direction with regard to CN's requirements for the management of both the quality and quantity of stormwater runoff.

**Controls**

- C1. Proposed site discharge points to waterways consider site acceptance criteria for CN's Standard Rock Outlet for Headwalls.
- C2. Water-sensitive urban design elements are incorporated into the subdivision, utilising land within Asset Protection Zones where possible and is not included in C2 Conservation zoned land

Aboriginal cultural heritage

**Objective**

1. Manage Aboriginal cultural heritage values to ensure enduring conservation outcomes.
2. Preserve known Aboriginal cultural heritage sites.

**Controls**

- C1. Development will identify any areas of Aboriginal cultural heritage value that are within or adjoining the area of the proposed development, including any areas within the development site that will be retained and protected (and identify the management protocols for these).
- C2. Development is to be carried out in accordance with the recommendations of <insert> report.

- Please provide site specific provisions for stormwater and water quality management in accordance with 8.3(3)(e) of the NLEP

- Required as outlined in this information request.



Environmental conservation and landscape character

**Objective**

- Development of the site is consistent with the surrounding landscape character
- Development of the site achieves long term biodiversity conservation outcomes

<b>Performance Outcome</b>	<b>Benchmark Solution</b>
<del>Landscaping makes a positive contribution to the surrounding landscape character</del>	<del>Asset protection zones are provided through a combination of perimeter roads and managed land adjacent to the road reserve on the opposite side of the road to dwelling lots.</del>
<del>Stormwater is managed in a way that improves environmental and amenity outcomes</del>	<del>Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation</del>
<del>Land zoned for environmental conservation is managed in perpetuity such that the biodiversity values of the land are protected</del>	<del>Land zoned for environmental conservation forms part of community land within a Community Title subdivision and is managed by the Community Corporation</del>
<del>Road design facilitates habitat connectivity for local native species</del>	<del>The connecting road between the Eastern and Western precincts is designed in consultation with a qualified ecologist to provide fauna crossing opportunities through retention of canopy trees either side of the road where possible and using supplementary planting.</del>

- These controls are more appropriately captured elsewhere in this section or do not satisfy the direction of this information request letter.

21 March 2024

Katrina Walker  
Barr Planning  
C/- Kingston Minmi Road Pty Ltd  
92 Young Street Carrington NSW 2294  
**CARRINGTON NSW 2294**

Dear Katrina

**Submission: Biodiversity Certification Application 505 Minmi Road Fletcher Council consultation under Section 8.4(3) of the Biodiversity Conservation Regulation 2017**

City of Newcastle (CN) thank you for the 8 February 2024 invitation to comment on the biodiversity certification assessment report (BCAR) for land at 505 Minmi Road, Fletcher. We acknowledge this is a requirement of the *Biodiversity Conservation Act 2016* (BC Act), s 8.6(1) and the *Biodiversity Conservation Regulation 2017* s 8.4(3) with a minimum of 42 days to respond. CN requests this letter including Attachment A, be recognised as our submission on the BCAR. Ideally exhibited with it, given this may occur before we have a Gateway determination to exhibit the planning proposal.

Biodiversity certification aims to integrate biodiversity conservation planning and land use intensification, focusing on strategic planning at the landscape scale. It relies on early identification of areas of higher biodiversity value for conservation, and those of lower biodiversity value for development. Land proposed for certification is to be located to avoid or minimise impacts on high environmental value (HEV) land including threatened species, ecological communities, and their habitats.

This submission comments on the BCAR, planning proposal, and supporting documents. It considers the Hunter and Central Coast Regional Planning Panel decision, the Gateway determination conditions, and recent NSW Land and Environment Court decisions, detailed in **Attachment A**. CN's comments raise significant matters. Addressing these adequately is necessary to achieve the objectives of local and State strategic plans and policies, and to comply with the BC Act's legislative requirements.

CN does not support the application (the application) in its current form as the proponent has **not** taken all necessary steps to avoid or minimise the loss of native vegetation with biodiversity values, under s 6.4 of the BC Act. That is, avoidance and minimisation of impacts on areas of HEV including:

- BC Act listed Endangered ecological community (EEC) Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions.
- key habitat such as riparian zones, hollow-bearing trees, and foraging habitat for threatened species.

CN is not satisfied the application in its current form can achieve the purpose of the BC Act as described in s 1.3; nor would it achieve the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as described in s 1.3.

The proposal fails to comply with Gateway determination and panel requirements to consider alternative designs for optimal density and diversity of housing that might better balance residential needs with environmental preservation. It appears that the applicant has not put sufficient effort into first addressing the loss of native vegetation and the impact on high biodiversity value land.

Should you wish to discuss this further or have any questions, please contact me on [REDACTED] or [REDACTED], or Jonathon Christie, Strategic Planner on [REDACTED] or [REDACTED]

Yours faithfully

Shane Cahill  
**STRATEGIC PLANNING SECTION MANAGER**

## ATTACHMENT A

### Submission Detail: 505 Minmi Road, Fletcher - Biodiversity Certification Application

The following detail is part of CN's submission on the biodiversity certification assessment report (BCAR) for 505 Minmi Road, Fletcher (Lot 23 DP1244350). Comments address the application, concurrent planning proposal and supporting information. It considers the Gateway determination conditions, the Hunter and Central Coast Regional Planning Panel (panel) decision, and recent NSW Land and Environment Court decisions. It raises significant matters that CN found need to be adequately addressed to achieve the objectives of local and State strategic plans and policies, and to comply with the BC Act's legislative requirements.

### Hunter and Central Coast Planning Panel Decision

The BCAR, under the heading *Impact, Avoidance & Mitigation*, misleadingly states the panel endorsed the proposed rezoning. The panel's decision to progress the planning proposal to Gateway determination was in no way an endorsement of the proposed zone boundaries. On 20 September 2021 the panel's Record of Decision, s 4 *Mitigation of Environmental Impacts and Additional Studies* stated:

*"The Panel does not currently endorse the proposed lot boundaries, minimum lot size and location or the indicative subdivision layout. By extension, the Panel does not currently endorse the proposed ecological outcomes. Key issues that require additional detailed investigation and /or information are discussed in the following sections.*

#### *Biodiversity*

*The Panel is not satisfied the zone boundaries have been informed by a combination of urban design and ecological considerations.*

*It is the Panel's view the zone boundaries should be informed by the onsite biodiversity values and location of the adjacent C2 zoned land through which the most viable biodiversity linkages can be maintained."*

The panel's clear intention was to request an urban design study to review the zone boundaries to better reflect ecological considerations, onsite biodiversity values, and biodiversity linkages before proceeding to Gateway determination. CN accepts minor amendments were made to the zone boundaries following the panel's decision. These changes do not adequately consider biodiversity values as requested by the panel. Rather than meet the panel's requirement the study appears to justify the original proposal. This is evident when comparing the *Planning Proposal 505 Minmi Road, Fletcher* document of September 2020 with that of March 2023. The September 2020 document notes, page 84:

*The **Indicative Subdivision Layout** has taken into consideration land stability, topography and slope analysis in determining the future development of the site including consideration to:*

- Land within the site > than a slope of about 15percent, is to be conserved in its natural bushland state and has been excluded from the area proposed for residential subdivision.*
- Land within the site, with flatter slopes of 15percent or less has been considered for the residential component of the site. Flatter areas have been identified and utilised for smaller lot sizes as indicated on the Indicative Subdivision Layout.*

This wording changed in the document of March 2023, page 78 reads:

*The **Urban Design Study to provide an indicative subdivision lot layout** has taken into consideration land stability, topography and slope analysis in determining the future development of the site including consideration to:*

- Land within the site > than a slope of about 15percent, is to be conserved in its natural bushland state and has been excluded from the area proposed for residential subdivision.*
- Land within the site, with flatter slopes of 15percent or less has been considered for the residential component of the site. Flatter areas have been identified and utilised for smaller lot sizes as indicated on the Indicative Subdivision Layout.*

The panel considered this a key issue requiring additional detailed investigation and /or information. A comparison of the proposed indicative subdivision layouts, found superficial changes, not informed by ecological assessment. The proposed zoning boundaries reflect

topographical site limits, not a combination of urban design and ecological considerations. The proposed R2 residential zoning is on the easier to develop parts of the site with proposed C2 conservation zoning on the steeper, harder to develop parts of the site. This does not meet the panel's requirements.

### Gateway Determination

Department of Planning Housing and Infrastructure's (the department) Gateway determination report, December 2022 provides a strategic assessment against the Hunter Regional Plan 2041 (HRP 2041). The application relates to the department's assessment against Objective 6 of the HRP 2041 which requires planning proposals to comply with the following strategies:

**Strategy 6.3:** *Planning proposals will ensure the biodiversity network is protected within an appropriate zone unless an alternative zone is justified following application of the avoid, minimise offset hierarchy.*

**Strategy 6.4:** *Planning proposals should promote enterprises, housing and other uses that complement the biodiversity, scenic and water quality outcomes of biodiversity corridors. Particularly, where they can help safeguard and care for natural areas on privately owned land.*

The department found the proposal inconsistent with these strategies requiring consultation with the Biodiversity Conservation Division (BCD) to refine the zone boundaries noting:

*The consultation may result in the development footprint being reduced, with the opportunity for a more optimal density to be achieved in the developable areas of the site.*

*The appropriate zoning footprint between conservation and residential needs to be informed by advice from the Biodiversity Conservation Division. The Department would be supportive of increased density up to four stories if this led to an increase in the amount of the site reserved for conservation. Particularly, as outlined above this may lead to an overall improvement in public benefit for the community and conservation.*

*This is consistent with the position of the Hunter Central Coast Regional Planning Panel, who noted in their September 2020 decision that "the proposal does have site specific merit provided the constraints are able to be addressed through additional information and future assessment. Accordingly, the Panel understands this may potentially result in a different zone boundary configuration and approach to density across the site."*

HRP 2041 requires planning proposals that do not comply with a strategy in Objective 6 **must** demonstrate how the following performance outcomes will be achieved.

1. Areas of high environmental value are protected to contribute to a sustainable region.
2. The biodiversity network is sustainably managed and provide social, environmental, health, cultural and economic benefits.
3. Development outcomes maintain or improve the environmental value or viability of the biodiversity network.
4. Connection with Country is at the core of designing and planning new projects and places.
5. Aboriginal cultural heritage is recognised and celebrated as living and dynamic and not dealt with statically through harm prevention and protection alone.
6. Items, areas, objects and places of heritage significance are conserved.
7. Water management uses innovative approaches in urban, rural and natural areas to enhance and protect the health of waterways, wetlands, coast and bays.
8. Water quality in drinking water catchments is protected.

The BCAR does not demonstrate how the above outcomes will be achieved. The proposed residential zone is predominantly on BC Act listed EEC of Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. It will impact key habitats including riparian zones, hollow-bearing trees, and foraging habitat for threatened species. All defined as HEV areas in the HRP 2041.

The department's 10 January 2023 Gateway determination (now expired), enabled the proposal to proceed with conditions relating primarily to biodiversity and efficient land use. Conditions 3 and 4 state:

### **Condition 3**

*Consultation is required prior to exhibition with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:*

- *Transport for NSW;*
- *Biodiversity and Conservation Division;*
- *Ausgrid;*
- *Heritage NSW;*
- *NSW Rural Fire Service;*
- *Subsidence Advisory NSW;*
- *Awabakal Local Aboriginal Land Council; and*
- *Department of Education.*

*Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.*

### **Condition 4**

*Following consultation with relevant public authorities listed in Condition 3, consider an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.*

Investigating alternative structure plans is essential to apply the principles of ecologically sustainable development (ESD). Namely the precautionary principle which requires an assessment of the risk-weighted consequences of **various options**. Noting ESD is the key purpose of the BC Act and an objective of the EP&A Act.

## **Consultation with the Biodiversity Conservation Division**

The proponent consulted BCD in January 2023, per Gateway determination condition 3. BCD's response of 15 February 2023 identified key issues around avoidance of impacts to high value biodiversity. It found, amongst other matters, that further regard is necessary to adequately meet requirements for the avoidance of impacts to high value biodiversity and providing sufficient habitat connectivity. The outstanding matters outlined below must be addressed to satisfy legislative requirements and the Gateway determination conditions.

### ***The planning proposal is inconsistent with Section 9.1 Ministerial Direction 3.1***

*Ministerial Direction 3.1 (1) issued under Section 9.1 of the Environmental Planning and Assessment Act 1979 requires that a planning proposal include provisions that facilitate the protection and conservation of environmentally sensitive areas. This direction applies to all relevant planning authorities when preparing a planning proposal. The ecological assessment is incomplete; however, does identify High Environmental Values (HEV) on site, including:*

- *Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions Endangered Ecological Community (EEC)*
- *45 Hollow-bearing Trees*
- *Myotis macropus habitat*

*The planning proposal is inconsistent with Ministerial Direction 3.1 as it reduces the environmental protection standards that apply to the land by seeking to rezone land from C4 Environmental Living to R2 Low Density Residential and C2 Environmental Conservation. Furthermore, land identified as Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions EEC is proposed to be rezoned as R2.*

### **Recommendation**

The planning proposal should address how the proposed rezoning includes provisions which facilitate the protection and conservation of environmentally sensitive areas pursuant to Ministerial Direction 3.1.

The BCAR V6, 21 November 2023 identifies significant impacts to HEV areas. The amended planning proposal does not provide sufficient justification to comply with the HRP's Strategy 6.3 nor has it demonstrated how the performance outcomes under the HRP's Objective 6 will be achieved. Therefore, consistency with ministerial direction 3.1 Conservation Zones remains unresolved.

**Avoidance of BC Act listed endangered ecological community (EEC) Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions**

*The planning proposal would result in the removal of up to 11.77 ha of Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions EEC. Pursuant to section 6.4(1) of the BC Act, the applicant must firstly demonstrate appropriate and sufficient steps have been taken to avoid or minimise impacts to areas with vegetation mapped with biodiversity values, and only then if satisfied, the relevant biodiversity conservation measures should be considered to offset or compensate any impacts such as from clearing.*

*The planning proposal fails to take all appropriate avoidance and minimisation measures for the EEC site. In order to adhere to the BC Act, further consideration should be given to ensure this EEC is sufficiently avoided or impacts minimised.*

Recommendation

*The planning proposal should display further avoidance of BC Act listed EEC Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions.*

CN accepts slight zone boundary amendments made since these comments somewhat reduce the impact on EEC Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions. Habitat removal is reduced from 11.77ha to 10.37ha in the latest iteration. This still proposes to clear 67.5 percent of the EEC on a site zoned for environmental conservation. Importantly, CN is not satisfied the zone boundary amendments reflect an evidence based ecological assessment.

**Further information should be provided for habitat features**

*Section 3.1.3 of the BAM 2020 requires the assessor to identify and map the following:*

- *rivers, streams, estuaries and wetlands*
- *karst, caves, crevices, cliffs, rocks and other geological features of significance*
- *connectivity of different areas of habitat*

*The BIR mentions rocky outcrops, however, does not provide mapped locations or photographs of the outcrops. The BIR should be amended to be consistent with BAM 2020 requirements.*

*Section 4.3.4 (9) of BAM 2020 requires the assessor to provide specifics such as dimensions and height above ground during a hollow-bearing tree assessment. It is recommended hollow-bearing tree data and labelled figure displaying location of hollow-bearing trees are included as an appendix.*

Recommendation

*Further information should be provided in the BIR regarding habitat features in accordance with section 3 and section 4 of BAM 2020. Impacts to habitat connectivity should be considered.*

The BCAR excludes identified watercourses observed on site and evident on CN's digital elevation modelling as shown in figure 1 below. BCAR appears to use NSW Government Hydroline spatial data or similar to define creek lines and buffers. This high-level dataset is not adequate for this purpose and has not registered all watercourses.

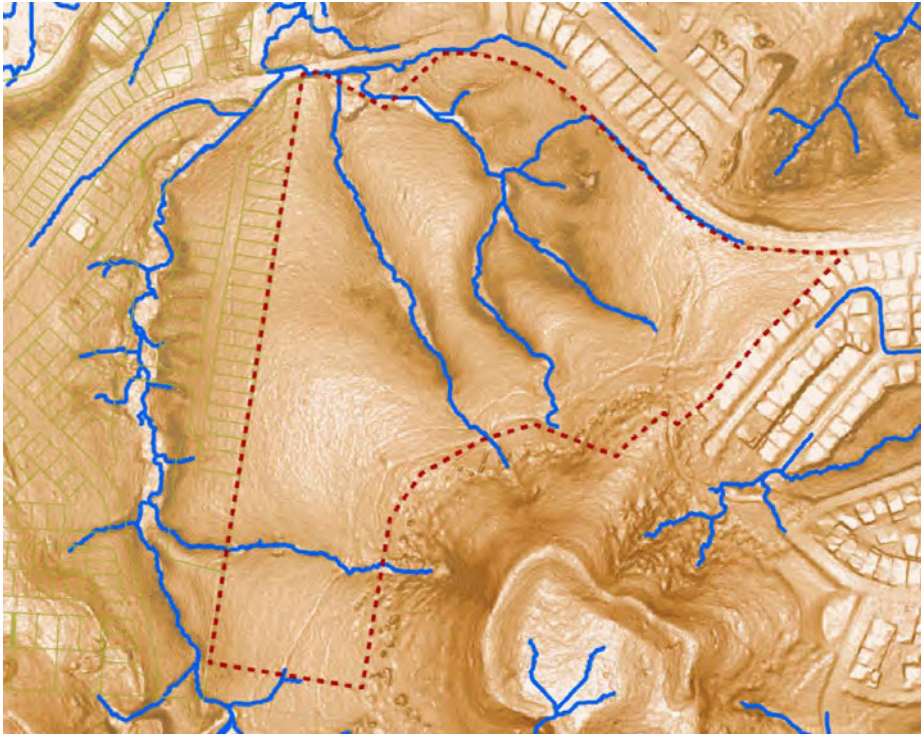


Figure 1: CN hydroline analysis

**Impacts to habitat connectivity should be considered**

Large intact bushland exists to the north and south of the proposal site. Vegetation within the east and west of the proposal site form part of a corridor.

Section 1.4 of the Biodiversity Conservation Regulation 2017 (BC Regulation) notes habitat connectivity as a prescribed additional biodiversity impact. For all proposals, prescribed impacts must be assessed as per clause 1.6 of the BC Regulation.

It is recommended that the assessment considers impacts to connectivity as per section 6.1.3 and section 8.2 of BAM 2020.

Recommendation

It is recommended habitat connectivity between vegetation north and south of the proposal site is considered as per section 6.1.3 and section 8.2 of BAM 2020.

The site is one of the largest forested north-south biodiversity linkages left in the southwest part of the Newcastle Local Government Area (LGA) zoned C4 Environmental Living. This zone provides for the development of land for uses that will not, or will be unlikely to, prejudice its possible future development for urban purposes or its environmental conservation. This site is important to HRP 2041 Objective 6 for Biodiversity conservation planning and corridor linkage at a landscape scale. It provides a direct non-gapped link to the south to a forested area of the Summerhill Waste Management Centre, Blue Gum Hills Regional Park and conservation zoned bushland towards the Link Road at West Wallsend.

While relatively narrow (less than 100m wide) the link north across Minmi Road to land zoned C2 Environmental Conservation (associated with the Hexham Wetlands) provides one of the few remaining lesser cleared links in this area. It connects the wetlands in the north to existing forest in the south. This link is part of the Watagans to Stockton Biodiversity Corridor, a key corridor link and patch as part of the biodiversity network under HRP 2041. This corridor is particularly important over the long term as previously grazed parts of the southern Hexham Wetlands regenerate and/or are rehabilitated. The HRP supports the principle of an extension of the corridor boundary.

CN's Local Housing Strategy (LHS), Environment Strategy and Development Control Plan 2023 (DCP) align with HRP Strategies 6.1 and 6.2, identifying corridors and patches on site to connect to the wider biodiversity network, including the Watagans to Stockton Link.



DCP Objective 7 is to protect high environmental value land, including biodiversity corridors, riparian areas and wetlands (s C3 Vegetation preservation and care; subsection 5). Control 10.0 C-6 a, b and c identify that all EEC, key habitat for threatened species, and biodiversity corridors (figures 2 and 3) are to be avoided and protected.

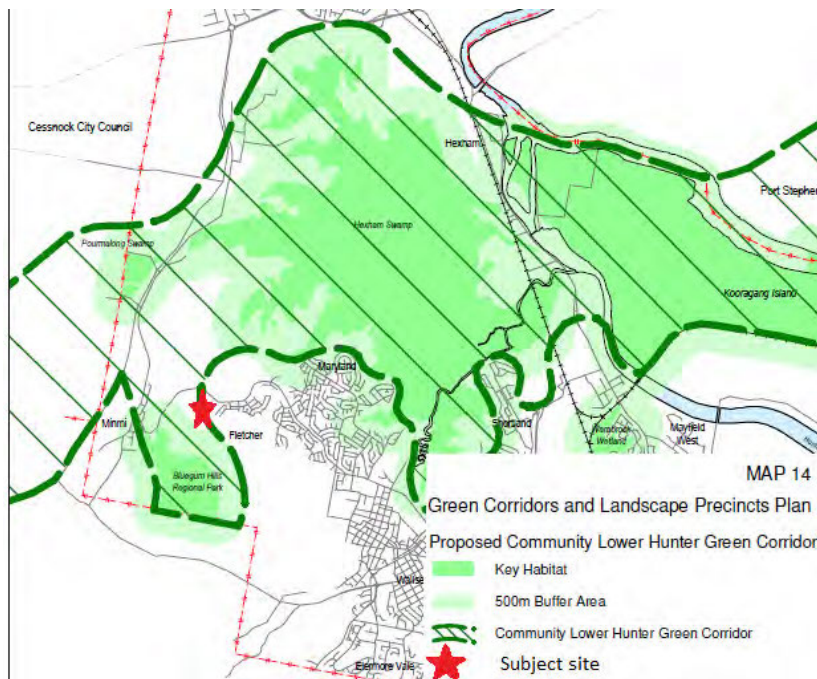


Figure 2 - Extract of CN's Map 14 Green Corridor and Landscape Precincts Plan 2005

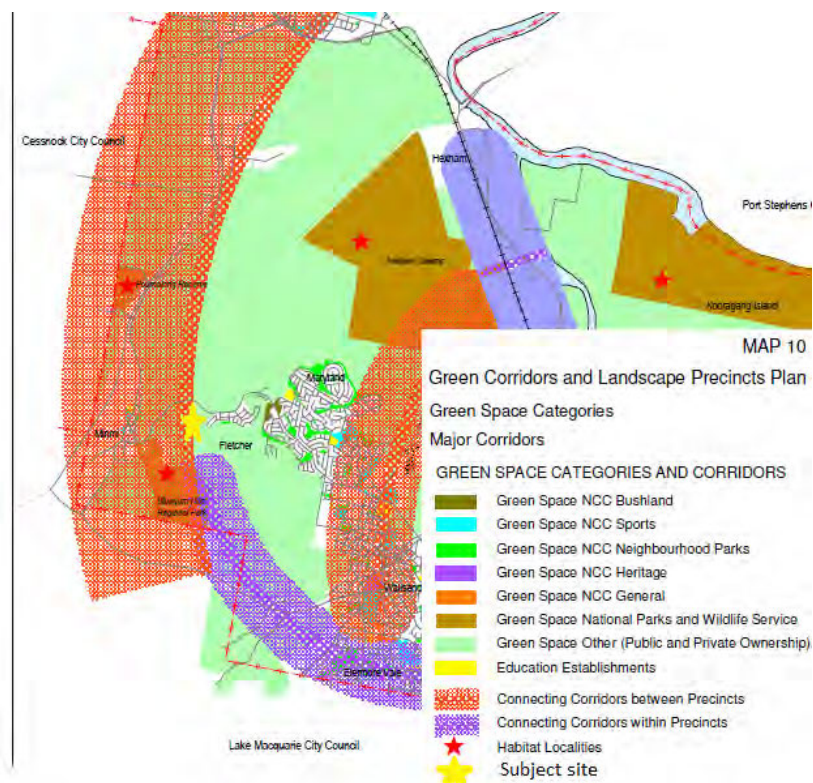


Figure 3 - Extract of CN's Map 10 Green Corridor and Landscape Precincts Plan 2005

The proposed link road between the proposed eastern and western residential zoned precincts will seriously compromise the integrity of the existing forested south-north corridor on the site for all but the most mobile species. It will also act as a threat to many species (including highly mobile species such as Large Forest Owls) from increased risk of vehicle impacts, as well as provide additional edge effects. While the BCAR states that this risk will be minimal it does not provide any empirical evidence for this including published research to justify this statement.

## **CNs Request for Further Information**

CN's assessment of the amended BCAR found the proposal does not adequately address biodiversity and ecological matters and is inconsistent with biodiversity outcomes identified in CN strategies and policies, including:

### *CN Environment Strategy*

#### A regenerative future

- In applying a regenerative approach, CN commits to protecting biodiversity corridors and areas of high environmental value from development, rehabilitating and restoring our environment, and designing a city that can coevolve with nature.

### *CN Local Housing Strategy (LHS)*

- Conserving, protecting and managing significant habitats and areas of high biodiversity value (including riparian zones); and
- Expanding and improving the Blue and Green Grids.

### *CN Development Control Plan 2023 (DCP)*

#### C3 Vegetation preservation and care

- 5.0 Objectives - 7) Protect high environmental value land, including biodiversity corridors, riparian areas and wetlands.

CN requested further information for the planning proposal on 26 May 2023 to demonstrate amongst other matters, land use efficiency to achieve better social and environmental outcomes. CN is not satisfied the proponent has made a genuine attempt to address matters previously raised. The BCAR must provide evidence of analysis which considers alternative structure plans based on CN's previous comments relating to dwelling yield and dwelling density to satisfy the requirements of the Biodiversity Assessment Method (BAM).

### *Dwelling yield*

HRP 2041 Objective 3 seeks to create 15-minute neighbourhoods with Objective 5 planning for 'nimble neighbourhoods', diverse housing and sequenced development. Strategy 3.3 and 5.2 regarding context areas is actioned in the DCP. It identifies greenfield areas as inner suburban (s D1 Subdivision and lot consolidation subsection 8).

CN's Local Strategic Planning Statement (LSPS) and LHS identify the importance of planning for growth and change in catalyst areas, strategic centres and Urban Renewal Corridors as a priority over greenfield development. This is reflected in LHS Priority 1, and the HRP 'preference for infill development rather than greenfield development' including Strategy 5.1 identifying CN with guidance for 20 percent greenfield delivery of the Table 6 required dwellings for CN to 2041 at 17,850. These projections are consistent with the LSPS and LHS planning and preference for infill development. The department estimated the Local Environmental Plan 2012 (LEP) had a theoretical capacity of 60,000 additional dwellings with 92 percent in infill areas and 8 percent or 4,800 dwellings in greenfield areas. The planning proposal does not satisfy Objective 5 or performance outcomes 1, 3 and 5.

The dwelling assumptions for the site in CN's Section 7.11 Western Corridor Development Contributions Plan of 110 dwellings is not essential to meeting CN's greenfield dwelling targets. A contributions plan does not convey developable rights. CN continues to deliver the HRP targets for both greenfield and infill development. The planning proposal yield of approximately 170 low density greenfield dwellings is considered an inefficient balance of ecology and housing needs and an overdevelopment of the site.

### *Dwelling density*

HRP Objective 3 seeks to create 15-minute neighbourhoods, with context areas aligned in the DCP identifying greenfield areas as inner suburban areas of 40 dwellings a hectare. As

a proposed urban release area per the LEP, the appropriate density for investigation across the site for the planning proposal is a minimum of 40 dwellings per hectare.

The planning proposal is for 450m<sup>2</sup> lots for the majority of the site, a proposed density of 13 dwellings per hectare and not 22 dwellings as the planning proposal report indicates. This is significantly below 40 dwellings a hectare. It is not an efficient use of land and does not minimise the impact of development on the environment as intended by Direction 6.1 Residential zones issued by the Minister under Section 9.1 of the EP&A Act.

The planning proposal does not satisfy HRP Objective 3 or its performance outcomes 1, 2, 5 and 7 nor does it satisfy Objective 5 or its performance outcomes 1, 3, 4 and 5. Similarly, the planning proposal is inconsistent with DCP control C-6, subsection 8.0 objectives 2 and 4 and the subsection 5.0 objectives 3, 5, 7 and 10 of Section D1.

### *Avoid and Minimise*

The Biodiversity Offsets Scheme is based on the 'avoid, minimise, offset' hierarchy. Using this, proponents must:

- first consider whether the development can avoid a negative impact on the environment
- next consider whether the development can minimise any negative impacts that cannot be avoided
- once all reasonable steps to avoid or minimise environmental impacts have been exhausted, consider whether any remaining impacts can be offset.

NSW Biodiversity Assessment Method (BAM) s 7.1 details the requirements for avoid or minimise when planning a proposal. Those that are relevant to the project include:

- Locate the project in areas lacking biodiversity values
- Locate the project where native vegetation and habitat is in the poorest condition
- Avoid habitat for species with a high biodiversity risk weighting, threatened ecological communities (TEC) or highly cleared Plant Community Types (PCT)
- Locate the proposal to avoid severing or interfering with corridors connecting different areas of habitat to important habitat or movement pathways

The areas proposed to be certified include areas of EEC and habitat for threatened species. The BCAR assigns these areas to 'moderate' or 'low' condition classes, describing them as being vulnerable to future disturbance as a result of being fragmented by fire-trails and bike tracks. However, the vegetation integrity scores (VIS) for these areas indicate they are in good condition. Threatened ecological communities are considered to be in moderate–good condition if they have a current vegetation integrity score greater than or equal to 60 (this score is consistent with the BAM 2020 Operational Manual - Stage 3 definition of a security benefit).

The development layout should avoid creating vegetation/habitat fragments and maintain corridors of sufficient width (150m) to avoid being subject to edge effects. Corridors should aim to link with important local and regional corridors, also consistent with DCP control C-6, subsection 10 of Section C3 Vegetation preservation and care.

The BAM 2020 Operational Manual – Stage 2, s 3.1 requires the BCAR clearly presents information on how potential impacts on biodiversity values are avoided. Including, location and design alternatives for the proposal evaluated with evidence of analysis of social, economic and environmental considerations. The BCAR justifies an appropriate level of avoidance stating an increase in C2 zoned land over the project lifespan. CN is not satisfied the minor zone boundary adjustments reflect effective urban design analysis informed by ecological assessment. The recent structure plan (BCAR, Appendix A) shows a 0.55 hectare increase to C2 zoned land. This contains a detention basin and based on proximity to proposed lots would be required as an asset protection zone (APZ). This is inconsistent with figure 12 of the BCAR which identifies areas not to be impacted. It is inconsistent with Rural Fire Service (RFS) advice provided in 2023.

## *Caselaw*

Avoid or minimise requirements examined in the NSW Land and Environment Court cases:

- Denwol Suffolk Pty Ltd v Byron Shire Council (2023) NSWLEC 1602
- IRM Property Group (No. 2) Pty Ltd v Blacktown City Council (2021) NSWLEC 1306
- Tomasic v Port Stephens Council (2021) NSWLEC 56

These are directly relevant to this proposal as each case found the projects did not address the requirement to avoid or minimise first, prior to finalising the projects' design and location and subsequently calculating offsets. The sites' biodiversity attributes did not sufficiently inform the project's design and location. This same concern has been a consistent request to the proponent to address throughout the assessment period.

In the case of Denwol Suffolk Pty Ltd v Byron Shire Council, this was in part determined by the linearity and regularity of the development application documentation over the course of the project, which did not reflect sufficient adjustments to avoid biodiversity constraints, including a threatened ecological community (TEC). The detrimental impacts were considered unacceptable due to their quantum and lack of responsiveness of the design to existing site attributes. Similarly, the subject proposal involves certification of a large area of TEC and as such, the project has not sufficiently considered avoidance of biodiversity constraints as a first step, or through subsequent consideration of alternative designs.

In the case of IRM Property Group (No. 2) Pty Ltd v Blacktown City Council, it was determined sufficient effort was not given to consideration of the biodiversity attributes of the site and the application did not first avoid or minimise impacts.

In the case of Tomasic v Port Stephens Council, alternative designs that would allow for greater retention of a TEC were not adopted and as a result, the project was not considered to have addressed the avoid or minimise requirements.

## *Offset Obligations*

CN notes any required biodiversity offsets are likely to be satisfied by payment into the Biodiversity Conservation Fund, after which the proponent would not be involved in sourcing of credits. However, should other options be considered (purchase of credits on the market or establishment of a Biodiversity Stewardship Site), it is Council's preference credits are sourced from the local area for both ecosystem and species credits.

## **Alternative Options**

On 26 May 2023 CN requested the proponent investigate alternative site opportunities, including revised zone boundaries, reducing the environmental impact. This was consistent with advice from the panel, the department, and BCD. The proponent has failed to provide evidence of considering a more optimal density and diversity of housing typologies, for a reduced impact. Exploring a similar dwelling yield at 40 dwellings a hectare, using a combination of residential flat buildings (RFB) up to four stories and multi-dwelling housing would be more efficient. This density (subject to biodiversity considerations) is suitable given the site context, existing local centre 400 metres to the east, the new local centre and R3 Medium Density zone to the west. An example of an alternative development footprint providing housing diversity is shown in concept approval MP06\_0031 which includes housing diversity on a nearby site 302 Minmi Road, Fletcher.

## **Additional Outstanding Matters**

CN raised the matters outlined below on 26 May 2023. These matters remain outstanding as the amended BCAR provides no further information to address them.

- The Spot Assessment Technique (SAT) and Spotlighting survey techniques used for koala may have been limited by the dense lantana cover in the lower parts of the site (making koala scat searching harder with this technique). Detection dogs and drones may be a better option with increased confidence in lack of koala presence.

- The Large-eared Pied Bat (*Chalinolobus dwyeri*) was potentially detected via ultrasonic acoustic survey (Anabat) while the Eastern Cave Bat (*Vespadelus troughtoni*) was probably detected via same method. According to the 'Species credit' threatened bats and their habitats – NSW survey guide for the BAM (OEH, 2018 p.15) for the Large-eared Pied Bat and Eastern Cave Bat: 'Acoustic detectors may be used; however, this method does not allow identification of reproductive status. If acoustic detectors are the only survey method used and the target species is detected, breeding must be assumed and mapped in accord with Table 2' (of the guidelines). While no breeding habitat (caves, overhangs etc) was identified on site for either species, Table 2 of the guideline requires all habitat for each species be mapped if present (i.e. including that described in Table 1). Table 1 of the guideline states in regard to features to include in species polygon for both species: 'All habitat on the subject land where the subject land is within 2km of caves, scarps, cliffs, rock overhangs and disused mines. Use high resolution aerial imagery and topographic maps to identify potential roost habitat features on the subject land when it is within 2km caves, scarps, cliffs etc. Species polygon boundary should align with plant community types on the subject land to which the species is associated (listed in the BioNet Threatened Biodiversity Profiles data collection) that are within 2km of identified potential roost habitat features.' The BCAR does not appear to comply with these requirements and does not assume presence of either species (although Large-eared Pied Bat is stated as foraging on the site in s 10.1, page 19 of the BCAR). It is unclear whether a species polygon for either species is required or not, as this may be due to ambiguity in the actual survey guidelines.
- The BCAR lists several indirect impacts proposal but does not consider those from increased predation by domestic dogs and cats, garden and other waste dumping, vehicle impacts, changes to fire frequency (increased incidence of illegal fires) and vegetation removal for recreation purposes (cubby houses, informal bike tracks etc).
- The BCAR incorrectly assumes no indirect impact on water quality within drainage line and waterbody identified as Southern Myotis habitat. Changed hydrology, nitrification, erosion and sedimentation are probable long term indirect impacts.
- The BCAR's Table 14 Mitigation Measures relies on several incorrect assumptions including for example the willingness of the civil contractor / developer to undertake clearing in summer outside core breeding periods for species. How is this to be enforced? The mitigation measures for prescribed impacts of waterbodies/water quality and vehicle strikes are either inadequate or non-existent.
- A preliminary RFS assessment of the subject site and surrounds shows that steeper effective slopes exist beneath the hazard compared to the slopes assessed in the submitted Strategic Bush Fire Study (MJD Environmental, 2021). Therefore, due to the significant variation in the effective slopes as identified, a revised subdivision layout may be required for all the proposed lots to achieve compliance with Planning for Bush Fire Protection 2019. The RFS identify standard practice has not been used (inconsistent with the DCP Section B2 Bush fire protection s 6.0 control C-2 and C-3). The APZs are should not be proposed in the C2 Conservation zoned land rather than the R2 Residential zoned lands and perimeter roads should be proposed for each residential lot adjacent to the hazard. This is likely to require additional clearing impacting the proposed conservation zoned land or a reduced area of the that land to accommodate required bushfire protection measures. These issues still remain in the revised draft development design at Appendix A of the revised BCAR.
- Further details are needed for the ongoing management of the C2 area, given that the current proposal will result in the area being surrounded by urban development, making long term management more difficult. Details of the mechanism by which management actions can be enforced on an ongoing basis are required.
- Poor weather conditions recorded on various survey dates (e.g. 26 November 2019, 23 November 2021, 19 January 2022, 2 February 2022, 22 April 2022, 9 March 2022, 22 April 2022, 25 May 2022, 11 July 2022, 15 July 2022, 28 March 2023) were not conducive to detect many of the target fauna species.
- Consider cumulative impacts of the project and of the proposed certification on the long-term viability of corridors and avoided areas in the context of approved and potential future development in the vicinity of the site.

## Conclusion

The application for biodiversity certification does not comply with s 6.4 of the BC Act. The proponent has not taken all necessary steps to avoid or minimise the loss of native vegetation with biodiversity values as reinforced by the panel, the department, the BCD, and CN. Therefore, the application for biodiversity certification fails to achieve the purpose of the BC Act to ensure ESD by integrating economic, environmental, and social considerations in environmental planning and assessment decisions. Moreover, the ESD principles have not been addressed adequately.

**Precautionary Principle:** The proposal fails to consider environmental impacts and conservation as it does not apply the avoid, minimise, and offset framework appropriately. The application lacks a comprehensive assessment of the risk-weighted consequences of different scenarios undermining the credibility of the decision-making process. The proposal fails to comply with Gateway determination and panel requirements to consider alternative designs for optimal density and diversity of housing that might better balance residential needs with environmental preservation. It appears that the applicant has not put sufficient effort in to first addressing the loss of native vegetation and the impact on high biodiversity value land.

**Inter-generational Equity:** *The Independent Review of the Biodiversity Conservations Act 2016: Final Report* emphasises the urgent need to transition towards a 'nature positive' approach. This recognition echoed in global forums, highlights the critical state of our natural environment and the imperative to ensure that future generations inherit a world as rich in biodiversity as ours.

The proposal in its current form fails to ensure inter-generational equity. Firstly, the failure to comply with the Precautionary Principle undermines the assurance that the health, diversity, and productivity of the environment will be maintained or enhanced for future generations. Additionally, the planning proposal does not satisfy s 1.3(e) of the EPA Act, 'to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. Despite allocating 49 percent of the site for conservation, the planning proposal lacks measures to avoid impacts on HEV land, including threatened species and ecological communities, thus jeopardising the long-term health and diversity of the environment for future generations.

While the applicant considers the economic aspects of the proposed rezoning, as outlined in this submission there is insufficient environmental consideration. This is inconsistent with facilitating ecologically sustainable development.

The failure to adequately address environmental concerns raises questions about the project's sustainability and long-term ecological viability. ESD requires a holistic approach balancing economic interests, environmental protection and social well-being. In its current form, the planning proposal falls short of achieving this balance and fails to fulfil the objectives of the BC Act.

30 September 2024

Jeremy Bath  
Chief Executive Officer  
City of Newcastle  
PO Box 489  
Newcastle NSW 2300

Dear Sir

**Advice - Rezoning of 505 Minmi Road Minmi**

**Your ref: PP-2021-2262**

**Our ref: 10394/KIN957-00001**

We act for Kingston Minmi Road Pty Ltd, the owner of 505 Minmi Road, Fletcher (**Land**).

Planning proposal PP-2021-2262 was submitted to Council for gateway determination to rezone the Land from C4 Environmental Living to the R2 Low Density Residential Zone and C2 Environmental Conservation. The Hunter and Central Coast Planning Panel determined that the Proposal should be submitted for Gateway determination on 20 September 2021. The Department of Planning and Environment issued the planning proposal Gateway determination on 10 January 2023.

The Proposal was exhibited from 22 April to 21 May 2024. The NSW Environment Protection Authority (**EPA**) wrote to the Council on 27 May 2024 raising concerns with the proposal as a consequence of the proximity of the Land to the Summerhill Waste Management Centre (**SWMC**) and the potential for emissions, including odour, noise and sub-surface gas, from the SWMC impacting on the Land.

The SWMC is managed by the Council. The Council must operate the SWMC in accordance with Environment Protection Licence 5897 (**EPL 5897**) issued by the EPA under the *Protection of the Environment Operations Act 1997* (**POEO Act**).

Emissions from the SWMC can be considered in making planning decisions, but only if those emissions are lawful.

In *Bailey v Oberon Shire Council* [2008] NSWLEC 815, the Land and Environment Court (**Court**) considered that a timber plant adjacent to a development site which was emitting noise in breach of operating licences and that whether the issue could be used as a reason to refuse the development application. The Court found as follows:

51. I am of the view that it would be entirely improper for a member of this Court to rely on an unlawful activity to sustain an objection to warrant or contribute to the refusal of an otherwise lawful application.

The decision in *Bailey* was followed in *Warnes v Muswellbrook Shire Council* [2009] NSWLEC 1284 in the context of odour. The development application being considered by the Court was for a residential use that was affected by odour from the Muswellbrook sewage treatment plant.

**Newcastle**

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The Court considered s.129 of the POEO Act:

### **129 Emission of odours from premises licensed for scheduled activities**

- (1) The occupier of any premises at which scheduled activities are carried on under the authority conferred by a licence must not cause or permit the emission of any offensive odour from the premises to which the licence applies.
- (2) It is a defence in proceedings against a person for an offence against this section if the person establishes that—
  - (a) ***the emission is identified in the relevant environment protection licence as a potentially offensive odour and the odour was emitted in accordance with the conditions of the licence directed at minimising the odour***, or
  - (b) the only persons affected by the odour were persons engaged in the management or operation of the premises.
- (3) A person who contravenes this section is guilty of an offence. (emphasis added)

The Court then considered the relevant environment protection licence for the plant that included the following condition:

L8.1 – No condition of this licence identifies a potentially offensive odour for the purposes of s.129 of the Protection of the Environment Operations Act 1997.

The Court found that condition L8.1 were not protective in the context of s.129 of the POEO Act. As a result, the Court concluded that the offensive odour emitted from the plant was unlawful.

108. As a consequence, as I observed in *Bailey v Oberon Shire Council* [2006] NSWLEC 815 at para 51, I do not think that an unlawfully produced impact can found refusal of a development application or, indeed, contribute to the refusal of such an application.

As noted above, the SWMC operates under EPL 5897. That EPL includes the following:

#### **L3 Potentially offensive odour**

L3.1 – No condition of this licence identifies a potentially offensive odour for the purposes of s.129 of the Protection of the Environment Operations Act 1997.

This condition is identical to the condition in *Warnes*.

EPL 5897 does not contain any provision relating to noise.

EPL 5897 condition O3.1 concerns dust emissions. It is in very general terms:

O3.1 – All operations and activities occurring at the premises must be carried out in a manner that will minimise emission of dust from the premises.

EPL 5897 requires the monitoring of subsurface gas at a number of locations. There are no thresholds for gas emissions set in the EPL.

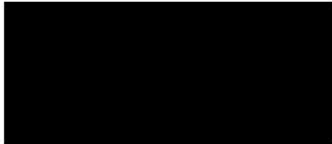
What is apparent is that EPL 5897 does not provide any lawful basis for emissions of offensive odour, sub-surface gas, or noise from the SWMC onto the Land.

Given this, and applying the relevant case law, such unlawful emissions cannot provide a reason to prevent the Proposal for the Land progressing. We also note that there are already dwellings much closer to the SWMC than the Land.



Given the above, the issues raised by the EPA cannot lawfully be used to prevent the Planning Proposal from proceeding. Given Council's only objection to the Department of Planning Housing and Infrastructure was associated with matters raised by the EPA, it is clear that does not contain any proper basis for objection. For that reason, we ask the Council to withdraw any objection to the progress of the Planning Proposal and support the Gateway Review Request to facilitate the rezoning of the land.

Yours faithfully



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