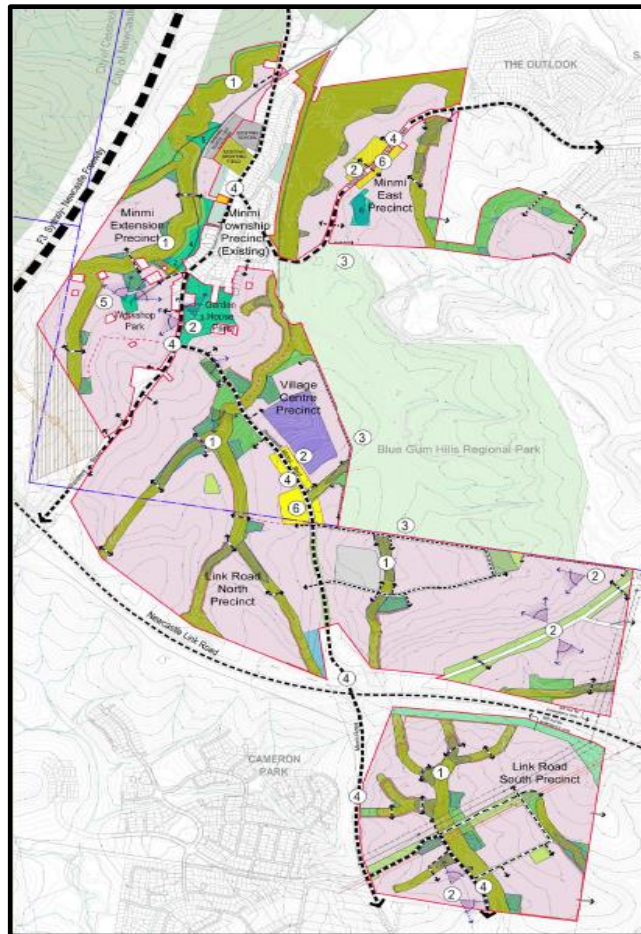


SECTION 75W MODIFICATION

WINTEN PROPERTY GROUP



SECTION 75W APPLICATION MAJOR PROJECT 10_0090 MINMI LINK ROAD DEVELOPMENT

MODIFICATION NO. 1

Sydney: PO Box 28 CROWS NEST NSW 1585 | Suite 405, 486 Pacific Highway ST LEONARDS NSW 2065 | Phone: (02) 9436 4210
Newcastle: PO Box 726 NEWCASTLE NSW 2300 | 125 Bull Street NEWCASTLE WEST NSW 2302 | Phone: (02) 4926 1388
Gunnedah: PO Box 328 GUNNEDAH NSW 2380 | 88 Marquis Street GUNNEDAH NSW 2380 | Phone: (02) 6742 0166

Email: survey@monteathpowys.com.au
Web: www.monteathpowys.com.au
ABN: 94 000 861 110

This report was prepared by Monteath & Powys Pty Limited.

PROJECT	Minmi Link Road Development
CLIENT	Winten Property Group
OUR REFERENCE	2015/0100
DATE	26 July 2016
AUTHOR	Jessica Bayley (BUrbRegPlan) Senior Planner
CERTIFICATION	I hereby certify that this Statement of Environmental Effects has been prepared in accordance with the requirement of the <i>Environmental Planning & Assessment Act 1979</i> and its associated Regulations. I certify that to the best of my knowledge the information contained within this report is neither false nor misleading.
SIGNATURE	

DOCUMENT CONTROL				
REVISION NO.	DATE	REVISION DETAILS	AUTHOR	APPROVED
A	29/6/2016	Final	JB	Client
B	26/7/2016	Final – Amended	JB	Client



1. INTRODUCTION	4
2. BACKGROUND	4
3. CONSULTATION	4
4. PROPOSED MODIFICATIONS	5
5. STATUTORY CONTEXT	6
6. CONCLUSION.....	7

1. INTRODUCTION

This Section 75W application relates to the Part 3A Concept Approval issued in relation to the Minmi Link Road Development, referred to as MP10_0090.

Modifications are sought to the determinations the Minister has made under Section 75P. The proposed modifications generally relate to the timing for submission of information under the Further Environmental Assessment Requirements, or seek clarification on certain matters, rather than material changes to the Concept Plan.

2. BACKGROUND

The Concept Approval was issued on 6 August 2013. The approval relates to a five stage development with up to 3,300 dwellings across the 520 hectare site at Minmi, including two commercial precincts, associated infrastructure and the dedication of approximately 1,561 hectares of environmental offset. The Concept Approval was sought on behalf of Coal & Allied Pty Ltd. It is noted, however, that in June 2015 Coal & Allied entered into a sale agreement with Winten Property Group, who are now responsible for the development of the land.

The Concept Approval requires that all development associated with the Concept Plan be subject to Part 4 or Part 5 of the Act, whichever is applicable. Monteath & Powys has submitted development applications on behalf of Winten Property Group for the first stage of the development, identified as the Minmi East Precinct.

3. CONSULTATION

Noting that the Concept Approval extends over two (2) local government areas, the Proponent has previously consulted with both Lake Macquarie City Council (David Pavitt) and Newcastle City Council (Brian Cameron) regarding the majority of the proposed modifications. The Proponent and their representatives have also discussed proposed amendments with a number of staff at the Department of Planning & Environment, including Michael File, Ann Maree Carruthers, Anna Johnson and Kate McDonald.

Both Councils were consulted in the preparation of the modification (August 2015). Where applicable, these comments are included in the table contained in Appendix A. Please note that in some circumstances the nature of the modification has changed

since then, whether to take into account changing factual circumstances or to accommodate Councils concerns.

Previous consultation with DPE indicated that they had no significant concerns with the proposed amendments discussed.

It is noted that we are no longer seeking to modify all Further Environmental Assessment Requirements that were discussed previously in August 2015. In addition, there are modifications to the Minister's determination that were not previously proposed:

- Further clarification for timing of Condition 1.16 (Item 2);
- Proposed modification to Condition 1.38 updated (Item 5); and
- Proposed modification to Condition 1.49 included (Item 7).

More recently, a meeting was held on 22 July 2016 between the Proponent, Monteath & Powys and DPE officers Natasha Harras (Team Leader, Modification Assessments) and Anthony Witherdin (Acting Director, Modification Assessments) to discuss the project and the proposed modifications in further detail. It was agreed that the original s.75W application (Rev. A, 29 June 2016) be amended to remove the proposed modifications relating to State infrastructure contributions, which would be dealt with under a separate application.

A copy of this application has been provided to both Newcastle and Lake Macquarie City Councils for their further review to assist with the Department's notification processes.

4. PROPOSED MODIFICATIONS

The proposed modifications generally relate to the timing of the submission of information required in the Further Environmental Assessment Requirements. The Concept Approval requires certain information to be submitted with the Part 4 development applications which would not typically be required until a later stage of the development process. For example, the preparation of management plans which are typically prepared after receiving consent for the development. In addition to the modifications relating to timing, we are seeking modifications to the Concept Approval to clarify the application of Requirement 1.49.

We have discussed majority of the proposed changes with both Lake Macquarie City Council and Newcastle City Council. Both Councils recognise the practicality in the proposed modifications they have been consulted on and are in general agreement with the proposed changes.

The proposed modifications, and reasons for the request, are outlined in Appendix A.

5. STATUTORY CONTEXT

The determination of a Concept Plan can be changed under s.75W of the Environmental Planning & Assessment Act (EP&A Act). Despite this section of the Act being repealed, the provisions of s.75W remain applicable due to the transitional arrangements for Part 3A.

Schedule 6A of the EP&A Act sets out the transitional arrangements for the repeal of Part 3A. A project that is the subject of an approved concept plan, whether approved before or after the repeal of Part 3A, is considered to be a transitional Part 3A project and subject to Schedule 6A. Clause 3C outlines that s.75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.

Section 75W stipulates the following:

1) *In this section:*

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

Modification of approval means changing the terms of a Minister's approval, including:

- a) *Revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
- b) *Changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*

2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*

S.75W (1) is satisfied as MP10_0090 is a Concept Plan approved under Part 3A.

The proposed changes to the determination of the Concept Plan meet the definition of "modification of approval" in s.75W(1)(b).

The modification will not result in any significant environmental impacts, and relates mainly to administrative matters or clarifying particular requirements.



6. CONCLUSION

A number of amendments to the Concept Approval are sought. It is noted, however, the proposed changes do not compromise the intentions of the Concept Approval. The amendments seek to:

- Implement timeframes on certain conditions that are typical to the Part 4 development process, rather than Part 3A project approvals; and
- Clarify certain requirements.

Both Councils were previously consulted regarding majority of the proposed modifications, and generally agreed to the proposals.

It is considered that the proposed modification will have no significant consequence to the approved Concept Plan or future development applications, and we look forward to the Department's approval of this Section 75W application.



APPENDIX A

PROPOSED MODIFICATIONS

**MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS**

ITEM	ENVIRONMENTAL ASSESSMENT REQUIREMENT	REASON FOR PROPOSED MODIFICATION	PREVIOUS NCC COMMENTS (6/8/2015)	PREVIOUS LMCC COMMENTS (3/9/2015)
URBAN DESIGN AND BUILT FORM				
1	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT: 1.15</p> <p><i>Prior to the lodgement of each development application for subdivision, a landscaping and public domain plan must be prepared for the relevant stage in consultation with the relevant Council(s), that includes: ...</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>Each development application for subdivision shall include a landscaping and public domain plan for the relevant stage, prepared in consultation with the relevant Council(s), that includes: ...</i></p>	<p>Landscaping and public domain plans should be required as part of each relevant development application, rather than prior to lodgment of the applications.</p> <p>The change is proposed for practical reasons as the issues to be resolved in order to prepare the plans, such as land ownership, heritage, bushfire and ecology, are issues resolved as part of the preparation of a development application. It is nevertheless intended to consult with the Councils as part of the pre DA process on the preparation of these plans.</p>	<p>Council notes that compliance with the condition, as currently provided, would assist to expedite consideration of the future development applications.</p> <p>Notwithstanding, Council has no objection to the proposal to submit this information in association with the respective development applications.</p>	<p>Agree with Newcastle comments</p>

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

ITEM	ENVIRONMENTAL ASSESSMENT REQUIREMENT	REASON FOR PROPOSED MODIFICATION	PREVIOUS NCC COMMENTS (6/8/2015)	PREVIOUS LMCC COMMENTS (3/9/2015)
CONTRIBUTIONS				
2	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT: 1.16</p> <p><i>Prior to the lodgement of the development application following Stage 1 the arrangements for provision of recreation facilities to meet demand for development within all stages including the skate park are to be identified. Suitable land for these facilities is to be identified within the development area, unless alternative arrangements can be made to accommodate these facilities within general proximity to the development site through negotiations with the relevant council(s). The location of the recreation facilities or alternative arrangements are to be submitted to the Director General for approval within 2 years of concept plan approval or before the lodgement of the second development application whichever occurs first.</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>Prior to the lodgement of the development application following Stage 1 (and occurs within Newcastle local government area) the arrangements for provision of recreation facilities to meet demand for development within all stages including the skate park are to be identified. Suitable land for these facilities is to be identified within the development area, unless alternative arrangements can be made to accommodate these facilities within general proximity</i></p>	<p>The 2 year timeframe should be deleted. The location of these facilities or alternative arrangements should be submitted prior to the Director General for approval before the lodgement of the development application following Stage 1, and occurs within Newcastle local government area.</p> <p>The deletion of the two year timeframe is an administrative amendment. The current proponent entered into a commercial agreement for the site after the determination of the concept plan and as a result the 2 year timeframe in this environmental assessment requirement has passed.</p> <p>The matters should be required to be resolved prior to the lodgement of the development application following Stage 1, and occurs within the Newcastle local government area. The provision and location of the required recreation facilities within Lake Macquarie local government area has been</p>	<p>(NOTE: RESPONSE BASED ON PROPOSED MODIFICATION TO DELETE TWO YEAR TIMEFRAME ONLY)</p> <p>Council maintains the view that this matter should have been resolved prior to the determination of the Concept Plan and continues to believe it is important to resolve this matter at the earliest opportunity so as to ensure potential sites for the recreational facilities are not precluded from consideration by the determination of other development applications.</p> <p>Council would support a modification to this condition that deleted the two year timeframe post Concept Plan approval however Council is of the opinion that the number, nature</p>	<p>(NOTE: RESPONSE BASED ON PROPOSED MODIFICATION TO DELETE TWO YEAR TIMEFRAME ONLY)</p> <p>Agree with Newcastle Council</p>

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

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	<p><i>to the development site through negotiations with the relevant council(s). The location of the recreation facilities or alternative arrangements are to be submitted to the Director General for approval before the lodgement of the development application associated with the second stage development application that occurs within Newcastle local government area.</i></p>	<p>accounted for and determined through Lake Macquarie Council's current Section 94 Plan, which was adopted by Council in May 2016. It is therefore considered that this Further Environmental Assessment Requirement is relevant only to development and recreation facilities required within Newcastle City Council, where the location of recreation facilities is somewhat unresolved. It is noted, however, that the number and nature of the recreational facilities required within the Concept Plan area have been identified through the relevant Section 94 Plan (<i>Western Corridor Section 94 Contribution Plan</i>, revised January 2016).</p>	<p>and location of the recreational facilities is a critical unresolved matter affecting the entire Concept Plan area and must be discussed and agreed by both Council's and the Secretary (Director General) "<i>Prior to the lodgement of the development application following Stage 1</i>".</p>	

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

ITEM	ENVIRONMENTAL ASSESSMENT REQUIREMENT	REASON FOR PROPOSED MODIFICATION	PREVIOUS NCC COMMENTS (6/8/2015)	PREVIOUS LMCC COMMENTS (3/9/2015)
3	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT:</p> <p>1.17</p> <p><i>Prior to each stage of development the proponent is required to prepare a staging plan to be endorsed by Council outlining the schedule of delivery of the following: ...</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>The Proponent is required to submit a staging plan with each development application for subdivision, to be endorsed by Council, outlining the schedule of delivery of the following: ...</i></p>	<p>It is proposed to clarify that this environmental assessment requirement applies to require the submission of a proposed staging plan to Council with the lodgement of each relevant development application.</p>	<p>Council agrees that these matters will need to be discussed, considered and resolved during the assessment of the respective development applications and that the timing for the delivery of the respective elements will be prior to the issuing of Construction Certificates or Subdivision Certificates, as appropriate.</p>	<p>Agree with Newcastle Council</p>

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

ITEM	ENVIRONMENTAL ASSESSMENT REQUIREMENT	REASON FOR PROPOSED MODIFICATION	PREVIOUS NCC COMMENTS (6/8/2015)	PREVIOUS LMCC COMMENTS (3/9/2015)
STORMWATER MANAGEMENT AND WATER QUALITY				
4	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT:</p> <p>1.25</p> <p><i>A revised water sensitive urban design strategy must be provided prior to the lodgement of the first development application for subdivision within each stage to consider how impacts on riparian corridors and waterways as a result of stormwater infrastructure can be minimised. The revised strategy is to demonstrate that, wherever possible, stormwater infrastructure has been located off-line and outside of the identified riparian corridor (as zoned E2 within the SEPP Major Development), having regard for relevant NSW Office of Water guidelines relating to works within riparian corridors.</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>A revised water sensitive urban design strategy must be provided with each development application for subdivision to consider how impacts on riparian corridors and waterways as a result of stormwater infrastructure can be minimised. The revised strategy is to demonstrate that, wherever possible, stormwater infrastructure has been located off-line and outside of the identified riparian corridor (as zoned E2 within the SEPP Major Development), having regard for relevant NSW Office of Water guidelines relating to works within riparian corridors.</i></p>	<p>The water sensitive urban design strategy should be required to be submitted as part of each relevant development application, rather than prior to lodgment of the applications.</p> <p>The change is proposed for practical reasons as the issues to be resolved in order to prepare the strategies, such as design, flooding and ecology, are issues resolved as part of the preparation of a development application. It is nevertheless intended to consult with the Councils as part of the pre DA process on the preparation of these strategies.</p>	<p>Council notes that compliance with the condition, as currently provided, would assist to expedite consideration of the future development applications, particularly in regards to issues relating to riparian zones and the provision of off-line stormwater infrastructure wherever possible.</p> <p>Notwithstanding, Council has no objection to the proposal to submit this information in association with the respective development applications.</p>	<p>The overall strategy for the whole of the development must be sorted before the first DA is lodged. I assume this was with the Concept Plan approval already. As such each respective DA should be supported by a detailed stormwater management strategy for each respective stage that is consistent with the overall strategy.</p>

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

ITEM	ENVIRONMENTAL ASSESSMENT REQUIREMENT	REASON FOR PROPOSED MODIFICATION	PREVIOUS NCC COMMENTS (6/8/2015)	PREVIOUS LMCC COMMENTS (3/9/2015)
HERITAGE				
5	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT:</p> <p>1.38</p> <p><i>Each development application for the subdivision is to be accompanied by an Aboriginal Heritage Management Plan. The plan is to be developed and implemented in consultation with OEH, the relevant local council(s), and Aboriginal stakeholders. The plan is to include, but shall not be limited to: ...</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>Prior to approval of any development application for subdivision an Aboriginal Heritage Management Plan is to be prepared. The plan is to be developed and implemented in consultation with OEH, the relevant local council(s), and Aboriginal stakeholders. The plan is to include, but shall not be limited to: ...</i></p>	<p>It is proposed to amend this assessment requirement so that the Aboriginal Heritage Management Plan is required prior to the approval of any development application for subdivision.</p> <p>This will ensure the requirement is consistent and aligns with the similar requirements for management of European Heritage (See Environmental Assessment Requirement 1.35).</p> <p>It is noted that, in accordance with requirement 1.38, an Aboriginal Heritage Management Plan has already been prepared for the entire site and was submitted with the first development application for subdivision.</p>	<p>(NOTE: MINOR AMENDMENT TO WORDING OF PROPOSED MODIFICATION)</p> <p>While Council does not oppose the proposed modification, details associated with proposed methods for Aboriginal Cultural Heritage Management may influence the assessment and discussions during the DA assessment phase around the potential impacts of the development and proposed ownership of land.</p>	<p>(NOTE: MINOR AMENDMENT TO WORDING OF PROPOSED MODIFICATION)</p> <p>It would need to be determined, during the DA process, whether there was any areas of significant aboriginal cultural heritage as this could impact the lot layout for example. The management of these areas would need to be sorted out prior to issue of CC.</p>

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

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CONSTRUCTION IMPACTS				
6	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT:</p> <p>1.46</p> <p><i>All development applications for subdivision shall be accompanied by an assessment of construction impacts. The assessment shall be accompanied by a construction environmental management plan, prepared in accordance with Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004), which shall include: ...</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>Prior to the commencement of works for each stage, the contractor/developer shall submit to Council a construction environmental management plan, prepared in accordance with Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004), which shall include: ...</i></p>	<p>The construction environmental management plan (CEMP) should be required prior to the commencement of works rather than at the time a development application is submitted.</p> <p>A CEMP is typically prepared by construction contractors prior to the commencement of works. It is not practical, and in some instances not possible, to provide details of construction management measures until the development has been approved, the final development outcomes are known, and detailed design drawings have been finalised.</p> <p>If necessary, the consent authority will likely impose conditions of consent that require the submission of a CEMP for approval prior to the commencement of works.</p>	<p>Council has no objection to the proposed modification.</p>	<p>Agree with Newcastle Council</p>

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

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PERIMETER ROADS				
7	<p>EXISTING ENVIRONMENTAL ASSESSMENT REQUIREMENT:</p> <p>1.49</p> <p><i>Perimeter roads are to be included within the development area, where practicable riparian zones shall be adjoined by roads rather than subdivision lots.</i></p> <p>SUGGESTED MODIFICATION:</p> <p><i>Any development application for subdivision is to include a road layout including perimeter roads where practicable, that is generally in accordance with the plans referred to in the Statement of Commitments that form part of the Concept Plan approval, or otherwise agreed by the relevant Council. Riparian zones should be adjoined by roads rather than subdivision lots, where practicable.</i></p>	<p>It is proposed to clarify this requirement, as a result of discussions with Newcastle City Council (20 June 2016).</p> <p>While it is noted that Condition 1.11 specifies the indicative lot and road layouts are not approved, the indicative layouts were informed by significant environmental assessment undertaken through the Concept Plan. Through this process, it was recognized that perimeter roads would not be achievable in certain circumstances. This has further become apparent through the preparation of road design to support the subsequent Part 4 development applications, due to constraints such as topology or mine subsidence as examples.</p> <p>Noting that development on the site is to be generally consistent with the terms of the Concept Approval, the requirement is to be amended so that any development application for subdivision is to include a road and lot layout generally in</p>	NOTE: NEW MODIFICATION, NO COMMENTS PROVIDED.	NOTE: NEW MODIFICATION, NO COMMENTS PROVIDED.

MP10_0090 MINMI LINK ROAD – MODIFICATION NO. 1
PROPOSED MODIFICATIONS

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		<p>accordance with the plans referred to in the Statement of Commitments that form part of the concept plan approval (or, where not practicable, as otherwise agreed to by the relevant council).</p> <p>The requirement should also provide that any development application for subdivision is to include road and lot layouts that indicate riparian zones adjoined by roads rather than subdivision lots, where practicable.</p>		