

ASSESSMENT REPORT

Newcastle Link Road, Minmi and Stockrington Concept Plan MP 10_0090 MOD 1

1. INTRODUCTION

This report is an assessment of a request to modify a Concept Plan Approval for a staged residential development at Newcastle Link Road, Minmi, in the Lower Hunter region.

The request has been lodged by Monteath and Powys Pty Ltd on behalf of the Winten Property Group (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to modify the timing of certain requirements in the approval and to clarify the provision of perimeter roads.

2. SUBJECT SITE

The subject site is located approximately 20 kilometres west of Newcastle adjacent to the F3 Freeway and the Newcastle Link Road at Minmi (**Figure 1**) and comprises:

- a development area of 520 hectares (ha) on the eastern side of the F3 Freeway and to the north and south of the Newcastle Link Road; and
- 1,561 ha of conservation lands comprising 1,544 ha at Stockrington on the western side of the F3 Freeway, and 17 ha directly to the north of the developable area.

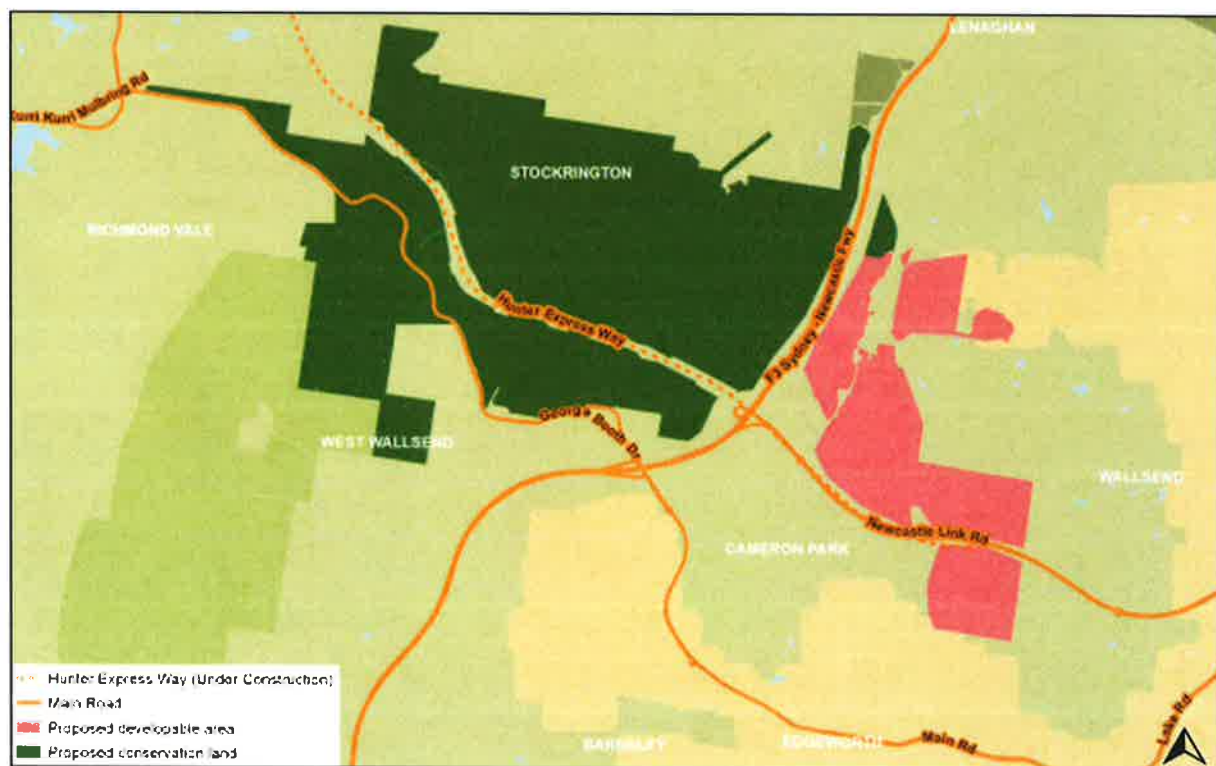


Figure 1: Location Plan illustrating development area (pink) and conservation lands (source: PPR to original application)

The development site is located across Newcastle and Lake Macquarie local government areas, and the proposed conservation lands are located within the Newcastle, Lake Macquarie, and Cessnock local government areas. The site is being developed in five stages as shown in **Figure 2**.



Figure 2: Indicative Staging Plan (source: PPR to original application)

3. APPROVAL HISTORY

On 6 August 2013, the Planning Assessment Commission granted Concept Plan Approval (MP10_0090) for:

- a five stage development with up to 3,300 dwellings across the 520 ha development site at Minmi, Newcastle Link Road;
- supporting commercial / retail development of up to a total of 8,000 sqm;
- dedication of approximately 1,561 ha of conservation lands to the NSW Government;
- urban design guidelines; and
- associated infrastructure.

The Concept Plan Approval requires all future development associated with the Concept Plan to be subject to Part 4 or Part 5 of the Act, whichever is applicable. It is understood the Proponent has submitted a number of development applications (DAs) to Newcastle City Council for the first stage of the development.

4. PROPOSED MODIFICATION

The Proponent lodged a section 75W modification application (MP 10_0090 MOD 1) seeking approval to modify the timing for the submission of information required under environmental assessment requirements (Nos 1.15, 1.16, 1.17, 1.25, 1.38 and 1.46). The proposal also seeks approval to modify environmental assessment requirement 1.49 regarding the provision of perimeter roads. **Table 1** provides a summary of the proposed modifications and the Councils' position.

Table1: Proposed modifications

Environmental Assessment Requirement	Proposed Modification	Council Position
1.15 Landscaping and public domain plan	Modify the requirement to lodge a landscaping and public domain plan from prior to lodgement of each DA for subdivision, to be submitted with each DA for subdivision	Newcastle City Council (NCC): No objection Lake Macquarie City Council (LMCC): No objection
1.16 Recreation facilities	Modify the timing of the requirement to provide details about the provision of recreational facilities from 'within 2 years of Concept Plan approval, or before the lodgement of the second stage development application, whichever occurs first', to 'prior to the determination of a DA for subdivision in Stages 3, 4, or 5 (whichever occurs first)'.	NCC: No objection to deletion of 2 year timeframe; do not support other changes. LMCC: same as NCC
1.17: Staging plan	Modify the requirement to submit a staging plan outlining the delivery of infrastructure and contributions prior to each stage of development, to be submitted with each relevant DA for subdivision.	NCC: No objection to timing, but suggest other changes LMCC: No objection
1.25: Water sensitive urban design strategy (WSUD strategy)	Modify the requirement to provide a WSUD strategy prior to the lodgement of the first DA for subdivision within in each stage, to be submitted as part of each DA for subdivision.	NCC: No Objection LMCC: Comments there needs to be an overall strategy for stormwater management
1.38: Aboriginal Heritage Management Plan	Modify the requirement to submit a management plan from submission with each DA for subdivision, to provision of an overarching plan prior to the approval of any DA for subdivision.	NCC: No objection LMCC: No objection
1.46: Construction Environmental Management Plan (CEMP)	Modify the requirement to submit a CEMP with each DA for subdivision, to prior to commencement of works for each stage.	NCC: No objection LMCC: No objection
1.49: Perimeter roads	Modify the requirement to enable some flexibility in the provision of perimeter roads on constrained sites.	NCC: suggest an alternative wording LMCC: consider requirement does not need to be changed

5. STATUTORY CONSIDERATION

5.1 Section 75W

The Concept Plan was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Planning Assessment Commission (the Commission) may determine the application under delegation. The application is referred to the Commission for determination as Newcastle City Council objects to an aspect of the proposed modification.

6. CONSULTATION

The Department made the modification application publicly available on its website, consulted with both Newcastle and Lake Macquarie City Councils, the Rural Fire Service (RFS) and Office of Environment and Heritage (OEH). Given the minor nature of the proposed modification, it was not notified by any other means.

6.1 Submissions

Lake Macquarie City Council made a number of specific comments about the proposed amendments to some of the environmental assessment requirements, including:

- concern that the number, nature and location of recreation facilities is an unresolved matter and should be agreed by both councils and the Secretary prior to the lodgement of subsequent DAs;
- each subdivision DA should be supported by a detailed stormwater management strategy for each respective stage that is consistent with the overall stormwater management plan; and
- the proposed modification in relation to perimeter roads is unnecessarily complicated and that the existing requirement is preferred as it is clearer whilst providing the requisite flexibility through the use of the term "where practicable".

Newcastle City Council made a number of specific comments in relation some of the proposed amendments, including:

- Council prefer the type and location of the recreational facilities should be resolved at the earliest possible opportunity to give certainty and direction to Council's strategic planning for other local, district and regional recreational facilities;
- suggests further amendments to requirement 1.25 (WSUD strategy) to address concerns about the location of stormwater infrastructure within the riparian corridors.

RFS and **OEH** raised no objection to the proposed modification.

No **public** submissions were received.

6.2 Response to Submissions

The Proponent submitted a Response to Submissions (RtS) to address the issues raised. The RtS included further minor modifications to the requirements to accommodate the comments raised by the councils. The RtS was forwarded to both Lake Macquarie and Newcastle City Councils for comment.

Newcastle City Council:

- Requested additional amendments be made to environmental assessment requirement 1.25 (WSUD strategy) to remove ambiguity about whether stormwater infrastructure could be located within the riparian zone.
- Advised it does not support the Proponent's request to reference the indicative road and lot layout in requirement 1.49, but would accept a modification which acknowledges perimeter roads may not be achievable in certain parts of the site and provides a mechanism to achieve agreement with the relevant council.

Lake Macquarie City Council did not make any further comments on the proposal.

7. ASSESSMENT

The Department considers the key issues associated with the proposed modification are:

- timing and certainty around the provision of recreation facilities;
- amendments to perimeter road requirements;
- provision of stormwater infrastructure details; and
- timing for submission of environmental assessment requirements.

7.1 Recreation Facilities

The Concept Plan approval requires details regarding the location of future recreation facilities or alternative arrangements to be submitted to the Secretary for approval within two years of the Concept Plan approval or before the lodgement of the second stage DA (whichever occurs first).

The Proponent seeks to delay the timing of the requirement to prior to the determination of development in Stages 3, 4, or 5 (whichever occurs first). The Proponent seeks to modify the requirement on the basis that:

- it purchased the site after the two year timeframe had passed, therefore it is no longer relevant; and
- the requirement is not relevant to Stage 2, as Stage 2 is located wholly within the Lake Macquarie LGA and the provision of the required recreational facilities to service this part of the development have been accounted for and determined through the relevant Lake Macquarie Section 94 plan.

Both Newcastle and Lake Macquarie Council raised no objection to deleting the two year timeframe. However, both Councils consider the matter should be resolved as early as possible to ensure potential recreation sites are not lost through the approval of future DAs.

In its assessment of the original application, the Department recommended the provision of recreation facilities should be based on the proposed development within Stages 3, 4 and 5 only. The Department also noted Lake Macquarie and Newcastle City Councils were satisfied that the active recreation facility needs for Stage 1 (located in Newcastle LGA) and Stage 2 (Lake Macquarie LGA) can be accommodated through existing and proposed facilities in nearby suburbs. The Department therefore considered it was appropriate for the location of the recreation facilities to be identified prior to any development being approved within Stages 3, 4, or 5.

In response to concerns raised by Newcastle Council that land for future recreation needs should be identified as soon as possible, the Commission imposed a requirement for the location of the recreational facilities to be identified prior to the lodgement of a DA in the second stage and at least within two years of the Concept Plan approval.

The Proponent has confirmed it would continue to review options for the location of recreation facilities in consultation with Newcastle Council with a view to achieving a resolution as soon as possible. However, it does not believe Stage 2 of the development in the Lake Macquarie LGA should be held up to resolve the location of recreation facilities within the Newcastle LGA.

The Department considers that details of the recreational facilities should be finalised prior to the development of Stages 3, 4, or 5 as:

- recreational facilities to service the needs of residents in Stage 2 has been accounted for through the *Lake Macquarie City Council Development Contributions Plan, Glendale Contributions Catchment – 2015* which will be applied to all future development in the stage;
- the need for the additional facilities arises from the development of Stages 3 to 5; and
- the additional recreational facilities would be located in Stages 3 to 5 and the land within Stage 2 is not a suitable location for recreational facilities to service the needs of Stages 3 to 5, as it is within a different LGA and physically isolated from Stages 3, 4, and 5 by Newcastle Link Road.

The Department's assessment therefore concludes Stage 2 can proceed prior to satisfying the requirement. However, to ensure the location of the recreational facilities (or alternative arrangements) are identified as soon as possible, the Department has modified the timing of the requirement so details are provided within two years from the date of the modified approval or prior to the lodgement of a DA in Stages 3-5, whichever occurs first.

7.2 Perimeter Roads

Requirement 1.49 currently provides that:

Perimeter roads are to be included within the development area, where practicable riparian zones shall be adjoined by roads rather than subdivision lots.

The Department has previously provided advice to Newcastle City Council that the words 'where practicable' relate to the second part of the sentence regarding riparian zones and not the requirement to include perimeter roads within the development area.

The Proponent seeks to modify the requirement to apply the words 'where practicable' to both the first and second parts of the requirement. While the Proponent has expressed its commitment to include perimeter roads within the development area where practicable, it has advised that due to site constraints this is not always achievable without the need for substantial retaining walls or extensive batters that would have a significant impact on the development layout.

Newcastle City Council advises that perimeter roads are the most effective and preferred way to address the interface between the development and residual areas, with positive outcomes for bushfire protection, the bushland / riparian zone interface, crime prevention and surveillance, and water sensitive urban design. However, Council advises it would support alternative wording incorporating the words 'unless otherwise agreed by the relevant Council' rather than 'where practicable'. The Proponent has raised concern with this wording as it provides no clear guidance regarding the circumstances in which Council would support an alternative outcome to perimeter roads, and leaves it entirely to Council's discretion.

Lake Macquarie Council considered the modification as originally proposed to be unnecessarily complicated. The Department notes the modification was amended following Council's submission to simplify the requirement.

The Department acknowledges the indicative road and lot layout submitted with the Concept Plan was a graphic representation of the development footprint and was not based on an accurate terrain model. As such, it was omitted from the Concept Plan Approval, pending detailed planning at the DA stage.

The Department considers it is reasonable to provide some flexibility in the provision of perimeter roads as more detailed design work may demonstrate that perimeter roads are not achievable in some areas without need for extensive earthworks, retaining walls, batters and other engineered solutions which would potentially result in other adverse impacts.

The Department also considers guidance should be provided regarding when an exception to the requirement for a perimeter road should be supported. The requirement is therefore recommended to be modified to incorporate the words "unless it is demonstrated that perimeter roads are not practicable in that location". This would still require the provision of perimeter roads in most circumstances, but it would allow Council to undertake a merit assessment of perimeter roads on constrained sites.

7.3 Stormwater Infrastructure

The proposed amendment to requirement 1.25 seeks to remove the requirement to provide a revised Water Sensitive Urban Design Strategy (strategy) at the beginning of each stage, and instead submit a strategy as part of each relevant DA. The remainder of the requirement, which requires the Proponent to demonstrate that stormwater infrastructure is located outside of the riparian corridors where possible, is not proposed to be modified.

The Proponent advises the modification is sought on the basis that it will enable issues including detailed design, flooding and ecology to be resolved first, rather than requiring a stormwater plan to be prepared in advance of the detailed design work. The Proponent also notes that an overall stormwater management plan was submitted and approved as part of the Concept Plan.

Lake Macquarie Council advise that an overall strategy for the whole of the site should be finalised prior to the lodgement of the first DA, and that each respective DA should then be supported by detailed stormwater management strategy.

Newcastle City Council raise no objection to the changes sought to the timing of the strategy. However, Council has expressed concern regarding the remainder of the requirement. Council advise that, as currently worded the requirement is ambiguous and as such, large areas of riparian vegetation may be lost from land zoned E2 (riparian corridors) because of the land-take associated with the construction of stormwater infrastructure, contrary to the zone objectives. Council therefore requests the Department make further modifications to the requirement to remove any doubt about whether stormwater infrastructure can be constructed in the riparian zones.

The Department notes that requirement 1.25 was originally imposed due to concerns raised by Councils and the NSW Office of Water (NOW) that the stormwater management plan submitted with the application included infrastructure within the riparian zones, contrary to NOWs guidelines with potentially adverse impacts on the corridors. A revised overarching strategy was therefore required, together with the provision of detailed stormwater management design for each DA.

To retain the intent of the original requirement the Department considers an overarching strategy should be prepared at the start of each stage, which looks holistically at stormwater management across the stage to ensure it is designed to locate infrastructure out of the riparian corridors wherever possible.

The Department therefore does not support the proposed change in the timing of the requirement, and recommends:

- a water sensitive urban design strategy to be submitted at the start of each stage, and
- a detailed stormwater plan to be submitted with each DA.

Amendments have been recommended to the wording of requirements 1.25 and 1.26 to clarify that the overarching strategy is a high level document only, and that detailed stormwater plans are to be provided at the individual DA stage. The overarching Strategy would inform the detailed design of the future stormwater infrastructure required to service the development and also allow the necessary infrastructure planning to be undertaken to minimise the encroachment of stormwater infrastructure into the riparian zones.

The Department considers it is not necessary to modify the remainder of the requirement, as requested by Newcastle City Council. The purpose of the requirement is to minimise impacts on the riparian corridor, but also to provide some flexibility to ensure a workable stormwater infrastructure arrangement can be achieved, noting that the Department's original assessment acknowledged that locating all stormwater infrastructure outside of the corridors is unlikely to be achievable. The Department is satisfied that the remainder of the requirement as currently worded strikes an appropriate balance between minimising impacts on the riparian corridors and ensuring a workable solution can be achieved on the site.

7.4 Timing of other Environmental Assessment Requirements

The Proponent seeks to delay the timing of the provision of a CEMP required under 1.46 to the construction stage. However, the Concept Approval may only identify requirements that Council is to take into consideration in its assessment of future DAs, and it cannot set out actions to be undertaken following the Council's assessment. The Department is therefore unable to modify the approval to require the submission of a CEMP at construction stage. Instead, the Department recommends that the approval be modified to require consideration of construction impacts at the DA stage (rather than a detailed CEMP). The Department is satisfied this would provide sufficient information for Council to make an assessment of the potential construction impacts associated with the proposal.

Other proposed amendments to environmental assessment requirements 1.15, 1.17, and 1.38 (landscaping plans, staging plan and Aboriginal heritage management plan) are supported by the Department as Council raise no objection, they are administrative in nature and would not affect the final form of development, or compromise the objectives of the original requirements.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that, subject to some modifications the proposal is appropriate on the basis that it:

- provides an appropriate timeframe for the resolution of recreation facilities, consistent with the demand for those facilities within the relevant LGA;
- provides flexibility in the provision of perimeter roads, allowing the relevant Council to vary the requirement to ensure the best outcome for the site;
- provides clarity around the provision of stormwater details, whilst ensuring the environmental objectives of the original requirements are retained; and
- makes minor administrative amendments that would not impact on the final development of the site.

Consequently the Department recommends the approval be modified, as set out in **Appendix A**.

9. RECOMMENDATION

It is RECOMMENDED that the Planning Assessment Commission, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report, noting that the Department considers that the modification is approvable, subject to conditions;
- **determines** that the proponent's request is a modification under section 75W of the EP&A Act; and
- if the Commission determines to modify the approval, **signs** the attached notice of modification.



Anthony Witherdin
Director
Modification Assessments



Anthea Sargeant 29/11/16
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7735

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7735

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7735

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7735