

4 July 2017

**NSW Planning Assessment Commission Determination Report
The Dan Land Residential Subdivision (MP06_0031 MOD 3)**

1. INTRODUCTION

On 15 June 2017, the Planning Assessment Commission received from the Department of Planning and Environment a modification request from Northwest Residential Pty Ltd (the proponent) to modify the Dan Land Concept Plan (Concept Plan) and Dan Land Project Approval (Project Approval) (MP 06_0031) for a residential subdivision at 290 and 302 Minmi Road, Fletcher within the Newcastle City Council local government area.

The Department has referred the modification request to the Commission for determination in accordance with the Minister for Planning's delegation because the Department received an objection from Newcastle City Council.

Ms Lynelle Briggs AO, Chair of the Commission, nominated Mr David Johnson (chair) and Mr Ross Carter to constitute the Commission to determine the modification request.

1.1 Summary of Development Application

The modification request proposes to modify the approved subdivision layout for Stage 10 of the Concept Plan and Project Approval as summarised below:

- replace 8 super lots with 138 residential lots and 2 open space lots;
- increase the total number of lots from 400 to 438 lots across the entire subdivision;
- provide an amended road layout including direct vehicular access for lots fronting Minmi Road;
- replace the eastern-most vehicular access point to the estate off Minmi Road with a pedestrian pathway; and
- provision of a new vehicular access point further west along Minmi Road opposite Highland Way in accordance with Condition B10.

1.2 Background

On 29 September 2006, the then Minister for Planning approved the Concept Plan and Project Application (MP 06_0031).

The Concept Approval allowed for the subdivision and future construction of up to 400 residential dwellings and associated services and infrastructure. The approval also included an environmental protection buffer to the adjoining Hexham wetlands.

The Project Approval comprised a 10-stage subdivision, providing a total of 337 community title lots and associated infrastructure works consistent with the approved Concept Plan. Stage 10, subject of this modification, comprises 30 residential lots, 8 super lots, an open space lot and a drainage lot.

The Project Approval has been modified on two occasions as detailed below:

- Modification 1 amended the staging of the subdivision, the requirement for cycleways along the site frontage, and incorporated community facilities within the northern portion of the site. This modification also included a new Condition B10 relating to amended access to Stage 10, which is relevant to the current modification.

- Modification 2 amended the Project Approval to enable the dedication of roads in the subdivision as public roads.

Works on stages 1-9 have commenced and are close to being finalised but works have not yet commenced on Stage 10.

1.3 Need for modification

The modification is requested by the proponent on the basis that it would result in a more efficient subdivision layout in response to the existing topography of the site.

2. DEPARTMENT'S ASSESSMENT REPORT

The Department's assessment report identified traffic safety and vehicular access as the key impacts associated with this proposal.

The approved subdivision includes three super lots with direct frontage to Minmi Road. Access to these lots was to be provided from internal roads. The proposal now seeks approval to replace the superlots with individual lots resulting in 33 lots gaining direct access off Minmi Road. Council raised concern with the Department regarding traffic safety impacts resulting from this subdivision and recommended lots facing Minmi Road gain access from a rear internal laneway or road, rather than directly off Minmi Road.

The Department's assessment report concluded that the proposed direct access to Minmi Road is acceptable and would not result in significant road safety issues. The Department stated that multiple traffic assessments had been undertaken which concluded that the proposal would not unreasonably compromise the safety of vehicles, cyclists or pedestrians. In addition, the recommended condition requiring road safety audits would further ensure any potential safety issues are identified and appropriately addressed.

3. COMMISSION'S MEETINGS AND SITE VISIT

As part of its assessment of the modification, the Commission met with the Department, the proponent, Council and visited the site. Notes from these meetings and the site inspection are provided in **Appendix 1**.

3.1 Briefing from the Department

On 22 June 2017, the Department briefed the Commission on the modification and discussed parking arrangements, loss of mature trees, direct lot access onto Minmi Road, the breakdown of lot sizes and Condition B10.

3.2 Meeting with Newcastle City Council

On 27 June 2017, the Commission met with Newcastle City Council and discussed the direct access for lots fronting Minmi Road, lot layout design and connectivity with the adjacent 'Sanctuary Estate', as well as growth (including traffic) in the area and demand for housing.

3.3 Briefing from the Proponent and Site Visit

On 27 June 2017, the Commission met with the proponent for a briefing on the modification. At the meeting the Commission discussed the direct access for lots fronting Minmi Road, lot layout design and connectivity with the adjacent 'Sanctuary Estate'. The meeting was followed by a site visit.

3.4 Public Meeting

The Commission considered that given the modification request received no public submissions a public meeting was not required to inform its deliberation.

4. ADDITIONAL INFORMATION

Following the Department's briefing on 22 June 2017 the Commission requested further information relating to the proponent's Bushfire assessment report and submission from the Rural Fire Service (RFS), the proponent's Landscape Plan and Statement of Commitments, and a breakdown of lot sizes.

The Commission also sought further information from the Council regarding historic and projected traffic volumes along Minmi Road.

5. COMMISSION'S CONSIDERATION

In this determination, the Commission has considered carefully:

- all information provided by the proponent;
- the Department's assessment report;
- advice and recommendations from government agencies;
- additional information provided to the Commission and described above in Section 4;
- relevant matters for consideration specified in section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act), including:
 - relevant environmental planning instruments;
 - the *Environmental Planning and Assessment Regulation 2000*;
 - the likely impacts of the development on both the natural and built environments;
 - social and economic impacts in the locality;
 - the suitability of the site for the development; and
 - the public interest, including the objects of the EP&A Act.

The key matters considered by the Commission were subdivision layout and density, vegetation retention, traffic safety and vehicular access, which are discussed in detail below.

5.1 Internal Subdivision layout and density

The modification seeks approval for a subdivision layout which includes a number of small lots which would support a range of different housing types.

Subdivision layout

The Commission acknowledges Council's previous concerns regarding the original proposal's mix of lot sizes, and the lack of guidelines for small lot housing in the Stage 10 development. It is noted that Stage 10 Development Guidelines have since been prepared by the proponent and apply to all residential lots within Stage 10. Council has advised that they are supportive of these guidelines. Further, the Commission notes that 68% of proposed lots do not comply with Council's Local Environmental Plan (LEP), which sets a minimum lot size of 400m². However, Council has not objected to this non-compliance and are supportive of smaller lots, particularly as they are located close to public transport and commercial centres. The Commission is satisfied that the implementation of the guidelines will lead to better design outcomes.

Road and pathway connection to adjacent subdivision

The proponent outlined concerns with the requirement of Condition B10 (a) to provide a road and pathway connection to an adjacent subdivision to the northeast of the site. The proponent stated that there was a lack of interest in providing the connection from the developers for each site and the local bus company was not interested in providing a bus route through the sites.

The Council advised the Department that the adjoining subdivision includes an approved road to the boundary of the project site. The Department considered that Condition B10 (a) of the concept plan and project plan approval requires the proponent to construct the road and pathway to the boundary of its site and to connect with the approved road of the adjoining subdivision. The Commission supports the Department's conclusion that Condition B10 (a) has not been satisfied by the proponent and that further negotiation between Council and the adjoining landowner is the most appropriate way forward to resolve this issue.

Road widths

The proponent seeks approval to amend internal local road widths outlined in the proponent's Statement of Commitments (SoC) from 7.5m to 5.5m. The proponent contended that the reduced road widths would meet AMCORD guidelines. However, this was considered to be marginal in the traffic consultant's report by SAMSA Consulting, commissioned by the Department

Council objected to this reduction as it would potentially result in adverse traffic and amenity impacts would not be compliant with Council's current Development Control Plan 2012 which specifies that local road widths should be 8.0m. Council was satisfied with the SoC road width of 7.5m.

The Commission supports the Department's recommendation and concludes that the road widths be retained at 7.5m for consistency with the original subdivision approval, which will ensure there are no adverse impacts on parking or traffic.

5.2 Vegetation retention

Council raised concern at its meeting with the Commission about the impact of the proposed modification on existing trees along Minmi Road. The proponent's Arborist Report stated that the majority of trees would require removal due to the proposed service locations, a shared footpath, parking lane, entry road and driveways. Council contended that this could be minimised if all lots were serviced by internal roads.

The Commission acknowledges Council's concerns but supports the Department's recommended condition requiring the proponent to implement the recommendations outlined in the Arborist Report to protect trees and vegetation where possible and provide appropriate replacement street tree planting. The Commission also considers that the proponent should provide appropriate compensatory measures for tree removal in consultation with Council.

5.3 Traffic safety and vehicular access

The modification seeks approval to replace the superlots with individual lots resulting in 33 lots gaining direct access off Minmi Road. To assess the potential traffic impacts associated with the proposal, the proponent submitted a Traffic Impact Assessment (TIA), which found that the proposal would not adversely impact on the operation or amenity of Minmi Road.

Council in their submissions raised concerns with the proposal regarding the safety of traffic, pedestrians and cyclists resulting from lots gaining direct access off Minmi Road. While Council acknowledges that there are lots in Stages 1 and 4 with direct access they have informed the Commission that they will restrict any direct access for future developments along Minmi Road to achieve better road safety outcomes. At the Commission's meeting with Council they noted that apart from properties in these stages, properties in the adjacent Highland County development and a nearby supermarket there are no other developments with direct access onto Minmi Road.

The Commission notes that Stage 10 did not originally intend direct access to Minmi Road. Since the original concept plan and project plan approval in 2006, the locality has seen a rapid and continued expansion in residential estate development. These estates, with the exception of Stages 1 to 9 and the Highland County estate adjacent to the site, all provide internal access to residential lots, without direct lot access to Minmi Road.

This expansion has seen a significant and continued increase in vehicle movements along Minmi Road. Council provided information to the Commission relating to future two-way traffic volumes post development along the section of Minmi Road West of Highland Way to East of Britannia Avenue. This section incorporates the proposed small lot frontage with Minmi Road, and morning and afternoon vehicle trips per hour are expected to increase by approximately 30% between 2015-2025 and 100% by 2040. Additionally, Council indicated that the dedicated cycleway was likely to be linked into a

broader network of cycle ways, including regional rail-trail tourist trails, and that its usage could be anticipated to grow in the future.

The Commission acknowledges the proponent's attempt to address Council's concerns by proposing to use shared driveways servicing lots along Minmi Road to minimise potential traffic conflicts. The Department-commissioned SAMSA Report considers that this measure would only marginally mitigate the conflicts between vehicles accessing the proposed lots and path users crossing the driveways. The report also concluded rear access for all lots proposed to front Minmi Road would be preferable, but established that direct access would not create any significant road safety issues. The Commission finds that the conflicting nature of this conclusion does not achieve the best possible road safety outcome, and as such the Commission gives less weight to the recommendations of this report.

The Commission notes the SAMSA Report considered conditioning access movements onto Minmi Road in a forward only direction, with the provision of an on-site turn-around area. It is acknowledged that both Council and the proponent raised concern over the practicality of this mitigation measure. The proponent raised in a submission that there would be safe reversing movements from driveways assisted by the proposed parking lane along Minmi Road and the low speed environment along this section of the road. However, Council contends that the parking lane would be well-used, and potentially maximised, as the small lots are unlikely to accommodate all residents and their visitors parking needs. This would result in vehicles reversing directly onto Minmi Road through the potentially fully utilised parking lane after crossing the pedestrian footpath and dedicated cycleway. Shared driveways, with relatively narrow lots, are unlikely to mitigate this risk and may exacerbate on street parking demands.

The Commission suggested to both Council and the proponent an alternative option of creating access from a rear laneway, while still maintaining lot frontages onto Minmi Road. Council advised that this option had not been implemented in any other subdivision off Minmi Road and would not be supported, and the proponent advised that a lane would be too close to the roundabout that provides access to the site and it would result in lots behind those fronting Minmi Road would be at a level 2 to 3 metres lower.

Conclusion

The Commission finds that to allow direct access for Stage 10 presents a significant risk to pedestrians, cyclists and motorists alike, and this conflict can be appropriately mitigated through denying direct access. The Commission also finds that the greenfield nature of Stage 10 does not pose any restrictions to a subdivision layout which provides internal access only.

Council suggested an alternative subdivision layout for all lots to be accessed from an internal road network, with no frontage and direct access onto Minmi Road. The Commission has been advised by the Department that the proponent did not wish to amend the subdivision layout to provide this option and has sought determination of the proposal as submitted. Taking this into consideration, the Commission believes that the proposal in its current form would adversely affect the safety of vehicular, cycle and pedestrian movements along Minmi Road.

6. COMMISSION'S FINDINGS AND DETERMINATION

The Commission has considered carefully the proponent's proposal, the Department's assessment report and the relevant matters for consideration under section 79C of the EP&A Act. The Commission has noted the advice and recommendations from Newcastle City Council, and government agencies including the NSW Rural Fire Service.

The Commission acknowledges the provision of guidelines for residential development in Stage 10 of the project. The Commission is satisfied that the implementation of the guidelines will lead to better design outcomes. The Commission also supports the Department's recommendation that the


proponent will be required to adhere to the road widths set out in the SoC to ensure there are no adverse impacts on parking or traffic, and that a connecting road and footpath to the adjacent subdivision should be provided by the proponent.

The Commission acknowledges Council's concerns regarding the removal of trees along Minmi Road. The Commission is satisfied that the Department's condition requiring the replanting of trees will address Council's concerns.

The Commission considers that the project would present a significant risk to the safety of vehicular, cycle and pedestrian movements along Minmi Road. For this reason, the Commission does not accept the Department's recommendation that this proposal be approved. Consequently, the Commission has determined to refuse consent to the modification request.

A handwritten signature in blue ink, appearing to read 'D. Johnson', with a long horizontal flourish extending to the right.

Mr David Johnson (Chair)
Member of the Commission

A handwritten signature in blue ink, appearing to read 'R. Carter', with a large circular loop at the beginning and a horizontal flourish at the end.

Mr Ross Carter
Member of the Commission

**APPENDIX 1
RECORDS OF COMMISSION MEETINGS**

Briefing from Department of Planning & Environment	
Date: 22 June 2017	Time: 11.00am
Project: The Dan Land Residential Subdivision MOD 3	
Meeting place: PAC Offices, 201 Elizabeth Street, Sydney	
Attendees: Commission Members: David Johnson (Chair) and Ross Carter. Commission Secretariat: David Koppers (Team Leader), Matthew Todd-Jones (Planning Officer). Department of Planning & Environment: Anthony Witherdin (Director, Modification Assessments), Emma Butcher (Planning Officer).	
The purpose of the meeting was for the Department to brief the Commission on the project	
<p>The following issues were discussed:</p> <ul style="list-style-type: none"> • The Department informed the Commission that the proponent has always been required to provide a parking lane along Minmi Road and that Council has said that if the project was approved then they would consider implementing a no parking zone. • The Department clarified that stages 1 to 9 were all to the west of the site and stage 10 is the site subject to the modification request. All reports make reference to stage 10. • The Department confirmed that trees along the road frontage with Minmi Road will be lost. They expect the proponent to implement the required vegetation management plan. If this isn't implemented then it becomes a compliance issue. • The Department's assessment was based on this proposal alone, without considering adjacent developments. • While the Department recognises that the SAMSA Report states that it would be preferable to access the properties fronting Minmi Road off a laneway, the current arrangements are still considered to be safe. • The Department confirmed that Minmi Road was a local road and that Council were the relevant transport authority. • The Department stated they were satisfied that parts B and C of Condition B10 had been satisfied but part A should remain and the proponent will be required to construct the road and pathway connection to the adjacent residential subdivision. • The Department will provide the Commission with a breakdown of the lot sizes and the location of the 27 premium court yards. • The Department will provide the Commission with the proponent's Statement of Environmental Effects, Landscape Plan and Statement of Commitments. Information relating to changes in traffic levels on Minmi Road since the first development application was lodged will also be provided to the Commission. 	
Meeting closed at 11.45am	

Meeting with Newcastle City Council	
Date: 27 June 2017	Time: 11.00am
Project: The Dan Land Residential Subdivision MOD 3	
Meeting place: City Administration Centre, 282 King Street, Newcastle	
<p>Attendees:</p> <p>Commission Members: David Johnson (Chair) and Ross Carter.</p> <p>Commission Secretariat: David Koppers (Team Leader), Matthew Todd-Jones (Planning Officer).</p> <p>Newcastle City Council: Geof Mansfield (Principal Planner), Brian Cameron (Senior Development Officer), Murray Blackburn-Smith (Manager Development and Building Services)</p>	
The purpose of the meeting was to discuss Council's views on The Dan Land Residential Subdivision MOD 3	
<p>The following matters were discussed:</p> <p><u>Proposed direct access for lots fronting Minmi Road</u></p> <ul style="list-style-type: none"> • The provision of direct access driveways onto Minmi Road and pavement crossings were concerns for the Council. • There are currently cycleway provisions from Minmi village and along the northern side of Minmi Road. • There is no direct access onto Minmi Road from lots in adjacent estates, except for a collection of houses on the opposite side of the road to the site. Only an Aldi store nearby has recently been given direct access. • There is no parking restriction on the parking lane at the opposite side of the road to the site. This would be the same for the proposed development. The community would not be happy if there were parking restrictions. • Council feels that the parking lane would be used and maximised. • Council indicated that long term traffic predictions for Minmi Road would result in a 100% increase in vehicle trips per hour by 2040. • Council stated that the parking lane and cycleway could be designed around the existing trees. • The applicant states that reversing into parking spaces is an option but Council does not support this. • If there is no direct access, less trees would be removed and more retained. • The Commission asked Council about the possibility of access to the lots along Minmi Road from a rear lane, but with the retention of the street frontage. Council would not support a rear lane option. • Council outlined the future linkages for the cycle way and potential for future linkages to rail trail tourist trails. <p><u>Lot Layout Design</u></p> <ul style="list-style-type: none"> • Council stated that their planning strategy is generally supportive of small lot housing. • Council stated that their LEP has to catch up to the market, with the demand for this type of housing. • Council's previous concerns regarding the mix of lot sizes were that there were no guidelines. They are now happy that Stage 10 has design guidelines for the estate produced by the applicant and would essentially use them as a DCP. • There are 18 to 20 metre frontages in the estate to the west, which comprises stages 1 to 9. The proposal would see 10 metre frontages with one garage. • Original concept plan for the estate said that trees along Minmi Road would be retained, but this hasn't happened and they have all been lost. 	

Connectivity with adjacent 'Sanctuary Estate'

- The Construction Certificate is currently with the Council for this estate and the developer is carrying out earthworks now.

Meeting closed at 11.50am

Meeting with Proponent	
Date: 27 June 2017	Time: 1.00pm
Project: The Dan Land Residential Subdivision MOD 3	
Meeting place: City Plan Services, 14 Watt Street, Newcastle	
Attendees: Commission Members: David Johnson (Chair) and Ross Carter. Commission Secretariat: David Koppers (Team Leader), Matthew Todd-Jones (Planning Officer). Proponent: Cathy Thomas (Seca Solution), Chris Speek (City Plan Services), Nathan Delaney (ADW Johnson).	
The purpose of the meeting was to discuss Council's views on The Dan Land Residential Subdivision MOD 3	
<p>The following matters were discussed:</p> <p><u>Proposed direct access for lots fronting Minmi Road</u></p> <ul style="list-style-type: none"> The proponent raised that there is currently direct access onto Minmi Road from properties on the opposite side of the road to the site. The proponent stated that the Department has not asked for direct access to be removed and supports this access. <p><u>Lot Layout Design</u></p> <ul style="list-style-type: none"> The proponent preferred to provide smaller lots along Minmi Road next to public transport. They envisage that people who may want this type of housing are likely to use public transport. The site topography has dictated the lot layout. There is approximately a 10 metre fall from the front to back of the site and there is a steep drop towards the gully. The proponent stated that a potential rear access lane would be too close to the roundabout which provides access to the site. A rear access lane would also mean that lots behind those fronting Minmi Road would be 2 to 3 metres lower. Tree retention in the parking lane would not be feasible as this would affect setback distances for the cycleway. Trees were to be retained for Stages 1-3 but were removed during construction. The proponent has seen a market for the smaller lots in other areas and the proposed modification would be a test for this area. Lower lot sizes would yield lower house prices and these lots would be aimed at first home buyers and the elderly. For the smaller lots, there would probably be a single storey, single garage, 2 to 3 bedroom option or a double storey, double garage, 3 bedroom option. The proponent confirmed that lifestyle lots on the state would be at 800m². The proponent stated that the original plan for the site had approved road widths at 5.5 metres. The Commission asked the proponent how the lot layout would be affected if the Department's recommendation of 7.5 metre road widths is accepted. The proponent stated that lot yield would remain the same but some lot sizes would decrease from 300m² to 290m². There will be pedestrian access either side of the roundabout with split islands. There are no bushfire issues for the site. The gully has vegetation but it is isolated. 	

Connectivity with adjacent 'Sanctuary Estate'

- The proponent stated that Council has been the only driver for the road connection with the 'Sanctuary Estate'. Developers for each estate do not see it as necessary.
- The proponent did not understand why Council want to link a community title development to a non-community title development.
- The proponent stated that they had spoken to the local bus company who were not interested in the link and wouldn't want to drive through the estates.
- The proponent did not see any facilities in the adjacent estate that would draw people from the site.

A further issue raised by the proponent was the sequencing of development. They would have preferred to build from the back to front of the site but have been required to build the roundabout first.

Meeting closed at 1.45pm