

Planning Services

Plan Finalisation Report

Local Government Area: Newcastle City

File Number: IRF18/1622

1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 (Amendment No. 32).

2. SITE DESCRIPTION

The planning proposal applies to land within a surplus rail corridor stretching between Worth Place and Watt Street, Newcastle (Figure 1).

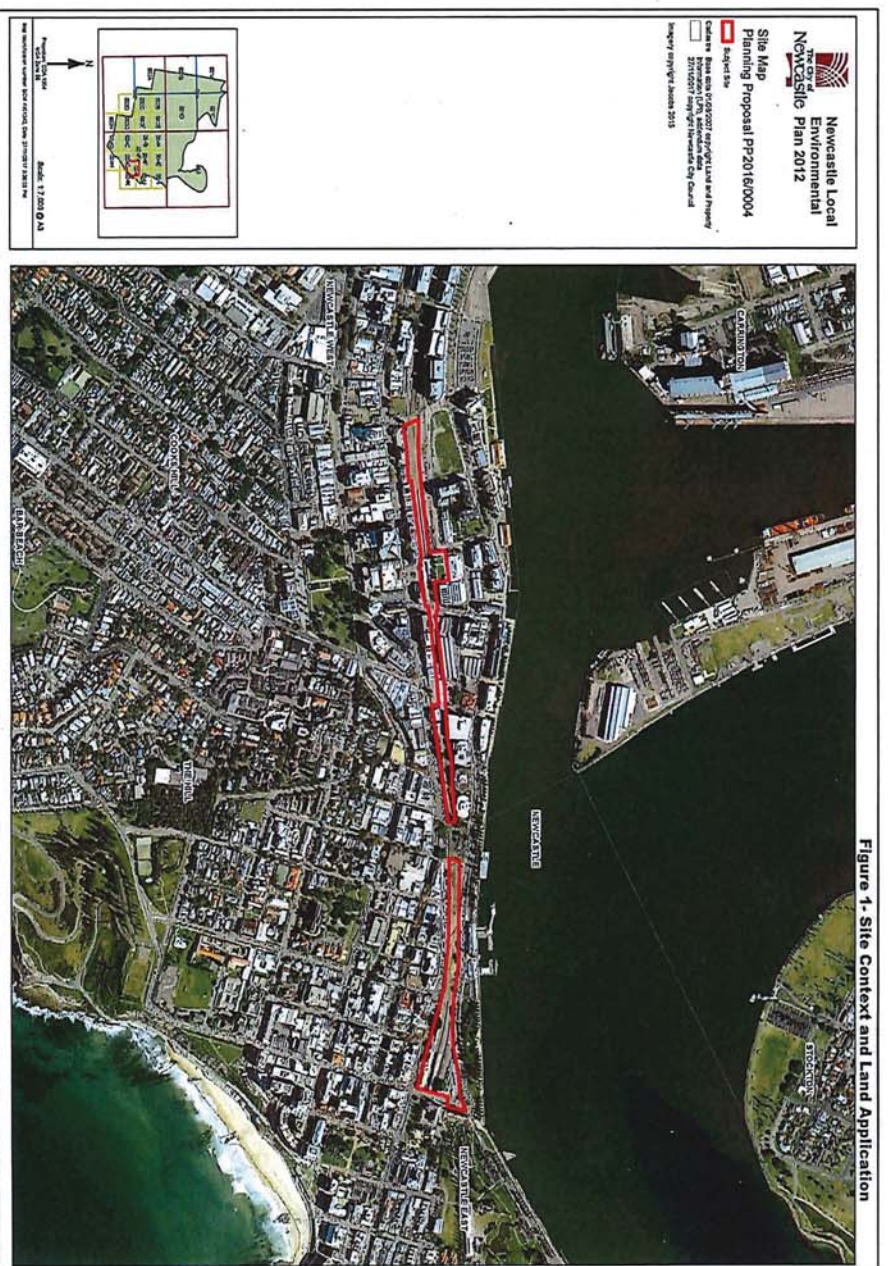


Figure 1: Site context and land application map.

Land titles, addresses and descriptors for the parcels making up the subject land are detailed in the following table:

Title	Address	Description
Lot 2 DP 1226145	430 Hunter Street, Newcastle	Rail corridor (Worth Place to Merewether Street)
Lot 1 DP 1192409	1R Merewether Street, Newcastle	Road (Merewether Street)
Part Lot 3 DP 1111305	6 Workshop Way, Newcastle	Land adjoining corridor (open space at rear of Newcastle Museum)
Lots 1 & 2 DP 1226551	280 Hunter Street, Newcastle	Rail corridor
Lot 3 & Part Lot 4 DP 1226551	150 Scott Street, Newcastle	Rail corridor
Lots 5 & 6 DP 1226551	110 Scott Street, Newcastle	Rail corridor and Newcastle Station and surrounds
SP 21188	342 Hunter Street, Newcastle	Land adjoining corridor (building)
Lot 1 DP 1008183	336 Hunter Street, Newcastle	Land adjoining corridor (building)

3. PURPOSE OF PLAN

Background

The LEP amendment seeks to rezone land in the surplus rail corridor and certain adjacent land between Worth Place and Watt Street, Newcastle. The subject land is approximately 1.53km in length and has an area of approximately 4.2ha.

The proposed LEP amendments support the objectives of the Newcastle Urban Transformation and Transport Program, which assists in the delivery of the Newcastle Urban Renewal Strategy. The program objectives are generally consistent with the broader objectives of Council's Newcastle 2030 Community Strategic Plan and local planning strategy.

Draft LEP

It is proposed to rezone the land from SP2 Infrastructure (Railway) to a mix of B4 Mixed Use, RE1 Public Recreation, SP2 Infrastructure (Electricity Generating Works) and SP3 Tourist (Figure 3, next page).

The land use zones and broad land uses proposed for various sections of the rail corridor are:

- between Worth Place and (the former) Civic Station: Zoned B4 Mixed Use and proposed for educational purposes (University of Newcastle);
- the former Civic Station site and land outside the corridor and adjacent to Newcastle Museum: Zoned RE1 to provide a new open space (Civic Gardens), which will provide walking and cycling links between existing open spaces at Wheeler Place and Honeysuckle Drive, connecting the civic heart of the city with the waterfront;
- between Civic Station and Merewether Street: Zoned B4 to allow mixed use development and a potential site for affordable housing;
- between Merewether Street and Argyle Street: Zoned B4 and RE1 to facilitate appropriate mixed use development and the creation of Darby Plaza, an urban plaza at the junction of Hunter and Darby Streets that will facilitate pedestrian and cycle movement between Hunter and Darby Streets and the harbour;
- between Argyle and Brown Streets: Zoned B4 to facilitate mixed use development with active frontages to Hunter Street;

The draft LEP also:

- establishes a new SP3 zone in the Newcastle Local Environmental Plan 2012 (NLEP 2012);
- establishes floor space ratio (FSR), lot size and height of building controls for certain parts of the corridor;
- identifies Newcastle Station and adjacent land as a key site for the purposes of clause 7.5 Design Excellence of the NLEP 2012;
- corrects mapping anomalies for land at 336 and 342 Hunter Street, Newcastle, which is outside the existing rail corridor and zoned B4 Mixed Use without any FSR or height of building controls. FSR and height of building controls that are consistent with adjacent corridor land will be applied; and
- corrects a zoning anomaly for land known as Parcel 10, zoned SP2 Infrastructure. Map labelling will be amended to identify the parcel as SP2 Infrastructure (Electricity Generating Works Facility).

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Newcastle state electorate. Mr Tim Crakanthorp MP is the State Member for Newcastle.

The site falls within the Newcastle federal electorate. Ms Sharon Claydon MP is the Federal Member for Newcastle.

Representations were made by state and federal MPs when the state government decided to truncate the heavy rail line and replace it with light rail. These representations pre-dated submission of this planning proposal. To the regional planning team's knowledge, no representations have been made by state or federal MPs regarding this planning proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 13 December 2016 (**Attachment C**) determined that the proposal PP_2016_NEWCA_007_00 should proceed subject to conditions.

A 12-month time frame for completion was given, meaning the LEP should have been completed by 13 December 2017.

The Gateway determination required land known as Parcel 12 to be removed from the planning proposal, and the removal of the key site designation from Parcel 12 and Parcel 8. Council had proposed an SP3 zone over the western portion of Parcel 12 to limit residential development on the land.

On 27 January 2017, Council submitted a Gateway determination review application, requesting that the planning proposal preferably proceed as submitted, or that at least only the western portion of Parcel 12 be removed from the proposal.

However, the Department had concerns about the relationship between Parcel 12 and adjacent sites, including a Council car park. The car park has potential as a consolidated development lot with land in Parcel 12, and it is considered that a separate planning proposal should be prepared and considered for the car park and Parcel 12 when future development potential is better understood, and appropriate development controls applied.

Council agreed with the Department's consideration and withdrew the Gateway determination review request.

6. PUBLIC CONSULTATION

The Gateway determination required exhibition of the planning proposal for 28 days. To align with concurrent exhibition of the related draft planning agreement and draft development control plan (DCP) controls for the railway corridor land, Council resolved to exhibit the planning proposal for 40 days, from 11 September until 23 October 2017.

Council received 847 submissions during the exhibition period (incorrectly cited as 849 in the planning proposal). Council also developed a social pinpoint map, which was included on the engagement page of its website. The map included all proposed zoning, FSR, height of building, potential dwelling yield and proposed non-residential areas for each land parcel. A survey was embedded into the map for people to provide comment. The survey was viewed 942 times, with 647 survey responses provided. These responses are not considered as formal responses but provide additional feedback on proposals for Council's consideration.

Council held a public meeting during the exhibition period on 18 October 2017, which included 12 speakers: six speaking for the planning proposal and six speaking against.

Council has advised that the breakdown of submissions was:

Supporting the planning proposal	Objecting to the planning proposal	Unclear as to support or objection
<ul style="list-style-type: none"> • 46 form letters • 226 individual submissions 	<ul style="list-style-type: none"> • 137 form letters • 394 individual submissions 	<ul style="list-style-type: none"> • 44 individual submissions
Total submissions = 847		

Of the 847 submissions, 17 were site-specific and one was from the proponent, the Hunter Development Corporation.

In summary, the key points of support for the planning proposal included:

- consistency with the community vision to bring people back to the Newcastle city centre by enhancing Newcastle as a destination;
- the creation of jobs, education and housing opportunities and high-quality public domain;
- the improvement of connectivity between the city centre and the harbour; and
- preserving and enhancing the unique heritage and character of the city.

The key points of objection are summarised as follows:

- the SP2 Infrastructure zone should be retained to protect the rail corridor and allow rail to be reinstated in the future;
- disagreement with the proposed light rail route, preferring it to run along the existing rail corridor rather than on Hunter and Scott Streets;
- the removal of on-street parking due to the proposed light rail route and the potential increase in traffic congestion and related pollution during the construction phase of the light rail and into the future;
- overdevelopment of the city centre and overshadowing of Hunter Street by development in the rail corridor;

- development in the rail corridor will create a visible barrier to the harbour and cause loss of significant views;
- retain the entire corridor as open space to create better connections to the harbour and allow for active transport uses such as walking and cycling;
- the proposal will threaten the heritage of the city, including Newcastle and Civic Stations, The Store and the Signal Box; and
- the widening of Scott Street onto the proposed Market Lawn due to the light rail route on Scott Street.

The 17 site-specific submissions related to six key issues:

- the realignment of Scott Street and the encroachment of 475m² into the former rail corridor adjacent to the Market Street Lawn;
- proposals to reduce building heights at 414-426 Hunter street from 24m to 18m;
- a draft DCP proposal for a through-site link from Hunter Street to Civic Lane;
- a proposed Live-Work Unit site on Hunter Street behind an existing apartment block (Nautilus Apartments). The land is proposed to be zoned B4 with a 14m height limit, and submissions requested an RE1 Public Open Space zoning to ensure the apartment block will not lose views or be overshadowed by new development;
- a request for an increased building height and FSR at 336 Hunter Street; and
- a request for the Civic East site to be zoned RE1 Public Open Space rather than B4 Mixed Use, with foregone FSR transferred as development rights to be used on adjoining properties.

The Hunter Development Corporation submission requested the planning proposal be amended to remove the proposed minimum lot size for RE1 Public Recreation-zoned land in the NLEP 2012. Removing this lot size restriction would allow a subdivision to separate the Newcastle Signal Box from surrounding RE1-zoned land and allow dedication of the surrounding land to Council, as set out in the draft planning agreement.

Council's response to these matters is addressed in sections 8 and 9 below.

7. ADVICE FROM PUBLIC AUTHORITIES

The Gateway determination did not require Council to consult with any public authorities. Earlier consultation with the Mine Subsidence Board (now Subsidence Advisory NSW) for the purposes of section 9.1 Direction 4.2 Mine Subsidence and Unstable Land was considered adequate.

8. POST-EXHIBITION CHANGES

The planning proposal submitted to the Department by Council for finalisation (dated December 2017) makes two post-exhibition changes to the draft LEP. These changes are:

- Council proposed and exhibited a minimum lot size for land to be zoned RE1 Public Recreation within the corridor. This has been removed post-exhibition to enable the Hunter Development Corporation to subdivide and dedicate open-space land to Council as outlined in the draft planning agreement; and
- the exhibited planning proposal proposed lowering the building height on land at 414-426 Hunter Street from 24m to 18m. The land is outside the rail corridor but was included in the proposal to improve amenity in surrounding open-space areas, such as Wheeler Place. Council received two submissions from the landowners concerned with the proposed lowering of the building height.

Further detailed analysis by Council of the impact of overshadowing on Wheeler Place has indicated no overshadowing impact at a building height of 18m, and a 3-4m encroachment at 12pm on 21 June with a 24m building height. Council considers this encroachment acceptable and has amended the planning proposal post-exhibition to retain the 24m building height on this land. Part of the justification for this decision is a draft DCP street wall height control of 16m for the Hunter Street frontage of the properties. This lessens the impact of overshadowing on Wheeler Place.

Neither of these changes have been re-exhibited, and the community has not been consulted on the changes. However, it is recommended that the changes can be endorsed without requiring further exhibition given their nature and the justification provided by Council. Further discussion on these issues is provided in the Assessment section of this report.

As a result of drafting of the final instrument by Parliamentary Counsel's Office, a post-exhibition change has been made to the proposed new SP3 zone, which will be applied to the Newcastle Railway Station site. One of the additional zone objectives proposed by Council "to provide for an inclusive and accessible environment for everyone" has been removed. The objective was considered to be subjective. Council has agreed to the deletion of this objective.

9. ASSESSMENT

Regional plans

Consistency with the Hunter Regional Plan 2036 and the Newcastle Urban Renewal Strategy was examined when the proposal was considered at Gateway. The proposal remains consistent with these plans and the following summarises those assessments.

Since the Gateway determination was issued, the Department has released the Draft Greater Newcastle Metropolitan Plan and an assessment of the proposal's consistency with this plan is also provided.

Hunter Regional Plan 2036

The regional plan recognises that revitalising the Newcastle city centre is an important component in achieving goal 1 of the plan, which is to make the Hunter the leading regional economy in Australia. It includes a specific direction to "revitalise the Newcastle City Centre" that identifies desired outcomes and specific actions to achieve this goal. This includes strengthening connections between the city and the waterfront, enabling development and investing in infrastructure such as the light rail to facilitate growth and urban renewal.

The proposal is consistent with this goal as it rezones surplus rail corridor land that has limited opportunity for renewal under existing planning controls. This rezoning enables the redevelopment for commercial, educational, residential, public recreation and tourism purposes. Urban renewal and improvements to the public domain will be facilitated together with strengthening the connection between the city and its waterfront by enabling future development of sites, the embellishment of open spaces and additional north-south crossings of the corridor.

Draft Greater Newcastle Metropolitan Plan 2036

The proposal sits within Newcastle city centre, which is recognised as the heart of the Greater Newcastle metropolitan area. This area is considered to be a major driver in achieving the metropolitan plan's vision to shape Greater Newcastle into a dynamic and entrepreneurial city with a globally competitive economy and a great lifestyle, framed by wineries to the waterfront. It is also identified as a catalyst area for driving transformation.

The proposal is consistent with strategy 1.1 of the draft plan to "reinforce the revitalisation of Newcastle City Centre and expand transformation along the waterside" because the rezoning provides opportunities for the renewal of a large tract of undeveloped land that

runs through the city centre area. This will enable the redevelopment of the land for open space, education facilities and housing for students and workers, and improve connectivity to the waterfront, which is consistent with the actions for strategy 1.1. Facilitating development for these purposes is also consistent with the catalyst actions that relate to Newcastle city centre's role as a precinct for urban renewal, education/innovation, housing and recreation.

Newcastle Urban Renewal Strategy

The proposal is consistent with the strategy as it will provide an opportunity for increased economic growth, viability, variety and competition, and opportunities to more closely link the waterfront and the city, which are all key outcomes sought under the strategy. The strategy notes that the future use of the rail corridor is to be determined in consultation with the community, and the planning proposal process has enabled this to occur. As discussed in section 8 of this report, changes have been made to the proposal in response to community feedback, which has resulted in reduced developable area, increased open space and changes to provide for better public domain outcomes.

Council had originally proposed to create an additional pedestrian connection between Hunter Street and Civic Lane and the Darby Plaza recreation space, which are not identified in the strategy. The Civic Lane connection has been removed from the proposal in response to submissions and the Darby Plaza element is to proceed because suitable justification for its inclusion has been provided. This inconsistency with the strategy is minor and is supported.

Plan-making matters

Details of the assessment of the proposal regarding Gateway determination requirements and post-exhibition changes that support the recommendation and address key issues are set out below.

Gateway determination requirements

The planning proposal has satisfactorily addressed the Gateway determination conditions, notably:

- Parcel 12 was removed from the planning proposal before exhibition and the key site designation was removed from Parcel 12 and Parcel 8;
- the additional lands outside of the rail corridor and the proposed changes to controls on these lands have been clearly identified and strategically justified (including post-exhibition changes to controls affecting some of these lands);
- information regarding the proposal's strategic consistency with the Hunter Regional Plan 2036 has been strengthened;
- additional information was provided and exhibited regarding the strategic justification for the proposed pedestrian connection and Darby Plaza concepts. The proposed amendments to the land acquisition reservation map to provide for a pedestrian link between Civic Lane and Hunter Street were removed before exhibition, and draft DCP controls relating to the link were removed following submissions resulting from exhibition of the planning proposal package;
- changes to the level of retail, transport and social impacts following a reduction in the amount of B4 zone proposed, and the removal of Parcel 12 from the planning proposal, were made prior to exhibition; and
- mapping and other minor zoning anomalies have been addressed.

In response to objections relating to the retention of the rail corridor for future transport use, the proposed route for the light rail, and potential traffic congestion and other related impacts of the light rail route, Council has noted that these relate to earlier decisions by the state government to truncate the heavy rail line and redirect light rail, in part, along Hunter and Scott Streets. They are not objections relating to the zonings and other planning controls proposed for the surplus rail corridor.

In response to other key objections received as a result of exhibition, the exhibited and final submitted planning proposal:

- contains substantially less developable area than requested by the proponent;
- addresses overshadowing concerns by nominating appropriate building heights on height of building maps that are generally consistent with heights on land adjoining the rail corridor, ensure adequate solar access to public open spaces and provide appropriate transition to buildings with heritage significance;
- concentrates development in those parts of the corridor where existing development lines the boundaries of the rail corridor, and increases open space zonings where there are existing open spaces and sight lines to minimise creation of an additional visual barrier along the corridor;
- retains more of the corridor than requested by the proponent for open-space purposes – an additional 3238m² – to increase connectivity between the city centre and the harbour and to create opportunities for large, activated spaces linked to each other and light rail stops by pedestrian and cycle paths; and
- provides adequate protection for heritage items in and adjacent to the rail corridor through the selection of appropriate building heights and zonings that support proposals to refurbish and adaptively re-use items such as the Signal Box and the Newcastle Station building.

Regarding site-specific issues raised during exhibition, the final planning proposal:

- notes that the realignment of Scott Street and the encroachment of 475m² into the rail corridor is necessitated by the location of a light rail stop, does not affect zoning outcomes and results in approximately 1.2ha of landscaped public open space at this location through the proposed Market Street Lawn;
- retains existing 24m building heights at 414-426 Hunter Street (see post-exhibition changes below);
- removes draft DCP provisions relating to a through-site link between Civic Lane and Hunter Street in addition to the pre-exhibition removal of land acquisition proposals for this link;
- retains exhibited 14m building heights for the proposed Live-Work Unit site on Hunter Street, noting that the adjacent apartment block has a 20m building height limit and is located to the north of the Live-Work site and so will not be affected by shadowing from by a new 14m building to the south;
- retains exhibited controls of 14m building height and FSR of 1.5:1 for 336 Hunter Street, as these are consistent with the adjacent Live-Work site and other surrounding corridor land; and
- retains the exhibited B4 Mixed Use zone on the Civic East parcel consistent with adjoining lands, noting that the RE1 zone is not appropriate in this location and that Council does not support transferable development rights as part of this proposal.

Post-exhibition changes

The post-exhibition removal of proposed lot size controls from land to be zoned RE1 in the rail corridor is supported. There is no change to zoning or land use outcomes as set out in the concept plan/urban design analysis exhibited with the planning proposal. The removal of lot size controls facilitates the delivery of public recreation space, tourist facilities and better connection between the city centre and the harbour, which are key objectives of the planning proposal.

The post-exhibition change to building height at 414-426 Hunter Street effectively retains the existing building height of 24m for this land. The exhibited urban design analysis suggests an 18m height for rail corridor land immediately adjoining this land, noting that this will provide a transition between the taller, 24m-high buildings at 414-426 Hunter Street and the low-scale heritage buildings to the north (the Newcastle Museum buildings with a 10m height limit).

Council exhibited an 18m building height for 414-426 Hunter Street to ensure adequate solar access to Wheeler Place on the opposite side of Hunter Street. Following objection by the two landowners, Council's more detailed analysis has identified that an acceptable level of solar access can be achieved while retaining the 24m building height. This is in part because of related draft DCP controls that will require a 16m street wall height along the Hunter Street frontage of the land.

The change does not affect zonings or development outcomes in the rail corridor or the outcomes described in the urban design analysis accompanying the planning proposal. Given that further analysis by Council has identified that the desired outcomes for solar access can be achieved while retaining the 24m building height, it is recommended this post-exhibition change be supported.

Section 9.1 Directions

The draft LEP is consistent with all relevant section 9.1 Directions. Section 9.1 Direction 6.2 Reserving Land for Public Purposes requires the Secretary's agreement to any additional land being zoned for public purposes. The final planning proposal contains land to be zoned RE1 Public Recreation. It is considered that the planning proposal justifies the location and extent of RE1 zoning. In addition, Hunter Development Corporation has entered into a formal planning agreement with Council for the embellishment of the RE1 zoned land and its dedication to Council. The purpose of the planning agreement is to ensure that the objective of the city centre revitalisation for north-south connections to the waterfront are achieved. This outcome is consistent with objective (1)(a) of Direction 6.2 to facilitate the provision of public facilities.

It is recommended that the Deputy Secretary, Planning Services, as the Secretary's delegate, grant the approval required under section 9.1 Direction 6.2(4) for the additional land being zoned for a public purpose.

State environmental planning policies

The draft LEP is consistent with all relevant SEPPs.

10. MAPPING

The draft LEP will be implemented through amendments to land zoning, lot size, height of building, floor space ratio and key sites maps. The maps have been checked by the Department's regional team and the ePlanning team, and they are suitable for plan-making.

11. CONSULTATION WITH COUNCIL

Council confirmed on 5 April 2018 that it accepted the terms of the draft LEP.

12. PARLIAMENTARY COUNSEL OPINION


On 4 April 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.


13. RECOMMENDATION

It is recommended that the Secretary's delegate determine to agree to the reservation of land for public purposes under section 9.1 Direction 6.2 Reserving Land for Public Purposes.

It is recommended that the Minister's delegate determine to make the draft LEP because:

- the land use zones, building heights and floor space ratios proposed for the surplus rail corridor land align with the urban design analysis prepared and concurrently exhibited with the planning proposal and deliver an appropriate mix of business, open space and tourism uses to activate the spaces, and meet the objectives of the Newcastle Urban Renewal Strategy and the Newcastle Urban Transformation and Transport Program;
- it will assist in the implementation of the Hunter Regional Plan 2036 goals and directions and is consistent with strategy 1.1 of the Draft Greater Newcastle Metropolitan Plan 2036 to "reinforce the revitalisation of Newcastle City Centre and expand transformation along the waterside";
- it will provide for approximately 4000m² of commercial/retail space and approximately 100-150 dwellings within the rail corridor land (excluding the area identified for education/university purposes);
- objections to proposed planning controls resulting from exhibition have been satisfactorily addressed by Council at a site-specific level;
- the two post-exhibition changes to the draft LEP proposed by Council are justified and supported; and
- there are no unresolved issues associated with the draft LEP.


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16 Apr. / 2018


Marcus Ray
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Noted. 17/04/18


16/4/2018
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