

Planning Services

Plan Finalisation Report

Local Government Area: Newcastle

File Number: 15/17573

Planning Proposal No: PP_2015_NEWCA_005_00

1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 Amendment No.26 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to land in Newcastle East End, being land bounded by Hunter, Newcomen, King and Perkins Streets (the site). Refer to Figure 1 below.

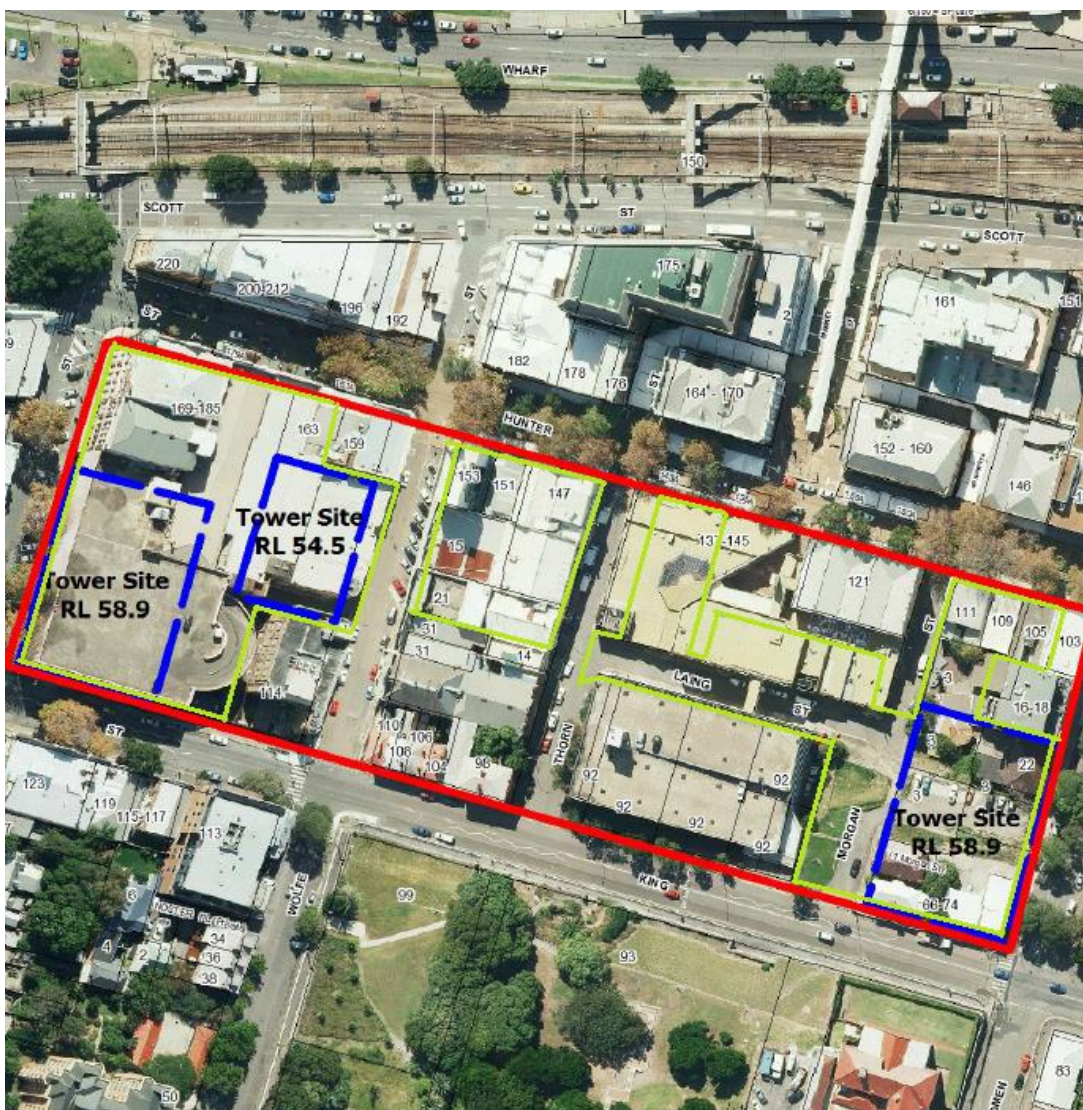


Figure 1: The site identified in the planning proposal is outlined red. Land affected by a change to the LEP height controls is outlined green (approximate). The tower sites are outlined blue.

3. PURPOSE OF PLAN

Background

The LEP amendment seeks to apply new heights to the Newcastle City Centre East End. Height controls for this land has a detailed and contentious history.

In December 2012, the Department released the Newcastle Urban Renewal Strategy for public comment. The draft Strategy proposed various actions for the Newcastle City Centre, including changes to the planning controls. Following consideration of submissions, several amendments to the LEP controls for the city centre were made (July 2014). This included significant increases to building heights on three development sites within the area bounded by Hunter, Newcomen, King and Perkins Streets, Newcastle.

The amendment changed the zone from B3 Commercial Core to B4 Mixed Use, and resulted in increased building heights over the site between 24m and 35m, and tower sites between RL 54.5 to RL 58.9. Prior to the amendment, a maximum of 24m building height applied, with clause 7.9 of NLEP 2012 permitting increased heights of up to 40 AHD.

The increased building heights evoked community concern, and were inconsistent with the heights detailed in the draft Newcastle Urban Renewal Strategy. Consequently, Council submitted a planning proposal to the Department to reinstate building heights of 24m (December 2015). The proposal also sought to introduce a local provision (clause 7.9(4)) which permitted height exceedance to 40m RL in certain circumstances.

The Department, in its consideration of the proposal, queried the reinstatement of clause 7.9(4) because the draft Urban Renewal Strategy had previously not supported the clause (March 2016).

The then owners of the site (Urban Growth and The GPT Group) lodged a staged development application for the subject land with Newcastle City Council in November 2015. The proposed heights were lower than that permitted under the current controls with a maximum height of 42.5 metres at the three locations.

The development application was approved subject to conditions by the Hunter and Central Coast Joint Regional Planning Panel (JRPP) on 28 April 2016. The approved concept plan allows a mixed-use re-development of the site. Various building heights were approved by the concept plan across the site, including the three tower sites which had their heights substantially reduced from RL 58.9 and RL 54.5 to RL 42 (AHD).

In August 2016, Council staff amended the proposal to be consistent with the JRPP approved building heights within the concept plan, and omitted clause 7.9(4) from the proposal.

On 14 September 2016, the Department issued a Gateway determination for the proposal PP_2015_NEWCA_005_00 to align the building heights with the JRPP determination.

Draft LEP

On 19 May 2017, Council forwarded the draft LEP to the Department for finalisation.

The draft LEP does not intend to make any changes to the Newcastle LEP 2012 written instrument. Instead, the draft LEP would amend the Height of Buildings Map in Newcastle LEP 2012 by:

- amending various building heights to Reduced Levels (AHD) for land in Newcastle bounded by Hunter, Newcomen, King and Perkins Streets;
- reducing the height of buildings for three tower sites to 42RL AHD; and
- reducing the above ground height of buildings for Laing and Morgan Streets to 24 m.

Figures 2 and 3 compare the existing building heights with the proposed heights.



Figure 2: Existing LEP maximum building heights (V = 35 m, T = 27m S = 24 m; other heights in grey are RL as shown). Land requiring a change to the LEP heights to align with the JRPP approval is outlined red.



Figure 3: Proposed LEP building heights (grey is RL heights as shown). Land outlined in red is affected by a change. Two sites have been removed following consultation (discussed later in the report).

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Newcastle Electorate. Tim Crakanthorp MP is the State Member for Newcastle. In 2016 he indicated his support for reducing the existing heights to those that applied in 2012. In March of this year he requested that the Department expedite the finalisation of the proposed new heights.

Ms Sharon Claydon MP is the Federal Member for Newcastle. To the regional planning team's knowledge, Ms Sharon Claydon has not made any written representations regarding the 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: A political donation disclosure statement has been provided OR there are no donations

5. GATEWAY DETERMINATION AND ALTERATIONS

On 14 September 2016, the Department issued a Gateway determination for the proposal PP_2015_NEWCA_005_00.

The conditions of the Gateway determination have been satisfied.

The draft LEP was due for finalisation by 21 September 2017.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, the draft LEP was publicly exhibited for 28 days from 24 October until 21 November 2016.

Council received seven (7) submissions, none were made in objection to the proposal.

The submissions raised the following key issues:

- preference for a maximum 24 metre height limit;
- support for the correction of over development of the site;
- supports protection of heritage character through reduced building heights;
- recommendations during construction of development; and
- finalise the draft LEP as soon as possible.

On 13 February 2017, one post exhibition submission by a land owner of Block 7 and Block 4B of the concept plan raised concerns over the proposed reduction to the maximum building height on two sites and requested the sites maintain the status quo. In this regard, the exhibited proposal sought to reduce the maximum building height from 24m (above ground) to 24m (RL) and 20m (RL) AHD for both sites. The two sites contain local heritage listed items under Council's LEP and the blocks are known as:

- the terraces, former Masonic Hall and former Lyrique Theatre on King, Wolfe and Thorn Streets; and
- the Market Square Building on the corner of Hunter and Morgan Streets.

The submission asserted that maintaining the existing height controls for the two heritage listed sites provided greater opportunity for a range of architectural and heritage options for the viable adaptive re-use of the buildings.

On 14 February 2017, Council deferred the consideration of the proposal to the next Council meeting to enable planning issues relating to the two sites to be resolved. Council planning staff recommended that Council support the request by amending the planning proposal to remove the two sites from the draft LEP. Subsequently, the sites would maintain existing planning controls under Council's LEP.

On 28 February 2017, Council considered a post exhibition report and subsequently resolved to endorse the planning proposal, forward the proposal to the Department for making and amend the building heights in line with the JRPP decision dated 28 April 2016 for the concept plan approval. The final planning proposal received by the Department maintains the existing heights for the two blocks.

7. ADVICE FROM PUBLIC AUTHORITIES

In accordance with the Gateway determination, agency consultation was not required.

8. POST EXHIBITION CHANGES

The planning proposal submitted to the Department by Council for finalisation (dated May 2017) makes two post exhibition changes to the draft LEP. These changes seek to remove the following land from the draft LEP:

- Block 7 - the Terraces, former Masonic Hall and former Lyrique Theatre on King, Wolfe and Thorn Streets; and
- Block 4B - the Market Square Building on corner of Hunter and Morgan Streets.

The proposal to remove Blocks 7 and 4B from the draft LEP means that the sites will maintain the status quo, an existing building height control of 24m above existing ground level. Figure 4 shows the sites in question.

These heights are greater than those allowed by the concept plan and have not been re-exhibited by Council. The community should be consulted on the change. Further discussion on this issue is provided in the “Assessment” section of this report.

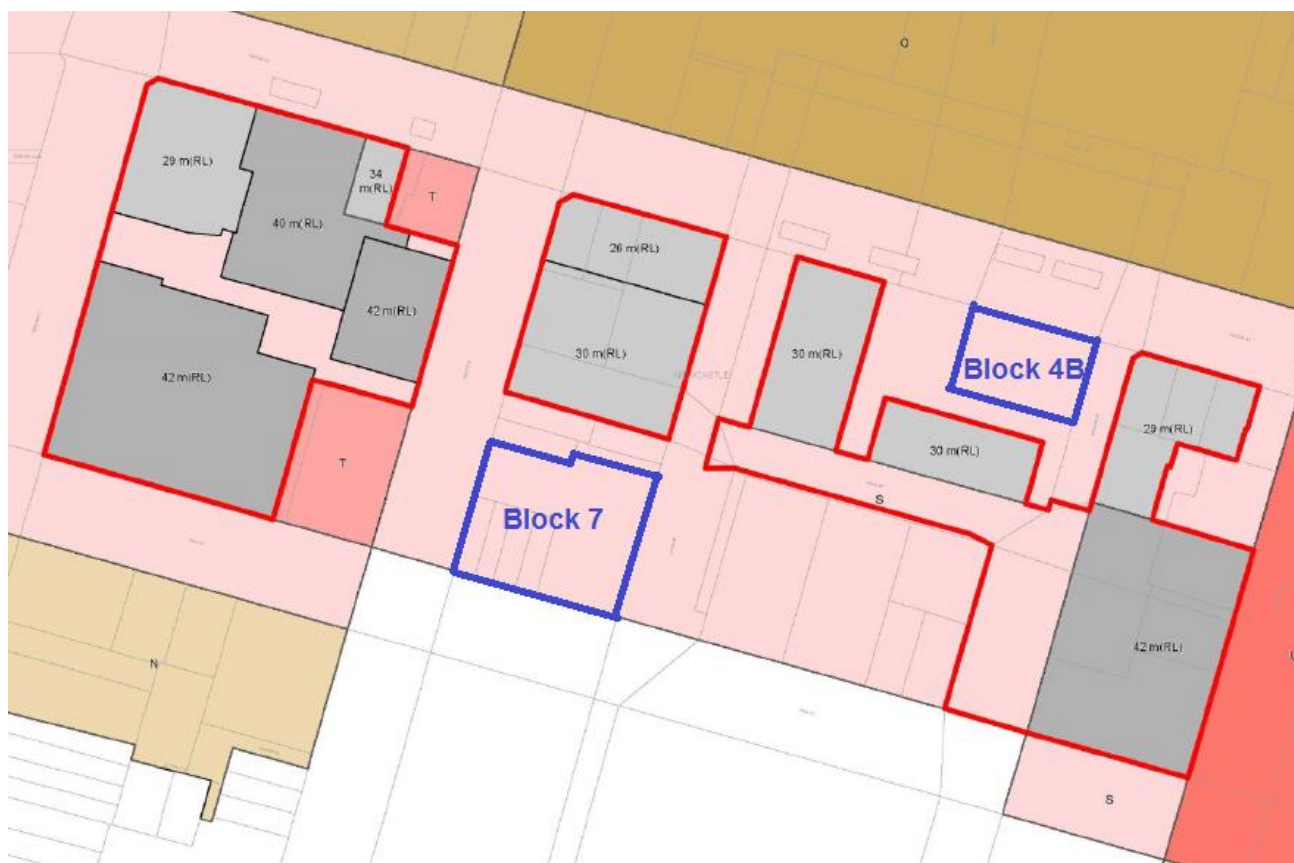


Figure 4: Sites removed from the planning proposal (outlined blue) overlayed on the proposed heights (S = 24 m)

9. ASSESSMENT

The post-exhibition changes made by Council for Blocks 7 and 4B are inconsistent with the core intent of the planning proposal which is to align the LEP heights with the heights in the JRPP concept approval. In removing the two sites from the proposal, Council is effectively maintaining the existing LEP heights of 24 m which is greater than the concept plan approval heights being the existing building heights.

The concept plan shows the intended building heights for the land in both envelope plan view and elevation plan view, and does create some confusion as to what is intended for these sites (**Attachment F**). The envelope plan (DA-2901) suggests RL heights similar to an above ground height of 24 m (as proposed by Council), however this conflicts with the elevation plan (DA-0501-1, DA-0502-1, DA-0503-2) which specifies the maximum height as being the existing building height (approximately RL 24 and RL 20 for Blocks 7 and 4B respectively).

As condition 7 of the concept plan approval (**Attachment H**) states that the approval permits maximum building heights as shown and referenced as 'Staged DA Building

Envelope' on the Building Envelope Plans prepared by SJB Architects (Elevation Plans 0501 – 0504). The elevation plans should therefore be used. As a result, Council's changes are inconsistent with the concept approval for these two blocks.

Issues associated with East End heights have been long standing and contentious. This planning proposal seeks to adopt the heights approved in the concept plan because those heights are the subject of detailed assessment through the JRPP process and are broadly supported. Aside from Blocks 7 and 4B, the heights proposed for the site are consistent with the approved concept plan.

Council's decision to adopt different heights for two of the sites, following a submission from the landowner, has not been considered by the community. While the change may better facilitate the adaptive reuse of those heritage buildings and align with the envelope plan, the community should be provided with the opportunity to consider whether these changes have merit.

Given the heights proposed for the remainder of the site align with the JRPP approval and the community's strong desire to see the new heights adopted quickly, it is recommended that the draft LEP proceed to making. However, the heights relating to the Block 7 and 4B should be deferred from the amendment, so that the community can be consulted on this change.

If deferral is supported, it is recommended that the Minister specify that Council submit a revised planning proposal to the Minister under section 56(6) so that the existing Gateway determination may be altered under section 56(7), where new conditions regarding community consultation, delegation and the completion timeframe may be issued. It should also specify that community consultation under section 57 would be required.

Section 117 Directions

The draft LEP is consistent with all relevant section 117 Directions, except for those discussed below:

1.1 Business and Industrial Zones – the proposal seeks to reduce the height of buildings on land zoned B3 Commercial Core. The proposal is inconsistent with the direction because it will reduce the total potential floor space in business zones. The sites are subject to an approved Concept Plan with reduced heights to ensure re-development is consistent with the character and heritage values of the East End area and therefore the reduced heights only seek to align with the approved Concept Plan. Therefore, it is recommended that the Secretary accept the inconsistency as minor.

State Environmental Planning Policies

The draft LEP is consistent with all relevant SEPPs.

10. MAPPING

The draft LEP will be implemented through mapping amendments to the Height of Building Maps. The maps have been checked by both the regional team and the ePlanning team, and minor changes were made by the Department to ensure they were suitable for plan making.

11. CONSULTATION WITH COUNCIL

Council confirmed on 22 August 2017 that it accepted the terms of the draft LEP.

12. PARLIAMENTARY COUNSEL OPINION

On 29 August 2017 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 Minister's delegate determine to make the draft LEP because:

- the building heights that would be introduced by the draft LEP have been subject to detailed assessment and align with the maximum building heights detailed in the JRPP concept plan approval;
- the building heights have been exhibited and are broadly supported by the community;
- there are no unresolved issues associated with the draft LEP, provided Block 7 and Block 4B are deferred from the draft LEP; and
- Block 7 and Block 4B should be deferred to enable the further consideration of suitable height controls for those sites.