# Subject:

## REPORT BY: PLANNING AND REGULATORY

**CONTACT:** **DIRECTOR PLANNING AND REGULATORY /** **MANAGER STRATEGIC PLANNING SERVICES**

## purpose

This report seeks Council's endorsement of a Planning Proposal to commence the statutory process to prepare an amendment to Newcastle Local Environmental Plan (LEP) 2012 to amend building heights on land bounded by Hunter, Newcomen, King and Perkins Streets, Newcastle.

## Recommendation

1 Council resolves to:

1. Endorse the attached Planning Proposal (**Attachment A**), prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)*,* to amend Newcastle LEP 2012 for land in Newcastle City Centre, as follows:

i. amend the height of building map for land bounded by Hunter, Newcomen, King and Perkins Streets as identified on the site map in the Planning Proposal at **Attachment A,** to have a maximum building height of 24m; and

ii. insert clause 7.9(4) to allow the building height to be exceeded in certain circumstances to a maximum height of 40m AHD.

b) Forward the Planning Proposal to the Minister for Planning and Environment for Gateway Determination pursuant to Section 56 of the EP&A Act.

c) Receive a report back on the Planning Proposal after the public consultation period has concluded.

## key issues

2 The Planning Proposal intends to reinstate the maximum building height for the site bounded by Hunter, Newcomen, King and Perkins Streets to be as it was prior to the 29 July 2014 city centre amendments.

3 This Planning Proposal was initiated by Council to implement its resolution of 9 December 2014. This resolution stated in part that Council should:

4 *"… write to the Minister for Planning and request that the Newcastle LEP 2012 be amended with respect to building heights for the lands and buildings to the southern side of Hunter Street Newcastle, between Perkins and Newcomen Streets extending south to King Street, together with two sites to the northern side of Hunter Street at the intersection with Market Street, by returning those building heights to those previously endorsed by the community and amend the Height of Building Map to include a maximum permissible height of 40 AHD over the land.*

5 *Should the Minister decline this request, Council prepare a planning proposal to the Newcastle LEP 2012 to reflect amendments to the Height of Building Map to include a maximum permissible height of 40 AHD to reflect these amendments."*

6 A letter was sent to the Planning Minister on 13 January 2015 requesting the Minister make the LEP amendments in accordance with the Council resolution. The Minister's reply, dated 5 March 2015, advised that the Minister was unwilling to make the amendments requested by Council.

7 Following a change to the Ministerial portfolios within the NSW Government a further letter dated 30 July 2015 was forwarded to the new Minister for Planning requesting they make the LEP amendments in accordance with the Council resolution. No reply has been received to date.

8 The Planning Proposal intends to re-impose a 24m height limit across the site. This was the height limit on the site prior to the city centre LEP amendments made by the Planning Minister in July 2014. The Planning Proposal also intends to reinstate clause 7.9(4) as per the Council resolution. Clause 7.9(4) allowed a height exceedance to 40m Australian Height Datum (AHD) in certain circumstances. This Subclause was removed from Newcastle LEP 2012 as part of the city centre LEP amendments made by the Planning Minister.

9 The Planning Proposal does not include the two sites on the northern side of Hunter Street at the intersection of Market Street as referred to in the Council resolution. The height limits on these two sites were not changed as part of the July 2014 LEP amendments and Clause 7.9(4) did not previously apply to these two sites.

10 The building height on the two Market Street sites is currently 20m and this has been the case since the gazettal of the Newcastle City Centre LEP 2008.

11 If endorsed by Council, the Planning Proposal will be forwarded to the Minister for Planning and Environment for Gateway Determination. Gateway Determination will confirm whether the State government provides in principle support for the Planning Proposal and identify what further technical studies and community consultation are required prior to the proposed amendments being made.

**View corridors**

**DCP 2005 - Element 6.2 City East**

12 Element 6.2 City East identified important views and vistas for the city centre. These included views to and from Christ Church Cathedral, Customs House, the harbour, the ocean and Heads, Nobby's and Fort Scratchley. The most important views were identified and used to regulate height limits and building form, subsequently ensuring any development would maintain and reinforce their existence. In other words, each view corridor was considered in setting the overall height limits so that, provided the height limits were maintained, the view corridor would be maintained.

13 Height limits were set on a block by block basis and over the subject site (bounded by Hunter, Newcomen, King and Perkins Streets) ranged from 13 and 16m (corner of King and Newcomen Streets) to 25m (between Perkins and Wolfe Streets), with sites between Wolfe and Newcomen Streets having either 22m or 19m height limits.

**Newcastle City Centre LEP 2008 and Newcastle LEP 2012**

14 Newcastle City Centre LEP 2008 adopted a height of buildings map, which replaced the height limits set in DCP 2005. There was a blanket 24m height limit set over the site by Newcastle City Centre LEP 2008.

15 The Newcastle City Centre LEP 2008 also included the new clause that allowed building heights to 40m AHD on the land bounded by Hunter Street, King Street, Newcomen Street and Perkins Street provided the site area was greater than 10,000m2 and the consent authority was satisfied that the impact of the building height on view corridors to and from Christ Church Cathedral and the Hunter River foreshores was not unreasonable.

16 The building heights and the clause in relation to the 40m AHD building heights were transferred to Newcastle LEP 2012. The clause became clause 7.9(4) in the LEP.

17 Clause 7.9(4) is intended to allow taller buildings on a consolidated, masterplanned site if they can be located on sites that did not impact on the view corridor to Christ Church Cathedral and Hunter River foreshore. The height limit of 40m AHD was determined to be the ground level at the base of the Cathedral. The clause is not intended to be read as allowing a blanket height of 40m AHD across the site but rather for specific buildings.

**Newcastle Urban Renewal Strategy 2012 (as originally exhibited)**

18 The Newcastle Urban Renewal Strategy 2012 (NURS), as originally exhibited in December 2012, proposed to retain the 24m height limit on the site between Newcomen and Wolfe Streets and increase the height limit on the block between Wolfe and Perkins Streets to 27m. The increase in height on this block was justified in the Strategy on the basis of the block being a key redevelopment site that did not have the same topographical or view corridor constraints as the block to the east between Newcomen and Wolfe Streets.

19 The NURS shifted the emphasis of the view of Christ Church Cathedral from *'the Cathedral on the hill'* to a view of the Cathedral tower as viewed along a street corridor. Oblique views of the Cathedral were considered to be a *'general view'* rather than a specific *'view corridor'*. The NURS states:

20 "*The most important views in Newcastle tend to be street views terminated by views of the water, or prominent buildings such as the old Courthouse. Other significant views that need to be preserved are those where the tower of the Cathedral terminates a street vista, such as the ones across the block between King, Wolfe, Hunter and Newcomen Streets."*

21 Similar to Council's earlier planning controls, the NURS set building heights, floor space ratios and built form controls (setting upper building levels back from the street) to maintain views along streets to important buildings, such as the Cathedral and Courthouse, and to maintain views across the subject site to the Cathedral tower.

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**Newcastle Urban Renewal Strategy 2012 (exhibition of amendments)**

22 In March 2014, the Department of Planning publicly exhibited several amendments to the proposed planning framework for the city centre, including significant increases to building heights on three development sites within the site bounded by Hunter, Newcomen, King and Perkins Streets. The three 'tower' sites, as exhibited, were allocated heights of RL 54.5m, RL 58.5m and RL 69.5m.

**Newcastle LEP 2012 City Centre Amendment 2014**

23 The City Centre amendment in July 2014 gazetted various building heights across the site: 24m, 27m, 35m and the three *'tower'* sites, one site at RL 54.5m and two sites at RL 58.9m. The identified view corridors considered as part of this amendment were limited to Market and Morgan Streets and distant views from Stockton and Fort Scratchley. The view to be maintained of the Cathedral was formally altered in the new City Centre DCP to be to the tower, roof-scape and pinnacles of the buttresses rather than to be of the *'Cathedral on the Hill'*. The City Centre DCP has now been incorporated into the Newcastle DCP 2012 as Section 6.01 Newcastle City Centre.

**FINANCIAL IMPACT**

24 Work will be undertaken by Council’s Strategic Planning staff within their current allocated work program and budget.

**COMMUNITY STRATEGIC PLAN ALIGNMENT**

25 The preparation and processing of the attached draft Planning Proposal aligns to the strategic direction *‘Open and Collaborative Leadership’* identified within the Newcastle Community Strategic Plan 2030.

**IMPLEMENTATION PLAN/IMPLICATIONS**

26 The Planning Proposal intends to ensure development in Newcastle East is of an appropriate type, height and scale that protects the City's heritage and promotes revitalisation.

27 The Planning Proposal involves reverting to the situation that existed before the Newcastle LEP 2012 City Centre Amendment in July 2014. This is considered to be consistent with the principles and findings of the draft Newcastle Urban Renewal Strategy as it was originally exhibited, though not exactly consistent with its recommendations for the site. The original Strategy was based on Council's planning controls and had broad community support.

**RISK ASSESSMENT AND MITIGATION**

28 The process of amending an LEP is prescribed by Part 3 of the EP&A Act. Adherence to the legislative framework reduces the risk by ensuring that a Planning Proposal is considered with regard to relevant strategic planning documents and is determined in an appropriate timeframe.

29 Justification has been provided for the formal LEP amendment request within the Planning Proposal at **Attachment A**.

**RELATED PREVIOUS DECISIONS**

30 Newcastle LEP 2012 was adopted by Council on 21 June 2011. It was amended by the State government on 29 July 2014 by State Environmental Planning Policy (Newcastle City Centre) 2014.

31 On 9 December 2014 Council resolved to write to the Minister for Planning requesting that the building heights on the GPT / Urban Growth site be amended and if the Minister declined this request that Council should prepare the Planning Proposal.

32 On 5 March 2015 the Minister for Planning wrote to Council declining to make the requested LEP amendments.

**CONSULTATION**

33 Consultation with stakeholders (including the community) will occur in accordance with the Minister’s requirements following Gateway Determination.

34 The change in building height has significant planning implications for the Newcastle city centre. It is therefore proposed that the Planning Proposal be publically exhibited for 28 days, unless otherwise advised by the Gateway Determination.

35 The Gateway Determination will confirm the consultation requirements, however, it is envisaged that this will include a public notice in the Newcastle Herald and publication on the Newcastle City Council web page.

**OPTIONS**

**Option 1**

36 The recommendation as at Paragraph 1. This is the recommended option.

**Option 2**

37 Council resolves not to proceed with the Planning Proposal. This option is not consistent with Council's resolution of 9 December 2014 and is not the recommended option.

**BACKGROUND**

38 In December 2012 the Department of Planning released the Newcastle Urban Renewal Strategy 2012 for public comment. The strategy was prepared in collaboration with Newcastle City Council.

39 Following consideration of submissions made during the public exhibition, the Department made several amendments to the proposed planning framework in the city centre, including significant increases to building heights on three development sites within the site bounded by Hunter, Newcomen, King and Perkins Streets.

40 In March 2014, the Department placed these amendments on public exhibition for a period of 16 days.

41 The Department of Planning's Newcastle City Centre Finalisation Report states that 266 individual submissions, a petition signed by over 500 people and an online petition with 676 signatures were received in response to the second exhibition period.

42 The report reveals that the majority of submissions were concerned about the heights proposed for three tower sites within the Hunter Street Mall / East End Precinct. The submissions cited a number of reasons for their concern, including impacts of building heights on the city skyline, views to significant landmarks such as the Christ Church Cathedral, overshadowing, and the general heritage and character of the city centre.

43 The Department of Planning made further adjustments to height limits in response to the submissions and the amendments were made to the Newcastle LEP 2012 in July 2014. The building heights for the three tower sites are RL 58.9 for the sites at King and Perkins Streets and King and Newcomen Streets and RL 54.5 for the site in Wolfe Street.

44 Council received a briefing on 2 December 2014 from members of Council’s Urban Design Consultative Group (UDCG). The UDCG raised serious concerns in relation to the proposed height limits on the subject site. In particular, the UDCG were concerned about the proposed increase in permissible heights on the three tower sites that would permit tall residential towers above retail podiums, due to the impacts this would create upon the legibility of the landform and character of this important part of the heart of the city.

45 The UDCG is of the view that the original LEP represents the maximum heights that these sites can be developed to without serious negative visual impact on the overall area.

46 The Planning Proposal (**Attachment A**) is consistent with this view and with successive council planning strategies for Newcastle East that have been in place since the early 1990s.

## ATTACHMENTS

**Attachment A:** Planning Proposal – Newcastle City Centre Urban Renewal - East End Building Heights