



IRF22/271

Gateway determination report – PP-2021-2262

505 Minmi Road, Fletcher

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Advice from Mine Subsidence Board 12 June 2014
Strategic Bushfire Study December 2021
Preliminary Contamination Assessment Report December 2021
Biodiversity Inventory Report December 2021
Traffic Impact Statement 20 December 2019
Visual Impact Assessment February 2020
Aboriginal Cultural Heritage Assessment October 2013
Infrastructure Servicing Report November 2021
Urban Design Study 21 December 2021
Site Specific Development Controls January 2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Newcastle
PPA	City of Newcastle Council
NAME	Rezoning of land (140 new dwellings)
NUMBER	PP-2021-2262
LEP TO BE AMENDED	<i>Newcastle Local Environmental Plan 2012</i>
ADDRESS	505 Minmi Road, Fletcher
DESCRIPTION	Lot 23 DP1244350
RECEIVED	12/05/2022
FILE NO.	IRF22/271
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The objective of the planning proposal is to amend the *Newcastle Local Environmental Plan 2012* to facilitate the future delivery of approximately 140 dwelling lots and secure biodiversity conservation outcomes.

The planning proposal was updated following the determination by the Hunter and Central Coast Regional Planning Panel, including to increase the area proposed for conservation by 2ha. There is inconsistencies across the planning proposal and technical studies of the area of land proposed to be rezoned for conservation and residential. This needs to be consistent.

1.3 Explanation of provisions

The planning proposal does not aim to include or amend any local environmental plan clauses. This proposal is identified as a map only amendment to the local environmental plan.

The maps included in the proposal require updating to reflect the state-wide transition to conservation (C) rather than environmental (E) zones and to show the proposal planning controls in the context of the controls applying to the surrounding lands.

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	C4 Environmental Living	R2 Low Density Residential C2 Environmental Conservation
Maximum height of the buildings	N/A	R2 Low Density Residential: 8.5m
Minimum lot size	40ha for RU6 Transition	R2 Low Density Residential: 300m ² and 450m ² C2 Environmental Conservation: 40ha
Urban release area	N/A	Identify proposed R2 Low Density Residential zone area as Urban Release Area under Part 6 of the LEP.

The planning proposal notes the area of land to be zoned C2 Environmental Conservation (10.8ha) is smaller than the minimum lot size of 40 hectares. It states clause 4.1B of *Newcastle Local Environmental Plan 2012* would facilitate subdivision of the land provided all of the land within the parent lot zoned C2 Environmental Conservation is contained within a single lot following the subdivision.

It is also noted the proposed zoning layout is inconsistent between the planning proposal and Urban Design Study. A condition has been placed on the Gateway determination to require consistency of information across the documentation. The appropriate zoning footprint between conservation and residential also needs to be informed by advice from the Biodiversity Conservation Division.

The planning proposal notes the proposed 300m² minimum lot size is located on relatively flat areas of the site, where slope primarily ranges between 4% to 10%, with the smaller residue primarily in the slope range of 10% to 15%. This 300m² minimum lot size has been chosen to provide flexibility in providing potential house and land packages, at a higher density, on the flatter portions of the site and to provide a more affordable housing product for consumers. This minimum lot size may need to be reviewed to facilitate the initial subdivision of the land. Council should consider a minimum lot size for the areas which will also facilitate the conservation objectives.

1.4 Site description and surrounding area

The land is identified as Lot 23 DP 1244350, known as 505 Minmi Road, Fletcher. The site is 26.2ha in area and is surrounded on the east and western sides with existing and approved residential development.

1.4.1 Site context and surrounding area

The site is located between the suburbs of Minmi and Fletcher in the northwest of the Newcastle Local Government Area. This site forms part of the Newcastle-Lake Macquarie Western Growth Area, which is an emerging residential area of either recently or soon-to-be developed residential subdivisions, interspersed with waterways and areas of environmental sensitivity. The site is a short distance from the M1 Pacific Motorway, the Blue Gum Hills regional recreation area and the Summerhill Waste Management Centre.

Surrounding and local land uses include low and medium density residential development, home businesses, sewage treatment works, water treatment facility, waste management centre, cemetery, neighbourhood centres and recreational areas.

Conservation lands are located further north of the site and form part of the Stockton to Watagans regional conservation corridor.

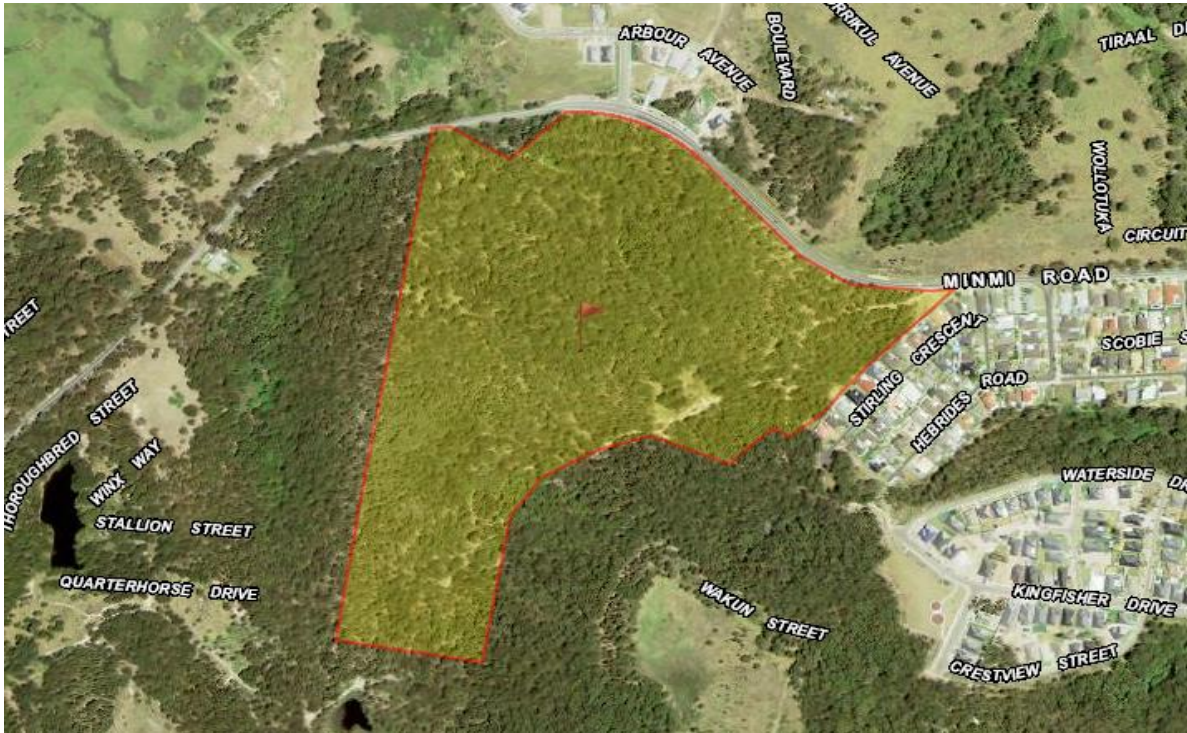


Figure 1 Subject site (source: Nearmap 2022)



Figure 2 Site context (source: Nearmap 2022)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the *Newcastle Local Environmental Plan 2022* maps, which are suitable for community consultation subject to updates to convert to conservation (C) rather than environmental (E) zones.

It is proposed to amend the following maps:

- Land Zoning Map
- Height of Buildings Map
- Minimum Lot Size Map
- Urban Release Area Map.

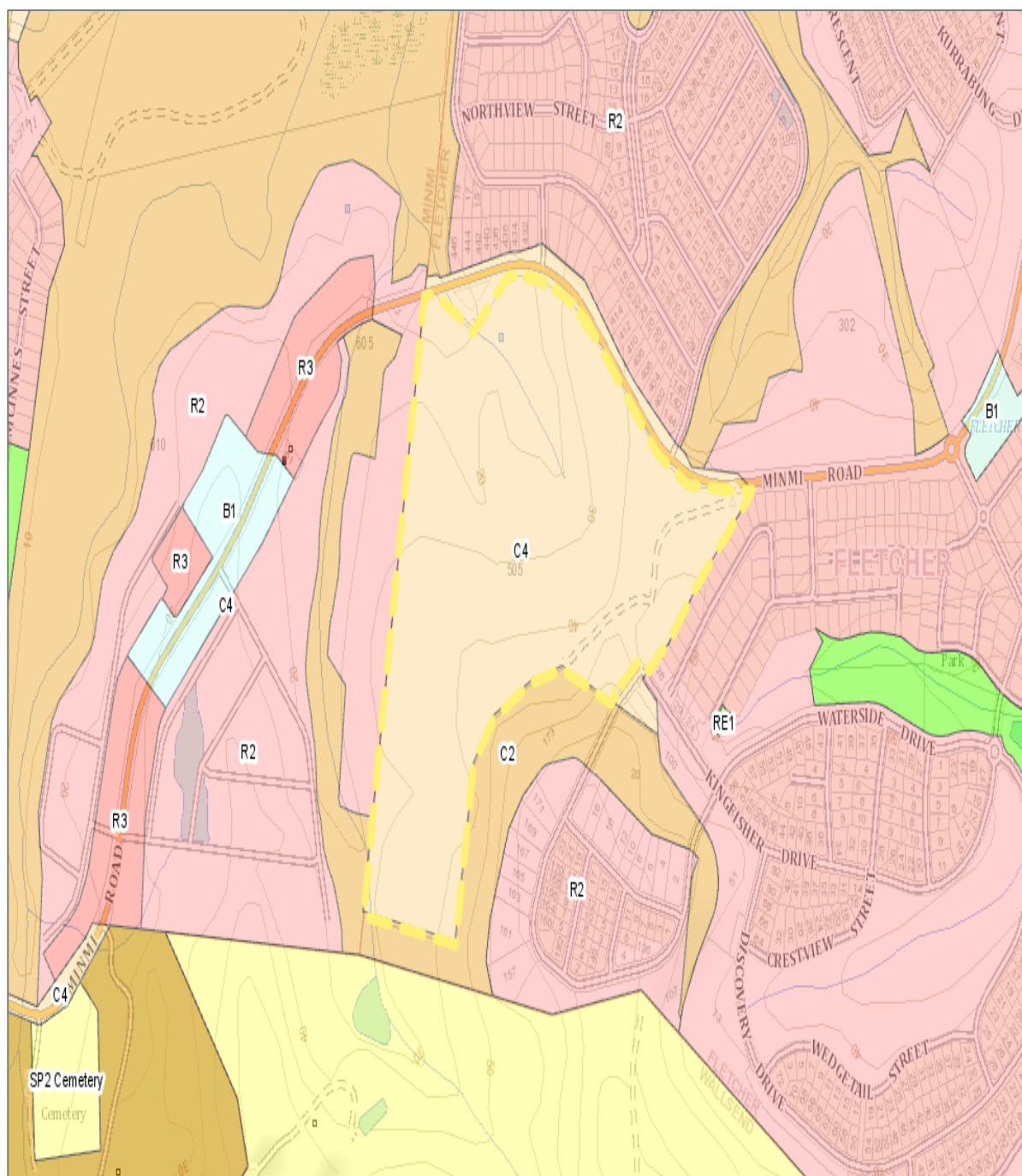


Figure 3 Current zoning map

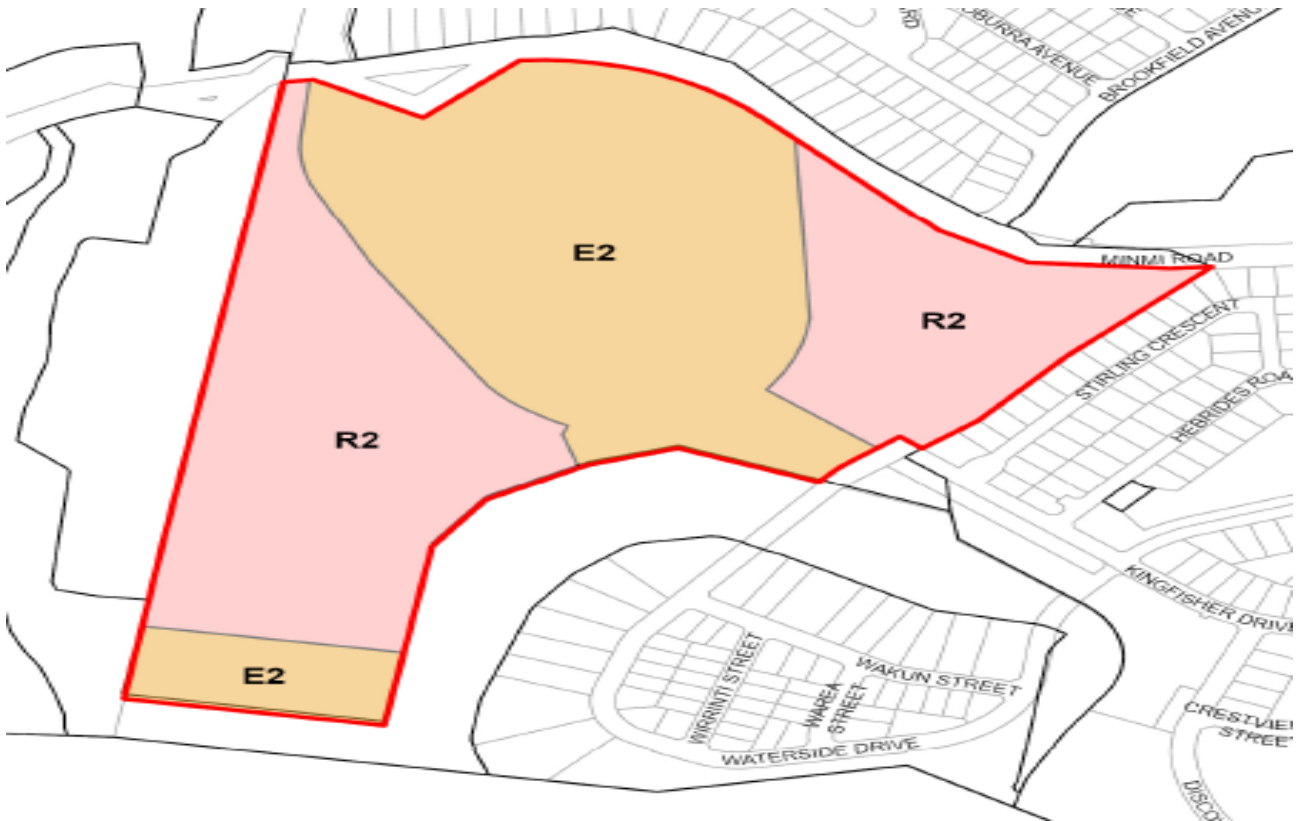


Figure 4 Proposed zoning map



Figure 5 Proposed height of building map

The map shows a proposed development site with four distinct areas:

- AB 40ha** (orange area, top center)
- G 450m²** (green area, left side)
- F 300m²** (yellow area, right side)
- AB 40ha** (orange area, bottom left)

Surrounding streets include Warrini Street, Wace Street, Wakers Street, Wakers Drive, Wakers Crescent, Wakers Road, Wakers Avenue, Brookfield Avenue, Minimi Road, Stirling Crescent, Herdies Road, Kingfisher Drive, Crestview Street, and Wakers Drive.

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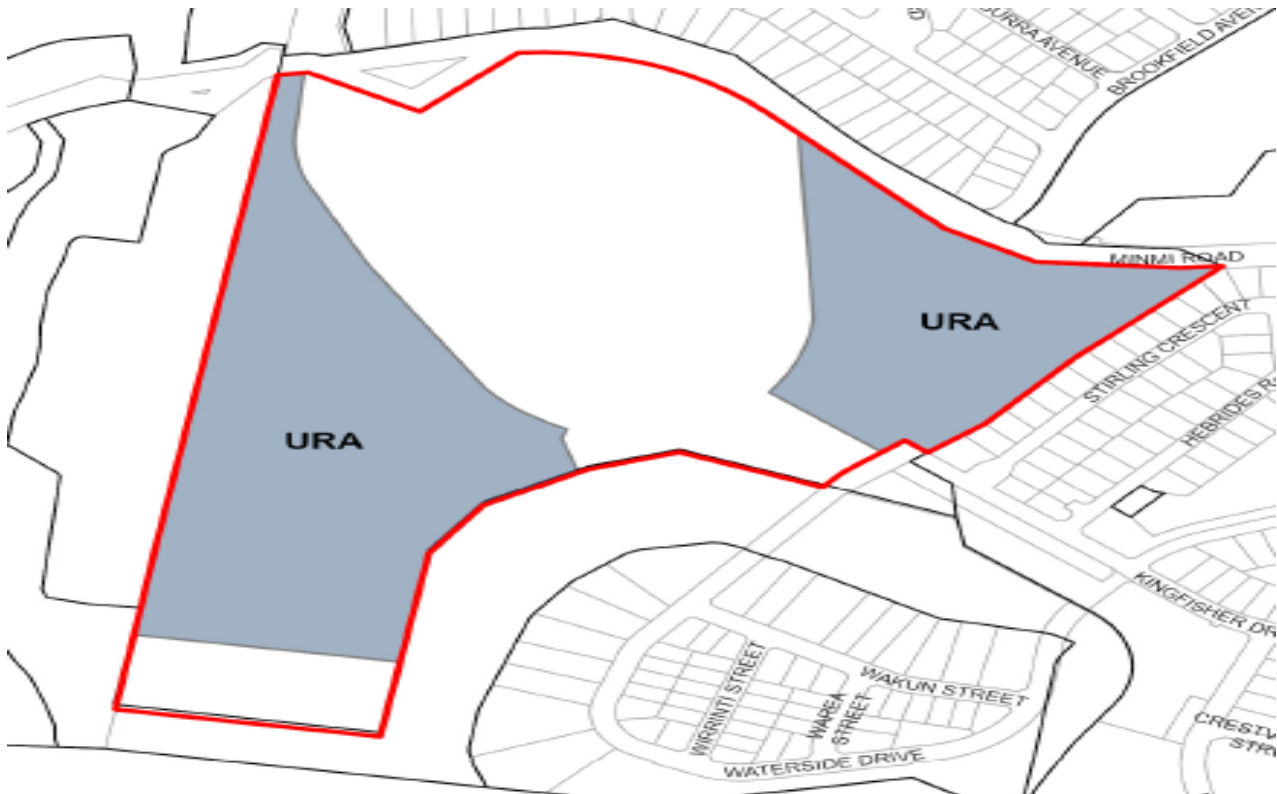


Figure 8 Proposed urban release area map

1.6 Background

There have been previous proposals for site which have not progressed.

Previous planning proposals relating to the site	
Planning Proposal (2009)	Gateway determination issued to not proceed due to insufficient information regarding biodiversity offset arrangements.
Planning Proposal (2013)	Gateway determination issued to proceed with conditions. A draft planning agreement and conservation agreement was publicly exhibited. Council refused the planning proposal post-exhibition, contrary to the recommendation of Council staff.
Planning Proposal (May 2017)	Planning proposal was not supported by Council as the proposal was substantially the same as the one that had been refused. A rezoning review was initiated by the landowner. The Hunter and Central Coast Regional Planning Panel (Panel) refused the planning proposal as it did not demonstrate site specific merit due to concerns the proposed zone boundaries did not adequately address site constraints.
Planning Proposal (November 2017)	Council engaged external consultants to review the planning proposal. The review recommended additional information be provided before the planning proposal be considered by Council.

1.7 Hunter and Central Coast Regional Planning Panel

A rezoning review was initiated by the landowner in 2021 as the planning proposal was refused by Council.

The Hunter and Central Coast Regional Planning Panel (Panel) found the proposal had strategic and site-specific merit and supported an updated proposal being submitted for a Gateway determination.

The Panel report included several conditions for the submittal of the proposal for a Gateway determination. These conditions included:

The Planning Proposal can proceed to Gateway provided the following information is included in the submission and is timely, adequately researched and reflects standards relevant at the time of preparation:

1. *A Strategic Bushfire Assessment.*
2. *Updated Ecological Assessment to meet BAM 2020.*
3. *Urban Design Study incorporating points 1 and 2 and addressing the information at section 4.0*
4. *Revised zone boundaries and development standards reflecting the outcome of the Urban Design Study.*
5. *Preparation of site specific development controls (for inclusion in existing DCP).*
6. *Detail of the mechanisms for delivery of biodiversity outcomes - i.e. management and ownership of any proposed E2 zoned lands*
7. *Updated Infrastructure Information including mechanism for delivery.*

Council accepted the role of the planning proposal authority and submitted the updated planning proposal to the Department for a Gateway determination.

The proposal and supporting documentation received by the Department is largely consistent with the Panel's conditions, with additional referrals required with the Biodiversity Conservation Division for points 2, 3 and 6. The Department sought initial advice from the Division who confirmed it was adequate for the Department to assess for a Gateway determination.

It is noted that site specific development controls document has been provided, it is not clear Council intends to adopt these for inclusion into the relevant development control plan. It is recommended a condition be included in the Gateway determination to clarify Council's position.

In terms of Item 7, an infrastructure servicing report has been submitted with the proposal. However, the proposal does not address the proposed residential yield being above what is set out in the section 7.11 Western Corridor Local Infrastructure Contributions Plan 2013. Given the Panel determined the proposal could proceed to a Gateway determination provided this information is included, it is recommended a condition be included in the Gateway determination.

2 Need for the planning proposal

The planning proposal has been initiated by the landowner and is not the result of a strategic study or report. The planning proposal states the rezoning is justified because it would cater for future housing demand in an area that has been identified in planning strategies for providing residential housing supply.

The planning proposal acknowledges the site has biodiversity values and is near to the Stockton to Watagan regional biodiversity corridor. However, the proposal suggests this should not prevent the development of part of the site for residential. It notes proposed conservation areas on the site supports biodiversity connections and that any biodiversity impacts can be adequately offset.

On balance, the site's context supports rezoning the site for housing, with further consideration required about the extent and location of vegetation to be retained for conservation. Delivery of housing on the site would occur within an area identified for housing and have a positive social benefit. The proposed rezoning to part residential and part conservation is therefore justified.

3 Strategic assessment

The site has had a detailed and complex history of proposed development.

- November 2017: Hunter and Central Coast Regional Panel determines the site has strategic merit, but not site specific merit.
- September 2018: *Greater Newcastle Metropolitan Plan 2036* published.
- September 2021: Hunter and Central Coast Regional Panel determines the site has strategic merit and site specific merit.
- December 2022: *Hunter Regional Plan 2041* published.

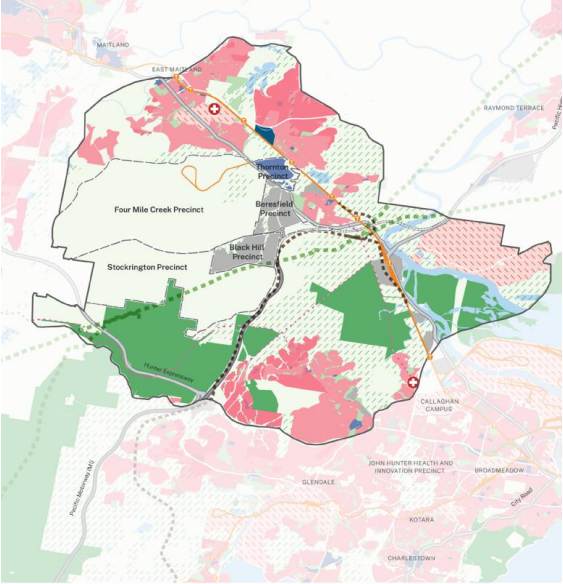
3.1 Hunter Regional Plan 2041

The *Hunter Regional Plan 2041* acknowledges the Hunter contains many different communities across various urban, rural and coastal contexts, each of which will see the 15-minute neighbourhood take a different shape. The site's suburban setting means it has a general suburban context and is identified as new residential land in the plan.

Hunter Regional Plan 2041 section	Justification
<p>Strategy 3.1: Planning proposals that propose a residential, local centre or commercial centre zone will not prohibit the following land uses within urban core, general urban, inner suburban and general suburban contexts:</p> <ul style="list-style-type: none"> • Business premises • Restaurants or cafes • Take-away food and drink premises • Neighbourhood shops and supermarkets • Education establishments • Early education and care facilities • Health service facilities • Markets • Community facilities • Recreation areas 	<p>The R2 Low Density Residential zone in the <i>Newcastle Local Environmental Plan 2012</i> does not permit the following land uses:</p> <ul style="list-style-type: none"> • Business premises • Restaurants or cafes • Take-away food and drink premises • Neighbourhood supermarkets • School-based education • Health service facilities • Markets <p>As such, the planning proposal is not consistent with the strategy.</p> <p>The planning proposal includes an assessment against the former Hunter Regional Plan 2036.</p> <p>An assessment against the relevant performance outcomes and indicators for Objective 3 has not been provided. Therefore, a view has not been able to be formed as to the proposal's consistency.</p>

Hunter Regional Plan 2041 section	Justification
<p>Strategy 5.3: Planning proposals will not prohibit the following housing typologies within residential zones that apply to urban core, general urban, inner suburban and general suburban contexts:</p> <ul style="list-style-type: none"> • Attached dwellings • Boarding houses • Dual occupancies • Group homes • Multi-dwelling housing • Secondary dwellings • Semi-detached dwellings 	<p>The R2 Low Density Residential zone in the <i>Newcastle Local Environmental Plan 2012</i> does not permit the following housing typologies:</p> <ul style="list-style-type: none"> • Boarding houses • Dual occupancies • Multi-dwelling housing • Secondary dwellings • Semi-detached dwellings <p>The planning proposal is consistent with the strategy.</p> <p>It is noted the <i>Newcastle Local Environmental Plan 2012</i> does not have a R1 General Residential zone. The above housing typologies are generally permissible with consent in this zone.</p> <p>It is also noted the urban design study prepared alongside the planning proposal focusses on uniform, traditional allotments.</p> <p>The planning proposal includes an assessment against the former Hunter Regional Plan 2036.</p> <p>An assessment against the relevant performance outcomes and indicators for Objective 3 has not been provided. Therefore, a view has not been able to be formed as to the proposal's consistency.</p>

Hunter Regional Plan 2041 section	Justification
<p>Strategy 6.3: Planning proposals will ensure the biodiversity network is protected within an appropriate zone unless an alternative zone is justified following application of the avoid, minimise offset hierarchy.</p>	<p>While the site is vegetated and near to the Stockton to Watagan regional biodiversity corridor, adjoining residential areas constrain to some degree the ecological sustainability values for this site. Further residential areas on the site needs to be carefully considered.</p> <p>The avoid, minimise, offset hierarchy will need to be applied to the site to evaluate the suitability of the areas identified for residential and conservation on the site.</p> <p>The planning proposal includes an assessment against the former Hunter Regional Plan 2036.</p> <p>An assessment against the relevant performance outcomes and indicators for Objective 6 has not been provided. Therefore, a view has not been able to be formed as to the proposal's consistency.</p> <p>It is recommended consultation be undertaken with the Biodiversity Conservation Division.</p> <p>The consultation may result in the development footprint being reduced, with the opportunity for a more optimal density to be achieved in the developable areas of the site.</p>
<p>Strategy 6.4: Planning proposals should promote enterprises, housing and other uses that complement the biodiversity, scenic and water quality outcomes of biodiversity corridors. Particularly, where they can help safeguard and care for natural areas on privately owned land.</p>	<p>The planning proposal is seeking to provide a mix of residential and conservation outcomes on the site.</p> <p>The planning proposal includes an assessment against the former Hunter Regional Plan 2036.</p> <p>An assessment against the relevant performance outcomes and indicators for Objective 6 has not been provided. Therefore, a view has not been able to be formed as to the proposal's consistency.</p> <p>The Department would be supportive of an increased density up to four stories if this led to an increase in the amount of the site reserved for conservation.</p>
<p>Strategy 7.5: Planning proposals will protect sensitive land uses from sources of air pollution, such as major roads, railway lines and designated freight routes, using appropriate planning and development controls and design solutions to prevent and mitigate exposure and detrimental impacts on human health and wellbeing.</p>	<p>The site is located 750m to the north-west of the Summerhill Waste Management Centre.</p> <p>Given the distance of the Centre and the high-level environmental management of the facility, the potential impacts of the centre on the subject site by way of noise or odour should be minimal.</p>

Hunter Regional Plan 2041 section	Justification
<p>National Pinch Point regionally significant growth area</p> <p>Greenfield areas close to the pinch point – like Thornton, Chisolm, Minmi, Hydro and Wallsend – will continue to grow and provide housing. Transport infrastructure is critical to these areas.</p>  <p>Figure 9 National Pinch Point regionally significant growth area</p>	<p>The site is identified for future residential uses in the regional plan.</p> <p>The planning proposal states there is regular public transport services easily accessible to the site. Additionally, the site is accessible to 15-minute neighbourhood everyday services.</p> <p>There are a number of traffic and transport capacity issues that are current and emerging in the West Newcastle area, including Minmi. The development would benefit from demonstrating the ways it will not create a car-dependent community in the context of above.</p> <p>The planning proposal is consistent with the National Pinch Point regionally significant growth area.</p>
<p>Appendix B: Repealed plans and strategies</p>	<p>The planning proposal has included an assessment of the proposal against the former Hunter Regional Plan 2036 and includes references to the Newcastle-Lake Macquarie Western Corridor Planning Strategy 2010.</p> <p>A Gateway condition has been included to update this assessment to the current <i>Hunter Regional Plan 2041</i> and remove references to repealed plans and strategies.</p>

Optimal density

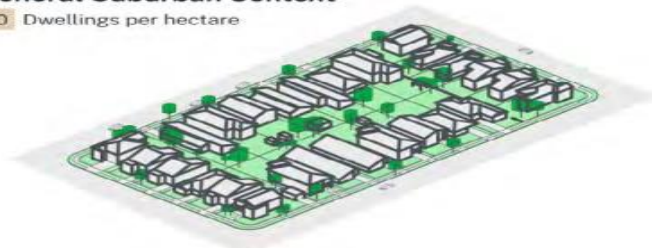
Housing needs to be planned in a way that meets varied and changing needs of people across their life, in areas where residents can access public transport, public open space and services, such as established towns and neighbourhoods.

The regional plan is seeking a mix of densities in terms of the urban and suburban context, and has proposed minimum and desired dwelling density targets within urban and suburban contexts that will be implemented through local strategic planning. As such, this optimal density is not mandated for planning proposals.

For this site as a general suburban context, the optimal density being sought by the regional plan is 30 dwellings per hectare. If the proposal is within 800m of high frequency public transport, the optimal density is 50 dwellings per hectare.

General Suburban Context

30 Dwellings per hectare



General Suburban Context

50 Dwellings per hectare
(within 800m of transit)

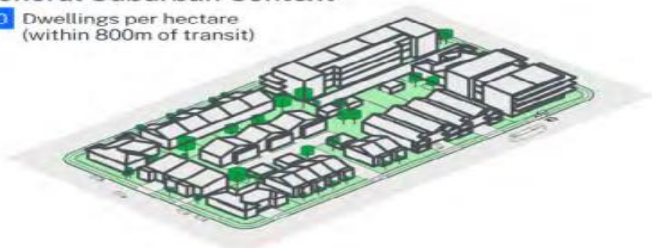


Figure 10 Optimal density for general suburban context

Based on the assumption the proposal will result in 140 additional dwellings, this represents a density of around 10 dwellings per hectare. This represents a third of the optimal density for the general suburban context.

As outlined above, the proposal is also inconsistent with the strategy in the regional plan seeking a more diverse range of housing typologies to be permissible on the site. The regional plan recognises that in order to achieve the many public interest intentions of the plan, new developments will have to be different. There needs to be a greater diversity of housing to improve affordability.

Optimal density is identified in the regional plan as one of the elements that enable 15 minute neighbourhood, by enabling human activity to support neighbourhood uses and services. This is also acknowledged in the performance outcomes in Objective 4 that urban areas and densities support the efficient and viable operation of public transport services for the 30 minute strategic centres.

The combination of low density, separated land uses and car-prioritising infrastructure decisions has consequences in terms of household costs, equity and choice. By reducing car dependency and vehicle ownership, it can reduce public health and infrastructure costs; reduce greenhouse gas emissions and air pollutants; improve the environment; and increase personal health and social equity.

The appropriate zoning footprint between conservation and residential needs to be informed by advice from the Biodiversity Conservation Division.

The Department would be supportive of increased density up to four stories if this led to an increase in the amount of the site reserved for conservation. Particularly, as outlined above this may lead to an overall improvement in public benefit for the community and conservation.

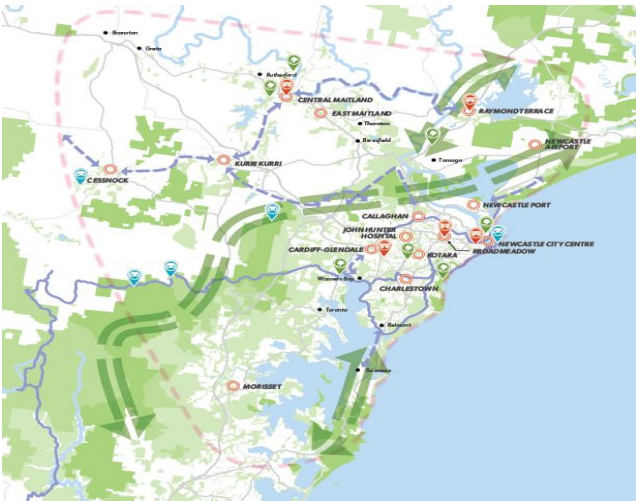
This is consistent with the position of the Hunter Central Coast Regional Planning Panel, who noted in their September 2020 decision that *“the proposal does have site specific merit provided the constraints are able to be addressed through additional information and future assessment. Accordingly, the Panel understands this may potentially result in a different zone boundary configuration and approach to density across the site.”*

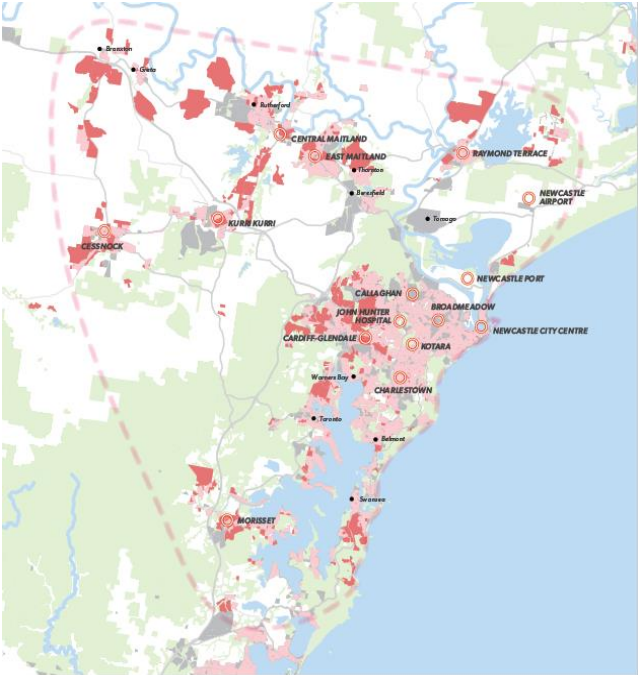
3.2 Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* sets out strategies and actions to drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities and assists to achieve the vision set by the former Hunter Regional Plan 2036. The metropolitan plan was published in September 2018.

The Hunter and Central Coast Regional Planning Panel considered a previous planning proposal in November 2017 to rezone the site and determined that the proposal at that point in time had strategic merit, but not site specific merit.

In September 2021, the Panel noted its decision in November 2017 pre-dates the metropolitan plan and concluded the site had strategic merit. The Panel also noted the broad nature of regional and metropolitan strategic plans do not necessarily identify all areas that may be suitable for consideration for urban development.

Greater Newcastle Metropolitan Plan 2036 section	Justification
<p>Strategy 12: Enhance the Blue and Green Grid and the urban tree canopy</p> <p>The metropolitan plan includes a map of the blue and green grid that includes biodiversity corridors.</p> <p>Action 12.1: Greater Newcastle councils ... will improve access to open space, recreation areas and waterways so that 90% of houses are within a 10-minute walk of open space.</p>  <p>Figure 6: Blue and Green Grid 2018</p> <p>Figure 11 Greater Newcastle Metropolitan Plan 2036's Blue and Green Grid</p>	<p>The metropolitan plan identifies an indicative regional biodiversity corridor across the site.</p> <p>This corridor is at the regional scale and extends over existing residential areas in Fletcher. As such more detailed locality analysis is required.</p> <p>In September 2021, the Hunter and Central Coast Regional Planning Panel considered that part of the land is suitable for development, but there is a need for further detailed studies to delineate the extent of the suitability. In the absence of any adopted biodiversity corridors or policies apply specifically to the site, the consistency of the proposal against current biodiversity planning methods is a key consideration in determining the appropriateness of any loss of vegetation and any mitigation requirements arising.</p> <p>Following the Panel determination, the planning proposal was updated to increase the area to be zoned for environmental conservation by 2ha to 12.8ha.</p> <p>The proposal states every lot will be within 10 minute walk of conservation land.</p> <p>Consultation with Biodiversity Conservation Division is recommended.</p>

Greater Newcastle Metropolitan Plan 2036 section	Justification
<p>Strategy 16: Prioritise the delivery of infill housing opportunities within existing urban areas</p> <p>Action 16.1: Greater Newcastle councils will focus new housing in existing urban areas, particularly within strategic centres and along urban renewal corridors.</p> <p>The metropolitan plan includes a map of housing release areas.</p>  <p>Figure 8: Housing opportunities 2018</p> <p>Legend:</p> <ul style="list-style-type: none"> Metro Frame Housing Release Area Existing Urban Area with Infill Housing Opportunities Other Existing Urban Area Strategic Centre Centre Environmental and Open Space Waterway Regional Road State Road 	<p>The metropolitan plan acknowledged there is enough land zoned for housing in Greater Newcastle to cater for a metropolitan population of at least 1.2 million people.</p> <p>The plan identifies housing release areas that will be supported by infrastructure planning and delivery.</p> <p>This site is not mapped as a housing release area, nor consistent with the definition of infill development.</p> <p>In September 2021, the Hunter and Central Coast Regional Planning Panel noted the planning proposal is consistent with the strategy.</p>
<p>Figure 12 Greater Newcastle Metropolitan Plan 2036's Housing Opportunities</p>	
<p>Strategy 17: Unlock housing supply through infrastructure coordination and delivery</p> <p>The metropolitan plan identifies housing release areas that will be supported by infrastructure planning and delivery, including the Hunter Special Infrastructure Contribution Plan.</p>	<p>This site is not mapped as a housing release area, nor consistent with the definition of infill development.</p> <p>The site is surrounded by residential development and is situated within a broader area identified for residential growth.</p> <p>In September 2021, the Hunter and Central Coast Regional Planning Panel noted the planning proposal is consistent with the strategy.</p>

3.3 Newcastle Local Strategic Planning Statement

The planning proposal states it is consistent with the Local Strategic Planning Statement.

In December 2020, Council resolved to update the Local Strategic Planning Statement to remove references to the site as a housing release area by reverting all references to the site to those contained in the draft Statement.

In September 2021, the Hunter and Central Coast Regional Planning Panel noted its previous decision in November 2017 concluded the site had strategic merit and pre-dates the Local Strategic Planning Statement. The Panel noted the site's removal from the Local Strategic Planning Statement was not exhibited and the site is still in the local contribution plan.

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	<p>Planning Priority 2: Support emerging transport opportunities and public transport improvements with continued integration of land use and transport planning</p> <p>Where intensification of land use is proposed comprehensive traffic and transport planning is undertaken to ensure the required infrastructure, initiatives and funding mechanisms are achievable.</p> <p>A traffic impact assessment confirmed capacity exists within the local road network to cater to the proposal. Depending on the eventual subdivision design, the proposal may facilitate local bus routes through the site.</p> <p>Planning Priority 4: Green our neighbourhoods</p> <p>Additional public green spaces and the provision of natural and built shade are included in planning for the mixed-use Catalyst Areas, Strategic Centres, Urban Renewal Corridors and Housing Release Areas.</p> <p>The proposal will include the long-term conservation and management of at least 10.2 hectares of land that will read as public green space. Proposed residential land would, when subdivided, incorporate suitable street trees to provide shade.</p> <p>Planning Priority 11: Protect and celebrate our Heritage</p> <p>A comprehensive Aboriginal cultural heritage assessment has been carried out for the site which includes recommendations for the recording and preservation of items of Aboriginal cultural heritage. A new assessment and associated consultation will be required, unless continuous consultation can be demonstrated.</p> <p>Planning Priority 12: Sustainable, affordable and inclusive housing</p> <p>Housing at appropriate densities will be located to support effective and integrated public transport. A culturally rich and vibrant community will be encouraged by providing a greater diversity of quality housing within each neighbourhood for current and future community needs.</p> <p>The 'lived experience' of residents will be improved by enhancing the quality and liveability of housing as it relates to health, overall cost of living and local character. Proposals in Housing Release Areas will incorporate affordable housing, adaptable housing and mechanisms to achieve excellence in sustainable building design.</p> <p>The proposal will facilitate residential subdivision incorporating a range of lot sizes down to 300m² in order to provide housing diversity and affordability.</p>

3.4 Section 9.1 Ministerial directions

The planning proposal's consistency with relevant section 9.1 Ministerial directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistency yet to be demonstrated.	<p>The objective of this direction is to give legal effect to the vision, objectives and strategies in the <i>Hunter Regional Plans 2041</i>.</p> <p>The planning proposal includes an assessment against the former Hunter Regional Plan 2036 and the draft regional plan.</p> <p>An assessment against the relevant strategies and Objective performance outcomes has not been provided. Therefore, a view has not been able to be formed as to the proposal's consistency with direction.</p>
3.1 Conservation Zones	Consistency yet to be demonstrated.	<p>As the proposal aims to rezone part of the land from C4 Environmental Living to R2 Low Density Residential, thereby reducing the conservation standards on that land, this direction applies.</p> <p>In September 2021, the Hunter and Central Coast Regional Planning Panel required an updated ecological assessment be undertaken to meet the biodiversity assessment methodology 2020.</p> <p>The proposal was accompanied by a Stage 1 and 2 ecology brief and a biodiversity inventory report that is stated to be consistent with the biodiversity assessment methodology.</p> <p>An assessment as to whether these reports consider the objective of this direction may be done following consultation with the Biodiversity and Conservation Division.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	Consistency yet to be demonstrated.	<p>As the planning proposal aims to rezone land on which two potential archaeological deposits and an isolated artefact are located, this direction applies.</p> <p>The Aboriginal cultural heritage report provided recommends additional sub-surface investigations be carried out prior to ground-disturbing elements of the development being carried out.</p> <p>The archaeological assessment was supplied to the then Office of Environment and Heritage (OEH) in 2015 who reviewed the report and provided comment 30 October 2015. At this time, the report was generally supported.</p> <p>Due to the time that has passed, it is recommended Heritage NSW and Awabakal Local Aboriginal Land Council be consulted and an updated Aboriginal cultural heritage assessment be prepared to account for changing legislation or circumstances.</p>
4.1 Flooding	Consistency yet to be demonstrated.	<p>The land is not identified as being flood affected. The existing central creek line (north-west corner) will be retained/preserved within the C2 Environmental Conservation Zone.</p> <p>The planning proposal was prepared prior to the release of the 2022 NSW Flood Inquiry report. The inquiry made a number of recommendations to minimise the risk of flooding, which have been adopted by the NSW Government.</p> <p>The Department is not in a position to determine consistency with this direction until the proposal has been updated to consider the findings of the 2022 NSW Flood Inquiry.</p>
4.3 Planning for Bushfire Protection	Consistency yet to be demonstrated.	<p>As the planning proposal affects land mapped as bushfire prone land, this direction applies.</p> <p>In September 2021, the Hunter and Central Coast Regional Planning Panel requested a strategic bushfire study be prepared. This has been submitted with the proposal.</p> <p>A condition is included for formal consultation with NSW Rural Fire Service.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.4 Remediation of Contaminated Land	Consistent	<p>As the planning proposal aims to rezone land for residential purposes, this direction applies.</p> <p>The proposal is accompanied by a preliminary investigation report which found there had been no known potentially contaminating land uses, however that the site has been subject to illegal dumping of household waste, some of which potentially contains asbestos.</p> <p>The proposal states it is determined the site is generally considered compatible with the proposed residential land use</p> <p>The proposal does recommend certain provisions in the local environmental plan.</p>
4.5 Acid Sulfate Soils	Inconsistency justified	<p>As the land subject to the proposal is identified as having potential for Class 3 and Class 5 acid sulfate soils, this direction applies.</p> <p>The <i>Newcastle Local Environmental Plan 2012</i> includes clause 6.1 which requires development consent and an associated ASSMP for work more than 1 metre below ground level (Class 3). The trigger for development consent for Class 5 acid sulfate soils is not applicable to this site as the land is at an elevation greater than 5m AHD.</p> <p>As there is an acceptable, alternative avenue of assessment to mitigate this risk, the inconsistency is considered minor and therefore is justified.</p>
4.6 Mine Subsidence and Unstable Land	Consistency yet to be demonstrated.	<p>As the land subject to the planning proposal is within a declared mine subsidence district, this direction applies.</p> <p>Referral to Subsidence Advisory NSW is required.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.1 Integrating Land Use and Transport	Consistency yet to be demonstrated.	<p>As the planning proposal aims to create zoned land for urban purposes, this direction applies.</p> <p>The proposal is accompanied by a traffic impact assessment which concludes that the Minmi Road/Britannia Boulevard intersection has sufficient capacity to cater for the additional traffic generated by this proposal and the now constructed subdivision to the south (known as Winten 1).</p> <p>The assessment also concludes the Britannia Boulevard, Kingfisher Drive and County Drive will be operating over capacity at the conclusion of the development and so recommends an alternative option for access to Minmi Road be explored. The Urban Design Study identifies an additional access to Minmi Road on land adjacent to the adjoining Winten site as an option. Council will need to consider this issue further post-Gateway and update the traffic impact assessment if required.</p> <p>The proposal notes it is consistent with this direction in that it has considered the objectives of the relevant guidelines in that the proposal <i>“has been designed to facilitate potential additional bus routes, to encourage the use of public transport... the site is within a 5-10 minute walk of existing neighbourhood shops, while the western part of the site will be within walk of a proposed neighbourhood centre on land being developed by the Winten Property Group”</i>.</p> <p>Consistency with the direction will need to be determined following consultation with Transport for NSW.</p> <p>The NSW Rural Fire Service may also provide comment on the suitability of the proposed site access for bushfire evacuation.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
6.1 Residential Zones	Consistency yet to be demonstrated.	<p>As the planning proposal aims to rezone land to R2 Low Density Residential, this direction applies. The nomination of the R2 Low Density Residential zone provides flexibility in housing types, satisfying this direction.</p> <p>In September 2021, the Hunter and Central Coast Regional Planning Panel accepted the requisite services and infrastructure are already accessible to the site or can be readily connected to the site. The Panel required updated infrastructure information, including mechanism for delivery be provided with the proposal for Gateway.</p> <p>The site is proposed to be identified as an Urban Release Area and subject to clause 8.2 of the <i>Newcastle Local Environmental Plan 2021</i> which requires that essential public utility infrastructure is or is able to be made available prior to the granting of development consent.</p> <p>The proposal states public utility services, including telecommunications, gas, electricity, sewer and water will be available to service any development on the site.</p> <p>Initial correspondence provided with the application reflect preliminary support from Hunter Water Corporation.</p> <p>The infrastructure servicing report provided with the proposal notes input will be required from an electrical engineer to confirm the number substations required to service the development and confirmation of supply capacity.</p> <p>Consultation is recommended with Transport for NSW, Hunter Water Corporation and Ausgrid.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal needs further work to demonstrate consistency with the relevant SEPPs as listed below SEPPs.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Biodiversity and Conservation) 2021	This SEPP aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Consistency yet to be demonstrated.	<p>A stage 1 biodiversity inventory report has been provided with the planning proposal. The report supersedes previous studies as these were invalidated by the age of survey data and the <i>Biodiversity Conservation Act 2016</i>.</p> <p>A stage 2 biodiversity development assessment report is to be prepared in accordance with the 'Biodiversity Assessment Method Operational Manual.</p> <p>The planning proposal identifies further consultation to be take place with Biodiversity and Conservation Division. It is agreed this is required.</p> <p>The focus of this consultation should be on the location of the proposed zoning boundaries and the connectivity of the included conservation area with the immediate area and wider region.</p> <p>The Department undertook initial consultation with the Biodiversity and Conservation Division at the time of lodgement of the proposal with feedback being the inconsistency between the ecological assessment and the provided Urban Design Study.</p> <p>The Panel also required the proposal to detail the mechanisms for delivery of biodiversity outcomes.</p> <p>The preliminary site specific development controls submitted with the proposal state the proposed conservation zoned land and adjacent asset protection zones will be maintained as community association land in conjunction with the community title subdivision of the site.</p>

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the planning proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Local context and visual impacts	<p>In September 2021, the Hunter and Central Coast Regional Planning Panel formed the view that any future development should appropriately interface with the form and scale of the existing low density residential environment surrounding the site and be designed to respond to the specific environmental characteristics of the site. Accordingly, the development controls, particularly minimum lot size and lot layout, needed to be informed by an urban design study and analysis of the site constraints.</p> <p>The companion urban design study provides for a 10m vegetation buffers between the development and Minmi Rd, a greenspace network and variation of lot sizes. The preliminary site specific development controls has also been submitted with the proposal. It includes performance outcomes and benchmark solutions to the issues raised by the Panel.</p> <p>The planning proposal is also accompanied by a visual impact assessment with assessments from six sites around the development site and concludes that the proposed development is consistent with the surrounding landscape.</p> <p>The assessment concludes that <i>“the combination of landscape and visual sensitivity impacts will be of minor significance. The direct significance of impacts for development is minimal, in comparison to the already cumulative impacts of existing and proposed development in the broader area. The visual impact of this development is mitigated by the fact that it is an isolated site amongst existing residential developments and has a significant amount of bushland being retained on the site.”</i></p> <p>The site is located within a wider, significantly developed residential area and would not appear inconsistent with these surrounds. Fine grain visual impacts can be assessed and addressed with additional design detail provided with the subsequent development applications.</p>
<i>Environmental Protection and Biodiversity Conservation Act 1999 (Commonwealth)</i>	<p>The planning proposal states a preliminary assessment under the Act determined the proposed action is unlikely to have an impact on matters of national environmental significance.</p>

Environmental Impact	Assessment
Noise and odour	<p>The site is located to the north of the Summerhill Waste Management Centre.</p> <p>Given the distance of the Centre and the high-level environmental management of the facility, the planning proposal considers the potential impacts of the centre on the site by way of noise odour to be minimal. As such, no specific noise or odour assessment has been carried out for the planning proposal.</p> <p>It also states a noise and odour assessment was not a specific consideration of the rezoning and subsequent development approval of the nearby Winten development.</p>
Water quality	<p>The site contains a number of gullies and creeks which may be considered as prescribed streams under the <i>Water Management Act 2000</i>, requiring any future development with 40m of the prescribed stream to be considered as integrated development.</p>

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Economic	<p>The planning proposal states it will result in around 140 additional dwellings increasing choice in the locality due to range of lot sizes.</p> <p>The <i>Hunter Regional Plan 2041</i> implied demand for the Newcastle Local Government Area is for 17,850 additional dwellings to 2041. The projected dwelling requirement is the minimum number of dwellings required to account for population projections.</p>
Social	<p>The planning proposal states it will deliver an open space network with new pedestrian and cycle networks.</p> <p>As outlined above, there</p>

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Western Corridor Local Infrastructure Contributions Plan	<p>In September 2021, the Hunter and Central Coast Regional Planning Panel required additional details of servicing, including whether or not the existing contributions plans need to be updated – noting that they assumed a particular yield.</p> <p>Council's section 7.11 Western Corridor Local Infrastructure Contributions Plan 2013 was updated in February 2020. The site is identified in the plan as a 'planned future development site' and states a total of 110 dwellings may be achieved housing approximately 300 residents.</p> <p>The planning proposal references the plan, but does not address the fact the proposed residential yield is above that set out in the plan, nor the Panel's requirement to state if the plan therefore needs updating.</p> <p>Given the Panel determined the proposal could proceed to a Gateway determination provided this information is included, it is recommended a condition be included in the Gateway determination.</p>
Education	<p>The planning proposal calculates the proposal will result in around 145 school-aged children (75 primary students and 70 secondary students). Consultation with the Department of Education has not been undertaken.</p> <p>Given the growth in the surrounding suburbs, this consultation is recommended.</p>

5 Consultation

5.1 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- Biodiversity and Conservation Division.
- Heritage NSW.
- Transport for NSW.
- Awabakal Local Aboriginal Land Council.
- NSW Rural Fire Service.
- Department of Education.
- Subsidence Advisory NSW.
- Ausgrid.

6 Timeframe

Under the new *Local Environmental Plan Making Guide (September 2022)*, a standard planning proposal is to achieve the following timeframes:

Stage	Actions	Working Days
Post-Gateway	Review gateway, action conditions, prepare relevant studies and consult with government agencies prior to exhibition.	70 days (counted from date of Gateway determination)
Public exhibition and assessment	Undertake public exhibition and consultation with authorities, review of submissions and endorsement of proposal by the planning proposal authority.	115 (inclusive of a minimum public exhibition period of 30 days)
Finalisation	Finalisation of the local environmental plan, including legal drafting and gazettal.	70
Total days		255

Accordingly, the Department recommends a timeframe of 12 months to ensure it is completed in line with the guide.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making Authority.

Given the complex history of proposed development on the site and a number of unresolved issues, the Department recommends Council is not made Local Plan-Making Authority for this proposal.

8 Recommendation

It is recommended the delegate of the Planning Secretary:

- agree any inconsistencies with section 9.1 Ministerial direction 4.5 Acid Sulfate Soils is justified.
- note the consistency with section 9.1 Ministerial directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding, 4.3 Planning for Bushfire Protection, 4.6 Mine Subsidence and Unstable Land, 5.1 Integrating Land Use and Transport and 6.1 Residential Zones are unresolved and will require justification.

It is recommended the delegate of the Minister for Planning and Homes determine the planning proposal should be updated to address the following points:

- 1) The planning proposal should be updated to:
 - i. remove assessment against the Hunter Regional Plan 2036 and Newcastle – Lake Macquarie Western Corridor Planning Strategy and replace it with assessment against the *Hunter Regional Plan 2041*.
 - ii. clarify inconsistencies in the planning proposal and supporting documents for the area of the site proposed to be zoned R2 Low Density Residential and C2 Environmental Conservation.
 - iii. confirm whether or not the section 7.11 Western Corridor Local Infrastructure Contributions Plan 2013 needs to be updated.
 - iv. confirm if the submitted site specific planning controls will be included in a relevant development control plan.
 - v. include an updated Aboriginal cultural heritage assessment.

- 2) Prior to approving for finalisation, the planning proposal should clarify the probable maximum flood event peak flood depths and level contours as well as peak flood velocities and volumetric check analysis of potential loss of flood storage where fill is proposed.
- 3) Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 30 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).
- 4) Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
 - Transport for NSW.
 - Ausgrid.
 - Biodiversity and Conservation Division.
 - Heritage NSW.
 - Awabakal Local Aboriginal Land Council.
 - NSW Rural Fire Service.
 - Department of Education.
 - Subsidence Advisory NSW.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the planning proposal.

- 5) Following consultation with relevant public authorities listed in Condition 4, consider an appropriate zone boundary configuration and development controls to achieve a more optimal density and diversity of housing typologies up to four stories if this will lead to an increase in the amount of the site reserved for conservation.
- 6) A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- 7) Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority.
- 8) The local environmental plan should be completed on or before 20 January 2024.



21/12/22

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