

DATE OF DECISION	20 September 2021
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton's employer, ADW Johnson, historically provided planning advice and reporting relating to the site and for the purposes of seeking rezoning. Ms Hutton therefore excluded herself to avoid a perceived conflict of interest.

REZONING REVIEW

RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher (AS DESCRIBED IN SCHEDULE 1)

Reason for Review:

- ☒ The Council has notified the proponent that the request to prepare a planning proposal has not been supported
- ☐ The Council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has:
 - ☐ not demonstrated strategic merit
 - ☐ has demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE DECISION

1.0 Overview

The Panel has been requested to review the decision of Newcastle City Council regarding the Planning Proposal for 505 Minmi Road, Fletcher.

The Planning Proposal seeks to rezone the site from E4 Environmental Living to R2 Low Density Residential and E2 Environmental Conservation and include minimum lot sizes of 300m², 1,000m² and 40 hectares, and a height of building standard of 8.5 metres. The site would also be identified as an urban release area.

The Panel notes the site has had a detailed and complex history which is documented in the DPIE Report.

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

Newcastle City Council considered this current Planning Proposal in December 2020. An independent report was presented to the Council recommending that the matter could proceed to Gateway. The Council resolved not to support the Planning Proposal and also resolved to remove the site from the recently adopted Local Strategic Planning Statement (LSPS).

The LSPS was amended and uploaded to the Planning Panel Portal. The Panel notes the site's removal from the LSPS was not exhibited and that Council has also subsequently removed the site as an urban release area from the adopted Local Housing Strategy. The site is still included in the Local Contribution Plan.

The Panel notes point 2 of the Council's resolution is as follows:

"Prior to being presented with any further planning proposal for this site, requires all required environment studies and analysis to be undertaken to: address the inherent constraints and hazards of the land and the interdependent analysis of these constraints (as these studies) may result in significant amendments to the Planning Proposal".

The Panel have inspected the site and had the benefit of a briefing from DPIE, Council officers and the proponent, as well as access to the Council report, independent report and the documentation lodged with the Planning Proposal.

The Panel had the benefit of a further supplementary report from Council which provided additional information addressing specific matters raised by the Panel arising from an initial review of material.

The Strategic Merit Test and Site Specific Merit Test for Planning Proposals is outlined in PS18-012 dated 14 December 2018.

2.0 Strategic Merit Test

The Panel understands that:

- The site is not listed as an urban release area in the Local Strategic Planning Statement; and
- Is not included in Figure 8 Housing Opportunities of the Greater Newcastle Metropolitan Plan.

The Panel notes a previous Panel in November 2017 – a time that pre-dates these documents, concluded that the site had strategic merit.

In considering the strategic merit the Panel notes that the proposal is consistent with:

- Hunter Regional Plan: Direction D14 - Protect Council Natural Areas; Direction 21 - Create and Connect a Compact Settlement; Direction 23 - Growth Centres and Renewal; Direction 25- Housing and Employment Supply and Demand;
- Greater Newcastle Metropolitan Plan: Strategy 16 - Prioritise the delivery of in-fill housing opportunities within existing urban areas; and Strategy 17- Unlock Housing Supply through infrastructure co-ordination and delivery.

The site is surrounded to the north, east and west by urban development. Immediately south of the site is the Newcastle Council Waste and Resource Management Facility and the Blue Gum Hills Regional Park – providing a clear limitation on urban development to the south.

The site is within the Newcastle-Lake Macquarie Western Corridor Strategy 2010 – a planning strategy to identify key planning principles and provide a broad strategic land use framework to future urban expansion and conservation outcomes. The site is identified as an investigation area under this strategy.

Notwithstanding the late removal of the site from the Housing Strategy and LSPS – the site’s location and alignment with the Hunter Regional Plan and Lake Macquarie Western Corridor Study and location as essentially an urban infill site means that there is utility in considering the site for urban development.

The Panel notes the broad nature of regional and metropolitan strategic plans and LSPS do not necessarily identify all areas that may be suitable for consideration for urban development.

The Panel has formed the view that the site has Strategic Merit.

3.0 Site Specific Merit

The site is surrounded by urban development. It is recognised the site is heavily vegetated, currently zoned E4 Environmental Living and supports threatened ecological communities.

A consideration of the matters in the PS18-012 are outlined as follows:

3.1 The natural environment (including known significant environmental values, resources, or hazards)

The key planning considerations arising from the natural environment that remain unresolved relate to biodiversity conservation and bushfire management.

The Panel recognises the site is heavily vegetated and that a change in zoning would result in a loss of vegetation. However, having regard to the natural environment, the Panel considers that part of the land is suitable for development but there is a need for further detailed studies to delineate the extent of suitability. In the absence of any adopted biodiversity corridors or policies applying 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.

It is noted that the documentation available to the Panel does not reflect current bushfire planning practice standards or the detail required for ecological studies. However, this does not lead to a conclusion that the site cannot meet current bushfire planning practice requirements although this may result in a reduced yield.

3.2 The existing uses, approved uses, and likely future uses of land in the vicinity of the land subject to the proposal

The site is effectively surrounded by existing or future urban development, interspersed with environmental conservation lands. The Panel is satisfied the proposal is generally consistent with this context, though further work is recommended to ensure urban design / interface issues align with those already within or planned within adjoining properties.

3.3 The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

The Panel accepts the requisite services and infrastructure are already accessible to the site or can be readily connected to the site. Additional efforts are required to confirm sufficient capacity is available and detail any arrangements required to make those services and infrastructure available to the site. Recommendations for further work are detailed later in the Panel’s response.

On balance the Panel considers the proposal does have site specific merit provided the constraints are able to be addressed through additional information and further assessment. Accordingly, the Panel understands this may potentially result in a different zone boundary configuration and approach to density across the site.

4.0 Mitigation of Environmental Impacts and Additional Studies

The Panel does not currently endorse the proposed lot boundaries, minimum lot size and location or the indicative subdivision layout. By extension, the Panel does not currently endorse the proposed ecological outcomes. Key issues that require additional detailed investigation and /or information are discussed in the following sections.

4.1 Biodiversity

The Panel is not satisfied the zone boundaries have been informed by a combination of urban design consideration and ecological considerations.

It is the Panel's view the zone boundaries should be informed by the onsite biodiversity values and the location of adjacent E2 zoned land through which the most viable biodiversity linkages can be maintained.

The Panel recommends the following be demonstrated prior to submission for a gateway determination:

- the manner in which the proposed zone boundaries have been informed by the biodiversity values of the site including, but not limited to, the presence and extent of threatened ecological communities, threatened species and their habitat.
- the manner in which the zone boundaries have been informed by the location of adjacent and nearby E2 zoned land to maintain the most viable biodiversity linkages to the remaining areas of native vegetation adjacent to the site and in the locality.

The Panel notes the likely requirement for additional biodiversity studies to meet the requirements of the *Biodiversity Assessment Method 2020* (BAM 2020). Whilst it is not expected that the full requirements of BAM 2020 are satisfied prior to submission for a gateway determination, the information used to support the proposed zoning boundaries should be sufficiently detailed and up to date so as to minimise any subsequent changes to the zoning boundaries.

4.2 Urban Design

The Panel is of the view that while a proposed R2 Low Density Residential zone and E2 Conservation zone is acceptable – further work is required to inform the actual zone boundaries, urban form and layout, lot sizes and landscape treatment. Lands at boundary interfaces need to respond to the adjoining lands.

Environmental considerations and bushfire constraints, need to be reflected in the proposed lot layouts.

The frontage to Minmi Road should retain its landscape character and feel. Consideration should be given to how conservation lands can be used as a link and passive open space, as well as areas for local parks. The character of the proposed area needs to be established through the choice of underlying controls.

4.2.1 Urban design and interface principles

The Panel's view is that any future development should appropriately interface with the form and scale of the existing and proposed 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, need to be informed by an urban design study and analysis of the site constraints.

The Panel recommends the following urban design and interface principles should be addressed prior to submission for a Gateway determination:

- Access and connectivity principles to guide safe and convenient pedestrian and vehicular access to local services and recreation facilities, including the proposed adjoining Winten subdivision.
- Indicative lot sizes and layouts that maximise environmental linkages and tree retention.

- Location of local open spaces within 400 metres of dwellings.
- Location and treatment of the APZ within the proposed R2 zoned land.
- Street frontage / landscape presentation to Minmi Road.

This work and the environmental review will inform zone boundaries.

This work should form the basis of site-specific development controls to be exhibited with the Planning Proposal.

4.3 Bushfire

The Panel concurs with the recommendation of the Independent Report to Council and agrees that a strategic Bushfire Assessment is required.

4.4 Servicing and Access

Details of servicing is required including whether or not the existing contributions plans need to be updated – noting that they assumed a particular yield.

4.5 Mechanism for Biodiversity Outcomes

The Panel notes the proponent seeks a Community Title subdivision of the site, including the proposed E2 Environmental Conservation.

The Panel also notes Council's position that these lands would create future demand on Council's resources particularly in relation to the future control and maintenance of the proposed E2 Environmental Conservation land. In short, Council will not accept dedication.

A Vegetation Management Plan to guide and manage the proposed E2 Environmental Conservation land will ultimately be required. This must include, but is not limited to:

- The proposed access arrangements to the E2 Environmental Conservation land; principally whether the land will be available to the general, public or just those with legal access through the Community Title subdivision,
- Measures to protect the integrity and biodiversity of the land and maintain the natural landscape,
- Ongoing maintenance program to ensure the future protection and conservation of the land,
- Conservation of places, objects and features of cultural value,
- Any improvements such as walking tracks, seating, signage, fencing of the land.

The Panel considers it is necessary to fully understand how proposed E2 Environmental Conservation land will be owned and managed in perpetuity. Therefore, the Planning Proposal package needs to include the statutory mechanisms to ensure the recommended environmental outcomes are fulfilled. This may mean either a VPA or specific clauses mandating community title subdivision.

5.0 Conclusion and Decision






The Planning Proposal seeks to adopt different zones and zone boundaries; development standards for subdivision and height; and to identify the site as an urban release area which provides a mechanism to levy state infrastructure contributions.

The Panel does not support the proposed zone boundaries and development standards and indicative lot yields.

The zone boundaries and development standards need to be informed by detailed urban design analysis that includes the outcomes of ecological recommendations to avoid and minimise habitat loss and accommodate bushfire constraints. The Planning Proposal needs to demonstrate how it integrates with the surrounding neighbourhood. Based on the additional work identified, the Panel anticipates a lesser lot yield and amended zone boundaries more closely reflecting the environmental constraints.

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.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Graham Brown	 Amanda Wetzel
 Evelyn Craigie	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher
2	LEP TO BE AMENDED	Newcastle Local Environmental Plan 2012
3	PROPOSED INSTRUMENT	<p>The proposal seeks to facilitate the delivery of 150 low density residential lots and 10.8ha of land to be rezoned for environmental conservation. Specifically, the following amendments are proposed:</p> <ul style="list-style-type: none"> • Rezoning of the site from E4 Environmental Living to Part R2 Low Density Residential and Part E2 Environmental Conservation. • Reduce the minimum lot size from 40 hectares to 300m² and 1,000m² for the R2 zoned portion of the land to provide 150 residential lots. • Introduce an 8.5 metre height of building standard for the R2 zoned portion of land, • Designate the site as an urban release area.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Rezoning review request documentation • Briefing report from Department of Planning, Industry and Environment
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 13 May 2021 <ul style="list-style-type: none"> ○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant and Graham Brown ○ Department of Planning, Industry and Environment (DPIE) staff in attendance: Kylie Dorsett ○ Applicant representatives: Andrew Donald • Site inspection: 29 June 2021 <ul style="list-style-type: none"> ○ Panel member in attendance: Amanda Wetzel • Briefing with Department of Planning, Industry and Environment (DPIE): 2 September 2021 <ul style="list-style-type: none"> ○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel ○ DPIE staff in attendance: Kylie Dorsett, Daniel Simpkins, Leanne Harris and Lisa Foley • Briefing with Council: 2 September 2021 <ul style="list-style-type: none"> ○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel ○ DPIE staff in attendance: Leanne Harris and Lisa Foley ○ Council representatives in attendance: Patricia McCarthy and Michelle Bisson • Briefing with Proponent: 2 September 2021 <ul style="list-style-type: none"> ○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel ○ DPIE staff in attendance: Leanne Harris and Lisa Foley ○ Proponent representatives in attendance: Stephen Barr, Andrew Donald and Matthew Doherty