



New South Wales Government
Independent Planning Commission

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505 Minmi Rd, Fletcher Gateway Determination Review PP-2021-2262

Advice Report

Richard Pearson (Chair)

4 December 2024

1. Introduction

1. On 31 October 2024, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Housing and Infrastructure (**Department**) requesting its advice on the merits of a Gateway Determination review request for planning proposal PP-201-2262 (**Planning Proposal**), in accordance with section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. The Gateway Determination review request arises from the decision made on 28 July 2024 by the delegate of the Minister for Planning and Public Spaces (the **Minister**), who determined through an Alteration to the Gateway Determination that the Planning Proposal should not proceed. In response, Kingston Minmi Pty Ltd (the **Proponent**) has requested a review of this decision.
3. The Department has requested that the Commission review the Gateway Determination and provide advice on the merits of the review request, including a clear and concise recommendation to the Minister's delegate on whether the Alteration of the Gateway Determination should be amended.
4. Andrew Mills, Chair of the Commission, appointed Richard Pearson to constitute the Commission for the purpose of exercising its functions with respect to this request for advice.

1.1 Site and Locality

5. The Planning Proposal pertains to the site located at 505 Minmi Road, Fletcher (Lot 23 DP 1244350) (the **Site**), which falls within the Newcastle Local Government Area (**LGA**). The Site is 26.2 hectares (**ha**) and is bounded by residential development to the north and east. The Winten residential estate is currently under development to the west of the Site. The Summerhill Waste Management Centre (**SWMC**) is located to the south and is the primary waste management facility for Newcastle (see Figure 1).

Figure 1 – Aerial image of the Site (Source: Nearmap with IPC annotations)



1.2 The Planning Proposal

6. The intent of the Planning Proposal is to amend the *Newcastle Local Environment Plan 2012 (NLEP 2012)* to facilitate the development of up to 150 dwelling lots and secure biodiversity conservation outcomes within the Site. The proposed amendments to NLEP 2012 are set out in Table 1 below.

Table 1 – Amendments proposed to the NLEP 2012 (Source: Department's Justification Assessment)

Control	Current	Proposed
Zone	C4 Environmental Living	R2 Low Density Residential (12.7 ha) C2 Environmental Conservation (13.54 ha)
Maximum height of buildings	NA	R2 Low Density Residential: 8.5m
Minimum lot size	40 ha	R2 Low Density Residential: 300m ² & 450m ² C2 Environmental Conservation: 40 ha
Urban release area	NA	Identify proposed R2 Low Density Residential zone areas as an Urban Release Area under Part 8 of NLEP 2012

1.3 Background

7. The background to the Planning Proposal and Gateway Determination Review is set out in Table 2 below.

Table 2 – Planning Proposal background

Date	Action
8 December 2020	The City of Newcastle (Council) resolved to not support the Planning Proposal. The Proponent subsequently initiated a rezoning review process for the Planning Proposal.
20 September 2021	The Hunter and Central Coast Planning Panel (HCCPP) recommended that the Planning Proposal be submitted to the Department for Gateway Determination as it considered there was strategic and site-specific merit.
10 January 2023	Gateway Determination The Department, as delegate of the Minister for Planning and Public Spaces, issued a Gateway Determination that the Planning Proposal should proceed subject to conditions. Council was nominated the Planning Proposal Authority (PPA). The Gateway Determination included a completion date of 20 January 2024.
3 February 2023	Council received comments from Subsidence Advisory NSW (SA NSW) which notes the presence of shallow mine workings and shafts under the subject site.

8 January 2024	Council requested that the Minister not proceed with the Planning Proposal on the grounds that the Proponent had not satisfied the Department's Gateway Determination conditions due to the provision of insufficient information on biodiversity and land-use efficiency. Specifically, Council's position was that the Proponent had failed to address Ministerial Direction 3.1 and Gateway Determination Conditions 3 and 4. The Proponent's lack of progress and inadequate responses led Council to conclude that the Planning Proposal could neither be supported nor further assessed.
22 March 2024	Alteration of Gateway Determination The Department issued an Alteration of Gateway Determination which extended the timeframe for completion to 'on or before 23 November 2024' and included a new condition requiring the commencement of exhibition by 30 April 2024.
22 April 2024 – 21 May 2024	Public exhibition
27 May 2024	Council received correspondence from the NSW Environment Protection Authority (EPA) raising the potential for land contamination and land use conflict because of the site's proximity to the SWMC as well as former underground coal workings.
8 July 2024	Council requested that the Planning Proposal not proceed as it considered a timeframe of a minimum of 12 months would be needed to undertake studies that would meet assessment requirements under the relevant EPA guidelines.
28 July 2024	Alteration of Gateway Determination The Department issued an Alteration of Gateway Determination, deleting conditions 1 to 7 and discontinuing the Planning Proposal due to the: • correspondence from NSW EPA; • uncertainty over the timeframe required to prepare an updated preliminary site investigation for contamination to confirm that there is no risk of harm to human health; and • length of time since the issue of the original Gateway determination in January 2023.
15 August 2024	The Proponent initiated a Gateway Determination review seeking to reinstate conditions 1 to 7 and requested an extension of time to address the EPA's concerns and finalise the zoning boundary footprint.
31 October 2024	Referral of Gateway Determination review to the Commission for advice.

2. The Commission's Consideration

2.1 Material Considered by the Commission

8. In this review, the Commission has considered the following material (**Material**):
- the Department's Referral to the Commission including the following documents:
 - Letter of Referral, dated 28 October 2024;
 - Department's Justification Assessment, dated 31 October 2024 (**Justification Assessment**);
 - Attachment A – Planning Proposal, dated May 2023;
 - Attachment B – Gateway Determination, dated 10 January 2023;
 - Attachment C – Alteration of Gateway Determination, dated 22 March 2024;
 - Attachment D – Correspondence from EPA, dated 27 May 2024 (**Appendix A**);
 - Attachment E – Alteration of Gateway Determination, dated 28 July 2024;
 - Attachment F – Department's Gateway Alteration Report, dated July 2024;
 - Attachment G – Proponent's Gateway Review Application Form;
 - Attachment H – Proponent's Justification Report, dated 15 August 2024;
 - Attachment I – Subsidence Advisory NSW advice, dated 3 February 2024;
 - Attachment J – Proponent's contamination advice, dated 17 September 2024 (**Proponent's Contamination Advice**);
 - Attachment K – Proponent's legal advice, dated 30 September 2024;
 - Attachment L – Council's Gateway Review Justification, dated 17 October 2024;
 - Attachment M – Council's request to Minister, dated 8 July 2024;
 - the Department's Gateway Determination Report, dated 21 December 2022; and
 - comments and presentation material at meetings with the Department, Proponent and Council, as referenced in **Table 3** below.

2.2 Additional Considerations

9. In preparing this advice, the Commission has also considered:
- Hunter Regional Plan 2041 (**Hunter Regional Plan**);
 - Newcastle S7.11 Western Corridor Local Infrastructure Contributions Plan 2013 (**s7.11 Plan**);
 - Newcastle Local Strategic Planning Statement (**LSPS**) (2020 and 2021 versions);
 - Newcastle Local Housing Strategy 2021;
 - Newcastle 2030 Community Strategic Plan;
 - Local Environmental Plan Making Guideline (August 2023);
 - Environmental Guidelines Solid Waste Landfills (EPA 2016);
 - Guidelines for Consultants Reporting on Contaminated Sites (OEH, 2011) and
 - Draft Contaminated Land Planning Guidelines (DPHI and EPA 2019).

2.3 The Commission's Meetings and Submissions received

10. As part of its advice, the Commission met with various persons as set out in **Table 3**. All meeting transcripts were made available on the Commission's website.

Table 3 – Commission's Meetings

Meeting	Date	Transcript/Notes Available on
Department	15 November 2024	19 November 2024
Proponent	15 November 2024	19 November 2024
Council	15 November 2024	19 November 2024

11. The Commission conducted a site inspection on 13 November 2024 to observe the Site's physical attributes and its surrounding context. Photographs taken on this site inspection are included at **Appendix B**.
12. As the Commission is exercising an advisory function only and the actual decision-maker is the Minister (through his delegates in the Department), the Commission typically does not invite submissions or conduct public meetings into Gateway review advice matters. The Commission's Scope of Rezoning and Gateway Reviews policy document sets out the matters that a Panel will consider in determining whether to conduct meetings with the Department, Council and Proponent or to accept submissions.
13. In the present matter, the Panel exercised its discretion to hold meetings with the Department, Council and Proponent (as set out above) and accepted all three submissions from local community members and a community group. These submissions were considered by the Commission in the preparation of this advice and have been published on the Commission's website.

3. Key Issues

3.1 Strategic merit

3.1.1 Strategic context

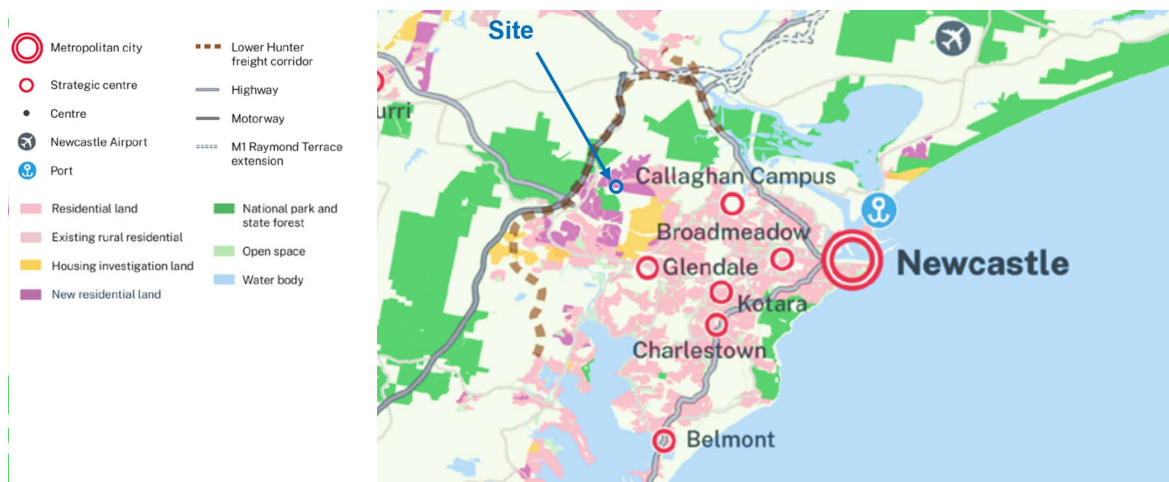
14. The Commission notes the Site is located adjacent to established residential areas of Fletcher and Minmi, as identified in section 1.1 above. Figure 2 below illustrates the Site's strategic location within Fletcher, offering access to key infrastructure, including schools, local shops, open spaces, and major transport links such as the M1 Pacific Motorway
15. Under the Hunter Regional Plan, the Site is situated in an area identified for residential growth and is designated as "new residential development" within this broader growth zone (refer to Figure 3).
16. According to Council's Section 7.11 Plan, updated in February 2020, the Site is earmarked as a 'planned future development site', with the potential to accommodate 110 dwellings and housing approximately 300 residents (Department's Gateway Determination Report, Table 11).

17. The Department's Justification Assessment stated that at the time the Planning Proposal was lodged in 2020, the Site was designated as a housing release area in the Newcastle LSPS. However, on 8 December 2020, Council resolved to update the LSPS, removing references to the Site as a housing release area. The Commission notes that in September 2021, the HCCPP concluded the Site had strategic merit (and site specific merit) and recommended submitting the Planning Proposal for Gateway Determination. The HCCPP also highlighted that the Site's removal from the LSPS was not publicly exhibited and that it remained identified in the Section 7.11 Plan.
18. During its meeting with the Commission, the Department confirmed that it does not dispute the strategic merit of the Planning Proposal.

Figure 2 - Aerial image of the Site within the existing residential context (Source: Department's Gateway Determination Assessment Report, dated December 2022)



Figure 3 - Site location (identified in blue) within the Housing map under Objective 5: Plan for 'nimble neighbourhoods', diverse housing and sequenced development – the Site is identified as "new residential land" (Source: Hunter Regional Plan 2041, p.61)



19. Council in its meeting with the Commission raised concerns regarding the strategic significance of the SWMC as a regionally important asset and the potential for the Planning Proposal to negatively impact its future operations and expansion opportunities. Council highlighted that the SWMC is the second-largest approved landfill in NSW, playing a critical role for Newcastle and Sydney, and potentially serving other regions in the future.
20. The Proponent in its Justification Report noted that the EPA raised concerns regarding sub-surface gas emissions from the SWMC and gases associated with coal mine workings. The Proponent noted that there are no non-compliances with residences in closer proximity to the SWMC and that it is unlikely that there is a risk associated with landfill sub-surface gas migration to the subject site. The Proponent also noted that the adjoining site to the west was recently approved for residential development.
21. Further to the above, the Proponent in its Justification Report stated that the Site is outside all EPA recommended setback distances in the guidelines for potential impacts. However, Council in its meeting with the Commission stated that the recommended buffer of 400m has been changed and has been increased to 1,000m under the Environmental Guidelines Solid Waste Landfills 2016.

3.1.2 Commission's findings

22. The Commission agrees with the Department and the HCCPP that the Planning Proposal has strategic merit. The Site is identified for residential purposes in the Department's *Hunter Regional Plan* and would contribute additional housing to the Hunter region in alignment with the Plan, published in December 2022. The Commission is also of the view that there is strategic merit in providing up to 13.54 ha of land zoned C2 Environmental Conservation on Site.
23. The Commission notes the concerns raised by the EPA and Council regarding the potential migration of sub-surface gas emissions from the SWMC and gases associated with coal mine workings. The Commission accepts the Proponent's position set out in paragraph 21 above, that the proximity of the SWMC is unlikely to preclude residential development from being undertaken at the Site, subject to the completion of the appropriate contamination investigations as addressed in section 3.2 below.
24. In relation to Council's concerns regarding future development on the Site impacting the strategic importance of the SWMC, and specifically its potential to constrain future operations at that facility, the Commission notes that there is already existing residential development closer to the SWMC than the Site. The Commission is of the view that any interface issues with the landfill should have been dealt with through the recently completed Hunter Regional Plan, and that the Planning Proposal's consistency with that Plan implies it is unlikely to unreasonably constrain further development of the SWMC.

3.2 Site-specific merit

25. The Commission notes that the key issues relating to the Planning Proposal's site-specific merit arise from advice provided by the EPA to Council, dated 27 May 2024. As noted in Table 2 above, the EPA raised the potential for land contamination and land use conflict due to the Site's proximity to the SWMC as well as former underground coal workings.
26. In its meeting with the Commission, the Department noted that its Alteration of Gateway Determination, dated 28 July 2024, was based on site-specific merit concerns related to contamination and the uncertainty surrounding the timeframes required to address these issues.

3.2.1 NSW Environment Protection Authority (EPA) advice

27. The EPA, in its letter to Council noted that the preliminary contamination assessment for the Planning Proposal, which concluded the Site is suitable for residential development, was conducted over 10 years ago and did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.
28. The EPA recommended that, before finalising the Planning Proposal, Council require the Proponent to provide an updated preliminary contamination site investigation for the entire Site, which should:
 - *consider the presence of SWMC and any mine workings in the area and investigate any risks associated with hazardous sub-surface gas at the Proposal area.*
 - *consider any recent activities that may have impacted the Proposal area (including illegal dumping or migration of contaminants from adjacent sites).*
 - *be drafted in accordance with the Consultants reporting on contaminated land - Contaminated Land Guidelines (EPA, 2020) and other relevant guidelines made or approved by the EPA under section 105 of the Contaminated Land Management Act (CLM Act).*
 - *be written by, or reviewed and approved by, a consultant certified by either the Environment Institute of Australia and New Zealand Certified Environmental Practitioner (Site Contamination) (CEnvP (SC)) or Soil Science Australia - Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) schemes.*
29. The Department, in its Justification Assessment, stated that land contamination is a fundamental consideration in the planning proposal process to reduce the risk of harm to human health and the environment. The Department notes that the Planning Proposal involves the intensification of land uses on the Site for residential purposes and considers it the responsibility of the Proponent to demonstrate that the land is suitable for human habitation. The Department determined that it would be inappropriate to proceed without an updated preliminary site investigation for contamination for the entire planning area as recommended by the EPA.

3.2.2 Timeframe to prepare updated preliminary site investigation and resolve zone boundary footprint

30. The Proponent's Request for Gateway Determination review was accompanied by advice from the Proponent's contamination specialist, Qualtest Laboratory NSW Pty Ltd (**Qualtest**). Qualtest advised that the expected timeframes for a preliminary site investigation would be 4 weeks, with a detailed site investigation requiring 8-16 weeks. Qualtest also advised that further time may be required for gas monitoring depending on atmospheric pressure conditions, gas concentrations and flow rates recorded.
31. The Department considers the timeframe to complete the additional site investigations to be relatively unknown and cannot be predicted with any certainty, noting that Qualtest has indicated that the atmospheric pressure conditions, gas concentrations and flow rates recorded cannot be predicted (**Proponent's Contamination Advice**).
32. Council estimates that meeting the assessment requirements under the EPA's *Contaminated Land Guidelines* (2020) and the *Assessment and management of hazardous ground gases: Contaminated Land Guidelines* (EPA, 2020) would take at least 12 months. The Department's Justification Assessment states that Council considers the Proponent's timeframes set out above are unrealistic based on their previous experience with gas monitoring.

33. The Proponent disputes Council's claim that preparing the preliminary Site investigation would take more than 12 months. In its meeting with the Commission, the Proponent stated that the preliminary and detailed Site investigations could be conducted simultaneously to reduce the time needed to complete updated contamination assessments while still meeting the EPA's requirements (p.13 meeting transcript):

Proponent's specialist:

... so we say four weeks for the preliminary site investigation and eight to 16 weeks for the detailed. So I guess a little bit of clarification. So a preliminary site investigation is typically a desktop assessment and a site walkover and then the detailed investigation is where you would go to site and you would do intrusive works, whether that's drilling boreholes, collecting soil samples, gas samples, et cetera. And you can definitely carry them out concurrently and essentially we have done a large proportion of the preliminary investigation already as part of to provide our original advice we had to do quite a bit of work to get to that point...

... so you could then say it's the 16 weeks, which would be two months to four months.

Commission:

... And by which point you'd have a detailed site investigation?

Proponent's specialist:

Yes.

34. In its meeting with the Commission the Proponent advised that if it was granted additional time to complete the Site contamination investigations it would be looking to have housing on-Site within a four year period, as opposed to an estimated eight years if it was required to restart the planning proposal process.
35. The Department considers the timeframe to complete the additional Site investigations to be relatively unknown and cannot be predicted with any certainty, noting that Qualtest has indicated that the atmospheric pressure conditions, gas concentrations and flow rates recorded cannot be predicted (Proponent's Contamination Advice).
36. The Proponent has also requested additional time within Condition 7 of the Gateway Determination to address the EPA advice and finalise the zoning boundary footprint with the Department of Biodiversity, Conservation and Science (now the Department of Climate Change, Energy the Environment and Water or **DCCEEW**).

3.2.3 Commission's findings

37. The Commission agrees with the Department that addressing land contamination and specifically the potential risks associated with hazardous sub-surface gas is critical in the planning proposal process to minimise risks to human health and the environment. The Commission finds that additional site contamination investigations are necessary and that the Planning Proposal should not proceed without satisfying the requirements of the EPA.
38. The Commission notes that the timing required to complete such additional Site investigations is dependent on the existence of sub-surface gas and any on-Site contamination and consequently whether a detailed Site investigation and potentially a Remediation Action Plan is required.
39. The Commission is of the view that the timeframe provided by the Proponent's contamination specialist of up to 16 weeks (or four months) to complete the required contamination assessments is likely to be reasonable, noting that:

- preliminary and detailed Site investigations could be conducted concurrently to reduce the time needed to complete updated contamination assessments in accordance with the EPA requirements; and
 - work completed from the Proponent's existing preliminary Site investigations could assist in reducing timing required to complete an updated preliminary Site investigation.
40. The Commission considers that providing the Proponent with additional time to complete the relevant Site contamination investigations is appropriate as it would allow for the delivery of up to 150 dwelling lots and would contribute additional housing consistent with the Hunter Regional Plan in the Newcastle region. Allowing this extension would facilitate progress more efficiently than restarting the planning proposal process.
41. The Commission recommends that the time allowed for completion of the LEP be no later than 30 June 2025 to allow sufficient time for the Proponent to finalise the required contamination assessments in accordance with the EPA's standards. This extension should be the final one granted for this Planning Proposal, considering the multiple previous Gateway Alterations and to ensure clarity and certainty for stakeholders and the community.
42. Additionally, to ensure that the updated site contamination investigations align with the EPA's guidelines and maintain high standards of accuracy, the Commission recommends that the updated investigations be reviewed and accredited by an EPA accredited Environmental Auditor.
43. The Commission also notes that there may be opportunities in finalising the zoning boundaries for the site to ensure that the conservation values of the site are better protected. This could be by allowing a trade-off between higher residential densities in the less ecologically valuable parts of the site in return for an expanded C2 Environmental Conservation zone.

3.3 Alternative Planning Proposal Authority

44. The Proponent has requested for the Department to be the PPA, instead of Council, to:
- address potential conflict of interest with Council being the owner-operator of SWMC; and
 - provide certainty on meeting the additional time requested to complete the Planning Proposal to address the EPA advice and finalise the zoning boundary footprint with DCCEEW.
45. In their Justification Assessment, the Department states that section 3.32 of the EP&A Act allows the Minister to direct the Planning Secretary (or another panel, person, or body) to act as the PPA for a proposed instrument under certain circumstances. Specifically, section 3.34(2)(c) permits this direction if the Planning Secretary, the Independent Planning Commission, or a Sydney district or regional planning panel recommends that the proposed instrument be submitted for a Gateway determination or that it should be made.
46. The Department's *Local Environmental Plan Making Guideline* (August 2023) states that:
- Council or a proponent can request an alternative PPA be appointed. It is the responsibility of the party that requested an alternative PPA be appointed to provide adequate justification in writing to assist the Minister (or delegate) in forming the opinion that an alternative PPA should be appointed.*

47. Council states that they believe the Proponent has had sufficient time and multiple opportunities to adequately respond to outstanding matters. Council does not support an alternative PPA nor consider it to be a reasonable outcome given the inadequacy of the information submitted with the proposal to date.
48. While understanding Council's position, the Commission considers it appropriate to appoint an alternative PPA for the Planning Proposal under Section 3.32 of the EP&A Act and the Department's Local Environmental Plan Making Guideline. This recommendation is based on the Proponent's need to address the EPA's requirements for further contamination investigations on the Site, including potential risks from hazardous sub-surface gases linked to the SWMC, as well as the perceived conflict of interest arising from Council's role as the owner and operator of the SWMC.
49. The Commission, therefore, recommends that the Minister direct the Planning Secretary to serve as the PPA for this Planning Proposal.

4. The Commission's Advice

50. The Commission has undertaken a review of the Department's Gateway Determination for PP-201-2262 and the Proponent's Gateway Determination Review Request, as requested by the Department.
51. In doing so, the Commission has considered the Material (see section 2.1 above) including submissions by the Proponent, Council, the Department and community, and the reasons given in the Department's Assessment Justification and Gateway Alteration Assessment Report.
52. Based on its consideration of the Material, the Commission finds that:
- the Planning Proposal has strategic merit as it would provide additional housing to the Hunter region in accordance with the Department's Hunter Regional Plan;
 - additional site investigations to support the Planning Proposal and meet the EPA's requirements are essential to minimise risks to human health and the environment, particularly as the proposal involves introducing residential land use on the site;
 - extending the timeframe to complete the LEP by 30 June 2025 would allow the site to contribute housing to the Newcastle region more efficiently, in line with the *Hunter Regional Plan*, compared to restarting the entire planning proposal process;
 - appointing an alternative PPA under Section 3.32 of the *EP&A Act* and the Department's *Local Environmental Plan Making Guideline* is appropriate, given the perceived conflict of interest stemming from Council's role as the owner and operator of the SWMC.
53. The Commission therefore recommends the Gateway Determination is amended to allow the Planning Proposal to proceed with the following amendments:
- reinstate Conditions 1 to 7;
 - amend Condition 1 to include the EPA requirements for an updated site contamination investigation that is verified by an EPA accredited Environmental Auditor;
 - amend Condition 7 to require completion of the LEP by 30 June 2025; and
 - the Minister direct the Planning Secretary (or another panel, person, or body) to serve as the PPA for this Planning Proposal.

A handwritten signature in black ink, appearing to read 'R Pearson', is centered on the page.

Richard Pearson (Chair)
Member of the Commission

Appendix A – Correspondence from EPA, dated 27 May 2024



DOC24/362098-5

Jonathon Christie
Newcastle City Council

Via email: jchristie@ncc.nsw.gov.au

27 May 2024

**EPA response – Gateway Determination of Planning Proposal
Proposed rezoning at 505 Minmi Road Fletcher (PP-2021-2262)**

Dear Mr Christie,

The NSW Environment Protection Authority (EPA) would like to thank Newcastle City Council (Council) for providing us the opportunity to comment on the draft planning proposal to amend Newcastle Local Environment Plan 2012 (NLEP 2012) (Proposal).

The EPA understand that the Proposal is in the latter stages of the planning process, however our feedback on this, and similar planning proposals within the vicinity of Summerhill Waste Management Centre (SWMC), has not been previously sought. We are interested in this proposal because we regulate SWMC under environment protection licence 5897 (EPL 5897) for the activities of landfilling and resource recovery of waste.

The EPA understands the Proposal is for the rezoning of land from C4 environmental living to R2 low density residential and C2 environmental conservation zone at 505 Minmi Road, Fletcher NSW 2287. If approved, it would enable the development of approximately 150 residential dwellings.

From our review, the Proposal:

- will locate residential receivers in proximity to SWMC, a landfill and resource recovery facility managed by Newcastle City Council (Council) and regulated by the EPA under (EPL 5897). This facility generates odour, sub-surface landfill gas, noise and air emissions.
- did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

SWMC provides an important waste management service for the community of Newcastle. Waste management facilities like SWMC emit odour, sub-surface gas, noise and air emissions. Controls are used to mitigate these issues, but even with these in place, it can be difficult to prevent adverse impacts beyond the boundary. Thus, locating residential receivers in close proximity to SWMC may lead to community complaint, increase regulatory oversight and pressure on the operator of SWMC to mitigate adverse impacts.

The EPA has considered details of the Proposal as provided by the proponent and include comments, including recommended actions and studies for Newcastle City Council (Council) to consider on odour, air, noise, water and contaminated land, in **Attachment A**.

Additionally, the EPA acknowledges the Traditional Custodians of Fletcher, the Awabakal people. We encourage meaningful engagement with the Aboriginal community in developing and

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implementing the proposed amendment to the NLEP 2012. The Proposal would be strengthened by considering ways to achieve this in greater detail.

If you have any further questions about this issue, please contact Kim Stuart, Senior Environmental Planning & Assessment Officer, Strategic Planning Unit on 02 6659 8292 or email environmentprotection.planning@epa.nsw.gov.au.

Yours sincerely



JACQUELINE INGHAM
Unit Head
Strategic Planning Unit

Attachment A

Land use conflict and required studies

The Hunter Regional Plan 2041 (Regional Plan) is a 20-year land use plan consisting of 9 objectives with associated performance outcomes to ensure planning proposals for the Hunter region appropriately consider and manage growth.

Strategy 1.5 under performance outcome 5 of Objective 1 of the Regional Plan states that local strategic planning should consider existing waste management centres and ensure sensitive land uses do not encroach on these areas or limit their future expansion.

The Proposal acknowledged that SWMC was within the broader vicinity of the proposed residential development but considered Objective 1 of the Regional Plan did not apply because:

- of its distance from the proposed residential development; and
- the strict environmental controls that it operates under.

As such, noise, air and odour assessments were not undertaken nor were the risks associated with the sub-surface gas generated by SWMC considered within the contamination assessment.

From our review, the proposed residential development will be located within approximately 140 metres of the boundary of SWMC. Table 1 of NSW Department of Planning and Environment's EIS Practice Guideline: Landfilling (1996) (EIS Guideline) states that locating residential development within 250 metres of a landfill boundary is inappropriate. This is a position supported by the EPA and referred to within EPA's Environmental Guidelines, Solid waste landfills (second edition, 2016) (Landfill Guideline).

Locating sensitive receivers close to landfills, can result in impacts to amenity and cause land use conflict. Addressing impacts retrospectively following development can be challenging, expensive and lead to community complaints.

To consider the impacts from existing land uses (such as SWMC) and inform appropriate land use, transitional zonings, buffer distances and design choices, the EPA recommends the following actions and studies be undertaken by the proponent:

1. Land uses be informed by current and future operations of the SWMC

The proponent should consult with the section within Council responsible for managing SWMC about current and proposed operations at the landfill and demonstrate how this has been considered in the proposed land uses.

2. Noise and vibration assessment

A noise and vibration assessment should be prepared in accordance with the NSW Noise Policy for Industry (EPA, 2017).

3. Air quality and impact assessments

Air quality and odour impact assessments should be prepared in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA 2022) and Technical framework: Assessment and management of odour from stationary sources in NSW (DEC, 2003). The air quality and odour impact assessments should include:

- an air and odour dispersion modelling to predict any potential air quality and odour impacts.
- odour surveys to evaluate and ground truth the results of the air and odour modelling.
- the results of the odour surveys and air and odour modelling to identify air quality mitigation measures that can be applied to prevent and manage air and odour related land-use conflicts.

4. An updated contaminated land assessment

The EPA understands that a preliminary contamination assessment completed for the Proposal found that it would be suitable for residential development. However, the assessment is over 10 years old, and it did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings.

SWMC is a large putrescible and non-putrescible landfill located within approximately 140 metres of the Proposal area. The facility's putrescible landfill cells are located over 1 kilometre southeast of the Proposal area, and a capped construction and demolition landfill cell is located within approximately 300 metres.

Subsurface gas monitoring results from the capped construction and demolition landfill cell dated from February 2024 showed elevated levels of carbon dioxide ranging from 9.5% to 13.7%. Council has advised that the capped cell was previously subjected to coal mining and the presence of sub-surface gases are from coal seam sources not the landfill. Regardless of the source of the gas, carbon dioxide is an asphyxiant and a toxic gas that is significantly denser than air. Toxic effects may become noticeable at 2% v/v and severe at 5% v/v, so further consideration of carbon dioxide is required prior to rezoning.

Given the proximity to the landfill, including this capped construction and demolition landfill cell, the EPA recommends that, prior to finalising a decision on the proposed rezoning, Council require the Proponent to submit an updated preliminary site investigation (PSI) for contamination which covers the entire Proposal area. The PSI should:

- consider the presence of SWMC and any mine workings in the area and investigate any risks associated with hazardous sub-surface gas at the Proposal area.
- consider any recent activities that may have impacted the Proposal area (including illegal dumping or migration of contaminants from adjacent sites).
- be drafted in accordance with the Consultants reporting on contaminated land - Contaminated Land Guidelines (EPA, 2020) and other relevant guidelines made or approved by the EPA under section 105 of the *Contaminated Land Management Act* (CLM Act).
- be written by, or reviewed and approved by, a consultant certified by either the Environment Institute of Australia and New Zealand Certified Environmental Practitioner (Site Contamination) (CEnvP (SC)) or Soil Science Australia - Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) schemes.

We note that under the Newcastle Development Control Plan 2012, The Technical Manual Contaminated Land Management for Newcastle City Council, and any relevant updated documents, Council may consider the engagement of an auditor, should the findings of the PSI indicate that there is sufficient contamination risk to warrant a Detailed Site Investigation and a site audit.

Other considerations:

- for future development applications, Council should ensure that the processes outlined in the State Environmental Planning Policy (Resilience and Hazards) 2021 are followed to assess the suitability of the land and any remediation required in relation to the proposed use.
- persons undertaking development on the Proposal area must ensure that any development does not result in a change of risk in relation to any pre-existing contamination at the Proposal area so as to result in significant contamination (note that this would render the Applicant the 'person responsible' for the contamination under section 6(2) of the CLM Act).
- the EPA should be notified under section 60 of the CLM Act for any contamination identified which meets the triggers in the Guidelines for the Duty to Report Contamination (EPA, 2015).

5. Water management strategy

Stormwater discharges from areas of increased residential density have the potential to impact on local surface water and groundwater quality. A water management strategy should be prepared for the Proposal to:

- demonstrate how the Proposal will be designed and operated to protect the NSW Water Quality and River Flow Objectives (Objectives) for receiving waters where they are currently being achieved or contribute towards achievement of the Objectives over time where they are not being achieved (see Hunter River Table of Contents).
- propose practical, reasonable and cost-effective measures to further minimise and mitigate impacts from land-use activity having regard to the above document and Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZG, 2018) the Risk-Based Framework for Considering Waterway Health Outcomes in Strategic Land-Use Planning Decisions (OEH and EPA, 2017).
- assess and mitigate any stormwater related impacts during construction having regard to the Managing Urban Stormwater: Soils and Construction (Landcom, 2004).
- provide a long-term strategy for the management of surface water and groundwater.

Appendix B – Site inspection photographs

View of site from Minmi Road frontage, looking south-east:



View west along Waterside Drive, towards site:



View east along Waterside Drive:



View south-west from Waterside Drive, towards site:





New South Wales Government
Independent Planning Commission

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