

Planning Services

IRF19/4346

Gateway determination report

LGA	Newcastle
PPA	City of Newcastle
NAME	Rezone 233 Wharf Road, part 150 and part 150A Scott Street, Newcastle to SP3 Tourist zone
NUMBER	PP_2019_NEWCA_001_00
LEP TO BE AMENDED	Newcastle LEP 2012
ADDRESS	233 Wharf Road, part 150 and part 150A Scott Street, Newcastle
DESCRIPTION	Lot 1 DP 1158422, part Lot 4 DP 1226551 and part Lot 3 DP 1226551
RECEIVED	12 April 2019
FILE NO.	EF19/16137
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. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to facilitate the development of the site for a multi-purpose community space which connects the Newcastle city centre with the waterfront and Market Street Lawn.

The proposal would rezone 233 Wharf Road, part 150 and part 150A Scott Street, Newcastle from zones RE1 Public Recreation and SP2 Infrastructure (Railway) to SP3 Tourist in the Newcastle LEP 2012 (the LEP).

A maximum building height of 14 metres and a floor space ratio of 2:1 would be applied to the site. No minimum lot size standard would apply.

The proposal would also map the site on the Key Sites map in the LEP, thereby making the future development of the site potentially subject to the architectural design competition requirements of LEP clause 7.5 Design excellence.

The existing car park (233 Wharf Road) would be reclassified from community to operational land and its public reserve status extinguished.

1.2 Site description

The site is approximately 0.35 ha and consists of a public car park (Lot 1 DP 1158422), a portion of cleared land that was part of the former Newcastle city centre rail corridor (part Lot 4 DP 1226551), and the adjoining footpath on Scott Street (part Lot 3 DP 1226551).

The site is bounded to the north by Wharf Road and the harbour promenade, and south by Scott Street and the light rail. Commercial development adjoins the site to the west, with the Market Street Lawn (open space) adjoining the site to the east (Figure 1).

The site is in a strategic location being in an entertainment and recreation precinct, where the city opens to its harbour waterfront. Within that precinct it is a site that transitions between land uses i.e. active open spaces (being the Market Street Lawn and waterfront promenade), the light rail corridor, the entry point to the Newcastle Mall, and commercial development to the west.

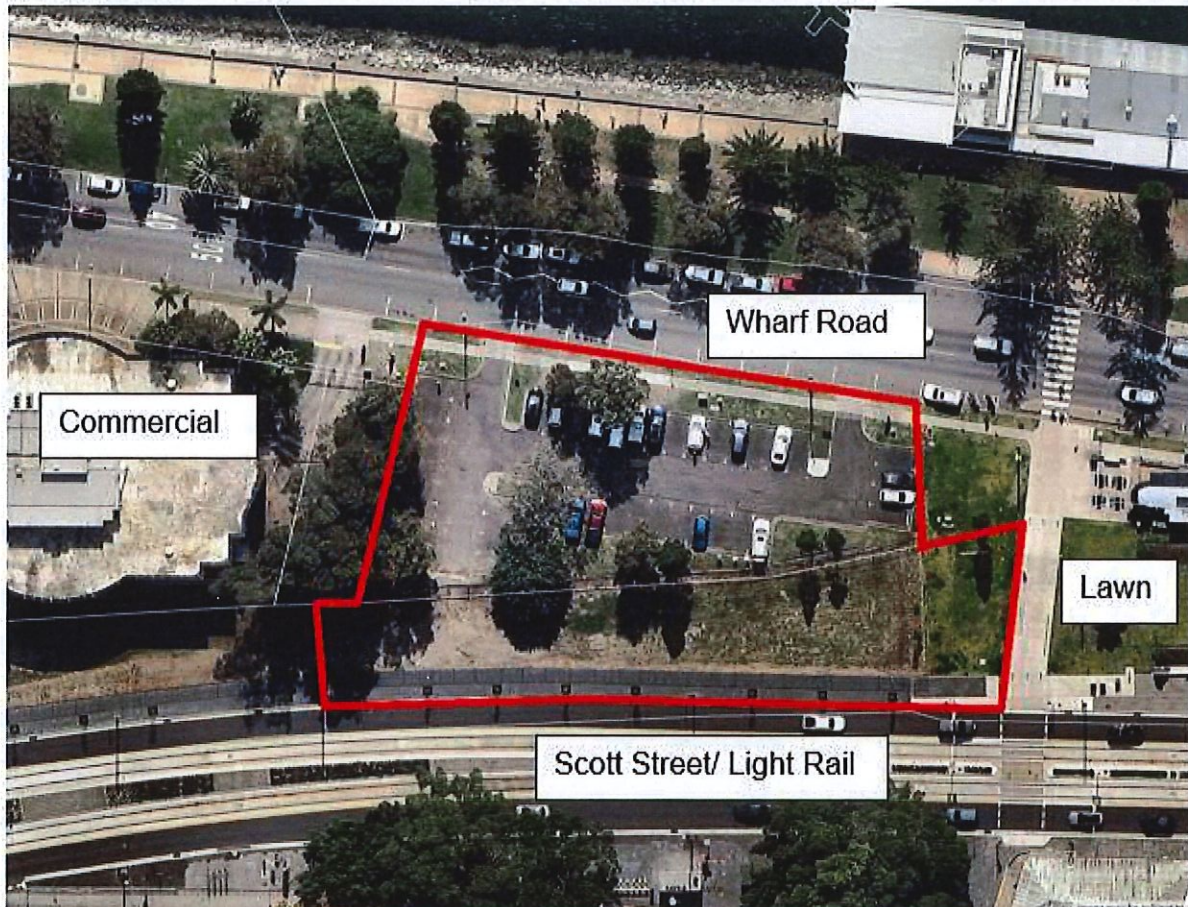


Figure 1: Site aerial

1.3 Existing planning controls

The site is zoned RE1 Public Recreation and SP2 Infrastructure (Railway) in the Newcastle LEP 2012. It does not have a building height or floor space ratio standard. A minimum lot size standard of 40 hectares applies to the carpark portion of the site, no minimum lot size applies to the remainder. Refer to Figures 2-5.

The RE1 zoned portion is classified as community land and Council advises that it is defined as a public reserve under the *Local Government Act 1993*.

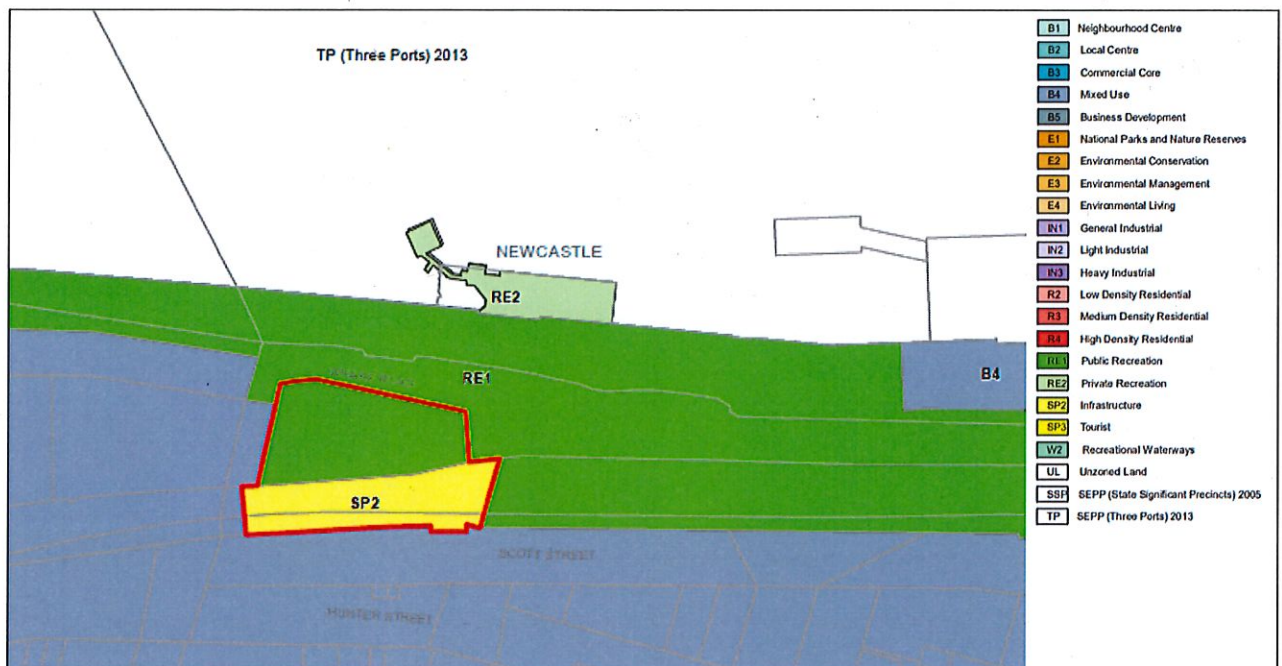


Figure 2: Existing land use zone

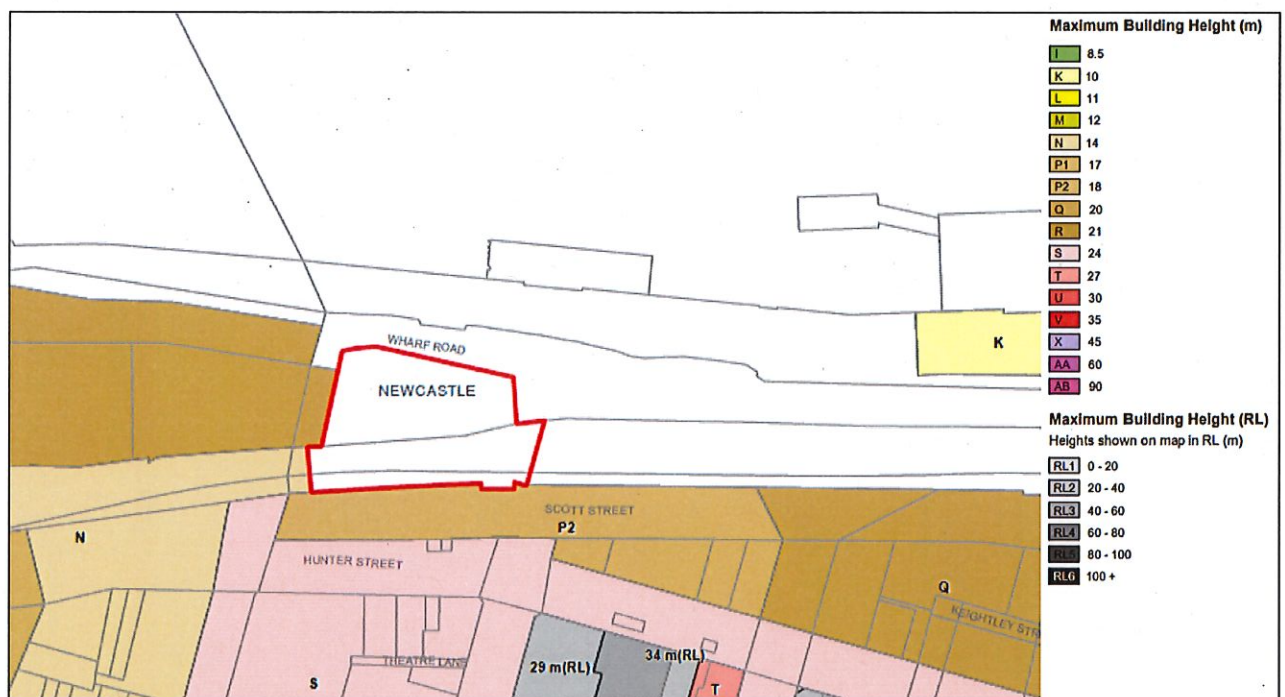


Figure 3: Existing maximum height of buildings

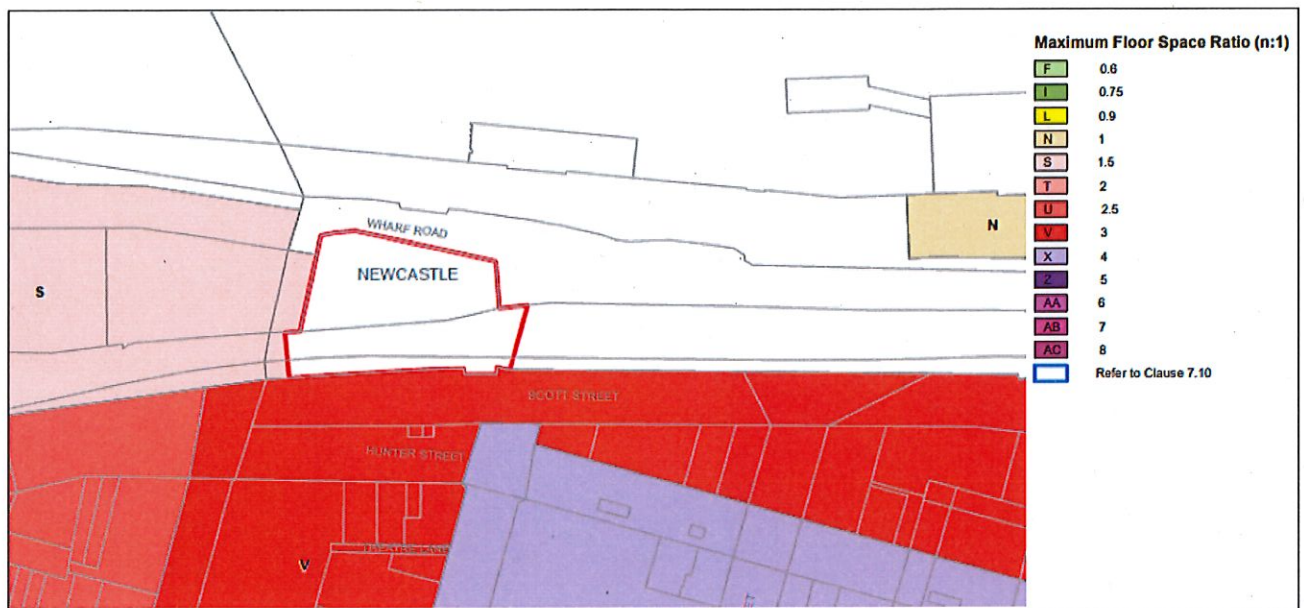


Figure 4: Existing maximum floor space ratio

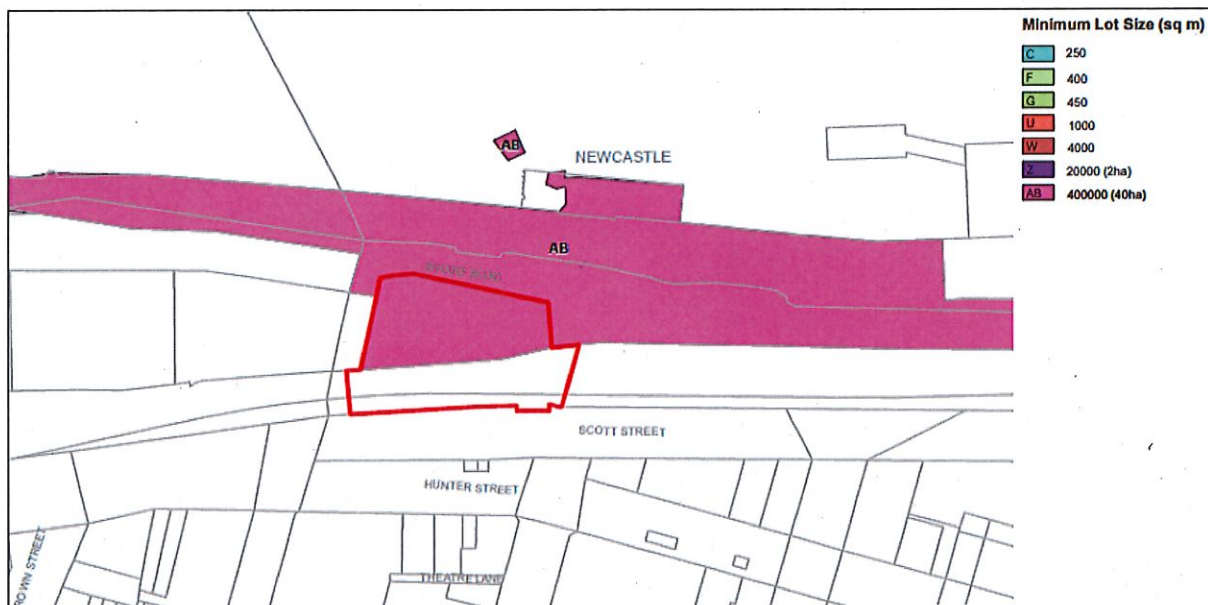


Figure 5: Existing minimum lot size

1.4 Surrounding area

The site is in the East End precinct of the Newcastle city centre where the Newcastle Mall connects to the harbour waterfront and ferry terminal. This part of the city centre is a focal point for retail, entertainment and recreation, with these activities occurring along the harbour promenade, Market Street Lawn, Newcastle Mall, and this part of Hunter Street.

The entry to the Newcastle Mall is located 30 m to the south. It is a mix of retail, business, office and residential uses and is currently being revitalised through mixed use redevelopment.

To the east of the site is the Market Street Lawn and former Newcastle railway station. Both are used as multi-purpose recreation and entertainment spaces, with the lawn serving to connect the Mall to the waterfront.

To the north is the waterfront promenade (recreation, entertainment, 40 m) and north east is the Newcastle ferry terminal (150 m). The ferry terminal connects Newcastle to Stockton but more broadly to the Williamstown airport, Medowie and Nelson Bay.

A light rail stop is located within 100 m of the site. It connects the site to the city centre's Civic Precinct (cultural/ employment hub, 500 m) and the Newcastle Interchange and West End/ Wickham Precincts (emerging high density employment/ residential hub, two kilometres) to the west.

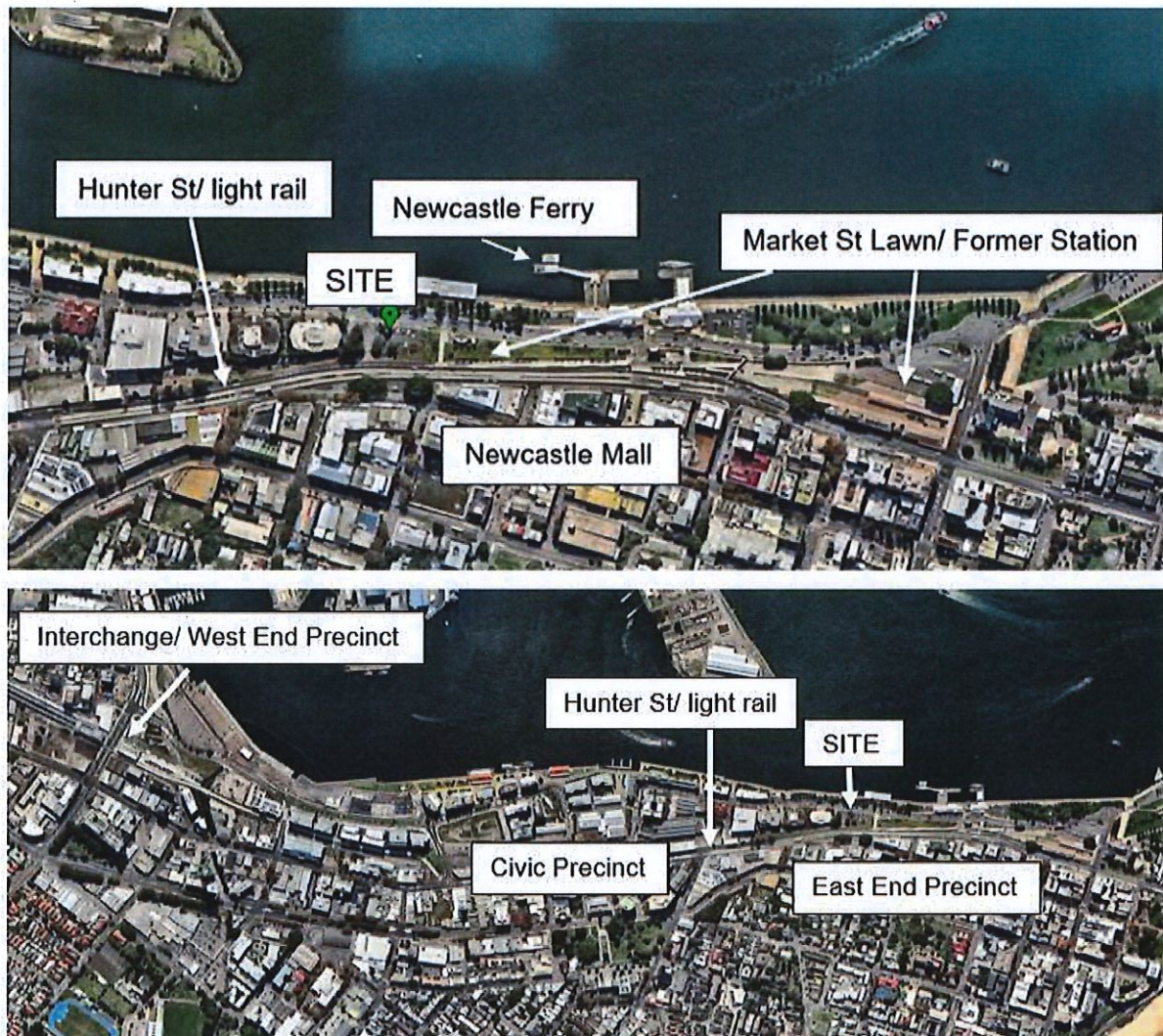


Figure 6: Locality maps

1.5 Summary of recommendation

It is recommended that the planning proposal proceed with conditions.

The site is in a strategic location in the Newcastle city centre. It is where the city centre opens to the harbour waterfront, forming part of an entertainment/ recreation precinct.

The existing planning controls are redundant and warrant review. Council's proposed SP3 Tourist zone and application of design excellence competition provisions should ensure that the site is developed such that it further revitalises the area and reinforces the city/ waterfront connection. Delivery of these outcomes is consistent with the connectivity, renewal objectives of the Greater Newcastle Metropolitan Plan, Hunter Regional Plan and Newcastle Urban Renewal Strategy.

Conditions are proposed to ensure agency and community input on the planning controls proposed and the proposed reclassification of the existing carpark.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the proposal are to:

- rezone the land to reflect its current and envisaged future use;
- reclassifying 233 Wharf Road from community to operational land; and
- redevelop the site as a multi-purpose community space that complements the community surrounding uses.

The objectives of the proposal are clear and no changes are required.

2.2 Explanation of provisions

The explanation of provisions notes the proposal would amend the LEP by:

- listing 233 Wharf Road in Part 1 (no interests changed) of Schedule 4 Classification and Reclassification of Land;
- amending the land use zone by rezoning the site from RE1 Public Recreation and SP2 Infrastructure (Railway) to SP3 Tourist;
- amending the maximum height of buildings to apply a 14 m height limit;
- amending the maximum floor space ratio to apply a 2:1 floor space ratio limit;
- amending the minimum lot size to remove the 40 ha limit that applies; and
- identifying the site on the Key Sites LEP map.

The explanation of provisions is clear and no changes are required.

Council advises that further controls are to be applied through Development Control Plan provisions. These provisions are to be prepared and should be exhibited with the planning proposal. A Gateway condition is proposed to require concurrent exhibition.

2.3 Mapping

The planning proposal identifies that the land use zoning, height of buildings, floor space ratio, minimum lot size and key sites LEP maps would be amended.

The planning proposal includes existing and proposed LEP maps to demonstrate the amendments that would occur.

The mapping is clear and no changes are required.

3. NEED FOR THE PLANNING PROPOSAL

Council advises that the planning proposal responds to a Gateway determination for a previous planning proposal (PP_2016_NEWCA_007_00) which rezoned former rail corridor land in the city centre.

The determination for the previous planning proposal required what is now part Lot 4 DP 1226551 and part Lot 3 DP 1226551 of the subject planning proposal to be removed because the zone proposed was not supported, and the future use of the site and adjoining carpark were uncertain at the time (**Attachment E**). The previous

planning proposal intended to rezone the site to SP3 Tourist and did not include the carpark.

While the previous planning proposal was finalised in April 2018, the excluded former rail corridor parcels remain zoned SP2 Infrastructure (Railway). As the sites are no longer used for this purpose, the zoning is redundant and should be reviewed with new controls put in place. Further, as these lots are to be transferred into the ownership of Council, who also owns the adjoining carpark, it is appropriate that the zoning of the carpark is also reviewed. The need for the planning proposal is therefore justified.

Council's zone review has identified the SP3 Tourist zone as being an appropriate zone for the site because it reflects Council's intention to develop the site for a multi-use community space. The space is to incorporate a community facility, public domain space, and provide an active frontage to the Market Street Lawn. This zone was favoured by Council over the alternative RE1 Public Recreation zone because the proposed facility better aligns with the objectives of the SP3 zone and the SP3 zone signals to the community that its future use is not solely intended for open space.

The SP3 zone currently applies to the former Newcastle Train Station site and was applied to that site to ensure its vibrant use as an entertainment area. While not specifically for entertainment, Council's intended use for the subject site is broadly similar in that it would create a vibrant focal point for the community in a strategic location. Unlike the previous planning proposal (PP_2016_NEWCA_007_00), the intended use for the site is now clear and the site now includes the adjoining carpark, and so the SP3 zone may be supported.

Council's intention to identify the site as a key site in the LEP and therefore require future development to potentially be subject to a design competition is also supported. The site is a gateway site where the city meets the harbour waterfront. Its characteristics are consistent with the principles used to identify key sites in the Newcastle Urban Renewal Strategy (discussed later in this report). Application of the design excellence competition provisions is considered justified.

Council considers the planning proposal to be the best means of achieving its desired outcome for the site. The Department agrees and it is recommended that the planning proposal proceed.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State level strategies that are specifically relevant to this proposal.

4.2 Regional

The site is located on land subject to both the Greater Newcastle Metropolitan Plan 2036 and the Hunter Regional Plan 2036.

Greater Newcastle Metropolitan Plan 2036

The proposal states that it is consistent with the plan's Newcastle City Centre catalyst outcomes:

- transform spaces for public open space, new shops and residential opportunities, and connecting the city to the waterfront; and

- encourage additional civic and cultural activities that reinforce the cultural axis from Civic Park to the waterfront.

The proposed zoning (and intended use) should facilitate the transformation of a strategic space and enhance the connection between the city and its waterfront.

It is also consistent with Strategy 1 of the plan which seeks to reinforce the revitalisation of the Newcastle city centre and to expand transformation along the waterfront. The planning proposal would enable the redevelopment of a site which has the potential to achieve both outcomes.

Hunter Regional Plan 2036

The proposal states that it is consistent with the Hunter Regional Plan, specifically Direction 3 Revitalise Newcastle City Centre and Direction 20 Revitalise Existing Communities.

Council also considers the proposal to support the plan's local government narrative for the city centre which is to strengthen connections between the city and the waterfront and improve civic spaces.

The proposed SP3 zone and application of the design excellence provisions should ensure that the above outcomes are achieved. The site is in a strategic location being where the city connects with its waterfront. As an underutilised space which adjoins an important civic space (Market Street Lawn), it has potential to strengthen the city/ waterfront connection and to further revitalise the area if redeveloped.

4.3 Local

Newcastle 2030 Community Strategic Plan

The proposal states that it is consistent with this plan because it is consistent with its strategic directions and objectives being:

- vibrant, safe and active public spaces
- inclusive community
- smart and innovative
- open and collaborative leadership

The Community Strategic Plan is a high-level plan which applies to all of Council's operations. It does not provide any specific guidance that relates to this site.

Newcastle Urban Renewal Strategy (2012)

The proposal states that it is consistent with the strategy outcome to connect the city to its waterfront. Council considers that the SP3 zone would enable the site to be redeveloped as a community space which would connect the city to the waterfront and also the Market Street Lawn.

The strategy predated the truncating of the railway and so it did not make recommendations regarding the site. However, it recognised the importance of strengthening links between the city and the waterfront in the area in which the site is located. The planning proposal enables the site to be redeveloped such that the city/waterfront link is strengthened and so it is consistent with the strategy.

It also identified sites which should demonstrate design excellence should they be developed. Sites were identified on the basis that they had significant potential to be

catalysts for renewal in their area and were subject to special constraints such as significant view corridors or have significant potential to influence the amenity of public domain. Given the site's strategic location, capacity to influence public domain, and Council's intention to develop the site as a multi-purpose community space, the site satisfies the key site principals of the strategy.

Local Planning Strategy (2015)

The proposal states that it is generally consistent with the principles of the strategy. No advice is provided regarding which principles may be relevant.

The strategy has not been endorsed by the Department. It does not provide any specific guidance for this site.

4.4 Section 9.1 Ministerial Directions

The proposal is consistent with the relevant section 9.1 Ministerial directions except the following which require further discussion:

Direction 4.1 Acid Sulfate Soils

The site is mapped as containing Class 4 acid sulfate soils. As the proposal would intensify the land uses on the land and no acid sulfate soils study is proposed, the proposal is inconsistent with this direction (clause 6). This inconsistency is of minor significance because LEP clause 6.1 Acid sulfate soils ensure that these issues can be adequately addressed at the DA stage. It is recommended that the Secretary agree that the inconsistency is of minor significance.

Direction 4.2 Mine Subsidence and Unstable Land

The site is in a mine subsidence district. Council does not propose consultation with Subsidence Advisory NSW (SA NSW) and so it is inconsistent with the direction (clause 4). The geotechnical assessment (included in the planning proposal) contains 2016 advice from the then Mine Subsidence Board which indicates that subsidence issues can be resolved at the development application stage.

The SA NSW advice does not refer to Lot 1 DP 1158422 (the carpark). Consultation with SA NSW should therefore occur. The proposal's consistency with the direction can then be determined. A Gateway condition to consult with SA NSW is proposed.

Direction 4.3 Flood Prone Land

The site is flood prone. As the proposal would rezone a flood planning area from recreation to a special purpose (clause 5) and permit a significant increase in the development of the land (subclause 6c), the proposal is inconsistent with the direction.

The planning proposal includes a flood risk study. The study notes the area to be low risk and that flooding matters can be adequately managed through Council's planning controls. The study states that the inconsistency is of minor significance because the proposal has considered Council's flooding provisions and is consistent with the Newcastle City-wide Floodplain Risk Management Plan that has been developed per the Floodplain Development Manual 2005.

The site is an infill site located in the Newcastle city centre. As identified in the study, the flood risk for this site is low and Council's flooding provisions are consistent with the Floodplain Development Manual. The planning proposal's inconsistency with the

direction is of minor significance. It is recommended that the Secretary agree to the inconsistency accordingly.

Direction 6.2 Reserving Land for Public Purposes

The proposal would rezone and reclassify an existing parcel of RE1 zoned land (Lot 1 DP 1158422). Council notes that this land is defined as a public reserve under the *Local Government Act 1993*. The rezoning and reclassification of the RE1 zone is supported for the reasons discussed earlier in this report. The Secretary may approve the rezoning and removal of the public reserve status of the carpark site as required by the direction (clause 4).

The proposal would also rezone two parcels of land owned by state government agencies. Part Lot 4 DP 1226551 (former rail corridor) is owned by the Hunter and Central Coast Development Corporation and part Lot 3 DP 1226551 (footpath) is owned by Transport for NSW. Approval from these agencies to the change in zone is required by the direction (clause 4).

Council advises that both parcels are to be transferred to Council. Formal advice to this effect from the agencies has not been included in the planning proposal. Once Council has obtained this advice, the Secretary may approve the rezoning of the former rail corridor and footpath portions of the site as required by the direction. A Gateway determination condition is proposed.

4.5 State environmental planning policies (SEPPs)

Council identifies the proposal to be consistent with the relevant SEPPs, including SEPP 55 Remediation of Land.

The geotechnical assessment identifies potential contamination due to historic fill and hydrocarbons associated with its past railway use. Council concludes that the site can be made suitable after remediation for all the purposes for which the land is to be used.

While the study does not refer to the carpark portion of the site, this portion is already zoned RE1 Public Recreation. Given the uses permitted in the RE1 zone are no more sensitive than those proposed in the SP3 zone, a preliminary contamination assessment is not required for the carpark.

Further consideration of contamination issues for the site may occur at the development application stage. Council has adequately addressed the requirements of SEPP 55.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Redevelopment of the site as proposed by Council is anticipated to have a positive impact for the community by revitalising an underutilised site, creating a community hub, and by strengthening the city/ waterfront link. The planning proposal would enable this to occur.

However, Council has provided limited advice regarding how it developed its community space vision for the site and the role of the community in that process. Formal consultation with the community as part of the planning proposal process is required. Council should include further information regarding its development concept in the proposal and a Gateway determination condition is proposed.

The rezoning and reclassification of the RE1 zoned carpark may be considered a negative impact by parts of the community due to the loss of either a potential open space site or to the loss of carparking in this locality.

In terms of the loss of potential open space, the carpark site is approximately 2,000m² which is a small amount in the context of RE1 zoned land in the East End. The harbour waterfront, Market Street Lawn, Foreshore Park, and Nobbys Beach Reserve are all zoned RE1 and used for public open space. They are within walking distance of the site.

Regarding carparking, Council notes that it has no plan to close the carpark in the short term. Notwithstanding, the potential loss of carparking is a matter for Council to consider as it works through its multi-purpose community space concept with the community.

5.2 Environmental

The site is subject to various environmental constraints. Acid sulfate soils, flooding, contamination and subsidence issues have already been discussed in this report. Visual, heritage and traffic impacts are also relevant:

Visual impact

The planning proposal states that a visual impact statement was undertaken as part of the previous planning proposal (PP_2016_NEWCA_007_00) for the former rail corridor lands. It states that this study considered a 17 m height for the site. View corridors were identified, and impacts noted to be greatest on buildings fronting Hunter and Scott streets as well as properties further to the south (Church Street).

Council advises that now that the site includes the carpark site, the height and floor space ratio proposed have been reduced with a maximum height of 14 m and a floor space ratio of 2:1 now intended (17 m height and 2.5:1 floor space ratio was proposed under PP_2016_NEWCA_007_00). It asserts that these controls better complement the surrounding development and protect view corridors from Hunter Street and further south.

The planning proposal includes three-dimensional block images to demonstrate the potential building envelope under the proposed controls. However, this information is insufficient and further work is required. The visual assessment section of the proposal should be updated to identify the relevant findings of the previous visual study and to detail how Council intends to manage the issues identified, including proposed development control plan provisions. This should allow the community to better understand potential impacts and to evaluate the effectiveness of the provisions proposed.

A Gateway determination condition is proposed to ensure that this occurs. Council's intention to exhibit the draft development control plan provisions with the planning proposal is supported.

Heritage impact

The planning proposal states that a heritage impact study was undertaken as part of the previous planning proposal (PP_2016_NEWCA_007_00) for the former rail corridor lands. The study identified the potential for both archaeological European and Indigenous heritage sites to be present in the former corridor, suggesting these items can be managed through mitigation measures. It also noted that any new buildings would need to consider impacts on the Newcastle Heritage Conservation

Area (which applies to the site and broader city centre). Council advises that it proposed development control plan provisions will consider this aspect.

Council's approach is supported, noting that further study of heritage impacts would be required at the development application stage. While the carpark site was not considered as part of the previous heritage study, the findings are considered relevant to the carpark also given it's adjoins the former corridor.

Traffic impact

The planning proposal states that a traffic study was undertaken as part of the previous planning proposal (PP_2016_NEWCA_007_00) for the former rail corridor lands. Council advises that the study overestimated impacts from redevelopment of the corridor (585 dwellings and 5,200 m² non-residential floor space) because the development footprint was reduced post-Gateway. The extent of reduction has not been quantified.

Council concludes that as traffic impacts associated with the previous proposal were acceptable and overestimated impacts, traffic impacts associated with this site are acceptable also. Further, it notes that any future development for the site would be subject to a detailed traffic assessment as part of the development application process.

Council's approach may be supported. The original study concluded that traffic impacts associated with rezoning the larger corridor were acceptable. It considered traffic impacts associated with rezoning the subject site to the B4 Mixed Use zone. While this review did not include the carpark, it considered greater height and floor space ratio limits on the former rail corridor portion of the subject site.

Given the above and noting that Council is still to work through its development concept with the community, it is considered that the study provides an adequate indication of potential impacts. Further traffic study should occur at the development application stage once Council has refined its development concept.

5.3 Economic

There are no known economic impacts associated with the proposal.

5.4 Infrastructure

The proposal states that the site has enough space to accommodate stormwater infrastructure and overland flow paths, which can be incorporated into any future development design for the site. Issues with water, wastewater, electricity and communications are not anticipated.

6. CONSULTATION

6.1 Community

The planning proposal states that community consultation would occur for a minimum of 28 days. This is appropriate given the proposal is for a strategic site, is not the result of a specific strategy, and is not consistent with the adjoining planning controls.

6.2 Agencies

Consultation with the Hunter and Central Coast Development Corporation, Subsidence Advisory NSW and Transport for NSW should occur.

7. TIME FRAME

Council has indicated that the planning proposal should be completed within 10 months. A 12 month timeframe is therefore recommended to account for any unanticipated delays and the need for Governor approval.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not specifically requested that it be the local plan-making authority. As the reclassification requires the approval of the Governor to extinguish the carpark's public reserve status, the Minister should be the local plan-making authority.

9. CONCLUSION

The planning proposal should proceed subject to conditions for the following reasons:

- the existing planning controls are redundant and warrant review;
- Council's proposed SP3 zone and application of design excellence competition provisions recognise the strategic importance of the site;
- the loss of public recreation zoned land is justified as the site will remain in public ownership and is proposed to be used as a multi-purpose community space; and
- the proposal is consistent with the connectivity and revitalisation outcomes of the Greater Newcastle Metropolitan Plan, Hunter Regional Plan and Newcastle Urban Renewal Strategy.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that the consistency with section 9.1 Directions 4.2 Mine Subsidence and Unstable Land and 6.2 Reserving Land for Public Purposes (agency owned sites) is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, Council is to update the planning proposal to:
 - (a) detail how the proposed planning controls and development control plan provisions respond to the visual amenity issues identified in the visual impact statement referred to in the planning proposal; and
 - (b) include further information regarding the proposed multi-purpose community space.
2. The planning proposal should be made available for community consultation for a minimum of 28 days. It should be exhibited concurrently with the development control plan provisions proposed for the site.
3. Consultation is required with the following public authorities:

- Hunter and Central Coast Development Corporation
 - Subsidence Advisory NSW
 - Transport for NSW
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
 5. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



Caitlin Elliott
Team Leader, Hunter



17/7/19

Greg Sullivan
A/Director, Central Coast and
Hunter
Planning & Assessment

Assessment officer: Ben Holmes
Senior Planner, Hunter
Phone: 4904 2709