

PP_2014_NEWCA_006_00

Part A – Administrative Amendment

May 2016

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Planning Proposal – Administrative Amendments

Summary of Proposal

This Planning Proposal incorporates a number of amendments to the Newcastle Local Environmental Plan (LEP) 2012. The planning proposal was initially issued a Gateway Determination in June 2014 and placed on public exhibition in October 2014. After this, "Item One" (Clause 6.8) of this Planning Proposal was amended following discussions between Council and Department of Planning and Environment.

An amended Gateway Determination was issued in October 2015 requiring Council to re-exhibit the planning proposal including the amended Clause 6.8. The planning proposal was re-exhibited in November 2015. A copy of the Gateway Determination is attached at **Appendix 1**. A copy of the Gateway Determination alteration is included at **Appendix 2**.

Clause 6.8 has been further refined after consultation with the Department of Planning and Environment and the Office of Environment and Heritage. All other items (Items 2-7) remain unchanged, as previously exhibited in October 2014 and November 2015.

A description of each of the items is included below:

Item One – Additional Local Provision (Council Infrastructure Development)

Proposal Include a new clause that removes the need for the Council to obtain development consent for commonly undertaken civic works and facilities and allows Council to undertake certain specified development with development consent, within Part 6 *Additional Local Provisions - Generally*.

Site Details The clause will apply to all land that Council owns or manages and to which the Newcastle LEP 2012 applies with the exception of land zoned E2 Environmental Conservation.

Applicant Details The proposed amendment was initiated by Newcastle City Council.

Background Clause 50 *Council Development* within Newcastle City Centre Local Environmental Plan 2008 (repealed) removed the need for the Council to obtain development consent for commonly undertaken civic works and facilities. It also allowed Council to undertake certain specified development with development consent on any land.

The provisions of Clause 50 were not transferred to Newcastle LEP 2012 given the absence of an equivalent clause within the standard LEP template.

However, the absence of the clause has impacted on the efficiency with which Council can undertake day to day work. The Infrastructure SEPP 2007 does not cover all of this work as it is limited to work that Council undertakes on public reserves and other specified development. Council therefore proposes to reinstate a 'council development clause' into the Newcastle LEP 2012 to capture the work that it carries out that is not covered by the Infrastructure SEPP 2007. See 'Part 2 Explanation of Provisions' for the clause.

Item Two – Mapping Anomalies (Shortland)

Proposal	Amend the Land Zoning (LZN) Map to rezone the following: ▪ Part of 12 Hansen Place, Shortland from B1 Neighbourhood Centre to R2 Low Density Residential. ▪ 310 Sandgate Road, Shortland from R2 Low Density Residential to B1 Neighbourhood Centre. ▪ Part of 312 Sandgate Road, Shortland from R2 Low Density Residential to B1 Neighbourhood Centre. Amend the Floor Space Ratio (FSR) Map to include a Floor Space Ratio (FSR) of: ▪ 0.75:1 for 12 Hansen Place, Shortland ▪ 1.5:1 for 310 Sandgate Road, Shortland Amend the Height of Buildings (HOB) Map as follows: ▪ A change from 11m to 8.5m for 12 Hansen Place, Shortland. ▪ Insert a height limit of 11m for 310 Sandgate Road, Shortland. Amend the Minimum Lot Size (LSZ) Map as follows: ▪ A minimum lot size of 450m² for 12 Hansen Place, Shortland. ▪ Removal of the lot size for 310 and 312 Sandgate Road, Shortland.
Site Details	The proposal applies to land on the southern edge of Shortland's commercial neighbourhood centre along the western side of Sandgate Road as shown in Figure 1: Air Photo of Site – 12 Hansen Place and 310-312 Sandgate Road, Shortland. The land includes the following sites: ▪ 12 Hansen Place, Shortland, described as Lot 7 DP 226353 ▪ 310 Sandgate Road, Shortland, described as Lot 15 DP 567254 ▪ 312 Sandgate Road, Shortland, described as Lot 14 DP 567254
Applicant Details	The proposed amendment was initiated by Newcastle City Council.
Background	The planning proposal aims to correct a minor mapping anomaly which occurred during the preparation of Newcastle LEP 2012. The amendment will ensure consistency across the subject sites.

Figure 1: Air Photo of Site – 12 Hansen Pl & 310-312 Sandgate Rd Shortland

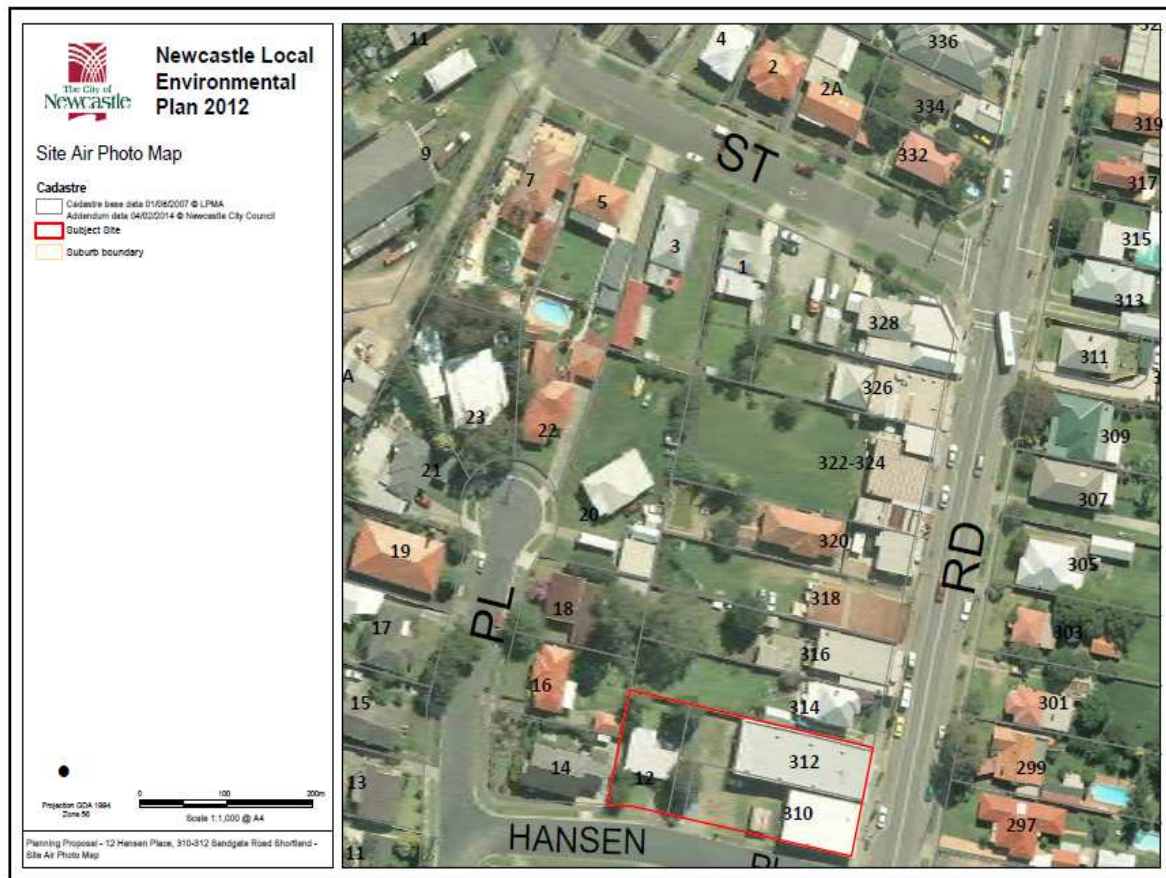


Figure 1

Item Three – Mapping Anomaly (The Junction)

Proposal Amend the Land Reservation Acquisition (LRA) Map to remove the land reservation acquisition layer, for Local Road, from land at 332 and 334 Darby Street, The Junction.

Site Details The proposal applies to land at the corner of Glebe Road and Darby Street, The Junction as shown in **Figure 2** – Air Photo of Local Area - 332 and 334 Darby St, The Junction.

The land includes the following sites:

- 332 Darby Street, The Junction, described as Lot 103 DP 37263
- 334 Darby Street, The Junction, described as Lot 102 DP 37263

Applicant Details The proposed amendment was initiated by Newcastle City Council.

Background The land reservation acquisition layer was previously applied on the land to enable future road widening works. However, further review of the necessary road design has identified that the additional land is no longer required for road reserve. Hence the land reservation acquisition layer is no longer required.

Figure 2 – Air Photo of Local Area - 332 - 334 Darby St, The Junction

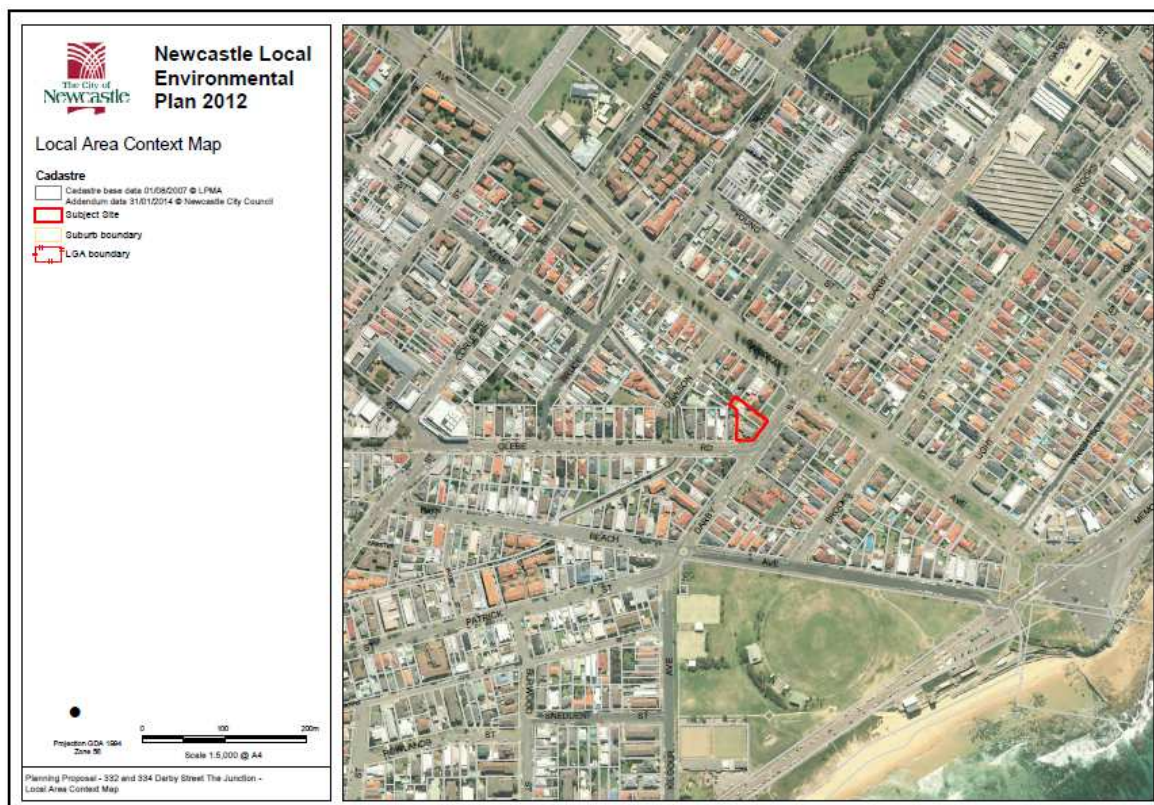


Figure 2

Item Four – Mapping Anomaly (Wallsend)

Proposal	Amend the Floor Space Ratio (FSR) Map to include a FSR of 0.6:1 on land at 9 and 14 Milgate Street, Wallsend. Amend the Height of Buildings (HOB) Map to include a height of 8.5m on land at 9 and 14 Milgate Street, Wallsend.
Site Details	The proposal applies to land at the end of Milgate Street on the North-western periphery of the residential area of Wallsend, as shown in Figure 3 - Air Photo of site - 9 & 14 Milgate Street, Wallsend. The Land includes the following sites: ▪ 9 Milgate Street, Wallsend, described as Lot 200 DP 1197461 ▪ 14 Milgate Street, Wallsend, described as Lot 141 DP 550885
Applicant Details	The proposed amendment was initiated by Newcastle City Council.
Background	The Proposal seeks to correct mapping anomalies found in the Floor Space Ratio Map and the Height of Buildings Map of Newcastle LEP 2012 with respect to the subject land. The aforementioned maps do not currently specify the relevant planning controls for the subject land, despite the land having the same zoning and minimum lot sizes as adjoining sites.

Figure 3 - Air Photo of site - 9 & 14 Milgate St Wallsend



Item Five – Mapping Anomaly (Tighes Hill)

Proposal	Amend the Land Zoning (LZN) Map to rezone land at 1 Henry Street, Tighes Hill from R3 Medium Density Residential to B1 Neighbourhood Centre. Amend the Floor Space Ratio (FSR) Map to include a FSR of 1.5:1 on the land at 1 Henry Street, Tighes Hill. Amend the Minimum Lot Size (LSZ) Map by removing the minimum lot size requirements from land at 1 Henry Street, Tighes Hill.
Site Details	The proposal applies to land adjoining to the rear of the commercial (zoned) strip development along the eastern side of Maitland Road, Tighes Hill as shown in Figure 4 - Air Photo of the Site - 1 Henry St, Tighes Hill. The land is located at 1 Henry Street, Tighes Hill and described as Lot 2 Section C DP 61.
Applicant Details	The proposed amendment was initiated by Newcastle City Council.
Background	The site currently consists a single detached dwelling, consistent with the existing uses along Henry Street, as well as providing access through to the adjoining commercial zoned land (203 Maitland Road, Tighes Hill), which is under the same ownership. Under Newcastle LEP 2003 the land was zoned 3(a) Local Centre. However, during the preparation of the Newcastle LEP 2012 the land was zoned R3 Medium Density Residential rather than being converted to Zone B1 Neighbourhood Centre, as was intended. The landowner has advised that they wish for the land to retain a commercial zoning to enable the redevelopment of both sites in the future for commercial use. Hence it is proposed to rectify the zoning by applying the B1 Neighbourhood Centre zone to the land.

Planning Proposal – Administrative Amendment to Newcastle LEP 2012



Item Six – Mapping Anomaly (Newcastle)

Proposal

Amend the Land Zoning (LZN) Map to rezone the road reserves surrounding Civic Park in Newcastle from Zone RE1 Public Recreation to:

- Zone B4 Mixed Use for Laman Street, Darby Street, and part of King Street to the east of Darby Street.
- Zone B3 Commercial Core along part of King Street between Auckland and Darby Streets.

Amend the Floor Space Ratio (FSR) Map to include Floor Space Ratios of:

- 2:1 for Laman Street.
- 2.5:1 for Darby Street, and part of King Street to the east of Darby Street.
- 4:1 for part of King Street between Auckland and Darby Streets.

Amend the Height of Buildings (HOB) Map to include heights of:

- 14m for Laman Street and Darby Street.
- 17m for part of King Street to the east of Darby Street.
- 30m for part of King Street between Auckland and Darby Streets.

Amend the Minimum Lot Size (LSZ) by removing the minimum lot size requirement from all of the subject road reserves.

Site Details

The land includes the following road reserves:

- Part of King Street between Auckland and Darby Streets.
- Part of King Street to the east of Darby Street.
- Part of Laman Street directly adjoining Civic Park.
- Part of Darby Street directly adjoining Civic Park.

The land is shown in **Figure 5** - Air photo of the land – King, Darby & Laman Streets, Newcastle.

Applicant Details

The proposed amendment was initiated by Newcastle City Council

Background

Newcastle LEP 2012 is consistent with the mapping requirements of the NSW Standard LEP Template, which zones all land including road reserves. The zoning of local streets usually take on the zoning of the adjoining land. As a result three of the streets adjoining Civic Park were zoned RE1 Public Recreation.

Item 7 of this proposal seeks to remove the need for development consent for banners in business zones within the city centre. Hence rezoning these road reserves (similar to the zoning of the land opposite Civic Park) will enable these provisions to be implemented consistently across the city centre.

Figure 5 - Air photo of the land – King, Darby & Laman Streets

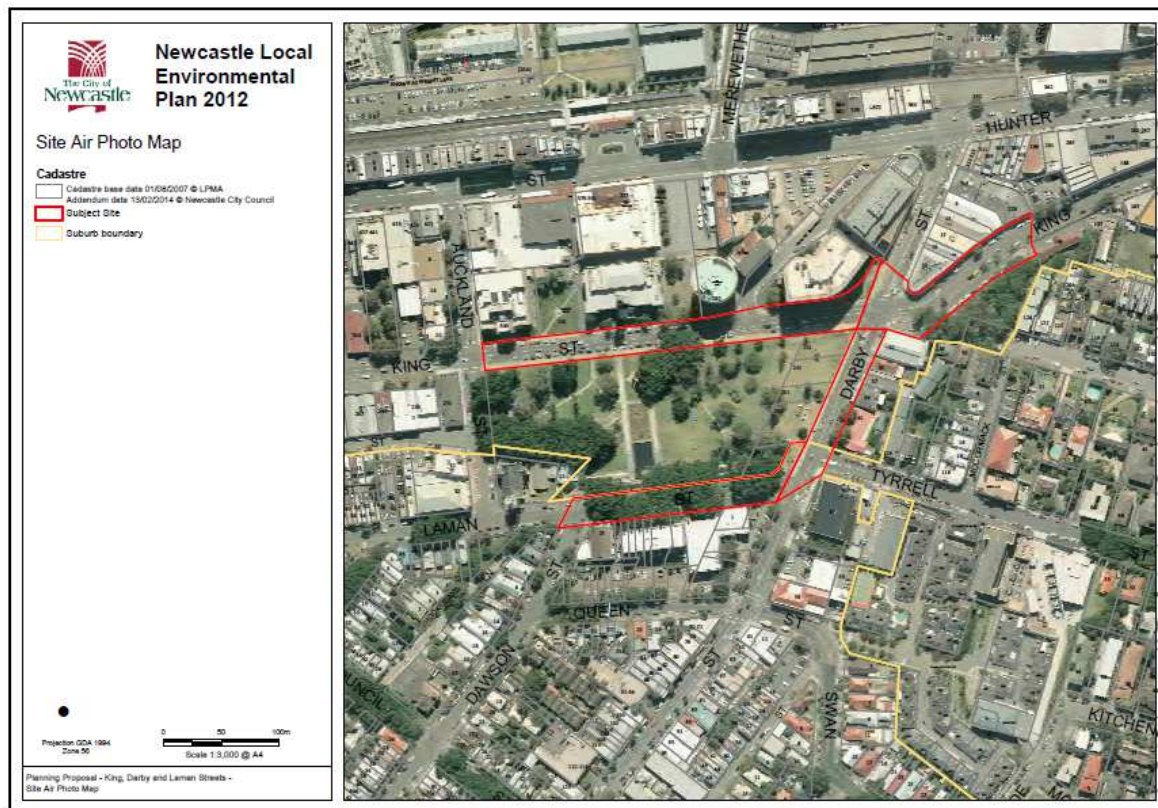


Figure 5

Item Seven – Exempt Development (Temporary Promotional Banners)

Proposal	Amend Newcastle LEP 2012 to include ‘Temporary promotional banners’ within Schedule 2 Exempt Development, to enable such banners to be placed on poles or lighting columns without needing development consent. The exemption will only apply to the Newcastle City Centre.
Site Details	The proposal applies to all land zoned B3 Commercial Core and B4 Mixed Use to which the Newcastle City Centre Map, within Newcastle LEP 2012, applies.
Applicant Details	The proposed amendment was initiated by Newcastle City Council.
Background	The installation of temporary promotional banners, as found on poles and light columns along streets with the city centre, currently require development consent. Recent amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, made in February 2014, enable “<i>construction or installation of a sign or banner that advertises a commercial, community or retail event or a private function (including sponsorship of the event or function)</i>” as exempt development. The Code provides standards that development must meet in order to be exempt. These include: a) not result in more than one banner and one other type of temporary sign facing any road frontage, and b) not have a surface area of more than 6m², and c) be located wholly within the boundaries of the property or, if attached to a building, fence or wall, not project more than 100mm from the building, fence or wall, and d) not be higher than 5m above ground level (existing), and e) not be permanently fixed to a building, fence or wall, and f) if advertising a commercial or retail event—not be constructed or installed in a residential zone, and g) not be illuminated, and h) not be displayed earlier than 14 days before the event, and i) be removed within 2 days after the event. However these changes do not apply to banners located on a pole or lighting column that is owned by Council or an electricity provider. Hence it is proposed that such banners be included in Schedule 2 Exempt development of Newcastle LEP 2012.

Part 1 - Objectives and Intended Outcomes

Item One – Additional Local Provision (Council Infrastructure Development)

Remove the need for the Council to obtain development consent for commonly undertaken civic works and facilities undertaken on Council owned land or on land that Council manages that are not covered under the Infrastructure SEPP 2007 and allow other specified development to be carried out with development consent on this land except for on land zoned E2 Environmental Conservation.

Items Two to Six – Mapping Anomalies

Rectify mapping anomalies within Newcastle LEP 2012 on land at:

- 310 and 312 Sandgate Road, and 12 Hansen Place, Shortland
- 332 and 334 Darby St, The Junction
- 9 and 14 Milgate St, Wallsend
- 1 Henry St, Tighes Hill
- Part of King, Darby & Laman Streets, Newcastle.

Item Seven – Exempt Development (Temporary Promotional Banners)

Remove the need for obtaining development consent for the installation of temporary promotional banners on poles and light columns located within road reserves of the Newcastle City Centre.

Part 2 - Explanation of Provisions

Item One – Additional Local Provisions (Council Development)

It is proposed to amend Part 6 Additional Local Provisions to insert a new clause, Clause 6.8 Council Infrastructure Development as shown below:

6.8 Council Infrastructure Development

- (1) The objectives of this clause are as follows:
 - (a) to permit the Council to carry out commonly undertaken civic works and facilities without development consent, and
 - (b) to permit the Council to carry out, with development consent, additional development in the public interest.
- (2) This clause does not apply to land zoned E2 Environmental Protection.
- (3) Development may be carried out by or on behalf of the Council without development consent on land owned by Council or on land that is under the care, control and management of Council.
- (4) Subclause (3), does not apply to the following development:
 - (a) development having a capital value of more than \$5,000,000,
 - (b) development that is the erection of a building of any class under the *Building Code of Australia*, other than a class 10 building,
 - (c) development for the purposes of ovals, tennis courts, grandstands, dressing sheds or the like,
 - (d) development for the purposes of a car park with more than 30 car parking spaces,
 - (e) development for the purposes of a caravan park,
 - (f) development for the purposes of a depot,
 - (g) development on land that comprises, or on which there is, a heritage item,
 - (h) development on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under that Act,
 - (i) development on land that is an environmentally sensitive area.
- (5) Development referred to in subclause (4) may be carried out by or on behalf of the Council with consent on any land to which this clause applies.
- (6) In this clause:

civic works and facilities includes those land uses and activities carried out by the Council for the benefit of the community, such as:

 - (a) roads, cycleways, single storey car parks, ticketing facilities and viewing platforms,
 - (b) outdoor recreational facilities, including playing fields, but not including grandstands,
 - (c) information facilities such as visitors' centres and information boards,
 - (d) lighting, if light spill and artificial sky glow is minimised in accordance with AS/NZS 1158: 2007, *Lighting for Roads and Public Spaces*,
 - (e) landscaping, including irrigation schemes (whether they use recycled or other water),
 - (f) amenity facilities,

- (g) maintenance depots,
- (h) environmental management works.

environmental management works means:

- (a) works for the purpose of avoiding, reducing, minimising or managing the environmental effects of development (including effects on water, soil, air, biodiversity, traffic or amenity), and
- (b) environmental protection works.

environmentally sensitive area has the same meaning as defined in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and means any of the following:

- (a) the coastal waters of the State,
- (b) a coastal lake,
- (c) land to which State Environmental Planning Policy No 14—Coastal Wetlands or State Environmental Planning Policy No 26—Littoral Rainforests applies,
- (d) land reserved as an aquatic reserve under the *Fisheries Management Act 1994* or as a marine park under the *Marine Parks Act 1997*,
- (e) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,
- (f) land within 100m of land to which paragraph (c), (d) or (e) applies,
- (g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,
- (h) land reserved under the *National Parks and Wildlife Act 1974* or land to which Part 11 of that Act applies,
- (i) land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes,
- (j) land identified as being critical habitat under the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*.

Note Other development carried out by or on behalf of a Council is dealt with by *State Environmental Planning Policy (Infrastructure) 2007*. If there is an inconsistency between this clause and *State Environmental Planning Policy (Infrastructure)*, the Policy prevails to the extent of the inconsistency.

Item Two – Mapping Anomalies (Shortland)

Amend the following Maps within Newcastle LEP 2012 as described below and shown in Part 4 Mapping of this planning proposal.

- Amend the Land Zoning (LZN) Map to rezone the following:
 - Part of 12 Hansen Place, Shortland from B1 Neighbourhood Centre to R2 Low Density Residential.
 - 310 Sandgate Road, Shortland from R2 Low Density Residential to B1 Neighbourhood Centre.
 - Part of 312 Sandgate Road, Shortland from R2 Low Density Residential to B1 Neighbourhood Centre.
- Amend the Floor Space Ratio (FSR) Map to include a Floor Space Ratio (FSR) of:
 - 0.75:1 for 12 Hansen Place, Shortland.
 - 1.5:1 for 310 Sandgate Road, Shortland.
- Amend the Height of Buildings (HOB) Map as follows:
 - A change from 11m to 8.5m for 12 Hansen Place, Shortland.

- Insert a height limit of 11m for 310 Sandgate Road, Shortland.
- Amend the Minimum Lot Size (LSZ) Map as follows:
 - A minimum lot size of 450 m² for 12 Hansen Place, Shortland.
 - Removal of the lot size for 310 and 312 Sandgate Road, Shortland.

Item Three – Mapping Anomaly (The Junction)

Amend the following Maps within Newcastle LEP 2012 as described below and shown in Part 4 Mapping of this planning proposal.

- Amend the Land Reservation Acquisition (LRA) Map to remove the land reservation acquisition layer, for Local Road, from land at 332 and 334 Darby Street, The Junction.

Item Four – Mapping Anomaly (Wallsend)

Amend the following Maps within Newcastle LEP 2012 as described below and shown in Part 4 Mapping of this planning proposal.

- Amend the Floor Space Ratio (FSR) Map to include a FSR of 0.6:1 on land at 9 and 14 Milgate Street, Wallsend.
- Amend the Height of Buildings (HOB) Map to include a height of 8.5m on land at 9 and 14 Milgate Street, Wallsend.

Item Five – Mapping Anomaly (Tighes Hill)

Amend the following Maps within Newcastle LEP 2012 as described below and shown in Part 4 Mapping of this planning proposal.

- Amend the Land Zoning (LZN) Map to rezone land at 1 Henry Street, Tighes Hill from R3 Medium Density Residential to B1 Neighbourhood Centre.
- Amend the Floor Space Ratio (FSR) Map to include a FSR of 1.5:1 on the land at 1 Henry Street, Tighes Hill.
- Amend the Minimum Lot Size (LSZ) Map by removing the minimum lot size requirements from land at 1 Henry Street, Tighes Hill.

Item Six – Mapping Anomaly (Newcastle)

Amend the following Maps within Newcastle LEP 2012 as described below and shown in Part 4 Mapping of this planning proposal.

- Amend the Land Zoning (LZN) Map to rezone the road reserves surrounding Civic Park in Newcastle from Zone RE1 Public Recreation to:
 - Zone B4 Mixed Use for Laman Street, Darby Street, and part of King Street to the east of Darby Street.
 - Zone B3 Commercial Core along part of King Street between Auckland and Darby Streets.
- Amend the Floor Space Ratio (FSR) Map to include Floor Space Ratios of:
 - 2:1 for Laman Street.
 - 2.5:1 for Darby Street, and part of King Street to the east of Darby Street.
 - 4:1 for part of King Street between Auckland and Darby Streets.
- Amend the Height of Buildings (HOB) Map to include a heights of:
 - 14m for Laman Street and Darby Street.
 - 17m for part of King Street to the east of Darby Street.
 - 30m for part of King Street between Auckland and Darby Streets.
- Amend the Minimum Lot Size (LSZ) by removing the minimum lot size requirement from all of the subject road reserves.

Item Seven – Exempt Development (Temporary Promotional Banners)

Add 'Temporary promotional banners' as an additional item within Schedule 2 Exempt Development of Newcastle LEP 2012 as follows:

Temporary promotional banners

- (1) Must be the installation of a banner attached to an electricity pole, another pole or lighting column that is owned by the Council or an electricity supply authority.
- (2) Must only be for the purposes of promoting a civic or community event (including a public exhibition, a festival, a sporting event, a charity event or the like) to be held in the Council's local government area.
- (3) Must be located on a public road in Zone B3 Commercial Core or Zone B4 Mixed Use that is within the Newcastle City Centre.
- (4) Must have the written approval of the owner of the pole or column before installing the banner.
- (5) Must not be longer than 2m or wider than 800mm.
- (6) Must not include advertising of a commercial nature, other than the name of the event's sponsor at the top or bottom of the banner and not covering more than 20% of the area of the banner.
- (7) Must not be displayed earlier than 14 days before the event.
- (8) Must be removed within two days after the event.

Part 3 – Justification

Section A - Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

No, the planning proposal is initiated by Council to give effect to a number of amendments, which were identified since the introduction of Newcastle LEP 2012.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Item One – Additional Local Provision (Council Development)

Yes. While State Environmental Planning Policy (Infrastructure) 2007 allows some Council developments and works to be carried out without consent it does not cover all activities that Council may wish to undertake. Reinstating this clause would allow a more efficient process for certain types of Council developments and works in the public interest.

Items Two to Six – Mapping Anomalies

Yes. The proposed amendments will correct a number of existing mapping anomalies within Newcastle Local Environmental Plan 2012.

Item Seven – Exempt Development (Temporary Promotional Banners)

Yes. Amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, made in February 2014, enable “construction or installation of a sign or banner on or attached to private property” as exempt development. However, these changes do not apply to banners located on a pole or lighting column on a public road.

Hence it is proposed that such banners be included in Schedule 2 Exempt development of Newcastle LEP 2012.

Section B - Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The proposed amendments (Items One to Seven) identified within this planning proposal are of a minor nature and hence are unlikely to have any consequence with respect to the Lower Hunter Regional Strategy.

4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Newcastle 2030 Community Strategic Plan

Council adopted the Newcastle 2030 Community Strategic Plan in February 2011 and updated in 2013. The Plan identifies the community's vision for "a smart, liveable, and sustainable city".

The Community Strategic Plan also identifies the community's vision for "decision-making based on collaborative, transparent and accountable leadership". Allowing this planning proposal to be placed on public exhibition supports this principle.

Local Planning Strategy

The Local Planning Strategy (LPS) was adopted by Council in July 2015. It contains principles to implement the strategic directions from the Community Strategic Plan. The principles will be achieved by implementing specific strategic land use directions that are outlined in the LPS. Primarily, land use policy is to promote integrated, sustainable long-term planning for Newcastle and the Region.

The planning proposal is consistent with the principles of the LPS.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposed amendments (Items One to Seven) identified within this planning proposal are consistent with applicable State Environmental Planning Policies. See table below:

Table 1 - Consideration of State Environmental Planning Policies

Name of SEPP	Applicable	Consistent
State Environmental Planning Policy No 1 Development Standards	No	
State Environmental Planning Policy No 14 Coastal Wetlands	Yes	Yes. The Planning Proposal does not affect the operation of SEPP 14.
State Environmental Planning Policy No 15 Rural Landsharing Communities	No	
State Environmental Planning Policy No 19 Bushland in Urban Areas	No	
State Environmental Planning Policy No 21 Caravan Parks	No	
State Environmental Planning Policy No 26 Littoral Rainforests	No	
State Environmental Planning Policy No 29 Western Sydney Recreation Area	No	
State Environmental Planning Policy No 30 Intensive Agriculture	No	
State Environmental Planning Policy No 32 Urban Consolidation (Redevelopment of Urban Land)	No	
State Environmental Planning Policy No 33 Hazardous and Offensive Development	No	
State Environmental Planning Policy No 36 Manufactured Home Estates	No	
State Environmental Planning Policy No 39 Spit Island Bird Habitat	No	
State Environmental Planning Policy No 44 Koala Habitat Protection	Yes	Yes. The items are of minor significance and will not impact on any Koala habitat.
State Environmental Planning Policy No 47 Moore Park Showground	No	
State Environmental Planning Policy No 50 Canal Estate Development	No	
State Environmental Planning Policy No 52 Farm Dams and Other Works in Land and Water Management Plan Areas	No	
State Environmental Planning Policy No 55 Remediation of Land	No	
State Environmental Planning Policy No 59 Central Western Sydney Economic and Employment Area	No	

Name of SEPP	Applicable	Consistent
State Environmental Planning Policy No 62 Sustainable Aquaculture	No	
State Environmental Planning Policy No 64 Advertising and Signage	No	
State Environmental Planning Policy No 65 Design Quality of Residential Flat Development	No	
State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes)	No	
State Environmental Planning Policy No 71 Coastal Protection	Yes	Yes. The Planning Proposal does not affect the operation of the SEPP.
State Environmental Planning Policy (Affordable Rental Housing) 2009	No	
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No	
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	Yes	Yes. Item Seven identifies an additional use for Schedule 2 Exempt Development within Newcastle LEP 2012, which is not otherwise included within this SEPP.
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	No	
State Environmental Planning Policy (Infrastructure) 2007	No	Note: Item One provides for uses not identified within this SEPP as being permissible without consent.
State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007	No	
State Environmental Planning Policy (Major Development) 2005	No	
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	No	
State Environmental Planning Policy (Rural Lands) 2008	No	
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	No	
State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007	No	
State Environmental Planning Policy (Western Sydney Parklands) 2009	No	
SEPP (State and Regional Development) 2011	No	

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Due to the minor nature of the planning proposal, there are no inconsistencies with the following Section 117 Directions. See table below:

Table 2 - Consideration of Section 117 Directions

S117 Direction	Applicable	Consistent
1. Employment and Resources		
1.1 Business and Industrial Zones	Yes Items Two and Five	Yes. Due to minor nature of the amendment there is no inconsistency with this direction.
1.2 Rural Zones	No	
1.3 Mining, Petroleum Production and Extractive Industries	No	
1.4 Oyster Aquaculture	No	
1.5 Rural Lands	No	
2. Environment and Heritage		
2.1 Environment Protection Zones	Yes	Yes. The planning proposal is consistent with the objective of this direction as it does not reduce or modify environmental protection standards that apply to the land. Item One of the Planning Proposal includes provisions that facilitate the protection and conservation of environmentally sensitive areas by excluding land zoned E2 and requiring development consent to be obtained for any development in environmentally sensitive areas (outside the E2 zone). The development that will be permitted on land zoned E3 and E4 will be required to undergo environmental assessment either under Part 5 of the EP&A Act or under Part 4 of that Act. Any potential impacts to biodiversity would be identified as part of these assessments along with appropriate mitigating strategies to ensure any impacts are managed appropriately.
2.2 Coastal Protection	No	
2.3 Heritage Conservation	No	
2.4 Recreation Vehicle Areas	No	
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Yes Items Two and Five	Yes. Due to the minor nature of the amendment there is no inconsistency with this direction.

S117 Direction	Applicable	Consistent
3.2 Caravan Parks and Manufactured Home Estates	No	
3.3 Home Occupations	No	
3.4 Integrating Land Use and Transport	No	
3.5 Development Near Licensed Aerodromes	No	
4. Hazard and Risk		
4.1 Acid Sulfate Soils	No	
4.2 Mine Subsidence and Unstable Land	Items Three to Six are within Mine Subsidence Districts.	Yes. The proposals are of minor significance. Note: Subsequent DAs on the land to alter or erect improvements will require approval from the Mine Subsidence Board.
4.3 Flood Prone Land	Items Three, Four, and Six consist flood prone land	Yes. The provisions of the planning proposals are only correcting minor mapping anomalies.
4.4 Planning for Bushfire Protection	No	
5. Regional Planning		
5.1 Implementation of Regional Strategies	Yes	Yes. The planning proposal is of minor significance at a regional scale.
5.2 Sydney Drinking Water Catchments	No	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.8 Second Sydney Airport: Badgerys Creek	No	
6. Local Plan Making		
6.1 Approval and Referral Requirements	Yes	Yes. The planning proposal does not include provisions to require subsequent DAs to seek approvals by other agencies.

S117 Direction	Applicable	Consistent
6.2 Reserving Land for Public Purposes	Yes	Yes. Item Six will reduce the area of Open Space zoning but not that of the land reserved for public purposes, as it only seeks to rezone the road reserves.
6.3 Site Specific Provisions	Yes	Yes the planning proposal complies with this direction as Item Seven does not require an additional restriction given the City Centre is already included as a map in Newcastle LEP 2012.

Section C - Environmental, social, and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proposed amendments (Items Two to Seven) identified within this planning proposal are of a minor nature and hence are unlikely to have any consequence with respect to critical habitat or threatened species, populations or ecological communities, or their habitats.

Item One applies to Council owned or managed land, including where that land is zoned E3 Environmental Management or E4 Environmental Investigation. The E3 and E4 zones are not intended to apply to critical habitat or threatened species or their habitats. Areas of high ecological significance are mapped as E2 Environmental Conservation. This is evident from the zone objectives. The exclusion of the E2 zone from clause 6.8, therefore, significantly limits the likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

The largest area of land within an environmental zone to which this clause applies is Blackbutt Reserve, which is zoned E3. Council adopted a plan of management for Blackbutt Reserve in February 2012. This document outlines how the area can be used now and into the future. Reserve management principles include conservation and sustainable management. Activities are confined to recreational uses only within areas categorised as park and general community use. The Plan of Management may be viewed on Council's website: <http://www.newcastle.nsw.gov.au/Blackbutt-Reserve/About-us/What-s-New/Future-Planning>

Council stresses that even though the clause permits Council to carry out development without consent, this does not mean that no environmental assessment is undertaken of a proposed activity. Environmental assessment is undertaken under Part 5 of the EP&A Act and is a legitimate process of assessment available to public authorities. Environmental assessments under Part 5 include consideration of all matters likely to affect the environment including consideration of matters under the Threatened Species Conservation Act 1996. It is therefore considered unlikely that the proposal would have adverse impacts on critical habitats or threatened species.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No.

9. Has the planning proposal adequately addressed any social and economic effects?

The items within this planning proposal are of a minor scale and nature and unlikely to have any social or economic implications.

Item One will improve efficiency for Council in providing infrastructure and civil works.

Item Seven will assist Council and community organisations by removing the unnecessary need for applying for development consent each time a banner is to be attached along certain streets within the city centre.

Section D - State and Commonwealth interests

10. *Is there adequate public infrastructure for the planning proposal?*

Due to the minor nature of the planning proposal, public infrastructure should not be impacted.

Item one will improve Council's ability in providing public infrastructure and civil works.

11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

Council has consulted with the Mine Subsidence Board and the Office of Environment and Heritage (OEH), as required by the original gateway determination and the amended Gateway Determination. These comments are included at **Appendix 3**.

No objections were raised by the Mine Subsidence Board to the proposed amendments of Newcastle LEP 2012.

OEH raised objections to Item One of the proposed amendments. Council staff, staff from OEH and staff from the Department of Planning met to discuss the issues raised by OEH.

As a result of this discussion, the clause was refined by Council and maps showing the extent of environment zones where the clause would apply were supplied to OEH. OEH reviewed this documentation and advised by letter dated 22 January 2016 that it maintained its objection to the proposed clause 6.8.

Key issues raised by OEH and Council's response are discussed below.

Issues raised in OEH Letter dated 19 November 2015	Council Response
Proposal is likely to result in impacts to environmental values and will allow Council to circumvent the strategic planning process on a scale that is unclear due to ambiguous definition of permissible actions	The clause does not remove the need for council to assess potential environmental impacts under Part 5 of the EP & A Act. Part 5 is a long standing, legitimate environmental assessment process available to public authorities that is aimed at assessing and mitigating potential environmental impacts of a proposed development Terms in the clause are defined using standard definitions where available in either the LEP or SEPP. Where terms are undefined it is standard legal practice to use dictionary definitions.
It is unclear whether 'environmentally sensitive areas' for development consent includes matters covered under the Threatened Species Conservation Act 1995 (TSC Act), the National Parks and Wildlife Act 1974 (NPW Act) (for Aboriginal cultural	The definition of 'environmentally sensitive areas' is defined in the Exempt and Complying Codes SEPP and is understood in planning terms. It is unclear what matters under the TSC Act or NPW Act OEH would like included in the definition. In any event, it

heritage) and coastal and flooding processes.	is unnecessary to duplicate provisions from these Acts in the Newcastle LEP as the clause will have no impact on the operation of either the TSC Act or NPW Act. Coastal and flooding processes are considered in environmental assessments undertaken of development under Part 5 of the EP&A Act. Environmental Assessment under Part 5 also includes the requirement to consider matters under the TSC Act.
Some elements conflict with existing definitions and permissibility within the relevant planning instruments	It is not clear to Council what elements conflict with existing definitions and permissibility. All definitions are consistent with definitions in the Standard Instrument or relevant State Environmental Planning Policies. However, should the Department find areas of conflict in its review of the proposal, Council is happy to discuss.
Unclear whether environmental management works would increase the area of impact of existing development consents or would be contained within them.	The term 'environmental management works' is defined in the Infrastructure SEPP and are works for the purpose of 'avoiding, reducing, minimising or managing the environmental effects of development'. Presumably the works would be undertaken to the extent necessary to avoid, reduce, minimise or manage the environmental effects of development. Council may already undertake environmental management works on public reserves without consent under the Infrastructure SEPP. Council is unaware of any confusion or issues arising with this work.
OEH Recommended Amendments to Item One	
Proposal excludes environmental and rural zones that contain environmentally sensitive areas	As a further refinement to the clause, Council has removed the E2 Environmental Conservation Zone from the clause and clarified that the clause will only apply to land that Council owns or manages. See Map of council owned or managed land zoned E3 or E4 at Appendix 4. It is unnecessary to refer to rural zoned land as the Newcastle LEP does not contain any rural zones. A decision was made when converting to the Standard Instrument LEP to use the E4 Environmental Living Zone as the

	"best match" to the former Environmental Investigation Zone. Any conversion of this zone to another zone would be based on environmental studies to determine the extent to which it could be rezoned to an urban zone while zoning land with high environmental values to an appropriate environmental zone.
Proposal details how 'environmentally sensitive areas' as a trigger requiring development consent includes matters covered under the TSC Act and NPW Act and coastal and flooding processes	It is unnecessary to include matters covered under the TSC Act and NPW Act in the Newcastle LEP. The clause does not "switch off" these Acts. The TSC Act and NPW Act will continue to operate as they currently do. Coastal and flooding processes would be considered in the environmental assessment undertaken under Part 5 of the EP&A Act.
Proposal should detail how 'environmental management works' would be applied to an existing development consent	The clause does not need to detail how environmental management works are applied to existing development. These works would be considered, assessed and undertaken on a case by case basis.
Provide unambiguous definitions of : • Civic works and facilities • Public interest • Benefit of the community • amenity facilities	These terms are commonly used in EPIs. Sometimes defined, sometimes not. Where terms have been defined in other EPIs, those definitions have been used. Where terms are not defined, it is accepted practice to use dictionary definitions. It is unnecessary to provide definitions of 'public interest' and 'benefit of the community' as those phrases are used only to provide the context and objectives of the clause.

OEH Letter dated 28 January 2016 relating to revised clause 6.8	
Maintains objection to definition of 'environmentally sensitive areas' as it does not specifically include matters under the TSC Act.	Council does not agree that the clause needs to address matters under the TSC Act as the clause does not interfere with the operation of the Act. "Environmentally Sensitive Areas" is defined in a State Planning Policy and the LEP definition is required to be consistent.
Maintains objection to inclusion of environmental zoned land due to potential impacts on biodiversity.	Council has removed the E2 Zone from the clause. Refer to the map at Appendix 4 which illustrates the extent to which environmental zones will be covered by the clause.
The clause is unwarranted.	The clause has received a gateway determination to proceed.
Clause should specifically exclude rural	There are no rural zones and it is improbable

zoned land due to potential impacts on biodiversity.	that there will be in future. Future land releases will be investigated for urban and where appropriate environmental zones.
Proposal does not comply with relevant 117 Direction.	Council believes the proposal is consistent with relevant 117 Directions. Refer to the table in Part 3, Section B, clause 6.

Part 4 – Mapping

The Matrix below identifies which map sheets (of Newcastle LEP 2012) are proposed to be amended as a result of Items Two to Six of the planning proposal.

Map Grid	Mapping Type										
	FSR	LAP	LZN	WRA	ASS	HOB	LSZ	LRA	CL1	HER	URA
001											
001A											
001B											
001C											
001D											
002											
002A											
002B	Item Four					Item Four					
002C											
002D											
002E	Item Two		Item Two			Item Two	Item Two				
002F											
002G											
002H											
003											
004											
004A											
004B											
004C											
004D											
004E											
004F	Item Five		Item Five				Item Five				
004FA											
004G								Item Three			
004H											
004I											
004J											
004K											

Map Codes:	FSR	=	Floor Space Ratio map
	LAP	=	Land Application Map
	LZN	=	Land Zoning Map
	WRA	=	Wickham Redevelopment Area Map
	ASS	=	Acid Sulfate Soils Map
	HOB	=	Height of Buildings Map
	LSZ	=	Lot Size Map
	LRA	=	Land Reservation Acquisition Map
	CL1	=	Key Sites Map & Newcastle City Centre Map
	HER	=	Heritage Map
	URA	=	Urban Release Area Map

Item Two – Mapping Anomalies (Shortland)

Item Two seeks to amend the following maps within Newcastle LEP 2012:

- Land Zoning Map
- Height of Buildings Map
- Floor Space Ratio Map
- Lot Size Map

The following maps illustrate the proposed amendments to the Newcastle LEP 2012 maps:

- **Figure 6** Existing Land Zoning Map – 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 7** Proposed Land Zoning Map – 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 8** Existing Height of Buildings Map – 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 9** Proposed Height of Buildings Map– 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 10** Existing FSR Map– 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 11** Proposed FSR Map– 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 12** Existing Lot Size Map– 12 Hansen Place, 310 and 312 Sandgate Road, Shortland
- **Figure 13** Proposed Lot Size Map– 12 Hansen Place, 310 and 312 Sandgate Road, Shortland

Figure 6

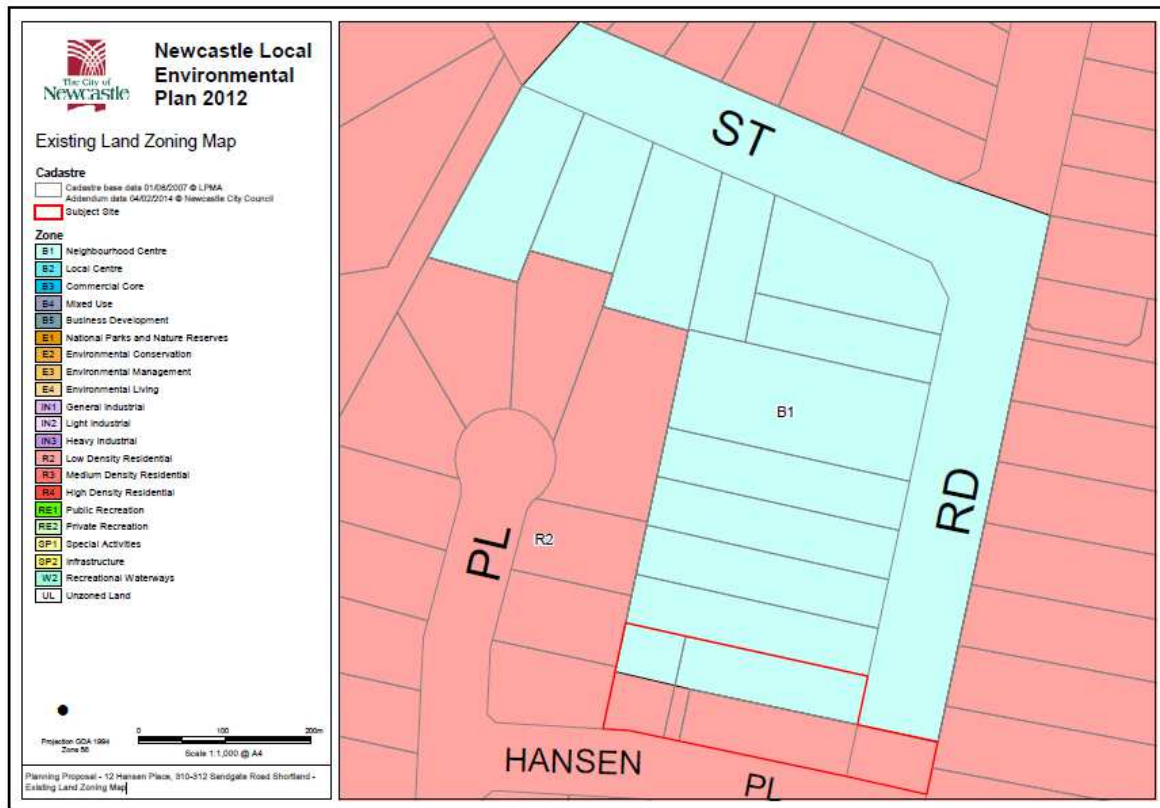


Figure 6

Figure 7

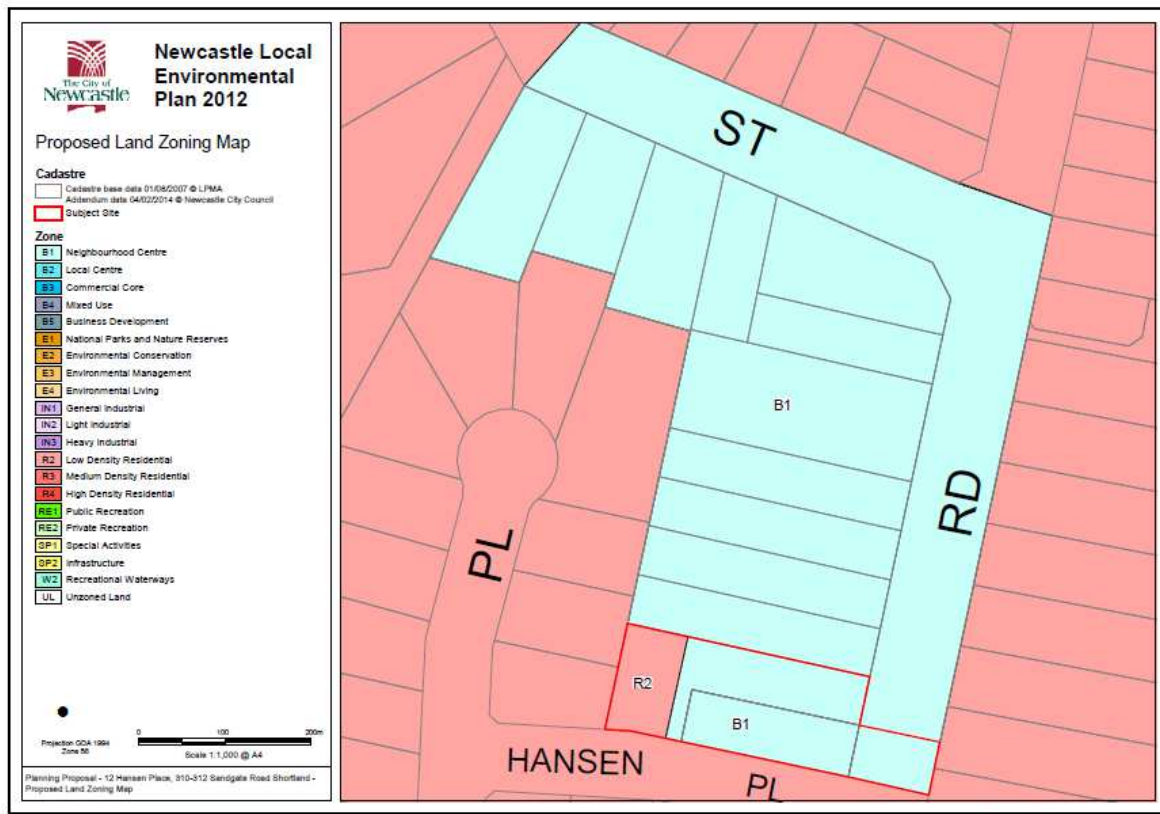


Figure 7

Figure 8

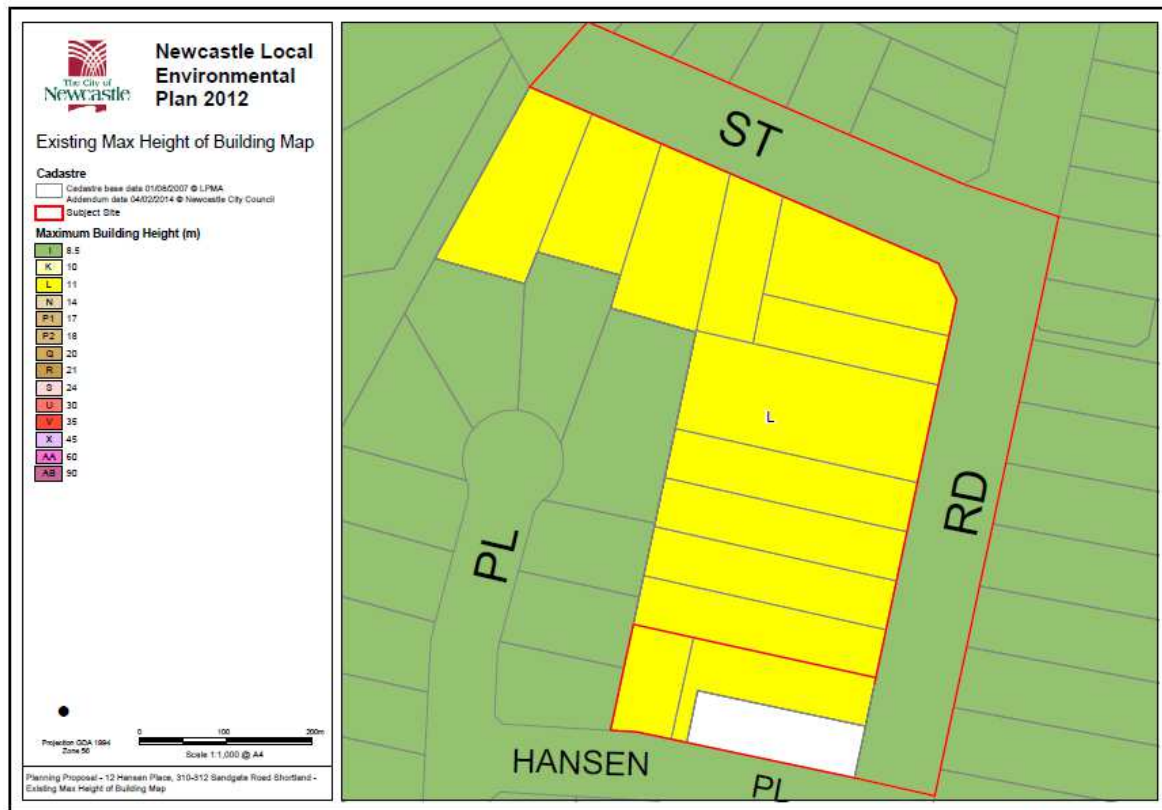


Figure 8

Figure 9

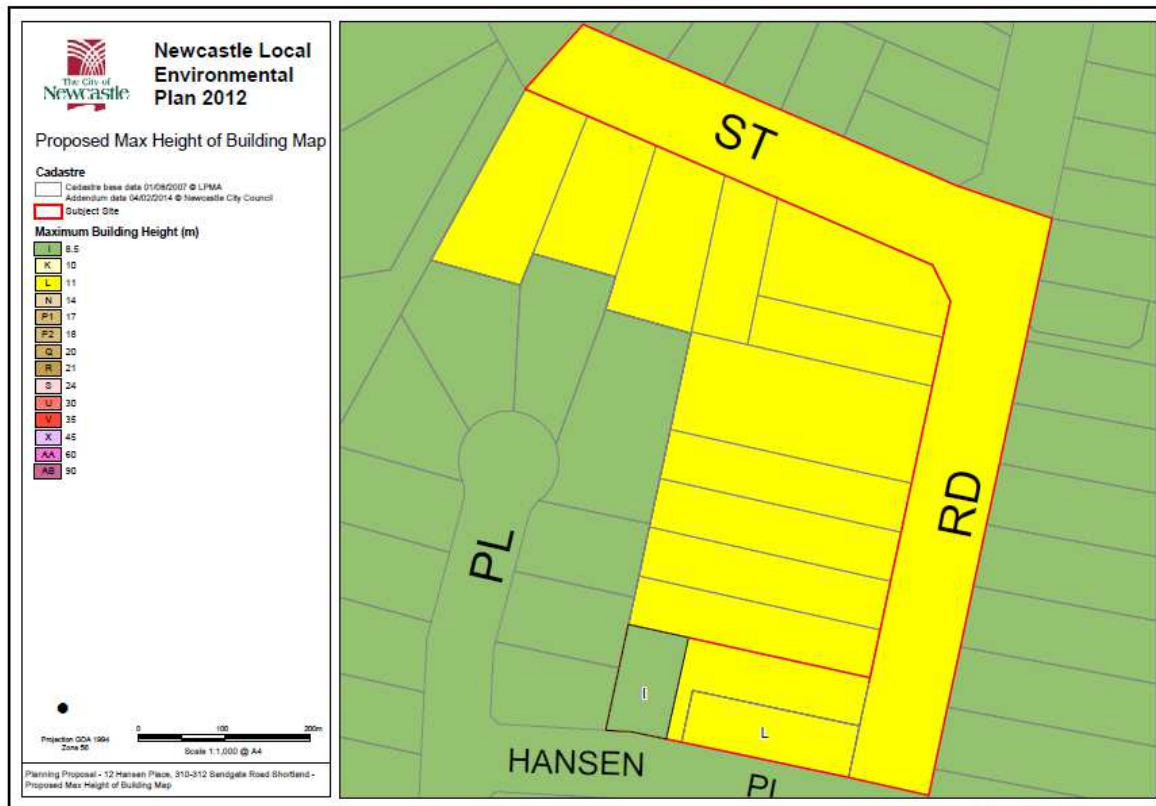


Figure 9

Figure 10

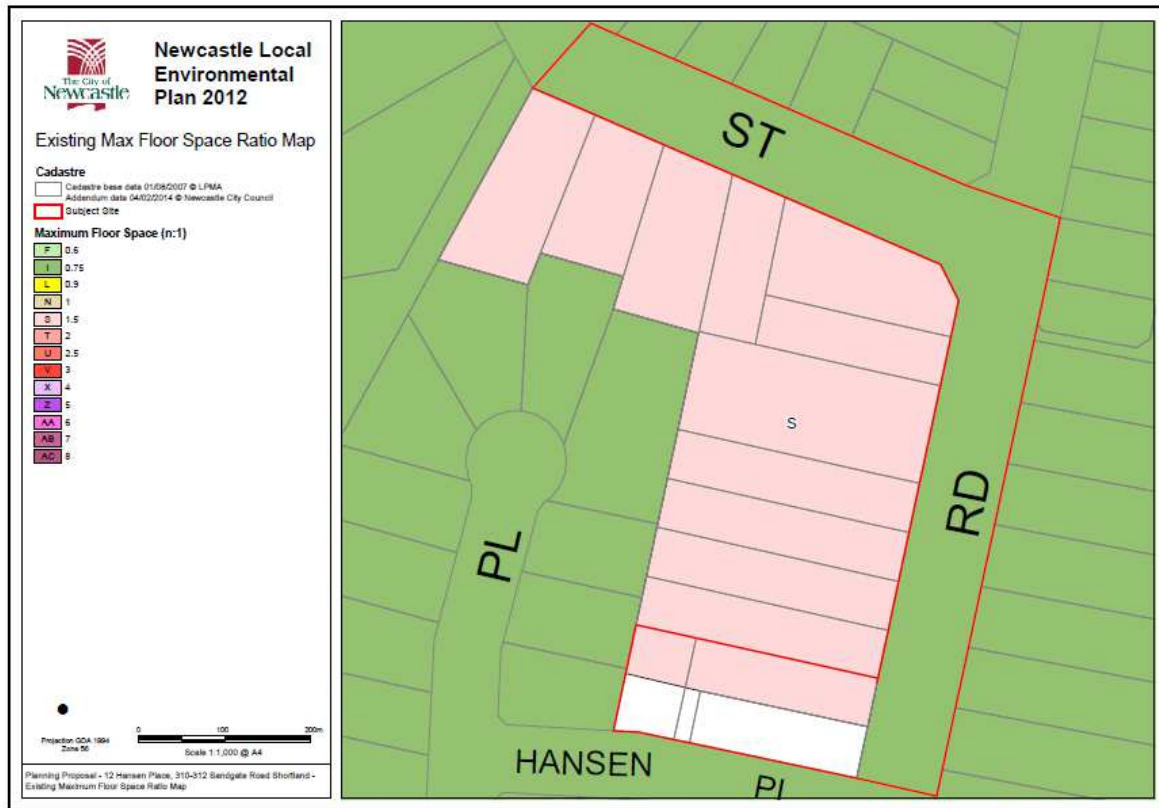


Figure 10

Figure 11

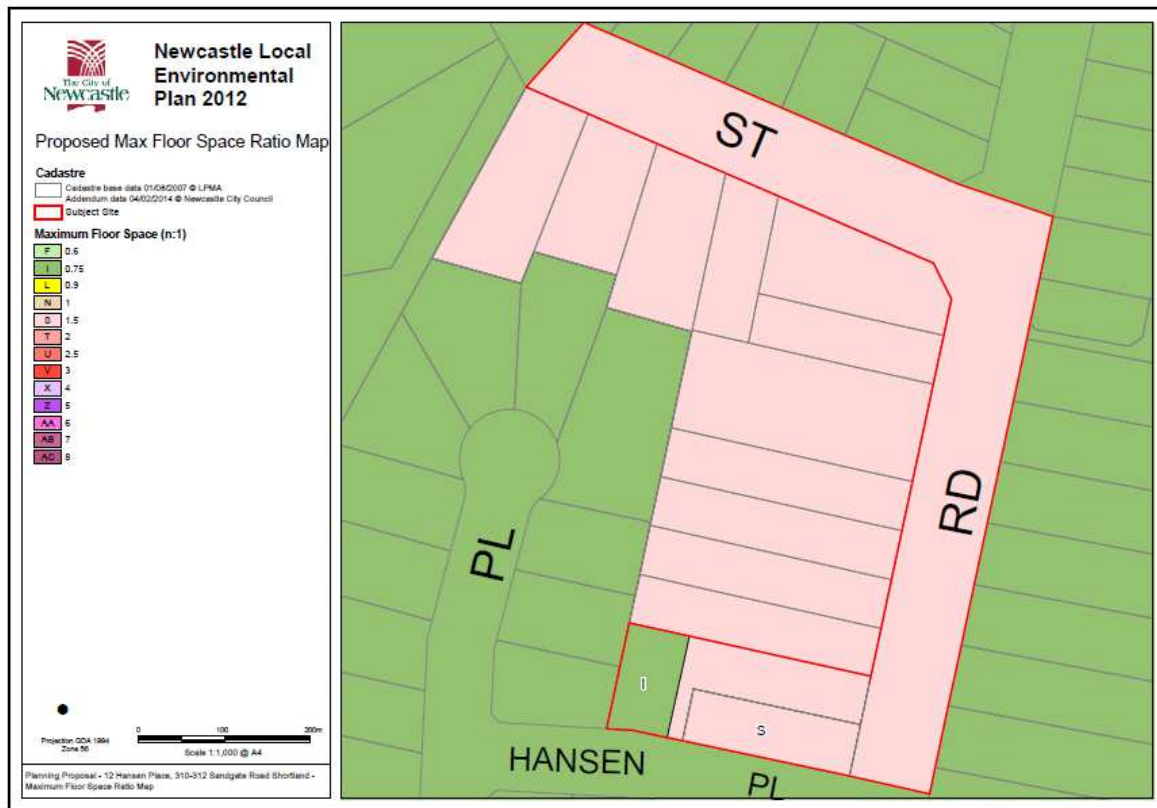


Figure 11

Figure 12

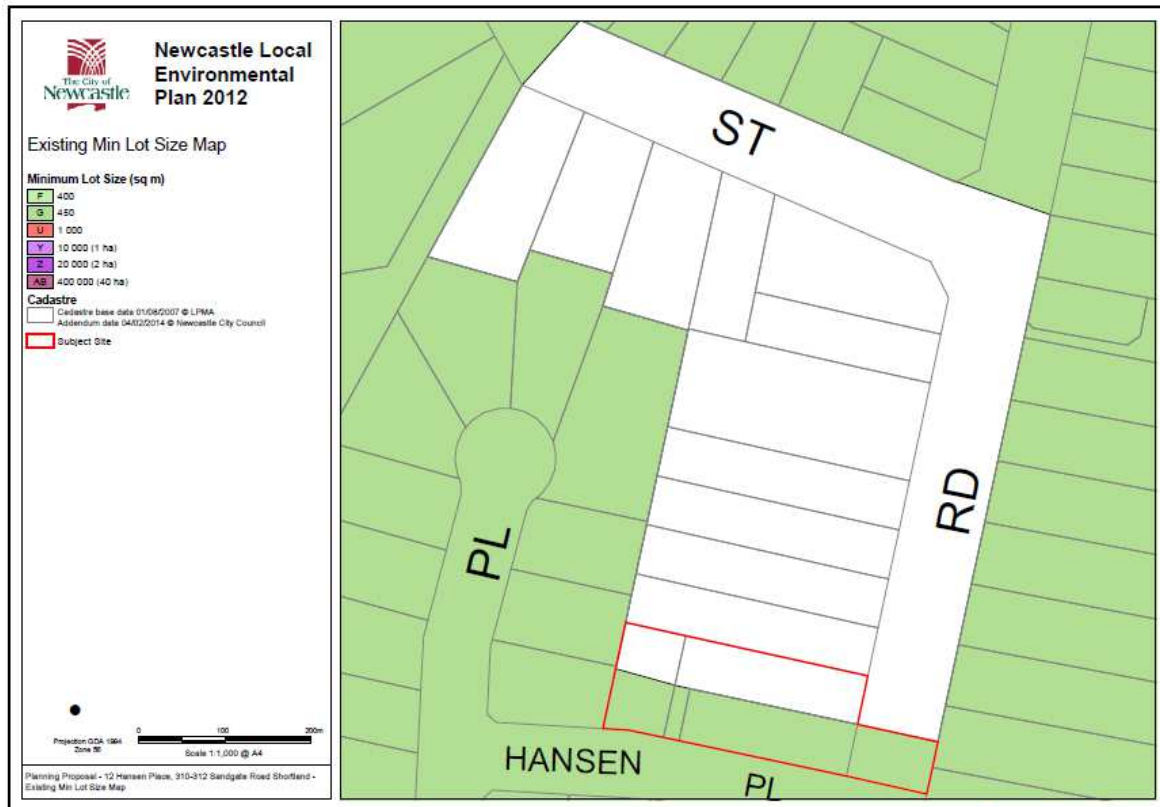


Figure 12

Figure 13

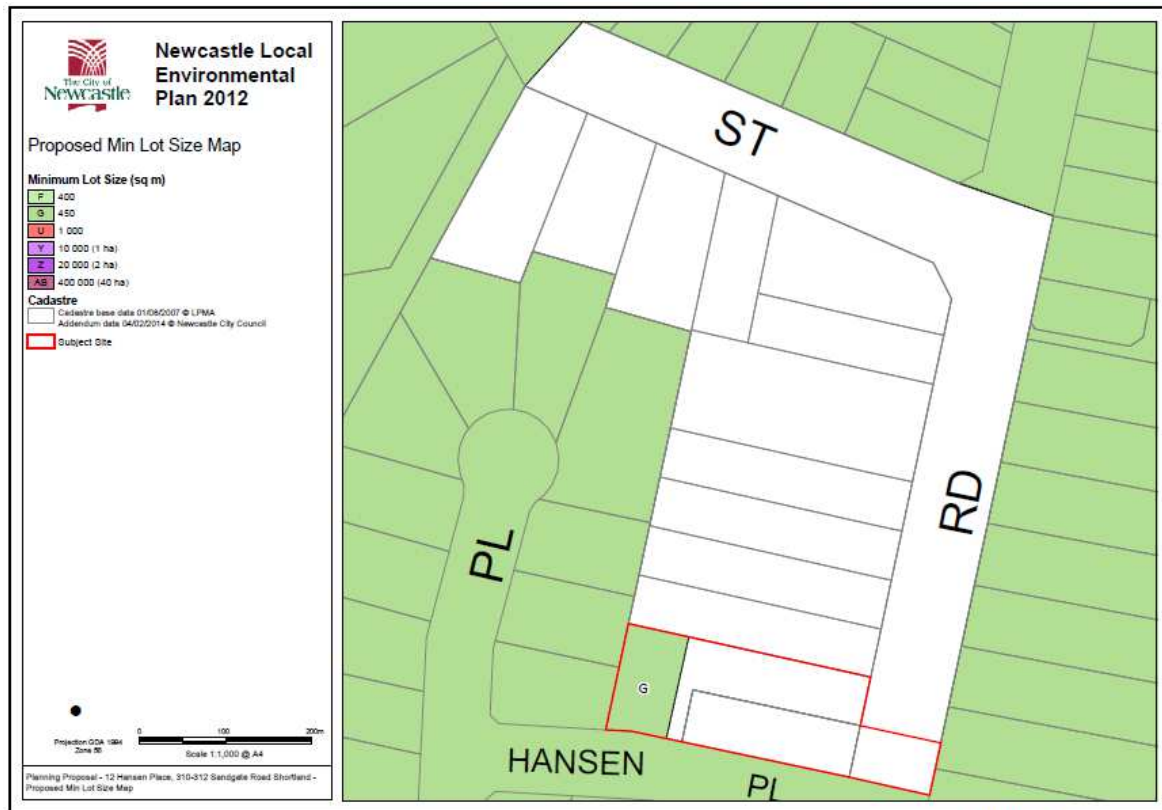


Figure 13

Item Three – Mapping Anomaly (The Junction)

Item Three only seeks to amend the Land Reservation Acquisition Map within Newcastle LEP 2012.

The following maps illustrate the proposed amendments to the Newcastle LEP 2012 maps:

- **Figure 14** Existing Land Reservation Acquisition Map - 332 and 334 Darby Street, The Junction
- **Figure 15** Proposed Land Reservation Acquisition Map - 332 and 334 Darby Street, The Junction

Figure 14

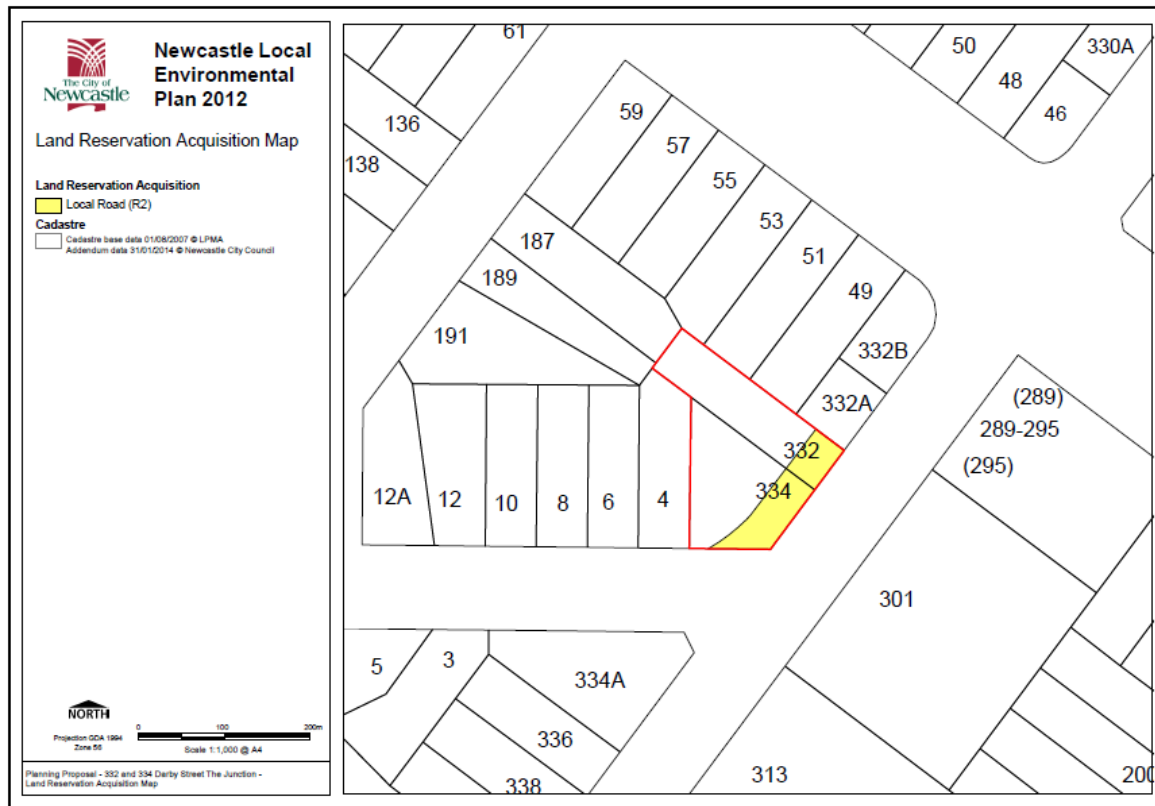


Figure 14

Figure 15

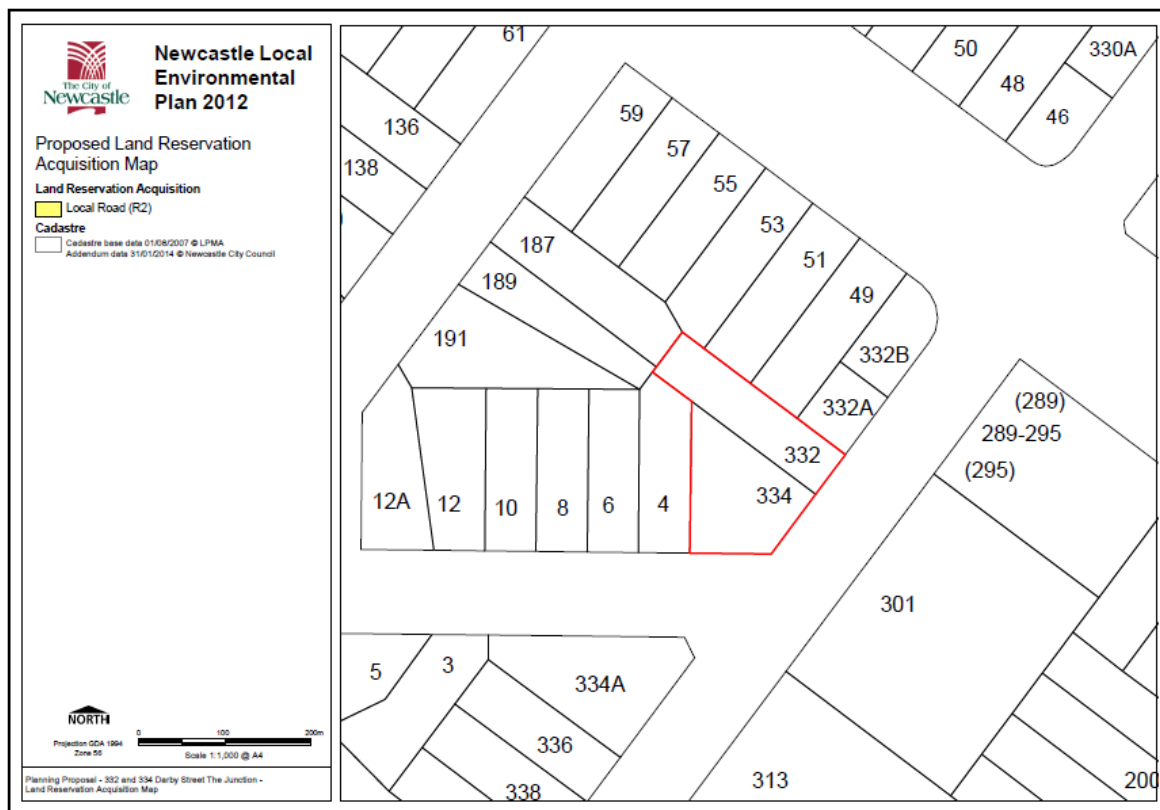


Figure 15

Item Four – Mapping Anomaly (Wallsend)

Item Four seeks to amend the following maps within Newcastle LEP 2012:

- Floor Space Ratio Map
 - Height of Buildings Map
-
- **Figure 16** Existing Height of Buildings Map - 9 & 14 Milgate Street, Wallsend
 - **Figure 17** Proposed Height of Buildings Map - 9 & 14 Milgate Street, Wallsend
 - **Figure 18** Existing Floor Space Ratio Map - 9 & 14 Milgate Street, Wallsend
 - **Figure 19** Proposed Floor Space Ratio Map - 9 & 14 Milgate Street, Wallsend

Figure 16

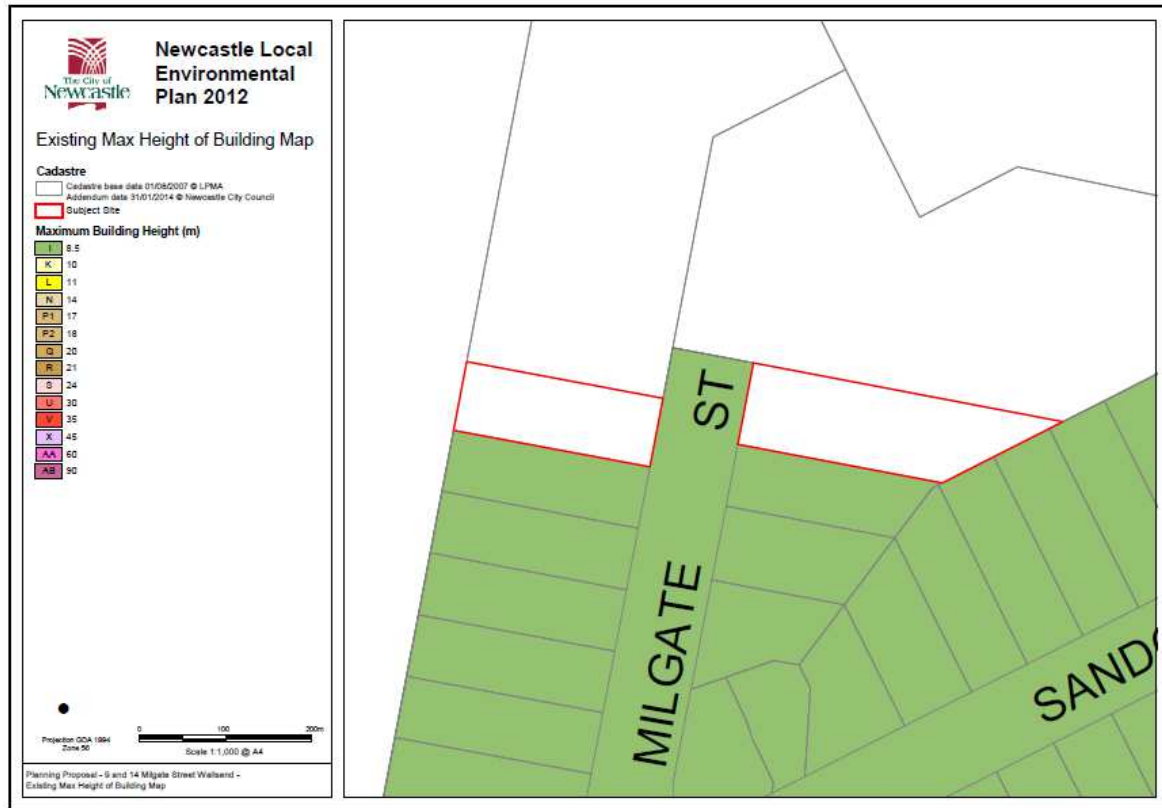


Figure 16

Figure 17

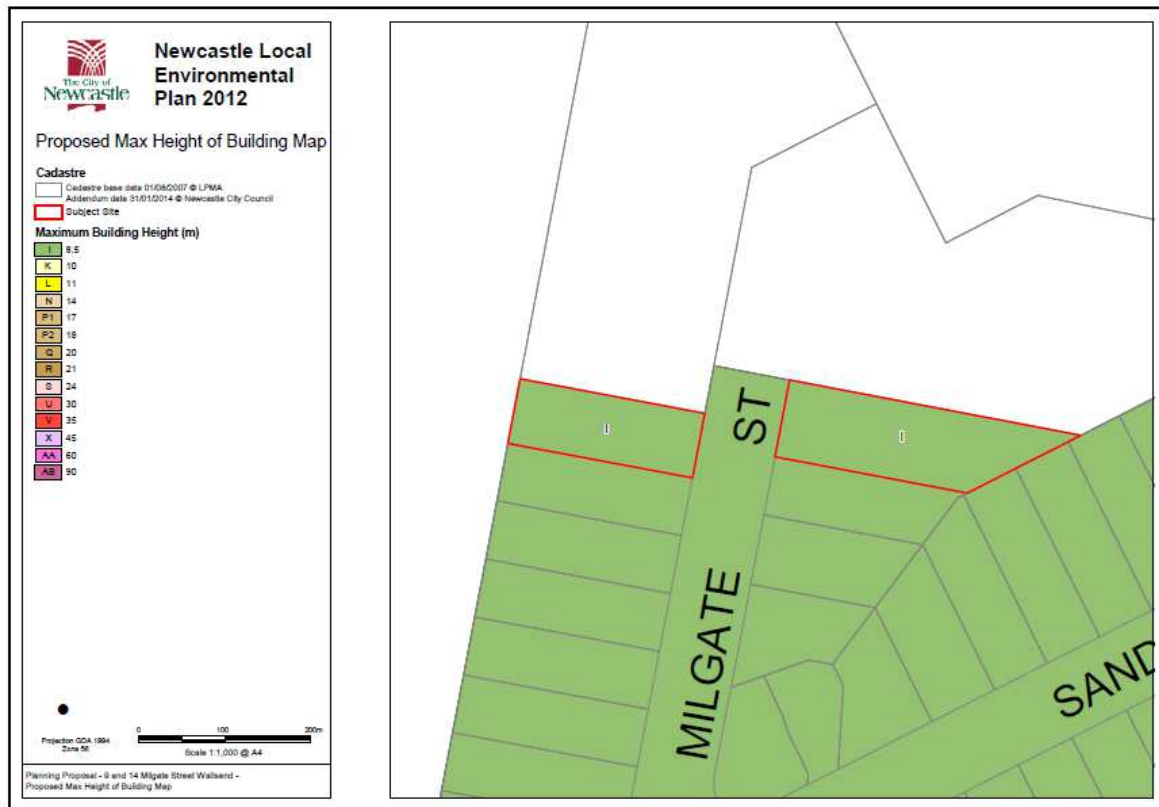


Figure 17

Figure 18

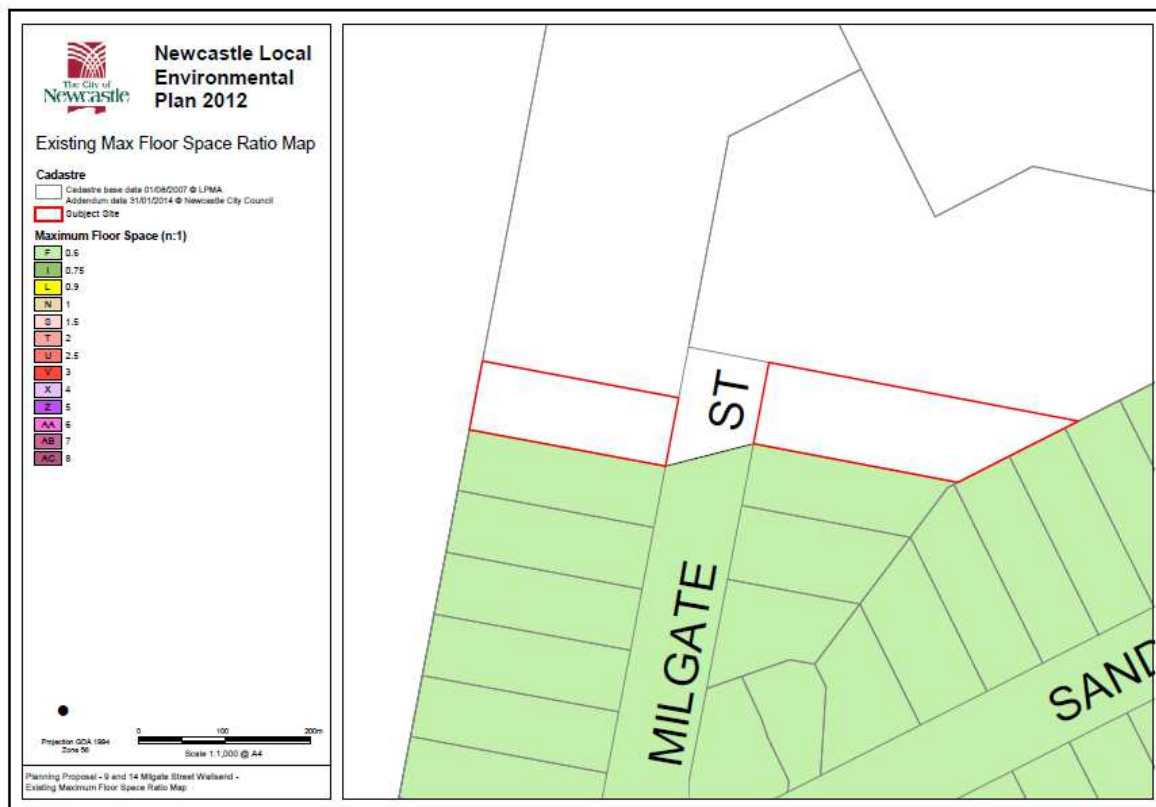


Figure 18

Figure 19

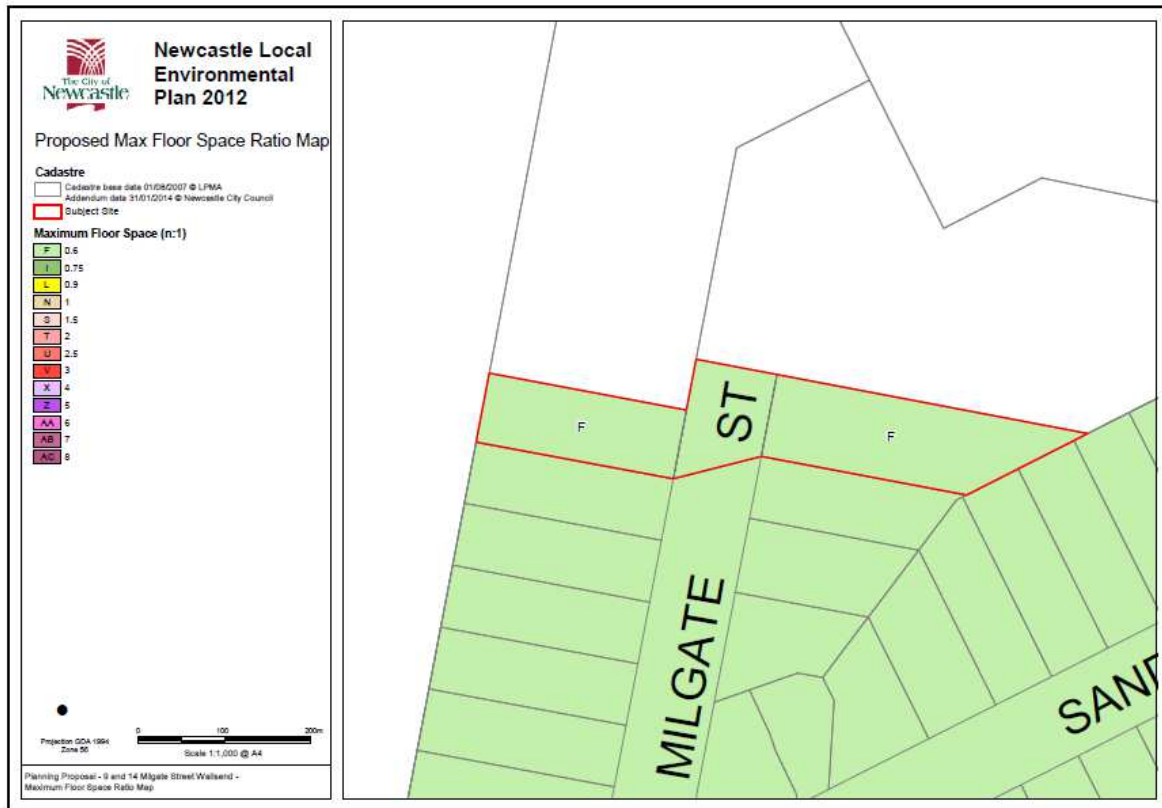


Figure 19

Item Five – Mapping Anomaly (Tighes Hill)

Item Five seeks to amend the following maps within Newcastle LEP 2012:

- Land Zoning Map
- Floor Space Ratio Map
- Lot Size Map

The following maps illustrate the proposed amendments to the Newcastle LEP 2012 maps:

- **Figure 20** Existing Land Zoning Map – 1 Henry Street, Tighes Hill
- **Figure 21** Proposed Land Zoning Map – 1 Henry Street, Tighes Hill
- **Figure 22** Existing Floor Space Ratio Map – 1 Henry Street, Tighes Hill
- **Figure 23** Proposed Floor Space Ratio Map – 1 Henry Street, Tighes Hill
- **Figure 24** Existing Lot Size Map – 1 Henry Street, Tighes Hill
- **Figure 25** Proposed Lot Size Map – 1 Henry Street, Tighes Hill

Figure 20

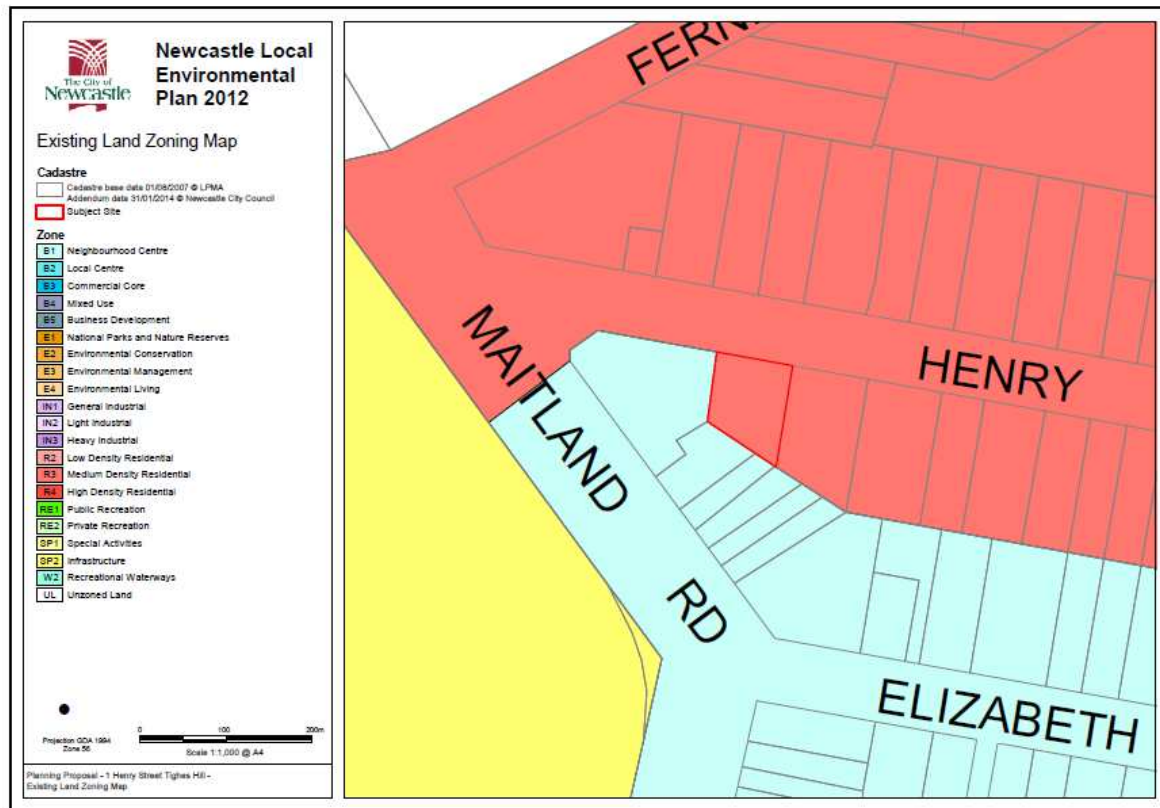


Figure 20

Figure 21

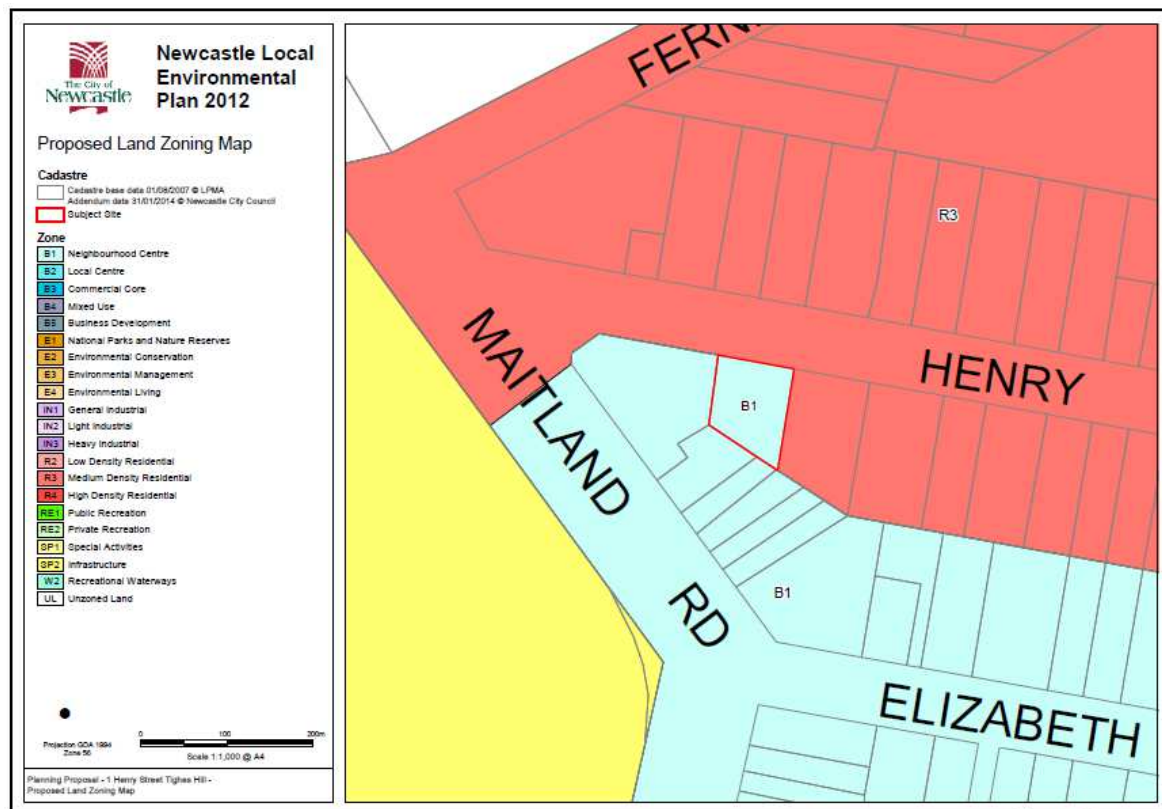


Figure 21

Figure 22

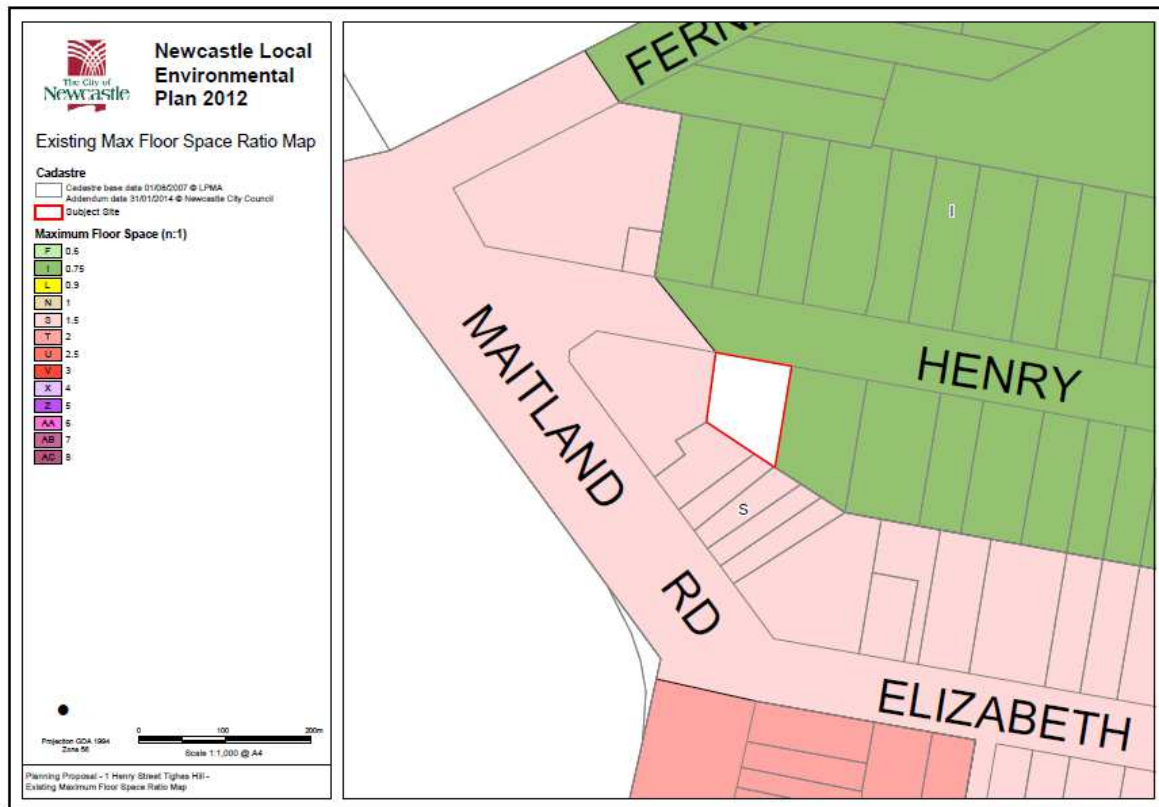


Figure 22

Figure 23

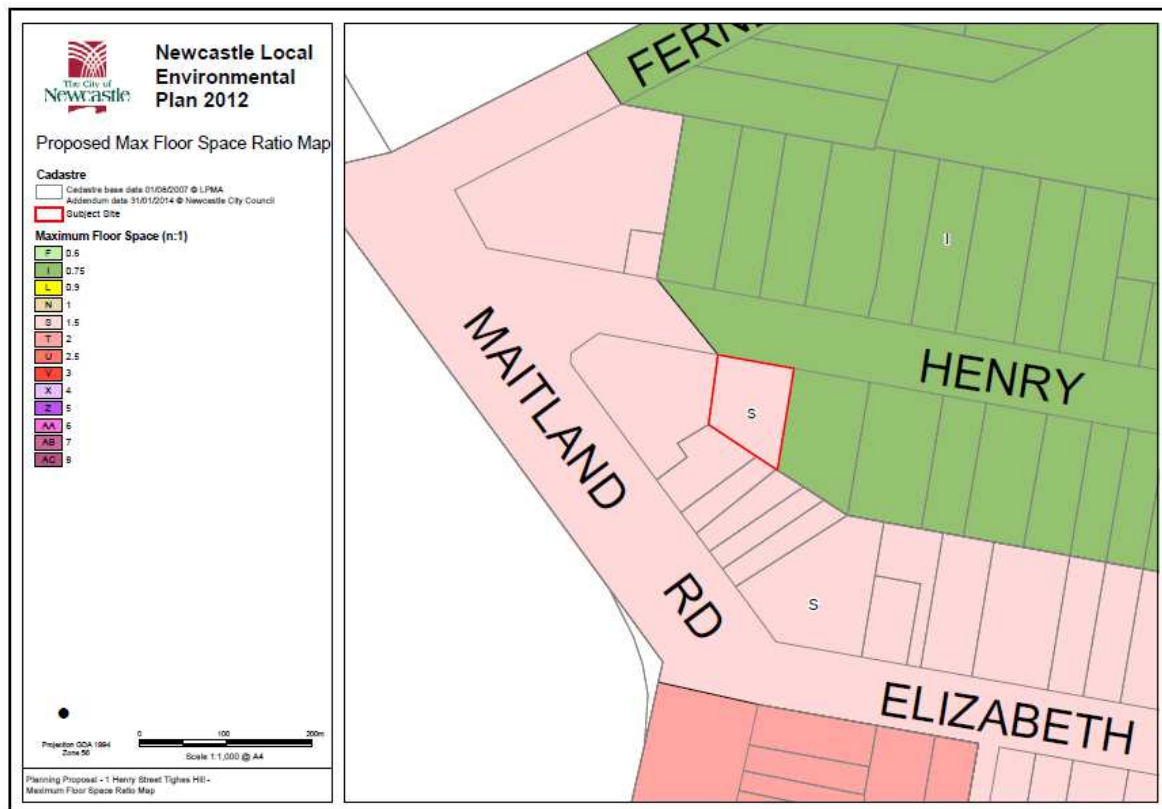


Figure 23

Figure 24

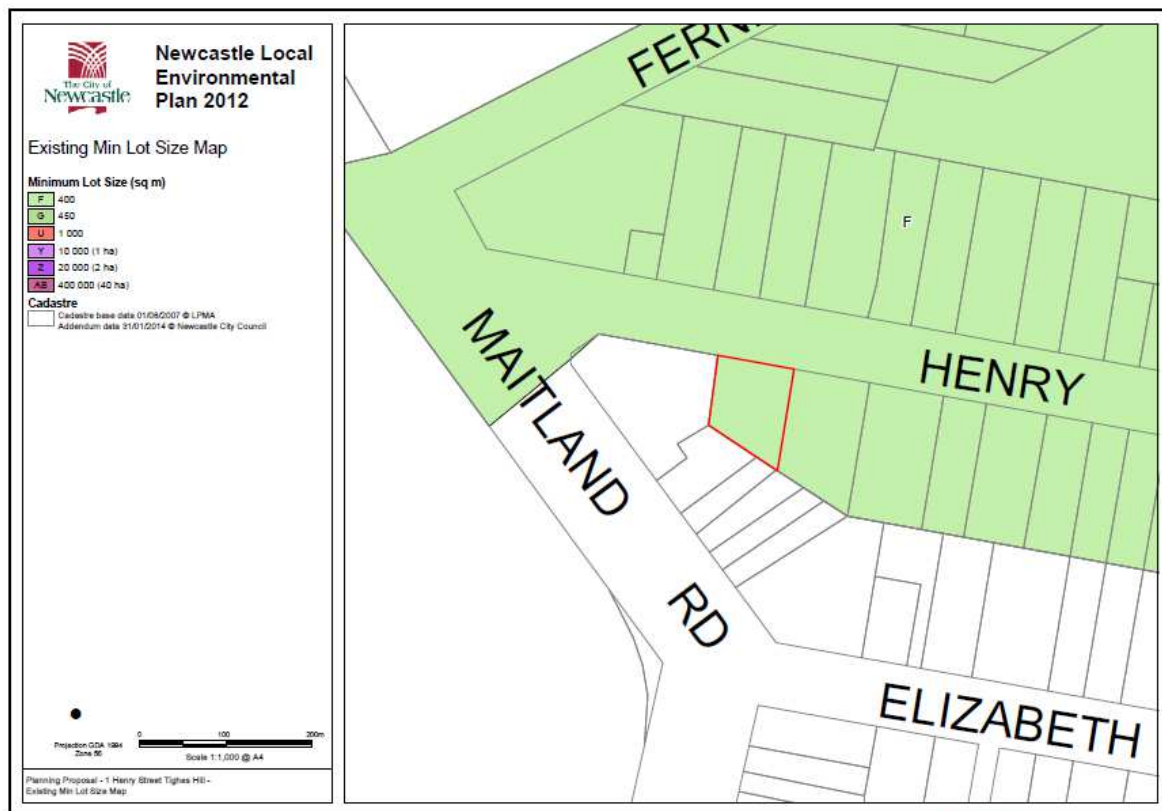


Figure 24

Figure 25

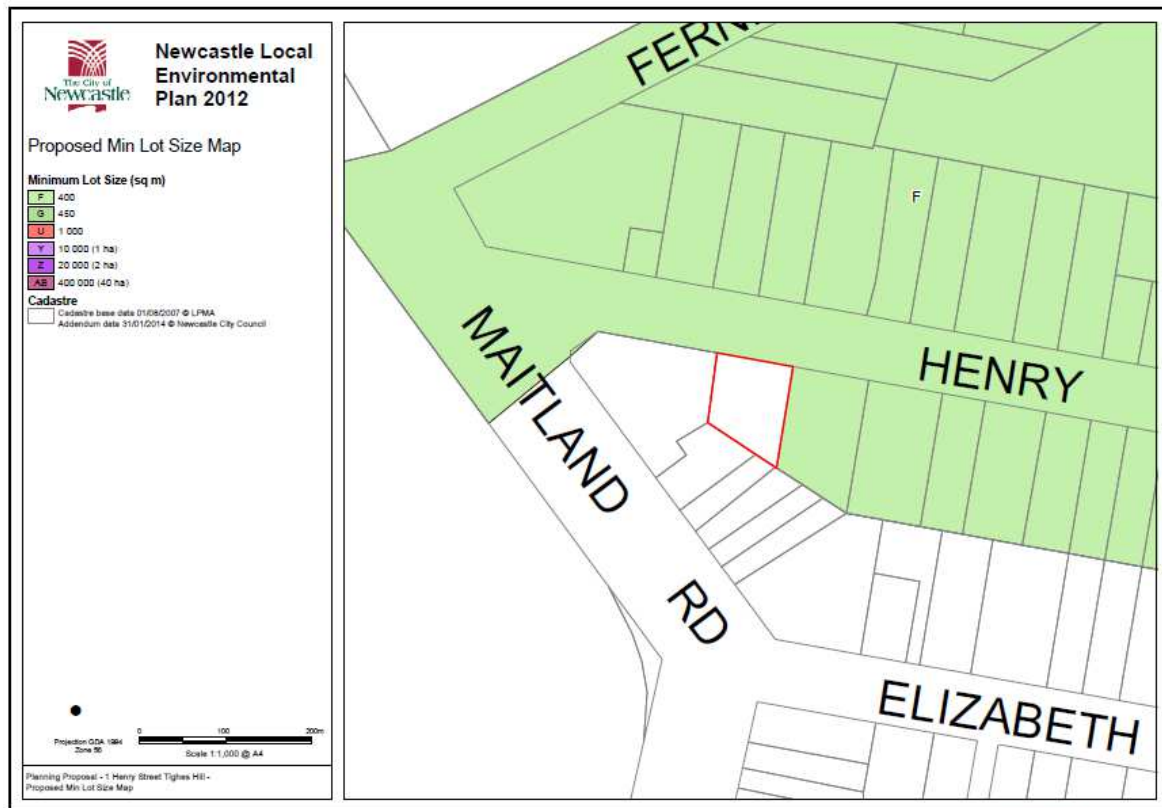


Figure 25

Item Six – Mapping Anomaly (Newcastle)

Item Six seeks to amend the following maps within Newcastle LEP 2012:

- Land Zoning Map
- Floor Space Ratio Map
- Height of Buildings Map
- Lot Size Map

The following maps illustrate the proposed amendments to the Newcastle LEP 2012 maps:

- **Figure 26** Existing Land Zoning Map – King, Darby & Laman Streets, Newcastle
- **Figure 27** Proposed Land Zoning Map – King, Darby & Laman Streets, Newcastle
- **Figure 28** Existing Height of Buildings Map – King, Darby & Laman Streets, Newcastle
- **Figure 29** Proposed Height of Buildings Map – King, Darby & Laman Streets, Newcastle
- **Figure 30** Existing FSR Map – King, Darby & Laman Streets, Newcastle
- **Figure 31** Proposed FSR Map – King, Darby & Laman Streets, Newcastle
- **Figure 32** Existing Lot Size Map – King, Darby & Laman Streets, Newcastle
- **Figure 33** Proposed Lot Size Map – King, Darby & Laman Streets, Newcastle

Figure 26

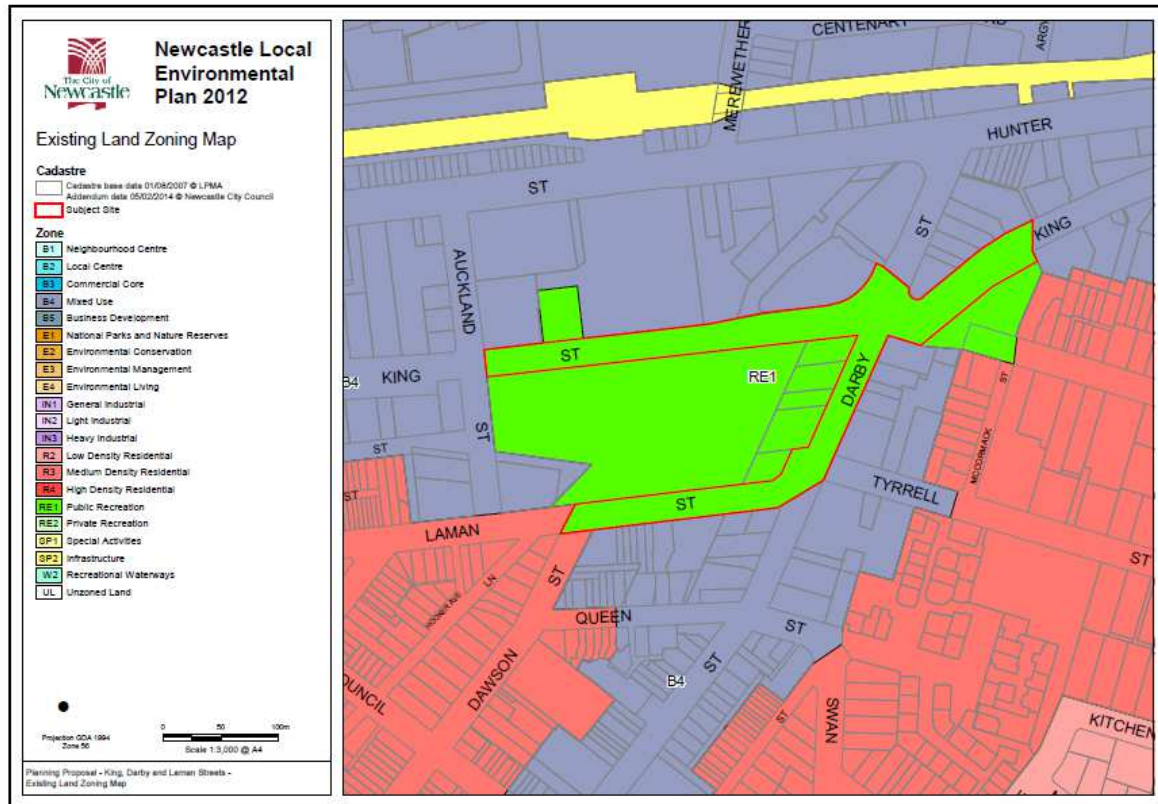


Figure 26

Figure 27

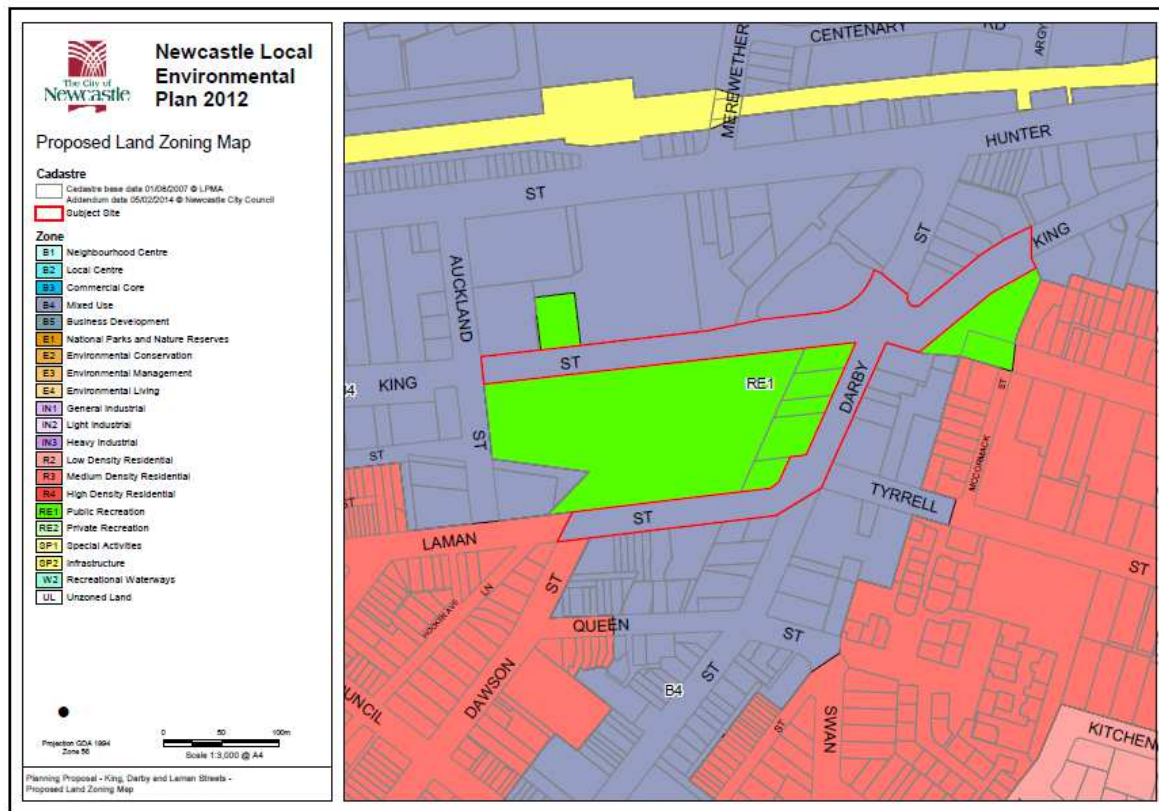


Figure 27

Figure 28

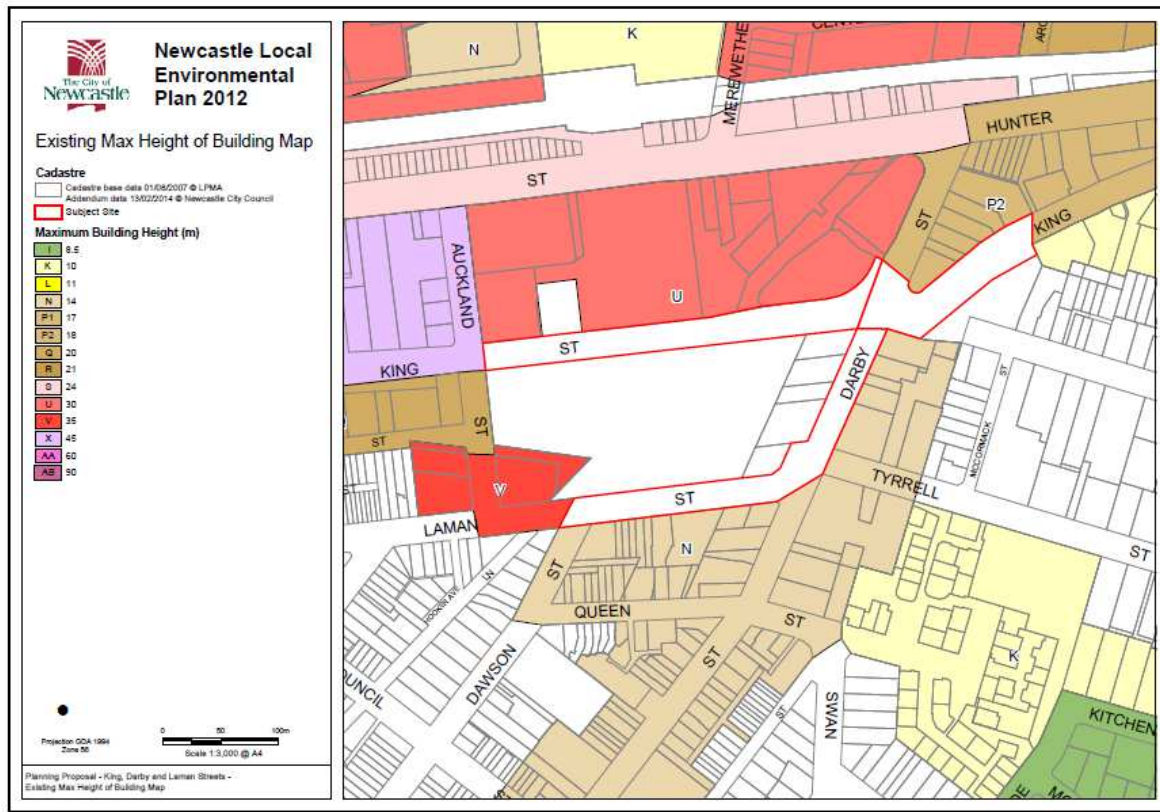


Figure 28

Figure 29

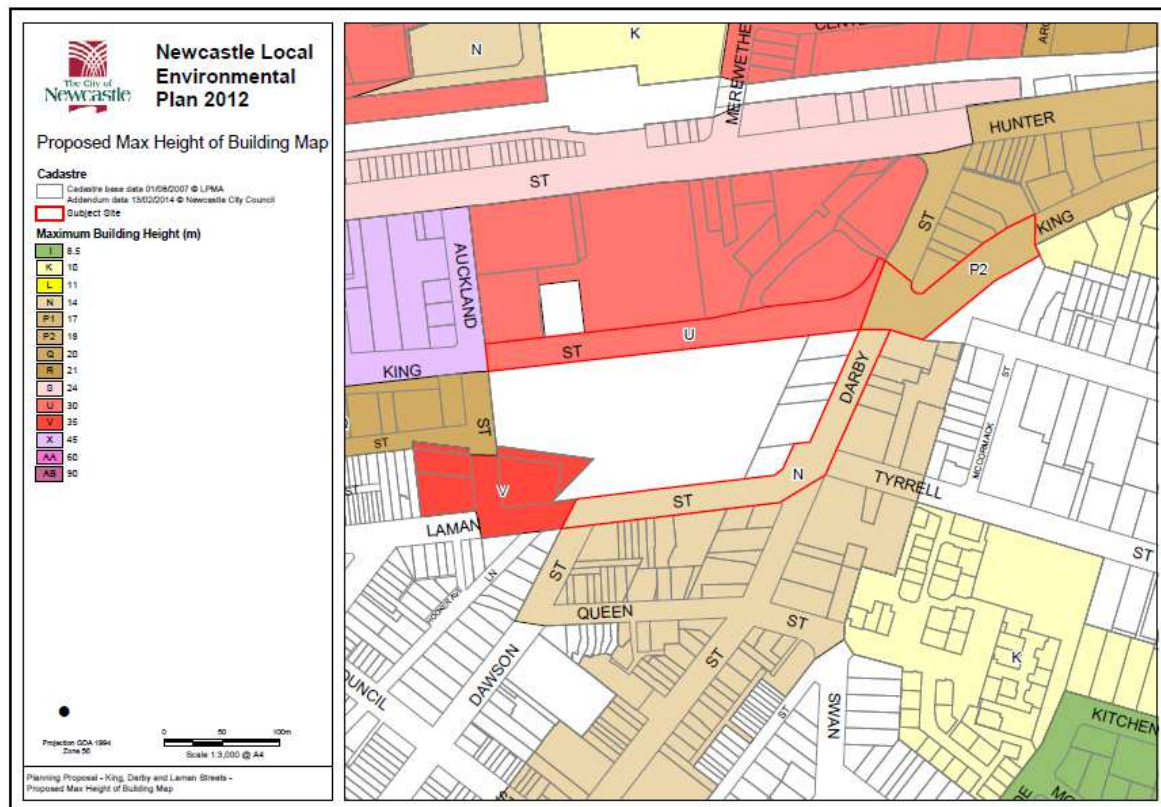


Figure 29

Figure 30

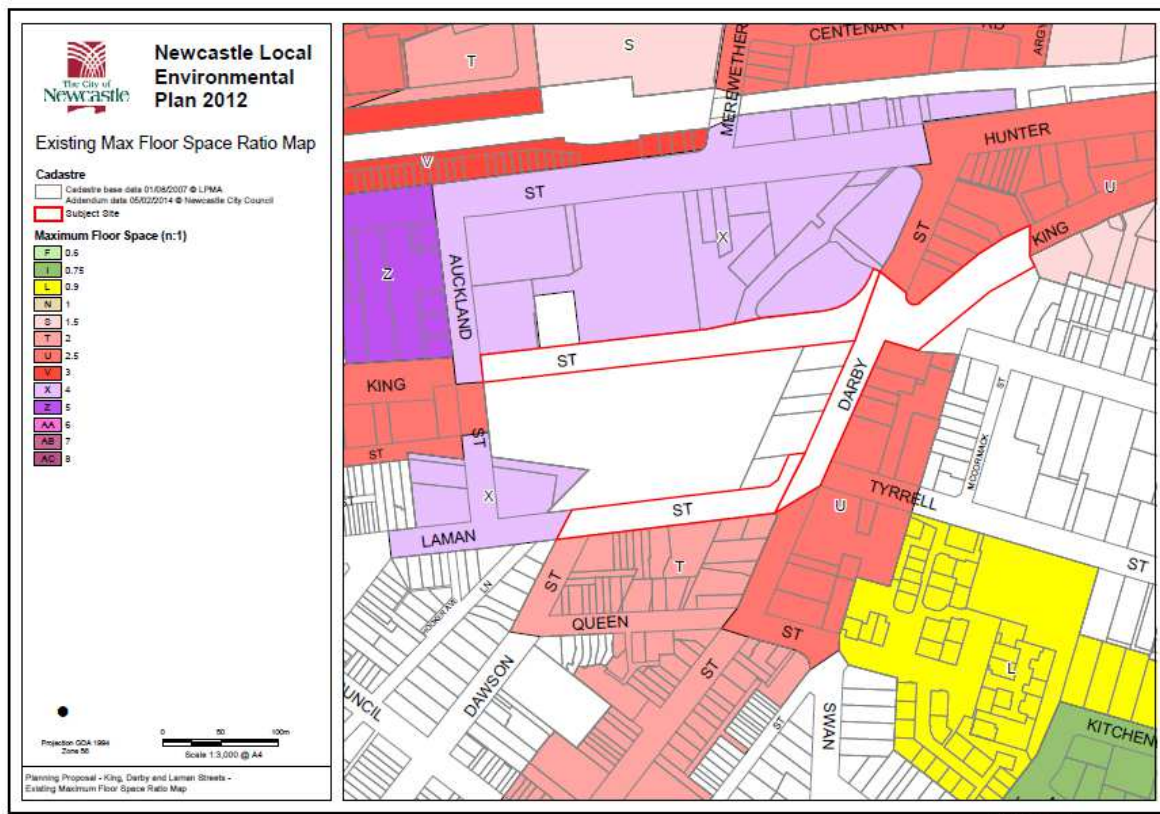


Figure 30

Figure 31

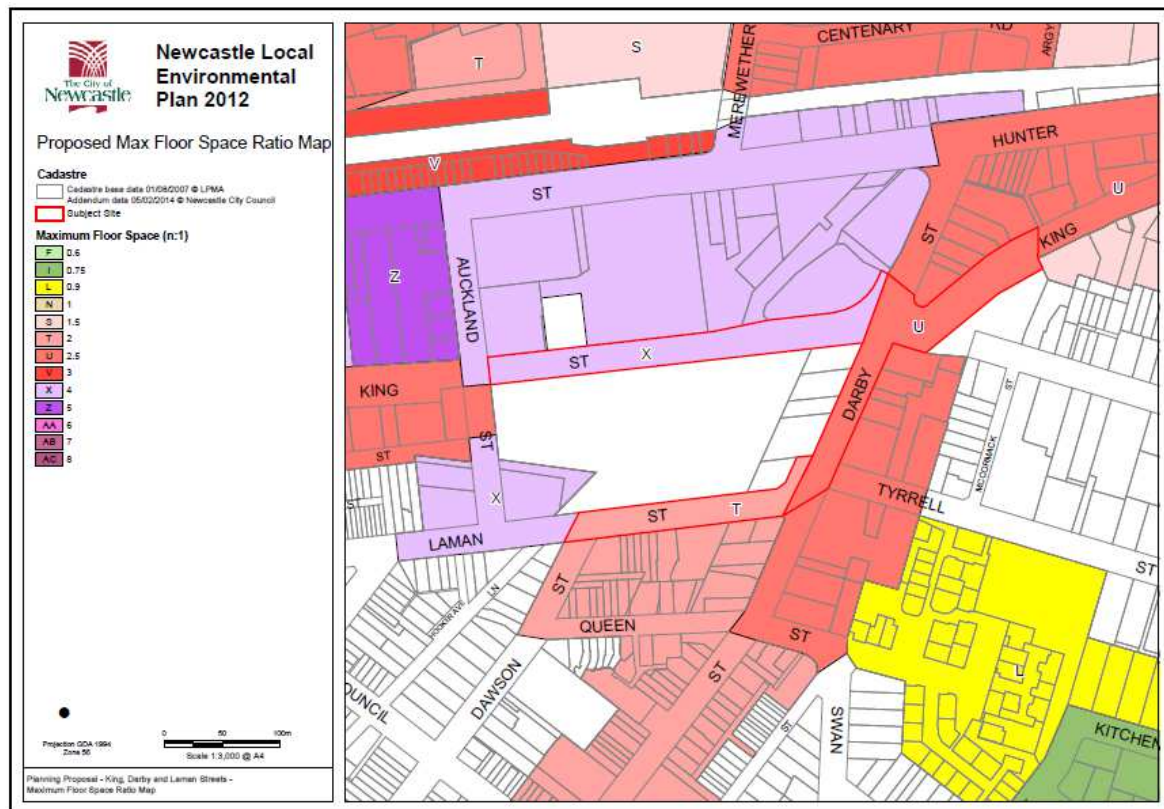


Figure 31

Figure 32

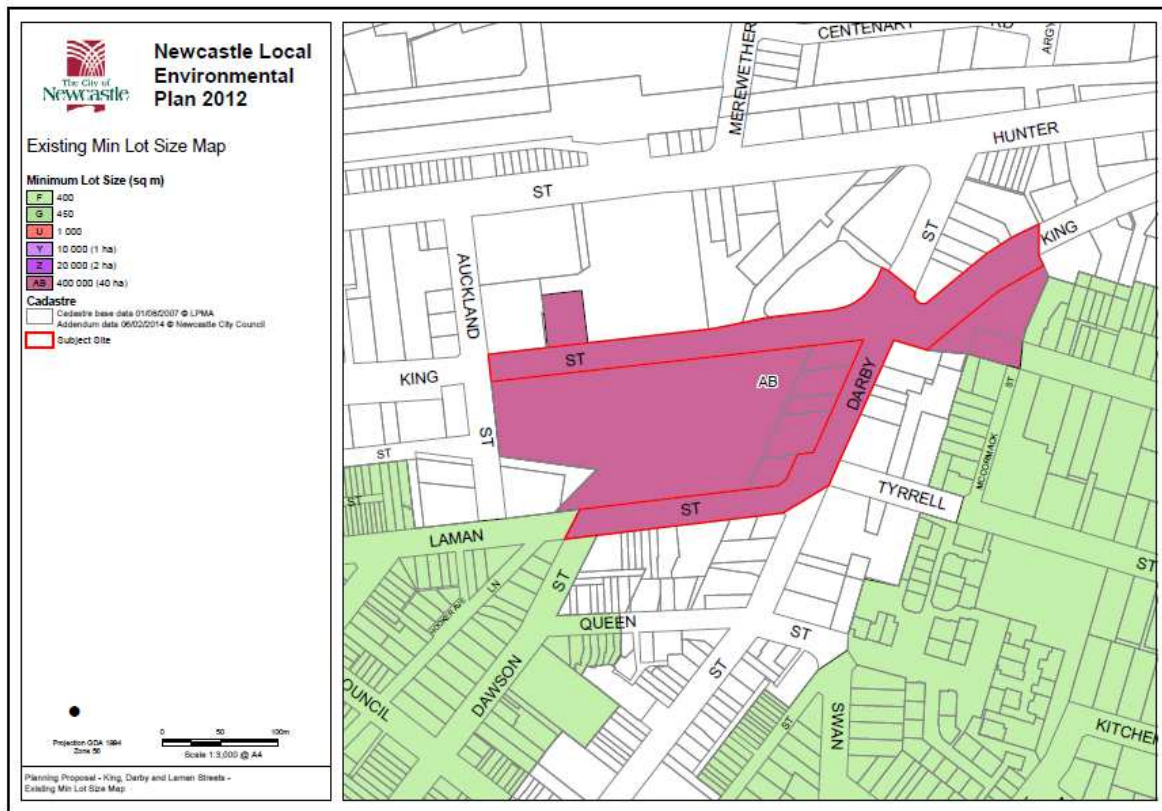


Figure 32

Figure 33

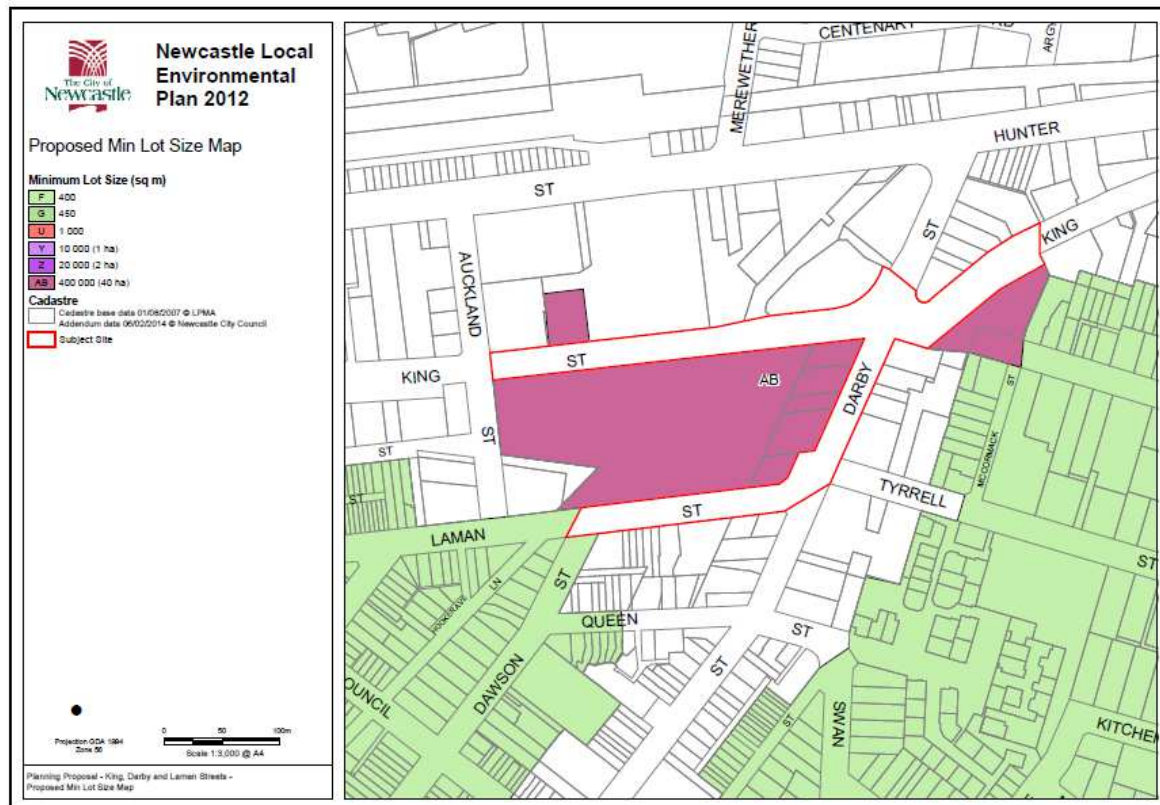


Figure 33

Part 5 – Community Consultation

The planning proposal is a low impact in accordance with the Department of Planning's guidelines, 'A guide to preparing local environmental plans'. The planning proposal was initially publicly exhibited for 14 days between 13 and 27 October 2014. No submissions were received.

In October 2015, after Council requested to modify clause 6.8, the Department of Planning issued an amended Gateway Determination, requiring Council to re-exhibit the Planning Proposal for a further 14 days.

Part 6 – Project Timeline

The project is expected to be completed within four months from the Gateway Determination Alteration which was issued in October 2015. The following schedule is proposed:

Task	Dates
Issue of Gateway Determination Alteration	20/10/2015
Prepare any outstanding studies	N/A
Consult with Office of Environment and Heritage	26/10/2015 to 16/11/2015
Exhibition of planning proposal and technical studies	16/11/2015 to 30/11/2015
Review of submissions and preparation of report to Council	February 2016
Report to Council following exhibition (if required)	N/A
Planning Proposal sent back to Department requesting that the draft LEP be prepared	March 2016

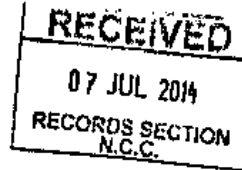
APPENDIX 1 - GATEWAY DETERMINATION - June 2014



Planning & Environment

Mr Ken Gouldthorp
General Manager
Newcastle City Council
PO Box 489
NEWCASTLE NSW 2300

Your ref: CCL 29/04/14
Our ref: PP_2014_NEWCA_006_00 (14/08482)



Att: Johannes Honnet

Dear Mr Gouldthorp,

Planning Proposal to amend Newcastle Local Environmental Plan 2012

I am writing in response to Council's request for a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to address a number of housekeeping matters. These matters include various localised zoning and development intensity control changes, an additional heritage listing and the exemption from development approval for banners and minor civil works undertaken for or by Council in certain circumstances.

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed that the planning proposal's inconsistency with S117 Direction 1.1 Business and Industrial Zones and 4.3 Flood Prone Land is of minor significance. No further approval is required in relation to these Directions. Council may still need to obtain the agreement of the Director General to comply with the requirements of relevant S117 Directions. Council should ensure this occurs prior to the plan being made.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has **not accepted** delegation for this planning proposal.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any questions regarding this matter, I have arranged for Ken Phelan from the Department's Newcastle office to assist you. Mr Phelan can be contacted on (02) 49042705.

Yours sincerely,

27 June 2014
David Rowland
General Manager
Hunter and Central Coast Region

Hunter and Central Coast Region - Hunter Office - Level 2 26 Honeysuckle Drive (PO Box 1226) Newcastle NSW 2300
Phone 02 4904 2700 Fax 02 4904 2701 Website planning.nsw.gov.au



Gateway Determination

Planning Proposal (Department Ref: PP_2014_NEWCA_006_00) Newcastle Local Environmental Plan 2012 (Amendment Number 6) Administrative Amendment

I, the General Manager, Hunter and Central Coast Region at Planning and Environment as delegate of the Secretary for Planning and Environment, have determined under section 56(2) of the EP&A Act that an amendment to the Newcastle Local Environmental Plan (LEP) 2012 to address a number of housekeeping matters, including various localised zoning and development intensity control changes, an additional heritage listing and the exemption from development approval for certain banners and minor civil works undertaken for or by Council.:

- 1) Council is to amend the proposal before exhibition to use the following local exemption clause for council works;
Council infrastructure development
 - (1) Development may be carried out by or on behalf of the Council without development consent on any land, other than land in a heritage conservation area, land containing a heritage item or land that is an environmentally sensitive area for exempt and complying development.
 - (2) Subclause (1) does not apply to the following development:
 - (a) the erection of a class 1–9 building under the *Building Code of Australia*,
 - (b) development that is not exempt development under *State Environmental Planning Policy (Infrastructure) 2007* and has a capital value of more than \$5,000,000.
- 2) The Secretary's Delegate accepts as minor the inconsistency of the proposal with S117 Direction 1.1 Business and Industrial Zones in respect of rezoning from commercial to residential at 12 Hansen Place, Shortland and at 1 Henry St Tighes Hill
- 3) Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013) and must be made publicly available for a minimum period of 14 days; and
 - (b) the relevant planning 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 section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).
- 3) Council exhibit alongside the Planning Proposal the Heritage Study and associated Conservation Management Plan in support of the proposed new heritage listing of 99 King Street ('Former Mulimbah House Site') as an archaeological site.
- 4) Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Mine Subsidence Board

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. Once the consultation is undertaken with the public authorities, and information is provided, Council is to update its consideration of S117 Directions.

6) A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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) The timeframe for completing the LEP is to be 9 months.

Dated 27th day of June 2014.



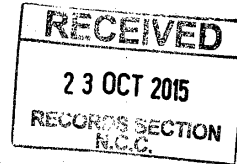
David Rowland
General Manager
Hunter and Central Coast Region
Growth Planning
Department of Planning and Environment

Delegate of the Minister for Planning

APPENDIX 2 - GATEWAY DETERMINATION ALTERATION - October 2015



**Planning &
Environment**



Ken Gouldthorp
General Manager
Newcastle City Council
PO Box 489
NEWCASTLE NSW 2300

Our ref: 14/08482

Attention: Patricia McCarthy

Dear Mr Gouldthorp

Planning Proposal PP_2014_NEWCA_006_00 – Alteration of Gateway Determination

I refer to your letter and subsequent email advice in relation to a revision of the Gateway determination and extension of time to complete Planning Proposal PP2014_NEWCA_006_00, for various localised zoning, development intensity and heritage listing matters and the inclusion of an additional local provision for exempt development.

I have determined as the delegate of the Minister, in accordance with section 56(7) of the Environmental Planning and Assessment Act, 1979, to alter the Gateway determination dated 27 June 2014 for PP2014_NEWCA_006_00 (as altered). The Alteration of the Gateway Determination is enclosed.

The Gateway Determination has been altered to enable the replacement of the infrastructure development clause as required by condition 1 of the Gateway, by a new draft clause. The Gateway Determination has also been altered to extend the time to complete the proposal. The Proposal is now due for completion on 3 February 2016.

If you have any questions in relation to this matter, I have arranged for Mr Brian Murphy to assist you. Mr Murphy can be contacted on 02 49042712.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Rowland'.

22 October 2015

David Rowland
General Manager, Hunter and Central Coast
Planning Services

Encl:
Alteration to Gateway Determination

Hunter and Central Coast Region - Hunter Office - Level 2 26 Honeysuckle Drive (PO Box 1226) Newcastle NSW 2300
Phone 02 4904 2700 Fax 02 4904 2701 Website planning.nsw.gov.au



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2014_NEWCA_006_00)

I, General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") to alter the Gateway determination dated 27 June 2014 (as since altered) for the proposed amendment to the Newcastle Local Environmental Plan 2012 as follows:

1. Delete:

"condition 7"

and replace with:

a new condition 7 "The timeframe for completing the LEP is by 3 February 2016"

2. Delete:

"condition 1 "

and replace with:

new condition 1) Council is to amend the proposal before re-exhibition to use the following local exemption clause for council works

6.8 Council infrastructure development

1) The objectives of this clause are as follows:

- a) to permit the Council to carry out commonly undertaken civic works and facilities without development consent,
- b) to permit the Council to carry out all other development that is in the public interest with development consent.

2) Despite any other provision of this Plan, the following development may be carried out by or on behalf of the Council with development consent:

- a) development having a capital value of more than \$5,000,000,
- b) development that is the erection of a building of any class under the *Building Code of Australia*, other than a class 10 building,
- c) development for the purposes of ovals, tennis courts, grandstands, dressing sheds or the like,
- d) development for the purposes of a car park with more than 30 car parking spaces,
- e) development for the purposes of a caravan park,
- f) development for the purposes of a depot,
- g) development on land that comprises, or on which there is, a heritage item,
- h) development on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under that Act,

- i) development on land that is an environmentally sensitive area for exempt and complying development.
- 3) Development that is commonly undertaken civic works and facilities may be carried out by or on behalf of the Council without development consent on any land.
- 4) In this clause:
civic works and facilities includes those land uses and activities carried out by the Council for the benefit of the community, such as amenity facilities and environmental management works.

Note. Most development carried out by or on behalf of a Council is dealt with by *State Environmental Planning Policy (Infrastructure) 2007*.

3. Insert:

new condition 8

Further community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the revised planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013) and must be made publicly available for a minimum period of 14 days; and
- (b) the relevant planning 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 section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).

4. Insert

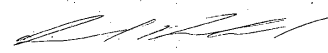
new condition 9

Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. Once consultation is undertaken with public authorities, and information is provided Council is to update its consideration of s117 Directions.

Dated 22nd day of October 2015.


David Rowland
General Manager,
Hunter and Central Coast
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

APPENDIX 3 - AGENCY COMMENTS

Mine Subsidence Board

In reply please send to: **Newcastle District Office**

Our reference: **FN11-29448N1**

Your reference:

Contact: **Ian Bullen (02) 4908 4353**

**NEWCASTLE CITY COUNCIL
PO 489
NEWCASTLE**

20 January 2015

Dear Rob,

**ENQUIRY NO. TENQ15-12277N1
For PP_2014_NEWCA_006_00 - PART A - ADMIN ADMEND -
VARIOUS LOTS**

I refer to Council's Planning Proposal dated OCTOBER 2014 concerning changes to Part A - Administration Amendments for various blocks of land. The Mine Subsidence Board has no objections with the changes to the Council's map, providing that future development comply with the following.

As you are aware several properties are located in a proclaimed Mine Subsidence District, with five (5) properties not within a proclaimed Mine Subsidence District.

The purpose of a district is to prevent damage through surface development controls that take account of the risk of damage from mine subsidence.

1. **332 & 334 Darby St The Junction:** The properties are undermined by the Borehole seam at 55 metres deep. The building guidelines for the area are a G09.

As a guide to persons intending to erect improvements on this property, the Board has adopted the following surface development guidelines and will consider applications for:

- a. Single or two storey timber or steel framed improvements clad with weatherboards or other similar materials erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - b. Single or two storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - c. Up to three (3) storey brick construction designed in accordance with the relevant codes and standards.
2. **Part of King St between Auckland and Darby Streets:** The properties are undermined by the Borehole seam at 55 metres deep. The building guidelines for the area are a G09.

Standard (Auto) Enquiries

PUTTING SERVICE AND THE NEEDS OF PEOPLE FIRST



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PICTON

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Facsimile: (02) 4677 2040
DX 26053 Picton

SINGLETON

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Singleton 2330
PO Box 524 Singleton 2330
Telephone: (02) 6572 4344
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Wyong 2259
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As a guide to persons intending to erect improvements on this property, the Board has adopted the following surface development guidelines and will consider applications for:

- a. Single or two storey timber or steel framed improvements clad with weatherboards or other similar materials erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - b. Single or two storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - c. Up to three (3) storey brick construction designed in accordance with the relevant codes and standards.
3. **Part of King St to the east of Darby St:** The properties are undermined by the Borehole seam at 55 metres deep. The building guidelines for the area are a G09.

As a guide to persons intending to erect improvements on this property, the Board has adopted the following surface development guidelines and will consider applications for:

- a. Single or two storey timber or steel framed improvements clad with weatherboards or other similar materials erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - b. Single or two storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - c. Up to three (3) storey brick construction designed in accordance with the relevant codes and standards.
4. **Parts of Laman St that are directly adjoining Civic Park:** The properties are undermined by the Borehole seam at 55 metres deep. The building guidelines for the area are a G09.

As a guide to persons intending to erect improvements on this property, the Board has adopted the following surface development guidelines and will consider applications for:

- a. Single or two storey timber or steel framed improvements clad with weatherboards or other similar materials erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - b. Single or two storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - c. Up to three (3) storey brick construction designed in accordance with the relevant codes and standards.
5. **Parts of Darby St the are directly adjoining Civic Park:** The properties are undermined by the Borehole seam at 55 metres deep. The building guidelines for the area are a G09.

Standard (Auto) Enquiries

TechnologyOne ECM Document Number: 5129439

As a guide to persons intending to erect improvements on this property, the Board has adopted the following surface development guidelines and will consider applications for:

- a. Single or two storey timber or steel framed improvements clad with weatherboards or other similar materials erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - b. Single or two storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - c. Up to three (3) storey brick construction designed in accordance with the relevant codes and standards.
6. **12 Hansen Place Shortland:** The property is not within a proclaimed mine Subsidence District and is not subject to any building restrictions imposed by the Mine Subsidence Board.
 7. **310 and 312 Sandgate Rd Shortland:** These properties are not within a proclaimed mine Subsidence District and they are not subject to any building restrictions imposed by the Mine Subsidence Board.
 8. **9 and 14 Milgate St Wallsend:** These properties are not within a proclaimed mine Subsidence District and they are not subject to any building restrictions imposed by the Mine Subsidence Board.
 9. **Banners Various:** These items would be covered under the Boards Deemed Approvals and council would not need to seek approval from the Board to erect temporary banners and signs as stated in your document.

Yours faithfully



Ian Bullen
A/District Manager

Standard (Auto) Enquiries

TechnologyOne ECM Document Number: 5129439

Office of Environment and Heritage



Office of Environment & Heritage

Your reference: PP-2014-NEWCA-006-00
Our reference: DOC15/429003-2
Contact: Ziggy Andersons, 4927 3151

Mr Frank Cordingley
Chief Executive Officer
Newcastle City Council
PO Box 489
NEWCASTLE NSW 2300

Attention: Rob O'Brien

Dear Mr Cordingley

RE: OEH ADVICE - PLANNING PROPOSAL (PP-2014-NEWCA-006-00) - PART A - ADMINISTRATIVE AMENDMENT

I refer to your email dated 26 October 2015 seeking comment on the above planning proposal, pursuant to section 56(2) of the *Environmental Planning and Assessment Act 1979*. The Office of Environment and Heritage (OEH) understands that the planning proposal was granted a Gateway Determination in 2014 and an amended Gateway Determination was issued in October 2015 to reflect changes to Clause 6.8. OEH has reviewed the planning proposal and has provided comment below.

OEH has no comment to make regarding Items 2 to 7 as detailed within the planning proposal. However, due to the potential impacts to biodiversity, coastal and floodplain processes, and Aboriginal cultural heritage, OEH provides the following comments relating to Item 1 of the planning proposal.

OEH has reviewed the supplied information and discussed elements of the proposal with Council staff and the Department of Planning and Environment. As a result, OEH understands that the proposal will allow Council to carry out commonly undertaken civic works and facilities which are loosely defined as including those land uses and activities carried out by Council for the benefit of the community, such as amenity facilities and environmental management works whether it is permissible in a particular zoning or not, and that they may be carried out by or on behalf of Council without development consent on any land. In addition, this proposal will also allow a number of additional actions with development consent on any land even if it is not permissible within a particular zoning. This was not clear from the information provided with the planning proposal as it lacked detail and context.

The proposal is likely to result in impacts to environmental values and will allow Council to circumvent the strategic planning process on a scale that is not clear due to the ambiguous definition of permissible actions. The definition of what actions do not require development consent under this proposal are loosely defined, and it is not clear whether the trigger 'environmentally sensitive areas' for development consent includes matters covered under the *Threatened Species Conservation Act 1995* (TSC Act), the *National Parks and Wildlife Act 1974* (NPW Act) (for Aboriginal cultural heritage), and coastal and flooding processes. In addition there are some elements of the proposal that conflict with existing definitions and permissibility within the relevant planning instruments. It is also not clear whether environmental management works would increase the area of impact of existing development consents or would be contained within them. Given the level of uncertainty, OEH objects to this proposal in its current form.

Locked Bag 1002 Dangar NSW 2309
Level 4/26 Honeysuckle Drive Newcastle NSW 2300
rog.hcc@environment.nsw.gov.au
ABN 30 841 387 271
www.environment.nsw.gov.au

OEH requests that the proposal excludes environmental and rural zones that contain environmentally sensitive areas, details how 'environmentally sensitive areas' as a trigger requiring development consent includes matters covered under the TSC Act, the NPW Act and coastal and flooding processes. The proposal should also detail how 'environmental management works' would be applied to an existing development consent, and provide unambiguous definitions of the points below to allow for a better understanding of what the scale of the potential impacts of the proposal will be:

- civic works and facilities
- public interest
- benefit of the community
- amenity facilities.

If you have any enquiries concerning this advice, please contact Ziggy Andersons, Conservation Planning Officer, on 4927 3151.

Yours sincerely



19 NOV 2015

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations

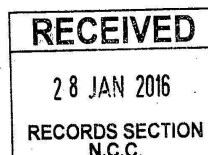


Office of
Environment
& Heritage

Your Reference: PP-2014-NEWCA-006-00
Our reference: DOC15/429003-6
Contact: Ziggy Andersons, 4927 3151

Mr Frank Cordingley
Chief Executive Officer
Newcastle City Council
PO Box 489
NEWCASTLE NSW 2300

Attention: Rob O'Brien



Dear Mr Cordingley

RE: OEH FURTHER ADVICE - PLANNING PROPOSAL (PP-2014-NEWCA-006-00) - PART A - ADMINISTRATIVE AMENDMENT

The Office of Environment and Heritage (OEH) has undertaken a review of the revised draft clause 6.8 and provides the following comments. In regards to defining environmentally sensitive areas the definition used within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 was one of the reasons for OEH's objection as it does not specifically include matters covered by the *Threatened Species and Conservation Act 1995* (TSC Act). During the meeting between OEH, Council, the Department of Planning and Environment, Council stated that they would include reference to TSC Act matters if the Parliamentary Counsel Office did not object. The information provided does not indicate if this work was undertaken.

OEH has reviewed the mapping provided of Council owned land and maintains its objection to the clause applying to environmental zoned land. As discussed at our meeting, OEH is of the opinion that the need for a single stockpile site does not just justify a local government area (LGA) wide amendment as proposed. As such OEH is requesting that the proposed clause include specific reference to the exclusion of environmental zoned land as well as rural zoned land due to potential impacts to biodiversity, and therefore noncompliance with the relevant Section 117 Direction. OEH accepts that, as stated by Council, there is currently no rural zoned land within the LGA, however, this cannot be guaranteed to remain the case and rural zoned land should be included for consistency.

If you have any enquiries concerning this advice, please contact Ziggy Andersons, Conservation Planning Officer, on 4927 3151.

Yours sincerely

 22 JAN 2016

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations

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Appendix 4

Map of Council owned/managed land zoned E3 or E4

