

Planning Services

IRF19/3871

Plan finalisation report

Local government area: Newcastle

1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 (Amendment No 40)

2. SITE DESCRIPTION

The planning proposal applies to an area bound by Donald Street, Tudor Street, Gordon Avenue and Murray Street, Hamilton as shown in Figure 1.

The subject site covers 13.86ha and is predominantly zoned R3 Medium Density Residential and comprises of approximately 312 properties. Part of the subject site in the south-west corner is zoned B2 Local Centre and forms part of the Beaumont Street local centre. A description of the properties within the subject site is included in the planning proposal (**Attachment A**).

Newcastle city centre and Newcastle Interchange are located approximately 1km to the east of the site.



Figure 1: Site location

The subject site is located adjacent to the existing Hamilton Business Heritage Conservation Area (HCA). The Newcastle City Centre HCA is located to the east, however does not directly adjoin the site (Figure 2). The site also contains a number of local heritage items listed in Schedule 5 of Newcastle LEP (shown in brown).

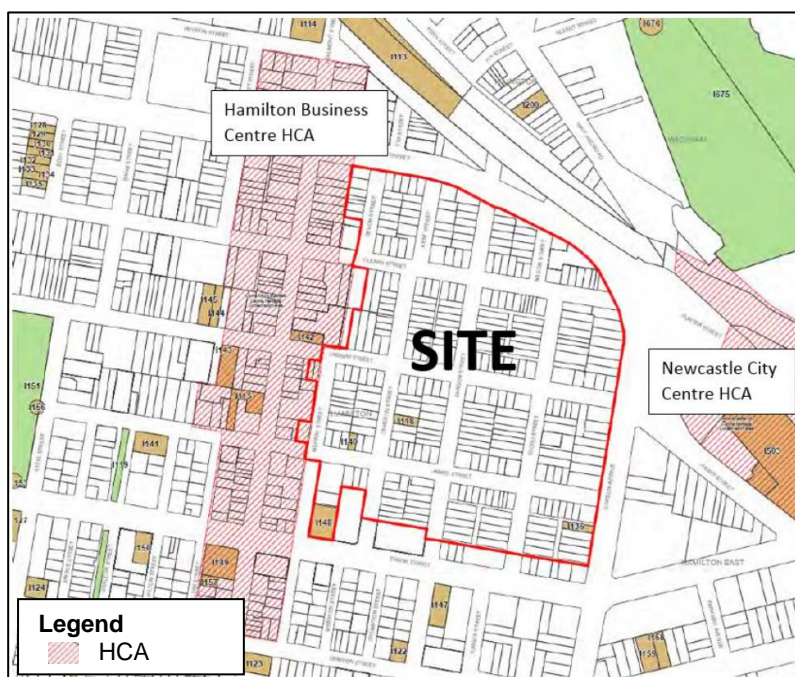


Figure 2: Existing HCAs and local heritage items

3. PURPOSE OF PLAN

The draft LEP seeks to protect and enhance the heritage values of the subject site by:

- amending Schedule 5 of the LEP and the Heritage Map by listing the subject site as a Heritage Conservation Area (HCA), referred to as the 'Hamilton Residential Precinct Heritage Conservation Area';
- amending the Floor Space Ratio Map to remove the maximum floor space ratio control for residential zoned properties within the HCA; and
- amending the Height of Buildings Map to remove the maximum height control for residential zoned properties within the HCA.

The proposal will not result in any additional dwellings or jobs.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Newcastle state electorate. Timothy Crakanthorp MP is the State Member.

The site falls within the Newcastle federal electorate. Sharon Claydon MP is the Federal Member.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION

The Gateway determination issued on 27 August 2018 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination has not been altered and is due to be completed by 27 June 2019.

6. PUBLIC EXHIBITION

The proposal was publicly exhibited by City of Newcastle Council (Council) from 3 September 2018 to 2 October 2018. Ten submissions were received, five supportive and five objecting to the proposal. The submissions objecting raised the following concerns:

- properties within the proposed HCA have been altered, reducing their heritage significance, and therefore requested to not to be included within the HCA;
- only property owners who agree should have their properties included in the HCA; and
- concern regarding the removal of FSR and height controls from commercial properties.

6.1 Council's Response

In response to the submissions received, Council confirmed that the proposed listing of the site as a new HCA was supported by the findings of Council's Conservation Areas Review (June 2016). Of the 312 properties within the proposed HCA, 85 percent contribute towards heritage values with only a small percentage either neutral or not contributing to heritage value. The proposed HCA contains a substantial number of contributing properties to justify listing as an HCA and can be considered as an intact heritage area.

In response to concerns relating to the removal of the FSR and height controls from commercial properties, Council proposed to retain the existing development controls for areas zoned B2 Local Centre (see *Section 8* for further detail).

7. ADVICE FROM PUBLIC AUTHORITIES

Council was not required to consult any public authorities in the Gateway determination.

8. POST-EXHIBITION CHANGES

The exhibited proposal sought to remove the floor space ratio and building height controls from all land uses (both R3 and B2) within the proposed HCA.

However, in response to the objections raised during exhibition, Council amended the proposal post-exhibition to retain the FSR and height of building controls on land zoned B2 Local Centre. Figure 3 below, illustrates the B2 zoned land within the proposed HCA.

Council's rationale for retaining the controls for land zoned B2 Local Centre was due to the absence of urban design objectives in the B2 zone. In the R3 zone, FSR and height controls are proposed to be removed. There are specific objectives relating to character of the area and amenity in the Newcastle LEP for the R3 zone. These

objectives are key considerations for any development and would enable desired urban design outcomes consistent with the heritage character of the HCA.

It is noted that Council has also prepared updated Development Control Plan (DCP) provisions to be implemented following the finalisation of the proposal. The DCP controls will also assist in ensuring any future development is consistent with the character of the area.

Council still proposes to remove the development controls for properties zoned R3, consistent with the approach taken by Council in other HCAs within the local government area (LGA).

The Department has assessed these changes and considered that there are in response to the public submissions, are consistent with the Gateway determination and are consistent with regional strategies and plan-making directions (see Section 9).

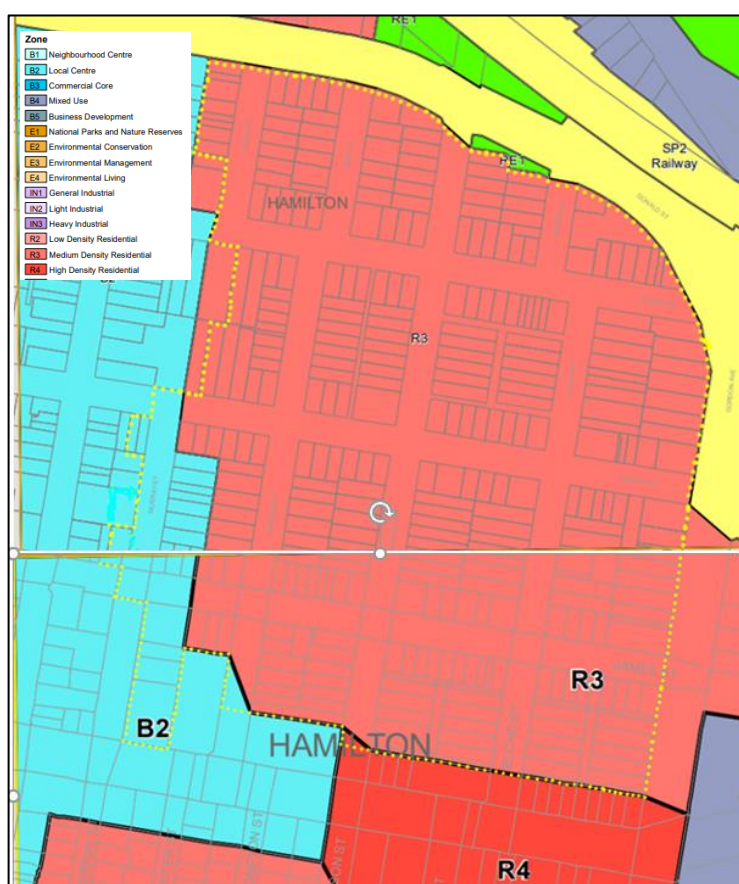


Figure 3: Existing zoning

9. ASSESSMENT

The proposal seeks to give effect to the Hamilton Residential Precinct HCA in the Heritage Map and in Schedule 5 of the LEP. Council's Review of Heritage Conservation Areas Report (June 2016) investigated a number of new HCAs within the LGA including the proposed HCA.

The proposed HCA is proposed to be listed as it is considered to be a highly intact residential area, strongly representative of the late 19th and early 20th centuries. The building stock is predominantly of the late Victorian, Federation or Inter -War periods and is representative of these periods consistent with the NSW State heritage criteria.

The proposed HCA includes a large number of detached terrace houses, unusual for terrace housing, with large number of houses from 1897. Figure 4 provides the heritage contribution rating for each of the properties within the proposed HCA and as

previously identified, 85 percent of properties contribute towards heritage values. Council's development control plan provides for different heritage impact assessment for development on sites with neutral and non-contributory status, which appropriately responds to the submissions about the effect of the HCA on properties that have been altered.

The proposal aims to protect these characteristics of the predominantly residential area, as well as that of similarly heritage significant commercial properties, by including them in the proposed HCA.

Council has adequately considered the submissions received during exhibition by responding to the concerns and retaining development standards for commercial areas consistent with other commercial areas in HCAs across the Newcastle LGA.



Figure 4: Heritage contribution rating

It is recommended that the draft plan be made because:

- the draft LEP is supported by a heritage study;
- the five submissions objecting to the proposal have been adequately addressed in the final planning proposal by Council;
- the proposal is a local planning matter dealing with local heritage significance, where Council is best positioned to consider matters of local heritage significance; and
- the proposal will allow Council to appropriately address heritage considerations in the local area.

Section 9.1 Directions

At Gateway, it was determined that the proposal was consistent with all Section 9.1 Directions.

Direction 1.1 Business and Industrial Zones

The proposal affects several properties that are currently zoned B2 Local Centre. The amendments to the planning proposal following exhibition by retaining the floor space and height of building controls for B2 zoned land, will not result in any reduction in the potential permitted floorspace. The proposal is considered consistent with this Direction.

Direction 2.3 Heritage Conservation

The proposal seeks to facilitate the conservation of an area due to its heritage values. The proposal is consistent with the Direction.

Direction 3.1 Residential Zones

The proposal affects land that is predominantly zoned R3 Medium Density Residential. Removing the height of building and FSR controls is considered consistent with this Direction because it does not reduce the permissible density. Retaining the R3 zoning and permitted uses ensure that the housing choice and variety objectives of the Direction are maintained. The proposal is considered consistent with this Direction.

Direction 5.10 Implementation of Regional Plans

As identified later in this report, the proposal is considered consistent with the Hunter Regional Plan (HRP).

State environmental planning policies

The proposal is consistent with relevant SEPPs or deemed SEPPs. The proposal does not involve any state-significant heritage items or places listed in the NSW State Heritage Register.

As determined at Gateway the proposal remains consistent with state planning policies.

State and regional plans

Hunter Regional Plan

Direction 19 – Identify and protect the region's heritage is relevant to the proposal. The direction recognises the importance of cultural heritage to communities as it provides a connection to the past and can generate tourism. The proposal seeks to recognise an area identified as having cultural heritage and is consistent with this Direction.

Greater Newcastle Metropolitan Plan 2036 (GNMP)

The GNMP recognises the importance of Greater Newcastle's heritage as a unique and attractive element of the city which can be used to enhance its emergence as a metropolitan city with global appeal.

Strategy 10 of the GNMP seeks to create better buildings and great places and acknowledges that Greater Newcastle's heritage is fundamental to its cultural economy. The proposal is consistent with this outcome because it seeks to protect the heritage values of local places.

The GNMP also recognises the need to provide housing close to jobs and services, particularly along existing major transport corridors which would benefit from urban renewal. The north of the proposed HCA is approximately 100m from the Hamilton railway station. Strategy 16.3 of the GNMP requires Council to undertake an investigation of renewal potential and ensure proposals do not prevent future redevelopment. The proposed HCA is located predominantly within a Stage 2 Urban Renewal Corridor (Figure 5).

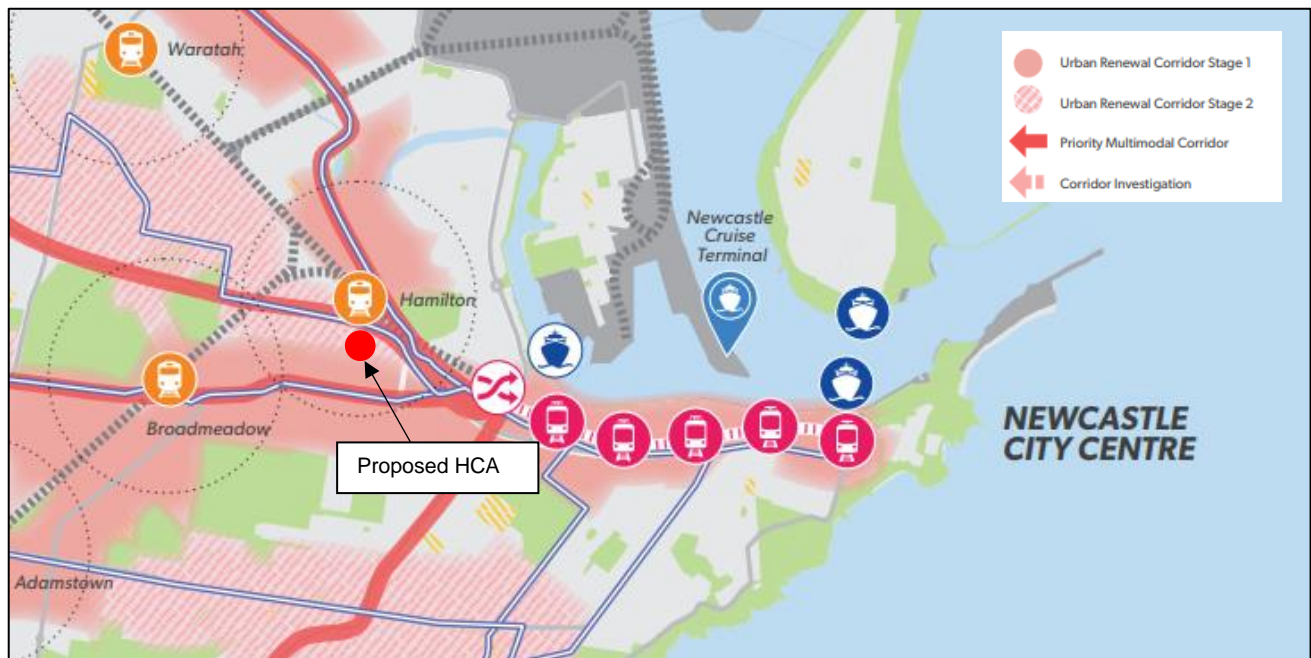


Figure 5: Site proximity to GNMP Stage 1 urban renewal corridor (Source: GNMP)

The desired future character for the HCA potentially limits the ability of the HCA to increase housing opportunities and to support urban renewal given its proximity to Hamilton station. However, as the proposal does not reduce the permissible density of the residential areas, the area is still able to be redeveloped as long as future development is consistent with the character of the area.

Council is currently preparing a Housing Strategy for the LGA which would respond to this action and to ensure proposals do not prevent future development opportunities. However, in the absence of this strategy, given the heritage values of the site and that there are a number of Stage 1 urban renewal corridors adjacent to the proposed HCA that include requirements for minimum dwelling densities, the Department is satisfied that the proposal is generally consistent with this strategy and may proceed independent of the Housing Strategy.

Local

Newcastle Local Planning Strategy (NLPS)

The NLPS implements the Community Strategic Plan (CSP) and generally adopts the desired outcomes of the CSP. It seeks to achieve CSP outcomes via appropriate heritage guidelines and controls to be included in the Newcastle LEP 2012 and Newcastle DCP 2012 to safeguard heritage. Strategic heritage management directions it identifies are:

- ensure heritage schedules are regularly reviewed and updated;
- ensure development controls and zoning protect the heritage significance of items and conservation areas; and

- apply a flexible approach to development provisions to support adaptive reuse of heritage items where it achieves their ongoing preservation and use.

The proposal is consistent with this strategy.

Newcastle Heritage Strategy (2013 – 2017)

This strategy seeks to ensure that heritage values are recognised, protected and promoted, including:

- Strategy 1 - Knowing our heritage - enhancing our community's knowledge of and regard for local heritage items and places;
- Strategy 2 - Protecting our heritage - Council will protect and conserve the City's heritage places for the benefit of everyone;
- Strategy 3 - Supporting our heritage - Council will protect the integrity of heritage places by ensuring consistent and sympathetic uses, physical and aesthetic treatments and outstanding interpretations; and
- Strategy 4 - Promoting our heritage – Newcastle's significant heritage places are a unique historical resource and represent an asset for the continuing educational, cultural and economic enrichment of the region.

The planning proposal is consistent with this strategy.

10. MAPPING

The LEP will be amended through mapping amendments to the following maps:

- Heritage (004FA and 004G);
- Floor Space (004FA and 004G); and
- Height of Buildings (004FA and 004G).

These maps have been checked by the Regional Team and the ePlanning Team. The proposed maps are provided as **Attachment Maps**.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment C**) on 5 June 2019.

Council confirmed on 6 June 2019 that it supports the draft and that the Plan should be made (**Attachment D**).

12. PARLIAMENTARY COUNSEL OPINION

On 3 June 2019, 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. CONCLUSION

The proposal to list the subject site as a proposed new HCA is supported because:

- the proposal is consistent with the Hunter Regional Plan, Greater Newcastle Metropolitan Plan and Council's planning strategies;
- the proposal is consistent with section 9.1 Ministerial directions;
- the proposal is supported by a heritage study;
- the five submissions objecting to the proposal have been adequately addressed by Council;

- there were no agency objections; and
- the proposal will allow Council to appropriately address heritage considerations in the local area.

14. RECOMMENDATION

It is recommended that Director Regions, Hunter, as delegate as of the Minister:

1. **note** the planning proposal (**Attachment A**) and the Gateway determination (**Attachment B**);
2. **note** the Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this Opinion (**Attachment PC**);
3. **note** the LEP maps (**Attachment Maps**), which have been approve by the Department's ePlanning Team and provided to Parliamentary Counsel;
4. **make** the draft LEP under section 3.36(2)(2) of the Act, by signing the instrument (**Attachment PC**) and supporting Map Cover Sheet (Attachment MCS); and
5. **sign** the letter to City of Newcastle Council (**Attachment Letter**) advising of the decision.



Caitlin Elliott
Team Leader, Hunter



Monica Gibson
Director Regions, Hunter
Planning Services

Assessment officer: Ken Phelan
Planning Officer, Hunter
Phone: 4904 2705

Attachment A: Planning proposal
Attachment B: Gateway determination
Attachment C: Section 3.36 consultation
Attachment D: Council response – section 3.36 consultation
Attachment PC: Parliamentary Counsel's Opinion and draft LEP
Attachment MCS: Map Cover Sheet
Attachment Maps: LEP maps
Attachment LEP: Draft LEP
Attachment Letter: Letter to Council