



IRF22/1062

# Gateway determination report – PP-2022-1541

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Community Infrastructure Incentives in Wickham

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the planning proposal**

Relevant reports and plans
Draft DCP – Section 6.03 Wickham – Community Infrastructure Incentives at Wickham
Planning Proposal – Community Infrastructure Incentives at Wickham – NC017250
Newcastle City-wide Floodplain Risk Management Study and Plan 2012
City of Newcastle – Strategic position for the management of low-lying areas of Newcastle
Applicable land – Community infrastructure incentives in Wickham PP
City of Newcastle Cycling Plan 2021-2030
Wickham Masterplan 2017
Wickham Masterplan 2021 Update
Draft Wickham Masterplan 2021 (2022 Amendment) (Feb 2022)
HillPDA Community Infrastructure Incentives Policy Advice – Full Report
HillPDA Community Infrastructure Incentives Policy Advice – Summary Report
City of Newcastle Community Infrastructure Incentives Policy – July 2021
Council report attachments – Community Infrastructure Incentives in Wickham Planning Proposal
Council report – Community Infrastructure Incentives in Wickham Planning Proposal
Wickham Master Plan Traffic and Transport Assessment Final Report 2017

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Newcastle</b>
<b>PPA</b>	City of Newcastle
<b>NAME</b>	Community Infrastructure Incentives in Wickham (0 Homes, 0 Jobs)
<b>NUMBER</b>	PP-2022-1541
<b>LEP TO BE AMENDED</b>	<i>Newcastle Local Environmental Plan 2012</i>
<b>ADDRESS</b>	Wickham
<b>DESCRIPTION</b>	Allow for community infrastructure provision through density incentives on particular properties in the suburb of Wickham
<b>RECEIVED</b>	28/04/2022
<b>FILE NO.</b>	IRF22/1062
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose, and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- utilise the existing gross floor area (GFA) derived from the development standards applying on land dedicated to Council, to be utilised in the development of the residual land.
- enable an incentive increase in development density consistent with *Wickham Masterplan 2021 Update*, where:
  - development involves the timely delivery of identified community infrastructure projects,
  - the incentive to development correlates to the quantifiable value that the community infrastructure represents to Council.
- identify land Council seeks to acquire for the public domain and pedestrian connectivity improvements within the local road reservation.
- remedy an existing anomaly within Part 7 Additional Local Provisions – Newcastle City Centre of *Newcastle Local Environmental Plan 2012*.

- ensure that nominated incentives increases to development standards are not subject to variation.

### Consistency with *Environmental Planning & Assessment Act 1979*

A local environmental plan amendment must be consistent with the *Environmental Planning & Assessment Act 1979* (the Act). The Act includes a pathway for the provision of community-based infrastructure through local contribution plans. The Act and associated guidance also outline the form in which a local contributions plan must be prepared.

The planning proposal has not been prepared in accordance with this guidance. Given the planning proposal is considered a contributions plan and has not been prepared in accordance with this guidance, the planning proposal is strictly inconsistent with the Act and needs to be amended prior to public exhibition.

Council has advised the Department that the planning proposal will be amended to include site-specific community infrastructure clause in Part 6 of the *Newcastle Local Environmental Plan 2012*. This clause will be consistent with Clause 6.17 of the *Randwick Local Environmental Plan 2012*. This will be supported by a separate community infrastructure plan that identifies the schedule of community infrastructure projects in Wickham, the incentive GFA rate and how the community infrastructure can be delivered through the development process.

This approach is supported at this time. However, final drafting will be determined by Parliamentary Counsel.

### Consistency with the *Wickham Masterplan 2021 Update*

As noted below, there are slight variations between the differing versions of the Wickham Masterplan that impact this planning proposal. Specifically, the objective nominates the 2021 Wickham Masterplan Update. However, the updates in 2021 and 2022 are both titled the 2021 update. Otherwise, the objectives of this planning proposal are clear and adequate.

An update to the planning proposal is required to determine which version of the Wickham Masterplan applies to the proposed incentive.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the *Newcastle Local Environmental Plan 2012* through the following provisions:

### ***Exceptions to Floor Space Ratio on certain land***

(1) *Introducing a new subclause of 'Clause 4.5 Calculation of floor space ratio and site area' under 'Part 4 Principal development standards', that enables the site area of any land or part of land proposed to be dedicated to the Council to be included as part of the overall site area for calculation of floor space available to proposed development on the remaining part of the land. Furthermore, the consent authority may allow an additional 25% of the area of land being dedicated to be applied to the calculation of floor space where:*

- a. the land being dedicated is identified on the Land Reservation Acquisition (LRA) map.*
  - b. the landowner has not otherwise been compensated; and*
  - c. the value of the land, or part thereof is not otherwise used to offset the payment of a contribution under Section 7.11 or Section 7.12 of the Act.*
- *Introducing a new clause, 'Clause 4.4A Exceptions to Floor Space Ratio (FSR) on certain land' under 'Part 4 Principal development standards', that enables the consent authority to allow an incentive increase in floor space ratio on certain land nominated on the FSR Map, up to a maximum incentive FSR but only where the consent authority is satisfied that the*

*proposed development will enable the provision of community infrastructure, as identified within a development control plan applying to the land.*

- *The objectives of this clause are:*
  - *(a) to facilitate the urban renewal of areas identified for strategic growth in housing and employment within the Greater Newcastle metropolitan area.*
  - *(b) to allow an increase in the maximum floor space ratio on certain land within the City of Newcastle, where community infrastructure is provided.*
- *(2) This clause applies to land identified as Area B, Area C, Area D and Area E on the Floor Space Ratio Map.*
- *(3) Despite Clause 4.4, the consent authority may consent to development on land to which this clause applies (including the erection of a new building or external alteration to an existing building) that exceeds the maximum floor space ratio shown for the land on the Floor Space Ratio Map, if the proposed development includes community infrastructure.*
- *(4) In subclause (3), the consent authority must not consent to development on land as identified on the Floor Space Ratio Map as per Column 1, with an existing maximum Floor Space Ratio as shown on the map as per Column 2, unless the site area is equal to or greater than that in Column 3, and the development will have a floor space ratio that does not exceed that identified in Column 4 of the table below.*

Column 1	Column 2	Column 3	Column 4
<i>Land identified on FSR Map as:</i>	<i>Where maximum FSR is shown on map as:</i>	<i>Where site area equal or greater than:</i>	<i>The incentive FSR is a maximum of:</i>
Area B	1.5	1,500m <sup>2</sup>	2
	1.5	2,000m <sup>2</sup>	2.5
Area C	1.5	1,000m <sup>2</sup>	2
Area D	1.5	1,000m <sup>2</sup>	2
	1.5	2,000m <sup>2</sup>	3
Area E	6	1,000m <sup>2</sup>	7

- *(5) In deciding whether to grant development consent, the consent authority must:*
  - *(a) have regard for the objectives of this clause, and*
  - *(b) be satisfied that the proposed development will provide community infrastructure as identified within a development control plan applying to the land, and*
  - *(c) take into account the nature of the community infrastructure and its value to the community.*
- *(6) In this clause, community infrastructure means development for any of the following purposes:*
  - *(a) community facilities, (b) community garden, (c) drainage, (d) public car parks, (e) public domain improvement, (f) public roads, (g) public walkway, (h) recreation areas, but does not comprise local infrastructure for which development*

*contributions apply within a Plan of City of Newcastle under Part 7 of the Environmental Planning and Assessment Act 1979.*

## Miscellaneous

- Repeal current Clause 7.9 Height of buildings.
- Amend the land reservation acquisition map to incorporate additional land identified for inclusion, in order for Council to deliver community infrastructure projects.
- Add the wording ‘development standards on land to which Clauses 4.3A and 4.4A applies’ under subclause (8) of 4.6 Exceptions to development standards.
- Council also explains the application of another planning proposal that is related to the community infrastructure incentives policy and what would happen in the event of that proposal not being made. Council intends this planning should prevail if the planning proposal at 41 & 47 Throsby Street (PP-2021-328) is not made.

## Exceptions to height of buildings on certain land

*(2) Introducing a new clause, ‘Clause 4.3A Exceptions to Height of Buildings (HOB) on certain land’ under ‘Part 4 Principal development standards’, that enables the consent authority to allow an incentive increase in height of building on certain land nominated on the HOB Map, up to a maximum incentive HOB but only where the consent authority is satisfied that the proposed development will enable the provision of community infrastructure, as identified within a development control plan applying to the land.*

- (1) The objectives of this clause are
  - (a) to facilitate the urban renewal of areas identified for strategic growth in housing and employment within the Greater Newcastle metropolitan area.
  - (b) to allow an increase in the maximum height of building on certain land within the City of Newcastle, where community infrastructure is provided.
- (2) This clause applies to land identified as Area A, Area B, Area C, Area D and Area E on the Height of Buildings Map.
- (3) Despite Clause 4.3, the consent authority may consent to development on land to which this clause applies (including the erection of a new building or external alteration to an existing building) that exceeds the maximum height shown for the land on the Height of Buildings Map, if the proposed development includes community infrastructure.
- (4) In subclause (3), the consent authority must not consent to development on land as identified on the Height of Buildings Map as per Column 1, with an existing maximum Height of Buildings as shown on the map as per Column 2, unless the site area is equal to or greater than that in Column 3, and the development will have a height of building that does not exceed the incentive Height of Building identified in Column 4 of the table.
- The proposed incentives heights and application are intended to be:

Column 1	Column 2	Column 3	Column 4
<i>Land identified on HOB Map as:</i>	<i>Where maximum HOB is shown on map as:</i>	<i>Where site area equal or greater than:</i>	<i>The incentive HOB is a maximum of:</i>
Area A	24m	2,000m <sup>2</sup> 2,500m <sup>2</sup>	35m 45m



Column 1	Column 2	Column 3	Column 4
Area B	10m	1,000m <sup>2</sup>	14m
	10m or 14m	1,500m <sup>2</sup>	24m
	10m, 14m, or 24m	2,000m <sup>2</sup>	35m
Area C	10m	1,000m <sup>2</sup>	14m
Area D	10m	1,000m <sup>2</sup>	14m
	10m	2,000m <sup>2</sup>	24m
Area E	45m	1,000m <sup>2</sup>	60m

- *In deciding whether to grant development consent, the consent authority must*
  - *(a) have regard for the objectives of this clause, and*
  - *(b) be satisfied that the proposed development will provide community infrastructure as identified within a development control plan applying to the land*
  - *(c) take into account the nature of the community infrastructure and its value to the community.*

*(6) In this clause, community infrastructure means development for any of the following purposes:*

*(a) community facilities, (b) community garden, (c) drainage, (d) public car parks, (e) public domain improvement, (f) public roads, (g) public walkway, (h) recreation areas, but does not comprise local infrastructure for which development contributions apply within a Plan of City of Newcastle under Part 7 of the Environmental Planning and Assessment Act 1979.*

### Department's assessment

The proposed explanations of provisions require an amendment prior to exhibition as they are inconsistent with the Act. Specifically,

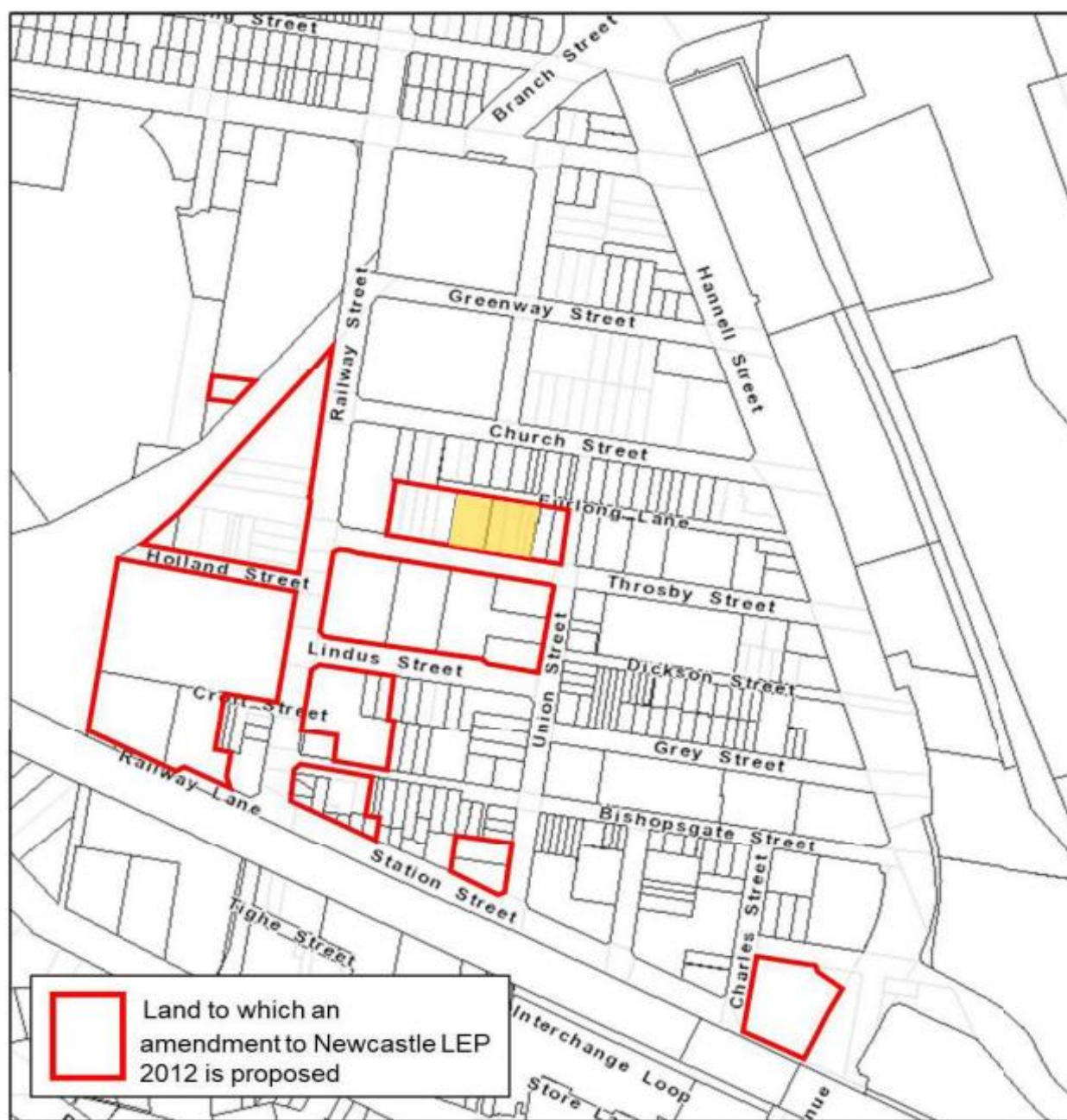
- The proposed exceptions for floor-space and building height must be consistent with Clause 6.17 of the *Randwick Local Environmental Plan 2012* requiring the delivery of community infrastructure to be site-specific only.
- The definition of community infrastructure must align with the Standard Instrument. The current drafting is inconsistent with the Standard Instrument.
- The explanation of the terms must clearly identify that they are subject to legal drafting and may change during the finalisation of the amendment.
- Clarification of which Wickham Masterplan update is required.

## 1.4 Site description and surrounding area

The planning proposal applies to multiple land parcels in the suburb of Wickham (**Figure 1**). Wickham adjoins the Newcastle City Centre and is also subject to a council led masterplan, titled the Wickham Masterplan (**Figures 2 and 3**).

The Newcastle transport interchange is located on the southern boundary of the Wickham Masterplan area which provides access to bus, light-rail and heavy rail services for regional and inter-city transport.

Wickham includes a range of differing built forms, including apartments and residential towers immediately adjoining the transport interchange, and a range of three-storey apartment buildings, townhouses, and industrial land uses north of the interchange. To the east, includes Newcastle Port, and a major road connection to and from the City Centre, Hannell Street.



**Figure 1 Application Area (source: Planning Proposal)**



Figure 2 Wickham Locality



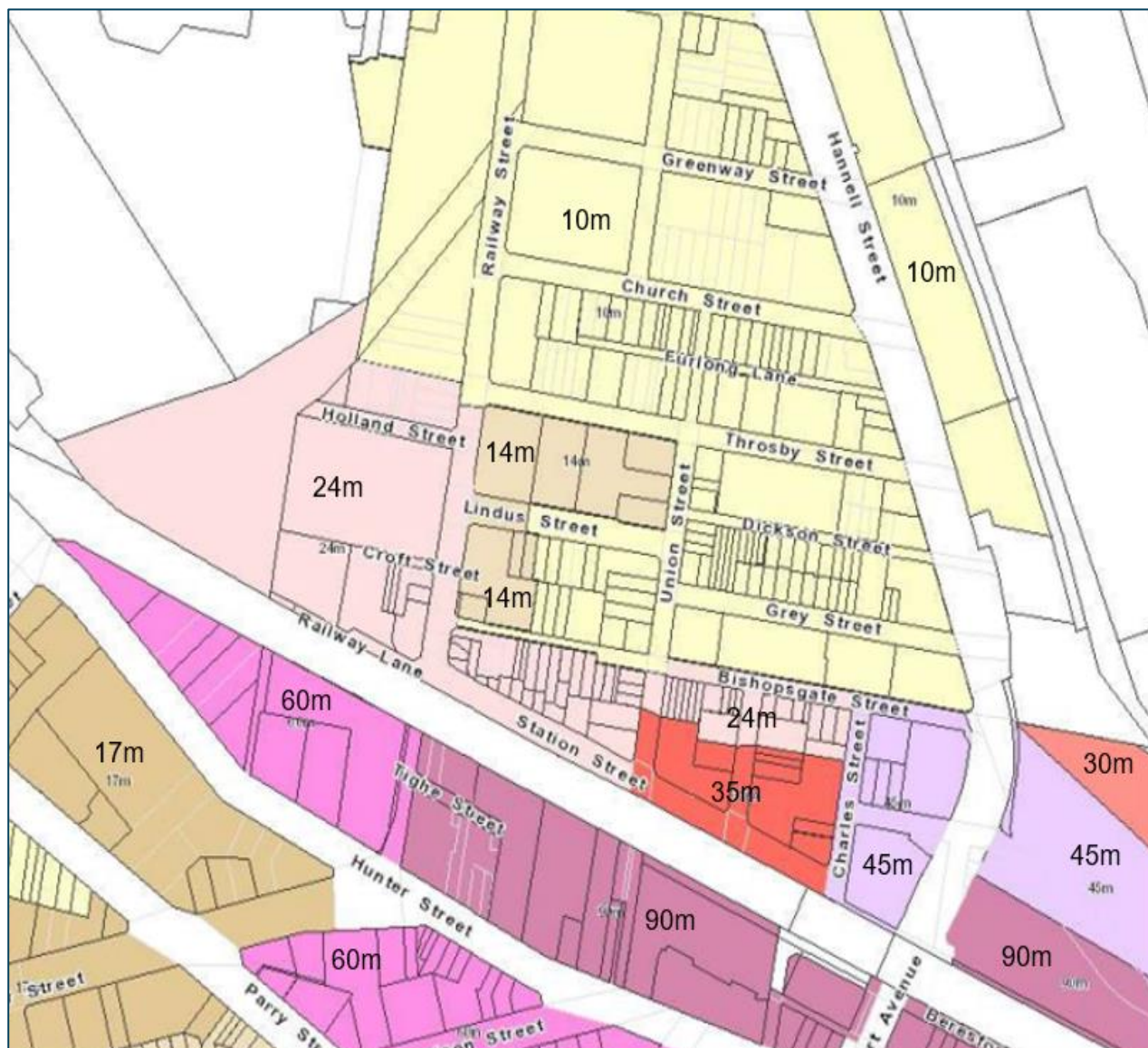
Figures 3 Site context (source: planning proposal)



## 1.5 Mapping

The planning proposal includes mapping showing the land which would be subject to the proposed community infrastructure incentives amendment (**Figure 1**).

The planning proposal also includes adequate mapping showing the existing and proposed planning controls that are subject to the amendment. These include building heights (**Figures 4 & 5**), floor-space ratios (**Figures 6 & 7**), and land reservation acquisition maps (**Figures 8 & 9**).



**Figure 4 Existing height of building standards**

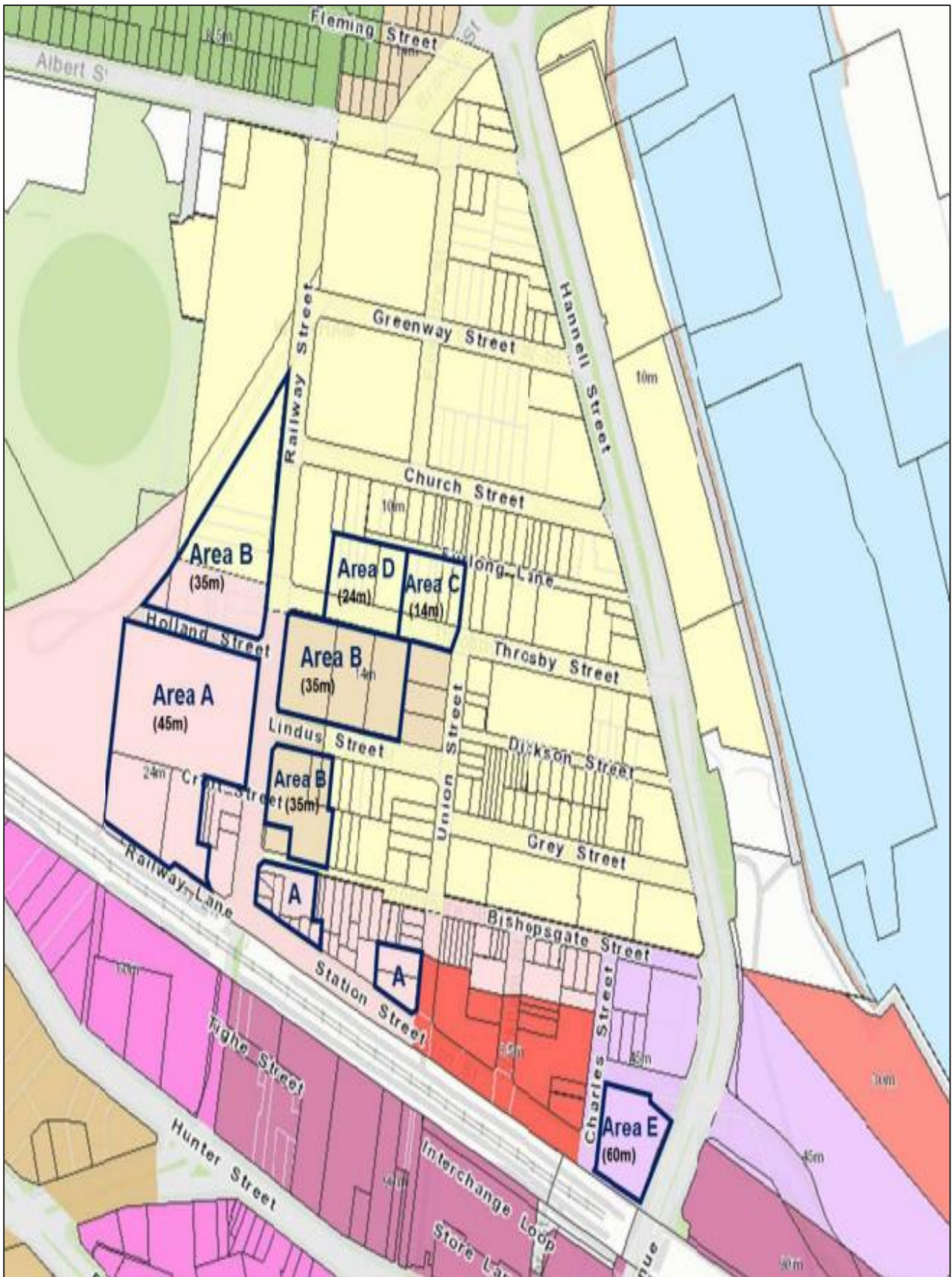


Figure 5: Proposed incentive height of building standards





Figure 6: Existing floor-space ratio

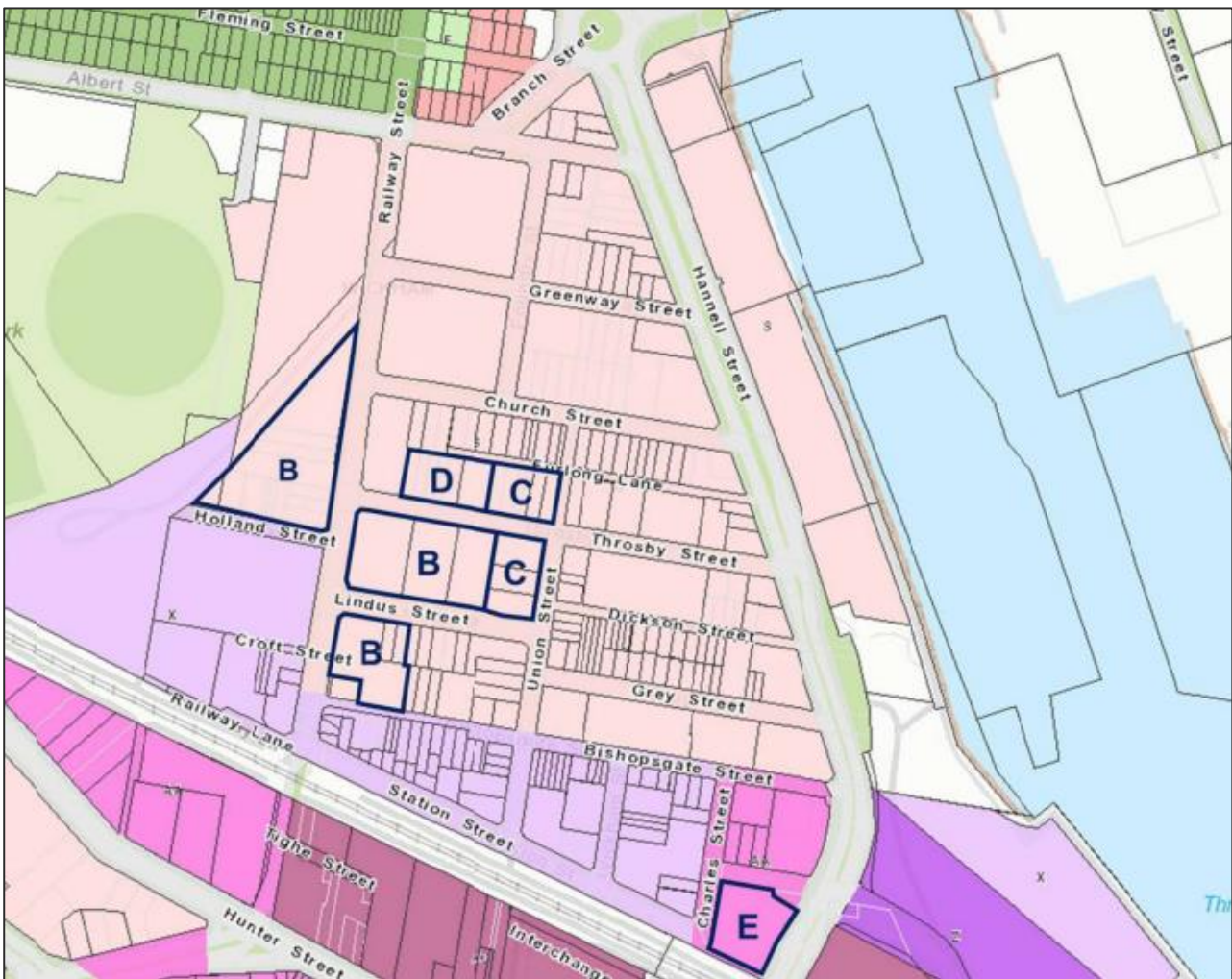


Figure 7: Proposed incentive floor-space ratio

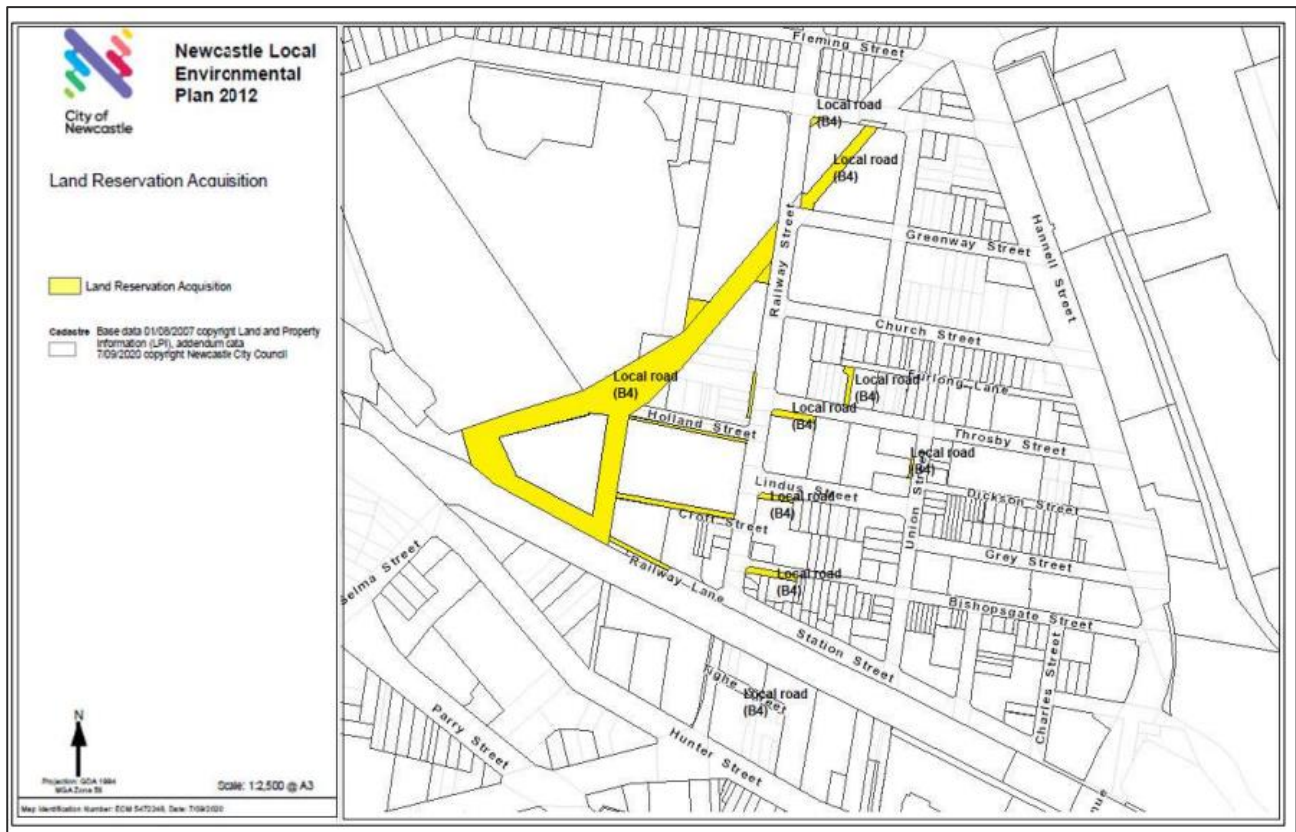


Figure 8: Existing land reservation acquisition map

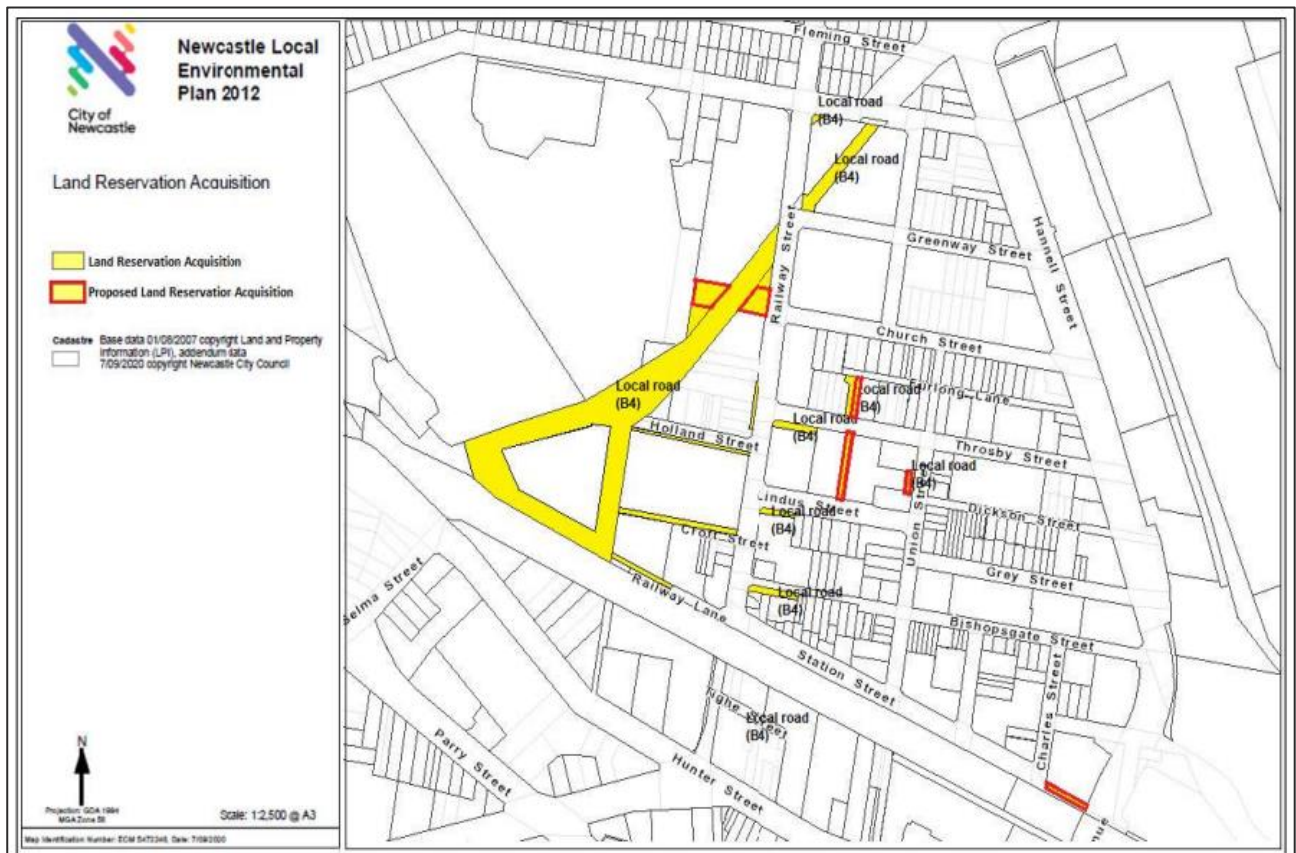


Figure 9: Proposed land reservation acquisition map



## 1.6 Background

The planning proposal is in response to:

- (i) Council's Community Infrastructure Incentives Policy; and
- (ii) The Wickham Masterplan.

### Community Infrastructure Incentives Policy

The Community Infrastructure Incentives Policy was adopted by City of Newcastle on 27 July 2021. The purpose of the policy is to outline the approach and mechanisms to enhance the delivery of community infrastructure, through the provision of development incentives. This planning proposal is the proposed mechanism to statutorily implement Council's policy.

A detailed assessment of the policy is included in section 3 of this report.

### Wickham Masterplan

The Wickham Masterplan was originally prepared in 2017 and included strategies and actions to inform redevelopment decisions, including:

1. Improving accessibility and connectivity within Wickham and to adjoining areas,
2. Creating safe, attractive, and inclusive public spaces,
3. Ensuring built environment is functional, responsive, and resilient.

The Wickham Masterplan was updated on 28 September 2021 and a further draft was prepared in March 2022. Iterations of the masterplans included the intent for a community infrastructure incentive mechanism to be considered in the re-development of the area. The masterplans also included maps identifying the type of infrastructure that was expected to deliver the vision for the area, one example is identified in **Figure 10**. The type of community infrastructure projects has not changed over time, however, the extent of potential community infrastructure projects reduced between the 2017 and 2021 masterplan.



**Figure 10: Wickham Masterplan – Location of proposed community infrastructure projects (Source: Wickham Masterplan – 28 September 2021)**



## 2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The Department conditionally endorsed the Newcastle Local Housing Strategy on 2 March 2021. The letter of endorsement offered the Department's assistance to Council in reviewing the stage 1 urban renewal corridors and the local environmental plan to reflect land capacity and constraints of precincts in the Wickham Master Plan and on implementation of catalyst areas to reflect the actions and objectives for housing typologies that are set out in the Strategy.

Council has identified a need for the planning proposal in response to the Wickham Masterplan. A detailed assessment of the proposal's consistency with the Wickham Masterplan has been undertaken in section 3.3 of this report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

### **Making of a contributions plan under the Act**

The *Environmental Planning and Assessment Act 1979* (Act) provides pathways for the charging of infrastructure contributions. The existing pathways for the charging of infrastructure are generally limited to:

- a planning agreement,
- a special infrastructure contributions plan,
- a local contributions plan,
- affordable housing, or
- site-specific incentive up-lift in a local environmental plan.

The Act is also very strict on the form, function, and governance of these relevant items.

The proposed Community Infrastructure Incentives Policy offers an alternative form and pathway to the existing pathways available. Although the planning proposal is like existing pathways, the infrastructure planning framework is strict in its application.

Section 7.11 of the Act provides the only legislative authority for a council to impose a condition on a development consent for a contribution, and/or dedication for public amenities and public services within the area. A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan. The proposed community incentives policy is considered a contributions plan.

Section 7.18 provides the mechanism for the making of a contributions plan and refers to the *Environmental Planning and Assessment Regulation 2021* (Regulation) for the process of making a contributions plan. Under Section 212 of the Regulation, the contributions plan must contain the following:

- (a) *the purpose of the plan,*
- (b) *the land to which the plan applies,*
- (c) *the relationship between—*
  - (i) *the expected types of development in the area to which the plan applies, and*
  - (ii) *the demand for additional public amenities and public services to meet the expected development,*

- (d) the formulas to be used for determining the development contributions required for different categories of public amenities and public services,*
- (e) the development contribution rates for different types of development, as specified in a schedule to the plan,*
- (f) a map showing the specific public amenities and public services that will be provided by the council,*
- (g) a works schedule that contains an estimate of the cost and staging of the public amenities and public services, whether by reference to dates or thresholds,*
- (h) if the plan authorises monetary development contributions or development levies paid for different purposes to be pooled and applied progressively for the different purposes—the priorities for the expenditure of the development contributions or development levies, by reference to a works schedule.*

Section 211 of the Regulation outlines the form in which a contributions plan must be prepared. The *Newcastle Development Contributions Plan 2022* is one preferred structure and form of a contributions plan.

Council's proposed scheme for community infrastructure is not in accordance with a contributions plan, as it has not:

- been prepared in accordance with the required form of a contributions plan, given the infrastructure will be identified in the development control plan,
- outlined a works schedule, containing the estimate of cost and staging of public amenities and public services, and
- outlined the priorities for the expenditure of the development contributions or development levies.

Given the community infrastructure provisions have not been prepared in the form of a contributions plan, a lawful condition of consent for the provision of community infrastructure cannot be imposed on a future development application in accordance with Section 7.11 of the Act and therefore the planning proposal is inconsistent with the Act.

This means that if the planning proposal was to be supported in its current form, the provisions would not enable the delivery of community infrastructure and developers would benefit from the development uplift at no additional cost.

### **Definition of community infrastructure under the Act**

The planning proposal seeks to introduce a new definition of community infrastructure.

The proposed definition is:

*In this clause, Community infrastructure means development for any of the following purposes:*

*(a) community facilities, (b) community garden, (c) drainage, (d) public car parks, (e) public domain improvement, (f) public roads, (g) public walkway, (h) recreation areas, but does not comprise local infrastructure for which development contributions apply within a Plan of City of Newcastle under Part 7 of the Environmental Planning and Assessment Act 1979.*

Although a new definition is proposed to capture the type of infrastructure to be provided as part of the Community Infrastructure Incentives Policy, part of the definition is inconsistent with the definition for community infrastructure under Direction 5 Standard Instrument land uses.

To support the planning proposal proceeding to public-exhibition, a new definition of community infrastructure will need to be consistent with Direction 5 of the *Standard Instrument – Principle Local Environmental Plan 2006*.

## 3 Strategic assessment

### 3.1 Hunter Regional Plan 2036

The following table provides an assessment of the planning proposal against relevant aspects of the Hunter Regional Plan 2036 (**Table 4**) and draft Hunter Regional Plan 2041 (**Table 5**).

**Table 4 Hunter Regional Plan 2036 assessment**

Regional Plan	Justification
Local Government Narratives	The <i>Hunter Regional Plan 2036</i> identifies Wickham as a key focus area for delivering future housing and urban renewal opportunities in the City of Newcastle. The planning proposal seeks to provide for urban renewal opportunities in the area of Wickham.
Goal 1: The leading regional economy in Australia	Actions 3.1 and 3.4 of the <i>Hunter Regional Plan 2036</i> identifies that to revitalise Newcastle City Centre, growth and renewal will be promoted in Newcastle City Centre through local strategies and controls and that to enable this growth and public domain improvement, including services and infrastructure investment.

The planning proposal is consistent with the *Hunter Regional Plan 2036*.

**Table 5 Draft Hunter Regional Plan 2041 assessment**

Regional Plan Objectives	Justification
Objective 3: Create a 15 minute region made up of mixed, multi-modal, inclusive and vibrant local communities	The planning proposal notes it is consistent with this objective as it supports walkable neighbourhoods in proximity to high-frequency public transport and provides for vibrant local communities through the timely and successful delivery of infrastructure through the community infrastructure incentives policy.  This assessment is supported.
Objective 4: Plan for nimble neighbourhoods, diverse housing and sequenced development	The planning proposal notes it is consistent with this objective as it promotes increased density for housing and employment alongside improved connectivity and amenity of the public domain.  Wickham would be considered either as urban core or general urban under the draft regional plan. A density of around 50-75 dwellings per hectare is desired in these contexts. Particularly, given proximity to high frequency public transport.

The planning proposal is consistent with the draft Hunter Regional Plan 2041.

## 3.2 Greater Newcastle Metropolitan Plan 2036

The site is located within the *Greater Newcastle Metropolitan Plan 2036*. The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

**Table 6: GNMP assessment**

Strategy	Justification
Catalyst Areas for Greater Newcastle	<p>The metropolitan plan outlines Wickham as a key precinct to facilitate the Newcastle City Centre Catalyst Area, where Council will update local plans to facilitate the long-term expansion of the city centre towards Wickham, provide floor-space for emerging new economy industries and businesses and increase opportunities for transit-oriented development.</p> <p>The planning proposal seeks to amend planning controls to facilitate the vision for the Wickham area.</p>

The planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036*.

## 3.3 Local strategic plans

The planning proposal states it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 7: Local Plans and endorsed strategies assessment**

Local Strategies	Justification
Local Strategic Planning Statement	<p>The Newcastle Local Strategic Planning Statement (LSPS) was finalised in 2020.</p> <p>The LSPS advocates for redevelopment in Wickham as part of the Newcastle City Centre Catalyst Area.</p> <p>The planning proposal supports an increase in provision of housing and jobs close to public transport, supports urban renewal and delivers on the following relevant Planning Priorities:</p> <ul style="list-style-type: none"> <li>• Plan for growth and change in Catalyst Areas, Strategic Centres, Urban Renewal,</li> <li>• Corridors and Housing Release Areas,</li> <li>• Sustainable, healthy and inclusive streets, neighbourhoods and local centres,</li> <li>• Development responds to the desired local character of our communities, and</li> <li>• Enable the transition to new economy job and grow creative industries.</li> </ul> <p>The LSPS identifies Wickham in the Newcastle City Centre Catalyst Area and that Council will work to ensure continued jobs and housing growth in the city. Action 8.6 specifically identifies that Council will review the actions and continue to implement the Wickham Masterplan.</p> <p>The planning proposal seeks to implement part of the Wickham Masterplan and is therefore considered consistent with the LSPS.</p>

Wickham Masterplan	<p>The vision for Wickham identifies opportunity for increased densities whilst building on the existing urban structure, improved public domain amenity, and built form to reflect the envisaged function and character of Wickham.</p> <p>The Wickham Masterplan (2017) describes the extensive community consultation that was undertaken to identify the vision and community needs for Wickham. Particularly, the July 2021 Masterplan identifies the community's interest in urban activation, streetscape improvement and public domain improvements to soften the urbanised environment. Item 5.2.2 of the Wickham Masterplan (2017) identifies examples of these public domain improvements that align with the proposed list of community infrastructure and an action plan that outlines the methods of achieving the envisaged urban activation and public domain improvements such as:</p> <ul style="list-style-type: none"> <li>• identifying land on the land reservation acquisition map, and</li> <li>• providing a mechanism to dedicate land to Council prior to redevelopment through an agreed development incentive or bonus.</li> </ul> <p>There is general consistency between the proposed objectives/provisions of the planning proposal and the differing versions of the Wickham Masterplan.</p>
Community Infrastructure Incentives Policy	<p>In July 2021, the Community Infrastructure Incentives Policy was adopted by the City of Newcastle. The purpose of the Policy is to support urban renewal through the provision of development incentives.</p> <p>The policy outlines how Council will implement the policy including amending the <i>Newcastle Local Environmental Plan 2012</i>, the development rate and publishing the incentive gross floor area rate that applies to the development which the incentive applies.</p> <p>The planning proposal aligns with Council's Community Infrastructure Incentives Policy. However, the proposed mechanism of implementing this policy is not support for the reasons outlined in section 2.0 of this report.</p> <p>The planning proposal is supported by an area-wide feasibility assessment. The feasibility assessment notes that it is not site specific and that feasibility varies on each site. The assessment has also considered the potential uplift that could occur as a result of the September 2021 Wickham Masterplan.</p> <p>In the April 2022 update of the draft Wickham Masterplan, the incentive height limits were reduced across part of the area. Should an incentive rate apply to individual sites in the Wickham area, a site-specific feasibility assessment would need to be undertaken and be updated in accordance with the planning controls intended at the time of application.</p> <p>The summary report accompanying the detailed advice also provides alternative options to support the proposed Community Infrastructure Incentives Policy, including examples at Randwick and Green Square. In these cases, incentive development uplift and corresponding community infrastructure is limited to the site subject to the development application only.</p>

## 3.4 Section 9.1 Ministerial directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 8: Section 9.1 Ministerial directions assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	Section 3.1 of this report has assessed the proposals consistency with the <i>Hunter Regional Plan 2036</i> and <i>Greater Newcastle Metropolitan Plan 2036</i> .
1.4 Site Specific Provisions	Inconsistency of minor significance	<p>Direction 1.4 seeks to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The planning proposal seeks to provide an incentive-based planning control to allow development uplift, subject to the delivery of community-based infrastructure and limit variation. This provision would restrict height increase or consideration of clause 4.6 variations, only where the infrastructure is delivered.</p> <p>Direction 1.4(c) requires that a planning proposal must not impose any development standards to those already contained in the principal environmental planning instrument being amended. <i>Newcastle Local Environmental Plan 2012</i> currently has no provision of a community incentives-based mechanism and therefore imposition of additional provisions over the subject land is inconsistent with the direction.</p> <p>It is noted other local environmental plans, including those at Randwick and Green Square (City of Sydney Local Government Area) have implemented similar community incentives-based mechanism. However, it is where the delivery of the community infrastructure is provided on the development site only.</p> <p>In contrast to the planning proposal, the above examples provide a link between the infrastructure need generated by a development and the enables provision of the infrastructure only on that site. This approach does not require full consideration of an infrastructure contributions plan which applies to multiple land parcels and requires the consideration of such things as priority of infrastructure delivery, a works schedule and how money/funds would be pooled and administered.</p> <p>Should the proposal align with the <i>Randwick Local Environmental Plan 2012</i>, the inconsistency is considered of minor significance.</p>
3.2 Heritage Conservation	Consistent	<p>The Wickham area, and land adjoining the sites proposed for development uplift, include items of local heritage significance.</p> <p>The planning proposal notes it will facilitate conservation of places of environmental heritage significance through additional funding and contribution to deliver appropriate interpretive treatments of items of heritage significance in the area.</p>

		<p>The planning proposal contain provisions that will facilitate the conservation of items and places of environmental heritage. In-addition, the local environmental plan identifies places of significance which would be required to be considered during the development application stage.</p>
4.1 Flooding	Inconsistent	<p>The planning proposal affects land that is within a flood planning area, but not within a floodway or considered flood storage, but is in a flood fringe area. The supporting material attached to the planning proposal included:</p> <ol style="list-style-type: none"> <li>1. Council's strategic position for the management of low-lying areas of Newcastle (July 2021), and</li> <li>2. Newcastle's <i>City-Wide Floodplain Risk Management Study and Plan 2012</i>.</li> </ol> <p>The direction also requires that a planning proposal must not contain provisions that apply to flood planning area which permits a significant increase in the development and/or dwelling density of that land or likely to result in an increased requirement for government spending on emergency management services, flood mitigation or emergency response measures.</p> <p>The number of additional dwellings or people expected as a result of the planning proposal has not been identified.</p> <p>Council's publicly available flood mapping also identifies the area subject to the planning proposal as medium to residual risk and the planning proposal identifies the land is located within the flood-planning area.</p> <p>Newcastle's <i>City-Wide Flood Plain Risk Management Study and Plan 2012</i> identifies most properties in Wickham will be flooded above floor-level during infrequent events and that properties within Wickham will be flooded to a significant depth during an extreme event.</p> <p>Newcastle's <i>City-Wide Flood Plain Risk Management Study and Plan 2012</i> has not addressed the <i>Considering flooding in land use planning guideline 2021</i>, or the <i>NSW Flood Prone Land Policy</i>.</p> <p>No assessment has been undertaken to determine whether the proposed provisions are commensurate with the flood behaviour in Wickham with regard to the flood impacts on life and/or property and consistency with the direction is unresolved.</p> <p>To determine consistency, a flood and risk management plan having regard to the <i>NSW Flood Prone Land Policy</i>, the <i>Floodplain Development Manual</i> and the Flooding Inquiry is required to be undertaken prior to exhibition.</p>
4.2 Coastal Management	Inconsistency is of minor significance	<p>The planning proposal is located within the 'Coastal Environment Area Map', 'Coastal Use Area Map' and 'Land Application Map' of the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (Resilience and Hazards SEPP).</p> <p>This direction applies when a planning is on land that is within the coastal zone, comprising the coastal environment area, and the</p>



		<p>coastal use area. The planning proposal must have regard to the Objectives of the <i>Coastal Management Act 2016</i> and not rezone land:</p> <ul style="list-style-type: none"> <li>(i) within a coastal vulnerability area,</li> <li>(ii) that is affected by a current or future coastal hazard, and</li> <li>(iii) that would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area</li> </ul> <p>The planning proposal does not apply to the above listed areas and therefore is considered of minor significance. The Wickham area is predominantly an urban/built environment and the Resilience and Hazards SEPP would be applicable at the development application stage where detailed investigation into water quality, impact on the water aquifer and other coastal processes can be considered on a site-by-site basis.</p>
4.4 Remediation of Contaminated Land	Consistent	<p>The direction applies to the planning proposal, given the land on which the development is proposed to be carried out is referred to in Table 1 of the contaminated land planning guidelines, particularly given the existing industrial area of Wickham that may have contained industries with chemicals, paint manufacturing, and other activities.</p> <p>The direction is only applicable when a planning proposal authority through a planning proposal seeks to change the land use in the zone. Given the planning proposal seeks to amend the development controls for existing zoned sites, the proposal is not inconsistent with Direction 4.4.</p>
4.5 Acid Sulfate Soils	Inconsistency is of minor significance	<p>The planning proposal seeks an intensification of land uses on land that has a probability of containing acid sulfate soils.</p> <p>Given the planning proposal seeks an increase in height / floor space on urban land, inconsistency with the direction is considered of minor significance.</p>
4.6 Mine subsidence and Unstable Land	Consistent	<p>The planning proposal is located within a mine subsidence district. The planning proposal notes, Subsidence Advisory NSW were consulted in the preparation of the <i>Wickham Masterplan 2017</i> and noted no in-principle objection to future development, however each development would be subject to further investigation.</p> <p>The extent of sites proposed for development uplift have also been revised in response to updated information from Subsidence Advisory NSW.</p> <p>The planning proposal is therefore considered consistent with Direction 4.6, given Council has consulted Subsidence Advisory NSW, and revised the footprint of land expected for increased development.</p>



5.1 Integrating land use and transport	Yes	<p>Wickham is located adjacent to the Newcastle Interchange which provides frequent access to inter-modal transport choices, such as buses, rail and light rail.</p> <p>The planning proposal seeks to provide an incentive mechanism for development in the area and provides avenues to improve the public domain through improved access and amenity to and from the station.</p> <p>Therefore, the planning proposal seeks to support the efficient and viable operation of transport services, reducing travel demand and improves access to house in proximity to public transport services.</p> <p>It is recommended consultation occur with Transport for NSW to assess the proposed uplift in development and its impact on supporting infrastructure needs for the area.</p>
5.2 Reserving land for public purposes	Consistent	The planning proposal seeks to reserve land for public services and proposes amendments to the land reservation acquisition map and includes a relevant acquisition authority.
6.1 Residential Zones	Consistent	The planning proposal seeks to broaden the choice of housing supply in the Wickham area in close proximity to major transport infrastructure and community services in the inner-city Newcastle area.

### 3.5 State environmental planning policies (SEPPs)

The planning proposal does not impact on the ability to assess SEPPs at the Development Application stage or proposes to amend a SEPP.

## 4 Site-specific assessment

### 4.1 Infrastructure, Social, Economic, and Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 10 Impact assessment**

Item	Assessment
Provisions of community infrastructure	<p>The planning proposal seeks to provide an avenue to deliver community infrastructure and public domain improvements that are outlined in the differing versions of the Wickham Masterplan.</p> <p>Although the intent to support the delivery of additional community infrastructure is supported, the planning mechanism and pathway to deliver the infrastructure requires further review and consistency with the <i>Environmental Planning and Assessment Act 1979</i> and other approved local environmental plan amendments, such as those in Green Square and Randwick.</p>

Road, Sewer and  
Water Capacity

It is recommended consultation occur with Transport for NSW and Hunter Water to assess the proposed uplift in development and its impact on supporting infrastructure needs for the area.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is not considered not appropriate, and should the planning proposal proceed to exhibition, detailed consultation with community and industry should be undertaken for a minimum of 30 days in accordance with Local Environmental Plan Making Guideline, given the complex nature of the planning proposal.

### 5.2 Agencies

Council identified it has consulted Subsidence Advisory NSW and the NSW Independent Commission Against Corruption (ICAC) in preparing the planning proposal.

Subsidence Advisory NSW identified limitations of redevelopment due to the nature of old mine workings within Wickham. ICAC advised it does not ordinarily provide comment on policy, and that it could not provide surety in relation to the potential for corrupt conduct.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- Transport for NSW;
- Biodiversity Conservation Division; and
- Subsidence Advisory NSW.

## 6 Timeframe

Council proposes a 7 month time frame to complete the local environmental plan following the Gateway determination.

The Department recommends the planning proposal is finalised by the 4 November 2023 and update the supporting material prior to exhibition, given the complex nature of the amendment. It is also recommended conditions requiring council to exhibit and report on the planning proposal by specified milestone dates are included in the Gateway Determination.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

It is recommended the Department retain local plan-making authority given the potential financial benefit to Council and the complexity of the planning proposal.

## 8 Assessment summary

Conditions are recommended on the planning proposal, given:

- The planning proposal seeks to introduce local provisions that cannot be lawfully imposed.

- Council would be unable to lawfully impose conditions of consent for the provision of infrastructure on future development applications and more intensive development could occur without any need to provide additional infrastructure.
- Flooding risk has not been assessed, and the risk to property and life from flooding could be significantly increased as a result of the planning proposal.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Ministerial directions 4.1 Flooding and 5.1 Integrating Land Use and Transport is unresolved and will require further justification.

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

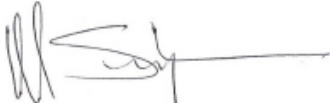
- The planning proposal seeks to introduce local provisions that cannot be lawfully imposed.
- Flooding risk has not been assessed and the risk to property and life from flooding could be significantly increased as a result of the proposal.



18 July 2022

Daniel Starreveld

Manager, Local and Regional Planning



4 November 2022

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(Signature)

\_\_\_\_\_  
(Date)

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