

REZONING REVIEW – Briefing Report

Date of referral	10/03/2021	
Department ref. no	RR-2021-70	
LGA	City of Newcastle	
LEP to be amended	Newcastle LEP 2012	
Address	505 Minmi Road, Fletcher NSW 2287	
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment	<input type="checkbox"/> Council failed to indicate support for the proposal within 90 days, or failed to submit the proposal after indicating its support
Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?	<input checked="" type="checkbox"/> Provided <input type="checkbox"/> Not required Comment: no donations or gifts to disclose	

1. SUMMARY OF THE PROPOSAL

1.1 Introduction

The rezoning review relates to a planning proposal at 505 Minmi Road, Fletcher (Lot 23 DP 1244350) which seeks to facilitate the delivery of 150 low density residential lots and 10.8ha of land to be rezoned for environmental conservation. Specifically, the following amendments are proposed:

- Rezoning of the site from E4 Environmental Living to Part R2 Low Density Residential and Part E2 Environmental Conservation.
- Reduce the minimum lot size from 40 hectares to 300m² and 1,000m² for the R2 zoned portion of the land to provide 150 residential lots.
- Introduce an 8.5 metre height of building standard for the R2 zoned portion of land,
- Designate the site as an urban release area.

Further details of the proposed provisions have been provided in Section 1.6 of this report.

1.2 Site Planning History

The site has previously been subject to a history of planning proposals seeking to rezone the site for greenfield residential development purposes. A summary of the history of previous and the current planning proposal is provided under the subheadings which follow:

1.2.1 Previous Planning Proposals

Date	Description
1 st Planning Proposal (2009-2016)	<p>The first planning proposal initially sight to rezone the site from 7(c) Environmental Investigation to part Residential and part Environmental Conservation. It was submitted and referred to the former Department of Planning for a Gateway Determination on 18 December 2009.</p> <p>On 8 February 2010, the planning proposal was refused at Gateway for the following reasons:</p> <ul style="list-style-type: none">• <i>“The proposal is premature given that detailed negotiations need to be carried out with Government Agencies to determine whether, or to what extent, residential development is suitable at the site.</i>• <i>The issue of possible environmental off-sets still needs to be determined following liaison with the Department of Environment and Climate Change”.</i> <p>From 2010 – 2013, the proponent engaged with the government agencies identified and negotiated a combined onsite and offsite biodiversity conservation package to compensate for the proposed clearing associated with the planning proposal and reached agreement with government agencies for the planning proposal to progress.</p> <p>On 22 February 2013, Gateway Determination was granted subject to conditions.</p> <p>On 8 December 2015, following public exhibition of a Draft Planning Agreement and Conservation Agreement, the planning proposal was presented at an Ordinary Council Meeting with a recommendation from Council staff that it be supported. However, at the meeting, Councillors resolved that the proposal should not proceed, and a request was sent to the then Minister for Planning and Environment to allow Council to discontinue the proposed amendments.</p> <p>On 7 July 2016, the planning proposal was formally refused.</p>
2 nd Planning Proposal (2017)	<p>A second planning proposal was submitted to Council on 12 May 2017 seeking to rezone land from E4 Environmental Living to R2 Residential and E2 Environmental Conservation.</p> <p>On 31 May 2017, Council advised the planning proposal was considered to be substantially the same as the previous planning proposal, which was refused, and therefore could not be supported. The proposal was then referred to the Hunter Region Joint Regional Planning Panel (HRJRPP) for a rezoning review.</p> <p>On 2 November 2017, the HRJRPP concluded the proposal should not be referred to Gateway as it was deemed the proposal demonstrated strategic merit but did not have adequate site-specific merit.</p>

Date	Description
3 rd Planning Proposal (2017-2019)	<p>A third planning proposal was submitted to Council in November 2017 (before being amended in December 2017).</p> <p>In May 2018, Council engaged external consultants to undertake an independent assessment of the planning proposal. The external consultants identified numerous matters that were unresolved and/or unsatisfactory that needed to be addressed. The assessment concluded the following:</p> <p><i>“additional justification/demonstration of certain matters through the provision of additional information is likely to be required at an earlier stage in order to receive Council’s support for the Planning Proposal.</i></p> <p><i>We therefore recommend that correspondence be forwarded to the applicant advising that additional information is required to address the above matters. Upon receipt of such information we recommend that referrals be forwarded to relevant Council Departments, as required. We will then undertake a further review of the application, prior to completing our report to Council.”</i></p> <p>Correspondence was provided to the Proponent on 5 June 2018 requesting the proponent commission updated studies and amend the planning proposal in response to matters raised within the external consultant’s independent assessment.</p>

1.2.1 The Current Planning Proposal

The current planning proposal was submitted and formally accepted by Council on 1 May 2020. Key variations to the planning proposal submitted in November 2017 are as follows:

- proposed land to be rezoned from E4 Environmental Living to part R2 Low Density Residential (increased from 11.7 to 15.4 hectares) and part E2 Environmental Conservation (reduced from 14.5 to 10.8 hectares).
- removal of intended FSR Map.
- removal of part of the site having a minimum lot size of 400m² to 300m².

On 5 May 2018, Council identified the revised planning proposal contained ‘most of the items’ identified as required by the external consultants in the correspondence received by the proponent.

On 26 June 2020, the planning proposal was referred to Council’s ‘LEP Planning Panel’ and the applicant was provided with preliminary advice regarding key issues and documentation requirements.

On 17 July 2020, following the LEP Planning Panel meeting, Council requested additional information and updates be provided prior to the reporting of the planning proposal to Council for endorsement and a resolution to seek Gateway Determination.

On 23 September 2020, an updated Planning Proposal was submitted to Council by the Proponent addressing Pre-Gateway matters identified in the letter of 17 July 2020. Council identified that changes were limited to minor wording edits/updates to the planning proposal report and inclusion of a new strategic bushfire study.

On 2 October 2020, Council requested the external consultant re-commence the independent assessment of the planning proposal, including the review of additional submitted information provided by the proponent.

On 31 October 2020, the independent assessment identified the planning proposal should proceed to the Department for Gateway determination and a planning proposal was prepared to be presented to Council at its ‘Ordinary Meeting’.

On 8 December 2020, the planning proposal was presented at Council's 'Ordinary Meeting' with a recommendation for endorsement. Notwithstanding the recommendation from staff, Council resolved not to support the planning proposal outlining the following:

PART A

That Council:

- 1. Does not endorse the Planning Proposal to rezone 505 Minmi Road Fletcher and maintains current zoning for the site (E4) as per the Newcastle Local Environment Plan 2012.*
- 2. Prior to being presented with any further planning proposals for this site, requires all required environmental studies and analysis be undertaken to: "address the inherent constraints and hazards of the land and the interdependent analysis of these constraints ... [as these studies] may result in significant amendments to the Planning Proposal" (Officers report, paragraphs 16-18).*

PART B

That Council:

- 1. Notes correspondence from the NSW Minister for the Environment, The Hon Matt Kean MP, seeking Council's advice on land that may have strategic potential to be acquired by the State for inclusion as part of the NSW National Parks Estate.*
- 2. Writes to Minister Kean and DPIE recommending that the NSW Government considers the inclusion 505 Minmi Road into the National Parks estate, noting the property's strategic importance to the Green Corridor, and its proximity to the existing Blue Gum Hills Regional Park and Hexham Wetlands National Park.*

PART C

That Council:

- 1. Amends the adopted Local Strategic Planning Statement (LSPS) to remove references to 505 Minmi Road as a 'Housing Release Area', by reverting all references relating to 505 Minmi Road to those contained within the draft Plan.*

On 29 January 2021, a rezoning review request was sent to the Department of Planning, Industry and Environment.

1.3 Locality and context

The site is located in the suburb of Fletcher and situated directly adjacent to the suburb of Minmi. It is located in the western extent of the Newcastle local government area (LGA) in proximity of the Cessnock LGA and Lake Macquarie LGA boundaries.

A number of greenfield residential estates are located to the east, north and west of the site. These developments consist mostly of single and double storey dwellings as well as vacant lots. The various residential estates are separated by Minmi Road and local road networks as well as native bushland vegetation which is interspersed throughout the wider locality.

North and west of the urban areas of Fletcher and Minmi are large extents of native bushland areas including national parklands and areas identified for environmental conservation.

The Blue Gum Hills Regional Park is located approximately 5.2km south of the site and contains protected native bushland as well as recreational facilities.

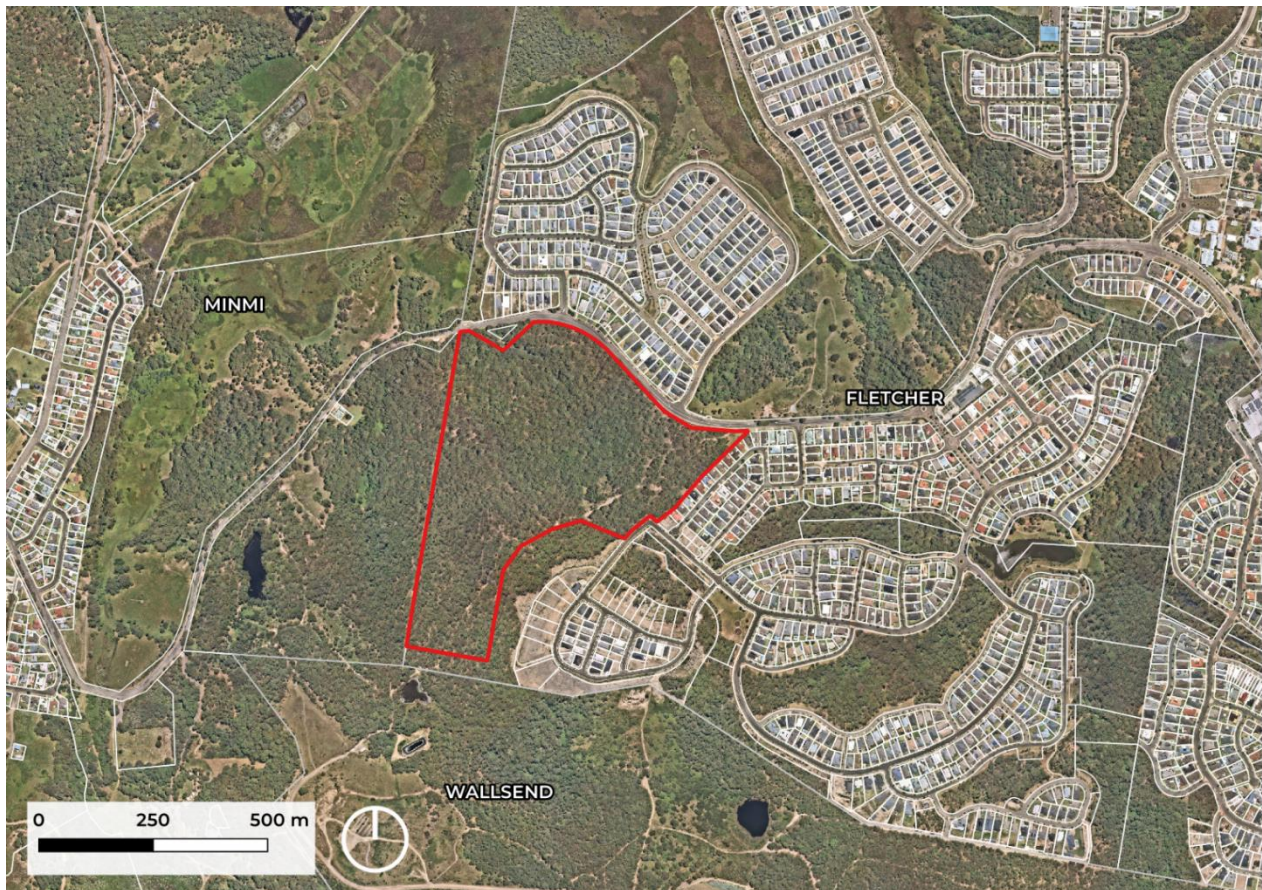


Figure 1 – Locality Map (Near Maps)

1.4 Site description

The site is approximately 26.2 hectares and is located between Wallsend and Minmi within the Blue Gum Hills development corridor.

There are no formal crossovers that exist to the site, however informal access roads and pathways to the site are available off Minmi Road and Sterling Crescent.

The lot is currently vacant, comprising native vegetation, unsealed roads, some fencing, and motorcycle/bicycle tracks.

The highest point of the site is located on the eastern boundary at approximately 53m ASL. The land falls steeply from south east to north west by approximately 30m at its lowest point.

1.5 Current planning provisions

Under the *Newcastle Local Environmental Plan 2012*, the following zoning and development standards apply to the site:

- The site is zoned E4 Environmental Living;
- The site has a minimum lot size area of 40 hectares; and
- The site does not have a maximum height of building development standard.

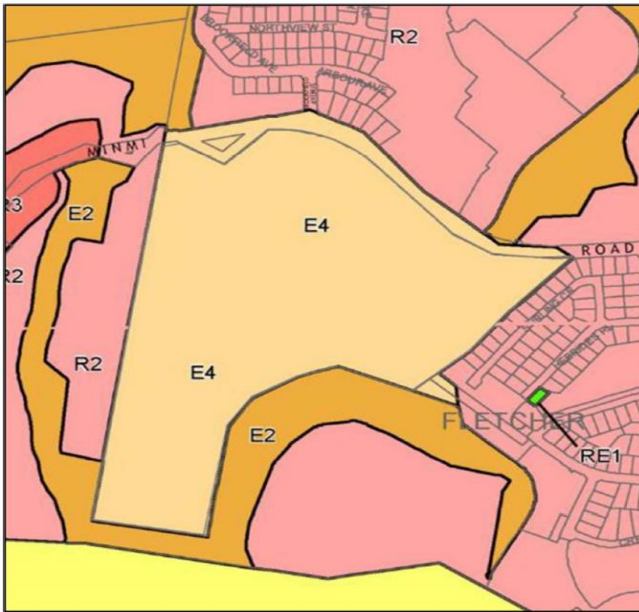


Figure 2 – Existing Land Zoning Map



Figure 3 – Existing Height of Buildings Map

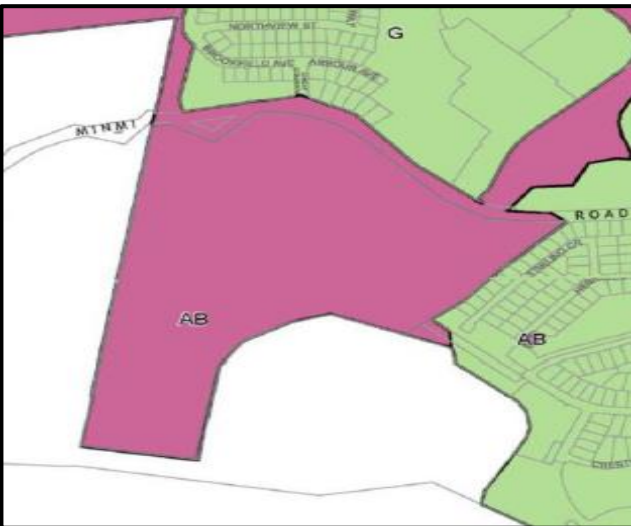


Figure 4 – Existing Minimum Lot Size Map

1.6 Proposed planning provisions

The planning proposal seeks to amend the *Newcastle Local Environmental Plan 2012* as follows:

- rezoning to R2 Low Density Residential and Part E2 Environmental Conservation;
- reducing minimum lot size to 300m² and 1000m² for the R2 Low Density Residential zoned portion of the land;
- introduce 8.5 metre height of building standard for the R2 Low Density Residential zoned portion of the land; and
- designate the site as an urban release area.

	Land Use Zone	Minimum Lot Size	Maximum Building Height	Floor Space Ratio
Control	E2 – Environmental Living	40 hectares	Not Applicable	Not Applicable
	R2 Low Density Residential	300m ² 1,000m ²	8.5m	Not Applicable

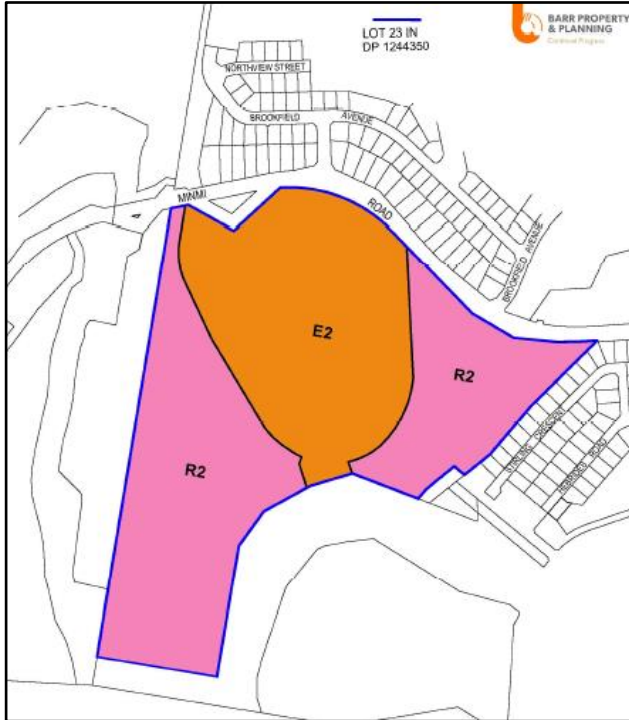


Figure 5 – Proposed Land Use Zone Map

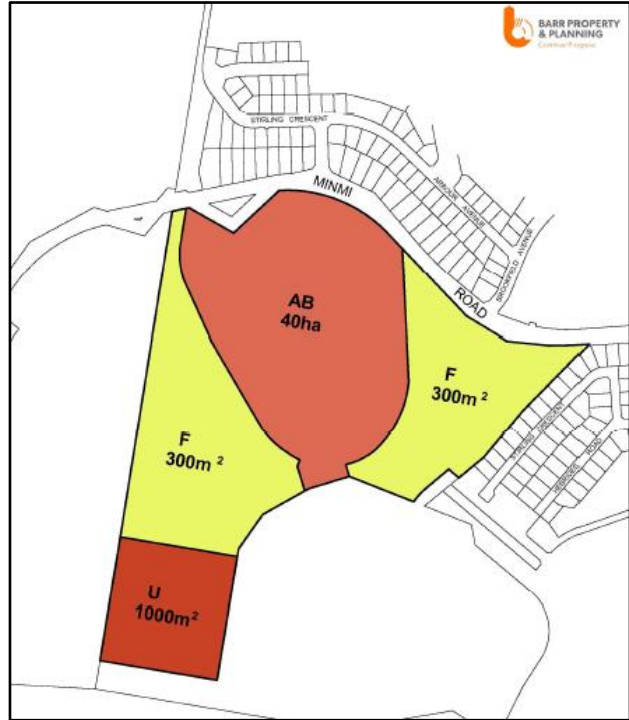


Figure 6 – Proposed Height of Buildings Map



Figure 7 – Proposed Minimum Lot Size Map

2. INFORMATION ASSESSMENT

Does the proposal seek to amend a zone or planning control that is less than five years old?

No. The Newcastle Local Environmental Plan 2012 commenced on 15 June 2012.

2.1 Strategic merit test

Consistency with the relevant regional plan outside the Greater Sydney region, district plan within the Greater Sydney region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.

Proponents will not be able to depend on a draft regional, district or corridor/precinct plan when the Minister for Planning and Public Spaces or the Department of Planning, Industry and Environment have announced that such a plan will be updated before being able to be relied on.

Hunter Regional Plan 2036

The Hunter Regional Plan outlines a vision to create a leading regional economy in Australia and is used to guide land use planning and infrastructure priorities and decisions over the next 20 years.

The planning proposal states: *“The proposed development is consistent with the vision and goals outlined in the HRP2036, including:*

- a) The Proposal will provide additional housing choice within a new, well- designed community that is accessible to a range of facilities and services (schools, shops and recreation).*
- b) The preservation of land for conservation purposes to ensure the long-term sustainability of the site within the context of other areas conserved in the local area.*
- c) The construction phase of the site-specific infrastructure and residential house construction will contribute toward economic growth and in the longer term, the provision of additional housing will provide broader social and economic benefits via increased demand for goods and services.*
- d) The subject site is identified on the Greater Newcastle Settlement Pattern Map contained within the HRP2036, as a current Urban Release Area, refer to Figure 10.”*

In addition, the planning proposal states that it is *“consistent with and will assist in achieving”* several strategy directions and actions within HRP 2036, namely including:

- *Direction 14: Protection and Connect natural areas.*
- *Direction 21: Create a compact settlement.*
 - *21.1 Promote development that respects the landscape attributes and the character of the metropolitan areas, towns and villages*
 - *21.2 Focus development to create compact settlements in locations with Lake Macquarie Western Corridor growth area*
 - *21.4 Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water catchments or on areas with high environmental values*
 - *21.7 Promote new housing opportunities in urban areas to maximise the use of existing infrastructure*
- *Direction 23: Growth centres and renewal.*
 - *23.4 Investigate locations for new and expanded centres, including within the Newcastle-Lake Macquarie Western Corridor*

- *Direction 25: Monitor housing and employment supply and demand.*
 - *25.3 Sequence new greenfield urban development that makes efficient use of infrastructure network capacity*
- *Direction 26: Deliver Infrastructure to support growth and communities.*
 - *26.5 Ensure growth is serviced by enabling and supporting infrastructure*

Greater Newcastle Metropolitan Plan 2036

The Greater Newcastle Metropolitan Plan (GNMP) 2036 sets out strategies and actions to drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities and assists to achieve the vision set by the Hunter Regional Plan 2036.

The Planning Proposal states that it supports the GNMP 2036 outcomes and that potential development of the site for residential purposes is reflected within GNMP 2036 mapping throughout (See Figure 11, 12, 13 and 14 of the planning proposal).

The Planning Proposal states that “*There are a number of strategies and actions in the GNMP2036 that align with the Planning Proposal and supports the development of the site*” and its consistency with relevant GNMP 2036 strategies and actions is outlined in the table below:

<i>Strategy</i>	<i>Action</i>	<i>Comment</i>
<i>12 – Enhance the Blue and Green Grid and the urban tree canopy</i>	<i>12.1 Greater Newcastle councils with support from the Department of Planning and Environment, will:</i> <ul style="list-style-type: none"> • <i>improve access to open space, recreation areas and waterways so that 90% of houses are within a 10-minute walk of open space</i> 	<i>“A large portion of the site is proposed to be conserved in its natural state, which will have strong connectivity to open space corridors external to the site. Every proposed residential lot on the site will be within a 10 minute walk to the proposed conservation land within the site, which may also be capable of supporting passive recreational usage. CONSISTENT</i>
<i>16 – Prioritise the delivery of infill Housing opportunities within existing urban areas</i>		<i>This is an isolated vacant lot surrounded by established residential areas and areas zoned, development applications approved and currently under construction or proposed for construction presently and in the immediate future. CONSISTENT</i>
<i>17 – Unlock housing supply through infrastructure coordination and delivery</i>		<i>Public utility services including telecommunications, gas, electricity, sewer and water will be available to serve any development on the subject land. While the previously provided (2012) approval for water and sewer provision from Hunter Water has expired, the site should not be constrained and by going through the processes previously defined by Hunter Water the site should be capable of being fully serviced by water and sewer.”</i>

Consistency with a relevant local strategy that has been endorsed by the Department.

Newcastle Local Strategic Planning Statement

The Newcastle Local Strategic Planning Statement (LSPS) is a 20-year land use vision prepare to guide future growth and development in Newcastle. The LSPS informs changes to the Newcastle LEP 2012, Newcastle Development Control Plan 2012 and land use strategies.

The Planning Proposal states, *“The subject land at 505 Minmi Road Fletcher is one of two sites mapped in the Urban Structure Plan as a “Housing Release Area”. Planning Priority 8 “Plan for growth and change in Catalyst Areas, Strategic Centres, Urban Renewal Corridors and Housing Release Areas”. Action 8.1 of the LSPS states:*

“Work with stakeholders to plan and prioritise infrastructure delivery with future development of Catalyst Areas, Strategic Centres, Urban Renewal Corridors and Housing Release Areas.”

The Planning Proposal states, *“this Planning Proposal directly responds to that action by endeavouring to facilitate the future development of the Housing Release Area at Fletcher”.*

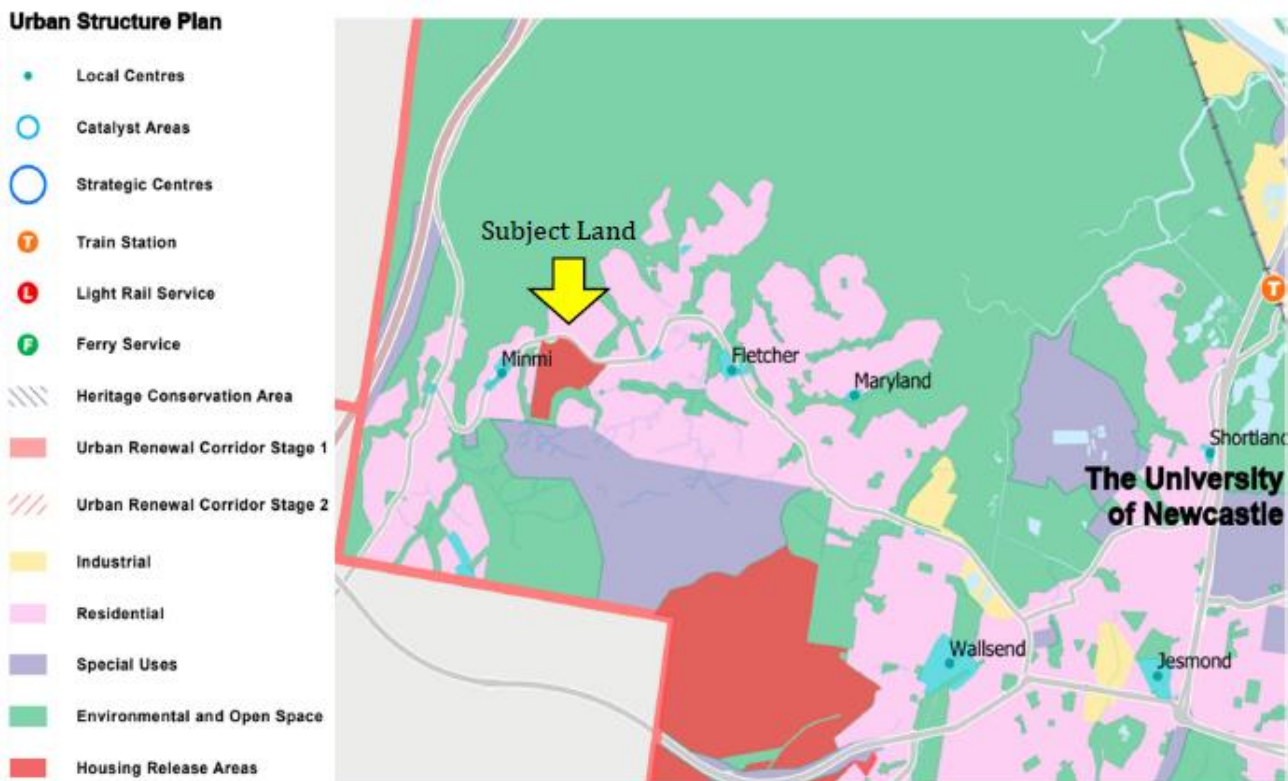


Figure 8 –Newcastle LSPS Urban Structure Plan, location of site identified (*Newcastle City Council, modified by Barr Property*)

However, following a Council resolution on 8 December 2020, Council has now removed reference to 505 Minmi Road as a 'Housing Release Area' within the LSPS.

The Planning Proposal also outlines its consistency with other Planning Priorities identified in the LSPS as follows:

Planning Priority	Principle	Consistency
2 - Support emerging transport opportunities and public transport improvements with continued integration of land use and transport planning	Where intensification of land use is proposed comprehensive traffic and transport planning is undertaken to ensure the required infrastructure, initiatives and funding mechanisms are achievable.	<i>"A Traffic Impact Assessment confirmed capacity exists within the local road network to cater to the proposal. Depending of the eventual subdivision design, the proposal may facilitate local bus routes through the site.</i>
4 – Green our neighbourhoods	Additional public green spaces and the provision of natural and built shade are included in planning for the mixed-use Catalyst Areas, Strategic Centres, Urban Renewal Corridors and Housing Release Areas.	<i>The proposal will include the long-term conservation and management of at least 10.2 hectares of land that will read as public green space. Proposed residential land would, when subdivided, incorporate suitable street trees to provide shade.</i>
5 - Protect and enhance our bushland, waterways and wetlands	The blue and green grids are improved.	<i>The proposal will include the long-term conservation and management of at least 10.2 hectares of vegetated land, including the riparian zone of a first-order watercourse</i>
6 - Reduce carbon emissions and resource consumption	Proposals in Housing Release Areas will incorporate mechanisms to achieve excellence in sustainable and urban building design.	<i>It is envisaged that the proposed residential areas will facilitate a range of lot sizes capable of accommodating sustainably-designed housing.</i>
7 - Plan for climate change and build resilience	Urban growth and change responds to environment and climate change risks and impacts. Infrastructure and asset planning incorporates emergency management principles and disaster risk reduction. Carbon emissions are minimised or offset.	<i>The proposal will ensure compliance with Planning for Bushfire Protection 2019. New infrastructure and assets to support the proposed residential zoning will incorporate emergency management principles.</i>
9 - Sustainable, healthy and inclusive streets, neighbourhoods and local centres	Streets are the primary public spaces for access and exchange between people, and should be safe, friendly, healthy, attractive and efficient.	<i>The proposal will facilitate new housing directly adjacent to existing established housing. The site is walking distance to shops and capable of being serviced by public transport.</i>
10 - Development responds to the desired local character of our communities	Design contributes to achieving the envisaged character of neighbourhoods and local centres. The liveability of different neighbourhoods is enhanced through sustainable growth that reflects desired local character. Ensure known and potential heritage places and values are conserved and contribute to local character and sense of place.	<i>The proposal will facilitate residential subdivision incorporating a range of lot sizes and will build on the local character of Fletcher as a greenfield estate.</i>

11 - Protect and celebrate our Heritage	The City's identity is maintained by protecting and enhancing heritage buildings, streetscapes, views and key features. CN's land use decisions will reflect our commitments included in our Heritage Policy to: – Know our heritage – Protect our heritage – Support our heritage – Promote our heritage	<i>A comprehensive Aboriginal Cultural Heritage Assessment has been carried out for the site which includes recommendations for the recording and preservation of items of Aboriginal cultural heritage.</i>
12 - Sustainable, affordable and inclusive housing	Housing at appropriate densities will be located to support effective and integrated public transport. A culturally rich and vibrant community will be encouraged by providing a greater diversity of quality housing within each neighbourhood for current and future community needs. The 'lived experience' of residents will be improved by enhancing the quality and liveability of housing as it relates to health, overall cost of living and local character. Proposals in Housing Release Areas will incorporate affordable housing, adaptable housing and mechanisms to achieve excellence in sustainable building design.	<i>The proposal will facilitate residential subdivision incorporating a range of lot sizes down to 300m2 in order to provide housing diversity and affordability."</i>

Newcastle Local Housing Strategy

The Newcastle Local Housing Strategy sets a vision for the provision of housing across the Newcastle Local Government Area over the next 20 years.

The site was originally identified as a 'Housing Release Area' under the draft Local Housing Strategy, which was anticipated to undergo significant change in the future to accommodate housing and associated services whilst addressing key issues including;

- *conserving, protecting and managing significant habitats and areas of high biodiversity value (including riparian zones)*
- *traffic impacts on existing roads and intersections*
- *providing infrastructure and services including new road networks, public recreation, open space, and other community infrastructure*
- *remediating areas of contamination*
- *expanding and improving the Blue and Green Grids*
- *providing affordable rental housing."*

However, following a Council resolution on 8 December 2020, the Local Housing Strategy has now removed reference to 505 Minmi Road as a 'Housing Release Area'.

The Planning Proposal outlines the projects consistency with the six priorities identified in the Local housing strategy as outlined below:

Housing Priority	How Planning Proposal relates
1. Maintain and encourage housing supply in the right locations	<i>"The land is identified as a Housing Release Area in the Newcastle LSPS, with which the LHS is intended to be consistent, hence the proposal is CONSISTENT with this priority.</i>
2. Diversify housing type and tenure across the LGA to provide for a range of housing needs	<i>The site has the potential to cater to the demand for both low and medium density housing forms within the popular growing suburb of Fletcher. CONSISTENT.</i>
3. Increase the availability of accessible and adaptable housing	<i>The proposal is expected facilitate approximately 150 new dwellings. Vacant land provides the most economical opportunity to deliver accessible and adaptable housing. CONSISTENT.</i>
4. Increase the supply of affordable rental housing	<i>The supply of additional land for housing provides greater opportunity to increase the supply of affordable rental housing. CONSISTENT.</i>
5. Ensure new housing and changes to existing housing reflect the desired future local character of the area	<i>New detached housing on the subject land will be consistent with the character of Fletcher. CONSISTENT.</i>
6. Homes are designed to be ecologically sustainable and to reduce the resource requirements through the life cycle of the dwelling	<i>The supply of greenfield housing lots provides the opportunity to construct ecologically sustainable homes utilising modern building techniques and materials. CONSISTENT."</i>

Newcastle 2030 Community Strategic Plan

The Newcastle 2030 Community Strategic Plan (CSP) is a shared community vision to inform actions over the next 10 years and is based on the aspirations, knowledge and values of the community. The CSP contains seven strategic directions and outlines key actions in achieving the shared community vision.

The Planning Proposal outlines its consistency with the CSP identified as outlined below:

Strategic Direction/Community Objectives	Commentary
Integrated and Accessible Transport 1.1 Effective and Integrated public transport 1.2 Linked networks of cycle and pedestrian paths 1.3 Safe, reliable and efficient road and parking networks Protected Environment	<ul style="list-style-type: none"> <i>"Provide an opportunity for future bus routes through the site with connectivity to adjacent developments and beyond.</i> <i>Maximise opportunities for walking and cycling within the site and provide a linkage to adjacent lands by creating an east-west connection through the site, with potential for footpaths and on road cycle ways.</i> <i>Set aside 10.8ha of the site for conservation purposes,</i>

<p>2.1 Greater efficiency in the use of resources</p> <p>2.2 Our unique natural environment is maintained, enhanced and connected</p> <p>2.3 Environment and climate change risks and impacts are understood and managed</p> <p>Vibrant, Safe and Active Public Places</p> <p>3.1 Public places that provide for diverse activity and strengthen our social connections</p> <p>Inclusive Community</p> <p>4.1 A welcoming community that cares and looks after each other</p> <p>4.2 Active and healthy communities with physical, mental and spiritual wellbeing</p> <p>Liveable Built Environment</p> <p>5.1 A built environment that maintains and enhances our sense of identity</p> <p>5.2 Mixed-use urban villages supported by integrated transport networks</p> <p>5.3 Greater diversity of quality housing for current and future community needs</p> <p>5.4 Sustainable infrastructure to support a liveable environment</p> <p>Collaborative Leadership</p> <p>7.2 Considered decision making based on collaborative, transparent and accountable leadership</p>	<ul style="list-style-type: none"> • <i>Retire biodiversity credits through one or a mix of the three alternatives provided in the Biodiversity Offset Scheme.</i> • <i>Directly contribute to the creation of open space within the site that promotes active and passive recreation and community interaction.</i> • <i>Require payment of S94 contributions for the provision of social and traffic/transport infrastructure to be provided in the western urban release area corridor for use of future residents of the site and for those in the wider Fletcher community.</i> • <i>Potential for the development of pedestrian/ cycle connections through the site will further promote opportunities for wider community interaction.</i> • <i>Compliment the growing residential community within Blue Gum Hills with additional housing and improved connectivity between established residential development and sites to be developed, located to the east and west of the site.</i> • <i>Provide new housing in an identified urban growth corridor, while conserving approximately 10.8ha or 41% of the site for conservation/ open space purposes which provides connectivity to adjoining conservation areas and linkages through the site for traffic, cyclists and pedestrian and the like."</i>
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Responding to a change in circumstances, such as investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.

Not Applicable.

2.2 Site-specific merit test

Ecology

The Planning Proposal is accompanied by a Stage 1 Biodiversity Inventory Report (BIR) (dated 7 January) prepared by MJD Environmental. The BIR supersedes previous studies undertaken by Ecobiological (2012) in relation to the site, as these were invalidated by the age of survey data and the emergence of new legislative requirements under the Biodiversity Conservation Act 2016 (BC Act 2016).

The BIR has been prepared in accordance with the Biodiversity Assessment Methodology (BAM) and according to the planning proposal represents the first of two stages of investigations intended to be undertaken. The Planning Proposal states that a 2-stage approach was adopted primarily due to:

- *“Introduction of the BC Act replacing the Threatened Species Conservation Act 1995, Native Vegetation Act 2003 and National Parks and Wildlife Act 1974 (animal and plant provisions only) and amendment to the Local Land Services Act 2013.*
- *CN’s requirements in regard to Flora and Fauna Assessment and Offset Strategy wherein the age of the Flora, Fauna and Threatened Species Assessment previously, undertaken by Ecobiological (Survey & Assessment) in May 2012 requires updating the status of the Conservation Agreement, Planning Agreement and Biodiversity Offset Strategy, based on the current and latest environmental legislation.*
- *OEH’s letter dated 17 January 2019 – See Appendix D*
- *Planning, Industry & Environment Department (Biodiversity and Conservation Division) letter dated 10 September 2019 See Appendix D This letter was the prime catalyst in adopting the two-stage approach for the purpose of the Planning Proposal”.*

BIR Approach and Assessment

The following extracts outline the approach of the BIR assessment:

“In agreement with Council and DPIE, a current biodiversity report was to be developed to inform the planning proposal and a more extensive body of works was required given the site history. As such this BIR has been produced in a manner which is consistent with the Biodiversity Assessment Methodology (BAM) in order to satisfy later stages of the biodiversity planning process, post gateway. The BAM was used as the assessment method, to establish impacts on threatened species and threatened ecological communities in the locality under the Biodiversity Conservation Act 2016.

In addition, preliminary assessment was also undertaken having regard to those threatened entities listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The proposed subject site is zoned as E4 Environmental Living and is currently a vacant bush lot containing unsealed roads, fences, rubbish and native vegetation. The land has undergone historic clearing most likely for pit props and grazing evident by the young age cohorts of trees, fences, weed invasion and disturbed vegetation. The overall native woody vegetation is in moderate condition comprising good species composition and structure.

Field surveys carried out as part of the biodiversity assessment identified three Plant Community Types (PCT): Refer Figure 8.

- *1589 – Spotted Gum – Broad-leaved Mahogany – Grey Gum grass – shrub open forest on Coastal Lowlands of the Central Coast*
- *1590 – Spotted Gum – Broad-leaved Mahogany – Red Ironbark shrubby open forest commensurate with the BC Act listed Endangered Ecological Community (EEC) Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions*
- *1619 – Smooth-barked Apple – Red Bloodwood – Brown Stringybark – Hairpin Banksia heathy open forest of coastal lowlands.”*

Impact Analysis

The following extracts outline the impact analysis of the BIR:

“The proposal will result in the following impacts and required offsets as calculated using the BAM-C Calculator:

- 2.05 ha of PCT 1589 requiring 78 ecosystem credits; and
- 11.77 ha of PCT 1590 requiring 406 ecosystem credits; and
- 0.94 ha of PCT 1619 requiring 24 credits.

The current method to retire credits for the proposal has not been determined and will be dependent on the availability of credits on the open market, viability of establishing a stewardship site in the locality or retirement of credits via payment into the Biodiversity Conservation Fund (BCF). It is likely that credit retirement will incorporate one or a combination of these options if the proposal was granted approval.”

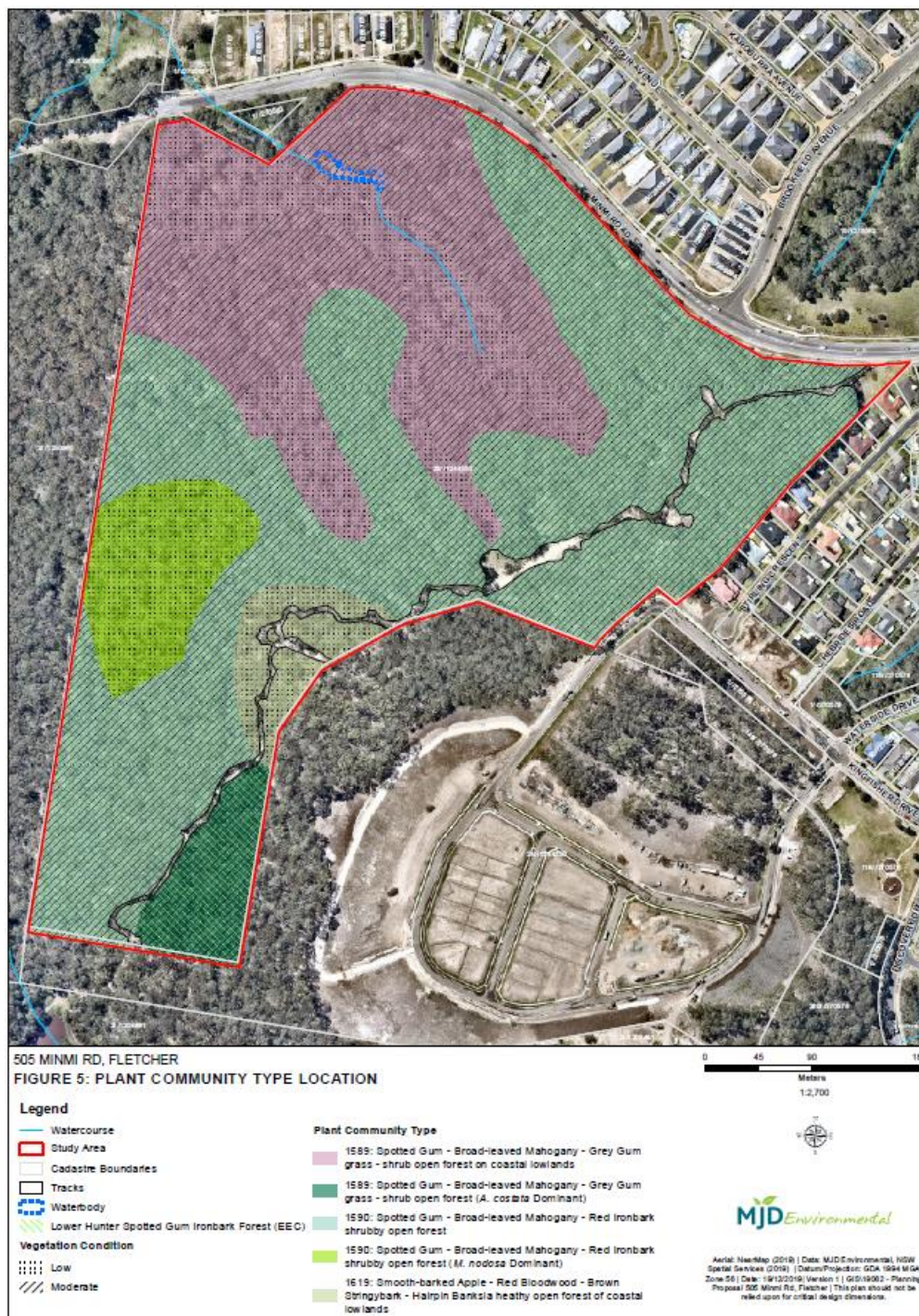


Figure 9 –Plant community Type Location (MJD Environmental - Biodiversity Inventory Report January 2020)

Stage 2 - Biodiversity Development Assessment Report

Should the Planning Proposal proceed post-Gateway, a Stage 2 Biodiversity Development Assessment Report (BDAR) is to be prepared in accordance with the 'Biodiversity Assessment Method Operational Manual – Stage 2' (NSW DPIE, 2019). The Planning Proposal identifies that further consultation is to take place with Council and relevant government authorities including BCD.

Aboriginal and Cultural Heritage

The planning proposal identifies that a basic AHIMS Report was conducted in September 2020 which found no known Aboriginal places one known Aboriginal site. In addition, it noted that *"A previous Archaeological Assessment noted that Aboriginal sites have been recorded on the site, but their significance is considered to be low. The Archaeological Assessment of the site was undertaken by Environmental Resources Management Australia (ERM) in November 2003. A grinding groove was located in the creek line to the west of the site and an isolated single artefact was recorded within the site"*.

The following recommendations were included as part of the Archaeological Assessment prepared by ERM in accordance with the planning proposal:

- *"The three PAD areas of relatively undisturbed ground within the study area that have been identified (refer Figure 11 below) as having moderate potential to reveal Aboriginal cultural heritage, should undergo a subsurface testing program before ground disturbing elements of the proposed housing development proceeds. Most appropriately this would occur as part of documentation for a development application;*
- *During works, all known and recorded sites should be clearly marked and avoided;*
- *No archaeological constraints exist for sections within the study area identified as existing outside of the areas of archaeological significance, identified in Figure 11;*
- *Areas outside of the study area identified in the Archaeological Assessment as holding Aboriginal significance require protective measures to be undertaken before ground disturbing elements of the proposed residential development can proceed;*
- *It is recommended that regular meetings are established with the local Aboriginal community to discuss the progress of the proposed works;*
- *Where possible, and in consultation with Aboriginal stakeholders, conservation areas could be established where artefacts may be relocated, and interpretive strategies be established for the past use of the landscape by Aboriginal people; and*
- *A copy of the Archaeological report should be provided to each of the Aboriginal groups who expressed an interest in the original rezoning proposal"*.

The Archaeological Assessment was supplied to the Office of Environment and Heritage (OEH) in 2015 who reviewed the report and provided comment 30 October 2015. In part, the review stated:

"The Planning Proposal must include provisions to facilitate the conservation of Aboriginal cultural heritage values. Such provisions may include:

- *appropriate land use zoning (e.g. E2 conservation)*
- *redesign of future development to avoid harm*
- *incorporating areas into passive open space*
- *recommendations for a development control plan.*

OEH supports the recommendations made within the report (ERM) and takes this opportunity to remind Council that if any registered sites present within the property are to be impacted at the development stage an Aboriginal Heritage Impact Permit will be required”.

The Planning Proposal states that “the recommendations in the ERM report will be implemented as supported by OEH and the single artefact and grinding grooves will be documented in preparing the development application for development on the site.”



Figure 10 –Location of Existing Artefacts and Discovered PAD sites (ERM 2003)

Bushfire

The site is identified a bushfire prone land. A strategic Bushfire Study (September 2020) accompanies the Planning Proposal which determined that the proposal is able to comply with the *Planning for Bushfire Protection 2019*. Part 5 of the Study 'Conclusion and Recommendations' states:

"In summary, this strategic assessment has determined that the proposed development is able to comply with PBP (2019) as;

- the land is suitable for development in the context of bushfire risk*
- new development on BFPL will comply with PBP 2019*
- reliance on performance-based solutions is minimised*
- infrastructure associated with emergency evacuation and firefighting operations is adequate.*
- Ongoing land management practices are appropriate"*

"In summary, the following key recommendations have been generated to enable the proposal to comply with PBP (2019).

- Direct access will be provided to each lot in the proposed developments*
- Services are to be provided and connected to the site in accordance with PBP (2019).*
- Careful consideration of future site landscaping and ongoing fuel management must occur to minimise the potential impact of bushfire on the site.*
- APZ's will be required, additionally each future residential lot is to be managed as an IPA in perpetuity. (NB: Specific distances to the east and west are provided, not reproduced here. It is noted that an APZ of 36m from the Forest hazard to the West (pending development: If this development does not proceed, an easement within the site will be required (which will impact on the lot yield).*
- Assessment has demonstrated that a future residential dwelling on each lot within the proposed subdivision, can be established with a BAL exposure of no greater than BAL- 29.*
- Services are to be provided and connected to the site in accordance with PBP (2019) as summarised and assessed in Chapter 3, Section 3.4 of this report.*
- Careful consideration of future site landscaping and ongoing fuel management must occur to minimise the potential impact of bushfire on the site.'*

Figure 11 below identifies the Asset Protection Zones (APZ) on the submitted indicative subdivision plan for the site which shows a number of the proposed allotments impacted by the recommended APZ.

The Planning Proposal states, *"The extent of additional clearing for bushfire hazard reduction and asset protection will be defined in greater detail at a later stage, and the impacts of this clearing should be incorporated into the biodiversity credits to be obtained for development on the site."*



Figure 11 – Preliminary Assessment Protection Zone Assessment Map (MJD Environmental September 2020)

Mine Subsidence

The NSW Subsidence Advisory Board records indicate that the former Lot 1 in DP 844711 (now Lot 23 in DP1244350) is partially undermined beneath the south/eastern boundary of the property where workings lie at depths of less than 10 metres below the surface.

A Preliminary Mine Subsidence Assessment prepared by Cardno Geotech Solutions (July 2013) which accompanies the planning proposal states: *“Subsurface investigation will be required to confirm the depth and extent of mine workings and potential influence on development. Further investigation will be required, and it would be suggested to use a combination of geophysical survey using ground penetrating radar (GPR) supplemented with a series of borehole using a bore camera to determine the extent and condition of working”.*

Correspondence from the Mine Subsidence Board (MSB) was provided with the planning proposal which concurred with the findings of the report and confirmed that the site is partially undermined and will need to be remediated. The correspondence further states, *“A thorough investigation and report from a Geotech engineer will be required to determine the extent of the mine workings and the proposed methodology to eliminate the risk of the mine subsidence.”*

Contamination

A report on preliminary contamination assessment (March 2014) of the site accompanies the Planning Proposal. The report identifies there is no indication of gross contamination on site and that it would be suitable for residential development subject to further assessment during construction.

Flooding, Hydrology and Water Management

The land is not identified as being flood affected. The existing central creek line (north west corner) will be retained/preserved within the E2 Environmental Conservation Zone.

The site also contains a number of gullies and creeks which may be considered as prescribed streams under the Water Management Act 2000, requiring any future development with 40m of the prescribed stream to be considered as integrated development.

The Planning Proposal states that *“a Storm Water Strategy will need to be prepared at development application stage to consider the on-site stormwater detention and water quality measures to be incorporated in any development proposal”.*

Noise, Odour and Air Quality

The site is located to the north of the Summerhill Waste Management Centre (SWMC). Given the distance of the SWMC and the high-level environmental management of the facility, the Planning Proposal considers the potential impacts of the centre on the subject site by way of noise odour to be minimal. As such, no specific noise or odour assessment has been carried out for the Planning Proposal.

The State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 identifies the site within a future Residential Growth area, around which, a buffer of 2km applies to any coal seam gas development. Specific assessment of the impact of the odour and air quality from adjoining development including potential coal mining and coal-bed methane extraction has not been carried out on the site given the buffer in place.

Furthermore, the Planning Proposal states that noise, odour and air quality were not a specific consideration for the rezoning and subsequent development approval of the Winten Precinct 1 and 1A to the south east and west of the site.

Visual Impact

A Visual Impact Assessment (February 2020) accompanies the Planning Proposal to address the potential landscape and visual impacts of the proposed development on the surrounding areas.

The Visual Impact Assessment concludes that *“the combination of landscape and visual sensitivity impacts will be of minor significance. The direct significance of impacts for development is minimal, in comparison to the already cumulative impacts of existing and proposed development in the broader area. The visual impact of this development is mitigated by the fact that it is an isolated site amongst existing residential developments and has a significant amount of bushland being retained on the site.”*

Indicative Subdivision Layout

An indicative subdivision layout accompanies the planning proposal; however it is likely to be subject to change based on the findings of the strategic bushfire Study and additional studies to be commenced post-Gateway. A summary of the factors considered in determining the indicative subdivision design are provided below:

- Residential zone: *“Land within the site of slope 15% and less”* (majority of site ranges between 4% to 10%). *“Flatter areas have been identified and utilised for smaller lot sizes”. “designed to provide adequate setbacks for potential building envelopes, within each lot, to provide for suitable APZ’s for bushfire purposes.”;*
- Road access points: *“Existing and potential public road vehicular access points on the periphery of the site, have been utilised in determining the internal road network. This includes an extension of Kingfisher Drive on the site’s eastern side and the preferred potential link with the proposed road system within the Winten Precinct 1A on the site’s north western side. Should access through the Winten Precinct 1A not be achievable, a separate access to Minmi Road can be pursued in the site’s north western corner.”*
- E2 Conservation zone: *“Centrally located ‘pocket’ of land which extends diagonally across the entire site from south to north. It also contains 31 of the 45 identified hollow bearing trees”. Aims to conserve environmental sensitive land within the site including bushland, riparian and habitat corridors and provide physical connectivity to adjoining and adjacent, similarly zoned lands, in the north west corner of the site.*

The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Services

The Planning Proposal states public utility services including telecommunications, gas, electricity, sewer and water will be available to service any development on the site.

Traffic

A Traffic and Transport Impact Assessment prepared by Baker Ryan Stewart in December 2019 was provided with the planning proposal for 150 lots at the site. It concludes that the increased traffic generated by the development *“will have acceptable impacts on the operation of Minmi Road/Britannia Boulevard Intersections and the surrounding road network would not require any upgrade works as a result of the proposed rezoning and future*

development. The surrounding road network will thus not require any upgrade as a result of the proposed rezoning and development”.

3. COUNCIL VIEWS

On 16 February 2021, the Department wrote to the City of Newcastle advising of the proponent's request for rezoning review.

Council provided correspondence on 9 March 2021 confirming the planning proposal supporting the request for rezoning review is consistent with the planning proposal Council considered on 8 December 2020 where Council resolved not to endorse the planning proposal.

Since Council's resolution on 8 December 2020, Council has amended the LSPS and Local Housing Strategy removing references to 505 Minmi Road, Fletcher as a 'Housing Release Area'. The updated versions were forwarded to the Department and are now published on the NSW Planning Portal.

Additionally, Council has also written to the Hon Matt Kean MP to nominate the site for inclusion in the National Park Estate as part of Council's resolution on 8 December 2020.

Council note that they have considered three planning proposals for rezoning the site since 2009. On each occasion, Council determined there was insufficient site-specific merit to overcome the environmental constraints and challenges of the site.

Council do not support the planning proposal and object to the planning proposal proceeding to Gateway.

ATTACHMENTS

Attachment A – Locality Map

Attachment B – Site Map

Attachment C – Current LEP Mapping

Attachment D – Proposed LEP Mapping

Attachment E – Council Planning Proposal Package for Endorsement, November 2020

Attachment F – Rezoning Review Application Package

- F1 – Rezoning Review Application form
- F2 – Cover letter – rezoning review request
- F3 – Council LEP Amendment Request Form
- F4 – Planning Proposal – January 2020
- F5 – Letter from Council – Panel Meeting Outcome
- F6 – Email to Council with requested updates to Planning Proposal
- F7 – Planning Proposal – September 2020
- F8 – Council Report – 8 December 2020
- F9 – Letter – Council Decision

Appendix G – Council Comments

- G1 – Council response to rezoning review
- G2 – Council resolution – 8 December 2020
- G3 – Letter to Hon Matthew Kean MP – 29 January 2021

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