

Planning Services

SF18/35872

Plan finalisation report

Local government area: Newcastle

1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 (Amendment No 39)

2. SITE DESCRIPTION

The planning proposal applies to various sites in the suburb of Fletcher (**Attachment A**). The site is known as Sanctuary Estate which is a housing estate on the western edge of Newcastle local government area (LGA). Sanctuary Estate was approved in 1998 and delivered 839 residential lots, a commercial site, two Aboriginal heritage conservation management areas and open space.

The planning proposal affects 27 lots (including a road reserve) in Sanctuary Estate, 19 of which are owned by the City of Newcastle Council (Council). The majority of the sites represent a continuous band of parcels around the edge of the residential estate and were dedicated to Council as part of a voluntary planning agreement (VPA) for the subdivision of the land in 1998. The lots include dedicated conservation lands, community land such as parks and also privately owned dwellings and are further described in Table 1 below.

The proposal separates the 27 sites into four parts based on the proposed change in the planning proposal. The four parts (A to D) are shown in Figures 1 and 1a.

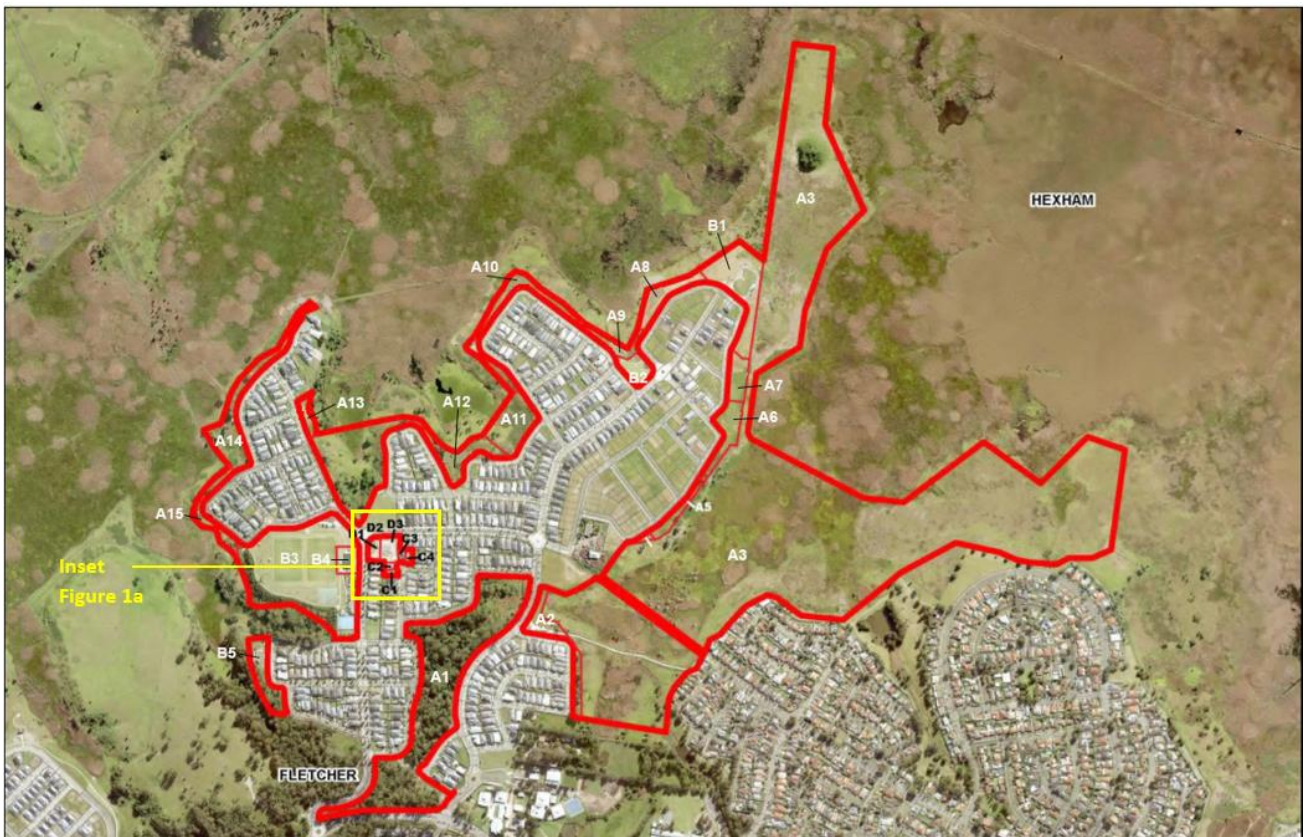


Figure 1: Site map (source planning proposal)

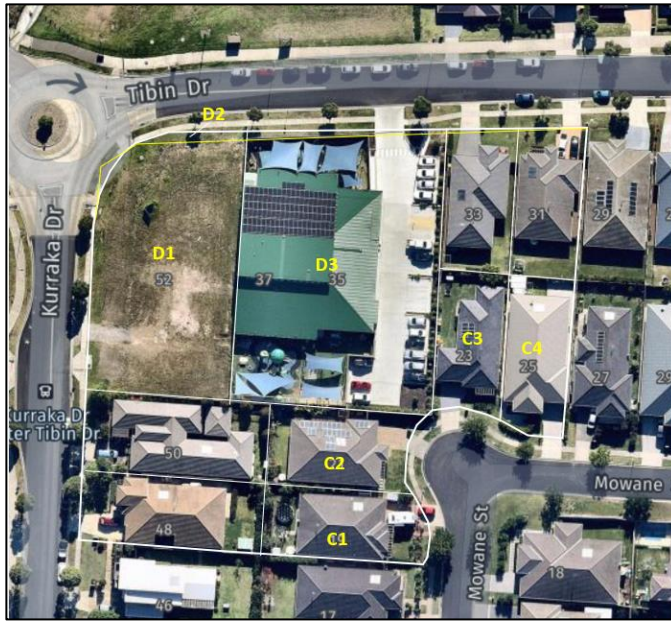


Figure 1a: Inset of Figure 1 (Sites C and D)

Table 1: Description of site

Part	Site reference	Site description
A	A1 – A15	Part A contains 15 parcels around the edge of the urban area which are vacant and contain scattered vegetation.
B	B1	Contains large assemblage of Aboriginal flaked stone artefacts and extensive views across Hexham Wetlands to 'Rocky Knob' which is a culturally important feature of the landscape.
	B2	Children's playground owned by Council.
	B3	Sporting oval, tennis courts, basketball courts and carpark owned by Council.
	B4	Amenities block for public use owned by Council.
	B5	A reserve and shelters between two creek lines.
C	C1 - C4	Four dwellings in private ownership.
D	D1 - D3	Two dwellings in private ownership and part of a road reserve (D2). The zone boundaries do not currently align with the property boundaries.

1. PURPOSE OF PLAN

The objectives of the proposal are to:

- ensure zoning of land is compatible with the intended use of the land;
- protect and maintain open space and bushland areas;
- identify and protect local Aboriginal history and cultural heritage sites; and
- correct minor zoning anomalies.

The proposal will not deliver any additional dwellings or jobs. The draft LEP seeks to:

- amend the LEP maps to rezone and amend the associated planning controls for Parts A – D as described in Table 2; and
- amend Schedule 5 (Environmental Heritage) to include two additional sites:
 - A22 - Yutilliko Park (25 Konara Crescent, Lot 174 DP 1113792); and
 - A21 – Kauma Park (29 Threkeld Crescent, Lot 1536, DP 122535225).

Table 2: Proposed LEP amendments

Site Reference	Current zone	Proposed zone	Current controls	Proposed controls
A1, A2, A3, A6, A7, A11, A12, A13, A14, A15	E2 and R2	E2*	MLS (R2) - 450m ²	MLS – 40ha
A4, A5, A8, A9, A10	R2	E2*	MLS - 450m ² HOB – 8.5m FSR – 0.6	MLS – 40ha
B1	E2 and R2	E2*	MLS – R2 - 450m ²	MLS – 40ha
B2, B3	E2 and R2	RE1*	MLS – R2 - 450m ²	MLS - N/A
B4	R2	RE1*	MLS – R2 - 450m ²	MLS – N/A
B5	R2	E2*	MLS – R2 - 450m ²	MLS – 40ha
C1, C2, C3, C4	B1	R2	HOB – 8.5m FSR – 0.6:1 MLS – 450m ²	HOB -11m FSR – 0.6:1 MLS – non-prescribed
D1, D3	B1 and R2	B1	Split B1 and R2 controls	HOB -11m FSR – 0.6:1 MLS – non-prescribed
D2 Road reserve	B1 and R2	R2	Split B1 and R2 controls	HOB – 8.5m FSR – 0.6:1 MLS – 450m ²

* There are no Height of Building (HOB) and Floor Space Ratio (FSR) planning controls proposed for the RE1 and E2 zones.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Wallsend State Electorate. Sonia Hornery MP is the State Member for Wallsend.

The site falls within the Newcastle Federal Electorate. Sharon Claydon MP is the Federal Member for Newcastle.

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

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

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

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 25 June 2018 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination conditioned that the timeframe for completing the LEP was 12 months and was extended for one month, which means that it is due for completion on 25 July 2019.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 24 September 2018 to 9 October 2018.

No submissions were received.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult the following agencies in accordance with the Gateway determination:

- Office of Environment and Heritage;
- Local Land Services (Catchment Management Authority);
- Awabakal Local Aboriginal Land Council; and
- NSW Rural Fire Service

Comments from these agencies indicate support for the planning proposal and are summarised below.

Office of Environment and Heritage (OEH)

Prior to public exhibition, OEH raised concerns about zoning the Aboriginal Heritage Conservation Management Areas of Yutillikko Park and Kauma Park (sites B1 and B5) being rezoned to RE1 Public Recreation zone (Figure 2).

The proposed RE1 Public Recreation zone was inconsistent with the Aboriginal Heritage Management Plan (AHMP) for the area which recommends the site be zoned E2 Environmental Conservation. OEH stated that the two parks are to be managed as Aboriginal Heritage Conservation Areas primarily for the repatriation of objects recovered under Aboriginal Heritage Impact Permit (AHIP) No. 2332.

Prior to exhibition, the proposal was updated to zone sites B1 and B5 to E2 Environmental Conservation and amend the minimum lot size accordingly.

It is considered that the planning proposal was updated to reflect advice from OEH adequately addresses OEH comments. The proposed E2 Environmental Conservation zone is consistent with the recommendations in the Aboriginal Heritage Management Plan.

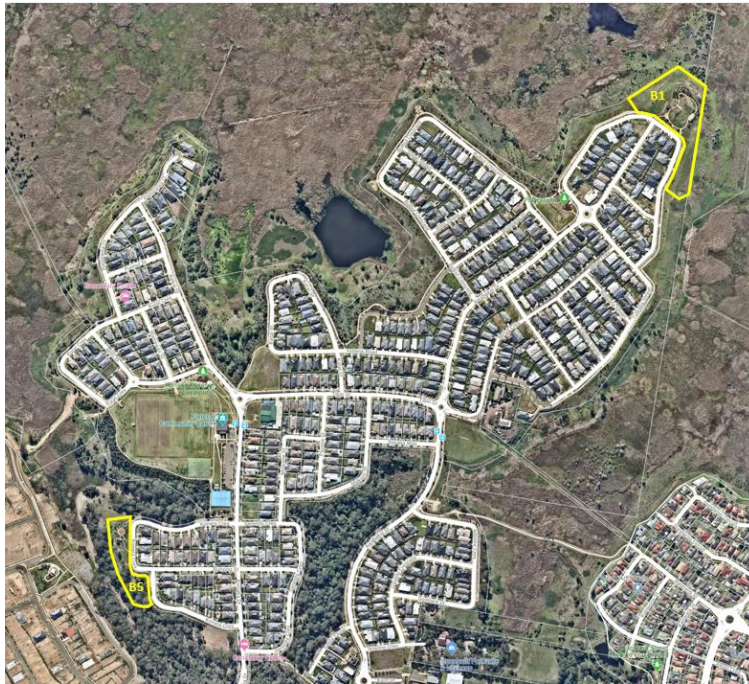


Figure 2: Sites B1 and B5 (source Nearmap)

Hunter Local Land Services (HLLS)

Hunter Local Land Services (HLLS) is the owner of site A3 located at 280 Minmi Road and raised no objection to the proposal (**Attachment C**). HLLS support the proposed zoning of site A3 from part R2 Low Density Residential and part E2 Environmental Conservation to wholly E2 Environmental Conservation.

HLLS note that the site is a site of cultural significance to the Awabakal people and that the site will be subject to a Protecting Our Places Project run by the Awabakal Local Land Council. The HLLS note that the proposal will not affect the implementation of this project.

Awabakal Aboriginal Land Council (AALC)

The matter was referred to the AALC, however no response was received.

Awabakal Descendants Traditional Owners Aboriginal Corporation (ADTOAC), Awabakal Traditional Owners (ATOAC) and AALC were all stakeholders involved in the development and implementation of the Aboriginal Cultural Heritage Management Plan (ACHMP) for the Fletcher Estate DA.

Parts of the proposal are based on the ACHMP and seeks to implement the recommendations. It is considered that the AALC's involvement in the preparation of the ACHMP is adequate justification and that the proposal is consistent with the ACHMP and seeks to protect Aboriginal cultural heritage.

NSW Rural Fire Service (RFS)

RFS had no objection to the proposal however advised that any future development would be required to comply with NSW Planning for Bushfire Protection 2006.

8. POST-EXHIBITION CHANGES

There were no changes made to the planning proposal following exhibition.

9. ASSESSMENT

The proposal seeks to rezone sites to reflect current use of the land and ensure consistency with adjoining uses, correct zoning anomalies and to list two items of local environmental heritage significance.

In summary, the changes to sites in Part A (A1 – A15) seek to rezone all of the sites to E2 Environmental Conservation and to amend the minimum lot size to 40ha to reflect other E2 zones in the LGA. These parcels adjoin existing conservation areas and have been dedicated to Council (with the exception of A3 which is owned by HLLS). The proposal seeks to rezone sites that are zoned R2 Low Density Residential and sites that are zoned part R2 and part E2 to wholly E2. The proposed rezoning of these sites is consistent with surrounding zoning and current land uses.

For Part B (B1-B4) these sites are owned by Council and contain public reserves, sporting fields and public facilities. The proposal seeks to rezone the sites to RE1 Public Recreation to reflect the current use of the sites. Sites B1 and B5 will be rezoned to E2 Environmental Conservation to reflect the cultural significance of the sites. Two sites within this area are also proposed to be listed in Schedule 5 of the LEP, Yutilliko Park (A22) and Kauma Park (A21) to facilitate the conservation of Aboriginal areas and artefacts. These sites were identified in consultation with the AALC as part of the ACHMP for Sanctuary Estate.

Part C of the proposal includes four dwellings in private ownership. It is proposed to rezone the land to R2 Low Density Residential consistent with the existing use of the sites and the surrounding zoning.

Part D includes three sites zoned part B1 Neighbourhood Centre and part R2 Low Density Residential. The current zone boundaries for these sites do not align with the property boundaries and the proposal seeks to rectify the mapping errors and zone sites D1 and D3 B1 Neighbourhood Centre and D2 (road reserve) to R2 Low Density Residential.

The proposed zoning amendments are considered to have merit as they reflect current uses of the land, amend zoning anomalies and implement the recommendations of the Aboriginal Heritage Management Plan for the area.

Section 9.1 Directions

There were two unresolved section 9.1 Directions as specified in the Gateway determination, an analysis is provided below.

Direction 6.2 Reserving Land for Public Purposes

The Secretary's delegate agreed to the inconsistency with Direction 6.2 for the public reserves owned by Council with the exception of site A3.

Council was required to obtain agreement of the Secretary to comply with the requirements of Direction 6.2 for site A3 that is owned by the HLLS. The site is proposed to be zoned from R2 Low Density Residential and E2 Environmental Conservation to wholly E2 Environmental Conservation.

Consultation was required with HLLS as owners of site A3. HLLS indicated no objection to the proposal and has satisfied clause (4) of the Direction. As the proposal is consistent with the Direction, the agreement of the Secretary's delegate is no longer required.

Direction 4.4 Planning for Bushfire Protection

The proposal affects land mapped as bushfire prone and therefore consultation with NSW RFS was required. RFS indicated it does not have objection to the proposal and therefore the proposal is consistent with this Direction.

State environmental planning policies

The proposal is consistent with relevant SEPPs or deemed SEPPs.

State and regional plans

Hunter Regional Plan

Direction 14 – Protect and connect natural areas and Direction 18 – Enhance access to recreational facilities and connect open spaces are relevant to the proposal. The proposal seeks to protect and maintain open space and bushland areas and protect local Aboriginal history and cultural heritage. The proposal is consistent with the Hunter Regional Plan.

Greater Newcastle Metropolitan Plan

The proposal is aligned with Strategy 11- Create more great public spaces where people come together for the same reasons as identified above relating to the protection of open space and cultural heritage areas. The proposal is consistent with the Greater Newcastle Metropolitan Plan.

Local planning strategy

Newcastle Local Planning Strategy 2015

The proposal is consistent with objectives of the Newcastle Local Planning Strategy 2015 for the suburb of Fletcher. Objectives for Fletcher include to protect and maintain existing public open space and bushland areas and increase the range and quality of social infrastructure available to the community to meet local demands. The proposal is consistent with these objectives.

10. MAPPING

The draft LEP will amend the following maps:

- Floor space ratio (FSR_001B and FSR_001D);
- Height of building (HOB_001B and HOB_001D);
- Heritage (HER_001B and HER_001D);
- Land zoning (LZN_001B and LZN_001D); and
- Minimum lot size (LSZ_001B and LSZ_001D).

The maps have been checked by the Department's ePlanning Team, the Regional Team and Council. The proposed maps are provided as **Attachment Maps**.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* on 6 May 2019 (**Attachment D**). Council confirmed on 10 May that the draft LEP and maps are consistent with the intent of the planning proposal and that the plan should be made, and provided agreement with the minor changes in the final draft LEP on 13 June 2019 (**Attachment E**).

2. PARLIAMENTARY COUNSEL OPINION

On 11 June 2019, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

3. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the proposal will formalise current uses of the land consistent with surrounding land uses;

- the proposal implements the recommendations of the Aboriginal Cultural Heritage Management Plan and will improve the protection of Aboriginal cultural heritage and protect environmental values;
- the proposal is consistent with the Hunter Regional Plan, Greater Newcastle Metropolitan Plan and Council's Local Planning Strategy;
- the proposal is consistent with section 9.1 Ministerial directions; and
- there were no public or agency objections.



8/7/2019
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Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination
C	Hunter Local Land Service comments
D	Section 3.36(1) consultation with Council
E	Council response to section 3.36 consultation
Alteration	Gateway alteration
PC	Parliamentary Counsel's Opinion
Maps	LEP maps
LEP	Draft LEP
MCS	Map Cover Sheet
Council	Letter to Council