

**ITEM-103**                      **CCL 26/10/21 - RECOMMENDATION FOR CITY OF NEWCASTLE  
TO BE PLANNING PROPOSAL AUTHORITY FOR 505 MINMI  
ROAD, FLETCHER GATEWAY**

**REPORT BY:**                      **GOVERNANCE**  
**CONTACT:**                      **DIRECTOR GOVERNANCE AND CHIEF FINANCIAL OFFICER /  
MANAGER REGULATORY PLANNING AND ASSESSMENT**

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**PURPOSE**

To be the Planning Proposal Authority for the Planning Proposal for 505 Minmi Road, Fletcher.

**RECOMMENDATION**

That Council:

- 1 Resolves to be the Planning Proposal Authority (PPA) for the Planning Proposal for 505 Minmi Road, Fletcher and advise the Hunter and Central Coast Regional Planning Panel (Panel) accordingly.
- 2 As the PPA, prepares the Planning Proposal under section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act), and consistent with the Panel's determination, noting the Panel's requirement for the applicant to provide substantial additional information.
- 3 Requests the Gateway determination include a condition authorising Council to be the Local Plan Making Authority and delegate this plan making function to the Manager Regulatory, Planning and Assessment.

**KEY ISSUES**

- 4 Council considered a Planning Proposal for land at 505 Minmi Road, Fletcher at the Ordinary Council Meeting held on 8 December 2020, where it was resolved that Council:
  - i) 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.
  - ii) 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).
- 5 The applicant requested a review of Council's decision. The Panel met to consider the rezoning review on 2 September 2021 and the Panel's decision was made on 20 September 2021:

*'That the proposed instrument should be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit'.*
- 6 The Panel's decision is provided at **Attachment A**, along with a letter from the Panel's Secretariat at **Attachment B**.

- 7 The Panel's decision did not include support for the proposed zone boundaries, development standards and indicative lot yields. The Panel's decision states that:
- 'The Planning Proposal can proceed to Gateway provided the following information is included in the submission and is timely, adequately researched and reflects standards relevant at the time of preparation:*
- i) A Strategic Bushfire Assessment*
  - ii) Updated Ecological Assessment to meet Biodiversity Assessment Method 2020*
  - iii) Urban Design Study incorporating points 1 and 2 and addressing the information at section 4.0*
  - iv) Revised zone boundaries and development standards reflecting the outcome of the Urban Design Study*
  - v) Preparation of site-specific development controls (for inclusion in existing DCP)*
  - vi) Detail of the mechanisms for delivery of biodiversity outcomes – i.e., management and ownership of any proposed E2 zoned lands*
  - vii) Updated Infrastructure Information including mechanism for delivery.'*
- 8 The Panel has invited Council to be the PPA for this proposal. Should it resolve to undertake this role Council must advise the Planning Panel's Secretariat by 4 November 2021. As the PPA, Council prepares the Planning Proposal under section 3.33 of the EP&A Act and submits it for a Gateway determination. Should it not agree to take this role, the Panel itself will be appointed by the Minister to prepare the planning proposal.
- 9 By accepting the role of PPA, Council will prepare the Planning Proposal which must include the objectives, intended outcomes and justification for the proposal. The Planning Proposal must also address the requirements outlined in the Panel decision, noting the Panel did not support the proposed zone boundaries, development standards and indicative lot yields and requires the applicant to provide substantial additional information as outlined in Paragraph 7 above.
- 10 Whilst the Panel has determined that the proposal has demonstrated strategic merit, the Planning Proposal will also be prepared to reflect the Greater Newcastle Metropolitan Plan, Local Strategic Planning Statement and Local Housing Strategy. The applicant's further studies on biodiversity and ecological assessments will also be considered in the Planning Proposal, noting Council's previous resolution recognising the site's strategic importance to the Green Corridor, and its proximity to the existing Blue Gum Hills Regional Park and Hexham Wetlands National Park.
- 11 The submission of the Planning Proposal for a Gateway determination is a request for a determination by the Department, it will not include a Council recommendation. The elected Council will be briefed by way of a workshop on the Planning Proposal prior to submission to DPIE, subject to the Department's timeline requirements for the Planning Proposal.
- 12 If the Department's Gateway determination is to proceed with the Planning Proposal, consultation with State agencies and public exhibition will occur in accordance with the determination. The public exhibition will be promoted to the community, stakeholders and Councillors in line with current practice, and the exhibition outcomes will be reported back to Council by way of formal Council report.

- 13 As the PPA, and following consideration of the outcomes of the public exhibition, Council may endorse or vary the proposal and forward the final Planning Proposal to the Minister. It may also, request the Minister to determine that the matter not proceed. The Minister will decide whether a revised determination should be issued.
- 14 Should the Gateway determination authorise Council to be the Local Plan Making Authority, Council may finalise the LEP amendment and arrange for it to be notified on the NSW Planning Portal, with this plan making function proposed to be delegated to the Manager Regulatory, Planning and Assessment, or determine not to proceed with the LEP amendment.
- 15 If the Gateway determination is that the Planning Proposal not proceed or that the Planning Proposal should be varied or resubmitted to Gateway, Council, if it is the PPA, or the proponent can request a Gateway review.
- 16 If a Gateway review request is made, the Panel will provide advice to the Minister on whether the original Gateway determination should be altered. The Minister's final decision on whether to alter the Gateway determination will be informed by this advice, and the views of Council and the proponent.
- 17 If Council decides not to be the PPA to progress this matter, the Panel will be appointed by the Minister for Planning and Public Spaces to prepare the Planning Proposal and will follow the steps outlined above for the PPA. Under this scenario, Council would only be able to formally comment on the Planning Proposal if the Gateway determination is that it should proceed to public exhibition.

#### **FINANCIAL IMPACT**

- 18 Should Council act as the PPA, an external consultant will be engaged to prepare the Planning Proposal and manage the process. The applicant has paid required application fees of \$26,213.
- 19 Should a positive Gateway determination be received (and Council is the PPA), the proponent will be required to pay engagement and administration costs of the consultant in accordance with City of Newcastle's (CN) adopted fees and charges.

#### **COMMUNITY STRATEGIC PLAN ALIGNMENT**

- 20 Undertaking the PPA role aligns with the following strategic directions of the Newcastle 2030 Community Strategic Plan:

##### **Liveable Built Environment**

- 5.1b Ensure our suburbs are preserved, enhanced and promoted, while also creating opportunities for growth.

##### **Open and Collaborative Leadership**

- 7.1a Encourage and support long term planning for Newcastle, including implementation, resourcing, monitoring and reporting.
- 7.2a Conduct Council business in an open, transparent and accountable manner.

#### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 21 If Council resolves to be the PPA, it will engage the services of an external consultant to prepare the Planning Proposal and manage the process, in accordance with section 3.33 of the EP&A Act and submit it for a Gateway determination. It is required to do this within 42 days after accepting the role, however the Panel has required the applicant to provide significant additional information that may not be possible within this timeframe, which may mean extensions are required.

### **RISK ASSESSMENT AND MITIGATION**

- 22 The process of amending a Local Environmental Plan is prescribed by Part 3 of the EP&A Act. The PPA is required to adhere to the legislative framework and ensure that the Planning Proposal is prepared consistent with relevant strategic planning documents and determined in an appropriate timeframe.

### **RELATED PREVIOUS DECISIONS**

- 23 At the Ordinary Council meeting held on 8 December 2020, Council resolved:

#### **'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 (originally endorsed by Council in December 2019 – see Attachment 3).*

## **CONSULTATION**

- 28 Consultation for the Planning Proposal will occur with stakeholders (including the relevant State Agencies and the community) in accordance with any Gateway determination.

## **BACKGROUND**

- 29 Council has considered four Planning Proposals for the land since 2010. These Planning Proposals have not proceeded primarily due to site specific merit not being satisfactorily established, with constraints around biodiversity conservation and bushfire management.
- 30 Since 2010, urban development has proceeded around the site, interspersed with environmental conservation lands. The Panel considered that on balance this proposal had site specific merit provided the constraints can be addressed through additional information and further assessment prior to Gateway consideration.
- 31 In accordance with Council's decision of 8 December 2020, CN wrote 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. As at the date of this report a formal reply has not been received.

## **OPTIONS**

### **Option 1**

- 32 The recommendation as at Paragraphs 1 – 2. This is the recommended option.

### **Option 2**

- 33 Council resolves not to be the PPA for the Planning Proposal. This is not the recommended option.

## **REFERENCES**

Nil

## **ATTACHMENTS**

- Attachment A:** Record of Decision – Hunter and Central Coast Regional Planning Panel – 20 September 2021
- Attachment B:** Letter to City of Newcastle from Hunter and Central Coast Regional Planning Panel – 23 September 2021









- Location of local open spaces within 400 metres of dwellings.
- Location and treatment of the APZ within the proposed R2 zoned land.
- Street frontage / landscape presentation to Minmi Road.

This work and the environmental review will inform zone boundaries.

This work should form the basis of site-specific development controls to be exhibited with the Planning Proposal.

#### *4.3 Bushfire*

The Panel concurs with the recommendation of the Independent Report to Council and agrees that a strategic Bushfire Assessment is required.

#### *4.4 Servicing and Access*

Details of servicing is required including whether or not the existing contributions plans need to be updated – noting that they assumed a particular yield.

#### *4.5 Mechanism for Biodiversity Outcomes*

The Panel notes the proponent seeks a Community Title subdivision of the site, including the proposed E2 Environmental Conservation.

The Panel also notes Council's position that these lands would create future demand on Council's resources particularly in relation to the future control and maintenance of the proposed E2 Environmental Conservation land. In short, Council will not accept dedication.

A Vegetation Management Plan to guide and manage the proposed E2 Environmental Conservation land will ultimately be required. This must include, but is not limited to:

- The proposed access arrangements to the E2 Environmental Conservation land; principally whether the land will be available to the general, public or just those with legal access through the Community Title subdivision,
- Measures to protect the integrity and biodiversity of the land and maintain the natural landscape,
- Ongoing maintenance program to ensure the future protection and conservation of the land,
- Conservation of places, objects and features of cultural value,
- Any improvements such as walking tracks, seating, signage, fencing of the land.

The Panel considers it is necessary to fully understand how proposed E2 Environmental Conservation land will be owned and managed in perpetuity. Therefore, the Planning Proposal package needs to include the statutory mechanisms to ensure the recommended environmental outcomes are fulfilled. This may mean either a VPA or specific clauses mandating community title subdivision.

### **5.0 Conclusion and Decision**

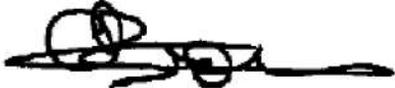
The Planning Proposal seeks to adopt different zones and zone boundaries; development standards for subdivision and height; and to identify the site as an urban release area which provides a mechanism to levy state infrastructure contributions.

The Panel does not support the proposed zone boundaries and development standards and indicative lot yields.

The zone boundaries and development standards need to be informed by detailed urban design analysis that includes the outcomes of ecological recommendations to avoid and minimise habitat loss and accommodate bushfire constraints. The Planning Proposal needs to demonstrate how it integrates with the surrounding neighbourhood. Based on the additional work identified, the Panel anticipates a lesser lot yield and amended zone boundaries more closely reflecting the environmental constraints.

The Planning Proposal can proceed to Gateway provided the following information is included in the submission and is timely, adequately researched and reflects standards relevant at the time of preparation:

1. A Strategic Bushfire Assessment.
2. Updated Ecological Assessment to meet BAM 2020.
3. Urban Design Study incorporating points 1 and 2 and addressing the information at section 4.0
4. Revised zone boundaries and development standards reflecting the outcome of the Urban Design Study.
5. Preparation of site specific development controls (for inclusion in existing DCP).
6. Detail of the mechanisms for delivery of biodiversity outcomes – i.e. management and ownership of any proposed E2 zoned lands
7. Updated Infrastructure Information including mechanism for delivery.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Graham Brown	 Amanda Wetzel
 Evelyn Craigie	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2021-70 – Newcastle at 505 Minmi Road, Fletcher
2	LEP TO BE AMENDED	Newcastle Local Environmental Plan 2012
3	PROPOSED INSTRUMENT	<p>The proposal 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:</p> <ul style="list-style-type: none"> <li>• Rezoning of the site from E4 Environmental Living to Part R2 Low Density Residential and Part E2 Environmental Conservation.</li> <li>• Reduce the minimum lot size from 40 hectares to 300m<sup>2</sup> and 1,000m<sup>2</sup> for the R2 zoned portion of the land to provide 150 residential lots.</li> <li>• Introduce an 8.5 metre height of building standard for the R2 zoned portion of land,</li> <li>• Designate the site as an urban release area.</li> </ul>
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Rezoning review request documentation</li> <li>• Briefing report from Department of Planning, Industry and Environment</li> </ul>
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• <b>Site inspection: 13 May 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant and Graham Brown</li> <li>○ Department of Planning, Industry and Environment (DPIE) staff in attendance: Kylie Dorsett</li> <li>○ Applicant representatives: Andrew Donald</li> </ul> </li> <li>• <b>Site inspection: 29 June 2021</b> <ul style="list-style-type: none"> <li>○ Panel member in attendance: Amanda Wetzel</li> </ul> </li> <li>• <b>Briefing with Department of Planning, Industry and Environment (DPIE): 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Kylie Dorsett, Daniel Simpkins, Leanne Harris and Lisa Foley</li> </ul> </li> <li>• <b>Briefing with Council: 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Leanne Harris and Lisa Foley</li> <li>○ Council representatives in attendance: Patricia McCarthy and Michelle Bisson</li> </ul> </li> <li>• <b>Briefing with Proponent: 2 September 2021</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Alison McCabe (Chair), Juliet Grant, Graham Brown, Evelyn Craigie and Amanda Wetzel</li> <li>○ DPIE staff in attendance: Leanne Harris and Lisa Foley</li> <li>○ Proponent representatives in attendance: Stephen Barr, Andrew Donald and Matthew Doherty</li> </ul> </li> </ul>

Jeremy Bath  
Chief Executive Officer  
City of Newcastle  
[mail@ncc.nsw.gov.au](mailto:mail@ncc.nsw.gov.au)

Attn: Michelle Bisson, Manager Regulatory, Planning & Assessment

23 September 2021

Dear Mr Bath

**Request for a Rezoning Review – RR-2021-70**

I refer to the request for a Rezoning Review for a proposal at 505 Minmi Rd, Fletcher to amend the Newcastle Local Environmental Plan 2012 to facilitate the delivery of 150 low density residential lots.

The Hunter & Central Coast Regional Planning Panel has recommended that the proposal should be submitted for a Gateway determination. In making this decision, the Planning Panel considered the request and advice provided by Council. A copy of the panel's decision is attached.

Consequently, Council is invited to be the Planning Proposal Authority (PPA) for this proposal and to advise the Planning Panels Secretariat within 42 days of the date of this letter whether it will undertake the role of PPA for this proposal. Should Council agree to be the PPA, it will need to prepare a planning proposal under section 3.33 (formerly section 55) of the *Environmental Planning and Assessment Act 1979* and submit it for a Gateway determination within 42 days after accepting this role.

If Council does not wish to progress this matter, the panel will be appointed to prepare the planning proposal.

If you have any queries on this matter, please contact me on (02) 4927 3152 or via email to [leanne.harris@dpie.nsw.gov.au](mailto:leanne.harris@dpie.nsw.gov.au)

Yours sincerely



**Leanne Harris**  
**Senior Case Manager, Regionally Significant Development**

encl. Rezoning Review Record of Decision

**Planning Panels Secretariat**

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