



IRF 24/1565

# Alteration of Gateway determination report – PP-2021-2262

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Rezoning at 505 Minmi Road, Fletcher

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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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# 1 Planning proposal

## 1.1 Original Gateway determination

City of Newcastle Council has prepared a planning proposal to rezone land at 505 Minmi Road, Fletcher.

The Gateway determination issued on 10 January 2023 (**Attachment C**) determined that the proposal should proceed subject to conditions.

## 1.2 Previous Gateway alterations

The Gateway determination was previously altered on 22 March 2024 to extend the time for completion (**Attachment D**).

## 1.3 Timeframe

The Gateway determination required that the local environmental plan (LEP) be finalised on or before 20 January 2024. As previously noted, an extension of time was granted on 22 March 2024 and the current deadline for completion is on or before 23 November 2024.

## 1.4 Council request

Council has requested that the proposal not proceed (**Attachment E**) due to uncertainty over the time that will be required to complete the proposal and whether it will be appropriate to proceed noting that it is already 18 months since the issue of the original Gateway determination.

Council's request relates to correspondence received from the NSW Environment Protection Authority (EPA) due to public exhibition of the proposal which raises land use conflict concerns as a result of the site's proximity to Summerhill Waste Management Centre (SWMC).

Of particular significance, the EPA notes that the preliminary contamination assessment completed for the proposal, which found that the land is suitable for residential development, is not adequate (as the assessment is over 10 years old and did not consider the risks associated with sub-surface landfill gases generated by SWMC and gases associated with coal mine workings). The EPA recommends that prior to finalising the proposed rezoning, Council require the proponent to submit an updated preliminary site investigation for contamination for the entire planning area. This investigation should:

- consider the presence of SWMC and any mine workings in the area and investigate any risks associated with hazardous sub-surface gas in the planning area;
- consider any recent activities that may have impacted the planning area (including illegal dumping or migration of contaminants from adjacent sites); and
- be drafted in accordance with the *Consultants reporting on contaminated land - Contaminated Land Guidelines* (EPA, 2020) and other relevant guidelines made or approved by the EPA under section 105 of the Contaminated Land Management Act 1997.

The EPA also recommends additional assessment of the impacts from existing land uses to inform appropriate future land uses, transitional zonings, buffer distances and design choices. Further detailed studies in relation to odour, air, noise and vibration and water are recommended.

Council anticipates a timeframe of a minimum of 12 months to meet assessment requirements under the relevant EPA guidelines including *Consultants reporting on contaminated land: Contaminated Land Guidelines* (EPA 2020) and the *Assessment and management of hazardous*

*ground gases: Contaminated Land Guidelines* (EPA 2020). Completing the LEP by 23 November 2024 is not possible.

The proponent submitted correspondence to Council on 12 July 2013 (**Attachment F**) outlining their position in response to the EPA's advice, as follows:

- it is the responsibility of the operator and the regulator of the SWMC facility to ensure adverse impacts are mitigated to ensure the safety of the community.
- the subject land does not adjoin the boundary of the SWMC and the proposal rezones the southern portion of the site to C2 Environmental Conservation ensuring a 150m minimum buffer between the SWMC and future residences.
- the EIS prepared in support of Development Application 10/1319 for the continued operation and expansion of the SWMC in August 2010 states that the SWMC has an appropriate buffer zone and would be compatible with surrounding land uses. The EIS further stated that the operation of the facility would not result in significant environmental impacts and the proposal would maintain long term air, noise and water quality objectives of the area.
- if the management of the SWMC is occurring in accordance with the consent for DA-10/1319 the risks associated with residential receivers adjoining the SWMC boundary should be suitably managed. There is significant concern raised that if sub-surface gas monitoring is required at the proposal site for risk of SWMC-related landfill gas or resulting from historical mining workings, there is considerable risk for the existing residences adjoining the SWMC. CN and the EPA have a duty of care to investigate this matter if there is a legitimate risk of sub-surface gas is likely to be present at 505 Minmi Road, Fletcher.

The Department considers that further detailed studies in relation to odour, air, noise and vibration and water are more the responsibility of Council as the operator of the SWMC than the proponent. However, land contamination is a fundamental consideration in the planning proposal process to reduce the risk of harm to human health and the environment. As the proposal involves the intensification of land uses on the subject site it is considered the responsibility of the proponent to demonstrate that the land is suitable for human habitation as part of the planning proposal process. As such, it is considered inappropriate to rely on historic documentation, and inappropriate to proceed without an updated preliminary site investigation for contamination for the entire planning area as recommended by the EPA.

## 2 Community consultation

Community consultation occurred between 22 April 2024 and 21 May 2024. During consultation, 361 submissions were received by Council.

Council has also undertaken consultation with government agencies as required under condition 3 of the Gateway determination including Transport for NSW, Department of Climate Change, Energy the Environment and Water - Biodiversity, Conservation and Science Division, Ausgrid, Heritage NSW, NSW Rural Fire Service, Subsidence Advisory NSW, Department of Education. The EPA made a voluntary unsolicited submission on the proposal. Comments from the Awabakal Local Aboriginal Land Council are yet to be received.

Matters raised by the EPA require further investigation as detailed in Section 1 of this report. It is also noted that the Department of Climate Change, Energy the Environment and Water - Biodiversity, Conservation and Science Division exhibited a draft Biodiversity Certification Assessment Report concurrently with the planning proposal which has also not been finalised.

### 3 Recommendation

Considering the correspondence from the NSW EPA, the likely timeframe required to prepare an updated preliminary site investigation for contamination to confirm that there is no risk of harm to human health, and the length of time since the issue of a Gateway determination in January 2023, it is considered inappropriate that the proposal continue at the present time.

It is recommended that PP-2021-2262 be altered to not proceed and that Council be invited to resubmit the proposal when all outstanding matters are resolved.

Therefore, it is recommended that the delegate of the Minister agree under section 3.34(7) of the Environmental Planning and Assessment Act 1979 to alter the Gateway determination for planning proposal PP-2021-2262 in accordance with the Alteration of Gateway determination document (**Attachment A**), which discontinues the planning proposal.



\_\_\_\_\_ (Signature)

11/7/24

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

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## Attachments

Attachment	
Attachment A	Alteration of Gateway determination
Attachment B	Letter to Council
Attachment C	Gateway determination
Attachment D	Gateway alteration
Attachment E	Council's alteration request
Attachment F	Proponent's submission