

## Planning Services

### Plan Finalisation Report

Local Government Area: Newcastle City

File Number: IRF18/4086

#### 1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 Amendment No 33.

#### 2. SITE DESCRIPTION

The planning proposal applies to land at Lot 3109 DP 755247, 1 Ordnance Street, Newcastle. The subject land is part of the King Edward Headland Reserve and is zoned RE1 Public Recreation (Figures 1 and 2).



Figure 1: Aerial photo of the site.

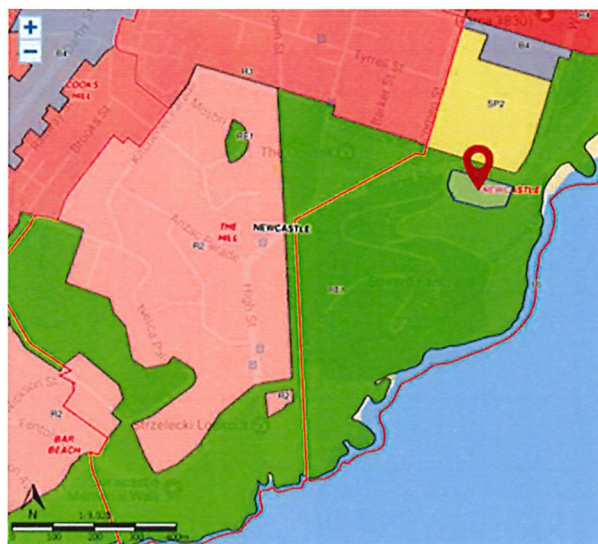


Figure 2: LEP zone map.

#### 3. PURPOSE OF PLAN

The draft LEP seeks to amend schedule 1 of the Newcastle Local Environmental Plan 2012 to remove the site's additional permitted use as a function centre and kiosk with associated car parking and landscaping. This will be achieved by removing item 1 from schedule 1.

There will be no jobs or dwellings created as a result of this proposal.

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Newcastle State Electorate. Mr Tim Crakanthorp MP is the State Member for Newcastle. He has made representations on behalf of a community group that has an interest in the reserve. The representations related to whether the proposed amendment could occur as an expedited amendment using (former) section 73A, and the timing of LEP finalisation.

Ms Sharon Claydon MP is the Federal Member for Newcastle. To the regional planning team's knowledge, Ms Claydon has not 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 ALTERATION**

The Gateway determination issued on 29 November 2017 (**Attachment A**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 24 July 2018 to extend the time frame for completion to 29 August 2018.

The planning proposal satisfies the conditions of the Gateway determination, as altered.

## **6. PUBLIC EXHIBITION**

In accordance with the Gateway determination, the proposal was publicly exhibited by Newcastle City Council for 14 days from 22 January to 6 February 2018. Council received 166 submissions in support of the planning proposal and one submission objecting to the proposal. Council advises that most of the submissions in support were form responses.

The objection was based on the land being subject to two undetermined Aboriginal land claims, and that the proposed amendment could significantly impact on the land should it come into private ownership. The submission requested deferral of the planning proposal until the determination of the land claims.

Council advises there is only one claim associated with the site, not two as suggested in the submission, and that the land claim does not affect the planning proposal. In Council's view, the planning proposal and the decision to progress a change to the planning controls is a matter for Council, irrespective of land ownership.

The land claim was granted on 28 June 2018 and the land is to be transferred to the Awabakal Local Aboriginal Land Council (LALC) as freehold land. The Department contacted Council to determine whether this altered its position. Council advised that the proposal should proceed because:

- there is significant community support for the amendment;
- the Awabakal LALC raised no objection to the proposed amendment; and
- if the land is no longer to be held in public ownership, Council will work with the land council and the community to determine an appropriate zone, and this amendment will not affect this process.

The Department is satisfied that Council has adequately responded to the matters raised in submissions.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult with the NSW Department of Industry (Lands and Water) and the Awabakal LALC in accordance with the Gateway determination.

Council consulted these authorities in December 2017. The Department of Industry (Lands and Water) responded that it had no objection to the removal of item 1 from schedule 1 of the Newcastle LEP 2012, and that the current RE1 Public Recreation zoning was appropriate.

The Awabakal LALC did not respond to Council. The Department contacted the LALC following the granting of the land claim to determine its view as the future landowner. The LALC advised that it had no concerns with the proposed planning controls.

## 8. ASSESSMENT

It is recommended that the draft LEP be made by the Minister's delegate because it:

- is a result of a decision of the Land and Environment Court [NSW LEC 40089 of 2012] that found the plan of management prepared by the Department of Lands for the King Edward Headland Reserve was invalid and the development of the land for the purposes of a function centre was not permissible as it was not authorised by a valid plan of management;
- will achieve consistency of planning controls across the King Edward Park area and the wider LGA under the RE1 Public Recreation zone in the Newcastle LEP 2012;
- has significant community support; and
- maintains the range of income-generating uses permitted with consent generally in the RE1 zone in the Newcastle LEP 2012, which include kiosks, markets, registered clubs and restaurants or cafes.

The decision to grant the land claim does not change this position and neither the current owner (NSW Department of Industry) nor the future landowner (Awabakal LALC) have raised concerns about the proposal.

Notwithstanding, whether the existing RE1 zone and associated controls remain appropriate will need to be reviewed by Council. This should occur in consultation with the landowner and the community, with any changes progressed through a separate planning proposal following the review.

### Section 9.1 Directions

#### *6.2 Reserving Land for Public Purposes*

The site is publicly owned. The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes. It is therefore consistent with this Direction.

### State environmental planning policies (SEPPs)

The draft LEP is consistent with relevant SEPPs.

### Regional plans

#### *Hunter Regional Plan 2036*

The draft LEP is consistent with *Goal 3 – Thriving Communities*, particularly *Direction 18 – Enhance access to recreational facilities and connect open spaces* as it provides certainty regarding the uses that can occur on the site consistent with adjoining RE1-zoned land.

The draft LEP is similarly consistent with Outcome 2 of the Draft Greater Newcastle Metropolitan Plan – *Enhance environment, amenity and resilience for quality of life*.

## 9. MAPPING

There are no maps associated with the planning proposal.

## 10. 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* (**Attachment D**). Council confirmed on 19 June 2018 that it was happy with the draft and the plan should be made (**Attachment E**).

## 11. PARLIAMENTARY COUNSEL OPINION

On 22 June 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

## 12. 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 it:

- will achieve consistency of planning controls across the King Edward Park area and the wider LGA under the RE1 Public Recreation zone in the Newcastle LEP 2012;
- reflects the outcomes of a Land and Environment Court determination [NSW LEC 40089 of 2012], which found the plan of management prepared by the Department of Lands for the King Edward Headland Reserve was invalid and the development of the land for the purposes of a function centre was not permissible as it was not authorised by a valid plan of management;
- has community support; and
- maintains the range of income-generating uses permitted with consent generally in the RE1 zone in the Newcastle LEP 2012, which include kiosks, markets, registered clubs and restaurants or cafes.



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