

**SUBJECT: CCL 24/10/17 - 1 ORDNANCE STREET NEWCASTLE -  
ENDORSEMENT OF PROPOSED AMENDMENT TO  
NEWCASTLE LOCAL ENVIRONMENTAL PLAN 2012**

**REPORT BY: PLANNING AND REGULATORY  
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER  
STRATEGIC PLANNING**

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## **PURPOSE**

This report seeks Council's endorsement of a Planning Proposal to commence the statutory process to prepare amendments to Newcastle Local Environmental Plan 2012 (LEP).

The Planning Proposal involves the amendment of Schedule 1 - Additional permitted uses of the LEP, by removing item 1 Use of certain land at 1 Ordinance Street, Newcastle, which allows a function centre on the land (the former bowling club site).

## **RECOMMENDATION**

1 Council resolves to:

- i) Endorse the attached Planning Proposal (**Attachment A**), pursuant to Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in order to amend Newcastle Local Environmental Plan 2012 for land at 1 Ordinance Street, Newcastle by amending Schedule 1 to remove the additional permitted use of a function centre and kiosk with associated car parking and landscaping.
- ii) Forward the Planning Proposal to the Minister for Planning and Environment for Gateway Determination pursuant to Section 56 of the EP&A Act.
- iii) Advise the Secretary of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 59(1) of the EP&A Act.
- iv) Receive a report back on the Planning Proposal following completion of the required consultation if any objections have been received.

## **KEY ISSUES**

- 2 The Planning Proposal (**Attachment A**) was prepared in accordance with the Department of Planning and Environment guidelines and Council's Local Environmental Plan - Request for Amendment Policy.
- 3 The additional permitted use for a function centre and kiosk with associated car parking and landscaping at 1 Ordinance Street, Newcastle was included in Schedule 1 of the LEP at the time the LEP was gazetted. This was to ensure

that uses permitted under the previous LEP (2003) were still permitted by the new LEP 2012.

- 4 Subsequent Court proceedings successfully challenged the validity of the use of the land for a function centre. It is therefore considered that the use should no longer remain on Schedule 1.
- 5 If endorsed by Council, the Planning Proposal will be forwarded to the Department of Planning and Environment for Gateway Determination. The Gateway Determination will confirm initial support for the Planning Proposal, and identify any further technical studies and community consultation that are required prior to the amendment being determined.

### **FINANCIAL IMPACT**

- 6 There are no significant financial impacts to Council in preparing a Planning Proposal to amend the LEP. This work will be undertaken by Council's Urban Planning team within their current work program and budget.

### **COMMUNITY STRATEGIC PLAN ALIGNMENT**

- 7 Preparation of the Planning Proposal is consistent with the 'Open and Collaborative Leadership' strategic direction of the Newcastle 2030 Community Strategic Plan.
- 8 Compliance with the LEP amendment process, in particular Section 57 Community Consultation of the EP&A Act, will assist in achieving the strategic objective "Consider decision-making based on collaborative, transparent and accountable leadership" and the identified strategy 7.2b, which states: "Provide opportunities for genuine representative community engagement in local decision making" as identified within the Newcastle 2030 Community Strategic Plan.

### **IMPLEMENTATION PLAN/IMPLICATIONS**

- 9 The preparation of the Planning Proposal was undertaken in accordance with Council's LEP - Request for Amendment Policy (2012). This policy identifies Council's processes and responsibilities in applying the requirements of Part 3 of the EP&A Act for amending an LEP.

### **RISK ASSESSMENT AND MITIGATION**

- 10 The process of amending an LEP is prescribed by Part 3 of the EP&A Act. Adherence to the legislative framework reduces the risk to both applicant and Council by ensuring that a Planning Proposal is considered with regard to relevant strategic planning documents and is determined in an appropriate timeframe.

### **RELATED PREVIOUS DECISIONS**

- 11 On 21 June 2011 Council adopted the draft Newcastle Standard Local Environmental Plan. The Newcastle Local Environmental Plan 2012 was gazetted on 15 June 2012.
- 12 Council resolved at the Ordinary Council Meeting held on 23 May 2017 to prepare a Planning Proposal to amend Schedule 1 - Additional permitted uses of the LEP by removing item 1 Use of certain land at 1 Ordinance Street, Newcastle.

## **CONSULTATION**

- 13 The land is owned by the Department of Industry - Lands (Department). Preliminary consultation was undertaken with the Department in relation to removing Item 1 from Schedule 1 of the LEP. The Department advised that it had no objection to the proposal. The Department is satisfied that the current zoning of RE1 - Public Recreation provides a sufficient range of land uses for any future development.
- 14 The Department further advised that the King Edward Headland Reserve is currently subject to two unresolved Aboriginal Land Claims. Council staff consulted with the Department of Planning and Environment (DPE) regarding the process for preparing a Planning Proposal over land subject of an Aboriginal land claim. DPE advised that there was no impediment to submitting such a Planning Proposal. Any Gateway Determination to proceed with the Planning Proposal would likely include conditions in relation to consultation with relevant parties.
- 15 The Planning Proposal outlines the level of consultation required in accordance with Planning NSW guidelines 'Preparing Local Environmental Plans'. The Planning Proposal will be exhibited in accordance with the requirements of Section 57 of the EP&A Act. The proposal will be placed on public exhibition for a minimum of 14 days.
- 16 The Gateway Determination will confirm which State agencies and other relevant stakeholders must be consulted on the Planning Proposal.

## **OPTIONS**

### **Option 1**

- 17 The recommendation as at Paragraph 1. This is the recommended option.

### **Option 2**

- 18 Council resolves not to proceed with the Planning Proposal. This is not the recommended option.

## **BACKGROUND**

- 19 On 10 November 2011 Council approved DA 2010/1735 for a function centre, kiosk and associated car parking and landscaping at 1 Ordnance Street, Newcastle.
- 20 On 11 May 2015 the Court ruled that the plan of management prepared by the Department of Lands for the King Edward Park Headland Reserve, which permitted the function centre, was invalid and that the development of the land for this purpose was therefore not permissible.
- 21 Friends of King Edward Park presented to Councillors at Public Voice Committee on 20 June 2017, supporting Council's resolution of 23 May 2017 to prepare a Planning Proposal to remove the use of the site as a function centre from Schedule 1 of Newcastle LEP 2012. As part of the presentation, Friends of King Edward Park suggested that Council write to the Planning Minister requesting the LEP amendment be made following the expedited process allowed under Section 73A of the EP&A Act.
- 22 Council staff wrote to the Planning Minister requesting advice on whether the Minister would consider amending the LEP under Section 73A of the EP&A Act or if the Minister could advise whether there was another appropriate expedited process Council could follow to make the LEP amendment.
- 23 The Planning Minister advised that Section 73A was only for use in minor amendments and was not appropriate to use in this instance, and supported Council in following the normal planning proposal process. The Planning Minister indicated that the planning proposal once submitted by Council to the Department would be dealt with in a timely matter.

## **REFERENCES**

## **ATTACHMENTS**

**Attachment A:** Planning Proposal - 1 Ordnance Street, Newcastle

**Attachment A**

**[Attachment A - CCL 241017 - Planning Proposal - 1 Ordnance Street, New...](#)**