

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Newcastle
<b>RPA</b>	Newcastle City Council
<b>NAME</b>	Planning Proposal to amend Schedule 1 of Newcastle LEP 2012 – 1 Ordinance Street Newcastle
<b>NUMBER</b>	PP_2017_NEWCA_005_00
<b>LEP TO BE AMENDED</b>	Newcastle LEP 2012
<b>ADDRESS</b>	1 Ordinance Street, Newcastle
<b>DESCRIPTION</b>	Lot 3109 DP 755247
<b>RECEIVED</b>	2/11/17
<b>FILE NO.</b>	OBJ17/15318
<b>QA NUMBER</b>	-
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

### INTRODUCTION

#### Description of Planning Proposal

The planning proposal seeks to amend Schedule 1 of the Newcastle Local Environmental Plan 2012 (LEP) to remove an additional permitted use for 1 Ordinance Street, Newcastle (King Edward Headland Reserve) as a function centre and kiosk with associated car parking and landscaping.

#### Site Description

Lot 3109 DP 755247, 1 Ordinance Street, Newcastle is a 0.65ha site being the King Edward Headland Reserve. It is owned by the NSW Department of Industry – Lands. The site has frontage to Ordinance Street to the north and York Drive and Reserve Road to the west. Shortland Esplanade and the Pacific Ocean are located directly to the east.

The subject site is zoned RE1 Public Recreation and is located within The Hill Heritage Conservation Area which is listed as a heritage conservation area of local heritage significance in the LEP.

The site is generally flat, with the land immediately to the east sloping downwards towards the ocean and to King Edward Park to the south. There is no significant vegetation on the site.

The site has previously been used as a bowling club. Although there are no longer any buildings on the site, the 'Newcastle City Bowling Club Memorial Gates and Fence Piers' remain on the northern perimeter of the site. Council advises that the gates and fence piers are listed on the Commonwealth Heritage list (non-statutory) and that the site has been

nominated for listing on the State Heritage Register as part of the larger King Edward Park. The site itself is not currently listed as a heritage item in the LEP.



Figure 1 – Subject site and surrounding locality

### Surrounding Area

North of the subject site, across Reserve Road, is a NSW Health facility zoned SP2 Health Services Facility. The Hill residential area is located north east and further south west of the site and is zoned R3 Medium Density Residential and R2 Low Density Residential in these areas respectively.

The site is adjoined to the west and south by King Edward Park which is zoned RE1 Public Recreation and is used for recreation, containing walking tracks, lookouts, gardens and coastal access at the Bogey Hole ocean swimming pool.

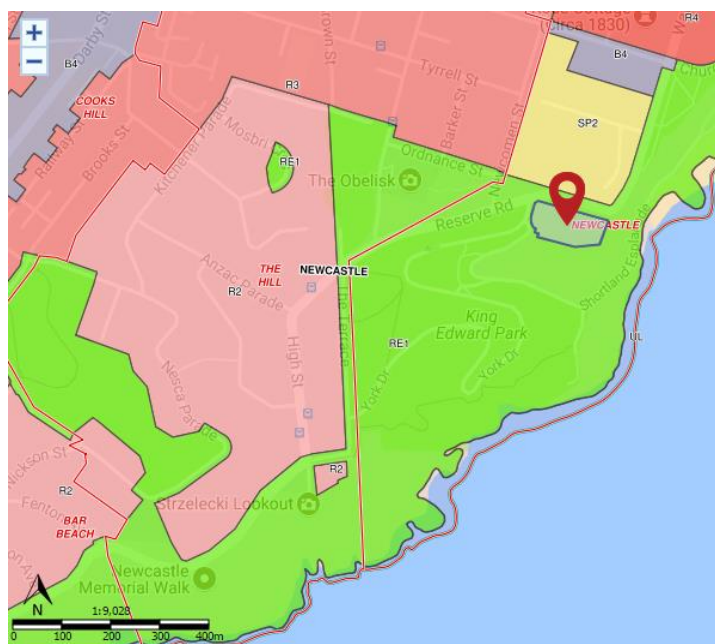


Figure 2 – zoning and surrounding land zones of subject site

## Summary of Recommendation

The planning proposal should proceed with conditions. The proposal reflects a Land and Environment Court decision which found that a function centre is not permitted under the site's Plan of Management. As a result, this proposal seeks to update the LEP such that function centres are no longer permitted on the site. In making this change, the planning controls that would apply to the site would be consistent with those that apply to other RE1 zoned land in the local government area. Consultation with the landowner (Department of Lands), the Awabakal Aboriginal Land Council and the community should occur as part of the planning proposal process.

## PROPOSAL

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### Objectives or Intended Outcomes

The planning proposal seeks to amend Schedule 1 of the Newcastle Local Environmental Plan 2012 (LEP) to remove an additional permitted use for 1 Ordinance Street as a function centre and kiosk with associated car parking and landscaping.

### Explanation of Provisions

The proposed outcome will be achieved by amending Schedule 1 of the Newcastle LEP 2012 by removing item 1, which states:

*1 Use of certain land at 1 Ordinance Street, Newcastle*

*(1) This clause applies to land at 1 Ordinance Street, Newcastle, being Lot 3109, DP 755247*

*(2) Development for the purpose of a function centre and kiosk with associated car parking and landscaping is permitted with development consent.*

### Mapping

There are no changes proposed to LEP maps.

## NEED FOR THE PLANNING PROPOSAL

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The planning proposal is the result of a decision of the Land and Environment Court [NSW LEC 40089 of 2012] that found that the King Edward Park Headland Reserve Plan of Management prepared by the Department of Lands was invalid and that 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. The planning proposal therefore seeks to remove item 1 from Schedule 1 of the Newcastle LEP 2012 to reflect the LEC decision.

Removing the item is supported. Function centres are not permitted on RE1 zoned land elsewhere in the LGA. Given the LEC has found that function centres are not permissible on the site due to the Plan of Management that applies, the additional permitted use for this site in the LEP should be removed.

The planning proposal is the best means for achieving the objectives of the proposal. Council sought advice from the Department as to whether an amendment under section 73A of the Environmental Planning and Assessment Act 1979 (EP&A Act) was possible, however the Department considers that the standard planning proposal process is the appropriate avenue for the proposed amendment.

## STRATEGIC ASSESSMENT

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### Regional / District

#### *Hunter Regional Plan 2036*

The planning proposal is consistent with Goal 3 of the Hunter Regional Plan 2036, 'Thriving Communities'. Goal 3 provides for the protection of the Hunter's open space, natural features and heritage values. The proposal is particularly consistent with Direction 18 'Enhance access to recreational facilities and connect open spaces', as it will facilitate the maintenance of the Hunter's open space network and public access to natural areas.

### Local

#### *Newcastle Community Strategic Plan (CSP) 2030*

Council advises that by following the LEP amendment process under the EP&A Act, including section 57 'Community Consultation', the proposal will facilitate transparent decision-making and community engagement. This is consistent with the CSP's strategic objective to "Consider decision-making based on collaborative, transparent and accountable leadership" and strategy 7.2b to "Provide opportunities for genuine and representative community engagement in local decision making".

#### *Local Planning Strategy (LPS)*

The LPS is a land use strategy designed to guide future growth and development in Newcastle. The LPS identifies the importance of ensuring uses permitted within recreation zones are consistent with the zone directions to avoid sterilisation of the land. It also outlines important criteria for providing usable and connected recreation spaces, including accessibility and connectedness, equity and opportunity, quality, size, allocation and safety. Council advises that the NSW Department of Industry has provided preliminary advice indicating that the current RE1 Public Recreation zone provides for an adequate range of land uses for any future development on the site. The proposed change aligns the uses permitted in the LEP for this site with those that apply to other RE1 zoned sites in the LGA. It will help ensure that any future use of the site aligns with the RE1 zone objectives as desired by the LPS.

### Section 117(2) Ministerial Directions

The planning proposal is consistent with all applicable S117 Directions. All applicable S117 Directions are identified below, with further discussion provided for those considered to be most relevant.

Applicable S117 Directions:

*2.2 Coastal Protection*

*2.3 Heritage Conservation*

*4.1 Acid Sulfate Soils*

*4.2 Mine Subsidence and Unstable Land*

*5.10 Implementation of Regional Plans*

*6.1 Approval and Referral Requirements*

*6.2 Reserving Land for Public Purposes*

Further discussion:

*2.3 Heritage Conservation*

The subject site is located within 'The Hill' Heritage Conservation Area and has been nominated for listing on the State Heritage Register as part of the larger Newcastle Recreation Reserve (King Edward Park). The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The proposal is consistent with this Direction, as removing the

additional permitted use will not affect the heritage value of the conservation area or the park's potential listing as a State heritage item.

#### *4.2 Mine Subsidence and Unstable Land*

Direction 4.2 applies because the site is identified as being within the Newcastle Mines Subsidence District. As the planning proposal would not permit additional development on the site, the proposal is consistent with this Direction. Consultation with the Subsidence Advisory NSW (formerly the Mine Subsidence Board) is unnecessary.

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

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**

#### *SEPP 44 – Koala Habitat Protection*

The SEPP applies to land across the entire Newcastle Local Government Area, however the subject site is urban and does not consist of areas of koala habitat.

#### *SEPP 55 – Remediation of Land*

Council records identify the site as being potentially contaminated. Contamination investigations in relation to a previous development application for the site however, found that tested contaminants were below relevant assessment criteria. Council has also indicated its satisfaction with the adequacy of the investigations.

Given that the planning proposal is only intended to remove an additional permitted use, it is considered that the proposal is consistent with SEPP 55 and no further assessment is necessary as part of the planning proposal process.

#### *SEPP 71 – Coastal Protection*

The planning proposal is consistent with SEPP 71 because the removal of the additional permitted use does not prevent the outcomes listed in clause 8 of the SEPP from being achieved should the site be developed in the future. Any future use of the site would need to address those matters as part of the development application process.

## **SITE SPECIFIC ASSESSMENT**

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### **Social and Environmental**

As the planning proposal would remove an additional permitted use (function centres) on the site, no adverse social or environmental impacts are anticipated. Should development of the land be proposed for a use permitted in the zone in the future, then social and environmental impacts (e.g. heritage, contamination) would be considered as part of the development application process.

### **Economic**

While it could be argued that removing the potential for the site to be developed as a function centre may result in a potential economic loss, the LEC has found that the site is unable to be developed for that purpose due to the Plan of Management that applies. As such, it is concluded that no adverse economic impacts are anticipated as a result of the proposal.

A range of other employment generating uses are permitted with consent in the RE1 Public Recreation zone which, if permitted by the Plan of Management, could be pursued in the future, subject to development consent.

## CONSULTATION

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### Community

Council proposes a public exhibition period of 14 days in accordance with Council's guidelines, as it considers the Proposal to be of low impact.

A 14 day public exhibition period is recommended, as the Proposal is considered 'low impact' as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) because the change would make the planning controls consistent with the adjoining land.

### Agencies

#### *Department of Industry – Lands*

Council has undertaken preliminary consultation with the Department of Industry – Lands (DPI) in relation to removing Item 1 from Schedule 1 which did not raise concerns with the proposal. Formal consultation with DPI is recommended.

#### *Local Aboriginal Land Councils*

Council indicates that the site is the subject of two unresolved Aboriginal Land Claims. As such, the Awabakal Aboriginal Land Council should be consulted as part of the planning proposal process.

## TIMEFRAME

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Council has proposed a 6-month timeframe for completing the LEP amendment.

It is recommended that the Department supports this timeframe, as it provides sufficient time for consultation to occur, consideration of any submissions and potential finalisation by the Department.

## DELEGATION

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Council has specifically requested that it not be given plan-making delegation for this proposal. This request can be supported.

## CONCLUSION

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The planning proposal is supported to proceed with conditions.

The proposal will align the LEP controls with those that apply to other RE1 zoned sites, noting a LEC finding that function centres are not permitted under the Plan of Management that applies to the site.

The proposal is consistent with the strategic framework and it is not anticipated that adverse social, environmental or economic impacts will result.

## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. Agree that the Proposal is consistent with all Section 117 Directions.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
  - Department of Industry – Lands; and
  - Awabakal Local Aboriginal Land Council.
3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act.
4. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Council should not be authorised to exercise delegation to make this plan.



27/11/2017  
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29/11/2017  
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