



PLANNING PROPOSAL

1 Ordnance Street Newcastle

Version 1.0 - Council endorsement

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1 Ordnance St Newcastle

Introduction

This planning proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (NSW). It explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making the plan.

'A guide to preparing planning proposals' has been used to guide and inform the preparation of this planning proposal.

The planning proposal may evolve over time due to various reasons, such as feedback during exhibition. It will be updated at key stages in the plan making process.

Summary of proposal

Proposal	Amend Schedule 1 to remove the additional permitted use as a function centre and kiosk with associated car parking and landscaping.
Property Details	Lot 3109 DP 755247, 1 Ordnance St Newcastle
Applicant Details	Newcastle City Council

Background

The additional permitted use for a function centre and kiosk at 1 Ordnance Street, Newcastle, was included in Schedule 1 at the time the Newcastle Local Environmental Plan 2012 (LEP) was gazetted. This was to ensure that uses permitted under the previous LEP (2003) were still permitted by the new LEP 2012.

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

Site

The proposal relates to land at Lot 3109 DP 755247, 1 Ordnance St Newcastle, which is a 0.65 ha part of the larger King Edward Park. The site is located within the north eastern corner of King Edward Park. It has frontage to Ordnance Street to the north, York Drive and Reserve Road to the west. Shortland Esplanade and the Pacific Ocean are located directly to the east (see **Figure 1** Local context of the site).

The site is zoned RE1 Public Recreation and is located within The Hill Heritage Conservation Area (see **Figure 2** Aerial view of the site).

The topography of the site is generally flat, but the land immediately to the east slopes downwards towards the ocean and to King Edward Park to the south. The site has previously been used as a bowling club and although there are no longer any buildings on the site, the 'Newcastle City Bowling Club Memorial Gates and Fence Piers' remain in a prominent position. The gates and piers are listed on the Commonwealth Heritage list (non-statutory) and the site

has been nominated for listing on the State Heritage Register, as part of the larger King Edward Park. There is no significant vegetation on the site.

Figure 1 - Local context of the site



Figure 2 - Aerial view of the site



Figure 3 - 1 Ordinance Street with the 'Newcastle City Bowling Club Memorial Gates and Fence Piers' along the northern boundary



Part 1 - Objectives or intended outcomes

To amend the Newcastle Local Environmental Plan 2012 to remove the additional permitted use of a function centre and kiosk at 1 Ordnance St Newcastle.

Part 2 - Explanation of provisions

The proposed outcome will be achieved by amending schedule 1 of the Newcastle Local Environmental Plan 2012 by deleting item 1 which states:

1 Use of certain land at 1 Ordnance Street, Newcastle

- (1) This clause applies to land at 1 Ordnance 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.*

There are no changes required to the LEP maps.

Part 3 - Justification

Section A - Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is a result of a decision of the Land and Environment Court [NSW LEC 40089 of 2012] that found that the plan of management prepared by the Department of Lands for the King Edward Park Headland Reserve was invalid and that the development of the land for the purposes of 'function centre' was not permissible, as it was not authorised by a valid plan of management.

Background

In June 2012 the Newcastle LEP 2012 was gazetted consistent with the standard LEP template. Council converted the Newcastle Local Environmental Plan 2003 into the standard LEP format under a "best match" approach and endeavoured to keep land use tables consistent so that there was no change in prohibited or permissible uses as a result of the conversion to the LEP standard template.

The 6(a) Open Space and Recreation Zone in Newcastle Local Environmental Plan 2003 permitted with consent 'any development allowed by a plan of management under the Local Government Act 1993 or Crown Lands Act 1989'.

Council could not transfer this provision into the Standard LEP land use table. In order to ensure that uses permitted under the Newcastle Local Environmental Plan 2003 remained permissible under the new LEP, the use for a function centre was placed in Schedule 1 as an additional permitted use.

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.

On 11 May 2015 the Court released its decision that the plan of management prepared by the Department of Lands for the King Edward Park Headland Reserve was invalid and that the development of the land for the purposes of 'function centre' was not permissible as it was not authorised by a valid plan of management.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, amending the Newcastle LEP 2012 is considered the best means of achieving the objectives of the planning proposal.

Section B - Relationship to strategic planning framework

3. *Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?*

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 is the NSW government's plan to guide land use planning and infrastructure priorities and decisions over the next 20 years. The plan identifies regionally important natural resources, transport networks and social infrastructure and provides a framework to guide more detailed land use plans, development proposals and infrastructure funding decisions. The plan includes overarching directions, goals and actions as well as specific priorities for each local government area in the Hunter region.

The planning proposal is consistent with Goal 3 - Thriving Communities, in particular Direction 18: "*Enhance access to recreational facilities and connect open spaces*".

4. *Is the planning proposal consistent with a council's local strategy or other local strategic plan?*

Newcastle 2030 Community Strategic Plan

The Newcastle Community Strategic Plan (CSP) reflects the community's vision for the city and is Council's guide for action. It contains the strategies to be implemented and the outcomes that will indicate achievement of the defined goals. Council adopted the Newcastle 2030 Community Strategic Plan in February 2011. It was revised and updated in 2013. The following relevant strategic directions and their objectives from the Newcastle CSP are addressed in relation to this planning proposal.

Open and Collaborative Leadership

The planning proposal primarily aligns with the strategic direction 'Open and Collaborative Leadership' identified within the Newcastle 2030 Community Strategic Plan.

Compliance with the LEP amendment process, in particular section 57 – Community Consultation of the *EP&A Act 1979*, will assist in achieving the strategic objective to "Consider decision-making based on collaborative, transparent and accountable leadership" and the identified strategy 7.2b to "Provide opportunities for genuine and representative community engagement in local decision making".

Local Planning Strategy

The Local Planning Strategy (LPS) is a comprehensive land use strategy to guide the future growth and development of Newcastle. The Strategy implements the land use directions from the Newcastle 2030 Community Strategic Plan and underpins the Newcastle Local Environmental Plan 2012. The Strategy was adopted by Council in 2015. It has not yet been endorsed by the Secretary of the Department of Planning and Environment.

A specific action of the LPS for recreation land is to ensure that permissible land uses are consistent with the zone directions. Preliminary advice from the NSW Department of Industry - Lands suggests that the current RE1 - Public Recreation zone provides a sufficient range of land uses for any future development on the site.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

An assessment of the planning proposal against the relevant SEPPs is provided in the table below.

Table 1 - Consideration of State Environmental Planning Policies

Name of SEPP	Applicable	Consistency
SEPP No. 1 -Development Standards	No	
SEPP No. 14 - Coastal Wetlands	No	
SEPP No. 21 - Caravan Parks	No	
SEPP No. 26 - Littoral Rainforests	No	
SEPP No. 30 - Intensive Agriculture	No	
SEPP No. 33 - Hazardous and Offensive Development	No	
SEPP No. 36 - Manufactured Home Estates	No	
SEPP No. 44 - Koala Habitat Protection	Yes	The SEPP applies to the entire LGA, however, the land is urban and does not consist of areas of koala habitat.
SEPP No. 55 - Remediation of Land	Yes	Council's records identify the site as potentially contaminated. However, previous contamination investigations undertaken in relation to the development application found that tested contaminants were below relevant assessment criteria. Exceedances of NEPM Ecological Investigation Levels were not considered necessary for remediation. See Section C - 8.
SEPP No. 62 - Sustainable Aquaculture	No	
SEPP No. 64 - Advertising and Signage	No	
SEPP No.65 - Design Quality of Residential Apartment Development	No	
SEPP No. 71 - Coastal Protection	Yes	The subject land is within the coastal zone. The planning proposal is acceptable in relation to the matters for consideration specified under Clause 8 as applying to the preparation of a draft LEP.
SEPP (Affordable Rental Housing) 2009	No	
SEPP (Building Sustainability Index: BASIX) 2004	No	
SEPP (Educational Establishments and Child Care Facilities) 2017	No	
SEPP (Housing for Seniors or People with a Disability) 2004	No	
SEPP (Exempt and Complying Development Codes) 2008	No	
SEPP (Infrastructure) 2007	No	May apply to future development

Name of SEPP	Applicable	Consistency
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	No	
SEPP (State and Regional Development) 2011	No	
SEPP (State Significant Precincts) 2005	No	
SEPP (Vegetation in Non-Rural Areas) 2017	No	The planning proposal will not affect the application of the SEPP.
Draft Coastal Management SEPP 2016	No	The planning proposal will not affect the application of the SEPP.

6. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

An assessment of the planning proposal against the relevant Ministerial Directions is provided in the table below.

Table 2 - Consideration of Ministerial Directions (Section 117 directions)

Section 117 Directions	Applicable	Consistency
1. Employment and Resources - no employment and resource directions are applicable		
2. Environment and Heritage		
2.1 Environment Protection Zones	No	
2.2 Coastal Protection	Yes	The planning proposal is consistent with this direction.
2.3 Heritage Conservation	Yes	The site is within 'The Hill' Heritage Conservation Area and has been included in a nomination for State heritage listing of the Newcastle Recreation Reserve (King Edward Park). The existing Clause 5.10 of the Newcastle LEP 2012 contains provisions that are sufficient to conserve the heritage significance of the site. See also Section C - 8.
2.4 Recreation Vehicle Areas	No	
3. Housing, Infrastructure and Urban Development - no housing, infrastructure and urban development directions are applicable.		
4. Hazard and Risk		
4.1 Acid Sulfate Soils	Yes	The land is Class 5. The planning proposal is consistent with this direction.
4.2 Mine Subsidence and Unstable Land	Yes	The land is within the Newcastle Mines Subsidence District. The planning proposal is consistent with this direction.
4.3 Flood Prone Land	No	
4.4 Planning for Bushfire Protection	No	
5. Regional Planning		
5.10 Implementation of Regional Plans	Yes	The Hunter Regional Plan 2036 applies to the land. The planning proposal is consistent with this direction.
6. Local Plan Making		
6.1 Approval and Referral Requirements	Yes	The planning proposal is consistent with this direction.

Section 117 Directions	Applicable	Consistency
6.2 Reserving Land for Public Purposes	Yes	The planning proposal is consistent with this direction.
6.3 Site Specific Provisions	No	

Section C - Environmental, social and economic impact

7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

The land does not contain critical habitat or threatened species, populations or ecological community, or their habitats.

8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

Land/site contamination

The site has been identified as potentially contaminated. As part of the assessment of the previous function centre development application, contamination reports were submitted and considered by Council. Council's Compliance Services Unit provided the following comments:

"The Preliminary Contamination Report undertaken by Coffey Environments, dated 19 November 2010, identified three Areas of Environmental Concern (AEC) with the potential to contain Chemicals of Concern (CoC).

The Phase 2 Contamination Report undertaken by Environmental Auditors, dated 22 July 2011, conducted a review of the Preliminary Contamination Report, the regional geological and hydro geological information, and any contamination notices found under relevant legislation. A site inspection was conducted with soil samples from 18 boreholes collected and analysed for potential contaminants identified in the Preliminary Contamination Report. The potential contaminants investigated included heavy metals, TPH, BTEX, PAH, OCP, OPP, PCB and asbestos.

All contaminants tested for in the Phase 2 Contamination Report were either below detection or below the relevant site assessment criteria according to the National Environment Protection Council (1999) "Assessment of Site Contamination" and the National Environmental Health Forum (NEHF) Soil Investigation Levels for 'parks, recreational open space, playing fields including secondary schools' use. Reference to the NSW Environment Protection Authority (EPA) (1994) "Guidelines for Assessing Service Station Sites" was made in assessing the TPH and BTEX results.

Exceedances of the NEPM Ecological Investigation Levels were encountered at three sample locations, with elevated zinc and mercury levels recorded in the shallow filling being potentially phototoxic to sensitive plant species. Considering a number of factors and the local conditions and potential impacts, the exceedances are not considered as justification for remediation in this case.

There were no asbestos fragments observed within the fill materials encountered, suggesting that the fill used on the site predates asbestos use. There was evidence of asbestos sheeting (bonded cemented) used around the two bowling green boundary perimeters. The asbestos sheets were described as intact and in good condition with no visible fragments observed."

Heritage impacts

The site is 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 nomination includes the following statement of significance:

The Newcastle Recreation Reserve is potentially of state heritage significance in its demonstration of activities and processes of importance in the history of NSW. The Reserve includes sites of known cultural significance to the Awabakal people, and was the scene of important early interactions with Europeans. The Reserve is a rare example in NSW of a comparatively undeveloped inner city natural, Aboriginal and European landscape influenced by convict labour and recorded by important colonial artists. The Reserve may be of state heritage significance for its inclusion of Themeda grasslands, an endangered ecological community.

The Reserve is potentially of state significance for its convict associations, including the grazing of government stock by convict shepherds; the construction of an early windmill; and the provision of the Bogey Hole and The Horseshoe access path. The convict mine workings demonstrate the transition between public sector and private sector operations, while The Obelisk demonstrates early public sector intervention in coastal navigation. The Bogey Hole and Horseshoe as later developed exemplify early sea bathing activities, together with the transition between gendered and ungendered bathing.

The Reserve may be of state heritage significance for its association with important historical and community events and commemorations, and also for its association with important Federation-era, pre-War and wartime defence installations that demonstrate progress in armaments technology during the Twentieth Century. The Shepherds Hill structures, in particular, have an apparently unique importance in their occupation by all three Services. Strongly associated with Major James Thomas Morisset, a figure of importance in the history of NSW, the Reserve is specially associated with Biraban, an Awabakal man, and with Rev. Lancelot Threlkeld, a missionary and scholar of great importance to knowledge of Aboriginal cultures. The cliff face and cliff top called Yi-ran-na-li contributes to the way of life, traditions and belief system of the Awabakal people, and is representative of the Dreaming.

The Reserve is potentially of state heritage significance in its setting, which incorporates coastal hills, headlands, gullies and sea cliffs with wide views across the lower Hunter Valley and the ocean. It has the principal characteristics of a nineteenth century belvedere park in the Picturesque style, demonstrating Victorian and Edwardian technical achievement, philosophy and customs, as well as continuity and change in the cultural landscape of NSW recreation reserves. The Reserve may have local significance for its association with the development in Newcastle of the sports of lawn bowls and tennis.

The convict-related and defence-related heritage items within the Reserve may be of state heritage significance in providing archaeological and other information as to convict coal workings, as to which there is as yet comparatively little knowledge. The defence relics at The Obelisk and beneath the King Edward Park Headland Reserve are also little known, and like those of the Shepherds Hill Defence Group may be of state heritage significance for their potential to supply information as to the development of Federation era and WWII defence technology.

Removing the function centre use will not impact on the nomination for listing on the State Heritage Register. As the site is within 'The Hill' Heritage Conservation Area, the existing Clause 5.10 of the Newcastle LEP 2012, would apply to any proposed development on the site.

Other

There are no other environmental effects as a result of the planning proposal.

9. Has the planning proposal adequately addressed any social and economic effects?

There are no social or economic effects as a result of the planning proposal. Removing the use of a 'function centre' will take away a potential income generating use. However, a range of other income generating uses are permitted with consent in the RE1 Public Recreation zone. These uses include kiosks, markets, registered clubs and restaurants or cafes.

Section D - State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

No infrastructure is required as the proposal seeks to remove an additional permitted use.

11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Council has undertaken preliminary consultation with the NSW Department of Industry - Lands. The Department did not raise any objection to the proposal. The Department also advised that there are two undetermined Aboriginal Land Claims over the King Edward headland Reserve.

Public authorities will be consulted with in accordance with the requirements of the Gateway determination.

Part 4 - Mapping

The planning proposal does not seek to amend any maps within Newcastle LEP 2012.

Part 5 - Community consultation

The planning proposal is considered as low impact in accordance with the Department of Planning and Environment's guidelines, 'A guide to preparing local environmental plans'. It is proposed that the planning proposal will be publicly exhibited for a minimum 14 day period.

Any other relevant authorities will be consulted in accordance with the requirements of the Gateway determination.

Part 6 - Project timeline

The plan making process is shown in the timeline below. It will be undertaken in accordance with the Gateway determination.

Task	Planning Proposal Timeline						
	Dec 17	Jan 18	Feb 18	Mar 18	Apr 18	May 18	Jun 18
Issue of Gateway determination							
Consult with required State Agencies*							
Exhibition of Planning Proposal*							
Review of submissions and preparation of report to Council							
Report to Council following exhibition							
Planning Proposal sent back to the Department requesting that the draft LEP be prepared.							

* Additional time has been allowed for these tasks due to Christmas office closures and school holidays.