

Planning and Regulatory. J Dunkerley
Phone: 02 4974 2891

3 January 2018

Ms Monica Gibson
Director Regions
Hunter and Central Coast
Department of Planning and Environment
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NEWCASTLE NSW 2300



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Dear Ms Gibson,

**RE: Request to amend Newcastle Local Environmental Plan 2012
under Section 73A**

Newcastle City Council requests an amendment to Newcastle Local Environmental Plan (LEP) 2012 under Section 73A of the Environmental Planning and Assessment Act 1979. The amendment seeks to omit *clause 7.7 Residential flat buildings in Zone B3 Commercial Core*, and to omit tree removal from *Schedule 3 Complying development*, as these clauses have become obsolete as a consequence the introduction of superordinate legislation and gazetted amendments to the LEP.

The two proposed amendments are:

1. Omit *Clause 7.7 Residential flat buildings in Zone B3 Commercial Core*

This Clause states:

"Development consent must not be granted to a residential flat building on land in Zone B3 Commercial Core unless it is a component of a mixed use development involving a permitted non-residential use."

This clause is now obsolete as residential flat buildings are not a permissible form of development in this zone. The B3 Commercial Core land use table was amended on the 29 July 2014 via the gazettal of *SEPP Amendment (Newcastle City Centre) 2014*, to remove residential flat buildings as a permissible form of development.

2. Amend *Schedule 3 Complying development* to omit tree removal as complying development as shown in Attachment A.

On the 25 August 2017 a suite of land management and biodiversity conservation reforms commenced in NSW, including *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP). At the same time '*clause 5.9 Preservation of trees or vegetation*' and '*clause 5.9AA Trees or vegetation not prescribed by development control plan*' of the Newcastle LEP 2012 were repealed via the *Standard Instrument (Local Environmental Plans) Amendment (Vegetation) Order 2017*. As a consequence of these changes, tree removal as complying development is now obsolete because:

- The Vegetation SEPP now regulates clearing that is not ancillary to development requiring consent. Clearing below the biodiversity offsets threshold only requires a permit issued by Council under the SEPP, and no longer requires development consent.

A complying development certificate is defined under the *Environmental Planning and Assessment Act 1979* as a form of development consent.

- The tree removal provisions in Schedule 3 Complying development only apply "*to the removal of species or kinds of trees that are prescribed for the purpose of clause 5.9 by a development control plan made by the Council.*" As clause 5.9 has been repealed, and vegetation clearing is now regulated under the Vegetation SEPP there is no vegetation that can be removed under these complying development provisions.

The proposed amendment to Schedule 3 is shown in Attachment A.

Please contact me on 4974 2891 or email jdunkerley@ncc.nsw.gov.au if you require any further information in relation to these matters.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Joanne Dunkerley', written in a cursive style.

Joanne Dunkerley
Urban Planner

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