

Planning and Assessment

IRF20/4204

Plan finalisation report

Local government area: Newcastle

1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 (Amendment No 47).

2. SITE DESCRIPTION

The planning proposal applies to land at Elemore Vale, being:

- Lot 1, DP 1197128, 15 Duncan Close;
- Lot 2, DP 1197128, 122 Cardiff Road; and
- Lot 10, DP 1226229, 156 Cardiff Road.

3. PURPOSE OF PLAN

This section 3.22 request under *the Environmental Planning and Assessment Act 1979* (the Act) request seeks to amend the Newcastle Local Environmental Plan 2012 by:

- Revoking the following maps:
 - 5900_COM_FSR_002C_010_20160803;
 - 5900_COM_HOB_002C_010_20160803;
 - 5900_COM_LZN_002C_010_20160803; and
 - 5900_COM_LSZ_002C_010_20160803.
- Adopting the following maps:
 - 5900_COM_FSR_002C_010_20200915;
 - 5900_COM_HOB_002C_010_20200915;
 - 5900_COM_LZN_002C_010_20200915; and
 - 5900_COM_LSZ_002C_010_20200915.

Putting into effect the following changes:

1. Change the Floor Space Ratio on:
 - Lot 1 DP119728 from Nil to 0.6:1
 - Lot 10 DP1226229 from Nil to 0.6:1
2. Change the Land Zoning on:
 - Lot 2 DP1197128 from R2 to RE1
 - Lot 10 DP1226229 from RE2 to R2
3. Change the Height of Building on:
 - Lot 1 DP119728 from Nil to 8.5m
 - Lot 10 DP1226229 from Nil to 8.5m
4. Change the Minimum Lot Size on:
 - Lot 2 DP1197128 from 450sqm to 40ha
 - Lot 10 DP1226229 from 40ha to 450sqm.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Newcastle state electorate. Mr Tim Crakanthorp MP is the State Member. The site falls within the Newcastle federal electorate. Ms Sharon Claydon MP is the Federal Member. To the regional planning team's knowledge, neither MP has 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 donations disclosure is not required.

5. GATEWAY DETERMINATION

City of Newcastle Council requested the local environmental plan amendment occur as an expedited amendment under section 3.22(1)(b) (**Attachment A – Section 3.22 Request**).

Council maintains the proposed amendment is consistent with section 3.22(1)(b) as it is needed to correct an inadvertent mapping error which is deemed to be of minor or inconsequential nature.

Furthermore, the amendment is of a minor nature consistent with Section 3.22(1)(b) and does not require consultation with other NSW Government agencies or the public.

As the amendment is occurring as an expedited local environmental plan amendment under section 3.22, no Gateway determination has been issued.

6. PUBLIC EXHIBITION

As the amendment is occurring as an expedited local environmental plan amendment under section 3.22, no public exhibition has occurred.

7. ADVICE FROM PUBLIC AUTHORITIES

As the amendment is occurring as an expedited local environmental plan amendment under section 3.22, no agency consultation has occurred.

8. POST-EXHIBITION CHANGES

No changes have been made to the proposal.

9. ASSESSMENT

The City of Newcastle seeks to make a minor amendment to *Newcastle Local Environmental Plan 2012* to correct an error to the Floor Space Ratio, Height of Buildings, Land Zoning and Minimum Lot Size maps that were introduced through Amendment 22 of *Newcastle Local Environmental Plan 2012*.

The use of section 3.22 of the *Environmental Planning and Assessment Act 1979* to facilitate this matter is also supported as a matter under section 3.22(1)(c). An expedited matter may be made if it;

(c) deals with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.

This amendment is proposed to be suitable to be made under s3.22(1)(b) as the Plan provides corrections to mapping errors produced with a previous local environmental plan amendment and were not the intention of the application, resulting in an amendment which is deemed to be of minor and inconsequential nature.

9.1 Section 9.1 Directions

As the amendment is occurring as an expedited local environmental plan amendment under section 3.22, no consideration of section 9.1 Ministerial directions is required.

9.2 State environmental planning policies

As the amendment is occurring as an expedited local environmental plan amendment under section 3.22, no consideration of State Environmental Planning Policies is required.

9.3 State, regional and district plans

As the amendment is occurring as an expedited local environmental plan amendment under section 3.22, no state or regional plans are relevant.

10. MAPPING

The maps adopted by *Newcastle Local Environmental Plan 2012* are amended or replaced, as the case requires, by the maps approved by the local plan-making authority on the making of this Plan (**Attachment Maps and MCS**).

11. CONSULTATION WITH COUNCIL

City of Newcastle Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979*. Council confirmed on 23 October 2020 it was happy with the draft and that the plan should be made (**Attachment B**).

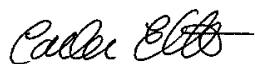
12. PARLIAMENTARY COUNSEL OPINION

On 8 October 2020, Parliamentary Counsel provided the final Opinion that the draft local environmental plan could legally be made. This Opinion is provided at **Attachment PC**.

13. 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:

1. **note** Parliamentary Counsel's Opinion the draft local environmental plan can legally be made and no changes have been made to the draft local environmental plan since obtaining this Opinion (**Attachment PC**);
2. **note** the local environmental plan maps (**Attachment Map**), which have been approved by the Department's ePlanning Team and provided to Parliamentary Counsel;
3. **make** the draft local environmental plan under section 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* by signing the instrument (**Attachment LEP**) and supporting map cover sheet (**Attachment MCS**); and
4. **sign** the letter to City of Newcastle Council (**Attachment Council**) advising of this decision.



02/11/20
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09/11/2020
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Attachment	Title
A	Section 3.22 Request
B	Section 3.36(1) consultation with Council
PC	Parliamentary Counsel's Opinion
Map	Draft LEP Map
LEP	Draft LEP
MCS	Map cover sheet
Council	Letter to City of Newcastle