

Agenda Report

ACTION ITEM

Ordinary Council
Tuesday, 22 July 2014

SUBJECT: CCL 22/07/14 - MINIMUM SUBDIVISION LOT SIZES FOR SPLIT ZONES AND COMMUNITY TITLE SCHEMES - PROPOSED AMENDMENTS TO THE NEWCASTLE LOCAL ENVIRONMENTAL PLAN 2012

RESOLVED: (Councillors Luke/Posniak)

Council resolves to:

- a) Endorse the attached planning proposal to amend Newcastle LEP 2012, pursuant to Section 55 of the *Environmental Planning and Assessment (EP&A) Act 1979*, in order to:
 - (i) enable subdivision of lots within certain 'split zones'.
 - (ii) apply the minimum lot size maps to community title subdivision across all zones to which the maps apply.
- b) Forward the planning proposal to the Minister for Planning and Environment for gateway determination pursuant to Section 56 of the *EP&A Act 1979*.
- c) Advise the Director-General of the Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 59(1) of the *EP&A Act 1979*.
- d) Consult with the community and relevant government agencies as instructed by the gateway determination.
- e) Receive a report back on the planning proposal if any written objections are received during consultation with the community as per the requirements of Section 57 of the *EP&A Act 1979*; otherwise forward the planning proposal to the Department of Planning and Environment requesting to make the proposed amendments to Newcastle LEP 2012.

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

PURPOSE

This report seeks Council's endorsement of a planning proposal to commence the statutory process to prepare amendments to Newcastle Local Environmental Plan (LEP) 2012. The amendments are proposing to insert a new clause in the LEP to allow the subdivision of lots that are within more than one zone and already below the minimum lot size and to include the E2 and E3 zones in the clause relating to minimum lot sizes for community title subdivision.

RECOMMENDATION

1 Council resolves to:

- a) Endorse the attached planning proposal to amend Newcastle LEP 2012, pursuant to Section 55 of the *Environmental Planning and Assessment (EP&A) Act 1979*, in order to:
 - (i) enable subdivision of lots within certain 'split zones'.
 - (ii) apply the minimum lot size maps to community title subdivision across all zones to which the maps apply.
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- c) Advise the Director-General of the Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 59(1) of the *EP&A Act 1979*.
- d) Consult with the community and relevant government agencies as instructed by the gateway determination.
- e) Receive a report back on the planning proposal if any written objections are received during consultation with the community as per the requirements of Section 57 of the *EP&A Act 1979*; otherwise forward the planning proposal to the Department of Planning and Environment requesting to make the proposed amendments to Newcastle LEP 2012.

KEY ISSUES

Subdivision of Split Zones

- 2 Part 4 of the Newcastle LEP contains clauses that set out the minimum size that can be created in the subdivision of lots. The minimum lot sizes are shown on the LEP maps. Lot sizes vary from 400m² – 450m² in residential zones to 40 hectares in environmental zones. This means, for example, a lot that is zoned environmental would need to be at least 80 hectares in area before it could be subdivided, as this would allow a subdivision to create two lots of 40 hectares each*.

**This only applies to subdivisions that require development consent. Some minor subdivisions/boundary adjustments can be done as exempt development and the LEP clauses do not apply.*

- 3 The minimum subdivision lot size clauses in the LEP create problems for lots that are within more than one zone. This is particularly the case for lots that are partly within an environmental zone (where the minimum lot size is 40 hectares) and partly within a residential zone where the minimum lot size is 400m² or 450m².
- 4 Most lots in Newcastle are already less than 40 hectares, so in effect most lots within environmental zones cannot be subdivided. This also applies to lots that are partly zoned environmental and partly zoned residential (or business or industrial). Because the part of the lot that is within the environmental zone is already below the minimum lot size, the whole of the lot, regardless of the other zone minimum lot size, cannot be subdivided.
- 5 Council officers have received inquiries from owners of land zoned part environmental and part residential wanting to subdivide the part of the land zoned residential into 400m²- 450m² lots but cannot do this as the lot is less than 40 hectares.
- 6 The planning proposal at **Attachment A** details the clause proposed to be inserted into the Newcastle LEP 2012 that would allow lots with 'split zonings' to be subdivided with development consent.

Community Title Subdivision

- 7 The planning proposal also includes an amendment to clause 4.1AA that makes provision for community title subdivisions. This clause currently applies to all zones but the E2 Environmental Conservation and E3 Environmental Management zones. It is proposed to amend the clause so that it also applies to the E2 and E3 zones to ensure that the minimum lot size map is applied to these zones in any proposed community title subdivision.
- 8 The planning proposal was prepared in accordance with the Department of Planning and Environment's guidelines and Council's Local Environmental Plan – Request for Amendment Policy.
- 9 If endorsed by Council, the planning proposal will be forwarded to the Minister for Planning and Environment for gateway determination. Gateway determination will confirm initial support for the draft planning proposal, and identify what further technical studies and community consultation are required prior to the proposed amendments being made.

- 10 Strategic Planning Services staff recommend that Council do not seek delegations under Section 59(1) of the *EP&A Act 1979* given the added impost on Council resources without any additional influence on the outcomes. These delegations obligate Council to prepare the final reporting, drafting and mapping in order for the Minister for Planning and Environment to 'make' the proposed amendments to Newcastle LEP 2012. Where Council does not exercise these delegations, the Department of Planning and Environment undertakes these requirements.

FINANCIAL IMPACT

- 11 Work will be undertaken by Council's Strategic Planning Services staff within their current allocated work program and budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 12 The preparation and processing of the attached draft planning proposal aligns to the strategic direction '*Open and Collaborative Leadership*' identified within the Newcastle Community Strategic Plan 2030.
- 13 Compliance with the LEP amendment process, in particular section 57 of the *EP&A Act 1979*, 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 and representative community engagement in local decision making*".

IMPLEMENTATION PLAN/IMPLICATIONS

- 14 The preparation of the attached planning proposal was undertaken in accordance with Council's Local Environmental Plan – 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 1979* for amending an LEP.

RISK ASSESSMENT AND MITIGATION

- 15 The process of amending an LEP is prescribed by Part 3 of the *EP&A Act 1979*. Adherence to the legislative framework reduces the risk to Council by ensuring that a planning proposal is considered with regard to relevant strategic planning documents and is determined in an appropriate timeframe.
- 16 Justification has been provided in the planning proposal for the formal LEP amendment request.
- 17 Further consultation with stakeholders (including the broader community) will occur in accordance with the Minister's requirements following gateway determination. This will ensure all relevant parties are able to consider and comment on the draft planning proposal.

RELATED PREVIOUS DECISIONS

- 18 Newcastle LEP 2012 was adopted by Council on 21 June 2011.

CONSULTATION

- 19 The planning proposal outlines the level of consultation required. This is in accordance with the Department of Planning & Environment's – 'Guide to Preparing Local Environmental Plans'. Low Impact proposals are exhibited for 14 days. These include proposals that are consistent with the pattern of surrounding land use zones and/or land uses; are consistent with the strategic planning framework; present no issues with regard to infrastructure servicing; are not for a principal LEP and do not reclassify public land. All other planning proposals are exhibited for 28 days.
- 20 The gateway determination will confirm the consultation requirements, however, it is envisaged that this will include a public notice in the Newcastle Herald and publication on the City of Newcastle web page. The subject planning proposal is considered low impact and has been recommended to be exhibited for 14 days.

OPTIONS

Option 1

- 21 The recommendation as at Paragraph 1.

Option 2

- 22 Council resolves not to proceed with the planning proposal. This option is not recommended as it could compromise the orderly release of urban and employment lands and also compromise environmental zoned land. It would also not enable the community to provide feedback on these planning matters.

BACKGROUND

- 23 Council's standard instrument LEP was gazetted in June 2012. The LEP has standard clauses that relate to the subdivision of land. Council staff have identified an issue with the application of these clauses to lots that have two or more zonings (split zonings). More detail regarding this issue and the proposed resolution are provided in the planning proposal (**Attachment A**).
- 24 In more recently gazetted standard LEPs it was noted that some councils have adopted a clause similar to what staff are proposing to deal with the subdivision of land with split zonings.
- 25 Council staff also identified that the current LEP instrument does not apply the minimum lot size maps to community title subdivision across all zones to which the maps apply. This could potentially lead to ad hoc fragmentation of environmentally sensitive lands.

- 26 As a result of the above, a planning proposal has been prepared to seek to amend the Newcastle LEP 2012 to address these matters.
- 27 The planning proposal (**Attachment A**) explains the need and justification for the proposed amendment to Newcastle LEP 2012 in further detail.

ATTACHMENTS

Attachment A: Planning Proposal – Minimum subdivision lot sizes for split zones and community title schemes

Attachment A distributed under separate cover.