

## Planning Services

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### Plan Finalisation Report

**Local Government Area:** Newcastle

**File Number:** 14/08482

**Planning Proposal:** PP\_2016\_NEWCA\_006\_00

#### 1. NAME OF DRAFT LEP

Newcastle Local Environmental Plan 2012 Amendment No. 20 (draft LEP).

#### 2. BACKGROUND

The provisions contained in this LEP amendment originally formed part of a larger planning proposal which progressed through the plan-making process to the post-exhibition phase. Following community consultation, Council decided to split the planning proposal into two parts being Part A and Part B. The split was formally recognised when the Minister decided to make Part B.

In making Part B, Part A was deferred so that outstanding issues relating to its provisions could be resolved (**Attachment D3**). This LEP amendment being considered here is the Part A component.

When the Minister deferred this component, his delegate did not specify any conditions under s59(4) of the Act which needed to be complied with before Part A could be reconsidered for making.

#### 3. SITE DESCRIPTION

The planning proposal applies to land at:

- 12 Hanson Place, Shortland (lot 7 DP 226353)
- 310 Sandgate Road, Shortland (lot 15 DP 567254)
- 312 Sandgate Road, Shortland (lot 14 DP 567254)
- 332 Darby Street, The Junction (lot 103 DP 37263)
- 334 Darby Street, The Junction (lot 102 DP 37263)
- 9 Milgate Street, Wallsend (lot 200 DP 1197461)
- 14 Milgate Street, Wallsend (lot 141 DP 550885)
- 1 Henry Street, Tighes Hill (lot 2 section C, DP 61)
- Part of King Street between Auckland and Darby Streets, part of King Street to the east of Darby Street, part of Laman Street directly adjoining Civic Park and part of Darby Street directly adjoining Civic Park
- All land zoned B3 Commercial Centre and B4 Mixed Use in the Newcastle LGA.

#### 4. PURPOSE OF PLAN

The planning proposal includes seven items however one of these items (Item 1: Clause 6.8 Council infrastructure development clause) is to be deferred at the request of Council (**Attachment G**). It is not in the draft LEP.

The draft LEP seeks to:

*Item 2 (mapping anomaly at Shortland)*

- rezone part of 12 Hansen Place from B1 Neighbourhood Centre to R2 Low Density Residential and part of 310-312 Sandgate Road from R2 Low Density Residential to B1 Neighbourhood Centre;
- apply a FSR of 0.75:1 to 12 Hansen Place and a FSR of 1.5:1 for 310 Sandgate Road; and
- apply a 450 sq.m minimum lot size for 12 Hansen Place and apply no minimum lot size for 310-312 Sandgate Road.

*Item 3 (mapping anomaly at The Junction)*

- remove 332 and 334 Darby Street, The Junction from the Land Reservation Acquisition Map

*Item 4 (mapping anomaly at Wallsend)*

- apply a FSR of 0.6:1 to 9 and 14 Milgate Street, Wallsend;
- apply a maximum building height of 8.5 m to the site

*Item 5 (mapping anomaly at Tighes Hill)*

- rezone 1 Henry Street from R3 Medium Density Residential to B1 Neighbourhood Centre; and
- apply a FSR of 1.5:1 and apply no minimum lot size to the site.

*Item 6 (mapping anomaly various streets in Newcastle)*

- rezone the road reserves from RE1 Public Recreation to B4 Mixed Use for Laman Street, Darby Street and part of Kings Street to the east of Darby Street, and to B3 Commercial Core for that part of King Street between Auckland and Darby Streets;
- apply a FSR of 2:1 to Laman Street, 2.5:1 for Darby Street and part of King Street to the east of Darby Street, and 4:1 for part of King Street between Auckland and Darby Streets;
- apply a maximum building height of 14 m to Laman Street and Darby Street, 17 m for part of King Street to the east of Darby Street, and 30 m for part of King Street between Auckland and Darby Streets; and
- amend the minimum lot size to apply no minimum lot size to these road reserves.

*Item 7 (Exempt development provision applying to all B3 and B4 zoned land in the Newcastle City Centre)*

- introduce a local clause which allows temporary promotional banners to be installed as exempt development, subject to certain requirements being met.

It is not anticipated that these amendments will result in a direct increase in lots, dwellings or jobs because the changes to specific lots are generally to correct identified errors with the LEP maps.

The change to the land acquisition maps proposed for the two parcels at Darby Street relates to a change in future road design meaning that the land no longer is required for incorporation into the road reserve.

## 5. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Wallsend and Newcastle Electorates. Ms Sonia Hornery MP is the State Member for Wallsend and Mr Tim Crakanthorp MP is the State Member for Newcastle.

Ms Sharon Claydon MP is the Federal Member for Newcastle.

To the regional planning team's knowledge, none of the MPs have 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 donation disclosure is not required

## 6. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 27 June 2014 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on:

- 1 April 2015: to extend the completion timeframe to 3 August 2015 (**Attachment D1**);
- 22 October 2015: to extend the completion timeframe to 3 February 2016, to specify the specific wording for the proposed Council infrastructure development clause, and to require additional consultation with the community (14 days) and OEH (**Attachment D2**); and
- 1 July 2016: to extend the completion timeframe to 3 August 2016 (**Attachment D3**).

The proposal is now overdue for completion, being due 3 August 2016.

Council was not granted delegation to make the plan as the proposal was to affect various Council land holdings and other assets (Item 1).

## 7. PUBLIC CONSULTATION

In accordance with the Gateway determination, the planning proposal PP\_2014\_NEWCA\_006\_00 was first exhibited for 15 days from 13 October until 27 October 2014. An Alteration of Gateway determination required further community consultation on a revised version of Item 1 (Clause 6.8). This occurred between 16 November and 30 November 2015.

Council advises that no public submissions were received.

## 8. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with Mines Subsidence Board and the Office of Environment and Heritage in accordance with the Gateway determination. Council has consulted with these authorities. No objections were raised to Item 2 – 7 of the proposal **(Attachment H)**.

The Mines Subsidence Board raised no objection to the draft LEP in its letter dated 20 January 2015.

OEH objected to the proposed Council infrastructure development clause due to concerns about potential environmental impacts. This objection was unable to be resolved by Council. As this component of the planning proposal is to be deferred and is not progressing as part this LEP amendment, the objection is no longer relevant.

## **9. POST EXHIBITION CHANGES**

Of the planning proposal items that are to proceed as part of the LEP amendment, there have been no post-exhibition changes.

Several minor map changes were made by the Department to ensure suitability for plan making, to ensure that the intended changes were accurately executed and so that the final map set is consistent with the maps in force at the time of making. These minor changes do not warrant re-exhibition.

Parliamentary Counsel (PC) has included provisions in the LEP amendment which would remove the existing signage provisions (Building and Business Identification Signs) in Schedule 2 of Council's LEP. PC has done this because the provisions no longer have effect as they are covered by *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Subclause 1.9(1) of the SEPP states that the exempt provisions of a Standard Instrument LEP do not apply if that development is covered by the SEPP. Building and business identification signs are provided for by the SEPP in Part 2, Division 2.

## **10. ASSESSMENT**

The mapping anomalies (PP items 2-6) are minor matters which seek to correct errors that were introduced when the Newcastle LEP 2012 commenced, provide consistency in approach to how road reserves have been zoned in the city centre, and update land acquisition maps by removing land no longer required. No issues were raised with these changes through the consultation process and their finalisation is supported.

The finalisation of item 7 of the PP (temporary promotional banners as exempt development) is also supported. It provides for banners that are located on poles or lighting columns which are otherwise not provided for by the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. This provision would be limited to B3 and B4 zoned areas located in the Newcastle City Centre. It should assist in the promotion of events and other activities as well as festivals and markets which occur in the centre. Its finalisation is supported.

Item 1 of the PP (Clause 6.8 Council Infrastructure Development clause) is to be deferred at the request of Council. Deferral of this item is supported. The purpose of the clause was to expand the range of activities which Council can undertake as exempt development,

particularly in relation to the routine activities that Council undertakes on its operational land. It also provided for Council to undertake certain activities with development consent.

When Council consulted on the PP, OEH objected to the clause because it was concerned about that the scope of activities which Council could potentially undertake may be substantial and may result in adverse environmental impacts on Council-owned land. It requested the clause not apply to environmental and rural zoned land, as well as environmentally sensitive areas.

In response to these concerns, and to address concerns held by the Department regarding the scope of works that would be enabled and heritage impacts, extensive legal drafting was undertaken to develop a clause which enabled certain development both with and without consent, subject to certain restrictions. This process was substantial, however it was ultimately not successful with Council considering that the final clause derived no longer achieved the outcomes it sought.

The Department generally supports the intended outcome of the clause. Similar to Council's recreation land, there are certain activities (eg temporary material stockpiles) which Council undertakes regularly on its operational land which should be allowed to occur without the need for development consent. Currently the Infrastructure SEPP does not provide for this development. Similarly, there may be activities which require consent and could be able to occur on Council-owned land, independent of whether that land use is permitted by the LEP's land use table.

However, the scope and circumstances whereby development may occur needs to be resolved. Given that a suitable clause has been unable to be drafted and that this has resulted in substantial delays to this LEP amendment, it is appropriate that the matter be deferred. This allows the rest of the proposed changes to be finalised, while still allowing the Council clause to progress to a resolution.

In deferring this matter, it is recommended that the Minister specify that Council submit a revised planning proposal to the Minister under section 56(6) so that the existing Gateway determination may be altered under section 56(7) with new conditions regarding agency and community consultation issued. It should also specify that community consultation under section 57 will be required.

Council needs to ensure that the revised planning proposal adopts a first principles approach by defining what land would be affected, land ownership, what types of development would be proposed, and what restrictions would apply. The policy outcome should be detailed in plain English, be supported by examples and occur in consultation with the regional team.

### Section 117 Directions

*1.1 Business and Industrial Zones* – Item 2 of the proposal is inconsistent with this direction. However, in the Gateway determination issued 27 June 2014, the Delegate accepted as minor the proposal's inconsistency with 1.1 Business and Industrial Zones. Item 5 of the proposal is inconsistent with the direction (subclause 4e) because it would create a new employment area not in accordance with an endorsed strategy. The proposal seeks to re-instate the former zone due to a translation error in Newcastle LEP 2012. Given this, it is recommended that the Secretary's Delegate now accept the inconsistency as being minor (subclause 5d).

*3.1 Residential Zones* – the direction requires the PP to contain a requirement that residential development not be permitted until land is adequately serviced or servicing arrangements are in place (subclause 10a) and not contain provisions that would reduce the permissible residential density of land (subclause 10b). As the PP would rezone land from business to residential (item 2) and not contain a servicing provision, and reduce the residential density of land by rezoning it from residential to business (items 2 and 5), the PP is inconsistent with this direction.

However, the proposal's inconsistency is considered to be of minor significance as the proposal seeks to rectify identified mapping errors. The planning team report informing the Gateway determination recommended that the inconsistency be deemed minor. However, this was not translated into the Gateway documentation. It is recommended that the Secretary's Delegate now accept the inconsistency as being minor (subclause 11d).

*6.2 Reserving Land for Public Purposes* – the direction requires the approval of the relevant planning authority and the Secretary when an existing zoning or reservation of land is to change (clause 4).

In this instance, Council has not consulted with RMS on the proposed change to the road reserve zoning for King and Darby Streets adjoining Civic Park which are regional roads (item 6). Council proposes to rezone the road reserve B4, consistent with the adjoining land. As the B4 zoning is also consistent with the existing zoning applying to these reserves elsewhere in the locality, the inconsistency is of minor significance. The Secretary should agree to the inconsistency accordingly (subclause 8d).

The PP also proposes to remove land from the land acquisition map which was to be acquired for local roads. Council no longer requires the land and so it should no longer be identified on the acquisition map. As Council is the relevant public authority in this instance, no further consultation is required regarding this change. However, the Secretary should approve the change to the reservation to satisfy the direction (clause 4).

#### State Environmental Planning Policies

There are no SEPPs directly relevant to this LEP amendment. Notwithstanding, the Department recently exhibited changes to the Infrastructure SEPP which, if adopted, may affect the proposed Council Infrastructure Development clause. Should deferral of this clause be supported by the Minister, then these SEPP changes may be considered as part of the progression of the deferred matter.

## **11. MAPPING**

The maps and map cover sheet have been checked by the regional team and the Department's ePlanning team. Several map changes were made by the Department to ensure suitability for plan making, to ensure that the intended changes were accurately executed and to that the final map set is consistent with the maps in force at the time of making.

On 27 April 2017, the Department requested Council to review the final maps. On 5 May 2017, Council certified that the maps are suitable for plan making.

## **12. CONSULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument (**Attachment E**). Council confirmed on 4 August 2017 that it was happy with the draft and that the Plan should be made (**Attachment F**).

## **13. PARLIAMENTARY COUNSEL OPINION**

On 10 August 2017 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at (**Attachment PC**).

## **14. RECOMMENDATION**

It is recommended that the Minister's delegate determine to make the draft LEP because:

- the LEP amendment consists of minor matters consisting of mapping changes to correct errors with the existing maps, update land acquisition information, and to enable temporary promotional banners on certain land in the Newcastle City Centre as exempt development;
- the finalisation of these matters is supported in order to ensure that the LEP remains up-to-date and to facilitate the promotion of events, activities and markets in the city centre in circumstances not catered for by the Codes SEPP;
- the unresolved item relating to the proposed Council infrastructure development clause should be deferred so that outstanding issues may be resolved and further consultation undertaken;
- community consultation has been undertaken and there were no community submissions made, and subject to item 1 being deferred, no agency objections;
- the conditions of the Gateway determination (except the completion timeframe) have been satisfactorily addressed; and
- inconsistencies with section 117 directions are of minor significance.