

Amendment to Newcastle City Centre LEP 2008 (Amendment no. 3)

**Reclassification of 231 King Street
Newcastle (TPI House) from community
land to operational land.**

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Part 1 - Objectives or Intended Outcomes

To enable reclassification of 231 King Street Newcastle from community land to operational land. It is believed that the original classification of community land was an administrative error. The reclassification will allow Council to consider various options for the future use and management of this city centre site, including the future sale of the site.

Part 2 - Explanation of Provisions

The reclassification will be effected under either the Newcastle City Centre LEP 2008 or Newcastle LEP 2011 (whichever is in force at the time), it is proposed to insert the following provisions into **Schedule 4 Classification and reclassification of public land**

Insert in Part 1 Land classified, or reclassified, as operational land –no interests changed.

Column 1 Locality
Newcastle '

Column 2 Description
TPI House', Lot B DP 502464, 231 King Street, as shown edged heavy black on Sheet 1 of the map marked 'Newcastle Local Environmental Plan 2008 (Amendment No. 3)'.
'

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 not a result of any strategic study or report. The proposal is to correct an error in the original classification of the site. It has been an ongoing proposal and subject to various reports to Council since 2001. The background to this proposal is detailed in the most recent report to Council on 20 December 2011. **See Appendix A.**

The subject site is zoned B4 Mixed Use and part unzoned land and the existing two storey building is currently vacant however it had previously been used by various community groups for a minimal rent. It appears from Council records that classification of the site as community land was an administrative error made during the period of land classification in 1993. In line with the transitional provisions for land classification the site should have been listed as operational land, given its zoning. Because it was not clearly identified within the legislative timeframe, the classification defaulted to community land.

In order to allow broader commercial uses of the site or the future sale of the building it is proposed to reclassify the site as operational.

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

Reclassification of the site from community land to operational will allow greater flexibility in its use and possible future sale of the building. The site is currently zoned part B4 Mixed Use and part unzoned land and reclassification will allow the site to be used for purposes consistent with the objectives of the zone. The University of Newcastle has previously expressed an interest in the purchase of this site to enable expansion of their inner city campus. This option is currently being further explored with Council's City Asset's Group. Council has found alternate accommodation for the two main tenants, TPI Association and Octopod. The building is now affected by termite damage and cannot be occupied until further investigations are undertaken in relation to its structural adequacy.

3. *Is there a net community benefit?*

Reclassification of TPI House to operational will allow a broader range of management options and use of this city centre site. The redevelopment or adaptive reuse of the site will assist in achieving Council's objectives in relation to urban renewal. The building has recently been heritage listed so any redevelopment of the site would need to take this into account.

Council has a Reclassification Policy (adopted 2000) where it states the following:

Step 3 Assessment i.e. all proceeds from the sale or lease of land that was former community land should be allocated to the purchase of replacement community land, or to the enhancement of public facilities etc.

If Council does proceed to sell the site then the money received from the sale will need to be set aside in accordance with this Policy.

Section B - Relationship to strategic planning framework.

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

The planning proposal is consistent with the Lower Hunter Regional Strategy.

5. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The Newcastle Urban Strategy is Council's local strategic planning document. The planning proposal is consistent with this strategy. Council has an adopted Community Strategic Plan. The proposal is consistent with the objectives and strategic directions for Newcastle as outlined in the Plan.

6. *Is the planning proposal consistent with applicable state environmental planning policies?*

The planning proposal is consistent with State Environmental Planning Policies (refer to Appendix B).

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

The planning proposal is consistent with Section 117 directions (refer to Appendix C).

In accordance LEP Practice Note: PN 09-003 Classification and reclassification of public land through a local environmental plan please refer to Appendix D.

Section C - Environmental, social and economic impact.

8. *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 is not identified as containing threatened species, critical habitat, ecological communities or their habitat.

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

Subsequent development of the site for educational or mixed use purposes is unlikely to have any environmental effects.

The subject site is affected by flooding and mine subsidence. It is also within a heritage conservation area and the building is listed as an item of local heritage significance. Any proposed redevelopment of the site would need to take these environmental issues into consideration.

10. *How has the planning proposal adequately addressed any social and economic effects?*

The main social effect is that the building was previously used by a number of community groups for community purposes. The building was leased to two main groups TPI Association and Octopod. The TPI Association sub-let the space in the building to other community groups. Council has found suitable alternative accommodation for the TPI Association, Octapod and many of the sub-lessees of the building.

Section D - State and Commonwealth interests.

11. *Is there adequate public infrastructure for the planning proposal?*

Sufficient public infrastructure is provided in the area to accommodate the planning proposal.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation with public authorities occurred in accordance with section 62 of the Environmental Planning and Assessment Act 1979 (draft prepared under previous legislation).

The Mine Subsidence Board had no objections to the proposed reclassification.

Roads and Traffic Authority had no objection to or requirements for the proposed reclassification.

The Heritage Branch of the Department of Planning raised no objection to the proposed reclassification as the amendment proposes no changes to zone, maximum building heights or floor space ratio. The Heritage Branch further noted that at the time of consultation, the subject site contained the draft local heritage item 'TPI House' and is located within the Newcastle City Centre Heritage Conservation Area. The Heritage Branch supports these heritage listings.

Part 4 – Community Consultation

The Planning proposal was exhibited under the previous legislative requirements as follows:

Public Exhibition of the proposed reclassification was held for a period of five weeks between 29 March 2010 and 3 May 2010. A total of 311 submissions were received. Of these, 295 were standard submissions from TPI Association members. A summary of the issues raised is provided in the Council report (refer to Appendix A).

All submissions received (predominantly from tenants/sub-tenants) opposed the proposed reclassification, expressing concerns that the building may be sold and the tenants would not have suitable alternate premises. Tenants identified the need and advantage of being located in the Civic and Cultural Precinct.

A Public Hearing was also held in relation to this matter. A copy of the report on the public hearing is attached to Council report.

Given the amount of community concern Council resolved on 20 July 2010 to "let the matter lie on the table until an agreement had been reached with TPI Association....". This was the subject of ongoing liaison between Council's City Asset Group and TPI Association and has now been resolved.

Map 1:

Existing Zoning of subject site: part B4 Mixed Use and part unzoned land



Existing Classification of Subject site: community land



Appendix B: Relevant SEPPs

	Relevant	Comments
State Environmental Planning Policy No 1—Development Standards	No	n/a
State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development	No	n/a
State Environmental Planning Policy No 6—Number of Storeys in a Building	No	n/a
State Environmental Planning Policy No 14—Coastal Wetlands	No	n/a
State Environmental Planning Policy No 15—Rural Landsharing Communities	No	n/a
State Environmental Planning Policy No 19—Bushland in Urban Areas	No	n/a
State Environmental Planning Policy No 21—Caravan Parks	No	n/a
State Environmental Planning Policy No 22—Shops and Commercial Premises	No	n/a
State Environmental Planning Policy No 26—Littoral Rainforests	No	n/a
State Environmental Planning Policy No 29—Western Sydney Recreation Area	No	n/a
State Environmental Planning Policy No 30—Intensive Agriculture	No	n/a
State Environmental Planning Policy No 32—Urban Consolidation (Redevelopment of Urban Land)	No	n/a
State Environmental Planning Policy No 33—Hazardous and Offensive Development	No	n/a
State Environmental Planning Policy No 36—Manufactured Home Estates	No	n/a
State Environmental Planning Policy No 39—Spit Island Bird Habitat	No	n/a
State Environmental Planning Policy No 41—Casino Entertainment Complex	No	n/a
State Environmental Planning Policy No 44—Koala Habitat Protection	No	n/a
State Environmental Planning Policy No 47—Moore Park Showground	No	n/a

State Environmental Planning Policy No 50—Canal Estate Development	No	n/a
State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	No	n/a
State Environmental Planning Policy No 53—Metropolitan Residential Development	No	n/a
State Environmental Planning Policy No 55—Remediation of Land	No	n/a
State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area	No	n/a
State Environmental Planning Policy No 60—Exempt and Complying Development	No	n/a
State Environmental Planning Policy No 62—Sustainable Aquaculture	No	n/a
State Environmental Planning Policy No 64—Advertising and Signage	No	n/a
State Environmental Planning Policy No 65—Design Quality of Residential Flat Development	No	n/a
State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)	No	n/a
State Environmental Planning Policy No 71—Coastal Protection	No	n/a
State Environmental Planning Policy (Affordable Rental Housing) 2009	No	n/a
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No	n/a
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	No	n/a
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	No	n/a
State Environmental Planning Policy (Infrastructure) 2007	No	n/a
State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007	No	n/a
State Environmental Planning Policy (Major Development) 2005	No	n/a
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	No	n/a
State Environmental Planning Policy (Rural Lands) 2008	No	n/a

State Environmental Planning Policy (Sydney Region Growth Centres) 2006	No	n/a
State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007	No	n/a
State Environmental Planning Policy (Western Sydney Parklands) 2009	No	n/a

Appendix C: Consistency with Section 117 Directions

	Applicable	Comments
1. Employment and Resources		
1.1 Business and Industrial Zones	Yes, as the draft LEP will affect land within a business or industrial zone (B4 Mixed Use Zone)	The draft LEP is consistent with the direction as it: - does not reduce potential floor space for employment uses and related public services in business zones, and - retains the areas and locations of existing business zones.
1.2 Rural Zones	Not applicable	n/a
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable	n/a
1.4 Oyster Aquaculture	Not applicable	n/a
1.5 Rural Lands	Not applicable	n/a
2. Environment and Heritage		
2.1 Environment Protection Zones	Not applicable	n/a
2.2 Coastal Protection	Not applicable	n/a
2.3 Heritage Conservation	Yes, 'TPI House' is listed as a draft heritage item of local significance under the to be gazetted Newcastle City Centre LEP 2008 (Amendment 2).	The draft LEP is consistent with the direction as it does not alter current provisions that facilitate the conservation of the draft heritage status of the building.
2.4 Recreation Vehicle Areas	Not applicable	n/a
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Not applicable	n/a
3.2 Caravan Parks and Manufactured Home Estates	Not applicable	n/a

3.3 Home Occupations	Not applicable	n/a
3.4 Integrating Land Use and Transport	Not applicable	n/a
3.5 Development Near Licensed Aerodromes	Not applicable	n/a
4. Hazard and Risk		
4.1 Acid Sulfate Soils	Not applicable	n/a
4.2 Mine Subsidence and Unstable Land	Yes, the subject site is within the Newcastle Mine Subsidence District,	The draft LEP is consistent with the direction as the reclassification of land does not permit additional development. The Mine Subsidence board was contacted under section 62 consultation and had no objections to the draft LEP proceeding.
4.3 Flood Prone Land	Yes, the property may be affected by flooding.	The draft LEP is consistent with the direction as the reclassification of land does not permit additional development.
4.4 Planning for Bushfire Protection	Not applicable	n/a
5. Regional Planning		
5.1 Implementation of Regional Strategies	Yes, the Lower Hunter Regional Strategy applies to the subject site.	The draft LEP is consistent with outcomes and actions of the Lower hunter regional Strategy particularly in regard to reinforcing the key function of a higher order education role for the Newcastle City Centre
5.2 Sydney Drinking Water Catchments	Not applicable	n/a
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable	n/a
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable	n/a
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Not applicable	n/a
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Not applicable	n/a

5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Not applicable	n/a
5.8 Second Sydney Airport: Badgerys Creek	Not applicable	n/a
6. Local Plan Making		
6.1 Approval and Referral Requirements	Yes	
6.2 Reserving Land for Public Purposes	Yes	
6.3 Site Specific Provisions	Yes	

Appendix D: LEP Practice Note: PN 09-003

Classification and reclassification of public land through a local environmental plan

Written Statement

Reclassification of 231 King Street Newcastle (TPI House)

Issues to be addressed in LEP Practice Notice	Comment
<i>Reasons why the draft LEP is being prepared including the planning merits of the proposal</i>	The draft LEP is being prepared to ensure the purpose and intent of acquisition and ownership are accurately reflected (the site has been incorrectly classified as community land). Reclassification will allow the site to be used in the manner intended at time of acquisition, reflects sustainable practice and maximises community and economic benefit to the City.
<i>The current and proposed classification of the land</i>	Current classification: community land Proposed classification: operational land
<i>The reasons for the reclassification</i>	To correct a historic anomaly. The Site is currently zoned for commercial purposes.
<i>Councils' ownership of the land</i>	Newcastle City Council is the owner of this land
<i>Nature of Council's interest in the land</i>	Council owns the site outright. The building is vacant.
<i>How and when interest was first acquired</i>	Council purchased the property in 1968 for cash. Title search shows that the subject land is affected by: 1*. Reservations and conditions in the Crown Grant; 2)** BK 1387 No 708 Land excludes minerals; and 3)** Notification in Government Gazette (7/11/58) FOL 3418 Restriction on User (s 27E(6)) Main Roads Act 1924) affecting the part shown in DP 445992. It is not intended to relinquish any of the above. * see below for detail
<i>The reason Council acquired an interest in the land</i>	It is believed that Council purchased the property for civic redevelopment.
<i>Any agreements over the land to dispose of the land</i>	There are no known agreements on the land to dispose of the land.

<i>An indication of the magnitude of any financial gain or loss from the proposed reclassification and of the types of benefit that could arise</i>	Will allow either sale of the building or development lease that would address current significant structural and functional issues associated with building. Site value estimated at between \$600,000 and \$800,000/ground rental estimated at up to \$50,000pa
<i>The asset management objectives being pursued; the manner in which they will be achieved and the type of benefits the council wants</i>	To have an aging under utilised and unsound building refurbished or redeveloped to deliver community and/or economic return in a manner that assist revitalise the civic area of the city.
<i>Whether there is an agreement for the sale or lease of the land; the basic detail of the any such agreement and if relevant when council intends to realise its asset, either immediately after rezoning/reclass or at a later time.</i>	Market sounding completed to establish nature and viability of possible uses. Key criteria for market sounding was community benefit. Preliminary discussions with respondents have been initiated, no agreement has been determined. Primary options identified are educational or cultural facility application.
<i>Relevant matters required in plan making under the EPA Act</i>	The site is currently zoned B4 mixed Use and part unzoned – there is no change proposed to the zoning of the land.
<i>Attach practice note to exhibition material</i>	

1* The first restriction noted is referring to the Crown Grant which was to the Australian Agricultural Company for their 2000 acre Grant – the AA Co had the monopoly on coal mining and hence minerals and gold and silver etc – this is standard and would appear on all CT's in that 2000 acre Grant as they have never been extinguished – refer to DP 1075433 showing coal definition of AA Co land in Newcastle (there's a separate one for the Platt's Estate

2** The second restriction is the Conveyance Book and Number noted that specifically deals with the mineral exclusions – this is standard for this part of the world because we only own to perhaps 50' below the surface of our properties and the mining companies that were originally granted the portions for mining were granted the mining rights and these are rarely extinguished

3** The third restriction refers to DP 445992 which is an RTA plan for road widening and this notes that the property is still affected by road widening as the road was not taken at the time – refer to DP 445992.

**ORDINARY COUNCIL MEETING
20 DECEMBER 2011**

CCL 20/12/2011

**DRAFT NEWCASTLE CITY CENTRE LEP 2008 (AMENDMENT NO. 3) -
RECLASSIFICATION OF 231 KING ST, NEWCASTLE (TPI HOUSE)**

ATTACHMENT B

Attachment B - Report to Council on 21 April 2009

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