

Newcastle Local Environmental Plan 2012 (Amendment Number 6) - Administrative Amendment

Proposal Title :	Newcastle Local Environmental Plan 2012 (Amendment Number 6) - Administrative Amendment		
Proposal Summary :	To change various localised zoning, development intensity and heritage listing matters, exempt certain banners from approval, include an additional local provision to exempt Council minor development and remove a local road acquisition overlay.		
PP Number :	PP_2014_NEWCA_006_00	Dop File No :	14/08482

Proposal Details

Date Planning Proposal Received :	17-Jun-2014	LGA covered :	Newcastle
Region :	Hunter	RPA :	Newcastle City Council
State Electorate :	NEWCASTLE	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	various addresses		
Suburb :		City :	Postcode :
Land Parcel :	various properties as detailed in the planning proposal and in Schedule 5 of the Newcastle LEP 2012		

DoP Planning Officer Contact Details

Contact Name :	Ken Phelan
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RPA Contact Details

Contact Name :	Johannes Honnef
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DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
Contact Email :	

Land Release Data

Growth Centre :	Release Area Name :
Regional / Sub Regional Strategy :	Consistent with Strategy :

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment :

Have there been meetings or
communications with
registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

DATE RECEIVED

The Planning Proposal was initially received from Council on 21 May 2014, however additional information to clarify the request was required and received 17 June 2014. This is the date that the PP has been considered adequate for the Gateway and the date it is recorded as received.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

Objectives and intended outcomes are adequately explained for the banners exemption, zone changes and changes to the development intensity controls in Attachment A of the proposal, and for heritage schedule changes and an additional item in Attachment B.

Council should clearly state the objectives, including the type of uses to be exempt, relating to the clause for minor council works to facilitate community consultation.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment :

Land use zoning changes, minor civic works clause, banner exemption and changes to development intensity controls are adequately explained in Attachment A and heritage changes in Attachment B of the proposal.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

* May need the Director General's agreement

3.1 Residential Zones

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

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5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes
6.3 Site Specific Provisions

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Infrastructure) 2007

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Zone and property boundary amendments and changes to development intensity controls are clearly mapped in detail in Attachment A.
Amendments to the heritage mapping are shown in Part 4 of Attachment B.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

As a set of minor amendments, Council proposes a 14 day exhibition period, which is supported.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

Newcastle Local Environmental Plan 2012 was given effect on 15 June 2012.

Assessment Criteria

Need for planning proposal :

In using the Newcastle Local Environmental Plan 2012 various anomalies, errors and changes have become apparent as needing correction via an administrative update.

A Planning Proposal is the only method of achieving the desired objectives.

Consistency with
strategic planning
framework :

• STATE ENVIRONMENTAL PLANNING POLICIES

The proposals have been assessed by Council against State Environmental Planning Policies it identified as relevant. Council's assessment is supported.

STATE ENVIRONMENTAL PLANNING POLICY (Infrastructure) 2007

Item 1 of the Proposal seeks to exempt from development assessment minor development and works by or for Council which is in addition to the works identified under this SEPP. Council was requested to clarify the types of development and works it seeks to exempt via the proposed local clause. Council provided an example of the type of clause sought from the Wyong LEP 2013 and having a works capital value threshold of one million dollars. It is recommended that the Planning Proposal be amended to include the additional local exemptions clause as per the Wyong LEP, 2013 as previously agreed by Parliamentary Counsel subject to a works capital value of one million dollars as per the repealed Newcastle City Centre Local Environmental Plan exemption that Council seeks to reinstate. It is recommended that Council amend the proposal before exhibition to replace Item 1 of the Planning Proposal with the following local exemption clause for council infrastructure:

Council infrastructure development

(1) Development may be carried out by or on behalf of the Council without development consent on any land, other than land in a heritage conservation area, land containing a heritage item or land that is an environmentally sensitive area for exempt and complying development.

(2) Subclause (1) does not apply to the following development:

- (a) the erection of a class 1–9 building under the Building Code of Australia,
 - (b) development that is not exempt development under State Environmental Planning Policy (Infrastructure) 2007 and has a capital value of more than \$1,000,000.
-

**STATE ENVIRONMENTAL PLANNING POLICY- EXEMPT AND COMPLYING DEVELOPMENT
CODES (Codes SEPP)**

The proposal seeks to exempt from development consent all promotional banners on street power and light poles within B3 Commercial Core and B4 Mixed use zones within Newcastle City Centre as defined on the City Centre Map in Newcastle Local Environmental Plan 2012.

Amendments to the codes SEPP, made in February 2014, enable “construction or installation of a sign or banner that advertises a commercial, community or retail event or a private function (including sponsorship of the event or function)” as exempt development. Council's proposal is therefore in addition to the existing exemptions.

• SECTION 117 DIRECTIONS

Ten Directions are applicable, assessed in turn below:

- 1.1 Business and Industrial Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

**S117 Direction 1.1 Business and Industrial Zones
(Planning Proposal Attachment A, Item 2)**

Proposed minor changes and exchanges of zoning from commercial to residential at 12 Hansen Place, Shortland and at 1 Henry St Tighes Hill involve a nominal loss of commercial area. It is considered that their small scale renders them acceptable minor inconsistencies with this Direction. It is recommended that the Delegate accept these inconsistencies as being minor.

**S117 Direction 2.3 Heritage Conservation
(Planning Proposal Attachment A, Items 6 and 7 and Attachment B- Heritage)**

This Direction requires planning proposals to 'contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts...'. Newcastle Local Environmental Plan 2012 lists state and locally significant heritage items within the City Centre, many of which are within the subject B3 and B4 zones, these are listed in Appendix 1 to this assessment as a planning study document.

State heritage item visibility and intervisibility across the City Centre may be obscured by banners within B3 and B4 zones. However exempt development is not able to be carried out on land on which a state heritage item is located and given the transitory nature of the banners they are not likely to have a significant impact. The proposed exemption clause for council minor works, excludes heritage conservation areas, heritage items and their sites.

In respect of the new heritage listing at 99 King Street, a public reserve adjoining Cathedral Park, which is the location of "Former Mulimbah House Site", Council's Heritage Officer confirmed that a heritage study (EJE,1991) and Conservation Management Plan (2007, updated 2013) underpin the proposal. These should be exhibited by Council with the planning proposal.
The PP is considered sufficiently consistent with this direction.

S117 Direction 3.1 Residential Zones (Planning Proposal Attachment A, Items 2 and 5)

Proposed minor changes or exchanges of zoning from commercial to residential at 12 Hansen Place, Shortland and vice versa at 1 Henry St Tighes Hill involve exchanges between the commercial and residential zones.
It is considered that the small scale of these renders them acceptable minor inconsistencies with this Direction. It is recommended that the Delegate accept these inconsistencies as being minor.

**S117 Direction 4.2 Mine Subsidence and Unstable Land
(Planning Proposal Attachment A)**

While Items 3,4,5 and 6 in the proposal are within Mine Subsidence Districts and may ultimately facilitate development, the proposal of itself does not facilitate additional development opportunities within a Mine Subsidence District with the exception of the rezoning of land currently used for streets. The items within the mine subsidence district are:

Item 3: Removal of the local road acquisition layer at 332 and 334 Darby Street.

Item 4: Application of a floorspace ratio at 9 and 14 Milgate Street, Wallsend for which maps do not currently specify the relevant planning controls for the subject land.

Item 5: Amendment of the commercial zone boundary at 1 Henry Street, Tighes Hill to the rear of commercial premises fronting 203 Maitland Road, rezoning the land from R3 Medium Density Residential to B1 Neighbourhood Centre.

Item 6: Rezoning of streets around Civic Park/ Precinct from open space to business and application of floorspace ratios to sections of land that are currently public street.

Consultation with the Mine Subsidence Board will be required to ensure consistency with this direction in relation to Item 6.

S117 Direction 4.3 Flood Prone Land

Items within the proposal do not of themselves propose new or intensified development within flood prone areas ie.:

Item 3: Removal of local road acquisition layer at 332 and 334 Darby Street.

Item 4: Application of floorspace ratio controls at 9 and 14 Milgate Street, Wallsend

Item 6: Rezoning of streets around Civic Park/ Precinct and application of floorspace ratios to sections of land that is currently public street.

Although the proposal rezones flood prone land, this land is currently used for the purposes of streets and the inconsistency is considered of minor significance.

S117 Direction 5.1 Implementation of Regional Strategies

While this Direction is applicable, the impacts of the proposals are minor in the regional context and therefore the proposal is considered consistent with the intent of the Lower Hunter Regional Strategy.

S117 Direction 6.1 Approval and Referral Requirements

Council observes, and it is the case, that the proposal is consistent as it does not include provisions which would increase the requirements for subsequent development applications to seek approvals by other agencies.

S117 Direction 6.2 Reserving Land for Public Purposes

Item 6 would reduce the land area within Public Open Space zone by switching from an open space zone for the streets (footpaths and roads) and adopting the commercial zones. This would not reduce the actual green area of Civic Park as such and therefore the Planning Proposal is consistent with this Direction. It is noted however that this change could have implications for the quality and amenity of public space depending on whether commercial uses or tall buildings are approved along the park boundaries once this buffer open space zoning is removed. This issue would be considered through any subsequent Development Application.

S117 Direction 6.3 Site Specific Provisions

The planning proposal is consistent with this direction as Item 7 does not require an additional restriction given the City Centre is already defined in Newcastle LEP 2012.

• LOWER HUNTER REGIONAL STRATEGY

The proposal is consistent with the Lower Hunter Regional Strategy.

Environmental social
economic impacts :

ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS

• Environmental Impacts

The minor amendments to zone and development intensity controls proposed within mine subsidence and flood prone areas do not of themselves affect risk levels in these areas, any subsequent development would be assessed at Development Application stage.

• Social Impacts

Proposed exemptions for council infrastructure will not apply where works involve cultural heritage items on the State Heritage Register, or the land on which they stand. In addition council infrastructure exemption will not allow exempt development on heritage items of local significance or to heritage conservation areas.

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▪ Economic Impacts

Proposed changes to zone and development intensity controls are minor, with no discernible overall impact on the local economy. Routine council works and infrastructure provision up to a capital value of \$1,000,000 will be relieved of development application fees and associated costs under the introduced local provision.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Mine Subsidence Board**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Attachment A - Planning Proposal_2014Administrative Amendments.pdf	Proposal	Yes
Attachment B - Planning Proposal - Minor Heritage Amendments.pdf	Proposal	Yes
Council report and resolution of 290414 - Endorsement of PP - Minor Admin and Heritage Amendments.pdf	Proposal	Yes
Newcastle City Council_21-05-2014_Planning Proposal 2014 Adminsitrative Amendments_.pdf	Proposal Covering Letter	Yes
APPENDIX 1_Newcastle LEP 2012 Sch5_ State Items within City Centre.docx	Study	No

Planning Team Recommendation

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Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones**
- 3.1 Residential Zones**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**

Additional Information : 1) Council amend the proposal before exhibition to replace Item 1 of the Planning Proposal with the following local exemption clause for council infrastructure:

Council infrastructure development

(1) Development may be carried out by or on behalf of the Council without development consent on any land, other than land in a heritage conservation area, land containing a heritage item or land that is an environmentally sensitive area for exempt and complying development.

(2) Subclause (1) does not apply to the following development:

- (a) the erection of a class 1–9 building under the Building Code of Australia,
 - (b) development that is not exempt development under State Environmental Planning Policy (Infrastructure) 2007 and has a capital value of more than \$1,000,000.
-

2) The Department's Delegate accepts as minor the inconsistency of the proposal with the S117 Directions:

- 1.1 Business and Industrial Zones
- 3.1 Residential Zones and
- 4.3 Flood Prone Land

3) Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013) and must be made publicly available for a minimum of 14 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).

4) Council exhibit alongside the Planning Proposal the Heritage Study and associated Conservation Management Plan in respect of the proposed new listing of 99 King Street ('Former Mulimbah House Site') as an archaeological site.

5) Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Mine Subsidence Board

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. Once the consultation is undertaken with the public authorities, and information is provided, Council is to update its consideration of S117 Directions.

6) A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

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Amendment**

7) The timeframe for completing the LEP is to be 9 months.

Supporting Reasons : **The localised changes are required to address minor issues and opportunities identified
by Council during the use of the LEP.**

Signature:



Printed Name:

K O'FLAHERTY

Date:

27/6/14

