

Administrative Amendment – Newcastle LEP 2012

Proposal Title : **Administrative Amendment – Newcastle LEP 2012**

Proposal Summary : **This Planning Proposal is an administrative amendment to Newcastle LEP 2012. It aims to rezone land at 70 Vale Street, Shortland; reclassify and rezone land at 3 Northern Avenue, Tarro; insert 'hospital' as a permissible use within the R2 Low Density Zone; and clarify clause 4.1A – exceptions to minimum lot sizes for certain residential development.**

PP Number : **PP_2013_NEWCA_008_00** Dop File No : **13/06907**

Proposal Details

Date Planning Proposal Received :	17-Apr-2013	LGA covered :	Newcastle
Region :	Hunter	RPA :	Newcastle City Council
State Electorate :	NEWCASTLE	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	70 Vale Street		
Suburb :	Shortland	City :	Shortland
		Postcode :	2307
Land Parcel :	RE2 Private Recreation, SP2 Infrastructure (Educational Establishments)		
Street :	3 Northern Avenue		
Suburb :	Tarro	City :	Tarro
		Postcode :	2322
Land Parcel :	RE 1 Public Recreation, R2 Low Density Residential		

DoP Planning Officer Contact Details

Contact Name : **Susan Blake**
 Contact Number : **0249042700**
 Contact Email : **susan.blake@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Johannes Honnef**
 Contact Number : **0249742893**
 Contact Email : **jhonnef@ncc.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	1	No. of Dwellings (where relevant) :	0
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 : Council resolved at its Committee Meeting on 12 March 2013 to send the Planning Proposal to the Department of Planning & Infrastructure requesting a Gateway Determination to enable amendments to Newcastle LEP 2013 pursuant to section 56 of the EP&A Act 1979.

* Amendments to Clause 4.1A

On 7 May 2013, the Department's Planning Officer and Council's Planner discussed the amendment to clause 4.1A to clarify the intention of the Planning Proposal. It was agreed there was potentially a lack of flexibility to meet the intention of the Planning Proposal by defining the exact wording to be used in the clause, and there was ambiguity in Part 3 - Justification regarding the suggested alternative - the removal of the minimum lot sizes for subdivision of multi-unit housing. Council indicated that this alternative does not reflect the actual intention of the Planning Proposal. Consequently, after the Gateway Determination and prior to public exhibition, shall amend the proposal to provide a clearer description of the intention in relation to this matter.

External Supporting Notes : Council lodged this Planning Proposal as a grouped administrative amendment. Council has subsequently requested that the four parts of this Planning Proposal be subdivided into four separate Planning Proposals. Given the different recommendations for exhibition time, and in an effort to minimise any one proposal delaying another, this separation is supported.

Council advised that it does not wish to exercise delegations for undertaking section 59(1) of the EP&A Act.

Adequacy Assessment

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

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

Comment : The statement of objectives satisfactorily outlines the intended outcomes of the Planning Proposal (PP) which is to make administrative amendments, rezone land and reclassify

land to better reflect existing uses, and address minor matters that have arisen. The statement of objectives is supported.

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

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

Comment : The PP aims to amend the Newcastle LEP 2012 (N LEP 2012) through four separate amendments including:

1. To rezone land at 70 Vale Street, Shortland being Lot 101 DP 881682 by amending the Land Zoning Map from RE2 Private Recreation to SP2 Infrastructure (Educational Establishment), and to amend the Minimum Lot Size Map to indicate no minimum lot size
2. Reclassify and rezone land at 3 Northern Avenue, Tarro being Lot 22 DP 513106 by:
 - * Amending Schedule 4 - Classification and reclassification of public land
 - * Amending Land Zoning Map from RE1 Public Recreation to R2 Low Density Residential
 - * Amending the Maximum Height of Building Map to 8.5m
 - * Amending the Maximum Floor Space Ratio Map to 0.6
 - * Amending the Minimum Lot Size Map from 40ha to 450sqm
 - * Amending the Land Classification Map from Community Land to Operational Land
3. To make hospitals permissible in the R2 Low Density Residential zone by:
Inserting in N LEP 2012, Part 2 'Permitted or Prohibited Development - Land Use Table' – 3. 'Permitted with consent' - the dictionary defined use 'hospital'.
4. To clarify clause 4.1A 'Exceptions to minimum lot sizes for certain residential development'.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

3.1 Residential Zones
3.2 Caravan Parks and Manufactured Home Estates
3.4 Integrating Land Use and Transport
4.1 Acid Sulfate Soils
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 21—Caravan Parks
SEPP No 36—Manufactured Home Estates
SEPP No 55—Remediation of Land
SEPP No 64—Advertising and Signage
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 :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Council has proposed a minimum 14 days for public consultation for the following sections of the PP:**

- a. rezoning of 70 Vale Street, Shortland
- b. insertion of 'hospital' uses in R2 Low Density residential zone
- c. clarification of wording in cl.4.1A

The Council has proposed a minimum 28 days for public consultation for the reclassification and rezoning of 3 Northern Avenue, Tarro. Council has identified that a public hearing will be required to be held in accordance with Department of Planning and Infrastructure Circular (PN09-003) after the close of the exhibition period. Council has indicated that a public notice of the public hearing will be sent and published at least 21 days before the public hearing.

Due the differences in the public consultation timeframes and after discussion with Council, it is recommended that this Planning Proposal be separated into four separate Planning Planning Proposals each to be exhibited separately. The Department agrees with the proposed public consultation timeframes.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **The following matters are inconsistent with the s117 Directions:**

3.1 Residential Zones

Under cl.3, the s117 Direction applies if the PP will affect land within an existing or proposed residential zone.

The PP includes provisions that are inconsistent with clauses 4 and 5 of the s117 Direction. However, in accordance with cl. 6(d), the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance. Specifically;

*** The rezoning of 70 Vale Street, Shortland from Zone RE2 Private Recreation to Zone SP2 Infrastructure is inconsistent as the SP2 zone prohibits dwellings. The site previously contained the BHP-Billiton research laboratories. The land which is now owned by the University of Newcastle has established the Newcastle Institute for Energy and Resources on the site. The loss of potential dwelling construction is of minor significance given the existing and future use of the site.**

*** The PP will rezone and reclassify land at 3 Northern Avenue, Tarro which will create additional residential land.**

*** The insertion of 'hospital' uses in the R2 zone does not contain provisions which will reduce the permissible residential density of land, but it will enable an additional non-residential use within the R2 zone. This may result in a minor reduction of future housing stock, and is considered of minor significance.**

3.2 Caravan Parks and Manufactured Home Estates

Two sections of the PP are inconsistent with the s117 Direction and will affect provisions relating to Caravan Parks and Manufactured Home Estates:

*** The rezoning of 70 Vale Street, Shortland from Zone RE2 Private Recreation to Zone SP2 Infrastructure is inconsistent as the SP2 zone prohibits caravan parks. The inconsistency is considered of minor significance as the intention of the rezoning is to reflect the existing use of the site for an education facility and research facility. A caravan park or manufactured home estate is highly unlikely to be developed on the site.**

*** The rezoning and reclassification of land at 3 Northern Avenue Tarro being Lot 22 DP 513106 from Zone RE1 Public Recreation to Zone R2 Low Density Residential is inconsistent as the existing RE1 zone permits with consent, caravan and manufactured home estates, but the proposed R2 zone prohibits caravan parks. Council indicates the**

inconsistency is minor as the subject land is too small (1805sqm) to permit viable development of a caravan park or manufactured home estate.

Consequently, in accordance with cl. 6(d) of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

4.1 Acid Sulfate Soils

Under cl.6, of the s117 Direction, a planning authority must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) on the ASS maps unless the planning authority has considered an ASS study assessing appropriateness of the change of land use given the presence of ASS. The rezoning and reclassification of 3 Northern Avenue, Tarro, will enable intensification of the land. The land is classified as Class 5 on the 'Potential Acid Sulfate Soils Planning Map' of the N LEP 2012. Any future development will need to take into account provision cl.6.1 of the N LEP 2012 regarding development of land on acid sulphate soils.

As the site is identified as Class 5 ASS and there are appropriate provisions within the N LEP 2012, in accordance with cl. 8(b) of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

4.4 Planning for Bushfire Protection

Land subject of this PP (70 Vale Street, Shortland) is identified as Bushfire Prone Land. In accordance with cl.4 and 7 of the s117 Direction, to enable examination of the consistency with this Direction, the Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination.

6.2 Reserving Land for Public Purposes

The PP is seeking to reclassify and rezone land at 3 Northern Avenue, Tarro. In accordance with cl.4 of the s117 Direction, a PP must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the DG of Planning. The land is presently used for the purposes of a children's playground. Council has identified that the land is small in area and alternative open space is available nearby. The land is not dedicated as a public reserve. Council has indicated that 'no trust, covenants or interests' will be discharged, so the reclassification will not require the Governor's approval. The PP will formalise the approval process and ensure consistency with this s117 Direction. It is recommended that the DG's delegate agrees to the reduction in open space as part of the Gateway Determination and, if supported, the proposal is consistent with the direction.

The following SEPPs are applicable to the PP and have been addressed in the PP:

SEPP 21 – Caravan Parks & SEPP 36 - Manufactured Homes

These policies aims to encourage the development of land for the purposes of a caravan park and manufactured home estates, and establishes strategies by which these aims can be achieved.

The rezoning of 70 Vale Street, Shortland from Zone RE2 Private Recreation to Zone SP2 Infrastructure is inconsistent with these SEPPs as caravan parks and manufactured home estates were permitted with consent in a recreation zone but are prohibited in the infrastructure zone. However the intention of the rezoning is to reflect the existing use of the site for an education and research facility. Given this context, it is not considered by Council as a viable site for a caravan park nor likely for a manufactured home estate, and it is agreed that the inconsistency is minor.

The rezoning and reclassification of land at 3 Northern Avenue, Tarro from Zone RE1 Public Recreation to Zone R2 Low Density Residential is inconsistent with these SEPPs as the existing RE1 zone permits with consent, caravan and manufactured home estates, but the proposed R2 zone prohibits caravan parks. Council indicates the inconsistency is minor as the subject land is too small (1805sqm) to permit viable development of a caravan park. This assessment is supported and agree that the inconsistency is minor.

SEPP 55 – Remediation of Land

In accordance with cl. 6, when preparing a draft LEP Council must consider whether the land is contaminated and be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for all the purposes on which the land in the zone concerned is permitted to be used. If remediation is required, Council needs to be satisfied that the land will be so remediated before the land is used for that purpose.

Council has indicated that although 70 Vale Street, Shortland is not identified in their register as being contaminated, past uses of the site may have included waste storage, iron and steel works. These uses are listed in Table 1 of 'Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land' as activities that may cause contamination. A detailed Site Investigation is currently being undertaken of the site in accordance with the 'NSW EPA Guidelines for Consultants reporting on contaminated sites.' The University of Newcastle, as the owners of the site has also appointed a site auditor to review contamination matters. Council has noted that the change in zoning will not affect the use or facilitate additional land uses not already permissible through the SEPP (Infrastructure) 2007, and any contamination identified through the detailed site investigation will be remediated as necessary. There is presently not enough information to determine consistency with SEPP 55. Therefore this matter will need to be adequately addressed by Council prior to finalisation of the PP.

SEPP 64 – Advertising and Signage

This policy aims to regulate signage display and requires assessment in relation to certain types of development. Council indicates any future signage on sites being rezoned and developed will require development consent and will be assessed on its merits.

Overall adequacy of the proposal

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

If No, comment : **Sufficient information has been provided to assess the proposal in preparation of the Gateway Determination.**

Proposal Assessment**Principal LEP:**

Due Date :

Comments in relation to Principal LEP : **Completed June 2012.**

Assessment Criteria

Need for planning proposal :

Council resolved at its Meeting of 12 March 2013 to endorse various PP to amend the N LEP 2012. Council indicates the following needs for this PP:

1. Rezone land at 70 Vale Street, Shortland being Lot 101 DP 881682

The 3.7ha site was used previously as the BHP-Billiton research laboratories and is now owned by the University of Newcastle who have established the Newcastle Institute for Energy and Resources on the site. The Zone SP2 Infrastructure (Educational Establishment) will reflect the use of the site.

2. Reclassify from community land to operational land, and rezone land at 3 Northern Avenue, Tarro being Lot 22 DP 513106

The purpose of the PP is to enable Council to dispose of the land no longer required by Council (potentially to the adjoining land owners - School of our Lady at Lourdes). The site is presently zoned RE1 Public Recreation and is approximately 1805 sqm (below the 0.5ha normally regarded as the minimum size for a neighbourhood park). The land was acquired by private treaty on 3 March 1965 for the purposes of a children's playground. Council indicates the subject land contains no play equipment or recreational facilities and is not identified in Council's Recreation Plan 2006-2016 and Section 94A Contribution Plan. These policies make no provision for strategic works to be undertaken on the park. These documents direct recreational works to the nearby Tarro Recreation Reserve. Council indicates they no longer require the land, and an R2 Low Density Residential zone will permit educational purposes to be carried out with consent as an 'education establishment' or approved under the SEPP (Infrastructure) 2007. The zone is also consistent with land zoning surrounding the site.

3. Insert 'hospital' as a permissible use within the R2 Low Density Zone

The requested amendment will affect all land zoned R2 Low Density Residential. However, Council has undertaken the PP in relation to a request to enable the Newcastle Eye Hospital at Waratah to prepare a development application for improvements to the existing hospital facility and incorporation of the adjoining land. Council believes this PP option does not restrict permissibility to a specific site or area (as permitted under Schedule 1 of N LEP 2012), but allows for future growth of existing hospitals when considered suitable under s79C of the EP&A Act 1979. Furthermore, it is unlikely that this PP will result in a substantial increase in new hospitals proposed across the LGA, given hospitals are already permitted within other zones under SEPP (Infrastructure) 2007.

4. Clarify wording in clause 4.1A – exceptions to minimum lot sizes for certain residential development

The PP is the result of Council's interpretation of clause 4.1A of N LEP 2012 and its unintended restriction on certain forms of residential accommodation. DP&I required the adoption of the model clause 4.1A as part of the conversion of the Standard Instrument.

The intention of this PP is to clarify that when land is subdivided under this clause, there is no need to erect new dwellings on each lot if one lot has an existing dwelling. Council wants to ensure that this existing dwelling does not need to be demolished and a new dwelling erected. Consequently, when subdivision occurs an existing dwelling on the subdivided lot can be retained. Council has identified that the clause requires rewording and suggests inserting the word 'retention'. The PP should be amended after Gateway Determination but prior to public exhibition so that the wording is sufficiently flexible to enable drafting of an alternative.

Council's proposed alternative which suggests removing the minimum lot size for subdivision of multi-unit housing from N LEP 2012 has been explored with Council. Discussions with Council on 7 May 2013 have noted that this does not meet the intention of the PP and Council have indicated that the PP will be amended to remove this alternative, providing the public with a better understood, plain english version of the PP after Gateway Determination but prior to public exhibition.

The Department supports the intention of this amendment.

A PP is considered the most appropriate way to achieve the intended outcomes.

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Consistency with strategic planning framework :

Lower Hunter Regional Strategy (LHRS)

The sites are not specially identified in the LHRS, however the proposed administrative amendments, land rezoning and land re-classification outcomes are consistent with the objectives and outcomes of the LHRS.

Newcastle 2030 Community Strategic Plan

The PP notes the various planning principles of the strategy, and the proposal's consistency with the Strategy.

Newcastle Urban Strategy

The PP notes the various planning principles of the strategy, and the proposal's consistency with the Strategy. The PP will assist in strengthening this position and is consistent with the goals of the Strategy.

Environmental social economic impacts :

As part of this PP, studies and investigations have been completed including:

1. Rezone land at 70 Vale Street, Shortland

* The land is identified as being bushfire prone. Although previous development applications for the site have undertaken risk assessments, the RFS may need to be consulted as part of the Gateway Determination.

* The site was used in the past by BHP for a research facility. Council records do not indicate the site as being affected by contamination however there may have been waste storage, iron and steel works on the site. These activities are identified within the guidelines for SEPP 55 that may cause contamination. Council indicates a detailed site inspection is being undertaken. Any contamination identified through these investigations will need to be remediated in accordance with the applicable policies.

* The PP recognises the establishment of the Newcastle Institute of Energy and Resources and will reflect the connection with the University activities in the rezoning process.

2. Reclassify and rezone land at 3 Northern Avenue, Tarro

* Council acquired the land in 1965 for the purposes of a children's playground. Since then, Council has provided local playground facilities in alternative locations in Tarro. Council has identified that the land is inconsistent with Council's policy framework for open space, and is surplus to the requirements given alternative open space exists nearby. Council notes that if the site was sold, it provides social and economic benefits as Council would not be responsible for ongoing maintenance cost, and the sale proceeds would be available for expenditure on other community land.

3. Insert 'hospital' as a permissible use within the R2 Low Density Zone

* Council indicates that the PP provides social and economic benefits in enabling the Newcastle Eye Hospital at Waratah to make improvements to the existing hospital facility incorporating the adjoining land. Council identifies that the PP will not result in hospitals proliferating throughout the LGA as hospitals are permitted within other zones under the SEPP (Infrastructure) 2007.

* Council has followed the Practice Note Schedule 1 - Additional Permitted Use which states that for reasons of clarity, land use permissibility should preferably be controlled by zones and the land use table. Additional listing in LEP Schedule 1 should be minimised and should only proceed when Council can demonstrate that there no other acceptable solution to progress the matter. Council has inserted the additional permitted use in the Land Use Table.

4. Clarify wording in clause 4.1A –exceptions to minimum lot sizes for certain residential development

* Council indicates the PP will have social and economic benefits as it allows the retention of existing dwellings and the provision of different dwelling types, thereby creating greater housing choice to the community.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **NSW Rural Fire Service**

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
council_report_administrative_amendment_newcastle_LEP_2012.pdf	Proposal Covering Letter	Yes
planning_proposal_newcastle_LEP_2012_administrative_amendment.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.2 Reserving Land for Public Purposes**

Additional Information : **It is recommended that:**

1. Support the Planning Proposal as proceeding separately (four separate Planning Proposals) and proceed subject to the following conditions:

2. The Planning Proposal clarifying clause 4.1A of Newcastle LEP 2012, should be amended after Gateway Determination but prior to public exhibition to remove reference to specific wording in clause 4.1A which may reduce the flexibility of finding an appropriate alternative resolution. Also remove from the Planning Proposal Council's proposed alternative, which suggests removing the minimum lot size for subdivision of multi-unit housing.

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

(a) the Planning Proposal be made publicly available for 14 days; except for the rezoning and reclassification of 3 Northern Avenue, Tarro, which must be publicly available for 28 days.

(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009)

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

* NSW Rural Fire Service as part of the rezoning of 70 Vale Street, Shortland; and the rezoning of 3 Northern Avenue, Tarro

Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the Planning Proposal.

5. The Director General (or delegate) agree with the following section 117 Direction inconsistencies –

3.1 Residential Zones; 3.2 Caravan Parks and Manufactured Home Estates; 4.1 Acid Sulfate Soils as the inconsistency with the terms of the s117 Direction are of minor significance. Note that the proposal will result in a reduction of open space and agree to this reduction. Noting that with this agreement the proposal will be consistent with s117 direction 6.2 Reserving Land for Public Purposes.

Consultation is required with the NSW Rural Fire Service to determine consistency with section 117 Directions – 4.4 Planning for Bushfire Protection respectively. Council is to amend the Planning Proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

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 submission if reclassifying land).

7. Council is to prepare a preliminary site investigation contamination study in accordance with clause 6(1) of State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land as part of the rezoning of 70 Vale Street, Shortland. This study is to be placed on public exhibition with the planning proposal.

8. The timeframe for completing the LEP is to be 12 months from the date of the Gateway Determination.

9. Council exercise their delegations under section 59(1) of the EP&A Act.

Supporting Reasons :

Newcastle City Council has identified the need for this administrative amendment to meet the operational needs.

Newcastle has identified time frames of between 5-7 months to complete the various sections of the PP. However, a 12 month timeframe is appropriate as a reclassification of land forms part of the proposal.

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Council's resolution has indicated that Council do not wish to exercise delegations,
however this is a minor administrative amendment.

Signature:



Printed Name:

KOFLAHERTY

Date:

10-5-2013

