

Agenda Report

ACTION ITEM

Ordinary Council
Tuesday, 12 February 2013

**SUBJECT: CCL 12/02/13 - PROPOSED AMENDMENT TO THE
NEWCASTLE LOCAL ENVIRONMENTAL PLAN 2012 -
LOTS 4, 5 & 6 DP 18086, 289 - 291 TURTON ROAD NEW
LAMBTON**

RESOLVED: (COUNCILLORS D COMPTON/L TIERNEY)

Council resolves:

- a) pursuant to Section 55 of the *Environmental Planning and Assessment (EP&A) Act 1979*, to endorse a planning proposal to enable the redevelopment of an existing service station on land at 289 - 291 Turton Road, New Lambton described as Lots 4, 5 and part Lot 6 DP 18086.
- b) to forward the planning proposal (**Attachment A**) to the Minister for Planning and Infrastructure for 'gateway determination' under Section 56 of the *EP&A Act 1979*; and
- c) that the outcomes of the community consultation process are reported back to Council if submissions are received.

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**REPORT BY: FUTURE CITY
CONTACT: DIRECTOR FUTURE CITY / MANAGER STRATEGIC
PLANNING SERVICES**

PURPOSE

This report seeks Council's endorsement of a planning proposal to commence the statutory process to prepare an amendment to Newcastle Local Environmental Plan (LEP) 2012.

RECOMMENDATION

1 Council resolves:

- a) pursuant to Section 55 of the *Environmental Planning and Assessment (EP&A) Act 1979*, to endorse a planning proposal to enable the redevelopment of an existing service station on land at 289 - 291 Turton Road, New Lambton described as Lots 4, 5 and part Lot 6 DP 18086,
- b) to forward the planning proposal (**Attachment A**) to the Minister for Planning and Infrastructure for 'gateway determination' under Section 56 of the *EP&A Act 1979*; and
- c) that the outcomes of the community consultation process are reported back to Council if submissions are received.

KEY ISSUES

- 2 Service stations are a prohibited land use within the R2 Low Density Residential zone within Newcastle LEP 2012. The definition of service station includes the ancillary sale of general merchandise.
- 3 Lots 4 and 5 DP 18086 (291 Turton Road) have existing use rights for a service station. However, this right does not extend to the adjoining lot, Lot 6 DP 18086 (289 Turton Road). The applicant intends to redevelop the service station on Lots 4 and 5 and expand the development over part of Lot 6 DP 18086 to update the service station and include an ancillary shop.
- 4 A development application for a service station and neighbourhood shop on Lots 4, 5 and 6 was refused by Council officers under delegated authority on 21 December 2012, for a number of reasons including that the part of the development proposed over Lot 6 was prohibited in the R2 zone. Hence the applicant has requested an amendment to Newcastle LEP 2012 in order to progress the redevelopment of the land.

- 5 Assessment of the proposal has identified that further investigation of the future zoning of land fronting Turton Road within the vicinity of the subject site is warranted as part of Council preparing a Local Planning Strategy. However, the timing to complete the Local Planning Strategy would unduly delay the redevelopment of the land, without necessarily altering the end result. Hence the planning proposal (**Attachment A**) requests for the use of Schedule 1 - Additional Permitted Uses within Newcastle LEP 2012 as an interim measure to facilitate redevelopment of the land, (without amending the existing land use zoning at this time).
- 6 The Department of Planning and Infrastructure's draft practice note on the use of Schedule 1 – additional permitted uses – in the standard instrument states that “‘Additional permitted uses’ in Schedule 1 are special exceptions to those provided in the Land Use Table.” Furthermore the practice note suggests “overuse of ‘additional permitted uses’ in Schedule 1 will make land use permissibility difficult, and undermine the clarity of the LEP.”
- 7 The subject planning proposal should be considered as an exceptional circumstance for the following reasons:
 - Council does not currently have sufficient strategic justification to warrant a change of the existing residential zoning and there is no suitable adjoining zone that could be applied to the land.
 - It is not considered suitable to generally include Service Stations as a use ‘permitted with consent’ within the R2 zone, as this would require an additional local clause to place appropriate restrictions and controls on their location in residential areas. The management of service stations in this way (via a local clause) would in effect be creating a ‘sub-zone’, which is not supported by the Department of Planning and Infrastructure.
 - The location is otherwise considered suitable for the ongoing use of a service station, without unwarranted impacts on the existing amenity of the area which is affected by traffic and noise from Turton Road.
 - The proposed use is not likely to negatively impact on the viability of existing commercial centres.

FINANCIAL IMPACT

- 8 Council is able to recoup costs associated with the preparation of a draft planning proposal, undertaking consultation, and preparation of technical studies, pursuant to Clause 11 of the *Environmental Planning and Assessment (EP&A) Regulation 2000*.
- 9 Fees (as outlined within Council's Fees and Charges Register) will be applied in accordance with Council's LEP Amendment Policy (2012). That is, prescribed fees apply to all formal requests except where required for the provision of public infrastructure or as a result of correcting a minor anomaly.
- 10 Where costs are unable to be recouped partly or in full, work will be undertaken by Council's Strategic Planning Services staff within their current allocated work program and budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

- 11 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.
- 12 Compliance with the LEP amendment process, in particular section 57 of the *Environmental Planning and Assessment (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

- 13 The preparation of the attached planning proposal was undertaken in accordance with Council's LEP 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

- 14 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 both applicant and Council by ensuring that a planning proposal is considered with regard to relevant strategic planning documents and is determined in an appropriate timeframe.
- 15 Justification has been provided by the applicant for the formal LEP amendment request.
- 16 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 prior to it being reported back to Council for final adoption of the proposed amendment.

RELATED PREVIOUS DECISIONS

- 17 On 21 December 2012, Council officers refused a development application under delegated authority for a service station and neighbourhood shop on the subject land on several grounds including that the proposed development is prohibited under the Newcastle LEP 2012. Lot 6 DP 18086 does not benefit from the same existing use right that Lots 4 and 5 DP 18086 have from the previous service station use and hence requires an amendment to Newcastle LEP 2012 in order to be permissible.

CONSULTATION

- 18 It is proposed that the amendment to the Newcastle LEP 2012 be publicly exhibited for a minimum 14 day period. This is in accordance with the

Department of Planning's' Guide to Preparing Local Environmental Plans for low impact proposals. The exhibition will include a notice in the Newcastle Herald and letter to adjoining property owners. The gateway determination will confirm the consultation requirements.

- 19 The Roads and Maritime Services (RMS) will be consulted following gateway determination given that Turton Road is a classified road under the Roads Act 1993.

OPTIONS

Option 1

- 20 The recommended option.

Option 2

- 21 Council resolves not to proceed with the Planning Proposal until a strategic review of the future land use of land fronting Turton Road, within the vicinity of the subject site, is undertaken as part of preparing Council's new local planning strategy.
- 22 This option is not recommended as it would unduly delay the redevelopment of the site without necessarily altering the outcome.

Option 3

- 23 Council resolves not to proceed with the Planning Proposal.
- 24 This option is also not recommended as it would not provide the community with the opportunity to provide feedback on the redevelopment of the existing service station use.

BACKGROUND

- 25 Council received a development application (DA 12/0677) on 22 June 2012 for a service station and neighbourhood shop to be located on Lots 4 and 5 DP 18086 and Part Lot 6 DP 18086. Lots 4 and 5 already contained an existing service station and were therefore able to rely on an existing use right. However, Lot 6 is vacant residential zoned land upon which service stations are prohibited.
- 26 The applicant requested that the associated neighbourhood shop be approved as a separate permissible use on Lot 6 but this was contrary to legal opinion that the two uses were not able to be considered as separate, hence the application was refused under delegated authority on 21 December 2012.
- 27 As the refusal of the proposed use was primarily due to a legal technicality rather than merit, the applicant requested Council consider an amendment to Newcastle LEP 2012 in order to facilitate the proposal.

- 28 The planning proposal (**Attachment A**) requests for 'service station' to be permitted with consent on the land by inclusion of an additional item within Schedule 1 Additional Permitted Uses within Newcastle LEP 2012.
- 29 The future land use zoning of land fronting Turton Road within the vicinity of the subject site will be considered as part of Council preparing its new Local Planning Strategy. However, the planning proposal is needed as an interim measure to enable redevelopment of the existing service station.

ATTACHMENTS

Attachment A: Planning Proposal (**distributed under separate cover**)