

**ORDINARY COUNCIL MEETING
12 FEBRUARY 2013**

**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**

Attachment A - Planning Proposal

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PLANNING PROPOSAL – 289 - 291 TURTON ROAD NEW LAMBTON

Summary of Proposal

Proposal	289 – 291 Turton Road, New Lambton (service station)
Property Details	289 – 291 Turton Road, Lot 4 DP 18086, New Lambton Lot 5 DP 18086 and Part Lot 6 DP 18086
Applicant Details	Convenience Properties (Operations) Pty Ltd c/o Ben Young, KDC Pty Ltd

Background

Council has received a request to amend Newcastle LEP 2012 in order to enable the redevelopment and extension of an existing service station use on land at 289 - 291 Turton Road, New Lambton. The existing service station has been located on the site and has operated continuously since the 1960's.

A development application for a service station was refused by Council on 21 December 2012 on several grounds including that service stations are prohibited in the R2 Low Density Residential zone and Lot 6 DP 18086 (289 Turton Road) does not have existing use rights for a service station, as does Lots 4 and 5 DP 18086 (291 Turton Road). Hence the applicant requests an amendment to Newcastle LEP 2012 to enable a service station on the whole site.

Site

The proposal consists of 289 - 291 Turton Road, New Lambton described as Lots 4, 5 and part Lot 6 DP 18086. A portion of the site (lots 4 and 5) is occupied by a service station to which existing use rights apply. There is an additional vacant site (Lot 6) immediately to the north fronting Turton Road.

The land is currently zoned R2 Low Density Residential within Newcastle LEP 2012. The adjoining land is also zoned R2 Low Density Residential zone. The land on the opposite side of Turton Road is zoned RE1 Public Recreation.

Figure 1 shows the extent of the site. **Photographs 1 to 3** depict the site from both Young and Turton Roads.

Figure 1: Aerial Photo of Subject Land



Photograph 1 – Site viewed from Young Road



Photograph 2 – Site as viewed from Turton Road



Photograph 3 – Site as viewed from Turton Road



PART 1 - OBJECTIVES OR INTENDED OUTCOMES

To enable the redevelopment and expansion of an existing service station on land at 289 – 291 Turton Road, New Lambton described as Lot 4 DP 18086, Lot 5 DP 18086 and Part Lot 6 DP 18086.

PART 2 - EXPLANATION OF PROVISIONS

An amendment to Newcastle LEP 2012 is required in order to achieve the intended outcome of this planning proposal and permit 'service stations' on the land.

This is proposed to be achieved through inclusion of an additional item within Schedule 1 Additional Permitted Uses as outlined below:

Use of Certain Land at Turton Road, New Lambton

- (1) This clause applies to land at 289 – 291 Turton Road, New Lambton, described as Lot 4 DP 18086, Lot 5 DP 18086 and Part Lot 6 DP 18086
- (2) Development for the purpose of a 'service station' is permitted with consent, with a retail floor area not exceeding 150 square metres.

PART 3 – JUSTIFICATION

Section A - Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

No; the planning proposal is of a minor site specific nature and is not the result of any specific strategic study or report.

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

Yes; the planning proposal is required in order to extend the redevelopment of a service station on Lots 4 and 5 DP 18086 (291 Turton Road) onto part of Lot 6 DP 18086 (289 Turton Road), given Lot 6 is not covered by the existing use rights on Lots 4 and 5. The applicant has advised that the current use needs to be extended to Lot 6 in order to achieve a more efficient and up-to-date service station development.

Council has considered alternative options for achieving the intended outcome. It has concluded that amending Schedule 1 is the most appropriate option as an intermediate solution until Council is able to consider the most appropriate zoning for the area as part of preparing a new Local Planning Strategy. The Local Planning Strategy is due to be completed by December 2013.

Alternate options Council has considered include:

- Rezone land to an appropriate commercial zone:

The preparation of the Planning Proposal identified that the site and adjoining land fronting Turton Road may warrant investigation of an alternate zoning given the low residential amenity and the vicinity to a regional sporting venue. However in order to consider the merits of such a rezoning on a strategic level, Council will need to undertake further investigation as part of preparing a Local Planning Strategy.

The anticipated 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 requests the use of Schedule 1 - Additional Permitted Uses within Newcastle LEP 2012 (as an interim measure) rather than rezoning land prematurely prior to completion of Council's Local Planning Strategy.

- Amendment of land use table to permit 'Service Stations' within the R2 Low density residential zone:

This option would provide a means of permitting the proposed development on the site but would thereby also permit service stations elsewhere within the R2 Low Density Residential Zone, where they may conflict with the amenity of the local neighbourhood.

It is recognised that service stations are more likely to only occur along major roadways rather than quiet neighbourhood streets. However, should this option be applied, it will be necessary to include local provisions limiting the location,

size and ancillary uses of such premises. Inclusion of such a local clause would ensure that the objectives of the zone are achieved.

- Use of Schedule 1 to permit 'service stations' on the land:

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."

Council accepts this position but believes that the subject planning proposal should be considered as an exceptional circumstance for the reasons described above.

Council will investigate the long term zoning of the land as part of preparing its local planning strategy.

Section B - Relationship to strategic planning framework

3. 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)?

Lower Hunter Regional Strategy (2006)

The Lower Hunter Regional Strategy applies to the land. The aim of this Strategy is to ensure that adequate land is available to sustainably accommodate the projected housing and employment growth in the Hunter Region over the next 25 years.

Although this project is small in scale it will contribute to generating employment opportunities and is therefore considered consistent with this aim.

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

Newcastle 2030 Community Strategic Plan

Compliance with section 57 – community consultation of the Environmental Planning and Assessment (EP&A) Act 1979, will assist in achieving the strategic direction 'Open and Collaborative Leadership' identified within the Newcastle 2030 Community Strategic Plan and more specifically strategy 7.2b, which states: "Provide opportunities for genuine and representative community engagement in local decision making".

Newcastle Urban Strategy (NUS)

In relation to manufacturing and road reliant activities, the NUS states: "Small scale manufacturing businesses, other light industry and commercial developments, such as service stations and/ or drive-in take-away food outlets, should be located appropriately on arterial roads providing a compatible use transition from industrial, road and rail environments to more sensitive, predominantly residential neighbourhoods."

The proposed amendment to the LEP to allow a service station as a permissible use is consistent with the NUS given the site is located on Turton Road (a main arterial road) and opposite the Hunter Sports Stadium, which is a major sporting / tourism hub for the Newcastle and Hunter region.

Under the NUS, the site is located within a residential 'limited growth precinct' and therefore restrictions in terms of maximum building height and Floor Space Ratios (FSRs) allowable for future residential development apply to the land. Consequently, utilising the site for a service station results in a more efficient use of the land as well as being consistent with the objectives of the NUS.

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

Consistency (of the planning proposal) with State Environmental Planning Policies is outlined in the table below.

Table 1 - Consideration of State Environmental Planning Policies

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

Name of SEPP	Applicable	Consistency
State Environmental Planning Policy No 44—Koala Habitat Protection	Yes	Yes, there are no known records of koalas on site.
State Environmental Planning Policy No 47—Moore Park Showground	No	
State Environmental Planning Policy No 50—Canal Estate Development	No	
State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	No	
State Environmental Planning Policy No 53—Metropolitan Residential Development	No	
State Environmental Planning Policy No 55—Remediation of Land	Yes	Yes, further investigation of contamination of the site will be carried out prior to exhibiting this planning proposal
State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area	No	
State Environmental Planning Policy No 60—Exempt and Complying Development	No	
State Environmental Planning Policy No 62—Sustainable Aquaculture	No	
State Environmental Planning Policy No 64—Advertising and Signage	Yes	Yes, future signage on the site will be compatible with the desired amenity and visual character of the local area.
State Environmental Planning Policy No 65—Design Quality of Residential Flat Development	No	
State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)	No	
State Environmental Planning Policy No 71—Coastal Protection	No	
State Environmental Planning Policy (Affordable Rental Housing) 2009	No	
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No	
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	No	
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	No	

Name of SEPP	Applicable	Consistency
State Environmental Planning Policy (Infrastructure) 2007	Yes	Yes, any DA for redevelopment of the service station will be referred to RMS as per clause 104 of this SEPP.
State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007	No	
State Environmental Planning Policy (Major Development) 2005	No	
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	No	
State Environmental Planning Policy (Rural Lands) 2008	No	
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	No	
State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007	No	
State Environmental Planning Policy (Western Sydney Parklands) 2009	No	
SEPP (State and Regional Development) 2011	No	

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

The following table identifies which Ministerial Directions (s.117 directions) apply to the planning proposal and examines their consistency with those that do apply.

Table 3 - Consistency with applicable Ministerial Directions (s.117 directions)

S117 Direction	Applicable	Consistent
1. Employment and Resources		
1.1 Business and Industrial Zones	No	
1.2 Rural Zones	No	
1.3 Mining, Petroleum Production and Extractive Industries	No	
1.4 Oyster Aquaculture	No	

S117 Direction	Applicable	Consistent
1.5 Rural Lands	No	
2. Environment and Heritage		
2.1 Environment Protection Zones	No	
2.2 Coastal Protection	No	
2.3 Heritage Conservation	No	
2.4 Recreation Vehicle Areas	No	
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Yes	Yes, the Planning proposal does not contain provisions which will reduce the permissible residential density of land. However it will permit an additional use of a non residential nature on the land, which is likely to result in one more lot not being developed for housing. This is of minor significance in comparison to the overall positive community benefits derived from the proposal.
3.2 Caravan Parks and Manufactured Home Estates	No	
3.3 Home Occupations	No	
3.4 Integrating Land Use and Transport	Yes	Yes, the proposal is consistent with the objectives of this direction as the site is strategically located for the proposed use and will not affect transport choices.
3.5 Development Near Licensed Aerodromes	No	
4. Hazard and Risk		
4.1 Acid Sulfate Soils	No	
4.2 Mine Subsidence and Unstable Land	No	

S117 Direction	Applicable	Consistent
4.3 Flood Prone Land	No	
4.4 Planning for Bushfire Protection	No	
5. Regional Planning		
5.1 Implementation of Regional Strategies	Yes	Yes, the planning proposal is consistent with the Lower Hunter Regional Strategy and does not undermine achievement of its vision, land use strategy, policies, outcomes or actions.
5.2 Sydney Drinking Water Catchments	No	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.8 Second Sydney Airport: Badgerys Creek	No	
6. Local Plan Making		
6.1 Approval and Referral Requirements	Yes	Yes, the planning proposal does not include any provisions that require the concurrence, consultation, or referral of development applications to a Minister or public authority. However; access to the site is from a classified RMS road, hence RMS have indicated that they will require any future DA to be referred to them as part of its assessment. This does not however require any specific provision to be included within the LEP.

S117 Direction	Applicable	Consistent
6.2 Reserving Land for Public Purposes	No	
6.3 Site Specific Provisions	Yes	No, the proposed amendment is inconsistent with this direction as it will impose development standards to restrict the retail floor area of the additional permitted use (Service Stations) on the land. However, this inconsistency is justified as the restriction ensures the retail component of any service station is consistent with the floor area restrictions for neighbourhood shops, which are already permissible (with consent) in the R2 Low Density Residential Zone. Furthermore, the proposed restriction will ensure that the proposed use is consistent with the objectives of the R2 Low Density Residential Zone applying to the land.

Section C - Environmental, social, and economic impact

7. 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 site is currently developed for urban purposes and the planning proposal has no potential for critical habitat or threatened species, populations or ecological communities, or their habitats, to be adversely affected.

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

Mine Subsidence

The site is not located within a Mine Subsidence District.

Hydrology and Water Management

A Flood Information Certificate was issued for the land on the 27 June 2012, which identified the land as being located in a flood prone area. Furthermore the certificate identifies the land as being affected by a flood storage area

Council's requirements generally restrict filling of a flood storage area to a maximum of 20% to allow for redistribution of flood water. Furthermore Council will set a minimum floor level for occupiable rooms (in any new development) and require an onsite flood refuge.

Bushfire

According to Newcastle Bush Fire Hazard Map (2009) the land is not affected by bushfire risk or in the vicinity of such a risk.

Heritage

There are no listed items of environmental heritage on site or in the vicinity of the site.

Contamination

As a portion of the site is currently used as a service station, there is a potential for land contamination from underground fuel tanks.

A contamination report will be prepared post gateway to assess the level of any contamination on the site and the level of remediation required.

Traffic Impacts and Vehicular and Pedestrian Access

The site is located on the western side of Turton Road, New Lambton which is a main arterial road that connects to the north with Griffiths Road (leading directly into Newcastle City Centre) and to the south to the Kotara retail precinct and onwards to the Pacific Highway

Redevelopment of the site provides an opportunity to consolidate the existing number of access points off Turton Road and Young streets. Hence removing the ability for vehicles cutting through the site to avoid the traffic signals and thereby improving traffic safety.

Signalised pedestrian crossings at the intersection of Turton and Young Roads and a footpath along Turton Road provide adequate safe pedestrian access to the site.

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

There is no effect from the proposal on items or places of European or Aboriginal cultural heritage.

The proposed redevelopment of the site would result in an overall positive social and economic impact in the local area. New employment opportunities will be created during the construction and operational phase of the project.

Once completed, the proposed contemporary service station shop will offer a valuable service and facility to the motoring public and local community.

The net community benefits are detailed below:

External 'benefits' of the proposed amendment include:

- Long term future employment opportunities at the redeveloped Service Centre.
- Short term employment opportunities during the construction phase of the development.
- No additional costs to the community for the provision or upgrade of public infrastructure as these are already provided to the site.

- The redevelopment of the existing service station, facilitated by this planning proposal, will provide a more modern premises located on a main arterial road and offering convenience retailing.
- Improving the presentation, convenience, safety, and aesthetics of what is an old and outdated service station.
- An overall net environmental gain as the land will need to be decontaminated and redeveloped in accordance with current standards; thereby avoiding potential for future ground water contamination. The service station on site at present is in poor condition and without many of the contemporary environmental safeguard measures that new premises must have.

External 'costs' associated with the proposed rezoning include:

- Loss of one vacant residential lot;
- Short term disruption to the local community from construction activities.

Overall, there will be a net positive community and environmental benefit as a result of the proposed amendment which will facilitate redevelopment of the entire site.

Section D - State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

Yes, the site currently accommodates a service station; existing public infrastructure will be adequate to meet the needs of the proposal.

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

The applicant initiated discussions with the RMS and the closure of one of the Young Road crossovers was tabled to avoid a 'rat run' through the site to avoid the traffic signals. No objection was received from the RMS in regards to the proposal. However Council proposes to formally consult with the RMS prior to public exhibition.

There have been no other State and Commonwealth public authorities consulted at this stage. Any other relevant agencies will be consulted in accordance with the requirements of the gateway determination.

PART 4 – MAPPING

This planning proposal does not seek to amend any of the maps within Newcastle LEP 2012.

Figure 2 shows the existing zoning of the site and adjoining land.

Figure 2 – Zoning Map (Map 4B)



PART 5 – COMMUNITY CONSULTATION

The planning proposal is considered as low impact in accordance with the Department of Planning's guidelines, 'A guide to preparing local environmental plans'. Hence it is proposed that the planning proposal will be publicly exhibited for a minimum 14 day period.

Council propose to consult with the Roads and Maritime Services (RMS) prior to public exhibition given that Turton Road is a classified road under the Roads Act 1993.

Any other relevant agencies will be consulted in accordance with the requirements of the gateway determination

PART 6 – PROJECT TIMELINE

The project is expected to be completed within seven months from Gateway Determination. The following timetable is proposed:

<i>Task</i>	<i>Envisaged timeframes</i>						
	Mar 13	Apr 13	May 13	Jun 13	Jul 13	Aug 13	Sep 13
Issue of Gateway Determination							
Prepare any outstanding studies							
Consult with required State Agencies							
Exhibition of planning proposal and technical studies							
Review of submissions and preparation of report to Council							
Report to Council following exhibition							
Planning Proposal sent back to Department requesting that the draft LEP be prepared							