

Mr Jeremy Bath  
Chief Executive Officer  
City of Newcastle  
PO BOX 489  
NEWCASTLE NSW 2300

Our ref: IRF22/1062

Attn: Michelle Bisson

Dear Mr Bath,

**Planning proposal (PP-2021-1541) to amend *Newcastle Local Environmental Plan 2012***

I am writing in response to the planning proposal Council has forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) to facilitate community infrastructure incentives in Wickham.

The provision for community-based infrastructure under local environmental plans can be complex. Ultimately, a local environmental plan amendment must be consistent with the Act. It is the Act and associated guidance that outlines the form in which contributions must be in accordance. The submitted planning proposal could be considered to not be in accordance with the Act.

I appreciated the work by Council in working with the Department in considering the relevant legal matters for the planning proposal to progress. In particular, Council's correspondence that the planning proposal will be amended to include a site-specific community infrastructure clause in Part 6 of the *Newcastle Local Environmental Plan 2012* that would be consistent with the relevant clause in the *Randwick Local Environmental Plan 2012*.

I note Council advised the Department that the proposed clause will be supported by a separate community infrastructure plan that identifies the schedule of community infrastructure projects, the incentive gross floor area rate and how the community infrastructure can be delivered through the development process. This is supported by the Department.

The planning proposal also needs to be updated to have a definition of community infrastructure that is consistent with Direction 5 of the *Standard Instrument – Principle Local Environmental Plan 2006*.

Consideration of flooding risks also needs to be considered in the planning proposal, having regard to the NSW Flood Prone Land Policy, the Floodplain Development Manual, section 9.1 Ministerial direction 4.1 Flooding, and the 2022 NSW Flood Inquiry. Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant applicable directions of the Minister under section 9.1 of the Act, including direction 4.1 Flooding. Council should ensure this occurs prior to public exhibition.

On the basis of this amendment being made to the planning proposal, I have determined as the delegate of the Minister for Planning and Homes the planning proposal should proceed subject to conditions in the enclosed gateway determination.

It should be noted final drafting of the local environmental plan and its consistency with the Act will be determined by Parliamentary Counsel.

I note the planning proposal does not identify the additional dwellings or population increase expected as a result of the proposed amendments to the local environmental plan. Council may need to manage this in its consultation with Transport for NSW and Hunter Water Corporation, along with any issues associated with flooding assessment outlined above.

Given the complexity outlined above, I have determined not to authorise Council as the local plan-making authority.

The amending local environmental plan (LEP) is to be finalised on or before 4 November 2023. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made eight weeks in advance of the date the LEP is projected to be made.

Should you have any enquiries about this matter, I have arranged for Thomas Holmes, Senior Planning Officer, Central Coast and Hunter Region, to assist you. Mr Holmes can be contacted on 9860 1583.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dan Simpkins', followed by a horizontal line.

**04/11/2022**  
**Dan Simpkins**  
**Director, Central Coast and Hunter Region**  
**Planning and Land Use Strategy**

Encl: Gateway determination