

The Regional Director,
Department of Planning – Hunter
Regional Office
PO Box 1226
NEWCASTLE NSW 2300

Attention: Mr David Bonjer

Dear Sir,

DRAFT CESSNOCK LOCAL ENVIRONMENTAL PLAN 1989 (AMENDMENT NO. 128) –
CESSNOCK CIVIC
REVISED SECTION 64 SUBMISSION

Reference is made to the correspondence received from the Department's LEP Review Panel dated 10 November 2006 in which it requests certain drafting amendments to the instrument before the Department is prepared to certify the plan for exhibition, and Council's subsequent response partly amending the draft instrument dated December 1, 2006.

In light of further discussions with the Regional Office regarding the appropriateness of introducing a new zone into the Cessnock LEP 1989 to address issues raised by the Panel, Council forwards a revised instrument under section 64 of the Act for the Department's consideration. To avoid confusion, this revised submission addresses all relevant matters required at this stage of the plan-making process. Where comments remain unchanged from the original section 64 submission dated September 15, 2006 they have been reproduced and presented in *italics*.

1. Background

This draft LEP actions one of the directions from the City Wide Settlement Strategy – Stage 2 that was adopted by Council at its meeting on December 14, 2005.

By way of background, Council considered a report on the draft CWSS – S2 and the concurrent submission of three site-specific LEP amendments that related to the draft strategy at its meeting on December 8, 2004. The three site-specific amendments are described as:

- development for the purposes of 'bulky goods sales' described as 'Cessnock Homemakers Centre', Maitland Road Cessnock (applicant: Insite Planning Services);
- development for the purposes of a factory retail outlet and associated bulky goods sales, Maitland Road Cessnock (applicant: Asquith & deWitt); and
- development for the purposes of mixed use – residential, light industrial, bulky goods, service industry, business park, described as 'Cessnock Civic', off Vincent Street, South Cessnock (applicant: Hardie Holdings).

Council resolved as follows:

- "1. The draft CWSS (Stage 2) be placed on public exhibition for a period of not less than 28 days, with provision for an extension of time should the exhibition period fall within the summer school holiday period.

2. Pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, Council resolve to prepare a draft Local Environmental Plan/s that incorporate the three site specific rezonings currently lodged with Council generally in accordance with the submitted plans shown in Enclosure A, B and C and the provisions in the Cessnock Local Environmental Plan 1989.
3. Pursuant to Section 34A and 62 of the Environmental Planning and Assessment Act 1979, Council consult with relevant statutory authorities and other agencies in the preparation of the draft Local Environmental Plan.
4. Council request DIPNR to issue certificates pursuant to Sec. 65 of the EP & A Act to enable the three site-specific draft LEPs to be exhibited concurrently with the Draft CWSS Stage 2."

Section 54(4) notifications were sent to the Department for each of the above mentioned site-specific LEPs in December 2004 and January 2005, being noted in each that, from an administrative perspective, it was considered appropriate to process the three LEP amendments separately rather than as one LEP amendment addressing all three sites.

The Department subsequently advised that it would not issue Section 65 certificates until Council had, firstly, considered the cumulative impact of the three site-specific LEP amendments on the existing supply of land in the context of the findings contained within the draft strategy and, secondly, adopted the strategy as a final document.

Council considered a report on the review of the draft strategy at its meeting on December 14, 2005 wherein it resolved to adopt the draft strategy as the final CWSS – Stage 2 subject to a number of amendments contained in the Council report.

Recommendation (5) in the adopted resolution of Council supports the investigation of the above mentioned site for the mixed-use development, viz:

"Identify the entire 'Cessnock Civic' site off Vincent Street, South Cessnock for further investigation for rezoning to mixed development – commercial/industrial/open space and residential development."

The Council report and minutes were sent to the Department for endorsement prior to finalisation of the adopted CWSS – S2 in a published form. Advice received from the Department in March 2006 identified that, while it supported the recommendations contained in the draft CWSS – S2 including the supplementary report prepared by HillPDA, it did not support the further amendments made by Council in its resolution on December 14, 2005. Similar advice was also received from the LEP Review Panel in relation to a request for "Written Authorisation to Exercise Delegation" under section 65 of the Act for the exhibition of the LEP amendment for the 'Cessnock Homemakers Centre' wherein the Department declined to issue delegation to Council in the first instance and then refused to certify the plan.

Council considered a report on the current status of the adopted CWSS – S2 and the LEP amendments in question at its meeting on May 3, 2005 and resolved as follows:

1. The CWSS – S2 as adopted by Council at its meeting on 14 December 2005 be amended to reflect the Department's direction in relation to commercial land, specifically by deleting any identification of additional sites for commercial land apart from land at Vincent Street South Cessnock ("Cessnock Civic") identified as Lots 18 & 19 Section D DP 4653, Lot 23 DP 845986 and Lot 1 DP 1036300.

2. Council meet with representatives of the LEP Review Panel and the Hunter Office of the Department of Planning to reconsider and support the inclusion of the Cessnock Homemakers Centre (Lots 576 & 577, DP 822137, Maitland Road Cessnock) – bulky goods retailing – within the CWSS – S2.

3. Council write to the NSW Minister for Planning through the local Member outlining the short-term need for opportunities for Bulky Goods retailing within the City and seeking support for the inclusion of the Cessnock Homemakers Centre within the CWSS – S2.

4. Council commission an independent review of the study of additional land opportunities, including the identification of additional sites for investigation.

5. A further report be prepared for Council's consideration following the completion of the independent review of industrial land opportunities within the LGA."

Council officers met with relevant representatives of the Department on June 2, 2006 wherein it was reaffirmed that the Department would not support any LEP amendment that was inconsistent with state and regional policies and Ministerial (s117) Directions. This outcome was reported to Council at its meeting on July 5, 2006 with a recommendation that Council not include the 'Cessnock Homemakers Centre' in the adopted CWSS – S2 and not proceed with the LEP amendment. This recommendation was adopted by Council.

Therefore, to summarise the current status in relation to the identification and investigation of additional commercial lands associated with the CWSS – S2, Council has resolved to only proceed with the 'Cessnock Civic' site. This decision is consistent with the recommendations contained in the draft CWSS – S2 including the supplementary report prepared by HillPDa and supported by the Department.

As a result, other LEP amendments lodged with Council for commercial lands will not be proceeded with, namely:

- (a) Lots 576 & 577, DP 822137, Maitland Road Cessnock – bulky goods retailing (Cessnock Homemakers Centre) File No: 18/2004/4/1. Dept File No: NEW122-1.
- (b) Lot 5141 DP 1056618, Lot 341 DP 755215 & Lot 2 DP 1072125, Maitland Road Cessnock – factory retail outlet and associated bulky goods retailing – File No. 18/2004/5/1. Dept File No: NEW123-1.
- (c) Lots 50 & 51, DP 746450, 311-317 Maitland Road, Cessnock – rezoning of Cessnock Mitsubishi site from 2(a) Residential to 3(c) Centre Support – File No. 18/2004/8/1.
- (d) Lots 7-9, DP 4966, 258-262 Maitland Road, Cessnock – rezoning of motor showroom and dwelling-house site from 2(a) Residential to 3(c) Centre Support – File No. 18/2004/7/1.

All applicants have been advised in writing accordingly.

2. Matters arising from or after the Section 54(4) Notification dated December 23, 2004

Boundaries of the subject site

The initial section 54 resolution of Council incorporated a general reference to the site area identified by the applicant as 'Cessnock Civic'. The final draft plan includes some additional lands on the periphery of the site, in order to logically incorporate isolated parcels of land not held in the same ownership as the identified site. Council is of the opinion that the initial resolution of Council does not inhibit the progression of the draft LEP amendment in its final version.

One of these additional lots fronting South Avenue, Cessnock (Lot 3, DP 608084, #0 South Avenue, Cessnock) is held in the ownership of Council and classified as 'operational land' under the Local Government Act 1993. As such, Council will not be requesting delegation under either section 65 or 69 of the Act.

In response to the Department's advice regarding the robustness of the original section 54 resolution in relation to the "subject land", Council considered a further section 54 report at its meeting on November 8, 2006 and resolved to prepare a draft LEP for the totality of land identified in the current draft LEP map. The revised section 54(4) notification was forwarded to the Department on November 10, 2006.

Proposed zones

In response to concerns raised by DEC over the conservation status for the KSSW and HLRF EECs located within the land proposed to be rezoned to 6(a) Open Space, the draft plan now proposes to rezone this land 7(b) Environmental Protection (Conservation). Similarly, land previously identified for a proposed school within the 6(a) zone is now proposed to be rezoned 3(e) Business Park, within which zone development for the purposes of an 'educational establishment' is permissible with consent.

Land and contamination

Aerial photos revealed an area of the site within the section proposed to be rezoned to 2(a) Residential as being previously used for the dumping of coal chitter. This area of the site has since been filled with approximately 1.0m – 1.5m of soil. This activity post-dates the remediation works carried out on that part of the site affected by the operations of the former Aberdare Colliery. In response to Council's concerns, the applicant submitted a "Phase 1 Environmental Site Assessment" (Parsons Brinckerhoff, December 2005) over the subject land in question. This report identifies that the potential does exist for some land contamination associated with the chitter deposits and recommends further testing at the Development Application stage, when excavation of test pits/ trenches etc. can occur "in conjunction with the proposed excavation and regrading works as specified in the geotechnical report."

This requirement has been included in the draft plan within proposed Schedule 7. A copy of the report is included in the attachments.

Note: As required by the LEP Review Panel, this part of the schedule has been deleted from the re-drafted instrument. Council will deal with this matter as part of the development process.

Legislative change

Legislative change in recent times requires Council to review the comments provided in the Section 54(4) Notification, in particular:

- the more recent listing of the Lower Hunter Spotted Gum-Ironbark Forest (LHSGIF) as an Endangered Ecological Community under the Threatened Species Conservation Act;
- the issue of new Section 117 Directions (September 30, 2005); and
- the implications of the Native Vegetation Act 2003 with regard to the clearing of native remnant vegetation.

Threatened Species Conservation Act 1997

The section 54(4) notification to the Department noted the presence of Kuri Sand Swamp Woodland (KSSW), Hunter Lowland Redgum Forest (HLRF) and Lower Hunter Spotted Gum/Ironbark Forest (LHSGIF) within the site and stated that "the indicative master plan indicates that the majority of the HLRF and the LHSGIF will be removed as a result of future subdivision works." At the time of forwarding the Section 54(4) notification, both the KSSW and HLRG were listed as an EEC under the Threatened Species Conservation Act 1997 and

the LHS GIF had a Preliminary Determination as an EEC. Some time thereafter, LHS GIF received a final listing as an EEC.

Accordingly, the applicant submitted a Section 5A assessment on the impact of clearing this vegetation (HWR Ecological, March 2005) which was forwarded to DEC for further comment. Detailed comments are provided below.

Comment received from DEC under section 62 of the Act is detailed below.

Section 117 Directions (issued September 30, 2005)

The Section 54(4) notification dated December 23, 2004 stated that the draft plan was not inconsistent with any s117 Directions applicable at the time.

Transitional provisions for the phasing-in of the new 117 Directions issued September 30, 2005 (as outlined in PS 06-006) provide for Council to continue to use the previous Directions, should a report under either Section 68 or 69 of the Act be submitted to the Department before 31 December 2006. However, as the draft plan has not been exhibited at this stage, Council considers it appropriate to also consider the new Directions in this instance.

The following Directions (issued September 30, 2005) apply to the draft LEP amendment:

Direction No. 3 – Business Zones
 Direction No. 5 – Coal, Other Minerals, Petroleum and Extractive Resources
 Direction No. 9 – Conservation and Management of Environmental and Indigenous Heritage
 Direction No. 11 – Development in a Mine Subsidence District or on Unstable Land
 Direction No. 15 – Flood Prone Land
 Direction No. 17 – Integrating Land Use and Transport
 Direction No. 19 – Planning for Bushfire Protection
 Direction No. 21 – Residential Zones
 Direction No. 22 – Rural Zones
 Direction No. 25 – Site Specific Zoning

Detailed comment is provided below. The draft plan is considered to be inconsistent with Directions No. 3, 21, 22 and 25. Inconsistencies have been justified in each instance as detailed below.

Direction No. 3 – Business Zones

The application is inconsistent with clauses (1)(a) and (b) of this Direction in that the draft plan alters the location and area of existing land zoned for business purposes. However, this inconsistency is considered to be justified under clauses (2)(a) and (c) in that the site:

- has been identified in the adopted CWSS – S2 and has been justified by the research associated with this strategy;
- is consistent with the actions identified in the Draft Lower Hunter Regional Strategy (DLHRS) for employment lands, which seek to facilitate employment growth around existing commercial centres; and
- is consistent with clause 19 in the Hunter RFP 1989 in that the findings contained in the CWSS – S2 support the development of this site for specialised commercial development (such as bulky goods retailing).

Direction No. 5 – Coal, Other Minerals, Petroleum and Extractive Resources

The NSW Department of Primary Industries (Mineral Resources) was consulted under section 62 of the Act. The site forms part of the former Aberdare Extended Colliery site and coal reserves have been extracted. The Department has raised no objection to the proposed rezoning application.

Direction No. 9 – Conservation and Management of Environmental and Indigenous Heritage

The initial rezoning submission includes a "Draft Archaeological Assessment" (ERM, March 2001) that investigates both European and Aboriginal archaeology. The report establishes that European heritage is associated with the former Aberdare Extended Colliery Mine site – a site that contains evidence of both underground and open cut mining activities. The "Aberdare Workshop" site is already listed in Schedule 3 of the Hunter RFP 1989 (Heritage) as an item of local significance. Further detailed investigation of this heritage item is appropriate at the Development Application stage and this requirement is, therefore, identified in proposed Schedule 7 in association with the required Development Control Plan. Council is of the opinion that conservation outcomes associated with this heritage item should not prohibit development within this area of the site or warrant a specific land use zone. Management of the resource can be addressed in accordance with relevant heritage guidelines.

The aboriginal archaeological survey found no aboriginal archaeological material within the study area, and concluded that only the south-eastern quarter of the study area has any potential for deposits, being the only area of the site that remains undisturbed by past mining practices including backfilling of open cut areas.

A more recent report ("Indigenous Cultural Heritage Assessment", McCardle Cultural Heritage Pty Ltd, 2005) identifies that one isolated find was recorded in relation to a separate study in 2004 within the sub-study area, but was not able to be relocated for the purposes of this report. This report concludes that conservation of this area is not warranted and a permit to destroy the site of the original finding be obtained. Council supports this approach.

Therefore, Council considers that the draft plan is consistent with clause (1) of this Direction in that it requires the preparation and adoption of a Development Control Plan for the site prior to any development occurring. The draft LEP introduces this requirement through the creation of an additional clause (clause 66) and a schedule of requirements (schedule 7).

Direction No. 11 – Development in a Mine Subsidence District or on Unstable Land

The subject site is located within the Tomalpin Mine Subsidence District (proclaimed in 2004). The draft LEP is considered to be consistent with this Direction in that:

- (a) Subclauses (1)(a) & (b) Council has consulted with the NSW Mine Subsidence Board under section 62 of the Act. The Board reviewed a comprehensive report entitled "Proposed Cessnock Civic, Vincent Street Cessnock – Mine Subsidence Investigation" (Parsons Brinckerhoff, 2005). MSB advises that it has no objections to the rezoning application and that detailed specifications to meet the requirements of the MSB are required at Development Application stage. No specific provisions have been identified as necessary to include in the draft LEP.

- (b) Subclause 1(c) A copy of the correspondence received has been included in the attachments to this submission.
- (c) Subclauses 1(d) & (2) The subject site has not been identified as unstable land.

Direction No. 15 – Flood Prone Land

Part of the site is affected by flooding along the alignment of Black Creek. A "Flood Modelling and Stormwater Management Strategy" (Parsons Brinckerhoff, December 2004) is included in the rezoning application as Appendix E. This strategy (and the design outcomes arising therefrom, such as the construction of a seawall) contain any potential floodwaters within the boundaries of the proposed 7(b) Environmental Protection (Conservation) zone. The report concludes, from hydraulic modelling of the Black Creek catchment, that post-development flows will not adversely impact on any downstream properties.

Land proposed to be zoned 7(b) Environmental Protection (Conservation) is intended to be dedicated to Council. In this regard, the draft plan is considered to be consistent with this Direction, in that Council will secure ownership of the flood affected land and drainage system.

Direction No. 17 – Integrating Land Use and Transport

The application is considered consistent with this Direction in that the matters listed are derived from Draft SEPP 66 – Integration of Land Use and Transport, a policy that was specifically considered and addressed in the adopted CWSS – S2. The site is contiguous with the existing commercial precinct of Cessnock and proposed restrictions on general retail and commercial uses within the site should ensure that development complements existing retail and commercial uses within the commercial precinct of Cessnock.

Direction No. 19 – Planning for Bushfire Protection

The draft LEP is considered to be consistent with clause (1) of this Direction in that Council has consulted with the NSW Rural Fire Service under section 62 of the Act and taken into consideration the comments received. A copy of the correspondence received by Council is included in the attachments.

Consistency with clauses (2) and (3) will be achieved through the preparation and adoption of the required Development Control Plan as specified in the draft LEP.

Direction No. 21 – Residential Zones

The Cessnock LEP 1989 does not currently contain a specific requirement for residential development to be connected to reticulated water and sewerage, although it is the practice to require connection as part of conditions of consent for subdivisions. This is considered inconsistent with clause (1) of this Direction.

Draft LEP (Amendment No. 120 – Clifftleigh Precinct) introduces an additional clause (clause 65) to address this inconsistency. The required DCP in relation to this site will also specify that connection to reticulated systems must occur with each stage of the development.

Direction No. 22 – Rural Zones

The draft LEP is inconsistent with clause (2) of this Direction in that it seeks to rezone land currently zoned 1(a) Rural 'A' to a mixture of commercial, residential and environmental protection zones.

However, this inconsistency is considered to be justified under clauses (4)(a) and (c) in that the site:

- has been identified in the adopted CWSS – S2 and has been justified by the research associated with this strategy;

- is consistent with the actions identified in the Draft Lower Hunter Regional Strategy (DLHRS) for employment lands, which seek to facilitate employment growth around existing commercial centres; and
- is generally consistent with clause 30 (1)(a) in the Hunter RFP 1989 in that the findings contained in the CWSS – S2 support the development of this site for urban purposes.

Direction No. 25 – Site Specific Zoning

The draft LEP is considered to be inconsistent with clause (1) in this Direction in that it seeks to introduce an additional land use zone into the Cessnock LEP 1989 that is unique to this particular site and proposed development. The additional zone is considered necessary to differentiate between the types of permissible land uses within this 'business park' area and those permissible within the existing 3(a) and 3(c) zones in the Cessnock LEP 1989.

Council considers this inconsistency to be justified under subclauses 3(a) and (c) in that the site and LEP process actions the principles and directions contained within Council's adopted CWSS – Stage 2 and is consistent with the principles contained in the Draft Lower Hunter Regional Strategy. Rezoning the site to 3(c) Centre Support without restricting the use of the site increases the general supply of commercial lands and will lead to direct competition between the existing commercial precinct of Cessnock and the subject site, which is not supported in the CWSS – S2.

SECTION 64 SUBMISSION

Pursuant to Section 64 of the Act, please find enclosed four (4) hard copies of the draft Plan for your attention.

Section 62 Consultation

Council has consulted with the following statutory authorities and agencies in relation to the application:

- NSW RTA and Regional Development Committee (SEPP 11)
- Department of Environment and Conservation – including Section 34A consultation
- Hunter-Central Rivers CMA
- Department of Planning (then DIPNR) – relevance to regional strategies (Hunter RFP 1989, Lower Hunter Regional Strategy) and draft SEPP 66
- NSW Rural Fire Service – bushfire prone land
- NSW Department of Transport – Direction G27
- NSW Department of Primary Industry (Mineral Resources – previous mine workings in area)
- NSW Mine Subsidence Board
- Hunter Water Corporation
- NSW Dept of Education and Training – proposed school site
- NSW Heritage Office – Schedule 3 listing in HREP 1989 (Heritage)

Responses have been received from all authorities with the exception of the NSW Department of Transport and NSW Department of Education.

The Department is advised that Council omitted to refer the rezoning request to the NSW Heritage Office as part of its earlier section 62 consultations. This process was subsequently undertaken in December 2006 and a response received in January 2007. The Office does not object to the draft plan. A copy of the response is attached. Additional comments are provided below.

Both the DEC and the CMA object to the proposed rezoning based on the loss of native vegetation (primarily EECs) on the site, without securing off-site offsets to compensate. These objections have not been resolved through the section 62 consultation process. No other authorities raise any objection to the proposal.

The following comments are made with regard to those responses that raised particular issues for consideration by Council:

Loss of native vegetation (primarily EECs – LHSGIF and HLRF)

Relevant authorities: DEC and CMA

The indicative layout for the future development of the subject site identifies that clearing of EECs and some native vegetation will occur. For the purposes of discussion, a map indicating the extent of clearing (dated 13 July 2006) was presented to representatives of DEC and the CMA in a meeting held on 11 August 2006 with Council officers. The table included on the map is reproduced below for information purposes and the map is included in the attachments.

Veg type	Existing vegetation	Vegetation conserved	Vegetation disturbed
Remnant	1.6ha	0.9ha	0.7ha
vegetation			
KSSW	3.8ha	3.8ha	-
LHSGIF	13.9ha	-	13.9ha
HLRF	1.5ha	0.8ha	0.7ha
Aquatic	0.6ha	0.6ha	-
Additional area to be regenerated			12ha

DEC provided initial comments on February 9, 2005 under both s34A and s62 of the Act in relation to this site. In summary, DEC noted that future development of the site will involve a loss of "degraded HLRF EEC and LHSGIF" and sought a higher conservation status for the KSSW remnant originally proposed to be contained within a 6(a) Open Space zoning. This loss of remnant native vegetation was considered to contribute to a loss of biodiversity conservation through cumulative impacts associated with site-specific applications, and reminded Council of the importance placed on remnant vegetation providing linkages to Werakata National Park, Cessnock State Forest and Aberdare State Forest with Cessnock city to the west.

In response, the proposed draft LEP now secures the KSSW (including the threatened species *Eucalyptus parramattensis* subsp. *Decadens* (Drooping Red Gum) as well as the area identified as habitat for the Squirrel Glider, within the 7(b) Environmental Protection (Conservation) zone. It is further proposed to dedicate this land to Council in due course.

The meeting held on 11 August, 2006 reaffirmed the DEC's position on the loss of EECs over the site (as outlined the most recent correspondence dated 15 August 2006) and provided the Hunter-Central Rivers CMA with the initial opportunity to discuss the loss of native vegetation. Correspondence subsequently received from the CMA dated 21 August 2006 also confirmed its objection to the loss of native vegetation without securing off-site offsets to compensate.

In the first instance, the applicant has advised Council that it will not be providing any off-site offsets in relation to this site. Therefore, Council cannot resolve these two objections to the proposed rezoning.

Secondly, Council supports the applicant's assessment of the value of the vegetation to be lost in this regard, being considered of low ecological value, and having little of no connectivity from one bushland area to another to the north, east and west as it is bordered by cleared and/or urban land in these directions. Specifically, the following comments by Harper Somers O'Sullivan are relevant:

"Surveys within the site have revealed that the most ecologically viable vegetation community on the site is the area of Kurri Sand Swamp Woodland (KSSW) in the site's south-east. This community is relatively intact, contains all records for threatened species recorded within the site and under the current proposal is to be retained and enhanced in terms of quality and size. Given that the most ecologically significant and intact area of the site is to be retained, enhanced and expanded, it can be clearly stated that the proposal would pass a "maintain or improve" biodiversity test. DEC has recommended that regeneration of the LHSIGF also occur, with appropriate buffers established to avoid further degradation. However, even with assisted revegetation, the ecological factors cited . . . [by DEC] . . . that contribute to a "high conservation value" are unlikely to be adequately achieved, particularly due to its isolation and small size. The loss of the isolated and disturbed LHSIGF remnants will be more than offset in biodiversity terms by the retention, enhancement and extension of the valuable KSSW section."

Connectivity is maintained with land to the south through the proposed 7(b) zoning, the retention of the KSSW EEC and the proposed regeneration of the riparian vegetation along Black Creek.

Council is also of the opinion that retention of vegetation on site (especially the LHSIGF) is not considered reasonable in this instance and the degraded state of the vegetation does not warrant compensatory mechanisms.

It is emphasised that this site is the only contiguous parcel of land identified for employment generating development within the adopted CWSS-S2 and presents Council with a unique opportunity to develop complementary land uses to support the continued viability of the Cessnock commercial precinct and the LGA in general. Any reduction in the development potential of this site will significantly compromise Council's ability to provide suitable land into the future, which is contrary to the objectives of the Draft LHSRS.

Council seeks support for the draft LEP and requests that the Department override the objections to the proposal from both the DEC and the CMA in this instance.

Aboriginal archaeology

Relevant authority: DEC

The original application included an incomplete Aboriginal archaeological report. DEC's initial comments dated 9 February 2005 stated that it was not in a position to provide comment in this regard.

A more recent report ("Indigenous Cultural Heritage Assessment", McCordle Cultural Heritage Pty Ltd, July 2005) was referred to DEC for comment. Correspondence received by Council dated 9 January 2006 notes the objection from the Black Creek Aboriginal Corporation and the need for continued negotiations with the Aboriginal communities prior to development occurring on the site.

Council is of the opinion that conservation of the site of the isolated find is not warranted, and would compromise the development potential of the site. The draft LEP does not specify a conservation zone for the site in question. Matters relating to the management of this resource will be appropriately addressed in the required DCP.

Bushfire hazard assessment

Relevant authorities: NSW RFS and DEC

RFS does not raise any objection to the proposal and notes that, as the site is identified as 'bush fire prone land' on Council's maps, future development is required to comply with both the provisions of the EP & A Act and the Rural Fires Act 1997.

Both the RFS and DEC also advise that the maintenance requirements for Asset Protection Zones as outlined in Section 4.2.2 of Planning for Bushfire Protection 2001 may conflict with the recommendations of the Flora and Fauna Assessment. The layout of development and the need to ensure that APZs are appropriately located is included in the schedule of requirements for the DCP. This level of consideration should ensure that this matter is appropriately addressed to balance the requirements of both authorities.

RFS also note that, as the lands proposed to be rezoned to commercial or industrial uses are not captured under the "integrated development" provisions in the Act, Council should consider the recommendations for asset protection zones identified in the rezoning submission and the general principles of 'Planning for Bushfire Protection' 2001.

NSW Roads and Traffic Authority

The RTA considered the LEP amendment and provided comments both under s62 of the Act and under SEPP11 (concept development proposal). The RTA does not object to the proposal. Internal issues relating to intersection points, direction of travel and access arrangements are appropriately addressed within the required DCP or with specific Development Applications as necessary. These matters have no bearing on the proposed draft LEP.

NSW Dept of Primary Industries (Mineral Resources)

DPI-Minerals advises that:

"the subject area is extensively undermined being adjacent to and overlying existing shallow (<100m) workings of the Greta seam which subcrops in the north of the subject area. Much of the site was once occupied by the Aberdare Extended Colliery and as such any proposed development should be undertaken with reference to the extensive mining and surface uses within the site."

The Dept recommends that, while it has no objections to the proposed application, Council seek approval from the Mine Subsidence Board regarding the proposed development.

Mine Subsidence Board

The MSB raise no objection to the proposed rezoning. Site-specific design responses are necessary for particular developments. These requirements have no bearing on the draft LEP.

Hunter Water Corporation

HWC advises that a water supply system can be provided to the development nominated as a mixture of domestic, light dry industry and commercial types, subject to augmentation prior to connection of new buildings.

Connection to sewerage will be delayed until the completion of the Cessnock Wastewater Treatment Works upgrade and the planned augmentation of the primary wastewater pump station (Cessnock No 1 WWPS) that will capture flows from the site. These works are expected to be completed in 2006/2007. HWC conclude their comments in stating that, apart from connection timing issues with regard to sewer, the provision of services is not seen as an impediment to Council's rezoning process for the site. HWC is currently reviewing the

NSW Heritage Office

The Heritage Office does not object to the draft plan, but recommends that:

"Council . . . require the full archaeological assessment (including the test excavation) to be undertaken prior to the draft plan being placed on public exhibition . . . [to] . . . allow for greater certainty to be achieved regarding the type and nature of the relics that exist within area and how they should be best managed and conserved. Council needs to ensure that an appropriate rezoning of the site occurs and will allow for the continued use and conservation of the heritage item in an appropriate manner."

In response, Council has written to the Office outlining its intention to detail the requirements for archaeological assessment in the Development Control Plan, which is not expected to be completed before the plan is gazetted.

Council will continue to liaise with the Office during this process, but is of the opinion that this request should not delay exhibition of the draft plan.

JUSTIFICATION FOR LEP AMENDMENT

The adopted CWSS – S2 recognises that the Cessnock LGA has a shortfall of employment generating land available for development.

With regard to commercial land, the opportunity to complement the existing commercial centres lies in the ability of the site to provide large development lots for those retail operations that require extensive floorspace (such as bulky goods), located in an area contiguous with the existing commercial centre of Cessnock. In this regard, the location of the site meets the principles of Draft SEPP 66 – Integration of Land Use and Transport, now reflected in s.117 Direction No. 17.

In relation to industrial land, the CWSS – S2 specifically concludes that the LGA is under-supplied with land for this purpose. A significant component of this site is targeted for light industrial or service industry purposes.

The site requires extensive engineering works to be undertaken before development of individual lots and marketing of the site can occur. This lead-in time requires Council to proceed with the draft LEP amendment prior to the principal LEP, to enable Council to attract valuable employment generating activities to establish in the Cessnock LGA in this interim period.

COMMENTS FROM THE LEP REVIEW PANEL

Correspondence from the LEP Review Panel dated November 10, 2006 have been reviewed in relation to the revised draft instrument as follows:

"The draft instrument needs to ensure that the land uses permitted in the 3(c) zone applying to the land are sufficiently broad in scope to support the Cessnock centre. The restrictions on commercial premises and shops would appear to be inappropriate for this zone. It would be preferable to alter the land use table to the 3(c) zone itself to achieve the desired outcomes, rather than prohibiting additional uses on the subject land through the proposed Schedule 8 to the LEP."

The intention with the original drafting of the instrument was to, while working within the existing zoning framework contained in the Cessnock LEP 1989, differentiate and restrict certain types of general retail and general commercial premises from the 'Cessnock Civic'

site – a site that has been identified in the CWSS – S2 as being suitable for business park uses. This was reflected in the proposed Schedule 8 to the LEP.

However, following on from recent discussions with the Department, Council has re-drafted the instrument to introduce a new zone into the 1989 LEP, which represents an amalgamation of the B7 Business Park zone contained in the Standard LEP and the existing definitions in the Cessnock LEP 1989. The new proposed 3(e) Business Park zone, drafted in this manner, achieves the intention of the earlier proposed Schedule 8 and will assist Council in transitioning this site to the new B7 zone in the comprehensive LEP. As a result, the site has its own suite of objectives and land use tables and Schedule 8 is no longer required. Accordingly, Schedule 8 has been deleted and the existing 3(c) zone remains unaffected.

"The clauses relating to site remediation and site audit are unnecessary as these matters are adequately covered by SEPP 55 – Remediation of Land. Additional requirements that Council feels are necessary could be included in the DCP proposed for the land."

Council accepts that the matter of land contamination and remediation works can be adequately addressed in the required Development Control Plan. Accordingly, as requested, any reference to this requirement has been deleted from the objectives of the draft plan and the schedule of amendments.

REQUEST FOR SECTION 65 CERTIFICATE

As Council owns part of the land in question, it is considered inappropriate to request delegations under either section 65 or 69 of the Act.

Therefore, Council requests a certificate under section 65 of the Act to enable the draft plan to be placed on public exhibition.

Should you require any further information please contact Ms Robyn Hawes, Consultant Town Planner on (02) 4993 4110 (Wed – Friday) during normal business hours or by e-mail at robyn.hawes@cessnock.nsw.gov.au

Yours faithfully,



R. HAWES
For CESSNOCK CITY COUNCIL

February 12, 2007

Encls.

1. Four (4) copies of draft LEP citation and map.
2. Copy of correspondence received from NSW Heritage Office under s62 of the Act.

(Note: Copies of relevant documents provided to the Dept with the original section 64 submission dated September 15, 2006 remain relevant and have not been reproduced as attachments to this document.)

Cessnock Local Environmental Plan 1989 (Amendment No. 128 – 'Cessnock Civic')

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

1 Name of plan	2 Aims of plan
This plan is <i>Cessnock Local Environmental Plan 1989 (Amendment No. 128 – 'Cessnock Civic')</i> .	This plan aims to amend <i>Cessnock Local Environmental Plan 1989</i> :

- (a) to introduce a new 3(e) Business Park zone in Cessnock Local Environmental Plan 1989 to provide for certain land uses to complement the existing Cessnock commercial precinct,
- (b) to insert a definition of *bulky goods premises* and associated provisions that nominate minimum floorspace requirements for such development,
- (c) to insert a definition of *office premises* and *neighbourhood shop* to differentiate between, and restrict, certain commercial and retail land uses that are currently commonly defined in the Cessnock Local Environmental Plan 1989 within the new 3(e) Business Park zone,
- (d) to allow with the consent of the Cessnock City Council, development for the purposes of bulky goods premises only on land within Zones No 3(a), 3(c) and 3(e),
- (e) to amend the existing land use tables to accommodate the new definition of office premises and neighbourhood shop without amending the permissibility of the related use,
- (f) to alter the zoning of certain land at Cessnock from part Zone No 1(a) Rural 'A' and part Zone No 5(a) Special Uses to part Zone No 2(a) Residential 'A', 3(c) Centre Support, 3(e) Business Park and 7(b) Environmental Protection (Conservation) to allow development of the site to occur, and
- (g) to require an integrated approach to development and conservation outcomes within the land to which this plan applies through the preparation and adoption of a Development Control Plan in the first instance.

3 Land to which plan applies

This plan applies:

- (a) in respect of the aims set out in clause 2(a)-(e), to all land to which the Cessnock Local Environmental Plan 1989 applies.
- (b) in respect of the aims set out in clause 2(f)-(g), to all land shown edged heavy black on the map marked "Cessnock Local Environmental Plan 1989 (Amendment No. 128 – 'Cessnock Civic') deposited in the office of Cessnock City Council.

Cessnock Local Environmental Plan 1989 is amended as set out in Schedule 1.

Schedule 1 Amendments

[1] Clause 5 Definitions

Insert in alphabetical order in clause 5 (1):

bulky goods premises means a building or place used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicles after purchase or hire,

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale of bulky goods.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

neighbourhood shop means retail premises used for the purpose of selling foodstuffs, personal care products, and other small daily convenience goods for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank, newsagency or dry cleaning.

[2] Clause 5 Definitions

Insert in appropriate order in the definition of *the map* in clause 5 (1):

Cessnock Local Environmental Plan (Amendment No. 128 – 'Cessnock Civic').

[3] Clause 6 Adoption of Model Provisions

Insert the following words after "extractive material" in clause 6 (1):

"general store,"

[4] Clause 8 Zones indicated on the map

Insert in appropriate order in clause 8:

3(e) (Business Park) – edged heavy black and lettered "3 (e)."

[5] Clause 9 Zone objectives and development control table

Insert "bulky goods premises;" in alphabetical order in item 4 of the matter relating to Zones No 1 (a), 1(c), 1 (c2), 2 (a), 2(b), 4 (a), 4 (b) and 4 (h).

[6] **Clause 9 Zone objectives and development control table**
Insert "office premises;" in alphabetical order in item 4 of the matter relating to Zones No 1(a), 1(c), 1(c2), and 2(a).

[7] **Clause 9 Zone objectives and development control table**
Omit "general stores;" in alphabetical order in item 3 of the matter relating to Zone No 1(c1).

[8] **Clause 9 Zone objectives and development control table**
Insert "neighbourhood shops;" in alphabetical order in item 3 of the matter relating to Zone No 1(c1), 2(c), and 3(b).

[9] **Clause 9 Zone objectives and development control table**
Omit the words "general stores" where referenced in relation to "shops" in item 4 of the matter relating to Zones No 1(a), 1(c), 1(c2) and 2(a), and replace with the words "neighbourhood shops".

[10] **Clause 9 Zone objectives and development control table**
Insert after the matter relating to 3 (c) Centre Support zone:

Zone No 3 (e) Business Park

1 Objectives of zone

The objectives of this zone are:

- (a) to provide a range of office and light industrial uses,
- (b) to encourage employment opportunities,
- (c) to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area, and
- (d) to permit the development of bulky goods premises to complement the higher order retailing activities within the Cessnock commercial precinct.

2 Without consent

NIL

3 Only with consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Aerodromes; agriculture; art gallery; boarding-house; caravan park; cemeteries and crematoria; club; commercial premises (other than office premises); dual occupancy; dwelling-house; commercial vineyards; cellar door facilities; extractive industries; feed lot; forestry; heliports; holiday cabin; horse training establishments; hotel; industry (other than light industry); institution; integrated tourist development; junkyard; mines; motel; motor showroom; multiple dwelling; recreation establishment; residential flat

building; riding school; sawmill; shop (other than neighbourhood shop); stable; stock and sale yards; tourist accommodation building; tourist recreation facilities; tourist-related craft shop; units for aged persons; wine storage facilities.

[11] Clause 27 Development principles – Zone Nos 3 (a) and 3 (c)

Amend the zone references in the description of clause 27 to read as follows:

"- Zone Nos 3 (a), 3 (c) and 3 (e)".

[12] Clause 27 Development principles – Zone Nos 3 (a) and 3 (c)

Omit the words "or 3 (c)" in clause 27. Insert instead:

", 3 (c) or 3 (e)"

[13] Clause 27A

Insert the following clause after clause 27:

27A Bulky goods premises

Consent shall only be granted for the development or use of land for the purpose of bulky goods premises if the minimum gross floor area for each individual tenancy is not less than 500m².

[14] Clause 66

Insert the following clause after clause 65:

66 Consent to development subject to special development requirements

- (1) Consent must not be granted to development on any land described in Column 1 of Schedule 7 unless the consent authority has had regard to the requirements for the land outlined in Column 2 of that Schedule.

[15] Insert new schedule after schedule 6:

Schedule 7 Land subject to special development requirements

Column 1	Land at Cessnock being land shown edged heavy black on the map identified as "Cessnock Local Environmental Plan 1989 (Amendment No. 128 – 'Cessnock Civic'.)"
Column 2	A development control plan must be approved by the Council before consent is granted for any development (including subdivision). This development control plan shall include recommendations about flora and fauna conservation, soil erosion and sedimentation control, drainage and water management, bushfire risk management, remediation of land contamination, Aboriginal archaeology and European heritage, subdivision pattern and development staging including urban design outcomes, infrastructure provision (including road and pedestrian networks and public transport provisions), and appropriate construction types and methods in relation to mine subsidence and soil compaction issues.
(Clause 66 (1))	

DRAWN BY: P. TAYLOR
PLANNING OFFICER: R. HAWES
COUNCIL FILE NO. 18/2004/9/1
DEPT. FILE NO.
CERT. PLAN NO.
CERTIFICATE ISSUED
UNDER SEC. 65 E.P.A. ACT DATED:
GOVT. GAZETTE OF

CERTIFIED IN ACCORDANCE
WITH THE ENVIRONMENTAL
PLANNING & ASSESSMENT ACT
1979, AND REGULATIONS.

PREPARED BY: CESSNOCK CITY COUNCIL

AMENDS CESSNOCK L.E.P. 1989

STATEMENT OF RELATIONSHIP WITH OTHER PLANS:

DATE
12.2.07

AUTHORISED OFFICER

CESSNOCK LOCAL ENVIRONMENTAL PLAN 1989 (DRAFT AMENDMENT NO. 128)

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

SCALE 1:8,000, LOCALITY OF CESSNOCK PARISH OF POKOLBIN COUNTY OF NORTHUMBERLAND



ZONE NO. 2(a)
Residential "A" Zone

ZONE NO. 3(c) Centre Support

ZONE NO. 3(e) Business Park

ZONE NO. 7(b)
Environmental Protection (Conservation) Zone

Environmental Protection (Conservation) Zone

