

PLANNING PROPOSAL
for
Cessnock Civic
Lots 18 & 19 (Sec D) DP 4653, Lot 23 DP 845986 and Lot 1 DP 1036300
Off Vincent Street Cessnock

PART 1: Objectives or Intended Outcomes

To rezone the land for a mixed use development adjacent to the southern fringes of the Cessnock Town Centre off Vincent Street comprising a Business Park to allow for bulky goods retailing, light and service type industries, a medium density residential precinct including a seniors living development with a significant part of the site remaining undeveloped that will act as a buffer to Black Creek as well as a park like precinct that retains bushland and surrounds the existing miners cottages.

PART 2: Explanation of Provisions

This Rezoning Proposal was to amend Cessnock Local Environmental Plan 1989 by rezoning the subject land from Rural 1(a) to:

- part 3(e) Business Park zone along Vincent Street and lands south west of Darwin Street;
- part 2(a) Residential Zone within the south western corner of the site;
- part 7(a) Environmental Protection for land adjacent to the southern boundary and along Black Creek.

Attachment 1 illustrates the proposed zone delineations under the Cessnock Local Environmental Plan 1989.

For the purposes of this planning proposal, it is proposed that the following zones under the Standard Instrument Template be utilised:

- part Zone B7 Business Park (for the 3(e) Business Park zone) along Vincent Street and lands south west of Darwin Street;
- part Zone R3 Medium Density Residential (for the 2(a) Residential zone) within the south western corner of the site;
- land adjacent to the southern boundary and along Black Creek to Zone E2 Environmental Conservation (for the 7(a) Environmental Protection zone); and
- with land within the centre of the site to RU2 Rural Landscape.

Attachment 2 illustrates the proposed zone delineations under the standard instrument template. These zoning delineations have largely been determined by on site constraints, including Mine Subsidence issues associated with past mining activities.

Note: under the recently exhibited draft Cessnock LEP, it is proposed to zone the entire subject site to RU2 Rural Landscape, pending completion of this Planning Proposal.

PART 3: Justification

Section A: Need for the planning proposal

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

A rezoning application accompanied by detailed submission prepared by the proponent was lodged with Cessnock Council in December 2004.

Cessnock Council at its meeting of 8 December 2004 resolved to rezone three specific sites including the subject site from Rural 1 (a) to a mixed use development, nominated as part 2(a) Residential, part 3(c) Centre Support and part 6(a) Open Space pursuant to Cessnock Local Environmental Plan 1989. This draft LEP (Amendment No. 128 – Cessnock Civic) also actions one of the directions from the City Wide Settlement Strategy – Stage 2 (CWSS 2005) that was adopted by Council at its meeting on December 14, 2005.

An independent review of Cessnock City Wide Settlement Strategy on behalf of Cessnock Council was undertaken by Hill PDA in July 2005 which concluded that this site was the best location and the site has greater potential to integrate with the existing main street.

The subject site is also included within the Draft City Wide Settlement Strategy 2009 as lands supporting the regional centre (i.e. Cessnock Town Centre). This Strategy was exhibited as part of Council's comprehensive draft LEP.

A copy of the Section 64 Submission forwarded to the Department of Planning on 12 February 2007 is attached to this Planning Proposal as **Attachment 3** that provides background information relating to this rezoning.

A copy of the proponents Planning Proposal also accompanies Council's Planning Proposal.

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

The CWSS (2005) identified the subject site which is commonly referred to as Cessnock Civic as being ideally located in proximity to the Cessnock commercial precinct to complement existing retailing activity through the development of a bulky goods retailing centre. Support for this type of land use activity is proposed with B7 Business Park Zone which also allows light industry and limited commercial activities.

The Planning Proposal is considered the best means for achieving a suitable mixed development upon the subject site based on these recent geotechnical investigations, however this may change once a further studies are completed including flora and fauna, flood and traffic.

However, in June 2007, Council advised the DoP that the progression of the 'Cessnock Civic' rezoning proposal would be delayed pending resolution of issues associated with the significant mine subsidence incident that occurred after a storm event on 7 June 2007.

3 October 2007, Council deferred the community workshops proposed until all additional information in respect to traffic and drainage were provided and issues associated with mine subsidence on site were satisfactorily resolved, including a site audit report.

The rezoning proposal has been held in abeyance whilst further geotechnical investigations have been undertaken by the proponent to determine suitable development footprints for the site. Completion of these investigations in March 2010 has subsequently resulted in a reduced amount of developable land being available, which have resulted in modified zoning delineations to those previously exhibited.

Further discussions / investigations are necessary with the proponent and the Mine Subsidence Board to resolve on site issues associated with the significant mine subsidence incident, particularly where constraints may restrict future development of lands zoned for business/industrial purposes.

3. Is there a net community benefit?

The proponent has completed an assessment of Net Community Benefit identified within the NSW Government's publication *The Right Place for Business and Services*. Table 4.1 of the proponent's Planning Proposal outlines the results of this assessment. The following conclusions have been reached:

- The Planning Proposal provides an opportunity for additional businesses and services to establish adjacent to the existing commercial centre of Cessnock further promoting Cessnock CBD and encouraging growth of an existing Town Centre;
- The subject site is in walking and cycling distance of the Cessnock CBD. A local bus route runs along Vincent Street to McFarlane Street which can service this site. A number of existing bus services run along Wollombi Road to the west of the subject site being a short walk to the subject site;
- The development footprint provides for an integrated residential, employment and services precinct within close proximity to the Cessnock Town Centre including schools, community facilities, etc;
- The Planning Proposal is intended to complement the Cessnock Town Centre and to assist to reduce escape expenditure and therefore assists with the economic performance and viability of the existing Cessnock Town Centre;
- It is not envisaged that the Planning Proposal will result in a significant amount of use of public infrastructure and facilities within Cessnock CBD. The proponent will be responsible for augmentation of infrastructure such as water and sewer and provision of suitable vehicular access to the site;
- There are little or no other suitable sites in close proximity to Cessnock CBD suitable for this form of development. Other sites along Maitland Road have been considered in the past and these have been determined to be isolated and not extensions of the existing Town Centre. The subject site is positioned to the south of the CBD and is a logical extension to the existing town centre being adjacent to Vincent Street which is a main arterial road providing access to areas south of Cessnock.
- The Planning Proposal has been specifically designed for the subject site given its constraints including mine subsidence, flooding, etc and is described as being a relatively large site in single ownership. There are no other sites adjacent to the CBD of a similar nature that are readily developable.

Section B: Relationship to strategic planning framework

4. 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?)

The subject site has been identified as a "Proposed Employment Area" within the Lower Hunter Regional Strategy and therefore is consistent with an adopted Regional Strategy.

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

The Cessnock Civic site has been identified within the draft City Wide Settlement Strategy as being a potential bulky goods retailing site as it is ideally located in close proximity to the Cessnock commercial precinct.

Action CC1 of this draft Strategy adopts the subject site within the proposed commercial hierarchy for the Cessnock LGA.

Action CC5 of the draft Strategy supports the rezoning of the site for business park uses (including bulky goods retailing) in proximity to the Cessnock commercial precinct (Cessnock Civic site).

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

The Planning Proposal is consistent with the following relevant SEPP'S:

SEPP	Comment
SEPP No. 44 – Koala Habitat Protection	Two 'Koala Feed Tree Species' listed in Schedule 2 of this policy occur on site, namely <i>Eucalyptus punctata</i> (Grey Gum) and <i>Eucalyptus tereticornis</i> (Forest Red Gum). Flora and fauna investigations relating to the site do not indicate any evidence of koalas on site or indicate that the site qualifies as "Core koala habitat". Hence the requirement for a Koala Management Plan is considered to be unnecessary in this case.
SEPP No. 55 - Remediation of Land	The applicant has submitted a Phase 1 Environmental Site Assessment in December 2005 for the subject site. This report identifies that potential does exist for some contamination associated with the chitter deposits and recommends further testing at development application stage, when excavation of test pits/trenches can occur in conjunction with the proposed excavation and regarding works.
SEPP (Housing for Seniors or People with a Disability) 2004	A development application has been submitted to Council for a seniors living development on part of the site that is to be rezoned for residential purposes. A site compatibility certificate has been issued by the Department of Planning for this development proposal and the DA is currently being assessed by Council.
SEPP (Building Sustainability Index: BASIX) 2004	The provisions of this SEPP will be considered in assessment of any future residential development upon part of the subject site.
SEPP (Infrastructure) 2007	Clause 104 of the SEPP requires developments of a certain size identified within Schedule 3 to be referred to the RTA. Draft LEP (Amendment No.128 – Cessnock Civic) for the subject site was referred to the RTA for comment under the provisions of the former SEPP No. 11. The RTA did not object to this draft LEP provided that a detailed traffic analysis was prepared at the DA stage and any future development shall adhere to the Criteria for Road Traffic Noise prepared by NSW Environment Protection Authority. The indicative subdivision layout now submitted to Council will result in creation of a reduced number of lots. A revised traffic study has been requested from the proponent given that potential access points to the site have changed and the subdivision layout has changed which may potentially impact onto the existing road system and adjoining properties. The RTA will be consulted once a revised Traffic Study is received by Council. Future development applications will be assessed in accordance with provisions of this SEPP.

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

The Planning Proposal has been considered with the following relevant Directions issued on 1 July 2009:

Direction	Comment
1.1 Business and Industrial Zones	The planning proposal is inconsistent with clause 4(b) of this Direction in that the draft plan does not "retain the areas and locations of existing business and industrial zones". However this inconsistency is considered to be justified under clause 4 e) of the Direction as it is a "Proposed New Employment Area" in accordance with a strategy (i.e. Lower Hunter Regional Strategy) that was approved by the Director-General of the Department of Planning.
1.2 Rural Zones	The planning proposal is inconsistent with clause 4(a) of this Direction in that the draft plan "must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone". However this inconsistency is considered to be justified under clause 5 c) of the Direction as it is a "Proposed Employment Area" in accordance with a relevant regional strategy (i.e. Lower Hunter Regional Strategy) prepared by the Department of Planning.
1.3 Mining, Petroleum Production and Extractive Industries	The NSW Department of Primary Industries (Mineral Resources) was consulted under Section 62 of the Act. The site forms parts of the former Aberdare Extended Colliery site and coal reserves have been extracted. The Department has raised no objection to the proposed rezoning.
1.5 Rural Lands	The planning proposal is inconsistent with clause 3(a) of this direction in that it seeks to rezone land that is currently zoned 1(a) Rural A to a mixture of residential, commercial and environmental protection. A planning proposal can be inconsistent with this Direction where justified by a strategy which gives consideration to the objectives of the Direction. The objective of this Direction is to protect the agricultural production of rural land. In this case the land is highly disturbed from past mining activities and has been identified within the Lower Hunter Strategy as proposed "Employment Area".
2.1 Environment Protection Zones	Consistent with Direction as potentially environmentally sensitive proportions of the site will be zoned Environmental Conservation purposes.
2.3 Heritage Conservation	The subject site has been designated as an item of heritage pursuant to Draft Cessnock LEP being the principle instrument for the LGA. Heritage provisions within the principle instrument will still be applicable to the subject site with existing miner's cottages being conserved.
2.4 Recreation Vehicle Areas	Consistent with this Direction as the site is not proposed as a recreation vehicle area.

3.1 Residential Zones	Consistent – the proposed R3 Medium Density Residential Zone will allow a variety of building types to be constructed adjacent to an established residential area where existing infrastructure and services are available.
3.2 Caravan Parks and Manufactured Home estates	Consistent - the Planning Proposal will not affect provisions relating to Caravan Parks and Manufactured Home estates.
3.3 Home Occupations	Consistent with this Direction as the principal Draft Cessnock LEP permits home occupation without development consent within the proposed R3 Medium Density Zone.
3.4 Integrating Land Use and Transport	A Planning Proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001) The subject site being located adjacent to the town centre along a major road with public transport facilities is considered to be well positioned for the establishment of new business/commercial precinct to service Cessnock.
4.1 Acid Sulfate Soils	Provisions relating to acid sulphate soils are contained with Draft Cessnock LEP 2009 being the principle instrument for the LGA and will be applicable to the subject site.
4.2 Mine Subsidence and Unstable Land	The site has previously been subject to mine activities and hence considered to be unstable land. This is evident by subsidence that resulted during the June 2007 storm event. Draft LEP (Amendment No. 128 – Cessnock Civic) was referred under Section 62 to the Mine Subsidence Board and the MSB raised no objection to the rezoning. On 25 March 2010 Council received further correspondence from the MSB advising it had no objections to the rezoning subject to a plan prepared by Parsons Brinckerhoff which limits parts of the site to particular forms of development. Refer to Attachment 4 for further details.
4.3 Flood Prone Land	Part of the site is within the 1:100 year flood event. Council has recently completed a new flood study for Black Creek. Council has also requested that a further Flood Study be completed for the site to ensure that lands are suitable for development particularly the western part of the site which is designated within the proposed B7 Business Park zone. A corridor of land adjacent to Black Creek is proposed to be zoned E2 Environmental Conservation which should contain any flood affected lands and an appropriate drainage system.

4.4 Planning for Bushfire Protection	Draft LEP (Amendment 128) was referred to the NSW Rural Fire Service under Section 62 of the Act and Council has taken into consideration the comments received.
5.1 Implementation of Regional Strategies	The Planning Proposal is consistent with the Lower Hunter Regional Strategy in that the site has been identified as "Proposed Employment Area."
6.1 Approval and Referral Requirements	The Planning Proposal will not require concurrence from or referral to the Minister or a public authority.
6.2 Reserving Land for Public Purposes	This Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and Director General of the Department of Planning.
6.3 Site Specific Provisions	The Planning Proposal seeks to use zonings within the standard template being different to the exhibited Draft LEP (Amendment 128).

Section C: Environmental, social and economic impact

8. 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 subject site contains three main vegetation communities being as following:

- Hunter Lowland Redgum Forest (HLRF);
- Lower Hunter Spotted Gum – Ironbark Forest (LHSGIF);
- Kurri Sand Swamp Woodland (KSSW).

All three vegetation communities are listed as Endangered Ecological Communities (EEC) under the TSC Act 1995 as per the Threatened Species and Conservation (TSC) Act 1995.

A Flora and Fauna Strategic Assessment was completed in 2004 and an Additional Flora and Fauna Response Report for the Cessnock Civic Business & Residential Estate was submitted to Council in September 2005. This report included an Eight Part test for the Lower Hunter Spotted Gum – Ironbark Forest.

Given changes to legislation and that new species and communities may have been listed as endangered since 2005 the proponent has been requested to submit a supplementary report to Council that includes Seven Part test for all endangered communities found on site.

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

Bushfire

Parts of the subject site are identified as bushfire prone lands on Council's bushfire mapping. The site is surrounded by existing development to the east, north and west. Mining activities by Austar are currently occurring to the south west of the site.

Council has previously consulted with the NSW Rural Fire Services who advised they support the rezoning provided that certain measures are established in accordance with the former document Planning for Bushfire Protection 2001 and now known as Planning for Bushfire Protection 2006. A Plan of Management will need to be prepared for any public reserve and/or open space/bushland areas retained on site. These matters can generally be dealt with at the development application stage, however Council's preference is that an appropriate development application plan be prepared to address any bushfire issues.

Flooding

Part of the site is affected by flooding being areas along the alignment of Black Creek and an area that is proposed to be rezoned for Zone B7 Business Park within the north western corner of the site. Council has recently completed a Flood Study for Black Creek. A revised hydrological study will need to be submitted to Council given the revised zoning delineations and completion of this recent flood study by Council. Also mining activities being undertaken on the adjoining Austar site involving changes to the landform may impact on the flooding regime of the subject site which needs to be addressed. This information can be submitted once the rezoning is included in the gateway proposal and prior to re-exhibition of the rezoning.

Traffic

The revised subdivision layout proposes lots with direct access off Vincent Street and also to a lesser extent off Charlton Street with access to other industrial lots off Darwin Street only. A revised traffic impact assessment is also necessary to determine whether existing streets have spare capacity and can carry industrial type traffic without impacting onto the existing road system and nearby residential development.

Contamination

A Phase 1 Environmental Site Assessment was lodged with the rezoning application. This report concluded the site was suitable for rezoning but a Phase 2 Environmental Site Assessment (ESA) at development application stage. A Phase 2 ESA can assess the potential contamination of the coal chitter placed on site post 1998 when excavation of test pits/trenches can occur in conjunction with proposed excavation and regrading works as specified in the geotechnical report. Remediation of land contamination therefore will require further detailed assessment.

It should be noted that the written instrument of Draft LEP (Amendment 128) included a requirement that a development control plan be prepared that incorporated provisions relating to 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, staging of development and appropriate construction types and methods in relation to mine subsidence and soil compaction issues prior to approval of any development applications for the subject site.

These matters still need to be addressed and should be considered once the Planning Proposal is accepted within the gateway process.

10. How has the planning proposal adequately address any social and economic effects?

Heritage

The Indigenous Cultural Heritage Assessment accompanied the rezoning proposal found no archaeological sites but noted a surface artefact in the current study area which was left in situ prior to the current study. The Black Creek Aboriginal Corporation opposed the destruction of this artefact until all other avenues were pursued. In this case conservation of the site is not warranted as the site has been subject to sub surface testing. 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 existing mining cottages on site are identified as an item of heritage pursuant to draft Cessnock LEP 2009 being of local significance. The three cottages within the centre of the site will be retained within the proposed RU2 Rural Landscape Zone. The former Aberdare Colliery is listed as an item of environmental heritage pursuant to Hunter Regional Environmental Plan (Heritage) 1989 as an item of local significance. Relevant clauses of Draft Cessnock LEP will apply to existing heritage items on site or as suggested in the previous section of this Planning Proposal a Development Control Plan should be prepared prior to any development application being approved for the site addressing outstanding heritage matters including a conservation management plan for the cottages.

An Employment and Economic Assessment was completed in March 2005. This report concluded there would be significant economic benefits for Cessnock as a whole from development of this land for business/industrial purposes that would be on going. Development of the site would strengthen the position of Cessnock CBD as a regional employment and shopping centre ensuring its long term viability for existing businesses.

Section D: State and Commonwealth interests

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

Hunter Water Corporation (HWC) previous advised that a water supply system can be provided to the development nominated as a mixture of domestic, light and commercial types, subject to augmentation prior to connection of new buildings.

Connection to sewage will be delayed until completion of the Cessnock Wastewater Treatment Works upgrade and the planned augmentation of the primary pump station (Cessnock No1 WWPS) that will capture flows from the site. These works are expected to be completed in 2006/2007. At this stage Council is not aware whether these works have been completed. 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.

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

To date Council has consulted with the following statutory authorities and agencies in relation to Draft LEP (Amendment 128):

- 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 REP 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 Department of Education and Training – proposed school site
- NSW Heritage Office – Schedule listing in HREP 1989 (Heritage).

Both DECC (i.e. former DEC) and CMA objected to Draft LEP (Amendment No. 128 – Cessnock Civic) based on the loss of native vegetation (primarily EECs) on the site, without securing site offsets to compensate. These objections have not been resolved through the previous Section 62 consultation process. No other authorities raise any objection to the proposal.

The revised zoning delineations will now result in an increased amount of land to be either zoned Environmental Conservation or Rural Landscape allowing for retention of 3.8 hectares of KSSW and 1.5 hectares of Hunter Lowland Redgum Forest and approx 7 hectares of Lower Hunter Spotted Gum – Iron bark Forest to be retained on site.

Council intends to liaise with DECC&W and Hunter – Central Rivers CMA regarding previous objections to this rezoning. Given that an increase amount of bushland is proposed to be retained on site, the long term maintenance and rehabilitation of this bushland now needs to be discussed with the proponent after the Planning Proposal is accepted into the gateway process.

Recent correspondence has also been received from the Mine Subsidence Board advising it would have no objection to development of portions of the site as identified by a Parsons Brinkerhoff Plan titled Development Boundaries. Figure 11 – Revision C. **Attachment 4** is a copy of this plan including correspondence.

However, further discussions are necessary with the proponent and the Mine Subsidence Board to resolve some of these restrictions, particularly where constraints may restrict future development of lands zoned for business/industrial purposes. Indicative building platforms for each industrial/business lot where impediments exist showing how the lot can be developed needs to be prepared. As outlined previously, this could be incorporated into an appropriate development control plan.

Council prefers that these issues be resolved prior to rezoning of the site and once the Planning Proposal is accepted into the gateway process so that when future development applications are lodged with Council mine subsidence issues have been fully addressed and lots can readily be developed.

Part 4: Community Consultation

Draft Local Environmental Plan (Amendment No.128 – Cessnock Civic) was publicly exhibited from the 1 March 2007 to 30 March 2007. A total of 25 submissions were received by Council during this exhibition period.

Given that this amended draft local environmental plan proposes changes to the previous zoning delineations and to be consistent with zonings contained within the standard LEP template Council's preference is for a minimum exhibition period of 28 days given the level and content of submissions previously received by Council.

Council also resolved on the 18 April 2007 to hold a public workshop in respect to this rezoning. Council still intends to enact upon this resolution once all additional information in respect to traffic, drainage and mine subsidence issues are received and have been reviewed and this rezoning has been accepted into the gateway process.

ATTACHMENTS:

Attachment 1- Proposed Zone delineations under Cessnock LEP 1989

Attachment 2- Proposed Zone delineations under draft Cessnock LEP

Attachment 3 - Section 64 Submission

Attachment 4 - Parsons Brinckerhoff Plan and correspondence from Mine Subsidence Board