

**Cessnock Local Environmental Plan 2011 Amendment 24 - Black Hill Employment Lands -
John Renshaw Drive Black Hill**

Proposal Title : **Cessnock Local Environmental Plan 2011 Amendment 24 - Black Hill Employment Lands -
John Renshaw Drive Black Hill**

Proposal Summary : **The Planning Proposal seeks to rezone the subject land from RU2 Rural Landscape to part
Industrial and part Environmental under the Cessnock Local Environmental Plan 2011.**

**The proposed zones, zone boundaries, development standards and local provisions were
finalised before the planning proposal was publicly exhibited.**

**The Lower Hunter Regional Strategy and Council's City Wide Settlement Strategy identifies
the subject land as part of the future freight hub and for employment lands.**

PP Number : **PP_2012_CESSN_005_00** Dop File No : **12/13190**

Proposal Details

Date Proposal Lodged with DOP : **12-Nov-2012** Date Proposal Uploaded to Public Website : **23-Nov-2012**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **NSW Aboriginal Land Council
Office of Environment and Heritage
NSW Department of Primary Industries
- Agriculture
NSW Department of Primary Industries
- Minerals and Petroleum
Mine Subsidence Board
NSW Rural Fire Service
Transport for NSW - Roads and
Maritime Services**

Gateway Determination

Decision Date : **11-Dec-2012** Gateway Determination : **Passed with Conditions**
Due Date of LEP : **18-Dec-2016**

Implementation

Implementation Start Date : **18-Dec-2012** Exhibition Duration : **31**

Agency consultation consistent
with recommendation : **Yes**

If No, comment : **Council in its section 59 report outlines how matters raised by agencies such as
Roads and Maritime Services, Office of Environmental Heritage, Department of
Primary Industries (Agriculture) and Trade and Investment (Mineral Resources
Branch) have been considered. The major issues needing to be addressed related
to traffic and biodiversity matters. It is considered that Council has addressed the
matters raised by agencies satisfactorily and that they can be appropriately
managed at the future development control plan, planning agreement and
development assessment stages.**

Agency Objections : No

If Yes, comment :

Documentation consistent
with Gateway : Yes

If No, comment : The Planning Proposal was lodged in November 2012 and applies to land at John Renshaw Drive and Black Hill Road, Black Hill, being Lot 1131, DP 1057179 and Lot 119 DP 1154904. The initial 2012 PP sought to rezone the land to part General Industrial IN1 and appropriate environmental conservation zones.

The Planning Proposal was amended in response to community and agency consultation, and detailed studies over the site in 2014. The revised Planning Proposal (PP) proposes the rezoning of approximately 300 hectares of land from Zone RU2 Rural Landscape to a combination of IN2 Light Industrial (195.6ha), E4 Environmental Living (64ha) and E2 Environmental Conservation (40.4ha) under the Cessnock Local Environmental Plan 2011 (LEP 2011).

The objectives of this Planning Proposal are to:

1. Implement the policy provisions of the Lower Hunter Regional Strategy 2006 which identifies the subject land as Employment Lands – balanced with the management of local impacts;
2. To improve the condition of land which include endangered ecological communities (Lower Hunter Spotted Gum) and provide mechanisms for the highly ecologically significant parts of land for conservation in perpetuity;
3. To enable a limited number of environmental living (residential subdivision and dwelling) opportunities compatible with the ecologically significant parts of the site that also supports the ongoing viability of the Black Hill Public School and other local services; and
4. To ensure that development occurs in a cost effective manner whereby there are no inappropriate demands on the funding and/or prioritisation of public infrastructure.

A Gateway determination was issued by the Department of Planning and Environment on 11 December 2012, followed by two additional amendments for extension of time. A further amendment was issued on 17 June 2016, and accommodated a change in PP description to include all environmental zones, an additional condition to include the 'General Industries' as an additional permitted use in the IN2 Zone on the site, and further consultation with agencies and the public. The amendment also allowed for a further extension of time to 18 December 2016.

Consultation

There have been two separate public exhibition processes. The first exhibition was in June and July 2014 which included an open day at Blackhill. 135 submissions objecting to the proposal were received. Key issues raised included:

- * the process by which the site was identified within the LHRS;
- * the lack of justification for additional industrial land;
- * loss of rural character and lifestyle;
- * environmental, traffic and amenity impacts;
- * lack of services and infrastructure for the proposed industrial land; and
- * lack of a broader sub-regional plan for the area and lack of consideration of alternative proposals.

Objections were also raised regarding the supporting material, the Voluntary Planning Agreement and the consultation process.

The zones selected for the land were subsequently amended (IN2 instead of IN1

and the addition of E4 land), although the extent of the zones remained similar. Clauses relating to the additional permitted general industry use and the subdivision of the E4 land into a maximum of 4 lots were also included.

Public exhibition of the revised planning proposal occurred in accordance with the gateway conditions from 29 June to 31 July 2016. Consultation with Public Agencies was also undertaken in accordance with the gateway.

More than 100 submissions were received and the issues raised were similar to those raised in relation to the earlier proposal. One submission was also received from the local community group which also maintains its objection to the Planning Proposal. The issues raised include;

- * supply and demand of industrial land in Black Hill
 - * loss of amenity and rural character of Black Hill
 - * environmental and Traffic impacts
 - * inadequacy of infrastructure to support the proposed industrial uses
 - * lack of consideration of alternative proposals and need for a sub-regional plan.
- Objections were again raised regarding the supporting material and the consultation process.

A response was received from Newcastle City Council which raised no objections.

No changes to the plan were made as a result of the 2016 consultation process. Council's consideration and assessment of the issues raised is considered to be satisfactory. This is discussed in more detail in Tab E1 which also considers and assesses the alternate proposal for the site submitted by the local community groups to the Minister in late 2016.

Section 117 Directions

1.1 Business and Industrial Zones

Comment: This Planning Proposal is consistent with all aspects of this Direction, as it provides for new industrial zoned areas; complies with the objectives of the Direction; and is located in an area designated for industrial purposes within the Lower Hunter Regional Strategy. The area is identified for employment used in the LHRS and as a Growth Area in the Hunter Regional Plan (HRP) (October 2016).

1.2 Rural Zones

Comment: This Planning Proposal is inconsistent with this Direction. However, clause 5(e) of the Direction provides that a Planning Proposal may be inconsistent with this Direction if it is justified by a strategy which considers the value of agricultural land; identifies the land which is the subject of the Planning Proposal and is approved by the Director-General of DoPE. The Department agreed that the inconsistency is justified and advised that no further approval is required in relation to this Direction when the Gateway determination was issued in December 2012.

1.3 Mining, Petroleum Production and Extractive Industries

Comment: Coal mining activities are currently occurring beneath the subject site (i.e. via operations of the Abel Underground Coal Mine), and the LHRS Natural Resources Map identifies parts of the subject site as containing Coal Resources. However, the proposed industrial/ employment development of the site is not likely to restrict the potential extraction of these resources due to the current underground coal mining operations taking place i.e. it is anticipated that the existing coal resources beneath the site will be exhausted before the development of the site for industrial purposes. Further, the proposed IN2 zoning does not prohibit the undertaking of mining activities.

Nevertheless, consultation was undertaken with the Mineral Resources Branch (MRB) within the Department of Trade & Investment in relation to the PP. The MRB recommended that further discussions take place between key stakeholders to assist in the formulation of appropriate development controls to minimise potential conflicts between mining uses (whether ongoing or completed) and industrial development. Council advised that they will include such appropriate controls in a future DCP over the site. The proposal is consistent with this Direction.

1.5 Rural Lands

Comment: This Planning Proposal is consistent with most of the relevant Rural Planning Principles in that it ensures consistency with the applicable regional strategy (i.e. the LHRS/HRP); will protect significant water resources and other variables (refer to Part 3, Section C of this PP); and strives to balance the social, economic and environmental interests of the community.

However, the Planning Proposal will not comply with all Rural Planning Principles, by the nature of the proposed development (i.e. industrial/employment). Nevertheless, the Direction provides that a Planning Proposal may be inconsistent with this Direction so long as it is justified by a strategy which considers the value of agricultural land; identifies the land which is the subject of the Planning Proposal and is approved by the Secretary of DoPE. The Department agreed that the inconsistency is justified and advised that no further approval is required in relation to this Direction when the Gateway determination was issued in December 2012

2.1 Environment Protection Zones

Comment: This Planning Proposal is consistent with this Direction where it zones land to E2 Environmental Conservation and E4 Environmental Living zones facilitating the protection and conservation of environmentally sensitive riparian and remnant vegetation areas associated with Viney Creek and Weakleys Flat Creek, as well as the nesting habitat of the threatened Grey-crowned Babbler.

The Lower Hunter Spotted Gum – an EEC - covers substantial areas of the site and the PP seeks to achieve a sound balance between implementing regional policy direction for industrial development and achieving reasonable protection and management of that EEC and other

2.3 Heritage Conservation

Comment: This Planning Proposal is consistent with this Direction as the provisions of the Cessnock LEP and relevant Sections of the National Parks and Wildlife Act 1974 both serve to adequately protect the heritage significance of heritage items/ places. Accordingly, this Planning Proposal satisfies this Direction.

3.4 Integrating Land Use and Transport

Comment: The Department agreed that inconsistency with this s117 direction is justified and advised that no further approval is required in relation to this Direction when the Gateway determination was issued in December 2012

4.2 Mine Subsidence and Unstable Land

Comment: While the subject site is not mapped as a Mine Subsidence Area, the land is currently being undermined as part of underground coal mining activities. Accordingly, there is the potential for the land to be identified as 'unstable land' and/or to be mapped as a Mine Subsidence Area in the future.

Consultation was undertaken with the Mine Subsidence Board (MSB) in relation to this Planning Proposal. The MSB had no objections to the rezoning of the land,

and did not recommend restrictions on the scale, density or type of development to be permitted on the land at this time. However it recommended that the development of the site be staged to allow for the completion of ongoing (underground) mining activities.

Accordingly, the Planning Proposal satisfies this Direction.

4.4 Planning for Bushfire Protection

Comments: The subject site is identified as 'bushfire prone', and a detailed bushfire hazard assessment has been undertaken identifying appropriate bushfire management controls to be applied in association with development design. It is noted that all future development within the site will have to be assessed against Planning for Bushfire Protection 2006 as part of the development assessment process.

While consultation was undertaken with the NSW Rural Fire Service (RFS) in relation to the previous PP regarding this Direction and they raised no concerns in relation to the rezoning, an inconsistency with this Direction still exists.

The inconsistency with this Direction is considered minor as RFS did not raise any concerns with the site and advised that the recommendations outlined in the bushfire hazard assessment are to be considered in relation to future development of the site as part of a development application.

5.1 Implementation of Regional Strategies

Comment: The proposal is consistent with the provisions of the Lower Hunter Regional Strategy which applied to the site at the time of considering the proposal and which identified the site for employment uses. The proposal is therefore consistent with this Direction in terms of proposing a substantial area for zoning to IN2 General Industrial.

5.10 Implementation of Regional Plans

Comments: As the subject site is identified for industrial/ employment purposes in the LHRS/HRP, the Department is satisfied that the Planning Proposal satisfies the provisions of this Direction in implementing the Regional Plan.

6.3 Site Specific Provisions

Comments: The Planning Proposal includes site specific provisions (Additional Permitted use) that are considered appropriate to differentiate this industrial site from the Hunter Economic Zone.

In addition, provisions that permit subdivision of the E4 zoned land into a maximum of four lots does not further limit the use of the site, or impose higher development standards to the site. This clause retains the current number of dwellings across the site. Without this local clause, the minimum lot size for a subdivision affecting E4 zoned land would be 80ha and only one E4 zoned lot could be created.

The Planning Proposal is consistent with all other Section 117 Directions.

State Environmental Planning Policies

SEPP No 44 (Koala Habitat Protection) - This SEPP aims to encourage the proper conservation and management of koala habitat areas in order to maintain the viability of koala populations. Land should be included in an environmental protection zone if it is 'Core Koala Habitat'.

Three species of koala feed trees have been identified on the site, particularly within the main creek lines. However, the trees do not occur at the designated percentages which constitute 'Potential Koala Habitat' as defined within the SEPP. Additional investigations were conducted to determine if there was evidence of a koala population, but no 'Core Koala Habitat' was found. Details about the koala habitat assessment are included in the Flora and Fauna Assessment. The Planning Proposal is consistent with SEPP 44 – Koala Habitat Protection.

SEPP No 55 (Remediation of Land) - This SEPP aims to promote the remediation of contaminated land for the purpose of reducing risks to people and the environment.

The site has accommodated a number of activities in the past that have led to contamination of certain areas. However, contamination remediation activities have been undertaken since the poultry farming ceased in 2003. A Site Contamination Investigation report by Noel Arnold & Associates concludes that "the land can be made suitable for industrial and residential land uses (and other activities permissible within the Environmental Conservation E2 area) through development and implementation of a remediation action plan (RAP), or series of RAPs if a staged approach is adopted (pp28-29)".

All other SEPP's were considered and found to be not applicable to this proposal.

Make the Plan

A PC opinion was requested on 30 November 2016 and a draft received 12 December 2016. Council was consulted in accordance with s.59(1) and accepted the drafted instrument (21.12.16). Mapping was also confirmed as being correct to enable the PC opinion to be finalised on 13 February 2017.

The Plan can now be made

LEP Assessment

Date Received from RPA : **22-Nov-2016**

LEP Determination

Date Publish Notification

Date sent to Parliamentary Council to Draft LEP : **06-Feb-2017**

Determination Date :

Determination Decision :

Notification Date :