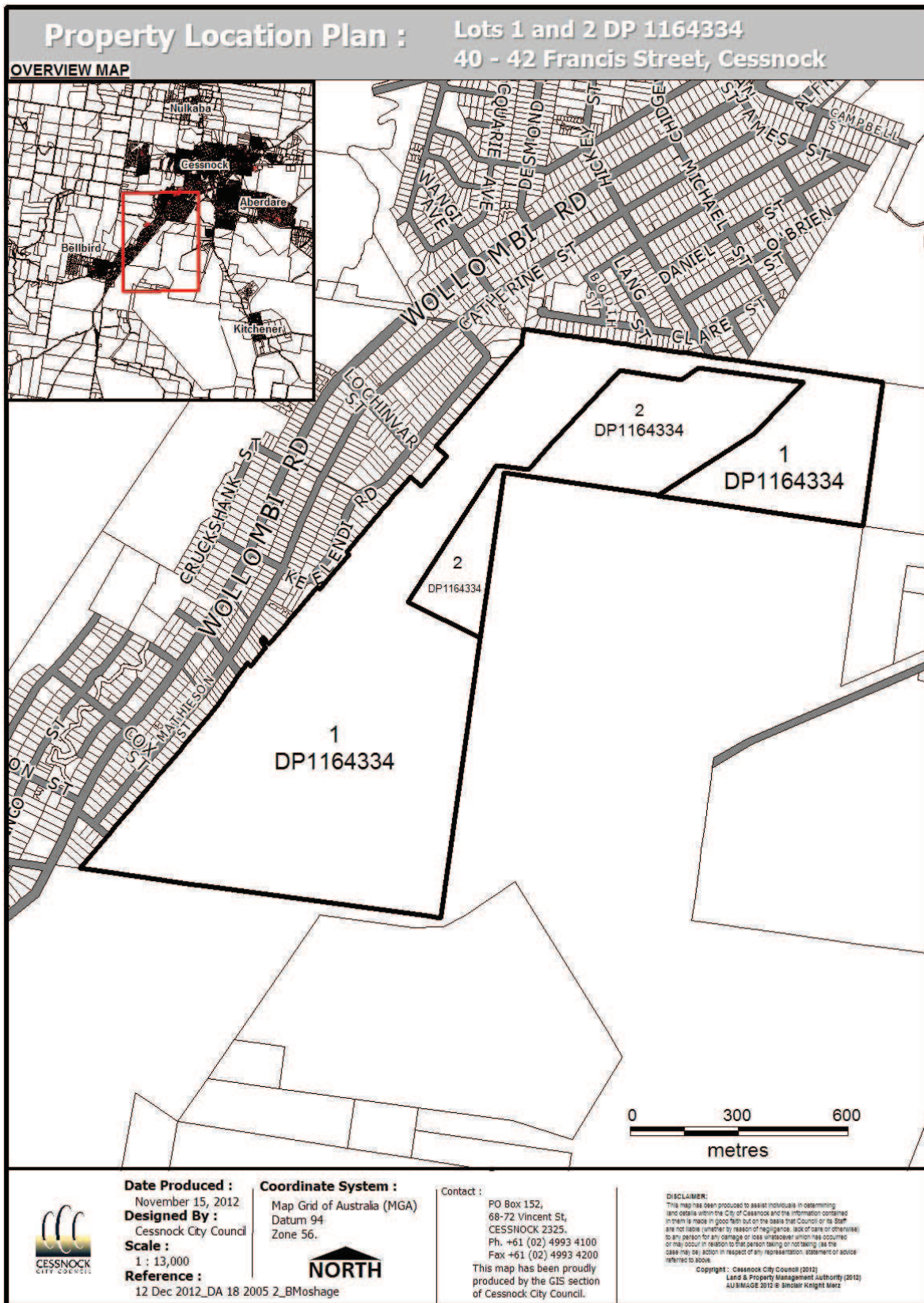




WINTON PARTNERS

LEVEL 15, 25 BLIGH ST SYDNEY NSW 2000 AUSTRALIA
telephone +61 2 9233 4903 facsimile +61 2 9233 4325

5 November 2012

The General Manager
Cessnock City Council
PO Box 152
Cessnock NSW 2325

Attention Bo Moshage

RE: BELLBIRD HEIGHTS – PLANNING PROPOSAL

We refer to our ongoing correspondence regarding the above mentioned planning proposal. As per the unanimous Council resolution on 21 March 2012 the proponent is required to provide documentation and studies that have been requested by the Department of Planning and Infrastructure (DoPI) to enable a planning proposal to be assessed and determined under the Gateway Process.

DoPI requirements were:

1. Mine Subsidence and Contamination.
2. Incompatibility between proposed residential use and current mine operations.
3. Environmental offsets if required.

For clarification the above three points primarily resolved from the original planning proposal that was being considered for up to 700 residential lots over the entire site. The 700 lot application was associated with the MOU/Deed the NSW Governments Crown Solicitor had prepared. Under the MOU/Deed the Bellbird Heights development site had an external environmental offset site that was proposed to be transferred to the National Park Network as part of the Lower Hunter Regional Conservation Plan.

Post Justice Lloyds decision in the Gwandalan case the Government insisted the MOU/Deed had to be revoked for the planning proposal for the Bellbird Heights site before the application could be progress. This has occurred for the Bellbird Heights site.

With the removal of the external environmental offset site, the Office of Environmental Heritage (OEH) previous concurrence for the rezoning was withdrawn. Consequently discussions were required to recommence with OEH to ascertain their requirements. As a result the development potential under the original planning proposal for the site has been reduced to approximately 1/3rd of the site, with the balance of the site to be zoned Environmental/Rural.

The area seeking to be rezoned for residential use for the site coincides with the development approval which exists for a 240 unit aged care facility which has been substantially commenced. So from a very simplistic view the final planning proposal seeks to zone land for residential purposes which has already been approved under a separate application for aged care dwellings.

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With respect to specific DoPI requirements raised in order for Council to progress the planning proposal for a Gateway Determination to be resolved, we advise as per below.

Mine Subsidence and Contamination

The development area under the revised planning proposal is over land where no mining has been undertaken, therefore no mine subsidence issues exists. The Mine Subsidence Board has no requirements for land which has no previous underground mining. This land coincides where development approval exist for 240 unit aged care facility which has been substantially commenced. The existing approval supports the suitability of the proposed residential zone land with respect to mine subsidence.

With Respect to the reference to contamination this related to the area which Austar Mine are currently undertaking emplacement works (lot 2 DP1164334). This area is not proposed to be rezoned for residential use. Austar Mine has a statutory obligation to rehabilitate this area in accordance with their Mines Operation Plan which they are continuing to progress. There is no contamination with respect to the to the revised planning proposal development area.

Incompatibility between proposed residential use and current mine operations.

As mentioned above the revised development area coincides with the existing development approval for 240 unit aged care development. The existing approval supports the suitability of the proposed residential zone land with respect to any perceived land use conflicts.

In addition to the above we have commissioned a noise consultant report to survey the current noise conditions relating to the mine emplacement work being undertaken by Austar Mine. As shown in the enclosed report the noise generated by the current Austar Mine works is well below the requirements for having an impact on residential development, even at the closest point to the mine emplacement area (lot 2 DP1164334).

We note that recently the Office of Resource and Energy letter dated 3 October 2012, copy enclosed has removed their objection to the residential zoning proposed for the site, with the exception of the area incorporating the 100 metre buffer around the mine emplacement area (lot 2 DP1164334).

We discussed with councillors and staff at a site inspection, DoPI staff, Austar Mine representatives and the Office of Resource and Energy that the 100 metre buffer has been registered on title via a restriction as to user, as well as a Caveat by Austar Mine. The registered restriction as to user on title states that "no development allowing residential occupancy is permitted within the area designated as (C) Restriction as to User". Copy of deposited plan and 88B are enclosed. The restriction as to user and the associated caveat will restrict development within this 100 metre buffer thus remove any potential land conflict use whilst the emplacement land continues to be used (noting current Austar Mine predictions have the emplacement area filled by end 2015).

From a practical aspect we are continuing to seek the rezone the site per the preferred zone plan enclosed.

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We have recently met with Dr Kevin Rumming regarding the reasons behind the 100 metre buffer objection. We have been advised the legal reasons behind the objection relate to the following:

- *the Item 2 of the Section 88B Instrument itself provides that the persons empowered to release, vary or modify the Restriction are the owners of "the burdened and benefited lots with the consent of the holder of the Mining Lease". Therefore, the restriction could be released merely by agreement between Cessnock Land Pty Ltd and Austar Coal Mine Pty Ltd (or their successors in title), and*
- *under s.28 of the Environmental Planning and Assessment Act 1979, an environmental planning instrument (EPI) may, for the purpose of enabling development in accordance with an EPI or a development consent to be carried out, provide that a restrictive covenant or other instrument shall not apply to any such development. That is, a (private) restrictive covenant registered on the title to land can be rendered ineffective by a s.28 clause in an EPI. In this instance, Cessnock Local Environmental Plan 2011 that applies to the land the site of ML1345 contains a s.28 clause (clause 1.9A(1)).*

With respect to these two dot points, Dr Rumming advised that the likely hood of these occurring is very minimal, however their view was purely from a legal point of view and not a practical one. We have sought our own legal advice and have advised the Office of Resource and Energy that we will seek to have them or Cessnock City Council as a party to release vary or modify the restriction. This would resolve dot point 1 above as a third party would have input into any variation or release of the restriction. Additional if the Office of Resource and Energy or Cessnock City Council are a party to release vary or modify the restriction then dot point 2 would not be relevant as clause 1.9A does not apply to a prescribed authority.

The Office of Resource and Energy are currently having a legal review of this position and if in agreeance would lift their objection to the rezoning of the 100 metre buffer area.

Regardless of the above we have met with Monica Gibson and Katrine O'Flaherty from the Department of Planning & Infrastructure (DoPI) to discuss this matter. The departments informal verbal view was that the alternative position would be that the majority of the site proposed for residential zoning could be zoned now and the area effected by the 100 metre buffer could be zoned under a separate application in due course. We enclose plan showing the alternative option.

We understand that the Minister for Planning is currently actively looking for sites that can be zoned for residential development that can provide housing without significant infrastructure costs or time delays. The alternative option plan as shown, has multiple road connection points to the site, with these roads having all required services at the sites property boundary. If the site was zoned and had development approval we could be constructing straight away and providing much needed housing.

Our preference remains to resolve the objection and rezone the site in one application. We are proposing to start development at the southern corner of the subject site, which is approximately over 1km from the emplacement works. By the time rezoning has occurred, development consent granted, and the development constructed in stages and houses constructed it is more than likely the emplacement works will have been completed.

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Environmental offsets if required.

As discussed above the primary change in the planning proposal is associated with the environmental zoning associated with the site. As per the enclosed preferred zoning plan, the intention is to now zone approximately 2/3rds of the site as an Environmental Zone. The balance of the site would be zoned residential and rural.

We have met with OEH and their response to the proposed zone is enclosed and summarised by:

"In this regard, and based on an initial review of the draft zone map (October 2012), OEH is generally supportive of the proposed zoning outcome. OEH will be in a position to provide further advice during the formal consultation phase of the planning proposal."

We are and will continue to work through with OEH during the formal consultation once a Gateway determination has occurred.

With respect to the other points in your letter we understand these are not required to finalise a report to seek a Council endorsement for a gateway determination. Regardless we advise:

- Voluntary Planning Agreement (VPA) or s.94 plan – we have previously advised Council we are willing to prepare and enter into a VPA.
- Traffic and updated studies – these were provided to Council July 2011 and again in November 2011.
- Biodiversity offsets – as per comments above.

In summarising the above we are of the view that the points raised by DoPI have more than adequately been addressed for Council to progress the application to seek a Gateway determination. The balance of the detail will be progressed during the process, which is similar to other planning proposals under the Gateway system.

General Comment

With respect to Council's comment regarding status of land owner/developer we advise that Cessnock Land Pty Ltd remains the legal land owner and Winton Partners Bellbird (WPB) have become the proponent/developer of the site. WPB are very keen to progress the rezoning and subsequent development of the site. As such WPB have been actively pursuing end users to take up house and land packages for the site. WPB advise:

Winton Partners Bellbird ("WPB") has received firm expressions of interest, and a refundable fee, from approximately 100 parties wanting to participate in a future release of residential land in Bellbird. Subject to achieving a suitable planning outcome, the registered parties have the first option to acquire their preferred lot. WPB considers that such high levels of demand at such an early stage in the development process is consequent of the persistent shortages of affordable housing options in the area, and also the underlying appeal of Cessnock to prospective residents.

WINTON PARTNERS

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Should you wish to discuss any of the matters raised above or attached, or want to inspect the site please call to discuss.

We look forward to working with Council to progress this application in a timely manner with a view to providing housing to the LGA as quick as possible.

If you have any further enquiries regarding the above please do not hesitate to contact the writer. Please forward any written responses to Winton Partners Bellbird, C/O GPO BOX 2557 Sydney, NSW 2001.

Sincerely,
Jamie Boswell
Project Manager

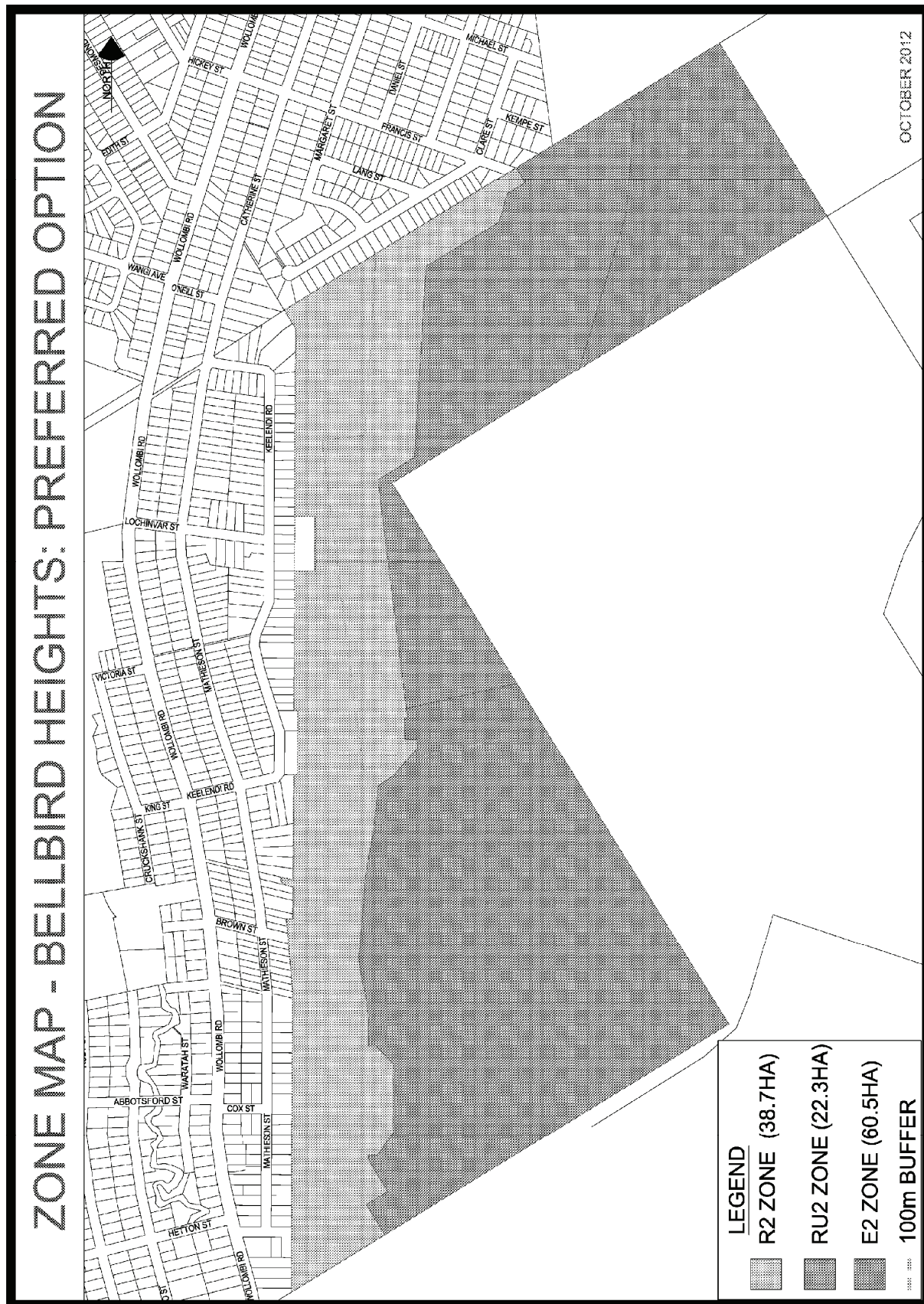
Enclosures
Preferred zone plan;
Alternative zone plan;
OEH correspondence;
Office of Resource and Energy correspondence;
Noise Study;
Current titles/deposited plan/88B.

cc Monica Gibson, Katrine O'Flaherty Department of Planning & Infrastructure

WINTON PARTNERS

LEVEL 15, 25 BLIGH ST SYDNEY NSW 2000 AUSTRALIA
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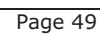
Preferred Zone Plan



WINTON PARTNERS

LEVEL 15, 25 BLIGH ST SYDNEY NSW 2000 AUSTRALIA
telephone +61 2 9233 4902 facsimile +61 2 9233 2325

Alternative Zone Plan



WINTON PARTNERS

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OEH Correspondence

Jamie Boswell

From: Richard Bath [Richard.Bath@environment.nsw.gov.au]
Sent: Monday, 15 October 2012 2:56 PM
To: Jamie Boswell
Cc: Lucas Grenadier
Subject: RE: Bellbird Heights

Jamie

Under the provisions of the *Environmental Planning and Assessment Act 1979*, OEH has an advisory role (as opposed to a concurrence role) in land rezonings / planning proposals.

In this regard, and based on an initial review of the draft zone map (October 2012), OEH is generally supportive of the proposed zoning outcome.

In regards to the adequacy of the ecological data on the site, it is noted that the existing assessment was conducted by Harper Somers O'Sullivan in May 2005. This report may need to be updated to account for legislative changes and to confirm the status of vegetation and other ecological attributes on the site. At the meeting with Cessnock City Council on 6 September 2012, OEH requested that the biobanking assessment methodology be used to determine whether the planning proposal would achieve an 'improve or maintain' outcome for biodiversity values.

OEH will be in a position to provide further advice during the formal consultation phase of the planning proposal.

Regards,

Richard Bath | Head - Hunter Planning Unit | Conservation and Regulation - North East | Office of Environment and Heritage | Ph: 4908 6805 | Fx: 4908 6810 | PO Box 488G Newcastle 2300 |

From: Jamie Boswell [mailto:jamie@hardieholdings.com]
Sent: Thursday, 11 October 2012 9:44 AM
To: Bath Richard; Grenadier Lucas
Subject: Bellbird Heights

Richard/Lucas

Following up from our meeting with CCC regarding OEH concurrence for our Bellbird Heights site.

What we are proposing is attached and summarised below:

R2 zoning – 38.7ha. This area is highly degraded, and say 50% is grassland. Entire area has no understorey.

RU2 zoning – 21.4ha. Area currently used as the mine emplacement area. We have checked with Austar and on completion their requirement is to leave the site as grassland.

E2 zoning – 61.6ha. Best of the undisturbed land as the previous mine works were underground.

So with the R2 zone with 50% as grassland, there is 19.35ha. Proposing to zone 61.6ha as E2 – so ratio of 3:1.

Quick question – do we really need another ecology report to articulate this?

Regards,

Jamie Boswell

T: 9233 2588

F: 9233 6599

M: 0448882757

E: jamie@hardieholdings.com

W: www.hardieholdings.com

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Any views expressed in this email are those of the individual sender except where the sender expressly and with authority states them to be the views of the Office of Environment and Heritage, NSW Department of Premier and Cabinet.

PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

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Office of Resource and Energy Correspondence

Jamie Boswell

From: kevin.ruming@industry.nsw.gov.au
Sent: Wednesday, 31 October 2012 4:36 PM
To: Jamie Boswell
Subject: RE: Bellbird Heights Rezoning

Hello Jamie,
I will have to get our legal to confirm this.

cheers
Kev

Dr Kevin Ruming | Acting Manager | Coal Advice | Mineral Resources
Office of Resources and Energy | 516 High Street | Maitland NSW 2320 | PO Box 344 | HPMO NSW 2310
T: 02 4931 6701 | F: 02 4931 6788 | M: 0403 047 887 | E: kevin.ruming@industry.nsw.gov.au
W: www.industry.nsw.gov.au | www.dpi.nsw.gov.au

From: "Jamie Boswell" <jamie@hardieholdings.com>
To: <kevin.ruming@industry.nsw.gov.au>
Cc: <steven.palmer@industry.nsw.gov.au>
Date: 28/10/2012 09:06 PM
Subject: RE: Bellbird Heights Rezoning

Hi Kevin/Steven

We have considered the below and what would appear to cover these points would be if Office of Resources and Energy was added as a party to release vary and modify the restriction.

With the Office of Resources and Energy added as a party clause 1.9A of the Cessnock LEP would not apply as this clause does not apply to a prescribed authority.

Could you please advise, and if you agree we will approach Austar for their consent to vary the 88B instrument.

Regards,
Jamie Boswell
T: 9233 2588
F: 9233 6599
M: 0448882757
E: jamie@hardieholdings.com
W: www.hardieholdings.com

From: kevin.ruming@industry.nsw.gov.au [<mailto:kevin.ruming@industry.nsw.gov.au>]
Sent: Friday, 19 October 2012 1:53 PM
To: Jamie Boswell
Cc: steven.palmer@industry.nsw.gov.au
Subject: RE: Bellbird Heights Rezoning

Jamie,

the two points.

- the Item 2 of the Section 88B Instrument itself provides that the persons empowered to release, vary or modify the Restriction are the owners of "the burdened and benefited lots with the consent of the holder of the

- Mining Lease". Therefore, the restriction could be released merely by agreement between Cessnock Land Pty Ltd and Austar Coal Mine Pty Ltd (or their successors in title), and
- under s.28 of the Environmental Planning and Assessment Act 1979, an environmental planning instrument (EPI) may, for the purpose of enabling development in accordance with an EPI or a development consent to be carried out, provide that a restrictive covenant or other instrument shall not apply to any such development. That is, a (private) restrictive covenant registered on the title to land can be rendered ineffective by a s.28 clause in an EPI. In this instance, Cessnock Local Environmental Plan 2011 that applies to the land the site of ML1345 contains a s.28 clause (clause 1.9A(1)).
 -
 - cheers
 - kev

Dr Kevin Rumung | Acting Manager | Coal Advice | Mineral Resources
Office of Resources and Energy | 516 High Street | Maitland NSW 2320 | PO Box 344 | HRMC NSW 2310
T: 02 4931 6701 | F: 02 4931 6788 | M: 0409 047 897 | E: kevin.rumung@industry.nsw.gov.au
W: www.industry.nsw.gov.au | www.dpi.nsw.gov.au

From: "Jamie Boswell" <jamie@hardieholdings.com>
To: <kevin.rumung@industry.nsw.gov.au>
Cc: <steven.palmer@industry.nsw.gov.au>
Date: 19/10/2012 10:51 AM
Subject: RE: Bellbird Heights Rezoning

Thanks,

Could you please send the advise you had yesterday as discussed.

From: kevin.rumung@industry.nsw.gov.au [<mailto:kevin.rumung@industry.nsw.gov.au>]
Sent: Friday, 19 October 2012 9:13 AM
To: Jamie Boswell
Cc: steven.palmer@industry.nsw.gov.au
Subject: Re: Bellbird Heights Rezoning

Hello Jamie,

the clause 1.9a is the issue. Council may be able to advise on this and it may be relatively straight forward.

Kev

Dr Kevin Rumung | Acting Manager | Coal Advice | Mineral Resources
Office of Resources and Energy | 516 High Street | Maitland NSW 2320 | PO Box 344 | HRMC NSW 2310
T: 02 4931 6701 | F: 02 4931 6788 | M: 0409 047 897 | E: kevin.rumung@industry.nsw.gov.au
W: www.industry.nsw.gov.au | www.dpi.nsw.gov.au

From: "Jamie Boswell" <jamie@hardieholdings.com>
To: <kevin.rumung@industry.nsw.gov.au>, <steven.palmer@industry.nsw.gov.au>
Date: 18/10/2012 05:33 PM
Subject: Bellbird Heights Rezoning

Hi Kevin/Stephen

Thanks for your time today. I have had another look at the clause 1.9.A under Cessnock Local Environmental Plan 2011.

Is it as simple as the Department does not object to the proposed residential rezoning by Hardie Holdings of part Lot 1 DP1164334 as shown in the attached October 2012 zone plan, subject to confirmation Cessnock City Council will not seek to utilise Clause 1.9.A, Cessnock Local Environmental Plan 2011, "Suspension of covenants, agreements and instruments" to enable residential occupancy within the buffer area of the Aberdare Emplacement area, as per the registered restriction as to user numbered 2 in DP1164334. All relevant documents attached.

Concept being all agree the deed is water tight, and the only loop hole lawyers have found is Clause 1.9.A of the Cessnock LEP 2011. The above is a way of closing that loophole?

Let me know your thoughts before we get our lawyers involved as it possible is simple.

Regards,

Jamie Boswell

T: 9233 2588

F: 9233 6599

M: 0448882757

E: jamie@hardieholdings.com

W: www.hardieholdings.com

[attachment "Titles DP 88B Covenants Caveat.pdf" deleted by Kevin Ruming/DII/NSW] [attachment "BELLBIRD ZONE PLAN OCTOBER 2012.pdf" deleted by Kevin Ruming/DII/NSW]

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Resources
& Energy

RECEIVED
09 OCT 2012

BY: _____

Our Ref: OUT12/24875

Jamie Boswell
Hardie Holdings
GPO Box 2557
Sydney NSW 2011

BELLBIRD HEIGHTS REZONING

Dear Jamie,

The Department has reviewed the rezoning proposal at Bellbird Heights (see map 1). The Department still objects to any rezoning to residential land within Mining Lease 1345 held by Austar Coal Mine Pty Ltd. However, the Department has lifted its' previous objection to the rezoning of land to residential use adjacent to this mining lease.

The Department will subsequently lift the current rezoning objection on the area covered by Mining Lease 1345 when all rehabilitation requirements have been fulfilled and approved by the Department.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Kevin Ruming'.

Kevin Ruming
A/Manager
Coal Advice

3 October 2012

cc. Dave Maclean – General Manager, Austar Coal
Bo Moshage – Cessnock City Council

Coal Advice - Mineral Resources
PO Box 344, Hunter Region Mail Centre NSW 2310
516 High St MAITLAND NSW 2320
Tel: 1300 736 122 Fax: 02 4931 6788
www.industry.nsw.gov.au
ABN 72189919072

BELLBIRD HEIGHTS



Map 1. Location of Mining Lease 1345 and Lots 1 & 2 DP 1164334.

WINTON PARTNERS

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telephone +61 2 9233 4902 facsimile +61 2 9233 2325

Noise Study



25 July 2012

Ref: 11697/4371

Jamie Boswell
Hardie Holdings
GPO Box 2557
SYDNEY NSW 2001

RE: BELLBIRD HEIGHTS ACOUSTIC ASSESSMENT

This letter report presents the results of noise measurements and modelling conducted for the proposed rezoning for a 300 Lot residential subdivision at Bellbird Heights. The proposed subdivision lies to the south-east of Mathieson Street, with an AUSTAR Coal spoil emplacement area and haulage route approximately 400m further to the east.

Figure 1 shows a site layout overlaid on an aerial photograph and also indicates the attended noise measurement location. **Figure 2** shows the proposed layout of the four-stage subdivision.

Cessnock City Council is the consent authority for the proposal and as such has requested that an assessment of potential noise impacts from AUSTAR Coal be submitted with the re-zoning application.

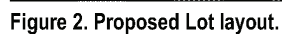


Bellbird Heights Subdivision



Figure 1. Aerial photograph of project site.





During the worst case 15 minute period, a piece of machinery was intermittently audible at the emplacement area and three trucks arrived at the emplacement area and departed via the haul road indicated in Figure 2.



Bellbird Heights Subdivision

Measured noise levels associated with all identified AUSTAR sources are summarised below, along with the duration of each noise event. These individual events are then averaged over the 15-minute assessment period and summed together for comparison with the noise guide of 38 dB(A), $L_{eq}(15\text{minute})$.

Source	dB(A), $L_{eq}(\text{time, sec})$	dB(A), $L_{eq}(15\text{minute})$
Machine at emplacement	32 (128)	23.5
Truck 1 (arrive)	40 (29)	25.1
Truck 1 (dump)	34 (15)	16.2
Truck 1 (depart)	42 (14)	23.9
Truck 2 (arrive)	39 (24)	23.3
Truck 2 (dump)	33 (10)	13.5
Truck 2 (depart)	43 (16)	25.5
Truck 3 (arrive)	36 (31)	21.4
Truck 3 (dump)	30 (16)	12.5
Truck 3 (depart)	41 (22)	24.9
TOTAL $L_{Aeq}(15\text{ minute})$		32.2

The noise contribution of 32 dB(A) from AUSTAR mine was 1 dB below the background noise level and 6 dB below the level of 38 dB(A) that the INP recommends should not be exceeded.

Since the measurement location was closer to the haul road than any of the proposed residential building lots (see Figure 1), and Stages 1-3 of the subdivision would benefit from a ridge line between housing lots and the AUSTAR haul road (see Figure 2), the expected noise level at all lots in the proposed Stages 1-4 would be below the level of 32 dB(A) measured in this study.

These results suggest that AUSTAR noise levels will be well below acceptable industrial noise levels at all Lots in the proposed subdivision and further detailed acoustic study of the proposal, or individual lots, will not be required.

We trust this report fulfils your requirements at this time, however, should you require additional information or assistance please contact the undersigned on 4954 2276.

Yours faithfully,

SPECTRUM ACOUSTICS PTY LIMITED

Author:

Neil Pennington

Acoustical Consultant

Review:

Ross Hodge

Acoustical Consultant



WINTON PARTNERS

LEVEL 15, 25 BLIGH ST SYDNEY NSW 2000 AUSTRALIA
telephone +61 2 9233 4902 facsimile +61 2 9233 2325

Current Titles/Deposited Plan/88B



Order number: 7485522
Your Reference: bellbird anna
11/06/11 11:47

DRAFT

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1/1164334

SEARCH DATE	TIME	EDITION NO	DATE
11/8/2011	11:47 AM	1	16/6/2011

LAND

LOT 1 IN DEPOSITED PLAN 1164334
AT CESSNOCK
LOCAL GOVERNMENT AREA CESSNOCK
PARISH OF CESSNOCK COUNTY OF NORTHUMBERLAND
TITLE DIAGRAM DP1164334

FIRST SCHEDULE

CESSNOCK LAND PTY LIMITED

SECOND SCHEDULE (8 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AB399535 MORTGAGE TO PERPETUAL NOMINEES LIMITED
AB925807 VARIATION OF MORTGAGE AB399535
AD899811 VARIATION OF MORTGAGE AB399535
- 3 AB782657 EASEMENT FOR ELECTRICITY AND ACCESS VARIABLE WIDTH
AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE
DIAGRAM
- * 4 AF478750 CAVEAT BY AUSTAR COAL MINE PTY LIMITED
- 5 DP1164334 RIGHT OF CARRIAGEWAY 25 METRE(S) WIDE REFERRED TO AND
NUMBERED (1) IN THE S.88B INSTRUMENT AFFECTING THE SITE
DESIGNATED (B) IN THE TITLE DIAGRAM
- 6 DP1164334 RESTRICTION(S) ON THE USE OF LAND
- 7 DP1164334 RIGHT OF CARRIAGEWAY 25 METRE(S) WIDE REFERRED TO AND
NUMBERED (3) IN THE S.88B INSTRUMENT AFFECTING THE SITE
DESIGNATED (D) IN THE TITLE DIAGRAM
- 8 DP1164334 EASEMENT FOR ELECTRICAL PURPOSES 25 METRE(S) WIDE
AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE
DIAGRAM

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 11/8/2011

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.
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Order number: 7486332
Your Reference: bellbird anna
11/06/11 13:16

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/1164334

SEARCH DATE	TIME	EDITION NO	DATE
11/8/2011	1:16 PM	1	16/6/2011

LAND

LOT 2 IN DEPOSITED PLAN 1164334
AT CESSNOCK
LOCAL GOVERNMENT AREA CESSNOCK
PARISH OF CESSNOCK COUNTY OF NORTHUMBERLAND
TITLE DIAGRAM DP1164334

FIRST SCHEDULE

CESSNOCK LAND PTY LIMITED

SECOND SCHEDULE (7 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AB399535 MORTGAGE TO PERPETUAL NOMINEES LIMITED
AB925807 VARIATION OF MORTGAGE AB399535
AD899811 VARIATION OF MORTGAGE AB399535
- * 3 AF478750 CAVEAT BY AUSTAR COAL MINE PTY LIMITED
- 4 DP1164334 RIGHT OF CARRIAGEWAY 25 METRE(S) WIDE (B) REFERRED TO
AND NUMBERED (1) IN THE S.88B INSTRUMENT APPURTENANT TO
THE LAND ABOVE DESCRIBED
- 5 DP1164334 RESTRICTION(S) ON THE USE OF LAND
- 6 DP1164334 RIGHT OF CARRIAGEWAY 25 METRE(S) WIDE (D) REFERRED TO
AND NUMBERED (3) IN THE S.88B INSTRUMENT APPURTENANT TO
THE LAND ABOVE DESCRIBED
- 7 DP1164334 EASEMENT FOR ELECTRICAL PURPOSES 25 METRE(S) WIDE
APPURTENANT TO THE LAND ABOVE DESCRIBED

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 11/8/2011

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.
© State of New South Wales through Land and Property Management Authority (2011)
SAI Global Property Division an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with section 96B(2) of the Real Property Act 1900.



Reg:R596676 /Doc:DP 1164334 P /Rev:16-Jun-2011 /Sts:SC.OK /Prt:11-Aug-201
Ref:4877P#s:ALL /Seq:2 of 3

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 2 sheet(s)	
SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants. PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1964, AS AMENDED IT IS INTENDED TO CREATE : 1. RIGHT OF CARRIAGEWAY 25 WIDE 2. RESTRICTION AS TO USER 3. RIGHT OF CARRIAGEWAY 25 WIDE 4. EASEMENT FOR ELECTRICAL PURPOSES 25 WIDE <i>Executed by Cessnock Land Pty Ltd ACN 088 457 989 in accordance with section 127 of the Corporations Act 2001 by:</i> <i>[Signature]</i> Duncan John Hardie Sole Director / Secretary Use PLAN FORM 6A for additional certificates, signatures, seals and statements	 DP1164334 S	OFFICE USE ONLY	
	Registered :  16.06.2011 Title System : TORRENS Purpose : SUBDIVISION		PLAN OF SUBDIVISION OF LOTS 2 & 3 DP1036300
	L.G.A. : CESSNOCK Locality : BELLBIRD CESSNOCK Parish : CESSNOCK County : NORTHUMBERLAND		Surveying & Spatial Information Regulation, 2006 I <u>BRETT WHITE</u> of <u>POSITIVE SURVEY SOLUTIONS PTY LTD</u> PO BOX 1273 NEWCASTLE 2300 a surveyor registered under the Surveying Act, 2002, certify that the survey represented in this plan is accurate, has been made in accordance with the Surveying Regulation, 2006 and was completed on : <u>25TH OCTOBER 2009</u>
	Crown Lands NSW/Western Lands Office Approval I in approving this plan certify (Authorised Officer) that all necessary approvals in regard to the allocation of the land shown herein have been given Signature : Date : File Number : Office :		The survey relates to <u>LOTS 1 & 2 ONLY</u> (specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey) Signature <i>[Signature]</i> Dated : <u>25/10/2009</u> Surveyor registered under the Surveying and Spatial Information Act, 2002 Datum Line : <u>'X' - 'Y'</u> Type : Urban/Rural
	Subdivision Certificate I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to : the proposed <u>subdivision</u> set out herein (insert "subdivision" or "new road") <i>A. Turner</i> * Authorised Person / General Manager / Accredited Certifier Consent Authority : <u>Cessnock City Council</u> Date of Endorsement : <u>OCTOBER 18, 2010</u> Accreditation No. : Subdivision Certificate No : <u>14/2000/10601</u> File No. : <u>8/2006/10601</u> * Dates whichever is applicable		Plans used in preparation of Survey/Compilation: DP 1036300 DP 1078532 DP 48819 M 1326 M 20864
SURVEYOR'S REFERENCE : 00061 2009M7100(1323) PARTIAL SURVEY			

Req:R596676 /Doc:DP 1164334 P /Rev:16-Jun-2011 /Sts:SC.OK /Prt:11-Aug-2011
Ref:148878PgH:ALL /Seq:3 of 3

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 2 of 2 sheet(s)
PLAN OF SUBDIVISION OF LOTS 2 & 3 DP1036300	DP1164334	
Subdivision Certificate No: 14/2006/1060/1		Registered :  16.06.2011
Date of Endorsement: 18.10.2010		
Signed in my presence for and on behalf of Perpetual Nominees Limited (A.C.N. 000 738 700) by its Attorneys <u>Sonal Razdan</u> who are personally known to me and each of whom declares that he/she has been appointed by the Board of Directors of that company as an attorney of the company for the purposes of the Power of Attorney dated <u>31/03/09</u> (Registration No. <u>45651619</u>) and that he/she has no notice of the revocation of his/her powers. Signature of Witness <u>Mark Callaghan</u> Full name of Witness Signature of Attorney <u>[Signature]</u> Signature of Attorney <u>[Signature]</u>		
SURVEYOR'S REFERENCE : 00061 2009M7100(1323) PARTIAL SURVEY		

OFFICE USE ONLY

Reg:EE95711 /Doc:DP 1164334 B /Env:16-Jun-2011 /Sta:SCLOK /Pri:11-Aug-2011 11:47 /Pgs:ALL /Seq:1 of 6
Ref: /Sta:E

Instrument setting out terms of Easement or Profits a Pendre intended to be created
and of Restrictions on the User of Land or Positive Covenants intended to be created
pursuant to Section 88B of the Conveyancing Act 1919



DP1164334 B

(Sheet 1 of 6 sheets)

Plan of Subdivision of Lot 2 & 3 DP1036300
covered by Subdivision Certificate

Full name and address
of the owner of the land:

Cessnock Land Pty Ltd ACN 088 457 959
Level 1, 106 King Street
Sydney NSW 2001

Part 1

Number of item shown in the intention panel on the plan	Identity of easement, profit a pendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Right of carriageway 25 wide	1	2 and Lot 1 in Deposited Plan 87087
2	Restriction as to user	1 and 2	2 and Lot 1 in Deposited Plan 87087
3	Right of carriageway 25 wide	1	2
4	Easement for Electrical Purposes 25 wide	1	2

Part 2

Terms of easement, profit a pendre, restriction, or positive covenant numbered 1 in
the plan.

Right of carriageway (delineated (B) on the plan) as set out in Part 1 of Schedule 8 of
the Conveyancing Act 1919 (NSW) with the addition of the following terms.

1. The holder of the Mining Lease is entitled to exercise the rights under this easement
for the duration of the Mining Lease subject to observation of the conditions of this
easement.
2. If the registered proprietor of either the dominant of servient tenements or the holder
or the Mining Lease (**Requesting Party**) requires that a noise attenuation barrier
(similar to those in use for highway barriers) be installed along part or the whole of
this easement that party may make a request by giving notice to the other party
(**Receiving Party**) that such a noise attenuation barrier is required.

page 1 of 6

Reg: E596711 / Doc: DP 1164334 5 / Rev: 16-Jun-2011 / Stat: SC.GH / Pct: 11-Aug-2011 11:47 / Pgs: All / Seq: 2 of 6
Ref: / Src: U

DP1164334

(Sheet 2 of 6 sheets)

3. The Requesting Party is responsible for applying for any necessary Approval from the relevant Authorities for the construction or installation of the noise attenuation barrier.
4. The Receiving Party must sign all documents and do all things reasonably available to it to enable the Requesting Party to make any application under clause (4).
5. When a party makes a request under clause (3):
 - (i) the Requesting Party must give notice to the Receiving Party of the cost of the construction and/or installation of the noise attenuation barrier;
 - (ii) each party must contribute one half of the cost of construction and/or installation of the noise attenuation barrier; and
 - (iii) each party must contribute one half of any and all costs associated with any Approval required and sought under clause (4).
6. If a noise attenuation barrier is installed along part or the whole of this easement in accordance with a request under clause (3) each party must contribute one half of the cost of dismantling the noise attenuation barrier at the completion of the Authorised Activities.
7. The Requesting Party must as soon as practicable after receiving any invoice for the construction, installation or dismantling of the noise attenuation barrier, provide the Receiving Party with an invoice which requests payment of one half of the cost invoiced.
8. The Receiving Party must within 21 days of the receipt of any invoice under clause (8) make payment in full in accordance with the terms of the invoice to the Requesting Party.
9. If a party fails to fulfill its obligations under clauses 3-9 (**Defaulting Party**) the other party (**Notifying Party**) may serve a notice on the Defaulting Party (**Default Notice**) which specifies:
 - (i) the default of the Defaulting Party;
 - (ii) the action required to be taken by the Defaulting Party to remedy the default; and
 - (iii) a reasonable time (must not be less than 7 days unless otherwise agreed by the parties) within which the default is to be remedied.
10. If the Defaulting Party does not remedy the default as required by the Default Notice, the Notifying Party may at its election:
 - (i) arrange for the construction, installation or dismantling of the noise attenuation barrier; and/or
 - (ii) take such action as the Notifying Party considers is reasonably required to recover the cost of rectifying the default from the Defaulting Party, including without limitation, such action as the Notifying Party considers is reasonably required to recover the one half share required under clauses 6(ii), 6(iii) or (7); and/or
 - (iii) if the default is material institute legal proceedings to protect the position of the non-defaulting party.

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Ref: /Str:U

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11. The Notifying Party may recover all of its costs incurred in acting under clauses 3-16 as a debt from the Defaulting Party (including all labour, materials, administrative and management costs, and legal costs on an indemnity basis).
12. Any party seeking payment from the other under clauses 3-16 must provide full particulars of the amount claimed and its calculation.
13. Any amount due under clauses 3-16 by the registered proprietor(s) of either the dominant or servient tenements to the holder of the Mining Lease may be set off against other money due by Austar Coal to the Landholder under the *Mining Act 1992* (NSW).
14. The parties must continue to perform their obligations and may continue to exercise their rights under this easement during the period of any dispute or litigation.
15. Neither party may institute any litigation, arbitration or other legal proceedings or dispute resolution process unless it has first followed the steps provided for in clauses 3-15.
16. The registered proprietor of the servient tenement will not impede the access of the holder of the Mining Lease to the easement.
17. This easement may only be released when the Mining Lease terminates.

In this easement:

"**Approval**" means any licence, consent, permit, approval or other requirement of any authority or existing or continuing use rights to conduct any activity on Lots 2 and 3 in Deposited Plan 1036300;

"**Authorised Activities**" means any activity the holder of the Mining Lease is authorised and obliged to do by virtue of the Mining Lease or under any Approval;

"**Authority**" means any government, semi governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person; and

"**Mining Lease**" means mining lease 1345 granted on 23 March 1995 under the Mining Act 1992 (NSW) and held by Austar Coal Mine Pty Limited as modified, varied or renewed from time to time including any new Mining Authority (as defined under the Mining Act 1992 (NSW)) issued over the burdened or benefited lots consequent upon an application to reduce the area of mining lease 1345 being granted.

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(Sheet 4 of 6 sheets)

Terms of easement, profit a pendre, restriction, or positive covenant numbered 2 in the plan.

1. No development allowing residential occupation is permitted within the area designated as "(C) Restriction as to user".
2. No objection or complaint from the registered proprietor or occupier of the burdened and benefited lots to operations or activities which are considered in the mining industry to be reasonable and appropriate mining practice and which comply with all applicable Approvals for the Austar Coal Mine including the Mine Operations Plan for the Authorised Activities contained wholly within the benefited lot and access thereto or Claim will be made by the registered proprietor or occupier of the burdened lots whilst ever the Mining Lease affects the benefited lot.
3. This restriction may only be released when the Mining Lease terminates.

In this restriction:

"Approval" means any licence, consent, permit, approval or other requirement of any authority or existing or continuing use rights to conduct any activity on Lots 2 and 3 in Deposited Plan 1036300;

"Austar Coal Mine" means the coal mine located at Middle Road Paxton NSW operated by Austar Coal Mine Pty Limited under the Austar Coal Mine Consent and Mining Lease;

"Authorised Activities" means any activity Austar Coal Mine Pty Limited is authorised and obliged to do by virtue of the Mining Lease or under any Approval relating to Lots 2 and 3 in Deposited Plan 1036300;

"Claim" means any claim, loss, liability, damage, suit, action, proceeding, order, litigation, Damages, judgment or expense either at Law or in equity or arising under any statute and including (without limitation) any request for an assessment of Compensation or claim for Compensation;

"Compensation" means the compensation payable by Austar Coal Mine Pty Limited (or its successor in title to the Mining Lease) to the registered proprietor (or any successor in title) under the Mining Lease as provided for under Part 13 of the Mining Act 1992 (NSW) and any other compensation entitlement which exists or which may arise under legislation or common law in respect of the Authorised Activities or Mining Lease;

"Consent" means development consent (DA No. 29/95) for the Austar Coal Mine granted 14 February 1996 as modified or replaced from time to time and all other Approvals to operate the Austar Coal Mine from time to time.

"Damages" means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

"Mining Lease" means mining lease 1345 granted on 23 March 1995 under the Mining Act 1992 (NSW) and held by Austar Coal Mine Pty Limited as modified, varied or renewed from time to time including any new Mining Authority (as defined under



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DP1164334

(Sheet 5 of 6 sheets)

the Mining Act 1992 (NSW)) issued over the burdened or benefited lots consequent upon an application to reduce the area of mining lease 1345 being granted; and

"Mining Operations Plan" means the Austar Coal Mine document titled "Mining Operations Plan 2008-2015", dated May 2008, as modified, varied or renewed from time to time.

Terms of easement, profit a pendre, restriction, or positive covenant numbered 3 in the plan.

Right of Carriageway (delineated (D) on the plan) only for the purpose of vehicular access for emergency vehicles.

Name of person or authority empowered to release, vary or modify the Easement numbered 1 & 2 in the plan:

Registered proprietor(s) of the burdened and benefited lots with the consent of the holder of the Mining Lease.

"Mining Lease" means mining lease 1345 granted on 23 March 1995 under the Mining Act 1992 (NSW) and held by Austar Coal Mine Pty Limited as modified, varied or renewed from time to time including any new Mining Authority (as defined under the Mining Act 1992 (NSW)) issued over the burdened or benefited lots consequent upon an application to reduce the area of mining lease 1345 being granted.

Name of person or authority empowered to release, vary or modify the Easement numbered 3 in the plan:

Cessnock City Council

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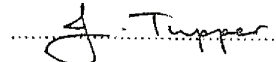


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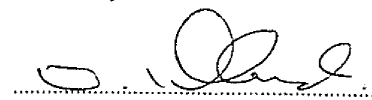
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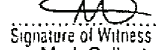
For and on Behalf of CESSNOCK CITY COUNCIL


.....
DEVELOPMENT...SERVICES...MANAGER..

Executed by Cessnock Land Pty
Ltd ACN 088 457 989 in accordance
with section 127 of the Corporations
Act 2001 by:


.....
Duncan John Hardie
Sole Director/Company Secretary

Signed in my presence for and on behalf of Perpetual Nominees
Limited (A.C.N. 000 733 700) by its Attorneys Sonal Razdan
.....
who are personally known to me and each of whom declares that he/she
has been appointed by the Board of Directors of that company as an
attorney of the company for the purposes of the Power of Attorney
dated 21.03.09 (Registration No. 545/619...) and that
he/she has no notice of the revocation of his/her powers.


Signature of Witness ASSISTANT
Mark Callaghan MANAGER
Full name of Witness
Signature of Attorney Sonal Razdan
Senior Account Executive

REGISTERED  16.06.2011

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af: /SIN:U

Form: 08X
Release: 3.0
www.lands.nsw.gov.au

CAVEAT

Prohibiting Recording of a Dealing or
Granting of a Possessory Application
New South Wales
Section 74F Real Property Act 1991



AF478750H

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

FOLIO IDENTIFIERS 2/1036300 AND 3/1036300

(B) REGISTERED DEALING

Number

Torrens Title

(C) LODGED BY

Document Collection
Box 47 V

Name, Address or DX, Telephone, and LLPN if any

LLPN H.M. Allen & Co.
123012 E DX 437 Sydney
Ph 5273 3650

CODE

Reference: SH. A45 437.56

X

(D) REGISTERED PROPRIETOR

CESSNOCK LAND PTY LIMITED
ACN 088 457 989
LEVEL 1, 106 KING STREET, SYDNEY, NSW

Postcode: 2000

(E) CAVEATOR

Insert the full name and residential address

AUSTAR COAL MINE PTY LIMITED
ACN 111 910 822
UNIT 1105, LEVEL 11, 68 YORK STREET, SYDNEY, NSW

Postcode: 2000

(F) NAME AND ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR

The address must be a street address. If desired, a Document Exchange box in NSW may be provided in addition.

Name: AUSTAR COAL MINE PTY LIMITED ACN111910822
Street Address: UNIT 1105, LEVEL 11, 68 YORK STREET
SYDNEY, NSW

Postcode: 2000

Document Exchange Box in NSW (additional):

NOTE: if the caveator's name or address for service of notices changes, the Department of Lands, Land and Property Information Division, must be notified on form 08CX.

(G) ACTION PROHIBITED

1

(H) The caveator claims to be entitled to the estate or interest in the above land specified in in Schedule 1 by virtue of the instrument set out in that schedule and prohibits the Registrar General from taking, with respect to the above land, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.
0807

4976644 /DocID: AF478750 /Rev:11-May-2010 /Stat:SC:OK /Prt:30-Mar-2011 13:27 /Pg:ALL /Seq:2 of 3
i: /Src:0

WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; damages may be awarded for lodging a caveat without justification; and penalties could be imposed for a breach of the Oaths Act 1900 and section 117 of the Real Property Act 1900. Furthermore failure to observe the requirements of section 117 of the Real Property Act 1900 and regulations 7 and 8 of the Real Property Regulation 1998 may make the caveat invalid.

(I) **SCHEDULE 1 Estate or interest claimed**

Nature of the estate or interest in the abovementioned land		
LEASE AND COMPENSATION AGREEMENT		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
SEE ANNEXURE A		
By virtue of the facts stated below		

(J) **SCHEDULE 2 Action prohibited by this caveat**

1. The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
2. The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
3. The registration of delimitation plan¹ No.
4. The granting of any possessory application² with respect to the land in the folio of the Register referred to above.
5. The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
6. The granting of an application to extinguish the NOT APPLICABLE created by NOT APPLICABLE No.
7. The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) **STATUTORY DECLARATION³**

I, KELLY ANNE O'MULLANE, SOLICITOR FOR THE CAVEATOR

solemnly and sincerely declare that—

1. To the best of my knowledge, information and belief the caveator has a good and valid claim to the estate or interest set out in Schedule 1.

2. This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor ; I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900. Made and subscribed at MUSWELLBROOK in the STATE OF NSW on 6 MAY 2010 in the presence of

Signature of witness:

Signature of declarant:

Name of witness:

NATALIE ADELE VARDANEA

Capacity of declarant if other than the caveator:

Address of witness:

57 BROOK ST

SOLICITOR FOR THE CAVEATOR

MUSWELLBROOK

Qualification of witness: ☐ Justice of the Peace ☒ Practising Solicitor ☐ Other qualified witness [specify]

(L) **CONSENT OF THE REGISTERED PROPRIETOR of the estate or interest affected by the caveat (section 74F Real Property Act 1900)**

I, the registered proprietor named at letter (D), for the purposes of section 74F(6) Real Property Act 1900 only, consent to this caveat.

Signature of registered proprietor:

1. A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
2. An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
3. As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment at Land and Property Information Division.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

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0807

Reg: E970044 / Doc: D5 AF470750 / Rev: 11-May-2010 / Sls: SC, OK / Ext: 30-Mar-2011 15:27 / Pgs: All / Seg: 3 of 3
Ref: / Src: 9

Annexure A

Schedule 1: Estate or Interest Claimed

By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
1. Mining Lease B45	23 March 1995	Austar Coal Mine Pty Limited and Minister for Mineral Resources
2. Deed of Settlement and Release	10 July 2009	Austar Coal Mine Pty Limited and Cessnock Land Pty Limited

KZO\CIM\NEW\21141142\1



PLANNING PROPOSAL
Amendment to the
Cessnock Local Environment Plan 2011

“BELLBIRD HEIGHTS”

**Rezoning of Lot 1 and Lot 2 DP 1164334
40-42 Francis Street, Cessnock**

**Version 1.0
12 December 2012**

Contact:
Bo Moshage
Coordinator Land Use Planning
Telephone: 02 4993 4241
Email: bo.moshage@cessnock.nsw.gov.au

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Background

The rezoning proposal was lodged with Council in May 2005. The proposal was not supported due to being constrained by past mine workings and there being other less constrained sites able to meet anticipated supply in the longer term. At this time, the (then) Department of Planning advised Council that the proposal should not be pursued until after the release of the Lower Hunter Regional Strategy.

Following the release of the Lower Hunter Regional Strategy in 2006, the site was identified as a 'proposed urban area'.

A locality plan is provided as Map 1.

Council first considered the rezoning proposal at its meeting held 7 February 2007, where it resolved to commence the rezoning of the site to allow urban development. However, the Planning Proposal did not progress due to an unresolved objection from the Department of Resources & Energy (Mineral Resources).

On 24 December 2010 the Bellbird Heights Planning Proposal was transitioned into the 'Gateway', subject to further consideration of the following matters:

- Mine subsidence and site contamination, as identified within the preliminary investigations reports and Council's Planning Proposal;
- Need for and nature of mechanisms to address incompatibility between the proposed residential development and current mine operations identified by Industry and Investment NSW and Council;
- The necessary environmental offsets for the proposed development, including the offsets to be achieved both on and off the site.

Upon resolution of these issues a Planning Proposal was to be lodged with the Department of Planning and Infrastructure and Council given direction on how to proceed with the Planning Proposal, including any consultation requirements.

On 8 December 2011, the Cessnock Planning Panel considered the Bellbird Heights Planning Proposal under Report PPEE72/2011 and resolved:

1. *That the Planning Proposal not proceed; and*
2. *That Council advise the Department of Planning and Infrastructure of the decision not to proceed with the proposal; and*
3. *That the Proponent be invited to lodge a new Planning Proposal when it is demonstrated by documentary evidence that conflicts with adjoining landuses can be resolved – specifically ongoing mining operations.*

With the repeal of the Cessnock Planning Panel on 27 January 2012, Council reconsidered the Bellbird Heights Planning Proposal through the transitional provisions of the Repeal Order, and on 21 March 2012 under Report EE15/2012 resolved:

Council may reconsider the Planning Proposal on the basis that:

- *The Proponent undertake to provide the documentation and studies that have previously been requested by the Department of Planning and Infrastructure; and*

- *The Planning Proposal is again reported to Council, at which time Council can consider forwarding the Proposal to the Department of Planning and Infrastructure for a Gateway Determination; and*
- *Adjoining landholders are notified that Council is considering the planning proposal.*

Following ongoing meetings and discussion, the Proponent submitted on 5 November 2012 supplementary information and a revised land zoning concept, as shown in Figure 1, below.

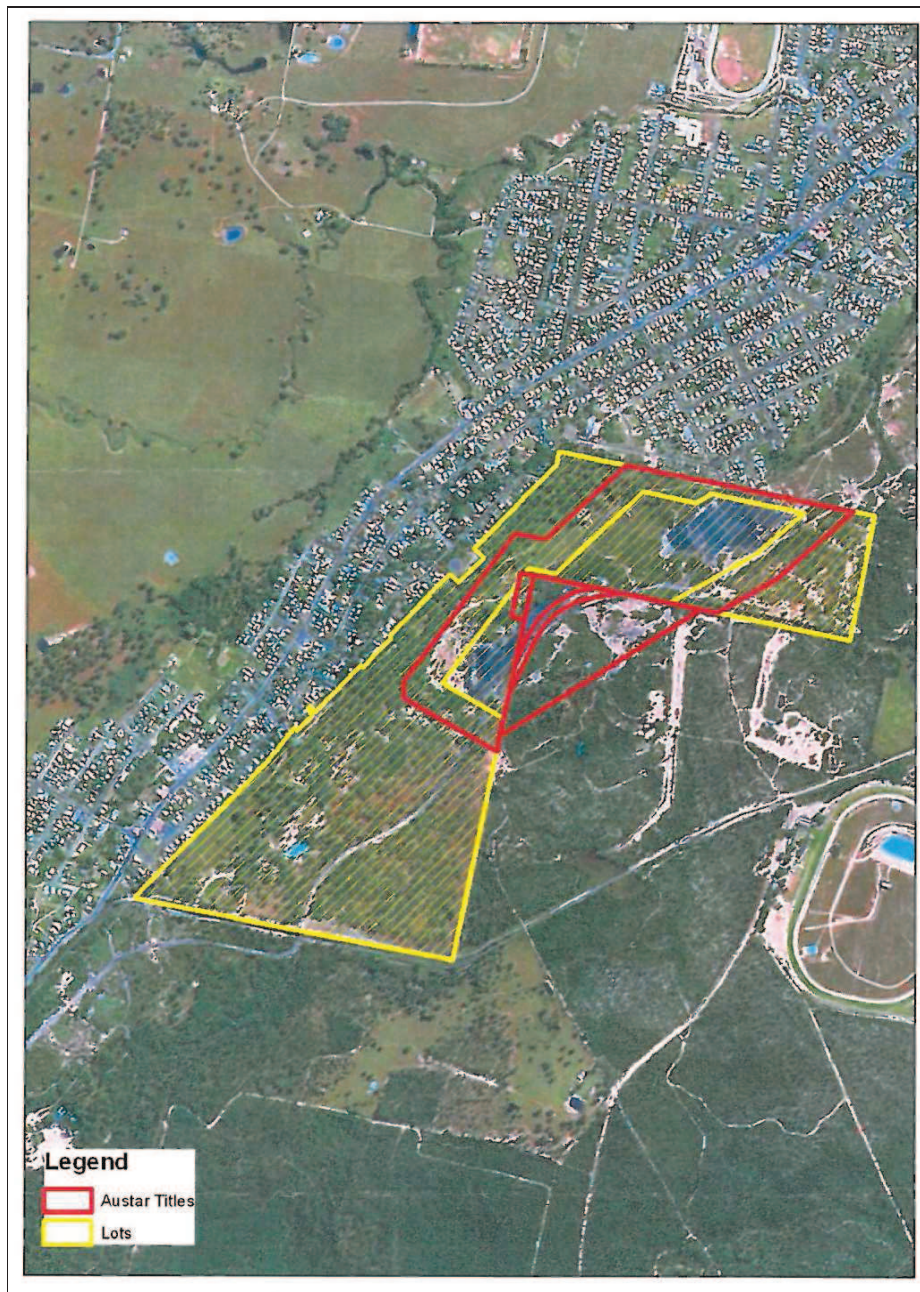


Figure 1: Location of Mining Lease 1345 and Lots 1 & 2 DP 1164334

While a reduction in land area has modified the objection of the Department of Resources and Energy, there still remains a number of unresolved issues relating to

this Planning Proposal, most notably the management of the area proposed for residential development immediately adjoining the active mine emplacement area.

The investigations and consultations for this Planning Proposal have been lengthy but have now progressed to such an extent that the modified Planning Proposal can be sent to the 'Gateway'. However, this will not meet the timeframe outlined in the Gateway Determination for completing the draft LEP by 24 December 2012.

Should Council resolve to proceed with the modified Planning Proposal, a twelve (12) month extension to complete the Planning Proposal, finalise the supporting Development Control Plan and Planning Agreement(s) for biodiversity and local infrastructure requirements will be requested.

PART 1: OBJECTIVES

Objective

To enable an amendment to the planning controls for Lot 1 and Lot 2 DP 1164334, 40-42 Francis Street, Cessnock, known as the "Bellbird Heights" Precinct.

The Bellbird Heights Precinct is adjacent to the existing residential areas located to the south and east.

The subject land is shown in the locality plan as Map 1.

The objective of this Planning Proposal is to enable an expansion of the settlement of Bellbird Heights by rezoning additional land R2 - Low Density Residential Zone for residential allotments of varying sizes.

An E2 - Environmental Conservation zone is proposed to manage on site environmental considerations.

It is proposed to retain the RU2 - Rural Landscape Zone for that part of the land where it is identified that further discussion / investigations are necessary with the Proponent and key Government Agencies to resolve on site issues, particularly where constraints may restrict future development of land for residential purposes.

An indicative zoning concept is shown as Map 2.

Corresponding amendment of Lot Size Map will also need to be made. It is anticipated that a minimum lots size of 450m² to 1000m² for R2 - Low Density Residential, 40ha for the RU2 - Rural Landscape and 80ha minimum lot size for the E2 - Environmental conservation zones will be proposed

The Urban Release Areas Map that supports the Cessnock Local Environmental Plan (2011) will also need to be amended to show the area corresponding to the "Bellbird Heights" Precinct as an Urban Release Area.

PART 2: EXPLANATION of PROVISIONS

The Planning Proposal will implement strategies contained in the Lower Hunter Regional Strategy and Council's City Wide Settlement Strategy that aims for a sustainable level of development, for current and future populations, through the balanced provision of residential and employment land, infrastructure and investment, and environmental protection and conservation.

Proceeding to the Gateway will enable the Planning Proposal to be developed and refined through further investigation, assessment of impacts (and measures to reduce these), and planning of services, and enable the land to come on line for its identified use in a timely manner.

These include requirements that a Development Control Plan be prepared that incorporates provisions relating to flora and fauna conservation, soil erosion and sediment control, drainage and water management, bushfire risk management, remediation of land contamination (if required), the physical and financial feasibility of servicing the land, 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 application for the subject site.

These studies will form the basis for assessing the Planning Proposal and would be professionally reviewed by Council Officers. Where required, independent studies will be undertaken to validate information to allow the full implications of the proposed rezoning to be considered and addressed.

Cessnock DCP 2010

An amendment to Cessnock DCP (2010) will be needed. The form and final (draft) content of this amendment will follow consultation with all relevant public authorities and completion of the supporting studies.

Local Infrastructure

An amendment to Council's current section 94 contributions plan and / or development of a Voluntary Planning Agreement for local infrastructure will be needed. The form and final (draft) content of this plan will follow consultation with all relevant public authorities and completion of the supporting studies.

PART 3: JUSTIFICATION

In accordance with the Department of Planning's "Guide to Preparing Planning Proposals", this section provides a response to the following issues:

- Section A: Need for Proposal;
- Section B: Relationship to Strategic Planning Framework;
- Section C: Environmental, Social and Economic Impact; and
- Section D: State and Commonwealth Interests

Section A: Need for Proposal

1. Resulting from a Strategic Study or Report

The Bellbird Heights Precinct is identified in the Lower Hunter Regional Strategy and Council's City Wide Settlement Strategy (2010) as a future urban area with an anticipated yield of 700. However, the yield for the Bellbird Heights Precinct has been revised down to 305 lots.

The change in lot size provisions is considered to be appropriate in this regard following a review of on-site constraints. Increases in potential yields from other candidate areas with improved servicing availability will need to be investigated to help to off-set the reduced lot yield from this site.

2. Planning Proposal as best way to achieve to objectives

Under the existing zoning controls in the Cessnock LEP 2011, the proposed increased residential densities are not achievable. Therefore, a change to the zoning and minimum lot sizes is required to enable additional residential subdivision of the subject land and to implement the directions of the City Wide Settlement Strategy and the Lower Hunter Regional Strategy.

Placing land use and minimum lot size provisions in Council's Local Environmental Plan, in conjunction with the existing subdivision controls in Council's DCP, is considered to be the most appropriate method for managing subdivision and land use on the locality.

3. Net Community Benefit

A Net Community Benefit test has been undertaken and provided below.

Table 1: Net Community Benefit

Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?	Yes. The land identified as the Bellbird Heights Precinct is consistent with the settlement principles identified in the CWSS and is identified in the LHRS as a 'proposed urban area'.
Will the LEP be consistent with agreed centres and sub-regional planning policy for development in the area?	Yes. Future urban development of the site is capable of meeting the requirements of the LHRS with regard to the provisions of community facilities and services and the rezoning land for urban purposes.

Is the LEP located in a regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?	Yes. The proposal is consistent with the Lower Hunter Regional Strategy, which identifies the Bellbird Heights Precinct as a new release area, forming an extension to the existing urban footprint.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	Yes. The proposed rezoning will provide for employment generating opportunities (through construction stages), and will underpin the local economy by building on the existing residential population and urban infrastructure. The rezoning will not result in the loss of employment lands.
Is the existing public infrastructure capable of servicing the proposed site?	Yes. It is anticipated that a site specific Contributions Plan and / or Voluntary Planning Agreement will include contributions for Council's community assets, roads, drainage and traffic infrastructure. Such contributions would address additional sporting facilities, parks and playgrounds and cycle ways. Ongoing discussions with the Proponent will be required prior to this matter being reported, considered and endorsed by Council. Satisfactory arrangements through the Standard Instrument have been made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land.
Will the LEP facilitate the provision of public transport?	Yes. Existing bus services in the vicinity of the site are minimal. However, it is expected that the additional population will underpin an extension of existing services.
Will the LEP implement studies and strategic work consistent with State and regional policies?	Yes. The proposal is consistent with the Lower Hunter Regional Strategy.

Section B: Relationship to Strategic Planning Framework

4. Consistency with Objectives and Actions within Regional Strategies

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy identifies Cessnock LGA as a location of substantial residential growth (21,700 dwellings), of which a high proportion (19,700) are projected in new release locations, such as at Bellbird Heights.

The Planning Proposal will contribute to the implementation of the housing targets identified in this LHRs by providing additional housing opportunities through mixed residential densities at Bellbird Heights.

5. Consistency with Council's Community Strategic Plan or other Local Strategic Plan

Community Strategic Plan - Our People, Our Place, Our Future

Council's Community Strategic Plan includes 5 key directions related to community, economy, environment, services and leadership, with Objectives and Actions related to each key direction as identified below:

Action 2.1.1 – Promote the whole of the LGA and market the area comprehensively to attract new businesses and residents.

Objective 3.1 - Protecting and enhancing the natural environment and the rural character of the area. Development in accordance with the Proposal needs to be undertaken in a way that achieves this objective. While it is considered appropriate to rezone some of the Land for residential use, protection and enhancement of the natural environment and the rural character around the site is also an important consideration that needs further investigation.

City Wide Settlement Strategy (CWSS) (2010)

In order to implement Ministerial Direction No. 5.1 - Implementation of Regional Strategies, the Bellbird Heights Precinct is identified in the City Wide Settlement Strategy (2010) as a future urban area with an anticipated yield of 700. However, following a review of on-site constraints, the yield for Bellbird Heights Precinct has been revised down to 305 lots.

The change in the number of lots is considered to be appropriate in this regard following a review of on-site constraints. Increases in potential yields from other candidate areas with improved servicing availability will need to be investigated to help to off-set the reduced lot yield from this site.

6. Consistency with State Environmental Planning Policies

An assessment of relevant SEPPs against the Planning Proposal is provided in the table below.

Table 1: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP 6 - Number of Storeys in a Building	The SEPP clarifies the reference to storey, floors and levels.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 15 - Rural Land Sharing Communities	The SEPP provides for multiple occupancy development, with council consent, in rural and non-urban zones, subject to a list of criteria in the policy.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 21 -Caravan Parks	The SEPP provides for development for caravan parks.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 22 - Shops and commercial premises	The SEPP provides for the change of use of commercial premises.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 30 - Intensive Agriculture	The SEPP provides considerations for consent for intensive agriculture.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 32 - Urban Consolidation (Redevelopment of Urban Land)	The SEPP makes provision for the re-development of urban land suitable for multi-unit housing and related development.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 33 - Hazardous & Offensive Development	The SEPP provides considerations for consent for hazardous & offensive development.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 36 - Manufactured Homes Estates	The SEPP makes provision to encourage manufactured homes estates through permitting this use where caravan parks are permitted and allowing subdivision.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 44 - Koala Habitat Protection	This SEPP applies to land across NSW that is greater than 1 hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 50 - Canal Estates	The SEPP bans new canal estates from the date of gazettal, to ensure coastal and aquatic environments are not affected by these developments.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 55 - Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination	The Environmental Assessment, undertaken in November 2005, concludes that any contamination is expected to be small scale and

		localised as a result of former uses of the site (the Aberdare Extended Colliery mined the site until 1966). This potential contamination is not expected to be of an extent that would preclude the proposed development. Remediation work would be required if any contamination is encountered during redevelopment works. The reports suggest that a dumped washery reject located on the site has the potential to generate acidic leachate. It recommends that a management plan be devised for the dumped washery reject, as the acid producing potential of the mine spoil had the potential to affect the environment on and around the site, including corrosion of buried structures acidification of drainage water, and detrimental effects of future landscaping or other vegetation. The additional contaminated land information submitted with the Proposal is confusing and appears to not have comprehensively tested the Land for contamination. It is recommended potential contamination and remediation be investigated in more detailed analysis, should the Proposal proceed through the Gateway process.
SEPP 62 - Sustainable Aquaculture	The SEPP relates to development for aquaculture and to development arising from the rezoning of land and is of relevance for site specific rezoning proposals.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 64 - Advertising and Signage	The SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 65 - Design Quality of Residential Development	The SEPP relates to residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.

	residential flat development.	
SEPP Building Sustainability Index: BASIX 2004	The SEPP provides for the implementation of BASIX throughout the State.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Housing for Seniors or People with a Disability 2004	The SEPP aims to encourage provision of housing for seniors, including residential care facilities. The SEPP provides development standards.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Major Development 2005	The SEPP defines certain developments that are major projects to be assessed under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. It also provides planning provisions for State significant sites. In addition, the SEPP identifies the council consent authority functions that may be carried out by Joint Regional Planning Panels (JRPPs) and classes of regional development to be determined by JRPPs.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Infrastructure 2007	The SEPP provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	Clause 104 of the SEPP requires developments of a certain size identified within Schedule 3 to be referred to the RTA. Council has undertaken consultation with the RTA who advised that they will rely on provisions in the LEP which ensure that satisfactory arrangements for the provision of State public infrastructure are made prior to the subdivision of land in an urban release area.
SEPP Mining, Petroleum Production and Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Temporary Structures 2007	The SEPP provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Exempt and Complying Development Codes 2008	The SEPP provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.

SEPP Rural Lands 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Affordable Rental Housing 2009	The SEPP provides for an increase in the supply and diversity of affordable rental and social housing in NSW.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP State and Regional Development 2011	The SEPP aims to identify development and infrastructure that is State significant and confer functions on the Joint Regional Planning Panels (JRPPs) to determine development applications.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.

7. Consistency with s.117 Ministerial Directions for Local Plan Making

The Proposal is inconsistent with some of the relevant directions for the reasons given against each direction in the Table below. The inconsistencies have been considered against the relevant criteria and it has been determined that there is justification for some of the inconsistencies.

Table 2: Relevant Section 117 Ministerial Directions

Ministerial Direction	Aim of Direction	Consistency and Implication
1. EMPLOYMENT AND RESOURCES		
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	The land zoned RU2 - Rural Landscape is of limited agricultural potential. The Bellbird Heights Precinct is also identified for future urban development in the Lower Hunter Regional Strategy and is therefore considered to be consistent with this Direction. The Planning Proposal is not inconsistent with this Direction.
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	In consultation with the DRE, it was advised that there are no significant coal resources beneath the subject land due to past mining activity between 1917 and 1972. However, part of the subject site is covered by a current mining lease, which is an essential part of the Austar mine's operations, being the placement area for washery reject. The proposed residential usage would be incompatible with the current usage of the site. Following discussion with DRE, they confirmed that they would

		no longer object to the proposal subject to no land being rezoned residential in the area covered by ML 1345.
1.5 Rural Lands	The objective of this direction is to protect the agricultural production value of rural land and facilitate the economic development of rural lands for rural related purposes.	The Planning Proposal will rezone the Land from rural to residential and is therefore inconsistent with this direction. However, the Proposal is consistent with the LHRS (criteria c) and the Land is identified in the LHRS, were the benefits between rural land and residential zoning have been considered and the preferred strategies approved (criteria a). The inconsistency with this Direction is justified in this instance.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	The Planning Proposal will include provisions to facilitate the protection and conservation of identified environmentally sensitive areas in a manner consistent with a property Vegetation Plan or a Voluntary Planning Agreement. The Planning Proposal is not inconsistent with this Direction.
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	<u>Aboriginal Heritage</u> An Aboriginal Heritage Impact Assessment undertaken on the site found a number of isolated finds, including stone tools and a flaked glass tool. The Assessment concludes however that due to the disturbed nature of the site, it is of relatively low scientific, archaeological or Aboriginal cultural significance. Notwithstanding, should any sites be impacted on by the proposal, the AHIA recommends that additional sub-surface testing be undertaken prior to development occurring, artefacts be salvaged and kept with the appropriate group, subject to relevant permit being obtained and Mindaribba Local Aboriginal Land Council and the Lower Hunter Wonnarua Council be informed prior to the commencement of any work

		within the study area. <u>European Heritage</u> A Heritage Impact Assessment was undertaken on the site to assess the impact of the proposal on the Bellbird Branch Line of the South Maitland Railway. The report makes a number of recommendations, including maintaining the existing 100m wide corridor from which development is precluded, erecting fencing, camouflaged with native vegetation planting, along the railway corridor and providing pedestrian access to the Bellbird cutting bridge with appropriate signage to provide information on the history of the Bellbird Branch Line. The report concludes that the proposal will not have a detrimental impact on the SMR subject to the above recommendations being implemented.
2.4 Recreation Vehicle Areas	The draft LEP amendment does not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>).	Nothing in this planning proposal affects the aims and provisions of this Direction
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	Encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource lands.	HWC raises no objection to the proposal. The Corporation confirms, however, that there is limited capacity in the existing water supply system and wastewater transportation and treatment to accommodate new development, and augmentation works to existing infrastructure and a new pump station will be required to cater for the additional loads. This is actively being pursued by the proponent as part of a water supply and wastewater strategy being undertaken to adjust programming and amplify the infrastructure accordingly and will be finalised prior to gazettal should Council be given authorisation to exhibit the draft Plan. Provisions in the LEP 2011 facilitate the arrangements for

		the provision of State infrastructure and public utility infrastructure before the subdivision of land in an urban release area to satisfy the needs that arise from development of the land. The Planning Proposal is not inconsistent with this Direction.
3.2 Caravan parks and Manufactured Home Estates	The objective of this direction is to provide for a variety of housing types, and provide opportunities for caravan parks and manufactured home estates.	The Planning Proposal does not seek to rezone land to provide for caravan parks or manufactured home estates, further there are no existing caravan parks within the study area. It is considered that the Planning Proposal is consistent with this Direction.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	Home occupations are permitted without consent in the proposed R2 Zone. The Planning Proposal is consistent with this Direction.
3.4 Integrating Land Use and Transport	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs subdivision and street layouts achieve the sustainable transport objectives.	The RTA (now RMS) has advised they will rely on the provisions of the LEP which facilitate the satisfactory arrangements for the provision of State public infrastructure is made prior to the subdivision of land in an urban release area. Local infrastructure requirements will be facilitated through a site specific Contributions Plan and / or Voluntary Planning Agreement.
3.5 Development Near Licensed Aerodromes	The objectives of this direction to ensure the efficient and safe operation of aerodromes, ensure their operation is not compromised by incompatible future adjoining land uses	Planning Proposal not affected by this direction.
3.6 Shooting Ranges	The objective of this direction is to maintain appropriate levels of public safety and amenity, reduce land use conflict and identify issues that must be addressed when rezoning land adjacent to an existing shooting range.	Planning proposal not affected by this direction.

4. HAZARD AND RISK		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils	Planning proposal not affected by this direction.
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	The Mine Subsidence Board have advised that additional investigation is required in some areas of the precinct to determine whether historical mining activities pose a threat to future development of the precinct. While the Planning Proposal is not strictly inconsistent with Direction 4.2, this matter needs to be resolved prior to rezoning.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	Part of the land is likely to be within the 1:100 year flood zone. Notwithstanding, the Planning Proposal is not seeking to rezone flood prone land. It is considered that the Planning Proposal is consistent with this Direction.
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	This Direction requires consultation with the NSW Rural Fire Service if a draft LEP affects land mapped as bushfire prone land. The subject land is mapped as Bushfire Prone Land and a Bushfire Planning Assessment was prepared of the site. Comments received from the RFS confirm that future development requires bushfire safety authorities to be issued by the RFS to enable the land to be developed. Detailed bushfire controls will need to be submitted and assessed at the development application stage to ensure compliance with Planning for Bushfire Protection Guidelines and Rural Fires Act.
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional	The LHRS is relevant. The Planning Proposal has been modified to consider the on site constraints.

	strategies.	It is considered that the Planning Proposal is consistent with this Direction.
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal does not propose amendments which require concurrence, consultation or referral of development applications to the Minister. The Planning Proposal does not identify any development as designated development. It is considered that the Planning Proposal is consistent with this Direction.
6.2 Reserving Land for Public Purposes	The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Planning Proposal not affected by this direction.
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal does not propose to allow a particular development to be carried out on site.

Section C: Environmental, Social and Economic Impact

8. Impact on Threatened Species

Harper Somers O'Sullivan (Ecology) Pty Ltd undertook a flora and fauna assessment in May 2005 where it was established that:

- The site contains four (4) vegetation communities, being:
 - Lower Hunter Spotted Gum – Ironbark Forest (LHSGIF);
 - a small area of Hunter Lowland Redgum Forest (HLRF);
 - degraded Kurri Sand Swamp Woodland (KSSW); and
 - Cleared/Mainly Cleared Land.

The LHSGIF, HLRF and KSSW are listed as Endangered Ecological Communities under the *TSC Act (1995)*.

- The site contains one (1) threatened flora species - *Eucalyptus parramattensis* subsp. *Decadens* (Drooping Red Gum), which is located within the KSSW community.
- *Macrozamia flexuosa* (Burrawang) listed as a Rare or Threatened Australian Plant (ROTAP) was recorded within the LHSGIF during these and previous investigations.
- *Grevillea montana* was found as a scattered understorey species within the KSSW. This species is considered to be of regional significance, though is noted as occurring commonly in bushland remnants within the wider locality of the site.
- The fauna species recorded are considered typical of the habitats present on the site and in the vicinity of Cessnock. Species recorded were predominantly restricted to common avifauna, although several species of native and introduced mammals were also identified.
- Two threatened fauna species as listed in the *Threatened Species Conservation Act (TSC Act 1995)* were recorded during the course of these investigations, being:
 - *Petaurus norfolcensis* (Squirrel Glider); and
 - *Mormopterus norfolkensis* (East-coast Freetail-bat).
- Previous studies undertaken by Ecotone (2001) recorded the presence of three additional threatened species, being:
 - *Chthonicola sagittata* (Speckled Warbler);
 - *Falsistrellus tasmaniensis* (Eastern Falsistrelle); and
 - *Scoteanax rueppelli* (Greater Broad-nosed Bat)

The Office of Environment and Heritage (OEH) are generally supportive of the proposed land use zoning outcomes for biodiversity and will be in a position to provide further advice during the formal consultation phase of the planning proposal.

A critical issue for the success of this Planning Proposal is how any environmental offset is managed. It is not considered appropriate that this land be transferred to Council because of ongoing cost considerations. While the ownership and management arrangements for the offset land are not in place at this time it is considered acceptable to progress the Planning Proposal to Gateway determination, as the negotiations between the Proponent and the OEH will be ongoing.

9. Environmental Impact

The Planning Proposal will have a positive environmental impact by conserving land of biodiversity significance in an E2 - Environmental Conservation zone.

Most of the land of biodiversity significance is proposed to be zoned E2 - Environmental Conservation and not developed in order to protect an endangered ecological community and to provide part of the biodiversity offset for vegetation removal within the proposed urban development area.

A Vegetation Management Plan is required prior to subdivision involving the land proposed to be zoned E2 - Environmental Conservation.

The Proposal will have a negative environmental impact because most residents will need to travel for employment. It is highly likely that many will travel by motor vehicle because of the dispersed nature of employment opportunities.

10. Social and Economic Impacts

A social impact assessment of the Proposal has not been provided and appears not to have been undertaken. To ensure that adequate provision of community facilities and other local infrastructure requirements for the proposed development, Council intends to prepare either a Section 94 Contributions Plan or Voluntary Planning Agreement for the Bellbird Heights Precinct.

Additional investigations and consultation with Council's Infrastructure and Community Departments will be required to determine future needs arising from the development.

Section D: State and Commonwealth Interests

11. Adequate Public Infrastructure

The provision of infrastructure has not been costed in the Planning Proposal. The preparation of a Contributions Plan and / or a Voluntary Planning Agreement will need be undertaken to ensure the adequate provision of local infrastructure, including the impacts of additional traffic on the local road network generated by future industrial development and contributions to drainage works.

12. Consultation with State and Commonwealth Authorities

Council will seek to consult with the following statutory authorities and agencies:

- Department of Planning and Infrastructure (DoP&I)
- Rural Fire Service (RFS);
- Office of Environment and Heritage (OEH);
- Hunter Water Corporation (HWC);
- Mine Subsidence Board (MSB);
- Department of Resource and Energy (DRE) (Mineral Resources);
- Electricity and Gas providers; and
- Roads and Maritime Services (RMS).

PART 4: MAPPING

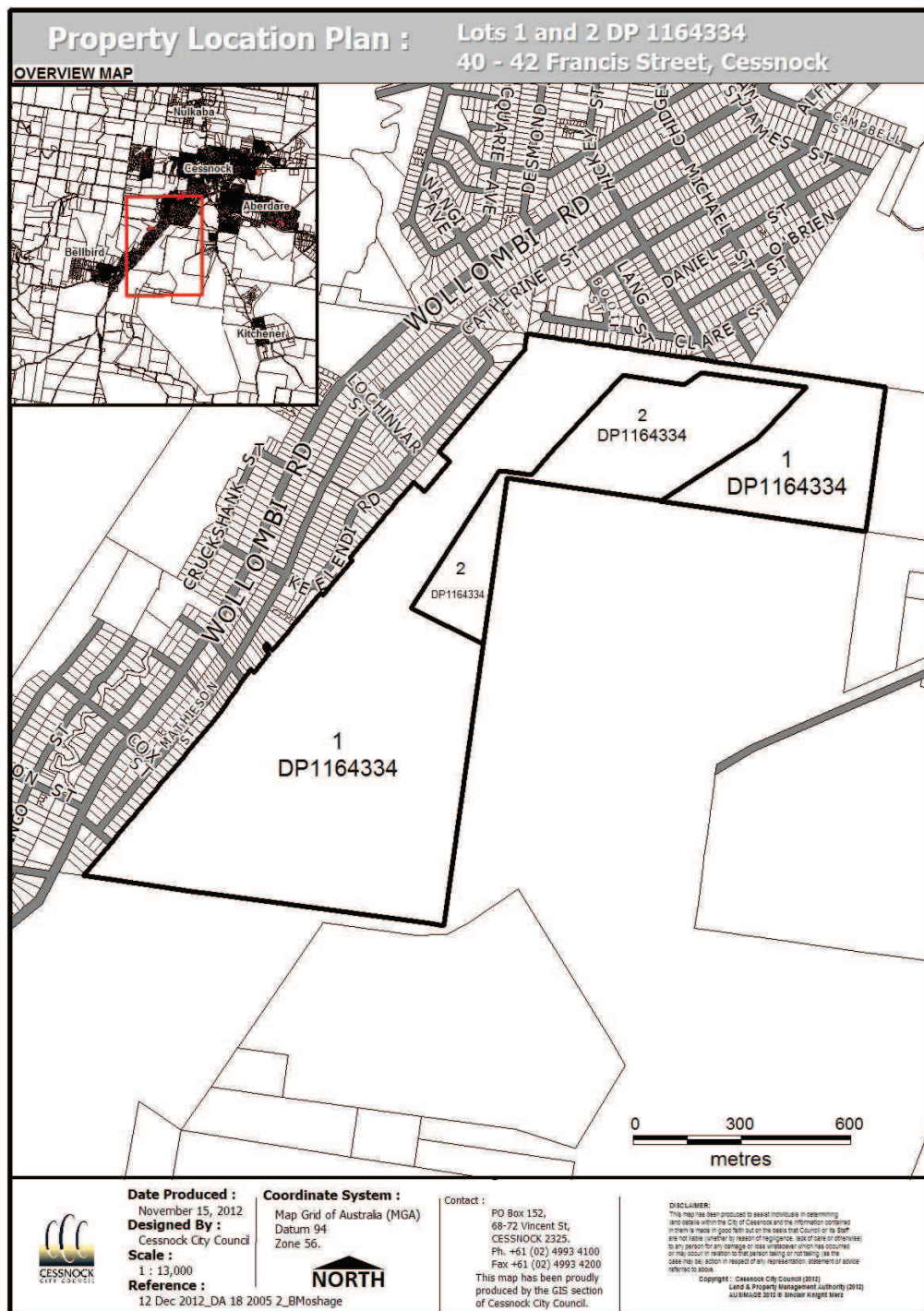
The Planning Proposal seeks to amend the Cessnock Local Environmental Plan 2011 as follows:-

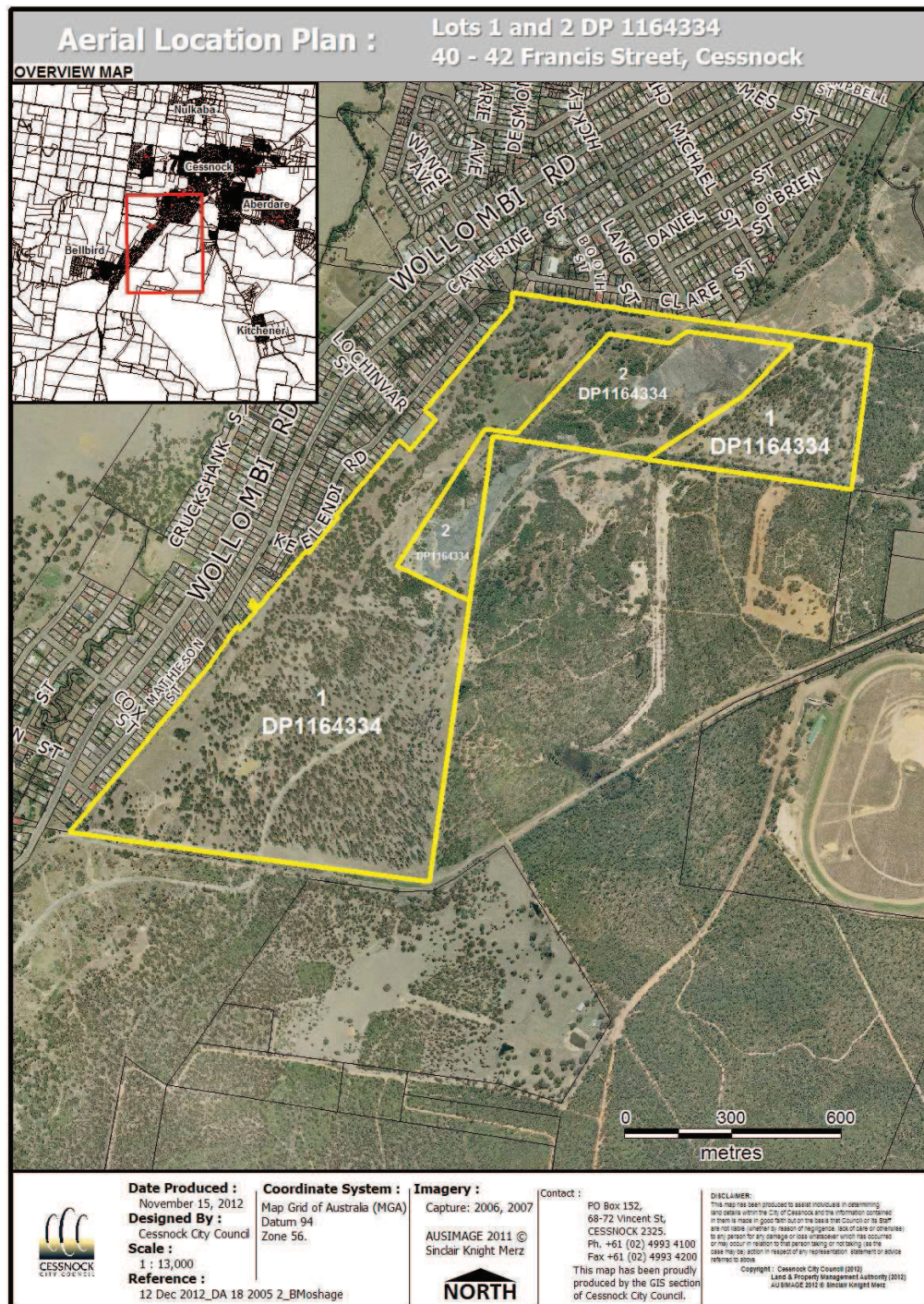
- Land Zoning Map in accordance with the proposed rezoning map attached as Map 3; and
- Corresponding amendment of Lot Size Map will also need to be made. It is anticipated that a minimum lots size of 450m² to 1000m² for R2 - Low Density Residential, 40ha for the RU2 - Rural Landscape and 80ha minimum lot size for the E2 - Environmental Conservation Zone will be proposed.

NOTE: The final proposed zoning boundaries and minimum lot size configurations will relate to the final assessment and consideration of the supporting studies, including the biobanking agreement for the site.

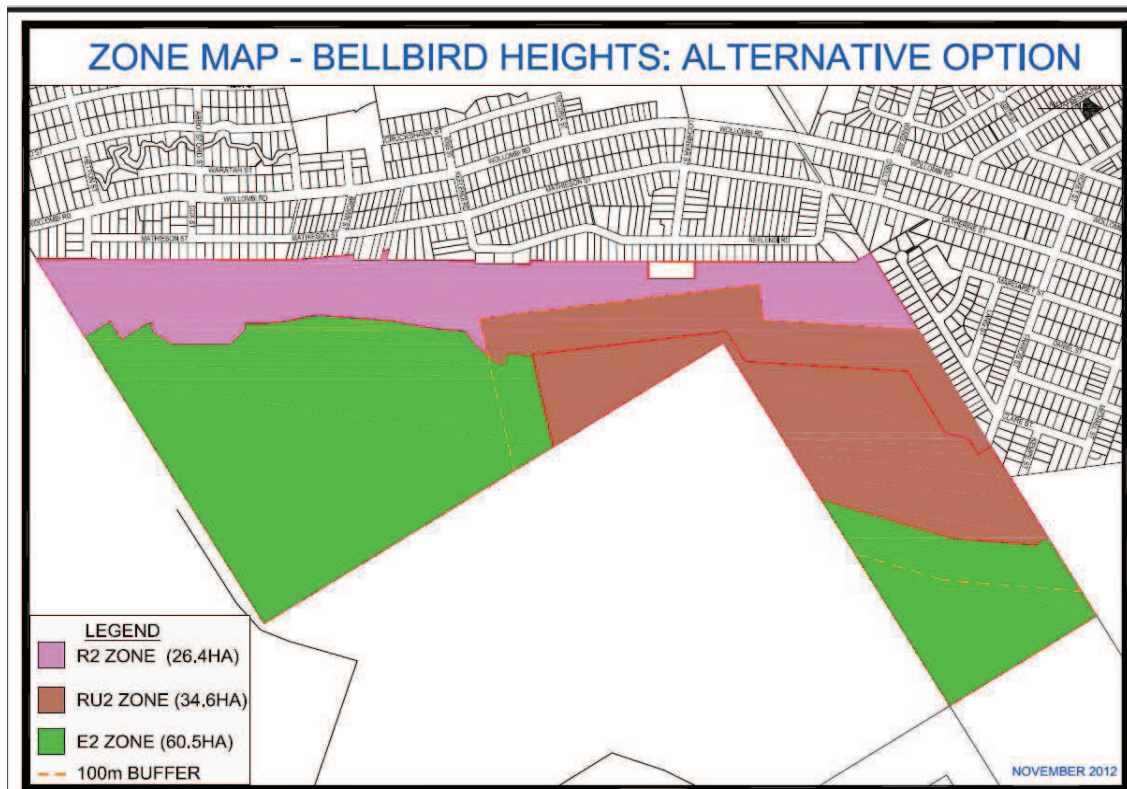
The Urban Release Areas Map that supports the Cessnock Local Environmental Plan (2011) will also need to be amended to show the area corresponding to the "Bellbird Heights" Precinct as an Urban Release Area.

Map 1: Location Plan





Map 2: Proposed Zoning Layout



PART 5: COMMUNITY CONSULTATION

Community consultation will be undertaken in accordance with Council's guidelines, requiring a minimum of twenty eight (28) days exhibition, and any specific requirements made by the Department of Planning and Infrastructure during the gateway determination.

It is also intended to consult with the adjoining land owners and community members who have previously made a submission in regard to this Planning Proposal.

Council will also seek to exhibit in conjunction with the Planning Proposal the draft Development Control Plan and draft Contributions Plan and / or draft Voluntary Planning Agreement.

PART 6: PROJECT TIMELINE

The Project Timeline will assist with tracking the progress of the Planning Proposal through the various stages of consultation and approval. It is estimated that this amendment to the Cessnock Local Environmental Plan 2011 will be completed by December 2013.

PROJECT TIMELINE

	Dec 2012	Jan 2013	Feb 2013	Mar 2013	April 2013	May 2013	June 2013	July 2013	Aug 2013	Sept 2013	Oct 2013	Nov 2013	Dec 2013
STAGE 1 Submit to DoP&I													
Gateway Panel consider Planning Proposal													
STAGE 2 Receive Gateway Determination													
STAGE 2a Consultation / Finalise supporting studies													
Contaminated land study and remediation plan													
Mapping of constraints and hazards													
The physical and financial feasibility of servicing the land													
Conservation of environmentally sensitive areas													
Bushfire assessment and protection													
STAGE 2b Preparation (draft) DCP													
STAGE 2c Preparation of (draft) Contributions Plan													
STAGE 3 Report to Council													
STAGE 4 Preparation of documentation for Public Exhibition													
STAGE 5 Public Exhibition													
STAGE 6 Review/consideration of submission received													
STAGE 7a Council/ Briefing													
STAGE 7b Report to Council													
STAGE 8 Forward Planning Proposal to DoP&I with request the amendment is made													

Appendix 1: Council Report and Minutes

To be added following Council's consideration

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