

Cessnock Local Environmental Plan 2011 Amendment - Bellbird Heights

Proposal Title : **Cessnock Local Environmental Plan 2011 Amendment - Bellbird Heights**

Proposal Summary : **To rezone the 'Bellbird Heights' Precinct from RU2 –Rural Landscape to permit the residential development (26.4ha) and environmental conservation (60.5ha) of appropriate lands. The planning proposal will result in an additional 300 residential allotments adjacent to an existing residential area.**

The planning proposal will also identify the land as an Urban Release Area.

PP Number : **PP_2013_CESSN_001_00**

Dop File No : **12/03341**

Proposal Details

Date Proposal Lodged with DOP : **17-Dec-2012**

Date Proposal Uploaded to Public Website : **11-Jan-2013**

Proposal Assessment

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

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

Gateway Determination

Decision Date : **05-Feb-2013**

Gateway Determination : **Passed with Conditions**

Due Date of LEP : **12-Aug-2015**

Implementation

Implementation Start Date : **12-Feb-2013**

Exhibition Duration : **78**

Agency consultation consistent with recommendation : **Yes**

If No, comment :

Agency Objections : **No**

If Yes, comment : **Agency objections have been resolved.**

Documentation consistent with Gateway :

Yes

If No, comment :

The amendment will rezone 87 ha of RU2 Rural Landscape to R2Low Density Residential and E2 Environment Conservation. The rezoning will allow the development of 305 dwellings while protecting 60.5ha of environmentally sensitive land.
The associated minimum lot size map will be amended to 450m² for the land zoned R2. The land to be zoned E2 will have a minimum subdivision requirement of 40ha.
The subject land will be mapped as an Urban Release Area and will be required to contribute to state infrastructure.

Consultation

The Planning Proposal was exhibited in excess of the requirement of the Gateway Determination of 28 days for a total of 78 days, from 27 November 2013 to 20 January 2014. This extended period accommodated the Christmas/New Year break and an extra 14 days to compensate for a short time that the exhibition material was accidentally removed from Council's website.

31 public submissions and five agency submissions were received. 10 public submissions were in support of the proposal, and 21 public submissions were against the proposal, including a letter from Clayton Barr, Member for Cessnock on behalf of one of his constituents. There was also a petition from the Bellbird Heights Residential Group signed by 86 people objecting to the proposal.

The issues raised in the consultation include:

Amenity and Character

The submissions objected to the proposal due to the perceived loss of amenity for the existing residents of Bellbird, the loss of rural character and that the proposed lots are too small, and inconsistent with the neighbouring residential development.

Council consider the development to be a natural extension of the existing residential area, with lot sizes responsive of the sites constraints.

Traffic

The submissions argue that the proposal will result in unacceptable traffic impacts, with a single entry and exit to the proposed development inadequate. Council determine that a comprehensive traffic study will be required at the Development Application stage. A Voluntary Planning Agreement is also being prepared to require the developer to provide monetary contributions for the upgrade of the existing road network.

Employment

The submissions argue that the area has insufficient employment to support the proposed additional population.

Council envisage that the planning proposal will create jobs in construction and associated trades.

Public transport

The objections argue that there is insufficient public transport provision for servicing the additional population or a safe means to cross Wollombi Road to access the eastward bus stop.

Council anticipate that the Voluntary Planning Agreement will include contributions for Council's community assets, roads, drainage and traffic infrastructure and local infrastructure. Contributions would address additional sporting fields, parks and gardens, playgrounds and cycleways.

Environment

The proposal will result in destruction of habitat, and negatively impact native animals, including those some endangered and vulnerable species.

Council conclude that the Planning Agreement which has been proposed by the proponent will ensure the provision of biodiversity offsets land to compensate for the loss of habitat within the proposed development.

A biodiversity offset proposal has been agreed in principle with the Office of Environment and Heritage (OEH) and corresponds to the proposed E2 – Environment Conservation zone.

Prior to subdivision of the site a Vegetation Management Plan (VMP) must be prepared in consultation with OEH.

Mine Subsidence

The objectors raise the issue that the site is subject to mine subsidence, and disturbance of the site could result in damage to property and injury.

Council argue that discussions have been held with the Mine Subsidence Board and concluded that the area to be developed is not within a mine subsidence district. Although mine subsidence is possible over the site, it will be addressed at the DA stage.

Site Contamination

The objections were based on site contamination assessments not being undertaken on the site.

Council advise that phase 2 contamination assessment has been provided. The assessment determined that there is limited potential for contamination within the areas proposed to be zoned R2 Low Density Residential.

Economic Issues

The objectors argue that there is an oversupply of rental properties in the area and that there are current high vacancy rates in new estates.

Council notes that the Planning Proposal will contribute to the housing targets identified within the Lower Hunter Regional Strategy by providing housing opportunities at Bellbird Heights.

Some objections also claimed that the new development will rise insurance premiums and devalue existing homes in the areas. Council response is that these assertions have not been supported by evidence.

Infrastructure Provision

The submissions argue that Cessnock does not currently have sufficient infrastructure to provide for the increase in population.

Council ascertain that the Voluntary Planning Agreement will address Council infrastructure costs arising from this development.

Dust, Noise and loss of Privacy

The objections state the construction will increase dust and air pollution. Due to land slope, the proposed development will look into existing houses and clearing will result in noise attenuation being removed allowing existing residence to hear nearby train movements.

Council ensure that dust suppression and privacy matters will be assessed at the development application stage.

An acoustic assessment was submitted to Council with this proposal. Council has determined the background noise level is typical of a suburban area.

Social housing

There was a concern that the proposed development may include provisions for housing commission dwellings.

This submission is considered irrelevant.

Consultation

A number of residents raised the matter that the timing of the exhibition over Christmas and New Year didn't allow for enough time for people to make a submission.

Council extended the exhibition time from 28 days to 78 days to allow for the "shut down" period.

No public hearing was required to be held under s56(2)(e) of the EP&A Act 1979.

Consultation with Public Authorities

Consultation was required by the Gateway Determination with

NSW Trade and Investment

Office of Environment and Heritage

Department of Primary Industries – Minerals and Petroleum

Hunter Water Corporation

Mine Subsidence Board

NSW Rural Fire Service

Transport of NSW – Roads and Maritime Services

Department of Resources and Energy (Mineral Resources)

NSW Aboriginal Land Council

The following agencies raised significant planning issues:

NSW Trade and Investment

A small portion of the subject site is located adjacent to the operational Mining Lease 1345 (ML 1345). ML 1345 is set to expire in 2023, although the mine operator may request an extension.

NSW Trade and Investment previously objected to the proposal due to the effect development may have on the operation of ML 1345.

Following negotiations with the proponent, Council, Legal Services Branch and NSW Parliamentary Counsel's Office a solution has been offered which involves delaying the zoning of the land through a unique local provision. The provision enables the land to be zoned residential but retain its rural zoning until the Secretary deems the land is not being used for mining, and all remediation is complete.

Council and NSW Trade and Investment have advised that the clause meets their needs and there is no outstanding objection to the proposal.

Mine Subsidence Board (MSB)

Although the site is not located within a Mine Subsidence District, and therefore MSB approval is not required for surface development of the site, there are shallow mines workings beneath part of the site and history of very dangerous mine subsidence potholes in the area.

The MSB have determined that whilst there is an area of unmined land to be zoned R2, developing this section will increase the risk of potholes to the immediate east of the area. Development in the R2 zone requires that the sub-crop line be defined, using an angle of draw and factor safety. The Planning Proposal advises that the proposed R2 zone boundary is to be located outside of the Greta Seam sub-crop line. The angle of draw is required to be determined to confirm that developable land does not encroach into the area of shallow mine works.

A long term management plan is recommended prior to subdividing the site, to address the issue of shallow mine workings across the site. Council have determined that the provisions in the proposed supporting DCP will include the following matters;

- No development within the angle of draw and factor of safety from the Greta seam sub-crop line, or in the RU2 or E2 zones.
- A long term management plan is to be prepared to the satisfaction of the MSB addressing the shallow workings of the site and taking into account the impact of developing the unmined section of the R2 land will have on the eastern section of the site, or adjoining land.
- Developable land does not encroach into areas of shallow mines workings.

The MSB supports the E2 Environmental Conservation zone and recommends entry be restricted for subsidence management.

Office of Environmental and Heritage (OEH)

OEH is generally supportive of the zoning outcomes of the Planning Proposal, noting that the land in the proposed E2 zone is currently in private ownership and a conservation mechanism to protect and manage this land needs to be secured as part of the planning process.

As a response to OEH, the proponent has proposed a Planning Agreement as a means of ensuring the provisions of biodiversity offsets land to compensate for the loss of habitat within the proposed development.

A biodiversity offset proposal has been agreed in principle with OEH for 60.5ha of the proposed E2 land.

Prior to subdivision of the site, a Vegetation Management Plan (VMP) must be prepared in consultation with OEH. The VMP must have particular regard for the

rehabilitation of existing and future mine subsidence; installation of fencing to prevent unauthorised motorbike and pedestrian access; and the removal/rehabilitation of the Austar operated haulage road when the ML 1345 expires.

NSW Aboriginal Land Council

The Mindaribba Local Aboriginal Land Council advised that an updated Aboriginal Heritage Assessment be undertaken as per the 2010 guidelines. The Land Council also require that it be involved in the field work to determine if there are any Aboriginal sites within the project area and to assess any potential impact on Aboriginal Cultural Heritage.

Council has determined that the provisions in the proposed supporting DCP will include provisions relating to the protection of Aboriginal heritage sites. The Aboriginal Heritage Impact Assessment that was undertaken found a number of isolated finds. Due to the disturbed nature of the site the assessment concluded the items were of little cultural value. Notwithstanding, any sites to be impacted from development would require additional sub-surface testing, as well as permits from the Land Council.

Changes since exhibition

The Planning Proposal exhibited contained the existing zoning pattern. At exhibition Council intended to pacify NSW Trade and Investments objection via the use of an 88b instrument and a DCP provisions to delay development within the Mining Lease until all mine works were complete. Legal advice advised that these means were not satisfactory, and therefore an alternative local provision was drafted to achieve the same outcome. Council and NSW Trade and Investment are satisfied with the wording and application of this clause.

Section 117 Directions and State Policies

The Gateway Determination dated 5 February 2013 advised that the Planning Proposal's inconsistencies with Section 117 Directions 1.2 Rural Zones and 1.5 Rural Lands are of minor significance and no further approval would be required in relation to these directions.

The following Section 117 Directions remain relevant;

1.3 Mining Petroleum Production and Extractive Industries

In consultation with NSW Trade and Investment, there are no significant coal resources beneath the subject land due to past mining activity between 1917 and 1972. The land to be zoned R2 encroaches a current mining lease ML 1345 and is used as an essential part of Austars mine's operations, being the placement area for washery reject. The proposed residential use is considered incompatible with the mining operation so a clause delaying rezoning will be applied until all mining and rehabilitation is undertaken.

NSW Trade and Investment is satisfied with this outcome.

2.1 Environment Protection Zones

The Planning Proposal will include provisions to facilitate the protection of land which has been identified as environmentally sensitive. Future development will be supported by a Property Management Plan and a Voluntary Planning Agreement.

2.3 Heritage Conservation

Aboriginal Heritage

The Aboriginal Heritage Impact Assessment that was undertaken found a number of isolated finds. Due to the disturbed nature of the site the assessment concluded the items were of little cultural value. Notwithstanding the assessment recommends that any sites impacted by the proposed development require additional sub-surface testing and permits from the Mindaribba Local Aboriginal Land Council.

European Heritage

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 (SMR). The report makes a number of recommendations, including maintaining the 100m wide corridor around the railine to exclude development. Erecting fencing along

the corridor which is camouflaged with native vegetation is also recommended, as well as providing pedestrian access to the cutting bridge with appropriate signage to inform the community of the historic value. If the above recommendations are implemented then the proposal will not have a detrimental impact on the SMR.

3.1 Residential Zones

The planning proposal is consistent with the requirement of this direction to ensure that the new housing has appropriate access to infrastructure by containing a provision that requires the facilitation of state and public utility infrastructure prior to subdivision.

3.4 Integrating Land Use and Transport

Roads and Maritime Service (RMS) advised it will rely on the provisions of the LEP which facilitate satisfactory arrangements. A detailed Traffic Report in accordance with RMS guidelines will be required at the DA stage.

4.2 Mine Subsidence and Unstable land

The Mine Subsidence Board has advised that additional investigation is required in some areas of the precinct to ensure historical mining activities do not pose a threat to development or adjoining lands.

Issues raised by the MSB are to be incorporated into the draft DCP prepared for the Bellbird Heights Precinct.

4.3 Flood Prone Land

The Planning Proposal contains land within the 1:100 year flood zone. However, this land will not be zoned for urban purposes. The Planning Proposal is consistent with this direction.

4.4 Planning for Bushfire Protection

This direction applies as the land is bushfire prone. All future development will be required to be compliant with the Bushfire Protection Guidelines and the Rural Fires Act.

5.1 Implementation of Regional Strategies

The land subject to the Planning Proposal is identified within the Lower Hunter Regional Strategy (2006) and Council's City Wide Settlement Strategy (2010) as a future urban area with an anticipated yield of 700 lots. Due to the review of on-site constraints, it is now likely the proposal will yield approximately 300 allotments.

State Environmental Planning Policies

The following State Environmental Planning Policies (SEPPs) are relevant to the Planning Proposal:

SEPP 44- Koala Habitat Production

Two species of 'Koala Feed Tree Species' occur on the site. Based on this, the site is considered 'Potential Koala Habitat'. However, secondary investigations made by Ecotone (2001) did not find any evidence of a koala population on site. The site was then deemed not qualify as 'Core Koala Habitat', and no further provisions of this SEPP apply.

SEPP 55 – Remediation of Land

A Phase 2 Contamination Assessment undertaken on this site found that there is a limited potential for contamination to occur within the areas proposed to be zoned R2 Low Density Residential. The assessment concluded that the site is suitable for residential development from a contamination perspective.

The existing mine overburden materials will require management depending on the final lot layout. Additional investigations may be required at the DA stage.

SEPP Infrastructure 2007

Consultation has occurred with RMS, as required by the SEPP. RMS advised they will rely on the provisions on the LEP that ensure that satisfactory arrangements for the provisions of State public infrastructure are made prior to the subdivision of the land.

Make the Plan

A PC Opinion was issued on 26 May 2015. Council was consulted in accordance with s59(1) and accepted the drafting of the instrument.

LEP Assessment

Date Received from RPA : **03-Dec-2014**

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP :

Determination Date :

Determination Decision : **Approved**

Notification Date :