

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 :

10/23550

Proposal Details

Date Planning : **17-Dec-2012**

LGA covered :

Cessnock

Proposal Received :

Region : **Hunter**

RPA :

Cessnock City Council

State Electorate : **CESSNOCK**

Section of the Act :

55 - Planning Proposal

LEP Type : **Precinct**

Location Details

Street : **40-42 Francis Street**

Suburb : **Cessnock**

City : **Cessnock**

Postcode : **2325**

Land Parcel : **Lot 1 and 2 DP 1164334**

DoP Planning Officer Contact Details

Contact Name : **Amy Blakely**

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RPA Contact Details

Contact Name : **Bo Moshage**

Contact Number : **0249934241**

Contact Email : **bo.moshage@cessnock.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	Other
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	26.40	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	300	No. of Dwellings (where relevant) :	300
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment :			

Supporting notes

Internal Supporting Notes : The original rezoning proposal, which proposed twice the amount of residential land, was lodged with Council in May 2005. The proposal did not proceed due to the land constraints from past mine workings and consideration that other less constrained sites were able to meet anticipated supply in the longer term. Council was advised that the proposal should not be pursued until after the release of the Lower Hunter Regional Strategy. The site was not contained within Council's local strategy at the time.

The Lower Hunter Regional Strategy, released 2006, identifies the site as a 'proposed urban area'. The site was one of those included within the Memorandum of Understanding signed between the then Planning Minister and Hardie Holdings. The Agreement was subsequently dissolved following the outcomes of a Land and Environment Court Case.

Council resolved to rezone the site on 7 February 2007 and sought to include the proposal within the comprehensive LEP underway at the time. However, the Planning Proposal was not included because of an unresolved objection from the Department of Resources & Energy (Mineral Resources). This objection has since been removed on the basis a 100 metre buffer be established around the mine emplacement area. The 100 metre buffer is incorporated into the zoning plan submitted by Council.

On 24 December 2010 the Bellbird Heights Planning Proposal was transitioned into the 'Gateway process', however required re-submission under clause 56(2)(b) which demonstrated consideration of:

- 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.

On 8 December 2011, the Cessnock Planning Panel considered the Bellbird Heights

Planning Proposal 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 resolved:

Council may reconsider the Planning Proposal on the basis that:

- The Proponent 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, which incorporated two zoning options.

While a reduction in land area has modified the objection of the Department of Resources and Energy, Council has identified a number of unresolved issues, most notably the management of the area proposed for residential development immediately adjoining the active mine emplacement area. The proponent preferred option (Option A) included zoning some land within the 100 metre buffer to the mine emplacement area residential, with an already in place Restriction to User 88B instrument restricting residential development. Council has supported the alternative land zoning option (Option B) which retains the RU2 zone for the all the land within the buffer. The Department of Resources and Energy does not object to Option B and this is considered the preferred option.

It is recommended that this site be identified as an Urban Release Area so that it contributes towards the provision of designated State Infrastructure, provides required public utility infrastructure and a DCP is prepared before any development application is determined.

Council resolved to support the planning proposal on 12 December 2012 and subsequently forwarded it to the Department as a re-submitted proposal under clause 56(2)(b).

External Supporting
Notes :

A 240 unit aged care facility has been approved under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, on land proposed to be rezoned residential.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment :

While the planning proposal contains an adequate explanation of objectives and provisions of the planning proposal – the format is neither clear nor consistent with 'A Guide to Preparing Planning Proposals (2012)'. Information on some of the proposed provisions are only contained within the discussion of the objectives etc. It is a recommendation that Council re-write these sections of the planning proposal prior to

exhibition to increase clarity to the public.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

2.4 Recreation Vehicle Areas

3.1 Residential Zones

3.2 Caravan Parks and Manufactured Home Estates

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.2 Mine Subsidence and Unstable Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SEPP (Infrastructure) 2007

e) List any other
matters that need to
be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Indicative maps which adequately outline the proposal have been incorporated into the Planning Proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council propose a 28 day exhibition period.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Cessnock Standard Instrument LEP was published on 23 December 2011.**

Assessment Criteria

Need for planning proposal :

The planning proposal is required to facilitate the provisions of the LHRS. The planning proposal will provide an additional 300 residential lots adjacent to existing residential development.

Consistency with strategic planning framework :

The Lower Hunter Regional Strategy (2006) (LHRS)

The site is identified as a proposed urban area, with boundaries to be defined by local planning.

City Wide Settlement Strategy (2010) (CWSS)

After the release of the LHRS, the CWSS was amended to identify the Bellbird Heights Precinct as a future urban area with an anticipated yield of 700. However, the expected yield for the subject planning proposal is now 305 lots, following a review of the site's constraints. Council advise this reduction is considered appropriate, with an increase in yield from other candidate areas an option to provide for the shortfall.

The reduction of lot yield is primarily in response to an objection from the Department of Resources and Energy. Part of the land is affected by a current mining lease utilised by a neighbouring coal mine. The subject land is currently used by the mine as a washery. The amended rezoning pattern known as option B, also takes it consideration a 100 m buffer to the mining operations. Urban development within this buffer is not considered appropriate at this time.

Section 117 Directions

Direction 1.2 Rural zones

The land proposed to be zoned residential is not considered to be viable agricultural land. Regardless, the land is identified within the CWSS and the LHRS as a proposed urban area. The inconsistency with this direction is justified under clause 5 (e).

Direction 1.3 Mining, Petroleum Production and Extraction Industries

The land proposed to be zoned residential does not contain significant coal resources due to previous under mining which occurred between 1917 and 1972. The objection of DRE has been resolved and correspondence to that effect is included within the submitted PP.

Direction 1.5 Rural Lands

The proposed reduction in Minimum Lot Size (MLS) for the residential land is in accordance with the LHRS. The planning proposals inconsistency with this direction is justified under clause 6(a).

Direction 2.3 Heritage Conservation

An Aboriginal Heritage Impact Assessment undertaken on the site has identified a number of isolated finds. The assessment concludes that because the site is significantly disturbed, the finds are considered to be of relatively low scientific, archaeological or Aboriginal cultural significance. However, Council argues that further testing be undertaken prior to development.

The Heritage Impact Assessment undertaken makes a number of recommendations for the conservation of the Bellbird Branch Line of the South Maitland Railway, which is located on the site. Council are satisfied that the item will be protected subject to the proposed recommendations made by the assessment. The item is not identified within Cessnock LEP 2011 or on the State Heritage Register.

The planning proposal is consistent with all of the other Section 117 Directions identified by Council.

SEPP 55 - Remediation of Land

The site subject of the planning proposal has the potential to be affected by land contamination (the Aberdare Extended Colliery mined the site until 1966). The Environmental Assessment, undertaken in November 2005, concluded any land contamination is expected to be small scale and localised, and not likely to impede the proposed residential development. The assessment specifically identified a dumped washery reject located on the site, with the potential to generate acidic leachate. It recommends a management plan be devised for the immediate area, due to the potential

environmental implications.

Despite the information submitted with the planning proposal and former submissions to rezone the land, Council is not satisfied that the issue of land contamination has been adequately addressed. Council suggest that potential contamination and remediation options be investigated in more detail, should the planning proposal proceed.

SEPP Infrastructure 2007

Under the provisions of the SEPP, Council has referred the planning proposal to the Roads and Maritime Services (RMS). RMS advised it is satisfied with the provisions to be contained within the LEP to ensure arrangements are made for State public infrastructure are made prior to the subdivision of land in an urban release area.

Environmental social
economic impacts :

Mine Subsidence

The Mine Subsidence Board has advised that additional investigations are required in some areas of the subject site to confirm whether historical undermining poses a threat to future urban development. The Mine Subsidence Board will be formally consulted as part of this planning proposal.

Site Contamination

The additional information submitted to support the planning proposal indicates that any potential contamination relates to the area which Austar Coal Mine is currently undertaking emplacement works (Lot 2 DP1164334), and not land proposed to be rezoned. However, further investigation into contamination of the land is proposed to satisfy the requirements of SEPP 55 - Remediation of Land.

Incompatibility Between Proposed Residential Use and Current Mine Operations

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, Department of Resources & Energy previously held objections to the rezoning of the subject site for residential purposes, due to the presence of Mining Lease (ML) 1345 over part of the site, and potential impacts on the mining operations of Austar Coal Mine. Following a review of on-site constraints, the yields for Bellbird Heights Precinct have been revised down to 305 lots.

The Department of Resources and Energy have confirmed that there are no coal resources under the site, however Council maintain concerns that the broader residential development may be in conflict with the use of the neighbouring site for mining purposes (noise, dust etc). Austar Mine initially opposed the rezoning, yet have since removed the objection, reaching an agreement with the Proponent to manage any noise and dust issues if they arise. As part of that agreement there is the provision for each party to share costs for the construction and removal of any noise attenuation barriers if required. It is considered that supporting Option B and restricting the residential development within the buffer will assist in minimising the associated impacts.

Council will seek to consult formally with the Department of Resource and Energy (Mineral Resources) on these matters should the Planning Proposal progress. Recommendations are likely to be incorporated into Cessnock DCP (2010).

Environmental Offsets

The majority of land with biodiversity significance will be zoned E2 – Environmental Conservation. The Office of Environment and Heritage (OEH) have provided general support to 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.

Social and Economic Impacts

An assessment has not been submitted with the proposal. Council propose the preparation of either a Section 94 Contributions Plan or Voluntary Planning Agreement to ensure the adequate provision of community facilities and other local infrastructure.

Assessment Process

Proposal type : **Consistent** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation :

Public Authority Consultation - 56(2)(d) :
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

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

Land Contmination

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **The site is identified by the draft Lower Hunter Special Infrastructure Contributions (SIC) map.**

Documents

Document File Name	DocumentType Name	Is Public
PlanningProposal _ Bellbird Heights _ December 2012.pdf	Proposal	Yes
Council Resolution.pdf	Determination Document	Yes
Cover Letter.pdf	Proposal Covering Letter	Yes
Enclosures to report EE116_2012.pdf	Study	Yes
Report to Council.pdf	Determination Document	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**

- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information : It is recommended that:

1. The Planning Proposal be supported.
2. As indicated by Council's submitted project timeline, Council is to prepare:
 - * A Contamination Assessment to satisfy the requirements of State Environmental Planning Policy 55 – Remediation of Land;
 - * A land constraint and hazard assessment;
 - * A servicing feasibility assessment;
 - * Arrangements to facilitate the conservation of environmentally sensitive areas;
 - * A bushfire assessment.

In addition, Council is to undertake a Mine Subsidence Assessment as required by the Mine Subsidence Board and any other studies identified or required by legislation to support the planning proposal.

The planning proposal should be updated and placed on public exhibition within 6 weeks of receiving the required studies.

3. The subject site be identified as an Urban Release Area and the Department's model clause adopted to require the development to contribute towards the provision of designated State Infrastructure, provide required public utility infrastructure and that a DCP is prepared before any development application is determined. This will address Council's requirement for a DCP without causing unnecessary delays.

4. The planning proposal be updated in accordance with the Gateway Determination before commencing public exhibition. Clarification should be made to Part 1: Objectives and Part 2: Provisions to be consistent with A Guide to Preparing Planning Proposals (2012).

The revised planning proposals proposed zones, zone boundaries, development standards and any local clauses be reviewed by the Department's regional office before the planning proposal is publicly exhibited.

5. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:

- (a) the Planning Proposal be made publicly available for 28 days;
- (b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009).

6. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

Hunter Water Corporation
Mine subsidence Board
Rural Fire Service
Transport for NSW - Roads and Maritime Services
NSW Aboriginal Land Council
Office of Environment and Heritage
NSW Department of Resource and Energy (Mineral Resources)

Each public authority is to be provided with a copy of the planning proposal and any

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relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

7. The Director General (or delegate) approves the minor inconsistencies with the Minister's S117 Direction 1.2 Rural Zones and 1.5 Rural Lands because the inconsistencies are justified by the Lower Hunter Regional Strategy.

8. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

9. The timeframe for completing the LEP is 12 months from the date of the Gateway Determination.

Supporting Reasons : The proposal is consistent with the Lower Hunter Regional Strategy and the Cessnock City Wide Settlement Strategy.

The further information required by the second recommendation, is taken from Councils projected timeline. It is considered adequate.

A Gateway Determination will allow formal agency public consultation to occur.

A 12 months timeframe is required to undertake additional studies, consult with agencies, exhibit the planning proposal and finalise the LEP. The submitted project timeline demonstrates this timeframe is achievable.

Signature:



Printed Name:

KO'FLAHERTY

Date:

11-1-13