

Planning and Assessment

IRF19/4508

Plan finalisation report

Local government area: Singleton

1. NAME OF DRAFT LEP

Singleton Local Environmental Plan 2013 (Amendment No 10).

2. SITE DESCRIPTION

The planning proposal applies to land at 257 Hermitage Road, Pokolbin adjoining the Pokolbin Vineyards District.

3. PURPOSE OF PLAN

The planning proposal seeks to rezone land at 257 Hermitage Road, Pokolbin from RU1 Primary Production to RU4 Primary Production Small Lots with an associated local clause to allow subdivision down to 10ha under certain circumstances. It is likely that there will be up to 30 lots created as a result of this LEP with future dwellings permitted on the lots under 40ha where they are ancillary to 'intensive plant agriculture' such as viticulture or horticulture, or where the dwelling is ancillary to tourist accommodation.

The proposal will also introduce a floor space ratio map into Singleton LEP 2013 to manage local character impacts.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within two state electorates, being Cessnock where Clayton Barr MP is the State Member and Upper Hunter with Michael Johnson MP as the State Member.

The site falls within the Hunter federal electorate. Joel Fitzgibbon MP is the Federal Member.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There has been a meeting with a registered lobbyist with respect to this proposal on 13 July 2016 (See **Attachment G**)

NSW Government reportable political donation: There are no known donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 20 June 2016 (**Attachment B**) determined that the proposal should be refused for various reasons. The applicant requested a Gateway Review which was considered by the Hunter Central Coast Joint Regional Planning Panel who resolved to issue the Gateway determination. A subsequent Gateway alteration was issued on 27 April 2017 that determined that the proposal should continue subject to appropriate conditions (**Attachment C**).

The Gateway determination was altered on 7 November 2018 and on 8 August 2019 to extend to extend the timeframe to complete the proposal (**Attachment D**). The current Gateway time frame is for the planning proposal to be completed by 20 September 2019. Although this date has passed, the plan may still be finalised.

PUBLIC EXHIBITION

The planning proposal was exhibited from 22 November 2018 to 7 January 2019 in accordance with the Gateway determination. No submissions were received.

6. ADVICE FROM PUBLIC AUTHORITIES

The following agencies were consulted, consistent with the Gateway determination:

- Office of Environment and Heritage
- NSW Primary Industries (Agriculture and Resources)
- NSW Rural Fire Service
- Cessnock City Council
- Local Aboriginal Land Council

No agencies raised any significant objections to the proposal. Minor matters such as riparian corridors, stormwater management, native vegetation, Aboriginal cultural heritage and water licensing can be addressed through existing legislation and through introducing DCP provisions, which have been included in reporting this matter to Council and considered as one package of planning provisions.

Cessnock City Council raised concerns regarding inconsistency with the planning approach in the adjoining local government area (Cessnock) and enforcement of LEP provisions. Visual impact studies and analysis was undertaken consistent with Cessnock Council's approach to planning in the Vineyards and the planning proposal has been amended to ensure the LEP and DCP provisions reflect the intent of the proposal and vision for the Pokolbin vineyards. The proposal is consistent with the precinct approach to planning being developed by Cessnock City Council.

7. POST-EXHIBITION CHANGES

The Department has consulted with Council and the proponent on a proposed change to the proposal from that exhibited and submitted to the Department to be made. The exhibited version of the proposal included in its objectives and explanation of provisions that a dwelling could be erected if it was ancillary to viticulture, agriculture or small scale tourism use.

The defined term 'agriculture' is a group term and some sub-terms may be potentially inconsistent with Section 9.1 Directions 1.5 (Rural Lands), 5.10 (Implementation of Regional Plans), and SEPP (Primary Production and Rural Development) 2019. For example, 'Agriculture' includes bee keeping and grazing of livestock.

intensive plant agriculture means any of the following:

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

Note.

Intensive plant agriculture is a type of *agriculture*—see the definition of that term in this Dictionary.

There is a risk that a dwelling house could occur on all of the 30 proposed 10ha lots through grazing livestock or bee keeping (i.e. rural residential development), which is also inconsistent with the RU4 zone aims (more intense agriculture) and the planning proposal's aims.

Council also clarified the intent of the proposal to have its local provisions apply to certain types of development such as tourist and visitor accommodation, not just dwelling houses.

As agreed with Council and the proponent, changes to the intent of the planning provisions part of the proposal were made to change the term 'Agriculture' to 'Intensive plant agriculture' and to list the types of development the local provisions will apply to. These changes are consistent with the intent of the planning proposal, the relevant s.9.1 Directions and are supported by Council and the proponent.

8. ASSESSMENT

9.1 Ministerial Directions

Attachment H provides a full assessment of the proposal against Section 9.1 Directions.

The proposal as exhibited was inconsistent with Directions 1.5 (Rural Lands) and 5.10 (Implementation of Regional Plans) for reasons outlined above. The planning proposal was changed post exhibition to address these inconsistencies by refining the land use types that are considered as being appropriate as ancillary to a dwelling house.

The Briefing Note recommends that the Secretary's delegate consider the inconsistency with Direction 6.3 (Site specific provisions) as being of minor significance.

9.2 State environmental planning policies

The draft LEP is consistent with all relevant SEPPs.

The Primary Production and Rural Development 2019 SEPP has been introduced since the initial Gateway determination was issued. The exhibited version of the proposal was assessed against this SEPP and was assessed as being inconsistent. This was due to a dwelling house being identified as a land use ancillary to 'Agriculture' and a 10ha minimum lot size. As discussed above, the definition of 'Agriculture' would enable rural residential development to occur with extensive agricultural activities, potentially creating rural fragmentation and land use conflict potential. Council and the proponent confirmed that this was not the intent of the proposal and a change to the planning proposal was made in relation to land uses that a dwelling could be ancillary to, to address this issue.

9.3 State, regional and district plans

As discussed above, the post exhibition change to the planning proposal has ensured consistency with the Hunter Regional Plan as outlined in **Attachment H**.

The draft LEP includes two LEP maps and a Map Cover Sheet. The Land Use Zone map rezones the land from RU1 Primary Production to RU4 Primary Production Small Lots. The Floor Space Ratio (FSR) map introduces an FSR of 0.03 to:

- manage the intent of the LEP for 'small scale tourist development'; and
- manage the density of development to control the impacts on local character.

The maps and Map Cover Sheet have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

9. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment E**). Council confirmed on 21 October 2019 that it was happy with the draft and that the plan should be made (**Attachment F**).

10. PARLIAMENTARY COUNSEL OPINION

On 29 October 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

11. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because the:

- proposal has been revised to be consistent with state and regional policies;
- LEP manages potential rural land use conflict by only allowing the erection of a dwelling on land down to 10ha when it is ancillary to tourist or intensive plant agriculture;
- LEP implements measures for the scenic quality and local character of the area to be in balance with rural activities, tourism development and rural living.



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