



Planning Team Report (Addendum)

GDR_2016_SINGL_001, PP_2016_SINGL_003_00

File No. 15/16887

BACKGROUND

Singleton Council submitted a planning proposal to rezone land at 257 Hermitage Road, Pokolbin (PP_2016_SINGL_003_00):

- (1) Rezone that part of the land which is zoned RU1 Primary Production to RU4 Primary Production Small Lots;
- (2) Facilitate the creation of primary production lots with a minimum lot size of 10ha and with a dwelling entitlement on the basis that the use of the dwelling is to support appropriate land uses (such as viticulture and tourist related uses) in accordance with the RU4. A local LEP clause will be drafted in consultation with the Department of Planning & Environment (DPE) to achieve this outcome.

The Gateway determined that the proposal should not proceed. The proponent sought a review of this decision (GDR_2016_SINGL_001), with the Joint Regional Planning Panel (Panel) recommending that the proposal proceed subject to certain matters being addressed (Tab D Gateway Review Advice Report), including that the proposal:

- a) *retain a mapped 40 Ha Lot Size standard for the site with a local provision allowing subdivision to 10 Ha provided it is for the purpose of viticulture, agriculture or small scale tourism and that any dwelling is ancillary to a viticultural, agricultural or small-scale tourism use;*
- b) *ensure the minimum 10 Ha standard is a minimum and not an average, with consideration given to whether the standard should be exempt from clause 4.6 of the Singleton LEP 2013; and*
- c) *ensure appropriate regulation of scenic values, built form character and vistas to/across the site to ensure the scenic qualities of the area are protected in the future development. This may warrant DCP provisions specifically applicable to the site.*

The Department accepts the independent advice of the Panel and it is recommended that the Gateway determination be altered. This report details the matters which the proposal needs to consider now that it is to proceed past Gateway.

PURPOSE OF REPORT

The purpose of this report is to set out matters that the planning proposal needs to address to ensure that the proposal objectives can be achieved, that they align with the direction of the Panel's advice, and that matters like consultation and inconsistency with section 117 directions etc are addressed. This addendum report recommends conditions that should be included in the revised Gateway determination.

ASSESSMENT REPORT

Planning Proposal Objectives

The objective(s) of this planning proposal are to:

- To rezone that part of the land which is zoned RU1 Primary Production to RU4 Primary Production Small Holdings;
- To facilitate the subsequent development of the site into primary production small lots not less than 10 hectares in size, each with dwelling entitlement (having permanent occupancy provisions), but only on the basis of satisfactory integration with tourism or viticulture or other land uses which support the strategic land use objectives of Hunter Wine Country, being permissible land uses in the RU4 Primary Production Small Lots zone;
- To recognise the inherent significance of the site as a gateway location situated at the northern entry to the internationally renowned Hunter Wine Country and promote its development and conservation in an appropriate manner;
- Having regard to the locational significance of the site, to clearly emphasise and regulate preferred potential development and the conservation values of the land;
- To update the Singleton Local Environmental Plan 2013 (LEP) to reflect any necessary changes identified by the investigations in relation to the subject site.

No changes are required to the planning proposal objectives.

Planning Proposal Explanation of Provisions

The following details the key LEP changes listed in the existing Explanation of Provisions:

Table 2: Key changes proposed to the Singleton LEP 2013

Component of LEP	Explanation of LEP Amendment
Land Zoning Map	Amend the Land Zoning Map: Subject land which is zoned RU1 Primary Production to be rezoned to RU4 Primary Production Small Lots.
Lot Size Map	It is intended to introduce a Local Provision Clause which will permit subdivision of the site to a size which is less than that shown on the Lot Size Map. The mechanism will be subject to further dialogue with the Department of Planning & Environment, however, it is anticipated that the area to which the Local Provision Clause will apply will be shown on the Lot Size Map.
Additional Local Provisions Clause - Integration of Dwellings with Other Land Uses	It is intended to introduce a Local Provision Clause (subject to further discussion with (DP&E) which will require Council to be satisfied that any dwelling approved on the land will support integrated tourism or specialised agriculture permissible within the zone.

The Explanation of Provisions do not adequately address the matters identified by the Panel, specifically that the proposal:

- (a) retain a mapped 40 Ha Lot Size standard for the site with a local provision allowing subdivision to 10 Ha provided it is for the purpose of viticulture, agriculture or small scale tourism and that any dwelling is ancillary to a viticultural, agricultural or small-scale tourism use;*

The uses identified by the Panel should be aligned with the Standard Instrument land use terms used in the Singleton LEP 2013 so that it is clear what is permitted for future

development applications. For example, the term 'agricultural' use could be interpreted to include extensive agriculture and intensive plant agriculture such as livestock grazing, turf farming and cropping. These types of agriculture uses are not consistent with the intent of the RU4 zone in the Critical Industry Cluster (Pokolbin vineyards district) or the development outcomes envisaged for the vineyards in the Hunter Regional Plan 2036. The land uses need to be refined.

It is recommended that Council determine appropriate land uses in consultation with the Department's regional office to ensure alignment with the CIC and the Hunter Regional Plan. Consultation should also occur with the Department of Primary Industries (Agriculture) to ensure that uses align with contemporary rural small holdings activities and to minimise the potential for land use conflict.

The local clause will also need to state that other clauses in the LEP which enable dwellings on rural land are disabled (e.g. Clause 4.2A Erection of dual occupancies and dwelling houses on land in certain rural and environment protection zones). Further consideration to which specific clauses need to be disabled can be considered at the legal drafting stage.

(b) ensure the minimum 10 Ha standard is a minimum and not an average, with consideration given to whether the standard should be exempt from clause 4.6 of the Singleton LEP 2013

A Gateway determination condition is recommended to ensure that the 10 ha minimum is not considered to be an average. The Department does not support the possibility of clause 4.6 Exceptions to Development Standards being used because it may serve to undermine the 10 ha minimum by enabling a lot size averaging outcome or provide for a greater development density than that proposed by Council and supported by the Panel. In doing so, scenic amenity impacts may result which is a concern raised by the Panel and shared by the Department.

c) ensure appropriate regulation of scenic values, built form character and vistas to/across the site to ensure the scenic qualities of the area are protected in the future development. This may warrant DCP provisions specifically applicable to the site.

In order to address this matter, a condition is proposed which would require the consent authority to be satisfied that visual impacts have been adequately addressed before it may determine any development application that relies on the clause. A similar approach is proposed to land use conflict given the concerns raised by DPI (Agriculture) and shared by the Department.

To support this approach, a visual analysis should be undertaken to consider scenic values, built form character and vistas to/across the site. This can then be used to determine suitable provisions to ensure that scenic amenity is adequately safeguarded – DCP provisions can be used to ensure appropriate built form, landscaping and subdivision design, while the local clause may include a maximum number of resulting lots to ensure that development density aligns with the scenic amenity outcomes.

Cessnock City Council is currently undertaking a 'Vineyards District Study' across the vineyards which includes the Pokolbin area. This work addresses visual amenity and scenic landscape analysis. It has initial industry support and aligns with the scenic amenity component of Action 9.3 of the Hunter Regional Plan which requires a land use assessment across the vineyards CIC to balance scenic amenity and ongoing growth in tourism.

It is therefore recommended that the provisions to be developed by Council to manage visual impact be prepared in consultation with Cessnock City Council so that there is consistency in approach across the Pokolbin area of the vineyards.

Consistency with Strategic Framework - SEPPs and regional strategies

State Environmental Planning Policy (Rural Lands) 2008

The proposal is inconsistent with the SEPP because it remains potentially inconsistent with several of the Rural Planning Principles and Subdivision Principles.

In terms of the planning principles, insufficient evidence is available to determine whether the proposal is consistent with principle (d) which requires a proposal to balance the the social, economic and environmental interests of the community, and principle (h) which requires consistent with the Upper Hunter Strategic Regional Land Use Plan.

In order to resolve this inconsistency Council will need to work with DPI (Agriculture) and the Department to identify appropriate Standard Instrument land uses to be permitted on the site.

The provisions resulting from the visual assessment work will also assist by ensuring that the key elements of the landscape value of this gateway site are maintained. This is to safeguard the tourism value of the Pokolbin area by ensuring scenic amenity impacts are minimised, and will ensure that the proposal is consistent with the planning principles.

This work will also help the proposal to demonstrate that the proposal is consistent with the SEPP's subdivision principles (b) minimisation of land use conflicts, and (d) the consideration of the natural and physical constraints and opportunities of land.

The proposal is otherwise considered consistent with the relevant SEPPs.

Upper Hunter Strategic Regional Land Use Plan (SRLUP)

The site forms part of the Critical Industry Cluster Land (Viticulture) (CIC). The CIC originates from the Upper Hunter Strategy Regional Land Use Plan 2012 and is described as a localised concentration of interrelated productive industries based on an agricultural product (in this case viticulture), that provides significant employment opportunities and contributes to the identity of the region. The SRLUP requires councils to include appropriate zonings and provisions to protect the identified land.

The Department has previously raised concerns about how the the development proposed would contribute to the agricultural productivity of the CIC. The concern is that the proposal may be more likely to facilitate tourism opportunities which is inconsistent with the agricultural value of the land and may lead to increased land use conflict. The Panel however was satisfied that the proposal could be consistent with the underlying objective of protecting (and enhancing) the viticulture CIC provided appropriate safeguards are put in place. The recommended conditions seek to develop those safeguards. The provisions to be developed by Council will help demonstrate that the development outcomes resulting from the proposal are consistent with the SRLUP.

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 was finalised in late 2016 and so does not apply because it was adopted after the planning proposal was sent to the Gateway (originally in November 2015). However, the Gateway may require consistency to be considered if desired.

As part of the Region Plan's direction to grow tourism in the region, the Regional Plan sets out an action to undertake a land use assessment across the viticulture CIC to balance scenic amenity and ongoing growth in tourism. It is to be undertaken by the Department in consultation with councils and the Department of Industry.

As this proposal would proceed in advance of the Regional Plan project, it is important that the approach taken for this proposal aligns with the work being undertaken by Cessnock and puts in place adequate safeguards provisions to ensure a consistent approach is taken to protect scenic amenity and minimise land use conflict. As the proposal has the potential to pre-empt the project, the Department should review the proposed provisions prior to public exhibition occurring to ensure that they are suitable and consistent with what is proposed for the rest of the Pokolbin vineyards area.

Lower Hunter Regional Strategy 2006

While the area covered by the Lower Hunter Regional Strategy does not apply to this site, it applies to the Cessnock LGA which includes over 80 % of the Pokolbin vineyards district. The proposal remains inconsistent with the principles of the LHRS because it has the potential to result in land use conflict and erode the character of the vineyards district. Gateway conditions have been recommended to ensure that suitable planning control provisions will be prepared that will address these issues.

Consistency with Strategic Framework - Section 117 Directions

The Planning Proposal would need to be resubmitted to the Department prior to public exhibition to seek consideration of the potential inconsistencies with the relevant Section 117 directions.

1.2 Rural Zones

The proposal is currently inconsistent with subclause (4)(b) of this direction as it contains provisions that will increase the permissible density of land within a rural zone. Consultation with the Department of Primary Industries (Agriculture) will need to occur as Council resolves subdivision layout provisions. Consistency with this direction can be considered following the completion of the further work conditioned in the recommended Gateway determination.

1.3 Mining, Petroleum Production and Extractive Industries

This direction (subclause 4(a)) requires Council to consult with the Department of Industry (Resources and Energy) regarding potential impacts on resources or nearby existing mines. Consultation with DoI will need to occur before consistency can be determined.

1.5 Rural Lands

The proposal is also inconsistent with s.117 Direction 1.5 Rural Lands subclause (3)(b) as it changes the existing minimum lot size on land within a rural zone. A planning proposal must also be consistent with SEPP (Rural Lands) 2008 in relation to Rural Planning Principles and Rural Subdivision Principles. As already discussed, further work needs to be undertaken before consistency can be fully determined and any inconsistency justified.

2.1 Environment Protection Zones

As the site contains endangered ecological communities, the direction the proposal to demonstrate that these environmentally sensitive areas will be protected and conserved (clause 4). Consultation with the Office of Environment and Heritage (OEH) is recommended before consistency with this direction can be fully determined.

2.3 Heritage Conservation

The planning proposal indicates that an aboriginal site was located on the site. Further, it is unclear whether aboriginal landscape values have been considered. The direction requires the proposal to put measures in place to conserve relevant areas (clause 4). Consultation with the Local Aboriginal Land Council and OEH is recommended before consistency with this direction may be fully determined.

4.4 Planning for Bushfire Protection

The bushfire assessment submitted with the planning proposal will need to be assessed by NSW Bushfire Service (clause 4) which will assist in the consideration of the potential inconsistency with s.117 Direction 4.4 Planning for Bushfire Protection.

6.3 Site Specific Provisions

The planning proposal would introduce provisions for the development of the land which would not apply elsewhere in the Singleton LEP 2013. This is inconsistent with subclause 4(c) of the direction. Whether the proposal's inconsistency with this direction is justified cannot be determined at this time. It should be reconsidered once Council has undertaken the further work identified in the Gateway determination.

Consistency with Strategic Framework - Singleton Land Use Strategy (2008) (local strategy)

The site was not identified in Singleton Land Use Strategy 2008 for an expansion of the vineyards district. The proposal is inconsistent with the local strategy in relation to rural planning and lot sizes, and tourism development.

Council is currently undertaking a review of its local strategy and there is an opportunity to include the planning principles for scenic and landscape amenity in the development of the strategy for the Vineyards district consistent with the work being undertaken by Cessnock City Council.

Agency Consultation

Agencies which should be consulted include:

- Department of Primary Industries (Agriculture) (s117 Directions 1.2 and 1.5).
- Department of Industry (Resources and Energy) (s117 Direction 1.3).
- Office of Environment and Heritage (s117 Direction 2.1 and 2.3)
- NSW Rural Fire Service (s117 Direction 4.4)

In addition to State agencies, consultation will be required with Cessnock City Council who is a major stakeholder in the planning for and within the Pokolbin vineyards district. As discussed in this report, the recent work undertaken by Cessnock will be an important consideration in the further work necessary to progress this planning proposal so that the planning provisions for Pokolbin are consistent.

The Local Aboriginal Land Council should be consulted regarding aboriginal heritage matters.

It is noted that Hunter Valley Wine Industry and Hunter Valley Wine Country Tourism Association are strong advocates of retaining the existing rural character and acknowledge its importance to the visitor experience. Therefore targeted community consultation should be encouraged.

Social, Economic and Environmental considerations

The Pokolbin district is the most accessible of the Hunters Vineyards districts and probably the most accessible in Australia as shown by its visitor numbers, activity and demands for development. One of the key components to its success is maintaining its rural character and charm, hence any departure from the existing planning provisions that alter the rural character needs to be considered carefully and within the broader vision for the Pokolbin district.

The supporting reports to the planning proposal suggest that threatened species and habitat investigations can be managed through Development Control Plan provisions and development consent conditions. The advice and expertise of the Office of Environment and Heritage should be sought to confirm whether this is a suitable approach given the ecology values identified.

Economic impacts of the proposal on existing agricultural and tourism businesses is unknown.

Planning Proposal Completion Timeframe, Community Consultation & Plan-making Delegation

Given the issues that remain outstanding and the further work required, an 18 month timeframe is recommended. This should provide sufficient time for Council to undertake the work required.

Council has suggested a 28 day community consultation period. This is supported.

Council has not requested plan-making delegation and given the outstanding issues it is not recommended in this instance.

 4/4/17

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4/4/17

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