

SECTION 59 PLANNING REPORT

Planning proposal details:

PP_2015_CESSN_005_00

Planning proposal summary:

The Planning Proposal introduces new subdivision provisions, simplifies Land Use Tables, and corrects mapping anomalies.

Date of Gateway determination:

17 November 2015

1.0 SUMMARY

The Planning Proposal seeks to amend the *Cessnock Local Environmental Plan 2011* (CLEP 2011) in the following manner:

- incorporate new provisions in Part 4 of CLEP 2011 to allow consideration of variations to the minimum lot size in Zone R2 Low Density Residential and Zone R3 Medium Density Residential to permit the Torrens subdivision of certain dual occupancy development;
- incorporate new provisions in Part 4 of CLEP 2011 to allow consideration of development applications for property boundary adjustments in certain rural and environmental zones that do not satisfy the exempt development standards of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the provisions of Clause 4.6 of CLEP 2011;
- rectify minor anomalies in the land use tables that accompany certain zones under CLEP 2011;
- rectify a misalignment of the boundary of heritage item I215, known as 'Collieries of the South Maitland Coalfields/Greta Coal Measures' to ensure that the boundary aligns with the cadastral boundary;
- remove the land reservation acquisition layer that affects various parcels of land recently acquired by Council, located to the north of Miller Park at Branxton; and
- rezone certain parcels of privately owned land that are inappropriately zoned RE1 Public Recreation under CLEP 2011 to reflect the adjoining land use zone.

2.0 GATEWAY DETERMINATION

A Gateway Determination was issued by the Department of Planning and Environment on 17 November 2015, allowing 6 months to complete the Amendment.

A request to amend the *Cessnock Local Environmental Plan 2011* was made to Parliamentary Counsel on 19 January 2016. Parliamentary Counsel Opinion was received on 16 February 2016.

All conditions of the Gateway determination have been complied with.

3.0 COMMUNITY CONSULTATION

The Planning Proposal was publicly exhibited for a period of 14 days from 2 December 2015 to 16 December 2015 in accordance with the Gateway Determination. No public submissions were received during the exhibition period.

Consultation requirements stipulated by the Gateway determination were complied with.

4.0 VIEWS OF PUBLIC AUTHORITIES

In accordance with the Gateway determination, consultation occurred with the following agencies. The agencies were provided a minimum of 21 days to comment on the Proposal.

- Department of Primary Industries (DPI) - Agriculture; and
- Office of Environment and Heritage (OEH).

Submissions were received from both agencies.

DPI Agriculture advised that it is generally supportive of the Proposal, specifically Amendment No. 2; however, suggested that it is stated that the lot to be reduced in size due to the realignment does not fall below the minimum lot size for that zone.

OEH noted that there are potential impacts from proposed Amendment No. 2 on biodiversity, Aboriginal cultural heritage, and flooding. The type and scope of the impacts are not thoroughly explored in the planning document; however, that there appear to be sufficient checks and balances to deal with these matters should they arise. Therefore, OEH has no objection to the Planning Proposal, but has some reservations over how Proposed Amendment No. 2 may be applied and resulting impacts addressed.

The agency concerns have been considered and this has resulted in Proposed Clause 4.2C (Amendment No.2) being revised to incorporate greater assessment rigour. This ensures that impacts of the proposed boundary adjustments made pursuant to this Clause are thoroughly addressed at a development application stage, which may include impacts relating to biodiversity, Aboriginal cultural heritage, and flooding.

Clause 4.2C has also been revised to incorporate a provision that any lot to be reduced in size due to the realignment does not fall below the minimum lot size for that zone, unless the lot or lots whose boundaries are being realigned is or are already smaller than the minimum size.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

An assessment of relevant Section 117 Directions is provided in the attached Planning Proposal.

6.0 PARLIAMENTARY COUNSEL OPINION

Council sought an opinion of Parliamentary Counsel on 19 January 2016.

Parliamentary Counsel's Opinion was given on 16 February 2016.

7.0 OTHER RELEVANT MATTERS

There are no additional matters that are relevant considerations for the making of the plan.

8.0 MAPPING

Please find relevant Maps and Map Cover Sheet attached.

9.0 RECOMMENDATION

Council recommends that the *Cessnock Local Environmental Plan 2011* (Amendment 20) be made as per the attached Parliamentary Counsel Opinion and associated Maps.

Attachments:

Attachment 1 – Cover Letter;
Attachment 2 – Planning Proposal;
Attachment 3 – Gateway determination (PP_2015_CESSN_005_00);
Attachment 4 – Delegated Plan Making Reporting Requirements sheet;
Attachment 5 – Parliamentary Counsel Opinion – *Proposed Cessnock Local Environmental Plan 2011 (Amendment 20)*;
Attachment 6 – Map Cover Sheet;
Attachment 7 – Email dated 13 January 2016 from NSW Department of Primary Industries – Agriculture; and
Attachment 8 – Letter dated 18 December 2015 from NSW Office of Environment and Heritage.

Maps Attached Separately:

- Maps associated with Cessnock Local Environmental Plan 2011 (Amendment 20).