

SUBJECT: *AMENDMENTS TO CESSNOCK LOCAL ENVIRONMENTAL PLAN 2011*

RESPONSIBLE OFFICER: *Strategic Landuse Planning Manager - Martin Johnson*

SUMMARY

This report proposes amendments to the Cessnock Local Environmental Plan (LEP) 2011. It is the third in a series of amendments to the LEP, the first being largely administrative in nature and the second correcting minor errors and discrepancies.

This report seeks Council's endorsement to prepare a Planning Proposal in order to seek a 'Gateway Determination' from the Department of Planning and Infrastructure to commence the Local Environmental Plan making process.

The proposed amendments to Cessnock LEP 2011 relate to four (4) matters, being the:

1. location of dual occupancies in the RU2 - Rural Landscape Zone;
2. controls for dams as permitted in Schedule 2 - Exempt Development;
3. rectify a drafting error that incorrectly map properties as heritage; and
4. changes to the description of a heritage item identified in Part 1 of Schedule 5 - Environmental Heritage.

RECOMMENDATION

1. That Council amend Part 7 Additional Local Provision of the Cessnock Local Environmental Plan 2011 to insert the following:

7.10 Erection of dual occupancy housing

- (1) The objective of this clause is to ensure that development for dual occupancy housing on land within zone RU2 preserves the natural quality of the land and the rural character of the area and does not impair the agricultural potential, capability and viability of the land.
- (2) Despite any other provision of this plan the consent authority must not consent to the erection of dual occupancy housing on land within zone RU2 unless the consent authority is satisfied that the dwellings are arranged in a clustered manner which:
 - (a) preserves the natural quality of the land and the rural character of the area;
 - (b) ensures that the agricultural potential, capability and viability of the land is not compromised;
 - (c) has regard to topographical features of the land; and
 - (d) minimises the impact of services and infrastructure on the land such as access roads and fire breaks.

2. That Council amend Schedule 2 - Exempt Development of the Cessnock Local

Environmental Plan 2011 to insert in appropriate alphabetical order the following:

Dams (Zones, RU2 & RU4)

- (1) Maximum embankment fill batter grades - 1 (vertical):2.5 (horizontal).
 - (2) Minimum distance from property boundary at closest point - 10m.
 - (3) Minimum fill embankment crest width - 3m.
 - (4) Minimum height difference between the embankment crest level and the spillway level - 1m.
 - (5) Maximum fill embankment height, as measured from ground level (existing) immediately down slope of the embankment to the top of the embankment crest level - 3m.
 - (6) Must not be in any area identified on the Acid Sulfate Soils Map.
 - (7) Maximum capacity of water storage - 3ML.
 - (8) Must not be constructed in a watercourse.
 - (9) Must not be within 40m of any part of an onsite sewerage management system.
3. That Council amend Heritage Map Sheet 1720 COM_HER_006D_040_20111206 to remove heritage item I128 from Lots 390 & 391 DP 755215 and Lots 536, 537, 538 & 539 DP 257370.
 - 4 That Council amend Part 1 of Schedule 5 Environmental Heritage of the Cessnock Local Environmental Plan 2011 by omitting the entries at Bellbird relating to Item I22 and Cessnock relating to Item I51 and substitute instead:

Bellbird	Uniting Church in Australia Bellbird Church	478 Wollombi Road	Lot 13, Section 3, DP 758082	Local	I22
Cessnock	Uniting Church in Australia Wesley Hall	4 Cooper Street	Lot 10, Section D, DP 4633; Lot 1, DP 1110465	Local	I51

2. That Council undertake a consultation program with public authorities and the community as determined by the "Gateway" Determination.
3. That a further report be presented to Council following the public exhibition of the Planning Proposal, if significant objections are received, advising of the outcomes of the consultation program and any recommendations relating to the adoption of the final LEP amendment.

BACKGROUND

Our Natural, Developed and Cultural Environment

Report No. EE9/2014

Built & Natural Environment



This report is the third in a series of reports to address changes to the Cessnock LEP 2011, which commenced on 23 December 2011.

Given the complexity and scope of the Cessnock LEP 2011 and the amendments required to achieve Council's intent, the need for a series of amendments were foreshadowed. This approach has been confirmed by the Department of Planning and Infrastructure as being appropriate.

Some errors were detected quite quickly and addressed through earlier reports which were considered by Council on 20 June 2012 and 1 August 2012 under reports EE54/2012 and EE59/2012 respectively.

Some further matters requiring correction or refinement have now been identified. It is proposed to address these amendments, as discussed below.

REPORT/PROPOSAL

This Planning Proposal has been prepared to enable the following amendments to be made to the Cessnock Local Environmental Plan 2011.

Proposed Amendment 1

Part 7 Additional Local provision: Dual Occupancies in RU2 Zone

Issue

This Local Planning Provision was removed by the Department of Planning and Infrastructure with the notification of the Cessnock Local Environmental Plan 2011 on 23 December 2011

This Planning Proposal seeks to re-establish these provisions to ensure appropriate consideration is provided to the erection of dual occupancy housing within zone RU2 - Rural Landscape regarding topographical features, including the sharing of infrastructure such as access arrangements, fire breaks and services.

This provision (in part) will facilitate orderly detached dual occupancy development, an important form of housing within the city. It is also intended to discourage fragmentation of rural lands.

Affected Land

This proposed provision is relevant to all land zoned RU2.

Any Council Interest

Given the general nature of this proposal, it is likely that Council would have interest in land that could be affected. However, this proposal has been prepared without regard to any such interest.

Recommendation

In Part 7 Additional Local Provision, Insert the following:

7.10 Erection of dual occupancy housing

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- (1) The objective of this clause is to ensure that development for dual occupancy housing on land within zone RU2 preserves the natural quality of the land and the rural character of the area and does not impair the agricultural potential, capability and viability of the land.
- (2) Despite any other provision of this plan the consent authority must not consent to the erection of dual occupancy housing on land within zone RU2 unless the consent authority is satisfied that the dwellings are arranged in a clustered manner which:
 - (a) preserves the natural quality of the land and the rural character of the area;
 - (b) ensures that the agricultural potential, capability and viability of the land is not compromised;
 - (c) has regard to topographical features of the land; and
 - (d) minimises the impact of services and infrastructure on the land such as access roads and fire breaks.

Proposed Amendment 2

Schedule 2 Exempt Development: Farm Dams

Issue

Clause 7.2 requires consent for earthworks (i.e. excavation or filling) unless it is exempt development or ancillary to other development that has a consent. This means that currently construction of farm dams requires consent.

It is considered desirable to permit smaller farm dams without consent, where certain requirements are satisfied.

Affected Land

This proposed provision is relevant to all land zoned RU2 or RU4.

Any Council Interest

Given the general nature of this proposal, it is likely that Council would have interest in land that could be affected. However, this proposal has been prepared without regard to any such interest.

Recommendation

In Schedule 2 - Exempt Development, insert in appropriate alphabetical order:

Dams (Zones, RU2 & RU4)

- (1) Maximum embankment fill batter grades - 1 (vertical):2.5 (horizontal).
- (2) Minimum distance from property boundary at closest point - 10m.
- (3) Minimum fill embankment crest width - 3m.
- (4) Minimum height difference between the embankment crest level and the spillway level - 1m.

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- (5) Maximum fill embankment height, as measured from ground level (existing) immediately down slope of the embankment to the top of the embankment crest level - 3m.
- (6) Must not be in any area identified on the Acid Sulfate Soils Map.
- (7) Maximum capacity of water storage - 3ML.
- (8) Must not be constructed in a watercourse.
- (9) Must not be within 40m of any part of an onsite sewerage management system.

Proposed Amendment 3

Heritage Mapping - Kitchener

Issue

The purpose of this amendment is to rectify a drafting error that unintentionally identified and placed heritage item I128 on Lots 390 & 391 DP 755215 and Lots 536, 537, 538 & 539 DP 257370 as shown in Figure 1.

NOTE: Heritage Item I128 relates to the Rotary Park Miners Memorial at Lot 190 DP 1108272, Lang Street Kurri Kurri and is not proposed to be removed from the LEP Heritage Schedule or supporting Heritage Maps.

Affected Land

Lots 390 & 391 DP 755215 and Lots 536, 537, 538 & 539 DP 257370. Council has no interest in this land.

Recommendation

- The Heritage Map Sheet 1720_COM_HER_006D_040_20111206 be amended to remove heritage item I128 from Lots 390 & 391 DP 755215 and Lots 536, 537, 538 & 539 DP 257370.

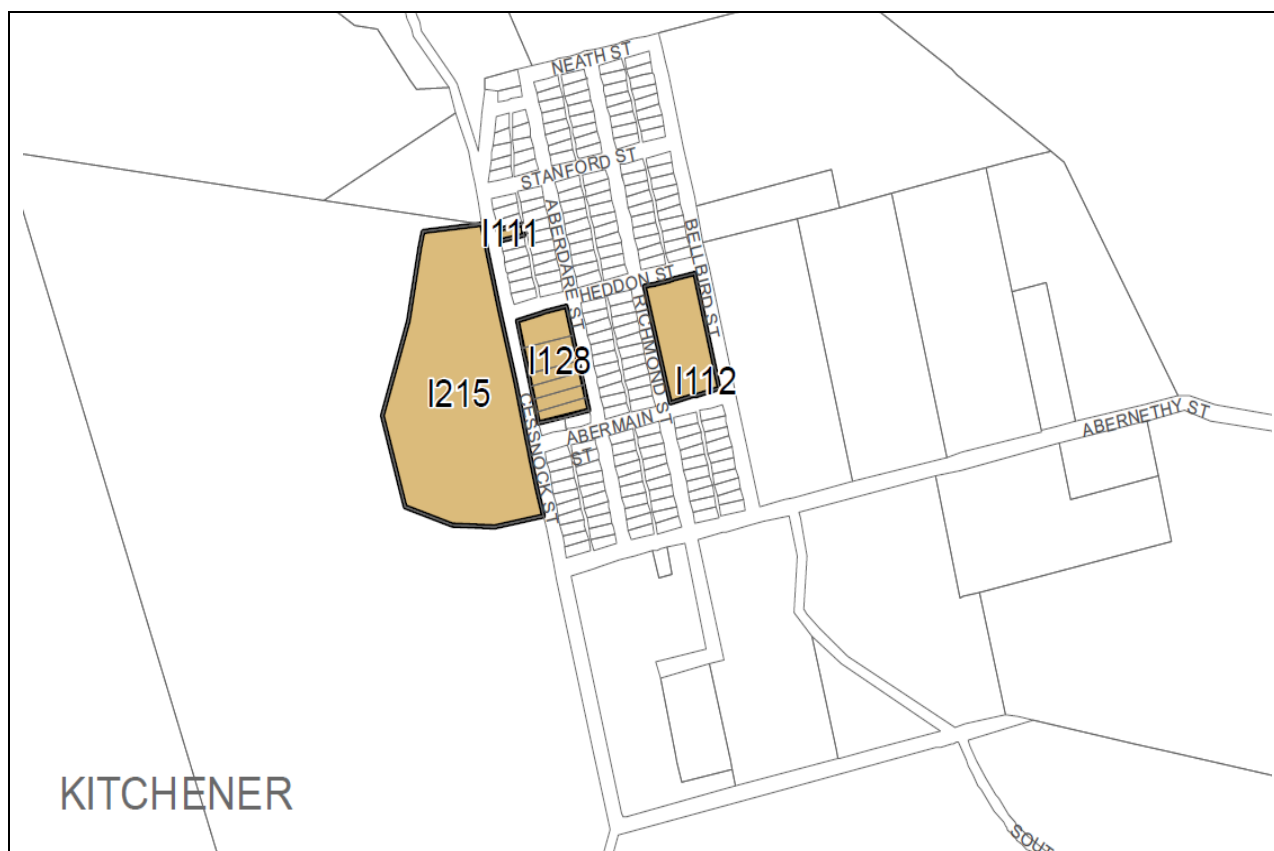


Figure 1

Proposed Amendment 4

Schedule 5: Environmental Heritage: Part 1 Heritage Items

Issue

The listing of heritage items I22 (478 Wollombi Road, Bellbird) and I51 (4 Cooper Street, Cessnock) within Part 1 of Schedule 5 contains errors in relation to item names.

The Uniting Church of Australia has requested to have these items listed as the “Uniting Church in Australia Bellbird Church”, and the “Uniting Church in Australia Wesley Hall, Cessnock”.

Affected Land

In practical terms, no land is affected by the change of the item name in the table. Council has no interest in this land.

Our Natural, Developed and Cultural Environment

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Recommendation

In Part 1 of Schedule 5 Environmental Heritage, omit from the table the entries at Bellbird relating to Item I22 and Cessnock relating to Item I51 and substitute instead:

Bellbird	Uniting Church in Australia Bellbird Church	478 Wollombi Road	Lot 13, Section 3, DP 758082	Local	I22
Cessnock	Uniting Church in Australia Wesley Hall	4 Cooper Street	Lot 10, Section D, DP 4633; Lot 1, DP 1110465	Local	I51

OPTIONS

1. Submit a Planning Proposal to the Department of Planning and Infrastructure for a "Gateway" determination. This option will ensure that Council's intent for Local Environmental Plan 2011 is achieved.
2. Not support the amendments to Council's Local Environmental Plan 2011. This will delay ongoing consideration by Council of the Local Environmental Plan 2011.

CONSULTATION

- Department of Planning and Infrastructure.
- Council's Planning and Environment Directorate

STRATEGIC LINKS

a. Delivery Program

A Sustainable and Healthy Environment: Objective 3.1 Protecting and Enhancing the Natural Environment and the Rural Character of the Area.

b. Other Plans

Nil.

IMPLICATIONS

a. Policy and Procedural Implications

Following Council's endorsement, a Planning Proposal will be submitted to the Department of Planning and Infrastructure for a "Gateway" determination.

It is intended that the Planning Proposal be exhibited for a period of 28 days in accordance with Council's Notification Policy and any specific requirements made by the Department of Planning and Infrastructure during the "Gateway" determination.

If required by the Department of Planning and Infrastructure, any consultation with public authorities will be undertaken concurrently as part of the "Gateway" determination.

b. Financial Implications

Our Natural, Developed and Cultural Environment

Report No. EE9/2014

Built & Natural Environment



The cost of this project is funded from Council's Strategic Land Use Planning budget. The Cessnock LEP 2011 will, however, continue to require strategic planning and mapping resources.

c. Legislative Implications

This report has regard to the provisions of the Environmental Planning & Assessment Act and its Regulations and the Standard Instrument (Local Environmental Plans) Order 2006 (as amended).

d. Risk Implications

The proposed changes will remove potential problems and / or delays for planned or possible future development.

e. Other Implications

Nil.

CONCLUSION

The proposed amendments to the Cessnock Local Environmental Plan 2011 are essential to ensure Council's intent for its planning instrument is maintained.

Other more substantial amendments to the Cessnock Local Environmental Plan 2011 will be subject to separate Planning Proposals, given the potentially different consultation requirements.

The Department of Planning and Infrastructure has agreed that this separate Planning Proposal approach was the most appropriate and timely way of achieving these amendments.

ENCLOSURES

1 Planning Proposal 21 Pages