

## Planning and Assessment

IRF20/3600

### Gateway determination report

<b>LGA</b>	Cessnock
<b>PPA</b>	Cessnock City Council
<b>NAME</b>	Additional permitted use for residential flat buildings
<b>NUMBER</b>	PP_2020_CESSN_004_00
<b>LEP TO BE AMENDED</b>	Cessnock Local Environmental Plan 2011
<b>ADDRESS</b>	Wine Country Drive & Claret Ash Drive, Rothbury
<b>DESCRIPTION</b>	Lot 1503 DP 1110274 Part Lot 1601 DP 1142579 Part Lot 2202 DP 1167247
<b>RECEIVED</b>	24/07/2020
<b>FILE NO.</b>	IRF20/3600
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal is to permit the development of residential flat buildings within the integrated tourist development known as 'The Vintage' in the suburb of Rothbury.

Buildings containing three or more dwellings, but not including an attached dwelling or multi dwelling housing would be permitted with development consent by adding it as an additional permitted use in Schedule 1 of the *Cessnock Local Environmental Plan 2011* (CLEP). The use will only be permissible for specific land parcels and provided that such development does not exceed a 14-metre building height limit.

### 1.2 Site description

The site is approximately 4ha in size, which is mostly vacant.

There appears to be recent earth works and grading on site with some retaining walls constructed and a large dam/basin reinforced. It currently contains a real estate/sales office and car park on the west corner, and the remainder is fenced off. There are also several mature trees across the site.

The site lies between Vintage Drive, Claret Ash Drive, and Casuarina Drive. It has a gentle slope declining from north to south and is set back from Wine Country Drive on its east boundary by approximately 290 metres.

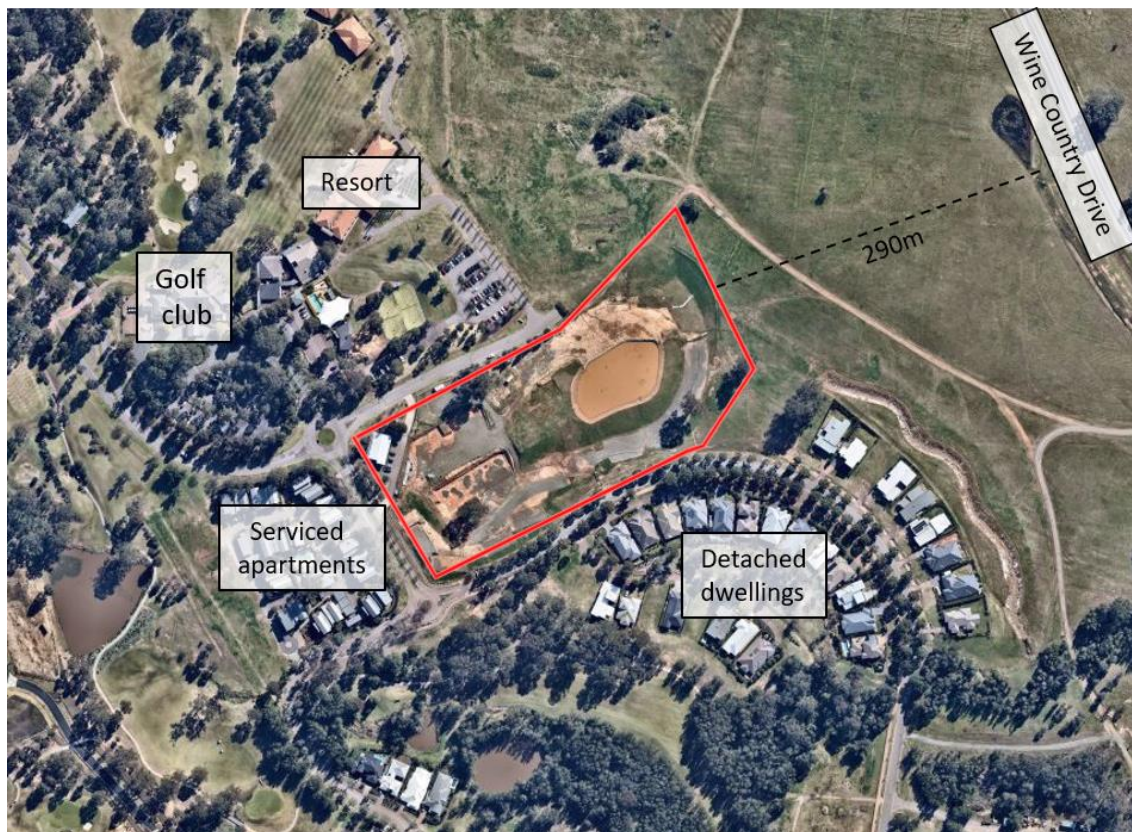


Figure 1: Broader site, outlined in red, and adjacent uses in the surrounding area.

### 1.3 Existing planning controls

The Vintage development is currently subject to a number of unique provisions in CLEP that reflect the evolution of planning controls for this development over time.

The zoning of the subject land is SP3 Tourist, which permits, amongst other things, tourist and visitor accommodation. Additional uses, including multi-dwelling housing, are permitted on some land parcels within The Vintage via Clause 9 of Schedule 1 of CLEP.

Furthermore, clause 7.11A requires that all permissible development is integrated tourist development, it stipulates the total number of dwellings permissible on the site and the proportion of those dwellings that are to be used for residential and tourism accommodation

No height of building, minimum lot size or floor space ratio controls currently apply to the subject site. The subject lots are affected by Obstacle Limitation Surface (OLS) restrictions under clause 7.4 of the CLEP. The proposed height limit does not penetrate the OLS controls.

The *Cessnock Development Control Plan 2010* (DCP) provides controls by development type within The Vintage does not provide controls for residential flat buildings that were not a permissible use at the time that it was prepared. Cessnock City Council advise they are in the process of reviewing the DCP and that this may recommend new development controls to be applied in future, including appropriate controls for residential flat buildings.



#### 1.4 Surrounding area

The Vintage lies to the west of Wine Country Drive in the suburb of Rothbury, part of the vineyard precinct of Cessnock Local Government Area.

The siting and design detail of the proposed additional permitted use was determined on the basis of a visual impact assessment prepared by the proponent to demonstrate compatibility of the proposed built form with the rural character of the area and to prevent visual impacts from potentially obtrusive development.

The north-east side of Wine Country Drive is also zoned SP3 for a separate integrated tourist development known as 'Golden Bear', which has staged development approval but is currently undeveloped.

Land outside of the tourist development boundaries is zoned RU4 Primary Production Small Lots with a 40ha minimum lot size. The surrounding RU4 Primary Production Small Lots zoned area reflects the character of the wider vineyards/rural area with undulating hills, open paddocks, creek lines, remnant vegetation patches and sparse development with large setbacks. Most of the surrounding uses in the RU4 Primary Production Small Lots zone are vineyard estates.

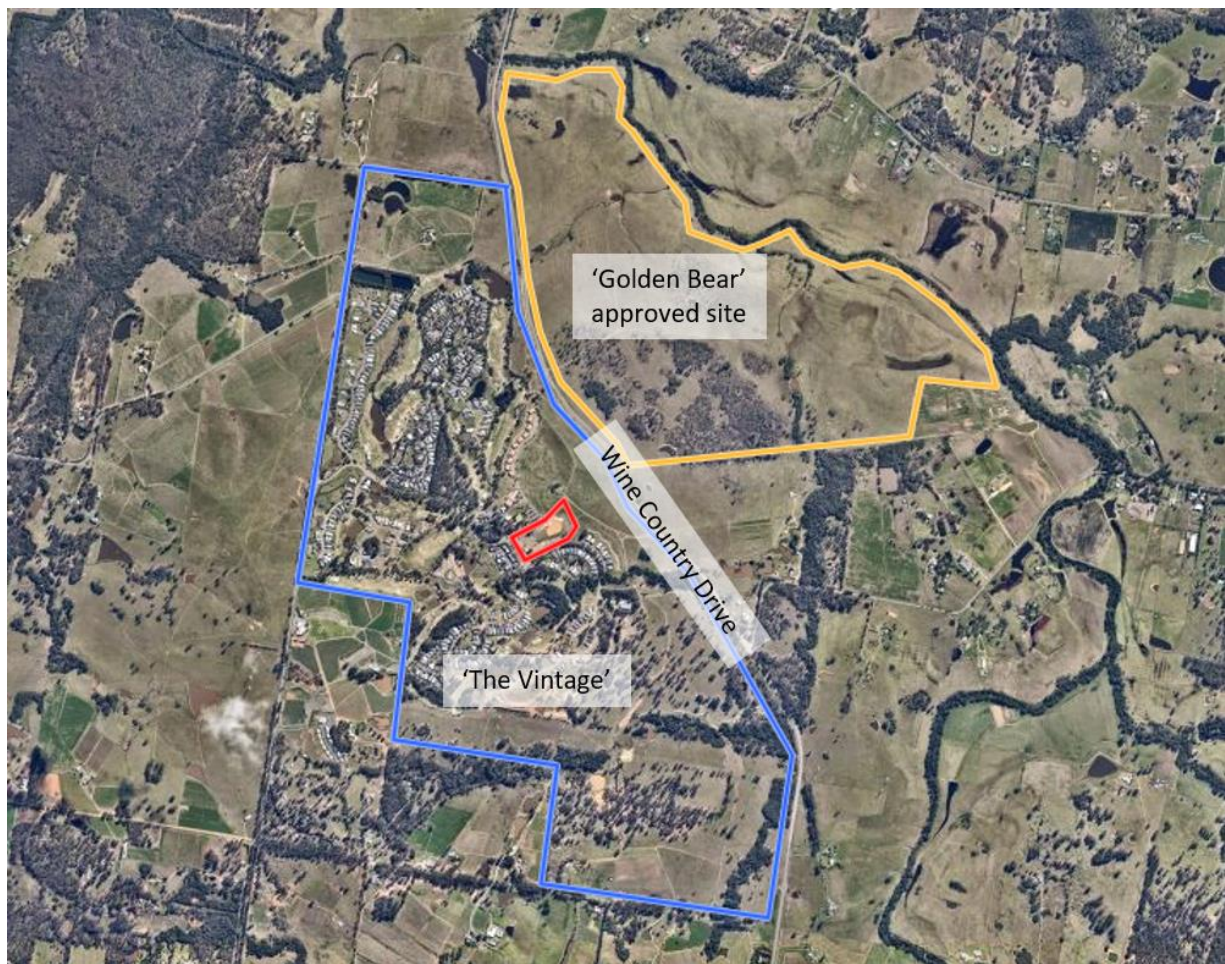


Figure 3: Subject site, outlined in red, in context of the wider surrounding rural area.

The proposed additional permitted use of residential flat buildings is a similar built form to other uses such as serviced apartments, which are already permitted and constructed in the area. The subject site is opposite existing medium density serviced apartments of The Vintage as shown in figure 4.



Figure 4: Medium density serviced apartments opposite subject site, looking west

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The objective of the planning proposal is to facilitate permissibility of residential flat buildings in a limited section of The Vintage with a 14 meter height of building limit.

### 2.2 Explanation of provisions

The proposal is to amend Schedule 1 of the CLEP to add residential flat buildings as an additional permitted use on the subject land with a 14 meter height of building limit:

***Use of certain land at Wine Country Drive, and Claret Ash Drive, Rothbury***

*(1) This clause applies to the following land:*

*Lot 1503 DP 1110274*

*Part of Lot 1601 DP 1142579*

*Part of Lot 2202 DP 1167247*

*(2) Development for the purpose of **residential flat buildings** is permitted with development consent where the maximum height of the building does not exceed 14 metres.*

The CLEP defined residential flat buildings as a building containing three or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The explanation of provisions is clear and does not require updating.

### 2.3 Mapping e

A map is provided that shows the proposed amendment on the CLEP additional permitted use map. No other maps are needed to demonstrate the nature of the proposed amendment.





Figure 5: Amendment to include the subject site on the APU Map of CLEP.

### 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal was initiated by the proponent, Stevens Group, on behalf of the landowner, seeking permissibility to construct residential flat buildings on the subject site. The proposed boundaries and 14m height limit for the additional permitted use are based on the proponent's concept development plans for residential flat buildings on the site.

An alternative means for achieving the intended outcomes would be to include residential flat buildings as a permitted use for the SP3 Tourist zone in the land use table of CLEP. This would enable all SP3 Tourist zoned areas to be constructed at a higher density and would alter the intended built form of the area. This is not recommended.

A holistic approach for a review of the planning controls across the entire area would be desirable, as the current proposal adds another site-specific development control within The Vintage. Council are currently undertaking a strategic assessment of the Vineyard district and may consider this approach in the future.

Restricting residential flat buildings to a limited area and height is a favourable option as it manages the extent of permitted residential uses from deviating towards higher density and bulkier built form, while protecting the rural character of the surrounding vineyards area in line with the strategic objectives.

### 4. STRATEGIC ASSESSMENT

#### 4.1 State

No state matters are impacted as the planning proposal is minor in nature.

#### **4.2 Regional / District**

The planning proposal has considered view impacts to maintain the rural character of the area by restricting the building height and preventing obtrusion, consistent with Strategy 13 of the *Greater Newcastle Metropolitan Plan 2036* to protect rural amenity outside urban areas.

The planning proposal also provides for greater housing diversity within existing communities, consistent with Directions 21 and 22 of the *Hunter Regional Plan 2036* for creating a compact settlement and promoting housing diversity.

#### **4.3 Local**

Restricting residential flat buildings with a significant set back from Wine Country Drive and impose a height limit is consistent with Planning Priority 23 in the *Cessnock Local Strategic Planning Statement 2036* to preserve the scenic and rural landscape of the vineyards district.

It is also generally consistent with the Planning Priority 7 to encourage infill development in existing urban areas, as The Vintage permits residential uses and higher density tourism development.

*Cessnock Development Control Plan 2010* (DCP) Chapter E.2 “The Vintage” sets the development controls and staging plan for the area, with objective c) “to ensure that the subdivision pattern, site layout, and building design do not detract from the rural character of the locality.” The DCP includes design guidelines that require setbacks, building heights, landscaping, and built form to achieve the objective. The site was generally identified as being for “special residential purposes” with either an 8.5m or 10m maximum building height depending on the development type – either detached dwelling or two storey serviced apartments respectively.

#### **4.4 Section 9.1 Ministerial directions**

Most directions are not applicable as the planning proposal is to add an additional permitted use of residential flat buildings, on land where similar uses including other residential and tourism accommodation are already permitted.

##### *Heritage Conservation (2.3)*

Cessnock City Council advise that no CLEP listed heritage items are on the subject site. The site is largely cleared, and earthworks have been undertaken over a substantial portion of the site in accordance with an approved DA.

An Aboriginal heritage assessment was prepared at the time the land zoned SP3 Tourist.

The provisions of the planning proposal are considered minor as there is unlikely to be any remaining heritage value on site that would be impacted by the planning proposal.

##### *Site Specific Provisions (6.3)*

The planning proposal is to apply a site specific additional permitted use and height control, in an area where height controls do not apply.

Cessnock DCP stipulates building heights for specific development types and based on locations within the masterplan for the staged development of The Vintage. Residential flat buildings are not currently a permitted use within The Vintage, and as such there are no associated height controls in the DCP to regulate the height of residential flat buildings.

The use of a site-specific provision is considered appropriate in this circumstance to maintain the built form of the locality and protect the rural character of the surrounding area. It is consistent with clause 4(c) of the direction as there is no existing height control for the site in CLEP.

#### *Remediation of Contaminated Land (2.6)*

Cessnock City Council have not provided information regarding the potential for contamination on the site. The site has been through a rezoning process and residential and accommodation uses are already permitted on the land. The planning proposal does not introduce any new uses, only a new development type for existing residential uses.

The Gateway determination should be conditioned to include a response to direction 2.6 to verify whether contamination has been considered.

#### *Development Near Regulated Airports (3.5)*

Cessnock City Council advise the additional permitted use boundary is within the 130-140m AHD OLS of the airspace affected area of Cessnock Airport. The proposed development of 14m will not penetrate the OLS. Clause 7.4 of CLEP ensures any development that may penetrate the OLS is referred to the appropriate commonwealth authority responsibly for advice before granting consent.

The Gateway determination should be conditioned to update the response to the direction with acknowledgement that Council is the owner operator of the airport and that Councils opinion satisfies the direction.

#### *Planning for Bushfire Protection (4.4)*

The site is partly affected by Vegetation Category 3 and Vegetation Buffer Fire Prone Land. Other residential and accommodation uses are already permitted on the land and any subsequent development application will be an integrated development with referral to the NSW RFS to ensure compliance with bushfire planning standards.

The Gateway determination should be conditioned to include consultation with NSW RFS and update the response to direction 4.4 to satisfy the provisions of the direction.

### **4.5 State environmental planning policies (SEPPs)**

No State environmental planning policies are applicable to the planning proposal.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The planning proposal will enable development of residential flat buildings, increasing housing supply and diversity in the area. The Vintage already comprises occupied residential houses and a mix of tourist accommodation uses.

The Cessnock DCP includes the provision of adequate recreation facilities and other services (including 1.5ha of open space, a playground, tennis courts and gymnasium) to match demand in line with the staged development of the area.

The planning proposal is not a significant increase in density of permanent occupation than is already permitted and is unlikely to increase demand for additional services or facilities.

## **5.2 Environmental**

The land is affected by a minor portion of Bushfire Vegetation Category 3 and buffer. The proposed changes relate to a type of occupiable building, for which residential dwellings are already permitted on the land and as such would not dramatically increase density. Any subsequent development application will be an integrated development requiring the approval of the NSW Rural Fire Service for compliance with bushfire planning requirements. The site is primarily cleared of native vegetation so will have no anticipated significant impacts on threatened species or communities.

## **5.3 Economic**

The planning proposal will enable a new residential development type to increase housing diversity in the area. Council advise utilities are available for connection and that local infrastructure is adequate for the proposed development type.

## **6. CONSULTATION**

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### **6.1 Community**

Cessnock City Council propose a 28-day consultation period in accordance with the Cessnock Community Participation Plan. The planning proposal is considered minor in nature and should be conditioned with a minimum 14-day consultation period.

### **6.2 Agencies**

Cessnock City Council propose consultation with Hunter Water and Transport for NSW. Consultation with these agencies are not considered necessary as the planning proposal does not increase the number or density of residential dwellings/units beyond the known anticipated capacity of The Vintage.

NSW Rural Fire Service will have to be consulted to satisfy the provisions of section 9.1 Ministerial direction 4.4 Planning for bushfire protection as the site is partly affected by bushfire prone land.

## **7. TIME FRAME**

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Cessnock City Council anticipate receiving a Gateway determination in September 2020, exhibiting the planning proposal in November, and finalising the plan by February 2021. A 6-month timeframe is considered appropriate given no significant changes are required before placing the proposal on public exhibition.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Cessnock City Council has requested to be the plan-making authority, and this is considered appropriate as the proposal is minor in nature with no significant impacts.

## **9. CONCLUSION**

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The planning proposal is supported to proceed as it enables housing diversity in an established residential area and protects local and rural character of the Vintage and surrounding area.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 Ministerial directions 2.3 Heritage Conservation and 6.3 Site Specific Provisions are minor or justified; and



2. note the consistency with section 9.1 Ministerial directions 2.6 Remediation of Contaminated Land, 3.5 Development Near Regulated Airports and Defence Airfields, and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal should be updated to include a response to satisfy the provisions of section 9.1 Ministers direction 2.6 to demonstrate that potential contamination has been considered.
2. Prior to public exhibition, the planning proposal response to section 9.1 Ministers direction 3.5 should be updated to acknowledge Cessnock Council as the owner/operator of Cessnock Airport and provide advice to satisfy the provisions of Direction 3.5.
3. The planning proposal should be made available for community consultation for a minimum of 14 days.
4. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
5. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be the local plan-making authority.



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