

**Rezone part of Lot 101 DP 1193184, James/O'Brien/Villis/Michael Streets Cessnock to R3
Medium Density Residential**

Proposal Title :	Rezone part of Lot 101 DP 1193184, James/O'Brien/Villis/Michael Streets Cessnock to R3 Medium Density Residential		
Proposal Summary :	The planning proposal aims to rezone the subject land from RU2 Rural Landscape to R3 Medium Density Residential and amend the minimum lot size from 40 hectares to 450 square metres under the Cessnock Local Environmental Plan 2011.		
PP Number :	PP_2016_CESSN_004_00	Dop File No :	15/16405

Proposal Details

Date Planning Proposal Received :	26-Jul-2016	LGA covered :	Cessnock
Region :	Hunter	RPA :	Hunter & Central Coast Joint Re
State Electorate :	CESSNOCK	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	James/O'Brien/Villis/Michael Streets		
Suburb :	Cessnock	City :	Postcode : 2325
Land Parcel :	Part of Lot 101 DP 1193184		

DoP Planning Officer Contact Details

Contact Name :	James Shelton
Contact Number :	0249042713
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RPA Contact Details

Contact Name :	Suzie Jattan
Contact Number :	0292282063
Contact Email :	suzie.jattan@planning.nsw.gov.au

DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
Contact Email :	

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes

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MDP Number :

Date of Release :

Area of Release (Ha) **2.85**

Type of Release (eg **Residential**
Residential /
Employment land) :

No. of Lots : **0**

No. of Dwellings **25**
(where relevant) :

Gross Floor Area : **0**

No of Jobs Created : **0**

The NSW Government **Yes**
Lobbyists Code of
Conduct has been
complied with :

If No, comment :

Have there been **No**
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

A planning proposal to rezone land for a site located at part of Lot 1 DP 1193184 James, O'Brien, Villis and Michael Streets, Cessnock was first submitted to Cessnock City Council in February 2014.

A Gateway determination was issued on 3 June 2014.

The planning proposal was publicly exhibited from the 30 July 2014 to 13 August 2014. Council received 17 submissions and 1 petition containing 68 signatures, objecting to the planning proposal. The submissions raise concerns about the adequacy of the services and infrastructure, traffic impacts, flooding and drainage and mine subsidence.

Following exhibition Council resolved to use their delegations not to proceed with the Planning Proposal at their meeting 15 April 2015 on the following grounds:

- inadequate supporting infrastructure to support the planning proposal;**
- impact on flooding;**
- impact on the local environment; and**
- it would not be in the public interest for the plan to be made.**

The applicant subsequently lodged a second Planning Proposal for the same land to Cessnock City Council who on 4 November 2015 resolved not to proceed with the PP.

The applicant then lodged a Pre-Gateway review with the Department on 6 November 2015.

The Hunter Central Coast JRPP considered the planing proposal and recommended that it proceed to Gateway on 10 March 2016.

Council advised on 22 April 2016) that it did not elect to be the Responsible Planning Authority (RPA) in this instance.

The Hunter and Central Coast JRPP was appointed as the RPA and formally lodged the PP with the Department on 26 July 2016.

External Supporting
Notes :

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Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives explains that the purpose of the Planning Proposal is to rezone the subject land to facilitate the subdivision of up to 25 residential allotments with a minimum lot size of 450m².**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions explains that the development site will be rezoned from RU2 Rural Landscape to R3 Medium Density Residential under the Cessnock Local Environmental Plan 2011.**

This will involve:-

- 1. Amending Land Zoning Map and rezoning part of Lot 101 DP 1193184 from RU2 Rural Landscape to R3 Medium Density Residential, and**
- 2. Amending the Minimum Lot Size Map for part of Lot 101 DP 1193184 from a minimum lot size of 40 hectares to a minimum lot size of 450m², and**

While not identified in the PP, amending the (4.1B) split zone clause so that it applies to land zoned RU2 Rural Landscape will also be required. This will permit the subdivision of the residential land from the rural residue, which does not comply with the minimum allotment size of 40ha.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.2 Rural Zones

1.5 Rural Lands

* May need the Director General's agreement

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

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Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal is conditioned in the Gateway determination to be exhibited for a minimum of 28 days, given it previously received reasonable levels of community interest.

In addition, the revised planning proposal is required to be updated with a report that addresses how submissions from the previous public exhibition have been addressed or incorporated.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The SI LEP for Cessnock was published on 23 December 2011**

Assessment Criteria

Need for planning proposal :

Yes. The preparation of a Planning Proposal is the most appropriate mechanism to investigate whether the subject land should be rezoned.

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Consistency with
strategic planning
framework :

The Lower Hunter Regional Strategy (LHRS) and Council's City Wide Settlement Strategy (CCWSS) (2010) identify the subject land as a potential urban area. The Planning Proposal will contribute to the implementation of the housing targets identified in the LHRS by providing additional housing opportunities in the proposed R3 Medium Density Residential zone.

The planning proposal is consistent with the planning principles in the draft Hunter Regional Growth Plan (Direction 4.1 and 4.2) which aims to focus housing and service growth on the regions existing towns and villages that meet local communities' needs.

State Environmental Planning Policies

SEPP No44 — Koala Habitat Protection

Comment: The ecological assessment found that the site does not constitute 'Potential Koala Habitat'. As such no further provisions of the policy apply to the site.

SEPP No55 — Remediation of Land

Comment: Previous site assessments have demonstrated that the site is uncontaminated and is suitable for residential development.

SEPP (Rural Lands) 2008

The land is not currently used for agriculture and is highly unlikely to be used for agriculture because of its size, location and characteristics. The land adjoins residential land to the west and environmental conservation land to the east and was identified in the endorsed Cessnock City Wide Settlement Strategy 2003 as potential infill for residential areas, hence any inconsistency with the SEPP is justified through s117 Direction 1.5 Rural Land.

Minister's s117 Directions

1.2 Rural Zones

Comment: The draft LEP is inconsistent with this direction because it rezones land from RU2 Rural Landscape to R3 Medium Density Residential. The inconsistency is justified by the Lower Hunter Regional Strategy (LHRS) and the endorsed Cessnock City Wide Settlement Strategy 2003.

1.5 Rural Lands

Comment: The draft LEP is inconsistent with this direction because it affects land within a rural zone. The inconsistency is justified by the Lower Hunter Regional Strategy (LHRS) and the endorsed Cessnock City Wide Settlement Strategy 2003.

2.1 Environment Protection Zones

Comment: The preliminary desktop ecological assessment dated Feb 2014 advises that the site is predominantly cleared but potentially contains some minor areas of Lower Hunter Spotted Gum Ironbark Forest, which is listed as an endangered ecological community under the Threatened Species Conservation Act 1995. Consultation with OEH confirmed that there are no threatened species or EEC's on the proposed development site and advised that they do not object to the proposal, however reinforced that any losses from land clearing will be subject to the maintain or improve principle.

2.3 Heritage Conservation

Comment: An archaeological assessment has been undertaken for this locality which concluded there were no items of significance on the subject site. The draft LEP is consistent with this direction.

3.1 Residential Zones

Comment: The proposed R3 Medium Density Residential zone permits a wider range of dwelling types. The subject land will be connected to reticulated sewer, reticulated water,

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electricity & telecommunication. The draft LEP is consistent with this direction.

3.4 Integrating Land Use and Transport

Comment: The draft LEP is consistent with this direction. The development will take advantage of existing infrastructure, services and accessibility to the town centre.

4.2 Mine Subsidence and Unstable Land

Comment: The Mine Subsidence Board on 25 March 2010 advised that this part of the Cessnock Civic Precinct has never been undermined and the site has no restrictions to buildings with respect to mine subsidence. However there is concern that unmapped historical mining may exist on the site and which may impose compensation responsibility onto Council. Further geotech studies will be required and further clarification from MSB will be required as a condition of the Gateway determination.

4.3 Flood Prone Land: The flood impact assessment undertaken for the site indicates that the majority of the site is above the 1:100 year flood level. Council advises that its draft flood maps identify additional areas subject to flooding, which may affect some of the proposed residential allotments.

Concerns have also been raised about upstream stormwater drainage and this sites ability to assist in managing storm events. The RPA needs to address this S117 Direction and determine consistency as a condition of the Gateway determination.

4.4 Planning for Bushfire Protection

Comment: The NSW Rural Fire Service advised that the site will be able to support building envelopes that meet the appropriate radiant heat level separation distances.

5.1 Implementation of Regional Strategies

Comment: The Lower Hunter Regional Strategy (LHRS) and Council's City Wide Settlement Strategy (CCWSS) (2010) identifies the subject land as a potential urban area. The proposal proposal is consistent with this S117 Direction.

The Department endorsed the Cessnock City Wide Settlement Strategy 2003 (CWSS). The CWSS identifies the subject site as having potential for increased development opportunities.

Environmental social
economic impacts :

Environmental Impacts

Areas of high conservation value have already been zoned E2 Environmental Conservation. The site is predominantly cleared but contains some minor areas of Lower Hunter Spotted Gum Ironbark Forest, which is listed as an endangered ecological community (EEC) under the Threatened Species Conservation Act 1995. OEH confirmed that the development site does not contain any EEC's or threatened species and hence do not object to the proposal.

Social and Economic Impacts

Social and economic impacts are considered to be positive through the provision of additional housing opportunities in close proximity to existing services, infrastructure and Cessnock town centre.

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Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority **Mine Subsidence Board**
Consultation - 56(2)(d)

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :
No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **The growth infrastructure team on the 14 May 2014 advised that the subject land does not need to be mapped as a URA.**

Documents

Document File Name	DocumentType Name	Is Public
JRPP 10 March 2016 advice signed by Suellen Wrightson.pdf	Proposal Covering Letter	Yes
JRPP 10 March 2016.pdf	Proposal Covering Letter	Yes
Planning Proposal April 2014.pdf	Proposal	Yes
James Street - RFS Comments.pdf	Proposal	Yes
James Street - OEH.pdf	Proposal	Yes
James Street - NSW Trade and Investment.pdf	Proposal	Yes
James Street - Mine Workings Overlay.pdf	Proposal	Yes
James Street - Mine Subsidence.pdf	Proposal	Yes
James Street - Ecological Assessment.pdf	Study	Yes
James Street - Bushfire Threat Assessment.pdf	Study	Yes
James St - Flood Assessment (vA5467635).pdf	Study	Yes
James Street - CCC Planing Proposal 4 November 2015.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

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S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information : The Planning Proposal be supported subject to conditions:

1. The Planning Proposal dated 28.10.2015 shall be updated and revised to include:
 - An independent geotechnical report on up-to-date testing of the site proposed for urban development be undertaken to determine if there are residual underground mine workings affecting the site.
 - An appropriate stormwater drainage solution for the site incorporating the adjacent existing residential area be developed in consultation with Council. The solution shall clearly outline what is required to resolve onsite generated drainage and what is the additional works to cater for upstream generated drainage (i.e. Material Public Benefit).
 - An updated flood study be prepared to take into consideration the Cessnock City Flood Risk Management Study (adopted 2 March 2016), and the proposed stormwater drainage solution which may reduce flooding impacts.
 - The Planning Proposal should also be updated to address the Ministers Direction 4.3 Flood Prone Land.
 - A report be prepared outlining how submissions from the previous public exhibition in August 2014 have been addressed and/or incorporated into the revised Planning Proposal.
2. The revised Planning Proposal shall be endorsed by the JRPP prior to public exhibition.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning authority (RPA) must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).
4. Consultation is required with the Mine Subsidence Board under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of s117 Direction 4.2 Mine Subsidence and Unstable Land when the revised geotechnical report is received.

The Mine Subsidence Board is also requested to provide advice on its role and responsibilities in providing compensation for subsidence events over unmapped and unknown mine subsidence areas. This action shall clarify the risk to Council in developing this site.

The Mine Subsidence Board is to be provided with a copy of the planning proposal, the revised geotechnical report and other any relevant supporting material, and given at least 21 days to comment on the proposal. The RPA should, following receipt of advice from the public authorities, update its consideration of s117 Directions in the planning proposal, as required.

5. The Director General (or delegate) approves the minor inconsistencies with the Minister's S117 Direction 1.2 Rural Zones and 1.5 Rural Lands because the inconsistencies are justified by the Lower Hunter Regional Strategy and the endorsed Cessnock City Wide Settlement Strategy 2003.

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6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge the RPA from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

7. The timeframe for completing the LEP is to be 12 months.

Supporting Reasons :

Consistent with the considerations and recommendation of the JRPP.

Issues identified concerning flooding and mine subsidence risk are addressed in the Gateway Determination conditions.

Signature:



Printed Name:

K O'Haherty

Date:

8/8/16