

Planning and Assessment

IRF20/3597

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Reclassification of properties at Cessnock, East Branxton, Greta and Kurri, and rezoning and reclassifying properties at Pelaw Main and Weston (263 dwellings)
NUMBER	PP_2020_CESSN_003_00
LEP TO BE AMENDED	Cessnock Local Environmental Plan 2011
ADDRESS & DESCRIPTION	<ol style="list-style-type: none"> 1. Lot 8 DP 255269 – 10 Redgrove Court, East Branxton; 2. Lot 20 Section D DP 1846 – 45 Yates Street, East Branxton; 3. Lot 7 DP 1177000 – 9 Abermain Street, Pelaw Main; 4. Lot 9 DP 253077 – 1A Lee-Ann Crescent, Cessnock; 5. Lot 1 DP 382568 – 10 Embelton Avenue, Weston; 6. Part of Lot 260 DP 1160174 – 85 Swanston Street Weston; 7. Lot 5 and 7 DP 1140055 – 101 Maitland Street and part of 107 Lang Street, Kurri Kurri; and 8. Lot 1-21 Section 29 DP 758474 – 35 Water Street, Greta.
RECEIVED	6 August 2012, adequate 16 September 2020
FILE NO.	IRF 20/3597
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

To reclassify from community to operational eight sites owned by Cessnock City Council.

Seven of the sites have been identified as surplus to community needs through a strategic review or *Recreation and Open Space Strategic Plan 2019*. Additionally, site 7 was identified as surplus during consideration of the planning proposal by Council.

Of the eight sites:

- Three sites would be rezoned to a residential zone and the minimum lot size changed accordingly;

- four sites are already zoned for residential purposes with a suitable minimum lot size.
- Site 7 would retain its RE1 Public Recreation zone while Council considers zoning options for the site. Council proposes to seek to rezone this site through a separate planning proposal.

The proposed reclassification/rezoning of the sites will enable Council sell and/or develop these sites. Council advise funds will be utilised to acquire and maintain a balanced portfolio of property investments ensuring maximum capital growth, a recurrent income source and the financial capacity to further invest and develop.

1.2 Site description

Table 1 provides a brief description of each site.

Site	Address	Lot/DP	Recreational Assets	Current Zone	Proposed rezoning	Proposed MLS change	Estimated additional dwelling
1	10 Redgrove Court, East Branxton	Lot 8 DP 255269	Park	R2 Low Density Residential	No change	No	1
2	45 Yates Street, East Branxton	Lot 20 Section D DP 1846	vacant	R2 Low Density Residential	No change	No	2
3	Jacobs Park 9 Abermain Street, Pelaw Main	Lot 7 DP 1177000	park	RE1 Public Recreation	R2 Low Density Residential	Add to map 450m	29
4	1A Lee-ann Crescent, Cessnock	Lot 9 DP 253077	park	R2 Low Density Residential	No change	No	2
5	10 Embelton Avenue, Weston	Lot 1 DP 382568	vacant	RE1 Public Recreation	R3 Medium Density Residential	Add to map 450m	44
6	Varty Park Part 85 Swanson Street, Weston	Part of Lot 260 DP 1160174	District sportsground – (part)	RE1 Public Recreation	R2 Low Density Residential	Add to map 450m	117
7	101 Maitland Street and 107 Lang Street, Kurri Kurri	Lot 5 and 7 DP 1140055	Netball courts	RE1 Public Recreation	Deferred	No	n/a (22 if rezoning continues)
8	35 Water Street, Greta	Lot 1-21 Section 29 DP 758474	Park	R2 Low Density Residential	No change	No	68

Table 1 Summary of site description

1.3 Existing planning controls

The planning proposal involves eight separate sites as described in above table 1.

1.4 Surrounding area

Sites proposed to be reclassified and not rezoned include:

Site 1



On 27 September 1977, Site 1 was vested as a public reserve by registration of DP 255269.

The site is approximately 810 m² and is known as Dalwood Road Park.

The planning proposal states there is sufficient recreation land in the immediate area to meet future demand for open space and recreation needs. Brunner Park is located within 500 m of the site.

Site 2



On 19 January 1996, the site was purchased by Cessnock City Council to be used as a drainage reserve.

The site is approximately 810 m² in area. It is currently vacant.

Council advises the drainage reserve is no longer required and therefore the site is surplus.

Site 4



On 15 August 1978, the site was vested to Cessnock City Council as a public reserve by registration of DP 253077.

The site is approximately 1,429 m² and is known as Lee-Ann Crescent Park.

The planning proposal states there is sufficient recreation land in the immediate area to meet future demand for open space and recreation needs. Manning Park East, Michael Drain Oval and North Cessnock Playground are all located within 300 m of the site.

Site 7



On 3 September 1976, the site was vested to Cessnock City Council as a public reserve by way of Government Gazette.

The site is approximately 1.18 hectares and is known as Molly Worthington Netball Courts.

Negotiations are taking place with the proponent of the Hydro development for a new location for the netball courts. Note that these negotiations are in the early stage and have not been finalised.

Site 8



On 17 June 1977, the site was vested to Cessnock City Council as a public reserve by way of Government Gazette. It has a total area of 4.5 hectares and is known as Victoria Park. The site was historically subdivided, but there has been no development on any lots, or any park improvements on the site.

The planning proposal states there is sufficient recreation land in the immediate area to meet existing and future open space and recreation needs. A public reserve is located with 400 m of the site and Great Central Oval is located 800 m of the site.

Sites proposed to be reclassified and rezoned include:

Site 3

Site 5

Site 6



On 20 August 1976, the site was vested to Cessnock City Council as a public reserve by way of Government Gazette. The site is approximately 1.65 hectares and is known as Jacob's Park.

The planning proposal states there is a surplus of local sportsground in the vicinity. Pelaw Main Centenary Park is located within 100 m of the site.



On 10 October 1952, the site was vested to Cessnock City Council as a public reserve by registration of Folio Plan 382568. The site is approximately 2.5 hectares in area and is currently vacant.

The planning proposal states Ernie Dunlop Park and a significant area of recreationally zoned Crown Land are located within 250 m of the site.



On 23 November 1934, the site was vested to Cessnock City Council as a public reserve by way of Government Gazette.

The total site area is approximately 11.4 hectares and is known as Varty Park. The portion of the site to be divested is approximately 6.6 hectares and is identified as flood free.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal seeks to reclassify and rezone Cessnock City Council's sites to enable the future sale of the sites.

The planning proposal will result in the reduction of 17 hectares of open space that (with the exception of 1.9 ha at site 7) has been identified as surplus to community needs through a strategic review undertaken by Council.

The planning proposal will provide the opportunity for up to 263 dwellings.

2.2 Explanation of provisions

The planning proposal includes the reclassification land which involves changes to Schedule 4 of the *Cessnock Local Environmental Plan 2011*, being:

- Part 1 will include site 2 (land classified, or reclassified, as operational – no interests changed); and
- Part 2 will include sites 1, 3, 4, 5, 6, 7 and 8 (land classified, or reclassified, as operational – interests changed). All interests proposed to be discharged relate to public reserve status.

The land use zone and minimum lot size maps are proposed to be amended to R2 Low Density Residential (sites 3, 6) or R3 Medium Density Residential (site 5), with a 450 m² minimum lot size.

Limited detail is provided in the planning proposal regarding how Cessnock City Council has identified the proposed zones as being suitable for each site.

This is particularly the case for site 5. This site is proposed to be rezoned R3 Medium Density Residential, despite the surrounding R2 Low Density Residential and would be physically separated by the railway line to the existing R3 Medium Density Residential zones.

This assessment and justification for the proposed new zones should be updated in the planning proposal in line with any other proposed rezoning.

2.3 Mapping

Site identification maps for all site to be reclassified are included and clearly indicate Cessnock City Council's intention to reclassify the land.

The planning proposal does not include the proposed zoning or minimum lot size maps for sites 3, 5 and 6. These should be included in the planning proposal prior to public exhibition.

3. NEED FOR THE PLANNING PROPOSAL

Cessnock City Council's *Recreation and Open Space Strategic Plan 2019* (ROSSP) provides the long-term strategic direction for future provision and management of recreation facilities, programs and services in the Cessnock Local Government Area.

The ROSSP included a gap analysis that compared the current and future provision of recreation and open space facilities against NSW Government standards. The analysis considered whether the quantity and location of recreation and open space types aligned with current and future community needs for the planning areas of Cessnock, Kurri Kurri, Branxton-Greta and Rural West.

A strategic property review was undertaken in 2019 to inform revision to the ROSSP.

The ROSSP categorises the following sites in the planning proposal:

Site	Category in the ROSSP
1	Nominated for disposal
2	Nominated for disposal (strategic property review)
3	Nominated for disposal (strategic property review)
4	Nominated for disposal
5	Nominated for disposal
6	Nominated for disposal (strategic property review)
7	Needing expansion to include additional recreation facilities
8	Nominated for disposal

Site 7 should be removed from the planning proposal.

The ROSSP identifies the site as a district sportsground and recommends a local park and playground be co-located at the netball courts to reduce the deficit of local parks in the Kurri Kurri Planning Area and the gap in the provision of playgrounds near Kurri Kurri CBD.

Practice Note PN 16-001 guides NSW councils to demonstrate merit when reclassifying public land through a local environmental plan. It requires clear messaging to the community and the Governor about the strategic merit of reclassifying a site, future use of the site and how any funds generated from disposal of a site will be used.

At this stage, this information has not been provided and reclassification is contrary to the recommendations of the ROSSP. While the planning proposal advises the existing use can continue once reclassified, the land would no longer be protected from potential sale.

The site was identified for reclassification and rezoning by Council via the Strategic Property Committee. A resolution was made 15 May 2019 that the reclassification of the site be run concurrently with the search for an alternative site.

An alternative site is being negotiated with the proponent of the planning proposal for the former Hydro smelter. Council has advised that a review has determined no Council sites are suitable to accommodate the Kurri Kurri Netball Courts and its potential future expansion. If the courts were to relocate, it is desirable they be part of a broader recreation precinct. Until these negotiations successfully conclude or alternative options such as land acquisition of other sites are considered, there is no alternative site for the facilities.

This report recommends the reclassification of the site be deferred and run concurrently with the rezoning once an alternative site for the regional netball facilities is secured. Progressing reclassification in advance of this is premature. It is inconsistent with the Practice Note PN 16-001 and there is a risk agreement may not be reached with the Hydro proponents. There is limited public benefit in reclassifying the site now when there is no plan in place for the future location of the facilities.

4. STRATEGIC ASSESSMENT

4.1 State

Practice Note PN 16-001 guides NSW councils to demonstrate merit when reclassifying public land through a local environmental plan. It requires clear messaging to the community and the Governor about the strategic merit of reclassifying a site, future use of the site and how any funds generated from disposal of a site will be used.

All sites, with the exception of site 7, have been identified by a strategic study consistent with the Practice Note for reclassifying public land.

Site 7 is considered inconsistent with the Practice Note.

4.2 Regional / District

Hunter Regional Plan 2036

The planning proposal is generally consistent with the *Hunter Regional Plan 2036*. In particular, with the following directions and actions:

- Direction 21: Create a compact settlement – which seeks to focus development in locations with established services and infrastructure and includes
 - Action 21.6 Provide greater housing choice by delivering diverse housing, lot types and sizes; and
 - Action 21.7 Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.
- Direction 22: Promote housing diversity – which seeks to support a diversity of housing types to reflect the diversity of housing needs of the Hunter's residents, and includes:
 - Action 22.2 Encourage housing diversity, including studios and one and two-bedroom dwellings, to match forecast changes in household sizes.

Greater Newcastle Metropolitan Plan 2036

The planning proposal is generally consistent with Strategy 16 which seeks to prioritise the delivery of infill housing opportunities within existing urban areas. Action 16.1 requires councils to focus new housing in existing urban areas, particularly within strategic centres and along urban renewal corridors. The reclassification and proposed rezoning will enable additional housing in these locations.

4.3 Local

Community Strategic Plan - Our People, Our Place, Our Future

Cessnock City Council advises the planning proposal amendments are not inconsistent with the Community Strategic Plan.

Local Strategic Planning Statement

The planning proposal provides for relatively minor changes to the existing urban area and is consistent with the Cessnock Local Strategic Planning Statement (LSPS) in its desire to provide further infill residential development. It responds to the following planning priorities:

- Planning priority 1 Our urban areas are compact – which seeks to support infill residential development; and
- Planning priority 2 Housing is diverse, adaptable and affordable and our urban areas facilitate affordable living – which seeks to support a mix of housing types in different locations.

Cessnock City Council needs to update this section of the planning proposal to reflect its endorsed LSPS as the current text refers to the draft LSPS.

4.4 Section 9.1 Ministerial directions

While the planning proposal only provides limited detail on the proposed rezonings and will need to be updated, the planning proposal is generally consistent with section 9.1 Ministerial direction 3.1: Residential zones. It will provide additional infill housing choice, making efficient use of existing infrastructure and services.

The planning proposal will reduce existing recreation reservations for public purposes by 17.45 hectares. The Governor's approval of the removal of the reserve status will be required following public exhibition and consideration of submissions.

There is not enough information to recommend consistency with section 9.1 Ministerial direction 6.2: Reserving land for public purposes.

Further information on section 9.1 Ministerial directions relevant to particular sites is listed below:

Site	Section 9.1 Ministerial direction
1	No additional section 9.1 Ministerial directions relevant
2	No additional section 9.1 Ministerial directions relevant
3	<p><u>Direction 4.2 Mine Subsidence and Unstable Land</u></p> <p>The site is mapped in the Tomalpin Mine Subsidence District. The planning proposal should be referred to the Subsidence Advisory NSW.</p> <p><u>Direction 4.4 Planning for Bushfire Protection</u></p> <p>The site is mapped as being partially affected by bush fire prone. The planning proposal should be forwarded to the NSW Rural Fire Service.</p>
4	<u>Direction 4.3 Flood Prone land</u>

	<p>site 4 is mapped below the flood planning level, requiring future development to comply with clause 7.3 of <i>Cessnock Local Environmental Plan 2011</i>.</p> <p>The site is above the 1% AEP (Annual Exceedance Probability) flood event, and not considered a floodway. It is unlikely that permitting development on the land will result in significant flood impacts to this or neighbouring properties at a 1% AEP flood event. Evacuation is considered possible in a flood event.</p> <p>The planning proposal is not inconsistent with the direction as site 4 is not proposed to be rezoned and will not be permitting significant development to be carried out with or without development consent.</p>
5	No additional section 9.1 Ministerial directions relevant
6	<p><u>Direction 4.3 Flood Prone land</u></p> <p>Site 6 is considered a flood control lot. The portion of the site proposed for reclassification and rezoning to residential is mapped as not affected by the Flood Planning Area (1% AEP flood plus 0.5 m).</p> <p>The planning proposal is consistent with this direction.</p> <p><u>Direction 4.4 Planning for Bushfire Protection</u></p> <p>The site is mapped as being partially affected by bush fire prone. The planning proposal should be forwarded to the NSW Rural Fire Service.</p>
7	No additional section 9.1 Ministerial directions relevant
8	<p><u>Direction 1.3 Mining, Petroleum Production and Extractive Industries</u></p> <p>Cessnock City Council consider this direction applies as site 8 is mapped in the energy resource audit as having 'energy resource potential'. This resource refers to potential renewal resources, such as wind, sun and Bioenergy.</p> <p>The direction applies to coal, mineral, petroleum or other extractive industries. This direction is not considered to apply in this instance.</p> <p><u>Direction 4.4 Planning for Bushfire Protection</u></p> <p>The site is mapped as being partially affected by bush fire prone. The planning proposal should be forwarded to the NSW Rural Fire Service.</p>

4.5 State environmental planning policies (SEPPs)

There are no State Environmental Planning Policies affected by this planning proposal. Any future development enabled by the planning proposal may need to consider them as part of a development application.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The sites have been assessed as being surplus due to their location and suitability for recreation as part of Cessnock City Council's adopted *Recreation and Open Space Strategic Plan 2019*. The Plan also includes details of land acquisitions to expand the recreation network and improvements to parks.

The planning proposal will result in an additional 263 infill dwellings, not including site 7.

5.2 Environmental

Cessnock City Council advises the reclassifications, and reclassification and rezonings are likely to have minimal environmental impact.

None of the sites are affected by acid sulfate soils.

Council advises an Endangered Ecological Community is also mapped on site 6. However, there is only a small portion of this EEC mapped within the portion of the site proposed for reclassification and rezoning. This matter can be resolved at the development application stage.

5.3 Economic

The planning proposal will result in financial benefit for Cessnock City Council. The sale of the properties will be managed by Council in accordance with its Property Investment and Development Policy.

The planning proposal will result in approximately 263 dwelling opportunities within existing urban areas. This may increase housing diversity and housing affordability within the local catchments with minimal infrastructure costs.

5.4 Infrastructure

Cessnock City Council advises the small amount of additional housing provided on each site is able to be serviced by existing infrastructure. It proposes consultation with Hunter Water regarding servicing.

6. CONSULTATION

6.1 Community

Cessnock City Council propose a 28 day public exhibition. This is appropriate as the planning proposal is not considered a 'low impact proposal'.

As the planning proposal involves reclassification, a public hearing under the *Local Government Act 1993* will be required.

6.2 Agencies

Cessnock City Council recommends consultation with the following agencies be undertaken during exhibition:

- Subsidence Advisory NSW;
- NSW Rural Fire Service; and
- Hunter Water

7. TIME FRAME

Cessnock City Council has proposed a 12-month timeframe. However, due to additional procedural requirements, reclassification planning proposals routinely take 18 months.

A 24-month timeframe is recommended to reflect the reality of procedural requirements for this planning proposal.

8. LOCAL PLAN-MAKING AUTHORITY

As the planning proposal includes reclassifications which require the Governor's approval, Cessnock City Council are unable to be the local plan-making authority.

9. CONCLUSION

Seven of the sites are recommended to proceed are consistent with relevant strategies and will enable Cessnock City Council to dispose of surplus land and invest in open space and recreational needs of the community.

Site 7 is not recommended to proceed at this time. The site contains district netball facilities and an alternative location is yet to be secured. The planning proposal has not clearly demonstrated the public benefit in reclassifying the land at this time. The reclassification is not the result of a strategic report or study. Reclassification of the site is considered premature at this time.

It is recommended reclassification of site 7 be considered when an alternative site for the netball facilities has been secured, and when it is clear what the proposed zoning of the site will be and how the funds will be used to benefit the public.

10. RECOMMENDATION

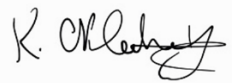
It is recommended that the delegate of the Secretary:

1. note the unresolved inconsistency with section 9.1 Ministerial directions;
 - Direction 4.2 Mine Subsidence and Unstable Land;
 - Direction 4.4 Planning for Bushfire Protection; and
 - Direction 6.2 Reserving land for Public Purposes.

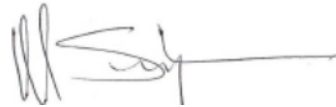
It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to community consultation to:
 - a. remove Item 7 Molly Worthington Netball Courts – (Lot 5 and Lot 7 DP 1140055 101 Maitland Street and 107 Lang Street, Kurri Kurri);
 - b. include additional information required by PN 16-001 Classification and reclassification of public land through a local environmental plan;
 - c. include an assessment and justification for the proposed zones identified for sites 3, 5 and 6;
 - d. include proposed zoning and minimum lot size maps which identify the site in the context of its surrounds.

- e. reflect the endorsed Local Strategic Planning Statement; and
- 2. The planning proposal should be made available for community consultation for a minimum of 28 days.
- 3. Consultation is required with the following public authorities:
 - Subsidence Advisory NSW; and
 - Rural Fire Service.
- 4. The time frame for the planning proposal are:
 - a. public exhibition of the planning proposal is commenced before 9 months from the date of the Gateway determination; and
 - b. completing the LEP is to be 24 months from the date of the Gateway determination.



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26/10/2020
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