



PLANNING PROPOSAL

**Building Height Controls
for
"Cessnock Civic"
Vincent Street, Cessnock
18/2011/6/1**

21 September 2011

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Planning Proposal – Building Height Controls for “Cessnock Civic” Vincent Street, Cessnock

Part 1 - Objective

The objective of the planning proposal is to place a 12 metre maximum building height over land to be zoned B7 Business Park at a location commonly known as “Cessnock Civic”.

Part 2 - Background

The Planning Proposal seeks to place a 12 metre maximum building height over land to be zoned B7 Business Park on Lot 251 DP 606348, Lot 21 DP845986, Lot 22 DP 845986, Part Lot 23 DP 845986, Part Lot 1 DP 1036300, Lot1 DP 608084, Lot2 DP 608084, and Lot 3 DP 608084 (see locality plan in Figure 1).

The subject land is currently zoned 1(a) General Business Zone under the Cessnock Local Environmental Plan 1989 and is proposed to be zoned B7 Business Park under an amendment to that Plan.

At its meeting held on 12 May 2011, the Cessnock Planning Panel considered report PPEE23/2011 Planning Proposal for Cessnock Civic precinct 18/2004/9/1 and resolved, amongst other matters, to:

1. *Amend the Planning Proposal for Cessnock Civic Precinct in the following manner:*
 - a) *Adopt the B7 – Business Park and E2 – Environmental Zones, the extent of which is shown on the attached rezoning plan;*
 - b) *The Cessnock Civic Precinct be incorporated into Part 7 Urban Release Areas of draft Cessnock Local Environmental Plan 2011 as an urban release area, the extent of which is shown on the attached urban areas release map;*
 - c) *A 12m height limit apply to the B7 – Business Park, the extent of which is shown on the attached height of building map;*
2. *The Planning Proposal be referred to the Department of Planning pursuant to Section 68 of the Environmental Planning and Assessment Act 1979 once Council has resolved to exhibit the draft Development Control Plan and Voluntary Planning Agreement for the Cessnock Civic Precinct;*
3. *The Department of Planning be advised that the Planning Proposal not be referred to the Minister for gazettal pursuant to Section 69 of the Environmental Planning and Assessment Act until the draft Development Control Plan and Voluntary Planning Agreement have been endorsed by Council;*

In respect of resolutions 2 and 3 above, a report recommending the public exhibition of a draft Development Control Plan and a draft Voluntary Planning Agreement will be considered by Cessnock City Council in the coming weeks.

Council officers have discussed the implications of resolution 1(c) with the Hunter Regional Office of the Department of Planning and Infrastructure. The Department has advised that the inclusion of a 12 metre building height limit may necessitate another exhibition of the Planning Proposal. The Department have further stated that while a decision about re-exhibition is one for Council, there may be a legal risk if re-exhibition did not occur.

The discussions concluded that a sound way to progress the Planning Proposal would be for Council to submit the Plan to the Department for finalisation without the 12 metre maximum building height, as per resolutions 1(a), 1(b), 2 and 3 of the Planning Panel's resolution of 12 May 2011, referred to above. A separate Planning Proposal could then be initiated to implement the intent of resolution 1(c) of the Panel.

This Planning Proposal therefore seeks to implement the intent of the Planning Panel resolution 1(c) of 12 May 2011.

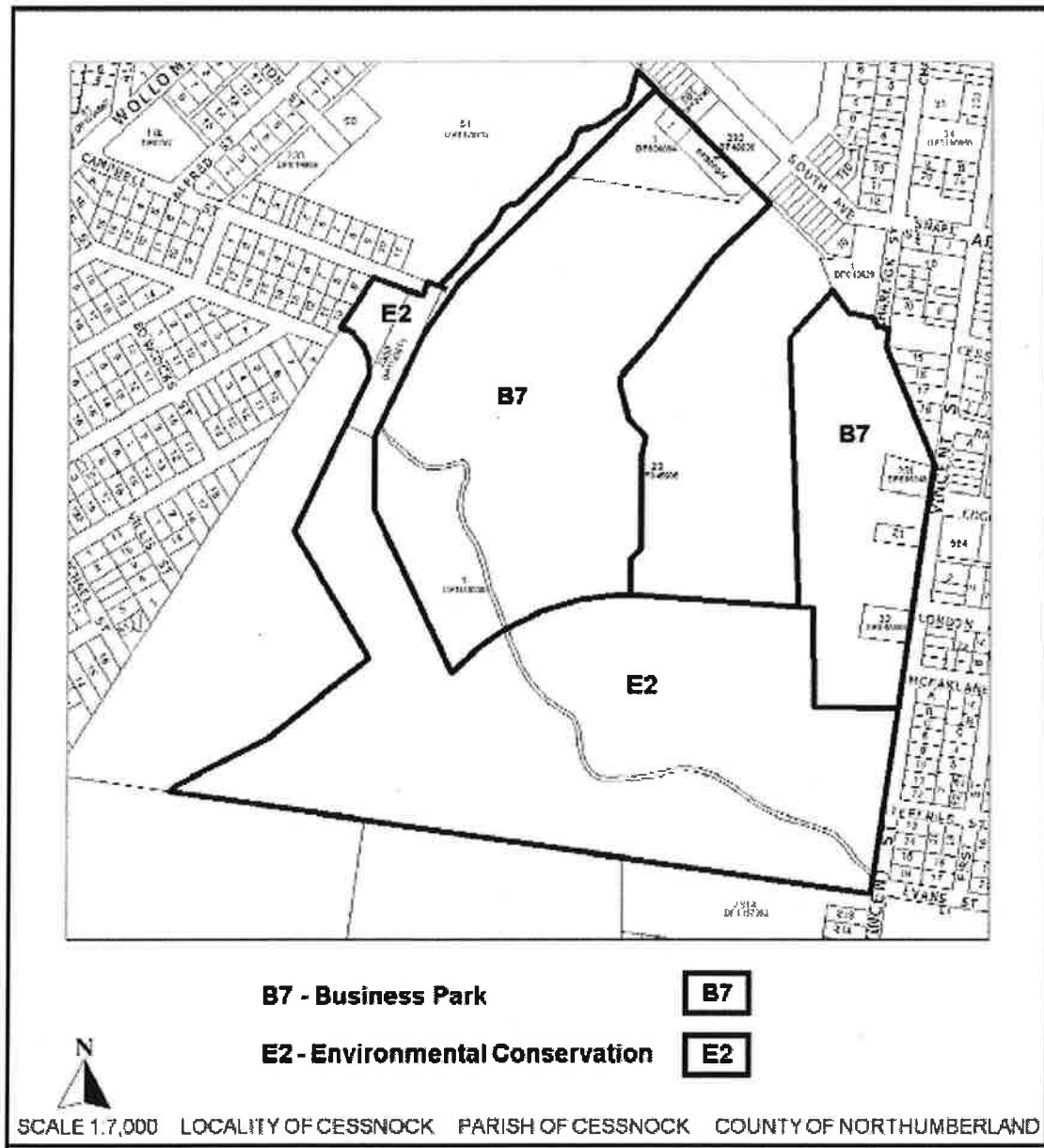
In order to formally progress the Proposal, the Cessnock Planning Panel resolved on 15 September 2011 as follows:

1. *The Planning Panel rescind part 1(c) of its decision of 12 May 2011 in relation to item PPEE23/2011 Planning Proposal for Cessnock Civic precinct 18/2004/9/1 - Lots 21, 22 & 23 DP 845986, Lot 1 DP 103630, Lots 1, 2 & 3 DP 608084, and Lot 7300 DP 1143010 off Vincent Street Cessnock.*
2. *The Planning Panel resolve to confirm that Lot 251 DP 606348 was included in its resolution of 12 May 2011 in relation to report PPEE23/2011. (This lot was included in the map but not included in the report title).*
3. *The Planning Panel resolve to prepare a planning proposal for a 12 metre building height limit over those lands proposed to be zoned B7 Business Park within the subject land.*

Part 3 - Location

This Planning Proposal affects those lands proposed to be zoned B7 Business Park in Figure 1 below.

Figure 1: Locality of the Subject Land



Part 4 - Explanation of the Provisions

The Planning Proposal seeks to amend the Cessnock Local Environmental Plan 1989 or the new Cessnock Comprehensive Local Environmental Plan (Cessnock Local Environmental Plan 2011), depending on which Plan is in force at the time of final gazettal as follows:

Cessnock Local Environmental Plan 1989

The Cessnock Local Environmental plan 1989 would be amended by including the following clause:

Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure that the height of a building is appropriate for the site
- (b) to ensure that the height of a building complements the streetscape or rural character of the area in which the building is constructed

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

In addition, a Height of Buildings Map would be included in the Cessnock Local Environmental Plan 1989 showing the subject zone B7 Business Park land with a 12 metre maximum building height.

Cessnock Local Environmental Plan 2011

The Height of Buildings Map of the Cessnock Local Environmental Plan 2011 would be amended by showing the subject zone B7 Business Park land with a 12 metre maximum building height.

Part 5 - Justification

Section A - Need for the Planning Proposal

A number of residents' submissions, received as a result of the public exhibition of the Planning Proposal to rezone the subject land, raised concerns about the impact on their residential amenity that would result from the development of the subject land. The Cessnock Planning Panel is of the view that while a development control plan will assist in protecting residential amenity, a maximum building height will limit the visual scale of development and further assist in reducing any amenity impacts on the adjoining streetscape.

Section B - Relationship to Strategic Planning Framework

Consistency with Objectives and Actions within Regional Strategies

Lower Hunter Regional Strategy

The *Lower Hunter Regional Strategy (LHRS) 2006* is relevant. The Lower Hunter Regional Strategy identifies Cessnock City Centre as a regional centre and projects significant employment increases. The development of Cessnock Civic seeks to increase economic activity and employment in the Cessnock regional centre.

Consistency with Council's Community Strategic Plan or other Local Strategic Plan

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

The Planning Proposal progresses *Objective 2.1 – Diversifying Local Business options* and *Objective 2.2 Achieving More Sustainable Employment Opportunities*.

The development of Cessnock Civic is identified as an action in the Cessnock City Wide Settlement Strategy.

Consistency with State Environmental Planning Policies

There are no existing or draft State Environmental Planning Policies (SEPPs) that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant SEPPs against the Planning Proposal is provided in the table below.

The Planning Proposal is very limited in scope, as it deals with building heights in a specific zone in a specific locality. It is consistent with all SEPPs and the provisions of all SEPPs are “not applicable” in so far as they are not affected by, or interact with, this Planning Proposal.

Table 1: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP No. 1 - Development Standards	Makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP No. 4 - Development without Consent and Miscellaneous Complying Development	Allows relatively simple or minor changes of land or building use and certain types of development without the need for formal development applications. The types of development covered in the policy are outlined in the policy.	Not applicable.
SEPP No. 6 - Number of Storeys in a Building	Sets out a method for determining the number of storeys in a building, to prevent possible confusion arising from the interpretation of various environmental planning instruments	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP No. 10 - Retention of Low Cost Rental Accommodation	Requires the local council's consent, and the Director General of the Department of Planning's concurrence, to demolish, alter or change the use of a boarding house. Consent is also required to strata-subdivide a low-cost residential flat building or boarding house.	Not applicable.

SEPP No. 14 - Coastal Wetlands	Ensures coastal wetlands are preserved and protected for environmental and economic reasons.	Not applicable.
SEPP No. 15 - Rural Land-Sharing Communities	Makes multiple occupancy permissible, with council consent, in rural and non-urban zones, subject to a list of criteria in clause 9(1) of the policy. Multiple occupancy is defined as the collective management and sharing of unsubdivided land, facilities and resources.	Not applicable.
SEPP No. 19 - Bushland in Urban Areas	Protects bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when local environmental plans for urban development are prepared.	Not applicable.
SEPP No. 21 - Caravan Parks	Ensures that where caravan parks or camping grounds are permitted under an environmental planning instrument, movable dwellings, as defined in the Local Government Act 1993, are also permitted. The specific kinds of movable dwellings allowed under the Local Government Act in caravan parks and camping grounds are subject to the provisions of the Caravan Parks Regulation.	Not applicable.
SEPP No. 22 - Shops and Commercial Premises	Permits within a business zone, a change of use from one kind of shop to another or one kind of commercial premises to another, even if the change of use is prohibited under an environmental planning instrument.	Not applicable.
SEPP No. 26 - Littoral Rainforests	Applies to 'core' areas of littoral rainforest as well as a 100 metre wide 'buffer' area surrounding these core areas, except for residential land and areas to which SEPP No. 14 - Coastal Wetlands applies.	Not applicable.
SEPP No. 30 - Intensive Agriculture	Requires development consent for cattle feedlots having a capacity of 50 or more cattle or piggeries having a capacity of 200 or more pigs.	Not applicable.
SEPP No. 32 - Urban Consolidation (Redevelopment of Urban Land)	Sets out guidelines for the Minister to follow when considering whether to initiate a regional environmental plan (REP) to make particular sites available for consolidated urban redevelopment. Where a site is rezoned by a REP, the Minister will be the consent authority.	Not applicable.

SEPP No. 33 - Hazardous and Offensive Development	Provides new definitions for 'hazardous industry', 'hazardous storage establishment', 'offensive industry' and 'offensive storage establishment'. The definitions apply to all planning instruments, existing and future. The new definitions enable decisions to approve or refuse a development to be based on the merit of proposal. The consent authority must carefully consider the specific case, the location and the way in which the proposed activity is to be carried out. The policy also requires specified matters to be considered for proposals that are 'potentially hazardous' or 'potentially offensive' as defined in the policy.	Not applicable.
SEPP No. 36 - Manufactured Home Estates	To enable the immediate development of estates, the policy allows MHEs to be located on certain land where caravan parks are permitted. There are however, criteria that a proposal must satisfy before the local council can approve development. The policy also permits, with consent, the subdivision of estates either by community title or by leases of up to 20 years.	Not applicable.
SEPP No. 44 - Koala Habitat Protection	Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range. The policy applies to 107 local government areas. Local councils cannot approve development in an area affected by the policy without an investigation of core koala habitat.	Not applicable.
SEPP No. 50 - Canal Estates	Bans new canal estates from the date of gazettal, to ensure coastal and aquatic environments are not affected by these developments.	Not applicable.
SEPP No. 55 – Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.	Not applicable.

SEPP No. 60 - Exempt and Complying Development	Provides a more efficient and effective approval process for certain classes of development. The policy is an essential part of the reforms introduced to the development assessment system in July 1998. It applies to areas of the State where there are no such provisions in the council's local plans.	Not applicable.
SEPP No. 62 – Sustainable Aquaculture	The SEPP relates to development for aquaculture and to development arising from rezoning of land and is of relevance for the site specific rezoning proposals.	Not applicable.
SEPP No. 64 – Advertising and Signage	Aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.	Not applicable.
SEPP No. 65 - Design Quality of Residential Development	Raises the design quality of residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential flat development.	Not applicable.
SEPP No. 71 - (Coastal Protection)	Ensures that development in the NSW coastal zone is appropriate and suitably located, to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.	Not applicable.
SEPP Housing for Seniors or people with a Disability 2004	Encourages the provision of housing for seniors, including residential care facilities. The SEPP provides development standards.	Not applicable.
SEPP (Building Sustainability Index: BASIX) 2004	Ensures consistency in the implementation of BASIX throughout the State by overriding competing provisions in other environmental planning instruments and development control plans, and specifying that SEPP 1 does not apply in relation to any development standard arising under BASIX.	Not applicable.

SEPP (Major Development) 2005	Defines certain developments that are major projects to be assessed under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. It also provides planning provisions for State significant sites. In addition, the SEPP identifies the council consent authority functions that may be carried out by joint regional planning panels (JRPPs) and classes of regional development to be determined by JRPPs.	Not applicable.
SEPP (Temporary Structures)	Provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity.	Not applicable.
SEPP Infrastructure 2007	Wide ranging. Provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	Not applicable.
SEPP Mining, Petroleum Production and Extractive Industries 2007	Provides for the proper management of mineral, petroleum and extractive material resources and ESD.	Not applicable.
SEPP (Rural Lands) 2008	Facilitates economic use and development of rural lands, reduce land use conflicts and provides development principles.	Not applicable.
SEPP (Exempt and Complying Development Codes) 2008	Provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP (Affordable Rental Housing) 2009	Increases the supply and diversity of affordable rental and social housing in NSW.	Not applicable.

Consistency with s.117 Ministerial Directions for Local Plan Making

An assessment of relevant s.117 Directions against the Planning Proposal is provided in the table below. The Planning Proposal is consistent with these Directions.

Table 2: Relevant s.117 Ministerial Directions

Ministerial Direction	Aim of Direction	Consistency and Implication
1. EMPLOYMENT AND RESOURCES		
1.1 Business and Industrial Zones	Encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified strategic centres.	The Planning Proposal does not propose to change the zoning of the land.
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	Planning Proposal not affected by this direction.
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Planning Proposal not affected by this direction.
1.4 Oyster Aquaculture	Not applicable.	Not applicable.
1.5 Rural lands	The objective of this direction is to protect the agricultural production value of rural land and facilitate the economic development of rural lands for rural related purposes.	Planning Proposal not affected by this direction.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	Planning Proposal not affected by this direction.
2.2 Coastal Protection	Not applicable.	Not applicable.
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Planning Proposal not affected by this direction.
2.4 Recreation Vehicle Areas	The draft LEP amendment does not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>).	Planning Proposal not affected by this direction.

3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	Encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource lands.	Planning Proposal not affected by this direction.
3.2 Caravan parks and Manufactured Home Estates	The objective of this direction is to provide for a variety of housing types, and provide opportunities for caravan parks and manufactured home estates.	Planning Proposal not affected by this direction.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	Planning Proposal not affected by this direction.
3.4 Integrating Land Use and Transport	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs subdivision and street layouts achieve the sustainable transport objectives.	Planning Proposal not affected by this direction.
3.5 Development Near Licensed Aerodromes	The objectives of this direction to ensure the efficient and safe operation of aerodromes, ensure their operation is not compromised by incompatible future adjoining land uses.	Planning Proposal not affected by this direction.
3.6 Shooting Ranges	The objective of this direction is to maintain appropriate levels of public safety and amenity, reduce land use conflict and identify issues that must be addressed when rezoning land adjacent to an existing shooting range.	Planning Proposal not affected by this direction.
4. HAZARD AND RISK		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	Planning Proposal not affected by this direction.
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Planning Proposal not affected by this direction.

4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	Part of the land is likely to be within the 1:100 year flood zone. Notwithstanding, the Planning Proposal is not seeking to rezone flood prone land.
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	Planning Proposal not affected by this direction.
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	The <i>Lower Hunter Regional Strategy (LHRS) 2006</i> is relevant. The Planning Proposal will enable a constrained site within an existing centre to be consolidated with adjoining land and utilized for its intended commercial purpose. This will assist in the achievement of the LHRS 2006 objectives by maximizing economic opportunities and job growth within an existing centre.
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Planning Proposal not affected by this direction.
6.2 Reserving Land for Public Purposes	The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Planning Proposal not affected by this direction.
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal introduced a limitation on building height. It is not considered that this restriction is unnecessarily restrictive and therefore is consistent with the SEPP.

Section C - Environmental, Social and Economic Impact

This Planning Proposal may limit development intensity on the subject land, and consequently may have an economic impact. However, given the likely nature of development on the land and the mine subsidence constraints that apply to the subject land, the effect of the building height restriction is likely to be minimal and therefore economic impact is likely to be minimal or even not existent.

The environmental impact of the proposal is to limit the scale of buildings in order to maintain the amenity of nearby residences.

Section D - State and Commonwealth Interests

The Hunter Regional Office of the Department of Planning has been consulted in regard to the merits of exhibiting this Planning Proposal.

Part 6 - Community Consultation

Community consultation will be undertaken in accordance with Council's guidelines and any specific requirements made by the Department of Planning and Infrastructure during the gateway determination.

The consultation period will involve notifying all affected property owners and inviting submissions during the exhibition period.

Attachment 1: Planning Panel Report No.PPEE23/2011

Report To meeting of the Cessnock Planning Panel - 12 May 2011

Our Natural, Developed and Cultural Environment

Report No. PPEE23/2011

Built & Natural Environment



SUBJECT: *PLANNING PROPOSAL FOR CESSNOCK CIVIC PRECINCT
18/2004/9/1 - LOTS 21, 22 & 23 DP845986, LOT 1 DP 103630, LOTS
1, 2 & 3 DP 608084, AND LOT 7300 DP 1143010 OFF VINCENT
STREET CESSNOCK*

AUTHOR: *Consultant Planner - Anne Moore*

SUMMARY

The purpose of this report is to provide an update in respect to additional information submitted to Council by the proponent for this Planning Proposal in March 2011 and to seek endorsement from the Panel to proceed with forwarding this Planning Proposal to the Department of Planning for further consideration.

Given a detailed review of the additional information lodged by the proponent by Council officers, submissions received as a result of the public exhibition of this Planning Proposal, consultation and discussions with the Office of Environment & Heritage and a further review of the original Planning Proposal by Council officers a revised zoning plan for the subject site is recommended and attached to this report as Enclosure 1.

The changes to the zoning plan include:

- i. The E3 Environmental Protection zone between the two B7 Business Park zones be changed to a RU6 Transition zone with incorporation of an associated Biodiversity protection layer to allow further investigations of this land to occur in the future whilst protecting the lands in the interim period;
- ii. The E2 Environmental Conservation zone has been adjusted to take into account Office of Environment & Heritage comments by increasing this zone surrounding Black Creek and moving the boundary in a northerly direction to further protect endangered ecological communities such as the Hunter Lowland Redgum Forest (HLRF) and Lower Hunter Spotted Gum Ironbark Forest (LHSGIF) found within the southern section of the site; and
- iii. The proposed residential zone within the south western corner of the site has been excluded from this Planning Proposal which means this part of the site will retain the current Rural 1(a) under Cessnock LEP 1989 and then a proposed Rural Landscape RU2 zone under Cessnock Local Environmental Plan 2010 when gazetted.

A copy of the exhibited Plan is attached as Enclosure 2 for comparison purposes.

An indicative draft Development Control Plan (DCP) has been prepared for the subject site and will be reported to a Council meeting in the near future to allow Council to resolve to prepare a DCP and for public exhibition of this document in accordance with the provisions of the Environmental Planning and Assessment Act.

The proponent has submitted correspondence to Council confirming that it is willing to enter into a Voluntary Planning Agreement (VPA) for the purpose of formalising on site biodiversity offsets in terms of land zoned for E2 Environmental Conservation purposes and to ensure protection and long term maintenance of endangered ecological communities found on site. This requires drafting of an appropriate agreement between the proponent and Council and preparation of a report to Council for endorsement of this Agreement.

RECOMMENDATION

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The Planning Panel endorse this Planning Proposal based on the revised zoning delineations attached to this report at Enclosure 1 and support the forwarding of this Planning Proposal to the Department of Planning once the Development Control Plan and Voluntary Planning Agreement are endorsed by Council.

BACKGROUND

The Planning Panel at its meeting of 9 December 2010 resolved:

1. That the content of the report be noted.
2. That the proponent be requested to provide further information addressing the following issues:-
 - A. Mine Subsidence
 - * Whether the buffer areas (ie E(2) & A(2) zones of the PB Plan) be incorporated into the E3 Environmental Management Zone and/or E(2) Environmental Conservation Zone
 - * Response to MSB correspondence dated 25 November 2010.
 - B. Flooding
 - * Modelling based on the completed DM1 Black Creek Flooding Study based on actual and proposed levels of the landform;
 - * Details of the final levels of land to be provided.
 - C. Vegetation
 - * Arrangements to be made for a suitable vegetation management plan/ongoing maintenance plan be completed for the Environmental Management E3 and Environmental Conservation E2 zoned lands for the site prior to any subdivision of any land;
 - D. Infrastructure Requirements
 - * List of infrastructure works necessary for the site including revision of the Traffic Impact Assessment taking into account further comments to be provided by Council and RTA.

Outstanding infrastructure works to be examined to include:

- i. upgrading improvements to various intersections surrounding the site including Darwin and South Avenue; Charlton and Snape Streets; Vincent Street and Aberdare Road and Wollombi Road and Darwin Street;
- ii. any improvements necessary to Vincent Street to provide access to proposed lots off Vincent Street including heavy vehicles access and routes (ie B Doubles) pedestrian and cycleways;
- iii. Identification of the location and type of connections to be provided off Vincent Street to the proposed B7 zoned lands given nearby residential development;
- iv. Vehicular access points to the proposed residential components of the site and traffic impacts onto the local road network.



3. *The proponent be advised that the Panel is of the view that a Development Control Plan and Section 94/VPA needs to be prepared parallel with the rezoning proposal given the nature of the issues.*
4. *The Development Control Plan is to address, but not be limited to flooding/drainage, potential interface amenity issues with surrounding residential properties and Austar activities to south of the site, insertion of Mine Subsidence Zone PB Plan and traffic.*
5. *The Section 94 Plan and/or Voluntary Planning Agreement shall address but not be limited to ongoing maintenance of the site and upgrading of identified infrastructure including road, drainage/flooding and open space requirements and community facility.*
6. *The proponent to provide a submission addressing the above to Council before the end of February 2011.*
7. *All information to be reviewed by Council and a report presented to the next available Planning Panel meeting in 2011."*

The following information was submitted to Council on the 2 March 2011 by the proponent:

- i. Amended Traffic Report which addresses outstanding infrastructure works, traffic counts outside school holidays as requested by the RTA, etc;
- ii. Amended Flood Study which provides actual proposed finished surface levels and also references the DHI Black Creek Flood Study;
- iii. A Mine Subsidence Management Plan that proposes future fencing of the site, restricting site access by the public and ongoing monitoring of any surface subsidence to ensure public safety; and
- iv. An indicative Draft Development Control Plan.

These documents have been reviewed by Council and further comments on these studies and Draft Development Control Plan are contained within the following section of this report.

REPORT

Council has been of the view that Mine Subsidence issues should be resolved prior to gazettal of any draft LEP for the site to avoid any unrealistic expectations that the site was suitable for development. In a report to the Planning Panel meeting of 9 December 2010 Council was of the view that a local provision be inserted to cover mine subsidence issues. However, given that a Development Control Plan now needs to be prepared for the site, development controls relating to mine subsidence such as the type of buildings that can be constructed on parts of the site which are subject to previous workings will now be incorporated into an appropriate Development Control Plan comprising a simplified plan of the PB Plan - Development Boundaries.

To allow further mine subsidence investigations to occur within the centre of the site between two Business Park zones a RU6 Transition zone is proposed. This zone is designed to act as transitional zone in the interim and is suited to a locality where more intense urban type development may occur along its fringes. This transition zone is considered to be more appropriate than the RU2 Rural Landscape zone or the E3 Environmental Management zone as proposed within the exhibited Planning Proposal as it will permit land uses that are more compatible with adjoining business park land uses and allows further investigations to be undertaken by the proponent.



The following clause will be inserted into the draft LEP:

Zone RU6 Transition

1. Objectives of zone

- To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

2. Permitted without consent

Extensive agriculture; Home occupations; Horticulture

3. Permitted with consent

Agriculture; Building identification signs; Business identification signs; Car parks; Cemeteries; Community facilities; Crematoria; Dual occupancies (attached); Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Farm buildings; Flood mitigation works; Forestry; Home businesses; Information and education facilities; Recreation areas; Roads

4 Prohibited

Intensive livestock agriculture; Any other development not specified in item 2 or 3

The proponent requested inclusion of additional permitted land uses, however after review car parks is considered the only acceptable land use given the transitional nature of this precinct. It is noted that a 40 hectare minimum allotment size will continue to apply to this zone within the draft Cessnock LEP 2010.

It is also intended to attach an environmental layer as per the standard LEP instrument within the draft LEP as follows:

7.2 Biodiversity protection

(1) The objective of this clause is to maintain terrestrial and aquatic biodiversity including:

- (a) protecting native fauna and flora, and
- (b) protecting the ecological processes necessary for their continued existence, and
- (c) encouraging the recovery of native fauna and flora and their habitats, and
- (d) protecting water quality within drinking water catchments.

(2) This clause applies to land identified as "sensitive land" on the Natural Resources—Biodiversity Map.

(3) Before determining a development application for land to which this clause applies, the consent authority must consider any adverse impact of the proposed development on the following:

- (a) native ecological communities,
- (b) the habitat of any threatened species, populations or ecological community,
- (c) regionally significant species of fauna and flora or habitat,
- (d) habitat elements providing connectivity,
- (e) water quality within drinking water catchments.



(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any adverse environmental impact, or
- (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Attachment of this environmental layer is discussed in more detail in a later section of this report.

The following outlines the findings of a review of further information that was requested by the Planning Panel at its meeting of the 9 December 2010:

Mine Subsidence

The area designated as A (2) on the PB Plan – Development Boundaries (copy attached as Enclosure 3) has been fully investigated within Mine Subsidence Reports completed for the subject site. This area consists of large pillars and has been found to be stable within the Mine Subsidence Investigation – Interpretive Report January 2010. This area also provides a buffer to Zone B where further investigations are required if further development is to occur in the future or Zone C where no development is likely to occur. Construction within this zone will be limited to buildings where foundations must be piled below any existing workings rather than on slab construction to avoid any differential settlement. Appropriate controls will be incorporated into the draft Development Control Plan limiting the construction as above.

The area designated as E(2) provides a buffer to the open cut area and construction within this area will also require piling below the existing depth of backfilled open cut or underground workings. Buildings which span over the boundary between Zone E (1) and E (2) will need to be designed to accommodate any differential settlement. Again controls will be incorporated into any draft Development Control Plan prepared for the subject site limiting the type of building that can be constructed within this area.

As a simplified version of the PB Plan will now be incorporated into the draft Development Control Plan outlining the type of buildings that can be constructed within certain parts of the site, it is considered not necessary that these buffer areas (i.e. A (2) and E (2)) be incorporated into the E2 Environmental Conservation zone as adequate controls will be implemented within the indicative DCP to ensure public and building safety.

The revised zoning plan shows that the A(2) area will be retained within the B7 Business Park Zone along Vincent Street and the E(2) will fall partly within the E2 Environmental Conservation Zone and B7 Business Park in the centre of the site. Refer to Enclosure 1 for further details.

Response to MSB Correspondence

The proponent acknowledges that sections of the site require further mine subsidence investigation prior to any development occurring. As stated above, components of the PB Plan in a simplified form will be incorporated into the draft DCP which restricts development to parts of the site that have been fully investigated and found to be stable and hence suitable for development.

A Plan of Management for Mine Subsidence has been prepared by the proponent. The key components of this Plan include:



- i. restricting public access by provision of fencing along the perimeter of the site;
- ii. provision of gates to allow restricted access to existing gravel tracks that will be regularly maintained. Access to other areas will be restricted to foot only;
- iii. the surface conditions of the site will be routinely inspected every six months and details submitted to Council outlining any changes. These details should also be provided to the Mine Subsidence Board and this requirement be included within the final adopted Plan and form part of the Planning Proposal.

A Voluntary Planning Agreement is to be prepared for the site and should also include a provision that this Plan of Management for Mine Subsidence be continually implemented by the owners of the land.

Hence the implementation of this Plan of Management for Mine Subsidence addresses the issues raised within the MSB correspondence dated 25 November 2010.

Flooding

The previous flood studies were based on an assumed footprint for the residential component of the subject site. An updated master plan that includes a conceptual landform has now been prepared for both the residential and business park sections of the site including roads and lots. The revised flood study completed by GCA Consultants submitted to Council has used this master plan. Therefore the flood study is based upon existing and proposed site landform, assumes that Austar has completed its rehabilitation to the south of the site which will result in higher flow rates through the site and also references the DHL Black Creek Flood Study.

This flood study demonstrates that:

- i. The existing 1% AEP flood envelope affects 50% of the western business park zone and 30% of the proposed residential zone;
- ii. The majority of 1% AEP flooding within the residential zone is proposed for road or drainage reserve with the majority of the lots being free of the 1% AEP existing flood envelope;
- iii. The PMF envelope affects 80% of the proposed residential and 85% of the western business park zone adjacent to Black Creek;
- iv. An egress route is available from the western business park zone through to flood free areas along Vincent Street;
- v. Sufficient building area on each lot is available within the residential zone area so that dwellings can be constructed with a 0.5m freeboard to the 1% AEP flood level using standard building construction practices and without requiring excessive additional earthworks during construction. Also earthworks for road grading will allow a continuous rising route to higher flood free ground;
- vi. Lots less than 5000m² in the western Business Park zone will need to have an area at or above the design 1% AEP flood level and lots greater than 5000m² within this area will need to have at least 50% of the lot area at or above the design 1% AEP flood level. Hence the finished floor levels of buildings are at or above the 1% AEP flood level;
- vii. No works will need to be undertaken within the Black Creek main channel other than required for the augmentation of the side drainage line through the residential zone;
- viii. The HEC-RAS modelling of the predicted solution has predicted that the proposed extent of earthworks would not increase flood levels upstream of the proposed development site during the 1% AEP event.

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Council Engineers have reviewed the revised flood study and have indicated that the study has covered both flooding and drainage aspects of the proposed development. It was noted that some important development levels and PMF do not appear on the cross sections of the study; however both the 1% AEP and PMF levels are included within Appendix C in a tabular form.

Implementation of appropriate finished floor levels, necessary filling of lots within the business park zoned areas to achieve levels above the 1% AEP flood level and other above requirements will be contained within a Development Control Plan (DCP) prepared for the subject site.

Vegetation

The ongoing maintenance of lands to be zoned E2 Environmental Conservation is considered to be important to protect any endangered ecological communities found on site. A Vegetation Management Plan for the long term maintenance of the subject site has not yet been completed by the proponent. The proponent has requested that this requirement be included within the Development Control Plan prepared for the site and this Plan be prepared and approved by Council prior to the release of the first development application for Stage 1 (i.e. lands zoned for Business Park purposes along Vincent Street). The Vegetation Management Plan is intended for lands zoned E2 Environmental Conservation. Refer to the revised zoning plan attached at Enclosure 1 of this report for further details.

Infrastructure Requirements

A revised Traffic Impact Assessment Report has been submitted to Council addressing deficiencies identified by Council and the Roads and Traffic Authority (RTA).

The major external works that need to be completed are identified as:

1. A roundabout or traffic signals be constructed at the Darwin Street / South Avenue / Snape Street intersection prior to construction of Stage 2 of the development;
2. The upgrading of the traffic signals at Aberdare Road / Vincent Street to provide additional approach and departure lanes occurs prior to construction of Stage 3 of the development;
3. Any of the identified intersection upgrading works will also be required;
4. Upgrading of Vincent Street along the frontage of the development to match construction standards and alignment of Vincent Street immediately north of the site; and
5. Provision of pedestrian and cycle links to the existing pedestrian and cycle networks in Vincent Street.

The upgrading of Vincent Street including kerb and gutter, provision of pedestrian and cycleway links, etc will be examined and included as requirements of any development application approval for any proposed development along Vincent Street. The upgrading of traffic signals at Aberdare Road / Vincent Street will be a matter that will need to be further negotiated with the Roads and Traffic Authority when Stage 3 of the development proceeds. The requirement for a roundabout or traffic signals at the Darwin Street/South Avenue intersection will be further examined once a subdivision application for Stage 2 being part of the western Business Park zone lands is lodged with Council.

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The Roads and Traffic Authority requires a Deed Containing Agreement to be entered for contributions towards designated infrastructure and the proponent will need to negotiate directly with the RTA on this matter along with any necessary works in kind at subdivision stage.

As the residential zone has now been removed from the revised zoning plan vehicular access into the residential estate is no longer a critical issue. The master concept plan for the subject site demonstrates an indicative subdivision layout for this residential precinct and that vehicular access may be provided from both James and Michael Streets. This matter will be subject to further review once a fresh Planning Proposal is lodged for this section of the site in the future.

Council's Engineer has completed a review of the revised traffic study and advised that the study covers all aspects of traffic and covers Council's requirements.

Draft Development Control Plan

An indicative draft Development Control Plan has been prepared for the site by the proponent in consultation with Council officers. Development controls incorporated into this draft DCP include stormwater, flooding, mine subsidence, traffic management, landscaping and vegetation management and building setbacks. As stated previously, a simplified plan demonstrating the building constraints identified within the PB Plan will be included to address mine subsidence issues.

The full contents of this draft Development Control Plan will be reported to Council and then exhibited in accordance with provisions of the Environmental Planning and Assessment Act. Therefore the public will be given an opportunity to examine and comment on this Plan.

Voluntary Planning Agreement (VPA)

The proponent has submitted correspondence to Council advising that it is willing to enter into a Voluntary Planning Agreement with Council in terms of the land zoned E2 Environmental Conservation to ensure its long term protection and that biodiversity offsets are recognised at the Planning Proposal stage and thus avoiding duplication when Council is assessing development applications in the future. The details of this Voluntary Planning Agreement will be reported to Council in the near future.

Section 94 Plan

The external works identified by the Traffic Study can be dealt with during assessment of various development applications for proposed development along Vincent Street and the subdivision of Business Park lands referred to as Stages 2 and 3.

The Draft LEP will not contain any residential zoned land. Other infrastructure works have been clearly identified within the Traffic Study and will be incorporated into a draft DCP and will be required in association with development applications approvals issued by Council. Therefore no separate Section 94 Plan needs to be prepared for the subject site at this stage.

CONSULTATION

Office of Environment & Heritage

The Gateway Determination required Council to consult with a number of Government agencies and the Local Aboriginal Council. Further consultation has been undertaken with the Office of Environment & Heritage (OEH) (i.e. former Department of Environment, Climate Change & Water (DECCW)) as previously this organisation requested an increased

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conservation buffer along sections of Black Creek and adjacent to the existing miners cottages on site.

OEH now advises that it is satisfied with the environmental outcomes currently proposed for the Cessnock Civic site provided that the following issues are given due consideration:

- a) A local environmental provision and associated (overlay) map is used to augment zone provisions for the area proposed to be zoned RU6- Transition;
- b) The area proposed for E2 Environmental Conservation is managed and protected in perpetuity;
- c) Ongoing management of the E2 zoned area should be guided by a Vegetation Management Plan which should be included as a requirement of the proposed Development Control Plan and prepared prior to the approval of any development applications for the site;
- d) All asset protection zones and stormwater and stormwater retention basins should be located outside of the E2 zoned area.

As previously stated an associated Biodiversity Protection layer as per the standard LEP template will be placed over the RU6 – Transition zone lands. The proponent has requested that this layer not be imposed over these lands as existing provisions of the Native Vegetation Act provide sufficient protection of this land. However given the comments provided by OEH, Council supports the view that rural lands where environmentally sensitive areas have been identified such as this site that environmental sensitivities are more appropriately managed through a local provision. A Voluntary Planning Agreement will be prepared to manage and protect lands to be zoned E2 and the draft Development Control Plan includes a provision that an appropriate Vegetation Management Plan be prepared that includes issues such as revegetation, weed control, rehabilitation, erosion and dumping of rubbish, etc. Provisions restricting the location of asset protection zones and stormwater retention basins can be added to the draft Development Control Plan.

Black Creek Aboriginal Corporation

A response has now been received from the Black Creek Aboriginal Corporation who previously commented on the Indigenous Cultural Heritage Assessment undertaken by McCordle Cultural Heritage Pty Ltd for the site.

The Corporation advises:

- a) As most of the Cessnock District is highly disturbed, any and all Aboriginal sites need to be protected and if possible left in situ as there is no way in which to renew any lost Aboriginal sites;
- b) Not all Aboriginal sites are surface sites, and much has been found in sub surface sites, as such care, should be taken to ensure that any sub surface sites are to be undisturbed and protected; and
- c) Black Creek is an important Aboriginal area in this zone, any and all precautions should be taken to preserve its integrity, its continual and unblemished flow.

The above Indigenous Cultural Heritage Assessment undertaken for the site found an open camp site within the south eastern corner of the site. This area is proposed to be zoned E2 Environmental Conservation and therefore will be protected in perpetuity once the Voluntary Planning Agreement is activated. The revised zoning plan has widened the E2 zone boundaries along Black Creek and no filling of the creek or provision of any retaining walls is proposed. Therefore an existing Aboriginal site and Black Creek will be protected if this Planning Proposal proceeds. Also Section 90 permits will be required if any sites are found during construction works.

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Public Exhibition

Further public exhibition of the Planning Proposal was considered not to be necessary for the following reasons:

- i. The revised zoning delineations will further limit development of the site in that the proposed residential zone has been removed and the current zone (i.e. Rural 1(a)) will be retained. The potential conflicts between the continued rehabilitation of the adjoining lands by Austar Pty Ltd known as the Aberdare Emplacement Area to the south of the subject site and any proposed residential development will be alleviated;
- ii. The area of the site to be zoned E2 Environmental Conservation has been extended along Black Creek and towards the centre of the site. Therefore an increased area of the site will be protected and important ecological communities retained and managed in perpetuity given that the proponent has agreed to enter into a Voluntary Planning Agreement with Council. Preparation of an appropriate Vegetation Management Plan will be a requirement of the Draft Development Control and will need to be completed prior to approval of the first Development Application for the site;
- iii. Development restrictions on the type of buildings that can be constructed upon the B7 Business Park zoned lands will be incorporated within a Development Control Plan and detailed Mine Subsidence reports will need to be lodged with any future development applications. A Mine Subsidence Management Plan has been prepared which addresses the long term maintenance of the lands for any subsidence events and requires fencing of the site to ensure public safety;
- iv. Flooding issues have been addressed within the revised study based on a master concept landform;
- v. The Traffic Study has identified external works that will need to be undertaken and these works have been included within the Development Control Plan.
- vi. Development controls that will address potential visual and amenity impacts onto residential properties along the opposite side of Vincent Street and the existing dwelling located upon the subject site such as building setbacks, landscaping, location of external storage areas, etc will be incorporated into the Draft Development Control Plan for the site.

As stated previously Council will need to resolve to prepare and exhibit this draft Development Control Plan and the public will be provided with an opportunity to comment on these development controls.

STRATEGIC LINKS

a. Management Plan

Nil

b. Other Plans

The subject site is identified within the Cessnock City Wide Settlement Strategy as being suitable for Business Park use per CC5.

STATUTORY IMPLICATIONS

a. Policy and Procedural Implications

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The proponent has agreed to the preparation of an appropriate Voluntary Planning Agreement (VPA) to ensure the long term maintenance of conservation areas of the site and to acknowledge that biodiversity off sets have been provided at the Planning Proposal stage and therefore will not be necessary once development of the site commences.

b. Financial Implications

Nil

c. Legislative Implications

Council needs to adhere to the timeline for the completion of the Planning Proposal by 30 June 2011 as determined by the delegate of the Minister under Section 56(7) of the Environmental Planning and Assessment Act. Further reports to Council will be necessary for adoption of an appropriate Development Control Plan and Voluntary Planning Agreement.

d. Risk Implications

Nil

e. Other Implications

The long term management of undeveloped areas of the site has been addressed in that a VPA will be prepared between Council and the proponent which is a legally binding agreement and that the Development Control Plan contains a provision that a Vegetation Management Plan be submitted to Council in conjunction with any development application for any Stage 1 development proposal including subdivision and be of an appropriate standard prior to release of any subdivision certificate.

OPTIONS

The following options are available:

- i. Adopt the recommendation of this report and endorse the Planning Proposal based on the revised zoning delineations; or
- ii. Advise the Department of Planning that the Planning Proposal is not supported given that the site is highly constrained in terms of mine subsidence, biodiversity and flooding.

CONCLUSION

The revised zoning delineations for the subject site recommended by this report will result in a better planning and environmental outcome for the subject site based on revised Traffic and Flooding studies and further consideration of mine subsidence and biodiversity issues. The revised zoning plan as well as the preparation of an appropriate Development Control Plan for the site will need to be endorsed by Council and has addressed the concerns raised by the public, a major adjoining land owner and government organisations.

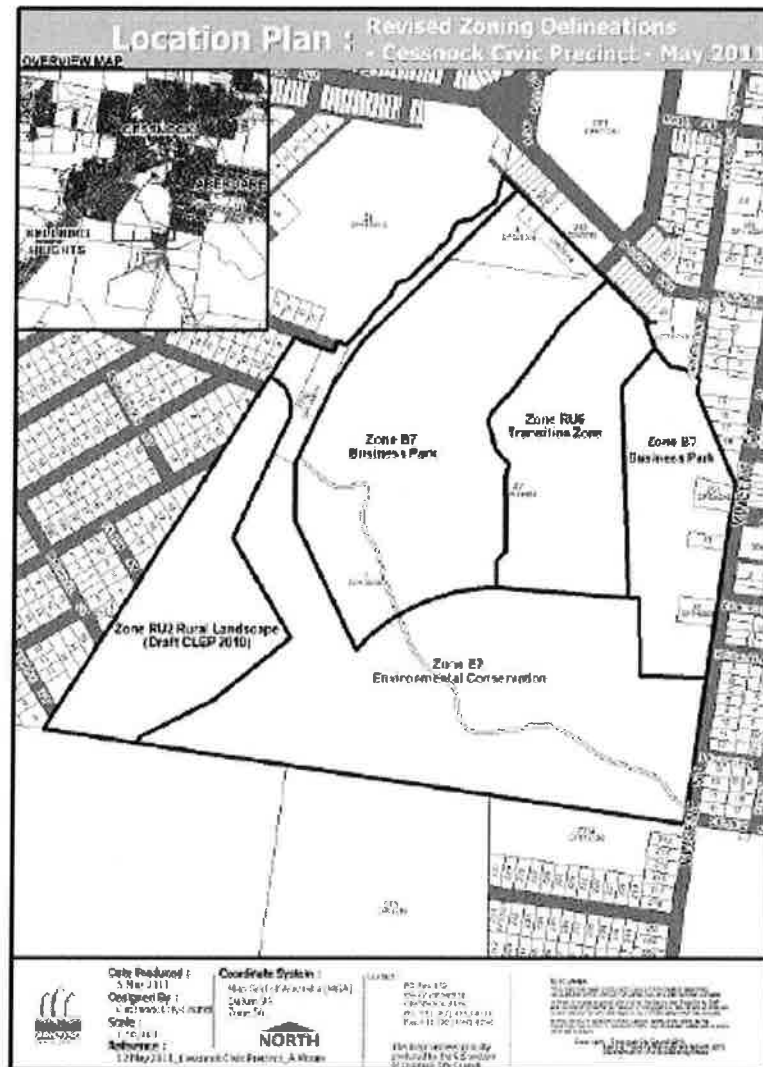
The implementation of an appropriate Voluntary Planning Agreement between the proponent and Council will allow environmentally sensitive parts of the site to be retained and protected in perpetuity along with the implementation of a Vegetation Management Plan.

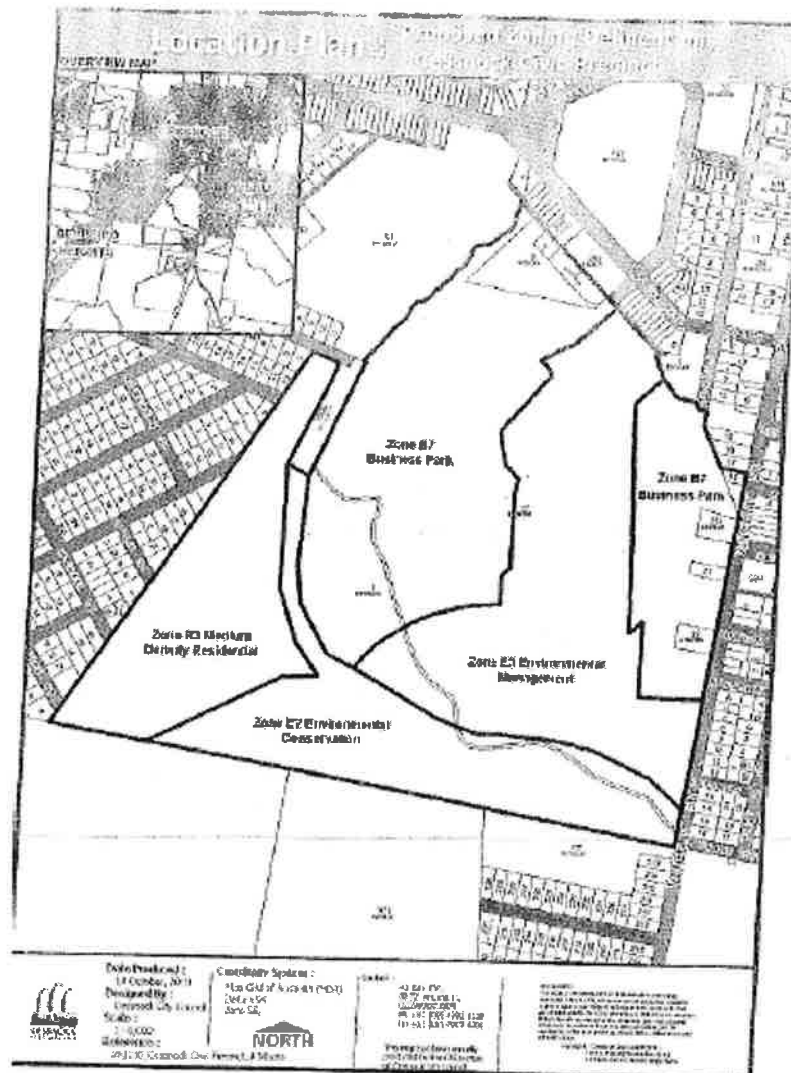
Therefore it is recommended that the Planning Proposal based on the revised zoning delineation attached to this report be supported by the Planning Panel and forwarded to Department of Planning.



ENCLOSURES

- | | | |
|----------|----------------------------------|--------|
| <u>1</u> | Revised Zoning Delineations | 1 Page |
| <u>2</u> | Exhibited Zoning Delineations | 1 Page |
| <u>3</u> | PB Plan - Development Boundaries | 1 Page |

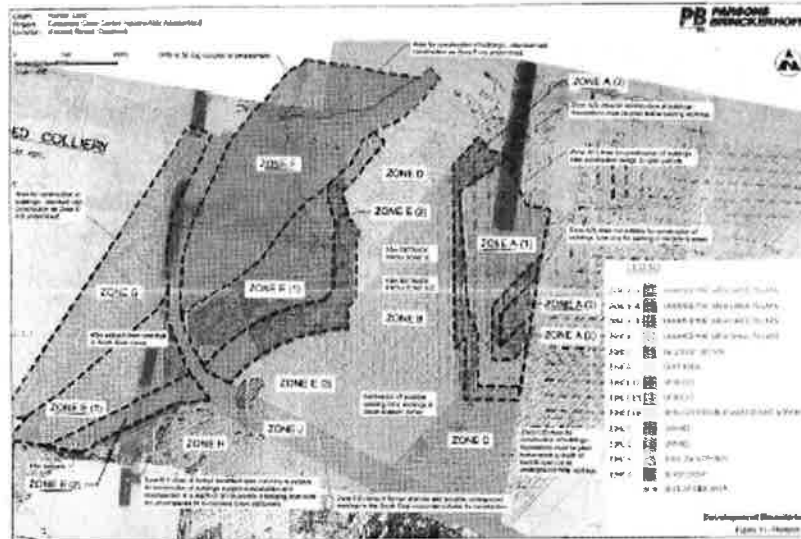




Our Natural, Developed and Cultural Environment

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Built & Natural Environment



Attachment 2: Minutes for Planning Panel Report No.PPEE23/2011

OUR NATURAL, DEVELOPED AND CULTURAL ENVIRONMENT NO. PPEE23/2011

SUBJECT: **PLANNING PROPOSAL FOR CESSNOCK CIVIC PRECINCT
18/2004/9/1 - LOTS 21, 22 & 23 DP845986, LOT 1 DP 103630,
LOTS 1, 2 & 3 DP 608084, AND LOT 7300 DP 1143010 OFF
VINCENT STREET CESSNOCK**

MOTION **Moved:** Alison McCabe **Seconded:** Tim Rogers
PP1
RESOLVED

The Planning Panel resolves to:-

- 1. Amend the Planning Proposal for Cessnock Civic Precinct in the following manner:**
 - a) Adopt the B7 – Business Park and E2 – Environmental Zones, the extent of which is shown on the attached rezoning plan;**
 - b) The Cessnock Civic Precinct be incorporated into Part 7 Urban Release Areas of draft Cessnock Local Environmental Plan 2011 as an urban release area, the extent of which is shown on the attached urban areas release map;**
 - c) A 12m height limit apply to the B7 – Business Park, the extent of which is shown on the attached height of building map;**
- 2. The Planning Proposal be referred to the Department of Planning pursuant to Section 68 of the Environmental Planning and Assessment Act 1979 once council has resolved to exhibit the draft Development Control Plan and Voluntary Planning Agreement for the Cessnock Civic Precinct;**
- 3. The Department of Planning be advised that the Planning Proposal not be referred to the Minister for gazettal pursuant to Section 69 of the Environmental Planning and Assessment Act until the draft Development Control Plan and Voluntary Planning Agreement have been endorsed by Council;**
- 4. The draft Development Control Plan should address, as a minimum, the following matters:-**
 - a) Minimisation of vehicular access points off Vincent Street;**
 - b) Building treatment and setbacks along Vincent Street;**
 - c) Provision of landscaping buffers along Vincent Street;**
 - d) Appropriate setbacks and landscape treatment to existing residential dwellings on site;**
 - e) Infrastructure works along Vincent Street and at the intersection of Darwin and Snape Street intersection;**
 - f) Flooding and Drainage**
 - g) Mine subsidence controls**
 - h) Traffic Management**
 - i) Indicative Subdivision Plan**
 - j) Specific controls relating to:-**

Attachment 3: Planning Panel Report No.PPEE50/2011

Report To meeting of the Cessnock Planning Panel - 15 September 2011

Our Natural, Developed and Cultural Environment

Report No. PPEE50/2011

Strategy and Sustainability



SUBJECT: UPDATE ON PPEE23/2011 PLANNING PROPOSAL FOR CESSNOCK CIVIC PRECINCT 18/2004/9/1 - LOTS 21, 22 & 23 DP 845986, LOT 1 DP 103630, LOTS 1, 2 & 3 DP 608084, AND LOT 7300 DP 1143010 OFF VINCENT STREET CESSNOCK

AUTHOR: Strategic Landuse Planning Manager - Bo Moshage

SUMMARY

The purpose of this report is to provide the Planning Panel with an update on the finalisation of the rezoning of the Cessnock Civic site and to seek endorsement of an alternative process to place a height limit over the land.

RECOMMENDATION

It is recommended that:

1. The Planning Panel rescind part 1(c) of its decision of 12 May 2011 in relation to item PPEE23/2011 Planning Proposal for Cessnock Civic precinct 18/2004/9/1 - Lots 21, 22 & 23 DP 845986, Lot 1 DP 103630, Lots 1, 2 & 3 DP 608084, and Lot 7300 DP 1143010 off Vincent Street Cessnock.
2. The Planning Panel resolve to confirm that Lot 251 DP 606348 was included in its resolution of 12 May 2011 in relation to report PPEE23/2011. (This lot was included in the map but not included in the report title).
3. The Planning Panel resolve to prepare a planning proposal for a 12 metre building height limit over those lands proposed to be zoned B7 Business Park within the subject land.

BACKGROUND

In relation to Report PPEE23/2011 Planning Proposal for Cessnock Civic, on 12 May 2011 the Planning Panel resolved as follows:

1. Amend the Planning Proposal for Cessnock Civic Precinct in the following manner:
 - a) Adopt the B7 – Business Park and E2 – Environmental Zones, the extent of which is shown on the attached rezoning plan;
 - b) The Cessnock Civic Precinct be incorporated into Part 7 Urban Release Areas of draft Cessnock Local Environmental Plan 2011 as an urban release area, the extent of which is shown on the attached urban areas release map;
 - c) A 12m height limit apply to the B7 – Business Park, the extent of which is shown on the attached height of building map;
2. The Planning Proposal be referred to the Department of Planning pursuant to Section 68 of the Environmental Planning and Assessment Act 1979 once Council has resolved to exhibit the draft Development Control Plan and Voluntary Planning Agreement for the Cessnock Civic Precinct;

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Strategy and Sustainability



3. *The Department of Planning be advised that the Planning Proposal not be referred to the Minister for gazettal pursuant to Section 69 of the Environmental Planning and Assessment Act until the draft Development Control Plan and Voluntary Planning Agreement have been endorsed by Council;*
4. *The draft Development Control Plan should address, as a minimum, the following matters:-*
 - a) *Minimisation of vehicular access points off Vincent Street;*
 - b) *Building treatment and setbacks along Vincent Street;*
 - c) *Provision of landscaping buffers along Vincent Street;*
 - d) *Appropriate setbacks and landscape treatment to existing residential dwellings on site;*
 - e) *Infrastructure works along Vincent Street and at the intersection of Darwin and Snape Street intersection;*
 - f) *Flooding and Drainage*
 - g) *Mine subsidence controls*
 - h) *Traffic Management*
 - i) *Indicative Subdivision Plan*
 - j) *Specific controls relating to:-*
 - * Traffic/Road patterns*
 - * Lot sizes and boundaries*
 - * Vegetation management and landscaping*
 - * Fencing details*

REPORT

Council officers sought advice from the Department of Planning and Infrastructure regarding the implementation of the 12 metre building height limit, introduced by the Panel as a measure to protect the amenity of residences along Vincent Street, which fronts the subject land. This advice related to the possible need to re-exhibit the Planning Proposal to include a height limit as this was not included in the exhibited draft Local Environmental Plan.

The Department responded that while it is Council's decision as to whether it re-exhibits the amended Planning Proposal, there may be legal risk associated with not exhibiting. This was based on a recent Land and Environment Court decision, which highlighted the importance of ensuring adequate community opportunity to review and comment on the content of Local Environmental Plans prior to their finalisation.

If the Panel nominates to re-exhibit, the Department of Planning and Infrastructure has offered to facilitate the process through the LEP gateway as a matter of priority. The Department has verbally indicated that the re-exhibition period would be for a maximum period of 14 days.

A re-exhibited Planning Proposal would provide members of the community with an opportunity to make a submission on any aspect of the Planning Proposal. The Planning Panel would then need to consider these submissions in addition to any other matters which might have arisen since the Planning Panel's resolution of 12 May 2011.

In addition to Alternative 1 above, there are three additional alternatives available to the Planning Panel to progress this matter:

Our Natural, Developed and Cultural Environment

Report No. PPEE50/2011

Strategy and Sustainability



2. The Planning Panel could request that Council incorporate a 12 m height limit over the proposed B7 zoned lands in the draft Development Control Plan being prepared for Cessnock Civic.
3. The Planning Panel could request Council prepare a Planning Proposal which placed a 12 m building height limit over the proposed B7 Business Park zoned lands as an amendment to the soon to be gazetted Comprehensive Local Environmental Plan for Cessnock Local Government Area.
4. The Planning Panel could resolve to finalise the existing Planning Proposal for Cessnock Civic with the exclusion of the proposed 12 m building height limit, and resolve to prepare and exhibit a fresh Planning Proposal containing a 12 metre height limitation over the land.

Alternative 2 carries the risk that it would require a future amendment to the Comprehensive Cessnock Local Environmental Plan. This is because under the Standard Local Environmental Plan building limit heights are to be included in the Local Environmental Plan, and not in Development Control Plans.

Alternative 3 is problematic as it relies on Council progressing an amendment to a Planning instrument which has not yet been gazetted.

Alternative 4 is clear in its intent, and allows the "finalised" components of the Planning Proposal for Cessnock Civic to proceed, while a fresh Planning Proposal introducing a 12 metre building height is subsequently considered. Attached is a Planning Proposal which seeks to place a 12 metre maximum building height over the land to be zoned B7 Business Park.

CONSULTATION

The Department of Planning and Infrastructure has been consulted and their advice sought. The proponent for the rezoning has also been consulted, and they have expressed a preference for a process which minimises planning and financial risks.

STRATEGIC LINKS

a. Delivery Program

Nil.

b. Other Plans

The development of Cessnock Civic is consistent with the City Wide Settlement Strategy.

STATUTORY IMPLICATIONS

a. Policy and Procedural Implications

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

b. Financial Implications

N/A.



c. Legislative Implications

The Report is consistent with Council's obligations under the Environmental Planning and assessment Act, 1979, as amended.

d. Risk Implications

The risk implications of the proposal are considered by the Report.

e. Other Implications

Nil.

OPTIONS

Four alternatives are discussed in the body of the report. The preferred option is to continue with the finalisation of the Cessnock Civic Planning Proposal and exhibit a fresh Planning Proposal for the inclusion of a 12 metre building height limit. This is also the preferred option of the Department of Planning and Infrastructure.

CONCLUSION

Council has received advice which supports the need for re-exhibition of the Planning Proposal for Cessnock Civic due to the inclusion of a 12 metre building height limit which did not form part of the public exhibition of the Cessnock Civic draft Local Environmental Plan.

The preferred option is to continue with the finalisation of the Cessnock Civic Planning Proposal and exhibit a fresh Planning Proposal for the inclusion of a 12 metre building height limit. This is also the preferred option of the Department of Planning and Infrastructure.

It is very likely that the process for the Planning Proposal for the 12 m building height limit will "catch up" with the remainder of the instrument and be gazetted as an integrated Local Environmental Plan for Cessnock Civic, i.e. as if they had always been one proposal.

ENCLOSURES

- 1** Planning Proposal - Cessnock Civic (12m height limit) 32 Pages

Attachment 4: Minutes for Planning Panel Report No.PPEE50/2011

***OUR NATURAL, DEVELOPED AND CULTURAL ENVIRONMENT NO.
PPEE50/2011***

***SUBJECT: UPDATE ON PPEE23/2011 PLANNING PROPOSAL FOR
CESSNOCK CIVIC PRECINCT 18/2004/9/1 - LOTS 21, 22 & 23
DP 845986, LOT 1 DP 103630, LOTS 1, 2 & 3 DP 608084, AND
LOT 7300 DP 1143010 OFF VINCENT STREET CESSNOCK***

***MOTION Moved: Vince Berkhout Seconded: Tim Rogers
PP1
RESOLVED***

It is recommended that:

- 1. The Planning Panel rescind part 1(c) of its decision of 12 May 2011 in relation to item PPEE23/2011 Planning Proposal for Cessnock Civic precinct 18/2004/9/1 - Lots 21, 22 & 23 DP 845986, Lot 1 DP 103630, Lots 1, 2 & 3 DP 608084, and Lot 7300 DP 1143010 off Vincent Street Cessnock.**
- 2. The Planning Panel resolve to confirm that Lot 251 DP 606348 was included in its resolution of 12 May 2011 in relation to report PPEE23/2011. (This lot was included in the map but not included in the report title).**
- 3. The Planning Panel resolve to prepare a planning proposal for a 12 metre building height limit over those lands proposed to be zoned B7 Business Park within the subject land.**

FOR	AGAINST
Tim Rogers	
Vince Berkhout	
Total (2)	Total (0)

CARRIED UNANIMOUSLY

