



PLANNING PROPOSAL

**Bellbird North
18/2006/6/1**

4 July 2011

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Planning Proposal – Bellbird North

Part 1 – Objectives or Intended Outcomes

The outcomes intended by this Planning Proposal are to:

- apply buffers consistent with the setback requirements as documented in Chapter E3 – Vineyards District of the Cessnock Development Control Plan (2006); and
- provide direct access, via Christy Road, to the residentially zoned land located to the north of the Bellbird North Precinct.

Part 2 - Background

Council, at its meeting held on 4 March 2009, endorsed Amendment No. 121 to Cessnock Local Environmental Plan 1989 for the Bellbird North Investigation Area. The draft Amendment was subsequently submitted to the Minister for Planning on 8 April 2009 with a request that the draft Plan be made, advising of Council's intention to exhibit a draft Section 94 Plan and a draft Development Control Plan.

On 28 January 2011, The Minister for Planning made Amendment No. 121 to the Cessnock Local Environmental Plan 1989. Refer to Figure 1. However, the supporting zoning plan differed from that endorsed by Council and submitted to the Department of Planning. The changes involved the removal of that area to be rezoned from 1(v) Rural (Vineyards) Zone to 1(c) Rural/Residential/Rural (Small Holdings) Zone and increasing the 6(a) Open Space buffer area to the vineyard land from 80 metre wide to the west and 50 metres wide to the north west to 100 metres.

The (then) Department of Planning advised that the 100 metre wide buffer was added to address shortcomings of the draft LEP as submitted by Council, particularly in regard to the (then) Department of Industry and Investment (NSW Agriculture) relating to potential land use conflicts between the proposed residential areas and adjoining lands zoned for vineyards purposes.

On 2 March 2011, Council considered under report EE 5/2011, the gazettal of Cessnock Local Environmental Plan Amendment No. 121 for the Bellbird North Precinct and resolved:

“to write to the Minister for Planning requesting that the Minister review the application of the 100 metre buffer to the western boundary of the Bellbird North rezoning to ensure that the application of the buffer is justified and that the landowners have not been significantly disadvantaged. Further, that any changes to the buffer be implemented by a Planning Proposal to be prepared by the Department of Planning.”

On 1 June 2011, Council considered report EE23/2011, outlining comments received from the (then) Department of Planning on the gazettal of Cessnock Local Environmental Plan Amendment No. 121 for the Bellbird North Precinct and resolved:

“to prepare a Planning Proposal to investigate the planning controls applying to the application of a 100 metre wide buffer along the western boundary of the Bellbird North Precinct adjacent to Christy Road.”

While the area the subject of the Bellbird North Investigation Area (Figure 2) is identified in the Lower Hunter Regional Strategy, the (then) Department of Industry and

Investment (NSW Agriculture) raised concerns at the expansion of the Bellbird North Investigation Area into the Rural 1(v) Vineyard zone and recommended that Council retain all the area currently zoned 1(v) Vineyards to reduce the risk of conflict and better maintain agricultural development opportunities. This concern was based on a perception that this would set a precedent for other rezonings of 1(v) zoned lands.

The Department of Industry and Investment (NSW Agriculture) also recommended minimising the number of lots close to the viticultural zone and ensuring dwellings would be located as far away from the zone boundary as possible.

Having regard for the issues raised, the Planning Proposal seeks to manage the application of the buffer requirements in the two (2) areas along the western boundary of the Bellbird North Precinct adjacent to Christy Road (Figure 3) only, through a 'targeted' approach by taking into account on site considerations and constraints. This incorporates part Lot 2 DP 597226, Part Lot 210 DP 1012346, Part Lot 11 DP 815485 and Part Lot 3 DP 810827.

This approach recognises Christy Road, a future sub-arterial road, as forming part of the buffer treatment, while also maintaining setback requirements of 50 metres to a non working vineyard, as documented in Chapter E3 - Vineyards District of the Cessnock Development Control Plan (2006) as shown in Figure 4.

All other buffers in and around the Bellbird North Precinct remain in situ.

Figure 1: Amendment 121 – Bellbird North – to the Cessnock Local Environmental Plan.

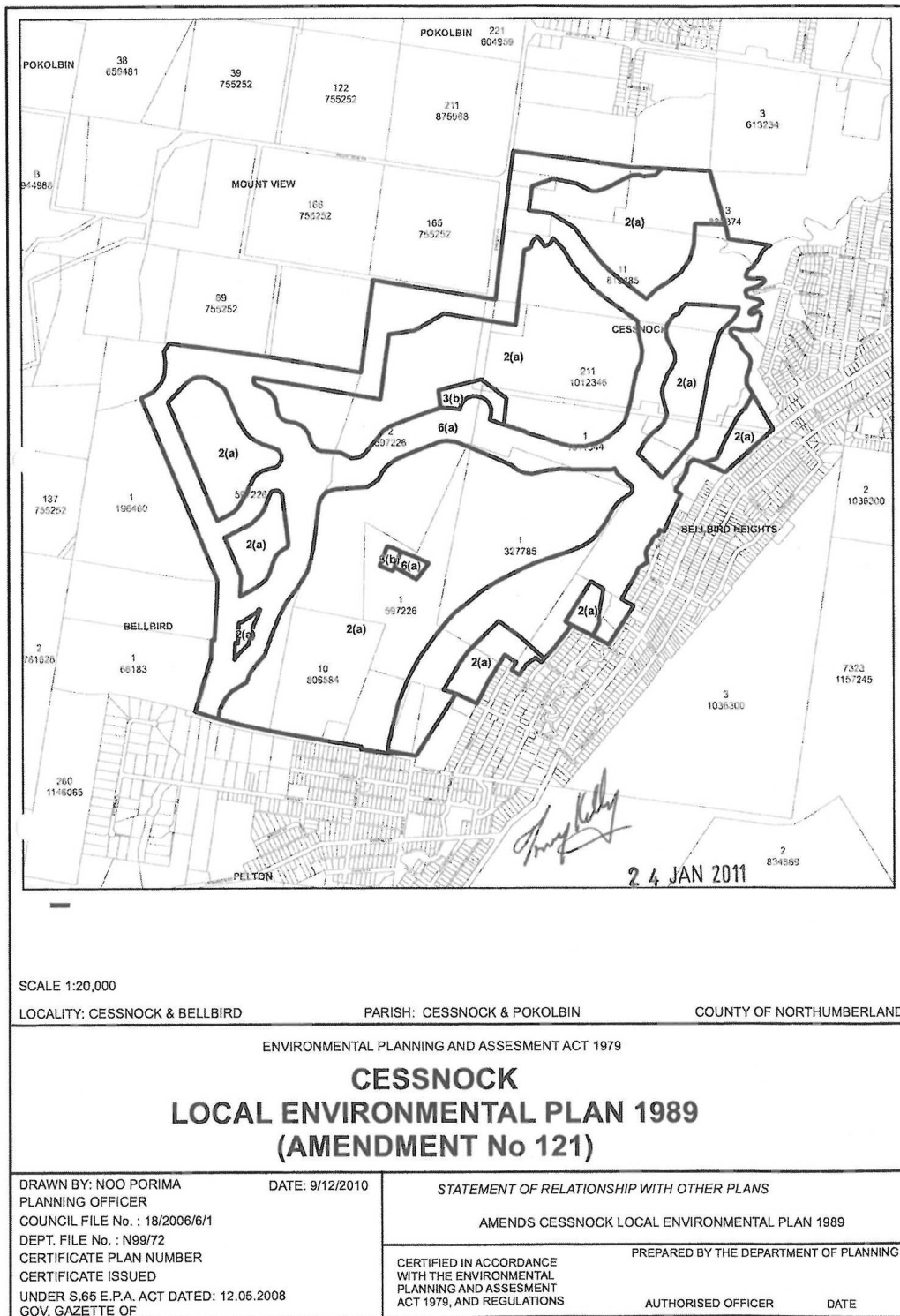


Figure 3: Study area in detail.

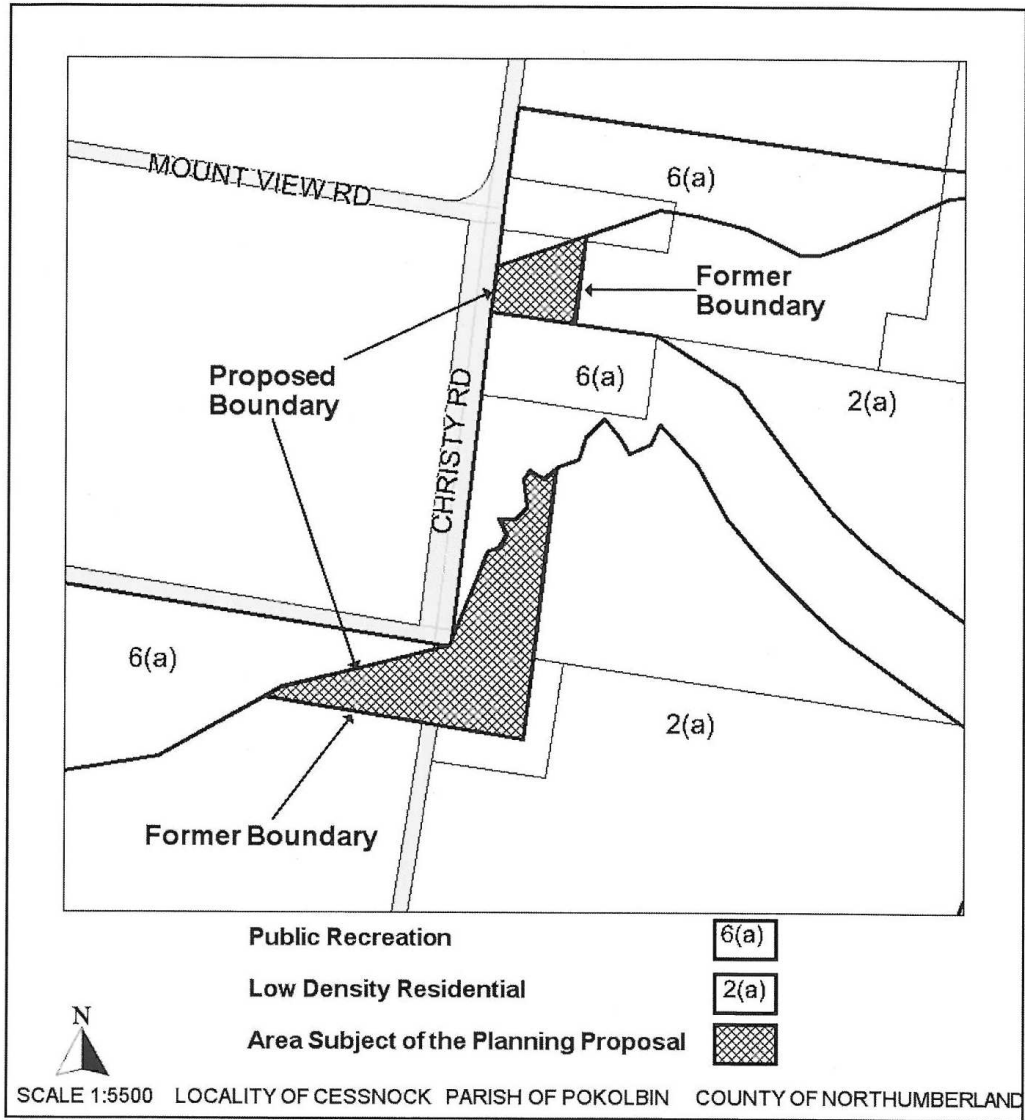
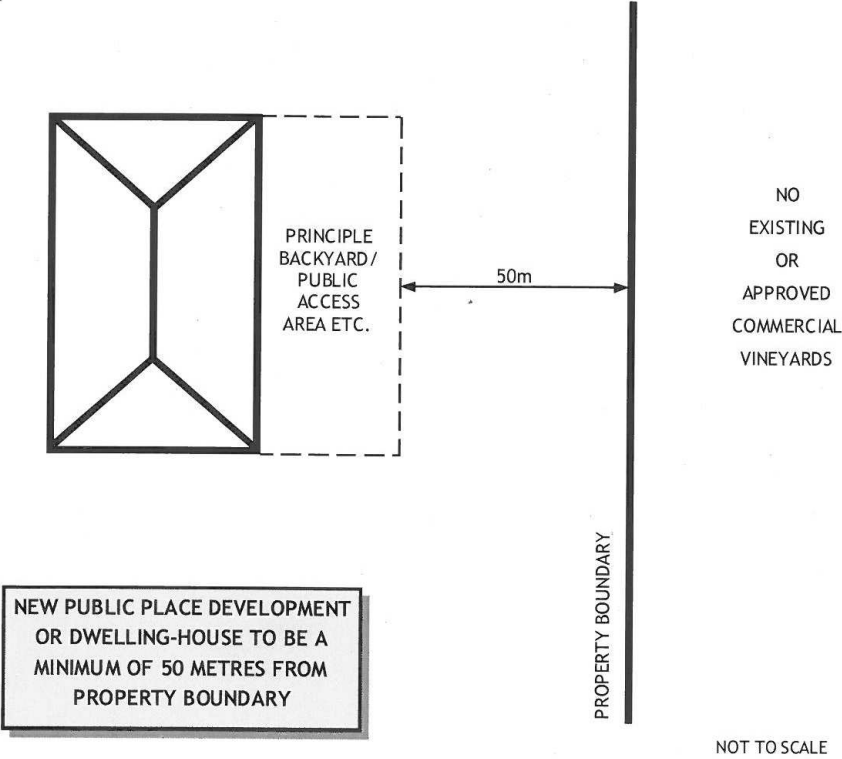


Figure 4: Setback requirements for new dwelling house adjacent to non-working vineyards.



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.

The subject land is zoned 6(a) Open Space under the Cessnock Local Environmental Plan, 1989. The Planning Proposal seeks to modify the application of this buffer, rezoning that area Residential 2(a).

The equivalent zones under the draft Cessnock Local Environmental Plan 2011 will be RE1 - Open Space and R2 – Residential, respectively. It is also noted that an amendment to the Minimum Lot Size map will also be required.

The land has an area of approximately 4.5ha, representing an increase of between 20 to 30 allotments to the overall Bellbird North Precinct. By taking into account on site considerations and constraints, the tapered nature of the buffer, as shown in Figure 5, recognises existing and future land uses while still providing a physical and visual separation between the rural (vineyard) lands and proposed residential areas.

Under the provisions of the draft comprehensive Local Environmental Plan, Christy Road assumes the RU4 Rural Small Holding (Vineyards) zone. Notwithstanding this, the supporting Bellbird North Development Control Plan notes Christy Road as forming part of the on going buffer treatment. This is particularly relevant having regard to the future function of Christy Road, representing a 40 metre wide road reserve, as a sub-arterial road servicing the overall Bellbird North Precinct.

The Planning Proposal, taking into account above considerations, maintains appropriate setback requirements to a non working vineyard, as documented in Chapter E3 - Vineyards District of the Cessnock Development Control Plan (2006), while also providing for direct access to Christy Road for the proposed residential zoned land in the north of the Bellbird North Precinct. This setback provides for a physical separation between new dwelling houses and any future vineyard operations, reducing the potential for chemical spray drift and noise impacts. Refer Figure 6.

If the adjoining Rural 1V (Vineyard) Land is subsequently developed as a working vineyard, it will need to comply with the setback requirements as documented in Chapter E3 – Vineyards District of Cessnock DCP (2006).

Figure 5: Indicative draft zoning plan.

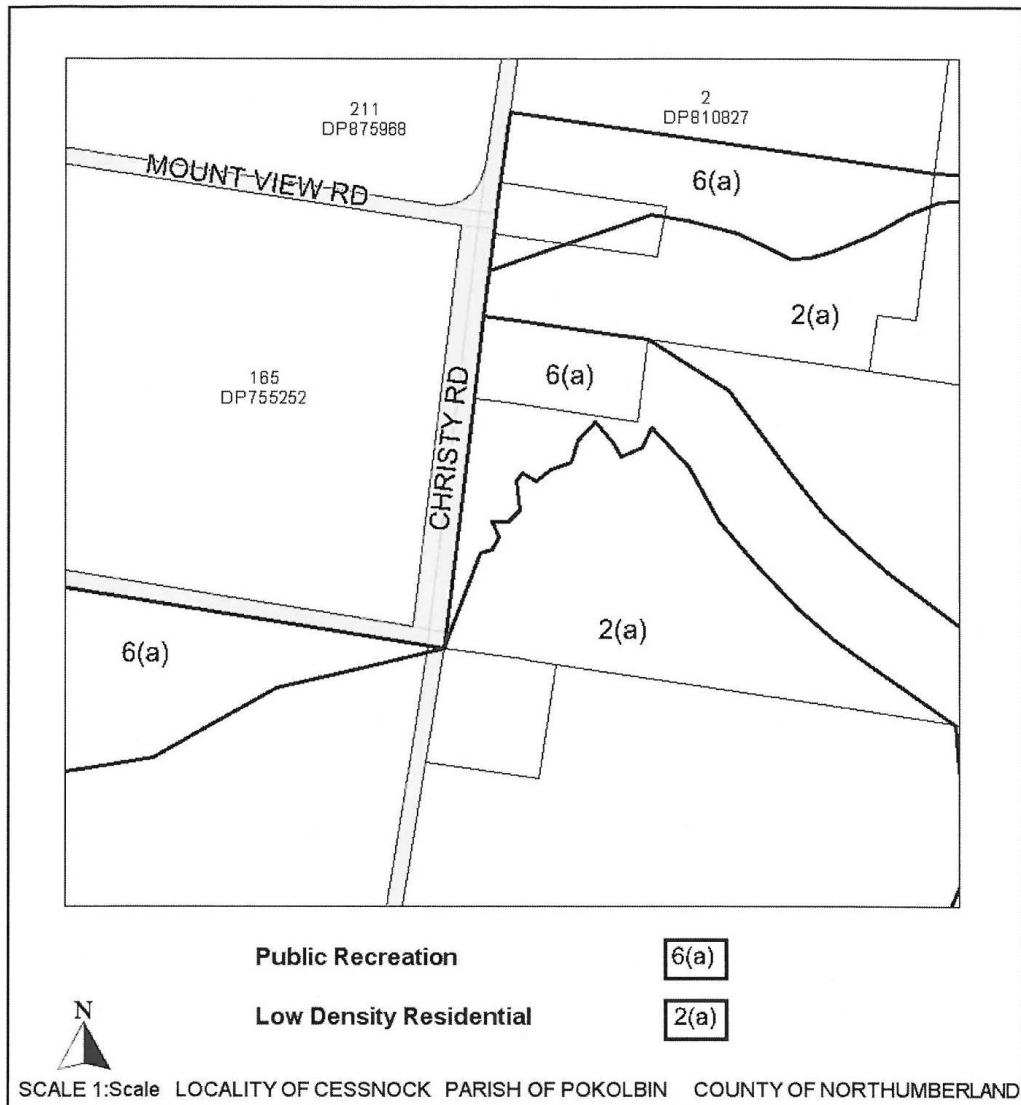
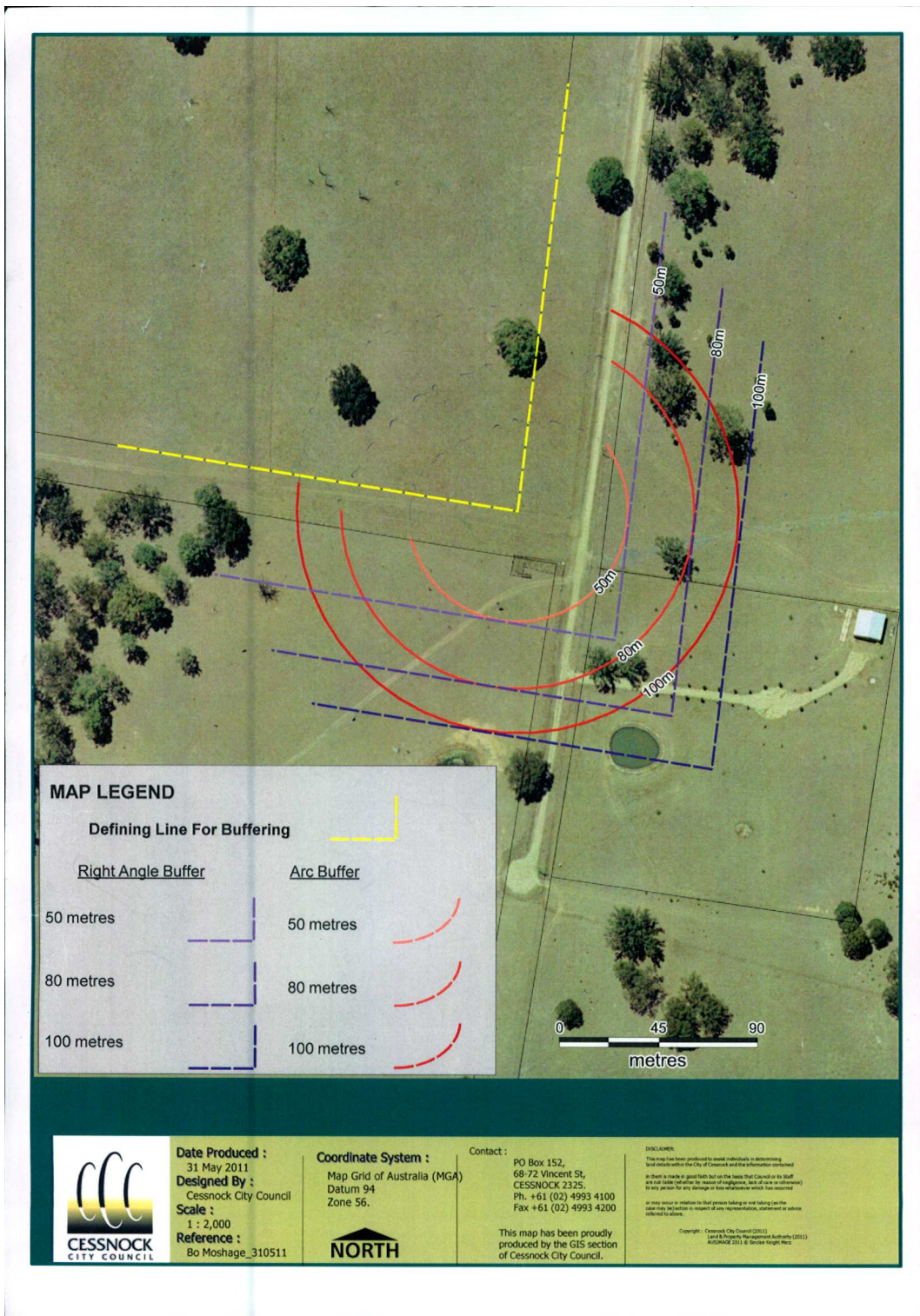


Figure 6: Buffer treatment to adjoining non-working vineyard.



Part 5 - Justification

Section A - Need for the Planning Proposal

The Planning Proposal is the result of a Council resolution to review the planning controls introduced by the (then) Department of Planning in relation to the application of a 100 metre wide buffer along the western boundary of the Bellbird North Precinct adjacent to Christy Road. A copy of Council Report No. EE23/2011 is provided as Appendix A.

A Planning Proposal is the only means by which the proposed amendments can be made to the Cessnock Local Environmental Plan.

Section B - Relationship to Strategic Planning Framework

Consistency with Objectives and Actions within Regional Strategies

Lower Hunter Regional Strategy

The area the subject of the Bellbird North Investigation Area is identified in the Lower Hunter Regional Strategy, identified as a 'proposed urban area'.

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

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

Goal: Protect, enhance and promote the natural, developed and cultural environment.

Objectives: Continue to develop residential development controls.

Outcome: Council's assessment and consideration of the subject Planning Proposal addresses the aims of Council's Management Plan.

City Wide Settlement Strategy

The subject site is identified in Council's City Wide Settlement Strategy and will contribute to 'a whole of city outcome' through the provision of residential land consistent with this strategy, which seeks to reinforce and strengthen the Cessnock town centre by providing housing opportunities near existing employment, schools, services and public transport.

Strategic Planning Framework

The Planning Proposal was prepared having regard to the following environmental planning instruments and Section 117 Directions:

- a. Cessnock Local Environmental Plan 1989;
- b. Cessnock Development Control Plan (2006);
- c. State Environmental Planning Policies; and
- d. Ministerial Directions - Section 117 Directions.

The Planning Proposal is considered to be consistent with the provisions of the above environmental planning instruments.

Section C - Environmental, Social and Economic Impact

Access to the site is from Christy Road, which will be developed as part of the Bellbird North Land Release Area as a main collector road for development in this area. Similarly, the staged provision of water and sewer will be provided.

The Planning Proposal will not adversely affect any critical habitat or threatened species, populations or ecological communities that may exist in the area, with the supporting Development Control Plan and a Section 94 Contributions Plan prepared to confirm the requirements applicable to the overall Bellbird North Precinct.

A social assessment undertaken for the Bellbird North Rezoning Proposal indicates a positive balance of impacts. In particular, the benefits associated with a larger population such as generation of infrastructure and services, retention of local public school through additional enrolments and economic benefits for the existing commercial premises. Adverse impacts such as increased traffic generation and amenity issues generally associated with increased residential densities were identified and addressed through the supporting Bellbird North Development Control Plan.

Section D - State and Commonwealth Interests

Council officers met with representatives of Department of Primary Industries (NSW Agriculture) on 23 June 2011 to discuss the draft Planning Proposal, particularly the background and planning implications associated with the nature and width of buffers as gazetted by the Department of Planning with the Bellbird North Precinct. NSW Agriculture noted these considerations in addition to the visual aspects of the buffer and the function of Christy Road as part of the overall Bellbird North Precinct, which were also discussed.

Council will seek to consult formally with the Department of Primary Industries (NSW Agriculture) on these matters as part of the Planning Proposal.

Part 6 - Community Consultation

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

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

Attachment 1: Council Report No. EE23/2011

Report To Ordinary Meeting of Council - 1 June 2011

Our Natural, Developed and Cultural Environment

Report No. EE23/2011

Strategy and Sustainability



SUBJECT: *BELBIRD NORTH REZONING UPDATE*

AUTHOR: *Strategic Landuse Planning Manager - Bo Moshage*

SUMMARY

The purpose of this report is to provide an overview of the comments received from the (then) Department of Planning on the gazettal of Cessnock Local Environmental Plan Amendment No. 121 for the Bellbird North Precinct.

RECOMMENDATION

That Council prepare a Planning Proposal to investigate the planning controls applying to the application of a 100 metre wide buffer along the western boundary of the Bellbird North Precinct adjacent to Christy Road.

BACKGROUND

On 2 March 2011, Council considered under report EE 5/2011, the gazettal of Cessnock Local Environmental Plan Amendment No. 121 for the Bellbird North Precinct and resolved:

1. The information be noted; and
2. Council proceed to review the adopted Bellbird North Development Control Plan and Section 94 Contributions Plan and report the matter to Council.
3. That Council write to the Minister for Planning requesting that the Minister review the application of the 100 metre buffer to the western boundary of the Bellbird North rezoning to ensure that the application of the buffer is justified and that the landowners have not been significantly disadvantaged. Further, that any changes to the buffer be implemented by a Planning Proposal to be prepared by the Department of Planning.

A locality plan for the Bellbird North Precinct is provided in the enclosure documents as Attachment 1.

REPORT

In response to Council's request for clarification, the Department of Planning noted that a 100 metre wide buffer was added to address shortcomings of the draft LEP as submitted by Council, particularly in regard to the (then) Department of Primary Industry relating to potential land use conflicts between the proposed residential areas and adjoining lands zoned for vineyards purposes.

A copy of the Department of Planning correspondence is provided in the enclosure documents as Attachment 2.

While the area the subject of the Bellbird North Investigation Area is identified in the Lower Hunter Regional Strategy, the (then) Department of Primary Industry raised concerns at the expansion of the Bellbird North Investigation Area into the Rural 1(v) Vineyard zone and

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recommended that Council retain all the area currently zoned 1(v) vineyards to reduce the risk of conflict and better maintain agricultural development opportunities. This concern was based on a perception that this would set a precedent for other rezonings of 1(v) zoned lands.

The Department of Primary Industry also recommended minimising the number of lots close to the viticultural zone and ensuring dwellings would be located as far away from the zone boundary as possible.

In response to minimising the number of lots in proximity to the viticultural zone, Council proposed an 80 metre wide buffer to the vineyard land to the west and 50 metre buffer to the vineyard land to the north west in accordance with the setback requirements as documented in Chapter E3 – Vineyards District of the Cessnock Development Control Plan (2006).

The application of these buffers allowed for the retention of the large stand of trees in the north west of the investigation area, which could also be supplemented by extensive plantings. These vegetation corridors would then be dedicated to Council as part of the proposed road reserves / recreations land, providing for both a physical and visual buffer between the rural land and the residential areas.

A Planning Proposal will allow Council to review the planning controls introduced by the Department of Planning, with the application of a 100 metre wide buffer, particularly along the western boundary of the Bellbird North Precinct adjacent to Christy Road.

This philosophy is in keeping with Council's objective for the vineyards district and consistent with Council's existing development controls, which have been endorsed by the (then) NSW Agriculture, and documented in Chapter E3 – Vineyards District of the Cessnock Development Control Plan (2006).

CONSULTATION

Council officers met with Department of Planning and Infrastructure representatives on 23 May 2011 to discuss the background and further planning implications for a Planning Proposal. The Department confirmed that any resulting Planning Proposal would be the responsibility of the Council and would need to be referred to the Cessnock Planning Panel for its consideration.

STRATEGIC LINKS

a. Management Plan

Goal: Protect, enhance and promote the natural, developed and cultural environment.

Objectives: Continue to develop residential development controls.

Outcome: Council's assessment and consideration of the subject rezoning addresses the aims of Council's Management Plan.

b. Other Plans

DCP 2006

STATUTORY IMPLICATIONS

Report To Ordinary Meeting of Council - 1 June 2011

Our Natural, Developed and Cultural Environment

Report No. EE23/2011

Strategy and Sustainability



a. Policy and Procedural Implications

Council is ultimately responsible for a Planning Proposal and must be satisfied with it such that it is prepared to forward it to the Minister for Planning for the gateway determination through the Cessnock Planning Panel.

b. Financial Implications

The preparation and consideration of a Planning Proposal investigating the application of a 100 metre wide buffer along the western boundary of the Bellbird North Precinct adjacent to Christy Road will need to be done within the constraints of existing land use planning resources and budget.

c. Legislative Implications

This report has had regard to the provisions of the Environmental Planning & Assessment Act and the supporting Regulations.

d. Risk Implications

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

e. Other Implications

Nil

OPTIONS

1. Council write to the (new) Minister for Planning responding to the issues raised in the Department of Planning's correspondence. This will seek further clarification from the Department in relation to the application of the 100 metre buffer.
2. Council prepare a Planning Proposal investigating the application of the 100 metre wide buffer along the western boundary of the Bellbird North Precinct, adjacent to Christy Road. This will enable a Planning Proposal to be considered by the Cessnock Planning Panel and progressed for 'gateway' determination.
3. Note the Department of Planning's correspondence comments. This will conclude Council's consideration of this matter.

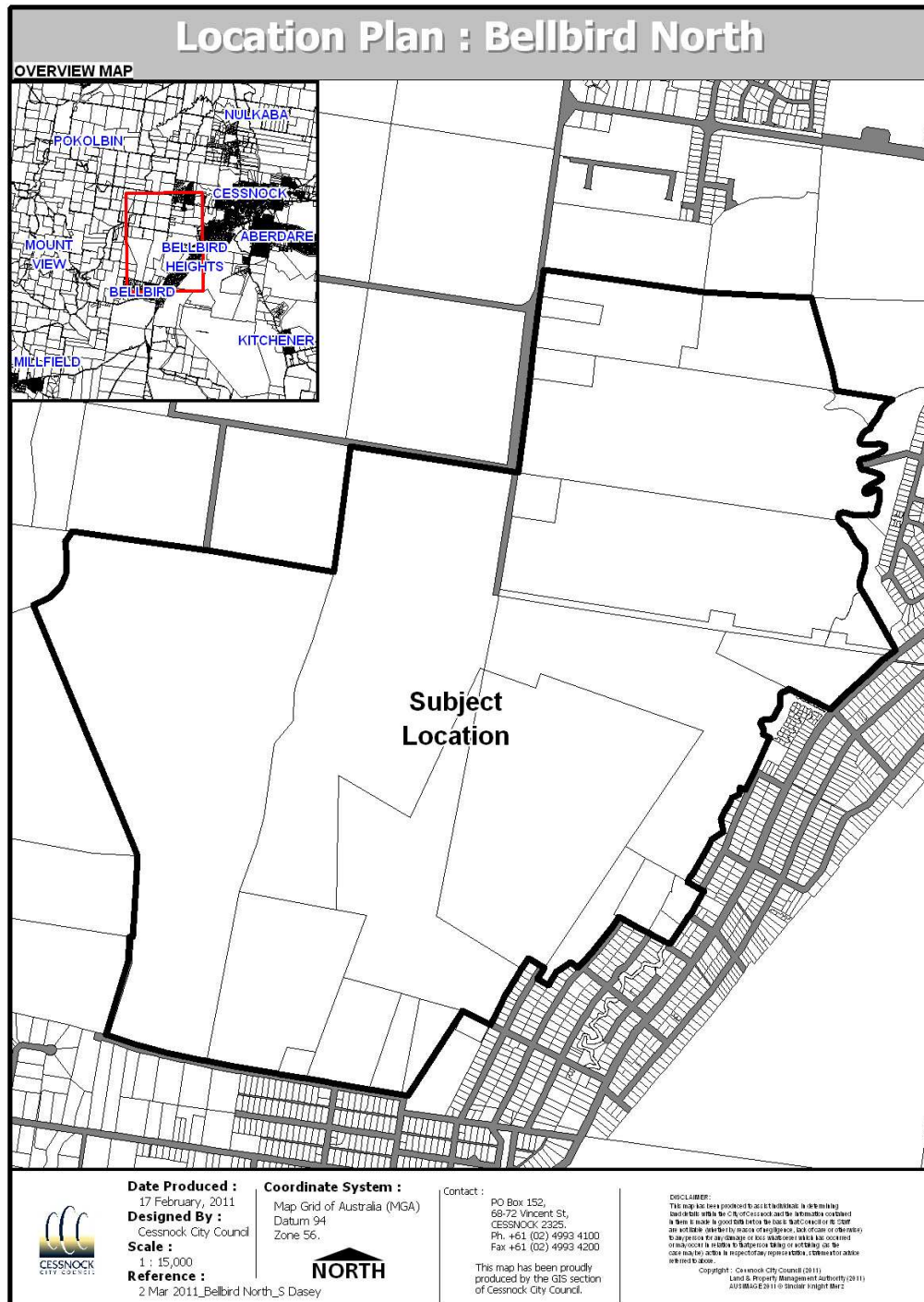
CONCLUSION

Council's endorsement for the preparation of a Planning Proposal as detailed in this report will ensure the orderly consideration and assessment of the 100 metre wide buffer introduced by the Department of Planning, particularly along the western boundary of the Bellbird North Precinct adjacent to Christy Road by the Landuse Planning Team.

ENCLOSURES

- 1 Locality Plan
- 2 Department of Planning Correspondence

Enclosure 1: Locality Plan

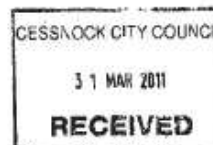
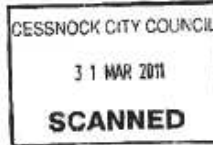


Enclosure 2: Department of Planning Correspondence



Planning

Office of the Director General



Ms Lea Rosser
General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

11/05439

Attention: Darryl Fitzgerald

Dear Ms Rosser,

I refer to Council's letter of 10 March 2011 to the Hon Tony Kelly MLC, Minister for Planning, concerning the Bellbird North LEP (Amendment 121). The Minister has asked me to reply on his behalf.

I note in particular your reference to the 100 metre buffer area to the Vineyards District which was included in the plan made by the Minister. This buffer was added by the Minister to address the shortcomings of the draft LEP as submitted by Council. In the Minister's view, the draft LEP failed to adequately address issues raised by the (then) Department of Primary Industry relating to potential land use conflicts between the proposed residential areas and adjoining lands zoned for vineyard purposes.

If Council wishes to review the 100 metre buffer, this would need to be carried out by Council itself. Any resulting planning proposal would also be the responsibility of Council, and would need to be referred to the Cessnock Planning Panel for its consideration.

Should you have any further enquiries about this matter, I have arranged for Mr Gary Freeland, of the Department's Newcastle Office, to assist you. He can be contacted on telephone number (02) 4904 2700.

Yours sincerely

SHaddad
Sam Haddad
Director General
25/3/2011

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