

Planning and Assessment

IRF21/4949

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Rezoning of land for residential and environmental conservation purposes at Gingers Lane, Sawyers Gully (374 lots)
NUMBER	PP-2021-3697
LEP TO BE AMENDED	<i>Cessnock Local Environmental Plan 2011</i>
ADDRESS	156 Frame Drive, 19, 71, 101, 107, 131 & 133 Metcalfe Lane, 15, 27, 37, 43 & 59 Sawyers Gully Road, and 40, 52, 60, 72, 102, 152 & 176 Gingers Lane, Sawyers Gully
DESCRIPTION	Lot 2721 DP 1104897, Lot 276 DP 755231, Lot 275 DP 755231, Lot 274 DP 755231, Lot 2732 DP 884423, Lot 2731 DP 884423, Lot 2722 DP 1104897, Lot 1 DP 308003, Lot 2 DP 314641, Lot 1 DP 371151, Lot 1 DP 663726, Lot 277 DP 755231, Lot 1 DP 345294, Lot 10, DP 710071, Lot 11, DP 710071, Lot 280 DP 755231, Lot 281 DP 755231, Lot 282 DP 755231 & Lot 283 DP 755231
RECEIVED	26/11/2021
FILE NO.	IRF21/4949
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Site description

The site has a land area of approximately 96 hectares comprising of 19 lots (Figure 1). The planning proposal identifies the site has been historically used for peri-urban uses and references detached dwellings as the main current land uses. Dwellings are located on each of the lots and often accompanied with rural sheds. There are decommissioned poultry sheds on site and existing poultry sheds to the north east of the site.

The site is bounded to the north by Metcalfe Lane, to the east by Sawyers Gully Road and the south by Gingers Lane. The site slopes downhill towards the northern boundary along Metcalfe Lane and several small dams and watercourses drain to the northeast towards Black Waterholes Creek.

Preliminary ecological site investigations identified the site contains native vegetation in a variety of management states as a result of past and present grazing and previous site improvements. An endangered ecological community - Lower Hunter Spotted Gum – Red Ironbark Forest is identified as being present on the site.

No threatened flora species were recorded on site however, vegetation may provide habitat for arboreal mammals, microbats and small birds and the watercourses and drainage lines may provide potential habitat for threatened frogs and fish.

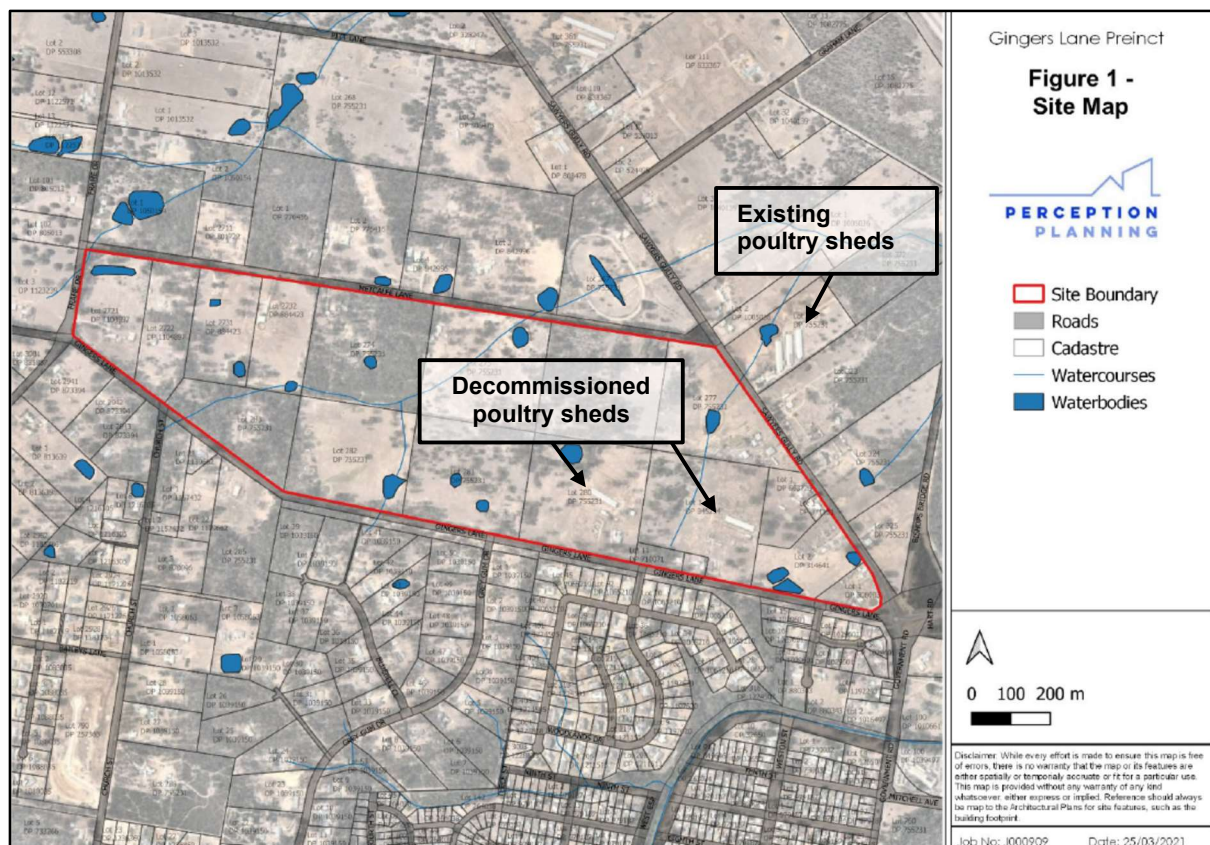


Figure 1 Site Plan

1.2 Existing planning controls

The site is currently zoned RU2 Rural Landscape (Figure 2) and has a part Minimum Lot Size of 40ha and 4ha (Figure 3) under the *Cessnock Local Environmental Plan 2011*.

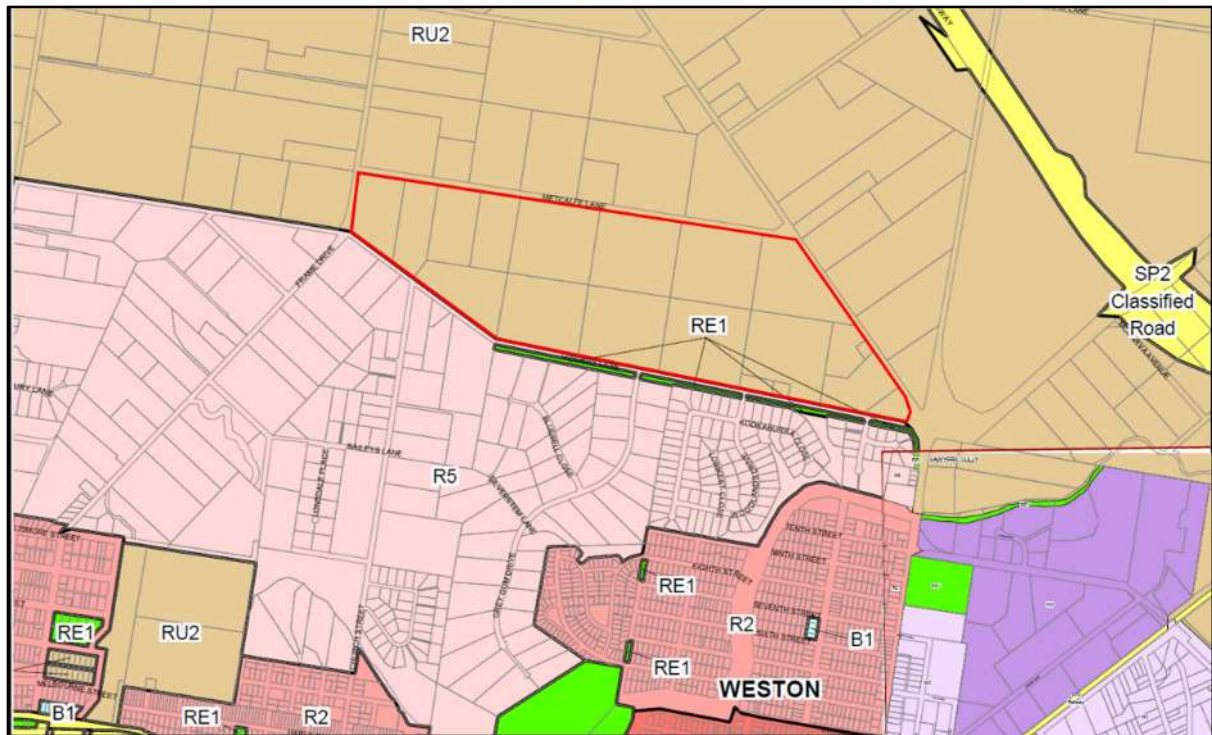


Figure 2 Existing Land Zoning

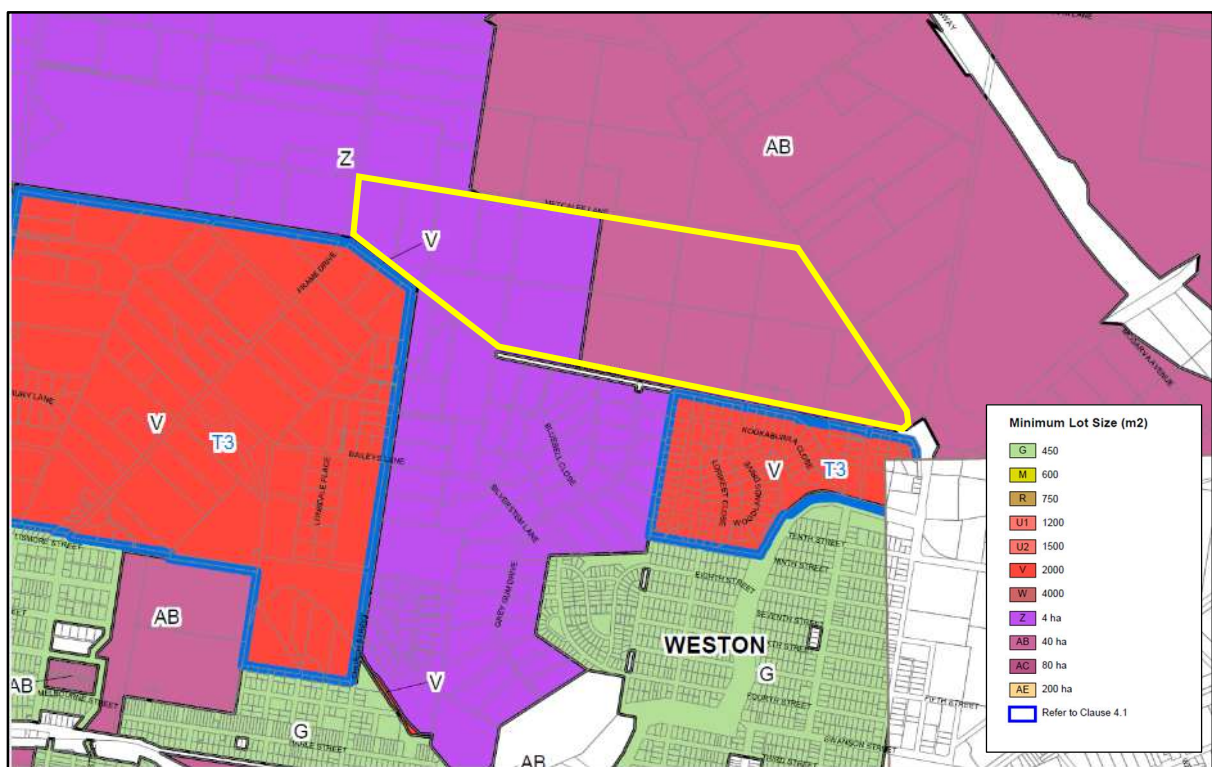


Figure 3 Existing Minimum Lot Sizes

1.3 Surrounding area

The site is located to the west of Sawyers Gully Road and is bordered by Gingers Lane to the south and Metcalfe Lane to the north (Figure 4). Hart Road links to the Hunter Expressway at the Loxford Interchange and is located north east of the site.

The suburb of Weston is located south of the site comprising of land zoned R5 Large Lot Residential and R2 Low Density Residential and has been developed for residential purposes. Land to the north of the site is generally zoned RU2 Rural Landscape comprising of dwellings on large lots with agricultural uses including poultry operations in the vicinity of the site.

The strategic centre of Kurri Kurri is located approximately 2.5km to the south east of the site comprising of business and residential zones and the Kurri Kurri Industrial Precinct containing IN2 Light Industrial and IN3 Heavy Industrial zones is approximately 500 metres south east of the site.

A planning proposal (PP-2021-477) to rezone the former Hydro Aluminium Smelter and surrounding buffer land is located to the east of the site. The Hydro proposal seeks to permit employment, industrial and residential development to provide 1,435 homes and 6,900 jobs. Cessnock City Council concluded public exhibition of the planning proposal on 1 February 2021.

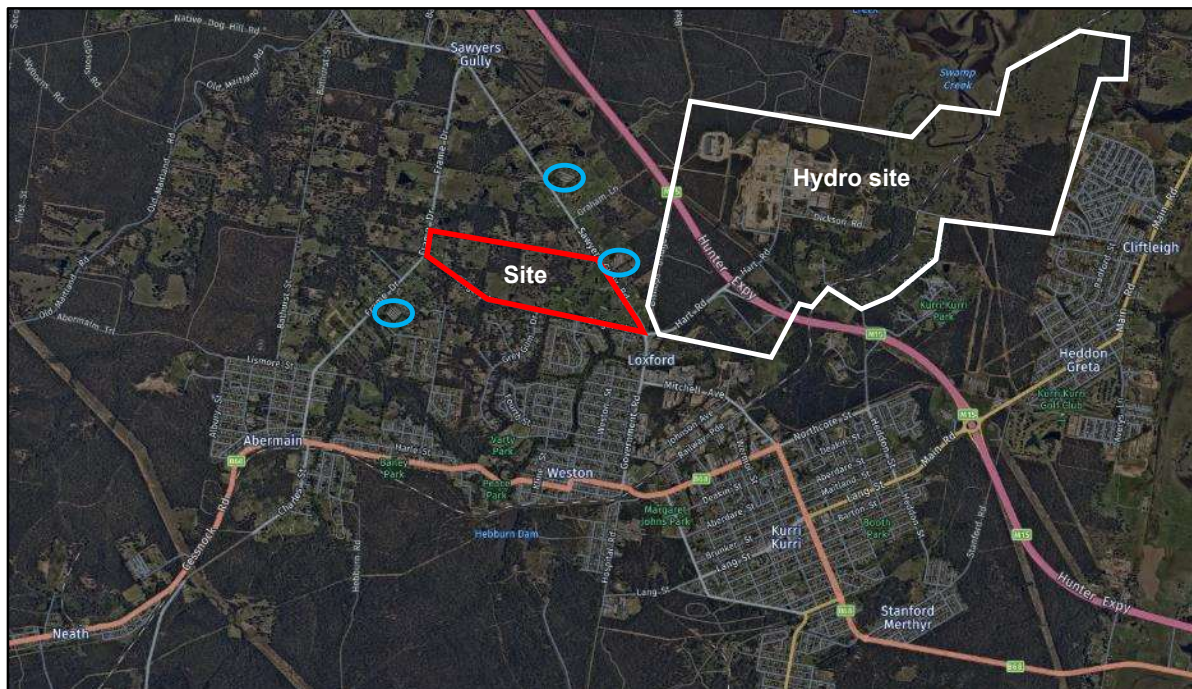


Figure 4 Surrounding land uses (poultry operations circled blue)

1.3 Background

The planning proposal to rezone the site was considered at the Ordinary Meeting of Council on 20 October 2021. Council staff recommended that:

- Council not support the rezoning, and
- Council invites the proponents to recommence investigation of the Sawyers Gully Investigation Area in accordance with the Cessnock Urban Growth Management Plan principles once the threshold for the established urban category reaches 15 years.

Council resolved unanimously:

- to support the planning proposal, request a Gateway determination and authorisation to be the local plan making authority,

- to note the general consistency of the planning proposal with the Urban Growth Management Plan principles and the high level and subjective nature of the Urban Growth Management Plan which enables specific planning proposals to be assessed on their merits, and
- that an investigation area-wide structure plan be developed and approved by Council prior to the rezoning of the planning proposal site.

2. PROPOSAL

2.1 Description of planning proposal

The planning proposal has been initiated by the proponent and seeks to rezone rural land to enable residential subdivision and environmental conservation on the site for 374 lots.

The site is proposed to be rezoned from RU2 Rural Landscape to R5 Large Lot Residential, R2 Low Density Residential and E2 Environmental Conservation.

The proposed minimum lot sizes are 1500m² for the R5 Large Lot Residential zoned land, 450m² for the R2 Low Density Residential zoned land and 40 hectares for the E2 Environmental Conservation zoned land.

2.2 Objectives or intended outcomes

The intended outcome of the planning proposal is to enable residential subdivision and environmental conservation on the site. The objectives of this planning proposal are clear and adequate.

2.3 Explanation of provisions

The planning proposal seeks to amend *Cessnock Local Environmental Plan 2011* by:

- amending the Land Zoning Map from RU2 Rural Landscape to R5 Large Lot Residential, R2 Low Density Residential and E2 Environmental Conservation (Figure 5).
- amending the minimum Lot Size Map from 40 hectares and 4 hectares to 1500m² for land to be zoned R5 Large Lot Residential, 450m² for land to be zoned R2 Low Density Residential, and 40 hectares for land to be zoned E2 Environmental Conservation (Figure 6).
- amending the Urban Release Area Map to identify the Gingers Lane Precinct as an Urban Release Area.

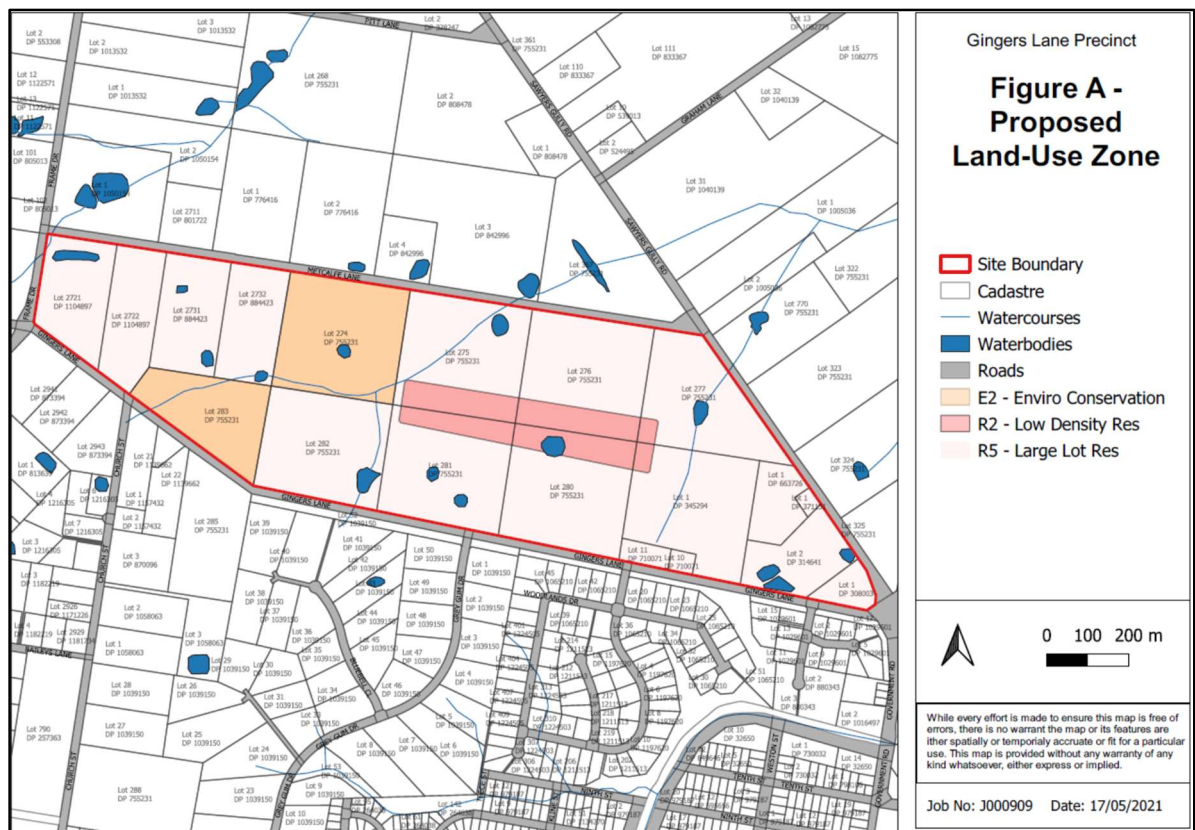


Figure 5 Proposed Land Use Zones

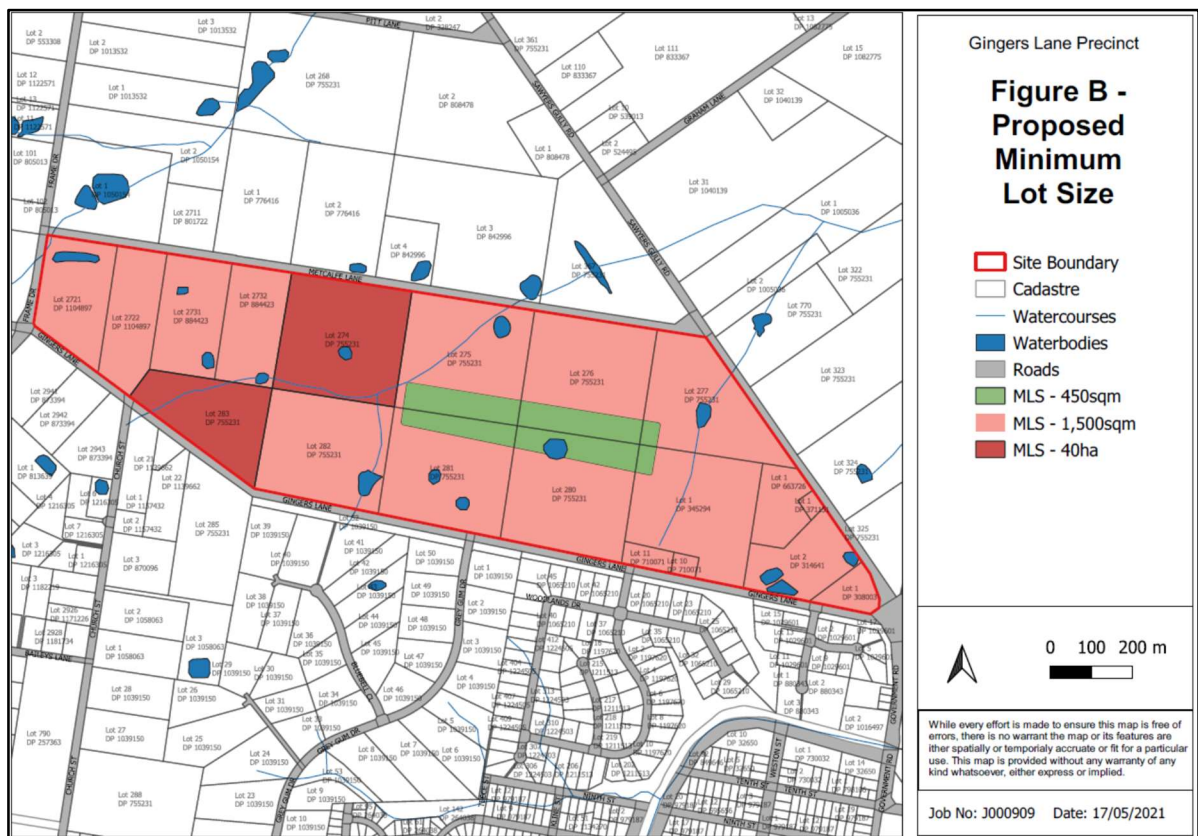


Figure 6 Proposed Minimum Lot Sizes

2.4 Mapping

The planning proposal seeks to amend Land Zoning Map – Sheet LZN_009A, Lot Size Map – Sheet LSZ_009A and Urban Release Area Map - Sheet URA_009A to enable the rezoning, lot size and urban release area amendments. The proposed maps are suitable for community consultation.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal states it is a result of the site's identification in the Cessnock Housing Strategy (2021) and the Cessnock Urban Growth Management Plan (2021) as a 'Future Investigation Area – Established Urban Release Areas' and the proposed zoning and development standards reflects an end subdivision plan for the site.

The site is partly located partly within the Sawyers Gully 'Future Investigation Area – Established Urban Release Areas' in the Cessnock Urban Growth Management Plan (2021) however the proposed zones and subdivision plan precede an adopted final structure plan for the entire Sawyers Gully Future Investigation Area.

The planning proposal is inconsistent with planning principles that need to be satisfied in order for an investigation area to be progressed as identified in Council's Urban Growth Management Plan which is discussed in Section 4.2.

Council resolved to support the planning proposal however required that an investigation area-wide structure plan be developed and approved by Council prior to the site rezoning. Given the uncertainty on timing of an area-wide structure plan, it is premature to identify zones and development standards on a single site in advance of investigations for the entire Sawyers Gully Precinct.

Land Zoning and Minimum Lot Size Consistency

The planning proposal seeks to allow the land to be developed for R5 Large Lot Residential purposes with a R2 Low Density Residential zone located along the centre of the site with 2 parcels of E2 Environmental Conservation located to the west of the site.

The prevailing subdivision pattern to the southeast of the site is identified on Council's minimum lot size map as 2000m² or 2ha if there is no reticulated sewer available. The land directly south has a 4ha minimum lot size. Land to the north is mapped with a 40ha and 4ha minimum lot size. The proposal seeks to apply a 1500m² for the R5 Large Lot Residential zoned land and 450m² for the R2 Low Density Residential zoned land.

The layout of the residential zones within the site aligns with the adjoining R5 Large Lot Residential zone to the south however creates a distinct pocket of low-density residential land that is isolated from any other R2 Low Density Residential zoned land in the vicinity. The proposed E2 Environmental Conservation zoning reflects existing site constraints creating two small distinct areas for environmental conservation however, it unclear whether the size of the conservation areas and linkages to other land with biodiversity values is appropriate.

It is uncertain how the site would align with other zones and development standards within the broader Sawyers Gully Investigation area until Council resolves to endorse a structure plan for the Sawyers Gully Precinct.

In the absence of a Council endorsed structure plan for the Sawyers Gully Precinct, the planning proposal introduces an ad-hoc site-specific residential rezoning in proximity to agricultural land uses, increasing the potential for land use conflict with agricultural and poultry operators in the vicinity of the site.

4. STRATEGIC ASSESSMENT

4.1 Regional / District

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* (HRP) provides high level directions for growth and change in the region. The site is located west of a growth area corridor between Cessnock and Maitland (Figure 7).

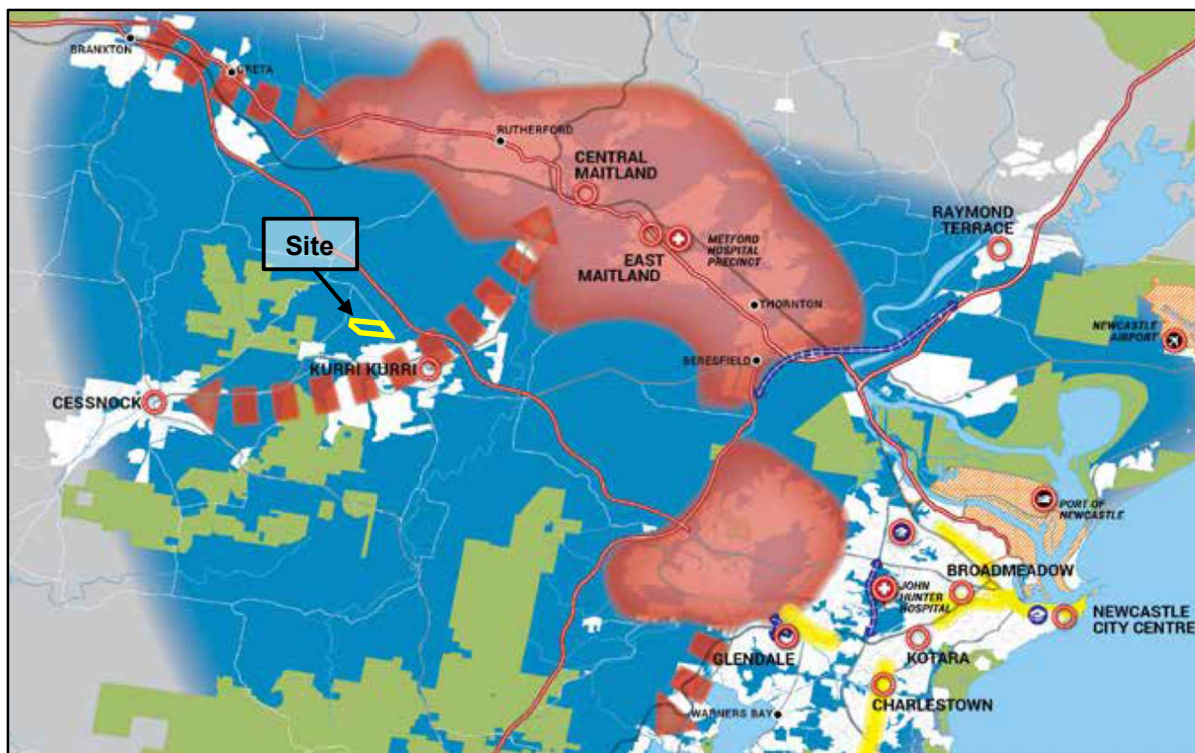


Figure 7 Extract Hunter Regional Plan 2036

The following directions apply to planning proposal:

- *Direction 10 – Protect and enhance agricultural productivity*

Action 10.1 Protect locations that can accommodate agricultural enterprises from incompatible development.

There are existing poultry operations located in proximity to the site and the planning proposal supporting odour assessment indicates impacts from the existing poultry industry can be mitigated by a buffer and subdivision is proposed to be staged to limit odour impacts.

The Department of Primary Industries 'Buffer zones to reduce land use conflict with Agriculture' Interim Guidelines (DPI NSW, 2018), recommends a separation distance of 1km between indoor poultry establishments and sensitive residential receptors. The existing poultry operation to the east is approximately 90metres from the boundary of the site. The odour report provided identifies a buffer of 255 metres from proposed residential properties which would impact the proposed residential lot

layout on the eastern part of the site. Other poultry operations to the north and west are located within the 1km buffer of the site, however, were not included in the odour assessment and impacts remain undetermined (Figure 8).

The NSW Government's Right to Farm Policy outlines the desire of farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users.

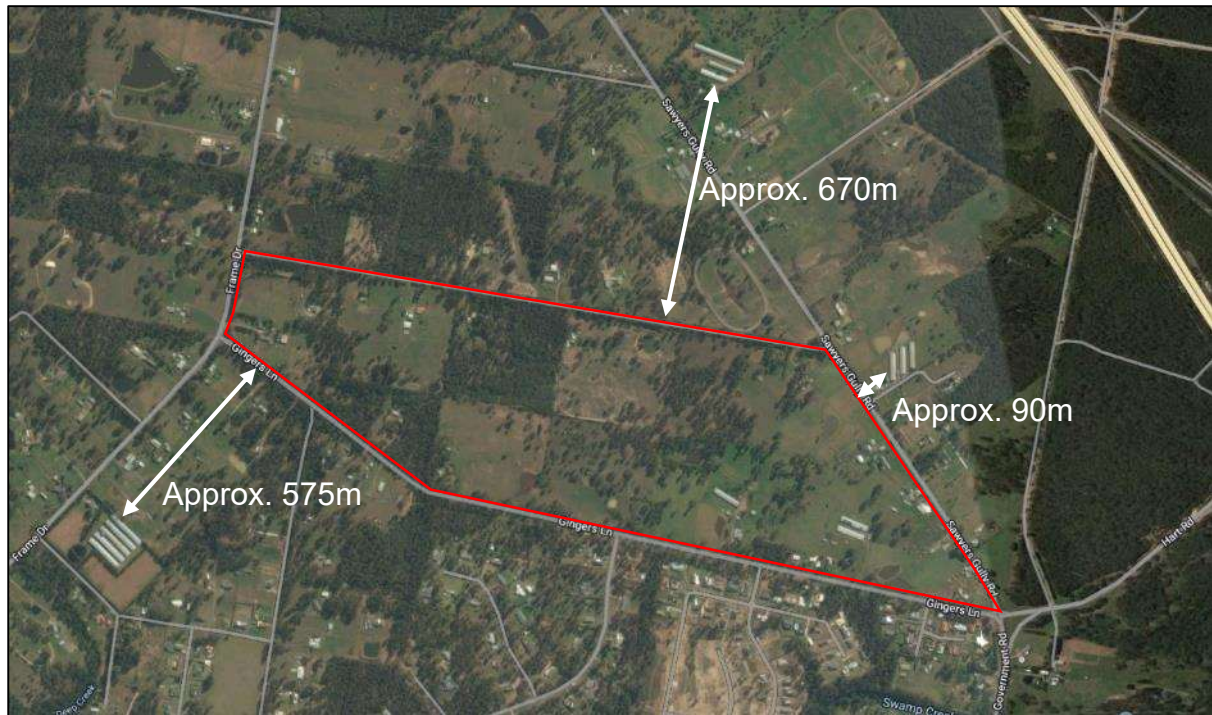


Figure 8 Proximity of site to poultry operations

Further information on the adequacy of the odour assessment and potential odour impacts will need to be determined in consultation with DPI – Agriculture and NSW Environment Protection Authority.

The potential for land use conflict, the risk to the ongoing operation of adjoining farms and subsequent local and regional economic impacts needs to be considered to determine whether the proposed mitigation measures are appropriate before consistency with the direction can be determined.

- *Direction 22 – Promote housing diversity*

The planning proposal supports housing diversity by locating large-lot residential and low-density residential housing in proximity to an established residential area of Weston and within a 2.5km drive of Kurri Kurri.

Action 22.5 of the *Hunter Regional Plan 2036* requires councils to include guidance in local land use strategies for expanding rural villages and rural residential development and includes objectives to manage rural residential development by:

- not adversely impacting on important agricultural land,
- not impacting on drinking water catchments,
- not adversely resulting in greater natural hazard risk,
- occurring on land that is unlikely to be needed for urban development,
- contributing to the conservation of important biodiversity values, and

- facilitating the expansion of tourist development activities in agricultural lands.

Council's Urban Growth Management Plan identifies areas for investigation for future development and identifies planning principles to be satisfied for an investigation area to be progressed.

The Sawyers Gully Precinct, which includes the site, is identified as an 'Established Urban' future investigation area and refers to development in the existing urban areas in the Bellbird to Maitland growth corridor identified in the *Hunter Regional Plan 2036*.

The 'Established Urban' future investigation area will primarily be driven by supply and demand and as the 15-year supply threshold is reached, investigation areas in the Bellbird to Maitland Growth Corridor and those around Greta - Branxton (the Maitland Growth Corridor) should be prioritised.

The Sawyers Gully Precinct is proposed to be investigated for urban purposes. Areas identified for large-lot residential development are in the 'Village Lifestyle' category investigation areas and are mapped in the villages of Nulkaba, Abernethy, Mulbring and Ellalong.

The planning proposal is generally consistent with some of the actions relating to rural-residential development, however, the Sawyers Gully Precinct is to be investigated for urban development and the rural residential component of the planning proposal is inconsistent as it precludes future use of the land that may be needed for urban development.

Determining precinct-wide land uses and densities for the entire Sawyers Gully Precinct will help assess and address some of planning proposal's inconsistencies with the *Hunter Regional Plan 2036*. At this stage, the planning proposal is premature as it precedes these strategic investigations.

Draft Hunter Regional Plan 2041

A 5-year review of the *Hunter Regional Plan 2036* updated the strategic framework for the region and resulted in the preparation of the draft Hunter Regional Plan 2041 (draft Plan), which concluded public exhibition on 4 March 2022.

The planning proposal was prepared prior to the exhibition of the draft Plan, however, there are matters appropriate for consideration in relation to the planning proposal.

Infrastructure first and place-based approach

The draft Plan proposes an infrastructure first and place-based approach to development planning. In summary this involves:

- plan for growth areas in the right ways through local strategies,
- determine enabling infrastructure servicing and staging,
- establish sequence for prioritisation, and
- develop place strategies to align development and infrastructure.

The planning proposal has been submitted for a site in an area identified for future urban investigation in Council's Urban Growth Management Plan. The UGMP contains principles to be satisfied before an investigation area can be progressed, including sufficient detail to inform the layout and logical sequencing of infrastructure within the investigation area.

Progressing a planning proposal prior to a structure plan being developed and approved by Council undermines Council's local strategic planning framework and is inconsistent with the infrastructure first and place-based approach to development planning identified in the draft Plan.

Hunter Expressway Corridor Growth Area

The site is located in the Greater Newcastle District and the most relevant District Planning Priority is the Hunter Expressway Corridor Growth Area (Figure 9) as the site is partly included in the interchange growth area boundary. The priorities for interchange growth areas are:

- define land available to investigate for release in local strategies,
- consider other uses compatible with the Hunter Expressway,
- prohibit rezoning for residential or rural residential development, other than land in a current proposal or future endorsed local strategy.

Given the proximity of the site to the Luxford Interchange, a structure plan should be prepared for the Sawyers Gully Precinct before proposals to rezone specific sites are submitted. Infrastructure upgrades to the road network proximate to the Hunter Expressway for the Sawyers Gully Precinct should be quantified prior to a structure plan for the Sawyers Gully Precinct being approved.

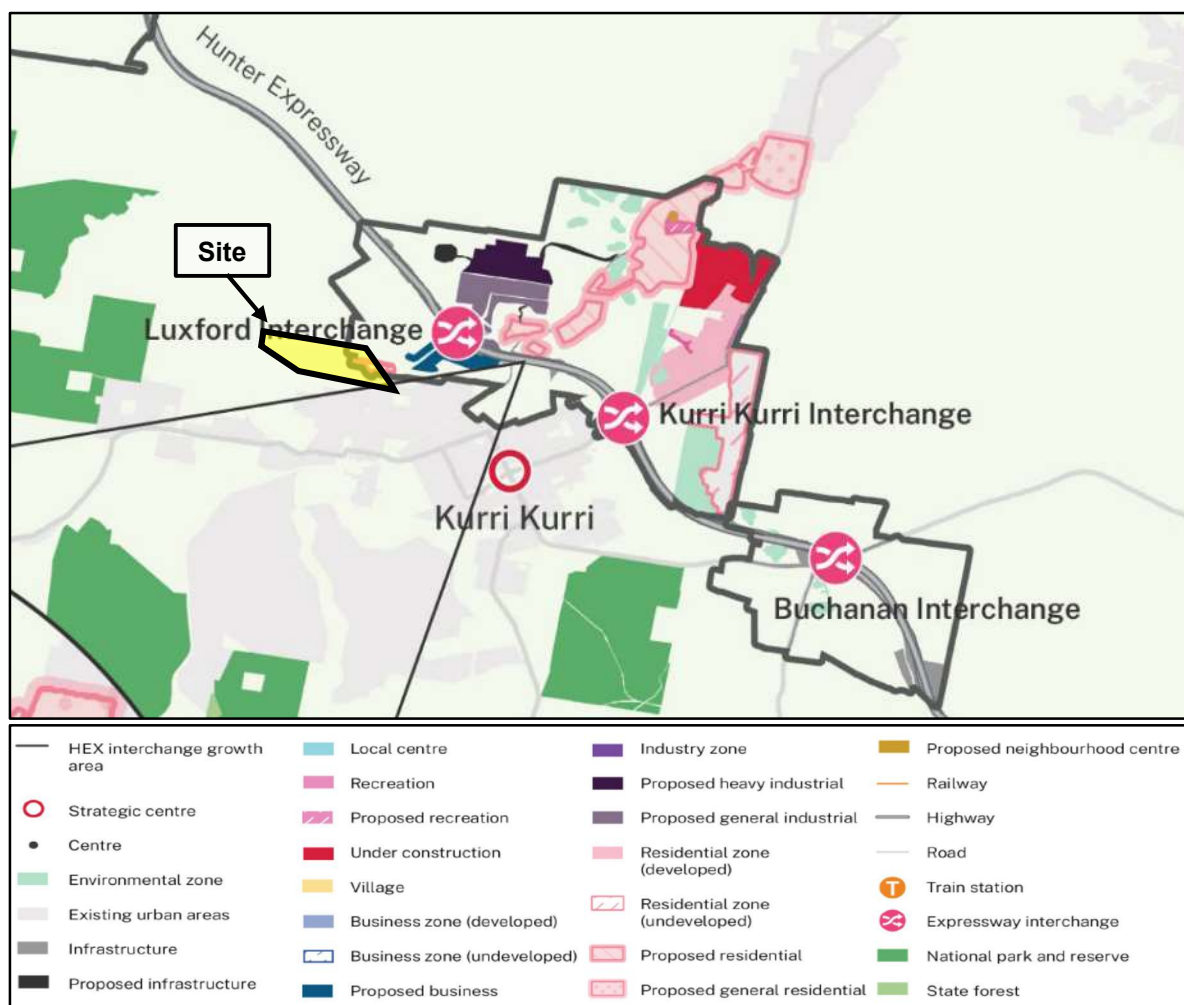


Figure 9 Extract from Draft Hunter Regional Plan 2041 - Hunter Expressway Corridor Growth Area

The planning proposal is inconsistent with the draft Hunter Regional Plan 2041.

Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* helps to achieve the vision outlined in the *Hunter Regional Plan 2036* and sets out strategies and actions that will drive sustainable growth across Greater Newcastle. The following strategies and actions are relevant to the planning proposal.

- *Strategy 18 - Deliver well-planned rural residential housing areas*

The objective of this strategy is to provide a consistent and balanced approach to rural residential development to minimise potential conflicts with productive rural areas and environmental assets.

Action 18.1, which enables rural residential housing when the need is demonstrated through a local planning strategy endorsed by the Department of Planning and Environment and it is in locations where:

- *the land is unlikely to be required for more intensive urban purposes in the future due to physical constraints such as slope, environmental characteristics or natural hazards*
- *less intensive development will result in better management of the land*
- *the delivery of infrastructure required to service the development is physically and economically feasible.*

The planning proposal has not addressed consistency with this strategy and is inconsistent with the first action of the locational criteria. The site is proximate to the Hunter Expressway, within a 2.5km drive to Kurri Kurri and is identified in Council's Urban Growth Management Plan as an Established Urban category for investigation in Sawyers Gully adjacent to the Bellbird to Maitland growth corridor.

Subject to further investigation the land could cater for a greater diversity of housing and is likely to be in part required for more intensive urban purposes. In the absence of an endorsed structure plan for Sawyers Gully Precinct progressing site-specific planning proposals for rural residential purposes is inconsistent with delivering well-planned rural residential housing areas.

- *Strategy 19 Prepare local strategies to deliver housing*

Action	Planning Proposal Response	DPE Response
Identifies new residential release areas if there is less than 15-year supply of land to meet dwelling projections	<p>The Cessnock Housing Strategy and Urban Growth Management Plan have been prepared in response to this Action.</p> <p>The Precinct Plan for Sawyers Gully has then been prepared in response to previous guidance provided by Council Officers.</p> <p>Based on this, the proposal can be seen</p>	<p>Council has identified there is currently 18 years of supply and the planning proposal is currently inconsistent with this action.</p> <p>Council has advised its interim review of the Urban Growth Management Plan is likely result in the threshold being closer to or below 15 years of supply for the established urban category and updated supply figures will be published in July 2022.</p> <p>Consistency with the strategy cannot be determined at this stage.</p>

Action	Planning Proposal Response	DPE Response
	to be consistent with the GNMP.	

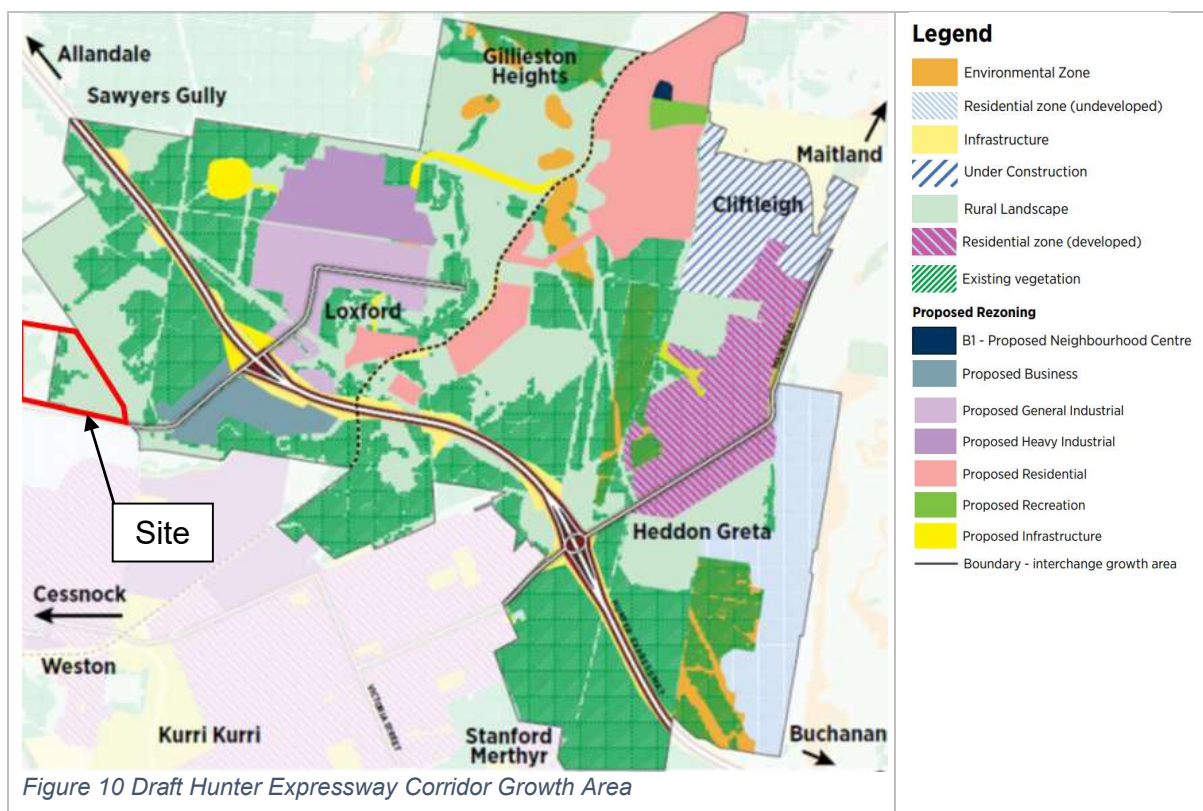
The planning proposal states it is consistent with the *Greater Newcastle Metropolitan Plan 2036* however, the 15-year supply threshold is intended to trigger commencement of a structure planning exercise for the Sawyers Gully Precinct, not site-specific planning proposal.

A structure plan should first be prepared in accordance with the Planning Principles identified in Council's Urban Growth Management Plan.

Draft Hunter Expressway Strategy 2020

The draft Hunter Express Strategy 2020 strategy identifies Interchange Growth Areas and land around the interchanges of the Expressway where careful management of land use change is required (Figure 10). Future development at Hunter Expressway interchanges will be considered through a strategic process that enables traffic, heavy vehicle access, environmental and other issues to be considered by the government and community and resolved early.

Given the site and the broader Sawyers Gully Precinct is located proximate to the Hunter Expressway it is considered these matters should be addressed as part of a Council endorsed structure plan once future investigation of the Sawyers Gully Precinct are complete.



The draft Hunter Expressway Strategy notes that proposals for additional large-scale changes to development potential will need to be first considered through a local strategy.

No further rezoning for residential or rural residential development, other than land in a current proposal or future endorsed local strategy, will be permitted to commence in the interchange growth areas.

The planning proposal precedes the above strategic planning and is inconsistent with the draft Hunter Expressway Strategy 2020.

4.2 Local

Cessnock Local Strategic Planning Statement 2036

Council's Local Strategic Planning Statement (LSPS) seeks to guide planning decisions and to set the planning direction for the Cessnock LGA. The LSPS gives effect to and implements the actions of the *Hunter Regional Plan 2036* and the *Greater Newcastle Metropolitan Plan 2036* and informs Council's land use planning priorities. The planning proposal seeks to include R5 Large Lot Residential and R2 Low Density Residential zones and the most relevant planning priorities are:

Planning Priority 1: Our urban areas are compact.

To achieve compact urban areas, additional low-density residential, and urban release areas will only be considered when land supply falls below an appropriate threshold.

To support this priority, Actions 1, 2 and 4 required Council to:

Action 1 - Prepare a Local Housing Strategy that –

- *Analyses local housing needs and housing preferences.*
- *Responds to the spectrum of housing types and needs across the local government area.*
- *Prioritises the delivery of infill housing within existing urban areas.*
- *Meets social and affordable housing requirements for low and very low-income households.*
- *Considers the extent of the existing R3 Medium Density Residential zone in Cessnock, Kurri Kurri, Weston and Branxton.*
- *Considers opportunities for medium-density development along the Cessnock to Maitland Growth Corridor.*

Action 2 - Prepare an Urban Growth Management Strategy including a sequencing strategy for future development.

Action 4 - Prepare an annual monitoring report –

- *To report on land and housing supply and demand.*
- *To inform when it is necessary to investigate the provision of additional land for development.*

The trigger for releasing additional urban release areas is identified in the Housing Strategy and Urban Growth Management Plan where supply falls below the 15-year threshold. Council has advised the current supply level is 18 years.

Planning Priority 6: Rural residential, large lot residential development and environmental living are considered in limited and appropriate locations.

Council has identified several possible investigation areas for urban expansion in the LSPS. The site is located next to an identified investigation area and proximate to the Cessnock Maitland Growth Corridor (Figure 12).

It is the intent of the priority that the investigation areas will contain a mix of zonings including residential, large lot residential and/or environmental zonings. Large lot residential areas will only be supported where services and infrastructure exist (e.g. sewer, water) or these utilities can be reasonably extended or provided and subject to the outcomes of Council's Urban Growth Management Strategy.

The planning proposal meets these priorities and services appear capable of augmentation however it is inconsistent with some requirements of the Urban Growth Management Strategy regarding housing supply, structure planning and social impacts.

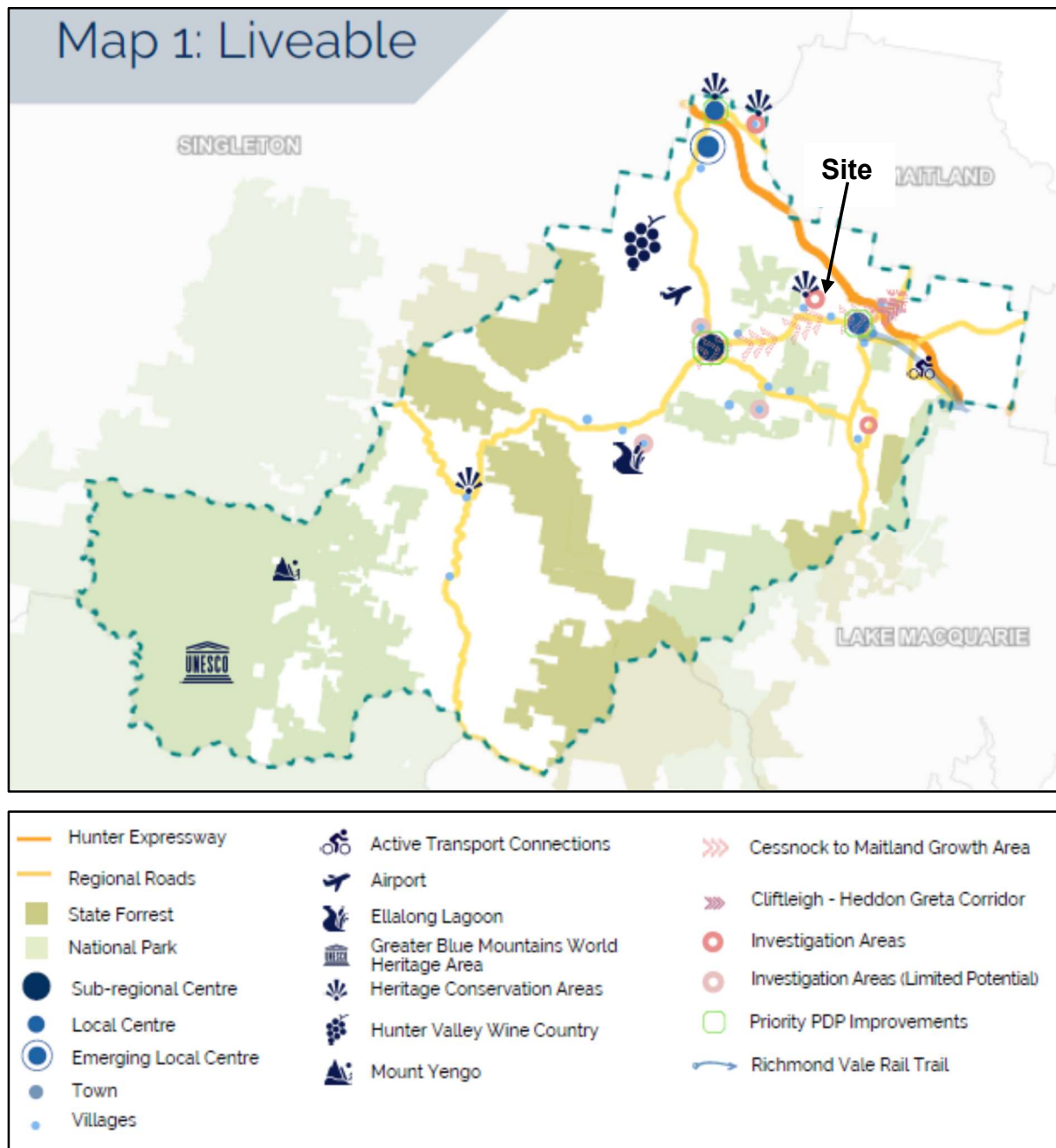


Figure 11 Extract Cessnock Local Strategic Planning Statement 2036

Cessnock Housing Strategy 2021

The Cessnock Housing Strategy (Strategy) analyses expected population growth, the changing characteristics of the community and housing preferences and makes a series of recommendations to help support the delivery of appropriate, affordable, and diverse housing across Cessnock LGA.

The Land Supply and Land Release sections of the Strategy are relevant to the planning proposal. The Strategy identifies Councils are encouraged to maintain a supply of 10-15 years to ensure:

- there is sufficient time to investigate and approve new areas for development
- provides enough surplus to accommodate any significant increases in demand, and
- reduces development fronts concentrating infrastructure contributions and leading to improved infrastructure sequencing.

The Strategy identifies Cessnock currently has around 20 years of greenfield land available and the amount of zoned land exceeds what is necessary to meet housing needs given some of the 400-500 new dwellings needed each year will be provided within the existing urban footprint or in medium-density developments. In summary the Strategy identifies there is an excess of land available (above the 10–15-year supply) for greenfield development purposes across Cessnock LGA.

Council will consider additional greenfield land when the land supply falls within a 10–15-year threshold in accordance with the Urban Growth Management Plan.

In relation to land release, the Strategy seeks to maintain a 10–15-year supply of zoned land for residential development particularly within existing urban areas and will ensure that infrastructure is identified in the contribution framework, appropriately funded and development is sequenced in a manner that funds these items

The planning proposal seeks to progress before the 10–15-year threshold is reached and is therefore inconsistent with the Cessnock Housing Strategy.

Cessnock Urban Growth Management Plan

The Cessnock Urban Growth Management Plan (UGMP) was prepared to help inform the logical sequencing of growth across Cessnock LGA and contains principles for deciding where and when development will occur.

The UGMP identifies areas that are most likely to address future housing demand (Figure 13) and provides a process for developers to advance future investigation areas. The site is located on part of the broader Sawyers Gully Established Urban URA - Future investigation area.

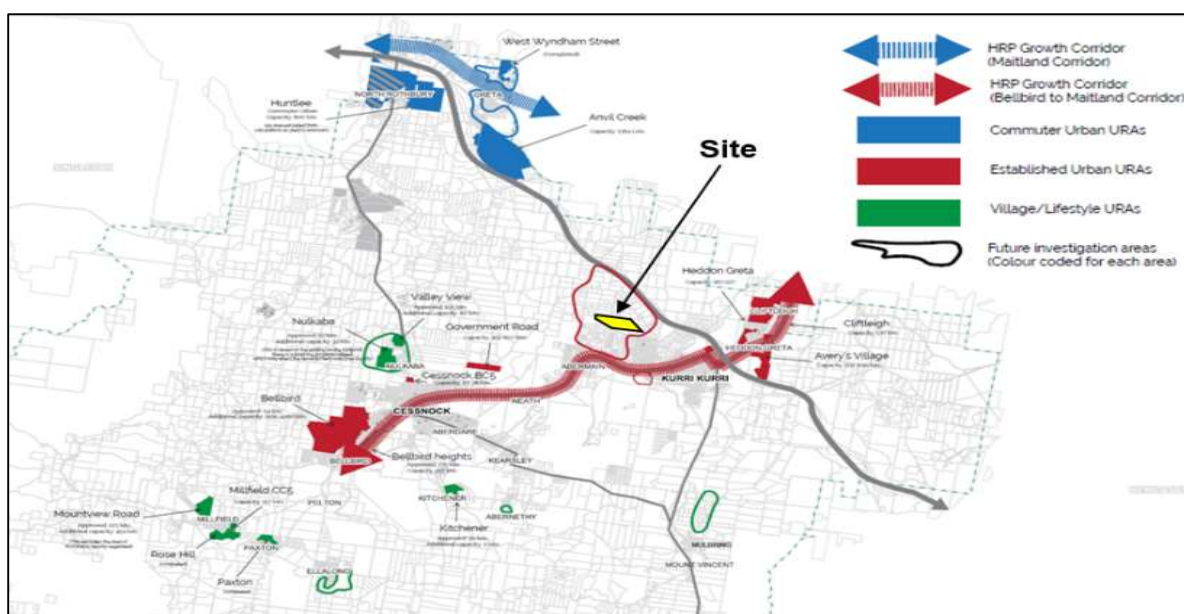


Figure 12 Cessnock Urban Growth Management Plan

The UGMP identifies the re is sufficient zoned land available for development and acknowledges the need to return to a 15-year supply threshold before investigating new areas. The supply thresholds are published in Council's Annual Monitoring Report each financial year with revised thresholds for 2020/2021 identifying 18 years of supply for the Established Urban category.

The UGMP also provides a process through its urban growth management principles for developers to advance future investigation areas to ensure that infrastructure is provided in a logical manner and funded by the developer. The principles need to be satisfied for an investigation area to be progressed and are addressed in the below table.

No	Urban Growth Management Plan Planning Principles	Comment	Satisfied
1	Land supply must be at or below the 15-year supply threshold for that lifestyle category as published in Council's annual monitoring report.	<p>Council's annual monitoring report identifies supply levels at 18 years.</p> <p>Note: Council has provided preliminary advice that an interim review of the Urban Growth Management Plan has indicated additional dwellings are required to meet projected population growth to 2041 and is likely to move the threshold closer to or below the 15-year threshold for the established urban category. Updated land supply figures will not be available until after the end of the financial year.</p>	No

No	Urban Growth Management Plan Planning Principles	Comment	Satisfied
2	The proposal must be within an investigation area identified on Map 1: Urban Growth Management Plan.	The site is located almost entirely within the Established Urban URAs - Future investigation area	Yes
3	The proposal must address and be consistent with the LSPS planning priorities and principles.	The planning proposal has provided an analysis of the Cessnock LSPS planning priorities and principles and is consistent.	Yes
4	As the 15-year supply threshold is reached in the commuter urban and established urban lifestyle categories, rezoning land for urban purposes will be prioritised along the Maitland Growth Corridor and the Bellbird to Maitland Growth Corridor, in accordance with the growth areas identified in Hunter Regional Plan.	The site is located adjacent to the Bellbird to Maitland Corridor.	Yes
5	Within each investigation area priority will be given to those areas immediately adjoining serviced urban areas and where services can be reasonably extended and funded by the developer.	Evidence from Hunter Water suggests water and sewer services may be augmented by a developer-funded servicing strategy.	Yes
6	<p>All planning proposals require a structure plan for the entire investigation area. The structure plan must address the criteria listed in clause 6.3(3) of the Cessnock Local Environmental Plan in sufficient detail to:</p> <ul style="list-style-type: none"> inform the layout and logical sequencing of the infrastructure within the investigation area, inform a preliminary contributions framework to fund infrastructure and facilities, and consult with affected landowners, and exhibit the structure plan. <p>Where there are multiple landowners in an investigation area, Council will commission an independent consultant to prepare a structure plan for the entire investigation area. Full cost recovery for the preparation and exhibition of</p>	<p>Council has advised in its Council Report that the proponents have submitted a structure plan, but it does not satisfy the detail required by this principle to inform the holistic planning of the Sawyers Gully Urban Investigation Area.</p> <p>The proponent's structure plan was not provided with Council's request for a Gateway determination however Council resolved that an investigation area-wide structure plan be developed and approved by Council prior the rezoning of the Gingers Lane Planning Proposal site.</p>	No

No	Urban Growth Management Plan Planning Principles	Comment	Satisfied
	structure plan will be achieved in accordance with Council's Fees and Charges and borne by the proponent.		
7	All investigation areas require a comprehensive social impact assessment that is undertaken by a qualified Social Impact Assessment professional and prepared in accordance with Council's DCP Chapter 3.8: Social Impact Assessment and Crime Prevention Through Environmental Design Guidelines for a proposed development.	A Social Impact Assessment has not been prepared.	No
8	For those investigation areas identified in the lifestyle village category, additional analysis and justification will be required to satisfy the LSPS planning principles relating to protecting the village structure and character, rural amenity, environmental lands and biodiversity, hazards, land-use conflict and infrastructure provision.	The site is not identified as lifestyle village category and the principal is not applicable.	N/A

The planning proposal is inconsistent with the UGMP principles as the 15-year threshold has not been reached, a structure plan provided by the proponent did not satisfy the detail required to inform the holistic planning of the Sawyers Gully Urban Investigation Area and a social impact assessment has not been prepared.

4.3 Section 9.1 Ministerial Directions

1.2 Rural Zones

The objective of the direction is to protect the agricultural production value of rural land and requires that a planning proposal must not rezone land from rural to a residential zone. The planning proposal identifies the site has limited agricultural value due to its proximity to existing urban development, soils, and small lot areas and states the inconsistency to be minor.

The site is not identified on Biophysical Strategic Agricultural Land maps or the draft State Significant Agricultural Land maps. While the current agricultural activity on the site appears to be limited, it is zoned RU2 Rural Landscape and located in the vicinity of nearby poultry farms.

Consultation is required from the Department of Primary Industries prior to determining consistency with the direction.

1.5 Rural Lands

The objective of the direction is to protect the agricultural production value, manage development, minimise land use conflict and ensure agricultural viability of rural lands while supporting farmers right to farm. The direction applies as the planning

proposal will affect land within an existing rural and proposed environment protection zone.

The rezoning is proximate to an existing poultry operation located east of the site which had previously been used for broiler purposes but now operations are for egg laying sheds. The submitted odour assessment identified a separation distance of 255 metres would be required for proposed residences within the development and is based on broiler odour. The assessment states egg laying farms are less odorous and concludes the proposal should be acceptable from an odour perspective. It is noted other poultry operation in the vicinity of the site have not been considered as part of the odour assessment and it is unknown whether there are any additional impacts from these operations.

The planning proposal notes that it is justifiably inconsistent however further advice is required from the NSW Environment Protection Authority on odour and the Department of Primary Industries on the agricultural production value of the land prior to determining consistency with the direction.

2.1 Environment Protection Zones

The objection of the direction is to protect and conserve environmentally sensitive areas.

The site contains plant community types associated with the Lower Hunter Spotted Gum - Ironbark Forest endangered ecological community and contains potential habitat for several threatened flora and fauna species (Figure 13).

The preliminary ecological assessment recommends carrying out a biodiversity impact assessment and associated seasonal surveys for threatened species including the Swift Parrot and Regent Honeyeater. Koala feed trees are located within the site however no koalas were observed. Additional investigations are proposed to determine if the site contains potential or core koala habitat.

The planning proposal seeks to apply an E2 Environmental Conservation on two lots and proposes to undertake further ecological investigations and a Biodiversity Development Assessment Report (BDAR) post-Gateway determination.

Consultation is recommended with DPIE – Biodiversity and Conservation Division (BCD) to confirm that the proposed approach in the planning proposal is in accordance with the *Biodiversity Conservation Act 2016*. Further agency consultation should subsequently be undertaken once a pathway is confirmed by BCD.



Figure 13 Mapping from ecological assessment

2.3 Heritage Conservation

The planning proposal identifies there are no heritage items listed under *Cessnock Local Environmental Plan 2011* located on site.

A preliminary Aboriginal Heritage Due Diligence Assessment has been prepared in support of the planning proposal and concluded there were no previously recorded sites (AIHMS) and there was a low likelihood the rezoning will result in harm to Aboriginal objects. The report identified only 4 lots were inspected within the Precinct and recommended further assessment must be undertaken on remaining lots within the project area.

Given further assessment of Aboriginal Heritage is required, advice from Heritage NSW and Mindaribba Local Aboriginal Land Council is also required prior to determining consistency with the direction.

2.6 Remediation of Contaminated Land

The direction applies as development for agricultural activities is known to have been carried out on the land and is an activity that may cause contamination. The preliminary site investigation identified only 5 lots were able to be accessed and as such the inspection was limited to the site boundary. The uses identified included rural residential, light agricultural, poultry farming operations, minor cropping, stockpiles of fill and an isolated junkyard.

Given there is incomplete knowledge of contamination on-site, the planning proposal is inconsistent with the direction and further information on land contamination should be provided before Council reconsiders consistency with the direction.

3.1 Residential Zones

The direction applies as it affects land within a proposed large-lot residential and low-density residential zone. The planning proposal is inconsistent as it does not reduce the consumption of land on the urban fringe. Council's Urban Growth Management Strategy identifies the area for further investigation once housing supply levels drop below 15 years.

Council has resolved to commence an investigation area-wide structure plan to be developed and approved prior to the rezoning of the site.

The inconsistency with the direction will need to be justified and should be reconsidered once Council approves a structure plan for the Sawyers Gully Precinct.

3.4 Integrating Land Use and Transport

The direction applies as it creates a zone for large-lot residential and low-density residential purposes. The site is located close to the Hunter Expressway, Kurri Kurri town centre, the Hydro rezoning and Council has resolved to commence investigations for the Sawyers Gully Precinct.

The planning proposal site is serviced by local roads and Sawyers Gully Road is a classified Regional Road. The Traffic Impact Assessment identifies the site is currently not conveniently serviced by public transport services with the nearest bus stop approximately 600 metres to the south at Weston.

The Traffic Impact Assessment identifies the adjoining local and state road network currently has sufficient capacity to cater for the traffic generated by this development

and other proposed developments in the area without adversely impacting on the efficiency of the adjoining state road network.

Interchange growth areas and surrounding land requires careful management of land use change and future development needs to consider traffic, heavy vehicle access, environmental and other issues early in the planning process.

Council has resolved to commence investigations and preparation of a structure plan for the Sawyers Gully Precinct which may outline a different growth scenario than envisaged in the site-specific planning proposal.

Further information will be required following completion of the investigations and structure plan to determine the cumulative impact of future development on traffic and transport, particularly the Hunter Expressway.

The outcome of the above investigations and any updated transport assessments should be provided in consultation with Transport for NSW before consistency with the direction can be determined.

4.3 Flooding

The planning proposal has not addressed the direction and the proposal is inconsistent with the direction. Council's online mapping identifies the planning proposal will affect land that is mapped as flood planning area (Figure 14). A flood impact and risk assessment should be prepared prior to determining consistency with the terms of the direction.

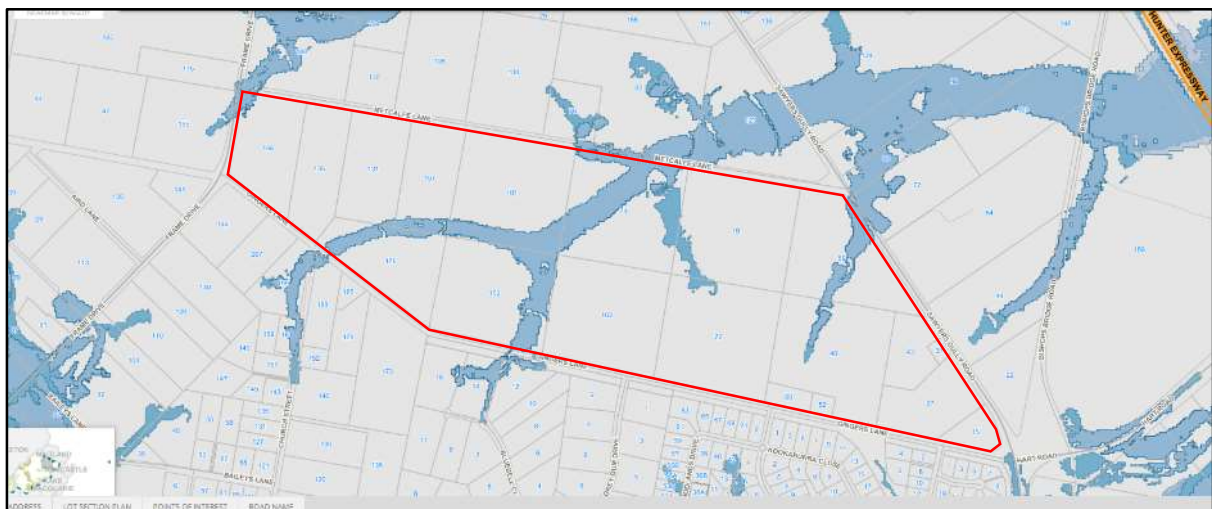


Figure 14 Flood mapping

4.4 Planning for Bushfire Protection

The planning proposal will affect land that is mapped as bushfire prone, and a bushfire assessment report identifies an asset protection zone of 29 metres within

the site (Figure 15). Consultation with the NSW Rural Fire Service must occur before consistency with this direction can be determined.

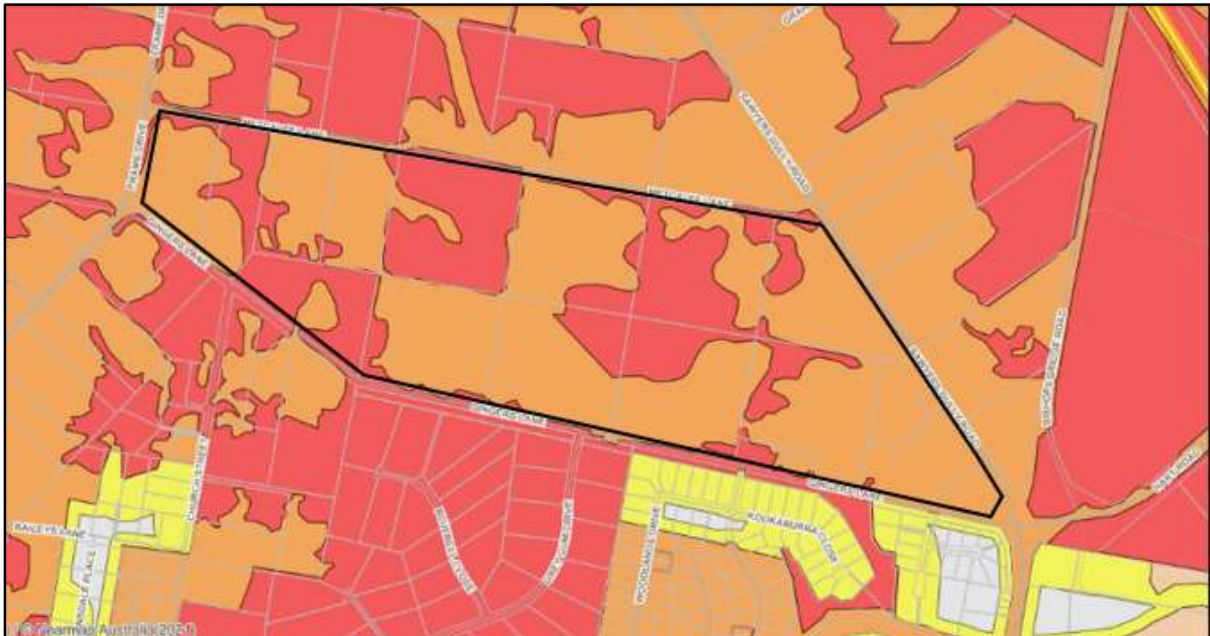


Figure 15 Bushfire mapping

5.10 Implementation of Regional Plans

As discussed previously the planning proposal is inconsistent with the *Hunter Regional Plan 2036*, the Draft *Hunter Regional Plan 2041* and the *Greater Newcastle Metropolitan Plan 2036* and the inconsistency will need to be justified for the planning proposal to progress.

4.4 State environmental planning policies (SEPPs)

State Environmental Planning Policy (Primary Production) 2021 formerly *State Environmental Planning Policy (Primary Production and Rural Development) 2019*

One of the aims of the SEPP is to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources.

The land is not identified as Biophysical Strategic Agricultural Land (BSAL) and is not identified as State Significant Agricultural Land in Schedule 1 of *SEPP (Primary Production) 2021*.

The intention for rural residential development is generally consistent with the SEPP however, the proposed zoning and minimum lot size is not considered to be consistent with the aim of reducing land use conflict given the proximity to poultry operators.

Consultation with the Department of Primary Industries is required regarding potential land use conflict from nearby poultry farms and supporting farmers in exercising their right to farm before consistency can be determined.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 formerly SEPP (Koala Habitat Protection) 2020

Further assessment is proposed to be undertaken to determine consistency and whether the site contains potential or core koala habitat. The planning proposal notes this may impact development potential of the site.

Further investigations are required to determine impacts on koala habitat as well as consultation with the Biodiversity Conservation Division to determine consistency with the SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal will provide additional large-lot residential and low-density residential development in Sawyers Gully which will assist in meeting local and regional dwelling demand and provide a variety of housing options to service the future population needs of Cessnock LGA. A comprehensive social impact assessment is proposed to be prepared as part of the investigation for the Sawyers Gully Structure Plan in accordance with Council's Urban Growth Management Plan principles.

The impact on adjoining and nearby agriculture operations for the site and the broader Sawyers Gully Precinct needs to be determined following consultation with the Department of Primary Industries.

5.2 Environmental

The land uses surrounding the site include rural residential development, grazing activities and poultry farms. Introducing additional residential receivers may contribute to conflicting land use and management concerns.

Odour Impacts

The eastern part of the site is in the vicinity of an operating poultry sheds and an Odour Assessment identified that a separation distance of 255 metres may be required for dwellings given their proximity to the poultry operations.

Consultation with the NSW Environment Protection Authority should be undertaken to confirm appropriate separation distances and the Department of Primary Industries should be consulted in relation to potential land use conflict between agriculture and proposed residential uses.

5.3 Economic

Supply, Demand and Needs Assessment

The planning proposal is supported by a Supply, Demand and Needs Assessment (Assessment) that concludes that the land supply is less than the 15-year threshold and challenges Council's Established Urban category within which there is currently 18-years of supply.

The Assessment identifies the reduced supply level is due to a higher population growth rate than envisaged when forecasted to 2036, resulting in land supply falling below the 15-year threshold. The Council report dated 20 October 2021 outlined some key arguments of the study, including:

- zoned land may not necessarily be brought to market meaning that that supply is less, and

- the Urban Growth Management Plan is based on 600m² lots where the market is delivering lots greater than this and reduces supply.

The Council report challenges these assumptions and identifies mechanisms to bring zoned land to the market and identifies a higher percentage of lots were below the 600m².

Council has subsequently provided preliminary advice that an interim review of the Urban Growth Management Plan has indicated additional dwellings are required to meet projected population growth to 2041. This may reduce supply closer to or below the 15-year threshold for the Established Urban category. Updated land supply figures will not be available until after the end of the financial year.

Irrespective of the final land supply figure, the 15-year threshold trigger is one of several principles to be satisfied in the Urban Growth Management Plan, including the requirement for an investigation area-wide structure plan to be prepared in advance of site-specific planning proposals.

Council resolved to commence preparation of an investigation area-wide structure plan prior to rezoning the site. This would ensure that development opportunities, constraints and community consultation have been appropriately considered through the strategic planning process.

5.4 Infrastructure

Council has advised connection to reticulated water and sewer services are available to support the planning proposal. Hunter Water issued preliminary advice identifying the development is on the periphery of the water network and augmentation of existing infrastructure would be required.

The site is also located on the edge of the wastewater network, however, may be able to connect into the nearby reticulation network. Hunter Water requested preparation of developer funded servicing strategies for water and wastewater for the site. The strategies should also identify potential future developments in the immediate vicinity and incorporate options for servicing these developments.

6. CONSULTATION

6.1 Community

Council proposes to exhibit the planning proposal for one month and it is appropriate to be exhibited for at least 28 days.

6.2 Agencies

Council proposes to consult with the following agencies:

- Department of Primary Industries (Agriculture and Water),
- DPE - Biodiversity and Conservation Division,
- Mindaribba Local Aboriginal Land Council,
- NSW Rural Fire Service,
- Hunter Water Corporation, and
- NSW Environment Protection Authority.

The consultation is considered appropriate however, Council should also consult with Transport for NSW given the proximity of the site to the Hunter Expressway.

7. TIME FRAME

Council's project timeline anticipates 13-month total timeframe to make the plan however does not include a timeframe for endorsement of the Sawyers Gully Structure Plan. Several studies are also still required to be completed which could potentially take 18 months. It is considered a 24-month timeframe is realistic to make the plan, should it progress.

8. LOCAL PLAN-MAKING AUTHORITY

Council resolved to request delegation to be the local plan-making authority and to not finalise the rezoning until the Sawyers Gully Structure Plan is endorsed by Council.

Given the uncertainty on timing it is considered the Department retain plan making delegation for the planning proposal.

9. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that consistency with section 9.1 Ministerial directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 2.6 Remediation of Contaminated Land, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.3 Flooding, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans are unresolved and will require justification.

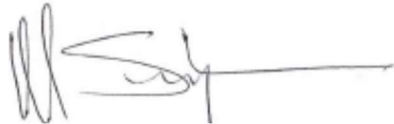
It is recommended that the delegate of the Minister determine that the planning proposal should not proceed for the following reasons:

1. The planning proposal is considered premature as it has not demonstrated sufficient strategic or site-specific merit to progress a rezoning and amend development standards in advance of a structure plan being prepared and endorsed by Council for the Sawyers Gully Precinct.
2. Council should consider relodging a new planning proposal once an endorsed structure plan for the Sawyers Gully Precinct is complete.
3. The planning proposal is inconsistent with actions in the *Hunter Regional Plan 2036* and the *Greater Newcastle Metropolitan Plan 2036* as it locates rural residential development on land that is likely to be needed for urban development.
4. The planning proposal is inconsistent with draft Hunter Regional Plan 2041, the draft Hunter Expressway Strategy and Council's Urban Growth Management Plan principles and sets an undesirable precedent of bringing forward development that is out of sequence with the strategic planning framework.
5. The following site-specific matters require resolution:
 - (a) odour impacts from agricultural operations within the Sawyers Gully Precinct.
 - (b) biodiversity impacts on site and within the broader Sawyers Gully Precinct.
 - (c) additional investigations regarding Aboriginal cultural heritage for the entire site.

- (d) additional investigations to determine the extent of land contamination for the entire site.
- (e) traffic and transport impacts from the site and the potential cumulative impacts from the Sawyers Gully Precinct on the Hunter Expressway.
- (f) additional investigations to determine potential flooding impacts.
- (g) A comprehensive social impact assessment is required.



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