

Planning and Assessment

IRF21/2759

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Miscellaneous housekeeping amendment
NUMBER	PP-2021-3922
LEP TO BE AMENDED	<i>Cessnock Local Environmental Plan 2011</i>
ADDRESS	Multiple sites within Cessnock LGA
DESCRIPTION	Additional land acquired for National Parks and State Conservation Areas to be zoned appropriately and other zoning corrections and heritage updates
RECEIVED	15 June 2021
FILE NO.	IRF21/2759
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

1. INTRODUCTION

1.1 Site description

The planning proposal applies to various land throughout the Cessnock Local Government Area (LGA).

1.2 Existing planning controls

The planning proposal seeks to amend or correct provisions and mapping within *Cessnock Local Environmental Plan 2011*. The changes proposed will affect certain land in relation to minimum lot sizes, environmental zones, heritage mapping, and zoning.

2. PROPOSAL

2.1 Description of planning proposal

The planning proposal seeks to make eleven housekeeping amendments to ensure the *Cessnock Local Environmental Plan 2011* remains up to date and reflects the appropriate zone for each parcel of land.

The proposed amendments can be summarised as follows:

- rezone land acquired by National Parks and Wildlife Service (NPWS),
- rezone land from RE1 Public Recreation and SP2 Infrastructure to B1 Neighbourhood Centre,

- correct property descriptions and addresses of heritage items in Schedule 5,
- amend heritage mapping to reflect subdivisions that have been completed,
- add a local provision to land that is intersected by the Hunter Expressway, and
- correct mapping anomalies.

2.2 Objectives

The objective of the planning proposal is to amend the *Cessnock Local Environmental Plan 2011* ensuring it remains up-to-date and accurate.

2.3 Explanation of provisions

The planning proposal includes the following proposed amendments to the *Cessnock Local Environmental Plan 2011*:

Amendment 1 - Land added to Yengo National Park

The following lots were acquired by National Parks and Wildlife Service and on 19 September 2019 were reserved under the *National Parks and Wildlife Act 1974* as part of the Yengo National Park:

- lots 67, 91, 126, 140, 179, 180, 193, 194, 207 and 208 DP 755272; and
- lots 19, 24, 32, 43, and 46 DP 755213.

Amendment 1 seeks to amend the zone and minimum lot size from RU2 Rural Landscape zone and 40ha to E1 National Parks and Nature Reserve and 200ha (Figure 1).

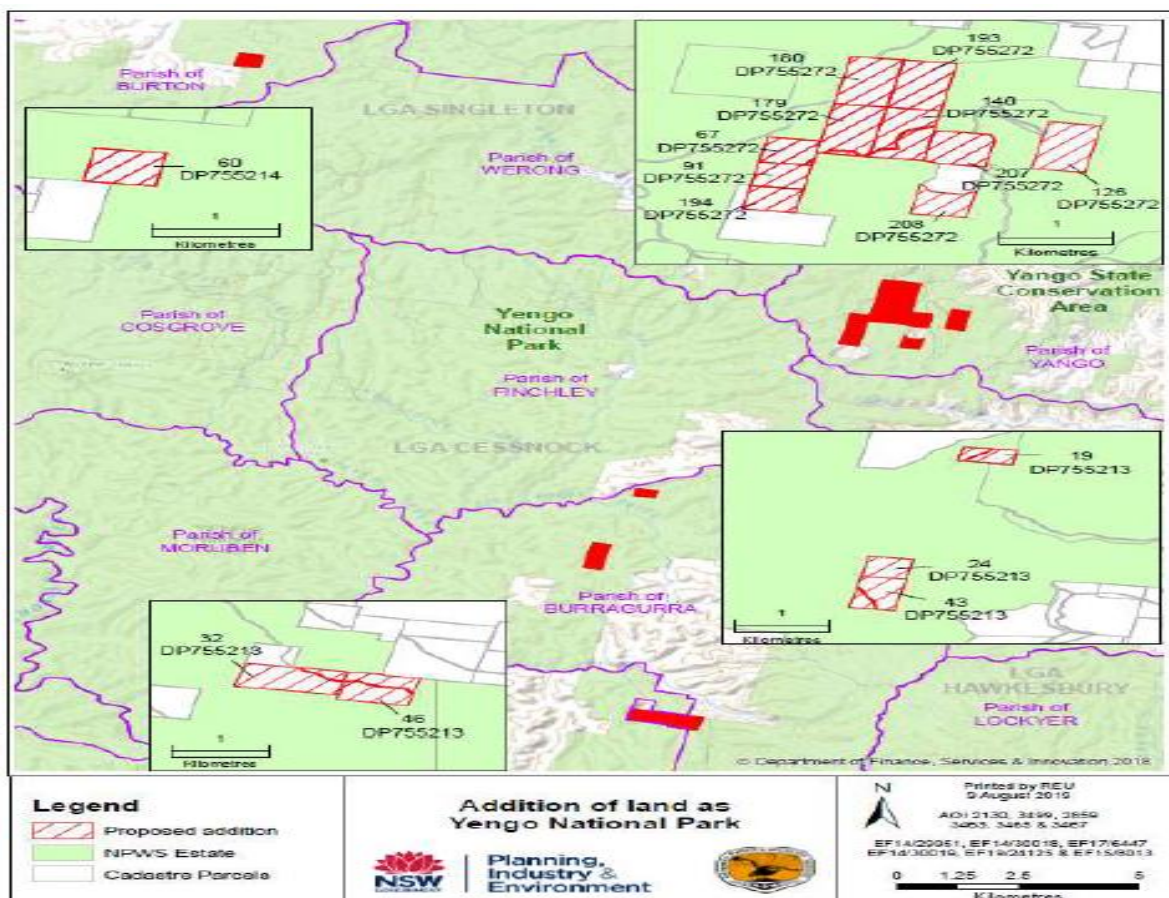


Figure 1 Lots to be reserved as part of Yengo National Park (highlighted and hatched red)

Amendment 2 – Land to create two new National Parks

The following lots were transferred to National Parks and Wildlife Service as offsets for development at Huntlee and are intended to be used to create two new national parks that are yet to be named:

- lot 181 DP 755241;
- lot 63 DP 755217; and
- lot 220 DP 755230.

The planning proposal seeks to amend the zone and minimum lot size of the above lots from RU2 Rural Landscape (40ha) to RU3 Forestry (200ha) (**Figures 2-5**).



Figure 2 Current and proposed land zoning maps

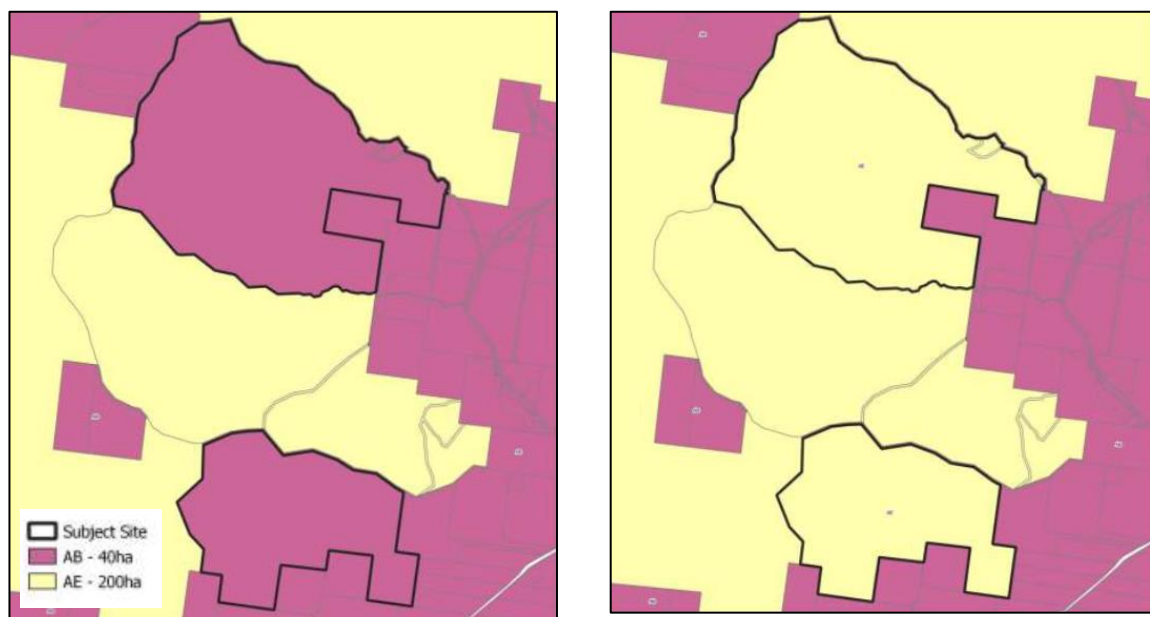


Figure 3 Current and proposed lot size maps



Figure 4 Current and proposed land zoning maps

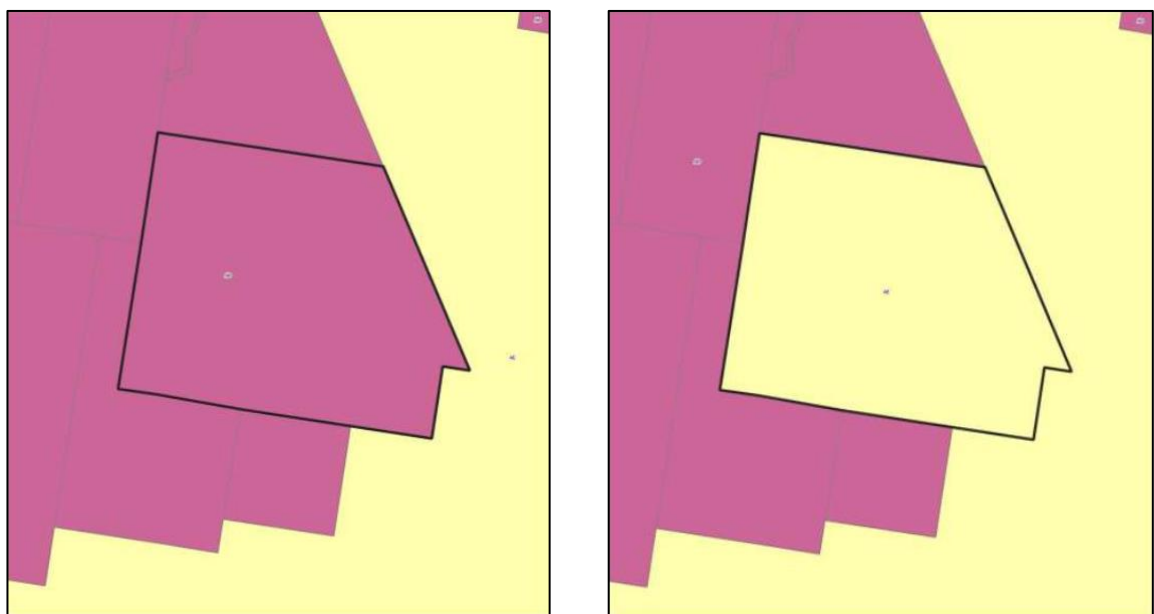


Figure 5 Current and proposed lot size maps

National Parks and Wildlife Services were consulted to clarify the land to which to the amendments applied. It advised a preference for the above land to be rezoned to E1 National Parks and Nature Reserves.

Council were subsequently consulted and indicated there were no objections to the E1 National Parks and Nature Reserves zone, but noted the zoning would be inconsistent with the adjoining RU3 Forestry zoning.

It is recommended a condition be included in the Gateway determination for council to clarify the proposed zone for the land with National Parks and Wildlife Services and update the planning proposal prior to public exhibition, if required.

Amendment 3 – Land added to Yango State Conservation Area

National Parks and Wildlife Service advised Council of 647.5ha of land known as Yango State Forest (DP 755272) has been revoked as state forest and reserved as a State Conservation Area (Yango SCA) under the *National Parks and Wildlife Act 1974*. In addition, Lot 64 DP 755213 has also been added to the Yango SCA.

The planning proposal seeks to rezone the Yango State Forest land from RU3 Forestry and Lot 64 DP 755213 from RU2 Rural Landscape to E1 National Parks and Nature Reserves (**Figure 6**). The planning proposal incorrectly identifies Lot 64 DP755213 as a proposed addition to Yengo National Park under Amendment 1. The planning proposal will need to be updated to include this lot under Amendment 3.

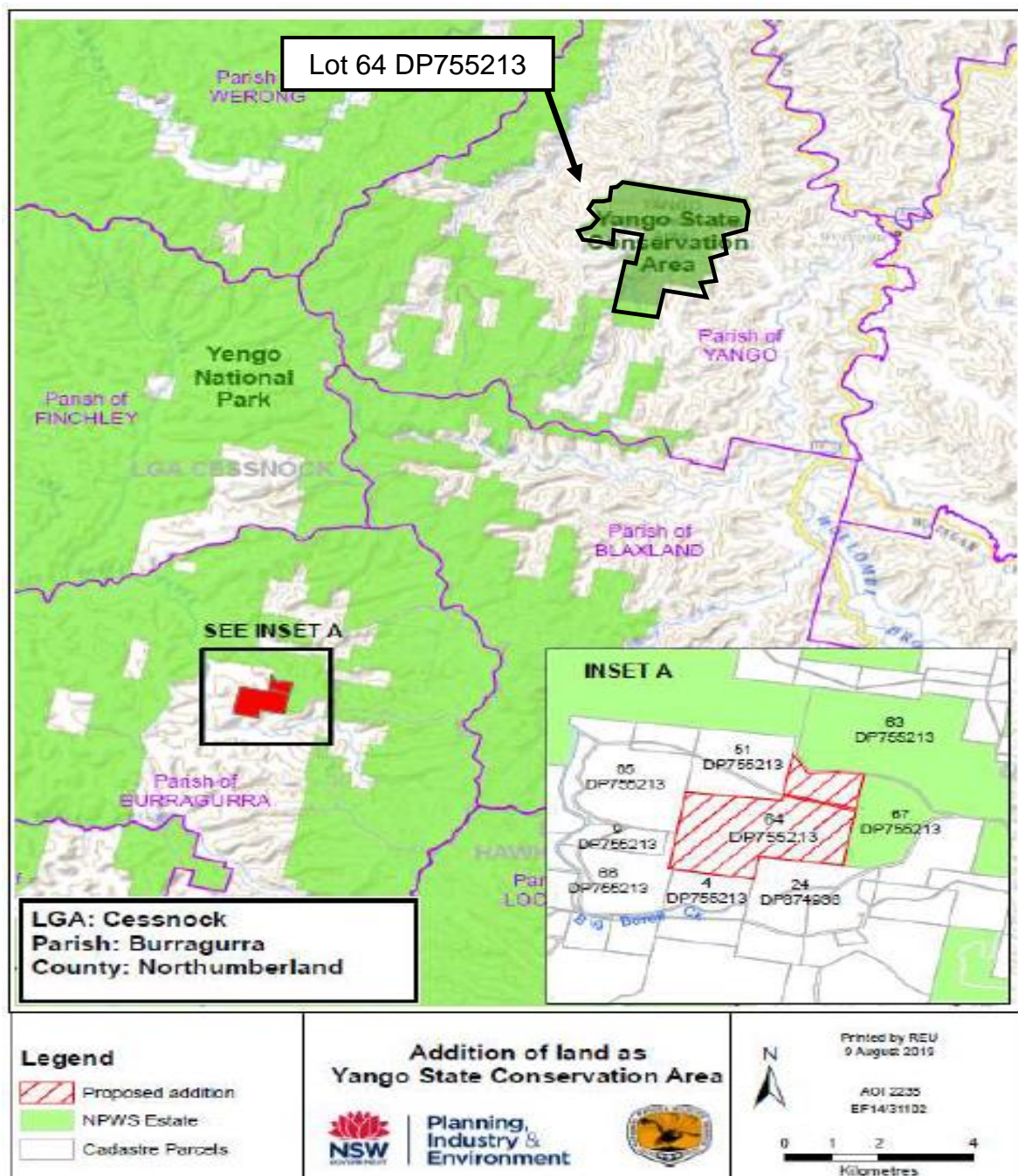


Figure 6 NPWS map identifying Lot 64 DP 755213 (hatched red) added to Yango State Conservation Area (outlined black)

Amendment 4: Rezone land to B1 Neighbourhood Centre

The planning proposal seeks to rezone three lots (Lots 784, 472, 329 DP 755231) from RE1 Public Recreation and SP2 Infrastructure to B1 Neighbourhood Centre (Figure 7).

Council advise Lot 784 and 472 are privately owned. However, they are zoned RE1 Public Recreation. The two lots are not used for public recreation purposes and are not classified as either operational or community. The site has historically been used as a place of public worship and a community facility.

Lot 329 contains a fire and rescue station and is zoned SP2 Infrastructure. To the west of the properties is a Council-owned public park, known as Jefferies Park. Council advise that the RE1 Public Recreation zone on Jefferies Park has been incorrectly applied to the subject lots (Figures 4 and 5).

There is an existing B1 Neighbourhood Centre zone opposite the site on Cessnock Road which is connected by a pedestrian crossing. The neighbourhood centre contains take-away shops, pharmacy, museum, and bottle-shop (Figure 6).

The planning proposal seeks to rezone the sites to B1 Neighbourhood Centre to reflect the uses by correcting the mapping error applied to the place of public worship and community facility and the fire station use on the adjoining site, .

The existing B1 Neighbourhood Centre zone on Cessnock Road Abermain has an area of approximately 6,500m². This amendment will add approximately 2,280m² of B1 Neighbourhood Centre zoned land to the Cessnock Road, Abermain precinct. The land uses also better reflect the objectives of the B1 Neighbourhood Centre zone.

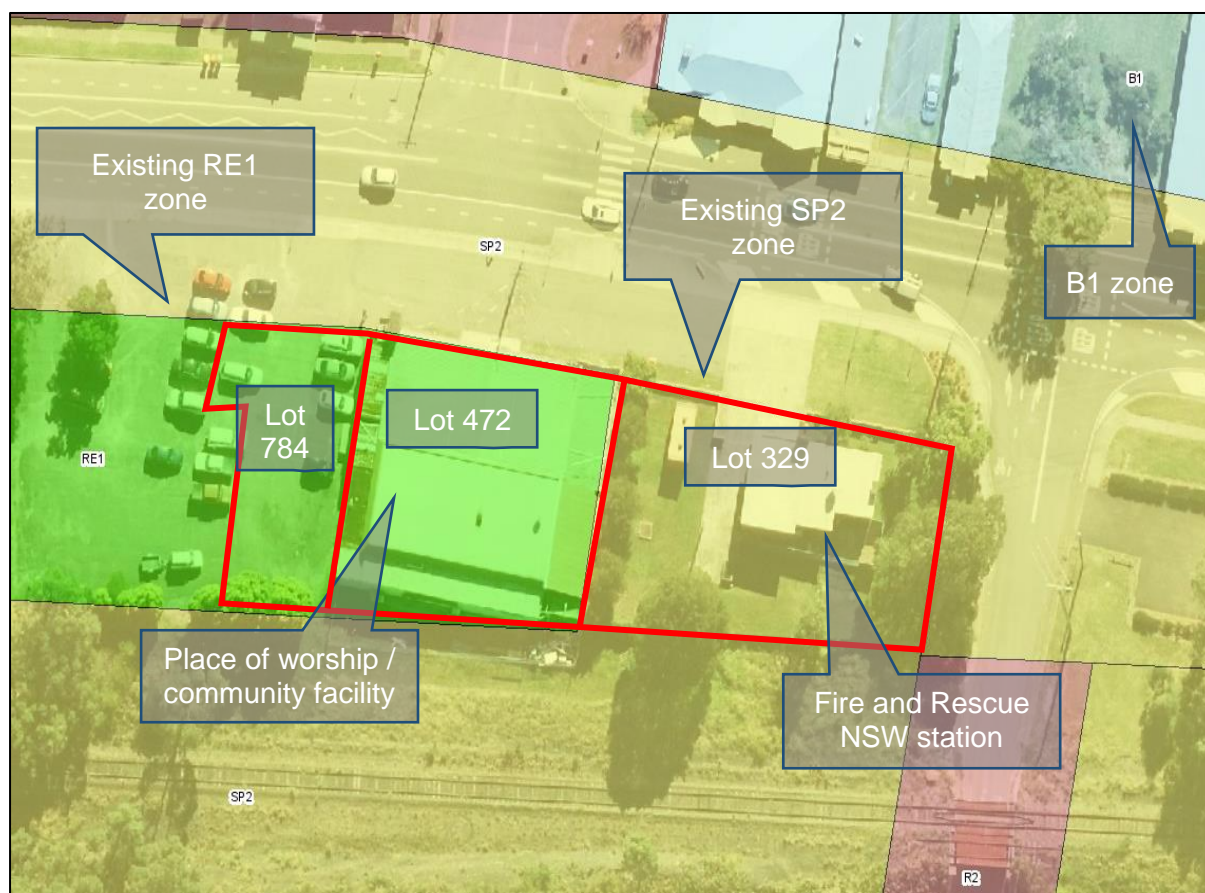


Figure 4 Subject sites at Cessnock Road, Abermain (outlined red)



Figure 5 View south towards the subject sites from Cessnock Road (Source: Google Streetview)



Figure 6 Subject sites in context with surrounding area (outlined red)



Figure 7 Existing and proposed land zoning maps

Amendment 5: Realignment of zoning and cadastre at North Rothbury

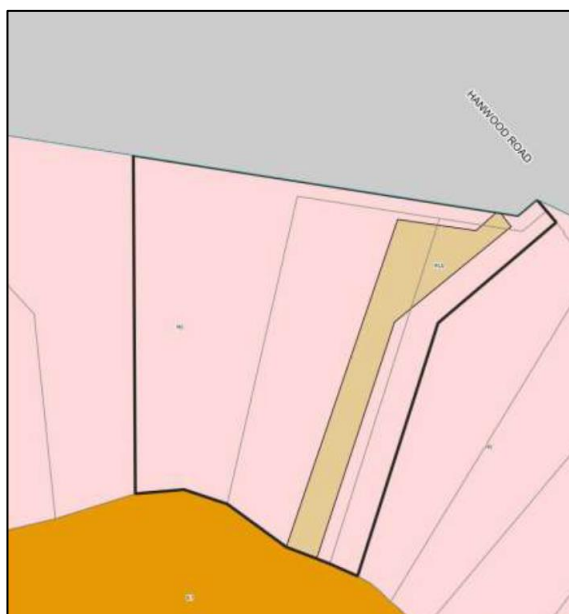
The planning proposal seeks to realign the zoning and cadastre at North Rothbury to correct an error affecting Lot 10 DP 1137569, Lot 26 and 27 DP 879254 (**Figures 8 and 9**).

There is an error in the alignment of a portion of RU2 land and the cadastre at North Rothbury. The RU2 Rural Landscape zone portion of land is located on Lot 26 and 27 DP 879254. Council advise that the RU2 Rural Landscape zoned portion of land and the lot size map it appears that the RU2 Rural Landscape zoned portion of land should be on Lot 10 DP 1137569. Lot 26 and 27 DP 879254 are privately owned and contain dwellings. The lot size map is correct, and no amendment is needed.



Figure 8 Context view of relevant lots

Current



Proposed

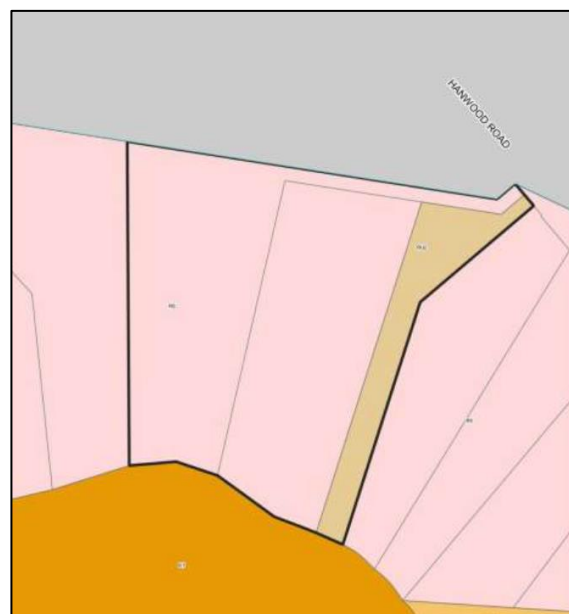


Figure 9 Current and proposed land zoning maps

Amendment 6 – Paynes Crossing - Two Storey House

The planning proposal seeks to update the Lot and DP listed in item I163 of Schedule 5 under *Cessnock Local Environmental Plan 2011* for the heritage item described as 'two storey stone house' and associated mapping as follows:

Current address: Lot 13 DP 755272

Proposed address: Lot 131 DP 1213509

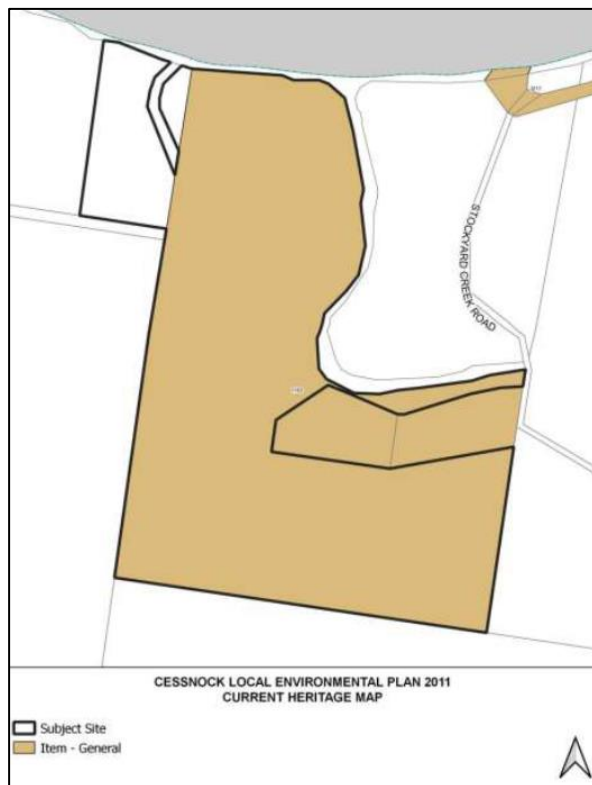
Schedule 5 of the *Cessnock Local Environmental Plan 2011* lists heritage item 'two storey house' as being located at 80 Stockyard Creek Road, Paynes Crossing (Lot 13 DP 755272). In 2005, 80 Stockyard Creek Road was subdivided into 3 properties. Number 76 (Lot 133 DP 1213509) and 78 (Lot 132 DP 1213509) Stockyard Creek Road were created in the subdivision and the lot and DP for 80 Stockyard Creek Road was amended (**Figure 10**).

Council advised that the item of heritage significance is located on 80 Stockyard Creek Road (Lot 131). The newly created Lots 132 and 133 Stockyard Creek Road do not contain any heritage items and are visually separated from Lot 131 due to the distance and topography. As such the heritage map should be amended (**Figure 11**).



Figure 10 Subject site (outlined red)

Current



Proposed

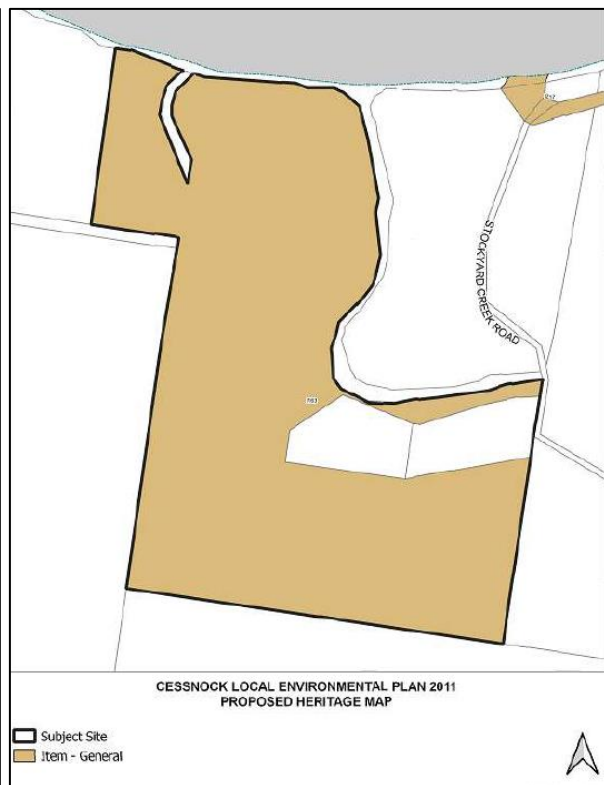


Figure 11 Current and proposed heritage map

Amendment 7– Wollombi Cottage

The planning proposal seeks to update the address and Lot and DP listed in item I203 of Schedule 5 under *Cessnock Local Environmental Plan 2011* for the heritage item of state significance known as Wollombi Cottage and include an associated grave site on the adjacent lot as follows:

Current address: 2883 Wollombi Road, Wollombi (Lot 6 DP 759103)

Proposed address: 2881 and 2881A Wollombi Road, Wollombi (Lot 671 and 672 DP 1201787)

Schedule 5 lists heritage item I203 Wollombi Cottage at 2883 Wollombi Road Wollombi, Lot 6, Section 1, DP 759103. The heritage inventory sheet mentions the significance of the cottage, a water well and gravestone on the property.

Council advise a subdivision in 2008 resulted in a different lot and DP for the property. Council has also confirmed that Lot 671 (the front allotment) contains the listed cottage and associated outbuildings, and Lot 672 (the rear allotment) contains a grave site and that both lots should be listed and mapped as heritage items (**Figure 12 and 13**).



Figure 12 Subject site (outlined red)

Current



Proposed



Figure 13 Current and proposed heritage maps

Amendment 8 – St Patricks Roman Catholic Church

The planning proposal seeks to correct the address, Lot and DP and associated mapping for item I158 listed in Schedule 5 and known as St Patricks Roman Catholic Church as follows:

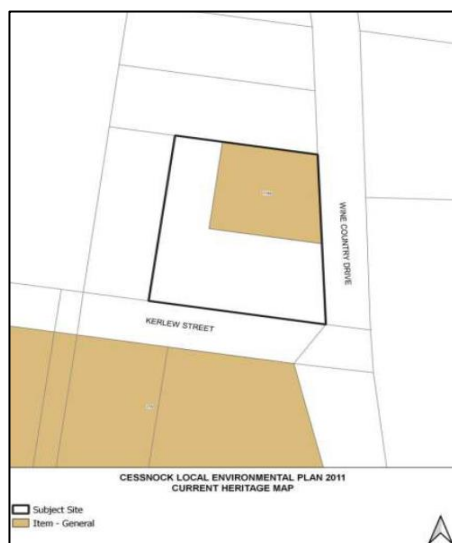
Current (incorrect) address: 67 Wine Country Drive, Nulkaba (Lot 1 DP 662149)

Proposed (correct) address: 2 Kerlew Street, Nulkaba (Lot 101 DP 1162970) (Figures 14 and 15).



Figure 14 Subject site (outlined red)

Current



Proposed



Figure 15 Current and proposed heritage maps

Amendment 9: Additional local provisions in Allandale

The planning proposal seeks to amend Part 7 additional local provisions applicable to Lot 201 DP 1099068 and Lot 165 DP 755204 of 1026 Lovedale Road, Allandale (**Figure 16**). The additional local provisions would allow the amalgamation/subdivision of the land.

Lot 201 DP 1099068 has been dissected by the Hunter Expressway corridor. The adjoining Lot 165 DP 755204 to the south is in the same ownership and has an area of 32.96ha.

The additional local provision would allow lot amalgamation/subdivision to create one lot on the southern side of the Hunter Expressway of approximately 59.44ha and one to the north approximately 32.96ha.

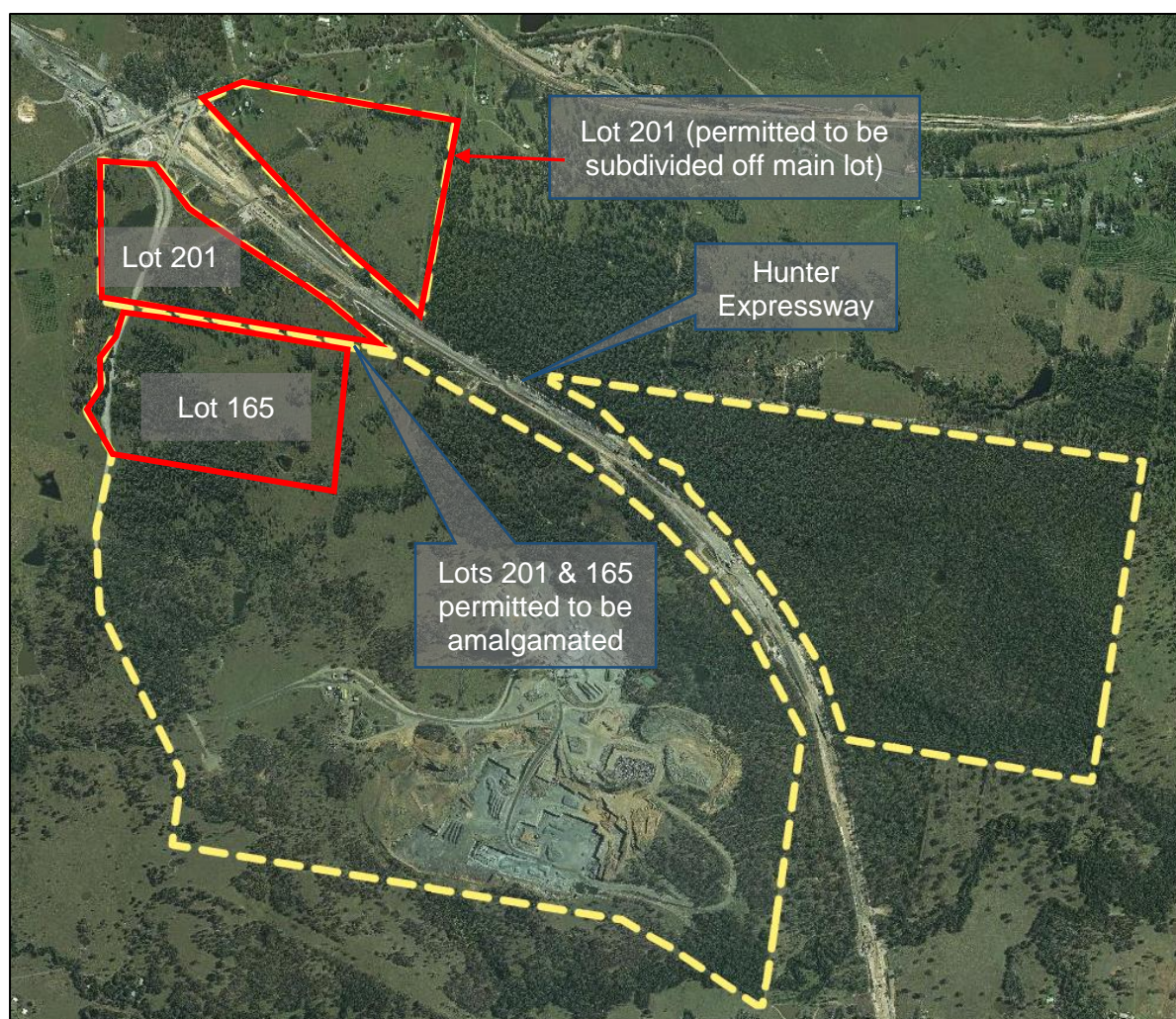


Figure 16 Property boundary (dashed yellow), subject lots (outlined red) and local context

Amendment 10: Inclusion of 'plant nursery' as permitted with consent in the RU2 Rural Landscape zone

The planning proposal seeks to add 'plant nurseries' as permitted with consent within the RU2 Rural Landscape zone. Plant nurseries are a type of 'retail premises', which are defined as 'commercial premises' and are therefore prohibited within the RU2 Rural Landscape zone under the *Cessnock Local Environmental Plan 2011*.

Plant nurseries are permitted with consent in the RU2 Rural Landscape zone in neighbouring local government areas, including Maitland and Singleton, and are consistent with the objectives of the zone, they also offer local employment, and economic opportunity.

Amendment 11: Updates to Clause 4.2A of the *Cessnock Local Environmental Plan 2011*

The planning proposal seeks to amend Clause 4.2A 'Erection of dwelling houses on land in certain residential, rural and environmental protection zones' which aims to minimise unplanned rural residential development.

The clause applies to the R5 Large Lot Residential zone where the construction of dwellings is planned and expected. The R5 Large Lot Residential zone is predominantly applied as a transition zone around villages in the local government area. The planning proposal indicates the original intent of Clause 4.2A was to limit unplanned rural residential development, which is not required on land zoned R5 Large Lot Residential.

Clause 4.2A will continue to apply to the RU2 Rural Landscape, RU4 Primary Production Small Lot, E2 Environmental Conservation and E3 Environmental Management zones. Applying the clause to these zones will minimise unplanned rural residential development, which is the intent of the clause.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report. The various amendments are required to update the *Cessnock Local Environmental Plan 2011* by facilitating the following outcomes:

- **amendments 1, 2 and 3** are the result of land acquisition and management by NPWS, which notified Council the land has been acquired for conservation purposes and should be rezoned to align with its intended use.
- **amendment 4** correctly identifies the full extent of the B1 Neighbourhood Centre precinct and correct public recreation zone anomalies.
- **amendments 5** corrects a zone mapping error.
- **amendments 6, 7 & 8** correct errors relating to heritage items.
- **amendment 9** responds to land that has been dissected by the Hunter Expressway.
- **amendment 10** adds a land use to the RU2 Rural Landscape zone to enable plant nurseries on certain rural land.
- **amendment 11** intends to remove the R5 Large Lot Residential zone from the application of Clause 4.2A which aims to minimise unplanned rural residential development.

Some of the amendments are the result of subdivision or development applications that have been approved changing lot descriptions and others relate to mapping anomalies. In some cases, alternatives to the amendments have been considered by Council, but not previously pursued.

4. STRATEGIC ASSESSMENT

4.1 Regional / District

4.1.1 Hunter Regional Plan 2036

The planning proposal is consistent with the *Hunter Regional Plan 2036*. Key directions include:

- *Direction 14 protect and connect natural areas including strengthening biodiversity corridors; and*
- *Direction 19 identify and protect the region's heritage.*

The *Hunter Regional Plan 2036* outlines the role that heritage plays in tourism and the local community. Direction 19 of the Plan aims to identify and protect the region's heritage. The planning proposal notes the proposed amendments are consistent with this direction by ensuring that Schedule 5 and the associated mapping are accurate and up to date. This allows Council and the community to easily identify items of heritage significance and ensure they are protected.

The planning proposal is consistent with the *Hunter Regional Plan 2036*.

4.1.2 Draft Hunter Expressway Strategy

The draft Hunter Expressway Strategy was released for exhibition in December 2020. The strategy identifies the types of land uses that are suitable for each area and aims to enable a streamlined assessment process and facilitate development opportunities at each of the interchanges.

Amendment 9 of the planning proposal is located near the Allandale Interchange. The strategy identifies future development opportunities at a site known as the former Greta migrant camp. The planning proposal would not affect the future development opportunities at this site nor the rural setting of the interchange.

The planning proposal is consistent with the draft Hunter Expressway Strategy.

4.2 Local

4.2.1 Local Strategic Planning Statement (LSPS)

On 17 June 2020, Council adopted the *Cessnock Local Strategic Planning Statement 2036* (LSPS). The planning proposal is consistent with the following LSPS priorities:

- *Planning priority 11: Our city has a defined commercial hierarchy;*
- *Planning priority 17: Our lands environmental value are protected and enhanced;*
- *Planning priority 18: Our areas of biodiversity and biodiversity corridors are enhanced and protected; and*
- *Planning priority 25: Heritage based tourism is facilitated and promoted.*

The planning proposal is consistent with the Cessnock LSPS.

4.2.2 Cessnock Urban Growth Management Plan

The Cessnock Urban Growth Management Plan (UGMP) indicates there is sufficient zoned land to accommodate the anticipated growth in commercial land supply until 2046. Amendment 4 of the planning proposal seeks to rezone three sites to B1 Neighbourhood Centre.

The Cessnock UGMP 2036 notes that no future commercial land supply is required and any planning proposal to rezone land for commercial purposes outside existing or planned centres should not be supported.

In this instance, the proposed B1 Neighbourhood Centre zone is to be applied to a place of public worship, community facility and fire station located opposite the Abermain neighbourhood centre, which is a more suitable land zoning than the RE1 Private Recreation and SP2 Infrastructure zones. The proposed rezoning will not compromise the role or function of the Abermain neighbourhood centre.

The planning proposal is justifiably inconsistent with the Cessnock UGMP 2036.

4.2.3 Community Strategic Plan Cessnock 2027

The *Cessnock Community Strategic Plan 2027* (CSP) identifies the community's main priorities for the future and ways to achieve these goals. A range of strategic directions are provided which relate to the social, environmental, and economic health, sustainability, and prosperity of the Cessnock LGA.

The planning proposal is consistent with the objectives in the CSP.

4.3 State Environmental Planning Policies (SEPPs)

The amendments are predominantly administrative and would not be impacted by any SEPPs. Based on an assessment within the planning proposal there are no relevant SEPPs.

4.4 Section 9.1 Ministerial Directions

1.2 Rural Zones and 1.5 Rural Lands

The direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone.

Amendment 5, 9 and 10 affect land zoned for rural purposes. However, the amendments do not propose to change the zone, rather they are correcting a mapping error (amendment 5) and proposing a local clause to facilitate a boundary adjustment (amendment 9).

Amendment 10 proposes to allow plant nurseries as permitted with consent in a rural zone which is consistent with local environmental plans in adjoining local government areas. It is considered that this use is appropriate in a rural zone.

The planning proposal is consistent with the directions.

2.1 Environmental Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. Amendments 1, 2 and 3 seek to add properties to an environmental zone. These parcels of land have been acquired by NPWS to add to or create National Parks or State Conservation Areas.

The planning proposal is consistent with the direction.

2.3 Heritage conservation

The proposed amendments intend to correctly identify items of local heritage significance and heritage conservation areas through updating Schedule 5 Environmental Heritage and the associated maps. The amendment will alter or remove

some properties from the heritage schedule and maps to reflect the correct location of items, subdivisions that have occurred and remove items that no longer exist.

The planning proposal is consistent with the direction.

4.3 Flood prone land

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes, or alters a zone or a provision that affects flood prone land.

Amendment 4 is partially affected by the probable maximum flood level. The planning proposal is inconsistent with the direction as it seeks to rezone land from RE1 Public Recreation and SP2 Infrastructure to B1 Neighbourhood Centre.

Whilst the rezoning is inconsistent with the direction, there are no proposed amendments to development standards and the sites would be subject to relevant flood-related controls in the *Cessnock Local Environmental Plan 2011* and Cessnock Development Control Plan 2010.

Flooding will not have an impact on other amendments in the planning proposal such as correcting heritage mapping anomalies and identifying land as National Park.

The planning proposal is justifiably inconsistent with the direction as is of minor significance.

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, and to encourage sound management of bush fire prone areas.

Amendments 1 to 3 of the planning proposal include amendments in national parks and conversation areas which are bushfire prone. The amendments do not establish incompatible land uses on bushfire prone land.

Amendments 4, 5 and 9 (B1 Neighbourhood Centre rezoning, minor zone map realignment, and additional local provisions to land dissected by Hunter Expressway) are also located on bushfire prone land. These amendments do not encourage development, are largely administrative, and are consistent with the direction.

Council has advised that they intend to forward the proposal to the NSW Rural Fire Service for comment during the exhibition period.

Consistency with the direction will be determined following consultation with NSW Rural Fire Service.

5.10 Implementation of Regional Plans

The planning proposal is consistent with this direction as it is consistent with Directions 14 and 19 of the *Hunter Regional Plan 2036* (see Section 4 of this report).

The planning proposal is consistent with the direction.

6.3 Site Specific Provisions

Amendment 9 will insert an additional local provision on RU2 Rural Landscape zoned land consistent with surrounding areas. The proposed local provision is consistent with the direction as it introduces less restrictive site-specific provisions that will enable site amalgamation/subdivision.

The planning proposal is consistent with the direction.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and economic

The planning proposal amendments are largely administrative and are expected to have minimal social or economic impacts.

5.2 Environmental

The planning proposal includes the dedication of land to increase the size of a state conservation area and Yengo National Park, as well as create two new national parks.

5.3 Infrastructure

The planning proposal amendments will not impact on the operation of the Hunter Expressway (Amendment 9) or any other state infrastructure.

6. CONSULTATION

6.1 Community

Council proposes to exhibit the planning proposal for a minimum of 28 days, which is appropriate.

6.2 Agencies

Council anticipates that consultation will occur with the following agencies:

- National Parks and Wildlife Service; and
- Rural Fire Service.

7. TIME FRAME

The planning proposal includes a timeframe of 9 months to update the plan. However, it is recommended the Gateway determination require the planning proposal to be completed within 12 months to allow for consultation with the relevant agencies.

8. LOCAL PLAN-MAKING AUTHORITY

Given the minor nature of the planning proposal, Council should be the local plan making authority.

9. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistency with section 9.1 Ministerial direction 4.3 Flood Prone Land is minor and justified.
2. note that the consistency with section 9.1 Ministerial direction 4.4 Planning for Bushfire Protection is unresolved and will require consultation and justification.

It is recommended the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to public exhibition to:
 - (a) identify the correct lots and DPs and proposed land zoning for Amendments 1 to 3 relating to National Parks and State Conservation

Areas within the explanation of provisions and mapping in consultation with NSW National Parks and Wildlife Service.

2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - NSW National Parks and Wildlife Service
 - NSW Rural Fire Service
4. The time frame for completing the local environmental plan is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



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