

Planning and Assessment

IRF20/5381

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Hydro Kurri Kurri (1,435 homes, 6,900 jobs)
NUMBER	PP_2020_COUNCIL_006_00
LEP TO BE AMENDED	<i>Cessnock Local Environmental Plan 2011</i>
ADDRESS	Hart Road Loxford, Cessnock Road Cliftleigh and Bowditch avenue Loxford
DESCRIPTION	Lots 10-12 and 14-22 DP 1082569, Lot 16 DP 1082775, Lots 2-3 DP 233125, Lot 3 DP 456769, Lots 1-2 DP 502196, Lot 10 DP 553542, Lot 1 DP 589169, Lots 2-3 and 5 DP 62332, Lot 1 DP 998540, and Lots 318-319, 411-418, 420-224, 427-429, 434-439, 447-449, 451, 453-454, 456, 458-463, 536, 682 & 769 DP 755231
RECEIVED	24 November 2020
FILE NO.	IRF20/5381
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 includes the former Hydro Aluminium Smelter and surrounding buffer land holdings. When the smelter operations closed in 2012, approval was given to demolish the buildings and infrastructure, including the storage of contaminated land in an on-site containment cell.

Figure 1 shows the site and surrounding area. The site covers 330 hectares and has land fronting Hart Road at Loxford, Cessnock Road at Cliftleigh and Bowditch Avenue at Loxford. The Hunter Expressway also links to the site via the Hart Road interchange.

The South Maitland Railway traverses the site and is privately owned to service coal mines in the Cessnock area. There are currently two trains per day and this is expected to continue.



Figure 1: Subject site

1.2 Existing planning controls

While the site has accommodated the industrial operations since the 1930s, it has retained a rural RU2 Rural Landscape zone over the majority of the site.

In more recent years, pockets of land have been identified as containing important native vegetation, and are now zoned E2 Environmental Conservation.

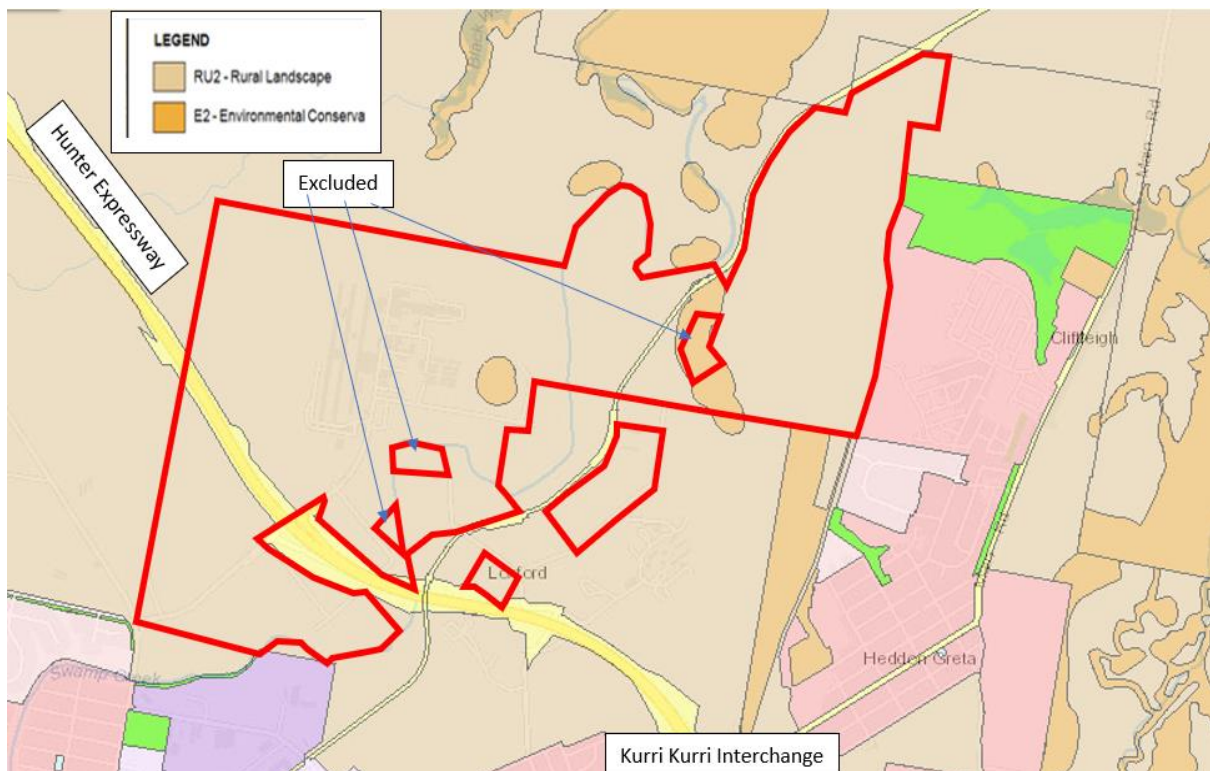


Figure 2: Existing zones

1.3 Surrounding area

The site is located close to existing urban areas of Kurri Kurri, Heddon Greta and Cliftleigh and contains expanses of bushland and wetland areas to the north and west.

The surrounding land is residential towards the east of the South Maitland Railway line with access to the Cessnock Road catchment in the Cliftleigh and Heddon Greta urban areas.

To the north of the site is the Maitland LGA. Another planning proposal for the remainder of the Hydro lands, which proposes to continue the residential zone further north towards the existing urban areas of Gillieston Heights is progressing concurrently with this planning proposal.

There are smaller pockets of semi-rural lands and the existing TAFE in the Bowditch Road area that have access to Kurri Kurri via McLeod Road, which bridges the Hunter Expressway.

The Kurri Kurri Sewer Treatment facility is located off McLeod's Road on the southern side of the Hunter Expressway.

There are some semi-rural activities in the area, including two dwellings and dirt race tracks. The two dwellings have access to Bowditch Avenue via a un-signalised railway crossing.

Land on the southern side of the Hunter Expressway is vegetated north of Hart Road where surrounding land uses are rural residential in nature, and partly cleared south of Hart Road which adjoins an existing industrial area.

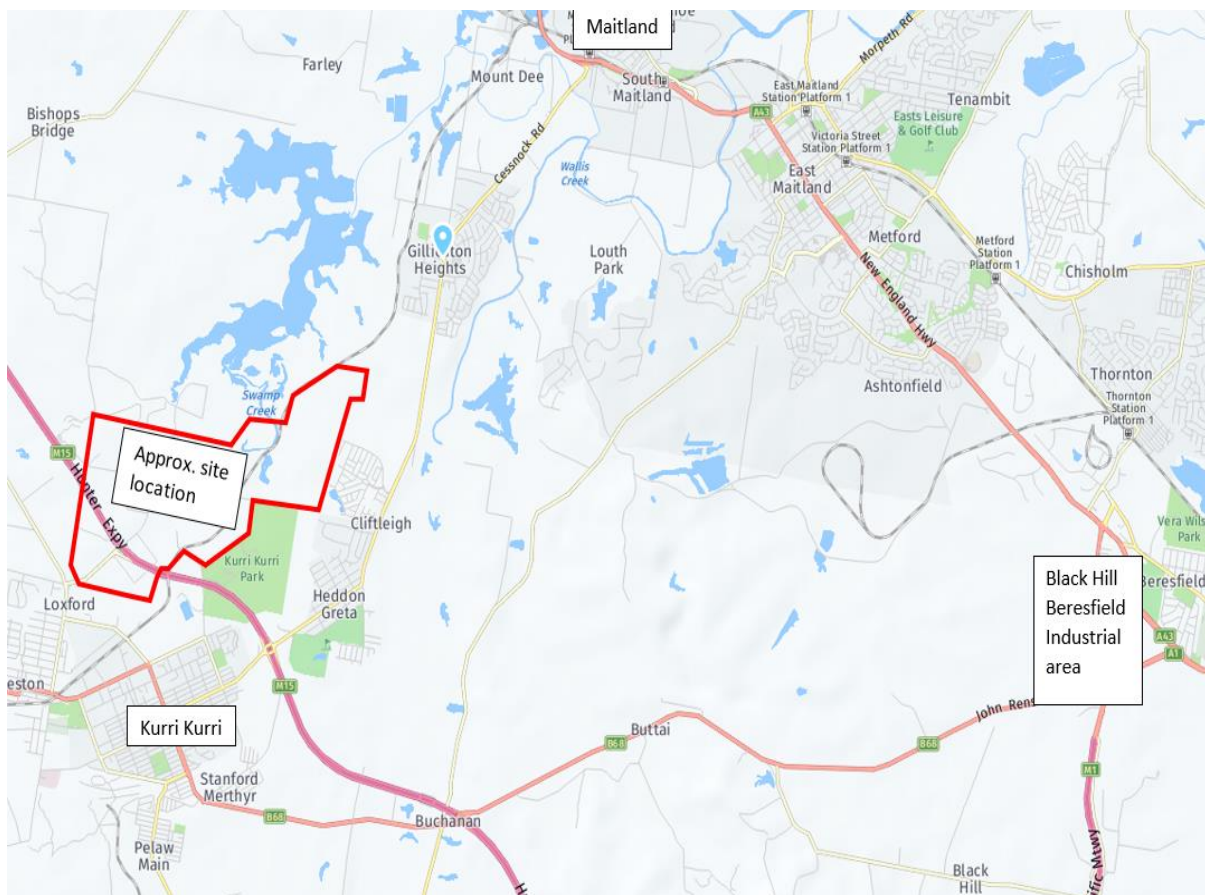


Figure 3: Local context

2. PROPOSAL

2.1 Description of planning proposal

The planning proposal (**Attachment A**) seeks to rezone the former Hydro Aluminium Smelter and surrounding buffer land to permit employment, industrial and residential development.

On 23 March 2016, the delegate of the Minister for Planning issued a Gateway determination for an existing planning proposal for the site (PP_2015_CESSN_006_00). Since this time, there has been agency consultation and further analysis undertaken. However, the planning proposal has not yet progressed to public exhibition.

The Gateway determination was subject to conditions. An assessment of the Gateway conditions is included in Table 1 to identify any unresolved issues that need to be considered as part of this planning proposal.

Table 1: 2016 Gateway determination conditions

Gateway Condition	Topic	DPIE assessment against conditions
1(a)	Business zones	Resolved - The planning proposal has been amended to seek to apply a B5 Business Development zone, instead of the previous proposal for a B7 Business Park. The objectives of the B5 Business Development zone under the principle Local Environmental Plan are to enable a mix of business and warehouse uses, and specialised retail premises that require a large flood area, in locations that are close to, and that support the viability, of centres. This appears to be a more appropriate zone for the proposed location, than the objectives of the previously proposed B7 Business Park that is to provide a range of office and light industrial uses, encourage employment opportunities and enable other land uses that provide facilities and services to meet the day to day needs of workers in the area.
1(b)	Containment cell	Resolved - The contamination cell is proposed to be zoned SP2 Infrastructure.
1(c)	Flooding	Resolved - The Wallis and Fishery's Creek Flood Study has been completed and confirmed the flood levels to determine the zone boundaries.
1(d)	Flood Free Access Strategy	Resolved – A flood free access strategy has been completed. It will be incorporated as part of the draft development control plan for the site.
1(e)	SEPP 55	Superseded – Matters of contamination are now assessed under section 9.1 Ministerial Direction 2.6 - Remediation of Contaminated Land. This is further addressed as part of this report.

Gateway Condition	Topic	DPIE assessment against conditions
1(f)	Noise and vibration,	Resolved - The recommendations of the noise impact assessment to address acoustic impacts from the South Maitland Railway and Hunter Expressway will be implemented as controls in the development control plan for the site.
1(g)	Agricultural lands study	Resolved - An agricultural lands study has been completed and the planning proposal updated to reflect assessment against relevant section 9.1 Ministerial directions.
1(h)	Traffic - Cessnock Road	Partly resolved - Transport for NSW is drafting a Main Road 195 corridor strategy that considers traffic modelling and capacity analysis to address the requirements of this condition.
1(i)	PP wording update	Resolved - The planning proposal has been updated to address this condition.
1(j)	Heritage	Resolved - To be included in the development control plan for the site. Impacts to South Maitland Railway heritage item considered acceptable, provided a heritage interpretation strategy as part of the development control plan.
1(k)	Confirm zone boundaries	Resolved – Zone boundaries have been confirmed.

Cessnock City Council undertook consultation as part of the 2016 planning proposal between February and March 2020. This included consultation with the following public authorities:

Table 2: Responses from consultation on 2016 planning proposal

AGENCY	RESPONSE
Biodiversity Conservation Division	Advised it will not provide comment on the planning proposal until the biodiversity conservation assessment report is submitted to the agency.
Department of Industry (Resources and Geosciences)	No objection raised. The agency advised it will need to directly liaise with the Biodiversity Conservation Trust in respect to any potential matters with any biodiversity stewardship.
TAFE NSW	No response provided.
State Emergency Services	No response provided.

AGENCY	RESPONSE
NSW Rural Fire Service	A revised bushfire report prepared in accordance with the <i>Planning for Bushfire Protection 2019</i> is required. Advised on perimeter roads, dead end roads and secondary access points.
Transport for NSW	Revised traffic assessment required, including micro-simulation modelling. Advised on preference for a grade separated crossing between residential and employment land and limiting 'local' trips on Hunter Expressway.
Mindaribba Local Aboriginal Land Council	Advised a number of lots under current claim were proposed to be rezoned to E2 Environmental Conservation. The Local Aboriginal Land Council advised this was not supported for lands under claim. Also advised it is necessary to undertake a revised and more rigorous Aboriginal cultural heritage assessment that include assessment of areas of Black Waterholes, Black Creek and Swamp Creek. The Local Aboriginal Land Council advised it would like to be consulted during the preparation and finalisation of and biodiversity conservation assessment report.
Subsidence Advisory NSW	No concerns raised as land is not identified in a mine subsidence district.
Hunter Water Corporation	The agency advised it did not object to the proposed industrial and business zone. However, it advised it objected to the proposed residential zone while the Kurri Kurri Waste Water Treatment works remain outstanding.

The Department consulted with Council regarding issuing a new Gateway determination for the planning proposal and discontinuing the original 2016 planning proposal, taking into consideration the work that has been completed to address the existing Gateway conditions. Council agreed to this approach.

2.2 Objectives or intended outcomes

The objectives of the planning proposal are to rezone the former Hydro Aluminium Smelter and surrounding buffer land to:

- permit employment, industrial and residential development;
- manage the interface between the land uses;
- minimise the fragmentation of the residual rural land;
- preserve Council's defined hierarchy of commercial centres; and
- respond to the environmental constraints on the site.

The objectives are clear and concise and do not require updating.

2.3 Explanation of provisions

The planning proposal outlines the proposed changes to the *Cessnock Local Environmental Plan 2011* and they are clear and adequate for public exhibition.

Since the 2016 planning proposal, there have been modifications to the proposed zoning plan. These changes reflect feedback in response to Council's assessment, agency consultation and technical reports.

The planning proposal has been amended to seek to apply a B5 Business Development zone, instead of the previous proposal for a B7 Business Park. The objectives of the B5 Business Development zone under the principle Local Environmental Plan are to enable a mix of business and warehouse uses, and specialised retail premises that require a large flood area, in locations that are close to, and that support the viability, of centres.

This is a more appropriate zone for the proposed location, than the objectives of the B7 Business Park that is to provide a range of office and light industrial uses, encourage employment opportunities and enable other land uses that provide facilities and services to meet the day to day needs of workers in the area.

In 2016, the containment cell was proposed to be zoned IN3 Heavy Industrial. It is now proposed to be zoned SP2 Infrastructure. This is a more appropriate zone.

Table 2 summarises the zoning changes from the 2016 planning proposal. The master plan in Figure 4 identifies the proposed zoning.

Table 2: Proposed zoning

Zone	2016 planning proposal	2020 planning proposal
IN1 General Industrial	87.23 ha	71.26 ha
IN3 Heavy Industrial	89.88 ha	53.49 ha
B1 Neighbourhood Centre	5,046m ²	5,046m ²
B5 Business Development	n/a	36.26 ha
B7 Business Park	38.18 ha	n/a
R2 Low Density Residential	127.7 ha	137.15 ha
RE1 Public Recreation	10.42 ha	8.54 ha
SP2 Infrastructure	19.93 ha	22.01 ha
E2 Environmental Conservation	944.7 ha	Environmental outcomes will be considered through the biodiversity conservation assessment report, which is a separate process.

This planning proposal also seeks to make the following changes consistent with the 2016 planning proposal:

- amendment to lot size maps including:

- 450m² for R2 Low Density Residential; and
- no minimum lot size for the B1, B5, IN1, IN3, RE1 and SP2 zones.

The *B1 and B7 Economic Assessment Review 2017* by SGS recognises the demand in the retail catchment and recommends a cap on floor space to manage the impact on the existing retail areas in Weston/Kurri Kurri and Cessnock. The report also recognises the sites locational advantages with access to the Hunter Expressway and how 'footloose, regionally focussed businesses' might be attracted to this area adding to the demand for land. Council have included a local clause in the explanation of provisions to implement floor space caps as recommended.

The planning proposes the following changes that are in addition to the changes proposed in the 2016 planning proposal:

- map the site as an Urban Release Area;
- For business zones:
 - introduce a floorspace cap of 20,000m² for the B5 Business Development zone to prevent the precinct from developing into a major regional cluster; and
 - introduce floorspace cap of 2,000m² for the B1 Neighborhood Centre.
- apply a land reservation acquisition layer to a portion of the local heritage item (Item No. 212 within the LEP) known as the former rail corridor for a future cycleway with the land to be zoned RE1 Public Recreation.

The planning proposal also includes an explanation of the actions Council intends to undertake for a development control plan for the site and local section 7.11 infrastructure contributions plan.

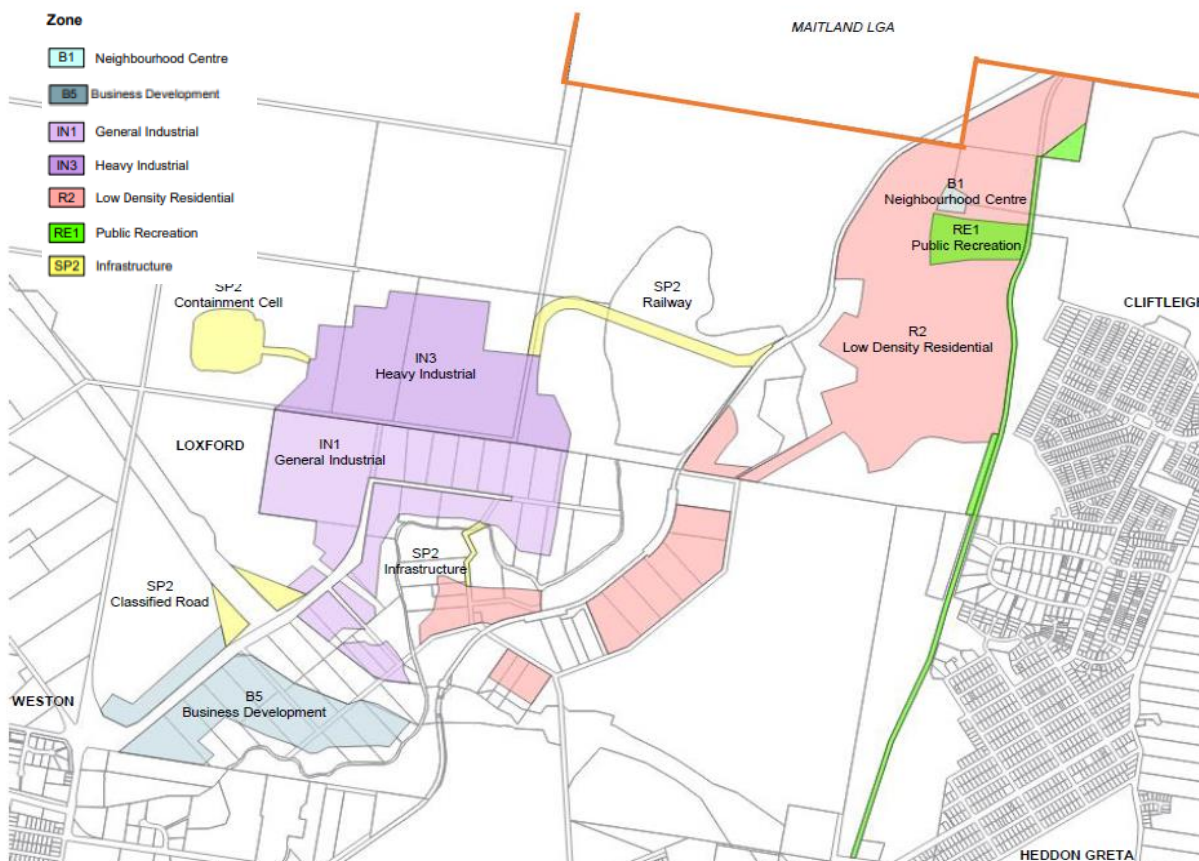


Figure 4: Proposed zoning

2.4 Mapping

The planning proposal includes maps that show the current and proposed controls that are suitable for community consultation.

The proposal includes amendments to the following local environmental plan maps:

- Land Use Zoning;
- Lot Size;
- Land Reservation Acquisition;
- Urban Release Area; and
- Heritage, which may possibly need to be amended following further agency consultation.

3. NEED FOR THE PLANNING PROPOSAL

Strategic planning documents at that time of the closure of the Hydro Aluminium Smelter in 2012 did not identify any change in the area. As part of the closure, the landowner commenced a range of planning studies to determine the land use capability of the site.

The aluminium smelter was a long-standing economic driver and employer within the local community and Hydro and Council indicated a desire to provide long term replacement jobs on the site which resulted in the preparation of a planning proposal for the site.

The planning proposal is consistent with regional and local planning strategies including the *Hunter Regional Plan 2036*, *Greater Newcastle Metropolitan Plan 2036* and the *Cessnock Local Strategic Planning Statement (LSPS)*.

4. STRATEGIC ASSESSMENT

4.1 Regional

Hunter Regional Plan 2036

The planning proposal is consistent with the *Hunter Regional Plan 2036*. The planning proposal provides a comprehensive assessment against the *Hunter Regional Plan 2036*.

The planning proposal is consistent with the following actions:

Action	Description	Consistency
4.8	Enable development that relies on access to the Hunter Expressway interchanges.	Yes
14.1	Identify terrestrial and aquatic biodiversity values and protect areas of high environmental value.	Yes
16.1	Manage the risks of climate change and improve the region's resilience to hazards.	Yes
16.2	Review and consistently update floodplain risk and coastal zone management plans.	Yes
18.1	Facilitate more recreational walking and cycling paths.	Yes

Action	Description	Consistency
18.2	Deliver connected biodiversity-rich corridors and open space areas for community enjoyment.	Yes
21.2	Focus development to create compact settlements in locations with established services and infrastructure, including the Maitland Corridor growth area.	Yes
21.4	Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses.	Yes
21.6	Provide greater housing choice.	Yes
21.7	Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.	Yes
26.1	Align land use and infrastructure planning to maximise the use and capacity of existing infrastructure and the efficiency of new infrastructure.	Yes
26.4	Coordinate the delivery of infrastructure to support the timely and efficient release of land for development.	Yes
26.5	Ensure growth is serviced by enabling and supporting infrastructure.	Yes

Greater Newcastle Metropolitan Plan

The *Greater Newcastle Metropolitan Plan 2036* sets out strategies and actions that will drive sustainable growth across Greater Newcastle, which includes Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens Councils.

The planning proposal provides a comprehensive assessment against the *Greater Newcastle Metropolitan Plan 2036* and is generally consistent with the following strategies:

Strategy	Description	Consistency
9	Plan for jobs closer to homes in the Metro frame	Yes
11	Create more great public spaces where people come together	Yes
12	Enhance the Blue and Green Grid and the urban tree canopy	Yes
14	Improve resilience to natural hazards.	Yes

The planning proposal is potentially inconsistent with Action 23.1, which '*require development adjoining nationally significant roads to demonstrate that access can be provided through existing interchanges*'.

Transport for NSW has advised it is preparing a Main Road 195 corridor strategy and undertaking modelling for the Hart Road interchange, including investigation of a potential connection between M15 and MR195.

An assessment for consistency with *Greater Newcastle Metropolitan Plan 2036* will be undertaken when above analysis undertaken by Transport for NSW is completed.

4.2 Local *Community Strategic Plan*

The planning proposal is consistent with the following objectives in Council's Community Strategic Plan:

- Objective 2.1 – Diversifying local business options;
- Objective 2.2 – Achieving more sustainable employment opportunities;
- Objective 3.1 – Protecting and enhancing the natural environment and rural character of the area;
- Objective 4.1 – Better transport links; and
- Objective 4.2 – Improving the road network.

Cessnock Local Strategic Planning Statement (LSPS)

The planning proposal is consistent with the following objectives in the LSPS:

- Planning Priority 1 – urban areas are compact;
- Planning Priority 5 – infrastructure and services meet the needs of the community and are appropriately funded;
- Planning Priority 7 – urban development is encouraged in areas with existing infrastructure;
- Planning Priority 11 – Our city has a defined hierarchy of commercial centres;
- Planning Priority 13 - industrial land is developed in an orderly manner and meets future development needs;
- Planning Priority 14 – our industrial land fosters economic growth, business diversity, and employment opportunities;
- Planning Priority 15 – key infrastructure is leveraged to support economic growth;
- Planning Priority 21 – Developments minimise environmental impacts and respond to site environmental characteristics and natural hazards; and
- Planning Priority 23 – developments are suitable, minimise environmental impact and respond to environmental characteristics.

The site is in an identified growth area and the planning proposal aligns with Action 30 of the LSPS regarding progressing the employment land aspects of the Hydro.

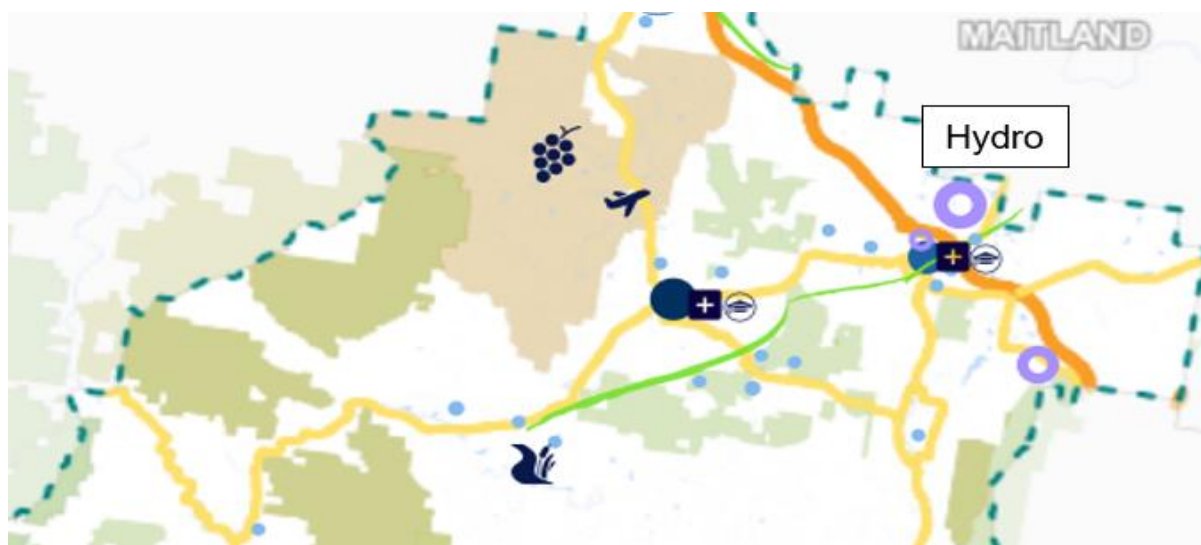


Figure 5: Hydro identified as a 'Future major employment node'

4.3 State environmental planning policies (SEPPs)

The planning proposal assesses the consistency with the applicable state environmental planning policies.

State Environmental Planning Policy (Koala Habitat Protection) 2019

As koalas are identified as a threatened species under the *Biodiversity Conservation Act 2016*, the parallel assessment of the Biodiversity Conservation Assessment Report (BCAR) will consider impacts on biodiversity values.

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

The planning proposal states a site assessment has identified there is no regionally significant agricultural land and only a small part of the site could be considered suitable for agriculture. This is consistent with the statement in the 2016 planning proposal.

4.4 Section 9.1 Ministerial Directions

Council provides a comprehensive assessment against the applicable section 9.1 Ministerial directions. The following assessment includes directions where the planning proposal justifies inconsistency or potential inconsistency.

Direction 1.1 Business and Industrial Zones

The planning proposal seeks to retain the industrial employment uses on the former Hydro Aluminium Smelter. This is considered consistent with the Ministerial direction to retain areas and locations of existing industrial zones.

The direction requires proposed new employment areas to be in accordance with a strategy that is approved the Secretary of the Department of Planning, Industry and Environment.

The planning proposal is generally consistent with the *Greater Newcastle Metropolitan Plan 2036*. In particular, the hunter expressway principles in the Metropolitan Plan. The planning proposal is potentially inconsistent with Action 23.1, which '*require development adjoining nationally significant roads to demonstrate that access can be provided through existing interchanges*'.

Transport for NSW has advised it is preparing a Main Road 195 corridor strategy and undertaking modelling for the Hart Road interchange, including investigation of a potential connection between M15 and MR195.

The consideration of consistency or justified consistency with the direction will be done once the work being undertaken by Transport for NSW is completed to determine consistency with the *Greater Newcastle Metropolitan Plan 2036*.

Directions 1.2 Rural Zones and 1.5 Rural Lands

The planning proposal is inconsistent with these directions.

However, the inconsistency is justified as the site is identified in the *Greater Newcastle Metropolitan Plan 2036* and *Hunter Regional Plan 2036*.

Appendix A states a planning proposal may be inconsistent with the terms of certain Ministerial directions if it is in accordance with the actions of the *Greater Newcastle Metropolitan Plan 2036*.

1.3 Mining, Petroleum Production and Extractive Industries

The planning proposal states it does not cover any known areas to have existing resources. The proposed residential and business zoning would have the effect of prohibiting mining and extractive industries.

Council consulted with the then Department of Industries (Resources and Geosciences). The agency did not raise any concerns in relation to sterilisation of resources and the site is not in a mining lease.

2.1 Environment Protection Zones

The 2016 planning proposal had proposed part of the site E2 Environmental Conservation. Since this planning proposal, land management and biodiversity conservation reforms have commenced under the *Biodiversity Conservation Act 2016*.

The planning proposal is currently inconsistent with this direction as Council has not undertaken a full assessment of the environmental impacts (clause 4).

The proponent is currently preparing a biodiversity conservation assessment report under the *Biodiversity Conservation Act 2016*. The planning proposal states the draft biodiversity conservation assessment report aims to secure 800 hectares of land for biodiversity stewardship.

The *Biodiversity Assessment Method Operational Manual* provides that field surveys more than five years old are not supported. Accordingly, targeted species surveys were required to be undertaken. This body of work was being undertaken over the course of 2019/20 to allow for seasonal variations and environmental conditions.

As the biodiversity conservation assessment report has not been finalised or assessed by the relevant authority, the planning proposal remains inconsistent with this direction. An assessment for consistency with this direction will be undertaken prior to finalisation of the local environmental plan.

2.3 Heritage Conservation

The Aboriginal cultural heritage assessment was prepared for the 2016 the planning proposal and is now five years old. The planning proposal states the assessment at that time raised no objection to rezoning the land, provided further assessment is undertaken at the development application stage.

Council considers the assessment remains relevant as the circumstances have not changed in respect to the proposed development footprint.

It is proposed that further consultation be undertaken with the Mindaribba Local Aboriginal Land Council as part of the Gateway determination.

Further consultation with Heritage NSW and local Aboriginal groups will also be required post exhibition of the planning proposal in order to inform the development control plan for the site.

The site contains a local heritage item, South Maitland Railway System (Item 212), and the planning proposal would result in the loss and fragmentation of the former railway corridor. Council have advised the proponent to revise the subdivision layout to incorporate the rail corridor allowing for continued interpretation of the rail corridor and its alignment. This is considered a development application matter and will be considered as part of the development control plan for the site.

2.6 Remediation of Contaminated Land

The planning proposal is currently inconsistent with this direction as Council has not undertaken an assessment of the preliminary investigations to verify that the land is suitable for its intended use following remediation. The landowner has been requested to provide a Phase 1 – Preliminary Investigation consistent with the 'Managing Land Contamination Planning Guidelines' over the subject land.

The preparation of remedial action plans and associated site audit statements and reports have been linked to the construction of the containment cell under the state significant development application (SSD-6666).

Site audit statements and reports prepared by and Environmental Protection Agency accredited auditor are currently being prepared and will be lodged with Council once completed.

An assessment for consistency with this direction will be undertaken as part of finalisation of the local environmental plan.

3.4 Integrating Land Use and Transport

Transport for NSW has advised it is preparing a Main Road 195 corridor strategy and undertaking modelling for the Hart Road interchange, including investigation of a potential connection between M15 and MR195. This analysis will inform the consideration of the planning proposal against the requirements for locating bulk goods in the *Right Place for Business and Services – Planning Policy*.

Council is also preparing a site specific development control plan. The planning proposal states the accessible development principles of the *Improving Transport Choice – Guidelines for planning and development*.

The planning proposal is potentially consistent with this direction, and an assessment for consistency will be undertaken the above analysis being undertaken by Transport for NSW is completed.

4.2 Mine Subsidence and Unstable Land

Subsidence Advisory NSW has advised the land is not identified within a mine subsidence district. The planning proposal is consistent with direction.

4.3 Flood Prone Land

The planning proposal states it has been designed to avoid the 1% AEP event with some minor flood prone areas nominated in the central residential precinct. A flood study has indicated the site has flood free access and the land can be developed without adversely affecting surrounding properties.

Agency advice from Biodiversity Conservation Division has confirmed the planning proposal is consistent with direction.

4.4 Planning for Bushfire Protection

The planning proposal is potentially inconsistent with this direction.

The 2016 planning proposal predate current standards. A revised bushfire report is being prepared in accordance with the *Planning for Bushfire Protection 2019* and further consultation will be required to be undertaken with the NSW Rural Fire Service.

Council has advised the proponent is required to submit the revised bushfire report once local traffic matters have been resolved, which will occur once Transport for NSW completes the Main Road 195 corridor strategy and additional modelling of the Hart Road interchange.

Therefore, any inconsistency with this direction will be considered following consultation with NSW Rural Fire Service.

5.10 Implementation of Regional Plans

The planning proposal is generally consistent with the *Hunter Regional Plan 2036* and the *Greater Newcastle Metropolitan Plan 2036* and implements aspects of these strategies. The planning proposal is potentially inconsistent with Action 23.1 and this will be considered prior to finalisation when further traffic modelling is available.

6.2 Reserving Land for Public Purposes

The planning proposal includes 5 hectare area of land that is proposed to be zoned RE1 Public Recreation. It is anticipated the land will contain a multi-functional regional open space facility consistent with Council's Open Space and Recreation Plan.

The planning proposal also includes the development of linear reserves, including a shared pathway forming part of a regional pathway route.

Clause 4 of the direction requires the approval of the Secretary's delegate for the creation of additional land for public purposes.

The report recommends the Secretary issue approval under this direction. The planning proposal is considered consistent with this direction.

6.3 Site Specific Provisions

The planning proposal includes local provisions for the drafting of the local environmental plan to implement the objectives of the proposal. The proposed local provisions are consistent with the intent of the direction.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal has considered social and economic impacts. While difficult to quantify, Council conclude there is a positive net community benefit from the planning proposal considering the job creation, new housing and housing diversity, integration with the existing community through urban design, the creation of a neighbourhood centre and district park for new residents.

The planning proposal will provide homes close to jobs and existing infrastructure aligning with the Department's policies and *Hunter Regional Plan 2036*.

5.2 Environmental

As assessed in Section 4.4 of this report there are a number of environmental matters relevant to the planning proposal.

Council's assessment of environmental impacts notes the various specialist studies address the key environmental attributes of the site. These studies include:

- Threatened Species (Ecological March 2015);
- Aboriginal Cultural Heritage Assessment (AECOM Dec 2014);

- Stormwater Impact Assessment (PCB Dec 2014);
- Servicing Strategy (PCB Dec 2014);
- Wallis and Swamp Fishery Creeks Flood Study (WMA Feb 2019);
- Bushfire (Kleinfelder Feb 2015)
- Geotechnical Assessment (Douglas March 2015);
- Heritage Impact Assessment (RPS March 2015);
- Visual Impact Assessment (Envisage March 2015)
- Economic (Urbis March and June 2015)
- Socio and economic (Elton March 2015)
- Contamination (Phase 2) Assessment Reports (Environ April 2015);
- Noise and Vibration Impact Assessment (VIPAC March 2015); and
- Traffic and Transport Study (Hyder March 2015).

Council have provided information to support their recommendation that other than biodiversity, the abovementioned environmental attributes can be managed through either development control plan and/or development application stage.

The consideration of biodiversity impacts is being undertaken concurrently with the assessment of this planning proposal. The process involves consultation with Council on a draft biodiversity conservation assessment report before the report is finalised and submitted to the Biodiversity Conservation Division for assessment.

Council note in the absence of a biodiversity conservation assessment report and a biodiversity certification order under the *Biodiversity Conservation Act 2016*, it is unable to determine whether there is any likelihood of critical habitat or threatened species impacts.

5.3 Economic

The planning proposal is anticipated to have positive economic impacts for the Hunter and local area and identifies potential job creation (6,900 jobs), construction jobs (13,160) and flow on effects for the economy in the order of \$ per annum.

In addition to the creation of local jobs, the predicted expansion of local retail spend is significant (\$58M) which will reinforce Kurri Kurri as a regional centre.

5.4 Infrastructure

The planning proposal states the supply of water to the site would be based on a staging that provides security of supply in the short-term and adequate main sizes for the ultimate proposed development. The planning proposal also includes information for sewer, electricity, gas and communication connections. Future development may require augmentation of existing services and this will be subject to agreement between the proponent and service providers.

TfNSW are currently preparing the Cessnock Road Corridor Strategy (MR195) and the planning proposal will need to be updated to be consistent with the outcomes of this corridor strategy once exhibited.

Transport for NSW in correspondence to Council has raised objection to the planning proposal on the grounds the traffic assessment is out of date. It is understood the agency also has concerns with the impact of the proposed employment lands at the Hart Road interchange will have on the Hunter Expressway in the longer term as the development processes.

There are process currently underway to resolve a number of traffic and transport matters. In particular:

- drafting of the Cessnock Road (MR195) corridor strategy by Transport for NSW is nearing completion and this will satisfy the need to determine the consolidated access points along MR195 and staging/development thresholds for upgrades;
- Transport for NSW is undertaking additional work on the information needed for a traffic impact assessment for the Hart Road interchange and potential bypass between the Hunter Expressway and Cessnock Road;
- drafting of the hunter expressway strategy by the Department of Planning, Industry and Environment is nearing completion and this will provide guidance for employment uses along the Expressway, including the interchanges.

The above processes will ensure matters are addressed as part of finalisation of the local environmental plan and enable infrastructure and development contribution matters to be resolved at a subdivision or development application stage.

6. CONSULTATION

6.1 Community

Council propose to undertake community consultation in accordance with their Community Participation Plan.

While the requirements are for a minimum of 28 days, the consultation period may potentially occur during the Christmas period, thus be extended in accordance with Council policy. This approach is considered appropriate.

6.2 Agencies

Public agency consultation has already occurred for the 2016 planning proposal.

Further consultation with Biodiversity Conservation Division, Mindaribba Local Aboriginal Land Council and NSW Rural Fire Service is required during the public exhibition period to address the matters raised during previous agency consultation.

Council have identified further agency responses that may require resolution, such as Hunter Water Corporation. These servicing issues can be addressed as part of the preparation of a development control plan and/or development application. Hunter Water have been advised of the application, hence can therefore begin to prepare for the servicing of the site.

Arrangements for the use of the South Maitland Railway crossing are yet to be resolved and the planning proposal should be updated to reflect these arrangements.

7. TIME FRAME

Council have proposed a six (6) month timeframe to complete the LEP process. A 12 month timeframe is recommended to provide additional time should any part of the process be delayed, such as resolving the biodiversity and traffic related matters.

The Department encourages Council to publicly exhibit the planning proposal as soon as possible given agency consultation is largely complete.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority.

There remain several inter-related matters that will be required to be resolved prior to finalisation of the local environmental plan, including the biodiversity conservation assessment report and Transport for NSW's MR195 corridor strategy and Hart Road interchange modelling. These also relate to a several potential inconsistencies with section 9.1 Ministerial directions.

Given these matters, is not proposed to make Council the local plan-making authority.

9. CONCLUSION

In 2016, a Gateway determination (PP_2015_CESSN_006_00) has been issued for this site, and the strategic and site specific merit of the planning proposal have been supported.

The current planning proposal recognises the previous work undertaken by Council for PP_2015_CESSN_006_00 and as outlined in Table 1 the majority of the Gateway determination conditions have been resolved.

The planning proposal is consistent with State, regional and local planning policies and strategies, and implements the intention of parts of these strategies through the creation of regionally significant jobs, homes and future conservation lands.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **agree** that any inconsistencies with following section 9.1 Ministerial directions are minor or justified:
 - 1.2 Rural Zones;
 - 1.5 Rural Lands; and
 - 6.3 Site Specific Provisions
2. **agree** to the creation of land for public purposes under section 9.1 Ministerial direction 6.2 Reserving Land for Public Purposes on the basis that the district park land is consistent with Council's Open Space Strategy and the linear park lands provide a regional shared pathway link;
3. **note** the consistency with following section 9.1 Ministerial directions is unresolved and may require justification:
 - 1.1 Business and Industrial Zones;
 - 2.1 Environmental Protection Zones;
 - 2.3 Heritage Conservation;
 - 2.6 Remediation of Contaminated Land;
 - 3.4 Integrating Land Use and Transport;
 - 4.4 Planning for Bushfire Protection; and
 - 5.10 Implementation of Regional Plans.

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

1. Prior to finalisation of the local environmental plan:
 - (a) comments in Transport for NSW's correspondence to Cessnock City Council dated 24 March 2020 are addressed; and
 - (b) consideration is given to a biodiversity conservation assessment report, preliminary contamination report and revised bushfire report.
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:
 - Biodiversity Conservation Division;
 - NSW Rural Fire Service;
 - Hunter Water Corporation; and
 - Mindaribba Local Aboriginal Land Council.
4. Council should also consult with the owners of the South Maitland Railway to consider the requirements for the existing level crossing.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.



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1/12/2020

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