

Planning and Assessment

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Cessnock Commercial Precinct
NUMBER	PP_2020_CESSN_005_00
LEP TO BE AMENDED	Cessnock Local Environment Plan 2011
ADDRESS	Multiple Addresses in the Cessnock Commercial Precinct
DESCRIPTION	Refer to Part 4 of the planning proposal
RECEIVED	10/03/2021
FILE NO.	IRF20/5023
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 Description of planning proposal

The planning proposal seeks to amend the *Cessnock Local Environmental Plan 2011* to encourage the revitalisation of the Cessnock Commercial Precinct. This includes:

- rezoning of Sternback Park and the TAFE Park to RE1 Public Recreation;
- amending the Land Reservation Acquisition Map to include land to be acquired for local roads and local recreation; and
- removing from the local environmental plan the floor space ratio and height of building planning controls that apply to the precinct (development control plan limits are to be used instead).

Recommendation to amend the planning proposal to not include removal of floor space ratio and height of building planning controls from the local environmental plan

The removal of the height and floor space ratio controls from the local environmental plan will permit increased residential density in the commercial precinct. If the controls were removed from the local environmental plan, the controls within the development control plan would apply. This would see an increase in height of building and floor space controls across the commercial precinct, enabling development of up to six storeys.



Figure 9 Development control plan Height of Building controls

Throughout the commercial precinct there are flood prone areas. Additional controls relating to flooding are in the local environmental plan (clause 7.3) and development control plan (Chapter 9), with parts of the Cessnock Commercial area below the flood planning level and subject to high hazard flooding.

Pre-lodgement consultation was undertaken by the Department with the Biodiversity Conservation Division (BCD) and Council regarding the flooding matters. BCD were not supportive of the proposed changes to the floor space ratio and height of building planning controls, noting parts of the precinct are subject to high hazard flash flooding and self-evacuation routes are limited. The agency advised the Department more work needs to be undertaken by Council before changes to the planning controls should be progressed. It suggests this could occur by undertaking a review of the *Cessnock City Floodplain Risk Management Study and Plan*. The purpose of the review would be to develop waterway and hazard management strategies that accommodate increased development density in parts of the CBD.

Based on this consultation it is recommended the planning proposal be amended to not progress with proposed changes relating to floor space ratio and building heights. This component is to be omitted from this planning proposal so the planning controls remain in the local environmental plan until this work has been undertaken.

Relationship with the existing planning proposal

In 2017, a planning proposal was submitted by Council to amend planning controls to support the growth and revitalisation of the Cessnock Commercial Precinct (PP_2017_CESSN_002_00). The Gateway determined the planning proposal could proceed subject to conditions. Agency concerns regarding road acquisitions and flooding impacts associated with enabling more dwellings in the precinct were unable to be resolved.

Council has now prepared this revised planning proposal to respond to agency concerns by omitting certain road acquisitions and proposing a different approach to flooding. It also revises other elements, such as removing design excellence provisions and acquisition of other lands, following further review by Council. These may be pursued in a separate future planning proposal once Council has undertaken more detailed work.

The planning proposal includes information stating which elements from the former planning proposal have been removed and the justification for the change throughout the document.

The original planning proposal is to be discontinued once a Gateway determination is issued for the current planning proposal.

1.2 Site description

The planning proposal covers the Cessnock CBD outlined in figure 1. The boundaries of the planning proposal correspond with the background reports being the *Cessnock CBD Masterplan* and the *Cessnock Commercial Precinct Background Report*.



Figure 1 Aerial Image - Cessnock Commercial Precinct

The precinct is the main commercial/ retail area within the Cessnock Local Government Area. Within the precinct there are two shopping centres, a TAFE, community facilities and various commercial and business properties. The commercial core focused around Vincent Street consists of multi storey buildings.

1.3 Existing planning controls

The Cessnock commercial precinct includes various zones. This planning proposal intends to rezone B3 Commercial Core and B4 Mixed Use to RE1 Public Recreation to identify established parks in the commercial precinct. Rezoning is also proposed of a local road from B4 Mixed Use and R3 Medium Density Residential to SP2 Infrastructure to facilitate a road upgrade.

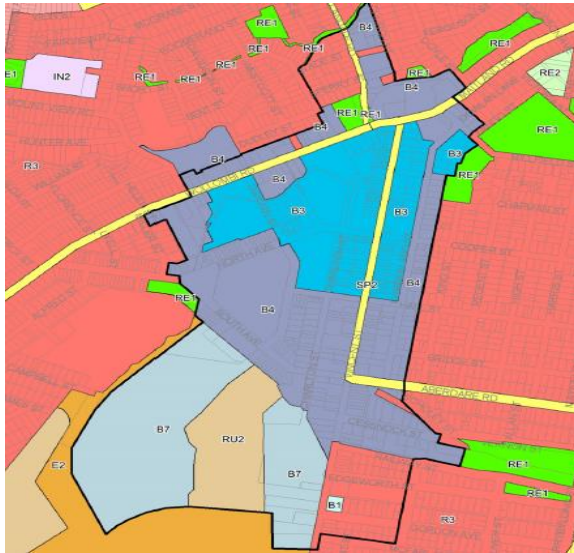


Figure 2 Current Land Zoning

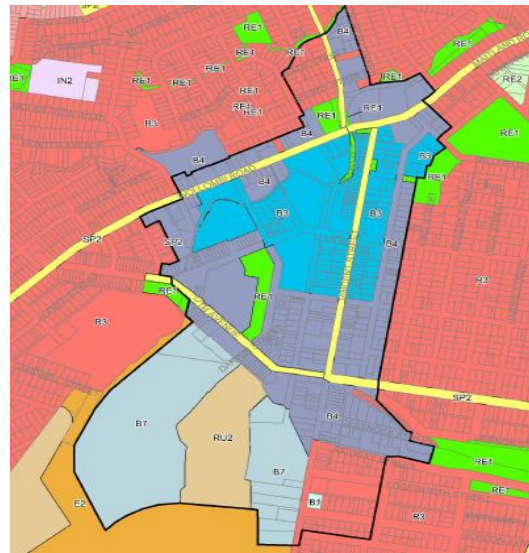


Figure 3 Proposed Land Zoning

The current floor space ratio provisions in the local environmental plan are over the northern region of the precinct. Current height of building provisions in the local environmental plan see maximum heights of 12m over areas of the precinct. The planning proposal seeks to remove these limits.

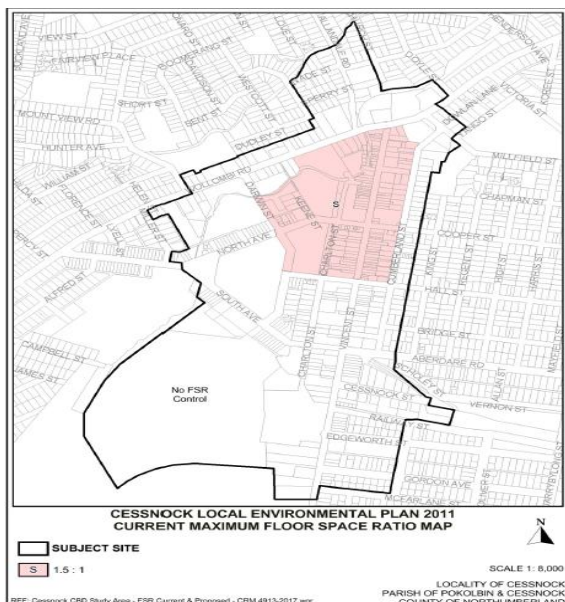


Figure 4 Current Floor Space Ratio Controls

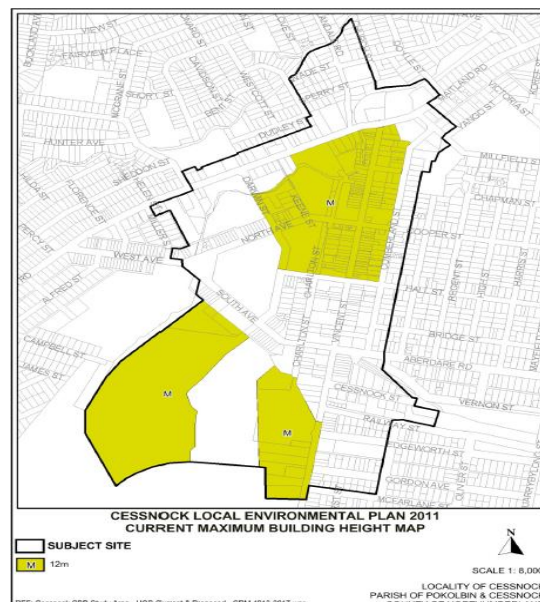


Figure 5 Current Height of Building Controls

There are no lots identified on the Land Acquisition Map in the commercial precinct boundary. The planning proposal intends to acquire land within the northern region of the commercial precinct boundary for local road upgrades and local open space.

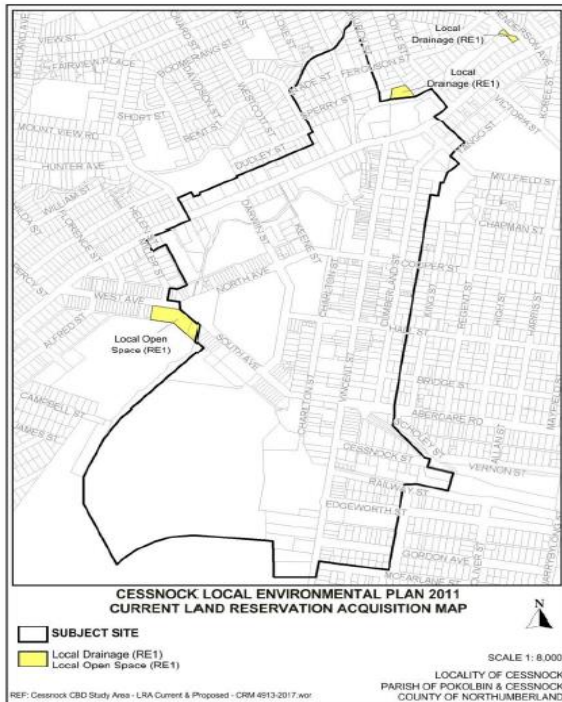


Figure 6 Current Land Acquisition Map

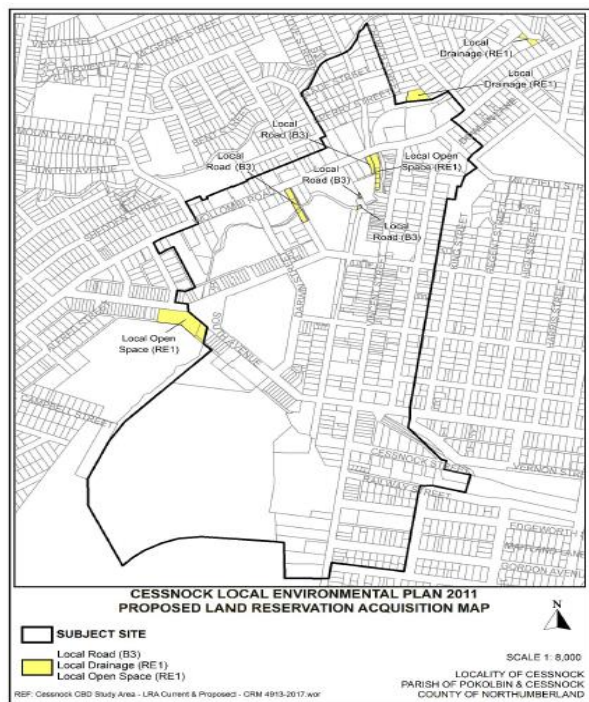


Figure 7 Proposed Land Acquisition Map

1.4 Surrounding area

The surrounding area is characterised by medium density housing around the northern, eastern and western boundaries of the commercial precinct. To the south of the precinct is bushland zoned E2 Environmental Conservation. The Black Creek catchment is located to the south west of the Cessnock CBD. The creek has several tributaries that flow into surrounding suburbs.



Figure 8 Surrounding Area Aerial

2. PLANNING PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the planning proposal are:

- to grow the Cessnock Commercial Precinct as a strategic centre and major gateway to the vineyards district;
- to encourage appropriate medium-density, mixed-use development within Cessnock Commercial Precinct;
- to achieve a high standard of quality for future buildings within the Cessnock Commercial Precinct;
- to promote urban growth within the Cessnock Commercial Precinct that does not adversely impact its heritage character; and
- to provide a simple and effective regulatory framework for development in the Cessnock Commercial Precinct.

2.2 Explanation of provisions

The objectives of this planning proposal are proposed to be achieved by amending the *Cessnock Local Environmental Plan 2011* in the following manner:

- rezone from B3 Commercial Core to RE1 Public Recreation – Part of Lot 1 DP 450874 (Sternbeck Park);
- rezone from B4 Mixed Use to RE1 Public Recreation – Part of Lot 1 DP 577260 (TAFE Park) and Lot 7009 DP 1030585;
- remove the maximum floor space ratio mapping controls for the Cessnock Commercial Centre from the *Cessnock Local Environmental Plan 2011*;
- remove the maximum height of buildings mapping controls for the Cessnock Commercial Precinct from the *Cessnock Local Environmental Plan 2011*; and
- amend the Land Reserved for Acquisition Map to include Land Reserved for Acquisition within the precinct for the purposes of Local Road (SP2) and Local Open Space (RE1).

It is recommended the explanation of provisions be updated to remove from the planning proposal the proposed height of building and floor space ratio amendments. These components are not supported and should be removed from the planning proposal.

The explanation of provisions should also note the land to be acquired would be rezoned per the zones specified above.

2.3 Mapping

The following maps from *Cessnock Local Environmental Plan 2011* are proposed to be amended to achieve the intent of the planning proposal:

- Land Acquisition Map – LRA_006CA; and
- Land Zoning Map – LZN_006CA

In addition, the following maps from *Cessnock Local Environmental Plan 2011* are proposed to be removed to achieve the intent of the planning proposal:

- Floor Space Ratio Map – FSR_006CA; and
- Height of Buildings Map – HOB_006CA.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal aims to promote growth and revitalisation of the Cessnock Commercial Precinct. It implements parts of the *Cessnock CBD Masterplan* which was adopted by Cessnock City Council in 2012.

The *Cessnock CBD Masterplan* identifies the need to promote open space and connectivity, and to increase the density of development to accommodate a mixture of land uses throughout the identified precinct.

The planning proposal intends to achieve these outcomes by rezoning three lots throughout the commercial precinct, identifying established open space, acquiring land for open space and road upgrades, and by removing height and floor space ratio controls.

Revitalising town centres is an important outcome for communities across the Hunter. It supports investment and growth, as well as reinforcing a sense of community and belonging. The planning proposal would enable these outcomes within the Cessnock CBD, increasing the amenity for residents and visitors.

However, the desire to enable more growth needs to be balanced with the need to manage natural hazard risks. Parts of the precinct are subject to flooding and therefore relying on development control plan provisions, rather than the current floor space ratio and height controls in the local environmental plan, would enable more residential development and likely increase flood risks. Further investigation is required before this change could be supported.

4. STRATEGIC ASSESSMENT

4.1 State

Nil.

4.2 Regional / District

Hunter Regional Plan 2036

The regional plan identifies Cessnock City as a regionally significant strategic centre supporting a variety of land uses.

The Local Government Narratives within the plan state that Council should implement the *Cessnock CBD Masterplan*, provide additional housing, and investigate opportunities to leverage off the heritage character of the centre.

Action 16.2 in the regional plan requires floodplain risk plans to be reviewed and consistently updated when urban growth is being investigated. Further investigations in line with the draft plan are required before proceeding with proposed changes to floor space ratio and height controls.

Draft Hunter Regional Plan 2041

The draft Hunter Regional Plan 2041 is currently on exhibition to 4 March 2022. The draft plan includes strategies for development proposals to ensure sensitive land uses, such as homes, are appropriately located so communities are not placed at high risk and people can safely evacuate if there is an emergency.

Further investigations in line with the draft plan are required before proceeding with proposed changes to floor space ratio and height controls.

Greater Newcastle Metropolitan Plan 2036

The metropolitan plan recognises Cessnock within the metro frame. This links Cessnock and its CBD to Strategy 10: Create better buildings and great places and Strategy 11: Create more great public spaces where people come together.

Action 14.1 in the metropolitan plan states that councils will apply the following principle to land use planning and development assessments, employ risk-responsive land use controls so that new development does not occur in high risk areas. Further investigations in line with the draft plan are required before proceeding with proposed changes to floor space ratio and height controls.

4.3 Local

Cessnock Local Strategic Planning Statement- Our Plan, Our Future, Our Cessnock

The Cessnock Local Strategic Planning Statement sets out planning priorities across the Local Government Area. These priorities support economic development and protect important environmental and rural landscapes, diverse heritage and unique social assets. The planning proposal supports the liveable theme of the document as it looks to improve the function of the commercial precinct for residents and tourists.

Cessnock CBD Masterplan

The *Cessnock CBD Masterplan* was adopted by Council in 2012 and outlines the overarching strategy for revitalising the CBD through improved liveability, aesthetics and investment opportunities. The planning proposal is consistent with the masterplan, as it looks to improve existing spaces and create new spaces for public recreation.

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

The planning proposal aligns with many of the objectives identified in the Cessnock City Council's Community Strategic Plan. Objectives within the plan relating to transport across the Local Government Area are supported in this planning proposal. Additionally, objectives concerning the utilisation of open space are supported within this planning proposal.

Cessnock City Wide Settlement Strategy (2010)

The *Cessnock City Wide Settlement Strategy* identifies the city of Cessnock as their major regional centre. The strategy identifies the community's main priorities and aspirations for the future. This involves Cessnock being a connected, safe and creative community with accessible infrastructure, services and facilities. The planning proposal supports the strategy's vision.

4.4 Section 9.1 Ministerial directions

1.1 Business and Industrial Zones

The proposed rezoning of 1.59ha of business zoned land to RE1 Public Recreation zoned land makes the planning proposal inconsistent with this direction. However, this inconsistency can be justified as minor due to the land already being used for a recreational purpose. TAFE Park and Sternbeck Park are already established open spaces.

4.2 Mine Subsidence and Unstable Land

The direction applies because the site is in a mine subsidence district. Consultation with Subsidence Advisory is not proposed on this planning proposal. Subsidence Advisory provided advice on the existing planning proposal that all components of the plan remain within Zone D and is identified as not undermined.

This planning proposal will exclude changes to height of building and floor space controls that were proposed in the existing planning proposal. The Subsidence Advisory raised no objection to development within Zone D previously.

4.3 Flood Prone Land

The planning proposal is inconsistent with this direction as it intends to remove the height and floor space ratio controls applying to flood prone land which would allow increased density within the town centre.

Further investigation into flooding issues associated with the commercial precinct is required before the height and floor space ratio components can be considered by the Gateway. This should occur separately, and a new planning proposal submitted to Gateway once issues are resolved.

Removal of the height and floor space ratio components of the planning proposal will make the planning proposal consistent with this direction.

6.2 Reserving Land for Public Purposes

The direction applies to the planning proposal as it alters existing zoning and reservations of land for public purposes. This requires the approval of the relevant public authority and Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

The planning proposal will be consistent with the direction when the Secretary or his delegate approves the above changes.

4.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with the relevant State Environmental Planning Policies.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Council intends to revitalise the Cessnock CBD encouraging visitors and residents to enjoy the outdoor areas of the CBD. Rezoning of the Sternbeck Park and TAFE park will help the Council move closer to the goals outlined within their Development Control Plan and 6546 to create open spaces for the community and visitors.

5.2 Environmental

Due the planning proposal applying the Cessnock CBD, it is unlikely to result in significant impacts on environmental values.

5.3 Economic

This planning proposal will implement objectives of the *Cessnock CBD Masterplan* creating an inviting centre for the local community and tourists.

6. CONSULTATION

6.1 Community

Community consultation has been previously undertaken by the Council regarding the masterplan and development control plan that support this planning proposal, albeit some years ago.

Council have proposed public exhibition to be undertaken for a minimum period of 28 days. As the planning proposal identifies land to be acquired, this timeframe is supported.

6.2 Agencies

Council consulted with agencies on the existing planning proposal and this planning proposal has been prepared in response to their concerns. The following agencies were consulted previously:

- former Roads and Maritime Services;
- former Office of Environment and Heritage; and
- Subsidence Advisory NSW.

No agency consultation is required for the planning proposal. It does not contain provisions which affect Transport for NSW. BCD has been consulted prior to the Gateway determination and their advice has been addressed. Consultation with Subsidence Advisory NSW is not proposed.

No further agency consultation will be required for the remaining components of the planning proposal.

7. TIME FRAME

Council have proposed a 12-month timeframe to complete the gateway process. A nine month timeframe is considered appropriate. Consultation should occur within three months of the Gateway determination.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested authorisation to use its delegated functions under section 3.36 of the Act to make the plan. It is appropriate that Council be authorised to be the local plan-making authority as the planning proposal is consistent with regional and local strategic planning framework for the area and outstanding issues will be resolved prior to public exhibition.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Ministerial directions 1.1 Business Zones and 4.2 Mine Subsidence and Unstable Land are minor or justified.

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

1. Council is to amend the planning proposal prior to consultation to omit the proposed change to the height of building and floor space ratio controls.

2. Council is to amend the planning proposal prior to consultation to identify the additional RE1 Public Recreation and SP2 Infrastructure zonings that have not been mentioned in the planning proposal.
3. Council is to amend the planning proposal prior to consultation to include assessment against the *Cessnock Local Strategic Planning Statement*.
4. Council is to update the project timeline and summarise information related to the previous planning proposal into a background section, removing references currently made throughout the planning proposal.
5. The planning proposal should be made available for community consultation for a minimum of 28 days, with consultation commencing within three months.
6. No further agency consultation is required.
7. The time frame for completing the LEP is to be nine months from the date of the Gateway determination
8. Given the nature of the planning proposal, Council should be authorised to be the local plan-making authority to make this plan.



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