

Planning and Assessment

PP-2021-6586

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Comprehensive LEP Review - Recreation Land Use Zones
NUMBER	PP-2021-6586
LEP TO BE AMENDED	<i>Cessnock Local Environmental Plan 2011</i>
ADDRESS	Various
DESCRIPTION	Various
RECEIVED	9 November 2021
FILE NO.	IRF21/4458
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 planning proposal applies to various sites across the Cessnock local government area as identified in **Attachment 1**.

1.2 Existing planning controls

The existing planning controls affected by this planning proposal on the sites are:

1. Land Use Zoning;
2. Minimum Lot Size;
3. Land Reservation Acquisition Map; and
4. Land Use Table.

2. PROPOSAL

2.1 Description of planning proposal

The planning proposal involves:

1. rezoning various sites from R2 Low Density Residential, R3 Medium Density Residential, RU5 Rural Village, RU4 Primary Production Small Lots and RU2 Rural Landscape to RE1 Public Recreation and RE2 Private Recreation.
2. rezoning various sites from RE1 Public Recreation to R2 Low Density Residential, R3 Medium Density Residential, E2 Environmental Conservation, E3 Environmental Management, SP2 Infrastructure and B1 Neighbourhood Centre.
3. amending the minimum lot size on the sites to align with the proposed zoning.

4. amending the Land Use Table for the RE1 Public Recreation Zone and RE2 Private Recreation Zone to include certain land uses as permitted with consent and prohibited in those zones.
5. identifying certain lots for reservation for public acquisition.

The sites have been selected following a review of *Cessnock Local Environmental Plan 2011* maps and the adoption of the *Recreation and Open Space Strategic Plan 2019* to identify sites which are not suitably zoned for their current or proposed uses.

2.2 Objectives or intended outcomes

The planning proposal aims to realign existing recreational lands with their appropriate zoning and to remove recreation zoning from lands no longer used for recreational purposes.

The intended outcomes are identified as:

1. amend the RE1 Public Recreation Zone Land Use Table to:
 - permit emergency services facilities, entertainment facilities, function centres, information and education facilities, markets, restaurants or cafes and signage; and
 - prohibit heliports and respite day care centres.
2. amend the RE2 Private Recreation Zone Land Use Table to:
 - permit amusement centres, building identification signs, business identification signs, entertainment facilities, function centres, information and education facilities, markets, restaurants or cafés; and
 - prohibit helipads.
3. amend the Land Use Zone, Minimum Lot Size and Land Reservation Acquisition Maps in relation to 67 parcels of land.

2.3 Explanation of provisions

The planning proposal includes the following provisions:

2.3.1 Amendment to RE1 Public Recreation and RE2 Private Recreation Land Use Tables

The land use tables for both the RE1 Public Recreation and RE2 Private Recreation zones are to be amended as follows:

- amend the RE1 Public Recreation Zone Land Use Table to:
 - permit emergency services facilities, entertainment facilities, function centres, information and education facilities, markets, restaurants or cafes and signage; and
 - prohibit heliports and respite day care centres.
- amend the RE2 Private Recreation Zone Land Use Table to:
 - permit amusement centres, building identification signs, business identification signs, entertainment facilities, function centres, information and education facilities, markets, restaurants or cafés; and
 - prohibit helipads.

Following consultation with Council, an updated planning proposal has been received which confirms the 'permitted' items above are to be 'permitted with consent'.

Under the *Cessnock Local Environmental Plan 2011* the following definitions apply:

- helipad means a place not open to the public used for the taking off and landing of helicopters.
- Heliport means a place open to the public that is used for the taking off and landing of helicopters, whether or not it include:
 - terminal building, or
 - facilities for the parking, storage or repair of helicopters.

The table below compares the existing and proposed Land Use Tables with additions in **bold red** and removals ~~struck through blue~~.

Existing	Proposed
RE1 Public Recreation Zone	
2 – Permitted without consent Nil 3 – Permitted with consent Aquaculture; Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Environmental facilities; Environmental protection works; Heliports; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Roads 4 – Prohibited Any development not specified in item 2 or 3	2 – Permitted without consent Nil 3 – Permitted with consent Aquaculture; Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Emergency Services Facilities; Entertainment Facilities; Environmental facilities; Environmental protection works; Function Centres; Heliports; Information and Education Facilities; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or Cafes; Roads; Signage 4 – Prohibited Any development not specified in item 2 or 3
RE2 Private Recreation Zone	
2 – Permitted without consent Nil 3 – Permitted with consent Aquaculture; Camping grounds; Caravan parks; Community facilities; Environmental facilities; Environmental protection works; Helipads; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Roads 4 – Prohibited Any development not specified in item 2 or 3	2 – Permitted without consent Nil 3 – Permitted with consent Amusement Centres; Aquaculture; Building Identification Signs; Business Identification Signs; Camping grounds; Caravan parks; Community facilities; Entertainment Facilities; Environmental facilities; Environmental protection works; Function Centres; Helipads; Information and Education Facilities; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Restaurants or Cafés; Roads 4 – Prohibited Any development not specified in item 2 or 3

Similar additional land uses permitted with consent have been adopted in the following nearby and comparable local environmental plans:

RE1 Public Recreation

Port Stephens LEP - Permitted with consent

- Building identification signs; Business identification signs; Emergency services facilities; Function centres; Information and education facilities; Markets; Restaurants or cafes.
- Excludes Entertainment Facilities and includes two signage terms.

Lake Macquarie LEP - Permitted with consent

- Emergency services facilities; Entertainment facilities; Function centres; Information and education facilities; Markets; Restaurants or cafes; Signage.
- Includes all proposed land uses.

Upper Hunter LEP – Permitted with consent

- Emergency services facilities; Entertainment facilities; Function centres; Information and education facilities; Markets; Restaurants or cafes; Signage.
- Includes all proposed land uses.

RE2 Private Recreation

Port Stephens LEP - Permitted with consent

- Building identification signs; Business identification signs; Function centres; Information and education facilities; Markets; Restaurants or cafes.
- Excludes Amusement Centres and Entertainment Facilities.

Lake Macquarie LEP - Permitted with consent

- Amusement centres; Entertainment facilities; Environmental facilities; Function centres; Information and education facilities; Markets; Restaurants or cafes; Signage.
- Includes all proposed land uses.

Upper Hunter LEP – Permitted with consent

- Entertainment facilities; Information and education facilities; Markets; Restaurants or cafes; Signage.
- Excludes Amusement Centres and Function Centres.

2.3.2 Amendments to Land Zoning, Minimum Lot Size and Land Reservation Acquisition maps

The planning proposal includes amendments to 67 sites throughout the local government area.

The planning proposal notes the proposed amendments will ensure the most appropriate zone and corresponding minimum lot sizes are applied to sites and land is identified for acquisition is included on the Land Reservation Acquisition Map.

Site 62 at 298 Cessnock Road, Abermain includes the rezoning of the land from RE1 Private Recreation to B1 Neighbourhood Centre. This amendment is already

progressing under PP-2021-3922 and should be removed from this planning proposal. A condition will be included in the Gateway determination.

2.3.3 C2 Environmental Conservation and C3 Environmental Management zones

The planning proposal refers to various sites where a conservation zone is proposed for reasons of endangered ecological communities being present on site (generally C2 Environmental Conservation) or due to flooding constraints (generally C3 Environmental Management). This approach of applying a zone based on which affectation is more prevalent is supported.

However, there are some sites where the reason for the proposed local environmental plan amendment does not correspond to a consistent approach to applying conservations zones as per above.

Site	Reason for amendment	Proposed zone	Response
30	Endangered ecological communities	C3 Environmental Management	No Change The site is flood prone and there are proposals for some public recreation activities on site in the future.
32	Flood prone and endangered ecological communities	C3 Environmental Management	No Change The site is primarily flood prone, with only a minor presence of endangered ecological community present.
36	Endangered ecological communities	C3 Environmental Management	Update planning proposal The site is flood prone and within a riparian corridor. The planning proposal should be updated to reference a prevalence of flooding.
45	Endangered ecological communities	C3 Environmental Management	Update planning proposal The site is flood prone and does not contain endangered ecological communities. The planning proposal should be updated to reference a prevalence of flooding.
47	Endangered ecological communities	C3 Environmental Management	No Change The site is primarily flood prone, with only a minor presence of endangered ecological community present.
54	No reason given. Adjoining areas are zoned C2 Environmental Conservation	C3 Environmental Management	Update planning proposal The site is flood prone and does not contain endangered ecological communities. The planning proposal should be updated to reference a prevalence of flooding.

2.4 Mapping

The planning proposal includes the amendment of several local environmental plan maps as included in Attachment 1.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal implements the *Cessnock Local Strategic Planning Statement 2036*, which identifies the need to review the *Cessnock Local Environmental Plan 2011*.

Action 5 of the *Cessnock Local Strategic Planning Statement 2036* seeks to provide the following outcomes:

- to provide flexibility for new tourism development in suitable locations.
- to ensure permitted development is consistent with the objectives of each zone.
- to examine the urban release areas and rezone riparian corridors to an appropriate environmental zone.
- to ensure significant riparian corridors and water bodies are zoned to an appropriate environmental zone.
- to ensure that the zoning and land-uses for land that is significantly affected by natural hazards (e.g. flooding and bushfire) reflect the risk.
- to ensure major events are permitted in strategic centres and other suitable locations.
- to enable land-uses that support events, such as tourist and visitor accommodation, function centres, to be permissible in strategic centres and other suitable locations.

The action is informed by the *Cessnock Recreation and Open Space Strategic Plan 2019*, which includes a series of actions for the recreation and open space network.

4. STRATEGIC ASSESSMENT

4.1 Regional / District

Hunter Regional Plan 2036

The planning proposal indicates it is consistent with the *Hunter Regional Plan 2036* as it aims to strengthen biodiversity corridors and expand on the recreational facilities that already exist to create a 'green grid' across the Hunter. Specifically, it is consistent with:

- Direction 14 - protect and connect natural areas; and
- Direction 18 - enhance access to recreational facilities and connect open spaces.

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

Greater Newcastle Metropolitan Plan 2036

The planning proposal is consistent with the following outcomes and strategies in the *Greater Newcastle Metropolitan Plan 2036* (GNMP):

- Strategy 7 – respond to the changing land use needs of the new economy;
- Strategy 10 – create better buildings and great places; and
- Strategy 11 – create more great public spaces where people come together.

The proposed amendments to the RE1 Public Recreation Zone and RE2 Private Recreation Zone Land Use Tables will enable greater flexibility for community

events, markets and assemblies to occur by permitting entertainment facilities, function centres, information and education facilities, markets and restaurants or cafes in the recreation zones.

The planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036*.

Draft Hunter Regional Plan 2041

The draft Hunter Regional Plan 2041 (draft Plan) commenced exhibition on 6 December 2021 and is scheduled to conclude on 4 March 2022.

The planning proposal is consistent with the following:

- Strategy 3.7: Councils and relevant public authorities through all applicable decisions, including development proposals, local infrastructure and street design approaches, public space design will seek the timely and successful achievement of safe, accessible and attractive streets for all modes of transportation, as well as trails, parks and public spaces that will encourage active living, community interaction and opportunities to integrate nature in neighbourhoods.

Response: The planning proposal will rationalise zones to reflect their current use, which will enable better use of local recreation and open space infrastructure, encouraging active living, community interaction and promoting opportunities to integrate nature in neighbourhoods.

- Objective 5: Increase green infrastructure and quality public spaces and improve the natural environment.

Response: The planning proposal will help reinforce the importance of open space, particularly in growing urban settings, as well as contribute to the urban forest throughout Cessnock. Expansion of Turner Park (Item 64) will increase the provision of quality public spaces for the Aberdare and Cessnock community and any future use or embellishment of public open spaces subject to the planning proposal will align with the zone objectives of the RE1 Public Recreation zone.

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

4.2 Local

Cessnock Community Strategic Plan 2027

The planning proposal identifies consistency with the following Objectives and Strategic Directions in the *Cessnock Community Strategic Plan 2027*:

Objective / Direction	Response
<ul style="list-style-type: none">• Objective 3.1 – Protecting & enhancing the natural environment & the rural character of the area<ul style="list-style-type: none">○ Strategic Direction – Our environmental amenity is protected and enhanced• Objective 3.2 – Better utilisation of existing open space<ul style="list-style-type: none">○ Strategic Direction – Our open spaces	<p>Consistent.</p> <p>The planning proposal seeks to amend land use zones to better reflect the use of various land, contributing to better protection and ongoing management of recreational and environmental land.</p>

<ul style="list-style-type: none"> Objective 5.2 – Encouraging more community participation in decision making 	<p>Consistent.</p> <p>The planning proposal will be placed on public exhibition seeking feedback on the proposed provisions. The Gateway determination will outline the minimum community consultation required.</p>
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The planning proposal is consistent with the *Cessnock Community Strategic Plan 2027*.

Cessnock Local Strategic Planning Statement

The planning proposal responds direct to Action 5 of the *Cessnock Local Strategic Planning Statement* (outlined in Section 3).

The planning proposal is consistent with the *Cessnock Local Strategic Planning Statement*.

4.3 State environmental planning policies (SEPPs)

SEPP (Koala Habitat Protection) 2021

The planning proposal is consistent with the SEPP as the additional land to be zoned E2 Environmental Conservation and E3 Environmental Management provides additional protection to potential koala habitat.

The planning proposal is consistent with the above SEPP and will not impact on the implementation of other SEPPs.

4.4 Section 9.1 Ministerial directions

The planning proposal identifies the following Ministerial directions as relevant to the proposal with comments provided:

Direction	Consistency	Response
<u>1.1 Business and Industrial Zones</u>	Inconsistency of minor significance and justified	<p>The planning proposal includes a proposed rezoning of Site 62 at 298 Cessnock Road Abermain from RE1 Public Recreation to B1 Neighbourhood Centre. This item is to be removed from the planning proposal as it is currently progressing under PP-2021-3922.</p> <p>Site 66 (also 39) at 1A Doyle Street, Cessnock is privately owned and is split zoned R3 Medium Density Residential, RE1 Public Recreation and B4 Mixed Use.</p> <p>The planning proposal notes the entire site will be zoned E3 Environmental Management Zone as it is flood affected. The site has been identified for acquisition will be included on the land reservation area map.</p> <p>The amendment is of minor significance and justified.</p>
<u>1.5 Rural Lands</u>	Inconsistency of minor significance and justified	<p>The planning proposal aims to rezone land from RU2, RU4 and RU5 to RE1 and C2 zoning.</p> <p>Sites 2-5, 8, 16, 18-20, 22, 25-29, 55 and 57 have a rural zoning but are used for recreational purposes including local parks, memorial parks, playgrounds, tennis courts and sportsgrounds.</p> <p>Site 9 is a nature strip.</p>

Direction	Consistency	Response
		<p>Council has considered whether the planning proposal is consistent with objective of the direction and the applicable strategic plans and the social, economic, and environmental interests of the community in relation to these lots.</p> <p>As the proposed zoning amendments reflect the current use of the recreational use of the land, the inconsistency is of minor significance and justified.</p>
<u>2.1 Environment Protection Zones</u>	To be determined	<p>As the planning proposal identifies several lots to be rezoned to an environmental zoning, this direction applies.</p> <p>The planning proposal notes the suitability of the conservation zoning to the lands proposed to be included and has provided adequate justification that the proposed zoning will achieve this.</p> <p>Further consultation should be undertaken with the Biodiversity Conservation Division to confirm suitability of the application of each conservation zone.</p> <p>References in the proposal to conservation zoning should also be amended to reflect the new Conservation (C) zones.</p>
<u>2.6 Remediation of Contaminated Land</u>	To be determined	<p>Council has not identified this direction as applicable.</p> <p>The planning proposal does include the rezoning of land for recreational and residential purposes (which may also permit educational or childcare purposes).</p> <p>Although the amendments are seeking to recognise existing land uses the planning proposal should be updated to address consistency with the direction.</p>
<u>3.1 Residential Zones</u>	Inconsistency of minor significance and justified	<p>The planning proposal does not contain any additional provisions relating to housing. However, the identified sites 1, 6, 7, 11, 12-15, 17, 21, 23, 24, 34, 38, 54, 66 and 67 are currently zoned residential yet used for recreational purposes.</p> <p>Sites 30, 31, 37, 39, 41, 46, 51, 53 and 61 are narrow 'nature strips' of land used as a buffer and are proposed to be consolidated to the adjoining land uses.</p> <p>Site 35 is zoned RE1 Public Recreation. However, it contains existing medium density development and a R3 Medium Density Residential zoning is more suitable to recognise its use.</p> <p>Site 43 is an existing school and a residential or infrastructure zoning is more suitable.</p> <p>As the proposed change of zoning for the above reflects the current use of the land, the inconsistency is of minor significance and is therefore justified.</p>
<u>4.2 Mine Subsidence and Unstable Land</u>	To be determined	<p>The planning proposal notes it is consistent with the direction. Consultation with the Subsidence Advisory NSW should be undertaken to determine any potential</p>

Direction	Consistency	Response
		<p>mine subsidence risks associated with the proposed amendments.</p> <p>A condition should be included on the Gateway determination to require consultation with Subsidence Advisory NSW.</p>
<u>4.3 Flooding</u>	Inconsistency of minor significance and justified	<p>Some of the sites proposed to be rezoned are within flood prone land.</p> <p>The planning proposal is inconsistent with this direction as Sites 39 and 51 are identified as flood prone land and are proposed to be rezoned from RE1 Public Recreation to R3 Medium Density Residential and R2 Low Density Residential respectively.</p> <p>Both sites are currently used for stormwater drainage and are taking on the adjoining zone, consistent with the Standard Instrument Order.</p> <p>The inconsistency is of minor significance and justified as the existing uses and lot sizes do not permit any further development.</p>
<u>4.4 Planning for Bushfire Protection</u>	To be determined	<p>The planning proposal applies to certain sites which are bushfire prone.</p> <p>Council must consult with the NSW Rural Fire Service to confirm that there are no objections to the planning proposal. consistency with the direction.</p> <p>This will be conditioned as part of the Gateway determination.</p>
<u>5.10 Implementation of Regional Plans</u>	Consistent	<p>The planning proposal is consistent with the <i>Hunter Regional Plan 2036</i>, as outlined in this report.</p>
<u>6.2 Reserving Land for Public Purposes</u>	Inconsistency of minor significance and justified	<p>As the proposal aims to rezone land from RE1 Public Recreation and remove reservations, this direction applies.</p> <p>Sites 1-29, 34, 38, 54 and 67 propose the application of the RE1 Public Recreation.</p> <p>Sites 30-33, 35-37, 39-54, 56, 58-62 and 66 propose the removal of RE1 Public Recreation zone to a variety of residential, infrastructure, business or conservation zones along with corresponding minimum lot sizes.</p> <p>Sites 35, 58, 60 and 63 are proposed to be removed from the Land Reservation Acquisition Map.</p> <p>Sites 64-66 are proposed to be included on the Land Reservation Acquisition Map.</p> <p>The planning proposal notes that Site 64 at 49B Aberdare Road, Aberdare will retain its B1 Neighbourhood Centre zone, despite Action C1.9 of the Recreation and Open Space Strategic Plan 2019 identifying the site for expansion of the adjoining Turner Park.</p>

Direction	Consistency	Response
		<p>Council advised the B1 Neighbourhood Centre zone is to be retained in the interim as the site remains in private ownership.</p> <p>All land proposed to be rezoned for public purposes is either already acquired or is proposed to be acquired through the planning proposal.</p> <p>All land which is no longer proposed to be used for public purposes and is currently identified for acquisition is proposed to have this acquisition mapping removed.</p> <p>The planning proposal is consistent with the direction as it seeks to apply a zone consistent with the use of the land and only includes a minimum lot size standard that would ordinarily apply alongside that zone.</p> <p>Any inconsistency with the direction is minor and justified.</p>

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal will enable greater flexibility for community events, markets and assemblies. Overall, the planning proposal is considered to have a positive social impact.

5.2 Environmental

The planning proposal seeks to further mitigate the potential for impact on threatened species and Endangered Ecological Communities by applying an appropriate environmental land use zone to that land.

5.3 Economic

The planning proposal will facilitate and enable greater flexibility for employment generating uses that are considered compatible with the recreation zones. This will have a positive economic impact.

5.4 Infrastructure

The planning proposal seeks to provide suitable zoning to allow protection of infrastructure assets.

6. CONSULTATION

6.1 Community

A consultation period of 20 working days is recommended. Public exhibition is recommended to commence within 3 months of the Gateway determination.

6.2 Agencies

Council has proposed to consult with the following public authorities/community groups:

- Biodiversity and Conservation Division;
- Subsidence Advisory NSW;
- Hunter Water Corporation; and

- Mindaribba Local Aboriginal Land Council.

The planning proposal does apply to areas are subject to bushfire risk and include provisions that allow greater land use flexibility. Consultation is also recommended with NSW Rural Fire Service.

7. TIME FRAME

Council has proposed a timeframe of 9 months.

The planning proposal is categorised as standard, which has a 200 working day timeframe post-Gateway. Given the nature and complexity of the proposal, a 9-month timeframe is suitable.

8. LOCAL PLAN-MAKING AUTHORITY

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

As the proposal includes Council-owned land, granting local plan-making authority is not recommended.

9. RECOMMENDATION

It is recommended the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 Ministerial directions: 1.1 Business and Industrial Zones, 1.5 Rural Lands, 3.1 Residential Zones, 4.3 Flooding and 6.2 Reserving Land for Public Purposes are minor or justified, and
2. note consistency with section 9.1 Ministerial directions: 2.1 Environment Protection Zones, 2.6 Remediation of Contaminated Land, 4.2 Mine Subsidence and Unstable Land and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for 20 working days.
2. Prior to public exhibition, the planning proposal is to be amended to:
 - a) remove Item 62 from the planning proposal as it is included in PP-2021-3922;
 - b) update the reason for LEP amendment for Items 36, 45 and 54 to reference a prevalence of flood prone land; and
 - c) update references to any environmental zones to conservation (C) zones.
3. Consultation is required with the following public authorities:
 - a) Biodiversity and Conservation Division;
 - b) Subsidence Advisory NSW;
 - c) Hunter Water Corporation;
 - d) Mindaribba Local Aboriginal Land Council; and

- e) NSW Rural Fire Service.
4. The LEP should be completed on or before 31 December 2022.
 5. Given the nature of the planning proposal, Council should not be the local plan-making authority.



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Attachment 1 – Planning proposal