

Amendment to Cessnock LEP 2011 - Golden Bear

Proposal Title : **Amendment to Cessnock LEP 2011 - Golden Bear**

Proposal Summary : **To amend Schedule 1 of Cessnock LEP 2011 to provide for additional permitted uses on Lots 1-4 DP 86951 Wine Country Drive Pokolbin, to facilitate a tourist and residential development that would otherwise be prohibited within the zone**

PP Number : **PP_2012_CESSN_002_00** Dop File No : **12/05857-1**

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions : **1.2 Rural Zones
1.5 Rural Lands
2.3 Heritage Conservation
3.1 Residential Zones
3.4 Integrating Land Use and Transport
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.3 Site Specific Provisions**

Additional Information : **It is recommended that:**

The Director General as delegate of the Minister for Planning and Infrastructure determine under section 56(2) of the EP&A Act that an amendment to the Cessnock Local Environmental Plan 2011 be undertaken to rezone portions of Lots 1-4 DP 86951 Wine Country Drive Pokolbin, to facilitate the development of a major tourist facility, subject to the following conditions;

- 1. The Planning Proposal is amended to;**
 - a. Adopt the Standard Instrument SP3 Tourist zone and adapt it to meet the needs of the LGA, consistent with the Practice Note PN 09-006.**
 - b. Rezone the relevant land from RU4 Primary Production Small Lots to SP3 Tourist under the Cessnock LEP 2011, as the inclusion of the tourist uses as additional permitted uses is not supported.**
 - c. Include information explaining any local provisions relevant to supporting the SP3 Tourist zone.**
 - d. Remove any reference to permanent residential development from within the proposal, including the subdivision of land below the current minimum lot size, as this is not supported.**

2. The amended proposal is to be submitted to the Department prior to public exhibition for a review under s57(2) of the EP&A Act.

2. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act 1979 as follows:

- a. the Planning Proposal must be publicly available for a minimum of 28 days; and**
- b. the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department of Planning 2009).**

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
NSW Aboriginal Land Council

Office of Environment and Heritage
NSW Department of Primary Industries - Agriculture
NSW Department of Primary Industries - Minerals and Petroleum
Hunter Water Corporation
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services

4. A public hearing is not required to be held into a matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

6. The following studies will need to be completed as part of the Planning Proposal and the findings and key recommendations incorporated into the planning proposal prior to exhibition:

- a. a contamination study in accordance with State Environmental Planning Policy No 55: Remediation of Land.
- b. updated flooding, flora and fauna, bushfire risk, traffic, infrastructure, agricultural land use, aboriginal archaeology and water management studies.
- c. study on the social and economic impacts of the tourism proposal

7. Council is requested to provide additional information as part of the s58 submission to assist in determining consistency with SEPP Rural Lands 2008 and with the following directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection

Issues with s117 directions 3.1 Residential Zones, 5.1 Implementation of Regional Strategies and 6.3 Site Specific Provisions do not arise if the proposal is to proceed as recommended, without the permanent residential component and as a re-zoning.

The proponent is encouraged to lodge a submission as part of the review of the Lower Hunter Regional Strategy in relation to the proposed residential development. The submission would need to address the issues raised in the PAC report. Further information on the additional matters to be addressed in this submission will be made available.

Supporting Reasons :

The proposal for a tourist development on the site is consistent with the Lower Hunter Regional Strategy which identifies the Pokolbin area as a specialised centre for tourism growth. A clear, certain and transparent approach to achieving the tourism objectives for the site are to zone for purpose and establish planning controls, both within the LEP and within a DCP, to achieve the desired outcome. Investigation into a SP3 Tourist zone for the Cessnock LGA is considered a useful tool for more clearly defining the role and permissible use of relevant sites within Vineyards District.

The proposal for a large residential development on the site is not consistent with the local Cessnock City-Wide Settlement Strategy 2010 or the relevant regional strategies (the Lower Hunter Regional Strategy or the draft Upper Hunter Strategy Regional Land Use Plan). The proposal does not demonstrate that it is consistent with the sustainability criteria identified within the LHRS.

The proposal has been promoted as an 'integrated tourism and residential proposal' however this 'integration' is not defined or detailed and there are no mechanisms proposed to achieve it. Despite the completion of numerous studies on the site the

assessment of the site's suitability for permanent residential density of the scale and density proposed has not been undertaken due to this presumption that the use is ancillary or 'integrated' with a broader tourism objective.

The review of the LHRS and the landholder nominated sites process provides the opportunity to assess permanent residential on this site from a strategic basis within a relatively short timeframe. This review will be informed by the outcomes of the strategic work that Council is currently undertaking for the Vineyards District. This approach is considered consistent with the advice of the Planning Assessment Commission and an appropriate response to the issues raised in the assessment of the Planning Proposal.

Panel Recommendation

Recommendation Date : 19-Apr-2012

Gateway Recommendation : Passed with Conditions

Panel

The Planning Proposal should proceed subject to the following conditions:

Recommendation :

1. The assessment of the site's suitability for permanent residential development of the proposed scale and density has not been undertaken due to the presumption that the use is ancillary or 'integrated' with a broader tourism objective. Therefore, the residential component of the planning proposal is not supported and is to be removed prior to public exhibition.

2. The use of Schedule 1 in this case is not supported due to a lack of clarity and transparency surrounding the intended future use of the land. The development of tourist related facilities on the land is not consistent with the objectives and outcomes envisaged within the RU4 Primary Production Zone, and therefore Council is to rezone the land to reflect the intended purpose. Council is encouraged to introduce the SP3 Tourist zone to Cessnock LEP 2011 and rezone the subject land from RU4 Primary Production Small Lots to SP3 Tourist.

3. Council is to undertake a site investigation into potential contamination of the land in accordance with SEPP 55 – Remediation of Land. The planning proposal is to be amended to reflect the outcome of the investigation prior to the commencement of public exhibition.

4. Council is to amend the planning proposal and demonstrate consistency with the Rural Planning and Rural Subdivision principles of State Environmental Planning Policy (Rural Lands) 2008 prior to public exhibition. Further to Condition 9 below, Council is to consult with the NSW Department of Primary Industries and amend the planning proposal accordingly to reflect the outcome of the additional assessment and public authority consultation, for the purposes of public exhibition.

5. The requirements of the following S117 Directions must be addressed in the amended planning proposal:

- S117 Direction 1.2 Rural Zones
- S117 Direction 1.5 Rural Lands
- S117 Direction 2.3 Heritage Conservation
- S117 Direction 3.4 Integrating Land Use and Transport
- S117 Direction 4.3 Flood Prone Land

6. Council is to provide additional information and undertake further assessment into the following matters in order to adequately justify the proposed outcomes of the planning proposal. The planning proposal is to be amended to reflect the outcomes of this work, is to be included with the planning proposal with exhibition purposes.

- flora and fauna
- traffic and infrastructure
- agricultural land use
- water management
- the social and economic impacts of the tourism proposal

7. Potential contamination of the land is to be investigated in accordance with State Environmental Planning Policy 55 – Remediation of Land, to ensure that the site is capable of supporting the proposed future land use. The planning proposal is to be amended to reflect the outcome of the investigation prior to the commencement of public exhibition.

8. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).

9. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- NSW Aboriginal Land Council
- Office of Environment and Heritage
- NSW Department of Primary Industries – Agriculture
- NSW Department of Primary Industries - Minerals and Petroleum
- Hunter Water Corporation
- NSW Rural Fire Service
- Transport for NSW - Roads and Maritime Services

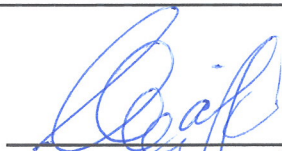
Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

10. Further to Condition 9 above, Council is to consult with the Commissioner of the NSW Rural Fire Service and, prior to undertaking community consultation, take into account any comments made and amend the planning proposal (if necessary) as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection.

11. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

12. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Signature:



Printed Name:

Neil McGaffin

Date:

8.5.12