

**Amendment to Cessnock LEP 2011 - Integrated Tourist Development Wine Country Drive
Golden Bear**

Proposal Title : **Amendment to Cessnock LEP 2011 - Integrated Tourist Development Wine Country Drive
Golden Bear**

Proposal Summary : **The Planning Proposal investigates whether the subject land should be rezoned from RU4
Primary Production Small Lots to SP3 Tourism under the Cessnock Local Environmental
Plan 2011. The subject land has an area of approximately 250 hectares.**

**The rezoning will permit the development of an integrated tourist development consisting of
the following:-**

- **Eighteen (18) hole golf course and clubhouse,**
- **300 tourist and visitor accommodation units, which includes a 50 room hotel,**
- **300 permanent residential dwellings, and**
- **function centre, neighbourhood shops, food and drink premises.**

**Subdivision requires development consent under clause 2.6 of the Cessnock Local
Environmental Plan 2011. There is no minimum subdivision requirement on the Lot Size Map
so it is possible to create development lots of any size provided it is consistent with the local
clause, which requires the site to be developed as an integrated tourist development.**

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

Proposal Details

Date Proposal Lodged with DOP : **27-Mar-2012** Date Proposal Uploaded to Public Website : **11-Apr-2012**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **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**

Gateway Determination

Decision Date : **01-Aug-2012** Gateway Determination : **Passed with Conditions**
Due Date of LEP : **08-Aug-2014**

Implementation

Implementation Start Date : **08-Aug-2012** Exhibition Duration : **30**

Agency consultation consistent
with recommendation :

Yes

If No, comment :

Consultation with Public Authorities

NSW Aboriginal Land Council

Council consulted the NSW Aboriginal Land Council on 29 November 2013. No response has been received. The Mindaribba Land Council previously gave its support to this development, known then as the "Golden Bear" (letter dated 12 July 2006) provided the necessary aboriginal archaeological assessments are undertaken at the development application stage. Council has complied with the Gateway determination, which required consultation with the Aboriginal Land Council.

Office of Environment and Heritage

The land is predominantly cleared and has been previously disturbed by grazing. Office of Environment and Heritage supports the flora and fauna assessment recommendations (RPS June 2013) which will be implemented by the Development Control Plan. Office of Environment and Heritage advises that a 7 part flora and fauna assessment will need to be submitted with the development application. If Council decides that a Species Impact Statement is required, Office of Environment and Heritage will have a concurrence role.

At the time of consultation, the Office of Environment and Heritage did not provide comments about the updated aboriginal cultural heritage assessment due to other competing high priority projects, but offered to provide further advice in 2014. Council did not follow up additional advice and resolved to support the rezoning on the basis that further aboriginal archaeological assessments will be undertaken at the development application stage. Council has complied with the requirements of the Gateway determination.

Department of Primary Industry - Agriculture

Department of Primary Industry advises that the development is not ideal from an agricultural perspective due to the area being lost from agricultural production, however it is not considered to be high quality agricultural grazing lands. The Department of Primary Industry recognises the potential economic benefit for the Region and advises Council to further consider limiting this type of development in the Vineyards District. The other issues raised about stormwater disposal and water quality will be resolved at the development application stage.

Trade & Investment - Resources & Energy

Trade & Investment raise no concerns about the planning proposal

Hunter Water Corporation

Hunter Water Corporation advises that it should be possible to connect the development to the existing reticulated water and sewer systems, subject to augmentation and upgrading of some pumping stations. If the development is progressed, the developer will need to submit a water and wastewater servicing strategy.

NSW Rural Fire Service

Rural Fire Service raised a number of bushfire issues (access, water supply, vegetation management and emergency evacuation plans) that need to be resolved at the development application stage.

Roads and Maritime Services

Roads and Maritime Services advises that Wine Country Drive is a classified State road and any new connections requires its concurrence at the development application stage. Roads and Maritime Services supports a combined four way roundabout to access this development as well as the Vintage development across the road. The four way roundabout should also provide a gateway entry

point to the vineyards. Roads and Maritime Services advises that the developers should agree on the proposed access point before the land is rezoned. However, this is not necessary at this stage, as the location of the four way intersection Will be resolved as part of preparing the Development Control Plan, which is required before any urban development is approved. The final road concept design and other traffic management issues will be resolved at the development application stage.

Agency Objections :

No

If Yes, comment :

Documentation consistent
with Gateway :

Yes

If No, comment :

1. Gateway Determination

A Gateway Determination was issued on 1 August 2012 to proceed with the rezoning for the Integrated Tourist Development, on the basis that the tourism component was consistent with the Lower Hunter Regional Strategy, and additional studies (ie, traffic and infrastructure, agricultural land use, water management, social and economic impacts) were required to justify the permanent residential component and to provide certainty regarding the integration. Council has complied with the requirements of the Gateway determination.

Zoning and Planning Controls

The Department (Ado Zanella and Trent Wink) attended meetings between Council and the proponent to assist in clarifying the requirements of the Gateway Determination. The Department reinforced the need to adequately justify the strategic merits of the proposals against the Lower Hunter Regional Strategy, Upper Hunter Strategic Regional Land Use Plan, Minister's S117 Directions and the outcomes of the Planning Assessment Commission report (PAC 2009). The Department stopped attending these meetings in October 2013 after resolving the zoning, permissible land uses and planning controls. The Department's record of resolved outcomes is attached. It was generally agreed that the proposed SP3 Tourism zone would permit the integrated tourism development without detracting from the rural character of the vineyards area. Council did not support adopting the R2 Low Density Residential for the residential component because it was not considered consistent with its existing residential hierarchy. The planning proposal explains that the components of the integrated tourist development are interdependent on each other and none of them can, or should, exist alone. The local clause ensures that the site is developed as an integrated tourist development by restricting the number of dwellings and tourist accommodation units and requires that the total number of permanent residential dwellings does not exceed the number of dwellings used for tourist and visitor accommodation.

Urban Release Area

The Infrastructure Planning & Coordination team advises that the site should be mapped as an urban release area based on cumulative impacts and contribute towards the provision of State infrastructure.

Development Control Plan

A Development Control Plan will need to be prepared and approved by Council prior to any development being approved in the urban release area.

Supporting studies

The Gateway determination required Council to prepare the following studies:- flora and fauna, bushfire risk, aboriginal archeology, contamination, transport and infrastructure, agricultural land use, water management, social and economic

assessments to determine the impacts of the proposal. Council peer reviewed the supporting studies and required additional information before publicly exhibiting the Planning Proposal. The studies were prepared on the basis that the 300 residential dwellings would be permanently occupied and no concession was given for a percentage of the residential dwellings which may be used for short term tourist accommodation. This was important to ensure that the supporting studies properly considered the social and economic impacts of the proposed development.

The Department has not engaged independent consultants to review the adequacy of the specialist reports, such as the social and economic assessment. The supporting studies justify the integrated tourist development, including the residential component. The social and economic assessment demonstrates that the development should positively contribute to tourism in the Pokolbin vineyards and provide employment opportunities. The assessment estimates that during construction, 600 full time equivalent jobs will be created. When completed, the integrated tourist development is expected to employ approximately 291 full time equivalent jobs plus positive multiplier effect. Council consulted with the office of Environment and Heritage, Roads and Maritime Services, Department of Primary Industry - Agriculture and NSW Rural Fire Service about the planning proposal, which included the supporting studies. There are no outstanding objections from any relevant Government agencies.

2. Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy recognises the Pokolbin vineyard and tourism precincts as a 'Specialised Centre'. The key function of a 'Specialised Centre' is to concentrate regionally significant economic activity and employment. An additional +1,600 jobs are targeted for Pokolbin Specialised Centre (which includes the subject site) over the period to 2031. It does not recognise the potential for additional residential housing in the vineyards area. It seeks to protect this area from residential encroachment, manage the competing opportunities of commercial vineyards versus tourism opportunities and support additional employment.

The integrated tourist development, including the residential component, is supported for the following reasons:-

- The development satisfies the sustainability criteria and the planning proposal demonstrates that the development will have a net community benefit, by providing housing options and employment opportunities. Council is satisfied that the development addresses the sustainability criteria. It is considered that the development adequately addresses the sustainability criteria and achieves the underlying intent of the Lower Hunter Regional Strategy by providing employment opportunities. The Department's assessment of the sustainability criteria is provided with the briefing note.
- The development will be managed as a community titled subdivision and the voluntary planning agreement between Council and the developer will ensure that the development provides all the required infrastructure at no additional cost to Council. The development will also be required to contribute towards the provision of State Infrastructure.
- Department of Primary Industry - Agriculture advises that the development is not ideal from an agricultural perspective due to the area being lost from agricultural production, however it is not considered to be high quality agricultural grazing lands. Also, the Peak Land Assessment (2013) advises that the land could not sustain a smallholding such as a vineyard in the present economic climate, and in competition with the more established enterprises in the district;

- The development proposes a third world championship golf course and associated tourist facilities within the vineyards district. The social and economic assessment demonstrates that the development should have a net community benefit and positively contribute to the existing tourism industry given the potential for linked trips;
- The development will provide employment opportunities during construction and operation. The Hill PDA economic and social assessment estimates that during construction 600 full time equivalent jobs will be created plus positive multiplier effect. When completed the integrated tourist development is expected to employ approximately 291 full time equivalent jobs plus positive multiplier effect;
- The residential component will provide lifestyle housing to meet a niche market, similar to the Vintage development across Wine Country Drive. It is not a standard residential development designed to meet local affordability or housing targets.
- Cessnock Local Government Area has multiple development fronts which more than adequately provides housing for aged, disabled or affordable housing. The Huntlee development, located approximately 2km to the north, will provide up to 7500 dwellings consisting of a range of housing options.

3. Upper Hunter Strategic Regional Land Use Plan

The subject site is identified as strategic agricultural land and located within the Viticulture Critical Industry Cluster under the Upper Hunter Strategic Land Use Plan. This land is identified for protection from non-agricultural activities due to its significance and councils are to protect this land through their Local Environmental Plans (Action 3.4). Department of Primary Industry - Agriculture advises that the development is not ideal from an agricultural perspective due to the area being lost from agricultural production, however it is not considered to be high quality agricultural grazing lands.

The relevant supporting chapters of the Upper Hunter Strategic Land Use Plan are:-

Chapter 5 'Economic Development and Employment' recognises the importance of the tourism industry to the Upper Hunter economy. The report states that building on existing industries, such as tourism, will ensure the continued resilience of the economy. The social and economic assessment demonstrates that the development should positively contribute to the existing tourism industry given the potential for linked trips.

Chapter 6 'Housing and Settlement' recognises that rural residential and lifestyle housing can contribute to the character, economy and social fabric of communities if it is appropriately located. The integrated tourist development will be marketed as a form of lifestyle housing to meet a niche market. It is not the standard residential development designed to meet local affordability or housing targets.

In conclusion, the integrated tourist development should not result in land use conflicts, loss of valuable viticulture lands or adverse environmental impacts. The proposed development has access to retail, medical, health services at Cessnock (10 minutes drive south) and Branxton (north) and further services will be available in the proposed Huntlee New Town development (5 minutes drive north). The integrated tourist development is considered consistent with the Upper Hunter Strategic Land Use Plan.

4. Cessnock City-Wide Settlement Strategy (CWSS)

The endorsed Cessnock City-Wide Settlement Strategy is consistent with the Lower Hunter Regional Strategy by identifying new urban release areas near existing settlements and urban centres. It recognises the need to protect highly valued agricultural lands, such as the Pokolbin vineyards, from residential

encroachment. It also highlights the importance of tourism to the Hunter Valley and raises concern about residential developments having the potential to detract from the character of this area that is primarily dedicated to wine making.

Council supports the integrated tourist development on the basis that it remains focused on tourism, it is suitably located and should not adversely impact on the character of the vineyards.

5. Vineyard District Community Vision

The vision reinforces the importance of maintaining the viticultural and rural character of the area. It recognises the need to prepare an agricultural lands assessment to identify and protect prime agricultural land, while allowing complementary land uses, such as accommodation and hospitality/retail, on non-prime agricultural lands. It highlights the importance of tourism to the survival and expansion of the viticulture industry in the Region.

The integrated tourist development, including international golf course, should further promote tourism and support the vineyards district. It has been demonstrated that the subject land has limited agricultural potential and both the proposed development and the adjacent Vintage development could provide a gateway entry point to the vineyards district along Wine Country Drive, which should enhance its visual attractiveness.

6. 2005 Warne Report, 2008 Croft Report, 2009 Charles Hill Report report and 2009 NSW Planning and Assessment Commission recommendation

A number of reports have been previously commissioned by Council and the Department to investigate the appropriateness of permitting permanent residential development within the Vineyards District. These are known as the 2005 Warne Report, 2008 Croft Report and 2009 Charles Hill Report.

The 2005 Warne Report was commissioned by Council and concluded that permanent residential development in the Vineyards District should not be considered "until an overall settlement hierarchy has been established and the implications for future demand for tourism accommodation in the Vineyards District are more fully understood." Council adopted the Warne Report and its recommendations on 5 July 2006.

The 2008 Croft Report was commissioned by Council and reviewed the strategic context of permanent residential development in the vineyards area. The review recommended that "Council not agree to additional residential development for permanent residents at the Golden Bear (this proposal), the Vintage Balance Land, or in the Vineyards District generally". Council did not adopt this report and resolved on 6 August 2008 to acknowledge that both The Vintage and the Golden Bear developments have significant strategic merit.

The Department sought independent advice from Charles Hill Planning, on the implications of permitting additional permanent residential development at the two sites.

The 2009 Charles Hill Report report concluded:

- . There would be negligible impact on potential loss of agricultural land or value. With proper planning and management, it is not anticipated there will be any significant adverse impacts on the rural character of the locality.
- . Any potential land use conflicts are capable of being managed through the establishment of adequate buffers.
- . Unlikely to set a precedent given the statutory and non statutory framework and any future proposal would need to be considered on its merits.

. Given the socio-economic status of the residents, the limitation on permanent residential accommodation, the expected permanent population within both developments, the need for any services is not anticipated.

2009 NSW Planning and Assessment Commission (PAC)

The former Minister for Planning, Kristina Keneally, requested advice from the Planning Assessment Commission about the Department's recommendation. The Planning Assessment Commission advised that approval of permanent residential dwellings would be inconsistent with the Lower Hunter Regional Strategy, which maintains a policy that land for urban release should be in close proximity to existing centres, transport, employment and services. The Planning Assessment Commission concluded that "the Department's recommendation that the Local Environmental Plan proceed is contrary to sub-regional strategies and to good planning practice and may prejudice the future viability of the vineyards area as a tourist area."

A Gateway determination was issued on 1 August 2012 for the Integrated Tourist Development, on the basis that the tourism component was consistent with the Lower Hunter Regional Strategy, and additional studies were required to justify the permanent residential component. As discussed above, the supporting studies have demonstrated that the development should support tourism in the Pokolbin vineyards, provide employment opportunities, utilise land with limited agricultural potential, enhance the visual amenity of the locality and provide a gateway entry point to the vineyards areas from the new Hunter Expressway along Wine Country Drive. The development satisfactorily addresses the sustainability criteria under the Lower Hunter Regional Strategy and the social and economic assessment advises that the development should have a net community benefit. It is considered that the integrated tourist development is consistent with the Gateway determination and sufficiently justifies the residential component.

7. The Vintage Development Proposal

The Vintage Development is located on the opposite side of Wine Country Drive from the proposed integrated tourist development. The Vintage development was originally approved in 1996, as an integrated tourism and residential development and consisted of 522 residential lots, 745 tourist accommodation units, 18-hole golf course, and a clubhouse, spa and recreation facilities. It is understood that only part of the tourist accommodation and most of the residential development has been constructed. A Gateway Determination was issued on 7 May 2013 to investigate the appropriateness of permitting an additional 410 dwellings, 40 rural residential allotments and 9 hole golf course extension. Council advises that it intends to publicly exhibit this planning proposal soon.

If the Department supports this rezoning as well as the Vintage expansion proposals, this will increase the total of dwellings from 522 to 1272 dwellings (up to 3300 residents) in this locality. This figure does not include other permanent residential dwellings existing in the vineyards area.

Council have been encouraged to look at the future of the vineyards more strategically, building on their work to date.

8. Hunter Expressway

The Hunter Expressway significantly improves travel times between Newcastle and Singleton. It also improves accessibility to the Hunter Valley vineyards, which should further support tourism in this locality. Cessnock and Singleton Councils recently received planning reform funding to strategically investigate the impacts and opportunities within the nearby area of Branxton/ Greta from the opening of the Hunter Expressway and the development of the Huntlee new town, which will

provide housing for a population of up to 21,000 people. It is considered that the Hunter Expressway should have positive benefits for tourism in the Hunter Valley and surrounds, including this site.

9. State Environmental Planning Policies

The draft Local Environmental Plan is consistent with relevant State Environmental Planning Policies.

State Environmental Planning Policy 55 Remediation of Land

Council is satisfied that the site is uncontaminated and suitable for the proposed urban uses. Coffey Geosciences previously investigated contamination of the site in 2006 and recent correspondence (6 June 2013) confirms that the recommendations made in the 2006 report remain applicable and the land is still considered to be suitable for the proposed uses.

State Environmental Planning Policy (Rural Lands) 2008

The integrated tourist development is considered consistent with the rural planning principles. Further consideration of the rural planning principles is provided in the assessment of the Minister's S117 Direction 1.5 Rural Lands below.

10. Minister's S117 Directions

The Gateway Determination required Council to address the following S117 Directions

Direction 1.2 Rural Zones

The draft Local Environmental Plan is inconsistent with this direction because it rezones land from RU4 Primary Production Small Lots to SP3 Tourism to accommodate the integrated tourist development. Council justifies the inconsistency by addressing the Lower Hunter Regional Strategy sustainability criteria and supports the development on the basis that it remains focused on tourism, it is suitability located and should not adversely impact on the vineyards. It is recommended that the Secretary's delegate approve this inconsistency on the basis that is justified by a study prepared in support of this planning proposal which gives consideration to the objectives of this direction.

Direction 1.5 Rural Lands

The draft Local Environmental Plan is considered consistent with the Rural Planning Principles and this direction. The proposed integrated tourist development provides lifestyle housing and an overall net community benefit. The Peak Land Assessment (2013) advised that the site is not prime agricultural land, and could not sustain a smallholding such as a vineyard in the present economic climate, and in competition with the more established enterprises in the district. The Department of Primary Industries - Agriculture advises that the subject land is not considered to be high quality agricultural grazing lands. The Hill PDA 2013 report recognises the potential stimulus from this development for Cessnock and Pokolbin community and businesses.

Direction 2.3 Heritage Conservation

The draft Local Environmental Plan is considered consistent with this direction. The site has been the subject of several archaeological surveys, discovering a diverse range of Aboriginal artefacts, sites, and potential subsurface deposits preserved in the relict alluvial terraces. The archaeological information from consultant reports has been mapped on the Concept Plan 2013, but will not be available to the public for reasons of security and cultural sensitivity.

The Office of Environment and Heritage does not provide advice about the

adequacy of the updated aboriginal archaeological assessment (March 2013) but advises that further assessment will be required at the development application stage. The Mindaribba Land Council previously gave its support to the Golden Bear development (letter dated 12 July 2006) provided the necessary aboriginal archaeological assessments were undertaken before the development commences. Council supports the rezoning on the basis that further aboriginal archaeological assessments will be undertaken at the development application stage.

Direction 3.1 Residential Zones

The draft Local Environmental Plan is consistent with this direction by providing lifestyle housing to meet a niche market. It is not a standard residential development designed to meet local affordability or housing targets. The development has appropriate access to infrastructure and services. It should have minimal impact on the environment and resource lands as confirmed by the Office of Environment and Heritage and Trade & Investment - Resources & Energy.

Direction 3.4 Integrating Land Use and Transport

The direction requires urban consolidation and the efficient use of public transport consistent with the aims and principles of Improving Transport Choice - Guidelines for planning and development (DUAP 2001) and The Right Place to do Business and Services – Planning Policy (DUAP 2001).

The draft Local Environmental Plan is inconsistent with this direction because the development is not within an established centre and provides 300 permanent residential dwellings in an isolated location. It is anticipated that the future residents will be less dependable on community services, facilities and public transport. The Hunter Expressway also improves vehicle access to the site and travel times from Newcastle and surrounds. It is recommended that the Secretary's delegate approve this inconsistency on the basis that is justified by a study prepared in support of this planning proposal which gives consideration to the objectives of this direction.

Direction 4.3 Flood Prone Land

The draft Local Environmental Plan is inconsistent with this direction because it rezones flood prone land SP3 Tourism. The flood prone land adjoins Black Creek, and is proposed for the golf course only. No dwellings or tourist accommodation units will be subject to flooding and will have direct access to Wine Country Drive. It is recommended that the Secretary's delegate approve this inconsistency on the basis that it is of minor significance.

Direction 4.4 Planning for Bushfire Protection

The draft Local Environmental Plan is consistent with this direction. The Rural Fire Service raised a number of bushfire issues which will be resolved at the development application stage.

Direction 5.1 Implementation of Regional Strategies

The draft Local Environmental Plan is consistent with the Lower Hunter Regional Strategy by delivering housing options, employment opportunities and environmental benefits. The Lower Hunter Regional Strategy does not identify this locality as a potential urban release area but Council justifies it by addressing the Lower Hunter Regional Strategy sustainability criteria and demonstrating that the development should have a net community benefit. Also, it is considered that the planning proposal achieves the overall intent of the Lower Hunter Regional Strategy.

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11. Lobbyist Code of Conduct

To date, all dealings with this Planning Proposal have adhered to the Lobbyist Code of Conduct. To the best of the knowledge of the regional team there have been no meetings with registered lobbyists.

12. Make the Plan

A Parliamentary Counsel Opinion was issued on 18 June 2014. Council was consulted in accordance with s59(1) and accepted the drafting of the planning proposal.

LEP Assessment

Date Received from RPA : **10-Feb-2014**

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP : **11-Apr-2014**

Determination Date :

Determination Decision :

Notification Date :