

24 November 2009

**Proposal to amend the Cessnock LEP 1989
To permit integrated tourism/residential development
In the Cessnock Vineyards District**

1. INTRODUCTION

On 29 October 2009, the Hon Kristina Keneally, MP, Minister for Planning requested the Planning Assessment Commission to advise on the reasonableness of a report of the Department of Planning recommending amendments to Cessnock Local Environmental Plan (CLEP) 1989.

The purpose of the LEP amendments is to permit permanent residential development as part of two separate but adjacent golf course and tourist accommodation developments in the Cessnock Vineyards District. The separate developments are known as the Golden Bear and VBL (Vintage Balance Lands), respectively.

The Commission consisted of Ms Donna Campbell, Ms Janet Thomson and Mr Garry Payne (members of the PAC). Ms Thomson chaired the Commission.

1.1 Site Visit and Department Briefing

The Commission was briefed by Mr Garry Freeland of the Department on 9 November 2009 and visited the sites and their surrounding areas on 11 November 2009.

1.2 The Proposals

Scope of request for advice from Minister

The tourist elements of the Golden Bear proposal are allowed with development consent under the LEP but the residential component of the proposal is currently prohibited under the LEP. The Minister has requested the Commission's advice on a proposed amendment to the LEP to remove the prohibition on the residential component.

The Minister has requested similar advice in relation the VBL site. A golf course and tourist accommodation development already exists on the Vintage site and approval was also given for permanent residential development associated with this development under clause 17 of the LEP. There is now a proposal to extend the Vintage development (VBL site), including the permanent residential element. Extension of the tourism development is allowed with consent under the LEP but extension of the residential element requires an LEP amendment because the extended site is outside the scope of clause 17.

The proposed extended residential development on the VBL site includes 200 seniors housing units.

For the purposes of this review, the Commission has assumed that the LEP proposals are for simple map amendments to allow the application of clause 17 of the Cessnock LEP to the whole of the VBL and Golden Bear sites. At this stage of the proposals, no draft LEPs has been provided to the Department or the Commission.

Golden Bear

The site is currently vacant land and the proposed development includes a golf course, country club, 250 tourist accommodation units, a 50 room 5 star hotel and 300 residential dwellings. It is proposed that the 300 residential dwellings will be on separate title and that the dwellings may be permanently occupied and not just used as temporary accommodation for tourists.

The proposed golf course and associated tourist development is allowed under the current planning controls but the proposed residential development is prohibited.

Vintage Balance Lands (VBL)

The proposal is to extend an existing development known as “The Vintage”, which received its main approvals in 1986 and 1996. As a result of these approvals and subsequent consents granted by the Council, there is currently approval for 445 tourist accommodation units and 300 tourist “keys”, a golf course, club house and recreation facilities and 522 residential dwellings on separate titles.

The golf course, club house and recreation facilities have been constructed and are currently operating. To date, only some of the tourist accommodation and residential development has been built. The Department’s report notes that of the approved 445 tourist accommodation units, only 44 have been constructed with approval given for the construction of a further 35. Of the 300 tourist “keys”, the first 100 are currently under construction. Of the 522 lots approved for residential dwellings on separate allotments, some 305 lots have been created and some 130 dwellings have been constructed or have been approved for construction on those lots.

The proposal is to increase the number of lots for permanent residential dwellings to almost 1000, comprising 250 additional dwellings on separate lots and 200 senior housing units.

The proponent has advised the Department that it has legal advice that the seniors housing units may be approved under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 without the need to amend the LEP.

1.3 The Background

Both the VBL and Golden Bear sites are zoned 1(v) Rural (Vineyards) in the Cessnock LEP 1989. Tourist development is a permissible use with consent. Dwelling houses are permissible with council consent but there is a 40ha minimum lot size within the zone. In simple terms, the current zoning does not allow the construction of permanent residential development on sites less than 40ha as proposed by Golden Bear and VBL. The remainder of the proposals are permissible under the current zoning of the sites.

The existing approval for the subdivision and construction of the permanent residential component of the Vintage development was granted under clause 17(2) of the Cessnock LEP 1989, which provides that “Council may grant consent to the subdivision of land and the erection of dwelling-houses, villas, duplexes and the like on the allotments so created where the subdivision is, in the opinion of the Council, required as an integral part of a major tourist recreation facility.”

Clause 17 does not apply to the Golden Bear proposal or to the proposed Vintage extension. It is expressly limited to the land the subject of the existing Vintage approval. Hence both proposals require amendment to the Cessnock LEP 1989 to allow approval to be granted to the subdivision and construction of the permanent residential components.

Before submitting the proposals to the Department, Cessnock City Council commissioned two reviews on the appropriateness of permanent residential development as part of tourist development in the Vineyards District.

The first report known as the “2005 Synergy Report” recommended 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.”

The second report known as “2008 Croft Report” was commissioned to undertake a strategic review of permanent residential development focusing on the Golden Bear and VBL sites. The review also considered the wider context of the Vineyards District. The key recommendation of this report was “Council not agree to additional residential development for permanent residents in the Vintage and Golden Bear lands (and the Vineyards District generally).”

Notwithstanding these recommendations, Council proceeded to seek Departmental approval to prepare amendments to the Cessnock LEP 1989 to enable permanent residential development as an “integrated” part of the tourist proposals.

The Department then sought further independent advice from Charles Hill Planning on the implications of extending the provisions of Clause 17 of the Cessnock LEP to enable the additional permanent residential component of the VBL and that of the Golden Bear to be developed. The terms of reference for the independent advice were to assess:

- Impact on agricultural value, rural character and potential loss of agricultural land;
- Potential land use conflict;
- Potential precedent for other similar proposals; and
- Needs of residents for access to infrastructure.

The report concluded that if subdivision for dwelling houses were permitted:

- 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 to be 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.

1.4 Department’s Report and recommendations

The report by the Department of Planning noted the independent assessment prepared by Charles Hill Planning and recommended as follows:

1. The Director General agree to the draft LEPs for both the Vintage Balance Lands and the Golden Bear proposals proceeding, for the reasons set out in the report, and subject to a restriction on the number of permanent residential dwellings as set out below, and subject to a suitable mechanism being developed to implement the proposed limits and to ensure that permanent residential development occurs only in conjunction with the proposed tourist development.

Limits on permanent residential development

Vintage Balance Lands – an additional 250 dwellings (to be linked to the proposed 300 tourist “keys” being provided).

Golden Bear – 300 dwellings (based on the separate 250 short stay apartments/villas and 50 room hotel to be provided).

2. Consider whether the Golden Bear and Vintage Balance Lands are determined under Part 3A in order to address the issues associated with the link between permanent and tourist accommodation.

2 STRATEGIC CONTEXT

The key planning instruments and strategies governing the future development and land use planning of the area are the Environmental Planning and Assessment Act 1979, Lower Hunter Regional Strategy, the Cessnock Local Environmental Plan 1989 and the City Wide Settlement Strategy. Other planning instrument and policy include State Environmental Planning Policy (Rural Lands 2008) and Cessnock Development Control Plan 2006.

These documents maintain a consistent set of planning principles to guide development in the Vineyards District. The key principle is to maintain the rural and viticultural character of the Vineyards District. Other principles include:

- Any new residential development should be located in close proximity to identified centres and employment area so as to maximise access to services and employment opportunities;
- Any draft local environmental plan should be consistent with the regional strategy;
- Minimise conflict between viticultural and non-viticultural land uses;
- Enable continued rural use of land which is complementary to the viticultural character of the land; and
- Encourage tourist development that is consistent with the viticultural character of the land.

3. THE COMMISSION’S COMMENTS

In reviewing the documents supporting the proposed permanent residential development within the two proposed tourist projects and the various planning instruments, strategies and policies and as a result of the site inspection the Commission notes that:

1. The proposed LEPs relate solely to the residential component of the development and not to the tourist components that are allowed with consent under the current planning controls. As a result the PAC has only addressed this aspect of the proposals.

2. The proposed sites are zoned 1(v) zone under the current planning controls and RU1 zone in the draft CLEP2009 that will replace the current planning controls. Tourist and visitor accommodation is permissible in both these zones.
3. Subdivision for residential dwellings below 40ha in 1(v) zone is prohibited on the proposed sites under CLEP 1989 and in the corresponding provisions in draft CLEP 2009. Clause 4.2B of the draft CLEP2009 provides that land with this zoning should not be fragmented by subdivisions that would create additional dwelling entitlements.
4. The Council approved the existing permanent residential development for the Vintage development before the Lower Hunter Regional Strategy was made on the basis that the subdivision was required as an integral part of a major tourist recreation facility.
5. The existing Vintage development has approval for 522 residential dwellings and 785 tourist units/ "tourist keys".
6. Residential development on the Vintage site appears to be outstripping the tourist development. The majority of tourist accommodation is yet to be developed. Of the 522 approved residential dwellings, about 130 have been built or approved for construction. This represents a development rate of 10 dwellings per year. Only 44 of the 445 tourist units have been constructed to date and there is an approval to construct a further 35. None of the 300 "tourist keys" have been completed. 100 are currently under construction.
7. At the current rate of take up there is sufficient residential land in existing approvals to last for several years in the area.
8. Approval of the VBL and Golden Bear proposals would increase the potential residential dwellings in this area to 1072 plus 200 senior residential dwellings and 1085 tourist units.
9. Departmental advice indicated that Synergy undertook consultation with Government Agencies in relation to the proposals and DIPNR (now DoP), DEC (now DECCW) and DPI (now Industry and Investment NSW) all raised concerns.
10. The 2008 Croft Report recommended a Vineyard Tourism and Development Strategy be prepared by Council so as to assist the orderly development of the Vineyards District. Such a strategy is yet to be available.
11. The Golden Bear and Vintage sites are located adjacent to each other at the northern entrance to the Vineyards District. The proposed residential development on the two sites will not assist in the development of an iconic gateway to the Wine District, which is characterised as rural and viticultural.
12. Notwithstanding the claim that the proposed residential development would have minimum impact on land value, the 2005 Synergy report notes that between June 2004 and Feb 2005, "Council received 7 representations from land holders in the Vineyards District seeking a review of the planning provisions as they relate to permanent occupation in and around various tourist resorts either existing or proposed in the area." Given these past interests, the Commission is not convinced that approval of permanent residential component in the two proposals would not increase the value of agricultural land in the area to the detriment of agriculture and viticulture.

13. Approval of residential development as proposed on these two sites is inconsistent with the Lower Hunter Sub Regional Strategy which maintains a policy that land for urban release should be in close proximity to existing centres, transport, employment and services. The two sites are not among the sites identified as new urban release areas under the Strategy. If approved, these proposals will also impact on the release of residential areas identified in the Strategy.
14. The 2008 Croft Report questioned the claimed economic benefits of the proposed development having regard to the potential cost of providing services to residents in these areas. Although the proponents claim that the population profile and economic status of future residents mean they would require minimum services, there is no evidence to support this and the scale of the residential development proposed would seem likely to produce a demand for services such as schools and shops. If the entire developments were to proceed there could be a permanent residential population on the two sites of up to 3000. It would be expected that such a population level would place a demand for services in the area.
15. The Commission considers that permitting residential accommodation on these sites would not implement the basic sustainability principles contained in the Lower Hunter Sub Regional Strategy. There is no public transport in the area and any development would be entirely dependant on the car. There is a large amount of appropriately located land available in the Cessnock area for residential development which is located adjacent to existing settlements. For these reasons it is also considered that the area is not suitable for seniors development
16. The proponents' major arguments in favour of the proposed residential development are that the tourist developments proposed are not economically viable unless financed by the sale of residential subdivisions. However, the Commission considers that residential development that is unacceptable on planning grounds cannot be made acceptable simply because it is required to finance tourist development. Furthermore, the possible adverse impacts on the viability of the vineyards area as a result of the proposals would in the long run outweigh any economic gains from the approval of the development. Residential development of the scale proposed would have adverse visual and amenity impacts on the very nature of the vineyard area and detracts from its tourist potential.

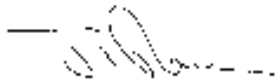
4. CONCLUSION

The Commission has concluded that the recommendations in the Department of Planning's report that the LEPs proceed is contrary to sub regional planning strategies and to good planning practice and may prejudice the future viability of the vineyards area as a tourist area.

The Commission notes that the Department is reviewing the Lower Hunter Sub regional Strategy and that this review is to be completed by 2011. The issue of the development of tourist facilities in the vineyard area should be addressed by both the Department and Council and a strategy developed to protect the intrinsic attributes of the area while enabling the development of tourist facilities in appropriate locations. This approach is preferable to considering the issue in individual Part 3A applications as raised in the Department's report.

The Commission further notes that the issue of residential land releases in the area needs to be addressed in view of the changes in the status of some areas identified for development in the current strategy. There is a need to develop a staging process for the release of land for residential development in this area, especially in the context of the demand for land in the Cessnock area.

In relation to the proposed seniors housing on the VBL site, the Commission questions whether it would be allowed under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The site is within a zone identified principally for rural uses and adjoins land within that zone and would therefore appear to be excluded from the Policy under clause 4. In any event, the Commission considers the site would be unsuitable for seniors housing for the same reasons that it is not suitable for other residential development.



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