



Contact: Michael Leavey
Phone: (02) 4904 2700
Fax: (02) 4904 2701
Email: Michael.Leavey@planning.nsw.gov.au
Postal: PO Box 1226, Newcastle NSW 2300

Our ref: PP_2012_CESSN_002_00 (12/05857)

Ms Lea Rosser
General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Dear Ms Rosser,

Planning proposal to amend Schedule 1 of Cessnock LEP 2011 to include additional permitted uses on Lots 1-4 DP 86951 Wine Country Drive, Pokolbin, to facilitate a tourist and residential development

I am writing in response to your Council's letter requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend Schedule 1 of Cessnock Local Environmental Plan 2011 to include additional permitted uses on Lots 1-4 DP 86951 Wine Country Drive, Pokolbin, to facilitate a tourist and residential development.

As delegate of the Minister for Planning and Infrastructure, I have now determined that the planning proposal should proceed subject to the conditions in the attached Gateway Determination.

In making this Determination I note that the tourist component of the proposal is consistent with the Lower Hunter Regional Strategy which identifies the Pokolbin area as a specialised centre for tourist growth. Therefore, the intended outcome to achieve the tourism objectives for the site is supported. However in proceeding with the proposal there is additional work required to support the permanent residential component. The proposal has been promoted as an 'integrated tourism and residential proposal'. A description of this 'integration' needs to be included in the public exhibition material.

The Planning Assessment Commission (PAC) in considering the permanent residential component in 2009 did not support the proposal and suggested that it may prejudice the future viability of the vineyards area as a tourist development. In particular the PAC report noted that the residential component would have adverse visual and amenity impacts on the nature of the vineyard area and detract from its tourist potential. The outcomes of the PAC assessment need to be addressed and included within the public exhibition material.

Use of Schedule 1

The use of Schedule 1 to achieve the proposed outcome in this case is not supported because it does not provide sufficient clarity, certainty and transparency regarding the future use of the land. The development of tourist facilities and residential accommodation is not consistent with the objectives and outcomes envisaged within the RU4 Primary Production Small Lots Zone, and therefore Council is to rezone the land to reflect the intended purpose. Council is encouraged to consider existing Standard Instrument zones, such as the SP3 Tourist zone for the tourist component and R2 Low Density Residential for the residential component. In doing so, Council is to include information in the planning proposal explaining any local provisions relevant to supporting the selected zone/s.

State Environmental Planning Policies

It is noted that the requirements of State Environmental Planning Policy 55 – Remediation of Land have not been addressed and that the Department cannot at this stage be satisfied that the land is suitable for the proposed use. Potential contamination of the land is to be investigated in accordance with the SEPP. The planning proposal is to be amended to reflect the outcome of the investigation prior to the commencement of public exhibition.

S117 Directions

Council needs to ensure that the requirements of S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land, 5.1 Implementation of Regional Strategies and 6.3 Site Specific Provisions are addressed in the public exhibition material.

It is noted that the Aboriginal Heritage Study is not consistent with the current guidelines on assessing Aboriginal cultural heritage and is therefore to be updated. Council is to undertake further investigation into the existence of artefacts on the site. In doing so, Council is to consult with the Aboriginal Land Council on the matter and address any inconsistencies with the requirements of S117 Direction 2.3 Heritage Conservation. Any relevant outcomes from this work needs to be included within the public exhibition material.

In regards to the planning proposal's inconsistencies with S117 Direction 4.4 Planning for Bushfire Protection, 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 the Local Planning Direction. In addition it is noted that Council's Bushfire Risk Assessment is not consistent with the current Planning for Bushfire Protection guidelines and therefore is to be updated and included with the exhibition material.

Additional Information Required

Council is to provide additional information within the public exhibition material into the following matters:

- flora and fauna
- bushfire risk
- aboriginal archaeology
- traffic and infrastructure
- agricultural land use
- water management
- the social and economic impacts of the proposal

This work is to be undertaken to suitably identify all impacts that may result from the proposed development.

Timeframe

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway Determination. Council is to undertake the additional work as required by the Gateway Determination and provide a copy of the revised planning proposal to the Department's Regional Team prior to the commencement of community consultation. Council's request for the Department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Department Contact

Should you have any queries in regard to this matter, please contact Michael Leavey of the Regional Office of the Department on 02 4904 2700.

SHaddad

Yours sincerely,
Sam Haddad
Director-General

1/8/2012.

Gateway Determination

Planning Proposal (Department Ref: PP_2012_CESSN_002_00): to amend Schedule 1 of Cessnock LEP 2011 to include additional permitted uses on Lots 1-4 DP 86951 Wine Country Drive, Pokolbin, to facilitate a tourist and residential development.

I, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to Schedule 1 of Cessnock Local Environmental Plan 2011 to include additional permitted uses on Lots 1-4 DP 86951 Wine Country Drive, Pokolbin, to facilitate a tourist and residential development should proceed subject to the following conditions:

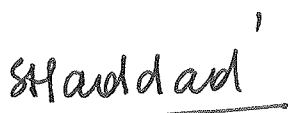
1. The use of Schedule 1 is not supported because it does not provide sufficient clarity, certainty and transparency regarding the future use of the land. The development of tourist facilities and residential accommodation is not consistent with the objectives and outcomes envisaged within the RU4 Primary Production Small Lots Zone, and therefore Council is to rezone the land to reflect the intended purpose. Council is encouraged to consider existing Standard Instrument zones, such as the SP3 Tourist zone for the tourist component and R2 Low Density Residential for the residential component. In doing so, Council is to include information in the planning proposal explaining any local provisions required to support the selected zone/s.
2. Council is to undertake a site investigation into potential contamination of the land in accordance with SEPP 55 – Remediation of Land to ensure the land 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.
3. Council needs to ensure that the requirements of the following S117 Directions are addressed in the public exhibition material:
 - 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 3.1 Residential Zones
 - S117 Direction 4.3 Flood Prone Land
 - S117 Direction 4.4 Planning for Bushfire Protection
 - S117 Direction 5.1 Implementation of Regional Strategies
4. Council is to provide additional information within the public exhibition material regarding the following matters to suitably identify all impacts that may result from the proposed development:
 - flora and fauna
 - bushfire risk
 - aboriginal archaeology
 - traffic and infrastructure
 - agricultural land use
 - water management
 - the social and economic impacts of the proposal

5. 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)*.
6. 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.

7. Further to Condition 6 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.
8. Council should amend the planning proposal to reflect the requirements of the Gateway determination. Council needs to provide a copy of the revised proposal to the Department's Regional Team prior to the commencement of exhibition.
9. 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).
10. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 1st day of August 2012.


Sam Haddad
Director-General
Delegate of the Minister for Planning and Infrastructure