

Amend Cessnock LEP 2011 Deferred Matters

Proposal Title : **Amend Cessnock LEP 2011 Deferred Matters**

Proposal Summary : **Addresses Deferred Matter land zoning in sensitive rural areas, infrastructure zoning, heritage listing including mapping and minimum lot sizes in RU2 Rural Landscape and E2 Environmental Conservation Zones**

PP Number : **PP_2013_CESSN_007_00** Dop File No : **13/16565**

Proposal Details

Date Planning Proposal Received : **01-Oct-2013** LGA covered : **Cessnock**

Region : **Hunter** RPA : **Cessnock City Council**

State Electorate : **CESSNOCK** Section of the Act : **33(A) - Transitional Matter**

LEP Type : **Housekeeping**

Location Details

Street : **Various**

Suburb : **Various** City : **Cessnock** Postcode : **various**

Land Parcel : **Extensive Deferred Matters land outlined red in the PP**

DoP Planning Officer Contact Details

Contact Name : **Ken Phelan**

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RPA Contact Details

Contact Name : **Scott Christie**

Contact Number : **0249934168**

Contact Email : **scott.christie@cessnock.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : Release Area Name :

Regional / Sub Regional Strategy : **Lower Hunter Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes : **This Planning Proposal (PP) translates Deferred Matter land from the Cessnock Local Environmental Plan 1989 zones to NSW Standard Instrument zones in the comprehensive Cessnock LEP 2011**

External Supporting Notes : **Cessnock Council report EE68/2013 of 18 September, 2013 refers.**

Council states that the 'Planning Proposal is relevant to land described as "Deferred Matter" in the suburbs of Mulbring, Brunkerville, Mount Vincent, Richmond Vale, Buchanan, Stockrington, Black Hill, Buttai, Wollombi, Cedar Creek, Sweetmans Creek, Paynes Crossing, Laguna and Bucketty'.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

- To achieve translation of all LGA land into the Standard Instrument LEP
- To resolve Deferred Matters

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment :

- Transition deferred matter areas to Standard Instrument zones and supersede Cessnock LEP 1989 for the deferred areas such that the whole LGA becomes subject to the single planning instrument, CLEP 2011.
- Amend Maps for Land Use Zone, Minimum Lot Size and Heritage across the Mulbring and Wollombi divisions of the LGA.
- Land Zone Map - Remove the "Deferred Matter" status of the subject land and instead zone the land RU2 - Rural Landscape, E2 - Environmental Conservation and SP2 - Infrastructure as shown on the supporting maps.
- Lot Size Map - Set a minimum lot size of 40 ha for the RU2 - Rural Landscape zone and 80ha for the E2 - Environmental Conservation zone as shown on the supporting maps.
- Heritage Map - Provide for the full extent of heritage listing for affected properties in CLEP Schedule 5 and the Wollombi Heritage Conservation Area as shown on the supporting maps.

The proposal also seeks to introduce a local provision for the RU2 Rural Landscape Zone covering:

- a) compatibility with rural and scenic character
- b) provision of utilities and on-site waste disposal and water harvesting for domestic and fire-fighting uses.
- c) no unreasonable demand being generated for the uneconomic provision of public facilities or services.
- d) no adverse impact on water quality or quantity within the catchment.
- e) Maximising the retention of vegetation consistent with rural character when clearing is being proposed
- f) Essential buildings are to be sited above the 1% flood level, designed to withstand flood pressures and
- g) be provided with all-weather flood-free access.
- h) Siting and designing buildings to minimise disturbance to the (natural) landscape due to clearing, earthworks and access roads.
- i) building not intruding into the skyline as viewed from roads or other public places.

However the above planning and design criteria would be better published as a Development Control Plan chapter. In the DCP expressions used could be adequately defined and the requirements better specified and illustrated to show good, and poor, practice.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions
- 3.6 Shooting Ranges

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

- SEPP No 6—Number of Storeys in a Building
- SEPP No 15—Rural Landsharing Communities
- SEPP No 21—Caravan Parks
- SEPP No 22—Shops and Commercial Premises
- SEPP No 30—Intensive Agriculture
- SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)
- SEPP No 33—Hazardous and Offensive Development
- SEPP No 36—Manufactured Home Estates
- SEPP No 44—Koala Habitat Protection
- SEPP No 50—Canal Estate Development
- SEPP No 55—Remediation of Land
- SEPP No 62—Sustainable Aquaculture
- SEPP No 64—Advertising and Signage

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SEPP No 65—Design Quality of Residential Flat Development
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Housing for Seniors or People with a Disability) 2004
SEPP (Infrastructure) 2007
SEPP (Major Projects) 2005
SEPP (Mining, Petroleum Production and Extractive Industries)
2007
SEPP (Rural Lands) 2008
SEPP (Temporary Structures and Places of Public Entertainment)
2007
SEPP (Affordable Rental Housing) 2009

e) List any other matters that need to be considered :

Hunter REP (Heritage), 1989.
SEPP State and Regional Development, 2011.
Cessnock Citywide Settlement Strategy, 2003 (endorsed).

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Maps are provided as below:

- Deferred Matter red-line area- Mulbring
- Deferred Matter red-line area- Wollombi
- Wollombi Heritage Conservation Area- boundary in CLEP 2011 and extended Wollombi Conservation Area boundary by inclusion of Deferred Matter land

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council's submitted time line shows submission to DP&I to make the LEP in July, 2014.

Community Consultation Details:

Council proposes to undertake community consultation in accordance with Council's guidelines by:

- Advertising the Planning Proposal in the local newspaper and on Council's website at the start of the exhibition period.
- Exhibiting the Planning Proposal for a period of twenty eight (28) days from the date it appears in the local newspaper and on Council's website.
- Notifying the owners of the exhibition of the Planning Proposal.

During the exhibition period, the Planning Proposal, gateway determination and other relevant documentation will be available on Council's website as well as at administration centre and libraries.

The scope of the planning proposal would normally indicate a 14 day exhibition under Departmental guidelines. However due to the scale of the amendment and its history an extended exhibition period is supported.

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Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

Cessnock LEP, 2011 came into effect on 23 December, 2011 containing a Deferred Matter which this PP seeks to remove and thereby transition the affected land areas out of CLEP, 1989 and into CLEP 2011

Assessment Criteria

Need for planning
proposal :

Extensive areas of the Cessnock LGA remain subject to CLEP 1989 and so stakeholders are working with two LEP's each covering large tracts of the LGA. This proposal transitions the Deferred Matter land to Cessnock LEP, 2011 thereby superceding CLEP 1989 to achieve a single LEP for the whole LGA.

Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY (LHRS)

The proposal addresses land within the Green Corridor identified within the LHRS

The LHRS states:

.....
PROTECTION OF GREEN CORRIDORS

The NSW Government is in the process of securing a consistent ownership and management regime for the significant green corridors of the Region. The companion planning document to this Regional Strategy, the Regional Conservation Plan, has identified a reserve expansion proposal that will allow the creation of new reserves under the National Parks and Wildlife Act 1974 so that these green corridors are managed for their biodiversity and conservation values.

(LHRS, p.33)

ACTIONS

• Local environmental plans in the Watagans to Stockton Corridor (including the foreshores of Port Stephens) and the Wallarah Peninsula are to provide for the ongoing role of biodiversity corridor and inter-urban break. (LHRS, p.34)

.....

At the LHRS mapping scale the biodiversity status of land is unclear. LHRS cites the Lower Hunter Regional Conservation Plan (LHRCP) so mapping in the latter was used in identifying land with biodiversity values affected by the proposal.

Some Deferred Matter areas transitioned by the proposal involve flora reserves mapped in the Lower Hunter Regional Conservation Plan. Accordingly it is recommended that the proposal be referred to the Office of Environment and Heritage for advice.

Consistency with the LHRS in this regard will be determined after exhibition and consultation.

The LHRS states in relation to mineral resources:

'• Land use change in the vicinity of mineral resources should be compatible with continued access to the resource.'

Council states that the PP does not seek to place new restrictions on access to mineral resources. This is considered below under SEPP (Mining, Petroleum Production and Extractive Industries) 2007.

HERITAGE

State Heritage Register Items within the Deferred Matter boundary include the Great North Road (GNR) between Mt Manning and Wollombi (SHR:01789). It is noted that this section of the road is mapped and included in the LEP Schedule 5- Heritage.

Hunter Regional Environmental Plan (Heritage), 1989

The Hunter REP (Heritage) is repealed by Cessnock LEP 2011 however remains in place for the deferred land. The REP will be repealed for this land when the Planning Proposal is finalised and deferred matter is resolved.

As well as the linear GNR heritage item, there is a number of heritage properties and places mapped in the proposal but which are not identified by their Schedule 5 reference number as per CLEP 2011.

Heritage item reference numbers should be added to the mapping to aid property identification as well as cross-referencing between mapping and Schedule 5 addresses and real property descriptions.

HREP Heritage Schedule 5:

This schedule identifies a Heritage Conservation Areas at Wollombi within the Deferred Matter.

The proposal includes extensions to the Wollombi Conservation Area in mapping and the Conservation Area is already listed in CLEP Schedule 5 which references the mapping.

Council should include the CLEP Schedule 5 reference numbers for heritage items and conservation areas on the heritage mapping. The beige colour-code of individual heritage items should be explained in the map legend.

CESSNOCK CITY-WIDE SETTLEMENT STRATEGY

The Cessnock City Wide Settlement Strategy (CWSS) was endorsed by the Department in 2003. The strategy identified environmentally constrained land, for example in the Wollombi Valley, which is the subject of rezoning in this proposal.

'The CWSS (2003) sets future direction for population growth throughout the Cessnock LGA for the next 10 years, 'captures' land for closer residential settlement beyond the 10 year timeframe, provides the basis for new planning policy for rural tourism and the foundation for sustainable planning policy which balances growth with the natural, scenic and cultural assets of the LGA'.
(Cessnock City Council website)

The CWSS 2010 updates CWSS 2003 (endorsed) by transitioning areas identified. The endorsed CWSS 2003 states that in Brunkerville (Mulbring Valley) and Wollombi Valley rezonings from 1(a) Rural A under CLEP 1989 to RU2 Rural Landscape will be required to be justified by local studies. These studies are not presented in or cited by the proposal and may not have been undertaken.

Council should exhibit any relevant local biodiversity/ natural heritage studies underpinning the proposal and a statement providing a clear line-of-sight between the provisions in the endorsed CWSS 2003 and the proposal.

With this the proposal will be consistent with the endorsed CWSS.

RELATIONSHIP BETWEEN THE CESSNOCK LEP, 1989 AND THE PROPOSAL (CESSNOCK LEP, 2011-DEFERRED MATTER)

A comparative land use matrix would be useful to show land uses that are permissible without consent, permissible only with consent, and, prohibited uses across the zones of CLEP 1989 and the proposed CLEP 2011 (Deferred Matter) zones.

STATE ENVIRONMENTAL PLANNING POLICIES

The proposal is consistent, or not inconsistent, with all the SEPP's identified by Council. Key SEPP's are discussed below.

SEPP (Infrastructure) 2007

Small sections of road and rail infrastructure are zoned SP2 by the proposal. Infrastructure asset owners should be notified of the proposal's exhibition. The proposal is consistent with this SEPP.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

The Planning Proposal does not propose to change zoning that would alter permissibility of mining on the subject lands.

While some areas in the proposal are to transition from a rural zone to the E2 Environmental Conservation Zone where mining is prohibited, the SEPP Clause 7(1)(b)(i) permits mining on any land where agriculture is permissible. Extensive agriculture is permissible within the E2 zone and hence so is mining.

The PP is consistent with this SEPP.

SEPP (Rural Lands) 2008

A relevant objective of this SEPP lies in:

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

As the endorsed Cessnock City-Wide Settlement Strategy identified environmentally constrained land in the Wollombi Valley, it should be demonstrated that the proposal is consistent with the CWSS by a line-of-sight statement linking the CWSS provisions with those of the proposal.

Section 117 Directions

The proposal is consistent, or not inconsistent, with all the S117 Directions identified by Council. Key S117 Directions are discussed below.

S117 Direction 1.2 Rural Zones

It is not proposed to amend the zoning of any land currently affected by a rural zone to an urban zone or provide for an increase in development density.

It is considered that the Planning Proposal is consistent with this Direction.

S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries

Details are discussed under the SEPP Mining above.

The proposal is consistent with this Direction.

S117 Direction 1.5 Rural Lands

This Direction aims to protect rural land productivity and facilitates economic development of rural land for compatible rural activities. The proposal does not seek to alter the zoning provisions. The proposal is consistent with this Direction.

S117 Direction 2.1 Environment Protection Zones

The proposal is consistent with this Direction in that it contains provisions that protect environmentally sensitive land. Land having environmental conservation value is currently covered by CLEP 1898 Clause 42 which references the Cessnock Development Control Plan 2010. It is unclear whether the deferred land is affected by Clause 42 and therefore whether the planning proposal reduces the level of protection of environmentally sensitive land. Council is requested to clarify this matter for the purposes of Clause 5.

S117 Direction 2.3 Heritage Conservation

It is recommended that the Council explicitly list in the proposal and map all items from the NSW Heritage Register. With these actions the proposal is consistent with this Direction.

S117 Direction 5.1 Implementation of Regional Strategies

The Lower Hunter Regional Conservation Plan (RCP), December, 2009 states:

'2.5 Land-use planning system context

The LHRS, accompanied by this RCP, is intended to guide local level strategic planning within the Lower Hunter. All new LEPs will be prepared in accordance with a direction

made under Section 117 of the Environmental Planning and Assessment Act 1979 (EP&A Act). Section 117 enables the Minister for Planning to direct the content of an LEP, including an outline of matters of environmental planning significance, that councils must consider when preparing the local provisions of their LEPs'.

Land in this proposal is located within sections of the Watagans to Port Stephens Green Corridor as identified by the RCP.

Council should clarify, as part of the Planning Proposal the relationship between the proposed zonings and the RCP objectives and recommendations.

6.1 Approval and Referral Requirements

The proposal does not introduce ministerial concurrence, consultation or referral requirements for development applications or identify any development as designated development.

The proposal is consistent with this Direction.

6.3 Site Specific provisions

The Planning Proposal seeks to introduce a new local clause that applies potentially additional requirements on development within the RU2 Rural Landscape zone. As such the PP is inconsistent with this direction. The intended effect of this clause can be delivered through a development control plan or future work that differentiates sensitive areas of the RU2 rural Landscape zone for the remainder. It is not appropriate that these additional requirements be applied across the LGA via a zone. The inclusion of this clause and inconsistency with the direction is not supported.

Environmental social
economic impacts :

Environmental Impacts

Council states on its website:

'Land that was the subject of an Environmentally Significant Areas (ESA) overlay has been deferred from Cessnock LEP 2011 for further assessment. Zoning provisions for Rural 1(a) and Rural 1(c) of the Cessnock Local Environmental Plan 1989 will continue to apply to these areas until Council completes an Agricultural Lands Study and Biodiversity Strategy.

The study will look at all rural and environmental zones to determine the base requirements for sustainable agriculture (including appropriate land use zones, lot sizes and dwelling entitlement provisions) and the identification of priority areas for vegetation offsets in conjunction with the Department of Primary Industries (Agriculture), the Office of Environment and Heritage and Hunter-Central Rivers CMA'.

'A Planning Proposal will be prepared to implement the actions and recommendations of the studies as an amendment to the Cessnock LEP 2011'

A recent natural heritage/ biodiversity values study for the Commonwealth Department of Sustainability, Environment, Water, Population and Communities by Parsons Brinckerhoff (June, 2013) indicates very high conservation priority for Wollombi Valley and surrounds and parts of the Mulbring Valley based on its application of Blue Mountains World Heritage criteria. These cover some Deferred Matter areas.

As the proposal does not include or cite an agricultural lands study or biodiversity strategy or consultations with agencies in its preparation, it is recommended that the proposal be referred to the above agencies for advice.

Economic Impacts

In transitioning land between rural zones under CLEP 1989 and rural and conservation zones in CLEP 2011 the proposal does not of itself imply economic costs or benefits. These will flow from local land management regimes in the Deferred Matter areas.

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Social Impacts

In transitioning land between rural zones under CLEP 1989 and rural and conservation zones in CLEP 2011 the proposal does not of itself imply social costs or benefits. These will flow from local land management regimes in the Deferred Matter areas, the population supported by these and the resultant rates/ tax base to fund services and facilities.

Assessment Process

Proposal type : **Comprehensive LEP** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Office of Environment and Heritage
Office of Environment and Heritage - NSW National Parks and Wildlife Service
Transport for NSW - RailCorp
Transport for NSW - Roads and Maritime Services**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal Deferred Matter.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
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- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
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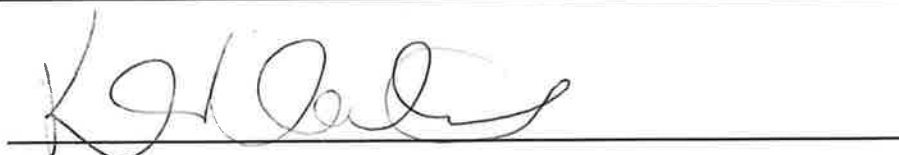
Additional Information :

1. Council are encouraged to provide additional advice, as part of the exhibition material of any changes in permissibility within the affected land when comparing Cessnock LEP 1989 and Cessnock LEP 2011.
2. Council provide additional information which clarifies inconsistency or otherwise with s117 direction 2.1 relating to the protection of environmentally sensitive land.
3. Council clarify within the Planning Proposal its' consistency with statements made on Council's website relating to the resolution of the deferred matter, Cessnock Citywide Settlement Strategy, the Watagans to Port Stephens Green Corridor within the Lower Hunter Regional Strategy and the information prepared for the Cessnock Biodiversity Management Plan.
4. Council add Heritage item reference numbers to the mapping to aid property identification and cross-referencing between mapping and Schedule 5 addresses and real property descriptions and include the beige colour-code for heritage items in the map legend.
5. The local provision for the RU2 Rural Landscape Zone covering design considerations be removed from the proposal as these could be better published as a DCP chapter which permits the illustration of good practice in rural design and inclusion of an appropriate related dictionary.
6. Infrastructure asset owners in the proposed SP2 zones be notified of the planning proposal exhibition.
7. Property owners within the proposed expanded Wollombi Conservation Area be notified of the exhibition.

Supporting Reasons :

The proposal resolves the deferred matter within Cessnock LEP 2011 by translating the existing zones into those of the Standard Instrument. The proposal does not reflect the outcome of any study into the environmental value of this land nor seek to reflect the environmental significance of some of this land as identified through other strategic work. Council indicates that this may be implemented in the longer term once supporting studies have been completed.

Signature:



Printed Name:

KOFLAHERTY Date: 27/10/13

