



PLANNING PROPOSAL
*Amendment to the
Cessnock Local Environment Plan 2011*

**Amendments
Cessnock
Local Environmental Plan 2011
“Deferred Matter”**

**Version 1.0
5 June 2013**

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PART 1: OBJECTIVES

In making the Cessnock Local Environmental Plan (LEP) 2011, certain lands illustrated in Figure 1 within the suburbs of Mulbring, Brunkerville, Mount Vincent, Richmond Vale, Buchanan, Stockrington, Black Hill and Buttai; and certain lands illustrated in Figure 2 within the suburbs of Wollombi, Cedar Creek, Sweetmans Creek, Paynes Crossing, Laguna and Bucketty were deferred from the Plan and identified as “Deferred Matter”.

This Planning Proposal aims to zone the “Deferred Matter” land to RU2 - Rural Landscape zone, E2 - Environmental Conservation zone and SP2 - Infrastructure zone as shown on the supporting maps and allocate a 40ha to land zoned RU2 – Rural Landscape and 80ha minimum lot size to land zoned E2 – Environmental Conservation under the Cessnock LEP 2011. A minimum lot size does not apply to the SP2 - Infrastructure zone.

The Planning Proposal will also provide for the full extent of heritage listing under the Cessnock Local Environmental Plan 2011, for affected properties and the Wollombi Conservation Area as shown in Figure 3.

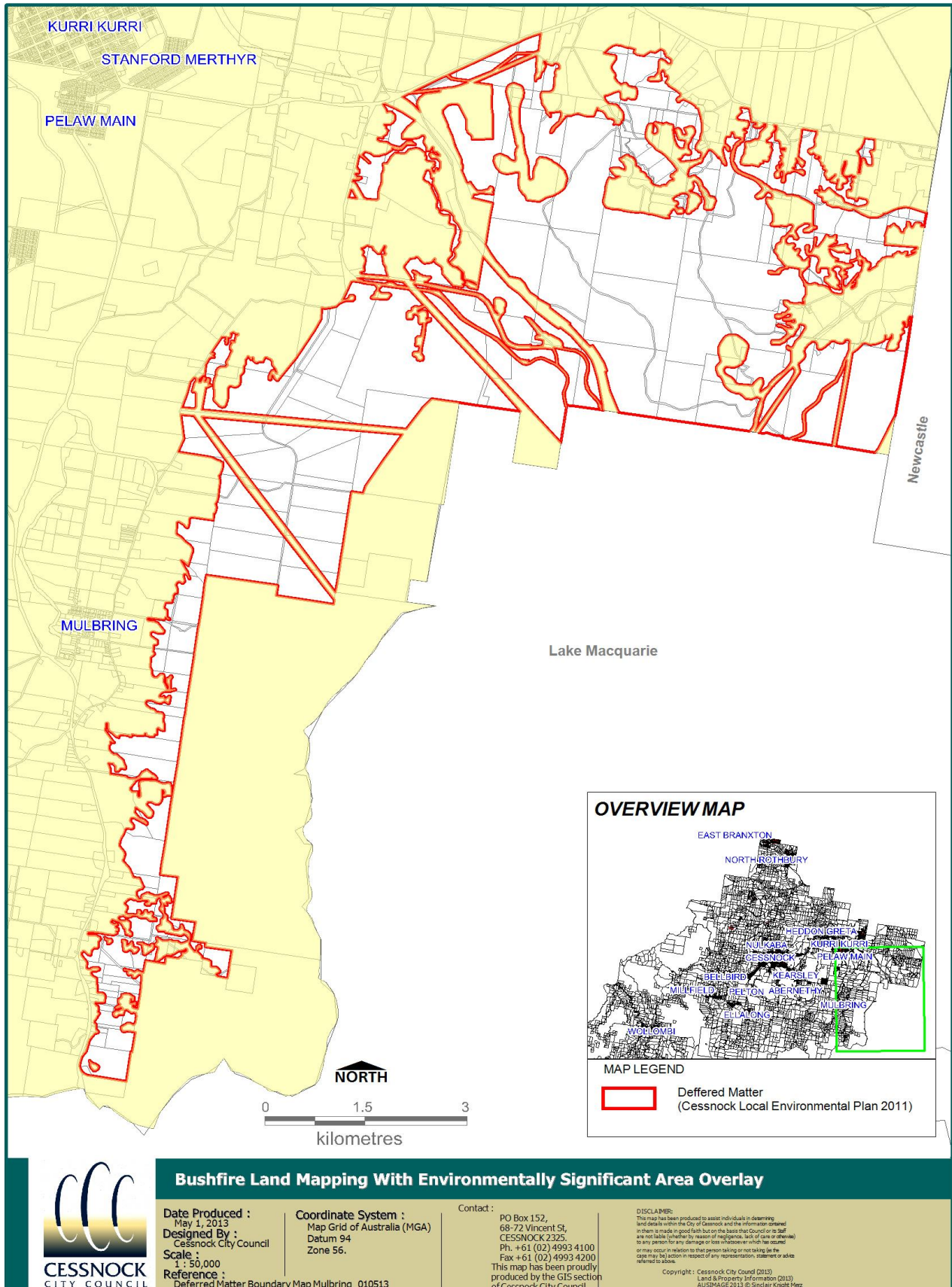


Figure 1 - Deferred Matter - Mulbring

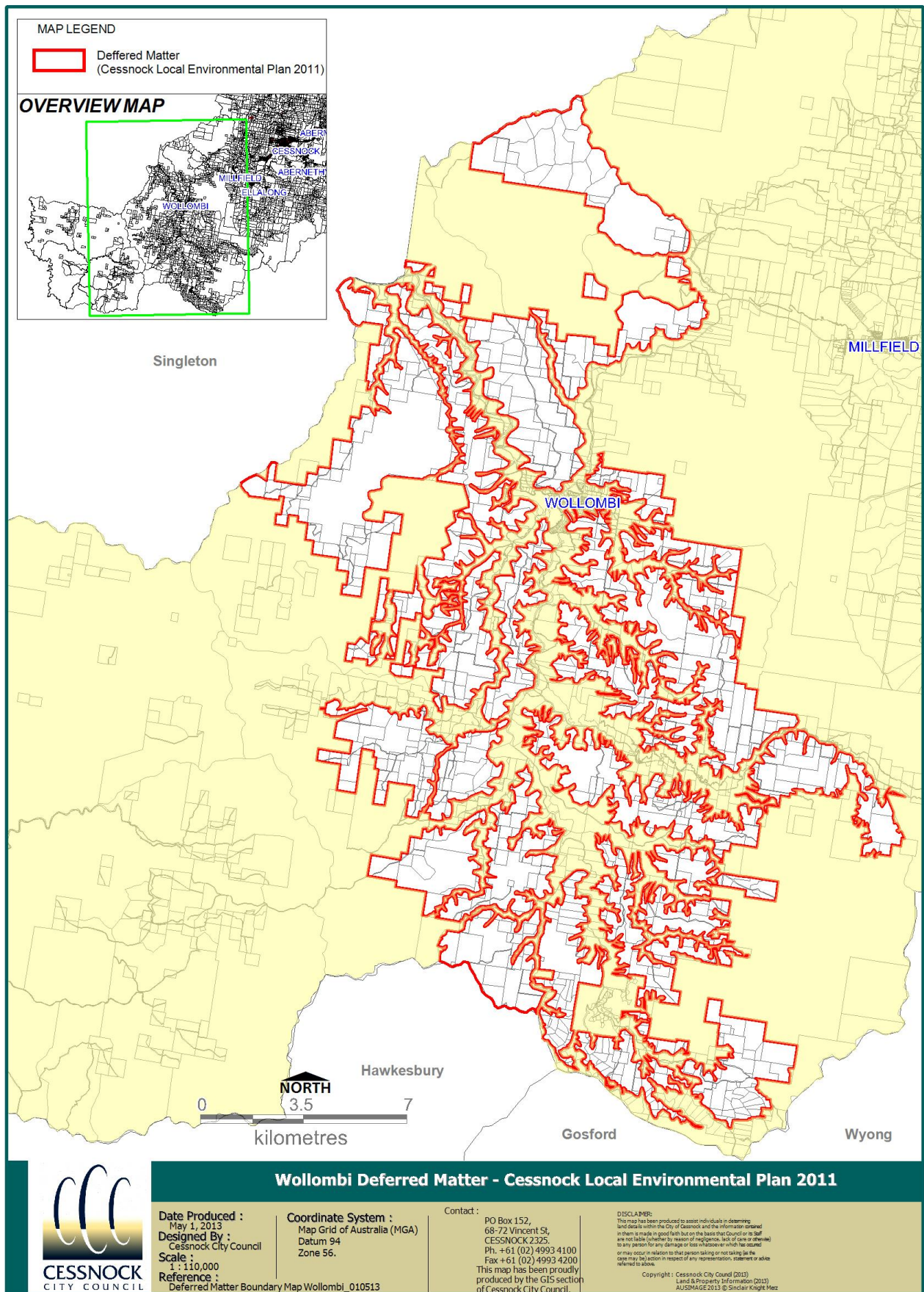


Figure 2 - Deferred Matter - Wollombi

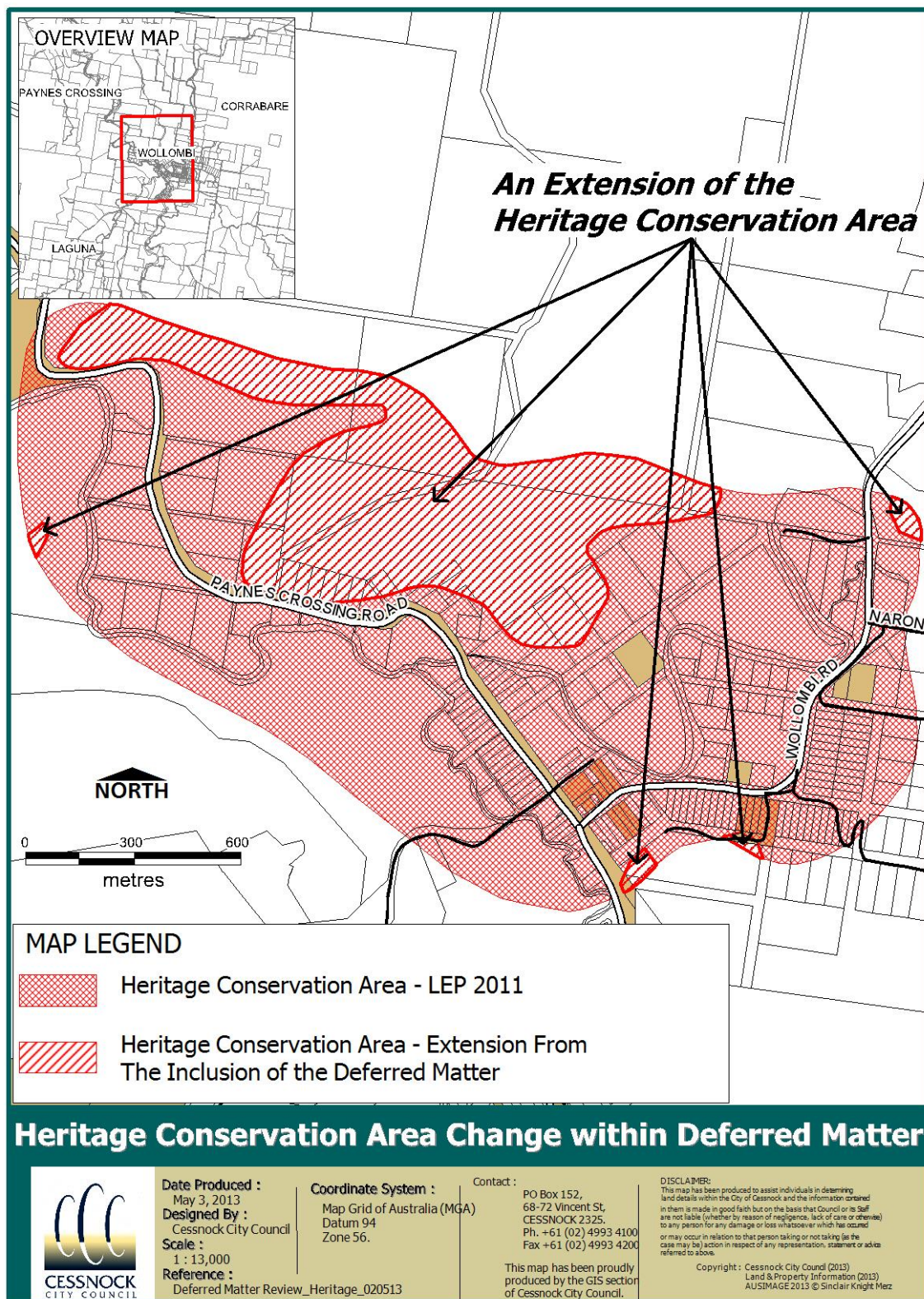


Figure 3 - Wollombi Heritage Conservation Area

PART 2: EXPLANATION of PROVISIONS

The Planning Proposal contains a zoning response for land identified as “Deferred Matter” under the Cessnock Local Environmental Plan 2011 at Mulbring and Wollombi to the equivalent Standard Instrument Template zone, being RU2- Rural Landscape.

The use of the RU2 - Rural Landscape zone in addition to the proposed local provision “General development principles in the RU2 - Rural Landscape zone” is the equivalent of the Rural 1(a) - Rural “A” zone and Clause 10 “General development principles - rural and environmental protection zones and Hunter Employment Zone” under Cessnock LEP 1989.

This reaffirms the process Council undertook when finalising the then (draft) Cessnock Local Environmental Plan in October 2010 and will provide the community an opportunity to comment on the proposal.

Affected Land

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.

Any Council Interest

Given the general nature of this proposal, it is likely that Council would have interest in land that could be affected. However, this proposal has been prepared without regard to any such interest.

Recommendation

Forward the Planning Proposal at Enclosure 1 to the Department of Planning and Infrastructure under s.56 (1) of the *Environmental Planning and Assessment Act 1979* seeking a gateway determination to amend the Cessnock Local Environmental Plan 2011 as follows:

- Repeal subclause 1(A) from Clause 1.3 Land to which the Plan applies:
(1A) Despite subclause (1), this plan does not apply to land identified on the Land Application Map as :Deferred matter”.
- Remove any reference to ‘Deferred Matter’ from all Maps.
- Amend the Land Zone Maps referencing “Deferred Matter” land to zones RU2 – Rural Landscape, E2 – Environmental Conservation or SP2 – Infrastructure accordingly.
- Amend the Minimum Lot Size Maps referencing “Deferred Matter” land to illustrate a 80ha or 40ha minimum lot size accordingly except on land proposed to be zoned SP2 – Infrastructure where no minimum lot size is applicable.
- Amend the Heritage Map to reflect the full extent of properties identified in Schedule 5 as being of heritage significance and affected by the “Deferred Matter”.
- In Part 7 Additional Local Provision, insert the following clause:

7.11 General development principles in the RU2 - Rural Landscape zone

- (1) The objective of this clause is to protect and maintain the environmental values of land within zone RU2.
- (2) The consent authority must have regard to the following principles when determining a development application for development on land to which this clause applies:
 - a. development should be of a type compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the City of Cessnock,
 - b. adequate utility services and community facilities should be available to the land and its future occupants, and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire-fighting capacity,
 - c. development should not have the possible effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority,
 - d. development should not lead to any deterioration of water supply or water quality within a water catchment,
 - e. where land is proposed to be cleared, vegetation should be retained in appropriate locations to reduce the visual impact of clearing to the maximum extent consistent with the rural character of the area,
 - f. essential buildings should be sited in positions of least flood risk, and the floor levels of dwellings should be above the 100 year flood level and be capable of withstanding floodwater pressures,
 - g. adequate all weather flood-free access should be available to dwellings,
 - h. buildings should be sited and designed to minimise disturbance to the landscape through clearing, earthworks and access roads,
 - i. buildings should not intrude into the skyline, when viewed from roads or other public places.

PART 3: JUSTIFICATION

In accordance with the Department of Planning's "Guide to Preparing Planning Proposals", this section provides a response to the following issues:

- Section A: Need for Proposal;
- Section B: Relationship to Strategic Planning Framework;
- Section C: Environmental, Social and Economic Impact; and
- Section D: State and Commonwealth Interests

Section A: Need for Proposal

1. Resulting from a Strategic Study or Report

Council resolved to prepare a Planning Proposal to rezone the land shown as "Deferred Matter" to RU2 – Rural Landscape under the Cessnock Local Environmental Plan 2011, based on the recommendation of a Council report on the subject land, dated 18 September 2013. (Appendix 1)

2. Planning Proposal as best way to achieve objectives

A Planning Proposal is the only way of formalising the zoning of the subject land, which is currently identified as "Deferred Matter" under the Cessnock Local Environmental Plan 2011, as a necessary step towards establishing one Local Environmental Plan for the Cessnock LGA.

3. Net Community Benefit

Formalising the rezoning of the subject land under the Cessnock LEP 2011 will be of benefit to the wider community, as this would be a further step towards establishing one Local Environmental Plan for the Cessnock LGA.

Section B: Relationship to Strategic Planning Framework

4. Consistency with Objectives and Actions within Regional Strategies

Lower Hunter Regional Strategy 2006

There is no inconsistency with the objectives or actions of the Lower Hunter Regional Strategy.

5. Consistency with Council's Community Strategic Plan or other Local Strategic Plan

Community Strategic Plan - Our People, Our Place, Our Future

Council's Strategic Plan contains objective 3.1.1 - *Protecting and enhancing the natural environmental and the rural character and village atmosphere of the area* as follows

- *Ensure the Local Environmental Plan and other planning protocols protect rural areas and reflect the community values on "rural character" and the heritage feel of the area.*

The Planning Proposal is consistent with the Council's Strategic Plan.

6. Consistency with State Environmental Planning Policies

An assessment of relevant SEPPs against the Planning Proposal is provided in the table below.

Table 1: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP 6 - Number of Storeys in a Building	The SEPP clarifies the reference to storey, floors and levels.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 15 - Rural Land Sharing Communities	The SEPP provides for multiple occupancy development, with council consent, in rural and non-urban zones, subject to a list of criteria in the policy.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 21 -Caravan Parks	The SEPP provides for development for caravan parks.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 22 - Shops and commercial premises	The SEPP provides for the change of use of commercial premises.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 30 - Intensive Agriculture	The SEPP provides considerations for consent for intensive agriculture.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 32 - Urban Consolidation (Redevelopment of Urban Land)	The SEPP makes provision for the re-development of urban land suitable for multi-unit housing and related development.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 33 - Hazardous & Offensive	The SEPP provides considerations for consent for hazardous & offensive development.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.

Development		
SEPP 36 - Manufactured Homes Estates	The SEPP makes provision to encourage manufactured homes estates through permitting this use where caravan parks are permitted and allowing subdivision.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 44 - Koala Habitat Protection	This SEPP applies to land across NSW that is greater than 1 hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 50 - Canal Estates	The SEPP bans new canal estates from the date of gazettal, to ensure coastal and aquatic environments are not affected by these developments.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 55 - Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 62 - Sustainable Aquaculture	The SEPP relates to development for aquaculture and to development arising from the rezoning of land and is of relevance for site specific rezoning proposals.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 64 - Advertising and Signage	The SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP 65 - Design Quality of Residential Development	The SEPP relates to residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential flat development.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Building Sustainability Index: BASIX 2004	The SEPP provides for the implementation of BASIX throughout the State.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Housing for Seniors or People with a Disability 2004	The SEPP aims to encourage provision of housing for seniors, including residential care facilities. The SEPP provides development standards.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Major Development 2005	The SEPP defines certain developments that are major projects to be assessed under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. It also provides planning provisions for State significant sites. In addition, the SEPP	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.

	identifies the council consent authority functions that may be carried out by Joint Regional Planning Panels and classes of regional development to be determined by JRPPs.	
SEPP Infrastructure 2007	The SEPP provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Mining, Petroleum Production and Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	The Planning Proposal does not propose to change zoning that would affect the permissibility of mining on the subject lands.
SEPP Temporary Structures 2007	The SEPP provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Exempt and Complying Development Codes 2008	The SEPP provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate.	The requirements of the SEPP will be applicable with respect to the land to be zoned RU2 - Rural Landscape.
SEPP Rural Lands 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP Affordable Rental Housing 2009	The SEPP provides for an increase in the supply and diversity of affordable rental and social housing in NSW.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.
SEPP State and Regional Development 2011	The SEPP aims to identify development and infrastructure that is State significant and confer functions on the Joint Regional Planning Panels to determine DAs.	Nothing in this Planning Proposal affects the aims and provisions of this SEPP.

7. Consistency with s.117 Ministerial Directions for Local Plan Making

An assessment of relevant Ministerial Directions against the Planning Proposal is provided in the table below.

Table 2: Relevant Section 117 Ministerial Directions

Ministerial Direction	Aim of Direction	Consistency and Implication
1. EMPLOYMENT AND RESOURCES		
1.2 Rural Zones	The objective of this direction is to protect the agricultural production	It is not proposed to amend the zoning of any land currently

	value of rural land.	affected by a rural zone or provide for an increase in land density. It is considered that the Planning Proposal is consistent with this Direction.
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	The Planning Proposal does not propose to change zoning that would affect the permissibility of mining on the subject lands. It is considered that the Planning Proposal is consistent with this Direction
1.5 Rural Lands	The objective of this direction is to protect the agricultural production value of rural land and facilitate the economic development of rural lands for rural related purposes.	The Planning Proposal is consistent with the rural planning principles specified in the Rural Land SEPP. It is not proposed to alter zoning provisions.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	The Planning Proposal does not seek to alter any existing zones that protect and conserve environmentally sensitive areas. The Planning Proposal is not inconsistent with this Direction.
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
2.4 Recreation Vehicle Areas	The draft LEP amendment does not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>).	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	Encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource lands.	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
3.2 Caravan parks and Manufactured	The objective of this direction is to provide for a variety of housing types, and provide opportunities for caravan	The Planning Proposal does not seek to rezone land to provide for caravan parks or

Home Estates	parks and manufactured home estates.	manufactured home estates. Further there are no existing caravan parks within the study area. It is considered that the Planning Proposal is consistent with this Direction.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
3.4 Integrating Land Use and Transport	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs subdivision and street layouts achieve the sustainable transport objectives.	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
3.5 Development Near Licensed Aerodromes	The objectives of this direction to ensure the efficient and safe operation of aerodromes, ensure their operation is not compromised by incompatible future adjoining land uses	Planning Proposal not affected by this direction.
3.6 Shooting Ranges	The objective of this direction is to maintain appropriate levels of public safety and amenity, reduce land use conflict and identify issues that must be addressed when rezoning land adjacent to an existing shooting range.	Planning Proposal not affected by this direction.
4. HAZARD AND RISK		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils	Planning Proposal not affected by this direction.
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	Nothing in this Planning Proposal affects the aims and provisions of this Direction.
	The objectives of this direction are to	Nothing in this Planning

4.4 Planning for Bushfire Protection	protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	Proposal affects the aims and provisions of this Direction.
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	Planning Proposal not affected by this direction.
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal does not propose amendments which require concurrence, consultation or referral of development applications to the Minister. The Planning Proposal does not identify any development as designated development. It is considered that the Planning Proposal is consistent with this Direction.
6.2 Reserving Land for Public Purposes	The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Planning Proposal not affected by this direction.
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal seeks to maintain local provisions not provided for within the existing framework of the Local Environmental Plan. These are not considered to be restrictive and therefore are consistent with this Direction.

Section C: Environmental, Social and Economic Impact

8. Impact on Threatened Species

There is no likelihood of adverse impact on threatened species, populations, ecological communities or critical habitat as a result of this Planning Proposal.

9. Environmental Impact

There is no likelihood of adverse environmental impact as a result of this Planning Proposal.

10. Social and Economic Impacts

There is no likelihood of adverse social or economic impact as a result of this Planning Proposal.

Section D: State and Commonwealth Interests

11. Adequate Public Infrastructure

The Planning Proposal will not generate demand for additional public infrastructure.

12. Consultation with State and Commonwealth Authorities

Council will seek to consult with the following statutory authorities and agencies:

- Department of Planning and Infrastructure (DoP&I)
- Office of Environment and Heritage (OEH);
- Hunter & Central Rivers Catchment Management Authority (CMA); and
- Department of Primary Industries (Agriculture).

PART 4: MAPPING

To achieve the intent of the Planning Proposal, it is proposed to amend the following Maps.

Land Application Map - Remove the “Deferred Matter” status.

- 1720_COM_LAP_001_250_20130311

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.

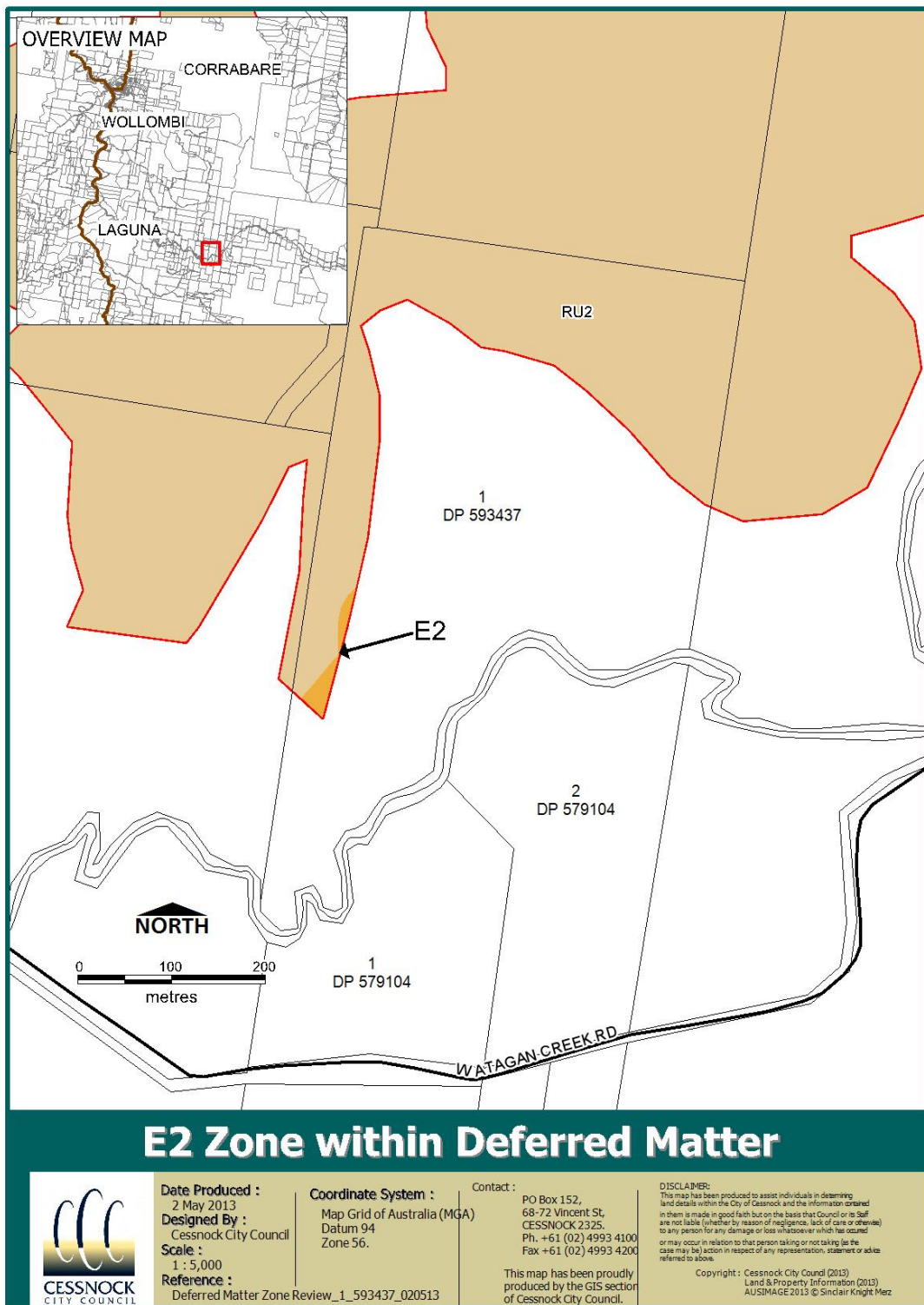
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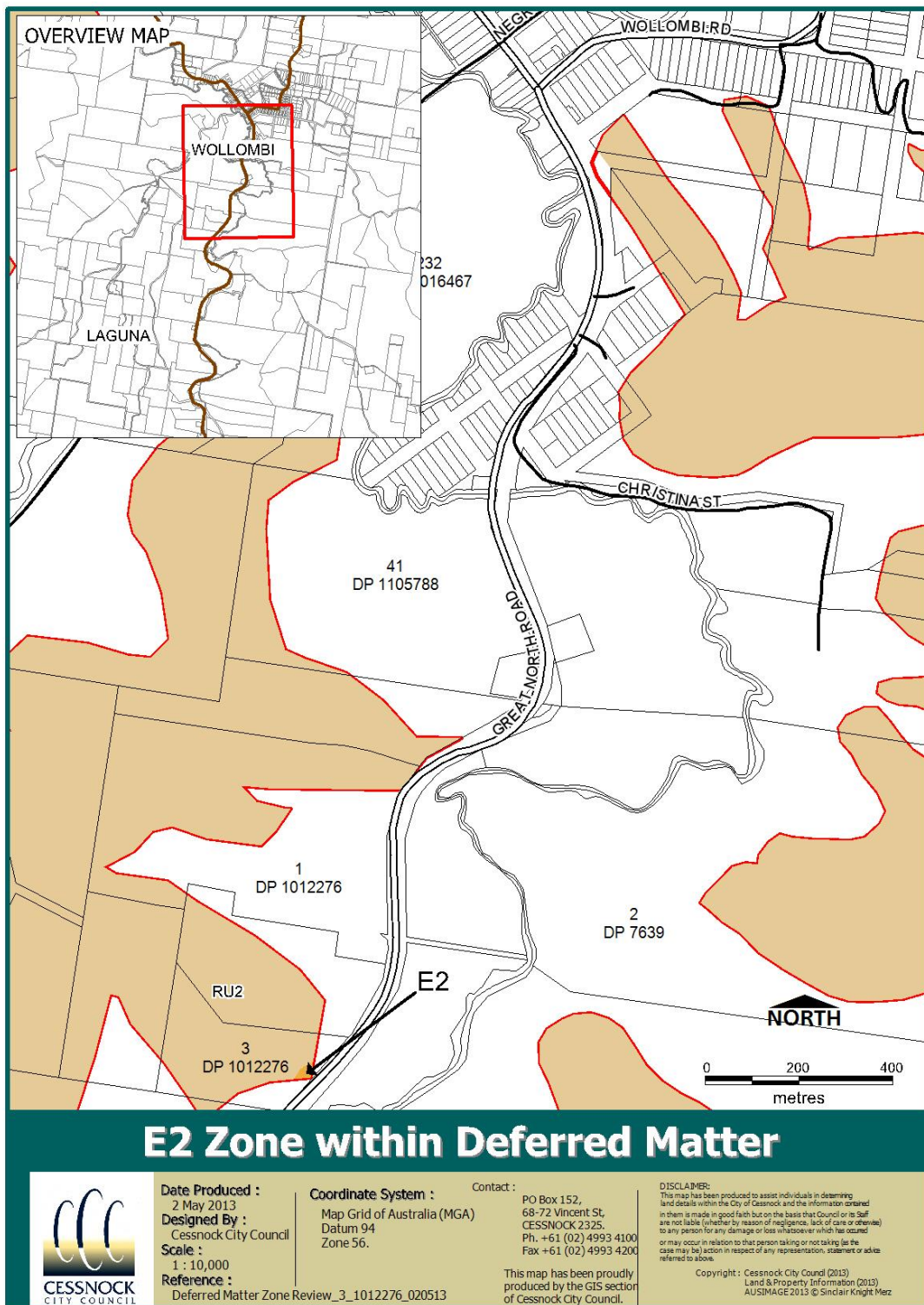
Lot Size Map - Provide a minimum lot size of 40 ha for the RU2 - Rural Landscape zone and 80ha for the E2 - Environmental Conservation zone as shown on the supporting maps.

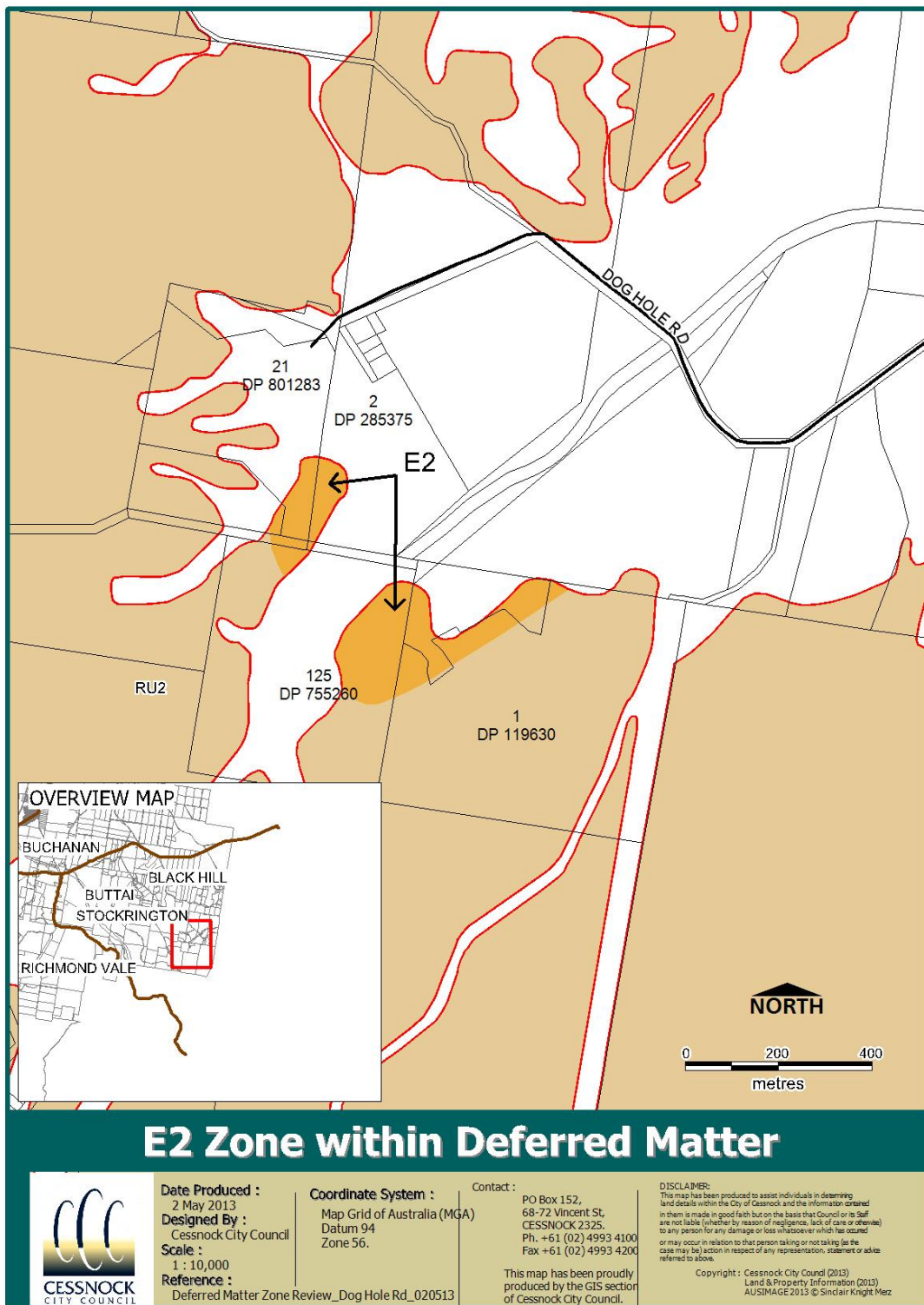
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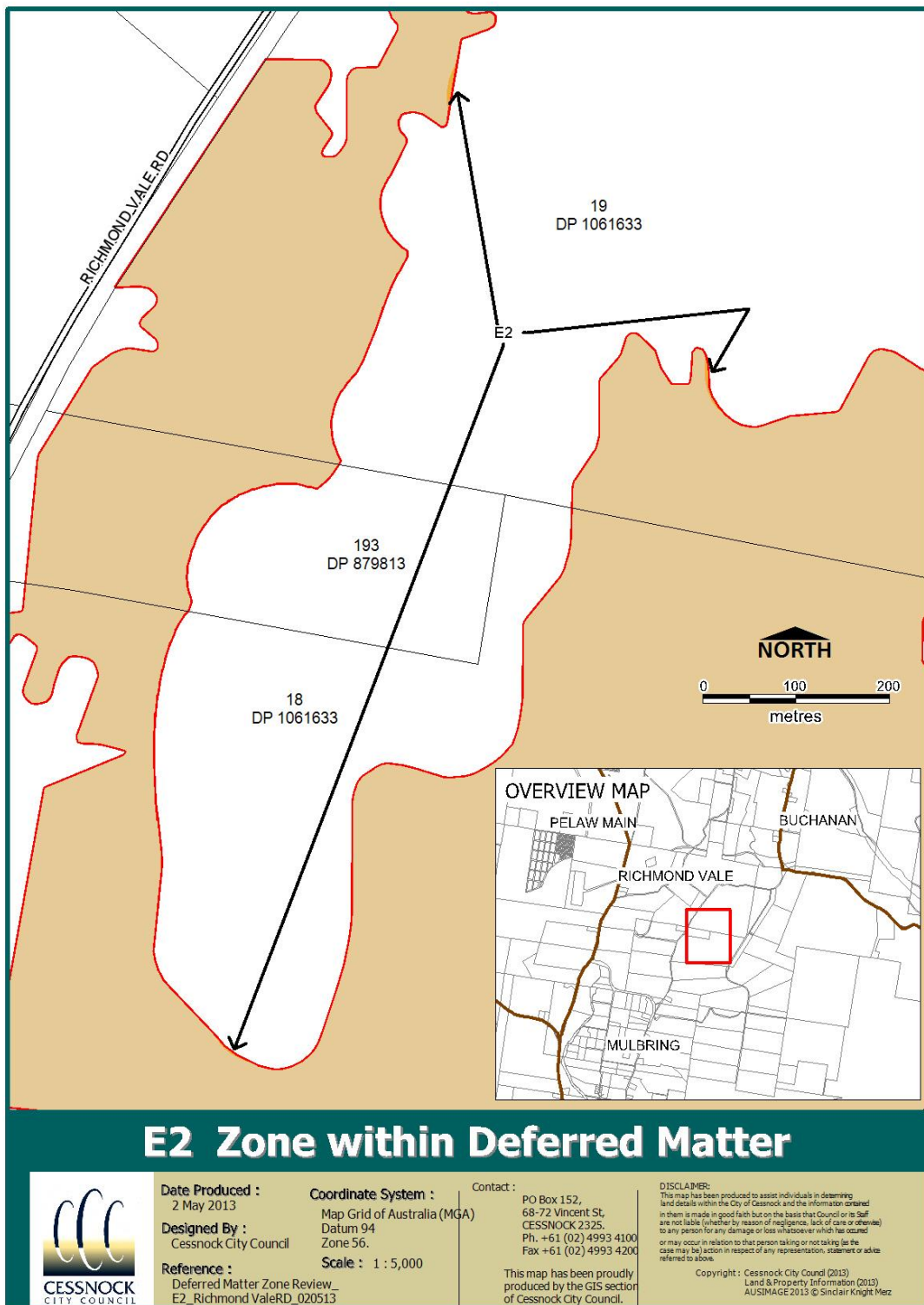
Heritage Map - Provide for the full extent of heritage listing for affected properties and the Wollombi Heritage Conservation Area as shown on the supporting maps.

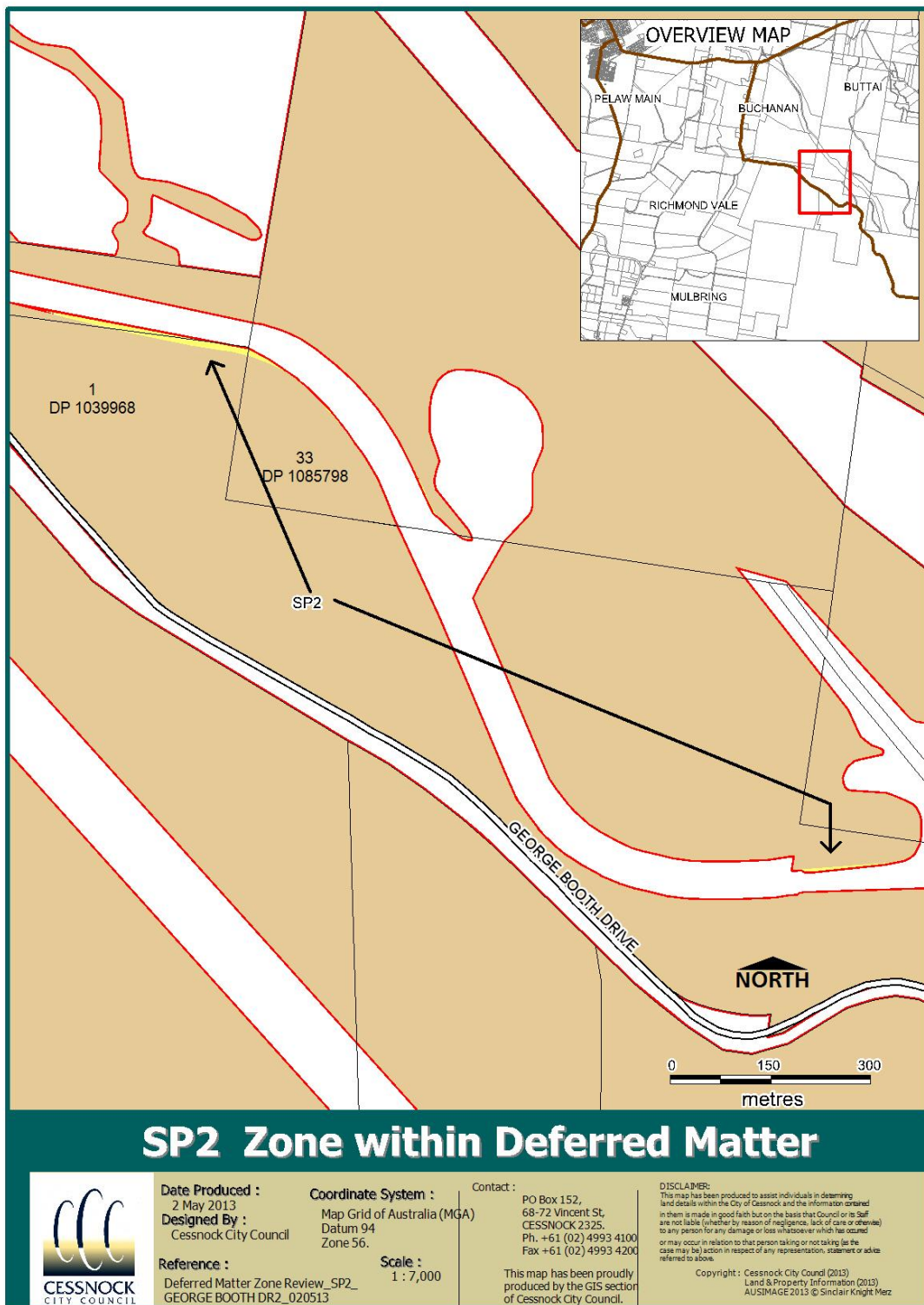
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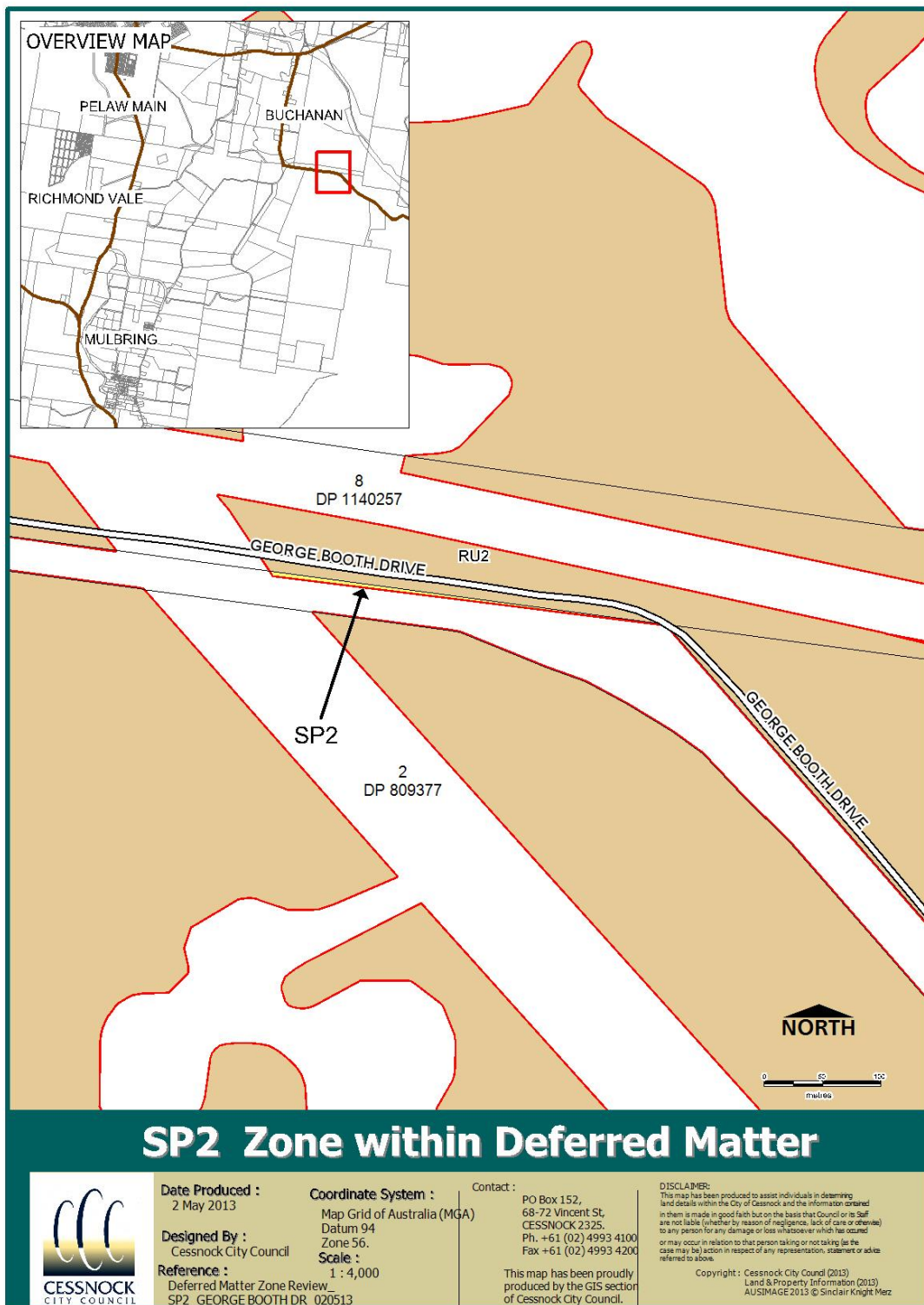


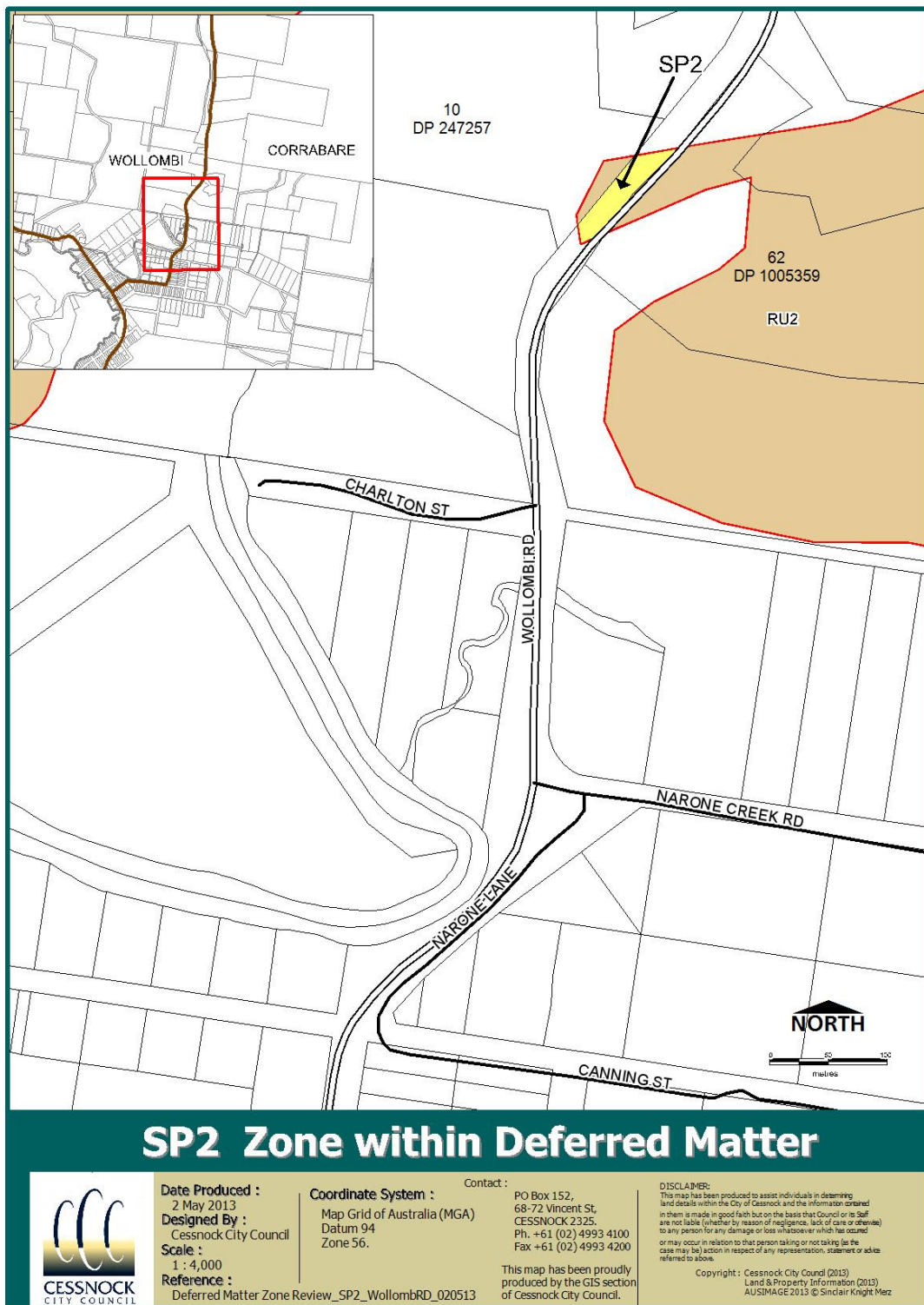


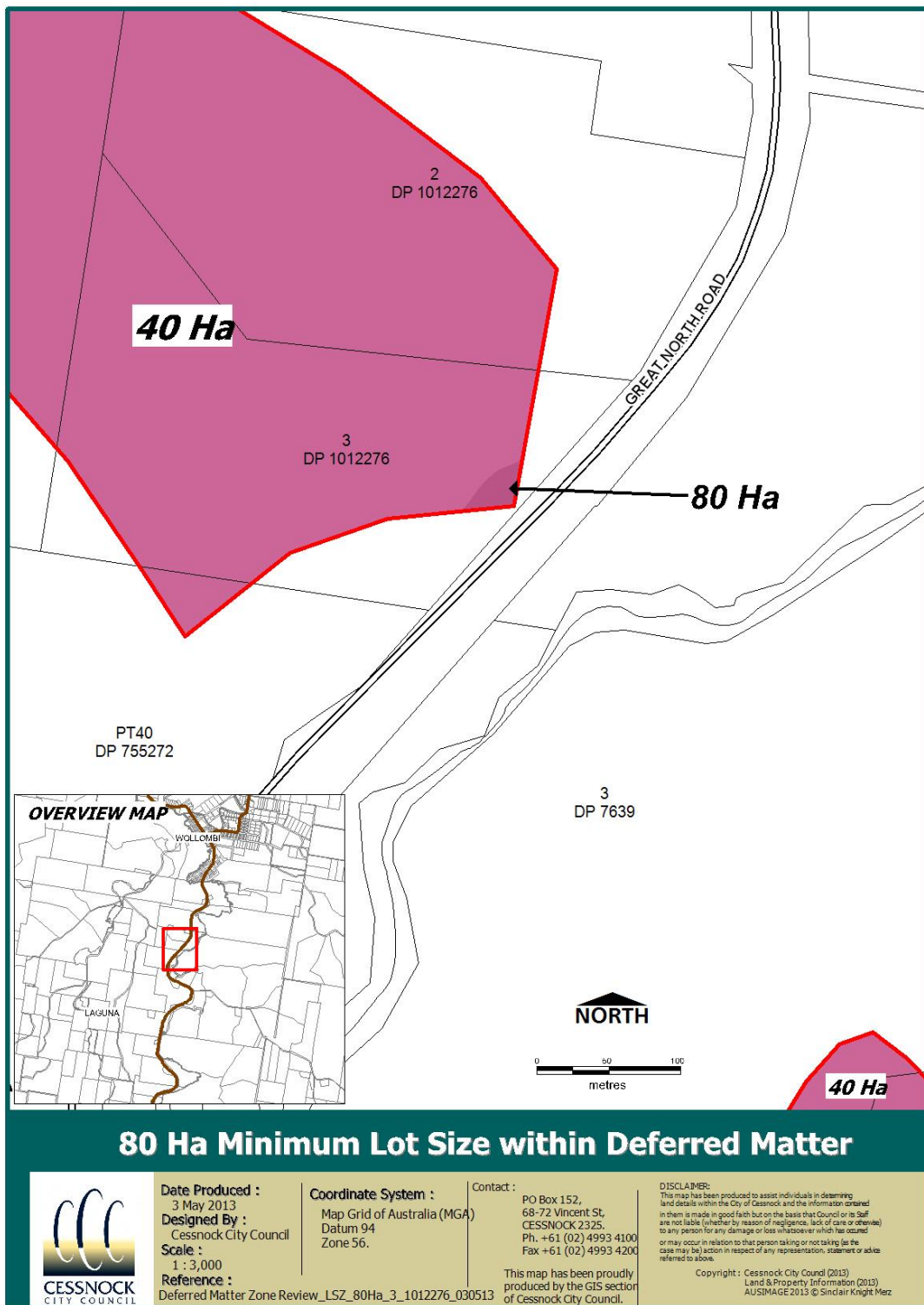


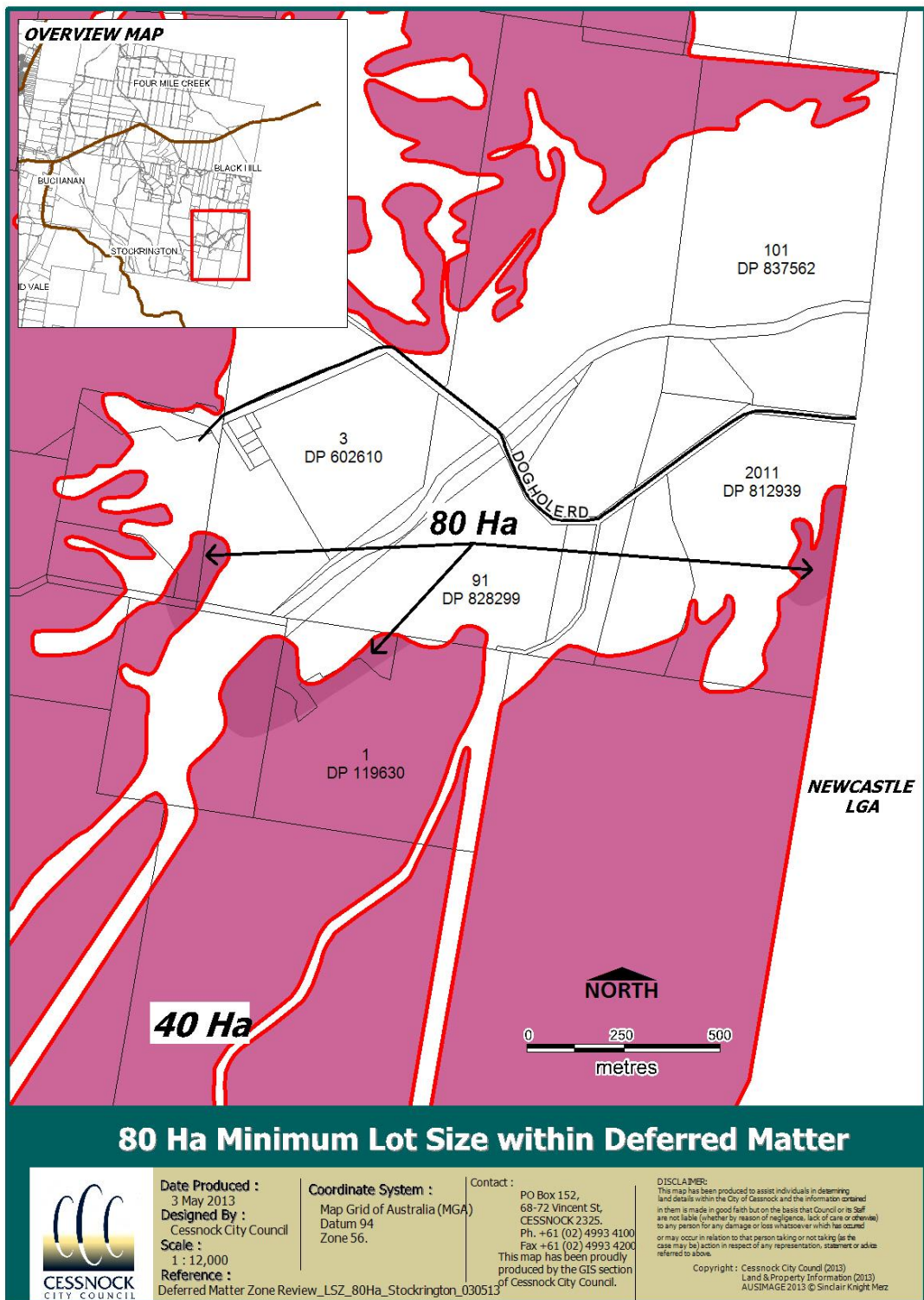


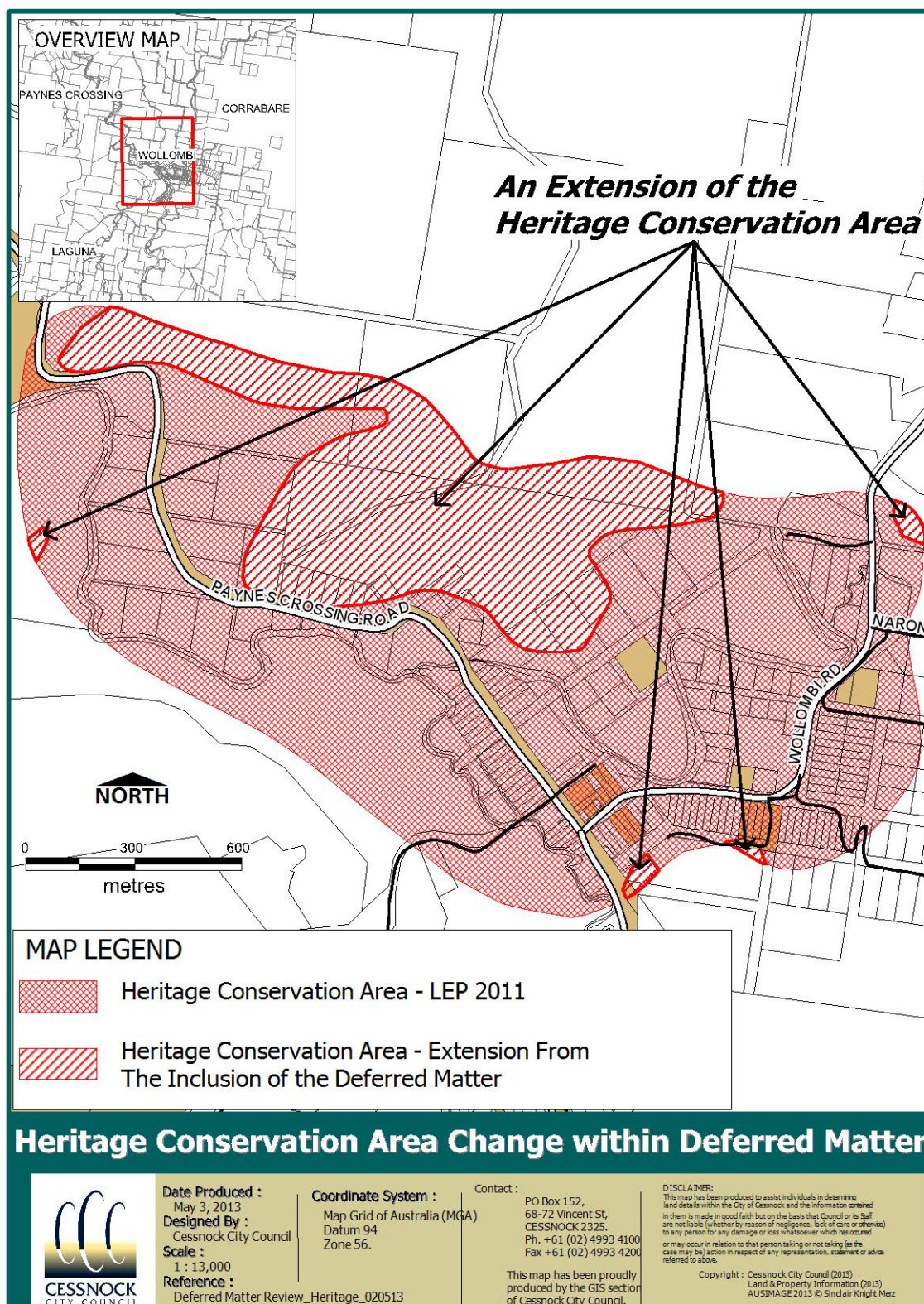












PART 5: COMMUNITY CONSULTATION

Council proposes to undertake community consultation in accordance with Council's guidelines, in the following manner:

- Advertise the Planning Proposal in the local newspaper and on Council's website at the start of the exhibition period.
- Exhibit the Planning Proposal for a period of twenty eight (28) days for the date it appears in the local newspaper and on Council's website.
- Notify 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 in Council's website and hard copies will be available at Council's administration building and public libraries.

PART 6: PROJECT TIMELINE

The Project Timeline will assist with tracking the progress of the Planning Proposal through the various stages of consultation and approval.

It is estimated that this amendment to the Cessnock Local Environmental Plan 2011 will be completed by July 2014.

Technical Studies have not been identified as a component of the Planning Proposal. The DoP&I Gateway Determination may make prescriptions relating to technical studies and this may impact on the estimated completion date.

PROJECT TIMELINE

	Sep 2013	Oct 2013	Nov 2013	Dec 2013	Jan 2014	Feb 2014	Mar 2014	April 2014	May 2014	June 2014	July 2014
STAGE 1 Submit to DoP&I – Gateway Panel consider Planning Proposal											
STAGE 2 Receive Gateway Determination											
STAGE 3 Preparation of documentation for Public Exhibition											
STAGE 4 Public Exhibition											
STAGE 5 Review/consideration of submission received											
STAGE 6 Report to Council											
STAGE 7 Forward Planning Proposal to DoP&I with request the amendment is made											

Appendix 1: Council Report and Minutes

Report To Ordinary Meeting of Council - 18 September 2013

Our Natural, Developed and Cultural Environment

Report No. EE68/2013

Strategy and Sustainability



SUBJECT: *AMENDMENTS TO CESSNOCK LEP - "DEFERRED MATTER"*

RESPONSIBLE OFFICER: *Acting Strategic Land Use Planning Manager - Scott Christie
Coordinator Strategic Landuse Planning - Bo Moshage*

SUMMARY

This report seeks to obtain Council's agreement to submit a planning proposal with the Department of Planning and Infrastructure requesting a Gateway determination to amend the Cessnock Local Environmental Plan (LEP) 2011 associated with land identified as "Deferred Matter". The deferred matter land resides within the suburbs of Mulbring, Brunkerville, Mount Vincent, Richmond Vale, Buchanan, Stockrington, Black Hill, Buttai, Wollombi, Cedar Creek, Sweetmans Creek, Paynes Crossing, Laguna and Bucketty.

Following a Council resolution in October 2010 to remove the Environmentally Significant Area overlay from the publicly exhibited draft comprehensive Cessnock LEP, the Department of Planning and Infrastructure subsequently removed the effected land from the making of the Cessnock LEP 2011 as it was considered a significant change that required re-exhibition.

Consequently, Council is currently maintaining and operating two Local Environmental Plans and two Development Control Plans. The Cessnock LEP 1989 and Cessnock Development Control Plan 2006 as it applies to the deferred matter and the Cessnock LEP 2011 and Development Control Plan 2010 as it applies to the remainder of the Cessnock Local Government Area. It is therefore proposed to amend the Cessnock LEP 2011 to negate the need to maintain and operate the Cessnock LEP 1989.

RECOMMENDATION

That Council

1. Forward the Planning Proposal at Enclosure 1 to the Department of Planning and Infrastructure under s.56 (1) of the *Environmental Planning and Assessment Act 1979* seeking a gateway determination to amend the Cessnock Local Environmental Plan 2011 as follows:
 - a. Repeal subclause 1(A) from Clause 1.3 Land to which the Plan applies.
 - b. Remove any reference to 'Deferred Matter' from all Maps.
 - c. Amend the Land Zone Maps referencing "Deferred Matter" land to zones RU2 – Rural Landscape, E2 – Environmental Conservation or SP2 – Infrastructure accordingly.
 - d. Amend the Minimum Lot Size Maps referencing "Deferred Matter" land to illustrate an 80ha minimum lot size for land zoned E2 – Environmental Conservation or 40ha minimum lot size for land zoned RU2 – Rural

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Landscape. No minimum lot size is applicable to land zoned SP2 – Infrastructure.

- e. Amend the Heritage Map to reflect the full extent of properties identified in Schedule 5 as being of heritage significance and affected by the “Deferred Matter”.

- f. In Part 7 Additional Local Provision, insert the following clause:

7.xx General development principles in the RU2 - Rural Landscape zone

- (1) The objective of this clause is to protect and maintain the environmental values of land within zone RU2.
- (2) The consent authority must have regard to the following principles when determining a development application for development on land to which this clause applies:
 - (a) development should be of a type compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the City of Cessnock,
 - (b) adequate utility services and community facilities should be available to the land and its future occupants, and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire-fighting capacity,
 - (c) development should not have the possible effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority,
 - (d) development should not lead to any deterioration of water supply or water quality within a water catchment,
 - (e) where land is proposed to be cleared, vegetation should be retained in appropriate locations to reduce the visual impact of clearing to the maximum extent consistent with the rural character of the area,
 - (f) essential buildings should be sited in positions of least flood risk, and the floor levels of dwellings should be above the 100 year flood level and be capable of withstanding floodwater pressures,
 - (g) adequate all weather flood-free access should be available to dwellings
 - (h) buildings should be sited and designed to minimise disturbance to the landscape through clearing, earthworks and access roads,
 - (i) buildings should not intrude into the skyline, when viewed from roads or other public places.

- 2. Undertake a consultation program with public authorities and the community as determined by the “Gateway” Determination.

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3. Present a further report to Council, following public exhibition of the Planning Proposal, advising of the consultation program outcomes and subsequent recommendations relating to the adoption of the final LEP amendment.

BACKGROUND

When commencing its preparation of the draft Cessnock Local Environmental Plan, Council resolved to translate the Cessnock LEP 1989 into the Standard Instrument LEP format. The only exemption to this would be to implement the City Wide Settlement Strategy and relevant NSW Government Planning Reforms. This underpinned the way in which the new LEP was drafted.

The draft Cessnock LEP was publicly exhibited in late 2009. In response to submissions received on the use and application of the E3 - Environmental Management zone for the Lower Hunter Regional Strategy identified "Green Corridor" at Mulbring and environmentally constrained areas of the Wollombi Valley identified in the City Wide Settlement Strategy, Council resolved to zone these areas RU2 - Rural Landscape with an Environmentally Significant Area overlay and local provision added. The proposed Environmentally Significant Area overlay generally corresponding to these constrained lands and the local provision provided for the protection, maintenance or improvement of the diversity of these landscapes.

Council re-exhibited these amendments and associated land use zone maps for public comment in July 2010.

In response to the submissions received objecting to the Environmentally Significant Area overlay, Council resolved in October 2010, to remove the overlay from the draft Local Environmental Plan, pending completion of the planned rural lands study.

The final (draft) Cessnock LEP was forwarded to the Department of Planning and Infrastructure on 6 November 2010, with a request that the Minister for Planning make the plan.

In notifying the Cessnock Local Environmental Plan, the Department of Planning and Infrastructure advised on 20 December 2011 that the Environmentally Significant Area and associated clause, if removed post exhibition as resolved by Council, would be a significant change that would require re-exhibition of the (draft) LEP.

The Cessnock LEP 2011 came into force on 23 December 2011. Lands at Mulbring and Wollombi that were the subject of an Environmentally Significant Area overlay were deferred matters from the making of the Cessnock LEP 2011 and remain subject to the provisions of Cessnock LEP 1989.

REPORT/PROPOSAL

The Planning Proposal at Enclosure 1 seeks to amend the Cessnock LEP 2011 appropriately in association with land identified as "Deferred Matter" in the aim of negating the need for Council to maintain and operate two Local Environmental Plans and two Development Control Plans. The deferred matter land resides within the suburbs of Mulbring, Brunkerville, Mount Vincent, Richmond Vale, Buchanan, Stockrington, Black Hill, Buttai, Wollombi, Cedar Creek, Sweetmans Creek, Paynes Crossing, Laguna and Bucketty.

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The amendments proposed by the Planning Proposal at Enclosure 1 seek to amend the zoning, minimum lot size and heritage mapping of the Cessnock LEP 2011 in combination with amendments to Clause 1.3 and 7. These amendments are briefly described following:

Zoning:

Totalling approximately 261.8km², the large majority of land identified as “Deferred Matter” under the Cessnock Local Environmental Plan 2011 is zoned Rural 1(a) – Rural “A” Zone under the Cessnock LEP 1989 with less than 5,000m² of land zoned 1(c1) Rural (Small Holdings) Zone.

The zoning objectives and permissible uses within the Rural 1(a) – Rural “A” Zone are described following:

1. Objectives of zone

The objectives of this zone are:

- (a) to enable the continuation of existing forms of agricultural land use and occupation,*
- (b) to ensure that potentially productive land is not withdrawn from production,*
- (c) to encourage new forms of agricultural land use,*
- (d) to enable other forms of development which are associated with rural activity and which require an isolated location, or which support tourism and recreation, and*
- (e) to ensure that the type and intensity of development is appropriate in relation to:*
 - (i) the rural capability and suitability of the land,*
 - (ii) the preservation of the agricultural, mineral and extractive production potential of the land,*
 - (iii) the rural environment (including scenic resources), and*
 - (iv) the costs of providing public services and amenities.*

2. Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); commercial vineyards; forestry; stables.

3. Only with consent

Any purpose other than a purpose included in item 2 or 4.

4. Prohibited

Advertising structures; amusement parks; automotive uses; boarding houses; bulk stores (other than those associated with an agricultural use); commercial premises

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(other than those primarily intended to provide services to tourists); heliports; industries (other than home industries or rural industries); junk yards; liquid fuel depots; mortuary chapels; motor showrooms; multiple dwellings; recreation facilities (other than those ancillary or related to a tourist recreation facility); residential flat buildings; shops (other than those primarily intended to provide services to tourists or general stores); transport terminals (other than the storage and servicing of vehicles associated with the occupation of the owner); warehouses.

The zoning objectives and permissible uses within the 1(c1) – Rural (Small Holdings) Zone are described following:

1. Objectives of zone

The objective of this zone is to encourage high quality and environmentally sensitive rural-residential and compatible development.

2. Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); dwelling-houses sited in accordance with the relevant development control plan.

3. Only with consent

Child care centres; dams; drainage; dwelling-houses (other than those referred to in item 2); environmental facilities; fire trails; general stores; home businesses; home occupations; pedestrian ways; roads; stables; tree planting; utility installations (other than gas holders or generating works).

4. Prohibited

Any purpose other than a purpose included in item 2 or 3.

Under the Cessnock LEP 2011, the RU2 Rural Landscape zone is considered to be the equivalent zone to the Rural 1(a) – Rural “A” Zone under the Cessnock LEP 1989. With the exception of the areas proposed to be zoned E2 Environmental Conservation and SP2 Infrastructure in the Planning Proposal at Enclosure 1, the large majority of land identified as deferred matter is proposed to be zoned RU2 Rural Landscape.

The zoning objectives and permissible uses within the RU2 Rural Landscape zone are described following:

1. Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To enable other forms of development that are associated with rural activity and require an isolated location or support tourism and recreation.

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- To ensure that the type and intensity of development is appropriate in relation to the rural capability and suitability of the land, the preservation of the agricultural, mineral and extractive production potential of the land, the rural environment (including scenic resources) and the costs of providing services and amenities.

2. Permitted without consent

Extensive agriculture; Home occupations; Horticulture

3. Permitted with consent

Cellar door premises; Dual occupancies; Dwelling houses; Environmental protection works; Farm buildings; Health consulting rooms; Home industries; Hospitals; Neighbourhood shops; Pubs; Restaurants or cafes; Roads; Roadside stalls; Rural supplies; Self-storage units; Any other development not specified in item 2 or 4

4. Prohibited

Attached dwellings; Boat building and repair facilities; Car parks; Charter and tourism boating facilities; Commercial premises; Depots; Entertainment facilities; Exhibition homes; Exhibition villages; Freight transport facilities; Health services facilities; Heavy industrial storage establishments; Heliports; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Mortuaries; Passenger transport facilities; Recreation facilities (indoor); Residential accommodation; Restricted premises; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Wharf or boating facilities; Wholesale supplies

The proposed zoning extents are illustrated in **Enclosure 2** and **Enclosure 3** to this report.

Minimum Lot Size:

The minimum lot size permissible within the Rural 1(a) – Rural “A” Zone is 40ha. The Planning Proposal at Enclosure 1 proposes a minimum lot size of 40ha for land zoned RU2 Rural Landscape, 80ha for land zoned E2 Environmental Conservation and no minimum lot size for land zoned SP2 Infrastructure.

The proposed minimum lot sizes are illustrated in **Enclosure 4** and **Enclosure 5** to this report.

Heritage:

Heritage items, heritage conservation areas and aboriginal places of heritage significance identified in Schedule 5 Environmental Heritage of the Cessnock LEP 2011 are proposed by the Planning Proposal at Enclosure 1 to be translated into the heritage mapping of the Cessnock LEP 2011.

The extent of heritage items, heritage conservation areas and aboriginal places of heritage significance identified in Schedule 5 Environmental Heritage of the Cessnock LEP 2011 are illustrated in **Enclosure 6** and **Enclosure 7** to this report.

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Amendments to Clause 1.3 and 7 of Cessnock LEP 2011:

The Planning Proposal at Enclosure 1 proposes to repeal subclause 1(a) from Clause 1.3 *“Land to which the Plan applies”* as it is specific to the deferred matter land.

Furthermore, Clause 10 *“General development principles - rural and environmental protection zones and Hunter Employment Zone”* of the Cessnock LEP 1989 specifically applying to land within Zone No 1(a) and 1(c1), amongst others, is proposed by the Planning Proposal at Enclosure 1 to be translated into Clause 7 *“General development principles in the RU2 - Rural Landscape zone”*.

It is considered that the use of the Cessnock LEP 2011 zone RU2 - Rural Landscape in addition to a minimum lot size provision of 40ha and the proposed local provision *“General development principles in the RU2 - Rural Landscape zone”* is the equivalent of the Rural 1(a) - Rural “A” zone and Clause 10 *“General development principles - rural and environmental protection zones and Hunter Employment Zone”* under Cessnock LEP 1989.

This reaffirms the process Council undertook when finalising the then (draft) Cessnock Local Environmental Plan in October 2010. No Environmentally Significant Area overlay has been included as intended by Council and will provide the community an opportunity to comment on the proposal.

Affected Land

The Planning Proposal will be relevant to land described as “Deferred Matter” within the suburbs of Mulbring, Brunkerville, Mount Vincent, Richmond Vale, Buchanan, Stockrington, Black Hill, Buttai, Wollombi, Cedar Creek, Sweetmans Creek, Paynes Crossing, Laguna and Bucketty.

Any Council Interest

Given the general nature of this proposal, it is likely that Council would have interest in land that could be affected. However, this proposal has been prepared without regard to any such interest.

Recommendation

- Repeal subclause 1(A) from Clause 1.3 Land to which the Plan applies:
(1A) Despite subclause (1), this plan does not apply to land identified on the Land Application Map as :Deferred matter”.
- Remove any reference to ‘Deferred Matter’ from all Maps.
- Amend the Land Zone Maps referencing “Deferred Matter” land to zones RU2 – Rural Landscape, E2 – Environmental Conservation or SP2 – Infrastructure accordingly.
- Amend the Minimum Lot Size Maps referencing “Deferred Matter” land to illustrate an 80ha minimum lot size for land zoned E2 – Environmental Conservation or 40ha minimum lot size for land zoned RU2 – Rural Landscape. No minimum lot size is applicable to land zoned SP2 – Infrastructure.

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- Amend the Heritage Map to reflect the full extent of properties identified in Schedule 5 as being of heritage significance and affected by the “Deferred Matter”.
- In Part 7 Additional Local Provision, insert the following clause:

7.11 General development principles in the RU2 - Rural Landscape zone

- (2) The objective of this clause is to protect and maintain the environmental values of land within zone RU2.
- (3) The consent authority must have regard to the following principles when determining a development application for development on land to which this clause applies:
 - a. development should be of a type compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the City of Cessnock;
 - b. adequate utility services and community facilities should be available to the land and its future occupants, and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire-fighting capacity;
 - c. development should not have the possible effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority;
 - d. development should not lead to any deterioration of water supply or water quality within a water catchment;
 - e. where land is proposed to be cleared, vegetation should be retained in appropriate locations to reduce the visual impact of clearing to the maximum extent consistent with the rural character of the area,
 - f. essential buildings should be sited in positions of least flood risk, and the floor levels of dwellings should be above the 100 year flood level and be capable of withstanding floodwater pressures;
 - g. adequate all weather flood-free access should be available to dwellings;
 - h. buildings should be sited and designed to minimise disturbance to the landscape through clearing, earthworks and access roads;
 - i. buildings should not intrude into the skyline, when viewed from roads or other public places.

OPTIONS

1. Submit a Planning Proposal to the Department of Planning and Infrastructure for a “Gateway” determination. This option will ensure that Council’s intent for Local Environmental Plan 2011 is achieved.
2. Not support the Planning Proposal. This will delay ongoing consideration by Council of the “Deferred Matter” in the Cessnock Local Environmental Plan 2011.

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CONSULTATION

This report has been prepared in consultation with the Department of Planning and Infrastructure and Council's Strategy & Sustainability and Built and Natural Environment Group.

Should the Planning Proposal progress through the 'Gateway', Council will seek to consult with the following statutory authorities and agencies:

- Department of Planning and Infrastructure (DoP&I);
- Office of Environment and Heritage (OEHL);
- Hunter & Central Rivers Catchment Management Authority (CMA); and
- Department of Primary Industries (Agriculture).

STRATEGIC LINKS

a. Delivery Program

N/A

b. Other Plans

NIL

IMPLICATIONS

a. Policy and Procedural Implications

Following Council's endorsement, a Planning Proposal will be submitted to the Department of Planning and Infrastructure for a "Gateway" determination.

It is intended that the Planning Proposal be exhibited for a period of 28 days in accordance with Council's Notification Policy and any specific requirements made by the Department of Planning and Infrastructure during the "Gateway" determination.

b. Financial Implications

The cost of this project is funded from Council's Land Use Planning Budget. The Cessnock LEP 2011 will, however, continue to require strategic planning and mapping resources.

c. Legislative Implications

This report has regard to the provisions of the Environmental Planning & Assessment Act and its Regulations and the Standard Instrument (Local Environmental Plans) Order 2006 (as amended).

d. Risk Implications

The risk implications of the Planning Proposal are considered by the Report. There are few tangible risks.

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e. Other Implications

An Agricultural Lands Study is being conducted by the Federal Government that evaluates and maps important agricultural lands in the Cessnock and other Local Government Areas and Council is currently preparing a Draft Biodiversity Strategy. The outcomes of these will be used to inform any future planning around the "Green Corridor" at Mulbring or the Wollombi area that may be required.

Council can consider a Planning Proposal to address any environmental issues and / or potential land zone changes recommended through the Agricultural Land Study and Biodiversity Strategy that meets Council's intended outcomes and planning approach with respect to the lands that are the subject of this report.

CONCLUSION

The Planning Proposal will seek to provide an outcome for the resolution to the Cessnock Local Environmental Plan 2011 "Deferred Matter" and help to improve efficiencies with a comprehensive Local Environmental Plan that meets Council's intended outcomes over the entire Cessnock LGA.

By resolving the zoning of the subject lands under Cessnock LEP 2011, greater clarity will be provided for land owners and the community while at the same time not preventing the consideration of any relevant issues that may arise through the completion of upcoming studies.

ENCLOSURES

1	Planning Proposal	33 Pages
2	Proposed Land Zoning Mapping - Mulbring	1 Page
3	Proposed Land Zoning Mapping - Wollombi	1 Page
4	Proposed Minimum Lot Size Mapping - Mulbring	1 Page
5	Proposed Minimum Lot Size Mapping - Wollombi	1 Page
6	Proposed Heritage Mapping - Mulbring	1 Page
7	Proposed Heritage Mapping - Wollombi	1 Page