

SECTION 59 PLANNING REPORT

Planning proposal details:

PP_2013_CESSN_002_00

Planning proposal summary:

To amend the Cessnock Local Environmental Plan 2011 by rezone land at Bellbird North (Bellbird Ridge) to SP2 Infrastructure zone, permit with consent utility infrastructure in residential zones and rectification of mapping errors to correctly identify the local government boundary between Cessnock and Singleton

Date of Gateway determination:

19 March 2015 & 8 May 2015

1.0 SUMMARY

The Planning Proposal seeks to:

- (i) rezone part of Lot 1 DP 327785 Ruby Street, Bellbird to facilitate an onsite water recycling facility by rezoning 8,077m² of land made up of 3,538m² of RE1 - Public Recreation and 4,539m² of R2 - Low Density Residential to SP2 - Infrastructure to accommodate a water recycling facility.

Corresponding amendments to the minimum lot size maps are also required, with the removal of the 450m² minimum lot size from that part of Lot 1 DP 327785 to be zoned from R2 - Low Density Residential to SP2 – Infrastructure.

There is no minimum lot size applicable to the SP2 - Infrastructure zone.

- (ii) permit with consent 'sewerage system' in the R2 - Low Density, R3 - Medium Density and R5 - Large Lot Residential zones and 'water supply system' to R2 - Low Density and R5 - Large Lot Residential zones to support urban development and to avoid the need for a rezoning process for future utility proposals in urban release areas across of the Local Government Area
- (iii) rectify a drafting error that unintentionally and inadvertently omitted Lot 79 DP 270482 and part of Lot 1 DP 812640, Pokolbin from the Cessnock Local Government Area on the following Maps:
 - Land Application Map
 - Land Use Zone Map
 - Lot Size Map
 - Additional Permitted Uses Map
 - Land Reservation Acquisition Map
 - Urban Release Areas Map

2.0 GATEWAY DETERMINATION

A Gateway Determination was issued by the then Department of Planning and Environment on 19 March 2015, allowing 6 months to complete the amendment.

A Gateway Determination Alteration was sought and issued on 8 May 2015 clarifying mapping amendment requirements.

All conditions of the Gateway Determination have been complied with.

3.0 COMMUNITY CONSULTATION

The Planning Proposal was exhibited for fourteen (14) days between 20 May 2015 and 3 June 2015.

During the exhibition period, one (1) public submission was received, raising concerns with the Planning Proposal to accommodate a Private Network Operator (PNO) water recycling facility at Bellbird North (Bellbird Ridge). The concerns raised in the submission, with responses, are summarised below.

1. ***The Planning Proposal does not represent an orderly and economic methodology for water and waste water infrastructure delivery within the Bellbird North URA.***

Comment

State Environment Planning Policy (Infrastructure) permits:-

- 1) Development by a person licensed under the Water Industry Competition Act 2006 for the purpose of a sewage treatment plant or water recycling facility to be carried out without development consent within prescribed zones; and
- 2) A sewage reticulation system by a person licensed under the Water Industry Competition Act 2006 to be carried out without development consent, and by any other person with development consent, within prescribed zones.

However, there are no provisions in the State Environment Planning Policy (Infrastructure) for development for the purpose of a water supply system by any person other than a public authority (or acting on behalf of a public authority), with or without development consent.

The Planning Proposal is compatible with the objectives of the State Environment Planning Policy (Infrastructure) and will make the provision of essential infrastructure under the Water Industry Competition Act 2006 permissible with development consent in zones not covered by the State Environment Planning Policy (Infrastructure), facilitating orderly and economic development opportunities in the Bellbird North Urban Release Area in particular and Council's Urban Release Areas generally.

2. ***The Planning Proposal will facilitate a piecemeal delivery of water and waste water infrastructure.***

Comment

In response to the issues raised in the submission, Council requested the Private Network Operator (Flow Systems P/L) to confirm the onsite capacities of the proposal water recycling facility at Bellbird North.

Flow Systems P/L confirmed that the land area of 8077m² was of a suitable size to construct infrastructure sufficient to cater for the 3,500 lot yield anticipated within the Bellbird North URA. The system will harvest sewage from the development area, treat it on site in accordance with Australian Guidelines for Water Recycling and return it to the development for non-potable uses such as toilet flushing, washing machine use and irrigation.

While all environmental and regulatory issues for the full facility will need to be addressed in future approvals sought from relevant authorities and regulators, the facility will be built in stages in line with development growth on commercial arrangement.

Based on current commercial arrangements, the initial stage to be constructed will service the proponents (Johnson Property Groups) land interests. Notwithstanding this, the operators will be able to satisfy interests from other land owners seeking service to allow augmentation of the facility on a commercial basis.

3. *Development of smaller land holdings within the Bellbird North URA will become unviable.*

Comment

The Water Industry Completion Act 2006 allows application to be made to construct and operate water industry infrastructure (including water recycling facility). The Independent Pricing and Regulatory Tribunal (IPART) are responsible for monitoring under the Act.

As such, the Private Network Operator (PNO) will service the Bellbird North URA, through a local servicing strategy following set procedures approved by Hunter Water, with the construction subject to future development approvals by Council and the operation, including connections and costs, regulated by IPART.

The Planning Proposal has not been amended as a result of the public exhibition.

Consultation requirements stipulated by the Gateway Determination were complied with.

4.0 VIEWS OF PUBLIC AUTHORITIES

The Gateway Determination required consultation with the Hunter Water Corporation prior to public exhibition.

The HWC advised that has no comments on the proposed rezoning for the purposes of permitting utility infrastructure noting that a Private Network Operator (PNO) under the Water Industry Competition Act would establish and operate a sewerage treatment facility in this area.

A copy of the HWC response is included in the Attachment to this report.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

An assessment of relevant Section 117 Directions is provided in the attached Planning Proposal.

6.0 PARLIAMENTARY COUNSEL OPINION

A request to amend the Cessnock Local Environmental Plan 2011 was made to Parliamentary Counsel on 13 August 2015. Parliamentary Counsel Opinion was received on 1 October 2015 and is included in the Attachment to this report.

7.0 OTHER RELEVANT MATTERS

There are no additional matters that are relevant considerations for the making of the plan.

8.0 MAPPING

Please find relevant Maps and Map Cover Sheet attached.

9.0 RECOMMENDATION

Council recommends Cessnock Local Environmental Plan (Amendment 19) be made as per the attached Parliamentary Counsel Opinion and associated Maps.

Attachments:

- Attachment 1: Planning Proposal;
- Attachment 2a: Gateway Determination;
- Attachment 2b: Gateway Determination (Clarification);
- Attachment 3: Delegated Plan Making Reporting Requirements sheet;
- Attachment 4: Parliamentary Counsel Opinion – *Proposed Cessnock Local Environmental Plan 2011 (Amendment 19)*;
- Attachment 5: Map Cover Sheet and Map (Amendment 19);
- Attachment 6: Letter dated 31 March 2015 from Hunter Water Corporation