

## Planning and Assessment

IRF22/205

### Gateway determination report

<b>LGA</b>	<b>Cessnock LGA</b>
<b>PPA</b>	<b>Cessnock City Council</b>
<b>NAME</b>	<b>Cessnock Conservation Zone Framework</b>
<b>NUMBER</b>	<b>PP-2021-7357</b>
<b>LEP TO BE AMENDED</b>	<b><i>Cessnock Local Environmental Plan 2011</i></b>
<b>ADDRESS</b>	<b>All land zoned C2, C3 and C4</b>
<b>RECEIVED</b>	<b>14/12/2021 14/12/2021</b>
<b>FILE NO.</b>	<b>IRF21/ 2205</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal. There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1. INTRODUCTION

### 1.1 Site description

This planning proposal applies to land zoned C2 Environmental Conservation, C3 Environmental Management and C4 Environmental Living within the Cessnock Local Government Area (LGA). The following map (Figure 1) details the Conservation zoned land to which the planning proposal applies.

## 2. PROPOSAL

### 2.1 Description of planning proposal

The planning proposal seeks to amend the conservation zone framework applying under the *Cessnock Local Environmental Plan 2011*. The proposed amendments to the zoning framework are informed by Council's Environmental Lands Study adopted in November 2021.

*Cessnock Local Environmental Plan 2011* and Cessnock Development Control Plan 2010 include existing environmental controls that guide development on conservation zoned land. The proposed amendments have been identified for comprehensive review to ensure consistency with the relevant priorities for

environmental land in the Cessnock Local Strategic Planning Statement (LSPS) 2036 and other relevant local and regional plans and strategies.

This planning proposal comprises Phase 1. Council has advised Phase 2 will include implementation of the new framework to land within Cessnock LGA. This will involve an analysis of spatial layers in consultation with the Biodiversity Conservation Division and documentation of the environmental values of the LGA.

It is recommended that Phase 2 also includes a verification methodology, which is consistent with the Northern Councils E Zone Review, which states a C2 Environmental Conservation and C3 Environmental Management zone or other mapped planning controls cannot be applied to land unless the attributes meet that relevant zones criteria have been verified on that land. The review sets out the methodology for verification that must be undertaken.

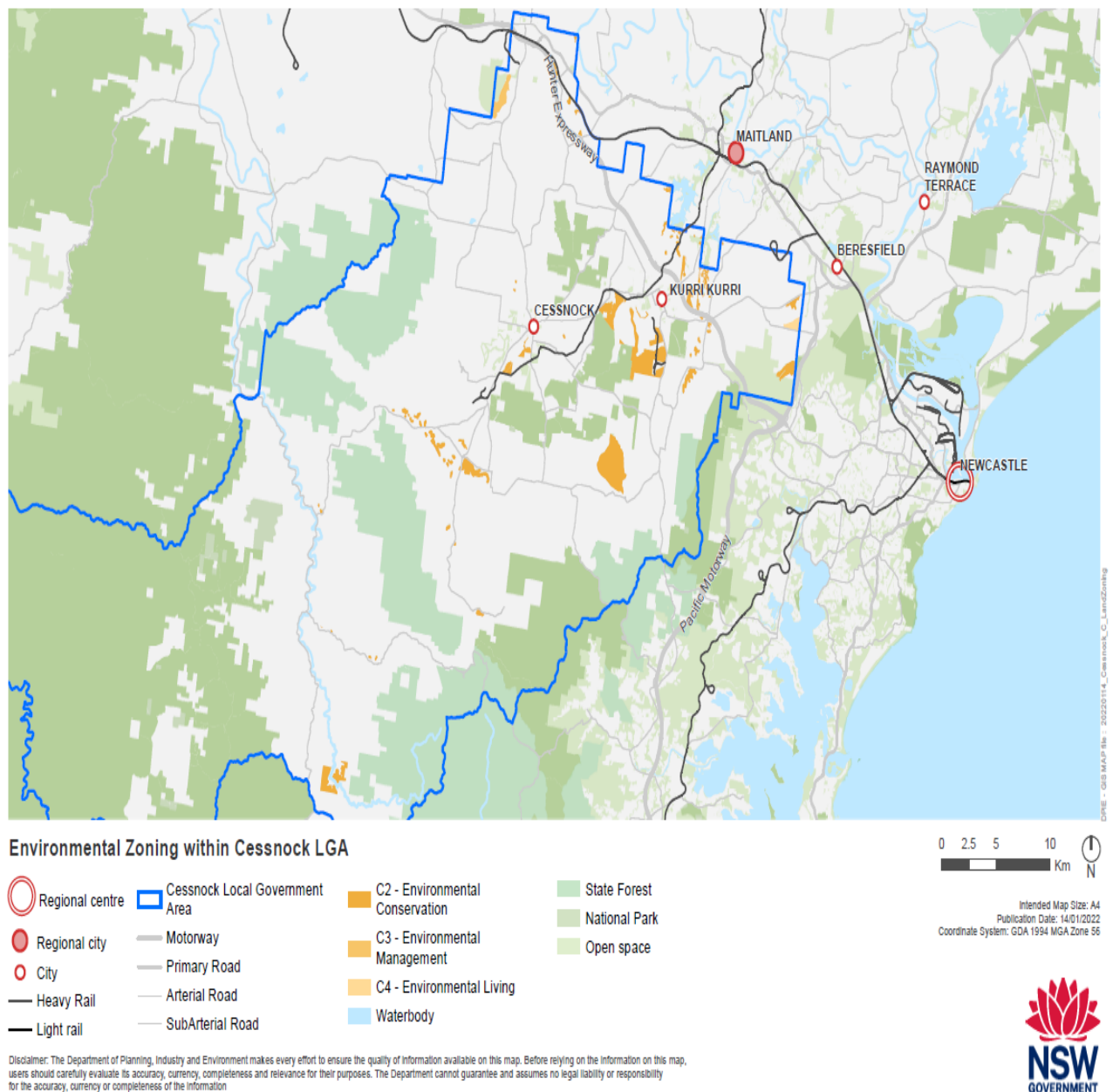


Figure 1: C2, C3 and C4 Land Application within Cessnock LGA (Source: Department of Planning & Environment)

## 2.2 Objectives or intended outcomes

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the planning proposal. The objectives are to amend the zone objectives and land use tables for the following zones:

- C2 Environmental Conservation;
- C3 Environmental Management; and
- C4 Environmental Living.

While the objectives of this planning proposal are clear and adequate, references to an environmental zone E2, E3 or E4 within the planning proposal should be taken to be a reference to a Conservation zone C2, C3 or C4 in accordance with the *Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021*.

A condition will be included in the Gateway determination.

## 2.3 Explanation of provisions

The planning proposal seeks to amend the *Cessnock Local Environmental Plan 2011* per the changes below:

**Table 1 Proposed changes to land use tables**

Zone	Objectives	Land Use Table
C2 Environmental Conservation	<p>Include additional zone objectives:</p> <ul style="list-style-type: none"><li>• to protect, manage and restore Aboriginal cultural heritage, threatened ecological communities, key threatened species habitat, biodiversity corridors and important ecosystems, and,</li><li>• to encourage activities that meet the conservation objective of the zone.</li></ul>	<ul style="list-style-type: none"><li>• remove the following land use as permitted without consent: Home occupations.</li><li>• remove the following land uses as permitted with consent: Extensive agriculture, Home based childcare, Recreation areas, Secondary dwellings, Tourist and visitor accommodation.</li><li>• include the following land uses as permitted with consent: Bed and breakfast accommodation, Building identification sign, Business identification sign, Community facilities, Eco-tourist facilities, Emergency services facilities, Flood mitigation works, Home businesses, Home occupations.</li></ul>
C3 Environmental Management	<p>Include additional zone objectives:</p> <ul style="list-style-type: none"><li>• to protect, manage and restore Aboriginal cultural heritage, water quality, riparian and estuarine vegetation, biodiversity corridors and important ecosystems,</li></ul>	<ul style="list-style-type: none"><li>• remove the following land use as permitted without consent: Environmental protection works.</li><li>• remove the following land use as permitted with consent: Recreation areas.</li><li>• include the following land uses as permitted with consent: Bed and breakfast accommodation, Building</li></ul>

Zone	Objectives	Land Use Table
	<ul style="list-style-type: none"> <li>• To recognise lands with environmental hazards in order to protect community and environmental health, and</li> <li>• to provide for low impact agricultural land uses on land with productive value.</li> </ul>	<p>identification sign, Business identification sign, Camping grounds, Community facilities, Eco-tourist facilities, Emergency services facilities, Environmental protection works, Extensive agriculture, Farm buildings, Farm stay accommodation, Home businesses, Roadside stalls, Tourist and visitor accommodation.</p> <ul style="list-style-type: none"> <li>• include the following land uses as prohibited: Backpackers' accommodation, Hotel or motel accommodation, Serviced apartments.</li> </ul>
C4 Environmental Living	<p>Include additional zone objective:</p> <ul style="list-style-type: none"> <li>• protect, manage and restore biodiversity corridors and facilitate species movement.</li> </ul>	<ul style="list-style-type: none"> <li>• remove the following land uses as permitted without consent: Environmental protection works, Home based childcare.</li> <li>• remove the following land uses as permitted with consent: Agriculture, Animal boarding or training establishments, Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Emergency services facilities; Environmental facilities; Farm buildings; Information and education facilities; Landscaping material supplies; Neighbourhood shops; Passenger transport facilities; Plant nurseries; Recreation areas; Research stations; Respite day care centres; Secondary dwellings; Water reticulation systems.</li> <li>• include the following land uses as permitted with consent: Bee keeping, Eco tourist facilities, and Environmental protection works.</li> <li>• remove the following land uses as prohibited: Intensive livestock agriculture.</li> </ul>

The explanation of provisions adequately explains how the objectives of the planning proposal will be achieved. The majority of the amendments align with the land use tables within the *Standard Instrument (Local Environmental Plans) Order 2006* and Council's Environmental Lands Study.

The amended zoning framework has been assessed in the context of the legislative and policy framework above and against local environmental plans of adjoining local government areas. Consideration has also been given to the unique environmental qualities of the Cessnock local government area.

In some instances, the proposed local objectives duplicate the mandated objectives under the Standard Instrument. These objectives will be subject to legal drafting and refinement during finalisation to ensure local intent is correctly drafted.

Similarly, finalisation of the planning proposal will include a legal review of the Standard Instrument dictionary to align land uses consistently within the applicable zones. This will include a review of the appropriate use of parent and child terms within each zone.

The following land use table changes require further justification:

#### C2 Environmental Conservation

- remove 'extensive agriculture' as permitted with consent, which is inconsistent with the Northern Councils E Zone Review.

#### C3 Environmental Management

- introduce 'extensive agriculture' as permitted with consent, which is inconsistent with the Northern Councils E Zone Review,
- prohibition of 'Recreation areas' given permissibility in adjoining local government areas, and
- criteria applied to justify the inclusion of 'Camping grounds' and 'Tourist and visitor accommodation' as permitted with consent.

#### C4 Environmental Living

- prohibition of 'Caravan parks'
- removal of 'Water reticulation systems' as permitted with consent is inconsistent with clauses 125 and 126 of SEPP (Infrastructure) 2007, now SEPP (Transport and Infrastructure) 2021.

The above matters should be further addressed, and the planning proposal updated prior to public exhibition.

### **Permissibility of agriculture in conservation zones**

The Department recommends extensive agriculture be permitted with consent in the C2 Environmental Conservation and permitted without consent in C3 Environmental Management zones. Not permitting extensive agriculture in conservation zones may significantly affect current and future agricultural activities. Such an effect could occur where agriculture is being conducted on land which was to be zoned C2 Environmental Conservation and C3 Environmental Management. If extensive agriculture is not permitted in that zone, landowners would have to rely on existing use rights to continue their farming practices.

The Department also recommends C2 Environmental Conservation and C3 Environmental Management zones only be applied if the primary use of the land is environmental conservation or environmental management and the land contains attributes which meet one or more of the criteria for a conservation zone.

Further justification is required to progress with the intention to remove extensive agriculture as currently permitted with consent in the C2 Environmental Conservation and C3 Environmental Management zones. The Gateway determination should be conditioned for this proposal to be removed until this justification is provided to the Department of Planning and Environment.

## 2.4 Mapping

No mapping is proposed to be amended by the planning proposal. This will be undertaken as part of Phase 2 works by Council and subject to a separate planning proposal.

## 3. NEED FOR THE PLANNING PROPOSAL

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Council has identified the need to comprehensively review conservation lands following the historical translation of land previously deferred under the *Cessnock Local Environmental Plan 2011* to an equivalent zone. The planning proposal implements Action 5 and Action 22 of the Cessnock Local Strategic Planning Statement 2036.

Action 5 of the Cessnock LSPS outlines the need to review the *Cessnock Local Environmental Plan 2011* to achieve the following outcomes in relation to conservation zoned lands:

- to review the land-uses in the C4 Environmental Living zone;
- to investigate the use of environmental zones;
- to ensure the land-uses permissible in each of the environmental zones are consistent with the objectives of the zone;
- to investigate the introduction of planning controls to reduce land-use conflict for lands of high environmental value;
- to ensure significant riparian corridors and water bodies are zoned to an appropriate environmental zone; and
- to ensure that the zoning and land-uses for land that is significantly affected by natural hazards (e.g. flooding and bushfire) reflect the risk.

Action 22 of the LSPS requires Council to undertake an Environmental Lands Study which has informed preparation of the planning proposal.

## 4. STRATEGIC ASSESSMENT

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### 4.1 Regional / District

#### 4.1.1 Hunter Regional Plan 2036

The following table provides an assessment of the planning proposal against relevant directions of the *Hunter Regional Plan 2036*.

**Table 2 Hunter Regional Plan 2036 assessment**

Regional Plan Direction	Justification
Direction 14 - Protect and connect natural areas;	The planning proposal implements Council's Environmental Lands Study and seeks to improve environmental outcomes on land within the local government area, including vegetation management. This will assist in managing fragmentation of biodiversity corridors. The planning proposal is consistent with Direction 14 of the plan.



Regional Plan Direction	Justification
Direction 16 - Increase resilience to hazards and climate change	<p>The planning proposal will assist the community in increasing resilience to hazards and climate change.</p> <p>The planning proposal addresses:</p> <ul style="list-style-type: none"> <li>• Action 16.1, to manage the risks of climate change and improve the region's resilience to flooding, sea level rise, bushfire, mine subsidence, and land contamination, and</li> <li>• Action 16.3, to incorporate new knowledge on regional climate projections and related cumulative impacts in local plans for new urban development by making sure land uses align are relevant to the planning proposal. The proposal will assist in delivering these actions through the creation of a comprehensive and informed conservation lands framework.</li> </ul> <p>The planning proposal is consistent with Direction 16 of the plan.</p>

The planning proposal is consistent with the *Hunter Regional Plan 2036*.

#### 4.1.2 Greater Newcastle Metropolitan Plan 2036

The following table provides an assessment of the planning proposal against relevant directions of the *Greater Newcastle Metropolitan Plan 2036*.

**Table 3 Greater Newcastle Metropolitan Plan 2036 assessment**

Regional Plan Directions	Justification
Strategy 12 – Enhance the Blue and Green Grid and the urban tree canopy	<p>The planning proposal will assist in implementing green infrastructure outcomes through the creation of a comprehensive and informed environmental lands framework. This will also enhance opportunities for nature-based tourism, for example, eco-tourist facility development.</p> <p>The planning proposal is consistent with Strategy 12 of the plan.</p>
Strategy 14 – Improve resilience to natural hazards	<p>The planning proposal seeks to employ risk-responsive land use controls so that new development does not occur in high risk areas, including those subject to natural hazards for example, the prohibition of centre based child care facilities within C4 Environmental Living zone land which may be mapped as bush fire prone.</p> <p>The comprehensive environmental lands framework will also assist Council in mitigating climate change and planning for net zero emissions by 2050.</p> <p>The planning proposal is consistent with Strategy 14 of the plan.</p>
Strategy 18 – Deliver well-planned rural residential housing area	<p>The Cessnock local government area currently contains a parcel of C4 Environmental Living zoned land at Black Hill. The conservation lands framework will permit the continuation of this land for residential purposes, while recognising its environmental significance. The additional local objectives and revised land use tables support this approach. The revised framework is not expected to result in land use conflict with existing C4 Environmental Living zoned land and the emerging Black Hill Precinct identified within the Metro Plan.</p> <p>The planning proposal is consistent with Strategy 18 in the plan.</p>

The planning proposal is consistent with the ***Greater Newcastle Metropolitan Plan 2036***.

#### **4.1.3 Draft Hunter Regional Plan 2041**

The planning proposal is consistent with the draft Hunter Regional Plan 2041 (draft Plan), including:

- Objective 5 - Increase green infrastructure and quality public spaces and improve the natural environment.
  - Strategies 5.6 and 5.7
- Objective 6 - Reach net zero and increase resilience and sustainable infrastructure
  - Strategy 6.1

The planning proposal includes consideration of the location and extent of areas of high environmental value and seeks to apply an appropriate zoning criteria to the applicable zones. The planning proposal is also seeks to prohibit incompatible uses, such as 'Centre based childcare facilities' from constrained lands and is unlikely to increase risk to life or property from mapped flood impacts.

The planning proposal is consistent with the Draft Hunter Regional Plan 2041.

#### **4.1.4 Northern Councils E Zone Review**

The Northern Councils E Zone Review Final Recommendations Report informed the preparation of Council's Environmental Lands Study. While the E Zone Review only applies to the five Far North Coast councils, the principles can be adopted by councils reviewing their environmental zone framework.

The planning proposal is inconsistent with recommendation 14 – Permissibility in E Zones, which recommends:

- 'Extensive agriculture' is to be listed as permissible with consent in the E2 zone [for all Far North Coast LEPs].
- 'Extensive agriculture' is to be listed as permissible without consent in the E3 zone [for all Far North Coast LEPs].

As noted in section 2.3 of this report, the planning proposal seeks to remove 'extensive agriculture' as permitted with consent in the E2 Environmental Conservation zone and introduce 'extensive agriculture' as permitted with consent in the E3 Environmental Management zone.

The planning proposal should be updated to justify the inconsistency prior to being included in this phase and this planning proposal.

### **4.2 Local**

#### **4.2.1 Community Strategic Plan 2027 - Our People, Our Place, Our Future**

The *Cessnock Community Strategic Plan 2027* identifies the community's priorities for the future and identifies strategies for achieving them. The planning proposal will implement Objective 3.1: protecting and enhancing the natural environment and the rural character of the areas.

The planning proposal is consistent with the *Cessnock Community Strategic Plan*.



### 4.2.2 Cessnock Local Strategic Planning Statement 2036

The *Cessnock Local Strategic Planning Statement 2036* establishes the 20-year vision for land use within the Cessnock local government area. It establishes the character and values that are to be preserved and outlines how change will be managed into the future. The planning proposal is consistent with the planning priorities and principles of the endorsed Strategy, as follows:

**Table 4 Local strategic planning statement assessment**

Local Strategies	Justification
Planning Priority 6: Rural residential, large lot residential development and environmental living are considered in limited and appropriate locations.	The conservation lands framework will impact the zone objectives and permissible land uses within the existing C4 Environmental Living zoned land at Black Hill. The environmental lands framework will see the continuation of this land for residential purposes, while recognising the environmental significance of the land. The planning proposal is consistent with planning priority 6 in the LSPS.
Planning Priority 17: Our lands of environmental value are protected and enhanced.	The conservation lands framework recognises the unique environmental qualities of conservation zoned land within the local government area, through additional local provisions and appropriate land use controls. A development control plan will be prepared by Council as a separate process to support the amended land use tables. The planning proposal is consistent with planning priority 17 in the LSPS.
- Planning Priority 18: Our areas of biodiversity and biodiversity corridors are enhanced and protected.	The planning proposal seeks to introduce additional local objectives that have regard to the biodiversity of the local government area, and the protection of biodiversity corridors. The planning proposal is consistent with planning priority 18 in the LSPS.
- Planning Priority 19: Our waterways are healthy, and water quality and water security are improved.	The revised C3 Environment Management zone framework will protect riparian and estuarine vegetation and wetlands, including through an additional local objective. The Environmental Lands Study highlighted the community's aspirations to maintain water quality within the local government area. The planning proposal addresses this outcome. The planning proposal is consistent with planning priority 19 in the LSPS.

The planning proposal is consistent with the *Cessnock Local Strategic Planning Statement*.

### 4.2.3 Cessnock Environmental Lands Study

The amended zoning framework has been informed by Council's Environmental Lands Study (ELS) which was adopted by Council in 2021. The objectives of the study are to:

- identify and document the environmental values of land within the Cessnock Local Government Area;

- ensure that environmental zones are appropriately applied, reflecting the true environmental value and importance of the environmental attribute;
- ensure adequate protection of environmentally significant lands and areas of high biodiversity;
- ensure that Council is applying NSW legislation as intended;
- recommend environmental zone objectives, land uses and lot sizes for inclusion in the Cessnock Local Environment Plan; and
- Develop environmental zone principles and criteria to guide the future application of environmental zones.

The Environmental Lands Study was guided by the Northern Councils E Zone Review Final Recommendations Report and Planning Practice Note 09-002 Environmental Protection Zones and supported by a community and stakeholder engagement strategy. The study includes environmental criteria for each relevant zone developed with consideration of community values, the planning and legislative requirements and in consultation with stakeholders. The criteria will inform the Phase 2 planning proposal.

### **4.3 State**

#### **4.3.1 Practice Note PN09-002 Environmental Protection Zones**

Practice Note PN09-002 Environmental Protection Zones requires that councils maintain the integrity of the conservation zones by including only uses consistent with the zone objectives. Councils should, wherever appropriate, retain existing uses that maintain conservation land capabilities. The criteria has informed the amended land use tables within the planning proposal.

Council has not proposed to include 'extensive agriculture' as permitted with consent in the C2 Environmental Conservation zone or without consent in the C3 Environmental Management zone.

The practice note contains direction regarding the consideration of mining within C3 Environmental Management zoned land where there are there are mining, petroleum or extractive industries resources identified in a section 117 direction (now 9.1 direction). This direction has informed Council's application of agricultural permissibility and should be read in the context of the Northern Councils E Zone Review Final Recommendations Report and the outcomes of community consultation.

The practice note also outlines that environmental zones should be supported by a detailed development control plan. Council's response to community submissions details that development control plan controls will be considered at a later stage for offset sites. Council's response to community submissions identifies that controls will also be required to address:

- C2 Environmental Conservation zone: Dwellings
- C3 Environmental Management zone: Business identification sign, Building identification sign, Camping grounds Extensive agriculture Farm Stay Accommodation, Home Industry, Information and Education Facilities
- C4 Environmental Living zone: Business Identification sign, Building identification sign, Eco-Tourist facilities, Home Industries,

This is a separate process to the planning proposal, however, should be in place prior to finalisation.

The planning proposal would benefit from additional clarification outlining the methodology applied to justify the additional local objectives and amended land use tables in the context of the Environmental Lands Study prior to public exhibition.

#### 4.3.2 State environmental planning policies (SEPPs)

The following section provides an assessment of each relevant SEPP as it relates to the planning proposal at the time of lodgement. The planning proposal is consistent with the application and provisions of all other SEPPs not listed below.

The planning proposal should be updated prior to public exhibition, in accordance with the attached gateway determination, to reflect the applicable SEPP framework.

**Table 5 Assessment of planning proposal against relevant SEPPs**

SEPPs	Assessment
SEPP 64 – Advertising and Signage	‘Building identification signage’ and ‘Business identification signage’ are proposed to be included as permitted with consent in the C2 Environmental Conservation and C3 Environmental Management Zones. These land uses are defined as a type of signage under the SEPP and future development applications will be assessed in accordance with the assessment criteria specified in Schedule 1 of the SEPP and the Cessnock Development Control Plan 2010. The planning proposal is consistent with SEPP 64.
SEPP (Coastal Management) 2018	The Cessnock local government area contains portions of land mapped under SEPP (Coastal Protection) 2008 zoned C2 Environmental Conservation. The planning proposal will not increase development opportunities within the zone or seek to rezone this land. Development of this land has regard to the significance of this mapped land. The planning proposal is consistent with the SEPP.
SEPP (Concurrences and Consents) 2018	The planning proposal does not raise any issues that conflict with the SEPP.
SEPP (Educational Establishments and Child Care Facilities) 2017	<p>The SEPP seeks to facilitate the effective delivery of educational establishments and early education and care facilities.</p> <p>The planning proposal identifies that ‘Home-based child care’ will be removed as permitted with consent in the C2 Environmental Conservation zone and permitted without consent in the C4 Environmental Living zones. ‘Home-based child care’ will continue to be regulated via the SEPP framework, specifically clauses 29 and 30 which specifies that this use may be exempt or complying development if specified requirements are met. This will be further reviewed during finalisation and subject to legal drafting.</p> <p>‘Centre-based child care’ is proposed to be removed from the permitted with consent column of the C4 Environmental Living zone resulting in this land use being prohibited.</p> <p>Council considers that these land uses are inconsistent with the objectives of the C2 Environmental Conservation and E4 Environmental Living zones given the requirement for strict compliances to achieve resilience from natural hazards, including</p>

SEPPs	Assessment
	vegetation management and bushfire. Further, sufficient provisions exist elsewhere in the local environmental plan to enable the provisions of this SEPP to apply.
SEPP (Housing) 2021	SEPP (Housing) 2021 aims to facilitate the delivery of more diverse and affordable housing across the state. The design controls within SEPP (Housing) 2021 for land uses, such as secondary dwellings, will apply to the relevant zones once the local environmental plan is finalised. The planning proposal does not introduce any provisions that alter or replace the provisions of the SEPP and is consistent with its application.
SEPP Infrastructure 2007 now SEPP (Transport and Infrastructure) 2021	SEPP (Infrastructure) 2007, now SEPP (Transport and Infrastructure) 2021, seeks to facilitate the effective delivery of infrastructure across the State. The planning proposal seeks to prohibit the land use 'water reticulation systems' in the C4 Environmental Living zone under the land use tables. The provisions of the SEPP, specifically clauses 125 and 126A (now 2.158 and 2.160), will still apply to this land use in the E4 Environmental Living zone. This will be further reviewed during legal drafting. The proposal does not raise any other issues that conflict with the SEPP.
SEPP (Koala Habitat Protection) 2021	The planning proposal does not raise any issues that conflict with the SEPP. The provisions of Part 2 of the SEPP will be considered at the development application stage.
SEPP Mining, Petroleum Production and Extractive Industries 2007	The aims of the SEPP seek to promote the importance of mining, petroleum production and extractive industries in New South Wales. Council's departure from the Northern Council's E-zone Review in relation to extensive agriculture should be considered in the context of the revised environmental criteria having regard to clause 7 of the SEPP. Clause 7 identifies that mining development may be carried out with consent on land where development for the purposes of agriculture or industry may be carried out (with or without development consent). It is recommended that further information be included in the planning proposal prior to exhibition.
SEPP (Primary Production and Rural Development) 2019	The SEPP aims to facilitate the orderly economic use and development of lands for primary production and to reduce land use conflict. The planning proposal does not apply to agricultural or rural zoned land or raise any matters that conflict with the provisions of this SEPP to apply.

#### 4.3.3 Ministerial directions

Consistency with relevant section 9.1 Ministerial directions is discussed below. The planning proposal references superseded Ministerial directions and should be updated pre-exhibition to reflect the new Ministerial direction that commenced on 1 March 2022.

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistency	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	<p>The planning proposal is consistent with the <i>Hunter Regional Plan 2036</i> as discussed in Section 4.1 of this report.</p> <p>The planning proposal is consistent with this direction.</p>
1.3 Approval and Referral Requirements	Yes	<p>The planning proposal does not seek to include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.</p> <p>The planning proposal is consistent with this direction.</p>
1.4 Site Specific Provisions	Not Applicable	<p>This direction does not apply to the planning proposal.</p>
3.1 Conservation Zones	Yes	<p>The direction requires that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas and must not reduce the environmental protection standards that apply to land within an environment protection zone or land otherwise identified for environment protection purposes in a local environmental plan.</p> <p>The planning proposal does not seek to apply a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".</p> <p>The planning proposal does not seek to reduce the environmental protection standards that apply to the land. The additional local objections will assist Council in planning for the environmental significance of these zones. The amended land use tables respond to the additional local objectives and support an environmental outcome through the removal of incompatible uses.</p> <p>The planning proposal is consistent with this direction.</p>
3.2 Heritage Conservation	Yes	<p>The amended land use tables and zone objectives will facilitate the conservation of historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, with specific consideration to enhanced protection for Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes.</p> <p>The planning proposal is consistent with this direction.</p>
3.5 Recreation Vehicle Access	Yes	<p>This direction applies when a relevant planning authority prepares a planning proposal. The planning proposal does not enable land to be developed for</p>

Directions	Consistency	Reasons for Consistency or Inconsistency
		<p>the purpose of a recreation vehicle area, within the meaning of the <i>Recreation Vehicles Act 1983</i>.</p> <p>The planning proposal is consistent with this direction.</p>
4.1 Flooding	Consistency to be determined	<p>The direction seeks to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. It also seeks to ensure the provisions of a local environmental plan that apply to flood prone land are commensurate with flood behaviour and include consideration of the potential flood impacts on and off the subject land.</p> <p>Land impacted by the planning proposal is mapped as flood prone land. The amended land use tables are unlikely to increase flood risk through intensification of land use and any future development application will be required to demonstrate consistency with clause 5.21 – Flood Planning of <i>Cessnock Local Environmental Plan 2011</i> and Part C9 of Cessnock Development Control Plan 2010.</p> <p>Notwithstanding, due to the scope of the proposed changes to the land use tables, the planning proposal should be referred to Biodiversity Conservation Division to determine consistency with the direction.</p>
4.2 Coastal Management	Yes	<p>The Cessnock local government area contains portions of land mapped under SEPP (Coastal Protection) 2008 zoned C2 Environmental Conservation. The planning proposal does not seek to enable increased development or more intensive land-use on any land impacted by this direction. The planning proposal gives effect to the objects of the <i>Coastal Management Act 2016</i> and does not raise any issues that conflict with the NSW Coastal Management Manual and associated toolkit or the NSW Coastal Design Guidelines 2003. Council are undertaking a separate project to meet their obligations under this framework.</p> <p>The planning proposal is consistent with this direction.</p>
4.3 Planning for Bushfire Protection	Consistency to be determined	<p>The planning proposal seeks to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone area. Land impacted by the planning proposal is mapped as flood prone land and will be impacted via the amended land use tables. Consultation should be undertaken with the NSW Rural Fire Service.</p>



Directions	Consistency	Reasons for Consistency or Inconsistency
4.4 Remediation of Contaminated Land	Consistency to be determined	<p>This direction applies where a relevant authority prepares a planning proposal. While the planning proposal applies to conservation zoned land, there are some residential, educational, recreational and childcare purposes in the land use tables that should be considered in the context of the direction.</p> <p>The planning proposal requires further consideration of this direction to demonstrate consistency.</p>
4.5 Acid Sulfate Soils	Consistency to be determined	<p>The Cessnock local government area contains land mapped as potential acid sulfate soil.</p> <p>The planning proposal requires further consideration of this direction to demonstrate consistency.</p>
4.6 Mine Subsidence and Unstable Land	Consistency to be determined	<p>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. Land impacted by the planning proposal is within a Mine Subsidence District.</p> <p>The planning proposal seeks to amend the land use tables applicable to the relevant zones, and as such will alter permissible development within mines subsidence areas, for example permitting community facilities. While these are low impact activities, consultation with Subsidence Advisory NSW should be undertaken to determine consistency with this direction.</p> <p>The planning proposal requires further consideration of this direction to demonstrate consistency.</p>
5.2 Reserving Land for Public Purposes	Yes	<p>The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.</p> <p>The planning proposal is consistent with this direction.</p>
5.4 Shooting Ranges	Not Applicable	<p>There are a number of existing shooting ranges within the Cessnock LGA however, they have a RU2 Rural Landscape zoning, and are not impacted by the planning proposal.</p>
6.2 Caravan Parks and Manufactured Homes Estates	Requires further consideration	<p>The planning proposal proposes to remove caravan parks as a land use permitted with consent in the C4 Environmental Living zoned land.</p> <p>Planning Practice Note 09-002 Environmental Protection Zones identifies that 'Caravan parks' can be considered as an additional local use within the C4 Environmental Living zone.</p> <p>The Practice Note also notes that care should be taken to select uses that are in keeping with the special conservation values of the land and complement low-impact residential development.</p>

Directions	Consistency	Reasons for Consistency or Inconsistency
		<p>Council will need to provide a more detailed response to the direction.</p> <p>The planning proposal requires further consideration of this direction to demonstrate consistency.</p>
9.2 Rural Lands	Yes	<p>This direction applies where a planning proposal will impact land within an existing or proposed rural or environmental protection zones.</p> <p>The planning proposal is consistent with the strategic planning framework, considers the significance of agriculture and primary production, and the constraints of the land.</p> <p>The planning proposal has considered the social, economic and environmental interests of the community. Clause 3(b) of the direction does not apply to the planning proposal.</p> <p>The planning proposal is consistent with this direction.</p>

## 5. SITE-SPECIFIC ASSESSMENT

### 5.1 Social

Consultation has been undertaken by Council on the draft Environmental Lands Study which informed the planning proposal. A consistent theme that emerged from the stakeholder engagement included:

- the importance of balancing protection of the environment with the continuation of existing land management practices and uses, and
- community support for allowing compatible low-impact land uses to occur in the conservation zones.

The proposed provisions have been informed by these principles.

The prohibition of 'Recreation areas' within the C3 Environmental Management zone will have a minor negative social impact through reduced opportunities to locate these facilities throughout the local government area, despite broad permissibility of this use within adjoining council local environmental plans. Council has been requested to review this amendment prior to exhibition. Further, the planning proposal provides for increased opportunities to undertake community facility developments which will have a positive social impact.

On balance, the planning proposal will have a positive social impact within the conservation zones.

### 5.2 Environmental

The planning proposal seeks to deliver a comprehensive conservation lands zoning framework informed by Council's Environmental Lands Study. The proposed framework will ensure that environmental zones in Cessnock are consistently applied and that environmentally significant lands are recognised and managed appropriately. Council will need to implement a DCP to provide additional controls to some developments as outlined in this report. The planning proposal will have a positive environmental impact.

### **5.3 Economic**

The planning proposal will have a minor economic impact given the proposed amendments to the land use tables which alter economic outcomes within the applicable zones. This is particularly relevant in relation to:

- the proposed C4 Environmental Living zoning framework given the proposal to prohibit caravan parks and centre based childcare facilities, and
- the proposed C2 Environmental Conservation zoning framework because of the prohibition of tourist and visitor accommodation.

However, these impacts must be considered in the context of the proposed additional local objectives which seek to enhance environmental outcomes. Further, the additional permissibility relating to compatible land uses such as eco-tourism development and community facilities, and changes to home occupations and permissibility of business identification signage will assist in mitigating some of the anticipated economic impacts by permitting a broad range of appropriate development outcomes. On balance, the revised conservation framework will not have a significant economic impact.

### **5.4 Infrastructure**

The planning proposal seeks to amend the environmental lands framework in response to Councils adopted Environmental Lands Study and will not directly impact on the adequacy of infrastructure within the LGA.

## **6. CONSULTATION**

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### **6.1 Community**

Council identifies that community consultation will be undertaken in accordance with the Gateway determination.

It is recommended that the exhibition period be undertaken for 30 days, in accordance with the conditions of the Gateway determination.

### **6.2 Agencies**

Council has undertaken community consultation during preparation of the Environmental Lands Study. This includes the establishment of a Community Reference Group and community values surveys. The following groups were consulted through targeted stakeholder engagement:

- Mindaribba Local Aboriginal Land Council;
- Council's Development Consultation Forum;
- Council's Aboriginal and Torres Strait Island Committee;
- Council staff;
- Councillors;
- Department of Planning and Environment; and,
- NSW Local Land Services.

Council has nominated the following public agencies to be consulted about the planning proposal:

- Biodiversity Conservation Division;
- Hunter Water Corporation; and

- Subsidence Advisory.

In addition to the above, consultation is recommended with the following agencies:

- Mindaribba Local Aboriginal Land Council;
- NSW Rural Fire Service; and
- NSW Local Land Services.

## **7. TIME FRAME**

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Council proposes a 10-month time frame to complete the LEP.

The planning proposal is categorised as complex as described in the Local Environmental Plan Making Guideline (Department of Planning and Environment, 2021), which includes a 255 working day time frame following issue of the Gateway determination. An overall timeframe of 12 months is recommended.

Due to the nature of the proposed amendments and required agency consultation, it is also recommended that interim milestones be included within the Gateway determination to ensure the LEP is made within the overall timeframe.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council have requested authorisation under Section 3.31 of the *Environmental Planning and Assessment Act 1979* to act as the local plan-making authority to make the Local Environmental Plan.

It is recommended that Council not be authorised to be the local plan-making authority for this proposal for the following reasons:

- the planning proposal is categorised as a complex amendment;
- the planning proposal relates to Council-owned land; and
- legal drafting will need to include a comprehensive review of dictionary terms under the Standard Instrument Principal LEP (2006).

## **9. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. note that the consistency with the following section 9.1 Ministerial directions are not resolved and will require further justification:
  - (a) 4.1 Flooding,
  - (b) 4.3 Planning for Bushfire Protection,
  - (c) 4.4 Remediation of Contaminated Land,
  - (d) 4.5 Acid Sulfate Soils,
  - (e) 4.6 Mine Subsidence and Unstable Land, and
  - (f) 6.2 Caravan Parks and Manufactured Home Estates;

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to community consultation to:

- (a) amend references to environmental (E) zones to conservation (C) zones;
  - (b) remove references to changing the permissibility of 'extensive agriculture' in the C2 Environmental Conservation and C3 Environmental Management zones from the explanation of provisions;
  - (c) include further justification for the following proposed amendments:
    - i. prohibiting 'recreation areas' in all conservation zones;
    - ii. including 'camping grounds' and 'tourist and visitor accommodation' as permitted with consent in the C3 Environmental Management zone;
    - iii. including 'eco-tourist facilities' as permitted with consent in the C2 Environmental Conservation and C3 Environmental Management zones; and
    - iv. removing 'water reticulation systems' as permitted with consent in the C4 Environmental Living zone, as the prohibition would result in an outcome inconsistent with clauses 2.158 and 2.160 of State Environmental Planning Policy (Transport and Infrastructure) 2021;
  - (d) reference all relevant State Environmental Planning Policies;
  - (e) address the Local Environmental Plan Making Guidelines (December 2021), including consistency with applicable State and regional studies or strategies;
  - (f) update the explanation of provisions to differentiate between mandated land uses and land uses that may be permitted with or without consent in accordance with the Standard Instrument (Local Environmental Plans) Order 2006; and
  - (g) update the timeline to reflect the categorisation of the planning proposal as 'complex'.
2. The planning proposal should be made available for community consultation for a minimum of 30 days.
  3. Consultation is required with the following public authorities and organisations:
    - Biodiversity Conservation Division;
    - Hunter Water Corporation;
    - Subsidence Advisory NSW;
    - Mindaribba Local Aboriginal Land Council;
    - NSW Rural Fire Service; and
    - NSW Local Land Services.
  4. Exhibition of the planning proposal is to commence by **14 July 2022**.
  5. The LEP should be completed on or before 3 April 2023.
  6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make the plan.



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12/05/2022

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