

Cessnock Local Environmental Plan 2011 Amendment - Orica Kurri Kurri

Proposal Title : **Cessnock Local Environmental Plan 2011 Amendment - Orica Kurri Kurri**

Proposal Summary : **It is proposed to rezone 292 ha of land at Richmondvale to SP1 Special Activities (116 ha) and E2 Environmental Conservation (176 ha). This will accommodate the existing uses of 'Technology Centre' and 'Explosives Research and Production Facility', allow for the future expansion of these operations, and facilitate environmental conservation outcomes on the site.**

Part of the site is a deferred matter. The proposal will address this deferred matter by rezoning land from the Cessnock LEP 1989 where the land is currently zoned part 1(a) Rural (A) (LEP 1989). The remainder of the land is zoned RU2 Rural Landscape under the Cessnock LEP 2011.

PP Number : **PP_2015_CESSN_001_00** Dop File No : **15/01317**

Proposal Details

Date Planning Proposal Received :	11-Feb-2015	LGA covered :	Cessnock
Region :	Hunter	RPA :	Cessnock City Council
State Electorate :	CESSNOCK	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	George Booth Drive		
Suburb :	Richmondvale	City :	Postcode : 2323
Land Parcel :	Lot 2 DP809377		

DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**
 Contact Number : **0249042718**
 Contact Email : **dylan.meade@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Scott Christie**
 Contact Number : **0249934168**
 Contact Email : **scott.christie@cessnock.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	No
MDP Number :		Date of Release :	
Area of Release (Ha) :	116.00	Type of Release (eg Residential / Employment land) :	Employment Land
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	50

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes : **Council request use of plan making delegations. This is supported.**

Council advises that the site has been used as a Technology Centre and Explosive Research Facility since 1991. On 26 July 2010, the Minister's delegate granted approval (MP09_0090) for the continuation of existing operations as well as the construction of new infrastructure to manufacture and distribute 250,000 tonnes per annum of Ammonium Nitrate Emulsion (ANE). A minimum biodiversity offset of 37.1ha was required as part of the conditions of consent for this approval.

The proposal was originally lodged with the Department on 7 January 2015. Additional Information was requested from Council in regards to proposed clearing of vegetation and offsets. Discussions were also held with OEH in order to clarify if the proposal sought to offset the rezoning of land to SP1 within the Green Corridor and / or clearing associated with future expansion of the site. Clarification of these matters occurred on 11 February 2015.

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The statement of objectives provided explains that the intent of the proposal is to accommodate the approved 'Technology Centre' and 'Explosives Research and Production Facility', allow for the future expansion of these operations, and to facilitate environmental conservation outcomes on the site.**

The statement of objectives is supported.

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

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

Comment : **The explanation of provisions provided explains the planning proposal will be achieved through an amendment to Cessnock LEP 2011 to introduce the SP1 Special Activities zone, rezone the site to SP1 and E2 Environmental Conservation, and amend the minimum lot size map.**

The proposal intends to permit an 'Explosives Research and Production Facility' through introduction of the SP1 zone. The proposal seeks to achieve this by labelling the SP1 zone applying to the site as 'Explosives Research and Production Facility' on the land use zoning map. The introduction of the SP1 zone will permit with consent the 'purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.'

The use 'Explosives Research and Production Facility' is not defined in the Cessnock LEP 2011 and is not a Standard Instrument definition. The SP1 zone should be labelled with the corresponding Standard Instrument definitions of 'heavy industry' and 'heavy industry storage establishment' instead of the proposed 'Explosives Research and Production Facility'.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

1.5 Rural Lands

2.1 Environment Protection Zones

3.4 Integrating Land Use and Transport

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

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

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

d) Which SEPPs have the RPA identified?

SEPP No 33—Hazardous and Offensive Development

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

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

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Adequate mapping is provided for exhibition, however as discussed the labelling of the SP1 Zone will need to be updated prior to exhibition.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council seeks to exhibit the planning proposal for a period of 28 days in accordance with Council's Notification Policy.**

The planning proposal is not considered of low impact as the proposal is inconsistent with the pattern of surrounding land use zones and presents issues with regard to

infrastructure servicing. As the proposal is not of low impact and in line with Council's request, a 28 day exhibition period is recommended.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The standard instrument Cessnock LEP 2011 is in force.

Assessment Criteria

Need for planning
proposal :

The site has been used as a Technology Centre and Explosive Research Facility since 1991. On 26 July 2010, the Minister's delegate granted approval (MP09_0090) for the continuation of existing operations as well as the construction of new Infrastructure to manufacture and distribute 250,000 tonnes per annum of Ammonium Nitrate Emulsion (ANE). Existing operations are able to continue under this approval, however the planning proposal is required to enable for future possible expansion of the site's operations.

The site is currently zoned part 1(a) Rural (A) (LEP 1989). The operation is permitted in the Cessnock LEP 1989 through additional permitted use provisions. The remainder of the site is zoned RU2 Rural Landscape under the Cessnock LEP 2011 and is permissible under existing use rights. The planning proposal is required to address the deferred matter from Cessnock LEP and to facilitate the continued use of the site under the Cessnock LEP 2011.

Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY (LHRS)

The site is located on the edge but within the LHRS identified Green Corridor. An outcome of the LHRS is for local environmental plans in the Green Corridor to provide for the ongoing role of biodiversity corridor and inter-urban break.

The intent of the proposal to zone land to E2 Environmental Conservation is considered consistent with the aim of the LHRS in respect of the Green Corridor.

The site is located on the edge of the Green Corridor and facilitates an existing use, however the intent to zone land to SP1 will not facilitate the ongoing role of the this part of the site as a biodiversity corridor.

It is noted that an on-site offset of 31.7 ha was required as part of the previous major projects approval. Additional offsets associated with the rezoning of land within the Green Corridor to SP1 and the future expansion of operations may be required. It is understood the proponent, Council and OEH have held preliminary discussions regarding this. It is not clear from the planning proposal if offsets are proposed for the rezoning of land within the Green Corridor or a development application for future expansion.

The proposal is considered inconsistent with the LHRS. It is recommended Gateway approval be given however as the proposed zoning will facilitate a use that is considered to best suited away from urban development. The Green Corridor will ensure a buffer to the site is maintained. Further discussions with OEH regarding offsets for the loss of the biodiversity corridor and the suitability of the proposed SP1 zoning are required. Further progression of the proposal will be contingent on the proponent reaching a suitable agreement with OEH in regards to offset calculation methodology and the offset conservation mechanism.

LOCAL PLANNING (SECTION 117) DIRECTIONS

***1.2 Rural Zones**

This Direction is applicable because the site is zoned rural under both LEPs. The planning proposal is consistent with this Direction as it does not rezone the land to a residential, business, industrial, village or tourist zone.

***1.5 Rural Lands**

This Direction is applicable as it affects land within existing rural zones and a proposed environment protection zone. The planning proposal is inconsistent with this Direction as although it introduces 80ha minimum lot size over the proposed environmental protection zoned area, no minimum lot size controls will apply to the SP1 area. The inconsistency is considered of minor significance as the site is heavily vegetated, is not being used for rural uses, and has limited future agricultural productivity.

***2.1 Environment Protection Zones**

The Direction applies to all planning proposals. The proposal is inconsistent with this Direction as it does not facilitate the protection and conservation of environmentally sensitive areas in the area proposed to be zoned SP1 Special Uses.

Land proposed to be zoned to E2 is not intended to be a biodiversity offset for the area to be zoned SP1. Council advises that preliminary discussions with the Office of Environment and Heritage indicates that a planning agreement will be required to offset any further clearing of land within the proposed SP1 zoned area. Negotiations should continue with OEH regarding any further clearing associated with the rezoning or expansion of existing operations.

It is noted that offsets were required for the major projects approval. Suitable arrangements to provide for appropriate long term conservation security for this existing offset area should continue but as a separate process to this proposal.

It can not be determined if the inconsistency with this Direction is of minor significance until appropriate biodiversity outcomes are agreed to with OEH.

***3.4 Integrating Land Use and Transport**

The proposal identifies this Direction as applicable. This Direction is not considered relevant as the planning proposal does not create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

***4.4 Planning for Bushfire Protection**

This Direction applies as the land is identified as bushfire prone. Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination and take into account any comments made.

***5.1 Implementation of Regional Strategies**

The planning proposal is inconsistent with this Direction as it is considered inconsistent with the Lower Hunter Regional Strategy outcome for local environmental plans in the Green Corridor to provide for the ongoing role of biodiversity corridor and inter-urban break. As discussed, further discussions are required with OEH to determine if appropriate offsets for loss of vegetation within the Green Corridor can be agreed to.

Environmental social
economic impacts :

ENVIRONMENTAL

The site is vegetated except for small areas cleared for existing buildings. The planning proposal does not state the type of vegetation that occurs over the site, however advises previous assessments were undertaken under S5A of the EP&A

Act, Threatened Species Conservation Act 1995 and Environmental Protection and Biodiversity Conservation Act 1999 as part of the major project approval. An offset was required as part of the major project approval. It is understood the area subject to the offset occurs on the site and is proposed to be zoned E2.

Council advises it has had preliminary discussion with the Office of Environment and Heritage (OEH), and that OEH advises a voluntary planning agreement is required to offset the loss of land to be zoned SP1 - Special Activities. Further discussions with OEH are recommended.

The intent to zone part of the site to E2 - Environmental Conservation will result in improved natural environmental outcomes. Further discussions with OEH are required to agree to arrangements concerning the zoning of land to SP1.

SOCIAL AND ECONOMIC

The planning proposal will have positive economic benefits by allowing the continuing use, and possible expansion of the existing operations. This may create additional employment opportunities.

There may be negative social impacts associated with increased noise and amenity issues. These impacts are limited due to the site's relative isolation from major urban settlements. It is considered that noise and other amenity impacts for any future expansion of the operations can be dealt with appropriately as part of the development assessment process.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Office of Environment and Heritage
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services**

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

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

If no, provide reasons :

Resubmission - s56(2)(b) : **Yes**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
2014-01-08 Planning Proposal - Cessnock City Council - Orica Kurri Kurri - Version 1.0.pdf	Proposal	Yes
2014-01-08 Planning Proposal - Kurri Kurri - Orica - Request for Gateway covering letter.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

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

S.117 directions: **1.2 Rural Zones
1.5 Rural Lands
2.1 Environment Protection Zones
3.4 Integrating Land Use and Transport
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies**

Additional Information : **It is recommended the proposal proceeds subject to the following conditions:**

1. Prior to undertaking community consultation, the land use zoning map of the planning proposal should be amended by labelling the SP1 Special Activities Zone as a

use defined in the Standard Instrument.

2. Prior to undertaking community consultation, suitable arrangements are agreed with the NSW Office of Environment and Heritage in regards to offset calculation methodology and the offset conservation mechanism. The planning proposal should be updated to clarify if offsets are for the rezoning of land to SP1 Special Activities within the Green Corridor and / or clearing associated as part of a future development application.

3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

(a) the planning proposal must be made publicly available for a minimum of 28 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment 2013).

4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

- NSW Office of Environment and Heritage (S117 Direction 2.1 Environment Protection Zones)
- NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)
- Transport for NSW - Roads and Maritime Services

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. Once the consultation is undertaken with the public authorities, and information is provided, Council is to update its consideration of S117 Directions.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

It is also recommended that Council are given plan making delegations.

Supporting Reasons : The proposal is supported as it removes a deferred area from Cessnock LEP 2013 and permits an existing use in a suitable location.

Signature:



Printed Name:

K-O'FLAHERTY

Date:

12/2/15