

Planning Services

Gateway Determination Report

LGA	Cessnock
RPA	Cessnock City Council
NAME	Rezone land from RE1 to R2 (13 homes, 0 jobs)
NUMBER	PP_2017_CESSN_005_00
LEP TO BE AMENDED	Cessnock LEP 2011
ADDRESS	21 & 43 Main Road, Cliftleigh
DESCRIPTION	Part Lot 949 DP1223319, Part Lot 20 1175757
RECEIVED	7 September 2017
FILE NO.	17/06073
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to rezone part of 21 and 43 Main Road, Cliftleigh from RE1 Public Recreation to R2 Low Density Residential and implement a minimum lot size of 450m² on the site.

Although the site is zoned RE1, it is currently in private ownership. The proposal does not include a reclassification of the land.

The proposal would result in up to 13 residential lots with direct frontage to Tarrango Street.

Site Description

The subject site is makes up part of Lot 949 DP1223319 and Lot 20 1175757. The site is rectangular, is approximately 260m long and 40m wide and has a total area of 1.69ha.

Part of the site has a frontage to Tarrango Street, while the eastern boundary adjoins existing residential development. The site contains disturbed remnant vegetation, including an Endangered Ecological Community (EEC). The northern part of the site contains a shed and outbuildings.

The site was identified for residential in the Cliftleigh Urban Release area rezoning. Council resolved to retain the subject site as 6(a) Open Space to act as a visual buffer for rural residential land to the east. The land was to be dedicated to upon creation of the 400th lot, which is yet to be created. As such the site is still in private ownership.



Figure 1: Aerial of 21 and 43 Main Road, Cliftleigh. Source: Nearmaps 2017.

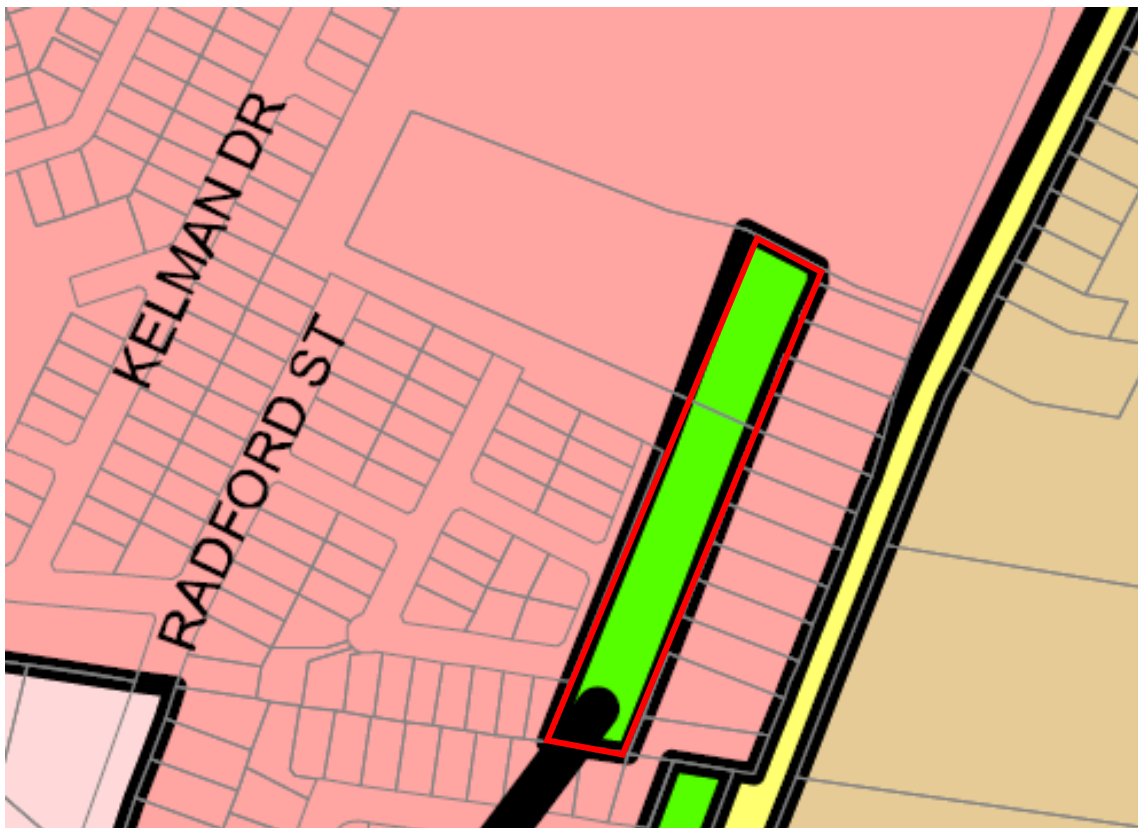


Figure 2: Land Zoning Map of 21 and 43 Main Road, Cliftleigh. Source: CLEP 2011.

Surrounding Area

Most of Cliftleigh, including the site and immediate area is identified on the Cessnock LEP 2011 Urban Release Area (URA) Map. Most of the URA area is zoned R2 Low Density Residential.

The site is located within an existing residential subdivision. The surrounding residential area has a minimum lot size of 450m², however it is not subject to height of building or floor space ratio controls.

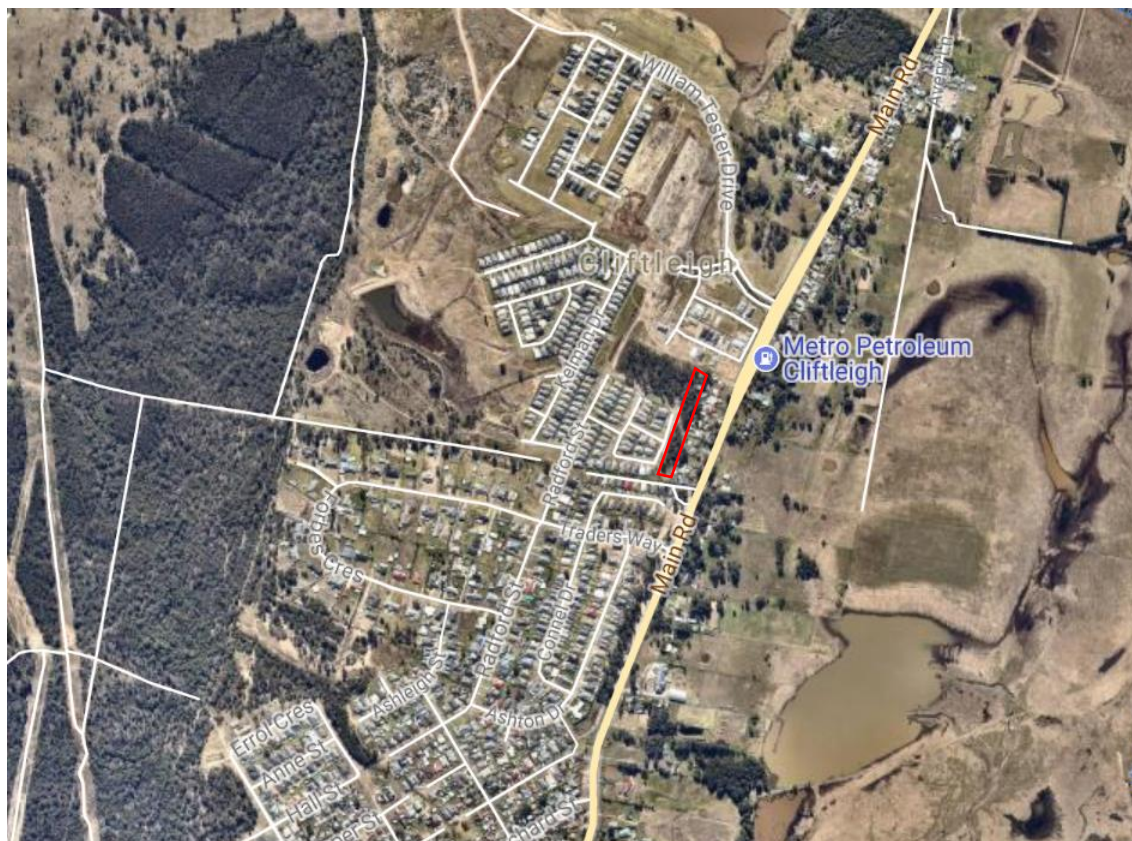


Figure 3: Aerial of Cliftleigh development area. Source: Nearmaps 2017.

Background

The Cliftleigh area was gazetted as an URA in November 2008.

The URA, including the subject site, were part of a planning proposal to rezone the land for residential purposes in 2007. That proposal would have resulted in a residential zone. However, Council resolved to retain the subject site as open space to act as a visual buffer to the existing residential land fronting Main Road.

The Cliftleigh Planning Agreement requires the site be dedicated to Council prior to issuing the Subdivision Certificate that would create the 400th lot. The site has not yet been dedicated to Council and does not need to be reclassified as part of this proposal.

The Cliftleigh URA area contained EEC. However, as part of the rezoning the Cliftleigh Planning Agreement required the land owner to pay a monetary contribution to offset vegetation loss.

The land owner has previously approached Council to rezone this site R2, however the proposal was not supported by Council as the land to the east remained RU2 Rural Landscape and the visual boundary was still required. Council now support the proposal, arguing that the buffer is not required as more development has occurred in the area and Main Road is the boundary between residential and rural zones.

Summary of Recommendation

The proposal should proceed subject to conditions. The proposal is supported because the site is an URA, adjoins residential zoned land and Council do not want to take ownership as the site does not meet recreation standards.

The land is an URA and was originally intended to be zoned R2. The proposed R2 zone is consistent with the zone and development standards applying to adjoining land, and aligns with the objectives of the URA and planned urban form for the area.

Council support the developer initiated proposal as they do not want land dedicated for public open space. Council's recreation studies identify the land as having limited recreational benefit and resident's recreation needs can be met by future regional sporting facilities proposed in the area. Further, the additional maintenance costs will have a negative impact on the existing maintenance program.

The proposal is consistent with the Hunter Regional Plan (HRP) 2036 because it will provide additional housing, close to existing infrastructure and services, as well as the Cessnock City Wide Settlement Strategy as it would contribute to meeting future housing demand.

The site is bushfire prone and should be referred to Rural Fire Service (RFS), however, once the site is rezoned it will likely be cleared and remove any risk. The site is in a mine subsidence district and should be referred to Subsidence Advisory NSW.

The site contains EEC, however, Council notes the landowner has offset the EEC in the URA through payment to the Department of Environment and Climate Change (Office of Heritage and Environment). The proposal should be referred to the Office of Environment and Heritage (OEH) to determine if additional offsets are required.

PROPOSAL

Objectives

Council list the intended outcome for the planning proposal to:

- Rezone the subject land from RE1 Public Recreation to R2 Low Density Residential; and
- Apply a minimum lot size of 450m².

Explanation of Provisions

The Explanation of Provisions state that Council would achieve the objective by:

- Rezone part of Lot 949 DP 1223319 and part of Lot 20 DP 1175757 currently zoned RE1 Public Recreation to R2 Low Density Residential;
- Apply a minimum lot size of 450m² to part of Lot 949 DP 1223319 and part of Lot 20 DP 1175757; and
- Amend the Land Zoning Map and Lot Size Map.

The amendments are considered sufficient for community consultation.

Mapping

The proposal will amend both the Land Zoning Map and the Lot Size Map.

The maps included in the proposal are considered sufficient for community consultation.

NEED FOR THE PLANNING PROPOSAL

The proposal was developer initiated and initial strategic planning was undertaken as part of the URA and initial R2 rezoning in 2007. As such, this proposal is not the result of a planning study or report, however, the proposal is generally supported by the URA Map and Council's recreation studies which identify future recreation demands will be met.

Planning Implications

The site was originally earmarked for residential zoning in the 2007 planning proposal, however Council resolved to zone the subject site for open space to provide a visual barrier for the existing residential development along Main Road.

The proposal will result in the site having a consistent zoning as the adjoining land. The size and proximity of the proposed residential land will permit development consistent with the established built form. Given Main Road is the boundary between the residential and rural landscape areas of Cliftleigh, retention of the subject site in its current form offers limited benefit.

Given most of Cliftleigh has been designated as a URA, the site will have similar zoning and development controls to the adjoining land, it is unlikely future residential development would have a negative impact the adjoining land. The proposal is supported.

Sufficient recreational facilities coming online in the future

Council utilised the Recreation and Open Space Strategic Plan (ROSSP) 2009, Cycling Strategy 2016 and Recreation Needs Analysis (RNA) 2017 to determine existing and future recreation needs. The studies indicate there is currently a recreation shortfall in the area. However, any shortfalls would be met in the future by other facilities set to be dedicated to Council as part of the Cliftleigh URA development. Three parks will be dedicated to Council prior to the Subdivision Certificate that would create the 331st, the 400th and the 600th lots.

Once complete the Cliftleigh area will have approximately 53 hectares of land designated for passive and active recreation. If the site were to become a public park it would have minimal impact on the overall recreation provisions on the Cliftleigh urban area.

The proposal is supported as the recreation needs of existing residents would be met through the development of new regional facilities as land is dedicated to Council.

Limited Recreation and Open Space value

According to Council's ROSSP guidelines the subject site, due to its size and shape, is of limited recreational value as a park. Further the site is not connected to other recreational facilities. As such, the site does not meet recreation needs of the local community and the land should be rezoned for residential purposes.

The proposed amendments are supported as the site does not meet the ROSSP guidelines.

Cost of maintenance

The ongoing management and maintenance cost will fall to Council once the site has been dedicated. This additional cost will have an impact on existing maintenance programs.

The proposed amendments are supported.

Planning Proposal

The proposal indicates that an LEP amendment is the best means of achieving the intended outcome.

It is considered that a planning proposal to amend the Cessnock LEP 2011 is the most appropriate way to achieve the intended outcome. There are no other alternative means of achieving Council's intended outcome.

STRATEGIC ASSESSMENT

Regional

Council's assessment indicates that the proposal is supported by the Hunter Regional Plan, particularly the following directions:

- Direction 18: Enhance access to recreational facilities and connect open spaces – the site is isolated and is not linked to other open space or recreational facilities in the area.
- Direction 21: Creating a compact settlement – Cliftleigh is an Urban Release Area which makes up part of the Kurri Kurri Growth Corridor.

The proposal is generally consistent with the HRP as it will provide an opportunity for infill and contribute to a compact settlement pattern.

Local

CESSNOCK CITY WIDE SETTLEMENT STRATEGY 2010 (CWSS)

Council's assessment notes the proposal is not inconsistent with the CWSS.

The proposal is generally consistent with the strategic direction of the CWSS which aims to ensure that sufficient zoned land is provided to accommodate future growth targets. The proposal also complies with the CWSS proposed density for new release areas.

Section 117(2) Ministerial Directions

Council has identified that the proposal is consistent with the following Section 117 Directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environmental Protection Zones
- 2.2 Heritage Conservation
- 2.3 Recreational Vehicle Areas
- 3.1 Residential Zones

- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 3.6 Shooting Ranges
- 4.1 Acid Sulphate Soils
- 4.2 Mine subsidence and Unstable Land
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.10 Implementation of Regional Plans
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

However, the proposal is inconsistent with the following Section 117 Directions or further work is required before consistency can be determined:

3.1 RESIDENTIAL ZONES

This Direction applies as the proposal will allow residential development. The Direction states that a Planning Proposal must include a requirement to ensure a site is adequately serviced prior to development. It is considered that Council's LEP and DCP provide suitable controls to address servicing requirements at the Development Application stage and therefore additional requirements do not need to be included in the proposal. The inconsistency with this Direction can be justified as it is of minor significance.

4.2 MINE SUBSIDENCE AND UNSTABLE LAND

This Direction applies as the site is in a mine subsidence district. The Direction states that Council should consult with Subsidence Advisory NSW and exhibit the findings and include provisions in the LEP relating to appropriate development scale. Council should address any inconsistencies and consult with Subsidence Advisory NSW prior to public exhibition.

4.4 PLANNING FOR BUSHFIRE PROTECTION

This Direction applies as the site is bushfire prone. The Direction states that Council should consult with the RFS. Council should address any inconsistencies and consult with RFS prior to public exhibition.

6.2 RESERVING LAND FOR PUBLIC PURPOSES

Despite being privately own and not identified on the Land Reservation Acquisition Map this Direction applies as the proposal will reduce land zoned for public purpose. The proposal is consistent with URA and recreation demand would be met by future regional recreation facilities. As such, any inconsistency with this Direction is considered to be justified.

State Environmental Planning Policies

SEPP 55 – REMEDIATION OF LAND

In accordance with clause 6 of SEPP 55 a preliminary investigation is required for residential, educational, recreational and childcare purposes. No preliminary investigation has been provided. Council must ensure the site is suitable for R2 permissible uses and include the assessment findings in the public exhibition.

SITE SPECIFIC ASSESSMENT

Social

The proposal would unlikely result in conflict with the surrounding land which is also zoned R2 Low Density Residential. Although Council resolved to zone the site for open space to protect the visual amenity of existing development, additional land has been zoned R2 and the proposal is consistent with the URA. As such, retention of the site for visual amenity is not necessary.

Further, the site is not necessary to meet the future recreation needs of the URA, which will be serviced by the regional recreation facilities.

It is considered that the proposal would not result in a negative impact on the surrounding R2 development given the site will adopt the same zone and development controls.

Environmental

The site contains EEC and as part of the rezoning the land owner agreed to offset the EEC through a monetary contribution.

Although the site contains EEC its value is limited given most of the native vegetation in the URA has been removed to make way for residential development and road infrastructure.

No ecological report was provided. Further, it is not clear whether the offset Deed of Agreement covers the subject site. Council should provide an ecological study for the site and consult with OEH to determine whether additional offsets are required.

Economic

If the site were dedicated to Council for recreational uses, it would result in ongoing cost for management and maintenance. Council identified this additional cost as an issue given the site will offer limited recreational value to the community. Rezoning the site would ensure the site can be retained in private ownership and would not result in a financial burden on Council.

The proposal would not have a negative financial impact on Council.

Infrastructure

The proposal will not generate demand for additional public infrastructure as the Cliftleigh URA has adequate infrastructure to support the proposal.

The proposal will only generate up to 13 additional residential lots within the existing URA. It is considered that the additional lots will not generate an unreasonable demand on public infrastructure as the area is already serviced.

CONSULTATION

Community

Council has proposed a 14 day exhibition period.

A 14 day exhibition period is supported because the proposal is low impact as it is consistent with the surrounding land use zones and strategic framework, it would not result in infrastructure issues and does not propose to reclassify public land.

Agencies

NSW RURAL FIRE SERVICE (RFS)

The proposal should be referred to RFS to address the terms of Section 117 Direction 4.4 Planning for Bushfire Protection.

SUBSIDENCE NSW

Both the Cessnock LEP and Subsidence NSW identify the site as being in a Mine Subsidence District. The proposal should be referred to Subsidence Advisory NSW to address the terms of the Section 117 Direction 4.2 Mine Subsidence and Unstable Land.

OFFICE OF ENVIRONMENT AND HERITAGE

Council should provide an ecological study for the site and consult with OEHL to determine whether additional offsets are required prior to community consultation.

TIMEFRAME

Council's proposal suggests a 12 month timeframe for making the plan.

This timeframe is supported given limited agency consultation and additional studies are required.

DELEGATION

Council resolved to request authorisation to exercise the functions of the Minister for Planning to make the plan.

Given the low impact nature of the proposal and the supporting evidence Council should be granted delegation to make the LEP.

CONCLUSION

The proposal is supported to proceed with conditions for the following reasons:

- the proposal is consistent with the Hunter Regional Plan 2036 because it would provide additional housing, close to existing infrastructure and services;
- the proposal is consistent with the Cessnock City Wide Settlement Strategy as it would contribute to meeting future housing demand;
- the site is part of a URA and was originally intended for residential development. The proposal would result in zoning and development controls consistent with the adjoining R2 land;
- Cessnock recreation studies confirm the site is not required to meet Cliftleigh's future recreation needs, as sufficient regional recreation facilities will be developed in conjunction with the final stages of residential development;
- The current RE1 land does not meet Council's recreation guidelines and will offer limited recreation value to the community, while the ongoing cost of managing the site will impact the existing maintenance program;

- the proposal will not result in an unreasonable social or economic impact, or result in unreasonable demands on infrastructure; and
- the site is constrained by bushfire, mine subsidence and EEC, however it is considered that these issues can be addressed by conditions and consideration of the Section 117 Directions.

RECOMMENDATION

Detailed recommendation to include requirements for community consultation, requirements for consultation with other public agencies, time frame for completing the LEP, recommendation regarding delegation to Council to finalise the plan, relevant section 117 Directions and any other conditions. Note that the Gateway Determination will set out the formal conditions which refer to the relevant sections of the Act.

It is recommended that the delegate of the Secretary:

1. Agree any inconsistencies with Section 117 Directions 3.1 Residential Zones and 6.2 Reserving Land for Public Purposes are minor or justified; and
2. Note that the consistency with Section 117 Directions 4.2 Mine Subsidence and Unstable Land and 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service (4.4 Planning for Bushfire Protection);
 - Subsidence NSW (4.2 Mine Subsidence and Unstable Land); and
 - Office of Heritage and Environment.
3. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.
5. Council should provide an ecological study for the site and consult with OEH to determine whether additional offsets are required.



2/10/2017

Monica Gibson
Director Regions, Hunter
Planning Services

Contact Officer: Ben Holmes
 A/Team Leader, Hunter
 Phone: 02 4904 2709