

Planning and Assessment

IRF20/3174

Gateway determination report

LGA	Cessnock
PPA	Cessnock City Council
NAME	Land rezoning at Nulkaba
NUMBER	PP_CESSN_2020_002_00
LEP TO BE AMENDED	Cessnock LEP 2011
ADDRESS	8 Kerlew Street and 39 Pinchen Street
DESCRIPTION	Part Lot 1552 DP 1046610 and part Lot 31 and 32 DP 1253404
RECEIVED	2 July 2020
FILE NO.	IRF20/3174
POLITICAL DONATIONS	There are no donations or gifts to disclose to the knowledge of the Regional Team.
LOBBYIST CODE OF CONDUCT	There have been no communications with registered lobbyists to the knowledge of the Regional Team.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal (**Attachment A**) seeks to rezone the subject site from R5 Large Lot Residential to RU5 Village and change the minimum lot size from 2000m² to 750m² to rectify a split zoning that does not support an orderly approach to residential subdivision.

1.2 Site description

The subject site is on the western fringe of Nulkaba village, 3km north of Cessnock (Figure 1). The L-shaped site (within the Nulkaba Urban Release Area (Figure 2), has a 150m frontage to Kerlew Street, the main approach from Wine Country Drive and a 282m frontage to Pinchen Street. The site covers approximately 5.1 hectares.



Figure 1: Subject site



Figure 2: Urban release areas

The site currently contains a dwelling, a shed and has been predominantly cleared for grazing. The site is partly flood affected and is also mapped as being bushfire prone.

1.3 Existing planning controls

The subject site, comprising of two lots is subject to a split zoning. The majority of the site is zoned RU5 Village with the area subject to this proposed amendment zoned R5 Large Lot Residential (Figure 2).

Land to the north and east is zoned RU5 Village and has been predominantly been developed. Land to the west is zoned R5 Large Lot Residential. Land directly to the south is zoned RU2 Rural Landscape, with land 100m south of the site zoned SP2 for the Cessnock Correctional Centre.

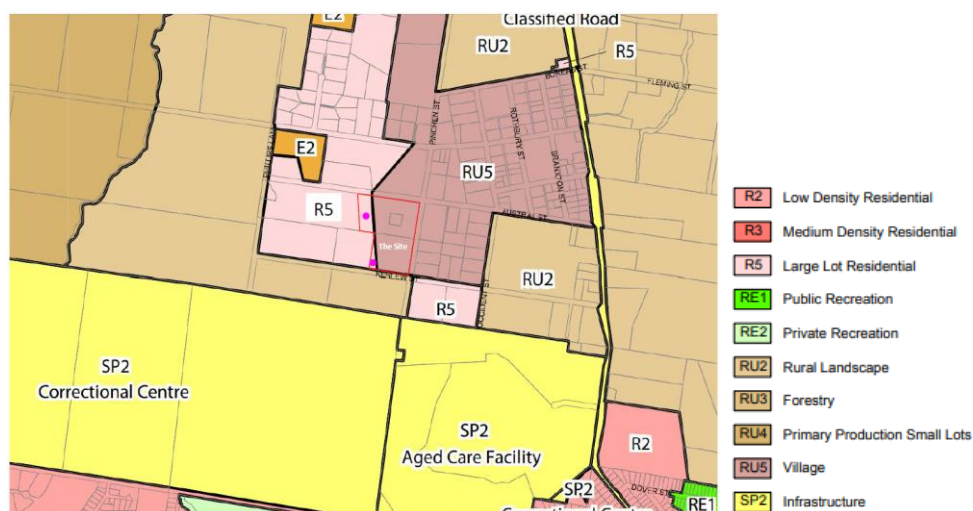


Figure 3: Existing Zoning

The subject site is subject to two minimum lot sizes, aligning with the zone boundaries a 2,000m² lot size for the R5 Large Lot Residential portion and 750m² for the RU5 Village part (Figure 4).

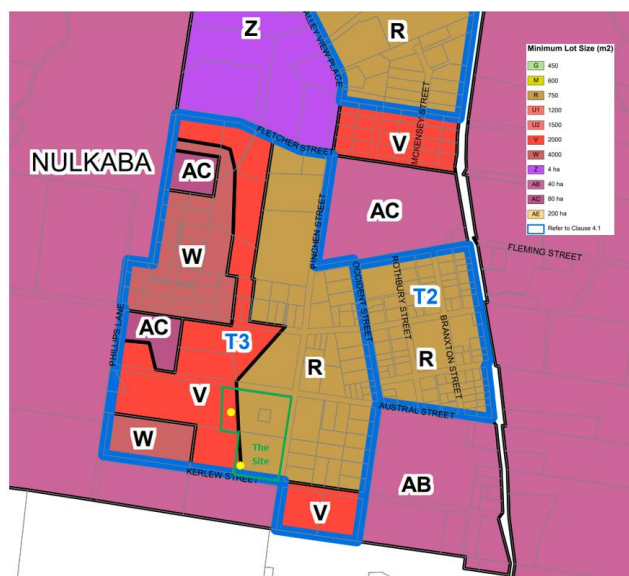


Figure 4: Existing Minimum Lot Size

1.4 Surrounding area

The subject site is located in a transitional area between the village of Nulkaba to the east and the Cessnock vineyards or 'Wine Country' to the west. Nulkaba is a small village containing a range of services such as a convenience store, public school, service station and businesses that support tourism within the Hunter Valley.

The north and east of the site has been developed for residential uses and to the west predominantly rural residential uses, and rural uses associated with small lots and vineyards.

To the south of the site is the Cessnock Correctional Centre.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the planning proposal are to:

- to remove the split zoning applying across the site; and
- to unify the development standards across the site to enable an appropriate development outcome.

2.2 Explanation of provisions

The planning proposal seeks to:

- rezone the site from R5 Large Lot Residential to RU5 Village;
- amend the minimum lot size from 2000m² to 750m² to reflect the proposed zoning.

The explanation of provisions is clear.

2.3 Mapping

The proposal seeks to amend the following local environmental plan maps:

- zoning map; and
- lot size.

The planning proposal should be updated to include clear separate 'current' and 'proposed' local environmental plan maps.

3. NEED FOR THE PLANNING PROPOSAL

The subject site was first identified as urban release area identified in the 2003 *Cessnock City Wide Settlement Strategy*, which has now been superseded by the updated 2010 version.

Due to the split zoning the site is currently constrained and limits the potential development of the site. The planning proposal seeks to enable a more efficient use of the site, with unified development controls across the site in a manner consistent with the Nulkaba Release Area Structure Plan. The planning proposal will allow for infill development for approximately seven additional lots within the village of Nulkaba.

The planning proposal is considered the best means of achieving the intended outcome for the site.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State-level strategies that provide specific guidance relevant to this planning proposal.

4.2 Regional

Hunter Regional Plan 2036 (HRP)

The planning proposal to rezone the entire site R5 Village is consistent with the following directions of the HRP:

- Direction 21 to create a compact settlement;
- Direction 22 to promote housing diversity and direction; and
- Direction 25 to monitor housing and employment supply and demand.

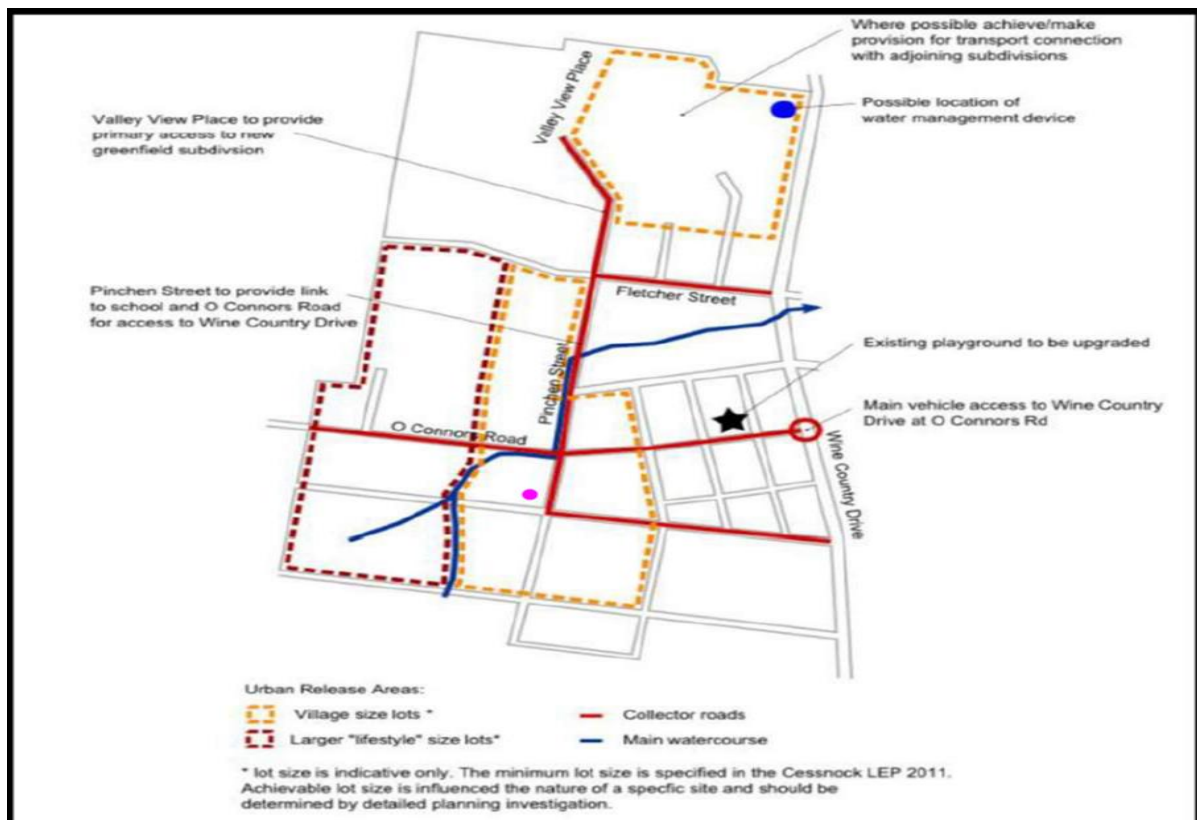
Greater Newcastle Metropolitan Plan 2036 (GNMP)

The planning proposal to extend the village zone in Nulkaba is consistent with Strategy 16, which is to prioritise the delivery of infill housing opportunities within existing areas.

4.3 Local

Cessnock Citywide Settlement Strategy 2010

The *Cessnock Citywide Settlement Strategy 2010* (CCSS) identified the subject site Nulkaba as being suitable for an Urban Release Area (Figure 5). This is reflected in the Urban Release Area maps of the *Cessnock Local Environmental Plan 2011* (Figure 6). The planning proposal is considered consistent with the CCSS.



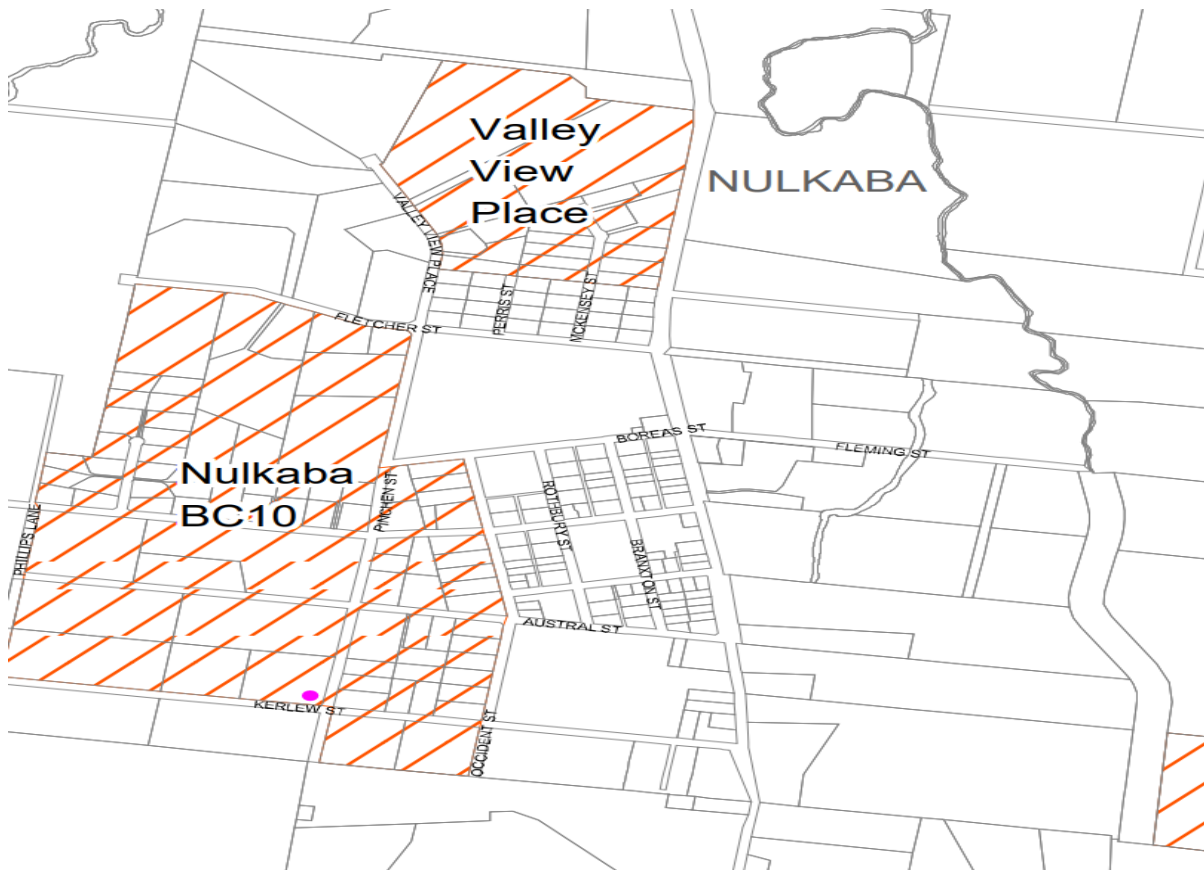


Figure 6: Urban Release Area Map (Cessnock LEP 2013)

Cessnock Local Strategic Planning Statement 2036 (LSPS)

The planning proposal is consistent with the villages planning principles of the LSPS and its planning priorities. The sites is in the mapped village area for Nulkaba with Nulkaba village identified as an investigation area for potential infill housing. The planning proposal is considered consistent with Cessnock LSPS.

4.4 Section 9.1 Ministerial directions

Direction 2.1 Environmental Protection Measures

The planning proposal states that previous studies have identified an Endangered Ecological Community (EEC) on the site and threatened species on the site. The remnant vegetation on site also has potential connectivity to an area of habitat to the south-west of the site.

It is noted that a subdivision development application for the site considers the site as substantially cleared. It is recommended consultation with the Biodiversity Conservation Division be undertaken and then consistency with this direction may be determined.

Direction 2.3 Heritage Conservation

An Aboriginal heritage due diligence report prepared in August 2019 is attached to the planning proposal. Site inspection by the consultant with a representative of the Mindaribba Local Aboriginal Land Council indicated no evidence for archaeological

deposits in the study area. No Aboriginal objects, sites, deposits or places were identified on inspection.

The planning proposal is considered consistent with this direction.

Direction 2.6 Remediation of Contaminated Land

The planning proposal does not address this direction and it is recommended that the planning proposal is updated prior to exhibition to address consistency with this direction.

Direction 4.3 Flood Prone Land

A small portion in the west of the site is flood prone as shown in Figure 6 and is affected by flooding during the 1% AEP flood event.

The planning proposal is inconsistent with this direction as the planning proposal does not provide sufficient information to determine the flood planning level and whether residential development is suitable in this part of the site. Council acknowledge this, and state that the proposed rezoning is contingent upon a flood study.

Subsequently, it is recommended as a condition of Gateway that a flood study is undertaken and the planning proposal updated with the findings of this study prior to exhibition. It is also recommended that Council consult with the Biodiversity Conservation Division.



Direction 4.4 Planning for Bushfire Protection

The site is bushfire prone land with Vegetation Category 3 (Figure 7). A bushfire hazard assessment has been undertaken and states that the site is capable of meeting the relevant guidelines. Consultation with NSW Rural Fire Service is required before consistency with this direction can be determined.

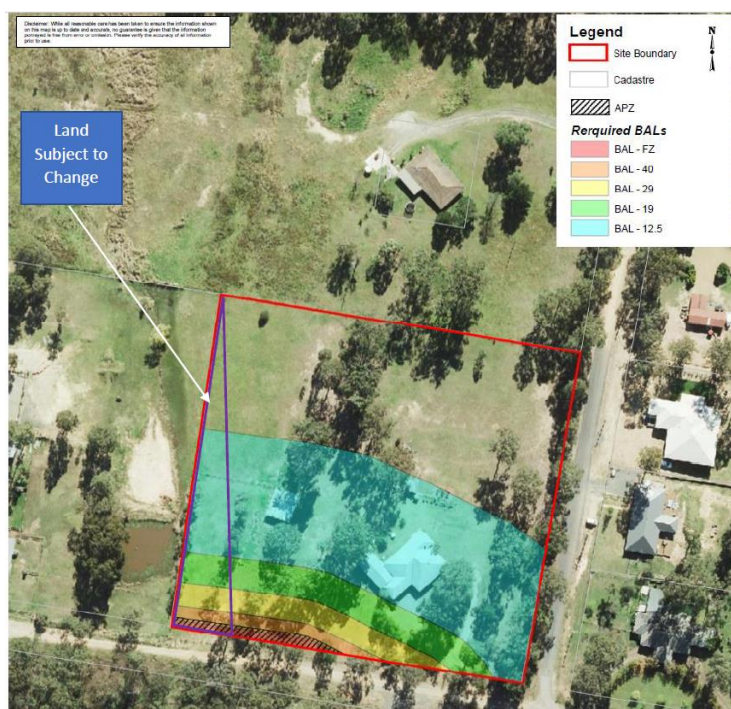


Figure 7: Bushfire Attack Levels for the southern site

Direction 5.10 Implementation of Regional Plans

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

4.5 State environmental planning policies (SEPPs)

State Environmental Planning Policy (Koala Habitat Protection) 2019 The subject site is predominantly cleared and has been approved for subdivision consistent with the outcomes of this planning proposal. A flora and fauna assessment prepared in 2018 identified that there were no signs of species during fieldwork and the site lacks suitable habitat and is considered unlikely to occur.

the SEPP (Koala Habitat Protection) 2019 now replaces SEPP 44 – Koala Habitat Protection, which was repealed and replaced on 1 March 2020. The policy intent of SEPP 44 has been retained in the new SEPP, which includes a new definition of 'core koala habitat'. The planning proposal should be updated to include assessment against the new SEPP.

At the development application stage, Council will consider the SEPP and therefore the proposal is considered consistent with the SEPP.

SEPP 55 - Remediation of Contaminated Land

Despite the site subject to previous rural uses, Council states that there is no evidence of the site being used for purposes which may have resulted in contamination. Council considers the proposal consistent with this SEPP.

As identified above, the planning proposal should be updated to address section 9.1 Ministerial direction 2.6.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal is likely to have a positive social impact by providing potentially seven additional residential lots and housing choice in Nulkaba.

5.2 Environmental

The flooding and bushfire impacts have been discussed in Section 4.4 above.

The site was subject to a flora and fauna study in 2018. The site contains some remnant vegetation, comprising of scattered native canopy trees and is considered to constitute a disturbed example of the Lower Hunter Spotted Gum – Ironbark Forest Endangered Ecological Community. Five threatened Microbat species were recorded on the site. The remnant vegetation has connectivity to an area of habitat to the south-west and provides a vegetation corridor allowing movement by these species in the local area.

Despite this, the subdivision DA (DA8/2017/438/2) concluded that the site did not contain critical habitat, threatened species, populations or ecological communities or their habitat. It is recommended that Council consult with Biodiversity Conservation Division regarding potential biodiversity impacts and potential mitigation measures.

5.3 Economic

No adverse economic impacts are anticipated.

5.4 Infrastructure

The site is currently serviced by infrastructure such as sewer and reticulated water.

A traffic impact assessment was attached to the planning proposal to assess the impacts of a potential seven additional residential lots. The planning proposal states there is sufficient capacity in the road network.

6. CONSULTATION

6.1 Community

The planning proposal is minor and a minimum 14-day exhibition period is considered appropriate.

6.2 Agencies

Consultation with the Biodiversity Conservation Division and NSW Rural Fire Service is recommended.

7. TIME FRAME

Council proposes a nine-month time frame for the planning proposal. A 12-month timeframe is considered appropriate to provide a buffer for any unanticipated delays.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not requested to be the local plan-making authority. Given the proposal is consistent with *Hunter Regional Plan 2036*, the *Greater Newcastle Metropolitan Plan 2036* and Councils strategies, it is recommended Council be the local plan-making authority.

9. CONCLUSION

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

- it supports increased infill residential development and housing choice in an identified urban release area in the village of Nulkaba;
- it removes the split zoning from the subject site and enables the more efficient development of the site and logical extension of the village zone; and
- is consistent with both regional and local planning strategies.

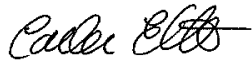
10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Inconsistent with the section 9.1 Ministerial directions 2.1 Environmental Protection Measures, 2.6 Remediation of Contaminated Land, 4.3 Flood Prone Land and 4.4. Planning for Bushfire Protection is unresolved and will require justification.

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

1. Prior to exhibition the planning proposal is to be updated to:
 - (a) include the findings of a flood study prepared for the site;
 - (b) refer to *State Environmental Planning Policy (Koala Habitat Protection) 2019*;
 - (c) address consistency with section 9.1 Ministerial direction 2.6 Remediation of Contaminated Land; and
 - (d) include both existing and proposed LEP zoning and lot size maps.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - Biodiversity Conservation Division
 - NSW Rural Fire Service
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.



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