

Cessnock LEP 2011 Housekeeping Amendment

Proposal Title : **Cessnock LEP 2011 Housekeeping Amendment**

Proposal Summary : **To make amendments to address minor matters within the Cessnock LEP 2011, including;**

1. Amendment to Lot Size maps for portions of land at Ellalong and Millfield to reflect the servicing of this land with sewer.

2. Amendment to Heritage maps to address labelling anomalies.

3. Amendment to Land Use Tables to clarify Council's intention regarding permissible and prohibited uses.

4. Amendment to the standard clause 5.9 Preservation of trees or vegetation, to include the optional sub-clause (9), that clarifies that all clearing within listed zones must be consistent with a development consent or property vegetation plan.

5. Inclusion of the standard clause 5.13 Eco-tourist facilities.

6. Inclusion of a new local provision that allows for the subdivision of land in Pokolbin, known as 'The Vintage', to create lots of any size for the purposes of development comprising of entertainment facility – amphitheatre, exhibition home, place of public worship, pub, residential accommodation (including attached dwellings, dual occupancy, dwelling houses, residential flat building and multi-dwelling housing), recreation facility (outdoor) - golf course and registered club.

7. Amendment to Schedule 5 and associated mapping to identify the Memorial Gates at Sawyers Gully as a heritage item of local significance.

If the Planning Proposal proceeds as the Regional Team recommends it will also;

8. Amend the model clause Acid Sulphate Soils for consistency with the revised model clause.

9. Amend the boundary of the urban release area at Heddon Greta to address a mapping error.

PP Number : **PP_2012_CESSN_004_00**

Dop File No :

12/13904

Proposal Details

Date Planning : **05-Oct-2012**

Proposal Received :

LGA covered :

Cessnock

Region : **Hunter**

RPA :

Cessnock City Council

State Electorate : **CESSNOCK**

Section of the Act :

55 - Planning Proposal

LEP Type : **Housekeeping**

Location Details

Street : **Watson Street**

Suburb : **Ellalong**

City :

Postcode : **2325**

Land Parcel : **Cessnock LGA**

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Street : **Wollombi Road**
Suburb : **Millfield** City : Postcode : **2325**
Land Parcel : **Various Lots**
Street : **Various**
Suburb : **Various** City : **Cessnock** Postcode : **2325**
Land Parcel : **Cessnock LGA**

DoP Planning Officer Contact Details

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RPA Contact Details

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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 :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	100	No. of Dwellings (where relevant) :	100
Gross Floor Area :	0	No of Jobs Created :	0

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 : **Communication in relation to the proposed development known as Vintage Balance, and located at the Vintage site has been recorded between 2009-2011. One such individual, Sarah Taylor, was recorded at the time as being a registered lobbyist. This communication pre-dates the lodgement of this planning proposal.**

Supporting notes

Internal Supporting
Notes :

External Supporting
Notes : Council originally submitted the Planning Proposal on 28 August 2012. Council have provided additional comments, however attempts to obtain a copy of the development consent to assist in assessing Item 6 The Vintage have been unsuccessful. Therefore the Planning Proposal has been assessed based only on the information that is currently available.

Adequacy Assessment

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

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

Comment : The statement of objectives indicates that the Planning Proposal seeks to correct a number of minor mapping and land use tables anomalies and to address inconsistencies in local planning provisions to ensure Council's intent in relation to these provisions is achieved.

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

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

Comment : The explanation of provisions explains that a number of minor amendments will be made to the Cessnock LEP 2011. Which include;

1. Amendment to Lot Size maps for portions of land at Ellalong and Millfield as identified, to reduce the minimum lot size from 40 hectares to 1500m2 and 750m2 respectively.

2. Amendment to Heritage map sheets to address labelling anomalies.

3. Amendment to Land Use Tables to clarify Council's intention regarding permissible and prohibited uses. Including;

Amend RU2 Rural Landscape Zone

Permit without consent – 'Bee keeping'

Permit with Consent – 'Eco-tourist facilities'

Prohibit – 'Truck depots', 'Warehouse or distribution centres', 'Garden centres', 'Hardware and building supplies', 'Landscaping material supplies', 'Plant nurseries', 'Timber yards', 'Vehicle sales or hire premises'.

Amend R3 Medium Density Residential Zone

Prohibit – 'Public administration building', 'Research station', 'Warehouse or distribution centres'.

Amend R5 Large Lot Residential Zone

Prohibit – 'Public administration building', 'Research station', 'Warehouse or distribution centres'.

Amend B1 Neighbourhood Centre and Amend B2 Local Centre zone

Prohibit – 'Warehouse or distribution centres'.

Amend IN1 General Industrial

Prohibit – 'Camping ground', 'Caravan park', 'Hardware and building supplies', 'Landscaping material supplies', 'Plant nurseries', 'Public administration building', 'Respite day care centre'.

Amend IN2 Light Industrial zone and Amend IN3 Heavy Industrial Zone

Prohibit – 'Garden centres', 'Hardware and building supplies', 'Landscaping material supplies', 'Plant nurseries', 'Public administration building', 'Respite day care centre', 'Vehicle sales or hire premises'.

4. Amend the Standard clause, 5.9 Preservation of trees or vegetation, to use the optional sub clause (9) which clarifies that all clearing within R5 Large Lot Residential Zone, E2 Environmental Conservation Zone, E3 Environmental Management or E4 Environmental Living, requires consent or consistency with a property vegetation plan under the Native Vegetation Act 2003.

5. Include the standard clause 15.3 Eco-tourist facilities to provide heads of consideration in relation to the assessment of application for these facilities.

6. Include a new local provision that allows the subdivision of land in Pokolbin, known as 'The Vintage', to create lots of any size for the purposes of development comprising of entertainment facility – amphitheatre, exhibition home, place of public worship, pub, residential accommodation (including attached dwellings, dual occupancy, dwelling houses, residential flat building and multi-dwelling housing), recreation facility (outdoor) - golf course and registered club.

7. Amend Schedule 5 and associated mapping to identify the Memorial Gates at Sawyers Gully as a heritage item of local significance.

It is recommended that the Planning Proposal be amended to address the following two matters;

8. Amend the model clause 7.1 Acid Sulphate Soils with a minor wording change to reflect the revised model clause.

9. Amendment to urban release area map 1720_COM_URA_009A_040_20111202 to address an error at Heddon Greta which incorrectly mapped certain land as being within the urban release area.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

Council are of the opinion that the proposal is consistent with all applicable SEPP's and s117 Ministerial Directions, however they do not elaborate on how this consistency has been assessed.

It is considered that State Environmental Planning Policy (Rural Lands) 2008 and s117 directions 1.2 Rural Zones and 1.5 Rural Lands are relevant to the proposal through the proposed changes at the Vintage (Item 6).

Although the planning status of the Vintage is complicated, consideration of consistency or otherwise with relevant SEPP's and s117 directions is required.

Due to the lack of this assessment, and other outstanding issues relating to this item, it is recommended that the Gateway determine that item 6 be limited to matters previously

permitted under clause 17 of the Cessnock LEP 1989.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **Some mapping has been provided in relation to amendments to minimum lot size at Ellalong and Millfield (Item 1) however no mapping has been provided for other components including heritage amendments.
If the recommended amendment to the urban release area at Heddon Greta is supported relevant mapping will need to be included.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council have proposed a 14 day exhibition period for the proposal as it represents minor matters. With the modification of Item 6 (the Vintage) this timeframe is supported.**

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? **No**

If No, comment : **The Proposal meets the adequacy criteria for all components except for the item relating to the Vintage.**

The Vintage was approved in 1988 as an Integrated Tourism Development and is proceeding as a staged development comprising three stages. It is understood that Stage 1 is the only stage that has commenced and comprises a golf course, country club, up to 223 residential lots and 21 rural-residential lots. Additional stages provide for further tourism and residential components.

Council has advised that Item 6 reflects the former clause 17 of Cessnock LEP 1989 (Subdivision of land within Zone 1(v) in conjunction with major tourist development) and historical development approval. Council have indicated that these provisions were lost in the drafting of the new standard instrument LEP.

A copy of Clause 17 is attached and relates to the subdivision of land and the erection of dwelling-houses, villas, duplexes and the like on the allotments so created where the subdivision is, in the opinion of the Council, required as an integral part of a major tourist recreation facility. However item 6 seeks to subdivide a wider range of uses, without the need for consideration of the integration of these uses as part of a larger tourism facility. It is unclear what subdivision capacity was included within the original consent and what is new and different.

Despite repeated requests Council has been unable to provide further evidence of this approval or adequate clarification of the matter. Evidence regarding prior approvals, and assessment of the proposed amendment's consistency with relevant planning strategies, instruments and directions, is required before the item can be fully assessed. It is considered unreasonable to delay other items within the Planning Proposal any further. Therefore it is recommended that this matter be limited to the capacity previously provided through clause 17 of Cessnock LEP 1989.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : Cessnock LEP 2011 was published in December 2011

Assessment Criteria

Need for planning proposal :

The planning proposal is required to address implementation issues associated with the new standard instrument Cessnock LEP 2011. Some of these issues were identified prior to gazettal of the new LEP, however were unable to be addressed due to implications for re-exhibition. Others have been identified through the early application of the new planning controls.

In particular;

1. Amendment to Lot Size maps for portions of land at Ellalong and Millfield is required to reflect the servicing of land at Ellalong by sewer since exhibition of the draft LEP and to address an error in lot size at Millfield. This land has been zoned for residential development RU5 Village and R5 Large Lot Residential respectively however the lot size has not permitted subdivision. The servicing of this land by sewer has been confirmed by Hunter Water.

2. Amendment to Heritage map sheets is required to reflect an error in labelling identified since gazettal of the 2011 LEP.

3. Amendment to land use tables is required to address new definitions and/or changes to group terms made after exhibition of the draft LEP, but unable to be addressed prior to gazettal without having to re-exhibit the plan.

4. Amendment to clause, 5.9 Preservation of trees or vegetation, is required to prevent the ability to clear vegetation without consent within R5 Large Lot Residential Zone, E2 Environmental Conservation Zone, E3 Environmental Management or E4 Environmental Living. This is an optional sub-clause from the Standard Instrument.

5. Inclusion of the provision relating to Eco-Tourist facilities, which is mandatory under the Standard Instrument where the use is permitted, as it is to be permitted within the RU2 Rural Landscape zone under item 3 of this proposal.

6. A new local provision is required to reflect the existing approval to subdivide uses at the Vintage, below the minimum lot size, that was not translated into the new LEP.

7. The Memorial Gates at Sawyers Gully need to be identified to as a heritage item of local significance to correct its omission in the drafting of the LEP.

The recommended items are required to be added;

8. To clarify the application of clause 7.3 Acid Sulphate Soils consistent with the model clause.

9. To remove urban land from the mapped boundary of the Heddon Greta urban release area which was incorrectly applied to existing residential land.

The proposed amendment is considered the most effective and timely method available to achieve the objectives and intended outcomes of the proposal.

Although no formal net community benefit test has been undertaken it is considered that there is community benefit in addressing these matters. In particular without these minor amendments development proposals at Ellalong, Millfield and for Eco-tourist facilities will be delayed. It is considered that there is insufficient information regarding the level of

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proposed change at the Vintage to determine whether or not that component is of net community benefit.

Consistency with strategic planning framework :

The proposal largely reflects minor matters that are not addressed within broad scale strategic plans such as the Lower Hunter Regional Strategy (LHRS) and Upper Hunter Strategic Regional Land Use (UHSRLUP) policy. However the intent of all items, except for Item 6 in relation to the Vintage, is considered consistent with the intent of these documents. In particular with the intent of maximising the best use of land close to services and infrastructure, maintaining a hierarchy of centres and ensuring consistency with the standard instrument.

The 6th item in the proposal, subdivision at the Vintage is not consistent with the LHRS which indicates that the vineyards district is regionally significant agricultural land. Nor is it consistent with the UHSRLUP which identifies this district as strategic agricultural land. Council have advised that this item reflects an existing approval that was issued prior to the release of these documents. Additional information is required to clarify the extent of this approval and applicability of these strategic plans to this item.

Council indicates that the whole proposal is consistent with the Cessnock City-Wide Settlement Strategy 2010. This version of the Strategy has not been endorsed by the Department (the 2003 version was). However the proposed amendment is considered consistent with the CWSS where applicable. In particular the proposal is consistent with the hierarchy of centres and approach to subdivision within the villages of Ellalong and Millfield.

The inclusion of the Memorial Gates at Swayers Gully is consistent with the City-wide heritage review which identified the item as of heritage significance and has the support of the local heritage society, Department of Veteran Affairs and Council's heritage consultant.

Council have indicated that the proposal is considered consistent with all relevant SEPPs and s117 directions.

However it is considered that State Environmental Planning Policy (Rural Lands) 2008 is relevant to item 6 at the Vintage because it affects rural land. The item is potentially inconsistent with the SEPP Rural Lands in relation to its aims for minimising rural land fragmentation and land use conflict. Clause 23 of the SEPP Rural Lands operates as a savings provision for development applications lodged but not determined before commencement of the SEPP. While it is understood that a development application for the Vintage was determined in 2006, it is unclear what subdivision capacity was included within that consent (and therefore not of relevance for consistency with the SEPP) and what is new and different. Consideration of consistency or otherwise with SEPP Rural Lands is required.

s117 direction 1.2 Rural Zones, 1.5 Rural Lands and 6.3 Site Specific Provisions are also considered relevant to the proposed changes at the Vintage.

1.2 Rural Zones - Item 6 at the Vintage is potentially inconsistent with clause 4b of this direction because it will increase the permissible density of land within a rural zone and no justification for this inconsistency has been provided.

1.5 Rural Land – Item 6 at the Vintage is potentially inconsistent with clause 3a of this direction because it will affect land within an existing rural zone without justification. No explanation of how it is consistent with the relevant principles, particularly the principle of minimising rural land fragmentation and land use conflict, is provided.

5.1 Implementation of Regional Strategies - Item 6 at the Vintage is potentially inconsistent with clause 4 of this direction because it will affect land identified within the Lower Hunter Regional Strategy as regionally significant agricultural land. Additional information is required to clarify the applicability of these strategic plans to this item.

6.3 Site Specific Provisions - Item 6 at the Vintage is potentially inconsistent with clause 4 of this direction because it will introduce a site specific provision which imposes particular requirements. It is considered that consistency with this direction will be clarified after

legal drafting.

It is noted that the recommended amendment to clause 7.3 Acid Sulfate Soils is consistent with s117 direction 4.1 Acid Sulfate Soils.

The proposal is considered consistent with all other applicable Directions.

Environmental social
economic impacts :

Although no formal net community benefit test has been undertaken it is considered that there is community benefit in addressing these matters.

In particular without these minor amendments residential opportunities at the existing villages of Ellalong and Millfield and economic opportunities for Eco-tourist facilities will be delayed.

In relation to the uses to be prohibited within the IN1 and IN3 zones under Item 3, Council has advised that there are two existing landscaping material supply / hardware and building supply enterprises. These uses will retain existing use rights but additional developments will be prohibited under this proposal. It is considered that the public exhibition process will enable this issue to be clarified.

Due to uncertainty about Item 6, it is unclear what environmental, social and economic impacts subdivision at the Vintage will create, if any.

Assessment Process

Proposal type : **Minor** Community Consultation **14 Days**
Period :

Timeframe to make **12 Month** Delegation : **DG**
LEP :

Public Authority
Consultation - 56(2)(d)
:

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

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

If no, provide reasons : **Yes the Planning Proposal should proceed, except for Item 6 the proposed amendment in relation to the Vintage which should be modified**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

Legal Services

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **The recommended additional item will remove existing urban land from the urban release area boundary at Heddon Greta, this area was mapped incorrectly and this matter has been confirmed by Ian Reynolds, Deputy Director General Strategies and Land Release.**

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal 23.8.12 Version 1.0.pdf	Proposal	Yes
Request for additional information and information provided.pdf	Proposal	No
Letter and BN re Satisfactory Arrangements at Heddon Greta DDG endorsed 27-9-12 copy.pdf	Study	No
Confidential Memo re Housekeeping PP.docx	Study	No

Planning Team Recommendation

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

S.117 directions:

- Additional Information :
1. Council is to amend the Planning Proposal to limit Item 6 to the subdivision potential provided by the former clause 17 of Cessnock LEP 1989 and provide an assessment of the item's consistency or otherwise with the SEPP Rural Lands 2008, relevant strategies and s117 directions.
 2. Amend the Planning Proposal to include an additional item that amends model clause 7.1 Acid Sulphate Soils to reflect the revised model clause.
 3. Amend the Planning Proposal to include an additional item that amends urban release area map 1720_COM_URA_009A_040_20111202 to address an error at Heddon Greta which incorrectly mapped certain land as being within the urban release area.
 4. Council is to amend the Planning Proposal to include mapping of the changes required in relation to Item 2 Heritage labels and Item 7 Memorial Gates at Sawyers Gully.
 5. Council is to provide a copy of the revised Planning Proposal and maps to the Regional Team for review prior to placing it on public exhibition.
 6. 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 14 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 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).
 7. Consultation is required with no public authorities under section 56(2)(d) of the EP&A Act. This does not discharge Council from any obligation to respond to submissions made by relevant agencies as a result of the public exhibition of the proposal.
 8. 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).
 9. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Supporting Reasons : The planning proposal is required to address implementation issues associated with the new standard instrument Cessnock LEP 2011. Some of these issues were identified prior to gazettal of the new LEP, however were unable to be made due to implications for re-exhibition, others have been identified through the early application of the new

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planning controls.

There is insufficient information provided to assess Item 6, the proposal for subdivision at the Vintage. The outstanding issues in relation to this item should not delay other elements of the proposal and therefore this item should be modified by limiting it to the former provisions of the Cessnock LEP 1989. It is considered that, once the relevant information is obtained, a proposal for additional subdivision at the Vintage could be considered.

This information includes;

- Evidence of the approval to subdivide, under torrens title and to a lot of any size, individual uses (including entertainment facility – amphitheatre, exhibition home, place of public worship, pub, recreation facility (outdoor) - golf course and registered club) without the need to consider their integration in a larger tourism facility.
- Assessment of the consistency or otherwise of this proposal with the SEPP Rural Lands 2008, relevant strategies and s117 directions.

Signature:



Printed Name:

K. O'FLAHERTY

Date:

12-10-12

