

PLANNING PROPOSAL
Amendment to the
Cessnock Local Environment Plan 2011

Minor Housekeeping Amendments
Cessnock
Local Environmental Plan 2011

Version 4.0
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PART 1: OBJECTIVES and INTENDED OUTCOMES

The amendments proposed to Local Environmental Plan 2011 by this Planning Proposal are to correct a number of minor mapping and land use table anomalies as well as address inconsistencies in local planning provisions to ensure Council's intent in relation to these planning controls are achieved.

Other more substantial amendments to the Cessnock Local Environmental Plan 2011, including the consideration of the planning controls that apply to land identified as 'Deferred Matters' will be subject to separate Planning Proposals, given the potentially different consultation requirements.

The Department of Planning and Infrastructure has previously agreed that this is the most appropriate and timely way of achieving these amendments, recommending that this 'minor housekeeping amendment' Planning Proposal be kept separate from Planning Proposals needed to rectify more substantial amendments to the Cessnock Local Environmental Plan 2011, including addressing the 'Deferred Matters' at Wollombi and Mulbring, given the potentially different consultation requirements.

As a condition of the Gateway Determination, Council has amended the Planning Proposal to:

- Remove all additional land uses proposed to be included in the clause to allow subdivision of land at The Vintage, Pokolbin, that were not included under the provisions of Clause 17 of the Cessnock Local Environmental Plan 1989 – this will be the subject to a further amendment to the Cessnock LEP 2011;
- Include an additional item that amends model clause 7.1 Acid Sulfate Soils to reflect the revised model clause;
- 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 release area, and
- Include mapping of the changes required in relation to proposed heritage amendments and the inclusion of the Memorial Gates at Sawyers Gully.

A copy of the Gateway Determination was provided with the exhibition material.

PART 2: EXPLANATION of PROVISIONS

This Planning Proposal has been prepared to enable the following amendments to be made to the Cessnock Local Environmental Plan 2011, which was published (gazetted) on 23 December 2011 and came into effect on that date.

General Mapping

Issue

The purpose of this amendment is to rectify a drafting error that unintentionally and inadvertently, retained a minimum lot size of 40ha for the RU5 - Village zone in Millfield.

Affected Land

This proposed provision is relevant to land zoned RU5 - Village in Millfield, as shown in **Figure 1**.

Any Council Interest

Council does not have any interest in this land.

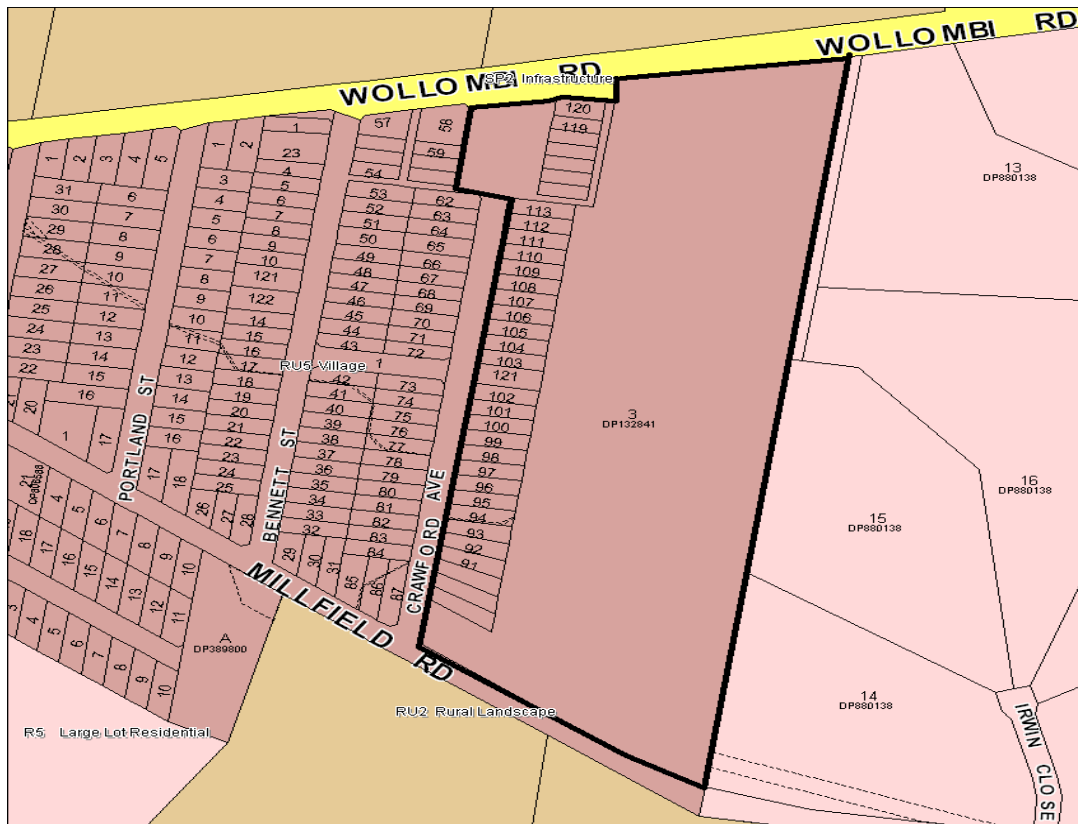


Figure 1

Recommendation

- Amend the Minimum Lot Size Map (1720_COM_LSZ_006B_040_20111214) and (1720_COM_LSZ_006D_040_20111220) corresponding to land zoned RU5 - Village at Millfield from AB - 40Ha to R - 750m².

Issue

The purpose of this amendment is to remove the 40ha minimum lot size for subdivision for the RU5 - Village zone in Ellalong. With the Hunter Water Corporation confirming the provision of sewer and water being extended to these areas in late 2011, this restriction is no longer required.

Affected Land

This proposed provision is relevant to land zoned RU5 - Village in Ellalong, as shown in **Figure 2**.

Any Council Interest

Council has the following land ownership in the area affected by this amendment:

Council Owned Community Land

Lot 7004 DP 93601 – Community Hall

Lot 140 DP 755255 – Public Recreation

Lot 7006 DP 93602 and Lot 1 DP 650540 – Ellalong Cemetery

Council Owned Operational Land

Lot 4 Section 3 DP 758382 – Drainage Easement

Lots 11 & 12 Section 4 DP 13656 – Drainage

Lots 18 – 21 Section 3 DP 13656 – Flood Prone Land

However, given the general nature of the amendment, this proposal has been prepared without regard to these interests.

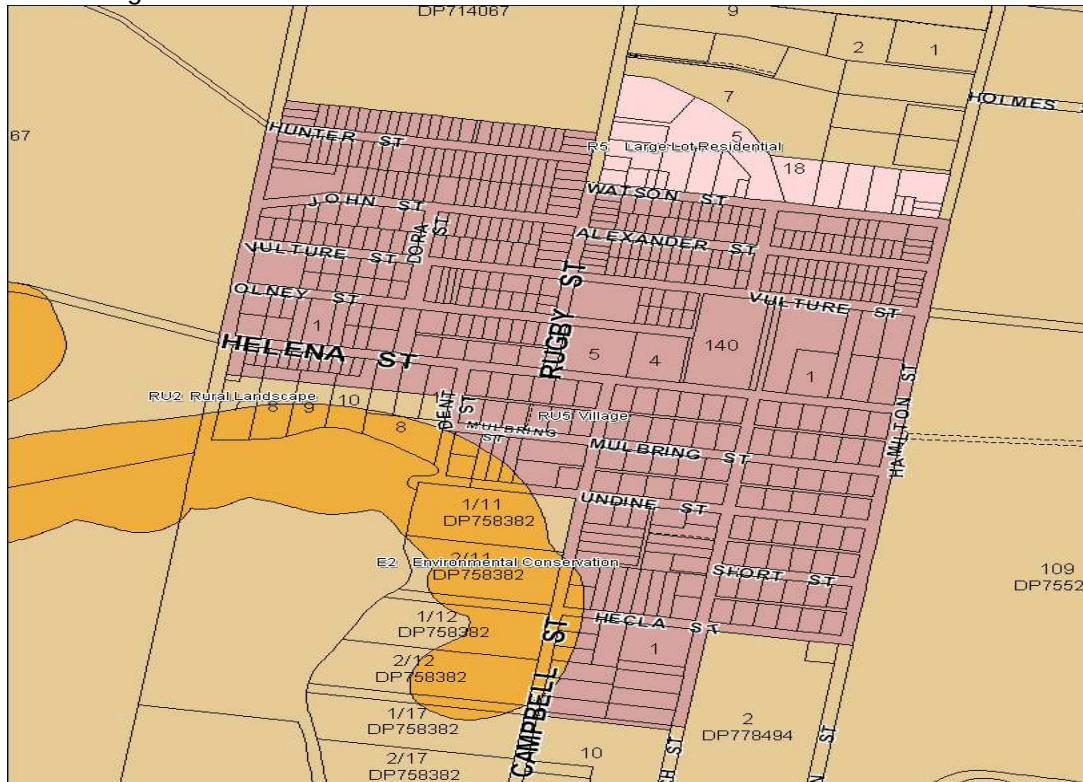


Figure 2

Recommendation

- The Minimum Lot Size Map (1720_COM_LSZ_006D_040_20111220) corresponding to the RU5 - Village zone at Ellalong be changed from AB - 40Ha to U - 1500m².

Heritage Mapping

Issue

The purpose of this amendment is to rectify a drafting error that unintentionally placed heritage item, I200 on Lot 23 DP 248431; I202, I203, I205 and I206 on Lot 41 DP 716227, I30 on Lot 2 DP 120482 and I8 on John Rose Avenue.

Affected Land

The relevant land is Lot 23 DP 248431 and Lot 41 DP 716227 (Laguna), Lot 2 DP 120482 (Abermain) and John Rose Avenue (Branxton).

Any Council Interest

Council is responsible for the road, and has an interest in John Rose Avenue, but does not have any interest in the other lands identified.

Recommendation

- Heritage Map Sheet 1720_COM_HER_007_080_20111128 be amended to remove reference to heritage item I200 from Lot 23 DP 248431, I202, I203, I205 and I206 from Lot 41 DP 716227, as shown in **Figure 3**.
- Heritage Map Sheet 1720_COM_HER_009A_040_20111128 be amended to remove reference to heritage item I30 from Lot 2 DP 120482, as shown in **Figure 4**.
- Heritage Map Sheet 1720_COM_HER_005A_020_20111120 be amended to replace reference to heritage item I8 with I30 for John Rose Avenue, as shown in **Figure 5**.

Figure 3 - Laguna

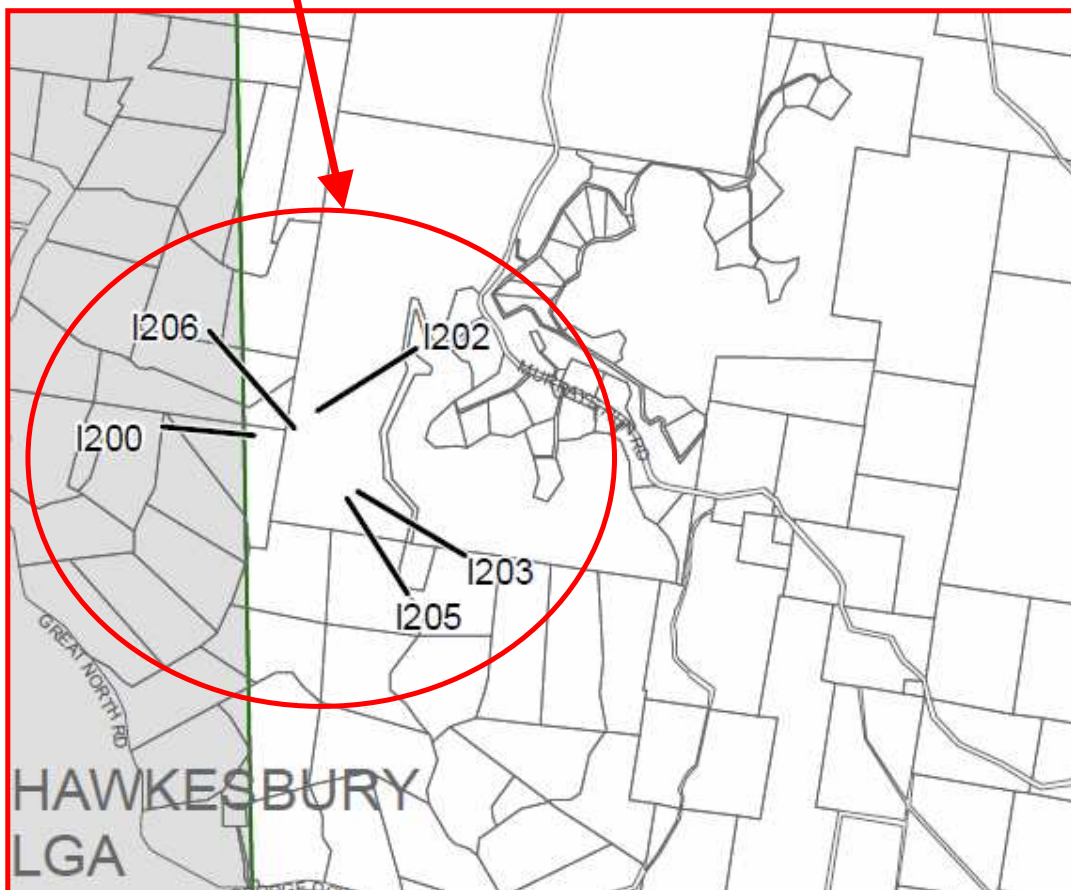
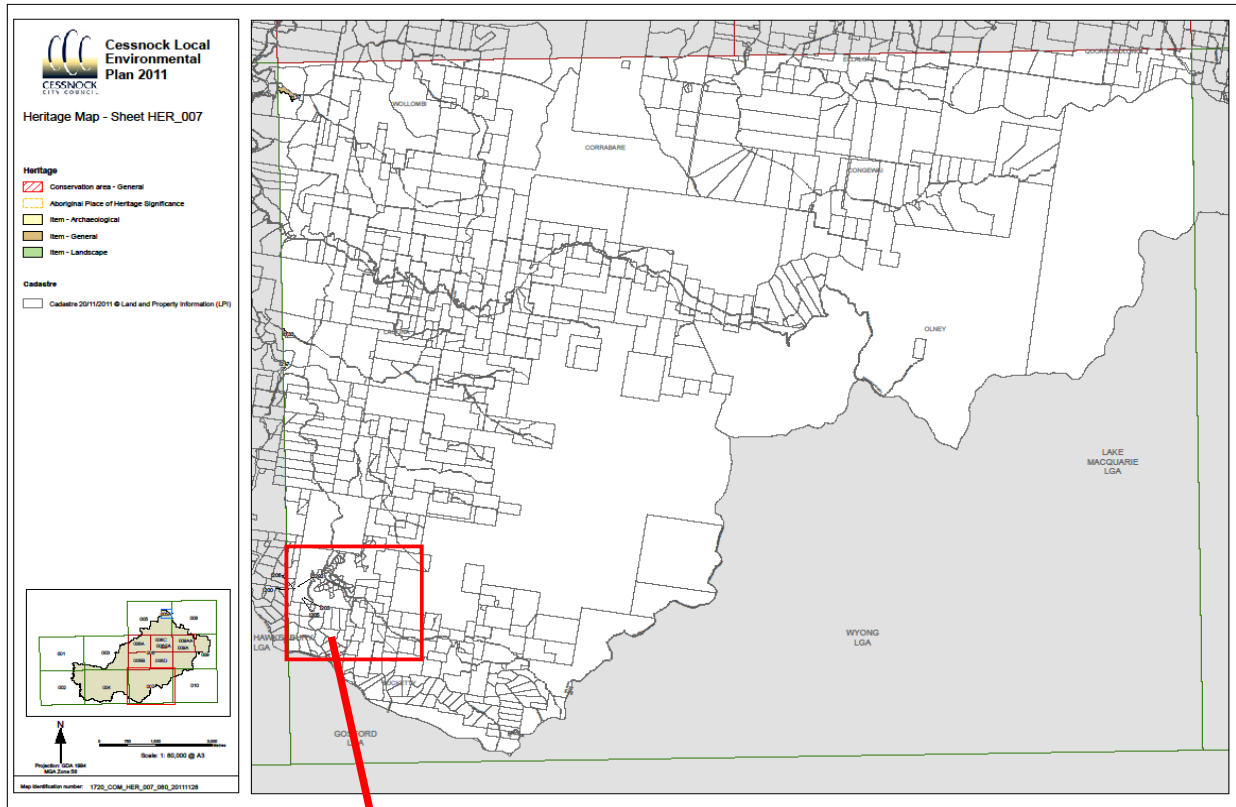


Figure 4 - Abermain



Figure 5 - Braxton



Land Use Tables

The purpose of this amendment is to ensure that Council's intent in relation to the following Land Use Tables of Local Environmental Plan 2011 are achieved.

Zone RU2 - Rural Landscape

Definition

bee keeping means a building or place used for the keeping and breeding of bees for commercial purposes.

eco-tourist facility means a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Issue

'Bee keeping' and 'Eco-tourist facilities' are newly defined land uses introduced to the Standard Instrument Local Environmental Plan template with the Standard Instrument Order (2006) amendments that commenced on 25 February 2011.

Comment

These land uses, while not exhibited with the (then) draft Local Environmental Plan as being permissible with consent, are consistent with the objectives of the of the RU2 - Rural Landscape zone to provide for a range of compatible land uses, including extensive agriculture and to enable other forms of development that are associated with rural activity and require an isolated location or support tourism and recreation respectively.

Recommendation

- The land use table for the RU2 - Rural Landscape zone be amended to remove 'Bee keeping' from the prohibited list, making this use permitted without consent in this zone as a subset of 'extensive agriculture'.
- The land use table for the RU2 - Rural Landscape zone be amended to remove 'Eco-tourist facilities' from the prohibited list, making this use permitted with consent in this zone.

Definitions

truck depot means a building or place used for the servicing and parking of trucks, earthmoving machinery and the like.

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may, if ancillary to the

principal purpose for which the building or place is used, include a restaurant or cafe and the sale of any the following:

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,
- (b) pets and pet supplies,
- (c) fresh produce.

hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

landscaping material supplies means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

plant nursery means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

timber yard means a building or place the principal purpose of which is the sale of sawn, dressed or treated timber, wood fibre boards or similar timber products. It may include the cutting of such timber, boards or products to order and the sale of hardware, paint, tools and materials used in conjunction with the use and treatment of timber.

vehicle sales or hire premises means a building or place used for the display, sale or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.

Issue

The following land uses were intended to be prohibited in the RU2 - Rural Landscape zone as either an individual land use or as part of a 'group term' under the (then) draft Local Environmental Plan:

- 'Truck depot' (as part of 'Freight transport facility') but is now separately defined;
- 'Warehouse or distribution centres' (as part 'Storage premises') but is now separately defined;
- 'Garden centres'; 'Hardware and building supplies'; 'Landscaping material supplies'; 'Plant nurseries'; 'Timber yards'; 'Vehicle sales or hire premises' (as part of 'Retail premises'), but are now separately defined as a subset of the newly created 'Commercial premises' group term.

Comment

Council's endorsed City Wide Settlement Strategy (2010) adopts a clear and definable commercial and industrial hierarchy providing certainty to stakeholders including Council, developers, traders and the community in general.

The hierarchy defines the level and type of service provision which can be used as a tool to assist the planning process by identifying the levels of service to be provided in different size centres across the Cessnock LGA.

Permitting these land uses in the RU2 - Rural Landscape zone will not enhance the ongoing viability of existing commercial and /or industrial precincts by maintaining a spatial link to existing areas. The rationale / justification is, that by co-locating retailing and commercial activities, the critical mass of the primary centre is strengthened and the service provisions in the area are centralised, thereby optimising the use of existing infrastructure.

Recommendation

- The land use table for the RU2 - Rural Landscape zone be amended to remove 'Garden centres'; 'Hardware and building supplies'; 'Landscaping material supplies'; 'Plant nurseries'; 'Timber yards'; 'Truck depot'; and 'Vehicle sales or hire premises' from the permitted with consent list, making these uses prohibited in this zone.

Zone R3 - Medium Density Residential

Definitions

public administration building means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes, and includes a courthouse or a police station.

research station means a building or place operated by a public authority for the principal purpose of agricultural, environmental, fisheries, forestry, minerals or soil conservation research, and includes any associated facility for education, training, administration or accommodation.

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

Issue

The following land uses are newly defined or were intended to be prohibited in the R3 - Medium Density zone as part of a 'group term' under the (then) draft Local Environmental Plan, but have been made newly permissible with consent:

- 'Public administration building' (as part of 'Office premises') is now separately defined;
- 'Research station';
- 'Warehouse or distribution centres' (as part 'Storage premises') is now separately defined.

Comment

These land uses are inconsistent with the objectives of the R3 - Medium Density Land Use zone, to provide for the housing needs of the community within a medium density residential environment.

Recommendation

- The land use table for the R3 - Medium Density zone be amended to prohibit 'Public administration building', 'Research station'; and 'Warehouse or distribution centres'.

Zone R5 - Large Lot Residential

public administration building means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes, and includes a courthouse or a police station.

research station means a building or place operated by a public authority for the principal purpose of agricultural, environmental, fisheries, forestry, minerals or soil conservation research, and includes any associated facility for education, training, administration or accommodation.

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

Issue

The following land uses are newly defined or intended to be prohibited in the R5 - Large Lot Residential zone as part of a 'group term' under the (then) draft Local Environmental Plan, but have been made newly permissible with consent:

- 'Public administration building' (as part of 'Office premises') is now separately defined;
- 'Research station';
- 'Warehouse or distribution centres' (as part 'Storage premises') is now separately defined.

Comment

These land uses are inconsistent with the objectives of the R5 - Large Lot Residential Land Use zone, to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

Recommendation

- The land use table for the R5 - Large Lot Residential zone be amended to prohibit 'Public administration building', 'Research station'; and Warehouse or distribution centres'.

Zone B1 - Neighbourhood Centre and Zone B2 - Local Centre

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

Issue

'Warehouse or distribution centres' was intended to be prohibited in both the B1 - Neighbourhood Centre and B2 - Local Centre zones as part 'Storage premises' under the (then) draft Local Environmental Plan, but has been made newly permissible with consent.

Comment

This land use is inconsistent with the objectives of the B1 - Neighbourhood Centre Land Use zone, to provide a range of small-scale retail, business and community uses

that serve the needs of people who live or work in the surrounding neighbourhood and the B2 - Local Centre Land Use zone, to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

Recommendation

- The land use table for the B1 - Neighbourhood Centre zone and the B2 - Local Centre zone be amended to prohibit 'Warehouse or distribution centres'.

Zone IN1 - General Industrial

camping ground means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.

caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

landscaping material supplies means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

plant nursery means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

respite day care centre means a building or place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.

public administration building means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes, and includes a courthouse or a police station.

Issue

In addition to 'Camping ground', 'Caravan park' and 'Respite day care centre' the following land uses were intended to be prohibited in the IN1 - General Industrial zone through the prohibition of 'Retail premises', but are now separately defined as a subset of the newly created 'Commercial premises' group term and permissible with consent:

- 'Hardware and building supplies';
- 'Landscaping material supplies';
- 'Plant nurseries'; and
- 'Public administration building'.

Comment

These land uses are inconsistent with the objectives of the IN1 - General Industrial zone, to support and protect industrial land for industrial uses.

Recommendation

- The land use table for the IN1 - General Industrial zone be amended to prohibit 'Camping ground' and 'Caravan park', 'Hardware and building supplies'; 'Landscaping material supplies'; 'Plant nurseries'; 'Public administration building'; and 'Respite day care centre'.

Zone IN2 - Light Industrial and Zone IN3 - Heavy Industrial

Definition

garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may, if ancillary to the principal purpose for which the building or place is used, include a restaurant or cafe and the sale of any the following:

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,
- (b) pets and pet supplies,
- (c) fresh produce.

hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

landscaping material supplies means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like.

plant nursery means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.

respite day care centre means a building or place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.

vehicle sales or hire premises means a building or place used for the display, sale or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.

Issue

The following land uses were intended to be prohibited in both the IN2 - Light Industrial and IN3 - Heavy Industrial zones through the prohibition of 'Retail premises', but are now separately defined as a subset of the newly created 'Commercial premises' group term and permissible with consent:

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

Comment

Council's endorsed City Wide Settlement Strategy (2010) recognises that industrial land is limited in the Cessnock LGA and restricts land uses that compete with industrial activity like bulky goods retailing and business premises from all industrial zones.

Recommendation

- The land use table for the IN2 - Light Industrial zone and IN3 - Heavy Industrial zone be amended to prohibit 'Garden centres'; 'Hardware' and building supplies'; 'Landscaping material supplies'; 'Plant nurseries'; 'Public administration building'; 'Respite day care centre' and 'Vehicle sales or hire premises'.

Standard Instrument Clause

Clause 5.9 - Vegetation

Current Provision

5.9 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
 - (a) development consent, or
 - (b) a permit granted by the Council.
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.
- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
 - (a) that is or forms part of a heritage item, or
 - (b) that is within a heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
- (a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003* or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
 - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
 - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying Act 2002*, or
 - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

Issue

The purpose of this amendment is to clarify the provisions as to which zones the clearing of native vegetation without the need for consent should apply under the Native Vegetation Act.

Affected Land

The clause does not apply to any specific land, but could potentially be applied to any land zoned R5 - Large Lot Residential, E2 - Environmental Conservation, E3 - Environmental Management or E4 - Environmental Living.

Any Council Interest

Given the general nature of this amendment, it is likely that Council would have interest in land that could be affected. However, this proposal has been prepared without regard to any such interest.

Recommendation

- Amend Miscellaneous Provision 5.9 by adding (new) Subclause (9):
 - (9) Subclause (8)(a)(ii) does not apply in relation to land in Zone R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management or E4 Environmental Living.

Eco-tourist facilities

Issue

The purpose of this amendment is to make provisions for Eco-tourist facilities in the RU2 – Rural landscape zone.

Comment

With the amendments to the Standard Instrument Order (2006) that commenced on 25 February 2011, Local Provision relating to Eco-tourist facilities was added.

This clause is a compulsory Local Provision and will need to be added to the Cessnock Local Environmental Plan with the introduction of Eco-tourist facilities as a permitted land use with development consent in the RU2 - Rural Landscape zone.

Recommendation

- The Cessnock Local Environmental Plan 2011 be amended to include the standard Local Provision Clause 5.13 Eco-tourist facilities as follows:

5.13 Eco-tourist facilities

- (1) The objectives of this clause are as follows:
 - (a) to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,
 - (b) to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.
- (2) This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Plan.
- (3) The consent authority must not grant consent under this Plan to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:
 - (a) there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and
 - (b) the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and
 - (c) the development will enhance an appreciation of the environmental and cultural values of the site or area, and
 - (d) the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and indigenous flora and fauna will be minimal, and
 - (e) the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and
 - (f) waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and
 - (g) the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours materials and landscaping with local indigenous flora, and
 - (h) any infrastructure services to the site will be provided without significant modification to the environment, and
 - (i) any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and
 - (j) the development will not adversely affect the agricultural productivity of adjoining land, and
 - (k) the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:
 - (i) measures to remove any threat of serious or irreversible environmental damage,
 - (ii) the maintenance (or regeneration where necessary) of habitats,
 - (iii) efficient and minimal energy and water use and waste output,
 - (iv) mechanisms for monitoring and reviewing the effect of the development on the natural environment,
 - (v) maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.

Part 7 Additional Local provision 7.1 Acid Sulfate Soils

Current Provision

7.1 Development on land affected by Acid sulfate soils

- (1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.
- (2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

Class of land	Works
1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

- (3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the *Acid Sulfate Soils Manual* and has been provided to the consent authority.
- (4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:
 - (a) a preliminary assessment of the proposed works prepared in accordance with the *Acid Sulfate Soils Manual* indicates that an acid sulfate soils management plan need not be carried out for the works, and
 - (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.
- (5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):

- (a) emergency work, being the repair or replacement of the works of the public authority required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,
 - (b) routine management work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),
 - (c) minor work, being work that costs less than \$20,000 (other than drainage work).
- (6) Despite subclause (2), development consent is not required under this clause to carry out any works if:
- (a) the works involve the disturbance of more than 1 tonne of soil, such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industry, dredging, the construction of artificial water bodies (including canals, dams and detention basins) or foundations or flood mitigation works, or
 - (b) the works are likely to lower the watertable.

Issue

The Department of Planning and Infrastructure has reviewed this 'Standard' Local Provision and clarified that, in subclause 7.1(6), development consent is not required where the works will result in the displacement of less than 1 tonne of soil and are not likely to lower the watertable. This change is relatively minor and addresses the Office of Water's concerns in relation to this matter.

Affected Land

The clause does not apply to any specific land, but could potentially be applied to any land to which the Acid Sulfate Soils Map applies.

Any Council Interest

Council does not have any interest in this land.

Recommendation

In Clause 7.1 Acid Sulfate Soils, replace subclause 6 with the following:

- (6) Despite subclause (2), development consent is not required under this clause to carry out any works where both of the following criteria are met:
- (a) the works involve the disturbance of less than 1 tonne of soil, and
 - (b) the works are not likely to lower the watertable.

Schedule 5 – Environmental Heritage

Memorial Gates – Sawyers Gully

Issue

The purpose of this amendment is to amend the heritage schedule and associated heritage mapping to include the Memorial Gates at Sawyers Gully as an item of environmental heritage.

Comment

The Memorial Gates - Sawyers Gully were identified in the city wide heritage review undertaken by Council in support of the Cessnock Local Environmental Plan 2011. However, the Sawyers Gully Memorial Gates were unintentionally omitted from the final (draft) Environmental Heritage Schedule.

This oversight was brought to Council's attention by the Abermain Heritage Preservation Society, who raised concerns about the lack of preservation for the Sawyers Gully Memorial Gates.

Listing is supported by both the Department of Veterans Affairs and Council's heritage consultant, recommending heritage protection through inclusion on the Council's Local Environmental Plan heritage schedules.

Affected Land

The relevant land is Lot 11 DP 755231, 1216 Old Maitland Road, Sawyers Gully, as shown on **Figure 6**.

Any Council interest

Council does not have any interest in this land.

Recommendation

- Heritage Map Sheet 1720_COM_HER_008_080_20111128 be amended to add the Memorial Gates on Lot 11 DP 755231, 1216 Old Maitland Road, Sawyers Gully as Heritage Item I221.
- The Environmental Heritage Schedule 5 of the Cessnock LEP be amended to include the Memorial Gates on Lot 11 DP 755231, 1216 Old Maitland Road, Sawyers Gully as Heritage Item I221.

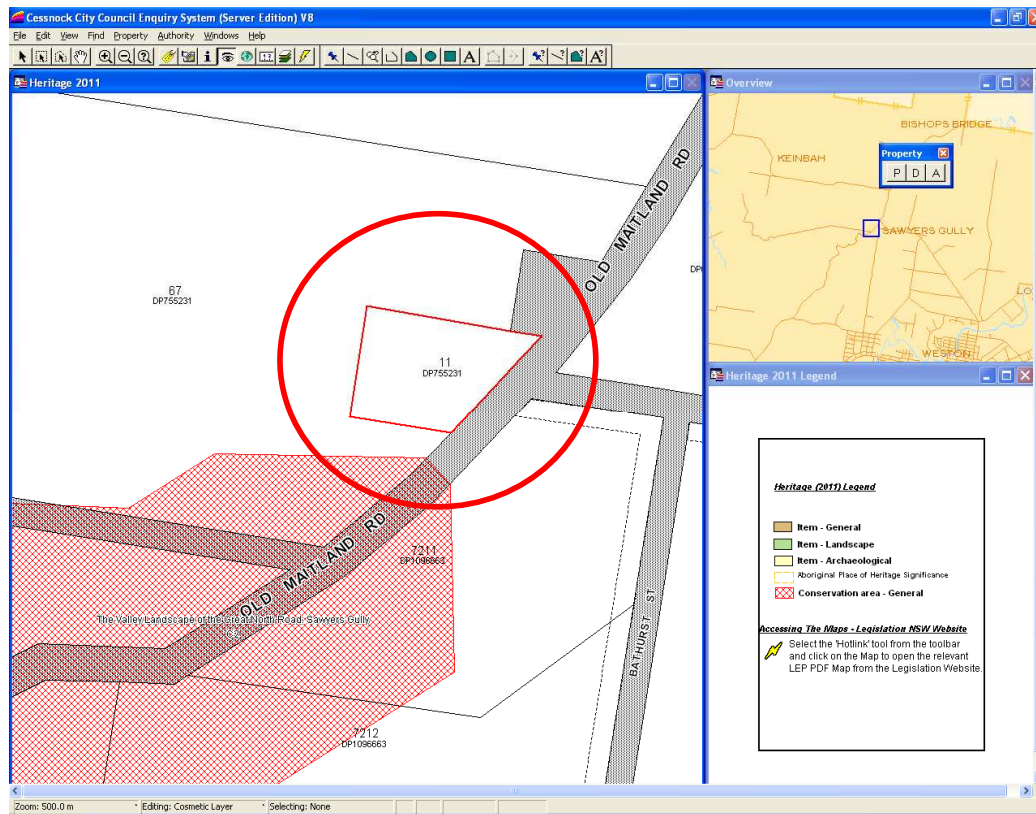


Figure 6 - Sawyers Gully

Mapping: Urban Release Areas Map

Issue

The area the subject of the Heddon Greta Urban Release Area includes additional (existing residential areas) that have been unintentionally mapped as shown in Figure 7(a).

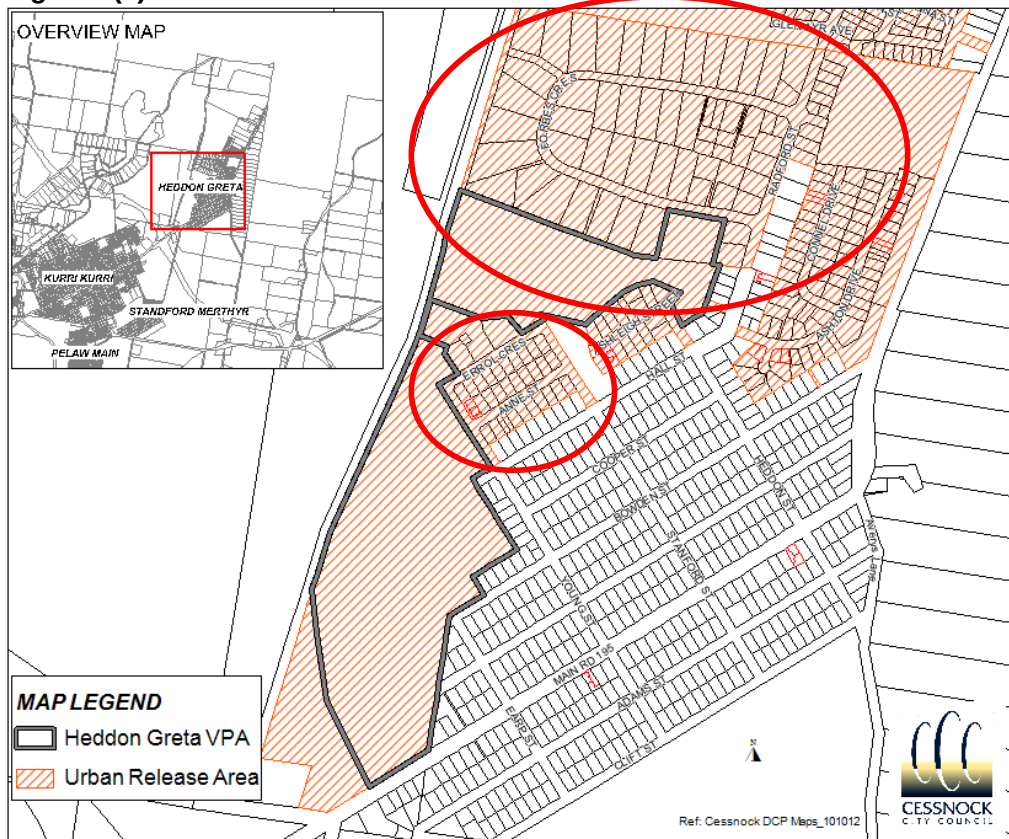
Affected land

In practical terms, no land is affected by the changes in the mapping of the Heddon Greta Urban Release Area. The relevant lands are shown in Figure 7(b).

Any Council interest

Council does not have any interest in this land.

Figure 7(a)



That Urban Release Area (Map Sheet 1720_COM_URA_009A_040_20111202), be amended to correctly identify the Heddon Greta Urban Release Area, as shown in Figure 7b.

PART 3: JUSTIFICATION

In accordance with the Department of Planning's "Guide to Preparing Planning Proposals", this section provides a response to the following issues:

- Section A: Need for Proposal;
- Section B: Relationship to Strategic Planning Framework;
- Section C: Environmental, Social and Economic Impact; and
- Section D: State and Commonwealth Interests

Section A: Need for Proposal

1. Resulting from a Strategic Study or Report

At its meeting of 16 August 2006, Council resolved to prepare a new Local Environmental Plan to implement the outcomes of the City Wide Settlement Strategy.

The Planning Proposal reflects this resolution, by correcting a number of minor mapping and land use table anomalies as well as address inconsistencies in local planning provisions, to ensure Council's intent in relation to these planning controls are achieved.

2. Planning Proposal as best way to achieve to objectives

A Planning Proposal is required to make the proposed change to the Cessnock Local Environmental Plan 2011.

3. Net Community Benefit

The proposed amendments to Cessnock Local Environmental Plan 2011 are essential to ensure Council's intent for Local Environmental Plan 2011 is achieved.

Section B: Relationship to Strategic Planning Framework

4. Consistency with Objectives and Actions within Regional Strategies

Lower Hunter Regional Strategy 2006

The applicable regional strategy is the Lower Hunter Regional Strategy.

There is no inconsistency with the objectives or actions of the Lower Hunter Regional

5. Consistency with Council's Community Strategic Plan or other Local Strategic Plan

Community Strategic Plan - Our People, Our Place, Our Future

There is no inconsistency with Council's Strategic Plan and the Planning Proposal.

6. Consistency with State Environmental Planning Policies

There is no inconsistency with any applicable SEPP or draft SEPP.

7. Consistency with s.117 Ministerial Directions for Local Plan Making

There is no inconsistency with any s.117 Ministerial Direction.

Section C: Environmental, Social and Economic Impact

8. Impact on Threatened Species

There is no likelihood of adverse impact on threatened species, populations, ecological communities or critical habitat as a result of this Planning Proposal.

9. Environmental Impact

There is no likelihood of adverse environmental impact as a result of this Planning Proposal.

10. Social and Economic Impacts

There is no likelihood of adverse social or economic impact as a result of this Planning Proposal.

Section D: State and Commonwealth Interests

11. Adequate Public Infrastructure

The Planning Proposal will not generate demand for additional public infrastructure.

12. Consultation with State and Commonwealth Authorities

The Department of Planning and Infrastructure advised that this 'minor housekeeping amendment' Planning Proposal should be kept separate from the Planning Proposals needed to rectify more substantial amendments to the Cessnock Local Environmental Plan 2011, including addressing the 'Deferred Matters', given the potentially different consultation requirements.

No other State or Commonwealth authorities have been consulted with regard to this Planning Proposal.

PART 4: COMMUNITY CONSULTATION

The Gateway Determination for the Planning Proposal was issued on 8 November 2012 by the Department of Planning and Infrastructure (DoPI). The determination required a public exhibition of the Planning Proposal for 14 days.

The Planning Proposal was placed on public exhibition from 5 December 2012 to 19 December 2012.

The exhibition material was available from the following locations:

- Council's administration building (Help and Information Counter);
- Cessnock Public Library
- Kurri Kurri Public Library; and
- Council's Website at www.cessnock.nsw.gov.au

Comments were also sought from the owners of the Swayers Gully Memorial Gates as a Heritage Item, who advised by telephone on 6 December 2012 that they did not have any objections or requirements in respect of this part of the Planning Proposal.

No other comments or submissions were received.

Appendix 1: Council Report and Minutes



Acrobat Document

Report



Acrobat Document

Minutes



Acrobat Document

Rescission

Appendix 2: List of Maps to be amended

Map Sheet	Map Identifier
Lot Size Map	
LSZ 006B	1720_COM_LSZ_006B_040_20111214
LSZ 006D	1720_COM_LSZ_006D_040_20111220
Heritage Map	
HER 005A	1720_COM_HER_005A_020_20111220
HER 007	1720_COM_HER_007_080_20111128
HER 008	1720_COM_HER_008_080_20111128
HER 009A	1720_COM_HER_009A_040_20111128
Urban Release Area Map	
URA 009A	1720_COM_URA_009A_040_20111202

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