

## Planning and Assessment

SF18/36246

### Gateway determination report

<b>LGA</b>	Cessnock
<b>PPA</b>	Cessnock City Council
<b>NAME</b>	No. 71 Branxton Street, Greta (40 homes)
<b>NUMBER</b>	PP_2020_CESSN_001_00
<b>LEP TO BE AMENDED</b>	Cessnock LEP 2011
<b>ADDRESS</b>	71 Branxton Street, Greta
<b>DESCRIPTION</b>	Part Lot 1 DP 873220
<b>RECEIVED</b>	11 March 2020
<b>FILE NO.</b>	EF18/7059
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to facilitate the development of the site for low density residential. It would rezone part of lot 1 DP 873220 from RU2 Rural Landscape to R2 Low Density Residential in the *Cessnock Local Environmental Plan 2011*. A minimum lot size of 450 m<sup>2</sup> would apply. This would result in approximately 40 houses.

### 1.2 Site description

The 5.8 ha site consists of pasture and vegetated land and contains a dwelling house and associated structures (Figure 1). The site is not currently used for a rural purpose. A creek runs from the across parts of the site from the water body in the lot's eastern corner to again cross the property in its southern most corner. These parts of the site are not subject to rezoning.



Figure 1: Site

### 1.3 Existing planning controls

The site is zoned RU2 Rural Landscape and has a 40 hectare minimum lot size (Figures 2 and 3).

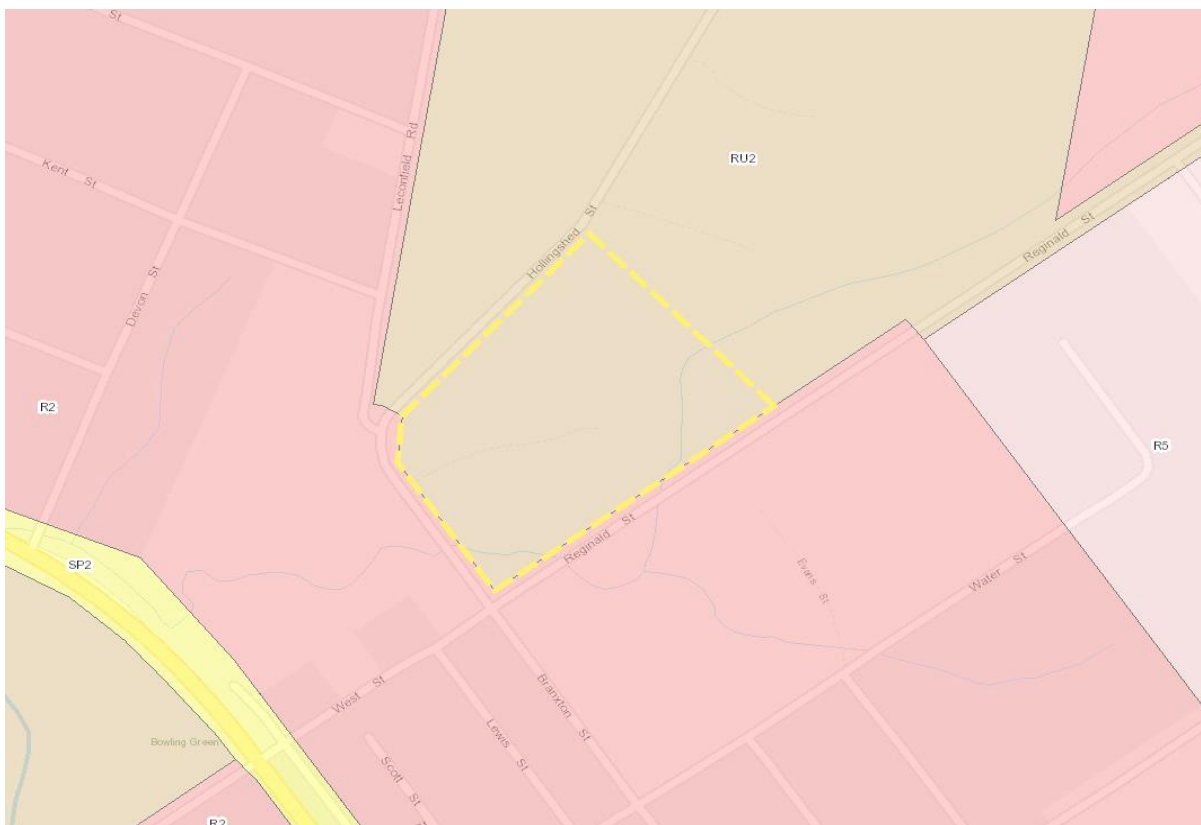


Figure 2: RU2 Rural Landscape zone applying to the site



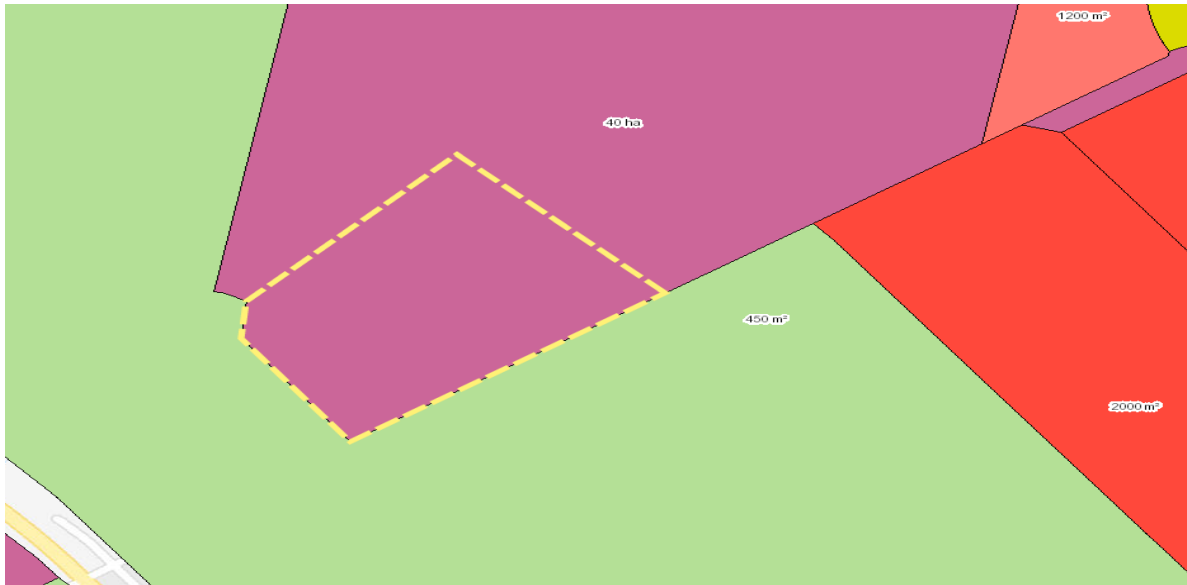


Figure 3: 40 ha minimum lot size applying to the site

#### 1.4 Surrounding area

The site is in the village of Greta, which is approximately 20 kilometres north of Cessnock on the New England Highway. Greta is well located in terms of connectivity, being where the highway meets the Hunter Expressway. The site is in 400 metres of the village centre which provides services to local residents. Greta adjoins the nearby settlements of Branxton and Huntlee, which provide higher order services to the community (Figure 4).

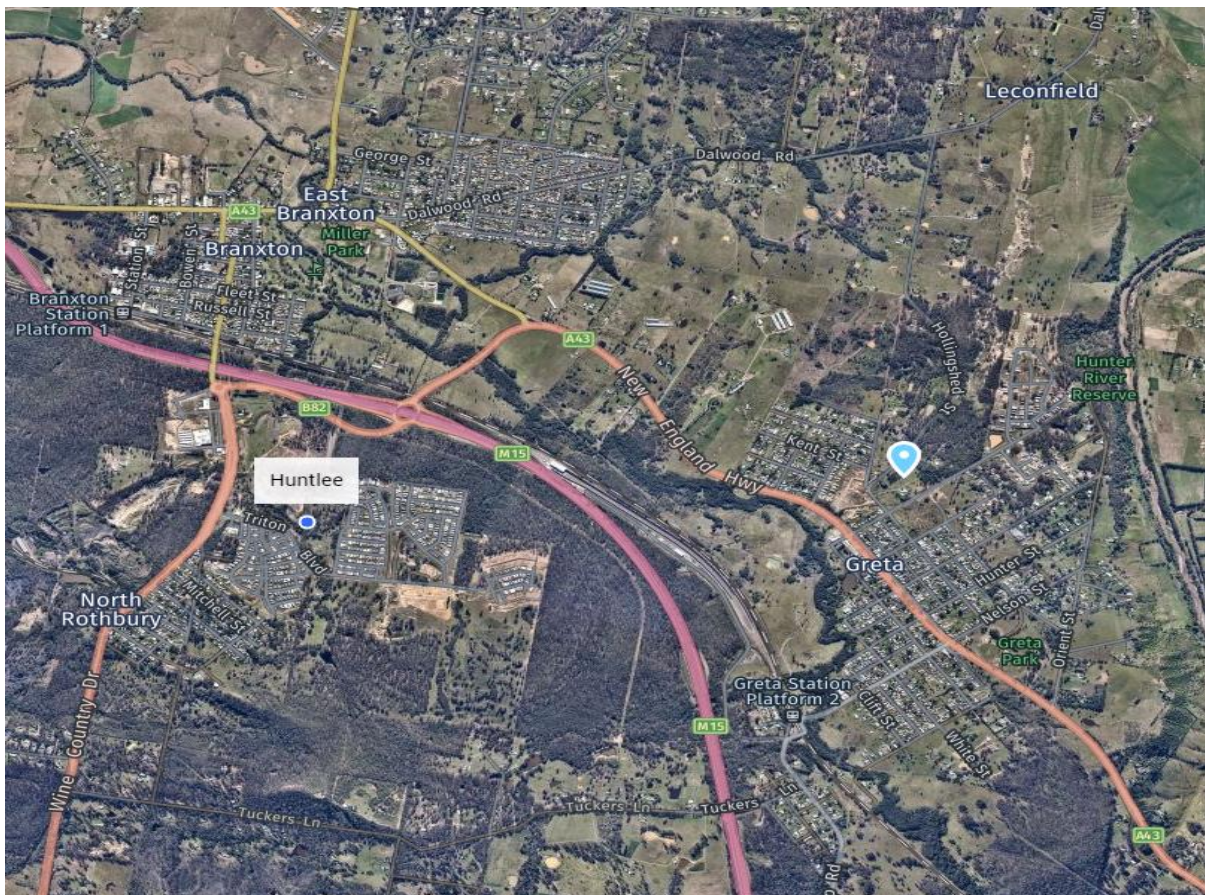


Figure 4: Branxton-Huntlee-Greta locality



The site is on the pointed edge of RU2 Rural Landscape zoned land that extends into existing R2 Low Density Residential zoned settlement. The land to the south of the site consists of developed residential, to the west is land currently under development for residential, and to the east is land that consists of undeveloped residential land 'Victoria Park' (Crown and LALC). Refer to Figure 5.

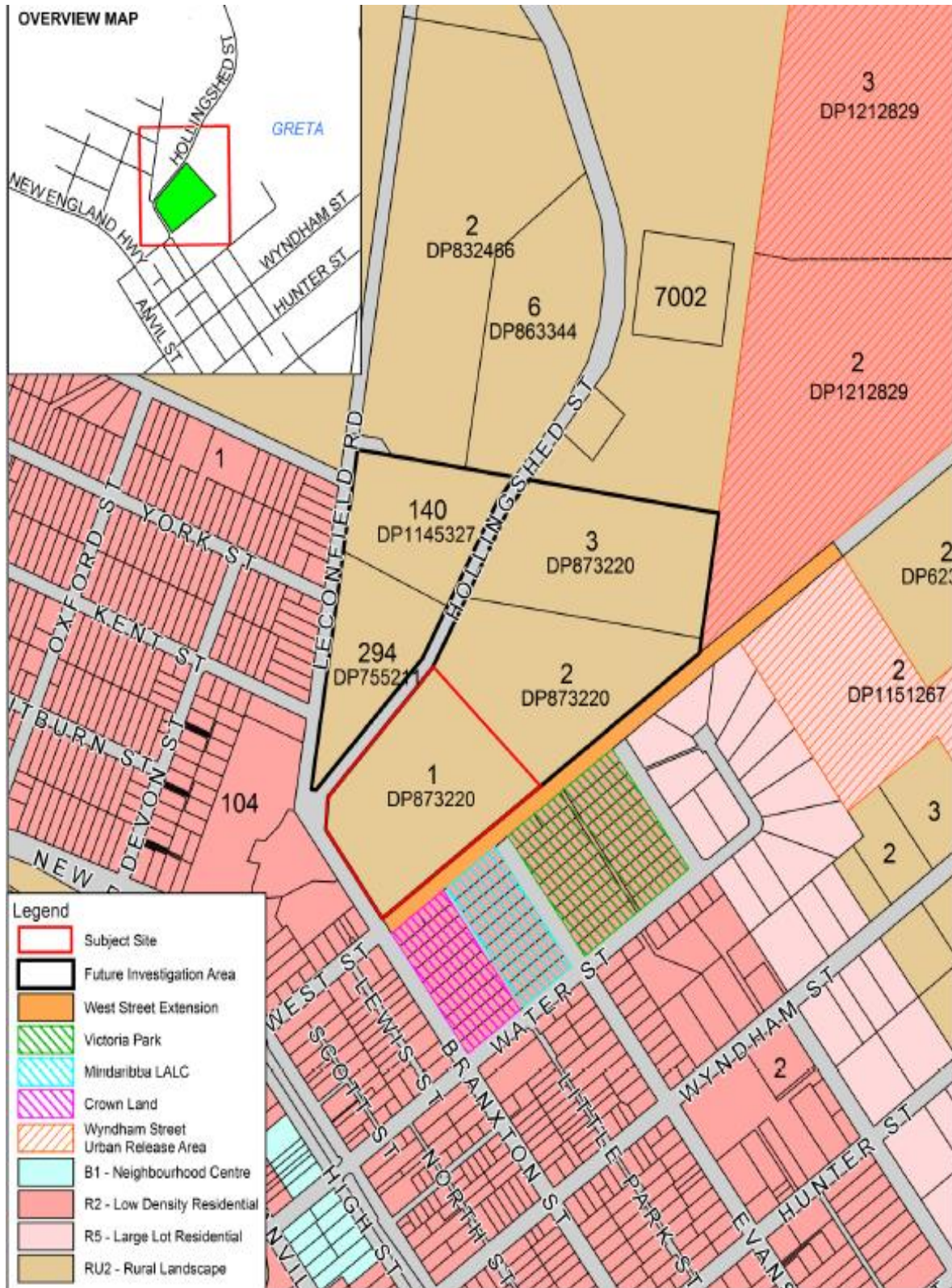


Figure 5: Locality

## 2. PROPOSAL

### 2.1 Objectives or intended outcomes

The objectives of the planning proposal are to amend the local environmental plan by changing the zone and minimum lot size to facilitate residential development of approximately 40 houses. The objectives are clear and no changes are required.

### 2.2 Explanation of provisions

The explanation of provisions identify the planning controls that are proposed to change and these are mapped to show the extent of changes (Figure 6). The zone and minimum lot size proposed are consistent with those that apply to the low density residential areas of Greta.



Figure 6: Proposed zone and minimum lot sizes

Those parts of the site not subject to rezoning are to retain their existing planning controls (RU2 Rural Landscape, 40 ha MLS). Council has resolved to include the RU2 Rural Landscape area bounded by Braxton and Water Streets and Leconfield Road as an area for investigation within the new Cessnock City Wide Planning Strategy. Until this occurs, it is unclear what is the long-term future of the two small RU2 Rural Landscape sections of the site, given they would then be surrounded by R2 Low Density Residential.

The planning proposal does not identify the site as an urban release area. As the proposal would result in approximately 40 lots and other release areas in the broader locality are mapped as urban release areas, this site should also be mapped and therefore subject to the provision of part 6 of the local environmental plan.

### 2.3 Mapping

Amendments to the land use zoning and minimum lot size maps are proposed. The urban release area map should also be amended.

Maps in the planning proposal could be improved to show the existing and proposed planning controls in the context of the controls applying to the surrounds to assist with community consultation.



### 3. NEED FOR THE PLANNING PROPOSAL

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The planning proposal is not the result of a strategic study or report. It has been initiated by the landowner and responds to demand for increased housing in Greta.

While Council states the planning proposal is not directly supported by Cessnock City Council's *Branxton Subregional Land Use Strategy* (the site was not identified for greenfield development and nor considered infill), it advises that the proposal aligns with the Strategy's directions.

The forecasts in the *Branxton Subregional Land Use Strategy* envisaged that demand in the Greta area for housing would be relatively low. Council states that recent development activity in Greta indicates that growth will outstrip supply over the next 10 years. Given there is no change in the development status of the Greta Migrant Camp or other 'investigation areas' nominated in the Structure Plan that accompanies the Strategy, Council considers there to be a need for the planning proposal.

The site is well located to provide additional housing supply in Greta. The site is within walking distance of the Greta village centre and adjoins residential areas. While it extends the boundaries of the Greta settlement, it occurs in a location that is largely surrounded by residential development thereby minimising the potential for land use conflict. This proximity to residential land, coupled with its size, make the site unsuitable for the rural uses allowed under its current zone. Council advises that the site can be serviced and therefore provide dwellings in a relatively short timeframe.

As the current planning controls do not facilitate the development of the site for residential, the planning proposal is the best means of achieving Council's intended outcome.

### 4. STRATEGIC ASSESSMENT

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#### 4.1 State

There are no State level strategies or plans which are relevant to the planning proposal.

#### 4.2 Regional / District

*Hunter Regional Plan 2036 (HRP)*

The planning proposal is consistent with the HRP.

#### Direction 10 Protect and enhance agricultural productivity

This direction is relevant because the site is zoned to facilitate rural purposes (RU2 Rural Landscape). Action 10.1 seeks to protect locations that can accommodate agricultural enterprises from incompatible development. The site is not considered suitable for agricultural enterprises due to its size (5.8 ha) and because it is largely surrounded by residential uses. The adjoining RU2 Rural Landscape properties are already constrained by nearby residential development and therefore rezoning of the site would not create any additional land use conflicts with the adjoining properties.

#### Direction 21: Create a compact settlement

This direction seeks to create a compact settlement. Actions seek to focus development towards areas where there is already established services and infrastructure (Action 21.1), urban development not encroach on land subject to

hazards and biodiversity (Action 21.4) and provide greater housing choice (Action 21.6). As the site is in a location with established services and infrastructure, close to the village centre and avoids hazards/ biodiversity values, the planning proposal is consistent with these actions.

#### *Greater Newcastle Metropolitan Plan 2036 (GNMP)*

The planning proposal is consistent with the GNMP.

#### Strategy 16 Prioritise the delivery of infill housing opportunities within existing urban areas

This strategy seeks to focus new housing in existing residential areas (Action 16.1) as there is enough zoned land in the Greater Newcastle metropolitan area to support substantial residential growth. Figure 8 of the GNMP identifies those lands with housing opportunities, including existing urban areas with infill opportunities. The site is not identified as a housing opportunity site.

While the planning proposal would expand the settlement boundary of Greta, it does so in an area that demonstrates the characteristics of urban development. The site is within walking distance of the village centre, it is largely surrounded by residential development and has access to enabling infrastructure. The proposal's is therefore consistent with the intended outcome of GNMP.

### **4.3 Local**

#### *Local Strategic Planning Statement 2020 (LSPS)*

The assessment in the planning proposal corresponds to the exhibition version of the LSPS, rather than the final. This assessment should be updated with the final version prior to exhibition.

While the LSPS does not identify future housing sites, it sets out planning priorities and principles to inform planning proposals.

#### Planning Priority 1 Urban areas are compact

The priority includes a principle that requires urban areas to be compact and fully serviced. The site's location and access to enabling infrastructure make it consistent with this planning priority.

#### Planning Priority 5 Infrastructure and services meet the needs of the community and are appropriately funded

The priority includes a principle that rezoning land for urban purposes will be prioritised in areas where infrastructure capacity exists. Council advises that the site has access to enabling infrastructure and so it is consistent with this planning priority.

#### Planning priority 7 Urban development is encouraged in areas with existing infrastructure

Principles for this priority focus on ensuring that urban areas are adequately serviced and integrated with existing areas. The planning proposal would deliver these outcomes and so it is consistent with the planning priority.

#### Planning Priority 30 Growth of our villages occurs in a way that protects their character and setting in the rural and environmental landscape and responds to risk of bushfire and flooding

The planning proposal has the characteristics of urban development and aligns with the principle that infill development in villages helps fund infrastructure and support local facilities, shops and venues. The planning proposal is consistent with this priority.

#### *Branxton Subregional Land Use Strategy (2016)*

Cessnock City Council's *Branxton Subregional Land Use Strategy* guides development in Greta and has been endorsed by the Department. It identifies how the development of Greta should occur and identifies areas for new housing. It also includes a framework for ensuring that adequate supply of land zoned and serviced for development are maintained across the Branxton subregion. The framework provides guidance on how Council should identify additional sites for urban uses.

Growth in Greta is notably higher than anticipated in 2016 when the Strategy was produced. The Strategy anticipated that the Wyndham Street Growth Area would provide adequate low-density residential supply for Greta to 2041. However, this growth area has seen substantial take-up since dwelling production started in 2018 and Council indicates that all dwellings are expected to be completed by 2022.

The Department's assessment of the proposal's consistency with the strategy's objectives and policies is in Attachment A.

#### **4.4 Section 9.1 Ministerial directions**

The planning proposal is consistent with section 9.1 Ministerial directions: 2.6 Remediation of Contaminated Land, 3.1 Residential Zones, 3.4 Integrated Land Use and Transport and 5.10 Implementation of Regional Plans.

The planning proposal is either inconsistent with the following directions or further work is required before consistency can be determined:

*1.2 Rural Zones* – inconsistent because the planning proposal would rezone land from a rural zone to a residential zone (subclause 4a). Due to the size of the site and its proximity to residential uses, the agricultural production value of the site is low. Consultation should be undertaken with the Department of Primary Industries as part of exhibition of the planning proposal.

*1.5 Rural Lands* – inconsistent because the planning proposal does not promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities (subclause 4e). Due to the size of the site and its proximity to residential uses, the site is unlikely to be productive. Consultation should be undertaken with the Department of Primary Industries as part of exhibition of the planning proposal.

*2.1 Environment Protection Zones* – inconsistent because the proposal would not include provisions which facilitate the protection and conservation of environmentally sensitive areas (clause 4).

An ecological assessment undertaken in 2017 notes the planning proposal would result in the loss of 430 m<sup>2</sup> of low condition endangered ecological community (EEC) and removal of potential foraging habitat for a threatened fauna species. A larger area of the EEC (3,540 m<sup>2</sup>) is to be retained.

While the ecological assessment was undertaken before the *Biodiversity Conservation Act 2017* applied to the site, the assessment provides an indication of biodiversity values. Values are not considered high and the scale of impacts is



considered low given that the majority of the site is pasture land. Should the site be rezoned, biodiversity impacts can be reconsidered at the development application (DA) stage. Consultation should be undertaken with the Biodiversity Conservation Division of the Department of Planning, Industry and Environment as part of exhibition of the planning proposal.

*2.3 Heritage Conservation* – the planning proposal states this direction is not applicable. It includes a statement that the site has no known heritage items. However no information is provided which establishes how this conclusion was reached. The planning proposal should be updated to demonstrate why the direction is not applicable.

*4.1 Acid Sulfate Soils* – the planning proposal states this direction is not applicable. However, no information is provided which establishes how this conclusion was reached. The planning proposal should be updated to demonstrate why the direction is not applicable.

*4.2 Mine Subsidence and Unstable Land* – the site is situated within a mine subsidence district. A geotechnical assessment has been undertaken. Consultation with Subsidence Advisory NSW is required (subclause 4a) before consistency with this direction can be determined.

*4.3 Flood Prone Land* – the site had been identified as having areas subject to flooding. A preliminary stormwater management plan has been developed. The planning proposal states the preliminary subdivision does not adequately respond to the flooding issue as filling is proposed to accomplish the flood planning level on three proposed lots. Council advise this will have to be addressed as part of any future development application process and that the concept plan does illustrate that a residential subdivision can be accomplished on the site.

Consultation should be undertaken with Biodiversity Conservation Division of the Department of Planning, Industry and Environment as part of exhibition of the planning proposal.

*4.4 Planning for Bushfire Protection* – the site is bushfire prone. A bushfire assessment has been undertaken. Consultation with the NSW Rural Fire Service is required (clause 4) before consistency with this direction can be determined.

#### **4.5 State environmental planning policies (SEPPs)**

Council identifies *State Environmental Planning Policy No 44 - Koala Habitat Protection*, *State Environmental Planning Policy No 55 - Remediation of Land* and *State Environmental Planning Policy (Primary Production and Rural Development) 2019* as relevant to the planning proposal.

SEPP No 44 has been repealed. Several other SEPPs referred to as not being applicable have been repealed also. Council should update the planning proposal to reflect the current SEPPs.

The *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, *State Environmental Planning Policy No 55 - Remediation of Land* and *State Environmental Planning Policy (Koala Habitat Protection) 2019* would apply to the site at the development application stage.

The ecological assessment found that the site did not contain preferred feed trees or core koala habitat. Further consideration of koala habitat can be undertaken at the development application stage.

## 5. SITE-SPECIFIC ASSESSMENT

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### 5.1 Social

Social impacts are not anticipated.

### 5.2 Environmental

The site is subject to ecological, geotechnical, contamination, flooding and bushfire constraints.

#### *Geotechnical and bushfire*

Agency consultation is required regarding geotechnical and bushfire constraints to determine whether constraints can be adequately managed.

#### *Ecological, contamination and flooding*

Ecological impacts are anticipated to be minor due to the low value of the vegetation on the site. This can be considered further at the DA stage should the site be rezoned. As the site is mainly pasture land and largely surrounded by residential, the site is not considered to have value as part of a biodiversity corridor.

A preliminary site assessment has been undertaken to evaluate site contamination. Council advises that the site is suitable for residential development provided remediation measures are undertaken prior to development occurring.

Flooding analysis has identified those parts of the site which are flood affected.

#### *Heritage*

Council advises that there are no heritage items on the site however no evidence has been provided to confirm how this conclusion has been reached. Further study and consultation with the LALC may be required regarding site heritage values.

### 5.3 Economic

Economic impacts are anticipated to be minor. Additional demand for village services may result from new residents should the site be developed.

### 5.4 Infrastructure

As new housing sites in this locality are required to contribute to State infrastructure, this site should also be required to contribute. Up to 40 residential lots may result.

Council advises that preliminary investigations indicate that the site has access to key services, with only extensions required. Consultation with service providers should occur.

## 6. CONSULTATION

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### 6.1 Community

Council does not nominate a preferred time period for community consultation. A 14 day consultation is proposed as the proposal is considered a low impact planning proposal as defined in the Department's *A guide to preparing LEPs*.

### 6.2 Agencies

Agency consultation should occur with the NSW Rural Fire Service, Department of Primary Industries, Biodiversity Conservation Division and Subsidence Advisory NSW to address the requirements of section 9.1 Ministerial directions.

Consultation with service providers Ausgrid and Hunter Water should also occur to confirm the site's capacity to be serviced.

## **7. TIME FRAME**

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The planning proposal nominates a 12 month period for completion of the planning proposal. This is supported.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council does not indicate whether it wants to be the local plan-making authority. As the proposal is consistent with the pattern of the surrounding uses, the proposal is of local planning significance and therefore Council should be the local plan-making authority.

## **9. CONCLUSION**

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

- There is a need for additional housing to be provided at Greta.
- The site is well located to provide housing given its proximity to the village centre, adjoining residential land and access to enabling infrastructure.
- The site is unsuitable for rural purposes. Rezoning it to residential is unlikely to result in land use conflicts.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

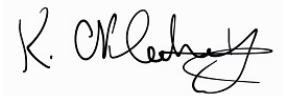
1. note that any consistency with section 9.1 Ministerial directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 4.1 Acid Sulfate Soils, 4.2 Mine Subsidence and Unstable Land, 4.4 Planning for Bushfire Protection is will require justification.

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

1. 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
  - Subsidence Advisory NSW
  - Ausgrid
  - Hunter Water
  - Biodiversity Conservation Division
  - Department of Primary Industries
3. The time frame 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 the local plan-making authority.
5. Prior to community consultation the planning proposal should be updated to:



- (a) map the site as an urban release area and so subject to the provisions of Part 6 of the LEP;
- (b) reflect the adopted local strategic planning statement;
- (c) refer to the relevant State Environmental Planning Policies (several identified in the planning proposal have been repealed);
- (d) detail the assessment undertaken which informs the proposal's view that the site contains no known items of historical, Aboriginal or archaeological significance and update section 9.1 Ministerial direction 2.3 accordingly;
- (e) analysis against section 9.1 Ministerial direction 4.1 Acid Sulfate Soils; and
- (f) include maps that show the existing and proposed planning controls for the site in the context of the site's surrounds.



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28/08/2020  
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