

Mr Robert Maginnity
A/General Manager
Cessnock City Council
PO Box 152
Cessnock NSW 2325

Our ref: IRF22/2040

Dear Mr Maginnity

Planning proposal PP-2022-1138 to amend Cessnock Local Environmental Plan 2011

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to increase the number of permanent residential dwellings permissible at 1184 Wine Country Drive, Rothbury from 300 to 640.

I note Council did not formally consider the planning proposal and obtain a Council resolution for the planning proposal, which is inconsistent with the *Local Environmental Plan Making Guideline* (September 2022). I ask that Council clearly identify Council is acting as the planning proposal authority for the proposal when it is placed on public exhibition.

As delegate of the Minister for Planning and Homes, I have determined the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

After discussions with Council, I have conditioned the Gateway determination to remove the proposed clause 7.11(3) and replace with updated intended outcomes and objectives to enable consideration of legal drafting by Parliamentary Counsel. It may not be possible for a local environmental plan to limit the issuing of occupational certificates. Council should be aware this may require further engagement prior to finalisation and should be factored into Council meeting the benchmarks in the *Local Environmental Plan Making Guideline 2022*.

Additionally, the Gateway determination has been conditioned to remove the proposed clause 7.11(4). The current clause in the *Cessnock Local Environmental Plan 2011* is clear on what is permissible on the site. If Council wishes to pursue this amendment, it should be incorporated into the concurrent planning proposal (PP-2022-1641).

I have agreed, as delegate of the Secretary, the inconsistency of the planning proposal with applicable directions of the Minister under section 9.1 of the Act for 1.1 Implementation of Regional Plans; 1.4 Site Specific Provisions; and 6.1 Residential Zones are justified in accordance with the terms of the directions. No further approval is required in relation to these directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant applicable direction of the Minister under section 9.1 of the Act for 4.3 Planning for Bushfire Protection; and 5.1 Integrating Land Use and Transport. Council should ensure this occurs prior to the LEP being made.

Considering the nature of the planning proposal I have determined Council may exercise local plan-making authority functions in relation to the planning proposal.

The proposed local environmental plan (LEP) is to be finalised on or before 1 November 2023. Council should aim to commence the exhibition of the planning proposal as soon as possible.

Should Council seek to make a proposed LEP, the request to draft the LEP should be made directly to Parliamentary Counsel's Office well in advance of the date the LEP is projected to be made. A copy of the request should be forwarded to the Department of Planning and Environment.

The NSW Government has committed to reduce the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline 2022* is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any enquiries about this matter, I have arranged for Mark Parker, Principal Planning Officer to assist you. Mr Parker can be contacted on 9995 5286.

Yours sincerely



31/10/2022
Dan Simpkins
Director, Central Coast and Hunter Region
Planning and Land Use Strategy

Encl: Gateway determination