

SUBJECT: *PLANNING PROPOSAL 18/2022/2 - COMPREHENSIVE LEP REVIEW - RURAL ZONES*

RESPONSIBLE OFFICER: *Strategic Planner - Alex Worthing
Strategic Planning Manager - Martin Johnson*

SUMMARY

The purpose of this Report is to provide an overview of the proposed amendments contained in the 'rural land theme' of the comprehensive *Cessnock Local Environmental Plan 2011* (the 'LEP 2011') review and seek Council endorsement to forward the Planning Proposal (distributed under separate cover) to the NSW Department of Planning and Environment (DPE) for Gateway determination.

RECOMMENDATION

1. That Council requests a Gateway determination for the RU2 Rural Landscape Zone, RU3 Forestry Zone and RU5 Village Zones Planning Proposal from the NSW Department of Planning and Environment pursuant to the *Environmental Planning and Assessment Act 1979*.
2. That Council requests authorisation under Section 3.31 of the *Environmental Planning and Assessment Act 1979* to act as the local plan-making authority to make the Local Environmental Plan.
3. That Council undertakes consultation with public authorities and the community as determined by the Gateway determination.
4. That Council receives a report back on the Planning Proposal if unresolved written objections are received during consultation with the community, otherwise, forwards the Planning Proposal to the Department of Planning and Environment requesting that the Plan be made.

BACKGROUND

The LEP 2011 is Council's primary planning instrument and came into force on 23 December 2011. The LEP 2011 contains provisions that manage development on land in the Cessnock Local Government Area (LGA); however, the instrument has not been comprehensively reviewed since 2011.

Council's Strategic Planning Team is carrying out a comprehensive review of the LEP 2011, which involves reviewing the instrument to ensure it:

- is current and accurate;
- is responsive to emerging forms of development;
- reflects the objectives contained in the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036; and
- addresses the outcomes of endorsed local strategies, such as the Cessnock 2027 Community Strategic Plan (CSP) and Local Strategic Planning Statement (LSPS) 2036.

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Due to the complexity of the project, the comprehensive LEP review is planned to be progressed in seven themes, as follows:

- employment land;
- environmental land;
- residential land;
- recreation land;
- rural land;
- special purpose land; and
- miscellaneous matters

Each theme will be subject to a separate planning proposal, which will examine and make recommendations regarding amendments to relevant zone objectives, permissible land uses, clauses and land-use mapping. Relevant sections of the Cessnock Development Control Plan (DCP) 2010 will also be amended concurrently, where possible.

The Rural Zones Planning Proposal (**Enclosure 1** – Provided under Separate Cover) is based on the findings of the Rural Lands Issues paper. This Paper was the result of a detailed review of the provisions contained in the LEP 2011 as they apply to rural lands, and the alignment of these with the strategic framework, including Council's Local Strategic Planning Statement (LSPS) applying to Cessnock LGA.

Rezoning of rural land for infill development has not been considered as a component of this Comprehensive LEP review, other than to address minor anomalies in the planning instrument. Provisions relating to the RU4 Primary Production Small Lots Zone (the Vineyards District), the Local Character Statement and Dwelling Entitlements are not addressed as part of this Planning Proposal and will be addressed separately.

REPORT/PROPOSAL

This report and associated planning proposal (**Enclosure 1**) relate to the 'rural land theme' of the comprehensive LEP 2011 review. The Planning Proposal recommends various amendments to the Cessnock RU2 Rural Landscape Zone, RU3 Forestry Zone and RU5 Village Zone objectives, land use tables, clauses and LEP 2011 maps.

Proposed amendments to Zone Objectives

Zone objectives set out the purpose of the zone, reflect the intended land uses and are used by Council to help determine if a development application (DA) is consistent with the intended planning outcomes for the area. Mandatory zone objectives are included to ensure consistency in how zones are applied across NSW. Council may also add or modify a limited number of additional local objectives to supplement mandatory objectives where appropriate.

This report and associated planning proposal seeks to make minor amendments to the LEP 2011 zone objectives for RU2 and RU5 Zoned land, in accordance with the recommendations of the Rural Lands Issues paper (**Enclosure 2 - Provided under Separate Cover**). The proposed amended zone objectives are consistent with the NSW Department of Planning guidance for zone objectives; that objectives:

- Clearly articulate what additional goals are intended to be achieved in the zone
- Do not repeat matters set out elsewhere under the *Environmental Planning and Assessment Act 1979*.

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- Do not describe development control matters that are addressed through a development control plan

A full list of amendments proposed to the RU2 and RU5 Zone Objectives are provided in the Planning Proposal. The amendments relate to minor word changes to ensure that development is compatible with the rural character.

Proposed LEP 2011 Land Use Table Amendments

Land use tables list the various forms of development that are considered to be compatible with the objectives of the zones and therefore permitted with or without consent. The land use tables also list development that is not compatible with the objectives of the zones and these are listed as prohibited development. Certain land uses are mandated as permissible or prohibited in each zone. Additional land uses may be included if, in Council's opinion, the mandated uses do not satisfactorily address the local intent of the zone.

The planning proposal seeks to amend the LEP 2011 land use tables for RU2, RU3 and RU5 Zoned land, in accordance with the recommendations of the Rural Lands Issues paper. The proposed land use table amendments will enable greater flexibility for compatible development to occur within the rural zones, while prohibiting uses that are considered incompatible.

A full list of permissible and prohibited land uses, along with amendments proposed to the rural zones is provided in the Planning Proposal however the key amendments are summarized below.

Amend the RU2 Rural Landscape Zone Land Use Table to:

- **Permit**

Secondary dwellings, Plant nurseries

- **Prohibit**

Advertising structures, Amusement centres, Backpackers' accommodation, Boat launching ramps, Boat sheds, Caravan parks, Centre-based child care facilities, Correctional centres, Dual occupancies, Function centres, Health consulting rooms, Hospitals, Hotel or motel accommodation, Jetties, Local distribution premises, Neighbourhood shops, Open cut mining, Places of public worship, Port facilities, Pubs, Public administration buildings, Registered clubs, Respite day care centres, Restaurants or cafes, Rural supplies, Self-storage units, Service stations, Serviced apartments, Veterinary hospitals, Development which cannot be characterised into any land uses defined in the SI

Amend the RU3 Forestry Zone Land Use Table to:

- **Permit**

Nil

- **Prohibit**

Open cut mining

Amend the RU5 Village Zone Land Use Table to:

- **Permit**

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Building identification signs, Business identification signs, Early education and care facilities, Home-based child care, Water supply systems,

- **Prohibit**

Boarding houses, Extensive agriculture, High technology industries, Intensive plant agriculture

Although not included in the Planning Proposal, Cessnock City Council strategic planning staff have prepared a separate report to the April meeting of Council that recommends adopting optional Local Environment Plan clause 5.24 created under draft *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2021*.

This clause is yet to come into effect, however once enacted will permit agritourism with consent in Zone RU2 Rural Landscape and Zone and RU4 Primary Production Small Lots Zone.

These amendments were created by the Department of Planning and Environment to support the economic recovery of regional communities and provide future resilience after years of challenges, including prolonged drought, bushfire and impacts arising from COVID-19, such as travel and trade restrictions, cancellation of regional events and temporary closure of local businesses.

Clause 5.24 will be complimentary to this planning proposal as a means for enabling more appropriate small scale tourism and commercial uses related to primary production that will facilitate sustainable long term economic growth in rural zones.

Proposed LEP 2011 clause Amendments

The planning proposal seeks to amend LEP clauses which apply to rural zoned land, in accordance with the recommendations of the Rural Lands Issues paper.

A full list of amendments proposed to LEP 2011 clauses are provided in the Planning Proposal however the key amendments are summarized below.

- **Revise clause 4.1 *Minimum Lot Size (4A)***

A new clause is proposed that will apply to land that is not serviced by reticulated sewer. The proposed clause will ensure that subdivision and subsequent development of land may only occur where land is of a sufficient size to safely accommodate on-site waste water management systems.

The proposed amendment is in response to concerns raised by Council's Environmental Health team over the potential for unsafe environmental health outcomes arising from inadequate or unsuitable on-site waste water management systems on undersized or otherwise incompatible lots.

The proposed amendments will remove the T2 and T3 areas established under the existing clause 4.1(4A). As the existing and proposed clauses relate solely to ensuring the effective operation of onsite waste management systems, any further consideration of broader issues related to minimum lot sizes will be carried out as part of subsequent LEP amendments.

- **Delete clause 7.13 *Dual occupancies on land in Zone RU2***

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This clause establishes conditions under which dual occupancies may be approved in the RU2 zone. Amendments to the land use table proposed under the planning proposal include prohibiting dual occupancies in the RU2 Rural Landscape zone, as they are inconsistent with a number of planning priorities outlined in Council's LSPS and have potential to increase land use conflicts on rural land. This clause will no longer be valid in the event of a prohibition of this land use within the zone.

Proposed mapping amendments

The planning proposal seeks to amend the LEP 2011 Land Use Zone Map and Minimum Lot Size Map in relation to various parcels of land in the LGA. The proposed amendments seek to address minor anomalies or inconsistencies. Rezoning of rural land for infill development has not been considered under the current Comprehensive LEP review.

OPTIONS

Council has the following options:

1. Council resolve to support the recommendations of this report and submit the Planning Proposal to the Department of Planning and Environment for a Gateway determination.
This is the recommended option.
2. Request changes to the Planning Proposal. This option may delay the proposed amendments.
3. Not support the recommendation of this Report for the following reasons:

(To be provided by Council).

CONSULTATION

To ensure the range of issues relevant to rural zoned land in the LGA were identified and considered in the Planning Proposal, an issues paper was prepared and circulated to relevant internal stakeholders including Councils Principal Development Planner, Development Services Team Leader and Environmental Health Team Leader.

Formal public consultation regarding the Planning Proposal will be carried out in accordance with Gateway determination and Community Participation Plan should Council resolve to endorse the recommendation of this report.

STRATEGIC LINKS

a. Delivery Program

The Planning Proposal is consistent with the following themes and objectives of the Cessnock 2027 Community Strategic Plan (CSP):

- Objective 3.1 – Protecting and enhancing the natural environment and rural character of the area.
This objective focuses on the conservation and preservation of the natural environment and rural character while balancing the impact of development to ensure a sustainable

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and healthy community. The Planning Proposal seeks to apply appropriate land use zones to protect the character of our rural areas.

- Objective 5.2 – involving more community participation in decision making
This objective focuses on involving the community in decision making processes affecting their future. Consultation is an important component of the Planning Proposal process and ensures outcomes align with the community's expectations.

b. Other Plans

Local Strategic Planning Statement (LSPS)

The Cessnock Local Strategic Planning Statement 2036 (LSPS) sets out the 20-year vision for land use in the local area. It establishes the special character and values of the LGA that are to be preserved and how change will be managed into the future.

The planning proposal is consistent with the planning priorities and principles of the endorsed LSPS, notably Action 5, which outlines the need to review the LEP 2011 to bring about the following outcomes:

- To ensure that land-uses are compatible with the rural landscape.

Hunter Regional Plan 2036

The Planning Proposal is consistent with the following directions of the Hunter Regional Plan (HRP) 2036:

- Direction 10: Protect and enhance agricultural productivity
- Direction 13: Plan for greater land use compatibility

Direction 10 of the HRP identifies the need to protect locations that can accommodate agricultural enterprises from incompatible development. Many of the proposed amendments contained in this Planning Proposal apply to productive rural lands and seek to reinforce their productivity through protection from incompatible development.

Direction 13 of the HRP 2036 identifies the potential for compatibility issues to arise as a result of the continued growth of the Hunter region. This Planning Proposal seeks to amend the rural zone objectives land use tables of the LEP 2011, to prevent land uses which are likely to cause conflict in the rural zones.

Draft Hunter Regional Plan 2041

The Planning Proposal is consistent with the following Strategies and Priorities of the draft Hunter Regional Plan:

- Strategy 4.9 Dwellings on rural lands that are not a primary residence or associated with agriculture should be limited to avoid conflicts with agricultural activities
- Rural land should principally facilitate agriculture, given its importance to the regional economy.

Greater Newcastle Metropolitan Plan 2036

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The Planning Proposal is consistent with the following strategies of the Greater Newcastle Metropolitan Plan (GNMP) 2036:

- Strategy 13 Protect rural amenity outside urban areas
This Strategy recognises the importance of rural areas for agricultural production and highlights the need to protect these from urban development to sustain long-term agricultural viability. This Planning Proposal aligns with the Actions of the GNMP, by seeking to enable the growth of the agricultural sector by directing urban development away from rural areas and managing the number of new dwellings in rural areas.

IMPLICATIONS

a. Policy and Procedural Implications

The status of the Planning Proposal is identified in the following process flow chart.

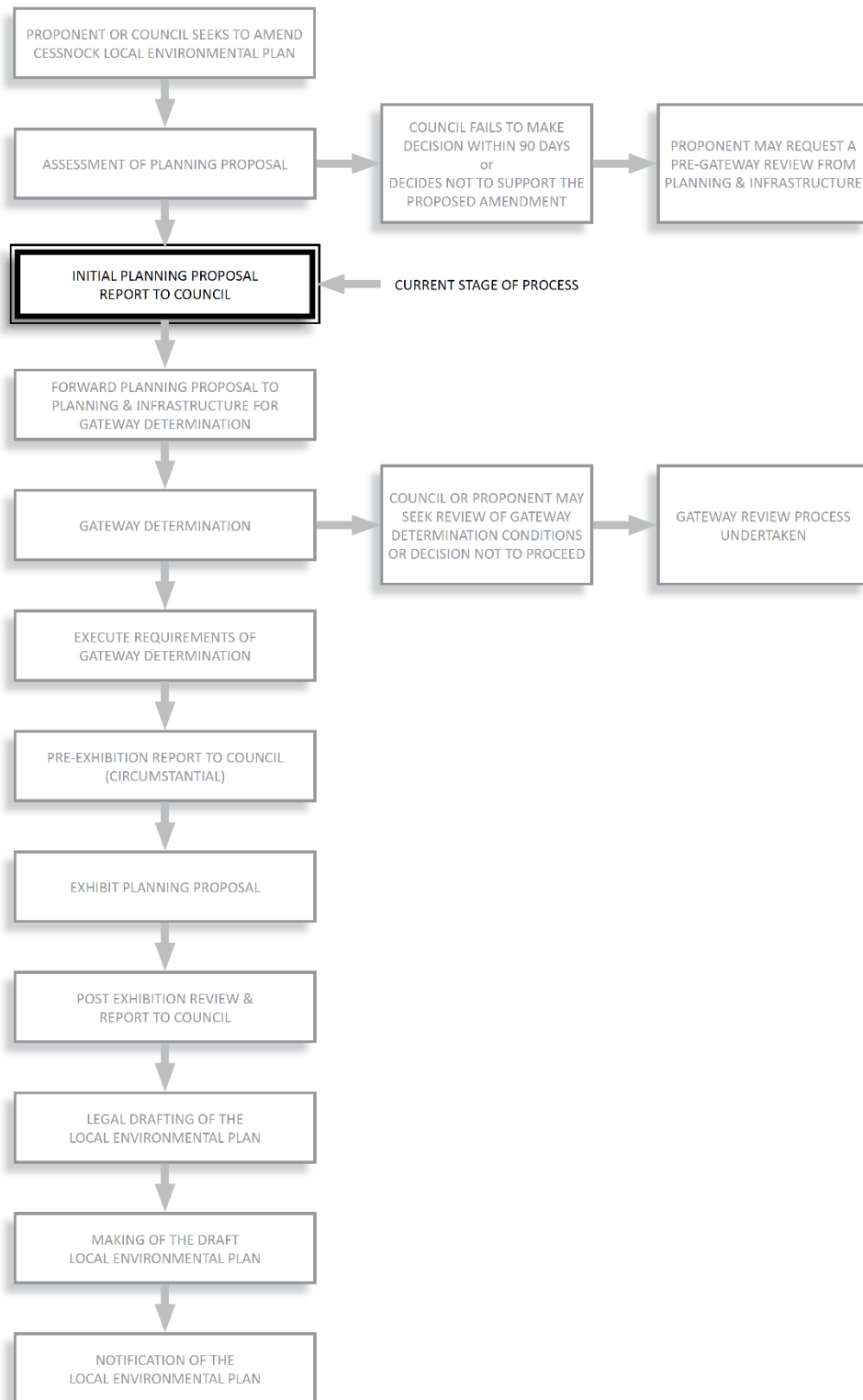
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PLAN MAKING PROCESS - LOCAL ENVIRONMENTAL PLAN

**b. Financial Implications**

The cost of the Planning Proposal will be funded from Council's Strategic Land Use Planning budget. This is because the Planning Proposal has been initiated by Council and is related to the broader comprehensive LEP review.

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c. Legislative Implications

The Planning Proposal has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Environment's Guide to Preparing a Planning Proposal.

d. Risk Implications

The proposed changes will remove potential problems and / or delays for planned or possible future development.

e. Environmental Implications

NIL

f. Other Implications

NIL

CONCLUSION

This report and the associated planning proposal relate to the rural land theme of the comprehensive LEP 2011 review. The Planning Proposal recommends various amendments to the Cessnock RU2 Rural Landscape Zone, RU3 Forestry Zone and RU5 Village Zone land use tables, LEP 2011 clauses and LEP 2011 maps. It is recommended that Council forward the Planning Proposal to the NSW Department of Planning and Environment for a Gateway determination.

ENCLOSURES

- 1 Draft Rural Lands Planning Proposal - Provided under Separate Cover
- 2 Comprehensive LEP and DCP Review - Issues Paper - Draft Rural Lands - Provided under Separate Cover