

## Planning and Assessment

**IRF22/1326**

### Gateway determination report

<b>LGA</b>	Cessnock
<b>PPA</b>	Cessnock City Council
<b>NAME</b>	Amending RU2, RU3 and RU5 Zones (0 homes, 0 jobs)
<b>NUMBER</b>	PP-2022-1446
<b>LEP TO BE AMENDED</b>	<i>Cessnock Local Environmental Plan 2011</i>
<b>ADDRESS</b>	Rural lands in Cessnock LGA
<b>DESCRIPTION</b>	Various rural lands
<b>RECEIVED</b>	21 April 2022
<b>FILE NO.</b>	IRF22/1326
<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 Site description

The planning proposal applies to all lands zoned RU2 Rural Landscape, RU3 Forestry and RU5 Village in the Cessnock Local Government Area.

### 1.2 Existing planning controls

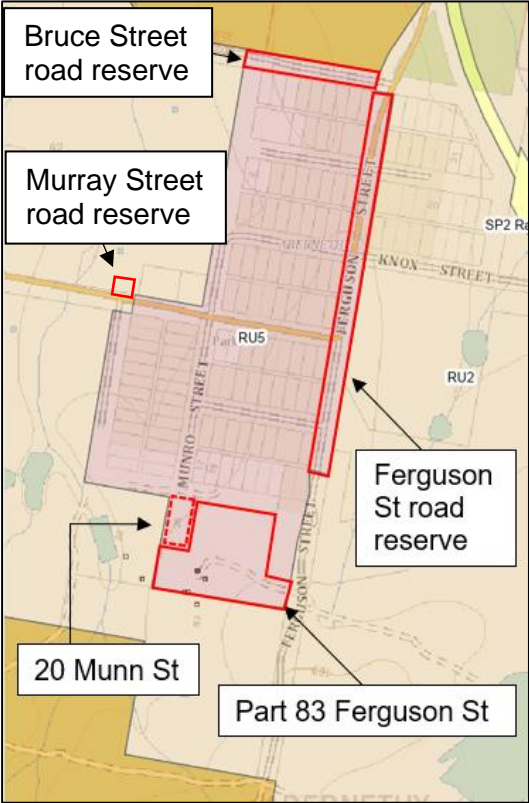
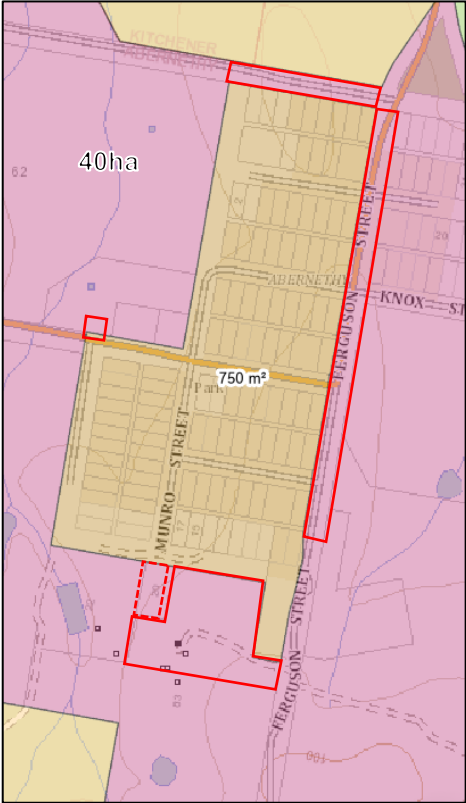

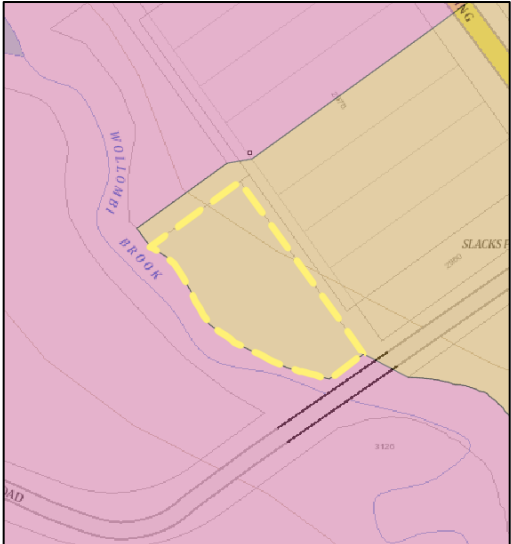
The land use tables for the existing RU2 Rural Landscape, RU3 Forestry and RU5 Village zones include objectives and land uses mandated by the Standard Instrument local environmental plan and others to reflect Council's local strategic plans and policies.

Other relevant clauses under the *Cessnock Local Environmental Plan 2011* include:

- Clause 4.1(4A), which requires land not able to be serviced by a reticulated water and sewerage system to achieve a minimum lot size of 2,000m<sup>2</sup>.
- Clause 7.13, which enables dual occupancies to be approved on RU2 zoned land if a dwelling house is permitted.

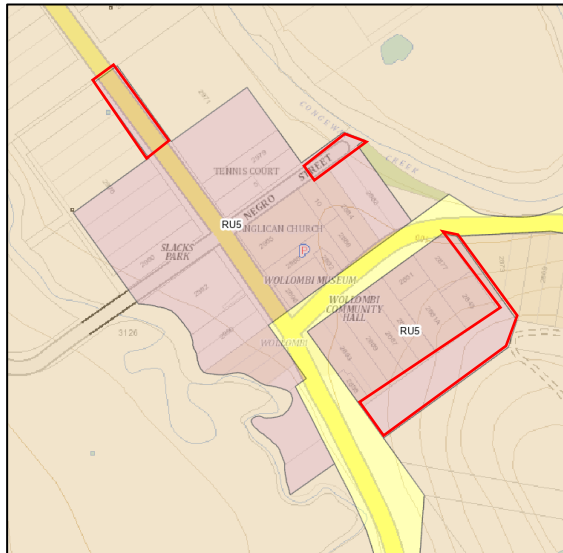
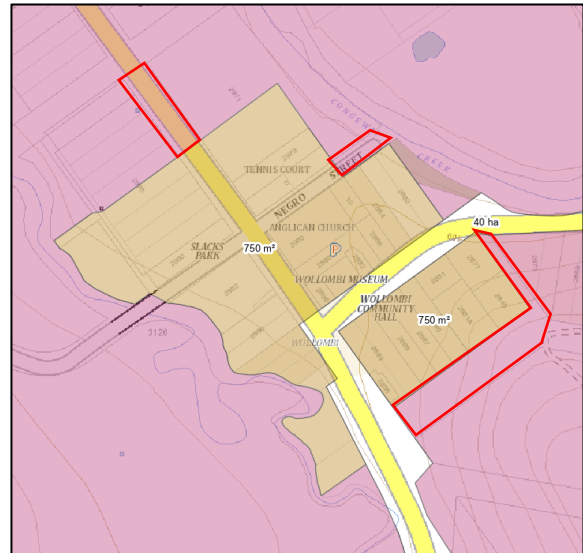
There are several locations where the minimum lot size is not consistent with the zoning of the land or where roads are not zoned consistently with the adjoining land. These anomalies are shown in Table 1.

**Table 1 – Zoning and Minimum Lot Size Anomalies**

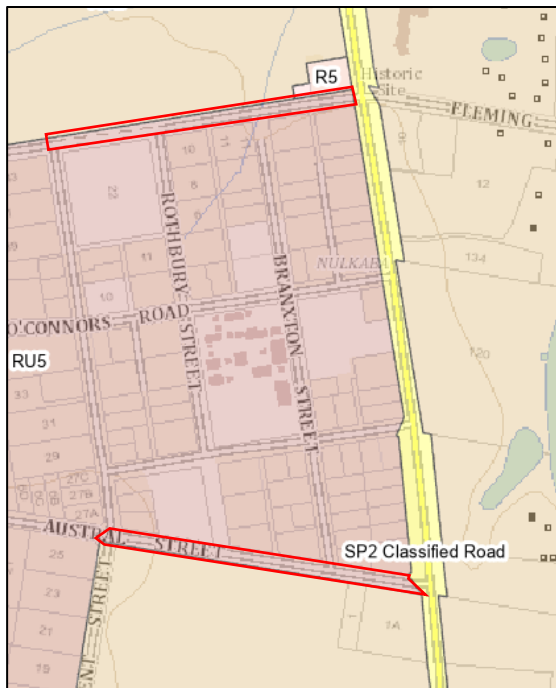
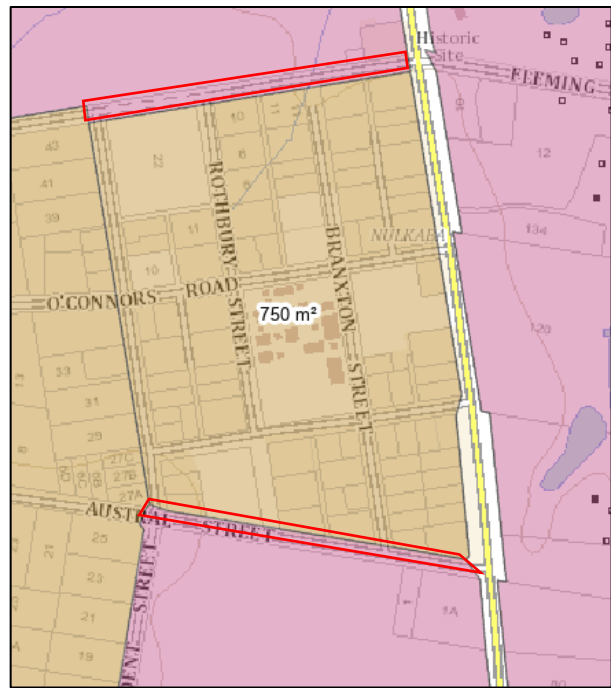
<p><b>Land description:</b> Part 83 Ferguson Street, 20 Munn St, Bruce and Murray Street road reserves, Abernethy</p>	
<p><b>Land zoning</b></p> 	<p><b>Minimum Lot size</b></p> 
<p><b>Land description:</b> Negro Street and Paynes Crossing Road, Wollombi</p>	
<p><b>Land zoning</b></p> 	<p><b>Minimum Lot size</b></p> 

**Land description:**

Negro Street and Paynes Crossing Road, Wollombi

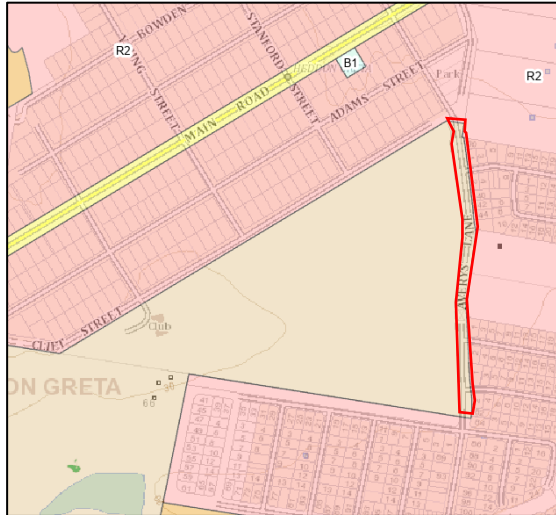
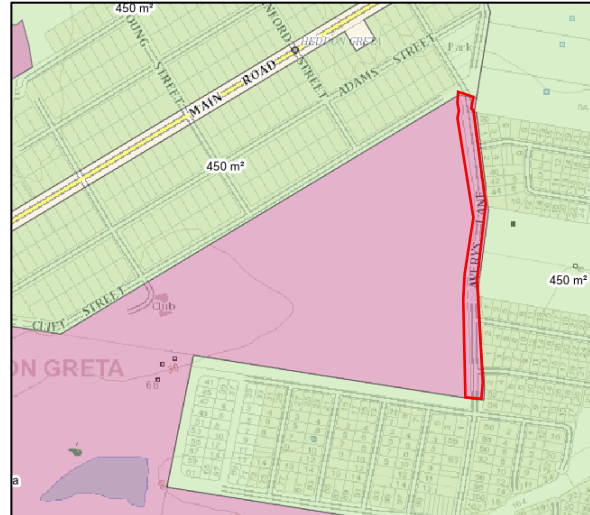
**Land zoning****Minimum Lot size****Land description:**

Boreas and Austral Street, Nulkaba

**Land zoning****Minimum Lot size**

**Land description:**

Averys Lane, Heddon Greta

**Land zoning****Minimum Lot size****1.3 Surrounding area**

The planning proposal applies to all areas zoned RU2 Rural Landscape, RU3 Forestry and RU5 Village in the Cessnock Local Government Area. This includes areas of agricultural land and vegetated land as well as numerous villages.

**2. PROPOSAL****2.1 Description of planning proposal**

The planning proposal is a component of its comprehensive review of *Cessnock Local Environmental Plan 2011*.

The planning proposal seeks to:

- amend the objectives and land uses permissible in the RU2 Rural Landscape, RU3 Forestry and RU5 Village,
- increase the minimum lot size for areas that do not have reticulated water and sewer from 2,000m<sup>2</sup> to 4,000m<sup>2</sup>,
- prohibit dual occupancies in the RU2 Rural Landscape zone, and
- amend the zones and minimum lot sizes on the edges of villages and urban areas to reflect their current land use and development potential.

RU4 Primary Production Small Lots zone will be considered in a separate planning proposal.

**2.2 Objectives or intended outcomes**

The objective of the planning proposal is to implement recommendations of the Rural Lands Issues Paper and ensure consistency with the Cessnock Local Strategic Planning Statement (LSPS) and relevant local and regional plans and strategies.

The objectives and intended outcomes are clear.

## 2.3 Explanation of provisions

The objectives and permissible land uses for the RU2 Rural Landscape, RU3 Forestry and RU5 Village zones are proposed to be amended in the following ways:

### (a) Land use table amendments

- RU2 Rural Landscape Zone

Amend the zone objectives to remove duplication and clarify intent. The permissible land uses have been amended to ensure only compatible forms of development are permitted to avoid land use conflict.

The land use table will list the desired land uses permitted with all other land uses prohibited, thereby, changing it from an 'open zone' to a 'closed zone' structure. This will provide certainty about what is permitted in the zone.

*Dual occupancies* are to be prohibited, instead *Secondary dwellings* will now be permitted.

The existing land use table does not prohibit the broad group term retail premises and thereby allows a range of retail uses generally compatible with the intent of the RU2 Rural Landscape zone including – food and drink premises, garden centres, hardware and building supplies, kiosks, landscaping material supplies, markets, shops, specialised retail premises, timber yards and vehicle sales and hire premises.

It is proposed to only permit the following retail uses with consent, cellar door premises, plant nurseries and roadside stalls.

- RU3 Forestry Zone

The planning proposal seeks to prohibit open cut mining from the zone. However, mining is permissible with consent under clause 2.9(1)(b)(i) of *State Environmental Planning Policy (Resources and Energy) 2021* on land where agriculture or industry is permitted.

The RU3 Forestry zone will permit aquaculture, extensive agriculture and horticulture, all within the definition of agriculture. It is not essential to list in the land use table uses permitted by SEPPs and this change will have no effect on the permissibility of open cut mining.

- RU5 Village Zone

The planning proposal seeks to permit with consent, building identification signs, business identification signs, early education and care facilities, home based child care and water supply systems.

Home based child care is already permitted within the zone.

It is intended to prohibit boarding houses, extensive agriculture, high technology industries and Intensive plant agriculture.

### (b) Clause amendments

- Clause 4.1(4A)

This clause is to be amended to ensure the area of any resulting lot on land not serviced by reticulated sewer is not less than 4,000m<sup>2</sup> or the area shown on the Lot Size Map, whichever is greater. The clause will also require the consent



authority to be satisfied that resulting lots will be suitable for on-site wastewater management.

The proposed amended clause will apply despite clauses 4.1AA Minimum subdivision lot size for community title schemes and 4.2B Minimum subdivision lot size for strata plan schemes in certain rural or environmental protection zones.

- **Clause 7.13**




This clause provides additional provisions under which Dual occupancies may be approved on RU2 Rural Landscape, RU4 Primary Production Small Lots and C2 Environmental Conservation zoned land. Dual occupancies are already prohibited on RU4 Primary Production Small Lots and C2 Environmental Conservation zones and this planning proposal will prohibit them on RU2 Rural Landscape land.


The clause becomes redundant and should be removed.

### **(c) Housekeeping amendments**

The planning proposal seeks to correct several anomalies where the land zoning does not align with the minimum lot size standard, as follows:

Land description	From	To	Location
<ul style="list-style-type: none"> <li>• 83 Ferguson St</li> <li>• 20 Munn St</li> <li>• Ferguson St Road Reserve</li> <li>• Bruce St Road Reserve, Abernethy</li> </ul>	<u>Zone:</u> RU5  <u>Lot size:</u> 40ha	<u>Zone:</u> RU5  <u>Lot size:</u> 750m <sup>2</sup>	
Murray St Road Reserve, Abernethy	<u>Zone:</u> RU2  <u>Lot size:</u> 750m <sup>2</sup>	<u>Zone:</u> RU2  <u>Lot size:</u> 40ha	

Land description	From	To	Location
Negro St Paynes Crossing Rd Wollombi	<u>Zone:</u> RU2  <u>Lot size:</u> 750m <sup>2</sup>	<u>Zone:</u> RU2  <u>Lot size:</u> 40ha	
Negro St Paynes Crossing Road Cedar St Wollombi	<u>Zone:</u> RU5  <u>Lot size:</u> 40ha	<u>Zone:</u> RU2  <u>Lot size:</u> 40ha	
Boreas St Austral St Nulkaba	<u>Zone:</u> RU5  <u>Lot size:</u> 40ha	<u>Zone:</u> RU5  <u>Lot size:</u> 750m <sup>2</sup>	

Averys Lane Heddon Greta	<u>Zone:</u> RU2	<u>Zone:</u> R2	
	<u>Lot size:</u> 40ha	<u>Lot size:</u> 450m <sup>2</sup>	

## 2.4 Mapping

Tables 1 and 2 identify the existing land zoning and minimum lot sizes and the proposed amendments to resolve the anomalies. The proposed Land Zoning and Minimum Lot Size maps are not included in the planning proposal.

The proposed amendments align appropriate Minimum Lot Size standards to land zoned RU2 Rural Landscape (40ha), RU5 (750m<sup>2</sup>) and R2 Low Density Residential (450m<sup>2</sup>). In addition, the land zoning of several road reserves will be amended to reflect surrounding and adjoining land.

The planning proposal should be updated to include the proposed Land Zoning and Minimum Lot Size maps prior to public exhibition.

## 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is the outcome of the Cessnock Rural Lands Issues Paper prepared by Council as part of the comprehensive review of *Cessnock Local Environmental Plan 2011*. The proposed changes ensure consistency with Cessnock Local Strategic Planning Statement (LSPS) 2036 and local and regional plans and strategies.

## 4. STRATEGIC ASSESSMENT

### 4.1 Regional / District

#### Hunter Regional Plan 2036

The planning proposal is consistent with the following in the Hunter Regional Plan:

- *Direction 5: Transform the productivity of the Upper Hunter*

- *Action 5.5 Improve land use certainty ...*

Response: The planning proposal restructures the RU2 Rural Landscape zone as a closed zone to provide certainty, nominating permissible uses that are compatible with agricultural uses.

- *Direction 10: Protect and enhance agricultural productivity*

- *Action 10.1 Protect locations that can accommodate agricultural enterprises from incompatible uses ....*

Response: The planning proposal seeks to remove incompatible uses that could lead to conflict and impact on agricultural productivity.



- *Direction 11: Manage the ongoing use of natural resources*

Response: The planning proposal is inconsistent with this direction as it seeks to prohibit open cut mining in the RU2 Rural Landscape and RU3 Forestry zones by not listing it as a permissible use and thereby making it prohibited. The proposed provision is overridden by *State Environmental Planning Policy (Resources and Energy) 2021*, which permits mining wherever agriculture is permitted.

The provision should be removed from the planning proposal as it cannot be achieved and is not supported. A condition will be included in the Gateway determination.

- *Direction 13: Plan for greater land use compatibility*
  - *Action 13.3 Amend planning controls to deliver greater certainty of land use.*

Response: The planning proposal supports this action by removing incompatible land uses and potential for land use conflict.

- *Direction 15: Sustain water quality and security*
  - *Action 15.5 Apply the neutral or beneficial water quality objectives to land use planning in surface and groundwater*

Response: The planning proposal seeks to apply minimum lot sizes and development application considerations that enable safe on-site wastewater management on rural lands.

The planning proposal is generally consistent with the *Hunter Regional Plan 2036*. However, reference to seeking to prohibit open cut mining in the RU2 Rural Landscape and RU3 Forestry zones should be removed.

#### Draft Hunter Regional Plan 2041

The planning proposal is consistent with and supports the following strategies in the draft Hunter Regional Plan 2041.

The draft regional plan divides the Hunter into six districts that each share similar characteristics, with planning priorities that build on and provide greater clarity and direction to the regional plan vision and objectives. The Cessnock Local Government Area is part of the Greater Newcastle and Hinterland districts.

The Hinterland district has the following relevant planning priorities:

- Rural villages and housing diversity – which seeks rural villages to be key destinations for tourism, leisure and recreation activities and support the development of an integrated network of green and blue grids. The priority also seeks to have rural villages to be suitable for renewal where it is sympathetic to local character and support local enterprises and employment opportunities.

Response: the planning proposal seeks to prohibit dual occupancies RU2 Rural Landscape zone. While these uses would not be appropriate in all contexts in rural areas of the hinterland to a metropolitan district, limiting the opportunities for housing diversity is not consistent with the draft regional plan.

- Rural enterprises and diversification – which seeks to support the establishment of new enterprises in rural locations, including embracing innovation, new activities and new business ideas.

Response: the planning proposal seeks to prohibit high technology industries in the RU5 Rural Village zone. Uses under that term include industrial activities associated with electronic or micro-electronic systems, information technology, telecommunication systems, sustainable energy and scientific or medical instruments. The term states these uses do not include carrying out an industrial activity that presents a hazard or potentially hazard to the neighbourhood.

The draft regional plan seeks to support rural enterprises to diversify and ensure rural areas can support the rural enterprises of the 21<sup>st</sup> century. For example, it is not clear why the manufacture of drones should be restricted in rural areas.

It is noted there were a number of submissions to the draft Hunter Regional Plan 2041 in response to public exhibition. The department is considering these submissions.

The planning proposal is not consistent with the draft Hunter Regional Plan 2041. However, in this case the inconsistency is overridden by the existing *Hunter Regional Plan 2036*.

#### Greater Newcastle Metropolitan Plan 2036

The planning proposal is consistent with the following strategies and actions in the *Greater Newcastle Metropolitan Plan 2036*.

- Strategy 13 Protect rural amenity outside urban areas.

Action 13.1 – Greater Newcastle councils will align local plans 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;
- encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector, and build the sector's capacity to adapt to changing circumstances; and
- protect and preserve productive agricultural land to support the growth of agricultural industries and keep fresh food available locally.

Response: The planning proposal manages the number of new dwellings in rural areas by prohibiting dual occupancies and limiting development of land not serviced by a reticulated sewerage system.

- Strategy 16 Prioritise the delivery of infill housing opportunities within existing urban areas.
  - Action 16.1 - Greater Newcastle councils will focus new housing in existing urban areas, particularly within strategic centres and along urban renewal corridors.

Response: The planning proposal focuses new housing in existing urban areas by limiting housing in rural areas and rezoning serviced village land and matching lot size to development potential.

The planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036*.

## **4.2 Local**

### Cessnock Local Strategic Planning Statement 2036

The planning proposal identifies Action 5 of the LSPS requires a review of the *Cessnock Local Environmental Plan 2011* and of relevance is Planning Priority 8 which requires rural land to be protected from incompatible uses. Changes to the land use table for the RU2 Rural Landscape zone achieves this as well as increasing the minimum lot size where on-site effluent management is required.

Planning Priority 30 requires growth of villages to occur in a way that protects their character and setting in the rural landscape. The amendments to the zones and minimum lot sizes of the several villages ensures the zones and minimum lot sizes define the village boundaries and enable development to match local services.

The planning proposal is consistent with the LSPS.

### Cessnock Community Strategic Plan – Our People, Our Place, Our Future

The planning proposal is consistent with the following objectives:

- Objective 3.1 – Protecting and enhancing the natural environment and rural character of the area. This is achieved by managing the land uses appropriate within the rural areas and limiting conflict and environmental impact.
- Objective 5.2 – Involving more community participation in decision making. The planning proposal's public consultation phase and review of submissions will achieve this objective.

The planning proposal is consistent with the Cessnock Community Strategic Plan.

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

### SEPP (Housing) 2021

The planning proposal does not impact on the intent of this SEPP. Provisions relating to the village locations and changes to zones and minimum lot sizes promotes consolidated development at appropriate densities that can take advantage of services provided.

### SEPP (Primary Production) 2021

The planning proposal supports the aims of this SEPP. Particularly, in relation to reducing potential for land use conflict in rural areas.

### SEPP (Resources and Energy) 2021

The planning proposal states it seeks to prohibit open cut mining in the RU2 Rural Landscape and RU3 Forestry zones. However, clause 2.9(1)(b)(i) of the SEPP makes mining permissible with consent wherever agriculture or industry are permitted.

The planning proposal seeks to amend the RU2 Rural Landscape and RU3 Forestry zones to prohibit open cut mining by:

- closing the RU2 Rural Landscape zone structure and not listing open cut mining as specifically permissible with consent and therefore prohibited; and
- the same approach is taken for the RU3 Forestry zone, however, currently open cut mining is specifically listed as permissible with consent.

Both provisions will not achieve the desired outcome as the SEPP will override any prohibition in the LEP, as agriculture is permissible in both zones.

Reference to prohibiting open cut mining in both zones should be removed from the planning proposal.

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

The following Section 9.1 Ministerial directions apply to this planning proposal:

##### 1.1 Implementation of Regional Plans

The planning proposal is consistent with the *Hunter Regional Plan 2036* except in relation to the provision proposing to prohibit open cut mining in RU2 Rural Landscape and RU3 Forestry zones. While it has no effect due to *State Environmental Planning Policy (Resources and Energy) 2021* permitting mining wherever agriculture is permitted, it should be removed to ensure clarity and certainty of the planning proposal.

The inconsistency with the direction will be rectified by removal of the provision by Gateway condition.

##### 8.1 Mining, Petroleum Production and Extractive Resources

The direction requires that, where a planning proposal seeks to prohibit or restrict mining or the development of resources, including coal, Council needs to consult with Mining, Exploration and Geoscience.

Attempting to prohibit open cut mining in the RU2 Rural Landscape and RU3 Forestry zones is not considered to be of minor significance and will have no effect as the *State Environmental Planning Policy (Resources and Energy) 2021* will override this provision and permit Open cut mining with consent because agriculture is permitted in the zones.

The intent to prohibit open cut mining should be removed from the planning proposal.

##### 9.1 Rural Zones

The planning proposal applies to rural zones and therefore the direction applies. The planning proposal reduces the density of housing permissible within the RU2 Rural Landscape zone. Land proposed to be zoned to RU5 Village already lies within established villages, is appropriately serviced and will not impact on rural production.

The planning proposal is consistent with the direction or any inconsistencies are of minor significance.

##### 9.2 Rural Lands

The planning proposal applies to RU2 Rural Landscape zoned land and seeks to:

- reduce the potential for land use conflict; and
- only permit land uses compatible with rural production.

It does rezone some land within Heddon Greta from RU2 Rural Landscape to R2 General Residential and reduce the minimum lot size accordingly. However, this land is a designated road entirely within the residential boundary.

The draft Hunter Regional Plan 2041 seeks to consider how rural enterprises and rural villages in the Hinterland district can ensure people can continue to work in

rural areas to help them stay connected with their communities. Welcoming new people to the Hinterland helps maintain its vitality. This needs to be balanced with the potential for land use conflict and critical analysis of what uses are compatible with rural production.

Inconsistency with the direction is of minor significance.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The planning proposal will have limited social impact. While dual occupancies are prohibited in the RU2 Rural Landscape zone, the planning proposal seeks to permit secondary dwellings.

### **5.2 Environmental**

The planning proposal reduces the potential density of development within rural areas and helps to reduce and manage the impacts of on-site wastewater management.

### **5.3 Economic**

The planning proposal limits a range of land uses however, it retains business and retail uses Council considers appropriate for the RU2 Rural Landscape zone.

Changes to minimum lot size for several village areas will enable these sites to reach their development potential.

### **5.4 Infrastructure**

Areas to be zoned RU5 Village with reduced minimum lot sizes are already serviced. There is no additional demand on State infrastructure.

## **6. CONSULTATION**

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### **6.1 Community**

Council has proposed a two-month exhibition period.

The planning proposal is categorised as 'standard' which has a recommended maximum exhibition period recommended is 20 working days. It is therefore recommended the planning proposal be exhibited for a period of 28 days.

### **6.2 Agencies**

Council has proposed to consult with Mining, Exploration and Geoscience in accordance with section 9.1 Ministerial direction 8.1 Mining, Petroleum Production and Extractive Resources.

Consultation should also be undertaken with NSW Department of Primary Industries in relation to the proposed land use table changes.

## **7. TIME FRAME**

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Council's project timeline indicates a 12-month timeframe.

The planning proposal is categorised as 'standard' which has 200 working day timeframe from issue of the Gateway determination. The Gateway determination will be conditioned accordingly.



## 8. LOCAL PLAN-MAKING AUTHORITY

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Council has requested to be authorised as the as the local plan making authority.

Council should be authorised under s3.31 of the *Environmental Planning and Assessment Act 1979* as the local plan making authority.

## 9. RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with section 9.1 Ministerial directions 1.1 Implementation of Regional Plans, 9.1 Rural Zones and 9.2 Rural Lands are of minor significance or justified; and
2. note the potential consistency with section 9.1 Ministerial direction 8.1 Mining, Petroleum Production and Extractive Industries is unresolved and will require an amendment to the planning proposal and consultation with Mining, Exploration and Geoscience.

It is recommended the delegate of the Minister for Planning and Homes determine the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be updated prior to public exhibition to:
  - (a) remove the proposed provision to prohibit 'open cut mining' in the RU2 Rural Landscape and RU3 Forestry zones from the Explanation of Provisions as it is inconsistent with *State Environmental Planning Policy (Resources and Energy 2021)*; and
  - (b) include proposed Land Zoning and Minimum Lot Size maps.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
  - Mining, Exploration and Geoscience
  - Department of Primary Industries
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



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21/07/2022

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