



PLANNING PROPOSAL

Amendment to the *Cessnock Local Environmental Plan 2011*

**Dwelling entitlement on land at 0 Black Hill
Road, Black Hill described as Lot 686
DP619758**

Version 2

15 March 2022

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Part 1: Objectives and Intended Outcomes

Background

At its meeting dated 9 December 2020, Council considered a planning proposal to grant a dwelling entitlement on the above described rural lot (Appendix 1). Clause 4.2(A) of the Cessnock Local Environmental Plan 2011 prohibits, with exception the construction of a dwelling on rural land that is less than the minimum lot size of 40ha. The aim of this clause is to minimise unplanned rural residential development. It is also to ensure the protection of existing and future rural uses from the encroachment of residential and other sensitive development. The subject lot is 8.5ha in area; so, based on clause 4.2(A) Council officers recommended that the proposal be refused. There were other issues that supported this recommendation including the proximity of the site to an operational quarry.

The LEP, like most NSW Planning Instruments, includes provisions that limit the permissibility of dwellings on undersized, rural-zoned land. Dwellings on lots below the minimum lot size are permissible with consent only where a dwelling entitlement exists. In the Cessnock LEP, a dwelling entitlement exists only where the proponent can establish that the land satisfies one or more of the following conditions:

1. Where a dwelling has been legally constructed on the land.
2. The land was a lot created before the LEP commenced (i.e. 2011) and on which the erection of a dwelling house was permissible immediately before that commencement, or
3. The land was a lot resulting from a subdivision for which development consent (or equivalent) was granted before the LEP commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
4. The land is an existing holding, or
5. The land is identified as having a dwelling entitlement on the Dwelling Entitlement Map,
or
6. It is a lot created under clause 4.1 (i.e. it satisfies the minimum lot size requirement).

The proponent for the current application cannot satisfy any of these criteria and therefore Council is unable to grant development consent for a dwelling under that clause. However, the proponent has requested that Council amend the LEP dwelling entitlement map to identify the site as having a dwelling entitlement and therefore enable Council to consider a development application for a dwelling on the site under item 5 above.

As part of the draft Local Strategic Planning Statement, officers proposed to introduce a *sunset* clause to 4.2(A), meaning that after 24 months the existing exceptions would be removed. This attracted significant community opposition and was removed from the LSPS. The intention is to replace clause 4.2(A) with a strategic, whole of LGA approach to regulate new residential development on rural land. However, this project has not commenced due to other priorities.

At the meeting, Council resolved to defer consideration of the subject application until interim guidelines to assess individual applications for dwelling entitlements were developed. These guidelines will apply until the comprehensive LEP review is completed. These guidelines were adopted by Council at its 17 February 2021 meeting and are attached to this planning proposal (Appendix 2).

The applicant has provided additional studies relating to noise, air quality and potential agricultural impact. The application has been assessed against these guidelines and generally satisfies the criteria. However, there are ongoing concerns about the operation of the quarry,

the potential use of the quarry site for landfill, the inconsistency with the LEP and the implications of site-by-site, rather than a strategic approach to this issue.

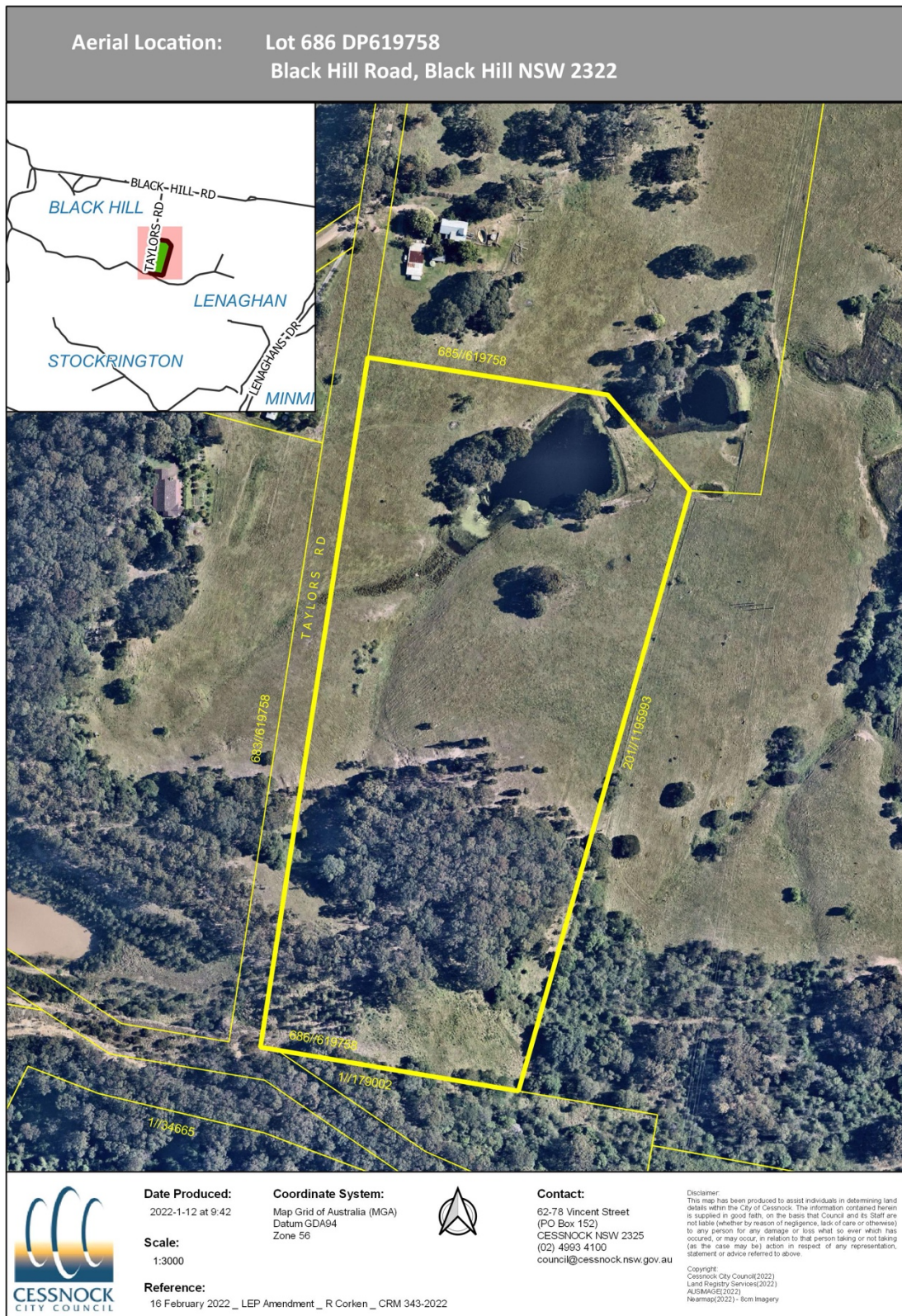


Figure 1: Site plan.

Objectives

The objective of this planning proposal is to grant a dwelling entitlement on the subject lot.

Part 2: Explanation of Provisions

The objectives of this Planning Proposal will be achieved by amending the Cessnock LEP 2011 in the following manner:

- To amend the Dwelling Entitlement Map - Sheet DWD_009 to show the subject lot with a dwelling entitlement.

Part 3: Justification of Strategic and Site-specific merit

In accordance with the Department of Planning and Environment'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 Is the planning proposal a result of an endorsed LSPS, strategic study or report?

No.

2 Planning Proposal as best way to achieve to objectives

At the present time, identifying the lot with a dwelling entitlement in the Cessnock Local Environmental Plan is the only way to achieve a dwelling entitlement on the subject property utilising clause 4.2(A)(3)(e). However, the Dwelling Entitlement Map and the exception provided by clause 4.2(A)(3)(e) was never intended as a vehicle to consider site-by-site applications for dwelling entitlements. Its inclusion in the CLEP was as an administrative tool to record the dwelling entitlements that existed.

Council intends to revisit the issue of dwelling entitlements as part of the comprehensive review of the CLEP. The intention is to look at this on a strategic, LGA-wide basis and be supported by a strategic policy framework.

Section B: Relationship to Strategic Planning Framework

3 Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

DRAFT Hunter Regional Plan 2041

The following objectives are relevant to this planning proposal:

OBJECTIVE

OBJECTIVE 3:

Create a 15 minute region made up of mixed, multi-modal, inclusive and vibrant local communities

Response: The site is approximately 15 minute's drive to Kurri Kurri. There is no public transport that services the site and it is unreasonable to expect any future resident to walk or ride to centre from the site because this would require travelling along John Renshaw Drive that does not have any cycling or walking infrastructure within the road reserve.

STRATEGY

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.

Response: The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical limitation restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.

National Pinch Point Growth Area

5. Stockrington

- Conserve high environmental value lands.
 - Promote rural lifestyles and the growth of rural enterprises.
 - Enable ongoing resource extraction.
-

Response: The site is within the Stockrington Area within the National Pinch Point Growth Area. It is uncertain if these objectives for the area, support the proposal or not. 'Promote rural lifestyles'? Does this support the growth of rural lifestyle development. The site is in close proximity to an active quarry operation. Acoustic and dust reports have been prepared to support the proposed residential development.

Hunter Regional Plan 2036

The following objectives are relevant to this planning proposal:

DIRECTION

ACTION

10 – Protect and enhance agricultural productivity

Response: The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical imitation restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.

There are flaws in this argument as it relies wholly on the consideration of a single lot. Many rural lots across Cessnock support small herds of beef cattle. Many would not qualify as economic units in themselves; however collectively they support a viable beef cattle industry, which in turn supports related rural industries such as the Kurri Abattoir.

DIRECTION	ACTION
13 – Plan for greater land use compatibility	13.2 Limit urban and rural housing encroachment into identified agricultural and extractive resource areas, industrial areas and transport infrastructure when preparing local strategies.

Response: The Agricultural Lands Assessment that accompanies the development concludes that the change of the site from rural to rural residential will not impact the surrounding rural uses.

The site adjoins the Woodbury Civil Quarry. Council has received complaints about the operation of the quarry from neighbouring sites in the past. Council is not aware of plans to expand the operations at the present time.

Noise and air quality reports have been submitted in support of the application. Both reports conclude that the current operation at the times of recording can meet minimum requirements.

The application was sent to the EPA who regulate the adjoining quarry. They have no concerns about the proposed development. The EPA did raise that an application for a landfill site in the vicinity of the site is currently under consideration.

Greater Newcastle Metropolitan Plan (GNMP)

The following outcomes and strategies are relevant to this planning proposal:

OUTCOME	STRATEGY
Enhance environment, amenity and resilience for quality of life	13 Protect rural amenity outside urban areas

Response: The GNMP acknowledges the role of agricultural production in Cessnock: *“Agricultural production will continue to be integral to the supply of Greater Newcastle’s fresh food, including ... meat from grazing and intensive farming at Cessnock.”*

The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical imitation

restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.

There are flaws in this argument as it relies wholly on the consideration of a single lot. Many rural lots across Cessnock support small herds of beef cattle. Many would not qualify as economic units in themselves; however collectively they support a viable beef cattle industry, which in turn supports related rural industries such as the Kurri Abattoir.

The GNMP also states: *“Regulating minimum lot size requirements for rural zones will enhance the viability of the agricultural sector, maximise production efficiencies and support the delivery of local fresh foods by limiting land fragmentation. Limiting dwellings in rural zones will also help to avoid potential land use conflicts with agricultural activities.”*

Council recognises that there may be opportunities for rural residential development in certain locations across the LGA. However, there is no strategic basis for decision making in place at present.

OUTCOME	STRATEGY
Deliver housing close to jobs and services	18 Deliver well-planned rural residential housing areas

Response: The GNMP states: *“If not planned well, large lot and rural residential development has the potential to conflict with valuable agricultural or environmental land... This Plan provides a consistent approach to manage rural residential development to minimise potential conflicts with productive rural areas and environmental assets, and to ensure it does not increase pressures on infrastructure.”*

Action 18.1 states: *“Greater Newcastle councils will enable rural residential housing when the need is demonstrated through a local planning strategy endorsed by the Department of Planning and Environment, and it is in locations where:*

- *the land is unlikely to be required for more intensive urban purposes in the future due to physical constraints such as slope, environmental characteristics or natural hazards*
- *less intensive development will result in better management of the land*
- *the delivery of infrastructure required to service the development is physically and economically feasible.*

The application is supported by an Agricultural Lands Assessment that argues: *“that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical imitation restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.”*

No additional infrastructure is anticipated to service a single dwelling on the site.

4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

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

Cessnock City Council’s Community Strategic Plan (Our People, Our Place, Our Future), was developed by Council following extensive local community consultation. The following objective is relevant to the proposal:

STRATEGY	OBJECTIVE
A Sustainable and Healthy Environment	Objective 3.1 - Protecting and enhancing the natural environment and the rural character of the area

Response: The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site from surrounding areas.

Cessnock Local Strategic Planning Statement.

The following LSPS principles are relevant to the proposal.

PLANNING PRIORITY	PRINCIPLE
Planning Priority 6: Rural residential, large lot residential development and environmental living are considered in limited and appropriate locations.	6. High quality agricultural land is protected and effective buffers are provided. 7. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimise the visual and ecological impacts.

Response: The site is not classified as high quality agricultural land.

The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site from surrounding areas.

PLANNING PRIORITY	PRINCIPLE
Planning Priority 8: Our rural land is protected from incompatible development.	2. Effective buffers are maintained to protect rural lands from further encroachment by non-agricultural development.

Response: The Agricultural Assessment Report concludes that a dwelling entitlement will not introduce a sensitive receiver that will further diminish the agricultural potential of the adjoining site (Lot 201 DP1195993).

PLANNING PRIORITY	PRINCIPLE
Planning Priority 22: Our rural landscape is retained and enhanced.	1. Scenic view corridors of the region are protected and enhanced. 2. The rural character and amenity of the land is preserved and enhanced. 4. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimize the visual impact. 5. Dwelling entitlement provisions reflect the rural amenity.

Response: The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site from surrounding areas.

PLANNING PRIORITY	PRINCIPLE
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Planning Priority 24:

Our Aboriginal cultural heritage is protected and celebrated.

1. The heritage significance of Aboriginal places, objects and sites is identified, protected and celebrated.

Response: An AHIMs search is included in the application which states that no Aboriginal sites and Aboriginal Places are recorded in or near the above location or declared.

5 Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other state or regional studies or strategies relevant to this proposal.

6 Consistency with State Environmental Planning Policies

An assessment of relevant SEPPs against the planning proposal is provided in the table below.

Table 1: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP Mining, Petroleum Production and Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	Due to the proximity of the existing quarry, the Assessment Agency would assess a <u>development application</u> against clause 13 of the SEPP. However, it is unlikely that a development application would be required as rural housing may be undertaken as complying development.
SEPP (Primary Production and Rural Land) 2019	<p>The aims of this Policy are as follows:</p> <ul style="list-style-type: none"> to facilitate the orderly economic use and development of lands for primary production, to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources, to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and 	<p>The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical limitation restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.</p> <p>There are flaws in this argument as it relies wholly on the consideration of a single lot.</p>

SEPP	Relevance	Consistency and Implications
	<p>environmental considerations,</p> <ul style="list-style-type: none"> • to simplify the regulatory process for smaller-scale lowrisk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts, • to encourage sustainable agriculture, including sustainable aquaculture, • to require consideration of the effects of all proposed development in the State on oyster aquaculture, • to identify aquaculture that is to be treated as designated development using a well- defined and concise development assessment regime based on environment risks associated with site and operational factors. 	<p>Many rural lots across Cessnock support small herds of beef cattle. Many would not qualify as economic units in themselves; however collectively they support a viable beef cattle industry, which in turn supports related rural industries such as the Kurri Abattoir.</p>
State Environmental Planning Policy (Koala Habitat Protection) 2021	<p>This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.</p>	<p>The report includes a plan with an indicative building envelope. It is unlikely that any vegetation/trees will be removed from the site as a result of this planning proposal. A future development application for the residence will be required and the loss of any trees will be assessed as part of the DA.</p>

7 Consistency with Section 9.1 Ministerial Directions for Local Plan Making

An assessment of relevant Section 9.1 Directions against the planning proposal is provided in the table below.

Table 2: Relevant Section 9.1 Ministerial Directions

Ministerial Direction	Objective of Direction	Consistency and Implication
1. Employment and Resources		
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	<p>The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical imitation restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.</p> <p>There are flaws in this argument as it relies wholly on the consideration of a single lot. Many rural lots across Cessnock support small herds of beef cattle. Many would not qualify as economic units in themselves; however collectively they support a viable beef cattle industry, which in turn supports related rural industries such as the Kurri Abattoir.</p>
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	<p>The site adjoins an existing extractive industry (Woodbury Civil Quarry). The planning proposal is supported by acoustic and air quality report. Both reports demonstrate that, during the period of testing, minimum noise and air quality standards can be achieved. The planning proposal was also referred to the Environmental Protection Agency who did not express any concerns about the proposal.</p> <p>The extractive industry is not of State or regional significance.</p>
1.5 Rural Lands	The objectives of this direction are to: (a) protect the agricultural production value of rural land,	The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land

Ministerial Direction	Objective of Direction	Consistency and Implication
	(b) facilitate the orderly and economic development of rural lands for rural and related purposes.	<p>classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical imitation restricting agricultural production. According to the assessment, the land is not capable of being an economic unit as defined by the NSW DPI.</p> <p>There are flaws in this argument as it relies wholly on the consideration of a single lot. Many rural lots across Cessnock support small herds of beef cattle. Many would not qualify as economic units in themselves; however collectively they support a viable beef cattle industry, which in turn supports related rural industries such as the Kurri Abattoir.</p> <p>Council has assessed the application against the interim guidelines and the proposal is generally consistent with those guidelines. See appendix 2.</p>
2. Environment and Heritage		
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	An AHIMs search is included in the application which states that no Aboriginal sites and Aboriginal Places are recorded in or near the above location or declared.
2.6 Remediation of Contaminated Land	The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.	The site is not identified as contaminated land. The site has been used for grazing purposes. A preliminary contaminated land assessment is not considered necessary.
4. Hazard and Risk		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	Not applicable
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	The site is located in the Black Hill Mine Subsidence District. Guideline 2 applies to the land which allows residential development in accordance with that guideline.

Ministerial Direction	Objective of Direction	Consistency and Implication
4.3 Flood Prone Land	<p>The objectives of this direction are:</p> <p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>Only a very minor part of the property is affected by flooding. The proposed building envelope is outside the flood affected area. See Figure 2.</p>
4.4 Planning for Bushfire Protection	<p>The objectives of this direction are:</p> <p>(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</p> <p>(b) to encourage sound management of bush fire prone areas.</p>	<p>A Bushfire Assessment Report accompanies the planning proposal. That report demonstrates that a building can be situated on the property and constructed in a manner to address the RFS Planning for Bushfire Protection requirements.</p>
5. Regional Planning		
5.10 Implementation of Regional Plans	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p>	<p>This has been addressed in Section B(3) above.</p>
6. Regional Planning		
6.3 Site specific provisions	<p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p>	<p>A dwelling is prohibited in the RU2 Rural Landscape zone on land less than the minimum lot size. The minimum lot size for this site is 40ha. The size of the lot is 8.3ha. The mechanism to grant a dwelling entitlement will rely on the dwelling entitlement map and clause 4.2A(3)(e).</p>

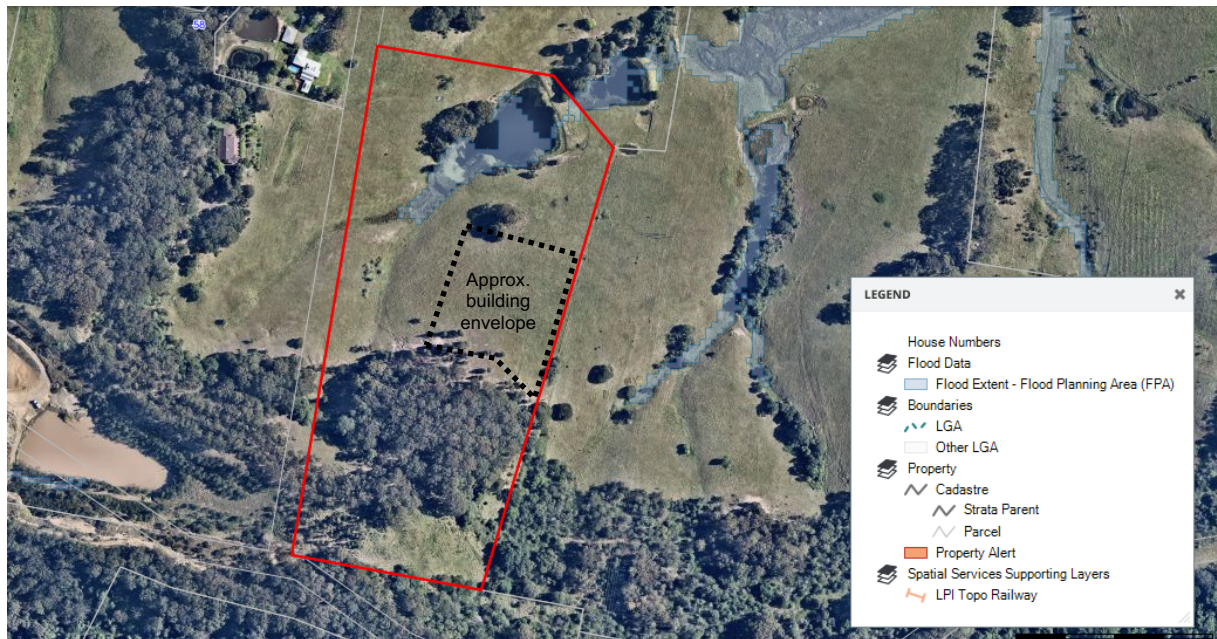
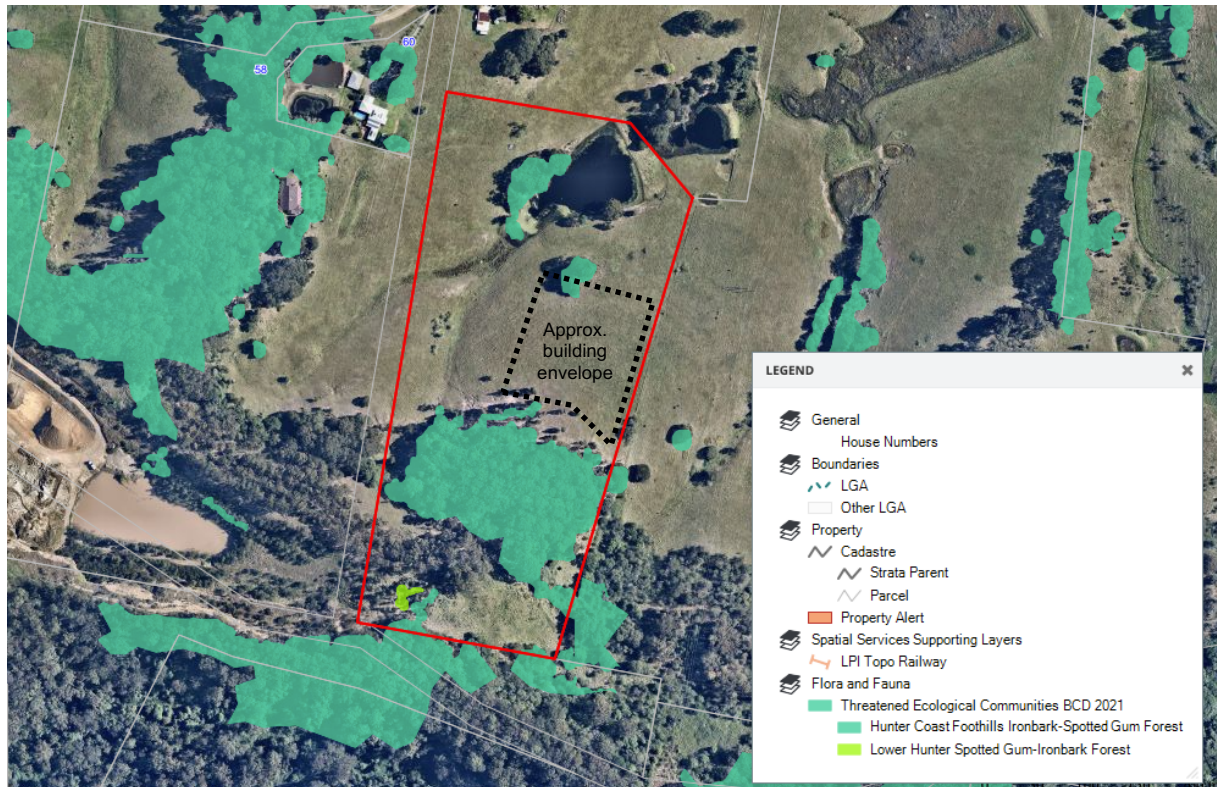


Figure 2: Flood planning level.

Section C: Environmental, Social and Economic Impact

8 *Impact on Threatened Species*

The location of the proposed building envelope is pasture. It is unlikely that the construction of a dwelling will impact on threatened species. The exact location of the dwelling will be determined at development application stage.



9 *Environmental Impact*

There is unlikely to be any environmental impact from the construction of a dwelling on the property.

The site adjoins the Woodbury Civil Quarry. Council has received complaints about the operation of the quarry from neighbouring sites in the past. Council is not aware of plans to expand the operations at the present time.

Noise and air quality reports have been submitted in support of the application. Both reports conclude that the current operation at the times of recording can meet minimum requirements.

The application was sent to the EPA who regulate the adjoining quarry. They have no concerns about the proposed development. The EPA did raise that an application for a landfill site in the vicinity of the site is currently under consideration.

10 *Social and Economic Impacts*

There is unlikely to be any social or economic impact from the construction of a dwelling on the property.

Section D: State and Commonwealth Interests

11 Adequate Public Infrastructure

The site is not serviced by reticulated water or sewer. Any dwelling on the site would rely on rainwater and an onsite sewerage system.

Taylors Road is gravel and its construction ends approximately 100m from the property. The applicants will have to extend Taylors Road in accordance with Council's rural roads standards to service their property.

All other services including electricity and telecommunications will have to be extended to the site at the landowners' expense.

12 Consultation with State and Commonwealth Authorities

Council will consult with any State or Commonwealth agencies in accordance with the Gateway Determination. It is anticipated that the application will be referred to the Environmental Protection Authority and the Department of Primary Industries.

Part 4: Mapping

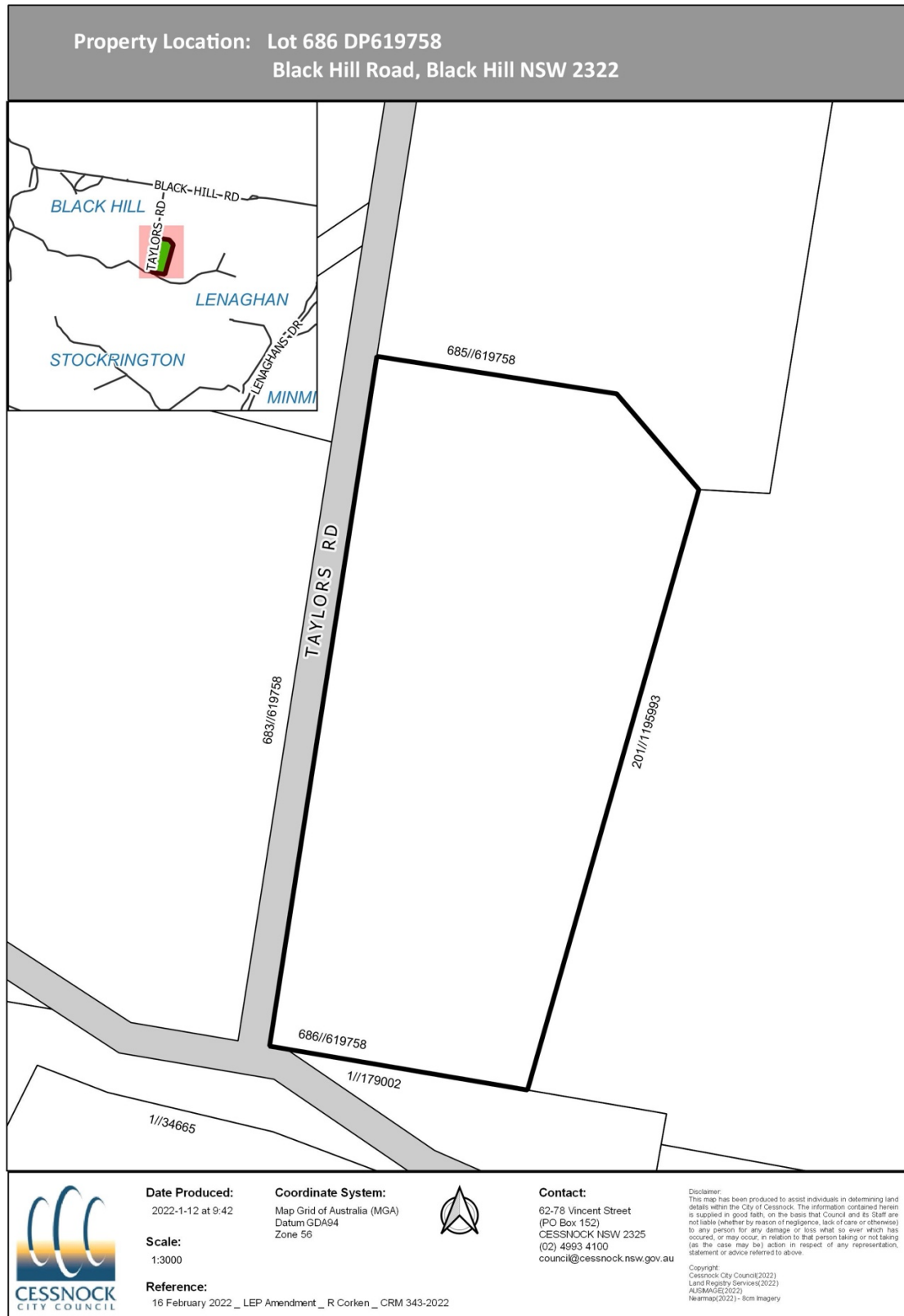


Figure 3: Existing dwelling entitlement map.

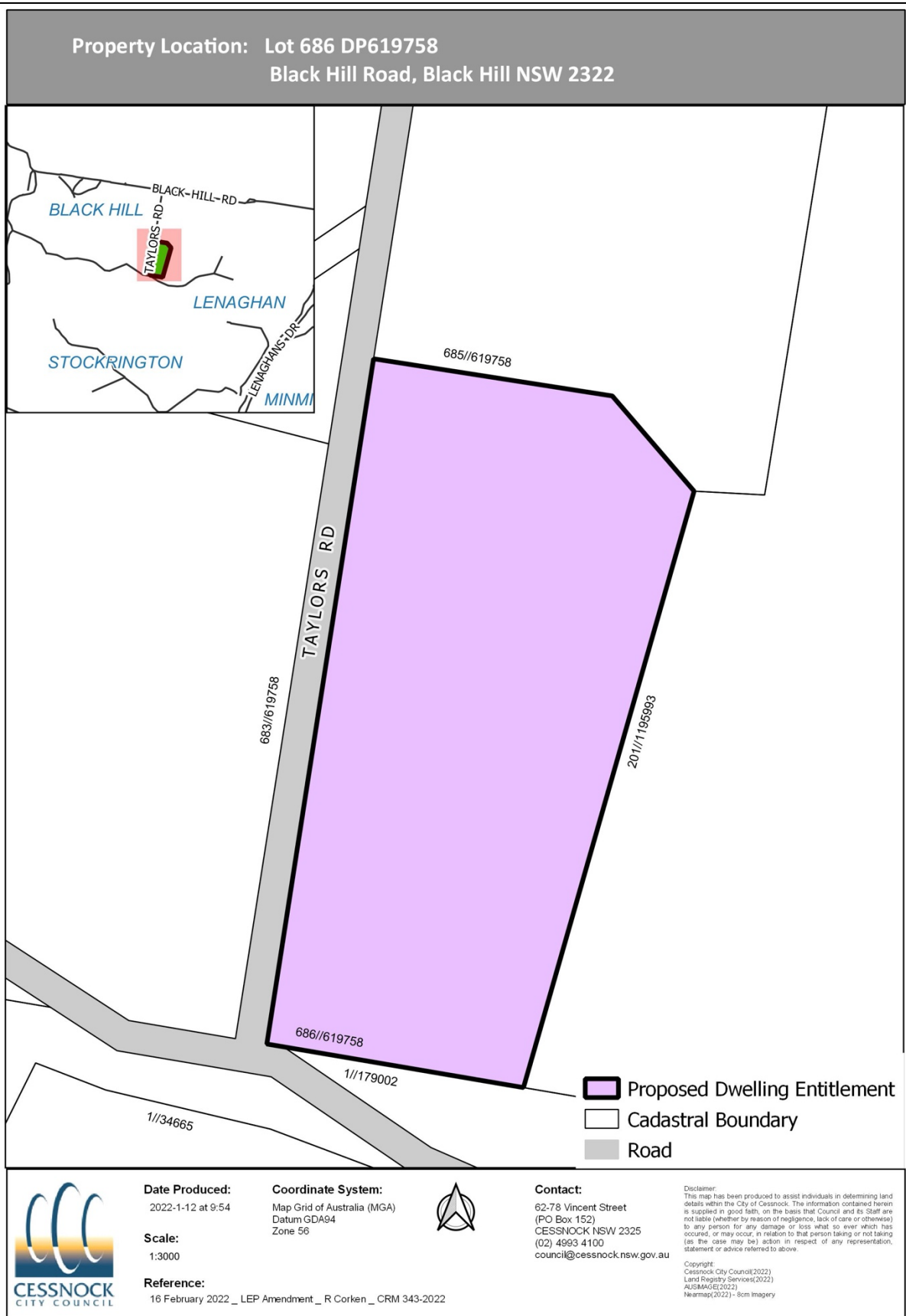


Figure 4: Proposed dwelling entitlement map.

Part 5: Community Consultation

Community consultation will be undertaken in accordance with the Gateway Determination and Council Community Engagement Strategy. Exhibition will occur over a 28 day period, with material available on Council's website and at the Administrative Building and Council Libraries.

Part 6: Project Timeline

	Apr 2022	May 2022	Jun 2022	Jul 2020	Aug 2022	Sep 2022	Oct 2022	Nov 2022
STAGE 1 Submit to DPIE – Gateway Panel consider Planning Proposal								
STAGE 2 Receive Gateway Determination								
STAGE 3 Preparation of documentation for Public Exhibition								
STAGE 3a Council resolutions to exhibit								
STAGE 4 Public Exhibition								
STAGE 5 Review/consideration of submission/s received								
STAGE 6 Report to Council								
STAGE 7 Make amendment or request amendment to be made by DPIE								

Appendix 1: Council Report and Minutes (dates)

Council Report_09-12-2020
Minutes_09-12-2020

Council Report_17-02-2021
Minutes_17-02-2021

Planning and Environment

Report No. PE45/2020

Planning and Environment



SUBJECT: **18 2020 5 - PLANNING PROPOSAL TO GRANT A DWELLING ENTITLEMENT FOR LOT 686 DP 619758, KNOWN AS 58 TAYLORS ROAD BLACK HILL**

RESPONSIBLE OFFICER: **Acting Strategic Planning Manager - Iain Rush**

SUMMARY

Application Number	18/2020/5
Proposal	Amend the LEP to grant a dwelling entitlement to Lot 686 DP 619758, known as 58 Taylors Road, Black Hill
Property Description	Lot 686 DP 619758
Property Address	58 Taylors Road, Black Hill
Zone (Current)	RU2 Rural Landscape
Zone (Proposed)	RU2 Rural Landscape
Owner	B Beavan and J Tyler
Proponent	Perception Planning

Council has received a planning proposal to amend the *Cessnock Local Environmental Plan 2011* (the LEP) to grant a dwelling entitlement on land at Lot 686 DP 619758, known as 58 Taylors Road, Black Hill.

An assessment of the proposal has been undertaken against the regional, district and local strategic planning framework. It has been determined that the proposal is inconsistent with this framework and has no merit to proceed. Therefore, it is recommended that Council not support the request to prepare a planning proposal and, pursuant to clause 10A of the *Environmental Planning and Assessment Regulation 2000*, notify the applicant as soon as practicable in writing that the proposal is not supported.

The proposal has also flagged that mapping of dwelling entitlements in the LEP provides a mechanism to apply for dwelling entitlements that it was never intended to provide. Therefore, it is recommended that Council further investigate clause 4.2(A)(3)(e) of the LEP and associated mapping as part of the comprehensive LEP review, potentially providing this administrative function in the Cessnock Development Control Plan (DCP).

RECOMMENDATION

1. That Council not support this request to prepare a planning proposal; and
2. That Council, pursuant to Clause 10A of the *Environmental Planning and Assessment Regulation 2000* notify the applicant as soon as practicable in writing that Council does not support the proposal.

Planning and Environment

Report No. PE45/2020

Planning and Environment



3. That Council investigate clause 4.2(A)(3)(e) of the Cessnock Local Environmental Plan 2011 and associated mapping as part of the comprehensive LEP review.

BACKGROUND

Clause 4.2(A) of the LEP prohibits the erection of a dwelling on land in a zone unless the land meets certain criteria, including that the lot is at least the minimum lot size specified for that land by the Lot Size Map.

Council received a request on 23 October 2020 to amend the LEP to include land at Lot 686 DP 619758, known as 58 Taylors Road, Black Hill, on the dwelling entitlement map; thereby allowing council to consider a development application for a dwelling on that land.

REPORT/PROPOSAL

The LEP, like most NSW Planning Instruments, includes provisions that limit the permissibility of dwellings on undersized, rural-zoned land. Dwellings on lots below the minimum lot size are permissible with consent only where a dwelling entitlement exists. A dwelling entitlement exists only where the proponent can establish that the land satisfies one or more of the following conditions:

1. Where a dwelling has been legally constructed on the land.
2. The land was a lot created before the LEP commenced (i.e. 2011) and on which the erection of a dwelling house was permissible immediately before that commencement, or
3. The land was a lot resulting from a subdivision for which development consent (or equivalent) was granted before the LEP commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
4. The land is an existing holding, or
5. The land is identified as having a dwelling entitlement on the Dwelling Entitlement Map, or
6. It is a lot created under clause 4.1 (i.e. it satisfies the minimum lot size requirement).

The proponent for the current application cannot satisfy any of these criteria and therefore Council is unable to grant development consent for a dwelling under that clause. The proponent has requested that Council amend the LEP dwelling entitlement map to identify the site as having a dwelling entitlement and therefore enable Council to consider a development application for a dwelling on the site under item 5 above.

Having a dwelling entitlement map in an LEP is uncommon. The reason why the mapping was originally included in the LEP was for administrative purposes to record where dwelling entitlements had been identified through Council's 'Dwelling Entitlement Check' process. It was not anticipated to be a mechanism for Council to approve dwelling entitlements outside the criteria (1-4, 6) listed above.

As part of the Local Strategic Planning Statement (LSPS), Council had proposed to introduce a *sunset clause* to the LEP to allow those landholders with a valid entitlement to prove that they had the entitlement and commence construction of the dwelling. After the *sunset period* expired, no further opportunities would be provided for dwellings on lots below the minimum

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lot size. There was significant community concern expressed during the exhibition period of the LSPS and Council opted to remove the initiative from the LSPS and indicated that it would consider the issue further at a later time and as its own project. Any consideration of dwelling entitlements should be undertaken in a holistic, strategic manner; not on a site-by-site or ad hoc basis as is proposed in this application. Most importantly, there is considerable risk that this will set a significant precedent for others to apply for dwellings on undersized lots using this mechanism.

In addition to the above, any change to the CLEP needs to be consistent with the strategic framework that includes the Hunter Regional Plan 2036 (HRP 2036), the Greater Newcastle Metropolitan Plan 2036 (GNMP 2036) and the LSPS. The following discusses the proposal with reference to these three strategies.

Hunter Regional Plan 2036

The proposal is inconsistent with the following directions of the HRP 2036.

Direction 10 – Protect and enhance agricultural productivity

The use of rural land for primarily a residential purpose undermines the capability of the land to sustain rural uses. It also introduces the potential of existing or future land-use conflicts. The proponent has argued that the proposal is consistent with this direction on that basis that:

“This would be achieved by ensuring the land is not sterilised of agricultural capability and productivity. As detailed within this report, given the small Lot size, undulating topography in sections, soil profile and vegetated areas of the site, the land is not suitable for large scale agricultural use. The planning proposal will not result in incompatible development on the site that would otherwise pose negative impacts on the agricultural sector.”

The justification does not acknowledge existing and potential rural uses on the adjoining sites. The reference to ‘large scale agricultural use’ does not recognise that rural uses do not have to be large to be viable or the importance of the collective of small scale rural uses that contribute to the overall viability of certain agricultural and supporting rural industries in the region.

Direction 11 – Manage the ongoing use of natural resources

The site adjoins the Black Hill extractive mining operation. The HRP states “Mining activities have specific operational needs that can compete with other sensitive uses”. The operation of the mine has attracted ongoing complaints from adjoining neighbours. The proposal is inconsistent with this direction in that it would introduce an additional sensitive receiver into an area that is experiencing land-use conflicts.

Direction 13 – Plan for greater land use compatibility

The HRP states in relation to resource areas: “There is also potential for conflict if new housing encroaches into rural and resource areas, leading to increased management costs. Conflict could also affect the potential to sustain or grow rural and resource industries.” Given the proximity of the site to the existing extractive industry and the conflict that is occurring, it is inconsistent with the direction to allow another sensitive receiver into the area.

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Greater Newcastle Metropolitan Plan 2036

The proposal is inconsistent with the following outcomes and strategies identified in the GNMP 2036:

Strategy 13: Protect rural amenity outside urban areas

Rural areas in Greater Newcastle have a wide range of environmental, social and economic values. These rural areas need to be carefully planned for the future to provide a secure long-term future for productive and sustainable agriculture.

According to the HRP 2036 beef cattle contributes \$5.5M to the local economy. A significant proportion of this comes from the many small-scale beef cattle operations across Cessnock. The argument presented under direction 10 that the site is not suitable for a 'large scale agricultural use' does not acknowledge the significant contribution that the small scale agricultural uses collectively make to the local economy.

Local Strategic Planning Statement 2036

The proposal is inconsistent with the following planning priorities of the Cessnock LSPS:

Planning Priority 6: Rural residential, large lot residential development and environmental living are considered in limited and appropriate locations.

In relation to rural residential development, this priority seeks to avoid existing and potential land-use conflict. As discussed above, the proposal would introduce an additional sensitive receiver into an area that is affected by an existing extractive industry and may undermine the potential of existing and future rural uses on adjoining sites.

Planning Priority 8: Our rural land is protected from incompatible development.

As above.

Planning Priority 22: Our rural landscape is retained and enhanced.

The rural landscape and amenity makes a significant contribution to the character of Cessnock. Arguably, dwellings on rural properties undermine the integrity of these qualities and therefore, should be minimised. The existing dwelling entitlement provisions in the LEP limit the number of dwellings that are permitted to those that have an existing dwelling entitlement. A decision to permit a dwelling via this mechanism in the LEP risks setting a significant precedent that could result in significantly more dwellings on undersized rural lots. A strategic, holistic review of the dwelling entitlement provisions across the entire city would result in a more robust, considered outcome.

OPTIONS

Council has the following options:

1. That Council does not support the request to prepare a planning proposal. *This is the recommended option.*

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2. That Council resolve to support the planning proposal and request a Gateway determination from the Department of Planning, Industry and Environment. This option is not recommended, as the proposal is inconsistent with the state and local policy framework and has no merit to proceed.

CONSULTATION

Acting Director Planning and Environment (Strategic Planning Manager)

Acting Strategic Planning Manager (Senior Strategic Planner)

STRATEGIC LINKS

a. Delivery Program

The recommendation supports Council's commitment to Objective 3.1: Protecting & enhancing the natural environment & the rural character of the area.

b. Other Plans

The following strategic plans are relevant to the proposal and are discussed elsewhere in this report.

- Hunter Regional Plan 2036
- Greater Newcastle Metropolitan Plan 2036
- Cessnock Local Strategic Planning Statement 2036

IMPLICATIONS

a. Policy and Procedural Implications

The proposal is inconsistent with the intent of clause 4.2(A)(3)(e) of the Cessnock Local Environmental Plan 2011. If the decision is made to support this proposal it would provide a significant precedent for other applications for dwelling entitlements on under-sized rural lots using this mechanism.

The recommendation of this report is consistent with Council's adopted LSPS.

b. Financial Implications

Nil

c. Legislative Implications

The proposal is inconsistent with the intent of clause 4.2(A)(3)(e) of the LEP. If the decision is made to support this proposal it would provide a significant precedent for other applications seeking dwelling entitlements on under-sized rural lots using this mechanism.

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d. Risk Implications

If the decision is made to support this proposal it would provide a precedence for other applications for dwelling entitlements on under-sized rural lots using this mechanism.

e. Environmental Implications

There is existing evidence of land-use conflict between rural residential lots in the vicinity of the Black Hill extractive industry. Supporting the proposal would result in an additional sensitive receiver in the immediate area of the operations.

f. Other Implications

Nil

CONCLUSION

An assessment of the proposal has been undertaken against the state, regional, district and local strategic planning framework. It has been determined that the proposal is inconsistent with this framework and has no merit to proceed. Any consideration of dwelling entitlements should be undertaken in a holistic, strategic manner; not on a site-by-site or ad hoc basis. Therefore, it is recommended that Council does not support this request to prepare a planning proposal and undertake additional measures to prevent the use of this mechanism in the future.

ENCLOSURES

- 1 Application for dwelling entitlement at 58 Taylors Road, Black Hill - Proponent Report - Provided Under Separate Cover

PLANNING AND ENVIRONMENT NO. PE45/2020

SUBJECT: 18 2020 5 - PLANNING PROPOSAL TO GRANT A DWELLING ENTITLEMENT FOR LOT 686 DP 619758, KNOWN AS 58 TAYLORS ROAD BLACK HILL

MOTION **Moved:** Councillor Suvaal **Seconded:** Councillor Gray
1522

RESOLVED

1. That report PE45/2020 be deferred until after point 4 below is undertaken and if adopted, application number [18/2020/5](#) can be assessed against these new interim guidelines.
2. That Council notes the preferred option for addressing dwelling entitlements is through a holistic approach as part of the upcoming LEP review and commits to undertaking this process as a priority.
3. That Council recognises that prior to the completion of the LEP review there may be individual applications for Gateway determination of dwelling entitlements that are required to be assessed.
4. That the General Manager develop interim guidelines to assess individual applications for Gateway determination of dwelling entitlements while the LEP review is underway and report them to Council for adoption in February 2021.

FOR

AGAINST

Councillor Olsen
Councillor Doherty
Councillor Fagg
Councillor Stapleford
Councillor Suvaal
Councillor Fitzgibbon
Councillor Gray
Councillor Burke
Councillor Sander
Councillor Lyons
Councillor Pynsent

Total (11)

Total (0)

CARRIED UNANIMOUSLY

Planning and Environment

Report No. PE3/2021

Planning and Environment



SUBJECT: ***GUIDELINES FOR PLANNING PROPOSALS REQUESTING A DWELLING ENTITLEMENT***

RESPONSIBLE OFFICER: ***Strategic Planning Manager – Martin Johnson***

SUMMARY

The purpose of this report is to seek Council endorsement of the Guidelines for planning proposals requesting a dwelling entitlement.

RECOMMENDATION

That Council endorses the Guidelines for planning proposals requesting a dwelling entitlement.

BACKGROUND

Clause 4.2A of the *Cessnock Local Environmental Plan 2011* (the LEP) prohibits the erection of a dwelling on land in specified zones unless the land meets certain criteria, including the minimum lot size, or being identified on the dwelling entitlement map.

Council received a request on 23 October 2020 to amend the LEP to include Lot 686 DP 619758, known as 58 Taylors Road, Black Hill, on the dwelling entitlement map; thereby allowing Council to consider a development application for a dwelling on that land.

On 9 December 2020, the planning proposal 18/2020/5 was reported to Council by PE45/2020 recommending that Council not support the request for the planning proposal. Council resolved:

1. That report PE45/2020 be deferred until after point 4 below is undertaken and if adopted, application number 18/2020/5 can be assessed against these new interim guidelines.
2. That Council notes the preferred option for addressing dwelling entitlements is through a holistic approach as part of the upcoming LEP review and commits to undertaking this process as a priority.
3. That Council recognises that prior to the completion of the LEP review there may be individual applications for Gateway determination of dwelling entitlements that are required to be assessed.
4. That the General Manager develop interim guidelines to assess individual applications for Gateway determination of dwelling entitlements while the LEP review is underway and report them to Council for adoption in February 2021.

REPORT/PROPOSAL

In response to the resolution of PE45/2020, draft Guidelines for planning proposals requesting a dwelling entitlement (**Enclosure 1**) have been developed as an interim measure until the comprehensive LEP review is complete. The Guidelines specify the criteria for how staff and Council will determine whether to accept or reject a planning proposal for a dwelling entitlement. The Guidelines have been developed based on the Planning Priorities and

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Principles in the Cessnock Local Strategic Planning Statement 2036 (LSPS) and require applicants to demonstrate how their request for a dwelling entitlement meets certain criteria.

The Guidelines reiterate that Council's preferred option is addressing dwelling entitlements as part of the comprehensive review of the LEP. The guidelines will allow for the consideration and assessment of requests for dwelling entitlements in a consistent and fair manner until such time as the review of the LEP is finalised and adopted by Council.

OPTIONS

Nil

CONSULTATION

The draft guidelines have been prepared by Council's Strategic Planning Team. The guidelines reference the priorities and principles contained in the Cessnock LSPS. The development of the Cessnock LSPS involved extensive consultation with the community, Council staff, industry groups and State Government agencies.

STRATEGIC LINKS

a. Delivery Program

A Sustainable and Healthy Environment: Objective 3.1 Protecting and Enhancing the Natural Environment and the Rural Character of the Area.

b. Other Plans

The following strategic plans are relevant to the proposal:

- Hunter Regional Plan 2036 (HRP)
- Greater Newcastle Metropolitan Plan 2036 (GNMP)
- Cessnock Local Strategic Planning Statement 2036 (LSPS).

IMPLICATIONS

a. Policy and Procedural Implications

The draft Guidelines will apply to the assessment of planning proposals requesting a dwelling entitlement. Having endorsed guidelines will provide consistent and transparent short-term criteria for Council to respond to requests for dwelling entitlements. In the longer term, dwelling entitlements will be addressed through the comprehensive LEP review.

b. Financial Implications

Fees for any future planning proposals will be applied in accordance with Council's adopted Fees and Charges Schedule.

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c. Legislative Implications

Having endorsed guidelines will provide consistent and transparent short-term criteria for Council to respond to requests for dwelling entitlements. In the longer term, dwelling entitlements will be addressed through the comprehensive LEP review.

d. Risk Implications

These guidelines will increase transparency in decision making to ensure consistent outcomes.

In addition, there is a risk that ad-hoc requests for dwelling entitlements may not receive Gateway determination if they are inconsistent with the planning principles of the HRP, GNMP or the Cessnock LSPS.

e. Environmental Implications

The proposed guidelines will provide transparent and consistent short-term criteria for Council to respond to requests for dwelling entitlements until Council adopts a revised LEP.

f. Other Implications

Nil.

CONCLUSION

Adopting the guidelines will allow staff and Council to apply a consistent, fair and transparent response to requests for dwelling entitlements while staff work towards completing the Comprehensive LEP Review.

ENCLOSURES

[1](#) Guidelines For Planning Proposals Requesting a Dwelling Entitlement

PLANNING AND ENVIRONMENT NO. PE3/2021

SUBJECT: GUIDELINES FOR PLANNING PROPOSALS REQUESTING A DWELLING ENTITLEMENT

MOTION **Moved:** Councillor Suvaal **Seconded:** Councillor Fitzgibbon
1558

RESOLVED

That Council endorses the Guidelines for planning proposals requesting a dwelling entitlement.

FOR

Councillor Olsen
Councillor Doherty
Councillor Dunn
Councillor Fagg
Councillor Suvaal
Councillor Fitzgibbon
Councillor Gray
Councillor Burke
Councillor Sander
Councillor Lyons
Councillor Pynsent

Total (11)

AGAINST

Councillor Stapleford

Total (1)

CARRIED

Planning and Environment

Report No. PE4/2022

Planning and Environment



SUBJECT: *18 2020 5 - PLANNING PROPOSAL TO GRANT A DWELLING ENTITLEMENT FOR LOT 686 DP 619758, KNOWN AS 0 BLACK HILL ROAD, BLACK HILL*

RESPONSIBLE OFFICER: *Senior Strategic Planner - Robert Corken
Strategic Planning Manager - Martin Johnson*

SUMMARY

Application Number	18/2020/5
Proposal	Amend the CLEP to grant a dwelling entitlement to Lot 686 DP 619758, known as 0 Black Hill Road, Black Hill
Property Description	Lot 686 DP 619758
Property Address	0 Black Hill Road, Black Hill
Zone (Current)	RU2 Rural Landscape
Zone (Proposed)	RU2 Rural Landscape
Owner	B Beavan and J Tyler
Proponent	Perception Planning

At its meeting dated 9 December 2020, Council considered a planning proposal to grant a dwelling entitlement on the above described rural lot. Clause 4.2(A) of the *Cessnock Local Environmental Plan 2011* (CLEP) prohibits, with exceptions, the construction of a dwelling on rural land that is less than the minimum lot size of 40ha. The aim of this clause is to minimise unplanned rural residential development. It is also to ensure the protection of existing and future rural uses from the encroachment of residential and other sensitive development.

The subject lot is 8.5ha in area; so, based on clause 4.2(A) of CLEP Council officers recommended that the planning proposal be refused. There were other issues that supported this recommendation including the proximity of the site to an operational quarry.

As part of the Local Strategic Planning Statement (LSPS), Council had proposed to introduce a *sunset clause* to the LEP to allow those landholders with a valid entitlement to prove that they had the entitlement and commence construction of the dwelling. After the *sunset period* expired, no further opportunities would have been provided for dwellings on lots below the minimum lot size. There was significant community concern expressed during the exhibition period of the LSPS and Council opted to remove the initiative from the LSPS. Council indicated that it would consider the issue further at a later time and as part of the comprehensive CLEP review.

At the meeting on 9 December 2020 when considering the Planning Proposal, Council resolved to defer consideration of the subject application until interim guidelines to assess individual applications for dwelling entitlements were prepared while the LEP review is underway. These guidelines were adopted by Council at its 17 February 2021 meeting and are attached to this report (**Enclosure 1**).

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The applicant has also provided additional studies relating to noise and potential agricultural impact. The application has been assessed against these guidelines and generally satisfies the criteria. There are ongoing concerns about the operation of the quarry, the potential use of the quarry site for landfill, the inconsistency with the LEP and the implications of site-by-site, rather than a strategic approach to this issue.

RECOMMENDATION

1. That Council requests a Gateway determination for the Planning Proposal – Dwelling Entitlement for Lot 686 DP619758 from the 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 be provided with a report back on the Planning Proposal if unresolved written objections are received during consultation with the community; otherwise forward the Planning Proposal to the Department of Planning and Environment requesting that the Plan be made.

BACKGROUND

Clause 4.2(A) of the LEP prohibits the erection of a dwelling on land in a zone unless the land meets certain criteria, including that the lot is at least the minimum lot size specified for that land by the Lot Size Map.

Council received a request on 23 October 2020 to amend the CLEP to include land at Lot 686 DP 619758, known as 0 Black Hill Road, Black Hill, on the dwelling entitlement map; thereby allowing council to consider a development application for a dwelling on that land.

The CLEP, like most NSW Planning Instruments, includes provisions that limit the permissibility of dwellings on undersized, rural-zoned land. Dwellings on lots below the minimum lot size are permissible with consent only where a dwelling entitlement exists. A dwelling entitlement exists only where the proponent can establish that the land satisfies one or more of the following conditions:

1. Where a dwelling has been legally constructed on the land, or
2. The land was a lot created before CLEP commenced (i.e. 2011) and on which the erection of a dwelling house was permissible immediately before that commencement, or
3. The land was a lot resulting from a subdivision for which development consent (or equivalent) was granted before CLEP commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or
4. The land is an existing holding, or

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5. The land is identified as having a dwelling entitlement on the Dwelling Entitlement Map,
or
6. It is a lot created under clause 4.1 (i.e. it satisfies the minimum lot size requirement).

The proponent for the current application cannot satisfy any of these criteria and therefore Council is unable to grant development consent for a dwelling under that clause. The proponent has requested that Council amend the LEP dwelling entitlement map to identify the site as having a dwelling entitlement and therefore enable Council to consider a development application for a dwelling on the site under item 5 above.

At the meeting on 9 December 2020, Council resolved to defer consideration of the planning proposal until interim guidelines to assess individual applications for dwelling entitlements were prepared while the LEP review is underway. These guidelines were adopted by Council at its 17 February 2021 meeting and are attached to this report (**Enclosure 1**).

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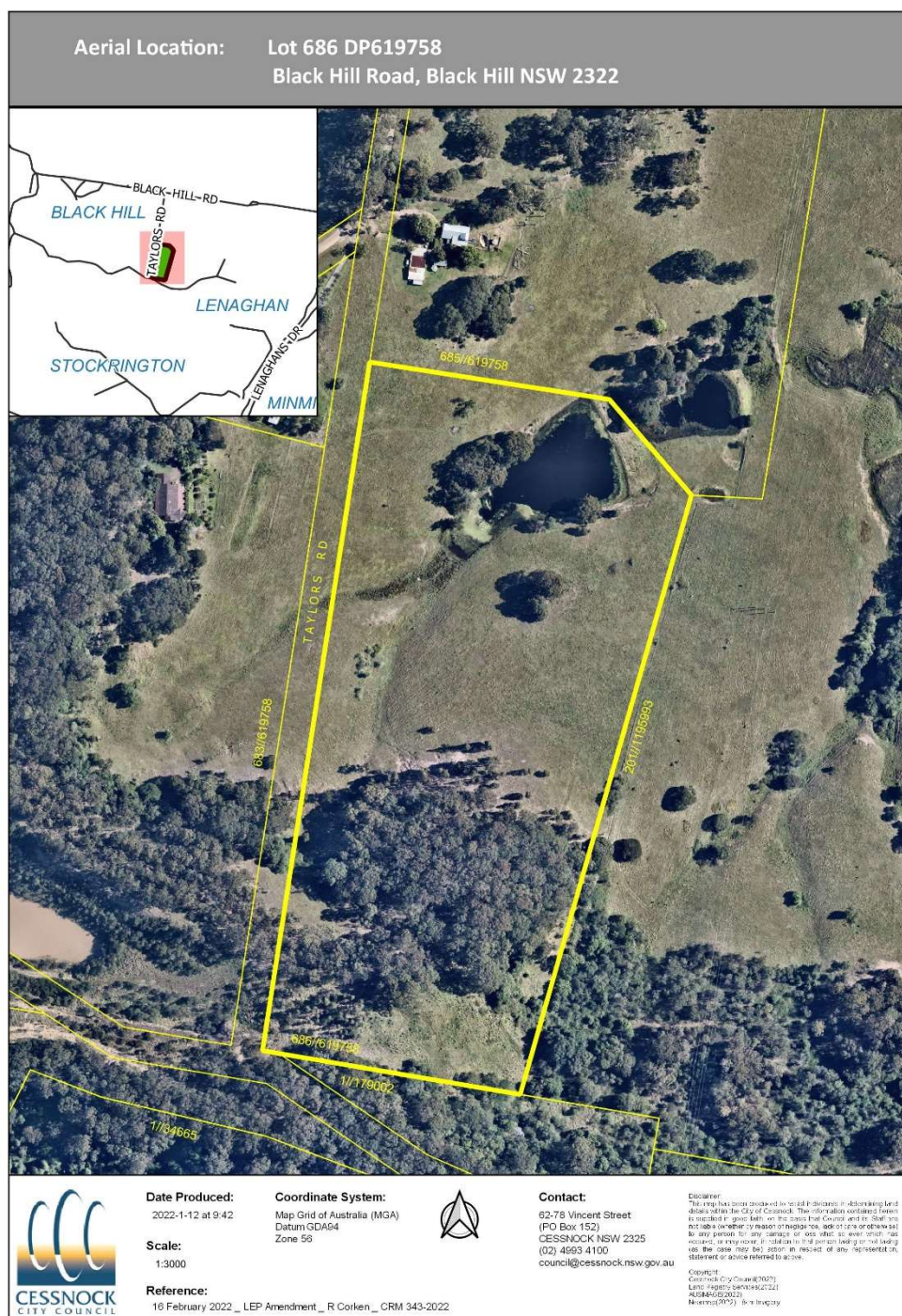


Figure 1: Location Plan.

REPORT/PROPOSAL

The Interim guidelines require the following to qualify as potentially eligible land to apply for a dwelling entitlement:

- Land zoned RU2 Rural Landscape Zone.

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- Satisfies the relevant objectives of the RU2 Rural Landscape zone.
- Satisfies each of the Cessnock Local Strategic Plan 2036 (LSPS) Planning Priorities and Principles.

Below is an assessment of the proposal against the interim Dwelling Entitlement guidelines.

RU2 Rural Landscape

The subject land is zoned RU2 Rural Landscape.

The objectives of the zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

Response: The proposal will change the primary use of the land from rural to rural residential. An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and have generally moderate to high levels of social and physical limitation restricting agricultural production. The land is not capable of being an economic unit as defined by the NSW DPI.

- To maintain the rural landscape character of the land.

Response: The rural residential use of the site will introduce new non-rural structures to the site and area. The proposal is consistent with the surrounding lots and has limited views into the site.

- To provide for a range of compatible land uses, including extensive agriculture.

Response: The proposal will change the primary use of the land from rural to rural residential.

- To enable other forms of development that are associated with rural activity and require an isolated location or support tourism and recreation.

Response: Not applicable.

- To ensure that the type and intensity of development is appropriate in relation to the rural capability and suitability of the land, the preservation of the agricultural, mineral and extractive production potential of the land, the rural environment (including scenic resources) and the costs of providing services and amenities.

Response: An Agricultural Lands Assessment accompanies the application. The assessment concludes that the Agricultural land classification of the site is Class 4. Class 4 land is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical limitation restricting agricultural production. The report states land is not capable of being an economic unit as defined by the NSW DPI.

The site adjoins the Woodbury Civil Quarry. There are no plans to expand the operations at the present time. Council has received complaints about the operation of the quarry from neighbouring sites in the past.

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Noise and air quality reports have been submitted in support of the application. Both reports conclude that the current operation at the times of recording can meet minimum requirements.

- To maintain and enhance the scenic character of the land.

Response: The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site.

- To ensure that development does not create unreasonable or uneconomic demands for the provision or extension of services.

Response: There is no reticulated water or sewer infrastructure that services the site. If the development is supported, the dwelling will be serviced by an onsite sewerage management system and rainwater. The additional dwelling is unlikely to require any additional infrastructure. There has been complaints in the past relating to the quality of Taylors Road and the need for it to be regraded more frequently. The additional vehicular movement generated by a dwelling is unlikely to worsen the quality and maintenance schedule of Taylors Road.

- To minimise the visual impact of vegetation clearing in order to be consistent with the rural character of the locality.

Response: It is unlikely that the dwelling will require any significant vegetation clearance.

- To minimise disturbance to the landscape from development through clearing, earthworks, access roads and construction of buildings.

Response: No significant works are required to access or construct a dwelling on the property.

- To ensure development does not intrude into the skyline when viewed from a road or other public place.

Response: The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site.

Cessnock Local Strategic Planning Statement (LSPS)

The following LSPS principles are relevant to the proposal.

Planning Priority 6:

Rural residential, large lot residential development and environmental living are considered in limited and appropriate locations.

Principle

- 6. High quality agricultural land is protected and effective buffers are provided.
- 7. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimise the visual and ecological impacts.

Response: The site is not classified as high quality agricultural land.

The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site from surrounding areas.

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Planning Priority 8:

Our rural land is protected from incompatible development.

Principle

2. Effective buffers are maintained to protect rural lands from further encroachment by non-agricultural development.

Response: The Agricultural Assessment Report concludes that a dwelling entitlement will not introduce a sensitive receiver that will further diminish the agricultural potential of the adjoining site (Lot 201 DP1195993).

Planning Priority 22:

Our rural landscape is retained and enhanced.

Principle

1. Scenic view corridors of the region are protected and enhanced.
2. The rural character and amenity of the land is preserved and enhanced.
4. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimize the visual impact.
5. Dwelling entitlement provisions reflect the rural amenity.

Response: The rural residential use of the site will introduce new non-rural structures to the site and area but it is consistent with the surrounding lots and has limited views into the site from surrounding areas.

Planning Priority 24:

Our Aboriginal cultural heritage is protected and celebrated.

1. The heritage significance of Aboriginal places, objects and sites is identified, protected and celebrated.

Response: An AHIMs search is included in the application which states that no Aboriginal sites and Aboriginal Places are recorded in or near the above location or declared.

OPTIONS

Nil

CONSULTATION

No community consultation has occurred. If the application receives a Gateway determination to proceed, community consultation will be undertaken in accordance with that determination.

Initial consultation has been undertaken with the Environmental Protection Authority (EPA) regarding noise and dust from the nearby quarry. The EPA has raised no concerns with this proposal. Further consultation may be undertaken with State Agencies as part of the Gateway determination.

STRATEGIC LINKS

a. Delivery Program

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Objective 3.1: Protecting & enhancing the natural environment & the rural character of the area.

b. Other Plans

The following strategic plans are relevant to the proposal:

- Hunter Regional Plan 2036
- Greater Newcastle Metropolitan Plan 2036

The planning proposal addresses the consistency of the proposal with these plans and this will also be assessed by the DPIE.

IMPLICATIONS

a. Policy and Procedural Implications

The proposal is inconsistent with the intent of clause 4.2(A)(3)(e) of the *CLEP*. Clause 4.2(A) relates to the erection of dwellings on land in certain residential, rural and environmental protection zones. The intent of the clause is to minimize unplanned rural development.

The decision to support this proposal may provide the precedent for other applications for dwelling entitlements on under-sized rural lots using this mechanism. It is difficult to assess the cumulative impact of dwelling entitlements. The issue of dwelling entitlements on undersized rural properties is best considered at a landscape and strategic level, so that existing rural land uses can be protected and future opportunities for rural uses can be accommodated.

The Planning Proposal is at the following stage of the process:

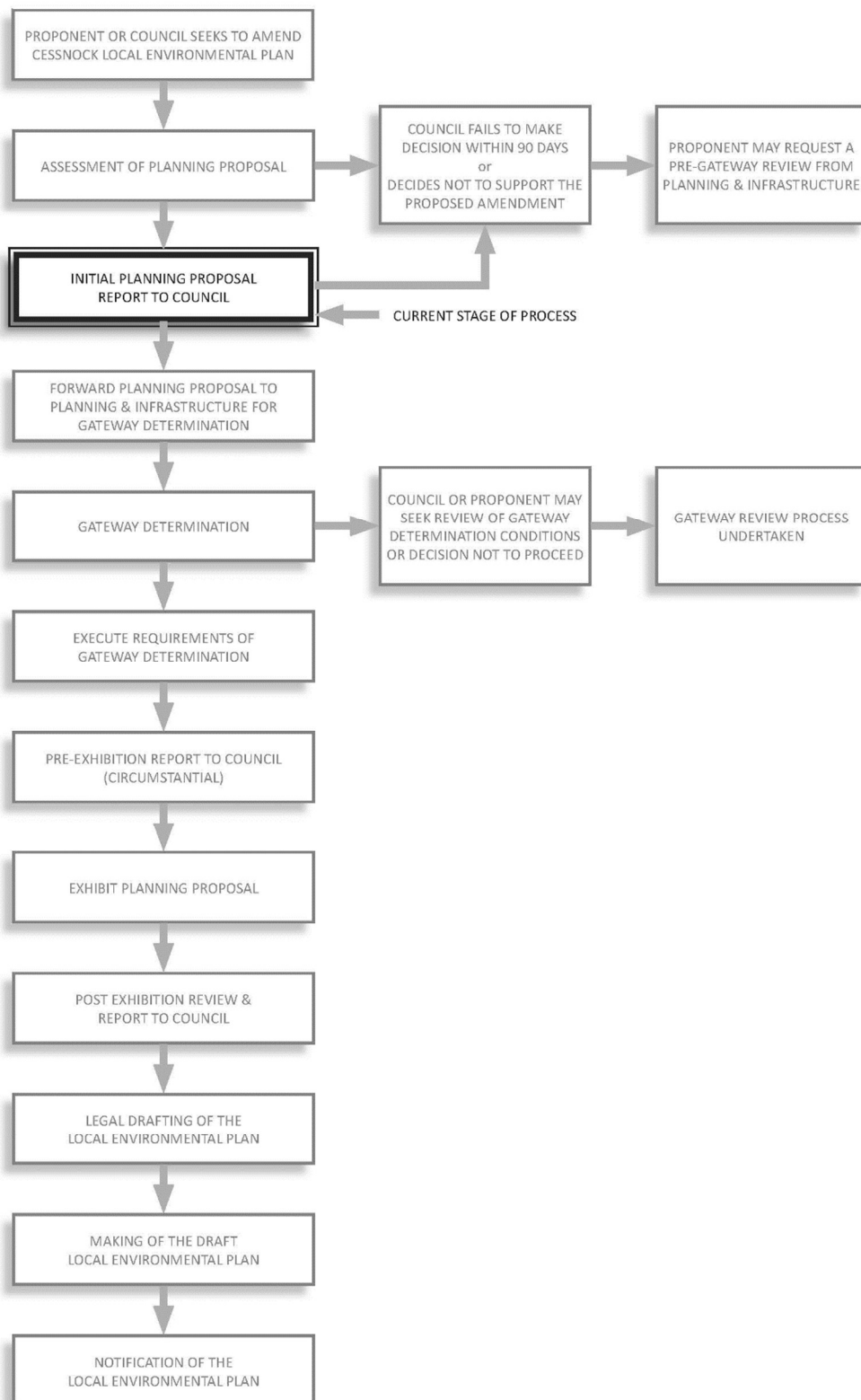
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PLAN MAKING PROCESS - LOCAL ENVIRONMENTAL PLAN



b. Financial Implications

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In accordance with Council's fees and charges the proponent will be charged fees for the proposal.

c. Legislative Implications

As discussed above, the proposal is inconsistent with the intent of clause 4.2(A)(3)(e) of the LEP.

The proposal is being assessed in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

d. Risk Implications

The decision to support this proposal may provide the precedent for other applications for dwelling entitlements on under-sized rural lots using this mechanism. It is difficult to assess the cumulative impact of allowing dwelling entitlement on rural land.

e. Environmental Implications

Council has received complaints from landowners near the quarry about their operations. However, the Air Quality and Acoustic reports indicate that the regulated levels can be achieved. Furthermore, the Environmental Protection Agency have no concerns about the proposal.

Council is in receipt of the Planning Secretary's Environmental Assessment Requirements (SEAR) for a non-putrescible waste management facility (landfill) near the site.

f. Other Implications

Nil

CONCLUSION

The proposal and the additional information has been assessed against Council's "Guidelines for planning proposals requesting a dwelling entitlement". The proposal is considered consistent with the criteria listed.

ENCLOSURES

- 1 Interim Guidelines for Dwelling Entitlements
- 2 Planning Proposal for Dwelling Entitlement on land at Black Hill Road described as Lot 686 DP619758.

PLANNING AND ENVIRONMENT NO. PE4/2022

SUBJECT: 18 2020 5 - PLANNING PROPOSAL TO GRANT A DWELLING ENTITLEMENT FOR LOT 686 DP 619758, KNOWN AS 0 BLACK HILL ROAD, BLACK HILL

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
25
RESOLVED

1. That Council requests a Gateway determination for the Planning Proposal – Dwelling Entitlement for Lot 686 DP619758 from the 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 be provided with a report back on the Planning Proposal if unresolved written objections are received during consultation with the community; otherwise forward the Planning Proposal to the Department of Planning and Environment requesting that the Plan be made.

FOR

AGAINST

Councillor Suvaal
Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Watton
Councillor Olsen
Councillor Jurd
Total (13)

Total (0)

CARRIED UNANIMOUSLY

Appendix 2: Guidelines for planning proposals requesting dwelling entitlements

Guidelines for planning proposals requesting a dwelling entitlement

Contact Council's Strategic Planning team on 02 4993 4100 for additional information

The purpose of this document is to outline how Council will consider planning proposals requesting a dwelling entitlement for rural properties that are less than the minimum lot size.

Council's preferred option for addressing dwelling entitlements is through the Comprehensive LEP Review, as such certain exclusions apply in this guideline.

Excluded land

Dwelling entitlements will not be considered for properties that fall into any of the following categories:

- Land that is zoned:
 - RU4 Primary Production Small Lots; or
 - E2 Environmental Conservation; or
 - E3 Environmental Management.
- Land that is identified as having high biodiversity value on the [Biodiversity Values Map and Threshold Tool](#).
- Land that is identified as an investigation area in the Urban Growth Management Plan.

These categories have been identified for exclusion because Council is currently working on a series of strategic projects that will inform the future direction of this land based on either their environmental or agricultural significance to the region, or the potential suitability of that land for future urban growth.

Potentially eligible land

Only land within the RU2 Rural Landscape Zone will be considered, subject to the site meeting the following criteria.

- The proposal for a dwelling entitlement will need to satisfy the relevant objectives of the RU2 Rural Landscape zone.
- The planning proposal will need to demonstrate that the proposal satisfies each of the Cessnock Local Strategic Plan 2036 (LSPS) Planning Priorities and Principles, listed in Table 1.

Table 1: Cessnock LSPS 2036 Considerations

Planning Priority (by theme)		Planning Principles
Livable	Planning Priority 6: Rural residential, large lot residential development and environmental living are considered in limited and appropriate locations.	6. High quality agricultural land is protected and effective buffers are provided. 7. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimise the visual and ecological impacts.
Productive	Planning Priority 8: Our rural land is protected from incompatible development.	2. Effective buffers are maintained to protect rural lands from further encroachment by non-agricultural development.
Sustainably	Planning Priority 17: Our lands of environmental value are protected and enhanced.	3. Development at the interface of our state forests and national parks has minimal environmental impact. 4. Areas of high environmental value are protected from encroachment by incompatible land-uses. 8. Developments that are likely to result in a Serious and Irreversible Impact (SII) on biodiversity values will not be supported.

Planning Priority (by theme)		Planning Principles
	Planning Priority 18: Our areas of biodiversity and biodiversity corridors are enhanced and protected.	4. The impacts that planning proposals or development applications have on biodiversity corridors are considered early in the planning process.
	Planning Priority 20: Our community adapts to climate change and builds climate resilience.	1. The impact of climate change and natural hazards is considered at all stages in the planning process.
	Planning Priority 21: Developments minimise environmental impacts and respond to site environmental characteristics and natural hazards.	6. The intensification of land-uses on sites with significant natural hazards will generally not be supported. 7. Development will continue to be assessed in accordance with the government's <i>Planning for Bushfire Protection guidelines</i> . 8. Mine subsidence will continue to be considered in the rezoning and development of land.
Unique	Planning Priority 22: Our rural landscape is retained and enhanced.	1. Scenic view corridors of the region are protected and enhanced. 2. The rural character and amenity of the land is preserved and enhanced. 4. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimize the visual impact. 5. Dwelling entitlement provisions reflect the rural amenity.
	Planning Priority 24: Our Aboriginal cultural heritage is protected and celebrated.	1. The heritage significance of Aboriginal places, objects and sites is identified, protected and celebrated.
	Planning Priority 29: Our villages retain their unique qualities that reflect their histories. 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.	Development on the periphery of existing villages may be supported where: <ul style="list-style-type: none"> • The proposal maintains the rural and/or environmental land separation between villages; and • Environmental constraints such as flooding, bushfire and mine subsidence are appropriate to the proposed development; and • Significant clearing of vegetation is not proposed; and • Features that contribute to the villages character including heritage will not be negatively impacted;

5. Council may require studies to support any requests for planning proposals.
6. A pre-lodgment meeting will be required prior to Council accepting any planning proposals for dwelling entitlements.

How the dwelling entitlement will be achieved.

Any dwelling entitlement will require an amendment to the *Cessnock Local Environmental Plan 2011*. Any proposal that is supported will require an update to the Dwelling Entitlement Map.

Fees and Charges

Planning proposals will be charged in accordance with Council's fees and charges. Council staff will determine which fee category is applicable.