

Planning and Assessment

IRF22/650

Gateway determination report

LGA	Cessnock Local Government Area
PPA	Cessnock City Council
NAME	To provide a dwelling Entitlement on land at Black Hill Road, Black Hill (1 home, 0 jobs)
NUMBER	PP-2022-620
LEP TO BE AMENDED	Cessnock Local Environmental Plan 2011
ADDRESS	Black Hill Road, Black Hill
DESCRIPTION	Lot 686 DP619758
RECEIVED	16 May 2022
FILE NO.	IRF22/650
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Site description

The site has a land area of approximately 8.4 hectares (Figure 1). The land slopes steeply from the southern to northern boundary with a fall of 92 metres.

Approximately 75% of land is cleared with the non-cleared area occupying the majority of the highest and southernmost part of the lot.

There are two gullies running from the southwest corner to the northeast corner of the site which drain to a dam of approximately 0.5 hectares in area. The land is used for grazing cattle and horses. Access to the site is from Taylors Road which connects to Black Hill Road to the north.



Figure 1 – Site Plan (Six Maps 2022)

1.2 Existing planning controls

The site is currently zoned RU2 Rural Landscape (Figure 2) and has a Minimum Lot Size of 40ha (Figure 3) under *Cessnock Local Environmental Plan 2011*.

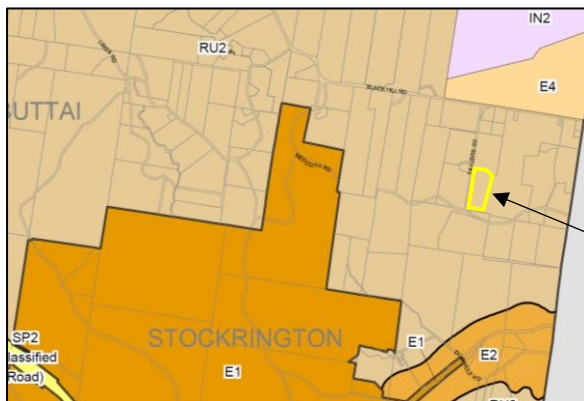


Figure 2 – Existing Land Zoning

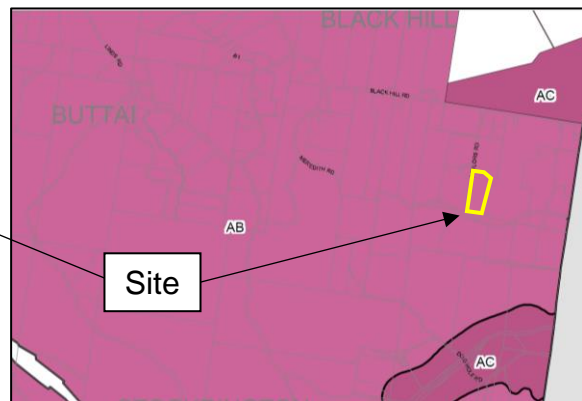


Figure 3 – Existing Lot Size

1.3 Surrounding area

The site is located on the eastern side of Taylors Road and is part of a large tract of RU2 Rural Landscape zoned land and is in the vicinity of the border of Newcastle local government area approximately 850 metres to the east of the site (Figure 4).

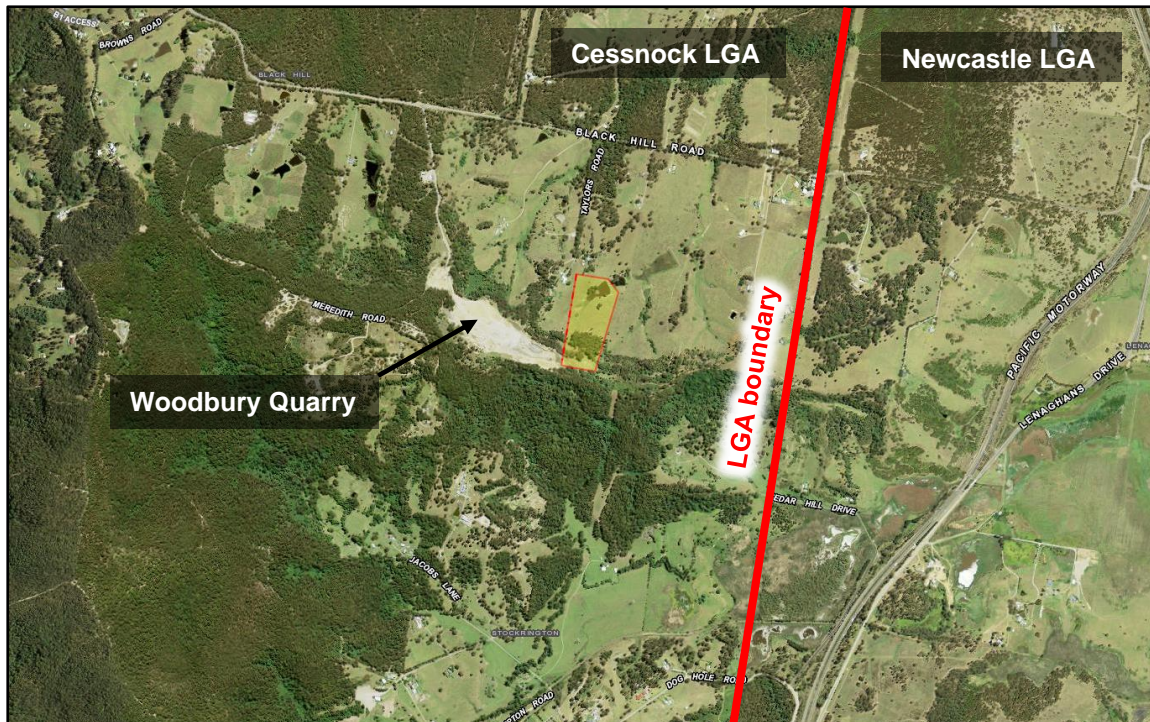


Figure 4 – Site Context

The surrounding land use zones include:

- RU2 Rural Landscape zoned land with a 40ha minimum lot size surrounding the site;
- C1 National Park and Nature Reserve with a 40ha minimum lot size to the south-west.
- C4 Environmental Living zoned land with an 80ha minimum lot size to the north.

The current land uses in the vicinity of the site are generally large lot residential, rural residential and low input extensive grazing for beef cattle or horses.

Land to the south west is zoned C1 National Park and Nature Reserve and forms part of the Watagans to Stockton Link, a regionally significant conservation corridor between Watagans National Park and Port Stephens.

Woodbury Civil Quarry, formerly known as Black Hill Quarry, is operational and located to the west of the site. The quarry extracts conglomerate used for road materials.

2. PROPOSAL

2.1 Description of planning proposal

The *Cessnock Local Environmental Plan 2011* includes provisions under clause 4.2A to limit the permissibility of dwellings on undersized rural lots.

The planning proposal seeks to amend the *Cessnock Local Environmental Plan 2011* to identify the site on the Dwelling Entitlement Map to enable Council to consider a future development application for a dwelling house on an undersized rural lot.

2.2 Objectives or intended outcomes

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

The objective of this planning proposal is clear and adequate.

2.3 Explanation of provisions

The planning proposal seeks to amend the *Cessnock Local Environmental Plan 2011* by amending the Dwelling Entitlement Map - Sheet DWD_009 to show the subject lot with a dwelling entitlement.

The planning proposal contains an explanation of provisions that adequately explains how the objectives will be achieved.

2.4 Mapping

The planning proposal seeks to identify the site with a dwelling entitlement and includes maps showing the proposed change which are suitable for public exhibition. Dwelling Entitlement Map - Sheet DWD_009 of *Cessnock Local Environmental Plan 2011* will be amended.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of an endorsed LSPS, strategic study or report. The planning proposal states the only way to enable a dwelling entitlement on the land is through an amendment to the *Cessnock Local Environmental Plan 2011* Dwelling Entitlement Map.

The *Cessnock Local Environmental Plan 2011* includes clause 4.2A Erection of dwelling houses on land in certain residential, rural and environmental protection zones. The objective of the clause is to minimise unplanned rural residential development and to enable the replacement of lawfully erected dwelling houses in certain residential, rural and environmental protection zones.

Clause 4.2A(3) provides for requirements to be met for the erection of dwelling houses on land in certain rural zones and is shown below:

(3) Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is-

- (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or*
- (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
- (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan 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*
- (d) an existing holding, or*
- (e) identified as having a dwelling entitlement on the Dwelling Entitlement Map, or*
- (f) a lot created under clause 4.1.*

Council has confirmed the site cannot meet any of these requirements to erect a dwelling on the site and the only mechanism available is to include the land on the

Dwelling Entitlement Map under clause 4.2A(3)(e). Council has advised 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 *Cessnock Local Environmental Plan 2011* was as an administrative tool to record the dwelling entitlements that existed.

Council intends to revisit dwelling entitlements as part of the comprehensive review of the *Cessnock Local Environmental Plan 2011*. The intention is to undertake a strategic, LGA-wide review supported by a strategic policy framework.

Guidelines for planning proposals requesting a dwelling entitlement.

Council resolved on 17 February 2021 to endorse its *Guidelines for planning proposals requesting a dwelling entitlement*. The purpose of the guidelines outlines how Council considers planning proposals requesting a dwelling entitlement for rural properties that are less than the minimum lot size in the interim before Council commences its comprehensive review.

The guidelines exclude certain land from being considered for a dwelling entitlement such as land zoned RU4 Primary Production Small Lots, C2 Environmental Conservation and C3 Environmental Management, land that has mapped biodiversity values or land identified as an investigation area in the Urban Growth Management Plan.

Eligible land for consideration must be zoned RU2 Rural Landscape and satisfy the RU2 zone objectives and Planning Priorities and Principles of *Cessnock Local Strategic Plan 2036*. Council states the planning proposal has been assessed against these guidelines and generally satisfies the criteria and its assessment is included in the Council Report dated 16 February 2022.

Council's assessment is consistent with the interim *Guidelines for planning proposals requesting a dwelling entitlement*.

Minimum Lot Size Consistency

The planning proposal seeks to allow a dwelling entitlement on an 8.4ha lot which is inconsistent with the mapped minimum lot size of 40ha in the RU2 Rural Landscape zone of *Cessnock Local Environmental Plan 2011*.

Analysis of the lot size distribution in the vicinity of the site indicates that of the 28 Lots, 19 lots have an existing dwelling with lot sizes ranging in size from 0.2ha to 46.75ha (Figure 5). Only 1 lot with a dwelling in the vicinity of the site would comply with the mapped minimum lot size of 40ha in *Cessnock Local Environmental Plan 2011*.

The addition of a dwelling entitlement on the site is generally consistent the prevailing existing lot sizes with most of the lots in the locality having an existing dwelling (Figure 5).

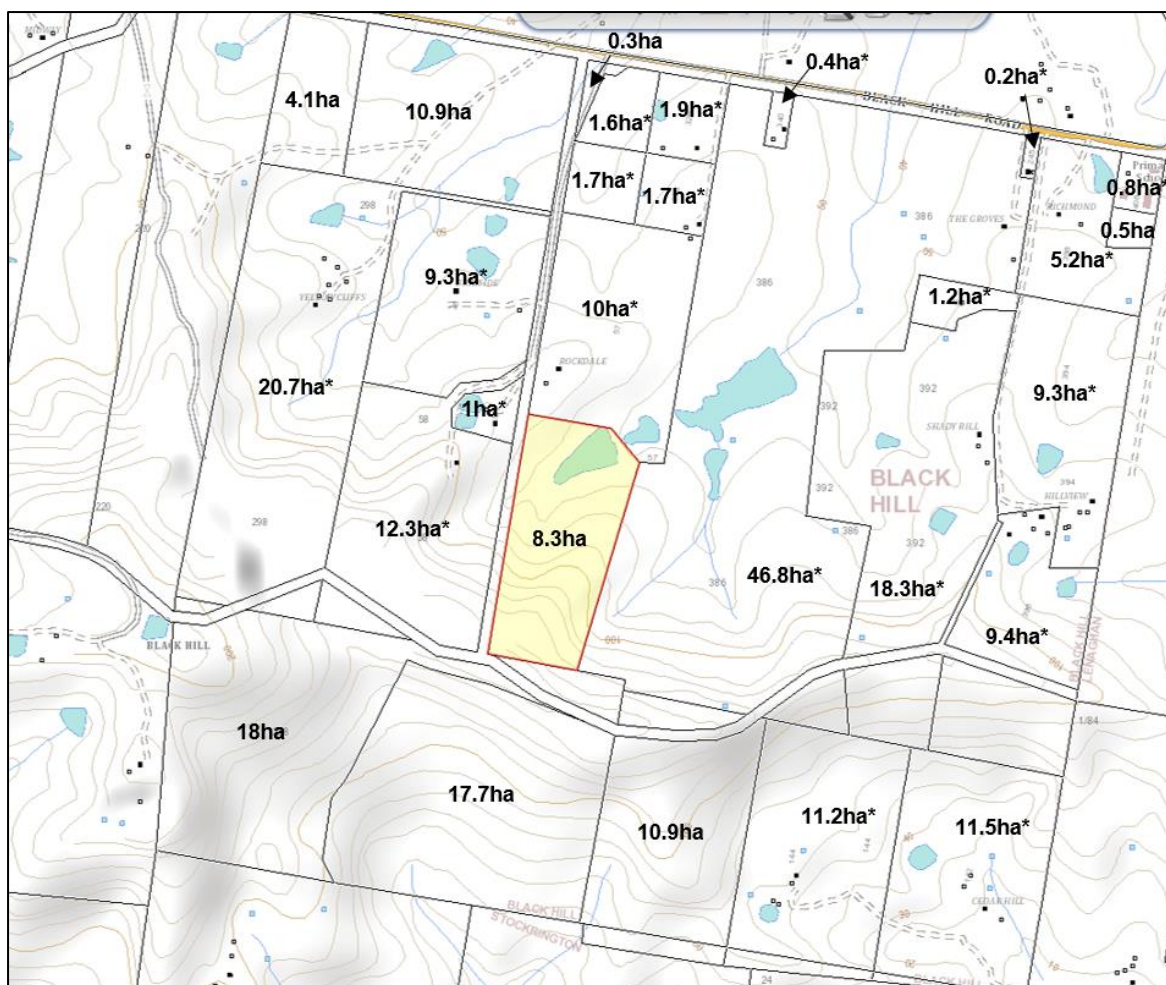


Figure 5 - Lot sizes in ha (* denotes an existing dwelling)

4. STRATEGIC ASSESSMENT

4.1 Regional / District

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* (HRP) provides high level directions for growth and change in the region. The site is located west of a growth area corridor between Cessnock and Maitland (Figure 6).

The following directions apply to planning proposal:

- *Direction 10 – Protect and enhance agricultural productivity*
Action 10.1 Protect locations that can accommodate agricultural enterprises from incompatible development.

The Agricultural Assessment identified surrounding agricultural land uses are limited due to land and soil capability limitations including slope, erodibility, physical and chemical soil characteristics, and drainage.

The assessment concluded land uses such extensive grazing, forestry and nature conservation were generally suitable and a dwelling entitlement would not diminish the agricultural potential of adjoining sites.

- *Direction 13 – Plan for greater land use compatibility*

Action 13.2 Limit urban and rural housing encroachment into identified agricultural and extractive resource areas, industrial areas and transport infrastructure when preparing local strategies.

The site adjoins a quarry located to the west of the site. Noise and air quality reports have been prepared and conclude there is no acoustic related constraint that should prevent a dwelling on the land, and the quarry can operate without causing any significant air quality impact at the proposed residential receptor.

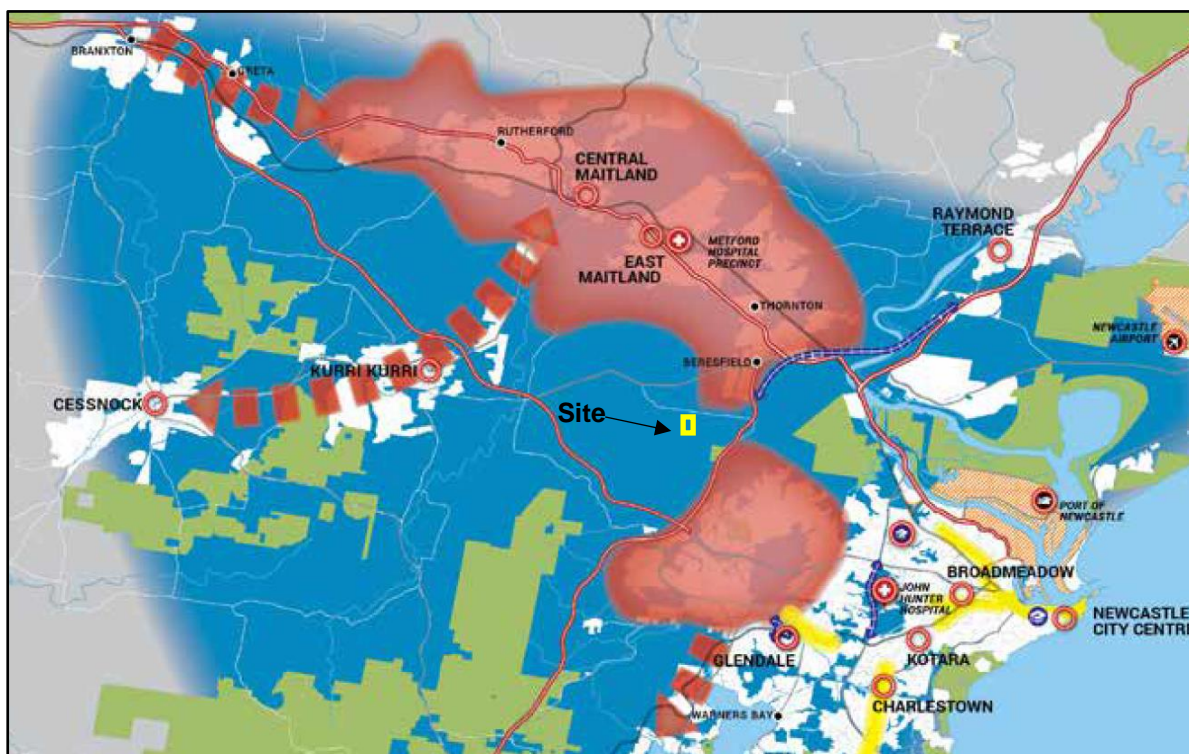


Figure 6 - Extract Hunter Regional Plan 2036

Draft Hunter Regional Plan 2041

A 5-year review of the *Hunter Regional Plan 2036* updated the strategic framework for the region and resulted in the preparation of the draft Hunter Regional Plan 2041 (draft Plan), which concluded public exhibition on 4 March 2022.

The most relevant strategy related to the planning proposal is:

- *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.*

An agricultural assessment to support the planning proposal concluded that introducing a dwelling would not diminish the agricultural potential of adjoining grazing. The proposal is consistent with the strategy.

National Pinch Point Growth Area

The National Pinch Point is the convergence of national road and rail routes located between Hexham and Buchanan. The draft Plan includes area-specific objectives to plan for future development in growth areas. The site is in Stockrington and includes objectives to:

- *Conserve high environmental value lands.*

- *Promote rural lifestyles and the growth of rural enterprises*
- *Enable ongoing resource extraction.*

The planning proposal seeks to enable a dwelling entitlement in an area of the site generally free of environmental constraints on rural land close to a quarry operation. Agricultural land, air quality and noise assessments conclude the site can accommodate a dwelling. The planning proposal is consistent with these objectives in the Stockrington Precinct.

Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* helps to achieve the vision outlined in the *Hunter Regional Plan 2036* and sets out strategies and actions that will drive sustainable growth across Greater Newcastle. The following strategies and actions are relevant to the planning proposal.

- *Strategy 13 – Protect rural amenity outside urban areas*

The objective of this strategy is to provide a secure long-term future for productive and sustainable agriculture. An agricultural assessment study identified the land was suitable for grazing but was not considered high-quality agricultural land. Council has identified there are a number rural lots with small herds of beef cattle across Cessnock that would not qualify as an economic unit as defined by the Department of Primary Industries, however, collectively they support a viable beef cattle industry and related rural industries.

The addition of a dwelling entitlement on the land does not change the zoning or permissibility of agricultural uses which could still occur on the site. The planning proposal has been able to demonstrate through the supporting agricultural assessment that the introduction of a dwelling would not diminish the agricultural potential of adjoining grazing operations and is not considered to be inconsistent with the strategy.

- *Strategy 18 - Deliver well-planned rural residential housing areas*

The objective of this strategy is to provide a consistent and balanced approach to rural residential development to minimise potential conflicts with productive rural areas and environmental assets.

Action 18.1, which enables 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 agricultural assessment identified the site is suitable for grazing but not cultivation and has generally moderate to high levels of social and physical limitation restricting agricultural production. Council do not anticipate there will be any additional infrastructure requirements to service a single dwelling on the site. The planning proposal is consistent with the strategy.

4.2 Local

Cessnock Local Strategic Planning Statement.

Council's Local Strategic Planning Statement (LSPS) seeks to guide planning decisions and to set the planning direction for the Cessnock LGA. The LSPS gives effect to and implements the actions of the *Hunter Regional Plan 2036* and the *Greater Newcastle Metropolitan Plan 2036* and informs Council's land use planning priorities. The planning proposal is consistent with the relevant Planning Priorities and Principles as outlined in the table below:

Planning Priority No.	Planning Principles No.	DPE Comment	Consistent
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.	An agricultural assessment study classified the land and soil capability as class 6 and the agricultural land classification as Class 4. The land is generally suitable for grazing but not for cultivation due to physical limitations, restricting the agricultural productivity and is not considered high quality agricultural land.	Yes
	7. Dwellings located in rural areas and areas of high environmental value are sited and designed to minimise the visual and ecological impacts.	The dwelling footprint is in a cleared area of the site and views are limited from surrounding areas. The addition of a dwelling entitlement would be consistent with the surrounding land uses.	Yes
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.	The agricultural assessment concluded the land and surrounding land has limited agricultural quality and with uses limited to grazing. Introducing a dwelling entitlement and potential sensitive receiver is not considered to diminish the agricultural potential of adjoining grazing operations.	Yes
22. Our rural landscape is retained and enhanced.	1. Scenic view corridors of the region are protected and enhanced.	The location of the proposed dwelling entitlement is not considered to impact view corridors.	Yes
	2. The rural character and amenity of the land is preserved and enhanced.	The addition of a dwelling entitlement is consistent with prevailing rural character of dwellings on rural lots in the vicinity.	Yes
	4. Dwellings located in rural areas and areas of high environmental value are sited and designed to	The proposed site is located clear of environmentally constrained land.	Yes

Planning Priority No.	Planning Principles No.	DPE Comment	Consistent
	minimise the visual impact.		
	5. Dwelling entitlement provisions reflect the rural amenity.	A proposed dwelling entitlement is consistent with the prevailing rural amenity characterised by dwellings on large rural lots.	Yes
24. Our Aboriginal cultural heritage is protected and celebrated.	1. The heritage significance of Aboriginal places, objects and sites is identified, protected and celebrated.	No Aboriginal site or places were identified on or near the site.	Yes

4.3 State environmental planning policies (SEPPs)

State Environmental Planning Policy (Resources and Energy) 2021

The relevant part of the SEPP is Chapter 2 Mining, Petroleum Production and Extractive Industries. Clause 2.19 Compatibility of proposed development with mining, petroleum production or extractive industry is required to be considered before a development application can be determined. Given the proximity of the quarry consultation should occur with the Department of Primary Industry to ensure the provision of a dwelling entitlement on the land would be compatible with current and future quarry operations.

State Environmental Planning Policy (Primary Production) 2021

One of the aims of Chapter 2 Primary Production and Rural Development is 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.

The land is not identified as Biophysical Strategic Agricultural Land (BSAL) and is not identified as State significant agricultural land in Schedule 1 of SEPP (Primary Production) 2021.

The intention is for rural residential development and supporting agricultural land, air quality and noise assessments conclude the site is capable of supporting a dwelling and is generally consistent with the SEPP. Consultation with the Department of Primary Industries should occur to ensure potential land use conflict from nearby cattle grazers and quarry operations can be managed.

State Environmental Planning Policy (Koala Habitat Protection) 2021

The proposed dwelling is to be located in a cleared area of the site and is consistent with the SEPP.

4.4 Section 9.1 Ministerial Directions

1.1 Implementation of Regional Plans

As discussed previously the planning proposal is consistent with the *Hunter Regional Plan 2036*.

4.1 Flooding

A minor part of the property is affected by flooding (Figure 7). The proposed building envelope is outside the flood affected area and the planning proposal is consistent with the terms of the direction.

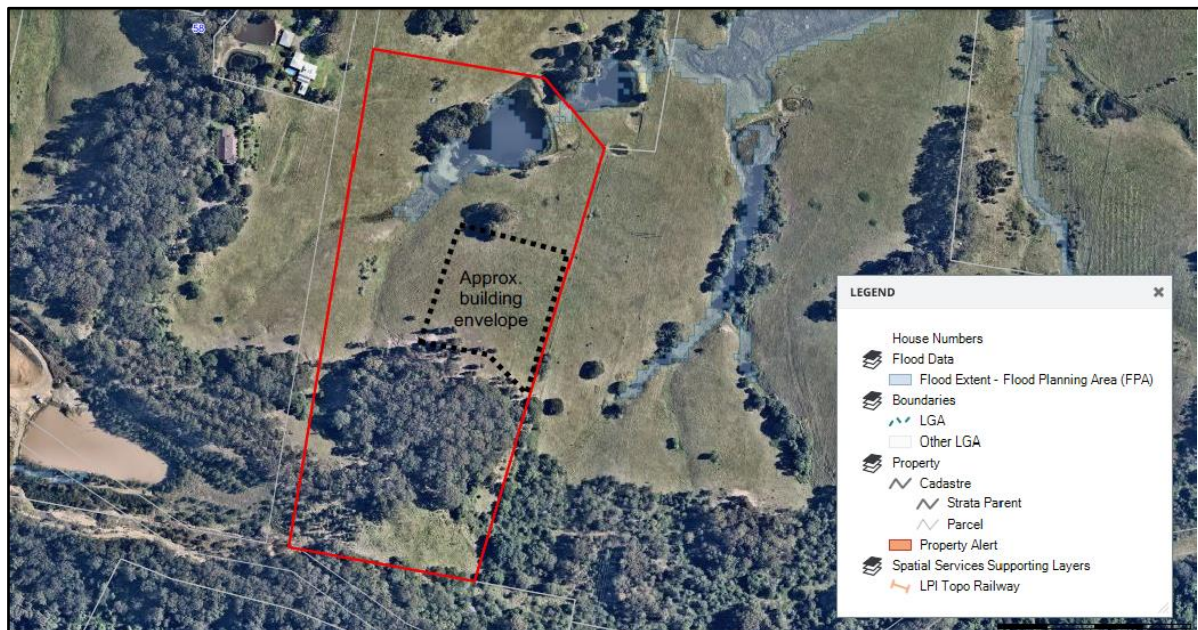


Figure 7 - Flood Prone Land Map

4.3 Planning for Bushfire Protection

The planning proposal will affect land that is mapped as Vegetation Category 3 and Vegetation Category 1 on the Bushfire Prone Land maps (Figure 8). Consultation with the NSW Rural Fire Service should occur before consistency with this direction can be determined.

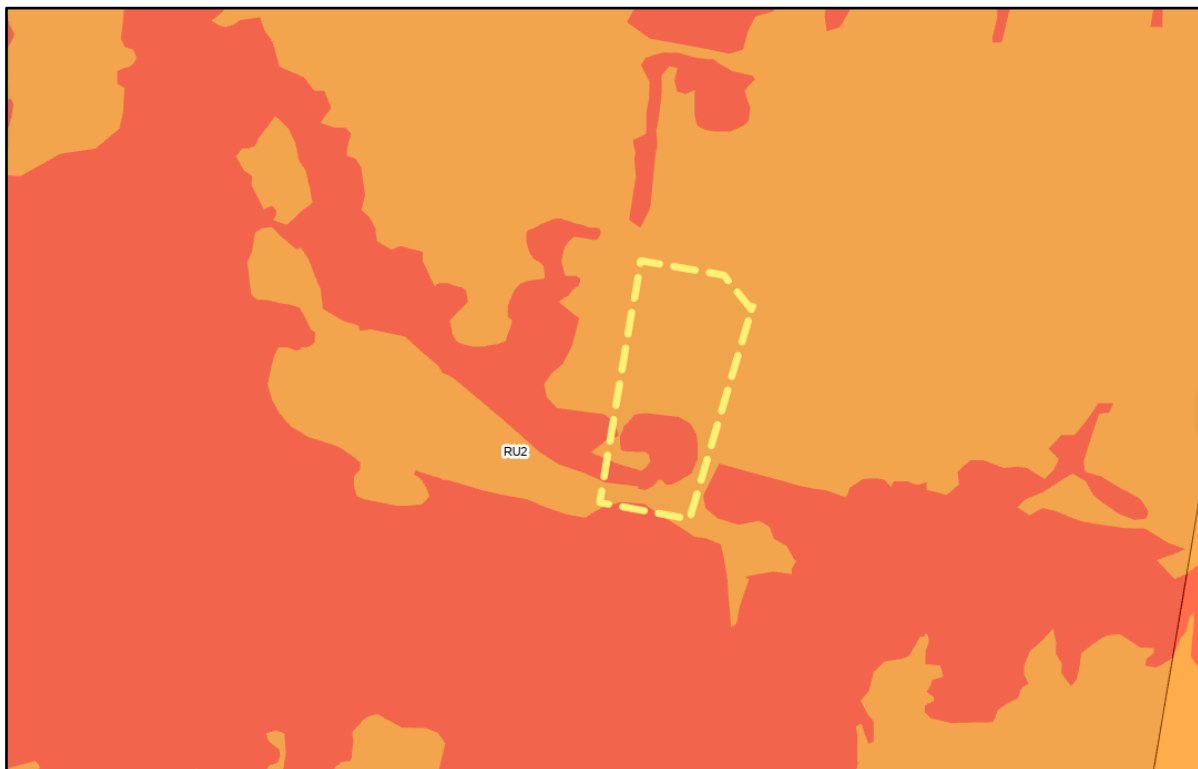


Figure 8 - Bushfire Prone Land Map

4.4 Remediation of Contaminated Land

The site has been used for grazing purposes which is a type of agricultural activity in Table 1 of the contaminated land planning guidelines. Given the planning proposal does not seek to include land in a particular zone and Council is satisfied the land is not contaminated, a preliminary contaminated land assessment is considered unnecessary.

The planning proposal is consistent with the terms of the direction.

4.6 Mine Subsidence and Unstable Land

The site is in the Black Hill Mine Subsidence District. Guideline 2 applies to the land which allows residential development in accordance with that guideline. The RU2 Rural Landscape zone permits dwelling with consent and the planning proposal will enable a dwelling to be permitted on land that is below the minimum lot size.

Consultation with Subsidence Advisory NSW is required under the terms of the direction however, given surface development guidelines already apply for dwellings it is considered this consultation is unnecessary.

The Secretary should consider the inconsistency with the Direction is of minor significance.

8.1 Mining, Petroleum Production and Extractive Industries

The Cessnock Mineral Resource Audit (Figure 9) identifies the site is partially located within the Identified Resource Area of Black Hill Quarry with the remainder of the site within the Transition Area. The quarry extracts conglomerate used for road building material. Permitting a dwelling entitlement in proximity to the quarry may increase the potential for land use conflict with current and future quarry operations.

In accordance with the direction Council should consult with the Department of Primary Industries before consistency with the direction can be determined.

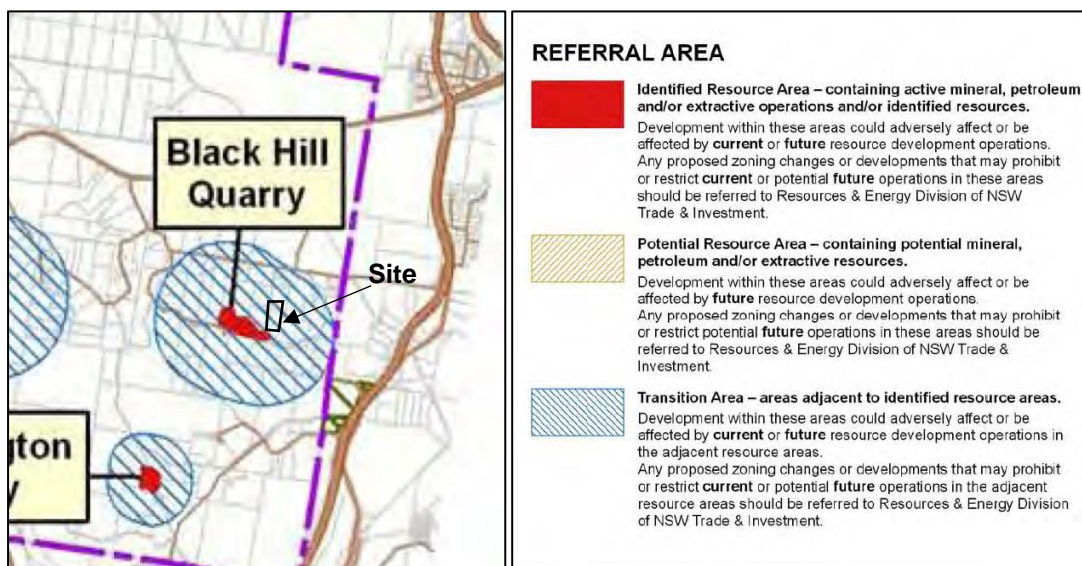


Figure 9 - Cessnock Mineral Resource Audit Map

9.1 Rural Zones

The direction requires that the planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. The proposal is consistent with the terms of the direction as no rezoning is proposed.

9.2 Rural Lands

The objective of the direction is to protect the agricultural production value, manage development, minimise land use conflict and ensure agricultural viability of rural lands while supporting farmers right to farm. The direction applies as the planning proposal will affect land within an existing rural zone.

The supporting agricultural land, air quality and noise assessments conclude the site can support a dwelling. Consultation is required from the NSW Environment Protection Authority on odour and the Department of Primary Industries on the agricultural production value of the land prior to determining consistency with the direction.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

There is not anticipated to be any social impacts of significance by including a dwelling entitlement on the land.

5.2 Environmental

The site contains two threatened ecological communities being Hunter Coast Foothills Ironbark-Spotted Gum Forest and Lower Hunter Spotted Gum Ironbark Forest. The proposed building envelope is in a generally cleared area of the site and is of sufficient area to accommodate a dwelling without impacts on these communities.

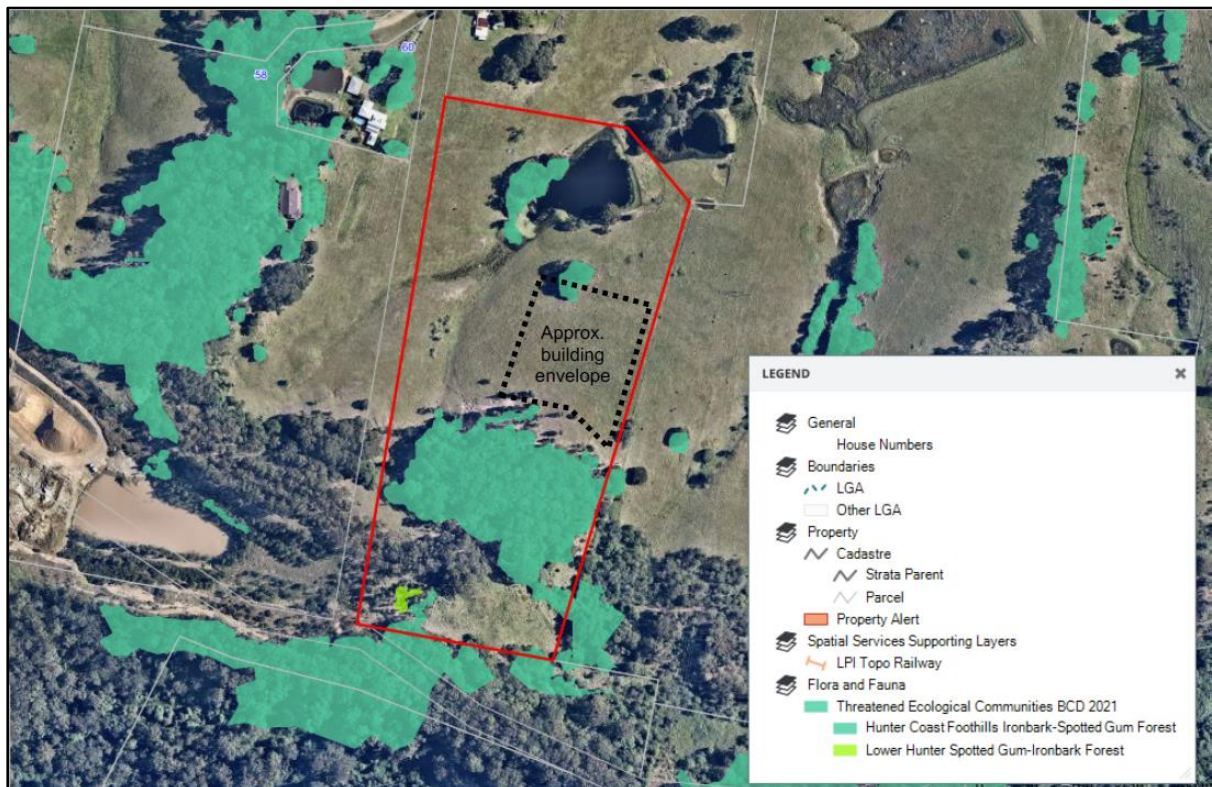


Figure 10 – Threatened Ecological Communities Map

5.3 Economic

The location of a rural property within the buffer area of Woodbury Civil Quarry has the potential to impact ongoing operations. Consultation with the Department of Primary Industries and the NSW Environment Protection Authority should be

undertaken to confirm the appropriateness of including a dwelling entitlement on the site.

5.4 Infrastructure

The site is not serviced by reticulated water or sewer services and Council has advised the site would need to provide an on-site sewerage system. The planning proposal identifies an area within the site for the building envelope of approximately 8000m² set towards the eastern part of the lot and appears to have sufficient space to accommodate an on-site sewerage system.

Access to the site is from Taylor Road and an upgrade to the road would be required to comply with Council's rural road standards to service the property.

6. CONSULTATION

6.1 Community

Council has anticipated a community consultation period of 28 days in the project timeline. Given the planning proposal's proximity to existing quarry operations a minimum community consultation period of 20 working days is appropriate.

6.2 Agencies

The planning proposal recommends consultation with the following:

- Department of Primary Industries
- NSW Environment Protection Authority
- NSW Rural Fire Service

The above consultation is considered reasonable.

7. TIME FRAME

Council proposes an 8-month timeframe to progress the planning proposal to Parliamentary Counsel. However, this timeframe does not account for the time to finalise the plan. The planning proposal is categorised as 'standard' which has an end-to-end timeframe of 320 days. The LEP is to be made by 18 May 2023.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. The planning proposal is considered to be a minor local planning matter and Council should be authorised to be the local plan-making authority.

9. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 4.6 Mine Subsidence and Unstable Land are minor; and
2. note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection, 8.1 Mining, Petroleum Production and Extractive Industries and 9.2 Rural Lands is unresolved and will require justification.

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

1. Update reference to current SEPPs and 9.1 Directions prior to community consultation.
2. The planning proposal should be made available for community consultation for a minimum of 20 days.
3. Consultation is required with the following public authorities:
 - Department of Primary Industries
 - NSW Environment Protection Authority
 - NSW Rural Fire Service
4. The time frame for completing the LEP is to be on or before 18 May 2023.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.
6. A public hearing is not required to be held.



4 August 2022
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