



IRF23/1759

Gateway determination report – PP-2023-1184

406 Wilderness Road, Lovedale - Depot

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

| Relevant reports and plans |
|---|
| Bushfire Assessment – Insite Planning Services (May 2023) |

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

| | |
|---------------------------------|---|
| LGA | Cessnock |
| PPA | Cessnock City Council |
| NAME | 406 Wilderness Road, Lovedale – Additional Permitted Use |
| NUMBER | PP-2023-1184 |
| LEP TO BE AMENDED | Cessnock Local Environmental Plan 2011 |
| ADDRESS | 406 Wilderness Road, Lovedale |
| DESCRIPTION | Part Lot 5, DP239505 |
| RECEIVED | 30/06/2023 |
| FILE NO. | IRF23/1759 |
| 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 |

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to enable depots as an additional permitted use which will facilitate the continued use of ballooning operations at 406 Wilderness Road, Lovedale.

The objective of this planning proposal is clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the *Cessnock Local Environmental Plan 2011* through an amendment to Schedule 1 to permit depots as an additional permitted use on the site which is currently zoned. The changes in the planning proposal are set out below.

Table 3 Current and proposed controls

| Control | Current | Proposed |
|---------------------------------------|--------------------|--|
| Schedule 1: Additional permitted uses | None for this site | <p>10 The use of certain land at 406 Wilderness Road, Lovedale</p> <p><i>(1) This clause applies to part of Lot 5, DP239505, being 406 Wilderness Road, Lovedale</i></p> <p><i>(2) Development for the purposes of a depot in association with a ballooning business is permissible with development consent.</i></p> |

Schedule 1 of *Cessnock LEP 2011* already contains the following items:

- 10 – Use of certain land at 1151 George Booth Drive, Richmond Vale
- 11 – Use of certain land in Zone E1
- 12 – Use of certain land at Wine Country Drive and Claret Ash Drive, Pokolbin.

This item is proposed to be added sequentially as item 13 into Schedule 1 of the LEP. The planning proposal will need to be updated prior to it being placed on exhibition. A condition has been added to the Gateway determination to require this change.

1.4 Site description and surrounding area

The planning proposal applies to land at 406 Wilderness Road, Lovedale (Figure 2). It is part of a larger lot which is cleared grazing land (Figure 1).

The site is currently being used for the storage of mini-buses, trailers, balloons and other vehicles that are associated with business operations. There is an occupied existing approved dwelling on the site and there is also two accommodation units on the site which are not approved and will be the subject of a separate future development application.

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1.5 Mapping

The planning proposal includes mapping showing where the proposed changes to the Additional Permitted Use Map, sheet APU_005 will occur. This is suitable for community consultation.



Figure 3: Area proposed to be added to the Additional Permitted Uses Map

1.6 Background

‘Beyond Ballooning’ commenced operations in the Hunter Valley in May 2013 and has used the site for storage of mini-buses, other vehicles, trailers and balloons since 2017. No passengers enter this site but are instead picked up at other locations.

Recently the operator sought advice about upgrading the depot facility, at which time it was noted that it is not permissible in the zone.

2 Need for the planning proposal

The planning proposal has arisen as a result of the operator seeking to upgrade the storage facilities and discovering the use is not permitted in the zone.

Amending the land use table of the RU4 Primary Production Small Lots zone or rezoning the land are not practical solutions, as it is intended to limit the depot use to this site only and not change the fundamental land uses in the vicinity or the zone.

An amendment to Schedule 1 to add the land use of depots to this site only to enable ballooning operations recognises its ongoing use but does not make the land use more broadly permissible.

Schedule 1 Additional permitted land uses should only be used in exceptional circumstances and where amending the land use table for the zone or rezoning the land is impractical. Council has adequately justified why the additional permitted uses provision should be used in this instance, as it is a demonstrated one-off within the Cessnock Vineyards regionally significant growth area (RSGA).

3 Strategic assessment

3.1 Hunter Regional Plan 2041

The *Hunter Regional Plan 2041* acknowledges the importance of providing employment uses and providing attractive places that support tourism and agricultural uses. The planning proposal is consistent with the *Hunter Regional Plan 2041*, as the additional permitted use supports an expanding tourism industry which avoids land use conflict with agricultural uses.

The following table provides an assessment of the planning proposal against relevant aspects of the *Hunter Regional Plan 2041*.

Table 4 Hunter Regional Plan 2041 assessment

| Regional Plan Objectives | Justification |
|--|--|
| Objective 6: Conserve heritage, landscapes, environmentally sensitive areas, waterways and drinking water catchments. | <p>Strategy 6.4</p> <p>The planning proposal supports recreational ballooning operations that promote tourists' enjoyment of visual landscapes and raises awareness of the scenic and environmental attributes of the Hunter region.</p> |
| Objective 8: Plan for businesses and services at the heart of healthy, prosperous and innovative communities. | <p>Strategy 8.6</p> <p>Permitting the continued use of the site as a depot for ballooning activities will:</p> <ul style="list-style-type: none"> • use current facilities to provide access and storage to support a sustainable tourist industry • not create land use conflict with surrounding agricultural uses • continue to support a tourist industry that attracts tourists to the Cessnock Vineyards • not require an assessment of land use conflict in accordance with the DPI Land Use Risk Assessment Guide as it is an ongoing use that has not and will not create land use conflict. |
| Objective 9: Sustain and balance productive rural landscapes. | <p>Strategy 9.4</p> <p>The ongoing use to support ballooning activities compliments the scenic values of the Hunter Valley.</p> <p>The proposal is unique and any further proposals to use existing premises for similar depots will be guided by the Cessnock Vineyard District Place Strategy outcomes.</p> |

3.2 Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* sets out the strategies and actions to drive sustainable growth across Lake Macquarie, Cessnock, Maitland, Newcastle and Port Stephens communities. The Metropolitan Plan contains planning priorities and actions to guide the growth of the region while improving its social, economic and environmental assets.

The Department is satisfied the planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036* as summarised in Table 5.

Table 5 Greater Newcastle Metropolitan Plan 2036 assessment

| Outcomes | Strategies and actions - Justification | Justification |
|--|---|---|
| Outcome 1: Create a workforce skilled and ready for the new economy | Strategy 6 <i>Promote tourism, major events and sporting teams on the national and international stage</i> Action 6.3 Greater Newcastle councils will align local plans to: <ul style="list-style-type: none"> increase flexibility for new tourism proposals (buildings, hotels, spaces, and activities) within strategic centres, throughout the metro core including Stockton, and rural and environmental areas in the metro frame that do not affect the environmental features, viticulture or other agricultural industries, or natural amenity. | The planning proposal supports this action by enabling the continued efficient operation of a tourist activity that is successful and compatible with the scenic values and viticultural and agricultural activities of the Cessnock Vineyards. |
| Outcome 2: Enhance environment, amenity and resilience for quality of life | Strategy 13 <i>Protect rural amenity outside urban areas</i> Action 13.1 Greater Newcastle councils will align local plans to: <ul style="list-style-type: none"> encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector, and build the sector's capacity to adapt to changing circumstances | The planning proposal enables the continued operation of the site as a depot for ballooning operations which supports this niche tourist operation that complements and promotes viticulture and agriculture in the Hunter Valley. |

3.3 Local

The planning proposal is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the section below.

3.3.1 Community Strategic Plan – Our People, Our Place, Our future

The planning proposal is consistent with:

- **Outcome 2:** A sustainable and prosperous economy
- **Objective 2.3:** Increasing tourism opportunities and visitation in the area.

The planning proposal enables the continued operation of ballooning operations that attract a large number of tourists to the area and that complement the scenic and environmental attributes of Cessnock LGA.

3.3.2 Cessnock Local Strategic Planning Statement 2036

The Cessnock Local Strategic Planning Statement (LSPS) provides a long term vision and planning priorities that guides future growth and development across the LGA. The LSPS sets out social, economic and environmental planning priorities for the future. The LSPS has also identified the short and longer term actions to deliver these planning priorities.

The planning proposal is consistent with the planning priorities as stated in the table below:

Table 6 Local Strategic Planning Statement assessment

| Local priorities | Justification |
|---|---|
| Planning Priority 9: Our wine industry is supported and enhanced | The planning proposal achieves this planning priority by supporting the efficient ongoing operation of a successful ballooning operation which promotes the wine industry. |
| Planning Priority 10: Our City encourages a variety of niche tourism opportunities. | The planning proposal achieves this outcome by supporting the ongoing operation of a niche ballooning operation that is a unique tourism industry. |
| Planning Priority 23: The scenic and rural landscape of our Vineyards District is preserved. | The planning proposal achieves this outcome by supporting the ongoing operation of the ballooning activities which raises awareness of the visual values and agricultural significance of this area. The existing sheds are similar in look and scale to rural sheds in the area. |
| Planning Priority 26: Nature-based and recreational tourism is facilitated and promoted. | This planning proposal achieves this outcome by enabling the ongoing operations of a successful tourism business. |

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

| Directions | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|--------------------------------------|----------------------------|---|
| 1.1 Implementation of Regional Plans | Yes | The planning proposal achieves the objective of this direction to give legal effect to the relevant aspects of the vision, land use strategy, goals, directions and actions contained in Regional Plan. |

| | | |
|------------------------------|-----|---|
| 1.4 Site Specific Provisions | No | <p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p> <p>The planning proposal is inconsistent with the direction in that it enables a specific use within a zone where it is prohibited. However, it does not impose any specific development standards and as the use of the land for a depot has been ongoing for some time, permitting it to continue through an addition to 'Schedule 1 Additional permitted uses' is of minor significance.</p> |
| 3.2 Heritage Conservation | Yes | <p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The planning proposal is consistent with this direction as it does not affect any known heritage items and the <i>Cessnock Local Environmental Plan 2011</i> contains standard heritage provisions.</p> |
| 4.1 Flooding | No | <p>The objectives of this direction are to:</p> <ol style="list-style-type: none"> 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 ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land. <p>Part of the land is within the flood planning area, however the planning proposal:</p> <ul style="list-style-type: none"> applies to development above the flood planning level does not increase development intensity does not introduce land uses identified in the direction as inappropriate <i>Cessnock Local Environmental Plan 2011</i> contains standard flooding provisions for assessment of development applications. <p>Any inconsistency with the direction is of minor significance.</p> |

| | | |
|--------------------------------------|-----|---|
| 4.3 Planning for Bushfire Protection | No | <p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> a) protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and b) encourage sound management of bush fire prone areas. <p>The land is identified as bushfire prone land.</p> <p>Council will consult the NSW Rural Fire Service.</p> <p>A Bushfire Assessment Report has been prepared to support the planning proposal. It concludes that the development proposed can meet the requirements of <i>Planning for Bushfire Protection 2019</i>.</p> <p>A decision on consistency with the direction will be made after consultation with the NSW Rural Fire Service.</p> |
| 9.1 Rural Zones | Yes | <p>The objective of this direction is to protect the agricultural production value of rural land.</p> <p>The planning proposal is consistent with this direction as it does not seek to rezone rural land nor increase intensity of development. The land will remain zoned RU4 Primary Production Small Lots and will allow the existing ballooning activities to continue.</p> |

3.5 State environmental planning policies (SEPPs)

The planning proposal does not trigger the application of any SEPPs and can be considered consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

The planning proposal applies to a parcel of land that is cleared, partially developed with hardstand areas and a number of buildings. There will be minimal environmental impacts and those that do apply can be adequately managed. Potential environmental impacts associated with the planning proposal include:

Habitats

The land is clear of native flora and fauna. Biodiversity Conservation Division (BCD) has confirmed that the planning proposal would not result in any clearing and is unlikely to have an impact on biodiversity values.

Flooding

The planning proposal will be minimally impacted by flooding and is considered to be of minor significance under section 9.1 Ministerial direction 4.1 Flooding.

Bushfire

Further consultation is required NSW RFS to understand the bushfire impacts under the planning proposal, as the land is identified as bushfire prone land. However, it is considered that there is minimal increase to the bushfire hazard on the site and minimal impact to the threats to human life and

property. A decision on consistency with the section 9.1 Ministerial direction 4.3 Planning for Bushfire Protection will be made after consultation with the NSW RFS.

Heritage

The site has been significantly disturbed and as proposed development is on already disturbed areas is unlikely to cause any additional impact to Aboriginal cultural heritage items or areas and the site does not affect any known heritage items.

There are two heritage items nearby, Wilderness Cemetery which is located 50 metres northwest and Wilderness Road Bridge which is located 700 metre northeast of the site, neither of which will be impacted by the planning proposal.

Standard heritage provisions are contained in the *Cessnock Local Environmental Plan 2011*.

4.2 Social and economic

The planning proposal seeks to formalise existing operations that has not generated any records of complaint during its operation. The development also

The planning proposal does not generate a significant amount of traffic as the site is and will be used for storage only.

4.3 Infrastructure

The planning proposal is for an existing use which has access to all available services and will not require any intensification of infrastructure and services.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

Council has nominated that it will consult with NSW RFS in accordance with section 9.1 Ministerial direction 4.3 Planning for Bushfire Protection.

Biodiversity Conservation Division was consulted at the scoping proposal stage and has advised it has no further comments to make.

It is recommended the following agencies be consulted on the planning proposal and given 40 days to comment:

- NSW Rural Fire Service.

6 Timeframe

Council proposes a 10 month timeframe to complete the LEP.

The Department recommends a timeframe of 10 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit the planning proposal within three months from the Gateway determination being issued.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making Authority.

The planning proposal is for an additional permitted use for the site to be added to Schedule 1 for depots which is a land use that has been occurring for some time. As such, the Department recommends that Council be authorised to be the local plan-making authority for this planning proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The land use to be added to Schedule 1 Additional permitted uses has been on-going for some time without any evidence of adverse impacts and supports a viable tourism business that benefits Cessnock Council Area and the Hunter Region.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.1 Implementation of Regional Plans; 1.4 Site Specific Provisions; 3.2 Heritage Conservation; 4.1 Flooding; and 9.1 Rural Zones are minor or justified; and
- Note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will be considered after consultation with NSW Rural Fire Service.

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

1. The planning proposal is to be updated prior to public exhibition to identify this item in Schedule 1 Additional permitted uses in *Cessnock Local Environmental Plan 2011* sequentially as item number 13.
2. Prior to public exhibition, consultation is required with the following public authorities:
 - NSW Rural Fire Service.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The planning proposal must be exhibited by 3 months from the date of the Gateway determination.
5. The timeframe for completing the LEP is to be 10 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should be authorised to be the Local Plan-Making Authority.



_____ (Signature)

15/4/2024 (Date)

Yasmin Campbell

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19/4/2024

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