



## PLANNING PROPOSAL

### AMENDMENT TO THE CESSNOCK LOCAL ENVIRONMENTAL PLAN 2011

406 Wilderness Road, Lovedale. Additional Permitted Use for 'Depot'.

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#### Revision History

Revision	Description	Date
1	Final Document for Public Exhibition	11 July 2024

Application No.: 18/2023/3/1  
Subject: Telephone and Email Log of Discussions with Applicant  
Proposal: Amendment to the Cessnock LEP 2011  
Parcel: 22971  
Ext Ref: PP-2023-1184  
Proponent: Insite Planning Services



## **PART 1: OBJECTIVES AND OUTCOMES**

The objective of the Planning Proposal is to facilitate the continuing use of 406 Wilderness Road, Lovedale as a depot for ballooning operations.

The intended outcome is an amendment to Schedule 1 of the Cessnock LEP 2011 to permit with development consent a depot associated with ballooning operations at the site. It will also allow a development application to be then lodged and considered by Council to regularise the existing activities and upgrade the depot to achieve a more efficient and secure operation.

## PART 2: EXPLANATION OF PROVISIONS

The Planning Proposal seeks to include an Additional Permitted Use (APU) in Schedule 1 of the Cessnock Local Environmental Plan 2011 (LEP) to facilitate the depot on part of the subject site. To achieve the intended outcome of this Planning Proposal, it is recommended that the following amendment be made to the LEP:

1. Amend Schedule 1 of the LEP to include the following additional permitted use

### **10 Use of certain land at 406 Wilderness Road, Lovedale**

(1) This clause applies to part of Lot 5 DP239505, being 406 Wilderness Road, Lovedale.

(2) Development for the purpose of a depot in association with a ballooning business is permissible with development consent.

2. Amend the Additional Permitted Uses map that accompanies the LEP 2011 to identify where the proposed APU applies, as identified in Figure 1.

The APU will apply to the area identified in Figure 1 below:



**Figure 1** Proposed application area of Additional Permitted Use (red)

## PART 3: JUSTIFICATION

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 the Planning Proposal

#### 1 Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The Planning Proposal is not the result of a strategic study or report. The proposal is proponent initiated following advice from Cessnock City Council. The proponent recently sought advice to obtain approval to upgrade the depot facility on the site and it was at this time that it became apparent that the current depot use was now not a permitted land use under the RU4 Primary Production Small Lots of the CLEP 2011. It is this recent development that has initiated this Planning Proposal.

#### 2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

In order to achieve the objectives, which is to enable a development application to be lodged and considered by Council to regularise the existing activities and upgrade the depot to achieve a more efficient and secure operation, the land use needs to be made a permissible use. There are four options to amend the CLEP 2011 to ensure that the activities are permissible with consent at the subject site:

- a) Amend the land use table of the RU4 zone such that depots become a permissible use with consent, or
- b) Rezone the site to a land use zone in which depots are permissible land uses with development consent, or
- c) Provide a new local provision under Part 7 of the LEP so that the proposed land use is a permitted land use activity, or
- d) Include the site and land use activity as an additional permitted use under schedule 1 which is then referenced via Clause 2.5 of the LEP.

Option a) would have broad implications across the Vineyards District and would not be in the public interest. Generally, such land uses are not suitably located in the RU4 zone.

Option b) has no strategic merit as it would create an isolated parcel of inappropriately zoned land that would also enable other potentially undesirable and incompatible land-use activities within what is otherwise a rural viticultural setting.

Option c) would only be required in the event that controls were sought to be placed on the operation or extent of any approval granted.

Consequently, it is option d) that would be the best means to achieve the objectives in this instance, which is similar to other provisions which have been introduced for other properties under CLEP 2011. By using schedule 1, the specific business activity can be made permissible with consent in the context of the relevant land use definition being a depot. If the operations cease, the underlying land-use zone remains intact allowing for uses compatible with the RU4 Small Lot Primary Production zone to commence.



## **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)?**

#### **3.1 Hunter Regional Plan**

The Hunter Regional Plan 2041 is a 20-year land-use plan for the future of the Hunter and provides the overarching strategic framework to guide development, investment and planning within the Hunter region to 2041. The extract of the NSW Governments vision directly applicable to this Planning Proposal is:

*To create a leading regional economy in Australia, where people are connected and care for Country, with a vibrant metropolitan city at its heart and sustainable 15-minute neighbourhoods.*

This Planning Proposal is conducive with the objectives of the HRP2041 in that it will enable a successful business that supports the tourism industry within the Hunter to operate legitimately in a suitable location. The HRP 2041 supports and promotes rural enterprises, tourism and diversification and identifies the proposed site as located in the Hinterland District where local strategic planning aims to consider emerging trends in rural enterprises to create new opportunities and profitability in the Hinterland communities.

The proposal is consistent with the following objectives of the Hunter Regional Plan 2041:

#### **OBJECTIVE 8: Plan for businesses and services at the heart of healthy, prosperous and innovative communities**

This Planning Proposal is consistent with strategies 8.5 and 8.6 which will deal with the Visitor Economy. Beyond Ballooning is an existing, successful tourist operation which provides significant positive impact on the visitor economy often used in promoting the tourism industry in the region. The 'money shot' used by the advertising industry to promote the area as a tourist destination is often of balloons flying against the vineyard and Brokenback Range landscape

#### **OBJECTIVE 9: Sustain and balance productive rural landscapes**

The HRP notes that the Hunter Valley Vineyards have global brand recognition and are known for producing premium wines. Tourist operations like Beyond Ballooning are critical in promoting the region and supporting the viticultural values. The viticulture clusters leverage landscape values to support their global image and grow ancillary uses like cellar doors, restaurants, tourist accommodation and support businesses like Beyond Ballooning.

#### **Cessnock viticulture regionally significant growth area**

The site is located within what the HRP 2041 identifies as the Cessnock viticulture regionally significant growth area. The HRP 2041 requires Cessnock Council to undertake 'Place strategy planning' and sets out a series of outcomes that need to be achieved. Given that this Planning Proposal is dealing with a relatively minor site-specific matter that achieves other elements and objectives of the local and strategic planning framework, that it has 'strategic merit' in that context. In relation to the specific place strategy outcomes that the plan espouses, this Planning Proposal:

- Will not result in land-use conflict. The nature of the depot is to store equipment, vehicles and other items required for operating the ballooning business in sheds that are of a similar size and design as rural sheds found more broadly in the vineyards area.
- In that context, the Planning Proposal will result in 'development that is sympathetic to the rural amenity and the local character of the area'.
- Supports what is a non-agricultural development with suitable infrastructure and accommodates it sensitively within the landscape setting.
- Ensures the siting, bulk, scale and built form of non-agricultural development is suitable for the setting by limiting the area of the property where the APU can be undertaken.
- Ensure development on land adjoining scenic areas is sympathetic to landscape values and view corridors from the vineyards by limiting the area of the property where the APU can be undertaken.

### **3.2 Greater Newcastle Metropolitan Plan**

The Greater Newcastle Metropolitan Plan 2036 (GNMP 2036) sets out strategies and actions to capitalise on investment in aviation, transport, education, health and tourism that will drive sustainable growth across the Greater Newcastle area and identifies environmental strategies that are addressed throughout this LSPS. The plan also assists achieve the Hunter Regional Plan 2036 vision to be a leading regional economy in Australia.

This proposal will assist in meeting the objectives of the Metropolitan Plan. The proposal is consistent with the strategies and actions in the Metropolitan Plan, as it will support local business and promote tourism (Strategy 6).

## **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?**

### **4.1 Cessnock Local Strategic Planning Statement 2036 (LSPS)**

The Cessnock Local Strategic Planning Statement 2036 sets out a 20-year land-use vision for the Cessnock Local Government Area (LGA) and outlines how this growth and change will be sustainably managed into the future. The LSPS sets out the important character and values, which are to be preserved and establishes planning principles to manage land use planning in the future.

The Planning Proposal is either consistent with, or does not contradict the following priorities:

- Planning Priority 9: Our wine tourism industry is supported and enhanced:  
Ballooning activities are used to promote the region as a tourist destination, so to enable a depot to support the Beyond Ballooning business supports and enhances the wine tourism industry directly.
- Planning Priority 10: Our City encourages a variety of niche tourism opportunities.  
The Planning Proposal supports an existing ballooning business which is a 'niche tourism' business.
- Planning Priority 21: Developments minimise environmental impacts and respond to site environmental characteristics and natural hazards.  
The operation of a business from the site does not result in any environmental impacts and is suitable in respect to natural hazards as illustrated in the flood mapping which has the APU area generally located above the 1%AEP flood level, and suitable in respect to bushfire

impacts as concluded by the bushfire report prepared by AEP which supports this Planning Proposal.

- Planning Priority 22: Our rural landscape is retained and enhanced.  
The depot operates by storing vehicles, machinery and equipment relevant to the business in sheds on the property which are structures consistent with sheds used in the wine industry and are consistent in design, scale and bulk of rural buildings in the vicinity
- Planning Priority 23: The scenic and rural landscape of our Vineyards District is preserved.  
The storage sheds are modest in scale and are similar in design, scale and bulk to those used for agricultural purposes in the area.
- Planning Priority 26: Nature-based and recreational tourism is facilitated and promoted.  
This Planning Proposal achieves this priority as the Beyond Ballooning business is a nature-based and recreational-based tourism business.

## **4.2 Community Strategic Plan - Our People, Our Place, Our Future**

The Cessnock Community Strategic Plan 2023 (CSP) was prepared in 2013 and identifies the community's main priorities and expectations for the future and ways to achieve these goals. The vision of the CSP is:

*Cessnock will be a cohesive and welcoming community living in an attractive and sustainable rural environment with a diversity of business and employment opportunities supported by accessible infrastructure and services which effectively meet community needs.*

A range of strategic directions are provided which relate to the social, environmental and economic health, sustainability and prosperity of the Cessnock LGA. The objectives and associated strategic directions relevant to the Planning Proposal relate to:

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

## **5 Is the planning proposal consistent with applicable SEPPs?**

The Planning Portal identifies the following State Environmental Planning Policies as being of relevance to the site with those of relevance to this Planning Proposal highlighted:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021: Land Application
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Industry and Employment) 2021 – State
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Resources and Energy) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

Nothing in this Planning Proposal impacts on the operation of any of the SEPP's noted above.



## 6 Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?

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

Table 1: Relevant Section 9.1 Ministerial Directions

Ministerial Direction		Provision	Consistency and Implications	Justification
Planning Systems				
1.1	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>Direction: Planning proposals must be consistent with a Regional Plan.</p>	<p>The Hunter Regional Plan 2041 applies to the subject site and triggers consideration of this direction.</p> <p><b>CONSISTENT</b> As set out in section 4.2.1 of this report, the Planning Proposal is consistent with the Hunter Regional Plan.</p>	The proposal is consistent with this direction, and therefore no justification is required.
1.2	1.2 Development of Aboriginal Land Council land	The objective of this direction is to provide for the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.	<p><b>NOT APPLICABLE</b> This Planning Proposal does not require the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021.</p>	Not Applicable
1.3	Approval and Referral Requirements	<p>This direction applies when a relevant planning authority prepares a planning proposal.</p> <p>(4) A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</li> <li>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</li> </ul>	<p><b>CONSISTENT</b> The Planning Proposal does not:</p> <ul style="list-style-type: none"> <li>• Include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority</li> <li>• Include provisions that identify development as designated development</li> </ul>	The proposal is consistent with this direction, and therefore no justification is required.

		<ul style="list-style-type: none"> <li>(i) the appropriate Minister or public authority, and</li> <li>(ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director General), prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&amp;A Act, and</li> <li>(c) not identify development as designated development unless the relevant planning authority: <ul style="list-style-type: none"> <li>(i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</li> <li>(ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act</li> </ul> </li> </ul>		
1.4	Site Specific Provisions	<p>This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</p> <p>(1) A Planning Proposal that will amend another environmental planning instrument in order to</p>	<p>The objective of this Planning Proposal “facilitate the continuing use of 406 Wilderness Road, Lovedale as a depot for ballooning operations.” Consequently, consideration of this Direction is triggered.</p>	<p>The addition of an APU in schedule 1 of the Cessnock LEP to accommodate this use is the most appropriate option</p>

		<p>allow particular development to be carried out must either:</p> <p>(a) allow that land use to be carried out in the zone the land is situated on, or</p> <p>(b) rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> <p>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p> <p>(2) A Planning Proposal must not contain or refer to drawings that show details of the proposed development.</p>	<p><b>CONSISTENT</b></p> <p>The Planning Proposal is consistent with (1)(c). The Planning Proposal is seeking to amend the CLEP 2011 to enable a depot at 406 Wilderness Road, Lovedale as an additional Permitted Use within Schedule 1. The Planning Proposal does not propose the imposition of any development standards or requirements beyond those existing within the CLEP 2011.</p> <p>The Planning Proposal does not contain or refer to drawings that show details of the proposed development.</p>	<p>to achieve this outcome. It limits the use to a very specific development outcome and retains the integrity of the underlying rural zone. All other options, including to amend the LUT or change the zone have enduring implications.</p>
1.5 to 1.22		These directions apply to site or locality specific development sites and precincts which do not include the subject site	<b>NOT APPLICABLE</b>	<b>NOT REQUIRED</b>
<b>Biodiversity and Conservation</b>				
3.1	Conservation Zones	Zones The objective of this direction is to protect and conserve environmentally sensitive areas.	The Planning Proposal does not trigger consideration of this Direction as it does not contain environmentally sensitive areas nor is it likely to impact on such areas.	<b>NOT APPLICABLE</b>
3.2	Heritage Conservation	<p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(a) items, places, buildings, works, relics, moveable objects or precincts of</p>	<p><b>CONSISTENT</b></p> <p>The subject site does not contain items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance. The subject site is developed and the use of the land as a depot is not going to</p>	The proposal is consistent with this direction, and therefore no justification is required.

		<p>environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	<p>impact on Aboriginal objects, places or landscapes.</p>	
3.3-3.10		These directions apply to site or locality specific areas which do not include the subject site.	<b>NOT APPLICABLE</b>	<b>NOT REQUIRED</b>
<b>Resilience and Hazards</b>				
4.1	Flooding	<p>This direction applies when a planning proposal authority prepares a Planning Proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p>(1) A Planning Proposal must include provisions that give effect to and are consistent with:</p> <p>(a) the NSW Flood Prone Land Policy,</p> <p>(b) the principles of the Floodplain Development Manual 2005,</p> <p>(c) the Considering flooding in land use planning guideline 2021, and</p>	<p>The subject site is classified as flood prone land. The inclusion of an additional permitted use provision into the CLEP 2011 triggers application of this direction.</p> <p><b>NOT CONSISTENT</b></p> <p>While the property the subject of the Planning Proposal is classified as flood prone land, the area of the APU, as identified on Figure 4, is largely not subject to the 1% AEP flood event, and that applies to the existing location of the</p>	<p>The CLEP 2011 already contains Clause 5.21 from the standard LEP instrument which is consistent with these guidelines. This Planning Proposal does not propose to alter these provisions. Consequently, the</p>



		<p>(d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council</p>	<p>Beyond Ballooning depot. A detailed survey is provided at Attachment 1, and it highlights that the Council supplied 100 year ARI Flood Height of RL45.74m AHD for the site (refer blue contour line).</p> <p>The floor level of the shed primarily used as part of the depot is RL46.2m AHD. Given the existing depot area is not impacted by the 100 year ARI Flood Height, it is consistent with the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual, and the Considering flooding in land use planning guideline 2021. There is no adopted flood study and/or floodplain risk management plan relating to this site.</p> <p>Furthermore, the CLEP 2011 contains Clause 5.21 from the standard LEP instrument which is consistent with these guidelines. This Planning Proposal does not propose to alter these provisions</p>	<p>inconsistency is of no significance.</p>
		<p>(2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Environmental Protection Zones to a Residential, Business, Industrial or Special Purpose Zones.</p>	<p><b>CONSISTENT</b> The Planning Proposal does not propose to rezone land.</p>	
		<p>(3) A Planning Proposal must not contain provisions that apply to the flood planning area which:</p>	<p><b>CONSISTENT</b> The proposed APU area is not a within a floodway.</p>	

		<ul style="list-style-type: none"> <li>(a) permit development in floodway areas,</li> <li>(b) permit development that will result in significant flood impacts to other properties,</li> <li>(c) permit development for the purposes of residential accommodation in high hazard areas,</li> <li>(d) permit a significant increase in the development and/or dwelling density of that land,</li> <li>(e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,</li> <li>(f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,</li> <li>(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or</li> <li>(h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.</li> </ul>	<p>The depot site is located above the 100 year ARI Flood Height so the Planning Proposal will not result in any flood impacts to other properties. The Planning Proposal does not permit residential accommodation in high hazard areas.</p> <p>The Planning Proposal does not permit any increase in the development and/or dwelling density of the land.</p> <p>The Planning Proposal does not permit development for the purpose of centre based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing.</p> <p>The Planning Proposal does not permit development to be carried out without development consent.</p> <p>The Planning Proposal will not require any government spending on emergency management services, flood mitigation and emergency response measures.</p> <p>The Planning Proposal will not permit hazardous industries or hazardous storage establishments.</p>	
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		<p>(4) A Planning Proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:</p> <ul style="list-style-type: none"> <li><a href="#">(a)</a> permit development in floodway areas,</li> <li><a href="#">(b)</a> permit development that will result in significant flood impacts to other properties,</li> <li><a href="#">(c)</a> permit a significant increase in the dwelling density of that land,</li> <li><a href="#">(d)</a> permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,</li> <li><a href="#">(e)</a> are likely to affect the safe occupation of and efficient evacuation of the lot, or</li> <li><a href="#">(f)</a> are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.</li> </ul> <p>(5) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise</p>	<p><b>CONSISTENT</b> While the subject site is located in an area between the flood planning area and probable maximum flood, it does not:</p> <ul style="list-style-type: none"> <li>• permit development in floodway areas,</li> <li>• permit development that will result in significant flood impacts to other properties as it is in a rural environment,</li> <li>• permit any residential development,</li> <li>• permit the development of centre based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing</li> <li>• affect the safe occupation of and efficient evacuation of the lot,</li> <li>• result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures</li> </ul> <p><b>CONSISTENT</b> The CLEP 2011 already contains Clause 5.21 from the standard LEP instrument which is consistent with the FPDM. This</p>	
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		determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.	Planning Proposal does not propose to alter these provisions.	
4.2	Coastal Management	This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone.	<b>NOT APPLICABLE</b> The site is not located within the Coastal zone.	<b>NOT REQUIRED</b>
4.3	Planning for Bushfire Protection	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>(1) In the preparation of a Planning Proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&amp;A Act, and take into account any comments so made</p> <p>(2) A Planning Proposal must:</p> <ul style="list-style-type: none"> <li>(a) have regard to Planning for Bushfire Protection 2019,</li> <li>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</li> <li>(c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ).</li> </ul>	<p>The subject site is mapped as bushfire prone land and therefore triggers application of this direction.</p> <p><b>CONSISTENT</b> The planning authority will need to consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.</p> <p><b>CONSISTENT</b> A Bushfire Threat Assessment report (BTAR) supports the Planning Proposal and has been prepared by AEP in accordance with Planning for Bushfire Protection 2019. Future development applications will also need to address the Planning for Bushfire Protection 2019 guidelines. Given the nature of this proposal as a depot, it can operate consistent with these guidelines as concluded by the AEP BTAR.</p> <p>The subject site is not a hazardous area from a bushfire planning perspective.</p>	The proposal is consistent with this direction, and therefore no justification is required.



		<p>(3) A Planning Proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> <li>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum: <ul style="list-style-type: none"> <li>i. an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</li> <li>ii. an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</li> </ul> </li> <li>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the Planning Proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</li> </ul>	<p>The Planning Proposal does not prohibit bushfire hazard reduction within the APZ.</p> <p><b>CONSISTENT</b></p> <p>As set out in the AEP BTAR, the subject site and development enabled by this Planning Proposal are capable of complying with these provisions where applicable noting that this is a depot on a rural zone parcel of land surrounded by what is largely cleared managed land.</p> <p>The Planning Proposal is not for 'infill development'.</p> <p>Access to the depot is considered suitable as outlined in the AEP BTAR. Provisions for adequate water supply for firefighting purposes is suitable as set out in the AEP BTAR.</p> <p>The APU is surrounded largely by cleared managed land as set out in the AEP BTAR.</p> <p>The AEP BTAR notes that "the distance between the hazard vegetation and the proposed development construction standards will provide adequate defensible space to comply with the requirements of PBP."</p>	
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		<ul style="list-style-type: none"> <li>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</li> <li>(d) contain provisions for adequate water supply for firefighting purposes,</li> <li>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</li> <li>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</li> </ul>		
4.4	Remediation of Contaminated Land	<p>This direction applies when a planning proposal authority prepares a planning proposal that applies to:</p> <ul style="list-style-type: none"> <li>(a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,</li> <li>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</li> <li>(c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land: <ul style="list-style-type: none"> <li>i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</li> </ul> </li> </ul>	<p><b>NOT APPLICABLE</b></p> <p>The Planning Proposal does not trigger this direction.</p>	<p><b>NOT REQUIRED</b></p>

		ii. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).		
4.5	Acid Sulfate Soils	This direction applies when a relevant planning authority prepares a Planning Proposal that will apply to land having a probability of containing acid sulfate soils.	<b>NOT APPLICABLE</b> The subject site does not contain Acid Sulfate Soils.	<b>NOT REQUIRED</b>
4.6	Mine Subsidence and Unstable Land	This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that is within a declared mine subsidence district.	<b>NOT APPLICABLE</b> The subject site does is not within a declared mine subsidence district.	<b>NOT REQUIRED</b>
Transport and Infrastructure				
5.1	Integrating Land Use and Transport	This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, employment, village or tourist purposes.	<b>NOT APPLICABLE</b> The Planning Proposal does not create, alter or remove a zone or a provision relating to urban land.	<b>NOT REQUIRED</b>
5.2	Reserving Land for Public Purposes	This direction applies to all relevant planning authorities when preparing a planning proposal.	<b>NOT APPLICABLE</b> The Planning Proposal does not propose the reserving of land for public purposes.	<b>NOT REQUIRED</b>
5.3	Development Near Regulated Airports and Defence Airfields	This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.	<b>NOT APPLICABLE</b> The Planning Proposal does not create, alter or remove a zone or a provision relating to land near a regulated airport.	<b>NOT REQUIRED</b>
5.4	Shooting Ranges	This direction applies to all relevant planning authorities when preparing a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.	<b>NOT APPLICABLE</b> The Planning Proposal will not affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.	<b>NOT REQUIRED</b>
Housing				

6.1-6.2		These directions apply to Planning Proposals which have implications in respect to the provision of Housing which is not relevant to this Planning Proposal.	<b>NOT APPLICABLE</b>	<b>NOT REQUIRED</b>
Industry and Employment				
7.1-7.3		These directions apply to Planning Proposals which have implications in respect to Employment Zones (Direction 7.1), non-hosted short-term rental accommodation (Direction 7.) and Commercial and Retail Development along the Pacific Highway, North Coast (Direction 7.3) are not relevant to this Planning Proposal.	<b>NOT APPLICABLE</b>	<b>NOT REQUIRED</b>
Resources and Energy				
8.1	Mining, Petroleum Production and Extractive Industries	<p>This Direction applies to Planning Proposals that have implications for mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials and is not relevant to this Planning Proposal.</p> <p>This direction applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed rural zone. A Planning Proposal must:</p> <ul style="list-style-type: none"> <li>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</li> <li>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</li> </ul>		
Primary Production				
9.1	Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	<b>CONSISTENT</b> The proposal does not seek to rezone the RU4 rural zone of the site or increase	The proposal is consistent with this direction, and therefore no

				justification is required
9.2	Rural Lands	This direction applies when a relevant planning authority prepares a planning proposal for land outside the local government areas of Lake Macquarie, Newcastle, Wollongong and LGAs in the Greater Sydney Region (as defined in the Greater Sydney Commission Act) other than Wollondilly and Hawkesbury	<b>NOT APPLICABLE</b> The Cessnock LGA is identified within Schedule 1 of the Act as being located within the Lower Hunter and Greater Newcastle City. The subject site falls within the Cessnock LGA, so this Direction does not apply to this Planning Proposal.	<b>NOT REQUIRED</b>
9.3-9.4		These directions apply to Planning Proposals which have implications in respect to Oyster Aquaculture (Direction 9.3) and Farmland of State and Regional Significance on the NSW Far North Coast (Direction 9.4) and are not relevant to this Planning Proposal.	<b>NOT APPLICABLE</b>	<b>NOT REQUIRED</b>

## Section C: Environmental, Social and Economic Impact

### 7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The land subject to this Planning Proposal is clear of native flora and fauna that may be impacted by the continued use of the subject site for depot for ballooning operations. This is confirmed in section 4.2 Vegetation and Slope Analysis of the AEP BTAR. As such, continued use of the site will not have any impacts on ecological communities or their habitats.

The Biodiversity and Conservation Division (BCD) of the Department of Planning and Environment were consulted during the scoping proposal stage. BCD acknowledges the planning proposal would not result in the removal of any native vegetation and is considered unlikely to have an impact to biodiversity values. As such, BCD has no further comment in relation to biodiversity values.

### 8 Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

#### 8.1 Flooding

While the subject site falls within the flood planning area, Cessnock City Council mapping (refer Figure 2 below) and flood investigations (refer Attachment 1) have confirmed that the ongoing use of the site for depot for ballooning operations will not be impacted by the 1% AEP flood event and is therefore consistent with the Flood Plain Development Manual and Councils flood controls contained in its Development Control Plan 2010.



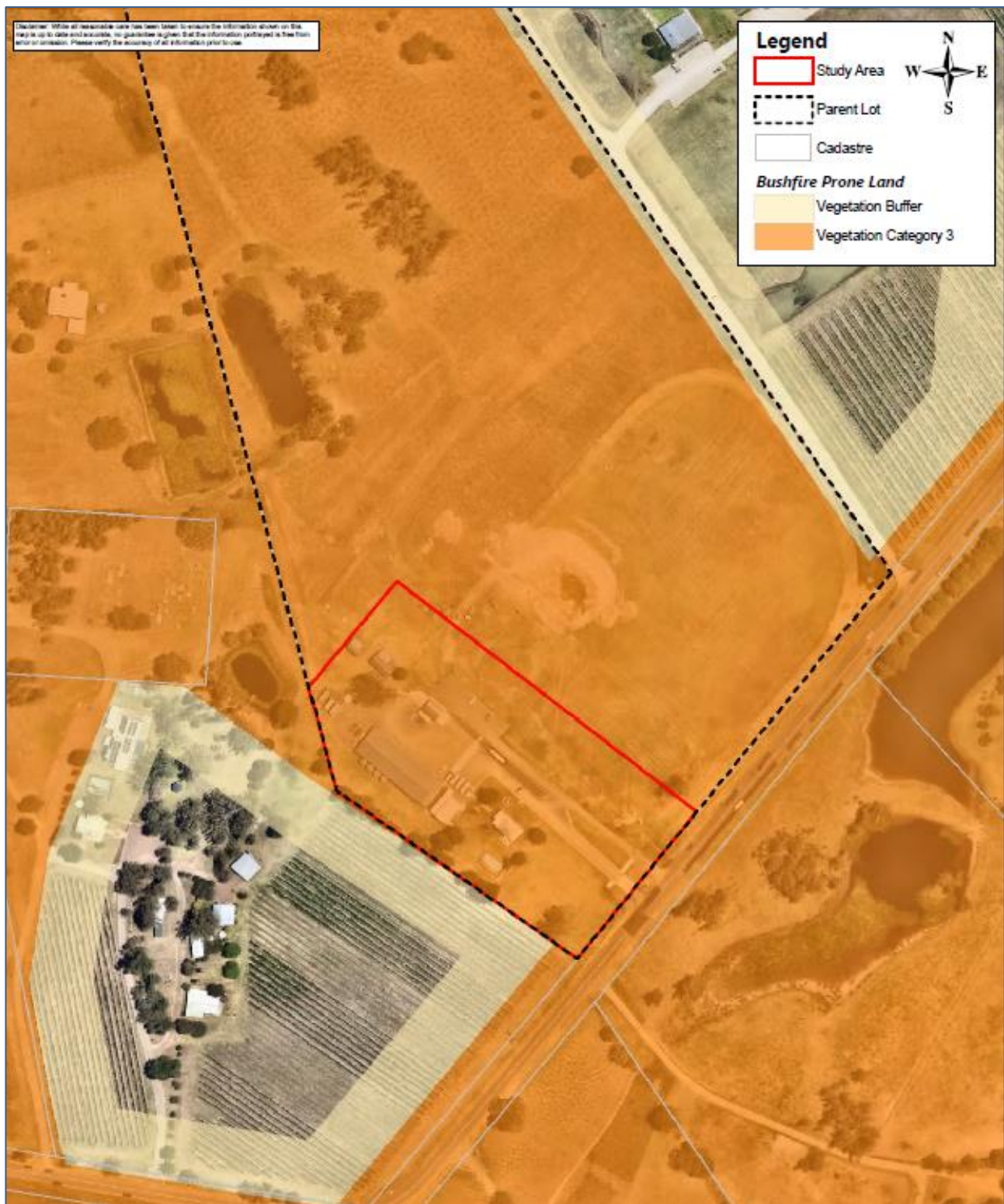
**Figure 2** 1 per cent AEP Flood Prone Land

Council's Flood Engineer has reviewed the proposal and has stated that 100 Year ARI flooding constraints on the site can be addressed by appropriate design and construction.

## **8.2 Bushfire**

Examination of the Cessnock City Council online Planning Information portal shows that the subject site is mapped as "Bushfire Prone Land – Vegetation Category 3" as shown in figure 3 below. Use of the site for depot for ballooning operations is not considered to increase the bushfire hazard on the site or increase the potential for bushfires to threaten human life or property. The Rural Fire Service (RFS) was consulted during the scoping stage of this proposal and provided the following comments. "The NSW RFS raises no objection to the proposed development, subject to the preparation of a bush fire consultant's report prepared by a suitably qualified person which addresses where the proposal conforms with, or deviates from, the relevant requirements of Planning for Bush Fire Protection 2019.





**Figure 3** Bushfire Prone Land Mapping (Source: AEP)

A Bushfire Assessment report has been prepared by Anderson Environmental Planning (AEP) and it concludes as follows:



*“The proposed (depot has) been assessed for surrounding hazard vegetation and a minimum 10m defendable area can be provided between and proposed class 5-8 and class 10 structures which are the likely outcomes of the (Planning Proposal).*

*The site is serviced by static water supply meeting AS 3959 and fire hose reels can be provided in accordance with AS/NZS 1221:1997 REC:2020, and installed in accordance with the relevant clauses of AS 2441:2005 (reconfirmed 2018).*

*Access and egress are provided by an access road at the south of Subject Site to Wilderness Road. It is considered that the proposed access and egress arrangements are appropriate, and no issues have been identified with evacuation, safe haven zones, or firefighting logistics.*

*It is considered that the distance between the hazard vegetation and the proposed development construction standards will provide adequate defendable space to comply with the requirements of PBP.*

*When applied, these measures should provide adequate protection to life and property within the proposed development in the event of a bushfire occurring in the immediate locality.*

*As such, it is considered that the Planning Proposal is able to meet the required objectives and principles of PBP 2019.”*

## **8.3 Heritage**

### **9.3.1 Aboriginal archaeology**

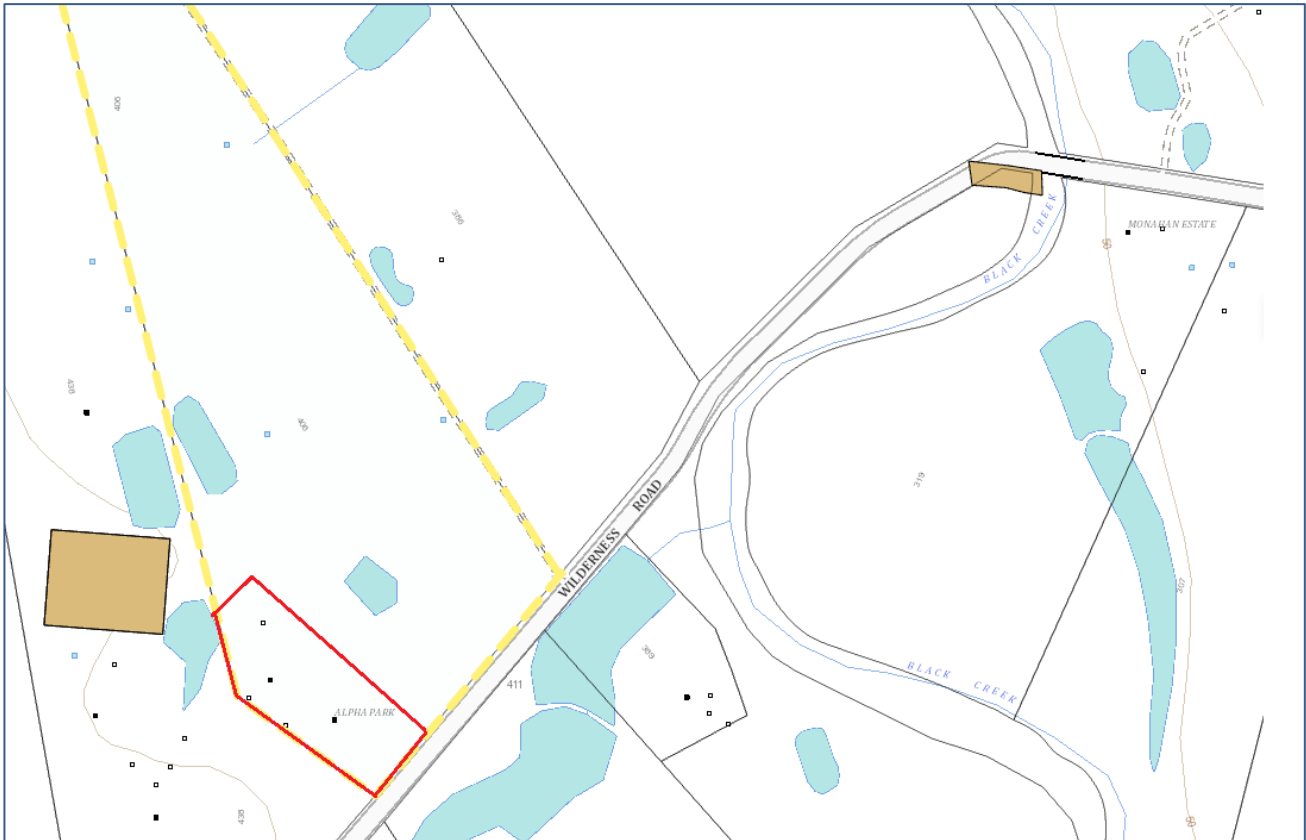
In terms of aboriginal archaeology, the requirement for an Aboriginal Heritage Impact Assessment (AHIA) is based on Part 2 of the NPWS Guidelines for Aboriginal Heritage Impact Assessments. Part 2 states that an AHIA is generally not required where:

- a) The proposed development is on land previously subject to intensive ground disturbance and the development will impact only on the area subject to the previous disturbance.*
- b) The impact of the proposed activity is unlikely to cause any additional damage to Aboriginal objects than that which has already occurred; and*
- c) The proposed development is in an area that has been identified in strategic planning, rezoning or other assessment studies as having low Aboriginal heritage potential.*

The subject site is in a highly disturbed state from previous activities associated with the site's development. Consequently, the site triggers a) and b) above and an AHIA should not be required with this Planning Proposal.

### **9.3.2 European heritage**

The nearest listed heritage items are the Wilderness Cemetery (I178), which is located 50m north west of the proposed APU area, and Wilderness Road Bridge (I213) which is located ~700m north east of the proposed APU. The current operation and infrastructure supporting the depot does not impact on either of these heritage items.



**Figure 4** Heritage items (Source: Planning Portal)

## 9 Has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal is not supported by a social or an economic impact assessment, however it is unlikely to result in adverse social or economic impacts. The proposed amendment to the CLEP 2011 will simply serve to enable regulation of the existing use which currently has a positive economic contribution to the Cessnock LGA and regional economy. The existing use is also considered to have no social impacts, with no records of complaints held on site or within council in association with operations.

## **Section D: Infrastructure (Local, State and Commonwealth)**

### **10 Is there adequate public infrastructure for the planning proposal?**

#### **10.1 Infrastructure services**

The subject site currently has access to all required infrastructure. No additional infrastructure services would need to be extended to service the depot operations at the site.

#### **10.2 Traffic and site access**

The operation of the depot generates very low volumes of traffic, with all traffic to and from the site being associated with the departure/return of ballooning equipment around flights. No customer ever enters the site as all are picked up and dropped off at Rydges Resort, Lovedale.

## Section E: State and Commonwealth Interests

### 11 What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

As per the Gateway determination, consultation was undertaken with the NSW Rural Fire Service (NSW RFS). NSW RFS indicated that they had no objections to the proposal, subject to the requirement that future development complies with *Planning for Bushfire Protection 2019*.

NSW RFS also requested further attention to address details of water supply. Specifically, the following points are required to be addressed:

- *Whilst bush fire is not captured in the NCC for Class 5-8 buildings, the following objectives apply in relation to access, water supply and services, and emergency and evacuation planning:*
  - *to provide safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupant egress for evacuation;*
  - *to provide suitable emergency and evacuation (and relocation) arrangements for occupants of the development; to provide adequate services of water for the protection of buildings during and after the passage of bush fire, and*
  - *to locate gas and electricity so as not to contribute to the risk of fire to a building;*
  - *and provide for the storage of hazardous materials away from the hazard wherever possible.*
- *The general fire safety construction provisions of the NCC are taken as acceptable solutions however construction requirements for bush fire protection will need to be considered on a case-by-case basis.*

These issues have been raised with the proponent for a response. A copy of the correspondence from NSW RFS is included as an attachment to this document.

## PART 4: MAPS

The following maps from the CLEP 2011 are required to be amended to achieve the intent of the Planning Proposal:

### Additional Permitted Uses map

- APU\_005

## PART 5: COMMUNITY CONSULTATION

The Gateway determination from the Department of Planning, Housing and Infrastructure has classed this Planning Proposal as standard as defined in the *Local Environmental Plan Making Guidelines*. As such, public exhibition for a minimum period of 28 days is required in accordance with Council's Community Participation Plan.

## PART 6: PROJECT TIMELINE

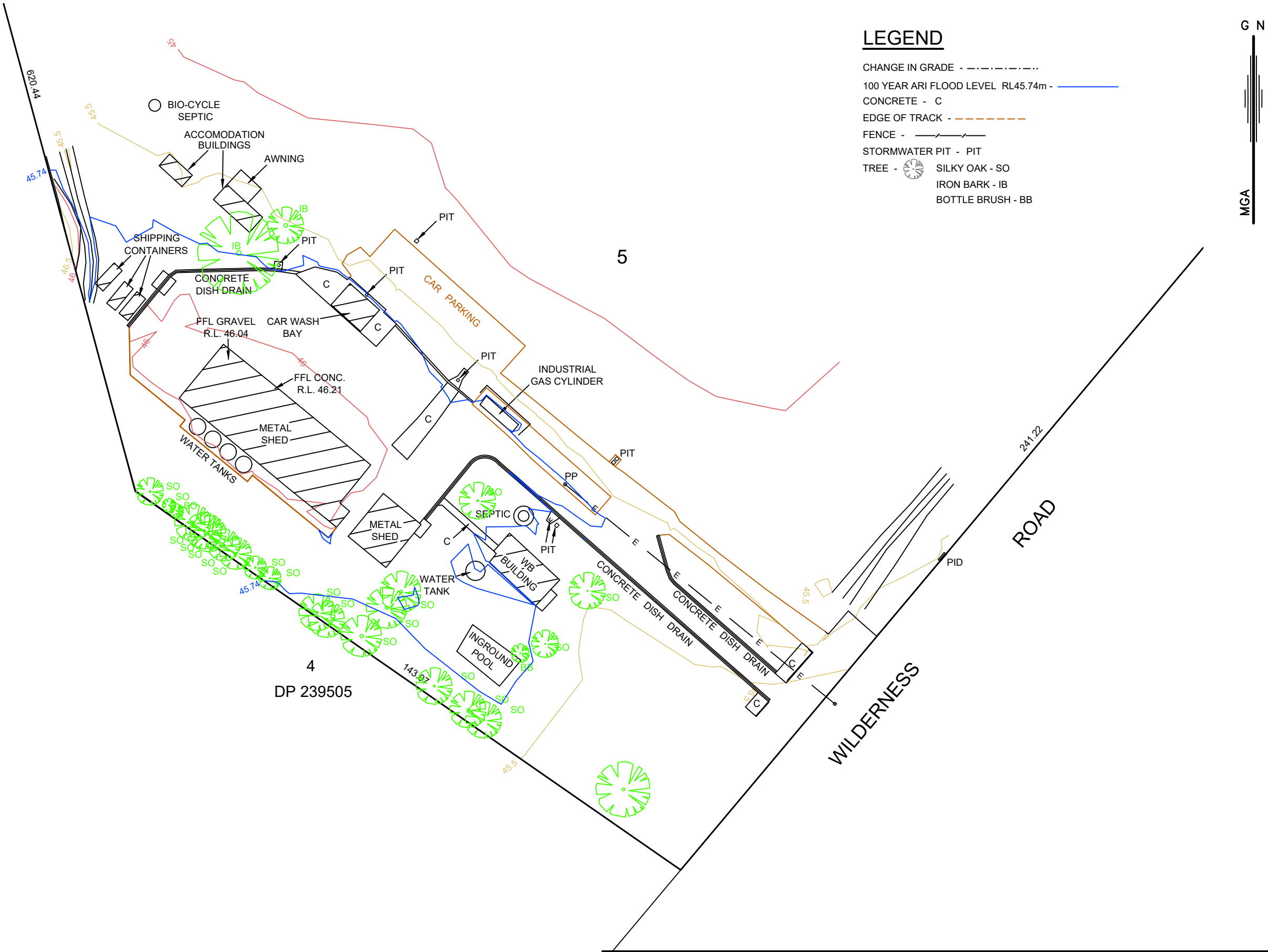
Table 2: Indicative project timeline.

Stage	Timeframe and/or date
Consideration by council	June 2023
Lodgement by Council with Department	June 2023
Gateway determination	April 2024
Pre-exhibition – including Agency consultation	April 2024 – July 2024
Commencement and completion of public exhibition period	July 2024 – August 2024
Consideration of submissions	August 2024
Post-exhibition review and additional studies	September 2024
Submission to the Department for finalisation (where applicable)	October 2024
Gazettal of LEP amendment	November 2024



# ATTACHMENT A – Flood Levels







# ATTACHMENT B – Bushfire Assessment



# AEP

ECOLOGY | OFFSETS | BUSHFIRE | ARBORICULTURE

## Bushfire Assessment

Planning Proposal for Additional Permitted Use – Lot 5  
DP239505, 406 Wilderness Road, Lovedale, NSW



**Prepared for: Insite Planning Services Pty Ltd**

**31 May 2023**

**AEP Ref: 3216**

**Revision: 02**

## Document Control

<b>Document Name</b>	Bushfire Assessment for Planning Proposal for Additional Permitted Use – 406 Wilderness Road, Lovedale, NSW
<b>Project Number</b>	3216
<b>Client Name</b>	Insite Planning Services Pty Ltd
<b>AEP Project Team</b>	Natalie Black Chris Wark Kathleen Bushell Stephen Curry

## Revision

Revision	Date	Author	Reviewed	Approved
00	21/04/2023	Stephen Curry	Natalie Black	Natalie Black
01	05/05/2023	Stephen Curry	Chris Wark	Natalie Black
02	30/05/2023	Chris Wark	Natalie Black	Craig Anderson

## Distribution

Revision	Date	Name	Organisation
00	21/04/2023	Stephen Leathley	Insite Planning Services Pty Ltd
01	05/05/2023	Stephen Leathley	Insite Planning Services Pty Ltd
02	31/05/2023	Stephen Leathley	Insite Planning Services Pty Ltd

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## Appendix

Appendix A – Site Photos

## 1.0 Introduction

A planning proposal for additional permitted use of the subject site as a commercial depot for the “Beyond Ballooning” tourism business is proposed within Lot 5 DP239505, located at 406 Wilderness Road, Lovedale, NSW, within Cessnock City Council LGA. At the request of Insite Planning Services Pty Ltd (the client), Anderson Environment & Planning (AEP) have undertaken the necessary investigations to inform the production of a Bushfire Assessment (BFA) report addressing the proposed additional use.

The Planning Proposal is being prepared as per Division 3.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Section 3.34(d) requires consultation with the Rural Fire Service (RFS). This report provides the required relevant information to inform consultation with the RFS and progress the Planning Proposal.

This report is specifically intended to assess the bushfire protection measures required by “Planning for Bushfire Protection 2019” (PBP) and the construction requirements for proposed development in accordance with the provisions of the Building Code of Australia – Volume 2, Edition 2010 and Australian Standard 3959-2009 (AS 3959) – “Construction of buildings in bushfire-prone areas”, to provide direction for future development planning within the site.

For the purposes of referencing, this document should be referred to as:

*Anderson Environment & Planning (2023). Bushfire Assessment for Planning Proposal for Additional Permitted Use, 406 Wilderness Road, Lovedale, NSW. Unpublished report for Insite Planning Services. May 2023*

## 2.0 Site Particulars

**Table 1 – Site Particulars**

Detail	Comments
<b>Client</b>	Insite Planning Services Pty Ltd
<b>Address</b>	406 Wilderness Road, Lovedale, NSW, 2325
<b>Title(s)</b>	Lot 5 DP239505
<b>Study Area</b>	1.72ha
<b>Subject Site</b>	13.22ha
<b>LGA</b>	Cessnock City Council
<b>Zoning</b>	RU4 – Primary Production Small Lots
<b>Current Land Use</b>	Residential Dwelling and Commercial Business Operations
<b>Surrounding Land Use</b>	The subject stie is surrounded by grassland to the north and east, paddock and freshwater wetland to the south, vineyards to the west and residential to the north-west.

**Figure 1** depicts the extent of the site overlain on an aerial photograph of the locality.

## 3.0 Proposed Development






The planning proposal is for additional permitted use of the Subject Site as a commercial depot for the “Beyond Ballooning” tourism business.

**Figure 2** depicts the proposed development plan within the Subject Site.



Disclaimer: While all reasonable care has been taken to ensure the information shown on this map is up to date and accurate, no guarantee is given that the information portrayed is free from error or omission. Please verify the accuracy of all information prior to use.

## Legend

-  Study Area
-  Parent Lot
-  Cadastre
-  Cessnock Hydroarea
-  Cessnock Hydroline



0 150  
meters

1. Boundaries are not survey accurate.  
2. Do not scale off this plan.



# AEP

Figure 1 - Site Map

Location: 406 Wilderness Rd, Lovedale

Client: Insite Planning

Date: April 2023

AEP Ref: 3216

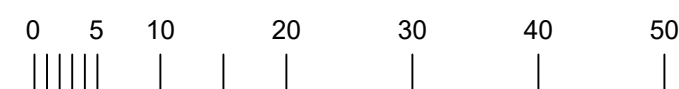


(A2)



NOTES:

DATUM IS AUSTRALIAN HEIGHT DATUM (AHD)  
ORIGIN: PM 120629 ~ RL 44.915 m AHD  
CONTOUR INTERVAL IS 0.5 METRES  
NO SUBTERRANEAN INVESTIGATION OF  
SERVICES HAS BEEN CARRIED OUT  
DIAL BEFORE YOU DIG - 1100



SCALE 1:600 @ A2

PLAN SHOWING  
LEVELS AND DETAIL WITHIN  
PART OF LOT 5, DP 239505,  
406 WILDERNESS ROAD,  
LOVEDALE

MARSHALL SCOTT

**SURVEYING & LAND DEVELOPMENT CONSULTANTS**

OFFICE: 44 CUMBERLAND STREET, CESSNOCK      POSTAL: P.O.BOX 165, CESSNOCK 2325  
TELEPHONE: (02) 4990 1711      EMAIL: [admin@marshallscott.com.au](mailto:admin@marshallscott.com.au)

DATE  
04/04/2023

REF. No.  
23657

DWG.No.  
23657-DET.dwg

SCALE  
1 : 600

## 4.0 Bushfire Hazard Assessment

### 4.1 Bushfire Prone Land Mapping

Examination of NSW Planning Portal, Bushfire Prone Land (BPL) Mapping (2021) confirmed that the Subject Site is mapped as “Bushfire Prone Land – Vegetation Category 3” (**Figure 3**). This designation has triggered the need for the information presented herewith.

Appendix 1 of the PBP provides the steps required to determine the level of bushfire hazard that applies to the site. Factors influencing the hazard level include:

- The formation of vegetation surrounding the site (as defined by Keith 2004);
- The distance between vegetation and the site (or proposed buildings therein);
- The effective slope for each patch of vegetation; and
- The Fire Danger Index (FDI) of the council area within which the development occurs.

These factors together provide an indication of the level of threat posed to development from any vegetation retained within the site and surrounding vegetation in the event of a bushfire, and the required mitigation measures to be taken in the form of defendable space. These measures are detailed further in **Section 5** below.

### 4.2 Vegetation and Slope Analysis

The Subject Site and surrounds occur within the Greater Hunter Region, with existing vegetation subsequently classified with a Fire Danger Index (FDI) of 100 as NSW Rural Fire Service (2017) NSW Local Government Areas FDI.

The Subject Site contains a residential managed garden/commercial premises with native, native cultivar and exotic plantings not commensurate with any vegetation type. Vegetation communities present within the 140m surrounding the development and slope assessment within 100m from hazard vegetation are shown in **Table 2** and **Figure 4**.

The proposed additional use will be industrial and commercial in nature and as such APZs do not apply. Instead, any development of this nature needs to show an ability to meet defendable space requirements to allow for firefighting.

**Table 2 – Hazard Vegetation and Slope Assessment**

Aspect	Hazard Vegetation (140m)	Slope (100m)	Defendable Space (m)
North	Grassland	Flat/upslope	10
North East	Grassland	Flat/upslope	10
East	Grassland	Flat/upslope	10
South East	Freshwater wetland and grassland	Flat/upslope	10
South	Grassland	Flat/upslope	10
South West	Managed Vineyard	Flat/upslope	10
West	Residential and Grassland	Flat/upslope	10
North West	Freshwater wetland and grassland	Flat/upslope	10

**Appendix A** contains photos showing the vegetation types within the 140m vegetation assessment buffer around the Subject Site.



Disclaimer: While all reasonable care has been taken to ensure the information shown on this map is up to date and accurate, no guarantee is given that the information portrayed is free from error or omission. Please verify the accuracy of all information prior to use.

## Legend


 Study Area

 Parent Lot

 Cadastre

### Bushfire Prone Land

 Vegetation Buffer

 Vegetation Category 3



0 150  
meters

Note:  
1. Boundaries are not survey accurate  
2. Do not scale off this plan



# AEP

Figure 3 - Bushfire Prone Land

Location: 406 Wilderness Rd, Lovedale

Client: Insite Planning

Date: April 2023


AEP Ref: 3216




Disclaimer: While all reasonable care has been taken to ensure the information shown on this map is up to date and accurate, no guarantee is given that the information portrayed is free from error or omission. Please verify the accuracy of all information prior to use.

## Legend

 Study Area


 Parent Lot

 Cadastre


 Cessnock Contour


### Assessment Buffer


 100m Slope

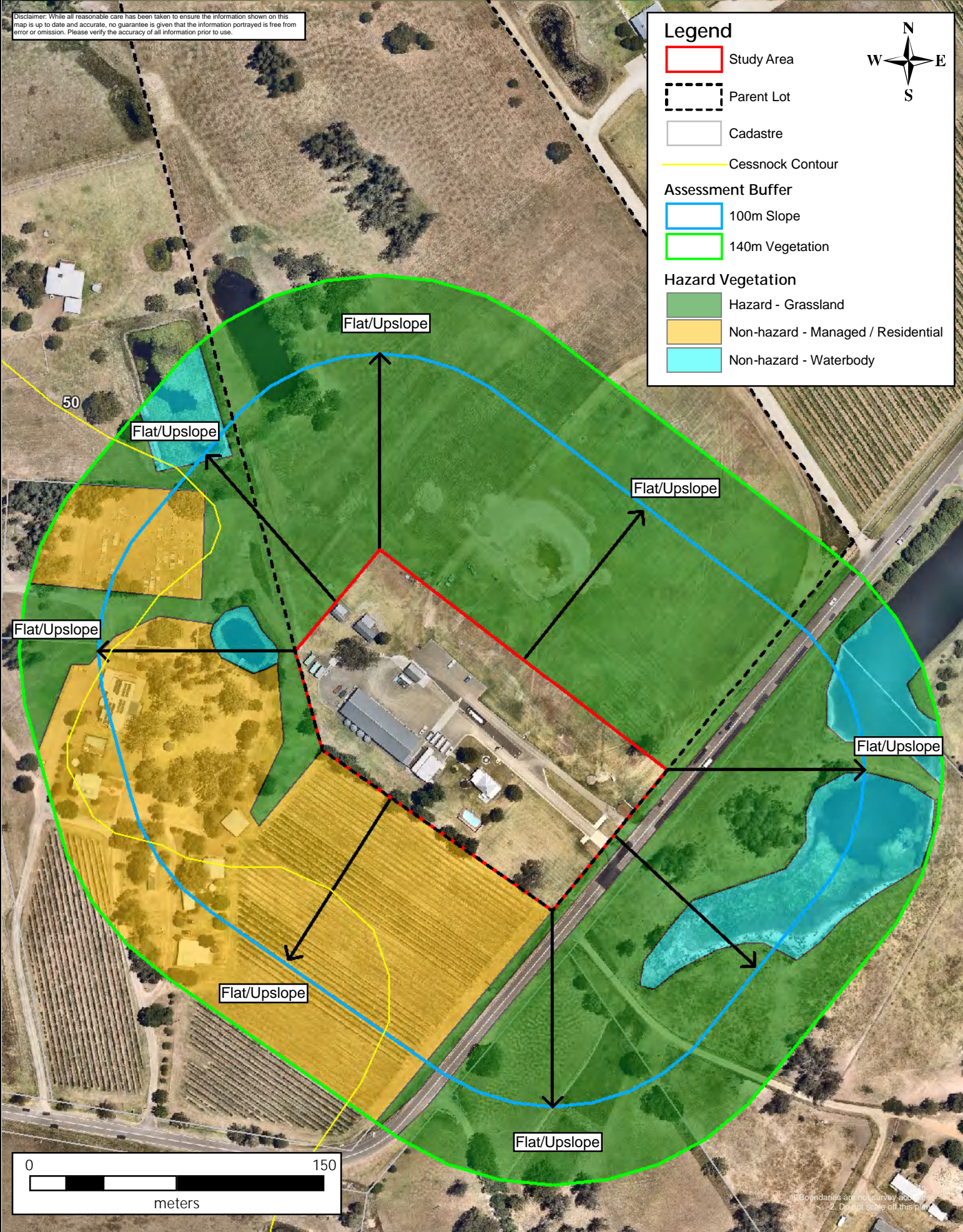
 140m Vegetation

### Hazard Vegetation

 Hazard - Grassland

 Non-hazard - Managed / Residential

 Non-hazard - Waterbody



1. Boundaries are not survey accurate.  
2. Do not scale off this plan.



# AEP

Figure 4 - Vegetation and Slope Assessment

Date: April 2023

Location: 406 Wilderness Rd, Lovedale

Client: Insite Planning

AEP Ref: 3216



### 4.3 PBP Performance Criteria Assessment

*Planning for Bush Fire Protection 2019* aims to provide an assessment and review process for proposed development within NSW on land identified as bush fire prone to minimise the risk of bush fires to life and property.

Section 4.2 and Table 4.2.1 within the PBP (2019) outline the bush fires issues and assessment considerations for a strategic development proposal. **Table 3** outlines these components and assessment as relates to the Subject Site. **Table 4** assesses the criteria for commercial/industrial buildings to further show consideration has been given to the suitability of the development proposed.

**Table 3 - Bush Fire Issues and Strategic Assessment**

Issue	Detail	PBP 2019 Considerations	AEP Assessment
Bush fire landscape assessment	A Bush fire landscape assessment considers the likelihood of a bush fire, its potential severity and intensity and the potential impact on life and property in the context of the broader surrounding landscape.	The bush fire hazard in the surrounding area, including: <ul style="list-style-type: none"> <li>Vegetation.</li> <li>Topography.</li> <li>Weather.</li> </ul>	Vegetation surrounding the Subject Site is mostly flat grassland, with areas of managed lawns, gardens and vineyards. Weather is temperate and typical of East coast NSW.
		The potential fire behaviour that might be generated based on the above.	Given the land is predominantly grassland or managed it is expected that only grassland fires would occur in the locality.
		Any history of bush fire in the area.	The closest bushfire to the site occurred in 2002/2003 approx. 2km to the north.
		Potential fire runs into the site and the intensity of such fire runs.	Long fire runs (250m) exist to the north, east and southeast of the Subject Site, though these are across grassland. Given the semi managed nature of the grassland hazard vegetation it is not expected that the intensity of these fires would be high. Black Creek runs to the North, East and South of the Subject Site separating the Subject Site from the wider vegetation landscape.
		The difficulty in accessing and suppressing a fire, the continuity of bush fire hazards or the fragmentation of landscape fuels and the complexity of the associated terrain.	Access throughout the proposed site is good and while there are theoretical long fire runs, these are over land that contains small rural holdings that would contain a mix of managed and unmanaged grassland. Black Creek runs to the North, East and South of the Subject Site separating the Subject Site from the wider vegetation landscape.
Land use assessment	The land use assessment will identify the most	The risk profile of different areas of the development layout based on the above landscape study.	The location of the depot is located in an area that is unlikely to be impacted by fire with managed areas, vineyards, gardens and areas of

Issue	Detail	PBP 2019 Considerations	AEP Assessment
	appropriate locations within the masterplan area or site layout for the proposed land uses.		unmanaged grassland. It is not located close to any Forest Hazard vegetation or fire runs of such. Therefore, it is considered that this area is suitable.
		The proposed land use zones and permitted uses.	The current operation of the depot is at odds with the current land zone permitted use, hence the need for this planning proposal.
		The most appropriate siting of different land uses based on risk profiles within the site (i.e., not locating development on ridge tops).	The current depot is situated in an area that is flat and without high risk of bushfire.
		The impact of the siting of these uses on APZ provision.	As the proposal is for a commercial/industrial development APZs do not apply. The site can adequately meet defendable space requirements, as shown in <b>Figure 5</b> .
Access and egress	A study of the existing and proposed road networks both within and external to the masterplan area or site layout.	The capacity for the proposed road network to deal with evacuating residents and responding emergency services, based on the existing and proposed community profile.	The proposed change of zoning will not alter the amount of traffic already present. It is considered that the current services or evacuation requirements would not change as part of this planning proposal and are considered adequate currently.
		The location of key access routes and direction of travel.	The main road in the area, Wine Country Drive, is located approx. 1.5km to the west of the Subject Site along a smaller feeder road, Wilderness Road. Both are paved, public roads.
		The potential for development to be isolated in the event of a bush fire.	Wilderness road runs to the east to Lovedale Road which eventually connects to the Hunter Expressway. Wilderness road also connects to Wine Country Drive to the west. Given these connections it is unlikely that the development would be isolated in the event of a bushfire.
Emergency services	An assessment of the future impact of new development	Consideration of the increase in demand for emergency services responding to a bush fire emergency including the need for new stations/brigades.	Given the type of development it is not considered likely that there would be an increase in the demand for emergency services above that which is already present.

Issue	Detail	PBP 2019 Considerations	AEP Assessment
	on emergency services.	Impact on the ability of emergency services to carry out fire suppression in a bush fire emergency.	The development will not negatively impact on the ability to undertake fire suppression in the case of a bushfire emergency and may actually decrease bushfire risk due to increased management.
Infrastructure	An assessment of the issues associated with infrastructure and utilities.	The ability of the reticulated water system to deal with a major bush fire event in terms of pressures, flows, and spacing of hydrants.	The development will be serviced by a static water supply, as such the development will have no impact on the reticulated water system. A dedicated water tank will be provided to provide adequate service of water for the protection of buildings during and after the passage of a bushfire.
		Life safety issues associated with fire and proximity to high voltage power lines, natural gas supply lines etc.	It is not considered that there are life safety issues associated with the proposed development when considering infrastructure and utilities.
Adjoining land	The impact of new development on adjoining landowners and their ability to undertake bush fire management.	Consideration of the implications of a change in land use on adjoining land including increased pressure on BPMs through the implementation of Bush Fire Management Plans.	It is not considered likely that adjacent land, vineyards and grassland areas would be at increased risk as a consequence of this development. Nor would it stop adjacent landowners from undertaking bushfire management.

**Table 4 – Performance Criteria Measures for Class 5-8 and Class 10 Building**

Performance Criteria	Assessment
Afford buildings and their occupants protection from exposure to a bush fire.	Buildings and occupants will be afforded suitable protection from exposure to a bush fire through the establishment of a 10m defendable space established in the border of the proposed depot location.
Provide for a defendable space to be located around building.	The managed nature of the grassland and trees directly surrounding buildings present on the Lot is considered to afford adequate area for defendable space. While there are three containers within the defendable space on the western side of the Lot it is not felt that these will interfere with the ability of firefighters in the case of a fire. Similarly, the vegetation on the southwestern boundary is not considered to pose a risk to firefighting logistics.

Performance Criteria	Assessment
Provide appropriate separation between a hazard and buildings which, in combination with other measures, prevent the likely fire spread to buildings.	Appropriate separation between hazards and buildings to prevent the likelihood of fire spread to buildings will be consistently provided.
Ensure that appropriate operational access and egress for emergency service personnel and occupants is available.	Appropriate operational access and egress for emergency service personnel and occupants will be available.
Provide for ongoing management and maintenance of BPMs.	Ongoing management and maintenance of BPMs will be provided.
Ensure that utility services are adequate to meet the needs of firefighters.	Adequate utility services required to meet the needs of firefighters will be met.
Water supply should aim to meet the objectives of Section 8.3.1 of Planning for Bushfire Protection (2019).	Water supply will meet the objectives outlined in section 8.3.1 of Planning for Bushfire Protection (2019).
Fire hydrant spacing, sizing and pressures comply with AS 2419.1 – 2021.	Fire hydrant spacing, sizing and pressures will comply with AS 2419 – 2021
Location and distance to nearest Fire Station	The nearest Fire Station to the subject site is Cessnock Fire Station, located 12.1km away.
The provisions of public roads in section 8.3.1 in relation to access and parking are met.	The proposal has sufficient area to provide safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupant egress for evacuation.



## **5.0 Bushfire Hazard Assessment**

### **5.1 Construction Standards – AS 3959-2018**

The National Construction Code (NCC) does not provide for any bushfire specific performance requirements for a commercial class of building. As such AS 3959 Standards are not considered as a set of 'deemed to satisfy' provisions, however compliance with AS 3959 and National Association of Steel Framed Housing (2021) should be considered when meeting the aims and objectives of PBP. Given the distance from the hazard vegetation, it is recommended that the development should use materials that maximise ember protection.




Disclaimer: While all reasonable care has been taken to ensure the information shown on this map is up to date and accurate, no guarantee is given that the information portrayed is free from error or omission. Please verify the accuracy of all information prior to use.

## Legend

 Study Area

 Parent Lot

 Cadastre

 Defendable Space (10m)



0 50  
metres

Note:  
1. Boundaries are not survey accurate.  
2. Do not scale off this plan.



# AEP

Figure 5 - Required Defendable Space

Location: 406 Wilderness Rd, Lovedale

Client: Insite Planning

Date: May 2023

AEP Ref: 3216



## 6.0 Other Considerations

The following analysis applied to the site in reference to environmental features present re listed in Table 5.

**Table 5 – Other Considerations**

Environmental Feature	Comments
<b>Riparian Corridors</b>	No riparian corridors have been identified on the subject site.
<b>State Environmental Planning Policy (Resilience and Hazards) 2021</b>	Subject site does not occur in proximity to coastal areas
<b>State Environmental Planning Policy (Biodiversity Conservation) 2021</b>	Subject site is not considered core Koala habitat
<b>Areas of geological interest</b>	No areas of geological interest have been identified on the subject site.
<b>Environmental protection zones or steep lands (&gt;18°)</b>	No environmental protection zones or steep lands have been identified within proximity to the subject site.
<b>Land slip or flood prone areas</b>	N/A
<b>National Parks estate or various other reserves</b>	Subject site is not located in proximity to National Parks or other reserves
<b>Threatened species matters</b>	Planning proposal is unlikely to impact any threatened species within the area
<b>Aboriginal Heritage</b>	Subject site does not contain any known areas of Aboriginal significance

The following table is added to inform the planning proposal for submission to Council and addresses the Local Planning Directions as issued by the Minister for Planning under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*. In particular the following addresses Focus Area 4.3 – Planning for Bushfire Protection within the directives.

<b>4.3 Planning for Bushfire Protection</b>	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>(1) In the preparation of a Planning Proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community</p>	<p>The subject site is mapped as bushfire prone land and therefore triggers application of this direction.</p> <p><b>CONSISTENT</b></p> <p>The planning authority will need to consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination.</p> <p><b>CONSISTENT</b></p>	<p>The proposal is consistent with this direction, and therefore no justification is required.</p>
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	<p>consultation in satisfaction of clause 4, Schedule 1 to the EP&amp;A Act, and take into account any comments so made.</p> <p>(2) A Planning Proposal must:</p> <p>(a) have regard to Planning for Bushfire Protection 2019,</p> <p>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</p> <p>(c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ).</p> <p>(3) A Planning Proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <p>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</p> <p>i. an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</p> <p>ii. an Outer Protection Area managed for hazard reduction and located on the bushland side of the</p>	<p>A Bushfire Threat Assessment report (BTAR) supports the Planning Proposal and has been prepared by AEP in accordance with <i>Planning for Bushfire Protection 2019</i>. Future development applications will also need to address the Planning for Bushfire Protection 2019 guidelines. Given the nature of this proposal as a depot, it can operate consistent with these guidelines as concluded by the AEP BTAR.</p> <p>The subject site is not a hazardous area from a bushfire planning perspective.</p> <p>The Planning Proposal does not prohibit bushfire hazard reduction within the APZ.</p> <p><b>CONSISTENT</b></p> <p>As set out in the AEP BTAR, the subject site and development enabled by this Planning Proposal are capable of complying with these provisions where applicable noting that this is a depot on a rural zone parcel of land surrounded by what is largely cleared managed land.</p>	
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	<p>perimeter road,</p> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the Planning Proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>	<p>The Planning Proposal is not for 'infill development'.</p> <p>Access to the depot is considered suitable as outlined in the AEP BTAR.</p> <p>Provisions for adequate water supply for firefighting purposes is suitable as set out in the AEP BTAR.</p> <p>The APU is surrounded largely by cleared managed land as set out in the AEP BTAR.</p> <p>The AEP BTAR notes that "the distance between the hazard vegetation and the proposed development construction standards will provide adequate defensible space to comply with the requirements of PBP."</p>	
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## 7.0 Conclusion

Investigations undertaken for this Bushfire Assessment have revealed that the proposed development area will be affected by hazardous vegetation to the north-west and west post rezoning.

The proposed industrial facilities have been assessed for surrounding hazard vegetation and a minimum 10m defendable area can be provided between and proposed class 5-8 and class 10 structures which are the likely outcomes of the proposed rezoning.

AEP understands that the development will be serviced by static water supply meeting AS 3959 and fire hose reels will be constructed in accordance with AS/NZS 1221:1997 REC:2020, and installed in accordance with the relevant clauses of AS 2441:2005 (reconfirmed 2018).

Access and egress are provided by an access road at the south of Subject Site to Wilderness Road. It is considered that the proposed access and egress arrangements are appropriate and no issues have been identified with evacuation, safe haven zones, or firefighting logistics.

It is considered that the distance between the hazard vegetation and the proposed development construction standards will provide adequate defendable space to comply with the requirements of PBP.

When applied, these measures should provide adequate protection to life and property within the proposed development in the event of a bushfire occurring in the immediate locality.

As such, it is considered that the Planning Proposal is able to meet the required objectives and principles of PBP 2019. However, it can never be guaranteed that the site and property therein will not at some stage be affected by a bushfire event.

## 8.0 References

- Australian Building Codes Board. International Fire Engineering Guidelines. Edition 2005.
- Keith, D (2004) *Ocean Shores to Desert Dunes*. OEH, Sydney.
- NSW Rural Fire Service (2019). *Planning for Bushfire Protection: A guide for councils, planners, fire authorities and developers*. November 2019.
- NSW Government (1979) *Environment and Planning & Assessment Act 1979*. NSW Government, Sydney.
- NSW Government (2021) *Rural Fires Act 1997*. NSW Government, Sydney.
- NSW Government (2019). Planning Portal website. Accessed May 2023.
- Standards Australia (2018) AS-3959 *Construction of Buildings in Bushfire-Prone Areas*. Standards Australia, Sydney. November 2018.
- National Association of Steel Framed Housing (2021) *Steel Framed Construction in Bush Fire Areas*
- Standards Australia (2010) AS-3745 *Planning for Emergencies in Facilities*. Standards Australia, Sydney. November 2010.
- Standards Australia (2021), AS-2419.1 *Fire Hydrant Installations – Part 1: System Design, Installation and Commissioning*. Standards Australia, September 2021.
- Standards Australia (2018) AS 2441-2005 (Reconfirmed 2018) *Installation of fire hose reels*. 2018

## **Appendix A – Study Area Photos**





**Above: Looking North.**

**Below: Looking North East.**





**Above: Looking East.**

**Below: Looking South East.**







**Above: Looking South.**

**Below: Looking South West**







**Above: Looking West.**

**Below: Looking North West**





# ATTACHMENT C – Scoping proposal submissions (BCD and RFS)



Your ref: 55/2022/7/1  
Our ref: DOC23/8124-3

Rob Corken  
Senior Strategic Planner  
Cessnock City Council  
62-78 Vincent St  
Cessnock NSW 2325

By email: [Council@cessnock.nsw.gov.au](mailto:Council@cessnock.nsw.gov.au)

Dear Rob

**Preliminary Planning Proposal at 406 Wilderness Road, Lovedale**

I refer to your email of 5 January 2023 asking for advice and comments in relation to a preliminary planning proposal at 406 Wilderness Road, Lovedale described as Lot 5 DP 239505. You provided a copy of the report, 'Planning Proposal Scoping Proposal Report: Beyond Ballooning Additional Permitted Use: 406 Wilderness Road, Lovedale' by Insite Planning Services Pty Ltd (dated 5 December 2022) in which the planning proposal is described.

Biodiversity and Conservation Division (BCD) acknowledges the planning proposal would not result in the removal of any native vegetation and is considered unlikely to have an impact to biodiversity values. As such, BCD has no further comment in relation to biodiversity values. If this is subject to change and removal of native vegetation proposed, an ecological assessment is recommended. Further, BCD does not have any further comments in relation to flooding and flood risk.

If you have any further questions about this issue, please contact Giorginna Xu, Senior Conservation Planning Officer, on 4927 3185 or at [huntercentralcoast@environment.nsw.gov.au](mailto:huntercentralcoast@environment.nsw.gov.au)

Yours sincerely

Steven Crick  
**Senior Team Leader Planning**  
**Hunter Central Coast Branch**  
**Biodiversity and Conservation Division**  
31 January 2023



## NSW RURAL FIRE SERVICE

Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2325

Your reference: 55/2022/7/1  
Our reference: SPI20230110000002

**ATTENTION:** Rob Corken

Date: Friday 10 February 2023

Dear Sir/Madam,

**Strategic Planning Instrument  
LEP Amendment – Draft Proposal**

The proposal is to allow a “depot” as an additional permitted use on the subject land. The site and existing approved infrastructure is being used for the storage of vehicles and equipment associated with the “Beyond Ballooning” tourism operation.

I refer to your correspondence dated 05/01/2023 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The NSW RFS raises no objection to the proposed development, subject to the preparation of a bush fire consultants report prepared by a suitably qualified person which addresses where the proposal conforms with, or deviates from, the relevant requirements of *Planning for Bush Fire Protection 2019*.

The report is to specifically address the requirements of *Section 8.3.1 - Buildings of Class 5 to 8 under the NCC* and *8.3.10 - Commercial and industrial development within Planning for Bush Fire Protection 2019*.

For any queries regarding this correspondence, please contact Adam Small on 1300 NSW RFS.

Yours sincerely,

Alastair Patton  
**Supervisor Development Assessment & Plan  
Built & Natural Environment**

**Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

**Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

**T** (02) 8741 5555  
**F** (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)





# RFS



Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2325

Your reference: (REF-2915) PP-2023-1184  
Our reference: SPI20240520000079

**ATTENTION:** Dylan Shoesmith

Date: Thursday 18 July 2024

Dear Sir/Madam,

**Strategic Planning Instrument  
LEP Amendment – Planning Proposal**

This Planning Proposal has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979. This Planning Proposal seeks to explain the intended effect of, and justification for the proposed amendment to the Cessnock Local Environmental Plan 2011 (CLEP 2011) to add an additional clause to Schedule 1 Additional Permitted uses enabling part of the land at 406 Wilderness Road, Lovedale (the subject site) to be used as a depot in association with the Beyond Ballooning business. The objective of this amendment will be to permit with consent a depot to store mini-buses, trailers and balloons and other vehicles associated with the business operations of the Beyond Ballooning when not required for use. Beyond Ballooning has been operating from the subject site since June 2017.

I refer to your correspondence dated 20/05/2024 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The NSW RFS has reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 9.1 of the *Environmental Planning and Assessment Act 1979*.

The objectives of the direction are:

- *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*
- *to encourage sound management of bush fire prone areas.*

The direction provides that a planning proposal must:

- *have regard to Planning for Bushfire Protection 2019,*
- *introduce controls that avoid placing inappropriate developments in hazardous areas, and*
- *ensure that bushfire hazard reduction is not prohibited within the APZ.*

Based upon an assessment of the information provided, NSW RFS raises no objections to the proposal subject to a requirement that the future development of the land complies with *Planning for Bush Fire Protection 2019*.

With regard to these requirements, the following comments are made in relation to the submitted documents:

**Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

**Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

**T** (02) 8741 5555  
**F** (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)





# RFS



- The bushfire report provided is generally acceptable, however, further attention is required to address the details of the water supply, and the following points in section 8.3.1 Buildings of Class 5 to 8 under the NCC of *Planning for Bush Fire Protection 2019*.
  - Whilst bush fire is not captured in the NCC for Class 5-8 buildings, the following objectives apply in relation to access, water supply and services, and emergency and evacuation planning:
    - to provide safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupant egress for evacuation;
    - to provide suitable emergency and evacuation (and relocation) arrangements for occupants of the development; to provide adequate services of water for the protection of buildings during and after the passage of bush fire, and
    - to locate gas and electricity so as not to contribute to the risk of fire to a building;
    - and provide for the storage of hazardous materials away from the hazard wherever possible.
  - The general fire safety construction provisions of the NCC are taken as acceptable solutions however construction requirements for bush fire protection will need to be considered on a case-by-case basis.

Council should note the RFS does not provide retrospective approval for existing development.

For any queries regarding this correspondence, please contact Elaine Chandler on 1300 NSW RFS.

Yours sincerely,

Kalpana Varghese  
**Supervisor Development Assessment & Plan  
Built & Natural Environment**