



IRF23/2224

## Gateway determination report – PP-2023-1296

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Reclassification and rezoning of various sites in  
Bellbird and Abermain

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# Acknowledgment of Country

The Department of Planning and Environment 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
Planning Proposal – Land Reclassification and Rezoning - Bellbird and Abermain

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Cessnock</b>
<b>PPA</b>	Cessnock City Council
<b>NAME</b>	Land reclassification and rezoning of various sites in Bellbird and Abermain
<b>NUMBER</b>	PP-2023-1296
<b>LEP TO BE AMENDED</b>	Cessnock Local Environmental Plan 2011
<b>ADDRESS</b>	Site 1: Carmichael Park - 32 Sparke Street, Bellbird Site 2: 90 Harle Street, Abermain
<b>DESCRIPTION</b>	Site 1: Part of Lot 3 DP 624793 Site 2: Lot 11 Section B DP 4748
<b>RECEIVED</b>	21/07/2023
<b>FILE NO.</b>	IRF23/2224
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The objectives of the planning proposal are as follows:

- to reclassify a 6m strip of Carmichael Park, 32 Sparke Street, Bellbird adjoining the Bellbird Park Bowling Club to operational land, and to rezone the same portion from RE1 Public Recreation Area to a RE2 Private Recreation, to formalise an existing vehicle access to the bowling club; and
- rezone Lot 11, 90 Harle Street, Abermain from R2 Low Density to RE1 Public Recreation to reflect its use as a public park consistent with the adjoining public park.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Cessnock City Council LEP 2011 per the changes below:

**Table 3 Current and proposed controls**

Subject Lot	Control	Current	Proposed
Site 1	Zone	RE1 Public Recreation	RE2 Private Recreation
	Reclassify land from	Community	Operational
Site 2	Zone	R2 Low Density	RE1 Public Recreation

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved and that the public reserve status of the land at Carmichael Park will be extinguished as part of this process.

## 1.4 Site description and surrounding area

Site one comprises a portion of Carmichael Park, 32 Sparke Road, Bellbird (Part of Lot 3 DP 624793). The land is 6m by 91m (**Figure 1**) located adjacent to the southern boundary of the Bellbird Bowling Club. The area is currently zoned RE1 Public Recreation and classified as community land.

To the north is the bowling club, to the east is low density residential land, while public recreation land is located to the south and west.



**Figure 1:** Subject Site one and site context (source: Nearmaps).

Site two consists of 90 Harle Street, Abermain (Lot 11 Section B DP 4748). The land forms part of the Harle Street Playground and includes embellishments in the form of play equipment. The area is zoned R2 Low Density Residential and is identified in Figure 2. The site is adjoined by residential development to the east, south and north and the remainder of the park to the west.



**Figure 2:** Subject Site two (source: Nearmaps).

## 1.5 Mapping

The proposal contains maps that clearly identify the subject land that will be rezoned and reclassified.

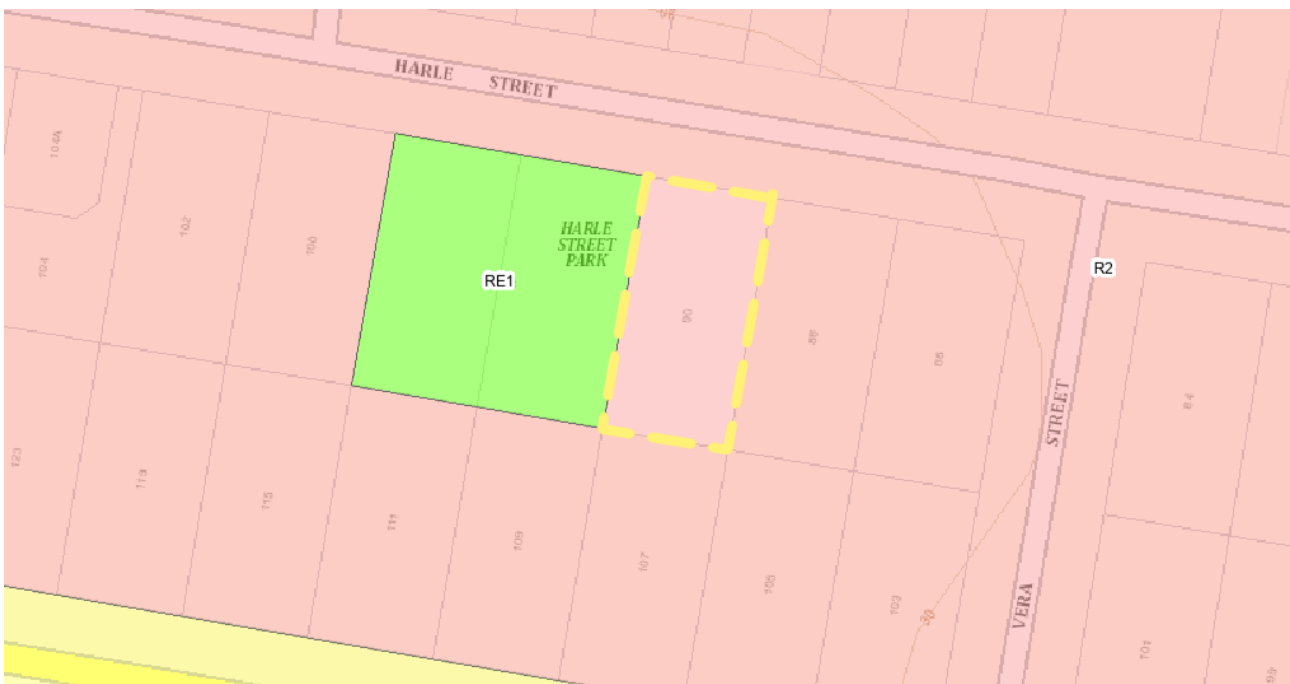
Prior to agency and community consultation it is recommended that existing and proposed LEPs maps be included as follows:

- Site 1 – zoning and part reclassification maps
- Site 2 – zoning and minimum lot size maps

The proposal currently makes no reference to amending the minimum lot size for Site 2. As the intend of the proposal is to align the planning controls of Lot 11 with the remainder of the Harle Street Playground, it is recommended that the existing 450m<sup>2</sup> minimum lot size be removed and a nil requirement be applied consistent with the remainder of the Harle Street Playground.



**Figure 3:** Current zoning map, 32 Sparke Road, Bellbird (Source: DPIE Spatial Viewer).



**Figure 4:** Current zoning map, 90 Harle Street, Abermain (Source: DPIE Spatial Viewer).



**Figure 5:** Current minimum lot size map, 90 Harle Street, Abermain (Source: DPIE Spatial Viewer).

## 1.6 Background

### Site 1

The land to be reclassified and rezoned in Carmichael Park is currently owned by Cessnock City Council and is used for vehicle access to the Bellbird Park Bowling Club loading dock and carpark. Council has identified that the land should be transferred to the bowling club to enable works that will address the following issues:

- fencing and extension of the bowling club's boundary at the southern end to allow vehicular access for club patrons and deliveries etc; and
- fencing of the western boundary to formalise the site and stop vehicular access from the bowling club through Carmichael Park.

### Site 2

The Cessnock Recreation and Open Space Strategic Plan (2019) identifies the Harle Street Playground as a local park. The anomaly in zoning was identified by Council's Open Space and Community Facilities Team who have sought to have the correct public recreation zone be applied to the entire park. Council has also resolved to reclassify the land from operational to community by resolution as permitted under the *Local Government Act 1993*.

## 2 Need for the planning proposal

The planning proposal is not a result of an approved local strategy, study, or report.

The planning proposal is needed to undertake changes to the Cessnock LEP to facilitate works at the Bellbird Bowling Club to recognise the existing arrangements and formalise appropriate vehicle access and to correct a zoning anomaly at Harle Street Park, Abermain.

The planning proposal is considered to be the best means of achieving the objectives and intended outcomes.

## 3 Strategic Assessment

### 3.1 Regional Plan

The planning proposal is considered to be consistent with the goals, objectives and overall intent of the Hunter Regional Plan 2041.

### 3.2 Local

The proposal is consistent with the Cessnock Local Strategic Planning Statement and Council's Community Strategic Plan 2036.

### 3.3 LEP Practice Note PN16-001 Classification and reclassification of public land through a local environmental plan

The planning proposal is generally consistent with Practice Note PN16-001, except for the preparation of a strategic study to support the proposal to reclassify land from community to operational. Due to the small amount of land involved in the 6m strip, and the minor nature of the proposed reclassification (which only seeks to recognise the existing vehicle access arrangements and formalise them to provide a safer outcome for bowling club patrons and users of Carmichael Park), a strategic study is not considered necessary in the circumstances.

### 3.4 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all relevant section 9.1 Directions except in regard to the following:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire	Unresolved	Harle Street Park is identified as being part bushfire prone, requiring consultation with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway determination. Until referral post Gateway is undertaken with the NSW Rural Fire Service, consistency with this direction cannot be determined.

4.6 Mine Subsidence and Unstable Land	Unresolved	Harle Street Park is within a declared mine subsidence district, requiring consultation with Subsidence Advisory NSW. Until referral post Gateway is undertaken with Subsidence Advisory NSW, consistency with this direction cannot be determined
5.2 Reserving Land for Public Purposes	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it removes an existing RE1 Public Recreation zoning adjacent to Bellbird Park Bowling Club and applies a RE1 Public Recreation Zone to Harle Street Park without the approval of the relevant public authority and the Planning Secretary. This inconsistency is considered to be of minor significance:</p> <ul style="list-style-type: none"> <li>• due to the small area involved at Carmichael Park and as it better reflects the existing use of this area and will enable vehicle safety upgrades to occur; and</li> <li>• the application of an RE1 Zone at Harle Street Park only seeks to apply a zone that better reflects its existing and future use as a public park.</li> </ul>
6.1 Residential Zones	Justifiably inconsistent	The proposal is inconsistent with this direction as it rezones land from R2 Low Density Residential to RE1 Public Recreation that will reduce the permissible residential density of the land. This inconsistency is considered to be of minor significance as the land is already utilised as a public park.

### 3.5 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with the provisions of all relevant SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

No adverse environmental impacts have been identified as likely to result from the proposal.

### 4.2 Social and economic

The planning proposal is not considered likely to result in any adverse social or economic impacts.

### 4.3 Infrastructure

No new or additional local or State infrastructure has been identified as being needed as a result of this planning proposal.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days consistent with the benchmark timeframe for planning proposals categorised as standard and is in accordance with PN16-001.

PN16-001 also requires Council to conduct a public hearing after the conclusion of community consultation period.

The exhibition period proposed is considered appropriate, and forms part of the conditions of the Gateway determination.

## 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 20 days to comment:

- NSW Rural Fire Service; and
- Subsidence Advisory NSW.

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposals by category. This planning proposal is categorised as a standard and the proposed timeframe is considered to be satisfactory in accordance with the benchmarks.

## 7 Local plan-making authority

Council has not advised that it would like to exercise its functions as a Local Plan-Making authority.

As the proposal involves Council owned land, and as the land at Carmichael Park was acquired and gazetted for the purposes of a public recreation reserve and is considered likely will require the Governor's approval for the extinguishment of the public reserve status, it is recommended that Council not be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

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

- the proposal is generally consistent with the regional and local planning framework; and
- the proposal does not result in any additional adverse impacts to the site or surrounding area.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions: 5.2 reserving land for public purposes and 6.1 Residential Zone is minor, and
- Note that the consistency with section 9.1 Directions: 4.3 Planning for Bushfire Protection and 4.6 Mine Subsidence and Unstable Land is unresolved and will require justification.

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

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to agency and community consultation to:
  - include existing and proposed LEP zoning maps for each site;

- include an existing and proposed LEP minimum lot size map for the land at Abermain applying a nil minimum lot size; and
  - include a proposed LEP part reclassification map for the land at Bellbird.
2. Consultation is required with the following public authorities:
    - NSW Rural Fire Service; and
    - Subsidence Advisory NSW
  3. The planning proposal should be made available for community consultation for a minimum of 28 days and a copy of PN16-001 is to be included in the public exhibition materials.
  4. Council must arrange a public hearing in respect of the planning proposal to reclassify community land as operational land in accordance with the requirements of the Local Government Act 1993.
  5. Council must ensure that all relevant obligations in relation to the reclassification of public land through an LEP are undertaken in accordance with the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021), LEP Practice Note PN16-001 Classification and reclassification of public land through a local environmental plan and Practice Note No. 1 (Revised) May 2000 – Public Land Management.
  6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



27/5/24

(Signature)

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27/05/2024

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