



IRF24/2757

Gateway determination report – PP-2024-2550

Reclassify Part of Lot 312 DP 566724 Old Maitland
Road, Cessnock from Community to Operational land

December 24

Published by NSW Department of Planning, Housing and Infrastructure

dpie.nsw.gov.au

Title: Gateway determination report – PP-2024-2550

Subtitle: Reclassify Part of Lot 312 DP 566724 Old Maitland Road, Cessnock from Community to Operational land

© State of New South Wales through Department of Planning, Housing and Infrastructure 2024. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Housing and Infrastructure as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (December 24) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Housing and Infrastructure), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

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

Contents

1	Planning proposal.....	1
1.1	Overview	1
1.2	Objectives of planning proposal.....	1
1.3	Explanation of provisions.....	1
1.4	Site description and surrounding area	2
1.5	Mapping	3
2	Need for the planning proposal	5
3	Strategic assessment	5
3.1	Regional Plan	5
3.2	District Plan	Error! Bookmark not defined.
3.3	Local.....	6
3.4	Section 9.1 Ministerial Directions.....	6
3.5	State environmental planning policies (SEPPs)	7
4	Site-specific assessment	7
4.1	Environmental	7
4.2	Social and economic	9
4.3	Infrastructure	9
5	Consultation.....	10
5.1	Community	10
5.2	Agencies	10
6	Timeframe	10
7	Local plan-making authority	10
8	Assessment summary	11
9	Recommendation.....	11

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – Land Reclassification – Old Maitland Road, Cessnock

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Cessnock City Council
PPA	Cessnock City Council
NAME	Reclassify Part of Lot 312 DP 566724 Old Maitland Road, Cessnock from Community to Operational land
NUMBER	PP-2024-2550
LEP TO BE AMENDED	Cessnock Local Environmental Plan 2011
ADDRESS	Old Maitland Road, Cessnock
DESCRIPTION	Part of Lot 312 DP 566724
RECEIVED	21/11/2024
FILE NO.	IRF24/2757
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

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

The objectives of the planning proposal are to:

- amend the Cessnock Local Environmental Plan (LEP) 2011 to reclassify a portion of public reserve at Old Maitland Road Cessnock from Community to Operational land.

The reclassification will allow for the sale of the land to facilitate a secondary access to the adjacent land to the north, which is proposed for residential subdivision.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

Clause 5.2 Classification and reclassification of public land of the Cessnock LEP 2011 enables Council to classify or reclassify public land as operational land or community land in accordance with the *Local Government Act 1993*.

The planning proposal seeks to amend the Cessnock LEP 2011 to include Part of Lot 312 DP 566724, Old Maitland Road, Cessnock within *Schedule 4 Classification and reclassification of public land, Part 2 Land classified, or reclassified, as operational land – interests changed*.

The reclassification includes the removal of the public reserve status of the portion of land identified, which will allow for the disposal of the land via sale. The removal of the public land reservation will require approval from the Governor of NSW.

It is not proposed to change any other provision relating to the land under the Cessnock LEP 2011.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved subject to being updated prior to consultation to confirm that the public reserve status, or if any other covenants, will be extinguished.

1.4 Site description and surrounding area

The land is legally described as Part of Lot 312 DP 566724, Old Maitland Road, Cessnock (Figure 1). The portion of Lot 312 the subject of the planning proposal is approximately 1.2 hectares in area.

The land is zoned R2 Low Density Residential under the Cessnock LEP 2011 and a minimum lot size of 450m² applies.

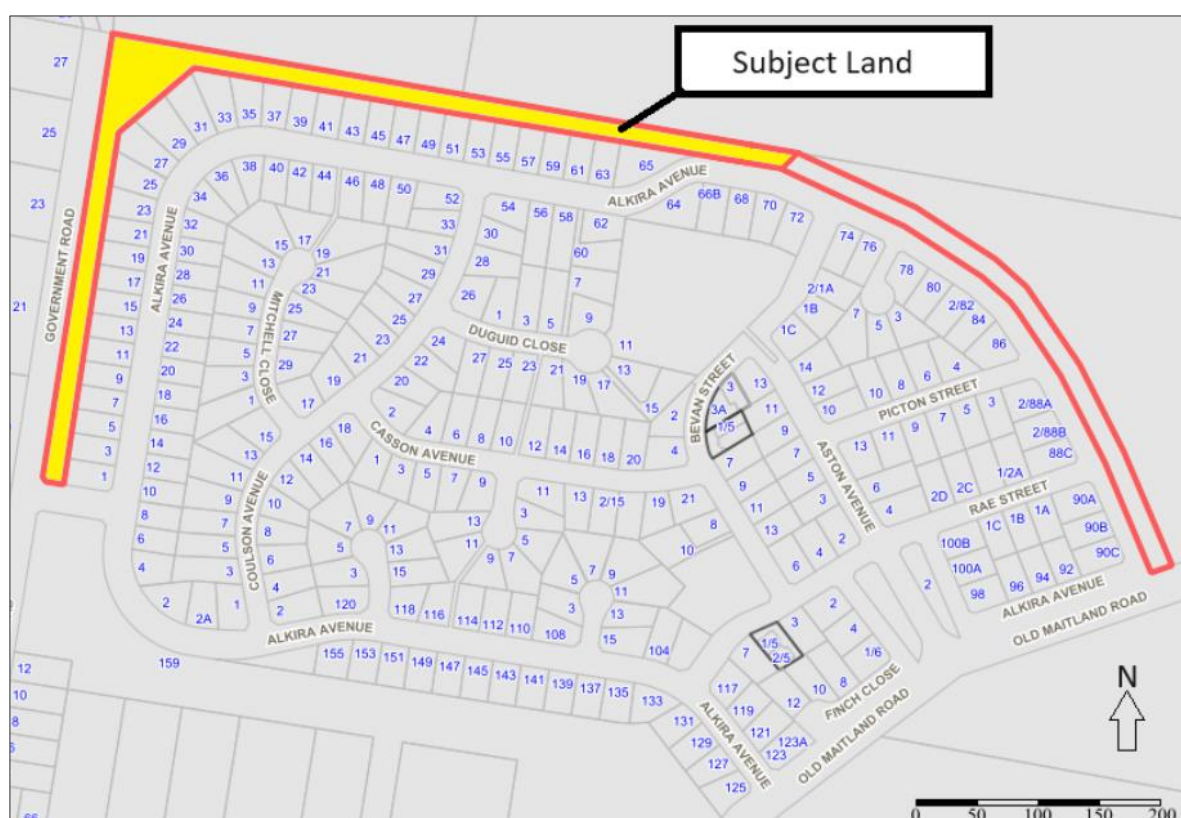


Figure 1 Subject site (source: Planning Proposal)

Council have indicated that the subject land is a narrow strip of community land that separates Alkira Avenue from private land that is under DA assessment for a residential subdivision. The NSW Rural Fire Service have identified that a secondary access point is required to the proposed subdivision. Following reclassification as Operational land, the subject land will be sold to the

owner of the adjacent proposed subdivision to provide a secondary access point from Alkira Avenue.

The site is approximately 1.4km north-east of the Cessnock Central Business District (Figure 2).

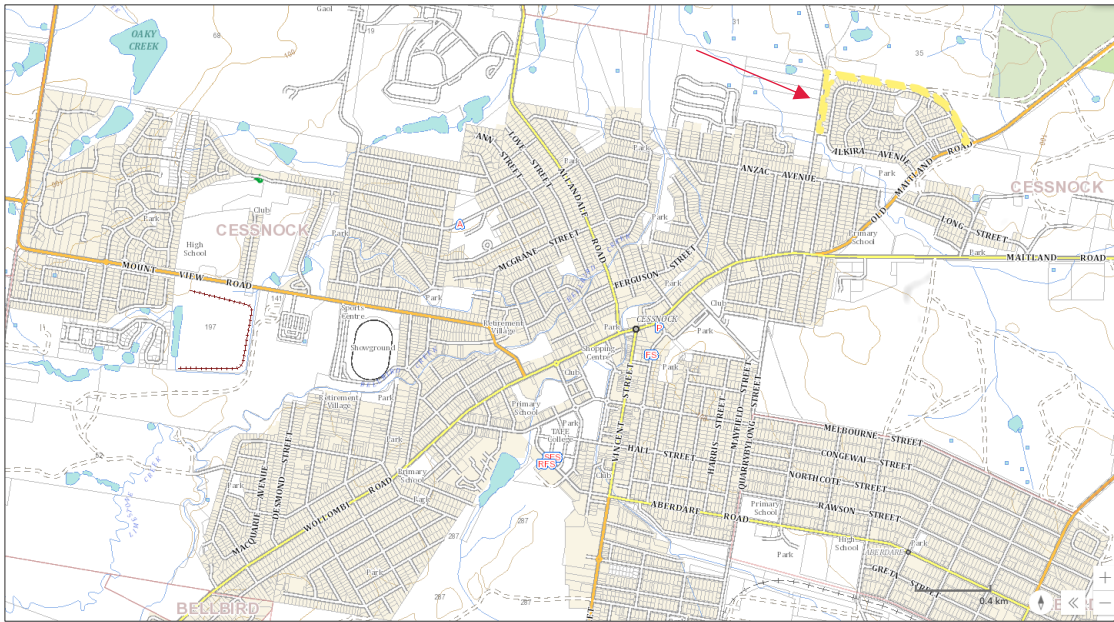


Figure 2 Site context (source: NSW Spatial Viewer)

1.5 Mapping

The planning proposal includes a map showing the land currently classified as Community Land (Figure 3) and a map (Figure 4) which shows the part of the land proposed to be reclassified as Operational. These maps are suitable for community consultation. Mapping prepared in accordance with the Department's technical requirements will be required at the finalisation stage.

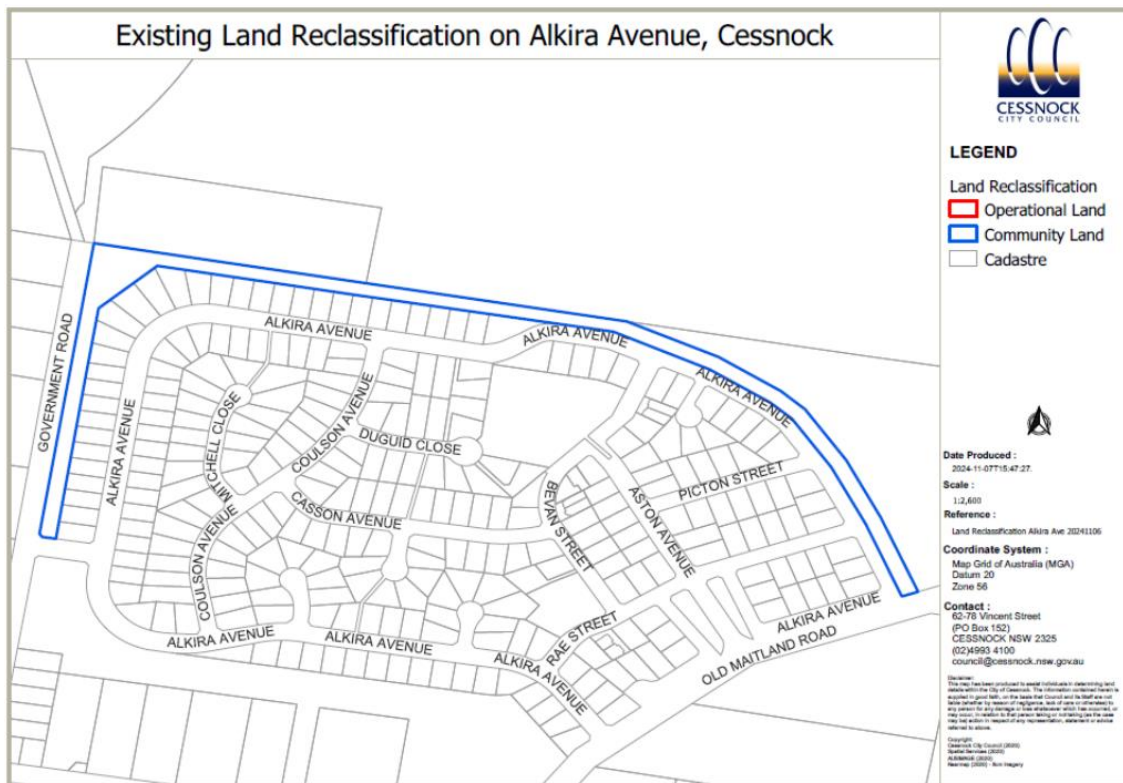


Figure 3 Existing Community Classification (source: Planning Proposal)

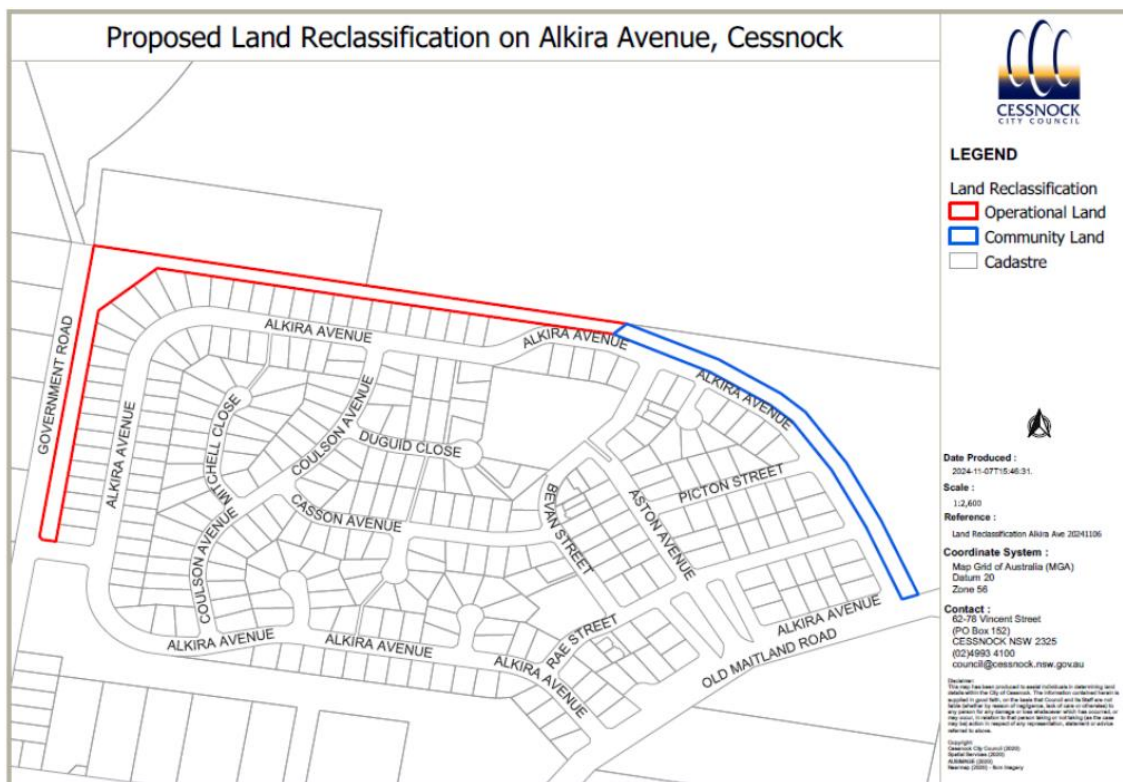


Figure 4 Proposed Operational Land (source: Planning Proposal)

2 Need for the planning proposal

The planning proposal is not the result of the Cessnock Local Strategic Planning Statement 2036 or any specific strategy or study.

The purpose of the planning proposal is to reclassify land from community to operational to enable the land to be sold to facilitate a secondary access to a proposed residential subdivision on the adjacent land to the north.

Council has entered into a Deed of Agreement with Land Specialists Estates NSW Pty Ltd (Land Specialists), whereby it has agreed to make the subject land available for purchase by Land Specialists. This Deed requires the reclassification of the subject land from community to operational land as a prerequisite to sale. Land Specialists intends to undertake residential subdivision on the adjacent land to the north and requires secondary access via the subject land.

The proposal includes additional strategic justification for the reclassification of public land to operational land as required by the DPE *Practice Note PN 16-001 – Classification and reclassification of public land through a local environmental plan* and notes that the land is surplus to Council's requirements and has no current or future intended recreational use.

The preparation of a planning proposal to amend Schedule 4, Part 2 of the Cessnock LEP 2011 to reclassify Part Lot 312 DP 566724, Old Maitland Road, Cessnock from community to operational land is the only way to achieve the objectives and intended outcomes.

3 Strategic assessment

3.1 Regional Plan

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

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 3: Create 15-minute neighbourhoods to support mixed, multi-modal, inclusive and vibrant communities	The planning proposal is not inconsistent with Objective 3 as it facilitates the sale of surplus Council land that has no current or future intended recreational use which will assist with the continued and improved use of recreation facilities that are important to the local community and will support the release of additional land for housing.

3.2 Greater Newcastle Metropolitan Plan

The site is within the area covered by the Greater Newcastle Metropolitan Plan which was released in September 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan.

3.3 Local

The proposal confirms that it is consistent with the following local plans and strategies.

Table 5 Local strategic planning assessment

Local Strategies	Justification
Cessnock Local Strategic Planning Statement 2036	The planning proposal is not inconsistent with <i>Action 17 Continue to implement Council's adopted plans for access and mobility, recreation and open space, traffic and transport and community</i> . The reclassification will allow for the sale of surplus Council land, reducing the maintenance burden for Council's Open Space and Communities team. This assists the continued and improved use of recreation facilities that are important to the local community.
Cessnock Community Strategic Plan 2027	The planning proposal is not inconsistent with <i>Objective 5.3.3 Our Council is financially sustainable</i> in that the reclassification will allow for the sale of surplus Council land.
Cessnock Recreation & Open Space Strategic Plan	<p>The land is not identified as a recreation or open space area by Council's Recreation and Open Space Strategic Plan. As such, the reclassification of the land to facilitate its sale is not contrary to the long-term strategic direction for the future provision and management of recreation facilities, programs and services in the Cessnock LGA.</p> <p>It is noted that the Alkiria Avenue Park located on the southern side of Alkira Road is identified in the Plan as passive open space. This park is 3.58 hectares in area and contains public art and a sandstone plaque memorial. The proposal does not impact this land.</p>

3.4 Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with relevant section 9.1 Directions except as discussed below.

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	Unresolved	The planning proposal is potentially inconsistent with this Direction as the subject site is mapped as bushfire prone. The Direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the Direction remains unresolved.

5.2 Reserving Land for Public Purposes	Justified	<p>The planning proposal is inconsistent with this Direction as the change from community to operational land will reduce existing reservations of land for public purposes and the agreement of the Secretary has not been obtained as required by the Direction.</p> <p>This inconsistency is of minor significance as Council has confirmed that the land is surplus to needs and has no known community purpose or likely future recreational use. Further, sale of the land allows Council to improve recreation facilities that are important to the local community in alignment with the Recreation and Open Space Strategic Plan and will help support housing delivery in the area.</p> <p>The proposal does not propose to rezone the land or effect a change in the current use. The sole purpose is to allow for the disposal of the land via sale, enabling a secondary access to be constructed to provide legal and practical access to a proposed residential subdivision on the adjacent land to the north.</p>
6.1 Residential Zones	Justified	<p>This Direction applies as the planning proposal affects land within an existing residential zone.</p> <p>The planning proposal is inconsistent with this Direction as it does not specifically address the requirements of the Direction.</p> <p>However, given the planning proposal will facilitate the sale of the land to enable the necessary access to an adjacent proposed residential subdivision, supporting the provision of additional housing supply, it is considered the inconsistency is of minor significance.</p>

3.5 State environmental planning policies (SEPPs)

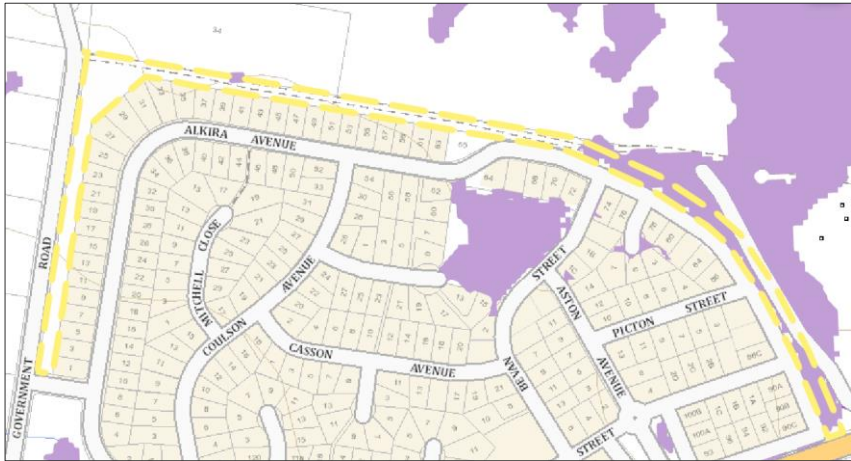

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Flora and fauna	<p>The subject land contains an extremely small area mapped as Biodiversity Values under the Biodiversity Conservation Act 2016 (Figure 5).</p>  <p>Figure 5 Biodiversity Values map (source: Biodiversity Values Map)</p> <p>The planning proposal states that the remainder of the proposed area contains larger trees that could contribute to biodiversity habitat for threatened species such as the Regent honeyeater (<i>Anthochaera phrygia</i>). The planning proposal has indicated that any future development would require a Biodiversity Development Assessment Report (BDAR) but would likely be undertaken as a streamlined assessment in accordance with the Biodiversity Assessment Method.</p> <p>However, it is recommended consultation occurs with BCS to confirm the suitability of the proposal. A condition is imposed on the Gateway determination in this regard.</p>
Bushfire	<p>The subject land is identified as bushfire prone (Figure 6).</p>  <p>Figure 6 Bushfire prone land map (source: NSW Spatial Viewer)</p> <p>As discussed above, consultation is required to occur with the NSW Rural Fire Service to resolve the inconsistency with the section 9.1 Directions and forms part of the Gateway conditions.</p>

Contamination	The planning proposal states that there is no known contamination affecting the subject land. Given the proposed reclassification would not increase the potential for sensitive land uses to occur outside of a development application, no issues have been identified in relation to contamination.
---------------	--

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Social infrastructure	<p>The planning proposal will facilitate the sale of land that has been identified as surplus to Council needs and has no known community purpose. This will reduce the maintenance burden on Council and assists the continued and improved use of recreation facilities that are important to the local community.</p> <p>The planning proposal will enable a secondary access to be constructed to provide legal and practical access to a proposed residential subdivision on the adjacent land to the north.</p>
Economic	The planning proposal will not result in adverse economic impacts and will reduce the maintenance burden on Council in enabling the sale of land that is surplus to Council needs.
Heritage	<p><i>European heritage</i></p> <p>The subject land does not contain any items listed as Heritage items in Schedule 5 of the Cessnock LEP 2011 or the State Heritage Register. The nearest heritage item is over 500 metres from the site. Therefore, the proposal is unlikely to impact upon the scheduled items or curtilage.</p> <p><i>Aboriginal cultural heritage</i></p> <p>An AHIMS search was carried out by the Department on 2 December 2024 which identified 5 Aboriginal sites recorded in or near the subject land. The planning proposal does not seek to reduce any conservation standards that apply and Aboriginal heritage will be further considered as part of the future use of the land. However, it is recommended consultation occurs with Mindaribba Local Aboriginal Land Council to confirm the suitability of the proposal.</p>

4.3 Infrastructure

The planning proposal will enable a secondary access to be constructed to provide legal and practical access to support housing delivery and a proposed residential subdivision on the adjacent land to the north.

5 Consultation

5.1 Community

The planning proposal is categorised as a standard under the LEP Making Guidelines (August 2023).

The Department's LEP Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan requires 28 calendar days (Monday – Sunday), which broadly aligns with the LEP Making Guideline. Council's Community Participation Plan supports the 28-calendar day timeframe.

A public hearing will also be required to be held in accordance with section 29(1) of the *Local Government Act 1993*. This must occur after the exhibition has ended and at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised. This is specified in the Gateway determination.

The required exhibition period forms part of the conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- NSW Rural Fire Service
- Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Directorate
- Mindaribba Local Aboriginal Land Council

6 Timeframe

Council proposes a 9-month time frame to complete the LEP (i.e. to September 2025).

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard.

An LEP completion date of 9 months is in line with the Department's commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

A Gateway condition is also recommended requiring the project timeline to be updated to reflect the date of the Gateway determination and timeframe to complete the LEP prior to community consultation.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal applies to Council owned land and the Governor's approval is required to extinguish the public reserve status, Council cannot 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 planning proposal is not inconsistent with the local and regional strategic planning framework;
- the planning proposal will allow for the sale of land to facilitate secondary access to support housing delivery and a proposed residential subdivision compliant with bushfire planning requirements;
- the subject land does not provide any current or likely future recreational value; and
- the planning proposal will support the continued and improved use of recreation facilities that are important to the local community.

9 Recommendation

It is recommended the delegate of the Secretary:

- agree that any inconsistency with section 9.1 Directions 5.2 Reserving Land for Public Purposes and 6.1 Residential Zones is minor or justified; and
- note that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require justification.

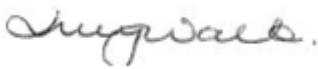
It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

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

1. Prior to agency and community consultation, the planning proposal is to be amended to:
 - (a) update the explanation of provisions to confirm that the public reserve status, or if any other covenants, will be extinguished.; and
 - (b) update the project timeline to reflect the date of the Gateway determination and timeframe to complete the LEP.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and LEP Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan.
3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
 - NSW Rural Fire Service
 - Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Directorate
 - Mindaribba Local Aboriginal Land Council

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 working days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. Council must ensure that all relevant obligations in relation to the reclassification of public land through the LEP are undertaken in accordance with the LEP Making Guidelines, Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan.
6. The LEP should be completed within nine months from the date of the Gateway determination.



11-12-2024

(Signature)_____
(Date)

Lucy Walker
Manager, Hunter and Northern Region
Local Planning and Council Support



13/12/24

(Signature)_____
(Date)

Craig Diss
A/Director, Hunter and Northern Region
Local Planning and Council Support

Assessment officer

Georgia Weallans
Planning Officer, Hunter and Northern Region
5778 1413