



Gateway determination report – PP-2024-2769

Cessnock LEP 2011 Housekeeping amendments

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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal (V1) – Administrative Amendments, December 2024

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Cessnock
PPA	Cessnock City Council
NAME	Housekeeping amendments
NUMBER	PP-2024-2769
LEP TO BE AMENDED	Cessnock LEP 2011
ADDRESS	Various (detailed in report)
DESCRIPTION	Various (detailed in report)
RECEIVED	20/12/2024
FILE NO.	IRF25/17
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:

- resolve minor anomalies within the Cessnock LEP to allow for better planning and land use outcomes. These anomalies relate to both mapping and LEP text changes.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to make five separate amendments to the Cessnock LEP 2011 and contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

The five amendments and changes proposed to either the text or mapping of CLEP 2011 are detailed below (more detail is also provided in Part 2):

Item 1 - *Permit storage premises with consent in the E4 General Industrial zone* – by inserting ‘storage premises’ into the CLEP 2011 land use table for the E4 zone as ‘Permitted with consent’

Item 2 - *Rezone Lot 328 DP 755231 from RU2 Rural Landscape to C2 Environmental Conservation* – by amending the relevant land zoning map for the subject site from RU2 to C2.

Item 3 – *Remove the Minimum Lot Size applying to the MU1 Mixed Use and E1 Local Centre zone in Weston Town Centre* – by amending the relevant Minimum Lot Size map (MLS) for the subject area to show no MLS applicable.

Item 4 – *Amendment of Clause 4.1E Subdivision of land not serviced by sewage reticulation system* – by rewording clause 4.1E to include the words ‘not less than’.

Item 5 – *Huntlee New Town Urban Release Area (URA)* – to amend the relevant URA map for the subject site to include two new areas (Rothbury and North Rothbury) associated with the development.

The explanation of provisions is considered adequate.

1.4 Site description and surrounding area

The proposed policy amendments apply to various properties across a range of zones. The proposed mapping amendments affect specific properties and are discussed in more detail in part two of this report.

1.5 Mapping

The planning proposal seeks to make mapping changes to items 2, 3 and 5. Whilst the planning proposal provides some mapping relevant to the proposed changes, it would benefit from being updated prior to exhibition to include additional maps for item 2. A condition to this effect is included in the Gateway determination.

2 Need for the planning proposal

The planning proposal is not a result of endorsed strategy or study, rather the result of a periodic review of Cessnock LEP.

The following provides a summary of the proposed amendments, the justification and planning assessment:

Item 1 - *Permit storage premises with consent in the E4 General Industrial zone*

As part of the employment zones reform in 2023, the former IN1 General Industrial and IN2 Light Industrial zones were merged into the current E4 General Industrial zone. ‘Storage premises’ were previously a land use permitted with consent in the IN2 Light Industrial zone, however under the transition became a prohibited use in the E4 General Industrial zone.

Schedule 1 of the Standard Instrument Order provides a savings and transition provision which enables the continued operation of valid land uses (such as storage premises) under the former zone, however this provision ceases to operate from 26 April 2025. Council must therefore correct this oversight (via a planning proposal) to enable storage premises to become a permitted land use with consent in the E4 zone. This would also enable Council to consider any development application for the expansion of existing storage premises.

This amendment is consistent with the Standard Instrument, does not conflict with the E4 zone objectives and is considered appropriate.

Item 2 - *Rezone Lot 328 DP 75523, Hospital Road, Weston from RU2 Rural Landscape to C2 Environmental Conservation*

The subject lot, which is Crown Land, is currently zoned RU2 with an approximate area of 2000m² and adjoins the Kurri Kurri Cemetery. The existing MLS for the lot is 40ha. The adjacent cemetery was rezoned from RU2 Rural Landscape to SP2 Infrastructure in 2023 as part of PP-2022-1461. That planning proposal sought to undertake a comprehensive review of Special Purpose (SP) zones in the Cessnock Local Government Area. Part of the proposal rezoned all operational

cemeteries to SP2. As the subject parcel was not part of the cemetery, it was not rezoned and hence remains as an isolated patch of RU2 zoned land amongst adjoining C2 zoned land.

The proposal seeks to rezone this parcel from RU2 Rural Landscape to C2 Environmental Conservation consistent with the surrounding land and reflecting the sites environmental attributes. Due to the site being completely vegetated and part of a larger Crown Land reserve designated for environmental protection, the application of the C2 Environmental Conservation zone is considered consistent with LEP Practice Notes Preparing LEPs using the Standard Instrument (PN 11-002) and Environmental Protection Zones (PN 09-002).

The planning proposal has not sought to amend the MLS associated with the subject lot. The existing MLS for the lot is 40ha whilst the MLS for surrounding C2 zoned land is 80ha. With an area of approximately 2000m², subdivision of the land is not permissible, however it is considered appropriate that the relevant MLS should be amended for consistency. Correspondence with Council 16/01/2025 has confirmed that they would also like to amend the MLS for the site. A condition to this effect has been included in the Gateway determination.

This amendment is considered to be appropriate, pending consultation with Crown Lands.



Figure 1: Lot 328 DP 755231 current zoning (source: Planning proposal)

Item 3 – Remove the Minimum Lot Size applying to the MU1 Mixed Use and E1 Local Centre zone in Weston Town Centre

In the Cessnock LEP 2011, there is generally no minimum lot size applying to employment zones. The only employment zone that has an MLS is part of the Weston Town Centre zoned E4 and MU1 as illustrated in Figures 2 and 3. For consistency across the zone, Council seeks to remove the MLS which currently applies to this part of the Weston Town Centre. This amendment is considered to be appropriate and will provide consistency with the other employment zoned areas.

For clarification purposes during exhibition, it is recommended that the planning proposal is updated to list the property details (Lot and DP) effected by this amendment. A condition to this effect has been included in the Gateway determination.

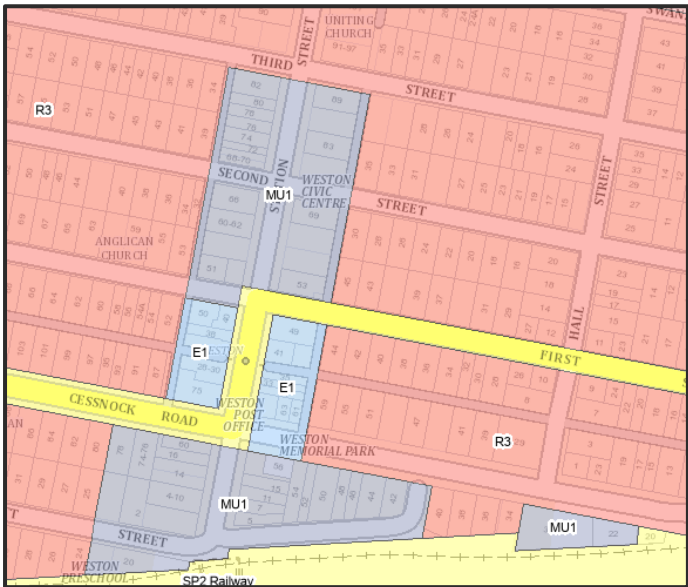


Figure 2: Current zone map (source: Spatial viewer)

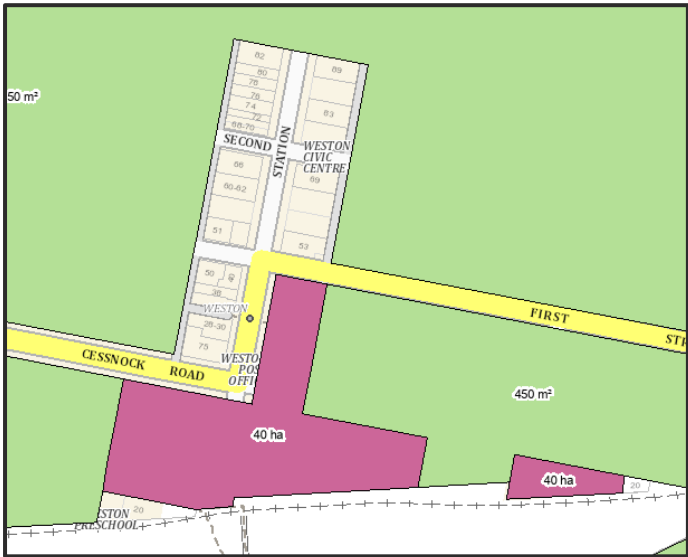


Figure 3: Current Lot Size Map (source: Spatial viewer)



Figure 4: Proposed lot size map (source: Spatial viewer)

Item 4 – Amendment of Clause 4.1E Subdivision of land not serviced by sewage reticulation system

The proposal seeks to amend subclause (1)(a)(i) to read “not less than 4000m”. Council states that this will align with best practice as the lot does not have to be exactly 4000m² for the clause to apply. This amendment is considered appropriate.

Clause 4.1E currently reads:

4.1E Subdivision of land not serviced by sewage reticulation system

(1) Development consent must not be granted to the subdivision of land that will not be serviced by a sewage reticulation system following registration of the plan of subdivision unless the consent authority is satisfied—

(a) each resulting lot will be—

(i) 4,000m², or

(ii) if the minimum lot size shown on the [Lot Size Map](#) for the land is more than 4,000m²— the minimum lot size shown on the map, and

(b) all resulting lots are suitable for on-site sewage management.

(2) This clause prevails over clauses 4.1, 4.1AA and 4.2B in the case of an inconsistency.

Item 5 – Huntlee New Town Urban Release Area

The proposal confirms that areas of the state significant Huntlee New Town site in Rothbury/North Rothbury are not identified in the Urban Release Area mapping within Cessnock LEP 2011.

While Council is unclear why these areas have been excluded, it is considered likely they may have been excluded due to their current SP2 Infrastructure zoning. The proposal seeks to amend the LEP URA maps in accordance with Figure 5. This amendment does not change any zoning or enable any additional development.

The Department’s Assessment Team responsible for the assessment of the Huntlee State Significant Development applications has confirmed that the sites are within the Huntlee urban footprint and has raised no objection to the amendment of the LEP URA maps to include these sites.

As the sites are considered to be part of the Huntlee State Significant Development urban footprint, it is considered that their inclusion with the URA mapping is appropriate.

The planning proposal does not currently provide a clear justification for the inclusion of these sites on the URA map or the effects that this would have. A condition of the Gateway is recommended to update the planning proposal prior to exhibition to provide further justification and explain the consequence of this amendment.

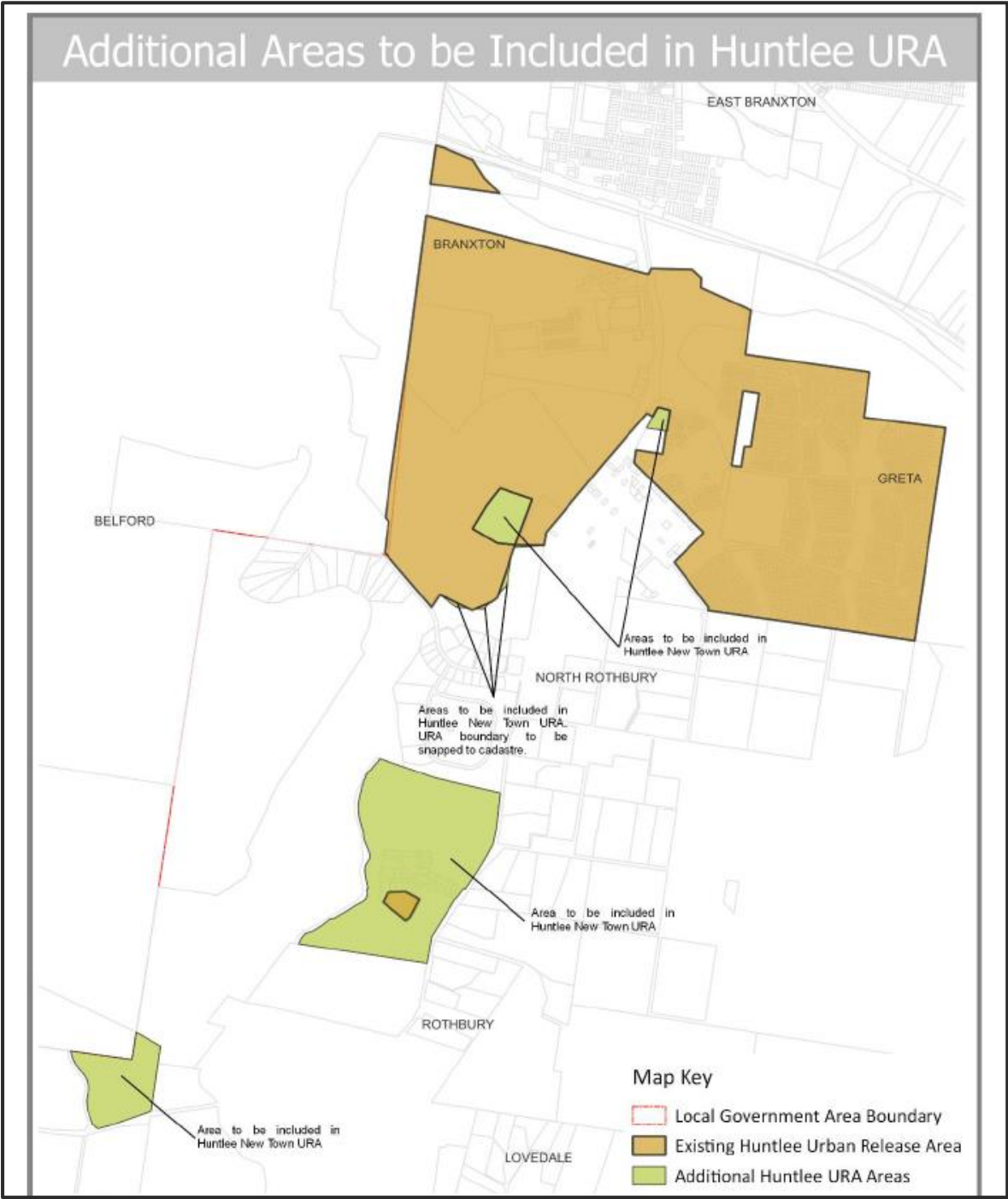


Figure 5: Additional areas to be included in the Huntlee URA (Source: planning proposal)

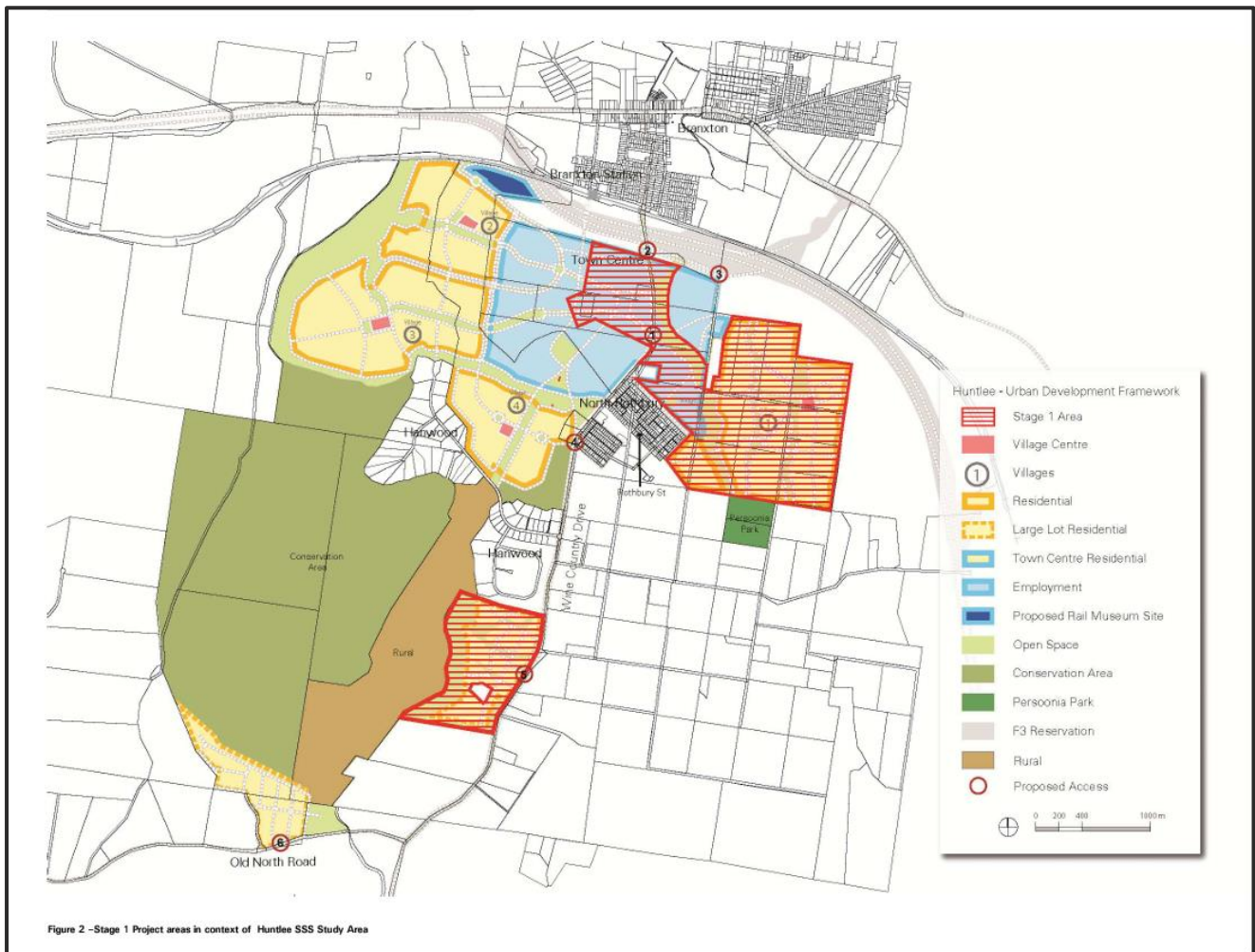


Figure 6: Huntlee Urban Development Area Stage 1 (Source: Planning Portal Major Projects Huntlee Stage 1 Development)

3 Strategic assessment

3.1 Regional Plan

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

3.2 Greater Newcastle Metropolitan Plan 2036

The proposal is considered to be not inconsistent with the goals, objectives and overall intent of the Greater Newcastle Metropolitan Plan 2036.


3.3 Local

The proposal states that it is consistent with the Cessnock Local Strategic Planning Statement 2036 (LSPS) and Community Strategic Plan. Ensuring the Cessnock LEP 2011 is reviewed and amended as needed is considered to help meet the broader objectives of the local strategies.

3.4 Section 9.1 Ministerial Directions

The planning proposal's is considered to be consistent with all relevant section 9.1 Directions except as discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistency	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as items 1 and 3 will increase land uses or subdivision potential within certain business areas of the LGA. This inconsistency is considered to be of minor significance as no significant increase in development potential or risk will result as:</p> <ul style="list-style-type: none"> ‘storage premises’ have historically been permitted on the subject land prior to the Department’s Employment Zone Reforms; removal of the subdivision minimum lot size only seeks to apply consistent planning controls to other similar zoned areas located across the LGA and which experience that same level of constraints; and CLEP 2011 contains suitable provisions that would enable the consideration of any flooding issues at any future development application stage.
		 <p>Figure 7: 1%AEP Flood Mapping in Weston (Source: Cessnock Council)</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>This proposal is inconsistent with this direction as Item 2 and parts of item 3 are mapped as bushfire prone land. This direction requires that the relevant planning authority consult with the Commissioner of the NSW Rural Fire Service (RFS). Until this consultation has occurred, and a written response received, the inconsistency of the proposal with this direction remains unresolved.</p>

9.2 Rural Lands	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as Item 2 seeks to rezone land from RU2 Rural Landscape to C2 Environmental Conservation. The site is an isolated parcel, fully vegetated, surrounded by land zoned C2 and is not suitable for agricultural purposes.</p> <p>A C2 zone is considered to be the most appropriate zone for this site and any inconsistency with this direction is considered to be of minor significance and justified.</p>
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3.5 State environmental planning policies (SEPPs)

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

4 Site-specific assessment

4.1 Environmental

The proposal is not expected to have any adverse environmental impacts. Item 2 will have a positive environmental outcome as it will zone the site to a more appropriate C2 Environmental Conservation zone and item 5 updates mapping to reflect state significant residential development applications.

4.2 Social and economic

The proposal involves minor housekeeping matters and is not 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 the planning proposal.

5 Consultation

5.1 Community

Council does not specify a community consultation period. A minimum exhibition period of 20 working days is recommended consistent with the Department's LEP Making Guideline for a standard LEP.

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:

- Crown Lands
- NSW Rural Fire Service

6 Timeframe

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

The Department recommends an LEP completion date of 9 months from the date of the gateway determination in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

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

As the planning proposal is generally consistent, or justifiably inconsistent with the State, regional and local plan making framework, it is recommended that Council 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 contains minor housekeeping amendments to refine provisions and correct mapping anomalies;
- the proposal will assist in ensuring the ongoing effective and efficient operation of the Cessnock LEP 2011; and
- the proposal is generally consistent, or justifiably inconsistent with the State, regional and local planning framework.

Based on the assessment outlined in this report, the proposal must be updated before consultation to include:

- a proposed zoning map and an existing and proposed minimum lot size map for item 2;
- a discussion in Part 2 detailing the intent to also amend the applicable MLS for item 2;
- a list of all properties affected by item 3; and
- further justification for item 5 on the need to update the URA mapping and explain the effect inclusion in the URA map will have on the subject land.

9 Recommendation

It is recommended the delegate of the Secretary:

- **agree** that any inconsistencies with section 9.1 Directions 4.1 Flooding and 9.2 Rural Lands are of minor significance and justified; and
- **note** that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require further 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 community and agency consultation, the planning proposal is to be updated to include:
 - a proposed zoning map and an existing and proposed minimum lot size map for item 2;
 - a discussion in Part 2 detailing the intent to also amend the applicable MLS for item 2;

- a list of all properties affected by item 3; and
 - further justification for item 5 on the need to update the URA mapping and explain the effect inclusion in the URA map will have on the subject land.
2. Consultation is required with the following public authorities:
 - NSW Crown Lands
 - NSW Rural Fire Service
 3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise Council to be the local plan-making authority and that an LEP completion timeframe of 9 months be included on the Gateway.



_____ (Signature)

_____ 16/01/2025__ (Date)

Gina Davis
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