



Vincent Street
CESSNOCK

27 October 2016

ORDINARY MEETING OF COUNCIL

WEDNESDAY, 2 NOVEMBER 2016

ENCLOSURES

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PLANNING PROPOSAL
Amendment to the
Cessnock Local Environmental Plan 2011

John Renshaw Drive BLACK HILL
Rezoning of LOT 1131 DP 1057179

Version 2.0

25 October 2016

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Planning Proposal – Black Hill

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PART 1: OBJECTIVES and OUTCOMES

The objectives of this Planning Proposal are to:-

1. Implement the policy provisions of the Lower Hunter Regional Strategy 2006 which identifies the subject land as Employment Lands – balanced with the management of local impacts;
2. To improve the condition of land which include endangered ecological communities (Lower Hunter Spotted Gum) and provide mechanisms for the highly ecologically significant parts of land for conservation in perpetuity;
3. To enable a limited number of environmental living (residential subdivision and dwelling) opportunities compatible with the ecologically significant parts of the site that also supports the ongoing viability of the Black Hill Public School and other local services; and
4. To ensure that development occurs in a cost effective manner whereby there are no inappropriate demands on the funding and/or prioritisation of public infrastructure

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PART 2: EXPLANATION of PROVISIONS

Statutory Requirements

This Planning Proposal describes the subject land and outlines the proposed zoning and planning control changes. It has been prepared in accordance with the Department of Planning and Environments (DoPE) Guide to Preparing Planning Proposals (October 2012), and with reference to DoPE's Guide to Preparing Local Environmental Plans (October 2012). These guides outline the matters to be addressed in a planning proposal set out in Section 55(2) of the Environmental Planning and Assessment Act 1979.

The Planning Proposal

This Planning Proposal (PP) proposes the rezoning of approximately 300 hectares of land from Zone RU2 Rural Landscape to a combination of IN2 Light Industrial (195.6ha), E4 Environmental Living (64ha) and E2 Environmental Conservation (40.4ha) under the *Cessnock Local Environmental Plan 2011* (LEP 2011).

Cessnock Local Environmental Plan 2011 - Instrument

1. The above objectives will be achieved by amending the Cessnock Local Environmental Plan 2011 (Cessnock LEP 2011) in the following ways (as shown in **Map 4** within this Planning Proposal):
 - a) The predominant zoning of the subject land being IN2 – Light Industrial (approximately 195.6 hectares);
 - b) The zoning of the northern sector of the site from RU2 – Rural Landscape to E2 – Environmental Conservation (approximately 40.4 hectares);
 - c) The zoning of the southern sector of the site from RU2 – Rural Landscape to E4 – Environmental Living (approximately 64 hectares)
2. The objectives will be enacted by:-
 - a) Applying the current IN2 Light Industrial zone (approximately 195.6 ha) which has zone objectives and a land use table including the additional permitted use of general industry (under Schedule 1) as follows:

Zone IN2 Light Industrial

Objectives of zone

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.

Permitted without consent

Nil

Permitted with consent

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Depots; Hotel or motel accommodation; Industrial training facilities; Light industries; Neighbourhood shops; Pubs; Roads; Timber yards; Warehouse or distribution centres; Any other development not specified in item 2 or 4

Prohibited

Agriculture; Airstrips; Animal boarding or training establishments; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Child care centres; Commercial premises; Community facilities; Correctional centres; Eco-tourist facilities; Educational establishments; Entertainment facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Function centres; Hazardous storage establishments; Health services facilities; Helipads; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Industries; Information and education facilities; Jetties; Marinas; Mooring pens; Moorings; Offensive storage establishments; Public administration buildings; Recreation facilities (major); Recreation facilities (outdoor); Residential accommodation; Respite day care centres; Resource recovery facilities; Sewerage systems; Tourist and visitor accommodation; Waste disposal facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies.

- b) Amending the Cessnock LEP 2011 by the introduction of the E4 – Environmental Living zone with objectives and the land use table as set out below:

Zone E4 Environmental Living

Objectives of zone

- *To provide balance between low-impact residential development in areas with special ecological, scientific or aesthetic values with enabling limited additional population to support local services and facilities;*
- *To ensure that residential development does not have an adverse effect on those values;*
- *To conserve the rural or bush land character and the biodiversity or other conservation values of the land.*
- *To provide for the development of land for purposes that will not, or will be unlikely to, prejudice its possible future development for urban purposes or its environmental conservation.*

Permitted without consent

Environmental protection works; Home occupations: Home based child care

Permitted with consent

Agriculture; Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Child care centres; Community facilities; Dwelling houses; Emergency services facilities; Environmental facilities; Farm buildings; Flood mitigation works;; Home businesses; Home industries; Information and education facilities; Landscaping material supplies; Neighbourhood shops; Passenger transport facilities; Plant nurseries; Recreation areas; Research stations; Respite day care centres; Roads; Roadside stalls; Secondary dwellings; Water reticulation systems

Prohibited

Aquaculture; Industries; Intensive livestock agriculture; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

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- c) Retaining the objectives and land use table for the E2 Environmental Conservation zone which applies to the northern sector of the site which are as follows:

Zone E2 Environmental Conservation

Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Permitted without consent

Home occupations

Permitted with consent

Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Home-based child care; Recreation areas; Roads; Secondary dwellings; Tourist and visitor accommodation

Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

- d) Applying the existing Clause 6.3 in the Cessnock LEP 2011 - given that the subject site is proposed to become an urban release area - regarding development control plans.

Development Control Plan

1. *The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.*
2. *Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in sub-clause (3) has been prepared for the land.*
3. *The development control plan must provide for all of the following:*
 - (a) *a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing,*
 - (b) *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
 - (c) *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent*

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locations, and detailed landscaping requirements for both the public and private domain,

- (d) a network of passive and active recreational areas,*
 - (e) Stormwater and water quality management controls,*
 - (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
 - (g) detailed urban design controls for significant development sites,*
 - (h) measures to encourage higher density living around transport, open space and service nodes,*
 - (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
 - (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*
4. Sub-clause (2) does not apply to any of the following development:
- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,*
 - (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,*
 - (c) a subdivision of land in a zone in which the erection of structures is prohibited,*
 - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.*

Cessnock Local Environmental Plan 2011 – Part 7 Additional Local Provisions

The objectives will be enacted by the inclusion of a new local clause allowing the maximum of four lots to be created with the erection of a single dwelling only on each lot in the E4 – Environmental Living zone only.

Subdivision of land at Black Hill Road, Black Hill

- (1) This clause applies to land at Black Hill Road, Black Hill, being Lot 1131, DP 1057179 zoned E4 Environmental Living.
- (2) Despite clause 4.1 (3), development consent may be granted for the subdivision of land to which this clause applies, but only if:
 - (a) the land will be subdivided into a maximum of 4 lots, and
 - (b) a maximum of one dwelling house will be erected on each lot.

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Schedule 1 Additional permitted uses

Use of certain land at Black Hill

(1) This clause applies to land at Black Hill Road, Black Hill, being Lot 1131, DP 1057179 zoned IN 2 Light Industrial.

(2) Development for the purpose of **General Industry** is permitted with development consent.

Cessnock Local Environmental Plan 2011 - Maps

1.2 The objectives will be enacted by:

- a. Amending the **land zoning map** (refer to **Map 4**) which is integral to the Cessnock LEP 2011 to the effect that:
 - i. The predominant zoning of the subject land being IN2 – Light Industrial (approximately 195.6 hectares);
 - ii. The zoning of the northern sector of the site from RU2 – Rural Landscape to E2 – Environmental Conservation (approximately 40.4 hectares);
 - iii. The zoning of the southern sector of the site from RU2 – Rural Landscape to E4 – Environmental Living (approximately 64 hectares).
- b. Amending the **Lot Size Map** (refer to **Map 6**) so that:-
 - i. No minimum lot size will be applicable to the land zoned IN2 – Light Industrial;
 - ii. A minimum lot size of 80 hectares applies to the E4 – Environmental Living zone. However it should be noted a local clause is recommend below for up to four additional lots to be created; and
 - iii. A minimum lot size of 80 hectare for the E2 – Environmental Conservation zone which is consistent with the E2 – Environmental Conservation zone currently in the Cessnock LEP 2011.
- c. Amending the **urban release area map** (refer to **Map 7**) which is integral to the Cessnock LEP 2011 so that the subject land is identified as an urban release area. It is a condition of the Gateway determination that the land be identified as an urban release area which has the effects of:-
 - i. Enabling the required contribution by the proponent of funding towards the provision of Designated State infrastructure and to provide the required public infrastructure in a timely manner - (Designated State infrastructure includes state and regional roads, bus interchanges and bus lanes, land required for regional open space and land required for social infrastructure and facilities).
- d. A Development Control Plan having to be prepared for the site before any development application (DA) is determined.
- e. The intended outcomes for the E4 Environmental Living zone will be achieved through a combination of the zone objectives and land use table, local clause allowing for a maximum of four lots and the Development Control Plan. As a result the Planning Proposal is considered to be consistent with the Regional Plan in that the number of lots will not represent a rural subdivision of any consequent scale.

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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

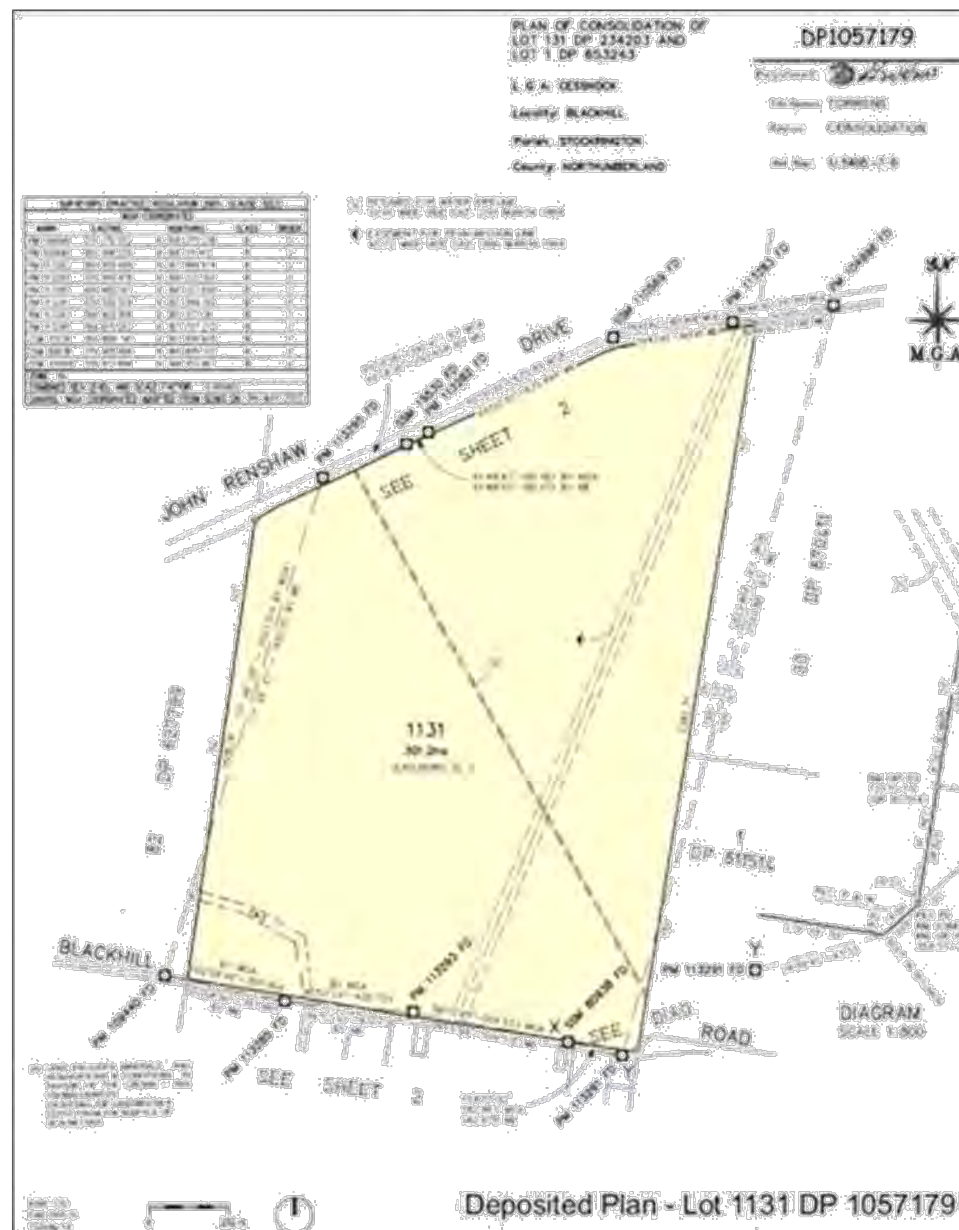
Overview of the Site

The subject site is located on the eastern extremity of the Cessnock Local Government Area (LGA). The site is bounded on the east by the Newcastle LGA, and the boundary with the Maitland LGA is located less than 500m to the north (See **Map 1**).

Black Hill is located approximately 20km north-west of the Newcastle commercial centre; 12 km south-east of Maitland; 15 km east of Kurri Kurri; and approximately 14 km south-west of Raymond Terrace. All of these centres provide a wide range of business, commercial and residential services and facilities. Excellent connections are provided from the subject site to these major destinations and beyond (e.g. to Sydney and Brisbane) through the site's proximity to John Renshaw Drive; the New England Highway; the Pacific Highway; the Hunter Expressway; and the M1 Pacific Motorway; all located within 5km of the site, with most located within 2km.

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Figure 1 – Deposited Plan of Subject Site**Locality Character**

The area is characterised by rural, rural residential and bushland uses. The character of the area to the north and north-east of the subject site has undergone a transition in recent years, changing from predominantly rural enterprise uses given mining and industrial developments and rezonings. This includes the recent development of several business and industrial parks west of Beresfield, sited to take advantage of the road network accessibility. A concept plan for a large industrial development directly adjacent to the subject site has recently been approved. Specific land uses in the immediate vicinity of the site are described below:

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- **North:** The northern boundary of the site is adjoined by John Renshaw Drive, a major 2-lane thoroughfare providing connections from Kurri Kurri in the west to the New England Highway in the east. The Donaldson Open Cut Mine is located on the northern side of John Renshaw Drive, separated from the road by a vegetated buffer. The portal of the Abel Underground Mine (also operated by Donaldson Coal) is located in association with the Open Cut Mine. This mine extends under John Renshaw Drive and under the subject site. Further to the north-east of the site lie several industrial and business estates; the New England Highway; and the township of Beresfield;
- **East:** Overhead 330kV transmission lines run the length of the site's eastern boundary within a 60 metre wide easement that is cleared to grass level. Large areas of predominantly heavily vegetated land lie to the east of the power lines. A 183ha section of this land, known as the 'Black Hill Employment Lands (Northern Estates)' is owned by Coal & Allied. A concept plan for the industrial development of this land was recently approved. The remainder of the land accommodates sparse rural and rural residential development;
- **South:** The site is bounded to the south by Black Hill Road, a 2-lane rural road. The Black Hill Public School is located on the southern side of Black Hill Road, in addition to the Black Hill Uniting Church and cemetery and several rural/ rural residential developments; and
- **West:** Land to the west comprises a significant area of heavily vegetated bushland.

Site Description

The land formerly accommodated a substantial chicken meat and egg farming operation first developed in the early 1960's; comprising multiple individual family farms, each with its own dwelling house, up to 57 large chicken sheds and associated development. In addition to the chicken sheds, farming development included a vaccine laboratory; diagnostic laboratory; veterinarian dwelling house; workshops; dead-bird burial grounds; and fuel/chemical storage areas. Most of this development has now been demolished, with only a few structures remaining.

Currently, the site is a mix of grassy paddocks, used for low-scale grazing purposes and tree covered areas. Much of the site has been cleared in the past to accommodate various activities and is now vegetated with pasture grasses. Large areas of native woodland vegetation remain scattered throughout the site, though this vegetation is fragmented, mostly heavily under scrubbed and disturbed, with little or no native understorey remaining, and with young stands of trees that lack larger hollows. Vegetation associated with most creek lines within the site appears to be in a highly degraded state, with infestations of lantana.

Existing development on, and uses of, the site generally comprise the following:

- Fencing, cattle yards and ramps - the site is frequently grazed by up to 250 head of beef cattle at any one time;
- Former diagnostic laboratory building - currently vacant;
- 4 occupied dwelling houses- utilised by a property manager and rental tenants;
- Former turkey hatchery buildings- a large building is currently vacant, while a smaller building is used as a site office;
- Several sheds/ outbuildings scattered around the site- predominantly vacant;
- Several roads throughout the site- predominantly unsealed and in poor condition;
- Former vaccine laboratory buildings and associated development- currently vacant; and
- Stockpiling area for concrete material.

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Various areas of the site are also affected by contamination (derived from previous activities on the site) and underground mining operations. Contamination remediation works are ongoing in several locations around the development site, while remediation (including capping) is complete in several other locations.

Underground mining works (part of the Abel Underground Coal Mine, operated by Donaldson Coal) began under the site in August 2010, and were expected to continue until around July 2013 under the current license. This mining has occurred under the majority of the site, and various air, water, noise and vibration monitoring stations are positioned around the site in association with this mining. Due to these operations, access to the site is strictly controlled via gates and fencing. The mining operations can continue under the site with the written agreement of the landowner. This consent has been granted and the mining timeframe has now been extended until mid-2015. To date, some areas of the site have experienced effects associated with recent mining activities, including mine subsidence.

Section A: Need for Proposal

1 Resulting from a Strategic Study or Report

The Planning Proposal results from policy directions and/or analysis from the following strategic plans and studies:

- a) *The Lower Hunter Regional Strategy – Department of Planning and Environment* (October 2006) (now superseded);
- b) *Hunter Regional Plan – Department of Planning and Environment* (October 2016);
- c) *Shaping the Lower Hunter: Shaping the next Twenty Years - Discussion Paper* (March 2013);
- d) *Cessnock City Wide Settlement Strategy*: Cessnock City Council 2010
- e) *The Hunter Region Employment Lands – a market and context review for the Hunter Development Corporation* by ADW Johnson Pty Ltd and Daley Research Systems (November 2010) – Unpublished document;
- f) *The Hunter Region Employment Lands Study by URBIS – prepared for the Hunter Development Corporation* (December 2012) – Unpublished document;
- g) *The Hunter Region Employment Lands by the Hunter Development Corporation* (December 2010) – Published document; and
- h) *Employment Lands Analysis - Monteath and Powys* (commissioned for this purpose by Council) – December 2014.

Lower Hunter Regional Strategy (Superseded)

The Lower Hunter Regional Strategy (LHRS) was adopted by the NSW Cabinet in October 2006 and subsequently released by (then) Department of Planning and Infrastructure in 2006. The LHRS was re-affirmed by the NSW Cabinet in February 2010. This document has now been superseded by the 14 October 2016 release of the Hunter Regional Plan, however, as this proposal was initiated under LHRS it still remains relevant in the context of the assessment. As a result all previous analysis of the site in regard to the LHRS has been retained in this Planning Proposal.

The LHRS includes the identification of population and employment capacity targets for the Lower Hunter region over the next 25 years and actions to ensure the ongoing growth and prosperity of the region.

The Lower Hunter region is targeted to accommodate an additional 66,000 jobs in the next 25 years, 16,500 of which are projected to occur in designated employment lands. This demand is anticipated to derive not only from an increasing population but also to meet the

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growing needs of the broader metropolitan region of Sydney. The LHRs anticipate that, in order to meet the demands for employment land, the *zoning of a further 1,000 hectares of additional land identified through the Regional Strategy* is required, including land at...Black Hill (p20).

Further, the LHRs has identified an opportunity to enhance the region's freight handling capacity through the designation of a site as a future freight hub *in the vicinity of the junction of the New England and Pacific Highways* with access to the Golden Highway and main north-south railway. This land is intended to accommodate various freight handling activities, and *additional employment lands at...Black Hill* will directly support the freight hub (p21). This development of employment land is recognised to *provide a competitive advantage to new industries through the minimisation of transport and handling costs* (p21). The LHRs directs local councils to *rezone proposed employment land as identified in the Regional Strategy (Strategy Map) through their local environmental plans* (p22).

The LHRs recognises that the area proposed as a freight hub and surrounding employment uses is likely to have some significant conservation values which need to be managed. Accordingly, the LHRs recommends this be achieved through a *structure-planning process that brings together the owners of the various sites in the freight hub precinct* (p21).

The Department of Planning and Environment did not proceed to initiate preparation of this Structure Plan. However a study has been completed for the freight hub precinct on behalf of a number of State government agencies. The study, Freight Hub Hunter (October 2008)¹ analysed the demand and opportunities for a freight hub and associated activities, and set objectives for employment land within this precinct. The site is identified as a potential development area within the precinct, but not one of the preferred options for the intermodal freight hub.

Further, the LHRs has identified an opportunity to enhance the region's freight handling capacity through the designation of a site as a future freight hub in the vicinity of the junction of the New England and Pacific Highways with access to the Golden Highway and main north-south railway. This land is intended to accommodate various freight handling activities, and additional employment lands at...Black Hill will directly support the freight hub (p21). This development of employment land is recognised to provide a competitive advantage to new industries through the minimisation of transport and handling costs (p21). The LHRs directs local councils to rezone proposed employment land as identified in the Regional Strategy (Strategy Map) through their local environmental plans (p22).

Hunter Regional Plan

The Hunter Regional Plan 2036 provides the strategy necessary to deliver the vision for the Hunter Region. The subject site is identified as part of a Growth Area in the Plan. Black Hill is identified under Direction 24: Protect the economic functions of employment land. This Direction focuses on the convergence of the national road network around this Thornton, Beresfield and Black Hill area. As a result in this context Growth Area would be interpreted to be considered as employment land which is the same as the LHRs.

The Black Hill Planning Proposal is also considered to be consistent with the Hunter Regional Plan in regard to the environmental values of the area, as the proposal will be required to achieve biodiversity offsetting which will need to occur both on and off site.

¹Freight Hub Hunter Part 1 – Executive Summary Report, 7 October 2008, prepared by Strategic Design + Development Pty Ltd

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Lower Hunter Regional Conservation Plan

The Lower Hunter Regional Conservation Plan is a complimentary document to the LHRS and identified a green corridor between the Watagan Ranges and the Stockton Peninsular is identified for protection in the LHRS (p13). The site subject of this PP adjoins, but is not mapped within, the green corridor.

Cessnock City Wide Settlement Strategy 2010

The Cessnock City-Wide Settlement Strategy was adopted by Council in 2010. The most relevant data and policy directions relevant to the evaluation of the Black Hill Planning Proposal are explained below.

Existing land supply

The Cessnock LEP 1989 identified three industrial land use zonings:

- 4(a) Industrial zone;
- 4(b) Light Industrial zone
- 4(h) Hunter Employment Zone

These zones are concentrated in six main areas across the Cessnock LGA as shown below.

Table 1: Cessnock LGA zone concentration

Location	Total Area (ha)	Occupied (ha)	Vacant (ha)
4(a) Industrial			
Kurri Kurri	60	45	15
Cessnock (Tunnel Rd)	10	0	10
TOTAL 4(a) land	70	45	25
4(b) Light Industrial			
Cessnock	16.4	12	4.4
Kurri Kurri	23.3	18.6	4.7
Weston	10.5	7.1	3.4
Branxton	13.6	9.7	3.9
TOTAL 4(b) land	63.8	47.4	16.4
4(h) HEZ			
	870	0	870

There is a mixture of light and general industrial land located at Kurri Kurri and Weston. The total extent of zoned land covers 94 hectares (as shown in Figure 10.2), of which 34 hectares is zoned for light industrial purposes. Opportunities for expansion are limited due to the proximity to residential areas (new and proposed) and the location of the Kurri Kurri Waste Water Treatment Works.

Hunter Economic Zone

The Hunter Economic Zone (HEZ) is by far the largest of all the industrial areas in the Cessnock LGA. Its advantage lies in the fact that it is one of the largest single tracts of industrial land in the Lower Hunter with around 870 hectares of zoned, surrounded by some 2,300 hectares of bushland. In this zone, allotment sizes are linked to the requirements of individual development (no pre-emptive subdivision), and is one of the few areas in the Hunter Region that can accommodate development with land requirements of up to 100 hectares. The development of HEZ is likely to encourage light industrial development to locate in close proximity to the HEZ estate.

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HEZ is targeted towards the regional-global market and specific zone objectives and a suite of planning controls exist to tailor development outcomes. This site is not considered to cater for general purpose local industrial land needs, instead recognised as one of the 'special purpose' sites in the Lower Hunter Regional Strategy.

Implementation of the Lower Hunter Regional Strategy will result in major changes to the regional industrial land supply over 25 years to 2031. For the HEZ site, the planned major tracts of export land targeting similar markets across the region will place further competitive pressures on HEZ, notwithstanding that it has 'first mover' advantages to other sites in this category (being already zoned for development). The site has no direct frontage but is close to the Hunter Expressway.

Take-up of Industrial Land

The CWSS includes commentaries as follows:

- a) *Historically, take-up rates of light industrial land in Cessnock were estimated at between 2 and 4 ha per annum and, for general industrial land, almost a negligible rate of around 1 - 2 ha per annum. This pattern has been attributed to a number of reasons:*
 - i. *Comparatively limited supply of both general and light industrial land;*
 - ii. *Traditional sources of demand have been from industries which are now in decline;*
 - iii. *Available land is largely encumbered by environmental, access and land use conflicts;*
 - iv. *Land ownership is fragmented and available parcels are small/poorly configured; and*
 - v. *There are a number of competing marketed industrial areas in the Lower Hunter.*
- b) *In terms of more recent demand trends, real estate agents confirm a shortage of industrial land in the township of Cessnock (AEC Group, 2007). The supply pressure has pushed average industrial land prices beyond \$160/m2 and resulted in Cessnock losing business to Racecourse Road at Maitland. The recent subdivision at Kurri Kurri has sold off the plan though no building works have commenced. Demand across the market is from local service businesses given the nature of the land supply and demand is reported as strongest for 2,000 – 4,000 m2 lots as per the Kurri Kurri subdivision (AEC Group, 2007).*
- c) *Current sale and price trends based on RP data property statistics indicate that an average of 5-10 industrial land sales involving around 5-7 hectares of land have occurred since 2000. It should be noted that this is not vacant greenfield sites and, therefore, does not wholly represent new industrial land take-up rates but gives an indicative value. There has been a dramatic increase in the average rates of these sales above \$150/sqm in 2006 although there was less than 1 ha of land sold in total. Over the past seven (7) years, Branxton has recorded the highest average value of land at \$73/sqm, followed by Cessnock (\$59/sqm), Weston (\$33/sqm) and Kurri Kurri (\$26/sqm). The majority of lot sales have been less than 1 ha in size (AEC Group, 2007).*
- d) *Projected local demand for all general purpose industrial land is estimated at between 72 -192 hectares over 25 years to 2031 (see Table 10.4 below) based on various take-up rates. The upper ratio considers the potential for higher population growth, latent market demand, and supply-led increases to demand and associated industry support uses that may be generated from progressive*

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development at HEZ. The lower (or conservative) ratio considers continued low organic population growth, competition from nearby local government areas and retail bulky goods development being restricted in industrial zones. The medium ratio generally reflects the current take-up rate across all existing land zoned either 4(a) or 4(b) in the Cessnock LGA.

Table 2 - Projected Light Industrial and Industrial Land Demand, Cessnock (CWSS – S2, AECgroup) (Source: Table 10.4 Cessnock City Wide Settlement Strategy 2010)

a) Growth Scenario	b) Take-Up Rates	c) 2016 (9yrs)	d) 2021 (14yrs)	e) 2027 (19yrs)	f) 2031 (24yrs)
g) Low	h) 3ha/annum	i) 27	j) 42	k) 57	l) 72
m) Medium	n) 5ha/annum	o) 45	p) 70	q) 95	r) 120
s) High	t) 8ha/annum	u) 72	v) 112	w) 152	x) 192

Accordingly, as outlined in the table above, it is projected that an additional 72-192 ha of general purpose industrial land is required to ensure sufficient zoned land between 2006 and 2031 - and as related to the employment capacity projections outlined in the Lower Hunter Regional Strategy. Staging of this supply is required to give an indicative measure of the need for land over the planning horizon of 25 years.

The CWSS stated that sufficient additional land has been identified within other areas across the LGA to accommodate the identified short-term shortage of industrial land. This includes Huntlee which has a nominated 50 ha for a business park and 70 ha for industrial land.

The current zoning of HEZ is problematic, in that it has been structured to present as a unique industrial estate, through the use of the land use zone, zone objectives and a suite of specific clauses. To retain the integrity of this direction, it is appropriate that HEZ be allocated a separate land use zone to the general purpose industrial lands, in order to tailor the zone accordingly. Either the IN1 General Industrial or SP1 Special Activities zone may be appropriate for HEZ, subject to advice from the Department of Planning.

The directions in the CWSS are:

- Direction EL1:** - Retain the 'uniqueness' of HEZ through the use of a separate land use zone, zone objectives and local provisions where appropriate.
- Direction EL2:** Retain opportunities for dispersed employment opportunities in the new LEP in accordance with the actions contained in the Lower Hunter Regional Strategy.
- Direction EL3:** Provide opportunities for additional sites to be developed for employment lands to meet local needs for general purpose industrial lands.
- Direction EL4:** Recognise that industrial land supply is limited in the Cessnock LGA and restrict other uses that compete with industrial activities from these areas.

The actions in the CWSS are:

- Action EL3:** Identify sites considered suitable for employment lands in the short term (0-5 yrs) as shown in Figures 10.5 and 10.6. See chapter 9 (Figure 9.1) for 'Cessnock Civic';

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- b) Action EL5: Retain the current planning provisions for HEZ where appropriate within the confines of the Standard Instrument.
- c) Action EL6: Defer the rezoning of land within HEZ for 'industry support' until the findings of the State Significant Site Study are known.

The Cessnock City-Wide Settlement Strategy concludes with projected demand for between 72ha and 192ha of industrial land between 2006 and 2031. Pro-rata, this would be approximately 46ha to 123ha between 2015 and 2031 for the Cessnock LGA.

Hence, in terms of the directions above, particularly EL 2, the progression of the Black Hill site should be implemented.

The CCWS also foreshadowed that Council will prepare a comprehensive biodiversity strategy to identify priority areas for vegetation offsets, and outlines environmental zones to be included in the Cessnock LEP. Council is yet to resolve to exhibit a draft biodiversity strategy. Relevant elements in the draft biodiversity strategy would be:

- There is a need to identify biodiversity assets (p34);
- There is a need to establish new mechanisms to assess impacts on biodiversity assets (p37);
- Council has not determined how offsetting will be achieved at the rezoning stage (i.e. onsite or offsite) (p20).

The site is not included in any of the environmental zoning areas identified in the CCWS and at this time, the biodiversity strategy is still in preparation and policy decisions have not been finalised.

The Hunter Development Corporation – Unpublished Reports

The Hunter Development Corporation (HDC) commissioned two reports to review demand and supply trends in employment lands and thereby contribute to the Regional Growth Plan for the Lower Hunter which will supersede the LHRS. HDC conditionally provided those reports (by ADW Johnson and URBIS) to assist the evaluation of this PP.

Employment Lands Analysis: Monteath and Powys (December 2014)

Cessnock City Council additionally commissioned the "Employment Lands Analysis" to be prepared by: Monteath and Powys. The analysis is also embodied in the Employment Lands Analysis.

Conclusion

The Planning Proposal is consistent with the implementation of the LHRS, Hunter Regional Plan and Cessnock City Wide Settlement Strategy and is considered to be compatible with locality impacts including the management of biodiversity assets.

2 Planning Proposal as best way to achieve objectives

Amending the Cessnock LEP in the manner proposed is considered the best way of achieving the outcomes for the site. This is for the following reasons:

1. Land that is well located and capable of being serviced for general industrial activities and as is proposed for zoning to IN2 Light Industrial;

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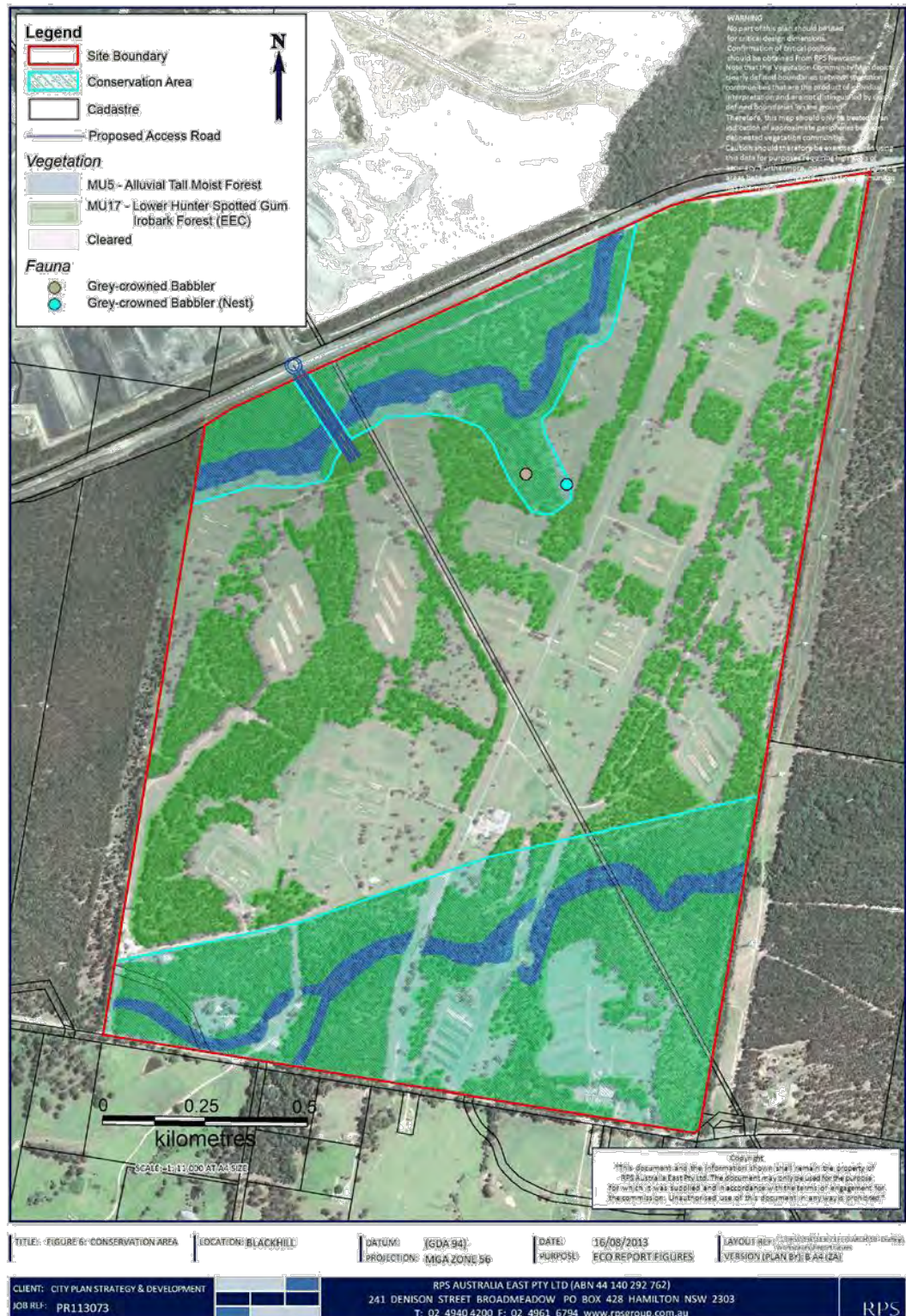
2. Key ecologically significant parts of the site are proposed to be rezoned to:
 - a) E2 in the northern sector to enable the condition of the vegetation/EEC and riparian areas of the site to be protected, enable removal of weeds and limiting stock access and to protect the habitat with the highest ecological value, including the habitat for the Grey-crowned Babbler. A Flora and Fauna Assessment for the site has identified areas of high environmental significance and areas where improvements need to be made (see **Figure 2**); and
 - b) E4 Environmental Living in the southern sector to provide a sound balance between a limited number of low density residential lots to be subdivided (and provide additional population support for local services – particularly the school) and conservation of the vegetation/EEC. The DCP and the local clause are to be developed to limit yield of lots in this zone to a maximum of four and proposed to facilitate optimal use of cleared areas for dwellings, outbuildings and asset protection zones.

Further, additional conservation measures (to occur either on-site or off-site) to compensate for vegetation clearing are to be agreed between the proponent and Council prior to the industrial development of the site. A voluntary Planning Agreement outlining this commitment is to be negotiated and executed between the proponent and Council. Remediation of contaminated areas within the site will also be undertaken prior to development of the site.

Figure 2: Vegetation Communities and Proposed Conservation Areas

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3. Identifying the Site as an Urban Release Area: by designating the site as an Urban Release Area, the site will be subject to Part 6 of the Cessnock LEP 2011. A DCP must be prepared before development is approved. Contributions towards Designated State Infrastructure (state/ regional roads, regional open space, and land for emergency and educational use) will be made. This will ensure that development occurs in a logical and cost-effective manner and that the development provides for key public infrastructure (water, sewer, electricity and telecommunications).

The best means to provide for supply of industrial land.

An Employment Lands Analysis (refer Enclosure 7 of Council Report 10 December 2014 **Appendix 1**) consolidates the data, analysis and policy contents of the various strategic and assessment documents produced – the LHRS, the LHRCP, the LH discussion paper (2013) , the Cessnock CWSS, the unpublished reports to the HDC and the Monteath and Powys report.

Key issues for the assessment of the need and strategic justification for the land subject of the Planning Proposal at Black Hill are:

- a) What land is actually available (zoned and serviced – actual/committed) into the medium to long terms which represent alternative sites for the types of development which will locate in IN 2 zones,
- b) Are these sites of comparable availability given analysis of constraints and being serviced/potentially serviced at feasible costs?
- c) What is the data for land sales and take up at Beresfield and Thornton which would give a more recent and localised analysis of relevant trends? and
- d) How pivotal are the locational advantages of good access to the Hunter Expressway and M1 Motorway, the Newcastle port and airport and the New England Highway?

The appropriate criteria for decision making about the overall planning for adequate supply of industrial land (IN1 and IN2 zoned land) within the Lower Hunter region and for a major Planning Proposal such as this are concluded to be:

- a) Facilitate agglomeration around key centre locations;
- b) Provide efficient and economic access to arterial roads and transport networks;
- c) Enable accessibility and proximity to a local workforce – particularly if there is evident localised and relatively higher levels of unemployment (including from relatively recent closure and/or downsizing of certain industries);
- d) Ensure the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of infrastructure;
- e) Ensure the integration of re-zoning of land from rural to industrial only if provision of adequate capacities and funding for infrastructure are available or committed.
- f) Manage growth over time through annual monitoring of supply and demand and major reviews of the Regional Growth Plan every five years; and
- g) Provide a contingency buffer of about 50% over and above committed supply of vacant, serviced industrial land at any point in time.

Responding to the above criteria, the following conclusions are drawn about implementing the LHRS policy direction for the provision of employment lands at Black Hill:

- a) This site remains as “employment lands” in the LHRS (as reaffirmed in 2010) and any non-fulfilment of that outcome at the local level has to be justified by submissions regarding inconsistency to respond the Ministerial direction;
- b) The Black Hill proposal does substantially align with the criteria stated above – including the potential for delivery of infrastructure at full costs to the owner of the

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subject site and the adjacent land owner (Coal and Allied). The adjacent Coal and Allied site (which is in the Newcastle LGA) presents an opportunity for combined water and sewer infrastructure funding and construction with the proponent (reciprocal needs for provision of water and sewer through the two sites are asserted to be needed) but will also potentially present short and medium term (and potentially long-term) over-supply; The potential joint servicing represents a major advantage for enabling the release of employment lands in a highly favourable strategic location;

- c) The recent rezoning of the Tomago, Anambah, "Freeway North", and Rutherford (combined total 675 ha) and, more recently, the Coal and Allied site (183ha – zoned IN2) adjacent to the subject site provide opportunities for significant IN2 oriented land supply and agglomeration – totalling 858 ha but there are very significant uncertainties relating to the development feasibility, timing and actual yields from these properties;
- d) The availability of the Kurri Kurri Hydro Smelter site also adds to the supply of land zoned for industrial and serviced. The Planning Proposal has now been reported to Council on 18 November 2015 and was issued a Gateway determination on 23 March 2016.

Accessibility to the M15 Hunter Expressway, M1 Motorway, the Newcastle Port and Airport and the New England Highway are significant locational advantages for industrial development at Black Hill – particularly for industries for which transport costs are significant within business financial structures and decision-making about locations for new enterprises.

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Section B: Relationship to Strategic Planning Framework

3 Consistency with Objectives and Actions within Regional Strategies

Lower Hunter Regional Strategy 2006 (superseded)

The *Lower Hunter Regional Strategy* (LHRS) was the strategy applicable to the Lower Hunter Region until superseded by the Hunter Regional Plan adopted on 14 October 2016. However, as the Planning Proposal has been considered in the context of LHRS throughout the process, it is considered appropriate that the Planning Proposal be considered in the context of both Regional documents. The planning proposal is wholly consistent with the objectives and desired outcomes of the strategy, which call for the development of a freight and employment hub in the location of the subject site and its surrounds. The proposal's consistency with all relevant 'Actions' of the Strategy is addressed below.

Table 3: Assessment of the proposal against the relevant Actions within the LHRS

ACTION	CONSISTENCY
Local Councils will rezone employment land as identified in the Regional Strategy (Strategy Map) through their local environmental plans	The subject site is identified as <i>future freight hub and employment lands</i> within the Strategy Map. The proposed zoning of the site for industrial uses will allow for a wide range of employment uses, industrial and freight handling - related uses, in compliance with this Action.
The Department of Planning in conjunction with Newcastle, Maitland and Cessnock councils as well as landowners, will develop a structure plan that maximises the employment and conservation outcomes for the freight hub precinct	No structure plan has been prepared by DoPE, or by Council. There is no requirement in the LHRS for the structure plan to be completed before rezoning can commence, and the Gateway determination has confirmed that preparation of such a plan is not required at this time. The industrial and environmental conservation zoning of the site has been proposed to respond to the constraints and opportunities of the site.
Councils will identify opportunities for bulky goods style retailing in appropriate locations in commercial centres and restrict this form of retailing in employment and industrial zones as set out in the NSW Government Policy 'The Right Place for Business'	Bulky goods retailing is not permitted in the IN2 Light Industrial zone, and therefore the Planning Proposal is in compliance with this Action.
Local environmental plans in the Watagan to Stockton Corridor ... are to provide for the ongoing role of biodiversity corridor and inter-urban break.	The site is not within the Watagan to Stockton green corridor, and this Planning Proposal is in compliance with this Action.

Hunter Regional Plan

The Hunter Regional Plan was approved by the Department of Planning and Environment on 14 October 2016. In regard to employment lands the document places a strong emphasis on the consolidation and reinforcement of the existing employment lands and the importance of

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industry clusters which have specific locational advantages to key transport infrastructure. The Black Hill Planning Proposal is contiguous with existing industrial zoned land and would form part of this industry cluster which will assist to reinforce and consolidate the Black Hill and Beresfield industrial estates.

The Plan also shows that the Black Hill site located in the "Indicative Greater Newcastle Metropolitan Area, and in the proposed Watagan to Stockton' Green Corridor" as a "Gateway Determination Site". It is not identified in the Plan as an Urban Release Area, however it appears to be identified as a "growth area" which reflects that the process to rezone the site and amend the Cessnock Local Environmental Plan 2011 is still underway and yet to be finalised.

The Regional Plan outlines that the proposed green corridor is:

"..intended to accommodate national transport infrastructure to enhance north-south connectivity, and the delivery of new release areas in Greater Newcastle and the western and northern parts of its hinterland"; and

"The aim of conservation planning in this area will be to conserve existing remnant vegetation and invest in the rehabilitation of land to strengthen the regionally significant corridor between Watagans National park and Port Stephens."

Discussion on biodiversity corridors in the Plan allows corridors to take certain forms including:

*"Stepping stone corridors of discontinuous patches of vegetation;
Continuous lineal strips of vegetation along lineal strips; and
Part of a larger habitat area known or likely to be important to local fauna as could occur in a national park or State forest."*

A green corridor does not act to specifically prevent development proposals nor urban release areas. However this must be considered in the context of this Planning Proposal.

The Black Hill site has areas of remnant vegetation as well as fully cleared areas where previous agricultural uses (e.g. Poultry) had been carried out. The site adjoins other land with continuous and disconnected patches of remnant vegetation and could be seen as a stepping stone corridor as well as part of a larger habitat area. There is scope for the protection of the 'existing' remnant vegetation on the site in consideration of other sites in the vicinity. As a result, the Planning Proposal for the site could still accommodate the requirements relating to the proposed green corridor. This will be an important consideration in the required development control plan for the site.

The Black Hill Planning Proposal is considered consistent with the Hunter Regional Plan as the proposal will be required to achieve biodiversity offsetting which will need to occur both on and off site as well as reinforce the existing industry cluster utilising the existing infrastructure corridors.

4 Consistency with Council's Community Strategic Plan or other Local Strategic Plan

Community Strategic Plan - Our People, Our Place, Our Future

In 2010 Cessnock City Council adopted its 10-year community strategic plan, titled *Cessnock Community Strategic Plan*. This Plan adopted objectives and strategies to achieve desired

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outcomes related to 5 Key Directions which in the opinion of the Cessnock community would make a significant long term difference to the City (i.e. *Our Community, Our Economy, Our Environment, Our Services and Our Leadership*).

This Planning Proposal generally supports the objectives and desired outcomes of the strategic plan. Specifically, the following strategies to achieve the plan's objectives are supported by this proposal:

2.1.1- Promote the whole of the LGA and market the area comprehensively to attract new businesses and residents

This proposal will allow for the development of a wide range of new industrial/ employment business opportunities, significantly increasing job opportunities within the LGA and beyond.

2.1.4- Develop a freight hub and transport interchange at the Bloomfield/ Donaldson site

This proposal will provide supportive employment uses for any future freight hub in the vicinity. In addition, the Planning Proposal is considered to be consistent with the *Cessnock City Wide Settlement Strategy 2010* as outlined in **Part 2, Section A** of this PP.

5 Consistency with State Environmental Planning Policies

An assessment of relevant SEPPs against the planning proposal is provided in the table below.

Consistency with State Environmental Planning Policies

Two State Environmental Planning Policies (SEPPs) apply to this Planning Proposal – *State Environmental Planning Policy No. 44- Koala Habitat Protection* (SEPP 44) and – *State Environmental Planning Policy No. 55- Remediation of Land* (SEPP 55). The Planning Proposal is consistent with both SEPPs, as outlined below.

SEPP 44 – Koala Habitat Protection

This SEPP aims to encourage the proper conservation and management of koala habitat areas in order to maintain the viability of koala populations. Land should be included in an environmental protection zone if it is 'Core Koala Habitat'.

Three species of koala feed trees have been identified on the site, particularly within the main creek lines. However, the trees do not occur at the designated percentages which constitute 'Potential Koala Habitat' as defined within the SEPP. Additional investigations were conducted to determine if there was evidence of a koala population, but no 'Core Koala Habitat' was found. Details about the koala habitat assessment are included in the *Flora and Fauna Assessment*.

The Planning Proposal is consistent with SEPP 44 – Koala Habitat Protection.

SEPP 55 – Remediation of Land

This SEPP aims to promote the remediation of contaminated land for the purpose of reducing risks to people and the environment. Clause 6 of the SEPP provides that the Council must not allow the rezoning of this land for industrial, residential or environmental conservation purposes unless:

- (a) *the planning authority has considered whether the land is contaminated, and*

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- (b) *if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) *if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

The site has accommodated a number of activities in the past that have led to contamination of certain areas. However, contamination remediation activities have been undertaken since the poultry farming ceased in 2003. Details about the current contamination status of the site, and recommendations for its further remediation are discussed in **Part 3, Section C** of this PP.

A *Site Contamination Investigation* report by Noel Arnold & Associates concludes that *"the land can be made suitable for industrial and residential land uses (and other activities permissible within the Environmental Conservation E2 area) through development and implementation of a remediation action plan (RAP), or series of RAPs if a staged approach is adopted (pp28-29)"*.

Table 4: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP 1 - Development Standards	The SEPP makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary.	Not Applicable to this Planning Proposal.
SEPP 14 – Coastal Wetlands	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 15 - Rural Land Sharing Communities	The SEPP provides for multiple occupancy development, with council consent, in rural and non-urban zones, subject to a list of criteria in the policy.	Not Applicable to this Planning Proposal.
SEPP 19 – Bushland in Urban Areas	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 21 - Caravan Parks	The SEPP provides for development for caravan parks.	Not Applicable to this Planning Proposal.
SEPP 26 – Littoral Rainforests	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 29 – Western Sydney Recreation Area	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 30 - Intensive Agriculture	The SEPP provides considerations for consent for intensive agriculture.	Not Applicable to this Planning Proposal.
SEPP 32 - Urban Consolidation (Redevelopment of Urban Land)	The SEPP makes provision for the re-development of urban land suitable for multi-unit housing and related development.	Not Applicable to this Planning Proposal.
SEPP 33 -	The SEPP provides	Not Applicable to this Planning

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SEPP	Relevance	Consistency and Implications
Hazardous & Offensive Development	considerations for consent for hazardous and offensive development.	Proposal.
SEPP 36 - Manufactured Homes Estates	The SEPP makes provision to encourage manufactured homes estates through permitting this use where caravan parks are permitted and allowing subdivision.	Not Applicable to this Planning Proposal.
SEPP 39 – Spit Island Bird Habitat	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 44 - Koala Habitat Protection	This SEPP applies to land across NSW that is greater than 1 hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Refer to full detail above.
SEPP 47 – Moore Park Showground	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 50 - Canal Estate Development	The SEPP bans new canal estates from the date of gazettal, to ensure coastal and aquatic environments are not affected by these developments.	Not Applicable to this Planning Proposal.
SEPP 52 – Farm Dams and Other works in Land and Water Management Plan Areas	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 55 - Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination	Refer to full detail above.
SEPP 59 – Central Western Sydney Regional Open Space and Residential	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP 62 - Sustainable Aquaculture	The SEPP relates to development for aquaculture and to development arising from the rezoning of land and is of relevance for site specific rezoning proposals.	Not Applicable to this Planning Proposal.
SEPP 64 - Advertising and Signage	The SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area,	Not Applicable to this Planning Proposal.

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SEPP	Relevance	Consistency and Implications
	provides effective communication in suitable locations and is of high quality design and finish.	
SEPP 65 - Design Quality of Residential Development	The SEPP relates to residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential flat development.	Not Applicable to this Planning Proposal.
SEPP 70 – Affordable Rental Housing (Revised Schemes)	The SEPP provides for an increase in the supply and diversity of affordable rental and social housing in NSW.	Not Applicable to this Planning Proposal.
SEPP 71 – Coastal Protection	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP Affordable Rental Housing 2009	The aims of this Policy are as follows: (a) to provide a consistent planning regime for the provision of affordable rental housing, (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards, (c) to facilitate the retention and mitigate the loss of existing affordable rental housing, (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing, (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing, (f) to support local business centres by providing affordable rental housing for workers close to places of work, (g) to facilitate the development	Not Applicable to this Planning Proposal.

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SEPP	Relevance	Consistency and Implications
	of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.	
SEPP Building Sustainability Index: BASIX 2004	The SEPP provides for the implementation of BASIX throughout the State.	Not Applicable to this Planning Proposal.
SEPP Exempt and Complying Development Codes 2008	The SEPP provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate.	Not Applicable to this Planning Proposal.
SEPP Housing for Seniors or People with a Disability 2004	The SEPP aims to encourage provision of housing for seniors, including residential care facilities. The SEPP provides development standards.	Not Applicable to this Planning Proposal.
SEPP Infrastructure 2007	The SEPP provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	Not Applicable to this Planning Proposal.
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP (Kurnell Peninsula) 1989	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP Major Development 2005	The SEPP defines certain developments that are major projects to be assessed under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. It also provides planning provisions for State significant sites. In addition, the SEPP identifies the council consent authority functions that may be carried out	Not Applicable to this Planning Proposal.

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SEPP	Relevance	Consistency and Implications
	by Joint Regional Planning Panels (JRPPs) and classes of regional development to be determined by JRPPs.	
SEPP Mining, Petroleum Production and Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	Not Applicable to this Planning Proposal.
SEPP Miscellaneous Consent Provisions 2007	The aims of this Policy are as follows: (a) to provide that the erection of temporary structures is permissible with consent across the State, (b) to ensure that suitable provision is made for ensuring the safety of persons using temporary structures, (c) to encourage the protection of the environment at the location, and in the vicinity, of temporary structures by specifying relevant matters for consideration, (d) to provide that development comprising the subdivision of land, the erection of a building or the demolition of a building, to the extent to which it does not already require development consent under another environmental planning instrument, cannot be carried out except with development consent.	
SEPP Penrith Lakes Scheme 1989	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP Rural Lands 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	Not Applicable to this Planning Proposal.
SEPP 53 Transitional Provisions 2011	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP State and Regional Development 2011	The SEPP aims to identify development and infrastructure that is State significant and confer functions on the Joint Regional Planning Panels (JRPPs) to determine	Not Applicable to this Planning Proposal.

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SEPP	Relevance	Consistency and Implications
	development applications.	
SEPP (Sydney Drinking Water Catchment 2011)	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP Sydney Region Growth Centres 2006	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP (Three Ports_ 2013	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP (Urban Renewal) 2010	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP (Western Sydney Employment Area) 2009	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>
SEPP (Western Sydney Parklands) 2009	<i>Not Applicable to LGA</i>	<i>Not Applicable to LGA</i>

6 Consistency with s.117 Ministerial Directions for Local Plan Making

The Section 117 Directions issued to Councils under s117 (2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), relevant to this proposal, are addressed in Table 2 below.

Table 5: Relevant s.117 Ministerial Directions

Ministerial Direction	Objective of Direction	Consistency and Implication
1. EMPLOYMENT AND RESOURCES		
1.1. Business and Industrial Zones	The objectives of this direction are to: (a) encourage employment growth in suitable locations, (b) protect employment land in business and industrial zones, and (c) support the viability of identified strategic centres.	This Planning Proposal is consistent with all aspects of this Direction, as it provides for new industrial zoned areas; complies with the objectives of the Direction; and is located in an area designated for industrial purposes within the Lower Hunter Regional Strategy. The area is identified as a Growth Area in the Hunter Regional Plan (HRP) (October 2016) with Black Hill identified as part of a significant employment precinct.
1.2. Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	This Planning Proposal is inconsistent with this Direction. However, clause 5(e) of the Direction provides that a Planning Proposal may be inconsistent with this Direction if it is justified by a strategy which considers the value

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Ministerial Direction	Objective of Direction	Consistency and Implication
		<p>of agricultural land; identifies the land which is the subject of the Planning Proposal and is approved by the Director-General of DoPE. As the subject site is identified for industrial/ employment purposes in the LHRS and HRP, this Planning Proposal satisfies the provisions of this Direction.</p> <p>DoPE has agreed that the inconsistency is justified and advised that no further approval is required in relation to this Direction.</p>
1.3. Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	<p>Coal mining activities are currently occurring beneath the subject site (i.e. via operations of the Abel Underground Coal Mine), and the LHRS Natural Resources Map identifies parts of the subject site as containing Coal Resources. However, the proposed industrial/ employment development of the site is not likely to restrict the potential extraction of these resources due to the current underground coal mining operations taking place i.e. it is anticipated that the existing coal resources beneath the site will be exhausted before the development of the site for industrial purposes. Further, the proposed IN2 zoning does not prohibit the undertaking of mining activities.</p> <p>Nevertheless, consultation was undertaken with the Mineral Resources Branch (MRB) within the Department of Trade & Investment in relation to the PP. The MRB recommended that further discussions take place between key stakeholders to assist in the formulation of appropriate development controls to minimise potential conflicts between mining uses (whether ongoing or completed) and industrial development. This is proposed to occur, and appropriate controls will be enshrined in a DCP prepared</p>

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Ministerial Direction	Objective of Direction	Consistency and Implication
		for the site.
1.4. Oyster Aquaculture	<p><i>The objectives of this direction are:</i></p> <p><i>(a) to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal,</i></p> <p><i>(b) to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.</i></p>	Not Applicable to LGA
1.5. Rural lands	<p>The objectives of this direction are to:</p> <p>(a) protect the agricultural production value of rural land,</p> <p>(b) facilitate the orderly and economic development of rural lands for rural and related purposes.</p>	<p>This Planning Proposal is consistent with most of the relevant Rural Planning Principles in that it ensures consistency with the applicable regional strategy (i.e. the LHRS/HRP); will protect significant water resources and other variables (refer to Part 3, Section C of this PP); and strives to balance the social, economic and environmental interests of the community. However, the Planning Proposal will not comply with all Rural Planning Principles, by the nature of the proposed development (i.e. industrial/employment). Nevertheless, the Direction provides that a Planning Proposal may be inconsistent with this Direction so long as it is justified by a strategy which considers the value of agricultural land; identifies the land which is the subject of the Planning Proposal and is approved by the Secretary of DoPE. As the subject site is identified for industrial/employment purposes in the LHRS and HRP, this Planning Proposal satisfies the provisions of this Direction.</p>
2. ENVIRONMENT AND HERITAGE		
2.1. Environmental	The objective of this direction is	This Planning Proposal is

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Ministerial Direction	Objective of Direction	Consistency and Implication
Protection Zones	to protect and conserve environmentally sensitive areas.	<p>consistent with this Direction where it zones land to E2 Environmental Conservation and E4 Environmental Living zones facilitating the protection and conservation of environmentally sensitive riparian and remnant vegetation areas associated with Viney Creek and Weakleys Flat Creek, as well as the nesting habitat of the threatened Grey-crowned Babbler.</p> <p>The Lower Hunter Spotted Gum – an EEC - covers substantial areas of the site and the PP seeks to achieve a sound balance between implementing regional policy direction for industrial development and achieving reasonable protection and management of that EEC and other environmental assets on the site.</p>
2.2. Coastal Protection	<i>The objective of this direction is to implement the principles in the NSW Coastal Policy.</i>	<i>Not Applicable to LGA</i>
2.3. Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	This Planning Proposal is consistent with this Direction as the provisions of the Cessnock LEP and relevant Sections of the National Parks and Wildlife Act 1974 both serve to adequately protect the heritage significance of heritage items/ places. Further discussion on heritage matters is provided in Part 3, Section C of this PP. Accordingly, this Planning Proposal satisfies this Direction.
2.4. Recreation Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.	<p>Development associated with the subject site will aim to implement the objectives of the relevant guidelines through detailed site design and management. These principles will be implemented via a future DCP.</p> <p>The Planning Proposal complies with this Direction as it is in accordance with the relevant Strategy/Plan which gives consideration to the integration of land use and transport. As the subject site is identified for</p>

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Ministerial Direction	Objective of Direction	Consistency and Implication
		<p>industrial/ employment purposes in the LHRs/HRP, this Planning Proposal satisfies the provisions of this Direction.</p> <p>DoPE has agreed that the Planning Proposal is justified and advised that no further approval is required in relation to this Direction.</p>
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1. Residential Zones	<p>The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	This is not applicable to this planning proposal.
3.2. Caravan parks and Manufactured Home Estates	<p>The objectives of this direction are:</p> <p>(a) to provide for a variety of housing types, and</p> <p>(b) to provide opportunities for caravan parks and manufactured home estates.</p>	This is not applicable to this planning proposal.
3.3. Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	This is not applicable to this planning proposal.
3.4. Integrating Land Use and Transport	<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and</p>	<p>Development associated with the subject site will aim to implement the objectives of the relevant guidelines through detailed site design and management (e.g. street networks will allow permeability for buses and pedestrians etc). These principles will be implemented via a future DCP.</p> <p>The Planning Proposal complies with this Direction as it is in</p>

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Ministerial Direction	Objective of Direction	Consistency and Implication
	<p>reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	<p>accordance with the relevant Strategy/Plan which gives consideration to the integration of land use and transport. As the subject site is identified for industrial/ employment purposes in the LHRS/HRP, this Planning Proposal satisfies the provisions of this Direction.</p> <p>DoPE has agreed that the Planning Proposal is justified and advised that no further approval is required in relation to this Direction.</p>
3.5. Development Near Licensed Aerodromes	<p>The objectives of this direction are:</p> <p>(a) to ensure the effective and safe operation of aerodromes, and</p> <p>(b) to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and</p> <p>(c) to ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</p>	This is not applicable to this planning proposal.
3.6. Shooting Ranges	<p>The objectives are:</p> <p>(a) to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range,</p> <p>(b) to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land,</p> <p>(c) to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.</p>	This is not applicable to this planning proposal.

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Ministerial Direction	Objective of Direction	Consistency and Implication
4. HAZARD AND RISK		
4.1. Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils	This is not applicable to this planning proposal.
4.2. Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	<p>While the subject site is not mapped as a Mine Subsidence Area, the land is currently being undermined as part of underground coal mining activities. Accordingly, there is the potential for the land to be identified as 'unstable land' and/or to be mapped as a Mine Subsidence Area in the future. It is anticipated that development of the site can be undertaken in a safe and appropriate manner regardless of any subsidence issues. This issue is discussed further in Part 3, Section C of this PP.</p> <p>Nevertheless, consultation was undertaken with the Mine Subsidence Board (MSB) in relation to this Planning Proposal. The MSB had no objections to the rezoning of the land, and did not recommend restrictions on the scale, density or type of development to be permitted on the land at this time. However it recommended that the development of the site be staged to allow for the completion of ongoing (underground) mining activities.</p> <p>Accordingly, the Planning Proposal satisfies this Direction.</p> <p>Note that additional consultation was undertaken with the Mineral Resources Branch within the Department of Trade and Investment in relation to mining matters- see Direction 1.3 above in this Table.</p>
4.3. Flood Prone Land	The objectives of this direction are: (a) to ensure that development	This is not applicable to this planning proposal.

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Ministerial Direction	Objective of Direction	Consistency and Implication
	<p>of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	
4.4. Planning for Bushfire Protection	<p>The objectives of this direction are:</p> <p>(a) 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</p> <p>(b) to encourage sound management of bush fire prone areas.</p>	<p>The subject site is identified as 'bushfire prone', and a detailed bushfire hazard assessment has been undertaken identifying appropriate bushfire management controls to be applied in association with development design. It is noted that all future development within the site will have to be assessed against <i>Planning for Bushfire Protection 2006</i> as part of the development assessment process.</p> <p>Consultation was undertaken with the NSW Rural Fire Service (RFS) in relation to the previous PP regarding this Direction. The RFS then raised no concerns in relation to the rezoning, but advised that the recommendations outlined in the bushfire hazard assessment are to be considered in relation to future development of the site. However, this modified PP will require further consultation with the RFS.</p> <p>Accordingly, the Planning Proposal satisfies this Direction.</p>
5. REGIONAL PLANNING		
5.1. Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes, and actions contained in regional strategies.	The proposal is consistent with the provisions of the LHRS and HRP, and is therefore consistent with this Direction in terms of proposing a substantial area for zoning to IN2 General Industrial.
5.2. Sydney Drinking Water Catchment	<i>The objective of this Direction is to protect water quality in the Sydney drinking water catchment.</i>	<i>Not Applicable to LGA</i>
5.3. Farmland of State and	<i>The objectives of this direction are:</i>	<i>Not Applicable to LGA</i>

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Ministerial Direction	Objective of Direction	Consistency and Implication
<i>Regional Significance on the NSW Far North Coast</i>	<p>(a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre,</p> <p>(b) to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and</p> <p>(c) to reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.</p>	
5.4. <i>Commercial and Retail Development along the Pacific Highway, North Coast</i>	<p>The objectives for managing commercial and retail development along the Pacific Highway are:</p> <p>(a) to protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route;</p> <p>(b) to prevent inappropriate development fronting the highway</p> <p>(c) to protect public expenditure invested in the Pacific Highway,</p> <p>(d) to protect and improve highway safety and highway efficiency,</p> <p>(e) to provide for the food, vehicle service and rest needs of travellers on the highway, and</p> <p>(f) to reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.</p>	Not Applicable to LGA
5.5. <i>Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)</i>	(Revoked 18 June 2010)	Not Applicable to LGA
5.6. <i>Sydney to Canberra</i>	(Revoked 10 July 2008. See amended Direction 5.1)	Not Applicable to LGA

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Ministerial Direction	Objective of Direction	Consistency and Implication
<i>Corridor</i>		
5.7. Central Coast	<i>(Revoked 10 July 2008. See amended Direction 5.1)</i>	Not Applicable to LGA
5.8. Second Sydney Airport: Badgerys Creek	<i>The objective of this direction is to avoid incompatible development in the vicinity of any future second Sydney Airport at Badgerys Creek.</i>	Not Applicable to LGA
5.9. North West Rail Link Corridor Strategy	<i>The objectives of this direction are to:</i> <i>(a) promote transit-oriented development and manage growth around the eight train stations of the North West Rail Link (NWRL)</i> <i>(b) ensure development within the NWRL corridor is consistent with the proposals set out in the NWRL Corridor Strategy and precinct Structure Plans.</i>	Not Applicable to LGA
6. LOCAL PLAN MAKING		
5.10. Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The proposal does not include any provisions that would require additional referrals/ concurrence or identify designated development, and is therefore consistent with this Direction.
5.11. Reserving Land for Public Purposes	The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	This is not applicable to this planning proposal.
5.12. Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	This Planning Proposal is consistent with this Direction, in that the inclusion of general industries in the zone table makes the zone more consistent with a standard light industrial zone. However, the DoPE directed the land use be included as an additional permitted use rather than the zone table which complicates the existing LEP. No changes are proposed to the E2 zone and urban release provisions

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Ministerial Direction	Objective of Direction	Consistency and Implication
		as already in force in the Cessnock LEP. The introduction of a local clause to permit the subdivision of the E4 zoned land into a maximum of four lots does not apply restrictive site specific planning controls, as it does not further limit the use of the site, or impose higher development standards to the site. Without this local clause, the minimum lot size for a subdivision affecting E4 zoned land would be 80ha and only one E4 zoned lot could be created.
7. METROPOLITAN PLANNING		
7.1 <i>Implementation of A Plan for Growing Sydney</i>	<i>The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.</i>	<i>Not Applicable to LGA</i>

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Section C: Environmental, Social and Economic Impact

7 Impact on Threatened Species

Site Investigations

The studies for the previous Planning Proposal for the subject site in recent years are:

- *Ecological Constraints Study* (prepared by Harper Somers O'Sullivan, November 2003);
- The draft *Black Hill Master Plan & Site Redevelopment Background Paper* (prepared by Harper Somers O'Sullivan and Parsons Brinckerhoff, December 2003);
- The *Vegetation Management Plan for Clearing of Regrowth Vegetation & Exotic Weeds* (prepared by Harper Somers O'Sullivan, April 2004);
- The *Flora & Fauna Assessment for Seven Rural Residential Allotments* (prepared by Harper Somers O'Sullivan, January 2006); and
- a *Flora and Fauna Assessment* (prepared by RPS, August 2013).

The most recent of these (the *Flora and Fauna Assessment* dated August 2013- the 'F&FA') was informed by the previous studies undertaken on the site.

Impacts on Threatened Species or Ecological Communities

Section 5A of the *Environmental Planning and Assessment Act 1979* lists seven factors that must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities or their habitats from development. The assessment of significance (also known as a '7-Part Test') is also used to determine whether further detailed investigations are required.

As part of the F&FA, twenty-six threatened species and one threatened ecological community (as listed in **Table 7** below) were identified as requiring a 7-Part Test, due to their actual or potential presence within the site. The 7-Part Test takes into account proposed mitigation measures such as retention of the riparian vegetation, creating corridor linkages across the site into adjacent landscapes and managing the conservation lands in perpetuity.

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Table 6: TSC Act Listed Species

TSC Act Listed Species	
Critically Endangered Species	
Regent Honeyeater	
Endangered Species	
Swift Parrot	
Vulnerable Species	
Gang-gang Cockatoo	Squirrel Glider
Brown Treecreeper (eastern subsp.)	Koala
Little Lorikeet	Eastern Bentwing Bat
Black-chinned Honeyeater (eastern subsp.)	Little Bentwing Bat
Turquoise Parrot	Southern Myotis
Scarlet Robin	Yellow-bellied Sheath-tail-bat
Grey-crowned Babbler	Eastern False Pipistrelle
Powerful Owl	Grey-headed Flying-fox
Masked Owl	Greater Broad-nosed Bat
Spotted-tail Quoll	Eastern Freetail-bat
Yellow-bellied Glider	
Flora	
<i>Callistemon linearifolius</i> (Nettle Bottle Brush)	<i>Grevillea parviflora</i> subsp. <i>parviflora</i> (Small-flower Grevillea)
<i>Tetradlea juncea</i> (Black-eyed Susan)	
Threatened Ecological Communities	
Lower Hunter Spotted Gum – Ironbark Forest in the Sydney Basin Bioregion	

8 Environmental Impact

A number of assessments have been undertaken with regard to the subject site. These assessments generally indicate that the implementation of appropriate mitigation techniques. A summary of the key findings are provided in the following sections.

Flora and Fauna

As outlined in the above section, a number of studies have been undertaken in recent years to investigate the impact of development on the site's biodiversity. The most recent of these (the F&FA dated August 2013) was informed by the previous studies undertaken on the site.

Results of Site Investigations

The F&FA made the following key points with regard to significant environmental values identified on the site:

- No threatened plant species listed under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) or *Threatened Species Conservation Act 1995* (NSW) were recorded in the site during targeted field surveys.
- Two vegetation communities are present on site, namely MU 5 Alluvial Tall Moist Forest (15ha or 5% of the site) and MU 17 Lower Hunter Spotted Gum- Ironbark Forest (145 ha or 48% of the site). Their locations are shown in **Figure 2**. In addition,

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cleared pastures occur over 139ha or 46% of the site. Lower Hunter Spotted Gum-Ironbark Forest is listed as an Endangered Ecological Community (EEC) under the *Threatened Species Conservation Act 1995* (TSC Act).

- Current and previous fauna surveys have identified 8 threatened fauna species listed in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) or the TSC Act as occurring on the subject site, being
 - Grey-crowned Babbler (vulnerable - TSC), recorded in 2013 and previously;
 - Little Lorikeet (vulnerable - TSC) recorded previously;
 - Grey-headed Flying-fox (vulnerable – TSC and EPBC) recorded previously;
 - East-coast Freetail-bat (vulnerable - TSC) recorded in 2013 and previously;
 - Little Bentwing-bat (vulnerable – TSC) recorded in 2013;
 - Eastern Bentwing-bat (vulnerable - TSC) recorded in 2013 and previously;
 - Yellow-bellied Sheath-tail-bat (vulnerable - TSC) recorded in 2013 and previously; and
 - Greater Broad-nosed Bat (vulnerable – TSC) recorded previously.
- Two nests of the Grey-crowned Babbler were recorded on site, supporting at least one family of this species. The location of the nests is shown in **Figure 2** and will be retained within the E2 zone.
- Both the vegetated and cleared areas provide habitat for some terrestrial and arboreal mammals and birds, though mostly for foraging purposes with nesting limited to small hollow-dependent fauna.
- As discussed above, no 'Core Koala Habitat' is present on the site (pursuant to SEPP 44), although the retention of vegetation along creek lines offers some potential habitat for koalas.
- Despite the highly degraded and weed infested nature of the riparian areas, they do hold ecological value as they provide a water source for fauna species and niches for amphibian species. Nearly 99% of the riparian vegetation community (MU5 – Alluvial Tall Moist Forest) is proposed to be retained within the E2 zone.
- The site is located in a highly modified landscape and habitat has become increasingly fragmented over the past years due to mining and clearing for development and agriculture. John Renshaw Drive and the cleared electricity easement on the eastern boundary are significant barriers to fauna movements.
- Patches of vegetation on the site maintain connectivity with the large fragment remnant vegetation to the west, which is further connected to patches south of Black Hill Road and beyond. These connections will be maintained in both the northern and southern E2/E4 zoned areas.

Conclusion

Impacts from loss or change of native vegetation and habitat, fragmentation of habitat, fauna injury and edge effects have all been considered. The results of the F&FA indicate that the site can be developed for the outcomes of this Planning Proposal without significant impacts on threatened species, communities or their habitat, provided appropriate mitigation measures are implemented. These measures will be implemented through the following mechanisms:

- the proposed E2 Environmental Conservation and E4 Environmental Living zones;
- commitments to additional conservation measures, as outlined within the Planning Agreement (to be executed between the proponent and Council); and
- environmental conservation outcomes included within the forthcoming DCP.

It should also be noted that additional flora and fauna assessments, including 7-Part Tests, must still be undertaken at the DA stage.

As outlined within the F&FA, it is unlikely that any Matters of National Environmental Significance under the EPBC Act will be affected by the proposal.

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BUSHFIRE HAZARD

Cessnock City Council identifies the subject site as containing 'bushfire prone land'. A *Bushfire Protection Assessment* has been prepared by Australian Bushfire Protection Planners to determine Asset Protection Zones (APZ) for future development and to manage the possible bushfire hazards. The key recommendations are as follows:

- Industrial development should be located at a distance from bushfire prone vegetation which prevents direct flame contact with buildings. This distance varies between 19 and 31 metres depending on the slope of the land.
- Future dwellings should be a minimum of 35 meters from the bushfire hazard and this APZ should be maintained as an Inner Protection Zone, meaning (for example) tree canopy cover should be less than 15% and located more than 2 metres from dwellings.
- Water supply for firefighting operations must be provided in accordance with the relevant technical standards.
- Bushfire construction standards must apply to all industrial and residential buildings within 100m of bushfire prone vegetation.
- Public road access for firefighting operations must be provided and comply with the technical requirements of the bushfire guidelines. This includes an 8m wide perimeter road between any IN2 development area and bushfire prone vegetation, and an alternative emergency access link to the site if John Renshaw Drive is not available.

An existing access road from Black Hill Road could be used as the alternate access. This road would be locked at the southern boundary of the site, and only emergency services agencies or the public under the direction of NSW Police could use this road.

It is noted that any future development on the site will need to comply with the provisions of Planning for Bushfire Protection 2006, and may be referred to the NSW Rural Fire Service for advice or approval.

MINE SUBSIDENCE AND GEOTECHNICAL CONSTRAINTS

Mine Subsidence as a Result of Underground Coal Mining

Underground mining works (part of the Abel Underground Coal Mine, operated by Donaldson Coal) began under the site in August 2010 and were expected to continue until around July 2013 under the current license. This mining was expected to occur under the majority of the site, and various air, water, noise and vibration monitoring stations are positioned around the site in association with this mining. Due to these operations, access to the site is strictly controlled via gates and fencing. The mining operations can continue under the site with the written agreement of the landowner. This agreement has been provided and operations are expected to continue until mid-2015.

There has been no previous underground mining of the site.

The coal is being mined via 'development' and 'pillar extraction' mining methods at depths of around 100m, which have the potential to cause subsidence of the land within the site due to the settling of ground into the resultant mining voids and other mechanisms. It is noted that the site is not located within an existing designated Mine Subsidence District, though it is expected that the site will be re-classified as a Subsidence District by the Mine Subsidence Board (MSB) in the future.

To date, some areas of the site have experienced effects associated with recent mining activities.

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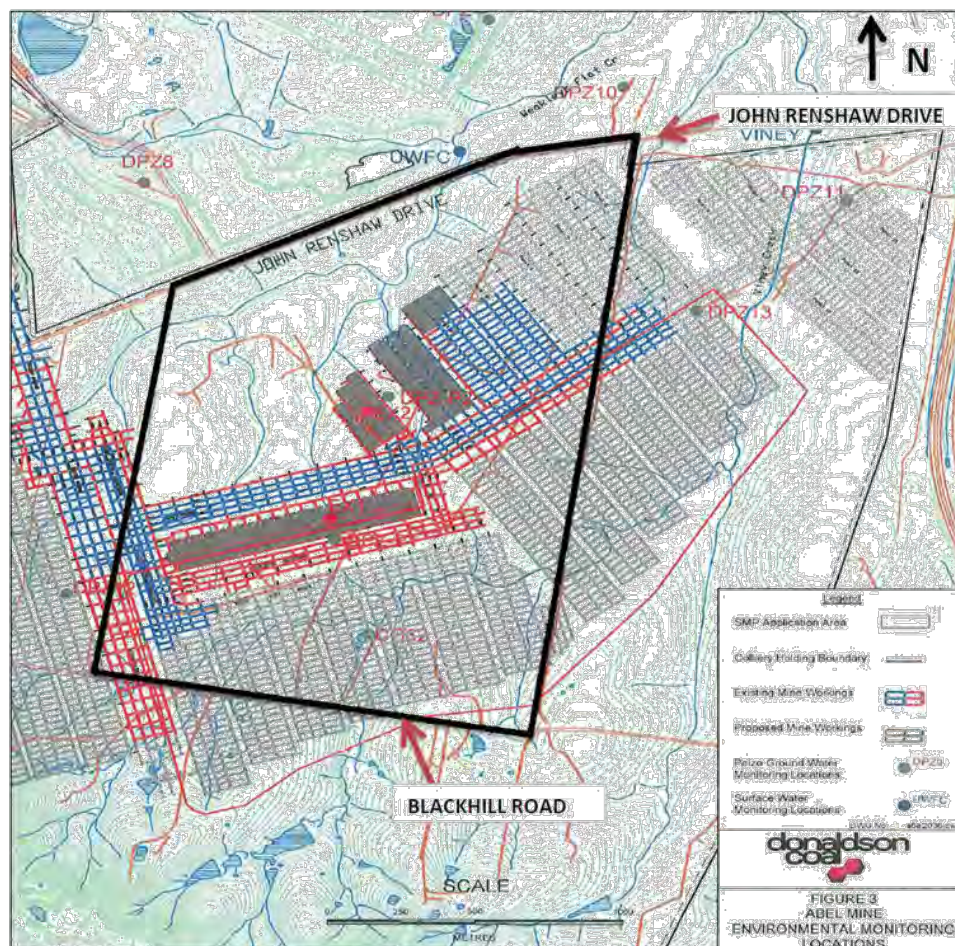
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A *Preliminary Geotechnical Assessment & Preliminary Mine Subsidence Review* (the 'Review') was prepared by Coffey Geotechnical in 2013. Amongst other matters, this review considered the findings of the Mine Subsidence Management Plan (MSMP) prepared by Donaldson Coal in association with the Abel Mine. The MSMP encompasses the *Area 2 Subsidence Management Plan Application Area*, which includes the subject site and adjoining land. This application area and the associated existing and proposed mine workings are shown in **Figure 3** below.

Key findings from the Coffey Review are as follows:

- Some areas within the site have already experienced relatively high 'tilts' and 'strains' associated with recent mining activities.
- Given the depth of the mining (100m approximately) 'sinkholes' are unlikely to develop. However with any workings at a depth of 80m and within 40m from the site boundary some surface subsidence i.e. 'troughs' (broad shallow depressions) within the site would be expected. The key anticipated impacts to the site may include subsidence of up to 1.3 metres, surface cracking up to 230mm wide, localised surface depressions extending up to 1 metre deep and changes to surface gradients of +/- 4% above pillar extraction panels.

Figure 2: Area 2 SMP Application Area and associated proposed/ existing underground mine workings



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- Most subsidence will occur during or shortly after mining (6 – 10 weeks) as workings are allowed to collapse. Ongoing residual settlement may continue for up to 1 year but is unlikely to result in further damage to the site surface.
- The MSB has indicated that the Board would not recommend any development on the site until the subsidence caused by undermining the land has been effectively completed.

Further advice provided by the MSB in relation to this Planning confirmed that development of the site should be staged to allow for the completion of the ongoing mining activities.

Regardless, proposed development can be appropriately designed and management measures implemented to ensure that subsidence does not detrimentally impact future development. It is noted that consent will be required from the MSB for all future DAs should the site be designated a Mine Subsidence District.

Geotechnical Constraints

The abovementioned review (Coffey, 2013) also addressed geotechnical constraints associated with the site. Key findings of this Review are listed below:

- A detailed slope stability assessment should be undertaken after mine subsidence has ceased, however due to the low topography of the site, slope instability is unlikely.
- The site lies within an area of no known occurrence of acid sulphate soils, and no acid sulphate soil management plan is required.

There are no significant constraints on the type of structures that may be constructed on the site in terms of soils and rocks, however no development should be approved until the mine subsidence has ceased. Site drainage and soil condition should be considered in the preparation of the Development Control Plan for the site, including provisions for landscaping, earthworks, storm water management and road design/construction.

ABORIGINAL AND NON-INDIGENOUS CULTURAL HERITAGE ISSUES

An *Aboriginal Due Diligence Assessment* was prepared for the site by RPS. This Assessment documented the results of a site survey undertaken to identify areas of Aboriginal archaeological significance. The survey found the following:

- The field survey investigation identified no new Aboriginal sites;
- Two registered Aboriginal sites are located in the north of the site (AHIMS sites #38-4-1289 and #38-4-1290), with an unspecified number of stone artefacts and a recorded site area of 63 meters x 57 meters; and
- Two areas of potential archaeological sensitivity including undisturbed portions of Weakley Flat Creek and tributary of Viney Creek, however these areas are in the proposed environmental zones and are not at risk of being disturbed.

The Assessment made a number of recommendations for the management of the site including the preservation of identified sites and quality potentially archeologically sensitive areas (or Potential Archaeological Deposits- 'PADs') if possible; the further assessment of PADs for archaeological integrity should they be proposed to be disturbed; as well as obtain permits under s90 of the *National Parks & Wildlife Act 1974*.

It is considered likely that additional archaeological testing/ survey and potentially consultation will be required to inform detailed design of future industrial development on the site (primarily due to the presence of the two registered sites within the proposed IN1 area), and will be undertaken in conjunction with the DA process. Through consultation in relation to

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this Planning Proposal, the Mindaribba Local Aboriginal Land Council recommended that a full Aboriginal Heritage Assessment be conducted prior to development proceeding. Such an Assessment will be completed if future development has the potential to impact on the two registered sites.

There are no known items or places of non-indigenous heritage significance within the site. *Historic Heritage Advice* was prepared by RPS in 2013 which confirmed that there are no listed heritage items within 1 kilometre of the site and that *there are no historic heritage constraints applicable to the proposed rezoning of the project area.*

TRAFFIC, TRANSPORT & ACCESS IMPACTS

A *Traffic and Transport Report* (TTR) was prepared by Hyder in 2013. The TTR examined various access options into the site in relation to intersection and road network capacity. Principles established to ensure effective transport management include:

- Two access points to the site from the north, to allow balanced impacts on the road network, provide alternative options in emergency events and improve viability for a bus route.
- Recognise the external network opportunities and constraints when considering access to and from the site.
- Support public transport and cycleway linkages between the site, other employment areas and residential areas.
- Coordinate access and movement with major landowners in the Black Hill area.
- The rural dwellings in the proposed E4 zone will have access to Black Hill Road.

An access on Black Hill Road for industrial development is not viable, as the road is not suitable for industrial traffic. As discussed in the *Bushfire Hazard* section of this PP, an existing access road from Black Hill Road could be used as an alternative emergency egress. This road would be locked at the southern boundary of the site, and only emergency services agencies or the public under the direction of NSW Police could use this road.

Full industrial development of the site would result in appropriately 3,800 additional two-way vehicle trips in the PM peak hour, based on a projected development estimate of 680,000m² of industrial gross floor area. Traffic growth has also been forecast and considers new network connections (Hunter Expressway, M1 to Pacific Highway link) as well as new development such as the adjacent Coal and Allied (C&A) employment lands. Background growth is assumed to occur at 1.6% pa, which is in line with historical traffic growth on John Renshaw Drive. Cumulative growth to the year 2013 is assumed to occur at 3.3% pa, primarily derived from the Coal and Allied development.

The small number of residential dwellings included in this proposal would create an insignificant impact on the local road network.

Traffic Impact Management

The most appropriate access option to the site for industrial traffic at full development capacity is to have two access points from John Renshaw Drive, as described below and illustrated in **Figure 4**.

- Western access - a new signalised intersection approximately 280 metres from the site's western boundary, created by adding a fourth leg to the existing Donaldson Mine access (i.e. within the proposed IN2 zoned corridor); and
- Shared Eastern access - a signalised intersection adjacent to the site's eastern boundary that has been agreed by the Roads & Maritime Service (RMS), but not yet

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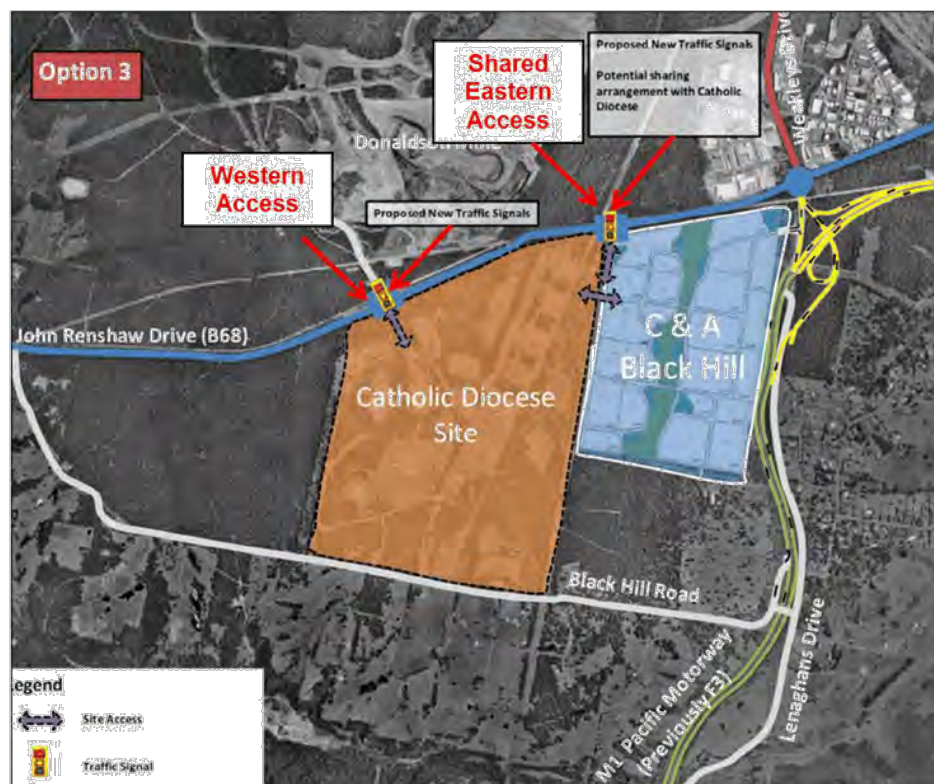
constructed. This intersection is likely to be shared with the C&A development. The precise position and design of the intersection has not yet been determined. There is likely to be some direct access between the subject site and the C&A land via a new internal access road/s.

The Western access point has the potential to accommodate the majority of the anticipated traffic generation (traffic from up to 630,000m² Gross Floor Area [GFA]), dependant on the actual traffic growth scenario at the time of construction and the ultimate trip generation rate that the development can achieve. Additional traffic up to the full projected 680,000m² GFA is likely to be accommodated by enhancing the proposed shared eastern access.

The shared eastern access has the potential to accommodate a greater proportion of the industrial traffic than projected, particularly during the early development stages, but is reliant on the design and sizing of an appropriate intersection. This intersection will be designed in consultation with C&A.

The roundabout at the end of the M1 Pacific Motorway/ Weakleys Drive is currently operating with a poor level of service and, regardless of any future development outcomes from this PP, the roundabout will continue to operate with poor service during critical peak periods.

Figure 3: Potential industrial site access from John Renshaw Drive



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The construction of the Western access and the (potentially shared) construction of the Shared Eastern access would be conditions of development consent and funded by the proponent. Access intersections required as a result of a single development are not covered by local or state infrastructure contribution plans.

A transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists, including updated traffic modelling will be included in the forthcoming DCP.

VISUAL IMPACTS

Any future development of the subject site could result in significant changes to the existing visual presentation of the area from surrounding land and streets, and may result in a change to the visual character of the immediate area. To better understand the potential impacts a *Landscape & Visual Impact Assessment* was prepared by Moir Landscape Architecture. Key findings of the assessment are as follows:

- The site is identified as having a 'low-moderate' *landscape quality rating*.
- A number of key viewpoints towards the site from around the locality were identified. Of the 18 viewpoints assessed, the subject site would be visible from 8 viewpoints. Impacts of development within the site on these viewpoints would have the following impacts, assuming no mitigation measures were put in place: low visual impact (1 viewpoint), moderate visual impact (5 viewpoints) and high visual impact (2 viewpoints).
- The highest visual impact is likely to be felt from parts of John Renshaw Drive, as the IN2 zone will directly adjoin the road for approximately 650m.
- There is expected to be nil visual impact along Black Hill Road, due to the presence of the proposed E4 area and the width of associated screening vegetation.

The Assessment made a number of recommendations which may be adapted to suit future development in order to minimise any detrimental impacts on visual amenity. The Assessment predicts that all visual impacts on the key viewpoints can be reduced to *low* or *nil* with the application of mitigation measures during development design. Recommended mitigation measures include:

- Provision of adequate development setbacks from public roads, namely John Renshaw Drive, and subsequent buffer vegetation planting of 10m width along the site's northern, eastern and western boundaries.
- Physical and visual separation between development zones (within IN2 zone) and the provision of 'green' corridors within the site
- Entry and internal roads should be positioned where possible close to existing topographical contours.
- Retention of existing vegetation, wherever possible, including any vegetation outside development footprints and unaffected by bulk earthworks (in addition to vegetation within the proposed E2 and E4 zones).

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The proposed vegetation retention areas and buffer planting zones are illustrated in **Figure 4**.

Figure 4: Proposed Mitigation Methods - Visual Impacts



The future DCP must provide for an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain. The inclusion of the mitigation measures in this DCP will therefore address visual impacts arising from this PP.

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CONTAMINATION ISSUES

The site has previously been used as a large poultry farming operation over many years and contamination of parts of the site has occurred as a result. Historical contamination sources within the site include the following:

- Buried poultry carcasses;
- Underground fuel storage tanks;
- Application of pest control products and timber preservatives;
- Asbestos from farm buildings; and
- Rubbish dumping across the site.

Extensive assessments of the site's contamination status have occurred in the past, and various site remediation activities have been undertaken in order to restore the site to a standard appropriate for the existing rural uses. Remediation activities around some areas of the site have now been completed, generally through the capping of the soil.

A *Site Contamination Investigation* (SCI) was undertaken by Noel Arnold & Associates in 2013. The SCI provides additional information regarding contamination from previous uses of the land, and supplements the existing investigations that have been undertaken since the poultry farming on the site ceased.

Contamination residues from previous uses of the land were identified as part of the SCI, and included asbestos cement sheeting and floor tile wastes and elevated concentrations of metal and petroleum hydrocarbons at some locations. Elevated concentrations of nutrients were also reported in soil and water samples, which pose a potential risk to surface water quality.

Microbiological contamination and low aesthetic quality of soils and waters were identified in areas impacted by animal farming activities, e.g. within the pig and duck ponds, as shown in **Figure 5** below. Remediation works in the form of site capping have been completed in some areas where burial of poultry was earlier identified. There is anecdotal evidence for burial of poultry in some additional areas however the test pitting program in the SCI did not identify additional poultry burial areas. The SCI report concludes that the land can be made suitable for industrial and residential land uses (and other activities permissible within the E2 and E4 zones) through the development and implementation of a remediation action plan, or a series of plans if a staged development approach is adopted. The remediation action plans would need to be completed and approved before development could commence, in accordance with *State Environmental Planning Policy No 55 – Remediation of Land*. No additional provisions are required in the Planning Proposal or in a DCP.

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Figure 5: Site contamination investigation- site overview



9 Social and Economic Impacts

A *Social Impact Assessment* (SIA) was prepared by Key Insights in 2013. The SIA analysed socio-economic data together with the results of qualitative research (one-on-one interviews and meetings) undertaken with local people and organisations to capture the full range of potential issues and opportunities arising from the PP.

The SIA identified potential impacts from development of the site in the following key areas:

- Sense of place (local character);
- Amenity;
- Social cohesion/ equity;
- Housing;
- Employment and economic impacts;
- Regional industrial land capacity/ loss of agricultural land;
- Black Hill Public School; and
- Cumulative impacts.

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The following is an extract from the SIA regarding the key concerns and aspirations raised during interviews and meetings:

The main concerns in the Black Hill community are the loss of rural ambience and local amenity because of the potential encroachment of industrial land into the quiet rural landscape. There is a strong desire to protect the environment of the school. There is some recognition of the potential of development in terms of local accessible employment and economic activity; however this would only be acceptable with appropriate offsets and minimal, if any, visual and noise impacts on the community along Black Hill Road. There is local support for the continuation of rural residential development on the site with the potential for new families and enrolments for the school as well as for the management of the environmental conservation zone (p10).

A number of recommendations are proposed in the SIA to address these concerns. Some recommendations are matters for the site owners to pursue separately to the PP, such as facilitating a Community Open Day at the Black Hill Public School. All other recommendations have been incorporated into the PP, including:

- permitting a limited number of residential lots and dwellings (four) in the E4 zoned area fronting Black Hill Road,
- ensuring no access to the industrial land from Black Hill Road,
- providing a buffer between any industrial development and Black Hill Road, and
- adopting the recommendations of the environmental investigations (outlined within this PP) to mitigate negative impacts.

The SIA concludes that *on balance, there would be a net social and economic benefit associated with the rezoning of the subject site and subsequent sensitive redevelopment (p55).*

POTENTIAL ECONOMIC IMPACTS

The site is currently utilised for low-scale grazing purposes (up to about 250 head of cattle), which provides insignificant employment opportunities even when flow-on effects are taken into account. Local farmers have indicated that the site does not constitute high value agricultural land.

It is difficult to quantify the end value of any industrial development of the site as the type and scale of uses are yet to be identified. However the SIA notes:

- *\$50 million in construction costs over the development of the site would be a conservative estimate;*
- *At 9 jobs per \$1 million spent in construction the development would deliver 450 jobs in the construction phase with multipliers throughout the economy;*
- *A second significant impact on the sub-regional economy from the construction phase comes from expenditure on materials; and*
- *Inputs to the sub-regional and local economy during the operational phase of any development would again far exceed those associated with agriculture however it is not possible to quantify without a determination of the end use.*

Development associated with the Planning Proposal is not anticipated to have any negative impacts on the local or wider economy.

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Section D: State and Commonwealth Interests

10 Adequate Public Infrastructure

An assessment of the infrastructure available to the site was undertaken by SMEC in 2013. This *Preliminary Infrastructure Investigation* was prepared to determine the trunk servicing requirements for services including water, wastewater, electricity, telecommunication and gas. The key findings of the Investigation are as follows:

- **Water:** An appropriate mains water supply is available. Hunter Water Corporation has advised that a connection can be made from the existing DN500 watermain on the southern side of John Renshaw Road.
- **Wastewater:** Expected use for the site is estimated at 2,000 equivalent tenements (ETs) and Hunter Water has advised that there is limited capacity currently available close to the site (i.e. a 'couple of hundred' ET available within existing infrastructure). Wastewater flows will ultimately need to be conveyed to one of the nearest wastewater treatment works (Morpeth, Shortland or Kurri Kurri). Various options are available to connect to these works, and should be investigated further to determine the preferred option. Alternatively onsite treatment may be a viable option. It is recommended that an on-site option is further investigated as part of development design for the site.
- **Electricity:** Ausgrid have indicated staged upgrades will likely be required to service any development and that some initial capacity is available on site.
- **Telecommunications:** Telstra maintains existing networks through the site and have advised that the network is currently insufficient to meet the likely demand for the site.
- **Gas:** Jemena have indicated that natural gas is available in the vicinity and may supply the proposed industrial area and will proceed based on the gas consumption customers once known.

By virtue of the identification of the site as an urban release area in the Cessnock LEP, clause 6.2 will apply to the development of the site. This clause requires that Council must be satisfied before granting consent to a DA that public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

11 Consultation with State and Commonwealth Authorities

As directed within the previous Gateway determination, the following agencies have been consulted during the process of assessment of the previous PP:

- Mine Subsidence Board;
- NSW Rural Fire Service;
- Transport for NSW- Roads & Maritime Service;
- NSW Aboriginal Land Council (represented by Mindaribba LALC);
- Office of Environment & Heritage;
- NSW Department of Primary Industries- Agriculture; and
- NSW Department of Primary Industries- Minerals & Petroleum (Mineral Resources Branch).
- Hunter Water;
- Newcastle City Council;
- Maitland City Council;
- Ausgrid;
- Telstra; and
- Any others specified in the determination.

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Table 8 below provides a summary of the Agencies' feedback, as well as a responding comment, where relevant. Full copies of agency responses have been provided previously to DoPE. Note as part of the revised Gateway determination additional consultation was required with Office of Environment and Heritage.

Table 7: Summary of Government Agency Responses

AGENCY COMMENTS	RESPONSE
Mine Subsidence Board (13/11/13)	
The site is not within a mine subsidence district and therefore MSB approval is not required for surface development.	Noted
The Board concurs with Coffey Report that the development should be staged to allow for the extraction of the remaining Upper Donaldson seam by Donaldson Coal.	The proponent will work with Council, Donaldson Coal & other relevant stakeholders throughout preparation of the DCP to establish appropriate staging and development controls in response to any ongoing or future mining plans.
The Board has no objection to the rezoning of the land and development of the land following mining.	Noted
NSW Rural Fire Service (07/01/14)	
RFS raises no concerns to the proposed rezoning.	Noted
Recommendations detailed in the 'Bushfire Protection Assessment' should be considered in future development of the site.	The recommendations will inform preparation of the DCP and subsequent development applications (DAs).
Transport for NSW- Roads & Maritime Services (24/01/14)	
RMS concurrence is required for connections to John Renshaw Drive (classified State Road B68) under Section 138 of the <i>Roads Act 1993</i> .	Noted- such concurrence would be sought at the DA stage.
RMS consent is required for traffic control signals and facilities under Section 87 of the <i>Roads Act 1993</i> .	Noted- such consent would be sought at the DA stage.
RMS will provide comment on subsequent DAs with regard to satisfying the requirements under Schedule 3 Column 2 in accordance with Clause 104 of the Infrastructure SEPP.	Noted
RMS considers the Traffic & Transport Report to be inadequate in addressing road and traffic issues. RMS requests the following preliminary requirements be adopted and additional information provided:	A submission was prepared by the proponent in response to RMS concerns about the Traffic & Transport Report, and provided to Council. In summary, it noted that a DCP will be prepared before any development of the land can take place, which will include more detailed design and consideration of the proposed road network. Further detailed design, modelling and

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AGENCY COMMENTS	RESPONSE
	<p>assessment will be undertaken in association with future DAs for development, which the RMS will have additional opportunities to provide comment on.</p> <p>Therefore the existing Traffic & Transport Report is considered adequate and appropriate for the rezoning stage.</p> <p>Council undertook liaison with RMS officers on 28/03/14 in relation to the above. The RMS confirms it has no further issues/ objection with regard to the PP.</p>
<p>i. Master plan showing:</p> <ul style="list-style-type: none"> • road upgrades (eastern and western intersections) • internal road connections between the adjoining Coal and Allied development and the site • no direct property access shall be permitted to/from John Renshaw Drive, and • all access to individual properties shall be via the internal road network 	<p>A DCP will be prepared before any development takes place on the land, which will include consideration of the issues identified by the RMS.</p>
<p>ii. John Renshaw Drive is to be upgraded to dual carriageways between the proposed Coal & Allied access and the proposed western signalised access.</p>	<p>The Traffic & Transport Report did not identify any logistical requirement to upgrade the road to dual carriageways, based on projected traffic volumes from the site. However the traffic situation should be re-examined at the DA stage to determine the requirement for any road upgrades.</p>
<p>iii. Revise the traffic study to reflect the concept master plan and include the traffic volumes of the Coal & Allied development. RMS does not concur with the traffic volumes in the traffic study</p>	<p>The Traffic & Transport Report takes into account the traffic volumes associated with the C&A development and was prepared using the RMS' own Lower Hunter Traffic Model. Traffic volume assumptions were previously agreed with RMS officers (August 2013). Additional modelling may be required pre DA approval.</p>
<p>iv. RMS to review the Paramics model being undertaken as part of M1 to Raymond Terrace upgrade investigations to determine the required intersection and mid-block capacity upgrades and traffic signal coordination</p>	<p>Such detailed intersection modelling shall be reviewed and/or undertaken at the DA stage.</p>
<p>v. RMS considers the proposed Coal & Allied intersection will be significantly impacted by this development and may require additional capacity. This is to be</p>	<p>Detailed intersection modelling and design shall be undertaken at the DA stage.</p>

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AGENCY COMMENTS	RESPONSE
investigated further and modelled, considering the proposed internal links between the developments.	
<p>vi. The proposed western access road shall be designed and constructed as a signalised intersection in accordance with the Austroads Guide to Road Design 2010 (with RMS supplements) and the RTA Traffic Signal Design 2008 to the satisfaction of RMS including, but not limited to, the following works:</p> <ul style="list-style-type: none"> • Upgrading the intersection to a four leg traffic controlled intersection, which incorporates vehicular access to/ from the development and Donaldson mine sites. • The required lane configuration, types and lengths shall be determined by RMS subject to a review of the revised Traffic study to be prepared to the satisfaction of RMS in accordance with the RMS's Guide to Traffic Generating Developments. • The intersection shall be designed to accommodate the largest design vehicle (25/26m B-Double). Comment: Turning templates shall be provided in electronic and hardcopy format for all movements for RMS' review and acceptance. • Street lighting shall be provided at the intersection to Australia Standards, or as determined by RMS. 	Noted. Such detailed design measures will be addressed at the DA stage, in consultation with the RMS.
All works associated with the proposed development shall be at full cost to the developer and at no cost to the RMS or Council.	Noted- the need for any future upgrade works shall be determined and negotiated with the RMS at the appropriate time.
Due to the limited amount of information provided, RMS is unable to comment on the potential subdivision of the land proposed to be zoned E4 Environmental Living.	Noted. It is emphasised that residential development within the E4 zone would create very low volumes of traffic and insignificant impacts on the local road network.
Mindaribba Local Aboriginal Land Council (undated)	

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AGENCY COMMENTS	RESPONSE
Mindaribba supports the rezoning provided a full Aboriginal Heritage Assessment is conducted prior to development proceeding.	If required (e.g. if there is the potential for impacts on registered sites), a full Aboriginal Heritage Assessment will be undertaken at the DA stage.
The LALC should be involved in the assessments.	Noted
Office of Environment & Heritage (28/11/13)	
Development design should use the hierarchy of 'avoid, mitigate, offset' in addressing biodiversity concerns.	The Planning Proposal <i>avoids</i> impacts on key ecological values (e.g. known habitat of a threatened bird species) through the E2 zoning of large parts of the site. Further, a range of <i>mitigation</i> measures have been outlined within the Flora & Fauna Assessment which will be implemented through the preparation of the DCP and future DAs. Finally, the proponent commits to the undertaking of additional appropriate conservation measures (whether they occur on-site or off-site) to <i>offset</i> the impacts of anticipated vegetation clearing within the IN1 zone. This commitment is enshrined within the Voluntary Planning Agreement (VPA) to be enacted between Council and the proponent, and details will be agreed before any development of the land takes place.
Given the high conservation values onsite, a field inspection should be attended by relevant parties to discuss appropriate land uses zones and 'avoid, mitigate and offset' to achieve an 'improve and maintain' outcome for the proposal.	Further discussions with OEH, Council and the proponent have occurred since the agency comments were received. It was determined that a site inspection was not necessary and that the proposed E2 zoning was appropriate in this case. The negotiation of additional conservation measures to offset vegetation clearing could appropriately occur after the rezoning stage- these commitments are outlined in the VPA.
Proposed significant impacts on high conservation values should be offset using the NSW Governments BioBanking Assessment Methodology (BAM).	Negotiations with regard to identifying appropriate conservation outcomes will be informed by the results of the Biobanking Assessment Methodology, as outlined within the VPA.
In the absence of a formal Biodiversity Certification or BioBanking Agreement under Parts 7A and 7AA of the TS Act, a Species Impact Statement and OEH concurrence may be required at DA stage.	Noted
Any impact on the known Aboriginal sites would require a full Aboriginal Cultural Heritage Assessment, Aboriginal Cultural Heritage Consultation Requirements and an Aboriginal Heritage Impact Permit (AHIP).	Noted- any proposal to impact on known sites would be comprehensively assessed at the DA stage.

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AGENCY COMMENTS	RESPONSE
OEH supports and concurs with the Aboriginal Heritage Due Diligence Assessment.	Noted
Office of Environment & Heritage (29/10/16)	
OEH advised the original response remains current.	Noted and response provided above.
OEH remains supportive of the Planning Agreement to manage required biodiversity offsets.	Noted.
OEH highlighted the importance of the values of the site and of particular note the Regent Honeyeater.	The proponent will need to consider all OEH and legislative requirements when fulfilling the requirements of the Planning Agreement and subsequent development assessment process.
NSW Department of Primary Industries (Agriculture) (22/11/13)	
It would be beneficial to identify strategically suitable (i.e. buffers, transport and distance to processing) areas for any future poultry activity in the Cessnock LGA.	The identification of alternative land for poultry farming activities is outside the scope of this PP. The poultry farming ceased on this site in 2003, before the identification of its strategic industrial/employment potential.
Encourages development options that are in line with Cessnock LEP and support possible future agricultural industries in this zone (e.g. poultry industry or aquaculture).	The proposed IN2 Light Industrial zone permits a wide variety of industrial activities that would support the poultry or aquaculture industries.
Department of Trade & Investment (Mineral Resources Branch) (06/12/13)	
Concerned that there is no planning mechanisms for MSB to guide future building requirements or standards since the site is not within a declared mine subsidence district. Strongly recommends further consultation with Donaldson Coal, Mineral Resource Branch, MSB and Council to establish planning controls to manage underground mining and potential subsidence impacts within the subject area.	The proponent will work with Council, Donaldson Coal & other relevant stakeholders throughout preparation of the DCP to establish appropriate staging and development controls in response to any ongoing or future mining plans, including associated subsidence issues.
Petroleum Exploration License (PEL) 267 held by AGL Upstream Investments Pty Limited exists over a broad area including this site.	Noted
MRB has no concerns regarding the rezoning of the environmental areas, but does have concerns regarding the IN1 rezoning with relation to managing the future subsidence impacts.	The proponent will work with Council, Donaldson Coal & other relevant stakeholders throughout preparation of the DCP to establish appropriate staging and development controls in response to any ongoing or future mining plans, including associated subsidence issues.

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PART 4: MAPPING

The Planning Proposal seeks to amend the Cessnock Local Environmental Plan 2011 maps applying to Lot 1131 DP 1057179, part of Lot 119 DP 1154904 and part of Lot 13 DP 1097621 as follows:

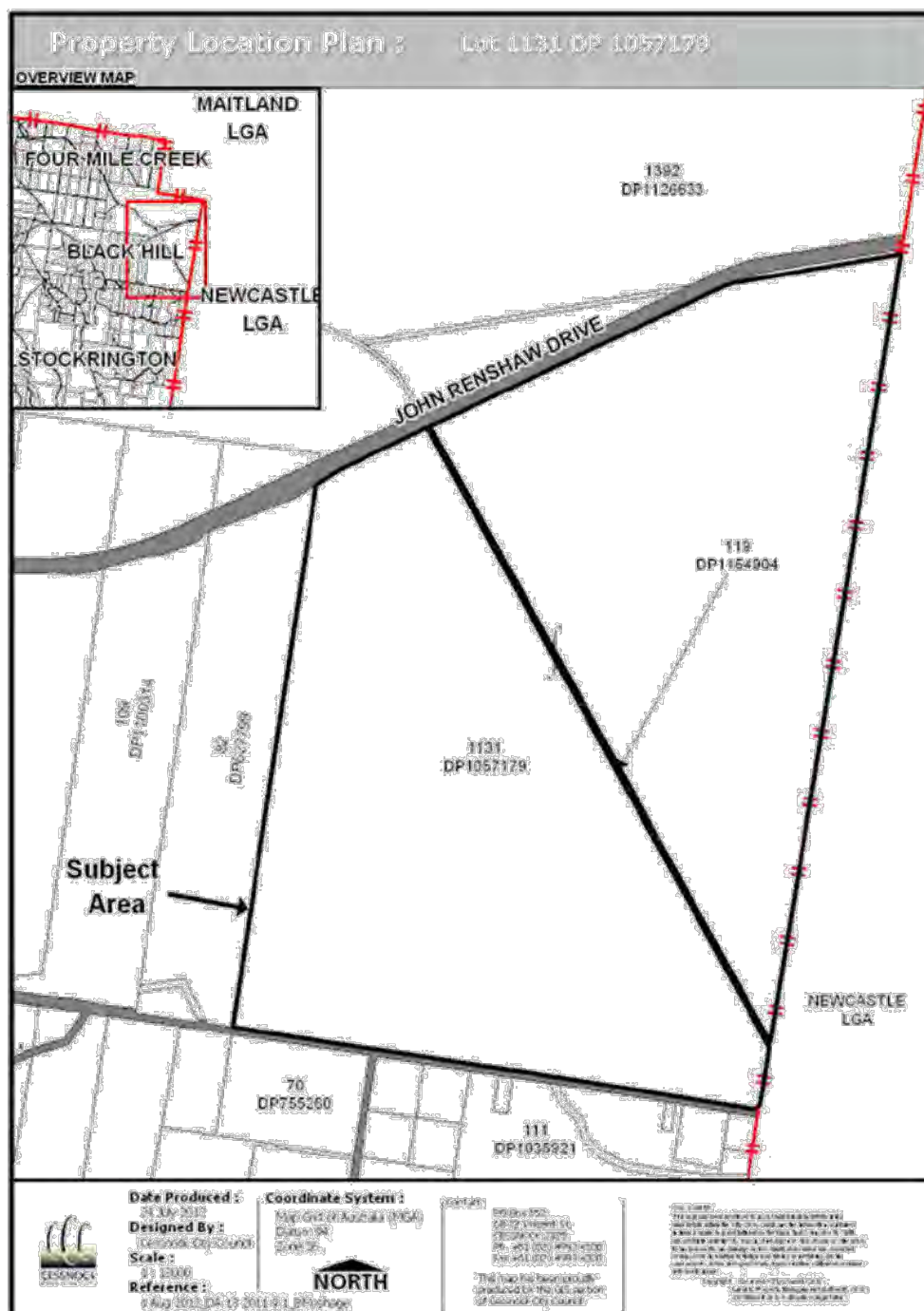
- **Land Zone Map** – Amend map sheet 1720_COM_LZN_009_080_20130321 to partly zone the subject land IN2 Light Industrial, E2 Environmental Conservation and E4 Environmental Living in accordance with Map 4 of this Planning Proposal.
- **Lot Size Map** – Amend the Minimum Lot Size Map sheet 1720_COM_LSZ_009_080_20111208 so that no Minimum Lot Size applies to land proposed to be zoned IN2 Light Industrial, a minimum lot size of 80 hectares applies to land proposed to be zoned E2 Environmental Conservation and E4 Environmental Living in accordance with Map 6 of this Planning Proposal.
- **Urban Release Areas Map** – Create a new Urban Release Area map for Grid Number 009 and identify the subject land as an Urban Release Area in accordance with Map 7 of this Planning Proposal.

Note the deferred matter identified on maps is no longer relevant as this was recently published on the NSW Legislation website.

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Map 1: Location Plan



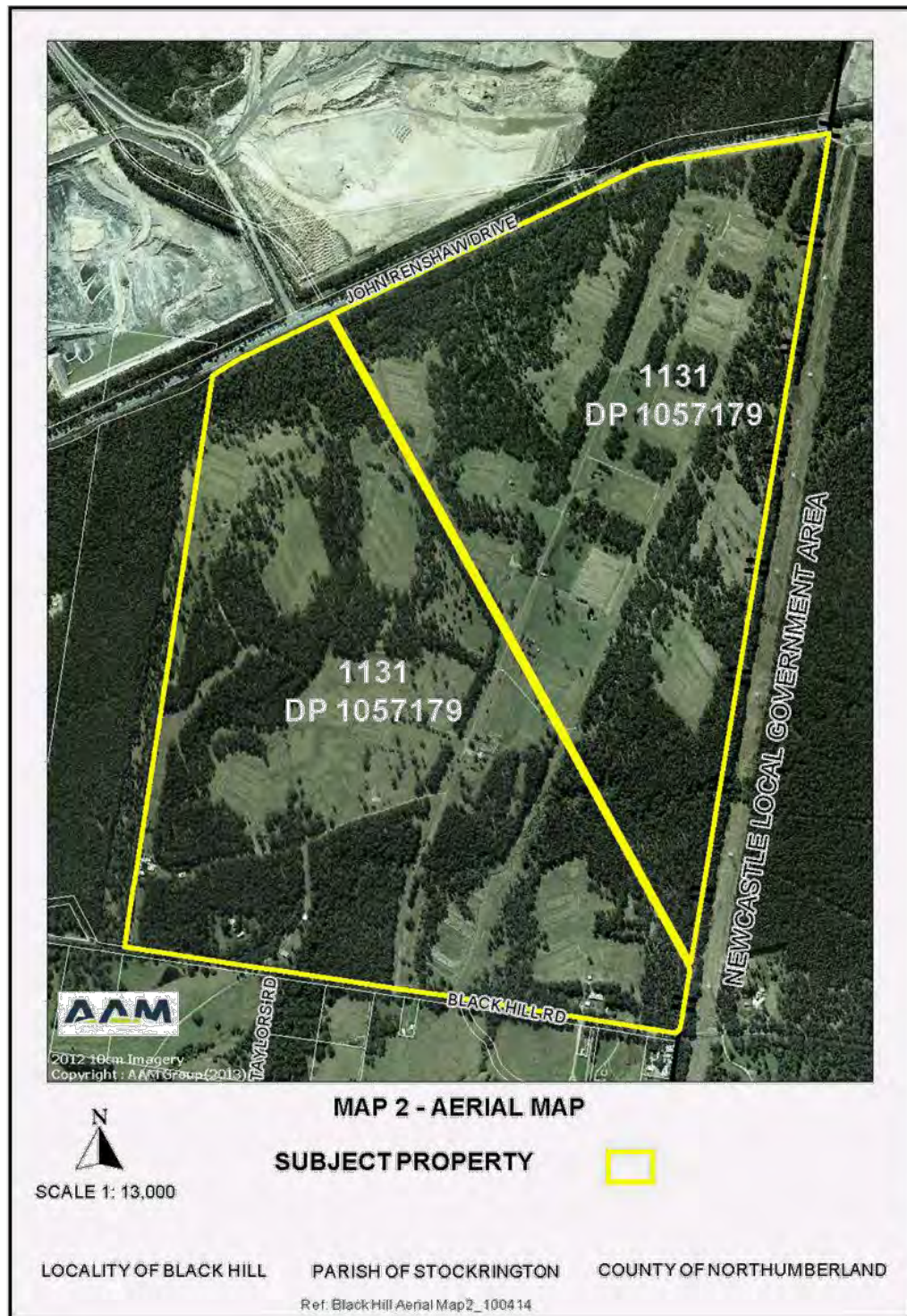
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Map 2: Aerial Location Plan

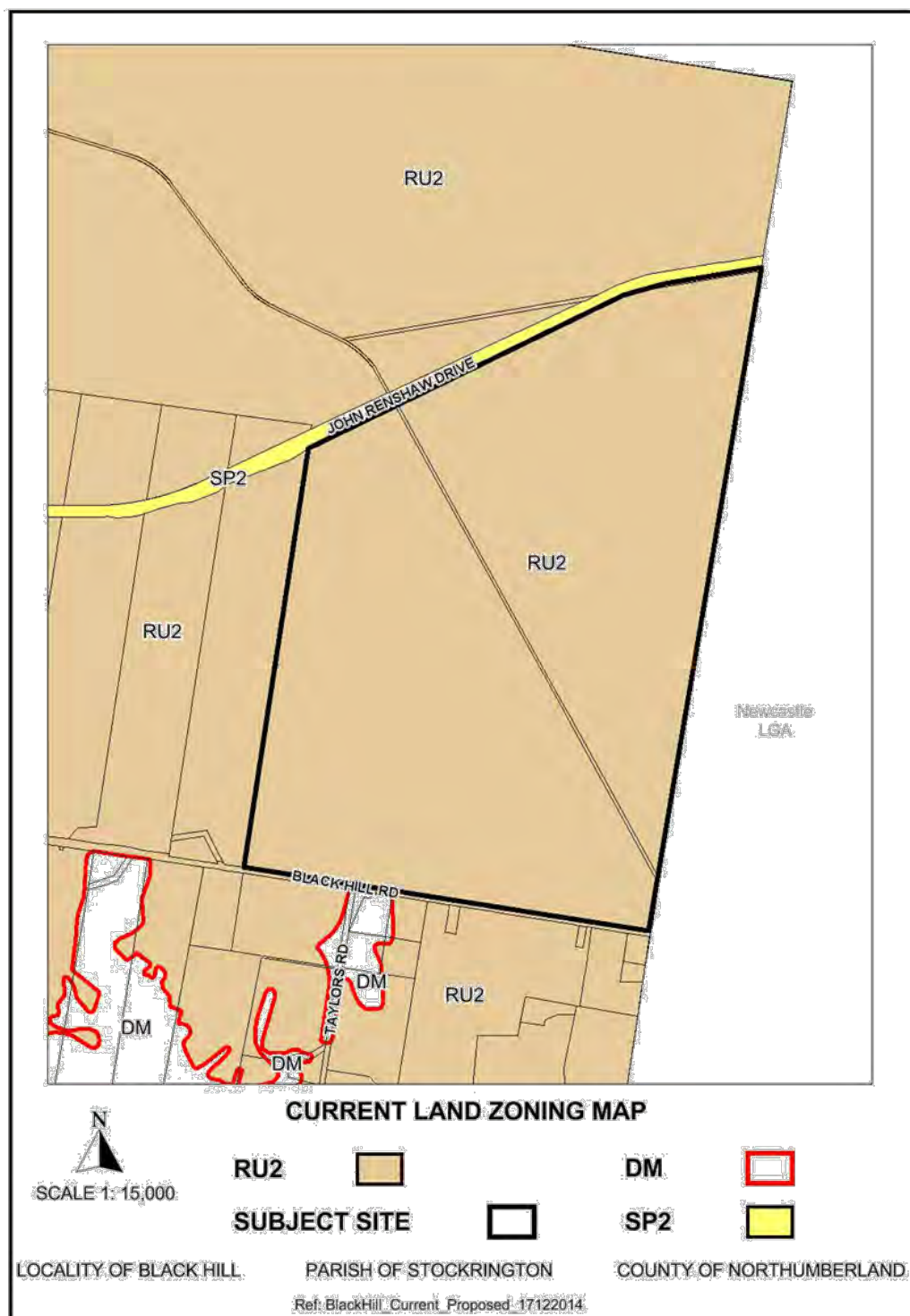
Planning Proposal – Black Hill

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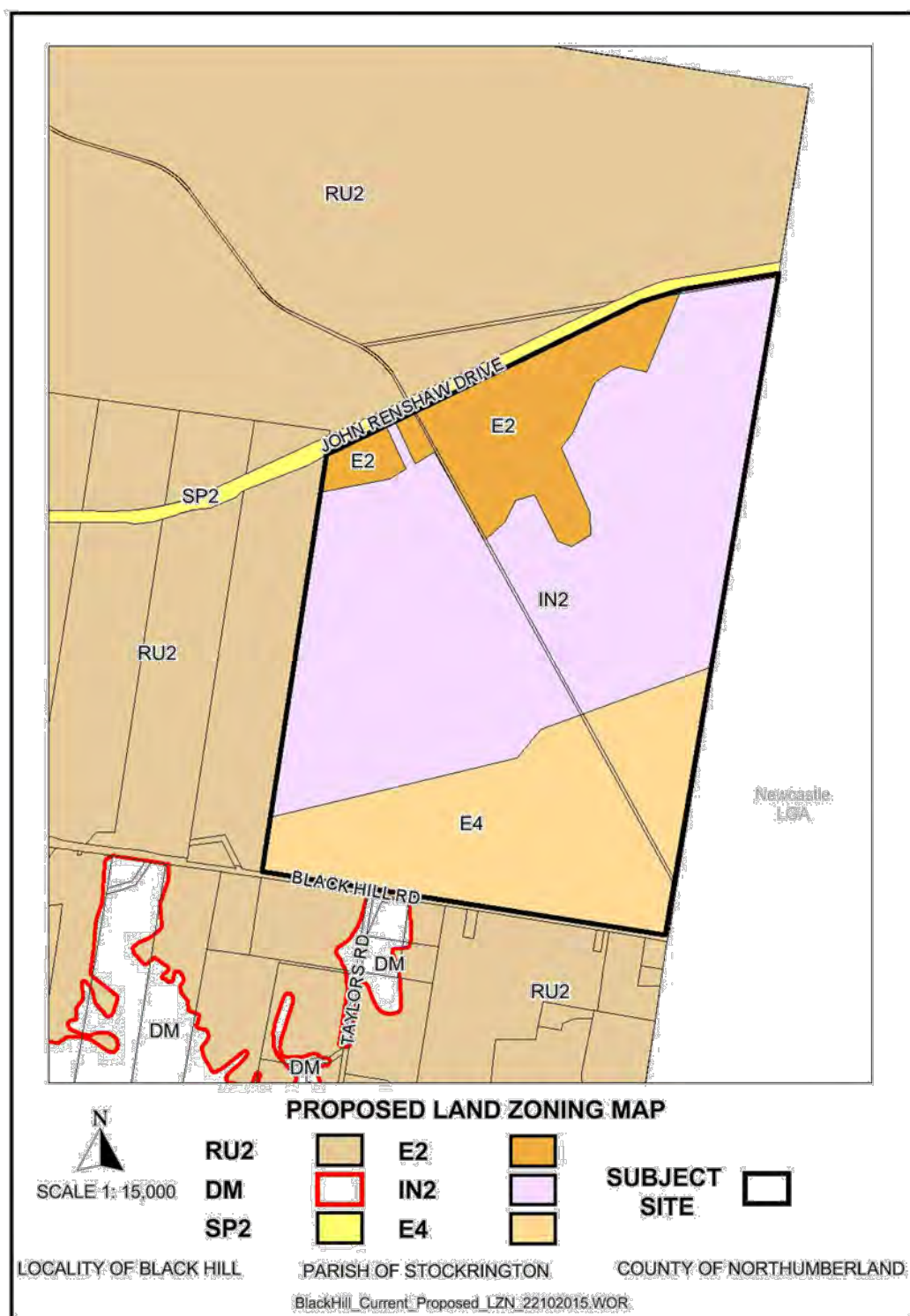
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Map 3: Existing Zoning Layout

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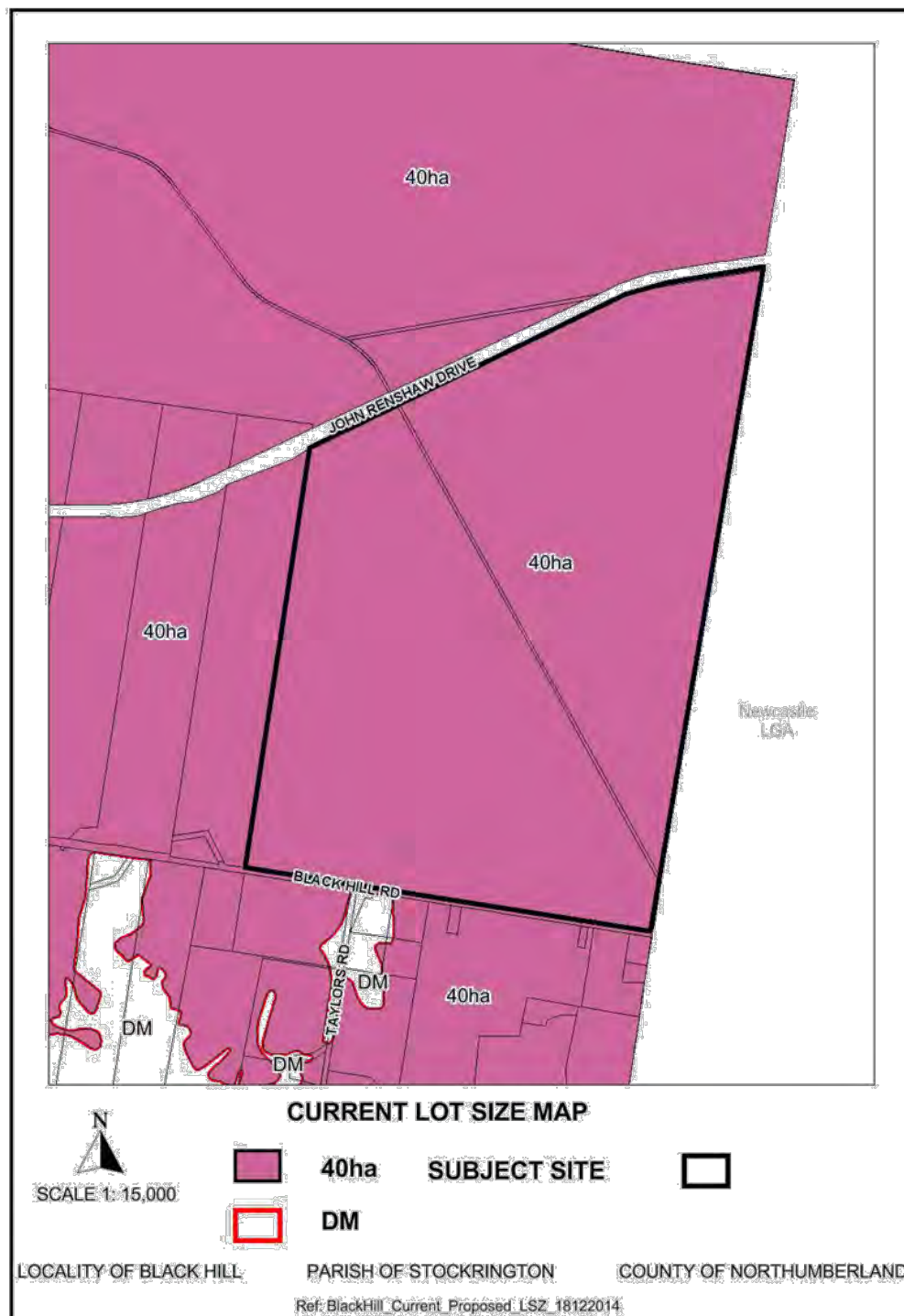
Map 4: Proposed Zoning Layout

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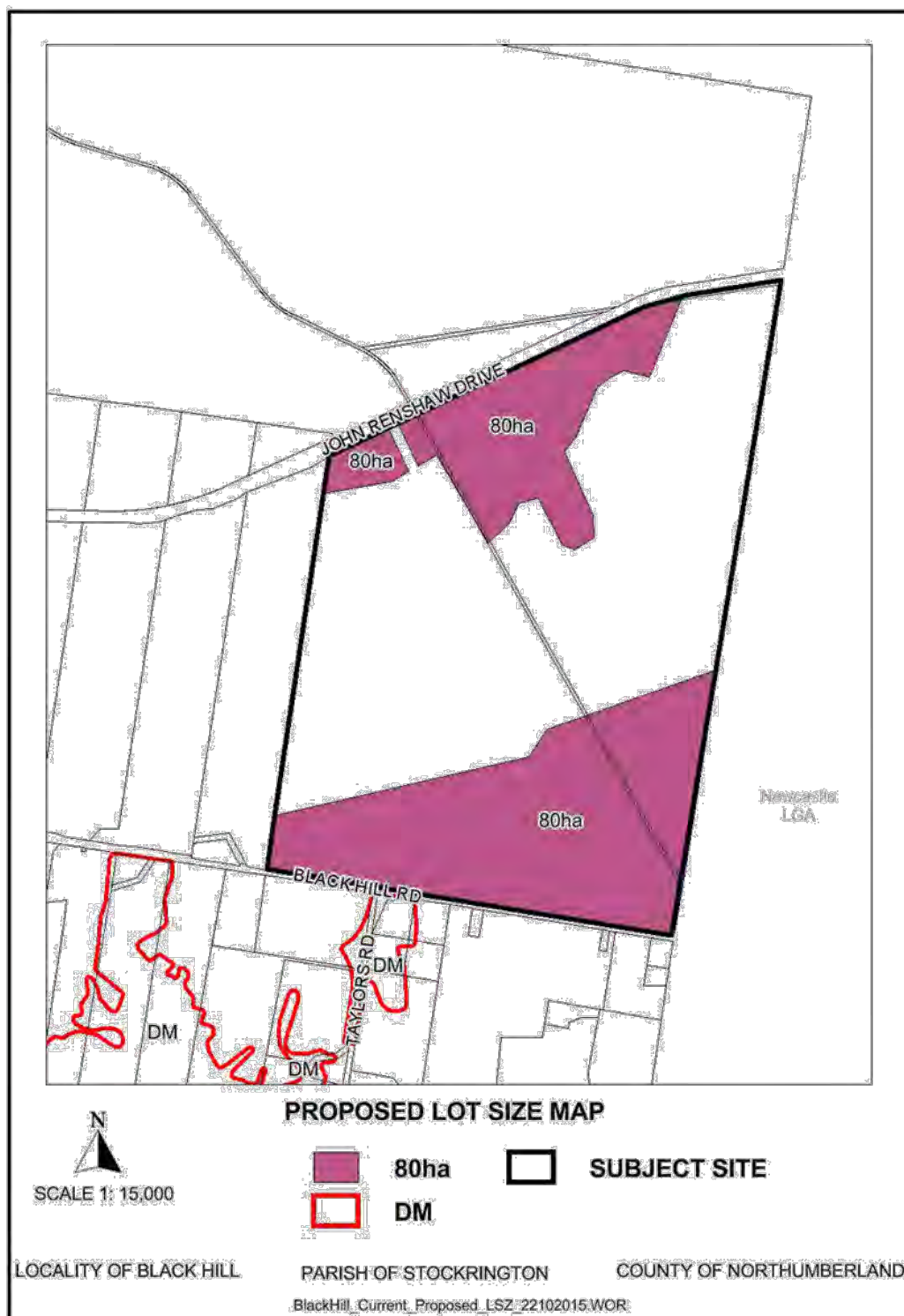
Map 5: Existing Minimum Lot Size



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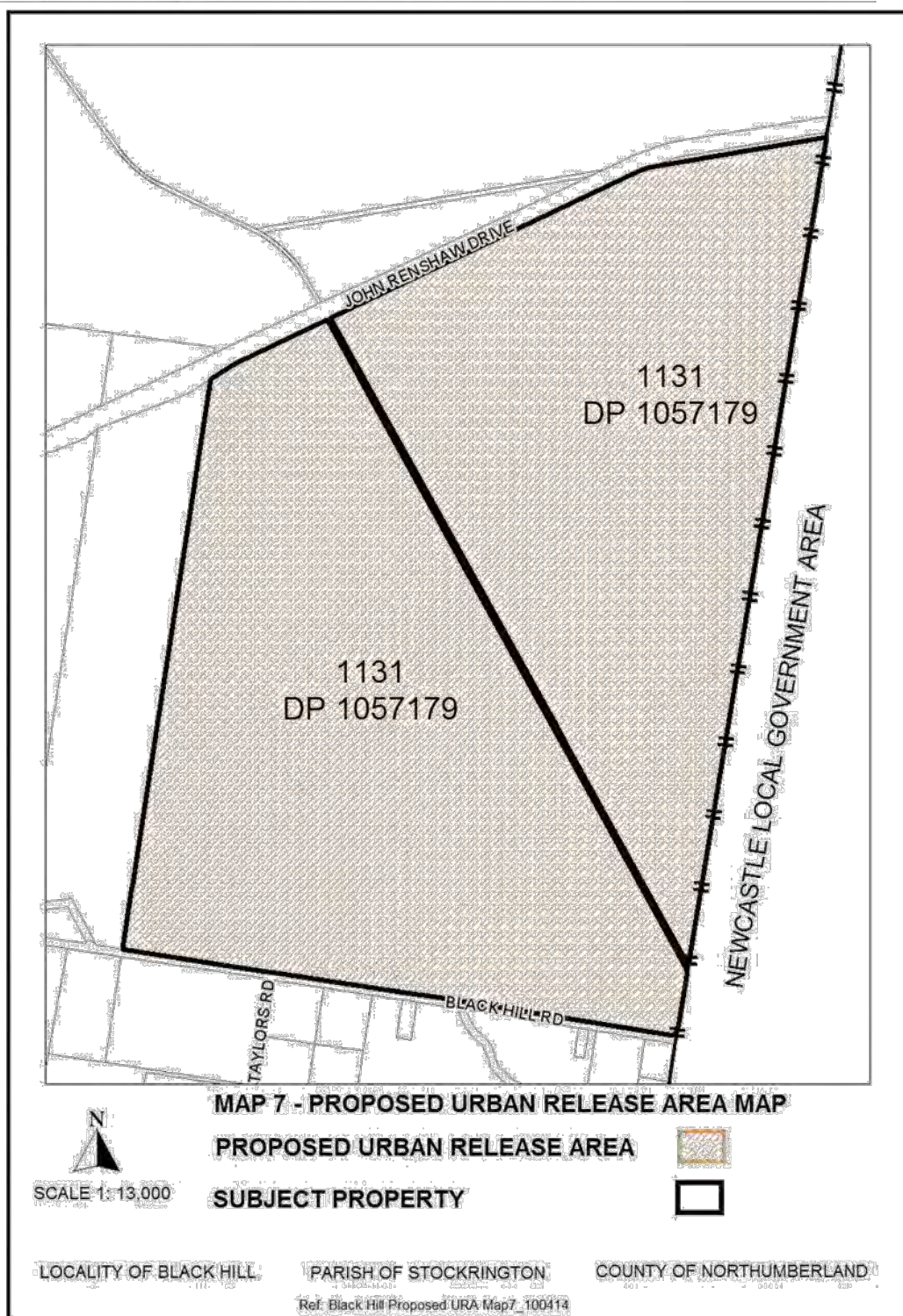
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Map 6: Proposed Minimum Lot Size

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Map 7: Proposed Urban Release Areas

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PART 5: COMMUNITY CONSULTATION

Public Exhibition for Previous Planning Proposal

The previous Planning Proposal and supporting studies were placed on public exhibition between 25 June and 30 July 2014. The draft voluntary Planning Agreement was exhibited from 2 July to 6 August 2014.

Also as part of that public exhibition an "open day" was held at the Black Hill Public School on 17 July 2014 at which presentations of maps and other wall chart based explanations were presented together with the availability of the professional Planners from CPS&D and Council to respond to enquiries and comments from the members of the public. Following the conclusion of the open day on 17 July 2014, an independently facilitated Community forum was conducted.

In response to the public exhibition, 135 public submissions were received objecting to the Planning Proposal, together with a petition with 28 signatories. Copies of this information have been provided to DoPE when the previous Planning Proposal was referred to Gateway.

Public Exhibition for Revised Planning Proposal

The revised Planning Proposal was placed on public exhibition from 29 June to 31 July 2016 and made available at the following locations:

- Notification in the Cessnock Advertiser and Newcastle Herald;
- Hard copy display at Council's Administration Building;
- Kurri Kurri Public Library and
- Cessnock Public Library.

Web based notification will be on Council's website at www.cessnock.nsw.gov.au

Although less submissions were received during this period, the issues and fundamental objections to the Planning Proposal have remained the same.

Planning Proposal – Black Hill

File No. 18/2011/9/1

PART 6: PROJECT TIMELINE

Table 8: Project Timeline for the previous PP and for the initial steps for the amended PP is as follows:

Stage	Completion Times	Comment
1: Lodgement of Planning Proposal	November 2011	Completed
2: Gateway Determination	December 2012	Completed
3: Completion of Technical Information	September 2013	Completed
4: Agency Consultation	October - December 2013	Completed
5: Council Report & Briefing (if required)	July 2014	Completed April 2014, including agreement on VPA
6: Public Exhibition	July/August 2014	Completed
7: Review & Consideration of Submissions; engagement and negotiation with community representatives and the proponents	October to December 2014	Completed
8: Council Report & Briefing	10 December 2014	Completed
9: Submit amended Planning Proposal to Department with Request for Gateway determination	December 2014	Completed
10: Council Report	4 November 2015	Completed – Rescission Motion Received.
11: Rescission Motion Considered	18 November 2015	Completed – Decision deferred until release of Hunter Regional Plan
12: Council Report	16 March 2016	Completed
13: Submit amended Planning Proposal to Department with Request for revised Gateway determination	30 March 2016	Completed.
14: Revised Gateway determination received.	7 June 2016	Completed.
15: Public Exhibition	29 June – 31 July 2016	Completed.
16: Review & Consideration of Submissions;	August - September	Completed
17: Council Report	2 November	Completed.

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Planning Proposal – Black Hill

File No. 18/2011/9/1

Stage	Completion Times	Comment
	2016	

Amended Timeframe	Mar 2016	April 2016	May 2016	June 2016	July 2016	Aug 2016	Sept 2016	Oct 2016	Nov 2016
STAGE 1 Submit to DoPE – Request for Revised Gateway Panel consideration of									
STAGE 2 Receive Revised Gateway Determination				17					
STAGE 3 Preparation of documentation for Public Exhibition				7					
STAGE 4 Public Exhibition				29	31				
STAGE 5 Review/consideration of submission received									
STAGE 6 Report to Council								2	
STAGE 7 Forward Planning Proposal to DoPE with request the amendment be									

Planning Proposal – Black Hill

File No. 18/2011/9/1

Appendix 1: Council Report and Minutes

Report to Ordinary Meeting of Council – 7 March 2012 – previously provided

Minutes of Ordinary Meeting of Council – 7 March 2012 – previously provided

Report to Ordinary Meeting of Council – 1 August 2012- previously provided

Minutes of Ordinary Meeting of Council – 1 August 2012 – previously provided

Report to Ordinary Meeting of Council – 16 April 2014

Minutes of Ordinary Meeting of Council – 16 April 2014

Report to Ordinary Meeting of Council – 10 December 2014

Minutes of Ordinary Meeting of Council – 10 December 2014

Rescission Motion to Ordinary Meeting of Council – 16 December 2014

Report to Ordinary Meeting of Council – 4 November 2015

Minutes of Ordinary Meeting of Council – 4 November 2015

Report of Ordinary Meeting of Council – 18 November 2015

Rescission Motion to Ordinary Meeting of Council – 18 November 2015

Report to Ordinary Meeting of Council – 16 March 2016

Minutes of Ordinary Meeting of Council – 16 March 2016

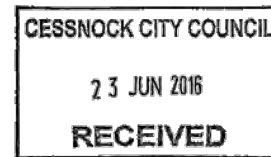
Planning Proposal – Black Hill

File No. 18/2011/9/1

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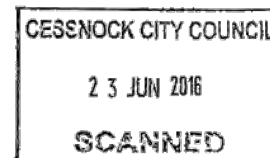
**Planning &
Environment**



Mr Stephen Glen
General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Our ref: 16/07088
Your ref: 18/2011/9/1

Attention: Wonona Fuzzard



Dear Mr Glen

**Planning Proposal PP_2012_CESSN_005_00 – Alteration of Gateway
Determination**

I refer to your letter of 30 March 2016 in relation to revisions to Planning Proposal PP_2012_CESSN_005_00 to rezone land for industrial and environmental purposes at Black Hill and the additional material provided by Council on 29 April 2016.

I have determined as the delegate of the Minister, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 11 December 2012 for PP_2012_CESSN_005_00 (as altered). The Alteration of the Gateway Determination is enclosed.

In making this amendment I have noted the significant length of time that it has taken to progress the proposal to date and do not consider this satisfactory. As a result, I request that Council ensure that no further delays are experienced and that the LEP is completed no later than the date set out in the altered Gateway determination.

The Department has recently considered a request by the proponent to appoint an alternate relevant planning authority in response to concerns regarding the progress to date. The Department has not recommended that an alternative relevant planning authority be appointed at this time only because Council has indicated its willingness to now finalise the planning proposal.

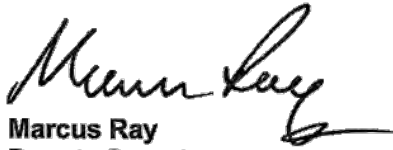
The amending Local Environmental Plan (LEP) is to be finalised by 18 December 2016. Council should commence the exhibition of the planning proposal within 4 weeks of the date of this letter. A report to Council under section 58 of the *Environmental Planning and Assessment Act 1979* should be made by September 2016 in accordance with the current project timeline for the proposal.

To ensure that this matter continues to proceed according to these milestones, the Department requires monthly updates from Council on the progress of this proposal. These updates are to be sent to the Newcastle office at hunter@planning.nsw.gov.au.

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone (02) 9228 6111 Facsimile (02) 9228 6191 Website www.planning.nsw.gov.au

If you have any questions in relation to this matter, I have arranged for Ms Katrine O'Flaherty to assist you. Ms O'Flaherty can be contacted on (02) 4904 2710.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

17/06/2016

Encl
Alteration to Gateway Determination



Planning & Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2012_CESSN_005_00)

I, the Deputy Secretary, Planning Services at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination dated 11 December 2012 (as since altered) for the proposed amendment to the Cessnock Local Environmental Plan 2011 as follows:

1. Amend the proposal description in the paragraph preceding condition 1 of the Gateway Determination from:

I, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Cessnock Local Environmental Plan (LEP) 2011 to rezone land at John Renshaw Drive and Black Hill Road, Black Hill from RU2 Rural Landscape to IN1 General Industrial and E2 Environmental Conservation should proceed subject to the following conditions:

to:

I, the Deputy Secretary, Planning Services at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) that an amendment to the *Cessnock Local Environmental Plan (LEP) 2011* to rezone land at John Renshaw Drive and Black Hill Road, Black Hill for industrial and environmental purposes should proceed subject to the following conditions:

2. Delete condition 8 and replace with a new condition 8:
 8. The timeframe for completing the LEP is by 18 December 2016.
3. Insert a new condition 9:
 9. Further community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal must be made publicly available for 28 days;
 - (b) the relevant planning 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 section 4.5 of A

PP_2012_CESSN_005_00 (12/13190)



Planning & Environment

Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).

4. Insert a new condition 10:

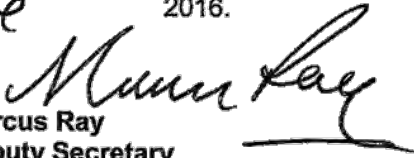
10. Further consultation is required with the Office of Environment and Heritage under 56(2)(d) of the EP&A Act.

The Office of Environment and Heritage is to be provided with a copy of the planning proposal and any relevant supporting material. The Office of Environment and Heritage is to be given at least 21 days to comment on the proposal.

5. Insert a new condition 11:

11. Council is to amend the planning proposal prior to exhibition to:
- (a) remove the proposal to include 'General industry' as a permissible use in the IN2 Light Industrial Zone; and
 - (b) introduce an additional permitted use in Schedule 1 of Cessnock LEP 2011 with associated mapping, to permit 'General industries' with consent within the IN2 Light Industrial Zone on the subject site.

Dated 17th day of June 2016.


Marcus Ray
Deputy Secretary
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

PP_2012_CESSN_005_00 (12/13190)

Explanatory Note

Draft Black Hill Planning Agreement for Conservation Outcomes

Introduction

This explanatory note has been prepared in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

The purpose of this explanatory note is to provide a plain language summary to support the notification of a draft planning agreement between the parties, under section 93F of the *Environmental Planning and Assessment Act 1979*.

Parties

Cessnock City Council

ABN 60 919 148 928 (*the Council*)

The Trustees of the Roman Catholic Church for the Diocese of Maitland- Newcastle

ABN 62 089 182 027 (*the Landowner*)

Description of Subject Land

Lot 1131 DP 1057179, John Renshaw Drive, Black Hill

Description of the Development to which the Planning Agreement relates

The rezoning and future development of land fronting John Renshaw Drive and Black Hill Road at Black Hill. The land is proposed to be rezoned from rural to partly light industrial, partly environmental living and partly environmental conservation. A map of the proposed zoning change is attached.

Summary of objectives, nature and effect of the Draft Planning Agreement

Objective of the Draft Planning Agreement

The objective of the Planning Agreement is to require the conservation of the natural environment, which is a public purpose associated with the carrying out of development.

Effect of the Draft Planning Agreement: a development contribution for the conservation outcome

Before granting consent to the first development application for the site, the parties must negotiate and agree on an overall plan of conservation measures for the whole subject site. The conservation measures may then be implemented in stages associated with the industrial development.

General principles for the negotiation and agreement of the conservation measures are outlined in clause 2 of Schedule 3. These include

- (a) that the conservation measures are to be fair and reasonable;
- (b) that the conservation measures may include one or more of the measures in the *Threatened Species Conservation Act 1995*, and/ or any other measure agreed by the parties,
- (c) that if more than one measure is reasonable and suitable, it is the Landowner's discretion to decide which measure shall be made;
- (d) that conservation measures that are close to the site are to be given first consideration;
- (e) that land that is not developed may be utilised as an on-site conservation measure;
- (f) that the development could generate a requirement for up to 6,367 biobanking credits, and that the development contribution should not exceed the biobanking credits;
- (g) that it is assumed that no vegetation clearing will be required in the E2 or E4 zoned land, however should any clearing be required, appropriate conservation measures will be negotiated.

In relation to principle (d), and in response to the Black Hill community's comments raised in public submissions, the Landowner agrees to investigate and consider conservation measures, in the following order of preference:

- 1. in the vicinity of the site,
- 2. in Cessnock local government area,
- 3. in locations with the same or similar ecological characteristics as the area affected by the development.

Nature of the Draft Planning Agreement

The Planning Agreement also makes provision for

- (a) the application of s94 and s94A to the Development (clause 4);
- (b) the registration of the agreement on the title of the land (clause 6.2);
- (c) the provision of security to the Council to meet the Landowner's obligations under the agreement (clause 7.1);
- (d) the enforcement of the agreement by either party (clause 7.2);
- (e) dispute resolution (clause 8)
- (f) notification to the Council of the sale of the land by the Landowner (clause 10);
- (g) the release and indemnity of the Council in relation to the Landowner's obligation to provide the conservation outcome (clause 11)
- (h) responsibility for costs involved in negotiating, preparing, executing, advertising, stamping, registering and enforcing the agreement (clause 12)
- (i) other general provisions relating to the operation of the agreement (clause 14)
- (j) each party to act in good faith to comply with the agreement (clause 14.11).

Assessment of the Merits of the Draft Planning AgreementThe Planning Purposes Served by the Draft Planning Agreement and whether it provides for a reasonable means of achieving that purpose

The proposed agreement provides a mechanism to ensure that a reasonable and suitable conservation outcome is provided if the site is developed. The agreement is a reasonable means for achieving that purpose as it provides for security and certainty before any development proceeds.

How the Draft Planning Agreement promotes the public interest and one or more of the objects of the Environmental Planning and Assessment Act 1979

The proposed agreement provides for one of the public purposes outlined in section 93F(2) of the *Environmental Planning and Assessment Act 1979*, being the conservation of the natural environment.

The proposed agreement also promotes several objects of the *Environmental Planning and Assessment Act 1979*, including

- To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (s5(a)(i));
- To encourage the promotion and co-ordination of the orderly and economic use and development of land (s5(a)(ii));
- To encourage the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats (s5(a)(vi)).

How the Draft Planning Agreement promotes one or more elements of the Council's charter

The draft planning agreement promotes the following element of the Council's charter under section 8(1) of the *Local Government Act 1993*:

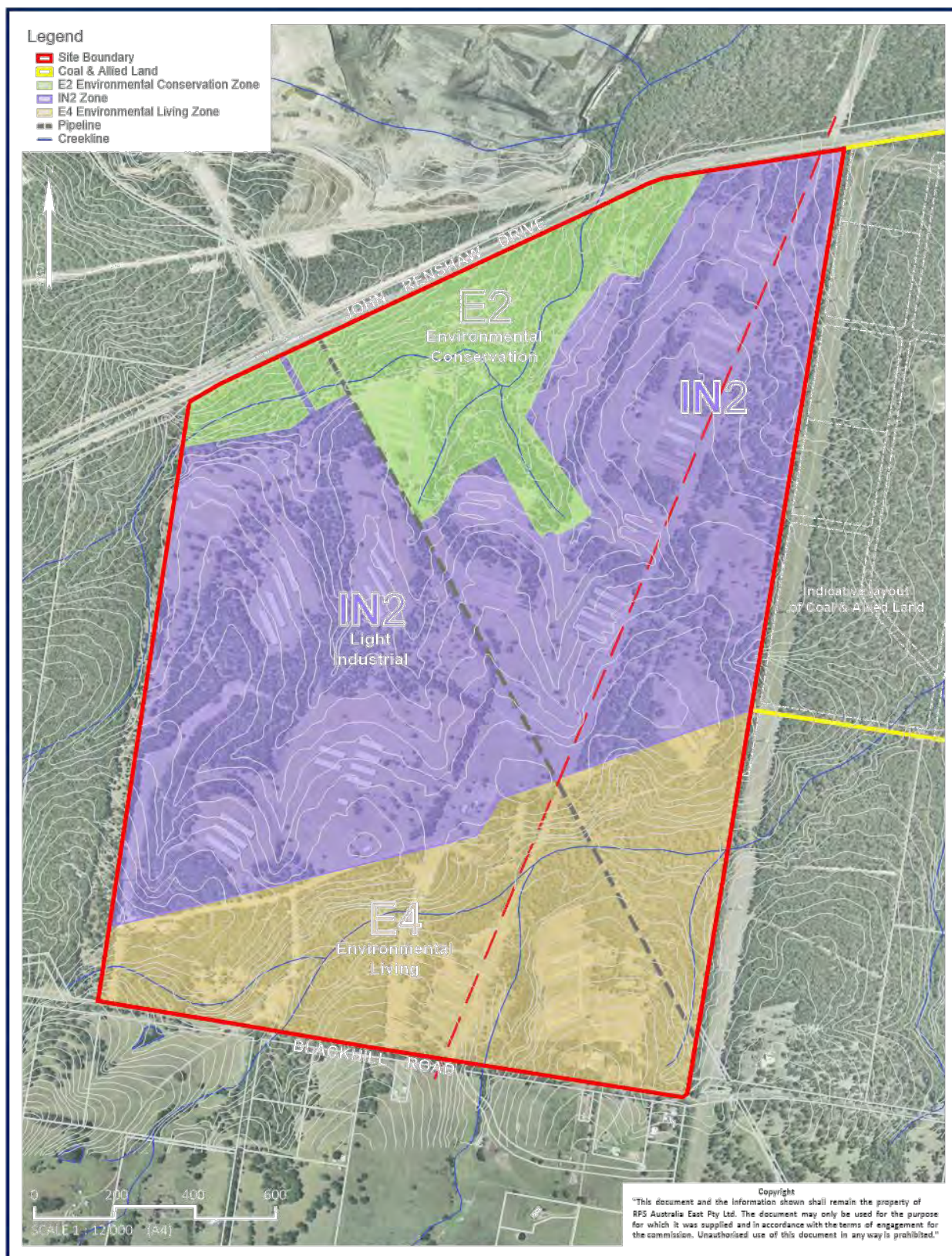
- To properly manage, develop, protect, restore, enhance and conserve the environment for the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

Whether the Draft Planning Agreement conforms to Council's capital works program

This matter is not relevant, as no capital works are proposed as part of the draft planning agreement.

State whether the Draft Planning Agreement specifies that certain requirements of the agreement must be complied with before development certificates are issued

Before granting consent to the first development application for the site, the parties must negotiate and agree on an overall plan of conservation measures for the whole subject site. This negotiation and agreement precedes any construction certificate, occupation certificate or subdivision certificate issue.



TITLE: ZONING - PROPOSED ZONE
BOUNDARY CHANGES

LOCATION: BLACKHILL

DATUM: AHD
PROJECTION: MGA ZONE 56 (GDA 94)

DATE: 10 SEPTEMBER 2015
PURPOSE:

CAD REF:
VERSION: REVISED ZONING

CLIENT:
JOB REF: PR124120

RPS AUSTRALIA EAST PTY LTD (ABN 44 140 292 762)
241 DENISON STREET BROADMEADOW PO BOX 428 HAMILTON NSW 2303
T: 02 4940 4200 F: 02 4961 6794 www.rpsgroup.com.au

RPS

Cessnock City Council

ABN 60 919 148 928

**The Trustees of the Roman Catholic Church
For the Diocese of Maitland-Newcastle**

ABN 62 089 182 027

Planning Agreement

Environmental Planning and Assessment Act 1979

S:3125724_3 RCM
(Revised)

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Agreement made at _____ on _____

Parties

Cessnock City Council ABN 60 919 148 928, 62-78 Vincent Street,
Cessnock NSW 2325 ("the Council")

**The Trustees of the Roman Catholic Church for the Diocese of
Maitland-Newcastle** ABN 62 089 182 027 ("Landowner")

Background

- A. The Landowner owns the Land which includes the Onsite Environmental Land.
- B. The Landowner has sought an amendment to the LEP to rezone the Land in order to allow the Proposed Development on the Land.
- C. The Landowner intends thereafter to lodge with the Council a Development Application(s) for the Proposed Development.
- D. The Landowner has offered to make the Development Contribution as described in Schedule 3 to this Agreement.
- E. The parties have therefore agreed to enter into this Agreement to make the Development Contribution.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this Planning Agreement.

Application means an application for any Approval.

Approval means any approvals, consents, modifications, Part 4A Certificates, Part 3A of the Act approvals, State Significant Development or State Significant infrastructure Approvals under the Act, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Proposed Development or for the commencement or carrying out of works contemplated by this Agreement.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

Biobanking Agreement means a biobanking agreement under the *Threatened Species Conservation Act 1995* (NSW).

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Claim means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise.

Commencement Date means the date that this Agreement operates under clause 2(b).

Consent Authority means, in relation to an Application, the Authority having the function to determine that Application.

Conservation Agreement has the same meaning as in the NPW Act.

Development Application means each Application made or to be made under Part 4 of the Act, by or on behalf of the Landowner, for consent to develop the whole or any part of the Land.

Development Consent means Approval by the Consent Authority under Part 4 of the Act in response to a Development Application, including any Modification of it.

Development Contribution means the procurement or provision by the conservation measures to be negotiated by the parties in good faith in accordance with Schedule 3 of this Agreement.

Explanatory Note means the explanatory note required by the Regulation.

Gazettal means the publication on the NSW legislation website under section 34(5) of the Act of the making by the Minister administering the Act of the amendment to the LEP.

General Register of Deeds means the land registry so entitled and maintained under the *Conveyancing Act 1919* (NSW).

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 2, and as shown on the plans attached as Annexure A.

Landowner means the owner of the Land from time to time, and where the context permits includes all of the owners of the Land.

LEP means Cessnock Local Environmental Plan 2011.

LPI means the Land and Property Information divisions of the Department of Finance and Services or any similar department or authority that may be established from time to time.

NPW Act means the *National Parks and Wildlife Act 1974* (NSW).

Onsite Environmental Land means that part of the Land identified by the hatching on the plan attached as Annexure A to this Agreement.

Onsite Environmental Land Subdivision means a subdivision of the Land to create a separate lot or lots for the Onsite Environmental Land.

Party means a party to this Agreement, including their respective successors and assigns.

Property Vegetation Plan means a property vegetation plan for land under the *Native Vegetation Act 2003* (NSW), not being a plan that proposes broadscale clearing of native vegetation within the meaning of the *Native Vegetation Act 2003* (NSW).

Proposed Development means the subdivision and development of the Land for the purpose of industrial and/or residential and/or other ancillary development on part of the Land and for the purpose of conservation of the Onsite Environmental Land in accordance with this Agreement

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens Title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Residential Accommodation has the same meaning as residential accommodation under the Standard Instrument.

Standard Instrument means *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement.

Strata Certificate has the same meaning as in the Strata Schemes Act.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the Strata Schemes (Freehold Development) Act 1973 (NSW).

Subdivision Certificate means a certificate issued under section 109C(1)(d) of the Act.

Subdivision Plan means the plan for the Onsite Environmental Land Subdivision.

Taxes means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Minister or the Environment Minister.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) the Schedules and Annexures to this Agreement form part of this Agreement; and
- (l) if a party to this Agreement is made up of more than one person:
 - (i) an obligation of those persons is several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

2. Operation and status of this Agreement

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) This agreement takes effect on its execution by all parties, or if the execution of the Agreement occurs prior to Gazettal, on Gazettal ('Effective Date').
- (c) This Agreement will terminate 2 months after the date of the provision of the Development Contribution in full in accordance with clause 5 of this Agreement

3. Application of the Agreement

This Agreement applies to the Land and the Proposed Development.

4. Application of section 94, section 94A and section 94EF of the Act

The application of sections 94, 94A and section 94EF are excluded to the extent stated in Schedule 1 to this Agreement.

5. Requirement to provide the Development Contribution

The Landowner undertakes to provide or procure the provision of the Development Contribution in the manner and at the times as set out in Schedule 3 to this Agreement and the Parties agree to abide by the procedures and obligations as set out in Schedule 3 to this Agreement.

6. Land ownership and Registration of this Agreement

6.1 Ownership

The Landowner represents and warrants to the Council that as at the date of this Agreement it is:

- (a) the legal and beneficial owner of that part of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this Agreement is required to be registered under clause 6.2 of this Agreement; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and otherwise to do all things necessary for it to comply with its obligations under clause 6.2.

6.2 Registration of this Agreement

- (a) As contemplated by section 93H of the Act, the Landowner, within 21 Business Days of the date of this Agreement, agrees to procure the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land.
- (b) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Land registered under the Real Property Act; or
 - B. is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land in accordance with section 93H of the Act.

- (c) The Landowner will, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 6.2(a) and (b) above, provide the Council with a copy of the relevant folios of the Register for the Land.

6.3 Release and discharge of this Agreement

The Council agrees to do all things reasonably required by the Landowner to release and discharge this Agreement with respect to any part of the Land upon the Landowner satisfying all of its obligations under this Agreement in respect to that part of the Land ('Satisfaction Date'). If any such part of the Land, and no other land, is at the Satisfaction Date, contained within a lot, the Council's obligations under this clause 6.3(a) shall include ensuring that the Agreement is no longer registered under section 93H of the Act on the relevant folios of any such lot.

7. Security and enforcement

7.1 Security

In consideration of the Council entering into this Agreement, the Landowner has agreed to provide security to the Council for performance of the Landowner's obligations under this Agreement by

- (a) the registration of this Agreement under clause 6.2 of this Agreement; and
- (b) agreeing to the provisions of Schedule 3.

7.2 Enforcement

This Agreement may be enforced by any Party in any court of competent jurisdiction.

7.3 No prevention to enforcement

For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Council from exercising any function under any Legislation, including the Act, or any other Legislation or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

8. Dispute resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 Mediation

If the parties do not agree within 21 days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

9. GST**9.1 Interpretation**

In this clause 9:

- (a) except where the context suggests otherwise, terms used in this clause 9 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause9; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

9.2 Intention of the parties

- (a) Without limiting the operation of this clause 9, the parties intend that:
 - (i) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement;
 - (ii) no tax invoices will be exchanged between the parties; and
 - (iii) no additional amounts will be payable on account of GST.
- (b) If it is subsequently determined that GST is payable by the Landowner in respect of any supply made pursuant to this Agreement, the Landowner must pay to the Council an amount equal to the Council's liability for GST in respect of the relevant supply to the Council within 10 Business Days after the Council has provided a tax invoice to the Landowner with respect to the supply to the Council.
- (c) The Landowner indemnifies the Council against any claims against, or costs, losses or damages suffered or incurred by the Principal, arising out of, or in any way in connection with, the Council's liability for GST in respect of any supply made pursuant to this Agreement.

9.3 Reimbursement

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional amount of GST payable

Subject to clause 9.7, if GST becomes payable on any supply made by a party ("Supplier") under or in connection with this Agreement:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Council, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the is a member) is entitled in relation to the Council's acquisition of that supply and is payable within 5 Business Days after the Council, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9.5(a).

9.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9.5 and clause 9.7), varies from the additional amount paid by the Recipient under clause 9.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9.6(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9.5.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

9.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 9.5 applies is a taxable supply made by the Recipient (the "**Recipient Supply**"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 9.5 shall:
 - (i) if the Supplier is the Council, be reduced by the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) is entitled in relation to the Council's acquisition of the Recipient Supply; and
 - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9.5 (or the time at which such GST Amount would have been payable in accordance with clause 9.5 but for the operation of clause 9.7(a)).

9.8 No merger

This clause will not merge on completion or termination of this Agreement.

10. Assignment and Dealing**10.1 Landowner's right to sell Land**

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person ("Transferee"):
 - (i) it satisfies the Council acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Landowner's obligations under this Agreement as the Council acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
 - (ii) the rights of the Council under this Agreement are not diminished or fettered in any way;
 - (iii) the Transferee signs an acknowledgement in form and substance acceptable to the Council by which the Transferee acknowledges that under section 93H(3) of the Act the Transferee is, upon and following transfer of the Land, bound by this Agreement; and
 - (iv) the Council is satisfied that it holds appropriate security to secure the Landowner's obligations under this Agreement; and
 - (v) any default by the Landowner has been remedied by the Landowner or waived by the Council; and
 - (vi) the Landowner and the Transferee pay the Council's reasonable costs in relation to the transfer.

11. Release and indemnity

- (a) The Landowner agrees that the obligation to provide the Development Contribution is at the risk of the Landowner. The Landowner releases the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Landowner's obligation to provide the Development Contribution.
- (b) The Landowner indemnifies the Council against any costs incurred in connection with the Council enforcing the Landowner's obligation to provide the Development Contributions in accordance with this Agreement, except to the extent caused or contributed to by the Council's negligent act or default under this Agreement.
- (c) The release and indemnity in clause 11(a) and 11(b) ends once the Council has confirmed, in writing, that the Landowner has fulfilled all of its obligations under this Agreement (such confirmation not to be unreasonably withheld or refused) or the agreement terminates under clause 2(c) whichever is the earlier.

12. Costs

- (a) Each party shall pay its own costs incurred in relation to the negotiation, preparation, execution, advertising, stamping and registration of this Agreement, including, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses.
- (b) The Landowner agrees to pay or reimburse the Council on demand for:
 - (i) costs of the Council in connection with any breach by the Landowner under the terms of this Agreement; and
 - (ii) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Agreement or a payment or receipt or any transaction contemplated by this Agreement,

including in each case, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses, however all such costs must be reasonable in the circumstances.

13. Effect of Scheduled terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules to this Agreement as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

14. General provisions**14.1 Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Agreement was executed.

14.2 Counterparts

This Agreement may be executed by counterparts by the respective parties, which together will constitute one agreement.

14.3 Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

14.4 Governing Law and Jurisdiction

This Agreement is governed by the Law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

14.5 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

14.6 No fetter

Nothing in this Agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation and nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.7 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

14.8 Severability

- (i) If any part of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (ii) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

14.9 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties as a deed.

14.10 Waiver

- (i) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (ii) A waiver by a Party is only effective if it is in writing.
- (iii) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

14.11 Good Faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Agreement.

15. Notices**15.1 Form**

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

The Council

Address: 62-78 Vincent Street, Cessnock NSW 2325
 Telephone: (02) 4993 4100
 Fax: (02) 4993 2500
 Attention: The General Manager

Landowner

Address: 841 Hunter Street, Newcastle West NSW 2302
 Telephone: (02) 4979 1100
 Fax: (02) 4979 1111
 Attention: Mr Boyd McCallum

15.2 Receipt

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted; or
 - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (b) Receipt - next Business Day

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Schedule 1 - Requirements under section 93F of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT												
Planning instrument and/or Development Application - (Section 93F(1)) The Landowner has: <table><tr><td>(a)</td><td>sought a change to an environmental planning instrument.</td><td>(a)</td><td>Yes</td></tr><tr><td>(b)</td><td>made, or proposes to make a Development Application.</td><td>(b)</td><td>Yes</td></tr><tr><td>(c)</td><td>entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</td><td>(c)</td><td>No</td></tr></table>	(a)	sought a change to an environmental planning instrument.	(a)	Yes	(b)	made, or proposes to make a Development Application.	(b)	Yes	(c)	entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c)	No	
(a)	sought a change to an environmental planning instrument.	(a)	Yes										
(b)	made, or proposes to make a Development Application.	(b)	Yes										
(c)	entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c)	No										
Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))	The whole of the Land.												
Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))	Rezoning of the Land to allow for the Proposed Development.												
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))	See the Schedule 3												
Applicability of section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded.												
Applicability of section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded.												
Applicability of section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded.												
Mechanism for dispute resolution - (Section 93F(3)(f))	See clause 8.												
Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clause 7.												
Registration of the Planning Agreement - (Section 93F(3)(g)) The Parties agree that the Planning Agreement will be registered in accordance with clause 6.2.	Yes												

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
No obligation to grant consent or exercise functions - (Section 93F(9))	No obligation. See clause 14.5.

Schedule 2 – Land

The whole of the land in Certificate of Title Folio Identifier 1131/1057179

Schedule 3 – Development Contribution**1. Development Contribution**

The Landowner undertakes to provide or procure the provision of the Development Contribution as set out and provided for in Column 2 of the Development Contribution Table below no later than the date or event described in Column 3 of the Development Contribution Table.

Column 1	Column 2	Column 3	Column 4
Item	Contribution	Timing	Public purpose
1	Development Contribution The Landowner must provide the Development Contribution to the Council.	In accordance with the requirements of this Schedule 3	To achieve appropriate conservation outcomes for the Development

2. Development Contribution Details

- (a) Within 1 month of the Effective Date and before the granting of consent to the first Development Application, the Parties must negotiate in good faith and agree on an overall plan of reasonable conservation measures to be made by the Landowner pursuant to this Agreement in respect of the Landowner's development of the Land;
- (b) Such conservation measures may include any one or more of the conservation measures described in section 126L of the Threatened Species Act 1995 (NSW) and/or any other conservation measure agreed on by the Parties in writing;
- (c) In the event that the Parties do not reach agreement on the conservation measures to be made by the Landowner pursuant to sub-clause 2(a) of this Schedule 3, the Parties will attempt to resolve such dispute in accordance with clause 8 of this Agreement;
- (d) The Parties agree that they shall adopt the following general principles in negotiating and agreeing on the conservation measures to be made by the Landowner pursuant to this Agreement:
 - (i) The conservation measures to be made by the Landowner pursuant to this agreement shall be fair and reasonable having regard to the Landowner's development of the Land, the benefit to the public in the Landowner providing such conservation measures, and all other relevant circumstances;
 - (ii) The Parties acknowledge and agree that Land (including land identified as Onsite Environmental Land) that is not developed by the Landowner may be utilised for the purpose of the calculation of the Development Contribution, potentially including but not limited to utilising such land for the purpose of off-site offsets, the inclusion of on-site offsets in the Onsite Environmental Land and/or the payment into a form of a biodiversity offset fund, provided that the Parties may agree that part of the Onsite

Environmental Land is to be utilised for residential purposes (provided that the number of residential dwellings does not exceed 4);

- (iii) The Parties acknowledge and agree that the Landowner does not intend to develop all of the Land at one time and that instead such development is intended to occur in a number of stages over time. The Parties agree that the conservation measures to be made by the Landowner in respect of the Land shall not be required to be made until a Development Application (excluding any Development Application for subdivision for a subdivision or the use of Land for the purpose only of dedicating public open space, public roads, public utility undertakings, or any other public purpose, and excluding any Development Application for a subdivision that would create a lot larger than the minimum size permitted on the land immediately before Gazetted) is made in respect of the Land that is in relation to either the use of land or the erection of a building;
- (iv) In the event that it is reasonable and suitable in the circumstances for the Landowner to make, procure or provide more than one conservation measure in respect of the development of either all of the Land or a Parcel, it shall be at the Landowner's absolute discretion as to which one or more of such conservation measures shall be made, procured or provided by the Landowner, with preference to be given to conservation measures that are close to the Land;
- (v) If the Landowner agrees to adopt a Biobanking Agreement or the acquisition or retirement of biobanking credits for the purpose of the Development Contribution or part thereof, the Parties agree that the Landowner's obligations in respect of the development of either all of the Land or a Parcel shall not exceed the obligations of a landowner that would be applicable pursuant to the Biobanking Assessment Methodology adopted for the purpose of the Biobanking Credit Calculator by the Office of Environment & Heritage, NSW Government, or any amending or replacement methodology;
- (vi) The Parties further acknowledge that the use of the Biobanking Calculator Tool in March 2014 indicates the development could generate a requirement for up to 6367 biobanking credits based on the assumed clearing of 100% of vegetation within the IN2 zoned land and the Parties agree that the result of this calculation will inform the quantum and form of the Development Contribution to be negotiated between the parties.
- (vii) The Parties acknowledge that it is assumed that no vegetation clearing will be required within the E2 or E4 zoned land, but should any clearing in this zone be required, the parties agree that an appropriate offset will be negotiated to compensate for that clearing.

Executed as a deed

Signed for and on behalf of Cessnock City)
Council ABN 60 919 148 928 by , who)
hereby declares that he/she has been duly)
authorised to do so, in the presence of:

.....
Signature of witness.....
Signature of authorised representative.....
Print Name.....
Print Name

Signed by The Trustees of the Roman)
Catholic Church for the Diocese of)
Maitland-Newcastle ABN 32 089 182 027)
in accordance with section 127 of the
Corporations Act:

.....
Signature of Director.....
Signature of Director/Secretary.....
Name of Director.....
Name of Director/Secretary

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Planning and Environment

Report No. PE154/2014

Planning and Environment

**SUBJECT:** **PLANNING PROPOSAL - BLACK HILL****RESPONSIBLE OFFICER:** **Acting Strategic Land Use Planning Manager - Scott Christie**

APPLICATION NUMBER:	18/2011/9/1
PROPOSAL:	Rezoning
PROPERTY DESCRIPTION:	Lot 1131 DP 1057179
PROPERTY ADDRESS:	John Renshaw Drive & Black Hill Road, Black Hill
ZONE: (CURRENT)	RU2 - Rural Landscape
ZONE (PROPOSED)	IN1 - Industrial Land and E2 - Environmental Conservation Land
OWNER:	The Trustees of the Roman Catholic Church for the Diocese of Maitland Newcastle
PROPONENT:	City Plan Strategy and Development

SUMMARY

The purposes of this report are to:-

- Inform Council of the public submissions and State Government Agency submissions resulting from public exhibition and consultation, and the consequent responses from the proponent.
- Inform Council of the proponent's amended Planning Proposal of 4 November 2014 and second amendment to the Proposal of 27 November 2014;
- Focus on the critical issue of strategic justification – particularly land supply and demand - for the proposed rezoning of the subject land;
- Recommend how Council should proceed with this Planning Proposal.

RECOMMENDATION

1. That Council Support the revised Black Hill Planning Proposal as outlined in the map in Enclosure 1(a), on the basis of :
 - A. The predominant zoning being IN1 – General Industrial (approximately 152.4ha);
 - B. An E2 zoning at the northern sector of the site (approximately 40.4ha);
 - C. An E4 Environmental Living zoning (based upon a 2 ha minimum lot size) in the southern and south-western sector of the site (approximately 105.6 ha);

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- D. The draft objectives and land use table for the E4 Environmental Living zone as provided in Enclosure 1 (b); and
2. That Council prepare a draft amendment to the Cessnock Development Control Plan 2010, reinforced by a local provision in the LEP, that:
 - a. moderates visual impacts,
 - b. establishes clarity about staging, road access and traffic management and infrastructure provision;
 - c. enables balance between additional lot and dwelling entitlements in the E4 zone with vegetation conservation and asset protection zones; and
 - d. enhances quality of design; and
3. That Council re-submit the revised Black Hill Planning Proposal to the Department of Planning and Environment (DPE) seeking an expeditious Gateway Determination; and
4. That Council delegate authority to the General Manager to facilitate timely public exhibition of the revised Black Hill Planning Proposal in the event of a favorable gateway determination.

BACKGROUND

The Black Hill Planning Proposal was considered by the Council at its meeting of 7 May 2014. At this meeting Council resolved:

1. That Council note that Planning & Infrastructure (formally NSW Department of Planning and Infrastructure) has granted an extension for finalization of the Planning Proposal to 16 December 2014.
2. That Council exhibit the Planning Proposal to rezone Lot 1131 DP 1057179 John Renshaw Drive and Black Hill Road, Black Hill (the land) from RU2 Rural Landscape to IN1 General Industrial and E2 Environmental Conservation in accordance with the Gateway Determination and Council's statutory obligation.
3. That Council endorse the draft Voluntary Planning Agreement for public notification for a period of 35 days subject to the following matters being resolved to the satisfaction of the General Manager:
 - a) Clarification of the recipient of the environmental offset development contributions; and
 - b) The proponent agreeing to include in the draft VPA a commitment to identify dwelling envelopes and Asset Protection Zones for the proposed lots in the southern sector of the land proposed for rezoning to E2 – Environmental Conservation.
4. That Council delegate authority to the General Manager for determine the adequacy of resolution of the matters outlined in Part 2 and 3 above and thereby enable public exhibition to proceed.
5. That a community consultation meeting occur with Council hosting the consultation meeting and that the report on this consultation meeting be included in the next

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report that is considered by Council. That the Community Groups be able to give a presentation.

In accordance with Council's resolution, The Proposal was exhibited between 25 June 2014 and 30 July 2014. The Voluntary Planning Agreement was exhibited from 2 July 2014 to 6 August 2014.

In addition Council held a community open day and public forum at Black Hill on 17 July 2014. In addition, Council also held three separate meetings with community groups to discuss the proposal and listen to their concerns.

Further, two (2) meetings were also held with the proponents and their consultants following the community open day and forum, and the meetings with the community groups.

In response to the public exhibition, 135 submissions were received by Council together with a 28 signatory petition objecting to the proposal.

Following exhibition and meetings with the proponent, the proposal has been amended three times, twice by the proponent and once by Council. This report will outline the process since public exhibition including an outline of each amended proposal, a summary of issues raised during public exhibition and Council's response, as well as providing relevant further detail for Council to consider regarding employment lands which was received in order to progress the proposal and address concerns about land supply.

Black Hill Planning Proposal – As Exhibited

The Black Hill Planning Proposal, as exhibited, sought to rezone Lot 1131 DP 1057179 which comprises approximately 300 hectares into an IN1 - General Industrial zone comprising approximately 195 hectares and an E2 - Environmental Conservation zone covering two sectors of the site in the northern and southern portions, totalling approximately 105 hectares.

The proposal as exhibited is included as Enclosure 2.

Black Hill Planning Proposal – Proponent's Post-exhibition Amendment (4 November 2014).

The proponent's post-exhibition amendment to the Proposal (4 November 2014) consisted of:

- 198 hectares of land proposed to be rezoned from RU2 Rural Landscape to IN2 Light Industrial – an increase in area of 3 hectares compared to the exhibited proposal for the IN1 General Industrial zone.
- The replacement of the exhibited E2 Environmental Conservation zone in the southern sector of the site by a proposed E4 Environmental Living zone (61 hectares in total of which 44 hectares are vegetated) – submitted by the proponent as being more consistent with the existing character and land use pattern of Black Hill and enabling a limited number of dwellings (a minimum lot size of 2 ha is proposed).
- No change to the exhibited E2 Environmental Conservation zone in the northern sector of the site which is 41 hectares of which 37 hectares are vegetated.

The proponent's post-exhibition amendment of 4 November 2014 is outlined in Enclosure 3.

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**Black Hill Planning Proposal – Proponent's Post-exhibition Amendment (27 November 2014).**

The proponent's second amendment (27 November 2014) consists of reversion to the IN1 General Industrial zoning, E2 Environmental Conservation and the associated local provision of the E2 zoned land into six allotments (with no nominated minimum lot size). This was submitted together with City Plan Services Employment Lands Analysis (Enclosure 4).

Black Hill Planning Proposal – Council's revised Proposal as recommended.

Following assessment of submissions and further information on employment land, Council staff has prepared a revised planning proposal for Council's consideration. The proposal is outlined further in this report however contains a IN1 industrial zoning (150ha), a new E4 Environmental Living zone at the southern interface with Black Hill and an E2 zoning unchanged at the northern sector of the site facing John Renshaw Drive. This revised proposal would require submission to the NSW Department of Planning to seek a gateway determination for the new zoning and then exhibition in the event gateway determination was issued.

History of Council Reporting, Resolutions and Actions: March 2012 to July 2014

- The Black Hill Planning Proposal was first reported to Council on 7 March 2012 under report EE 10/2012 where Council resolving to defer the matter pending a briefing of Councillors and to enable the proponent to provide additional information and undertake consultation with local residents.
- The Planning Proposal was again reported to Council on 4 July 2012 under report EE60/2012, taking into account the issues raised by Council. However, Council resolved to withdraw report EE60/2012 on the request of the proponent to enable more community consultation to be completed.
- The results of the consultation undertaken by the proponent were reported to Council on 1 August 2012 under report EE67/2012. Statements that consultation to date to the effect that there was community support for the proposal were disputed and assertions made that there was strong objections by the broader community.
- Council resolved, on 1 August 2012, not to accept the Planning Proposal but to call a public meeting to enable Council to consult with the community and how the community views their locality and how they see options for Planning Proposals to be presented in the future, with the Black Hill Environment Protection Group and the Buttai Community Development Group to be specifically notified of all details of the public meeting.
- On 7 November 2012, following a letter from the Acting Director General, stating that Council should forward the Planning Proposal for gateway determination by 11 November 2012, a further report was considered by Council under report EE99/2012. Council resolved at this meeting to submit the Planning Proposal to the NSW Department of Planning & Infrastructure and not undertake further community consultation at that stage.

In this correspondence, the Acting Director General of the Department of Planning & Infrastructure, conveyed his opinion that the consultation and additional work being

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requested by Council resolution of 1 August 2012 could be more appropriately considered and identified through the gateway process and also indicated that:-

- The Planning Proposal has merit and is suitable for gateway determination;
 - That the Council forward the Planning Proposal to the "Gateway" by 11 November, 2012; and
 - If the Planning Proposal is not forwarded accordingly, a decision will be taken on appointing a "Relevant Planning Authority" to assess the Planning Proposal instead of Council.
- On 12 November 2012, the Black Hill Planning Proposal was forwarded to the Department of Planning & Infrastructure for a Gateway determination based upon zonings of IN1 General Industrial and E2 Environmental conservation in the northern and southern sectors of the site.
 - A Gateway determination was issued by the Director General of the Department of Planning & Infrastructure (DOP&I) allowing the Planning Proposal to proceed subject to conditions. Gateway completion date of 16 December 2013 was provided. A copy of the Gateway determination is provided as Enclosure 5.
 - On 4 March 2013, Council advised the proponent that in order to meet Gateway determination completion date, supporting technical studies would need to be completed towards the end of June 2013. However, the proponent advised that delays were experienced in the completion of the required supporting technical information, anticipating these to be finalised in September 2013, obviously affecting Council's ability to finalise the Planning Proposal within the prescribed period.
 - In discussions and in agreement with the proponent, on 29 August 2013, Council sought a 15 month extension to the initial Gateway determination to allow for the completion of technical information, undertake consultation and exhibition, to complete the supporting Development Control Plan and finalise the arrangements for the management of the proposed E2 Environmental Conservation zone through a Voluntary Planning Agreement (VPA) between the proponent, the Office of Environment & Heritage (OEH) and Council.
 - On 25 September 2013, the DOP&I endorsed a 12 month Gateway determination extension, with the Planning Proposal now due for completion by 18 December 2014. A copy of the amended Gateway determination is provided as Enclosure 5.
 - The supporting technical studies were received in finalised from City Plan Services Pty Ltd on 16 October 2013 and the distribution of these planning studies to the following State Agencies:
 - Mine Subsidence Board;
 - NSW Rural Fire Service;
 - Transport for NSW – Roads & Maritime Services;
 - NSW Aboriginal Land Council;
 - Office of Environment & Heritage;
 - NSW Department of Primary Industries – Agriculture; and
 - NSW Department of Primary Industries – Minerals and Petroleum.
 - Ongoing discussions with each agency was subsequently undertaken and concluded late February 2014. The most significant issues were raised by the NSW Office of

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Environment & Heritage and Roads & Maritime Services. A summary of the content and key issues contained in the Stage Agency responses are provided in Enclosure 6.

- Council endorsed the public exhibition of the Planning Proposal at its meeting of 7 May 2014.
- Post-exhibition report to Council 10 December 2014 addressing submissions, amendments to the proposal and further detail on employment lands.

REPORT/PROPOSAL

The exhibited Black Hill Planning Proposal sought to rezone Lot 1131 DP 1057179 which comprising approximately 300 hectares into an IN1 General Industrial zone comprising approximately 195 hectares and an E2 Environmental Conservation zone covering two sectors of the site in the northern and southern portions, totaling approximately 105 hectares.

Following the 135 submissions in response to the public exhibition the proponent (City Plan Strategy and Development – CPS&D) and the Catholic Diocese of Maitland tabled an amended Planning Proposal at a meeting with Council's Manager, Strategic Land Use Planning and Strategic Land Use Planning Consultant on 21 October 2014. The amended Planning Proposal was formally submitted 4 November 2014.

Essentially this revised Proposal consists of:

- 198 hectares of land proposed to be rezoned from RU2 Rural Landscape to IN2 Light Industrial – an increase in area of 3 hectares compared to the exhibited proposal for the IN1 General Industrial zone;
- The replacement of the exhibited E2 Environmental Conservation zone in the southern sector of the site by a proposed E4 Environmental Living zone (61 hectares in total of which 44 hectares are vegetated) – submitted by the proponent as being more consistent with the existing character and land use pattern of Black Hill and enabling a limited number of dwellings (a minimum lot size of 2 ha is proposed);
- No change to the exhibited E2 Environmental Conservation zone in the northern sector of the site which is 41 hectares of which 37 hectares are vegetated.

The proponent asserted that the revised Planning Proposal will generate "over 3,000 jobs" within a 10 minute drive of Kurri Kurri and ensuring the protection of the land of conservation value in perpetuity.

The full justification for this first amendment as submitted by the proponent is at Enclosure 3.

The extent of the proposed substantive changes in this amendment, explained in summary above, certainly raises the question of need to re-exhibit the Planning Proposal if Council is of the mind to support that proposal. It should also be noted that the amended proposal will generate the need for the re-application of the bio-banking methodology and re-negotiation and further drafting of the Voluntary Planning Agreement which is applicable.

On 27 November 2014, a second amendment was submitted by the proponent which stated that *"we wish to proceed with the rezoning of land to IN1 General Industrial, E2 Environmental Conservation and the associated local provision to enable subdivision of the E2 land into six allotments"*.

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It had been emphasised to the proponent (including at a meeting on 25 November 2014) that the originally submitted Planning Proposal was limited in terms of addressing the issue of supply and demand for employment lands. The proponent advised that substantially more work had been done on that issue and the proponent submitted an "Employment Lands Analysis – Response to Cessnock City Council" on 27 November 2014. This is Enclosure 7.

Main Issues and Assessment Criteria

The seven main issues/criteria for assessment and decision-making derived, from professional assessment, public submissions and discussions with the proponent are:

1. *Is there strategic justification in terms of the real need for the rezoning at the scale of 195 ha for industrial purposes given employment lands supply and demand in the Lower Hunter and Cessnock city? (This is analysed comprehensively in Enclosure 7);*
2. *Does the Proposal represent the best means to provide economic and employment opportunities benefits to Cessnock?*
3. *Does the Proposal meet the criteria of good location relative to transport routes, agglomeration of economic enterprises and market choice?*
4. *If the land is to be re-zoned for industrial development, should the appropriate zoning be IN1 General Industrial or IN2 Light Industrial?*
5. *Is the E2 Environmental Conservation zone appropriate?*
6. *Is the proposal acceptable in terms of local impacts on visual and rural character, the "social character" of Black Hill, endangered ecological communities and vegetation and traffic safety;*
7. *Is the re-zoning supported by committed provision of infrastructure and does the planned provision of infrastructure represent "good public value"?*

Discussion

1. *Is there strategic justification in terms of the real need for the rezoning at the scale of 195 ha for industrial purposes given employment lands supply and demand in the Lower Hunter and Cessnock city?*
 - This is analysed comprehensively in Enclosure 7 and reference should also be made to the Proponents submission "Employment Lands Analysis (27 November 2014) which is Enclosure 4.
2. *Does the Proposal represent the best means to provide economic and employment benefits to Cessnock city?*

While this issue should be primarily addressed from a regional Lower Hunter perspective, from the "Cessnock perspective",

- Cessnock LGA has a current unemployment level at 8.3% which warrants initiatives to provide opportunities and employment diversification;
- Cessnock Civic was recently rezoned and is about 30ha;
- The Proposal at Huntlee includes about 50 ha for a business park and 70 ha of "employment lands";
- A preliminary Planning Proposal for the Kurri Kurri Smelter site is anticipated to be for approximately 180 ha of industrial land. This land is already serviced

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but there are uncertainties about the formalised Proposal and its approval and timing

- HEZ has about 870 ha of industrial land but is discounted as a “competitive site” due to constraints.
- The subject Planning Proposal represents the basis to provide substantial industrial land supply, market choice, locational advantages and employment opportunities for Cessnock;
- The Proposal responds to the projected need in the Cessnock City-Wide Settlement Strategy (CWSS) for 72 ha to 192 ha of industrial land over 25 years between 2006 and 2031. Eight (8) years into this period, only the Cessnock Civic site re-zoning has offset this projected need by 23.7 ha. Hence, approximately 50 to 170 ha would be required to fulfill the CWSS projection, noting the LGA boundary should not be viewed as negating the benefits to Cessnock of the adjoining Coal and Allied site and other industrial land supply in the Lower Hunter.

3. Does the Proposal meet the criteria of good location relative to transport routes, agglomeration of economic enterprises and market choice?

- There are clear locational advantages for the subject site in terms of accessibility to the M1, the Hunter Expressway and the New England highway;
- Access to Newcastle port and airport is also relatively good;
- Transport access for journey to work from various locations is also relatively good;
- There are existing industrial zonings (all IN2 Light Industrial) in proximity of the subject site - the Beresfield/Thornton industrial developments and the adjoining Coal and Allied site – with advanced discussions for agreed coordination of approach for the design, funding and construction of water, sewer and road infrastructure between Coal and Allied and the proponent.

4. If the land is to be re-zoned for industrial development, should the appropriate zoning be IN1 or IN2 Light Industrial?

- There are significant differences between the land use tables for the two zones in the Cessnock and Newcastle LEP's – notably;
 - IN1 – General Industrial zones in Cessnock and Newcastle LEP's prohibit “heavy industry”;
 - Cessnock LEP includes retail premises and bulky goods retailing as permissible within “any other developments not specified” whereas Newcastle LEP prohibits retail premises and bulky goods retailing;
 - In the Cessnock LEP 2011, general as well as heavy industries are prohibited in IN2 whereas Newcastle LEP permits the former with consent.
- IN1 – General Industrial is recommended as the appropriate zoning for the subject site given that there is no rationale for prohibiting general industry on the subject site and the IN1 is generally consistent with the IN2 zones in Newcastle LGA including for the adjoining Coal and Allied site.

5. Is the E2 Environmental Conservation zone appropriate?

- It must be acknowledged that the E2 Environmental Conservation zoning was included in Council's submission for Gateway Determination of the Planning Proposal in December 2012. The proponent's proposal for the subdivision of

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the E2 land into six (6) allotments was subsequent to the Gateway Determination.

- The E2 Environmental Conservation zone state-wide has objectives and a minimum lot size which is generally incompatible with the proposal for four lots. The minimum lot size for the E2 zone in the Cessnock LEP 2011 is 80 ha – the proposed total E2 zone in the southern sector within which 4 lots are proposed is approximately 61 ha to be an E4 Environmental Living zone under the first amendment to the Planning Proposal of 4 November 2014.
- The related question is whether the Environmental zoning should apply to a larger area of the site if impacts on vegetation, endangered ecological species and visual amenity warrant.
- The Flora and Fauna Assessment and public submissions underpin the ecological values of sectors of the land and balancing this with additional opportunities for limited dwelling entitlements.

6. *If the land is considered as being more appropriately zoned IN2 and/or the environmental zoning is increased – should the Planning Proposal be re-exhibited?*

- As the relevant planning authority, Council can amend the Planning Proposal and has the discretion to determine that the changes are substantive and that therefore, for due process, the Proposal should be re-exhibited.
- Any change to zoning and/or land use tables should lead to re-exhibition. Any change from E2 Environmental Conservation to E4 Environmental Living would mean that the Planning Proposal should be forwarded back to the Department of Planning and Environment for another Gateway Determination – which Council could seek to be expedited to enable re-exhibition without undue delay.

7. *Is the proposal – at the scale proposed - acceptable in terms of local impacts on visual and rural character, the “social character “ of Black Hill, endangered ecological communities and vegetation and traffic safety;*

- These are consistently strong issues in the public submissions and more detailed responses are given in the Consultation section of the report;
- The development subject of the Proposal will change visual and rural character significantly. It is, of course, a question of balancing this character for local benefit with fulfilling broader needs for industrial development and related economic and employment benefits. There do appear to be some valid gaps raised by local property owners about the analysis of visual impacts;
- The Flora and Fauna Assessment concluded that:
 - “No threatened plant species listed under the EPBC Act or TSC Act were recorded in the site during field surveys.
 - Two vegetation communities are present on site: MU 5 Alluvial Tall Moist Forest (15 ha); and MU 17 Lower Hunter Spotted Gum- Ironbark Forest (145 ha).
 - Lower Hunter Spotted Gum- Ironbark Forest is listed an Endangered Ecological Community (EEC) under the TSC Act. Cleared pastures also persist over approximately 139 hectares of the site.
 - Of the 145.3 hectares of MU 17 Lower Hunter Spotted Gum - Ironbark Forest present on site, 65.3 hectares of this community will be retained

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within the proposed conservation area. Of the 14.93 hectares of MU 5 Alluvial Tall Moist Forest present on site, 14.75 hectares of this community will be retained within the conservation area. The development footprint will account for 195 hectares of the site with 105 hectares retained within the proposed conservation area;

- *It was determined that 23 threatened fauna species and three flora species listed under the TSC Act and five threatened fauna species and two threatened flora listed under the EPBC Act may possibly occur on the site but assessments of Significance concluded that the proposal was unlikely to significantly impact on any of these threatened species.*
- *Assessment under SEPP 44 found that no 'Potential Koala Habitat' occurs within the project area and no further assessment under SEPP 44 was required.*
- Recommendations of the Flora and Fauna Assessment included:
 - *Clearing of native vegetation should be minimised as far as is practicable;*
 - *Attempts should be made to relocate hollow logs and felled trees containing hollows into adjacent habitats to provide further habitat resources for native fauna;*
 - *The erection of a fauna crossing should be considered across the approved entry road to the north of the site. The vegetation patch that is being fragmented as a result of the road construction is known to contain gliders. The erection of a fauna crossing will provide a safe crossing zone while reducing the likelihood of predation and vehicle strike for arboreal mammals.*
 - *Riparian vegetation on site should be retained due to its importance in maintaining creek-line integrity, acting as potentially suitable Koala habitat and providing corridor linkages across the site into the adjacent landscapes.*
 - *Conservation lands are to be managed in perpetuity to enhance and maintain ecological integrity and habitat value across the site. A Management Plan should be prepared for the offset lands.*
 - *Appropriate landscaping of the site within any development to enhance retained vegetation, habitat corridors, and to provide seasonal foraging resources for species such as Grey-headed Flying-fox, Swift Parrot and Regent Honeyeater.*
- *Given the above conclusions and recommendations and the support of OEH for bio-banking and consequent offsetting to be embodied in a VPA, flora and fauna impacts are not considered impediments to the Proposal proceeding. Importantly, however, the extension of environmental zoning and the re-negotiation, re-drafting and re-exhibition of the draft VPA (whatever the determination by Council regarding the Planning Proposal) is considered to be a better planning and environmental outcome.*
- *The analysis of land supply and demand leads to the conclusion that a balanced outcome is limited reduction of industrial zoning and increased Environmental Living zoning, thereby reducing a number of local impacts with improved conservation and management of the environmental assets on the site;*
- *Traffic management and safety issues are anticipated to be adequately managed through the future additional studies and meeting of RMS requirements, including through DCP provisions.*

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8. *Is the re-zoning supported by committed provision of infrastructure which represents "good public value"?*

- The proponent advised by letter (27 November 2014) that discussions are:

"advanced "with the neighbour (Coal & Allied Ltd) for a joint infrastructure servicing strategy for the two sites. The total development area considered by the strategy is 483ha of employment land. The combined cost of augmentation and connection for the various required servicing is estimated to be as follows (2014 NPVs):

- *Shared John Renshaw Drive intersection: \$4.5m*
- *Sewer (connection to Morpeth WWTP via Beresfield 5 WWPS): \$10.33m*
- *Water: \$1.63m*
- *Electricity: \$1.24m*
- ***TOTAL: \$17.7m***

The cost of the above works is proposed to be shared on a pro-rata basis between the parties.

In addition, the proponent will also be required to remediate the site and provide a second intersection to John Renshaw Drive. Reducing the area of employment land (for example, by increasing the amount of environmental conservation land) will not reduce the infrastructure servicing costs because of fixed costs for trunk works, and will test the viability of the project going forward.

No objection has been raised by any servicing authority during the Gateway determination or Planning Proposal preparation that infrastructure upgrades and connections could not be made or were too expensive".

- Correspondence was also attached to the proponent's letter of 27 November 2014 from Hunter Water Corporation (HWC) in relation the preliminary servicing advice, indicating that regional capacity will be available or made available in the future, to support the employment land development. The HWC letter is preliminary advice only and servicing capability and commitment remains unclear. The HWC advice refers to being based upon 2150 Equivalent Tenements at 215 ET/ha – implying assessment on the basis of 215 ha whereas the Planning Proposal relates to 195 ha of industrial land and 183 ha of land has been re-zoned IN2 Industrial on the Coal and Allied site – a total of 378 ha., which again varies from the 453 ha quoted in the CPS letter of 27 November 2014;
- It is noted that the IN2 zoning for the Coal and Allied site was approved without demonstrated commitment for infrastructure funding and delivery. If water and sewer infrastructure and road improvements were formally agreed and committed for such joint funding and at full developers' cost, the Proposal would be consistent with re-zoning on the basis of committed infrastructure at "good public value".
- It is also noted that demonstrated feasibility to provide infrastructure is clearly not a precondition to zoning industrial or referencing as employment land in the LHRS.

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**OPTIONS**

1. To support progression of the revised Black Hill Planning Proposal according to the recommendation provided.
2. If Council was of a mind to support the Black Hill Planning Proposal, as exhibited, Council would need to resolve as follows:
 - A. To forward the Black Hill Planning Proposal, as exhibited, to the Department of Planning and Environment for the plan to be made;
 - B. Prepare a draft Development Control Plan (at the applicant's expense) to address (insert issues here)
 - C. Delegate authority to the General Manager to negotiate and finalise the draft VPA, as exhibited in relation to Biodiversity Offsets based on the planning proposal, as exhibited
3. Council may choose to support the amended Black Hill Planning Proposals provided by the proponent on 4 November 2014;
4. Decline to support progression of the Planning Proposal and recommend to the Minister for Planning that it not proceed for the following reasons:
 1.
 2.etc

(Reasons to be provided by the Council.)

CONSULTATION

The Planning Proposal and supporting studies were placed on public exhibition between 25 June and 30 July 2014. The draft Voluntary Planning Agreement was exhibited from 2 July to 6 August 2014.

As part of the public exhibition an "open day" was held at the Black Hill Public School on 17 July 2014 at which presentations of maps and other wall chart based explanations were presented together with the availability of the professional Planners from the Proponent and Council to respond to enquiries and comments from the members of the public. Following the conclusion of the open day on 17 July 2014, an independently facilitated Community forum was conducted – the minutes for which are Enclosure 8.

Councillors were briefed on 26 November 2014 and 3 December 2014.

In response to the public exhibition, 135 public submissions were received objecting to the Planning Proposal, together with a petition with 28 signatories and the content of these submissions is summarised in Enclosure 6. Both community representatives and the proponent were invited to comment on the draft of this summary – resulting in some appropriate amendments and the inclusion of the proponent's submission in response as Appendix One to the summary.

The main issues raised in the public submissions (as summarised in Enclosure 6) were:

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*1. The Process by which the site was identified as Employment Lands;*

Response:

It is understood that written submissions were appropriately made in response to the draft LHRS as exhibited in 2005 which led to this decision by the NSW Cabinet to include this land at Black Hill as "employment lands".

Council has accepted the Lower Hunter Regional Strategy as it is finalised and represents State Government Regional Policy direction. Issues relating to the process leading up to the adoption of the LHRS cannot be given any weight for decision-making for this Planning Proposal.

2. No need or justification for more industrial zoned land;

Response:

This is a critical issue and is analysed in detail in the Employment Lands Analysis (Enclosure 7) and which is summarised under the section "Strategic Links".

3. Loss/destruction of rural character and lifestyle;

Response:

Given the policy direction of this site being "employment lands" in the Lower Hunter Regional Strategy, the NSW Office of Environment and Heritage have broadly responded in terms of accepting that a voluntary planning agreement will enable significant clearing on the site to enable industrial development to take place and on the basis that the bio banking methodology will be applied and offsets provided on alternative sites. The draft of this VPA was exhibited and the amended Planning Proposal requires recalculation of the bio banking methodology and the credits for offsetting.

The recommended proposal includes E4 and E2 zones to address the environmental and rural character and lifestyle at the interface with Black Hill. The proposal as exhibited contains the E2 zones at the northern and southern interfaces of the site in an effort to address concerns raised by the community.

In other terms there will be the obvious change from rural land to industrial land, however, this can be managed if the recommendation is accepted by Council and more vegetation is preserved and indeed the buffers at the perimeters of the site are improved.

4. Adverse effects on the Endangered Ecological Communities and flora and fauna;

Response:

The Regional Policy direction that this land is employment lands has led to the acceptance that development of the site for industrial purposes has priority and that any adverse effects on the endangered ecological communities flora and fauna will be managed properly through a negotiated VPA, bio banking methodology and credits for offsetting. There is a case for negotiating the proportion of offset lands provided locally or in proximity.

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5. *Undermining of investments;*

Response:

It is very difficult for this evaluation to include comments about effects on property values. Expectations of purchasers in the local area, that the land would be developed by the proponents for a Catholic School cannot be taken into account as the current planning proposal has openly followed due process, including exhibition and community workshops allowing people to understand the proposal and to have their say.

6. *Traffic implications;*

Response:

The advice of the Roads & Maritime Services indicates there is certainly a need for additional traffic impact assessments and the need also for resulting measures to be put into place to ensure safe and manageable access arrangements and to respond to issues raised by Maitland City Council. What has essentially been agreed with the RMS is that these issues will be addressed in a DCP and as an integral part of the Development Application (Development Applications). Clearly two (2) sets of traffic lights within a relatively short distance will be needed and would need to be managed to ensure that congestion is not caused. It is understood that the Catholic Diocese and Coal and Allied are working in conjunction to fund the preparation of appropriate studies and to implement the required traffic safety and management measures. The preparation of such studies would need to involve Maitland City Council representatives. This is able to be resolved and does not preclude the current proposal or the recommended proposal from progressing.

7. *Lack of servicing/infrastructure*

Response:

The submissions are correct in that there is no committee infrastructure for the provision of reticulated water or reticulated sewer/effluent disposal. However it is understood that there are advanced discussions to establish a joint approach between the Catholic Diocese and Coal and Allied (as owner of the adjoining site) to prepare appropriate studies, designs and to jointly implement the provision of such infrastructure jointly to the two (2) sites. It is further understood that confirmation from Hunter Water is being sought by the two (2) owners to the provision of this infrastructure and that the provision will be fully funded by the benefitting owners with no net public cost being involved.

8. *Short term gain for landowner versus perpetually negative effects on community;*

Response:

Whilst the land owner/proponent may sell the land to a developer should the Planning Proposal be approved by Council and the State Government, this is a legitimate and common process. This does reinforce however the importance of establishing full clarity and certainty within the Planning Proposal, supporting documentation and the related Voluntary Planning Agreement.

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It is legitimate legal process for the proponents to initiate a Planning Proposal for such industrial and environmental protection zonings, having purchased the land when it was zoned RU2 Rural Landscape.

9. *Inadequacy of supporting documentation and analyses;*

Response:

The Planning Proposal as submitted by the Proponent does have a fairly limited analysis in relation to strategic justification and need for this rezoning – being substantially based on the Lower Hunter Regional Strategy of October 2006 and as reaffirmed in February 2010, however this Council report seeks to provide the analysis which should form the basis of Council's decision making.

It is agreed that the visual analysis does not comprehensively cover all potential visual impacts and the recommendation in relation to a Development Control Plan is directed at potentially addressing some of these issues.

Whilst more detailed and comprehensive traffic analysis might have assisted at this stage it has been agreed with the RMS that a more comprehensive traffic analysis – including the address of issues raised by Maitland City Council – will be undertaken when the first Development Application is lodged.

10. *Precedent;*

Response:

The issue of precedent is not considered to be significant and indeed this Planning Proposal – given all of the committed land uses in proximity – is interpreted as representing the position when any net additional industrial zoning at Black Hill is not anticipated. It is also an issue which can be fully addressed through the urban settlement, rural land use and employment land strategies which Council is committed to preparing in the near future.

11. *Lack of adequate community consultation;*

Response:

Certainly, Council endeavoured in 2012 to initiate a much broader level of community engagement before making a decision in relation to the submission of this Planning Proposal for Gateway determination, however Council had to respond to the Department of Planning & Infrastructure to submit the Planning Proposal for Gateway Determination on an urgent basis in November 2012 which made the conduct of such broader community engagement very difficult prior to that submission.

Notwithstanding, Council has exceeded the minimum requirements by not only placing the proposal on exhibition but also conducted a public forum and three meetings with public representatives. Council has held a community open day, public forum and worked with community groups to hear their views. The proposal has also been amended several times by the proponent and discussed with community groups. The revised proposal subject to the recommendation has been provided as a result of assessment by Council staff of the submissions and further details provided by the proponent regarding employment lands.

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12. *Lack of Consideration of Alternative Development Options;*

Response:

Alternative development options have been explored after the public exhibition of the Planning Proposal and indeed the community representatives have discussed the potential and preferential development of rural residential. However, no definite alternative has been accepted or put forward and, as is their prerogative, the proponent simply wishes to pursue the Planning Proposal as amended (4 November 2014).

Council has a number of alternative options it can progress based on the original and amended proposal and this is outlined in the report for Council's consideration.

13. *The need for a sub-regional plan;*

Response:

There are adequate strategic plans available for Council to consider the proposal. The need for additional regional, sub-regional and local strategic planning to assist decision making on such a Planning Proposal could be pursued through the urban settlement, rural land use and employment land strategies which Council is committed to preparing in the near future. Similarly, Council could consider deferring decision making on this subject Planning Proposal pending completion of the draft Regional Growth Plan, however there is uncertainty on the timing of the delivery of the plan which would be seen as contributing further and unreasonable delay.

14. *General:*

Response:

Whilst the Black Hill Environment Protection Group and community representatives are willing to engage with Council and the proponents to resolve and negotiate the issues, the proponent has declined any further opportunity. Whilst it is acknowledged that the local community is wholly against this proposal, it is Council's responsibility as the relevant planning authority to make a fully considered and balanced decision on this matter.

15. *The petition:*

Response:

This is self-explanatory and has been taken into account in the summary of public exhibitions and in the evaluation of this Planning Proposal.

To seek to ensure a sound information base for Councillors, a more detailed summary of submissions - omitting references to the names and addresses of individual authors of those submissions - is also tabled for Councillors as Enclosure 6 to this report.

Consultation with State Government Agencies occurred prior to formal public exhibition in accordance with the Gateway determination and a summary of those State Government Agency responses is Enclosure 9.

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Following the closure of the formal public exhibition, Council's Manager of Strategic Land Use Planning and Strategic Land Use Planning Consultant have met with representatives of the community on three occasions and with the proponent on two occasions with the resulting position essentially being:

- a) The proponent and land owner standing by a position that:
 - i. The amended Planning Proposal should be considered by Council at its meeting of 10 December 2014;
 - ii. The LHRS and related Ministerial direction is a very strong basis for Council to support the Planning Proposal; and
 - iii. They do not wish to participate in any tri-partite, facilitated discussion/negotiation with Council and community representatives.
- b) The Community representatives maintaining strong opposition to the Planning Proposal predominantly on the bases that:
 - i. The strategic justification and need for the rezoning given employment land supply and demand in the Lower Hunter are strongly contended;
 - ii. The identification of this land as employment lands in the LHRS in 2006 is based upon a flawed process; and
 - iii. Localised impacts are unacceptable.

The draft Voluntary Planning Agreement

The main issues with the draft VPA contained in public submissions were:

- a) Lack of clarity in terms of how and where the offset land will be provided.
- b) Objective of Conservation of Natural Environment not achieved
- c) Lack of Council Resources and Policy
- d) Section 93 of EP&A Act not satisfied
- e) Offset land should be transferred to public ownership and Minister should be a party
- f) Incompatible with VPA outcomes with Coal and Allied rezoning adjacent
- g) Costs of VPA

Comments:

The draft VPA does need to be renegotiated to satisfy legal and policy requirements. This would in turn require re-exhibition at a later stage.

STRATEGIC LINKS**a. Employment Lands Analysis**

An Employment Lands Analysis is provided at Enclosure 7. It has been enabled by the provision of two unpublished reports by the Hunter Development Corporation and the provision of data and analysis by Monteath and Powys.

The purposes of this analysis are to:

- Provide an evidence-based analysis for the rigorous assessment of the need for the net additional industrial land that is subject of this Planning Proposal by the Catholic Diocese of Maitland for the land in its ownership at Black Hill; and
- Enable a well-founded analysis for responding to this critical issue for the assessment of the Black Hill Planning Proposal (as amended on 7 November 2014) for rezoning to IN2 – Industrial (previously submitted and exhibited as IN1 – General Industrial) in terms of a significant number of public submissions (received in response to the public exhibition) focussing on this issue.

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The conclusions are:

The Regional Growth Plan is not anticipated for exhibition as a draft until the latter half of 2015 at the earliest and therefore there are no updated relevant strategic policies at the regional level beyond the LHRS (as reaffirmed in February 2010). Such updated regional level policy would have been an important contribution to Council's decision on this matter.

The Council's Employment Lands Strategy is programmed for initiation in 2015.

There is a crucial need for the NSW Department of Planning and Environment to commission a comprehensive analysis of employment lands trends, supply and demand to form a sound basis for the draft Regional Growth Plan and to assist major decisions on Planning Proposals such as this.

The LHRS (2006) estimated that:

- 16500 jobs (25% total jobs target) needed to be provided for between 2006 and 2031 in terms of major employment lands sites which translated into the need for 825 ha of land;
- 500 ha of industrial land were zoned;
- 1000 ha should be provided for as "buffer provision" at West Wallsend, Tomago and Black Hill –with interdependence for the Stony Pinch/Black Hill industrial land related to the freight hub;

The Discussion Paper ("Lower Hunter: Shaping the Next 20 years") estimated that: there will be demand for a further 960 hectares of employment land from 2011 to 2031 with an estimated supply of 1050 hectares of zoned employment - including 675ha zoned industrial since the LHRS adoption in October 2006. This represents very limited supply above demand given constraints on many of the sites comprising the 1050 ha and the drivers and criteria – particularly as referenced in the URBIS report.

This availability of "Employment Lands" covers a broader range of potential developments and uses that would locate in the proposed IN1 zone at Black Hill. The 1050 ha does not include the HEZ site which is 870 ha, and subject to constraints which limit supply. The additionally zoned Coal and Allied site at Black Hill (183 ha, zoned IN2 but currently not serviced) or the Kurri Kurri hydro-smelter site (approx. 180 ha) for which a Planning Proposal is anticipated before the end of 2014.

The URBIS (unpublished) report estimated that 239 ha net (366 ha gross) of industrial land will be demanded in the Lower Hunter over the period 2011 to 2031 based upon the projected increase of 4774 industrial jobs at 20 jobs per hectare (12 ha net and 18.3 ha gross average per annum demand). The distinctions between URBIS's definition of industrial land compared to employment lands is not clear.

The Cessnock City-Wide Settlement Strategy concludes with projected demand for between 72ha and 192ha of industrial land between 2006 and 2031. Pro-rata, this would be approximately 46ha to 123ha between 2015 and 2031 for the Cessnock LGA.

The critical flow-on questions to assess the need and strategic justification for the land subject of the Planning Proposal at Black Hill are therefore:

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- What land is actually available (zoned and serviced – actual/committed) into the medium to long terms which represent alternative sites for the types of development which will locate in IN 2 zones,
- Are these sites of comparable availability given analysis of constraints and being serviced/potentially serviced at feasible costs?
- What is the data for land sales and take up at Beresfield and Thornton which would give a more recent and localised analysis of relevant trends? and
- How pivotal are the locational advantages of good access to the Hunter Expressway and M1 Motorway, the Newcastle port and airport and the New England Highway?

Based upon all of the reports referenced above, and professional opinion, the appropriate criteria for decision making about the overall planning for adequate supply of industrial land (IN1 and IN2 zoned land) within the Lower Hunter region and for a major Planning Proposal such as this one could be to:

- a) Facilitate agglomeration around key centre locations;
- b) Provide efficient and economic access to arterial roads and transport networks;
- c) Enable accessibility and proximity to a local workforce – particularly if there is evident localised and relatively higher levels of unemployment (including from relatively recent closure and/or downsizing of certain industries);
- d) Ensure the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of infrastructure;
- e) Ensure the integration of re-zoning of land from rural to industrial only if provision of adequate capacities and funding for infrastructure are available or committed.
- f) Manage growth over time through annual monitoring of supply and demand and major reviews of the Regional Growth Plan every five years; and
- g) Provide a contingency buffer of about 50% over and above committed supply of vacant, serviced industrial land at any point in time.

Responding to the above criteria, the following conclusions are drawn about the Black Hill Planning Proposal:

1. There are still significant data gaps for a sound evidence-based and policy-based evaluation;
2. This site remains as "employment lands" in the LHRS (as reaffirmed in 2010) and any non-fulfilment of that outcome at the local level has to be justified by submissions regarding inconsistency to respond the Ministerial direction;
3. The Black Hill proposal does substantially align with the criteria stated above – including the resolution of constraints if the infrastructure commitments are more assured
4. The commitment to fund the infrastructure for the subject site and provide more industrial land in Cessnock is not confirmed and is subject to uncertainty;
5. The recent rezoning of the Tomago, Anambah, "Freeway North", and Rutherford (combined total 675 ha) and, more recently, the Coal and Allied site (183ha – zoned IN2) adjacent to the subject site provide opportunities for significant IN2 oriented land supply and agglomeration – totalling 858 ha but there are very significant uncertainties relating to the development feasibility, timing and actual yields from these properties;
6. The adjacent Coal and Allied site (which is in the Newcastle LGA) presents an opportunity for combined water and sewer infrastructure funding and construction with the Catholic Diocese (reciprocal needs for provision of water and sewer through the two sites are asserted to be needed) but will also potentially present short and medium term (and potentially long-term) over-supply;

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7. The availability of the Kurri Kurri Hydro Smelter site also adds to the potential supply of serviced industrial land. There is no current proposal with Council however it is expected late 2014/early 2015 and is therefore some time away. At this stage, it is understood that the proposal is for approximately 180 ha of employment land.
8. Accessibility to the M15 Hunter Expressway, M1 Motorway, the Newcastle port and airport and the New England Highway are significant locational advantages for industrial development at Black Hill – particularly for industries for which transport costs are significant within business financial structures and decision-making about locations for new enterprises;
9. There is no current evidence or commitment that:
 - i. the Black Hill site's development for industrial purposes represents the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of infrastructure;
 - ii. re-zoning would be soundly based upon the integration with committed provision of adequate capacities and funding for infrastructure; or
 - iii. servicing of the site represents development feasibility independently or in coordination with Coal and Allied.
 - iv. However, the potential joint servicing represents a major advantage for enabling the release of employment lands in a highly favourable strategic location.
10. The combined total of IN2 zoning on the Coal and Allied and IN1 for the subject site will be 381 ha –Added to the 1050 ha of available land quoted in the Discussion Paper (March 2013), this represents 1431 ha - 471ha or 49% more than employment lands demand of 960 ha.
11. There is a sound basis to conclude that the subject site would be highly demanded for employment land development in the medium to long term if not in the short term.
12. Based upon the above analysis, two major issues arise:
 - i. Whether there is demonstrable need for another 195 ha of IN 2 zoned land in the short to medium term; and
 - ii. If the need is demonstrable, then are certain local impacts (ecological, visual, negation of opportunities to provide for additional population growth to support local services) justified?
13. Consequently, the rezoning should be supported to proceed on the bases of:
 - a) Being zoned IN1 – General Industrial;
 - b) A reduced area for IN1 zoning – potentially with additional E4 Environmental zoning in the south-western sector of the site to moderate significant local impacts;
 - c) A DCP that moderates visual impacts, establishes clarity about staging and infrastructure provision, enhances quality of design (which, in itself is a marketing plus in the context of demand by many industrial enterprises) and enabling limited population growth in the catchment of Black Hill village to support the local school and other services.

b. Delivery Program

The Planning Proposal is consistent with the major desired outcomes and objectives in the Council's Community Strategic Plan as follows:-

- **Desired Outcome** – A sustainable and prosperous economy.
 - Objective 2.1 – Diversifying local business options; and
 - Objective 2.2 – Achieving more sustainable employment opportunities.
- **Desired Outcome** – A sustainable and healthy environment.

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- Objective 3.1 – Protecting and enhancing the natural environment and rural character of the area.
- **Desired Outcome** – Accessible infrastructure, services and facilities.
 - Objective 4.1 – Better transport links; and
 - Objective 4.2 – Improving the road network.
- **Desired Outcome** – Civic leadership and effective governance.
 - Objective 5.2 – Encouraging more community participation in decision making; and
 - Objective 5.3 – Making Council more responsive to the community.

c. Other Plans

City Wide Settlement Strategy

The CWSS recognises the need identified in the LHRS for employment land within the Lower Hunter Region to contribute to meeting the employment land needs of the broader metropolitan region of Sydney and the long term need for a freight hub at Beresfield (near the intersection of the New England and Pacific Highways).

There are no Directions or Actions that relate directly to this Proposal or employment land at Black Hill in the CWSS. While it is recognised in the CWSS that "The proposed employment lands identified in the Lower Hunter Regional Strategy will primarily cater for employment needs in the Cessnock LGA in the medium term (Branxton/Huntlee) and long term (regional freight hub)", the CWSS focuses on short term needs and land adjacent to existing centres were identified for rezoning for industrial use in Cessnock Local Environmental Plan 2011.

The Cessnock City-Wide Settlement Strategy concludes with projected demand for between 72ha and 192ha of industrial land between 2006 and 2031. Pro-rata, this would be approximately 46ha to 123ha between 2015 and 2031 for the Cessnock LGA.

From the perspective of planning for land zoned light industrial in the Cessnock LGA, this scale of demand and the currently limited supply of industrial land (acknowledging that the Kurri Kurri smelter site may well provide for 200 ha of industrial land within the next few years) – this Proposal is generally consistent with the CWSS.

Lower Hunter Regional Strategy

The Planning Proposal will contribute to the implementation of the Lower Hunter Regional Strategy which identifies the need to develop the area known as the 'future freight hub and employment lands' to maximise the employment and conservation outcomes in this area.

The Lower Hunter Regional Strategy was originally adopted in October 2006 following the exhibition of the draft LHRS in late 2005 and the LHRS was reaffirmed by the NSW State Cabinet in September 2010.

The LHRS (October 2006 and as reaffirmed in September 2010) contains the following key forecasts and directions for the 25 year period to 2031:

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- a. The planning for sufficient employment lands to provide for a total of 66,000 new jobs.
- b. 25 percent of the 66,000 new jobs required (16,500 jobs) to be located in "major employment land sites" – thereby occupying approximately 825 ha of employment land
- c. Accommodating these jobs and providing an adequate buffer supply of employment land to be achieved through the development of 500ha of zoned but vacant employment land and the zoning of a further 1,000ha of additional employment land identified at West Wallsend, Tomago and Black Hill
- d. Recognising that although there is currently a supply of vacant employment land across the region, localised supply and demand issues exist and an increase in the local supply of employment land for general industry needs is required in some areas

The above was essentially adopted following consideration of submissions to the exhibited draft LHRS which included the following relevant references:

- a. Projected demand for 445ha of industrial land between 2006 and 2031
- b. The (then) approximate 900ha of vacant industrial land able to respond to that demand
- c. The large amount of vacant industrial land for "specialised" purposes such as heavy industrial – including the Hunter Economic Zoned land of 847ha, and
- d. That an adequate supply of industrial land will be maintained

The Lower Hunter: Shaping the Next 20 Years – a Discussion Paper (March 2013) contained the following findings:

- a. Land capacity or availability was not a significant issue
- b. In the short term, expanding small to medium enterprises will remain important
- c. The region must continue to diversify employment opportunities
- d. About 8,000ha of employment land are available
- e. The take up rate since the adoption of the LHRS in 2006 has been approximately 48ha per annum (higher than the 33ha per annum projected in the LHRS of 2006)
- f. This equates to demand for a further 960ha of employment land between 2011 and 2031
- g. Since 2006, 675ha of new employment land have been rezoned – at Tomago, the Freeway North of Industrial Business Park, the Anambah Business Park and the Rutherford Industrial Estate (Stage 2) and development has commenced on some of these sites, and
- h. When added to the estimated 175ha remaining of the zoned vacant land the Lower Hunter now has a supply of around 1,050ha of zoned employment land

State Environmental Planning Policies

The Planning Proposal is considered to be consistent with relevant SEPPs. The Planning Proposal provides specific details with regards to SEPP considerations.

Section 117 Directions

The Proposal is considered to be consistent with relevant Section 117 Directions. The Planning Proposal contains an assessment of the proposal with regards to its consistency with the Section 117 Directions.

The Ministerial directions issued under Section 117 of the Environmental Planning and Assessment Act include the following:

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*1.1 - Business and Industrial Zones*

This direction aims to encourage employment growth and the development of employment land in suitable locations whilst supporting the viability of strategic centres relevantly Planning Proposals related to industrial zones must:

- a. Give the effect to the objectives of this direction*
- b. Retain the areas and location of existing and business industrial zones*
- c. Not reduce the total potential floor space area for employment uses and related public services in business zones*
- d. Not reduce the total potential for are for industrial uses in industrial zones, and*
- e. Ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning*

Consequently most relevant is the Direction 1.1 (e) above and if Council does not support this Planning Proposal then a submission to support inconsistency with this Ministerial Direction will have to be prepared for submission to the Director-General of the Department of Planning and Environment given that this Black Hill site is identified within the "employment lands" in the Lower Hunter Regional Strategy.

IMPLICATIONS**a. Policy and Procedural Implications**

The significant level of conflicting and competing positions – and the strength thereof – between the proponents Planning Proposal and position and the objections from the community representatives must be acknowledged. This reinforces the rigor which Council needs to bear in the processes and decision making for this Planning Proposal.

The Planning proposal's current status is identified in the following flow chart.

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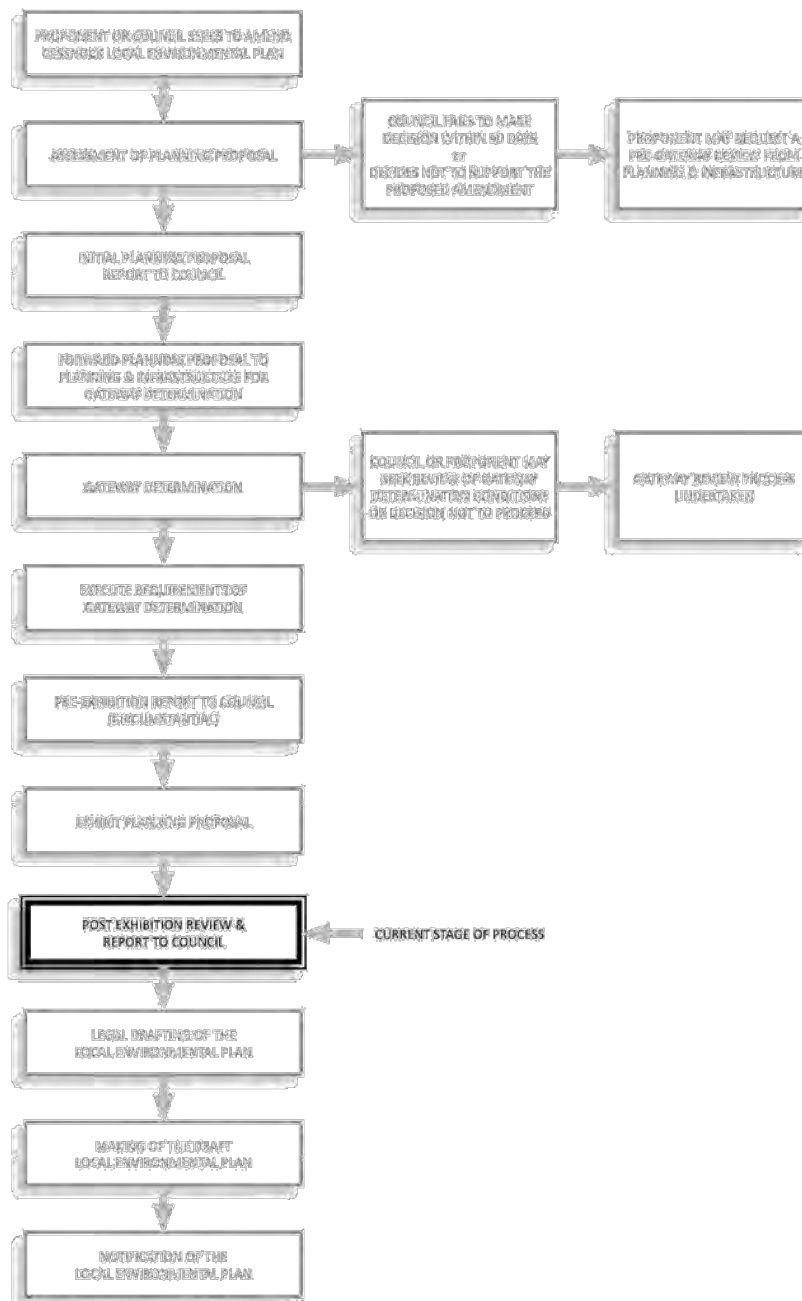
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PLAN MAKING PROCESS - LOCAL ENVIRONMENTAL PLAN



b. Financial Implications

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The rigor of processes and decision making for this Planning Proposal need to be fully ensured to minimise the risk to Council of significant financial implications resulting from a legal challenge.

c. Legislative Implications

Under Section 123 of the Environmental Planning & Assessment Act 1979 a person may bring proceedings in the Court for an order to remedy or restrain a breach of the Act. The Act states that "any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings". This is mitigated by Council following due process in preparing, consulting on and considering the Proposal.

As advised at the Council briefing on 3 December 2014, Council could consider an independent public hearing as provided for under section 57 of the Act. However, as outlined in this report, consultation has been greater than the minimum required under the process.

In considering the options, Council should also note section 58 of the Environmental Planning & Assessment Act, 1979 (as amended) as follows:

"The relevant planning authority may vary proposals or not proceed

(1) The relevant planning authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.

(2) If it does so, the relevant planning authority is to forward a revised planning proposal to the Minister.

(3) Further community consultation under section 57 is not required unless the Minister so directs in a revised determination under section 56.

(4) The relevant planning authority may also, at any time, request the Minister to determine that the matter not proceed".

d. Risk Implications

Rigor of process and decision making in this matter is very significant to minimise the risk implications to Council in terms of legal and reputational challenges. Other risks involved in the assessment and decision making for this Planning Proposal are:

- i. If supported, declaration of a very significant scale of land zoned industrial with slow take up and return on investment in infrastructure given the extent of alternatively available in lands zoned IN2 Light Industrial in the Lower Hunter
- ii. The adverse implications for traffic safety on John Renshaw Drive and Black Hill Road unless appropriate traffic improvement works and management are initiated

These risks are addressed within the recommended course of action.

e. Other Implications

Nil.

CONCLUSION

It is concluded that:

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1. The site meets critical criteria of:
 - a) agglomeration,
 - b) size,
 - c) location in terms of transport workforce accessibility;
 - d) The projections in the Cessnock City-Wide Settlement Strategy; and
 - e) State Government policy directions in the LHRS.
2. The IN 1 zoning is appropriate as is contained in the Cessnock LEP 2011 – and is reasonably compatible with the IN2 Light Industrial zone in the Newcastle LEP (and as applied to the Coal and Allied site and other industrial land in proximity);
3. There is uncertainty about feasibility of, and commitment for, infrastructure delivery and this should be ensured as a precondition to supporting the re-zoning (potentially through a Voluntary Planning agreement);
4. There is merit in limited reduction in scale of the re-zoning to industrial and thereby:
 - a) reducing impacts on endangered ecological species and visual amenity; and
 - b) Enabling a small number of net additional “environmental living” opportunities to be created to manage the environmental assets and increase population supporting the local community and school.
5. The draft Voluntary Planning Agreement needs re-negotiation, re-drafting and re-exhibition;
6. The Planning Proposal should therefore be supported to proceed on the bases of:
 - The majority of the site – indicatively 150 ha, being zoned IN1 – General Industrial;
 - Confirmation from Coal and Allied the Catholic Diocese and Hunter Water Corporation that a joint agreement will be formalised between the Catholic Diocese and Coal and Allied for the strategy, design, funding and implementation of water and sewer infrastructure - thereby incurring no public costs or re-prioritisation of such works; and such delivery of infrastructure is feasible.
 - The reduced area for IN1 zoning being balanced with additional E4 Environmental Living zoning – and additional subdivision and dwelling entitlements in the south-western sector of the site;
 - A DCP that moderates visual impacts, establishes clarity about staging and infrastructure provision, enhances quality of design (which, in itself can be a marketing plus in the context of demand by many industrial enterprises) and increases opportunities for residential lots and dwellings in the southern sector of the site.

ENCLOSURES

- 1 a) Proposed Zoning Map; b) Draft E4 zoning provisions
- 2 Zoning map as exhibited
- 3 Proponent's first exhibition amendment 4/11/14
- 4 Proponent's second amendment post exhibition 27/11/14
- 5 Gateway Determination & Extension
- 6 Summary of Public Submissions

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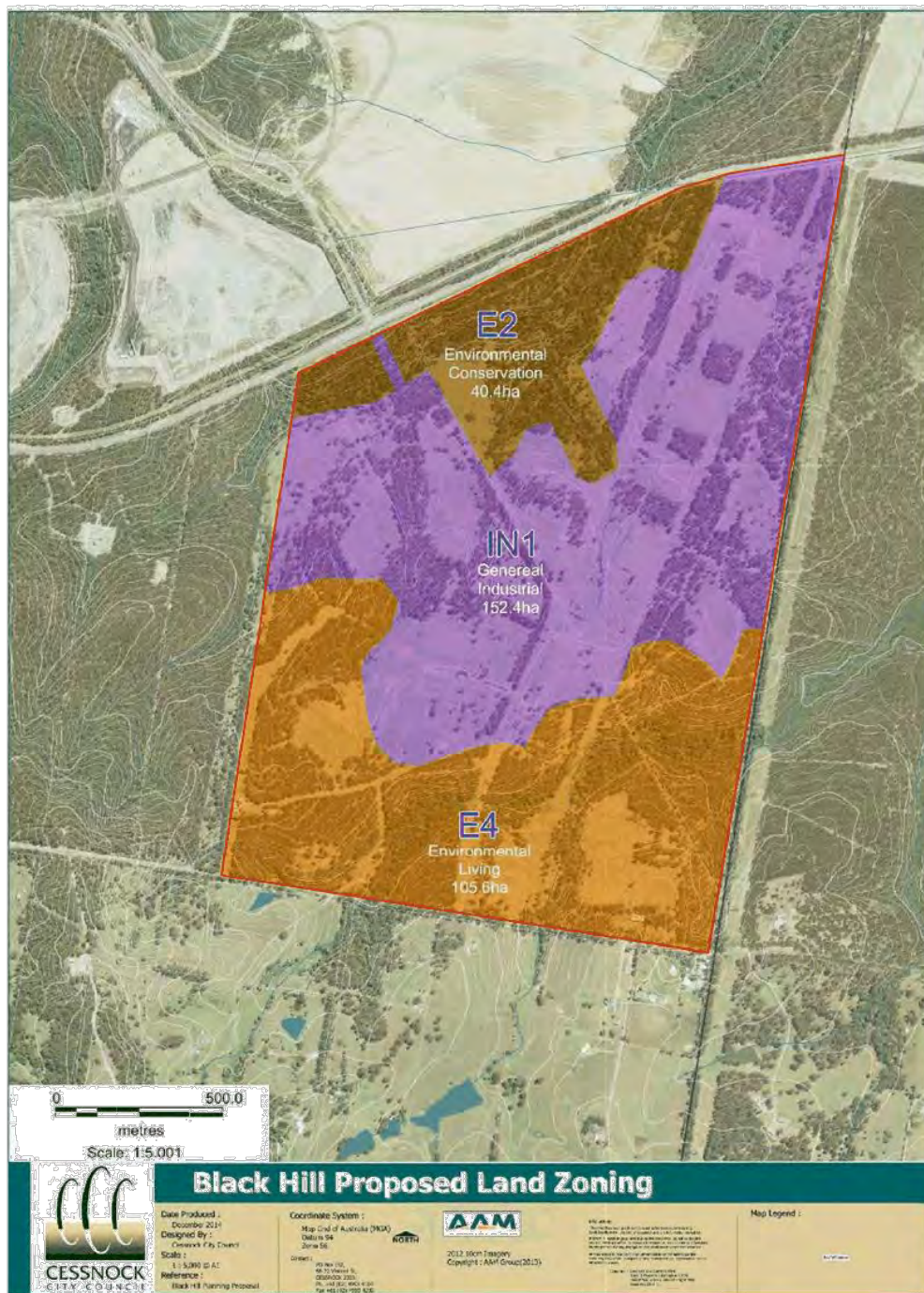
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- 7 Employment Lands Analysis
- 8 Minutes of public community forum
- 9 Summary of State Agencies Advices
- 10 Public submissions (Will be provided under separate cover) - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy.*

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Enclosure 1



Enclosure 1 - a) Proposed Zoning Map; b) Draft E4 zoning provisions

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Zone E4 Environmental Living**1. Objectives of zone:**

- To provide balance between low-impact residential development in areas with special ecological, scientific or aesthetic values with enabling limited additional population to support local services and facilities;
- To ensure that residential development does not have an adverse effect on those values;
- To conserve the rural or bushland character and the biodiversity or other conservation values of the land.
- To provide for the development of land for purposes that will not, or will be unlikely to, prejudice its possible future development for urban purposes or its environmental conservation.

2. Permitted without consent

Environmental protection works; Home occupations; Home-based child care

3. Permitted with consent

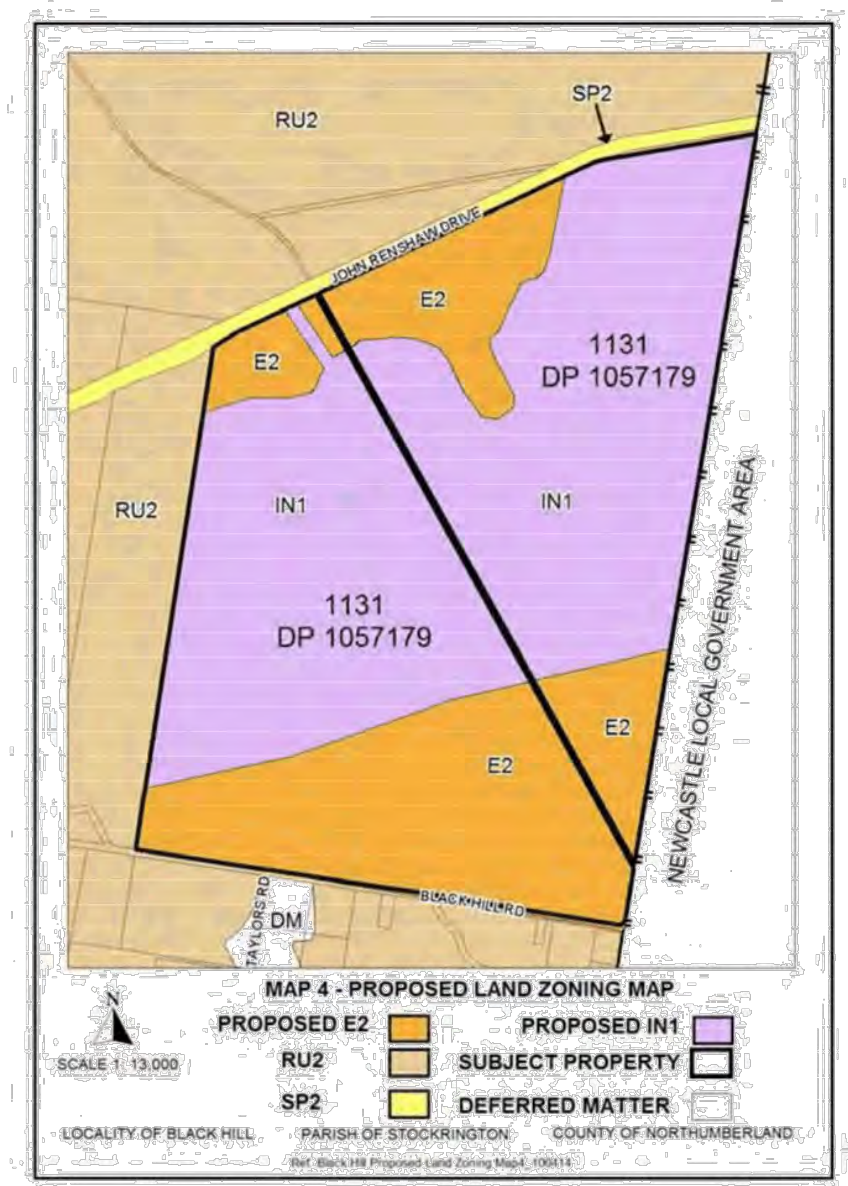
Agriculture; Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Child care centres; Community facilities; Dual Occupancy; Dwelling houses; Environmental protection works; Emergency services facilities; Environmental facilities; Farm buildings; Flood mitigation works; Home-based child care; Home businesses; Home industries; Information and education facilities; Landscaping material supplies; Neighbourhood shops; Passenger transport facilities; Plant nurseries; Recreation areas; Research stations; Respite day care centres; Roads; Roadside stalls; Secondary dwellings; Water reticulation systems

4. Prohibited

Aquaculture; Industries; Intensive livestock agriculture; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

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Enclosure 2

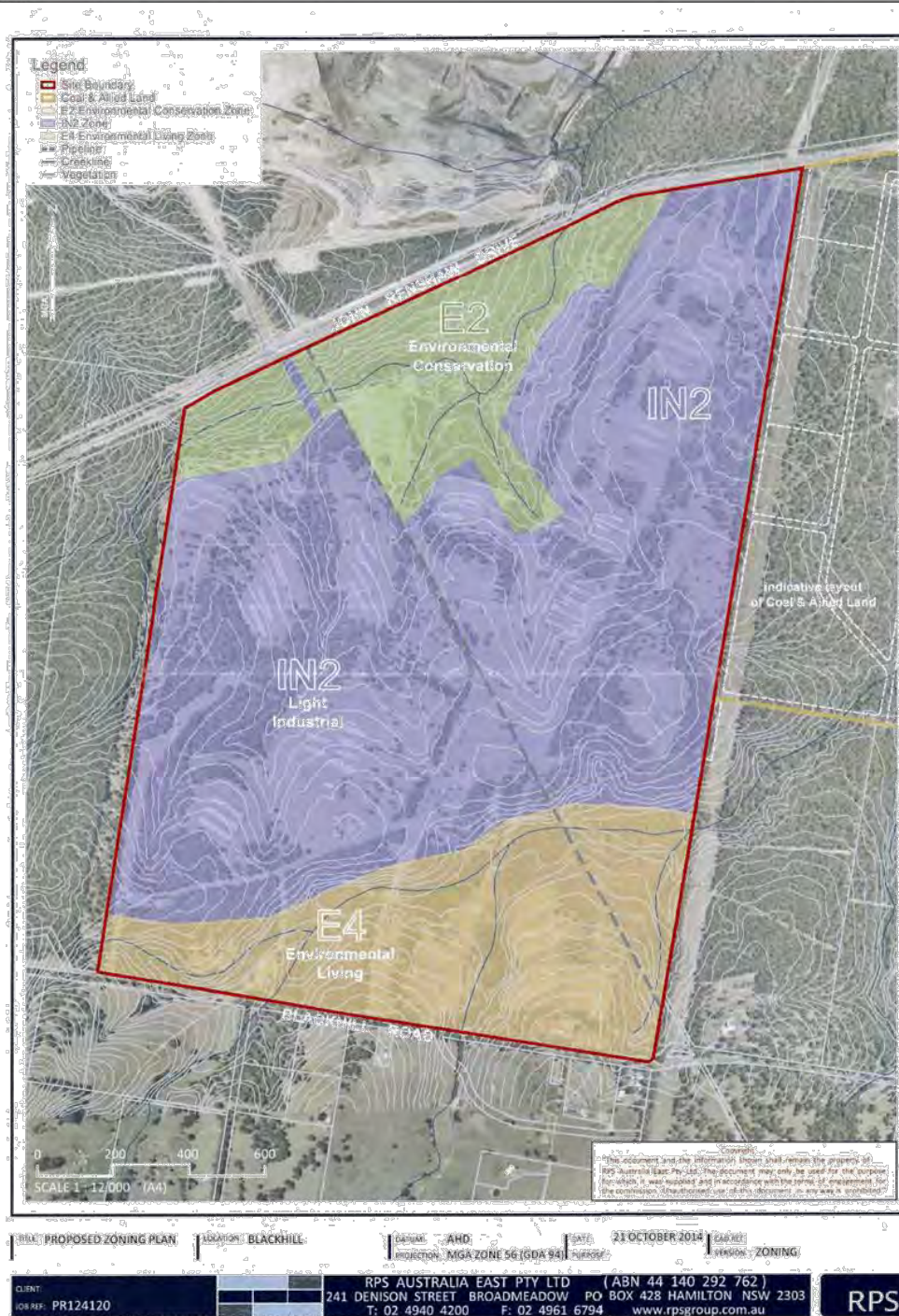


Enclosure 2 - Zoning map as exhibited

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Enclosure 3





4 November 2014

Martin Johnson
Cessnock City Council

Transmission via email: martin.johnson@cessnock.nsw.gov.au

Dear Martin,

WITHOUT PREJUDICE

REVISÉD PLANNING SCHEME FOR BLACK HILL PLANNING PROPOSAL

I refer to our meeting on 21 October 2014 where we discussed the submissions made to the exhibition of the Black Hill Planning Proposal and additional community feedback from Council's ongoing engagement with stakeholders in the Black Hill area.

Thank you for the opportunity to present our preliminary response to the public submissions, which include some amendments to the planning scheme for the site to address the planning matters raised by the local community. You asked us to make a formal submission to Council of our amended planning scheme with a supporting statement outlining the reasons for the proposed changes.

Attached is our **Revised Planning Scheme** and our **Response to Submissions**.

Overview of changes to the planning scheme

1. IN2 Light Industrial is proposed instead of IN1 General Industrial.

This change is made to respond to community feedback in relation to concerns about emissions from industrial activities¹. Zone IN2 Light Industrial is the lowest intensity industrial zone in the Standard Instrument list, and the types of uses need to be "light" in nature, meaning they will not cause nuisance or adversely affect the surrounding amenity for example by way of noise or emissions².

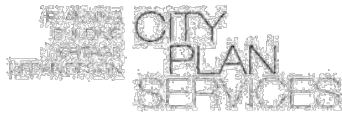
The list of all the permitted and prohibited uses in the IN1 and IN2 zones are shown in the attached **Cessnock LEP 2011 Land Use Matrix**, however the key difference is that no

⁷ Issues 1.3 & 3.2 in Council's Summary Analysis of submissions, dated September 2014

² LEP Practice Note PN 11-002 Preparing LEPs using the Standard Instrument: standard zones

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Enclosure 3



general or heavy industry is permitted in the IN2 zone. Light industrial uses are permitted, which are defined as a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise; and includes any of the following (a) high technology industry; (b) home industry.

The IN2 zone has also been applied to the adjoining site in the Newcastle local government area, and the Beresfield industrial estate, as shown in the attached **Zoning context map**.

Some minor changes have been made to the boundaries of the zones, with IN2 and E4 zone boundary generally following a 50m setback from the creek line. The area of the proposed IN2 zone is 198ha, an increase of 3ha from the exhibited IN1 zone.

2. E4 Environmental Living is proposed instead of E2 Environmental Conservation adjoining Black Hill Road.

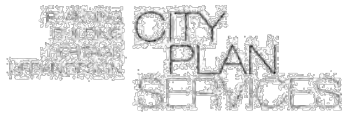
This change is made in response to community concerns about the consideration of alternative development options and rural character⁹. A zone called *Environmental Living* is more consistent with the existing character and land use pattern of typical Black Hill land - which is rural dwellings, surrounded by a mix of cleared agricultural land and vegetated natural areas.

The intention for the future of the land fronting Black Hill Road is to enable low impact residential development within an area of special conservation values. The exhibited planning proposal attempted to achieve this with an E2 zone coupled with a clause that allowed subdivision. However, the E4 zone is a better match because its objectives seek to balance residential development and conservation, whereas the E2 zone focusses on the protection of conservation values.

Cessnock Local Environmental Plan 2010 does not contain the E4 zone; so it would need to be added to the zoning list. The E4 zone has been used in the adjoining Newcastle local government area, for the rural lifestyle areas on both sides of the M1 Motorway as well as the land immediately south of the Coal & Allied industrial site (see attached **Zoning context map**). A land use table similar to the Newcastle E4 zone could be applied to this land (see attached **Newcastle LEP E4 zoning table**).

⁹ Issues 3.1 – 3.5, 5.1, 10.2, 12.1, 12.2, 15.

21/10/14



The area of the proposed E4 zone is 61ha, of which 44ha is vegetated. There is sufficient cleared land for building envelopes, asset protection zones and roads, so that there will be no net loss of vegetation within this area. Lots would average 2ha, but include larger lots and deep protected vegetated setbacks along the creek lines and the boundary with the industrial zone.

3. No change to the E2 Environmental Conservation zone fronting John Renshaw Drive.

The area of the proposed E2 zone is 41ha of which 37ha is vegetated. The remaining 4ha can be re-vegetated.

Reasons for amending the proposal

These changes in zoning are a direct response to the issues raised during community consultation regarding consideration of alternative development options, such as *rural residential development, seniors living development or other lower impact zoning development*.

Contrary to the comments in the submissions, a number of development alternatives have been investigated for the site over time, including rural residential development, educational uses, recreational uses, seniors living development, infrastructure and agricultural activities.

However, the amended proposal is the preferred option for the site given the specific constraints, locational opportunities, planning requirements and development feasibility.

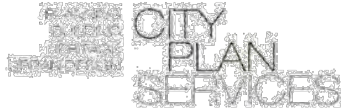
Conclusion

I provide the following information to enable Council to make an informed, evidence-based decision regarding the largest employment generating proposal in Cessnock in more than 10 years. This proposal will generate over 3,000 jobs within 10 minutes drive of Kurri Kurri and ensure in perpetuity protection of native vegetation of much better quality and substantially larger area than exists on site.

* Issue 12/2

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Enclosure 3



I trust that Council will take these matters into consideration in their assessment of the Planning Proposal, and will recommend to the Minister for Planning that the proposal be made.

If you have any questions in relation to this letter, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Monica Gibson'.

MONICA GIBSON
REGIONAL DIRECTOR
CITY PLAN STRATEGY AND DEVELOPMENT PTY LIMITED

4/11/14

Report PE154/2014 - Planning Proposal - Black Hill

Enclosure 4



27 November 2014

Our Ref: N-12001

Martin Johnson
Cessnock City Council

Transmission via email: martin.johnson@cessnock.nsw.gov.au

Dear Martin,

RE: BLACK HILL PLANNING PROPOSAL

Thank you for the opportunity to meet on Tuesday 25 November 2014, and for your feedback from the ongoing community engagement in relation to the Black Hill Planning Proposal.

In response to the matters raised at this meeting, and as requested by you, we provide the following responses:

1. We wish to proceed with the rezoning of land to IN1 General Industrial, E2 Environmental Conservation and the associated local provision to enable subdivision of the E2 land into six allotments.

We make this decision based on your advice that the community reference group *outright rejected* the most recent alternative proposal that we made, without prejudice, for a light industrial and environmental living zone. No viable alternative zoning scheme has been suggested by the community that would be consistent with the endorsed Regional Strategy or an adopted local strategy.

2. A brief report on matters of employment land supply is enclosed for your information and consideration. This information is provided in response to matters you raised at the meeting on 25 November 2014. We note that this information was not requested by the Department of Planning and Environment or Council during the Gateway Determination or preparation of the Planning Proposal.

We believe that the Black Hill site is consistent with an endorsed Regional Strategy and that the agglomeration of transport-focussed employment land in the Thornton/ Beresfield/ Black Hill location needed. The State government has indicated that the rezoning of employment land

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Enclosure 4

at Black Hill is required to maintain and achieve regional and local land supplies for State-endorsed employment forecasts:

3. The proponent is in advanced discussions with its neighbour (Coal & Allied Ltd) for a joint infrastructure servicing strategy for the two sites. The total development area considered by the strategy is 483ha of employment land. The combined cost of augmentation and connection for the various required servicing is estimated to be as follows (2014 NPVs):

- Shared John Renshaw Drive intersection: \$4.5m
- Sewer (connection to Morpeth WWTP via Beresfield 5 WWPS): \$10.33m
- Water: \$1.63m
- Electricity: \$1.24m
- TOTAL: \$17.7m

The cost of the above works are proposed to be shared on a pro-rata basis between the parties.

In addition, the proponent will also be required to remediate the site and provide a second intersection to John Renshaw Drive. Reducing the area of employment land (for example, by increasing the amount of environmental conservation land) will not reduce the infrastructure servicing costs because of fixed costs for trunk works, and will test the viability of the project going forward.

No objection has been raised by any servicing authority during the Gateway determination or Planning Proposal preparation that infrastructure upgrades and connections could not be made or were too expensive. Attached is correspondence from HWC in relation the preliminary servicing advice, indicating that regional capacity will be available or made available in the future, to support the employment land development.

If you have any questions on these matters, please do not hesitate to contact me.

Yours sincerely,



Monica Gibson
Regional Director

Attachments:

Employment Land Analysis, November 2014

Correspondence from HWC, June 2013

10/10

Report PE154/2014 - Planning Proposal - Black Hill

Enclosure 4



Employment Land Analysis Response to Cessnock Council

Black Hill Planning Proposal


Black Hill Planning Proposal
Response to Cessnock Council
Employment Land Analysis

November 2014 (N-1201)

Report PE154/2014 - Planning Proposal - Black Hill

Enclosure 4

Report Revision History

Revision	Date Issued	Prepared by	Reviewed by	Verified by
01 - Draft	24/11/14	MG	MG	MG
02 - For Council submission	26/11/14	Monica Gibson B. Science (UoN), B. Urban & Regional Planning (UNE), M. Environmental Management (UNSW), MPA	MG	

This document is preliminary unless approved by a Director of City Plan Strategy & Development

CERTIFICATION

This report has been authorised by City Plan Strategy & Development, with input from a number of other expert consultants, on behalf of the Client. The accuracy of the information contained herein is to the best of our knowledge, not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

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1. Preface

This brief report has been prepared to provide response to questions raised by Cessnock Council officers in relation to the strategic justification for the rezoning of land for industrial purposes at Black Hill.

Cessnock City Council is the relevant planning authority for the preparation of an amendment to their Local Environmental Plan to rezone rural land at Black Hill to a mix of industrial, environmental conservation and environmental living zones. A Gateway Determination was issued by the authority of the Minister for Planning on 11 December 2012. A Planning Proposal was prepared by City Plan Strategy and Development on behalf of Diocese of Maitland-Newcastle, who are the owners of the land. The Planning Proposal was publicly exhibited for 35 days in June and July 2014. Submissions received raised questions about the need for additional industrial land.

Council officers have asked four questions to assess the need and strategic justification for the industrial rezoning:

1. What land is actually available into the medium to long terms which represent alternative sites for the types of development which will locate in IN2 zones?
2. Are these sites of comparable availability given analysis of constraints and being serviced/potentially serviced at feasible costs?
3. What is the data for land sales and take up at Beresfield and Thornton which would give a more recent and localised analysis of relevant trends?
4. How pivotal are the locational advantages of good access to the Hunter Expressway and M1 Motorway, the Newcastle port and airport and the New England Highway?

The following information has been prepared to provide answers to these questions, and to provide further justification to support the Planning Proposal.

2. Alternative sites for industrial development

Council officers are attempting to determine what sites are available for light industrial development, as an alternative to the Black Hill Cessnock land. Their question is:

What land is actually available into the medium to long terms which represent alternative sites for the types of development which will location in IN2 zones?

There are a number of assumptions to be made about this question:

- Available is assumed to be zoned or strategy identified for industrial development
- Medium to long term is assumed to be 10-30 years
- Types of development in IN2 zones is assumed to be all uses permitted in IN2 zone, or the likely uses for sites close to major transport networks within a variety of zones

In order to compare other lands to the Black Hill site, they need to have

- A large estate size (>100ha)
- Proximity to M1, Pacific Highway, New England Highway or Hunter Expressway
- Zoned for development or identified in a local or regional strategy
- More than 50ha vacant to accommodate medium - long term expansion
- Permit light industrial development, including transport and warehousing uses
- Be in the Lower Hunter

The following sites have been identified following a review of available planning studies and reports.

• Beresfield/ Thornton/ Black Hill cluster

Large estate (280+ha), frontage to M1 and New England Highway, identified as strategically important land in Newcastle industrial land strategy; range of employment zones that permit transport and warehousing needs. Recent zonings to permit some expansion to south and west. Currently, around 110ha vacant.

• Heatherbrae

Large estate (150+ha), frontage to Pacific Highway and proposed M1 - Pacific Hwy extension; range of zones that permit bulky goods retailing, highway services, transport and manufacturing. Some vacant land along Masonite Road (>50ha).

• Rutherford/ Anambah

Large estate (400+ha), frontage to New England Highway; range of zones that permit bulky goods retailing, transport, engineering, manufacturing and light industry. Recent zoning to permit expansion to west (>150ha vacant).

• Tomago

Very large estate (700+ha), frontage to Pacific Highway; range of zones that permit manufacturing, engineering, general industry and transport. Recent zoning (350ha) to permit expansion to the southeast.

• Morisset

Medium size holding (80+ha), frontage to M1, range of zones that permit offices, transport, bulky good retail, light industry and warehousing. Small area vacant (<50ha).

• Hunter Economic Zone (HEZ)

Very large holding (860+ha). This site is earmarked for the establishment of major industrial or major employment generating developments, and light industrial, transport and warehousing developments are permitted. Mostly vacant, with significant ecological constraints. No direct frontage, but close to Hunter Expressway.

Stoney Pinch and West Wallsend have been identified in the Lower Hunter Regional Strategy, but are not zoned to permit industrial development. Sites at Kurri Kurri, Branxton and Singleton have also been suggested for industrial zoning, but have not been included in an endorsed land use strategy.

3. Availability of land for industrial development

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Council officers are attempting to determine if the alternative sites are suitable and ready for light industrial development. Their question is:

Are these sites of comparable availability given analysis of constraints, and being serviced, potential serviced at feasible costs?

The six identified comparison sites are zoned to permit industrial development and are therefore technically available for industrial development. However there are development constraints including ecological issues, flooding, utility servicing, road upgrades that will affect the early release of many of these areas.

We have not undertaken a full analysis of the constraints and servicing costs associated with each site, but instead provide a summary of the known issues affecting the sites:

• **Beresfield/ Thornton/ Black Hill cluster**

Brownfield sites (Beresfield north) have been slower to redevelop than the greenfield sites to the south¹. Utility servicing, road upgrades and ecological issues need to be addressed prior to the release of developable land at the C&A Black Hill Newcastle site². This was acknowledged and accepted in the concept approval by the State government. There are strong opportunities for coordinated solutions to these issues if the Black Hill Cessnock site is rezoned.

• **Heatherbrae**

Vacant zoned land is substantially vegetated. Uncertain timing on the M1- Pacific Highway connection.

• **Rutherford/ Anambah**

Recent zoning to permit expansion to west will require significant infrastructure upgrades including sewer, electricity and new highway intersections.

• **Tomago**

Vacant zoned land to the north is heavily vegetated and there are ecological issues on the land to the south. Flooding and servicing issues also affect the land to the south³.

• **Morisset**

Small area vacant as an extension from existing area developed area. Local road upgrades required⁴.

• **Hunter Economic Zone (HEZ)**

¹ Newcastle Employment Lands Strategy, September 2003

² Concept Plan MP-10_0093, Director General Assessment Report, August 2013

³ Part 3A assessment P 07_0066, Director General Assessment Report, July 2009

⁴ Morisset Catchment Section 94 Contribution Plan, December 2012

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Mostly vacant, with significant ecological constraints. No direct frontage, but close to Hunter Expressway.

Strategy identified sites that are not yet zoned (Stoney Pinch and West Wallsend) will involve re-development of mining land. It is highly likely that they have significant ecological issues and will require significant infrastructure planning prior to rezoning. They are therefore further behind Black Hill in the supply chain.

4. Take up rates for local area

Council officers are attempting to determine if there is demand for more industrial land in catchment of Black Hill. Their question is:

What is the data for land sales and take up at Beresfield and Thornton which would give a more recent and localised analysis of relevant trends?

The existing Beresfield/Thornton/Black Hill industrial conurbation is split between Newcastle and Maitland local government areas, and would extend into Cessnock with the rezoning of the subject land.

Newcastle Council engaged Hill PDA to prepare the Newcastle Employment Lands Strategy which was completed in September 2013. Hill PDA analysed land demand and supply, drawing on existing research and revised population forecasts and trend analysis. The Beresfield industrial area is one of three main concentrations of employment in the Newcastle area.

Between 2004 and 2009, over 50ha of land was taken up in Beresfield, leaving 110ha of vacant land. The vacant holdings are in the northern half of the industrial area and are brownfield sites. They have remained vacant and underutilised for some time and have not been as marketable as the southern areas which were greenfield releases. One development (Aldi distribution and warehouse) will occupy 15ha of previously vacant land.

The Maitland Urban Settlement Strategy (2012 edition) commented that there is no longer a readily available supply of industrial land at Thornton, and that all 110ha of zoned industrial land in the Thornton estate is taken up.

5. Locational advantages to transport networks

Council officers are attempting to determine if the proximity of the Black Hill/Cessnock site to key transport networks is significant. Their question is:

How pivotal are the locational advantages of good access to the Hunter Expressway and M1 Motorway, the Newcastle port and airport and the New England Highway?

A number of recently published reports have considered the locational advantages of the Black Hill area for transport and warehouse related activities within light industrial estates. They consistently conclude that the Black Hill area is a strategic location for these employment activities and should be protected and expanded.

Newcastle Employment Lands Strategy - Hill PDA September 2013

The Beresfield employment area may be considered an important future resource for Newcastle LGA. The area's location at the junction of the Sydney Newcastle Freeway and the New England Highway provides excellent opportunities for storage and transportation components of businesses seeking sites with excellent highway access. This employment area has already attracted the distribution arms of major supermarkets for this reason.

Working Paper: Centres and Employment Lands – Newcastle Council November 2013

The existing industrial land at Beresfield and Hexham should be protected in their entirety to ensure that there remains adequate land to meet predicted industrial growth in the area. The exceptional logistical advantage of the Beresfield employment area means that this area is likely to continue to attract warehousing and distribution uses.

Black Hill and Tank Paddock Environmental Assessment – Urbis February 2011

The land identified for proposed development at Black Hill is strategically located at the intersection of the F3 Freeway and John Renshaw Drive, providing excellent road access in all directions. The benefits of this location have since been recognised in the LHRS which notes that employment lands at Black Hill contribute to the viability of a future Freight Hub Precinct in the locality.

6. Supply of industrial land

The premises of these questions is that rezoning land at Black Hill will limit light industrial development occurring in other parts of the Lower Hunter, and that the development which might be accommodated at Black Hill, could be accommodated at another location.

Maintaining an adequate stock of industrial lands in the Lower Hunter is essential to provide for economic growth, ensure the competitiveness and affordability of land stocks and ensure the market is not constrained by land supply shortages. This involves retaining existing stocks of land as well as the timely provision and servicing of well-located new land to meet the long term needs arising from growth and change.

6.1 Regional strategies

The Lower Hunter Regional Strategy addressed land supply with a strategic objective to provide for 16,500 jobs in employment zones over 25 years. This is to be achieved by having sufficient land available, plus identifying more land as a contingency supply equal to 20 years land take up.

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The additional identified land for rezoning was West Wallsend, Tomago and Black Hill.

Lower Hunter Regional Strategy employment forecasts	
Land required for projected jobs	825ha
Take up rate per year	33ha, based on 500sqm per job, for 660 jobs per year, for 25 years
Existing zoned & vacant land	503ha in 2006
Additional identified land for rezoning	1,000ha
Total proposed supply of vacant Industrial Land	1,503ha

In the discussion paper on the review of the regional strategy, revised land take up and land supply figures were released. In the five years between 2006 – 2011, large holdings at Tomago and Rutherford were rezoned, and there was a significant up-tick in the land consumption (from 33ha/yr to 48ha/yr).

Discussion Paper on Lower Hunter Regional Strategy	
Take up rate per year	48ha based on land sales between 2000-2009
Existing zoned land	1,050ha in 2011

In 2011, there was still 453ha of land to be zoned from the proposed industrial land in LHRS (1,503ha-1,050ha) to accommodate the required supply of land for the jobs projection.

The Regional Strategy proposed a contingency buffer supply of employment land (around 680ha, or 20 years supply). If a similar buffer is to be maintained on the amount of employment land in 2011, an additional 660 – 960ha of land is needed depending on job creation rates.

6.2 Maintaining an adequate supply of industrial land

The State government monitors the take-up of industrial land through the Employment Land Development Program. It is managed by the Department of Planning and Environment and currently only operates in the Sydney Metropolitan Region.

The Program objective is to ensure enough land is always available for development, and to have stocks of land at progressive stages in the planning and development process. Three stages are listed:

1. Strategy Identified – total land explicitly identified for future development
2. Undeveloped Zoned – land that has been investigated and planned in more detail and zoned for development

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3. Undeveloped Zoned and Serviced - land that has key infrastructure services provided.

This staging recognises that servicing is not essential for the rezoning of land for employment purposes, and that connection of key infrastructure is a further step in the development and release of industrial land.

There is no sequencing program for the release of employment land in the Lower Hunter at this time, and councils are required to rezone proposed employment lands as identified in the Regional Strategy (p. 22, Lower Hunter Regional Strategy, 2006).

6.3 Role of Black Hill in employment land supply

The Black Hill Cessnock site is mapped in the "Future Freight Hub and Employment Lands" investigation area in the Lower Hunter Regional Strategy. It is also part of the "Additional identified lands" that will provide 1,000 additional hectares of employment land supply.

This land is therefore part of the stock of agreed and endorsed employment land, currently sitting in Stage 1 - Strategy Identified, waiting to be progressed to Stage 2 - Undeveloped Zoned.

There should therefore be no concern that the rezoning of the Black Hill Cessnock site will limit light industrial development occurring in other parts of the Lower Hunter. Black Hill has been strategically endorsed to provide for key transport and warehousing uses for the Lower Hunter.

7. Criteria for supply of employment land

Council officers provided us with draft details about the key principles that they would be applying to make an assessment of the Black Hill Cessnock Planning Proposal in relation to the supply of employment land.

We understand that this supply assessment is separate and additional to the supply assessment made by the State government, which have assessed that the Black Hill Cessnock site is part of the identified supply of employment land for the Lower Hunter.

We respectfully provide the following amended criteria for Council's consideration:

The appropriate criteria for decision making about the overall planning for an adequate supply of employment land within Cessnock LGA could be to:

1. Meet long-term needs for employment growth across a range of industry categories;
2. Support competitive advantages of Cessnock LGA;
3. Ensure land is physically suitable for employment uses (topography, environmental constraints, utilities, parcel size and fragmentation, hazards);

VIEW OF AN EXISTING INDUSTRIAL DEVELOPMENT, BLACK HILL CESSNOCK, AS PART OF THE ANALYSIS OF THE PROPOSED DEVELOPMENT. SOURCE: SUPPLIER



4. Facilitate agglomeration in geographically strategic locations;
5. Ensure there is efficient access to arterial roads and transport networks;
6. Encourage accessibility and proximity to a local workforce – particularly if there is evident localised and relatively higher levels of unemployment (including from relatively recent closure and/or downsizing of certain industries);
7. Ensure the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of enabling infrastructure;
8. Accommodate growth over time through annual monitoring of supply and demand and major reviews of the Local Growth Plan every five years, and rezone land in a timely manner;
9. Provide a contingency buffer of zoned land (Buffer to be 50% of total area of vacant serviced and unconstrained land).

7.2 Assessment of local employment supply for Black Hill PP

1. Meet long-term needs for employment growth across a range of industry categories
Yes, provides for nearly 200ha of employment land with potential for 3,000 employees over a 15 - 20 year build-out period, with a focus on transport, warehousing and other light industrial activities.
2. Support competitive advantages of Cessnock LGA
Yes, Black Hill has been identified as a strategically important transport distribution hub with access to interstate and international transport networks.
3. Ensure land is physically suitable for employment uses (topography, environmental constraints, utilities, parcel size and fragmentation, hazards)
Yes, environmental and planning investigations have confirmed that the majority of the site (200ha) is physically suitable for employment uses.
4. Facilitate agglomeration in geographically strategic locations
Yes, the site will be an extension of the Thornton/ Beresfield/ Black Hill agglomeration of employment land. It directly adjoins existing zoned industrial land.
5. Ensure there is efficient access to arterial roads and transport networks
Yes, the site has access to John Renshaw Drive and then to the M1, New England Highway, Hunter Expressway and Pacific Highway. The RMS have confirmed that there is capacity in these networks to accommodate the increased traffic generated by the site.
6. Encourage accessibility and proximity to a local workforce – particularly if there is evident localised and relatively higher levels of unemployment

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(including from relatively recent closure and/or downsizing of certain industries)

Yes, the site is 10 minutes drive from Kurri Kurri, and within 20 minutes drive of the expanding residential populations at Minmi/Fletcher, Thornton, East Maitland/Ashtonfield.

7. Ensure the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of enabling infrastructure

Yes, there are strategic opportunities to coordinate the delivery of infrastructure (new intersections, sewer, water) with the adjoining Black Hill C&A land. There were no objections from public utilities authorities to the proposed rezoning of the site.

8. Accommodate growth over time through annual monitoring of supply and demand and major reviews of the Local Growth Plan every five years, and rezone land in a timely manner

Yes, there are limited opportunities for industrial development in the Cessnock LGA due to the constraints of the HEZ estate and no other large industrial holdings.

9. Provide a contingency buffer of zoned land (Buffer to be 50% of total area of vacant serviced and unconstrained land).

Cessnock Citywide Settlement Strategy (2010) reported that there were 911.4ha of vacant employment land in the LGA, of which 870ha were in HEZ. The Cessnock Civic site has been rezoned since this report, but it was zoned for business park purposes (including bulky goods development).

The rezoning of the Black Hill Cessnock site would provide 200ha of serviceable and unconstrained land, to add to the 40+ha of industrial land outside of the HEZ site.

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Mr Stephen Glen
Interim General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Our ref: 12/13190

Dear Mr Glen

Planning Proposal PP_2012_CESSN_005_00 - Gateway Determination extension

I refer to Council's request for an extension of time to complete the Planning Proposal PP_2012_CESSN_005_00 to rezone land at Black Hill from RU2 Rural Landscape to IN1 General Industrial and E2 Environmental Conservation under the Cessnock Local Environmental Plan 2011.

I have determined as delegate of the Minister, in accordance with section 56(7) of the Environmental Planning and Assessment Act, 1979, to amend the Gateway Determination dated 11 December 2012 for PP_2012_CESSN_005_00.

The Gateway Determination is amended by extending the time for the completion of the Planning Proposal by an additional 12 months, in accordance with the project plan agreed between Council and the proponent. The Planning Proposal is now due for completion by 18 December 2014.

I encourage Council to work with the proponent to meet the project plan milestones, and I would appreciate regular advice being provided to the Department on progress.

If you have any questions in relation to this matter, please contact Trent Wink of the Department's Newcastle Office on (02) 4904-2716.

Yours sincerely


Michael Leavey 25/12/13
Regional Director
Hunter & Central Coast Region
Planning Operations & Regional Delivery

Hunter & Central Coast Region Level 2, 26 Honeysuckle Drive, Newcastle PO Box 1226 NEWCASTLE 2300
Telephone: (02) 4904 2700 Facsimile: (02) 4904 2701 Website: www.planning.nsw.gov.au

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**Office of the Director General**

Ms Lea Rosser
General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Contact: Trent Wink
Phone: (02) 4904 2700
Fax: (02) 4904 2701
Email: Trent.Wink@planning.nsw.gov.au
Postal: PO Box 1226, Newcastle NSW 2300

Our ref: PP_2012_CESSN_005_00 (12/19/138)
Your ref:

Dear Ms Rosser,

Planning proposal to amend the Cessnock Local Environmental Plan 2011

I am writing in response to Council's request for a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend the Cessnock Local Environmental Plan (LEP) 2011 to rezone land at John Renshaw Drive and Black Hill Road, Black Hill for industrial and environmental protection purposes.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also determined it is not necessary to prepare the structure plan for the freight hub precinct in accordance with the Lower Hunter Regional Strategy, for the land south of John Renshaw Drive. It is considered the required flora and fauna investigations will determine the environmental conservation outcomes.

Furthermore it is agreed the planning proposal's inconsistencies with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands and 3.4 Integrating Land Use and Transport are justified by the Lower Hunter Regional Strategy. No further approval is required in relation to these Directions.

It is noted as part of this planning proposal process, Council seeks to amend its development control plan and Section 94 contribution plan and prepare a voluntary planning agreement. It is recommended this additional work is carried out at a later stage, to reduce the time taken to finalise the LEP. The inclusion of the subject site as an Urban Release Area also ensures the development contributes towards the provision of designated State infrastructure and a Development Control Plan is prepared before any development application is determined.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as practical after the completion of the studies so as to meet the 12 month timeframe. Council's request for the department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date.

Bridge Street Office: 23-33 Bridge Street, Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
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The NSW State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Trent Wink of the regional office of the department on 02 4904 2700.

Yours sincerely,


Sam Haddad
Director General

11/12/2012

Bridge Street Office: 23-33 Bridge Street, Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney
Telephone: (02) 9228 6111 Facsimile: (02) 9228 6455 Website: www.planning.nsw.gov.au



Planning & Infrastructure

Gateway Determination

Planning proposal (Department Ref: PP_2012_CESSN_005_00): to amend Cessnock Local Environmental Plan 2011 to rezone land for industrial and environmental protection purposes.

I, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Cessnock Local Environmental Plan (LEP) 2011 to rezone land at John Renshaw Drive and Black Hill Road, Black Hill from RU2 Rural Landscape to IN1 General Industrial and E2 Environmental Conservation should proceed subject to the following conditions:

1. Prior to commencing public exhibition, Council is to prepare maps that show the zones proposed for the site and any other development controls that will apply to the site, to achieve Councils intended outcomes. The 'explanation of provisions' in the planning proposal is to be amended to include any proposed local clauses to further illustrate Council's intention for the site.
2. Council has identified additional information regarding flora and fauna, Aboriginal archaeology and European heritage, transport, bushfire, visual impacts, social impacts and public utilities feasibility to be provided to support the planning proposal. The planning proposal should be updated to include this information prior to being placed on public exhibition.
3. Prior to commencing public exhibition, Council is to amend the planning proposal to identify the subject site as an Urban Release Area. The department's model clause is to be adopted to require the development to contribute towards the provision of designated state infrastructure, provide required public utility infrastructure and that a development control plan is prepared before any development application is determined.
4. Council is to demonstrate that the planning proposal satisfies the requirements of State Environmental Planning Policy No 55 (SEPP 55) – Remediation of Land and the Contaminated Land Planning Guidelines. Council is to prepare an initial site contamination investigation to demonstrate that the site is suitable for rezoning to the proposed zone. This report is to be included as part of the public exhibition material.
5. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for 28 days; and
 - (b) the relevant planning 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 section 4.5 of *A Guide to Preparing LEPs* (Department of Planning 2009).
6. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Mine Subsidence Board
 - NSW Rural Fire Service
 - Transport for NSW – Roads and Maritime Service
 - NSW Aboriginal Land Council
 - Office of Environment and Heritage
 - NSW Department of Primary Industries – Agriculture

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• NSW Department of Primary Industries – Minerals and Petroleum

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

7. A public hearing is not required to be held into the matter by any person or body under section 56(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).
8. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Dated 11th day of December 2012.

SHaddad
 Sam Haddad
 Director General
 Delegate of the Minister for Planning and Infrastructure

CESSNOCK PP_2012_CESSN_005_00 (12/13190)

BLACK HILL PLANNING PROPOSAL AND DRAFT VOLUNTARY PLANNING AGREEMENT: SUMMARY ANALYSIS OF SUBMISSIONS

Purpose

The purposes of this report are to summarise:

1. The most consistent and relevant contents of written submissions received in response to the public exhibitions of the Planning Proposal and draft Voluntary Planning Agreement for Black Hill and
2. The presentations made at the Community Forum held on 17 July 2014 (Minutes of which are Attachment 1).

Introduction

The Planning Proposal was exhibited from 25 June to 30 July 2014 and the draft Voluntary Planning Agreement was exhibited from 2 July to 6 August 2014.

The summary of the main themes and issues below:

- Does not include any references to assertions about inappropriate motives or behaviour of stakeholders; and
- Does not refer to any names of individual signatories in accordance with NSW Privacy Legislation and Council Policies;
- Includes two submissions – each with the same signatures as one submission.

THE PLANNING PROPOSAL

Overview of submissions

A total of 135 submissions were received with 148 signatories. 134 of the 135 submissions received were letters of objection to the Proposal.

Letters expressing no objection was received from Newcastle City Council, the submission from Lake Macquarie City Council is to be identified and Maitland City Council submitted a letter requesting more time to respond and followed up with a range of comments focussing upon road network and traffic issues.

A joint submission (treated as one – but significant – submission) from two local representative/interest groups – the Black Hill Environment Protection Group (BHEPG) and the Buttai Community Development Group (BCDG) was received. The submission raised 47 issues/objections over 60 pages plus appendices (the Appendix listing the groups' issues/objections is Attachment 2 to this report).

Five (5) submissions from students were coordinated as one submission (and interpreted as such) from the Black Hill Primary School.

One petition of 28 signatures was lodged and was treated as one submission.

The Planning Proposal - The Main Issues and Objections

The main themes of objections are as follows:

1. The Process by which the site was identified as Employment Lands;
2. No need or justification for more industrial zoned land;
3. Loss/destruction of rural character and lifestyle;
4. Adverse effects on the Endangered Ecological Communities and flora and fauna;
5. Undermining of investments;
6. Traffic implications;
7. Short term gain for landowner versus perpetually negative effects on community;
8. Inadequacy of supporting documentation and analyses;
9. Precedent
10. Inadequacy of Community Consultation;
11. Lack of Consideration of Alternative Development Options;
12. The Need for a sub-regional strategy;
13. General
14. The Petition

1. Process of identification as Employment Lands

- 1.1. Assertions that process by which the draft LHRs proposal for "conservation lands" to "employment lands" in adopted LHRs were:
 - a) Flawed;
 - b) Subject of inappropriate lobbying and political influences;
 - c) Not subject of any explicit justification, supporting report(s) or analyses;
 - d) Not subject of any public exhibition/community engagement;
- 1.2. Therefore, the LHRs should not be given any credibility for justifying this Proposal
- 1.3. Lack of natural justice that this change in the LHRs has prompted the Catholic Church to propose industrial zoning with high range of adverse effects on the local community.

2. No Need or Justification for more Industrial zoned land

- 2.1 The forecast need for 960 hectares of industrial land in the LHRs in 2006 has been superseded by more recent forecasts - particularly the LHRs Review Discussion Paper of 2013 which identified 1050 hectares of industrial land being available in the Lower Hunter.
- 2.2 Assertions that studies demonstrate that there is long term supply of zoned and serviced industrial land in the Lower Hunter and the subject site is not serviced;
- 2.3 Consistent assertions that the recent re-zonings at Tomago (241 ha), the nearby Coal and Allied site (185 ha) and the proposed redevelopment of the Kurri Kurri hydro-smelter site (300 ha) are all additional to the 1050 ha. Hence, the availability of zoned and serviced industrial land provides for more than the forecast need up to and beyond 2031;
- 2.4 Complete lack of evidence-based justification for re-zoning to industrial.
- 2.5 If zoned industrial, this site could compromise the timing of development of other, better sites;
- 2.6 Assertions that this is an "opportunistic spot re-zoning".

3. Loss and Destruction of Rural Character and Lifestyle

- 3.1 Longstanding residents and multi-generational family representatives asserting destruction or loss of rural character valued for extensive periods of time and/or as reasons for staying and investing in the Black Hill area;
- 3.2 Public School is highly valued by the local community and will be very adversely affected by noise, traffic and other pollution;
- 3.3 Objections to loss of trees and consequent visual "pollution" of cleared area and in the future, industrial buildings;
- 3.4 Visual impact unacceptable - views negatively affected, overall visual outlook will be "changed forever" and visual impact analysis selective and missing crucial point sources/view corridors;
- 3.5 Overall impacts represent unacceptable, negative long term consequences.

4. Adverse effects on the Endangered Ecological Communities and flora and fauna:

- 4.1 The LHRS was complemented by a Lower Hunter Regional Conservation Plan which identified the conservation of a corridor between the Watagan's and Port Stephens—referencing that corridor as the most significant priority. There are many endangered fauna species on-site and these will be destroyed and/or forced to relocate which would mean more road kill and other major disturbance;
- 4.2 Destruction of such a large area of vegetation should not be allowed;
- 4.3 The scale of offsets required in the draft VPA demonstrates the value of flora and fauna on-site.

5. Undermining of investments:

- 5.1 Objections that have purchased into Black Hill because of rural character and attractions and that local resident owners' investments would now be undermined by the industrial zoning;
- 5.2 Some property owners saying that they purchased into Black Hill on understanding that the Church will build a school and that it is very unfair that this is now changed to an industrial zoning/development;

6. Traffic implications:

- 6.1 Traffic on John Renshaw Drive has increased substantially since opening of the Hunter Expressway and roundabout at intersection of John Renshaw Drive and the M1 is unsafe;
- 6.2 Industrial development will lead to major increase in traffic – particularly heavy traffic with consequent increased noise and air pollution together with reduced road safety;
- 6.3 Substantial traffic will divert to Black Hill Road and reduce safety for parents and children around the school;
- 6.4 Two sets of traffic lights within relatively short distance will exacerbate congestion on John Renshaw Drive and at the M1 roundabout;
- 6.5 The Maitland City Council submission focussed on road network and traffic issues and a summary of the comments is as follows:
 - Heavy vehicle trips are not quantified – including specifically use of Mount Vincent Road/Buchanan Road;
 - Details of traffic volumes to access Beresfield and Thornton railway stations not provided (and Thornton station is closer not Beresfield as referenced in the traffic report);
 - Impact assessment is needed of Weakley's Drive and Glenwood Drive - especially for commute trips.

- Daily traffic volumes are not provided and daily heavy vehicle trips are required to assess cumulative impacts of road pavement damage;

6.6 Traffic impacts need to be considered in conjunction with those from the Coal and Allied proposal.

7. Lack of Servicing/Infrastructure

- 7.1 Sewer/wastewater system not available or planned and represents huge costs to provide. Hunter Water has no plans to fund or construct a system in proximity to the site. On-site disposal would take up about 100 ha of the site area. This could mean an undeveloped site for a long time – a “waste land” that still destroys the character of Black Hill.
- 7.2 Telecommunications also not available – considered an essential for an industrial estate.

8. Short term gain for landowner versus perpetually negative effects on community;

- 8.1 Objections that Catholic Church only wants to get financial return from the land and will then on-sell with all of the uncertainties about intentions of subsequent purchaser(s);
- 8.2 Catholic Church bought land when it was zoned RU2 – Rural Landscape and industrial development could not have been considered at that stage – now not natural justice to propose industrial zoning.

9. Inadequacy of supporting documentation and analyses;

- 9.1 The supporting documentation completely lacks analysis seeking to justify the need for more industrial zoning;
- 9.2 Visual analysis selective and not properly representative of visual impacts;
- 9.3 Traffic analysis is inadequate at this stage – including reference to the RMS advice;

10. Precedent

- 10.1 If Planning Proposal is approved, then a major precedent will be created and future similar proposals will be very difficult to resist leading to more of Black Hill area becoming industrial;
- 10.2 Rural character will be totally lost.

11. Lack of adequate Community Consultation

- 11.1 Objections about July 2012 meeting and how this was reported as being representative of community views when it has been stated by community members present that it was not;
- 11.2 Assertions that DPE, following Catholic Church lobbying, inappropriately made Council decide to forward the Planning Proposal for Gateway Determination in November 2012 (foreshadowing a Relevant Planning Authority taking over the process if Council did not do so). As a consequence, Council did not implement its plan to consult the community at that time;
- 11.3 Consultation too late – should have been much earlier with discussions about alternative developments. This may have lead to a more mutually agreeable outcome.

12. Lack of Consideration of Alternative Development Options

- 12.1 Why were no alternative developments considered and subject of consultation – particularly when no more industrial zoned land is needed in the Lower Hunter?
- 12.2 Land is much more suited to rural residential development and/or seniors living development, – or other lower impact zoning/development.

13. The Need for a Sub-Regional Plan

- 13.1 This is needed as a proper basis for decision-making on the future of this land rather than an ad hoc process for an “opportunistic spot re-zoning”;

14. General

- 14.1 The BHEPG are willing to engage with Council and the Catholic Church to seek to resolve the issues;
- 14.2 The balance between land clearing, industrial rezoning, employment lands and conservation is wrong;
- 14.3 There are no benefits to the local community just negative consequences;
- 14.4 The local community is wholly against the Proposal – Council should support the community and reject the Proposal.

15. The Petition

- 15.1 This is a supplementary petition – with 28 signatures (12 from Black Hill) lodged by the Black Hill Environment Protection Group – which stated the objection as being:

*“That the rezoning poses a threat to the rural amenity of the existing residents and school users of the Black Hill area, and will change the rural character of Black Hill forever.
We request that Council rejects this Planning Proposal.”*

THE VOLUNTARY PLANNING AGREEMENT

Overview of submissions

A total of 13 submissions were received with 15 signatories. All of the 13 submissions received were letters of objection to the Proposal.

A joint submission (treated as one – but significant – submission) from two local representative/interest groups – the Black Hill Environment Protection Group (BHEPG) and the Buttal Community Development Group (BCDG) was received

The Voluntary Planning Agreement - The Main Issues and Objections

1. Objection because objected to the Planning Proposal.

- There were 8 submissions (9 signatories) containing a statement to this effect.

Lack of clarity

- There is complete lack of clarity generally in the VPA;
- It is an “empty agreement” – an agreement to make an agreement;
- Lack of information about offsets; not clear where the offset land will be;

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- Insufficient information as to how conservation outcomes will be achieved;
- No clarity on obligations of Catholic Church;
- No confidence in long term viability of this VPA – could be “scrapped” in future;
- Any environmental management agreements?
- Who pays for upkeep? Mechanism for dispute resolution?

Objective of Conservation of Natural Environment not achieved

- Statements made to this effect;
- Offset land cannot compensate for what will be lost;
- Flora and fauna should not be threatened but protected – there has already been enough decimation;
- E2 land on-site not valid conservation land because it is split and southern segment has four houses proposed within it including asset protection zones;
- Need for 600 ha environmental offsets located elsewhere will be of zero benefit to Black Hill community and this part of Cessnock LGA;
- Such an environmental trade-off elsewhere does not make sense;
- Cannot agree to 684ha elsewhere to offset 195ha of industrial re-zoning;
- Any offset should be in, and benefit, Black Hill, has net destructive impact on Black Hill; - how can displaced wildlife in Black Hill benefit from offset lands elsewhere?

Lack of Council Resources and Policy

- Concern that Council does not have the resources and policy to deal with such a VPA;
- Concern that Council cannot ensure any effective implementation and enforcement of VPA;
- OEH usually want to have offset conservation measures determined at rezoning stage;
- Does not comply with Council's charter under section 8(1) of the LG Act (as referenced in the Explanatory Note);
- Council's Biodiversity Strategy proves that Council is in no position to be the main party.

Section 93 of EP&A Act not satisfied

- VPA totally unclear as to how “material public benefit” and “public purpose” referenced under section 93 will be satisfied;
- This includes how the “conservation or enhancement of the natural environment” and how the “scope, timing and manner of delivery of the contribution” will be satisfied;
- Does not satisfy section 93F of EP&A Act or section 126L of the TSC Act in terms of specifying measures agreed between the parties, nature and extent of provision to be made or time(s) when to be made;
- VPA is too general and unlikely to be enforceable to satisfy section 93.

Offset land should be transferred to public ownership and Minister should be a party.

- If VPA to proceed, the offset land should be committed for transfer to public /State Government ownership with the Minister to be a party to ensure that this occurs.
- LHRCP identifies Watagan Ranges to Port Stephens as one of three (3) priority areas for offset land and the site's proximity should mean that this happens. This reference in the LHRCP also underlines why Black Hill land should not be rezoned to industrial in the first place.

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Enclosure 6

Incompatible with VPA outcomes with Coal and Allied rezoning adjacent

- Coal and Allied VPA resulted in land being transferred to State Government with preceding significant funding of remediation works – a very similar site and re-zoning proposal. Why is the Catholic Church not required to do the same?

Costs of VPA

- Catholic Church as proponent should be paying all costs – including Council's;

General

- The significant risks associated with the VPA are unacceptable. What restitution does the community have?
- Independent advice should be sought.

DRAFT**BLACK HILL PLANNING PROPOSAL – EMPLOYMENT LANDS ANALYSIS**

Acknowledgement: Cessnock City Council wishes to acknowledge the significant assistance of the Hunter Development Corporation in providing the two unpublished reports referenced below.

Note: The Hunter Development Corporation also states that "while all care was taken in assembling data and estimations, HDC does not warrant the findings contained in the two unpublished reports referenced below."

1. PURPOSES**1.1 The purposes of this report are to:**

- a) Provide an evidence-based analysis for the rigorous assessment of the need for the net additional industrial land that is subject of this Planning Proposal by the Catholic Diocese of Maitland for the land in its ownership at Black Hill; and
- b) Enable a well-founded analysis for responding to this critical issue for the assessment of the Black Hill Planning Proposal (as amended on 7 November 2014) for rezoning to IN2 – Industrial (previously submitted and exhibited as IN1 – General Industrial) in terms of a significant number of public submissions (received in response to the public exhibition) focussing on this issue;

2. SUMMARY OF THE PLANNING PROPOSAL**2.1 The exhibited and original Planning Proposal was for:**

- a) 195 ha of IN1 General Industrial zoning; and
- b) Two sectors in the north and south of the site of E2 Environmental conservation zoning with the proposed entitlement for subdivision into six lots and including four dwelling entitlements.

2.2 The first amendment to the Planning Proposal (4 November 2014) consists of:

- a) 198 ha IN2 Light Industrial – an increase in area of 3 ha compared to the exhibited IN 1 zone;
- b) The replacement of the exhibited E2 Environmental Conservation zone in the southern sector of the site by a proposed E4 Environmental Living zone (61 ha in total of which 44 ha are vegetated) – submitted as being more consistent with the existing character and land use pattern of Black Hill and enabling a limited number of dwellings; and
- c) No change to the exhibited E2 Environmental Conservation zone in the northern sector of the site which is 41 ha of which 37 ha are vegetated.

2.3 The proposal is submitted by the proponent as generating "over 3000 jobs within 10 minutes' drive of Kurri Kurri and ensuring the protection in perpetuity of the land of conservation value."**2.4 On 27 November 2014, the proponent reverted to the original Proposal.****3. SUMMARY OF SUBMISSIONS AND RESPONSES BY THE PROPONENT**

- 3.1 In summary, a very substantial theme within the public submissions received in response to the public exhibition of the Planning Proposal is summarised as follows:-
- a) Assertions that the process by which the draft Lower Hunter Regional Strategy (LHRS) proposal for the change from "conservation lands" to "employment lands" in the adopted LHRS was:-
 - i. Flawed;
 - ii. Subject of inappropriate lobbying and political influences;
 - iii. Not subject of any explicit justification supporting report(s) or analysis; and
 - iv. Not subject of any public exhibition / community engagement;
 - b) Therefore the LHRS should not be given any credibility for justifying this Planning Proposal;
 - c) The asserted lack of natural justice that this change has prompted the Catholic Church Diocese to propose industrial zoning with a high range of adverse effects on the local community;
 - d) The forecast need for 960 hectares of industrial land in the LHRS (October 2006) has been superseded by more recent forecasts – particularly contained in the Lower Hunter Regional Growth Plan Discussion Paper of May 2013 (*"The Lower Hunter - Shaping the next 20 years"*) which identified 1,050 hectares of industrial land being available in the Lower Hunter;
 - e) There is a long term supply of zoned and serviced industrial land in the Lower Hunter and the subject site is not serviced;
 - f) The recent re-zonings at Tomago (241 ha), the nearby Coal & Allied site (185 hectares) and the proposed re-development of the Kurri Kurri Hydro Smelter site (300 hectares) are all additional to the 1,050 hectares – hence the availability of zoned and serviced industrial land provides for more than the forecast need up to and beyond 2031;
 - g) Asserted complete lack of evidence based justification for rezoning to Industrial;
 - h) If zoned Industrial, this site could compromise the timing of development of other better sites.
- 3.2 The relevant responses from City Plan Services on behalf of the Catholic Diocese to these issues are as follows:-
- a) *"In terms of the process of identification as employment land, much has been said about the preparation and adoption of the LHRS in 2005 and 2006. The LHRS was adopted in October 2006 and then re-endorsed by Cabinet in February 2010. Council is obliged to consider the LHRS by Ministerial direction when preparing a Planning Proposal";*
 - b) *"In terms of the justification for more industrial land – Council has advised that they are discussing the supply of industrial land with the Department of Planning & Environment. We reserve the right to address this matter following these discussions".*

4. DATA SOURCES AND THE METHODOLOGY FOR ANALYSIS

- 4.1 The main documents and data sourced for this analysis are:-

- a) The Lower Hunter Regional Strategy – Department of Planning & Environment (October 2006 and as re-endorsed by NSW State Government Cabinet in February 2010);
 - b) Shaping the Lower Hunter: the next Twenty Years - Discussion Paper (March 2013);
 - c) The Hunter Region Employment Lands – a market and context review for the Hunter Development Corporation by ADW Johnson Pty Ltd and Daley Research Systems (November 2010) – Unpublished document;
 - d) The Hunter Region Employment Lands Study by URBIS – prepared for the Hunter Development Corporation (December 2012) – Unpublished document;
 - e) The Hunter Region Employment Lands by the Hunter Development Corporation (December 2010) – Published document;
 - f) Report from Monteath and Powys (commissioned for this purpose by Council).
- 4.2 It must be acknowledged that the data in the reports for the HDC (c, d and e above) is not updated beyond September 2012 and that certain, very relevant localised trends such as take up rates of employment lands at Thornton and Beresfield are not presented.
- 4.3 There was also an analysis completed of trends in industrial land supply and demand by SGS Pty Ltd for the Department of Planning and Environment for the review of the LHRs and drafting of the Regional Growth Plan but this is a confidential document at this stage.
- 4.4 The proponent, City Plan Services, has also made a submission (27 November 2014): "Employment Land Analysis" which is taken into account.

5. THE LOWER HUNTER REGIONAL STRATEGY AND LOWER HUNTER: SHAPING THE NEXT 20 YEARS - DISCUSSION PAPER

- 5.1 The Lower Hunter Regional Strategy (LHRs) was in draft form in 2005, placed on public exhibition and then adopted by NSW Cabinet in October 2006. The NSW Cabinet re-affirmed the LHRs in February 2010. The draft LHRs contained a provision for the site subject of this Planning Proposal to be "conservation lands" and an integral part of the Watagans to Port Stephens conservation corridor. However, following public exhibition a review of the draft LHRs led to the adopted Strategy portraying the subject site as an integral part of a broader area of "employment lands" in the Black Hill sector of Cessnock City Council Local Government Area. There was no clear rationale or publicly available reporting that explained this change of policy position. However, it is understood that relevant submissions were made in response to the exhibition of the draft LHRs and duly considered by the NSW Cabinet in adopting the LHRs in October 2006.
- 5.2 The LHRs (October 2006) contains the following key forecasts and directions for the 25 year period to 2031:-
- a) Planning for 115,000 new dwellings housing 160,000 residents; and
 - b) Ensuring that sufficient employment lands are protected or created to provide for 66,000 new jobs;
 - c) "It is expected that 25 per cent of the 66 000 new jobs required (16 500 jobs) will need to locate in major employment land sites. These 16 500

jobs will occupy approximately 825 hectares of employment land (Table 4). Accommodating these jobs, and providing an adequate buffer supply of employment land, will be achieved through the development of 500 hectares of zoned but vacant employment land and the zoning of a further 1000 hectares of additional employment land identified through the Regional Strategy, including land at West Wallsend, Tomago and Black Hill. A further 1200 hectares of vacant 'special purpose' employment land remains available for special purpose industry needs, including port- and airport-related development. The additional employment land identified under the Regional Strategy recognises that although there is currently a supply of vacant employment land across the Region, localised supply-and-demand issues exist and an increase in the local supply of employment land for general industry needs is required in some areas;

- d) Additional employment land required to accommodate employment capacity projections is stated as being:
 - land required: 825 ha;
 - land zoned vacant supply: 503 ha; and
 - Current zoned vacant additional land required: 322 ha.
- 5.3 The draft LHRS (2005) included relevant references as per the following:
 - a) The demand for 445 ha of industrial land between 2006 and 2031;
 - b) There was (then) approximately 900 ha of vacant industrial land able to respond to that need/demand of 445 ha;
 - c) There was also a large amount of vacant industrial land for "specialised" purposes such as heavy industrial (HEZ land 847ha) or port-related activities (274 ha);
 - d) The utilisation of existing zoned land before consideration is given to any further business parks;
 - e) An adequate supply of industrial land will be maintained.
- 5.4 The LHRS also states that "the identification of additional employment lands at Stony Pinch and Black Hill, which directly support the freight hub, will provide a competitive advantage to new industries through the minimisation of transport and handling costs".
- 5.5 Also included in the LHRS and of relevance to this analysis of employment lands in relation to the Black Hill Planning Proposal are the following:-
 - a) Cessnock was identified as a major regional centre for which the key functions are identified as being "a concentration of business, higher order retailing employment, professional services and generally included civic functions and facilities, a focal point for sub-regional road and transport networks and may service a number of districts"; and
 - b) The Pokolbin Vineyard and Tourism Precincts were identified as one of the specialised centres for which the key functions are defined as being "centres and concentrations of regionally economic activity and employment".
- 5.6 "The Lower Hunter over the next 20 years: A Discussion Paper contained the following findings (page 18):
 - a) Land capacity or availability was not a significant issue;
 - b) In the short term, expanding small to medium enterprises will remain important; and
 - c) The region must continue to diversify.

- 5.7 The Discussion Paper of 2013 concluded that the Lower Hunter:
- a) Has around 8,000 hectares of employment land;
 - b) Had a take up rate of 48 hectares a year between 2000 and 2009 - higher than the 33 hectares per year anticipated in 2006 Strategy;
 - c) Is projected to have a demand for a further 960 hectares of employment land from 2011 to 2031.
 - d) Has had 675 hectares (part of the 960 ha) of new employment land rezoned (see Table 1) since the adoption of the LHRS in 2006 and development has commenced on many of the sites.
 - e) When added to the estimated 375 hectares remaining of the zoned vacant land supply in 2006, the Lower Hunter now has a supply of around 1,050 hectares of zoned employment land.
- 5.8 The Discussion Paper table (page 18) presents the "Employment Lands rezoned since 2006":

Employment Lands	Status	Area (ha)
Tomago – zoned IN1	Declared State Significant Site in June 2007 – underpins development for an Industrial Park.	351
Freeway North Industrial Business Park	Declared State Significant Site and rezoned to light Industrial.	74
Anambah Business Park	Employment land for light industrial and a business park. LEP gazetted May 2007.	50
Rutherford Industrial Estate (Stage 2)	LEP gazetted August 2011	200
TOTAL		675

- 5.9 It is understood - including from the CPS submission of 27 November 2014 - that:
- Land to the north of the Tomago site is heavily vegetated and there are ecological issues on the land to the south. There are also flooding and ecological issues; and
 - Rutherford/Anambah will require significant infrastructure upgrades (sewer, electricity and new highway intersections).

6. THE CESSNOCK CITY-WIDE SETTLEMENT STRATEGY

- 6.1 The Cessnock City-Wide Settlement Strategy was adopted by Council in 2010. The most relevant data and policy directions relevant to the evaluation of the Black Hill Planning Proposal are explained below.

Existing land supply

- 6.2 The Cessnock LEP 1989 identified three industrial land use zonings:

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- 4(a) Industrial zone
- 4(b) Light Industrial zone
- 4(h) Hunter Employment Zone

6.3 These zones are concentrated in six main areas across the Cessnock LGA as shown below.

Location	Total Area (ha)	Occupied (ha)	Vacant (ha)
4(a) Industrial			
Kurri Kurri	60	45	15
Cessnock (Tunnel Rd)	10	0	10
TOTAL 4(a) land	70	45	25
4(b) Light Industrial			
Cessnock	16.4	12	4.4
Kurri Kurri	23.3	18.6	4.7
Weston	10.5	7.1	3.4
Braxton	13.6	9.7	3.9
TOTAL 4(b) land	63.8	47.4	16.4
4(h) HEZ	870	0	870

6.4 There is a mixture of light and general industrial land located at Kurri Kurri and Weston. The total extent of zoned land covers 94 hectares (as shown in Figure 10.2), of which 34 hectares is zoned for light industrial purposes. Opportunities for expansion are limited due to the proximity to residential areas (new and proposed), the location of the Kurri Kurri WWTW and buffer zone for the aluminium smelter.

Hunter Economic Zone

- 6.5 The Hunter Economic Zone (HEZ) is by far the largest of all the industrial areas in the Cessnock LGA. Its advantage lies in the fact that it is one of the largest single tracts of industrial land in the Lower Hunter with around 870 hectares of zoned, surrounded by some 2,300 hectares of bushland. In this zone, allotment sizes are linked to the requirements of individual development (no pre-emptive subdivision), and is one of the few areas in the Hunter Region that can accommodate development with land requirements of up to 100 hectares. The development of HEZ is likely to encourage light industrial development to locate in close proximity to the HEZ estate.
- 6.6 HEZ is targeted towards the regional-global market and specific zone objectives and a suite of planning controls exist to tailor development outcomes. This site is not considered to cater for general purpose local industrial land needs, instead recognised as one of the 'special purpose' sites in the Lower Hunter Regional Strategy.
- 6.7 Implementation of the Lower Hunter Regional Strategy will result in major changes to the regional industrial land supply over 25 years to 2031. For the HEZ site, the planned major tracts of export land targeting similar markets

7.

across the region will place further competitive pressures on HEZ, notwithstanding that it has 'first mover' advantages to other sites in this category (being already zoned for development). The site has no direct frontage but is close to the Hunter Expressway.

Take-up of Industrial Land

6.8 The CWSS includes commentaries as follows:

- a) Historically, take-up rates of light industrial land in Cessnock were estimated at between 2 and 4 ha per annum and, for general industrial land, almost a negligible rate of around 1 to 2 ha per annum. This pattern has been attributed to a number of reasons:
- b) Comparatively limited supply of both general and light industrial land;
- c) Traditional sources of demand have been from industries which are now in decline;
- d) Available land is largely encumbered by environmental, access and land-use conflicts;
- e) Land ownership is fragmented and available parcels are small/poorly configured; and
- f) There are a number of competing marketed industrial areas in the Lower Hunter.
- g) In terms of more recent demand trends, real estate agents confirm a shortage of industrial land in the township of Cessnock (AEC Group, 2007). The supply pressure has pushed average industrial land prices beyond \$160/m² and resulted in Cessnock losing business to Racecourse Road at Maitland. The recent subdivision at Kurri Kurri has sold off the plan though no building works have commenced. Demand across the market is from local service businesses given the nature of the land supply and demand is reported as strongest for 2,000 to 4,000 m² lots as per the Kurri Kurri subdivision (AEC Group, 2007).
- h) Current sale and price trends based on RP data property statistics indicate that an average of 5-10 industrial land sales involving around 5-7 hectares of land have occurred since 2000. It should be noted that this is not vacant greenfield sites and, therefore, does not wholly represent new industrial land take-up rates but gives an indicative value. There has been a dramatic increase in the average rates of these sales above \$150/sqm in 2006 although there was less than 1 ha of land sold in total. Over the past seven (7) years, Branxton has recorded the highest average value of land at

\$73/sqm, followed by Cessnock (\$59/sqm), Weston (\$33/sqm) and Kurri Kurri (\$26/sqm). The majority of lot sales have been less than 1 ha in size (AEC Group, 2007).

- i) Projected local demand for all general purpose industrial land is estimated at between 72 -192 hectares over 25 years to 2031 (see Table 10.4 below) based on various take-up rates. The upper ratio considers the potential for higher population growth, latent market demand, and supply-led increases to demand and associated industry support uses that may be generated from progressive development at HEZ. The lower (or conservative) ratio considers continued low organic population growth, competition from nearby local government areas and retail bulky goods development being restricted in industrial zones. The medium ratio generally reflects the current take-up rate across all existing land zoned either 4(a) or 4(b) in the Cessnock LGA.

a) Growth Scenario	b) Take-Up Rates	c) 2016 [9yrs]	d) 2021 [14yrs]	e) 2027 [19yrs]	f) 2031 [24yrs]
g) Low	h) 3ha/annum	i) 27	j) 42	k) 57	l) 72
m) Medium	n) 5ha/annum	o) 45	p) 70	q) 95	r) 120
s) High	t) 8ha/annum	u) 72	v) 112	w) 152	x) 192

- 6.9 Accordingly, as outlined in Table 10.4 above, it is projected that an additional 72-192 ha of general purpose industrial land is required to ensure sufficient zoned land between 2006 and 2031 - and as related to the employment capacity projections outlined in the Lower Hunter Regional Strategy. Staging of this supply is required to give an indicative measure of the need for land over the planning horizon of 25 years.
- 6.10 The CWSS stated that sufficient additional land has been identified within other areas across the LGA to accommodate the identified short-term shortage of industrial land. This includes Huntlee which has a nominated 50 ha for a business park and 70 ha for industrial land.
- 6.11 The current zoning of HEZ is problematic, in that it has been structured to present as a unique industrial estate, through the use of the land use zone, zone objectives and a suite of specific clauses. To retain the integrity of this direction, it is appropriate that HEZ be allocated a separate land use zone to the general purpose industrial lands, in order to tailor the zone accordingly. Either the IN1 General Industrial or SP1 Special Activities zone may be appropriate for HEZ, subject to advice from the Department of Planning.
- 6.12 The directions in the CWSS are:
- Direction EL1:** - Retain the "uniqueness" of HEZ through the use of a separate land use zone, zone objectives and local provisions where appropriate.

- b) Direction EL2: Retain opportunities for dispersed employment opportunities in the new LEP in accordance with the actions contained in the Lower Hunter Regional Strategy.
 - c) Direction EL3: Provide opportunities for additional sites to be developed for employment lands to meet local needs for general purpose industrial lands.
 - d) Direction EL4: Recognise that industrial land supply is limited in the Cessnock LGA and restrict other uses that compete with industrial activities from these areas.
- 6.13 The actions in the CWSS are:
- a) Action EL3: Identify sites considered suitable for employment lands in the short-term (0-5 yrs) as shown in Figures 10.5 and 10.6. See chapter 9 (Figure 9.1) for Cessnock Civic.
 - b) Action EL5: Retain the current planning provisions for HEZ where appropriate within the confines of the Standard Instrument.
 - c) Action EL6: Defer the rezoning of land within HEZ for 'industry support' until the findings of the State Significant Site Study are known.
- 6.14 The directions above, particularly EL2, imply that the directions of the LHRs - including the progression of the Black Hill site - should be implemented.

7. THE HUNTER REGION EMPLOYMENT LANDS – A MARKET AND CONTEXT REVIEW (2010)

- 7.1 This report was provided to Hunter Development Corporation by ADW Johnson Pty Ltd and incorporated analysis by Daley Research Systems. At this stage, it is an unpublished document.
- 7.2 In terms of land demand, this report identified that of a total land area subject of sales between 2000 and 2009 of 478 hectares in the Lower Hunter Region, only 25.48 hectares were in the Cessnock LGA.
- 7.3 The most significant factors underpinning employment land demand as relevant to this analysis and the Cessnock LGA in particular, relate to the Hunter Employment zone land and Weston.
- 7.4 In relation to the HEZ the ADW Johnson report concludes that *this large estate currently has an uncertain future with the site being in the hands of a receiver with the administrators at the time intending to proceed with the development of the project. During 2010, the NSW Department of Planning approved variation to the minimum lot size and the permitted uses to allow for approximately 50 hectares of the land to be directed towards light industrial and industry support uses. The HEZ is a distinctive site not really directly comparable to other general industrial estates in the region and the minimum 5 hectare subdivision size and intention to capture "big box and regionally significant industry" places it apart from other development opportunities. The completion of the Hunter*

Expressway was considered at the time to be significant in terms of reducing the sites isolation and thereby enhancing accessibility and making it more of a potential development opportunity."

- 7.5 The report goes on to state that *"there are, however, key factors which have impeded the sites development, being:-*

- *Lack of infrastructure and servicing*
- *Complicated planning framework*
- *Changing economic conditions; and*
- *High development costs due to topographical and ecological constraints.*

- 7.6 The Review also commented that the broader Cessnock and Kurri Kurri area does not otherwise have large un-constrained supplies of industrial land - other than the HEZ. The Huntlee concept plan includes a significant portion of non-residential land whilst it is a concept the respective uses designated for the non-residential portions are extensive. A business park, commercial development, retail and bulky goods have all been "flagged".

- 7.7 In the authors view, the completion of the Hunter Expressway changes the context of the Huntlee development significantly and the development of a business park, commercial and / or light industrial land may be taken to a higher level of potentiality within the release area.

8. HUNTER REGION EMPLOYMENT LANDS STUDY – PREPARED FOR HUNTER DEVELOPMENT CORPORATION BY URBIS (DECEMBER 2012)

- 8.1 The study's overall aim is stated as being to provide *"a clear picture of the opportunities, constraints and market gaps within the Hunter Region, and the key locational drivers that will drive the location of future jobs and employment lands within the Hunter Region."*

- 8.2 The purpose of this study was further expresses as being to identify the opportunities and constraints that exist in the Hunter Region to support the development of future employment lands. As such, the study area to which this assessment applies is the total Hunter Region with assessments at a Local Government Area (LGA) and specific references to the Upper and Lower Hunter sub-regions.

- 8.3 In terms of the summarised economic and employment drivers, the following are included:-

- a) over the period of 2001 to 2011 there has been a significant shift in industry sectors comprising the Hunter Region economy, consisting mainly of:-
 - i. A fall in the manufacturing sector from 12.2% to 10.2% of total employment – following a long run contraction in manufacturing employment;
 - ii. Rapid Growth in the following industrial sectors between 2001 and 2011:
 - Mining – 3.25% to 4.6% in the Hunter region;
 - Construction- 5.8% to 8.6%, driven by residential and non-residential construction resulting from engineering works, infrastructure and mining capital investment;;

- Accommodation and food services – 6% to 7.9% reflecting a strong and growing tourism sector;
 - b) There was about 8,432 ha of land zoned for employment purposes in the Lower Hunter with about half being capable of supporting standard industrial users and about 1350 ha was vacant within the areas of the Tomago industrial estate, the HEZ and the Singleton industrial estate;
 - c) The manufacturing sector regionally will continue to comprise a small proportion of overall employment share;
 - d) Overall, it is anticipated that there will be a demand for a total of an additional 239 hectares (366 hectares gross) of mainstream industrial land in the Lower Hunter between 2011 and 2031 – representing averages of 12 ha net and 18.3 ha gross per annum.
- 8.4 With regard to the development of a potential business park within the Lower Hunter Region, employment forecasts have been prepared for light industrial and office based employment from 2011 to 2031. It is expected that there will be an additional 6,265 workers within the light industrial sector and 7,478 workers in the office sector – indicating that office employment growth will outpace light industrial at an annual rate of 1.1% compared to 0.3% per annum between 2011 and 2016.
- 8.5 Identified drivers for location of industry are concluded to be:
- a) Agglomeration around key centre locations;
 - b) Access to arterial roads and transport networks – with trends along the New England Highway from Rutherford to Beresfield and close to the Port of Newcastle validating this;
 - c) Accessibility and proximity to a local workforce.
- 8.6 In terms of vacant employment land as at November 2012, the analysis for Cessnock LGA reveals the following:-
- Total land zoned – 1,044.6 hectares
 - Special uses / bulky goods – 24 hectares
 - Industrial use – 1,020.6 hectares
 - Vacant industrial use – 911 hectares (of which HEZ is 870 ha).
- Therefore, the vacant industrial use represents 89% of the total land zoned – compared to the equivalent proportion of 32% in the Lower Hunter overall.
- 8.7 Further data assimilation and analysis for the Cessnock LGA reveals the following significant points:-
- a) The major industrial areas are the Hunter Economic zone and Weston.
 - b) While most industrial zoned land is used for the purpose, the occupied lots in the B7 Business Park zone area near Cessnock is currently being used for bulky goods retail including a Bunnings trade and auto servicing;
 - c) The Hunter Economic zone (HEZ) was rezoned to Industrial in 2003 and has 332 hectares of land designated for IN1 General Industrial use. Relevant plans proposed 267 hectares of land to be utilised for Heavy Industrial purposes and 65 hectares for Light Industrial uses. HEZ has reliable supplies with gas, electricity and water together with good road and rail access. There are also 2,300 hectares of bushland that act as a natural buffer and which will allow extended hours of operation. The site represents one of few areas in the Hunter Region that can accommodate development with land requirements of up to 100 hectares. In terms of

forecast by the LHRS the site has not as yet delivered on the projected 10,000 jobs and \$2 billion in investment. This is particularly significant for Cessnock LGA in its own right, given the loss of over 300 jobs at Hydro Aluminium earlier in 2012;

- d) The main issues pertinent to the planned development of the HEZ site are again stated as being:-
- The related complicated planning framework;
 - High development costs due to topographical and ecological constraints;
 - The high ecological value of the site; and
 - The sub-prime location with poor road access; and
- e) Weston has a small established area of industrial properties to the north of the HEZ site. The area is characteristically low density, medium sized, three standing warehouses constructed in the 1970's and the 1980's. Uses include motor vehicle sales, repairs, spare parts and transport services. There has been limited sales activity for industrial units over the period 2009 to 2012.
- 8.8 The completion of the Hunter Expressway in March 2014 clearly shifts the landscape for potential locational advantages for employment lands. The new Expressway provides a 40km major road connection between Newcastle and the Upper Hunter and includes off and on ramps for John Renshaw Drive connection and a north bound off ramp and a south bound on ramp at the intersection for Weston.
- 8.9 In terms of industrial land sales, the data for Cessnock LGA was presented by URBIS as follows:-

	2010	2011	2012	TOTAL
Total Area (ha)	0.40	0.80	1.26	2.46
Total Number of Sales	1	1	2	4
Average (\$ / sqm)	\$89.00	\$50.00	\$90.00	\$80.00
Average Area Per Sale (ha)	0.40	0.80	0.63	0.61
Sum of Sales (\$)	\$275,000.00	\$400,000.00	\$990,000.00	\$1,665,000.00

- 8.10 The projected growth in industrial jobs in the Lower Hunter is as follows:

- 2011 – 43415;
- 2031 – 48189;
- Inc. of: + 4774.

The projected growth in hectares of land for industrial development is projected as follows:

- 2011 – 2171 ha;
- 2031 – 2409 ha
- Inc. of + 239 ha (which assumes therefore an average of 20 jobs/ha).

The 239 ha equates to an average annual growth of 11.95 ha.

- 8.11 It is not totally clear how the URBIS definition of "industrial lands" compares to the uses and developments in IN1 and IN2 zones - e.g. freight handling, storage, warehousing, distribution etc.
- 8.12 Criteria identified by URBIS for application to potential employment lands were as follows:
- a) Opportunities for agglomeration;
 - b) Physical constraints and opportunities - infrastructure, environmental and physical;
 - c) Lot sizes and land area and compatibility with land types and characteristics of industrial sector demands;
 - d) Connectivity and accessibility to major transport routes; and
 - e) Access to workforce and population growth.

9. CONCLUSIONS

- 9.1 The Regional Growth Plan is not anticipated for exhibition as a draft until the latter half of 2015 at the earliest and therefore there are no updated relevant strategic policies at the regional level beyond the LHRS (as reaffirmed in February 2010). Such updated regional level policy would have been an important contribution to Council's decision on this matter.
- 9.2 The Council's Employment Lands Strategy is programmed for initiation in 2015.
- 9.3 There is a crucial need for the NSW Department of Planning and Environment to commission a comprehensive analysis of employment lands trends, supply and demand to form a sound basis for the draft Regional Growth Plan and to assist major decisions on Planning Proposals such as this.
- 9.4 The LHRS (2006) estimated that:
- a) 16500 jobs (25% total jobs target) needed to be provided for between 2006 and 2031 in terms of major employment lands sites which translated into the need for 825 ha of land;
 - b) 500 ha of industrial land were zoned;
 - c) 1000 ha should be provided for as "buffer provision" at West Wallsend, Tomago and Black Hill - with interdependence for the Stony Pinch/Black Hill industrial land related to the freight hub;
- 9.5 The Discussion Paper ("Lower Hunter: Shaping the Next 20 years") estimated that there will be demand for a further 960 hectares of employment land from 2011 to 2031 with an estimated supply of 1050 hectares of zoned employment - including 675ha zoned industrial since the LHRS adoption in October 2006. This represents very limited supply above demand given constraints on many of the sites comprising the 1050 ha and the drivers and criteria - particularly as referenced in the URBIS report.
- 9.6 This availability of "Employment Lands" covers a broader range of potential developments and uses that would locate in the proposed IN1 zone at Black Hill. The 1050 ha does not include the HEZ site which is 870 ha, not serviced and highly problematic to develop, the additionally zoned Coal and Allied site at Black Hill (183 ha, zoned IN2 but currently not serviced) or the Kurri Kurri hydro-smelter site (377ha) for which a Planning Proposal is anticipated before the end of 2014.
- 9.7 The URBIS (unpublished) report estimated that 239 ha net (366 ha gross) of industrial land will be demanded in the Lower Hunter over the period 2011 to

2031 based upon the projected increase of 4774 industrial jobs at 20 jobs per hectare (12 ha net and 18.3 ha gross average per annum demand). The distinctions between URBIS's definition of industrial land compared to employment lands is not clear.

- 9.8 The Cessnock City-Wide Settlement Strategy concludes with projected demand for between 72ha and 192ha of industrial land between 2006 and 2031. Pro-rata, this would be approximately 46ha to 123ha between 2015 and 2031 for the Cessnock LGA.

- 9.9 The critical flow-on questions to assess the need and strategic justification for the land subject of the Planning Proposal at Black Hill are therefore:

- a) What land is actually available (zoned and serviced – actual/committed) into the medium to long terms which represent alternative sites for the types of development which will locate in IN2 zones;
- b) Are these sites of comparable availability given analysis of constraints and being serviced/potentially serviced at feasible costs?
- c) What is the data for land sales and take up at Beresfield and Thornton which would give a more recent and localised analysis of relevant trends? and
- d) How pivotal are the locational advantages of good access to the Hunter Expressway and M1 Motorway, the Newcastle port and airport and the New England Highway?

- 9.10 Based upon all of the reports referenced above, and professional opinion, the appropriate criteria for decision making about the overall planning for adequate supply of industrial land (IN1 and IN2 zoned land) within the Lower Hunter region and for a major Planning Proposal such as this one could be to:

- a. Facilitate agglomeration around key centre locations;
- b. Provide efficient and economic access to arterial roads and transport networks;
- c. Enable accessibility and proximity to a local workforce – particularly if there is evident localised and relatively higher levels of unemployment (including from relatively recent closure and/or downsizing of certain industries);
- d. Ensure the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of infrastructure;
- e. Ensure the integration of re-zoning of land from rural to industrial only if provision of adequate capacities and funding for infrastructure are available or committed.
- f. Manage growth over time through annual monitoring of supply and demand and major reviews of the Regional Growth Plan every five years; and
- g. Provide a contingency buffer of about 50% over and above committed supply of vacant, serviced industrial land at any point in time.

- 9.11 Responding to the above criteria, the following conclusions are drawn about the Black Hill Planning Proposal:

- a) There are still significant data gaps for a sound evidence-based and policy-based evaluation;
- b) This site remains as "employment lands" in the LHRS (as reaffirmed in 2010) and any non-fulfilment of that outcome at the local level has to be

- justified by submissions regarding inconsistency to respond the Ministerial direction;
- c) The Black Hill proposal does substantially align with the criteria stated above – including the resolution of constraints if the infrastructure commitments are more assured.
 - d) The commitment to fund the infrastructure for the subject site and provide more industrial land in Cessnock is not confirmed and is subject to uncertainty;
 - e) The recent rezoning of the Tomago, Anambah, "Freeway North", and Rutherford (combined total 675 ha) and, more recently, the Coal and Allied site (183ha – zoned IN2) adjacent to the subject site provide opportunities for significant IN2 oriented land supply and agglomeration – totalling 858 ha but there are very significant uncertainties relating to the development feasibility, timing and actual yields from these properties;
 - f) The adjacent Coal and Allied site (which is in the Newcastle LGA) presents an opportunity for combined water and sewer infrastructure funding and construction with the Catholic Diocese (reciprocal needs for provision of water and sewer through the two sites are asserted to be needed) but will also potentially present short and medium term (and potentially long-term) over-supply;
 - g) The availability of the Kurri Kurri Hydro Smelter site also adds to the supply of land zoned for industrial and serviced. At this stage, it is understood that the proposal is for 375 ha to be used for industrial purposes;
 - h) Accessibility to the M15 Hunter Expressway, M1 Motorway, the Newcastle port and airport and the New England Highway are significant locational advantages for industrial development at Black Hill – particularly for industries for which transport costs are significant within business financial structures and decision-making about locations for new enterprises;
 - i) There is no current evidence or commitment that:
 - the Black Hill site's development for industrial purposes represents the most effective utilisation of public investment and fulfilment of public agency priorities in the delivery of infrastructure;
 - re-zoning would be soundly based upon the integration with committed provision of adequate capacities and funding for infrastructure; or
 - servicing of the site represents development feasibility independently or in coordination with Coal and Allied.
 - However, the potential joint servicing represents a major advantage for enabling the release of employment lands in a highly favourable strategic location.
 - j) The combined total of IN2 zoning on the Coal and Allied and IN1 for the subject site will be 381 ha –Added to the 1050 ha of available land quoted in the Discussion Paper (March 2013), this represents 1431 ha – 471ha or 49% more than employment lands demand of 960 ha..

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- k) There is a sound basis to conclude that the subject site would be highly demanded for employment land development in the medium to long term if not in the short term.
- l) Based upon the above analysis, two major issues arise:
- Whether there is demonstrable need for another 195 ha of IN 2 zoned land in the short to medium term; and
 - If the need is demonstrable, then are certain local impacts (ecological, visual, negation of opportunities to provide for additional population growth to support local services) justified?
- m) Consequently, the rezoning should be supported to proceed on the bases of:
- Being zoned IN1 – General Industrial;
 - A reduced area for IN1 zoning – potentially with additional E4 Environmental zoning in the south-western sector of the site to moderate significant local impacts;
 - A DCP that moderates visual impacts, establishes clarity about staging and infrastructure provision, enhances quality of design (which, in itself is a marketing plus in the context of demand by many industrial enterprises) and enabling limited population growth in the catchment of Black Hill village to support the local school and other services.

David Broyd
3 December 2014.

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Black Hill Community Forum - MinutesThursday, 4 December 2014**Black Hill Planning Proposal - Community Information & Feedback Session****Meeting Start: 7pm****Head count (not including Council Staff or Proponent and Land Owner):**

- Total – 52
 - Cllrs – 4
 - Children – 5.

Mediator: David Broyd**Welcomed:** Cllrs Maybury, Hawkins, Ryan and Smith.**Apologies:** from Mayor and Cllr Doherty, Troy and Gibson.**Introduced:** Martin Johnson, Bo Moshage and Hannah McCauley (Note: Acting Director Colin Davis was also present)**City Plan:** Mr Gary Fielding, Shay Gill and Ellen Davis - Meehan**Agenda:**

- Background – Martin Johnson
- Presentations from:
 - Terry Lewin (Handout 1)
 - Catherine Talley
 - Gregory Steele
 - Janet Murray (Handout 2), and
 - Geoff Stevenson
- Response – Proponent, Garry Fielding (PowerPoint Presentation)
- Q&A Session, questions to be held to the end.

Minutes and meeting to be on website**Background – Martin Johnson****Welcome.** Council value your comments, this is a draft proposal and there is no finality. All matters will be considered by the staff and reported to the Council.**Application lodged in November 2011.** Proposal affects land approx. 300ha, currently zoned RU2 Rural Landscape. Proposal is 195 of IN1 General Industrial and 105 zoned as E2 Environmental Conservation.**Matter first reported to Council in 2012,** deferred for Councillor briefing. Reported back to Council in July 2012. Subsequently withdrawn by the proponent for further research.**1 August 2012 reported to Council.** Council resolved not to accept the proposal and take community consultation. Department became involved and order Council to act.

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Council subsequently resolved to put the matter to Gateway Determination. This process stipulates whether or not the proposal is to go to Public Exhibition. The Department requested additional studies and engagement with other agencies.

January - December 2013 was the timeframe of technical studies that underpin the current format of the proposal. It was post gateway that the proposal was amended to represent its current form and introduced to E2 Environmental Conservation and the four (4) dwelling house sites.

Since January 2014 there has been ongoing liaison with Department of Planning and Environment, Office of Environment and Heritage discussing Planning and Ecological issues.

Matter reported to Council in April 2014 for Public Exhibition approval, matter deferred. Resolved in May 2014 to exhibit and hold a public forum. On exhibition from 25th June to 30th July 2014.

Supporting Biodiversity Planning Agreement also on exhibition 2nd July – 6th August 2014.

Purpose of the Planning Proposal is to rezone the land. A supporting DCP will be prepared to nominate access points (all industrial access from John Renshaw Drive), siting of buildings, environmental issues. DCP needs to be in place prior to Development Applications.

E2 Environmental Conservation will incorporate dwellings; these four (4) sites will be the only sites with access to Black Hill Road.

Terry Lewin

Black Hill resident for 30 years; Property owner, active community resident.

Two proposals have frustrated him, the formerly proposed Sydney Waste and this Planning Proposal. Member of community groups who have been active since 1982.

How did we get to this point, and why do we need to object?

- Lower Hunter Regional Strategy.
 - Draft Strategy and referenced Infrastructure Hub and Freight Facility and agricultural/bushland conservation land to the east.
 - Highlighted the removal of the agricultural/bushland conservation land under the adopted strategy
 - Suggested connection to Coal and Allied proposals
 - Outlined that it should be in line with the NCC border, and is an "accident of the pen" that it incorporates Cessnock.
 - Donaldson Coal Bushland Conservation conditions from 1999, pre-date the Lower Hunter Strategy.
 - Coal and Allied plan doesn't set precedent for more industrial land, it alone satisfies the requirements of the Lower Hunter Plan.
 - 360 jobs
 - 500ha offset land

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Terry believes that Black Hill area has provided ample Industrial zonings and conservation plans e.g. Coal and Allied. Believes more alternatives to the current industrial proposal need to be considered.

Highlighted the current Industrial Hydro smelter site proposed at Kurri Kurri (refer to Handout 1), and indicates that it could become a mix of uses.

Question: "Is the proposed the best outcome for the Black Hill Community?"

"The decision has not been made". Submissions need to be made to Council as decision is yet to be made. What is in the best interest, long term of the community? Planning Proposal should be evaluated on:

- Merits,
- Benefits
- Long Term effects for the Black Hill community

Catherine Talley

Lives at the end of Black Hill Road, near John Renshaw Drive.

Reiterated that the process is not finalised, opportunity for submission is still open and important.

Outlined that she has been a resident for 2 years and that Black Hill is a good environment for semi-rural pursuits.

"Trouble in paradise", pending underground mining and rezoning of land owned by Catholic Church.

Struggle to see rationale behind rezoning. Concerned by the industrialisation of the Black Hill area.

Questions the need for more Industrial land when we have Tomago, redevelopment of Hydro site at Kurri Kurri. Believes that the amount and type of land uses needs to be regionally focused not just focused on the Cessnock LGA.

Referred to "The Lower Hunter over the next 20 years" discussion paper. Outlined that it was developed to assist with gaining input from residents as to land uses that are required into the future. Believed to be a replacement for the Lower Hunter Regional Strategy.

- Demand of employment land to 2031 is 960ha as outlined by the discussion paper.

Outlined that current approvals in the regional exceeds this limit.

Outlined that she believes that if this land is zoned as proposed will this become vacant unused land.

The location and beauty of the area is part of the appeal. The rural nature in close proximity to services is part of the appeal of the area.

Can't see that the only value of the land is as an industrial site.

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Argues that the site could be subdivided and sold as rural properties in its current form. Quoted from a consultant report as saying land could be remediated to be suitable for residential land uses.

Argues that the Industrial estate doesn't offer any community services.

Buffer zones and residential allotments facing Black Hill Road do not offset the impact of 300ha.

Industrialisation of the area currently includes quarry, underground and open cut mining.

Concerns of precedent set by this proposal. Potential future uses of land currently owned by Donaldson Coal.

"What is the good of buffer zones when the precedent has been established for future industrial zones?"

Doesn't want to be a long term objector to future development applications.

Asks Council to throw out proposal and ask Church to choose something more appropriate to the area.

Gregory Steele

Moved to Black Hill in 1991. Considers the area to be a tucked away gem, but an "orphan" due to location on border of three (3) Councils.

Outlined that the majority of the residents of the long term residents.

Due to being an "orphan", Black Hill has been subject to:

- Quarry,
- Mining, and
- Formally proposed Sydney Waste dump

Believes to be due to the location of Black Hill.

For the majority, the current operators are considered to be good citizens.

Industrial estates are visual eyesores. Believes the buffer zones will only shield the roads. The proposed industrial site will be visible from the ridges surrounding the Black Hill area.

Stated that the vacant area of the site coincides with the entry to Wine Country drive.

Discussion of sewerage and run off management, questions potential for sewerage management sites within the Black Hill area.

Suggested the contaminated areas of the former Steggles site are exaggerated by the proposal.

Argued that if the site is left as is it will become an overgrown, derelict eyesore.

Argued that the proposal will sterilise the area. Questioned the intention of the Developer.

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Mediator asked not to pre-judge the Developer.

Industrial estates are a 9-5 weekday operation, no services to the community.

Questions lack of housing estates and community services.

Questioned the values of the proposal, the Council and the Proponents. Minimal acknowledgement of the Black Hill community groups.

Suggested the Planning Industry is "incestuous". Where are the loyalties of the staff that change employment regularly?

Mediator asked to respect the integrity of the staff involved in the proposal.

Encourage that the Council consult more with the community.

Allan Brown

Outlined no relation to Ron Brown.

Thunder had been stolen due to his position in the speaking order. Agreed with the earlier sentiments.

The Brown's from Eleebana lived in a bungalow in Belmont North. Soon realised this wasn't the lifestyle for them. Within 12 months they relocated to 1/2 acre block in Warners Bay, believed it to be utopia. Located in a semi-rural area off Cherry Road. Sparsely populated at the time. Boundary changes made them part of Eleebana, and the Eleebana Heights Estate. Property along Cherry Road (10 acres chrysanthemum farm) was sold to a developer and became 46 dwellings. Block behind their house gained another 46 dwellings. In excess of 100 dwellings of 20 years. At this point they commenced looking for acreage.

Purchased in Black Hill 9 years ago.

Never took an active interest in the development at Eleebana. In the end the development of the Eleebana area led them to relocate when it became an undesirable lifestyle for them.

Became aware of Planning Proposal in March 2012. Acknowledged that Martin has provided timeline of events.

Identified that there wasn't a great deal of support for the original proposal.

August 2012 Council meeting resolved that there would be elections in September. Outlined that the sentiment was why don't we wait until after the elections to hold a community forum. Original date to be November 2012.

Outcomes of the directive of Department was essentially "a gun put to the head" saying proceed to gateway or we remove your Planning powers. Outlined the action period of 5 days that resulted from the Department notification.

Contacted Ellen Davis-Meehan as she was preparing Social Impact Statement. It was suggested that Community Consultation could possibly occur November 2013. It is now July 2014.

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Amount of industrial employment land is in excess of a 1000ha, at current rate of development that amount is sustainable for 30 years.

Original plan was a school and a retirement village. Suggested that the developer sell the land and move on.

Janet Murray

Lives at Bullai next to the Fire Station, resident for nearly 21 years. Used to work at the steel works, moved to the area for the rural environment.

Was involved with the Daraon Quarry objectors, resulted in Land Environment Court.

Discussed the success of the fight against Sydney Waste dump/s.

Getting "sick off" arguing against undesirable developments.

Outlined that there is no demand for industrial land.

Failure of planning system. Let down by Council for not rejecting the proposal due to no need for further industrial land.

Failure of employment land nomination in Lower Hunter Strategy.

Thornton Killingworth Strategy. "Large new settlements" would be difficult due to infrastructure connections e.g. waste water treatment, septic.

Argues that limited scope for development is the reason for lack of plans for waste water management. Approx. \$15.5m to connect to Morpeth waste water management. Cost decreases the viability of the site. Or the area ends up with an onsite waste water plant.

Questions the disposal of the effluent. Argues that 100ha is required to dispose of effluent.

Questions the viability of the site for industrial land uses based on undermining of the area. Undermining will increase the cost of developing the sites.

Increased traffic on surrounding roads network. Planning Proposal argues that the proximity to M1 and New England Highway is why is this desirable. Argues that the dependence on the roundabout is an area that will continue to grow as and become increasingly over utilised due to the proposed site. Traffic report doesn't accurately represent the volume of traffic from Coal and Allied, no consideration of the Hunter Expressway in terms of the increased traffic.

Where does the nominated buffer and protective zones come from, the E2 Environmental Conservation or the IN1 General Industrial?

The VPA nominates land as offset to this development in another area. This is of no benefit to the Black Hill area.

Questions the Catholic Churches motives of using the land as industrial land. "Why won't they consider a more compatible land use?"

Encouraged the community to make submissions to Council.

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Black Hill Community Forum - MinutesThursday, 4 December 2014Geoff Stevenson

Resident of Black Hill Road.

Thanked Council Staff and Councillors. Appreciative of the forum environment and opportunity it provides.

Works in the mining industry, not opposed to development. Opposed to "stupid development". Finds this proposal to be a "nonsensical development". Purchased in the area to live in a rural environment, doesn't know any of his neighbours who are accepting of the industrial zoning of the site. Plenty of land owners are keen to subdivide and on sell their land, but not for the purposes of industrial land uses.

Argues that the Planning Proposal is a statement of good intent. RPS document outlines that clearing the site should be minimised. The proposal outlines extensive clearing, but the site is determined by other agencies to be highly valuable environmental land.

How does Council plan to enforce the Conditions of Consent? Council has struggled in the past to enforce Conditions of Consent, how does Council plan to ensure that future conditions would be complied with?

Catholic Church tends not to develop on their land. Land is usually rezoned and then on sold. Speculates that the block would be sold and that any "moral promises" made by the current owner would not be adhered to. Covenants can be missed by developers and certifiers and then have to be dealt with by Council.

What happens to the remainder of the land in the area?

Applauded the management of the land owned by Donaldson Coal.

Speculated that a Department of Planning employee allegedly outlined that "political intervention" had changed the course of this Planning Proposal.

Mediator: Reference to the conversation with Department of Planning is hearsay.

Community member suggested lobbying.

Gary Fielding – City Plan

Run through the key site issues relating to the Planning Proposal:

- Ecology
- Mines Subsidence Board (MSB)
- Visual Amenity
- Traffic and Access
- Contamination
- Heritage

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Ecology

15ha of alluvial, moist forest

145ha of Spotted Gum

139 ha of cleared pasture, this is the major focus of the rezoning.

Series of flora and fauna studies that have been carried out in accordance with LHCCREMS Survey Guidelines.

Total of 23 threatened fauna species identified as potentially on site. 7 part test has been undertaken, conclusion is that the Planning Proposal is unlikely to adversely impact on these species

78 species recorded on site

1 endangered ecological community Lower Hunter Spotted Gum

No threatened species on site.

Planning Proposal retains most sensitive areas of the site in the two conservation zones, adjoining John Renshaw Drive and Black Hill Road. Offsets are proposed, may include on and off site areas, financial contributions etc.

Mines Subsidence Board

Development staged to allow restrictions of site specific DCP to be developed.

Visual Impact Assessment

Given rise to the proposal for the buffer of varying depths. Proposal has considered topography and slope of the area. Additional landscaping that would need to occur and building design to be implemented by DCP.

Contamination

Site has been partly remediated.

Need for remedial action plan, required for ANY type of development on the site.

Traffic and Access

Access proposed of John Renshaw Drive, one shared with Coal and Allied.

Residential access only from Black Hill Road.

Heritage

Two known aboriginal items on the site. Ongoing consultation with relevant aboriginal groups has been held. More potential items along creek line. Further assessment required.

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Black Hill Community Forum - MinutesThursday, 4 December 2014**Voluntary Planning Agreement:**

Between land owner and Council. Legally enforced through property and planning laws and legislation. Land owner and Council to agree on conservation measures prior to development.

Map outlining where the site sits within the Lower Hunter Regional Strategy 2006. Within the designated Freight Hub.

Also mentioned in the NCC/LMC Western Corridor Strategy.

Planning Proposal

Based on constraint identification work. General Industrial zoned area of 195 ha. Environmental Conservation area of 105 ha bordering Black Hill Road. Potential for 4 dwellings within E2 Environmental Conservation. Industrial access from John Renshaw Drive. VPA for Biodiversity.

Question and Answers

Terry Lewin: Clarification of Western Corridor Study as supportive of the study, claims it didn't have any support for the strategy?

Gary Fielding – City Plan: the study does support the proposal in the sense that it nominated to Coal and Allied area as the first incursion of industrial land within the area. Highlights the nominated Coal and Allied land within the Strategy area.

Geoff Stevenson: concern of on flow effect of rezoning part of the area.

Janet Murray: Speculation of further rezoning along Buttai Road.

Kevin Debroad: Consideration to Visual Amenity, have residents on ridges been considered?

Gary Fielding – City Plan: Moyer Landscaping undertook the study, went well beyond the Black Hill Road area. Study extended as far as Mt Sugar Loaf.

Sharron Brown: Doesn't believe photos to be taken from B1 Private access in Black Hill.

Gregory Steele: Where is BH08, why is it not included? Indicated that he believes that it highlights deficiencies.

Corally Lewis: Looks over Bloomfield Pitt. Photos do not extend far enough.

Phillip Mehard: Coal fields are visible from Black Hill Road, he has view to former Steggle's site in its current form.

Verna Debroad: Can see and hear trucks and mining activity.

Catherine Talley: Directed to Council, why is the Lower Hunter Strategy considered accurate for support of the Planning Proposal?

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Black Hill Community Forum - Minutes**Thursday, 4 December 2014**

Martin Johnson - Answer: It is referenced as it is the main strategy in place at this point in time. Growth Strategy is expected to be released later in the year. Council analyse future directions, Council will consider the growth numbers of the year. Proponent has to establish Strategic grounds; the key document at the time was Lower Hunter Strategic Plan.

Cllr Ryan: Lower Hunter Strategic Plan is a political document, lobbying occurred. Strategic Plan is not always abided to. Strategy doesn't add up.

Mediator: view of one Cllr, not Council.

Terry Lewin: States that Council is consent authority, refutable process exists. Determinations can be challenged. Draws attention to the LGA boundary, suggests that the acceptance of this proposal would set precedent for the LGA.

Martin Johnson – Answer: If the Planning Proposal proceeds, this will be the first industrial zoned land in Cessnock identified within the Lower Hunter Regional Strategy. Outlines that the strategy is for the overall Lower Hunter. The Lower Hunter Regional Plan provides a hierarchy for the Council's in the area.

Mediator: The Planning Proposal can be resolved to be decided upon by State Government.

Colin East: Concerns regarding the stage the process is at. Draws attention to the fact the consultation was supposed to occur in 2012. So much time and money has been spent by Developer and Council, why has it taken so long to get to the Community Consultation stage. Suggests that any suggestions from the community will have no impact as Developer and Council are set in the ways of preparing and assessing the proposal. Suggests that the Developer and the Proponent are disconnected from the community, believes that the community consultation should have been done upfront. No comments have come directly from the Catholic Church. City Plan's presentation only outlines a simplified version of the proposal.

Martin Johnson – Answer: Council had resolved to consult with the community; however the State Government's involvement meant that a decision to proceed to a formal proposal had to be made. Council has followed the standard process as stipulated by the Department of Planning & Environment. Martin outlines that decisions of the past are "water under the bridge" and that the Planning Proposal should be considered on the parameters of the current proposal not the details of the past proposal.

Gary Fielding – City Plan: Outlined that meetings occurred prior to Gateway submission. 2 meetings, one at Black Hill School and one with Catholic Diocese.

Allan Brown: Please explain position on JRPP?

Gary Fielding – City Plan: Chairs the JRPP. Asks the relevance of the question?

Allan Brown: Surveyed the attendees; outlined that original consultation was poorly undertaken.

Gary Fielding – City Plan: Doesn't believe that the community suggested that; listed specific residents and attendees.

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Mediator: If JRPP involvement was to occur, Gary would be required to declare a conflict of interest. And an alternate Chair would be appointed.

Suggestion from the floor that Martin had said the Planning Proposal would end up with JRPP.

Martin Johnson - Correction: to say it was outlined as a possibility that the Planning Proposal could be determined by the JRPP.

Martha East: Designated employment lands were nominated in 2006 strategy. Council chose not to adopt these zonings in the LEP 2011.

Phillip Mehard: Was involved in the first meeting, signed a document in supporting the original Planning Proposal; however believes he was misled. Suggests that the purpose of the meeting was to quiet the community groups. Invites the Catholic Church to comment on why they didn't go ahead with School, and housing. Suggests the process was selective because it was invitation only.

Representatives of the Catholic Church declined to provide comment.

Geoff Stevenson: outlines "shame" as fellow Christian with the Catholic Churches actions; considers the circumstances/history of the Planning Proposal to be deliberate misleading.

Mediator: Misleading is a strong word. Ascertains made, please remain respectful.

Dave Beach: Resident of Meredith Road. Attended a number of Council Meetings, applauds Cllr Ryan for support to Black Hill community. Comments on the sometimes dysfunctional voting nature of Cllrs at Council Meetings. How do we oppress upon Cllrs the importance of the issue? How do we get your attention? Further to the submission process.

Mediator: Cllrs are here to observe

Cllr Smith: The only way Council can make a decision is based on evidence. The evidence is the submissions received to Council. Without evidence, any decision may be able to be overturned.

Mediator: Suggests that representatives of the Communities, Proponent and Cllrs form a round table working group to discuss submissions and issues.

Catherine Talley: What is the numeric weighting of a submission? How many submissions are required?

Mediator: Substance of submissions, not just the volume.

Allan Brown: We have they been advised in the past that a pro-former submission should have the same weight as an individual submission?

Catherine Talley: Why cannot it just be a letter stating objection, why does it need to contain issues?

Cllr Smith: Happy for the above mentioned "state objection to occur".

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Martin Johnson – Answer: it is true that pro-former letters and petitions are given less weight through the Court than detailed submissions. Consider both options appropriate.

Martha East: Are letters to be sent to Cllrs or Council?

Cllr Smith: All correspondence forms part of Meeting Agenda. Submissions submitted to Cllrs are forwarded to Council.

Terry Lewin: Thanks Council for engagement.

Martin Johnson – Answer: Highlights that Council supports the request for more liaison with community and proponent representatives. Or Council could negotiate with Community and Proponent. Martin outlines that submissions would generally be summarised.

Kevin Debroadar: How much consideration to a rural residential, or more mixed use type development? When was decision to become more industrial?

Gary Fielding – City Plan: decision influenced by Lower Hunter Regional Strategy. Employment area, residential proposal would not have been supported as against strategy.

Colin East: Suggests that Council have added to terminology "strongly" to documentation.

Mediator: Council report refers to a letter of support for the proposal. The statement comes from Proponents documentation.

Martin Johnson – Answer: Outlines that that he is a new staff member, the decision will be a professional recommendation based on the standard assessment process.

Mediator: Outlined the timeline set by the Department of Planning & Environment.

Martin Johnson – Answer: is happy to liaise with the Department for a potential increase of time in an aim to work through community concerns

Mediator: Thank you to Cllrs, Council Staff and City Plan for attendance.

Meeting Closed: 9:15pm

Report PE154/2014 - Planning Proposal - Black Hill

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CESSNOCK CITY COUNCIL

PLANNING PROPOSAL – BLACK HILL

ADVICES RECEIVED, AND POSITIONS REACHED, IN RESPONSE TO REFERRALS TO STATE AGENCIES

NSW TRADE AND INVESTMENT – RESOURCES AND ENERGY

DATED: 6 December 2013
AUTHOR: Simon Francis, Acting Team Leader Land Use
DOCUMENT REFERENCE: (TRIM) OUT 13/32740

Summary of Comments

1. The subject site is covered by mining lease 1618 held by Donaldson Coal Pty Limited;
2. The area is not within a declared mine subsidence district but has been undermined in part;
3. Currently, Donaldson Coal Pty Limited is continuing underground operations and this will continue into the future;
4. As the area is not within a mine subsidence district, there is no commonly applied planning mechanism to guide building requirements or standards. However, this is a major concern for MRB if the site is to be rezoned in terms of how to ensure the approved mining operations can continue and not introduce any additional liabilities to the company or the MSB with respect to property damage to newly constructed buildings from mine subsidence.

Recommendations and Key Issues

MRB has no concerns regarding the rezoning of the E2 areas, but does have concerns regarding the IN1 Industrial proposed rezoning. Hence, MRB strongly recommends that further consultation with Donaldson Coal, MRB, MSB and the City Council takes place with regards to underground mining and potential subsidence impacts within the subject area. These discussions may assist in determining the option of planning mechanisms such as development or staging requirements, restrictions or guidelines imposed in an instrument such as a Development Control Plan, thereby ensuring that no inappropriate development would occur over areas subject to past or future subsidence without the necessary construction and building controls. Additionally, the consultation may help establish indications on the mining schedule and investigate the implications of these on the Black Hill Planning Proposal.

Recommendation: That as part of DCP preparation, further consultation with Donaldson Coal, MRB, MSB and the City Council takes place with regards to underground mining and potential subsidence impacts.

MINE SUBSIDENCE BOARD

DATED: 13 November 2013
AUTHOR: Richard Pickles, Acting District Manager
DOCUMENT REFERENCE: FN 06-0029683

Summary of Comments

Report PE154/2014 - Planning Proposal - Black Hill

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1. The site is not within a mine subsidence district and Mine Subsidence Board approval is not required for service development outside of a proclaimed mine subsidence district;
2. The Board concurs with the Coffey Report (GEOTWARA 21984 AA-AB-AA) in that the development of the site should be staged to allow for the extraction of the remaining upper Donaldson seam by Donaldson Coal;
3. The Board has no objection to the rezoning of the land and the development of the land following mining.

Recommendations and Key Issues

The MSB should be involved in the consultations proposed by the Resources and Energy Division of the NSW Trade and Investment as referenced above.

NSW GOVERNMENT – DEPARTMENT OF PRIMARY INDUSTRIES

DATED: 22 November 2013
AUTHOR: Jennifer Warner, Resource Management Officer – Hunter
DOCUMENT REFERENCE: OUT 1335004

Summary of Comments

1. The land was of significant agricultural value due to its previous land use, location and proximity to transport routes and agricultural processing plants;
2. The area is recognised as already having been largely constrained as an RU2 zone and it is noted that rezoning will permanently exclude agriculture from the area;
3. The Department regrets the loss of a site that was valuable to agriculture;
4. NSW DPI sees the benefit of a well planned industrial estate for primary industries and sees the logic in the sites ability to provide for an industrial and environmental area in the region. Development options are encouraged that are in line with the Cessnock LEP and possible future agricultural industries in this zone (e.g. poultry industry or aquaculture) are supported.

Recommendations and Key Issues

Essentially, the Planning Proposal is supported by DPI (Agriculture).

OFFICE OF ENVIRONMENT AND HERITAGE:

DATED: 28 November 2013
AUTHOR: Richard Bath, Senior Team Leader – Planning; Regional Operations / Anne Killick
DOCUMENT REFERENCE: DOC13/73666; FIL12/7304-02

Summary of Comments from letter of 28 November 2013

1. The general principle / overarching goal for conservation is that biodiversity and other environmental values must be "improved or maintained" i.e. gains in biodiversity and other environmental values must be greater than or equal to any losses resulting from land clearing and / or other forms of environmental degradation.

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2. After all feasible measures have been taken to avoid or mitigate impacts to biodiversity, off-sets should be used to compensate for any remaining impacts in order to achieve and "improve or maintain" outcomes for the proposal;
3. This site contains high conservation value areas, including large areas of Lower Hunter Spotted Gum Ironbark Forest, Endangered Ecological Community (145 hectares), Riparian Corridors including Eluvial Tall Moist Forest (15 hectares) multiple threatened species recorded both on the site and within the adjoining areas and listed under the NSW Threatened Species Conservation Act 1995 and / or the Australian Government Environment Protection and Biodiversity Conservation Act 1999 and Habitat for a Range of other Threatened Flora and Fauna Species that have potential to be present on the site;
4. OEH notes that the proponent is currently proposing significant impacts to endangered ecological communities and threatened species habitat across the site. Once further discussions has determined appropriate land use outcomes for the site that avoid and mitigate impacts on high conservation values, it is suggested that the proponent uses the bio-banking assessment methodology under the NSW Government's Biodiversity Banking and Off-set Scheme to quantify the off-set requirements for any remaining impacts from the development;
5. OEH notes that similar sites in the vicinity of the subject site have provided significant biodiversity off-sets in order to adequately off-set the impacts of these proposals;
6. Council is reminded that in the absence of a formal biodiversity certification or bio-banking agreement, assessments under the EP&A Act 1979, will be required at the DA stage;
7. The Aboriginal due diligence assessment has been reviewed and it is noted that there are two Aboriginal sites within the development footprint. Neither of these sites was able to be relocated during the field survey and despite the sites not being observed during the field survey, they are still registered sites on the Aboriginal Heritage Information Management System and are protected. The project area has been characterised as having been subject to high levels of disturbance;
8. The field survey identified no new Aboriginal sites, however, it did identify two areas of archaeological sensitivity in addition to the two registered sites, in undisturbed portions of the Weakly Flat Creek and a tributary of Viney Creek. Both of these sites are within the proposed E2 Environmental Conservation zone and therefore are not at risk unless the proposed development plans were to change;
9. OEH supports and concurs with the due diligence assessment and its recommendations;

Subsequent Positions: Meetings on 20 January and 27 February 2014

Following the letter of advice, a meeting was held on 20 January 2014 involving representatives of Council, OEH, the Catholic Diocese and City Plan Services. It was concluded then that the issues could be addressed in a re-drafted VPA about which OEH Representatives would have imminent legal advice and directions about how to proceed. The legal advice that followed (17 February 2014) was to the effect that the Black Hill Planning Proposal issues could not be managed that way.

Following this advice from OEH, a further meeting was initiated with OEH and the (then) Department of Planning and Infrastructure on 27 February 2014.

Summary Notes of the meeting of 27/2/2014 are provided below:

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4.

Present:Cessnock City Council: Martin Johnson, Bo Moshage, David Broyd (Independent Planning Consultant to Council);OEH: Richard Bath and Anne Killick;DPI: Trent Wink.

1. It was noted that City-Plan had advised acceptance of off-site offsetting at meeting on 25/2/2014. The Catholic Diocese does not own land potentially usable for offsetting. Appropriate restrictions as to user/covenants etc will be accepted by the proponent for the proposed four lots in the southern sector of the proposed E2 zone – as would a PVP. However, the CMA are very unlikely to agree to a PVP under these circumstances;
2. Every endeavour to be made to get report to Council meeting of 19 March 2014. Notwithstanding acknowledged reservations about the compatibility of the Planning Proposal, and particularly the 4 lots in the southern sector of the E2 zone – Council will proceed on the basis of the E2 zone with a draft local clause referencing a maximum 4 lots in that southern sector of the E2 zone. (The DPI is open to working with a statement of intention of outcome and providing this to PC for drafting of an appropriate clause);
3. The currently drafted VPA lacks any tangible outcomes and is not productive in going forward. A re-drafted VPA to be between proponent and Council based upon:
 - a) City-Plan engaging accredited ecologist to apply bio-banking methodology for calculation of land area required and credits;
 - b) A presumption that all of the land proposed to be zoned IN1 will be cleared;
 - c) More detailed assessment by City-Plan and sub-consultants (notably for asset protection zone assessments) of building envelopes for the proposed four lots within the southern sector of the proposed E2 zone. Areas of required clearing will be included in bio-banking assessment;
 - d) Non-ability to enter into a formal bio-banking agreement/approach because of the extensive presence of EEC on the site;
4. The draft VPA will be exhibited with the Planning Proposal and OEH will be consulted about the adequacy and rigour of the bio-banking assessment during the exhibition period;
5. The conceptual sub-division pattern and building envelopes forming the basis for the bio-banking assessment will be incorporated into a draft DCP for preparation after the Planning Proposal is forwarded to the DPI (noting that the Gateway Determination requires the site to be formally established as an Urban Release Area).

Note: Hence, an assessment based upon the bio-banking methodology was subsequently carried out and the redrafting of the VPA initiated.

MINDARIBBA LOCAL ABORIGINAL LAND COUNCIL**DATED:** (Undated letter)**AUTHOR:** Stephen Talbot, Site Officer - Mindaribba LALC**DOCUMENT REFERENCE:** N/ASummary of Comments

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1. It is considered disrespectful that the Aboriginal due diligence assessment has been carried out without input or consultation with the LALC;
2. There is awareness of the area and that Aboriginal surveys have been carried out before;
3. The Mindaribba LALC supports the rezoning application, being aware of the amount of time that a full Aboriginal heritage assessment requires for its conduct, but a full Aboriginal heritage assessment is recommended to be conducted prior to development proceeding.

Recommendation and Key Issues

- There appears to be a concern about the need to improve the working relationship with the Mindaribba LALC on this project;
- A comprehensive Aboriginal Heritage Assessment be undertaken at the Development Application stage.

ROADS AND MARITIME SERVICES

DATED: 24 January 2014
AUTHOR: Ash Tamhane, Acting Manager Land Use, Hunter Region
DOCUMENT REFERENCE: N/A

Summary of Contents

1. John Renshaw Drive is a classified State road and Council is the public authority for all other public roads in the area, except the M1 Pacific Motorway and the Hunter Expressway;
2. Traffic and Transport Study is inadequate. RMS does not concur with the traffic volumes adopted in the Traffic and Transport Report - traffic volumes generated by the adjoining Coal & Allied development must be included in all traffic modelling. The completion of a revised traffic study, is required to:-
 - a) Be based on a concept master plan which will:-
 - Consider the impacts of both the Coal and Allied development, and this development, when fully developed (clearly show internal connections proposed with the Coal and Allied development);
 - Factor in no access being permitted to / from John Renshaw Drive and John Renshaw Drive being required for upgrading to dual carriageways between the proposed Coal & Allied access and the proposed western signalised access; and
 - Assess the impacts the proposed development on the signalised Coal & Allied intersection.
3. The proposed western access shall be designed and constructed as a signalised intersection in accordance with the Austroads *Guide to Road Design 2010* (with Roads and Maritime supplements) and the RTA *Traffic Signal Design 2008* to the satisfaction of Roads and Maritime including, but not limited to, the following works:
 - a) Upgrading the intersection to a four leg traffic signal controlled intersection, which incorporates vehicular access to / from the development and Donaldson mine sites;
 - b) Due to the limited amount of information provided, Roads and Maritime is unable to comment on the potential subdivision of the six lots within the land proposed to be zoned E2 Environmental Conservation; and

- c) Continued consultation on this rezoning proposal is sought by RMS "to ensure that both Roads and Maritime and Council's interests are included, particularly in relation to provision of traffic and transport infrastructure upgrades that are required as a consequence of the traffic generated by the future development proposed in this area".

Key Issues and Recommendations

Many aspects of the RMS advice and requirements can be addressed at the DA stage but there is a need to expeditiously address the inadequacies in the Traffic and Transport Study, particularly in terms of traffic volumes and points 2 b), c) and d) above. This should be completed prior to exhibition of the Planning Proposal, and during the period still required to resolve the ecological issues.

Subsequently, Council met with RMS on 28 March 2014 with the resultant position as confirmed in a letter from Council to RMS summarised as follows:

- As the "Black Hill" development site will be identified as an Urban Release Area (URA), Part 6 of the Cessnock Local Environmental Plan 2011 (LEP) will apply. This will require that satisfactory arrangements for designated State public Infrastructure, public utility infrastructure and the preparation of a supporting Development Control Plan (DCP) to be prepared prior to approval of any Development Application for subdivision;
- Inclusive of a 'masterplan' to be developed for the "Black Hill" site, many aspects of the RMS advice and requirements can be satisfactorily addressed through Part 6 of the Cessnock LEP and / or a supporting DCP, which will provide: for an overall transport movement showing the major circulation routes and opportunities for connections to adjoining development sites to achieve a simple and safe movement system. Where development is intended to be released sequentially, a transport movement hierarchy for each stage or precinct will be required to be developed;
- To address cumulative traffic volumes, the supporting DCP will require that an Independent Traffic and Transport Study be undertaken to determine the extent of road works, intersection upgrades and ancillary vehicular infrastructure requirements generated. This assessment will include consideration of the shared use of the eastern access with the adjoining development site, which has the potential to accommodate a greater proportion of the "Black Hill" industrial traffic than projected, particularly during the early development stages;
- Continued consultation with the RMS on the development of the Development Control Plan supporting the Black Hill Planning Proposal will be undertaken to ensure that both the RMS and Council interests are included, particularly in the timely provision of traffic and transport infrastructure upgrades required as a consequence of the traffic generated by future development proposed for this site;
- The RMS was requested to formally advise that it has no objection to the Planning Proposal proceeding - noting that there are standard clauses within Council's planning instruments that address the RMS's needs and requirements.

David Broyd
David Broyd Consulting Services Pty Ltd
1 April 2014

From:
To:
Cc:
Subject:
Date:

Begin forwarded message:

A relative of the Cruickshank family has already contacted Council about a misspelled street name in Bellbird (Ref. CRM7557/2016).

The street in question is CRUCKSHANK STREET but the street signage shows CRUICKSHANK Street. The sign is in a state which warrants replacement, so the time is right to rectify what was probably a clerical error made some time ago.

This matter might seem trite but there are issues of heritage and history which need to be considered. The Street was named after a pioneer of the Bellbird area, John Cruickshank (1851 – 1912). John Cruickshank owned the *Abbotsford* property which is remembered in a street bearing the name of his property in Bellbird. He bought this property in 1889 and grew wheat and maize on the flats of *Abbotsford*. Growth of the township of Bellbird occurred with the establishment of Bellbird Colliery in 1908. In the same year as the establishment of the mine, John Cruickshank sold part of *Abbotsford* to Messieurs Schoby and Harris who subdivided and sold off this new estate. John Cruickshank died in 1912 and lies buried in Cessnock Cemetery. Cemetery records will verify the spelling of his surname. John Cruickshank's son Cyril was born in 1987 on *Abbotsford*, which he owned and farmed until his own death. Cyril was keenly interested in horse racing and Bellbird race course was situated on his *Abbotsford* property. Cyril's grave can also be found in the Cessnock Cemetery.

I am a descendant of John and Cyril Cruickshank and ask Cessnock City Council to rectify an error of the past and replace the street sign with the correct spelling, CRUCKSHANK STREET. This would involve little effort and cost and would honour the contribution of a pioneering family of the Bellbird area. Should approval be given for this small change, residents of the street could be informed by Council of the change and the reasons for it.

I seek your help in supporting this request and making a favourable recommendation to the relevant Council Senior Officers. I thank you in anticipation of a favourable and sensible outcome.

Yours sincerely,

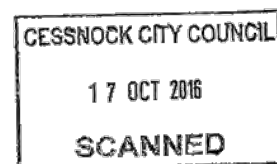
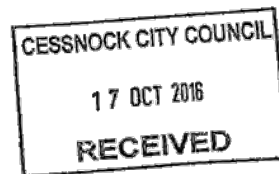
Doug Cruickshank



SENATOR THE HON JAMES MCGRATH
ASSISTANT MINISTER TO THE PRIME MINISTER

Reference MC16-072221

Cr Bob Pynsent and Mr Stephen Glen
Mayor and General Manager
City of Cessnock
PO Box 152
CESSNOCK NSW 2325



Dear Cr Pynsent and Mr Glen

Thank you for your letter dated 1 September 2016 to the Prime Minister, the Hon Malcolm Turnbull MP, regarding assistance to local governments for infrastructure projects. The Prime Minister has asked me to reply to you on his behalf.

The Government is committed to building a strong economy for the prosperity of all Australians. This includes ensuring local councils, like Cessnock, have the resources they need to deliver infrastructure and services for their communities.

Councils are a big beneficiary of the Government's substantial investment in infrastructure. During the election the Coalition committed over \$500 million to establish new community infrastructure and upgrade existing facilities. We also committed to establishing the Building Better Regions Fund to provide grant funding for regional and remote infrastructure projects. Councils will have the opportunity to apply for funds when the new Fund opens.

The Government is also helping councils improve local roads by providing \$3.2 billion under the Roads to Recovery Programme, \$300 million for the Bridges Renewal Programme and \$500 million for the Black Spot Programme. These current and future programmes will provide long term improvements in the social and economic viability of local communities.

Thank you again for sharing your views with the Government.

Yours sincerely

JAMES MCGRATH

10 / 10 / 2016

Parliament House CANBERRA ACT 2600