



PLANNING PROPOSAL

Amendment to the

Cessnock Local Environmental Plan 2011

by establishing an

**Schedule 1: Additional Permitted Use to facilitate
residential flat buildings**

Version 1.0

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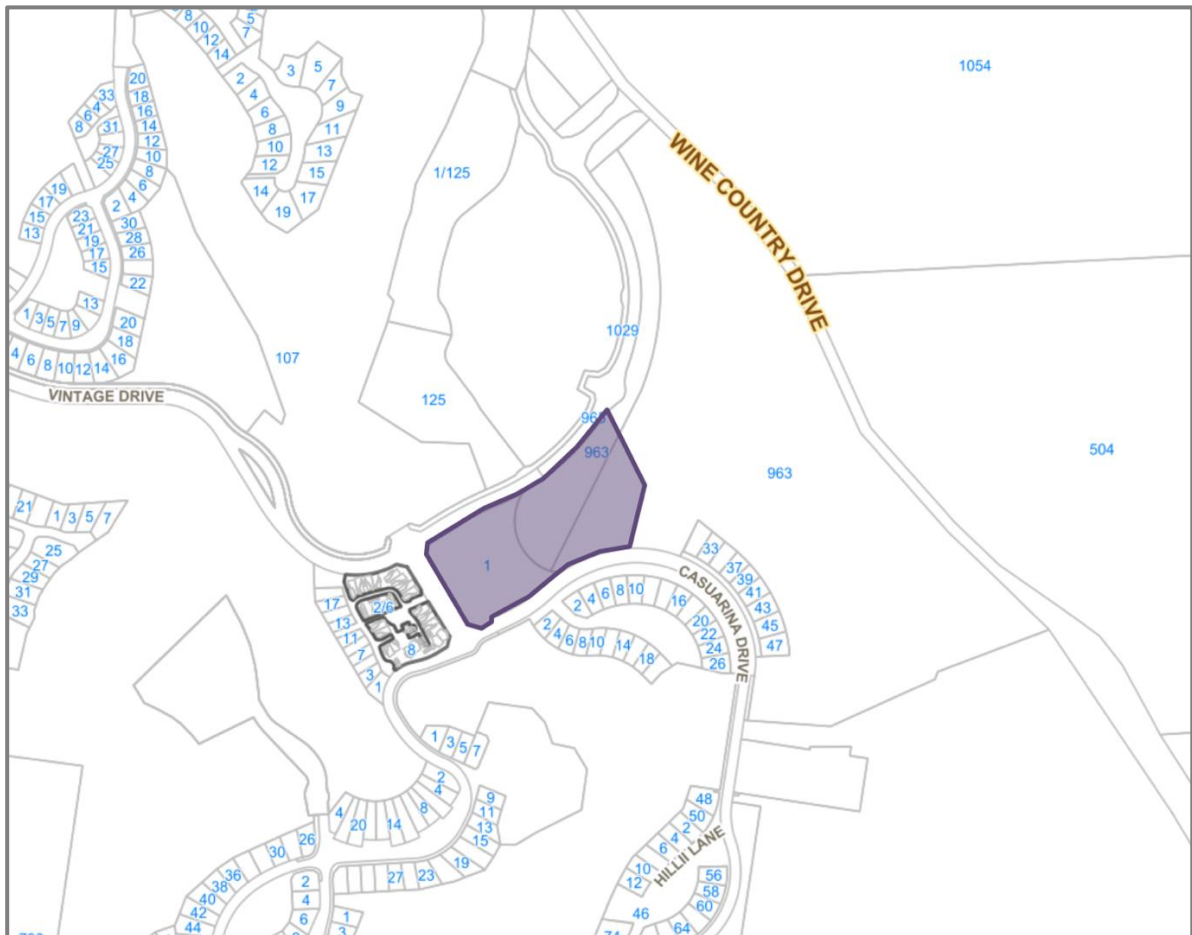
Part 1: Objectives and Outcomes

The objective of the Planning Proposal is to facilitate the permissibility of **residential flat buildings** within the integrated tourist development known as "The Vintage." The outcome of the Planning Proposal will be the inclusion of an Additional Permitted Use to Schedule 1 of the *Cessnock Local Environmental Plan 2011* applicable only to certain properties within The Vintage development.

Part 2: Explanation of Provisions

The Planning Proposal seeks to include an Additional Permitted Use (APU) in Schedule 1 of the *Cessnock Local Environmental Plan 2011* (LEP) to facilitate the land use *residential flat buildings* within the integrated tourist facility defined within Clause 7.11A of the LEP. The LEP defines *residential flat building* as “a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.” The APU will apply to the areas identified in Figure 1 below.

Figure 1: Proposed application area of Additional Permitted Use



Recommendation:

It is recommended that the following amendment be made to the LEP.

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

Use of certain land at Wine Country Drive, and Claret Ash Drive, Rothbury

- (1) This clause applies to the following land:

Lot 1503 DP 1110274
Part of Lot 1601 DP 1142579
Part of Lot 2202 DP 1167247

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- (2) Development for the purpose of **residential flat buildings** is permitted with development consent where the maximum height of the building does not exceed 14 metres.

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

The Planning Proposal is supported on the basis *residential flat buildings* are consistent, in terms of built form, with certain land-uses that are already permissible within the broader integrated tourist facility, specifically *serviced apartments, hotel and motel accommodation* and *multi dwelling housing*. It is considered that the proposed additional permitted use, *residential flat buildings*, will have no greater impact on the amenity than the existing permitted residential and tourist accommodation land uses, provided they are subject to a height limit of 14 metres. Further controls will also be specified development at The Vintage, including for *residential flat buildings*, as part of Council's review of the Vintage DCP. Council staff have already commenced this review.

In determining the height limit proposed consideration has been given to the impact of *residential flat buildings* on the amenity of the broader area. The proponent was required to undertake a Visual Impact Assessment, to demonstrate how *residential flat buildings* would look where they are proposed to be sited. **Figure 4** below depicts the comparative visual impact of a 14 metre residential flat building to existing dwellings that have already been constructed at The Vintage.

Figure 2: Extract from the Proponent's Visual Impact Assessment



Part 3: Justification

In accordance with the Department of Planning and Environment's "Guide to Preparing Planning Proposals", this section provides a response to the following issues:

- Section A: Need for Proposal;
- Section B: Relationship to Strategic Planning Framework;
- Section C: Environmental, Social and Economic Impact; and
- Section D: State and Commonwealth Interests

Section A: Need for Proposal

1 Resulting from a Strategic Study or Report

The Planning Proposal is not the result of a strategic study or report. The planning proposal was requested by Stevens Group on behalf of the landowner. The purpose of the proposal is to facilitate diversity in land use permissibility's to allow for diversity in housing supply and allow for increased density in residential accommodation types within the development.

2 Planning Proposal as best way to achieve to objectives

The proposed Planning Proposal is the most appropriate way to achieve the inclusion of **residential flat buildings** as a permitted land use on the sites identified in Figure 2.

The use of the *Schedule 1 Additional permitted uses* of the LEP 2011 ensures that the proposed land-use of **residential flat buildings** is restricted to a defined area as identified in Figure 2 below.

Figure 3: Aerial of proposed application area of Additional Permitted Use



In order to determine the exact location and specific design detail of the proposed APU, Council requested a Visual Impact Assessment be prepared to demonstrate the visual impact of proposed **residential flat buildings** on the surrounding area. The intent of this

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was to ensure that the proposal would have minimal visual impact from Wine Country Drive, the prominent entrance into the surrounding vineyards district. The proponent has based the Visual Impact Assessment on the design specifications of the plans for **residential flat buildings** included in Appendix 3. The Visual Impact Assessment is appended to this Planning Proposal at Appendix 4.

Section B: Relationship to Strategic Planning Framework

3 Consistency with Objectives and Actions within Regional Strategies

Hunter Regional Plan 2036

The Hunter Regional Plan (HRP) provides the overarching strategic framework to guide development, investment and planning within the Hunter region to 2036. The extract of the NSW Governments vision directly applicable to this Planning Proposal is:

Greater housing choice is available in existing and new communities, close to jobs and services and well supported by public transport and walking and cycling options. More housing has reduced the upward pressure on house prices.

In order to achieve the vision, the HRP set the following regionally focused goals:

- The leading regional economy in Australia
- A biodiversity-rich natural environment
- Thriving communities
- Greater housing choice and jobs

This Planning Proposal is conducive with the objectives of the HRP in that it will deliver greater housing choice within an already thriving community of the Cessnock LGA.

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

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

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

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

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

The Planning Proposal is consistent with the themes of the CSP, noting that there are no themes within the CSP that relate directly to housing.

City Wide Settlement Strategy (2010)

The City Wide Settlement Strategy (CWSS) was first prepared in 2003 and revised in 2010, the intent was to establish Council's strategic directions for land-use planning and the preparation of the CLEP 2011.

There is no inconsistency between the Planning Proposal and the CWSS, noting that the area known as The Vintage was amended from the RU4 Primary Production Small Lots zone to the SP3 Tourist zone by way of Amendment 18 to the CLEP 2011. As such, the Planning Proposal will not result in excessive intensification of development within the vineyards district as it relates to a confined area within the already established area of The Vintage.

Cessnock Local Strategic Planning Statement 2036

The Cessnock Local Strategic Planning Statement 2036 (LSPS) sets out the 20-year vision for land use in the local area. It establishes the special character and values of the LGA that are to be preserved and how change will be managed into the future.

The Planning Proposal is generally consistent with the provisions of the LSPS. Specifically, with consideration to the Planning Priorities of the LSPS that are relevant to the proposal type and location. These are:

- **Planning Priority 7: Urban development is encouraged in areas within existing infrastructure**
 - Planning Principles:
 1. Infill development is encouraged in established urban areas.
 2. Our urban areas are compact and well serviced.

Whilst The Vintage is not zoned residential, The Vintage has been developed in accordance with an approval issue in the mid-1990's, and subsequent Amendment 18 to the CLEP 2011 which introduced the SP3 Tourist zone, Clause 7.11A (sub clause 2(a) permits residential development not exceeding 1,022 dwellings within the integrated tourist facility) and the APU9 has by virtue of the planning outcomes established the area with an urban character specific to The Vintage site.

- **Planning Priority 23: The scenic and rural landscape of our Vineyards District is preserved.**
 - Planning Principles:
 3. Visually significant views and tree-lined local road corridors will be preserved.

The reduction in proposed land application of the APU and the proposed height limit have been negotiated to ensure that the visual impact of any proposed *residential flat building* is not greater than the impact of existing residential development within The Vintage. Particularly, that it is not greater than the existing dwellings located along the western side of Wine Country Drive.

The endorsement of the proposed APU is based purely on the fact that it is proposed within an area that is already zoned SP3 Tourist and subject to the provisions of an existing APU and therefore that has an established urban character. The proposal is not consistent with the broader aims of the LSPS in

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terms of protecting and preserving the Vineyards District, and a proposal of this nature would most unlikely be supported on a rural zoned site (the principle zone applying to the vineyards district).

5 Consistency with State Environmental Planning Policies

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

Table 1: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP 21 - Caravan Parks	The SEPP provides for development for caravan parks.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
SEPP 33 - Hazardous & Offensive Development	The SEPP provides considerations for consent for hazardous & offensive development.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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, provides effective communication in suitable locations and is of high quality design and finish.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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.	Consistent. The SEPP is the primary planning instrument for facilitating the design review panels for residential development. There is no such panel in the Cessnock LGA.
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.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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	Nothing in this Planning Proposal impacts on the operation of this SEPP.

SEPP	Relevance	Consistency and Implications
	<p>of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,</p> <p>(c) to facilitate the retention and mitigate the loss of existing affordable rental housing,</p> <p>(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,</p> <p>(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,</p> <p>(f) to support local business centres by providing affordable rental housing for workers close to places of work,</p> <p>(g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.</p>	
SEPP Building Sustainability Index: BASIX 2004	The SEPP provides for the implementation of BASIX throughout the State.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
SEPP (Coastal Management) 2018	<p>The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the <i>Coastal Management Act 2016</i>, including the management objectives for each coastal management area, by—</p> <p>(a) managing development in the coastal zone and protecting the environmental assets of the coast, and</p> <p>(b) establishing a framework for land use planning to guide decision-making in the coastal zone, and</p> <p>(c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the <i>Coastal Management Act 2016</i>.</p>	Nothing in this Planning Proposal impacts on the operation of this SEPP.
SEPP (Concurrences and Consents) 2018		Nothing in this Planning Proposal impacts on the operation of this SEPP.
SEPP (Educational Establishments and Child Care Facilities) 2017	The aim of this Policy is to facilitate the effective delivery of educational establishments and early education and care facilities across the State by:	Nothing in this Planning Proposal impacts on the operation of this SEPP.

SEPP	Relevance	Consistency and Implications
	<ul style="list-style-type: none"> (a) improving regulatory certainty and efficiency through a consistent planning regime for educational establishments and early education and care facilities, and (b) simplifying and standardising planning approval pathways for educational establishments and early education and care facilities (including identifying certain development of minimal environmental impact as exempt development), and (c) establishing consistent State-wide assessment requirements and design considerations for educational establishments and early education and care facilities to improve the quality of infrastructure delivered and to minimise impacts on surrounding areas, and (d) allowing for the efficient development, redevelopment or use of surplus government-owned land (including providing for consultation with communities regarding educational establishments in their local area), and (e) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and (f) aligning the NSW planning framework with the National Quality Framework that regulates early education and care services, and (g) ensuring that proponents of new developments or modified premises meet the applicable requirements of the National Quality Framework for early education and care services, and of the corresponding regime for State regulated education and care services, as part of the planning approval and development process, and (h) encouraging proponents of new developments or modified premises and consent authorities to facilitate the joint and shared use of the facilities of educational establishments 	

SEPP	Relevance	Consistency and Implications
	with the community through appropriate design.	
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.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
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.	Consistent. The SEPP is the primary planning instrument addressing the provision and operation of infrastructure across the State. Referral to the NSW Roads and Maritime Services (RMS) will be required for traffic generating development.
SEPP (Koala Habitat Protection) 2019	This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
SEPP Mining, Petroleum Production and Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	Nothing in this Planning Proposal impacts on the operation of this SEPP.
SEPP (Primary Production and Rural Land) 2019	The aims of this Policy are as follows: (a) to facilitate the orderly economic use and development of lands for primary production, (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources, (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social,	The land to which the planning proposal applies is zoned SP3 Tourist. Nothing in this Planning Proposal impacts on the operation of this SEPP.

SEPP	Relevance	Consistency and Implications
	<p>economic and environmental considerations,</p> <p>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</p> <p>(e) to encourage sustainable agriculture, including sustainable aquaculture,</p> <p>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</p> <p>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</p>	
<p>SEPP State and Regional Development 2011</p>	<p>The SEPP aims to identify development and infrastructure that is State significant and confer functions on the Joint Regional Planning Panels (JRPPs) to determine development applications.</p>	<p>Nothing in this Planning Proposal impacts on the operation of this SEPP.</p>
<p>SEPP (State Significant Precincts) 2005</p>	<p>The aims of this Policy are as follows:</p> <p>(a), (b) (Repealed)</p> <p>(c) to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State,</p> <p>(d) to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.</p> <p>(e), (f) (Repealed)</p>	<p>Nothing in this Planning Proposal impacts on the operation of this SEPP.</p>

6 Consistency with Section 9.1 Ministerial Directions for Local Plan Making

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

Table 2: Relevant Section 9.1 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.	Consistent. The Planning Proposal does not relate to business and industrial zones.
1.2. Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	Consistent. The Planning Proposal does not relate to rural zones.
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.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
1.4. Oyster Aquaculture	<i>The objectives of this direction are: (a) to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, (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>	<i>Not Applicable to LGA</i>
1.5. Rural Lands	The objectives of this direction are to: (a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic development of rural lands for rural and related purposes.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
2. The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. Environment and Heritage		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.

Ministerial Direction	Objective of Direction	Consistency and Implication
2.2 Coastal Protection	The objective of this direction is to protect and manage coastal areas of NSW.	<i>Not Applicable to the 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.	<p>Consistent.</p> <p>The Planning Proposal does not seek to amend any provisions of the LEP relating to heritage conservation.</p> <p>The site is not identified as a heritage item in the CLEP 2011.</p> <p>An Aboriginal Heritage Assessment was prepared at the time the land was zoned SP3 Tourist.</p>
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>Consistent.</p> <p>Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.</p>
2.6 Remediation of Contaminated Land	The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.	<p>Consistent.</p> <p>Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.</p>
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	<p>The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands. 	<p>Consistent.</p> <p>Although the Planning Proposal does not relate to a residential zone it is proposed on land zoned SP3 Tourist that is subject to the provisions of a local clause facilitating residential development. The proposed APU for residential flat buildings is consistent with the objectives of Direction 3.1.</p>
3.2 Caravan Parks and Manufactured Home Estates	<p>The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to provide for a variety of housing types, and (b) to provide opportunities for caravan parks and manufactured home estates. 	<p>Consistent.</p> <p>Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.</p>
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	<p>Consistent.</p> <p>Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.</p>

Ministerial Direction	Objective of Direction	Consistency and Implication
<p>3.4 Integrating Land Use and Transport</p>	<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> <ul style="list-style-type: none"> (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. 	<p>Consistent.</p> <p>Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.</p>
<p>3.5 Development Near Licensed Aerodromes</p>	<p>The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to ensure the effective and safe operation of aerodromes, and (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 (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>Consistent.</p> <p>Cessnock City Council is the owner and operator of the Cessnock Airport at Lot 22 DP 1261911.</p> <p>The Planning Proposal was referred to Council's Airport Coordinator for comment; it was advised that the proposed APU would in no way impact on the operations of the Cessnock Airport.</p> <p>The proposed location of the APU is not within the ANEF of the Cessnock Airport, nor does the proposed height limit penetrate the Obstacle Limitation Surface (OLS) as mapped within the Cessnock LEP 2011.</p> <p>The application area of the proposed APU, as identified in Figure 1, is located within the Airspace Affected Area (AHD) of 130-140m as identified on the OLS mapping.</p>
<p>3.6 Shooting Ranges</p>	<p>The objectives are:</p> <ul style="list-style-type: none"> (a) to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range, (b) to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land, 	<p>Consistent.</p> <p>Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.</p>

Ministerial Direction	Objective of Direction	Consistency and Implication
	(c) to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.	
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 sulfate soils.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
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.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
4.3 Flood Prone Land	The objectives of this direction are: (a) to ensure that development 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 (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.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
4.4 Planning for Bushfire Protection	The objectives of this direction are: (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 (b) to encourage sound management of bush fire prone areas.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction. The proposal was referred to the NSW Rural Fire Service. Copy of comments at Appendix 6.
5 Regional Planning		
5.10 Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	Consistent. The Planning Proposal is consistent with the Ministerial Direction 5.10. The Planning Proposal satisfies Direction 21 and 22 of the HRP.
6. Local Plan Making		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and	Consistent.

Ministerial Direction	Objective of Direction	Consistency and Implication
	appropriate assessment of development.	Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
6.2 Reserving Land for Public Purpose	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.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction.
6.3 Site Specific Provision	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	Consistent. Nothing in the Planning Proposal is contrary to the objectives of the Ministerial Direction. The Planning Proposal utilises Schedule 1 Additional permitted uses to ensure that residential flat buildings do not become permissible by virtue of inclusion within the zoning table on areas of the LGA that are intended for tourist development and are unsuitable for residential development.

Section C: Environmental, Social and Economic Impact

7 Impact on Threatened Species

The Planning Proposal will not impact upon threatened species as the proposed location of the APU is within the confines of the established development known as "The Vintage." The application area of the APU is located within the area of the development referred to as "The Village Centre" within the relevant DCP chapter, an area that has already been cleared and partially developed under previous development consents.

8 Environmental Impact

Bushfire

A portion of the proposed application area of the APU is partially Bushfire Prone Land, affected by Bushfire Vegetation Category 3 and Buffer zone. Any future residential development on the site will therefore be subject to considerations under Section 100B of the Rural Fires Act and the Planning for Bushfire Protection 2006, or the equivalent provisions at the time of lodgement of the development application/s.

The Gateway determination, dated 18 September 2020 and attached at Appendix 5, conditioned that the Planning Proposal be referred to the NSW Rural Fire Service. The concurrence request was sent on 25 September 2020. Referral comments were received on 12 November 2020. The referral outlines, "There is no objection to the Planning Proposal. Future development will be required to comply with the requirements of *Planning for Bush Fire Protection 2019*." A copy of the referral comments are available at Appendix 6.

Heritage

There are no known items of Aboriginal or archaeological significant on the subject site.

Airspace Operations

The proposal does not have an adverse impact on existing airspace operations.

General

Subsequent development applications will be required address in detail a range of environmental considerations considered relevant to the proposed application.

9 Social and Economic Impacts

The Planning Proposal is not supported by a social or an economic impact assessment, however it is unlikely to result in adverse social or economic impacts.

The proposed APU will facilitate higher density residential development within an established **integrated tourist development**, a development with a cap on the number of dwellings able to be developed by virtue of clause 7.11A of the CLEP 2011. The permissibility of **residential flat buildings** by way of the APU will result in an additional land-use included within the total number of dwellings per the provision of clause 7.11A.

Additionally, the proposal will reduce the demand to rezone rural land for urban purposes by providing housing diversity in an established area.

Section D: State and Commonwealth Interests

10 Adequate Public Infrastructure

The site/s to be subject to this APU are located within an established ***integrated tourist development***, known as The Vintage, and the land is already zoned SP3 Tourist. The site is fully serviced with infrastructure for utilities; however, infrastructure needs will also need to be considered with subsequent development applications.

The site is adequately serviced.

11 Consultation with State and Commonwealth Authorities

Formal consultation with selected statutory agencies will be undertaken per the conditions of the Gateway determination, should it be granted. Consultation is recommended with the following statutory authorities and agencies:

- Transport for NSW
- Hunter Water

Part 4: Mapping

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

Additional Permitted Uses Map

- APU_005

Part 5: Community Consultation

Community consultation will be undertaken per the conditions of the Gateway determination. Council recommends the exhibition of the Planning Proposal for a period of 28 days in accordance with Council's Community Participation Plan, unless the gateway states otherwise.

The proposed consultation strategy for this Planning Proposal includes:

- Notification in the Cessnock Advertiser;
- Web based notification via Council's website and application tracker.

Part 6: Project Timeline

It is estimated that the proposed amendment to the LEP will be completed by March 2021, following receipt of a Gateway determination from the Department of Planning, Industry and Environment. This is based on the assumption Gateway will be granted and that it will specify a 12-month timeframe.

Technical studies have not been identified as a component of the Planning Proposal. If the DPE Gateway determination makes prescriptions relating to technical studies, this may impact the estimated completion date.

PROJECT TIMELINE

	July 2020	Aug 2020	Sept 2020	Oct 2020	Nov 2020	Dec 2021	Jan 2021	Feb 2021
STAGE 1: Report to Council requesting endorsement to seek Gateway determination								
STAGE 1 Submit to DPIE – Gateway Panel consider Planning Proposal.								
STAGE 2 Receive Gateway Determination.								
STAGE 3 Preparation of documentation for Public Exhibition and undertake Agency Consultation (if any stipulated).								
STAGE 4 Public Exhibition								
STAGE 5 Review/consideration of submissions received								
STAGE 6 Report to Council								
STAGE 7 Forward Planning Proposal to DOPE with request the amendment be made								

Appendix 1:

Council Report and Minutes (dates)

Report to Ordinary Meeting of Council – PE25/2020, 15 July 2020

Minutes of Ordinary Meeting of Council – PE25/2020, 15 July 2020

All Council reports and minutes are accessible from Council's website:
<https://www.cessnock.nsw.gov.au/Council/Council-meetings/Minutes-agendas>

Planning and Environment

Report No. PE25/2020

Planning and Environment



SUBJECT: *PLANNING PROPOSAL: ADDITIONAL PERMITTED USE AT THE VINTAGE*

RESPONSIBLE OFFICER: *Acting Strategic Planning Manager – Iain Rush*

SUMMARY

The purpose of this report is to seek Council's endorsement to forward the Planning Proposal, which seeks to include *residential flat buildings* as an Additional Permitted Use at 'The Vintage', to the NSW Department of Planning, Industry and Environment (DPIE) for Gateway determination.

APPLICATION NUMBER:	18/2019/2/1
PROPOSAL:	Residential Flat Buildings Additional Permitted Use at 'The Vintage'
PROPERTY DESCRIPTION:	Lot 1503 DP 1110274 Part of Lot 1601 DP 1142579 Part of Lot 2202 DP 1167247
PROPERTY ADDRESS:	1 Caret Ash Drive and 963 Wine Country Drive, Pokolbin
ZONE: (CURRENT)	SP3 Tourist
ZONE (PROPOSED)	N/A
OWNER:	Errol Nominees Pty Ltd
PROPONENT:	Stevens Group

RECOMMENDATION

1. That Council requests a Gateway determination for the Planning Proposal – Residential Flat Buildings Additional Permitted Use at 'The Vintage' from the Department of Planning, Industry and Environment pursuant to the *Environmental Planning and Assessment Act 1979*.
2. That Council requests authorisation under Section 3.31 of the *Environmental Planning and Assessment Act 1979* to act as the local plan-making authority to make the Local Environmental Plan.
3. That Council undertakes consultation with public authorities and the community as determined by the Gateway determination.
4. That Council receives a report back on the Planning Proposal if unresolved written objections are received during consultation with the community; otherwise, forward the Planning Proposal to the Department of Planning, Industry and Environment requesting that the Plan be made.

BACKGROUND

Council received a Planning Proposal (**Enclosure 1**) to amend the *Cessnock Local Environmental Plan 2011* (the LEP) by including the land use, *residential flat buildings*, as an Additional Permitted Use (APU) on the following 11 lots (See **Figure 1**) at 'The Vintage':

- Lot 12 DP 1187663
- Lot 1601 DP 1142579
- Lot 202 DP 1167247
- Lot 1503 DP 1110274
- Lot 2202 DP 1167247
- Lots 21, 22 & 23 DP 1044459
- Lot 2303 DP 1209818
- Lot 1506 DP 1110274
- Lot D DP 182933

The proponents request did not apply to the full extent of the vintage, outlined in red below. The request applied to the land hatched blue.

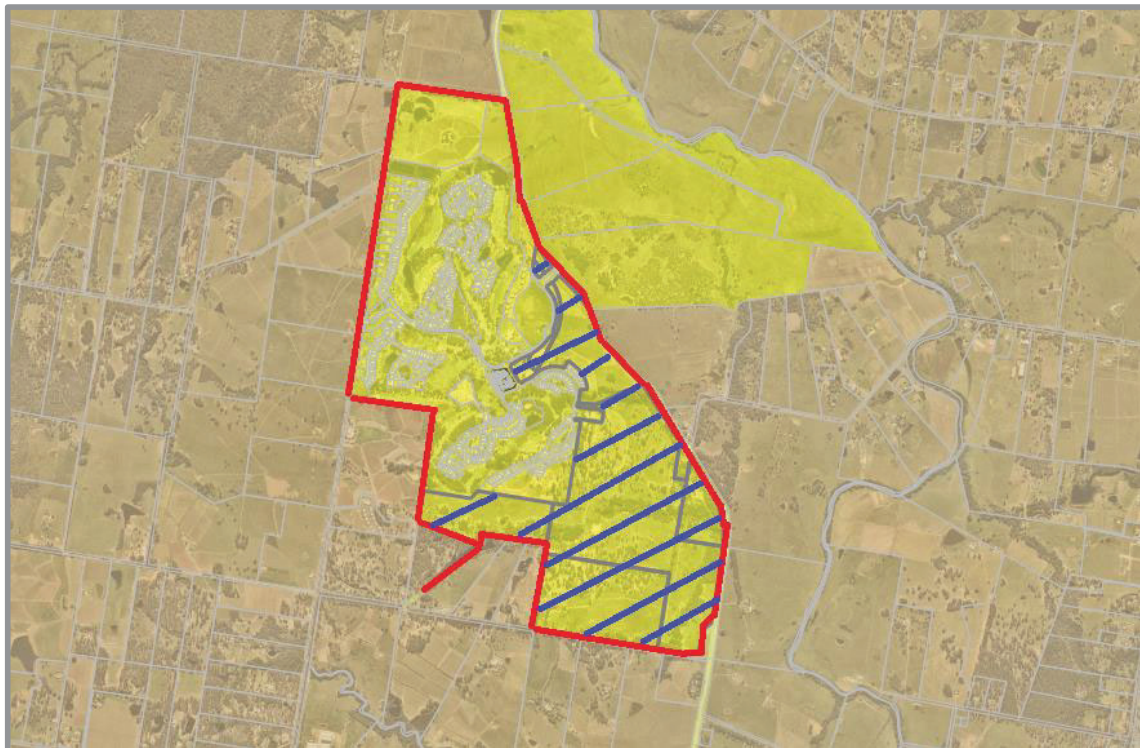


Figure 1: Lots originally sought for the APU and boundary of The Vintage site.

Council reviewed the proponent's Planning Proposal and sought additional information to address concerns regarding the potential siting, bulk, scale, and visual impact of *residential flat buildings* on the surrounding environment. The Vintage is located within an important rural

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and viticulture area of the Hunter Valley and was originally approved in the mid-1990s. The Vintage is effectively an urban development within a broader rural environment. For this reason, it is important that the impact of development at The Vintage is measured against the rural amenity of the broader area.

Following provision of the requested information and negotiation with the proponent, the application area of the Planning Proposal was reduced from 11 lots to one whole lot and part of two other lots (see **Figure 2**). The reduction in the extent of the APU substantially reduces the potential for visual impacts on the wider area. This is further discussed below.



Figure 2: Aerial

REPORT/PROPOSAL

The Vintage is defined under clause 7.11A of the LEP as an *integrated tourist facility*, meaning a *‘development that is predominantly tourist and visitor accommodation and tourist facilities in combination with other uses permissible on the land’*. Permitted land-uses at ‘The Vintage’ are governed by the SP3 Tourist Zone, and APU 9, *Use of certain land at Wine Country Drive, Palmers Lane and McDonalds Road, Rothbury*. The SP3 Zone, already permits with consent a range of land-uses, including *tourist and visitor accommodation*, which incorporates *serviced apartments* and *hotel and motel accommodation*. The existing APU 9 also permits *dual occupancies, exhibition villages, health services facilities, multi dwelling housing, places of public worship* and *shops*.

The Planning Proposal seeks to include a further APU in Schedule 1 of the LEP to facilitate the land-use *residential flat buildings* at The Vintage. The LEP defines *residential flat building* as “*a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.*”

The APU will only apply to the area identified in **Figure 2** and **Figure 3**.

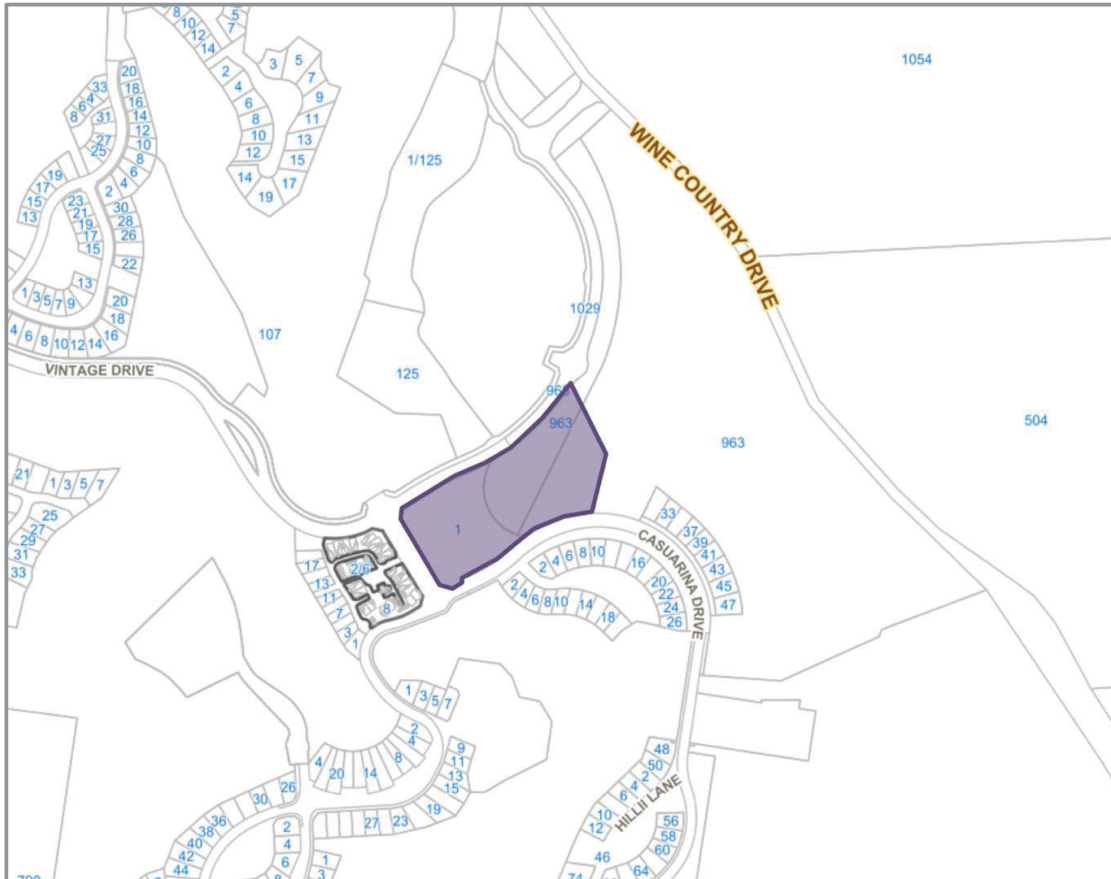


Figure 3: Proposed application area of Additional Permitted Use

The Planning Proposal is supported on the basis *residential flat buildings* are consistent, in terms of built form and general impact, with the following land-uses that are already permissible within the broader integrated tourist facility:

- **serviced apartment** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.
- **hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

(a) comprises rooms or self-contained suites, and

(b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

- **multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

It is considered that the proposed additional permitted use, *residential flat buildings*, will have no greater impact on the amenity of the area than the existing permitted residential and tourist accommodation land-uses (listed above), provided they are subject to a height limit of 14 metres. There is no existing height limit for development within The Vintage, the introduction of a height limit will help to mitigate the impact of *residential flat buildings*.

Further controls will also be specified development at The Vintage, including for *residential flat buildings*, as part of Council’s review of the Vintage DCP. Council staff have already commenced this review.

In determining the height limit proposed consideration has been given to the impact of *residential flat buildings* on the amenity of the broader area. The proponent was required to undertake a Visual Impact Assessment, to demonstrate how *residential flat buildings* would look where they are proposed to be sited. **Figure 4** below depicts the comparative visual impact of a 14 metre residential flat building to existing dwellings that have already been constructed at The Vintage.



Figure 4: Extract from the Proponent’s Visual Impact Assessment

It would be proposed to amend CLEP to include the following additional permitted use. The precise wording of the APU will be drafted by Parliamentary Counsel.



Use of certain land at Wine Country Drive and Claret Ash Drive, Rothbury

(1) *This clause applies to the following land:*

Lot 1503 DP 1110274

Part of Lot 1601 DP 1142579

Part of Lot 2202 DP 1167247

(2) *Development for the purpose of residential flat buildings is permitted with development consent where the maximum height of the building does not exceed 14 metres.*

The APU map that accompanies the LEP would also be amended to precisely identify where the proposed APU applies, as identified in Figure 4.

OPTIONS

Council has the following options:

1. Endorse the recommendations and forward the Planning Proposal to the Department of Planning, Industry and Environment for Gateway determination.
2. Not endorse the recommendations of this report. This would mean that the Planning Proposal would not progress.

CONSULTATION

Formal consultation on the Planning Proposal will be carried out in accordance with the Gateway determination.

STRATEGIC LINKS

a. Delivery Program

The Draft Planning Proposal generally aligns with the themes and objectives of the Cessnock 2027 Community Strategic Plan (CSP). Noting that the CSP does not have any objectives relating to the provision of housing.

b. Other Plans

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 (HRP) provides the overarching strategic framework to guide development, investment and planning within the Hunter Region to 2036. This Planning Proposal is consistent with the objectives of the HRP in that it will deliver greater housing choice within a specialised area of the LGA that already permits higher density land-uses.

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Cessnock Local Strategic Planning Statement 2036

The Cessnock Local Strategic Planning Statement 2036 (LSPS) sets out the 20-year vision for land use in the local area. It establishes the special character and values of the LGA that are to be preserved and how change will be managed into the future.

It is considered that *residential flat buildings* will have no greater impact in the area than other permissible land uses within the SP3 Tourist Zone and APU 9 *Use of certain land at Wine Country Drive, Palmers Lane and McDonalds Road, Rothbury, e.g. serviced apartments, hotel and motel accommodation and multi dwelling housing.*

The Planning Proposal is generally consistent with the provisions of the Draft LSPS. The Planning Priorities of the LSPS that are relevant to the proposal type and location are:

- Planning Priority 7: Urban development is encouraged in areas with existing infrastructure.
 - Planning Principles:
 1. Infill development is encouraged in established urban areas.
 2. Our urban areas are compact and well serviced.

Whilst The Vintage is not zoned residential, The Vintage has been developed in accordance with an approval issued in the mid-1990's, and subsequent Amendment 18 to the CLEP 2011 which introduced the SP3 Tourist zone, Clause 7.11A (sub clause 2(a) permits residential development not exceeding 1,022 dwellings within the integrated tourist facility) and the APU9 has by virtue of the planning outcomes established the area with an urban character specific to The Vintage site.

- Planning Priority 23: The scenic and rural landscape of our Vineyards District is preserved.
 - Planning Principles:
 3. Visually significant views and tree-lined local road corridors will be preserved.

The reduction in proposed land application of the APU and the proposed height limit have been negotiated to ensure that the visual impact of any proposed *residential flat building* is not greater than the impact of existing residential development within The Vintage. Particularly, that it is not greater than the existing dwellings located along the western side of Wine Country Drive.

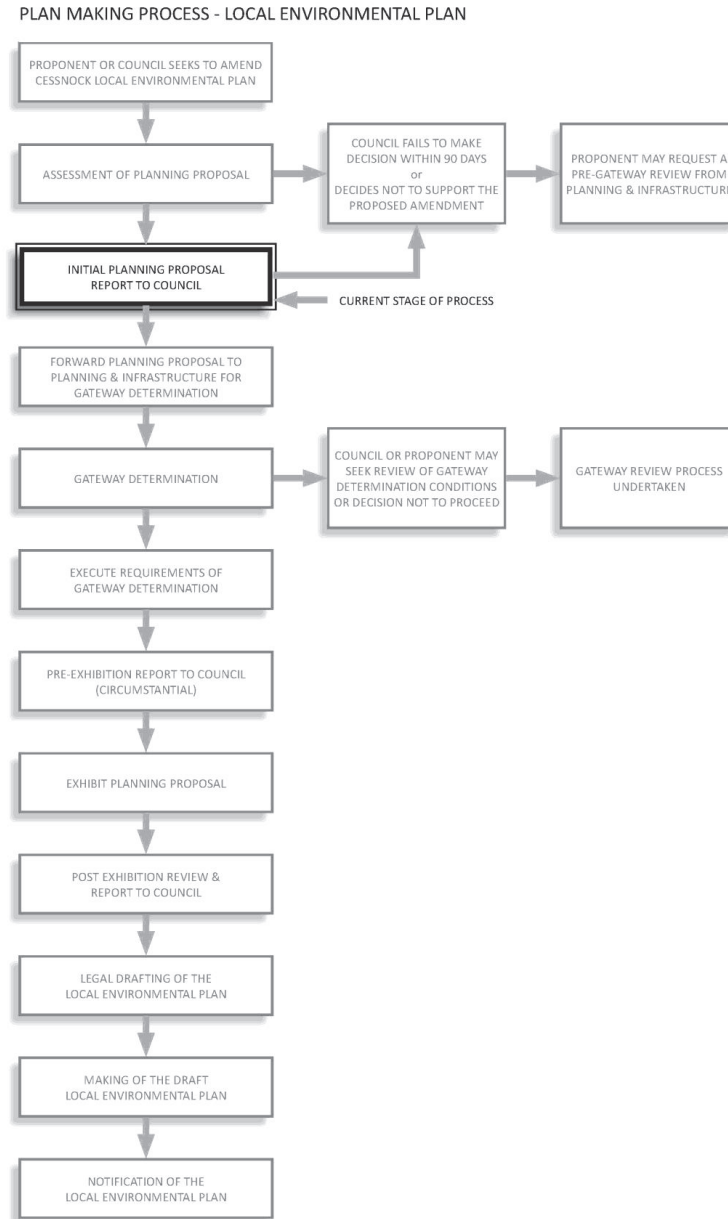
The endorsement of the proposed APU is based purely on the fact that it is proposed within an area that is already zoned SP3 Tourist and subject to the provisions of an existing APU and therefore that has an established urban character. The proposal is not consistent with the broader aims of the LSPS in terms of protecting and preserving the Vineyards District, and a proposal of this nature would unlikely be supported on a rural zoned site (the principle zone applying to the vineyards district)



IMPLICATIONS

a. Policy and Procedural Implications

The status of the Planning Proposal is identified in the following process flow chart.



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b. Financial Implications

Planning proposals require payment of fees as outlined in Council's Fees and Charges 2020/21. This Planning Proposal is considered Category A in accordance with the Fees and Charges. The next phase will be invoiced should Council endorse the Planning Proposal.

There are no financial implications to Council should it not proceed with the Planning Proposal.

c. Legislative Implications

This Planning Proposal has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the Department of Planning Industry and Environment's a Guide to Preparing Planning Proposals.

d. Risk Implications

Nil

e. Environmental Implications

A portion of the site to which the Planning Proposal relates is partially Bushfire Prone.

Environmental measures will be required to be addressed, and subsequently assessed, at the Development Application stage when the design details are known and should the Planning Proposal proceed.


f. Other Implications

The proposal will provide additional housing and housing types to the local community. The site is already serviced by all utilities and is within close proximity to the infrastructure and amenities of the development known as "The Vintage."

CONCLUSION

The Planning Proposal, specifically the request for an additional permitted use to facilitate *residential flat buildings* on certain land within the development known as 'The Vintage' has merit. It is recommended that Council endorse the Planning Proposal.

ENCLOSURES

- 1  Planning Proposal: Additional Permitted Use on certain land at The Vintage - Provided under Separate Cover

PLANNING AND ENVIRONMENT NO. PE25/2020

SUBJECT: PLANNING PROPOSAL: ADDITIONAL PERMITTED USE AT THE VINTAGE

MOTION **Moved:** Councillor Doherty **Seconded:** Councillor Fitzgibbon
1344

RESOLVED

1. That Council requests a Gateway determination for the Planning Proposal – Residential Flat Buildings Additional Permitted Use at ‘The Vintage’ from the Department of Planning, Industry and Environment pursuant to the *Environmental Planning and Assessment Act 1979*.
2. That Council requests authorisation under Section 3.31 of the *Environmental Planning and Assessment Act 1979* to act as the local plan-making authority to make the Local Environmental Plan.
3. That Council undertakes consultation with public authorities and the community as determined by the Gateway determination.
4. That Council receives a report back on the Planning Proposal if unresolved written objections are received during consultation with the community; otherwise, forward the Planning Proposal to the Department of Planning, Industry and Environment requesting that the Plan be made.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (13)	Total (0)

CARRIED UNANIMOUSLY

Appendix 2:

Proponents Planning Proposal

Planning Proposal request prepared by Stevens Group.

PLANNING PROPOSAL

To rezone land to include enabling provisions to
allow Residential Flat Buildings within the SP3
Tourist zoning

The Vintage Pokolbin

Prepared By: Lin Armstrong
Date: September 2019

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Postal Address: PO Box 3171 Erina NSW 2250 | Suite 6, 257-259 Central Coast Highway, Erina
Phone: 02 4365 3351 | **Fax:** 02 4365 3750 | www.stevensgroup.com.au

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1.0 INTRODUCTION

This report has been prepared by Stevens Group in support of an application to rezone land at The Vintage and in particular that part of the Vintage known as the “Balance Lands” or VBL. The proposal does not relate to the existing residential land at the Vintage but rather to the land shown at **Appendix 2**.

The Application seeks to re-instate “Residential Flat Buildings” as a permissible use over the remainder of the land. In this regard planning controls over the Vintage previously provided for a range of built forms and densities. As a consequence of the adoption of the standard instrument Local Environmental Plan (LEP) the only higher density housing form now permitted is “Multi Dwelling Housing”. This type of residential accommodation is defined as follows:

“Means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building”.

The key part of the definition of multi dwelling housing is the requirement for each dwelling in the building to have “access at ground level”.

Residential Flat Buildings on the other hand are defined as follows:

“means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing”.

By prohibiting Residential Flat Buildings and only permitting multi dwelling housing, the ability to design higher density housing is compromised. Each unit must be accessible from the ground floor. This design constraint does not limit the height of a development, the maximum floor space permitted or any other matter that would be readily visible to a person comparing multi dwelling housing to a residential flat building. It is therefore considered that the exclusion of residential flat development from the permissible land uses pertaining to The Vintage within the SP3 land use table and schedule of permitted uses (No.2) is unreasonable.

It is also relevant that if the units were to be occupied for tourist related purposes only, they would be permissible as “Serviced Apartments” with the same built form as a residential flat building. Inclusion of residential flat buildings in the schedule of permissible land uses over the land shown at **Appendix 2** is therefore requested.

The Planning Proposal should be read in conjunction with the following plans and documentation.

- Site Location Plan attached at **Appendix 1**.
- Plan of land over which the proposed rezoning is to occur at **Appendix 2**.

2.0 THE SITE

This section of the report identifies the proposed site for the development and describes its physical and social setting, thus placing the rezoning and future development in context.

2.1 SITE LOCATION AND PHYSICAL DESCRIPTION

The site is located adjacent to Wine Country Drive, Palmers Lane, McDonalds Road and Vintage Drive at Pokolbin. The land is gently undulating with vegetated creek corridors traversing the property.

See Site Location Plan attached at **Appendix 1**.

The land that is the subject of the rezoning application is vacant, if undeveloped, with the exception of the Village Centre which is currently under construction. The Village Centre is considered the ideal location for the establishment of higher density built forms given the proximity to the cafes, restaurants and neighbourhood shops that will be built there.

2.2 REAL PROPERTY DESCRIPTION

The Real Property Description for the land is:

Lot 12 DP 1187663
Lot 1601 DP 1142579
Lot 202 DP 1167247
Lot 1503 DP 1110274
Lot 2202 DP 1167247
Lots 21, 22 & 23 DP1044459
Lot 2303 DP 1209818
Lot 1506 DP 1110274
Lot D DP 182933

It should be noted that whilst “Residential Flat Development” is proposed to be enabled over the above portions of SP3 Tourism zoned land, only certain pockets will be developed for such purposes subject to the relevant considerations under S79C of the Environmental Planning & Assessment Act 1979 (as amended) at Development Application stage.

3.0 FUTURE DEVELOPMENT

This section of the report describes the proposed development in order to provide Council with sufficient information to assess the rezoning application. In this regard the site is currently zoned SP3 Tourist.

3.1 DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed outcome of the Planning Proposal is to enable the establishment of Residential Flat Buildings on the subject land (see plan at **Appendix 2**) under the provisions of the Cessnock Local Environmental Plan 2011.

The objectives of the SP3 Tourist zone that applies to the subject land are;

- *To provide for a variety of tourist-oriented development and related uses.*
- *To allow for integrated tourist development.*

Residential Flat Buildings are currently a prohibited use within the SP3 Tourist Zone under the provisions of the Cessnock Local Environmental Plan 2011 (CLEP 2011).

This Planning Proposal seeks to permit the establishment of Residential Flat Buildings on various parts of the site suited to higher density development, for example, within the approved Village Centre.

A Residential Flat Building is defined within the CLEP 2011 to mean:

A Residential Flat Building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Residential flat buildings are a type of residential accommodation which is defined within the CLEP 2011 to mean:

Residential Accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,*
- (b) boarding houses,*
- (c) dual occupancies,*
- (d) dwelling houses,*
- (e) group homes,*
- (f) hostels,*
- (g) multi dwelling housing,*
- (h) residential flat buildings,*
- (i) rural workers' dwellings,*
- (j) secondary dwellings,*
- (k) semi-detached dwellings,*
- (l) seniors housing,*
- (m) shop top housing,*

but does not include tourist and visitor accommodation or caravan parks.

The SP2 Tourist Zone that applies to The Vintage permits the following range of uses with Development Consent.

Aquaculture;
Attached dwellings;
Building identification signs;
Business identification signs;
Cellar door premises;
Centre based childcare facilities
Dwelling houses;
Entertainment facilities;
Environmental facilities;
Environmental protection works;
Exhibition homes;
Flood mitigation works;
Food and drink premises;
Function centres;
Home businesses;
Home industries;
Home occupations;
Horticulture;
Information and Education facilities;
Kiosk;
Markets;
Neighbourhood shops;
Recreation facilities (indoor);
Recreation facilities (outdoor);
Registered clubs;
Respite day care centres;
Roads;
Semi-detached dwellings;
Sewerage treatment plants;
Tourist and visitor accommodation;
Viticulture;
Water recycling facilities;
Water reticulation systems;
Water storage facilities;
Water and treatment facilities.

The additional permissible uses on the land as spelled out in Schedule 1 of Cessnock LEP 2011 and include the following:

- (a) Dual occupancies;*
- (b) Exhibition villages;*
- (c) Health services facilities;*
- (d) Multi dwelling housing;*

- (e) Places of public worship;*
- (f) Shops.*

Each of the uses discussed above have a separate definitions within the dictionary to the Local Environmental Plan, however, of most relevance to this discussion is the definition of serviced apartments which means:

“a building (or part of a building) providing self contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner’s or manager’s agents.”

As noted in the introduction of this report, residential flat buildings have the same physical appearance as serviced apartments. Whilst serviced apartments are currently permitted, residential flat buildings are not.

4.0 THE PLANNING PROPOSAL

This report has been prepared in accordance with the NSW Department of Planning's "Guide to Preparing Planning Proposals".

PART 1

Objectives or Intended Outcomes of the proposed LEP:

The objective of the proposal is to allow for the development of the subject land, specifically to allow for the construction of residential flat buildings on part of the site suitable for higher density forms of development.

PART 2

An explanation of the provisions that are to be included in the proposed LEP:

This proposal seeks to enable Residential Flat Buildings as a Permissible use within the SP3 Tourist zone to enable the establishment of Residential Flat Buildings for permanent occupation.

PART 3

The Justification for the objectives, outcomes and provisions and the process for their implementation:

Section A – Need For The Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

No. It is noted, however, that The Vintage Balance lands constitutes an Urban Release Area. A diversity of housing options are generally encouraged within an URA. The exclusion of Residential Flat Buildings limits housing options.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, the subject land is strategically located for the uses proposed and the site.

Further, the Vintage has been developed as a major integrated Tourism and Recreation facility.

The enabling provisions proposed for the Residential Flat Buildings will allow the development of a more diverse offering of housing options for residents and visitors to the area.

As noted elsewhere, this form of housing is permitted under the current DCP, however, was inadvertently removed from the LEP in the course of the development of the Standard Instrument.

Section B - Relationship to Strategic Planning Framework

1. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The applicable Regional Strategy is the Greater Newcastle Metropolitan Plan (2036). A primary objective of the strategy is to ensure that there is sufficient appropriately zoned land capable of accommodating development to meet the housing and employment needs of the growing community over the next 25 years. The plan seeks to provide housing diversity and choice to improve affordability, help meet the needs of the ageing population and support the reduction in household size. The need for a smaller residential option has been identified by a number of downsizers currently living in the Vintage.

2. Is the Planning Proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The Community Strategic Plan for Cessnock 2027 identifies the need to attract a diverse range of businesses, industries and services to ensure there is a sustainable and prosperous economy in the Cessnock LGA. The desired outcomes of Cessnock 2027 aligns with the Regional Development Framework prepared by the NSW Department of Industry, Skill and Regional Development and seeks to activate local economies through the provision of services and infrastructure to support regional centres.

The proposed enabling provisions are consistent with these strategic plans.

3. Is the Planning Proposal consistent with applicable State Environmental Planning Policies? (SEPPs)

SEPP No.55 – Remediation of Land

The land is zoned and has been developed for tourist and permanent residential purposes. There is no evidence of previous contaminating activities having been conducted on the land.

Is the proposal consistent with applicable Ministerial Directions made under S.117?

The Minister has issued Directions under Section 117 (2) of the Environmental Planning and Assessment Act. These Directions are to be taken into consideration in the determination of a rezoning application. The following section of this report addresses those directions that are of relevance to the current proposal: -

Table 1: Section 117 Directions

The Minister for Planning has issued directions under Section 117 (2) of the Environmental Planning and Assessment Act 1979 to relevant planning authorities. These 117 directions are to apply to Planning Proposals. A review of the directions indicates that the following directions are relevant to the current proposals:

- 5.10 Implementation of Regional Plans
- 6.3 Site Specific Provisions

Summary of Relevant s117 Directions	Comment
<p>5.10 Implementation of Regional Plans The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions, actions contained in regional plans.</p>	<p>The Greater Newcastle Metropolitan Plan 2036 has been considered in Section B(1) of this Planning Proposal and it is considered that the proposed rezoning is consistent with the regional strategy.</p>
<p>6.3 Site Specific Provisions The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.</p>	<p>The proposed rezoning will result in less restrictive controls than currently apply.</p>

Table 2: Spot Rezoning Criteria (Category 1)

	Criteria	Yes/No
1.	Will the LEP be compatible with agreed State and Regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?	Yes. The rezoning is consistent with the Greater Newcastle Metropolitan Plan 2036. See Section B(1) above.
2.	Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (S.117) directions?	See Table 1
3.	Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?	Yes. The land is within Greater Newcastle Metropolitan Plan 2036.
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	No.
5.	Will the LEP be compatible/complementary with surrounding land uses?	Yes. The Vintage has been developed to reflect a range of built forms and densities under the existing DCP. Residential Flat Buildings will complement to mix and assist in meeting the objectives of the DCP.
6.	Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?	
7.	Will the LEP deal with a deferred matter in an existing LEP?	No.
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	It is considered unlikely that the current proposal would set a precedent for other spot rezonings.

Section C - Environmental, Social and Economic Impact

1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities or their habitats, will be adversely affected as a result of the proposal?

It is unlikely that the proposal will adversely affect any critical habitat, threatened species, populations or ecological communities or their habitats. The land does not include or comprise critical habitat or lay within a conservation area under the meaning of an

environmental planning instrument or any proposed environmental instrument applying to the land.

The site has been previously developed for tourist and residential purposes including the new "Pavilions" development under construction and has been significantly disturbed in the past.

Vegetated Creek Corridors and buffer areas will be retained.

2. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The potential environmental impacts relate to future minor pockets of vegetation removal, sedimentation and erosion during construction and the potential impacts of the future development on the built environment including noise and traffic impacts. These matters have been considered in the previous rezoning to SP3 and can be addressed at the DA stage and ameliorated via future development conditions.

3. Has the Planning Proposal adequately addressed any social and economic effects?

Yes. Endorsement of this proposal will allow the land to be used for a purpose which is socially and economically compatible with the existing environment.

Section D - State and Commonwealth Interests

4. Is there adequate public infrastructure for the Planning Proposal?

Yes, the site is located within the proposed extension to The Vintage and all services are available to the area or can be augmented to meet the future requirements of the development if needed.

5. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

To be advised should the application proceed to the Gateway.

PART 4

Community Consultation

Details of the Community Consultation that is to be undertaken are yet to be determined.

5.0 CONCLUSION

The Planning Proposal seeks enabling provisions for Residential Flat Buildings on the subject land.

Any potential adverse impacts arising as a result of future development of the land will be assessed at DA stage.

Favourable consideration of the Planning Proposal is therefore requested.

APPENDIX 1 - Location Plan



Site Location Plan – “The Vintage”

**APPENDIX 2 -
Plans of Area to be Rezoned**



ver.	date	comment	drawn	pm	level information	scale (A1 original size)	notes
A	14/08/19	INITIAL ISSUE	AM	MD	DATUM: N/A CONTOUR INTERVAL: N/A	0 125 250m SCALE: 1:5000 (FULL)	

drawing title:

VBL SITE PLAN

location: WINE COUNTRY DRIVE
POKOLBIN

council: CESSNOCK

dwg ref: 11634(9)-VBL-002-A

client:



central coast office ph: (02) 4305 4300
 hunter office ph: (02) 4978 5100
 sydney office ph: (02) 8046 7411

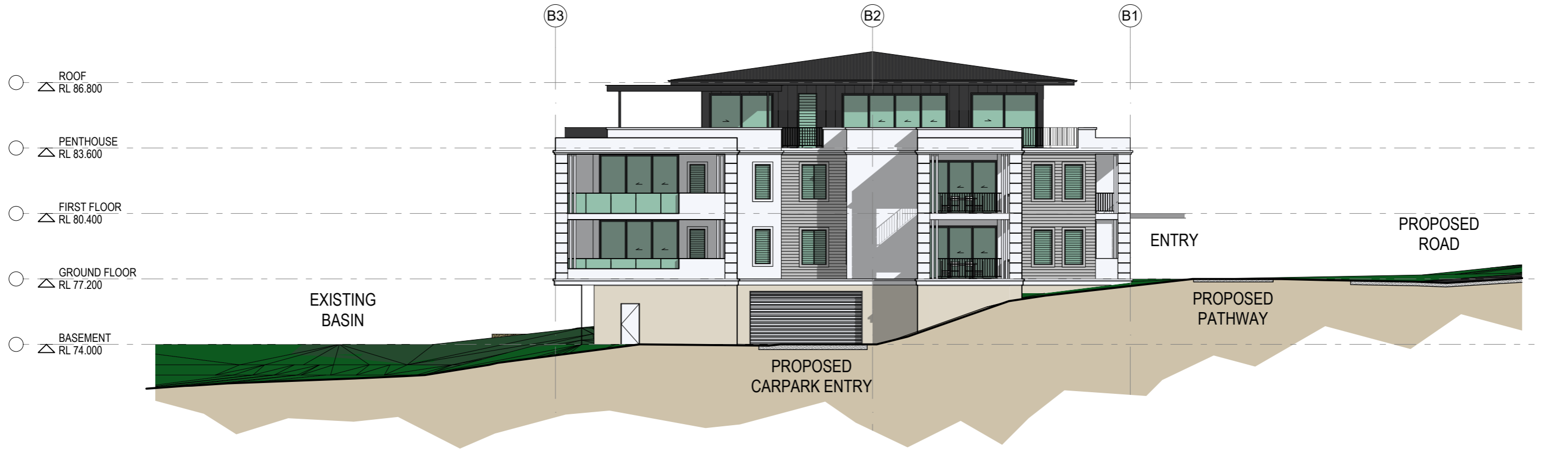
www.adwjohanson.com.au

working beyond expectations

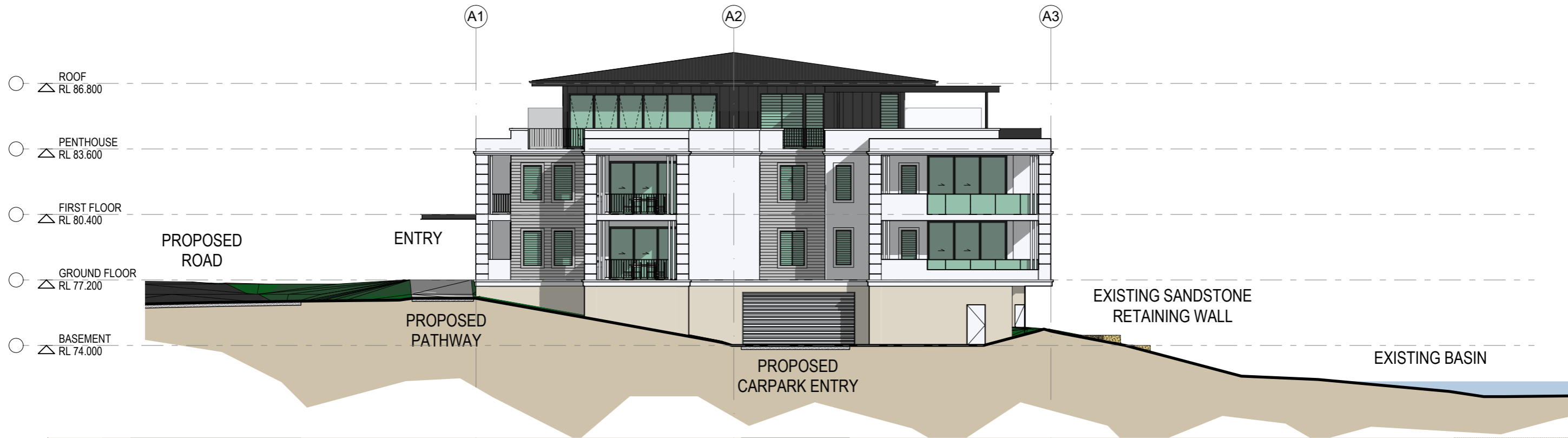
Appendix 3:

Elevations of Proposed “Pavilion Apartments”

Elevations of proposed “Pavilion Apartments” submitted after a request for further information.



EAST ELEVATION
1:200

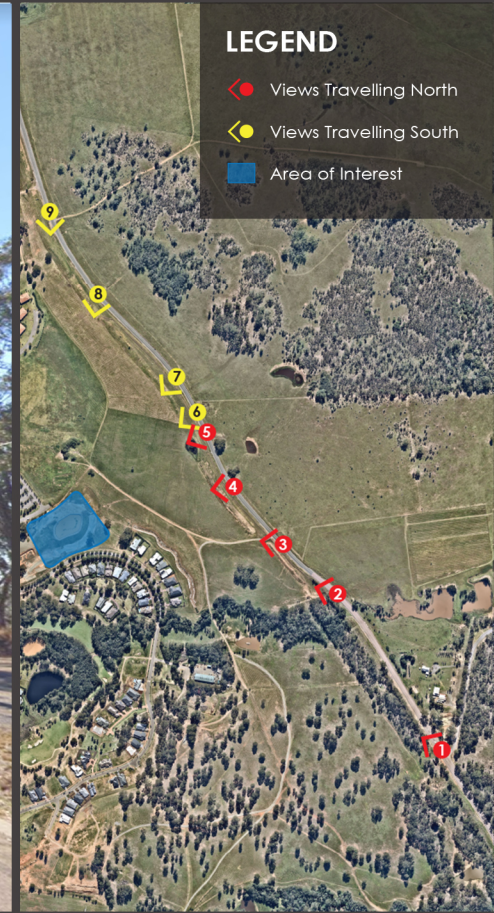


WEST ELEVATION
1:200

Appendix 4:

Visual Impact Assessment

Visual Impact Assessment submitted after a request for further information.



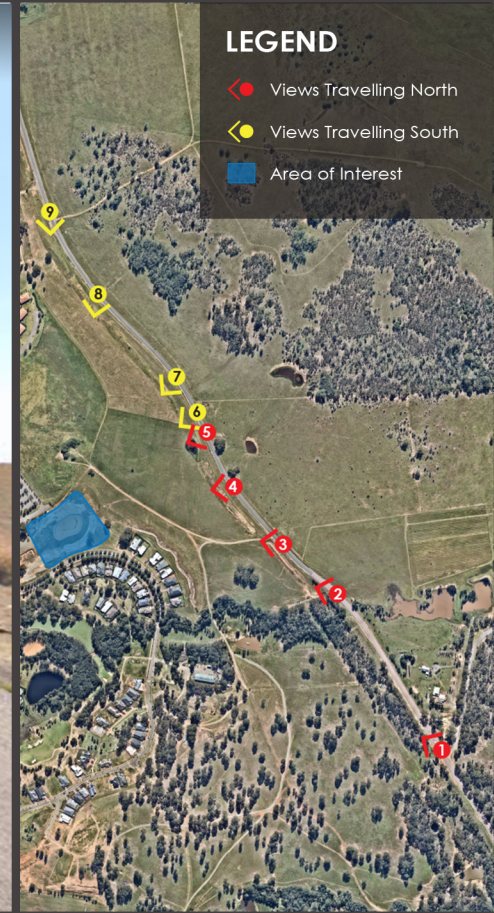
1 VIEW 1 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE (SITE NOT VISIBLE IN LOCATION)

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



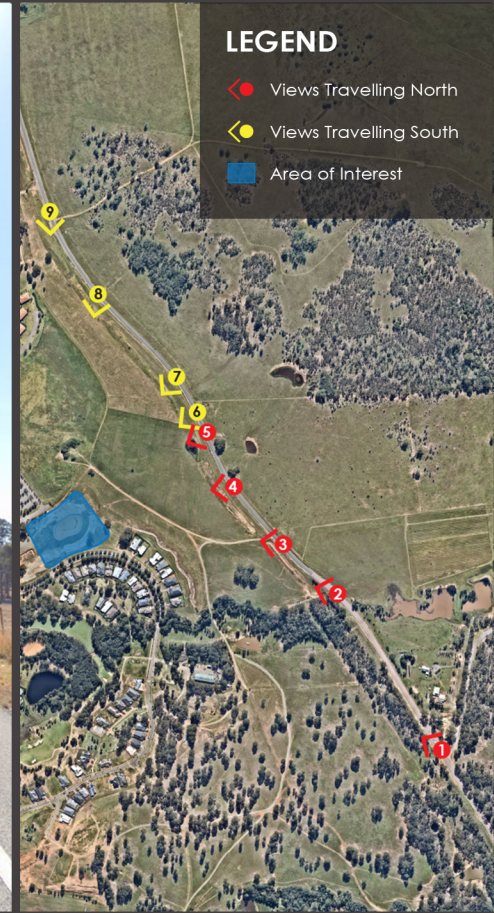
2 VIEW 2 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



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- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



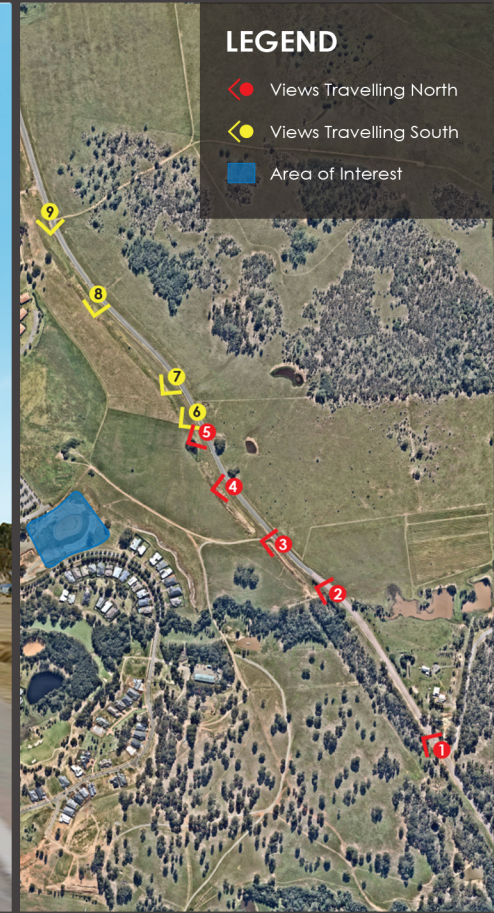
3 VIEW 3 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE

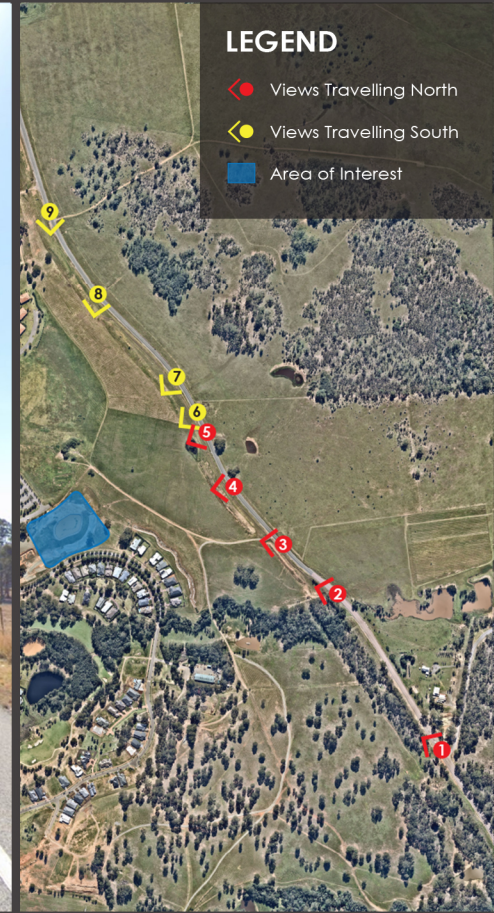


LEGEND

- Views Travelling North
- Views Travelling South
- Area of Interest

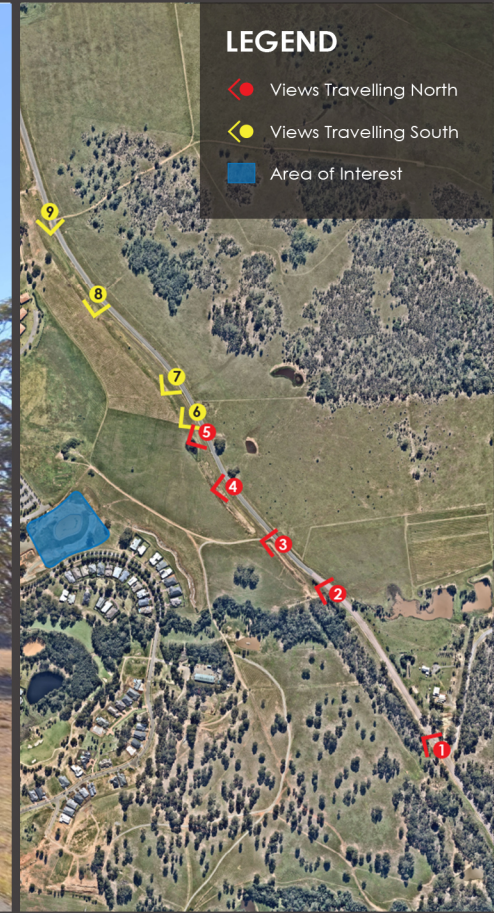
3 VIEW 3 - 3D MODEL AND DIGITAL TWIN
TRAVELLING NORTH ALONG WINE COUNTRY DRIVE

VINTAGE VILLAGE SITE
- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



3 VIEW 3 - PHOTOMONTAGE

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



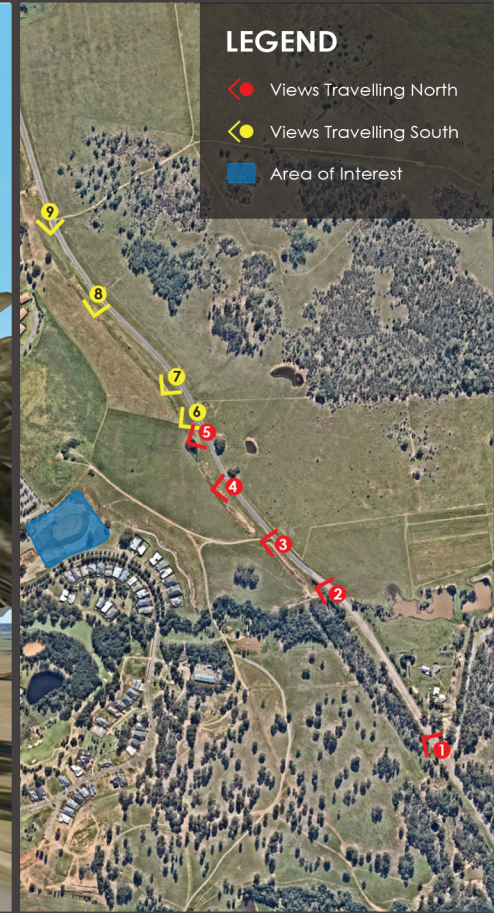
4 VIEW 4 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



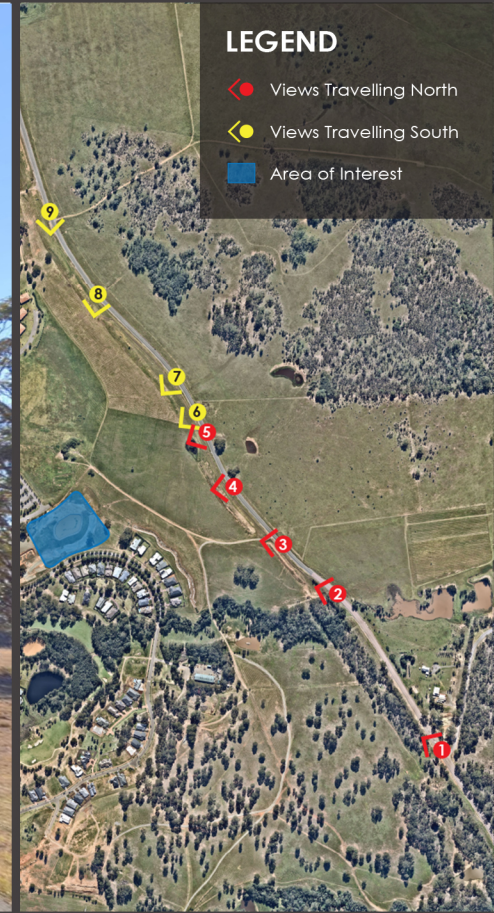
VINTAGE VILLAGE SITE

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



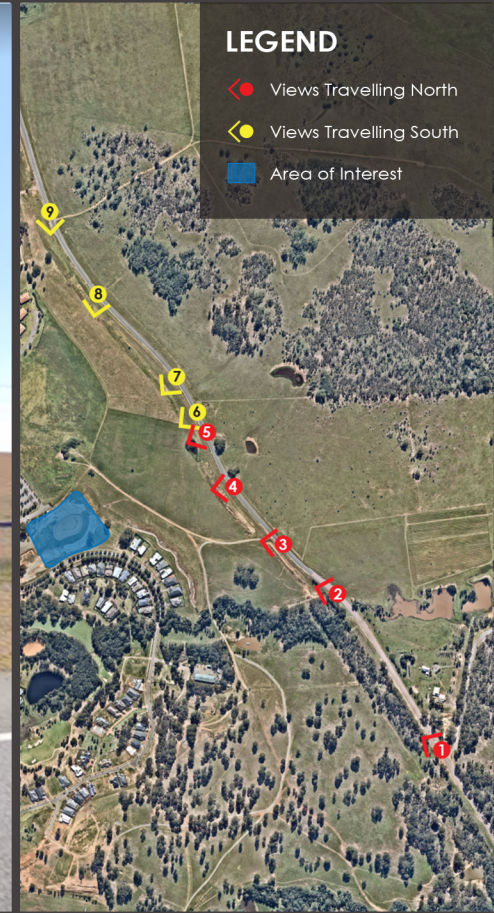
4 VIEW 4 - 3D MODEL AND DIGITAL TWIN
TRAVELLING NORTH ALONG WINE COUNTRY DRIVE

 **VINTAGE VILLAGE SITE**
- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



4 VIEW 4 - PHOTOMONTAGE

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



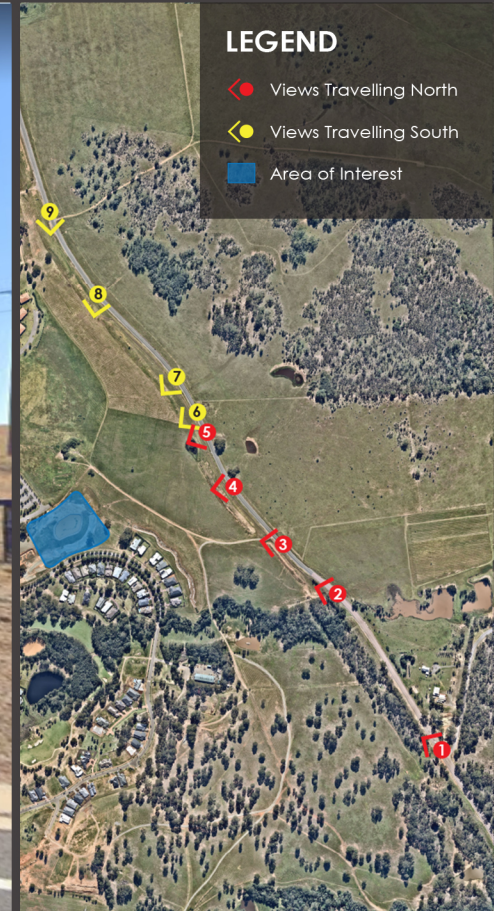
5 VIEW 5 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING NORTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE (SITE NOT VISIBLE IN LOCATION)

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



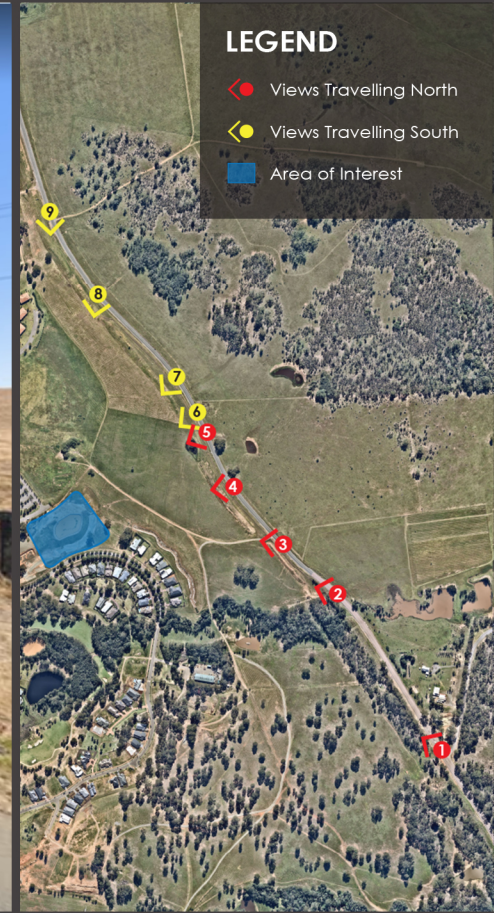
6 VIEW 6 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING SOUTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE (SITE NOT VISIBLE IN LOCATION)

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



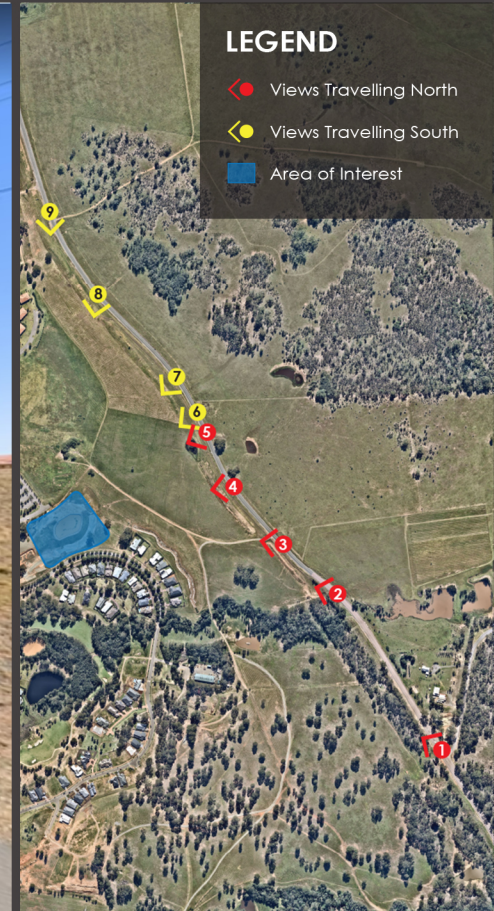
7 VIEW 7 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING SOUTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE (SITE NOT VISIBLE IN LOCATION)

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



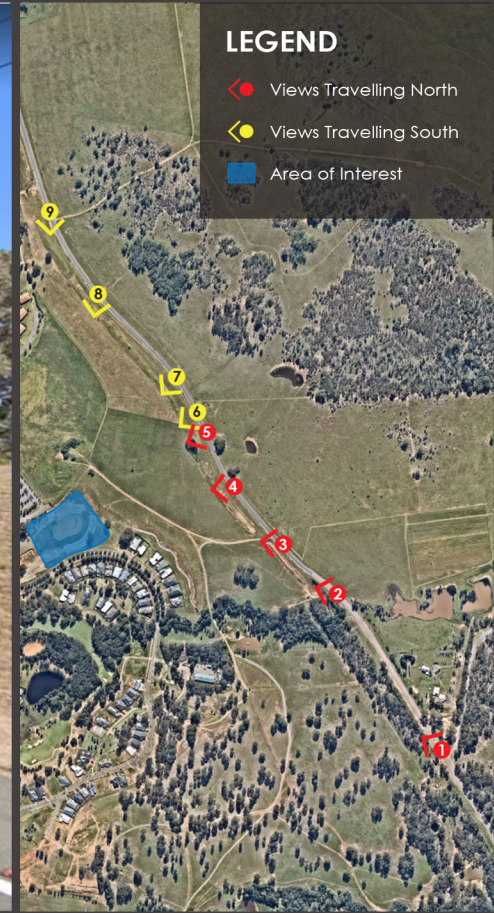
8 VIEW 8 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING SOUTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE (SITE NOT VISIBLE IN LOCATION)

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE



9 VIEW 9 - CURRENT VIEW (GOOGLE STREET VIEW)

TRAVELLING SOUTH ALONG WINE COUNTRY DRIVE



VINTAGE VILLAGE SITE (SITE NOT VISIBLE IN LOCATION)

- VIEWLINE AND LOCATION OF VINTAGE VILLAGE

Appendix 5:

Gateway determination

Copy of Gateway determination received to Council on 18 September 2020.



Ms Lotta Jackson
General Manager
Cessnock City Council
62-78 Vincent Street
CESSNOCK NSW 2325

Dear Ms Jackson

Planning proposal PP_2020_CESSN_004_00 to amend *Cessnock Local Environmental Plan 2011*

I am writing in response to Cessnock City Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information received on 24 July 2020 in respect of the planning proposal to permit residential flat buildings as an additional permitted use within the integrated tourist development 'The Vintage'.

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

As delegate of the Secretary, I have also agreed the planning proposal's inconsistencies with section 9.1 Ministerial directions 2.3 Heritage Conservation and 6.3 Site Specific Provisions are justified in accordance with the terms of the directions. No further approval is required in relation to these directions.

Council will still need to obtain the agreement of the Secretary to comply with the requirements of the following section 9.1 Ministerial directions:

- 2.6 Remediation of Contaminated Land;
- 3.5 Development Near Regulated Airports and Defence Airfields; and
- 4.4 Planning for Bushfire Protection.

Council should ensure this occurs prior to public exhibition.

It is noted Council has requested to be authorised as the local plan-making authority. I have considered the nature of Council's planning proposal and have conditioned the Gateway for Council to be authorised as the local plan-making authority.

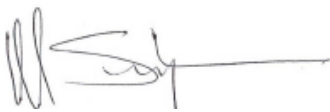
The amending local environmental plan (LEP) is to be finalised within six months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six

weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning, Industry and Environment.

The NSW 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 section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Mr Scott Monro, Planning Officer, Central Coast and Hunter Region to assist you. Mr Monro can be contacted on 02 4927 3208.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dan Simpkins', with a long horizontal line extending to the right.

18/09/2020

Dan Simpkins
Director, Central Coast and Hunter Region
Planning and Assessment

Encl: Gateway determination
Authorised plan-making reporting template



Gateway Determination

Planning proposal (Department Ref: PP_2020_CESSN_004_00): to permit residential flat buildings as an additional permitted use within the integrated tourist development 'The Vintage'.

I, the Director, Central Coast and Hunter at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Cessnock Local Environmental Plan 2011* to permit residential flat buildings as an additional permitted use in the integrated tourist development 'The Vintage' should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal should be updated to:
 - a. include a response to satisfy the provisions of section 9.1 Ministerial direction 2.6 to demonstrate potential contamination has been considered; and
 - b. update the response to section 9.1 Ministerial direction 3.5 to acknowledge Cessnock City Council as the owner/operator of Cessnock Airport and provide advice to satisfy the provisions of the direction.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018) and must be made publicly available for a minimum of **14 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Ministerial directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.

6. The time frame for completing the Local Environmental Plan is to be **6 months** following the date of the Gateway determination.

Dated 18th day of September 2020.



Dan Simpkins
Director, Central Coast and Hunter Region
Planning and Assessment
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and
Public Spaces

Appendix 6:

Concurrence – NSW Rural Fire Service

Copy of comments from NSW Rural Fire Service.



NSW RURAL FIRE SERVICE

Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Your reference: 18/2019/2
Our reference: SPI20201002000173

ATTENTION: Hannah McCauley

Date: Thursday 12 November 2020

Dear Sir/Madam,

**Strategic Planning Instrument
LEP Amendment - Planning Proposal**

Planning Proposal: Request for Additional Permitted Use within "The Vintage". Development for the purpose of residential flat buildings is permitted with development consent where the maximum height of the building does not exceed 14 metres.

I refer to your correspondence dated 02/10/2020 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

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

There is no objection to the Planing Proposal. Future development will be required to comply with the requirements of *Planning for Bush Fire Protection 2019*.

For any queries regarding this correspondence, please contact Garth Bladwell on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager Planning & Environment Services
Planning and Environment Services

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

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

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au