

# Wollombi Valley Progress Association

C/- Wollombi General Store  
Wollombi 2325

Mr. Bernie Mortomor,  
General Manager,  
Cessnock City Council,  
Vincent Street,  
Cessnock. NSW. 2325.

Dear Sir,

re: Cessnock Draft LEP 2008.

re: State Environmental Planning Policy (Rural Lands) 2008.

re: Report of the Independent Expert Panel into the NSW Heritage Act. (December 2007).

The above SEPP and Report constitute the most up-to-date planning documents in NSW in relation to Rural Lands and Heritage. In important respects they challenge and even reverse aspects of previous planning policies in these areas. The Cessnock Draft LEP 2008 was prepared over a period of time well prior to either document's release, and understandably reflects earlier planning policies.

You will be aware from the Wollombi Valley Forum and other meetings, and numerous correspondence, that there is a groundswell, even tidal wave, of community opposition to the proposed zoning of Wollombi Valley as E3 Environmental Management, rather than RU2 Rural Landscape, and to the proposed massive expansion of the Heritage Conservation Area from currently covering the precincts of Wollombi Village to cover an area from Bucketty in the south to Paynes Crossing in the north, and east almost to Millfield.

I write on behalf of the LEP Sub-committee of the Wollombi Valley Progress Association to request that Council, in conjunction with the NSW Department of Planning, delay approval and exhibition of the Draft LEP, to enable it to be reviewed and revised in the light of the recent Rural Lands SEPP 2008 and the Heritage Report. I set out below the basis for requesting such review.

Re: Proposed E3 Environmental Management zoning of Wollombi Valley, rather than RU2 Rural Landscape.

The Valley has been a rural area since the first European settlement early in the 1800s, and has been zoned Rural 1(a) since 1989, along with the vast majority of rural holdings in the LGA. Wollombi Valley is by far the largest area in the LGA where Rural 1(a) land is now proposed to be zoned E3. The only other area covers a small pocket in the north east. At a meeting on 23 April 2008, Council's principal planning officer stated that the advices received from the NSW Department of Primary Industries were a critical influence in the inclusion of the Wollombi Valley in the E3 zone.

In the *Review of Land Use Planning in the Central West*, upon whose recommendations the Rural Lands SEPP 2008 was based, the Panel criticized the approach of the Department of Primary Industries in rural zones, and stated at p.17 *The Department of Planning to its detriment followed along with the DPI approach rather than providing an alternative more holistic 'planning based' rather than 'economic based' approach. It is considered essential that this situation be rectified if proper planning based on the full range of social, economic and environmental factors not solely economic viability is to be reinstated in rural areas.*

The Rural Planning Principles resulting from the Review are set out in cl. 7 of the Rural Lands SEPP 2008, and include the following:

*(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

.....

*(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*

.....

*(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.*

It is our view that the proposed E3 zoning in Wollombi Valley stifles opportunities and fails to balance interests as required by these Principles. The E3 zoning was based upon the advice of the

Department of Primary Industries, whose approach has now been criticized by the Panel, as discussed above. A proper application of the Rural Planning Principles would require Wollombi Valley to be zoned RU2 Rural Landscape, in keeping with its long rural history, and with proposed RU2 zonings elsewhere in the LGA. There is concern in the Wollombi Valley community that the E3 zoning, which does not reflect the above Principles, may be being utilised as a means of stopping development in the area, or for some other planning agenda.

I note that the Minister has directed that councils exercise their functions relating to local environmental plans in accordance with the Rural Planning Principles. Accordingly, the final LEP must reflect these Principles. If not, it may well be vulnerable to legal challenges, bearing in mind also cl.5 of the Rural Lands SEPP 2008, which provides *If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.* The Minister also has the power to direct a council to prepare a local environmental plan. It would be most regrettable, to say the least, if the Minister were to consider that the Cessnock Draft LEP 2008 reflected outdated planning principles, and were to direct the preparation of a new Plan.

Re: The massive expansion of the Heritage Conservation Area.

The Wollombi Valley community welcomes restrictions that do in fact protect and conserve the heritage of our district, and supports the extent of the current Heritage Conservation Area under the Hunter REP. However, the proposed Heritage Conservation Area in the Cessnock Draft LEP 2008 goes far beyond this, and instead imposes onerous and unnecessary restrictions on the use and enjoyment of areas of land which do not contain significant heritage values. These provisions were initially drafted before the publication of the *Report of the Independent Expert Panel into the NSW Heritage Act*. That Report deals in detail not only with that Act, but also with principles that should be adopted by councils when including heritage provisions in LEPs. At p.67 the Report sets out 25 Proposed Recommendations. Nearly all of these have a bearing on the preparation and exhibition of an LEP. The Report recognizes that a heritage listing can significantly affect the reasonable economic use of property, reduce values, and place undue financial hardship on the owners. Its recommendations include the establishment of detailed guidelines to assist councils in their decision making on listing heritage items and identifying conservation areas, and stresses the importance of consultation with owners.

At the meeting of 23 April 2008 mentioned above, Cessnock Council's principal planner stated that the huge increase on the present Heritage Conservation Area was adopted as a result of a recommendation by heritage consultants who reported to Council. No consultation with owners or the community took place in the fixing of the boundaries of the proposed Wollombi Heritage Conservation Area. As far as we are aware, Council relied on the recommendations of outside consultants, and not on their own procedures as recommended in the Report. Again, in this area of drastic change proposed in the Cessnock Draft LEP 2008, with consequent serious negative effects on landowners, it would be most regrettable if current planning principles are not adopted.

To conclude, it is the view of our Sub-committee that a short-term delay to review and revise the Cessnock Draft LEP 2008 in line with recently published planning principles could result in a final LEP which would reflect these principles and serve as a model for future rural council LEPs. Failure to review may have long-lasting consequences, including legal battles and the necessity to prepare a new LEP much earlier than anticipated.

Yours faithfully,



cc. Cessnock Mayor and all Councillors.  
Kerry Hickey MP, Member for Cessnock.  
Frank Sartor MP, NSW Minister for Planning.  
Michael Costa MP, NSW Treasurer, Minister for the Hunter  
Michael Gallacher MP, Shadow Minister for the Hunter  
Brad Hazzard MP, Shadow Minister for Planning