

SUBMISSION DRAFT LITHGOW LOCAL ENVIRONMENTAL PLAN 2013

Prepared for:

Ceedive Pty Ltd

Address:

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Date:

8 August 2013



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DESCRIPTION: Submission – Draft Lithgow LEP 2013

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This document has been authorised by

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BACKGROUND

This submission consists of the following sections:

- Background
- Subject Land
- Review of draft Local Environmental Plan
- Response to draft Local Environmental Plan

It is noted that this is a follow up submission to the submission made with respect to the Lithgow Draft Land Use Strategy 2010-2030 (16/6/2011).

1.1 Introduction

Ceedive Pty Ltd has engaged Anthony Daintith Town Planning to prepare a submission with respect to the draft Lithgow Local Environmental Plan 2013 (currently on exhibiton. The submission principally is an objection to the proposed “back zoning” of their lands commonly known as the “Pottery Estate” from the current residential and business zonings under the *Lithgow Local Environmental Plan 1994* to Environmental Protection.

Lithgow City Council to date has conducted a series of background Study's (including the Land Use Strategy mentioned above) that has informed the preparation of the draft Local Environmental Plan currently on public exhibition.

It is noted that a draft Local Environmental Plan and draft Development Control Plan was prepared for the “Pottery Estate” lands in 2005/2006 that involved a “land swap” of residential and business zonings under the current *Lithgow Local Environmental Plan 1994*. The process was stalled on the basis on Council requiring the submission of a site audit with respect to potential contamination over the subject land – see comments below. There is also a number of development applications (now approved) that also apply to the site that provides background detail relating to this submission.

1.2 Draft LEP - Pottery Estate (LEP Amendment 11)

There has been a draft Local Environmental Plan (Draft LEP) and associated draft Development Control Plan (Draft DCP) prepared over the site subject to this submission:

- Draft Lithgow City Local Environmental Plan Amendment No.11 – Pottery Estate
- Draft Pottery Estate and Adjacent Lands Development Control Plan for Business, Recreational and Residential Land Uses

The Draft LEP essentially proposed a “land swap” of land zoned residential on the southern side of Valley Drive with land that was zoned business to the east of Silcock Street under the current *Lithgow Local Environmental Plan 1994* (Amendment 11).

The Draft LEP was advertised on the 14 July 2005 for a period of 28 days. Council on the 19 December 2005 adopted the LEP and resolved to prepare the necessary paperwork under Section 68 and 69 of the *Environmental Planning and Assessment Act 1979* to send the amendment to the Department of Planning seeking gazettal (submission sent 25 February 2006).

It is understood that the Draft LEP was not accepted by the Department of Planning until such time as the site audit (contamination) was completed on that part of the land that was proposed to be zoned residential from the current business zoning. It is understood that there were no issues outstanding in relation to that part of the land proposed to be zoned business to the south of Valley Drive.

The Draft LEP did not proceed after this point. It is noted that the site audit is completed and has been submitted to Council.

1.3 Draft DCP - Pottery Estate

The draft DCP was prepared to provide a strategic basis to the draft LEP for the Pottery Estate location (the draft DCP applied to additional land than that subject to the draft LEP). The owner's consultants at the time prepared the draft DCP on behalf of Council and the draft DCP was subsequently adopted by Lithgow City Council as their own draft once it was adopted at the Council meeting. This would indicate that Council considered the contents of the draft to be satisfactory at the time and provided the necessary guidance for subsequent Development Applications on the site to follow.

The draft DCP was publicly advertised during June/July 2006 (completed 14/7/2006).

To assist with the preparation of the DCP, the owners consultants were advised to use the South Bowenfels DCP as a guide – this DCP has been since been adopted. Further, the owners consultants liaised with Council staff throughout the drafting of the DCP and also provided the draft to Council staff 8 weeks prior to the draft been put to Council for adoption. There was no comment provided during this time that the draft DCP was not adequate. It is understood that the DCP would have gone through to final adoption if it were not for the delays with the site audit for the draft LEP for the Pottery Estate.

It is noted that the draft DCP did not proceed after this point and was halted in line with the draft LEP as a result of the wait for the site audit to be completed (which has since been completed).

1.4 DA 002/07 (Subdivision – Hassan Walls Road)

A Development Application was lodged on the 3 January 2007 for an 18 lot subdivision of Part Lot 604 DP 1051775, Hassans Walls Road (the proposal was subsequently altered to a 17 lot subdivision proposal).

This DA has been approved by Council and following submission of the site audit indicating that the land is suitable for residential development.

It is noted that a letter to the applicant for the DA on the 11 January 2007 requested that:

"a statement is to be submitted detailing how the development relates to the provisions of the Draft Pottery Estate and Adjacent Lands Development Control Plan for Business, Recreational and Residential Land Uses".

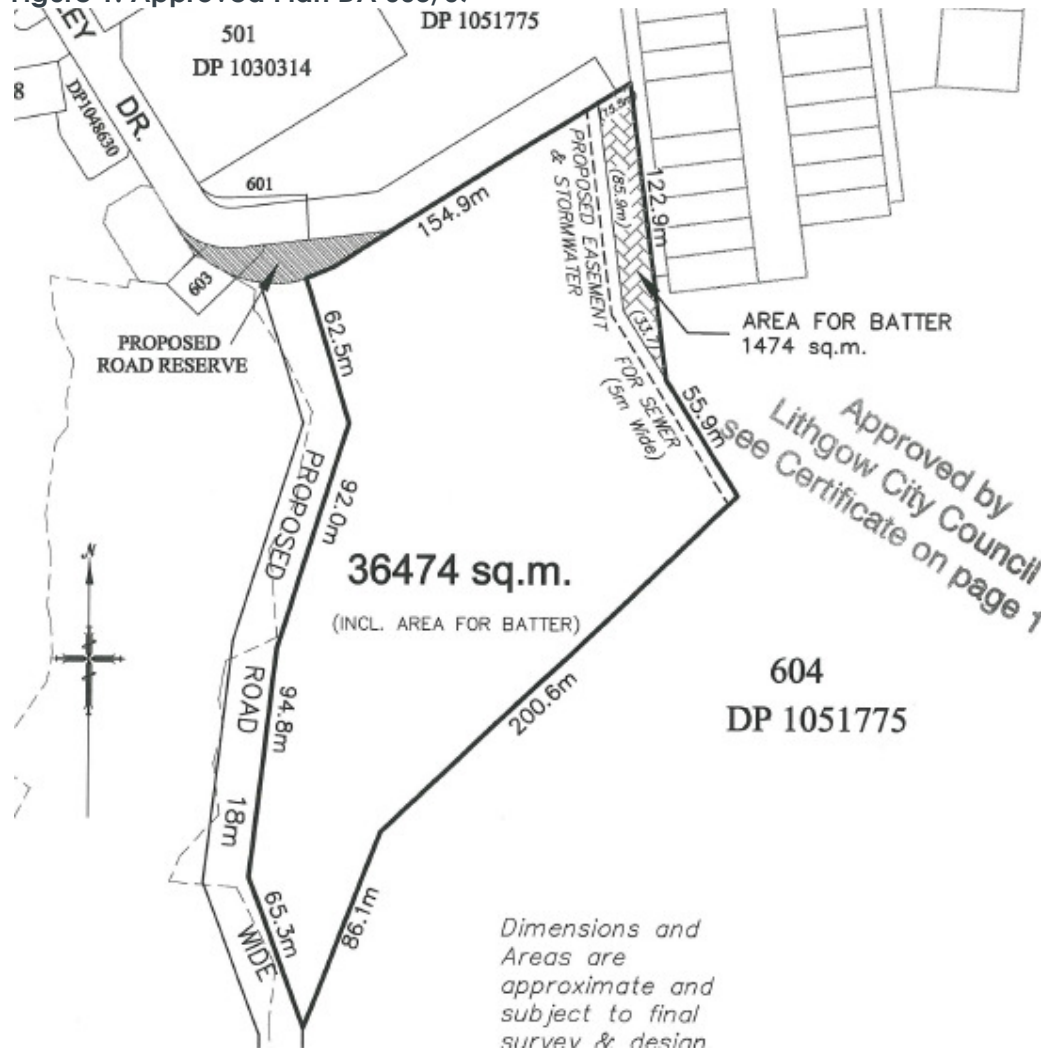
Clearly, Council at this time in 2007 considered that the draft DCP for the Pottery Estate was sufficient in detail and status for a proposed subdivision to be considered in accordance with its provisions.

1.5 DA 003/07 (Subdivision – Valley Drive)

A Development Application was approved by Lithgow City Council on the 24 November 2008 for a 2 lot subdivision of the subject land. The subdivision consisted of creating a lot where it was proposed to undertake a “land swap” under the draft LEP for commercial land at the end of Valley Drive (the other lot was essentially the residue of the land).

A copy of the approved plan of subdivision is shown as **Figure 1**.

Figure 1: Approved Plan DA 003/07



The Development Application has been approved but the final plan of subdivision has not been prepared at this stage.

SUBJECT LAND

2.1 Location and Title

The subject land is commonly known as the “Pottery Estate”.

The land is accessible from Silcock Street, Valley Drive and Hassans Walls Road. Refer to **Figures 2 & 3**, which depict the site within the locality.

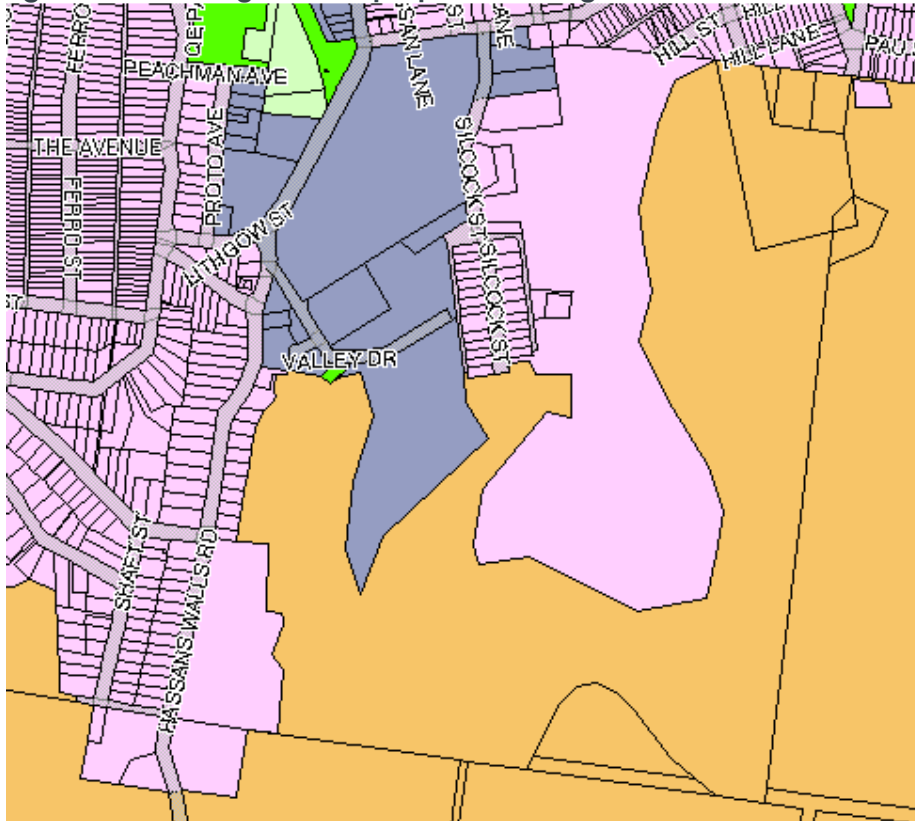
Figure 2: Locality Map



Figure 3: Locality Plan (aerial view)



Figure 5: Draft Lithgow LEP – proposed zoning



The Minimum Lot Size (MLS) under the draft LEP (as shown in **Figure 6**) indicates a MLS of 400m² in the R1 General Residential zoned areas adjacent to Silcock Street and 600m² for the R1 General Residential zoned area along Hassan Walls Road. There is no MLS for the B4 Mixed Use zone and a 40 hectare minimum for the E3 Environmental Management zone.

Figure 6: Draft Lithgow LEP – proposed MLS map

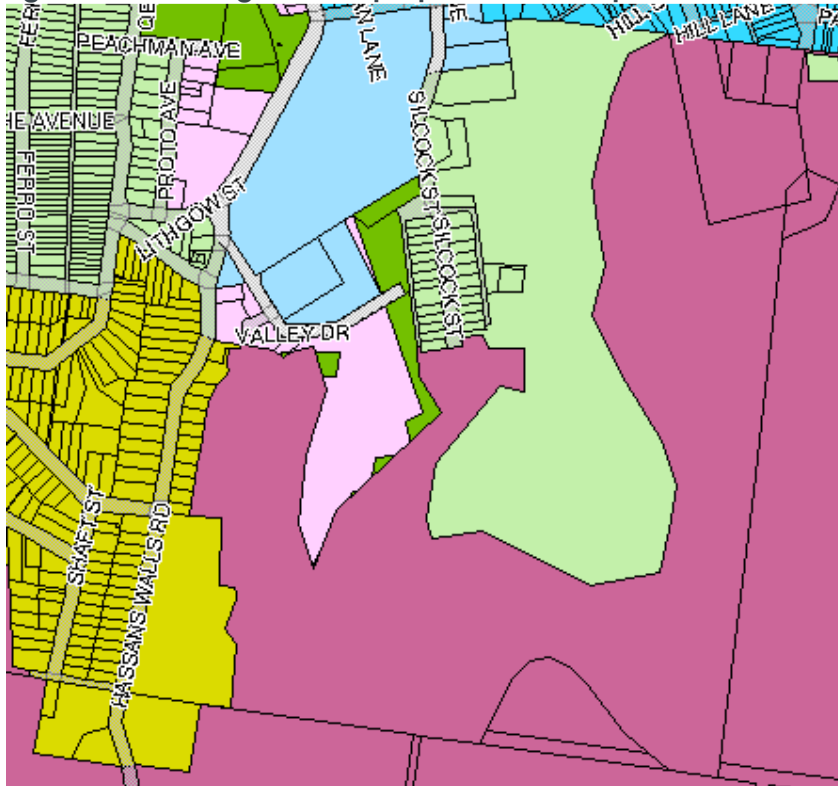
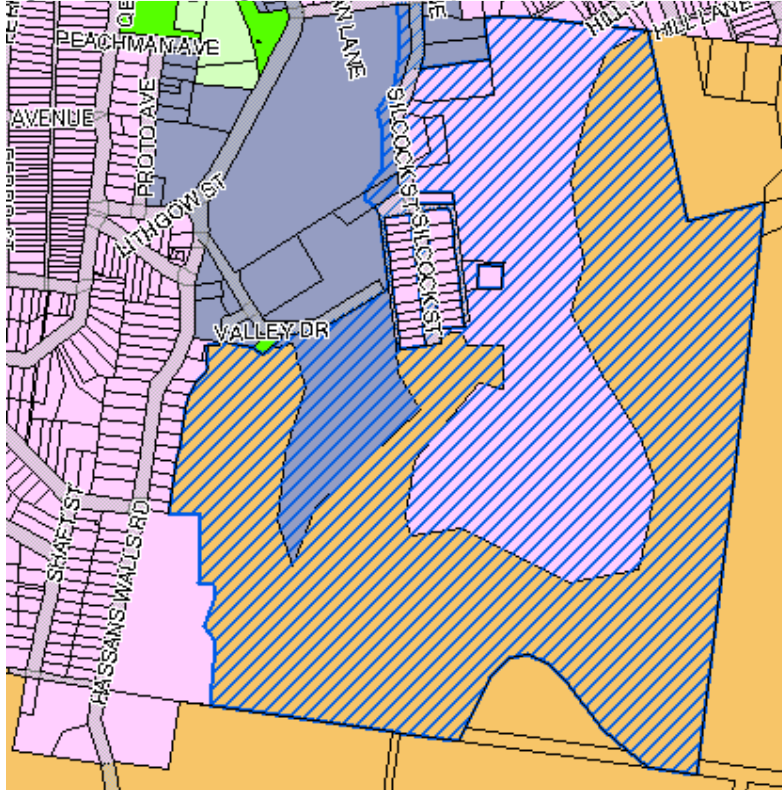


Figure 7 is known as the “Pottery Estate Development Map” and is referenced in Clause 7.11 of the draft LEP. This map covers the entire area subject to this submission.

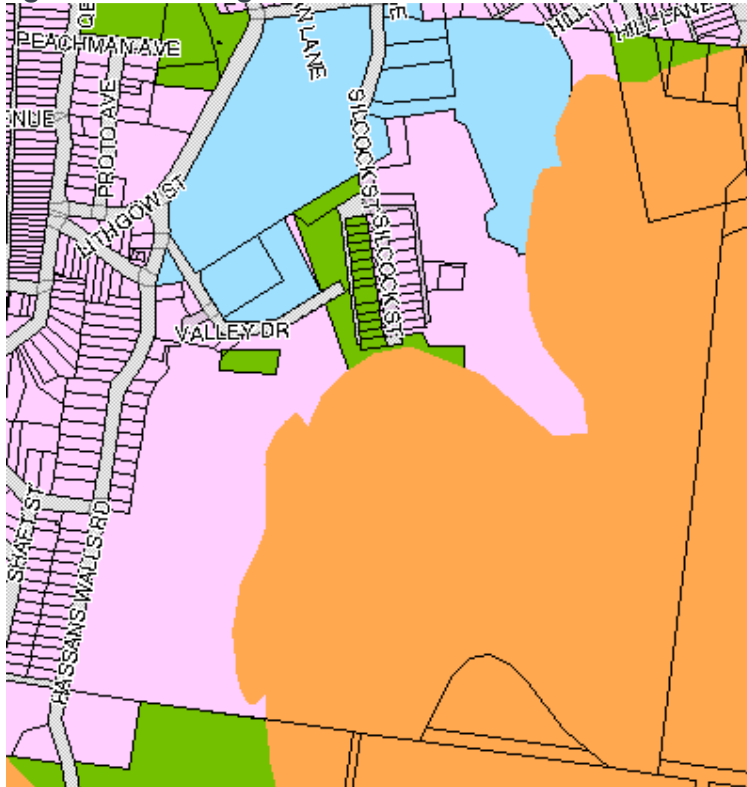
Figure 7: Draft Lithgow LEP – Pottery Estate Map



As discussed previously, a Development Control Plan (DCP) was previously prepared for this site but was stalled for a number of reasons. It is proposed to upgrade this draft DCP to relate to the final LEP to be gazetted (including new zonings, definitions, clauses and the like). As the draft DCP was prepared in consultation with Council based on its own template, the client requests that Council actively assist in the prompt finalisation of the DCP to meet the LEP clause 7.11.

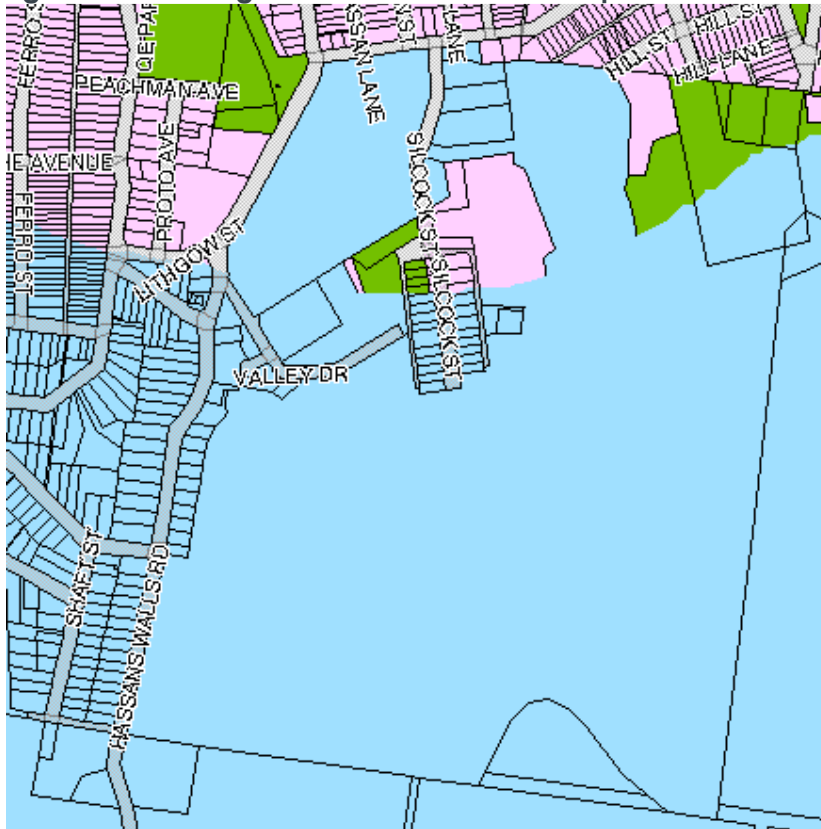
Figure 8 is the "Sensitive Land" map that covers eastern and western parts of the site and is referenced in Clause 7.7 of the draft LEP.

Figure 8: Draft Lithgow LEP – Sensitive Land Map



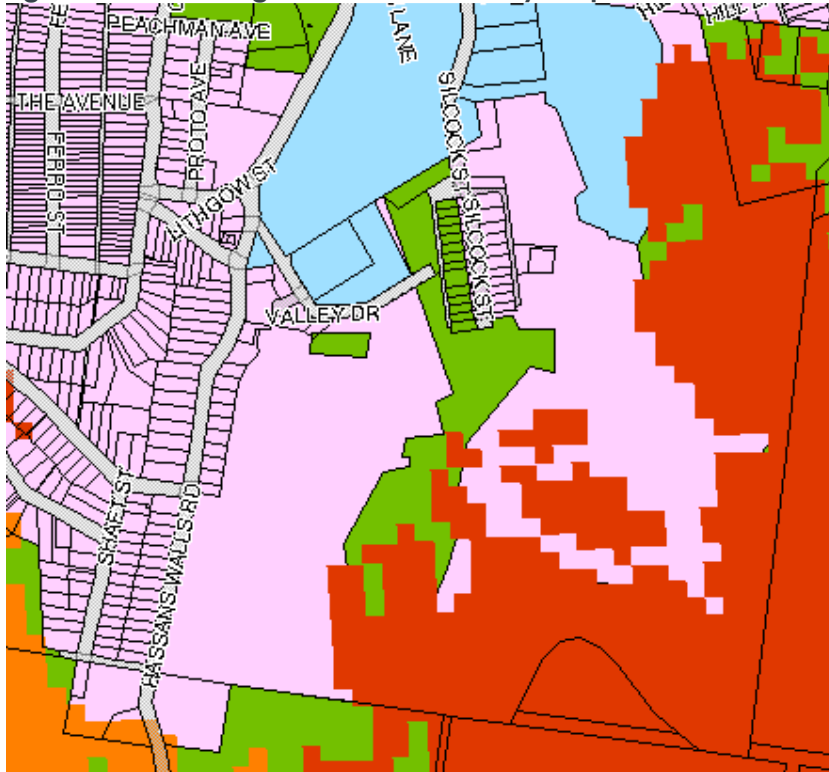
Nearly the entire subject land is covered by the Groundwater Map which is called up in the Clause 7.5 of the Draft LEP (refer to **Figure 9**).

Figure 9: Draft Lithgow LEP – Groundwater map



Eastern and southern parts of the subject land are covered by the Biodiversity map called up in Clause 7.6 of the draft LEP (as shown in **Figure 10**).

Figure 10: Draft Lithgow LEP – Biodiversity map



It is clear by comparing the above Figures that much of the land proposed to be back zoned to Environmental Protection is not affected by any of the mapped constraints. On this basis, it is assumed the land is proposed to be back zoned on the basis of the other constraints mentioned such as contamination and mine subsidence (as the lands in question are not affected by heritage or Bathurst Copper Butterfly).

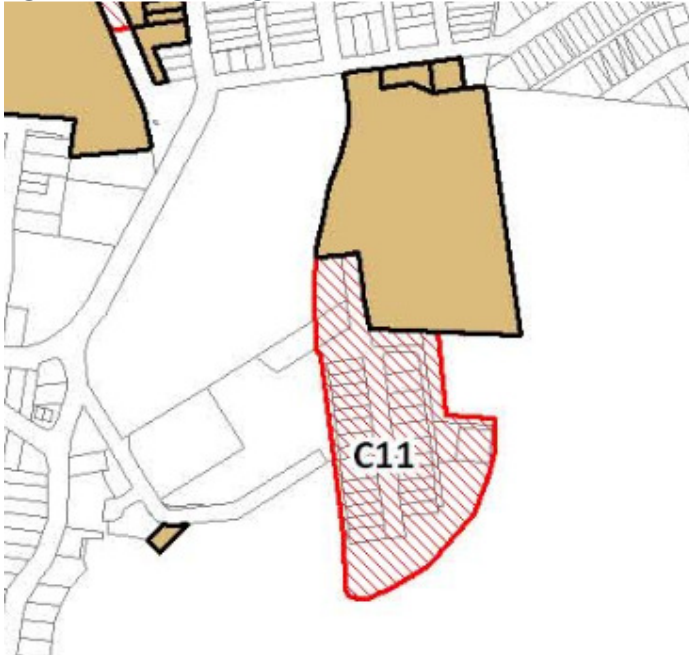
Clarification from DECCW indicates land remediated to a standard suitable for residential uses subject to restrictions on vegetable gardens and the keeping of poultry is a standard classification under the remediation guidelines, and should not be a fundamental reason for re-zoning land to Environmental Protection.

Other issues such as heritage and mine subsidence are regularly addressed through the development application process. It is considered completely unnecessary to subject the land to a rezoning process when it has already been identified as suitable for residential uses

Silcock Street - Heritage Conservation Area

It is noted that the draft LEP proposes to impose a Heritage Conservation Area over the Silcock Street group of dwellings.

Figure 11: Draft Lithgow LEP – Silcock Street HCA



RESPONSE TO DRAFT LOCAL ENVIRONMENTAL PLAN

4.1 General

The submission principally is an objection to the proposed “back zoning” of Ceedive Pty Ltd lands commonly known as the “Pottery Estate” from the current residential and business zonings under the Lithgow Local Environmental Plan 1994 to E3 Environmental Protection in the draft Local Environmental Plan.

In summary, Ceedive Pty Ltd intend for the subject lands to be zoned as part of the Draft LEP as per the provisions of the draft LEP and associated draft DCP for the “Pottery Estate” (as discussed in Section 1 of this submission) that did not proceed and zoning thereafter as per the current provisions of the *Lithgow Local Environmental Plan 1994*.

In summary, the following is sought as part of the draft Local Environmental Plan relating to this land:

4.2 Hassans Walls Road

The land along Hassans Walls Road is proposed to be zoned **R1 General Residential** to enable the creation of residential allotments in line to those approved by Council under DA 002/07 (proposal to create 17 residential allotments).

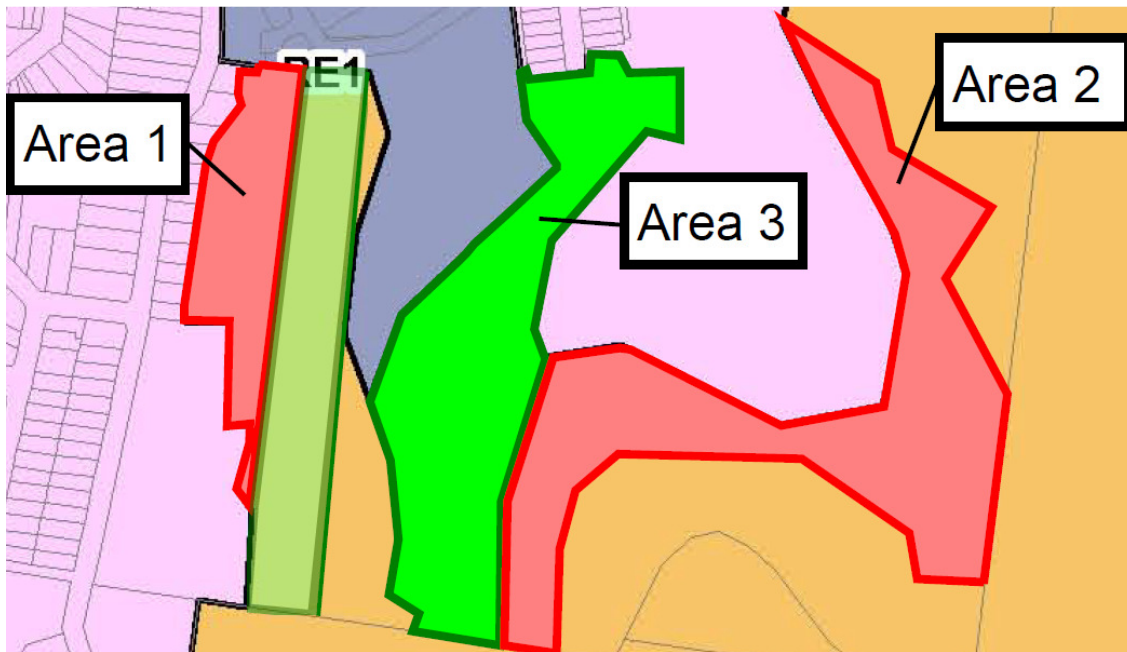
Envirowest Consulting has provided the following comments with respect to site contamination issue:

The auditor (Andrew Kohlrusch, GHD) is currently assessing the contamination investigations and remediation reports undertaken on the site. It is understood the auditor will issue a recommendation that the site is suitable for residential land-use with accessible soil (NEHF A). The proposed land-use is standard residential with accessible soil and NEHF A is generally considered the appropriate health based criteria. NEHF A is considered the most sensitive land-use under the current health based investigation level criteria (DEC 2006 Guidelines for the NSW Site Auditor Scheme). A more sensitive land-use can be achieved by site specific risk assessment but this is not undertaken for residential land-use developments as NEHF A is considered a sufficiently rigorous evaluation criteria. A covering layer of validated excavated natural material comprising clayey sand will be placed over the site to a depth of 0.1 to 0.3m.

Two lots in the Hassans Walls Estate (Lots 1 and 2 formerly Lot 11 DP263092 and part Lot 604) have been approved for residential development by council. Contamination investigations were undertaken on these lots. The lots were found to be suitable for residential land-use with accessible soil (NEHF A).

Areas of the Hassans Wall Road development have been subject to filling from a nearby quarry. Part of the site has up to 4m of fill but most has less than 0.5m. Preliminary geotechnical compaction testing was undertaken on the filled area by Macquarie Geotech demonstrating adequate compaction density. Additional testing is proposed at the time of landforming.

However, it is proposed to extend the R1 General Residential zoning to include those lands located to the west of the creek that traverses the site (identified by Area 1 below).



This land is zoned 2(a) Residential under the current LEP and is proposed to be zoned E3 Environmental Protection under the draft LEP which prohibits residential development. Mr Keith Fletcher from Craven, Elliston & Hayes (Lithgow) Pty Limited on behalf of the owner has sent correspondence to Council regarding this matter. Following is an extract of an email sent to Council (Sherilyn Hanrahan) on the 15 July 2013 regarding this area:

As pointed out this area is stage 2 of a proposed residential Development as shown on Approved DA 002/07DA plan attached.

You gave 4 reasons why this was changed:

- **"The area is in a riparian zone."** This is incorrect. Attached are approved plans and letter from The Office of Water allowing a sewer main to be constructed along the edge of the riparian zone. Lithgow Council have approved the construction of a sewer main and this is partly built - see attached sewer design plans.
- **"There are contamination issues"**. This is also incorrect. Col O'Connor has informed me a full contamination report has been carried out and submitted to Council. Notwithstanding this, the area in question is virgin bushland with any potential contamination being extremely remote.

- **"The land is too steep".** This land is a lot less steep than DA 335/05 approved for 160 residential lots in the vicinity of "Three Tree Hill"
- **"There are environmental issues with the copper wing butterfly"** To my knowledge there is no evidence of copper wing butterflies west of the watercourse. A flora and fauna study would be carried out by a qualified person to ascertain this and prepare a plan of management.

It appears that there has been an anomaly in this area on the plan and all 4 reasons cannot be justified. I request "Area 1" shown on the attached plan be zoned Residential.

4.3 Land to south of Valley Drive

The land (approximately 3.64 ha) to the south of Valley Drive is proposed to be zoned B4 Mixed Use under the draft LEP. In essence, the client is happy with the B4 zoning but need further flexibility in the land use table. In particular the owner requests **additional residential uses** in the zone, including provisions for dwellings and dual occupancy developments (this is in line with other Councils with how they have arranged the land uses permissible under a B4 Mixed Use zoning).

The final zoning must also be flexible enough to enable the consideration of a large anchor tenant with associated specialty shops.

It is noted that from the previous draft LEP Amendment No 11, there was no matters outstanding that would have stopped the rezoning of this land to business (the issues were in relation to the area proposed to be zoned residential). Accordingly, it is considered that there is no reason now why such a proposal could not be supported.

4.4 Land to the east of Silcock Street

The land to the east of Silcock Street to be zoned R1 General Residential (in line with the previous draft LEP) with main aim of permitting subject to a development application, the development of higher density residential development such as Seniors Housing (supported by page 45 of the Land Use Strategy).

Envirowest Consulting has provided the following comments with respect to site contamination issue:

Investigation and remediation of the site has been undertaken and is being audited by Tony Scott (Coffey Environments). It is understood the auditor will issue a recommendation that the site is suitable for residential with accessible soil (home produce contributing less than 10% fruit and vegetable intake and no poultry), including children's day-care centres, preschools, primary schools, townhouses and villas. The health based investigation criteria is residential (NEHF A) which is considered the most sensitive land-use under the current health based investigation level criteria (DEC 2006 Guidelines for the NSW Site Auditor Scheme). The investigation level is appropriate for the proposed land-use of aged care.

The Site Audit provides the following conclusion:

8 CONCLUSIONS

As noted earlier in this letter we are currently working through the audit process and this letter represents interim advice only, and does not constitute a Site Audit Report or Site Audit Statement. The advice provides the opinion of the auditor based on the knowledge that is available at the time of this advice. A Site Audit Report and Site Audit Statement will be issued at the end of the Audit process, when the Auditor is satisfied all relevant matters have been adequately addressed.

Interim audit advice does not pre-empt or constrain the final outcome(s) of the audit or any conditions that may be placed by the auditor in the audit report. The following conclusions were preliminary based on currently available data and these opinions may change during the course of completion of the audit.

However, we do note that the data presented herein will not change, although the interpretation may.

Based on the discussions in this letter, Coffey Environments consider that the Site **CAN BE MADE SUITABLE** for commercial/industrial land use subject to the following:

- Completing the current site audit.
- Placing appropriate restrictions so groundwater cannot be extracted for any beneficial use without further assessment for that use and to manage potential risks to site workers via secondary contact (e.g. skin contact; ingestion through splashing; etc) if groundwater is encountered during development or subsequent works on the Site.
- Development and subsequent implementation of an unexpected finds protocol at the Site.

Coffey Environments consider that the current constraints to **residential land use with minimal access to soil** from a contaminated land perspective relate primarily to aesthetic matters (bricks, chitter, ash) and to a lesser extent potential phytotoxic effects on plants rather than contaminant concentrations that pose a human health risk. It is considered that these matters could be managed to allow such developments. However, specific details of management requirements would depend on the nature of the development and would be best assessed once detailed development proposals are available.

Further, Coffey consider that the current constraints to a **standard residential** land use are primarily aesthetic and phytotoxic risks and note that management of these is probably achievable where a development or subdivision proposal exists but may be more difficult on an individual lot by lot basis.

Coffey consider this is consistent with the planning Guidelines which acknowledge that it is difficult for the planning authority to assess contamination risks to a particular land uses before the details of the development are known. The example given in the Planning Guidelines is for rezonings that cover a large area where proposed land uses vary generally both in type and location. This makes it difficult for a planning authority to be satisfied that every part of the land is suitable for the proposed use(s) in terms of contamination at the rezoning Stage. The Planning Guidelines state that in these cases, the rezoning should be allowed to proceed, provided measures are in

place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made.

Therefore, the Site **could potentially BE MADE SUITABLE for other land uses such as standard residential, high density residential or aged care** either by appropriate management or further remediation to address aesthetic issues.

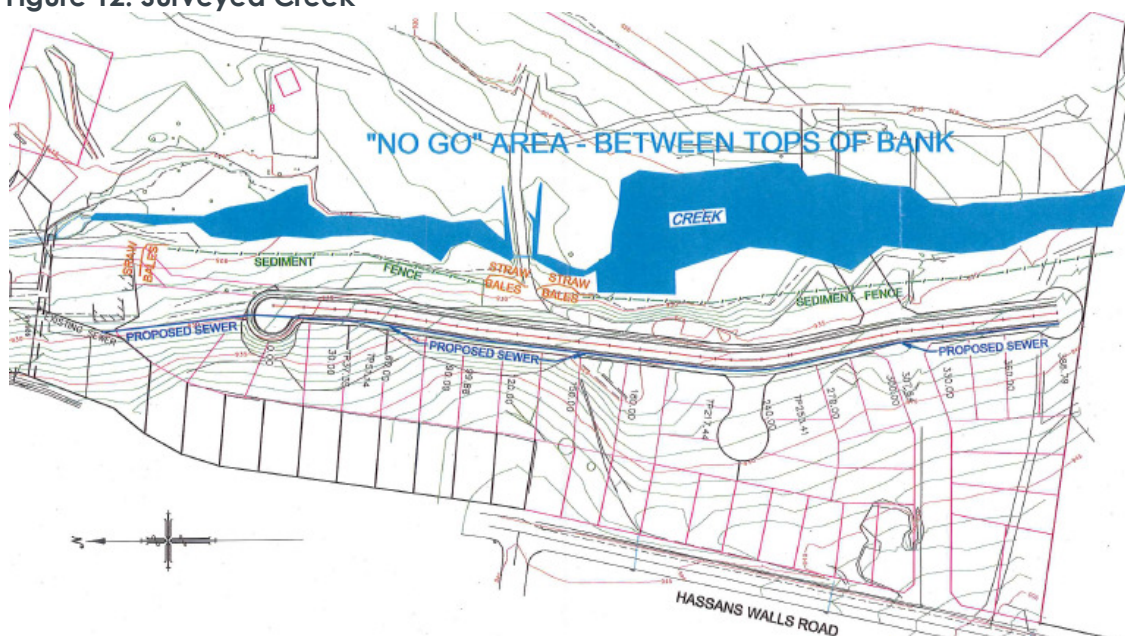
Finally, the Site **could potentially BE MADE SUITABLE for other land uses such as: Residential with substantial vegetable garden (contributing 10% or more of vegetable and fruit intake) and/or poultry providing any egg or poultry intake; or Residential with substantial vegetable garden (contributing 10% or more of vegetable and fruit intake), poultry excluded;** through undertaking site specific risk assessment based on the likely exposure scenarios under these uses; although it is noted that this is can be complex. Dependent upon the results of the site specific risk assessment further remediation may be required.

4.5 Open Space – Surveyed Creek

As discussed previously in this submission, there are some anomalies with respect to the location of the Open Space 6 zone under the current LEP 1994 through the middle of the property. It is considered that the surveyed creek area (as shown below) to the west of this open space area be zoned E3 Environmental Protection to ensure that it is not developed.

The owners would like to offer this surveyed area to Council for purchase to facilitate the ongoing maintenance of this riparian area.

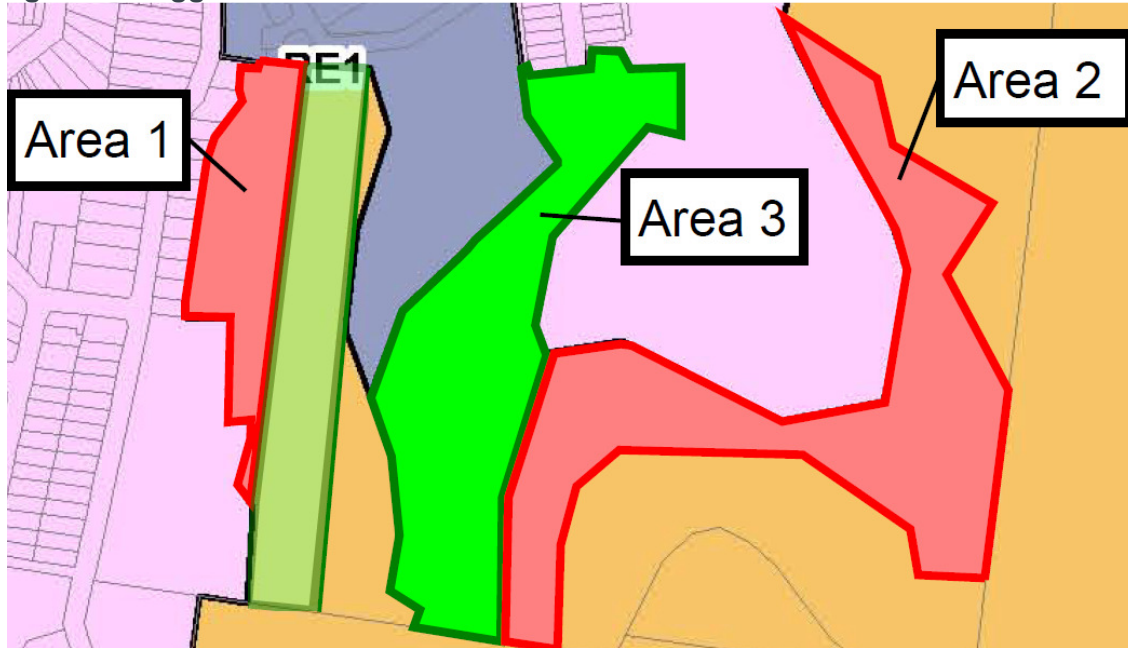
Figure 12: Surveyed Creek



4.6 Residue Land

It is recommended that the residue land within the “Pottery Estate” be zoned **R1 General Residential** as per the current 2(a) Residential LEP zoning (as depicted by **Area’s 2 and 3** below). The remaining area can remain zoned E3 Environmental Protection.

Figure 13: Suggested areas for consideration in draft LEP



Envirowest Consulting has provided the following comments with respect to site contamination issue:

Preliminary site investigations have been undertaken over other areas of the Pottery Estate. These investigation have been undertaken by Macquarie Geotech and indicate the levels of metals, total petroleum hydrocarbons and polycyclic aromatic hydrocarbons do not exceed the residential NEHF A health based land-use criteria. The other areas of the Pottery Estate are considered suitable for residential land-use with accessible soil.

Any future development of this land would be undertaken in accordance with the draft Development Control Plan developed for the Pottery Estate. No development would take place in this area until such time as the draft Development Control Plan for the Pottery Estate has been finalised and adopted by Council (as per Clause 7.11 of the draft LEP).

It is recommended that the MLS for **Area 2** be set at 1,500 m² and 800m² for **Area 3** as per the **Figure 13** – it is noted that lots will be developed in accordance with the Pottery Estate DCP and economic considerations. In addition, it is recommended that the areas that are proposed to remain zoned E3 Environmental Protection (outside of Areas 2 & 3) under the draft

LEP have the ability to be subdivided to be added to a subdivided lot within **Area 2** as described above (the dwelling to be located within the R1 General Residential zone) – otherwise there will be ongoing maintenance problems for the remaining E3 zoned land in which there will be access issues. This could be further controlled through the preparation of the DCP required under Clause 7.11 of the draft LEP.

All lots would be connected to reticulated water and sewer services.

4.7 Dwellings in Silcock Street

The dwellings in Silcock Street are proposed to be zoned residential which is considered the most appropriate zoning for the area.

It is proposed that the precinct be covered by a Heritage Conservation Area (HCA). The owners don't have any major opposition to the imposition of the HCA and thank Council for not listing dwellings at 11 and 20 Silcock Streets as heritage items.

The Land Use Strategy recommended that land within Silcock Street be covered by a "Heritage Conservation Area". Concerns are raised regarding the statement "No identified contributory building is to be demolished" as the study does not appear to consider the structural quality of the relevant buildings. In this context there may be safety implications of prohibiting demolition on buildings that may in time be considered structurally unsound. The owner wants to ensure that through the LEP process that these issues will be considered.