



9 December 2016

To All Councillors

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993, that the next Ordinary Meeting of Council will be held in the Council Chambers, on Wednesday, 14 December 2016 at 6.30 pm, for the purposes of transacting the undermentioned business.

**AGENDA:**

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<b>(1) OPENING PRAYER</b>	
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<b>(3) RECEIPT OF APOLOGIES</b>	
Apologies received from: Councillor Paul Dunn	
<b>(4) CONFIRMATION OF MINUTES OF PREVIOUS MEETING</b>	
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## ***Principles for Local Government***

### **Exercise of functions generally**

The following general principles apply to the exercise of functions by Councils:

- a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- e) Councils should work co-operatively with other Councils and the State Government to achieve desired outcomes for the local community.
- f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- g) Councils should work with others to secure appropriate services for local community needs.
- h) Councils should act fairly, ethically and without bias in the interests of the local community.
- i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

### ***Council's Values***

- Integrity
- Respect
- Teamwork
- Accountability
- Excellence

### ***Our Community's Vision***

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 need.

*Cessnock – thriving, attractive and welcoming.*

### ***Our Community's Desired Outcomes***

- A connected, safe and creative community.
- A sustainable and prosperous economy.
- A sustainable and healthy environment.
- Accessible infrastructure, facilities and services.
- Civic Leadership and effective governance.



## ***Council Model Code of Conduct***

Council adopted its current Code of Conduct on 3 February 2016. This Code provides details of statutory requirements and gives guidance in respect of the way in which pecuniary and conflict of interest issues should be approached.

Generally, the policies refer to the following issues:

1. Councillors are under an obligation at law to disclose any interest they may have in any matter before the Council and to refrain from being involved in any consideration or to vote on any such matter
2. Councillors must disclose any interest in any matter noted in the business paper prior to or at the opening of the meeting
3. The nature of the interest shall be included in the notification
4. Councillors shall immediately and during the meeting disclose any interest in respect of any matter arising during the meeting which is not referred to in the business paper
5. All declarations of interest shall be recorded by the General Manager
6. All disclosures of interest shall as far as is practicable be given in writing
7. Any member having a pecuniary or non-pecuniary significant conflict of interest shall leave the meeting and remain absent while the subject of the interest is being considered by Council
8. The meeting shall not discuss any matter in which a Councillor has a pecuniary or non-pecuniary significant conflict of interest while the Councillor is present at the meeting

**MINUTES OF ORDINARY COUNCIL MEETING OF THE CESSNOCK CITY COUNCIL  
HELD IN COUNCIL CHAMBERS ON WEDNESDAY, 16 NOVEMBER 2016,  
COMMENCING AT 6.30 PM**

**PRESENT:** His Worship the Mayor, Councillor R Pynsent (in the Chair) and Councillors Olsen, Doherty, Dunn, Fagg, Stapleford, Suvaal, Fitzgibbon, Gray, Dagg, Burke, Sander and Lyons.

**IN ATTENDANCE:** General Manager  
Director Planning and Environment  
Director Corporate and Community Services  
Director Works and Infrastructure  
Manager Governance and Business Services  
Development Services Manager  
Consultant Development Engineer  
Senior Planning Assessment Officer  
Chief Financial Officer  
Management Accountant  
Integrated Planning & Strategic Property Manager  
Recreation Services Manager  
Strategic Recreation & Facilities Planner  
Strategic Asset Planning Manager  
Media & Communication Officer  
Corporate Governance Officer  
Relief Executive Assistant

**MINUTES:**

**MOTION**      **Moved:** Councillor Burke  
**Seconded:** Councillor Stapleford

46

**RESOLVED** that the Minutes of the Ordinary Meeting of Council held on 2 November 2016, as circulated, be taken as read and confirmed as a correct record, with the following amendment being made to Q79/2016:-

Councillor Olsen Question – Frame Drive Bridge – Weight Limits should read:-

*“whether Council would be considering a weight limit on Gingers Lane once the new Frame Drive Bridge and surrounding roads are constructed?”*

**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**

## **DISCLOSURES OF INTEREST**

### **DISCLOSURES OF INTEREST NO. DI19/2016**

**SUBJECT: DISCLOSURES OF INTEREST**

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**That Councillors now disclose any interests and reasons for declaring such interest in the matters under consideration by Council at this meeting.**

**PE77/2016 - DA 8/2016/287/1 proposing Partial Demolition of Existing Building and Construction of a Worker's Accommodation Building Containing five (5) bedrooms and shared facilities 39 Lovedale Road, Lovedale** – Councillor Gray declared a Non-Pecuniary – Less Than Significant Conflict for the reason that his daughter in-law is an employee at Crowne Plaza. Councillor Gray advised that he would remain in the Chamber and participate in discussion and voting as the conflict has not influenced him in carrying out his public duty because it doesn't have any impact on the decisions he makes.

**MM5/2016 – Cessnock Correctional Centre** – Councillor Olsen declared a Non Pecuniary - Less Than Significant Conflict for the reason that he is employed at Cessnock Correctional Centre. Councillor Olsen advised that he would remain in the Chamber and participate in discussion and voting as the conflict has not influenced him in carrying out his public duty because as the progress of this site will have no bearing on my position.

**PE77/2016 - DA 8/2016/287/1 proposing Partial Demolition of Existing Building and Construction of a Worker's Accommodation Building Containing five (5) bedrooms and shared facilities 39 Lovedale Road, Lovedale** – Councillor Dagg declared a Non Pecuniary - Significant Conflict for the reason that a business owned by a close relative provides services for the proponent for which they receive payment. Councillor Dagg advised that she would leave the Chamber and take no part in discussion and voting.

## PETITIONS

NIL

### ADDRESS BY INVITED SPEAKERS

The following people addressed the meeting of Council:

Speakers	Report	Page No.	Duration
Mr Geoff Allan Forsyths Chartered Accountants	CC71/2016 - Financial Statements for the Year Ended 30 June 2016	143	

### CORPORATE AND COMMUNITY NO. CC71/2016

**SUBJECT:** FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2016

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Sander  
47  
**RESOLVED**

That the Annual Financial Statements incorporating the Auditor's Reports for the year ended 30 June 2016 be received and the information noted.

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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

**PROCEDURAL MOTION**

**Moved:**

Councillor Olsen

**Seconded:**

Councillor Doherty

**That the meeting go into Suspension of Standing Orders to allow the 3 listed applicants to address Council.**

**FOR**

Councillor Olsen  
Councillor Doherty  
Councillor Dunn  
Councillor Fagg  
Councillor Fitzgibbon

**Total (5)**

**AGAINST**

Councillor Stapleford  
Councillor Suvaal  
Councillor Gray  
Councillor Dagg  
Councillor Burke  
Councillor Sander  
Councillor Lyons  
Councillor Pynsent

**Total (8)**

The Motion was **PUT** and **LOST**

Dennis Moore on behalf of Cessnock Pool Users Group	WI49/2016 - Cessnock Aquatic Centre Feasibility & Design Report	194	3 mins
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**EXTENSION OF TIME**

**Moved:**  
**Seconded:**

Councillor Suvaal  
Councillor Burke

48

**RESOLVED**

**That an extension of 1 minute be granted to allow Mr Moore to complete his address.**

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

**CARRIED**

**WORKS AND INFRASTRUCTURE NO. WI49/2016**

**SUBJECT: CESSNOCK AQUATIC CENTRE FEASIBILITY & DESIGN REPORT**

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**MOTION**      **Moved:** Councillor Suvaal      **Seconded:** Councillor Sander

49

**RESOLVED**

1. That Council acknowledges the draft Cessnock Aquatic Centre Feasibility and Design Report.
2. That Council be briefed on the process that has been followed to date including the 2014 Aquatics Needs Analysis; the 2016 Cessnock Aquatic Centre Feasibility and Design Report; Councillor Briefings and Council Reports.
3. That Council considers a further report outlining facility options that exclude the need for a Special Rate Variation.

<b>FOR</b>	<b>AGAINST</b>
Councillor Stapleford	Councillor Olsen
Councillor Suvaal	Councillor Doherty
Councillor Fitzgibbon	Councillor Dunn
Councillor Gray	Councillor Fagg
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (9)</b>	<b>Total (4)</b>

**CARRIED**

## **MAYORAL MINUTES**

### **MAYORAL MINUTES NO. MM4/2016**

**SUBJECT: COUNCIL INITIATED AWARDS COMMITTEE**

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**MOTION**      **Moved:**    Councillor Pynsent

50

**RESOLVED**

**That the Deputy Mayor, Councillor Stapleford and Councillor Burke be the Councillor representatives in addition to the Mayor for the Council Initiated Awards Committee.**

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

**CARRIED**

**MAYORAL MINUTES NO. MM5/2016**

**SUBJECT: CESSNOCK CORRECTIONAL CENTRE**

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*Councillor Olsen declared a Non Pecuniary - Less Than Significant Conflict for the reason that he is employed at Cessnock Correctional Centre. Councillor Olsen remained in the Chamber and participated in discussion and voting.*

**MOTION Moved:** Councillor Pynsent

51

**RESOLVED**

1. That Council urgently write to the Hon. David Elliott, MP, Minister for Corrections, to clearly outline:
  - A. Council's serious concerns and dissatisfaction over the failure of the Review of Environmental Factors (REF) to achieve a satisfactory outcome regarding access to the expanded Cessnock Correctional Centre, and seeking to resolve the issue of transport, traffic and access as soon as possible.
  - B. Council's current position in relation to access to the expanded Cessnock Correctional Centre, particularly:
    - a) that access to the proposed expanded State facility be via direct routes to the State road network; and
    - b) that local roads paid for by Cessnock ratepayers should not shoulder the significant financial and maintenance burden of the significant expansion of this State facility.
2. That Council continue to actively lobby the relevant Ministers and NSW Government agencies and work with them to achieve a better transport, traffic and site access outcome which reflects Council's position and which does not burden ratepayers of Cessnock City Local Government Area with the demands of State infrastructure.
3. That the General Manager make arrangements for further assessment of the Review of Environmental Factors regarding the expansion of Cessnock Correctional Centre by 1000 beds, and a further report on any issues or impacts be brought back to Council for consideration.

**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***

Councillor Olsen moved a Point of Order claiming Councillor Suvaal called him a liar.

The Mayor advised that he did not hear the word liar used by Councillor Suvaal and ruled the Point of Order as Out of Order.

Councillor Olsen moved dissent from the Mayor's ruling.

**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 (12)**

**Total (1)**

The Motion of Dissent was ***PUT*** and ***LOST***

**MAYORAL MINUTES NO. MM6/2016**

**SUBJECT: FORMAL ACKNOWLEDGEMENT OF EMERGENCY SERVICES -  
CESSNOCK BUSH FIRES NOVEMBER 2016**

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**MOTION**      **Moved:**    Councillor Pynsent

52

**RESOLVED**

1. That Council formally acknowledge and thank all of the emergency services personnel, and supporting service volunteers, for their efforts in protecting the Cessnock Community from the Race Course Road and Heddon Greta Bush Fires on 5 and 6 November 2016;
2. That Council includes recognition of the emergency services personnel who fought in the November fires or any other natural disaster that may occur, at the Australia Day 2017 Celebration.

<b>FOR</b>	<b>AGAINST</b>
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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**

## **MOTIONS OF URGENCY**

### **MOTIONS OF URGENCY NO. MOU19/2016**

**SUBJECT: MOTIONS OF URGENCY**

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#### **RECOMMENDATION**

**That Councillors now indicate if there are any matters of urgency which they believe should be conducted at this meeting of Council.**

Councillor Olsen

That Council discuss what will be sent into the Enquiry into the Bat Issue at East Cessnock.

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

#### **CARRIED UNANIMOUSLY**

*The Mayor ruled the matter as urgent and will be dealt with at the conclusion of the Ordinary Agenda.*

## GENERAL MANAGER'S UNIT

### GENERAL MANAGER'S UNIT NO. GMU15/2016

**SUBJECT: COUNCIL'S ROLE IN CHRISTMAS - CBD DECORATIONS AND COUNCIL CHRISTMAS APPEAL**

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**MOTION**      **Moved:** Councillor Doherty      **Seconded:** Councillor Dunn

1. That Council establishes an annual Council Christmas Appeal.
2. That \$10,000 be allocated to a Christmas decoration rebate program for businesses in Branxton, Cessnock, Kurri Kurri and Wollombi CBD precincts, to funded from within existing operational budget areas.
3. That Council seek support from the Cessnock, Kurri Kurri, Branxton/Greta and Wollombi Chambers to facilitate a best dressed Christmas shopfront competition.

**AMENDMENT**      **Moved:** Councillor Fitzgibbon      **Seconded:** Councillor Gray

1. That Council establishes an annual Council Christmas Appeal.
2. That Council writes to Cessnock, Kurri Kurri, Branxton/Greta and Wollombi chambers before the end of November 2016 asking for ideas and support for a Main Street Christmas Decoration Start Up Plan for 2017.
3. That Council purchases and installs as an interim measure under the guidance of the General Manager solar LED bud lights in appropriate Main Street locations in Kurri Kurri, Cessnock, Branxton/Greta and Wollombi as a cost effective Christmas decoration trial to a maximum cost of \$5,000.

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

The Amendment was **PUT** and **CARRIED** and as such became the **MOTION**.

The Motion was then **PUT** and **CARRIED**.

**MOTION**            **Moved:**    Councillor Fitzgibbon    **Seconded:**    Councillor Gray  
53

**RESOLVED**

1.     **That Council establishes an annual Council Christmas Appeal.**
2.     **That Council writes to Cessnock, Kurri Kurri, Branxton/Greta and Wollombi chambers before the end of November 2016 asking for ideas and support for a Main Street Christmas Decoration Start Up Plan for 2017.**
3.     **That Council purchases and installs as an interim measure under the guidance of the General Manager solar LED bud lights in appropriate Main Street locations in Kurri Kurri, Cessnock, Branxton/Greta and Wollombi as a cost effective Christmas decoration trial to a maximum cost of \$5,000.**

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

**CARRIED**

## **PLANNING AND ENVIRONMENT**

### **PLANNING AND ENVIRONMENT NO. PE77/2016**

**SUBJECT: DA 8/2016/287/1 PROPOSING PARTIAL DEMOLITION OF EXISTING BUILDING AND CONSTRUCTION OF A WORKER'S ACCOMMODATION BUILDING CONTAINING FIVE (5) BEDROOMS AND SHARED FACILITIES**

**39 LOVEDALE ROAD, LOVEDALE**

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*Councillor Gray declared a Non-Pecuniary – Less Than Significant Conflict for the reason that his daughter in-law is an employee at Crowne Plaza. Councillor Gray remained in the Chamber and participated in discussion and voting.*

*Councillor Dagg declared a Non Pecuniary - Significant Conflict for the reason that a business owned by a close relative provides services for the proponent for which they receive payment. Councillor Dagg left the Chamber and took no part in discussion and voting.*

*Councillor Dagg left the meeting, the time being 7.56pm*

**MOTION**            **Moved:** Councillor Burke            **Seconded:** Councillor Stapleford

54

#### **RESOLVED**

1. That Council determine Development Application No. 8/2016/287/1 proposing the partial demolition of existing building and construction of a worker's accommodation building containing five (5) bedrooms and shared facilities at Lot 3, DP1073823, 39 Lovedale Road, Lovedale, pursuant to Section 80 of the Environmental Planning and Assessment Act, 1979, by refusing to grant consent for the reasons detailed in this report.
  
2. That the General Manager be delegated to investigate and commence proceedings if necessary, to have the existing building demolished in accordance with Council's adopted Compliance and Enforcement Policy.

### **REASONS FOR REFUSAL**

---

Development Application 8/2016/287/1 proposing the partial demolition of existing building and construction of a workers accommodation building containing five (5) bedrooms and shared facilities at 39 Lovedale Road, Lovedale, is refused for the following reasons:

1. The subject site is not suitable for the proposed development for the following reasons:
  - a. The subject site is located within a high hazard floodway.
  - b. Intensification of habitable development within a high hazard floodway will result in increased risks to life and property (Section 79C(1)(c) *Environmental Planning and Assessment Act, 1979*).

2. The development is inconsistent with the *Cessnock Local Environmental Plan, 2011* specifically the objective of the RU4 Primary Production Small Lots zone, as the development fails to maintain the ecological sustainability of the Vineyards District as a result of the APZ's requirements to protect the development in the event of a bushfire which conflicts with the Controlled Activity Approval to rehabilitate the bank of Black Creek adjacent to the development site (Section 79C(1)(a)(i) *Environmental Planning and Assessment Act, 1979*).
3. The development is inconsistent with the *Cessnock Local Environmental Plan, 2011* specifically Clause 7.3 Flood Planning for the following reasons:
  - a. The development of the site is not compatible with the lands high risk flood hazard.
  - b. Intensification of development will increase the potential flood affectation of other properties in vicinity of the subject site.
  - c. The development cannot incorporate appropriate measures to manage risk to life from flood (Section 79C(1)(a)(i) *Environmental Planning and Assessment Act, 1979*).
4. The proposed development is inconsistent with Chapter E.3 Vineyards District of the Cessnock Development Control Plan 2010. Specifically, the development fails to meet the objectives of Chapter E.3 Vineyards District of the Cessnock DCP 2010; is not considered to be suitably sited having regard to the proximity of the development to Black Creek; and fails to meet the side setback requirements (Section 79C(1)(a)(iii) *Environmental Planning and Assessment Act, 1979*).
5. The proposed development is not in the public interest (Section 79C(1)(e) *Environmental Planning and Assessment Act, 1979*).

<b>FOR</b>	<b>AGAINST</b>
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

*Councillor Dagg returned to the meeting, the time being 7.58pm*

**PLANNING AND ENVIRONMENT NO. PE78/2016**

**SUBJECT: DEVELOPMENT APPLICATION PERFORMANCE MONITORING  
SEPTEMBER QUARTER 2016**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Stapleford  
55  
**RESOLVED**

**That Council receive the report and note the information.**

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

**PLANNING AND ENVIRONMENT NO. PE79/2016**

**SUBJECT: ANNUAL REPORT 2015-16**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Suvaal  
56  
**RESOLVED**

**That Council post a copy of the Annual Report 2015-16 on Council's website and notify the Minister for Local Government.**

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

**CARRIED**

**PLANNING AND ENVIRONMENT NO. PE80/2016**

**SUBJECT: SEPTEMBER 2016 QUARTER REVIEW OF 2013-17 DELIVERY PROGRAM AND FIT FOR THE FUTURE IMPROVEMENT PROPOSAL**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Stapleford  
57

**RESOLVED**

1. That Council note the progress in implementing the 2013-17 Delivery Program as at 30 September 2016.
2. That Council note the progress in the implementation of Council's Improvement Proposal and the updated forecasts against the Fit for the Future benchmarks.

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

**CARRIED**

## **CORPORATE AND COMMUNITY**

### **CORPORATE AND COMMUNITY NO. CC72/2016**

**SUBJECT: QUARTERLY BUDGET REVIEW STATEMENTS - SEPTEMBER 2016**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Suvaal

58

#### **RESOLVED**

1. That Council note the September 2016 Quarterly Budget Review Statements were presented to and endorsed by the Audit Committee on 8 November 2016.
2. That Council approve the variations to the income, expenditure and capital budgets as detailed in the September 2016 Quarterly Budget Review Statements.

<b>FOR</b>	<b>AGAINST</b>
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (1)</b>

**CARRIED**

**CORPORATE AND COMMUNITY NO. CC73/2016**

**SUBJECT: INVESTMENT REPORT - OCTOBER 2016**

---

**MOTION**      **Moved:** Councillor Stapleford      **Seconded:** Councillor Burke  
59  
**RESOLVED**

**That Council receive the report and note the information.**

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

**CORPORATE AND COMMUNITY NO. CC74/2016**

**SUBJECT: TENDER EVALUATION REPORT - T1516/9 SMARTFORMS DIGITAL DATA SOLUTION**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Sander  
60  
**RESOLVED**

1. That Council decline to accept all tenders for Tender No. T1516-09 - Smartforms Digital Data Solution.
2. That Council not call for fresh tenders and cancel the proposal for the contract.
3. That Tenderers are formally advised of Council's decision.

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

**CORPORATE AND COMMUNITY NO. CC75/2016**

**SUBJECT: REGIONAL PROCUREMENT TENDER FOR THE SUPPLY AND DELIVERY OF MOBILE GARBAGE BINS AND PARTS (T191617HUN)**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Lyons

61

**RESOLVED**

1. That Council accept Regional Procurement Tender for the Supply and Delivery of Mobile Garbage Bins and Parts (T191617HUN).
2. That SULO MGB Australia Pty Ltd be accepted as the single source supplier to Cessnock City Council under Regional Procurement Tender for the Supply and Delivery of Mobile Garbage Bins and Parts (T191617HUN)
3. That Council note the contract term for the Supply and Delivery of Mobile Garbage Bins and Parts (T191617HUN) is from 1 October 2016 to 30 September 2018 with an option for a 12 month contract extension based on satisfactory supplier performance.

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

**CORPORATE AND COMMUNITY NO. CC76/2016**

**SUBJECT: RESOLUTIONS TRACKING REPORT**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Sander  
62  
**RESOLVED**

**That Council receive the report and note the information.**

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

## **WORKS AND INFRASTRUCTURE**

### **WORKS AND INFRASTRUCTURE NO. WI50/2016**

**SUBJECT: CONTINUATION OF THE HUNTER REGIONAL ILLEGAL DUMPING SQUAD**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Stapleford  
63  
**RESOLVED**

1. That Council provides in principle commitment to continue its involvement with the Hunter Regional Illegal Dumping Squad subject to receiving the required funding from the NSW Government's Waste Less Recycle More Program;
2. In the event that full funding is not provided by the NSW Government to cover the operational cost of the Squad, a further report be brought back to Council to consider its position with respect to ongoing participation in the initiative.

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

## **BUSINESS OF WHICH WRITTEN NOTICE HAS BEEN GIVEN**

### **BUSINESS WITH NOTICE NO. BN17/2016**

**SUBJECT: WESTON JUNIOR FOOTBALL CLUB RELOCATION FROM VARTY PARK TO WESTON PARK**

---

**MOTION**      **Moved:** Councillor Sander      **Seconded:** Councillor Dagg  
64  
**RESOLVED**

1. That Council consider a report on a review of the 2008 Council adopted Masterplan for Weston Bears Park to confirm that the recommendations and costings associated with works identified within the Masterplan, are still current.
2. That Council consider a report on the options that would allow the sale of Varty Park, the proceeds from which would be restricted to the development of Weston Bears Park.
3. That funding for the redevelopment of Weston Bears Park also be sought from the NSW State and Federal Governments.

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

**ANSWERS TO QUESTIONS FOR NEXT MEETING**

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ75/2016**

**SUBJECT:     IMPOUND COSTS - ENQUIRY REGARDING PAYMENT PLANS**

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The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ76/2016**

**SUBJECT:     EDUCATION FOR RESIDENTS REGARDING PARKING IN KEARSLEY**

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The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ77/2016**

**SUBJECT:     REGULATION OF BABY CHANGING ROOMS IN CBD**

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The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ78/2016**

**SUBJECT:     TRAFFIC FLOW**

---

The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ79/2016**

**SUBJECT:     THE BASIN REDEVELOPMENT**

---

The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ80/2016**

**SUBJECT:     PARKING SIGNS WITHIN CESSNOCK CBD**

---

The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ81/2016**

**SUBJECT:     FLOODING - SOUTH CESSNOCK AREA**

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The answer was noted.

**ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ82/2016**

**SUBJECT:     FRAME DRIVE BRIDGE - WEIGHT LIMITS**

---

The answer was noted.

## **QUESTIONS FOR NEXT MEETING**

*Councillor Rod Doherty*

### **INTERNAL SERVICE REVIEW - REQUEST FOR UPDATE**

Councillor Doherty asked for a report on the Internal Service Review that is currently being undertaken.

*Councillor Rod Doherty*

### **CESSNOCK COUNCIL ORGANISATIONAL STRUCTURE**

Councillor Doherty asked when Councillors will be given the opportunity to review the structure of Council?

*Councillor Ann Sander*

### **HEBBURN ESTATE - REQUEST FOR UPDATE**

Councillor Sander asked for an update on Hebburn Estate Weston and what is its future.

*Councillor Ann Sander*

### **STRATEGIC PROPERTY REVIEW - UPDATE REQUEST**

Councillor Sander asked what the status is of Council's Strategic Property Review?

*Councillor Mark Lyons*

### **HAZARDOUS PRIVATE CAR PARKS AND RIGHTS OF WAY**

Councillor Lyons asked what Council could do in regard to improving hazardous private car parks and rights of way?

*Councillor Mark Lyons*

### **AUSTAR GUARDRAIL AT KITCHENER**

Councillor Lyons asked for an update on the Austar Guardrail at Kitchener.

*Councillor Ian Olsen*

### **HUNTER COUNCILS MINUTES**

Councillor Olsen asked if there have been any Hunter Council meetings and when would Council be getting a report.

Councillor Ian Olsen

## **DONATIONS FUND - SPONSORSHIP OF SPORT**

Councillor Olsen referred to the previous Donations Fund which was stopped and asked why Council sponsored some players, by paying for their shirts, to play touch football.

## **CORRESPONDENCE**

### **CORRESPONDENCE NO. CO5/2016**

**SUBJECT: CESSNOCK CORRECTION CENTRE - RESPONSES UPDATE**

---

**MOTION**      **Moved:** Councillor Burke      **Seconded:** Councillor Gray  
65

**RESOLVED**

**That Council note the correspondence received.**

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

## **COUNCILLOR'S REPORTS**

Councillor Lyons

Austar Consultative Committee

Councillor Lyons reported on his attendance at the Austar Consultative Committee meeting and advised that it was a very productive meeting. Councillor Lyons was briefed on the operations and how they integrate with affected land holders and the community in general as well as minimising environmental and noise issues. Austar advised that they have EPA approvals until 2030 and employ over 200 full time employees. Austar also advised that they review the rigorous environmental controls in terms of dust abatement, water release and dealing with contaminants on the site and the Committee were quite satisfied with the way in which they were dealing with those. An example of their consultation with the community would be 4 years ago when they were undergoing an expansion they received 14 complaints from neighbours and during the most recent round of expansions they had only received 4 complaints. Austar also has their community grants program which has been very popular.



The Motion was then **PUT** and **CARRIED**.

**MOTION**            **Moved:**    Councillor Suvaal            **Seconded:**    Councillor Lyons  
66  
**RESOLVED**

1. That Council notes that the very short time frame provided by the Commonwealth Government's *Standing Committee on Environment and Energy Inquiry into Flying Fox Management in the Eastern States* has prevented the opportunity for a full submission to be provided to the elected Council to consider before the Committee's submission period closes on 18 November 2016.
2. That Council notes that Council staff will make a submission, in consultation with Hunter Councils, to the *Standing Committee on Environment and Energy Inquiry into Flying Fox Management in the Eastern States*, and that prior to the staff submission being lodged, a copy of the submission be provided to Councillors for reference.
3. That Council make a brief submission to the *Standing Committee on Environment and Energy Inquiry into Flying Fox Management in the Eastern States* as follows:
  - c) The impact on local residents of the flying foxes at the East Cessnock Flying Fox Camp is significant and is worthy of further review by the Council before making a submission to the Inquiry;
  - d) That given the significant impact on residents at East Cessnock, it is considered more than reasonable for Council to request the Committee provide an extension of time to enable the elected Council to consider the matter and provide an endorsed and informed submission.
4. That Council send a representative(s) to the Standing Committee's Public Roundtable Hearing in Canberra on 24 November 2016 in an effort to contribute to this important national issue and ensure Cessnock City Council's concerns are heard.

<b>FOR</b>	<b>AGAINST</b>
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	
<b>Total (13)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

*The Meeting Was Declared Closed at 8.33pm*

**CONFIRMED AND SIGNED** at the meeting held on 14 December 2016

.....**CHAIRPERSON**

.....**GENERAL MANAGER**

**Disclosures Of Interest**

**Report No. DI20/2016**

**Corporate and Community Services**



**SUBJECT: DISCLOSURES OF INTEREST**

**RESPONSIBLE OFFICER: Manager Governance and Business Services - Kim Appleby**

**RECOMMENDATION**

**That Councillors now disclose any interests and reasons for declaring such interest in the matters under consideration by Council at this meeting.**

**SUMMARY**

The provisions of Chapter 14 of the Local Government Act, 1993 regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions, voting on that matter, and require that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

**ENCLOSURES**

There are no enclosures for this report.

Notice of Intention to Deal With Matters in Confidential Session

Report No. NI3/2016

Corporate and Community Services



**SUBJECT:** *NOTICE OF INTENTION TO DEAL WITH MATTERS IN CONFIDENTIAL SESSION*

*WI57/2016 – CESSNOCK CORRECTIONAL CENTRE EXPANSION ACCESS OPTIONS*

**RESPONSIBLE OFFICER:** *Manager Governance and Business Services - Kim Appleby*

**RECOMMENDATION**

1. That Council consider in Confidential Session the following matters in accordance with Section 10A(2)(di) of the Local Government Act 1993:

Report No. WI57/2016 – Cessnock Correctional Centre Expansion Access Options as it deals with commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

2. That Council request the Mayor in accordance with Section 253 of Local Government (General) Regulation 2005 to report on these matters to the meeting in Open Session following completion of the Confidential Session.

**SUMMARY**

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in Confidential Session. The reports are incorporated in the “Confidential” business paper which has been circulated to Councillors.

The Local Government Act, 1993 requires the General Manager to identify those matters listed on the business paper which may be categorised as confidential in terms of Section 10A of the Local Government Act, 1993.

**ENCLOSURES**

There are no enclosures for this report.

**Motions of Urgency**

Report No. MOU20/2016

**Corporate and Community Services**



**SUBJECT:** *MOTIONS OF URGENCY*

**RESPONSIBLE OFFICER:** *Manager Governance and Business Services - Kim Appleby*

**RECOMMENDATION**

**That Councillors now indicate if there are any matters of urgency which they believe should be conducted at this meeting of Council.**

**SUMMARY**

Under Clause 10.5 of Council's Code of Meeting Practice, business may be transacted at a meeting of Council even though due notice of the business has not been given to the Councillors. This can only happen if a motion is passed to have the business transacted at the meeting, the Mayor rules that the business is of great urgency and the business notified in the agenda for the meeting has been disposed of.

Only the mover of such a motion can speak to the motion before it is put.

**ENCLOSURES**

There are no enclosures for this report.

General Manager's Unit  
Report No. GMU16/2016  
General Manager's Unit



**SUBJECT:** *MINUTES OF THE AUDIT COMMITTEE MEETING HELD 7 NOVEMBER 2016 COMMENCING AT 9.00AM IN THE ANTE ROOM*

**RESPONSIBLE OFFICER:** *Internal Auditor - Ian Lyall*

---

**RECOMMENDATION**

That the Minutes of the Audit Committee Meeting of 7 November 2016 be adopted as a resolution of the Ordinary Council.

***MINUTES OF EXTRAORDINARY AUDIT COMMITTEE MEETING OF THE CESSNOCK CITY COUNCIL HELD IN ANTE ROOM ON TUESDAY, 8 NOVEMBER 2016, COMMENCING AT 9.02 AM***

**PRESENT:** Mr Jason Masters - Independent Chair  
Mayor Bob Pynsent  
Councillor Paul Dunn  
Mr Neal O'Callaghan - Independent Representative  
Dr Felicity Barr - Independent Representative

**IN ATTENDANCE:** Mr Robert Maginnity – Director Corporate & Community  
Mr Gareth Curtis – Director Planning & Environment  
Mr Justin Fitzpatrick-Barr – Director Works & Infrastructure  
Ms Darrylen Allen – Human Resource Manager  
Ms Catherine Watson - External Auditor – Forsyths Business Services Pty Ltd  
Mr Ian Lyall – Internal Auditor  
Mr John Oliver – Chief Financial Officer  
Ms Robyn Larsen – Minute Taker

**INVITEES:** Mr Paul Grosbernd  
Mr Robert Wilson

**APOLOGIES**

Apology accepted on behalf of the General Manager

## **CONFIRMATION OF MINUTES**

**MINUTES:**

**MOTION**

**Moved:** Felicity Barr  
**Seconded:** Mayor Pynsent

**RECOMMENDED** that the Minutes of the Audit Committee held on 2 August 2016, as circulated, be taken as read and confirmed as a correct record.

**CARRIED UNANIMOUSLY**

### **Procedural Matter**

The Chair requested that the Quarterly Budget Review Statements report be brought forward to enable it to be dealt with immediately following the Financial Statements and External Audit Governance reports.

## **DISCLOSURES OF INTEREST**

### **COMMITTEE DISCLOSURE OF INTEREST NO. ACCDI4/2016**

**SUBJECT: DISCLOSURES OF INTEREST**

---

Dr Felicity Barr disclosed a non-pecuniary interest in regards to a conference being held in the Cessnock area in March next year, with an approach expected to request the Mayor to open the conference.

## **LISTED MATTERS**

### **LISTED MATTERS - COMMITTEE NO. ACCLM21/2016**

**SUBJECT: FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2016**

**MOTION**      **Moved:** Dr Felicity Barr      **Seconded:** Councillor Dunn

#### **RECOMMENDATION**

1. That the Audit Committee endorse the 2015-16 Annual Financial Statements for referral to Council.
2. That the Audit Committee note the Ordinary Council Meeting of 16 November 2016 as the meeting at which the 2015-16 Annual Financial Statements will be presented to the public.
3. That Management draft a letter to the Office of Local Government and Auditor General for the Chairman's signature raising anomalies in the process for clearance and adoption of the financial statements comparison with State Government entities process.

**CARRIED UNANIMOUSLY**

### **LISTED MATTERS - COMMITTEE NO. ACCLM22/2016**

**SUBJECT: EXTERNAL AUDIT GOVERNANCE**

**MOTION**      **Moved:** Neal O'Callaghan      **Seconded:** Mayor Pynsent

#### **RECOMMENDATION**

1. That the Governance Letters be noted.
2. That Management, in consultation with the external auditor, review the timing of the year end process to ensure that the audited financial statements and Management Letter are available for review by the Audit committee prior to lodgement and presentation to Council.

**CARRIED UNANIMOUSLY**

**LISTED MATTERS - COMMITTEE NO. ACCLM27/2016**

**SUBJECT: QUARTERLY BUDGET REVIEW STATEMENTS - SEPTEMBER 2016**

**MOTION**      **Moved:** Neal O'Callaghan      **Seconded:** Councillor Dunn

**RECOMMENDATION**

That the Audit Committee receive and endorse the September 2016 Quarterly Budget Review Statements for presentation to Council in accordance with Clause 203 of the Local Government (General) Regulation 2005.

**CARRIED UNANIMOUSLY**

**LISTED MATTERS - COMMITTEE NO. ACCLM23/2016**

**SUBJECT: INTERNAL AUDIT OF THE PLANNING REFORM FUND**

**MOTION**      **Moved:** Mayor Pynsent      **Seconded:** Jason Masters

**RECOMMENDATION**

That the Committee receives and notes the internal audit report on the Planning Reform Fund and the agreed management action plan.

**CARRIED UNANIMOUSLY**

**LISTED MATTERS - COMMITTEE NO. ACCLM24/2016**

**SUBJECT: DRIVES24 INTERNAL AUDIT**

**MOTION**      **Moved:** Mayor Pynsent      **Seconded:** Councillor Dunn

**RECOMMENDATION**

That the internal audit report on DRIVES24 be received and the Committee notes the agreed management action plan.

**CARRIED UNANIMOUSLY**

**LISTED MATTERS - COMMITTEE NO. ACCLM25/2016**

**SUBJECT: Q2 INTERNAL AUDIT REPORT**

**MOTION**      **Moved:** Dr Felicity Barr      **Seconded:** Neal O'Callaghan

**RECOMMENDATION**

1. That the Q2 Internal Audit Report be noted.
2. That the revised schedule of audits to be completed during 2016/17 be noted.
3. That the current status of outstanding management action plans be noted.
4. That the Internal Audit Business Rules be noted.

**CARRIED UNANIMOUSLY**

**LISTED MATTERS - COMMITTEE NO. ACCLM26/2016**

**SUBJECT:     AUDIT COMMITTEE ANNUAL PERFORMANCE REVIEW 2015/16.**

---

**MOTION       Moved:** Jason Masters           **Seconded:** Dr Felicity Barr

**RECOMMENDATION**

1. That the Committee endorse the Annual Performance Review for 2015/16 for submission to Council for consideration.
2. The following wording "Improved understanding of information technology risks" within the Suggested Goals for 2016/17 be amended to read "Better understanding of action taken to manage information technology risks".

**CARRIED UNANIMOUSLY**

**CORRESPONDENCE**

NIL

**GENERAL BUSINESS**

**GENERAL BUSINESS - COMMITTEE NO. ACCGB4/2016**

**SUBJECT:     AUDIT COMMITTEE OUTSTANDING ITEMS REPORT**

---

**MOTION       Moved:** Neal O'Callaghan           **Seconded:** Dr Felicity Barr

**RECOMMENDATION**

That the Committee notes the list of outstanding Audit Committee action items.

**CARRIED UNANIMOUSLY**

**General Manager's Unit**

**Report No. GMU16/2016**

**General Manager's Unit**

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Mayor Pynsent advised of his acceptance of the resignation of the Audit Committee Chair, Mr Jason Masters which is effective from 31 December 2016.

The Internal Auditor to prepare a report regarding the changes to the Audit Committee following amendments to the Local Government Act.

*The Meeting Was Declared Closed at 10.50am*

***ENCLOSURES***

There are no enclosures for this report

Planning and Environment

Report No. PE81/2016

Planning and Environment



**SUBJECT:** *DA 8/2016/548/1 PROPOSING ALTERATIONS AND ADDITIONS TO EXISTING COMMERCIAL BUILDING AND USE AS A CHILD CARE CENTRE CATERING FOR 84 CHILDREN*

*14 & 14A VINCENT STREET AND 3 CUMBERLAND STREET, CESSNOCK*

**RESPONSIBLE OFFICER:** *Senior Planning Assessment Officer - Sarah Hyatt  
Development Services Manager - Janine McCarthy*

<b>APPLICATION NUMBER:</b>	8/2016/548/1
<b>PROPOSAL:</b>	Alterations and additions to existing commercial building and use as a child care centre catering for 84 children
<b>PROPERTY DESCRIPTION:</b>	Lot 169 DP 755215, Lots 1 & 2 DP 439520 and Lot 1 DP 442878
<b>PROPERTY ADDRESS:</b>	14 & 14A Vincent Street and 3 Cumberland Street, Cessnock
<b>ZONE:</b>	B3 Commercial Core
<b>OWNER:</b>	2 North Avenue Pty Ltd
<b>APPLICANT:</b>	Professional Construction Services Pty Ltd

## RECOMMENDATION

1. That Council determine Development Application No. 8/2016/548/1 proposing alterations and additions to existing commercial building and use as a child-care centre catering for 84 children at Lot 169 DP 755215, Lots 1 & 2 DP 439520 and Lot 1 DP 442878, 14 & 14A Vincent Street and 3 Cumberland Street, Cessnock, pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, by the granting of consent subject to the conditions contained in this report.
2. That Council notify in writing the person who made a submission with regard to the proposed development, of Council's decision.

## REASON FOR REPORT

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Development Application No. 8/2016/548/1 is being referred to Council for determination as a variation is proposed, and it is considered such variation constitutes a 'significant variation' in accordance with the provisions of Development Practice Note G3 – Delegations for Determination of Development Applications.

Specifically, the application seeks to vary the requirements of Chapter C.1 Parking and Access of the Cessnock Development Control Plan (DCP) 2011 by proposing a 37.5% variation to the car parking requirements of the DCP. Justification has been submitted by the applicant which is acceptable to Council officers in this instance, thereby reducing the proposed variation to 4.8 percent.

## EXECUTIVE SUMMARY

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Council is in receipt of Development Application No. 8/2016/548/1 seeking approval for alterations and additions to an existing commercial building and use as a child care centre catering for 84 children at 14 & 14A Vincent Street and 3 Cumberland Street, Cessnock.

The Development Application has been assessed against the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulations 2000, relevant Environmental Planning Instruments and Council policies. The outcome of this assessment is detailed further in this report.

The Development Application was publicly exhibited with one (1) submission received following conclusion of the exhibition period. The issues and concerns raised in the submission are addressed in the following report.

The application seeks to vary the requirements of Chapter C.1 Parking and Access of the Cessnock DCP 2011. In accordance with the DCP, the proposed development generates a requirement for 32 spaces, incorporating 11 employee car parking spaces and 21 spaces for parent parking. A total of 20 car parking spaces are proposed to service the development, representing a variation of 37.5 percent to the requirements of the DCP. However, the applicant has submitted justification to support the variation, providing car parking surveys and a comparison of Council's car parking requirements for child-care centres in the Hunter region. The application seeks to remove the requirement for staff parking which reduces the proposed car parking variation from 12 spaces (variation of 37.5 percent) to one (1) space (variation of 4.8 percent). The justification provided by the applicant is supported by Council officers in this instance due to the location of the site within the Cessnock CBD, the availability of on-street parking in the direct locality, the provision of dedicated parking spaces for drop-off/pick-up, and the results of the surveys undertaken by the applicant in respect of comparing Council's parking requirements with other Councils in the Hunter region and the NSW RMS requirements.

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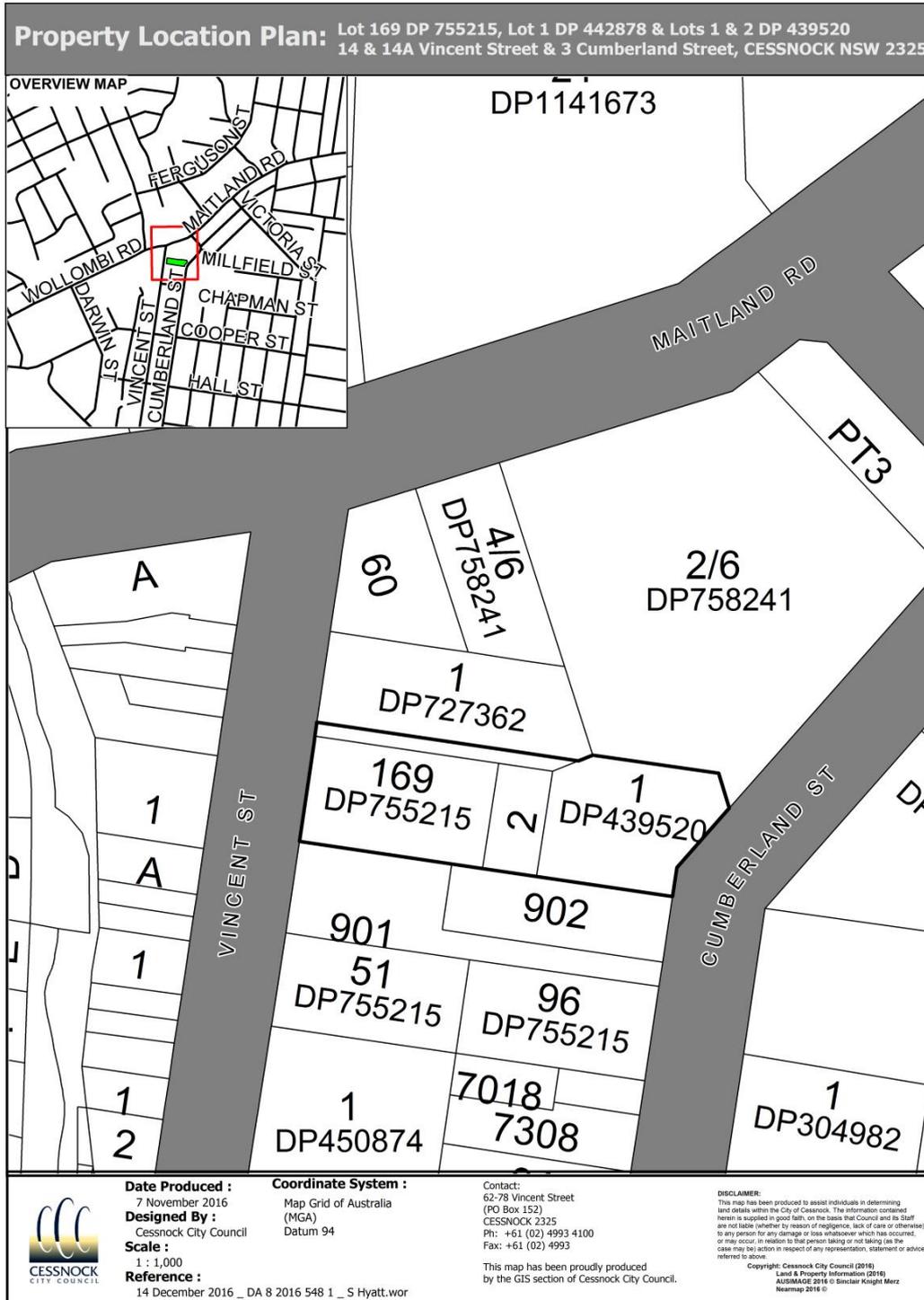


The subject site is located within the area covered by the 'Car-Parking in the Cessnock Central Business District Section 94 Contributions Plan'. A requirement for the applicant to pay a monetary contribution to cover the shortfall in car parking of one (1) space has been applied as a condition of consent on the draft determination notice.

Based on the assessment, it is recommended that the Development Application be approved subject to the conditions of consent included in this report.



LOCATION MAP





**AERIAL**



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## SITE DESCRIPTION AND LOCALITY

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The subject site is commonly known as 14 & 14A Vincent Street and 3 Cumberland Street, Cessnock, and is legally described as Lot 169 DP 755215, Lots 1 & 2 DP 439520 and Lot 1 DP 442878.

The subject site is located on the eastern side of Vincent Street, west of Cumberland Street. The site has a frontage of approximately 25m to Vincent Street, a frontage of approximately 23m to Cumberland Street, a depth of approximately 90m and an overall site area of 2,224m<sup>2</sup>. Vehicular access to the site is available from the Cumberland Street frontage.

The subject site is currently occupied by a two-storey brick building known as the 'Soldiers Memorial Hall', listed in the Cessnock Local Environmental Plan 2011 as a local heritage item.

The surrounding properties are characterised by business premises, retail shops and cafés/restaurants.

## HISTORY

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### Development Consent 8/2013/20/1 - Offset Parking Arrangement

Development Application No. 8/2013/20/1 proposing a commercial development (at 2, 2A and 4 North Ave, Cessnock) including 10 retail and three (3) office premises was approved by Council on 19 June 2013. A subsequent Section 96 Application was lodged to modify the original approval by proposing the deletion of Condition 16 that required provision of 12 car parking spaces to service the development. At its meeting on 11 December 2013, Council resolved to support the removal of Condition 16 subject to an additional condition being imposed on the development consent, as follows:

*'Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the car parking, vehicle access and off street parking facilities have been constructed in accordance with the approved car parking plan, the development consent and relevant Australian Standard and the following have been implemented within the property known as 14 Vincent Street, Cessnock, where applicable:*

- a. *The car park has been completed, line marked, and all signage relating to car parking, erected. A notice has been clearly displayed at the Cumberland Street frontage to indicate that parking is available within the property for staff associated with the approved development at 2, 2A and 4 North Avenue and Keene Street, Cessnock.*
- b. *Registration of an 88B restriction over 14 Vincent Street Cessnock, to ensure that the 12 dedicated parking spaces are available for the approved development at 2, 2A and 4 North Avenue and Keene Street, Cessnock.*

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- c. *Sign(s) have been erected that clearly indicate to the drivers of vehicles, both on and off the property, which driveway they are to use to enter or leave the subject land.*
- d. *Sign(s) have been erected that clearly indicate to the drivers of vehicles, both on and off the property, the location and means of access to the car parking area(s).*

*Certification by a qualified practising Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance with the above and relevant Australian Standard's must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate'.*

The use of 14 Vincent Street, which forms part of the subject land under this application, is therefore restricted with 12 car parking spaces located on the site covered by an 88B instrument benefiting the development at 2, 2A and 4 North Avenue and Keene Street, Cessnock.

**History of the subject Development Application**

The history of the subject Development Application is summarised in the following table:

Date	Action
2 September 2016	Development Application lodged with Council.
6 September 2016	Referrals sent to the following internal officers: <ul style="list-style-type: none"> <li>• Building Services – Fire Safety Officer,</li> <li>• Environmental Health,</li> <li>• Consultant Development Engineer, and</li> <li>• Heritage Officer.</li> </ul>
13 September 2016	Referral response received from Council's Environmental Health Officer. The application is satisfactory in relation to health matters subject to conditions being imposed on the notice of determination.
13 September 2016	Referral response received from Council's Consultant Development Engineer requesting additional information in relation to the following: <ul style="list-style-type: none"> <li>• Impact of traffic generated on the Cumberland Street entry/exit,</li> <li>• Proposed car parking deficiency – 28 spaces (variation of 72 percent), and</li> <li>• Stormwater, including a proposed stormwater plan indicating a proposed stormwater layout and overland flow paths.</li> </ul>
13 September 2016	Additional information requested in relation to engineering matters.

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21 September 2016	A meeting was held between Council staff, the applicant and the applicant's traffic consultant to discuss the request for additional information.
13 October 2016	Amended information received from applicant and re-referred to Council's Consultant Development Engineer and Heritage Officer.
14 October 2016	Additional information received and referred to Consultant Development Engineer and Heritage Officer.
18 October 2016	Referral response received from Council's Senior Building Fire Safety Officer. The application is satisfactory in relation to fire safety matters subject to conditions being imposed on the notice of determination.
24 October 2016	Referral response received from Council's Consultant Development Engineer requesting additional information in relation to the following: <ul style="list-style-type: none"> <li>• Impact of traffic generated on the Cumberland Street entry/exit, and</li> <li>• Proposed car parking deficiency – 12 spaces (variation of 37.5 percent).</li> </ul>
2 November 2016	A meeting was held with the applicant, the applicant's traffic consultant and the property owner, in addition to the Mayor, Council's General Manager, Director Planning and Environment, Development Services Manager, Senior Planning Assessment Officer and Consultant Development Engineer to discuss the outstanding engineering matters, i.e., impact of traffic on the Cumberland Street entry/exit and car parking deficiency.
3 and 7 November 2016	Referral response received from Council's Heritage Officer. Clarification provided by Council's Senior Strategic Landuse Planner that the matters raised within the heritage referral can be conditioned on the notice of determination.
7 November 2016	Additional information provided by the applicant and re-referred to Council's Consultant Development Engineer.
8 November – 22 November 2016	Application notified to adjoining landowners. One (1) submission was received following conclusion of the exhibition period.

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11 November 2016	Referral response received from Council's Consultant Development Engineer. The application is satisfactory in relation to engineering matters subject to conditions being imposed on the notice of determination.
23 November 2016	Assessment finalised.

**DETAILS OF THE PROPOSED DEVELOPMENT**

Development Application No. 8/2016/548/1 seeks approval for alterations and additions to existing commercial building and use as a child-care centre catering for 84 children at 14 & 14A Vincent Street and 3 Cumberland Street, Cessnock.

Specifically, the proposed development involves:

- demolition of part of the addition to the rear of the building to facilitate the new extension,
- minor internal alterations within the original building to remove remnants of the last use of the building as a bank,
- construction of a new addition to the rear of the building,
- construction of a new outdoor play area at the rear of the building, including sail structures covering the first floor play area, and
- alterations within the existing ground floor and first floor levels of the building to enable the building to be used as a childcare centre.

The child care centre will accommodate 84 children within five (5) rooms as outlined below:

- babies room – eight (8) children,
- 2-3 year old room – 10 children,
- 3-4 year old room – 20 children,
- 4 year old room – 26 children, and
- 5 year old room – 20 children.

The centre proposes to operate between 7:00am and 6:00pm, Monday to Friday.

**ASSESSMENT**

***Education and Care Services National Law and Regulation***

Child-care services are covered by a National legislative framework consisting of the *Education and Care Services National Law* and the *Education and Care Services National Regulations*. The operator will be required to obtain a licence from the NSW Department of Family and Community Services prior to the issue of an Occupation Certificate, ensuring that the premises complies with the minimum standards adopted by the National legislative framework. A condition will be imposed on the notice of determination in this regard.

***Environmental Planning and Assessment Act 1979 – Section 79(C)(1)***

In determining a Development Application, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the Development Application on the subject property:

***(a)(i) The Provisions of any Environmental Planning Instrument***

The Environmental Planning Instruments that relate to the proposed development are:

1. State Environmental Planning Policy No. 55 – Remediation of Land; and
2. Cessnock Local Environmental Plan 2011

An assessment of the proposed development under the Environmental Planning Instruments is provided below:

**1. State Environmental Planning Policy No. 55 – Remediation of Land**

The aim of the policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7(1) of State Environmental Planning Policy No. 55 – Remediation of Land, is relevant to the assessment of this Development Application.

Clause 7(1) requires that consent not be granted until Council has considered whether the land is contaminated. If the land is contaminated, the Council needs to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The subject site has historically been used as a hall for public gatherings and most recently, to provide services to the community. No evidence of contamination was observed during inspection of the site.

As there is no historical evidence of the site being previously used for a purpose which would result in the land being contaminated, further testing of the site in respect of contamination is not warranted in this instance.

**2. Cessnock Local Environmental Plan 2011**

**2.1 Permissibility**

The subject site is zoned B3 Commercial Core under the provisions of *Cessnock Local Environmental Plan (CLEP) 2011*. The proposed development is defined as a child-care centre under CLEP 2011, which provides as follows:

***child care centre*** means a building or place used for the supervision and care of children that:

- a) provides long day care, pre-school care, occasional child-care or out-of-school-hours care, and

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*b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre,*

*but does not include:*

- c) a building or place used for home-based child care, or*
- d) an out-of-home care service provided by an agency or organisation accredited by the Children's Guardian, or*
- e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or*
- g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility, or*
- h) a service that is concerned primarily with the provision of:*
  - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or*
  - (ii) private tutoring, or*
- i) a school, or*
- j) a service provided at exempt premises (within the meaning of Chapter 12 of the Children and Young Persons (Care and Protection) Act 1998), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.*

The development satisfies the above definition, providing long day-care for children aged between 0 and 5 years.

Development for the purpose of a child care centre is a permissible land use in the B3 zone, with consent.

## **2.2 Objectives**

The objectives of the B3 zone are as follows:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community,*

The development will provide additional child-care facilities within the CBD of Cessnock, assisting to meet the demand for childcare both within Cessnock and the broader area.

- To encourage appropriate employment opportunities in accessible locations,*

The development will generate an additional 11 full time equivalent positions. As the subject site is located in the CBD of Cessnock, it is in a prime business location, accessible via car and bus and is within walking distance to other local shops, services and facilities.

- *To maximise public transport patronage and encourage walking and cycling,*

It is considered that most people travelling to the site will do so via car; however, with the site being located within the CBD of Cessnock, it is highly accessible with existing pedestrian links and public transport available.

It is considered that the proposed development is consistent with the objectives of the B3 zone.

### **2.3 Relevant Clauses**

The Development Application was assessed against the following relevant clauses of CLEP 2011:

- *Clause 2.7 Demolition requires consent*

The application seeks consent to partly demolish the existing addition to the rear of the building in order to facilitate the new addition and use of the existing building for the purposes of a child-care centre. Any demolition is required to be undertaken in accordance with the relevant Australian Standards.

- *Clause 4.3 Height of buildings*

The subject site is identified on the Height of Buildings Map as having a maximum building height of 12m. Building height is defined in the CLEP 2011 as follows:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The height of the existing building measured from natural ground level to the top of the ridgeline is 10.76m. The new addition to the rear, including the lift overrun will have a maximum height of 8.5m measured from natural ground level. Overall, the height of the building is consistent with the maximum height defined on the Height of Buildings Map.

- *Clauses 4.4 & 4.5 Floor Space Ratio and Calculation of FSR*

Clauses 4.4 and 4.5 provide for a Floor Space Ratio (FSR) within certain areas and identify how the FSR is to be calculated. The subject site is identified on the Floor Space Ratio Map as having a maximum FSR of 1.5:1. The FSR is the ratio of the gross floor area (GFA) of all buildings within the site to the site area. Gross floor area is defined by the CLEP 2011 as:

*gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

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- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
  - (i) storage, and
  - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above

Based on a GFA of 521m<sup>2</sup> and a site area of 1,956m<sup>2</sup> (excluding the car parking area covered by the 88B as offset parking for development at North Avenue, Cessnock) the FSR of the development is 0.27:1, thereby complying with the requirements of Clause 4.4.

- *Clauses 5.10 Heritage conservation*

The subject site is identified on the Heritage Map as containing a heritage item listed in Schedule 5 of the CLEP 2011 as outlined below:

Item Name	Address	Property Description	Significance	Item Number
Soldiers Memorial Hall	14 Vincent Street, Cessnock	Lot 169 DP 755215	Local	159

The NSW State Heritage Inventory provides the following statement of significance in relation to the item:

*'Of historic and social significance to the people of the Cessnock district, naming those of the community who had taken part in a world conflict. The size and substance of the hall reflects the depth of the community's attitude towards those who served.'*

The subject land is also located within the vicinity of a number of other heritage items listed in the CLEP 2011, including:

Item Name	Address	Significance	Item Number
Hunter District Water Board	16 Vincent Street, Cessnock	Local	160
Kearsley Chambers	18 Vincent Street, Cessnock	Local	161
School of Arts	6 Vincent Street, Cessnock	Local	158
Cessnock Courthouse and Police Station Group	223-225 Main Road, Cessnock	Local	156

In part, Clause 5.10 provides that development consent is required for any of the following:

*(2) Requirement for consent Development consent is required for any of the following:*

*(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*

*(i) a heritage item,*

*(ii) an Aboriginal object,*

*(iii) a building, work, relic or tree within a heritage conservation area,*

*(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*

*(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*

*(d) disturbing or excavating an Aboriginal place of heritage significance,*

*(e) erecting a building on land:*

*(i) on which a heritage item is located or that is within a heritage conservation area, or*

*(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*

*(f) subdividing land:*

*(i) on which a heritage item is located or that is within a heritage conservation area, or*

*(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

The application seeks consent to demolish part of the addition to the rear of the building to facilitate the new extension, and to use the existing building for the purpose of a child care centre.

In accordance with subclause (4) *Effect of proposed development on heritage significant*, a Statement of Heritage Impact was submitted addressing the potential impact of the development on the heritage significance of the item. Based on the 1992 Cessnock Main Street Study, the following recommendations to conserve the heritage significance of the building were provided:

- *Prevent painting of brickwork,*
- *Prevent advertising on front facade,*
- *Prevent loss of detail including balconies, balustrades, graphics etc, and*
- *Refer to old photographs*

The Statement of Heritage Impact was assessed by Council's Heritage Officer as being satisfactory, subject to conditions being imposed on the notice of determination. The development will not result in any significant impact upon the heritage value of the building.

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- *Clauses 7.2 Earthworks*

Clause 7.2 seeks to ensure that any earthworks do not result in an adverse impact on the environment, neighbouring properties or heritage items. Earthworks proposed are considered to be minor and will not result in any detrimental impact upon the surrounding environment.

- *Clauses 7.4 Airspace operations*

The subject site is identified on the Obstacle Limitation Surface map as having an Obstacle Limitation Height of 140-150m. The proposed development will have a maximum height of 10.76m at RL 80.3m and as such will not penetrate the Obstacle Limitation Surface.

***(a)(ii) The Provisions of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)).***

No Draft Environmental Planning Instruments are relevant to the application.

***(a)(iii) The Provisions of any Development Control Plan***

**Cessnock Development Control Plan 2010**

The following is an assessment of the proposal's compliance with the numerical standards in Cessnock Development Control Plan 2010:

***Chapter C.1 Parking and Access***

Sections 1.2, 1.3 and 1.4 of Chapter C.1 apply to the proposed development.

In accordance with the Section 1.2 of the DCP, a child care centre requires car parking to be provided in accordance with the following standards:

Land Use	No of employees or children	DCP Parking Requirement	Land Use Parking Requirement
Employees	11	1 space per employee	11
Children	84	1 space per 4 children enrolled for visits and parent parking	21
Total (rounded up)			<b>32</b>

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The child care centre requires a total of 32 car parking spaces to be provided on site. The application proposes a total of 20 spaces including nine (9) spaces dedicated for dropping off and collecting children. With the provision of the 20 spaces, the proposed non-compliance with the parking requirements represent a 37.5 percent variation to the DCP requirements or a shortfall of 12 parking spaces.

The applicant has undertaken parking surveys within a 100m radius of the site which demonstrates that, on average, 54 vacant on-street spaces are available in the AM peak period, and approximately 39 vacant on-street spaces are available in the PM period.

A comparison of other Hunter region Councils parking requirements for child-care centres was undertaken by the applicant. Consideration was also given to the RTA's Guide for Traffic Generating Development. The results of this comparison are shown in the table below. The main difference highlighted was that the Cessnock DCP requires one (1) space per staff member on top of the one (1) space per four (4) children. It can be seen that the larger, more densely populated LGA's prescribe lesser parking rates, while smaller, regional LGA's prescribe higher rates.

LGA/Organisation	Car Parking Requirements	Required Car Parking Spaces for an 84 Place Centre
Wyong	1 space per 4 children	21
Gosford	1 space per person employed in connection with the use, plus a temporary stand area at a rate of 1 car for each 6 children (1 minimum of 5 temporary stand spaces)	25
Newcastle	1 space per 4 children	21
Lake Macquarie	1 car space per 8 children, plus 0.75 spaces per staff member. Parking designated for staff may be provided as single file parking where practical.	19
Port Stephens	1 space per 4 children	21
Singleton	1 space per 4 children plus 1 space per staff member	32
Maitland	1 space per 4 children	21
RTA's Guide for Traffic Generating Development	1 space per 4 children	21

Based on justification provided by the applicant, it is considered reasonable to waiver the staff parking requirements ensuring consistency between the requirements of the DCP and the RTA's Guide to Traffic Generating Development, which sets provisions for development throughout NSW.

The RTA's Guide to Traffic Generating Development prescribes parking provisions for child care centres based on parking surveys. The RTA's surveys found that the average length of stay for the dropping off and collecting of children was 6.8 minutes. The applicant has allowed for short stays of between 5 to 10 minutes. Each parking space dedicated for dropping off and collecting children can reasonably accommodate between 6-12 cars in a

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one (1) hour period. Based on the nine (9) spaces dedicated to dropping off and collecting children, the spaces can reasonably accommodate between 54-108 cars in a 1 hour period. The proposed Peak Vehicle Trips and proposed Peak Vehicle Trips per Hour (PVT & PVT/HR) are summarised below.

	7.00am-9.00am	2.30pm-4.00pm	4.00-6.00pm
	PVT	PVT	PVT
Proposed (84 places)	68	26	59
	PVT/HR	PVT/HR	PVT/HR
Proposed (84 places)	34	18	30

The table above demonstrates that the nine (9) dedicated drop off/pick up car parking spaces suitably cater for the peak parking requirements of the development.

Based on the outcomes of this assessment and the justification provided by the applicant, the proposed variation to the requirements of the DCP is considered acceptable. Acceptance of the applicant's justification reduces the car parking variation down from 12 spaces (proposed variation of 37.5 percent) to one (1) space (proposed variation of 4.8 percent), which is considered to be minor.

The subject site is located within the 'Cessnock Central Business District Section 94 Contributions Plan' catchment. As such, contributions are payable on the car parking shortfall. A requirement for the applicant to pay a monetary contribution to cover the shortfall in car parking of one (1) space has been applied as a condition of consent on the draft determination notice.

**Chapter C.5 Waste Management and Minimisation**

A suitable waste management plan has been submitted with the application. Waste generated during construction of the development shall be separated into recyclable and non-recyclable materials and where possible shall be reused on-site. All other materials shall be disposed of at an appropriate facility. Ongoing waste shall be collected by a private waste contractor. Evidence will be required that the operator of the site has entered into a private waste collection agreement with an appropriate contractor prior to the issue of an Occupation Certificate.

**Chapter C.8 Social Impact and Crime Prevention through Environmental Design Guidelines for Proposed Development (CPTED)**

As the size of the child care centre is less than 100 places, in accordance with the DCP, a Social Impact Comment and CPTED comment were required to be submitted in conjunction with the application. Comments in relation to social impact and crime prevention were provided within the Statement of Environmental Effects accompanying the Development Application.

It is acknowledged that the Cessnock Local Government Area requires increased licensed childcare places to meet the needs of an increased population. This is referenced in the 'Early Childhood Care and Pre School Services: An Analysis of Current and Future Needs within the Cessnock Local Government Area (Cessnock City Council, 2014). The placement of these services is required to be appropriate for the community, stakeholders and users of

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the facility. With the site being located in the CBD of Cessnock, the site is highly accessible with existing pedestrian links and public transport available.

The development has been designed taking into account the principles of Crime Prevention through Environmental Design including surveillance, access control, territorial reinforcement and space management. The following recommendations have been imposed as conditions of consent on the draft notice of determination to minimise the risk of crime:

- CCTV shall be installed at the rear of the premises providing surveillance of the car park and play areas,
- Sensor lighting shall be installed in accordance with Australian Standard AS1158 Lighting for Roads and Public Spaces,
- A security gate shall be installed at the entry to the car park preventing authorised access, and
- Security signage shall be installed around the building.

It is considered that the application is consistent with the requirements of Chapter C.8.

**Chapter D.12 Heritage Conservation and Design Guidelines**

The following provisions of Chapter D.12 – Sections 12.6 and 12.7, apply to the proposed development. The table below provides an assessment of the development against the relevant sections of the DCP.

Provision	Assessment	Compliance?
Section 12.6 Changes of use	The application proposes to replace the existing metal fence on the street frontage with a timber picket fence, use recessive colours, locate new works to the rear and retain the existing brick façade. Minor internal works within the original building, including removal of counters left from the previous use, will not result in any impact. Implementing the measures outlined above will respect/enhance the heritage significance of the building without causing irreversible damage.	Yes
12.7.1 Sympathetic Design	The original heritage façade will not be modified with the new addition to be located behind the original building. Overall, the design of the development does not propose to mimic any original heritage features. New works are easily distinguishable as a contemporary addition.	Yes
12.7.2 Siting, Setback and Orientation	The new addition is generally consistent with established side setbacks. The orientation of the original building to Vincent Street is maintained with the new addition located to the rear. The existing metal fence on the street frontage will be replaced with a timber picket fence, re-establishing the façade of the building depicted in historic photos. The proposed works do not result in any significant impact on views of the site from the surrounding area.	Yes

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12.7.3 Size and Scale	The scale of the development generally sits within the building envelope defined by the width and height of the existing building. In order to facilitate the use of the building for the purposes of a child care centre, minor non-structural internal works are required. The proposed addition to the rear of the building will not result in any significant impact on views of the site from the surrounding area.	Yes
12.7.4 Roof form and shapes	The existing roof form on the original building is not proposed to be changed. The new addition will have a flat roof, which does not mimic the existing roof form and is easily distinguishable as a contemporary addition. Air conditioning units are proposed to be located on the roof of the new ground floor addition. Existing buildings and layout of the new addition will ensure that service areas are screened from view and will not impact the heritage significance of the building.	Yes
12.7.6 Accessibility	In order to comply with the requirements of the Disability (Access to Premises – Buildings) Standard 2010, a lift is proposed. Locating the lift in the center of the building, separated from the original building, will ensure the heritage significance is maintained.	Yes
12.7.7 Materials and Colours	The application proposes the use of recessive colours on the new addition. Materials and finishes do not mimic the brick work of the original building, allowing new works to be easily distinguishable as contemporary. A final materials and colours schedule will be required prior to the issue of a Construction Certificate confirming this detail.	Yes
12.7.8 Design of new detail and openings & 12.7.10 Removal of Unsympathetic Alterations and Additions	The existing heritage façade will not be modified. The later addition to the rear is proposed to be removed to facilitate the new addition. The removal of this addition is acceptable from a heritage perspective. An original window on the northern elevation is proposed to be replaced with a new access door. Replacement of the existing window with a door will change the original fabric of the building, though the impact is considered to be acceptable. All new details and openings proposed within the new addition do not mimic those in the original building, allowing new works to be easily distinguishable.	Yes
12.7.11 Services and New Technologies	Air conditioning units are proposed to be located on the roof of the new ground floor addition. Existing buildings and layout of the new addition will ensure that service areas are screened from view and will not impact the heritage significance of the building.	Yes

12.7.12 Landscaping	The Statement of Heritage Impact identifies that there is a lack of evidence available in relation to the original landscaping of the site. Retention of existing landscaping, including a tree within the front setback will help to screen views of the new addition from Vincent Street.	Yes
12.7.13 Fences	The application proposes to replace the existing metal fence on the street frontage with a timber picket fence as depicted in historic photos of the site, enhancing the heritage significance of the building.	Yes

***(a)(iia) The Provision of any Planning Agreement that has been entered into under Section 94F, or any draft Planning Agreement that a developer has offered to enter into under Section 93F***

No such agreement has been proposed as part of this application.

***(a)(iv) The Regulations***

There are no matters prescribed by the Regulations that apply to this development.

***(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality***

Based on this assessment, the proposed development is unlikely to have a significant impact on the natural and built environments, or the social and economic conditions of the locality. In particular, the use of the existing building for the purposes of a child-care centre will provide a use within a heritage building which is currently vacant. Having a use occupy the building will help to ensure that the heritage significance is maintained into the future.

A child-care centre will result in positive social and economic impacts, including providing additional child care facilities within the CBD of Cessnock, and additional employment opportunities.

***(c) The suitability of the site***

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development. Specifically, the development is consistent with established uses within the vicinity of the subject land. The site is not impacted by any significant constraints that would result in the site being considered unsuitable for the proposed development. The development is consistent with the objectives of the B3 Commercial Core zone.

***(d) Any submissions made in accordance with this Act or the Regulations***

The Development Application was publicly exhibited between 8 and 22 November 2016.

One (1) submission was received following conclusion of the exhibition period. The following discussion addresses the issues and concerns raised in the submissions:

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**Concern has been raised in relation to increased traffic in Vincent Street due to parents dropping off / picking up children**

Car parking for the proposed development is located to the rear of the site. The assessment above demonstrates that suitable parking has been provided on-site to service the development. While pedestrian access is available to the site from Vincent Street, the entry point into the child-care centre is located on the southern elevation of the building.

Timber picket fencing provided along the Vincent Street frontage will direct parents to the entry point.

**Concern has been raised that parents dropping off and picking up children will use other car parks adjoining the site.**

As demonstrated by the assessment above, suitable parking has been provided on the site to allow parents to drop off and pick up children.

**(e) The public interest**

The public interest is served through the detailed assessment of this Development Application under the Environmental Planning and Assessment Act, 1979, Environmental Planning and Assessment Regulation 2000, Environmental Planning Instruments and Council Policies.

Based on the above assessment, the proposed development is consistent with the public interest, providing additional child care places within the area and generating employment opportunities.

## SECTION 94 CONTRIBUTIONS

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Section 94 Contributions are payable for the proposal.

In the event that the application is approved, S.94 Contributions totalling **\$12,624.00** would be payable for the shortfall of one (1) car parking space, in accordance with the 'Car Parking in the Cessnock Central Business District Section 94 Contributions Plan', as follows:

Contribution Type	Amount Payable
Parking not provided	\$12,624.00

## INTERNAL REFERRALS

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The Development Application was referred to the following Council officers for comment:

Officer	Comment
Building Services – Fire Safety Officer	The application is considered satisfactory in relation to building matters. The application is supported subject to standard conditions being imposed on the notice of determination.
Environmental Health	The application is considered satisfactory in relation to environmental health matters. The application is supported subject to standard conditions being imposed on the notice of determination.
Consultant Development Engineer	Following submission of additional information in relation to traffic and car parking matters, the application is considered satisfactory from an engineering perspective. The application is supported subject to standard conditions being imposed on the notice of determination.
Heritage Officer	The application is considered satisfactory in relation to heritage matters. The application is supported subject to standard conditions being imposed on the notice of determination.

## EXTERNAL REFERRALS

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The Development Application was not required to be referred to any external agencies for comment.

## CONCLUSION

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The Development Application has been assessed in accordance with Section 79C(1) of the Environmental Planning and Assessment Act 1979, and all relevant instruments and policies.

Development proposed by this application seeks to vary the car parking requirements of Chapter C.1 of the DCP. The proposed shortfall in car parking represents a variation of 37.5 percent. Based on the assessment outcomes and justification provided by the applicant, it is considered reasonable to waive the requirement to provide staff car parking, consistent with other Councils in the Hunter region and the RTA's Guide to Traffic Generating Development. In consideration of the above, the car parking rate for the proposed development has been

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based on one (1) space per four (4) children. Therefore, the car parking variation is one (1) space (proposed variation of 4.8 percent), which is considered to be minor.

The subject site is located within the 'Cessnock Central Business District Section 94 Contributions Plan' catchment. As such, a condition of consent has been imposed on the draft determination notice, requiring a contribution to be paid to compensate for the shortfall in car parking.

Based on the assessment, Development Application No. 8/2016/548/1 is recommended for approval subject to the conditions of consent included in this report.

## **ENCLOSURES**

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- 1 Architectural Plans
- 2 Confidential Submission

## CONDITIONS OF CONSENT

### SCHEDULE 1

#### CONDITIONS OF CONSENT

##### 1. Approved Plans and Documentation

Development must be carried out strictly in accordance with DA No. 8/2016/548/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Plan, Drawing No. DA01	Enzhuo Studio	04/11/2016
Ground Floor Plan, Drawing No. DA02	Enzhuo Studio	04/11/2016
First Floor Plan, Drawing No. DA03	Enzhuo Studio	04/11/2016
First – outdoor area, Drawing No. DA04	Enzhuo Studio	04/11/2016
Elevation A and B, Drawing No. DA05	Enzhuo Studio	04/11/2016
Elevation C and D, Drawing No. DA06	Enzhuo Studio	04/11/2016

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail

##### 2. CC, PCA & Notice Required

In accordance with the provisions of Section 81A of the *EP&A Act 1979* construction works approved by this consent must not commence until:

- a) A CC has been issued by the consent authority, Council or an accredited certifier; and
- b) A PCA has been appointed by the person having benefit of the development consent in accordance with Section 109E of the *EP&A Act 1979*; and
- c) If Council is not the PCA, notify Council no later than two (2) days before building work commences as to who is the appointed PCA; and
- d) At least two (2) days before commencement of building work, the person having benefit of the development consent is to notify Council as to the intention to commence building work.

##### 3. Compliance with Recommendations of Acoustic Report

All recommendations as outlined in Acoustic Noise assessment report (Project Number 161 287) prepared by Spectrum and dated August 2016, are to be complied with at all times.

**4. Compliance with Recommendations of Statement of Heritage Impact**

All recommendations as outlined in the Statement of Heritage Impact (Job no. 2671) prepared by Heritage 21 and dated October 2016, are to be complied with at all times.

**5. Separate Approval for Signs**

A separate DA for any proposed signs additional to those approved as part of this consent must be submitted to and approved by Council prior to the erection or display of any such signs.

**PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

The following conditions are to be complied with, to the satisfaction of the Principal Certifying Authority, prior to issue of a Construction Certificate.

**6. Car Parking Section 94 Contributions**

A contribution pursuant to the provisions of Section 94 of the *EP&A Act 1979* for the services detailed, and for the amount detailed, must be made to Council prior to the issue of a CC:

Contribution Type	Amount Payable
Parking not provided	\$12,624.00

A copy of the Car Parking in the Cessnock Central Business District Section 94 Contributions Plan may be inspected at Council's Customer Service Section, Administrative Building, Vincent Street, Cessnock or can be accessed on Council's Website at [www.cessnock.nsw.gov.au](http://www.cessnock.nsw.gov.au)

The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be indexed at the time of actual payment in accordance with the Consumer Price Index. Indexation of contributions for payment occurs quarterly.

**7. Colours and Finishes**

Prior to the issue of any Construction Certificate final design details of the proposed external materials and finishes, including schedules and a sample board of materials and colours (including an A3 photographic reproduction), shall be submitted to and approved by Council.

**8. Car Parking – Commercial/Industrial**

The design of the vehicular access and off street parking facilities must comply with, but not be limited to *AS 2890.1-2004 Parking Facilities – Off-Street Car Parking*, *AS 2890.2-2002 Parking Facilities – Off-Street commercial vehicles facilities*, and *AS 2890.3-1993 Parking Facilities – Bicycle parking facilities*. Details demonstrating compliance with these Standards are to be included on the plans submitted in association with a CC application.

A design certificate satisfying these requirements is to be issued by a suitably qualified professional engineer and submitted to the CA prior to the issue of a CC.

#### **9. Parking – Minimum Requirement**

On-site car parking shall be provided for a minimum of 20 vehicles and such being set out generally in accordance with Council's Car Parking Code.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the CA as satisfying this requirement prior to the issue of a CC.

#### **10. Stormwater – Detailed Design Requirements**

A detailed drainage design shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property, and connection to the existing drainage system in accordance with Council's 'Engineering Requirements for Development' (available at Council's offices). Such layout shall include existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the CA as satisfying this requirement prior to the issue of a CC.

#### **11. Archival Recording Required**

Prior to the issue of a CC, the CA shall be satisfied that an Archival Record has been completed and submitted to Council for the following properties:

- 14 & 14A Vincent Street, Cessnock

The report must be an A4 bound, prepared by a suitably qualified and experienced heritage consultant and must contain the following minimum requirements:

- a) Title page with subject, author, client, date, copyright etc
- b) Statement of why the record was made
- c) Outline history of the item and associated sites, structures and people
- d) Statement of heritage significance of the items in accordance with the Burra Charter and the State Heritage Inventory
- e) Inventory of archival documents related to the item and their location (eg company records, original drawings, photography), when available
- f) Location plan showing relationship to surrounding geographical features, structures, roads etc, and including a north point. A site plan or floor plan should show any moveable items

- g) Base plans, drafted or hand-drawn, cross-referencing photographs, naming the relevant features, structures and spaces, and showing a north point
- h) Black and white photographic record. One set of 35mm black and white negatives, labelled and cross-referenced to base plans and accompanied by informative catalogues and two copies of proof sheets. Images should include:
  - i) View to and from the site (possible from four compass points)
  - ii) Views showing relationships to other relevant structures, landscape features and moveable items
  - iii) All external elevations
  - iv) Views of all external and internal spaces (e.g. courtyards, rooms, roof spaces, etc)
  - v) External and internal detail (e.g. joinery, construction joints, decorative features, paving types, etc)
  - vi) Selected prints to give an overall picture of the item may be required. They should be mounted and labelled
- i) Colour slides. One set of slides mounted in archival stable slide pockets, clearly labelled and cross-referenced to base plans. Images should include:
  - i) Views to and from the site and/or heritage item
  - ii) Views and details of external and internal colour schemes as appropriate

Three (3) copies of the report must be submitted to Council, one copy with negatives. A written acknowledgement from Council must be obtained (attesting to this condition being appropriately satisfied) and submitted to the CA prior to the issue of a CC

## 12. Food Premises

The construction and operation of the food premises shall comply with all applicable legislation, regulation and standards including:

- a) *Food Act 2003*
- b) *Food Regulation 2004*
- c) Food Standards Australia and New Zealand – *Food Standards Code 2003*
- d) *AS 4674-2004 for Design, Construction and Fit out of Food Premises*
- e) *AS 1668.2-2002 – The use of ventilation and air conditioning in buildings*
- f) *BCA.*

Details submitted in association with the CC application are to demonstrate compliance with this requirement, and shall include the following:

- a) a separate floor and sectional plan detailing:
  - i) the kitchen/cafe area floor, wall, and ceiling surface finishes
  - ii) location of the required handwash basin/s and cleaning sinks/s
  - iii) location of dry and cold storage areas,
  - iv) fit-out details for the kitchen and servery, including proposed refrigeration and cooking equipment

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- v) designated cupboard or locker for the storage of staff clothing and personal belongings
- vi) location of the bar area.

The details are to be approved by the CA as satisfying this requirement prior to the issue of a CC

**13. Mechanical Exhaust System**

Details of any proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the BCA and *AS 1668 Parts 1 and 2* (including exhaust air quantities and discharge location points) are to be provided to the CA prior to the issue of a CC.

**14. Air Conditioning Units**

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment (Operations) Act 1997*.

Details demonstrating noise attenuation measures in this regard are to be submitted to the CA prior to the issue of a CC.

**15. Crime Prevention Design**

The following Crime Prevention through Environmental Design (CPTED) principles are to be incorporated:

- a) Back to base intruder alarm system to be installed which complies with the *Australian Standard – Systems Installed within Clients Premises, AS:2201* to enhance the physical security and detect unauthorised entry to the premises.
- b) The provision of a Closed Circuit Television System (CCTV) which complies with *Australian Standard – Closed Circuit Television System (CCTV) AS:4806.1.2.3.4* shall be considered for installation at the ground level, entry/exit points, car parks and the exterior of the building.
- c) Warning signs to be displayed around the perimeter of the premises to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
- d) Sensor lighting is required to be designed in accordance with the Australian and New Zealand *Lighting Standard AS 1158*. A Lighting Maintenance Policy should be established. Security lighting should be installed in and around the building, and such shall not impact on any adjoining properties. The lighting should be vandal resistant - especially external lighting.
- e) Fences are to be used to define the property boundaries and restrict access to the property. Any external palisade or pool style fencing shall be black in colour, unless otherwise noted on the approved plans/details. Fences shall have a maximum height of 1.8m.

- f) A “lock down” plan be formulated and disseminated to all staff regarding actions to be undertaken in relation to unauthorised intruders.

Plans and details shall be submitted the CA in with the CC application. The plans and details must be approved by the CA as satisfying this requirement prior to the issue of a CC.

## **PRIOR TO COMMENCEMENT OF WORKS**

**The following conditions are to be complied with prior to the commencement of works on the subject site/s.**

### **16. Site Security**

The site must be secured and fenced prior to works commencing. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public property to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property.

Separate approval is required to erect a hoarding or temporary fence on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed.

### **17. Demolition Proposed**

Consent is granted for the demolition of the addition to the rear of the original building on the property, subject to strict compliance with the following conditions. No demolition shall occur to the original heritage listed building.

- (a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.
- (b) Written notice is to be given to the Council prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours, contact telephone number, and licence number of the demolisher.
- (c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher’s name, licence number, contact phone number and site address.

- (d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves, etc). Access to the site must be restricted to authorised persons only, and the site must be secured against unauthorised entry when work is not in progress, or the site is otherwise unoccupied.
- (e) Demolition is to be carried out in accordance with the relevant provisions of AS 2601:2001: *Demolition of structures*.
- (f) The hours of demolition work are limited to between 7.00am and 5.00pm on Monday to Saturday. No demolition work is to be carried out on Sundays and public holidays.
- (g) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of the WorkCover Authority and the Office of Environment and Heritage.
- (h) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- (i) During demolition, public property (footpaths, roads, reserves, etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition. No materials shall be stockpiled on footpaths or road carriageways.
- (j) All vehicles leaving the site with demolition materials must have their loads covered, and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves, etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- (k) The burning of any demolished material on site is not permitted, and offenders will be prosecuted.
- (l) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense.
- (m) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works, and must be maintained at all times.
- (n) Prior to demolition, a Work Plan must be prepared in accordance with the relevant provisions of AS 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance, and the disposal methods for hazardous materials.

- (o) If the building contains asbestos, an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
- (i) A WorkCover Authority licensed contractor must undertake removal of all asbestos.
  - (ii) During the asbestos removal, a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a visible position on the site to the satisfaction of Council, and *AS 2601:2001: Demolition of structures*.
  - (iii) Waste disposal receipts must be provided to Council / CA as proof of correct disposal of asbestos laden waste.
  - (iv) All removal of asbestos must comply with the requirements of the WorkCover Authority.

An asbestos clearance certificate prepared by a qualified occupational hygienist must be provided to Council/CA at the completion of the demolition works.

## 18. Signage

Prior to the commencement of works, a sign must be erected in a prominent position on the site on which the proposal is being carried out. The sign must state:

- a) Unauthorised entry to the work site is prohibited.
- b) The name of the principal contractor (or person in charge of the site) and a telephone number on which that person may be contacted at any time for business purposes and including outside working hours.
- c) The name, address and telephone number of the *PCA* for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed

## 19. Relocation of Services

The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

## 20. Public Risk Insurance

Any person or contractor undertaking works on public property must take out Public Risk insurance with a minimum cover of twenty (10) million dollars in relation to the occupation of, and approved works within, public property. The Policy is to note, and provide protection for Cessnock City Council as an interested party, and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property. The insurance shall also note the location and the risk.

**21. S138 Roads Act Approval**

Under Section 138 of the *Roads Act 1993*, should any work on the verge, footpath, or public road reserve be required, a S138 Roads Act Approval will need to be obtained from Council. In this regard, the applicant is to make a formal application to Council. The S138 application is to be submitted to, and approved by, Council prior to works commencing.

**DURING WORKS**

**The following conditions are to be complied with during works.**

**22. Construction Hours**

Excavation and building work must be restricted to the hours of 7.00am and 5.00pm on Monday to Saturday inclusive. No work is to be carried out on Sundays and public holidays.

**23. Demolition**

All demolition works are to be carried out in accordance with AS 2601-2001 "Demolition of structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, should be handled, conveyed and disposed of in accordance with guidelines and requirements from NSW Workcover Authority. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.

**24. On-site Amenities**

Toilet facilities are to be provided prior to works commencing, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be a sewerage management facility approved by the NSW Department of Health and/or Council, and operate in an environmentally responsible manner, free of nuisance or offence, and be appropriately serviced.

**25. Stormwater – Impact on Adjoining Land – Natural Drainage**

Filling shall not be placed in such a manner that natural drainage from adjoining land will be obstructed.

**26. Stormwater – Impact on Adjoining Land – Surface Water**

Filling shall not be placed on land in such a manner that surface water will be diverted to adjoining land.

**27. Containment of Rubbish**

Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.

**28. Obstruction to Footpaths and Roads**

No obstruction is to be caused to Council's footpaths, roads and/or other public areas during construction of the development.

No spoil, building materials, excavated or demolition material from the site shall be stored or deposited on the public road, footpath, public place or Council owned property, without prior approval of Council.

**29. Erosion and Sedimentation Control**

The control of erosion, and the prevention of silt discharge into drainage systems and waterways, will be necessary in accordance with Council's "Engineering Requirements for Development", and Landcom's Soils and Construction Manual - April 2004. Erosion control measures are to be implemented prior to the commencement of any earthworks, and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

**30. Containment of Building Materials On-site**

All building materials, plant and equipment are to be placed on the building site. Building materials, plant and equipment (including water closets), are not to be placed on footpaths, roadways, public reserves, etc.

**31. BCA Compliance**

Pursuant to Section 80A (11) of the *EP&A Act 1979* all building work must be carried out in accordance with the requirements of the *BCA*.

**32. Construction Noise**

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment and Heritage *Noise Guide for Local Government*.

**33. Prevention of Views from Vincent Street**

The windows fronting Vincent Street on the ground floor shall be appropriately treated to prevent pedestrians viewing into the building.

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**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**The following conditions are to be complied with, to the satisfaction of the Principal Certifying Authority, prior to issue of either an Interim or Final Occupation Certificate (as specified within the condition):**

**34. Department of Family and Community Services - Licence**

A license to operate the child-care centre must be obtained from the New South Wales Department of Family and Community Services and be fully complied with, prior to the issue of an OC.

The age breakdown and the number of children attending the child-care centre shall not exceed the maximum number of approved childcare places advised by the New South Wales Department of Family and Community Services.

**35. Parking – Completion**

Car parking areas shall be completed prior to the issue of an OC.

**36. Fire Safety Certificate**

Prior to issue of an Occupation Certificate, documentary evidence in the form of a Final Fire Safety Certificate is required to be submitted to Council verifying the fire safety measures as listed in the fire schedule for the building certifying it is compliant with the BCA and the relevant Australian Standards. A copy of the final fire safety certificate and the fire schedule is to be displayed in the building.

**37. Food Premises**

Council must be notified that the premises is being used for the preparation, manufacture, or storage of food for sale, and an inspection of the completed fit out is to be conducted by Council prior to the issue of an OC.

**38. Waste Disposal**

Prior to the issue of an OC and/or commencement of the use, whichever is earlier, the building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on the public way, e.g. footpaths, roadways, plazas, reserves, at any time.

**39. Trade Waste Disposal**

Prior to the issue of an OC and/or commencement of the use, whichever is earlier, of the building the owner must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. footpaths, roadways, plazas, and reserves at any time.



**40. Mechanical Exhaust Ventilation System**

Where any proposed cooking or heating equipment being considered for installation, has a combined capacity exceeding 8 kilowatts or 29 megajoules/hour, then an approved mechanical exhaust ventilation (M.E.V.) system will be required. Such equipment which is specifically designed to cater for the removal of odours, vapours or emissions from such area and equipment, shall comply with the requirements of the relevant Australian Standard No. 1668 Part 2. Detailed plans and specifications of the equipment as proposed are to be submitted to Council for approval with the construction certificate.

**41. Section 50 Certificate**

Evidence shall be submitted to Council that the registered proprietors of the land on whose behalf the application was made have complied with the requirements of Section 50 of the Hunter Water Board (Corporation) Act 1991. Such evidence shall be submitted to Council prior to the issue of the OC.

**43. Use of Existing Drainage System**

Where elements of the existing drainage system are to be utilised, the existing drainage system shall be overhauled and maintained clear of silt and accumulated debris. Silt and the like shall be removed, not flushed, from the system.

A certificate shall be provided by a suitably qualified person to the satisfaction of the PCA, (a registered plumber, or a person of equivalent or greater experience or qualification) prior to the issue of an OC, to confirm that the system is in good working order and adequate to accept additional flows.

**43. New Stormwater System Proposed**

Prior to the issue of an OC, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant AS.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a licensed plumber or qualified practising civil engineer, that the drainage system has been constructed in accordance with the approved design and relevant AS, must be provided to the PCA prior to the issue of an OC.

**ONGOING USE**

**The following conditions are to be complied with as part of the ongoing use of the premises.**

**44. Hours of Operation**

The property is to be open for business and used for the purpose approved only within the following hours:

Monday to Friday	7:00am to 6:00pm
Public Holidays	Closed

**45. Maximum Number of Children**

The maximum number of children cared for at the premises must not exceed 84 at any given time.

**46. Stormwater – Impact on Adjoining Land**

Filling shall not be placed in such a manner that obstructs natural drainage from adjoining land.

Filling shall not be placed on land in such a manner that surface water will be diverted to adjoining land.

**47. Parking Areas to be Kept Clear**

At all times, the loading area, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.

**48. Driveways to be Maintained**

All access crossings and driveways shall be maintained in good order for the life of the development.

**49. Outdoor Lighting**

All outdoor lighting must not detrimentally impact upon the amenity of other premises and adjacent dwellings and road reserve, and must comply with, where relevant, *AS 1158.3:2005 Lighting for roads and public spaces – Pedestrian Area (Category P) lighting – Performance* and design requirements and *AS 4282:1997 Control of the obtrusive effects of outdoor lighting*.

**50. Discharge into Waterways**

No waste water, chemicals or other substances harmful to the environment shall be permitted to discharge to the waterway that runs through the site, or to Council's stormwater system. Only clean, unpolluted water is permitted to discharge. Waste oil shall be stored in a covered and suitably bunded area, pending regular removal to a waste oil recycler.

**51. Noise Complaints**

Where a noise complaint is received by Council from a place of different occupancy and the noise source is proven by a Council Officer to be non-compliant, the Council may employ a consultant to measure noise emanating from the property, and to recommend (if necessary) appropriate actions to ensure compliance.

The consultant must be a member of the Australian Acoustical Society, Engineers Australia, or the Association of Australian Acoustical Consultants. The cost of such appointment and associated work shall be borne by the applicant, who shall also ensure the recommendations of the acoustic consultant are implemented.

**52. Loading to Occur on Site**

All loading and unloading operations are to be carried out wholly within the site, and not from the footpath or roadway for the life of the development.

**ADVISORY NOTES**

**a) Disability Discrimination Act**

This application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*. The applicant/owner is responsible for ensuring compliance with this, and other, anti-discrimination legislation. The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references *AS 1428.1 - Design for Access and Mobility*. *AS1428 Parts 2, 3 & 4* provide the most comprehensive technical guidance under the *Disability Discrimination Act 1992* currently available in Australia.

**b) "Dial Before You Dig" Dial 1100**

Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables. [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)

**c) Other Approvals and Permits**

The applicant shall apply to Council for all necessary permits including crane permits, road opening permits, hoarding or scaffolding permits, footpath occupation permits, and/or any other approvals under *Section 68 (Approvals)* of the *Local Government Act, 1993* or *Section 138 of the Roads Act, 1993*.

**d) Responsibility for Other Consents / Agreements**

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

**e) Grease Trap**

It is recommended that the applicant contact Hunter Water to discuss the requirements of a grease trap for the kitchen. Depending on the intended intensity of use for the kitchen, a grease trap may not be required.

Should a grease trap be required, it is requested that the applicant enters into a service agreement with a licensed contractor for regular servicing. A copy of the agreement must be submitted to Council prior to issuing of the OC.

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**SUBJECT:** *DA 8/2016/624/1 PROPOSING CONSTRUCTION OF A TWO-STOREY DWELLING HOUSE CONSISTING OF NEW SUBFLOOR STORAGE AREA/GARAGE TO SUPPORT A RELOCATED DWELLING*

*45 FERGUSON STREET, CESSNOCK*

**RESPONSIBLE OFFICER:** *Team Leader Development Services - Peter Giannopoulos  
Development Services Manager - Janine McCarthy*

<b>APPLICATION NUMBER:</b>	8/2016/624/1
<b>PROPOSAL:</b>	Construction of a two-storey dwelling house consisting of new subfloor storage area/garage to support a relocated dwelling
<b>PROPERTY DESCRIPTION:</b>	Lots 21 & 22, Section A, DP 8991
<b>PROPERTY ADDRESS:</b>	45 Ferguson Street, Cessnock
<b>ZONE:</b>	R3 Medium Density Residential
<b>OWNER:</b>	F Danaie & G Douglass
<b>APPLICANT:</b>	F Danaie

## RECOMMENDATION

1. That Council determine Development Application 2015/624 proposing construction of a two-storey dwelling house consisting of the construction of new subfloor storage area/garage to support a relocated dwelling, at Lots 21 & 22, Section A, DP 8991, 45 Ferguson Street, Cessnock, pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, by refusing to grant consent for the reasons detailed in this report.
2. That Council notify in writing the persons who made a submission with regard to the proposed development, of Council's decision.

## REASON FOR REPORT

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Development Application No 8/2016/624/1 is being referred to Council for determination as the Application is recommended for refusal and the refusal is considered to be merits based.

## EXECUTIVE SUMMARY

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Council is in receipt of Development Application No. 8/2016/624/1 seeking approval for construction of a two-storey dwelling house consisting of new subfloor storage area/garage to support a relocated dwelling.

The Development Application has been assessed against the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulations 2000, relevant Environmental Planning Instruments and Council Policies. The outcome of this assessment is detailed further in this report.

The Development Application was publicly exhibited and three (3) submissions were received during the exhibition period, objecting to the proposed development. The issues and concerns raised in the submissions are addressed in this report.

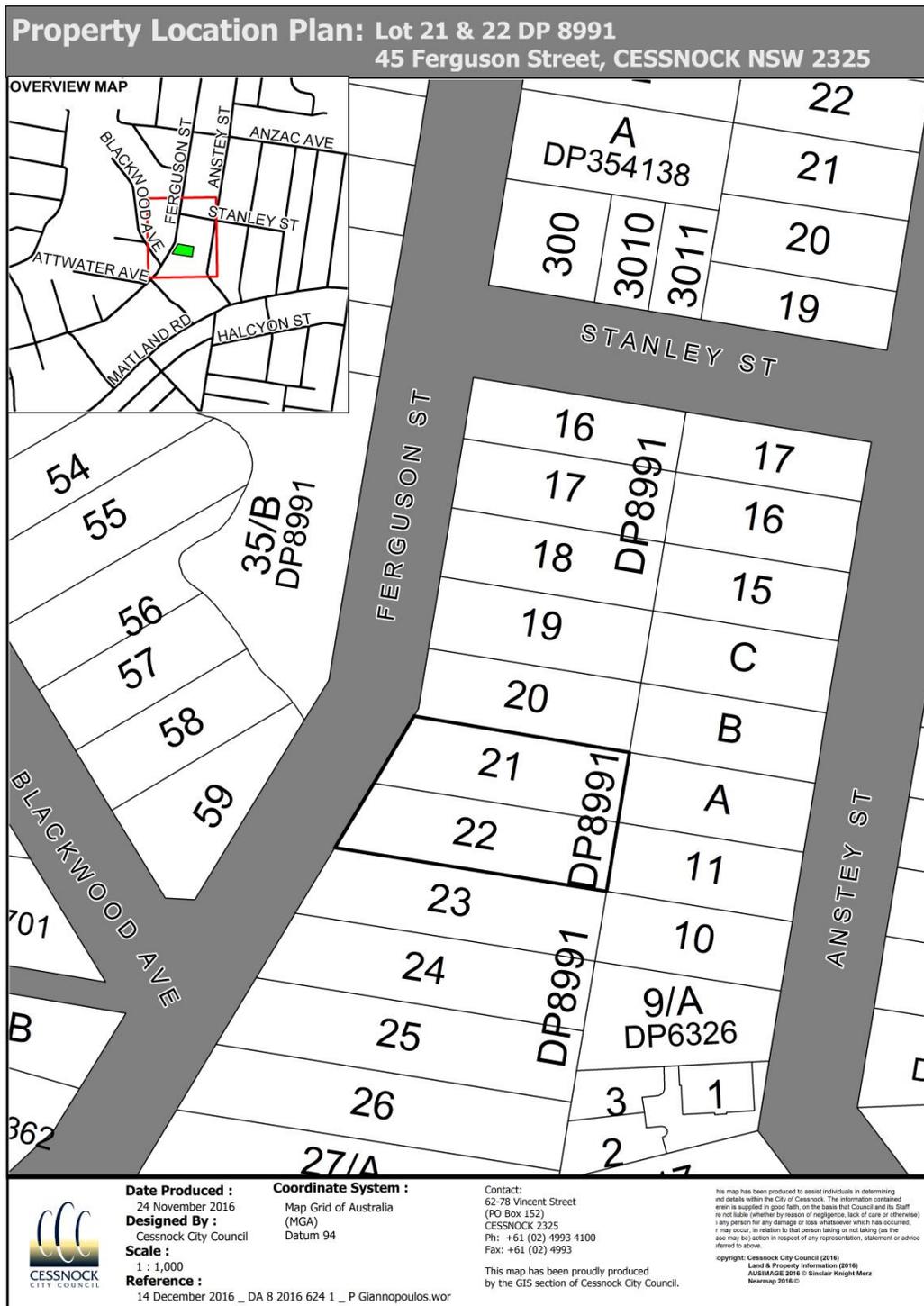
The assessment of the application demonstrates that the proposed development presents a significant threat to life and property due to the flood affectation of the subject site. In this regard, it is considered that the likely environmental, social and economic impacts are significant. Furthermore, in order to achieve a floor level that is above the flood planning level, the proposed relocated dwelling is to be constructed over a relatively large subfloor storage area/garage, thereby resulting in a two-storey development of considerable bulk and scale. In this regard, it is considered that the proposed development will result in a significant visual impact. Accordingly, the site is considered to be unsuitable for the proposed development and contrary to the public interest.

Whilst it is recognised that the assessment contained within this report is of a technical nature, it is considered that Council should be provided with a detailed assessment of the application and its merits with respect to flooding, in order to make an informed decision given that the application is recommended for refusal.

Based on the assessment, it is recommended that the Development Application be refused subject to the reasons for refusal detailed in this report.



LOCATION MAP



**AERIAL**



## SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 45 Ferguson Street, Cessnock, and is legally described as Lots 21 and 22, Section A, Deposited Plan 8991.

The subject site is located on the eastern side of Ferguson Street, Cessnock. The site has a frontage of 28.48m to Ferguson Street, a depth of 57.93m and an overall site area of 1579.6m<sup>2</sup>. Access to the site is directly from Ferguson Street but is limited to the northern parts of the site (Lot 21) due to the location of the Hunter Water channel that runs through the site.

The subject site is currently occupied by a dwelling located on Lot 21, and an unauthorised, relocated dwelling that is located partly over Lot 22. Lot 21 also contains associated outbuildings and more recently, a large trailer being used as a storeroom, has been parked in the driveway. The relocated dwelling has been temporarily placed on the boundary between Lots 22 and 23 (to the south of the subject land). Lot 22 is otherwise vacant of buildings.

The surrounding properties are characterised by predominantly single-storey detached dwellings. There is a concrete Hunter Water drainage channel that bisects a number of properties in the locality. Low areas of land, adjacent to the drainage channel, are generally undeveloped.

## HISTORY

The history of compliance action in respect of the relocatable dwelling, and the subject Development Application, is summarised in the following table:

Date	Action
26 March 2015	Complaint received in respect of a house being moved from the corner of Henderson Ave and Maitland Road, Cessnock. Council staff attend the area and observe that a house is being moved to the property known as 39 Ferguson Street, Cessnock.
27 March 2015	Letter sent to owner advising no consent has been granted for the activity carried out on 26 March 2015.
31 March 2015	House is moved from 39 Ferguson St across the drainage channel to the current location (i.e., site the subject of this application).
1 April 2015	Letter sent to owner regarding activities carried out on 31 March 2015.
14 April 2015	Written response received from one of the owners advising of intention to submit a DA for the house.
29 September 2015	No DA received, therefore a penalty infringement notice is issued by Council.
31 March 2016	Notice of Intention to serve an Order to remove house, sent to owner.
4 August 2016	Order issued for the removal of the unauthorised dwelling.

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2 September 2016	Class 1 appeal filed in the NSW Land and Environment Court, appealing Council's Order.
September and October 2016	Ongoing discussions between Council's solicitors and the applicant and/or their representative/s in relation to the matter. Various adjournments sought by the applicant in relation to the current Class 1 appeal.
27 October 2016	Following legal advice, Order issued by Council on 4 August 2016, revoked.
5 November 2016	Development Application 8/2016/624/1, submitted to Council.
19 October 2016	Notification of application commences and application referred to Consultant Development Engineer.
2 November 2016	Consultant Development Engineer requests flood hazard information from Council' Strategic Infrastructure Project Officer.
3 November 2016	Strategic Infrastructure Project Officer provides flood hazard information.
4 November 2016	Consultant Development Engineer finalises referral response. Response contains detailed assessment of flood impacts.
7 November 2016	<p>Letter sent to applicant stating that Council has completed its assessment of the application and determined that the DA is not supported. The letter states that Council's concerns relate predominantly to flooding issues, and the resultant risks to property and life. Council's letter also details concerns regarding the visual impact of the proposed development.</p> <p>The applicant is afforded the opportunity to withdraw the application, and is advised that, in the event the application is not withdrawn, Council officers will proceed to determine the application on the basis of the information submitted to-date.</p>
11 November 2016	Applicant's designer requests a meeting with relevant staff to discuss the application and the development potential of the applicant's various sites in Ferguson Street.
11 November 2016	Notice of Discontinuance filed by the applicant in the NSW Land and Environment Court in relation to the outstanding Class 1 appeal.
16 November 2016	Meeting held to discuss flood impacts associated with the application, and constraints associated with the applicant's various sites in Ferguson Street.
21 November 2016	Applicant's designer confirms that the applicant will not be withdrawing the application, and requests that it be determined on the basis of the information submitted to-date.
23 November 2016	Assessment of the application completed.

## DETAILS OF THE PROPOSED DEVELOPMENT

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Development Application No 8/2016/624/1 seeks approval for construction of a two-storey dwelling house, to be developed by the construction of a subfloor storage area/garage to support a relocated dwelling, including the construction of associated access stairs and a new balcony. The development as submitted also proposed a boundary realignment between the two allotments, and a carriageway easement, neither of which require Council approval. Therefore, these elements have not been assessed as part of this application.

Specifically the proposed development involves:

- Construction of a subfloor structure with a height of 2.5m, width of 9m, length of 14.8m, three garage doors (two on the western elevation and one on the eastern elevation), and three windows on each of the northern and southern elevations.
- Installation of an existing dwelling above the subfloor structure, with a floor area of 107m<sup>2</sup>, a 9.5m<sup>2</sup> balcony with three bedrooms, a lounge, a combined kitchen and dining room, bathroom WC and storage rooms.
- Additions to the first floor consisting of a 26m<sup>2</sup> balcony, laundry and staircase.

The front stairs of the building are setback 23m from the front boundary, with the main walls sited 25m from the front boundary. The building has a setback of 2.02m from the northern boundary, 10.88m from the rear boundary (eastern boundary) 2.999m from the southern boundary and 17.1m from the main stormwater channel.

## ASSESSMENT

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### ***Environmental Planning and Assessment Act 1979 – Section 79C(1)***

In determining a Development Application, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the Development Application on the subject property:

#### ***(a)(i) The Provisions of any Environmental Planning Instrument***

The Environmental Planning Instruments that relate to the proposed development are:

1. State Environmental Planning Policy No. 55 – Remediation of Land
2. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
3. Cessnock Local Environmental Plan 2011

An assessment of the proposed development under the Environmental Planning Instruments is provided below:

#### **1. State Environmental Planning Policy No. 55 – Remediation of Land**

Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* is relevant to the assessment of this Development Application.

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Clause 7(1) requires that consent not be granted until Council has considered whether the land is contaminated. If the land is contaminated, the Council needs to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The subject site has historically been vacant and used as open space in association with a dwelling on the adjoining parcel of land. No evidence of contamination was observed during the inspection of the site, and there is no historical use of the site to warrant testing in respect of contamination.

**2. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

As required under State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, a Certificate has been submitted and the required commitments have been indicated on the plans. The certificate has been checked and found to be satisfactory.

**3. Cessnock Local Environmental Plan 2011**

**3.1 Permissibility**

The subject site is zoned R3 Medium Density Residential under the provisions of Cessnock Local Environmental Plan 2011 (CLEP). The proposed development is defined as a 'dwelling house', which prescribes as follows:

***dwelling house*** means a building containing only one dwelling.

Development for the purpose of a dwelling house is permitted in the R3 Medium Density Residential zone, with consent.

**3.2 Objectives**

The objectives of the R3 Medium Density Residential are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal will increase the supply of residential development within the locality, and is therefore consistent with the relevant objectives.

### 3.3 Relevant Clauses

#### *Clause 7.3 – Flood Planning*

The Development Application was assessed against *Clause 7.3 – Flood Planning*, which prescribes as follows:

(1) *The objectives of this clause are as follows:*

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

(2) *This clause applies to land at or below the flood planning level.*

(3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) *is compatible with the flood hazard of the land, and*
- (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

(4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.*

(5) *In this clause, **flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

Consideration has been given to the flood planning requirements contained in Clause 7.3. According to Council's mapping system the site is identified as being flood affected during the 1 in 100 year Average Recurrence Interval (ARI) to a level of 67.42m (AHD) with a flow velocity across the site of 2.55m/second. The contours on the site range between 64m (AHD) within the drainage channel, to 68m (AHD) at the rear north-eastern corner.

The flood affectation of the site is identified as follows:



During the assessment of the application, Council's Strategic Flooding and Drainage Planning Engineer provided specific details in respect to flood depths and hazards. Flood Hazard Categorisation has been provided in accordance with the recommendations of Australian Rainfall and Runoff – A Guide to Flood Estimation (ARR). A description of flood hazard vulnerability classification is provided below:

Table 6.7.3. Combined Hazard Curves - Vulnerability Thresholds (Smith et al, 2014)

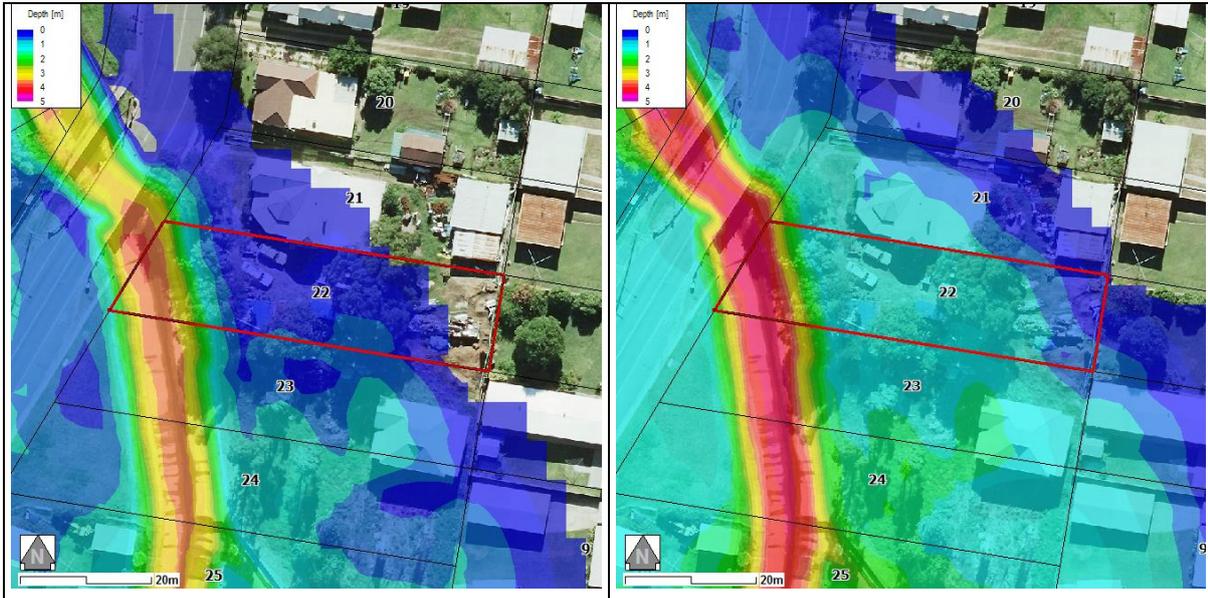
Hazard Vulnerability Classification	Description
H1	Generally safe for vehicles, people and buildings.
H2	Unsafe for small vehicles.
H3	Unsafe for vehicles, children and the elderly.
H4	Unsafe for vehicles and people.
H5	Unsafe for vehicles and people. All buildings vulnerable to structural damage. Some less robust buildings subject to failure.
H6	Unsafe for vehicles and people. All building types considered vulnerable to failure.

The maximum hazard H6 at the site is the most extreme hazard categorisation provided by ARR. Flooding at the site is unsafe for people, unsafe for vehicles, and all building types are vulnerable to failure.

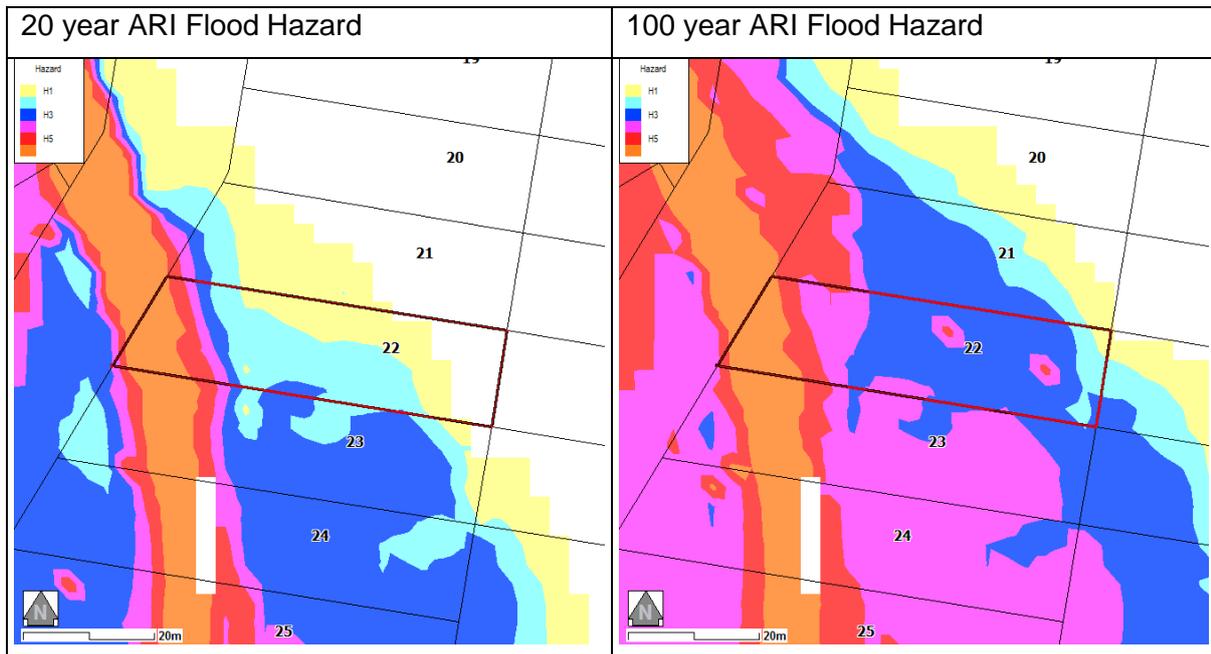
Below are maps depicting the 1:20 and 1:100 ARI flood events:

1. Map of flood depths around property : Lot 22 : Sec A : DP 8991

20 year ARI Flood Depths	100 year ARI Flood Depths
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2. Map of flood hazards around property: Lot 22 : Sec A : DP 8991



The diagrams demonstrate that the maximum velocity and hazard occur at the western boundary of the site, adjacent to the concrete channel at the south western corner of the lot.

Council's Consultant Development Engineer has assessed the flood impacts on the site and the consequences associated with the development, and the following comments are noted:

Flooding – Access and Evacuation

Rights of carriageway providing access to the proposed dwelling are provided at the west of the site adjacent to the concrete stormwater channel, through the maximum flood hazard category H6.

As outlined above, at flood hazard category H6, flooding is unsafe for people and vehicles, and all building types are vulnerable to failure.

Evacuation from the site will not be possible during flood events as safe passage to Council's road network cannot be provided through flood waters with hazard categorisation H6. Construction of a dwelling where evacuation is not possible during flood events would represent an unacceptable risk to life.

Flooding – Proposed Dwelling

Flood Hazard mapping provided by Council's Infrastructure Planning Engineer suggest that flood hazard at the proposed dwelling site will be H3/H4.

Reassessing the flood hazard based on accurate spot levels/detail survey provided, existing ground levels at the proposed dwelling site of approximate RL 66.1 would suggest a depth of flooding of approximately 1.3m.

A flood information certificate issued by Council on 25 August 2016 provided a flood velocity of 1.76m/s across the lot.

Assessing the flood hazard in accordance with Figure 6.7.9 from the ARR guide, flooding with a depth of 1.3m and velocity of 1.76m/s would be considered as H5.

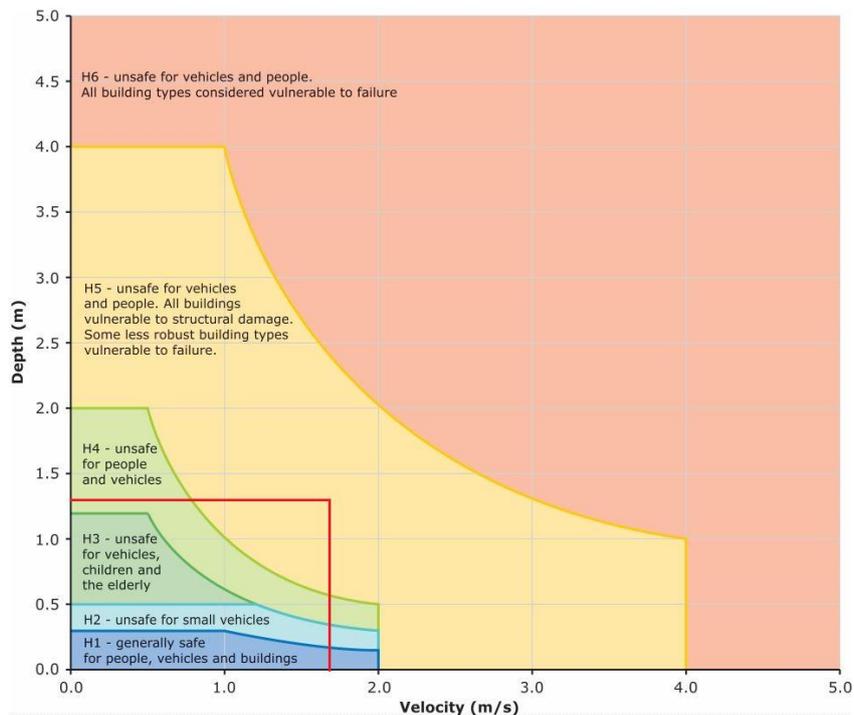


Figure 6.7.9 Combined Flood Hazard Curves (Smith et al, 2014)

Refuge within the building during the 100 year event (or greater) is not suitable as damage to the building by floodwaters would be likely.

Evacuation from the dwelling will not be possible during flood events via any route as flood waters at the dwelling site are not suitable for evacuation on foot or by vehicle.

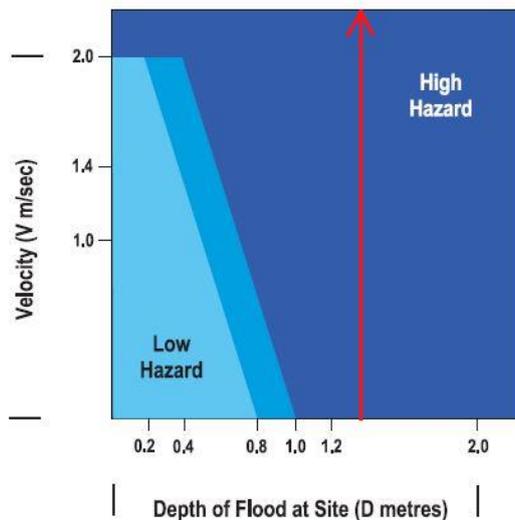
Construction of a dwelling where evacuation and/or refuge is not possible during flood events would represent an unacceptable risk to life.

When considering the broader extent of flooding in the locality, i.e., the confluence of 2 concrete channels immediately upstream of the development site, channel restrictions under Ferguson Street bridge downstream, it is noted that the subject land would be considered as floodway in order to convey the significant out of bank flow during large flood events. Portions of the subject land would also be considered as flood storage in large flood events. Therefore, the proposed development within the floodway/flood storage area is likely to cause diversion of floodwaters onto, and/or raise flood levels on adjoining properties.

Assessing the impact of the proposed development in accordance with Clause 7.3 of the Cessnock Local Environmental Plan 2011 and the NSW Government Floodplain Development Manual, Council must consider a) the impact on flood behaviour, b) the risk to property, and c) the risk to life. These are assessed below:

a) Impact on flood behaviour

Figure L2 from the NSW Government Floodplain Development Manual provides provisional hydraulic hazard category based on flood depth and velocity. From the figure, flooding with a depth of 1.3m and a velocity of 1.76m/sec would be classified as high hazard floodway.



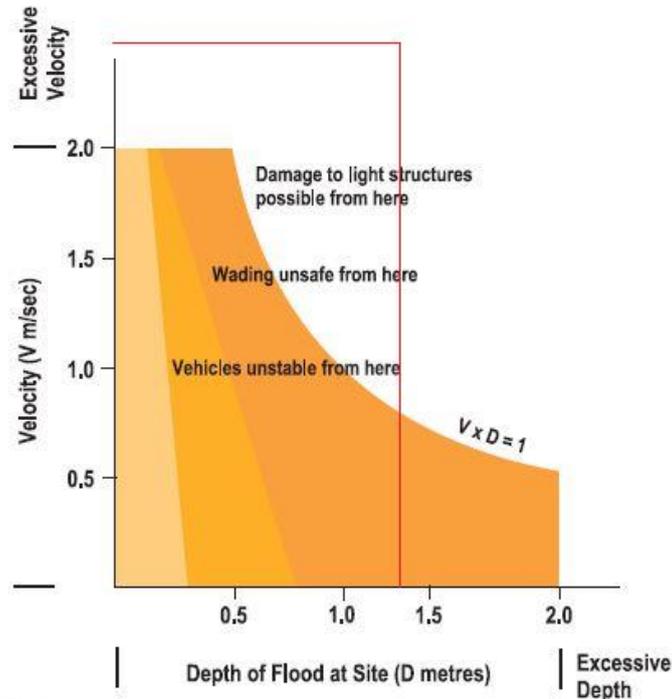
NSW Government Floodplain Development Manual  
 FIGURE L2 - Provisional Hydraulic Hazard Categories

Cessnock City Council's Black Creek Flood Study (Cardno 2015) confirms classification of the site as a floodway.

Considering the potential impact of development within the floodway, the NSW Government Floodplain Development Manual defines floodways as: "... areas conveying a significant proportion of the flood flow and where partial blocking will adversely affect flood behaviour to a significant and unacceptable extent."

b) Risk to property

Figure L1 from the NSW Government Floodplain Development Manual provides approximate thresholds where the velocity/depth relationship is likely to prevent evacuation by vehicle, evacuation by wading, and where damage to structures is likely.



NSW Government Floodplain Development Manual  
FIGURE L1 - Velocity & Depth Relationships

In accordance with the figure above, flooding with a depth of 1.3m and a velocity of 2.55m/sec, may result in damage to the proposed structure.

Further, adverse effects on flood behaviour due to blockage of the floodway (noted above) are likely to cause detrimental increases in the potential flood affectation of the development site and nearby properties (floodwaters being diverted onto, and/or raising flood levels on adjacent land).

c) Risk to life

From further assessment of Figure L1 above, safe evacuation of the proposed building during the 1:100 year event will not be possible via vehicle or on foot. Refuge within the building will not be possible due to possible damage to the structure as a result of flood waters.

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Furthermore, the NSW Government Floodplain Development Manual requires consideration of evacuation for all flood events up to the PMF, where flood hazard will exceed the levels assessed for the 1:100 year event.

Construction of a habitable building at the proposed location within a high hazard floodway would represent an unacceptable risk to life. As neither safe evacuation nor safe refuge can be provided in the building's current location, it is considered that the proposed development cannot incorporate appropriate measures to manage risk to life from flood.

For these reasons, it is concluded that the proposed development is inconsistent with the recommendations of the NSW Government Floodplain Development Manual and Clause 7.3 of the Cessnock Local Environmental Plan 2011.

***(a)(ii) The Provisions of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)).***

No draft Environmental Planning Instruments are relevant to the application.

***(a)(iii) The Provisions of any Development Control Plan***

**Cessnock Development Control Plan 2010**

The development is consistent with the relevant provisions in the Cessnock Development Control Plan 2010 (DCP). Below is a discussion of the pertinent chapters:

**C.3 Contaminated Lands**

The Contaminated Lands Chapter in the DCP has been prepared in accordance with the requirements of SEPP 55. As discussed earlier in this report, the proposed development is consistent with the requirements of SEPP 55.

**C.5 Waste Management and Minimisation**

A suitable Waste Management Plan has been submitted in accordance with the requirements of the DCP. Waste generated during construction of the development is to be separated and where possible, reused on-site. Some materials are to be disposed of at appropriate recycling and waste facilities.

***(a)(iia) The Provision of any Planning Agreement that has been entered into under Section 94F, or any draft Planning Agreement that a developer has offered to enter into under Section 93F***

No such agreement has been proposed as part of this application.

***(a)(iv) The Regulations***

There are no matters prescribed by the Regulations that apply to this development.

**(b) *The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality***

The likely impacts of the development are discussed below as follows:

**Overlooking**

The development provides two balconies on the first floor, one on the western elevation, one on the eastern elevation. The western balcony is well distanced from Ferguson Street (29 metres). The applicant owns the property to the south of the subject land which is the most affected by the potential for the balcony to create a loss of privacy. Given the consideration of the surrounding environment and separation of the balcony from adjoining properties, it is considered that the western balcony does not present privacy concerns.

The eastern balcony is larger in area and well dimensioned (4.2m by 5m), therefore it is more likely to be used for recreational purposes such as outdoor dining. The balcony has an outlook that may result in a loss of privacy to the three adjoining properties to the northeast, east and southeast. In the absence of further information to confirm or disprove viewlines from the development, it is not possible to fully assess the likely impacts in terms of privacy. It should be noted that relatively generous separation has been provided to the eastern boundary (10.8m) but also that the topography most likely exacerbates privacy loss.

**Visual Impact**

The visual impact of the development is of concern. The applicant proposes to place a relocated timber dwelling on newly constructed brick walls. The ground level walls lack articulation and but for plain fenestration (garage door and high single pane windows), lack visual interest and presents as a utilitarian structure that does not harmonise with the traditional, lightweight design of the relocated dwelling that sits above. The design of the development, in an area with more traditional styled, single-storey dwellings, presents compatibility concerns with the character of the surrounding locality.

**Overshadowing**

The application includes shadow diagrams showing the extent of overshadowing during the winter solstice (when most severe overshadowing will occur). The shadow diagrams demonstrate that, excluding the property located directly to the south of the subject site (vacant land owned by the applicant), the development will not impact on adjoining properties.

It should be noted that these matters have been raised with the applicant and with further consultation, it may be possible to address the above matters through design changes or the provision of additional information. However given the critical nature of the flooding concerns, which make the site unsuitable for the development proposed, it is considered that requesting these changes from the applicant would impose more unnecessary cost and would be futile.

## Flood Impacts

As demonstrated by the above assessment, the site is significantly impacted as a result of flooding in the locality. The development presents a threat to human life and property that is unacceptable. The *Floodplain Development Manual* states that a flood imposes a range of intangible damages on flood victims including mental and physical health impacts, which have associated social costs.

The economic costs of flooding are also passed onto emergency services and government authorities. The *Floodplain Development Manual* acknowledges that development may impact unduly on emergency services, and for this reason, does not support development in certain situations, such as in this case, where suitable evacuation cannot be achieved and it is also not safe to 'refuge in place'.

### (c) *The suitability of the site*

As demonstrated by the above assessment, the site is considered to be unsuitable for the development, predominantly due to the flood hazard associated with the land. The development proposed does not comply with the requirements of Clause 7.3 of the Cessnock Local Environmental Plan 2011, or the *Floodplain Development Manual*. The flood impacts associated with the site are likely to result in adverse social and economic consequences, undue impact on emergency services and, in the manner proposed, an adverse impact upon the visual amenity of the local area.

### (d) *Any submissions made in accordance with this Act or the Regulations*

The Development Application was publicly exhibited between 21 October and 7 November 2016, via notices that were sent to eight (8) residents. Three (3) submissions were received during the exhibition period objecting to the proposed development. The following discussion addresses the issues and concerns raised in the submissions.

#### 1. **Double storey building not in keeping with other properties in the area**

Comment:

This matter has been discussed previously in this report. The ground is considered valid.

#### 2. **Overlooking from rear deck**

Comment:

As previously discussed, the development has the potential to impact on the privacy of adjoining properties, particularly from the rear (eastern) balcony. Although the extent of overlooking is difficult to assess, this ground of objection is considered to be valid.

**3. Concern that proposed building may affect other properties during flooding**

Comment:

The matter of flooding has been discussed earlier in this report.

**4. Junk and rubbish will attract vermin to the area**

Comment:

It is difficult to substantiate this ground of objection. The matters of tidiness and controlling vermin are not a planning consideration. Other legislation provides for the control of vermin.

**5. The proponent is not genuine in application, merely attempting to gain time.**

Comment:

The applicant has a notable compliance history and has engaged in methods of stalling, prolonging contraventions. However, the applicant's intentions are not matters that Council can assess as they are not relevant to the determination of this application.

**6. If approved, can a condition be included to move the dwelling in a short period of time?**

Comment:

This is a matter that is difficult to control by conditions of consent. Even if conditions are applied, the process of compelling someone to comply can be prolonged and the proponent in this case has proven a reluctance to adhere to Council's requests in the past.

**7. Can Council instruct proponent to clear undergrowth?**

Comment:

This matter cannot be dealt with through the assessment of this application. A separate customer service request has been created to deal with this matter.

**(e) *The public interest***

The public interest is served through the detailed assessment of this Development Application under the Environmental Planning and Assessment Act, 1979, Environmental Planning and Assessment Regulation 2000, Environmental Planning Instruments and Council Policies. Based on the above assessment, it is considered that the proposed development is not in the public interest.

## RISK IMPLICATIONS

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### Local Government Act 1993 – Sections 731 and 733

The following information is provided for information purposes:

The subject land has been identified as being flood prone. The impact of flooding is a primary issue in the planning assessment warranting refusal of the application.

Section 731 of the Local Government Act 1993 states as follows:

*'A matter or thing done by the Minister, the Director-General, a Council, a Councillor, a member of a committee of the Council or an employee of the Council or any person acting under the direction of the Minister, the Director-General, the Councillor a committee of the Council does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, and for and on behalf of the Minister, the Director-General, the Council or a Committee of the Council, subject a Councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand:*

In part, Section 733 of the Local Government Act 1993 states as follows:

- (1) *A Council does not incur any liability in respect of:*
  - (a) *any advice furnished in good faith by the Council relating to the likelihood of any land being flooded or the nature or extent of any such flooding, or*
  - (b) *anything done or omitted to be done in good faith by the Council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.*

Amongst other things, Section 733 of the Act applies to the assessment and determination of development applications.

## SECTION 94 CONTRIBUTIONS

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Section 94 Contributions are not payable for the proposal.

Planning and Environment

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Planning and Environment



## INTERNAL REFERRALS

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The Development Application was referred to the following Council officer for comment:

Officer	Comment
Consultant Development Engineer	Detailed comments in respect to flooding were received in response to the referral of the application. Such comments are contained within this report.

## EXTERNAL REFERRALS

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The Development Application was not required to be referred to any external agencies for comment.

## CONCLUSION

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The Development Application has been assessed in accordance with Section 79C(1) of the Environmental Planning and Assessment Act 1979, and all relevant instruments and policies.

The assessment of the application demonstrates that the proposed development presents a significant threat to life and property due to the flood affectation of the subject site. In this regard, it is considered that the likely environmental, social and economic impacts are significant. Furthermore, in order to achieve a floor level that is above the flood planning level, the proposed relocated dwelling is to be constructed over a relatively large subfloor storage area/garage, thereby resulting in a two-storey development of considerable bulk and scale. In this regard, it is considered that the proposed development will result in a significant visual impact. Accordingly, the site is considered to be unsuitable for the proposed development and contrary to the public interest.

Based on the assessment, it is recommended that the Development Application be refused subject to the reasons for refusal detailed in this report.

## ENCLOSURES

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- 1 Architectural Plans
- 2 Confidential submissions

## REASONS FOR REFUSAL

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1. The site is not considered suitable for the proposed development due to the flooding constraints of the land in question (Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979).
2. The proposal is inconsistent with the Floodplain Development Manual as the development proposes a habitable building within high hazard floodway for the following reasons and this presents:
  - a) a significant and unacceptable adverse effect on flood behaviour.
  - b) detrimental increases in the potential flood affectation of other development or properties.
  - c) a development that cannot incorporate appropriate measures to manage risk to life from flood.
  - d) a development that is not considered to be compatible with the flood hazard of the land.(Section 79C(1)(b) and (c) of the Environmental Planning and Assessment Act 1979).
3. The proposed development is likely to detrimentally impact on adjoining land, resulting from loss of privacy associated with overlooking from the development (Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979).
4. The design of the development is likely to be incompatible with the character of the built form in the area and will adversely impact upon the visual amenity of the surrounding area (Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979).
5. The proposal is considered to be contrary to the public interest (Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979).



**SUBJECT:** *STATE SIGNIFICANT DEVELOPMENT 7520 FOR THE PURPOSE OF CONSTRUCTING AND OPERATING A BATTERY RECYCLING FACILITY*

*129 MITCHELL AVENUE, KURRI KURRI*

**RESPONSIBLE OFFICER:** *Team Leader Development Services - Peter Giannopoulos  
Development Services Manager – Janine McCarthy*

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### **SUMMARY**

The purpose of this report is to present for Council's consideration and endorsement of a draft submission to the NSW Department of Planning and Environment for a State Significant Development (Reference No. SSD 7520), for the purpose of constructing and operating a battery recycling facility at 129 Mitchell Avenue, Kurri Kurri.

### **RECOMMENDATION**

**That Council endorse the draft submission for forwarding to the NSW Department of Planning and Environment.**

### **BACKGROUND**

Weston Aluminium at 129 Mitchell Road, Kurri Kurri, (the 'site') currently operates as an aluminium dross recycling facility under two approvals:

- A NSW Land and Environment Court approval issued on 30 August 1996 (Reference No. 10397 of 1995); and
- An approval by the Minister for Planning on 20 September 2001 (Reference No. 86-04-01).

In recent years the following modifications have been granted to vary the above approvals:

- Development Consent DA-86-04-01 (Mod 9) and NSW Land and Environment Court No. 10397 of 1995 (Mod 7), approved on the 15 September 2015 for the trial the processing of up to 2,000 tonnes of illicit and pharmaceutical waste over a two year period;
- Development Consent DA-86-04-01 (Mod 8) and NSW Land and Environment Court No. 10397 of 1995 (Mod 6), approved on the 17 February 2013 for the trial the processing of up to 3,000 tonnes mixed spent pot lining over a 12 month period; and
- Development Consent DA-86-04-01 (Mod 7) and NSW Land and Environment Court No. 10397 of 1995 (Mod 5), approved on the 7 September 2012 for the trial the processing of up to 3,000 tonnes mixed spent pot lining over a 12 month period.

There are five (5) other applications recently lodged with the Department for consideration. These are discussed later in this report.

**Planning and Environment**

**Report No. PE83/2016**

**Planning and Environment**



Council received notice of a proposed State Significant Development (Reference No. SSD 7520) on 14 November 2016. The application is on public exhibition between 17 November and 16 December 2016.

The applicant, 'Pymore Recyclers International Pty Ltd' seeks approval for the purpose of constructing and operating a battery recycling facility, at 129 Mitchell Avenue (Lots 796 and 797 in DP 39877), Kurri Kurri. The facility will be capable of receiving up to 60,000 tonnes per annum of used lead-acid batteries for separation into components (lead, plastic and other materials), which can be recycled for use in new products. The applicant proposes to operate 24 hours, seven days a week and, at full production, employ approximately 60 full time operational staff and 13 contractors. The capital investment value is \$30Million with annual revenue estimated at \$50Million.

As a State Significant Development, Council is not the consent authority for the proposal. Council has an opportunity to contribute to the assessment of the proposal by providing comments to the NSW Department of Planning who are assessing the application for the proposal. The Minister for Planning (or delegate) is the consent authority and will determine the application.

***REPORT***

***The proposal***

The facility is designed to operate with four main processes:

1. Crushing, screening and separation;
2. Desulphurisation;
3. Crystallisation; and
4. Lead recovery.

Up to two rotary furnaces will be installed within the facility in two phases. In the submitted EIS, Phase 1 is used to describe the scenario where one furnace is operating and Phase 2 is the scenario where two furnaces are operating.

The maximum capacities of the facility are:

- Phase 1 (one furnace) – 100 tonnes per day, 30,000 tonnes per annum.
- Phase 2 (two furnaces) – 200 tonnes per day, 60,000 tonnes per annum.

The main components of the facility include:

- Building 1 – Guard house/truck scale room;
- Building 2 – Quality Assurance (QA) laboratory, workshop, parts and refractory store room;
- Building 3 – Administration building including canteen and clinic;
- Building 4 – Employee change rooms;
- Building 5 – Production and crystallizer building;
- Building 6 – Air compressor room;
- Building 7 – Oxygen plant;
- Building 8 – ULAB storage warehouse;
- Building 9 – Waste water treatment plant;

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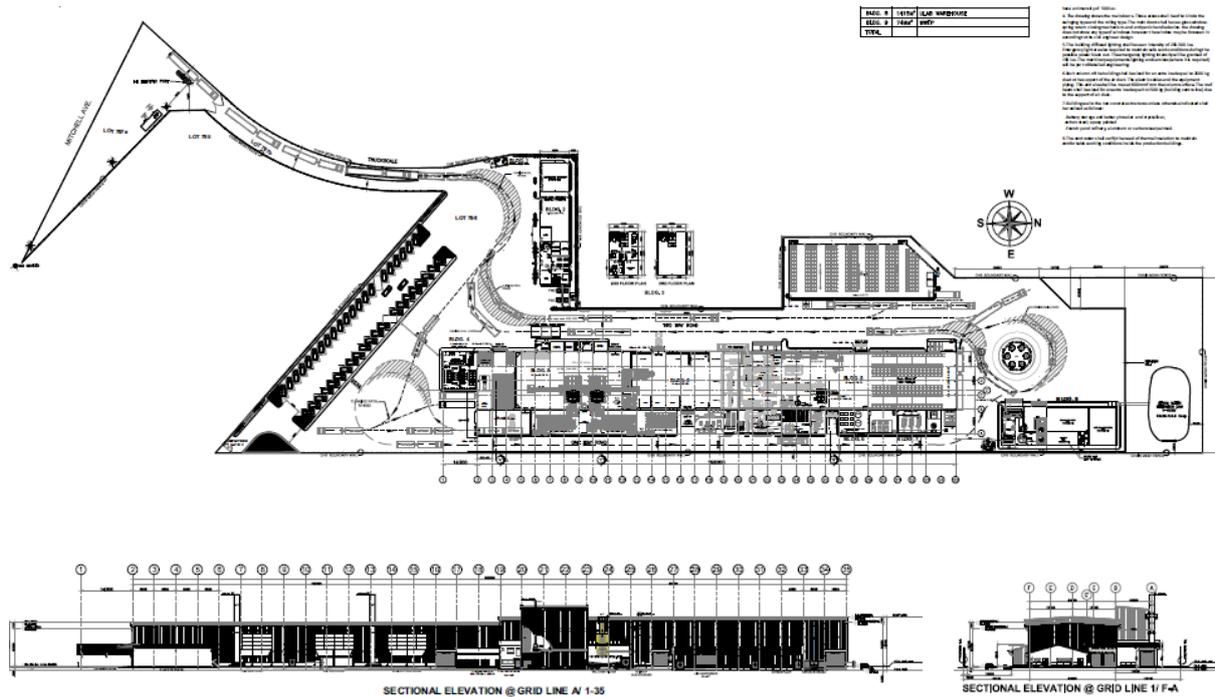
Planning and Environment



- truck scale/weighbridge and automatic wheel wash station;
- employee vehicle parking; and
- stormwater detention dam.

Figure 1, below, shows the proposed works overlaid on an aerial photograph of the subject site.





Council staff have considered the proposal and prepared draft comments to assist the Department of Planning and Environment ('the Department'), in their consideration of the proposal. The draft submission prepared by Council staff is attached to this report as Enclosure 1.

**Recent approvals**

On 21 September 2015, Council received notification from the Department advising that on 15 September 2015, the Department approved Applications to modify Development Consent DA-86-04-01 (Mod 9), and NSW Land and Environment Court No. 10397 of 1995 (Mod 7). The approval of the Applications enabled 'Weston Aluminium' to undertake an illicit drug and pharmaceutical waste processing trial for a period of two (2) years.

The above Applications were referred to Council for consideration at their meetings of 20 May and 17 June 2015. Subsequently, Council lodged two submissions with the Department outlining that whilst Council did not object to the proposal, a number of concerns relating to air emissions, the quantity of material to be processed, the source of the waste, social impact and the potential for crime, were relevant.

**Other Applications currently under consideration**

There are five (5) other applications recently lodged with the Department for consideration, as follows:

- Development Consent DA-86-04-01 (Mod 11) and NSW Land and Environment Court No. 10397 of 1995 (Mod 9), seeking to trial the processing of up to 1,000 tonnes of quarantine waste over a two year period;

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- Development Consent DA-86-04-01 (Mod 10) and NSW Land and Environment Court No. 10397 of 1995 (Mod 8), seeking to remove the distinction between spent pot lining (SPL) types in the consent, thereby enabling the facility to process both first cut and second cut SPL as well as a mix of both, whilst not increasing the capacity of the facility.
- State Significant Development 7396, proposing to install and operate thermal processing equipment for the processing of medical and other wastes, processing of up to 8,000 tonnes per annum.

At the time of writing, the proponent is reviewing the submissions for each application. Council has lodged a submission in respect to these applications, as previously reported to Council.

***OPTIONS***

Council has the following options:

1. Endorse the draft submission (Enclosure 1), for forwarding to the NSW Department of Planning and Environment.
2. Include/remove matters in the draft submission (Enclosure 1) for forwarding to the NSW Department of Planning and Environment.
3. Not send a submission in relation to State Significant Development (Reference No. SSD 7520).

Option 1 is recommended.

***CONSULTATION***

The preparation of Council's response involved collaborated inputs from a number of Departments with Council, including Environmental Health and Development Services.

Councillors and senior staff were briefed by the applicant on 7 December 2016.

Council is advised that the NSW Department of Planning and Environment has a dedicated website in relation to State Significant Development. The website outlines the full process associated with the consideration and determination status of each application.

The weblink for this proposal is:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7520](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7520)

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**STRATEGIC LINKS**

**a. Delivery Program**

This matter progresses the Community's Desired Outcome for "A Sustainable and Healthy Environment" in particular Objective 3.1 of the Delivery Program "Protecting and Enhancing the Natural Environment and Rural Character of the Area".

**b. Other Plans**

NIL

**IMPLICATIONS**

**a. Policy and Procedural Implications**

NIL

**b. Financial Implications**

Other than the staff time in reviewing the proposal and compiling the draft submission, there are no other financial implications given this proposal is not being determined by the Council.

In terms of the proposal itself, the proponent has indicated the capital investment value is approximately \$39.8 million, and would provide direct employment for approximately 60 people.

**c. Legislative Implications**

Nil for Council. As a State Significant Development, compliance and licensing will be the responsibility of the NSW Government.

**d. Risk Implications**

The risks to Council and the community within the locality should be addressed through the assessment process carried out by the NSW Department of Planning. Council's comments should assist the Department in their assessment in this regard.

**e. Environmental Implications**

There are environmental implications associated with the development. Council's draft submission to the NSW Department of Planning and Environment adequately identifies pertinent considerations that should be properly considered before the application is determined. It is noted that the proposal would also be subject to review by the NSW Environment Protection Authority in terms of the Protection of the Environment Operations Act 1997 and other agencies such as SafeWork NSW.

**f. Other Implications**

NIL

**Planning and Environment**

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***CONCLUSION***

State Significant Development (Reference No. SSD 7520) is being publicly exhibited by the NSW Department of Planning and Environment between 17 November and 16 December 2016.

The subject proposal seeks approval for the purpose of constructing and operating a battery recycling facility, to receive up to 60,000 tonnes per annum of used lead-acid batteries for separation into components (lead, plastic and other materials), which can be recycled for use in new products, at 129 Mitchell Avenue, Kurri Kurri.

Council's draft submission provides comment on the key aspects of the development that warrant particular attention in order to ensure that there are adequate safeguards implemented to protect the environment and local community. In terms of economic considerations there would be substantial benefits to the local economy with 60 jobs created and a capital investment value of \$39.8M and ongoing revenues estimated at \$50M over annum.

This report recommends that Council endorses the draft submission (Enclosure 1) for forwarding to the NSW Department of Planning and Environment.

***ENCLOSURES***

- [1](#) Draft submission

**SUBJECT:** *CESSNOCK CORRECTIONAL CENTRE EXPANSION  
REVIEW OF ENVIRONMENTAL FACTORS*

**RESPONSIBLE OFFICER:** *Principal Natural Environment Planner - Ian Turnbull*

### **SUMMARY**

This report is provided in response to Council's resolution relating to Mayoral Minute MM05/2016 – Cessnock Correctional Centre Expansion.

### **RECOMMENDATION**

**That Council note the summary of staff comments on the Review of Environmental Factors for the Cessnock Correctional Centre Expansion.**

### **BACKGROUND**

Council adopted Mayoral Minute MM6/2016 at its Ordinary Meeting of November 16, 2016. Council resolved at that meeting as follows;

1. *That Council urgently write to the Hon. David Elliott, MP, Minister for Corrections, to clearly outline:*
  - A. *Council's serious concerns and dissatisfaction over the failure of the Review of Environmental Factors (REF) to achieve a satisfactory outcome regarding access to the expanded Cessnock Correctional Centre, and seeking to resolve the issue of transport, traffic and access as soon as possible.*
  - B. *Council's current position in relation to access to the expanded Cessnock Correctional Centre, particularly:*
    - a) *that access to the proposed expanded State facility be via direct routes to the State road network; and*
    - b) *that local roads paid for by Cessnock ratepayers should not shoulder the significant financial and maintenance burden of the significant expansion of this State facility.*
2. *That Council continue to actively lobby the relevant Ministers and NSW Government agencies and work with them to achieve a better transport, traffic and site access outcome which reflects Council's position and which does not burden ratepayers of Cessnock City Local Government Area with the demands of State infrastructure :*
3. *That the General Manager make arrangements for further assessment of the Review of Environmental Factors regarding the expansion of Cessnock Correctional Centre by 1000 beds, and a further report on any issues or impacts be brought back to Council for consideration.*

**Planning and Environment**

**Report No. PE84/2016**

**Planning and Environment**



This report provides Council with an update on the assessment of the REF and other steps taken to implement Council's resolution.

***REPORT/PROPOSAL***

In accordance with Council's resolution of 16 November 2016, Council staff have now completed the Review of Environmental Factors (REF) for the expansion of the Cessnock Correctional Centre. Council staff have also met with NSW Department of Justice on issues identified within the REF. In addition, the Department have committed to reviewing preliminary options for the permanent relocation of the access and entrance to the Centre.

This report will provide a brief outline of the issues identified relating to:

- Social Impact
- Flora and Fauna
- Visual Amenity
- Noise
- Traffic, Entry and Access

***Social Impact***

The Social Impact statement, following review by Council's Principal Community Planner, also had a number of shortcomings. They include; a lack of mitigation measures to address the identified negative social impacts or methodology for measuring these impacts. A recommendation that membership of the proposed Community Consultative Committee be expanded to include social and welfare services that provide to the broader community – not restricted to those that provide to offenders. This broader representation will provide a greater strategic focus for the Committee and strengthen its effectiveness.

The impact upon service provision at Cessnock Hospital was raised where there is the real potential for double the number of Correctional Centre occupants being presented for treatment at Cessnock Hospital. This would, if unsupported by an increase in hospital resources, impact significantly on waiting times for the community. The provision of public transport and the engagement of Aboriginal community organisations (in addition to Land Council's) as part of the proposed Consultative Committee were raised in the review of the Social Impact Assessment.

***Ecological Assessment***

The Flora and Fauna Assessment concluded that the proposed development would not have a significant impact upon any threatened species, populations or Endangered Ecological Communities listed under the NSW Threatened Species Conservation Act 1995. The assessment identifies that the proposal will destroy 41 percent of the Heath Wrinklewort (*Rutidosis heterogama*) population on the site. Council's Ecologist disagrees with the significance of this impact and recommended to the Department that a Species Impact Statement be prepared for the site.

In addition clarity over the currency of the survey data and methodology used to capture it, the uncertainty in the documentation over the removal of a dam and the status and disclosure of a Vegetation Management Plan for the site were also raised.

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Note: While, Council staff have observed that the works associated with the expansion have commenced and that substantial site clearing has been undertaken, Department of Justice staff are entitled to, and have relied upon, the ecological studies provided and considered prior to the REF being signed off.

**Access to Cessnock Correctional Centre**

On Thursday 17 November 2016, the afternoon following Council's Ordinary Meeting, Mayor Pynsent received correspondence from Mr Matthew Dalmau, Project Director (Rapid Build Prison) (enclosed). This correspondence acknowledged Council's concerns regarding the road access and suggested that any change to access may impact upon community members that have not been consulted as yet. Mr Dalmau indicated that the REF was focused on the activities within the boundaries of the Government owned land and as such was "limited in its ability to address concerns raised by Council during the community consultation period regarding road access to the facility". The correspondence follows to indicate that the Department will "consider revised Correctional Centre wide access options" and indicates further work is being undertaken by consultants with respect to these options.

On Friday 25 November 2016, staff met with representatives of the Department to discuss the Review of Environmental Factors and traffic access issue. A separate report has been provided to Council for consideration of this matter.

**Visual Amenity**

The assessment for the impact upon visual amenity for the proposal was restricted to the new buildings. No consideration was given within the REF for the impact of the relocation of the demountable buildings on the site specifically their proximity to the sensitive receptor of Oakey Creek Road.

**Noise**

The noise reports did not take into consideration the cumulative impact of activities within the expansion project and ongoing operation of the Correctional Centre. The assessments looked at individual elements of the proposal however failed to address the combined impacts.

**OPTIONS**

The recommendation is for Council to note the information contained in the report regarding the REF. In addition it is recommended that Council endorse the continued dialogue with the Department on the access and entrance to the facility.

Council could consider looking at investigating further action on the shortcomings identified within the REF. The cost of such a decision is unknown however a challenge on the legality of the REF would incur expert advice and legal representation and the associated high financial cost on issue which Council is not responsible for enforcing. Council should consider the ramifications of such a decision on the relationship with the Department and the potential outcome of such a challenge. This is not recommended by Council staff.

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**CONSULTATION**

A range of staff reviewed sections of the REF particular to their area of expertise. They include Council's Principal Community Planner, Ecologist, Environmental Health Staff, Building Services Staff, Development Assessment Manager, Strategic Land Use Planning Manager and Council's Development Engineers.

It should also be noted by Council that the expansion project and proposed relocated access are not Council controlled projects and as such responsibility for community engagement rests with the NSW Department of Justice and Corrective Services NSW. This does not prevent Council maintaining its current position on the matters. Should Council determine to implement its own community engagement of potential options for the relocated access to the facility, this will have resourcing and potential financial implications and is not recommended.

**STRATEGIC LINKS**

**a. Delivery Program**

Desired Outcomes:

- A connected, safe and creative community
- A prosperous and sustainable economy
- A healthy and sustainable environment
- Accessible infrastructure, services & facilities
- Civic leadership and effective governance

Objectives:

- 1.3 Promoting safe communities
- 2.2 Achieving more sustainable employment opportunities
- 3.1 Protecting and enhancing the natural environment and the rural character of the area
- 4.2 Improving the road network
  - 4.2.2 Advocate for road funding to better manage traffic impacts on the local road network
- 4.3 Improving access to health services locally
  - 4.3.1 Advocate for health services on behalf of the community
- 5.2 Encouraging more community participation in decision making

**b. Other Plans**

N/A

**IMPLICATIONS**

**a. Policy and Procedural Implications**

N/A

**b. Financial Implications**

Should Council consider further action or to seek advice on the REF this could incur significant legal costs to the organisation with no guarantee of any real outcome and is not recommended.

**c. Legislative Implications**

N/A

**d. Risk Implications**

There are risks that the community may misinterpret Council's role in this Government Project. The Community should be aware that the engagement and consultation responsibility rests with the State Government and not the Council. There is a real risk however that Council resources will continue to be taken up with community enquiries, and while enquiries will not be disregarded, it is important the community is provided with the right information regarding responsibility for consultation and action.

**e. Environmental Implications**

The environmental implications are identified within the report body.

**f. Other Implications**

Nil

***CONCLUSION***

The Review of Environmental Factors for the expansion of the Cessnock Correctional Centre has been assessed by Council staff in accordance with Council's resolution. A number of shortcomings were identified across a range of areas including flora and fauna reports, noise impacts, social implications and the previously identified matter of access to the expanded Centre. These matters have been brought to the attention of the Department of Justice. The Department have responded to Council's concerns regarding the access to the site and have opened dialogue with staff on options for addressing this matter.

***ENCLOSURES***

There are no enclosures for this report

**SUBJECT:** *SUBMISSION TO STANDING COMMITTEE ON THE ENVIRONMENT AND ENERGY ENQUIRY INTO FLYING-FOXES IN THE EASTERN STATES.*

**RESPONSIBLE OFFICER:** *Principal Natural Environment Planner - Ian Turnbull*

### **SUMMARY**

This report seeks endorsement of the staff submission to the Commonwealth Government's *Standing Committee on the Environment and Energy Enquiry into Flying Fox Management in the Eastern States* and provides Council with a brief update on matters associated with the development of the Camp Management Plan for East Cessnock.

### **RECOMMENDATION**

1. That Council endorse the staff submission to the Standing Committee on the Environment and Energy Enquiry into Flying-Foxes in the Eastern States and submit it to the Committee Secretariat.
2. That Council note the brief update on the development of the East Cessnock Flying-Fox Camp Management Plan.

### **BACKGROUND**

At its Ordinary Meeting of 16 November 2016 Council considered a Matter of Urgency on the Enquiry into Flying-Foxes in the Eastern States by the Australian Government's House of Representatives Standing Committee on Environment and Energy and resolved:

1. That Council notes that the very short time-frame provided by the Commonwealth Government's *Standing Committee on Environment and Energy Enquiry into Flying Fox Management in the Eastern States* has prevented the opportunity for a full submission to be provided to the elected Council to consider before the Committee's submission period closes on 18 November 2016.
2. That Council notes that Council staff will make a submission, in consultation with Hunter Councils, to the *Standing Committee on Environment and Energy Enquiry into Flying Fox Management in the Eastern States*, and that prior to the staff submission being lodged, a copy of the submission be provided to Councillors for reference.
3. That Council make a brief submission to the *Standing Committee on Environment and Energy Enquiry into Flying Fox Management in the Eastern States* as follows:
  - a) The impact on local residents of the flying foxes at the East Cessnock Flying Fox Camp is significant and is worthy of further review by the Council before making a submission to the Enquiry;
  - b) That given the significant impact on residents at East Cessnock, it is considered more than reasonable for Council to request the Committee

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provide an extension of time to enable the elected Council to consider the matter and provide an endorsed and informed submission.

4. That Council send a representative(s) to the Standing Committee's Public Roundtable Hearing in Canberra on 24 November 2016 in an effort to contribute to this important national issue and ensure Cessnock City Council's concerns are heard.

**REPORT/PROPOSAL**

Council staff, in accordance with resolution 2, prepared a submission in response to the Terms of Reference established by the Standing Committee on Friday 18 November 2016. Prior to lodgement, Councillors were provided a copy of the submission via Councillor Memo. Council's submission was complimentary to, and supportive of, the submission lodged by Hunter Councils Environment Division.

In addition, a short submission was lodged in accordance with resolution 3 and also provided to Council on Friday 18 November 2016. Both of the submissions have subsequently been published on the Parliamentary Website and are now available as enclosures to the report.

As yet, no formal response has been received by Council from the Committee with respect to the request for an extension in time for its submission. However, Council Director of Planning and Environment was advised while in attendance at the Enquiry, that should Council wish to alter its submission at the December Council meeting and provide further information soon after, then the Committee could still consider it early in the new year prior to it finalising the inquiry.

Council's staff submission addressed each of the terms of reference provided by the Committee and offered a number of recommendations for the Committee to consider. The recommendations were as follows;

*The communication of threatened species listing processes and the evidence used to justify them should be presented in clear and easy to understand terms to allow greater community engagement in the process.*

*That the Australian Government explore more effective integration and simplification of the State and Commonwealth legislation in relation to threatened species management and its impact on communities.*

*That the Australian and State Governments provide greater assistance and support to the health and wellbeing of people and communities adversely impacted by threatened species such as Grey-Headed Flying-Foxes.*

*That as a priority, the Australian Government, in partnership with State Governments, review, fund and implement a revised recovery plan for the Grey-Headed Flying Fox as a matter of priority.*

*That the Australian Government reassess its approach to ensure it takes a "proactive role in assisting community efforts towards the recovery of the species" with a view to a broader approach which addresses management actions beyond the immediate camp boundaries.*

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*That the Australian government take a leading role, along with the State Governments, in the review of the draft recovery plan for the Grey-Headed Flying-Fox, to ensure outcomes from the review reflect a whole of government approach to effectively manage strategic and operational regional intelligence beyond local and State government boundaries.*

*That the Australian and State Governments work together in a transparent manner, with opportunities for community engagement, to streamline regulation and avoid unnecessary duplication. Streamlining the legislation may include bilateral agreements between levels of government, legislative amendments or other arrangements.*

*That the Australian and State Governments work together to carry out further research on dispersal management options for flying-foxes, and how this impacts on both affected communities and flying-foxes.*

**Public Roundtable Hearing, Canberra 24 November 2016**

Council's Director of Environment and Planning and Principal Natural Environment Planner, in accordance with resolution 4, attended the Roundtable Hearing in Parliament House Canberra on Thursday 24 November. The Standing Committee heard statements from a range of organisations and individuals. The Enquiry issues ranged from complexities associated with the census counting of the species, the difference in legislative controls across the States, the unique behaviour of flying-foxes, their impact on communities and the success or otherwise of dispersal actions.

Council's Director of Planning and Environment spoke with the Chair, The Hon, Andrew Broad, MP prior to and after the roundtable. Matters not raised by invited parties were discussed with the Chair to ensure he was aware that Cessnock City Council's submission had provided further issues for consideration, including the health and wellbeing of affected residents. This was an excellent opportunity for Council to still be heard despite not being specifically invited to speak at the roundtable.

**East Cessnock Camp Update**

After a short period of complete vacancy of the camp there is a relatively small occupancy of Grey-Headed Flying-Foxes in residence. The Paperbark trees that were completely denuded by the Little Red Flying-Foxes are recovering and reshooting. Flying-Fox pups have been observed falling from the trees it is thought due to starvation.

Flying-Fox Engage has now concluded and over 220 submissions were received. The East Cessnock Camp Working Group will be considering the results report at its next meeting. The consultation outcomes are a key element to the determination of management actions to be proposed by the Camp Management Plan.

**Millfield - former Flying Fox Camp**

Following reports, Council's Principal Natural Environment Planner recently revisited the Millfield site with staff from Local Land Services, where there was once an established camp. There were no flying-foxes at that site and there was no evidence to suggest they have been there.

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***OPTIONS***

The preferred option is for Council to endorse the staff submission as enclosed.

Council may choose to not endorse the submission or make amendment to the staff submission.

***CONSULTATION***

Council consulted with the Hunter Council's Environment Division in the drafting of the staff submission.

***STRATEGIC LINKS***

**a. Delivery Program**

This report aligns with Objective 3.1 of Council's 2013-2017 Delivery Program – Protecting and Enhancing the Natural Environment and the Rural Character of the area.

**b. Other Plans**

NIL

***IMPLICATIONS***

**a. Policy and Procedural Implications**

NIL

**b. Financial Implications**

NIL

**c. Legislative Implications**

NIL

**d. Risk Implications**

Nil

**e. Environmental Implications**

The submission is reflective of community and Councillor feedback on the issues surrounding the Flying-Fox camp at East Cessnock.

**f. Other Implications**

NIL

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**CONCLUSION**

Council staff, in a very short timeframe, drafted and lodged a comprehensive submission to the Commonwealth Government's *Standing Committee on the Environment and Energy Enquiry into Flying Fox Management in the Eastern States* in accordance with a Motion of Urgency at the Council Meeting of 16 November. Council staff are seeking Council's endorsement of that submission. In addition, a brief update on the East Cessnock Flying-Fox Camp and development of the Camp Management Plan is provided for Council's information.

**ENCLOSURES**

- 1** Staff Submission - Standing Committee on the Environment and Energy Enquiry into Flying-Foxes in the Eastern States.
- 2** Council Submission - Standing Committee on the Environment and Energy Enquiry into Flying-Foxes in the Eastern States.



**SUBJECT:** *CODE OF CONDUCT - COMPLAINT STATISTICS*

**RESPONSIBLE OFFICER:** *Director Planning and Environment - Gareth Curtis*

**SUMMARY**

Part 12 of the Procedures for the Administration of the Model Code of Code requires the Council's appointed Complaints Coordinator to provide a report to Council on Code of Conduct Complaints Statistics within three months from the end of September.

The report is provided for Council's information.

**RECOMMENDATION**

**That Council note the report.**

**BACKGROUND**

Part 12, Clause 12.1 of the Procedures for the Administration of the Model Code of Conduct (the 'Procedures') requires the Council's appointed Complaints Coordinator to provide a report to Council on Code of Conduct Complaints Statistics within three (3) months of the end of September each year. The Director Planning and Environment is the appointed Complaints Coordinator.

The reporting period referred to in this report is from 1 October 2015 up to and including 30 September 2016.

**REPORT/PROPOSAL**

The following table provides the statistics for the period 1 October 2015 up to and including 30 September 2016:

Number of Complaints			
1	a	The total number of complaints <b>received</b> in the period about Councillors and the General Manager (GM) under the Code of Conduct	2
	b	The total number of complaints <b>finalised</b> in the period about Councillors and the GM under the Code of Conduct	2
Overview of Complaints and Cost			
2	a	The number of complaints <b>finalised at the outset</b> by alternative means by the GM or Mayor	2

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b	The number of complaints <b>referred to the Office of Local Government</b> under a special complaints management arrangement	0
c	The number of Code of Conduct complaints <b>referred to a conduct reviewer</b>	0
d	The number of Code of Conduct complaints <b>finalised at preliminary assessment</b> by conduct reviewer	0
e	The number of Code of Conduct complaints <b>referred back to GM or Mayor</b> for resolution after preliminary assessment by conduct reviewer	0
f	The number of finalised Code of Conduct complaints <b>investigated by a conduct reviewer</b>	0
g	The number of finalised Code of Conduct complaints <b>investigated by a conduct review committee</b>	0
h	The number of finalised complaints investigated where there was found to be <b>no breach</b>	2
i	The number of finalised complaints investigated where there was found to be <b>a breach</b>	0
j	The number of complaints referred by the GM or Mayor <b>to another agency</b> or body such as the ICAC, the NSW Ombudsman, the Office or the Police	0
k	The number of complaints being investigated that are <b>not yet finalised</b>	0
l	The <b>total cost</b> of dealing with code of conduct complaints within the period made about Councillors and the GM including staff costs	1,110

The statistics are also forwarded to the Office of Local Government before 31 December 2016 in accordance with Clause 12.2 of the Procedures.

**OPTIONS**

N/A

**CONSULTATION**

General Manager

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**STRATEGIC LINKS**

**a. Delivery Program**

This report relates to the Community's Desired Outcome of "Civic Leadership and Effective Governance" outlined in the Community Strategic Plan 2023.

The Delivery Program 2013-2017 link is; *Action 5.3.5 - Carry out governance functions, provide advice and conduct education programs to comply with legislation and best practice.*

**b. Other Plans**

N/A

**IMPLICATIONS**

**a. Policy and Procedural Implications**

The report is provided to ensure conformance to the Procedures for the Administration of the Model Code of Conduct published by the NSW Office of Local Government

**b. Financial Implications**

N/A

**c. Legislative Implications**

N/A

**d. Risk Implications**

N/A

**e. Environmental Implications**

N/A

**f. Other Implications**

N/A

**CONCLUSION**

The report is provided for Council's information in accordance with the Procedures for the Administration of the Model Code of Conduct.

**ENCLOSURES**

There are no enclosures for this report

**SUBJECT:** *COUNCIL SUBMISSION TO DISCUSSION PAPER - SPECIAL INFRASTRUCTURE CONTRIBUTION PLAN*

**RESPONSIBLE OFFICER:** *Principal Strategic Land Use Planner - Wonona Fuzzard  
Strategic Land Use Planning Manager – Martin Johnson*

### **SUMMARY**

The purpose of this Report is to gain Council endorsement and forward the submission to the Department of Planning and Environment regarding the Discussion Paper – Special Infrastructure Contribution Plan (Enclosure 1).

### **RECOMMENDATION**

**That Council endorse and submit the submission to the Discussion Paper – Special Infrastructure Contribution Plan to the Department of Planning and Environment.**

### **BACKGROUND**

In 2011, the Department of Planning and Environment (DoPE) released a draft Environmental Planning and Assessment (Special Infrastructure Contribution - Lower Hunter) Determination 2011 (SIC) as a public consultation draft. The intent of the SIC was to levy developers to help fund regional infrastructure such as schools, healthcare and emergency services. Although the SIC documents remained in draft, the DoPE was able to enact the levy through Part 6 Urban Release Areas of local environmental plans. To date the application of the SIC by the DoPE has been problematic for both Council and developers. Key areas of concern have been the lack of governance, transparency and equity in application of the levy as well as the adverse impact on the processing times of development applications due to time taken by DoPE to undertake the SIC assessment.

### **REPORT/PROPOSAL**

On the 14 October 2016 and in conjunction with the release of the Hunter Regional Plan, a Discussion Paper for the Special Infrastructure Contributions Plan was released. The intent is to gain preliminary feedback prior to a formal draft Plan being placed on public exhibition in 2017. This document is only a Discussion Paper, not an actual plan and is therefore very limited in detail. However, it does provide Council the opportunity to raise key points regarding the functioning of the current process and highlight specific infrastructure requirements for the Local Government Area.

The key matters for consideration are addressed in full in Enclosure 2 including the need for:

- A sound governance framework;
- Processes and application of the Plan to be transparent and equitable;
- Infrastructure items listed in the Plan to be actual State infrastructure not local;
- Monies collected in the Hunter Region to be spent in the Hunter Region;
- Monies to be apportioned across growth areas as the development generates the need;
- Impacts on the development assessment process to be removed;

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- The existing community to be excluded from being levied for the future growth; and
- List of additional infrastructure requirements for this LGA to support growth outlined in the Hunter Regional Plan.

**OPTIONS**

Council has the following options:

1. Endorse the submission on the Discussion Paper – Special Infrastructure Contribution Plan and forward onto the Department of Planning and Environment for consideration. This is the recommended option.
2. Decline to make a submission on the Discussion Paper and wait until the formal exhibition of the Special Infrastructure Contributions Plan in February 2017.
3. Decline to make a submission on the Discussion Paper and take no further action.

**CONSULTATION**

The DoPE's Discussion Paper is on exhibition from 14 October to 16 December 2016. There will be a formal exhibition process when an actual plan is developed which is anticipated to be in February 2017.

**STRATEGIC LINKS**

**a. Delivery Program**

This Report is linked to the Community Strategic Plan as follows:-

- **Desired Outcome** – A sustainable and prosperous economy.
  - Objective 2.2 – Achieving more sustainable employment opportunities.
- **Desired Outcome** – Accessible infrastructure, services and facilities.
  - Objective 4.1 – Better transport links; and
  - Objective 4.2 – Improving the road network.
- **Desired Outcome** – Civic leadership and effective governance.
  - Objective 5.2 – Encouraging more community participation in decision making; and
  - Objective 5.3 – Making Council more responsive to the community.

**b. Other Plans**

The State Government's Hunter Regional Plan and Council's City Wide Settlement Strategy 2011 provide the direction at a regional and local area level respectively, to guide land use planning and decision making for development and environmental outcomes. To ensure delivery of these strategies it is critical that infrastructure is delivered at the right time and in the right location. As a result, the development of a new Special Infrastructure Contribution Plan is of critical importance to support the growth of the LGA.

## ***IMPLICATIONS***

### **a. Policy and Procedural Implications**

The Discussion Paper is not an actual Special Infrastructure Contribution Plan and therefore has no immediate policy implications; however it does present an excellent opportunity to provide the DoPE with information for consideration as they develop a new Plan.

### **b. Financial Implications**

This is only a Discussion Paper and contains very little information. The financial implications to the organisation will become more apparent when the draft Plan is released in February 2017.

### **c. Legislative Implications**

Nil

### **d. Risk Implications**

Nil

### **e. Environmental Implications**

Nil

### **f. Other Implications**

Nil

## ***CONCLUSION***

The release of a Discussion Paper is considered a positive approach to pre-consultation by the DoPE. As outlined in the submission, the current SIC process has many shortcomings and requires a far more rigorous and transparent framework to function effectively. Although the Discussion Paper had little detail, it is important to make a submission to facilitate the DoPE's understanding of the many issues which affect this LGA. It is then hoped that many of the issues will have already been addressed when the draft Plan is released in February.

## ***ENCLOSURES***

- [1](#) Enclosure1 Discussion Paper - SIC
- [2](#) Enclosure 2 CCC Submission to Discussion Paper

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**SUBJECT:** *INVESTMENT REPORT - NOVEMBER 2016*

**RESPONSIBLE OFFICER:** *Chief Financial Officer - John Oliver  
Management Accountant - Paul Grosbernd*

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### **SUMMARY**

Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulation 2005 and Council's Investment Policy require a monthly report to Council detailing all money invested.

### **RECOMMENDATION**

**That Council receive the report and note the information.**

### **BACKGROUND**

The Local Government Act 1993, the Local Government (General) Regulation 2005 and Council's Investment Policy require a monthly report to Council detailing all money invested.

### **REPORT**

#### **Statement by the Responsible Accounting Officer**

I, John Oliver, as Responsible Accounting Officer, hereby certify that this report is produced in accordance with Clause 212 of the Local Government (General) Regulation 2005 and that all investments have been made in accordance with the Local Government Act 1993, Local Government (General) Regulation 2005 and Council's Investment Policy.

#### **General Investment Commentary**

Following assessment of projected cash flow requirements, surplus funds are invested in accordance with Council's Investment Policy.

The Reserve Bank of Australia (RBA) official cash rate as at 30 November 2016 was 1.50 percent. Scheduled RBA Board meetings are held on the first Tuesday of each month (excluding January) at which the official cash rate is one of the matters considered. The December meeting held on 6 December 2016 retained the official cash rate at 1.50 percent.

Investment revenues to the end of November 2016 exceeded budget and the adopted benchmark in the Investment Policy, with an actual level of return 11.2 percent more than budget.

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## Corporate and Community Services

**Investment Portfolio Information**

Total cash and investments held by Council as at 30 November 2016 are:

Invest No	Financial Institution Investment Held With	Invest Type	Interest Coupon Term	Maturity / Next Coupon Date	Current Coupon Rate	Par Value \$'000
	Commonwealth Bank	Cash			1.15%	6,503
	Commonwealth Bank	At Call			0.70%	41
1243	AMP Bank	At Call			2.30%	500
1233n	Suncorp Bank	TD	182	15-Mar-17	2.62%	700
1236n	Maitland Mutual BS	TD	124	30-Jan-17	2.95%	600
1255m	ANZ Bank	TD	182	18-Jan-17	2.70%	800
1256j	National Australia Bank	TD	245	07-Jun-17	2.71%	900
1258l	ANZ Bank	TD	186	13-Feb-17	2.50%	700
1260h	National Australia Bank	TD	212	11-May-17	2.72%	1,000
1262m	Newcastle Permanent BS	TD	274	2-Jun-17	2.70%	600
1263h	Westpac Bank	TD	184	23-Feb-17	2.40%	600
1264i	IMB Bank	TD	182	15-Feb-17	2.60%	600
1269f	Maitland Mutual BS	TD	140	8-Feb-17	2.95%	900
1270l	Bendigo & Adelaide Bank	FRN	92	14-Feb-17	3.03%	500
1273f	Members Equity Bank	TD	147	21-Dec-16	2.70%	600
1276j	Newcastle Permanent BS	TD	182	8-Dec-16	2.80%	800
1277k	Greater Building Society	FRN	92	24-Feb-17	3.06%	500
1281e	National Australia Bank	TD	203	22-Feb-17	2.80%	700
1282d	Maitland Mutual BS	TD	140	8-Mar-17	2.85%	500
1284e	National Australia Bank	TD	273	5-Jul-17	2.73%	800
1285d	National Australia Bank	TD	182	14-Dec-16	2.98%	600
1286e	IMB Bank	TD	182	2-Mar-17	2.60%	900
1287h	IMB Bank	TD	184	17-May-17	2.50%	700
1288d	Members Equity Bank	TD	203	8-Mar-17	2.65%	800
1289d	Suncorp Bank	TD	181	24-May-17	2.76%	800
1290g	Newcastle Permanent BS	VRD	91	5-Dec-16	2.52%	700
1292c	Suncorp Bank	TD	186	13-Feb-17	2.60%	700
1293c	Maitland Mutual BS	TD	210	8-Feb-17	2.80%	800
1295f	Newcastle Permanent BS	TD	183	22-Mar-17	2.60%	900
1297c	Members Equity Bank	TD	188	15-Mar-17	2.65%	900
1298e	Newcastle Permanent BS	VRD	91	3-Jan-17	2.53%	800
1300c	Members Equity Bank	TD	139	25-Jan-17	2.65%	800
1301b	Maitland Mutual BS	TD	182	29-Mar-17	2.85%	800
1302b	Suncorp Bank	TD	183	23-Feb-17	2.65%	900
1303b	IMB Bank	TD	186	27-Feb-17	2.60%	700
1304b	AMP Bank	TD	212	22-Mar-17	2.95%	800

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Invest No	Financial Institution Investment Held With	Invest Type	Interest Coupon Term	Maturity / Next Coupon Date	Current Coupon Rate	Par Value \$'000
1305c	Commonwealth Bank	TD	154	26-Apr-17	2.62%	900
1306b	Suncorp Bank	TD	202	5-Apr-17	2.62%	900
1307c	Bankwest	TD	63	13-Dec-16	2.55%	800
1308d	Bankwest	TD	183	20-Apr-17	2.55%	900
1311b	Bankwest	TD	183	19-Apr-17	2.55%	600
1312	Newcastle Permanent BS	TD	185	13-Feb-17	2.80%	700
1313	Commonwealth Bank	TD	216	26-Apr-17	2.61%	800
<b>TOTAL</b>						<b>37,044</b>

The following table provides information on the level of funds held and the percentage invested with financial institutions in the investment portfolio:

Financial Institution	Amount \$'000	% of Portfolio
Commonwealth Bank of Australia	8,244	22.24%
Newcastle Permanent Building Society	4,500	12.15%
National Australia Bank	4,000	10.80%
Suncorp Bank	4,000	10.80%
Maitland Mutual Building Society	3,600	9.72%
Members Equity Bank	3,100	8.37%
IMB Bank	2,900	7.83%
Bankwest	2,300	6.21%
ANZ Bank	1,500	4.05%
AMP Bank	1,300	3.51%
Westpac Bank	600	1.62%
Bendigo & Adelaide Bank	500	1.35%
Greater Building Society	500	1.35%
<b>TOTAL</b>	<b>37,044</b>	<b>100.00%</b>

The following table provides information on investment types including a risk assessment and the amount and percentage invested compared to the total investment portfolio:

Investment Type	Risk Assessment		Amount \$'000	% of Portfolio
	Capital	Interest		
Term Deposits	Low	Low	27,500	74.24%
Cash/At Call Deposits	Low	Low	7,044	19.01%
Variable Rate Deposit	Low	Low	1,500	4.05%
Floating Rate Notes	Low	Low	1,000	2.70%
<b>TOTAL</b>			<b>37,044</b>	<b>100.00%</b>

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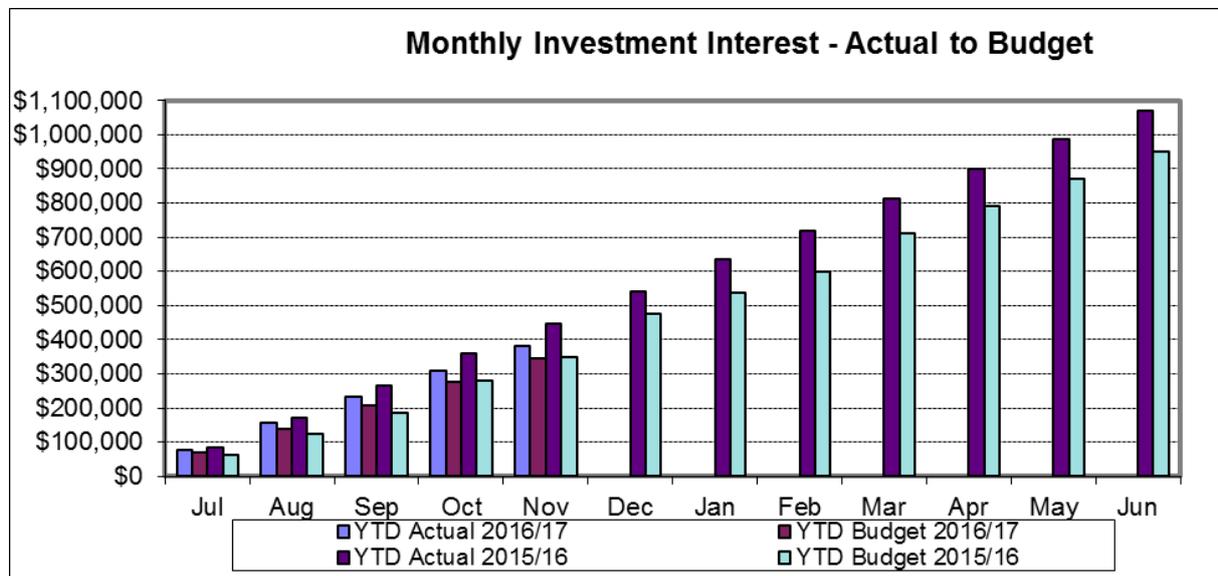
The following table provides information on interest rates and earnings this year compared to last year as well as a comparison of investment balances from this year to last year:

Performance Measures	This Year	Last Year
Portfolio Average Interest Rate (year to date)	2.53%	2.74%
BBSW Average Interest Rate (year to date) *	1.78%	2.15%
Actual Investment Interest Earned (year to date)	\$382,112	\$448,165
Budget Investment Interest (year to date)	\$343,750	\$348,330
Original Budget Investment Interest (Annual)	\$825,000	\$650,000
Revised Budget Investment Interest (Annual)	\$825,000	\$740,000

Investment Balances (Par Value)	This Year	Last Year
Opening Balance as at 1 July	\$37,684,000	\$37,253,000
Month End Current Balance	\$37,044,375	\$39,986,000

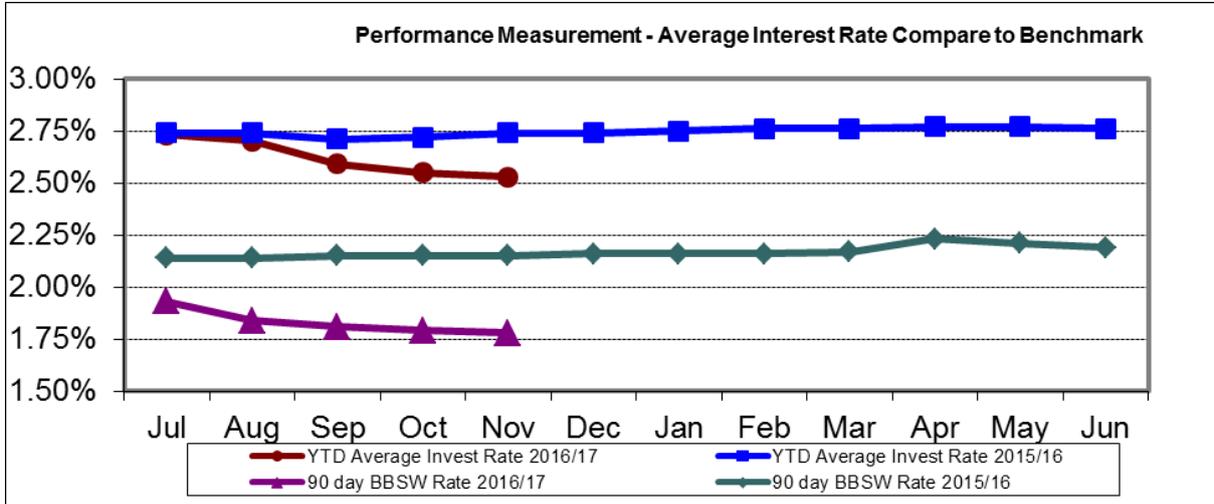
- BBSW 90 day Bank Bill Reference Rate (performance measure as per Council's Investment Policy)

The following graph compares actual interest earned to budget for this year and last year.





The following graph compares current year portfolio performance to prior year performance.



**OPTIONS**

N/A

**CONSULTATION**

Financial Accountant

**STRATEGIC LINKS**

**a. Delivery Program**

Investment returns are an integral part of funding sources for future services and community expectations within the Delivery Program and Operational Plan.

**b. Other Plans**

N/A

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Investments are held in accordance with Council’s Investment Policy which accords with the Ministerial Investment Order.

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**b. Financial Implications**

Investment returns are included in Council's Delivery Program and Operational Plan. Amendments are effected through the Quarterly Budget Review process. Investment portfolio performance is detailed within the report with comparisons to prior year and budget.

A portion of the portfolio and its associated investment income is restricted as it relates to funds held from Developer Contributions, Domestic Waste Management and Property Investment Reserve and is not available for operational projects.

**c. Legislative Implications**

This report meets Council's statutory obligations under the Local Government (General) Regulation 2005 and the Local Government Act 1993.

**d. Risk Implications**

Investment risks are detailed within this report.

**e. Other Implications**

There are no environmental, community, consultative or other implications to this report.

***CONCLUSION***

The report details investments held and meets statutory and policy reporting obligations.

***ENCLOSURES***

There are no enclosures for this report.

**SUBJECT:** *TENDER FOR LICENCE OF COMMUNITY LAND  
CARMICHAEL PARK, BELLBIRD*

**RESPONSIBLE OFFICER:** *Senior Property Officer - Susanne Brinkworth  
Manager Governance and Business Services - Kim  
Appleby*

## **SUMMARY**

Evaluation and selection of tender in relation to Tender No. T1617-02 – Licence of Community Land part of Carmichael Park Bellbird.

## **RECOMMENDATION**

1. That Council accept the tender from Optus Mobile Pty Limited for the licence of community land being part of Carmichael Park, Bellbird.
2. That Council delegate to the General Manager the power to negotiate the terms of the Licence Agreement for the sum of \$17,600 per annum including GST for the first year (adjusted annually) for a maximum period of 20 years.

## **BACKGROUND**

Optus Mobile Pty Limited previously made application to Council to construct a mobile tower at Carmichael Park Bellbird. Prior to consideration of a licence, Optus Mobile Pty Ltd requested to lodge a development application for the proposal and at the Meeting of 20 May 2015 Council resolved the following:

- a) *That Council provide landowner's consent for the lodgement of a development application for the telecommunication tower to be located on Council owned community land at Carmichael Park, Bellbird affecting Lot 1 DP 329071 and Lot 3 DP 624793.*
- b) *That Council, subject to any necessary development consent for the proposal, license the Council land to Optus Mobile Pty Ltd in accordance with the Local Government Act 1993 and delegate to the General Manager the power to negotiate the terms (including the payment of commercial rental) of the Licence for the purpose of a telecommunications tower.*
- c) *That Council advise the applicant that all costs associated with the Licence including Council's reasonable legal and valuation costs be borne by Optus Mobile Pty Ltd.*
- d) *That Council authorise the Common Seal of Cessnock City Council to be affixed to the Licence between Cessnock City Council and Optus Mobile Pty Ltd.*
- e) *That Council authorise the Mayor and General Manager to execute the Licence between Cessnock City Council and Optus Mobile Pty Ltd.*

Subsequently, on 16 September 2015, Council considered Report No PE67/2015 – Development Application 8/2015/304/1 – Replacement of electricity pole with telecommunications tower and associated structure. Council Resolved:

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1. *That Council determine Development Application No. 8/2015/304/1 proposing replacement of an existing electricity pole with a telecommunications tower and associated structures at Lot 1 DP 329071 2 Tennant Street, Bellbird, pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by the granting of consent subject to the conditions contained in this report.*
2. *That Council notify in writing the persons who made a submission with regard to the proposed development, of Council's decision.*

During negotiations of the Licence Agreement, Optus Mobile Pty Ltd advised a Licence for a term longer than 5 years was required and in accordance with s46 of the *Local Government Act 1993*, a Lease or Licence for a term exceeding 5 years may be granted only by tender unless it is granted to a non-profit organisation. Therefore, tenders were called for the Licence of Community Land being part of Carmichael Park, Bellbird. Council has also commenced public notification of a proposal to license the Community Land as required by the Local Government (General) Regulation 2005.

**REPORT**

***Request for Tender***

The Request for Tender (RFT) was prepared and reviewed by the Tender Audit Panel (TAP) before tenders were called.

***Invitation***

Tenders were invited on Tuesday 4 October 2016 on Council's e-tender portal, Tenderlink and advertised in the Sydney Morning.

***Closure***

Tenders closed 2pm Tuesday 25 October 2016.

***Evaluation of Tenders***

**Tender Evaluation Team:** In accordance with Council's Procurement Procedure, a Tender Evaluation Team (TET) was formed with the following members:

1. Senior Property Officer – Governance & Business Services
2. Recreation & Community Facilities Coordinator
3. Financial Accountant

**Evaluation Process:** The evaluation was conducted according to the following process:

1. Assessment of receipt
2. Assessment of conformance
3. Shortlisting of Tenders
4. Weighted evaluation
5. Due diligence
6. Determine evaluation result
7. Independent review of the tender selection process

The Evaluation criteria and their weightings were documented in the Contract Initiation and Development Plan and Tender Evaluation Plan, which were reviewed by the Manager Governance & Business Services prior to tenders being invited.

**1. Assessment of Receipt:**

One tender was received from Optus Mobile Pty Ltd and assessed against the first threshold criteria.

Threshold Criteria	
Criterion 1	Submission on time

The tender was received on time and met threshold criterion 1.

**2. Assessment of Conformance**

The Tender was then assessed for conformance with the remaining threshold criteria.

Threshold Criteria	
Criterion 2	Conformance with Request for Tender Documents

The tender was considered conforming in threshold criteria 2 and progressed to the next stage of evaluation.

**3. Shortlisting of Tenders**

As only one tender was received shortlisting of tenders was not necessary.

**4. Weighted Evaluation**

Tenders were evaluated using the following weighted evaluation criteria:

Weighted Criteria	
Criterion 3	Tender Price and Term
Criterion 4	Proposed use - Community Benefit and Co-use of Facility
Criterion 5	Referees and Past Performance
Criterion 6	Environmental Management Performance
Criterion 7	Work Health & Safety Performance

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Details of the weighted evaluation are contained within **Confidential Enclosure 1**.

The proposal from Optus Mobile Pty Ltd is in accordance with the Development Application and Consent DA8/2015/304/1 for the replacement of an existing electricity pole with a telecommunications tower and associated structure. The Proposal includes the co-location of Council's lighting for the ground on the telecommunication pole and plans to improve the mobile phone coverage for the area.

**5. Due Diligence**

Optus Mobile Pty Ltd is a recognised mobile carrier in Australia and has also obtained development consent for the proposed development.

**6. Evaluation Result**

Following steps 1 to 5 of the evaluation process, the TET recommended acceptance of the tender from Optus Mobile Pty Ltd. The Tenderer met the requirements of the RFT.

**7. Independent Review**

The evaluation process and recommendations were reviewed by the TAP and determined to be in accordance with:

- Cessnock City Council's Procurement Policy,
- Cessnock City Council's Procurement Procedure, and
- Relevant legislation.

***TIME FRAME***

The Proposed Licence will commence following negotiations of the terms of the Licence Agreement for a period up to twenty (20) years.

***LOCAL CONTENT***

N/A

***OPTIONS***

Council may either:

1. Choose to reject the tender from Optus Mobile Pty Ltd, or
2. Choose to accept the tender from Optus Mobile Pty Ltd and the parties execute a Licence Agreement prior to works commencing. This is the preferred option as the proposal provides a financial benefit to Council as well as improved mobile phone coverage for an area proposed for future residential development. Development consent has been granted for the proposal and the community was consulted during this process.

## **CONSULTATION**

The community has been consulted in regard to this proposal both during the development application process and as required by the Local Government (General) Regulation 2005 (for the Licence of Community Land). Council publicly notified the proposal in the Cessnock Advertiser on 19 October 2016 including advising adjoining owners and no submissions have been received.

The following officers were consulted during the tender process:

- Manager Business & Governance Services
- Tender Audit Panel (TAP)

## **STRATEGIC LINKS**

### **a. Delivery Program**

This report is linked to objective 5.3.5 of Council's Delivery Program being "carry out governance functions, provide advice and conduct education programs to comply with legislation and best practice."

### **b. Other Plans**

N/A

## **IMPLICATIONS**

### **a. Policy and Procedural Implications**

The tender process has been carried out in accordance with:

- Cessnock City Council's Procurement Policy
- Cessnock City Council's Procurement Procedure
- Tendering Guidelines for NSW Local Government 2009
- NSW Government – Code of Practice for Procurement 2005

### **b. Financial Implications**

Accepting the resolution contained in this report will provide an income of at least \$17,600 per annum over the term of the Licence. The income generated could offset the operating expenses for Carmichael Park. The Department of Primary Industries rental fees for Crown Land in the area of Cessnock for 2015/16 are \$15,771 plus GST. Therefore, the annual rental is consistent with market rent for the License of land for a telecommunication tower.

### **c. Legislative Implications**

The tender process has followed the legislative provisions referenced in Council's Procurement Policy and Procedure which are as follows:-

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*

In particular, reference is made to part 7 Division 4 Clause 178 of the Local Government (General) Regulation 2005 (Acceptance of Tenders):

- (1) *After considering the tenders submitted for a proposed contract, the Council must either:*
- (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
  - (b) *decline to accept any of the tenders.*

(1A) *Without limiting subclause (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the Council must take into account whether or not existing workers (within the meaning of clause 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.*

(2) *A Council must ensure that every contract it enters into as a result of a tender accepted by the Council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the Council (as provided for in [section 55](#) (2A) of [the Act](#)), the Council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*

(3) *A Council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

- (a) *postpone or cancel the proposal for the contract,*
- (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
- (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
- (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
- (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*

(4) *If a Council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*

- (a) *the Council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)-(d),*
- (b) *the Council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

#### **d. Risk Implications**

The RFT required tenderers to have appropriate insurances and to comply with NSW legislative requirements such as Work Health & Safety legislation and to obtain consent under the *Environmental Planning and Assessment Act 1979*.

Council will verify the authenticity of the successful tenderer's insurances including public liability (\$20m) and worker's compensation. Risks identified in relation to safety and the environment are mitigated by the RFT requirement for adherence to legislation and the successful tenderer is required to obtain development consent for the proposal.

Corporate and Community

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**e. Other Implications**

NIL

**CONCLUSION**

The request for tender has been carried out in accordance with the requirements of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*. Although only one tender has been received, the annual rent proposed is similar to the annual fees assessed by the NSW Department of Primary Industries for telecommunication towers occupying Crown Land and offers fair value.

**ENCLOSURES**

- 1** Weighted Evaluation Matrix - *This matter is considered to be confidential under Section 10A(2) (di) of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it.*

Corporate and Community

Report No. CC79/2016

Corporate and Community Services



**SUBJECT:** *COUNCILLOR EXPENSES AND FACILITIES POLICY*

**AUTHOR:** *Manager Governance and Business Services - Kim Appleby*

### **SUMMARY**

In accordance with Section 252 of the Local Government Act 1993, Council must review its policy on the payment of expenses and provision of facilities to Councillors within the first 12 months of each term of a Council. The Draft *Councillor Expenses and Facilities Policy (Enclosure 1)* is submitted for Council's adoption.

### **RECOMMENDATION**

That Council adopt the *Councillor Expenses and Facilities Policy*, as exhibited, with a slight amendment to delete the reference to Council's Motor Vehicle Policy (3.3.1) which has been superseded.

### **BACKGROUND**

At its Meeting of 19 October 2016, Council resolved:

1. *That Council place the draft Councillor Expenses and Facilities Policy on public exhibition for 28 days.*
2. *That, if no submissions are received by the close of the exhibition period, Council adopt the new Councillor Expenses and Facilities Policy.*

As noted in the report of 19 October 2016, Section 252 (1) of the Act was recently amended (*Local Government Amendment (Governance and Planning) Act 2016*) to negate the provision that required Council to review its policy on the payment of expenses and provision of facilities to Councillors within 5 months of the end of each financial year. Councils are now required to review and adopt its policy within the first 12 months of each term of a Council.

Section 253 (4) is now omitted, which required policies to be submitted to the Director General (Local Government), Office of Local Government within 28 days of adoption by a Council, even if the policy remained unchanged.

### **REPORT**

The draft *Councillor Expenses and Facilities Policy* was exhibited from 20 October 2016 to 16 November 2016. During the exhibition, one submission was received.

The submission requested that:

*Section 3.2.9 Meal and Beverages* be deleted and not replaced; allowing for the amount spent on meals to be redirected for improving infrastructure within the Cessnock LGA, and that Section 20.9 of Council's Code of Meeting Practice be removed to reflect the deletion.

**Corporate and Community**

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*Section 3.3.1 Mayoral Motor Vehicle* to include a value amount not exceeding \$35,000 (GST inclusive), and the vehicle be purchased within the Cessnock LGA. The additional \$30,000 that has previously been spent on the Mayoral vehicle could be redirected to improve infrastructure within the Cessnock LGA in the future. Further, that Council's Motor Vehicle Policy/superseded policies be updated to reflect the change.

Council has recently considered an amendment prior to the exhibition of the draft policy in relation to deletion of meals (report BN14/2016), and this was not supported.

Councillors could consider an option to include a monetary value or vehicular type for the Mayoral vehicle. The draft policy should include a slight amendment to remove the reference to the Motor Vehicle Policy as this has been superseded with other vehicular usage and contribution agreements.

**CONSULTATION**

The community was consulted via the exhibition process. Councillors, General Manager and Director Corporate and Community Services were consulted in the preparation of this report.

**STRATEGIC LINKS**

**a. Delivery Program**

The review of the *Councillor Expenses and Facilities Policy* is linked to *Civic Leadership and Effective Governance*.

**b. Other Plans**

N/A

**STATUTORY IMPLICATIONS**

**a. Policy and Procedural Implications**

This policy provides the framework for the provision of facilities and payment of expenses to Councillors and ensures transparency and accountability to the community is achieved.

**b. Financial Implications**

All financial provisions under the policy are provided for in the annual operational plan.

**c. Legislative Implications**

The adoption of this policy is a statutory requirement under Section 252 and Section 253 of the Local Government Act 1993.

**d. Risk Implications**

Adoption of this policy significantly reduces the potential for abuse of Council's facilities and improper payment of expenses to Councillors.

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**e. Other Implications**

N/A

**OPTIONS**

Option 1: Adopt the draft policy, as exhibited, with the slight amendment to delete the reference to a superseded policy.

Option 2: Amend any of the clauses in the policy, noting that any substantive changes would require re-exhibition.

Option 1 is the preferred option.

**CONCLUSION**

Council must adopt a *Councillor Expenses and Facilities Policy* within the first 12 months of each term of a Council.

**ENCLOSURES**

[1](#) Councillor Expenses and Facilities Policy 2016

Corporate and Community

Report No. CC80/2016

Corporate and Community Services



**SUBJECT:** *COUNCIL COMMITTEE STRUCTURE AND APPOINTMENT OF DELEGATES AND REPRESENTATIVES*

**RESPONSIBLE OFFICER:** *Manager Governance and Business Services - Kim Appleby*  
*Sustainability Projects Officer - Patricia Donnelly*

### **SUMMARY**

Council has a Committee structure requiring Council's review and determination of its representation to these Committees. A Council may, by resolution, establish such Committees as it considers necessary and appoint Councillors to represent Council on these Committees.

Council may also nominate Councillors to be representatives on external Committees managed and controlled by other organisations.

### **RECOMMENDATION**

1. That Council adopt the following Internal and Statutory Committees for the Term of Council

#### **Internal Committees**

- Aboriginal and Torres Strait Islander Committee
- Dollar For Dollar Grants Committee
- Section 355 Committees (Enclosure 1)
- Council Initiated Awards (adopted by Council on 16 November 2016)

#### **Statutory Committees**

- Audit, Risk and Improvement Committee
- Floodplain Management Committee
- Traffic Committee
- Organisational and General Manager's Employment Committee

2. That the following Committees be abolished:

- Access Advisory
- Economic Development Strategy
- Cultural Planning and Development
- Youth Advisory
- Kurri Kurri Aquatic
- Environmental Strategy and Management
- Heritage and Vineyard Vision Implementation
- Special Events

3. That Council seek expressions of interest for community representation on Committees that are not Section 355 Committees.



4. That Council appoint the community representatives listed in Table 1 of Enclosure 1 without an asterisk (\*) beside their name to the respective Section 355 volunteer Committees for the care, control and management of Council's community and recreation facilities and other Council owned and controlled land.
5. That Council appoint the community representatives listed in Table 1 of Enclosure 1 with an asterisk (\*) beside their name to the respective Section 355 volunteer Committees for the care, control and management of Council's community and recreation facilities and other Council owned and controlled land as their nomination forms are lodged with Council.
6. That Council notify the community representatives of their appointment to the respective Section 355 volunteer Committees.
7. That Council determines delegates and alternates for the Internal, Statutory and External Committees as per the table in Enclosure 2.

## **BACKGROUND**

There are three (3) types of Committees that require Councillor representation (with the exception of s355 Committees).

1. Internal Committees
2. Statutory Committees
3. External Committees

These Committees comprise elected members, staff and community representatives.

Some Internal Committees are established in accordance with Section 355 of the Local Government Act and are granted individual delegation of authority by the Council in accordance with Section 377 of the Local Government Act. Committees must be chaired in accordance with Clause 267 of the Local Government Regulations. For the most, the Internal Committees are advisory only.

To enable Committee meeting coordination and continuity and to promote a more efficient governance model, it is suggested that Council appoint at least one alternate delegate to each Committee and in the case of larger Committees, it would be appropriate to have two alternate delegates.

Statutory Committees comply with Legislative and Office of Local Government Guidelines. Membership and function of these Committees is in accordance with related legislation and guidelines as well as Council adopted Charters and/or Terms of Reference.

At the commencement of a new Council term following a Local Government Election, community, business and other organisations seek nominations for representation on their organisations and External Committees. These bodies maintain their own Terms of Reference and reporting requirements and do not fall under the control of Council. However, participation ensures that Council has an opportunity to be appraised of issues of community concern, and to contribute to decision making in these areas.

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**Report No. CC80/2016**

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**Existing Committees include:**

*Internal*

- Access Advisory (Mayor + 2 Councillors)
- Aboriginal and Torres Strait Islander (3 Councillors)
- Cultural Planning and Development (Mayor + 2 Councillors)
- Dollar for Dollar Grants (Mayor + 2 Councillors)
- Economic Development Strategy (3 Councillors)
- Environmental Strategy and Management (Mayor + 2 Councillors)
- Youth Advisory (3 Councillors)
- Kurri Kurri Aquatic (Mayor + 1 Councillor)
- Section 355 Tidy Towns (No Councillors unless in their own citizen capacity)
- Section 355 Halls (No Councillors unless in their own citizen capacity)
- Heritage (3 Councillors)
- Vineyard Vision Implementation (2 Councillors)
- Special Events (Mayor + 2 Councillors)
- Council Initiated Awards (Mayor + 2 Councillors)

*Statutory*

- Audit, Risk and Improvement
- Floodplain Management (Mayor + 2 Councillors)
- Traffic
- Review of General Manager's Employment Arrangements

*External*

- Hunter and Central Coast JRPP
- Astar Coal Mine CC
- Cessnock/Kurri Kurri Local Health Advisory
- Lower Hunter and Hunter Bush Fire Management
- Public Libraries NSW (Central East Zone)
- Hawkesbury/Nepean Local Government Advisory
- Hunter Water CC
- Vintage Design Review (No Councillor representatives)
- Buttai Quarry CC
- Blackhill Quarry CC
- Cessnock Correctional Centre CC
- Hunter Joint Organisation (Mayor only)
- Hunter Valley Wine and Tourism Alliance
- Hunter Resource Recovery
- Association of Mining Related Councils

(NB: Mayor is ex-officio of all Internal Committees)

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**Proposed to Abolish and Rationale**

There are a number of internal Committees that seldom meet and when they do they are unable to achieve a quorum. Council should be considering its Community Engagement Plan when determining the most effective methods of stakeholder engagement.

There is a measure in the current Community Strategic plan regarding engagement via Committees. The target is greater than 75 percent and yet only 47.7 percent has been achieved. Alternate modes of engagement need to be considered such as specific purpose forums and social media.

The following Committees are proposed to be abolished:

- Access Advisory (alternatively engage via Disability Inclusion Action Plan)
- Economic Development Strategy (alternatively engage via Chambers of Commerce and Industry Associations)
- Cultural Planning and Development (functions absorbed by Council Initiated Awards and Dollar for Dollar Committee)
- Youth Advisory (alternatively engage via specific purpose forums and social media)
- Kurri Kurri Aquatic (strategic direction is now guided by AMPs and IP&R)
- Environmental Strategy and Management (alternatively engage via specific purpose forums and social media, and/or combine with other Committee)
- Heritage and Vineyard Vision Implementation (alternatively engage via specific purpose forums and social media, and/or combine with other Committee)
- Special Events (absorbed within Council staff resources)

**Proposal to amend Committee to include Organisational review functions**

Section 332 of the Act requires that Council after consulting with the General Manager, must determine the senior staffing positions within the organisation structure of the Council, the roles and reporting lines (for other senior staff) of holders of senior staff positions and the resources to be allocated towards the employment of staff. Council last determined its structure in October 2013.

Section 333 of the Act provides that a Council may re-determine the organisation structure from time to time and that Council must review (and may re-determine) the structure within 12 months after any ordinary election of the Council.

To facilitate the above it is proposed that the Review of General Manager's Employment Arrangements Committee be renamed to Organisational and General Manager Review Committee with the existing functions of the Committee being retained and that matters relating to the organisational structure be included within the functions of the Committee.

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**REPORT/PROPOSAL**

After the Councillor Briefing held on 23 November 2016, the following Council Committee structure has been proposed:

1: Internal Committees

- Aboriginal and Torres Strait Islander Committee
- Dollar For Dollar Grants Committee
- Section 355 Committees (Halls and Tidy Towns) – **Enclosure 1**
- Council Initiated Awards (already adopted by Council on 16 November 2016)

2: Statutory Committees

- Audit, Risk and Improvement Committee
- Floodplain Management Committee
- Traffic Committee
- Review of General Manager's Employment Arrangements Committee

It is recommended that Council appoint Councillor delegates; seek community representation as appropriate for Committees; and that the General Manager appoint relevant staff as required to these Committees.

Council has traditionally made appointments to these Committees for a twelve month period. However, Council can determine they be for a longer period, ie up to the full term of this Council.

The Local Government Act also requires that the Terms of Reference and/or Charters for these Committees be reviewed within 12 months following the Local Government elections. It is recommended that Internal and Statutory Committees review and confirm their Terms of Reference and/or Charters and submit them to the full Council for endorsement as part of their minutes for adoption.

Council is also represented on a number of external Committees and organisations; therefore if Council determines to continue its participation, the following organisations will require representatives.

3. External Committees

- Hunter and Central Coast Joint Regional Planning Panel
- Austar Coal Mine Community Consultative Committee
- Cessnock/Kurri Kurri Local Health Advisory Committee
- Lower Hunter & Hunter Bush Fire Management Committee
- Public Libraries NSW (Central East Zone) Committee
- Hawkesbury/Nepean Local Government Advisory Group
- Hunter Water CC
- Vintage Design Review (No Councillor representatives)
- Buttai Quarry CC
- Blackhill Quarry CC
- Cessnock Correctional Centre CC

**Corporate and Community**

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- Hunter Joint Organisation (Mayor only)
- Hunter Valley Wine and Tourism Alliance
- Hunter Resource Recovery
- Association of Mining Related Councils

**OPTIONS**

1. Council adopt the proposed Committee structure and appoint Councillor delegates and representatives to internal, statutory and external Committees.
2. Council not adopt the proposed structure.
3. Council not appoint delegates or representatives to some or all of the Committees.
4. Council defer their decision and seek further information.

**CONSULTATION**

Councillors

Directors

Managers connected with various Committees

**STRATEGIC LINKS**

**a. Delivery Program**

Committee participation and consultation is linked to all the objectives in the Delivery Program, with an emphasis on Objective 5: Encouraging community participation and leadership, and making Council more responsive to the community.

**b. Other Plans**

NIL

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Councillor delegates are encouraged to report back to Council on the deliberations of external Committee activities and meetings.

**b. Financial Implications**

Existing Committee operations are covered under the current budget. New Committees may need to submit a proposal for funding if required. Councillor expenses for attendance at meetings is covered by the Councillor Facilities and Expenses Policy and included in the budget.

**c. Legislative Implications**

Council is required to comply with Section 355 and Section 377 of the Local Government Act, and with Clause 267 of the Local Government Regulations 2005 in relation to chairing of meetings.

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**d. Risk Implications**

NIL

**e. Other Implications**

Councillor attendance or non attendance at Committee meetings will impact the quorum, and may result in meetings being inquorate.

**CONCLUSION**

It is recommended that Council adopt the Committee structure proposed and nominate delegates and alternates to the various Committees listed.

**ENCLOSURES**

- 1** Section 355 Committee Renomination Tidy Towns and Hall Committees
- 2** Advisory Committee Nominations

**SUBJECT:** *KURRI KURRI NOSTALGIA FESTIVAL - MARCH 2017*  
**RESPONSIBLE OFFICER:** *Director Works and Infrastructure - Justin Fitzpatrick-Barr*

### **SUMMARY**

Council has been approached by Towns With Heart (TWH) seeking in-kind support for the upcoming Kurri Kurri Nostalgia Festival, which is to be held on the weekend of 24, 25 and 26 March 2017.

The purpose of this report is to detail the extent and estimated cost of the assistance being requested by TWH and to seek Council's approval to provide in-kind support to the event.

### **RECOMMENDATION**

**That Council supports the Kurri Kurri Nostalgia Festival on 24, 25 and 26 March 2017 by providing in-kind support as detailed in the report for the following services; waste management, road closure equipment, park management and amenity management.**

### **BACKGROUND**

The 2017, Kurri Kurri Nostalgia Festival is being held over the weekend of 24, 25 and 26 March. Council has in past years provided in-kind support for the Festival and TWH openly acknowledges that this support has been critical to the event's success.

TWH has approached Council seeking various forms of in-kind support for the 2017 Festival.

This report details the extent of the sponsorship being requested by TWH and seeks Council's endorsement to provide the in-kind support.

### **REPORT/PROPOSAL**

The following in-kind support for the 2017 Kurri Kurri Nostalgia Festival is requested by TWH:

#### Waste Management

- Emptying of street bins in the Rotary Park / Lang Street / Barton Street area prior to the weekend;
- Provision of bins for the weekend (up to 50);
- Provision of bin liners;
- Delivery (Friday morning) and pick up (Monday morning) of bins;
- Emptying of bins on Saturday and Sunday night;
- 3 sets of keys for CBD bins to be supplied to TWH for the weekend;
- Contact numbers for garbage truck drivers to be supplied to TWH.

**Works and Infrastructure**

**Report No. WI51/2016**

**Works and Infrastructure**



Road Closure Equipment

Delivery to Kurri Kurri Visitor Centre carpark on Friday morning (24 March 2017):

- 40 waterfilled barriers;
- 20 bollards;
- 20 star pickets;
- 20 traffic cones;
- Bunting / safety line;
- 20 Barrier boards and 40 stands.

Park Management

- Mowing of Rotary Park to be scheduled prior to the Festival weekend;
- Access to and use of Booth Park for car parking over the weekend;
- Access and use of Kurri Kurri Central for caravan / camper temporary parking over the weekend.
- Waiver of all fees and charges for the use of Rotary Park and Booth Park.

Amenity Management

- Provision and delivery of supplies to public amenities in Rotary Park, Kurri Kurri Central and Booth Park (paper towels and toilet paper);
- Servicing and cleaning of the public toilet block in Rotary Park on a regular basis during the Saturday and Sunday of the Festival;
- Cyber key access to power and water in Rotary Park;
- Access to amenities block at Booth Park;
- Access to the amenities block adjacent to the Kurri Kurri Cricket Ground for the use by registered visitors requiring caravan parking;
- Access to power at the front of the Kurri Kurri Library on Sunday.

The estimated cost to waive all applicable fees (excl. GST) and supply the above is as follows:

• Waste Management	\$2,360
• Road Closure Equipment	\$1,540
• Park Management	\$4,000
• Amenity Management	\$2,255

In reviewing the requests, Council officers have determined that in-kind support for the above can be provided within existing recurrent operating budgets.

**OPTIONS**

1. Council provides in-kind support for all of the requests at a total estimate cost of \$10,155. This is the preferred option;
2. Council provides partial support for the requests by way of a percentage discount based on adopted fees and charges for waste management, market stalls, cleaning and park usage.

**Works and Infrastructure**

**Report No. WI51/2016**

**Works and Infrastructure**



3. Council provided no support and charge TWH as per Council's adopted 2016/2017 Fees and charges for waste management, market stalls (site usage fee), cleaning and park usage.

**CONSULTATION**

In writing this report the following have been consulted:

1. Works Delivery Manager
2. Environmental & Waste Services Manager
3. Recreation Services Manager
4. Procurement & Contracts Manager

**STRATEGIC LINKS**

**a. Delivery Program**

The proposed in-kind sponsorship for this event supports:

*Objective 2.3 – Increasing Tourism Opportunities and Visitation in the Area*, as the event has the potential of attracting in excess of 20,000 people to the LGA over the weekend of 24, 25 and 26 March 2017.

**b. Other Plans**

Nil

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Nil

**b. Financial Implications**

The cost of providing the assistance for each of the requests being made by TWH is estimated to be \$10,155. This estimate is primarily based on Council's adopted fees and charges for waste management, market stalls (site usage fee), cleaning and park usage. The in-kind support for the above can be provided within existing recurrent operating budgets.

**c. Legislative Implications**

Nil

**d. Risk Implications**

Nil

**e. Other Implications**

Nil

**Works and Infrastructure**

**Report No. WI51/2016**

**Works and Infrastructure**

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***CONCLUSION***

On the basis of supporting events that promote visitation across the Cessnock LGA, it is recommended that Council provides in-kind sponsorship to the 2017 Kurri Kurri Nostalgia Festival as detailed in the report.

***ENCLOSURES***

There are no enclosures for this report.

**SUBJECT:** *BUSHFIRE PREPAREDNESS*  
**RESPONSIBLE OFFICER:** *Director Works and Infrastructure - Justin Fitzpatrick-Barr*  
*Director Planning and Environment - Gareth Curtis*

### **SUMMARY**

At its meeting of 2 November 2016, Council considered a Notice of Motion (BN15/2016) relating to bushfire preparedness. This report responds to the Council resolution.

### **RECOMMENDATION**

**That Council receives and notes the report.**

### **BACKGROUND**

At its meeting of 2 November 2016, Council considered a Notice of Motion (BN15/2016) and resolved:

*That the General Manager report back to the Council on/or before the 14 December 2016 Council meeting on the following:-*

- *What is Council's current bush fire level of readiness?*
- *Does Council have emergency plans in place to deal with a major bush fire event?*
- *Has Council regularly undertaken risk assessments of its physical assets, including Greenfield sites, to ensure all steps have been taken toward protecting them and surrounding development from bushfires?*
- *Has Council recommended any sites to the Rural Fire Service to have hazard reduction assessments or burns conducted?*
- *Is Council regularly maintaining its real property assets which could be affected by fire (ie the last trench of Vineyard Grove estate, which in turn is affecting the cost of development)?*
- *Are Council's assets, that have been identified as at risk, adequately covered by insurance in the event of bushfires?*

This report responds to the questions raised in the Council resolution.

**REPORT/PROPOSAL**

**What is Councils current bush fire level of readiness?**

Council through its on-going participation in the Lower Hunter & Hunter Bush Fire Management Committee is well prepared and has the necessary plans and framework in place to protect the community and support the NSW Rural Fire Service (RFS) in the event of major bush fires.

**Does Council have emergency plans in place to deal with a major bush fire event?**

The Local Disaster Plan (Displan), covering Cessnock, Dungog, Maitland and Port Stephens Local Government Areas (LGA's) details arrangements that prevent or mitigate, prepare for, respond to and recover from emergencies within the LGA.

The arrangements detailed in this plan apply to emergency operations conducted by the local emergency operations controller (LEOCON) or relevant combat agency.

In the case of bushfires, the relevant combat agency is the RFS.

**Has Council regularly undertaken risk assessments of its physical assets, including Greenfield sites, to ensure all steps have been taken toward protecting them and surrounding development from bushfires?**

The Hunter Bush Fire Management Committee has an adopted Bush Fire Risk Management Plan (BFRMP) that comprises the following sections;

Preliminary pages – authorisation page, Executive Summary, Glossary.

1. **Introduction** – Sets out the context. The bulk of this information is provided to the Committee, and is incorporated into a background document for reference, with only the most pertinent facts included in the actual BFRMP.
2. **Risk identification** – Assets and hazards, captured by way of maps and data layers. The amount of text included in the actual BFRMP is minimised, and the related collection of data informing this section is documented as an appendix, to streamline the BFRMP itself whilst still retaining all relevant information for audit purposes.
3. **Risk assessment** – Minimal description of key risk areas. As for section 2, all related data collected and processes undertaken to complete the risk register is documented and included as an appendix.
4. **Risk treatment** – Local works program i.e. what, how, when and where and who. The resulting table is included in the BFRMP, with specific agency/land manager Annual Schedules of Works and all background information included as appendices.
5. **Monitor** – Table of State wide performance measures.
6. **Appendices**

In accordance with the guidelines, the BFRMP includes assessments made at a range of spatial scales, from individual properties to a whole of landscape scale. It is generally a strategic level document, with most single property or township level planning being done in documents such as Village Protection Plans, which may then sit as sub-plans to the BFRMP.

**Works and Infrastructure**

**Report No. WI52/2016**

**Works and Infrastructure**



The adopted Plan has a complete risk register included as an appendix. This register is developed in accordance with the guidelines.

**Has Council recommended any sites to the Rural Fire Service to have hazard reduction assessments or burns conducted?**

Council is responsible for hazard reduction works at a number of locations across the LGA and these sites are identified in the BFRMP. Council officers have recently recommended additional sites to the RFS for inclusion in the next iteration of the BFRMP.

Council staff, through consultation with the RFS, has issued a Hazard Reduction Certificate for a Hazard Reduction Burn on a Council property to the North of Harle St, Abermain. This burn will be conducted by the RFS when conditions are appropriate.

**Is Council regularly maintaining its real property assets which could be affected by fire (ie the last trench of Vineyard Grove estate, which in turn is effecting the cost of development)?**

With regards to the undeveloped Council-owned land at Vineyard Grove, Council has a Plan of Management that requires the under storey or shrub layer to be slashed once per year (in October or November).

In October 2016 Council obtained a Hazard Reduction Certificate and carried out the mitigation works on this site.

As noted above, Council, through consultation with the RFS, has also issued a Hazard Reduction Certificate for a Hazard Reduction Burn on a Council property to the North of Harle St, Abermain. This burn will be conducted by the RFS when conditions are appropriate.

**Are Council's assets, that have been identified as at risk, adequately covered by insurance in the event of bushfires?**

Yes. Council buildings, parks and playground equipment are covered by insurances under various insurance policies subject to normal excesses and the like. Values are as agreed between Council's Strategic Asset Planning and Insurance sections on estimated value of replacement, and by 3<sup>rd</sup> party quantity assessment of most of Councils larger facilities.

**OPTIONS**

That Council receives and notes the report.

**CONSULTATION**

Director Corporate & Community Services  
Director Planning and Environment.  
Principal Natural Environment Planner

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**STRATEGIC LINKS**

**a. Delivery Program**

The report broadly aligns with the Community Desired Outcome;

‘A connected, safe and creative community’.

**b. Other Plans**

Local Disaster Plan (Displan) 2011

Hunter Bush Fire Management Committee – Bush Fire Risk Management Plan 2009

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Nil

**b. Financial Implications**

Nil

**c. Legislative Implications**

Nil

**d. Risk Implications**

Nil

**e. Environmental Implications**

Nil

**f. Other Implications**

Nil

**CONCLUSION**

The responses to each of the questions raised in the Council resolution for BN16/2016 shows that Council is well prepared for bush fires, having the necessary plans and framework in place to protect the community and support the NSW Rural Fire Service.

**ENCLOSURES**

There are no enclosures for this report

Works and Infrastructure

Report No. WI53/2016

Works and Infrastructure



**SUBJECT:** *PEDESTRIAN CROSSING - KEENE STREET, CESSNOCK*

**RESPONSIBLE OFFICER:** *Director Works and Infrastructure - Justin Fitzpatrick-Barr*

### **SUMMARY**

Recent redevelopment of the former Cessnock Ambulance Station site, on the corner of North Avenue and Keene Street, Cessnock has led to numerous requests for a pedestrian crossing on Keene Street. This report seeks Council's approval to reallocate \$50,000 from the 2016-17 Traffic Facilities – Maintenance and Improvement Program to fund the construction of a pedestrian crossing on Keene Street, Cessnock.

### **RECOMMENDATION**

**That Council reallocates \$50,000 of funding from the Traffic Facilities – Maintenance and Improvement program to allow a pedestrian crossing to be built in Keene Street, Cessnock in the 2016/17 Financial Year.**

### **BACKGROUND**

Council has received numerous requests for the installation of a pedestrian crossing on Keene Street, Cessnock following the recent redevelopment of the former Cessnock Ambulance Station site.

This report provides further information relating to the matter and seeks Council approval to commit \$50,000 of funding to allow the pedestrian crossing to be built in the 2016/17 Financial Year.

### **REPORT/PROPOSAL**

A recent change of use of the former Cessnock Ambulance site, culminating in the establishment of a commercial fitness centre, Yogurt Land, Coffee Club and news agency, has resulted in increased pedestrian movements across Keene Street. It has also led to numerous requests for a pedestrian crossing at the subject location.

In response to immediate concerns, Council officers promptly arranged for an upgrade of the existing pedestrian refuge on Keene Street by installing hold rails, Raised Reflective Pavement Markers (RRPM) and repainting pedestrian refuge perimeter kerbing. This upgraded pedestrian refuge facility serves to enhance pedestrian safety but does not afford pedestrians priority over motor vehicles.

Some preliminary pedestrian and traffic counts have been conducted by officers, the results of which suggest that the Roads & Maritime Services (RMS) mandatory warrant for a pedestrian crossing would likely be met or exceeded at the subject location.

Officers have also assessed the likely loss of existing parking spaces and estimated the anticipated cost associated with the installation of a suitable crossing on Keene Street.

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A draft concept plan illustrating the extent of works associated with the proposed crossing is provided as Enclosure 1.

**Estimated Cost and Parking Impact**

A preliminary estimate of the cost of installing the proposed crossing, complete with kerb extensions and Australian Standard compliant street lighting is in the order of \$50,000 (note - this estimate includes an assumption on the Ausgrid lighting cost).

It is estimated that potentially seven (7) existing car parking spaces along Keene Street would be sacrificed to accommodate the pedestrian facility and associated mandatory No Stopping areas.

**OPTIONS**

1. That Council commits \$50,000 from the Traffic Facilities – Maintenance and Improvements Program to allow the pedestrian crossing to be built in the 2016/17 financial year. This is the preferred option.
2. That Council gives consideration to installing the subject pedestrian crossing as part of a future works program.
3. That Council does not install the subject pedestrian crossing.

**CONSULTATION**

- Road Safety Officer
- Design Delivery Manager
- Design Engineer
- Local Businesses

**STRATEGIC LINKS**

**a. Delivery Program**

A connected, safe and creative community – Objective 1.3 Promoting Safe Communities

**b. Other Plans**

Road Safety Strategic Plan 2014

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Nil

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**b. Financial Implications**

The estimated cost of the proposed pedestrian crossing is \$50,000. These funds can be sourced from the existing Traffic Facilities – Maintenance and Improvement program. This program currently funds infrastructure projects that stem from Local Traffic Committee reports and recommendations.

**c. Legislative Implications**

Nil

**d. Risk Implications**

Installation of the proposed pedestrian crossing will reduce community risk associated with pedestrian movements at the corner of North Avenue and Keene Street, Cessnock.

**e. Environmental Implications**

Nil

**f. Other Implications**

Nil

***CONCLUSION***

Development of the former Cessnock Ambulance Station site has led to a significant increase in pedestrian movements at the corner of North Avenue and Keene Street, Cessnock. Installing a new pedestrian crossing at this location reduces pedestrian risk.

***ENCLOSURES***

- 1** Concept Plan

**SUBJECT:** *FLOODPLAIN MANAGEMENT GRANTS*

**RESPONSIBLE OFFICER:** *Strategic Asset Planning Manager - Stephen Long*

**SUMMARY**

This report seeks Council's approval to accept an offer of funding from the NSW Minister for the Environment, under the 2016/17 Floodplain Management Program, for four successful project grant applications. The report provides an outline of each project and the conditions of the State Government's offer of funding. Council's portion of funding, under the grant conditions, will be sourced from the 2016/17 Operational Plan – Floodplain Management Program.

**RECOMMENDATION**

1. That Council accept the Grant Funding offers from the "Office of Environment & Heritage" for the following projects under the 2016-17 Floodplain Management Grants Program:

1	South Cessnock - Investigation and Design Bund Structure. Maximum funding amount \$66,666.
2	Greta - Flood Study – (Data collection, two dimensional model creation, associated report). Maximum funding amount \$100,000.
3	Voluntary House Raising (VHR) Scheme – Cessnock
4	Voluntary House Raising (VHR) Scheme – Abermain - Weston

2. That Council co-contributes the following funding amounts to each program:

1	South Cessnock - \$33,334 funded from Council's 2016/17 Operational Plan, Floodplain Management Program
2	Greta - Flood Study – \$50,000 funded from Council's 2016/17 Operational Plan, Floodplain Management Program
3	Voluntary House Raising (VHR) Scheme – Cessnock – (Staff costs only)
4	Voluntary House Raising (VHR) Scheme – Abermain - Weston – (Staff costs only)

**BACKGROUND**

The NSW Government has committed \$4.59 million in funding to local Councils and other authorities to undertake priority projects to assess the risks and reduce the impacts of flooding in NSW.

Cessnock City Council submitted applications for the following projects:

1. South Cessnock – Investigation and Design Earth Bund Structure. Maximum State Funding Amount \$66,000;
2. Greta – Flood Study. Maximum State Funding Amount \$100,000;
3. Voluntary House Raising (VHR) Scheme – Cessnock (access to the VHR funding pool)
4. VHR Scheme – Abermain and Weston (access to the VHR funding pool)

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In November 2016, Council received notification from the NSW Minister for the Environment that all four projects have been successful, forming part of 43 projects in total that were supported in the 2016/17 funding round.

The funding provided through the NSW 2016/17 Floodplain Management Program was discussed at the Councillor Briefing session held on 7 December 2016 during the briefing relating to the South Cessnock mitigation project proposals.

The purpose of this report is to provide an outline of each proposed project, the conditions of the funding, Council's matching funding commitment and seek approval to accept each offer.

***REPORT/PROPOSAL***

**South Cessnock**

As outlined during a recent Councillor Briefing sessions Council has made significant progress toward finalising the investigations required to enable on ground activities and works to alleviate the flooding impacts for the South Cessnock area.

The funding offered for the South Cessnock project will allow for completion of the detailed design and documentation to enable construction of a proposed bund wall. At this time the estimated cost of these works is approximately \$1,000,000.

The funding agreement for this project must be signed and returned to Office of Environment and Heritage (OEH) before the 13 January 2017 if Council wishes to accept the funding. Under the terms of the agreement Council is required to provide a Work Plan to OEH by the 21 April 2017.

Applications for the next OEH funding round are expected to be called in March/April 2017 and a further application will be prepared and submitted to enable construction of the identified works.

**Greta Flood Study**

The funding for the Greta Flood Study will enable a new flood model to be established for the Greta/Anvil Creek catchment. This project will be a significant step forward as some of the studies available for the area are small isolated studies that date back to the 1980's and 1990's.

The funding agreement for this project must be signed and returned to OEH before the 13 January 2017 if Council wishes to accept the funding. Under the terms of the agreement Council is required to provide a Work Plan to OEH by the 21 April 2017.

**Voluntary House Raising Scheme**

The funding for the VHR Scheme is not a direct allocation to Council but enables Council to access a funding pool managed by OEH. The VHR Scheme pool is available across the State and hence the funding available from the pool is dependent upon the number of Councils wishing to access the pool.

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The funding ratio of \$2 NSW Government : \$1 Council still applies to the pool funds however, it should be noted that Council would require private property owners to provide the required one third of the cost as they benefit directly from the funding. The amount of funding from the VHR Scheme is dependent upon the number of property owners wishing to take up the opportunity to reduce the flood impact on their property.

Council's administration costs associated with the VHR Scheme are not funded under the scheme.

Under the terms of the funding agreement Council is required to provide a Work Plan to OEHL by the 4 April 2017.

**OPTIONS**

Option 1 – Council accepts the funding offer for each project and commits to providing the required funding of one third in accordance with the grant conditions with the co-contribution coming from Council's 2016/17 Operational Plan - Floodplain Management Program, as follows:

- South Cessnock - \$33,334
- Greta - Flood Study – \$50,000

Acceptance of all the offers will enable Council to continue with the implementation of key floodplain management projects aimed at reducing flood damages and risk to public safety. This is the preferred option.

Option 2 – Council does not accept the funding offered for any of the projects.

**CONSULTATION**

Director Works & Infrastructure  
Strategic Asset Planning Manager  
Strategic Flooding & Drainage Planning Engineer  
Senior Natural Resource Officer (Floodplain) - Office of Environment and Heritage

**STRATEGIC LINKS**

**a. Delivery Program**

Community's Desired Outcome: A sustainable and healthy environment.

Objective – 3.1 – Protecting and enhancing the natural environment and the rural character of the area:

- 3.1.3 - Complete further flood studies and risk management plans for major catchments in the local government area;
- 3.1.1. a – Finalise procurement of consultants for the Greta/Anvil Creek Flood Study.

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**b. Other Plans**

Nil

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Nil

**b. Financial Implications**

The 2016-17 OEH Floodplain Management Grant offers provide funding in the ratio of \$2 NSW Government : \$1 Council. Councils 2016/17 Operational Plan provides for Council's monetary component under the Floodplain Management Program.

Council's financial contribution (on the basis of \$2 State: \$1 Council) towards the four projects is as follows:

<b>Project</b>	<b>Amount</b>
1. South Cessnock – Investigation and Design Earth Bund Structure	
State component	\$66,666
Council component	\$33,334
<b>Total</b>	<b>\$100,000</b>
2. Greta – Flood Study	
State component	\$100,000
Council component	\$50,000
<b>Total</b>	<b>\$150,000</b>
3. VHR Scheme – Cessnock	
<b>Council</b>	<b>\$Nil</b>
4. VHR Scheme – Abermain and Weston	
<b>Council</b>	<b>\$Nil</b>

Note: The funding provided through the VHR scheme is not a direct allocation to Council but enables access to a funding pool held by the State. The expected cost to Council in accepting the VHR funding will be the staff costs to administer the scheme.

**c. Legislative Implications**

Under the NSW Floodplain Development Manual 2005 Council has responsibility to manage the floodplain. The current funding offers from OEH enable Council to continue to build on its co-ordinated controls with regard to development controls and mitigation opportunities.

**d. Risk Implications**

By not accepting the funding:

- Council may suffer reputational risk and adverse public comment;
- There is a high risk that flooding will continue to adversely affect public safety and create property damage;
- Council would bear the whole cost of the proposed projects.

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**e. Environmental Implications**

Nil

**f. Other Implications**

Non acceptance of the 2016-17 Floodplain Management Grant offers will halt investigations already undertaken by Council toward achieving flood damage mitigation measures identified in adopted floodplain risk management studies and plans.

**CONCLUSION**

Council has been successful with four funding submissions under the NSW Government's 2016/17 Floodplain Management Program. The total amount received from the program is \$166,666 and Council's contribution is \$83,334. Funding for Council's component is available in the 2016/17 Operational Plan.

Funding from the VHR Scheme is dependent upon the number of property owners wishing to take up the opportunity to reduce the flood impact on their property.

Acceptance of the funding offered enables Council to continue with the background studies and implementation required to manage local floodplains and mitigate risk to public safety and damage to properties and infrastructure.

**ENCLOSURES**

There are no enclosures for this report.

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**SUBJECT:** *PERPETUAL TRIBUTE OPTIONS FOR THE LATE COUNCILLOR JEFF MAYBURY*

**RESPONSIBLE OFFICER:** *Recreation & Community Facilities Co-ordinator - Nathan Eveleigh  
Recreation Services Manager – Nicole Benson*

### **SUMMARY**

The NSW Geographical Names Board (GNB) have considered Council's Naming Application for Peace Park and resolved to advertise the proposed new park name of "Maybury Peace Park". The purpose of this report is to seek Council's endorsement to advertise the proposed name in line with the GNB guidelines.

### **RECOMMENDATION**

1. That Council endorses the NSW Geographical Names Board resolution to advertise "Maybury Peace Park" in line with their naming guidelines.
2. That Council write to the NSW Geographical Names Board advising them of its decision.

### **BACKGROUND**

With the passing of long serving Councillor Jeff Maybury in July 2015, Council resolved on 5 August 2015 that the General Manager undertake investigations into identifying a suitable site within the Weston precinct to be named after the late Councillor. An investigation of suitable sites was undertaken, and at its 3 August 2016 Council resolved:

1. That Council rename "Peace Park" to "Jeff Maybury Peace Park" subject to gazettal by the New South Wales Geographical Names Board;
2. That if approval is received from the New South Wales Geographical Names Board, Council install appropriate signage in line with the adopted Cessnock LGA Signage Strategy;
3. That the Maybury family be advised of the outcome of the application.

### **REPORT/PROPOSAL**

The GNB has the role of assigning names to places and natural features. The GNB's guidelines and procedures are aimed at ensuring community input, giving all interested parties a say in a naming decision and minimising the duplication of names.

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Following the Council resolution on 3 August 2016 Council officers submitted a naming proposal to the GNB. The GNB deferred considering the proposal at its September 2016 meeting, and wrote to Council seeking additional information on the original name of Peace Park. Council officers answered the request and the GNB considered the proposal at its November 2016 meeting, where they resolved to advertise the naming proposal as “Maybury Peace Park”.

If Council resolves to proceed with the application to rename Peace Park to “Maybury Peace Park”, in accordance with their guidelines, the GNB will advertise the naming proposal for one month in local media and online; consider submissions; and advise Council of the outcome of the application.

**OPTIONS**

**Option 1** – That Council resolve to endorse the recommendation of the GNB to rename Peace Park, “Maybury Peace Park” and write to the GNB to continue with the renaming process.

Following the GNB assessment process, and if approved, Council will install signage in line with the adopted Cessnock LGA Signage Strategy in a suitable location within the park.

This is the preferred option after consideration of several options of sites to commemorate the late Councillor Maybury’s contribution to the local area.

**Option 2** – That Council withdraws the application to the GNB, and instead installs a suitable commemorative plaque within Peace Park recognising the late Councillor Maybury’s contribution to the local area and Peace Park.

This is not the preferred option as Council has previously resolved to proceed with an application to the GNB to rename Peace Park after the late Councillor Jeff Maybury.

**CONSULTATION**

Consultation has taken place with the following key stakeholders:

- Members of the late Councillor Maybury’s family
- Members of Council’s Recreation Services Team
- NSW Geographical Names Board
- Weston RSL Sub-Branch

**STRATEGIC LINKS**

**a. Delivery Program**

The proposal to dedicate a park after the late Councillor Jeff Maybury aligns with the community Delivery Program Objective 5.1 ‘Fostering and Supporting Community Leadership’.

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**b. Other Plans**

This proposal is in line with the Generic Plan of Management for Council owned community land categorised as "Park" under the *Local Government Act 1993*.

**IMPLICATIONS**

**a. Policy and Procedural Implications**

The preparation of this report and the recommendation is consistent with Council's adopted Naming of Council Assets Policy (2014).

**b. Financial Implications**

The only financial implication with the commemorative naming of the park will be for the purchase and installation of appropriate park signage which can be funded from Council's 2016/2017 Park Signage budget.

**c. Legislative Implications**

The renaming proposal will be considered by the NSW GNB in line with the *Geographical Names Act 1966* subject to Council's resolution.

**d. Risk Implications**

Nil

**e. Environmental Implications**

Nil

**f. Other Implications**

By providing opportunities for social interaction, recreational settings such as parks and reserves can help enhance community identity and promote community integration. Individuals can learn and share community values and gain a better understanding of other groups in society through social interactions in parks. Providing signage detailing the associated history of the park and its surrounding area assists in this regard.

**CONCLUSION**

The renaming of Peace Park to commemorate the late Councillor Jeff Maybury is regarded as a fitting tribute to his distinguished 35 years in civic service. The Peace Park name will continue to be part of the park identification. Information about the late Councillor Maybury will be included as part of any signage so that visitors to the park will have information readily available outlining the history and significant role he played in the development of the park as it stands today.

**ENCLOSURES**

There are no enclosures for this report

**SUBJECT:** *CONSTRUCTION OF CESSNOCK WASTE TRANSFER STATION TENDER (T1617/03) EVALUATION REPORT*

**RESPONSIBLE OFFICER:** *Project Engineer - Samuel Mackie  
Design Delivery Manager - Katrina Kerr*

## SUMMARY

Evaluation and selection of Tender No. T1617/03 – Construction of Cessnock Waste Transfer Station.

## RECOMMENDATION

**That Council accept the tender from Daracon Contractors Pty Ltd in the lump sum amount of \$4,364,810.38 (including GST) for the construction of Cessnock Waste Transfer Station.**

## BACKGROUND

Cessnock City Council (CCC) operates a Waste Management Centre (WMC) on Old Maitland Road, Cessnock. The WMC is soon to be upgraded as part of a major extension project. This project is divided into four sub-projects as follows:

1. construction of Waste Transfer Station,
2. upgrade of access from Old Maitland Road,
3. construction of new internal access road, drainage, and landfill cell and,
4. capping of existing landfill cell.

The Waste Transfer Station (WTS) component is required to assist in the effective management of waste and recyclable material at the WMC. The WTS is to be constructed adjacent to the existing weighbridge, and has been designed so green waste, building wastes, recyclables and mixed/general waste can all be conveniently deposited without exposing the general public to inherent risks associated with the landfill face.

This report relates to Tender No. T1617/03 – Construction of Cessnock WTS

## REPORT

### ***Request for Tender***

The Request for Tender (RFT) documents were prepared by Council officers, and reviewed by the Tender Audit Panel (TAP) before tenders were called. The form of contract selected was AS 2124 – 1992 *General conditions of contract*. The RFT called for a lump sum tender for the required civil and building works.

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**Invitation**

Tenders were invited on Tuesday 25 October 2016 on Council's e-tender portal, Tenderlink and advertised in the following publications:

Publication	Day	Date
Newcastle Herald	Saturday	29 October 2016
Sydney Morning Herald	Tuesday	01 November 2016
Cessnock Advertiser	Wednesday	02 November 2016

**Addenda**

The following addenda were issued via the Tenderlink website to all prospective tenderers during the invitation period:

No.	Date	Description
1	28 October 2016	Returnable Tender Schedules in MS word format
2	28 October 2016	Change to specification
3	31 October 2016	Provision of 12D file
4	01 November 2016	Revised structural drawings
5	01 November 2016	Weigh bridge civil drawings
6	01 November 2016	Electrical and Mechanical scope changes
7	08 November 2016	Forum question responses
8	08 November 2016	Revised drawings and specification
9	10 November 2016	Tender period extension
10	14 November 2016	Revised drawings
11	17 November 2016	Forum question responses and revised drawings

**Closure**

Tenders closed 2pm Tuesday 22 November 2016.

**Evaluation of Tenders**

**Tender Evaluation Team:** In accordance with *CCC Procurement Procedure*, a Tender Evaluation Team (TET) was formed with the following members:

- Projects Engineer 1, Design Delivery
- Projects Engineer 2, Design Delivery
- Environment & Waste Manager, Environmental & Waste Services
- Operations Accountant, Financial Services

**Evaluation Process:** The evaluation was conducted according to the following process:

1. Assessment of receipt
2. Assessment of conformance
3. Shortlisting of tenders
4. Weighted evaluation
5. Due diligence checks on preferred tenderers
6. Determine evaluation result
7. Independent review of the tender selection process

The evaluation criteria and their weightings were documented in the Tender Evaluation Plan, reviewed by the Design Delivery Manager prior to tenders being invited.

To assess tenders against the evaluation criteria, the panel used information obtained from the tender documents and referees.

### 1. Assessment of Receipt

Tenders were received and assessed against the first threshold criteria:

Threshold Criteria	
Criterion 1	Submission on time

The following tenders were received and are listed in alphabetical order.

Tender	Tenderer	Business Address	Criterion 1
1	Daracon Contractors Pty Ltd	Wallsend	On time
2	KCE Pty Ltd	Beresfield	On time
3	Robson Civil Projects Pty Ltd	Beresfield	On time
4	Project Coordination (Australia) Pty Ltd	Unanderra	On time

All four tenders were received on time and met threshold Criterion 1.

### 2. Assessment of Conformance

The tenders were then assessed for conformance with the remaining threshold criteria:

Threshold Criteria	
Criterion 2	Acceptable legal entity;
Criterion 3	Conformance with the RFT;
Criterion 4	Compliance with insurance requirements;
Criterion 5	Safety, quality and environmental management capacity; and
Criterion 6	Satisfactory financial capacity.

All four tenders included a number of qualifications that were subsequently clarified.

All four tenders were considered conforming in threshold Criteria 2, 3, 4, 5 and 6. All four tenders were progressed to the next stage of evaluation, subject to the financial capacity of those tenderers, found to be in contention, to be confirmed at the Due Diligence stage of evaluation.

### 3. Shortlisting

With four competitive tenders received, shortlisting was not considered necessary. All tenders were progressed to the next stage of evaluation.

### 4. Weighted Evaluation

Tenders were evaluated using the following weighted evaluation criteria:

Criterion 7	Lump sum tender amount;
Criterion 8	Contract program and staging plan;
Criterion 9	Experience, past performance, management and staff resources offered;
Criterion 10	Safety management performance;
Criterion 11	Environmental management performance; and
Criterion 12	Quality management performance.

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To assess tenders against the evaluation criteria, the TET used information obtained from the tender documents. A Weighted Evaluation Matrix, containing full details of the tender amounts and weighted evaluation is provided as confidential **Enclosure 1**.

Tender 1 scored highest for the tendered amount, as well as scoring competitively on all other weighted criteria. With the highest score, Tender 1 from Daracon Contractors Pty Ltd was identified as the preferred tender.

**5. Due Diligence**

Referees, provided by the preferred tenderer, were contacted and positive comment on past performance was received. Performance on other known work was also considered.

In addition, the RMS Roadworks Prequalification Scheme was referenced to confirm the tenderers ability to manage construction works of this scale and value. The preferred tenderer exceeded the tender requirement of R1 RMS prequalification holding the highest level of R5. The preferred tenderer also demonstrated an ability to utilise their independently assessed, ISO 9001 accredited, quality management system for in house and subcontracted works.

Kingsway Financial Assessments Pty Ltd was engaged to independently assess the preferred tenderers' financial capacity. The assessment confirmed conformance with threshold Criterion 6, having current financial capacity to satisfactorily complete the work.

**6. Evaluation Result**

Following steps 1 to 5 of the evaluation process, the TET found that Tender 1 from Daracon Contractors Pty Ltd met the requirements of the RFT and recommended acceptance of Tender 1.

**7. Independent Review**

The evaluation process and recommendations were reviewed by the TAP and determined to be in accordance with relevant documents and legislation:

- *Cessnock City Council Procurement Policy,*
- *Cessnock City Council Procurement Procedure,*
- *Local Government Act 1993,* and
- *Local Government (General) Regulation 2005.*

**TIME FRAME**

The RFT documents required a contract period of 29 calendar weeks from the date of acceptance of the tender. This allows for:

- 2 weeks Pre-construction planning and documentation,
- 1 week Site Establishment, and
- 26 weeks Construction.

In addition, the project program allows a contingency for:

- Latent site conditions which may be encountered, and
- Inclement weather.

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**LOCAL CONTENT**

Local preference scoring was not applied to this tender, however, it was noted that the preferred tenderer, Daracon Construction Pty Ltd is based in the region at Wallsend, and is likely to use local services and suppliers.

**OPTIONS**

**Option 1:** Accept the tender from Daracon Construction Pty Ltd in the amount of \$4,364,810.38 (including GST). This is the preferred option.

**Option 2:** Decline to accept any offers and negotiate with other civil and building contractors. This option is not recommended as it will negatively impact on the project program.

**CONSULTATION**

The following officers were consulted during the tender process:

- Design Delivery Manager
- Environmental and Waste Services Manager
- Projects Engineer
- Operations Accountant
- TAP

Extensive consultation has been ongoing with the Environment Protection Authority, and other agencies and stakeholders.

While the impact of construction on the operation of the WMC will be minimised, communication about progress of the works will be ongoing. For users of the Centre, information flyers will be distributed at the entrance. For residents and businesses generally, Council's website will provide information and access to a *Community Newsletter*, and Council's Facebook Page offers opportunity for feedback.

**STRATEGIC LINKS**

**a. Delivery Program**

Acceptance of the tender will contribute to achieving the following objectives of:

*2013-2017 Revised Delivery Program:*

- Objective 3.3: Better Waste Management & Recycling
  - Objective 3.3.1.c: Commence stage 1 construction of the Waste Management & Reuse Centre expansion project.

**b. Other Plans**

Acceptance of the tender will facilitate objectives of:

- NSW State Government Waste Avoidance and Resource Recovery Strategy 2013–2021
- Regional Waste Avoidance and Resource Recovery Strategy 2014–2021
- Cessnock Waste Management Strategy 2014-2019

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**IMPLICATIONS**

**a. Policy and Procedural Implications**

The tender process has been carried out in accordance with:

- *Cessnock City Council Procurement Policy,*
- *Cessnock City Council Procurement Procedure,*
- *Tendering Guidelines for NSW Local Government 2009, and*
- *NSW Government – Code of Practice for Procurement 2005.*

**b. Financial Implications**

Acceptance of the tender and a contingency amount to run the contract is fully funded as follows:

Description	Source	Amount excl GST
Waste Reserve	Domestic Waste Charge	\$2,901,577.00
Small Vehicle Reveal Station at Landfill Site Grant	EPA Waste and Sustainability Improvement Program	\$371,432.00
Resource Recovery Facility Expansion & Enhancement Program (RRFEPP) Grant	Environmental Trust Waste Less Recycle More	\$375,000.00
Community Recycling Centre Grant	Environmental Trust Waste Less Recycle More	\$200,000.00
Software and Security Upgrades for Landfill	EPA Waste and Sustainability Improvement Program	\$60,000.00
Waste and Reuse Centre Clean up and Education Program	EPA Better Waste and Recycling Fund	\$60,000.00

**c. Legislative Implications**

The tender process has followed the legislative provisions, referenced in *Cessnock City Council Procurement Policy* and *Cessnock City Council Procurement Procedure*, as follows:

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*

In particular, reference is made to Part 7, Division 4, Clause 178 of the *Local Government (General) Regulation 2005 (Acceptance of tenders)*:

1. After considering the tenders submitted for a proposed contract, the Council must either:
  - (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
  - (b) decline to accept any of the tenders.
2. A Council must ensure that every contract it enters into as a result of a tender accepted by the Council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the

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successful tender was made by the Council (as provided for in section 55 (2A) of the Act), the Council is not required to enter into any contract in order to carry out the requirements of the proposed contract.

3. A Council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:
  - (a) postpone or cancel the proposal for the contract,
  - (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
  - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
  - (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
  - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
  - (f) carry out the requirements of the proposed contract itself.
4. If a Council resolves to enter into negotiations as referred to in sub clause (3) (e), the resolution must state the following:
  - (a) the Council's reasons for declining to invite fresh tenders or applications as referred to in sub clause (3) (b)–(d),
  - (b) the Council's reasons for determining to enter into negotiations with the person or persons referred to in sub clause (3) (e).

**d. Risk Implications**

To minimise Council's exposure to business risks, the RFT required:

- Satisfactory financial capacity, and
- Adequate levels of insurances.

The authenticity of the Contractor's certificates of currency for the following insurance policies will be verified:

- Workers Compensation,
- Public Liability (\$20M or greater),
- Comprehensive Motor Vehicle,
- Professional Indemnity, and
- Insurance of the Works.

Risks identified in relation to safety, environment and quality are mitigated by the RFT requirement for adherence to the following system standards:

- *RMS R1 prequalification for civil works*
- *AS/NZS 4801:2001 - Occupational Health and Safety Management Systems*
- *AS/NZS ISO 14001:2004 - Environment Management Systems*
- *AS/NZS ISO 9001:2000 - Quality Management Systems*

**Works and Infrastructure**

**Report No. WI56/2016**

**Works and Infrastructure**



Regarding safety, the RFT requires the Contractor to prepare and implement a Site Specific Safety Management Plan including:

- Traffic Management Plan to manage broader traffic implications such as heavy vehicles and delays,
- Traffic Control Plans to manage interactions between public and construction traffic and a staging plan to maintain access to the weighbridge and landfill,
- Requirements for on-site workers to have current general construction induction cards (white card) and licences/tickets and inducted to the site, and
- Safe Work Method Statements, kept on site, and discussed at daily tool box talks.

**e. Other Implications**

**Safety:** The new WTS will facilitate implementation of safer practices for both private and business users, and Council workers alike. In particular the community will no longer interact with the landfill face or operational equipment.

**Environmental:** Improved environmental outcomes will result from the establishment of a WTS. For the operation of the WMC, the WTS is an important component of the overall diversion of waste from landfill, and is aimed at increasing the longevity of the Centre. The provision of a transfer service will see a reduction in the total volume of waste entering landfill and lower production of greenhouse gases.

**Financial:** The long term financial performance of the WMC will be improved by reducing the volume of waste entering landfill due to the corresponding reduction in waste levy. Greater recycling and resource recovery will increase the lifespan of the existing and future waste cells.

**Social:** Access to a modern WTS will benefit the community with increased opportunities for awareness about sustainability and participation in recycling.

**CONCLUSION**

The tender from Daracon Contractors Pty Ltd, in the lump sum amount of \$4,364,810.38 (including GST) offers the best value for money for the construction of the Cessnock WTS. The contract sum and contingency are fully funded from the available project budget identified in this report.

**ENCLOSURES**

- 1** Waste Transfer Station Tender Evaluation Matrix - *This matter is considered to be confidential under Section 10A(2) (di) (dii) of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; AND commercial information of a confidential nature that would, if disclosed (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret.*

Notices Of Motion

Report No. BN18/2016

General Manager's Unit



***NOTICES OF MOTION No. BN18/2016***

**SUBJECT:** *BRANXTON POOL - HEATING UPGRADE*

**COUNCILLOR:** *Anne Sander*

**MOTION**

1. That the General Manager prepare a report on the installation and operating costs for the provision of heat pump/s for the Branxton Pool.
2. That the report includes confirmation of appropriate funding sources to cover the costs, such as the Voluntary Planning Agreement associated with the Huntlee development for Miller Park precinct improvements.
3. That the report include details and timing on installation so that the pump/s could be installed and operational prior to the commencement of the 2017-18 pool season.
4. That the report be presented at the first Meeting in March 2017 to allow consideration for inclusion in the 2017-18 Operational Plan.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 14 December 2016.

**RATIONALE**

In order to increase patronage and usage of the Branxton Pool the need to install heat pumps must be considered. Initial estimates for the purchase and installation of heat pumps would be approximately \$90,000. An increase in operational costs would also be incurred for the operation of the pumps, with this amount to be confirmed at this stage.

With the Huntlee Voluntary Planning Agreement to provide funding for improvements to the Miller Park precinct, the opportunity to use up to \$100,000 towards the Branxton Pool may be available. It is proposed the purchase and installation be funded from that contribution.

A report on the capital and operating costs is needed so that Council can consider the issue with all the relevant facts detailed, including pump types, installation costs, operating costs and funding sources. A report is to be presented to Council at the first meeting in March 2017, so that Council can consider for inclusion in the 2017-18 Operational Plan, so that the installation, if endorsed by Council, can be undertaken and the pump/s operational prior to the commencement of the 2017-18 pool season.

Sgd: Anne Sander

Date: 21 November 2016

**ENCLOSURES**

There are no enclosures for this report

Notices Of Motion

Report No. BN19/2016

General Manager's Unit



***NOTICES OF MOTION No. BN19/2016***

**SUBJECT:** *EMPLOYEE COSTS - PAYMENTS IN EXCESS OF ENTITLEMENTS*

**COUNCILLOR:** *Rod Doherty, John Fagg*

***MOTION***

**That the General Manager provide a report to Council outlining the cost for amounts paid to exiting staff in excess of entitlements such as leave and other benefits under the Council Enterprise Agreement and Local Government (State) Award, over the last five financial years.**

It is my intention to move the above motion at the next Ordinary Meeting of Council on 14 December 2016.

**RATIONALE**

When reading the General Purpose Financial Statements the accumulated losses over the past 5 years amount to \$21.4 million excluding capital grants. If Council is to reach the "Fit for the Future" benchmark of breakeven, we must review all expenditure and employee benefits outside of normal payments are part of the losses accrued to Council's bottom line. Every expenditure item needs to be analysed to see where savings can be made.

In conjunction with Councillor Fagg, we request the General Manager to formally provide Council with a report outlining the costs related to additional expenses being paid out to exiting staff over and above their normal entitlements (e.g. LSL, Holidays and any other benefits that may be in their Enterprise Agreement).

We believe this relates to the General Purpose Financial Statements on page 77 as per the Outflows of Employee benefits and on-cost expenses over the past 5 years. The report is to include details on how many people have been paid out over this time.

Sgd: Rod Doherty

Sgd: John Fagg

Date: 9 December 2016

**ENCLOSURES**

There are no enclosures for this report

Notices Of Motion

Report No. BN20/2016

General Manager's Unit



***NOTICES OF MOTION No. BN20/2016***

**SUBJECT:** *WOLLOMBI SCHOOL*

**COUNCILLOR:** *Paul Dunn, Allan Stapleford, Mark Lyons*

**MOTION**

1. That Council reinforces its resolution of 14 December 2014 that the Wollombi School should remain in public ownership in perpetuity for use by the community at no financial impost to the ratepayers of the Cessnock LGA.
2. That Council commences actions to have the Wollombi School site included on the National Heritage Register and the State Heritage Register.
3. That Council request the Minister for Education and the Education Department to delay any further action regarding disposal of the Wollombi School site and investigate opportunities for the retention of the site in community ownership.
4. That Council seeks the support of the Member for Cessnock Clayton Barr MP, the Parliamentary Secretary for the Hunter Scott McDonald MLC and the Member for Hunter the Hon Joel Fitzgibbon MP in progressing the resolutions regarding retention of the Wollombi School in public/community ownership.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 14 December 2016.

**RATIONALE**

Council at the meeting of 10 December 2014 considered a notice of motion regarding the proposed closure of the Wollombi Public School and resolved:

“That Council write to the Minister for Education, The Hon Adrian Piccoli, and the Opposition Spokesperson on Education, Ryan Park, seeking a commitment from each of them on behalf of their respective political party, that Wollombi School will be retained in public ownership in perpetuity for use by the community at no financial impost to the ratepayers of the Cessnock LGA”.

Following this resolution, the Wollombi School was subsequently closed and the Department of Education has recently declared the site surplus to needs with an expectation that the land will be sold in early 2017. The community groups that have been using the site since the school's closure have been informally advised that they are to cease occupation of the site in December 2016.

The existing stone school was erected in 1881, with the residence built in the same year. The weatherboard addition appears to have been added in the early 1900's. The heritage significance of the site, apart from age and example of style, is enhanced by the grouping of

**Notices Of Motion**

**Report No. BN20/2016**

**General Manager's Unit**



the school and residence. Whilst the site is listed on Council's Heritage Register, it is considered imperative that this listing be extended to both the State and National Heritage Register to ensure the retention of the character of the site.

The school site is currently zoned RU2 Rural Landscape.

Since the school closure, various community groups have used the site and with the impending sale, we are concerned at the potential loss of a valuable community asset. The Wollombi School Community Education Trust is the locally based not for profit group which is facilitating the use of the school site since the closure. The association has advised that since April 2015 almost 270 community events have been directly facilitated by the group, and over 300 community events in total have been held at the school.

Uses for the school site include: preschool 2 days per week, local history talks, indigenous programs, art workshops, meetings such as land care, knitting, film nights and prenatal classes. The community value includes use as a venue, historical significance to the village, preschool and educational facility for possible future population fluctuations is considered significant to the community.

The community is seeking Council's support to maintain the school site in community ownership, and the request accords with Council existing adopted position of retention as a community based asset without a financial impost to the ratepayers of the Cessnock local government area.

Sgd: Paul Dunn

Sgd: Allan Stapleford

Sgd: Mark Lyons

Date: 9 December 2016

**ENCLOSURES**

There are no enclosures for this report

Notices Of Motion

Report No. BN21/2016

General Manager's Unit



***NOTICES OF MOTION No. BN21/2016***

***SUBJECT: COUNCIL ELECTIONS***

***COUNCILLOR: Rod Doherty***

***MOTION***

1. That the General Manager request the NSW Electoral Commissioner to undertake a full review and audit of the last Council election conducted on behalf of Council by the NSW Electoral Commission.
2. That this review and audit is to encompass the whole process of the election but paying a particular focus on the handling of ballot papers at pre-poll and on polling day and the electronic management of the electoral roll.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 14 December 2016.

**RATIONALE**

Alarmingly it has come to light in recent days that an overwhelming number of residents and ratepayers recently receiving penalty infringement notices from Elections New South Wales for failing to vote at the last Council election.

Most of these cases are from Cessnock and Kurri Kurri pre poll and it is of grave concern that these PIN's have been issued in error. Are there any other issues/anomalies we are not aware of?

It would seem from residents' complaints that they have voted and data held on the electoral Commission of NSW is corrupted.

Sgd: Rod Doherty

Date: 7 December 2016

**ENCLOSURES**

There are no enclosures for this report

Notices Of Motion

Report No. BN22/2016

General Manager's Unit



***NOTICES OF MOTION No. BN22/2016***

***SUBJECT: ROAD RANKING***

***COUNCILLOR: Ian Olsen***

***MOTION***

1. That the General Manager organise a ranking system for all Council roads in the Cessnock Local Government Area which will prioritise an organised structure on how we plan our road renewal program and gives greater benefit to the community.
2. That a report be bought back to Council for its ratification on a ranking system for Council roads by the last meeting in March 2017.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 14 December 2016.

**RATIONALE**

To the ratepayers, currently they feel that Council's road works are completed without any planning or rationale and as a Councillor I find it difficult to explain why some roads are repaired and others are left in poor condition. With a ranking system in place Councillors, staff and residents will then have a clear direction on what Council will be doing in the coming years and will give greater benefit to the majority of our road users.

Sgd: Ian Olsen

Date: 6 December 2016

**ENCLOSURES**

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ83/2016

Corporate and Community Services



**SUBJECT:** *INTERNAL SERVICE REVIEW - REQUEST FOR UPDATE*

**RESPONSIBLE OFFICER:** *Project Manager - Katrina Patch*

**Q80/2016 – Internal Service Review – Request for Update**

Asked by Councillor Doherty at the Ordinary Meeting of Council held on 16 November 2016.

*“Councillor Doherty asked for a report on the Internal Service Review that is currently being undertaken.*

Council’s Service Review Project is a Financial Sustainability Initiative that supports the Fit for the Future objectives and forms part Council’s adopted Performance Improvement Plan submitted to the Office of Local Government.

Progress of the Service Review Project is reported as part of the Delivery Program each quarter and was included in the recent briefing by the Integrated Planning & Strategic Property Manager. A briefing to Council was also held on 8 June 2016.

Project outcomes achieved to-date include:

- Identification of 55 services comprising 135 sub-services
- Review of 153 sub-services and identification of 601 opportunities. Prioritisation and actioning of these has commenced with 63 complete and 228 in action.
- Establishment of seven Service Improvement Projects (SIP):
  - Compliance
  - Principal Certifying Authority
  - Cessnock and Branxton Pools
  - Purchasing and Procurement
  - Heavy Plant and Equipment
  - Landfill Operations
  - Rural Road Maintenance
- SIP teams are led by the responsible Manager and include staff members responsible for service delivery, key stakeholders and independent team members.
- The Compliance SIP is undertaking a gap-analysis of the legislation that Council is charged with enforcing against that which Council is currently acting upon. This project is due for completion by end of 2016.
- The Principal Certifying Authority SIP is undertaking a full financial analysis of the cost of delivering this competitive service. This project is due for completion by end of 2016.
- All other SIPs are undertaking an in-depth analysis of the service delivery mechanisms and are making progress towards identifying cost savings and productivity improvements. These are expected to be completed during 2017.

**ENCLOSURES**

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ84/2016

Corporate and Community Services



**SUBJECT:** *COUNCIL ORGANISATIONAL STRUCTURE*

**RESPONSIBLE OFFICER:** *Director Corporate and Community Services - Robert Maginnity*

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**Q81/2016 – Council Organisation Structure**

Asked by Councillor Doherty at the Ordinary Meeting of Council held on 16 November 2016.

“Councillor Doherty asked when Councillors will be given the opportunity to review the structure of Council?”

Section 332 of the Local Government Act 1993 (the Act) requires that Council after consulting with the General Manager, must determine the senior staffing positions within the organisation structure of the Council, the roles and reporting lines (for other senior staff) of holders of senior staff positions and the resources to be allocated towards the employment of staff. Council last determined its structure in October 2013.

Section 333 of the Act provides that a Council may re-determine the organisation structure from time to time and that council must review (and may re-determine) the structure within 12 months after any ordinary election of the Council.

Subsequent to the Phase 1 amendments to the Act, the Office of Local Government issued Circular 16-30, where it was clarified that “determination of the organisation structure of a Council is by the governing body of the Council, in consultation with the General Manager for senior staff positions and by the General Manager for the remainder of the structure.”

As outlined at the briefing on 23 November 2016, it has been recommended as part of the review of Council Committees report to be considered by Council at the 14 December 2016 meeting that the organisational review functions be included in the scope of the existing General Managers Employment Arrangements Committee (proposed to be renamed), rather than creating a separate committee to meet the legislative structure review requirements.

**ENCLOSURES**

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ85/2016

Planning and Environment

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**SUBJECT:** *HEBBURN ESTATE - REQUEST FOR UPDATE*

**RESPONSIBLE OFFICER:** *Integrated Planning & Strategic Property Manager - Bronwyn Rumbel*

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**Q82/2016 – Hebburn Estate – Request for Update**

Asked by Councillor Sander at the Ordinary Meeting of Council held on 16 November 2016.

*“Councillor Sander asked for an update on Hebburn Estate Weston and what is the future?”*

A Councillor briefing on Hebburn Estate is scheduled for March 2017.

**ENCLOSURES**

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ86/2016

Planning and Environment

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**SUBJECT:** *STRATEGIC PROPERTY REVIEW*

**RESPONSIBLE OFFICER:** *Integrated Planning & Strategic Property Manager - Bronwyn Rumbel*

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**Q74/2016 – Property Review Briefing**

Asked by Councillor Doherty at the Ordinary Meeting of Council held on 2 November 2016.

*“Councillor Doherty asked when Councillors would receive a briefing on the property review?”*

**Q83/2016 – Strategic Property Review – Update Request**

Asked by Councillor Sander at the Ordinary Meeting of Council held on 16 November 2016.

*“Councillor Sander asked what the status is of Council’s Strategic Property Review?”*

A Councillor briefing on the Strategic Property Review is scheduled for March 2017.

**ENCLOSURES**

There are no enclosures for this report

**Answers To Questions For Next Meeting**

**Report No. AQ87/2016**

**Works and Infrastructure**

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**SUBJECT:** *HAZARDOUS PRIVATE CAR PARKS AND RIGHTS OF WAY*

**RESPONSIBLE OFFICER:** *Strategic Asset Planning Manager - Stephen Long*

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**Q84/2016 – Hazardous Private Car Parks and Rights of Way**

Asked by Councillor Lyons at the Ordinary Meeting of Council held on 16 November 2016.

*Councillor Lyons asked what Council could do in regard to improving hazardous private car parks and rights of way?*

Council has very limited ability to direct a private property owner to undertake repairs to infrastructure like carparks and rights of way.

**ENCLOSURES**

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ88/2016

Works and Infrastructure

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**SUBJECT:** *AUSTAR GUARDRAIL AT KITCHENER*

**RESPONSIBLE OFFICER:** *Design Delivery Manager - Katrina Kerr*

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**Q85/2016 – Austar Guardrail at Kitchener**

Asked by Councillor Lyons at the Ordinary Meeting of Council held on 16 November 2016.

*Councillor Lyons asked for an update on the Austar Guardrail at Kitchener.*

Austar have liaised with Council regarding the need for a safety barrier around a power pole on Quorrobolong Road, Kitchener.

The installation is programmed for January 2017, weather permitting.

**ENCLOSURES**

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ89/2016

Works and Infrastructure

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**SUBJECT:** *DONATIONS FUND - SPONSORSHIP OF SPORT*

**RESPONSIBLE OFFICER:** *Director Works and Infrastructure - Justin Fitzpatrick-Barr*

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**Q87/2016 – Donations Fund – Sponsorship of Sport**

Asked by Councillor Olsen at the Ordinary Meeting of Council held on 16 November 2016.

*Councillor Olsen referred to the previous Donations Fund which was stopped and asked why Council sponsored some players, by paying for their shirts, to play touch football.*

The staff touch football sponsorship forms part of a number of health & wellbeing initiatives that are being rolled out across Council in accordance with Clause 24 of the Local Government (State) Award 2014. The initiative is seen as a valuable team building activity with work colleagues.

**ENCLOSURES**

There are no enclosures for this report

Correspondence

Report No. CO6/2016

Corporate and Community Services



**SUBJECT:** *INFRASTRUCTURE FUNDING - ESTABLISHMENT OF A \$200M FUTURE FUND - NSW PREMIER'S RESPONSE*

**RESPONSIBLE OFFICER:** *Director Corporate and Community Services - Robert Maginnity*

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**RECOMMENDATION**

**That Council note the correspondence received.**

At its meeting of 2 November 2016, Council considered a Notice of Motion regarding the establishment of a future fund for infrastructure and resolved:

1. That Council write to the State Government via the Premier, Treasurer, Parliamentary Secretary for the Hunter and our local State MP seeking the establishment of a 10 year \$200 million future fund for the ongoing upgrade and replacement of local, Regional and State roads within the LGA (including bridges and drainage assets).
2. That the future fund allocate \$20 million per year to Cessnock City Council to undertake a rolling Capital Works Program.
3. That any unspent funds from the future fund would roll over to the next financial year.
4. That the future fund would be overseen in consultation with Treasury Corporation, Roads and Maritime Service and Cessnock City Council.

In accordance with that resolution a letter requesting the establishment of a Future Fund for Cessnock was forwarded to the NSW Premier. The Hon Catherine Cusack MLC, Parliamentary Secretary to the Premier has responded on behalf of the Premier advising that the request has been forwarded to the Minister for Local Government for the Ministers information and consideration.

Copies of both letters are attached for Council's information.

**ENCLOSURES**

- [1](#) Correspondence received on behalf of Hon. Mike Baird NSW Premier
- [2](#) Letter Requesting Establishment of Future Fund

Correspondence

Report No. CO7/2016

Corporate and Community Services



**SUBJECT:** *PROVISION OF FUNDS TO LOCAL GOVERNMENT FOR INFRASTRUCTURE PROJECTS*

**RESPONSIBLE OFFICER:** *Director Corporate and Community Services - Robert Maginnity*

### **RECOMMENDATION**

**That Council note the correspondence received.**

At its meeting of 17 August 2016, Council considered report BN6/2016 in relation to the Provision of Funds to Local Government for Infrastructure Projects and resolved:

- 1. That Council notes that the Reserve Bank has lowered the cash rate to a historic low of 1.5 percent, as a response to persistently low inflation and sluggish economic growth.**
- 2. That Council notes that 10 year Government bond yields have fallen below 2 percent.**
- 3. That Council notes that Councils around Australia face long-standing infrastructure backlogs, with the issue especially acute in regional areas.**
- 4. That Council writes to the Prime Minister and the Treasurer urging them to stimulate local economies by providing grants to Local Governments for infrastructure projects.**
- 5. That Council submit motions to the NSW and National Local Government Associations for consideration.**

In accordance with Council's resolution, Council wrote to the Prime Minister and the Treasurer urging them to stimulate local economies by providing grants to Local Governments for infrastructure projects. The motion was also submitted to the NSW and National Local Government Associations for consideration.

The motion was debated and supported at the recent LG NSW Annual Conference. A response was received from the Prime Minister's office on 17 October 2016 and reported to Council on 2 November 2016 (report CO4/2016).

A response has been received from the Hon Scott Morrison MP, Treasurer on 25 November 2016 and a copy is enclosed for Council's information.

### **ENCLOSURES**

- 1 Correspondence received on behalf of the Treasurer**