



7 December 2018

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, 12 December 2018 at 6.30 pm, for the purposes of transacting the undermentioned business.

AGENDA:

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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, 21 NOVEMBER 2018,
COMMENCING AT 6.30 PM**

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

IN ATTENDANCE: General Manager
Director Planning and Environment
Director Corporate and Community Services
Director Works and Infrastructure
Finance and Administration Manager
Management Accountant
Financial Accountant
Media & Communication Officer
Corporate Governance Officer

APOLOGY:

MOTION *Moved:* Councillor Sander
Seconded: Councillor Gray

675

RESOLVED that the apology tendered on behalf of Councillor Suvaal, for unavoidable absence, be accepted and leave of absence granted.

That Councillor Burke's Leave of Absence be noted.

FOR

AGAINST

Councillor Olsen
Councillor Doherty
Councillor Dunn
Councillor Fagg
Councillor Stapleford
Councillor Fitzgibbon
Councillor Gray
Councillor Dagg
Councillor Sander
Councillor Lyons
Councillor Pynsent

Total (11)

Total (0)

CARRIED UNANIMOUSLY

MINUTES:

MOTION **Moved:** Councillor Doherty
Seconded: Councillor Stapleford

676

RESOLVED that the Minutes of the Ordinary Meeting of Council held on 7 November 2018, as circulated, be taken as read and confirmed as a correct record.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

DISCLOSURES OF INTEREST

DISCLOSURES OF INTEREST NO. DI20/2018

SUBJECT: DISCLOSURES OF INTEREST

NIL

PETITIONS

Councillor Lyons presented a petition signed by 46 residents of Ellalong regarding nuisance cats.

ADDRESS BY INVITED SPEAKERS

NIL

CONSIDERATION AND ADOPTION OF ALL REPORTS BY ENGLOBE OR INDIVIDUALLY WITH NOMINATED EXCEPTIONS

MOTION **Moved:** Councillor Doherty **Seconded:** Councillor Gray
677

RESOLVED

That having read and considered the reports in the agenda related to items:-

CC86/2018 - Schedule of Ordinary Meetings of Council Dates 2019
AQ117/2018 - Submission on Branxton / Greta Cycleway
AQ118/2018 - St Philips Christian College Traffic Solutions
AQ119/2018 - Sealing Road Corner Mitchell Avenue
CO42/2018 - Cessnock Correctional Centre Access Road

Council adopt the recommendations as printed for those items.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

MOTIONS OF URGENCY

MOTIONS OF URGENCY NO. MOU20/2018

SUBJECT: MOTIONS OF URGENCY

NIL

GENERAL MANAGER'S UNIT

GENERAL MANAGER'S UNIT NO. GMU24/2018

SUBJECT: INVITATION TO JOIN REGIONAL CITIES NSW

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

678

RESOLVED

1. That Cessnock City Council join Regional Cities NSW with a formal review of Council's membership to occur after 30 June 2020, to ensure that the RCNSW is meeting its stated objectives.
2. That the \$5,000 for membership of Regional Cities NSW for the period 1 January 2019 to 30 June 2019 of \$5,000 be funded from within the existing Economic Development operational budget for 2018-19.
3. That \$10,000 be considered for inclusion in the draft 2019-20 Operational Plan for Council's 2019/2020 full year membership of the Regional Cities NSW.
4. That any requests for financial contributions over and above the annual membership fee to Regional Cities NSW be reported to Council for further consideration.

FOR	AGAINST
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (10)	Total (1)

CARRIED

CORPORATE AND COMMUNITY

CORPORATE AND COMMUNITY NO. CC82/2018

SUBJECT: RICHMOND MAIN COLLIERY - PROGRESS REPORT

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
679
RESOLVED

1. That Council note the progress of actions for Richmond Main Colliery and that a further report be presented to Council in February 2019.
2. That Council note the cessation of commercial operations within Precinct B.
3. That Council note the progress in regards to activities undertaken to clean up the precinct, and in particular the efforts of the Richmond Main Preservation Co-operative Society Limited over the last 6 months.
4. That Council, in not currently being able to fund the remediation works required for the Locomotive Shed and Store and/or Power House Store buildings, commence discussions with the Richmond Main Preservation Co-operative Society Limited Board to establish the feasibility of members of the Society and its community partners undertaking the building repair works in accordance with the Structural Assessment Building Report, and once works are completed to a standard agreed by Council, the Society be allowed to re-occupy the buildings for operational purposes as part of a licence agreement.
5. That Council note grounds maintenance within Precinct B and C has historically been undertaken by the Richmond Main Preservation Co-operative Society Limited and permitting ongoing access to these Precincts for this purpose will be discussed with the Society as part of a new licence agreement.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC83/2018

SUBJECT: QUARTERLY BUDGET REVIEW STATEMENTS - SEPTEMBER 2018

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
680
RESOLVED

1. That Council note the September 2018 Quarterly Budget Review Statements were presented to and endorsed by the Audit and Risk Committee on 5 November 2018.
2. That Council approve the variations to the income, expenditure and capital budgets as detailed in the September 2018 Quarterly Budget Review Statements.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC84/2018

SUBJECT: SEPTEMBER 2018 QUARTERLY REVIEW OF THE 2017-21 DELIVERY PROGRAM

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Fitzgibbon
681
RESOLVED

1. That Council note the progress in implementing the 2017-21 Delivery Program as at 30 September 2018.
2. That Council endorse the correction in the 2017-21 Delivery Program:
 - a. 4.1.4.a From Bridge Street Weston to Bridge Street Cessnock.
3. That Council endorse the following change to the Recreation Facilities Construction Program:
 - a. Remove: CFR-2019-004 Various – Jeffries Park (Abermain), Brunner Park (Branxton), Harle St (Abermain) – Playground replacement program
 - b. Add: CFR-2019-004 Jeffries Park (Abermain) – Playground replacement program
4. That Council endorse deferring 2017-21 Delivery Program actions 3.1.6.a - Adopt a Climate Change Policy and 3.1.6.c – Adopt a Contaminated Land Policy and Procedures to the 2019-20 Operational Plan.
5. That Council note the progress of carryover deliverables.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC85/2018

SUBJECT: COUNCIL RECESS PERIOD

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

1. That Council be in recess from 13 December 2018 to 6 February 2019.
2. That Council pursuant to Section 377 of the Local Government Act 1993, delegate authority to the Mayor and/or Deputy Mayor, and the General Manager jointly to exercise any function of Council during the recess period.
3. That a full list of any matters considered under such delegated authority be submitted for Council's information to the first 2019 Ordinary Meeting of Council scheduled to be held on 6 February 2019.

AMENDMENT **Moved:** Councillor Olsen

1. That Council be in recess from 21 December 2018 to 2 January 2019.
2. That Council pursuant to Section 377 of the Local Government Act 1993, delegate authority to the Mayor and/or Deputy Mayor, and the General Manager jointly to exercise any function of Council during the recess period.
3. That a full list of any matters considered under such delegated authority be submitted for Council's information to the first 2019 Ordinary Meeting of Council scheduled to be held on 6 February 2019.

The Amendment lapsed for want of a Seconder.

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

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
682
RESOLVED

1. That Council be in recess from 13 December 2018 to 6 February 2019.
2. That Council pursuant to Section 377 of the Local Government Act 1993, delegate authority to the Mayor and/or Deputy Mayor, and the General Manager jointly to exercise any function of Council during the recess period.
3. That a full list of any matters considered under such delegated authority be submitted for Council's information to the first 2019 Ordinary Meeting of Council scheduled to be held on 6 February 2019.

FOR	AGAINST
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (10)	Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC86/2018

SUBJECT: SCHEDULE OF ORDINARY MEETINGS OF COUNCIL DATES 2019

MOTION **Moved:** Councillor Doherty **Seconded:** Councillor Gray
683
RESOLVED

That Council adopt the following schedule of Ordinary Meetings of Council for 2019:

6 February	20 February
6 March	20 March
3 April	17 April
1 May	15 May
5 June	19 June
3 July	17 July
7 August	21 August
4 September	18 September
2 October	23 October
6 November	20 November
11 December	

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC87/2018

SUBJECT: INVESTMENT REPORT - OCTOBER 2018

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
684
RESOLVED

That Council receive the report and note the information.

FOR	AGAINST
Councillor Doherty	Councillor Olsen
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (10)	Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC88/2018

SUBJECT: RESOLUTIONS TRACKING REPORT

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
685
RESOLVED

1. That Council receive the report and note the information.
2. That the General Manager write to the State Member for Cessnock referring to point 5 of the resolution of Report Number BN27/2018 asking for an update on the outcomes of the consultation meetings.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC89/2018

SUBJECT: LOCAL GOVERNMENT NSW TOURISM CONFERENCE 2019

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
686
RESOLVED

That Councillors interested in attending the LG NSW Tourism Conference 2019 make application to the General Manager by Friday 30 November 2018 so that Council can determine attendees at the Council meeting of 12 December 2018.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE

WORKS AND INFRASTRUCTURE NO. WI90/2018

SUBJECT: HUNTER VALLEY AIR SHOW

MOTION **Moved:** Councillor Dagg **Seconded:** Councillor Sander
687

RESOLVED

1. That Council supports the proposed Paul Bennet Airshows event by providing in-kind sponsorship as detailed in the body of this report and;
2. That Council allocates \$5,400 from the Tourism Related Projects budget to fund the in-kind sponsorship.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE NO. WI91/2018

SUBJECT: MINUTES OF LOCAL TRAFFIC COMMITTEE HELD ON 15 OCTOBER 2018

MOTION **Moved:** Councillor Gray **Seconded:** Councillor Stapleford
688
RESOLVED

That the recommendations of the Local Traffic Committee held on 15 October 2018 be adopted as a resolution of the Ordinary Council being:

1. **TC45/2018 – That angle parking, regulatory signage and line marking be installed on Broke Road, Pokolbin in accordance with the Broke Road Pokolbin _ Signage & Line Marking Diagram provided with the Traffic Committee report.**
2. **TC46/2018 – That Council authorise installation of an indented parking bay, and the removal of regulatory parking controls, in Pokolbin Street, Aberdare, in accordance with the Pokolbin Street Aberdare _ Signage & Parking Bay Diagram provided with the Traffic Committee report.**
3. **TC47/2018 – That the matter be referred back to the Local Traffic Committee to consider the option of creating a one way street along Eleventh Avenue from Millfield Road to Walmsley Street, Millfield to alleviate the safety concerns relating to the Eleventh Avenue and Millfield Road intersection.**
4. **That the General Manager investigate and develop suitable policies and procedures regarding meeting protocols for the Local Traffic Committee meetings and in particular the moving and seconding of recommendations.**
5. **TC44/2018**
 - **That No Stopping restrictions be installed on Percy Street, Cessnock in accordance with Percy Street Cessnock _ Signage & Line Marking Diagram provided with the Traffic Committee report; and**
 - **That Council note the future treatments proposed in the adopted Cessnock LGA Traffic and Transport Strategy for the Percy Street, West Avenue and Wollombi Road intersections.**

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

BUSINESS OF WHICH WRITTEN NOTICE HAS BEEN GIVEN

BUSINESS WITH NOTICE NO. BN34/2018

SUBJECT: GREENFIELD HOUSING CODE CONSULTATION

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

689

RESOLVED

1. That the General Manager write to the Department of Planning and Environment requesting membership of the Complying Development Expert Panel (CDEP) for Council staff to ensure the voice of Cessnock City Council and regional NSW is considered in future planning policies and directions.
2. That the minutes of these meetings be distributed by Councillor Memorandum.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

BUSINESS WITH NOTICE NO. BN35/2018

SUBJECT: DUAL OCCUPANCY DEVELOPMENT

MOTION **Moved:** Councillor Gray **Seconded:** Councillor Sander

690

RESOLVED

1. That Council note the current heightened level of community concern over the clustering of dual occupancy development in the Heddon Greta area.
2. That the General Manager arrange a briefing and provide a report to Council on the current permissibility of dual occupancy development in the R2 Low density residential zone and ways that this could be better controlled to prevent unsatisfactory clustering and poor development outcomes.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

ANSWERS TO QUESTIONS FOR NEXT MEETING

ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ117/2018

SUBJECT: SUBMISSION ON BRANXTON / GRETA CYCLEWAY

The answer was noted.

ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ118/2018

SUBJECT: ST PHILIPS CHRISTIAN COLLEGE TRAFFIC SOLUTIONS

The answer was noted.

ANSWERS TO QUESTIONS FOR NEXT MEETING NO. AQ119/2018

SUBJECT: SEALING ROAD CORNER MITCHELL AVENUE

The answer was noted.

QUESTIONS FOR NEXT MEETING

Councillor Di Fitzgibbon

CHRISTMAS BANNERS

Councillor Fitzgibbon asked why the Christmas banners were not put up when the Remembrance Day banners were removed.

Councillor Di Fitzgibbon

CHRISTMAS LIGHTS AT MAITLAND RAILWAY STATION

Councillor Fitzgibbon asked if council can ask Maitland Council for all the details on the beautiful lights hanging in the trees at the Railway Station.

Councillor Anne Sander

CESSNOCK LGA SIGN - BUCHANAN

Councillor Sander asked if a Cessnock Local Government Area entry sign can be placed on Buchanan Road at our boundary.

Councillor Ian Olsen

COUNCILLORS CHRISTMAS FUNCTION

Councillor Olsen asked if his share of the funds to be spent at the Councillor Christmas Function could be donated to Diabetes Australia.

Councillor Ian Olsen

RESERVES USAGE

Councillor Olsen asked for a written explanation on where Council is getting the \$5m from the investments that Council have, where it is coming from and where it is showing the \$400,000 that has already been spent.

Councillor Mark Lyons

BUSH REGENERATION GRANTS

Councillor Lyons asked if there are any Bush Regeneration Grants that Council can apply for.

Councillor Allan Stapleford

SANDSTONE KERB AND GUTTER AT BELLBIRD

Councillor Stapleford asked how much sandstone kerb and gutter there is at Bellbird and is it Heritage Listed.

CORRESPONDENCE

CORRESPONDENCE NO. CO42/2018

SUBJECT: CESSNOCK CORRECTIONAL CENTRE ACCESS ROAD

MOTION **Moved:** Councillor Doherty **Seconded:** Councillor Gray
691
RESOLVED

That the correspondence be noted.

FOR	AGAINST
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Dagg	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

COUNCILLOR'S REPORTS

Councillor Dagg

Association of Mining & Energy Related Councils

Elected to the Executive Committee which will meet separately to discuss future strategic planning and actions going forward. We received an address by Dr Juan Castilla of University of Wollongong regarding a potential fellowship, to be funded by the MERC, which will look at Participatory Modelling in two case studies involving either wind farming, coal seam gas development or water, and specifically collaborative community planning and decision-making in the digital age, and specifically seeking out a triple bottom line in those projects. The fellowship is yet to be decided on. Otherwise, we will be meeting again in February in Sydney where we will seek an audience with the major parties to discuss their position leading into the state election, specifically in relation to Resources for Regions and whether they will take on our concerns with the current funding model.

Mine Subsidence Board

Today was the last meeting of the MSB before it is wound up on the 31st December. We had an update on contentious claims and high risk subsidence together with instruction on procedures and collection of the colliery levies once the Board is disbanded in the New Year.

Keep Australia Beautiful Tidy Town Awards

As everyone can see from the awards displayed in front, Cessnock has another good news story that it can share with the community. Cessnock was very successful at the Keep Australia Beautiful Tidy Towns Awards with a number of wins acknowledging community groups and projects such as Greta Museum, Yengo Gallery, Wollombi Awards Display Board, Cessnock Regional Art Gallery and Council's own Waste Management Centre Transfer Station, the Revolving Energy Fund Energy Efficiency Projects, and its Biodiversity Communications Engagement Strategy. But most importantly, Cessnock was awarded the overall winner of the 2018 Tidy Town Award which qualifies Cessnock to represent NSW in the Keep Australia Beautiful National Tidy Towns Awards. I was honoured to be present and accept the award on Council's behalf, it was incredibly satisfying being able to stand in front of a full room and speak about how good this town this. We should all be proud to live in Cessnock, and this award represents more than just collecting rubbish from the side of the road, it is an acknowledgement of this Council's initiative to engage the community to make our region more livable, attractive and sustainable and we should all be incredibly proud of the staff for their award-winning work, once again. Well done.

Councillor Gray

New Maitland Hospital Forum

Councillor Gray advised that they are currently still in design mode for the Hospital itself and have commenced enabling works, round-a-about etc. Multiplex is the builder and is setting up a connectivity centre for employment that will link in with all the service and job providers with a focus on aboriginal employment with 180 trainees and approximately 140 long term unemployed. The hospital will be 339 bed capacity and there are no plans to hold onto the Old Maitland Hospital. Rehabilitation will be staying at Kurri Kurri Hospital.

Councillor Lyons

Postie Bike Grand Prix

Councillor Lyons advised that he attended the 5th Annual Australian Postie Bike Grant Prix where the Inaugural SMW Drilling Services Female Race was run, which was well supported and Alice O'Connor took out first prize.

The Meeting Was Declared Closed at 7.26pm

CONFIRMED AND SIGNED at the meeting held on 12 December 2018

.....**CHAIRPERSON**

.....**GENERAL MANAGER**

Disclosures Of Interest

Report No. DI21/2018

Corporate and Community Services



SUBJECT: *DISCLOSURES OF INTEREST*

RESPONSIBLE OFFICER: *Finance and Administration Manager - Andrew Glauser*

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. NI6/2018

Corporate and Community Services



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

PE92/2018 - MINUTES OF THE CONFIDENTIAL SESSION OF THE STRATEGIC PROPERTY AND COMMUNITY FACILITIES COMMITTEE MEETING HELD ON 13 NOVEMBER 2018

RESPONSIBLE OFFICER: *Finance and Administration Manager - Andrew Glauser*

RECOMMENDATION

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

Report No. PE92/2018 – Minutes of the Confidential Session of the Strategic Property and Community Facilities Committee Meeting held on 13 November 2018 as it deals 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.

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.

Mayoral Minute

Report No. MM13/2018

General Manager's Unit



MAYORAL MINUTE No. MM13/2018

SUBJECT: NSW LEGISLATION ALLOWING CEMETERY OPERATORS TO REUSE GRAVES

RECOMMENDATION

1. That Council notes that the Berejiklian Barilaro Government's new Cemetery and Crematoria Regulation 2018 which allows cemeteries to disinter human remains as little as 25 years after the burial and sell the plot to another party;
2. That Council notes that during a recent review of the Cemetery and Crematoria Regulation 2018, a range of church groups, indigenous representatives and the broader community were simply unaware of the new regulation;
3. That Council notes concerns the new laws may create two classes of burial rights in NSW;
4. That Council does not offer renewable interment rights at any of its cemeteries;
5. That Council writes to the Premier, The Hon Gladys Berejiklian MP advising that Council strongly opposes any law change that allows the reuse of burial plots and requests the NSW Government to urgently look for alternate solutions to address the need for more cemetery space.

REPORT/PROPOSAL

It has been brought to my attention that the NSW State Government has recently defeated a motion that would have prevented cemetery operators from digging up human remains and reselling the associated burial plots.

The State's Upper House recently reviewed the *Cemetery and Crematoria Amendment Regulation 2018* and heard evidence from many community groups opposed to the Government's plan.

Church groups, the NSW Aboriginal Council and even some cemetery operators voiced concerns over the new laws.

While renewable interment rights are voluntary and optional for cemetery operators to offer and for customers to purchase, I am concerned that the community's perception may be that as the cemetery operator Cessnock City Council would be involved in digging up the remains of loved ones as soon as 25 years after their burial.

Mayoral Minute

Report No. MM13/2018

General Manager's Unit



In recognition of the sensitive nature of the exhumation of human remains and the offering of renewable interment rights I bring this important community issue to Council for consideration.

ENCLOSURES

There are no enclosures for this report.

Mayoral Minute

Report No. MM14/2018

General Manager's Unit



MAYORAL MINUTE No. MM14/2018

SUBJECT: CESSNOCK CORRECTIONAL CENTRE ACCESS

RECOMMENDATION

That the General Manager meet with the community representatives on the Cessnock Correctional Centre Community Consultative Committee to discuss options and viewpoints of the community representatives relating to access to the Cessnock Correctional Centre and that a report be prepared on the outcomes from the meeting, for Councils consideration, at the first Council meeting in 2019.

REPORT/PROPOSAL

I received an email early on Friday 7 December 2018 following a meeting of the Community Consultative Community (the Committee) for the Cessnock Correctional Centre requesting that Council consider a request for a meeting with the community representatives from the Committee at the last meeting in December 2018.

This meeting is proposed to gain an understanding of the community representative's viewpoint and discuss options available for the access to the Correctional Facility. I propose that the General Manager and appropriate staff meet with the community representatives and that a report be prepared for Councils consideration at the first meeting in 2019.

ENCLOSURES

- 1** Community Consultative Committee Request

Motions of Urgency

Report No. MOU21/2018

Corporate and Community Services



SUBJECT: *MOTIONS OF URGENCY*

RESPONSIBLE OFFICER: *Finance and Administration Manager - Andrew Glauser*

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.

SUBJECT: *AUDIT AND RISK COMMITTEE INDEPENDENT MEMBER*

RESPONSIBLE OFFICER: *Internal Auditor - Ian Lyall*

SUMMARY

This report provides information to Council regarding the selection process for the recruitment of an independent member of Council's Audit and Risk Committee.

RECOMMENDATION

That Council receives and notes the report on the appointment of an independent member to the Audit and Risk Committee.

BACKGROUND

On 6 September 2017 Council accepted the Audit Committee recommendation that independent Audit Committee members should have staggered terms so that one member is eligible for re-election each year.

Section 5.4 of the Audit and Risk Committee Charter contains the following provisions in relation to the selection of Committee members.

5.4 Selection of Members

5.4.1 The selection criteria and process for the recruitment and appointment of the external members, including the Chair, shall be undertaken as required, and directed by the General Manager, in line with merit based selection principles.

5.4.2 Pre-Qualification Panel arrangements may be utilised if appropriately authorised by the General Manager.

5.4.3 The outcome of the recruitment process will be referred to Council for noting.

A vacancy for an independent member of the Audit Committee occurred when Dr Felicity Barr's term expired on 7 November 2018. Dr Barr was a member of the Audit Committee since 7 November 2012.

The General Manager appointed a selection panel to oversee the recruitment process which included the Internal Auditor (panel coordinator), Director, Planning and Environment and Chief Internal Auditor, Central Coast Council.

An expression of interest (EOI) was advertised on Council's recruitment webpage on 18 October 2018, as well as being advertised via SEEK, LinkedIn, the Newcastle Herald, local papers, the Institute of Internal Auditors, Australian Institute of Company Directors, Women On Boards and the Local Government Internal Auditors Network during October and November 2018. The EOI closed on 4 November 2018 with 15 applications received.

General Manager's Unit

Report No. GMU25/2018

General Manager's Unit



REPORT/PROPOSAL

Following the closing date, and in accordance with Councils recruitment protocols, the selection panel independently assessed each application against the selection criteria listed in the expression of interest. The panel met to determine the shortlist for interviews based upon the assessments made and five suitable candidates were interviewed between 20 and 27 November 2018. One interview was held via Skype and the other four were in person. Following the interview process, and after considering reference checks, a preferred candidate was recommended to the General Manager.

The position is for the period from February 2019 to December 2021 with a remuneration of \$7,500 per annum (ex GST), including travel, for all meetings.

The preferred candidate's CV is provided as a confidential enclosure for Councillors information.

The appointment will be made using an offer and acceptance letter, following a satisfactory police history check.

OPTIONS

Nil

CONSULTATION

The Executive Team provided direction with regard to the selection process.

STRATEGIC LINKS

a. Delivery Program

The Audit and Risk Committee is a crucial part of the organisation's governance framework. Appointment of an independent member will enable the committee continue to operate effectively. This is in line with the community's desired outcome of: "*Civic Leadership and Effective Governance.*"

b. Other Plans

NIL

IMPLICATIONS

a. Policy and Procedural Implications

The selection process was conducted in accordance with section 5.4 of the Audit and Risk Committee Charter.

b. Financial Implications

Funds are available within the internal audit budget.

General Manager's Unit

Report No. GMU25/2018

General Manager's Unit



c. Legislative Implications

While not currently required, recent changes to the *Local Government Act 1993* mandate that Councils are to have an Audit Risk and Improvement Committee by March 2021.

d. Risk Implications

NIL

e. Environmental Implications

NIL

f. Other Implications

NIL

CONCLUSION

Council undertook a merit based selection process to appoint a replacement member to the Audit and Risk Committee. This report provides information to Council about that process and the preferred candidate.

ENCLOSURES

- 1** Recommended Applicant Curriculum Vitae - *This matter is considered to be confidential under Section 10A(2) (a) of the Local Government Act, as it deals with personnel matters concerning particular individuals.*

General Manager's Unit
Report No. GMU26/2018
General Manager's Unit



SUBJECT: *MINUTES OF THE AUDIT AND RISK COMMITTEE MEETING
HELD 5 NOVEMBER 2018*

RESPONSIBLE OFFICER: *Internal Auditor - Ian Lyall*

RECOMMENDATION

That the Minutes of the Audit and Risk Committee Meeting held 5 November 2018 be adopted as a resolution of the Ordinary Council.

PRESENT: Mrs Jennifer Hayes – Independent Chair
Mr Stephen Coates – Independent Member
Dr Felicity Barr – Independent Member
Mayor Pynsent
Councillor Dunn
Councillor Lyons – Alternate Member

IN ATTENDANCE: Mr Stephen Glen – General Manager
Mr Gareth Curtis – Director of Planning & Environment
Mr Justin Fitzpatrick-Barr – Director Works & Infrastructure
Ms Darrylen Allen – Human Resources Manager
Mr Ian Lyall – Internal Auditor
Mr Andrew Glauser – Finance and Administration Manager (left meeting at 2:30pm)
Ms Vivian Waugh – Minute Taker

INVITEES: Mr Paul Grosbernd – Management Accountant
Ms Catherine Bradley – Infrastructure Accountant
Mr Wayne Reid – Business Partner and Service Accountant
Mr Manav Sharma – Financial Accountant

APOLOGIES

Mr Robert Maginnity – Director Corporate & Community Services
Mr Mr James Sugumar – NSW Audit Office
Mr Furqan Yousuf - NSW Audit Office

ACKNOWLEDGEMENT OF COUNTRY

The Chair delivered an Acknowledgement of Country.

CONFIRMATION OF MINUTES

MINUTES:

MOTION

Moved: Dr Felicity Barr
Seconded: Stephen Coates

RESOLVED that the Minutes of the Audit & Risk Committee held on 21 August 2018, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

MINUTES:

MOTION

Moved: Mayor Pynsent
Seconded: Stephen Coates

RESOLVED that the Minutes of the Special Audit & Risk Committee held on 16 October 2018, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

DISCLOSURES OF INTEREST

COMMITTEE DISCLOSURE OF INTEREST NO. ACCDI5/2018

SUBJECT: DISCLOSURES OF INTEREST

That any interests and reasons for declaring such interest in the matters under consideration at this meeting are now disclosed.

NIL

LISTED MATTERS

LISTED MATTERS - COMMITTEE NO. ACCLM37/2018

SUBJECT: QUARTERLY BUDGET REVIEW STATEMENTS - SEPTEMBER 2018

MOTION Moved: Jennifer Hayes **Seconded:** Dr Felicity Barr

That the Audit and Risk Committee receive and endorse the September 2018 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. ACCLM38/2018

SUBJECT: WORK HEALTH AND SAFETY GAP ANALYSIS REVIEW

MOTION Moved: Mayor Pynsent **Seconded:** Jennifer Hayes

1. That the Work Health and Safety Management System – Gap Analysis Review be received and the agreed management action plan be noted.
2. That the WHS (AS4801 Compliance) Audit as contained within the Council's Annual Audit Plan 2015/16 Audits, be considered finalised as a result of the Work Health and Safety Management System – Gap Analysis.
3. That a further report be presented to the Audit and Risk Committee in May 2019 providing an update on the status of the redevelopment of the Integrated Risk Management System (IRMS).

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM39/2018

SUBJECT: PLANNING REFORM FUND AUDIT

MOTION Moved: Jennifer Hayes **Seconded:** Stephen Coates

That the Audit and Risk Committee receives and notes the report on the audit of the Planning Reform Fund.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM40/2018

SUBJECT: DRIVES24 INTERNAL AUDIT

MOTION Moved: Mayor Pynsent **Seconded:** Stephen Coates

That the internal audit report on DRIVES24 be received and noted.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM41/2018

SUBJECT: INTERNAL AUDIT REPORT OCTOBER 2018

MOTION Moved: Mayor Pynsent **Seconded:** Jennifer Hayes

1. That the Audit and Risk Committee notes the October 2018 Internal Audit Report.
2. That the Audit and Risk Committee confirms the removal of the Visitor Information Centre audit from the Annual Audit Plan.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM42/2018

SUBJECT: AUDIT COMMITTEE INDICATIVE CALENDAR

MOTION Moved: Stephen Coates **Seconded:** Jennifer Hayes

That the Audit Committee notes the indicative Calendar.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM43/2018

SUBJECT: AUDIT COMMITTEE OUTSTANDING ACTIONS REPORT

MOTION Moved: Dr Felicity Barr **Seconded:** Jennifer Hayes

That the Audit and Risk Committee notes the outstanding actions report.

CARRIED UNANIMOUSLY

CORRESPONDENCE

NIL

GENERAL BUSINESS

PRESENTATION TO DR FELICITY BARR

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

That the Committee recognise the contribution of Dr Barr since the inception of the Committee and thanked Dr Barr on behalf of Council and the wider community.

CARRIED UNANIMOUSLY

The Meeting Was Declared Closed at 3:15 pm

ENCLOSURES

There are no enclosures for this report.

Planning and Environment

Report No. PE79/2018

Planning and Environment



SUBJECT: *SECTION 4.55(2) APPLICATION PROPOSING TO MODIFY DEVELOPMENT CONSENT NO. 2011/836 WHICH GRANTED APPROVAL FOR A 62 LOT SUBDIVISION*

RUBY STREET, BELLBIRD

RESPONSIBLE OFFICER: *Development Services Manager - Janine Maher*

APPLICATION NUMBER:	8/2011/836/3
PROPOSAL:	Section 4.55(2) Application proposing to modify Development Consent No. 2011/836 which granted approval for a 62 lot subdivision. The Section 4.55(2) Application seeks to alter the approved phasing and subdivision layout, defer the construction of infrastructure (road and bridge) in Abbotsford Street, and reduce monetary contributions/consider offset for monetary contributions on the basis of material public benefit.
PROPERTY DESCRIPTION:	Lot 1 Deposited Plan 327785, Lot 1 Deposited Plan 328498 and Lot 1 Deposited Plan 597226
PROPERTY ADDRESS:	Ruby Street, Bellbird
ZONES:	R2 Low Density Residential, SP2 Infrastructure and RE1 Public Recreation and under the Cessnock Local Environmental Plan 2011
OWNER:	Bellbird Ridge Pty Ltd
APPLICANT:	Johnson Property Group Pty Ltd

RECOMMENDATION

1. That the Section 4.55(2) Application proposing to modify Development Consent No. 2011/836, seeking to alter the approved phasing and subdivision layout, defer the construction of infrastructure (road and bridge) in Abbotsford Street, and reduce monetary contributions/consider offset for monetary contributions on the basis of material public benefit, at Ruby Street Bellbird, be deferred.
2. That Council note the advice received in relation to prospects of success and costs associated with defending NSW Land and Environment Court Appeal No. 2018/319751.
3. That, in relation to NSW Land and Environment Court Appeal No. 2018/319751, Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

4. That, in the event Council resolves to defend the appeal, decision-making in respect of the appeal be delegated to the General Manager over the Christmas/New Year (2018/19) recess period.

REASON FOR REPORT

Council is in receipt of a Class 1 appeal in the NSW Land and Environment Court (Reference No. 2018/319751) against Council's deemed refusal of the Section 4.55(2) Application.

This matter is referred to Council for consideration rather than determination.

For the reasons set out in the report, this matter is referred to Council to enable Council to determine how it wishes to proceed in respect of the appeal, and grant necessary delegations.

EXECUTIVE SUMMARY

Council is in receipt of a Section 4.55(2) Application (8/2011/863/3) proposing to modify Development Consent No. 2011/863 which granted approval for 62 Lot subdivision (60 residential allotments, one drainage reserve and a residue lot) at Ruby Street, Bellbird. The Section 4.55(2) Application seeks to alter the approved phasing and subdivision layout, defer the construction of infrastructure (road and bridge) in Abbotsford Street, and reduce monetary contributions/consider offset for monetary contributions on the basis of material public benefit.

The Section 4.55(2) 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 Section 4.55(2) Application was publicly exhibited and no submissions were received. However, it is noted that the Application was initially lodged as a Section 4.55(1A) Application. In response to a concern raised by Council's legal representatives in respect of the categorisation of the Application as a (1A), the applicant subsequently opted to amend the categorisation to a Section 4.55(2) Application. Due to this change, it is necessary to re-exhibit the Section 4.55(2) Application. In this regard, the Application is being re-exhibited between 12 December 2018 and 2 February 2019 (extended exhibition period due to Christmas/New Year period, in accordance with Clause 16 of Schedule 1 of the *Environmental Planning and Assessment Act, 1979*). It is noted that, until such time as the Section 4.55(2) Application is exhibited, and any submissions considered, Council has no ability to determine the application by way of either approval or refusal.

A Class 1 appeal was filed in the NSW Land and Environment Court on 19 October 2018 against Council's deemed refusal of the Section 4.55(2) Application.

Planning and Environment

Report No. PE79/2018

Planning and Environment



The Section 4.55(2) Application proposes to amend Condition 32, to defer the Abbotsford Street road and bridge works until Stage 3B. This will effectively remove the works from the development consent and will result in construction and residential traffic, traversing an indirect route, that will unnecessarily impact on amenity along the route, thereby reducing traffic efficiency. The significance and acceptability of these impacts has not been fully evaluated, however there are notable, valid concerns in respect of this matter. Consideration is presently being given to whether or not the changed traffic arrangements result in a development which is not 'substantially the same' as the original development. Further traffic advice is being obtained for this purpose.

The Section 4.55(2) Application also includes the proposed reduction in monetary contributions. It is considered that such reduction has not been suitably justified. Council is undertaking a review of its contributions for the Bellbird North contributions plan but has not fully determined the extent and the manner in which the review will impact on the current rates. Further, in light of a previous challenge to the contributions levied on development pursuant to the Bellbird North Contributions Plan, it is considered appropriate to investigate this issue further.

The Section 4.55(2) Application requests the consideration of the Abbotsford Street road and bridge construction works as works in kind (WIK), however the works facilitate the proposed and future land release and do not provide a material public benefit that is considered to be appropriate to be used to justify a reduction in monetary contributions.

Based upon the need to renotify the Section 4.55(2) Application and the assessment to date, in particular the need to further consider amenity impacts associated with the reconfiguration of the access route and the proposed changes to the s7.11 contributions, it is recommended that the Section 4.55(2) Application be deferred, and that Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

Planning and Environment

Report No. PE79/2018

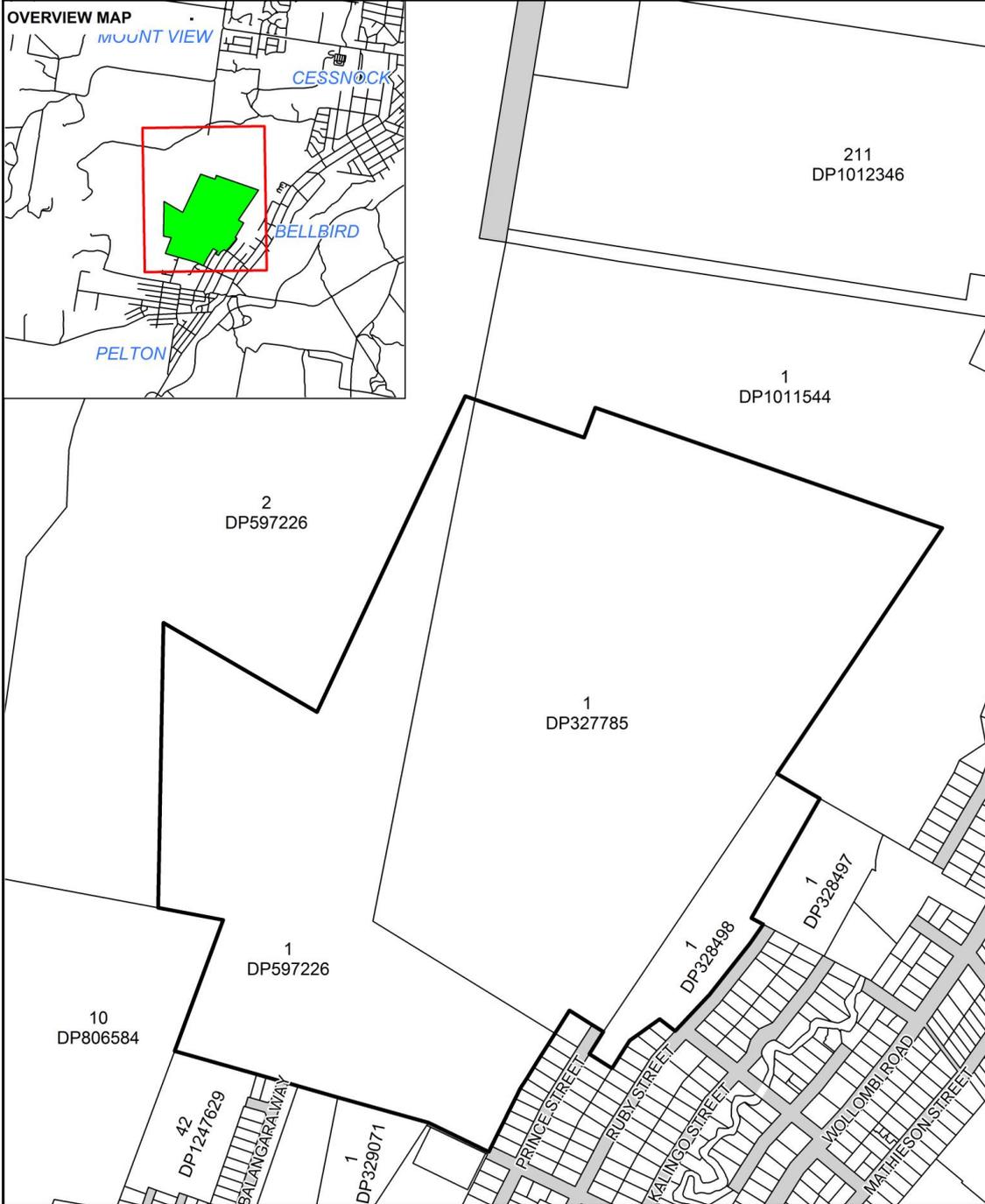
Planning and Environment



LOCATION MAP

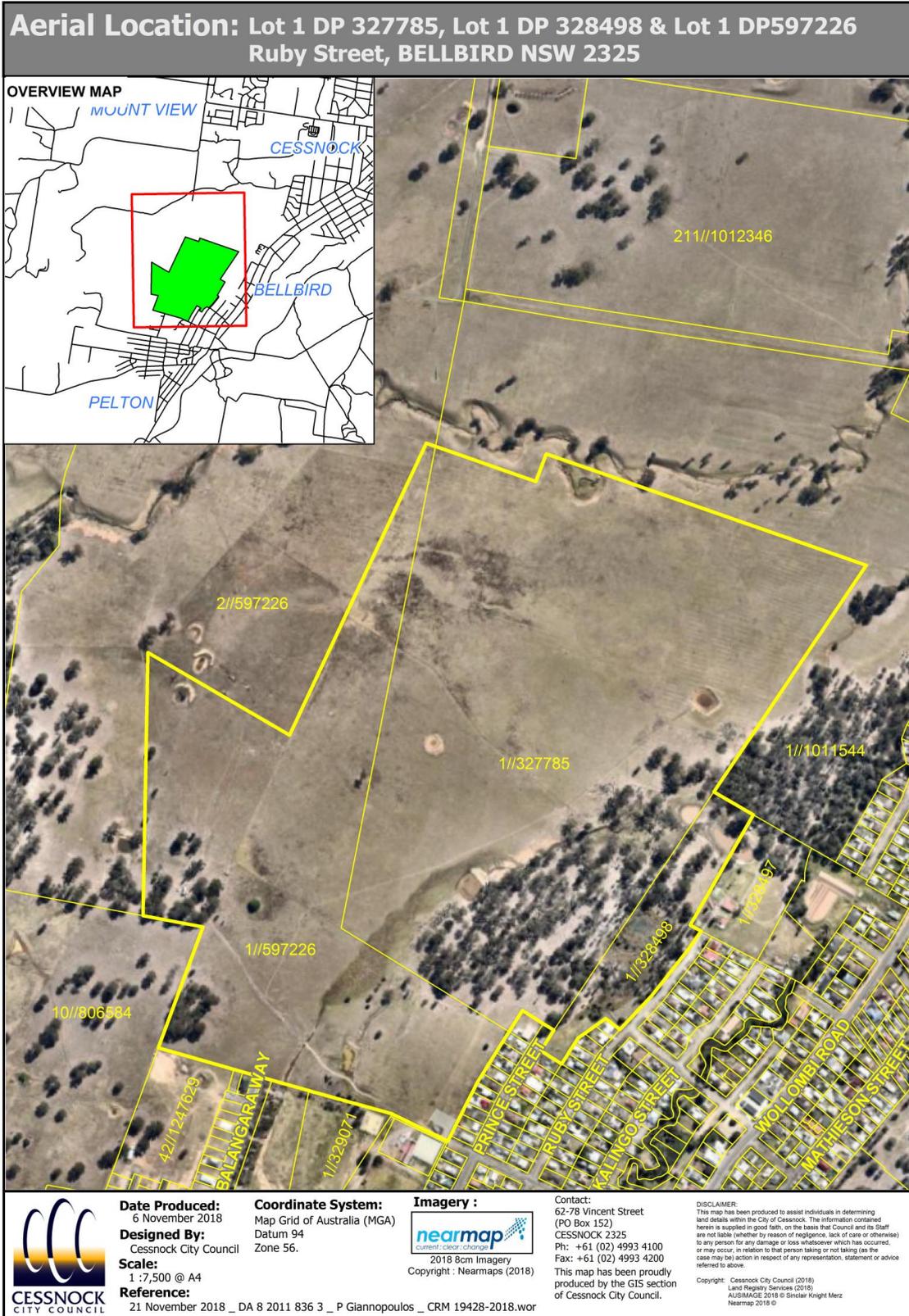


**Property Location: Lot 1 DP 327785, Lot 1 DP 328498 & Lot 1 DP597226
Ruby Street, BELLBIRD NSW 2325**



<p>CESSNOCK CITY COUNCIL</p>	<p>Date Produced: 6 November 2018</p>	<p>Coordinate System: Map Grid of Australia (MGA) Datum 94 Zone 56.</p>	<p>Contact: 62-78 Vincent Street (PO Box 152) CESSNOCK 2325 Ph: +61 (02) 4993 4100 Fax: +61 (02) 4993 4200</p>	<p><small>DISCLAIMER This map has been produced to assist individuals in determining land details within the City of Cessnock. The information contained herein is supplied in good faith, on the basis that Council and its Staff are not liable (whether by reason of negligence, lack of care or otherwise) to any person for any damage or loss whatsoever which has occurred, or may occur, in relation to that person taking or not taking (as the case may be) action in respect of any representation, statement or advice referred to above.</small></p> <p><small>Copyright: Cessnock City Council (2018) Land Registry Services (2018) AUSIMAGE 2018 © Sinclair Knight Merz Neatmap 2018 ©</small></p>
	<p>Designed By: Cessnock City Council</p>	<p>This map has been proudly produced by the GIS section of Cessnock City Council.</p>		
	<p>Scale: 1 : 7,500 @ A4</p>			
	<p>Reference: 21 November 2018 _DA 8 2011 836 3 _P Giannopoulos _CRM 19428-2018.wor</p>			

AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site consists of three allotments, and is commonly known as Ruby Street, Bellbird. The unnumbered properties are legally described as Lot 1 Deposited Plan 327785, Lot 1 Deposited Plan 328498 and Lot 1 Deposited Plan 597226.

The subject site is located on the western side of Ruby Street. The site has a frontage to Ruby Street, Princess Street and Heddon Street. The site has an overall site area of 80.25ha.

The works associated with the approved subdivision the subject of Development Consent No. 2011/836 are currently being carried out by the applicant. The site is occupied by an unauthorised sales office.

The subject site is located to the north of Bellbird Village. Bellbird Village straddles the north and south of Wollombi Road, this being the main arterial road that links Cessnock to rural land and a series of mining/rural villages generally to the west of Cessnock. Bellbird is a relatively low density village characterised by mainly single-storey detached dwellings, with a small commercial centre. To the north-west of the subject site is vacant rural land that has been rezoned for residential purposes and is designed to include commercial and community facilities. This area is known as Bellbird North. In terms of recent activity within Bellbird North, a newly constructed subdivision to the south west of the site adjacent to Tennant Street, has been developed.

The site contains a ridgeline that runs from the southwest to northeast with gradients of approximately 4 degrees away from the ridgeline. The site is vacant of buildings and generally clear of vegetation, except along and adjacent to the waterways where there is native riparian vegetation.

CLASS 1 APPEAL IN THE NSW LAND AND ENVIRONMENT COURT

As outlined above, Council is in receipt of a Class 1 appeal in the NSW Land and Environment Court (Reference No. 2018/319751) against Council's deemed refusal of the Section 4.55(2) Application.

(2)The applicant for the appeal is 'Johnson Property Group'.

In order to assist Council in determining its position on the matter, Council solicitors were requested to provide advice on prospects of success and costs, details of which are attached as a confidential enclosure to this report.

In consideration of receipt of the appeal, it is appropriate for Council to consider advice in respect of the matter, and determine its position to either defend or not defend the appeal. It is noted that Council's position will be dependent upon determination of the Section 4.55(2) Application, i.e:

- In the event Council resolves to refuse the Application, Council will need to defend the appeal.
- Finally, in the event Council resolves to defer the Application as per the recommendation in this report, Council can authorise the General Manager to defend

the appeal and negotiate with the developer, and if appropriate, enter into a Section 34(3) Agreement.

In the event Council resolves to defend the appeal, Council staff are available to give evidence in respect of the matter. However, given the nature of the issues involved (traffic and the appropriate apportionment for s7.11 contributions) and the fact that similar issues have been considered by external consultants in a previous appeal involving a development nearby at Bellbird North, it is considered appropriate to retain these experts as they already have a sound knowledge of the issues.

Given the state of the assessment and the need to re-advertise the Section 4.55(2) Application, this report recommends that Council defer determination of the application, authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

BACKGROUND AND DETAILS OF THE SECTION 4.55(1A) APPLICATION

Development Application No 8/2011/836/1 was approved on 20 December 2013 for the purpose of a 62 lot subdivision (60 residential allotments, one drainage reserve and a residue lot). The development consent was modified on the 18 July 2014 via approval of a Section 96 (at the time, under the *Environmental Planning and Assessment Act, 1979*) Application (8/2011/836/2) to alter the layout of the subdivision including lot sizes; adjust road widths; and modify drainage basins.

The Section 4.55(2) Application, proposes the following modifications:

Revised staging as follows:

- Phase 1
 - Lots 101 – 124 (23 residential lots)
 - New roads
 - Bulk earthworks
 - Stormwater management
 - Installation of services

- Phase 2
 - Lots 201 – 220 (20 residential lots)
 - New roads
 - Bulk earthworks
 - Installation of services

- Phase 3A
 - Lots 301 – 317 (17 residential lots)
 - New roads
 - Bulk earthworks
 - Installation of services

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- Phase 3B
 - Lot 101 and a residue lot
 - Connection to, and upgrade of, Abbotsford Street road alignment and bridge.

The applicant’s revised staging plan is intended to enable Phases 1 - 3 to connect to the existing road network along Prince Street. A traffic assessment provided by the applicant indicates that the existing road network is able to accommodate the increased traffic volumes likely to be generated by the subdivision.

It is proposed that upgrade works along Abbotsford Street, which are presently required to be provided as part of Stage 1 of the development, including the bridge upgrade to a two-way/two-lane bridge, be carried out in conjunction with Stage 3B. These upgrade works are required to facilitate connectivity to future stages of the Bellbird North release area.

HISTORY

The history of the Section 4.55(2) Application, is summarised in the following table:

Date	Action
2 September 2018	Section 4.55(1A) Application submitted to Council.
10 September 2018	Internal and external referrals sent. Note: Development Engineering referral not sent at this time, pending the completion of Council’s Flooding Engineering referral.
19 September 2018 to 22 October 2018	Section 4.55(1A) Application publicly exhibited.
13 October 2018	Flooding Engineering referral completed. Application referred to Council’s Development Engineer.
27 September 2018	NSW Rural Fire Service responds, advising that no amendment to the previously issued General Terms of Approval, are required.
29 September 2018	NSW Natural Resources Access Regulator (formerly Office Of Water) responds, advising that no amendment to the previously issued General Terms of Approval, are required.
19 October 2018	Class 1 appeal filed in the NSW Land and Environment Court (Reference No. 2018/319751) against Council’s deemed refusal of the Section 4.55(1A) Application.
6 November 2018	Development Engineering referral response completed.
19 November 2018	
4 December 2018	Confirmation received from applicant that leave is being sought from the NSW Land and Environment Court to amend the categorisation of the Application from a (1A) to a (2). On this basis, re-exhibition of the Section 4.55(2) Application is required.
12 December 2018 – 2 February 2019	Section 4.55(2) Application publicly exhibited (extended exhibition period due to Christmas/New Year period, in accordance with Clause 16 of Schedule 1 of the <i>Environmental Planning and Assessment Act, 1979</i>).

APPLICANT'S POSITION IN RELATION TO THE SECTION 4.55(2) APPLICATION

The applicant lodged a submission in support of the Section 4.55(2) Application, which is included as an enclosure to this report. The applicant's comments and the officer's responses, are outlined below:

1. Amendment to the subdivision layout

The proposed and approved subdivision layouts are annexed as enclosures to this report.

A comparison of the two layouts reveals that the proposed subdivision layout the subject of the Section 4.55(2) Application includes the identification of sewer and drainage easements involving phase one (referred to on the plans as 'stage' one) and minor adjustments to allotments involving all the lots in phase one except for Lot 102, and Lots 115-118. The proposed allotments retain the originally approved layout and the allotments are generally similar sized and shaped.

These changes may only be described as minor, inconsequential amendments.

2. Amend 'staging' of development

The development has not been approved as a staged development under Section 4.22 of the *Environmental Planning and Assessment Act, 1979* and therefore does not constitute formal staging. Whilst the proponent makes reference to 'stages' this report uses the term 'phases' to ensure that the development is not misunderstood to be a staged development under the Act.

The approval provides for three phases, being phases 1, 2 and 3. The modification proposes to make phase 3 into 3A and to include an additional phase to be known as 3B.

The table below demonstrates the adjustment to the phasing proposed:

Phase	Lots approved original consent (excludes residue allotment)	Proposed lots (excludes residue allotment)
1	24 (including 1 drainage reserve)	23
2	20	20
3/3A	17	17
3B	0	1 (drainage reserve)
Total	61 (including 1 drainage reserve)	61 (including 1 drainage reserve)

The purpose and role of the drainage reserve has become unclear. The original consent makes reference to the dedication of an allotment for drainage purposes. The drainage allotment is incorrectly referenced in the consent conditions. The consent states that proposed Lot 3001 is to be dedicated as a drainage reserve. However, since the consent

was granted, Council has approved drainage construction plans that are outside the area originally nominated for development, that is, the drainage detention basins are located on the residue lot. This creates a situation where the lot to be created in phase three, cannot be built on but also there is no meaningful incentive for the lot to be released, and there is no reason for the developer to not withhold the release of the lot and therefore delay the construction of Abbotsford Street road and bridge works indefinitely.

3. Amendment to Condition 32 to require works to be carried out within Abbotsford Street as part of Stage 3B

Condition 32 of the consent reads as follows:

32 The registered proprietor of the land shall construct the following works within Abbotsford Street in accordance with Council's 'Engineering Requirements for Development'. The design is to be submitted on a set of plans, four (4) copies of which shall be submitted to and approved by Council prior to release of the s138 Roads Act approval.

- i) Widen the existing bridge / box culvert to allow for two way flow of traffic.*
- ii) Where required construct and gravel Abbotsford Street to allow for a minimum 8 metre wide carriageway.*
- iii) Where required widen the existing wearing course to a minimum 6 metre wide, 2 coat bitumen seal.*
- iv) Topdress and turf footways*
- v) Construct drainage works where necessary.*

Note: *Upgrading works in Abbotsford Street are to be completed in conjunction with Stage 1 of the proposed development.*

The applicant has requested that the condition be amended to require the works as part of 'stage' 3B. It should be noted that 'stage' 3B is the final phase of the development and does not create any developable residential lots. Not only is it unlikely that the developer will undertake the road and bridge works for the release of a single, undevelopable allotment, there can be no justified reason or nexus for Council to require the works at that time.

The applicant has included a traffic report that examines the road capabilities and the intersection capacities in relation to the deferral of the Abbotsford Street road works and bridge. The report provides a technical assessment but does not consider the practical amenity impacts associated with the deferral of the requirement. The nature of the streets that are located between the development site and the nearest main road (Wollombi Road) are low traffic, relatively quiet (from a traffic perspective) residential (suburban) streets that enjoy a level of amenity that will potentially be significantly altered as a result of construction and residential traffic. That is, construction vehicles associated with construction works for the subdivision, but also for the construction of future dwellings.

There will also be residential traffic once the newly created lots within the subdivision have been occupied. Whilst it is not possible to avoid the impacts on the residents, it is considered that the impacts should be minimised. In this regard, minimisation of impacts could be achieved by ensuring that the most direct route between the new subdivision and Wollombi Road, be created.

It is noted that further consideration is currently being given to this issue.

4. Reduction in Section 7.11 (previously S94) contributions

The applicant has requested that monetary contributions be reduced.

Part of the applicant's submission refers to components of the contributions plan, being the land acquisition/dedication, open space/recreational/sporting facilities, community facilities and Road and Traffic Works. The applicant's contentions are not directed at Council's calculations or the contribution's legality, but question the basic foundations of the plan.

The current Section 7.11 contribution was imposed pursuant to a properly constituted, adopted plan. That is, it underwent exhibition as required and contains all the components that are required for the plan to be valid and applicable. It is not considered that the material relied upon by the applicant demonstrates that the Section 7.11 condition is not reasonable.

Whilst Council and the Court has the power to amend consent conditions, it needs to be satisfied that the condition is unreasonable and the reduction proposed is reasonable.

The applicant's justification for the reduction in respect of the contribution payable for roads and traffic relies upon material prepared for a modification on a nearby property that was determined via the NSW Land and Environment Court. The proponent makes reference to a matter that was determined through a confidential process. It is inappropriate for this report to reveal details of the case and the two applications cannot be directly compared.

The applicant has also requested that the construction of Abbotsford Street road and bridge be offset from the contributions on the basis of material public benefit. Clause 2.2.3 of the Bellbird North contribution plan states:

'A material public benefit (MPB) may be offered by the developer in part or full satisfaction of a condition requiring the payment of a monetary contribution or the dedication of land. A MPB may include the provision of work that is not scheduled within a contributions plan. Council may accept the provision of a material public benefit that is not nominated in the works schedule, if it can be justified why it is of equivalent or greater benefit to the community compared to what has been identified under the Plan.'

The proposed road works are connected to the development proposal. That is, the road and the bridge construction works provide for the connection for the current development with Wollombi Road via Abbotsford Street. It is considered that they have a direct connection with the proposed subdivision and urban release area and are appropriate to be dealt with as an offsite works condition. The applicant's approach is not supported in this instance because if Council were to vary the contributions, it would be at the expense of works identified in the contributions plan. Ultimately this would result in underfunding of the contributions plan and the shift of the costs of infrastructure that directly benefits the development upon the community at large. Alternatively, the provision of infrastructure would be reduced, neither of these options would be in the public interest.

ASSESSMENT

Environmental Planning and Assessment Act 1979 – Section 4.55

Section 4.55 Modifications

Section 4.55(2) of the EP&A Act states: -

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment:

The following is noted in response to the above:

- (a) The Section 4.55(2) Application proposes minor changes to the layout of the approved subdivision.

As outlined previously in this report, consideration is presently being given to whether or not the changed traffic arrangements result in a development which is not 'substantially the same' as the original development. Further traffic advice is being obtained for this purpose.

- (b) Relevant approval bodies have been consulted, and no objection has been raised to the Section 4.55(2) Application.

- (c) The Section 4.55(2) Application was required to be publicly exhibited in accordance with Cessnock Development Control Plan 2010.

As outlined previously, the application is being re-exhibited between 12 December 2018 and 2 February 2019 (extended exhibition period due to Christmas/New Year period, in accordance with Clause 16 of Schedule 1 of the *Environmental Planning and Assessment Act, 1979*).

- (d) It will be necessary to await the conclusion of the exhibition period to ascertain whether submissions are lodged in respect of the Section 4.55(2) Application.

Environmental Planning and Assessment Act 1979 – Section 4.15(1)

Section 4.55(3) of the *Environmental Planning and Assessment Act 1979* specifies that ‘*in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application*’.

The following matters are relevant to the assessment of the Section 4.55 Application:

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

The Environmental Planning Instruments that relate to the Section 4.55(2) Application are:

1. State Environmental Planning Policy 55 – Remediation of Land
2. State Environmental Planning Policy 44 – Koala Habitat Protection
3. Cessnock Local Environmental Plan 2011

An assessment of the Section 4.55(2) Application under the Environmental Planning Instruments is provided below:

1. State Environmental Planning Policy 55 – Remediation of Land

The matter of compliance with the State Environmental Planning Policy 55 – Remediation of Land, is not relevant to consideration of this Section 4.55(2) Application, as the land the subject of the subdivision remains the same.

2. State Environmental Planning Policy 44 – Koala Habitat Protection

The matter of compliance with the State Environmental Planning Policy 44 – Koala Habitat Protection, is not relevant to consideration of this Section 4.55(2) Application, as the approved land affected by clearing remains the same and the modification proposed presents no other consequences for koala habitat.

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3. Cessnock Local Environmental Plan 2011

3.1 Permissibility

The subject site is zoned part R2 Low Density Residential, SP2 Infrastructure and RE1 Public Recreation under the provisions of Cessnock Local Environmental Plan 2011 (CLEP).

The matter of permissibility of the development is not relevant to consideration of the Section 4.55(2) Application, as the approved land use remains the same.

3.2 Objectives

The matter of zoning objectives is not relevant to consideration of the Section 4.55(2) Application, as the approved land use remains the same and the overall development will therefore continue to be consistent with the objectives of the zone.

3.3 Relevant Clauses

There are no clauses within the Cessnock LEP 2011 considered relevant to the assessment of the Section 4.55(2) Application

(a)(ii) *The Provisions of any proposed 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 Planning Secretary 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 Section 4.55(2) Application.

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

Cessnock Development Control Plan 2010

The Section 4.55(2) Application seeks to make changes to the approved development, partly in respect of deferring works/upgrades associated with Abbotsford Street and bridge. Such changes are not consistent with the road hierarchy adopted within Chapter E.11 Bellbird North of Cessnock Development Control Plan 2010.

(a)(iiia) *The provision of any Planning Agreement that has been entered into under Section 7.4, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4*

No such agreement has been proposed as part of the Section 4.55(2) Application.

(a)(iv) *The provisions of the regulations*

There are no matters prescribed by the Regulations that apply to the Section 4.55(2) Application.

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

As outlined previously in this report, consideration is presently being given to whether or not the changed traffic arrangements result in modified impacts, particular those associated with traffic distribution. Further traffic advice is being obtained for this purpose.

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

The site is considered suitable for a residential subdivision of this nature.

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

The Section 4.55(2) Application was publicly exhibited between 19 September 2018 and 22 October 2018 and no submissions were received. However, due to an administrative error, it was necessary to re-exhibit the Section 4.55(2) Application. In this regard, the Application is being re-exhibited between 12 December 2018 and 2 February 2019 (extended exhibition period due to Christmas/New Year period, in accordance with Clause 16 of Schedule 1 of the *Environmental Planning and Assessment Act, 1979*).

It will be necessary to await the conclusion of the exhibition period to ascertain whether submissions are lodged in respect of the Section 4.55(2) Application.

(e) *The public interest*

The public interest is served through the detailed assessment of this Section 4.55(2) Application under the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, Environmental Planning Instruments and Council Policies.

As previously stated, there is concern in respect to the impacts of the infrastructure delivery, mainly that the proposed road network differs from that adopted in the Cessnock Development Control Plan and that this has unplanned amenity impacts. Furthermore, there is concern that if Council were to reduce the monetary contributions, it would be at the expense of works identified in the contributions plan. Ultimately this would result in underfunding of the contributions plan and the shift of the costs of infrastructure that directly benefits the development, to the community at large.

Based on the above assessment, it is considered that approval of the Section 4.55(2) Application would be contrary to the public interest.

SECTION 7.11 CONTRIBUTIONS

The Section 4.55(2) Application impacts on the Section 7.11 Contributions initially imposed on the development consent.

On the information available, the reduction in contributions is not properly founded. Council cannot be satisfied that the reduction proposed is reasonable.

INTERNAL REFERRALS

The Section 4.55(2) Application was referred to the following Council officers for comment:

Officer	Comment
Principal Development Engineer	<p>The submitted traffic report provided demonstrates that the roads and intersections are capable of accepting the anticipated traffic loads.</p> <p>The application requires input from Council's Infrastructure staff/Local Development Committee prior to finalisation of comments.</p>
Strategic Planning Manager	<p>The Bellbird North Contributions Plan is a current and adopted contributions plan.</p> <p>Council officers have identified that the plan requires improvements, and as such, the plan is currently under review.</p>
Local Development Committee/Infrastructure	<p>At the time of writing this report, comments had not been provided.</p>

EXTERNAL REFERRALS

The Section 4.55(2) Application was referred to the following external agencies for comment:

External Agency	Comment
NSW Rural Fire Service	<p>The Section 4.55(2) Application was assessed and no amendment to the previously issued General Terms of Approval, were required.</p>
NSW Natural Resources Access Regulator (formerly Office Of Water)	<p>The Section 4.55(2) Application was assessed and no amendment to the previously issued General Terms of Approval, were required.</p>

OPTIONS IN RESPECT OF THE CLASS 1 APPEAL IN THE NSW LAND AND ENVIRONMENT COURT

As outlined previously, Council is in receipt of a Class 1 appeal in the NSW Land and Environment Court (Reference No. 2018/319751) against Council's deemed refusal of the Section 4.55(2) Application.

The following options are provided for Council's consideration in respect of the Class 1 Appeal:

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1. Defend the appeal. This will initially involve taking part in the Section 34 on-site conciliation conference on 3 June 2019. Legal costs for the Section 34 Conference would be in the vicinity of \$28,000 to \$30,000 (plus GST). As additional experts are required in respect of S7.11 monetary contribution issues, their consultancy fees will be additional to the legal costs.

If the matter is not resolved at the Conciliation Conference and proceeds to hearing, a further costs estimate will be obtained.

2. As outlined previously in this report, the Section 4.55(2) Application is currently on re-exhibition. Until such time as the Section 4.55(2) Application is exhibited, and any submissions considered, Council cannot determine the application by way of either approval or refusal.

In the event Council is of a mind to further consider the Application with a view to determining it, Council staff can refer the Application to a Council meeting following conclusion of the re-exhibition period. In the event the Application is approved, it will be necessary for the applicant to discontinue the appeal as there will be no grounds for the appeal following Council's approval of the application.

This report recommends that Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

CONCLUSION

The Section 4.55(2) Application has been assessed in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979, and all relevant instruments and policies.

The Section 4.55(2) Application proposes minor changes to the lot layout approved under the original development consent. The amendments to the layout are considered minor in nature and consistent with the originally approved development. There are amenity and public interest concerns associated with the indefinite deferral of the road and bridge works associated with Abbotsford Street. The deferral of the road and bridge works will lead to undesirable, unnecessary impacts on residents, and these impacts are considered to be inconsistent with the original development consent as well as contrary to the traffic strategy for the Bellbird North land release.

The proposed reduction in monetary contributions is a matter for further consideration. The current Section 7.11 contribution was imposed in accordance with the Bellbird North s94 Contribution Plan. The applicant needs to demonstrate that the current condition is unreasonable and that the proposed modification results in a reasonable contribution.

As outlined previously in this report, the Section 4.55(2) Application is currently on re-exhibition. Until such time as the Section 4.55(2) Application is exhibited, and any submissions considered, Council cannot determine the application by way of either approval or refusal.

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Based on the assessment, it is recommended that the Section 4.55(2) Application be deferred, and that Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

ENCLOSURES

- 1 Submitted Plans
- 2 Applicant's traffic impact assessment
- 3 Applicant's submission
- 4 Legal Advice - *This matter is considered to be confidential under Section 10A(2) (g) of the Local Government Act, as it deals with advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

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SUBJECT: ***SECTION 4.55(2) APPLICATION PROPOSING TO MODIFY DEVELOPMENT CONSENT NO. 2017/718 WHICH GRANTED APPROVAL FOR A 24 LOT RESIDENTIAL SUBDIVISION***

65 BAILEYS LANE, ABERMAIN

RESPONSIBLE OFFICER: *Development Services Manager - Janine Maher*

APPLICATION NUMBER:	8/2017/718/2
PROPOSAL:	Section 4.55(2) Application proposing to modify Development Consent No. 2017/718 which granted approval for a 24 lot residential subdivision. The Section 4.55(2) Application seeks to remove road upgrading requirements prescribed in Conditions 8, 11, 12, 18 and 19; and modify Condition 6 relating to S7.11 contributions.
PROPERTY DESCRIPTION:	Lot 790, DP 257363
PROPERTY ADDRESS:	65 Baileys Lane, Abermain
ZONE:	R5 – Large Lot Residential under Cessnock Local Environmental Plan 2011
OWNER:	Baileys Lane Pty Ltd
APPLICANT:	Baileys Lane Pty Ltd

RECOMMENDATION

1. That the Section 4.55(2) Application proposing to modify Development Consent No. 2017/718, seeking to remove road upgrading requirements prescribed in Conditions 8, 11, 12, 18 and 19; and modify Condition 6 relating to S7.11 contributions, at 65 Baileys Lane Abermain, be deferred.
2. That Council note the advice received in relation to prospects of success and costs associated with defending NSW Land and Environment Court Appeal No. 2018/309387.
3. That, in relation to NSW Land and Environment Court Appeal No. 2018/309387, Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

4. That, in the event Council resolves to defend the appeal, decision-making in respect of the appeal be delegated to the General Manager over the Christmas/New Year (2018/19) recess period.
5. That Council notify in writing the persons who made a submission with regard to the Section 4.55(2) Application, of deferral of the Application.

REASON FOR REPORT

This report is being referred to Council for the following reasons:

- The Section 4.55(2) Application was publicly exhibited and eleven (11) submissions representing eight (8) households, were received, all objecting to the Application. The submissions received constitute 'significant objection' in accordance with the provisions of Development Practice Note G3 – Delegations for Determination of Development Applications.
- Whilst this report recommends deferral rather than refusal of the Section 4.55(2) Application proposing to modify Development Consent No. 2017/718, the matter is being referred to Council as it is considered that, on the basis of the information submitted, there are aspects to the proposal that are not supported.
- Council is in receipt of a Class 1 appeal in the NSW Land and Environment Court (Reference No. 2018/309387) against Council's deemed refusal of the Section 4.55(2) Application. In situations where Council has determined the related Application the subject of the appeal, Council must determine its position in respect of the appeal in accordance with adopted delegations.

EXECUTIVE SUMMARY

Council is in receipt of a Section 4.55(2) Application (8/2017/718/2) proposing to modify Development Consent 2017/718, which granted approval for a twenty-four (24) lot residential subdivision including the construction of associated road and drainage works, and the creation of a drainage reserve. The Section 4.55(2) Application seeks to remove road upgrading requirements prescribed in Conditions 8, 11, 12, 18 and 19; and modify Condition 6 relating to S7.11 contributions.

The Section 4.55(2) 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 Section 4.55(2) Application was publicly exhibited and eleven (11) submissions representing eight (8) households, were received. Of the eleven (11) submissions received,

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all were in objection to the proposal. The issues and concerns raised in the submissions are addressed in the following report.

A Class 1 appeal was filed in the NSW Land and Environment Court on 10 October 2018 against Council's deemed refusal of the Section 4.55(2) Application.

The Section 4.55(2) Application proposes the deletion of a number of conditions imposed on the development consent requiring upgrades to the road network to service the proposed twenty-four (24) residential lots. Whilst assessment of the modifications sought has identified that Council may be in a position to partially support the applicant's request, particularly with respect to the upgrade of Baileys Lane, the removal of the requirement for the applicant to construct an intersection at Baileys Lane and Frame Drive, is not supported.

The Section 4.55 Application includes a request to remove part of the contributions imposed via Condition 6 of the development consent. Council has undertaken a review of its Residential Contributions Plan (cf S94) S7.11, particularly with respect of Abermain South, and it has been determined that the contributions have been properly applied to the development in accordance with the adopted plan.

Based on the assessment, it is recommended that the Section 4.55(2) Application be deferred, and that Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

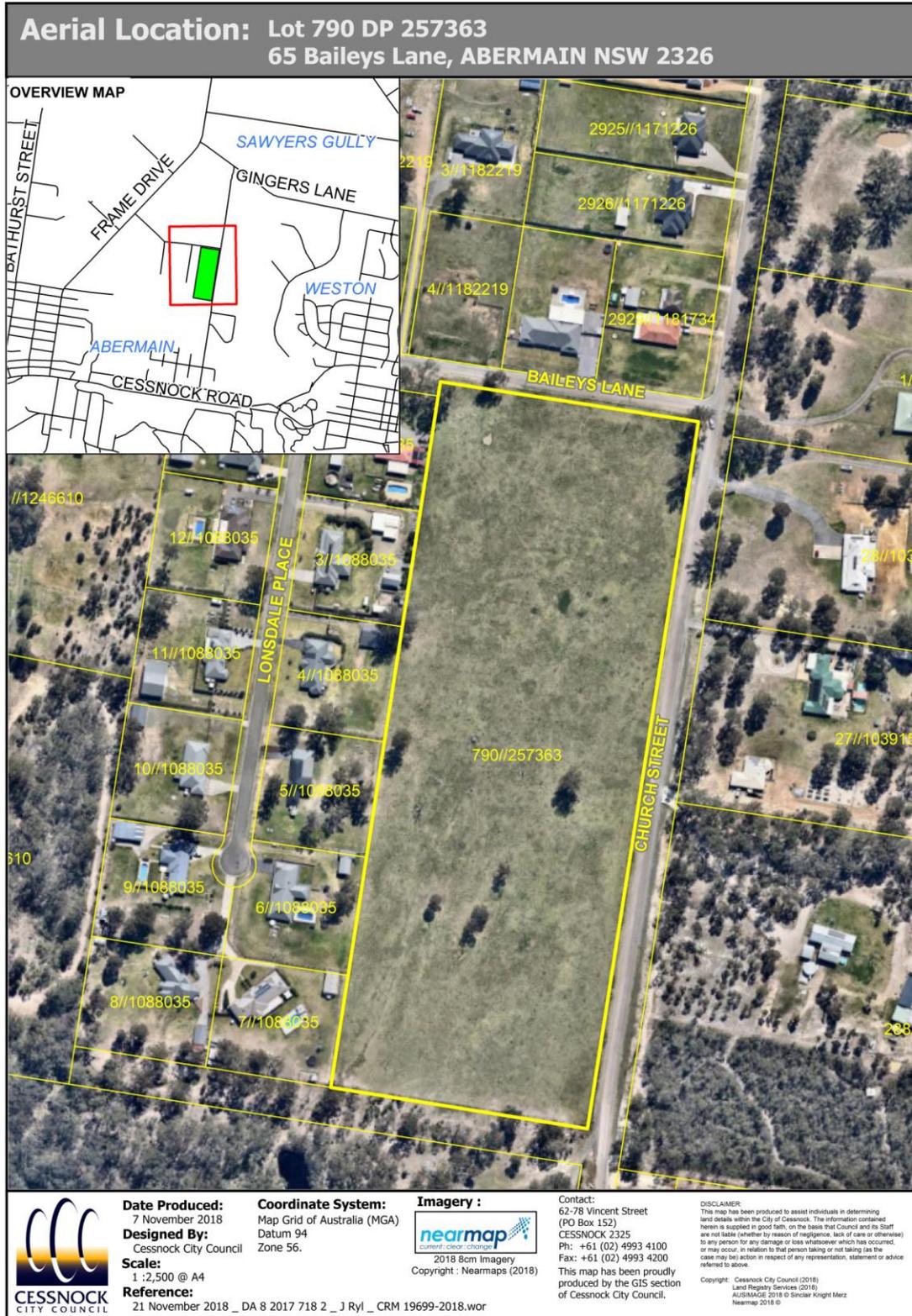


LOCATION MAP





AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 65 Baileys Lane, Abermain, and is legally described as Lot 790, Deposited Plan 257363.

The subject site is located on the south-western corner of Baileys Lane and Church Street. The site has a frontage of 141m to Baileys Lane, a depth of 390m (the Church Street frontage), and an overall site area of 5.49ha. Vehicular access to the site is proposed from both the Baileys Lane and Church Street frontages. The subject site is vacant of buildings and is sparsely vegetated.

The surrounding properties are characterised as being predominantly utilised for residential purposes. The land within the vicinity of the proposed subdivision is currently transitioning from previous agricultural land uses to rural residential. The dominant built development within the vicinity of the subject land is that of single-storey dwelling houses. Presently, a varying range of land sizes exist within close proximity to the subject land. The subject land is accessed from the wider road network by a sole access, being Baileys Lane.

CLASS 1 APPEAL IN THE NSW LAND AND ENVIRONMENT COURT

As outlined above, Council is in receipt of a Class 1 appeal in the NSW Land and Environment Court (Reference No. 2018/309387) against Council's deemed refusal of the Section 4.55(2) Application.

A telephone directions hearing took place at on 12 November 2018, whereby Council's solicitors sought to adjourn the matter until such time as the Section 4.55(2) Application could be considered/determined by Council. Notwithstanding Council's request, the matter was listed for a Section 34 Conciliation Conference on 28 May 2019.

The applicant for the appeal is 'Baileys Lane Pty Ltd'.

In order to assist Council in determining its position on the matter Council solicitors were requested to provide advice on prospects of success and costs, details of which are attached as a confidential enclosure to this report.

In consideration of receipt of the appeal, it is appropriate for Council to consider advice in respect of the matter, and determine its position to either defend or not defend the appeal.

It is noted that Council's position in the appeal will be dependent upon determination of the Section 4.55(2) Application, i.e:

- In the event Council resolves to approve the Application, it will be necessary for the applicant to discontinue the appeal as there will be no grounds for the appeal following Council's approval of the Application.
- In the event Council resolves to refuse the Application, is it likely that Council will seek to defend the appeal.
- Finally, in the event Council resolves to defer the Application as per the report recommendation, Council can authorise the General Manager to defend the appeal and negotiate with the developer, and if appropriate, enter into a Section 34(3) Agreement.



Figure 1: Map of locality depicting locations of roadworks to be deleted by modification application.

Condition No. and corresponding area	Modification sought under Section 4.55(2) Application
Area labelled 1 illustrated by yellow dashed line shows the extent of works required by Condition 8	The applicant proposes the deletion of this condition in its entirety.
Area labelled 2 illustrated by red circle identifies the location where works are required by Condition 11	The applicant proposes the deletion of this condition in its entirety.
Area labelled 3 illustrated by a solid pink line demonstrates the extent of works required by Condition 18 .	The applicant proposes the deletion of this condition in its entirety.

CONDITION 8

Modification Sought: The applicant seeks to delete Condition 8 in its entirety as the applicant is of the opinion that the requirement to undertake these works is neither fair nor reasonable, and there is insufficient nexus to justify imposition of the condition.

Condition 8 currently prescribes as follows:

8. Road Works Required

The applicant must bear the cost of construction of the following works:

- a) *Road and Stormwater Drainage works in Church Street, Frame Drive and Baileys Lane in accordance with the approved plans.*
- b) *All works within the Council road reserve as identified by the structural engineering design plans.*

Development Consent does not give approval to undertake any works on Council property. An application must be made to Council for a S138 Roads Act Approval to construct these works. Detailed engineering drawings (plans, sections and elevation views) and specifications of the works required by this Condition must accompany the application form.

The Roadworks Approval request/application must be submitted to, and approved by, Council prior to the issue of a CC.

These works must be constructed in accordance with the conditions of the Roadworks Permit and be completed prior to the issue of an OC.

Note: The cost of adjustment or relocation of any public utility service shall be borne by the owner/applicant. Where the finished levels of the new works will

result in changes to the existing surface levels, the cost of all necessary adjustments or transitions beyond the above scope of works shall be borne by the owner/applicant.

CONDITION 11

Modification Sought: The applicant seeks to delete Condition 11 in its entirety as the applicant is of the opinion that the requirement to undertake these works is neither fair nor reasonable, and there is insufficient nexus to justify imposition of the condition. Condition 11 currently prescribes as follows:

11. Road – Road Widening Requirement-Frame Drive

The registered proprietor of the land shall construct the following in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by, Council prior to issue of a CC for the civil works.

- a) *Construct a Channelised right turn treatment (CHR) on Frame Drive*
- b) *Construct a Basic Left Turn (BAL) on Frame Drive*
- c) *Place two (2) coat hot bitumen seal on new works*
- d) *Construct drainage works as necessary.*

CONDITION 18

Modification Sought: The applicant seeks to delete Condition 18 in its entirety as the applicant is of the opinion that the requirement to undertake these works is neither fair nor reasonable, and there is insufficient nexus to justify imposition of the condition.

Condition 18 currently prescribes as follows:

18. Road Upgrade – Baileys Lane

The registered proprietors of the land shall construct Baileys Lane for a distance of approximately 520m (which excludes the current unsealed sections of Baileys Lane) in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by, Council prior to the release of the S138 Roads Act Approval.

- a) *Construct a 6m sealed pavement with gravel shoulders for the length of Baileys lane from the intersection of Frame drive to Church Street, excluding existing unsealed sections.*
- b) *Place two (2) coat hot bitumen seal on road shoulders.*
- c) *Construct drainage works as necessary.*

CONDITION 12

Modification Sought: The applicant seeks to delete Condition 12 in its entirety as the condition will be unlawful considering the deletion of Condition 11.

Condition 12 currently prescribes as follows:

12. Road Bond – Frame Drive

The applicant shall lodge payment of fees and contributions as follows:-

Based on a road length for the intersection works, bond amounts will be levied on accurate dimensions contained within the engineering plans.

- a) *Road fees - engineering plan checking and supervision*
- b) *A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).*
- c) *A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).*

It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.

The fees and bonds shall be payable prior to the issue of a CC for the Civil Works and/or release of the Subdivision Certificate and shall be in accordance with Council's adopted fees and charges current at the time of payment.

The bond may be used to meet any costs referred to above, and on application being made to the Council by the person who provided the bond, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the bond within 6 years of the date of issue of the SC for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.

CONDITION 19

Modification Sought: The applicant seeks to delete Condition 19 in its entirety as the condition will be unlawful considering the deletion of Condition 18.

Condition 19 currently prescribes as follows:

19. Road Bond – Baileys Lane

The applicant shall lodge payment of fees and contributions as follows:-



Based on a road length of approximately 520 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- a) *Road fees - engineering plan checking and supervision of \$21,400.*
- b) *A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).*
- c) *A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).*

It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.

The fees and bonds shall be payable prior to the issue of a CC for the Civil Works and/or release of the Subdivision Certificate and shall be in accordance with Council's adopted fees and charges current at the time of payment.

The bond may be used to meet any costs referred to above, and on application being made to the Council by the person who provided the bond, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the bond within 6 years of the date of issue of the SC for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.

CONDITION 6

Modification Sought: The applicant seeks to delete \$24,652.55 for Local Drainage Abermain, and \$4,241.89 for Studies (Flood Study) Abermain South (identified in bold in the table below), as the applicant is of the opinion that these amounts have not been validly imposed.

Condition 6 currently prescribes as follows:

6. Residential 7.11 (formerly S94) Contributions Plan

A contribution pursuant to the provisions of Section 7.11 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
<i>District Open Space</i>	<i>\$31,015.50</i>
<i>District Community Facilities (Halls)</i>	<i>\$18,996.62</i>
<i>District Community Facilities (Libraries)</i>	<i>\$5,071.96</i>
<i>District Community Facilities (Bushfire)</i>	<i>\$1,414.04</i>
<i>District Roads – Rural Areas</i>	<i>\$23,638.25</i>
<i>Local Roads – Abermain</i>	<i>\$121,449.20</i>
<i>Local Drainage – Abermain</i>	<i>\$24,652.55</i>

Contribution Type	Amount Payable
<i>Studies (Plan Preparation)</i>	\$1,782.96
Studies (Flood Study) – Abermain South	\$4,241.89
<i>Plan Administration</i>	\$6,762.46
Total	\$239,025.43

A copy of the Residential Contributions Plan may be inspected at Council's Customer Services Section, Administration Building, Vincent Street, Cessnock or can be accessed on Council's website at 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.

HISTORY

The history of the Section 4.55(2) Application, is summarised in the following table:

Date	Action
02 May 2018	Development Application 8/2017/718/1 approved by Council at their meeting of 2 May 2018.
28 May 2018	Meeting held between proponent and Council officers to provide clarification of requirements of development consent conditions – specifically Conditions 11, 13 and 18 were discussed in relation to the physical works required to be undertaken to satisfy conditions. Discussion also included the possibility of entering into a Works in Kind (WIK) arrangement for the provision of road upgrades.
02 July 2018	Correspondence between Council officer and planning consultant to confirm the 'road' referred to within Condition 9 of the consent was the proposed new internal access road to service the subdivision.
06 July 2018	Correspondence received from proponent's engineer requesting the WAE plans for the Frame Drive upgrade works.
22 August 2018	Section 4.55(2) Application lodged with Council.
24 August 2018	Application assigned to assessing officer and internal referral initiated to Development Engineer.
29 August 2018	Council's Development Engineer finalises assessment.
7 September 2018	Assessing officer initiates referral of application to Council's Strategic Planning Department for comment on the adopted contributions plan.
10 October 2018	Class 1 appeal filed in the NSW Land and Environment Court (Reference No. 2018/309387) against Council's deemed refusal of the Section 4.55(2) Application.
11 October 2018	Council's Strategic Planning Department finalises assessment.
24 October 2018	Memo circulated to Mayor and all Councillors advising of lodgement of the Class 1 Appeal.

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26 October – 9 November 2018	Section 4.55(2) Application publicly exhibited. Notifications are issued to adjoining land owners and to those who made submissions to the original development application. A total of eleven (11) submissions are received.
12 November 2018	

APPLICANT’S POSITION IN RELATION TO THE SECTION 4.55(2) APPLICATION

The applicant lodged a submission in support of the Section 4.55(2) Application, which is included as an enclosure to this report.

The applicant’s comments in respect of each matter sought, and the officer’s responses, are outlined below:

PROPOSED AMENDMENT TO CONDITION 6

Applicant’s Comment:

*I note the Contributions Plan does not contain a map showing the areas referred to as “Abermain”, “Abermain North” or “Abermain South”. I note that Part C paragraph 23 of the Contributions Plan refers to former Development Control Plans being the Cessnock Development Control Plan No. 15: Abermain South Small Holdings Area and Cessnock Development Control Plan No. 24: Abermain North Small Holdings Area. ... Council has incorrectly applied the Contributions Plan. This is because the Contributions Plan at page 6 specifically provides that (i) Abermain North is exempt from a contribution for local drainage **and** (ii) it is only the Abermain South area that requires a contribution to be made for the Flood Study.*

Therefore, condition 6 of the Consent imposes requirements that are not in accordance with the Contributions Plan and the amounts of \$24,652.55 and \$4,241.89 have not be validly imposed in accordance with section 7.13(1) of the EPA Act.

Officer’s Response:

Condition 6 requires payment of S7.11 Contributions, including the components being challenged by the applicant, i.e., \$24,652.55 for Local Drainage Abermain, and \$4,241.89 for Studies (Flood Study) Abermain South.

The applicant has advised that they are of the opinion that the line items of ‘Local Drainage-Abermain’ and ‘Studies (Flood Study Abermain South)’ should be removed from the condition. The justification that the applicant has provided is that the adopted Residential Contributions Plan refers to DCP No. 15 Abermain South Smallholdings Areas as the areas where these specific items apply, and DCP No. 15 Abermain South Smallholdings Areas is not the current adopted DCP.

Council’s solicitors have provided advice in respect of this matter, and such advice is attached to this report as a confidential enclosure.

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Overall, the applicant's conclusions (outlined above), are not concurred with because the Contributions Plan should be construed in accordance with its terms, i.e., in its entirety, having regard to all related documents.

On the basis of the above, it is recommended that Condition 6 should be retained without alteration.

PROPOSED DELETION OF CONDITIONS 8, 11 and 18

Applicant's Comment:

A council can require an applicant/developer to provide, as a condition of consent, certain public works (or a contribution to the cost of such works). The legal power of a council to have works undertaken or receive a monetary contributions is contained in the EPA Act. ...

In this case, in order to meet the common law requirements – the Newbury test – conditions 8, 11 and 18 must:

- (a) be fair and reasonable;*
- (b) relate to the subject matter of the development; and*
- (c) have a clear nexus between the purpose of the condition and the benefit to the development.*

In my opinion, the imposition of conditions 8, 11 and 18 fail to meet the first and third requirements of the Newbury test as they are neither fair or reasonable as they seek to 'double dip', in that they impose requirements which have been levied by virtue of condition 6 of the Consent ... Council cannot on the facts determine that there is a sufficient nexus between the carrying out of the Development and the requirements for the works imposed by conditions 8, 11 and 18 (particularly the intersection works at Frame Drive). ... This is not a case where the Development will be the sole beneficiary of the works required to be carried out and the Council could justify the imposition of a condition pursuant to section 4.17(1)(f) of the EPA Act.

Officer's Response:

Condition 8

Condition 8 specifies who is responsible for the cost of certain roadworks, i.e., the applicant, and also deals with the timing and other approvals requires for the work works.

Condition 8 may need to be amended, depending on which is the outcome in respect of Conditions 11, 12, 18 and 19, refer to discussion below.

Condition 11

Condition 11 requires the undertaking of works in respect of the Baileys Lane and Frame Drive intersection to a 'Basic Left Turn' (BAR) and 'Channelised Right Turn' (CHR) (for the right turn lane) standard.

The applicant submitted a traffic impact assessment in conjunction with the original development application which concluded that, having regard to the additional traffic volumes

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anticipated to be generated by the proposed development, only a BAR/BAL standard of intersection works are required.

As part of the assessment of the Section 4.55(2) Application, Council's Principal Development Engineer reviewed the applicant's position, along with the assessment carried out in conjunction with the original development application, and concluded that Council should maintain the BAL/CHR intersection standard. In addition, Council's solicitors obtained an independent review of the applicant's traffic assessment, the conclusions of which are contained in the legal advice attached to this report as a confidential enclosure.

The applicant has also raised that Council is 'double-dipping' in respect of Condition 8. A review of documentation held by Council in respect of the relevant Contributions Plan confirms that Council did not seek to levy contributions for works to the Frame Drive/Baileys Lane intersection, therefore the applicant's argument is not considered to be justified.

On the basis of the above, it is considered that Condition 11 has been validly imposed.

Condition 18

Condition 18 essentially requires 520 metres of Baileys Lane to be upgraded by the applicant to a particular standard.

As part of the assessment of the Section 4.55(2) Application, Council's Principal Development Engineer reviewed the applicant's position, along with the assessment carried out in conjunction with the original development application. As previously outlined, the applicant has proposed the entire deletion of Condition 18. Council's Principal Development Engineer has concluded that it may be reasonable to support an amendment of Condition 18 to reduce the extent of upgrade required, i.e., the amendment would result in the required upgrading of 260m of Baileys Lane (including the realignment of the bend in Baileys Lane), rather than the entire 520m originally imposed.

The applicant has also raised that Council is 'double-dipping' in respect of Condition 18. A review of documentation held by Council in respect of the relevant Contributions Plan confirms that Council did not seek to levy contributions for works to Baileys Lane, therefore, the applicant's argument is not considered to be justified.

On the basis of the above, it is noted that Council officers would be supportive of an amendment to Condition 18, however, the applicant has proposed the deletion of Condition 18 in its entirety. Deletion of the condition in this way is not supported.

DELETION OF CONDITIONS 12 AND 19

Applicant's Comment:

These conditions require bonds to be paid to guarantee the completion of the works required by conditions 11 and 18 respectively. As conditions 11 and 18 are not lawful conditions, the requirements in these conditions are, in my opinion, also invalid.

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Officer's Response:

Conditions 12 and 19 require the payment of fees and bonds to ensure the adequate completion of works prescribed in Conditions 11 and 18, in accordance with Council's adopted Engineering Requirements for Development.

Whilst assessment of the application identified that an amendment to Condition 18 could be supported by Council officers, the applicant has applied to delete Condition 18 in its entirety. As outlined previously, this is not supported.

In the event Conditions 11 and 18 are retained, Conditions 12 and 19 are also required to be retained as they have a direct relationship to the roadworks prescribed.

ASSESSMENT

Environmental Planning and Assessment Act 1979 – Section 4.55

Section 4.55(2) Other Modifications

Section 4.55(2) of the EP&A Act states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

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Comment:

The following is noted in respect of the above:

- (a) It is considered that the proposed modification will result in the proposed development being substantially the same as that which was originally approved.
- (b) Relevant approval bodies have been consulted, and no objection has been raised to the Section 4.55(2) Application.
- (c) The Section 4.55(2) Application was required to be publicly exhibited in accordance with Cessnock Development Control Plan 2010.
- (d) As outlined above, submissions were received in response to public exhibition of the Section 4.55(2) Application, and these are considered later in this report.

Environmental Planning and Assessment Act 1979 – Section 4.15(1)

Section 4.55(3) of the *Environmental Planning and Assessment Act 1979* specifies that *'in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application'*.

The following matters are relevant to the assessment of the Section 4.55(2) Application:

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

The Environmental Planning Instruments that relate to the Section 4.55(2) Application are:

1. State Environmental Planning Policy 55 – Remediation of Land
2. State Environmental Planning Policy 44 – Koala Habitat Protection
3. State Environmental Planning Policy – Rural Lands
4. Cessnock Local Environmental Plan 2011

An assessment of the Section 4.55(2) Application under the Environmental Planning Instruments is provided below:

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

The matter of compliance with the State Environmental Planning Policy 55 – Remediation of Land, is not relevant to consideration of this Section 4.55(2) Application, as the land the subject of the subdivision remains the same.

2. State Environmental Planning Policy No. 44 – Koala Habitat Protection

The matter of compliance with the State Environmental Planning Policy 44 – Koala Habitat Protection, is not relevant to consideration of this Section 4.55(2) Application, as the approved land affected by clearing remains the same and the modification proposed presents no other consequences for koala habitat.

3. State Environmental Planning Policy (Rural Lands) 2008

The matter of compliance with the State Environmental Planning Policy (Rural Lands) 2008, is not relevant to consideration of this Section 4.55(2) Application, as the approved subdivision remains the same.

4. Cessnock Local Environmental Plan 2011

4.1 Permissibility

The subject site is zoned R5 – Rural Residential under the provisions of Cessnock Local Environmental Plan 2011 (CLEP). The matter of permissibility of the development is not relevant to consideration of this Section 4.55(2) Application, as the approved land use remains the same.

4.2 Objectives

The matter of zoning objectives is not relevant to consideration of this Section 4.55(2) Application, as the approved land use remains the same and the overall development will therefore continue to be consistent with the objectives of the zone.

4.3 Relevant Clauses

There are no relevant clauses which apply to the Section 4.55(2) Application.

(a)(ii) *The Provisions of any proposed 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 Planning Secretary 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 Section 4.55(2) Application.

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

Cessnock Development Control Plan 2010

The following provisions of Cessnock Development Control Plan 2010, are relevant to consideration of the Section 4.55(2) Application.

D.1. – Subdivision Guidelines – 1.6.7 – Roads and Access

The performance criteria of the development control plan identifies that existing roads shall be upgraded where necessary to accommodate increased traffic arising from new subdivisions, with the impact of new roads or access way works to be minimised on adjoining residents.

Any required upgrades are to be undertaken in accordance with Cessnock City Council 'Engineering Requirements for Development'.

(a)(iia) The provision of any Planning Agreement that has been entered into under Section 7.4, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4

No such agreement has been proposed as part of this Section 4.55(2) Application.

(a)(iv) The provisions of the regulations

There are no matters prescribed by the Regulations that apply to this Section 4.55(2) Application.

(b) The likely impacts of that 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 were assessed in conjunction with the original development application.

There is concern that, without the provision of properly formed roads of adequate pavement width and drainage, the increased traffic generated will result in erosion issues with respect to vehicles being required to drive on the road verge to safely pass. Additionally, without the provision of adequate drainage, the roads that service the proposed development may become unsafe during rain events without being able to adequately drain.

(c) The suitability of the site for the development

The issue of site suitability was assessed in conjunction with the original development application.

The site continues to be suitable for the proposed residential subdivision, subject to certain infrastructure upgrades.

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

The Section 4.55(2) Application was publicly exhibited between 26 October 2018 and 09 November 2018.

Eleven (11) submissions were received during the exhibition period representing eight (8) households. Of the 11 submissions received, all were in objection to the proposal. The following discussion addresses the issues and concerns raised in the submissions:

1. Safety

Concern has been raised that the existing road network is unable to efficiently and safely accommodate the proposed development, as an additional twenty-four (24) residential lots will impact on the safety of existing and future residents utilising Baileys Lane.

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The application proposes to remove road upgrade requirements that would ensure the road network is upgraded to a standard that is able to safely accommodate the additional traffic that will be generated through the addition of twenty-four (24) lots. Cessnock Development Control Plan 2010 identifies that existing roads shall be upgraded where necessary to accommodate increased traffic arising from new subdivisions in accordance with Council's 'Engineering Requirements for Development'.

Additionally, the Applicant's traffic impact assessment identifies that Baileys Lane is deficient, and Council officers concur with this conclusion.

2. Single Access Road

Concern has been raised that the proposed development will result in additional strain on the sole access that currently services eighty-four (84) existing lots. The proposed development will result in the single access (Baileys Lane) servicing one-hundred and eight (108) lots in total.

Baileys Lane in its entirety does not currently meet the minimum engineering requirements having regard to road design. Failure to upgrade this access road will result in a sub-standard road and drainage which will place an unreasonable burden on Council and the public to maintain.

3. Public Interest

Concern has been raised that if the modification is approved and the required road works are removed from the consent, then the public interest will not be served as a result of the development.

Refer to the below discussion, specifically in respect of the public interest.

(e) The public interest

The public interest is served through the detailed assessment of this Section 4.55(2) 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 Section 4.55(2) Application is considered contrary to the public interest as appropriate infrastructure, in this case road upgrades, are required as a direct result of intensification of land within the locality. Such intensification will directly result in increased traffic volumes utilising Frame Drive, Baileys Lane and Church Street for access to the subject land.

The assessment of the Section 4.55(2) Application has concluded that the conditions imposed on the original development consent do not require an unreasonable level of infrastructure to be constructed, nor has Council 'double-dipped' in respect of the infrastructure upgrades conditioned.

SECTION 7.11 CONTRIBUTIONS

The Section 4.55(2) Application proposes the deletion of certain components of the Section 7.11 Contributions imposed via Condition 6 of the development consent.

This issue has been previously discussed in this report.

INTERNAL REFERRALS

The Section 4.55(2) Application was referred to the following Council Officers for comment:

Officer	Comment
Principal Development Engineer	Assessment of the Section 4.55(2) Application has been undertaken, the conclusions of which have been outlined in this report.
Principal Strategic Planner	Assessment of the Section 4.55(2) Application has been undertaken, the conclusions of which have been outlined in this report.

EXTERNAL REFERRALS

The Section 4.55(2) Application was referred to the following external agency for comment:

Agency	Comment
NSW Rural Fire Service	The NSW RFS provided correspondence dated 14 November 2018 advising that no objection is raised to the proposed modification subject to the General Terms of Approval set out in their correspondence (Bushfire Safety Authority), dated 12 March 2018.

OPTIONS IN RESPECT OF THE CLASS 1 APPEAL IN THE NSW LAND AND ENVIRONMENT COURT

As outlined previously, Council is in receipt of a Class 1 appeal in the NSW Land and Environment Court (Reference No. 2018/309387) against Council's deemed refusal of the Section 4.55(2) Application.

The following options are provided for Council's consideration in respect of the Class 1 Appeal:

1. Defend the appeal. This will initially involve taking part in the Section 34 on-site conciliation conference on 28 May 2019. Legal costs for the Section 34 conference would be in the vicinity of \$20,000 to \$25,000 (plus GST). If an additional expert is required in respect of traffic issues, their consultancy fees will be additional to the legal costs, however, such fees are not expected to be significant.

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If the matter is not resolved at the Conciliation Conference and proceeds to hearing, legal costs are anticipated to be in the order of an additional \$20,000 to \$30,000 (plus GST).

2. Not defend the appeal and instead approve the Section 4.55(2) Application, in which case it will be necessary for the applicant to discontinue the appeal as there will be no grounds for the appeal following Council's approval of the application.

This report recommends that Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

CONCLUSION

The Section 4.55(2) Application seeking to modify Development Consent No. 2017/718 has been assessed in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979, and all relevant instruments and policies.

The Section 4.55(2) Application seeks to delete Conditions 8, 11, 12, 18 and 19, which require infrastructure/road upgraded in order to service the approved residential subdivision. Whilst assessment of the modifications sought has identified that Council may be in a position to partially support the applicant's request, particularly with respect to the upgrade of Baileys Lane (Condition 18), the removal of the requirement for the applicant to construct an intersection at Baileys Lane and Frame Drive (Condition 11), is not supported.

Additionally, the application proposes to amend Condition 6 which relates to the Section 7.11 contribution fees imposed. Council has undertaken a review of its Residential Contributions Plan, particularly with respect of Abermain South, and it has been determined that the contributions have been properly applied to the development in accordance with the adopted plan.

Based on the assessment, it is recommended that the Section 4.55(2) Application be deferred, and that Council authorise the General Manager to defend the appeal and negotiate with the developer, and if in the opinion of the General Manager it is appropriate, enter into a Section 34(3) Agreement.

ENCLOSURES

- 1 Applicant's submission (town planning)
- 2 Applicant's submission (legal advice) - *This matter is considered to be confidential under Section 10A(2) (g) of the Local Government Act, as it deals with advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*
- 3 Submissions - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy.*
- 4 Legal Advice - *This matter is considered to be confidential under Section 10A(2) (g) of the Local Government Act, as it deals with advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

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SUBJECT: *DEVELOPMENT APPLICATION NO. 8/2018/261/1
PROPOSING DEMOLITION OF EXISTING DWELLING AND
CONSTRUCTION OF A TWO-STOREY BOARDING HOUSE
WITH TWENTY-ONE (21) SUITES INCLUDING A
MANAGER'S RESIDENCE*

6 BRIDGE STREET, CESSNOCK

RESPONSIBLE OFFICER: *Development Services Manager - Janine Maher*

APPLICATION NUMBER:	DA8/2018/261/1
PROPOSAL:	Demolition of existing dwelling and construction of a two-storey boarding house with twenty-one (21) suites including a manager's residence
PROPERTY DESCRIPTION:	Lot 10, Section A, DP 4269
PROPERTY ADDRESS:	6 Bridge Street, Cessnock
ZONE:	B4 – Mixed Use
OWNER:	Mrs Sharmini Sivathas
APPLICANT:	Parker Scanlon Pty Ltd

RECOMMENDATION

1. That:

- (i) Development Application No. 8/2018/261/1 proposing demolition of existing dwelling and construction of a two-storey boarding house with twenty-one (21) suites including a manager's residence at 6 Bridge Street Cessnock, be approved pursuant to Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979 subject to the conditions contained in this report.
- (ii) The reasons for the decision (having regard to any statutory requirements applying to the decision), are as follows:
 - The proposal is consistent with the relevant provisions contained within *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
 - The proposal is a permitted land use in the B4 Mixed Use zone

under *Cessnock Local Environmental Plan 2011*.

- The proposal is generally compliant with the requirements of relevant Chapters of *Cessnock Development Control Plan 2010*, and any variations are considered minor in nature.
- The subject development incorporates adequate measures to minimise any impacts on the social and economic locality. The development, in the manner proposed, is considered suitable for the site.
- The subject development is designed in a manner that takes into account the constraints of the site and proposes measures that will minimise any impacts on the natural and built environments.
- The subject development incorporates adequate measures to ensure the development does not result in any adverse impacts in respect of amenity, overshadowing, overlooking, noise or views.
- The development provides a form of housing that will add to the diversity of housing stock in the area, and increases options in respect of the rental market. The development provides a social benefit and serves in the public interest by contributing to housing availability.

(iii) In considering community views, the following is relevant:

- The proposal is consistent with the existing and desired future character and amenity of the surrounding area. The proposal is sympathetic to the existing scale of development within the area and provides an innovative design in response to the existing as well as intended future development potential of adjoining land.
- The proposed boarding house has incorporated a number of design features which mitigate concerns relating to privacy and overlooking.
- The proposal is generally consistent with the setback requirements as specified within Council's Development Control Plan with the exception of a minor variation to the setback of the vehicular access to service the development.
- The location of the proposed development is permissible within the land use zone and meets the requirements of relevant State Environmental Planning Policies. The proposed boarding house is ideally located within close proximity to transport stops and services within Cessnock Central Business District.
- Satisfactory measures are proposed and relevant conditions applied with respect of potential noise to be generated, including; the development being designed with communal areas being cut into the site, and the inclusion of sound attenuating measures on proposed mechanical devices (air conditioning units) to ensure acceptable noise levels.

- Satisfactory measures have been proposed and relevant conditions applied with respect to the social impact of the development, including; the provision of a Plan of Management, and incorporation of Crime Prevention Through Environmental Design principals.
 - Conditions have been applied with respect to the nature and capacity of infrastructure to cater for the proposed boarding house with specific regard given to the existing connections to Cessnock CBD and transport stops.
 - The car parking provided by the development meets the requirement of the State Environmental Planning Policy (Affordable Rental Housing) 2009 at the date of lodgement of the application. Clause 54 of the amended State Environmental Planning Policy (adopted during the assessment of the application), permits the application to be determined as if the amendments were not made.
 - The proposed development has considered potential impacts on views and privacy with the design incorporating a low pitch roof, and no balconies on the first floor, thereby negating view loss and privacy impacts for existing, adjoining residents.
 - The proposed landscaping will provide territorial reinforcement as well as assisting in providing a natural sound buffer. The inclusion of stepped retaining at the rear of the subject site will reduce the level of cut required and provide for deep soil planting across the site.
 - The proposed development is compliant with the requirements of applicable State Environmental Planning Policies, as at the date of lodgement.
 - The consideration of property values is not a valid planning consideration under the *Environmental Planning and Assessment Act 1979*, and does not form part of the assessment of a development application.
- (iv) The details contained above be publicly notified pursuant to Section 2.22 and Clause 20(2) of Schedule 1 of the Environmental Planning and Assessment Act 1979.
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

Development Application No. 8/2018/261/1 is being referred to Council for determination as objections were received in response to the public exhibition period, and it is considered such objections constitute 'significant objection' in accordance with the provisions of Development Practice Note G3 – Delegations for Determination of Development Applications.

EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 8/2018/261/1 seeking approval for the demolition of existing dwelling and construction of a two-storey boarding house with twenty-one (21) suites including a manager's residence, at 6 Bridge 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 proposal is compliant with the relevant planning controls, most notably those contained within *State Environmental Planning Policy – Affordable Rental Housing 2009*, and *Cessnock Local Environmental Plan 2011*.

The Development Application was publicly exhibited on two (2) occasions. In total, twenty-five submissions representing 19 properties, were lodged with Council in response to the two (2) exhibition periods. All submissions were in objection to the proposal. The issues and concerns raised in the submissions have been addressed during assessment of the application.

The proposed development is considered appropriate given the assessment of the application and compliance with relevant State Environmental Planning Policies and relevant considerations in accordance with Section 4.15 of *Environmental Planning and Assessment Act 1979*.

The proposed boarding house is considered a 'new generation boarding house' and provides self-contained kitchen and bathroom facilities for each occupant. The design of the proposed boarding house has taken into account existing development within the locality, along with the intended desired future character of the area, as identified by Cessnock Commercial Precinct Development Control Plan. The location of the development is considered suitable given the proximity of public transport connections and services provided within the central business district of Cessnock.

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



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 6 Bridge Street, Cessnock and is legally described as Lot 10, Section A, Deposited Plan 4269.

The subject site is located on the northern side of Bridge Street. The site has a frontage of 20.115m to Bridge Street, a depth of 40.234m and an overall site area of 809.4m². Vehicular access to the site is available from the Bridge Street frontage.

The subject site is currently occupied by a single-storey weatherboard dwelling with pergola, a detached garage and two storage sheds.

The site is on the fringe of the Cessnock CBD and the character of the area is mixed. To the east of the site, beyond the commercial zoning, are properties almost exclusively used for residential purposes. The built form is represented mainly by single-storey detached dwellings. To the west, where the land lies within Cessnock's CBD precinct, land uses and built form are varied and include a residential flat building comprising four (4) units, a two-storey motel, a pub, and a two-storey civic building (Cessnock Performing Arts Centre). To the south of the subject site, a farm, small acreage, home garden, pet and produce store exists. To the north of the subject site, commercial businesses including a taxi cab station, automotive repair/service business and single storey dwellings exist.

Council has issued one development consent in respect of the property (Council Reference No. 6/1992/659/1), which approved the addition of pergola and free standing carport, on 13 July 1992.

HISTORY

Prior to the submission of the development application, the proponent undertook consultation with Council, utilising Council's Pre DA lodgement service on two (2) occasions, being 21 July 2017 and 20 October 2017.

Initially, the development was proposed as a three-storey boarding house with twenty-seven (27) self-contained units, and five (5) car parking spaces. Council officers raised concerns regarding:

- Character, particularly given the height of the proposed boarding house and concerns over how this would integrate into the existing character of the area.
- Overshadowing, particularly given the position and height of the proposed boarding house.
- Accessibility within the proposed boarding house, as disabled access was only provided to the ground floor.
- A live-in manager was identified as being required for the proposed boarding house, as the development proposed 20+ rooms, however this was not incorporated into the design.
- Inadequate car-parking was proposed to service the proposed twenty-seven (27) units on-site.

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In response to the concerns raised by Council officers, the development was revised to propose a two-storey boarding house with nineteen (19) self-contained units, two (2) commercial tenancies and six (6) car parking spaces. Council officers raised concerns regarding:

- The number of units had been reduced to 19 in order to eliminate the requirement for a live-in manager, however, concerns were raised by Council staff in respect of potential social impacts.
- The character of the development was again raised as a matter to be addressed by the applicant, particularly with regard to the bulk of the development and the inclusion of commercial premises in a predominantly residential locality.
- Accessibility, was again raised as a matter of concern specifically with regard to internal access. It was recommended that a lift be incorporated into the design to ensure persons with a disability (including situations of temporary incapacitation) are not excluded by virtue of design.
- Inadequate car parking was proposed to service both the residential units and commercial tenancies.

In response to the concerns raised by Council officers, the development was revised to propose the development application the subject of this report.

The history of the subject development application is summarised in the following table:

Date	Action
3 May 2018	Development Application lodged with Council.
8 May 2018	Development Application allocated to assessing officer.
8 May 2018	Development Application referred to the following Council officers for comment: <ul style="list-style-type: none"> • Development Engineer • Community Planner
18 May – 1 June 2018	Development Application placed on public exhibition.
21 May 2018	Referral from Community Planner completed. Additional information requested in relation to social impacts.
30 May 2018	Applicant submits additional information relating to social impact assessment. Information referred to Community Planner for comment.
1 June 2018	Referral to NSW Police Local Area Command in accordance with CPTED protocol for development applications.
6 June 2018	Referral from Development Engineer completed. The application is supported subject to conditions of consent.
27 June 2018	Referral response received from NSW Police Local Area Command. Referral completed by Community Planner. Additional information requested in respect of design issues, social impact and plan of management.



5 July 2018	Assessment officer requests the submission of additional information, as follows: <ul style="list-style-type: none"> • Amended Social Impact Assessment • Amended Plan of Management • A visual photomontage of the proposed development within the streetscape • Amended plans to address privacy concerns, security of motorbike parking and bicycle storage location.
27 July 2018	Applicant provides response to request for further information.
1 August 2018	Information referred to Community Planner for comment.
7 August 2018.	Referral from Community Planner completed. The application is supported subject to conditions of consent.
21 August 2018	Referral made to Environment and Waste Services for comment on ongoing waste services.
6 September 2018	Environment and Waste Services requests additional information for assessment of application. Assessment officer requests the submission of additional information, as follows: <ul style="list-style-type: none"> • Amended plans providing additional bicycle storage, illustrating location of air-conditioning units or roof-top plant and lift over-run, • Amended Acoustic Assessment report to incorporate noise generated by air-conditioning units, and • Details regarding ongoing waste management.
3 October 2018	Applicant provides requested additional information.
19 October 2018	Additional information referred to Environment and Waste Services for comment.
22 October – 6 November 2018	Development Application re-exhibited as a result of minor amendments to the original plan, i.e., lift over-run and air-conditioning units included.
7 November 2018	Environment and Waste Services provides response requiring proposal be serviced by 240L waste receptacles in accordance with Council's requirements.
16 November 2018	Assessment Officer clarifies with Environment and Waste Officer that application proposes waste collection by private contractor and requests review of recommendation.
16 November 2018	Environment and Waste Officer provides comment on application and confirms ability of site to be serviced by private contractor.
29 November 2018	Assessment completed.

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2018/261/1 seeks approval for the demolition of existing dwelling (and structures) and construction of a two-storey boarding house with twenty-one (21) suites including a manager's residence, and associated communal facilities, car parking, accessways and landscaping.

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The proposed development consists of a two-storey building. The building incorporates a mixture of construction materials including face brick, horizontal cladding boards, vertical cladding boards, colorbond sheet cladding, powder coated aluminium frame windows, and aluminium clad entry canopy. The second floor is in parts recessed further from the boundaries than that of the ground floor. The roof is constructed with colorbond roof sheeting with matching fascias and gutters. An articulated skillion and hip and valley form roof is proposed, with varying pitches of 12.5 degrees - 15 degrees.

The ground floor level incorporates an internal ramp to ensure appropriate access for persons with a disability. As a result of this, the ground floor level rises from a finished floor level (FFL) of 76.00m to a FFL of 76.36m at the rear of the site. The FFL of the first floor is identified by the plans as being 79.50m. The natural ground level falls across the site from the north-east corner (78.50) to the south-west corner (75.10). As a result of this cross fall, earthworks are proposed to effectively 'bench' the boarding house into the site, for example, at the north-east corner of the site, approximately 2.0m of cut is proposed. At the street frontage, the boarding house is located close to natural ground level.

Specifically, the proposed development involves:

- The demolition of the existing structures onsite including a single-storey weatherboard dwelling and three (3) sheds of varying sizes
- A total of twenty (20) bedrooms/suites and one (1) manager's suite with bathroom, laundry, kitchenette and private courtyard.
- A 24 square metre communal room (provided on the ground floor) that opens onto communal open space and is orientated in a northerly direction.
- A communal recreational open space (38m²) on the ground floor level located off the communal room.
- At-grade car parking, accessed from Bridge Street.
- A total of 5 car parking spaces are provided (including one (1) for the site manager and one (1) for disabled persons, four (4) motorcycle parks and a bike storage cage for five (5) bicycles.
- Lift core and stair wells located on the ground floor
- Garbage storage area provided at-grade
- Associated landscape embellishment works.

The application proposes to provide low cost flexible rental accommodation to a variety of tenants with target residents identified as follows:

- 40 - 60 year age group;
- Single persons (50% males/ 50% females);
- In current employment;
- Lower wage earner

ASSESSMENT

Environmental Planning and Assessment Act 1979 – Section 4.15(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 (Affordable Rental Housing) 2009
2. State Environmental Planning Policy No. 55 – Remediation of Land
3. Cessnock Local Environmental Plan 2011

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

1. State Environmental Planning Policies

1.1 State Environmental Planning Policy (Affordable Rental Housing) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) was introduced on 31 July 2009. The policy's intent is to increase the supply and diversity of affordable rental and social housing in the state. The ARHSEPP covers housing types including villas, townhouses and apartments that contain an affordable rental housing component, along with secondary dwellings (granny flats), boarding houses, group homes, social housing and supportive accommodation.

The ARHSEPP includes provisions that deal with permissibility. The site is zoned B4 Mixed Use under Cessnock Local Environmental Plan (CLEP) 2011. It is noted that the ARHSEPP specifically permits boarding house developments in the B4 Mixed Use zone, subject to the consent of Council.

Division 3 of the SEPP provides standards for boarding house developments with respect to the following:

Relevant Section Division 3 Boarding Houses	Development Standards	Compliance
<p>29. Standards that cannot be used to refuse consent</p> <p>Note: The ARHSEPP prescribes that a consent authority must not refuse consent to</p>	<p><u>Density or Scale</u></p> <p>The development is on land in which residential flat buildings are permitted, and the site does not contain a heritage item. Therefore, the Floor Space Ratio (FSR) is not to exceed the maximum FSR permitted for</p>	<p>N/A.</p> <p>No Floor Space Ratio applies to the subject land under CLEP 2011.</p>

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development that complies with the provisions contained within Clause 29.	any form of residential accommodation on the land.	
	<u>Building Height</u> Not to exceed maximum building height permitted under CLEP 2011.	N/A. No maximum building height applies to the subject land under CLEP 2011.
	<u>Landscaped Area</u> Front landscaped area to be compatible with the streetscape.	Yes. The applicant submitted a detailed landscape concept plan, including a landscape master plan and planting details (species etc), in support of the application. It is considered that the proposed landscaped area within the front setback will be compatible with the streetscape.
	<u>Solar Access</u> Communal living area to receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	Yes. The proposed communal area is located in the northern portion of the proposed boarding house on the ground floor. Windows are located on the northern, eastern and western elevations of the communal area, thereby ensuring that the area will receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.
	<u>Private Open Space</u> The following private open space area/s (other than in the front setback) must be provided: (i) 20m ² with minimum dimension of 3m for use by lodgers. (ii) 8m ² for boarding house manager, with minimum dimension of 2.5m provided adjacent to that accommodation.	Yes. (i) one communal private open space area is provided for the use of lodgers in excess of 20m ² with a dimension greater than 3m. (ii) 8m ² of private open space is provided for the boarding house manager, with dimensions of 1.85m x 4.35m.



		<p>In this case, the front setback is 0m, or where there are existing adjoining buildings within 40m of the street frontage, the setback must be consistent with the established setbacks. It has been assessed that a setback of 2.3m is consistent with established setbacks within 40m of the site. Therefore, neither of the above areas of private open space are located within the front setback.</p>
	<p><u>Car Parking</u></p> <p>(i) Within an accessible area – at least 0.2 parking spaces to be provided for each boarding room.</p> <p>Therefore, five (5) parking spaces to be provided on site, with one (1) being allocated to the on-site manager.</p>	<p>The proposed development is assessed as being located within an <i>accessible area</i>, as the subject site is located within 400 metres walking distance of a bus stop used by a regular bus service.</p> <p>A review was undertaken of current bus timetables and bus stop locations. The bus stop located at Rover Motors Depot is serviced between 06:00 and 21:00, Monday – Friday and 08:00 and 18:00 Saturday – Sunday. The subject site is located within 400m of six (6) bus stops, two (2) are located on Aberdare Road and four (4) are located in Vincent Street</p> <p>Therefore the provision of:</p> <p>Five (5) car parking spaces; Four (4) motorcycle spaces; Five (5) bicycle lockers;</p> <p>complies with the requirements of the SEPP.</p> <p>To ensure convenient and safe access to bus stops serviced by regular bus</p>



		<p>service in Vincent Street, it is proposed to impose a condition of consent requiring the construction of a 1.2m wide footpath between the site and Cumberland Street to join the existing footpath located on the eastern side of Cumberland Street, thereby creating an 'unbroken' link of footpath.</p> <p>It is noted that recent amendments to the ARHSEPP have resulted in an increase in on-site parking being required. However, the application was lodged on 3 May 2018, which was prior to the amendments to the ARHSEPP being adopted on 1 June 2018. Clause 54 (1) of the amended SEPP permits the application to be determined as if the amended SEPP had not been made. Therefore, the application is fully compliant with the parking requirements.</p>
	<p><u>Accommodation Size</u></p> <p>Minimum of 12m² for boarding rooms intended to be used by a single lodger; or 16m² in any other case (excluding private kitchen and bathroom facilities within rooms)</p>	<p>Yes.</p> <p>The proposed accommodation units comply with the size requirements of the SEPP.</p>
<p>30. Standards for Boarding Houses</p> <p>Note: The ARHSEPP prescribes that a consent authority must not consent to development unless it complies with the provisions of Clause 30.</p>	<p><u>Communal Living Room</u></p> <p>At least one communal living space to be provided where 5 or more boarding rooms are proposed.</p>	<p>Yes.</p> <p>One (1) communal living space has been provided.</p>
	<p><u>Gross Floor Area</u></p>	<p>Yes.</p>



	Each boarding room not to exceed 25m ² gross floor area.	Each boarding room is not greater than 25m ² .
	<u>Occupancy Rates</u> Maximum of 2 lodgers per boarding room.	Yes. Each room is identified for use by a single lodger.
	<u>Bathroom and Kitchen Facilities</u> Adequate facilities to be provided within the boarding house for the use of each lodger.	Yes. Each boarding room is provided with its own bathroom, kitchen facilities and an under-bench laundry.
	<u>Boarding House Manager</u> Accommodation for on-site manager where there will be 20+ lodgers.	Yes. Accommodation for a live-in manager has been provided.
	<u>Land Use Zoning</u> If the land is zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts the street will be used for residential purposes. Unless another EPI permits such use.	The land is zoned for mix-use and the use of the ground floor that fronts the street is able to be utilised for residential purposes in this instance.
	<u>Motorcycle and Bicycle Parking</u> At least one (1) space for a bicycle and one (1) space per five (5) boarding rooms for motorcycles.	Yes. A bicycle cage for up to 5 bicycles has been provided. 4 motorcycle parking spaces have been provided with lockable gates to prevent theft.
30A. Character of Local Area Note: The ARHSEPP prescribes that a consent authority must not consent to development unless it complies with the provisions of Clause 30A.	Consent not to be granted unless the design of the development is compatible with the character of the local area.	Yes. The design of the development is considered to be sympathetic to the mixed-use style of development in the locality. This includes residential development to the east (single-storey dwelling house) and west (4 x units), and commercial development located to the north-west and across Bridge



		<p>Street to the south.</p> <p>The design of the proposed boarding house is considered sympathetic to adjoining land uses, with the proposed development stepping down to the east to a single-storey level to ensure that bulk and scale is consistent with the remainder of development in Bridge Street. Two-storey construction is proposed on the western boundary which is within close proximity to the Cessnock commercial precinct area which has a maximum building height of 12m. The maximum height of the proposed boarding house is 8.66m.</p>
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As outlined in the compliance table able, the subject development application was lodged on 3 May 2018, which was prior to the introduction of the amended *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)*, which was effective from 1 June 2018. In summary, the policy amendment resulted in increased car parking standards for boarding houses.

Clause 54(1) *State Environmental Planning Policy (Affordable Rental Housing) 2009* includes a savings provision which allows the application to be determined as if the amended policy had not been made. Specifically, Clause 54(1) states as follows:

'If a development application has been made before the commencement of this clause in relation to development to which this Policy applies and the application has not been finally determined before that commencement, the application may be determined as if this Policy had not been made'.

In consideration of the above, the amended provisions of the SEPP now in force (specifically, in respect of parking), do not apply to this development application.

1.2 State Environmental Planning Policy No. 55 – Remediation of Land

The aim of the State Environmental Planning Policy No. 55 – Remediation of Land 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.

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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.

Given the subject site has historically been occupied/utilised for the purpose of a residential dwelling and there was no evidence of contamination observed during inspection of the site, 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 B4 – Mixed Use under the provisions of Cessnock Local Environmental Plan (CLEP) 2011. The proposed development is categorised as a Boarding House under CLEP 2011, which is defined as follows:

'boarding house means a building that:

(a) is wholly or partly let in lodgings, and

(b) provides lodgers with a principal place of residence for 3 months or more, and

(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and

(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment'.

The development satisfies the above definition, as the development comprises twenty-one (21) self-contained rooms which will be available to let for a minimum period of three (3) months. In addition, the development includes the provision of a communal living room and private open space.

As outlined previously, the ARHSEPP permits development for the purpose of a boarding house in the B4 – Mixed Use zone.

2.2 Objectives

The objectives of the B4 – Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*

The proposed development is consistent with this objective, as the boarding house will provide increased housing options within the locality, and is a compatible land use.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is consistent with this objective, as the boarding house will be located in an accessible location (being close to public transport stops, and Cessnock Central Business District).

The location of the proposed boarding house will maximise opportunities for residents to utilise public transport and encourage walking and cycling to services located within Cessnock CBD.

2.3 Relevant Clauses

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

- Clause 2.7 – Demolition requires consent

Clause 2.7 states as follows:

'The demolition of a building or work may be carried out only with development consent.'

Note. If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as exempt development, the Act enables it to be carried out without development consent'.

The application seeks consent to demolish the existing structures on the site in order to facilitate the proposed development.

Draft conditions of consent have been imposed to ensure all demolition works will be undertaken in accordance with the relevant Australian Standards.

Accordingly, the application is consistent with the requirements of Clause 2.7.

- Clause 7.2 – Earthworks

In part, 7.2 states as follows:

'(3) Before granting development consent for earthworks, the consent authority must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,

(b) the effect of the proposed development on the likely future use or redevelopment of the land,

(c) the quality of the fill or the soil to be excavated, or both,

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,

- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any measures proposed to minimise or mitigate the impacts referred to in paragraph (g)'.*

Clause 7.2 seeks to ensure that any earthworks do not result in an adverse impact on the environment, neighbouring properties or heritage items.

The earthworks proposed are considered to be reasonable and will not result in any detrimental impact upon the surrounding environment.

Accordingly, the application is consistent with the requirements of Clause 7.2.

- Clause 7.4 – Airspace Operations

In part, Clause 7.4 states as follows:

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

- (a) *to provide for the effective and ongoing operation of the Cessnock Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,*
- (b) *to protect the community from undue risk from that operation'.*

The subject site is identified on the Obstacle Limitation Surface map as having an Obstacle Limitation Height of 170m.

The proposed development will have a maximum height of 8.5m (to the highest point on roof) and as such will not penetrate the Obstacle Limitation Surface.

Accordingly, the application is consistent with the requirements of Clause 7.4.

- (a)(ii) *The Provisions of any proposed 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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).***

Draft State Environmental Planning Policy (Affordable Rental Housing) 2009

The NSW Department of Planning is reviewing SEPP (Affordable Rental Housing) 2009, with the intention of limiting the number of boarding house rooms for development in the R2 – Low Density Residential zone. Based on the current information provided by the Department of Planning, the amendment will be on exhibition from 28 November 2018 until 19 December

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2018. With comments submitted during the exhibition period to be considered by the Department following the closure of the exhibition period.

Given that the proposed amendments apply to the R2 – Low Density Residential zone and the proposed development is within the B4 – Mixed Use zone, the proposed amendment is not considered relevant to the current Development Application.

Draft State Environmental Planning Policy No. 55 – Remediation of Land

The NSW Department of Planning is reviewing SEPP 55 – Remediation of Land. Based on the current information provided by the Department of Planning, it is expected that comments provided within the exhibition period which ceased in April 2018 will be considered prior to a further round of consultation.

Based on this, it is considered that the level of certainty with the expected changes is low and therefore, the level of weight afforded to the amendments is reduced.

Notwithstanding this, it is considered that the proposed amendments would not significantly impact on the assessment of this 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 relevant standards in Cessnock Development Control Plan 2010.

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

The applicant has prepared and submitted a detailed Social Impact Assessment in support of the proposed development which has been assessed by Council's Community Planner and the NSW Police Force – Hunter Valley Policing District Youth and Crime Prevention Officer.

The proposal offers one form of housing, namely studio style suites. The applicant has identified a target group for the occupation of the proposed suites as being 40 -60 years of age, single with a male to female ratio of 50:50, employed and a low income earner.

Section 8.6.6 of Chapter C.8 details mitigation strategies to prevent adverse social impacts. One of the various design features for affordable housing developments is not to concentrate the one type of accommodation style within an identifiable cluster. Rather, a range of accommodation types is preferred to improve the social cohesion of the development.

Whilst the boarding house development proposed does not incorporate a range of accommodation types, the design and location of the development satisfies the majority of the other relevant performance criteria contained within Section 8.6.6 of the DCP:

- a) Social Infrastructure – In the case of residential development, there should be reasonable access to a mix of facilities including local shopping, health services, educational institutions, leisure and recreational space.

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- b) Social Cohesion, Social Connectivity and Sense of Place – Shared communal facilities (including a common room and outdoor private open space) have been provided within the development. Further, the close proximity to shops, public recreation areas and parks further assists in enhancing social cohesion.
- c) Health including Physical Activity – The development is located within walking distance to the Cessnock Central Business District, recreation facilities and transport stops. This close proximity to facilities encourages pedestrian activity and cyclists.
- d) Public Open Spaces – The development is within close proximity to parks, sporting ovals (Turner Park), and pedestrian paths suitable for walking, cycling and wheelchair access.

In addition to the above, a permanent on-site manager will reside at the premises and will be contactable 24 hours a day, 7 days a week. It is recommended that the requirement for the on-site manager to reside at the site be imposed as a condition of consent, in addition to the requirement for lodgement of a detailed Plan of Management comprising (at a minimum) the following:

- Measures to ensure that each room is utilised for the accommodation of a single lodger at any given time. The total number of residents is a maximum of 21 (inclusive of the on-site manager).
- Measures to ensure that residents are inducted to the site and this includes awareness of the emergency evacuation procedure.
- Live-in on site manager contact details and secondary contacts in the event that the on-site manager is uncontactable, are to be included in the Plan. It is also to be made clear to residents the role of the on-site manager.
- Measure to minimise unreasonable impacts on adjoining premises, including acceptable behaviours.
- Measures to ensure prominent display of appropriate house rules and a procedure for informing residents of the house rules.
- Alcohol and drug policies to be clearly documented and displayed.
- Guidelines for use of external communal open space and indoor common areas, to be documented and made available to residents.
- A procedure for documenting complaints. The complaints process is to be made available to all residents.
- Procedures for recording and accessing CCTV footage in accordance with State and Federal legislation.
- Procedures for the on-site manager in establishing contact and maintaining a relationship with the neighbours of the boarding house within a 100m radius. This is to include informing neighbours of the contact details for the on-site manager.

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Having regard for the above (and subject to the imposition of appropriate conditions of consent), it is considered that the performance criteria contained within Council's DCP is satisfied, and the development will have an acceptable social impact on the surrounding neighbourhood.

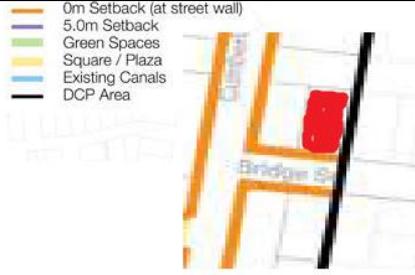
Section 8.6.7 of Chapter C.8 details mitigation strategies for crime prevention. In summary, there are four (4) crime prevention principles which are required to be addressed. The applicant has addressed the issue of crime prevention within the submitted Social Impact Assessment through Environmental Design.

Council's Community Planner and NSW Police Force – Hunter Valley Policing District Youth and Crime Prevention Officer, have assessed the design of the development in conjunction with the submitted Social Impact Assessment and are satisfied that the key principles of crime prevention through environmental design have been satisfactorily addressed. The following design elements have been recommended in the event the application is approved:

- Surveillance – installation of a vandal proof CCTV system to the proposed boarding house to be monitored via a live link to a professional security company who will monitor the system 24/7. External lighting to be provided around the building, building entries and parking area to enable clear vision, and be designed in such a manner so as to prevent concealment and shadowing.
- Access Control – entry to the building to be gained by way of swipe tag, with an electronic lock system on all external doors. Access to each room to be controlled via key provided to each lodger.
- Territorial Reinforcement – landscaping to provide a clear definition between private and public spaces, and 'House Rules' to be clearly displayed to reinforce expected behaviours of occupants whilst residing at the boarding house
- Space Management – requirement for a Plan of Management to be in place at all times and submitted to Council annually.

Having regard for the above, it is considered that the performance criteria of Council's DCP (with regards to crime prevention) has been satisfied.

Development Control Plan 2010 – E.16: Cessnock Commercial Precinct		
Relevant Section	Development Standards	Compliance
16.1.11 Built Form, Setbacks and Street Hierarchy	The Cessnock Commercial Precinct DCP identifies the site as having a zero (0) metre setback requirement, although, within a setting where there is existing development within forty (40) metres, consideration of the pre-existing setbacks is to be made.	A setback of 2.3 metres from the front boundary is proposed. The existing dwelling on the site proposed to be demolished is positioned 2.3m from the front boundary, therefore the application proposed to retain the existing setback.

	 <p>Figure 1: DCP Setback requirement.</p>	 <p>Figure 2: Existing site setback conditions.</p> <p>Existing setbacks within forty (40) metres of the subject site vary between six (6) metres and zero (0) metres.</p> <p>The proposed setback is considered to be appropriate and compliant with the requirements outlined in the DCP. Furthermore, in conjunction with the road pavement width of ten (10) metres, the development will not appear overbearing in the streetscape.</p>
<p>16.1.12 Height in Storeys</p>	<p>Development is to be consistent with the Height in Storeys Map – 12m (3 Storeys) as shown at Figure 12 of the DCP.</p> <p>In case of inconsistency the LEP prevails over the DCP.</p>  <p>Figure 3: Extract - Figure 12 of DCP – Height in Storeys map.</p>	<p>The proposed development is a maximum of 8.66m in height to the ridge, and is therefore compliant with the Height in Storeys Map shown at Figure 12 of the DCP.</p> <p>There is no height restriction applied to the subject land by the <i>Cessnock Local Environmental Plan 2011</i>.</p>



Development Control Plan 2010 – C.1: Access and Parking		
Relevant Section	Development Standards	Compliance
1.4.1 Access to Site	(i) A vehicular driveway should: (a) be located no closer than 1.5 metres from the boundary of the site and no closer than 6 metres to a corner boundary; (b) not be located within 12 metres on the approaches to a “stop” or “giveaway” sign; (c) Cross the footpath or footway at right angles to the centerline of the road; (d) Be located so that any vehicle entering or leaving the site can be readily seen by the driver of an approaching vehicle in the street; (e) be clear of obstructions which may prevent drivers having a timely view of pedestrians’ (f) be properly signposted by the use of “in” or “entrance” and “out” or ‘exit” signs, where appropriate’; and (g) be designed and constructed to suit design traffic loads.	The proposed vehicular access is setback 1.1 metres from the side boundary. This is a 27% variation from the required 1.5 metre setback. The 1.5 metre setback requirement is generally provided to the ensure provision of services to the development and/or drainage to the street. It is considered that the proposed driveway location will not significantly impact on the performance of sight distances at the proposed access. All other aspects of access to the site comply with the requirements where applicable.

It is noted that no other Development Control Plan provisions apply to the proposed development, particularly with respect to design controls, as the requirements of *State Environmental Planning Policy – Affordable Rental Housing 2009* supersede any local provisions within *Cessnock Development Control Plan 2010*.

(a)(iia) The provision of any Planning Agreement that has been entered into under Section 7.4, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4

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

(a)(iv) The provisions of the regulations

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

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

As demonstrated by the above assessment, the proposed development is not likely to have a significant adverse impact on both the natural and built environment in the locality. The assessment of the application as demonstrated above is not likely to have a detrimental impact on the social and economic characteristics of the locality.

Additional impacts for consideration which have been identified by the assessment of the application include; character, social impact, noise, overshadowing, view loss, privacy, car parking and traffic. These are further addressed below:

Character

Consideration has been given to the potential impact of the proposed development on the existing character in the locality. Particular consideration has been given to the fact that the subject site is identified as being zoned B4 – Mixed Use under CLEP2011, and adjoins land zoned R3 – Medium Density Residential, as illustrated below:

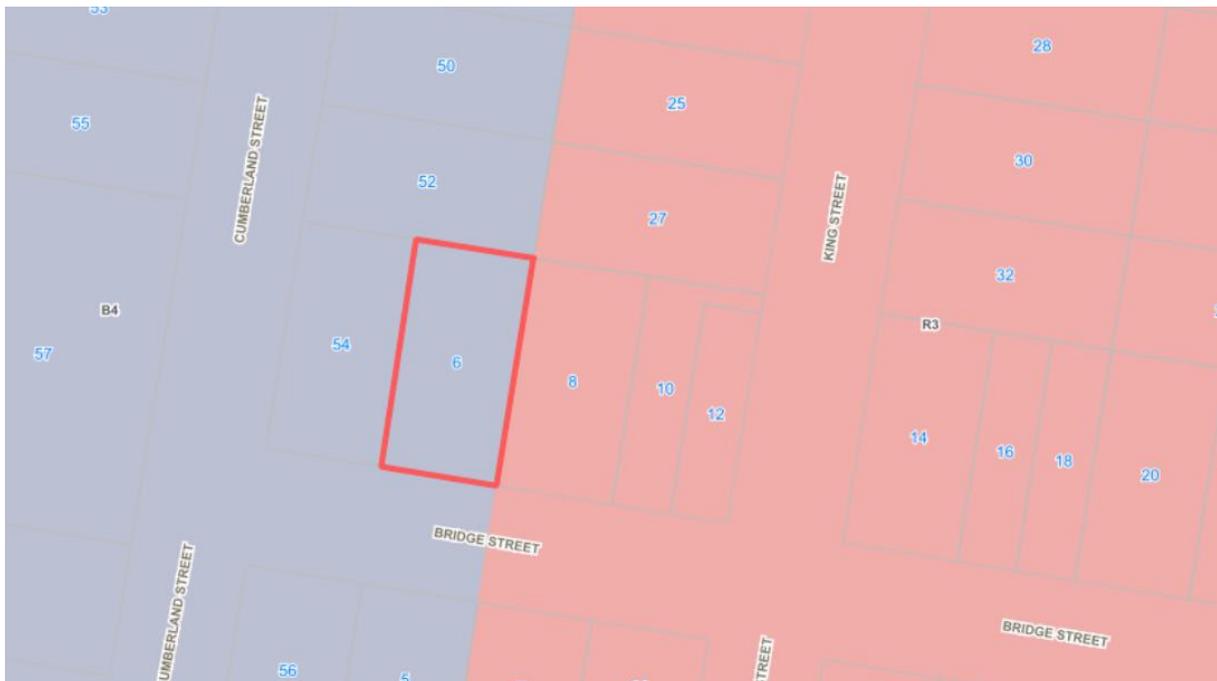


Figure 4: Cessnock Local Environmental Plan 2011 – Land Zoning Map - 6 Bridge Street.

It is acknowledged that the street consists predominately of single-storey weatherboard dwellings, and therefore, the form of the proposed development represents a change to the existing streetscape. In assessing character, it is relevant to appreciate that sameness does not represent compatibility. *Confusion about sameness and compatibility frequently pervades disputes about urban character.* (Project Venture Developments v Pittwater Council [2005] NSW LEC 191. Whilst the proposed built form of the boarding house is not the same as the residential development located within Bridge Street, the proposed built form is compatible with the existing urban character and this is further discussed below.

The proposed two-storey boarding house is of a residential nature which is in keeping with the existing character of the residentially zoned land within Bridge Street to the East. The residential use and scale of the boarding house proposed will provide a complimentary

transition to the B4 – Mixed Use of land to the west towards Vincent Street and the Cessnock CBD precinct.



Figure 5: Visual representation of proposed two-storey boarding house within existing streetscape looking North.



Figure 6: Visual representation of proposed two-storey boarding house within existing streetscape looking East.



Figure 7: Visual representation of proposed two-storey boarding house within existing streetscape looking West.

In designing the two-storey boarding house, the applicant's architect has considered the surrounding development and has integrated the proposal into the existing streetscape, through using measures such as articulation between the ground and first floor. The proposal also provides a stepping point to the redevelopment of land within Cumberland Street in line with *Cessnock Development Control Plan - Cessnock Commercial Precinct*, which allows for construction of buildings to a height of 12 metres.

Whilst the proposed boarding house is two-storey, it does not result in an excessive height disparity between the existing developments within the locality. As outlined previously in this report, the ground floor level of the proposed boarding house will be cut into the natural ground level, particularly towards the rear of the site. This results in the communal areas located at the rear of the lot being cut to a reduced level of 76.30, which is approximately 2 metres below the natural ground level. As previously discussed, the natural ground level falls across the site from the north-east corner (78.50) to the south-west corner (75.10). It is considered that this cross fall, along with the earth works proposed, will negate any adverse impacts associated with the height of the two-storey boarding house.

In terms of compatibility with directly adjoining residential development, it is noted that the ridge of the existing single-storey units located directly to the west is measured at RL 79.12. The ridge of the existing single-storey dwelling located directly to the east is measured at RL 82.22. The ridge of the proposed boarding house is illustrated on the architectural plans as being RL 83.89. Therefore, the proposal is 4.77m higher than the adjoining units to the west, and 1.67m higher than the dwelling to the east.

The materials proposed to be utilised include a mixture of cladding, face brick and sheet metal roofing which are sympathetic to the existing development within Bridge Street.

There is no consistent front setback established within Bridge Street, and the proposed setback of the boarding house has taken into consideration the adjoining setbacks and is positioned in consideration of the varied setbacks within Bridge Street. It is further noted that the proposal adopts the same front setback as the existing dwelling located on the site.

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Within the existing streetscape of Bridge Street there are properties which are landscaped from the front boundary to the building line of the development on the subject allotments, which is not dissimilar to that proposed by the proposed development. A comprehensive landscape master plan was submitted in support of the application, and it is considered that the proposed landscaping will assist in softening any visual impact of the proposed two-storey boarding house and enhance the existing streetscape.

Assessment of the application has considered the impact of the proposed two-storey boarding house on the character of the locality, and taking into account all aspects that create character, has concluded that the proposed development is compatible with the character of the locality.

The assessment of the proposed two-storey boarding house has identified that the two-storey structure is compatible with the existing streetscape, the proposed development does not restrict the future development potential of adjoining land.

Social Impact

The potential social impacts of the proposed two-storey boarding house have been considered in the assessment of the application, and outlined previously in this report.

The applicant has proposed a selection criteria for the endorsement of residents within the proposed boarding house. Draft conditions of consent also require a Plan of Management to be in place which includes a strict one chance rule being applied to the development with regard to anti-social behaviour. The short-listed occupants will also go through a screening and reference check process before being offered a residence within the boarding house.

The ongoing management of the development will be monitored by Council through the requirement for a Plan of Management to be submitted to Council annually.

Noise

The potential noise impacts of the proposed two-storey boarding house have been considered in the assessment of the application. Proposed air-conditioning units are to be provided with noise attenuation baffles to reduce the impact of noise generated by these, on adjoining properties.

Additionally, the private open space provided for resident use to the rear of the proposed development is provided below natural ground level which will assist with reducing any acoustic impacts. Furthermore, management of the proposed boarding house will incorporate house rules designed to reduce noise impacts for residents within the boarding house and those of adjoining properties.

The applicant submitted an Acoustic Report in conjunction with the application which has demonstrated that the development is capable of complying with all noise goals given the HVAC (external air-conditioning units) are fitted with acoustic treatments (e.g. Megasorber).

The assessment of potential noise impacts associated with the proposed boarding house has considered potential noise sources including; mechanical (air-conditioning units), vehicular, and social (communal areas). The assessment has concluded that the noise anticipated to be generated by the development is able to be mitigated through the inclusion of attenuation

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measures, and design solutions utilising the natural topography as noise barriers. These measures assist in reducing the potential noise generated to a compliant level.

Overshadowing

Consideration has been given to the potential impact of overshadowing as a result of the proposed two-storey boarding house. As the subject allotment is positioned on a north/south axis, the proposal largely overshadows Bridge Street.

Each adjoining allotment will continue to receive not less than three (3) hours solar access to north facing windows of living areas, and not less than two (2) hours of sunlight to principal ground-level private open space between 9:00am and 3:00pm on June 21.

View Loss

The assessment of the application has considered the potential impact of view sharing on nearby properties as a result of the proposed two-storey boarding house. The assessment has identified the following with regards to the potential impacts; the *Cessnock Local Environmental Plan 2011* does not impose a height restriction over the subject land. The overall height of the proposed two-storey boarding house is within the permissible height for buildings within the Development Control Plan Cessnock Commercial Precinct, being a maximum height of 12 metres. Specifically, the boarding house proposes a maximum height of 8.66m measured from lowest natural ground level on the site to the ridge of the roof.

The impact on existing views of adjoining properties is considered to be minimal given the topography of the surrounding area, along with the proposed to 'bench' the boarding house into the site. As outlined previously in this report, considering the extent of cut proposed, along with the natural topography within the vicinity which rises in an easterly direction, the existing views of properties located to the north and east will not be adversely impacted by the construction of the two-storey boarding house.

Privacy

The assessment has considered the potential impact on adjoining properties by way of overlooking and the associated impact of privacy currently enjoyed by existing adjoining properties. The use of high sill windows on the first floor rooms, in conjunction with compliant setbacks and alterations to existing natural ground levels (AHD) of the development, have all been assessed as providing a development which will not result in adverse impacts on privacy by way of overlooking on existing adjoining developments.

Additionally, the proposed development provides landscape screening and is devoid of any balconies on the first floor level which will significantly assist in maintaining the privacy of adjoining residential developments.

Car parking and Traffic.

The assessment of the application has considered the potential impact of the development with regard to car parking and traffic. The proposed development has been assessed against the requirements of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (version in force at the time of lodgement) in respect of car parking, and was determined to be compliant.

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As outlined previously, the amendments made to the *State Environmental Planning Policy (Affordable Rental Housing) 2009* on 1 June 2018 in respect to car parking, do not apply to this application due to the operation of Clause 54(1) of the SEPP.

The submitted plan of management identifies visitors are unable to stay at the proposed boarding house overnight, thereby reducing the potential for on-street parking stress of visitors to the boarding house tenants for long periods of time.

Council's Development Engineer has considered the additional traffic movements expected as a result of the boarding house, and the assessment has determined that the existing road network is capable of accommodating the expected additional traffic generated as a result of the development. The assessment concluded that it is reasonable to assume that 100% of the traffic generated by the development will utilise the Bridge Street and Cumberland intersection. From here residents would be capable of heading north towards Cessnock CBD, Pokolbin, and Maitland or turn south towards Toronto and Sydney.

The potential impacts of the proposed boarding house on car parking and traffic have been considered through the assessment of the application and are considered to be acceptable.

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

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development. Specifically, the subject site is located within Cessnock Council's Commercial Precinct and is ideally located to provide good access to public transport connections and to services within the Central Business District. The development has considered the existing character of the area and provided an innovative design which allows for future integration into the envisaged Cessnock Commercial Precinct Plan. The proposed development is compliant with relevant State Environmental Planning Policies, Cessnock Local Environmental Plan 2011, and is generally compliant with relevant Cessnock Development Control Plan 2010.

Having given consideration to the proposed development and any potential impacts the subject site is considered suitable for the proposed two-storey boarding house.

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

The development application and accompanying information were placed on public exhibition on two (2) occasions, between the following dates:

- 18 May to 1 June 2018; and
- 22 October to 5 November 2018.

Over the two (2) exhibition periods, a total of 25 submissions representing 19 properties, were received.

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The issues raised, and a response to each, are outlined below:

Matters raised relating to Traffic specifically On-Street Car Parking	
Matters raised	Comment
<p>Concern has been raised in relation to the proposed boarding house being inadequately serviced by off-street car parking, specifically, given the proximity of the site to entertainment venues which already result in overflow parking in Bridge Street.</p> <p>Additional, concern has been raised that whilst residents may not have vehicles, they are likely to have visitors whom do.</p>	<p>The car parking requirements and existing condition of Bridge Street and its ability to cater for increased traffic movements are matters which have been considered and addressed throughout the assessment.</p> <p>Assessment of the application has identified that residents would likely take the most direct route to connecting roads towards services within the Cessnock CBD, or wider Maitland and Toronto areas. The most direct line of travel would therefore be towards Cumberland Street.</p>
<p>Concern has been raised in relation to the assumption that 100% of the traffic generated by the proposed boarding house will utilise the intersection of Cumberland Street and Bridge Street.</p>	<p>The assessment has determined that the applicant is to formalise the intersection of Bridge and Cumberland Streets by providing centre line-marking, and in this respect, a condition of consent has been imposed on the draft determination notice requiring this work to be undertaken by the developer.</p>

Matters raised relating to Social Impacts	
Matters raised	Comment
<p>Concern has been raised in relation to the social impacts of the proposed development, specifically the clientele which the proposed boarding house will accommodate.</p>	<p>In assessing the social impacts associated with the development, the following matters have been considered:</p> <ul style="list-style-type: none"> • The applicant has identified a target group for the occupation of the proposed boarding house as being 40 - 60 years of age, single with a male to female ratio of 50:50, employed and a low income earner. • The close proximity to shops, public recreation areas and parks will assist in enhancing social cohesion. • The minimum lease of a room within the boarding house is a period of three (3) months, with no restriction on leases for longer periods to exemplary residents. <p>It is considered that the applicant has proposed adequate measures to ensure the proposal does not result in adverse social impacts.</p>
<p>Concern has been raised with regard to the integration of the residents of the boarding house with the existing community.</p>	
<p>Concerns have been raised regarding the potentially adverse social impacts on the surrounding residents due to a concentration of disadvantaged persons. Particularly, an increase in crime and anti-social behaviour (loitering following eviction).</p>	

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Matters raised relating to Privacy	
Matters raised	Comment
Concern has been raised regarding the impact of the proposed two-storey boarding house development on the privacy of existing residential development within the vicinity by way of overlooking.	Potential privacy impacts have been addressed previously in this report.

Matters raised relating to Location	
Matters raised	Comment
Concern has been raised in relation to the location of the proposed boarding house having regard to existing commercial premises including licensed premises, schools and the Cessnock Performing Arts Centre.	<p>The proposed boarding house is to be located within the Cessnock Commercial Precinct which is used by residents, workers and visitors as an important centre for civic functions, business, employment, education, community facilities and services. The location of the proposed boarding house is considered to ameliorate the isolation aspect of the proposed development. This is achieved by providing a location of residence for low income earners with limited private transport whereby, they are able to access services within walking distance or by utilising public transport connections to access services required.</p> <p>This concern is not considered to be justified as the proposed location within the Cessnock Local Government Area is considered to be an appropriate location with regard to access to services for disadvantaged persons.</p>
Concern has been raised that Cessnock is an isolated area with poor infrastructure that is unable to sustain further social disadvantage.	<p>The proposed boarding house is to be located within walking distance of local services which are utilised on a regular basis. It is the intention of the relevant State Environmental Planning Policy to facilitate the retention, and mitigate the loss, of existing affordable rental housing.</p> <p>The recent collapse of Endeavour Industries which provided housing and employment for people with disabilities specifically within the Cessnock area, and the subsequent liquidation of assets including homes occupied by low income earners, has resulted in a potential loss of affordable rental housing within the Cessnock LGA.</p> <p>The proposed boarding house will assist in facilitating the retention, and mitigate the</p>

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	loss, of existing affordable rental housing.
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Matters raised relating to Noise	
Matters raised	Comment
Concern has been raised in relation to the amount of noise generated by the proposed development and its impact on existing adjoining residential land uses. Of particular concern is the location of the private open space for the use of up to 21 persons.	Potential noise impacts have been addressed previously in this report.

Matters raised relating to Character and Amenity	
Matters raised	Comment
Concern has been raised in relation to the impact of the proposed development on the character and amenity of the area.	Potential impacts in relation to character and amenity have been addressed previously in this report.
Concern has been raised in relation to over-development of the site.	
Concern has been raised in relation to the proposal's inconsistency with the existing streetscape.	
Concern has been raised in relation to the building bulk and architectural presentation of the proposal.	
Concern has been raised that the site is a transition site with adjoining residential properties and does not respond architecturally to the transition in land use.	

Matters raised relating to Views	
Matters raised	Comment
Concern has been raised that the proposed two-storey boarding house will impact on views currently enjoyed by adjoining property owners of the Brokenback Range to the west.	Potential impacts in relation to view sharing have been addressed previously in this report.

Matters raised relating to Landscaping	
Matters raised	Comment
Concern has been raised in regard to the proposed landscaping not benefitting from deep-soil planting.	The proposal will benefit from deep soil planting with reduced cut to the existing natural ground level being retained for the purpose of garden beds to the rear of the subject site, with minimal cut to facilitate the development to the front of the site being required.

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	Overall, the site will benefit from landscaping, with a detailed landscape concept plan being lodged in support of the application.
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Matters raised relating to State Environmental Planning Policy – Affordable Rental Housing (2009)

Matters raised	Comment
Concern has been raised in relation to the proposal's satisfaction of State Environmental Planning Policy – Affordable Rental Housing 2009, and specifically, the lack of consideration of the Draft State Environmental Planning Policy Affordable Rental Housing amendments.	<p>As outlined previously in this report, the proposal is identified as satisfying the relevant provisions of SEPP – Affordable Rental Housing.</p> <p>Council is satisfied that the proposed boarding house meets the provisions of the prevailing SEPP at the time of lodgement.</p> <p>Council is permitted to determine the application without reference to the SEPP amendments, as clearly evidenced within Clause 54 of the SEPP.</p>
Concern has been raised specifically with regard to the proposal's compliance with the definition within the State Environmental Planning Policy – Affordable Rental Housing (2009) of an 'accessible area'.	<p>Assessment of the application has concluded that the subject site can be considered an 'accessible area' within the terms of the definition within the SEPP, which prescribes as follows:</p> <p>accessible area means land that is within:</p> <p>(a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or</p> <p>(b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or</p> <p>(c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p> <p>A review of local bus timetables has identified that the 'Cessnock Rover Depot/Vincent Street' bus stop is located</p>

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	<p>within 400m distance of the subject location and is serviced by a regular bus service (within the meaning of the <i>Passenger Transport Act 1990</i>), and has at least one bus service per hour servicing the stop between 06:00 and 21:00 each day Monday – Friday and between 08:00 and 18:00 on Saturday and Sunday.</p> <p>To improve accessibility for future residents, a condition of consent has been imposed on the draft determination notice requiring installation of a footpath between the subject site and the existing footpath on the eastern side of Cumberland Street.</p>
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Matters raised relating to Property Value	
Matters raised	Comment
Concern has been raised by residents that the boarding house will result in decreased property values of their own properties.	The consideration of property values is not a valid planning consideration under the <i>Environmental Planning and Assessment Act 1979</i> , and does not form part of the assessment of a development application.

Matters raised relating to Compliance with Council’s Development Standards	
Matters raised	Comment
Concern has been raised by residents that, in accordance with Cessnock Development Control Plan Chapter E16: Cessnock Commercial Precinct, the site requires an active street frontage with awnings and commercial premises.	<p>The Cessnock Commercial Precinct Development Control Plan refers to an ‘active’ street frontage being preferred within Bridge Street, however is not required.</p> <p>Importantly, the application proposes a boarding house, not a form of development that would ordinarily be expected to provide an active street frontage such as a commercial development or mixed use development.</p> <div style="text-align: right;"> </div> <p>Figure 8: Preferred Frontage.</p>

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	<p>Assessment of the application has concluded that a residential frontage complies with the DCP requirement. A residential frontage also integrates with the existing use/character of the northern side of Bridge Street being for residential purposes.</p>
<p>Concern has been raised that the proposed boarding house does not comply with the required front setback for development in accordance with <i>Cessnock Development Control Plan Chapter E16: Cessnock Commercial Precinct</i>.</p>	<p>The issue relating to the front setback has been addressed previously in this report.</p>
<p>Concern has been raised by residents with regard to non-compliances with development standards contained with Chapter C1: Parking and Access of Cessnock Development Control Plan, relating to the setback for the provision of access to the site being 1.5 metres from side boundaries.</p>	<p>The issue relating to the setback of the vehicular access from the side boundary has been addressed previously in this report.</p>

The concerns raised in submissions lodged in respect of the proposal have been considered and addressed during the assessment process. Where relevant, appropriate conditions of consent have been imposed on the draft notice of determination to address concerns raised by residents.

(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 consistent with the public interest. The proposed development is for a 'new generation boarding house' which provides self-contained rooms for twenty-one (21) residents inclusive of an on-site manager. The design of the proposed boarding house has considered the existing character of the area whilst also taking into consideration the direction of Council's strategic plan as detailed within the adopted Development Control Plan.

In addition to the above, the proposed development will assist in the provision of housing variety within the Cessnock Local Government Area, which is in the public interest.



SECTION 7.11 CONTRIBUTIONS

Section 7.11 Contributions are payable for the proposal. In the event the application is approved, Section 7.11 Contributions totalling \$41,248.75 would be payable, in accordance with the following:

Residential Section 94 Contributions Plan Calculation:

Summary - Calculations	
District Open Space	\$14,422.46
Local Open Space (Land & Works)	\$0.00
District Community Facilities (Halls)	\$8,829.21
District Community Facilities (Libraries)	\$2,356.15
District Community Facilities (Bushfire)	\$674.61
District Roads – Urban Areas	\$10,977.45
District Roads – Rural Areas	\$0.00
Local Roads	\$0.00
Local Drainage	\$0.00
Flood Mitigation - Nulkaba	\$0.00
Studies (Plan Preparation)	\$828.51
Flood Study - Abermain South	\$0.00
Plan Administration	\$3,160.36
Unformed/Partially formed Roads	\$0.00
Summary - Total S94 Contribution	\$41,248.75

INTERNAL REFERRALS

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

Officer	Comment
Development Engineering	No objection raised to the proposal, subject to relevant conditions of consent.
Social Impact/ Community Planning CPTED	The Social Impact Assessment (SIA) and proposed Plan of Management were reviewed, and comments were provided which resulted in revised information in relation to: social impacts on the affected community and mitigation measures; the intended target residents; emergency procedures and secondary contacts; and procedural response to address loitering/unwanted congregation in an updated Plan of Management. No objection raised to the proposal, subject to relevant conditions of consent.

Environment and Waste	The proposed ongoing waste management arrangements were reviewed, with no objection raised to the development being serviced by a private contractor from the street kerb.
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EXTERNAL REFERRALS

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

It is noted that the subject site is within a mine subsidence district. The applicant sought approval from Subsidence Advisory prior to lodgement of the Development Application, and submitted a stamped plan approved by Subsidence Advisory, in conjunction with the application.

CONCLUSION

The Development Application has been assessed in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979, and all relevant instruments and policies.

The proposal complies with the relevant planning controls, most notably those contained within *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *Cessnock Local Environmental Plan 2011*, and *Cessnock Development Control Plan 2010*.

The development application was publicly exhibited on two (2) occasions. In total, 25 submissions representing 19 properties, were lodged with Council in response to the two (2) exhibition periods. The issues and concerns raised in the submissions have been addressed during assessment of the application.

It is considered that the proposed boarding house has generally been designed to have regard to the natural and built environments, and is sympathetic to existing development within the direct locality, noting that the site is located close to Cessnock Central Business District.

It is considered that the site is suitable for the proposed development, and that the addition of a boarding house within the locality will result in positive social benefits as it will provide an alternate affordable housing choice within an accessible area.

Based on the assessment, it is recommended that Development Application No. 8/2018/261/1 be approved, subject to the conditions of consent included in this report.



ENCLOSURES

- 1 Architectural Plans
- 2 Landscape Plans
- 3 Photomontage
- 4 Submissions from first exhibition period - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy.*
- 5 Submissions from second exhibition period - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy.*

CONDITIONS OF CONSENT

SCHEDULE 1

TERMS OF CONSENT

CONDITIONS OF CONSENT

1. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2018/261 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Plan Project Number: A081 Drawing No: A011 Revision: I	Rainsford Architecture & Design	04.12.2018
Ground Floor Project Number: A081 Drawing Number: A100 Revision: I	Rainsford Architecture & Design	04.12.2018
Level 1 Project Number: A081 Drawing Number: A101 Revision: I	Rainsford Architecture & Design	04.12.2018
East and South (Elevations) Project Number: A081 Drawing Number: A200 Revision: I	Rainsford Architecture & Design	04.12.2018
West and North (Elevations) Project Number: A081 Drawing Number: A201 Revision: I	Rainsford Architecture & Design	04.12.2018
Section AA, BB and CC Project Number: A081 Drawing Number: A300 Revision: I	Rainsford Architecture & Design	04.12.2018
Landscape Master Plan – Bridge Street Boarding House Job No: 12174.5 Sheet: L01 Revision: B	Terras Landscape Architects	7.5.18

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Document Title	Prepared By	Dated
Plan of Management Proposed Boarding House 6 Bridge Street, Cessnock 2325 NSW Ref Number: 18081_POM_Boarding House_July 2018	Un-authored	July 2018
Social Impact Assessment Proposed Boarding House 6 Bridge Street Cessnock NSW 2325 Job Number: 18081	KDC Pty Ltd (Kate Young)	25 July 2018
Letter – Response to Submissions – DA 8/2018/261/1- Lots 10 of Section A in DP 4269 at No. 6 Bridge Street, Cessnock	Parker Scanlon Pty Ltd (Brad Draper)	30 July 2018
Noise Assessment Report 6 Bridge Street, Cessnock Job Ref: 181004	Rapt Consulting (Greg Collins)	September 2018
Letter – Request for Additional Information – DA 8/2018/261/1- Lots 10 of Section A in DP 4269 at No. 6 Bridge Street, Cessnock Item 5 – Waste Management	Parker Scanlon Pty Ltd (Brad Draper)	03 October 2018

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 6.6 (cf previous s 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 6.5 (cf previous s 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. BCA Compliance

Pursuant to Section 4.17(11) (cf previous s 80A) of the *EP&A Act 1979* all building work must be carried out in accordance with the requirements of the *BCA*.

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.

4. Local Traffic Committee Approval

Any application involving the installation of, or amendment to, regulatory signage, linemarking and/or traffic control devices, will require approval of the Council Local Traffic Committee. Full details shall be submitted to, and approved by the Council Local Traffic Committee, prior to the issue of an *CC*, and subsequent Section 138 Roads Act Approval.

5. Road Marking – Bridge Street

The applicant is to provide centreline marking from the intersection with Cumberland Street until the western boundary extents of the subject site. The applicant is to provide give way line marking at the eastern branch of the Cumberland Street intersection as per *AS1742.2-2009*.

6. Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a *CC*.

7. Footpath Construction

The registered proprietors of the land shall construct a 1.2m wide concrete footpath for the full frontage of the Lot and connecting to the existing footpath network on the eastern side of Cumberland Street in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by, Council prior to the release of a Construction Certificate and issue of the S138 Roads Act Approval.

8. Security for Cost of Damage and Completion of Public Work

Prior to issue of a *CC* authorising the carrying out of any work in accordance with this development consent, the applicant must provide security to the Council for the payment of the cost of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates,

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- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
- c) remedying any defects in any such public work that arise within six (6) months after the work is completed.

The security is to be for an amount that is the greater of \$5000 or 5% of the estimated cost of carrying out the development and may be provided by way of:

- a) cash deposit with the Council, or
- b) an unconditional bank guarantee in favour of the Council.

The security may be used to meet any costs referred above and on application being made to the Council by the person who provided the security, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the security within six (6) years of the date of issue of the Occupation Certificate or Subdivision Certificate for the development the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.

9. Residential S94 Contributions Plan

A contribution pursuant to the provisions of Section 7.11 (cf previous s 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:

Fee Type Code	Contribution Type	Amount Payable
525	District Open Space	\$14,422.46
523	District Community Facilities (Halls)	\$8,829.21
524	District Community Facilities (Libraries)	\$2,356.15
522	District Community Facilities (Bushfire)	\$674.61
527	District Roads – Urban Areas	\$10,977.45
543	Studies (Plan Preparation)	\$828.51
540	Plan Administration	\$3,160.36
	Total	\$41,248.75

A copy of the Residential Contributions Plan may be inspected at Council's Customer Services Section, Administration Building, Vincent Street, Cessnock or can be accessed on Council's website at 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.

10. Street Trees

Prior to the issue of a CC, a Street Tree Planting Plan must be submitted to and approved by Council.

Prior to submission of the Street Tree Planting Plan, the applicant is required to schedule a meeting with the relevant Council Officer to discuss species and location requirements relating to street trees. A fee is payable for this service in accordance with Council's adopted Fees and Charges.

11. Retaining Wall

Where a retaining wall is in excess of 600mm in height and/or within 900mm of a property boundary, separate detailed drawings are to be submitted in conjunction with the CC, specifying wall heights, heights of retaining walls, proposed mounding and stabilisation treatment, and landscaping for the elevations of the building.

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.

12. Car Parking - Residential

The design of the vehicular access and off street parking facilities must comply with AS 2890.1:2004 *Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance with this Standard 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.

13. Disabled Car Parking Spaces

A total of one (1) car parking spaces for use by persons with a disability must be provided as part of the total car parking requirements.

Plans demonstrating compliance with this requirement and the following Australian Standards are to be submitted to, and approved by, the CA prior to the issue of a CC.

- * AS/NZS 2890.1:2004 Parking Facilities – Off street car parking
- * AS/NZS 1428.1:2009 Design for access and mobility – General requirements for access – New building work
- * AS/NZS 1428.4.1:2009 Design for access and mobility – Means to assist the orientation of people with vision impairment – Tactile ground surface indicators.

14. Parking – Minimum Requirement

Onsite car parking shall be provided for a minimum of five (5) vehicles and such being set out generally in accordance with Council's Development Control Plan.

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.

15. Parking - Signage

One (1) car parking space must be designated and signposted for use by disabled persons for the life of 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.

16. Road – Engineering Requirements

All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & AS2890.2 - Parking Facilities.

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.

17. OSD System

A stormwater drainage design, incorporating on site stormwater retention / detention facilities, prepared by a qualified practising Civil Engineer must be provided to the CA prior to the issue of a CC. The design must be prepared / amended to make provision for the following:

- a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. C03 prepared by MPC Consulting Engineers and dated 27.03.18.
- b) Comply with Council's Engineering Requirements for Development.
- c) All plumbing within the site must be carried out in accordance with AS 3500.3.2003 *Plumbing and Drainage – Stormwater Drainage*
- d) Overflow pipeline(s) must be provided for any rainwater tank(s) to discharge by gravity to the Council drainage system. Where OSD facilities are required by this consent, the overflow pipelines must be discharged by gravity to the OSD storage tank(s)
- e) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets

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- f) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- g) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system
- h) Stormwater must be discharged by gravity to the kerb and gutter of a public road or to Council's piped drainage system
- i) Stormwater must be discharged by gravity directly into Council's piped drainage system
- j) All redundant stormwater pipelines within the footpath area must be removed, and the footpath and kerb reinstated
- k) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm

Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

18. Stormwater – Collection and Discharge Requirements

The registered proprietor of the land shall collect all roof and stormwater runoff from the site and discharge it to Council's kerb and gutter in Bridge Street in accordance with Council's 'Engineering Requirements for Development' (available at Council's Offices). Full details shall be submitted to, and approved by, the CA prior to the issue of a CC for the building.

19. Stormwater – Construction Management Plan Requirement

A construction management plan shall be submitted with the application for the CC and approved by the CA as satisfying the below requirements:

- a) Details of sedimentation and erosion control
- b) Details of provision of truck and machinery wash down areas. Note: All trucks and machinery must be free from all foreign material where such material is likely to cause pollution. An area must be set aside for the cleaning of concrete agitator trucks.
- c) Details of dust mitigation on building sites and access roads
- d) Location and phone number of the site office

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- e) Details regarding provision of areas set aside for the storage/stockpiling of:
 - i) Construction refuse
 - ii) Construction materials
 - iii) Raw materials such as sand, soil, mulch and the like
 - v) Details regarding the provision of facilities for workers associated with the development.

Note: All protection and control of earthworks shall be carried out in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements, and the Department of Housing 'Soil and Water Management for Urban Developments'.

20. 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.

21. Stormwater – Detention Requirement

The registered proprietor of the land is to provide a stormwater detention facility within the boundaries of the site to reduce the peak stormwater discharge from the developed lot to that of the peak stormwater discharged from the undeveloped lot for all storm events from the 1 in 1 year to the 1 in 100 year Average Recurrence Interval (ARI) storm event. 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. Details shall include onsite storage, the method of controlled release from the site, and connection to an approved drainage system in accordance with Council's 'Engineering Requirements for Development'.

Detailed plans, specifications and copies of the calculations, including existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development, shall be prepared by an engineer suitably qualified and experienced in the field of hydrology and hydraulics. 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.

22. Stormwater – Discharge (General)

The applicant shall collect all roof and stormwater runoff from the impervious areas on site, and any other drainage entering the site, and discharge it to Council's satisfaction in accordance with Council's 'Engineering Requirements for 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 the CC.

23. Smoke Alarms

The smoke alarm system must be installed on or near the ceiling in accordance with Part 3.7.2.3 of the BCA. The smoke alarm system must be connected to the mains electrical power supply and must have a stand-by (battery backup) power supply.

Plans demonstrating compliance with this requirement is to be submitted to, and approved by, the CA prior to the issue of a CC.

24. 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.

25. Garbage Room

Details and location of the proposed garbage room are to be provided to the CA prior to the issue of a CC. Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, are to be constructed of solid material, cement rendered and trowelled to a smooth even surface, and subject to the following requirements:

- a) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room
- b) Garbage rooms must be vented to the external air by natural or mechanical ventilation

Such details must be approved by the CA as satisfying this requirement prior to the issue of a CC.

26. Waste Management Plan

A Waste Management Plan is to be provided to the CA prior to the issue of a CC. The Waste Management Plan is to be prepared in accordance with the following:

- a) Estimated quantities of materials that are reused, recycled, removed from the site

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- b) On site material storage areas during construction
- c) Materials and methods used during construction to minimise waste
- d) Nomination of end location of all waste generated

All requirements of the approved Waste Management Plan must be implemented during the construction of the development.

27. Detention Basin Engineering Checking

The applicant shall pay Detention Basin(s) engineering checking and site supervision fees in accordance with Council's current Fees & Charges prior to release of a Civil CC for the site. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's current Fees & Charges.

28. Crime Prevention Through Design

It is recommended that the following Crime Prevention Through Environmental Design (CPTED) principles be incorporated into the building.

- a) Back to base alarm systems
- b) Basement parking area shall be painted a light colour
- c) CCTV for the ground level, entry/exit points, car parks, lifts and the exterior of the building shall be considered
- d) 'Way finding' signage should be utilised at all major interchanges such as lifts and stair wells
- e) 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 premises. The lighting should be vandal resistant - especially external lighting
- f) Corrugated ramps should be considered to prevent skate boarding activities
- g) Glazed tiling, patterned, porous and non-solid surfaces reduce the reward for graffiti offenders
- h) Any external approved palisade or pool style fencing shall be black in colour, unless otherwise noted on the approved plans/details

In the event these recommendations are implemented, plans and details submitted in association with the CC application are to reflect this. The plans and details must be approved by the CA as satisfying this requirement prior to the issue of a CC.

29. Exterior Lighting

Prior to the issue of a CC, submit to Council for approval a proposed exterior lighting plan. The external lighting plan is to be designed to enable clear vision, and be designed in such a manner so as to prevent concealment and shadowing. Design and position all exterior/outdoor lighting, to minimise any detrimental impact upon the amenity of other premises, adjacent dwellings and the road reserve, and in accordance with the relevant provisions of:-

- AS 4282:1997 Control of the obtrusive effects of outdoor lighting.

30. Acoustic Report

Prior to the issue of a CC, plans shall be submitted to, and approved by the CA confirming that the recommendations specified in the Noise Impact Assessment prepared by Rapt Consulting dated September 2018, have been implemented in the final design of the proposed development.

PRIOR TO COMMENCEMENT OF WORKS

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

31. Excavation Protection of Adjoining Property

If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:

- Must preserve and protect the adjoining building from damage
- Must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished
- The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated, or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

32. Demolition Proposed

Consent is granted for the demolition of development currently existing on the property, subject to strict compliance with the following conditions:

- 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.

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- 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.

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- 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 SafeWork 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.

33. Construction and Traffic Management Plan

The applicant must prepare a Construction Management and Traffic Management Plan incorporating the following matters. The plan must be submitted to and approved by the CA as satisfying these matters prior to the commencement of works.

- a) A plan view of the entire site and frontage roadways indicating:
 - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
 - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
 - iii) The locations of proposed work zones in the frontage roadways.
 - iv) Location of any proposed crane, concrete pump, truck standing areas on and off the site.
 - v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
 - vi) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.

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- vii) An onsite parking area for employees, tradespersons and construction vehicles as far as possible.
 - viii) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
 - ix) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
 - x) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a Chartered Civil Engineer.
- b) During excavation, demolition and construction phases, noise generated from the site must be controlled.
 - c) All site works must comply with the work health and safety requirements of SafeWork NSW.
 - d) During excavation, demolition and construction phases, toilet facilities are to be provided on site, at the rate of one (1) toilet for every twenty (20) persons or part of twenty (20) persons employed at the site.
 - e) All traffic control plans must be in accordance with the *RMS* publication *Traffic Control Worksite Manual* and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of six (6) weeks prior to the proposed activity being undertaken.

34. Site To Be Secured

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.

35. PCA Signage and Contact Details

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.

36. Home Building Act Requirements

Pursuant to Section 4.17(11) (cf previous s 80A) of the *EP&A Act 1979*, where the development involves residential building work for which the Home Building Act 1989 requires a contract on insurance to be in force in accordance with Part 6 of that Act, building work authorised by this consent must not commence until such a contract of insurance has been obtained and is in force.

Residential building work must not be carried out unless the *PCA* for the development to which the work relates (not being the council) has given the council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act
- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information required by (a) or (b) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has given the council written notice of the updated information.

This condition does not apply in relation to Crown building work that is certified, in accordance with Section 6.28 (cf previous s 109R) of the Act, to comply with the technical provisions of the State's building laws.

37. Soil and Water Management Plan

The applicant must prepare a Soil and Water Management Plan, being compatible with the Construction Management and Traffic Management Plan referred to in this Development Consent and incorporating the following matters. The plan must be submitted to and approved by the CA as satisfying these matters prior to the commencement of works.

- a) Minimise the area of soils exposed at any one time
- b) Conservation of top soil
- c) Identify and protect proposed stockpile locations
- d) Preserve existing vegetation. Identify revegetation technique and materials
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner
- f) Control surface water flows through the site in a manner that:
 - i) Diverts clean-runoff around disturbed areas
 - ii) Minimises slope gradient and flow distance within disturbed areas
 - iii) Ensures surface run-off occurs at non erodible velocities
 - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

38. Public Liability Insurance

Any person or contractor undertaking works on public property must take out Public Risk insurance with a minimum cover of twenty (20) 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.

39. Road Opening Permit

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

40. S138 Roads Act Approvals

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.

41. Noise and Vibration Management Plan Required

Prior to the commencement of works, a Noise and Vibration Management Plan is to be prepared by a suitably qualified professional addressing, the likely noise and vibration from demolition, excavation and construction of the proposed development, and provided to the Council.

The plan is to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant AS. The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works. The plan shall address, but not be limited to, the following matters:

- a) Identification of activities carried out, and associated noise sources
- b) Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- c) Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- d) Noise and vibration monitoring, reporting and response procedures
- e) Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- f) Description of specific mitigation treatments, management methods, and procedures to be implemented to control noise and vibration during construction
- g) Construction timetabling to minimise noise impacts, including time and duration restrictions, respite periods and frequency
- h) Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- i) Contingency plans to be implemented in the event of non-compliances and/or noise complaints.

42. Approval Required for Equipment in Road Reserve

An application for any of the following on public property (footpaths, roads, reserves) shall be submitted to, and approved by, Council prior to the commencement of works.

- a) Construction zone

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- b) A pumping permit
- c) Mobile crane
- d) Skip bins.

43. Nominated Location of Waste

The location and facilities for the collection, storage and disposal of waste generated within the premises shall be submitted to the *PCA*, prior to the commencement of works.

44. Soil and Water Management Plan Implemented

The requirements of the Soil and Water Management Plan shall be in place prior to the commencement of demolition works and/or construction works and shall be maintained throughout the demolition and/or construction process.

45. Toilet Facilities

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 sewage 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.

46. 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.

47. Excavation Permit

Prior to the commencement of any excavation works, an Excavation Permit issued under Section 140 of the *Heritage Act 1977* must be obtained from the Heritage Division of the Office of Environment and Heritage.

DURING WORKS

The following conditions are to be complied with during works.

48. Construction Hours

Excavation, building or subdivision work must be restricted to the hours of 7.00am and 5.00pm on Monday to Saturday inclusive. Work is not to be carried out on Sundays and public holidays.

49. Site is Securely Fenced

The site must be appropriately secured and fenced at all times during works.

30. Excavations and Backfilling

All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a professional engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage
- b) If necessary, underpin and support the building in a manner certified by a professional engineer.
- c) Give at least seven (7) days' notice to the adjoining owner before excavating, of the intention to excavate

The principal contractor, owner builder, or any person who needs to excavate and undertake building work, must first contact "Dial Before You Dig" and allow a reasonable period of time for the utilities to provide locations of their underground assets.

51. 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*.

52. Location of Council Pipes

During all phases of demolition, excavation and construction, it is the full responsibility of the applicant and their contractors to:

- a) Ascertain the exact location of the Council stormwater drainage pipeline and associated pits traversing the site in the vicinity of the works
- b) Take measures to protect the in-ground Council stormwater drainage pipeline and associated pits
- c) Ensure dedicated overland flow paths are satisfactorily maintained through the site

Stormwater drainage pipes can be damaged through applying excessive loading (such as construction machinery, material storage, and the like). All proposed structures and construction activities must be sited fully clear of Council's stormwater drainage pipes, pits, easements, watercourses and overland flow paths on the site.

If the Council pipeline is uncovered during construction, all work must cease, and the PCA and Council must be contacted immediately for advice. Any damage caused to the Council stormwater drainage system must be immediately repaired in full as directed, and at no cost to Council.

53. Construction Vehicles

Construction material and vehicles shall not be placed on public footpaths. The use of footpaths or roadways shall be undertaken in accordance with the prevailing kerbside restrictions, the Australian Road Rules and Council's Parking Code.

54. 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.

55. 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.

56. Road – Obstruction of Footpath Restriction

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.

57. Removal of Contaminated Soil

Any soil proposed to be disposed of off-site must be classified, removed and disposed of in accordance with the New South Wales Environment and Heritage *Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-liquid Wastes 1999* and the *Protection of the Environment Operations Act 1997*.

Any soil which fails to meet the criteria is not to be disposed of off-site unless agreed to in writing by the Environment Protection Authority. Results of testing are to be forwarded to Cessnock Council for acknowledgement before any off-site disposal, and before proceeding with any construction works.

58. Implementation of Soil and Water Management Plan

The requirements of the Soil and Water Management Plan must be maintained at all times during the works, and any measures required by the Soil and Water Management Plan shall not be removed until the site has been stabilised.

Materials from the site are not to be tracked into the road by vehicles entering or leaving the site. At the end of each working day, any dust/dirt or other sediment shall

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be swept off the road and contained on the site, and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily, and defects or system failures are to be repaired as soon as they are detected.

59. Erosion and Sediment Controls

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.

60. Stormwater Runoff

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

61. Waste Management

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.

62. 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.

63. Hunter Water Sewer Main

The applicant shall comply with the requirements of the Hunter Water Corporation where the structure is proposed to be located over/adjacent to the Corporation's sewer main. The Corporation maintains right of access to the sewer main for maintenance purposes.

64. Survey Report

The building is to be set out by a registered surveyor in the position approved by Council. A copy of the survey report indicating the position of the building as approved, and wholly contained within the subject lot, is to be submitted to the PCA prior to construction works proceeding beyond floor level stage.

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):

65. Plan of Management

A final Plan of Management is to be submitted to Council for approval prior to an OC being issued for the proposed development.

The Plan of Management as a minimum should incorporate the conditions/measures outlined in the following documents:

- Plan of Management, Proposed Boarding House, 6 Bridge Street, Cessnock 2325 NSW; and
- Letter from Parker Scanlon *Re: Response to Submissions – DA 8/2018/261/1-Lots 10 of Section A in DP 4269 at No. 6 Bridge Street, Cessnock*, dated 30 July 2018.

In addition to the above, The Plan of Management must include the following conditions/measures, as a minimum:

- House rules will be clearly displayed in common areas and provided to each resident, these will address at a minimum alcohol and drug use, overnight visitors/lodgers, anti-social behaviour and visiting hours. Tenants will be strictly managed under a one chance only rule.
- An independent caretaker will live within the building and manage all day-to-day operational aspects of the boarding house. In the case of an emergency, if the caretaker is not contactable the second point will be the property manager. When the onsite manager takes leave for holidays or extended sickness a substitute will be engaged however the contact number will remain the same.
- Residents will be screened, reference checked, and emergency contacts will be kept up to date.
- At no time is any room to be advertised as or made available for short stay accommodation such as that associated with back packer hostels, motels, hotels or the like.
- The on-site manager is to establish contact and maintain a relationship with the neighbours of the boarding house within a 100m radius. This is to include informing neighbours of the contact details for the on-site manager.
- Measures to ensure that residents are inducted to the site and this includes awareness of the emergency evacuation procedure.
- Guidelines for use of external communal open space and indoor common areas, to be documented and made available to residents.

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- A procedure for documenting complaints. The complaints process is to be made available to all residents.
- Vandal resistant CCTV surveillance cameras will be installed in and around the complex in all communal areas (hallways, stairs, open space, car park etc). No CCTV surveillance cameras are to be located within the rooms of boarders. All cameras will operate 24 hours a day, 7 days a week and a live link be provided to a professional security company who will monitor the camera 24/7.

66. Roads – Concrete Crossing

The registered proprietors shall construct and maintain a concrete access crossing from the kerb and gutter in Bridge Street to the property boundary, in accordance with Council's "Engineering Requirements for Development" and AS 2890.1. A S138 Roads Act Approval is required from Council prior to any construction commencing within the road reserve. The access crossing is required to be constructed prior to the issue of a Final OC. Where an Interim OC is issued the crossing shall be completed within six (6) months from the date of the Interim OC.

Construction of the crossing will require inspections to be undertaken by Council. The applicant shall pay Council engineering site supervision fees in accordance with Council's current Fees & Charges, prior to the inspections being undertaken.

The initial fee will facilitate approval of the application and one (1) construction inspection (steel and formwork inspection).

A final inspection will be required upon completion of the driveway and restoration of all disturbed footway areas. (A separate fee will be required to be paid when the final inspection is booked.) Should further inspections become necessary as a result of unsatisfactory or defective works, additional inspection fees will be charged in accordance with Council's current Fees & Charges.

The applicant is to advise Council at least 48 hours prior to inspection of works within the footpath and/or road reserve.

67. Footpath Completion

The approved footpath in Bridge Street and Cumberland Street is to be completed prior to an OC being issued.

68. Certification of Fire Services

The building must comply with the fire safety provisions applicable to the approved use. The applicant shall provide Council and the Fire Commissioner with a copy of the Final Fire Safety Certificate and the Fire Safety Schedule relating to the required fire safety measures, in accordance with Division 4 of the Environmental Planning and Assessment Regulation 2000 prior to occupation of the building or issue of an OC.

The Final Fire Safety Certificate and the Fire Safety Schedule are to be prominently displayed in the building.

69. All Services Provided

Certification that all services as required (eg water supply, gas, electricity, telephone, sewer), are available to the site, shall be submitted to the *PCA* prior to issue of an *OC*.

70. Finish of Excavated &/or Filled Areas Around Site

Prior to issue of a Final *OC*, the excavated and/or filled areas of the site are to be stabilised and drained, to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water, and to ensure the free flow of water away from the building and adjoining properties.

71. Completion of Landscape Works

All landscape works, including the removal of all noxious weed species, are to be undertaken in accordance with the approved landscape plan and conditions of Development Consent, prior to the issue of an *OC*.

72. Acoustic Report Recommendations Complied With

A certificate must be submitted to and approved by the *CA* prior to the issue of an *OC* demonstrating compliance with the recommendations of the Noise Impact Assessment prepared by Rapt Consulting dated September 2018.

The certificate must be prepared by an accredited acoustic consultant, and must certify that the recommendations in the approved acoustic report have been complied with and the desired acoustic performance achieved.

73. Parking – Signage

Signs shall be clearly displayed at the Bridge Street frontage of the premises indicating the availability of car parking at the rear, for the life of the development, prior to the issue of an *OC*. Note: AS 1742.1 requires the use of white lettering on blue background for such signage.

74. Parking – Bicycle Parking

Bicycle parking racks to accommodate five (5) bicycles shall be provided prior to the issue of a Final *OC*.

75. Parking – Completion

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

76. Disabled Access/Parking

The proposed development shall be provided with vehicular access and parking for the disabled in accordance with AS 1428.1 and AS 2890.6. The access shall be provided prior to issue of an *OC*.

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77. Completion of Car Park

Prior to the issue of an *OC*, the *PCA* must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant *AS* and the following have been implemented within the property, where applicable:

- a) The car park has been completed, line marked and all signage relating to car parking erected
- b) 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 *AS*'s must be provided to the *PCA* prior to the issue of an *OC*.

78. 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.

79. Reinstate Road Reserve Verge

The applicant shall construct/reconstruct the unpaved road reserve verge with grass - species and installation shall be approved by Council prior to issue of an *OC*.

80. Road – Driveway Standard

The registered proprietors of the land shall construct a reinforced concrete driveway 3.0m wide, with integral kerb from the property boundary to the useable portion of the lot, in accordance with Council's 'Engineering Requirements for Development' (available at Council's offices) and *AS* 2890.1. Construction shall be completed prior to the issue of an *OC*.

81. Positive Covenant – OSD

Prior to the issue of an *OC*, a positive covenant must be created under Section 88E of the *Conveyancing Act 1919*, burdening the owner(s) with the requirement to maintain the onsite detention and onsite retention/re-use facilities on the property.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a) The proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the onsite stormwater detention facilities ("OSD").
- b) The proprietor shall have the OSD inspected annually by a competent person.

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- c) The Council shall have the right to enter upon the land referred to above, at all reasonable times, to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures which comprise the OSD, or which convey stormwater from the said land, and recover the costs of any such works from the proprietor.
- d) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD, or failure to clean, maintain and repair the OSD.

The proprietor, or successor, must bear all costs associated with the preparation of the subject 88E instrument. Proof of registration with the NSW Department of Lands must be submitted to, and approved by, the *PCA* prior to the issue of an *OC*.

82. Works-As-Executed Plan

Two (2) copies of a *WAE* plan prepared by a registered surveyor (both marked up in red), must be submitted to, and approved by, the *PCA*, clearly showing all aspects of the constructed drainage and / or OSD. The plan must include:

- a) Sufficient levels and dimensions to verify the constructed storage volumes
- b) Location and surface levels of all pits
- c) Invert levels of the tanks, internal drainage line, orifice plates fitted, and levels within the outlet control pit
- d) Finished floor levels of all structures and driveways
- e) Verification that trash screens and/or GPTs have been installed
- f) Locations and levels of any overland flow paths
- g) The *WAE* plan information should be shown on a stamped copy of the approved civil works drawings
- h) Surface levels of pits and surrounding ground levels
- i) Levels of spillways and surrounding kerb
- j) Floor levels of buildings, including garages
- k) Top of kerb levels at the front of the lot
- l) Dimensions of stormwater basins and extent of inundation
- m) Calculation of actual detention storage volume provided

The plan shall be accompanied by a report from the designer stating the conformance or otherwise of the as-constructed basins in relation to the approved design.

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The *WAE* plan and report shall be submitted to and approved by *PCA* prior to the issue of an *OC*.

83. Drainage Works

All drainage works required to be undertaken in accordance with this consent shall be completed prior to issue of an *OC* for the development.

84. Stormwater – Plan of Management

The registered proprietor of the land shall prepare a Plan of Management for the *OSD* facilities within the development. The plan shall set out all design and operational parameters for the detention facilities, including design levels, hydrology and hydraulics, inspection and maintenance requirements, and time intervals for such inspection and maintenance. The plan shall be submitted to the *PCA* for approval prior to the issue of an *OC*.

85. Stormwater – Discharge to Kerb & Gutter

The registered proprietor of the land shall ensure that connection of the stormwater drainage to the kerb inlet pits in Bridge Street is carried out in accordance with the following:

- a) the connection point into the existing drainage pipe will be required to be sealed by the use of mortar, ensuring that no material can enter the drainage system around the connection point. The connection of the PVC pipe is to be flush with the interior of Council's drainage pipe so that there are no obstructions within Council's drainage pipe.
- b) Any excess mortar or concrete rubble caused from the connection into the pit is to be removed, at the expense of the person/s undertaking the works, from both the footpath and from within the pit.
- c) When working within the footpath, appropriate signage is to be displayed warning pedestrians of the works. The owners shall hold Cessnock City Council indemnified against any claims arising out of damage or injury to property or persons in the performance of the proposed works.
- d) Any disturbance to underground services is to be restored / replaced at the expense of the person/s undertaking the works.
- e) All disturbed areas within the footpath are to be restored to at least the condition before the commencement of any works. This expense is to be borne by the owner of the property.
- f) An inspection of the stormwater connection into the pit will be required by a Council employee. The Subdivision and Engineering Coordinator shall be notified at least 48 hours before the required time of inspection.
- g) All works are to be carried out in accordance with Cessnock City Council's 'Engineering Requirements for Development.'

Construction works are to be completed prior to the issue of an *OC*.

86. Retaining Walls and Drainage

All retaining walls and associated drainage shall be installed and completed prior to issue of an *OC* in respect of the building.

87. Completion of Driveway Access Crossing

The driveway access crossing is to be constructed prior to the issue of an *OC*.

88. Roof Stormwater – Street Gutter

Roof water from the development shall be conducted to the water storage tank in accordance with the BASIX requirements. Any additional roof water, and overflow from the water storage tank, shall be conducted to the street gutter by means of a sealed pipeline having a minimum diameter of 90mm, prior to issue of an *OC*.

89. Roof Stormwater – Recycling and Reuse

Prior to issue of an *OC*, roof water from the building, and any associated rainwater tank overflow, shall be piped clear of all buildings without creating a nuisance on the property or to adjoining properties. Roof water should be collected and stored for recycling and reuse.

90. Roof Stormwater – Clear of Buildings

Prior to issue of an *OC*, roof water from the building and any rainwater tank overflow shall be piped clear of the building, without creating any nuisance on the property or to adjoining properties.

91. Section 50 – Hunter Water Act 1991

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 Act 1991. Such evidence shall be submitted to Council prior to the issue of the *OC*.

92. Connection to the Reticulated Water and Sewer System

The subject development will be serviced by an independent water and sewer utility operator. Prior to issue of an *OC* and use of the dwelling, the *PCA* is to be provided with evidence from the independent water and sewer utility operator that the development has been connected to and has approval for use of the reticulated water and sewer system.

ONGOING USE

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

93. Plan of Management

The Plan of Management is to remain current and enforced while the property is operated as boarding house accommodation.

A current copy of the Plan of Management is to be submitted to Cessnock City Council annually, alongside the Annual Fire Safety Statement.

94. Manoeuvring of Vehicles

All vehicles must enter and exit the site in a forward direction.

95. Submission of Annual Fire Safety Statement

An annual Fire Safety Statement must be given to Council and the New South Wales Fire Brigade commencing within twelve (12) months after the date on which the initial Interim / Final Fire Safety Certificate is issued.

96. Removal of Graffiti

The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within twenty-four (24) to forty-eight (48) hours of its application.

97. Waste Servicing

The owner/manager of the site is to ensure that a contract with a private contractor for weekly waste management is in place for the development.

Waste receptacles are to be placed at the kerb prior for servicing by the private contractor either the night before or prior to collection commencement (5am) and retrieved within twelve (12) hours after service. Waste servicing should be conducted in line with Council's service day for the location.

98. 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*.

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99. Maximum Resident Occupancy

The Boarding House is approved for a maximum occupancy of twenty-one (21) residents. A sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted to reside at the building.

100. 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.

101. 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.

102. Driveways to be Maintained

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

103. Road – Advice

The applicant is advised that Council will not accept responsibility for the road access. In this respect, the care, control and maintenance thereof, is the sole responsibility of the user/s, in perpetuity.

104. Maintenance of Landscaping

Landscaping shall be maintained in accordance with the approved plan in a healthy state, and in perpetuity, by the existing or future owners and occupiers of the development.

If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

An annual report shall be submitted to Council, for the three (3) years following issue of the OC, certifying that the landscaping works have been satisfactorily maintained.

ADVISORY NOTES

A. Disability Inclusion 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 Inclusion Act 2014*. The applicant/owner is responsible for ensuring compliance with this, and other, anti-discrimination legislation. The *Disability Inclusion Act 2014* 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 Inclusion Act 2014* 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

C. Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

D. 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*.

E. 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.

F. Site Contamination Issues During Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about site contamination, Council must be immediately notified by the applicant, and works must cease. Works must not recommence on site until approval is granted by Council.

G. Impact of Below Ground (Sub-surface) Works – Non-Aboriginal Relics

If any archaeological relics are uncovered during the course of the work, all works shall cease immediately in that area, and the OEH Heritage Branch shall be contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the *NSW Heritage Act 1977*, may be required before further works can continue in that area.

H. Aboriginal Heritage

As required by the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the Heritage Division of the Office of Environment and Heritage (OEH) must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *Heritage Act 1977* to obtain the necessary approvals/permits from the Heritage Division of the OEH.

Note: The *National Parks and Wildlife Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and/or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

I. Boarding Houses Act 2012

The erection of the boarding house under this consent does not affect the provisions of the *Boarding Houses Act 2012*. Under this Act, all boarding houses must be registered to provide certainty in occupancy principles with respect to the provision of accommodation to residents.



SUBJECT: *DEVELOPMENT APPLICATION NO. 8/2017/388/1
PROPOSING THE DEMOLITION OF TWO EXISTING
POULTRY SHEDS, CONSTRUCTION OF SIX NEW TUNNEL
VENTILATED POULTRY SHEDS (AND ASSOCIATED
OUTBUILDINGS), FILLING AND DEWATERING OF THREE
DAMS, EXPANSION OF ONE DAM AND LANDSCAPING*

925 OLD MAITLAND ROAD, BISHOPS BRIDGE

RESPONSIBLE OFFICER: *Development Services Manager - Janine Maher*

APPLICATION NUMBER:	8/2017/388/1
PROPOSAL:	Demolition of two existing poultry sheds, construction of six new tunnel ventilated poultry sheds (and associated outbuildings), filling and dewatering of three dams, expansion of one dam and landscaping
PROPERTY DESCRIPTION:	Lot 45, DP 1114966
PROPERTY ADDRESS:	925 Old Maitland Road, Bishops Bridge
ZONE:	RU2 Rural Landscape
OWNER:	Mr J W and Mrs N M Attard
APPLICANT:	Tattersall Lander Pty Ltd

RECOMMENDATION

1. That:

- (i) Development Application No. 8/2017/388/1 proposing the demolition of two existing poultry sheds, construction of six new tunnel ventilated poultry sheds (and associated outbuildings), filling and dewatering of three dams, expansion of one dam and landscaping at 925 Old Maitland Road Bishops Bridge, be approved pursuant to Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, subject to the conditions contained in this report.
- (ii) The reasons for the decision (having regard to any statutory requirements applying to the decision), are as follows:

- The proposal is a permitted landuse in the RU2 zone under Cessnock Local Environmental Plan 2011.
- The proposal is generally compliant with the provisions of Chapter C.4 and D.6 of Cessnock Development Control Plan 2010, and any variations are considered consistent with the objectives of the relevant requirements.
- The proposal incorporates adequate measures to ensure the development does not result in any adverse impacts on the natural and built environments.
- The site is considered suitable for the proposed development as it is located within a rural locality, is currently being used as a poultry farm, and the construction of the intensive agricultural industry is consistent with the desired intent of the area.
- The proposal is consistent with the public interest having regard to providing an agricultural industry in the rural area.

(iii) In considering community views, the following is relevant:

- The proposal has been designed in such a way that its impact on the natural and built environment is considered acceptable, and the proposal is consistent with the character of the existing rural area.
- The proposed method of poultry farming incorporates modern farming techniques. The new proposed sheds are likely to result in far less impact than the existing style of poultry sheds currently in use at the site.
- The design of the development, along with the recommended conditions of consent, have adequately responded to issues raised by the public during the exhibition period relating to the development application.

(iv) The details contained above be publicly notified pursuant to Section 2.22 and Clause 20(2) of Schedule 1 of the Environmental Planning and Assessment Act 1979

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

Development Application No 8/2017/388/1 is being referred to Council for determination as objections were received in response to the public exhibition period, and it is considered such objections constitute 'significant objection' in accordance with the provisions of Development Practice Note G3 – Delegations for Determination of Development Applications.

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The Development Application was publicly exhibited between 17 August and 19 September 2017.

Five (5) submissions were received during the exhibition period representing 5 households. Of the 5 submissions received, all were in objection to the proposal. The objection themes raised by submission makers are summarised as follows:

- Noise pollution
- Odour pollution
- Air pollution
- Animal health
- Flora and fauna
- Planning issues
- Scale of the development
- Traffic
- Loss in surrounding properties values

In addition to the above, the proposal seeks to vary the provisions of Part C.4 Land Use Conflict and Buffer Zones of the Cessnock Development Control Plan 2010. In this regard, poultry farms require a setback of 50 metres to side boundaries. The proposed development seeks consent for setbacks ranging between 10 metres and 18.8 metres. Despite this significant variation, the setbacks are supported on the basis that the land adjoins dense tracts of forest vegetation. It is considered that there will be no loss of amenity to adjoining properties, or restrictive impact on adjoining properties despite the reduced setbacks. In addition, the location of the poultry sheds has been specifically designed to limit the amount of vegetation removal required within the property.

EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 8/2017/388/1 seeking approval for the demolition of two existing poultry sheds, construction of six new tunnel ventilated poultry sheds (and associated outbuildings), filling and dewatering of three dams, expansion of one dam and landscaping at 925 Old Maitland Road, Bishops Bridge.

The land use is classified as Designated Development, pursuant to Clause 4.10 of the Environmental Planning and Assessment Act 1979. Clause 21(4)(b)(i) of Schedule 3 of the Environmental Planning and Assessment Regulation 2000 stipulates that poultry farms within 100 metres of a watercourse are classified as Designated Development.

In addition to the above, the Development Application has been submitted as 'Nominated Integrated Development' in accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979; requiring the concurrence of the Department of Primary Industries – Water (DPI Water). General Terms of Approval have been received from the DPI Water.

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.

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The Development Application was publicly exhibited and five (5) submissions were received. All 5 submissions were in objection to the proposal. The issues and concerns raised in the submissions are addressed in the following report.

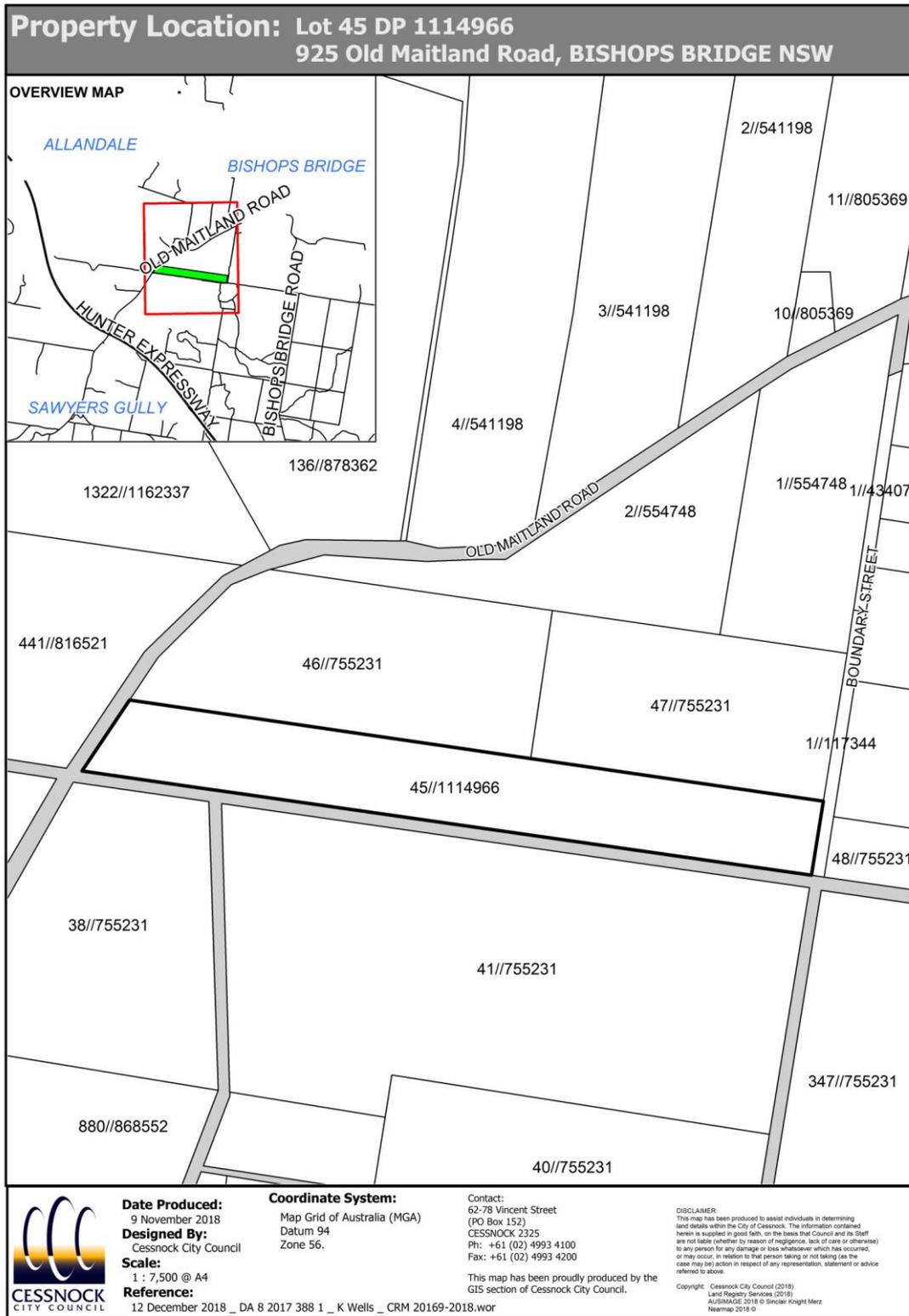
The proposed poultry farm expansion seeks to increase the operational capacity of the existing poultry farm on site. The existing sheds utilise 'natural ventilation', meaning that the sides of the sheds are open. This style of poultry farming is likely to produce increased impacts associated with odour, dust and noise. The proposed new sheds are tunnel ventilated, whereby the sheds are totally enclosed, consequently reducing the likelihood of adverse odour, noise and dust impacts.

The proposed land use is explicitly supported by the *NSW Department of Primary Industries (DPI) "Right to Farm Policy" December, 2015*. The objective of this policy is to identify and protect valuable agriculture, including poultry farming, across the region. The objectives for the RU2 Rural Landscape zone reflect the intention of the policy. As is outlined within this report, the proposal is a permissible land use and is consistent with the objectives of the RU2 zone.

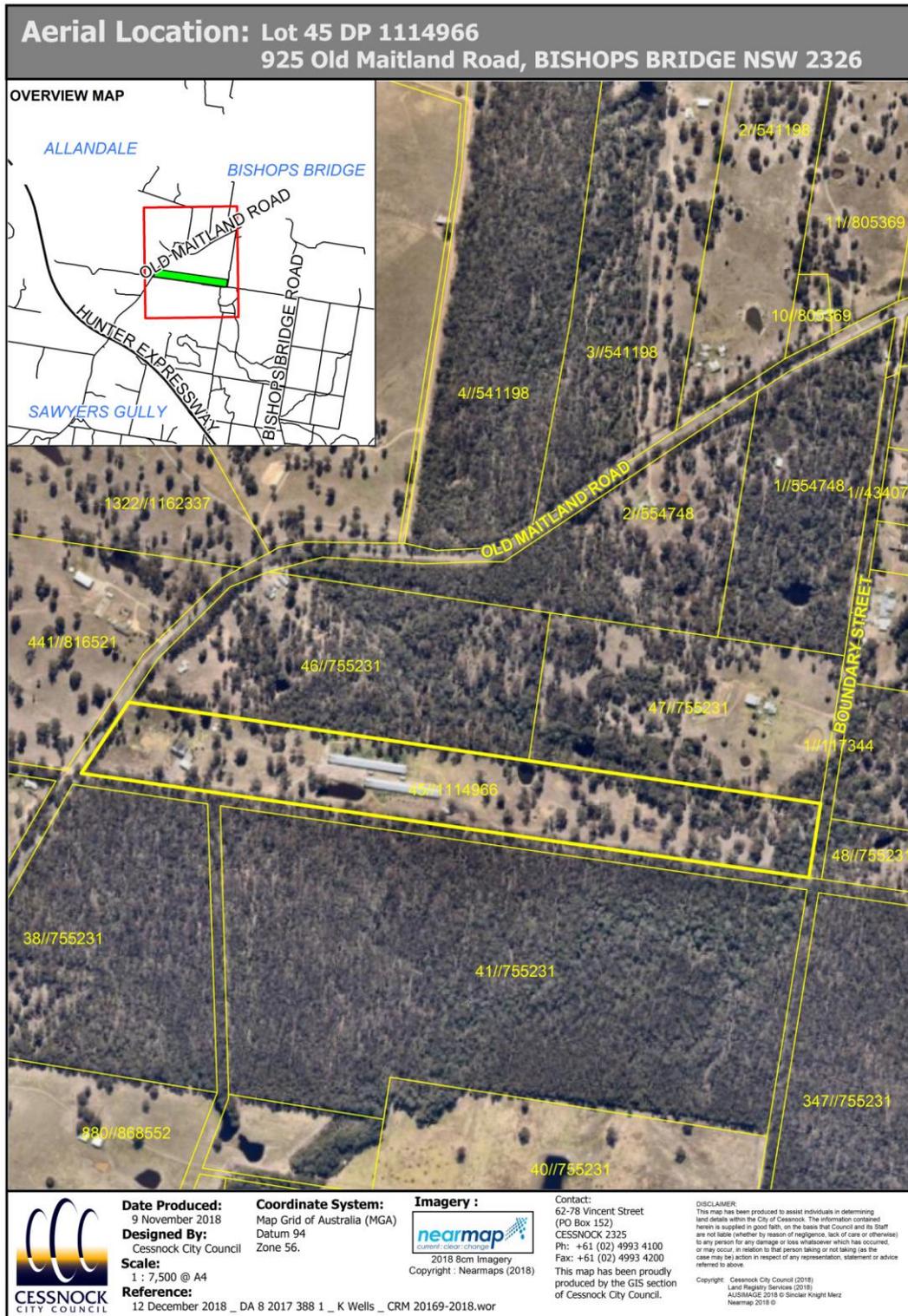
Based on the assessment, it is recommended that the Development Application be approved subject to the conditions of consent included in this report.



LOCATION MAP



AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site comprises Lot 45 DP 1114966 and is known as 925 Old Maitland Road, Bishops Bridge. The site comprises rural land and is a generally rectangular shaped parcel located on the eastern side of Old Maitland Road, approximately 1.2km north of the Hunter Expressway overpass. The site has a 141.8m frontage to Old Maitland Road and depth of 1,188.9m along the common southern side boundary. Overall, the site area is approximately 14.49 hectares.

The site is not affected by any easements or other restrictions on title that would affect development of the site as proposed.

The site is presently occupied by an existing poultry farm, which has two naturally ventilated sheds, currently capable of housing a maximum of 50,000 birds for the purpose of meat production. A residence is located in the western portion of the site adjacent to Old Maitland Road.

A large dam is located to the south of the poultry sheds, as well as a medium sized dam to the north-east. An additional two smaller dams are located to the east of the existing sheds. An intermittently flowing stream is positioned along the north boundary. At its closest point, the stream is approximately 18 metres north of the existing poultry sheds.

The surrounding area is rural in character, with a number of residences nearby on the opposite (western) side of Old Maitland Road and on neighbouring properties to the north, north-east and south-west. An additional cluster of rural residences occur to the north-east of the site. (Refer below to Figure 1: Nearby Sensitive Receivers and associated Table 1: Distance to Sensitive Receivers).



Figure 1: Nearby Sensitive Receivers

Table 1: Nearest Identified Sensitive Receivers

Receiver ID	Receiver Type	Approximate Distance from Facility Noise Source	Bearing
R1	Residential	115 metres	WNW
R2	Residential	215 metres	WNW
R3	Residential	220 metres	N
R4	Residential	470 metres	N
R5	Residential	70 metres	WSW
R6	Residential	220 metres	W
R7	Residential	520 metres	SW
R8	Residential	470 metres	W
R9	Residential	470 metres	NW
R10	Residential	430 metres	N
R11	Residential	130 metres	N
R12	Residential	160 metres	E
R13	Residential	190 metres	NE
R14	Residential	310 metres	N
R15	Residential	460 metres	NE
R16	Residential	560 metres	NE
R17	Residential	680 metres	NNE
R18	Residential	790 metres	NE
R19	Residential	760 metres	NE
R20	Residential	720 metres	NE
R21	Residential	830 metres	N
R22	Residential	620 metres	SW
R23	Residential	660 metres	SW
R24	Residential	730 metres	SW

Table 1: Distance to Sensitive Receivers

HISTORY

Background of Previous Approvals/Applications

The site contains an operational poultry farming establishment which was originally approved by Council under Development Consent No. 118/679/35 on 12 June 1979, subject to conditions of consent. The site has operated continuously as a poultry farm since the issuing of this consent and subsequent establishment of the poultry farm.

A previous Development Application was lodged over the property on 2 May 2007 (Council Reference DA No. 8/2007/288/1). This proposal sought consent for the expansion of the existing poultry farm with the addition of two production sheds. This proposal was refused by Council on 21 April 2010 on the following basis;

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- *There will be an unacceptable impact on neighbours amenity from noise and odour;*
- *There is insufficient distance from the proposed shed to the property boundary to provide a buffer zone and this is contrary to Council's Development Control Plan;*
- *There is no agreement from the Crown to use their land as an odour buffer zone;*
- *The proposal is not in the public interest.*

Subsequent to Council's refusal, the applicant lodged an appeal in the NSW Land and Environment Court, however, the applicant ultimately discontinued the appeal on 20 October 2010.

It is noted that there have been two changes to ownership since the refusal was issued by Council in 2010. In 2015, the current occupiers of the land acquired the property.

On 10 August 2016, DA No. 8/2016/489/1 was lodged with Council. This proposal was near identical to the one the subject of this report, with the exception of the preparation of an Environmental Impact Statement. It was determined by Council officers at lodgement that the proposed development constituted Designated Development in accordance with Schedule 3 of the Environmental Planning and Assessment Regulation 2000; however the application was not submitted by the applicant as Designated Development. Accordingly, the application was rejected by Council, and the applicant was advised that, in the event they intended to re-submit the application, the application was required to be classified as Designated Development. Furthermore, the applicant was advised that any future application lodged must address the relevant provisions of legislation.

The DA the subject of this report was lodged on 10 July 2017, and was correctly classified as Designated Development.

History of Current Application

The history of the subject DA is summarised in the following table:

Date	Action
10 July 2017	The development application is lodged.
20 July 2017	The application is allocated to an assessing officer. The following referrals are initiated: <ul style="list-style-type: none"> • Development Engineers • Ecologist • Environmental Health • Department of Primary Industries (Water) • Office of Environment and Heritage (OEH)
2 August 2017	Wastewater comments are received from Council's environmental health team. A request for information pertaining to how wastewater is disposed from the site, is made.
4 August 2017	The development engineering referral response is received. This referral requested minor detail associated with the dam design. All requested information was provided and re-referred to development engineers, who finalised their assessment, recommending conditions, on 13 November 2018.
9 August 2017	The OEH comments are returned. A request for additional information is received and is relayed to the applicant.

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17 August – 19 September 2017	<p>The application is placed on public exhibition.</p> <p>At the conclusion of the exhibition period, 5 objections representing 5 households are received. All submissions object to the proposed development.</p>
25 August 2017	<p>A request for additional information is made in respect of engineering, OEH and wastewater matters</p>
28 August 2017	<p>Ecologist referral is completed. The referral comments require the submission of additional information relating to amending the Vegetation Management Plan and clarifying technical data associated with the flora and fauna report.</p>
31 August 2017	<p>Environmental Health referral is completed. A peer review of odour and noise matters is requested.</p>
6 September 2017	<p>An additional request for additional information is made, requesting clarification on ecological and wastewater matters.</p> <p>The applicant is informed that an independent peer review is to be conducted in respect of the noise and odour information.</p>
3 October 2017	<p>The applicant responds to the information requests raised in the 6 September 2017 correspondence.</p>
5 October 2017	<p>Revised flora and fauna information is received from the applicant.</p>
17 October 2017	<p>The first peer review document from the independent odour expert is received. This review identified discrepancies with the odour data used in the documentation.</p>
19 October 2017	<p>The first peer review document from the independent <i>noise</i> expert is received. This review identified discrepancies with the noise data used in the documentation.</p>
10 November 2017	<p>Additional information for the attention of the OEH is re-referred back to the agency.</p>
13 November 2017	<p>A copy of all submissions is forwarded to the applicant.</p>
13 November 2017	<p>A discussion is held with the Dams Safety Committee regarding prescribed dams. The Dams Safety Committee indicates that it is unlikely that the dam will be a 'prescribed dam' pursuant to Schedule 1 of the Dams Safety Act 1978. The Dams Safety Committee advises that once the dam is approved, it is worthwhile that the applicant apply to have the dam reviewed by the committee to definitively decide if the dam is to be prescribed or not.</p> <p>Noting the Dams Safety Committee response, and the information submitted by the applicant on 3 October 2017, a final referral is initiated to development engineers.</p>
20 November 2017	<p>The final engineering response is received.</p> <p>Recommended conditions of consent are provided.</p>
21 November 2017	<p>An update letter is provided to the applicant. This letter summarises the proposal and requests the submission of additional information relating to noise and odour.</p> <p>The deadline to submit additional information is placed on hold pending the facilitation of a meeting between the applicant and Council's consultants.</p>

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2 February 2018	A re-referral to Council's ecologist is initiated. The re-referral is in response to the information submitted on 5 October 2017.
13 February 2018	<p>The meeting between the applicant and Council's consultants is conducted. This meeting brings together Council's expert consultant in odour (Northstar Air Quality) and representatives from Advitech (assisting the applicant, Tattersall Lander). Council is represented by staff from development services and environmental health.</p> <p>The purpose of this meeting was to discuss the extensive request for additional information relating to odour and noise issues. It was concluded at this meeting that the noise matters could be resolved, subject to further information. It was further concluded that odour issues require significant attention. A direction for the meteorological process was to be agreed to between the expert consultants.</p>
27 February 2018	OEH final referral comments are received. The referral did not raise objection to the proposal.
11 April 2018	A meteorological methodology is agreed to for the continued assessment of odour matters.
18 April 2018	A secondary ecological assessment is received. The ecological assessment requests the submission of additional information associated with the VMP and detail within the flora and fauna report. This information is relayed to the applicant.
1 May 2018	DPI Water comments are provided to Council. The DPI Water request the submission of additional information from the applicant.
4 May 2018	A combined request for information, seeking the applicant to address ecological and DPI Water matters, is issued by Council.
16 May 2018	The applicant submits information attempting to address the DPI Water issues. This information is provided direct to DPI Water for their consideration by the applicant.
1 June 2018	<p>The applicant submits information attempting to address the ecological issues. This information is referred to Council's Ecologist for review.</p> <p>The applicant is afforded until 15 June 2018 to address the outstanding odour requirements.</p>
18 June 2018	The applicant fails to submit the required odour information. A report is prepared in accordance with Clause 54 of the Environmental Planning and Assessment Regulation 2000, recommending refusal of the application based on insufficient information. The applicant is advised of this.
19 June 2018	The outstanding odour information is provided to Council. This is referred to Council's consultant peer reviewer, Northstar Air Quality.
25 June 2018	Council requests updated plans reflecting the amended odour information. Within this request, Council requires the submission of updated elevation plans showing the new height of ventilation stacks, as well as an updated Acoustic Report confirming that the increased height of the ventilation stacks will not have an adverse impact on acoustic conditions.
13 July 2018	The requested information regarding the ventilation stacks is submitted.



17 July 2018	<p>A peer review by Council's odour consultant, Northstar Air Quality, is received. This peer review raises a number of matters with respect to the odour assessment.</p> <p>The peer review is referred to Council's Environmental Health Team for review.</p>
6 August 2018	<p>Additional information is provided to the DPI Water. The DPI Water responds the following day to Council requesting clarification on a specific matter. This information is provided to the applicant.</p>
7 August 2018	<p>Council's Environmental Health Team provides a review of the air quality consultant's assessment of odour matters.</p>
27 August 2018	<p>A meeting is held with the applicant to discuss the remaining issues with respect to the proposal.</p> <p>All outstanding matters relating to this development application are summarised in a final letter to the applicant. The DPI Water requirements, as well as the identified issues in the odour information, are outlined in this letter.</p>
3 September 2018	<p>The applicant liaises directly with DPI Water. On this date, the General Terms of Approval are received by Council from the DPI Water.</p>
4 October 2018	<p>Based upon the meeting held on 27 August 2018, the applicant submits the final version of the odour report, addressing the outstanding issues raised by Council's air quality consultant and Environmental Health Officers.</p>
9 November 2018	<p>Council's Environmental Health Team provide final referral comments in respect of the odour considerations. Support of the application is provided, subject to the imposition of conditions of consent.</p>
15 November 2018	<p>Assessment of the application is finalised.</p>

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2017/388/1 seeks approval for the demolition of two existing naturally ventilated poultry sheds (currently capable of accommodating 25,000 free range birds per shed, totalling 50,000 birds) and the construction of six tunnel ventilated sheds. The new sheds are proposed to house up to 250,000 birds. The new sheds represent an approximate 400% increase in poultry production for the farm. The primary purpose of the new sheds is to house poultry, allowing them to grow to market size.

The land use is classified as Designated Development, pursuant to Clause 4.10 of the Environmental Planning and Assessment Act 1979. Clause 21(4)(b)(i) of Schedule 3 of the Environmental Planning and Assessment Regulation 2000 stipulates that poultry farms within 100 metres of a watercourse are classified as Designated Development.

In addition to the above, the Development Application has been submitted as 'Nominated Integrated Development' in accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979; requiring the concurrence of the Department of Primary Industries – Water (DPI Water). General Terms of Approval have been received from the DPI Water.

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In addition to the plans lodged in conjunction with the application, the following specialist reports were lodged with Council to support the proposal:

- Environmental Impact Statement, prepared by Tattersall Lander, dated 13 July 2017;
- Air Quality (Odour) Impact Assessment, prepared by Advitech Environmental, dated 26 May 2016;
- Noise Impact Assessment, prepared by Advitech Environmental, dated 26 May 2016;
- Flora and Fauna Assessment, prepared by Wildthing Environmental Consultants, undated;
- Historic Heritage Assessment and Aboriginal Cultural Heritage Assessment, prepared by Advitech Environmental, dated 26 May 2016, prepared by Advitech Environmental, dated 12 April 2016;
- Traffic Impact Assessment, prepared by SECA Solution, dated 20 April 2017;
- Storm water Quality Report, prepared by Tattersall Lander, dated June 2017.

It is noted that a number of the above documents were amended during assessment/consideration of the application.

Each component of the works are summarised as follows:

Sheds

Six new sheds are proposed, having dimensions of 167.95m x 18.5m with a pitched gable roof similar to the existing sheds. Eight metre high ventilation shafts are attached to each shed and provide temperature and odour control. Roof water from the new sheds is to be drained to the large dam to the east of the sheds. Large doors are to be located at various points to provide vehicular access for equipment used in the laying and removal of litter.

The proposed sheds will be orientated in an east-west direction, with each shed containing ten fans on the eastern facing wall (rear) for tunnel ventilation; as well as an additional five fans (three on the north and two on the south) at the rear of the shed for maximum ventilation under extreme conditions. Under minimum ventilation, air flow would be controlled by two fans on the western facing wall (front) of each shed, as well as eight chimney fans located on each roof.

Feed Silos

Feed silos are proposed on the western end (south facing wall) of sheds 1, 2, 4 and 5. The silos are 10 metres in height.

Dam

Three of the four dams will be dewatered and filled to make way for the proposed poultry shed building pad. The proposed dam will increase the overall storage capacity and is designed to capture all stormwater run-off from the poultry sheds. Effectively, the dam has been designed to act as a stormwater detention area, and in this regard, the water will be reused in the sheds (i.e. for cooling purposes, drinking water for birds, and clean out of

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sheds). The proposed new dam includes a surface area of 7,200m² and a permanent volume of 23.4ML.

Earthworks and Access

In addition to earthworks necessary for the construction of the poultry sheds, a 3 metre high vegetated earth mound is proposed on the west, north and east sides of the proposed poultry sheds. Access to the site will be via the existing route adjacent to the southern boundary. A new manoeuvring area for trucks is to be constructed alongside the proposed sheds.

Composting Shed

In addition to the new sheds, a large (18 metres x 12.4 metres) sheltered enclosure (shed) for the composting of dead birds and spent litter is proposed. The composting shed will be positioned to the east of the poultry sheds, beyond the proposed dam.

The composting of routine bird mortalities is an accepted practice described in the *Best Practice Management for Meat Chicken Production NSW (Department of Primary Industries)*. The composting shed will consist of three bays, whereby at any time, one bay will be used for composting mortalities over an eight (8) week cycle. These mortalities will be layered over an initial base layer of sawdust, with layers of mortalities interspersed between layers of litter. To prevent localised wet areas and poor composting, carcasses will be arranged so that they do not overlap. The second bay will be used to store used litter, whilst the third will be cleaned out and prepared for the next cycle of composting. To minimise odour impacts, only benign litter will be used for composting. At the end of the 8 weeks, in specific conjunction with the broiler production cycle, a front-end loader will remove all composted material from the site.

Fertiliser material generated through composting will be supplied to the same primary production customers as those purchasing poultry litter. Records of the quantity, transporter, destination and intended use will be maintained on site.

Machinery Shed/Amenities Building

A 40 metre x 20 metre machinery shed is proposed to the east of the poultry sheds. An additional small amenities and storage shed, including the housing of a back-up generator is proposed to the west of the poultry sheds. This shed has dimensions of 9.2 metres x 11 metres. Both the machinery shed and the amenities/storage shed are proposed in similar cladding to the poultry sheds (colorbond, 'earthy' tones).

Operational Procedures

The operational procedures are summarised as follows:

The site will operate 24 hours a day, all year round. A total of 5.5 poultry batches per annum are proposed, which generally occurs over a 54 day period. This equates to 1,980,000 birds per annum.

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The poultry farm is proposed to operate in accordance with the *Best Practice Management for Meat Chicken Production NSW (Department of Primary Industries)*. The owners of the farm will have a contractual agreement with the processing companies. The farm will be responsible for the growing, then supplying of chickens to the processing plant owned by the nominated company. The processor provides one-day old chickens to the farm. The farm's responsibility is to provide the infrastructure and labour to grow the birds.

Day old chickens are delivered in batches to the farm from a hatchery (typically at night for animal welfare) and are subsequently collected at various stages of the growing cycle and transported to a processing plant. Fully stocked, the farm has a capacity of 250,000 birds. The birds are grown for approximately 33 days with a progressive thin out until 54 days. This provides a range of bird sizes for the market and keeps the total bird weight down in the sheds as the birds grow.

A growing cycle is made up of the placement of new litter, the placement of day old birds, the growing of the birds and the progressive removal of birds and cleanout. Each cycle takes approximately 54 days resulting in 5.5 cycles per year. At the end of each production cycle all shed litter is removed from the site in covered vehicles and transported off site for use as fertiliser. The sheds will be cleaned and disinfected. New litter will be laid on the shed floor prior to the delivery of the new batch of day old chicks.

Initial harvesting is generally conducted at approximately 32 days. Thinning of bird numbers at this stage supplies the market with smaller size birds and provides additional space for growing larger birds. Typically, about 33% of the birds are removed at about day 32. A second thin out at 42 days typically removes another 33% of the birds. This leaves the remaining 33% of the original number of birds to be reared up to 52 days, depending on the size of the birds required for market and other production requirements.

At various stages of the cycle, the birds will be transported live from the site by truck for off-site processing. The birds will be placed into transport cages from inside the shed and loaded onto trucks by a forklift. Each time it is conducted, bird collection takes approximately two days.

Over the growing cycle, a mortality rate of about between 0.1 - 0.25% per day is expected. Dead birds will be collected from sheds and taken to an onsite composting facility. The resulting nutrient rich compost material produced in the compost facility will be removed from the farm, i.e., not re-used on the subject site. Details of the proposed carcass composting facility and its operating procedures have been outlined above and within the Environmental Impact Statement.

Sawdust and/or shavings (or suitable organic alternatives) will be used as a bedding material, which helps absorb moisture, limiting the production of ammonia and harmful pathogens. All litter will be removed from the sheds at the end of every batch of birds. The majority of the waste associated with the operation is manure produced by the chickens. This is removed from the sheds via a front-end loader and transported offsite in appropriately covered trucks. During the cleanout process, the poultry sheds will be 'sealed' (i.e. vents closed, fans off and doors closed). The applicant has confirmed that all waste associated with the poultry farm will be appropriately managed to ensure no adverse impacts are caused to the local environment.

ASSESSMENT

Environmental Planning and Assessment Regulation 2000

Consideration has been given to Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (Regulations), which relates to designated development. Clause 21 – Livestock Intensive Industries provides the criteria for poultry farms, and an assessment of the proposal against this criteria shows that the activity is ‘designated development’ for the following reasons:

The proposed development is located within 100 metres of a natural waterbody.

The Regulations define a "waterbody" to mean:

(a) a natural waterbody, including:

- (i) a lake or lagoon either naturally formed or artificially modified, or*
- (ii) a river or stream, whether perennial or intermittent, flowing in a natural channel with an established bed or in a natural channel artificially modifying the course of the stream, or*
- (iii) tidal waters including any bay, estuary or inlet, or*

(b) an artificial waterbody, including any constructed waterway, canal, inlet, bay, channel, dam, pond or lake, but does not include a dry detention basin or other stormwater management construction that is only intended to hold water intermittently.

The development site directly adjoins a first order stream (as specified under the Strahler system), which is positioned on the northern boundary of the subject property. At its closet position, the stream will be 17 metres from the proposed poultry sheds.

Environmental Planning and Assessment Act 1979 – Section 1.7

Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

An assessment of the likelihood of the proposed development having a significant impact on threatened species or ecological communities and their habitats has been undertaken in accordance with Clause 7.3 of the Biodiversity Conservation Act 2016.

Council's ecologist has confirmed that the proposed development is unlikely to have a significant impact on a threatened species, ecological community or their habitat and in doing so, has conducted a ‘five-part’ test in accordance with this clause. The outcome of which is detailed below:

7.3 (1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

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Comment: A total of 7 threatened species were recorded on the site, being *White-bellied Sea Eagle*, *Southern Myotis*, *Little Bentwing-bat*, *Eastern Bentwing-bat*, *Greater Broad-nosed Bat*, *Eastern False Pipistrelle* and *Eastern Freetail-bat*.

The Flora and Fauna Assessment states that the habitat on site is considered to be suitable for another 32 threatened fauna species, including *Green and Golden Bell Frog*, *Grey-crowned Babbler*, *Brown Treecreeper*, *Dusky Woodswallow*, *Hooded Robin*, *Scarlet Robin*, *Flame Robin*, *Regent Honeyeater*, *Painted Honeyeater*, *Black-chinned Honeyeater*, *Varied Sittella*, *Speckled Warbler*, *Swift Parrot*, *Turquoise Parrot*, *Little Lorikeet*, *Gang-gang Cockatoo*, *Glossy Black-Cockatoo*, *Spotted Harrier*, *Square-tailed Kite*, *Black Falcon*, *Little Eagle*, *Barking Owl*, *Powerful Owl*, *Masked Owl*, *Spotted-tailed Quoll*, *Koala*, *Brush-tailed Phascogale*, *Squirrel Glider*, *Grey-headed Flying-fox*, *Yellow-bellied Sheath-tail-bat*, *Large-eared Pied Bat* and *Eastern Cave Bat*.

It is considered that the proposed development site does not contain suitable breeding habitat for *Dusky Woodswallow*, *Swift Parrot*, *Hooded Robin*, *Flame Robin*, *Painted Honeyeater*, *Rainbow Bee-eater*, *Eastern Cave Bat* or *Speckled Warbler* but does contain suitable foraging habitat.

Breeding or foraging habitat was not present for the *Australasian Bittern* (requires vegetation in water, eg reeds), *Giant Burrowing Frog* or *Stuttering Frog* (no suitable stream types), *Spotted-tailed Quoll* (no midstorey and ground layer plants), *Koala* (lack of sufficient number of feed trees), *Curlew Sandpiper* (no mudflats, wetlands), *Eastern Curlew* (no mudflats, wetlands), *Black-necked Stork* (no swamps, wetlands), *Australian Painted Snipe* (no swamps and streams), *Cattle Egret* (no wetlands), *Eastern Bristlebird* (no dense vegetation), *Brush-tailed Rock-wallaby* (no rocky escarpments, outcrops, cliffs), *Greater Glider* (no taller, montane, moist eucalypt forests with relatively old trees), *Long-nosed Potoroo* (no dense understorey) or *New Holland Mouse* (no heathland understorey).

The proposed development site contains suitable breeding and foraging habitat for Grey-crowned Babbler Square-tailed Kite Squirrel Glider, Brown Treecreeper, Scarlet Robin. Regent Honeyeater Black-chinned Honeyeater, Varied Sittella, Gang-gang Cockatoo, Glossy Black-Cockatoo, Yellow-bellied Sheath-tail-bat, Turquoise Parrot, Little Lorikeet, Spotted Harrier, Square-tailed Kite, Black Falcon, Little Eagle, Barking Owl, Powerful Owl, Masked Owl and Brush-tailed Phascogale.

Although the site contains habitat that could potentially be used by the *Regent Honeyeater* for breeding, it is not near any known areas that have been used for breeding, with only a very small number of sites known to be used by this species at present, including within the Hunter Economic Zone.

Although the site could potentially be used as a roosting camp for *Grey-headed Flying-fox*, no camps of *Grey-headed Flying-fox* were observed on or adjoining the site and no records are known of any camps in close proximity, with the closest known camp at East Cessnock. The site contains suitable roosting habitat (tree hollows) for *Southern Myotis*, *Little Bentwing-bat*, *Greater Broad-nosed Bat*, *Eastern False Pipistrelle* and *Eastern Freetail-bat*. The site could be used for roosting by *Large-eared Pied Bat* (tree hollows) but no suitable arch caves required for nursery roosts are on or near the site.

No threatened flora species were recorded on the site.

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It is considered unlikely that the proposed development will have an adverse effect on the life cycle of any of the threatened species recorded or considered likely to occur on the site due to the existing disturbed condition of the proposed development site and the presence of large areas of more suitable intact habitat adjoining the site. The restoration of the vegetation in the east of the site will mitigate some of the impact of the proposed development.

No endangered populations were considered likely to use or occur in the habitat on the site.

(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

- (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
- (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,*

Comment: With regard to (i), the vegetation to be removed was identified as disturbed *Lower Hunter Spotted Gum – Ironbark Forest EEC*. The proposed development will result in the removal of 108 scattered native trees within an area of 3.7 ha. The vegetation is already disturbed, and it is proposed to replant at least the same number of trees as well as midstorey and ground layer plants. It is also noted that there are more intact areas of the same EEC on adjoining land. Therefore, it is considered unlikely that the proposed development will have an adverse effect on the extent of *Lower Hunter Spotted Gum – Ironbark Forest EEC*, such that its local occurrence will be placed at risk of extinction.

In response to item (ii), it is noted that the *Lower Hunter Spotted Gum – Ironbark Forest EEC* to be removed is already highly disturbed and lacks native midstorey or ground layer. It is therefore considered unlikely that the proposed development will substantially and adversely modify the composition of the EEC, such that its local occurrence will be placed at risk of extinction.

(c) in relation to the habitat of a threatened species or ecological community:

- (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and*
- (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and*
- (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,*

Comment: Each item is addressed below;

i) The proposed development will result in the removal of 108 scattered native trees identified as *Lower Hunter Spotted Gum – Ironbark Forest EEC* within an area of 3.7 ha.

ii) No habitat is likely to become fragmented or isolated as a result of the proposed development.

iii) The habitat to be removed is degraded and dominated by exotic species. It is of very low importance to the long-term survival of the EEC and threatened fauna likely to occur in the site.

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(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

Comment: The action proposed will not impact on critical habitat.

(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

Comment: The proposed development is not in accordance with relevant recovery plans (*Swift Parrot, Regent Honeyeater, Large Forest Owls, Grey-headed Flying-fox, Green and Golden Bell Frog*) as it is proposing the removal of native vegetation including hollow bearing trees. Although it is proposed to replant and no net loss of trees will occur, it will take a number of years for the trees to reach the same size as the trees to be removed. In the interim period, the replacement of hollows with nest boxes will provide replacement roosting habitat in the short term.

It is considered that the proposed development would not have a significant impact on any listed threatened species, populations or ecological communities due to the existing disturbed condition of the proposed development site and the presence of large areas of more suitable intact habitat adjoining the site.

Environmental Planning and Assessment Act 1979 – Section 4.12

In accordance with Clause 4.12(8) of the Environmental Planning and Assessment Act 1979, the applicant prepared an Environmental Impact Statement (after receiving the Secretary's Environmental Assessment Requirements – SEARs 1082 on 27 September 2016).

Environmental Planning and Assessment Act 1979 – Section 4.14

Consultation and development consent – certain bushfire prone land

The proposal is situated upon bushfire prone land. Pursuant to this clause, development consent must not be granted for the carrying out of development for any purpose on bushfire prone land unless the consent authority is satisfied that the proposal complies with the Planning for Bushfire Protection Guidelines 2006.

The proposed works will be situated upon a part of the land that is predominantly cleared and relatively flat; resulting in a low risk of bushfire threat. Furthermore, the proposal does not incorporate habitable components, therefore the risk to human life is low.

The proposed internal access road is capable of allowing emergency vehicle access. The site is predominantly cleared of vegetation within the portion of the land where the sheds are proposed. Grasslands surrounding the sheds and alongside the internal access road shall be managed to prevent the accumulation of bushfire fuels.

Effectively, with the imposition of precautionary conditions, the proposal is deemed to comply with Clause 4.14 of the EP&A Act 1979.

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Environmental Planning and Assessment Act 1979 – Section 4.15(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 No. 44 – Koala Habitat Protection
3. Cessnock Local Environmental Plan 2011

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

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of *State Environmental Planning Policy (SEPP) 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 for rural purposes, including the current use as a poultry farm. As this application does not propose a use different to that which is existing, no further consideration is required under the SEPP.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No. 44 – Koala Habitat Protection aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

The site comprises an area of 14.49 hectares, and the SEPP is therefore applicable in accordance with the provisions of Part 2, Clause 6.

Notwithstanding the applicability of the SEPP, an assessment of the application against the provisions of the SEPP has identified that only a small number of specimens of the Koala feed tree *Eucalyptus punctata* (Grey Gum) were present in the site. No other feed tree species were recorded on the site. *E. punctata* specimens did not constitute 15% of the total number of trees on the site, therefore the site is not considered to comprise 'potential koala habitat'.

In consideration of the above, Council is not prevented from granting development consent to the development application, as per the provisions of Part 2, Clause 7(3)(a), which states;

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(3) *If the council is satisfied:*

(a) *that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or*

2. Cessnock Local Environmental Plan 2011

2.1 Permissibility

The subject site is zoned RU2 under the provisions of Cessnock Local Environmental Plan (CLEP) 2011. The proposed development is categorised as **intensive livestock agriculture** under CLEP 2011, which is defined as follows:

Intensive livestock agriculture means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses or other livestock that are fed wholly or substantially on externally-sourced feed, and includes any of the following:

- (a) dairies (restricted),
- (b) feedlots,
- (c) piggeries,
- (d) poultry farms,

The development satisfies the above definition, as the proposal comprises a facility designed for the keeping and feeding of poultry. It is noted that a poultry farm is specifically listed in the above landuse definition.

Development for the purpose of intensive livestock agriculture is a permitted land use in the RU2 zone, with consent.

2.2 Objectives

The objectives of the RU2 are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base*

The proposed development is consistent with this objective as it seeks consent for a primary industry that is compatible with the natural resource base (i.e. soil, vegetation and water) of the site. The site currently accommodates a poultry farm and whilst it is noted that the intensification is significant, the development proposal has specifically intended to cluster the poultry sheds so that limited vegetation removal is required, minimal disturbance to the ground is required, and no waterways are impacted. The detailed assessment of this proposal has demonstrated how limited impact to the natural resource base of this site (and surrounding area) is likely to occur; therefore this objective is met.

- *To maintain the rural landscape character of the land.*

The applicant has submitted a visual analysis in support of the proposal.

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The proposed sheds are not readily viewed from the public domain as the site falls away from the Old Maitland Road frontage. As the new works are not readily identifiable from the road frontage, the existing rural visual character of the area is maintained.

- *To provide for a range of compatible land uses, including extensive agriculture.*

Poultry farming is a type of extensive agriculture; therefore this objective is specifically upheld via this proposal.

- *To enable other forms of development that are associated with rural activity and require an isolated location or support tourism and recreation.*

The proposal does not restrict the ability of other forms of rural activity being conducted on surrounding sites. The proposed development is not inconsistent with this objective.

- *To ensure that the type and intensity of development is appropriate in relation to the rural capability and suitability of the land, the preservation of the agricultural, mineral and extractive production potential of the land, the rural environment (including scenic resources) and the costs of providing services and amenities.*

The proposed land use is a permissible land use the RU2 zone. The scale of the development, whilst comparatively large to what currently exists on the site, is deemed to be commensurate to the size of the land.

- *To maintain and enhance the scenic character of the land.*

This objective is upheld as this proposal is not likely to have a significant adverse impact on the existing scenic character of the area. The land slopes away from the Old Maitland Road frontage. The proposed sheds are positioned more than 360 metres away from the road and the site is dwarfed by established tracts of forested vegetation.

The proposed sheds are 7.88 metres tall (with 8 metre tall ventilation stacks and 10 metre silos), and they are not likely to be readily identified from the main public viewpoint (Old Maitland Road land).

- *To ensure that development does not create unreasonable or uneconomic demands for the provision or extension of services.*

All services are to be provided by the applicant, and the proposal will not result in unreasonable/uneconomic demands in respect of services.

- *To minimise the visual impact of vegetation clearing in order to be consistent with the rural character of the locality.*

As evidenced via the flora and flora assessment, minimal vegetation clearing is proposed, and where it is necessary, equivalent vegetation planting has been proposed.

- *To minimise disturbance to the landscape from development through clearing, earthworks, access roads and construction of buildings.*

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The existing access road is being utilised by this development, with minor internal additions where necessary. Clearing has been minimised through the placement of the proposed sheds upon the existing location of the poultry shed on site. The poultry sheds are to be located in a portion of the site where extensive clearing has already occurred. The disturbance to the land (i.e. via earthworks etc) is deemed acceptable as it is confined to a centralised location of the property. Extensive revegetation improvement works can occur within the eastern portion of the lot.

- *To ensure development does not intrude into the skyline when viewed from a road or other public place.*

The land falls away from the Old Maitland Road frontage. The proposal is unlikely to protrude into the skyline.

2.3 Relevant Clauses

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

- Clause 1.2 – Aims of Plan

Clause 1.2 provides the aims and objectives for the Cessnock LEP 2011. The particular aims of this plan are as follows [Clause 1.2(2)]:

- to strengthen and protect a high quality, sustainable lifestyle for Cessnock's residents and visitors,*
- to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of Cessnock,*
- to encourage development for employment purposes in appropriate locations having regard to proximity to appropriate infrastructure, to ensure the efficient use of land and services, to provide walkable urban environments and to reduce dependency on the use of private vehicles,*
- to provide opportunities for a range of new housing and housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities, including opportunities for the provision of adaptable and affordable housing,*
- to recognise and protect the historical, cultural and economic values of the vineyards district in relation to agricultural production and associated flow on effects, including tourism.*

A thorough and balanced assessment of the development proposal has been carried out, and as a result of this assessment, it is concluded that the proposed development is consistent with the aims and objectives of the plan.

- Clause 2.3 Zone Objectives and Land Use Table

This clause outlines how the land use table within the Cessnock LEP 2011 specifies a zone, the objectives for the zone, development that may be carried out with or without development consent, and prohibited development.

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The clause also requires that the consent authority must have regard to the objectives for development in a zone when determining an application.

The land use zone and permissibility of the proposed use has been addressed previously within this report. Due regard has been applied to the objectives of the RU2 zone. Accordingly, this clause is deemed to have been satisfied.

- Clause 2.7 Demolition

This application includes demolition of the existing two poultry sheds, which is permissible with consent. The existing sheds are intended to be replaced by six new poultry sheds.

- Clause 5.10 Heritage Conservation

The applicant submitted a Historic Heritage Assessment and Aboriginal Cultural Heritage Assessment (Advitech Environmental, 12 April 2017).

This report concluded that: *There is a nil to very low chance that Aboriginal object(s) may be present within the areas proposed for impact by the proposed development and within the study area (see Section 3 for potential impact areas). This conclusion is based on:*

- *the lack of Aboriginal objects found during the survey;*
- *the results of past archaeological studies;*
- *the cultural perspectives of Tracey Skene (Culturally Aware) and Annie Hickey (Gidawaa Walang Cultural Heritage Consultancy);*
- *the landscape and landforms of the study area; and*
- *the highly disturbed nature of the study area due to intensive clearing, earthworks, dams, farming practices and development*

Notwithstanding this, a condition of consent has been imposed on the draft determination notice stating: *"If Aboriginal artefacts are uncovered during work, excavation or disturbance of the area, work must stop immediately. The Environmental Protection and Regulation Group of the Office of Environment and Heritage is to be contacted. Aboriginal archaeological excavation must be coordinated with any proposed investigation of non-indigenous material."*

- Clause 7.2 Earthworks

Pursuant to the provisions of Clause 7.2 of the Cessnock LEP 2011, before granting consent for earthworks, Council must consider the impacts of the proposed earthworks to ensure they do not detrimentally affect adjoining land.

Due to the topography of the proposed development site, excavation and fill of the site is necessary to ensure a flat building area for the proposed poultry sheds. It is identified from the plans that the floor level of the sheds will be up to 3 metres below the land surface on the western side of the development, and up to 4 metres above the land surface on the eastern side of the development. In addition to this, a 3 metre vegetated earth mound is proposed on the west, north and east sides of the proposed poultry sheds.

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The earthworks proposed to be carried out in conjunction with the development are not located close to any adjoining boundaries, and adequate sediment and erosion control measures will be employed during the construction phase. On this basis, it is considered that the proposed earthworks will not have an adverse environmental impact upon adjoining land.

- Clause 7.3 Flood Planning

The site is not identified as being flood prone land, therefore, the proposal is not required to be assessed against this clause.

- Clause 7.14 Essential Services

This clause applies specifically to land in the RU2 Rural Landscape zone. The specific requirements of this clause and a comment in relation to each matter, is contained below:

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) the supply of water,

Comment: The site does not have access to water main services. The proposal will operate with rainwater detention and the provision of water tank supplementation when/if the need arises.

Satisfactory arrangements have been made for the provision of potable and non-potable water.

(b) the supply of electricity,

Comment: Electrical services are available to the site.

(c) the disposal and management of sewage,

Comment: An existing wastewater system is in place. This system caters for wastewater generated from the residence only. Any additional requirement for wastewater removal (i.e. amenities for employees etc.) will be subject to consideration under a Section 68 Application (a condition of consent has been recommended in the draft notice of determination).

(d) stormwater drainage or on-site conservation,

Comment: A stormwater plan and report has been submitted by the applicant. This proposal has been assessed by Council and is discussed further within this report. The methods proposed for disposing of stormwater have been assessed as being satisfactory.

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(e) suitable vehicular access.

Comment: The existing vehicular access location will be maintained under this proposal. The vehicle access crossing is required to be upgraded to bitumen seal (a condition of consent has been imposed in the draft notice of determination). The internal access road is proposed to be gravel.

- Clause 7.15 Groundwater Vulnerability

The intent of this clause is to ensure the protection and function of groundwater locations.

There are no known key groundwater locations within the vicinity of this site. Notwithstanding this, the proposal does not require the disposal of hazardous chemicals or other wastes which may adversely impact on a groundwater supply. Compliance with this clause is therefore achieved.

(a)(ii) The Provisions of any proposed 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 Planning Secretary 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 relevant numerical standards in Cessnock Development Control Plan 2010. A discussion in respect of any non-compliances with the planning controls, is included after the compliance table:

Cessnock Development Control Plan 2010 – relevant provisions			
Provision	Required	Provided	Complies?
C.1 Parking and Access	<p><i>Council's DCP requires that:</i></p> <p><i>a) adequate car parking facilities are provided in association with developments;</i></p> <p><i>b) each development proposal is assessed consistently and equitably in relation to the provision of off-street vehicular parking;</i></p> <p><i>c) vehicular parking areas are designed in such a</i></p>	<p>The proposed development meets all relevant requirements in this regard.</p> <p>There are no specific DCP requirements for parking and access for the development proposed. Notwithstanding, the site is rural and of sufficient size and dimension to readily accommodate the parking and manoeuvring of all vehicles (including large and articulated trucks) associated with the proposed</p>	Yes

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	<p><i>manner as to be functional, aesthetically pleasing in terms of landscaping, and safe for motorists and pedestrians; and</i></p> <p><i>d) all vehicles entering or leaving properties are driven in a forward direction.</i></p>	<p>development of the land.</p> <p>All light and heavy vehicles are able to both enter and leave the site in a forward direction.</p>	
C.2 Flora and Fauna Considerations		<p>This issue has been explored in depth, earlier in this report.</p> <p>A Flora and Fauna Assessment has been prepared (by 'Wildthing Environmental Consultants') to assist with the understanding of the anticipated development and conservation impacts on both the site and surrounding ecology.</p> <p>The report concludes that the proposal will not have any significant ecological impact.</p>	Yes
C.3 Contaminated Lands		<p>This issue has been explored in depth, earlier in this report.</p> <p>The subject site has historically been used for rural purposes, including the current use as a poultry farm. As this application does not propose a use different to that which is existing, no further consideration is required in respect to contamination matters.</p>	Yes
C.4 Land Use and Buffer Zones	4.3.1 Intensive Agricultural Uses	<p>The DCP classifies a poultry farm as a Category C land use where potential conflict may arise as a result of noise (from birds, delivery trucks, equipment), odour (from sheds, waste disposal areas including disposal of dead birds and direct land application of manure), dust</p>	Yes



		(from sheds, feed hoppers, delivery trucks), light spillage and visual impact on adjoining properties (whether rural or urban) and on public roads and other public places.																									
	<p>4.3.1 Intensive Agricultural Uses</p> <p>'Methods for Reducing Conflict': New poultry developments shall comply with the guidelines and the minimum separation distance in the following table:</p> <table border="1" data-bbox="411 871 799 1310"> <tr> <td>Urban residential zone</td> <td>500m</td> </tr> <tr> <td>Settlements of 10 or more dwellings</td> <td>300m</td> </tr> <tr> <td>Dwelling on another property</td> <td>150m</td> </tr> <tr> <td>Property boundary</td> <td>50m</td> </tr> <tr> <td>Public road</td> <td>100m</td> </tr> <tr> <td>Other poultry farms</td> <td>500-1000m</td> </tr> <tr> <td>Water course</td> <td>50m</td> </tr> </table>	Urban residential zone	500m	Settlements of 10 or more dwellings	300m	Dwelling on another property	150m	Property boundary	50m	Public road	100m	Other poultry farms	500-1000m	Water course	50m	<p>Urban residential zone</p> <p>The subject site is located within a rural zone, and is positioned more than 500m from the nearest urban residential zones in Greta, Kurri Kurri and Cliftleigh.</p> <p>Settlements of 10 or more dwellings</p> <p>There are no settlements of 10 or more dwellings within 300m of the proposed development site.</p> <p>Dwelling on another property</p> <p>The nearest adjoining dwelling is situated on the northern adjoining property of this site. The dwelling is situated approximately 275m north-east of the poultry shed location.</p> <p>Property boundary</p> <p>The proposed setbacks for affected buildings are:</p> <table border="1" data-bbox="826 1538 1219 2038"> <tr> <td>Shed 1</td> <td>18-18.8m setback to the northern boundary</td> </tr> <tr> <td>Shed 2</td> <td>All setbacks exceed minimum requirements.</td> </tr> <tr> <td>Shed 3</td> <td>10-12m setback to the southern boundary</td> </tr> <tr> <td>Shed 4</td> <td>16.5-17.4m setback to the northern boundary</td> </tr> <tr> <td>Shed 5</td> <td>All setbacks exceed minimum requirements.</td> </tr> </table>	Shed 1	18-18.8m setback to the northern boundary	Shed 2	All setbacks exceed minimum requirements.	Shed 3	10-12m setback to the southern boundary	Shed 4	16.5-17.4m setback to the northern boundary	Shed 5	All setbacks exceed minimum requirements.	<p>No, in respect of property boundary setback and water course setback</p>
Urban residential zone	500m																										
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		<table border="1" data-bbox="831 322 1222 412"> <tr> <td data-bbox="831 322 1023 412">Shed 6</td> <td data-bbox="1023 322 1222 412">10-12m setback to the southern boundary</td> </tr> </table> <p>Public Road</p> <p>The site does share its southern boundary with James Lane; however this end of James Lane is semi-formed and only appears to serve one rural property for access. Old Maitland Road is the nearest main public road and is 365m west of the poultry shed location.</p> <p>Other Poultry Farms</p> <p>There are no poultry farms in the vicinity of this site.</p> <p>Water course</p> <p>The proposed poultry shed will be, at its closest location, approximately 17m from a 1st order stream. This matter has been dealt with by the Department of Primary Industries (Water), who have provided concurrence to the proposal via the issuing of General Terms of Approval. In consideration of the DPI (Water) support for the reduced setback, this variation is supported.</p>	Shed 6	10-12m setback to the southern boundary	
Shed 6	10-12m setback to the southern boundary				
C.5 Waste Management		A Waste Management and Minimisation Plan has been prepared.	Yes		
D.6 Poultry Farm – Neighbouring Land Uses	6.3.1 Site Selection	<p>The site currently contains an existing poultry farm; therefore the site selection is considered to be suited. This provision also requires that: <i>Consideration shall also be given to the proximity of markets and farm supplies and the availability of utility services.</i></p> <p>In this instance, the site is</p>	Yes		



		situated in close proximity to the Hunter Expressway.	
	6.3.2 Physical Considerations	The subject site is located within the RU2 zone, which is a zone specifically intended for rural and agricultural land pursuits. The proposed sheds are to be located within a portion of the site that has undergone prior clearing and where additional clearing is required, there is space for replanting to occur. The topography allows for the sheds to be situated in a lower portion of the land, meaning that the sheds are less likely to be visible from the main public thoroughfare, being Old Maitland Road.	Yes
	6.3.3 Socio – Economic Considerations	The site is within reasonable proximity to town centre locations, allowing for ease of service interaction (fuel, farm supplies, markets etc). The Hunter Expressway is also in close proximity, enabling the easy transportation of poultry to processing plants when needed.	Yes
	6.4.1 Waste Management	This provision states that <i>“composting is the favoured method of management for routine bird mortality”</i> . The applicant seeks consent for the composting method, and this has been outlined in depth, previously in this report.	Yes
	6.4.2 Transport	With regard to estimated traffic generation rates, the applicant has provided the following: <ul style="list-style-type: none"> • Feed truck – 2 trucks inbound and 2 trucks outbound per week. • Poultry trucks – up to 6 	Yes



		<p>truck movements inbound per day (and 6 outbound) during a thinning or cleanout. The first thinning occurs at 32-34 days, with further thinning as required until the final cleanout at 52-54 days. The final cleanout occurs over the course of a number of days.</p> <ul style="list-style-type: none"> • Waste removal – up to 5 inbound trucks per day (and 5 outbound) for 4 days following a cleanout. • Restocking – up to 4 trucks inbound and 4 trucks outbound over two days. <p>This results in a worst case scenario of 7 inbound and 7 outbound truck movements in a single day should a feed truck undertake a delivery whilst poultry is being transferred off site (during a thinning). The poultry movements however would typically occur at night (for the welfare of the birds) which is when the traffic volumes along the local roads would be low. A cleanout would occur once every 9-10 weeks (allowing up to 2 weeks between batches for cleaning of sheds and preparation for restocking).</p> <p>The additional traffic generated by the expansion of the poultry farm will not significantly increase the peak daily truck movements or pattern of operations. Instead the thinning and cleanout will occur over additional days compared with the existing operation. Thus the proposed expansion could see the peak truck movements occur over 3 days, 3-4 times during a cycle with 5.5 cycles</p>	
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		<p>occurring per year.</p> <p>Based upon this information, the proposed development is likely to produce a maximum of 924 additional truck movements per annum. Given the proximity of the site to the Hunter Expressway, this figure is able to be absorbed into the existing traffic network.</p>	
	6.4.3 Pest Control	<p>The submitted Environmental Impact Statement does not provide detailed information as to how pests/vermin will be controlled on the site, apart from the installation of deterrents and traps.</p> <p>To address this uncertainty, a condition of consent has been imposed on the draft determination notice requiring submission of an Operational Management Plan (OMP), that includes the preparation of an Integrated Pest Management Plan.</p>	Yes
	6.4.4 Disease Control	<p>Biosecurity is a high priority for the operation of a poultry farm. All persons entering and leaving the farm will report via the office/amenities block to the farm manager and be disinfected.</p>	Yes
	6.4.5 Poultry House Environmental Control	<p>In the event of a power outage, the tunnel ventilation system has a back-up generator for electricity supply.</p>	Yes
	6.4.6 Maintenance	<p>The applicant is required to prepare an OMP in accordance with a condition of consent. The ongoing maintenance of the site is to be included within the OMP.</p>	Yes
	6.5.1 Potential impacts on surrounding land uses	<p>This assessment report provides a summary of the potential impacts associated</p>	Yes

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		with this development application.	
D.7 Construction of Dams	7.5 Performance Standards 7.5.1 Location Requirements <i>The dam shall:</i> <i>a. ideally be built in a depression, as this is generally the most favoured location due to its better storage to excavation ratio; and</i> <i>b. not be constructed on slopes greater than 15% slope, because there is not usually enough suitable soil material to build a satisfactory wall.</i>	The proposal seeks to excavate and increase the size of an existing dam. This dam is considered to be in an ideal location, where the storage to excavation ratio is acceptable. The site slope in the dam location does not exceed 15%.	Yes
	7.5.2 Construction Requirements	Council's Development Engineers have assessed the design of the proposed dam. The design features of the dam have been deemed compliant with industry guidelines.	Yes
	7.5.3 Erosion and Sediment Control	This requirement can be met via the imposition of conditions of consent.	Yes
	7.5.4 Vegetation Impacts	The proposal is deemed to meet this provision.	Yes
	7.5.5 Salinity Impacts	N/A	N/A
	7.5.6 Dam safety <i>Where dams are to be within 100 metres of a dwelling-house, the dam shall have a maximum upstream batter slope of 6.0 horizontal to 1.0 vertical.</i>	The proposed dam is more than 100m from the nearest residence. Refer to 'Dam Safety Committee' comments in the external consultation section of this report.	Yes
	7.5.7 Visual Impacts	The proposed dam is to be located in a centralized region of the site. The dam is not likely to be readily viewed from any public place; with the exception of James Lane on the southern boundary	Yes

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		(noting this unformed road appears to serve a rural residence). The dam will be shielded by dense vegetation on the northern and southern adjoining properties. The nearest adjoining dwelling is positioned approximately 380m north-east of the proposed dam location.	
	7.5.8 Pokolbin (Hunter Wine Country) Private Irrigation District	N/A	N/A
	7.5.9 Compliance with other legislation and policies	The proposal is deemed to meet this provision.	Yes
	7.5.10 Impacts on neighbouring properties	Neighbouring properties are not anticipated to be impacted by the operation of the dam.	Yes
	7.5.11 Areas affected by underground mine workings	N/A	N/A
	7.5.12 Reinstatement / rehabilitation of dams and dam sites	Details of the dewatering process have been submitted to Council and the Department of Primary Industries (Water).	Yes
	7.5.13 Cumulative Impacts	The proposal is deemed to meet this provision.	Yes

As outlined above, the proposal does not comply with the setbacks provisions outlined within Chapter C.4 Land Use and Buffer Zones, specifically, with respect to the following:

- Property boundary setback
- Water course setback

Justification for each variation is outlined below:

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Property boundary setback

The proposed setbacks for affected buildings are:

Shed No.	Setback Proposed
Shed 1	18-18.8m setback to the northern boundary
Shed 2	All setbacks exceed minimum requirements.
Shed 3	10-12m setback to the southern boundary
Shed 4	16.5-17.4m setback to the northern boundary
Shed 5	All setbacks exceed minimum requirements.
Shed 6	10-12m setback to the southern boundary

The reduced setbacks are considered worthy of support. The recommended setbacks in this chapter of the DCP are designed to mitigate impacts to adjoining properties in relation to noise, odour, dust and/or visual intrusion. It is noted that dense vegetation exists on both the northern and southern adjoining boundaries, particularly adjacent to where the proposed poultry sheds are to be located. The vegetation on adjoining land means there will be no loss of amenity to adjoining properties. The dense vegetation on both the northern and southern adjoining properties largely constrain the adjoining properties from constructing development upon portions of the land adjacent to the poultry sheds; therefore the reduced poultry shed setbacks will not additionally impact upon the future use of the land.

The northern adjoining neighbour has an existing residence constructed to the north-west of the proposed poultry shed, which is more than 300m away from the proposed shed location. The dwelling is located within a cleared portion of the site and if a new dwelling or future development is to occur on this site, it is likely to occur within the western portion of the property, away from the dense vegetation adjoining the proposed poultry sheds.

The southern boundary abuts the semi formed James Lane. This portion of James Lane appears to serve only a single residence further east down the road. The road provides an additional 20m width from which the site is then separated from the adjoining southern land owner. This additional 20m improves the buffer distance to the southern adjoining property; this extra 20m buffer combined with the dense vegetation and low likelihood of development occurring in this portion of the adjoining property, means the variation can be supported.

This assessment report has detailed the potential impacts associated with noise, odour, dust and visual impact intrusion. Given that the assessment has not identified that any of these potential impacts are likely to adversely affect the surrounding area, the setbacks variations are supported.

Water Course Setback

The proposed poultry shed will be, at its closest location, approximately 17m from a 1st order stream. This matter has been dealt with by the Department of Primary Industries (Water), who have provided concurrence to the proposal via the issuing of General Terms of Approval. In consideration of the DPI (Water) support for the reduced setback, this variation is supported.

(a)(iia) *The provision of any Planning Agreement that has been entered into under Section 7.4, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4*

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

(a)(iv) *The provisions of the regulations*

As previously outlined in this report, the proposal is classified as Designated Development under Schedule 3 of the Regulations.

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

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact on both the natural and built environments, and the social and economic conditions of the locality. A summary of the key considerations for potential impacts is outlined below:

Air Quality (Odour) Impacts

By way of background, it is noted that the current proposal differs to the previously refused application (Council Reference DA No. 8/2007/288/1), in that the proposed facility represents best practice with respect to the use of technology and site management to ensure that unacceptable odour and noise impacts are avoided. In this regard, the previous proposal, along with the operation that currently exists on the site, comprise naturally ventilated sheds managed by the grower in order to respond to the prevailing temperature and climatic conditions. The current proposal the subject of this application utilises ventilation and climate control technology to avoid odour exceedances due to poorly managed ventilation and unfavourable shed temperature and humidity conditions.

Given the sensitivity associated with odour concerns and poultry farming practices, Council engaged the services of an independent consultant to assess the proposal and the likely associated air quality matters.

The initial independent peer review commenced with an assessment of: *Advitech, Air Quality (Odour) Impact Assessment, Bishops Bridge Poultry Farm (Rev 1 (Final) (ref: 14144, dated: 26 May 2016)*. On 17 October, 2017, comments were received from the peer review, requiring updated information and clarification on various matters. Feedback from the independent peer review were provided on 21 November 2017 and subsequently forwarded to the applicant.

An expert meeting was then conducted between representatives for the applicant, 'Advitech Environment', Council's independent consultant, and Council staff. Extensive liaison between all agencies followed, before an updated *Air Quality (Odour) Impact Assessment* was submitted on 19 June 2018.

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This updated *Air Quality (Odour) Impact Assessment* was referred again to the independent consultant and further matters were raised. A meeting was held on 13 September 2017, whereby Council's consultant discussed the outstanding issues with the applicant's consultant, 'Advitech Environmental'. The result of this meeting was positive. Verbal agreement was obtained as to the issues identified in the peer review. The applicant consequently resubmitted an Addendum report (4 October 2018) clarifying the matters raised by the peer reviewer. Council's Environmental Health Team were then able to conduct the final assessment of air quality (odour) issues, and on 18 October 2018, provided referral comments stating '*support for the proposal subject to the imposition of strict conditions of consent*'.

From the commencement of assessment of this proposal, it has been acknowledged that the site is located in a position that is difficult to model against meteorological observations from Bureau of Meteorological (BOM) weather stations. The applicant initially opted to apply the Paterson (Tocal) AWS and Cessnock AWS conditions as both stations have multiple years' worth of data, including wind analysis, to utilise. However; Council's consultant was of the opinion that Maitland AWS was more likely to adequately reflect the meteorological conditions of the site, given that it is the closest weather station to the land (6.5km NNE and reflective of the valley environment at the subject site). The problem with using the Maitland AWS data is that it only became commissioned as a weather station in late 2016 and the weather station only has one year of data available (i.e., 2017).

Within the applicant's June, 2018 *Air Quality Impact Assessment*, the consultants used observational data from Cessnock AWS and Paterson (Tocal) AWS accrued over ten years. A hybrid model using averaged statistical data of weather conditions was developed. This study indicated a wind calm reading of 4.4% (i.e. winds below 0.5m/s) to be used in modelling exercises. This information was used in a CALPUFF modelling system.

The results of this study predicted a minor exceedance of the 5 Odour Units (OU) limitation stated by the EPA (at 5.1OU). The figure was below the determined 5.3OU population odour performance criteria for the area. The minor exceedance occurred at two receivers (R1 and R3 – depicted in Figure 2 below).

The applicant addressed this matter via correspondence with the EPA. The applicant stated:

Advitech advises the NSW EPA (Email correspondence 14 September 2018 – Jason Price) expressed a view of odour concentrations and the rounding of criterion used. The following is a NSW EPA statement on the issue:

"To confirm, odour concentrations are to be rounded to the nearest whole number. Less than 0.5 rounds down to the nearest whole number and 0.5 above rounds up to the nearest whole number."

Effectively, this results in all sensitive receivers investigated by the Advitech report complying with the stated odour impact criterion of 5OU.

Notwithstanding this, to ensure absolute compliance with odour impact criteria, the applicant proposed to rectify this exceedance (albeit marginal). Additional modelling was then developed using slightly elevated ventilation stacks (increased to 8 metres in height).

Higher ventilation stacks are able to filter potential odour sources more capably. Under this modelling scenario, no receivers exceeded the impact assessment criteria of 5OU. As depicted in the table below (including a map showing the location of sensitive receivers), the majority of receivers are likely to experience little to no odour impact.

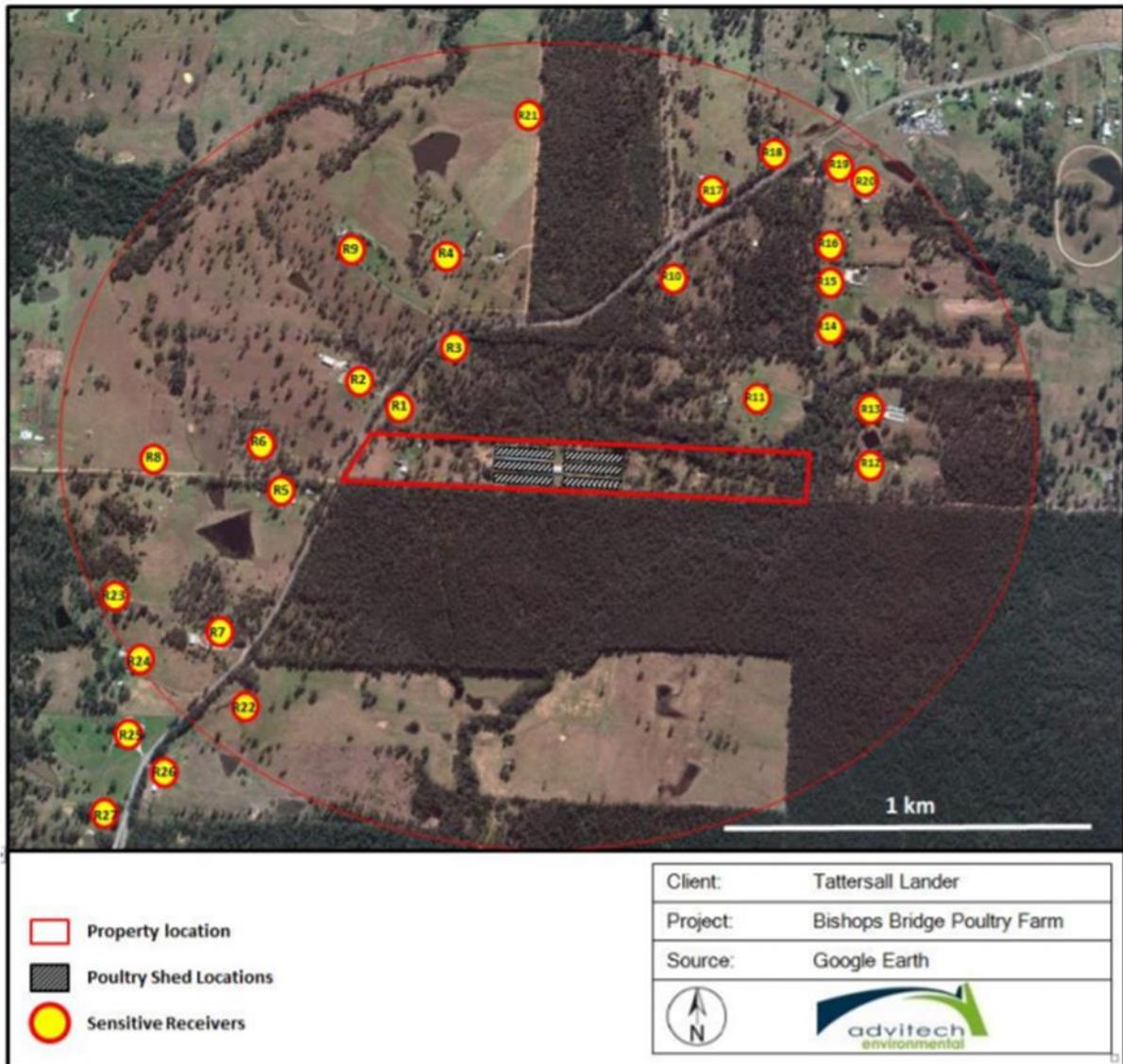


Figure 2: Sensitive Receivers

Receiver	Receiver ID	Predicted GLC 99 th Percentile One-Second Odour (OU)	Impact assessment criteria (OU)
R1	Residential	4.0	
R2	Residential	3.0	
R3	Residential	3.6	
R4	Residential	1.6	
R5	Residential	2.1	
R6	Residential	2.0	
R7	Residential	0.6	
R8	Residential	1.7	
R9	Residential	1.6	
R10	Residential	0.3	
R11	Residential	<0.1	
R12	Residential	<0.1	
R13	Residential	<0.1	
R14	Residential	<0.1	5.3 OU
R15	Residential	<0.1	
R16	Residential	<0.1	
R17	Residential	0.1	
R18	Residential	0.1	
R19	Residential	<0.1	
R20	Residential	<0.1	
R21	Residential	0.3	
R22	Residential	0.6	
R23	Residential	0.4	
R24	Residential	0.4	
R25	Residential	0.7	
R26	Residential	0.4	
R27	Residential	0.3	

Table 2: Predicted Odour Unit Criterion

On July 17, 2018, Council's consultant requested revised modelling information based on Maitland AWS data.

Given the limited data available for Maitland AWS, a wind calm figure of 18.1% was used. This information indicates that winds below 0.5m/s are far more frequent using data from the Maitland AWS than both Cessnock and Paterson AWS. Low winds result in a higher predicted ground level concentration of odour concentration.

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This figure was inputted into a CALPUFF modelling, which indicated that three receivers are likely to exceed the odour criteria of 5.0 OU (R1, R5 and R6).

The applicant disputes the use of the Maitland AWS meteorological data for this site. The wind calm figure devised from a statistically broader study period (i.e. 10 years) for Cessnock and Paterson AWS is considered to better reflect the long term patterns of the area. The one year statistical data information for Maitland AWS is considered to be too restrictive and the wind calm of 18.1% in one year may not accurately reflect long term wind patterns for the area.

Council's Environmental Health Team agrees with the applicant's position in respect of this matter, and supports the proposal from an air quality perspective subject to conditions of consent. The Environmental Health Team have noted that the majority of poultry shed odour complaints in the Cessnock LGA emanate from spent litter being dispersed upon the property (i.e. manure from the sheds is stockpiled on site after the cleanout phase). As outlined in the 'operational procedures' detailed earlier within this report, spent litter is immediately taken off site in covered trucks during the clean out phase.

In respect of odour, a condition of consent has been imposed on the draft determination notice requiring the development of an Operational Management Plan (OMP). Such OMP must incorporate specific odour requirements, and outline how the farm is to be operated and managed. As stated in the NSW DPI *Best Practice Management Guideline*, "*Farm Management has the greatest influence on odour generation.*" The applicant has further stated that: "*The proponent intends to manage the poultry farm to industry best practices, including the implementation of mitigation measures should odour nuisances occur.*"

The information recommended by the Environmental Health Team in the OMP are as follows:

1. Under no circumstances are waste materials (i.e. spent litter) to be disposed of on the site.
2. Small amounts of dead birds may be composted as described in the Environmental Management Procedures. In the event of large scale mortalities, birds must be disposed of in a Council approved landfill, or as directed by the Department of Industry - Agriculture.
3. Any chicken litter stockpiled to assist with composting must be stored under cover in a bunded area to prevent moisture infiltration and runoff.
4. Three months after the operation of the sheds has commenced, field testing must be undertaken by a suitably qualified person to demonstrate compliance, or otherwise, with the specified odour criteria. Field testing must be undertaken under typical circumstances. If necessary, the report must detail additional odour attenuation measures required to achieve compliance.

The above recommendation has been applied as a condition of consent in the draft notice of determination.

Cumulative Odour Impact

A final point to note is that the proposed Bishops Bridge poultry farm is the only facility of its nature in the area. Within the immediate locality there is no other industry that emits odour

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similar in nature to the facility. Therefore, it is not considered likely that *cumulative impacts* between emissions from this and any other site in the surrounding region, would occur.

Acoustic Impacts

The applicant has advised that should the farm be operated in accordance with the Noise Impact Assessment, prepared by 'Advitech Environmental', dated 12 July 2018, there is not expected to be any significant adverse impacts on the locality by way of detrimental noise emissions.

The applicant has identified three major producers of predicted noise impacts:

- The operation of the ventilation fans for tunnel ventilation;
- Feed delivery and refilling of the silo;
- Delivery and collection of birds, including truck transportation.

These uses are summarised as follows:

The ventilation fans have been identified as the likely highest source of noise generating activity at the proposed development. In the noise assessment report, prepared by 'Advitech Consulting', the use of fans is summarised as follows:

"Each broiler shed will have fourteen Euromemme EM52 exhaust fans fitted with cones to direct the flow of air. Ten ventilation fans would be located at the rear of the shed (eastern end) to facilitate tunnel ventilation, and two fans would be located on each side of the shed, towards the rear, to be operated during extreme conditions. The fans operate automatically on an as-required basis, with a greater number of fans operating during warmer or more humid conditions. It is considered that only extreme meteorological conditions, late in the production cycle, would warrant the operation of all 14 fans, and such conditions would occur during the day period only. During the cooler evening and night periods, a reduced number of fans would be required operate".

The delivery and refilling of the silos can occur during the day or night; however the delivery is estimated to take one hour, using one delivery truck. Feed delivery is stated to occur once per week. It is recommended that, in the event the application is approved, a condition of consent be imposed in the draft determination notice permitting feed deliveries to occur only during daylight hours 7am – 7pm, weekdays.

Finally, the bird collection and delivery process is considered to be the third major cause of noise impact. When trucks arrive to deliver or remove birds, a maximum of two trucks will be on site at any one time. Telescopic handlers are engaged during this process and the noise generated from this process has been considered in the submitted noise assessment report. Bird collection and delivery is stated to occur in a staggered approach. Only allowing two trucks at any one time will assist to limit the noise generated from this practice. A condition of consent has been imposed on the draft determination notice recommending that the following noise amelioration procedures (specifically for truck movement) be implemented in the development of a site Operational Management Plan:

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- Site speed limit will be 30km/hr.
- Noise generation will be controlled by regular maintenance of farm machinery and vehicles. If a vehicle/machine is creating excessive noise, maintenance will be undertaken to correct the problem.
- Contractors will be informed of noise nuisance concerns and requested to limit noise generation (e.g. engine braking, limiting airbrakes, horns, excessive revving of motors, avoidance of impact with solid objects during litter clean-out, feed delivery, chick delivery and poultry pick-up).
- Vehicles have a modified beeper installed ("croaker") with flashing lights.
- No alarm bells or paging systems will be used.
- All on-site driveways/roads will be maintained (no potholes) and levelled as required to minimise truck bounce as they move on-site.
- Maintain a noise complaints register and operate a telephone complains line.
- Instruct all staff on the appropriate handling of noise complaints.

Noise Monitoring

Background noise monitoring was conducted and submitted in the original Noise Impact Assessment by 'Advitech' dated 26 May 2016. Project Specific Noise Levels (PSNL) for the proposed development were devised after determining the relevant noise levels from the intrusiveness and amenity criteria. This set the benchmark against which noise impacts and the need for noise mitigation are assessed. The PSNL for residential receivers were determined as:

Day (7:00 to 18:00) 37 dB(A)
Evening (18:00 to 22:00) 36 dB(A)
Night (22:00 to 7:00) 35 dB(A)

The sleep disturbance criterion for the project has been established as 45 dB(A).

Predicted noise model results were obtained by 'Advitech' using Predictor environmental noise modelling software, assessing several operational scenarios and considering topographical and meteorological conditions. The noise modelling predicted noise levels for: operation of the ventilation fans, feed delivery and silo refilling, bird collection. Results of the predictive modelling indicating that 'no exceedance of the day, evening or night criteria are anticipated' (i.e. the sleep disturbance criterion was not exceeded).

In regard to traffic noise, the 'Advitech' report states that the existing road traffic noise exceeds the criteria of 55 dB(A) for the day period and 50 dB(A) for the night period for local roads. It is stated that the assessment of traffic noise generated by the development indicates that noise levels are predicted to increase by less than 1dB(A).

A condition of consent has been imposed on the draft determination notice requiring the applicant to develop an Operational Management Plan, which includes consideration of noise, for all staff and visitors of the proposed operation.

Visual Impact

This issue has been addressed previously in this report.

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Flora and Fauna Impact

This issue has been addressed previously in this report.

Economic Impact on the Locality

It is considered that the proposed development will have a positive impact on the agricultural economy of the locality, specifically via employment relating to the site and associated operations.

At its capacity, the poultry farm will result in an increase in employment, requiring the following full time jobs: 4 on-farm staff, 2 labourers, 2 transport workers and 12 processing staff (off site).

Traffic Impacts

The site is currently accessed via a gravel accessway off Old Maitland Road. Old Maitland Road is a local road with a posted speed limit of 80km/hr. Good visibility is provided to both directions of Old Maitland Road, with all vehicles able to enter and exit the site in a forward direction. The internal road layout provides for manoeuvring to be carried out within the site. The gravel crossover is required to be upgraded to sealed bitumen, and a condition of consent has been imposed on the draft determination notice in respect of this.

All heavy vehicles departing the site will travel south along Old Maitland Road towards the Hunter Expressway (via Sawyers Gully Road and Hart Road) and return along this route. This will require all movements to be right in and left out of the site access on Old Maitland Road.

With regard to estimated traffic generation rates, the applicant has provided the following:

- *Feed truck – 2 trucks inbound and 2 outbound per week.*
- *Poultry trucks – up to 6 truck movements inbound per day (and 6 outbound) during a thinning or cleanout. The first thinning occurs at 32-34 days, with further thinning as required until the final cleanout at 52-54 days. The final cleanout occurs over the course of a number of days.*
- *Waste removal – up to 5 inbound trucks per day (and 5 outbound) for 4 days following a cleanout.*
- *Restocking – up to 4 trucks inbound and 4 outbound over two days.*

This results in a worst case scenario of 7 inbound and 7 outbound truck movements in a single day should a feed truck undertake delivery while poultry is being transferred off site (during a thinning). The poultry movements however would typically occur at night (for the welfare of the birds) which is when the traffic volumes along the local roads would be low. A cleanout would occur once every 9-10 weeks (allowing up to 2 weeks between batches for cleaning of sheds and preparation for restocking).

The additional traffic generated by the expansion of the poultry farm will not significantly increase the peak daily truck movements or pattern of operations. Instead the thinning and cleanout will occur over additional days compared with the existing operation. Thus the proposed expansion could see the peak truck movements occur over 3 days, 3-4 times during a cycle with 5.5 cycles occurring per year.

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A traffic count undertaken on February 2017, 1.2 km north of the site on Old Maitland Road, revealed that the peak hour occurred during 3pm – 4pm and the peak volume was 380 vehicles per hour. Assuming an even distribution of traffic along Old Maitland Road, 190 vehicles per hour travel in each direction along Old Maitland Road. Based upon the *Austrroads Guide to Traffic*, the proposal does not warrant the construction of an intersection.

Dust Impacts

The amount of dust and airborne particulate matter typically present in a poultry shed is dependent on a number of factors including:

- Bird activity
- Stocking density
- Cleaning practices
- Bird handling
- Residual dust levels
- Type and moisture content of litter and feed
- Ventilation system
- Nearby dust sources

The existing practice of the poultry farm provides for free range poultry, where birds have access to outside areas. The existing sheds also have large openings, allowing for natural ventilation. The side effects of this practice are that dust and odour can be more readily absorbed into the existing environment; potentially causing nuisance to adjoining properties. The proposed system of poultry farming adopts tunnel ventilation, meaning all birds are contained within the sheds; minimising the opportunity for dust generation into the environment.

The following practices can be managed through the implementation of the Operational Management Plan to limit the impact of dust nuisance. The Operational Management Plan is a recommended condition of consent within the draft notice of determination:

- *Use of tunnel ventilated sheds with fans discharging away from the nearest residences.*
- *Construction and maintenance of 3 metre high vegetative screens to minimise dust impact on nearby residences.*
- *Management of litter moisture and removal.*
- *Variable ventilation rates on the sheds.*
- *Minimise dust emissions from carcass composting.*
- *Composting to occur in covered or enclosed area to help control dust.*
- *Dust nuisance from transport of feed, bedding, poultry and spent litter.*
- *Maximum vehicle speeds limited on farm to 30Km/h.*
- *Watering of internal roads during dry conditions when excessive dust is generated from vehicles.*

Stormwater

The existing stormwater catchment structure of the site drains water into the first order stream to the north of the site as well as the third order stream to the east. Four dams of variable size also capture existing stormwater flows from the dwelling and two poultry sheds. Some stormwater runoff in the western end drains naturally towards the road.

Under the proposed development, the stormwater catchment structure will be altered. Six 250kL rainwater tanks will be provided to collect rainwater for operational purposes. Three of the four dams will be dewatered and filled to make way for the proposed poultry shed building pad. A fourth dam will increase in capacity and is designed to capture all stormwater produced from the 22,612 square metres of shed roof area. This dam will be for reuse in the sheds (i.e. for cooling purposes, drinking water for birds and during clean out stage). The proposed new dam includes a surface area of 7200m² and a permanent pool volume of 23.4ML.

During the dewatering process, all water will be directed to the fourth dam under the supervision of a qualified ecologist. No water from the dewatering process will be permitted to enter riparian corridors.

The proposed dam exceeds the harvestable rights allowance issued by the Department of Primary Industries (Water). A Water Access License (WAL) is ordinarily required for dams exceeding their maximum harvestable rights in accordance with Clause 53(3)(b) of the Water Management Act 2000. The *Water Management Regulation 2000* (the Regulation) contains a number of exclusions to obtaining an access license and in this case, Clause 12 of the Regulation specifically outlines this proposed dam. This clause states:

12 Excluded works

(1) Any landholder—in relation to the taking of water from or by means of a work referred to in item 1, 2, 3, 4, 6, 7 or 9 in Schedule 1 that is situated on the land, for the purposes and in the circumstances specified in Schedule 1 in respect of the work.

In this regard, Item 3 of *Schedule 1 Excluded Works* of the *Regulation* states the following dam is 'excluded works':

(3) Dams solely for the capture, containment and recirculation of drainage and/or effluent, consistent with best management practice or required by a public authority (other than Landcom or the Superannuation Administration Corporation or any of their subsidiaries) to prevent the contamination of a water source, that are located on a minor stream.

In this instance, the proposed expanded dam is designed to capture stormwater runoff from the proposed new sheds. The six sheds have a significant impervious area (22612.5sqm) and will produce a large amount of runoff. The sheds have a slight 1% grade towards the dam. This captured water will be specifically used for recirculation and reuse within the sheds for cooling, drinking and clean out; before being directed back to the dam for continued reuse.

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The applicant states in their Environmental Impact Statement that it is their intent to construct the dam as excluded works in accordance with the Schedule 1 exclusions. As the licensing arrangement is not a consideration under Clause 4.15 of the Environmental Planning and Assessment Act 1979, no further action is necessary on Council's part. The applicant will need to liaise with NSW Water, the agency responsible for issuing Water Access Licenses, to ascertain whether the proposed dam can be classified as excluded works. If NSW Water considers that the proposed dam is not an excluded work, the applicant will be required to obtain a WAL from NSW Water as part of a separate approval process.

(c) The suitability of the site for the development

The site is considered suitable for the development primarily on the basis that it is supported by the land use objectives associated with the RU2 zone. The objectives relating to the RU2 zone encourage development of a rural/agricultural nature. In addition, the establishment of a viable operation ensures the preservation of the agricultural potential of the land established by the current poultry farm.

The proposal represents an extension to the existing poultry farm consolidating the use of the land for this purpose without the need to bring new rural land into production.

As demonstrated by the planning assessment, the site is considered to be suitable for the proposed development. The proposed land use is permissible, the application is consistent with the objectives of the zone and with due regard for the objections received, the proposal has addressed the range of planning matters raised within the submissions.

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

The public participation process for Designated Development is outlined within Division 5 of the Environmental Planning and Assessment Regulation 2000. The proposal was exhibited in accordance with the Regulation.

The Development Application was publicly exhibited between 17 August and 19 September 2017.

Fifty-six (56) notification letters were issued and a total of five (5) submissions (or 8.9% of properties notified), were received during the exhibition period. Of the 5 submissions received, all were in objection to the proposal. A copy of all submissions was forwarded to the Planning Secretary in accordance with Clause 81 of the Regulations.

The following discussion addresses the issues and concerns raised in the submissions:

Objection theme	Ground for objection	Comment
Odour	<p><i>Concern for the degree and persistence of odour related to the development.</i></p> <p><i>Depending on the direction of the wind, the current poultry farm (at its current size) can be smelt strongly at neighbouring properties.</i></p>	<p>The existing poultry operation at the site operates a free range, open style method, including the use of naturally ventilated sheds. The practice is far more likely to produce adverse odour impacts on the surrounding</p>



		<p>area. Under the proposed method of tunnel ventilation (a more modern technique), the keeping of poultry is conducted in a much more contained environment. As evidenced via the air quality (odour) assessment, the likelihood of nuisance odour occurring in the vicinity of the property is low.</p>
	<p><i>Dry periods have resulted in increased smell from the (existing) farm.</i></p>	<p>As noted, the past poultry farm practices of the site are outdated, and in periods of dryness, are likely to produce adverse amounts of odour, given the open nature of the keeping area for birds.</p> <p>The proposed new method will contain the birds in large sheds. All spent litter (i.e. flooring) is contained within the sheds) and during the clean out period (likely to occur 5-6 times per year), the sheds are in 'lock down' (i.e. no vents or open partitions are present) and the flooring is removed from the site via enclosed trucks. The dust generation as a result of the farming practice is likely to be significantly reduced under this development application.</p>
<p>Pollution</p>	<p><i>The organic dust generated from the poultry can contain bacteria and bio-active substances and cannot be considered inert. The poultry dust contains: feed, faecal particles, feather barbules, skin debris, fungal fragments, spores, bacterial fragments, viruses and particles of litter.</i></p>	<p>The proposed sheds will wholly contain all chickens within the shed confines. The clean out period will occur at the end of each bird cycle, approximately every 10 weeks (allowing for a 54 day chicken cycle, and 10-14 clean up and restock period). As noted above, during the clean out period (likely to occur 5-6 times per year), the sheds are in 'lock down' (i.e. no vents or open partitions are present) and the flooring</p>



		is removed from the site via enclosed trucks.
	<i>Night lights from large vehicles.</i>	<p>The Operational Management Plan that Councils Environmental Health Team have recommended be enforced via conditions of consent includes a traffic management statement:</p> <p><i>Movement of trucks and mobile equipment on-site is to be restricted to one (1) vehicle at any one point in time. Farm management is to ensure that the necessary timetabling and organisation of contractors is conducted in a manner that accommodates this requirement.</i></p> <p>A condition of consent has been imposed on the draft determination notice to reflect this.</p> <p>With regard to light spill, feed trucks are only permitted to deliver to the site during daylight hours. This leaves bird collection and delivery vehicles as the only likely source of light spill. Given the irregular nature of the truck entering and exiting the site (i.e it does not occur daily, only during specified periods in the bird cycle), the extent of light spill to adjoining western properties will be minimal.</p>
	<i>Noise pollution – particularly associated with traffic and large vehicles at night.</i>	Noise pollution matters have been addressed within the assessment report.
	<i>Noise – tunnel ventilation</i>	
Traffic	<i>Concerns surrounding the increased traffic on Old Maitland Road. Neighbouring properties already deal with increased traffic noise from the Expressway.</i>	Traffic matters have been addressed with within the assessment report.

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	<p><i>Nearby dwelling has tank water and has had previous bouts of e-coli present in the water.</i></p>	<p>The existing sheds on site comprise open walls and areas for poultry to roam outdoors. This arrangement is likely to have a greater risk of producing airborne particles than the proposed method of wholly containing birds within the sheds.</p> <p>The proposed development is likely to have an improved scenario for airborne pollution to surrounding properties.</p>
	<p><i>A nearby property has been receiving waste from the existing poultry farm in a trade deal.</i></p>	<p>A waste management plan has been submitted for Council's consideration. All waste is to be either suitably contained onsite or disposed of at a recognized disposable facility.</p> <p>If waste is being disposed in an alternate manner, Council's compliance officer are able to investigate.</p> <p>Under a new development consent, existing arrangements no longer apply.</p>
Social	<p><i>The high intensity poultry farm is ethically questionable.</i></p>	<p>Poultry farms are governed by the Department of Primary Industries (Agriculture) for regulations on the handling and treatment of livestock.</p>
	<p><i>Concern associated with potential diseases from airborne toxins associated with a chicken farm.</i></p>	<p>Poultry farms are governed by the Department of Primary Industries (Agriculture) for disease control and health regulation.</p>
	<p><i>Do not wish for the poultry farm to cease; however the large expansion should be denied.</i></p>	<p>The expansion of the poultry shed is a permissible land use in the RU2 zone applicable to the site, and the assessment of the proposal has identified that the site is considered suitable for the proposed intensification.</p>
Economic	<p><i>Potential devaluing of neighbouring</i></p>	<p>The potential loss of property</p>



	<p><i>properties.</i></p>	<p>values is not a warranted planning consideration. Case law from the Land and Environment Court of NSW is clear in respect to how the Court determines whether issues relating to loss in property values are given weight (as a result of a proposed development). In <i>Alphatex Australia v The Hills Shire Council (No 2) [2009]</i>, the Commissioner stated: <i>“I pay no regard to the fears about loss of property values as, consistent with the position long taken in the Court, this is not a relevant planning consideration”</i>.</p>
	<p><i>The construction of the poultry farm is too close to neighbouring properties and is better suited to larger, isolated properties.</i></p>	<p>A variation is proposed to side setbacks; however the variation is worthy of support given that the location of the proposed sheds adjoins neighboring tracts of dense vegetation. The proposed sheds are a considerable distance from surrounding residences and the modern method of poultry farming is not likely to produce unreasonable levels of odour, noise or dust impact on surrounding residents.</p>
<p>Flora and Fauna</p>	<p><i>Endangered species, specifically bats, are on the subject property. The bats may spread virus's from the poultry. Alternatively, poultry may have adverse impact on bat populations.</i></p>	<p>Council's Ecologist has undertaken an assessment of threatened species on the site. The existence of bats on the area is acknowledged in the ecology referral. No adverse impacts to bat population is anticipated as a result of this development application.</p> <p>Furthermore, the poultry sheds are wholly enclosed, meaning there are no free-range areas for birds. The birds should not come into direct contact with bats in the</p>



<p>Other</p>	<p><i>The existing business is illegally operating without existing use rights.</i></p>	<p>area.</p> <p>The site contains an operational poultry farming establishment which was originally approved by Council under DA 118/679/35 on 12 June 1979, subject to conditions. In 2005 Council received an enquiry regarding the established continued use of the property. Council confirmed the continued operation of the consent by correspondence dated 8 November 2005 which stated;</p> <p><i>“It is advised that Council’s records indicate that the chicken sheds were approved in 1979 at the same time as the dwelling that also exists on the lot...”</i></p> <p><i>Council will consequently raise no objection to the continuation of the use of the sheds for the business activity of the keeping of poultry...”</i></p> <p>The site is said to have been continuously used for the purpose of keeping poultry birds since this time.</p>
	<p><i>A 500 metre buffer should apply.</i></p>	<p>Pursuant to Part C.4 of the DCP, the 500 metre buffer applies to ‘residential / urban zones’. The area contains large lot rural residential properties but remains essentially rural in nature.</p>

(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.

The development proposal is considered to satisfy the public interest as it will provide a rural land use, utilising a site where an established poultry farm is already in operation. Furthermore, assessment of the proposal has demonstrated that the development will not result in adverse impacts on nearby residents or the wider locality.

Based on the above assessment, it is considered that the proposed development is consistent with the public interest.

SECTION 7.11 CONTRIBUTIONS

Section 7.11 Contributions are payable for the proposal. The *Cessnock Section 94A Levy Contributions Plan 2017* is applicable and contributions have been applied accordingly.

In the event the application is approved, Section 7.11 Contributions totalling **\$42,000.00** would be payable. This rate is based upon a levy of 1% on the \$4,200,000.00 estimated cost of works.

NSW RIGHT TO FARM POLICY – NSW DEPARTMENT OF PRIMARY INDUSTRIES

The contribution to the NSW economy from poultry (both eggs and meat) production in the Lower Hunter is significant to NSW. The region produces approximately 10% of all the State's chicken meat and eggs, making it the third largest production region in NSW.

Lower Hunter poultry farming represents 60% of the Hunter region's egg production and 40% of the chicken meat (NSW Parliamentary Research Service, July 2012). In 2011, the Cessnock LGA was responsible for 24.5% of the Lower Hunter's meat production and 11.0% of its egg production. (ABS Agricultural Census Data, 2011). Overall, the Lower Hunter region benefits from in excess of \$18 million return to farmers, with processing, feed and filleted products estimated at \$100 million.

With respect to rural land in the Cessnock LGA suitable for poultry, it should be noted that current and future land use zoning schemes have a significant impact on available land;

Poultry Uses – Cessnock LGA	
Extent of all rural land meeting Biophysical requirements for Poultry (Ha)	51,825 Hectares
Extent of rural land meeting Biophysical requirements available under current zoning	26,452 Hectares or 49% of all suitable rural land area.
Extent of rural land meeting requirements under future planning scenarios	23,007 Hectares
% area potentially impacted by future planning scenarios	13%

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Source; Mapping Important Agricultural Lands in the Lower Hunter of NSW - Environment Division Hunter Councils, 2013.

On the basis of the diminishing availability of suitable rural land, it is considered important to consolidate any existing agricultural land uses to ensure their economic viability, and preserve the availability of the remaining suitable land to meet future food production needs.

In recognition of the need to protect existing lawful agricultural practices from the likelihood of increasing land use conflicts and complaints, *NSW Department of Primary Industries (DPI)* introduced the “*Right to Farm Policy*” December, 2015.

The Policy reinforces the contribution of agricultural industries to the region by input at the strategic planning level (Regional Plans) and ensuring appropriate zoning objectives for the use of rural land. In this instance, the Policy objectives require the identification and protection of valuable agriculture across the region. This Policy objective is reflected within the land use objectives for land zoned *RU2 Rural Landscape* under the Cessnock Local Environmental Plan (2011), ensuring that the type and intensity of development is appropriate in relation to the rural capability and suitability of the land, and the preservation of the agricultural production potential of the land.

The Policy informs the weight to be given to land use conflict objections to lawful agricultural operations, which adopt best industry practice giving preference to the use of suitable rural land for production rather than precluding agricultural production on the basis of enhancing residential amenity.

INTERNAL REFERRALS

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

Officer	Comment
Development Engineer	Council’s Development Engineer has assessed the application and is satisfied with the granting of consent, subject to the inclusion of standard conditions.
Ecologist, Development Assessment	Council’s Development Ecologist has assessed the application and is satisfied with the granting of consent, subject to the inclusion of standard conditions.
Environmental Health Officer	Council’s Senior Environmental Health Officer has assessed the application and is satisfied with the granting of consent, subject to the inclusion of standard conditions.
Onsite Sewage System Management Officer	Council’s Environmental Water Management Officer has assessed the application and is satisfied with the granting of consent, subject to the inclusion of standard conditions.



EXTERNAL REFERRALS

The Development Application was referred to the following external agencies for comment:

Agency	Comment
Department of Primary Industries (Water)	<p>The application requires the concurrence of the Department of Primary Industries (Water) under Section 91 of the Water Management Act 2000. The proposal seeks consent for works within 40 metres of an identified watercourse.</p> <p>General Terms of Approval were received from the Department of Primary Industries (Water) on 3 September 2018.</p>
Office of Environment and Heritage	<p>Concurrence from the Office of Environment and Heritage (OEH) is not required for this Development Application. The proposal was referred to the OEH for comment only.</p> <p>The OEH provided their final referral comments to Council on 27 February 2018.</p> <p>The referral to OEH comprised two issues:</p> <ul style="list-style-type: none"> • Biodiversity • Aboriginal Cultural Heritage <p><u>Biodiversity</u></p> <p>With regard to biodiversity, the OEH stated in their referral that: <i>“with respect to biodiversity matters, OEH does not have a statutory role in assessing this development unless the consent authority (Cessnock City Council) determines that the impact is likely to significantly affect a threatened species, population, ecological community, or its habitat, as listed under the now repealed Threatened Species Conservation Act 1995 (TSC Act). If a significant impact on any listed matter is identified by the consent authority during the assessment process, then OEH will have a concurrence role in the approval process for threatened species.”</i></p> <p>As confirmed by Councils Ecologist on 25 July 2018; <i>“It is considered that the proposed development would not have a significant impact on any listed threatened species, populations or ecological communities due to the existing disturbed condition of the proposed development site and the presence of large areas of more suitable intact habitat adjoining the site.”</i></p> <p>To this effect, no further action from OEH with regard to biodiversity matters is necessary.</p> <p><u>Aboriginal Cultural Heritage</u></p>

	<p>During the preparation of the EIS, The Office of Environment & Heritage (OEH) advised that,</p> <p><i>“OEH acknowledges the existence of numerous registered Aboriginal sites in the regional locality. These include middens, isolated finds, camp sites, artefact scatters and potential artefact deposits. It is also acknowledged that the project area contains landforms which have yielded a significant volume of evidence of Aboriginal occupation. It is therefore recommended that the proponent consider any potential impacts of the proposal on these known Aboriginal sites/objects, the sensitivity and significance of these sites to the traditional Aboriginal knowledge holders and any relationship that may exist between these sites and any Aboriginal cultural heritage values of the project area.”</i></p> <p>The applicant has addressed this recommendation and submitted a Historic Heritage Assessment and Aboriginal Cultural Heritage Assessment (‘Advitech Environmental’, 12 April 2017).</p> <p>This report concluded that: <i>There is a nil to very low chance that Aboriginal object(s) may be present within the areas proposed for impact by the proposed development and within the study area.</i></p> <p>This information was provided to the OEH for consideration. In the referral response of 27 February 2018, the OEH stated that: <i>“...if the proposal triggers Section 90 of the National Parks and Wildlife Act 1974 then it will be deemed an ‘integrated development’ under the EP&A Act and will require consent to knowingly destroy, deface or damage or knowingly cause or permit the destruction or defacement of or damage to, a relic or Aboriginal place. OEH recommends that the proponent follows the standard assessment requirements, guidelines, consultation requirements and Code of Practise – as detailed in our letter dated 09 August 2017 to collect and present the minimum information requirements for assessment of Aboriginal cultural heritage with the Development Application.</i></p> <p>The proposal is not considered to be Integrated Development in accordance with the requirements of Section 90 of the National Parks and Wildlife Act 1974. This information was forwarded to the OEH, with a request for clarification on whether the Historic Heritage Assessment and Aboriginal Cultural Heritage Assessment (Advitech Environmental, 12 April 2017) satisfactorily addressed the ‘minimum requirements’ referred to in the OEH referral comments above.</p> <p>On July 30, 2018, the OEH responded by stating that <i>“...we don’t have capacity to do a preliminary review of documents that will later be submitted for our review. Are you formally sending us the document in response to our previous letters? If so, we will begin</i></p>
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	<p><i>our formal review as part of the integrated development assessment.”</i></p> <p>This correspondence was followed by a telephone discussion with OEH representative, Mr Steven Cox. It was confirmed that as Council and the proponent do not consider the application to be Integrated Development, then OEH do not have a further role in the assessment process. The imposition of a standard condition of consent is satisfactory for this proposal. As discussed previously within this report, a precautionary condition of consent has been imposed on the draft determination notice stating: <i>“If Aboriginal artefacts are uncovered during work, excavation or disturbance of the area, work must stop immediately. The Environmental Protection and Regulation Group of the Office of Environment and Heritage is to be contacted. Aboriginal archaeological excavation must be coordinated with any proposed investigation of non-indigenous material.”</i></p> <p>No further action from the OEH is necessary.</p>
<p>Dams Safety Committee</p>	<p>The Dams Safety Committee was consulted on 13 November 2017 to ascertain if a specific referral was warranted.</p> <p>A representative from the committee advised that a dam of this size (i.e. 23.4ML) would not ordinarily be a prescribed dam; however the committee did encourage the submission of an application to determine if the dam would be prescribed and ongoing safety monitoring of the dam is required. It was further noted that due to a lack of built form downstream of the dam, the risk of significant injury or impact should the dam collapse is lessened.</p> <p>Further information on the Dams Safety Committee website provides that; <i>“In most circumstances, a dam will not be prescribed until a final decision (as defined under the Environmental Planning and Assessment Act) has been made to proceed with the work”</i> This means that development consent for the dam to be constructed is usually obtained first, and then a decision whether to make the dam prescribed and subject to safety monitoring, is subsequently made.</p> <p>A condition of consent has been imposed in the draft notice of determination, requiring that the applicant register the dam with the Dam Safety Committee for consideration on becoming a prescribed dam.</p>
<p>Department of Environment and Climate Change</p>	<p>A referral to this agency was not required.</p> <p>Schedule 1 of the Protection of the Environment Operations Act 1997 (POEO Act) states that “livestock intensive activities” applies to bird accommodation with the capacity to accommodate more than 250,000 birds at any time.</p>



	<p>Based on the details provided to Council, the proposal has the capacity to store approximately <i>up to</i> 250 000 day old birds. Therefore, an Environment Protection License under the POEO Act is not required, and Council is the Appropriate Regulatory Authority for the site once operational.</p>
<p>Department of Primary Industries (Agriculture)</p>	<p>The NSW Department of Primary Industries (DPI) are the advisory authority on poultry farms. The DPI is concerned with the running of a farm once it is operational, therefore referral at the development application stage is not necessary.</p> <p>The DPI have issued a best practice document for poultry farms, titled: <i>'Best Practice Management for Meat Chicken Production in New South Wales.'</i> Within this document, tunnel ventilation is specified as the desired ventilation and temperature control mechanism for poultry sheds. This has the best outcomes for bird health and welfare as well as odour control. This proposal seeks to incorporate this method of poultry farming.</p>

CONCLUSION

The Development Application has been assessed in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies.

The proposed development is permitted within the prescribed zone, and is considered consistent with the zone objectives. The proposed developed area is contained to a centralised location on the site and as such, will not be readily viewed from public areas, given the topographical lay of the land and the existence of dense tracts of forested vegetation surrounding the site.

The proposed method of tunnel ventilation for the poultry sheds is an improved modern technique of poultry farming, that is likely to have improved amenity measures than the current practice of poultry farming at the site.

Despite receiving public objection, the proposal has demonstrated compliance with all key planning considerations. Furthermore, as outlined within this report, the issues raised during the public exhibition period have been addressed.

The proposal is consistent with the Department of Primary Industry, *"Best Practice Management for Meat Chicken Production in NSW"* and is supported by the *"Right to Farm Policy"* December, 2015.

Based on the assessment, it is recommended that Development Application No. 8/2017/388/1 be approved, subject to the conditions of consent included in this report

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ENCLOSURES

- 1 Plans
- 2 Submissions - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy.*

CONDITIONS OF CONSENT

SCHEDULE 1

TERMS OF CONSENT

CONDITIONS OF CONSENT

1. General Terms of Approval

All General Terms of Approval issued by Department of Primary Industries (Water), date 3 September 2018, shall be complied with prior, during and at the completion of the development, as required.

A copy of the General Terms of Approval is attached to this determination notice.

2. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2017/388/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
21500246, SHEET 1, TITLE PAGE, CONTENTS AND LOCALITY SKETCH, REV E	TATTERSALL LANDER PTY LTD	-
21500248, SHEET 2, OVERALL LAYOUT, REV E	TATTERSALL LANDER PTY LTD	11/07/2018
21500248, SHEET 3, LAYOUT PLAN 1, REV E	TATTERSALL LANDER PTY LTD	11/07/2018
21500249, SHEET 4, LAYOUT PLAN 2, REV E	TATTERSALL LANDER PTY LTD	11/07/2018
21500250, SHEET 5, SECTION A, REV E	TATTERSALL LANDER PTY LTD	11/07/2018
21500251, SHEET 6, SECTIONS B, C, D AND E, REV E	TATTERSALL LANDER PTY LTD	11/07/2018
21500252, SHEET 7, LAYOUT DIMENSION PLAN, REV E	TATTERSALL LANDER PTY LTD	11/07/2018
21600319, SHEET 8, POULTRY SHED TYPICAL PLAN AND ELEVATIONS, REV D	TATTERSALL LANDER PTY LTD	11/07/2018
21600318, SHEET 9, MACHINERY SHED PLAN AND ELEVATIONS, REV C	TATTERSALL LANDER PTY LTD	15/06/2018

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21700067, SHEET 10, GENERATOR, AMENITIES AND STORAGE SHED AND COMPOSTING SHED PLANS AND ELEVATIONS, REV A	TATTERSALL LANDER PTY LTD	15/06/2018
21700068, SHEET 11, MACHINERY SHED AND WATER TANKS DETAIL PLAN, REV A	TATTERSALL LANDER PTY LTD	15/06/2018
21700069, SHEET 12, COMPOSTING SHED DETAIL PLAN, REV B	TATTERSALL LANDER PTY LTD	19/09/2017
21700057, SHEET 13, FIRST ORDER STREAM (WESTERN) PLAN AND SECTION 1, REV B	TATTERSALL LANDER PTY LTD	15/09/2017
21700059, SHEET 14, FIRST ORDER STREAM (WESTERN) CATCHMENT CALCULATIONS, REV B	TATTERSALL LANDER PTY LTD	15/06/2017
21700058, SHEET 15, FIRST ORDER STREAM (EASTERN) PLAN AND SECTION 2, REV B	TATTERSALL LANDER PTY LTD	15/09/2017

Document Title	Prepared By	Dated
Environmental Impact Statement	Tattersall Lander Pty Ltd	July 2017
Air Quality (Odour) Impact Assessment, Rev 2	Advitech Environmental	19 June 2018
Addendum to Bishops Bridge Air Quality Impact Assessment, Rev O	Advitech Environmental	4 October 2018
Noise Impact Assessment, Rev 3	Advitech Environmental	12 July 2018
Flora and Fauna Assessment Report	Wildthing Environmental Consultants	May 2018
Vegetation Management Plan	Wildthing Environmental Consultants	September 2017
Stormwater Quality Report	Tattersall Lander Pty Ltd	June 2017
Traffic Impact Assessment	SECA Solution	20 April 2017
Historic Heritage Assessment & Aboriginal Cultural Heritage Assessment	Advitech Environmental	12 April 2017

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

3. BCA Compliance

Pursuant to Section 4.17(11) (cf previous s 80A) of the *EP&A Act 1979* all building work must be carried out in accordance with the requirements of the *BCA*.

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.

4. Cessnock Section 94A Levy Development Contributions Plan

A total monetary contribution of \$42,000.00 is to be paid to Council, pursuant to Section 7.12 (cf previous s 94A) of the *Environmental Planning and Assessment Act 1979*, such contribution is to be paid prior to the issue of a Construction Certificate in respect of the proposed development.

- i) This condition is imposed in accordance with the provisions of *Cessnock S94A Levy Development Contributions Plan 2017*. A copy of the document is available on Council's website at www.cessnock.nsw.gov.au or maybe inspected at Councils' Customer Services Section, Administration Building, Vincent Street Cessnock.
- ii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council to determine the indexed amount of contribution on the date of payment.

5. Car Parking - Residential

The design of the vehicular access and off street parking facilities must comply with *AS 2890.1:2004 Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance with this Standard 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.

6. OSD System

A stormwater drainage design, incorporating on site stormwater retention detention facilities, prepared by a qualified practicing Civil Engineer must be provided to the CA prior to the issue of a CC. The design must be prepared / amended to make provision for the following:

- a) The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 215325 prepared by Tattersall Lander Pty Ltd and dated 15/09/2017.
- b) Comply with Council's Engineering Requirements for Development.
- c) All plumbing within the site must be carried out in accordance with AS 3500.3.2003 Plumbing and Drainage – Stormwater Drainage
- d) Overflow pipeline(s) must be provided for any rainwater tank(s) to discharge by gravity to the Council drainage system. Where OSD facilities are required by this consent, the overflow pipelines must be discharged by gravity to the OSD storage tank(s)
- e) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- f) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.

7. Dam Design

The details of the following are required prior to the issued of the Construction Certificate:

- a) The dam and overflow spillway must be designed by a suitably qualified person. The overflow spillway is not to directly discharge on to any neighbouring property, other than through an existing watercourse.
- b) The materials used for the banks of the dam are to be comprised of material excavated from the site if suitable. If materials are to be imported from other sites, the applicant is to notify Council of the origin of the fill.
- c) The site surface levels are to be designed so that site surface stormwater is deflected away from buildings and neighbours' boundary fences, and does not cause nuisance or flooding of those areas for storm events less than 1% AEP.
- d) To ensure stability of the dam embankment, exposed soil embankments are to be stabilised using appropriate grass species, to the satisfaction of Council. Trees or shrubs are not to be planted on the embankment, as roots may provide a seepage path for water, and weaken the dam wall.
- e) The dam must be designed to handle storm flows, and the dam walls are to be sufficiently compacted to prevent seepage or slumping.
- f) The dam wash is not to direct flows onto the downstream top of wall of the dam.
- g) The dam is to have a cut off trench that is to be taken down a minimum of 30mm into impervious soil and backfilled with suitable impervious material.

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- h) Any requirements for the NSW Dam Safety Committee are to be satisfied.
- i) The freeboard of the dam is to be in accordance with Council's DCP Part D Chapter 7. This required the freeboard to be a minimum of 1.0 metre is to be established for freeboard. This should increase by 10% for every metre over a 3.0-metre-high wall.

8. Outdoor Lighting

Prior to the issue of a CC, the CA must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises, adjacent dwellings and the road reserve, and that the outdoor lighting complies with the relevant provisions of *AS 1158.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements* and *AS 4282:1997 Control of the obtrusive effects of outdoor lighting*.

9. Acoustic Report

Prior to the issue of a CC, plans shall be submitted to, and approved by the CA confirming that the recommendations specified in the Noise Impact Assessment prepared by Advitech Environmental dated 12 July 2018, with regard to the following structural components, have been implemented in the final design of the proposed development.

- i. Exhaust fans
- ii. Site excavation and fill
- iii. Poultry shed pad
- iv. Vegetation earth mound and solid fence construction

10. Vegetation Management Plan

A Vegetation Management Plan (VMP) is required to be submitted to the satisfaction of Council's Ecologist prior to issue of the CC. The VMP by *Wildthing Environmental Consultants* dated *September 2017* will need to be updated with the following information:

- o The species lists for planting will need to be updated to include a greater variety of species. Species to be included in the planting lists are:
 - Zone 2: *Eucalyptus moluccana*, *Syncarpia glomulifera*, *Breynia oblongifolia*, *Melaleuca nodosa*, *Ozothamnus diosmifolius*, *Hardenbergia violacea*, *Lomandra multiflora*, *Lomandra filiformis*, *Dianella revoluta*, *Dianella caerulea*, *Aristida vagans*, *Grevillea montana*, *Laxmannia gracilis* and *Panicum simile*.
 - Zone 3: *Entolasia marginata*, *Microlaena stipoides*, *Einadia hastata*, *Dianella caerulea*, *Cymbopogon refractus*, *Glycine clandestina*, *Glycine tabacina*, *Cheilanthes sieberi*, *Geitonoplesium cymosum* and *Melia azedarach*.
- o The density of plantings needs to be increased, particularly for midstorey and ground cover species. Planting densities for midstorey species is to be 2 per square metre and for groundcover species is to be 3 per square metre.

- Targets for cover of native canopy, midstorey and exotic species need to be provided;
- The frequency of works must be increased (with details provided as to man hours per week). Primary weed control is to occur for the first year of the VMP, secondary weed control is to occur following primary weed control and last 18 months and maintenance weeding control is to occur in the last 2.5 years. Primary weeding is to occur at least once every 2 weeks during periods of rapid weed growth (spring and summer) and once every 3 weeks during autumn and winter. Secondary weed control must to occur every 3-6 weeks during spring and summer and every 5-8 weeks during autumn and winter. Table 15 will need to be updated to reflect the increased works required.
- The performance targets for exotic midstorey and groundcover species in the primary and secondary phases must be reduced to:
 - Primary phase: less than 20% cover for exotic midstorey and groundcover species.
 - Secondary phase: less than 10% cover for exotic midstorey and groundcover species.
- A paragraph must be added below Table 12 reading *'Performance Targets are required to be met as part of this Vegetation Management Plan. The above table indicates the desired outcomes for bush regeneration. If these targets are not met for any reason then additional weeding and plantings must be implemented for the site so that targets are achieved'*.
- Installation of nest boxes, seed collection and propagation, weed control, planting, maintenance and monitoring are to be done by qualified bush regenerators. Table 14 must be updated to be in accordance with this requirement.
- The VMP is to specify that hollows from felled trees are to be relocated into the native vegetation to be retained.
- Quadrats (10 m by 10 m) are to be surveyed at each photo point as part of monitoring. Details to be recorded from the quadrats include native species cover for each layer, exotic species cover for each layer, plant survival rates for plantings and any general observations.

11. Protection of Vegetation

Prior to issue of a CC, the area within Management Zones 2, 3, 4 and 5 as shown on Figure 5 'Management Zones within Lot 45 DP 1114966 Old Maitland Road Bishops Bridge NSW' of the *Vegetation Management Plan* by *Wildthing Environmental Consultants* dated *September 2017* is to be protected via an 88B instrument to ensure that the vegetation is protected in perpetuity. The 88B is to state that the vegetation within the Management Zones 2, 3, 4 and 5 as shown on Figure 5 'Management Zones within Lot 45 DP 1114966 Old Maitland Road Bishops Bridge NSW' of the *Vegetation Management Plan* by *Wildthing Environmental Consultants* dated *September 2017* must be kept in a natural state and must not to be mown, slashed, grazed, used by recreation vehicles or cleared. No development activities or Asset Protection Zones are

permitted within the area covered by the *Vegetation Management Plan*. The 88B instrument is to be submitted to and approved by Council's Ecologist prior to registration on title.

12. Vegetation Protection

Evidence that Conditions 19 and 20 have been complied with must be provided to the PCA prior to 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.

13. Demolition Proposed

Consent is granted for the demolition of the poultry sheds currently existing on the property, subject to strict compliance with the following conditions:

- 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) Demolition is to be carried out in accordance with the relevant provisions of *AS 2601:2001: Demolition of structures*.
- e) 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.
- f) 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.
- g) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- h) 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.

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- i) The burning of any demolished material on site is not permitted, and offenders will be prosecuted.
- j) 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.
- k) 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.
- l) 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.
- m) 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 SafeWork 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.

14. Toilet Facilities

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 sewage 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.

15. 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.

16. Soft-felling of Hollow Bearing/Habitat Trees

A hollow bearing/habitat tree survey must be undertaken by a fauna ecologist in the week prior to the felling of any trees. During the survey, the ecologist is to tap the tree, by banging the base of each tree with a mallet or using a similar method, to encourage any fauna to vacate. An observation period of at least 5 minutes per tree is required to observe the emergence of any fauna, and observations must be noted. All hollow bearing/habitat trees must be marked as part of the survey.

All surrounding trees that are not hollow bearing or habitat trees must be cleared at least one day prior to felling of any hollow bearing/habitat trees.

Equipment used to fell hollow bearing or habitat trees must be capable of slowly lowering the trees to the ground. A qualified fauna ecologist must be present during the felling of the trees. The fauna ecologist must have the appropriate skills and equipment to perform euthanasia if necessary. Immediately prior to felling, each hollow bearing/habitat tree should be tapped or gently shaken with the equipment followed by an observation period of at least one minute to watch for the emergence of any fauna. The tree should be tapped again, followed by a second observation period of at least one minute. If fauna appear during the observation period, the ecologist should encourage the fauna to relocate. If no fauna appear, the tree is to be lowered to the ground slowly and gently. The hollows of the felled tree should be inspected for fauna by the ecologist after it has settled.

17. Care of Native Fauna Found in Felled Trees

Any uninjured fauna should be relocated to nearby bushland. Any nocturnal fauna should be kept in a suitable cage in a shaded location until dusk, and then released into nearby bushland. If juvenile fauna are discovered in hollows after a tree is felled, they are to be taken into the care of an organisation such as the Native Animal Trust Fund.

Injured fauna should be assessed by the ecologist, and euthanised if their injuries are such that the ecologist considers that they are unlikely to survive. If injured fauna are likely to survive, they should be taken to a vet for treatment. After treatment, fauna should be taken to an organisation such as the Native Animal Trust Fund for care until they can be released.

18. Protection of Trees

Any trees to be retained within 10 m of the development footprint are to be fenced after clearing has been completed and prior to construction works beginning. The fencing is to encompass the maximum possible area within the drip line of the canopy and remain in place until completion of construction works. All areas within the fencing are to be covered with woodchip mulch to a depth of 100 mm. Tree protection signage is to be attached to the fencing surrounding the retained trees.

DURING WORKS

The following conditions are to be complied with during works.

19. Construction Hours

Excavation, building or subdivision work must be restricted to the hours of 7.00am and 5.00pm on Monday to Saturday inclusive. Work is not to be carried out on Sundays and public holidays.

20. 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*.

21. Virgin Fill To Be Used

All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste, and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities, and which do not contain sulphate ores or soils.

22. 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.

23. Erosion and Sediment Controls

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.

24. Stormwater Runoff

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

25. Dam Proposed

The dam and overflow spillway must be designed by a suitably qualified person. The overflow spillway is not to directly discharge on to any neighbouring property, other than through an existing watercourse.

The following works are required in relation to the dam:

- a) The dam and any embankments shall be constructed using a sufficiently impervious material. A soil with a 25% clay content is considered ideal. Sands, gravels, organic soils and peat are prohibited from use in the construction of an embankment.
- b) Topsoil shall be stripped and stockpiled from the excavation and wall areas prior to dam construction. The stockpile shall be located clear of any natural watercourse. Excavated areas and the embankment above the high water mark are to be covered in a minimum of 100mm of soil. Appropriate sediment and erosion control measures are to be applied to the stockpile site.
- c) Embankments are to be covered with a minimum of 100mm of topsoil and planted with a good holding grass such as cooch. Trees and shrubs are not to be planted within the embankment.
- d) The upstream batter slope shall be no steeper than 1:2.5 (vertical:horizontal). The downstream batter shall be no steeper than 1:3 (v:h). However, if the dam is within 100m of a dwelling and is not fenced, then the upstream batter shall not be steeper than 1:6 (v:h).
- e) A spillway shall be located and sized to handle overflows from major storm events with a minimum width of 3m and designed such that the depth of water flowing through the spillway is not deeper than 0.5 metres. The spillway shall be grassed, stable and able to accept runoff flow. Overflows from the spillway shall not be directed to the toe of the embankment and shall be spread using a sill or level spreader.
- f) The dam is to be adequately compacted by track rolling or a sheep foot roller or similar in layers no greater than 150mm.

26. 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.

27. Dewatering of Dams

The dewatering of the dams onsite must be done in accordance with the recommendations in Section 10.0 of the *Flora and Fauna Assessment Report* by *Wildthing Environmental Consultants* dated May 2018.

28. Removal of Tress

Only the trees shown on Figure 5 and as nominated for removal in Appendix D Significant Tree Data of the *Flora and Fauna Assessment Report* by *Wildthing Environmental Consultants* dated May 2018 as requiring removal are to be removed. All other native vegetation on the site is not to be cleared or harmed in any way.

29. Nest Boxes

Nest boxes are to be installed, at a ratio of at least 1 box per hollow, with a minimum of 108 nest boxes to be installed. Nest boxes should be installed in mature trees in the eastern part of the lot to be protected and enhanced as part of the Vegetation Management Plan. Nest boxes are to be a variety of types and sizes to provide additional habitat for the threatened fauna recorded on the site.

30. Bushfire Protection

The following bushfire protection measures are to be implemented at the commencement of building works, and maintained for the life of the development:

a) Asset Protection Zones

The intent of measures is to provide sufficient space, and maintain reduced fuel loads, so as to ensure radiant heat levels of buildings are below critical limits, and to prevent direct flame contact with a building.

At the commencement of building works, and in perpetuity, the property around the asset shall be managed as follows in accordance with Section 4.1.3 and Appendix 5 of Planning for Bushfire Protection 2006 and the Rural Fire Services document 'Standards for Asset Protection Zones' as an inner protection area.

b) Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bushfire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

- i) Water, electricity and gas to comply with Section 4.1.3 of Planning for Bushfire Protection 2006
- ii) In recognition that an unreliable reticulated water supply exists, a 22500 litre dedicated water supply tank (non-flammable) shall be provided. An RFS standard 65mm metal Storz outlet with a ball valve shall be provided.

c) Access

The intent of measures for property access is to provide safe access to/from the public road system for firefighters providing property protection during a bushfire, and for occupants faced with evacuation. To achieve this, the following requirements shall apply:

- i) Access shall comply with Section 4.1.3(2) of Planning for Bushfire Protection 2006.

d) Landscaping

Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bushfire Protection 2006.

31. Protection of Aboriginal Artefacts

If Aboriginal artefacts are uncovered during work, excavation or disturbance of the area, work must stop immediately. The Environmental Protection and Regulation Group of the Office of Environment and Heritage is to be contacted. Aboriginal archaeological excavation must be coordinated with any proposed investigation of non-indigenous material.

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):

32. Completion of Dam

Upon completion of the dam, the applicant shall provide Council with a Compliance Certificate, which confirms that the civil works and associated development have been constructed strictly in accordance with the provisions of the Development Consent.

33. Works as Executed

The registered proprietor of the land shall submit works-as-executed (WAE) drawing for the dam. The WAE drawings shall be prepared by a registered surveyor and shall indicate the following as applicable:

- Embankment levels
- Crest width
- Spillway level and dimensions
- Available freeboard
- Top Water Level
- Calculation of actual storage volume provided

The WAE plan and report shall be submitted to and approved by Council prior to filling of the dam.

34. Roads – Bitumen Crossing

The registered proprietors shall construct and maintain a bitumen sealed access crossing from the edge of the road formation in Old Maitland Road to the property boundary, in accordance with Council's "Engineering Requirements for Development" and AS 2890.1. A S138 Roads Act Approval is required from Council prior to any construction commencing within the road reserve. The access crossing is required to be constructed prior to the issue of a Final OC. Where an Interim OC is issued the crossing shall be completed within six (6) months from the date of the Interim OC.

Construction of the crossing will require inspections to be undertaken by Council. The applicant shall pay Council engineering site supervision fees in accordance with Council's current Fees & Charges, prior to the inspections being undertaken.

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The initial fee will facilitate approval of the application and one (1) construction inspection (gravel in place but prior to sealing of the crossing).

A final inspection will be required upon completion of the driveway and restoration of all disturbed footway areas. (A separate fee will be required to be paid when the final inspection is booked.). Should further inspections become necessary as a result of unsatisfactory or defective works, additional inspection fees will be charged in accordance with Council's current Fees & Charges.

The applicant is to advise Council at least 48 hours prior to inspection of works within the footpath and/or road reserve.

35. Parking – Completion

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

36. Operational Management Plan

The operator is to develop an Operational Management Plan (OMP) to the satisfaction of Council prior to release of the OC. The Operational Management Plan is to be a working document and is to include, but not be limited to:

- a) Addressing, in accordance with the "Best Practice Management for Meat Chicken Production in NSW Manual 2" as amended from time to time, the best practice recommendations outlined in Section 2, Managing Environmental Impacts During Production and, Section 3, Managing Wastes

Development of the OMP must take into account, and where practicable incorporate the management practices and assumed conditions on which the submitted Air quality (Odour) Impact assessment and Noise Impact Assessment reports were based upon in the Development Approval application.

- b) Specific operational conditions outlined in Conditions 46 – 53 (inclusive).

37. 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.

38. 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.

39. Disposal of Hazardous Waste

Prior to the issue of an *OC*, details concerning how hazardous and/or industrial waste arising from the demolition/operational activities is to be removed and/or transported in accordance with the requirements of the Office of Environment and Heritage and SafeWork New South Wales is to be submitted.

40. 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*.

41. Stormwater – Plan of Management

The registered proprietor of the land shall prepare a Plan of Management for the OSD facilities within the development. The plan shall set out all design and operational parameters for the detention facilities, including design levels, hydrology and hydraulics, inspection and maintenance requirements, and time intervals for such inspection and maintenance. The plan shall be submitted to the *PCA* for approval prior to the issue of an *OC*.

42. Vegetation Management Plan

A monitoring report on the progress of the Vegetation Management Plan's implementation shall be prepared and submitted to the *PCA* upon completion of the primary planting, and prior to the issue of an *OC*.

43. Dams Safety Committee

The developer shall complete and lodge D1 form to refer the dam to the Dams Safety Committee of NSW. Evidence that the form has been lodged shall be provided to the *CA* release of the *OC*.

WITHIN 3 MONTHS AFTER THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Principal Certifying Authority, within 3 months after the issue of either an Interim or Final Occupation Certificate (as specified within the condition):

44. Acoustic Report Recommendations Complied With

A report must be submitted to and approved by the *CA* within 3 months after the issue of an *OC* demonstrating compliance with the recommendations of the Noise Impact Assessment prepared by Advitech Environmental dated 12 July 2018.

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The report must be prepared by an accredited acoustic consultant, and is to assess noise emissions from the development, the effectiveness of the noise attenuation measures and compliance, or otherwise, with the appropriate noise level described in the Noise Impact Assessment prepared by Advitech Environmental dated 12 July 2018.

If necessary, the report must detail additional noise attenuation measures required to achieve compliance, which must be implemented by the approved operator within the time specified, or as otherwise approved by Council.

A copy of the report must be submitted to Council within 5 days of receipt.

45. Odour Attenuation Measures

Within 3 months after the issue of an OC, the applicant must engage a suitably qualified professional to undertake an odour assessment of the composting operations to verify odour emissions and confirm the outcomes (and conclusions) presented in Section 4, table two of "addendum to Bishops Bridge AQIA, Tattersal Lander Pty Ltd dated 04/10/2018, submitted in association with the Development Approval.

If necessary, the assessment must detail additional odour attenuation measures required to achieve compliance, which must be implemented by the approved operator within the time specified, or as otherwise approved by Council.

A copy of the odour assessment report must be submitted to Council within 5 days of receipt.

ONGOING USE

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

46. Compliance with Operational Management Plan

The operator, owner and all staff must comply with Operational Management Plan (OMP) developed in accordance with Condition 36, at all times.

47. Submission of Amended Operational Management Plan

Submit for approval to the relevant authority any amendments to the Operational Management Plan (OMP) referred to in Condition 36, prior to the implementation of changes or significant amendments to the plan.

48. Copy of Operational Management Plan to be Kept On-Site

A copy of the OMP developed in accordance with Condition 36 and all associated records must be maintained on site, and must be made available to an Authorised Officer on request to inspect and/or make copies.

49. Complaints Regarding Operational Management Plan

Should a justifiable complaint be received by Council that is unable to be resolved using the complaint process in the OMP developed in accordance with Condition 36 to the satisfaction of the Authority,

- a. On request of the relevant Authority, the operator must engage a suitably qualified professional/s to investigate and provide recommendations at the cost of the operator.
- b. The resulting report arising from Condition 49a, must be provided to the relevant authority within seven (7) days of receipt.
- c. Recommendations arising as a result of Condition 49a, must be implemented as far as is reasonably practicable in a timely manner at the cost of the applicant.

50. Maintenance of Critical Infrastructure and Equipment

All critical infrastructure and equipment required to comply with the OMP developed in accordance with Condition 36, must be maintained in good working order, and be available for use as is required.

51. Control of Noise Emissions

Specific measures to control noise emissions from the site:

- i) All feed delivery trucks and filling of the silos shall only enter the property during daylight hours, 7am – 7pm.
- ii) Movement of trucks and mobile equipment on-site is to be restricted to one (1) vehicle at any one point in time. Farm management is to ensure that the necessary timetabling and organisation of contractors is conducted in a manner that accommodates this requirement.
- iii) The operation of the premises and all plant and equipment shall not give rise to a noise level at any residential premises greater than 5dB(A)LAeq(15 minute) above the L90 background level.
- iv) Noise attenuation measures:
 - Site speed limit will be 30km/hr.
 - Farm machinery and vehicles will be regularly maintained to control noise generation. If a vehicle/machine is creating excessive noise, maintenance will be undertaken to correct the problem as soon as is practicable.
 - Contractors will be informed of noise nuisance mitigation measures onsite and instructed to limit noise generation (e.g. engine braking, limiting airbrakes, horns, excessive revving of motors, avoidance of impact with solid objects during litter clean-out, feed delivery, chick delivery and poultry pick-up).

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- Vehicles fitted with reverse beepers to have modified beeper installed ("croaker") with flashing lights to minimise noise disturbance.
- No alarm bells or paging systems will be used.
- All on-site driveways/roads will be maintained (no potholes) and levelled as required to minimise truck bounce as they move on-site.

52. Control of Odour and Dust Emissions

Specific measures to suppress odours and dust emissions:

- i) No spent litter or compost generated is to be disposed of on the site.
- ii) Composting of dead birds may be undertaken within the designated composting shed. In the event of large scale mortalities, birds must be disposed of in a Council approved landfill, or as directed by the Department of Industry and Investment.
- iii) Any chicken litter stockpiled to assist with composting must be stored only within the designated compost shed and be protected from moisture infiltration.

53. Complaints Register

A complaints register must be maintained recording the nature of all complaints received and corrective action taken, and include where available the details of the complainant and responsible person undertaking the corrective action.

54. Dam Maintenance

The dam is to be maintained in a condition free of noxious aquatic weeds, and in a manner that minimises the breeding of mosquitoes.

55. Storage of Hazardous Goods

Dangerous and hazardous goods shall be stored in accordance with New South Wales WorkCover Authority requirements, dependant on the quantities stored. Any flammable or combustible liquids must be stored in accordance with *AS 1940 The Storage and Handling of Flammable and Combustible Liquids*.

Hazardous and/or industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the Department of Environment and Climate Change and SafeWork NSW.

56. 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.

57. Driveways to be Maintained

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

58. Pollution Control

The use of the premises must not give rise to the emission of gases, vapours, dusts, or other impurities which are a nuisance, injurious, or prejudicial to health.

Air emissions from the premises must not be expelled from the premises to any other part of the building. Air emissions from the premises must not enter the atmosphere of any other occupancy within the building.

59. 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.

60. Vegetation Management Plan

A monitoring report on the progress of the Vegetation Management Plan's implementation shall be prepared and submitted to Council at six monthly intervals until the end of the specified maintenance period. A final report shall also be submitted upon completion of the maintenance period.

61. Vegetation Management

The following vegetation management practices are to be implemented after commencement of the development:

- a) A minimum of 108 native trees characteristic of Lower Hunter Spotted Gum – Ironbark Forest Endangered Ecological Community are to be planted within the area to be managed as part of the Vegetation Management Plan and protected by the 88B instrument. The trees are to be maintained in good health and any trees that die must be replaced with a tree of the same species. The trees are to be retained and not cleared or harmed in any way.
- b) Nest boxes are to be regularly monitored (once every 6 months) and replaced if in poor condition for a period of at least 5 years. At the end of the 5 year period, all boxes are to be replaced if more than two years old unless they are in use. A monitoring report is to be submitted to the satisfaction of Council's ecologist once every six months for a minimum of 5 years.
- c) Any landscaping is to use native species of local provenance grown by a specialist native plant nursery to enhance foraging opportunities for native fauna. Native species are to be characteristic of Lower Hunter Spotted Gum – Ironbark Forest Endangered Ecological Community.

- d) All noxious weeds on the site, including *Senecio madagascariensis* (Fireweed), *Asparagus aethiopicus*, *Asparagus asparagoides* (Bridal Creeper), *Olea europaea* subsp. *cuspidata* (African Olive), *Ligustrum sinense* (Small-leaved Privet), *Lantana camara* (Lantana) and *Opuntia stricta* (Common Prickly Pear) are to be removed from the site.
- e) Any new fencing using wire is to be constructed with plain wire. Barbed wire is not to be used in any new fencing on the site. Any new fencing is to be designed and erected so that native fauna movement is not impaired or restricted to reduce the chance of native fauna being injured.
- f) The vegetation within the Management Zones 2, 3, 4 and 5 as shown on Figure 5 'Management Zones within Lot 45 DP 1114966 Old Maitland Road Bishops Bridge NSW' of the Vegetation Management Plan by Wildthing Environmental Consultants dated September 2017 must be kept in a natural state and must not to be mown, slashed, grazed, used by recreation vehicles or cleared. No development activities or Asset Protection Zones are permitted within the area covered by the Vegetation Management Plan.

ADVISORY NOTES

A. Water Access Licensing

The applicant shall liaise with the NSW Water to discuss Water Access Licensing requirements, pursuant to Clause 53 of the *Water Management Act 2000*.

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

C. Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

D. 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*.

E. Section 68 Approval

In the event it is proposed to install, construct or alter an existing onsite system of sewage management, the applicant shall obtain from Council approval under Section 68 of the *Local Government Act 1993*.

F. 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.

G. Site Contamination Issues During Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about site contamination, Council must be immediately notified by the applicant, and works must cease. Works must not recommence on site until approval is granted by Council.

H. Impact of Below Ground (Sub-surface) Works – Non-Aboriginal Relics

If any archaeological relics are uncovered during the course of the work, all works shall cease immediately in that area, and the OEH Heritage Branch shall be contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the *NSW Heritage Act 1977*, may be required before further works can continue in that area.

I. Aboriginal Heritage

As required by the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the Heritage Division of the Office of Environment and Heritage (OEH) must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *Heritage Act 1977* to obtain the necessary approvals/permits from the Heritage Division of the OEH.

Note: The *National Parks and Wildlife Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and/or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

Planning and Environment

Report No. PE83/2018

Planning and Environment



SUBJECT: ***CESSNOCK LOCAL ENVIRONMENTAL PLAN 2011 - PLANNING PROPOSAL TO REZONE LAND AT STONEBRIDGE DRIVE, CESSNOCK FROM RE2 PRIVATE RECREATION TO R2 LOW DENSITY RESIDENTIAL AND INCLUDE MULTI-DWELLING HOUSING AS AN ADDITIONAL PERMITTED USE***

RESPONSIBLE OFFICER: *Strategic Planning Manager - Martin Johnson*

APPLICATION NUMBER:	18/2018/1/1
PROPOSAL:	Planning Proposal – Stonebridge Drive, Cessnock
PROPERTY DESCRIPTION:	Part of Lots 1000 and 1009 DP1234890
PROPERTY ADDRESS:	Stonebridge Drive, Cessnock
ZONE: (CURRENT)	RE2 Private Recreation
ZONE: (PROPOSED)	R2 Low Density Residential
OWNER:	Cessnock Golf Club Ltd.
PROPONENT:	Monteath & Powys

SUMMARY

Council has received a Planning Proposal to rezone land at Stonebridge Drive, Cessnock from RE2 Private Recreation to R2 Low Density Residential and include multi dwelling housing as an additional permitted use under Schedule 1 of *Cessnock Local Environmental Plan 2011* (CLEP).

The proposal has merit in that it is located close to the Cessnock Town Centre, has access to all essential utilities and services, is accessible from Stonebridge Drive and is surrounded by similar residential development.

This Report seeks Council’s endorsement to forward the Planning Proposal to the Department of Planning and Environment seeking a ‘Gateway determination’ to commence the Local Environmental Plan making process.

RECOMMENDATION

- 1. That Council forward the Planning Proposal to the Department of Planning and Environment seeking a ‘Gateway determination.’**
- 2. That Council undertake consultation with public authorities and the community as determined by the Department of Planning and Environment Gateway determination.**

3. That Council receive a report back on the Planning Proposal if written objections are received during the consultation with the community; otherwise forward the Planning Proposal to the Department of Planning and Environment requesting the plan be made.

BACKGROUND

Chronology

Date	Brief description
16 August 2018	Application to Amend LEP received
12 December 2018	Planning Proposal reported to Council

The site at Stonebridge Drive, Cessnock is currently zoned RE2 Private Recreation with 'hotel or motel accommodation' as an additional permitted use. The site is an existing staged development based around a golf course. **Figure 1** shows the part of the lots subject to the Planning Proposal. The area subject to the Planning Proposal is close to the 4th hole fairway.

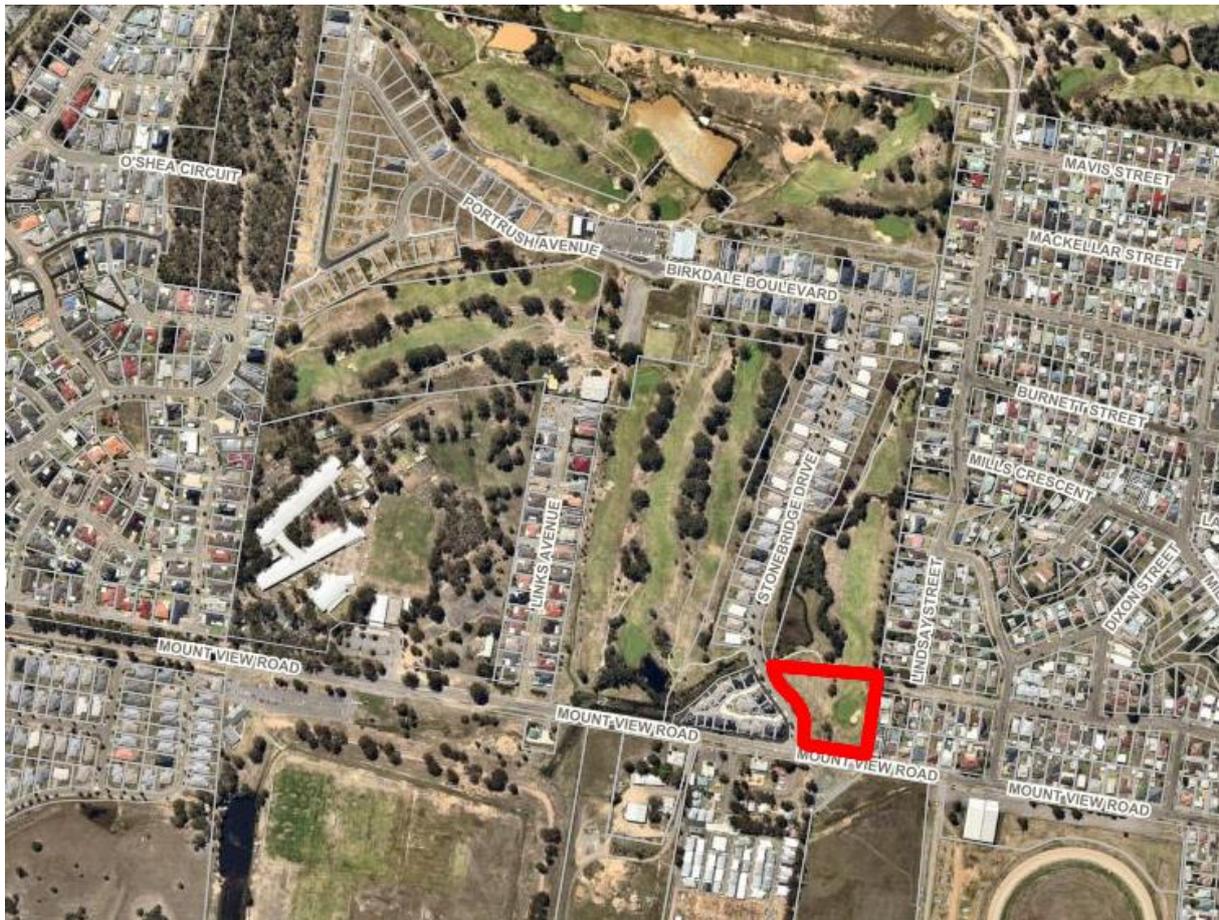


Figure 1: The subject site.

The portion of the site used for the 18 hole golf course provides an opportunity for expansion of residential uses in an area close to services, with high accessibility and connected to essential services. The site is located in an urban area close to two existing Urban Release Areas, Bellbird North and Nulkaba.

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REPORT/PROPOSAL

The Planning Proposal (**Enclosure 1**) seeks to amend the CLEP 2011 to rezone part of Lots 1000 and 1009 DP1234890 at Stonebridge Drive, Cessnock, from RE2 Private Recreation to R2 Low Density Residential. This will mean that all uses permitted in the R2 zone will be permitted. The site already had an additional permitted use of 'hotel of motel accommodation. The proposal also seeks to include multi dwelling housing as an additional permitted use under Schedule 1 of CLEP. The site does not currently contain a minimum lot size. It is proposed to apply a minimum lot size of 450m² to the subject site, consistent with the proposed R2 Low Density Residential.

The existing strategic policy framework provided by the Hunter Regional Plan 2036, the Greater Newcastle Metropolitan Plan and the City Wide Settlement Strategy 2010 do not directly identify this proposal however the documents support infill development. The proposal has merit as the site:

- Is in close proximity to services such as a high school and the hospital;
- Is close to Cessnock Town Centre;
- Has frontage to Mount View Road and Stonebridge Drive;
- Is close to open space (Mount View Park, showground and sports centre);
- Is connected to existing services
- Is surrounded by similar residential development
- Provides the opportunity for infill development

Multi dwelling housing is currently an Additional Permitted Use on the adjacent site to the west on the adjacent corner of Stonebridge Drive and Mount View Road. Proposing the same Additional Permitted Use on the subject site would be consistent with the surrounding residential development.

It is recommended that the proposal be forwarded to the Department of Planning and Environment seeking a 'Gateway determination.'

OPTIONS

Council has the following options:

1. Resolve to support the recommendation of this Report and submit the Planning Proposal (**Enclosure 1**) to the Department of Planning and Environment for a Gateway determination. This is the preferred option.
2. Request changes to the Planning Proposal. This option will delay the proposed amendment.
3. Not proceed with the Planning Proposal.

CONSULTATION

Internal consultation was undertaken with Council's Principle Development Engineer, and Ecologist.

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Further consultation will be undertaken with the community and State Government Agencies in accordance with the Gateway determination.

If significant objections or unresolved matters are raised in the public exhibition process a Council briefing will be provided.

STRATEGIC LINKS

a. Delivery Program

The Planning Proposal aligns with the following objectives of the Cessnock 2027 Community Strategic Plan:

A connected, safe and creative community
Objective 1.1 Promoting social connections

Accessible infrastructure, services and facilities
Objective 4.1 Better transport links

b. Other Plans

Hunter Regional Plan

The Hunter Regional Plan forecasts a population growth in the Cessnock Local Government Area of 13,150 which will require 6,350 new dwellings. The proposal will help accommodate this growth.

It is considered that the Planning Proposal is consistent with the aims of the Hunter Regional Plan by presenting opportunities to add to the residential housing stock in the LGA.

Greater Newcastle Metropolitan Plan

The Greater Newcastle Metropolitan Plan Outcome 3 aims to prioritise infill development and increase housing diversity and choice in the Greater Newcastle area. This Planning Proposal is consistent with this outcome by providing an opportunity for a range of housing outcomes on a fully serviced site.

City Wide Settlement Strategy 2010 (CWSS)

The CWSS is Councils primary strategic planning policy. The CWSS directs growth across the local government area and informs any changes to the Cessnock Local Environmental Plan.

Part 5 of the CWSS refers to the provision of residential land. Section 5.3 and 5.4 identify specific areas of infill residential development. The site is not identified as an infill or a development site. However, the proposal presents an opportunity for infill development and efficient use of existing services and infrastructure.

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IMPLICATIONS

a. Policy and Procedural Implications

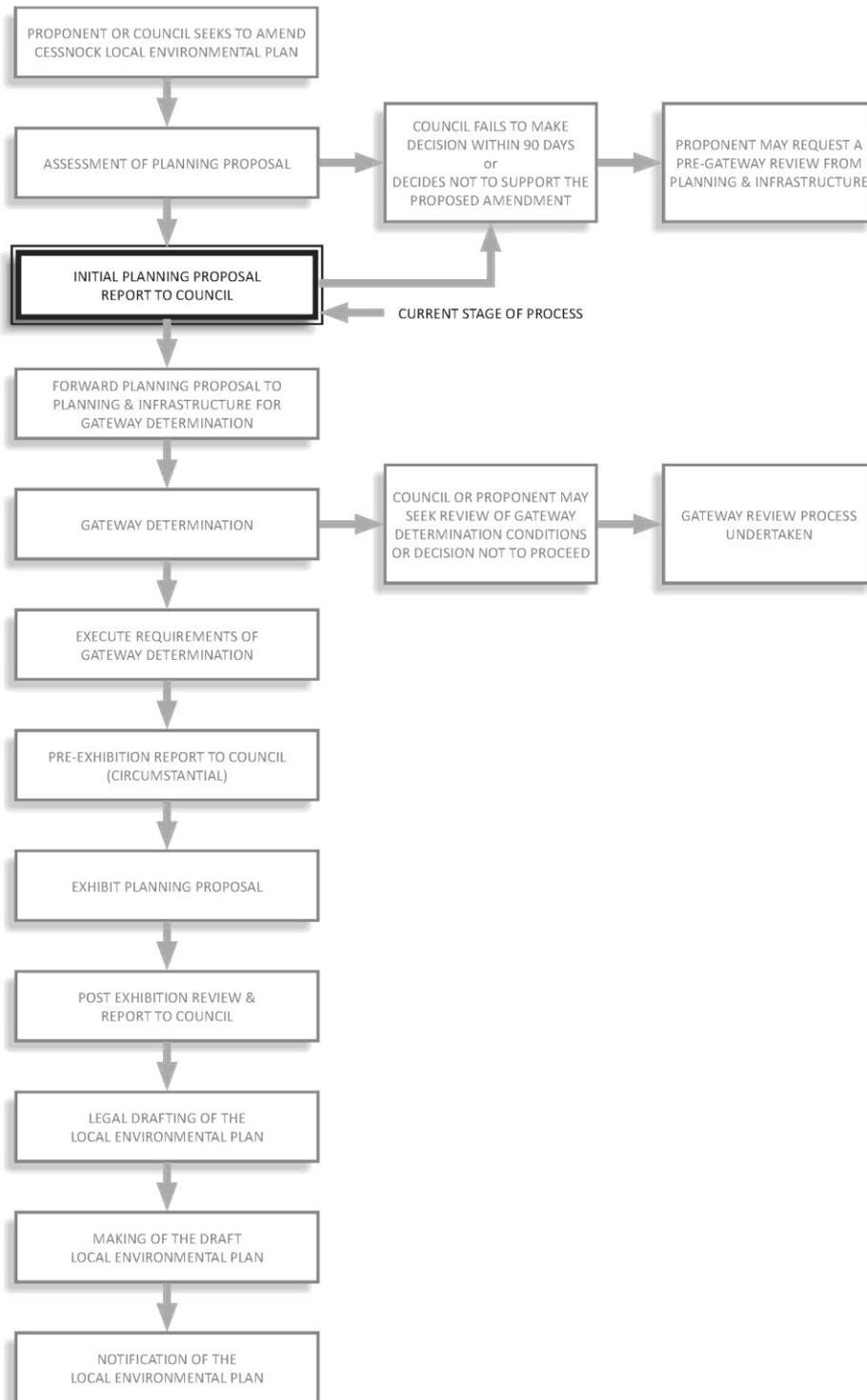
Following Council's endorsement, the Planning Proposal will be submitted to the Department of Planning and Environment for a Gateway determination.

It is intended that the Planning Proposal be exhibited in accordance with any specific requirements made by the Department of Planning and Environment in the Gateway determination.

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



PLAN MAKING PROCESS - LOCAL ENVIRONMENTAL PLAN



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b. Financial Implications

The Planning Proposal requires payment of fees as outlined in Council's adopted Fees and Charges. This allows Council to recoup costs for the staff time spent on the proposal and any costs incurred as part of the exhibition process. The fees are based on the time and costs associated with the average planning proposal. This Planning Proposal is considered to be a Category B rezoning application.

An invoice for the phase 1 fee was issued on 16 November 2018. The phase 2 fee is required after issue of a Gateway determination.

There are no financial implications if Council does not proceed with the Planning Proposal.

c. Legislative Implications

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

d. Risk Implications

Nil.

e. Environmental Implications

Part of the site is mapped as being Endangered Ecological Community (EEC) however it is considered unlikely that the existing vegetation would meet the definition of an EEC. A site inspection showed that there is very little vegetation on site and it is unlikely that critical habitat, threatened species of ecological communities would be adversely affected. The site is largely cleared for use as a golf course. The existing trees on site do not contain any understorey vegetation and are not located within the mapped EEC area.

f. Other Implications

NIL

CONCLUSION

Allowing the subject site to be rezoned to R2 with an Additional Permitted Use of multi dwelling housing will provide a serviceable and well located residential infill development opportunity.

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Should Council determine to support the proposal, the Planning Proposal will be forwarded to the Department of Planning and Environment for a Gateway determination. The Gateway determination is likely to contain conditions that will need to be satisfied prior to public exhibition. As per the recommendations of this Report, a further report will be presented to Council following public exhibition of the Planning Proposal if written objections are received. Otherwise the Planning Proposal will be forwarded to the Department of Planning and Environment requesting the plan be made.

ENCLOSURES

- [1](#) Planning Proposal Stonebridge Drive Cessnock

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Report No. PE84/2018

Planning and Environment



SUBJECT: *AMENDMENT TO CLIFBLEIGH URBAN PRECINCT PLANNING AGREEMENT*

RESPONSIBLE OFFICER: *Strategic Planning Manager - Martin Johnson*

SUMMARY

The purpose of this Report is to advise Council of an offer from Winten Property Group to amend the Clifbleigh Urban Precinct Planning Agreement and seek Council's endorsement to publicly notify the Deed of Variation in accordance with legislative requirements.

RECOMMENDATION

- 1. That Council prepare a draft Deed of Variation for the Clifbleigh Urban Precinct Planning Agreement in accordance with the offer from Winten Property Group.**
- 2. That Council publicly notify the draft Deed of Variation for a minimum period of 28 days in accordance with the provisions of the Environmental Planning and Assessment Act 1979.**
- 3. That Council delegate authority to the General Manager to execute the Planning Agreement unless unresolved written objections are received during the exhibition period.**

BACKGROUND

The Clifbleigh Urban Precinct Planning Agreement (Planning Agreement) was executed on 20 August 2008. The Planning Agreement requires a combination of monetary contributions, dedication of land and provision of facilities for the development of 977 lots.

The Planning Agreement was modified in December 2016. The modification amended the staging of works, provision of public facilities and dedication of open space to reflect the proponents approved staging plan. The changes also amended the proposed level of public facilities to reflected additional development within Cessnock and Maitland LGA's that were not envisaged at the time of the original VPA.

Since 2016 further development has occurred and is proposed to occur in the Clifbleigh to Kurri Kurri corridor, including the proposed Hydro development. This has meant that further amendments are needed to the Planning Agreement to reflect adjoining development and provide the best use of facilities.

REPORT/PROPOSAL

A number of items in the Planning Agreement have already been delivered including the District Recreation Facility, Testers Hollow Wetland Rehabilitation and Hilltop Park. There are a number of outstanding items in the Planning Agreement that are still to be delivered as the timing trigger has not yet been met. **Table 1** contains a summary of the outstanding items to be provided, the indicative value and timing.

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Table 1: Outstanding items from the Planning Agreement.

Item	Indicative Value	Timing	Additional detail
Neighbourhood Community Centre	\$650,000	Prior to the issuing of the subdivision certificate for the 600 th lot	Provision of Council approved Community Centre
Neighbourhood Childcare Centre	\$1,600,000	Prior to the issuing of the subdivision certificate for the 900 th lot	Provision of a minimum 30 place childcare center
Dedication of 1,000m ² of land for a Neighbourhood Community Centre	\$180,000 1,000m ² @ \$180 / m ²	Prior to the issuing of the subdivision certificate for the 600 th lot	
Dedication of 1,000m ² of land for a Neighbourhood Childcare Centre	\$180,000 1,000m ² @ \$180 / m ²	Prior to the issuing of the subdivision certificate for the 900 th lot	
Dedication of 7,266m ² of land zoned RE1 behind Main Road Cliftleigh	\$350,000 7,266m ² @ \$48.2 /m ²	Prior to the issuing of the subdivision certificate for the 400 th lot	
Total indicative value	\$2,960,000.00		

As the Planning Agreement was written in 2008 the need for a number of the facilities and dedication of land have changed as additional information has become available and further development has occurred. Below is a summary of each outstanding item:

Neighbourhood Community Centre

When the original Planning Agreement was prepared it was determined that the development would generate the need for a Neighbourhood Community Centre. Since this time the development that has occurred, or is expected to occur in the Cliftleigh to Kurri Kurri corridor has significantly increased. There has been additional development at Avery's Village and further development is anticipated on the former Hydro site. These additional developments, combined with the Cliftleigh development, generate the need for a Multi-purpose Community Centre in the Cliftleigh corridor, rather than a series of smaller neighbourhood community centres.

The Planning Agreement currently requires Winten Property Group to build a Neighbourhood Community Centre near William Tester Drive valued at \$650,000. The offer from Winten Property Group (Enclosure 1) proposes that rather than build the facility, a cash contribution of \$650,000 will be paid to Council. Receiving a cash contribution will allow Council the option of combining the contribution with funds from surrounding development to build a larger multi-purpose Community Centre.

Current practice suggests that the introduction of multi-purpose community centres have replaced the previous 'neighbourhood centre' infrastructure model, offering more flexible spaces that accommodate a variety of activities and population groups as the needs of communities change. *2031: A Vision for the Future - Community Infrastructure Strategic Plan* indicates that multi-purpose community centres should be provided for a population of

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15,000 to 20,000 people and ideally co-located with other community infrastructure. Multi-purpose community centres often include combinations of formal meeting and function rooms, community office accommodation, recreation and leisure group activity space, education training rooms and specific purpose activities such as neighbourhood activities, youth programs and playgroups.

Neighbourhood Childcare Centre

When the original Planning Agreement was prepared in 2008 it was determined that the development would generate the need for a Council owned 30 place childcare centre. In 2016, at the time of development *2031: A Vision for the Future - Community Infrastructure Strategic Plan* indicated that the number of early childhood facilities in the Kurri Kurri and Surrounds Planning Area exceeded the suggested planning standards. The Plan also considered future growth of the corridor and suggested that requirements for early childhood services would need to be reviewed in line with future growth. Given the private market's growing provision of child care services it is envisioned the requirement for a centre-based child care facility will become evident with the future population growth in Heddon Greta/Cliffleigh corridor and met by the private market. It has been proposed however that a dedicated space for children is included as part of a multi-purpose community centre. This space will be a flexible space to accommodate child-focused activities and initiatives such as playgroups, mobile pre-schools and child minding for families who may be involved in a co-located activity.

As a result of this, the offer from Winten Property Group (**Enclosure 1**) proposes to remove the requirement to provide a childcare centre. Instead additional land at William Tester Drive will be dedicated to Council.

Dedication of land for the Community Centre and Childcare Centre

The current Planning Agreement requires Winten Property Group to dedicate 2,000m² adjoining William Tester Drive for both the Childcare Centre and the Neighbourhood Community Centre (**Figure 1**). The offer from Winten Property Group still proposed to dedicate this land to Council. A large area of land near William Tester Drive has already been dedicate to Council as part of the Testers Hollow Wetland Rehabilitation and the District Recreation Facility (**Figure 1**).

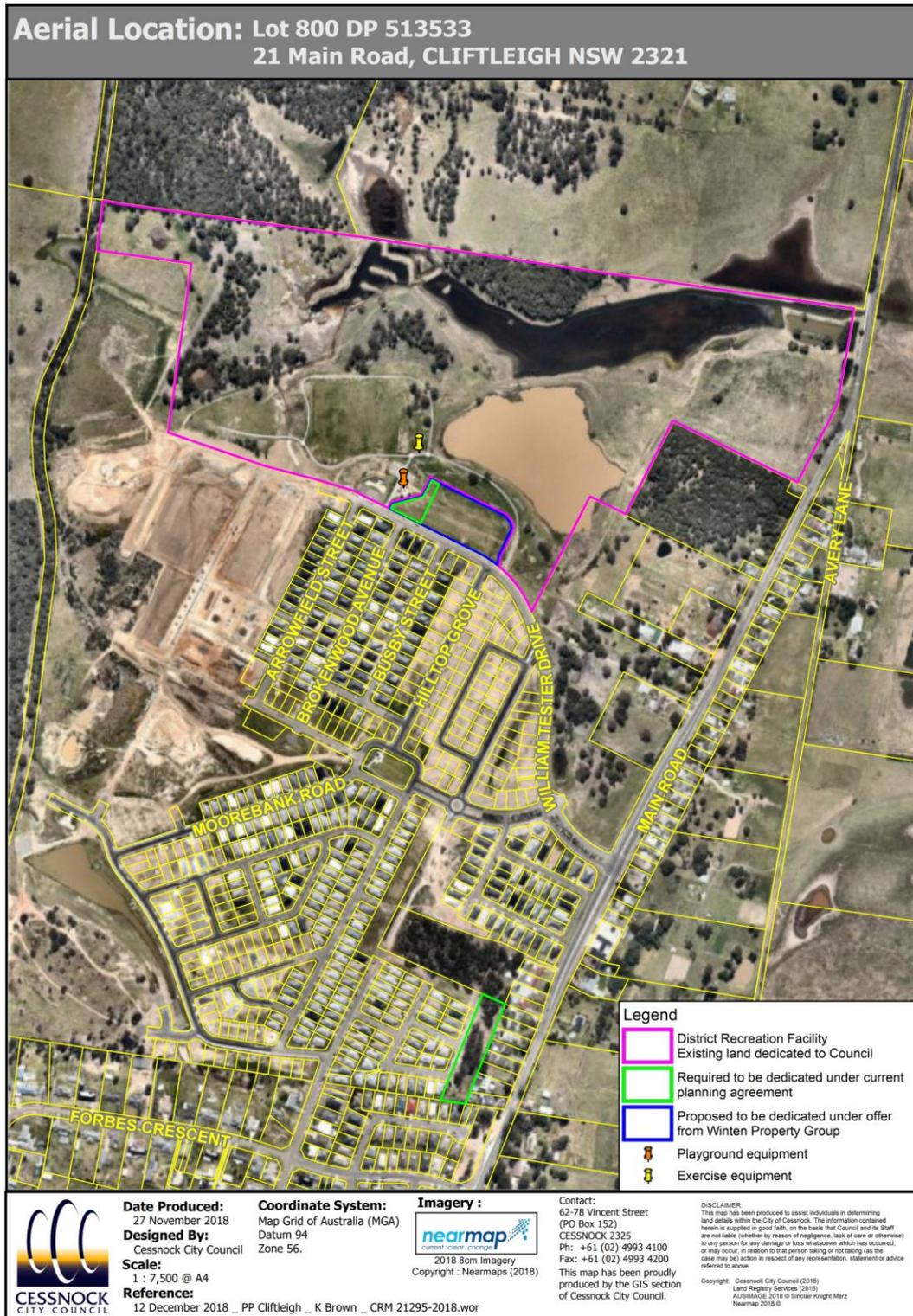
Dedication of land behind Main Road

The Planning Agreement requires Winten Property Group to dedicate 7,266m² of land behind Main Road Cliffleigh to Council (**Figure 1**) or provide a cash contribution equal to the value of the land. The land is valued at \$350,000 in the Planning Agreement (2008 value).

The site was recently subject to a Planning Proposal to rezone the site from RE1 Public recreation to R2 Low Density Residential. This meant that rather than dedicating the land to Council, Winten Property Group would pay Council the cash value of the land as indicated in the Planning Agreement. The offer from Winten Property (**Enclosure 1**) proposes that rather than dedicate the site behind Main Road or provide a cash contrition to the value of the land, additional land will be dedicated to Council on William Tester Drive (**Figure 1**). This will allow for one large consolidated recreational parcel of land to be dedicated to Council. Centralising and consolidating open space areas has many benefits including the quality of open space provided, diversity in opportunities available for users and reduced costs in maintaining the facility.



Figure 1: Land dedicated and proposed to be dedicated to Council under the Cliftleigh Urban Precinct Planning Agreement and the proposed offer from Winten Property Group.



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Table 2 contains a summary of the cash contributions and land that would be dedicated to Council under the offer from Winten Property Group. The offer would allow all land north of William Tester Drive to be dedicated as open space. The cash contribution for the Neighbourhood Community Centre could be used to contribute to the larger District Multi-purpose Centre that will be need with the proposed Hydro development.

Table 2: Proposed items in the offer from Winten Property Group

Item	Indicative Value	Timing	Additional Detail
Neighbourhood Community Centre	\$650,000	Prior to the issuing of the subdivision certificate for the 600 th lot	Contribution provided as cash
Dedication of 1,000m ² of land for a Neighbourhood Community Centre	\$180,000 1,000m ² @ \$180 / m ²	Prior to the issuing of the subdivision certificate for the 600 th lot	
Dedication of 1,000m ² of land for a Neighbourhood Childcare Centre	\$180,000 1,000m ² @ \$180 / m ²	Prior to the issuing of the subdivision certificate for the 900 th lot	
Dedication of 11,240m ² adjoining William Tester Drive	\$2,023,200 11,240m ² @ \$180 / m ²	Prior to the issuing of the subdivision certificate for the 900 th lot	
Total indicative value	\$3,033,200.00		

*Note: For consistency all land values have been calculated based on the rates provided in the Planning Agreement (i.e. 2008 \$).

OPTIONS

1. Council resolve to support the recommendations of this Report, prepare and publically notify the draft Deed of Variation for a minimum of 28 days. This is the recommended option.
2. Request changes to the draft Deed of Variation and seek further discussion with the landowner. This option is not recommended.
3. Not adopt the recommendation and take no further action.

CONSULTATION

Internal consultation has been undertaken to determine the future infrastructure and service needs for the area. The offer from Winten Property Group was discussed at the internal Development Contributions Governance Group. The Group has management representatives from across the organisation who have involvement with the application of development contributions and the management, ownership or delivery of assets. The Group recommended the offer from Winten Property Group be reported to Council, recommending the offer be supported.

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In accordance with the requirements of the *Environmental Planning and Assessment Act, 1979*, the Draft Planning Agreement will be publically notified for a minimum of 28 days. Public notification will not commence until after the Christmas and New Year period. If significant objections or unresolved matters are raised in the public exhibition process a Council briefing will be provided.

STRATEGIC LINKS

a. Delivery Program

The draft Deed of Variation is consistent with the following objectives of the Cessnock 2023 Community Strategic Plan:

- 1.1 Promoting social connections
- 1.3 Promoting safe communities
- 3.2 Better utilisation of existing open space

b. Other Plans

The following adopted plans have been used to inform this Report:

- 2031: A Vision for the Future - Community Infrastructure Strategic Plan
- Recreation and Open Space Strategic Plan 2018

IMPLICATIONS

a. Policy and Procedural Implications

The negotiation of the amended Deed of Variation have been undertaken in accordance with the Council's Planning Agreement Policy and relevant provisions under the *Environmental Planning and Assessment Act, 1979*.

b. Financial Implications

Table 1 and 2 show the costs of the commitments under the existing Planning Agreement and the costs under the offer by Winten Property Group. For consistency all values have been calculated based on the rates provided in the Planning Agreement (i.e. 2008 \$). The costs are relatively comparable with a difference of \$73,200. The current Planning Agreement requirements equate to \$2,960,000.00. The offer from Winten Property Group is slightly higher valued at \$3,033,200.00.

The costs associated with preparing the draft Deed of Variation will be covered from the Strategic Planning budget.

c. Legislative Implications

The development of the draft Deed of Variation will be undertaken in accordance with provisions of the *Environmental Planning and Assessment Act 1979*.

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d. Risk Implications

There is a risk to Council that when the District Multi-purpose Centre is constructed there may be a short fall of funds. It is anticipated that the District Multi-purpose Centre could be constructed with funds from the Cliftleigh Planning Agreement and potentially contributions from Avery's Village and the Hydro proposal. It is unknown what grants will be available at the time of construction.

The Planning Agreement required the Neighbourhood Community Centre to be provided by the 600th lot. The proposed offer, to accept the contribution as a cash payment and contribute the funds towards the District Multi-purpose Centre, does pose some risk to Council. The timing for the construction of the District Multi-purpose Centre is unknown; however, it is unlikely to be by the 600th lot in the Cliftleigh Development. Council will continue to advocate for the District Multi-purpose Centre to be provided early in the staging of the Hydro proposal. Until the District Multi-purpose Centre is constructed there continues to be a shortfall of community facilities in the catchment.

e. Environmental Implications

Nil

f. Other Implications

There are number of significant development in the Kurri Kurri to Cliftleigh Corridor including Avery's Village and the proposed rezoning on the former Hydro site. The Development Contribution Plans for these development should be considered holistically and take into consideration the infrastructure proposed in other Plans.

CONCLUSION

The offer from Winten Property Group will allow all land north of William Tester Drive to be dedicated as open space. The cash contribution for the Neighbourhood Community Centre could be used to contribute to the larger District Multi-purpose Centre that will be need with the additional population from the proposed Hydro development.

It is recommended that a draft Deed of Variation be prepared in line with the offer from Winten Property. Following exhibition of the draft Deed of Variation a further report will be provided to Council.

ENCLOSURES

- 1** Cliftleigh Planning Agreement Letter of Offer

SUBJECT: ***BRANXTON TOWN CENTRE DRAFT PUBLIC DOMAIN PLAN AND DRAFT DEVELOPMENT CONTROL PLAN***

RESPONSIBLE OFFICER: ***Strategic Planning Manager - Martin Johnson***

SUMMARY

The purpose of this Report is to seek Councils' endorsement for the draft Branxton Town Centre Public Domain Plan and draft Branxton Town Centre Development Control Plan to proceed to public exhibition for a minimum period of 28 days.

RECOMMENDATION

- 1. That Council place the draft Branxton Town Centre Public Domain Plan and draft Branxton Town Centre Development Control Plan on public exhibition for a minimum of 28 days.**
- 2. That Council receive a briefing and a further report following public exhibition of the draft Branxton Town Centre Public Domain Plan and draft Branxton Town Centre Development Control Plan, detailing the outcomes of the public exhibition.**

BACKGROUND

Council adopted the Branxton Subregional Land Use Strategy and the Town Centre Master Plan in June 2016. The Master Plan recommended Council prepare a public domain plan for the town centre to provide a higher level of detail and to establish likely costs of implementation.

In August 2017, Council held a public workshop on the Branxton Subregional Land Use Strategy and the Branxton Town Centre Master Plan. The purpose of the workshop was to get initial input into the development of a Public Domain Plan and Development Control Plan for the town centre. One of the actions from that workshop was to return to the Branxton Community with a draft of the public domain plan to obtain their feedback before it went on formal exhibition.

Council held a pre-exhibition consultation event at the Branxton Golf Course on 25 October 2018. Approximately, 40 people attended the event and provided comments and feedback on the draft Public Domain Plan. Minor amendments have been made to the draft Branxton Town Centre Public Domain Plan (Draft PDP) (**Enclosure 1**) to reflect the outcomes of the pre-exhibition consultation.

A draft Development Control Plan for the Branxton Town Centre (Draft DCP) has also been prepared to guide development in the centre (**Enclosure 2**). This is proposed to be exhibited at the same time as the draft Public Domain Plan.

Following public exhibition a further report detailing the outcomes of the formal exhibition will be provided to Council with recommendations on how to proceed.

REPORT/PROPOSAL

This Report seeks Council endorsement to place two documents on public exhibition; the draft Branxton Town Centre Public Domain Plan and draft Branxton Town Centre Development Control Plan.

Draft Branxton Town Centre Public Domain Plan (Draft PDP)

The draft PDP provides a framework for public domain infrastructure upgrades within the Branxton Town Centre. The draft PDP advances the concepts of the Master Plan that was adopted in 2016 and provides a greater level of detail. There are a number of differences between the adopted Master Plan and the draft PDP. This has occurred because the draft PDP relies on greater detail including a detailed survey of the Branxton Town Centre. It has also been prepared by Landscape Architects who specialise in public domain works.

The key difference is the removal of the centre median planting. The Master Plan showed extensive plantings down the centre median of Maitland Street. On review, this element has been omitted due to expense, potential conflicts with traffic, pedestrian safety and also to allow the width of the pavement on the southern side of Maitland Street to be extended. Planting is now proposed either side of Maitland Street.

The second change is the installation of parallel parking and the widening of the nature strip on the northern side of the Maitland Street and the Anvil Creek Bridge. This will significantly improve the gateway into the town centre, allow significant tree planting and reduce the dominance of the road corridor.

Council committed to return to the community to seek their comment on the draft PDP prior to formal exhibition. Council held a pre-exhibition consultation event at the Branxton Golf Course on 25 October 2018. The following is a summary of the key issues raised and a response. A more detailed list of issues and responses has been attached to this Report (**Enclosure 3**).

Results of pre-exhibition consultation

Car parking

The potential loss of car parking in the centre was a common concern by those who attended the event. There are a number of initiatives that are proposed that will affect car parking in the centre.

1. The draft PDP recommends the creation of a new public square on part of the Council-owned car park on the corner of Maitland and Cessnock Roads. The work will remove around 20 car spaces in this location. Council received funding for this project in Stronger Country Communities Fund and this will be progressed next year.
2. The draft PDP recommends the formalisation of car parking at Branxton Oval that will provide 40 spaces.
3. The pedestrian crossing in the centre will remove four spaces (two on either side of Maitland Street) to accommodate blisters, signage and lighting.
4. The draft DCP allows for alternative arrangements to be made to offset car parking deficiencies on sites within the Branxton Town Centre. For example; Council may enter into planning agreements with proponents to contribute to car parking facilities

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or access improvements (for example; bus, cycle or walking facilities) elsewhere in the town centre.

The car park at the Branxton Oval is currently underutilised and the Council car park at the corner of Cessnock Road is heavily used by commuters who travel up the valley. The formalisation of the Branxton Oval Car Park and improved signage directing visitors to this car park should increase the use of the Branxton Oval Car Park. Better public domain including pedestrian paths between the car park and the main street should also increase its appeal to visitors. The use of the Council car park by commuters may be further managed by placing time limited controls on the car park (for example, maximum 3 hours).

The significantly improved public domain will make it more appealing for people to walk through the town, thereby opening up underutilised, on-street parking along Maitland Street east towards Anvil Creek and west towards Bowen Street.

There were several comments about parallel versus angled parking. Angled parking does not add many more car parks; however, it does interrupt the flow of traffic and it takes up more streetscape space which has been allocated to the pedestrian areas. At this stage, parallel parking is the preferred option.

Branxton Oval

There are a number of initiatives at Branxton Oval that have raised concern. The draft PDP proposes to formalise car parking at the oval by regrading, resurfacing and lining 40 car spaces. The work will also involve installing a one-way vehicle circulation system around the car park and rotunda utilising the existing road reserve between the rotunda and the adjoining houses.

There was concern expressed that buses could not complete the turn around the one-way system in Branxton Oval. Council Engineers have run swept-paths for buses over the draft PDP and confirm that buses can complete the movement. A copy of the swept paths is included in **Enclosure 3**.

Another concern at the oval was the use of the site as an interchange for school children. In the morning, school children interchange between buses at a facility on Maitland Street opposite Miller Park. In the afternoon this interchange occurs at Branxton Oval. There are perceived problems with this arrangement. In particular; congestion on John Rose Avenue caused by buses and the use of the rotunda for shelter by the children.

The draft PDP formalises car parking, proposes a new shelter and provides a layby for buses at Branxton Oval. The one-way system will improve the movement of vehicles through the car park. It also proposes to improve the setting of the historic rotunda and obelisk by installing landscaping works.

Implementation Priorities

Attendees were asked to prioritise works that they would like to see happen. The number one priority was the Maitland Street section between Cessnock Road and Clift Street.

Materials, pavement and furniture

Options for materials, paving and furniture were shown to attendees. There was general support for materials including pavements, edging and sandstone retaining walls. However, concern was raised over paving becoming uneven over time. The furniture choices were

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generally supported as well. From the landscaping palette, there was one request not to use deciduous trees as they drop leaves and become a hazard; and another asking not to plant trees near power lines.

These comments have been considered in the draft PDP. After exhibition, any additional issues will be considered and where appropriate, incorporated into the draft PDP.

Draft Branxton Town Centre Development Control Plan

The Draft DCP provides detailed locality specific development guidelines for the Branxton Town Centre. It is anticipated that the Draft DCP Chapter will be incorporated into the Cessnock DCP 2010 as a site specific chapter.

OPTIONS

Council has the following options:

1. To endorse draft PDP and draft DCP for public exhibition for a minimum period of 28 days. This is the recommended option.
2. To amend the draft PDP and draft DCP and place the documents on public exhibition.
3. To not place the draft PDP and draft DCP on public exhibition.

CONSULTATION

The draft PDP and draft DCP have been developed in consultation with Council's Infrastructure Department.

Pre-exhibition consultation was also undertaken with the community and landowners in the town centre. Council staff met with a group of key landowners in the Branxton Town Centre and discussed the draft documents. Council also held a pre-exhibition consultation event at the Branxton Golf Course on 25 October 2018. Approximately, 40 people attended the event and provided comments and feedback on the draft PDP. The plan was generally well received by the community. A summary of the comments received at the pre-exhibition consultation event are in **Enclosure 3**.

It is proposed to exhibit the draft documents for a minimum period of 28 days. The exhibition will not commence until after the Christmas/New Year period. A Council briefing will be provided following public exhibition. The following consultation will occur in relation to the draft documents:

- written notification to persons who attended the pre-exhibition consultation;
- notification in the Cessnock Advertiser and Branxton Newspaper;
- notification on social media'
- hard copy display at Council's Administration Building (Help & Information Centre); and Cessnock and Kurri Kurri Public Library;
- Display of draft documents on Council's webpage; and
- Display of draft documents at a suitable location in the Branxton Town Centre

STRATEGIC LINKS

a. Delivery Program

The draft PDP and draft DCP align with the following objectives of the Cessnock 2027 Community Strategic Plan:

- Objective 1.3 Promoting safe communities
- Objective 2.1 Diversifying local business options
- Objective 2.2 Achieving more sustainable employment opportunities
- Objective 2.3 Increasing tourism opportunities and visitation to the area
- Objective 4.2 Improving the road network
- Objective 5.2 Encouraging more community participation in decision making

The draft PDP and draft DCP are consistent with the following actions in the 2017-2021 Delivery Program:

- 2.1.4 Provide support for activation of commercial centres, business engagement, promotion and support for business growth.
- 2.1.7 Continue delivery of the Branxton Subregional Plan - Stage 2.

b. Other Plans

The draft Public Domain Plan and Draft Development Control Plan have been coordinated with, or informed by, the following:

- Hunter Regional Plan;
- Greater Newcastle Metropolitan Plan;
- Cessnock City Wide Settlement Strategy 2010;
- Cessnock LGA Traffic and Transport Strategy;
- Cessnock Economic Development Strategy;
- Recreation and Open Space Strategic Plan 2018;
- Cessnock Cycling Strategy 2016.
- Branxton Subregional Land Use Strategy; and,
- Branxton Town Centre Master Plan.

IMPLICATIONS

a. Policy and Procedural Implications

The draft PDP will provide guidance for Council in upgrading, installing or designing public domain infrastructure within the Branxton Commercial Precinct. It will also be used to support applications made by Council in the future for grant funding to fund the implementation of the plan.

The draft DCP will also inform future development activities in the Branxton Commercial Precinct.

b. Financial Implications

Council engaged Moir Landscape Consultants to prepare the draft Branxton Town Centre Public Domain Plan. This was funded from the Strategic Planning Budget.

The works proposed in the draft PDP will cost around \$6 million to implement. It is anticipated that the works will predominantly be funded by grant funds. Council has already received over \$400,000 to implement two sub-projects of the draft PDP. Council will continue to look for funding opportunities to achieve the plan.

Importantly, the works identified in the draft PDP will significantly improve Council's ability to secure grant funding in the longer term.

c. Legislative Implications

The *Environmental Planning and Assessment Regulations 2000* outline the requirements for preparing and exhibiting a Draft DCP. The Regulations require any Draft DCP to be placed on public exhibition for a minimum of 28 days. The recommendations of this Report are consistent with the requirements of the *Environmental Planning and Assessment Regulations 2000*.

Once adopted, Council will be required to consider the Draft DCP Chapter when determining Development Applications in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

d. Risk Implications

NIL

e. Environmental Implications

NIL

f. Other Implications

NIL

CONCLUSION

It is recommended that Council endorse the draft Branxton Town Centre PDP and draft Branxton Town Centre DCP for public exhibition for a minimum period of 28 days to enable the community to respond to the draft documents. A further report will be presented to Council following the exhibition period responding to submissions received and any amendments required to the draft documents.

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ENCLOSURES

- [1](#) Draft Branxton Town Centre Public Domain Plan
- [2](#) Draft Branxton Town Centre Development Control Plan
- [3](#) Pre-exhibition on the draft Branxton Town Centre Public Domain Plan

Planning and Environment

Report No. PE86/2018

Planning and Environment



SUBJECT: *DEVELOPMENT APPLICATION PERFORMANCE
MONITORING REPORT - SEPTEMBER 2018 QUARTER*

RESPONSIBLE OFFICER: *Business Support & Customer Relations Manager - Roslyn Ashton*

SUMMARY

The purpose of this report is to provide Council with the September 2018 quarterly report in relation to development assessment performance monitoring data and provide an overview of development activity within the Cessnock Local Government Area.

RECOMMENDATION

That Council receives the report and notes the information.

BACKGROUND

Each year, the NSW Department of Planning and Environment analyses data from each Council in NSW to provide comprehensive information on the operation of the local development assessment system for DAs, Section 96 Applications and complying development.

Over recent years, Council has continued to work with key stakeholders to improve processes and the overall performance in relation to development assessment and processing times.

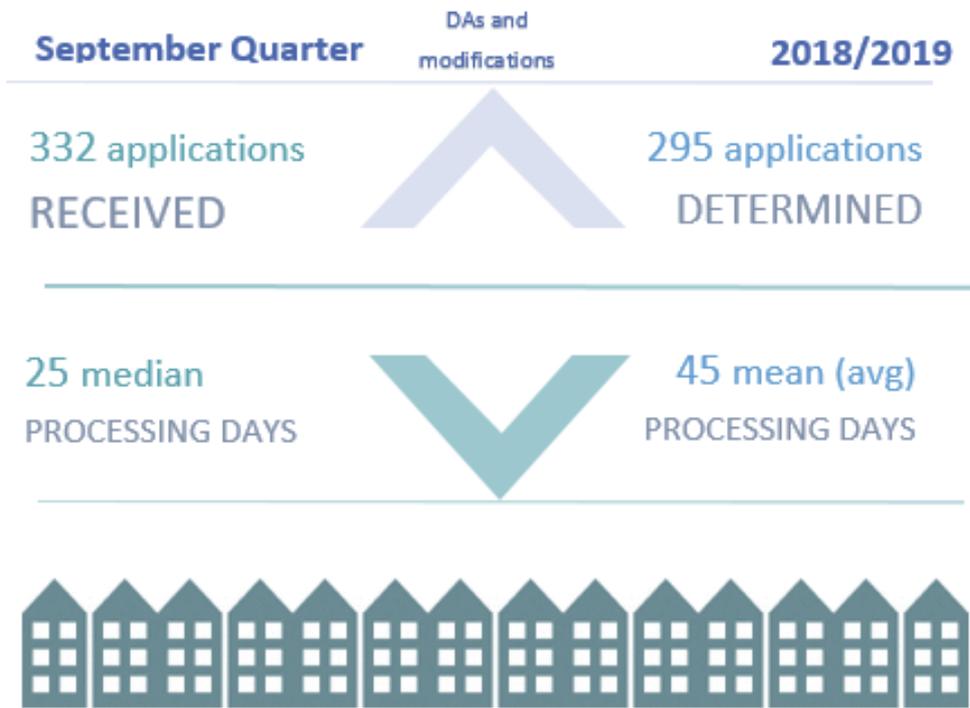
The most recent data is provided in the report and indicates ongoing efforts to improve performance are being realised. In addition, Council is significantly exceeding projections for residential dwelling approvals.



REPORT/PROPOSAL

DEVELOPMENT ASSESSMENT

Key Highlights



SEPTEMBER QTR

2018/2019



Determination Body
DELEGATED AUTHORITY

97%



Determination Type
APPROVED

95%

CESSNOCK
PCA Market

74 percent
Construction Certificates

32 percent
Occupation Certificates



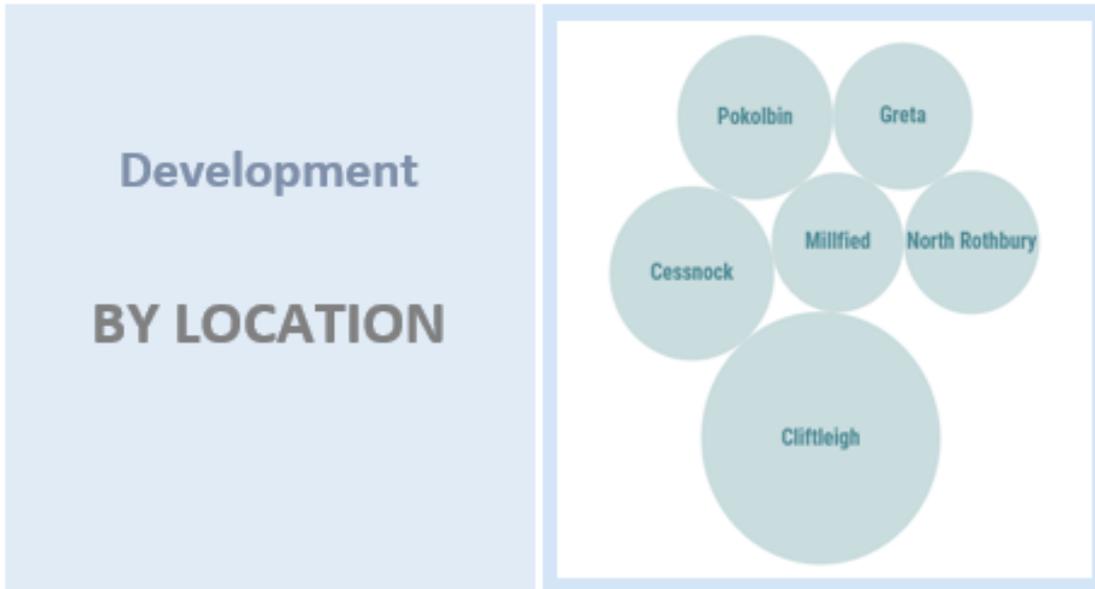
\$73,750,526
Development
Value for approvals



\$17,522,372
Complying Development
Value for approvals
(Council & Private Certifiers)

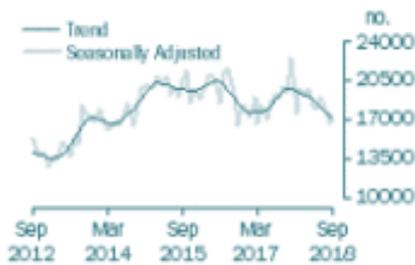
SEPTEMBER QTR

2018/2019



BUILDING APPROVALS

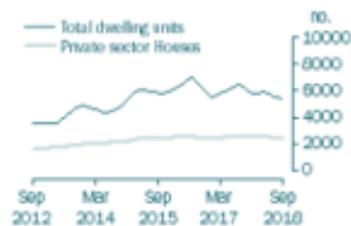
NUMBER OF TOTAL DWELLING UNITS



The trend estimate for Australia fell 1.9% in September.

DWELLING UNITS APPROVED STATE TRENDS

NEW SOUTH WALES

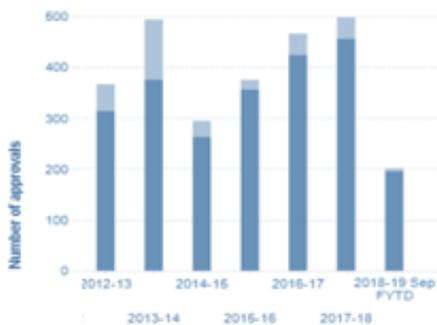


The trend estimate for total number of dwelling units approved in New South Wales fell 1.3% in September. The trend estimate for the number of private sector houses rose 0.5% in September.

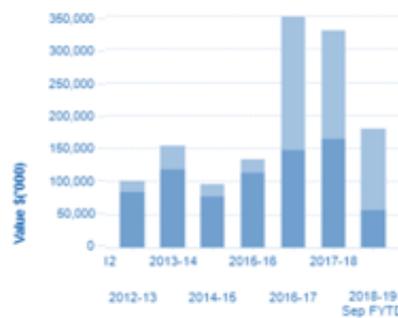
Residential building approvals						
Cessnock City						
Year (ending June 30)	Number			Annual change		
	Houses	Other	Total	Houses	Other	Total
2018-19 Sep FYTD	194	6	200			
2017-18	456	41	497	+33	-3	+30
2016-17	423	44	467	+68	+24	+92
2015-16	355	20	375	+93	-13	+80
2014-15	262	33	295	-112	-87	-199
2013-14	374	120	494	+60	+67	+127
2012-13	314	53	367	+29	-28	+1

<https://profile.id.com.au/cessnock/building-approvals>

House approvals Other dwelling approvals



Residential NonResidential



200 residential buildings approved to be built in the financial year 2018-19 SEP FYTD



The value of **building approvals** was **\$180m** in the 2018-19 SEP FYTD financial year

Value of total building approvals							Cessnock City as a % of New South Wales
Financial year	Cessnock City			New South Wales			
	Residential \$('000)	Non-residential \$('000)	Total \$('000)	Residential \$('000)	Non-residential \$('000)	Total \$('000)	
2018-19 Sep FYTD	57,053	122,543	179,596	6,091,370	4,115,169	10,206,538	1.8
2017-18	163,630	163,611	327,241	26,330,690	13,871,867	40,202,557	0.8
2016-17	146,563	200,917	347,480	25,294,965	14,322,685	39,617,649	0.9
2015-16	112,573	20,406	132,979	24,507,071	11,286,909	35,793,980	0.4
2014-15	76,046	19,245	95,291	15,651,703	12,000,977	27,652,680	0.3
2013-14	117,126	37,315	154,441	15,651,703	12,000,977	27,652,680	0.6
2012-13	83,814	17,007	100,821	11,981,013	7,883,815	19,864,829	0.5

<https://economy.id.com.au/cessnock/value-of-building-approval>

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Highlights Commentary

- The data is showing a *significant increase* in the number of applications being submitted.
- There is a positive trend indicating the median processing time and average (mean) processing times have reduced during the quarter. The median of 25 days and average of 45 days is well below Council's 50 day target.
- The number of residential dwelling approvals for the 2017/18 financial year was **497** – a record number of dwellings were approved during the period. This *exceeded* the annual dwelling projections for the Cessnock LGA, outlined in the Hunter Regional Plan 2036, by **56%** and exceeded the previous highest level last seen in 2013/14 during the height of the mining investment boom.
- In the first quarter of this financial year, Council has approved **200** residential dwellings which exceeds the quarterly projection by **150%**. The volume of approvals is at record levels in the Cessnock LGA and is 1.76% of the overall residential dwelling approvals across NSW.
- Council's residential dwelling approvals continue to increase – this is going against the trend across NSW and Australia.
- Council's Building Certification market share has *increased* to **74%** during the quarter. This indicates our certification team is competing well and capitalising on the increased number of development applications being submitted.

The trends evident in the current data will be discussed with the NSW Department of Planning and Environment as part of the Greater Newcastle Urban Development Program and in monitoring implementation of the Hunter Regional Plan 2036.

CONSULTATION

NSW Planning – Local Development Performance Monitoring
Civica – Authority and MasterView Consultants
Director Planning and Environment
Health and Building Manager
Development Services Manager

STRATEGIC LINKS

a. Delivery Program

The report is linked to Objective 3.1.6 Continue to efficiently and effectively process development applications, and respond to planning related enquiries.

b. Other Plans

Nil

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IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

Nil

c. Legislative Implications

The statistics will continue to be prepared and submitted annually as required by the NSW Department of Planning and Environment.

d. Risk Implications

N/A

e. Environmental Implications

N/A

f. Other Implications

Nil

CONCLUSION

The report is provided for Council information and outlines an overview of the quarterly performance of Development Assessment as at the end of the September 2018 Quarter.

ENCLOSURES

There are no enclosures for this report

Planning and Environment

Report No. PE87/2018

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MINUTES:

MOTION

Moved:

Councillor Dunn

Seconded:

Councillor Lyons

RECOMMENDED

That the Minutes of the Strategic Property & Community Facilities Committee held on 5 September 2018, as circulated, be taken as read and confirmed as a correct record.

That the Minutes of the Extraordinary Strategic Property & Community Facilities Committee Meeting held on 19 September 2018, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

OFFICER'S REPORTS

OFFICER'S REPORTS NO. SPOR23/2018

SUBJECT: CESSNOCK AIRPORT UPDATE

MOTION

Moved:

Councillor Dunn

Seconded:

Councillor Sander

RECOMMENDATION

1. That the Committee endorse the draft 2018 Cessnock Airport Strategic Plan and associated Business Plan.
2. That the Committee recommend to Council that the draft 2018 Cessnock Airport Strategic Plan and associated 5 year Business Plan be placed on Public Exhibition early in 2019 for a period of 28 days during which time key stakeholder response is sought.
3. That the Committee recommend that Council consider the implications of the Draft Airport Strategy in the assessment of any Development Application for activities at the airport.
4. That the committee be briefed on the Growing Local Economies grant application and the effects it will have on the airport.
5. That a further report be provided to the Committee upon completion of the public exhibition.

CARRIED UNANIMOUSLY

Planning and Environment

Report No. PE87/2018

Planning and Environment



OFFICER'S REPORTS NO. SPOR24/2018

SUBJECT: VINEYARD GROVE STAGE 8 - INVESTIGATION OF ROADWIDTHS

MOTION **Moved:** Councillor Sander **Seconded:** Councillor Dunn

RECOMMENDATION

That the Committee recommend that Council widen the road reserve width to 15-metre for Saxonvale Grove.

CARRIED UNANIMOUSLY

OFFICER'S REPORTS NO. SPOR25/2018

SUBJECT: LICENCES - OCCUPATION OF HEBBURN ESTATE POLICY

MOTION **Moved:** Councillor Lyons **Seconded:** Councillor Sander

RECOMMENDATION

That the committee endorse the amended Licences – Operation of Hebburn Estate Policy.

CARRIED UNANIMOUSLY

OFFICER'S REPORTS NO. SPOR26/2018

SUBJECT: AMENDED PROPERTY INVESTMENT AND DEVELOPMENT POLICY, PROPERTY MANAGEMENT POLICY AND PROPERTY MANAGEMENT GUIDELINES.

MOTION **Moved:** Councillor Lyons **Seconded:** Councillor Dunn

RECOMMENDATION

That the Committee endorse the amended Property Investment and Development Policy, the Property Management Policy and the Property Management Guidelines.

CARRIED UNANIMOUSLY

Planning and Environment

Report No. PE87/2018

Planning and Environment



GENERAL BUSINESS

GENERAL BUSINESS NO. SPSEGB3/2018

SUBJECT: PROPERTY INVESTMENT FUND UPDATE

MOTION **Moved:** Councillor Sander **Seconded:** Councillor Lyons.

RECOMMENDATION

That the Committee notes the balance of the Property Investment Fund as at 31 October 2018.

CARRIED UNANIMOUSLY

The Meeting Was Declared Closed at 2:34pm

ENCLOSURES

There are no enclosures for this report



SUBJECT: *DRAFT CESSNOCK AIRPORT STRATEGIC PLAN*

RESPONSIBLE OFFICER: *Strategic Planning Manager - Martin Johnson*

SUMMARY

The report seeks approval from Council to publically exhibit the Draft Cessnock Airport Strategic Plan.

RECOMMENDATION

1. That Council place the draft Cessnock Airport Strategic Plan 2018 and associated 5 year Business Plan on public exhibition early in 2019 for a period of 28 days.
2. That Council consider the implications of the Draft Strategic Plan in the assessment of Development Application for activities at the Airport.
3. That Council be provided with a report following public exhibition of the draft Cessnock Airport Strategic Plan 2018 detailing the outcomes of the public exhibition.

BACKGROUND

Cessnock Airport (the Airport) was originally constructed on Commonwealth controlled land and was formally known as Pokolbin Aerodrome. It was renamed in 1948 to Cessnock Airport, and in 1992 the north-south airstrip and immediate surrounding land was gifted by the Commonwealth Government to Council.

The Airport was subsequently operated under lease by an independent body from 1999, with Council taking back control of the Airport in December 2011. Council has managed the airport since this time.

On 22 January 2014 Council adopted the 2014 Cessnock Airport Strategic Plan to lay the foundation for the future development of this asset.

On 5 July 2017 Council resolved:

That Council transfers Cessnock Airport to the Property Investment Fund, runs the facility on a more commercial basis and classifies the site for financial reporting purposes as an investment property.

As part of the consideration to operating the airport on a more commercial basis it was determined that the previous strategic plan be reviewed and updated. This report outlines the proposed revised document.

The draft Cessnock Airport Strategic Plan was endorsed by the Strategic Property & Community Facilities Committee on 13 November 2018.

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REPORT/PROPOSAL

The Airport sits on an area of approximately 75 hectares, and is zoned SP 2 Infrastructure (Air Transport Facility) under Cessnock Local Environment Plan (CLEP) 2011. The site consists of 26 buildings/structures, including a main north south runway 1,094 metres long and 24 metres wide, with associated taxi-way, a main eastern terminus and smaller western terminal building, hangars, fuel facility, and apron spaces. Refer **Enclosure 1** for a site plan of the airport.

The facility is accessed through the Information Centre, off Wine Country Drive to the east and from De Beyers Road from the west.

The airport sees approximately 14,000 movements per annum, through a mix of general and recreational flights, from a range of aircraft including light aircraft, helicopters, ultralights and similar.

The airport has seen renewed interest for use in recent years, and a number of users are currently seeking approval to construct new hangars at this site.

The proposed draft strategic plan includes a precinct plan to assist in the controlled development of the available surplus land surrounding the airstrip.

Strategic Plan

The plan has a vision for Cessnock Airport to be 'a viable, user friendly and vibrant aviation hub to the Hunter region'. It identifies that the Airport is an integral component to the Hunter community, and can achieve an improved revenue position through development of an aerodrome business hub that works with and contributes to the economic growth of the region.

It is considered that the success of this facility lies in the fact the Airport already has a point of difference in the market place due to its central location to the vineyards of the Hunter Valley and the current varied user base, and that this should be exploited.

The key Principles that this document focus on are to;

- Implement a safe and secure airport;
- Construct a well-planned airport;
- Develop sound asset management and business practices;
- Ensure strong financial viability and sustainability; and,
- Focus on Branding and marketing.

From these principles a number of directions and subsequent actions have been detailed which will result in an incremental improved financial position.

Future development and growth should be investigated as funding opportunities arise, and this document should be reviewed every five years to determine whether market forces have arisen that could benefit this airport facility.

A Business plan has also been prepared which highlights 59 actions. Subject to these actions being implemented the Business plan reveals the airport can become financially viable in 6-7 years.

Planning and Environment

Report No. PE88/2018

Planning and Environment



A copy of the Strategic Plan incorporating the Business Plan is attached in **Enclosure 1**.

OPTIONS

The Council has a number of options in front of it, as follows;

Option 1

Place the draft document to exhibition in early 2019.

This is the recommended option as it progresses business opportunity, is reflective of the Delivery Program objectives, and sets the framework for an inclusive and progressive new strategic direction for the Cessnock Airport.

Option 2

Alter the draft document.

The Strategic Plan is based on consultation with key stakeholders, and is considered to be reflective of the most appropriate avenue forward. The public exhibition process will reveal any suggested alterations, and these can be reviewed and addressed in this process.

Option 3

Not proceed with the exhibition at this time.

This option is not consistent with the direction of Council to ensure the airport moves towards financial viability.

CONSULTATION

Consultation has been held with;

- Works and Infrastructure Section
- Property Section
- Existing airport users at a key stakeholder meeting held 2 August 2018.
- Councillors inspected the airport on 8 May 2018 and were briefed on 26 September 2018

The Strategic Property & Community Facilities Committee received an initial report on 9 May 2018 with a further update on 13 November 2018.

STRATEGIC LINKS

a. Delivery Program

Council's Delivery program 2017-2021 states, under

A sustainable and prosperous economy

Planning and Environment

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Objective 2.1

Our local government area is attractive to and supportive of business

2.1.4 Provide support for activation of commercial centres, business engagement, promotion and support for business growth

Accessible Infrastructure, Services & Facilities that;

Objective 4.1 Better transport links

4.1.6 Continue implementation of the Cessnock Airport Strategic Plan

b. Other Plans

Other relevant plans include;

- Cessnock Community Strategic Plan 2027
- Greater Newcastle Metropolitan Plan 2036;
- Hunter Regional Plan 2036
- Hunter Valley Destination Management Plan 2014
- Operational Plan 2018-19
- Cessnock Economic Development Strategy 2013-2017
- Community Infrastructure Strategic Plan – 2031 A vision for the future
- Cessnock LGA Traffic and Transport Strategy 2017

IMPLICATIONS

a. Policy and Procedural Implications

None of the proposed actions are considered to impact negatively upon any Council policy or procedure.

The Plan does make recommendation to review Council's planning documentation, including Cessnock Local Environmental Plan 2011 (LEP), and Cessnock Development Control Plan 2010 (DCP). This will be addressed as part of the exhibition process.

b. Financial Implications

There are potential financial implications in regard to the proposed precinct masterplan implementation, along with capital works. However, these have been outlined in the business plan.

Further detail as to costing will be covered in subsequent reports on approval of the Strategic Plan itself.

c. Legislative Implications

Where appropriate CASA and other relevant bodies will be consulted on any proposed changes and approvals sought as necessary.

d. Risk Implications

The plan outlines clear ways to better manage risk moving forward.



e. Environmental Implications

The proposed Fauna and Flora review identified as an action within the Strategic Plan will identify any issues.

f. Other Implications

N/A

CONCLUSION

This report recommends that Council endorse the draft Strategic Plan and associated business Plan and place it to public exhibition for a period of 28 days. A further report will be prepared based on the community feedback received.

ENCLOSURES

- [1](#) Draft Airport Strategic Plan

SUBJECT: *HEBBURN ESTATE POLICY*

RESPONSIBLE OFFICER: *Project Manager - Strategic Property Review - Joe O'Connor*
Strategic Planning Manager - Martin Johnson

SUMMARY

The purpose of this report is to seek adoption of the recently exhibited draft Licences – Operation of Hebburn Estate Policy (the draft Policy).

RECOMMENDATION

That Council adopt the amended Licences – Operation of Hebburn Estate Policy.

BACKGROUND

At its Ordinary meeting of 4 July 2018 (report number PE39/2018) Council resolved:

That to facilitate the sale and or development of the site the General Manager make arrangements to review Licence-Occupation of Hebburn Estate Policy H15.1. With the addition that licences will not be reassigned, that licensees without approved OSSM be terminated and that Council recommends the termination of licences in line with default on Rates. That the residents be notified of the changes to the Policy once it has been endorsed by Council.

A review of the Policy was undertaken and the draft Policy was reported to the Strategic Property and Community Facilities Committee on 5 September 2018, and subsequently to Council on the 19 September 2018 seeking approval to proceed to public exhibition. A copy of the amended draft Policy, and report to and minutes of the Strategic Property and Community Facilities Committee meeting of 5 September 2018, are included at Enclosures 1,2 and 3.

Public exhibition concluded on 31 October 2018, no objections were received.

REPORT/PROPOSAL

The draft Licences – Operation of Hebburn Estate Policy outlines Council's position on the management of licences, including the conditions under which licences can be terminated, for dwellings at Hebburn Estate.

The draft Policy was placed on public exhibition from the 3 October – 31 October 2018. No submissions were received.

OPTIONS

1. Endorse the amended draft Licences – Operation of Hebburn Estate Policy.

This is the recommended option.

2. Not proceed with amended draft Licences – Operation of Hebburn Estate Policy, and by virtue maintain the current policy. This option will result in “business as usual”, restricting the strategic review of Hebburn Estate. This is not the recommended option.

CONSULTATION

The policy review was tabled to the Strategic Property and Community Facilities Committee on the 13 June 2018 seeking endorsement to review the existing policy; and again on the 19 September 2018 seeking that the committee recommend to Council that the Policy be publically exhibited.

The draft document was publicly exhibited from the 3 October to 31 October 2018. Notice of the exhibition was placed in the Cessnock Advertiser and on Council’s website.

No submissions were received during the public exhibition period.

STRATEGIC LINKS

a. Delivery Program

The Strategic Property project is a key project within the 2017-21 Delivery Program.

b. Other Plans

The project aligns with a number of outcomes in the Community Strategic Plan including:

- A connected and safe community
1.1 promoting social connections
- A sustainable and healthy environment
2.2 achieving more sustainable employment opportunities
- Civic leadership and effective governance
5.3 making Council more responsive to the community

IMPLICATIONS

a. Policy and Procedural Implications

The adoption of the draft Licences – Operation of Hebburn Estate Policy will repeal the existing “H15.1 Licences – Hebburn Estate” policy.

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b. Financial Implications

The adoption of the amended draft Licences – Operation of Hebburn Estate Policy Council will facilitate the eventual redevelopment of disposal of the site.

c. Legislative Implications

- Local Government Act, 1993
- Local Government (General) Regulation, 2005
- Real Property Act, 1900
- Residential Tenancies Act 2010
- Landlord and Tenant Amendment Act 1948

d. Risk Implications

There is potentially the reputational risk from constituents that Council is not fulfilling the obligations as set out under the licence agreement. The draft Licences – Operation of Hebburn Estate Policy has been drafted in line with existing licence agreements and previous policy; however, the revision clarifies Council's position that it will actively terminate licences where licence holders are in breach of the licence conditions.

e. Environmental Implications

Councils adoption of the draft Licences – Operation of Hebburn Estate Policy will facilitate the redevelopment or sale of the site, which will eventually lead to the rehabilitation of the remainder of site.

f. Other Implications

Nil.

CONCLUSION

A review of the current Hebburn Estate Policy has been undertaken and amendments made to better reflect Council objectives for the site as well as providing certainty to Council staff applying the policy.

It is recommended that Council endorse the draft Licences – Operation of Hebburn Estate Policy.

ENCLOSURES

- 1** Licences - Operation of Hebburn Estate Policy
- 2** Report to the Strategic Property and Community Facilities Committee of 5 September 2018.
- 3** Extract of the minutes of Strategic Property and Community Facilities Committee of 5 September 2018.

SUBJECT: ***AMENDED PROPERTY INVESTMENT AND DEVELOPMENT POLICY, PROPERTY MANAGEMENT POLICY AND PROPERTY MANAGEMENT GUIDELINES***

RESPONSIBLE OFFICER: *Strategic Planning Manager - Martin Johnson*

SUMMARY

The purpose of this Report is to seek adoption of the draft Property Investment and Development Policy and Property Management Policy and Property Management Guidelines following public exhibition.

RECOMMENDATION

That Council adopt the amended Property Investment and Development Policy, the Property Management Policy and the Property Management Guidelines.

BACKGROUND

At the Ordinary Council Meeting of 4 July 2018 (Report No PE39/2018) Council resolved:

That when considering further reports to the Committee regarding the potential disposal of a Council asset, the opportunity analysis include investigating the feasibility of development opportunities, including construction, leasing, subdivision or other method of raising revenue as part of any Council land review.

A review of the relevant Policies was undertaken and the amended Policies reported to the Strategic Property & Community Facilities Committee on 5 September 2018, and subsequently Council on the 19 September 2018 seeking approval to proceed to public exhibition.

Public exhibition concluded on 31 October 2018, no objections were received.

REPORT/PROPOSAL

Property Investment and Development Policy (Enclosure 1)

This policy applies to the acquisition, development, management, investment, disposal, reclassification, rezoning and the undertaking of entrepreneurial activities of properties referred within Council's Policies and Guidelines as Investment Property, and held within a separate Property Investment Fund.

Property Management Policy (Enclosure 2)

The objective of this policy is to provide a framework for the consistent management of Council's real estate assets.

This Policy applies to all land and buildings owned and managed by Cessnock City Council.

Property Management Guidelines (Enclosure 3)

The purpose of these Guidelines is to establish a consistent approach to property management based on a clear understanding of the requirements of the Council and the services it delivers combined with best practice in property management.

A report outlining the draft changes proposed to the Policies and Guidelines presented to the Strategic Property and Community Facilities Committee meeting, and subsequent minutes, of 5 September 2018 are included at Enclosure 4 and 5.

OPTIONS

1. Endorse the Property Investment and Development Policy, the Property Management Policy and the Property Management Guidelines.

This is the recommended option.

2. Not proceed with the amended policies and guideline. This option will affect the integrity and effectiveness of the Strategic Property review and is not recommended.

CONSULTATION

The draft policies and guideline were reviewed at the Strategic Property & Community Facilities Committee meeting of 5 September 2018, and ratified by Council on 19 September 2018 for public exhibition.

Exhibition of the documents occurred from the 3 October to 31 October 2018. Notice of the exhibition was placed in the Cessnock Advertiser and on Council's website.

No submissions were received during the public exhibition period.

STRATEGIC LINKS

a. Delivery Program

The Strategic Property project is a key project within the 2017-21 Delivery Program.

b. Other Plans

The project aligns with a number of outcomes in the Community Strategic Plan including:

- A connected and safe community
1.1 promoting social connections
- A sustainable and healthy environment
2.2 achieving more sustainable employment opportunities
- Civic leadership and effective governance
5.3 making Council more responsive to the community

IMPLICATIONS

a. Policy and Procedural Implications

The amendments proposed allow for better direction in all aspects of investment and development that Council may consider into the future.

b. Financial Implications

The Strategic Property Review project is part of the Financial Sustainability Initiative. In the medium-long term it should generate sustainable revenue streams for Council.

In accordance with Council's resolution of 17 September 2014, a Property Investment Fund restricted asset has been established.

Existing Council land identified as surplus to requirements, or land acquired specifically to assist in generating sustainable revenue streams, can be placed within the Property Investment Fund.

In line with the adopted policy, any income received from Investment Fund property portfolio activities will be directed into the Fund and then invested (after reimbursing Council for any expenditure incurred in the conduct of property investment activities and the generation of income from such activities) in property investment/development projects or in income producing activities.

c. Legislative Implications

Council's property activities are managed within legislative parameters, including:

- Local Government Act, 1993
- Local Government (General) Regulation, 2005
- Real Property Act, 1900
- Conveyancing Act, 1919
- Residential Tenancies Act 2010
- Valuation of Land Act 1916

d. Risk Implications

Council has two distinct roles in its property activities - as the developer seeking the best possible return for its property; and as a statutory authority responsible for the assessment and approval of any Development Application for the property. Council must exercise particular care to ensure its roles as consent authority and as a developer are kept separate and are seen to be separate.

The revised Property Investment & Development Policy will continue to include (as did the Property Investment Policy) that Council will not acquire any property from or dispose of any property to any Councillor, employee or consultant of the Council who has been involved in any process related to a decision to acquire or dispose of the property and/or the establishment of a reserve price.

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Planning and Environment



Section 716(3) of the Local Government Act 1993 states that land may be sold (under this Division) to the council, a councillor, a member of staff of the council or any relative a member of staff of the council in the case of sale by public auction, but may not be so sold by private treaty.

To mitigate risks in its dealings, the recommendations of the 2013 ICAC report on the investigation into Cessnock City Council have continued to be incorporated into the Property Management Guidelines.

e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

A review of the Property Investment and Development Policy, the Property Management Policy and the Property Management Guidelines has been undertaken and amendments have been made to reform the property policies to provide clear, concise and appropriate directions for all future investment and development opportunities within the property investment portfolio.

It is recommended that Council adopt the draft Property Investment and Development Policy, the Property Management Policy and the Property Management Guidelines.

ENCLOSURES

- 1 Property Investment and Development Policy
- 2 Property Management Policy
- 3 Property Management Guidelines
- 4 Report to Strategic Property and Community Facilities Committee of 5 September 2019
- 5 Minutes of the Strategic Property and Community Facilities Committee of 5 September 2018.

Planning and Environment

Report No. PE91/2018

Planning and Environment



SUBJECT: *PARKING FINE CONCESSIONS*

RESPONSIBLE OFFICER: *Health & Building Manager - Colin Davis*

SUMMARY

The purpose of this report is for Council to consider recent changes by the NSW Government to reduce certain parking fine penalty amounts and to determine whether to 'opt-in' to the changes.

RECOMMENDATION

1. That Council note that certain parking fine amounts may now be reduced by individual Councils across NSW following legislative changes by the NSW Government
2. That Council 'opt in' to take advantage of parking fine concessions by notifying the NSW Government before 1 January 2019.

BACKGROUND

At the Ordinary Meeting of 15 August 2018, Council considered Report No. PE45/2018 to the where it was reported that the NSW Government reduced a range of State Government issued parking fines by 25 per cent. Council would recall that those reduction in penalty amounts only applied to land and officers under the control of the NSW Government.

Subsequently the NSW Government notified Council on 30 November 2018 that they have now made the regulatory changes necessary for Council's to reduce specific parking fines.

REPORT/PROPOSAL

Under the new framework, Councils can now reduce specific parking fines from \$112 to \$80. These concessions do not apply automatically and to make this change Councils must opt in by advising The Hon Dominic Perrottet MP Treasurer and Minister for Industrial Relations by 1 January 2019 as detailed in attached correspondence.

The parking offences nominated are for minor offences that attract minimum fines legislated under the Road Rules 2014 by the NSW State Government.

Council Rangers/Parking enforcement officers have a regulatory obligation to enforce parking legislation to manage public safety, traffic management and providing equitable access to available parking spaces.

It is considered that opting into the changes is an appropriate course of action to ensure Cessnock City Council is able to take advantage of reduced penalty amounts for certain parking fines. This does not impact on Council's obligations to enforce parking restrictions, however may be seen to somewhat ease the burden on those who are fined.

Planning and Environment

Report No. PE91/2018

Planning and Environment



If Council were to determine not to opt in to reduced parking fine amounts, there is a risk that other LGA's will opt in and Cessnock LGA will be seen as an area where fines are higher for the same offences. This might deter visitors and residents from parking in our centres and instead they may choose to shop and do business elsewhere. There may also be reputational risk to Council because the community would see that Council chose to keep higher penalty fine amounts when they could have reduced them. Members of the public are likely to perceive that unfavourably and Council could be seen as a 'high fine' Council.

OPTIONS

1. That Council opt in to take advantage of the reduced parking fines for specific offences.

This is the preferred course of action. This will not send a message that people may breach parking regulations, however will ease the financial burden on those who are fined for parking breaches.

2. That Council not opt in to the reduced parking fines.

This may see Cessnock LGA having higher penalties than other local government areas for the same offences –this may act as a deterrent for visitors and residents to park in our LGA.

CONSULTATION

Director Planning and Environment
Ranger Team Leader

STRATEGIC LINKS

a. Delivery Program

The report is linked to Action 1.3.2: "Carry out regulatory and education programs to protect residential amenity and community health and safety"

b. Other Plans

Cessnock 2027 Community Strategic Plan - "A connected, safe and creative community"

IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

Minimal reduction in fine income as detailed in report

c. Legislative Implications

N/A

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Planning and Environment



d. Risk Implications

Risk implications are outlined within the report.

e. Environmental Implications

N/A

f. Other Implications

Nil

CONCLUSION

The NSW Government has enacted legislative change to allow Councils to reduce certain parking fines. This report recommends that Council opt in to take advantage of the reduced parking fines for specific minor parking offences.

ENCLOSURES

- 1** Correspondence from Treasurer and Minister for Industrial Relations

SUBJECT: *REVOTING OF EXPENDITURE FROM 2017-18 TO 2018-19*

AUTHOR: *Finance and Administration Manager - Andrew Glauser*

SUMMARY

A report seeking Council endorsement of projects budgeted for 2017-18 but not commenced as at 30 June 2018 requiring revoting of funding to the 2018-19 Operational Plan and endorsement of changes to carryover projects and revotes to reflect the application of additional grant and section 7.11 funding to undertake projects approved for 2018-19 and scope changes.

RECOMMENDATION

1. That Council endorse variations to carryover projects and revoted projects totalling \$1,509,618 with no additional general funds, new grant funding totalling \$707,288, section 7.11 funding of \$727,500 and reserve funding of \$74,830 as detailed in the report, inclusive of variation to programs.

Budget Adjustment 30/06/18	General Funds	Section 7.11	Reserves	Grants	Total
Bridges	233,454			(130,908)	102,546
Cemeteries	(10,295)				(10,295)
Parks & Recreation	10,295			224,961	235,256
Pathways	38,775			116,576	155,351
Roads	(232,229)		74,830	496,659	339,260
Strategic Asset Planning	(40,000)				(40,000)
Tourism Signage		727,500			727,500
Grand Total	0	727,500	74,830	707,288	1,509,618

2. That Council authorise the revoting of expenditure from 2017-18 to 2018-19.

Revotes by Asset Class	Council Funds	Loan Funds	Grants	Total Revotes
Buildings	116,391	0	0	116,391
Cemeteries	13,881	0	0	13,881
Parks & Recreation	140,384	0	274,961	415,345
Roads	80,894	0	0	80,894
Stormwater	21,693	5,307	53,000	80,000
Strategic Asset Planning	212,500	0	0	212,500
Total	585,743	5,307	327,961	919,011

3. That Council note that projects as listed in Enclosure 1: Revotes and Carryovers 2017-18 to 2018-19 have been brought forward into the current financial year.

BACKGROUND

There is expenditure across all categories and Council usually addresses all variations for such projects as part of the Quarterly Budget Review process. The variations for carryover projects and revotes have been included as part of this report to streamline this process. There is no impact to General funds with all variations funded from other sources. This report seeks Council endorsement to those variations.

All projects which were in progress as at 30 June 2018 are treated as carryover projects under Council's policy and do not require Council authorisation to continue. Projects which were within the Operational Plan 2017-18 but had not been commenced as at 30 June 2018 require council authorisation as a revote to enable the works to be undertaken in 2018-19.

REPORT

The projects were reviewed by the responsible line Managers, endorsed by the responsible Director, and the Executive Leadership Team has reviewed the proposed carryover projects and revotes from a corporate perspective. Funds are needed to complete projects in 2018-19 however these funds have been held in reserve specifically for these projects.

Council was successful in obtaining grant funding in the 4th quarter of the 2017-18 financial year which related to specific projects. Examples of these grants or funding approvals and the associated projects are:

- Stronger Countries Communities Fund to fund:
 - Pathway renewal and Access CBD (\$155,351)
 - Playground replacement program (\$113,897)
 - Citywide Shade program (\$74,441)
 - Kurri Kurri Sportsground fence replacement (36,623)
- Roads to Recovery to fund variations and new projects resolved by Council:
 - Ellalong, Gillies and Thursbys Bridges and to replace the culvert on Whitebridge road (\$161,976)
 - Pelaw Main Public School parking (\$165,000)
- Signage program (generally funded from Building Better Regions) received approval to utilise section 7.11 (s94) funding for tourism signage (\$727,500)

All asset classes (except for Cemeteries) will have more funding applied with no change in the overall requirement of Council's General Funds. The variations by program are:

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Budget Adjustment 30/06/18	General Funds	Section 7.11	Reserves	Grants	Total
Bridges	233,454			(130,908)	102,546
Bridge Construction Program	308,275			(130,908)	177,367
Bridge Maintenance Program	(74,821)				(74,821)
Cemeteries	(10,295)				(10,295)
Cemetery Facilities Construction Program	(10,295)				(10,295)
Parks & Recreation	10,295			224,961	235,256
Parks Maintenance Program	(13,000)				(13,000)
Recreation Facilities Construction Program	43,597			113,897	157,494
Recreation Facilities Renewal Program	(20,302)			111,064	90,762
Pathways	38,775			116,576	155,351
Cessnock Civic Precinct Revitalisation Program				155,351	155,351
Pathways Construction Program	38,775			(38,775)	0
Roads	(232,229)		74,830	496,659	339,260
Gravel Rehab & Resheeting Program	(27,698)				(27,698)
Local Road Construction Program	(173,917)			292,884	118,967
Traffic Facilities Program			26,300	176,127	202,427
Regional Road Maintenance Program				38,775	38,775
Regional Road Renewal Program	(118,000)		47,200		(70,800)
Traffic Facilities Block Grant Program				(11,127)	(11,127)
RMS Blackspot or Safer Roads Program	36,033		1,330		37,363
Traffic Facilities Program - Improvement & Maintenance	51,353				51,353
Strategic Asset Planning	(40,000)				(40,000)
Administration	(40,000)				(40,000)
Tourism Signage		727,500			727,500
Signage Program		727,500			727,500
Grand Total	0	727,500	74,830	707,288	1,509,618

The funding requirement for revoted funds is reflected by program in the table below. The works are substantially capital related projects and funded by grant or Section 7.11 funds, as well as Council funds. A detailed listing of projects is provided in **Enclosure 1**.

Programs requiring revote	Council Funds	Loan Funds	Grants	Total Revotes
Buildings	116,391	0	0	116,391
Community Buildings Renewal Program	96,500	0	0	96,500
Recreation Buildings Renewal Program	19,891	0	0	19,891
Cemeteries	13,881	0	0	13,881
Cemetery Facilities Construction Program	13,881	0	0	13,881
Parks & Recreation	140,384	0	274,961	415,345
Recreation Facilities Construction Program	136,884	0	113,897	250,781
Recreation Facilities Renewal Program	0	0	111,064	111,064
Recreation Pre-Construction Design	3,500	0	0	3,500
Cessnock Civic Precinct Revitalisation Program	0	0	50,000	50,000
Roads	80,894	0	0	80,894
Traffic Facilities Program	80,894	0	0	80,894
Stormwater	21,693	5,307	53,000	80,000
Floodplain Management Program	21,693	5,307	53,000	80,000
Strategic Asset Planning	212,500	0	0	212,500
Strategic Asset Planning Studies	212,500	0	0	212,500
Total	585,743	5,307	327,961	919,011

As part of the year end procedures Council funds were transferred to restricted assets to ensure funding is available for both carryover projects and projects listed to be revoted.

OPTIONS

Council could elect to not allocate the funding to those items requested for revote. However this would result in those items not having a funding source in 2018-19 which would require either an alternate source of funding or that the projects not be completed or completed by inclusion in the current year's works programs. Additionally a number of the projects are subject to contractual arrangements and are works underway.

CONSULTATION

Relevant Budget Managers
Executive Leadership Team

STRATEGIC LINKS

a. Delivery Program

These documents are a part of the organisation's governance framework – providing feedback on the progress against the budget adopted by Council. – in line with the community's desired outcome of: *Civic Leadership and Effective Governance*.

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The Operational Plan 2018-19 in conjunction with the variations in this report provides the required funding allocations to meet the outcome detailed within the Delivery Program. As noted funding for variations is provided by funds other than General Funds.

b. Other Plans

N/A

STATUTORY IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

The Operational Plan includes allocations for 2018-19 and additional funding sources and therefore the requested budget variation and revotes will enable completion of projects not completed in 2017-18, without a detrimental effect on the 2018-19 Operational Plan.

c. Legislative Implications

Regulation 211 of the Local Government (General) Regulation 2005 requires Council to vote the funds necessary to meet the expenditure required for projects to be revoted to 2018-19. Endorsement is also sought for all budget variations.

d. Risk Implications

N/A

e. Other Implications

N/A

CONCLUSION

The revoting of funds will enable those projects not finished to be completed in 2018-19.

ENCLOSURES

- [1](#) Revotes and Carryovers 2017-18 to 2018-19

SUBJECT: *TABLING OF PECUNIARY INTEREST RETURNS*

RESPONSIBLE OFFICER: *Finance and Administration Manager - Andrew Glauser*

SUMMARY

Section 450A of the *Local Government Act 1993* (NSW) (**Act**) requires the General Manager to keep a register of pecuniary interest returns lodged by Councillors and designated persons within 3 months after becoming Councilors or designated persons and to table them at a meeting of Council.

The purpose for this report is to table the pecuniary interest returns received from designated persons for the period 1 August 2018 to 31 October 2018.

RECOMMENDATION

That Council note the tabling of the pecuniary interest returns (for the period 1 August 2018 to 31 October 2018) by the General Manager in accordance with the *Local Government Act 1993* (NSW).

BACKGROUND

Council has reviewed its governance processes in relation to the requirement for the General Manager to table pecuniary interest returns in accordance with the Act.

Appropriate resources and mechanisms were put in place to specifically capture information about commencing designated staff or staff that would otherwise require to complete a pecuniary interest return at a particular point in time (such as staff acting in designated roles for more than three months) to ensure compliance with the Act and greater openness and transparency.

The result of this review is that the General Manager will table pecuniary interest returns, if any, on a three monthly basis in addition to tabling the annual pecuniary interest returns to ensure Council remains compliant with the Act.

REPORT/PROPOSAL

Section 449(1) of the Act requires Councillors and designated persons to lodge a pecuniary interest return in the form prescribed by the *Local Government (General) Regulation 2005* (NSW) (**Regulation**) within three months after becoming a Councillor or a designated person.

Section 441 of the Act provides that designated persons are:

- (a) The General Manager;
- (b) Senior staff;
- (c) A person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by

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the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest;

- (d) A person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

Section 450A of the Act requires the General Manager to keep a register of pecuniary interest returns lodged and to table them at a meeting of Council.

In accordance with section 739 of the Act, Council has amended the register of pecuniary interest returns to omit information that discloses a designated person's place of living where:

- i. The designated person requested such information be deleted on the grounds that it would place their personal safety or their family's safety at risk; and
- ii. The General Manager was satisfied that disclosing the information would place the designated person's safety or their family's safety at risk.

The register of returns is available for public inspection in accordance with the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and as prescribed by section 1(2)(a) of Schedule 1 of the Regulation.

OPTIONS

Option 1 is to adopt the recommendation to this report.

Option 2 is not to adopt the recommendation above. The Act requires pecuniary interest returns to be tabled at a Council meeting. Failure to do so would constitute a breach of section 450A of the Act. This is not the recommended option.

CONSULTATION

All designated persons were provided the 'S449 Guide' from the Office of Local Government to assist them in the completion of their returns.

STRATEGIC LINKS

a. Delivery Program

Completion of the annual returns links to the community's desired outcome of "*Civic Leadership and Effective Governance*", and in particular, the links to:

- strategic direction 5.3.7 within the Delivery Program 2017-2018 – continue to educate staff on statutory compliance obligations and
- strategic action 5.3.7.b within the Operational Plan 2017-2018 – coordinate disclosures of interest returns.

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b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

N/A

c. Legislative Implications

On the day following the meeting, the register of returns may be accessed by members of the public (at Council's Administrative Centre) during business hours without an appointment.

At all other times, the Register of Returns is available for inspection in accordance with the GIPA Act. Council requires a person to make an appointment to view the register of returns during business hours.

d. Risk Implications

Failure to table the register of pecuniary interest returns would constitute a breach of section 450A of the Act.

e. Environmental Implications

N/A.

f. Other Implications

Tabling the register of returns and allowing access to it demonstrates Council's commitment to openness and transparency, and is a crucial element of Council's civic leadership and effective governance.

CONCLUSION

Tabling of the register of returns satisfies Council's legislative requirements under the Act.

ENCLOSURES

There are no enclosures for this report

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Corporate and Community Services



SUBJECT: *LOCAL GOVERNMENT NSW TOURISM CONFERENCE 2019
- ATTENDANCE REQUEST*

RESPONSIBLE OFFICER: *Director Corporate and Community Services - Robert
Maginnity*

SUMMARY

This report provides information for Council regarding nominations to attend the 2019 Local Government NSW (LG NSW) Tourism Conference in Terrigal from 17-19 March 2019.

RECOMMENDATION

That Council endorse the attendance of Councillors Pynsent, Dunn and Gray to the LG NSW Tourism Conference 2019 to be held in Terrigal from 17-19 March 2019.

BACKGROUND

The LG NSW Tourism Conference is scheduled to be held at the Crowne Plaza Terrigal from the 17-19 March 2019 and Council at the meeting of 21 November 2018 resolved:

That Councillors interested in attending the LG NSW Tourism Conference 2019 make application to the General Manager by Friday 30 November 2018 so that Council can determine attendees at the Council meeting of 12 December 2018.

REPORT/PROPOSAL

The LG NSW Tourism conference is to be held in Terrigal from the 17-19 March 2019.

The conference theme is 'Experience Changes Perceptions' with three topic streams;

- **Technology and Marketing** – how does this influence your experience? Does it influence your experience? Does the expectation live up to the actual experience? Can it encompass artificial intelligence (AI) and virtual reality (VR) and how they can be used on websites as destination promotional pieces, or on tours to display heritage links.
- **Driving you to Distraction** – the drive market itself, eg Drives No 2 DNSW (to be launched), integrated trip planner, making the journey the experience and not just a final destination. Are we there yet?
- **Product Development and Niche Tourism** – dog tourism, dark tourism, wedding tourism, nude tourism, adventure and nature-based tourism.

In accordance with *Councillors Expenses and Facilities Policy*, Councillors Pynsent, Dunn and Gray have submitted requests to attend and these are presented for consideration.

OPTIONS

Council can elect to send a Councillor, a number of Councillors or no Councillors.

CONSULTATION

N/A

STRATEGIC LINKS

a. Delivery Program

This report is aligned with Objective 5.1 Fostering and Supporting Community Leadership and professional development for Councillors is linked to Civic Leadership and Effective Governance.

b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

Application for attendance to the conference is in accordance with *Councillors Expenses and Facilities Policy*.

b. Financial Implications

It is estimated the conference costs will be approximately \$1,200 per delegate which includes registration, accommodation and travel and funding is available in the operational budget for Councillor Conferences and Seminars. This financial year \$12,639 has been spent on conference expenses from a budget allocation of \$25,000.

c. Legislative Implications

Nil

d. Risk Implications

Nil

e. Environmental Implications

Nil

f. Other Implications

Nil

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CONCLUSION

This report provides information regarding the 2019 Local Government NSW Tourism Conference and attendance applications from Councillors Pynsent, Dunn and Gray.

ENCLOSURES

- 1 Request to Attend Conference _ Mayor Pynsent
- 2 Request to Attend Conference _ Clr Dunn
- 3 Request to Attend Conference _ Clr Gray

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Corporate and Community Services



SUBJECT: *INVESTMENT REPORT - NOVEMBER 2018*

RESPONSIBLE OFFICER: *Finance and Administration Manager - Andrew Glauser*

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 requires a monthly report to Council detailing all money invested.

REPORT

Statement by the Responsible Accounting Officer

I, Robert Maginnity, 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 2018 was 1.50%. 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 meeting held on 4 December 2018 retained the official cash rate at 1.50%.

Investment revenues to the end of November 2018 exceeded the benchmark in the Investment Policy with an actual level of return 24.38 % more than budget.

Investment Portfolio Information

Total cash and investments held by Council as at 30 November 2018:

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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
	Commonwealth Bank	CASH			1.15%	5,335
	Commonwealth Bank	At Call			0.50%	41
1243	AMP Bank	At Call			1.80%	500
1263m	Westpac Bank	TD	154	03-Apr-19	2.62%	600
1277s	Greater Bank	FRN	91	25-Feb-19	3.39%	500
1281h	National Bank	TD	273	20-Feb-19	2.66%	700
1286i	IMB Bank	TD	238	07-May-19	2.70%	900
1298m	Newcastle Permanent Building Society	VRD	92	03-Jan-19	3.34%	800
1303f	IMB Bank	TD	210	29-Jan-19	2.75%	700
1304e	AMP Bank	TD	279	15-Jan-19	2.65%	800
1305g	Commonwealth Bank	TD	70	11-Dec-18	2.39%	900
1306f	Suncorp Bank	TD	195	21-May-19	2.65%	900
1307g	Bankwest	TD	181	04-Dec-18	2.70%	800
1311e	Bankwest	TD	273	13-Feb-19	2.65%	600
1320c	Bankwest	TD	179	14-Dec-18	2.75%	600
1322b	Bankwest	TD	272	23-Apr-19	2.80%	900
1323a	Bankwest	TD	273	13-Feb-19	2.65%	800
1324c	National Bank	TD	205	12-Jun-19	2.70%	900
1325a	Members Equity Bank	TD	273	20-Feb-19	2.75%	900
1330a	National Bank	TD	273	26-Jun-19	2.71%	900
1331a	IMB Bank	TD	112	14-Dec-18	2.60%	800
1332b	Suncorp Bank	TD	181	30-May-19	2.70%	1,000
1334a	Commonwealth Bank	TD	274	18-Jun-19	2.65%	800
1335a	Suncorp Bank	TD	223	12-Mar-19	2.65%	1,000
1337b	Bankwest	TD	239	04-Jun-19	2.65%	1,200
1338	Bankwest	TD	273	26-Feb-19	2.65%	800
1339	Suncorp Bank	TD	211	22-Jan-19	2.82%	1,000
1340	AMP Bank	TD	211	22-Jan-19	2.85%	1,000
1341	AMP Bank	TD	224	05-Feb-19	2.85%	1,000
1342	Suncorp Bank	TD	224	05-Feb-19	2.82%	1,000
1343a	National Bank	TD	182	16-Apr-19	2.70%	1,000
1344	Suncorp Bank	TD	192	07-Jan-19	2.85%	1,200
1345a	National Bank	TD	203	14-May-19	2.71%	800
1346	Suncorp Bank	TD	221	19-Mar-19	2.70%	800
1347	Suncorp Bank	TD	228	26-Mar-19	2.70%	800
1348	AMP Bank	TD	230	02-Apr-19	2.80%	700
1349	Bankwest	TD	294	11-Jun-19	2.80%	1,000
1350	Bankwest	TD	301	18-Jun-19	2.80%	1,000
1351	Commonwealth Bank	TD	232	16-Apr-19	2.62%	1,000
1352	Commonwealth Bank	TD	246	30-Apr-19	2.66%	1,000
1353	Suncorp Bank	TD	186	05-Mar-19	2.70%	1,500
1354	AMP Bank	TD	217	09-Apr-19	2.80%	800
1358	National Bank	TD	212	19-Jun-19	2.70%	1,000
1359	National Bank	TD	45	14-Jan-19	2.15%	1,000
1360	National Bank	TD	270	27-Aug-19	2.75%	1,000
TOTAL						43,276



The level of funds held and the percentage invested with financial institutions:

Financial Institution	Amount \$'000	% of Portfolio
Commonwealth Bank	9,076	20.96%
Bankwest	7,700	17.79%
IMB Bank	2,400	5.55%
National Bank	7,300	16.87%
Suncorp Bank	9,200	21.26%
Members Equity Bank	900	2.08%
Newcastle Permanent Building Society	800	1.85%
AMP Bank	4,800	11.09%
Westpac Bank	600	1.39%
Greater Bank	500	1.16%
TOTAL	43,276	100.00%

Investment types, risk assessment, amount and percentage invested compared to the total:

Investment Type	Risk Assessment		Amount \$'000	% of Portfolio
	Capital	Interest		
Term Deposits	Low	Low	36,100	83.42%
Cash/At Call Deposits	Low	Low	5,876	13.57%
Floating Rate Notes	Low	Low	800	1.85%
Variable Rate Deposit	Low	Low	500	1.16%
TOTAL			43,276	100.00%

Comparison of on interest rates, earnings and balances this year to last year:

Performance Measures	This Year	Last Year
Portfolio Average Interest Rate (year to date)	2.56%	2.37%
BBSW Average Interest Rate (year to date) *	1.96%	1.71%
Actual Investment Interest Earned (year to date)	\$432,752	\$355,916
Budget Investment Interest (year to date)	\$347,925	\$343,750
Original Budget Investment Interest (Annual)	\$825,000	\$825,000
Revised Budget Investment Interest (Annual)	\$835,000	\$825,000

Investment Balances (Par Value)	This Year	Last Year
Opening Balance as at 1 July	\$38,760,390	\$36,277,000
Month End Current Balance	\$43,275,974	\$40,308,789

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

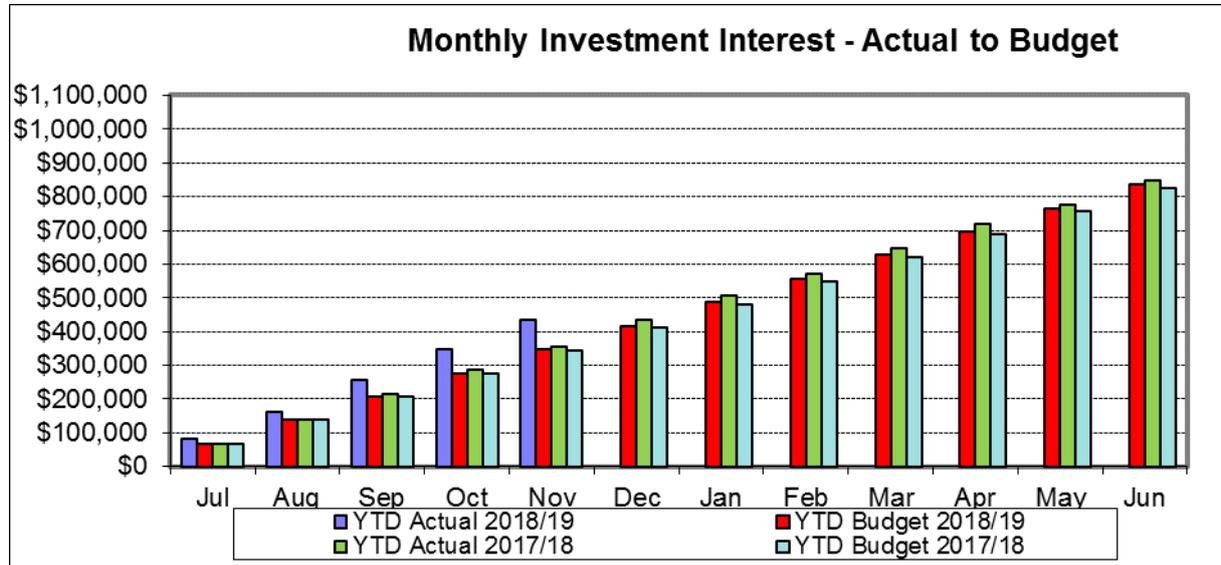
Corporate and Community

Report No. CC93/2018

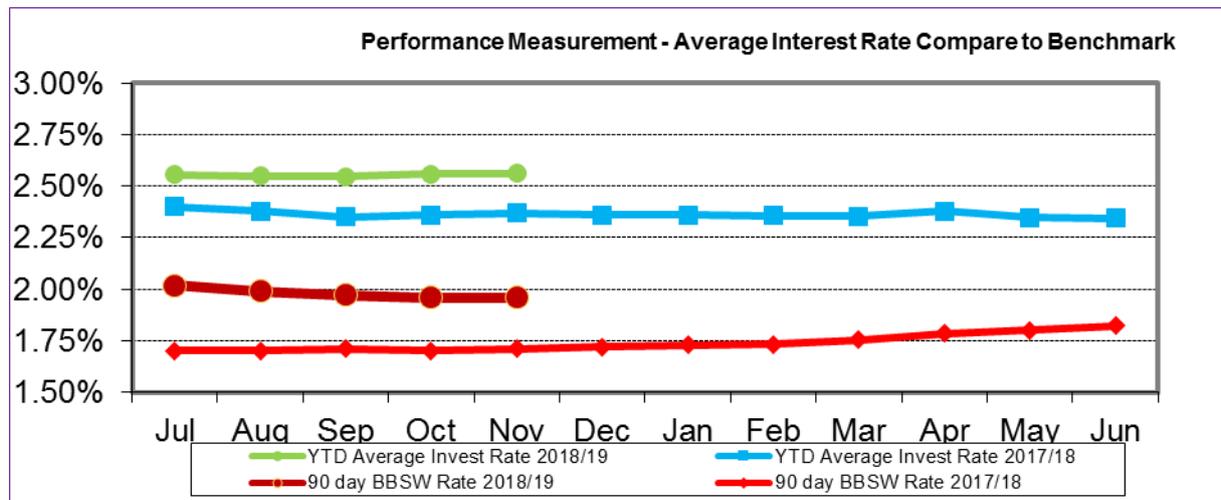
Corporate and Community Services



Actual interest earned to budget for this year and last year:



Current year portfolio performance to prior year performance:



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Internal and external restrictions over cash and investments held:

Restrictions over cash and investments:	
Developer Contributions	11,634
RMS Contributions (Reserve)	2,303
Specific Purpose Unexpended Grants	1,500
Loan Funds Unexpended	500
Plant & Vehicle Replacement Reserve	1,471
Employees Leave Entitlement Reserve	2,264
Bridge Replacement	721
Insurance Provisions	933
Miscellaneous and Property Reserve	4,866
Property Investment Fund	1,037
Single Invitation Contracts	1,764
Waste Depot and Rehabilitation Reserve	5,588
Other Reserves and Council funds still to be spent	8,695
TOTAL	<u>43,276</u>

OPTIONS

N/A

CONSULTATION

Director Corporate & Community Services
Management 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.

This report is a part of the organisation’s governance framework – providing feedback on the progress against the investment policy and budget adopted by Council. This is in line with the community’s desired outcome of: “*Civic Leadership and Effective Governance*” and more specifically links to strategic direction:

- 5.3.7: Continue to educate staff on statutory compliance obligations.
- 5.3.8: Carry out governance functions to comply with legislation and best practice.

b. Other Plans

N/A

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Corporate and Community Services



IMPLICATIONS

a. Policy and Procedural Implications

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

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.

Works and Infrastructure

Report No. WI95/2018

Works and Infrastructure



SUBJECT: *ABBOTSFORD BRIDGE, BELLBIRD - DEFER REPLACEMENT*

RESPONSIBLE OFFICER: *Infrastructure Manager - Katrina Kerr*

SUMMARY

The purpose of this report is to seek deferment of the replacement of Abbotsford Bridge, pending the outcome of an application to modify an existing development consent for an adjacent phased subdivision of 62 residential allotments, and a current appeal to the NSW Land and Environment Court.

RECOMMENDATION

That Council defer the replacement of Abbotsford Bridge pending the outcome of planning and development control matters related to an adjacent residential subdivision.

BACKGROUND

Abbotsford Bridge is an existing timber bridge over Bellbird Creek on Abbotsford Street, Bellbird. The bridge has been reduced to pedestrian/cyclist access due to deterioration in its condition.

The future demand for a trafficable bridge on Abbotsford Street is affected by the approved phased subdivision of 62 residential allotments off Ruby Street, Bellbird. This development, and an application to modify its existing development consent, as well as an appeal to the NSW Land and Environment Court, are the subject of another report currently before Council.

This report addresses the importance of deferring expenditure of limited Council resources on replacement of the Bridge until the outcome of the application to modify the existing consent and the appeal to the Land and Environment Court are known and the applicants intentions are made clear.

REPORT/PROPOSAL

Location: Abbotsford Bridge is located over Bellbird Creek on Abbotsford Street, Bellbird as shown on Figure 1 below. The proposed residential development is located west/north west off Ruby Street.

Current Project Status:

Councillors were provided with an update on the Abbotsford Bridge project in a memo to all Councillors on 15 May 2018, which advised that:

- A Concept Options Report was prepared in 2017, which investigated and considered the future of the bridge, and recommended replacement with a new concrete bridge with 1 lane carriage way and segregated pedestrian access at the existing bridge deck level;
- This scope of work replaces the previously available vehicular access, and upgrades to make safe for pedestrians. Duplication of the 1 lane 2 way creek crossing on adjacent Hetton Street was not considered necessary under current traffic demand circumstances;
- The Report estimated the cost at \$300,000. The \$315,000 allocation in the 2017/18 Operational Plan is based on the above recommendation with a \$15,000 contingency to manage any latent site conditions or unforeseen circumstances;
- Use of the limited Council funds available for bridge construction, have not been proposed to upgrade the Bridge to cater for traffic generated by any future development of Bellbird. It is anticipated that any upgrade to cater for future demand generated directly by new development, would be funded by developer contributions.”

This report relates directly to the final point above.

The future demand for a trafficable bridge on Abbotsford Street is affected by the approved phased subdivision of 62 residential allotments off Ruby Street, Bellbird.

Condition 32 of the consent for this development reads:

32 The registered proprietor of the land shall construct the following works within Abbotsford Street in accordance with Council's 'Engineering Requirements for Development'. The design is to be submitted on a set of plans, four (4) copies of which shall be submitted to and approved by Council prior to release of the s138 Roads Act approval.

- Widen the existing bridge / box culvert to allow for two way flow of traffic.*
- Where required construct and gravel Abbotsford Street to allow for a minimum 8 metre wide carriageway.*
- Where required widen the existing wearing course to a minimum 6 metre wide, 2 coat bitumen seal.*
- Topdress and turf footways*
- Construct drainage works where necessary.*

Note: *Upgrading works in Abbotsford Street are to be completed in conjunction with Stage 1 of the proposed development.*

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The bridge works associated with the above consent requires an upgrade of the bridge to cater for two way flow of traffic. As noted earlier, the proposed scope of works currently being considered by Council is replacement with a new concrete bridge with a one lane carriage way and segregated pedestrian access at the existing bridge deck level. The estimated cost for the one lane bridge is in the order of \$300,000. Council has allocated \$315,000 to the project in the 2018-9 Operational Plan.

Council officers have attended various meetings relating to the conditions of consent for the Ruby Street residential housing with a view to realising any potential for shared provision of a new upgraded bridge.

More recently however, there has been an application to modify the existing development consent for the Ruby Street development, as well as the lodgment of an appeal to the NSW Land and Environment. Both of these items are the subject of another report currently before Council. In light of these recent movements Council officers are of the opinion that Council should defer the Abbotsford Bridge replacement pending the outcome of these two cases.

OPTIONS

Option1 (Preferred):

- That Council defer replacement of Abbotsford Bridge pending the outcome of planning and development control matters related to an adjacent residential subdivision.

This is the preferred option to preserve Council's position in relation to planning matters and ensure the best use of limited Council funds.

Option 2 (Not Preferred):

- That Council proceed with the replacement of Abbotsford Bridge as originally planned in the 2018-19 Operational Plan.

This is not the preferred option as a one lane bridge does not fully cater for the future impact of an adjoining development.

CONSULTATION

Internal Consultation: Consultation has occurred with the following Council officers:

- Asset Engineering Officer, Transportation
- Development Services Manager
- Team Leader Development Services

External Consultation: Consultation has occurred with representatives of Hunter Development Corporation

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STRATEGIC LINKS

a. Delivery Program

Delivery Program 2017-21: The recommendation of this report aligns with:

- Objective 1.3 Promoting Safe Communities:
 - Our residents and visitors feel safe in the Cessnock local government area.
 - Our roads are safe for motorists and pedestrians.

b. Other Plans

Road and Road Infrastructure Network Asset Management Plan: The Plan provides the monitoring, maintenance and renewal approach for bridges.

IMPLICATIONS

a. Policy and Procedural Implications

Deferring the construction of the Bridge aims to allow planning processes to be completed without undue influence and externalities.

b. Financial Implications

Bridge Construction Program: Council has allocated \$315,000 in the 2018-19 Operational Plan to replace Abbotsford Bridge.

Grants: External grant funding for bridges has recently been made available from the Australian Governments Bridges Renewal Program. Past submissions for replacement of Abbotsford Bridge have not been successful as the cost benefit ration has been insufficient.

It is noted that the \$4,845,500 of funding allocated to the adopted Bridge Construction Program in 2018-19 includes \$2,040,738 of grant funding.

c. Legislative Implications

Legislation relevant to the environmental and planning implications of the development and dealings related to the development are the subject of a separate report to the same Ordinary Meeting of Council.

d. Risk Implications

Safety Risk: Risks to safety are mitigated by the current closure to vehicular traffic.

The road safety implications of the traffic expected to be generated by the adjacent residential subdivision are addressed in the *Traffic Impact Assessment* provided by the developer. This assessment suggests that demand for a bridge is not warranted until a significant no of residential lots are developed.

Reputation Risk: Risks to Council's reputation may be mitigated by considering the condition and expenditure on the bridge in light of the replacement required by the developer.

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Decisions should also achieve value for money, with appropriate facilities being provided to meet demand.

e. Environmental Implications

The *Traffic Impact Assessment* prepared by the developer seeks to assess and address the traffic impacts associated with the construction and traffic generated by the new land use.

f. Other Implications

Nil

CONCLUSION

The Council funds that are currently available for the replacement of Abbotsford Bridge allows for a like for like asset, being a one lane bridge.

The current consent for a nearby development requires the bridge to be upgraded to a two way traffic flow bridge, however the developer of the adjacent residential subdivision argues that the demand for a bridge is not warranted until a significant number of lots are developed.

Council officers are of the opinion that any upgrade to cater for future demand generated directly by new development, would appropriately be funded by developer contributions or works in kind and this would occur at an early stage of development, in accordance with the current conditions of consent.

As a result of recent movements in relation to the subject development, it is recommended that Council defer the replacement of Abbotsford Bridge pending the outcome of the planning and development control matters.

ENCLOSURES

There are no enclosures for this report

Works and Infrastructure

Report No. WI96/2018

Works and Infrastructure



SUBJECT: ***STORMWATER, WATERWAY AND FLOODPLAIN STRATEGY***

RESPONSIBLE OFFICER: ***Infrastructure Manager - Katrina Kerr***

SUMMARY

The purpose of this report to seek Council's endorsement to place the Draft Stormwater, Floodplain and Waterway Strategy on public exhibition for a period of six weeks, commencing in mid-January 2019.

RECOMMENDATION

- 1. That Council place the Draft Stormwater, Waterway and Floodplain Strategy on public exhibition for a period of six weeks, commencing in mid-January 2019.**
- 2. That at the end of the exhibition period, following consideration of submissions received, the final Stormwater, Waterway and Floodplain Strategy be reported to Council for adoption.**
- 3. That the General Manager respond to any submissions received.**

BACKGROUND

The purpose of the Draft Stormwater, Waterway and Floodplain Strategy (the Draft Strategy) is to provide a framework for the sustainable management of stormwater, waterways and floodplains across the Cessnock LGA.

Council's Revised Delivery Program 2013 - 2017 recognised the need for development of a strategy to manage Council's trunk stormwater system.

The Draft Strategy outlines a total water management approach to better manage Council's built and natural stormwater assets by setting guiding principles and proposing implementation actions. It identifies a range of issues affecting the local area floodplains and natural waterways, as well as connections to trunk drainage and kerb and gutter.

This report seeks Council's endorsement to place the Draft Strategy on public exhibition for a six week period, commencing in mid-January 2019.

REPORT/PROPOSAL

Within the framework of Commonwealth and State legislation and standards, Council has responsibility to manage portions of the water cycle within its Local Government Area (LGA).

While Hunter Water Corporation manages the water supply and some of the stormwater trunk drainage network, Council has functional responsibilities for constructed stormwater assets, floodplains and natural waterways within the LGA, along with obligations under various State Government legislation and policy.

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Core activities for management of stormwater include:

- Stormwater planning;
- Stormwater system management;
- Floodplain management; and
- Natural and modified waterways planning.

The aim of the Draft Strategy is to provide a framework for the planning and management of stormwater infrastructure, floodplain areas and waterway environments, with guiding principles to deliver natural and built assets that are fit for purpose and meet the community's service level expectations.

The Draft Strategy guiding principles are:

- Improve public safety and mitigate risk
- Protect waterway health and improve water quality
- Value stormwater as a resource that enhances community wellbeing and amenity
- Promote total water cycle management
- Be financially sustainable

The Draft Strategy outlines prioritised management actions as well as an Implementation Plan to ensure that maintenance, renewal and upgrade works are undertaken in accordance with the Strategy.

OPTIONS

Option 1 (Preferred):

- That Council place the Draft Stormwater, Waterway and Floodplain Strategy on public exhibition for a period of six weeks commencing mid-January 2019.
- That at the end of the exhibition period, following consideration of submissions received, the final Stormwater, Waterway and Floodplain Strategy be reported to Council for adoption.
- That the General Manager respond to any submissions received.

This is the preferred option as it provides opportunities to receive stakeholder feedback.

Option 2 (Not Preferred):

- That Council retain the status quo in respect to stormwater assets.

This is not the preferred option as environmental and financial performance are unlikely to be improved.

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CONSULTATION

Internal Consultation: Consultation has occurred with the following:

- Councillors at a Councillor Briefing on 28 November 2018
- Director Works and Infrastructure
- Strategic Land Use Planning Manager
- Development Services Manager
- Development Engineer
- Works & Operations Manager
- Maintenance Coordinators

External Consultation: Consultation has occurred with the following:

- Officers of Hunter Water Corporation
- Officers of Maitland City Council
- Officers of Singleton Council

STRATEGIC LINKS

a. Delivery Program

Delivery Program 2017-2021: The recommendation of this report aligns with:
Objective 3.1.10 Continue implementation of Council's Trunk Stormwater Drainage Strategy to protect and enhance the natural environment.

b. Other Plans

In relation to asset management of Council's stormwater assets:

- *Cessnock City Council Stormwater Network Asset Management Plan*
- *Cessnock City Council Asset Management Policy 2011*
- *Cessnock Engineering Requirements for Development 1994*

IMPLICATIONS

a. Policy and Procedural Implications

Relevant policies, plans and guidelines by external bodies identified in the Draft Strategy include:

- *BASIX 2004*
- *NSW Flood Prone Land Policy and Floodplain Development Manual 2005*
- *Right to Discharge Water*
- *Statewide Mutual Guidance Notes – Stormwater Infrastructure (2015)*
- *Australian Rainfall and Runoff 2016 (ARR2016)*
- *ANZECC Guidelines 2000*
- *Managing Urban Stormwater – Harvesting and Reuse 2006*
- *Managing Urban Stormwater – Soils and Construction 2004 (The Blue Book)*
- *Australian Runoff Quality*
- *Adoption Guidelines for Stormwater Biofiltration Systems*

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- *A Rehabilitation Manual for Urban Streams*

In relation to local planning:

- *Hunter Regional Plan 2036*
- *Cessnock 2027 Community Strategic Plan*

Relevant policies, plans and strategies by Council are also identified in the Draft Strategy including:

- *NSW Flood Prone Land Policy*
- *NSW Floodplain Development Manual 2005*
- *Cessnock City Council Flood Risk Management Policy 2017*
- *Draft Kerb and Gutter Strategy 2018*
- *Draft Improvements and Maintenance of Watercourse and drainage channels Policy 2018*
- *Draft Protection of Watercourses and Drainage Channels Policy 2018*

b. Financial Implications

The Draft Strategy provides a framework which will allow planning and budgeting for the recommended actions and implementation plan.

Importantly, the Draft Strategy sets out criteria for the assessment and ranking of maintenance, renewal and upgrade works to ensure that limited resources are wisely used to achieve the best value for money with appropriate outcomes.

c. Legislative Implications

Relevant legislation and statutes identified in the Draft Strategy include:

- *Water Management Act 2000*
- *Conveyancing Act 1919*
- *Local Government Act 1993*
- *Protection of the Environment Operations Act 1997*
- *Roads Act 1993*
- *Dams Safety Act 2015*
- *Conveyancing Act 1919 (Easements in Gross)*
- *Fisheries Management Act 1994 (Key Fish Habitats)*

Relevant planning instruments by Council are also identified in the Draft Strategy including:

- *Cessnock Local Environmental Plan 2011*
- *Cessnock Development Control Plan 2010*
 - *Chapter 9 Development on Flood Prone Land*

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d. Risk Implications

Safety Risks: The existing and future risk to human life and property arising from occupation of floodplains must be minimised. The Strategy seeks to minimise safety risk by prioritising the protection of human life, livestock and property.

e. Environmental Implications

The Draft Stormwater, Waterway and Floodplain Strategy ensures a range of environment protection remedies exist for water pollution such as clean-up notices and directions, prevention, prohibition and compliance under the Protection of the Environment Operations Act 1997 (POEO Act).

f. Other Implications

Nil

CONCLUSION

The Draft Stormwater, Waterway and Floodplain Strategy is an important step in Council's progress towards responsible environmental custodianship. The Strategy seeks to address the quadruple bottom line with exemplary guiding principles for the affordable management of constructed stormwater assets, floodplains and natural waterways within the LGA.

It is appropriate that the Strategy be exhibited publically for comment ahead of adoption and implementation by Council. The extended exhibition period of six weeks, commencing mid-January 2019 seeks to maximise community engagement following the Christmas holiday period.

ENCLOSURES

- 1 Stormwater, Waterway and Floodplain Strategy 2018 (provided under separate cover)

SUBJECT: *AIRVENTURE AUSTRALIA AIR SHOW EVENT - AUDITED
FINANCIAL STATEMENTS AND LONG TERM
SUSTAINABILITY OF EVENT*

RESPONSIBLE OFFICER: *Works and Operations Manager - Geoffrey Bent*

SUMMARY

This report is in response to Council resolution of 4 April 2018 (WI25/2018) relating to the 2018 Airventure Australia Air Show at Cessnock Airport. It provides information for Council's consideration pertaining to a request for audited financial statements for the event and the long term sustainability of future Airventure Australia air shows.

RECOMMENDATION

That Council assess future applications for air show events at Cessnock Airport on an individual basis.

BACKGROUND

At its meeting of 4 April 2018, Council considered report WI25/2018 – AirVenture Proposed Air Show and resolved as follows:

- 1. That Council supports the proposed AirVenture Australia event and allocate \$75,000 to the event, noting \$37,000 relates to ongoing support and \$38,000 is a once off cost for infrastructure associated with the camping site;**
- 2. That the General Manager negotiates suitable arrangements with respect to event promotion and liaison.**
- 3. That the General Manager discuss with the Management Team of AirVenture the promotion of the Hunter Valley Visitor Information Centre as the nominated booking agency for accommodation for the event.**
- 4. That Council, through the Strategic Property and Community Facilities Committee, investigate a plan to allow some of the works required to be permanent.**
- 5. That Council request audited accounts of the event be presented to Council within three months of the event being held.**
- 6. That the General Manager request from the event organisers a full financial plan of the event to be held in September and that this information be subject of a report to the Council.**
- 7. That a report after the September event be prepared for Council's consideration relating to the long term sustainability of the event.**

The information provided in this report relates to points 5 and 7 of the above resolution.

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REPORT/PROPOSAL

The AirVenture Australia Airshow took place at Cessnock Airport on 19, 20 and 21 September 2018. On 31 October 2018 Airventure Australia provided Council with a report on the event. A copy of this report is provided as **Confidential Attachment 1.**

The confidential report indicates that the Airventure Air Show attracted in excess of 2,400 visitors. While this figure is lower than expected, Airventure Australia deems the Cessnock event a success, highlighting the fact that total gate numbers grew on the previous year's event, which was hosted at an alternate venue.

Audited Accounts of the Event

In response to Council's resolution of 4 April 2018, Council officers sought from Airventure Australia a set of audited financial accounts for the event. Airventure Australia's response to Council's request is provided under the heading 'Event Financials' in the attached confidential report.

Council Officer Observations of the Event

The AirVenture Australia Air Show and Fly-in catered to the needs of the recreational aviation industry by providing a trade show style event with minimal activities for families and non-aviation enthusiasts.

Wet weather leading up to the event may have impacted on the final number of attendees, which was well below the expected 5,000 – 10,000 as originally anticipated by AirVenture Australia.

Event site

The Airport infrastructure adequately catered for the event, however, future Fly-in style events may be hindered by proposed the airport expansion and development as outlined in the Airport Strategic Plan.

Event Safety

There were no safety concerns during the event.

Event Communication

During the pre-event planning period, communication between AirVenture Australia, Airport Operators and Council representatives was at times difficult. Council officers found it challenging to obtain specific information from the event organisers within requested timeframes in order to assist with the preparation and implementation of in-kind works. Officers also found it difficult to get information to assist in resolving other event planning issues as they arose.

Airventure Australia provides an overview of some of the event issues from their perspective. These are documented in the attached confidential report. Council officers rebuke some of the comments provided in the attachment, pointing out that a large number of necessary

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agreements and approvals were only finalized in the week leading up to the event, including the appropriate NSW Police and Civil Aviation Safety Authority (CASA) approvals.

Furthermore, a number of issues relating to restrictions on airport operators were unable to be resolved amicably between AirVenture Australia and the Operators, which created ongoing tensions between the two parties. Council officers eventually intervened to achieve a compliant outcome.

Future Events at Cessnock

The capacity for Cessnock Airport to cater for similar Fly-in style events of this nature may be impacted by the implementation of the Airport Strategic Plan.

Coupled with this, Council's legal obligation to the existing airport tenants, due to existing leases and licences, is to provide 24/7 right of access/enjoyment to their hangars. The recent experience shows that events such as the Airventure Australia Airshow places pressure on the unrestricted operational activities of existing airport tenants. This highlights the need for substantial engagement and consultation with airport tenants prior to approving future airshow event proposals.

OPTIONS

1. That Council assess future applications for air show events at Cessnock Airport on an individual basis. This is the preferred option.
2. That Council Supports future AirVenture Air Shows to be held at Cessnock Airport.
3. That Council does not support future AirVenture Air Shows and that the General Manager advise AirVenture of Council's decision to not support the event in the future.

CONSULTATION

Works and Infrastructure Directorate
Planning and Environment Directorate
Corporate and Community Services Directorate

STRATEGIC LINKS

a. Delivery Program

The event Supports Objective 2.3 – Increasing Tourism Opportunities and Visitation in the area.

b. Other Plans

Cessnock Airport Strategic Plan

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IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

There are no financial implications to this report, with works and sponsorship for the event already covered by previous reports and resolutions of Council.

c. Legislative Implications

Nil

d. Risk Implications

Reputational risk due to potential negative community response to the event and / or minimal community benefit.

e. Environmental Implications

Nil

f. Other Implications

Nil

CONCLUSION

The Airventure Airshow that was held on 19, 20 and 21 September 2018 attracted in excess of 24,00 visitors to the area. While this figure is lower than expected, Airventure Australia deems the Cessnock event a success, highlighting the fact that total gate numbers grew on the previous year's event, which was hosted at an alternate venue.

Council officers sought from Airventure Australia a set of audited financial accounts for the event, in accordance with Council's resolution of 4 April 2018. Airventure Australia's response to Council's request is provided in the attached confidential report.

With regard to the long term sustainability of the event, Council officers have noted that the implementation of the Airport Strategic Plan may have an impact on Council's ability to host future Fly-in style events such as the Airventure Australia event. Coupled with this, these type of events place pressure on the unrestricted operational activities of existing airport tenants.

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In light of the above, it is recommended that Council assess future applications for similar events on an individual basis.

ENCLOSURES

- [1](#) AirVenture Letter to Council

Notices Of Motion

Report No. BN36/2018

General Manager's Unit



NOTICES OF MOTION No. BN36/2018

SUBJECT: ***DONATION***

COUNCILLOR: ***Ian Olsen***

MOTION

That Council donate to Diabetes Australia the cost of the attendance of my wife and I to the Councillors Christmas Party as I won't be in attendance.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 12 December 2018.

RATIONALE

Diabetes is a major problem in Australia and any money they can get goes towards finding ways to better control the illness. It is a life threatening illness which has no cure and means once you have it, you have it for life.

Sgd: Ian Olsen

Date: 27 November 2018

ENCLOSURES

There are no enclosures for this report

Notices Of Motion

Report No. BN37/2018

General Manager's Unit



NOTICES OF MOTION No. BN37/2018

SUBJECT: *COUNCIL MEETING SPEAKERS*

COUNCILLOR: *Ian Olsen*

MOTION

That Council amend its Code Of Meeting Practice, “*Part 7.8 Addressing Council*”, with time limit for speakers at a Council Meeting reverting back to five minutes with no extensions of time allowed.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 12 December 2018.

RATIONALE

Our policy used to be five minutes but was shortened to three minutes and we find most speakers need an extension of time. To solve this problem we should revert back to five minutes with no extensions of time.

Sgd: Ian Olsen

Date: 27 November 2018

ENCLOSURES

There are no enclosures for this report

Notices Of Motion

Report No. BN38/2018

General Manager's Unit



NOTICES OF MOTION No. BN38/2018

SUBJECT: SNAPE/VINCENT STREET CESSNOCK

COUNCILLOR: Ian Olsen

MOTION

That the Council Traffic Committee review the changes made to the traffic lanes at the intersection of Snape Street and Vincent Street Cessnock with the view to changing the lanes back to the original layout.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 12 December 2018.

RATIONALE

I have had so much negative feedback since the change and have seen so many near misses it seems logical to change back to a way that never had any accident problems.

Sgd: Ian Olsen

Date: 27 November 2018

ENCLOSURES

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ120/2018

General Manager's Unit



SUBJECT: *CHRISTMAS BANNERS*

RESPONSIBLE OFFICER: *Senior Media and Communication Officer - Annaleize Hambling*

Q120/2018 – Christmas Banners

Asked by Councillor Fitzgibbon at the Ordinary Meeting of Council held on 21 November 2018.

“why the Christmas banners were not put up when the Remembrance Day banners were removed?”

The Christmas banners are hung four weeks before Christmas every year by Council officers. This year the banners located on Vincent Street, Cessnock were hung on the 22 November. Due to high winds Council officers were forced to delay hanging the banners on Victoria Street, Kurri Kurri. The banners in Kurri Kurri were installed on 26 November.

ENCLOSURES

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ121/2018

Works and Infrastructure



SUBJECT: *CHRISTMAS LIGHTS AT MAITLAND RAILWAY STATION*

RESPONSIBLE OFFICER: *Open Space and Community Facilities Manager - Nicole Benson*

Q121/2018 – Christmas Lights at Maitland Railway Station

Asked by Councillor Fitzgibbon at the Ordinary Meeting of Council held on 21 November 2018.

“if council can ask Maitland Council for all the details on the beautiful lights hanging in the trees at the Railway Station?”

The lights hanging in the trees at Maitland Railway Station was the result of a partnership between Maitland Council, Samaritans and Maitland Station. It was funded through a Place Activation ‘My Place’ Grant.

ENCLOSURES

There are no enclosures for this report.

Answers To Questions For Next Meeting

Report No. AQ122/2018

Works and Infrastructure



SUBJECT: *CESSNOCK LGA SIGN - BUCHANAN*

RESPONSIBLE OFFICER: *Infrastructure Manager - Katrina Kerr*

Q122/2018 - Cessnock LGA Sign - Buchanan

Asked by Councillor Sander at the Ordinary Meeting of Council held on 21 November 2018.

“if a Cessnock Local Government Area entry sign can be placed on Buchanan Road at our boundary?”

The adopted *Cessnock LGA Signage Strategy* sets out Gateway Entry Signs on major road entries to the LGA, such as on classified roads and designated Tourist Routes.

Buchanan Road is not identified in the Strategy as a major road entry, however Council officers will arrange to install an Australian Standard black on white sign to signify the LGA boundary.

ENCLOSURES

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ123/2018

General Manager's Unit



SUBJECT: *COUNCILLORS CHRISTMAS FUNCTION*

RESPONSIBLE OFFICER: *General Manager - Stephen Glen*

Q123/2018 – Councillors Christmas Function

Asked by Councillor Olsen at the Ordinary Meeting of Council held on 21 November 2018.

“if his share of the funds to be spent at the Councillor Christmas Function could be donated to the Diabetes Australia?”

The Councillor Christmas function is funded from the civic expenses budget allocation, which is for all of Council and not based on an individual allocation for a Councillor. In order to provide a donation as requested a resolution of Council under Section 356 of the Local Government Act 1993 would be required.

ENCLOSURES

There are no enclosures for this report.

Answers To Questions For Next Meeting

Report No. AQ124/2018

Corporate and Community Services



SUBJECT: *RESERVES USAGE*

RESPONSIBLE OFFICER: *Finance and Administration Manager - Andrew Glauser*

Q124/2018 - Reserves Usage

Asked by Councillor Olsen at the Ordinary Meeting of Council held on 21 November 2018.

“a written explanation on where Council is getting the \$5m from the investments that Council have, where it is coming from and where it is showing the \$400,000 that has already been spent.”

The response is structured to address the key components of the question and where necessary expanded to address ancillary or related considerations.

- The temporary funding (or liquidity) requirement will be met with a combination of internal and external borrowing as per the resolution of Council. The funding for the two recently endorsed projects (funds not yet expended) will involve a total of \$4.8m and will be sourced from a pool of \$22m of internally restricted funds. There is considerable flexibility of how these projects can be funded and it will be more prudent to decide where funds will be sourced from closer to when funds are needed but in the knowledge Council has a range of viable options.
 - The mix of funding between internal and external sources and the reserves utilised (where internal funds are used) will be determined based on what is most optimal at the time of the borrowing, and will be based on liquidity considerations including which reserves that are most long lived and stable.
 - Council however also has the flexibility to swap between reserves if required. Therefore the understanding of our aggregate reserves position is more relevant than determining which specific reserve will funds be sourced.
 - The Council resolutions also provide flexibility to use internal funds initially and then use external funds if needed.
 - Council will be advised of the funding source once it is determined.
 - These two projects are expected to generate returns in excess of the initial funding requirement.
- Reporting via Annual Financial Statements and Quarterly Budget Reviews ensure that any borrowing against restricted funds are reported to ensure transparency of Council's obligations.
 - The \$400,000 already expended relates to Cemetery works that already have been undertaken. This was funded solely from unrestricted reserves. In effect there has not been any borrowing against any restricted funds. Repayments have been factored into the Operational budget which will effectively replenish Council's cash position.
 - Unlike external reserves, there is no legal obligation to maintain internal reserves, with internal reserves determined at Council's discretion based on appropriate policies (which can be amended at any time by Council). It is prudent to retain these reserves to address future commitments and some of

Answers To Questions For Next Meeting

Report No. AQ124/2018

Corporate and Community Services



the restrictions relate to requirements that will only manifest in the longer term. Consequently there is no legal obligation to repay any internal borrowing nor pay an “interest” component, with any such “repayment” decision is at the discretion of Council.

- To ensure transparency for the two future projects any internal borrowings against restricted funds will be reflected as part of Note 6 of Council’s Financial Statements. All external borrowings are also reflected in Council’s Financial Statements. Repayments will be factored in to Councils future Operational Budgets.

ENCLOSURES

There are no enclosures for this report

Answers To Questions For Next Meeting

Report No. AQ125/2018

Works and Infrastructure



SUBJECT: *BUSH REGENERATION GRANTS*

RESPONSIBLE OFFICER: *Environmental & Waste Services Manager - Michael Alexander*

Q125/2018 – Bush Regeneration Grants

Asked by Councillor Lyons at the Ordinary Meeting of Council held on 21 November 2018.

“if there are any Bush Regeneration Grants that Council can apply for?”

The NSW Environmental Trust’s Restoration and Rehabilitation annual grants program offers grants of up to \$100,000 to assist community and government organisations to contribute to the ongoing sustainable management and stewardship of significant environmental assets and services in NSW.

Applications for the current program closed on Monday 3 December.

It is noted that Council does not have bush regeneration as a direct activity in its Operational Plan, however Council has close working relationships with a number of community groups and funding opportunities are generally forwarded to these groups for consideration if it is identified that they have either current or planned projects suitable for the grant offer.

ENCLOSURES

There are no enclosures for this report.

Answers To Questions For Next Meeting

Report No. AQ126/2018

Works and Infrastructure



SUBJECT: *SANDSTONE KERB AND GUTTER AT BELLBIRD*

RESPONSIBLE OFFICER: *Infrastructure Manager - Katrina Kerr*

Q126/2018 – Sandstone Kerb and Gutter at Bellbird

Asked by Councillor Stapleford at the Ordinary Meeting of Council held on 21 November 2018.

“how much sandstone kerb and gutter there is at Bellbird and is it Heritage Listed?”

Council’s Asset Register currently lists 700m of sandstone kerb and gutter in the following streets in Bellbird:

- Cox Street,
- Crossing Street,
- Doyle street,
- Hetton Street,
- Kendal Street,
- Ruby Street, and
- Wollombi Road.

These historic features are not currently included in Council’s Local Environmental Plan 2011 as Heritage Items or in Heritage Conservation Areas.

ENCLOSURES

There are no enclosures for this report.