



Vincent Street
CESSNOCK 2325

25 March 2008

To All Councillors

You are hereby notified that the next Meeting of the Corporate and Regulatory Services Committee will be held in the Council Chambers, on Wednesday, 2 April 2008 immediately following the conclusion of the Strategic and Community Services Committee Meeting, for the purpose of transacting the undermentioned business.

**B R MORTOMORE
GENERAL MANAGER**

AGENDA:

PAGE NO.

(1) APOLOGIES.

(2) CONFIRMATION OF MINUTES.

Minutes of the Corporate and Regulatory Services Committee
Meeting held on 19 March 2008

(3) OFFICERS' REPORTS

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES

18/2008	8/2007/545/1 - 482 Wilderness Road, Rothbury	2
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20/2008	Council Contributions to Local Government Superannuation Scheme 2008/9	16
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(4) QUESTIONS WITHOUT NOTICE.

OFFICER'S REPORTS

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 18/2008

DEVELOPMENT APPLICATION NO: 8/2007/545/1
APPLICANT: MR H J STERNBECK
OWNER: ROMALTO HOLDING P/L AND ROMEO HOLDINGS P/L
PROPERTY: LOT 2 DP 239505 482 WILDERNESS ROAD ROTHBURY
AREA: 10.4 HECTARES
ZONING: 1(V) - RURAL (VINEYARDS) ZONE
PROPOSAL: NEW DWELLING

Senior Planning Assessment Officer, Mr R J Sandell, reports:-

SUMMARY:

Application has been received for the erection of a dwelling on the subject land. The land is below the minimum lot size of forty (40) hectares for the erection of a dwelling in the Rural (Vineyards) zone and forms only part of an existing holding. The applicant has therefore submitted an objection to the forty (40) hectare development standard contained within Clause 16 (1) (a) of the Cessnock LEP 1989 under the provisions of State Environmental Planning Policy No. 1 – Development Standards. The applicant's objection to the development standard is not considered to be well founded and the Department of Planning has advised that the Director-General has declined to grant concurrence to the application. The application is therefore recommended for refusal.

PROPOSAL:

The applicant has sought approval for the erection of a dwelling house on the subject land which is below the minimum lot size for a dwelling within the Rural (Vineyards) zone. The applicant has also sought approval for a dwelling on the adjoining lot (Lot 3) on which a separate but similar report has been completed for consideration by Council.

The proposal involves the erection of a single storey, four (4) bedroom brick and tile residence towards the rear of the lot. Physical and legal access is available to the lot directly from Wilderness Road. Access to the proposed dwelling is intended adjacent the western boundary of the site.

The applicant has argued that *"the site will allow for suitable rural residential development that will support the commercial vineyard on site"*.

In support of the application the applicant has submitted an objection to the provisions of the Cessnock LEP, 1989 under SEPP No. 1 which will be considered in detail below.

BACKGROUND:

The "existing holding" related to the subject land consists of Lots 1 - 3 in DP 239505 having a total area of approximately 30 hectares and being located alongside one another.

Lot 1 DP 239505 contains an existing dwelling approved on 7th September 1979 under Development Application No. 118/679/79 while Lots 2 and 3 are vacant.

SITE DESCRIPTION:

The subject land is located on the northern side of Wilderness Road approximately 720 metres to the west of its intersection with Wine Country Drive. The lot is a rectangular shaped lot with a 201.2 metre frontage to Wilderness Road an average depth of 689 metres and tapering to a rear boundary of 97.5 metres and an overall area of 10.40 hectares. The only services available to the site are electricity and telephone services. The land is relatively flat and has previously been cleared of native vegetation. It currently contains a commercial vineyard that occupies a large portion of the site but contains no buildings or other structures. The land has been identified as Class 3 prime crop and pasture land by the NSW Department of Primary Industries (formerly NSW Department of Agriculture).

STATUTORY SITUATION (S79C.a):

The subject site is zoned 1(v) - Rural (Vineyards) zone and the application for the erection of a dwelling house on Lot 2 does not comply with the provisions of Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended. The provision states that land zoned 1(v) – Rural (Vineyards) cannot be built upon if the lot has an area of not less than forty (40) hectares or the land is not the whole of an “existing holding”. In this instance the subject land is only 10 hectares in area and is only part of an “existing holding”. Consequently Council has no power to approve the application based solely on the provisions of the Cessnock LEP.

The applicant has therefore sought a variation to the provisions of Clause 16 (1) (a) of the Cessnock LEP 1989 by way of an objection to the forty (40) hectare development standard pursuant to the provisions of State Environmental Planning Policy No. 1.

SEPP NO. 1 OBJECTION:

The applicant has submitted a detailed objection pursuant to SEPP No. 1 to the provisions of Clause 16 of the Cessnock LEP, 1989. The applicant’s principle argument is that the erection of a dwelling house on Lots 2 and 3 will not prevent through alienation, fragmentation, degradation or sterilisation the continued use of these lands for viticultural purposes.

Further, the applicant argues that the proposal is consistent with the zone objectives and the unstated objective of the 40 hectare development standard to limit the fragmentation of rural land and the number of rural dwellings erected throughout the City. In this regard the applicant states that *“the granting of concurrence to this development applicationwould not lead to other development applications which, if approved, would cumulatively undermine the planning objectives for the locality. The circumstances relating to the subject land are unique as they are the only remaining existing lots in the locality which do not currently have dwelling houses erected on them”*.

The applicant has further stated that approval of the applications *“will not lead to similar applications which through cumulative effect change the character and pattern of land use in the subject locality or the City generally.”*

It is argued that the proposal is consistent with the objects of the EP & A Act, 1979 and is consistent with the objectives and principles of the Hunter Regional Plan 1989 with respect to rural land.

The applicant has also made an assessment of the proposal having regard to the provisions of Draft State Environmental Planning Policy (Application of Development Standards) 2004.

PLANNING COMMENT ON SEPP NO. 1 OBJECTION

The applicant's principle argument that the erection of a dwelling house on Lots 2 and 3 will not prevent through alienation, fragmentation, degradation or sterilisation the continued use of these lands for viticultural purposes is not accepted. The existing holding comprised three (3) lots on which one dwelling house was erected (on Lot 1). The remainder of the land was developed as vineyard.

The present proposal is for additional dwellings on Lot 2 and Lot 3 thereby reducing the potential for a viable and sustainable agricultural activity on the site and increasing the potential for conflict between landowners. The NSW Department of Primary Industries commenting on the proposal state, "*the potential for such risks increases in direct proportion to the number of dwellings and resident landowners, and can increase even further when land ownership changes; the expectations of new owners are often quite different to those of the initial developer or owner.*"

The juxtaposition of viticultural operations with adjoining residential lifestyle lots also increases the cost of contacting and liaising with neighbours about routine farm activities such as weed or pest control. The lack of a buffer area between the established vines and the property boundary also increases the scope for differences in expectations and land use to result in restrictions on operating hours or procedures. There may also be conflict between practices used to manage pests and diseases on the existing vines on Lot 2 and Lot 3. Construction of this dwelling may also lead to restrictions on future development opportunities for currently vacant land adjoining to the north."

The applicant's argument that the subject lots are unique as they are the only remaining existing lots in the locality which do not currently have dwellings on them is also refuted. A brief search of Council's records indicates that Lot 1 DP 70349 within 1 kilometre from the subject land represents only part of an existing holding and has no dwelling erected upon it. This is one example only and a more extensive search would reveal numerous similar circumstances.

To also suggest that approval of the present applications would not lead to similar applications within the City area is incorrect and highlights a lack of knowledge of the history of rural planning issues within the Cessnock Local Government area. It is concluded that there has not been an adequate justification of the applicant's contention in support of the application in this regard.

Further, the proposal is not considered to be consistent with the objects of the EP & A Act, 1979:-

- a) *to encourage:*
 - i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for promoting the social and economic welfare of the community and a better environment;*
 - ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

The proposal does not encourage the conservation of agricultural land but rather has the potential to fragment and degrade such land and lead to its use in an unco-ordinated and uneconomic manner.

The applicant has also argued that the provisions of Draft State Environmental Planning Policy (Application of Development Standards) 2004, if made, would apply to the proposed development. However, Clause 8(2) of the Policy states that a development application cannot be made under the policy on land described as rural land where the development is permissible under another planning instrument ie Cessnock LEP 1989 and where the lot is less than 90% of the minimum area specified for the lot by a development standard. In this instance the land area is only 25% of the permitted land area within the zone and represents a major departure from the development standard.

It is concluded that the grounds of objection stated by the applicant are not well founded nor do they demonstrate sound reasons why strict adherence to the development standard is unreasonable or unnecessary in the circumstances of this case.

RELEVANT ISSUES (S79c(b)(c)&(e)):

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

a) The Provisions of any Environmental Planning Instrument

Cessnock Local Environmental Plan

The objectives of the 1(v) - Rural (Vineyards) Zone are:-

- i) to maintain prime viticultural land and enhance the economic and ecological ;
- ii) to ensure that potentially productive land is not withdrawn from production;
- iii) to encourage new forms of agricultural land use;
- iv) to enable other forms of development which are associated with rural activity and which require an isolated location, or which support tourism and recreation; and
- v) 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 of the land;
 - the rural environment (including scenic resources); and
 - the costs of providing public services and amenities.

In relation to the objectives of the 1(v) Rural (Vineyards) zone it is considered that the proposal is:

- a) contrary to objective i) as the potential to fragment the ownership of the parcels of land being considered may impact on the potential for sustainable use of the agricultural resources of the site through the potential for increased conflict
- b) contrary to objective ii) as the potential for a change in ownership and increased potential for conflict between owners also has the potential to lead to land being withdrawn from production
- c) inconsistent with clause (v) as it will adversely impact upon the intensity of development within the locality, the rural capability and suitability of the land for such intensive activity and the rural environment in general. The intensity of development is also inappropriate as it will have the potential to increase the costs of providing public services and amenities to the locality.

The proposal is also inconsistent with Part 3 – Special Provisions of the Local Environmental Plan (Clause 10) which refers to general development principles Council shall have regard to when considering any application for consent to carry out development in the 1(v) - Rural (Vineyards) zone.

These are:-

- i) adequate utility services and community facilities should be available to the land and its future occupants and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire fighting capacity
- ii) development should not have the effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority.

Hunter Regional Environmental Plan, 1989.

The objectives of the HREP in relation to rural land strategies are:-

- a) to protect prime crop and pasture land from alienation, fragmentation, degradation and sterilisation;
- b) to provide for changing agricultural practices; and
- c) to allow for the development of small rural holdings and multiple occupancy on land capable of such developments in appropriate locations.

As stated above it is considered that the proposal to allow the erection of a dwelling house on each of the lots will lead to the fragmentation and degradation of prime crop and pasture land and this view is supported by the NSW Department of Primary Industries.

Furthermore, the development of smaller rural holdings has not been encouraged in the locality due to the aim of preserving larger holdings for viticulture as the priority land use. Clause 27 of the Hunter REP requires Council to refer applications for development to NSW Department of Primary Industries where the land is prime crop and pasture land. The subject land is Class 3 prime crop and pasture land and the Department has provided its advice to Council on a strategic planning level as well as specifically relating to the agricultural potential of the land (see comments above).

On the strategic planning level the Department states, "the SEE acknowledges that the application is intended to provide a rural lifestyle living opportunity. Providing rural residential and rural lifestyle options is contrary to the protection of development opportunities for productive primary industries, the protection of natural resources and sustainable agriculture. Such development options are also more sustainably and appropriately provided for in separate small holding and rural residential zones.

Use of SEPP 1 would be contrary to current guidelines in that it would clearly substitute for alternative more strategic approaches based on comprehensive assessment of the characteristics of the area, the wider provision of services (not just infrastructure), the protection of natural resources including water quality and preferred/priority location for such rural lifestyle development.

The proposed application would also appear to create precedent in that the justification for permitting a dwelling on a substandard lot includes:

- *previous ad hoc approvals for small lot residential development within this zone*
- *unsubstantiated assurances that the resources of this site will not be compromised by the construction of a new dwelling.*

The proposed development is therefore considered inconsistent with the objectives of the Hunter Regional Plan 1989 with respect to rural land.

b) The Provisions of any Development Control Plan

Cessnock Development Control Plan 2006

Part E – Chapter E.3 – Vineyards District is relevant to the proposal as it contains guidelines for the siting and design of development, density, setbacks and chemical spray drift controls within the Vineyards district zone. The DCP requires a minimum 100m setback (or 80m with an approved vegetation buffer) from an adjoining property with an existing or approved vineyard and 50m where no vineyard exists.

The proposed dwelling is setback 72m from the western boundary where no vineyard exists and only 20m to the eastern boundary where a vineyard exists. The location of the proposed dwelling therefore does not comply with the provisions of the Vineyards District DCP and its approval has the potential to further restrict any future expansion of vineyards on Lot 3 to the east.

CONCLUSION:

The applicant's objection to the provisions of Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended, represents a major departure from the forty (40) hectare development standard. It is not well founded nor does it provide sound reasons as to why strict adherence to the development standard is unreasonable or unnecessary in the circumstances of this case. The proposal is inconsistent with the objectives of the Rural 1 (a) zone and if supported would lead to the creation of an undesirable precedent for similar applications in the locality and in the Local Government area in general.

The application has been referred to the Department of Planning to seek the concurrence of the Director General to the variation of the standard. Advice now received from the Department of Planning that the director-general has declined to grant concurrence to the application.

RECOMMENDATION that the applicant's objection pursuant to Clause 6 of State Environmental Planning Policy No. 1 to the forty (40) hectare development standard contained within Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended, be not supported and the application for the erection of a dwelling house on Lot 2 DP 239505, 482 Wilderness Road Rothbury be refused for the following reasons:-

1. The proposed development does not comply with Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended.
2. The proposed development is inconsistent with the objectives of the 1(a) Rural 'A' zone.
3. The proposed development is inconsistent with the general development principles set down in Clause 10 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended.
4. The proposed development is inconsistent with the objectives of the Hunter Regional Environmental Plan, 1989.
5. The proposed development does not comply with the provisions of the Cessnock Development Control Plan 2006 (Part E – Chapter E.3 – Vineyard District) in relation to setbacks from adjoining properties.

6. The proposed development would create an undesirable precedent for similar approvals, the cumulative effect of which would be to create a demand not only for Council's services but the services of other authorities which would result in the unorderly, uncoordinated and uneconomic development of land within Council's rural; areas.
7. Having regard to the circumstances of the case it is considered that an approval of the application would not be in the public interest.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 2 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
5 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 19/2008**

DEVELOPMENT APPLICATION NO: 8/2007/547/1
APPLICANT: MR H J STERNBECK
OWNER: ROMALTO HOLDINGS P/L AND ROMEO HOLDINGS P/L
PROPERTY: LOT 3 DP 239505 444 WILDERNESS ROAD ROTHBURY
AREA: 11.35 HECTARES
ZONING: 1(V) - RURAL (VINEYARDS) ZONE
PROPOSAL: NEW DWELLING

Senior Planning Assessment Officer, Mr R J Sandell, reports:-

SUMMARY:

Application has been received for the erection of a dwelling on the subject land. The land is below the minimum lot size of forty (40) hectares for the erection of a dwelling in the Rural (Vineyards) zone and forms only part of an existing holding. The applicant has therefore submitted an objection to the forty (40) hectare development standard contained within Clause 16 (1) (a) of the Cessnock LEP 1989 under the provisions of State Environmental Planning Policy No. 1 – Development Standards. The applicant's objection to the development standard is not considered to be well founded and the Department of Planning has advised that the Director-General has declined to grant concurrence to the application. The application is therefore recommended for refusal.

PROPOSAL:

The applicant has sought approval for the erection of a dwelling house on the subject land which is below the minimum lot size for a dwelling within the Rural 1(v) (Vineyards) zone. The applicant has also sought approval for a dwelling on the adjoining lot (Lot 2) on which a separate but similar report has been completed for consideration by Council.

The proposal involves the erection of a single storey, four (4) bedroom brick and tile residence towards the rear of the lot. Physical and legal access is available to the lot directly from Wilderness Road. Access to the proposed dwelling is intended adjacent the western boundary of the site.

The applicant has argued that *"the site will allow for suitable rural residential development that will support the commercial vineyard on site"*.

In support of the application the applicant has submitted an objection to the provisions of the Cessnock LEP, 1989 under SEPP No. 1 which will be considered in detail below.

BACKGROUND:

The "existing holding" related to the subject land consists of Lots 1 - 3 in DP 239505 having a total area of approximately 30 hectares and being located alongside one another.

Lot 1 DP 239505 contains an existing dwelling approved on 7 September 1979 under Development Application No. 118/679/79 while Lots 2 and 3 are vacant.

SITE DESCRIPTION:

The subject land is located on the northern side of Wilderness Road approximately 930 metres to the west of its intersection with Wine Country Drive. The lot is a rectangular shaped lot with a 201.2 metre frontage to Wilderness Road an average depth of 742 metres and tapering to a rear boundary of 91.4 metres and an overall area of 11.35 hectares. The only services available to the site are electricity and telephone services. The land is relatively flat and has previously been cleared of native vegetation. It currently contains a commercial vineyard on the front portion of the site and a large dam towards the rear of the site. An existing shed has been erected near the dam. The land has been identified as Class 3 prime crop and pasture land by the NSW Department of Primary Industries (formerly NSW Department of Agriculture).

STATUTORY SITUATION (S79C.a):

The subject site is zoned 1(v) - Rural (Vineyards) zone and the application for the erection of a dwelling house on Lot 2 does not comply with the provisions of Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended. The provision states that land zoned 1(v) – Rural (Vineyards) cannot be built upon if the lot has an area of not less than forty (40) hectares or the land is not the whole of an “existing holding”. In this instance the subject land is only 11.35 hectares in area and is only part of an “existing holding”. Consequently Council has no power to approve the application based solely on the provisions of the Cessnock LEP.

The applicant has therefore sought a variation to the provisions of Clause 16 (1) (a) of the Cessnock LEP 1989 by way of an objection to the forty (40) hectare development standard pursuant to the provisions of State Environmental Planning Policy No. 1.

SEPP NO. 1 OBJECTION:

The applicant has submitted a detailed objection pursuant to SEPP No. 1 to the provisions of Clause 16 of the Cessnock LEP, 1989. The applicant’s principle argument is that the erection of a dwelling house on adjoining Lot 2 and subject Lot 3 will not prevent through alienation, fragmentation, degradation or sterilisation the continued use of these lands for viticultural purposes.

Further, the applicant argues that the proposal is consistent with the zone objectives and the unstated objective of the 40 hectare development standard to limit the fragmentation of rural land and the number of rural dwellings erected throughout the City. In this regard the applicant states that *“the granting of concurrence to this development applicationwould not lead to other development applications which, if approved, would cumulatively undermine the planning objectives for the locality. The circumstances relating to the subject land are unique as they are the only remaining existing lots in the locality which do not currently have dwelling houses erected on them”*.

The applicant has further stated that approval of the applications *“will not lead to similar applications which through cumulative effect change the character and pattern of land use in the subject locality or the City generally.”*

It is argued that the proposal is consistent with the objects of the EP & A Act, 1979 and is consistent with the objectives and principles of the Hunter Regional Plan 1989 with respect to rural land.

The applicant has also made an assessment of the proposal having regard to the provisions of Draft State Environmental Planning Policy (Application of Development Standards) 2004.

PLANNING COMMENT ON SEPP NO. 1 OBJECTION

The applicant's principle argument that the erection of a dwelling house on Lots 2 and 3 will not prevent through alienation, fragmentation, degradation or sterilisation the continued use of these lands for viticultural purposes is not accepted. The existing holding comprised three (3) lots on which one dwelling house was erected (on Lot 1). The remainder of the land was developed as vineyard.

The present proposal is for additional dwellings on Lot 2 and Lot 3 thereby reducing the potential for a viable and sustainable agricultural activity on the site and increasing the potential for conflict between landowners. The NSW Department of Primary Industries commenting on the proposal state, "*the potential for such risks increases in direct proportion to the number of dwellings and resident landowners, and can increase even further when land ownership changes; the expectations of new owners are often quite different to those of the initial developer or owner.*"

The juxtaposition of viticultural operations with adjoining residential lifestyle lots also increases the cost of contacting and liaising with neighbours about routine farm activities such as weed or pest control. The lack of a buffer area between the established vines and the property boundary also increases the scope for differences in expectations and land use to result in restrictions on operating hours or procedures. There may also be conflict between practices used to manage pests and diseases on the existing vines on Lot 2 and Lot 3. Construction of this dwelling may also lead to restrictions on future development opportunities for currently vacant land adjoining to the north."

The applicant's argument that the subject lots are unique as they are the only remaining existing lots in the locality which do not currently have dwellings on them is also refuted. A brief search of Council's records indicates that Lot 1 DP 70349 within 1 kilometre from the subject land represents only part of an existing holding and has no dwelling erected upon it. This is one example only and a more extensive search would reveal numerous similar circumstances.

To also suggest that approval of the present applications would not lead to similar applications within the City area is incorrect and highlights a lack of knowledge of the history of rural planning issues within the Cessnock Local Government area. It is concluded that there has not been an adequate justification of the applicant's contention in support of the application in this regard.

Further, the proposal is not considered to be consistent with the objects of the EP & A Act, 1979:-

- b) *to encourage:*
 - i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for promoting the social and economic welfare of the community and a better environment;*
 - ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

The proposal does not encourage the conservation of agricultural land but rather has the potential to fragment and degrade such land and lead to its use in an unco-ordinated and uneconomic manner.

The applicant has also argued that the provisions of Draft State Environmental Planning Policy (Application of Development Standards) 2004, if made, would apply to the proposed development. However, Clause 8(2) of the Policy states that a development application cannot be made under the policy on land described as rural land where the development is permissible under another planning instrument ie Cessnock LEP 1989 and where the lot is less than 90% of the minimum area specified for the lot by a development standard. In this instance the land area is only approximately 26% of the permitted land area within the zone and represents a major departure from the development standard.

It is concluded that the grounds of objection stated by the applicant are not well founded nor do they demonstrate sound reasons why strict adherence to the development standard is unreasonable or unnecessary in the circumstances of this case.

RELEVANT ISSUES (S79c(b)(c)&(e)):

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

a) The Provisions of any Environmental Planning Instrument

Cessnock Local Environmental Plan

The objectives of the 1(v) - Rural (Vineyards) Zone are:-

- i) to maintain prime viticultural land and enhance the economic and ecological ;
- ii) to ensure that potentially productive land is not withdrawn from production;
- iii) to encourage new forms of agricultural land use;
- iv) to enable other forms of development which are associated with rural activity and which require an isolated location, or which support tourism and recreation; and
- v) 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 of the land;
 - the rural environment (including scenic resources); and
 - the costs of providing public services and amenities.

In relation to the objectives of the 1(v) Rural (Vineyards) zone it is considered that the proposal is:

- d) contrary to objective i) as the potential to fragment the ownership of the parcels of land being considered may impact on the potential for sustainable use of the agricultural resources of the site through the potential for increased conflict
- e) contrary to objective ii) as the potential for a change in ownership and increased potential for conflict between owners also has the potential to lead to land being withdrawn from production

- f) inconsistent with clause (v) as it will adversely impact upon the intensity of development within the locality, the rural capability and suitability of the land for such intensive activity and the rural environment in general. The intensity of development is also inappropriate as it will have the potential to increase the costs of providing public services and amenities to the locality.

The proposal is also inconsistent with Part 3 – Special Provisions of the Local Environmental Plan (Clause 10) which refers to general development principles Council shall have regard to when considering any application for consent to carry out development in the 1(v) - Rural (Vineyards) zone.

These are:-

- i) adequate utility services and community facilities should be available to the land and its future occupants and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire fighting capacity
- ii) development should not have the effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority.

Hunter Regional Environmental Plan, 1989.

The objectives of the HREP in relation to rural land strategies are:-

- d) to protect prime crop and pasture land from alienation, fragmentation, degradation and sterilisation;
- e) to provide for changing agricultural practices; and
- f) to allow for the development of small rural holdings and multiple occupancy on land capable of such developments in appropriate locations.

As stated above it is considered that the proposal to allow the erection of a dwelling house on each of the lots will lead to the fragmentation and degradation of prime crop and pasture land and this view is supported by the NSW Department of Primary Industries.

Furthermore, the development of smaller rural holdings has not been encouraged in the locality due to the aim of preserving larger holdings for viticulture as the priority land use. Clause 27 of the Hunter REP requires Council to refer applications for development to NSW Department of Primary Industries where the land is prime crop and pasture land. The subject land is Class 3 prime crop and pasture land and the Department has provided its advice to Council on a strategic planning level as well as specifically relating to the agricultural potential of the land (see comments above).

On the strategic planning level the Department states, *"the SEE acknowledges that the application is intended to provide a rural lifestyle living opportunity. Providing rural residential and rural lifestyle options is contrary to the protection of development opportunities for productive primary industries, the protection of natural resources and sustainable agriculture. Such development options are also more sustainably and appropriately provided for in separate small holding and rural residential zones.*

Use of SEPP 1 would be contrary to current guidelines in that it would clearly substitute for alternative more strategic approaches based on comprehensive assessment of the characteristics of the area, the wider provision of services (not just infrastructure), the protection of natural resources including water quality and preferred/priority location for such rural lifestyle development.

The proposed application would also appear to create precedent in that the justification for permitting a dwelling on a substandard lot includes:

- previous ad hoc approvals for small lot residential development within this zone*
- unsubstantiated assurances that the resources of this site will not be compromised by the construction of a new dwelling.*

The proposed development is therefore considered inconsistent with the objectives of the Hunter Regional Plan 1989 with respect to rural land.

b) The Provisions of any Development Control Plan

Cessnock Development Control Plan 2006

Part E – Chapter E.3 – Vineyards District is relevant to the proposal as it contains guidelines for the siting and design of development, density, setbacks and chemical spray drift controls within the Vineyards district zone. The DCP requires a minimum 100m setback (or 80m with an approved vegetation buffer) from an adjoining property with an existing or approved vineyard and 50m where no vineyard exists.

The proposed dwelling is setback 64m from the western boundary where a vineyard presently exists and 50m to the eastern boundary where a vineyard exists (on Lot 4 which contains a vineyard over 100m from the proposed dwelling). The location of the proposed dwelling therefore does not comply with the provisions of the Vineyards District DCP.

CONCLUSION:

The applicant's objection to the provisions of Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended, represents a major departure from the development standard. It is not well founded nor does it provide sound reasons as to why strict adherence to the development standard is unreasonable or unnecessary in the circumstances of this case. The proposal is inconsistent with the objectives of the Rural 1 (a) zone and if supported would lead to the creation of an undesirable precedent for similar applications in the locality and in the Local Government area in general.

The application has been referred to the Department of Planning to seek the concurrence of the Director-General to the variation of the standard. Advice has now been received from the Department that the Director-General has declined to grant concurrence to the application.

RECOMMENDATION that the applicant's objection pursuant to Clause 6 of State Environmental Planning Policy No. 1 to the forty (40) hectare development standard contained within Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended, be not supported and the application for the erection of a dwelling house on Lot 3 DP 239505, 444 Wilderness Road Rothbury be refused for the following reasons:-

1. The proposed development does not comply with Clause 16 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended.
2. The proposed development is inconsistent with the objectives of the 1(a) Rural 'A' zone.
3. The proposed development is inconsistent with the general development principles set down in Clause 10 (1) (a) of the Cessnock Local Environmental Plan, 1989, as amended.
4. The proposed development is inconsistent with the objectives of the Hunter Regional Environmental Plan, 1989.
5. The proposed development does not comply with the provisions of the Cessnock Development Control Plan 2006 (Part E – Chapter E.3 – Vineyard District) in relation to setbacks from adjoining properties.
6. The proposed development would create an undesirable precedent for similar approvals, the cumulative effect of which would be to create a demand not only for Council's services but the services of other authorities which would result in the unorderly, uncoordinated and uneconomic development of land within Council's rural; areas.
7. Having regard to the circumstances of the case it is considered that an approval of the application would not be in the public interest.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 2 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
5 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 20/2008**

**SUBJECT: COUNCIL CONTRIBUTIONS TO THE LOCAL GOVERNMENT
SUPERANNUATION SCHEME 2008/9**

Management Accountant, Mr P Grosbernd, reports:-

Council has received notification from the Local Government Superannuation Scheme advising that Councils are required to contribute the full "notional" rate for the period 1 July 2008 to 30 June 2009.

For the years 2001/2 to 2004/5, the Superannuation Scheme funded the full "notional" contribution from its surpluses saving Council approx \$700,000pa. For the years 2005/6 to 2007/8, the Superannuation Scheme funded 50% of the notional contribution saving Council approx \$325,000pa. Council is now required to pay the full contribution in 2008/9 (refer to copy of letter received from Local Government Superannuation Scheme in the enclosure documents).

The savings generated in previous years have been used to supplement the Gravel Rehabilitation/Resheeting Program, Cessnock Library refurbishments and transfers to the Special Projects Reserve.

The 2008/09 Draft Budget will now include the increased contributions of \$325,000. Also due to growth in salaries and wages over the last year and employees electing to contribute more to superannuation, the superannuation expense is expected to increase by an additional \$64,000.

Therefore a total of \$389,000 additional superannuation expense will be funded as part of the Budget process.

RECOMMENDATION that the information be noted

To: **The General Manager**
Corporate & Regulatory Services
Committee - 2 April 2008

D FITZGERALD
**ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES**
25 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 21/2008**

DEVELOPMENT APPLICATION NO: 8/2008/38/1
APPLICANT: RED FLOOR PRODUCTIONS
OWNERS: RACESUN PTY LTD, B. BARNES, I. BAWDEN
CESSNOCK COUNCIL
PROPERTY: LOT 1 DP 198636 2982 PAYNES CROSSING
RD, WOLLOMBI
LOTS 1 & 2 SEC 7 DP 759103 2988 PAYNES
CROSSING RD, WOLLOMBI
LOTS 1,2 3, 6 & 7 SEC 1A DP 759103 2992
PAYNES CROSSING RD, WOLLOMBI
LOTS 4 & 5 SEC 20 DP 759103 3006 PAYNES
CROSSING RD, WOLLOMBI
LOTS 2 & 3 SEC 4 DP 759103 2951 PAYNES
CROSSING RD, WOLLOMBI
LOTS 1 - 5 SEC 13 DP 759103 0 CANNING ST,
WOLLOMBI
LOTS 1 - 6 SEC 12 DP 759103 0 CANNING ST,
WOLLOMBI
LOT 102 DP 755219 66 CHRISTINA ST,
WOLLOMBI
AREA: APPROX. 31.9 HA
ZONING: 2(B) VILLAGE & 1(A) RURAL
PROPOSAL: THREE (3) DAY TEMPORARY EVENT – “THE
GUM BALL” MUSIC FESTIVAL

Council's Acting Planning Services Co-ordinator, Kerry Porter, reports:-

SUMMARY

Council's consent is sought for a three (3) day temporary event (The Gum Ball), being held at various locations throughout Wollombi with the main activities occurring on the Wollombi Tavern site. A maximum of 2000 people are expected to attend the event over the course of the three (3) days.

The event is to be held on the following dates and times:

- Friday, April 11, 2008 (5.00pm to 12.00am)
- Saturday, April 12, 2008 (10.00am to 2.00am)
- Sunday, April 13, 2008 (11.00am to 4.00pm)

A total of twenty-seven (27) submissions were received during the exhibition period with the majority objecting to the proposal.

The proposed use is permissible with consent. However, the proposal does not comply with the requirements of Clause 33 of the Cessnock Local Environmental Plan (CLEP) 1989 and the provisions of Cessnock Development Control Plan (CDCP) 2006 in that the proposed event will adversely impact on the residential neighbourhood and township of Wollombi.

It is recommended that the application be refused.

BACKGROUND

The “Gum Ball” has been marketed as an annual outdoor music, art and cultural event supporting people of all ages and artistic tastes. The event has been running since 2005 and is set for its fourth season as a medium scale public event of around 1500 to 2000 people.

Previously the “Gum Ball” has been held twice at James Estate, Pokolbin and prior to this, it had its introduction as a public music event for 1000 people at Belford.

The event is mainly targeted to the 18-25 year age group. Demographics from the previous events give the following age group breakdown:

- 0-17 14%
- 18-25 42%
- 26-35 33%
- 36-50+ 11%

PROPOSAL

The main event is to be held on the land occupied by the Wollombi Tavern, and will comprise three (3) music stages (located on the land behind the Tavern building). There will also be a small children’s festival, food stalls and general arts stalls.

The event has been promoted as offering 30 hours of music over the three (3) days (country, rock, roots & blues) with approximately twenty-eight (28) different bands/artists performing over the weekend.

Camping has also been proposed as part of the event in two (2) locations away from the tavern site. The camping sites are depicted on the site plan included in the Enclosures.

Parking for the event will be along Negro Street and Paynes Crossing Road. There are also an additional three sites located throughout Wollombi proposed for parking associated with the event. Two of these sites will also provide camping facilities, with the third site (owned by Council) proposed for parking only. Portable shower and toilet facilities are also to be provided at the various locations.

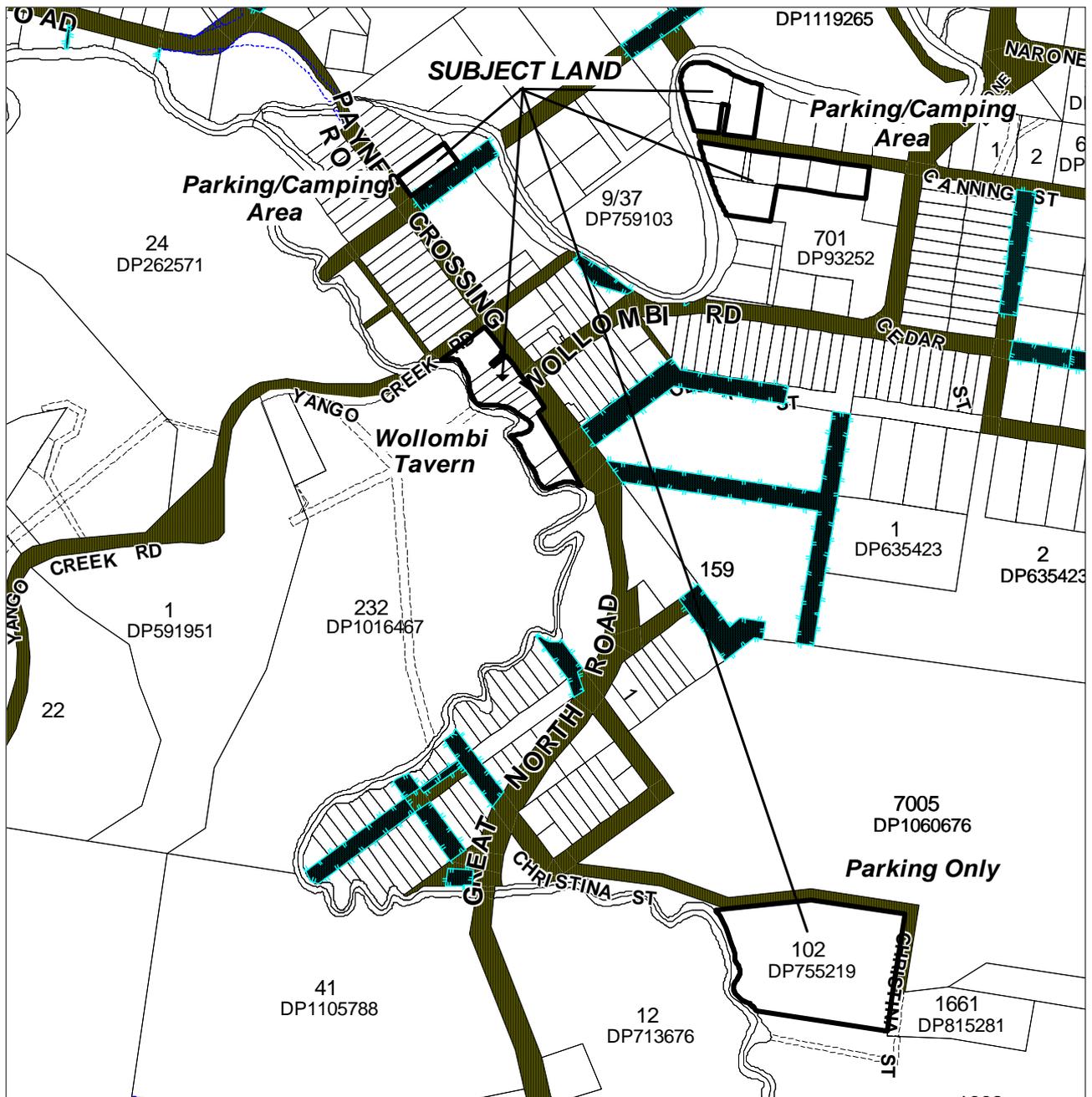
The event is to be fully licensed by the Wollombi Tavern.

It should also be noted that the proposed event is currently being advertised and ticket sales have commenced.

SITE DESCRIPTION

The main event site is located on land occupied by the Wollombi Tavern. There are three (3) other areas throughout Wollombi (not adjoining the Tavern site) proposed to be used for parking and camping (see site plan). One of these sites, the Wollombi Recreation ground located off Christina Street, is owned by Council and is proposed to be used for parking only.

All owners have given their respective consents for the development application to be lodged with Council.



PUBLIC NOTIFICATION

The application was notified for a period of fifteen (15) days with a total of twenty-seven submissions received during this time. Twenty-three (3) of these submissions objected to the proposal with four (4) letters of support received.

The Wollombi Chamber of Commerce raised no objections to the proposal, subject to a signed agreement being reached with the owners of the Tavern.

The Wollombi Progress Association has submitted minutes of a meeting held to discuss the proposed event, with neither support nor objection being raised to the proposal, but with a number of outstanding issues left with the proponent to address.

The issues raised in the letters of objection are summarised as follows:

- Noise and lighting impacts on the village of Wollombi and surrounding wildlife.
- Litter and garbage generation.
- Location of the event in a floodplain and associated safety issues in the event of a flood.
- Conflict with the following scheduled events on the same weekend:
 - Friday night Mass on 11th April at St Michaels in the township of Wollombi.
 - Holy Eucharist Sunday Morning 13th April at St Johns in the township of Wollombi.
 - Two (2) Wedding Services booked at St Michaels Church.
 - Cattle sales.
- The presumption by the applicant that the event will be held before any community support or approval from Council has been obtained.
- Parking and traffic impacts and suitability of existing road network within the village of Wollombi.
- Uncertainty of patron numbers.
- Concerns regarding the security of properties in the area, with only one (1) police officer present in the town over the scheduled weekend.
- The event site does not just comprise the Tavern land, but impacts on the entire village.
- Impact of camping throughout the village of Wollombi and disorderly behaviour.
- Disposal of sewerage and lack of toilet facilities, with the Taverns facilities not able to cope with weekend trade.
- The probability of anti social behaviour, theft and vandalism associated with these types of events, fuelled by alcohol.
- Emergency vehicle access.
- The isolated location of the Wollombi Recreation Ground for parking and access to this site which is a very narrow one lane gravel road.
- General amenity impacts on the village of Wollombi.

The issues raised in the four (4) letters of support are summarised as follows:

- The proposal seems to be a sympathetic venture that will bring life, and needed dollars to the community that suffered extensively in the Queen's Birthday weekend floods.
- The tavern is very strict with RSA (responsible service of alcohol).
- A music festival is a positive event for young people of the district.
- Generate tourist dollars into the area, if successful it will continue to create further visitation.

The above issues will be addresses in the following sections of the report.

PLANNING ASSESSMENT

All *heads of consideration* under Section 79C of the Environmental Planning and Assessment Act 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

Cessnock Local Environmental Plan (CLEP) 1989

Clause 33

The proposed festival is defined as a temporary event under Clause 33 of the Cessnock Local Environmental Plan 1989, and is permissible on the subject land with the consent of Council.

Clause 33 states the following:

“The Council may grant consent to the temporary development of any land, including development for the purposes of temporary accommodation, construction camps, construction depots, markets, fetes, circuses, public purposes and the like, for such period as may be determined by the Council, where it is satisfied that:

- (a) the development, by virtue of its location, scale, site landscaping and treatment, and temporary nature, is unlikely to significantly conflict with the purpose of the zone applying to the land on which the development is proposed to be carried out,*
- (b) appropriate arrangements have been made for any necessary water supply, sewage disposal and stormwater drainage, other utility services, access to and parking on that land,*
- (c) the development is unlikely to interfere with the amenity of any residential development or rural dwellings in the vicinity, and*
- (d) appropriate arrangements have been made for the reinstatement of the land following cessation of the development.”*

It is considered that the proposal fails to satisfy part (a),(b) and (c) of this Clause, the reasons being further discussed in the report.

Zone Objectives

Clause 33 of the CLEP requires any temporary event not to conflict with the purpose of the zone to which the event relates.

The zoning of the main event site is 2(b) Village with the objectives of this zone being:

- (a) to recognise existing villages and to enable future development appropriate to their function while ensuring residential lifestyles are maintained,*
- (b) to provide for other forms of development which will not impact on the amenity of existing villages and which are compatible with the functioning and scale of the environment.*

A primary objective of this zone is to maintain the amenity of the village. The scale and nature of the event will significantly impact on the amenity of the village by way of traffic generation, parking, noise levels, hours of operation, potential anti-social behaviour and minimal security on the night. As such, the site is not considered suitable for the village setting of Wollombi, with the zone objectives not being met.

Cessnock Development Control Plan (DCP) 2006 – Temporary Events

Pursuant to Chapter D.8 of the Cessnock Development Control Plan 2006 (Temporary Events), a temporary event is defined as being *“the temporary use of land for a maximum period of twelve (12) days, whether consecutive or non-consecutive in any one year.”*

One of the main aims of Council’s DCP for temporary events is to *“ensure that events are professionally run in suitable locations which are safe for participants and spectators and do not unduly impact on the neighbouring properties or environment.”*

Another objective of the DCP is also to “ensure that an unacceptable impact does not occur to the community or to the local environment.”

While the proposal generally satisfies the definition of a temporary event under the DCP, it fails to satisfy the aims and objectives of the DCP with respect to amenity impacts on the village of Wollombi. Strong objection has been received to the event and it is considered that the proposal will have a significant amenity impact on local residents. This type of event would be more suited to an isolated location (to minimise neighbourhood impacts), and a larger (consolidated) site that could contain all parking and camping areas to assist with security and surveillance.

Further, the proposed hours of operation do not comply with the requirements of the DCP which generally restrict operating hours from 8:00am to 11:00pm (unless special circumstances - eg: New Years Eve).

Likely Impacts

Traffic Management and Car Parking

Parking for the event is proposed along Negro Street, Paynes Crossing Road, Wollombi Recreation Ground (off Christina Street) and privately owned land off Canning Street and Paynes Crossing Road.

It is considered that the majority of visitors to the event will park along the streets of Wollombi, which are narrow, and the consequent parking congestion over the three (3) days would adversely affect the functionality of existing village operations and residents requiring access to the village centre.

While three (3) other locations have been proposed throughout Wollombi for additional parking, these sites are isolated from the main event site and are unlikely to be the first preference for many patrons. Hence, without significant onstreet parking restrictions being imposed it is likely that street parking could extend from the designated on-street locations throughout the village of Wollombi and intensify traffic and parking congestion.

Further, the isolated nature of the designated parking/camping areas provides safety issues for patrons requiring access to and from the main event site. While a shuttle bus service is proposed to operate between the parking areas and event site, depending on patron numbers and the regularity of the service, it is expected that pedestrian movements will be significant between these locations.

Pedestrian lighting has been proposed throughout the event site; however, the extent of lighting that would be required to provide safe pedestrian paths between all parking/camping sites and the main event site has the potential to create amenity issues for local residents.

The Local Traffic Committee considered the proposal at its meeting held on March 17, 2008 and raised objection to the proposed event for the following reasons:

- Lack of traffic control measures to be implemented.
- Concerns regarding the safe movement of pedestrians.
- Disruption to the amenity of the village of Wollombi.
- Adverse impacts associated with parking along a main tourist route.

Noise

The event is proposed over three (3) days with a total of twenty-eight (28) bands being advertised over the course of the weekend, totalling thirty (30) hours of music. The main areas of noise generation from this type of event will be from bands (amplified music), patron activities (including camping), generators and traffic. The cumulation of this, over a three (3) day period within a quiet village setting is considered excessive and will adversely impact on the general amenity of the village neighbourhood.

Council's DCP 2006 (Temporary Events) restricts the operating hours for these types of events between 8.00am and 11.00pm. The proposal fails to comply with these requirements and no justification has been provided as to why the provisions of Council's DCP should be varied in this instance.

Given the existing low background noise levels in Wollombi and the close proximity of the site to adjoining residential areas, noise will significantly affect the residential amenity of the village over a prolonged period.

The applicant has advised that an acoustic consultant had been engaged to monitor noise levels over the course of the weekend. However, no project specific noise levels have been identified, nor has any report been lodged specifying mitigation measures in the event of excessive noise levels.

Security and Anti-Social Behaviour

The applicant proposes to engage the services of an independent security company (Unique Security Group) to provide security for the event. It is intended that there will be no less than ten (10) security personnel working at any one time over the course of the event.

Given the event is proposed over a number of locations (with the parking and camping areas being isolated from the main event site), ten (10) security personnel is considered inadequate for providing a safe environment for both patrons and residents over the three (3) day period.

Further, Wollombi does not have a permanent police presence and only one (1) officer is scheduled to be on duty for the proposed weekend. Given the distance from the main police headquarters in Cessnock to Wollombi, there would be a significant time lag if additional police resources were to be required.

The application was not accompanied by a strategy to prevent patrons from bringing alcohol onto the event site and given the isolated nature of the camping areas, policing of alcohol consumption would be extremely difficult. Given that the event targets the 18-25 age group it is considered critical that there be a strategy to prevent alcohol/substance abuse and to manage it should a problem arise. In the absence of such a strategy it is considered that it would be socially irresponsible to approve the proposed development.

Conflict with other Community Events

A number of other community events have also been proposed for the same weekend. These events include regular weekend church services, two (2) weddings to be held at St Michael's Church and the monthly cattle sales.

The proposed three (3) day event would impact on these scheduled activities with respect to restricted parking, excessive traffic generation and noise levels. With regards to the cattle sales, there is potential disruption to stock, which are held in the yards overnight prior to the commencements of the sales.

Environmental Health Issues

Council's Environmental Health Section have reviewed the proposal and have objected to the proposal in its current form. The various issues raised are as follows:

- There are a total of five (5) food stalls proposed for the event. Two food stalls and three other stalls providing beverages (water, juice, coffee etc). This number of stalls is not sufficient to serve the 1500-2000 persons for the three (3) day event without compromising food safety. The lack of food provided will place undue stress on both the temporary food stalls and the existing food shops in Wollombi.
- There is very limited information in relation to the camping areas to adequately address health concerns. Camping areas with large volumes of people always pose a risk in terms of preventing spread of communicable diseases and need to be carefully planned and managed. The application does not provide sufficient information to ensure the safety of persons attending the event and camping overnight. A lack of detailed information has been provided on the layout of the proposed camping areas with respect to proximity to waterways, car parking locations, shower and toilet locations, water storage and wastewater storage locations.
- Facilities are not provided for cooking and cleaning needs, which are associated with camping activities on the designated sites. Combined with alcohol consumption (if fires were to be lit), there is a risk of fire spreading to adjoining tents and camping areas, endangering the lives of campers. The Rural Fire Service have indicated that they will not be on call throughout the event, and will only conduct duties outlined under the Rural Fires Act.

Other health concerns include:

- Space provided for tents and separation in terms of fire safety.
- Availability of 'potable water' as defined in the National Health and Medical Research Council's (NHMRC) Australian Drinking Water Guidelines.
- Collection of wastes on the sites.
- Availability of hand washing facilities.
- No indication as to the disposal of effluent generated from the use of portable toilets.
- Lack of disabled provisions in camping areas.
- No consideration of evacuation of sites in the event of a flood.
- Lack of information regarding the activities of local fund raising events.

Suitability of the Site

It is considered that the site is suitable for the proposed temporary event. These types of events are normally located at isolated venues (within rural areas) where there are minimal neighbourhood impacts. The proposed site is located within the village of Wollombi (being a residential neighbourhood) and the event is proposed over a three (3) day period.

Council's LEP and DCP for temporary events require these events to be held in locations where the impacts upon existing residential areas can be minimised. In this instance the proposed site is deemed to be unsuitable for such an event because the impacts upon the village of Wollombi will be significant, which is inconsistent with the overall aims and objectives of Council's DCP.

Furthermore, the main event site and camping/parking locations are affected by flooding, which raises public safety and emergency evacuation issues in the event of a flood. A satisfactory emergency evacuation plan has not been provided.

Submissions/Public Interest

There has been significant community objection to the proposal, evident from the number of submissions received during the notification period. The various issues raised in the letters of objection are considered to be well founded and have been discussed throughout the previous sections of the report.

The prolonged nature of the event (over three (3) days) and the dispersed nature of the properties involved will intensify amenity impacts and make security surveillance difficult.

CONCLUSION

The application has been assessed in accordance with the requirements of Section 79C of the Environmental Planning and Assessment Act 1979 and it is concluded that the proposed temporary event fails to satisfy the provisions of Clause 33 of the Cessnock LEP 1989 and DCP 2006 in that the proposal is contrary to the objectives of the 2(b) Village zone and will adversely impact upon the residential amenity of the Wollombi township.

It is considered that the site is unsuitable for the type of event proposed given its location within a small residential community and the dispersed nature of the land involved. The prolonged nature of the event (3 days) and the cumulative impacts of noise from amplified music, traffic and patron activities (with minimal security) will lead to significant amenity impacts for local residents, and safety issues for event patrons and the community.

Significant community objection has been raised to the event and support of the application is not in the public interest.

The application is recommended for refusal.

RECOMMENDATION that:-

A. Development Application No. 8/2008/38/1 for a three (3) day temporary even on the subject land be refused for the following reasons:

1. The proposal fails to satisfy Clause 33(a) of the CLEP 1989 in that the proposed location and scale of the event will significantly conflict with the purpose of the 2(b) Village Zone which is to permit development of a nature that will not impact on the amenity of existing villages and ensure residential lifestyles are maintained.
2. The proposal fails to satisfy Clause 33(b) of the CLEP 1989 in that inadequate arrangements have been made with regards to parking, access, sewage disposal, water supply and utility services.

3. The proposal fails to satisfy Clause 33(c) of the CLEP 1989 in that the development will interfere with the amenity of surrounding residential development and rural dwellings within the vicinity.
4. The proposal fails to comply with Part D, Chapter D.8, Section 8.1.3 of the Cessnock DCP 2006 (Temporary Events) with respect to the aims and objectives of the Plan which is to provide events in suitable locations that do not unduly impact on neighbouring properties, the surrounding community and the local environment.
5. The proposal fails to comply with Part D, Chapter D.8, Section 8.6.1 of the Cessnock DCP 2006 (Temporary Events) with respect to the hours of operation.
6. The site is not considered suitable for the proposed event given its location within a small village community, the dispersed nature of the subject land and its flood affectation.
7. Support of the proposal would not be in the public interest due to significant public objection.

B. Council write to the applicant and owners of the subject land and advise that in the event of the temporary event proceeding without the consent of Council that appropriate legal action will be taken to remedy a breach of the Environmental Planning and Assessment Act, 1979.

To: ***The General Manager***
Corporate & Regulatory Services
Committee – 2 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
20 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 22/2008**

DEVELOPMENT APPLICATION NO: 8/2007/375/1
APPLICANT: AGCAD PTY LTD
OWNER: MR S R HINDMARSH
PROPERTY: LOT 4 SECTION 46 DP 32650 17 TENTH STREET WESTON
AREA: 1209 SQUARE METRES
ZONING: RESIDENTIAL 2(A)
PROPOSAL: DEMOLITION OF EXISTING COTTAGE, ERECTION OF FOUR (4) RESIDENTIAL UNITS AND STRATA TITLE OF DEVELOPMENT

Senior Planning Assessment Officer, Mr R J Sandell, reports:-

SUMMARY:

The applicant is seeking Council's consent for the demolition of an existing cottage, the establishment of a single storey, four (4) unit residential development on the subject land and for approval to Strata title the new units. The proposal has been notified to adjoining owner/occupiers in accordance with Council policy and several submissions have been received from residents of two (2) local households objecting to the proposal. The objections have been considered in the assessment of the application. The proposal is in compliance with the provisions of Council's DCP 2006 with the exception of the front building setback which is considered acceptable and the application is recommended for approval subject to appropriate conditions of consent.

PROPOSAL:

The proposal involves the demolition of an existing timber/weatherboard dwelling on the site and its replacement with a single storey residential unit development comprising three (3) x two (2) bedroom units and one (1) x three (3) bedroom unit. The units will be placed down the lot with a driveway located on the western side of the development, an adaptable housing unit at the front of the lot and the three (3) bedroom unit at the rear. Each dwelling will be brick veneer with slab on ground construction and with a colorbond corrugated roof. Strata subdivision of the site is also sought.

As the site falls towards the rear of the land it is proposed to create a drainage easement over the downstream Lot 10 Section 46 DP 32650. The owner of Lot 10 has agreed to the creation of the easement.

BACKGROUND:

The applicant was advised that the initial application was not supported as it did not comply with the provisions of the Cessnock DCP. It was recommended that the development be redesigned by mirror-reversing the layout of the units to maximise energy efficiency and solar access to living areas and open space. Amended plans were received and notification was then undertaken.

SITE DESCRIPTION:

Lot 4 is located near the corner of Tenth and Weston Streets, Weston. The subject site is rectangular in shape with a width of 20 metres a depth of over 60 metres and an area of 1215 sq m. The site falls from south to north away from Tenth Street and a drainage easement will be required through the adjoining lot to the north to drain stormwater from the site. A timber weatherboard cottage is presently erected on the site and is to be demolished. There is no significant vegetation on the site.

PUBLIC NOTIFICATION (S79C.d):

In accordance with the Cessnock Development Control Plan 2006, the application was notified to adjoining owner/occupants for comment and four (4) submissions were received. Concern was raised that the fencing provided between the properties will be inadequate in preventing noise and fumes from reaching the bedrooms of adjoining dwellings. This concern has been supported by separate submissions from a builder and a consulting civil and structural engineer and it has been requested that a concrete panel fence (concreted into the ground at a maximum height of 1.8m) be required as an acoustic, fume and fire barrier to preserve the amenity of adjoining residents.

Further concern has been raised that there will be an increase in noise and traffic generated by the additional residential occupancies and that the lights from cars entering and leaving the site will cause a nuisance. The issues raised during the notification period are addressed in further sections of the report.

STATUTORY SITUATION (S79C.a):

The zoning of the subject site is Residential 2(a) and residential unit development is permissible with the consent of Council within the 2(a) Residential zone under the provisions of the Cessnock Local Environmental Plan 1989.

RELEVANT D.C.P.'S (S79C.a):

Cessnock Development Control Plan 2006 Part D, Chapter 2: Urban Housing

The provisions of the Urban Housing DCP are relevant to the consideration of this application. The application has been assessed having regard to the provisions of the Plan and generally satisfies the prescriptive and performance criteria of the Plan. A compliance table is provided below together with a brief description of the principal issues associated with the design of the unit development.

2.3: Design Elements- Site Analysis Planning and Layout

2.3.3 Site Planning and Layout

The proposed development has achieved the environmental criteria for solar access and energy conservation due to a request for the mirror-reversing of the building design to re-orientate the units so that the kitchen and living areas face the east instead of the west. Bedrooms facing onto the main driveway have favourable aspects, with appropriate coverage provided for by vegetation.

2.3.4 Streetscape and Front Setbacks

The plans for the development provide for a setback of 4.8m, when under Council's DCP a minimum setback of 6m is required. Setbacks for adjoining buildings on either side of the proposal and within the street are varied. Structures to the east are considerably less than 4.8 metres due to the site being on a corner lot. The dwelling to the west is located beyond the 6 metre building line. The proposed setback for the unit development is considered satisfactory as it fits into the surrounding residential character with its building line being in transition between a minimal building line and one that exceeds the building line. Overall it is considered that the proposed building line satisfies the objectives of the DCP in that it will make a positive contribution to the streetscape and is appropriate in reinforcing the function of the street as a residential environment. Further, it will not have an adverse impact on the adjoining residence to the west as the front unit of the proposed development is located on the eastern side of the site with an open driveway adjacent the dwelling.

2.4: Design Elements- Building Design and Appearance

2.4.5 Energy Conservation

Objectives 1 and 2 state:

To provide dwellings with adequate daylight and natural ventilation to habitable rooms and adequate sunlight to private open spaces.

To avoid the potential for significant overshadowing of habitable rooms and private open spaces.

Private open space for each dwelling is provided for to the east. This will result in shadowing of pergola areas in the afternoon. This is favourable in terms of the alternative western aspect and use of outdoor areas during summer.

2.4.6 Views and Privacy

Objective 2 states:

To site and design buildings to meet projected user requirements for visual and acoustic privacy.

The positioning of bedroom 2 in units 2 and 3 face westward directly onto the main driveway. Landscaped areas to a depth of 2 metres separate the windows of these bedrooms from the driveway and these areas are to be landscaped. In order to provide an additional visual and acoustic screen for the occupiers of the units and to assist in providing an additional acoustic and visual barrier for the resident of the adjoining residence to the west it is recommended that an additional 2 metre high semi-transparent screen wall be provided adjacent the window of each bedroom. This will also provide shade to the bedroom from the westerly sun.

COMPLIANCE TABLE FOR UNIT DEVELOPMENT

Provision	Requirement	Compliance
Open Space		
Area	Min area is 35m ²	All units comply
Dimension	4x4 area	All units comply with minimum 4x4 dimension to outdoor areas adjacent to internal living areas
Connection	Ground level & directly accessible from living area	All units comply
Screening for privacy	1.8 metre screening	All units comply to achieve satisfactory privacy.
Orientation	Oriented to achieve comfortable year round use	Courtyards north and east facing.
Building Height and Scale		
Floorspace Ratio	0.4:1	0.39:1 complies
6 metre front setback	6 metres	4.8m provided and considered satisfactory
Side and Rear Setbacks		
Side and rear setback	1m min for walls up to 3m in height	Complies – proposed setback is minimum 1 metre to side boundaries.
Car Parking		
Minimum number of spaces	1 space per dwelling with 2 bedrooms (x3) and 2 spaces per 3 bedroom dwelling 1 visitors for the first 3 dwellings plus 1 for 5 thereafter (3)	Total number of car parking spaces complies
Dimension	Preferred dimensions	Complies – Parking dimensions in accordance with diagrams in DCP.

SECTION 94:

A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of public amenities and public services in the contribution types below.

District Open Space	2298
District Community Facilities (Halls)	1404
District Community Facilities (Libraries)	378
District Community Facilities (Bushfire)	108
District Roads – Urban Areas	1752
Studies (Plan Preparation)	132
Plan Administration	504
Total	6576

RELEVANT ISSUES (S79c(b)(c)&(e)):

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

a) The Provisions of any Environmental Planning Instrument

Cessnock Local Environmental Plan 1989

The objectives of the Residential 2(a) Zone are:-

- i) primarily to provide for low density residential development,
- ii) to enable residential flat buildings which are compatible with single dwelling development,
- iii) to provide for other forms of development which may appropriately be located in a residential zone, and
- iv) to ensure non-residential development is of a type, scale and character which will maintain residential amenity.

The proposed development is considered to be consistent with the objectives of the Residential 2(a) zone as it represents a form of residential flat development which is compatible with existing urban development within the local area.

(b) The Likely Impacts of that Development

Context and Setting

The proposed development consists of a single storey residential unit development which is of a scale, density and design that is considered compatible and in character with the surrounding residential housing. Submissions received during the exhibition period cite a potential adverse impact on the amenity of the adjoining neighbours from noise and vehicle fumes as a result of the increase in residential occupancies and request Council consider a more substantial fence to mitigate any nuisance that may be created.

The applicant has provided a 1.8 metre high colorbond fence around the boundary of the site and this is consistent with Council's requirements for similar developments within the Council area. In addition, plans submitted with the application provide for landscaping along the western boundary and an additional screen has been required adjacent the nearest windows to the adjoining residence. Both these measures will assist in reducing the impact of noise and vehicle fumes on the amenity of the adjoining neighbours.

Under the circumstances it is considered that adequate provision has been made to ensure that the impact of the proposal on the amenity of the adjoining property has been properly addressed. Should some additional form of barrier be deemed necessary by either party then this is a matter that can be negotiated between the parties under the provisions of The Dividing Fences Act 1953.

Traffic and Access

In relation to the concern of local residents that additional traffic generated by the proposal will create traffic problems in the local area, Council's engineering consultants have advised that the local street network will be able to cater for the increase in traffic generated by the development.

Stormwater Management

As referred to above it is proposed to create a drainage easement over the downstream Lot 10 Section 46 DP 32650. Written evidence has been provided by the owner of this lot to confirm that he is prepared to allow the creation of the drainage easement and the construction of the pipeline through this property. Any development consent to be issued is proposed to be issued as a “deferred commencement” consent to ensure the creation of the drainage easement over the downstream property benefiting the subject lot prior to development commencing under the consent.

(c) The Suitability of the Site for the Development,

The subject land consists of a fully serviced parcel of land with an area of 1215 sq m and occupied by a small cottage. The land is appropriately zoned for residential unit development and the form of development proposed will be in keeping with the residential housing existing in the area and will be unlikely to have an adverse impact on the amenity of adjoining residents. The site is therefore considered suitable for the proposed development.

CONCLUSION

The proposed residential unit development has been assessed having regard to the provisions of the Cessnock Local Environmental Plan 1989 and Cessnock Development Control Plan 2006 and satisfactorily complies with the provisions of these instruments. The proposal has been notified in accordance with Council policy for comment from adjoining owner/occupiers and the issues raised have been addressed in the above report. It is concluded that the proposed development will have a positive impact in the locality and should therefore be supported.

RECOMMENDATION that Development Application No. 8/2007/375/1 for the construction of a four (4) residential unit development, consisting of three (3) x two (2) bedroom units and one (1) x three (3) bedroom units and the associated strata subdivision on Lot 4 Section 46 DP 32650 17 Tenth Street Weston be approved subject to the following conditions:-

SCHEDULE 1 – DEFERRED COMMENCEMENT CONDITION

1. The applicant shall provide an inter allotment drainage easement 1.5m wide over Lot 10, Section 46, DP 32650 to a legal point of discharge. Full details shall be submitted to and approved by Council prior to consent.

Note:

- (a) A suitable 88B instrument creating the easement, in accordance with the requirements of the Conveyancing Act 1919, shall be submitted to Council prior to endorsement of the Surveyor’s transparency.
- (b) Construction shall be completed prior to endorsement of the Surveyor’s transparency.

Reason

To provide the necessary legal right to drain through adjoining lots where necessary.

STAGE 1 – CONDITIONS FOR FOUR (4) RESIDENTIAL UNITS

TERMS OF CONSENT

General

1. The erection of a building in accordance with a development consent shall **not** be commenced until:-
 - (a) detailed plans and specifications of the building have been endorsed with a **construction certificate** by:-
 - (i) the consent authority; or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:-
 - (i) has **appointed a principal certifying authority**, and
 - (ii) has notified Council of the appointment, and
 - (c) the person having the benefit of the development consent has given at least 2 days notice to the Council of the persons intention to commence erection of the building.

Reason

To ensure the applicant complies with the provision of the Environmental Planning and Assessment Act 1979 (as amended).

2. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans numbered Sheets S01 to S06 (Job Number 07-131, Drawing Nos. 131-01) dated September, 2007, the Statement of Environmental Effects and any other information submitted in support of the application, except as amended in red on the submitted plans or as modified by the conditions of this consent.

Note: Any proposal to modify the terms or conditions of this consent, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application under Section 96 of the Environmental Planning and Assessment Act 1979 for Council's consideration. If amendments to the design result in the development not remaining substantially the same as that approved by this consent, a new development Application will have to be submitted to Council.

Reason

To confirm and clarify the terms of Council's approval.

3. All building work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates:-
- (A) in the case of work for which a principal contractor has been appointed:
- (i) has been informed in writing of the name and licence number of the principal contractor, and
 - (ii) where required has submitted an insurance certificate with 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) has been informed in writing of the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, has submitted a copy 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 notified under subclause 1 of this condition becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development has been given written notice of the updated information.

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

5. The proposed building/s shall be provided with access and facilities for the disabled in accordance with AS 14281.1. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the building/s.

Reason

To ensure there is adequate access and facilities for the disabled.

Building Construction

6. Development shall be undertaken strictly in accordance with all commitments specified in the current BASIX Certificate.

Reason

Compliance with the Environmental Planning and Assessment Regulation 2000.

Access, Carparking and Loading Arrangements

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

Reason

To ensure that a safe adequate all-weather access is available to the development.

8. On-site car parking shall be provided for a minimum of six (6) vehicles and such being set out generally in accordance with Council's Car Parking Code.

Reason

To ensure that adequate provision has been made for manoeuvring and parking of vehicles within the development or on the land, to meet the expected demand generated by the development.

9. All driveways, access corridors and carparking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The shared driveway is to have a minimum width of 5.5m. The carparking areas shall be constructed with reinforced concrete, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

Reason

To ensure the orderly and efficient use of on-site parking facilities and ensure that adequate provision is made on-site for the loading and unloading of goods.

Site Works

10. This consent allows the removal of trees and other vegetation from the site of approved buildings, structures, permanent access ways and carparks. It also allows for the removal or lopping of trees within three (3) metres of approved buildings. No other trees or vegetation shall be removed or lopped except with prior written consent of Council.

Reason

To ensure that only trees and vegetation directly affected by the development are removed from the site, and to grant approval for such removal.

Landscaping

11. Landscaping works shall be carried out in accordance with the details indicated on the submitted landscape design plan, except as required to be modified under the terms of this consent.

Reason

To ensure that adequate and appropriate provision is made for landscaping of the site in association with the proposed development, to enhance the external appearance of the premises and to contribute to the overall landscape quality of the locality.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

General

12. The provision of a 2 metre high semi-transparent screen in the landscaped areas adjacent the bedroom 2 windows in Units 2 and 3. Details of these screens are to be provided to Council for approval prior to issue of the Construction Certificate.

Reason

To provide a privacy screen to the bedrooms of Units 2 and 3 from the common driveway to the unit development.

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

Reason

To ensure compliance with the Hunter Water Corporation requirements for the supply of water and sewerage to the new dwellings created.

Access, Carparking and Loading Arrangements

14. The Registered Proprietors shall construct a bitumen sealed access crossing from the edge of the road formation to the property boundary. The shared crossing is to be increased to 5.5m wide. Earthworks are required within the road reserve to prevent overland flow from entering the front of the site. The construction of the access crossing shall be in accordance with Council's Engineering Requirements for Development (available at Council's offices) and Australian Standard 2890.1 & 2 with respect to location, size and type of driveway. The registered proprietor should contact Council's Works Department for specific requirements. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the crossing.

Reason

To ensure the provision of safe, adequately defined and properly constructed means of vehicular access from the road to the development.

Drainage and Flooding

15. A detailed drainage design 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. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the building/s.

Reason

To ensure that on site stormwater runoff is properly collected and conveyed to an appropriate drainage facility.

16. Any alterations to existing surface levels on the site shall be undertaken in such a manner as to ensure that no additional surface water is drained onto or impounded on adjoining properties. Full details of existing and proposed surface levels shall be submitted to and approved by Council prior to release of the Construction Certificate for the building/s.

Reason

To ensure that such alterations to surface levels do not disrupt existing stormwater flows in the vicinity.

17. The applicant shall construct a drainage line together with the necessary grated yard inlet pits from the subject site through the downstream Lot 10 Section 46 DP 32650 to a legal point of discharge in accordance with Council's 'Engineering Requirements for Development' - full details shall be submitted to and approved by Council prior to release of the Construction Certificate.

Note:

- (a) A suitable 88B instrument creating the easement, in accordance with the requirements of the Conveyancing Act 1919, shall be submitted to Council prior to endorsement of the Surveyor's transparency.
- (b) Construction shall be completed prior to endorsement of the Surveyor's transparency.

Reason

To provide the necessary legal right to drain through adjoining lots where necessary.

18. 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 of on-site storage and the method of controlled release from the site and connection to an approved drainage system in accordance with Council's 'Engineering Requirements for Development'.

The detailed plans, specifications and copies of the calculations, including existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development prepared by an engineer suitably qualified and experienced in the field of hydrology and hydraulics. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate

Note: Construction shall be completed prior to the release of the Occupation Certificate.

Reason

To ensure that the development is adequately drained and will not increase the flood hazard or flood damage to other properties or adversely affect flood behaviour.

Fees, Development Contributions, Monetary Bonds, Dedication of Land

19. A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of public amenities and public services in the contribution types below.

CONTRIBUTION TYPE	\$
District Open Space	2,298
District Community Facilities (Halls)	1,404
District Community Facilities (Libraries)	378
District Community Facilities (Bushfire)	108
District Roads – Urban Areas	1,752
Studies (Plan Preparation)	132
Plan Administration	504

At this time the total contribution required is \$6,576.00 and is to be paid prior to the release of the **Construction** Certificate.

NOTE:

- i) A copy of the Residential Section 94 Contributions Plan may be inspected at Council's Customer Services Section, Administrative Building, Vincent Street, Cessnock or can be accessed on Council's Website: www.cessnock.nsw.gov.au
- ii) 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 – All Groups – Sydney. Indexation of contributions for payment occurs quarterly, on the first working day of December, March, June and September.

Reason

To assist the Council in meeting the expected increased demand for public facilities and services arising as a consequence of the proposed development, and to ensure that the real value of contributions is not deflated by price movements.

DURING CONSTRUCTION

General

20. If the soil conditions require it:-
- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and
 - (b) adequate provision must be made for drainage.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

21. If the excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:-
- (a) must preserve and protect the building from damage, and
 - (b) if necessary, must underpin and support the building in an approved manner, and
 - (c) 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 clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, **allotment of land** includes a public road and any other public place.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

22. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, however must be removed when the work has been completed.

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

23. Toilet facilities are to be provided, 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:

- (a) must be a standard flushing toilet, and
- (b) must be connected:
 - (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

24. Construction, demolition and associated work shall be carried out only between the times stated as follows:-

Mondays to Fridays	7.00a.m. to 6.00p.m.
Saturdays	8.00a.m. to 1.00p.m.
Sundays & Public Holidays	No construction work to take place.

Reason

To ensure that the environmental quality of adjoining land is not adversely affected, such as by the generation of excessive noise levels.

25. A container of at least one (1) cubic metre capacity shall be provided and maintained from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste.

Reason

To ensure that waste generated by the building works is contained and does not pollute the surrounding environment.

26. All building materials, plant and equipment is 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.

Reason

To ensure pedestrian and vehicular access is not restricted in public places.

27. 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.

Reason

To ensure that any required alterations to utility infrastructure are undertaken to acceptable standards at the developer's cost.

Building Construction

28. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001 "Demolition of Structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, being 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.

Reason

To ensure that all wastes including asbestos waste is handled and disposed of safely and in an appropriate manner.

29. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards.

Reason

To ensure that all excavations on the site are maintained in a safe condition.

30. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

Reason

To ensure that all excavations on the site are maintained in a safe condition.

Site Works

31. 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", 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'. 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.

Reason

To ensure protection of the environment by minimising erosion and sediment.

32. No obstruction is to be caused to Council's footpaths, roads and/or other public area 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.

Reason

To ensure that construction activity does not interfere with the orderly use of public footpaths, roads or places, or Council owned property.

Scheduling of Inspections

33. The applicant is to advise Subdivision and Engineering Co-Ordinator at least 48 hours prior to commencement of any construction works on site or associated with the site, together with the approved contractor's name and address.

Reason

To enable orderly scheduling of inspections

34. Prior to commencement of any works within the road reserve, the applicant or their nominated contractor shall obtain a road opening permit from Council's Roads, Bridges and Drainage Section. Reinstatement of the road shall be to the satisfaction of Council's Roads, Bridges and Drainage Manager prior to the issue of the Occupation Certificate.

Reason

To enable orderly scheduling of inspections.

PRIOR TO OCCUPATION

General

35. Occupation or use of premises for the purposes approved by this consent shall not commence until all conditions of this consent have been complied with and the Occupation Certificate has been issued.

Reason

To ensure compliance with the provisions of the Environmental Planning and Assessment Act, 1979, and Council's terms of consent

36. The applicant shall submit to Council evidence that the requirements of Energy Supplier, the Hunter Water Corporation and telecommunications authorities have been met in regard to the provision of services provided by those authorities to the development. Such evidence shall be submitted to and approved by Council prior to endorsement of the final plan of survey and release of the Occupation Certificate.

Reason

To ensure that adequate services are provided to each dwelling created.

Building Construction

37. 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.

Reason

To reduce the risk of environmental and building damage.

38. The proposed visitor parking bays shall be clearly indicated by means of signs and/or pavement markings for the life of the development.

Reason

To encourage the use of the proposed on-site car parking facilities and thereby minimise kerbside parking in the adjacent public road as a result of the proposed development.

Drainage and Flooding

39. The registered proprietor of the land shall submit a report and a works-as-executed (WAE) drawing of the stormwater detention basin(s) and stormwater drainage system. The WAE drawings shall be prepared by a registered surveyor and shall indicate the following as applicable:

- * invert levels of tanks, pits, pipes and orifice plates
- * surface levels of pits and surrounding ground levels
- * levels of spillways and surrounding kerb
- * floor levels of buildings, including garages
- * top of kerb levels at the front of the lot
- * dimensions of stormwater basins and extent of inundation
- * 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.

The WAE plan and report shall be submitted to and approved by Council prior to Occupation Certificate.

Reason

To ensure the stormwater detention system has been constructed in accordance with the design plans.

40. The registered proprietor of the land shall prepare a Plan of Management for the on-site stormwater detention facilities within the development. The Plan of Management 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 and approved by Council for approval prior to the issue of an Occupation Certificate.

Reason

To ensure the on-going maintenance and operation of the on-site stormwater detention facilities in accordance with the approved design.

STAGE 3 – STRATA SUBDIVISION

TERMS OF CONSENT

General

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans submitted, the Statement of Environmental Effects/Environmental Impact Statement dated 17 May 2007 and any other information submitted in support of the application, except as modified by the conditions of this consent.

Note: Any proposal to modify the terms or conditions of this consent, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application under Section 96 of the Environmental Planning and Assessment Act 1979 for Council's consideration. If amendments to the design result in the development not remaining substantially the same as that approved by this consent, a new development Application will have to be submitted to Council.

Reason

To confirm and clarify the terms of Council's approval

Development Contributions, Monetary Bonds, Dedication of land

2. A final plan of survey, prepared by a Registered Surveyor, and seven (7) copies for endorsement by Council are to be submitted with the application for a Subdivision Certificate.

Reason

To enable the linen plan to be legally made.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

General

3. The registered proprietors of the land shall provide evidence of satisfactory arrangements having been made with electricity supply authority, telecommunications provider and the Hunter Water Corporation Ltd. in regard to any existing installations and proposed connections prior to the release of the Subdivision Certificate for the development.

Reason

To ensure that adequate electricity supply is provided and that the interests of the energy supply authority are protected.

4. Certification shall be submitted to Council by a Registered Surveyor, prior to endorsement of the final plan of survey and release of the Subdivision Certificate that all services and domestic drainage lines are wholly contained within each of the respective lots.

Reason

To ensure that all services are wholly contained within each new lot created.

5. Evidence shall be submitted to Council that the registered proprietors of the land on whose behalf the application was made have complied with the requirements of Section 50 of the Hunter Water Board (Corporatisation) Act 1991. Such evidence shall be submitted Council prior to the release of the final plan of survey for the subdivision and the Subdivision Certificate.

Reason

To ensure compliance with the Hunter Water Corporation requirements for the supply of water and sewerage to the new lots created.

6. Prior to the issue of a **Subdivision** Certificate the applicant shall provide Council with an **Occupation** Certificate, which confirms that the development has been constructed strictly in accordance with the provisions of the Development Consent and Construction Certificate.

Reason

To ensure that the building has been constructed in accordance with the Development Consent and Construction Certificate

Development Contributions, Monetary Bonds, Dedication of Land

7. The registered proprietors of the whole of the land shall, prior to endorsement and release of the **Occupation Certificate** at their costs and expense, enter a positive covenant over all of the land comprised in the development providing as follows:-
- a) *Covenanting with the Council (the prescribed Authority) to at all times at their costs maintain, repair and keep the on-site stormwater detention facilities in a good and safe condition and state of repair in accordance with the approved design to the reasonable satisfaction at all times of the said Council having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention facilities in accordance with Schedule 2 Condition No (35), and*
 - b) *Providing that the liability under the said Covenant will jointly and severally bind the registered proprietors of the proposed dwellings, and*
 - c) *Providing that the Cessnock City Council (the prescribed Authority) will be the person entitled to release or modify the Covenant.*

All costs associated with the Covenant, including any legal costs payable by Council, are to be paid by the owner on whose behalf the applicant has lodged the application.

Reason

To ensure that on-site stormwater detention facilities are maintained to an appropriate standard.

8. The Section 88B Instrument will be submitted to Council with all relevant signatures and company seals (where applicable) prior to endorsement of the linen plan of subdivision and release of the subdivision certificate. Alternatively, Council will accept, at the discretion of the Development Services Manager, a copy of the Section 88B Instrument with an accompanying letter from the acting Solicitor or Surveyor giving an undertaking that the Section 88B Instrument will be signed and submitted as presented to Council, unaltered, to the Land Titles Officer for registration with the linen plan of subdivision.

Reason

To ensure the Section 88B Instrument is submitted to the Lands Titles Office in the same form as it is submitted to Council.

9. Payment of the subdivision endorsement fee is to be received prior to release of the final plan of survey. Currently, this endorsement fee is **\$120** per lot. This fee is adjusted annually and the fee to be paid will be the applicable fee at the time of lodgement of the final plan of survey for endorsement and Subdivision Certificate application.

Reason

To ensure that the developer meets all costs associated with the release of the final plan of subdivision.

ADVICE

1. The applicant shall pay Detention Basin(s) engineering checking and site supervision fees in accordance with Council's adopted fees and charges prior to release of a Construction Certificate for the site. Council's current fee is \$492.00 per basin for basins less than 50m³. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's adopted fees and charges current at the time of payment.

Reason

To ensure that the developer meets all costs associated with the approval of engineering plans and the inspection of detention basin works associated with the development.

2. The applicant is advised that an engineering plan checking and site supervision fee of **\$748.00** is payable prior to release of the Construction Certificate for the building/s.

Reason

To ensure that the developer meets all costs associated with the design checking and inspections of vehicle crossing and earthworks within the Tenth Street road reserve.

3. The applicant is advised that an engineering plan checking and site supervision fee of **\$1,051.20** is payable prior to release of the Construction Certificate for the building/s.

Reason

To ensure that the developer meets all costs associated with the design checking and inspections of the inter-allotment drainage works.

4. CHILD SAFETY INFORMATION

Each year in New South Wales approximately 150 children are admitted to hospital with scald injuries caused by hot tap water.

Statistics indicate that 93% of hot tap burns occur in the bathroom. Most household water heaters supply HOT WATER at 65 to 75 degrees Celsius.

At 60 degrees Celsius it takes ONE SECOND for a child to incur third degree burns.
At 50 degrees Celsius it takes FIVE MINUTES for a child to incur third degree burns.

The temperature of hot water delivered to bathrooms can be reduced by installing one of the following devices:-

- (a) a tempering device
- (b) a thermostatic mixing valve
- (c) a temperature control device

Council recommends that one of the above devices be installed during construction to reduce the risk of scalding in the bathroom.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 2 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
6 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 23/2008**

DEVELOPMENT APPLICATION NO: 8/2006/998
APPLICANT/OWNER: J HOWARTH
PROPERTY: PROPOSED LOT 1 IN THE SUBDIVISION OF
LOTS 1 AND 2 DP 245636 NO 25 COULSON
ROAD AND NO 999 MCDONALDS ROAD
POKOLBIN
AREA: PROPOSED LOT 1 - 8.1 HECTARES
ZONING: 1(V) RURAL (VINEYARDS)
PROPOSAL: MANAGERS RESIDENCE, GARAGE AND
TWO (2) TOURIST ACCOMMODATION
BUILDINGS

Senior Development Planner, Ms T Sharp, reports:-

SUMMARY:

The applicant proposes a managers residence, detached double garage and two (2) tourist accommodation buildings on the subject land.

The subject site does not have a dwelling entitlement under the provisions of Clause 16(1) of the Cessnock Local Environmental Plan 1989 and as such, a manager's residence is not permitted under the provisions of Clause 16(2) of the LEP. The proposal is recommended to Council for refusal.

The tourist accommodation buildings are permissible under the zoning. However, approval cannot be granted for only part of the application.

BACKGROUND:

At its meeting of 19 September 2007, Council considered a report on the subject land for a manager's residence (Report No. 80/2007) where it was resolved to defer the application for a site inspection. (Refer to attachment)

A further report was prepared for Council to consider at its meeting of 17 October 2007 for a Manager's Residence on proposed Lot 1, but the applicant requested that the report be withdrawn from Council pending the submission of amended plans and details.

The applicant has since submitted amended plans to incorporate two (2) tourist accommodation buildings as part of the proposal which is now subject of this application.

Development Application No 8/2006/996 for a boundary realignment of Lots 1 and 2 DP 245636 being No 25 Coulson Road and No 999 McDonalds Road Pokolbin, was approved on 1 August 2007. The proposed managers residence and tourist accommodation units is proposed to be erected on proposed Lot 1 of the approved boundary realignment.

PROPOSAL:

The applicant proposes the construction of a manager's residence, double garage and two (2) tourist accommodation units. The residence is to be located in the north-eastern corner of the site, being 75 metres south off Coulson Road and 100 metres west off McDonalds Road.

The residence is to be single-storey with three (3) bedrooms with a free standing double garage.

The tourist accommodation buildings comprise two (2) bedrooms with en-suites and open plan living areas.

SITE DESCRIPTION:

The subject site is known as Blueberry Hill Vineyard and is located on the south-western corner of the intersection of McDonalds Road and Coulson Road.

Proposed Lot 1 is vacant of any structures and the only improvement is a dam.

The adjoining proposed Lot 2 in the approved subdivision of Lots 1 and 2 DP (DA8/2006/996) contains approximately 5.23ha of vines, a single storey residence incorporating two (2) tourist accommodation units, a free standing garage, swimming pool, tennis court, a cellar door and dams.

Vehicular access to the property is available from both McDonalds Road and Coulson Road. Following the re-alignment of the boundary, all access to the Managers Residence will be via an existing access point to Coulson Road.

PLANNING ASSESSMENT:

Cessnock Local Environmental Plan 1989

Manager's Residence

Clause 16 – Dwelling-houses – Zone No.1(v)

This clause provides that -

- “(1) Except as provided by subclause (2) or (3) or by clause 24, one, but not more than one, dwelling-house may be erected on land within Zone No 1 (v) if the land:*
- (a) has an area of not less than 40 hectares, or*
 - (b) is an existing holding and the Council is satisfied that:*
 - (i) there will be adequate vehicular access to the dwelling-house, and*
 - (ii) the erection of the dwelling-house will not create or increase ribbon development along a main or arterial road, and*
 - (iii) a water supply and facilities for the removal of sewage and drainage are available or, if any such supply or facility is not so available, arrangements satisfactory to the Council have been made for the provision of such a supply or facility to the existing holding.*
- (2) In addition to a dwelling-house permitted by subclause (1), one additional dwelling-house may, with the consent of the Council, be erected where that additional dwelling-house is or will be occupied by a person employed or engaged by the owner of the land in the actual use of the land for the purpose of managing a commercial vineyard or for the purpose of managing tourist-related development having tourist accommodation building components”.*

As at 31 December 1984 Lots 1 & 2 in DP 245636 (No 25 Coulson Road & No 999 McDonalds Road Pokolbin) comprised the whole of an existing holding in the name of Mr G. W. Oborn.

A dwelling has been constructed on Lot 2 DP 245636 and therefore Lot 1 DP 245636 does not have a dwelling entitlement. Consequently proposed Lot 1 in the approved subdivision (DA8/2006/996) of these two allotments does not have a dwelling entitlement under the provisions of Clause 16(1). Therefore a manager's residence is not permissible under the provisions of Clause 16(2) as the provisions of Clause 16(1) cannot be satisfied.

Tourist Accommodation

Clause 5 – Definitions

Under this Plan the following definitions are relevant to this application: -

“Tourist accommodation building means a building or part of a building containing one or more tourist accommodation units”;

“tourist accommodation unit means premises used for the temporary accommodation of up to four (4) tourists in a maximum of two (2) bedrooms for up to 42 consecutive days or, in aggregate, 150 days in any 12-month period, but does not include bed and breakfast accommodation”.

Proposed Lot 1 is vacant. The applicant proposes two (2) tourist accommodation buildings comprising a total of four (4) bedrooms, therefore consisting of two (2) tourist accommodation units.

Clause 9 – Zone Objectives and Development Control Table

Under the 1(v) Rural zone objectives and development table of Clause 9, the proposal is permissible with consent from Council.

Clause 52 - Tourist Development Densities within Zone 1(v)

Under this Clause, the tourist accommodation density is one (1) tourist accommodation unit per hectare.

Currently the site is vacant and has a total area of 8.1 hectares. The applicant proposes two (2) tourist accommodation buildings comprising a total of four (4) bedrooms which complies with the requirements of this Clause.

Department of Planning

The application for boundary realignment (DA8/2006/996) was referred to the Department of Planning for the Director-General's Concurrence under SEPP 1. At the time the Department advised as follows: -

“For the purpose of clause 7, State Environmental Planning Policy No 1 the Director-General's concurrence is granted to the above application to vary the development standard stipulated by clause 15 of the Cessnock LEP 1989 to allow the two lot subdivision of the above lots. Concurrence for this application should not be seen as precedent for other applications that may seek to subdivide lots with this locality. Should Council approve the subdivision, it should be made clear to the landowner that the newly created lot 1 is not sufficient size for a dwelling and that the Department does not support the creation of undersized lots and dwellings in the Vineyards District.”

The Department has made it clear that the lot does not have sufficient area for a dwelling and would not support an application.

Department of Primary Industries – Agriculture

The Department provides guidelines for manager's residences that the applicant needs to address and submit to Council.

The applicant must demonstrate to Council that the farm or use generates enough income to support the employee, cannot operate without the employee's labour and the on-site accommodation is essential for the existing enterprise.

The proposed manager's residence is for the sole purpose of managing only two (2) tourist accommodation units (which are proposed as part of this application). The need for a permanent employee on-site for only two (2) tourist accommodation units is arguable, particularly given this type of use is concentrated over weekend periods only. Further, the location of the site is not isolated but located approximately 14km from the Cessnock town centre and management of these units is capable of being undertaken off-site.

CONCLUSION:

Proposed Lot 1 does not have a dwelling entitlement under the provisions of Clause 16(1) of the Cessnock Local Environmental Plan 1989 (CLEP). Therefore, a manager's residence **which** is not permitted on the proposed allotment under the provisions of Clause 16(2) of the CLEP.

Furthermore, the proponent has failed to demonstrate the necessity for a manager's residence under the Department of Primary Industries guidelines for managers residence given the small-scale of the proposed tourist related development and close proximity to an urban centre.

Whilst the tourist accommodation buildings are permissible under the CLEP, Council cannot approve only part of an application.

The application is recommended for refusal.

RECOMMENDATION that Development Application No.8/2006/998/1 for a *Manager's Residence, Double Garage and Two (2) Tourist Accommodation Buildings* on Proposed Lot 1 in the Subdivision of Lots 1 & 2 DP 245636 No 25 Coulson Road & No 999 McDonalds Road, Pokolbin, be refused for the following reasons:-

1. The proposal does not comply with the provisions of Clause 16(2) of the Cessnock Local Environmental Plan 1989 which requires the subject land to have a dwelling entitlement prior to consideration of a manager's residence.
2. A manager's residence cannot be justified on the subject land for the sole purpose of managing only two (2) tourist accommodation units. The land is located within close proximity of the village of Nulkaba and township of Cessnock and as such is not an isolated rural location requiring on-site management.
3. Approval of the application will create an undesirable precedent for similar proposals in the locality and undermine the intent and purpose of establishing a manager's residence associated with bona-fide agricultural activities and tourist related developments.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 2 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
4 March 2008