



Vincent Street  
CESSNOCK 2325

27 February 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, 5 March 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 20 February 2008

**(3) DEFERRED BUSINESS.**

115/2007	8/227/365/1 – Off John Renshaw Drive Black Hill	2
116/2007	5/1995/80124/3 – Buttai Quarry Amendment	20

**(4) OFFICERS' REPORTS**

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**

7/2008	Investments - Collateralised Debt Obligations	30
8/2008	8/2005/1088/1 – 141 Mitchell Avenue Kurri Kurri	32
9/2008	Dilapidated and Unsightly Building – 508 Maitland Road Cessnock	65
10/2008	8/2006/1162/1 – 88 Sawyers Gully Road Sawyers Gully	70

**(5) QUESTIONS WITHOUT NOTICE.**

## **DEFERRED BUSINESS**

### **ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 115/2007**

**DEVELOPMENT APPLICATION NO:** 8/2007/365/1  
**APPLICANT/OWNER:** COUNTY PROPERTY HOLDINGS PTY LTD  
**PROPERTY:** LOT 75, DP 755260 OFF JOHN RENSHAW DRIVE, BLACKHILL  
**AREA:** 128.5 HECTARES  
**ZONING:** RURAL 1(A)  
**PROPOSAL:** USE OF EXISTING ROAD TO HAUL GRAVEL ASSOCIATED WITH REHABILITATION OF QUARRY

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Senior Planning Assessment Officer, Mr Rod Sandell, reports:

#### **SUMMARY:**

Application has been received to use an existing road off John Renshaw Drive to haul gravel from the Benwerrin quarry. The proposal is associated with the rehabilitation of the quarry. The proposal represents designated development and the accompanying Environmental Impact Statement and rehabilitation plan have been advertised in accordance with the Act with an extension for submissions being granted until 9 November 2007.

A total of twenty three (23) submissions have been received from local residents objecting to the application. The submissions have been considered in the following report.

Both the subject site and that of the adjoining site (Lot 76) which is also subject of a report to Council (and now also owned by the applicant company) have an associated and close history and should be read in conjunction with each other.

The application has been recommended for approval.

#### **PROPOSAL:**

The applicant has advised that the proposal involves the use of an existing road to haul gravel associated with the rehabilitation of a quarry operating from the subject site. The haul route is also to be used for the transport of additives used in a blending process to stabilise gravel for use as roadbase external to the site.

The application has been accompanied by a Rehabilitation Plan. Part of the rehabilitation process will involve "benching" the existing quarry face. The Rehabilitation Plan indicates that benches will be established at approximately 12 metre levels, commencing at the quarry floor level. The benching process will involve the extraction of quality gravel material from the quarry face. The applicant has further advised that "*gravel material to be removed from the quarry will be from **benching operations only** associated with the proposed quarry rehabilitation and the proposal **does not** seek to expand the quarry or the base of the quarry wall.*"

Additional details of the proposal include:

- a) Daromin Engineering Pty Ltd estimates that there is approximately 350,000m<sup>3</sup> of gravel and overburden to be removed from the site as a result of the rehabilitation process.
- b) Based on the extraction of approximately 70,000m<sup>3</sup> per year, it is anticipated that the time frame would be in the order of 5 -7 years depending on demand.
- c) Drilling and blasting will be used to fragment fresh rock. Blasting is to occur between the hours of 9.00am and 3.00pm twice per week
- d) Machinery to be used in the extraction operation include a pug mill, a Cat 330 hydraulic excavator, a Cat966/972 front end loader, a mobile drilling rig, an hydraulic rock breaker, a mobile primary and secondary crusher, a water cart, a dump truck and a grader, scraper and Cat D7/D9 bulldozer for part time use.
- e) Truck movements associated with the quarry operation during peak demand periods are envisaged to be a maximum of 60 loads/day or 120 truck trips/day for material transportation.
- f) Hours of operation of the proposed quarry and haul route will be between 7.00am and 6.00pm Monday to Saturday.

**BACKGROUND:**

The subject land has been used intermittently since 1949 for coal mining activities and in more recent years as an open gravel quarry. The Buchanan Borehole Colliery was established on the site in 1947 and mining ceased in 1956.

Development Consent for a gravel quarry and service roads (Development Application No. D74/73/3) was granted by Council on 2 March 1973. The consent contained a requirement that stated, *provided that the area which is being quarried is reinstated to the satisfaction of Council when the quarrying operations are completed.* Access to the quarry was approved through Lots 41, 42 and 94 and then via Lings Road through to John Renshaw Drive.

A new application for consent (Development Application No. D74/74/44) for an open cut coal mine on Lot 75 was granted approval by Council on 4 September 1980. The Department of Mineral Resources notified owners on 20 January 1994 that Coal lease no. 207 in respect to coal mining operations at the Benwerrin mine site had been cancelled.

The access route now proposed to be used in the present application is via Old Buttai Road which was originally surveyed and dedicated to the public on 9 January 1974. The remaining portion of the access road is a Crown Road reserve.

Council's records indicate that the access route may have been used prior to this time to haul coal from Lot 75. The access route has been used at times since 1974 to haul both gravel and coal from Lot 75 however no formal agreement to haul gravel has become evident. Further, such access was located through Lot 74 prior to its subdivision in 1997 and only partly within the Crown Road reserve.

**RECENT HISTORY:**

In October/November 2005 Council received complaints that the present owner/operator had undertaken roadworks within the Crown reserve road immediately to the west of the two dwellings on Lots 741 and 742 DP 876393 and other earthworks within the quarry. The roadworks extended the gravel road construction from the access to the two dwellings to the northern boundary of Lot 75 thus providing access to that lot. In addition, earthworks had been undertaken above the highwall in the south-eastern corner of the site so that the new earthworks could be clearly seen from John Renshaw Drive.

The owner/operator subsequently agreed to cease further work on the site and to enter into discussions/negotiations with Council officers on the further development of the subject site and the quarry development on the adjoining Lot 76. This application and an amendment to the quarry development on Lot 76 are as a result of those discussions/negotiations.

**SITE DESCRIPTION:**

The subject site is located off John Renshaw Drive and then via Old Buttai Road. It is situated approximately 10 kilometres south of East Maitland and 2.5 kilometres south of John Renshaw Drive and on the western side of Lings Road.

Lot 76 has an area of approximately 128.5 hectares and remains as a vacant site with a large open gravel quarry and several dams located towards the eastern side of the site. Some evidence is also available on the site of previous coal mining activity although rehabilitation work on the site has been undertaken by the Department of Mineral Resources. The site has been substantially degraded due the mining and quarrying activities that have occurred on the site since the 1940's.

**PUBLIC EXHIBITION:**

The proposed designated development was advertised for an initial period of thirty (30) days from 22 September 2007 until 23 October 2007. This period was extended during the exhibition period until 9 November 2007. A total of twenty three (23) submissions were received from residents of the Blackhill area.

A submission was received from the two (2) community groups involved (The Black Hill Environment Protection Group and The Buttai Community Development Group) together with submissions from the owners of Lots 741 and 742 who are most affected by the proposal. In summary the local community's' objections have been based on the following seven (7) themes:-

- 1) The current application is completely misleading as it contains a number of inaccuracies and omissions including:-
  - a) The Executive Summary states that *"the proposal involves the use of an existing road to haul gravel.....* This statement is incorrect as there is no "existing haul road for gravel.
  - b) The application pretends that there is a fully operational quarry on Lot 75 when in fact the quarry has been abandoned since the late 1980's.
  - c) No reference is made in the application to the relationship between the approved quarry on Lot 76 and the proposal given that both sites are owned by the same or related companies.
  - d) No quarry products exist on Lot 75 and the approved haulage route is no longer available. Access has been illegally provided to Lot 75 and previous rehabilitation work undertaken relates to coal extraction activities.

- 2) All aspects of the development need to be considered together not the haulage route in isolation and a full environmental assessment for rehabilitation on Lot 75 is needed.
- 3) The proposed haulage route is illegal, inequitable, dangerous and unacceptable for the two (2) owners and families of Lots 741 and 742 who purchased these properties in good faith.
- 4) The application is misrepresented as a “rehabilitation project” due to the amount of material to be removed from the site and the number of truck movements involved.
- 5) The cumulative impact of the proposal with other nearby quarry and mining developments including the approved gravel quarry on Lot 76 have not been considered.
- 6) Inadequate community consultation has been undertaken by the developer.
- 7) It is not possible to satisfactorily monitor the environmental impacts arising from two quarries operating beside one another under different consents and therefore standards.

These matters will be addressed in the following report.

**STATUTORY CONTEXT:**

The proposal represents “designated development” under Schedule 3, Part 2, Clause 35 of the EP & A Regulations, 2000. The establishment of an alternative haulage route results in a significant increase in the environmental impacts of the development compared to the approved development. These impacts include the proposed location of the haul road in close proximity to two (2) dwellings which will potentially increase environmental impacts including noise, dust and vibration for the residents of those dwellings and the construction of an intersection of the haul road with John Renshaw Drive, a classified State Road.

**PLANNING ASSESSMENT:**

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**

**State Environmental Planning Policy No. 11 – Traffic Generating Developments**

The applicant has submitted a Traffic Impact Assessment for the proposal in accordance with the above policy for consideration by the Local Traffic Committee and Roads and Traffic Authority (RTA). The Local Traffic Committee has recommended dust abatement sealing works be undertaken along the haulage route and the RTA require an upgrading of the intersection of Old Buttai Road with John Renshaw drive.

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

The proposed development does not seek to clear any significant vegetation and therefore no Koala habitat will be affected by the proposal.

**Hunter Regional Environmental Plan, 1989.**

The primary objective of this plan is to *'promote the balanced development of the region, the improvement of its urban and rural environments and the orderly and economic development and optimum use of its land and other resources, consistent with conservation of natural and man made features and so as to meet the needs and aspirations of the community.'* (Clause 2)

This objective proposes to regulate activities to ensure that reserves of coal, other mineral resources and low cost extractive resources such as sand, gravel, clay and the like are developed to their full potential.

Clause 39 of the Plan provides the following objectives in relation to planning strategies concerning extractive materials:-

- a) manage the coal and other mineral resources and extractive materials of the region in a co-ordinated manner so as to ensure that adverse impacts on the environment and the population likely to be affected are minimised;
- b) ensure that development proposals for land containing coal and other mineral resources and extractive materials are assessed in relation to the potential problems of rendering those resources unavailable; and
- c) ensure that the transportation of coal and other mineral resources and extractive materials has minimal adverse impact on the community.

The Plan also identifies the following development control matters that Council's should consider when determining applications for extractive industries (Clause 41) :-

- a) the conservation value of the land concerned and apply conditions which are relevant to the appropriate past mining and extractive land use.
- b) Consult with offices of relevant State Government departments to determine appropriate post-mining or extraction land uses.
- c) Ensure the progressive rehabilitation of the extracted area.
- d) Minimise the extent and impact of the final landform.
- e) Minimise any adverse effect of the proposal on groundwater and surface water quality.
- f) Review any likely impacts on air quality and the acoustical environment.
- g) Be satisfied that an environmentally acceptable mode of transport is available.

The Plan also identifies in a map (Map 4(a)) that the Blackhill area is one area of the Lower Hunter containing an important road base material resource.

The objectives and principles contained within the Hunter Regional Environmental Plan, 1989 and as referred to above have been considered in the following report.

### **Cessnock Local Environmental Plan 1989**

The subject land is zoned No. 1(a) – Rural “A” Zone and the relevant objective of this zone is (e) *to ensure that the type and intensity of development is appropriate in relation to:-*

- i) the rural capability and suitability of the land;*
- ii) the preservation of the agricultural, mineral and extractive production potential of the land;*
- iii) the rural environment (including scenic resources); and*
- iv) the costs of providing public services and amenities.*

The objectives and principles contained within the Cessnock Local Environmental Plan, 1989 and as referred to above have also been considered in the following report.

#### **b) The Provisions of any Development Control Plan**

The application has been considered under the Cessnock Development Control Plan (DCP) 2006 –Part C – General Guidelines Chapter 4 – Land Use Conflict and Buffer Zones.

The Plan identifies quarries as a Category C activity and recommends a minimum self-contained buffer distance of 1000 metres from Category A land uses ie dwelling houses. The plan identifies potential conflicts between these land uses as noise, dust, vibration, blast over-pressure fly-rock from blasting and disruption and contamination of ground and surface waters.

The nearest dwellings are located in excess of 1,000 metres from the existing quarry wall where the quarry operation will occur. A direct impact in terms of dust and noise and vibration however will occur for those residents of Lots 741 and 742 due to the transport to and from the site of quarry product and materials being transported to the site. The dwellings are located approximately 40 and 60 metres from the haul route however they will be adversely affected by the proposal. In order to mitigate this impact the applicant has advised that a sealed section of the haul route will be constructed in front of these dwellings.

The Plan suggests one method of reducing conflict between land uses is the compulsory acquisition of affected properties through conditions of consent.

#### **c) The Likely Impacts of that Development**

##### **Context and Setting**

The proposed development involves an application for the approval of an alternative haulage route to that originally approved for the quarry development in 1973. Although Council’s records indicate that the operation of the quarry ceased in 1993 consent for the quarry remains valid as the notion of an abandonment of an approved land use is not recognised.

The establishment of an alternative route for the gravel quarry is to take place in conjunction with the rehabilitation of the quarry. The rehabilitation plan submitted provides some information on the areas proposed to be remediated and these include the existing quarry face, the quarry floor, old haul roads, ramps and buffers.

### **Access, Transport and Traffic**

The proposed haul road consists of a gravel road approximately 2 kilometres in length passing over relatively flat terrain. From the quarry site the Crown Reserve road travels in a northerly direction for approximately 800 metres before joining Old Buttai Road. The road then turns sharply to the west and intersects John Renshaw Drive after approximately 1.15 kilometres.

In addition to the proximity of the haul road to the two (2) dwellings located on the road objection has also been received from local residents that the applicant within the EIS has provided inaccuracies concerning the proposed haul route. These are summarised as the haul route:-

- i) has been constructed illegally and without approval from the relevant authorities
- ii) that owing to a discontinuity in the Crown Reserve Road no legal access is available to Lot 75 from this road
- iii) that the access from Lot 75 along the Crown Reserve Road was located within Lot 74
- iv) the road has never been used as a gravel haul road.

In relation to these matters it should be noted that the access road had been constructed as a gravel road to provide access to the two (2) dwellings on Lots 741 and 742 as a result of a subdivision of Lot 74 DP 755260 in 1997 Council Ref. DA 150/595/44).

The remaining portion of the road (approximately 120 metres) to Lot 75 along the Crown Reserve road together with some upgrading of the road was undertaken without the consent of the Department of Lands.

The Department has been consulted and the EIS referred for comment. The Department has advised that following the subdivision referred to above *“the transfer of the Crown road to Council pursuant to Section 151 of the Roads Act 1993 is scheduled to be undertaken shortly”*. The Department further states, *“This places Council in a position to consider, determine and fulfil any obligations (past and future) under the Roads Act and the EP& AAct. It is also consistent with the transfer protocols established with Council.”*

The discontinuity referred to by local residents has also been investigated and a title search over Lot 75 has revealed that a right-of-carriageway exists over Lot 1 DP 780462 in favour of Lot 75 and thereby providing access to the subject land.

The final points made by local residents have been investigated and from Council's records it would appear that the road was used with Council approval to haul coal from Lot 75 (hence the deceleration lane on John Renshaw Drive) and only involved access through Lot 74. While no formal approval to haul gravel along the haul road is evident it would seem reasonable to assume that as both coal and gravel were available on the site then this access to a main road may have been used to transport both products. The applicant states that the present owner who became the operator of the gravel quarry in the 1980's used this haul route for a number of years albeit without a formal approval.



In conjunction with the application the applicant completed a Traffic Impact Assessment in relation to the use of the haul road which recommended that the following works be required:-

1. The construction of a dust abatement seal on the quarry access road from the quarry entrance gate for a distance of 250 metres towards Old Buttai Road.
2. The construction of a type AUR (right turn auxiliary lane) intersection at the Old Buttai Road/John Renshaw drive intersection in accordance with Austroads/RTA requirements.
3. Selective under scrubbing at the quarry access road/Old Buttai Road to improve sight distance to the east along Old Buttai Road.

Both the Roads and Traffic Authority and the Local Traffic Committee have considered the EIS and have raised no objection to the application subject to the imposition of appropriate conditions.

### **Noise, Dust and Vibration**

The proposed development has the potential to impact on the amenity of those residents in dwellings on Lot 741 and 742 and to a lesser extent to those on other rural properties in the locality. All dwellings in the area are in excess of 1 kilometre from the quarry face. However it is the times of the quarry's operation and the size and frequency of vehicles hauling material to and from the subject site which will have the most adverse impact on the existing residents in terms of noise, dust and vibration.

The proposed hours of operation of the quarry are from 7.00am to 6.00pm Monday to Saturday. The applicant has stated that truck movements will take place between the hours of 7.00am and 6.00pm and average 120 per day (60 loads) which equates to one movement every 5.5 minutes.

The applicant has advised that both the owners of Lot 741 (Stevenson's) and Lot 742 (Wheldon's) have been consulted in relation to the proposal. The Stephenson's were not supportive of the proposal due to the number of truck movements and loss of amenity to be experienced and requested additional roadworks along the haulage route if the application was to proceed. The Wheldon's were consulted and advised that in general they did not object to the proposal but also asked for additional roadworks to be undertaken on the haul route and for additional security measures to be implemented as the unauthorised provision of access into Lot 75 had resulted in antisocial behaviour in the area.

The applicant has conducted both an air quality assessment and noise assessment with respect to the nearest dwellings on Lots 741 and 742 and other dwellings in the locality in order to assess the impact of noise and dust from the use of the haul road. The following mitigation measures have been combined to ensure that there are no exceedences of acceptable levels for noise to the dwellings under the NSW Industrial Noise Policy (INP) or for particulate (dust) under the EPA criteria set down in the Approved Methods for the Modelling and Assessment of Air Pollutants NSW ( DEC 2005):-

**1. Primary Mitigation Recommendation**

A sealed section of haulage route extending from 100 metres north of Lots 741 and 742 DP 876393 (and along the western boundary of Lots 741 and 742 DP 876393 (approximately 280 metres) to 100 metres south from the subject sites' northern boundary is required to be constructed.

**2. Secondary Mitigation Recommendation**

\* a 40 km/hour speed zone be applied to the sealed section of the haul route. (as both families have young children)

\* signage displaying 'limit noise' and/or 'limit compression braking' is erected near the existing dwellings.

\* effective organisation is implemented when entering and exiting the site so that trucks are not unnecessarily idling near the existing dwellings.

As the proposed transportation of materials to and from the site will have such a profound impact on the amenity of those persons residing in dwellings on Lots 741 and 742 it is proposed that in addition to the mitigation measures outlined that the owners be given the opportunity for their properties to be compulsorily acquired by the quarry owner through conditions of consent.

**Safety and Security**

The owners of Lot 42 have raised concerns about the antisocial behaviour of persons who have gained access to the quarry. In this regard the owners of the quarry will be required to put in place appropriate measures to ensure that this does not occur particularly outside the times that the quarry is operating.

**Social Impact**

The proposed development is considered to have a positive social benefit by providing an opportunity for the rehabilitation of Lot 75 which has been left in a degraded state following its use for coal mining and as a gravel quarry site since the 1940's.

Aspects of the proposal have the potential to have an adverse impact on the health and safety of the local community. However, it is considered that the exposure to such potential is for a limited duration only and that the mitigation measures proposed by the applicant together with those imposed by Council as conditions of any consent to be issued will minimise any adverse impact that may arise.

## **Economic Impact**

The subject site contains only a limited amount of gravel reserve due to the increasing depth of overburden covering the gravel and the fact that the gravel deposit dips to the south-east at an angle of approximately 5%. The economic viability of completing the extraction of the remaining reserves remains marginal but may in other ways be of value to the owner of the reserve.

The formal approval of a gravel haul route from Lot 75 to John Renshaw Drive will provide the owner and operator of the quarry with several positive economic outcomes with the most obvious being an efficient means of transporting any remaining product from the quarry to external clients.

## **Visual Impact**

As stated above in October/November 2005 Council received complaints that the present owner/operator of the quarry was undertaking earthworks in the south-eastern corner of the quarry. These earthworks were clearly visible from John Renshaw Drive and are located in the area proposed to be rehabilitated.

The EIS and Rehabilitation Plan submitted by the applicant do not address the issue of the visual impact of the rehabilitation of the highwall. The use of plant tubestock on 12 metre high benches will mean that the visual scarring of the highwall will be evident for a number of years before the plantings can be established to provide a vegetation screen.

It is noted from the consent granted to the quarry that *“the area which is being quarried is reinstated to the satisfaction of Council.....”*. In other words under the consent for the quarry Council must be satisfied with the works proposed under the rehabilitation plan. In this regard the applicant should be required to restrict the height of benches given that other quarry developments have been required to adopt bench heights of seven (7) metres (Woodbury’s Blackhill Quarry) and ten (10) metres (Darracon quarry on Lot 76 adjoining). Further details are also required from the applicant in this regard as well as further details of the quarry floor rehabilitation. As the applicant has suggested a program of progressive rehabilitation this should be linked to the progressive extraction of material from the quarry.

## **Cumulative Impacts**

The subject site contains a gravel quarry with limited remaining reserves. The site adjoins Lot 76 on which a new quarry is presently being established for a twenty (20) year term. The two quarries are held in the same ownership and are therefore likely to be operated in conjunction with one another rather than operate independently. The cumulative impact of these quarry developments are therefore likely to be minimised due to their common ownership and operation.

## **CONCLUSION:**

The proposal involves the establishment of an alternative access to an approved gravel quarry on Lot 75. The consent for the quarry was issued in 1973 and remains valid. The only condition of the consent was that the site be reinstated to the satisfaction of Council. The Rehabilitation Plan submitted requires further amendment prior to its approval by Council.

The applicant has sought Council's consent to establish an alternative haul route for the quarry in conjunction with the rehabilitation of the quarry. Only material associated with the rehabilitation (benching) of the quarry will be removed from the quarry. Any consent issued with respect to the alternative haulage route will contain only those conditions relating to the establishment of the alternative haul road and its use.

The establishment of the proposed alternative haul route will have a significant impact on the amenity of residents of Lots 741 and 742 in DP 876393 and although the applicant has proposed a number of measures to mitigate that impact it is considered of such significance that they should be provided with the opportunity to have their properties acquired by the quarry owner/operator should they wish this to occur. The establishment of the proposed haulage route is unlikely to have a significant impact on the amenity of other residents in the locality.

**RECOMMENDATION** that:

- A) Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Blackhill be approved subject to compliance with the following conditions of consent:**

### **SCHEDULE 1**

#### **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 Environmental Impact Statement dated August 2007, and Noise & Air Assessments from Insite dated February 2007 and March 2007 respectively 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.*

2. The intersection of John Renshaw Drive and Old Buttai Road to be upgraded to a Type 'AUR' right turn treatment (designed in accordance with the RTA's Road Design Guide and the relevant Austroads guidelines) prior to the commencement of any quarrying on the site. Such intersection works shall be undertaken at full cost to the developer.

**Note 1** - The applicant will be required to enter into a Works Authorisation Deed with the RTA. In this regard the applicant is required to submit detailed design plans and all relevant additional information, as may be required in the RTA's Works Authorisation Deed documentation, for each specific change to state road network for the RTA's assessment and final decision concerning the work.

**Note 2** - The conditions of consent set by Council do not guarantee the RTA's final consent to the specific road work, traffic control facilities and other structures works on the classified road network. The RTA must provide a final consent for each specific change to the state road network prior to the commencement of any work.

Reason

*To ensure that a safe and efficient means of access is available to and from the quarry site via the State Road prior to the commencement of quarrying/rehabilitation activities.*

3. All gravel material to be transported from the quarry shall be from benching operations only associated with the proposed quarry rehabilitation and no further expansion of the quarry is to be undertaken.

Reason

*To confirm the terms of consent.*

4. a) The applicant shall:-
  - (i) within twenty eight (28) days of the date of this consent, serve upon the owners of Lot 741 and Lot 742 DP 876393 adjoining the subject land a copy of this condition.
  - (ii) Upon receipt of a request to purchase within six (6) months from the commencement of commercial operation of the quarry from the owners of Lot 741 and Lot 742 DP 876393 purchase the property.
  - (iii) Pay not less than market value having regard to the existing use of the land immediately prior to the date of development consent and as if unaffected by the proposed development.
  - (iv) Pay reasonable costs, if any, of the claimant in respect of expenses for legal advice and representation and expert witnesses in determining the value of the property and the terms of acquisition.
- b) Where agreement as to acquisition details cannot be reached between the applicant and the relevant land owner within 6 months of the date of the applicant having received a request to purchase, then:-
  - (i) either party may refer the matter to the Council who shall arrange through the President of the Australian Institute of Valuers for an independent valuation of the relevant property to be undertaken in order to determine current market value as of the land was not affected by the proposed development, and reasonable costs and compensation referred to in (a) (iv) and (v) above;

- (ii) the applicant shall bear the costs of the valuation arranged by the Council'
- (iii) following receipt of advice of such valuation, the applicant shall offer to purchase the relevant property at a price of not less than the said valuation.

Should the applicant's offer to purchase under part (iii) not be accepted by the relevant landowner within 6 months of the date of such offer, the applicant's obligations pursuant to this condition shall cease in respect of the land subject of that offer.

Reason

*To provide the owners of Lots 741 and 742 DP 876393 with an opportunity for their properties to be compulsorily acquired by the owner of the quarry should they wish for this to occur.*

Access, Car parking and Loading Arrangements

- 5. 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.*

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

Access, Car Parking & Loading Arrangements

- 6. The registered proprietors shall reconstruct the existing all-weather access road from the property boundary to the quarry site to a Category "B" standard with a 6m wide carriageway and 1m wide road shoulders and a dust abatement seal for the first 150m from the property boundary in accordance with Council's 'Engineering Requirements for Development' Pt 4.5.13 (available at Council offices). Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the Haul Road.

Reason

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

7. The registered proprietors of the land shall construct the following works within Old Buttai Road from John Renshaw Drive to the intersection of the Crown Road in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by council's Development Services Manager prior to the release of the Construction Certificate for the Haul Road.
- (a) Construct and gravel road pavement with 6m wide carriageway and 1m wide road shoulders
  - (b) Place two (2) coat hot bitumen seal 6m wide for the first 200m from John Renshaw Drive.
  - (c) An 80km/h speed limit is to be posted.
  - (d) Construct drainage works

Full engineering pavement design in accordance with ARRB Special Report No. 41 is to be submitted for assessment.

Reason

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

8. The registered proprietors of the land shall construct the following within the Crown Road extending from the subject property boundary north for a distance of 380 metres (being the combined frontage of Lot 741 and 742 and 100 metres north of Lot 741) in accordance with Council's policy "Road standards for Crown Road Transfers" and Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by council's Development Services Manager prior to the release of the Construction Certificate for the Haul Road.
- (a) Construct and gravel 320mm road base with a 6m wide carriageway and 1m wide road shoulders
  - (b) Place two (2) coat bitumen seal 6m wide for the full length.
  - (c) Selective under scrubbing works to improve sight distance at the Quarry Road/ Old Buttai Road intersection.
  - (d) Signage displaying "limit noise" and/or "limit compression braking" being erected near the existing dwellings on lot 741 and 742 DP 876393 adjacent to the entrance to the quarry.
  - (e) Construct drainage works
  - (f) Signage for an enforceable 40km/hour speed zone on the sealed sections of the haulage route in the vicinity of Lots 741 and 742 DP 876393.

Reason

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

9. All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The car parking areas shall be constructed with a base course of adequate depth to suit design traffic loadings with an all weather surface treatment, 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.*

Drainage and Flooding

10. 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.

Reason

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

Site Works

11. A construction management plan shall be submitted with the application for the Construction Certificate. The management plan shall include:

- (a) Details of sedimentation and erosion control
- (b) Details of provision of truck and machinery wash down areas. **Note:** All trucks and machinery must be free from all foreign material where such material is likely to cause pollution.
- (c) Details of dust mitigation on construction sites and access roads
- (d) Location and phone number of the site office
- (e) Details regarding provision of areas set aside for the stockpiling of:
  - (i) Topsoil
  - (ii) Raw materials such as sand, soil, mulch and the like
  - (iii) Details regarding the provision of facilities for workers associated with the development.

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

Reason

*To reduce the environmental impact on the site during the construction period.*

**DURING CONSTRUCTION**

General

12. 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.*



Site Works

13. All reasonable measures shall be taken to protect all other vegetation on the site from damage during construction. All useable trees and shrubs shall be salvaged for re-use, either in log form, or as woodchip mulch for erosion control or site rehabilitation.

Reason

*To protect the landscape and scenic quality of the locality, to maintain ground surface stability and to ensure sensitive management of vegetation and other natural resources.*

14. 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.*

Scheduling of Inspections

15. 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.*

**PRIOR TO OCCUPATION & OPERATION**

16. Prior to the issue of an Occupation Certificate the applicant shall provide Council with a Compliance Certificate which confirms that the Haul Road and associated works have been constructed strictly in accordance with the provisions of the Development Consent and Construction Certificate.

Reason

*To ensure that Haul Road works have been constructed in accordance with the Development Consent and Construction Certificate*

17. The registered proprietor of the land shall prepare a Plan of Management for the maintenance of the Haul Road to minimise noise, dust nuisance, soil erosion and all other relevant environmental matters. The Plan of Management shall set out the operational parameters for the 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.*

**ADVICE**

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

Based on a road length of approximately 730 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- (i) Road fees - engineering plan checking and supervision of \$5,208.00.
- (ii) A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).
- (iii) A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).

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

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

Reason

*To meet costs associated with the approval of engineering plans and inspection of construction works.*

- B) Having regard to the requirement under the original consent for the gravel quarry (Development Application No. D74/73/3 dated 2<sup>nd</sup> March 1973) for the reinstatement of the site to the satisfaction of Council the applicant be advised that Council will require the submission of a revised Rehabilitation Plan for its consideration incorporating the following amendments prior to its acceptance of the Plan:-**
- a) **The Rehabilitation Plan to address the visual impact of the quarry when viewed from John Renshaw Drive.**
  - b) **A reduction in the height of the proposed benching of the quarry face or justification as to why a height of 12 metres for the benching is considered appropriate having regard to bench heights approved for similar quarries in the Cessnock Local Government area.**
  - c) **The proposed program of progressive rehabilitation intended for the quarry to be linked to the progressive extraction and production of gravel materials from the quarry.**
  - d) **Further details being provided of the quarry floor rehabilitation.**
- C) A Liaison Committee comprising Ward D Councillors the Mayor and appropriate Council officers be established to monitor progress of the operation of the haul road and rehabilitation of the quarry and shall meet on a bi-yearly basis or as determined by Council.**

To: **The General Manager**  
Corporate & Regulatory Services  
Committee - 12 December 2007

**D FITZGERALD**  
**ACTING DIRECTOR CORPORATE &**  
**REGULATORY SERVICES**  
25 November 2007

**MOTION**      **Moved:**      Councillor Smith      **Seconded:**      Councillor Davey  
797 (12/12/2007)

**RECOMMENDED** that Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Blackhill be **DEFERRED** until the next meeting of Council, due to the report being the subject of an address to Council earlier in the evening.

**CARRIED**

**MOVED**      **Moved:**      Councillor Besoff      **Seconded:**      Councillor Smith  
806 (23/1/2008)

**RECOMMENDED** that Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Black Hill be **DEFERRED** to allow Council Officers to facilitate consultation with the residents concerned together with the developer and arrange a site inspection.

**CARRIED**

**MOTION**      **Moved:**      Councillor Besoff      **Seconded:**      Councillor Pynsent  
818 (20/2/2008)

**RECOMMENDED** that Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Blackhill be **DEFERRED** to the meeting of 5 March 2008.

**CARRIED**

**Please note that due the size of the enclosure document for this deferred report it is not contained within this meetings enclosure documents as they have previously been issued on two occasions. They are available on Council's website for those who wish to access them.**

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**  
**REPORT NO. 116/2007**

**DEVELOPMENT APPLICATION NO:** 5/1995/80124/3  
**APPLICANT:** DAROMIN ENGINEERING PTY LTD  
**OWNER:** DAROMIN ENGINEERING PTY LTD  
**PROPERTY:** LOTS 76, 77 & 84 DP 755260, LOTS 1 & 2 DP 34957, LOT 3 DP 809377 AND LAND IN DP 977069 LINGS ROAD AND GEORGE BOOTH DRIVE BLACKHILL  
**AREA:** 131 HECTARES (LOT 76 ONLY)  
**ZONING:** RURAL 1(A)  
**PROPOSAL:** APPLICATION TO AMEND DEVELOPMENT CONSENT 118/695/124

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Senior Planning Assessment Officer, Mr Rod Sandell, reports:

**SUMMARY:**

Application has been received for an amendment to the consent for Development Application No. 118/695/124 granted by the Land & Environment Court on 28 August 1997. The amendment seeks approval to modify or remove several conditions of the consent relating to the provision of a seventy (70) metre buffer between the subject land and Lot 75 immediately adjoining to the west. The basis on which the amendment is made is that the applicant/owner has now acquired Lot 75 and an adjoining Lot 42 and therefore the buffer is no longer required.

The application represents an amendment to a designated development and was advertised in accordance with the Act. A total of twenty nine (29) submissions were received from local residents in the area objecting to the proposed development.

It is considered that the proposal which involves a minor extension to the approved quarry area will be unlikely to have any significant increase in environmental consequences. The application is therefore recommended for approval.

**PROPOSAL:**

The applicant/owners of the subject land have advised that they have received written approval from Land and Property Information to compile a plan of consolidation for Lots 75 and 76. The applicant therefore requests the following amendments to the consent:-

- modification to Conditions 1; and
- a minor extension of the approved quarry area (1.2 hectare area of the buffer)

The amendment to Condition 1(imposed by Council and enforced by Court) involves the following:

- removes the 70 metre buffer to boundary of Lot 75 (maintained for all other boundaries to the site),
- allows construction and operation of the quarry to encroach below the 100 metre contour line only on the current boundary with Lot 75.

A request for the deletion of Condition 13A (imposed by the Land & Environment Court), which requires that the boundary between 75 and 76 be surveyed and pegged for the life of the development has been withdrawn.

**BACKGROUND:**

The original application for the development of a gravel quarry on Lot 76 was lodged with Council in August 1990 via Development Application No. 118/690/165. Consent to the proposal was granted by Council on 24 August 1993 but was subject to an appeal in the Land and Environment Court. The application was deemed to be refused by the Court as it was considered by the Court that among other issues the haul route via Lings Road was unacceptable.

Development Application 118/695/124 was made on 9 June 1995 and maintained the same quarry plan as that previously consented to by Council but indicated that the haul route from the quarry would be located to the south following an existing fire trail and public road reserve until it intersected with George Booth Drive.

During consideration of this application, reference to a buffer was first discussed in the Council report 151/1996 (11 December 1996). In relation to the impact on Lot 75 from blasting (flyrock) the report states:

*“In the absence of an existing buffer zone, a condition requiring purchase of Portion 75 will be imposed should the owner wish to take advantage of it. From Council’s point of view, the conditions able to be imposed, and the relative importance of the resource to the community as a whole, mean that this is the only fair way to address what is an imposition on one particular landowner “.*

The report acknowledged a need for a buffer to Lot 75 but did not specifically mention Lot 42 or any other lots. This report did not include a condition requiring a buffer, but imposed a condition requiring the owners of Lot 76 to purchase Lot 75 should the owners of 75 wish.

Following consideration of this report, Council resolved that the matter be “deferred pending the receipt of legal advice and further clarification”.

On 19 March 1997 the DA was reported back to Council (Council report 24/1997).

In relation to buffer zones. The report stated that the properties most affected are Lot 75 and, to a lesser extent Lot 42. An assertion from the owner of Lot 42 that this property was being “ignored” in terms of the quarries impact (and associated requirement to purchase) was not accepted by Council officers. In the 1996 report no other properties were identified as needing to be purchased, however the report states that the “*impact on each Lot including Lot 42 has been addressed through the assessment of Section 90 heads of consideration and acceptable limits according to advice received from Statutory Authorities*”.

Discussions were held with the Buttai Community Group and Black Hill Environment Protection Group and a submission from this group was annexed to the Council report. These groups were given the opportunity to review the proposed conditions of consent and provide comment.

In regard to the 70 metre buffer the groups “*welcomed the inclusion of a buffer zone and endorse the comments made on page 2 of ESR 24/1997*”, which in part state that the 70 metre clear buffer zone, in which no activity takes place between the quarry and the surrounding lots/portions, would help address residents concerns. The report further states:

*“it also keeps quarrying operations an adequate distance from the existing high wall and maintains a natural wall of material and vegetation which will assist in visually and acoustically screening the proposal from adjacent properties.”*

The submission also requested that Lot 42 be included within Condition 12 which required the owners of the quarry to purchase Lot 75. Condition 12 was amended to include Lot 42. Condition 1 also imposed a 70 metre buffer zone to any adjoining lot or portion. The consent was issued to the applicant on 7 April 1997.

### **1997 Appeal to Land & Environment Court**

An Appeal was lodged by Beanie and Myrtle Jones (then owners of Lot 75) with the Land & Environment Court on 21 May 1997, against Council's decision to grant consent to the quarry. This appeal was resolved on 28 August 1997 by consent orders and resulted in an amendment to Condition 13 and the introduction of a new Condition 13A. The underlying intent of the appeal and resultant conditions was that the owners of Lot 75, 40 and 42 could have the opportunity to comment on the quarry operation plan before Council approved it.

### **SITE DESCRIPTION:**

The subject site consists of a principle lot (Lot 76) having an area of 131 hectares together with a number of lots owned by Coal and Allied through which access to George Booth Drive has been constructed. Lot 76 is rectangular in shape and the approved quarry site is located on an elongated ridge or spur running in a south-west to north-east direction. The maximum elevation of the ridgeline is 120m AHD rising up from a height of approximately 50 AHD. The land is predominantly covered in an open Eucalypt forest on moderate to very steep slopes.

### **PUBLIC EXHIBITION:**

The proposed amendment to the designated development was advertised for an initial period of thirty (30) days from 22 September 2007 until 23 October 2007. This period was extended during the exhibition period until 9 November 2007. A total of twenty nine (29) submissions were received from residents of the Blackhill area.

A submission was received from the two (2) community groups involved (The Black Hill Environment Protection Group and The Buttai Community Development Group) together with submissions from other owners of properties in the locality. In summary the local community's' objections have been based around the following nine (9) themes:-

- 1) The application is based on false information and fails to address our previous concerns.
- 2) The modification is not "substantially the same development" as that approved by Council and the Land & Environment Court and should not be considered under the provisions of s.96AA of the EP & A Act.
- 3) The purpose of Condition 13A is misrepresented (which is essentially: "keeping the bastards honest) and this condition should be retained.
- 4) No justification is provided for this Modification and Council should not consider supporting the proposed amendments to conditions based on the information provided by the applicant.
- 5) Consolidation of Lots 75 and 76 would allow the operation of a "super-quarry", the impact of which has never been addressed. If the consolidation occurs, it would require a new comprehensive Environmental Assessment and the development of a single, integrated Environmental Management Plan.
- 6) The land owner has consistently shown non-compliance with the existing conditions of consent and we have concerns about ongoing compliance.

- 7) Other local and regional changes have occurred that justify tightening rather than loosening the conditions of consent.
- 8) Consideration of Clause 36 of Schedule 3 of the EP & A Regulation 2000.
- 9) Issues raised in Community Groups' March 15 objection that have not been adequately addressed.

These matters will be addressed in the following report.

**STATUTORY CONTEXT:**

The proposed development involves alterations to a designated development consent under Section 96(2) of the EP & A Act 1979. In order for Council to consider the application under this provision it must be satisfied that the alterations are “*substantially the same development*”. This matter has been investigated having regard to the concerns raised by local residents and it has been concluded that it is appropriate to consider the application under Section 96(2) of the Act.

In addition, Council must also determine under Schedule 3 Part 2 of the EP&A Regulations 2000 whether the alterations are designated development: Schedule 3 provides that if the consent authority is of the opinion that the alterations and additions do not significantly increase the environmental impacts of the total development compared with the approved development, the application is not designated development.

In forming its opinion as to whether or not development is designated development, a consent authority is to consider:

- (a) the impact of the existing development having regard to factors including:
  - (i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and
  - (ii) rehabilitation or restoration of any disturbed land, and
  - (iii) the number and nature of all past changes and their cumulative effects, and
- (b) the likely impact of the proposed alterations or additions having regard to factors including:
  - (i) the scale, character or nature of the proposal in relation to the development, and
  - (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and
  - (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and
  - (iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and
- (c) any proposals:
  - (i) to mitigate the environmental impacts and manage any residual risk, and
  - (ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.

## **Comments**

In relation to the matters raised above the following points are made:-

- a) The applicant company is well recognised in the field of road building and earthwork constructions and has owned and operated a number of gravel quarries in the Lake Macquarie area eg at Belmont, Boolaroo and Fennell Bay most of which have been rehabilitated. The company presently operates from the Stockrington quarry in Council's area and has done so for a number of years without complaint.

The company has commenced the initial stages of quarrying on Lot 76 and Council has recently conducted an audit of the consent conditions relating to the quarry's operation. The audit identified a number of conditions of consent that were outstanding and many of these have now been addressed by the company. Council is seeking the ongoing cooperation of the company to ensure compliance with the consent conditions as the quarry is further developed to the stage where it is transporting its gravel product to external clients.

- b) The proposed removal of the buffer area adjoining Lot 75 results in an additional area of 1.2 hectares being cleared and used for quarry compared to the eleven (11) hectare approved quarry site on Lot 76 ie approximately 10%. On the adjoining Lot 75 the area previously developed for quarrying is approximately 46 hectares.

The potential environmental impacts of the quarrying of the additional 1.2 hectares can be predicted with some certainty as these impacts were appropriately assessed for the approved quarry and considered to comply with acceptable noise, dust, vibration and other limits suggested by Statutory Authorities. Any requirement to seek a comprehensive review of the environmental studies previously undertaken for the quarry is considered to be unwarranted and unreasonable having regard to the scale of the proposed addition to the quarry and its likely impact when compared to that of the overall development.

- c) Approval of the additional 1.2 hectare quarry area would be subject to the conditions of the existing consent which contains conditions to mitigate the environmental impacts, manage any residual risk, and facilitate compliance with relevant standards set down by the appropriate authorities. It is appreciated that the application may involve minor amendments to management systems that have been proposed. For example the removal of the buffer will aid water management by providing more room for sediment structures and minor revisions to the water management plan would be required.

While it is considered that the proposed amendments to the consent do not significantly increase the environmental impacts of the total development compared with the approved development, given the history of the site, the community interest in the amendment and the significant neighbour objection previously received it was considered appropriate for the notification period to be extended in line with that required for designated development to ensure interested parties had adequate opportunity to review the amendments and provide their comments to Council.



**PLANNING ASSESSMENT:**

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:

**b) The Provisions of any Environmental Planning Instrument**

**Hunter Regional Environmental Plan, 1989.**

The primary objective of this plan is to *'promote the balanced development of the region, the improvement of its urban and rural environments and the orderly and economic development and optimum use of its land and other resources, consistent with conservation of natural and man made features and so as to meet the needs and aspirations of the community.'* (Clause 2)

This objective proposes to regulate activities to ensure that reserves of coal, other mineral resources and low cost extractive resources such as sand, gravel, clay and the like are developed to their full potential.

Clause 39 of the Plan provides the following objectives in relation to planning strategies concerning extractive materials:-

- d) manage the coal and other mineral resources and extractive materials of the region in a co-ordinated manner so as to ensure that adverse impacts on the environment and the population likely to be affected are minimised;
- e) ensure that development proposals for land containing coal and other mineral resources and extractive materials are assessed in relation to the potential problems of rendering those resources unavailable; and
- f) ensure that the transportation of coal and other mineral resources and extractive materials has minimal adverse impact on the community.

The Plan also identifies the following development control matters that Council's should consider when determining applications for extractive industries (Clause 41) :-

- h) the conservation value of the land concerned and apply conditions which are relevant to the appropriate past mining and extractive land use.
- i) Consult with offices of relevant State Government departments to determine appropriate post-mining or extraction land uses.
- j) Ensure the progressive rehabilitation of the extracted area.
- k) Minimise the extent and impact of the final landform.
- l) Minimise any adverse effect of the proposal on groundwater and surface water quality.
- m) Review any likely impacts on air quality and the acoustical environment.
- n) Be satisfied that an environmentally acceptable mode of transport is available.

The Plan also identifies in a map (Map 4(a)) that the Blackhill area is one area of the Lower Hunter containing an important road base material resource.

The objectives and principles contained within the Hunter Regional Environmental Plan, 1989 and as referred to above have been considered in the following report.

### **Cessnock Local Environmental Plan 1989**

The subject land is zoned No. 1(a) – Rural “A” Zone and the relevant objective of this zone is (e) *to ensure that the type and intensity of development is appropriate in relation to:-*

- v) *the rural capability and suitability of the land;*
- vi) *the preservation of the agricultural, mineral and extractive production potential of the land;*
- vii) *the rural environment (including scenic resources); and*
- viii) *the costs of providing public services and amenities.*

The objectives and principles contained within the Cessnock Local Environmental Plan, 1989 and as referred to above have also been considered in the following report.

#### **b) The Provisions of any Development Control Plan**

The application has been considered under the Cessnock Development Control Plan (DCP) 2006 –Part C – General Guidelines Chapter 4 – Land Use Conflict and Buffer Zones.

The Plan identifies quarries as a Category C activity and recommends a minimum self-contained buffer distance of 1000 metres from Category A land uses ie dwelling houses. The plan identifies potential conflicts between these land uses as noise, dust, vibration, blast over-pressure fly-rock from blasting and disruption and contamination of ground and surface waters.

The nearest dwellings are located in excess of 1,000 metres from the reduced buffer area under the Section 96 application. Given the existing setback to the new dwellings is outside the 1,000 metre buffer zone, it is likely that the impact on these dwelling will be within acceptable limits.

Having regard to the proposed modification with reference to the above matters, it is considered that the removal of the buffer for approximately 150 metres adjacent to the boundary of Lot 75 will not result in a significant increase in the environmental impacts of the development. It is appreciated that this will involve the removal of the 100 metre contour restriction in this locality.

#### **c) The Likely Impacts of that Development**

##### **Context and Setting**

The 70 metre buffer was imposed on the development as a condition of consent and was in addition to conditions requiring satisfaction of acceptable noise, dust, vibration and other limits suggested by Statutory Authorities and imposed through conditions. The maintenance of the buffer to all adjoining boundaries apart from Lot 75 should maintain the intent of the original condition which was to assist in visually and acoustically screening the proposal from adjacent properties.

However, since the original quarry consent was issued in 1997, Council has granted consent to at least three (3) dwelling houses to the north and northwest of the subject site. These dwellings are located at Lot 42 (Brooks DA 2005/663 replacing an existing dwelling), Lot 141 (Stevenson DA1999/1019 & 2005/10) and Lot 142 (Weldon DA2000/1044).

All three (3) dwellings are located over 1,000 metres from the reduced buffer area proposed under the s96 application and therefore it is likely that the environmental impacts on these dwellings in terms of noise, dust and vibration will be within acceptable limits .

### **Visual Impact**

The applicant has undertaken a visual analysis of the area where the additional 1.2 hectares will be quarried in order to assess any visual impact of the addition from adjoining properties or public roads such as John Renshaw Drive. The visual scarring in evidence from John Renshaw Drive is associated with the quarry development on Lot 75 and this area will be subject to rehabilitation under Development Consent No. 8/2007/365/1 presently before Council. It is concluded that the additional area to be quarried will be unlikely to cause additional impacts on the visual amenity of the surrounding rural landscape.

### **Fauna and Flora**

The application for additional quarry area has been considered for its impact on flora and fauna under the Environment Protection and Biodiversity Conservation Act 1999 and a Seven (7) Part Test has been conducted under the Threatened Species Conservation Act 1995. The site has also been investigated of potential and core Koala habitat in accordance with State Environmental Planning Policy No.44 – Koala Habitat Protection. No endangered ecological communities were identified within the site and no threatened flora species were identified on site. Four (4) threatened fauna species were recorded in the surrounding land during previous investigations and while it was concluded that the impact to potential local populations of threatened species would not be significant several mitigation measures were proposed to reduce ecological impacts.

### **CONCLUSION:**

The present application represents an amendment to a designated development and has been advertised in accordance with the Act as designated development to enable local residents the opportunity to comment on the application. Substantial objection has been received from the local community seeking a comprehensive review of the environmental impacts of the proposed amendment involving the removal of a portion of the 70 metre buffer between the approved quarry and the boundary with Lot 75. Having regard to the scale and nature of the additional area to be quarried together with the detailed assessment that was undertaken for the original quarry development it is considered that this is not warranted.

The amended application has adequately been assessed and it is considered that the proposal which involves a minor extension to the approved quarry area will be unlikely to result in any significant increase in environmental consequences for the natural environment or for local residents.

**RECOMMENDATION** that Council grant consent pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979 to the following modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive, Buttai.

**Condition 1**

*'The development is to be carried out generally in accordance with the proposal set out in the Environmental Impact Statement, the Addendum Report dated March 1996, the Archaeological Survey dated July, 1996 and the document titled "Response to Issues Raised by Cessnock City Council" dated September 1996, provided by E.R.M. Mitchell McCotter Pty. Ltd., and as modified by the following conditions of consent.*

*At no time during construction or operation of the quarry is it to encroach and closer than 70 metres to the common boundary of any adjoining lot or portion or the 100m contour line where it exceeds that distance. This separation distance is to be indicated in the detailed quarry plan to be submitted to Council, and is to remain clear of any development other than dams for control of runoff water, sedimentation control structures and the like. Initial plant and amenities are also not to be located within this 70 metre buffer. A quarry operation plan identifying this buffer zone is to be submitted to Council for approval as set out in Condition 13.'*

**Proposed modification to Condition 1**

'The development is to be carried out generally in accordance with the proposal set out in the Environmental Impact Statement, the Addendum Report dated March 1996, the Archaeological Survey dated July, 1996, the document titled "Response to Issues Raised by Cessnock City Council" dated September 1996, provided by E.R.M. Mitchell McCotter Pty. Ltd., and the details of the Section 96 Modification contained within the Buttai Quarry – Section 96 Modification document prepared by ERM dated June 2007 and as modified by the following conditions of consent.'

At no time during construction or operation of the quarry is it to encroach and closer than 70 metres to the common boundary of any adjoining lot or portion. This buffer does not apply to the boundary with the existing Lot 75.

At no time during construction or operation of the quarry is it to encroach below the 100m contour line except on the current boundary with Lot 75. This separation distance is to be indicated in the detailed quarry plan to be submitted to Council, and is to remain clear of any development other than dams for control of runoff water, sedimentation control structures and the like. Initial plant and amenities are also not to be located within this 70 metre buffer. A quarry operation plan identifying this buffer zone is to be submitted to Council for approval as set out in Condition 13.'

To: **The General Manager**  
Corporate & Regulatory Services  
Committee - 12 December 2007

**D FITZGERALD**  
**ACTING DIRECTOR CORPORATE &**  
**REGULATORY SERVICES**  
28th November 2007

**MOTION**                      **Moved:**        Councillor Smith                      **Seconded:**        Councillor Davey  
797 (12/12/2007)

**RECOMMENDED** that Development Application No. 5/1995/80124/3 for the modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive Buttai be **DEFERRED** until the next meeting of Council, due to the report being the subject of an address to Council earlier in the evening.

**CARRIED**

**MOVED**                      **Moved:**        Councillor Besoff                      **Seconded:**        Councillor Smith  
806 (23/1/2008)

**RECOMMENDED** that Development Application No. 5/1995/80124/3 for the modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive Buttai be **DEFERRED** to allow Council Officers to facilitate consultation with the residents concerned together with the developer and arrange a site inspection.

**CARRIED**

**MOTION**                      **Moved:**        Councillor                                      **Seconded:**        Councillor  
818 (20/2/2008)

**RECOMMENDED** that Development Application No. 5/1995/80124/3 for the modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive Buttai be **DEFERRED** to the meeting of 5 March 2008.

**CARRIED**

**Please note that due the size of the enclosure document for this deferred report it is not contained within this meetings enclosure documents as they have previously been issued on two occasions. They are available on Council's website for those who wish to access them.**

## **OFFICER'S REPORTS**

### **ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 7/2008**

**SUBJECT: INVESTMENTS – COLLATERALISED DEBT OBLIGATIONS**

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Financial & Administrative Services Manager, Robert Maginnity, reports:

Council at its meeting of 20 February 2008 when considering the monthly investment report as required under Section 212 of the Local Government (General) Regulation 2005, resolved under Minute No 818 that:

*“A further report be provided to Councillors on the \$4.5 million that Council has invested in CDO's or collateralised debt objects”.*

In response to that request the following information is supplied to Council.

Council has a diversified investment portfolio with a mixture of short and long term investments. Short term investments generally are cash held at bank, cash held in “at call” accounts and term deposits of varying lengths (usually less than 90 days). Longer term investments encompass a variety of investment vehicles including managed funds, accrual notes, floating rate notes, equity linked deposits and collateralised debt obligations (CDO's). A summary of the various types of investments held are included with the monthly investment report presented to Council.

With the recent change to International Accounting Standards requiring investments being recorded on a “Mark to Market” basis, discussions were held with Council auditors at the time (PricewaterhouseCoopers) regarding the valuation of investments. The consensus reached was that as Council does not actively trade investments once purchased, with the usual practice being to hold the investment to maturity and obtaining the coupon interest rate over the life of the investment, investments are held at par value in the accounts of Council. Regular updates are received on the market value of all investments and a notation was made in Councils Annual Financial Statements to this effect.

Council has sold some investments prior to maturity when circumstances present a positive cash return to Council. For example an investment which had a par value (face value) of \$1,000,000 was sold in 2006/7 for \$1,200,600, which after interest coupon represented a capital profit of \$195,614 (20% return on investment). Regular monitoring of cashflow requirements limits the need to sell investments prior to maturity, so avoiding potential losses if the market value is less than par.

As recently reported in the press the global financial markets have undergone significant upheaval with the failure of structured funds associated with banks. This resulted in forced selling of bank debt and mortgage backed securities such as CDO's, particularly those instruments directly impacted by the problems in the US with regards to the Sub-prime Mortgage Market.

Locally, this affected a number of debt instruments, in particular the heavily publicised Grange issued “Federation” CDO. As verbally advised, Cessnock Council does not hold this particular CDO. Forced sales of these investments prior to maturity could result in the value received being lower than par (Mark to Market valuation) and a capital loss would occur. It is stressed that any losses would only be realised if the individual securities are actually sold.

A summary of the CDO's currently held by Council are detailed below for the information of Councillors. The indicative capital valuation shown represent the value expected to be received if the investment was "sold" now prior to maturity.

<b>Investment Summary for CDO's as at 31 January 2008</b>						
<b>Invest No</b>	<b>Issuer/CDO</b>	<b>Amount \$'000</b>	<b>Indicative Capital Valuation (per \$100)</b>	<b>First Call or Maturity Date</b>	<b>Final Maturity Date</b>	<b>Coupon BBSW + basis points</b>
1020n	Credit Suisse - Tasman (1)	\$1,000	75.00	5/5/08	5/5/11	90 day + 200
1020n	Credit Suisse – Tasman (1)	\$1,500	75.00	5/5/08	5/5/11	90 day + 200
1069l	RIMsec – Generator	\$2,000	68.50	8/10/11	8/10/11	90 day + 200
1132e	Morgan Chase – Kakadu (2)	\$500	48.34	20/12/09	20/03/14	90 day + 100
1142c	Lehman Brothers – Coolangatta (3)	\$1,000	54.31	20/3/11	20/3/14	90 day + 130
1146b	Merill Lynch – Palladin (4)	\$1,000	73.00	20/6/10	20/6/12	90 day + 100
	<b>Total CDO's held</b>	<b>\$7,000</b>				

1. Tasman – it is anticipated that these investments will be called up by the issuer in May 2008 due to the high coupon rate payable
2. Kakadu – if not called up then coupon rate increases to 140 over 90 day BBSW
3. Coolangatta – if not called up then coupon rate increases to 170 over 90 day BBSW
4. Palladin – if not called up then coupon rate increases to 115 over 90 day BBSW

The coupon rates attached to the above CDO's are all well above the 90 day BBSW against which Council rates its investment returns and are contributing positively to the investment revenues which help fund necessary works in the budget. Unless the investments are sold prior to maturity no actual loss of investment capital would occur, even if the Mark to Market value shows a less than par rating at any particular time. Importantly, Council's cashflow has not been impacted and the coupon interest is still being received on all investments.

Council recently considered and adopted a revised investment policy (meeting of 23 January 2008, minute number 806). The report associated with the revised investment policy included for information purposes a definition of CDO's sourced from the Australian Stock Exchange website.

All investments are made in accordance with Section 625 of the Local Government Act 1993, the Local Government (General) Regulation 2005, the Ministers order relating to investments and Councils investment policy. Due to the diversification of Councils portfolio and the practice of holding investments to maturity, it is not considered that the capital value of Council's investment portfolio is significantly affected by the current turmoil in global markets.

**RECOMMENDATION** that the report be received and the information noted.

To: **The General Manager**  
Corporate & Regulatory Services  
Committee – 5 March 2008

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

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**  
**REPORT NO. 8/2008**

**DEVELOPMENT APPLICATION NO:** 8/2005/1088/1  
**APPLICANT:** COMLIX PTY LTD  
**OWNER:** JUKAR PTY LTD  
**PROPERTY:** 141 MITCHELL AVE, LOT 1001 DP 1062120,  
KURRY KURRI  
**AREA:** 2HA  
**ZONING:** 4(A) INDUSTRIAL, 6(A) OPEN SPACE & 1(A)  
RURAL  
**PROPOSAL:** INDUSTRY – INERT WASTE RECYCLING  
FACILITY

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Senior Planning Assessment Officer, Mr P Giannopoulos, reports:

**SUMMARY:**

Proposed is an inert waste recycling facility that will operate by accepting concrete and other builders' waste then dismantle the waste and reuse it. The processing includes crushing of the concrete. The proposed waste processing is below 30,000 tonnes per annum.

The application constitutes designated development and has been advertised in accordance with the legislative requirements. Two objections have been received in response to advertising.

The key impacts associated with the development are the noise impacts and dust impacts. As the development is a scheduled facility under the Protection and the Environment Operations Act, the Department of Environment and Climate Change (DECC) is responsible for controlling pollution (including air and noise) from the development. The General Terms issued by the DECC are comprehensive and provide suitable control of the development. The secondary impacts from the development are threatened species impacts and visual impacts. The secondary impacts will be appropriately controlled by the recommended conditions.

The development complies with all the objectives for industrial development as contained in Council's Development Control Plan and all the requirements except for a minor variation. The variation is considered reasonable in the circumstances.

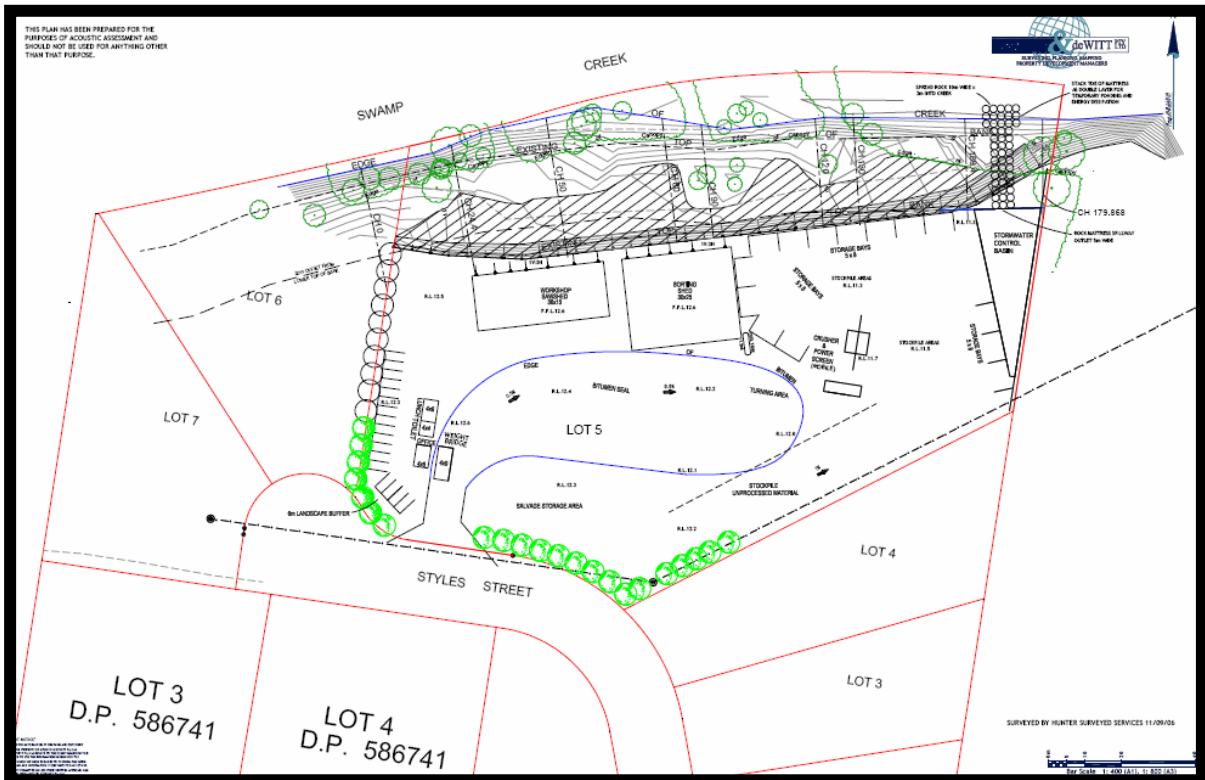
The development is considered appropriate and approval is recommended.

**PROPOSAL:**

The applicant proposes to develop a concrete and builders waste recycling facility on 141 Mitchell Avenue Lot 1001 DP 1062120 Kurri Kurri.

The concrete and builders waste recycling facility will accept inert building materials on site, mainly consisting of waste bricks, tiles and concrete, that will be sorted and crushed to specifications to enable the product material to be sold as useable product for various construction purposes. The majority of the material brought on site will be sourced from building demolition projects, and will consist of inert waste material that would otherwise have been disposed of landfill. In addition to the production of crushed material, ancillary operations on site will also produce timber products for sale and scrap steel for off site for reprocessing and recycling.





The development includes:

- A weigh bridge of at least 30 tonne capacity will be constructed on the main driveway near the site entrance to weigh vehicles entering or exiting the site.
- The erection of an office building and an amenities building at the front of the site, adjacent to the weighbridge. These buildings will be transportable "Atco" or similar structure.
- A 5,000 to 10,000 litre diesel aboveground storage facility will be constructed on the western boundary of the site to provide fuel storage for on site machinery.
- Construction of a skip storage area to store skips.
- Construction of a pad that the mobile crusher
- Construction of a single 10 m wide concrete driveway
- A shed for the sorting of materials 30 metres by 25 metres
- A shed to operate as a workshop/sawshed 36 metres by 15 metres.
- An office building 4 metres by 6 metres

The buildings will be clad in non-reflective materials. There will be landscaping provided along the frontage and side boundaries along with the retention of the riparian vegetation along the rear boundary (Swamp Creek).

The main trafficable areas will be surfaced with line marked and sealed pavement to a standard sufficient to handle heavy vehicle movements. Less trafficked areas on the site will be surfaced with compacted gravel/aggregate material to service the sale yard, concrete crushing area, concrete stockpiles, product storage bays and skip area. Car parking spaces for eighteen cars (minimum) will be provided at the front of the site for employees and visitors.

### **Transport of Materials to Site**

Trucks will be used to transport materials to the site and will be operated in a manner to prevent loss of materials during transport. Waste materials will be brought on site in collection skips. It is expected that 14 tonne eight wheeled trucks with an 11 tonne trailer (or one 25 tonne truck) will make the majority of truck movements to and from the site.

### **Handling and Storage of Materials on Site**

Once the weight of trucks entering the site has been recorded and the acceptability of the material type has been confirmed, trucks with skips containing concrete and/or builders waste will proceed to the sorting shed where the skips will be unloaded from the trucks separated and processed.

The applicant was required to submit details in respect to the handling procedure for individual materials.

### **Workforce**

The proposed development is likely to employ six full time employees and one or two casual employees.

### **Hours of Operation**

The facility is proposed to operate 6 days a week, with the proposed hours of operation as shown below:

- Monday to Friday 7 am to 5 pm
- Saturday 7 am to 2 pm
- Sunday Not Operational

All activities are proposed to be conducted within these hours of operation.

### ***SITE DESCRIPTION:***

At the time of lodgement of the application the site consisted of a 4.58ha property that was under consideration for subdivision. Since then, the application for subdivision has been approved but the subdivision certificate has not been issued. The subject site consists of a Lot 5 within the proposed subdivision.

The site has an area of 2 hectare and is located off Mitchell Avenue, Weston, it will be accessed via a new road to be constructed off Mitchell Avenue.

The subject site is vacant land that has been subject to previous land disturbance, such as clearing, rubbish dumping and feral animal impact. The vegetation is contained to the area adjacent Swamp Creek and comprises of Degraded Woodland and Riparian Forest.

In general, the proposed site is surrounded by partly developed industrial land to the west and south, undeveloped industrial land to the east, and rural land to the north.

**PUBLIC NOTIFICATION (S79C.d):**

The application was advertised in accordance with the EP&A Act, the Regulations and Council's Notification Policy. In response two objections have been received that present the following grounds of objection:

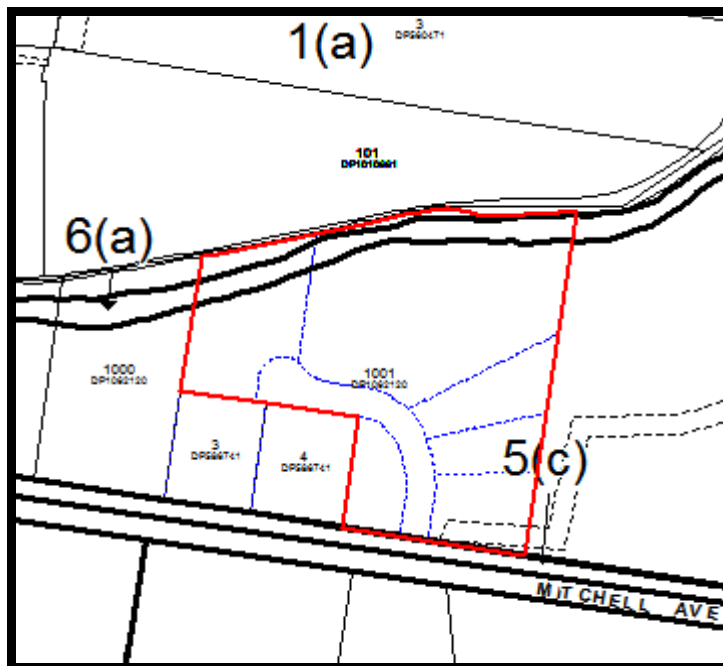
1. Noise impacts including noise from crushing operation will distress/spook horses
2. Pollution resulting from dust

The noise and dust concerns are valid and are matters that are discussed later in this report.

One objection refers mainly to impacts from other developments and existing conditions such as vehicles blocking their driveway and the absence of kerb and gutter on Mitchell Avenue, these have not been discussed as they are not considered valid grounds of objection.

**STATUTORY SITUATION (S79C.a):**

The subject site is predominately zoned 4(a) Industrial under the provisions of the Cessnock Local Environmental Plan 1989. An area adjacent the northern boundary is zoned 1(a) Rural and 6(a) Open Space but not be developed except for a spillway.



The definition of an industry in the adopted Model Provisions, includes the breaking up or dismantling of goods for trade. The development fits the definition of 'industry', a use that is permitted in the 4(a) zone with consent.

The objectives of the 4(a) zone are:

- (a) to encourage industrial development which will generate employment,
- (b) to provide opportunities for other activities which support industrial land use, or which are reasonably located in an industrial zone, and
- (c) to ensure that development will not:
  - (i) cause permanent damage to the natural environment,
  - (ii) detract from the amenity of any residential or other urban area in the vicinity, or
  - (iii) create excessive demands on infrastructure and roads.

The development is capable of operating within the above objectives.

**Characterisation of Designated Development**

Part 1 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains a list of some 34 categories under the heading “What is designated development?”. The development has been characterised under that schedule as follows:

The development is a Waste Management Facility or Works that are:

- within 100 metres of a water body
- within 500 metres of a residential zone.
- the development is within 250 metres of a dwelling.

The development is also characterised as cement works that are:

- processing 150 tonnes per day
- within 100 metres of a water body
- within 250 metres of a dwelling that is not associated with the development

The characterisation is based on the applicant’s proposed handling figures that total 29,500 tonnes per year as stated in the Environmental Impact Statement.

It should be noted that the applicant has stated the processing is likely to be increase to more than 57,000 tonnes per year. The applicant states:

*After speaking with the operator – a standard truck will carry 10-12 tonne, but semi trailer (truck and dog) will carry 25 tonne per trip.*

*Based on the number of visits and tonnage throughout a year – capacity loadings (with respect to traffic) could be anywhere between 28,800 tonnes and 57,600 tonnes.*

The applicant was advised that as the application was not publicly exhibited as a development with a processing capacity of 57,600 tonnes, it advertised as a development with a total capacity of 29,500 tonnes. The applicant was advised that if the to 57,600 the application would need to be advertised again and offered the option of bringing the development application to an early conclusion and proceed with future plans under a separate application or to amend the application at this time. The applicant agreed to an early determination:

*we will accept the 30,000 tonnes per annum and lodge a Section 96 application afterward.*

**RELEVANT DCP's (S79C.a):**

Council's Development Control Plan 2006 (DCP) contains a number of chapters that need to be considered in the assessment of this application. The most notable chapter is D.3 Industrial Development. Below is a summary of the provisions and details in respect to compliance:

Provision	Compliance
<b>3.2.1 Landscaping</b>	
Landscape the front setback area to a minimum depth of 6 metres	Complies
Landscape the side and rear setbacks if visible from a public place	Complies
Landscape large vehicular parking areas may be required to be landscaped to provide shade and to soften the visual impact of parking facilities	Complies
<b>3.2.2 Vehicular Parking</b>	
All car parking facilities shall be located behind the front 6 metre landscaped area	Complies
<b>3.2.3 Vehicular Movements and Access</b>	
Access drives to be designed to have a width which reflects the nature and needs of the particular land use.	Complies
Access drives shall not be located in close proximity to an intersection	Complies
Loading and unloading facilities appropriate to the particular development are to be provided on site such that service vehicles are located wholly within the site and generally do not impede traffic movements	Complies
<b>3.2.4 Building Design</b>	
The external walls of industrial buildings shall be of profiled colour treated cladding or masonry materials, or a combination of both	This has not been demonstrated although the applicant has stated that they intend to comply with DCP requirements
Consideration shall be given to the design and use of the above materials in the street elevation of industrial buildings, particularly where such buildings are in close proximity to residential or commercial neighbourhoods or front main roads	Complies
<b>3.2.5 Building Setbacks</b>	
Front building setbacks shall be determined on the following criteria:- a) Provision of landscaped area to a minimum depth of 6 metres (refer to 3.2.1). b) Provision of car parking facilities (refer to 3.2.2). c) Building height, bulk and layout. d) The nature and needs of the industrial activity. e) The general streetscape.	Complies

**Comments**

Although the applicant states that the development complies with all the provisions of the DCP, the proposed buildings do not have 'external walls ... of profiled colour treated cladding or masonry materials, or a combination of both'. The purpose of this requirement is to ensure new buildings are of a higher visual standard than common industrial sheds.

In this case regardless of the external cladding of the buildings, the site will have a utilitarian appearance. The site will contain a weighbridge, mobile crushing equipment and stockpiles of metal, concrete waste. The most appropriate manner to deal with the visual impact of the development is considered to be to provide suitable landscaping to screen the development. The use of masonry walls as required under 3.2.4 of the DCP is considered to be pointless in the context of the proposed site conditions. For this reason it is considered that although the buildings will not be finished with masonry or treated cladding, the appearance of the buildings will be acceptable in their context.

The applicant has not provided details of landscaping except that landscaping is to be provided along the full frontage (6 metres wide) and along the side boundaries. Conditions are proposed to ensure that the landscaping will effectively screen the development, including extending the length of landscaping along the south-eastern site boundary.

#### **Chapter C.4 Land Use Conflict and Buffer Zones**

Chapter C4 contains separation distances or buffer zones for incompatible uses. The distances are '*provided as a guide and minimum recommendation only for physical separation of incompatible uses*'. There are no specific requirements for an inert waste facility or concrete crushing plant but there is a minimum buffer distance of 1000 metres between a waste management facilities and dwellings. The nearest dwelling to the proposed development is on an abutting property that is zoned Rural 1(a). The dwelling is a distance of approximately 250 metres from the development.

The DCP states that the buffer distances are aimed at reducing conflicts. For waste management facilities the stated conflicts are '*odour, wind-blown refuse, noise, traffic, dust and significant potential for contamination of ground and surface waters*'. DECC's terms of approval do not contain requirements for odour control because the proposed development is not categorised as a development with potentially offensive odorous. Odour and ground water conflicts (from the likelihood of leachates) mentioned in the DCP appear to be aimed at Putrescible Landfills. Noise impacts, dust, surface water and other pollution are impacts including the impact that the development will have on the objecting residents as well as the adjoining properties generally are discussed later in this report. It is considered that, subject to compliance with this consent and the future approval of the DECC, the impacts of the development will be appropriately mitigated.

The purpose of the DCP is stated as:

*To provide consistent development guidelines for residents, developers, the Council and assessment staff when considering applications for development which:*

- *may conflict with existing developments or environmentally sensitive areas because of emission of an odour, noise, vibration, visual impact or other nuisance and may therefore require a separation **or other means of reducing the conflict to an acceptable level;***

Whilst the development does not meet the separation requirements, it provides 'other means to reduce conflict to an acceptable level'. These other means include, the use of noise rated machinery, the provision of screens around the machinery whilst operating, restricting the hours of operation, dust spraying whilst machinery is operating and self-management of complaints. As the development provides significant 'other means' of reducing conflict, it is considered that the development complies with the guidelines, although not with the distance standard.

It should be noted that the required separation distance between the development and a dwelling of 1000m under the DCP, appears excessive when compared to the separation distance under the schedule for designated development. The DCP requirement is four times or 400% of the 250 metre, designated development threshold (distance to a dwelling). Consideration should also be given to the fact that, if the DCP buffer distance were to be strictly applied, there would be no industrial property within the Cessnock LGA that would meet the siting requirements, with the exception of selective properties the HEZ industrial zone.

**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:

**Noise**

The expected noise associated to the development is from:

- The use of equipment, particularly the concrete crushing equipment
- The use of heavy vehicles

The measures that the applicant proposes to control noise emissions are:

- Limiting the number of truck movements to and from the site
- Restricting the hours of operation to recognised 'Daytime' hours
- The use of mechanical plan equipment that does not exceed the background noise level by more than 5dB
- The implementation of 5 metre high acoustic barriers located along the northern and most of the western boundary.

The acoustic report predicts that the noise levels at the residential dwelling will comply with the relevant noise criteria.

The submitted Acoustic Impact Assessment provides an assessment of the projected noise levels with the following assumptions:

- The worst-case noise from mobile plant (all operating simultaneously and continuously over the measurement period)
- The neutral and worst-case meteorological effects modelled during the worst-case operation period
- Plant items as noise sources at a height of 1.5 metres
- The semi trailer noise is modelled on a semi trailer located in the turning zone to be under full load and engaging in dumping
- The residential receiver height was assumed to be 2.0m above natural ground level

The applicant was required to submit additional information on several occasions before the DECC were satisfied that the operation is likely to achieve the projected noise levels. However, the latest version of the acoustic report has demonstrated that the development is likely to meet the projected noise levels and therefore comply with the required noise restrictions. It is considered that the development will not detrimentally impact on the surrounding properties, including the objectors' properties in terms of noise.

The DECC have included conditions of consent that address the noise impacts of the development, including that a noise compliance assessment to be submitted within 3 months of commencement.

### ***Air and Water quality***

The proposed development is one that will generate dust, including cement dust. The applicant has submitted the following in respect to air and water quality:

*Air Quality regulatory guidelines and standards will be met, and there will be no exceedances of assessment criteria at the receptors. Based on the modelling undertaken, the impact of dust emissions from the proposed development will have negligible impact to the surrounding community. The mitigation measures incorporated into the proposed development include water sprays, traffic control and wind protection*

*Surface Water should not be negatively impact upon by the proposal. The implementation of a storm water management system that fully contains all surface water on site for re-use and the establishment of riparian buffers zone will protect the value of adjoining Swamp Creek.*

The use of water spraying to suppress dust during the crushing of concrete and from vehicle tracking is recognised as an effective method to prevent dust transmission beyond the site. The proposed measures to suppress dust will ensure that there will not be significant dust impacts on adjoining properties and addresses the concerns expressed by the objectors.

The measures of controlling water quality, that is the use of a detention basin that will provide for sediment settlement will provide the means for suitable water quality management. The containment of stormwater will also provide a reusable, cheap source of water for the use during processing.

It should be noted that DECC will control air and water pollution by requiring the applicant to implement:

- Compliance with Section 120 (prohibition of pollution of waters) of POEO Act
- Dust suppression and dust collection measures including dust spraying
- Water management plan
- Operational stormwater/sediment control

### ***Visual impact***

The proposed development will have several buildings including a large working shed and storage shed and will have mobile crushing equipment on site periodically. It is considered that the resultant industrial aesthetic is inescapable given the processes that will occur on the site and the nature of the development.

The applicant proposes the following measures to mitigate the visual impact of the development:

- *The sheds and buildings will be painted or clad in appropriate non-reflective colours to reduce the prominence of the structures.*
- *Appropriate coloured fencing will be constructed around the perimeter of the site which will reduce the visibility of equipment and infrastructure on site from the street front, neighbouring properties, and the rural land to the rear of the site.*
- *The riparian vegetation along Swamp Creek will be maintained as it provides an existing visual screen from the rural lands to rear.*



- *Extensive planting and landscaping will be done at the frontage of the site, including a feature, such as stone water feature. A Landscape Concept Plan has been prepared to show the planting to be done along the street frontage, this plan uses native plants indigenous to the site, which attract birds and are easily obtained from local nurseries. An extract from the Landscape Concept Plan showing the planting at the street frontage is shown in Figure 7.*

The above measures are considered adequate, however conditions are proposed to require a detailed landscape plan, to ensure that landscaping is maintained for the life of the development and to ensure the colours of the buildings match/compliment each other and blend into the natural aspects of the surrounding environment.

### **Threatened species**

The Environmental Impact Statement contains a copy of a threatened species assessment that was submitted with a preceding application for the subdivision of the site. The applicant did not provide a whole new assessment because no clearing of vegetation was proposed.

However, the Department of Natural Resources required the construction of a spillway and it necessitates the removal of grass and lower storey vegetation (no mid-overstorey trees). The applicant was required to submit a report prepared by an ecological consultant to address the impacts of the spillway, particularly in respect to the connectivity of the remnant vegetation. The assessment concludes that the vegetation that will be disturbed is not Kurri Sand Swamp Woodland and that the development will not impact on the movement of fauna or the survival of the vegetation community, provided that mid/over-storey trees are not removed. Appropriate controls are proposed to ensure the protection of trees and it is considered that the development is unlikely to have a significant impact on threatened species.

### **REFERRALS:**

The application has been referred externally to the following departments:

#### **Department of Environment and Climate Change NSW**

The proposed facility is scheduled under the Protection of the Environment Operations Act 1997 as a Waste Facility and Crushing, Grinding and Separating Works. The Department of Environment and Climate Change (DECC) has determined that it is able to issue an Environment Protection Licence and has issued general terms of approval.

#### **Department of Natural Resources**

Approval is required under Part 3A of the Rivers and Foreshores Improvement Act 1948. The Department of Natural Resources has issued their General Terms of Approval.

#### **Hunter Regional Development Committee**

The committee has no objections subject to conditions subject to conditions being included in the consent. The Committee's requirements have been incorporated in the draft consent.

Council's internal referral responses are summarised in the table below:

<b>Referral</b>	<b>Response</b>
<b>Rural Fire Service</b>	No requirements in respect to Bushfire matters
<b>Engineer Roads and Bridges</b>	Comments provided but no requirements
<b>Subdivisions Engineers</b>	Conditions required to be included in consent
<b>Building</b>	Conditions required to be included in consent

### **CONCLUSION:**

The development, being scheduled premises, will require licensing from the Department of Environment and Climate Change (DECC). The DECC will assume control and be responsible for pollution emitted from the subject site. The impact of the development in terms of noise and dust, emerge as the key issues in determining the application. The general terms from DECC are comprehensive and provide for thorough, prudent control of the development and will ensure protection for the environment and protect the amenity of neighbouring properties, including the objectors. In all other respects the development is considered suitable and therefore warrants approval.

**RECOMMENDATION** that Development Application No. 8/2005/1088/1 for an Inert Waste Recycling Facility at 141 Mitchell Avenue Lot: 1001 DP: 1062120 Kurri Kurri be approved subject to the following conditions below:

### **SCHEDULE 1**

#### **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, Environmental Impact Statement dated 19 October 2005 Plans prepared by MJD Design Dwg. No. 050202, Asqueth de Witt Ref 36777 Dated February 2007 Version A Fig 1&2, Asqueth de Witt Ref 36777 Dated November 2007 Version E Ecobiological Plan SP1 Issue A Job No. 373 Handling Procedure submitted to Council on the 18 January 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.*

3. This consent is limited to the handling of waste to a maximum of 29,500 tonnes per year.

Reason

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

4. 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.*

5. Lighting must be provided for the security of staff and visitors that may be leaving the premises after dark. The lighting must be connected to a self-activating system to provide suitable illumination of the common parking area at all hours of operation after dark.

Reason

*To ensure that the development provides safety and security for the staff and public.*

6. Any proposed floodlighting of the premises including the lights for the car park must be so positioned, directed and shielded so that it does not interfere with traffic safety or detract from the amenity or project glare onto the adjacent premises.

Reason

*To ensure that the proposal does not interfere with traffic safety and to protect the existing amenity of the neighbourhood.*

7. 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.*

Access, Car parking and Loading Arrangements

8. 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.*

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

General

9. The applicant shall comply with the requirements of the Hunter Water Corporation Ltd., in respect of any building or structure proposed to be erected over any services or stormwater drain under the Corporation's control. Details of the Hunter Water Corporation's requirements shall be provided to Council prior to the release of the Construction Certificate.

Reason

*To protect the Corporation's infrastructure for site development works.*

10. Prior to the issue of a Construction Certificate the consent authority must be provided with documentary evidence that the Department of Natural Resources has granted a permit approval under Part 3A of the Rivers and Foreshores Improvement Act 1948 for the proposal.

Reason

*To ensure that only approved works are carried out.*

11. Building materials and painting or other external finishes shall be of dark natural tones with low reflective quality, or such other treatment as may be appropriate to ensure that the buildings are not visually intrusive. All buildings to be finished in a similar colour or a complementary colour scheme. Colours and materials to approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

Reason

*To minimise the visual impact of building and structures in the landscape.*

Landscaping

12. A suitable plan shall be submitted and approved by the Principal Certifying Authority showing details of landscaping. The plan shall include a landscape schedule with details of mounding, ground cover and maintenance procedures. The vegetation shall consist of low maintenance native species that are endemic to the area. The landscaping must be undertaken at front and side boundaries of the site to restrict the view of the development from the road and neighbouring sites and designed so that, when mature, will provide a significant visual barrier that will screen of the development.

Reason

*To ensure landscaping is provided for visual relief and to screen the development.*

Building Construction

13. Plans showing the extent of excavation and/or filling together with details of the method of retaining, draining and stabilising the disturbed areas shall be submitted to and approved by Council prior to issue of the Construction Certificate.

Reason

*To determine that satisfactory arrangements have been made to reduce environmental and building damage.*

Access, Carparking and Loading Arrangements

14. The Registered Proprietors shall construct a reinforced concrete access crossing from the kerb and gutter to the property boundary, including a layback in the kerb, 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. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate.

Reason

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

15. On-site car parking shall be provided for a minimum of eighteen (18) vehicles and such being set out generally in accordance with Council's Car Parking Code. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate.

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.*

16. All driveways, access corridors and carparking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The carparking areas shall be constructed with a base course of adequate depth to suit design traffic loadings with a sealed surface treatment, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

Full details shall be submitted and approved by Council prior to the release of the Construction Certificate.

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.*

17. A separate off-street loading/unloading facility with capacity to accommodate the largest delivery vehicle likely to deliver goods to and from the premises shall be provided for all loading and unloading of vehicles wholly within the property. Such facility shall be constructed clear of the car parking area and driveways. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate.

Reason

*To ensure the orderly and efficient use of on-site parking facilities and that loading and unloading of vehicles does not interfere with the use of public footpaths and roadways.*

Drainage and Flooding

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

Reason

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

19. The applicant shall ensure that the floor level of the proposed buildings are at least above the area of inundation for a 1 in 50 year flood and the finished ground level of the sales yard and the storage bays is at least above the area of inundation for a 1 in 100 year flood. The 50 year ARI flood level ranges from RL 11.69m AHD at the eastern boundary to RL 11.89m AHD at the western boundary and the 100 year ARI flood level ranges from RL 11.92m AHD at the eastern boundary to RL 12.07m AHD at the western boundary. Details shall be submitted to and approved by Council prior to the release of the Construction Certificate.

Reason

*To ensure that risk to life and property from inundation by flooding is minimised.*

20. The applicant shall submit a report from a suitably qualified and experienced engineer in respect of the proposed development, such report to verify that:-
- (a) any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property;
  - (b) the building structure will be able to withstand the force of flood waters (including buoyancy forces) and the impact of debris;
  - (c) all finishes, plant fittings and equipment subject to inundation will be of materials and functional capability resistant to the effects of flood waters.
  - (d) All electrical installations are to be 500mm above the 1 in 100 year ARI level. The 100 year ARI flood level ranges from RL 11.92m AHD at the eastern boundary to RL 12.07m AHD at the western boundary.

Note: The report shall be submitted to and approved by Council prior to release of the Construction Certificate for the building/s.

Reason

*To minimise the extent of property damage and the risk of injury in the event of flooding of the site.*

## **PRIOR TO CONSTRUCTION**

21. Prior to the construction of the spillway, a construction management plan must be approved by Council. The management plan must ensure that there will be no over-storey or mid-storey trees removed or damaged as a consequence of the construction of the spillway. The measures to protect the vegetation must include, prior to the removal of vegetation, the marking out of the area that will be disturbed and establishing a 'no-go' zone to prevent activity extending beyond the necessary area of disturbance.

Alternatively a suitably qualified ecological consultant shall be employed to supervise the construction works to ensure that the clearing of vegetation is minimised and in accordance with the terms of the Ecobiological survey and assessment dated 27 April 2007. At the completion of works, documentary evidence shall be provided by the ecological consultant to state that the works have been completed satisfactorily.

### Reason

*To ensure that clearing is minimised and protect the ecology.*

## **DURING CONSTRUCTION**

### General

22. All construction work at the premises must be conducted between 7am and 6pm Monday to Friday and between 7am and 1 pm Saturdays and at no time on Sundays and public holidays, unless inaudible at any residential premises .

### Reason

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

23. 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.*

24. 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.*

25. 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.*

26. 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.*

Flooding

27. The floor level of the proposed buildings and the finished ground level of the sales yard and storage bays shall be certified by a registered surveyor as being not less than the 50 and 100 year Average Recurrence Interval (ARI) flood level, respectively. The 50 year ARI flood level ranges from RL 11.69m AHD at the eastern boundary to RL 11.89m AHD at the western boundary and the 100 year ARI flood level ranges from RL 11.92m AHD at the eastern boundary to RL 12.07m AHD at the western boundary. The evidence shall be submitted to Council prior to pouring the slab of the proposed development.

Reason

*To minimise the extent of property damage and the risk of injury in the event of flooding of the site.*



Site Works

28. 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.*

29. The registered proprietor of the land shall place engineered fill on the site. The fill shall be placed in accordance with Council's 'Engineering Requirements for Development' and Australian Standard AS 3798 'Guidelines on Earthworks for Commercial and Residential Developments' and as follows:-

The minimum gradient on the fill shall be 1%. The fill shall be contained wholly within the lot and shall be battered at a maximum grade of 1 in 4 to match existing ground levels at the lot boundary.

The fill shall be certified by a Geotechnical Engineer as being in compliance with AS 3798 and site levels shall be certified by a Registered Surveyor prior to commencement of construction of the building.

Reason

*To ensure that the lots are filled to above the 100 year ARI flood level to minimise flood damage.*

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

Reason

*To ensure that filling placed on land does not affect natural drainage.*

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

Reason

*To ensure that site works do not result in water being diverted onto adjoining land.*

32. 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.*

33. Excavations or filling against boundaries are to be adequately retained by retaining walls.

Reason

*To reduce the risk of damage to adjoining properties.*

## PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

### General

34. 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.*

35. All landscaping (required under condition 12 of this consent) shall be completed prior to issue of the occupation certificate.

#### Reason

*To ensure the site is suitably landscaped, in accordance with condition 12.*

### Access, Car Parking and Loading Arrangements

36. The vehicular entrance and exit driveways and the direction of traffic movement within the site shall be clearly indicated by means of reflectorised signs and pavement markings prior to occupation of the building and for the life of the development.

#### Reason

*To ensure that clear direction is provided to the drivers of vehicles entering and leaving the premises in order to facilitate the orderly and efficient use of on-site parking spaces and driveway access and in the interest of traffic safety and convenience.*

37. A truck management plan must be approved by Council prior to the issue of an Occupation Certificate. The management plan must not permit heavy vehicles to use Government Road south of Mitchell Avenue and provide an alternative route. The management plan must not allow, articulated vehicles, over 19 metres to access the site.

#### Reason

*To ensure that orderly traffic management of heavy vehicles and to ensure the development operates in accordance with the requirements of the Hunter Regional Development Committee.*

### Drainage and Flooding

38. Prior to the issue of the occupation certificate a flood warning sign of durable material and permanently affixed shall be located in a prominent location within the building. The sign shall advise occupants that the building may be subject to inundation during times of flood.

#### Reason

*To ensure the occupants of the building are aware of the potential flood hazard.*

39. The applicant shall prepare a flood emergency evacuation and management plan for the proposed development. The plan should advise occupants of flood evacuation procedures and emergency contact telephone numbers. The management plan should avoid the letting of the premises during periods of flood emergency or when flood warnings are issued. The applicant should contact Council and the State Emergency Service for advice in the preparation of the management plan.

The evacuation procedures should be permanently fixed to the building in a prominent location and kept up to date at all times.

The management Plan shall be submitted to and approved by Council prior to use or occupation of the development.

Reason

*To ensure temporary occupants of the accommodation units are aware of the flood hazard and emergency procedures in the event of flood.*

**POST OCCUPATION OPERATIONAL REQUIREMENTS**

General

40. The use and occupation of the site including construction plant and equipment installed thereon, shall not give rise to any offensive noise or vibration within the meaning of the Protection of the Environment Operations Act, 1997.

Reason

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

41. There being no interference with the amenity of the neighbourhood by reason of the emission of any “offensive noise” or vibration as a result of the proposed development.

Reason

*To prevent environmental pollution, to ensure observance of appropriate public health standards and to protect the existing amenity of the neighbourhood.*

42. The site shall be managed for the life of the development in a manner which protects and preserves the integrity of any Endangered Ecological Communities. The development shall not result in the harm or picking of any plant or animal as described in section 118A of the *National Parks and Wildlife Act 1974*, other than the clearing identified in the ecological assessment submitted with this Development Application.

Reason

*To ensure that any threatened species or endangered ecological communities are preserved in perpetuity.*

43. The proposed landscaping must be maintained appropriately for the life of the development in accordance with the approved landscape plan.

Reason

*To ensure that any landscaping is maintained and visual screening is provided in perpetuity.*

## **ADVICE**

1. The applicant is advised that an engineering plan checking and site supervision fee of \$543.84 is payable prior to release of the Construction Certificate for the building/s.

### **Reason**

*To meet costs associated with the approval of engineering plans and inspection of construction works.*

2. 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.*

## **SCHEDULE 2**

### **Integrated Approvals**

#### **DEPARTMENT OF ENVIRONMENT AND CONSERVATION NSW GENERAL TERMS OF APPROVAL**

### **ADMINISTRATIVE CONDITIONS**

#### **A 1 Works to be undertaken in accordance with information supplied to the DECC**

A1.1 Except as provided by these general terms of approval, the works and activities must be undertaken in accordance with the proposal contained in:

- a) The development application No 8/2005/1088/1 submitted to Cessnock City Council;
- b) The document "Environmental Impact Statement Proposed Concrete & Builders Waste Recycling Facility at Mitchell Avenue Weston, NSW" prepared by GSS Environmental and dated 19 October 2005;
- c) All additional documents supplied to the EPA in relation to the development prepared by the proponent and its agents including:
  - \* Vipac Engineers and Scientists; Acoustic Impact Assessment - Proposed Development of a Concrete Recycling Facility, Lot 5 of proposed subdivision of Lot 1001 DP1062120 Mitchell Avenue Weston dated 20 August 2007 (Report No. 29N-07-0039-TRP- 214436-0); and
  - \* Addendum Report contained in a letter from Vipac dated 26 September 2007 - 'Mobile Plant Noise Emissions Survey' (Reference No. 29N-07-0039-GCO-214471-0) unless otherwise specified in these General Terms of Approval.

#### **A2 Fit and Proper Person**

A2.1 The applicant must, in the opinion of the DECC, be a fit and proper person to hold a licence under the Protection of the Environment Operations Act 1997, having regard to the matters in s.83 of that Act.

### **LIMIT CONDITIONS**

#### **L 1 Pollution of waters**

L 1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development and operations, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.

**L2 Waste**

- L2.1 The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.
- L2.2 The above condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.
- L2.3 Except as provided by any other condition of this licence, only the inert waste (as defined in the Protection of the Environment Operations Act 1997 and the DECC's "Environmental Guidelines: Assessment Classification and Management on Liquid and Non-Liquid Wastes" listed below may be stored, transferred and/or recovered by way of separating or processing at the premises: .
- a) Inert building and demolition waste being material resulting from the demolition, erection, construction, refurbishment or alteration of buildings or other structures and which:
    - (i) is not contaminated or mixed with any other type of waste (including wastes classified as 'solid', 'industrial' or 'hazardous' in accordance with the above Guidelines, and
    - (ii) does not contain asbestos waste.
- L2.4 The height of any stockpiles of waste or any processed material or reject material must not exceed three (3) metres above natural ground level.

**L3 Limit of Activity**

- L3.1 The maximum amount of waste received on site must not exceed 35,000 tonnes over any 12 month period.
- L3.2 No disposal or landfilling of waste must occur at the premises.

**L4 Potentially offensive odour**

- L4.1 No condition of this licence identifies a potentially offensive odour for the purposes of section 129 of the Protection of the Environment Operations Act 1997.  
Note: Section 129 of the Protection of the Environment Operations Act 1997, provides that the licensee must not cause or permit the emission of any offensive odour from the premises but provides a defence if the emission is identified in the relevant environment protection licence as a potentially offensive odour and the odour was emitted in accordance with the conditions of a licence directed at minimising odour.

**L5 Asbestos**

- L5.1 The licensee must comply with the condition as specified in this licence or where no specific conditions are provided with relation to asbestos waste, the licensee must comply with the Protection of the Environment Operations (Waste) Regulation 2005.

**L6 Noise Limits**

- L6.1 Noise from the premises must not exceed the sound pressure level (noise) limits presented in the Table below. Note the limits represent the sound pressure level (noise) contribution, at the nominated receiver locations in the table.

**Noise Limits (dB(A))**

Location	Day	Evening	Night	
	L <sub>Aeq</sub> (15 minute)	L <sub>Aeq</sub> (15 minute)	L <sub>Aeq</sub> (15 minute)	L <sub>A1</sub> (1 minute)
Residential Premises	38	N/A	N/A	N/A

L6.2 For the purpose of Condition 6.1 : .

\* Day is defined as the period from 7am to 6pm Monday to Saturday and 8am to 6pm Sundays and Public Holidays,

\* Evening is defined as the period from 6pm to 10pm

\* Night is defined as the period from 10pm to 7am Monday to Saturday and 10pm to 8am Sundays and Public Holidays

L6.3 Noise from the premise is to be measured at the most affected point within the residential boundary, or at the most affected point within 30 metres of the dwelling where the dwelling is more than 30 metres from the boundary, to determine compliance with the noise level limits in Condition L6.1.

Where it can be demonstrated that direct measurement of noise from the premises is impractical, DECC may accept alternative means of determining compliance. Reference should be made to Chapter 11 of the NSW Industrial Noise Policy.

The modification factors presented in Section 4 of the NSW Industrial Noise Policy shall also be applied to the measured noise levels where applicable. L6.4 The noise emission limits identified in Condition L6.1 apply under meteorological conditions of wind speed up to 3 metres per second at 10 metres above ground level.

**Hours of Construction and Operation**

L6.5 All construction work at the premises must be conducted between 7am and 6pm Monday to Friday and between 7am and 1 pm Saturdays and at no time on Sundays and public holidays, unless inaudible at any residential premises.

L6.6 Operations at the facility must be conducted between 7am to 5pm Monday to Friday and 7am to 2pm Saturdays. .

**OPERATING CONDITIONS**

**01 Dust**

01.1 The premises must be maintained in a condition which minimises or prevents the emission of dust from the premises.

01.2 Dust spray systems must be installed and operating to minimise dust from all stockpiles and processing areas at the facility.

01.3 Dust sprays and/or dust collection systems must be installed and operating on all crushing, grinding and screening equipment at the premises.

01.4 All un-sealed trafficable areas are to be kept damp during operating hours.

**02 Wastewater management**

02.1 A water management system must be constructed and utilised to manage the collection, storage, treatment, use and disposal of sewage effluent and other wastewater.

**03 Stormwater/sediment control - Operational Phase**

03.1 Following the construction phase, stormwater management measures must be implemented to mitigate the impacts of stormwater run-off from and within the premises in a manner that is consistent with the Stormwater Management Plan for the catchment. Where a Stormwater Management Plan has not yet been prepared the measures should be consistent with the guidance contained in Managing Urban Stormwater: Council Handbook (available from the EPA).

**04 Fuel and chemical storage**

- 04.1 All liquid chemicals, fuels and oils must be stored in containers inside suitable bund(s). Bund(s) are to be designed, constructed and maintained in accordance with the DECC's Technical Guideline "Bunding and Spill Management" available at <http://www.environment.nsw.gov.au/mao/bundingspill.htm>

**05 Emergency Response Plan**

- 05.1 The licensee must maintain, and implement as necessary, a current emergency response plan for the premises.
- 05.2 The licensee must keep the emergency response plan on the premises at all times.
- 05.3 The emergency response plan must document systems and procedures to deal with all types of incidents (eg. Spills, explosions or fire) that may occur at the premises or that may be associated with activities that occur at the premises and which are likely to cause harm to the environment.
- 05.4 The emergency plan must be developed within 3 months after the date of issue of the licence.

**06 Closure Plan**

- 06.1 The licensee must prepare and submit to the DECC within twelve (12) months prior to the intended closure of the facility, a closure plan in accordance with section 76 of the Protection of the Environment Operations Act 1997.

**07 Preventing Fires**

- 07.1 All operations and activities occurring at the premise must be carried out in a manner that will prevent and minimise the risk of fire at the premises.

**08 Processes and Management**

- 08.1 The licensee must ensure that all waste stored, transferred or recovered by way of separating or processing at the premises as assessed and classified in accordance with the DECC's "Environmental Guidelines: Assessment Classification and Management of Liquid and Non-Liquid Wastes".

**09 Volumetric Survey**

- 09.1 The licensee must submit to the DECC's Manager Waste Operations, a volumetric survey of the premises carried out by a registered surveyor:
- a) During June in each year and provided to the DECC in the approved form and manner by no later than 31 July in that year; and
  - b) During December in each year and provided to the DECC in the approved form and manner by no later than 31 January in that year.

**010 Screening of Materials to be Processed**

- 010.1 Before any waste material is accepted on site for processing, the proponent must implement procedures to screen and remove any material not permitted by the licence to be processed at the premises.

**MONITORING AND REPORTING CONDITIONS**

**M1 Monitoring records**

- M1.1 The results of any monitoring required to be conducted by the DECC's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.
- M1.2 All records required to be kept by the licence must be:
  - \* in a legible form, or in a form that can readily be reduced to a legible form;
  - \* kept for at least 4 years after the monitoring or event to which they relate took place; and
  - \* produced in a legible form to any authorised officer of the DECC who asks to see them.
- M1.3 The following records must be kept in respect of any samples required to be collected:
  - a) the date(s) on which the sample was taken;
  - b) the time(s) at which the sample was collected;
  - c) the point at which the sample was taken; and
  - d) the name of the person who collected the sample.

**M2 Requirement to Monitor Meteorological Parameters**

- M2.1 The licensee must monitor the parameters specified in Column 1. The licensee must use the sampling method, units of measure, averaging period and sample at the frequency, specified opposite in the other columns.

Parameter	Units of Measure	Frequency	Averaging Period	Sampling Method
Rainfall	mm	Daily		AM-4
Wind speed @2 metres	m/s	Continuous	3 hourly	AM-2 & AM-4
Wind speed @ 2 metres	°	Continuous	3 hourly	AM-2 & AM-4
Temperature @ 2 metres	°C	Continuous	3 hourly	AM-4

**REPORTING CONDITIONS**

- R1 The applicant must provide an annual return to the DECC in relation to the premises as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the premises. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the premises, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.
- R2 The total tonnage of materials received on site during the licence year must be reported with the Annual Return.
- R3 A noise compliance assessment report must be prepared each year and submitted to DECC with the Annual Return. The report shall be prepared by a suitably qualified and experienced acoustical consultant and must provide an assessment of compliance with Condition L6.

**GENERAL CONDITIONS**

- G1 The applicant must nominate at least two persons (and their telephone numbers) who will be available to the DECC on a 24 hours basis, and who have authority to provide information and to implement such measures as may be necessary from time to time to address a pollution incident or to prevent pollution from continuing as directed by an authorised officer of the DECC.



## **SPECIAL CONDITIONS**

### **E1 Scheduled Development Works**

- E1.1 The proponent must submit with the application for an Environment Protection Licence (EPL) a report which details all dust mitigation measures to be implemented on site to achieve compliance with condition 01 above. This should include, but need not be limited to:
- a) stockpile sprays (designed to automatically activate at specific times and/or wind speeds);
  - b) Mist sprays to other potential dust sources (designed to automatically activate at specific times and/or wind speeds
  - c) Road sprays to all unsealed trafficable areas
  - d) Windbreakers around all potential dust sources
- E1.2 The proponent must submit with the application for an EPL a report, prepared by a suitably qualified engineer regarding the stormwater retention and treatment capacity of the premises.
- E1.3 The report must include calculation of the capacity required to ensure that all rain falling on the premises during a one-in ten year rainfall event can be captured on the premises so that the contaminated stormwater generated by such an event does not escape the premises and pollute waters. The report must show the sources of data and the manner in which the calculations have been determined.
- E1.4 The report must also detail the design, construction and operation of controls to be implemented on site to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction and operational activities. All control structures should conform to the requirements outlined in Managing Urban Storm water: Soils and Construction (available from the Department of Housing) unless otherwise specified.
- E1.5 The proponent must submit with the application for an EPL a noise monitoring program to assess ongoing compliance with the conditions specifying noise limits for the construction and operation of the facility.

The Noise Monitoring Program must include details on but need not necessarily be limited to the following:

- (a) an outline of methodologies for noise monitoring to assess compliance;
- (b) location of noise monitoring which must be representative of any noise affected residence(s) and/or receptor(s); and
- (c) frequency of noise monitoring including justification of the proposed frequency;

### **E2 Noise Compliance Monitoring**

- E2.1 A noise compliance assessment must be submitted to the DECC within three (3) months of commencement of operations at the premises. The assessment shall be prepared by a suitably qualified and experienced acoustical consultant and shall assess compliance with noise limits presented in L6.1 under worst case operating conditions.

### **E3 Screening Procedures**

- E3.1 Prior to the commencement of operations at the facility, the proponent must submit to the DECC details of how materials not authorised to be received at the premises will be removed from the waste stream received at the facility, and the process to be implemented to screen all waste received at the facility remove materials unsuitable for processing.

### **E4 Stockpile Markers**

- E4.1 Prior to commencement of operations at the site, the licensee must install a permanent stockpile height marker that shows the permitted height of stockpiles, being three (3) metres, such that a visual check can be made against the marker to determine the height of the stockpiles.

**E5 Financial Assurance**

- E5.1 A financial assurance in the form of an unconditional and irrevocable guarantee from a bank, building society or credit union in favour of the EPA is required.
- E5.2 The amount of financial assurance is assessed by the EPA prior to issue of the licence. The EPA may increase the amount of the financial assurance at any time as a result of reassessment of the total likely costs and expenses of rehabilitation of the premises.
- E5.3 The financial assurance is required to secure or guarantee funding for works or programs required by or under the licence.
- E5.4 The financial assurance must contain a term that provides that any monies claimed can be paid to the EPA or, at the written direction of the EPA, to any other person.
- E5.5 The financial assurance must be maintained during the operation of the facility and thereafter until such time as the EPA is satisfied the premises is environmentally secure.
- E5.6 The financial assurance must be replenished by the full amount claimed or realised if the EPA has claimed on or realised the financial assurance or any part of it to undertake a work or program required to be carried out by the licence which has not been undertaken by the licence holder.
- E5.7 The EPA may claim on a financial assurance under s303 of the POEO Act if a licensee fails to carry out any work or program required to comply with the conditions of the licence or clean up notice issued under section 91 of the Protection of the Environment Operations Act 1997.

**E6 Environmental Obligations of the Licensee**

- E6.1 While the licensee's premises are being used for the purpose to which the licence relates, the licensee must:
  - (a) Clean up any spill, leak or other discharge of any waste(s) or other materials(s) as soon as practicable after it becomes known to the licensee or to one of the licensee's employees or agents.
  - (b) In the event(s) that any liquid and non-liquid waste(s) is unlawfully deposited on the premises, such waste(s) must be removed and lawfully disposed of as soon as practicable or in accordance with any direction given by the EPA.
  - (c) Provide all monitoring data as required by the conditions of this licence or as directed by the EPA.
- E6.2 In the event of an earthquake, storm, fire, flood or any other event where it is reasonable to suspect that a pollution incident has occurred or is likely to occur, the licensee (whether or not the premises continue to be used for the purposes to which the licence relates) must:
  - (a) Make all efforts to contain all firewater on the licensee's premises;
  - (b) Make all efforts to control air pollution from the licensee's premises;
  - (c) Make all efforts to contain any discharge, spill or run-off from the licensee's premises;
  - (d) Make all efforts to prevent flood water entering the licensee's premises;
  - (e) Remediate and rehabilitate any exposed areas of soil and/or waste;
  - (f) Lawfully dispose of all liquid and solid waste(s) stored on the premises that is not already securely disposed of;
  - (g) At the request of the EPA monitor groundwater beneath the licensee's premises and its potential to migrate from the licensee's premises;
  - (h) At the request of the EPA monitor surface water leaving the licensee's premises and
  - (i) Ensure the licensee's premises is secure.

E6.3 After the licensee's premises cease to be used for the purpose to which the licence relates or in the event that the licensee ceases to carry out the activity that is the subject of this licence, that licensee must:

- (a) remove and lawfully dispose of all liquid and non-liquid waste stored on the licensee's premises;
- (b) rehabilitate the site, including conducting an assessment of and, if required, remediation of any site contamination.

## **Mandatory Conditions for all Environment Protection Licences**

### **Operating conditions**

#### **Activities must be carried out in a competent manner**

Licensed activities must be carried out in a competent manner. This includes:

- the processing, handling, movement and storage of materials and substances used to carry out the activity; and
- the treatment, storage, processing, reprocessing, transport and disposal of waste generated by the activity.

#### **Maintenance of plant and equipment**

- All plant and equipment installed at the premises or used in connection with the licensed activity;
- must be maintained in a proper and efficient condition; and
- must be operated in a proper and efficient manner.

### **Monitoring and recording conditions**

#### **Recording of pollution complaints**

The licensee must keep a legible record of all complaints made to the licensee or any employee or agent of the licensee in relation to pollution arising from any activity to which this licence applies. The record must include details of the following:

- the date and time of the complaint;
- the method by which the complaint was made;
- any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
- the nature of the complaint;
- the action taken by the licensee in relation to the complaint, including any follow-up contact with the complainant; and
- if no action was taken by the licensee, the reasons why no action was taken.

The record of a complaint must be kept for at least 4 years after the complaint was made.

The record must be produced to any authorised officer of the DECC who asks to see them.

#### **Telephone complaints line**

The licensee must operate during its operating hours a telephone complaints line for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by the vehicle or mobile plant, unless otherwise specified in the licence. The licensee must notify the public of the complaints line telephone number and the fact that it is a complaints line so that the impacted community knows how to make a complaint. This condition does not apply until 3 months after this condition takes effect.

## Reporting conditions

### Annual Return documents

#### What documents must an Annual Return contain?

The licensee must complete and supply to the DECC an Annual Return in the approved form comprising:

- a Statement of Compliance; and
- a Monitoring and Complaints Summary.

A copy of the form in which the Annual Return must be supplied to the DECC accompanies this licence. Before the end of each reporting period, the DECC will provide to the licensee a copy of the form that must be completed and returned to the DECC.

#### Period covered by Annual Return

An Annual Return must be prepared in respect of each reporting, except as provided below.

Note: The term "reporting period" is defined in the dictionary at the end of the licence. Do not complete the Annual Return until after the end of the reporting period. Where this licence is transferred from the licensee to a new licensee,

- \* the transferring licensee must prepare an annual return for the period commencing on the first day of the reporting period and ending on the date the application for the transfer of the licence to the new licensee is granted; and
- \* the new licensee must prepare an annual return for the period commencing on the date the application for the transfer of the licence is granted and ending on the last day of the reporting period.

Note: An application to transfer a licence must be made in the approved form for this purpose. Where this licence is surrendered by the licensee or revoked by the DECC or Minister, the licensee must prepare an annual return in respect of the period commencing on the first day of the reporting period and ending on

- \* in relation to the surrender of a licence - the date when notice in writing of approval of the surrender is given; or
- \* in relation to the revocation of the licence - the date from which notice revoking the licence operates.

#### Deadline for Annual Return

The Annual Return for the reporting period must be supplied to the DECC by registered post not later than 60 days after the end of each reporting period or in the case of a transferring licence not later than 60 days after the date the transfer was granted (the 'due date').

#### Licensee must retain copy of Annual Return

The licensee must retain a copy of the annual return supplied to the DECC for a period of at least 4 years after the annual return was due to be supplied to the DECC.

#### Certifying of Statement of Compliance and Signing of Monitoring and Complaints Summary

Within the Annual Return, the Statement of Compliance must be certified and the Monitoring and Complaints Summary must be signed by:

- (a) the licence holder; or
- (b) by a person approved in writing by the DECC to sign on behalf of the licence holder.

#### Notification of environmental harm

The licensee or its employees must notify the DECC of incidents causing or threatening material harm to the environment as soon as practicable after the person becomes aware of the incident in accordance with the requirements of Part 5.7 of the Act. Notifications must be made by telephoning the DECC's Environment Line service on 131 555. The licensee must provide written details of the notification to the DECC within 7 days of the date on which the incident occurred.

**Written report**

Where an authorised officer of the DECC suspects on reasonable grounds that:

- (a) where this licence applies to premises, an event has occurred at the premises; or
- (b) where this licence applies to vehicles or mobile plant, an event has occurred in connection with the carrying out of the activities authorised by this licence and the event has caused, is causing or is likely to cause material harm to the environment (whether the harm occurs on or off premises to which the licence applies), the authorised officer may request a written report of the event.

The licensee must make all reasonable inquiries in relation to the event and supply the report to the DECC within such time as may be specified in the request. The request may require a report which includes any or all of the following information:

- the cause, time and duration of the event;
- the type, volume and concentration of every pollutant discharged as a result of the event;
- the name, address and business hours telephone number of employees or agents of the licensee, or a specified class of them, who witnessed the event; and
- the name, address and business hours telephone number of every other person (of whom the licensee is aware) who witnessed the event, unless the licensee has been unable to obtain that information after making reasonable effort;
- action taken by the licensee in relation to the event, including any follow-up contact with any complainants;
- details of any measure taken or proposed to be taken to prevent or mitigate against a recurrence of such an event;
- any other relevant matters.

The DECC may make a written request for further details in relation to any of the above matters if it is not satisfied with the report provided by the licensee. The licensee must provide such further details to the DECC within the time specified in the request.

**General conditions**

Copy of licence kept at the premises or on the vehicle or mobile plant

A copy of this licence must be kept at the premises or on the vehicle or mobile plant to which the licence applies.

The licence must be produced to any authorised officer of the DECC who asks to see it.

The licence must be available for inspection by any employee or agent of the licensee working at the premises or operating the vehicle or mobile plant.

**General Terms of Approval**

**Rivers and Foreshores Improvement Act 1948**

**Standard**

1. The general terms of approval (GT A) relate to development I works on protected land, defined by the Rivers and Foreshores Improvement Act 1948 (RFIA) within the proposed development site.
2. The GTA do not constitute an approval under the RFIA.
3. If the consent authority determines to grant consent, the GT A are to form part of the development consent.
4. Any amendments to the development application may void these GT A.
5. The approval holder must submit, to the Department of Natural Resources (DNR) Newcastle, a completed application form for a permit under Part 3A of the RFIA prior to the commencement of any development works on protected land.
6. The permit application is required to accord with the GT A. Permit Application

7. The approval holder must provide the following with the permit application:
  - (a) A copy of the development consent.
  - (b) A costing based on current industry rates for all development I works that are subject to the GTA. The costing is to cover, but may not be limited to:
    - construction of any stream works, stormwater outlets, associated scour protection and their revegetation;
    - Implementation of a vegetation management plan, including monitoring, reporting and maintenance;
    - decommissioning of any temporary works on protected land, including erosion and sediment controls, other pollution controls or water diversion structures.
  - (c) Stormwater and scour protection design plans prepared by a person with relevant knowledge, qualifications and experience to industry standards.
  - (d) A Vegetation Management Plan (VMP) prepared by a person with relevant knowledge, qualifications and experience to industry standards. The VMP is to:
    - detail all the vegetation within forty (40) metres of the protected waters;
    - clearly indicate vegetation to be removed, vegetation to be retained, and vegetation proposed for establishment;
    - utilise local native endemic species; and,
    - include maintenance, monitoring and performance criteria.

#### **Relevant Plans and Documents**

8. The approval holder must ensure that development I works are completed in accordance with the following drawings and I or documents:
  - (a) Environmental Impact Statement for Proposed Concrete & Builders Waste Recycling Facility at Mitchell Avenue, Weston, NSW. Reference ADI1-0505-08, dated 19<sup>th</sup> October 2005, prepared by GSS Environmental Pty Ltd.
  - (b) Additional information and plans (Ref 36777, sheets 1 & 2 of 2) dated 24 November 2006, prepared by Asquith & DeWitt Pty Ltd.

#### **Works**

9. The approval holder must ensure that all works proposed are designed, constructed and operated to minimise:
  - sedimentation, erosion and scour of the banks or bed of the watercourse, and;
  - adverse impacts on aquatic and riparian environments.
10. The approval holder must ensure that work-as-executed survey plans, prepared to a professional standard are provided to DNR upon request.

#### **Riparian Zone**

11. The approval holder must ensure that a riparian buffer zone of a least 20 metres, measured horizontally and at right angles to the flow from the top of the bank of protected waters, consisting of local native plant species, is provided and maintained along the watercourse.
12. The approval holder must ensure that any Asset Protection Zone required for bushfire protection under the Rural Fires Act 1997 is outside riparian buffer zone.
13. The approval holder must ensure that any remnant local native riparian vegetation is protected and not damaged or destroyed by the proposed development works.
14. The approval holder must ensure that construction techniques minimise disturbance to soil and vegetation on protected land and within the riparian buffer zone.

### **Site Rehabilitation**

15. The approval holder must ensure that following completion of the works, site rehabilitation protects any remnant local native riparian vegetation and restores riparian zones disturbed or otherwise affected by the development work.
16. The approval holder must ensure that any restored riparian zones are made up of a diverse range of endemic native tree, shrub, groundcover and grass species, planted at appropriate densities to achieve an effective and full riparian vegetation structure to the satisfaction of DNR.
17. The approval holder must ensure that restored areas are maintained for successful native plant establishment to the satisfaction of DNR. Note: Maintenance may include watering, weed control, replacement of plant losses, disease and insect control, mulching, or any other action necessary for successful plant establishment.

### **Stormwater**

18. The approval holder must ensure that stormwater outlets are designed, located and constructed to minimise any erosion or scour of riparian buffer zones and the bed or banks of protected waters.

### **Advisory Notes**

1. For the purpose of the GT A, the term approval holder refers to the applicant for the integrated development application.
2. Retrospective approval cannot be granted under the RFIA.
3. A permit cannot apply to works that have already been undertaken.
4. A permit will not give the approval holder the right to use and occupy any land without the consent of the registered owners of the property.
5. A permit will not relieve the approval holder of any obligations or requirements of any other acts, regulations, planning instruments or Australian standards.
6. A permit will not apply to works on Crown land, authorised under the Crown Lands Act 1989 (CLA). Note: Use and occupation of Crown land requires approval from the Department of Lands.
7. A permit will not apply to development I works where there is a right lawfully exercisable or other right in force under any act relating to mining.

### **Definitions under RFIA**

The meanings under the RFIA for the following are:

1. **Protected land** means:
  - (a) land that is the bank, shore or bed or protected waters, or
  - (b) land that is not more than forty (40) metres from the top of the bank or shore of protected waters (measured horizontally from the top of the bank or shore), or
  - (c) material at any time deposited, naturally or otherwise and whether or not in layers, on or under land referred to in paragraph (a) or (b).
2. **Protected waters** means:  
a river, lake into or from which a river flows, coastal lake or lagoon (including any permanent or temporary channel between a coastal lake or lagoon and the sea).

3. **River** means:

any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream of water and any affluent, confluent, branch, or other stream into or from which the river flows and, in the case of a river running to the sea or into any coastal bay or inlet or into a coastal lake, includes the estuary of such river and any arm or branch of same and any part of the river influenced by tidal waters.

To: ***The General Manager***  
Corporate & Regulatory Services  
Committee – 5 March 2008

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



**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**  
**REPORT NO. 9/2008**

**SUBJECT:     DILAPIDATED AND UNSIGHTLY BUILDING – LOT 1 DP 568962,  
              508 MAITLAND ROAD CESSNOCK**

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Environmental Health Coordinator, Ms Jenny Lange, reports:

**INTRODUCTION**

At its meeting of 23 January 2008 the issue of a dilapidated service station was raised at Council as a question without notice. Three vacant buildings exist on the property; a service station, manager's residence and shed which have been vacant for a number of years, the buildings are dilapidated and demolition is warranted.

**REPORT**

An inspection of the property has disclosed that the service station, manager's residence and shed building are in a very dilapidated condition such as to be prejudicial to property within the neighbourhood. The buildings, which are now unoccupied, are in a dilapidated condition due to:

- Windows and doors are broken and damaged;
- External wall cladding being defective in a number of locations resulting in walls not being weatherproof;
- The internal walls and cladding are severely damaged and of a substandard condition;
- Water and power have been disconnected;
- Guttering is badly rusted, not effective and no stormwater disposal exists; and
- The buildings are considered to be beyond repair.

Photographs 1 to 6 show the extent of the dilapidation to the buildings



Photograph 1: Service Station Facing East



Photograph 2: Service Station Facing West





Photograph 3: Inside of service station



Photograph 4: Manager's Residence





Photograph 5: Manager's Residence and Service Station



Photograph 6: Vacant Shed.

The property is in the ownership of Maitland Road Developments Pty Limited and there is a current Development Consent issued by Council on 1 May 2006 for the demolition of the Service Station and construction of a new service station, convenience store, take away diner, car wash and manager's residence.

Discussions with the company's nominee have indicated that they are unsure when development will commence and they have also indicated a general reluctance to voluntarily remove the buildings. It is understood that each subsequent attempt by the property owners to secure the buildings has resulted in more vandalism to the buildings and as such the owners are not prepared to further secure the property.

The buildings are beyond economical repair and are so dilapidated as to be prejudicial to property in the neighbourhood. If demolition of the building is not effected shortly, the buildings are likely to be burnt.

**RECOMMENDATION** that:

1. Council resolve to serve notice of its intention to service an Order on the owners/s of Lot 1, DP 568962, 508 Maitland Road Cessnock, under the provisions of Section 121B(1) 2(c) of the Environmental Planning and Assessment Act 1979, requiring them to demolish, within thirty (30) days the service station, manager's residence and shed thereon, which are so dilapidated as to be prejudicial to the property in the neighbourhood, and remove all building materials from the property.
2. The notice shall indicate a period of fourteen (14) days from the date of service of the notice for the owner/s to make representations to the Council as to why the Order should not be given or as to the terms of the Order or period for compliance.
3. Council delegate authority to the General Manager to sign and serve the notice of intention to serve the Order on Councils behalf.
4. At the expiration of the period allowed for representations, the matter be referred to Council if any representations are received from the owner/s of the property for consideration prior to Council determining if the Order is to be served.
5. If no representations are received from the owner/s of the property the General Manager be granted delegated authority to issue the Order.
6. If at the expiration of the period allowed within the Order have not been fully complied with, arrangements be made for the work required to be carried out to be executed and expenses of doing so be recovered from the owner/s in accordance with the provisions of Section 121ZJ of the Environmental Planning and Assessment Act 1979.

To: **The General Manager**  
Corporate & Regulatory Services  
Committee – 5 March 2008

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

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**  
**REPORT NO. 10/2008**

<b>DEVELOPMENT APPLICATION NO:</b>	<b>8/2006/1162/1</b>
<b>APPLICANT&amp; OWNER:</b>	<b>MR G LEES &amp; MS J RADFORD</b>
<b>PROPERTY:</b>	<b>LOT 2 DP 1005036 NO.88 SAWYERS GULLY ROAD SAWYERS GULLY</b>
<b>AREA:</b>	<b>2HA</b>
<b>ZONING</b>	<b>1(A) – RURAL “A” ZONE</b>
<b>PROPOSAL:</b>	<b>NEW BRICK VENEER DWELLING</b>

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Planning Services Co-ordinator, Kerry Porter, reports:

**BACKGROUND:**

Council considered a report for a new dwelling on the subject land at its meeting held on the 6 June 2007. The report recommended approval subject to various conditions of consent. Council resolved to refuse the application for the following three (3) reasons:

1. *The Council assessment does not fully comply with the provisions within Council’s DCP, in particular, it has not assessed the future stress of the adjacent poultry farm operators as is required.*
2. *The report has not given any assessment to any cool air flow carrying smells, fumes and odours from the chicken sheds downhill to the proposed residence.*
3. *There are adequate available sites on the property to accommodate a residence without being within the 150 metre exclusion zone.*

On 22 August 2007 Council’s Planning Review Committee considered a further report on the matter and resolved to refuse the application for the following five (5) reasons:

1. *The original Council assessment does not fully comply with the provisions within Council’s DCP, in particular, it has not assessed the future stress of the adjacent poultry farm operators.*
2. *The report has not provided an assessment regarding cooling the air flow carrying smells, fumes and odours.*
3. *There are available sites on the property to accommodate a residence without being within the 150 metre exclusion zone, and as such, the refusal of this development application is not denying the property owners the right to build a dwelling on the property.*
4. *Both the original and Section 82 reports incorrectly assume that the predominant summer breezes on the property are from the north west.*
5. *That the recommendation of the Department of Primary Industries to have a minimal separation distance of 347 metres, means that Council should be prudent and at least enforce the minimum separation of our own DCP of 150 metres.*

Copies of the previous Council reports enclosed within the Annexures.

**COURT APPEAL:**

The applicant has lodged an appeal with the Land and Environment Court (LEC) against Council's refusal. During a consultation hearing held between the Court, Council and the applicant on January 16, 2008 the Commissioner gave the following instructions:

- The applicant to submit to Council amended plans that show a 150m buffer distance between the dwelling and the nearest chicken shed;
- The applicant to submit to Council a landscape plan showing the bushfire asset protection zone and a vegetation buffer to the south of the proposed dwelling;
- The applicant to submit to Council an amended bushfire report;
- After the information from the applicant is received, Council notify adjoining properties and refer the amendments to the Rural Fire Service and Department of Primary Industries.

The above instructions have been followed and the revised plans have been assessed along with responses received from the notification period, Department of Primary Industries and Rural Fire Service.

**PLANNING COMMENT:**

Amended Plans

The applicant has submitted amended plans re-positioning the proposed house such that it achieves a 150 metre separation distance from the nearest poultry shed to comply with the provisions of Council's DCP 2006 (Part C.4) Land-use Conflict and Buffer Zones (4.3.1 – Minimum Separation Distances). This has been achieved by relocating the proposed dwelling immediately adjacent to the north-western boundary of the site.

In addition to the increased set-back, the applicant is proposing a 15 metre wide x 25 metre long landscape buffer along the south-eastern boundary of the site to assist with visual screening and to provide a natural barrier which will also protect against the airborne spread of disease (DCP 2006 – Part D.6 – Poultry Farms (6.3.1 – Vegetation)). This landscape buffer will be fenced off to protect it from grazing stock and irrigated for the first 12 months to ensure it is well established. In the event of Council supporting the amendments, it will be recommended to the Land and Environment Court that a condition be imposed requiring the implementation of an 88B instrument over the land requiring the vegetation buffer to be maintained in good condition for the life of the adjacent poultry farm operation.

Department of Primary Industries

The Department of Primary Industries have commented on the amendments and are recommending a minimum separation distance of 347m from the nearest poultry shed, unless further odour assessments are undertaken by a suitably qualified professional demonstrating that a lesser separation distance is achievable with minimal impacts. The provision of such an extensive separation distance will sterilize the land from further development.

It is noted that the Department's comments are of an advisory nature only and in response to their concerns, the applicant is proposing a dense vegetation buffer between the new dwelling and poultry farm to further minimise impacts.

NSW Rural Fire Service

While the NSW Rural Fire Service have yet to respond to the amended plans, the applicant has provided an amended Bushfire Assessment under the provisions of Planning for Bushfire Protection 2006. This assessment recommends a minimum asset protection zone (APZ) of 10 metres around the proposed dwelling. While a 20 metre APZ has been provided to the north-east, south-east and south-west of the building, a 1.5 metre setback is proposed to the north-west boundary (which is well below the 10 metre APZ requirement). Notwithstanding this non-compliance, the submitted bushfire report references the NSW Rural Fire Service Policy regarding the use of adjoining residential land as a managed landscape. In accordance with this policy, the adjacent property can be categorised as a managed landscape (given the close proximity of the dwelling on this lot) and can therefore be relied upon as a suitable APZ without the need for an 88B restriction. No objections have been raised to the proposal by the property owners on this adjacent lot.

It is considered that the proposed justification for a reduced APZ to the north-western boundary is adequate, subject to the support of the NSW Rural Fire Service.

Notification of Amended Plans

One (1) submission was received during the notification period objecting to the amendments on the following grounds:

- The 18.5m increase in the buffer distance (compared to the previous proposal) is of little consequence. Any future residents will complain about the poultry farm operation.
- The poultry shed provides the operator with a livelihood that is threatened by the proposal.
- The amended plans place the dwelling merely 1.5m from the north-western boundary of the site (which is within close proximity to an adjacent dwelling).
- The buffer distance is less than the 350m recommended by the Department of Primary Industries.
- The poultry farm existed prior to the subdivision which created the land.
- The development is contrary to Council's Economic Development Objectives and Council's DCP.

The grounds of objection are relatively similar to the grounds that have been previously considered by Council which has led to the previous refusal of the application.

In response to the these comments, it is considered that the amendments made to the proposal will further reduce any land-use conflicts through an increased separation distance of 150 metres (now complying with Council's DCP 2006) and installation of a vegetation buffer.

The concern raised over the 1.5 metre setback to the north-western boundary is regulated under the Building Code of Australia (BCA) which stipulates a minimum distance of 0.9m for dwellings (without fire rating the building). The proposed setback exceeds the BCA requirement and given that no objections have been received by the property to the northwest, the setback to the side boundary is considered reasonable.



**CALLOVER:**

A callover is scheduled for 18 March 2008 to determine if agreement between the various parties can be reached. If agreement is not achieved, the matter will be deferred to a full hearing. Council's position is required in response to the amended proposal.

The amended proposal brings the development into conformity with Council's DCP 2006 (Part C.4) Land-use Conflict and Buffer Zones (4.3.1 – Minimum Separation Distances). The applicant proposes, in addition to meeting the DCP requirement for the separation of dwellings from poultry farms, to provide a landscape buffer to mitigate the impacts from the poultry farm. The two measures combined are considered adequate. The objection from the Department of Primary Industries (DPI) whilst well intended does not provide a practical, workable buffer and appears to be excessive (231% of Council's DCP specifications).

The subject site was created for the purpose of a dwelling and refusal of the application would make the subject property sterile. Subject to suitable conditions of consent and the requirement for an 88B restriction requiring the installation and maintenance of a vegetation buffer along the south-eastern boundary of the site, it is considered that the dwelling and nearby poultry farm can co-exist with minimal conflict.

**RECOMMENDATION** that:

- A. Subject to the support of the NSW Rural Fire Service, Council advise the Land Environment Court that it is satisfied with the amendments made to the application and is considered to be worthy of approval.
- B. The Land and Environment Court be provided with a set of draft conditions including the requirement for an 88B instrument for the establishment and maintenance of a 15 metre wide x 25 metre long landscape buffer along the south-eastern boundary of the site in accordance with the details contained within the submitted landscape plan.

To: **The General Manager**  
Corporate & Regulatory Services  
Committee – 5 March 2008

**D FITZGERALD**  
**ACTING DIRECTOR CORPORATE &**  
**REGULATORY SERVICES**  
27 February 2008