



Vincent Street
CESSNOCK 2325

8 April 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, 16 April 2008 immediately following the conclusion of the Strategic and Community Services Committee Meeting, for the purpose of transacting the undermentioned business.

**B R MORTOMORE
GENERAL MANAGER**

AGENDA:

PAGE NO.

(1) APOLOGIES.

(2) CONFIRMATION OF MINUTES.

Minutes of the Corporate and Regulatory Services Committee
Meeting held on 2 April 2008

(3) OFFICERS' REPORTS

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES

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(4) QUESTIONS WITHOUT NOTICE.

OFFICER'S REPORTS

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 25/2008

SUBJECT: INVESTMENTS

Financial & Administrative Services Manager, Mr Robert Maginnity, reports:

Details of investments held by Council as at 31 March 2008 are set out below:

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

Inv. No.	Amount \$'000	Instrument	Term	Coupon Date	Maturity Date	Interest Rate %	Interest to Date \$	Form Held With
	1,616	CASH						Commonwealth Bank of Australia
1001o	500	FRN	90	27/05/2008	27/11/2008	9.63%	4,353	Greater Building Society
1010o	500	FRN	92	17/06/2008	15/12/2008	9.51%	1,824	Wide Bay Capricorn Bldg Society
1020o	1,000	CDO	90	5/05/2008	5/05/2008	9.42%	14,192	Credit Suisse First Boston Int.
1029o	1,500	CDO	90	5/05/2008	5/05/2008	9.42%	21,288	Credit Suisse First Boston Int.
1069l	2,000	CDO	92	8/04/2008	8/10/2011	9.12%	41,992	RIMsec
1102i	500	AN	91	17/06/2008	16/12/2010	7.50%	0	Commonwealth Bank of Australia
1126e	500	AN	90	6/05/2008	6/11/2011	9.25%	6,842	Commonwealth Bank of Australia
1132f	500	CDO	92	20/06/2008	20/12/2009	8.78%	1,323	JP Morgan Chase Bank
1133a	1,000	ELD	364	22/12/2008	20/12/2009	7.87%	21,124	Commonwealth Bank of Australia
1138a	500	ELD	365	5/03/2009	5/10/2010	3.00%	1,068	Commonwealth Bank of Australia
1142d	1,000	CDO	91	20/06/2008	20/03/2011	9.08%	2,488	Lehman Brothers
1143a	500	ELD	365	30/06/2008	30/03/2013	4.00%	15,014	ANZ Banking Group
1146c	1,000	CDO	92	20/06/2008	20/06/2010	8.78%	2,646	Merill Lynch International
1147	500	ELD	366	5/06/2008	7/10/2010	6.00%	24,658	Commonwealth Bank of Australia
1149c	500	TD	84	17/04/2008	17/04/2008	7.37%	6,764	Newcastle Permanent B.S.
1150c	500	TD	84	10/04/2008	10/04/2008	7.31%	7,410	Newcastle Permanent B.S.
1159a	500	TD	91	24/04/2008	24/04/2008	7.38%	6,773	Illawarra Mutual Building Society
1161a	500	TD	49	8/05/2008	8/05/2008	7.74%	1,166	Illawarra Mutual Building Society
1163	1,000	TD	64	3/04/2008	3/04/2008	7.23%	12,083	National Australia Bank
1164	500	TD	71	10/04/2008	10/04/2008	7.70%	6,434	Maitland Mutual Building Society
1165	500	TD	78	17/04/2008	17/04/2008	7.43%	6,209	Illawarra Mutual Building Society
1166	500	TD	85	24/04/2008	24/04/2008	7.46%	6,234	Newcastle Permanent B.S.
1167	1,000	TD	92	1/05/2008	1/05/2008	7.70%	12,868	Maitland Mutual Building Society
1168	1,000	TD	93	15/05/2008	15/05/2008	7.82%	10,284	Local Government Fin. Services
1169	500	TD	97	22/05/2008	22/05/2008	7.96%	4,907	Illawarra Mutual Building Society
1170	500	TD	107	5/06/2008	5/06/2008	8.16%	4,583	Maitland Mutual Building Society
1171	500	TD	112	12/06/2008	12/06/2008	7.99%	4,269	Newcastle Permanent B.S.
1172	500	TD	92	29/05/2008	29/05/2008	7.99%	3,612	Illawarra Mutual Building Society
1173	500	TD	41	10/04/2008	10/04/2008	7.90%	3,355	Maitland Mutual Building Society
1174	500	TD	98	19/06/2008	19/06/2008	8.23%	2,029	Newcastle Permanent B.S.

22,616

257,792

Weighted Average Return on Portfolio (Year to Date)	7.43%
Average 90 day BBSW (Year to Date)	7.13%
Interest on investments matured so far in 2007/08	767,523
Interest on above investments	<u>257,792</u>
	<u>1,025,315</u>

N.B. This amount includes investment returns on Section 94 and Waste Services Funds.

Percentage	Amount Held	
	\$'000	of Total
Financial Institution Summary		
Commonwealth Bank of Australia	4,616	20.44%
Credit Suisse First Boston Int.	2,500	11.05%
Newcastle Permanent Building Society	2,500	11.05%
Maitland Mutual Building Society	2,500	11.05%
Illawarra Mutual Building Society	2,500	11.05%
RIMsec	2,000	8.84%
Lehman Brothers	1,000	4.42%
Merill Lynch International	1,000	4.42%
Local Government Financial Services	1,000	4.42%
National Australia Bank	1,000	4.42%
ANZ Banking Group	500	2.21%
Greater Building Society	500	2.21%
JP Morgan Chase Bank	500	2.21%
Wide Bay Capricorn Bldg Society	500	2.21%
	<u>22,616</u>	<u>100.00%</u>

Instrument	Amount Held	Percentage
	\$'000	of Total
Cash	1,616	7.15%
Collateralised Debt Obligation (CDO)	7,000	30.95%
Floating Rate Note (FRN)	1,000	4.42%
Term Deposit (TD)	9,500	42.01%
Equity Linked Deposit (ELD)	2,500	11.05%
Accrual Note (AN)	1,000	4.42%
	<u>22,616</u>	<u>100.00%</u>

RECOMMENDATION that the information be noted.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 16 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
1 April 2008

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 26/2008

SUBJECT: FOOD REGULATION PARTNERSHIP AND FOOD SAFETY PROGRAM

Acting Regulatory Services Manager (Environmental Health), Ms J Lange, reports:-

PURPOSE

To formally nominate a level of food regulation responsibility for Cessnock City Council to form an agreement with the NSW Food Authority. This report will also consider:-

- the resources required to satisfactorily perform Councils statutory role,
- the funding base to provide these resources, and
- Council's Food Program including food safety promotion initiatives.

BACKGROUND

On 19 March 2008 a report was put to Council advising of changes to the Food Act 2003 and Regulation thereunder, mandating the role of Councils in the regulation and inspection of the retail and food service sector and advising of the need for Council to enter into a formal agreement with the Food Authority to be effective from 1 July 2008.

The NSW Food Authority is responsible for food safety across the entire food industry, from primary production through to the point of sale. It has been recognised that both the NSW Food Authority and local government play significant roles in food regulation and to provide the best food regulation system in NSW, a strong, genuine and cohesive partnership is essential.

In NSW the principle legislation for food safety is the Food Act 2003, which is supported by the Food Regulation 2004. Local Government powers to act on food matters come principally from the Food Act. Under this Act the General Manager has the power to authorise Officers and section 6 of the Food Regulation gives the ability for Local Government to be prescribed as an enforcement agency.

Traditionally Cessnock City Council has played a key role in food regulation and education protecting the health and promoting hygienic conditions and standards in the community. The community's knowledge and expectations for safe food is increasing as is the trend to eat out, it is estimated that most families will now either eat out or consume takeaway foods at least once a week.

Cessnock City Council has a reputation for best practice in food safety as was demonstrated in the development of the Hunter and Central Coast Temporary Event Guidelines; a document that was driven by Cessnock City Council. These guidelines have now been adopted by the NSW Food Authority and are being used state-wide.

The risk of incidences of food borne illness justify the need for continued involvement in food regulation, education and promotion. It is estimated that on average Australians will experience an episode of food borne gastroenteritis every three to four years (Australian Government, Department of Health and Aging 2000).

In NSW for the 2006/07 financial year the NSW Food Authority received 430 notifications of alleged food borne illnesses where 2 or more cases were involved and 551 single cases of alleged food borne illnesses. In 2007 NSW Health reported 2,539 cases of salmonella poisoning, an increase on the 2006 figure of 2,055. Salmonella poisoning is usually a direct result of contaminated food ingestion.

Symptoms of food poisoning can range from minor discomfort to severe vomiting, diarrhoea stomach cramps, numbness and even death. Recently a man who ate at an upmarket restaurant on Sydney's North Shore died after consuming a cream asparagus sauce contaminated with *Bacillus cereus* after the sauce was heated and re-heated on a number of occasions.

As the Cessnock region relies heavily on tourism one incident of large-scale food borne illness has the potential to have serious ramifications to the reputation of the area and to significantly impact on visitor rates.

REPORT

There are 368 food premises currently registered with Council. All registered premises are placed into a High Risk, Medium Risk, Low Risk or Minimal Risk category. The category in which food premises are placed is determined by the level of risk associated with the business and the type of food offered for sale.

High Risk premises are the ready to eat outlets such as restaurants, bakeries and takeaways, medium risk premises generally consist of cafes and bakery outlets. Both medium and high risk premises are programmed to receive two (2) inspections per year. Low risk premises are typically the corner store, fruit and vegetable shops and service stations that have limited food handling or processing and therefore the risk is reduced, these premises receive one inspection per year. Minimal risk premises include cellar doors and wineries that present an even lower risk level.

The existing inspection regime equates to a minimum of 483 routine inspections per year. On top of these routine inspections a number of follow up inspections also form part of the assessment program on premises to ensure compliance with notices and orders. Officers also carry out additional inspections in response to complaints.

The program is predominantly focused towards prevention and education of the customers and where minor matters are identified on inspection, the primary mechanism for compliance is the issuing of non-compliance inspection reports identifying actions required and a time frame. Where the matters are more serious, on-the spot penalty notices or Court prosecutions may result.

In addition the environmental health team is also responsible for the following functions:-

- Registration of temporary food businesses and inspection at temporary events. Council Officers often attend events to inspect stalls to ensure compliance with the guidelines.
- Regulation, education and inspection of another 215 identified regulated premises including hairdressers, beauty salons, mortuaries, water cooling systems (*Legionella*), tourist accommodation facilities and soon public swimming pools and spas. 154 routine inspections are programmed each year for these premises with re-inspections conducted as required,

- Investigation and monitoring of alleged pollution matters including air, water, land and noise pollution.
- Review and comment on development applications relating to regulated premises, and applications with the potential to have significant environmental impact.
- Provision of information and advice on environmental health and public health matters.

Over the last eight years (8) there has been a 20% growth in the number of regulated premises including food premises registered within the LGA and this is increasing. With this increase in fixed premises and increasing temporary events it has become increasingly difficult to meet the program requirement within the existing resource allocation.

As part of the legislative changes Council must now select one of three levels of food regulation responsibility:-

- Category A - Response to urgent food safety matters, urgent food recall investigations and six-monthly reporting on food regulation activities. Examples being power loss to a number of food businesses, truck roll overs or flood damaged food businesses.
- Category B – Includes category A responsibilities and,
 - food recall investigations,
 - routine inspections and enforcement of retail and food service sector,
 - medium, and low risk food complaint investigations, and
 - collaboration on single-case food borne illness investigationsMandatory protocols providing details around these responsibilities have been drafted in consultations with Councils.
- Category C – Includes category A & B responsibilities and other responsibilities determined in consultation with the Authority eg inspection of manufacturers and wholesalers.

The three services levels were proposed to make the regulation partnership a viable option for all Councils including small regional Councils. Category A appointments are not intended for Councils that have a history of providing food regulation and will only be provided at the discretion of the Director General upon written application addressing a number of specified criteria. Given Cessnock Councils history in providing a food safety service it is highly unlikely that Council would be considered for a Category A nomination.

Category B would allow Council to continue to provide a level of food safety surveillance for the protection of public health that our community would expect. It would also guarantee a future role for Council in the important role of food surveillance.

Under Category B Council would also need to re-classify food premises to low, medium or high risk according to a classification which has been developed as part of the partnership proposal. The majority of Council's food businesses will fall into either a high or medium risk classification under this proposal. Child care facilities that previously have not been included as part of Council food safety program will now need to be included.

The food Bill also mandates the number of inspections that Councils are required to undertake, being two inspections annually for high and medium risk premises, with low risk premises inspected on an as needs basis or on receipt of a complaint. The classifications are included in the enclosure document.

It is also recommended that when food businesses have undergone three (3) consecutive inspections with no critical food safety breaches identified, then the inspection frequency may be reduced. When food businesses are found to have critical food safety breaches their inspection frequency may be increased. This is an option which is supported and recommended to be trialed to encourage well run and managed businesses.

This inspection model will increase the number of routine/scheduled inspections to be conducted; inspections will increase from approximately 480 food business inspections to 650 food business inspections. Including re-inspections and other regulated premises inspections it is expected that the environmental health team will be conducting a minimum of 1,000 inspections per annum.

Our current staffing resources of one Environmental Health Co-ordinator and one Trainee Environmental Health Officer will not be sufficient to fulfil this role and therefore Council would need to appoint an additional Environmental Health Officer. The Food Amendment Act 2007 provides the opportunity to charge adequate fees to cover the costs to fund the expenses of securing additional staff and therefore be cost/revenue neutral as outlined below.

The following options for fees to be charged are provided for in the Food Amendment Act 2007:-

1. An Annual Administration fee for food businesses, as follows
 - \$2,000 Premises employing 51 or more food handlers
 - \$500 Premises employing 6-50 food handlers
 - \$250 premises employing 5 or less food handlers
2. Charging Inspection Fees. With a recommended maximum fee of \$140 per hour (excluding travelling time).
3. A \$320 prescribed fee to recover the costs associated with the issuing of improvement notices and one re-inspection.

The fees outlined above are those proposed by the food Authority, the Food Authority itself currently charges \$240 per hour which is a fully commercial cost recovery. It is proposed that Cessnock Council charge the following fee structure.

Annual Administration fee	\$250 for each high and medium food retail outlet
Inspection fee	\$140 for high risk food retail outlet \$70 for medium risk food retail outlet

In the interest of service to the community and not placing an unsustainable burden on schools it is proposed that school canteens not be charged an inspection fee.

The proposed fee increases would increase the revenue stream by \$110,890. This additional income would fund one additional Environmental Health Officer in terms of salary, vehicle and on-costs.

Additional income may also be generated with the proposed administration fee that will be imposed with the service of any improvement notices serviced by Council's Officers and through fines derived from on-the-spot fines and Court prosecutions. This would vary from year to year.

Currently businesses are charged annual fees based on the risk classification of the business, these fees are:-

High Risk	\$240
Medium Risk	\$160
Low Risk	\$85
Minimal Risk	\$80

The fees proposed will represent a significant increase for many premises; previously the program has operated as partial cost recovery with Council funding a significant portion of the program. The proposed fees expect to allow the food safety program to run at cost neutral.

In unforeseen circumstances where Council is unable to meet its responsibilities under the agreement the Food Authority is to be advised and assistance may be sought. However, if the Food Authority does undertake the inspections on behalf of Council, Council would then be invoiced for this service and this would most likely be at full commercial rates.

The \$250 annual administration fee as proposed is designed to cover such costs as:-

- Staff training,
- Identifying premises,
- Registration of premises,
- Maintaining Council's electronic register, and
- Preparation and submission of 6 monthly activities reports to the Food Authority

In addition it is proposed that Council utilise the administration fee to develop Food Safety Promotion Initiatives to allow Council Officers to address the needs and want of its user groups in a positive and rewarding manner while improving food service quality.

It is proposed that this will be achieved by:-

- Working with the tourism board to develop rewards systems to promote businesses that have met or exceeded the relevant standards,
- Working with and supporting other food focused community programs to promote safe food production,
- Providing education programs including internet training packages, industry training through Tafe and generic food safety seminars,
- Fact sheets and annual newsletters,
- Improved information packages for new business operators,
- Re-design and development of Council's internet site to provide the latest forms guides and information,
- Informing and educating the consumer,
- Provision of pre-temporary event information sessions to stall holders, and
- Promotion of Councils pre-purchase inspection service,

These initiatives will require further development and refinement; however the intention is to develop a much closer and positive relationship with stakeholders focusing on positive reinforcement rather than negative feedback. Support will be provided to user groups in the form of inspections, food safety promotion initiatives as outlined above, education and the provision of information and advice.

A large component of this package development will be consultation with all stakeholders as it is intended to write to stakeholders to identify the changes. Opportunity for feedback on the changes and initiatives stakeholders wish to see developed will be provided either through surveys or community forums.

CONCLUSION

The new legislation should be viewed as a chance to embrace change and respond to the evolving demands of the community for safe food supply and the demands of the food service sector for information and support. The ability to provide this level of service can be secured by the funding base as provided for in the legislation.

Opportunity is provided to Cessnock Council to raise the bar in food safety and to continue to identify the region as providing food of an excellent standard and quality. This will further support and enhance the regions tourism.

The adoption of Category B service level and entering into an agreement with the NSW Food Authority allows Council to continue to improve upon its food safety program for the benefit of food retail outlets, consumers, visitors and the community.

If Council does not fulfil the program under this Category B agreement, the NSW Food Authority will undertake inspections on Councils behalf and charge Council at full cost recovery.

RECOMMENDATION that:-

1. Council enter into a partnership agreement as an Enforcement Agency in the terms of Category B premises under the provisions of the Food Amendment Act 2007.
2. The fees be included in Council's Draft Fees and Charges 2008/09.
3. One additional permanent Environmental Health Officer position be created.
4. An update report is provided to Council after the partnership agreement has been in place for 12 months.

To: **The General Manager**
Corporate & Regulatory Services
Meeting - 16 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
31 March 2008

**DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 27/2008**

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

Acting Regulatory Services Manager (Environmental Health), Ms J Lange, reports:-

INTRODUCTION

This report considers representations made in relation to Councils intention to serve an order for the demolition of dilapidated buildings situated at Lot 1 DP 568962 508 Maitland Road Cessnock consisting of a service station, manager's residence and shed.

BACKGROUND

Council at its meeting of 5 March 2008 considered a report regarding dilapidated buildings and adopted the following recommendations:-

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, managers 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 and;
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.

REPORT

A notice of intention to serve an Order was served to the company director on 17 March 2008 providing 14 days to make representations as to why the order should not be given or as regards the terms of or period of compliance with the order.

Representations were received from the company director on 28 March 2008 requesting that Council withdraw the proposed order to demolish on the grounds that the buildings will be demolished in accordance with Development Application conditions. Further representations were received on 8 April 2008 advising that the demolition will take place within three (3) months from Councils approval of a work plan and acoustic report forming part of Development Consent 8/2005/511 and the time bracket would permit scheduling of the work with the companies contractor.

A deferred commencement approval has been granted 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. This deferred commencement has the condition which states:-

Within twenty four (24) months from the date of determination, the proponent shall submit to Council, an acoustic report from a qualified acoustic consultant, identifying all noise sources associated with the proposed development (including traffic noise) and demonstrating compliance with the "Industrial Noise Policy, January, 2000" introduced by the Department of Environment and Conservation.

To comply with this requirement the acoustic report must be submitted and approved by Council before the 30 April 2008. If a suitable report is not provided within this time frame the approval will lapse.

CONCLUSION

The buildings are so dilapidated and unsightly as to be prejudicial to persons and property within the neighbourhood and are beyond economical repair. The buildings are likely to be burnt if not demolished shortly.

The company director has advised that the buildings will be demolished in accordance with the terms of a development consent subject to the approval of an acoustic engineers report. An undertaking has been given that the acoustic report will be submitted to Council by the 30 April 2008 and that demolition will commence within three (3) months of the approval from Council.

If the site is to be redeveloped within three months it would be advantageous for the owner to complete demolition as part this redevelopment. However, if the terms of the deferred development are not complied with the development will lapse and demolition can only occur if an order is issued or another development application is sought and approved.

RECOMMENDATION that:-

1. Council resolve to not proceed with the service of the Order provided the terms of the deferred consent 8/2005/511 are met by 30 April 2008.
2. If the terms of the deferred consent 8/2005/11 are not met by 30 April 2008 then Council resolve to serve 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, managers 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,
3. Council delegate authority to the General Manager to sign and serve the Order on Councils behalf,
4. 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
Meeting - 16 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
7 April 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 28/2008**

DEVELOPMENT APPLICATION NO: 8/2007/958/1
APPLICANT: MARSHALL SCOTT PTY LTD
OWNER: MR G & MRS L HINDMARSH
PROPERTY: LOT 1092, DP 558562, 160 LONDONS ROAD,
LOVEDALE
AREA: 20.13 HECTARES
ZONING: 1(A) RURAL 'A' ZONE
PROPOSAL: TWO (2) LOT SUBDIVISION

Planning Consultant, Tamai Davidson, reports:-

SUMMARY:

Council is in receipt of an application to subdivide an existing 20 hectare parcel of land in to two (2) separate parcels pursuant to the provisions of Clause 12(3) of Cessnock Local Environmental Plan 1989.

The proposal is not considered to satisfy the intent of Clause 12(3) of the Cessnock Local Environmental Plan and support of the application would create an undesirable precedent for smaller subdivisions in the locality, undermining the planning principles and objectives of the rural 1(a) Zone. The application is therefore recommended to Council for refusal.

PROPOSAL:

The application seeks Councils consent for a two (lot) subdivision of the subject land under the provisions of Clause 12(3) of the Cessnock Local Environmental Plan 1989. The lot currently has an area of 20.13 hectares. The proposed allotments are to have areas of 2.02 hectares and 18.11 hectares.

The site is currently occupied by three (3) tourist accommodation buildings. The subdivision proposes to separate one (1) of the tourist accommodation buildings on the smaller allotment of 2 hectares, with the remaining two (2) buildings located on the residual lot of 18 hectares.

BACKGROUND:

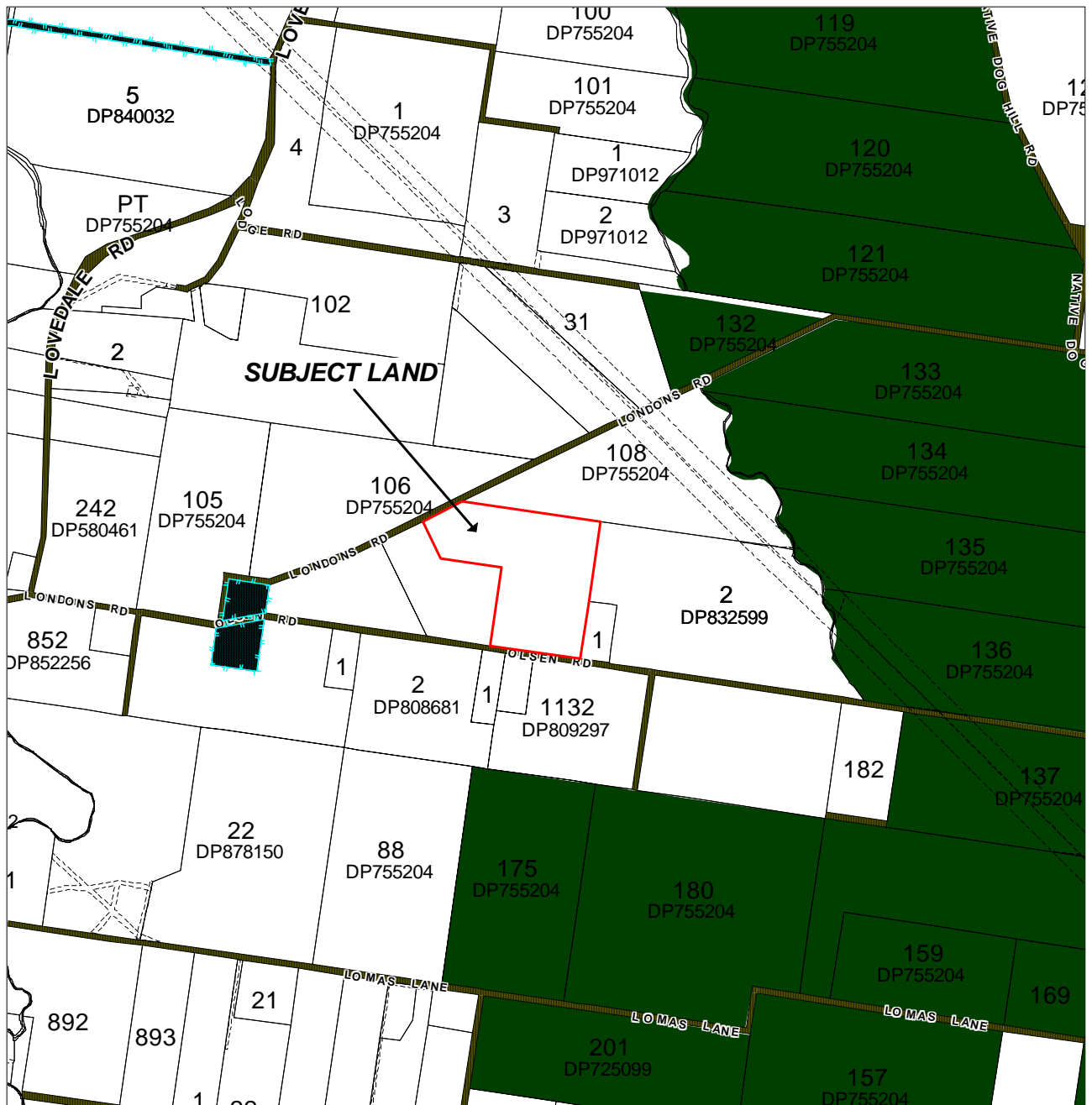
The site currently contains three (3) tourist accommodation buildings. The two (2) larger buildings are capable of supporting up to 24 guests over any given period. The two (2) bedroom cottage has become ancillary to the operation of the larger buildings.

The intention of the owners is to sell the smaller allotment containing the smaller two (2) bedroom cottage and to reinvest in the residue allotment. The proceeds from the sale are to construct a dwelling on the residue allotment to facilitate the management of the two (2) larger tourist accommodation buildings.

The applicant was requested to withdraw the application in a letter dated February 18, 2008 due to the proposal not satisfying the intent of Clause 12(3) of the LEP. A meeting was subsequently held with the applicant to further encourage the withdrawal of the proposal given Council's intent to refuse the application. Notwithstanding this meeting, the applicant has requested Council to determine the application.

SITE DESCRIPTION:

The subject property is located at 160 Londons Road, Lovedale with a secondary frontage to Olsen Road. The site contains three (3) tourist accommodation buildings. The southern half of the property has been extensively cleared for the purpose of establishing a vineyard, with the northern half selectively cleared leaving a scattering of native trees with no understorey.



PUBLIC EXHIBITION:

In accordance with the Cessnock Development Control Plan 2006, this application was notified for 15 days during which time no submissions were received.

PLANNING ASSESSMENT:

Cessnock Local Environmental Plan 1989

Pursuant to Cessnock Local Environmental Plan 1989, the site is zoned 1(a) Rural “A” Zone. The objectives of the zone, as relevant are as follows;

(a) *to enable the continuation of existing forms of agricultural land use and occupation,*

This land currently demonstrates an integrated mixed use of agriculture/viticulture and tourism on the land, demonstrating the capability of the land to support such a mixed use. As defined by New South Wales Agriculture, the lot comprises of Class 3 and 4, with Class 3 defined as prime crop and pasture land by the Hunter Regional Environmental Plan, 1989. Subdivision of this type containing a habitable dwelling could be seen as a precursor for applications for dwelling entitlement.

(b) *to ensure that potentially productive land is not withdrawn from production,*

The application proposes to isolate a 2.02 hectare portion of the existing 20.13 hectare lot for the purpose of raising revenue to erect a dwelling house on the residual lot, enabling better management of the two (2) larger tourist accommodation buildings. This would facilitate the further fragmentation of agricultural land and lead to the potential for conflict between the existing vineyard operations and the proposed 2hectare parcel containing the tourist accommodation.

The application indicates the proposed subdivision is purely for financial gain. The subdivision is not proposed in order to achieve an improved outcome in terms of operational issues for the existing site and developments contained thereon, or for each of the proposed resultant lots. It could be argued that, should the subdivision be approved, there is a higher risk of conflict between the uses which currently operate harmoniously on a single site.

(c) *to encourage new forms of agricultural land use,*

The subdivision of a 2.02 hectare allotment, is not favourable for agricultural activities to be pursued given the limited size. The remaining residual lot would still be capable of supporting the existing grape vines and possibly minimal grazing activities, however the capacity if such an activity was pursued would be reduced. Any subdivision is likely to result in conflict between adjoining landuses.

(d) *to enable other forms of development which are associated with rural activity and which require an isolated location, or which support tourism and recreation, and*

Both allotments are likely to continue to be used for tourist accommodation purposes. The created allotment would not allow for any other development, with minimal activity able to be carried out on the created lot, other than the approved purpose of tourist accommodation.

(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,

Subdivision of the existing lot, which has been established as agricultural Class 3, would reduce the capacity of the land to support agricultural activities and restrict any further development on the created allotment. Further subdivision would result in the continued fragmentation of agricultural land within the locality. This application would set an undesirable precedent for further subdivision of rural land if approved.

Clause 12 Subdivision of land within Zone No 1 (a)

The relevant section of Cessnock LEP 1989 states;

(3) The Council may grant consent to a subdivision of land which creates allotments of land of less than 40 hectares in area where the allotment is used for a permissible purpose other than agriculture, forestry or a dwelling-house (not being a dwelling-house ancillary to the purpose) and in the opinion of the Council:

(a) the land does not comprise any prime crop and pasture land or any land that is or could be used for a form of agriculture common in the area, and

(b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created.

Council's mapping information obtained from New South Wales Agriculture (2007), suggests that the Agricultural Land Classification of the lot is Class 3 and 4. As defined by the Hunter Regional Environmental Plan 1989:

“prime crop and pasture land” means land shown as being Class 1, 2 or 3, or special purpose lands, on maps prepared by the Department of Agriculture and Fisheries from time to time, or land identified by the Department of Agriculture and Fisheries as being Class 1, 2 or 3, or special purpose lands.

The application was referred to the Department of Primary Industries- Agriculture. Comments from the Department have advised that Council use caution in determining this application as a small lot subdivision of this type only serves to further fragment and alienate agricultural land. A copy of the submission is contained in the enclosure document.

Council has stringently and consistently applied the provisions of Clause 12(3) of the LEP, and consent for subdivision has only historically been issued where the application has demonstrated that the existing land use to be subdivided is commercially viable in its own right (large scale tourist developments) or is for an operational purpose (rural fire stations, electricity substations).

Cessnock Development Control Plan 2006

Part D, Chapter 1: Subdivision Guidelines

1.4.1 Lot Size and Shape

The creation of the 2.02 hectare allotment, under the provisions of Cause 12 (3), would set an undesirable precedent in relation to the subdivision of 1(a) zoned land throughout the locality. An adjoining land owner, who was notified of this proposal, sought advice as to whether a similar proposal is likely to be supported on another site within the area.

The lot size is inconsistent with the subdivision pattern in the area, particularly taking in to account the existing use of a tourist accommodation building. There is some evidence of similar sized parcels on Olsens Road, however these have been created under the now repealed provisions of Clause 12(4) of Cessnock LEP 1989, where the allotments were created for the purposes of a dwelling.

The resultant lot size has the potential to create future conflict between uses which are currently operating under the one management.

General Planning Assessment and Comment

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:

79C(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

Approval of the subdivision has the potential to create impacts in terms of conflict between adjoining uses of tourist accommodation and vineyards. Separate management of each lot is likely to result in increased vehicular movements (those related to maintenance & cleaning staff) which are currently combined under the management of the single lot.

79C(c) the suitability of the site for the development,

The site is located in the 1(a) Rural “A” zone, with subdivision of land permitted with consent. The minimum lot size within the zone is 40 hectares, with the existing lot already substantially under size. Given the fragmented nature of rural land within the region, this application would allow for the further division of useable agricultural land. The isolation of one (1) tourist accommodation building, is not favourable with concern regarding how the site is to be managed if sold and retained as tourist accommodation. Subdivision of this type containing a habitable dwelling could be seen as a precursor to applications for dwelling entitlement.

(e) the public interest.

Concern is also raised in regard to the setting of an undesirable precedent for further subdivision of rural land. Therefore, it is recommended that the application be refused to avoid any precedent being set for possible future applications.

CONCLUSION:

The application before Council proposes a subdivision which is clearly outside the intent of Clause 12(3) of Cessnock LEP 1989, and approval of such will seek to create an undesirable precedent for similar application in the Local Government Area. The application fails to meet the objectives of the 1(a) Rural zone and the provisions contained within Clause 12(3) of the LEP. The application is therefore recommended to Council for refusal.

RECOMMENDATION that DA 8/2007/958/1 for a two (2) Lot subdivision of Lot 1092, DP 558562, 160 Londons Road, Lovedale, be refused for the following reasons:-

1. The application is inconsistent with the objectives of the 1(a) Rural (A) Zone (S79C(1)(a)(i)).
2. The application is inconsistent with the provision of Clause 12(3) of Cessnock Local Environmental Plan 1989 (S79C(1)(a)(i)).
3. The application is inconsistent with the provisions of Part D, Chapter 1.4.1 of Cessnock Development Control Plan 2006 (S79C(1)(a)(iii)).

4. The proposal will create the potential for land use conflict (S79C(1)(b)).
5. The proposal is not considered to be a suitable form of development in the 1(a) Rural 'A' Zone (S79C(1)(c)).
6. The proposed development will not be in the public interest (S79C(1)(e)).

To: ***The General Manager***
Corporate & Regulatory Services
Committee – 16 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
31 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 29/2008**

DEVELOPMENT APPLICATION NO: 8/2007/618/1
APPLICANT/OWNER MR G DONAVAN
PROPERTY: LOT 86 DP 270293, 20 MACULATA PLACE,
THE VINTAGE, ROTHBURY
AREA: 807.5M2
ZONING: 1(V) RURAL (VINEYARDS)
PROPOSAL: CHANGE OF USE FROM DWELLING TO
CONFERENCE FACILITY AND ANCILLARY
ACCOMMODATION

Planning consultant, Tamai Davidson, reports:-

SUMMARY:

Council is in receipt of an application to convert an existing residential dwelling located at The Vintage, in to a 16 seat conference facility, with ancillary accommodation. The application has been assessed in accordance with Council's relevant plans and policies and determined to be inconsistent on the basis of land use conflict, conflict with the intention of the DCP Masterplan, local amenity, noise, precedent, non compliance with the DCP car parking requirements and public interest. The application is therefore recommended to Council for refusal.

PROPOSAL:

The applicant proposes to change the use of an existing dwelling to a 16 seat conference facility and ancillary five (5) bedrooms of accommodation. The development seeks consent for small groups to utilise the dwelling for the purposes of short-stay accommodation and conferences in a golf resort environment. The application does not propose any substantial alterations to the existing building.

BACKGROUND:

The existing residential dwelling and swimming pool was approved in 2005 (DA 8/2005/643). The two storey house has five bedrooms, five bathrooms, laundry, kitchen, decks, spa, pool, two living areas and two car garage.

On 11 January 2007, Council issued a notice to the landowner advising of alleged unauthorised use of the dwelling. This development application is in response to this notice.

SITE DESCRIPTION:

The site is located within 'The Jacaranda' residential precinct of 'The Vintage' estate at Rothbury. The site comprises a standard residential style allotment of 807sq. metres and is surrounded by existing residential dwellings and backs onto the golf course. The site is located in a cul-de-sac.

PUBLIC EXHIBITION:

The application was notified in accordance with Part B.2 Cessnock DCP 2006 for a period of 15 days, after which time 28 submissions were received, including a petition signed by 14 landowners. The application was also referred to the Vintage Design Review Committee (DRC) who resolved not to support the proposal.

The DRC's role is set down in Part 2.2.1 of Cessnock DCP 2006, whereby the DRC has the responsibility to review all applications and determine their consistency with the provisions of "The Vintage" chapter of the DCP. Council has consistently applied the provisions contained in the DCP, in terms of the DRC involvement and commitment to creating a development of a high quality for both the community and Council.

The key issues raised by the individual submissions are summarised below, with the issues raised addressed in the *Planning Assessment*. (The submissions are contained in the enclosure document)

Residential amenity

The existing estate and character of the area is that of a residential precinct, with the expectations of all owners (upon purchase in to the estate) being that this area of "The Vintage" would remain as a residential precinct. The commercial nature of the development is considered to be out of character and outside the intent of the establishment of the residential precinct.

Traffic issues

The site is located in a cul-de-sac and it is envisaged that the additional traffic generated by the proposed development will create traffic and parking congestion issues on a narrow, residential street. Issues which flow on from traffic, include parking deficiencies on the site, leading to overflow parking on a narrow street and the potential for conflict between both residential traffic and pedestrian movements in the locality.

Expansion possibilities

Submission raises issues in relation to the potential for the development to expand in to the future.

Operational issues

Concerns raised in relation to the potential for increased staff, hours of operation, liquor licensing requirements – no details of which have been provided in the application.

Precedent

Concerns raised in relation to the potential for a precedent to be set for similar styles of development if Council were to consent to the application.

Existing Operations

Submissions state that the site has been historically used for the proposed purpose and traffic/parking issues were obvious.

Noise

Concerns raised in relation to the potential for noise associated with the use, including, traffic noise, participant noise – amplification of voices, clapping, general discussion.

Existing Facilities available on site

There are facilities for conferences available in the existing Vintage Clubhouse precinct

Security concerns

The estate is currently a gated community – concerns are raised over the potential for security of this estate to be breached.

Master Plan for the Vintage

The Master Plan identifies this precinct for residential purposes and it was on this basis that current owners sought to purchase in this area.

Property Values

Concern raised in relation to the impact that approval of the development could have on surrounding property values.

PLANNING ASSESSMENT:

Cessnock Local Environmental Plan 1989

Pursuant to Cessnock Local Environmental Plan 1989, the site is zoned 1(v) Rural (Vineyards) Zone. The objectives of the zone include "...to encourage appropriate tourist development consistent with the rural and viticultural character of the Vineyards District...". The proposal is considered to be inconsistent with this particular objective, in that the proposed development is not considered to be "appropriate" when assessed on its merits and in terms of its location within an identified and established residential precinct.

Conference facilities and tourist accommodation buildings are permissible in the zone with consent, where the following definitions are applicable:

'conference facilities means a building or buildings used for the purpose of meetings or gatherings of an organisation, association or group or for the purpose of conventions, training or meetings or any other like purpose.'

'tourist accommodation building means a building or part of a building containing one or more tourist accommodation units.'

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

The site is also subject to the provisions of Clause 17 of the LEP, by virtue of the ability for Council to consent to the development of "dwelling house, villas, duplexes and the like on the allotments so created where the subdivision is, in the opinion of the Council, required as an integral part of a major tourist recreation facility." The creation of this allotment of land and the subsequent erection of the dwelling on the site was done so under the provisions of this clause.

The provisions contained in clause 17, make clear the intent of Council in establishing areas for residential use within the approved subdivision. In considering the types of use which are consistent with residential use, the provisions of the 2(a) zone may be referred to. The 2(a) zone prohibits development for the purposes of 'conference facilities' and 'tourist accommodation buildings.'

Clause 10 (1) of the LEP provides matters for consideration by Council for development in the 1 (v) Rural (Vineyards) Zone. The existing building is visually compatible with surrounding land use and will not affect any natural or archaeological features. No physical works are proposed and hence the proposal will not impact on erosion, drainage, vegetation or agricultural production. However the use of the building is not consistent with surrounding land use and may affect enjoyment of other land in the locality in relation to noise and traffic issues.

Relevant DCPs – Cessnock DCP 2006

An assessment of the proposal against the relevant Chapters of Cessnock DCP 2006 has been undertaken, with the following areas of relevance.

Chapter C.1: Parking and Access – Clause 1.2 specifies the following car parking requirements:

Activity	Council Parking Requirement	Area/unit	Parking Spaces Required
Tourist Accommodation units	1 space for bedroom	5 bedrooms	5
Conference facilities	1 space per 5 seats	16 seats	3.2 (4)

Assuming the two activities will operate in conjunction and not independently, the higher of the two rates should apply. Therefore 5 car park spaces are required. The current dwelling has facilities for undercover parking of two vehicle and off-street parking within a driveway of two more vehicles. However, the required 5 spaces cannot be accommodated and would require on-street parking. The proposal is not consistent with the car parking requirements of the DCP. Information provided in complaints to Council in relation to the historic unauthorised use indicate issues in relation to vehicles parking on the footpath and street.

Chapter C.4: Land Use Conflict and Buffers – the proposed commercial operation is not compatible with the existing residential surrounds. The increased traffic movements, likely on-street parking, noise and number of visitors is not consistent with the established residential context of the precinct. The proposed development is considered likely to diminish the local residential amenity.

Chapter C.5: Waste Management and Minimisation – a Waste Management Plan was not provided with the application and it is unclear as to the expected waste to be generated from the site. Given occupation of the site is likely to exceed that of a residential dwelling an increase in waste can be expected. The application fails to address this issue.

Chapter E.2: The Vintage – Clause 2.3.1.1 relates to the definition of Tourist Recreation Facilities under the CLEP and considers the inclusion of a golf course, country club and holiday accommodation in The Vintage. Clause 2.3.1.2 details the types of development intended within the residential precincts and does not include use for conference facilities or tourist accommodation. The proposal is not consistent with the intent of Chapter E.2 in locating tourist activities within a residential precinct.

Chapter E.3: Vineyards District – Clause 3.2 of the DCP and sub-clauses provide a list of considerations and development application requirements that have been considered as follows as relevant to this application:

- Surrounding land uses – the proposal consists of use of an existing dwelling, however the additional traffic generated will have a negative impact on surrounding land uses. The commercial use of the site is not consistent with the surrounded residential land uses.
- Soils – no physical works are proposed that would potentially expose contaminated land or affect viticulture.
- Building siting and design – the proposal involves no physical works or alterations.
- Cessnock airport – the proposal does not involve physical works and will not affect obstacle height limitations. As the proposal is an additional use of an existing building it will not create any additional limitations on the operation of the airport.
- Heritage – Aboriginal and European heritage will not be affected as no physical works are proposed.
- Waste management – no indication of proposed waste management is addressed in the SOEE..
- Car parking – the proposed four off-street carpark spaces is not consistent with the required five spaces.

The proposal does not comply with the requirements of Cessnock DCP 2006 in relation to car parking, consistency with surrounding land use, waste management and minimisation and the intention of the use of the ‘residential precincts’.

General Planning Assessment and Comment

The site’s location within a designated ‘residential precinct’ of the approved Vintage Master Plan is not consistent with the intent of the Master Plan. The proposed type of tourist accommodation and conference facility are not intended to be provided in the Special Residential precincts. Approval of this development would undermine the intent of the approved Vintage Master Plan and create a precedent for future commercial developments within residential precincts.

The proposed commercial operation is not consistent with the established residential context. The high number of visitors and associated traffic and noise is in conflict with the ‘lifestyle’ residential setting established by the existing Vintage complex.

Overflow carparking is a concern in this residential precinct. A minimum of five spaces are required under Councils DCP, while only four off-street spaces are provided. The distance to the nearest community parking parcel at the Golf Club is likely to prevent its use for the overflow parking, leading to on-street parking within this residential estate, encroaching on the privacy, safety and access of existing residential properties.

Increased traffic movements on this residential street will reduce the safety for outdoor play, reducing local amenity and public enjoyment of the neighbourhood.

Operational noise is proposed to be managed by a Code of Conduct detailing limitations to visitor numbers, carparking and operating hours. It is not clear if the facility would be staffed which would create additional traffic and parking demands. The Code of Conduct refers to a 5 car parking space allocation and 20 person limitation. This is not consistent with parking and operating commitments within the SEE. This type of Code of Conduct is considered unlikely to be successful in enforcing the proposed controls given the transient nature of the visitors and the absence of onsite staff to enforce the provisions. It is likely that the associated short stay accommodation is intended to be enjoyable, as such entertainment noise from the attendees (eg. music, swimming, associated alcohol, talking of up to 10 overnight guests) attending the venue is likely to extend beyond that of the usual residential noise, particularly into the evening.

The 'Jacarandas' estate is a gated community with secure access by way of swipe card. It would undermine the security of the estate for a commercial activity of this nature to operate, allowing high visitor turnover and requiring tradespeople ongoing access (eg. caterers, cleaners, maintenance etc).

A Special General Meeting of the owners within this part of the estate was held on 23 November 2007 where the proposal was rejected by large majority vote. The concerns raised were in relation to traffic, local amenity, noise and parking. The local community has expressed a strong opposition to the proposal identifying its incompatibility with the existing residential context. It is therefore not considered in the public interest to approve the development.

CONCLUSION:

Development Application 8/2007/618 proposes to establish a 16 seat conference facility and associated tourist accommodation on a site situated within an identified and established residential precinct at The Vintage. The application has failed to demonstrate that the proposed development is satisfactory in terms of the provisions of the Council's relevant planning instruments and has generated substantial community concern and objection. The proposal is considered not to be in the public interest and is therefore recommended to Council for refusal.

RECOMMENDATION that DA 8/2007/618 for the Change of Use from a Dwelling to Conference Facility and ancillary tourist accommodation on Lot 86, DP 270293, 20 Maculata Place, the Vintage, Rothbury, be refused for the following reasons;

1. The application is inconsistent with the objectives of the 1(v) Rural (Vineyards) Zone through the proposal of a development which is not appropriate in the locality (S79C(1)(a)(i)).
2. The application is inconsistent with the provisions of Clause 17 of Cessnock Local Environmental Plan 1989 (S79C(1)(a)(i)).
3. The application is inconsistent with the provisions of Clause 10(1)(a)(ix) of Cessnock Local Environmental Plan 1989 whereby the proposed development will create significant additional traffic (S79C(1)(a)(i)).

4. The application is inconsistent with the provisions of Clause 2.3.1.2 of Cessnock DCP 2006 “The Vintage,” whereby the proposed development constitutes a development not consistent with the intended use of the residential precinct (S79C(1)(a)(iii).
5. The proposal will create a negative social impact in the residential precinct(S79C(1)(b).
6. The proposal is not considered to be a suitable form of development in an identified and established residential precinct (S79C(1)(c).
7. The proposed development would not be in the public interest (S79C(1)(a)(e)

To: **The General Manager**
Corporate & Regulatory Services
Committee – 16 April 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 30/2008**

**SUBJECT: MINUTES OF FINANCE/RATING STRATEGY COMMITTEE MEETING
HELD 10 APRIL 2008**

A meeting of the Finance/Rating Strategy Committee was held on 10 April 2008 and reports as follows:-

Attendees at the meeting included - His Worship the Mayor, Councillor J. Clarence OAM (in the Chair) and Councillors Pynsent, Besoff, Parsons & Troy, General Manager, Financial & Administrative Services Manager, Revenue Accountant, Director Works & Services .

OFFICERS' REPORTS

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 1/2008**

SUBJECT: RATING OPTIONS 2008/09

MOTION Moved: Councillor Besoff **Seconded:** Councillor Pynsent

RECOMMENDED that:-

1. For 2008/09 Council apply to business properties that are subject to the Stormwater Management Services charge an area based charge of \$25 per 350m² with a maximum charge of \$500.00 per property.
2. the Rating Structure for 2008/09 shall consist of:-

3.2% increase

Category	Base%	Base Amount	Ad Valorem
Residential	44.28	\$360.00	\$0.407681
Residential – Rural	24.26	\$350.00	\$0.328816
Residential – Vintage	43.54	\$590.00	\$0.322443
Farmland	14.61	\$240.00	\$0.243627
Farmland – Mixed Use	19.44	\$930.00	\$0.402691
Farmland – Low Intensity	26.18	\$350.00	\$0.331537
Farmland – Business Rural	13.98	\$450.00	\$0.464332
Business	11.74	\$490.00	\$1.630266
Business – Recreational – Golf Courses	6.64	\$970.00	\$1.704533
Business – Recreation – Public Golf Course	5.87	\$590.00	\$1.225604
Business – Vineyards	47.74	\$660.00	\$1.230257
Mining	43.60	\$90,700.00	\$3.273905

RECOMMENDATION that Council endorse the Report of the Finance/Rating Strategy Committee meeting held 10 April 2008

To: **The General Manager**
Corporate & Regulatory Services
Committee - 16 April 2008

D FITZGERALD
**ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES**
11 April 2008