



Vincent Street
CESSNOCK 2325

11 March 2008

To All Councillors

You are hereby notified that the next Meeting of the Corporate and Regulatory Services Committee will be held in the Council Chambers, on Wednesday, 19 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 5 March 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. 11/2008

SUBJECT: INVESTMENTS

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

Details of investments held by Council as at 28 February 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	Type	Term	Coupon Date	Maturity Date	Interest Rate %	Interest to Date \$	Form Held With
	3,253	CASH						Commonwealth Bank of Australia
1001o	500	FRN	90	27/05/2008	27/11/2008	9.63%	264	Greater Building Society
1010n	500	FRN	91	17/03/2008	15/12/2008	9.03%	9,154	Wide Bay Capricorn Bldg Society
1020o	1,000	CDO	90	5/05/2008	5/05/2008	9.42%	6,193	Credit Suisse First Boston Int.
1029o	1,500	CDO	90	5/05/2008	5/05/2008	9.42%	9,289	Credit Suisse First Boston Int.
1057l	1,000	FRN	91	12/03/2008	12/03/2008	10.09%	21,839	Savings & Loans Credit Union
1069l	2,000	CDO	92	8/04/2008	8/10/2011	9.12%	26,495	RIMsec
1102h	500	AN	91	17/03/2008	16/12/2010	7.50%	0	Commonwealth Bank of Australia
1126e	500	AN	90	6/05/2008	6/11/2011	9.25%	2,914	Commonwealth Bank of Australia
1132e	500	CDO	91	20/03/2008	20/12/2009	8.30%	8,071	JP Morgan Chase Bank
1133a	1,000	ELD	364	22/12/2008	20/12/2009	7.87%	14,442	Commonwealth Bank of Australia
1138	500	ELD	366	5/03/2008	5/10/2010	3.33%	16,468	Commonwealth Bank of Australia
1142c	1,000	CDO	91	20/03/2008	20/03/2011	8.60%	16,722	Lehman Brothers
1143a	500	ELD	365	30/06/2008	30/03/2013	6.00%	19,973	ANZ Banking Group
1146b	1,000	CDO	91	20/03/2008	20/06/2010	8.30%	16,142	Merill Lynch International
1147	500	ELD	366	5/06/2008	7/10/2010	7.31%	26,937	Commonwealth Bank of Australia
1149c	500	TD	84	17/04/2008	17/04/2008	7.37%	3,635	Newcastle Permanent B.S.
1150c	500	TD	84	10/04/2008	10/04/2008	7.31%	4,306	Newcastle Permanent B.S.
1159a	500	TD	91	24/04/2008	24/04/2008	7.38%	3,639	Illawarra Mutual Building Society
1161	500	TD	50	20/03/2008	20/03/2008	7.33%	3,012	Illawarra Mutual Building Society
1162	500	TD	57	27/03/2008	27/03/2008	7.36%	3,025	Newcastle Permanent B.S.
1163	1,000	TD	64	3/04/2008	3/04/2008	7.23%	5,942	National Australia Bank
1164	500	TD	71	10/04/2008	10/04/2008	7.70%	3,164	Maitland Mutual Building Society
1165	500	TD	78	17/04/2008	17/04/2008	7.43%	3,053	Illawarra Mutual Building Society
1166	500	TD	85	24/04/2008	24/04/2008	7.46%	3,066	Newcastle Permanent B.S.
1167	1,000	TD	92	1/05/2008	1/05/2008	7.70%	6,329	Maitland Mutual Building Society
1168	1,000	TD	93	15/05/2008	15/05/2008	7.82%	3,642	Local Government Fin. Services
1169	500	TD	97	22/05/2008	22/05/2008	7.96%	1,527	Illawarra Mutual Building Society
1170	500	TD	107	5/06/2008	5/06/2008	8.16%	1,118	Maitland Mutual Building Society
1171	500	TD	112	12/06/2008	12/06/2008	7.99%	876	Newcastle Permanent B.S.
1172	500	TD	92	29/05/2008	29/05/2008	7.99%	219	Illawarra Mutual Building Society
1173	500	TD	41	10/04/2008	10/04/2008	7.90%	0	Maitland Mutual Building Society

25,253

241,456

Weighted Average Return on Portfolio (Year to Date)	7.45%
Average 90 day BBSW (Year to Date)	7.04%
Interest on investments matured so far in 2007/08	634,899
Interest on above investments	<u>241,456</u>
	<u>876,355</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	6,253	24.76%
Credit Suisse First Boston Int.	2,500	9.90%
Newcastle Permanent Building Society	2,500	9.90%
Maitland Mutual Building Society	2,500	9.90%
Illawarra Mutual Building Society	2,500	9.90%
RIMsec	2,000	7.92%
Lehman Brothers	1,000	3.96%
Merill Lynch International	1,000	3.96%
Savings & Loans Credit Union	1,000	3.96%
Local Government Financial Services	1,000	3.96%
National Australia Bank	1,000	3.96%
ANZ Banking Group	500	1.98%
Greater Building Society	500	1.98%
JP Morgan Chase Bank	500	1.98%
Wide Bay Capricorn Bldg Society	<u>500</u>	<u>1.98%</u>
	<u>25,253</u>	<u>100.00%</u>
	Amount Held	Percentage
Instrument	\$'000	of Total
Cash	3,253	12.88%
Collateralised Debt Obligation (CDO)	7,000	27.72%
Floating Rate Note (FRN)	2,000	7.92%
Term Deposit (TD)	9,500	37.62%
Equity Linked Deposit (ELD)	2,500	9.90%
Accrual Note (AN)	1,000	3.96%
	<u>25,253</u>	<u>100.00%</u>

RECOMMENDATION that the information be noted.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 4 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
4 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 12/2008**

DEVELOPMENT APPLICATION NO: 8/2006/18/1
APPLICANT: HARDIE HOLDINGS C/O EJE ARCHITECTS
OWNER: J ROBB
PROPERTY: LOT 1 DP 1112428, LOTS 7 & 8 DP 260641
NO 72 WINE COUNTRY DRIVE NULKABA
AREA: 20.6 HA
ZONING: 1(A) RURAL
PROPOSAL: TOURIST AND AGRICULTURAL FACILITY

Senior Planning Assessment Officer, Ms T Sharp, reports:-

The applicant seeks consent for a tourist and agricultural facility on Lots 7 and 8 DP 260641 No. 72 Wine Country Drive Nulkaba worth an estimated \$5M. The various uses proposed in the development are permissible with consent in the 1(a) Rural Zone under the Cessnock LEP 1989.

The application was lodged with Council on 11 January 2006. The determination of the application has been delayed due to the applicant satisfying the requirements of the Roads and Traffic Authority, this took approximately two (2) years.

Under the Public Notification and Advertising Plan, the application was notified for a period of fifteen (15) days. Two (2) submissions were received. The main issues of concern related to the crematorium, the floodplain, road widening, sewage treatment, traffic, construction, fencing, salinity, dams, a natural watercourse and lack of information.

All the proposed uses comply with the provisions of the Cessnock Local Environmental Plan 1989 and Cessnock Development Control Plan 2006. The issues raised in the submissions are considered minor. Therefore, the application is recommended for conditional approval.

PROPOSAL:

The development comprises the following components: -

- Demolition of the existing dwelling-house, steel clad garage, three (3) ancillary derelict sheds;
- Nursery farm areas & organic produce farms
- Retail Nursery & Coffee Shop – The proposed nursery building has an area of 570m² and an adjacent external open area display area with an area of 1250m². The building houses indoor and sun-sensitive plants, nursery support facilities and the coffee shop. The external nursery display area contains a range of plants and associated items.
- Wholesale Nursery & Bulk Material Supplies – This business will provide wholesale plants and material for landscape contractors. Staff facilities are located in another building.
- Machinery Shed & Produce Storage Building – The building is to be used to store farm produce and associated farm machinery.
- Honey Market - This building is to be used for the production and sale of honey.
- Organic Produce Markets – This building will be used to define local and regional produce stalls.
- Antique Centre/Art Gallery
- Café – This building has a floor area of 300m².
- Restaurant – This restaurant seats 150 people and has a drive-thru facility.

- Service Station Including Take Away Food & Mini Mart – This building incorporates the service station fuel kiosk, take-away food shop and mini mart. The mini mart has a floor area of 500m². The service station will comprise 3 x 55,000 litre petrol tanks, 1 x 55,000 litre split storage petrol tanks, 1 x 30,000 litre petrol tank and 1 x 30,000 LPG tank to be located under the car park at the front of the service station.
- Associated Roadworks, Car Parking & Landscaping – The proposed development comprises 235 car parking spaces including 5 disabled spaces and three (3) coach lay-bys located near the restaurant and art gallery. The road works include widening Wine Country Drive for traffic management; on-site access roads, car parking and pedestrian routes; landscaping and water management basins.
- Signage – A six (6) metre high illuminated pylon sign is to be located adjacent to the northern most entry on Wine Country. Various sized signage and internal directional signage is proposed for the development.

In addition, the applicant proposes stormwater management & erosion control to allow for controlled overland flow to the detention basins use for temporary detention, sediment control, with subsequent drainage to the dam wetlands. A storage and nutrient containment pond, is to be used for nursery irrigation.

The applicant proposes the following hours of operation for the various businesses: -

- Retail nursery & coffee shop – 9am to 5pm 7 days
- Honey market, organic produce markets, café, antique centre & art gallery – 10am to 5pm Monday to Friday, 10am to 7pm Sat & Sun
- Storage & machinery shed & wholesale nursery – 7am to 3pm Monday to Friday, 8am to 12 Noon Saturday
- Restaurant, Service Station, Take-away & Mini-mart – 7am to 10pm Sun to Thur, 7am to 11pm Fri & Sat

The subject site is affected by a 10m wide road widening requirement. The proposed buildings are setback a minimum of 28m from the Wine Country Drive boundary and has minimum side setbacks of 15.8m from the northern boundary and 21.7m from the southern boundary

The proposed buildings vary in design and height, with a maximum height is 10.4m. The proposed development has a total floor area of 4275m². The buildings are predominately steel framed structures with steel cladding to walls and roof, with rammed earth or precast concrete infill panels to some buildings. The majority of the buildings are single storey, with mezzanines to honey market and produce store.

Refuse bins are to be located in the rear service/loading dock areas and are to be shared by tenants.

A 1.8m high chainmesh fence is to be erected on the west end of the southern boundary separating the farming, storage shed, nursery and machinery shed from Wine Country Drive and around the detention basins to restrict public access. A 1m post and wire fence is to be erected on the northern and southern boundaries to secure produce/nursery practices from adjacent properties. A 3m high acoustic barrier fence will be located along part of the northern boundary screening the restaurant and nursery operations from the adjacent residential property.

A sewerage pumping station is to be located near the machinery shed and connected to the nearest Hunter Water sewer main in Wine Country Drive. The proposed sewerage pumping station is ancillary to the development and is therefore, not considered designated development under Schedule 3 of the Environmental Planning and Assessment Regulations.

SITE DESCRIPTION:

All the subject lots are approximately rectangular and have frontage and access to Wine Country Drive. At the rear of the subject land is Black Creek. The subject site contains a brick and tile dwelling, steel clad garage, three (3) ancillary derelict sheds, and a couple of dams. The subject land slopes away from Wine Country Drive to the rear of the property. The property is traversed by two (2) watercourses. The subject site contains little vegetation other than grasses.

PUBLIC EXHIBITION:

Under the Public Notification and Advertising Plan, the application was notified and advertised for a period of thirty (30) days from 25 January 2006 to 27 February 2006. Two (2) submissions were received during this period. The issues are summarised below in the Planning Assessment Section.

GOVERNMENT DEPARTMENTS:

During the assessment process several government departments were asked to comment and/or provide concurrence on the proposed development.

The NSW Rural Fire Service had no specific conditions, the Department of Water and Energy is prepared to issue General Terms of Agreement subject to the requirements in Attachment 2 and the Roads and Traffic Authority is prepared to grant concurrence subject to appropriate conditions of consent.

PLANNING ASSESSMENT:

Hunter Regional Environmental Plan (Heritage) 1989

The subject site is located opposite the St Patrick's Group (Formerly St Patrick's Convent & St Patrick's Church) which has been identified in Schedule 3 of the Hunter Regional Environmental Plan (Heritage) 1989 as an item of local environmental heritage.

It is considered that the proposed development will not have an impact upon the heritage item.

Cessnock Local Environmental Plan 1989

Under Clause 5 of this Plan, the proposed uses are defined as follows: -

- Retail plant nursery
- Agriculture
- Refreshment rooms
- Shop
- Art gallery
- Service station
- Advertising structures, which are ancillary to the proposed development.

Under Clause 9 of this Plan, the proposed uses are permissible on 1(a) Rural zoned land with consent of Council.

The objectives of this zone are:

- (a) *to enable the continuation of existing forms of agricultural land use and occupation,*
- (b) *to ensure that potentially productive land is not withdrawn from production,*
- (c) *to encourage new forms of agricultural land use,*
- (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*
- (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.*

Comment

The proposed development will continue an agricultural pursuit on the subject land in the form of organic farming, therefore, the land is not withdrawn from production. The proposed application is proposing a new form of agricultural land use than has been undertaken previously. The proposed development enables other forms of development which are associated with rural activities and support tourism. The proposed development incorporates several different uses which will attract tourists as well as incorporating the agricultural use (markets) but also preserving the majority of the subject land for agricultural potential/uses. The proposed development has been designed to have a large setback from Wine Country Drive to decrease the impact upon the rural environment. Reticulated water is available to the site and the applicant has indicated that they will connect the site to sewer. The proposal complies with the objectives of the zone.

Under Clause 10(1)(a)(ii) *the “development should be of a type compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the City of Cessnock.”*

Comment

The proposed development is compatible with the existing rural and scenic character of Cessnock as the design reinforces the agricultural nature of the region, with separate farm shed style buildings loosely aligned to the site contours allowing views between, around and through the structures to the farm land. The proposed development satisfies the intent of Clause 10(1)(a)(ii).

Under Clause 10(1)(c)(i) *the “buildings should be sited and designed and be of an appropriate scale so as to maintain the rural character of the locality, to minimise disturbance to the landscape through clearing, earthworks, access roads, the use of platforms or stilts and other similar construction methods, to maintain slope stability, and to generally fit into their environment to the maximum extent consistent with their being sited to minimise flood and bushfire hazards.”*

Comment

As previously stated, the proposal adopts a design that reinforces the agricultural nature of the region.

The building materials, proportions, details and design are a careful contemporary interpretation of the ubiquitous farm shed, retaining historical and functional links to the agricultural use of the area. The proposal is for buildings that are predominately steel framed structures, with steel cladding to the walls and roof, and with rammed earth or precast concrete infill panels to some buildings. The simple pitched roof forms & sheet metal claddings are designed to reinforce the agricultural nature of the development.

The buildings vary in height and design according to their function, with a maximum height of 10.4m above ground level. The total development floor area of the proposal is 4275 square metres. This building area represents only 2% of total land area of the subject site.

There will be earthworks required as part of the proposal for the buildings and road works, however, they will be located in a small area of the site. The stability of the site will be controlled through retaining wall, batter and landscaping.

It is considered that the proposal satisfies the intent of Clause 10(1)(c)(i).

Cessnock Development Control Plan 2006

C.1 Parking and Access

The proposed development generates a requirement for 294 car parking spaces. The applicant proposes a 20% reduction for cross usage given the variety of uses proposed. This results in the provision of a total of 235 spaces.

While Council's DCP does not formerly provide for cross-usage, a variation to the standard requirements of the plan can be considered subject to sound justification. Council's Development Engineer has assessed the application and raised no object to the proposed parking numbers (nor have the RTA) given the nature of the development and likely cross-use by visitors to the site.

The five (5) disabled car parking spaces equate to 2.1% of the overall spaces provided, which is satisfactory.

D.5 Outdoor Signage

The applicant proposes to erect a single 6m high illuminated pylon sign at northern most entry, advertising the Nulkaba Organic Produce Centre and associated businesses. No specific detail has been provided for the individual businesses. If approved a condition of consent will require separate applications to be submitted to Council for approval on the detail of the individual signage.

D.7 Construction of Dams

The applicant proposes to modify the existing dams to create artificial wetlands to improve water quality and use the water to irrigate the proposed nursery and agricultural area. The Department of Water and Energy does not support the proposed modification of the existing dams due to an embargo which prohibits the alteration and extraction of water. This is due to the existing dams/water storage structures not being licensed under Part 2 of the Water Act and they exceed the maximum harvestable dam right capacity for the property. If the applicant wishes to harvest water and undertake works to alter the dams they will need to seek the approval of the Department. If the development is approved a condition of consent will be required to prohibit works to the existing dams and the applicant will need to obtain a licence from the Department to harvest water and do alterations to the dams.

In addition, the applicant proposes to erect two (2) smaller detention basins. If approved, the applicant will need to submit to Council detailed information on the detention basins prior to issue of any Construction Certificate.

Submissions

The following is a summary of the submissions: -

- 1 The subject site is located in the 200m buffer/fallout area of the crematorium as required under the cremation association guidelines.

Comment

The 200m buffer is a guideline which can be varied depending upon what adjoins the site and the emission testing devices in the crematorium. Several of the proposed buildings are located within this buffer. A report submitted with the application for the crematorium indicated that the fallout impacts were minimal and that several emission testing devices were installed to comply with the emission requirements.

- 2 The fallout from the crematorium will not make the subject land suitable for organic farming.

Comment

Fallout impacts from the crematorium were found to be minimal and several emission testing devices were installed to comply with the emission requirements.

The applicant can start growing crops, however to be certified as organic all agricultural pursuits must adhere to strict requirements by a recognised organic certification authority and it may take 3-5 years to accomplish the necessary requirements.

- 3 Buildings will be located below RL 64m AHD and there is to be no filling within the floodplain.

Comment

The 1 in 100 year flood level on the subject lots is RL 62.4m AHD. All the proposed buildings are located above this flood level.

- 4 The subject site is affected by a 10m wide road widening requirement.

Comment

The proposed buildings are setback 28m from the Wine Country Drive boundary, therefore complying with this road widening requirement.

- 5 The site is located within the 400m buffer to the sewage treatment works.

Comment

Hunter Water have indicated that this buffer is for residential development and activities that are considered compatible with wastewater treatment operations are open space, recreation areas, drainage basins, natural bush/forest, constructed wetlands, flora and fauna reserves and agricultural use. The proposed buildings are located wholly outside the buffer area of the Cessnock Waste Water Treatment Plan. The majority of the agricultural land is located within this buffer which is considered a satisfactory use by Hunter Water.

- 6 The proposed entry/exits will cause considerable traffic congestion and will require restrictions to the speed limit.

Comment

The entry/exits have been designed in consultation with the Roads and Traffic Authority to incorporate deceleration lanes to minimise traffic disruption.

- 7 Construction times should be restricted to preserve the amenity of the adjacent residents.

Comment

If approved, specific construction times will be specified to ensure the amenity of adjacent residents.

- 8 Any overflow from the sewerage pumping station will contaminate the watercourse and our property.

Comment

The Hunter Water Corporation have accepted the proposed system which will be designed in accordance with the relevant statutory requirements, with appropriate backup systems and bunding to prevent contamination of surrounding areas.

- 9 A standard agricultural fence is 1.2m, the 1m high fence proposed is not adequate and should be increased to 1.5m due to the proximity of buildings to the boundary the fence.

Comment

The fencing is to be increased to 1.5m by a condition of the consent if approved.

- 10 Due to the south easterly winds in the area the proposed nursery will constitute a noise and dust hazard.

Comment

If approved, a condition of consent will require dust abatement measures during and post construction. The acoustic barrier should minimize dust and noise hazards upon construction of the development.

- 11 The existing dams are illegally constructed and located on a designated watercourse and would only supply water for 2 days on the subject farm area. Any increase in usage would affect adjoining properties.

Comment

The Department of Water and Energy have indicated that the existing dams/water storage structures on Lots 7 and 8 DP 260641 are not licensed under Part 2 of the Water Act and exceed the maximum harvestable dam right capacity for the property. Further, the system is embargoed under provisions of the Water Act and no harvesting of the water and no alteration of the dams is permitted without the approval of the Department.

- 12 Due to runoff from the golf course and residential development the existing watercourse is severely contaminated which has resulted in excessive weed growth and is not suitable for organic farming.

Comment

The watercourse and dams are likely to receive runoff water in wet periods due to the small catchment that feeds the watercourse which has been extensively dammed upstream of the development site. There is potential for the watercourse and dams to experience contamination because of land use activities in the upper catchment. A soil profile tested close to the banks of Black Creek showed evidence of salinity that appeared to be derived from saline floodwaters contaminating the site. To decrease the salinity of the soil, the applicant will need to put nitrogen into the soil either manually or by nitrate plants such as legumes.

- 13 The plans submitted with the application do not make reference to the location of the crematorium or St Patrick's Church. In addition, the photos do not show adjacent residences.

Comment

While the submitted plans do not make reference to the location of the crematorium or adjacent residences, "Council has assessed the impact of the development on these surrounding land uses as part of the assessment process.

Crime Risk Assessment

Service stations and takeaway restaurants can attract safety and security risks. The proposal has been designed with consideration to CPTED (Crime Prevention through Environmental Design) to incorporate formal and informal surveillance to address crime prevention, by having adequate space around buildings, designing the buildings to increase securing for staff, good lighting and enhanced passing visual surveillance.

Strategies that can be incorporated to prevent crime include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out lighting and the removal or refurbishment of decayed physical elements.

Due to the location of this development adjacent to Nulkaba, below the road line, and with clear views over the site; there is not expected to be significant safety or security risks to the neighbouring properties.

Potters Tavern is located a short distance from the property and closes at midnight. A condition of consent is recommended that the service station and restaurant close at 10pm to alleviate concerns with regards to loitering and security risks.

Visual Amenity

Wine Country Drive is considered to be one of the gateways into the vineyards district and it is considered important to have development that enhances the visual impact of the area.

It is considered that the proposal will not have an impact upon the visual amenity of the area as: -

- The construction method adopted by the development, contemporary interpretation of the ubiquitous farm shed predominately steel framed structures, with steel cladding to the walls and roof, and with rammed earth or precast concrete infill panels to some buildings and simple pitched roof forms and sheet metal claddings are designed to reinforce the agricultural nature of the development.
- The buildings vary in height and design according to their function, with a maximum height of 10.4m above ground level. The total development floor area of the proposal is 4275 square metres. This building area represents only 2% of total land area of the subject site.
- The proposed buildings are setback a minimum of 28m from the Wine Country Drive boundary and has minimum side setbacks of 15.8m from the northern boundary and 21.7m from the southern boundary
- Landscaping at the front of the development will help to alleviate the expanse and height of the buildings at the front of the site. A condition of consent will require the applicant to submit a detailed landscaping plan prior to the release of the construction certificate.
- The subject site slopes away from Wine Country Drive reducing the height of the buildings.

Road Closure

The Department of Lands have signed off the road closure permit for the Crown Road located between the two (2) subject lots, directly opposite Kerlew Street, which has been registered with the Department of Lands. The applicant is currently negotiating the purchase of this road.

Flooding and Drainage

The subject site is affected by flooding from the 1 in 100 year ARI flood event in Black Creek and a tributary of Black Creek known as the Mavis Street Channel. The 1 in 100 year flood level is RL 62.4m AHD. All the buildings are above the critical RL 62.4m AHD contour. If approved, standard conditions of consent will apply to flooding and drainage controls.

Food Safety

The proposed plans are conceptual with in specific information provided for the premises approval in relation to the requirements for buildings which incorporate 'food for sale' as defined under the Food Act 2003 in order to assess the design to ensure that safe food is produced. If approved, conditions of consent will be applied to ensure adequate details are submitted.

CONCLUSION:

All the proposed uses proposed as part of the tourist and agricultural facility complies with the provisions of the Cessnock Local Environmental Plan 1989 and Cessnock Development Control Plan 2006. The issues raised in the submissions are considered minor. Therefore, the application is recommended for conditional approval.

RECOMMENDATION that Development Application No 8/2006/18/1 – Proposed Demolition Of Existing Dwelling-House, Tourist & Agricultural Facility Comprising A Wholesale Nursery & Bulk Material Supplies, Retail Nursery & Coffee Shop, Honey Market, Organic Produce Markets, Café, Art & Antique Centre, Produce Storage, Machinery Shed, Restaurant, Service Station Including Take-Away Food & Mini Mart, Car Parking, Roadworks & Advertising Signage on Lots 7 & 8 DP 260641 No 72 Wine Country Drive Nulkaba, be approved subject to the following conditions:-

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 development being undertaken strictly in accordance with the details set out on the application form, any information submitted with the application and the plans numbered 10555 A01 Issue 2, 10555 A02 Issue 3, 10555 A03 Issue 8, 10555 A04 Issue 3 and 10555 A05 Issue 2, and drainage plan prepared by CSG Engineers Pty Ltd numbered 176-05 sheets 1 & 2, as amended in red by Council, or as modified by these further conditions.

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

Reason

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

3. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Reason

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

Design Considerations/Building Setbacks

4. Lighting of the development shall not project glare onto adjoining properties or roadways.

Reason

To ensure that lighting of the land does not adversely affect the environmental quality of adjoining land nor create a hazard to motorists.

Building Construction

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

Reason

To reduce the risk of damage to adjoining properties

Access, Car Parking and Loading Arrangements

6. 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

Site Works

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

Reason

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

Advertising Structures

8. Only bland advertising boards advertising structure shall be erected in accordance with the approved plan. No advertising sign details or material shall be affixed or displayed on any building or land without the prior development approval of the Council. A separate application is to be made on the prescribed form, appropriate plans and information are to be submitted to Council for consideration and determination.

Reason

To ensure that the applicant is aware that Council approval is required prior to the erection of any advertising structure or display of any advertising sign.

Lighting and Advertising Material

9. No flashing, chasing or scintillating lighting or promotional material of a visually intrusive nature shall be installed or displayed on the exterior of the premises.

Reason

To protect the existing amenity of the neighbourhood.

Traffic

10. Landscaping and signposting adjacent to the entrance and exit not impede sight distance for motorists.

Reason

To maintain good sight distance.

Fencing

11. A 1.5m high post and wire agricultural fence to be constructed on the northern, eastern and southern boundaries to prevent stock from entering the property.

Reason

To ensure the safety of stock on adjoining properties.

Food Safety

12. A separate development application is to be submitted to Council for the design, construction and fit-out of each building which is to contain 'food for sale' as defined under the Food Act 2003.

Reason

To enable to the assessment of the overall design, construction, sizing and layout of the kitchen facilities ensuring the production of food safe for consumption and meet the requirements of the Food Act of 2003, Food Regulation 2004, and Australian Standard 4674-2004, Design, construction and fit-out of food premises.

13. All buildings incorporating 'food for sale' as defined under the Food Act 2003 are to be provided with solid wall construction.

Reason

To prevent the access and harbourage of vermin in voids and cavities and to ensure compliance with the requirements of Australian Standard 4674-2004, Design, construction and fit-out of food premises.

Water Management Act 2000

14. The existing dams/water storage structures on Lot 7 & 8 DP 260641 are not licensed under Part 2 of the Water Act 1912 and exceed the Maximum Harvestable Dam Right Capacity for the property. Further, the system is embargoed under provisions of the Water Act 1912. Therefore, the existing dams/water storage structures are not to be altered or used for irrigation water or any other extractive use without the prior approval of the Department of Water and Energy.

Reason

To ensure compliance with the requirements of the Water Act 1912.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

General

15. Where Council is appointed as the Principal Certifying Authority, the following information demonstrating compliance with the Building Code of Australia is to be provided to Council for assessment prior to the issue of the Construction Certificate: -
- a. Compliance with Part C1.1 Type C Fire Resisting Construction
 - b. Compliance with Specification C.1.10 Fire Hazard Properties
 - c. Compliance with Specification C1.10a Fire Hazard Properties – Floors, Walls and Ceilings
 - d. Compliance with Specification C.1.11 Performance of External Walls in Fire
 - e. Compliance with Part D1 Provisions for Escape
 - f. Compliance with Part D2.13 Goings and Risers in Stairway Construction
 - g. Compliance with Part D2.16 Balustrades or other Barriers
 - h. Compliance with Part D2.20 Swinging Doors

- i. Compliance with Part D2.21 Operation of Latch
- j. Compliance with Part D2.23 Signs on Doors
- k. Compliance with Part D3.6 Identification of Accessible Facilities, Services and Features
- l. Compliance with Part D3.8 Tactile Indicators
- m. Compliance with Part E1 Fire Fighting Equipment
- n. Compliance with Part E4 Emergency Lighting, Exit Signs and Warning Systems
- o. Compliance with Section J Energy Efficiency

Reason

To ensure the buildings, services and facilities comply with the Building Code of Australia.

Water Management Act 2000

16. If the existing dams/water storage structures on Lot 7 & 8 DP 260641 are to be altered or water is to be extracted or utilised for irrigation, a licence is required from the Department of Water and Energy under Part 2 of the Water Act. A copy of this licence is to be submitted to Council prior to issue of the Construction Certificate.

Reason

To ensure compliance with the requirements of the Water Act 1912.

Landscaping

17. A detailed landscaping plan drawn by a suitably qualified landscape architect or professional, utilising a variety of species including natives indicative of the area is to be submitted to Council for approval prior to release of the Construction Certificate.

The landscape plan is to include details of the areas indicated in red on the approved plan in front of the car parking areas for the restaurant, honey market, produce markets, café, art and antique gallery. The intent of the landscape plan is to enhance the features of the site as a gateway into Cessnock and the Vineyards District area.

Reason

To ensure the site is adequately landscaped with appropriate planting to enhance the external appearance of the proposed development and to contribute to the overall landscape quality of the locality.

Waste Management

18. A Waste Management Plan in accordance with Council's Development Control Plan 2006 Chapter C.5 Waste Management and Minimisation shall be submitted with the application for the Construction Certificate. The management plan shall include:

- (a) The volume and type of waste to be generated
- (b) Where the waste is to be stored and treated on site
- (c) How the residue is to be collected and disposed of
- (d) On going management of the Waste Management Plan

Reason

To reduce the environmental impact on the site during the construction period and to ensure waste is suitably managed and minimised.

Design Considerations

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

Reason

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

Building Construction

20. 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.

21. Topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping. Details shall be submitted to and approved by Council prior to release of the Construction certificate.

Reason

To minimise erosion and silt discharge and ensure valuable topsoil resources are protected.

Access, Car parking and Loading Arrangements

19. The Registered Proprietors of the land shall construct a bitumen sealed access crossing from the edge of the road formation to the property boundary. The construction of the access crossing shall be in accordance with Council's Engineering Requirements for Development (available at Council's offices) and Australian Standard 2890.1 & 2 with respect to location, size and type of driveway. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the Civil Works.

Reason

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

20. The registered proprietor of the land shall construct the following works along the property frontage in accordance with Council's 'Engineering Requirements for Development'. The design is to be submitted on a set of plans, four (4) copies of which shall be submitted to and approved by the Development Services Manager prior to release of the Construction Certificate for the civil works.

- i) Construct concrete kerb and gutter.
- ii) Construct and gravel road shoulders.
- iii) Place AC seal on road shoulders.
- iv) Form/topdress/grass seed footpath.
- v) Construct drainage works where necessary.

Reason

To ensure that adequate provision is made for vehicular and pedestrian movements to meet expected demand generated by the development, in accordance with current Council requirements.

21. The registered proprietor of the land shall construct the following in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by the Development Services Manager prior to release of the Construction Certificate for the civil works.
1. Construct the intersection of Kerlew Street and Wine Country Drive in accordance with the RTA's conditions below and in accordance with RTA's "Road Design Guide" and Council's "Engineering Requirements for Development": -
 - A. Traffic control signals and associated civil works shall be designed and constructed at the intersection of Wine Country Drive, Kerlew Street and the proposed central access, in accordance with the RTA's Road Design Guide and the relevant Austroads guidelines. This shall include, but not be limited to, the following works: -
 - a. The approach and departure lane configuration/lengths on all legs shall be provided as follows:

Wine Country Drive (South)

 - 1 shared left / through kerbside lane, minimum 100 metres in length
 - 1 through lane
 - 1 right turn lane, minimum 50 metres in length
 - 2 departure lanes, kerbside lane minimum 200 metres in length

Central Access (East)

 - 1 right turn lane
 - 1 shared left / through lane

Wine Country Drive (North)

 - 1 shared left / through kerbside lane, minimum 100 metres in length
 - 1 through lane
 - 1 right turn lane, minimum 50 metres in length
 - 2 departure lanes, kerbside lane minimum 200 metres in length

Kerlew Street (West)

 - 1 right turn lane
 - 1 shared left / through lane

Note: All of the above lane lengths do not include tapers.
 - b. Signalised pedestrian crossings shall be provided on all legs of the intersection with footpaths connecting to/from the site and existing footpaths within the area.
 - c. Provision shall be made for on-road cyclists through the intersection.
 - d. The intersection shall be designed to allow for concurrent opposing right turn movements by articulated vehicles.
 - e. Raised concrete medians shall be provided on all approaches to the satisfaction of the RTA and Council.

- f. The raised central median on the central access road shall be extended by a sufficient length to restrict right turn movements to/from adjacent car parking areas, to allow efficient operation of the traffic control signals.

Comment: The access to the southern car park shall be relocated further from Wine Country Drive at a distance beyond the back of the expected queue from the traffic control signals.

- g. The design and construction of the traffic control signals shall include provision for future reconstruction, with the traffic signal controller and other signal hardware to be located to accommodate the future intersection upgrade.
- B. The northern access shall be restricted to left in only. with an associated left turn deceleration lane. A raised central concrete median shall be provided on Wine Country Drive to restrict right turn movements.
 - C. The southern access shall be restricted to left out only. as a give-way arrangement, orientated at right angles to Wine Country Drive. A raised central concrete median shall be provided to restrict right turn movements.
 - D. Provision for on-road cyclists shall be made through all intersections I site accesses.
 - E. Street lighting shall be provided at all proposed intersections I accesses in accordance with the relevant Australian Standard.
 - F. The entire road project shall be paved with asphaltic concrete including all intersections I site accesses. This is required to accommodate truck turning movements.
 - G. 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.

Comment. It is requested that Council advise the applicant that the conditions of consent set by Council do not guarantee the R T A s final consent to the specific road work, traffic control facilities and other structures works on the classified road network. The R T A must provide a final consent for each specific change to the state road network prior to the commencement of any work.

- H. The whole site is subject to road widening as shown on the attached PIMS image. The road widening is a former Council scheme adopted by the RTA in 1999, with boundaries established in 2005. All road works should take the proposed new property boundary into account and any structures associated with the proposed development (including advertising signs) should be set back accordingly. Any further road widening requirements at the intersection and other accesses to the proposed development shall be dedicated as public road at no cost to Council or the RTA.

Comment. The current road widening proposal caters for a future duplication of Wine Country Drive. This duplication should be considered in developing the concept and detailed design plans for the proposed intersection and accesses. Any further road widening to cater for deceleration and turning lanes to access the subject site shall be dedicated by the developer.

- a. All works shall be designed and constructed in accordance with the RTA's Road Design Guide and relevant Austroads guidelines. to the satisfaction of the RTA and Council, at full cost to the developer.
- b. Pedestrian refuges/crossings are to be provided to allow pedestrians to cross Wine Country Drive, Kerlew Street and the entry/exit to the site.
- c. A bus stop and shelter with pedestrian connections are to be provided in Wine Country Drive.
- d. Place AC seal on new works.
- e. Construct drainage works as necessary.
- f. The posted speed limit of 60km/h is to be extended across the entire frontage of the site in Wine Country Drive.
- g. A 2.5 metre wide concrete cycle/foot path is to be constructed on the western side of Wine Country Drive from the Aged Care Centre to the intersection.

Reason

To allow a single entry and exit point to the site and to ensure the public road facilities are upgraded to an appropriate standard as a result of additional requirements of the development.

22. On-site car parking shall be provided for a minimum of two hundred and thirty five (235) vehicles and such being set out generally in accordance with Council's Development Control Plan 2006 Chapter C.1 Parking and Access. Three (3) coach/bus parking are to be provided on-site near the areas most likely to be used by tourists in accordance with the approved plans. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the building.

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.

23. Five (5) car parking spaces shall be designated and signposted for use by disabled persons for the life of the development. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the building.

Reason

To ensure the provision of adequate on-site parking for the disabled.

24. Kerbing having a minimum height of 150mm being constructed along the edge of all garden areas or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details shall be submitted to and approved by Council prior to the release of the Construction Certificate for the building.

Reason

To assist in confining vehicular movement to constructed driveways and parking areas and protect site landscaping works against vehicular damage.

25. 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 sealed pavement to suit design traffic loadings, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

Full details shall be provided with an application for a Construction Certificate for the building.

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.

26. Separate off-street loading/unloading facilities 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 for the building/s.

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.

27. The proposed development shall be provided with access and facilities for the disabled in accordance with AS 14281.1. Details of such access and facilities shall be submitted to the Prescribed Certifying Authority with the Application for a Construction Certificate for the building.

Reason

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

Drainage and Flooding

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

The existing dams are NOT to be modified to create an artificial wetland due to the embargo under the Water Act 1912.

Energy dissipaters, pollution control devices and an absorption systems/level spreaders are to be located at the point of stormwater discharge from the development in to the existing natural depression.

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

Reason

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

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

Reason

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

30. The registered proprietor of the land is to provide a stormwater detention facility within the boundaries of the site to reduce the peak stormwater discharge from the developed lot to that of the peak stormwater discharged from the undeveloped lot for all storm events from the 1 in 1 year to the 1 in 100 year Average Recurrence Interval (ARI) storm event. A detailed drainage design shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property. Details of on-site storage and the method of controlled release from the site and connection to an approved drainage system in accordance with Council's 'Engineering Requirements for Development'.

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

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

Reason

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

31. The applicant shall ensure that the floor level of the proposed buildings are at least RL 62.90m AHD, which is 500mm above the area of inundation for a 1 in 100 year flood. Details shall be submitted to and approved by Council prior to the release of the Construction Certificate for the building/s.

Reason

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

Site Works

32. 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. An area must be set aside for the cleaning of concrete agitator trucks.
 - (c) Details of dust mitigation on building sites and access roads
 - (d) Location and phone number of the site office
 - (e) Details regarding provision of areas set aside for the storage/stockpiling of:
 - (i) Construction refuse
 - (ii) Construction materials
 - (iii) Raw materials such as sand, soil, mulch and the like
 - (iv) 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.

33. 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.

34. Topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping. Details shall be submitted to and approved by Council prior to release of the Construction certificate.

Reason

To minimise erosion and silt discharge and ensure valuable topsoil resources are protected.

Rivers and Foreshores Improvement Act

35. Prior to release of the Construction Certificate a copy of the documentary evidence that the Department of Water and Energy has granted a permit under Part 3A of the Rivers and Foreshores Improvement Act 1948 for the proposal is to be submitted to Council.

Reason

To ensure compliance with the Rivers and Foreshores Improvement Act.

Lighting

36. Prior to release of the Construction Certificate, a specialist lighting consultant to undertake an assessment of external lighting for the development to identify the required locations and height of external light fittings. This study is to establish lux levels on-site and position light fittings to prevent light spill onto adjoining properties and ensure the lighting does not impact upon traffic utilising Wine Country Drive, in accordance with the Australian Standard. A copy of the assessment and light spill plan is to be submitted to Council.

Reason

To ensure that lighting from the proposed development does not impact upon passing motorists and adjoining properties.

Bunding

37. Details of bunding around the sewerage pumping station to prevent contamination of the site and adjoining properties shall be submitted to and approved by Council prior to release of the Construction Certificate.

Reason

To ensure that any leakage from the sewerage pumping station does not contaminate the site and adjoining properties.

Environmental Considerations

38. Prior to issue of a Construction Certificate, details must be submitted to show segregation of drainage subject to contamination from fuel oil, grease or fuel spills, including methods for preventing contaminants discharging from the site with stormwater.

Reason

To prevent environmental pollution of waterways and to protect the amenity of the neighbourhood.

DURING CONSTRUCTION

General

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

Reason

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

40. If the work involved in the erection or demolition of a building:-
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (b) building involves the enclosure of a public place,

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

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

Reason

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

41. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:-
- (a) stating that unauthorised entry to the work site is prohibited, and
 - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

This clause does not apply to:

- (a) building work carried out inside an existing building, or
- (b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

Reason

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

42. 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.

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

Reason

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

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

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

Reason

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

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

Reason

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

46. 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.

47. 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.

Dust Abatement

46. During dry and windy periods the construction site is to be watered down at regular intervals to ensure that dust does not impact upon adjoining properties.

Reason

To ensure that does does not impact upon adjoining properties.

Site Works

47. 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.

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

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

Reason

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

49. Any engineered fill to be placed on the site, shall be to a maximum level of RL 62.40 m AHD and to the extent shown on the DA approved plans. 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 1.5% and shall be graded away from adjoining lots and to ensure no ponding occurs. The fill shall be contained wholly within the subject site and shall be battered at a maximum grade of 1 in 4 to match existing ground levels within the subject site.

The fill is to be controlled by compaction testing which is to be carried out in accordance with AS 1289 for controlled filling. Testing is to be carried out by a NATA registered laboratory and copies of the test certificate clearly indicating the location of each test and the laboratory's certificate, shall be forwarded for approval prior to Compliance Certificate.

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 the issue of a Compliance Certificate.

Reason

To ensure that the lots are filled to a level as approved by this consent and to minimise flood damage on adjoining lots.

50. 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.

51. 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.

Scheduling Of Inspections

51. 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

Building Construction

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

Reason

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

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

Reason

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

PRIOR TO OCCUPATION

General

54. 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

55. Prior to the commencement of any building or demolition works the applicant shall engage a competent person to undertake the following in accordance with the Australian Standard AS2601-2001 "Demolition of Structures":-
- (a) An audit of the building and associated demolition works to determine if there is any hazardous material present, which may include but not be limited to asbestos.
 - (b) Where such materials are identified the Occupational Hygienist, shall, in consultation with the owner of the property, interested parties and relevant government authorities, develop a work Plan for the demolition and disposal of the hazardous material.
 - (c) the demolition and disposal Work Plan shall -
 - i) be in accordance with and certified by the competent person to be in accordance with Australian standard AS 2601 – 2001 "Demolition of Structures".
 - ii) be developed in accordance with WorkCover authority requirements for the said demolition and/or associated work.
 - iii) be in accordance with the waste management authority requirements for the disposal of the hazardous material.

The Work Plan must be submitted to Council prior to the commencement of any works.

Reason

To ensure appropriate public health, occupational health and environmental safety standards are in place relevant to the potential hazards.

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

Reason

To ensure that adequate services are provided to the development.

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

Reason

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

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

Reason

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

Building Construction

57. 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.

Access, Car parking and Loading Arrangements

58. 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.

59. All parking and loading bays shall be permanently marked out on the pavement surface, with loading bays and visitor parking facilities shall be clearly indicated by signs prior to occupation of the building and for the life of the development.

Reason

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

60. Kerbing or dwarf walls having a minimum height of 150mm shall be constructed along the edge of all garden areas or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon.

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

Reason

To assist in confining vehicular movement to constructed driveways and parking areas and protect site landscaping works against vehicular damage.

61. All redundant vehicular accesses shall be removed and the footpath, road shoulders and kerb and gutter, where applicable, restored to match existing conditions at no cost to Council prior to use of the building or issue of an Occupation Certificate for the building.

Reason

To ensure that vehicular access to the development occurs efficiently and safely in accordance with approved plans and unnecessary accesses are restored at no cost to Council.

Bicycle Parking

62. Prior to release of the Occupation Certificate a set of bike racks are to be located outside the minimart and organic produce markets.

Reason

To ensure adequate bicycle parking is provided on-site.

Site Works

63. All retaining walls and associated drainage shall be installed and completed prior to use or occupation of the building.

Reason

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

Drainage and Flooding

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

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

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

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

Reason

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

65. The registered proprietor of the land shall prepare a Plan of Management for the on-site stormwater detention facilities within the development. The Plan of Management shall set out all design and operational parameters for the detention facilities including design levels, hydrology and hydraulics, inspection and maintenance requirements and time intervals for such inspection and maintenance. The plan shall be submitted to and approved by Council for approval prior to the issue of an Occupation Certificate.

Reason

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

Subdivision

65. A plan of consolidation of all lots included within the bounds of the development shall be submitted to Council prior to release of the Construction Certificate. The final plan of consolidation shall be approved by Council prior to the issue of a Subdivision Certificate, and shall be registered at the Land Titles office, Sydney, prior to commencement of occupation or use of the premises.

Reason

To ensure that the proposed development is managed as a single entity by the owner or owners.

Development Contributions, Monetary Bonds, Dedication of Land

66. The registered proprietors of the whole of the land shall, prior to endorsement and release of the Occupation Certificate at their costs and expense, enter a positive covenant over all of the land comprised in the development providing as follows:-
- a) Covenanted with the Council (the prescribed Authority) to at all times at their costs maintain, repair and keep the on-site stormwater detention facilities in a good and safe condition and state of repair in accordance with the approved design to the reasonable satisfaction at all times of the said Council having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention facilities in accordance with Condition No 45, and
 - b) Providing that the liability under the said Covenant will jointly and severally bind the registered proprietors of the proposed dwellings, and
 - c) Providing that the Cessnock City Council (the prescribed Authority) will be the person entitled to release or modify the Covenant.

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

Reason

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

67. The portion of the site required for road widening shall be transferred to Council for dedication as road and a suitable survey plan providing for the dedication shall be lodged with the land Titles Office for registration prior to occupation of the site or issue of an occupation certificate.

Reason

To facilitate the implementation of proposed road widening and road improvement works considered to be necessary and/or desirable having regard to likely increased traffic movement in Wine Country Drive and Kerlew Street.

68. Prior to issue of the Occupation Certificate the existing Crown Road located between the two (2) subject lots is to be closed and purchased/transferred to the owners of the subject lots. The applicant is to make the necessary arrangements with the Department of Lands. A copy of the purchase/transfer is to be submitted to Council prior to release of the Occupation Certificate.

Reason

To ensure that the proposed development is managed as a single entity by the owner or owners.

Waste Disposal

67. Prior to issue of the Occupation Certificate a copy of the agreement between the owner and waste disposal contractor (private or Council) to service the site is to be submitted to Council.

Reason

To ensure that the site and proposed uses are to be adequately serviced to remove all waste.

Fencing and Acoustic Barrier

68. Prior to release on the Occupation Certificate all fencing indicated on the approved plans and conditions of consent are to be erected.

Reason

To ensure all fencing has been erected in accordance with the approved plans.

69. The acoustic barrier and associated landscaping is to be erected in accordance with the approved plan prior to the release of the Occupation Certificate.

Reason

To ensure the acoustic barrier is erected to decrease the impact of noise on adjoining properties.

Site Works

70. All retaining walls and associated drainage shall be installed and completed prior to use or occupation of the buildings.

Reason

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

Environmental Considerations

71. There is to be no interference with the amenity of the neighbourhood by reason of the emission of any offensive noise, vibration, smell, fumes, smoke, vapour, steam or dust, or otherwise as a result of the proposed development.

Reason

To prevent environmental pollution and to protect the existing amenity of the neighbourhood.

72. Any fill that is brought onto the site must be classified according to the NSW Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (NSW EPA) as inert material. Evidence of this classification must be provided to Council from a suitably qualified consultant that the material is virgin excavated natural material prior to any fill being placed on site. Any imported fill must be validated to ensure its suitability for the proposed land use from a contamination perspective. Imported fill is to be certified that it is not contaminated, based on laboratory analysis or the known history of the site/source from which it has been obtained.

Reason

To ensure that only clean material is used to fill the site.

Landscaping

73. Landscaping works shall be carried out in accordance with the details indicated on the landscaping plan submitted prior to release of the Construction Certificate, except as required to be modified under the terms of this consent. All landscaping shall be completed prior to issue of the Occupation Certificate.

Reason

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

POST OCCUPATION OPERATIONAL REQUIREMENTS

General

74. The existing service station is to be demolished and removed from site within six (6) months of the service station being operational.

Reason

To clarify the terms of the consent.

Noise Control & Hours of Operation

75. Following commencement of occupation, the premises shall operate or trade only between the times stated as follows:-

Nursery & coffee shop - 9am to 5pm 7 days

Honey market, organic produce markets, café, antique centre & art gallery - 10am to 5pm Monday to Friday, 10am to 7pm Sat & Sun

Storage & machinery shed & wholesale nursery - 7am to 3pm Monday to Friday, 8am to 12 Noon Saturday

Restaurant, Service Station, Take-away & Mini-mart - 7am to 10pm Seven (7) Days a Week

Upon construction of the nursery, during times of dry and windy days, the area is to be watered down to minimise the impact of dust on adjoining properties.

Reason

To ensure that adjoining properties and the subject site are not impacted upon by dust.

ADVICE

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

Based on a road length of approximately 400 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- (i) Road fees - engineering plan checking and supervision of \$9,479.00.
- (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 and 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.

2. The applicant shall pay Detention Basin(s) engineering checking and site supervision fees in accordance with Council's adopted fees and charges prior to release of a Construction Certificate for the site. Council's current fee is \$972.00 per basin for basins between 50m³ and 500m³. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's adopted fees and charges current at the time of payment.

Reason

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

3. The applicant is advised that an engineering plan checking and site supervision fee for the parking, access and drainage of \$2,244.00 and is payable prior to release of the Construction Certificate for the building.

Reason

To ensure that the developer meets all costs associated with the inspection of necessary works associated with the development.

SCHEDULE 2

Integrated Approvals

**Department of Natural Resources
Part 3A Permit under the Rivers and Foreshores and Improvement Act 1948,
Water Act 1912 and Water Management Act 2000**

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 GTA.
5. The approval holder must submit, to the Natural Resources (DNR) Newcastle, a completed application form for a permit under Part 3A of the RFIA prior to the commencement of any development I works on protected land.
6. The permit application is required to accord with the GTA 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; and
 - 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/or documents: -
 - (a) Statement of Environmental Effects for Nulkaba Organic Produce Development, Wine Country Drive, Nulkaba. Prepared by EJE Architecture, Ref: 6663-SEE-001-A, Issue A - January 2006.

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 10 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 of 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 – 19 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
5 December 2007

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 13/2008**

APPLICANT:	JAR PROPERTIES PTY LTD
OWNER:	AS ABOVE
PROPERTY:	LOTS 1,3,4,5 &6, D.P 841468, CLIFT ST BRANXTON
AREA:	6256 SQ M
ZONING:	PART 2(A) RESIDENTIAL & 3(A)GENERAL BUSINESS
PROPOSAL:	AMENDMENT TO EXISTING TWENTY UNIT "SENIORS LIVING" DEVELOPMENT TO PART "SENIORS LIVING" & EIGHT(8) RESIDENTIAL UNITS.

Senior Assessment Officer, Mr. Richard Forbes, reports:-

SUMMARY:

Council has received a proposal for the amendment of an existing "Senior's Living" housing development comprising twenty (20) two-bedroom units at Branxton approved by Council at its meeting of 2 November 2005.

The proposal is to delete from Council's adopted conditions of consent condition No 2 which restricts the occupation of the development to persons aged 55 years and over or persons with a disability. The exemption is requested over eight (8) of the twenty (20) existing units to enable the sale or rental to persons other than those to which the provisions of State Environmental Planning Policy "Seniors Living" 2004 apply.

The applicant has sought to justify the amendment on the basis that the subject eight (8) comply with the provisions of Council's requirements for residential unit development. The proposal has been subject to additional detailed submissions dealing with compliance with the provisions of DCP 2006 – Urban Housing which are attached.

The matter is before Council on the basis that the original development was granted consent by Council and the amendment is recommended for refusal.

The applicant has been advised that the amendment proposed under the provisions of Section 96(1) of the Environmental Planning & Assessment Act does not result in the existing "Seniors Living" development remaining substantially the same development. A new development application would be required as "Seniors Living" and "residential unit development" are separately defined uses under the Act.

In addition, the proposed amendment fails to demonstrate that it satisfactorily addresses a range of planning matters raised by the part occupation of the site by residents or tenants other than seniors or persons with a disability.

PROPOSAL:

The existing twenty (20) single storey two-bedroom dwellings comply with the requirements for self-contained housing for older or disabled persons under the provisions of State Environmental Planning Policy - "Senior's Living", 2004. The development is wholly contained within a single development site of 6,256 square metres located in close proximity to existing commercial, community, medical and transport facilities in Branxton and is serviced by a single internal access road and visitor parking area. Eight (8) of the existing units are occupied by senior residents.

State Environmental Planning Policy "Senior's Living" 2004 contains a series of design criteria which prevail over any adopted residential flat code applicable to the location. Therefore, the traffic and amenity issues within DCP 2006 - Urban Housing under which Council would normally assess a residential unit development did not apply in this instance.

The design criteria under the Policy set minimum design standards with respect to the provision of disability access, private open space, overall density of development, parking and landscaping. The proposal complies with the design and density criteria under the Policy

SITE DESCRIPTION:

The site is part of the Branxton Heritage Conservation Area under Schedule 5 of the Hunter Regional Environmental Plan (Heritage) 1989 which recognises the presence of a number of buildings of heritage significance. In this case, a Police residence, former school house and two local churches give the location a character of heritage significance. The buildings mentioned are not "Items of Environmental Heritage" under Schedule 3 of the Cessnock Local Environmental Plan, 1989 but contribute to the character of the precinct against which proposed development must be assessed. The subject land lies to the rear of the buildings mentioned such that it does not interfere unduly with the overall view of the collection of buildings.

The site comprises five lots which have been consolidated. The site was once part of a Department of Education property which is reflected in the retention of the old school building currently used as a medical centre. The New England Highway lies approximately 80 metres to the north of the site. The rear yards and car parks of existing development in the commercial centre of Branxton back onto the subject land. The largest of the adjoining developments comprises the "IGA" supermarket fronting the New England Hwy and Cessnock Road.

Access to the subject land is proposed via Cessnock Road with a "one-way" internal road branching into the development from the main driveway to the rear of the existing commercial premises on the New England Hwy. The proposal will require the construction of a new concrete driveway crossing onto Cessnock Rd. This will need to be undertaken without causing loss of the existing sandstone kerb and gutter found in this location. Entry from Cessnock Rd is preferred despite its proximity to the IGA car park as it will avoid traffic conflict from turning movements onto Clift Street (MR 220) close to the intersection with the New England Hwy.

Access to the site will be via a right of carriageway. The right of way extends from Lot 1 Clift St through to Cessnock Rd and gives access to the medical centre via Cessnock Rd. There have been previous objections with respect to the use of the right of carriageway, however, it has been established that the right of carriageway is properly constituted as legal and physical access to the site.

The subject land is located on the southern fringe of the known extent of the 1955 flood of the Hunter River. In accordance with Council's Branxton Flood Policy (B30/10). The development is located 500 mm above the known flood level of RL 33.873 m AHD.

PLANNING ASSESSMENT:

Cessnock Local Environmental Plan, 1989.

The original consent was granted under the provisions of State Environmental Planning Policy "Senior's Living" 2004 which prevails over the provisions of the Cessnock Local Environmental Plan, 1989 excepting that the development must still be consistent with the objectives of the zone. In this instance the site is in part zoned 2(a) Residential and 3(a) Commercial under the planning instrument. Residential flat buildings are permissible in both zones and Council may grant consent to development complying with either the provisions of the State Environmental Planning Policy or DCP 2006 – Urban Housing.

State Environmental Planning Policy (Senior's Living) 2004

The State Environmental Planning Policy under which the development was approved required the development to address specific design criteria (clause 30) which determines the maximum density of development, parking, open space, landscaping and access requirements. Assessment of the proponents amendment submission has concluded that the design requirements of the Policy with respect to the areas of open space, landscaping and visitor parking have resulted in development which functions as an integrated development with shared access, visitor parking, garbage disposal and common open space.

To change the defined land use solely by amendment would unsatisfactorily affect the compliance of the balance of the development with the standards imposed by the State Environmental Planning Policy.

The occupation or use of the development for purposes other than Seniors Living is considered contrary to the objectives of the State Environmental Planning Policy under which consent was granted and would detract from the integrated functions of the development.

Section 79C - Environmental Planning & Assessment Act, 1979

The Provisions of Section 96 – Environmental Planning & Assessment Act.

It is considered that the proposed amendment does not comply with the provisions of Section 96 of the Act. Section 96 provides for the modification of consents generally and allows for Council to modify a consent if "it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted". In this instance Council cannot be satisfied that the amended development would be substantially same as the development for which consent was originally granted.

The resulting development whilst having the same physical appearance, will not remain a seniors living housing development in accordance with the consent granted by Council. On this basis Council would need to consider a new development application for an eight (8) unit residential development on the site at which time issues with respect to traffic and the amenity of the existing residents would be considered. The applicant has advised that a new development application is not intended to be lodged.

Context & Setting

The existing context of the development consists of partial occupation of the completed development by seniors. The eight (8) units nominated to be occupied by persons other than seniors (or people with a disability) are physically remote from the existing senior residents, however the vehicle access, visitor parking and common open space would be shared.

The existing open nature of the setting and close proximity of each of the units is desirable from the viewpoint of seniors living as it affords a sense of security and community, however the introduction of other residents will make these attributes an amenity issue with respect to privacy and noise.

The broader occupation of the development is contrary to the manner in which the development has previously been approved, marketed and occupied. The amendment would likely give rise to conflict between those that have purchased on the understanding that the development is to comprise seniors living housing and future residents.

Access & Parking

The site was originally assessed under State Environmental Planning Policy (Senior's Living) 2004, part 4, clause 56 with respect to the size and number of car spaces provided. The off-street parking provides for twenty-six spaces overall which exceeds the minimum requirements for development under the Policy and would satisfy Council's DCP 2006 – Urban Housing to the extent that each unit has a single garage.

The impact of the regular occupation of eight (8) of the existing units on traffic and parking has been assessed as unsatisfactory on the basis that the RTA "*Guidelines for Traffic Generating Developments*" indicate that seniors housing generates around four (4) vehicle trips per day per unit as opposed to nine (9) vehicle trips per day for a residential unit. The shared internal access is presently sufficient for the nature of the use however increased movements over the site would have an adverse impact on the safety and amenity of existing senior residents. The prospect of children utilising the internal road as play space is also considered to be an issue given the limited open space opportunities within the site.

The arrangement of shared visitor parking and the internal set back of the units is such that the development cannot accommodate stacked parking in front of the existing garages or within the internal road. In the circumstances where at least half of the two bedroom units subject of the amendment attract two cars it is likely that insufficient visitor parking would remain to service the seniors living component of the development.

CONCLUSION:

The existing seniors living development has demonstrated that it can function as an integrated housing development in which the density of development, internal traffic areas and relatively open private spaces contribute to its suitability for seniors living. The amendment proposed cannot be considered to be an amendment to a seniors living proposal to the extent that it will substantially change the nature of the use and the ability of the existing development to function as approved.

RECOMMENDATION that the amendment application made under Section 96 of the Environmental Planning & Assessment Act to enable eight (8) of the existing seniors living units to be occupied by persons other than those aged 55 years or with a disability be refused for the following reasons;

1. The proposed amendment is not satisfactory with respect to the use of Section 96 of the Environmental Planning & Assessment Act to establish a change of land use on the subject land. The resultant development is not considered to be substantially the same land use as originally granted, contrary to the provisions of Section 96 of the Act.

2. The proposed amendment will have unsatisfactory impact on the amenity of the existing senior residents occupying the site by virtue of increased vehicle movements and loss of visual & acoustic privacy.
3. The proposed amendment is unsatisfactory with respect to the creation of an undesirable precedent for the amendment of existing “seniors living” developments to accommodate other than senior residents.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 19 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
10 March 2008

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 14/2008**

DEVELOPMENT APPLICATION NO: 8/2006/1038/3
APPLICANT: CUMMINS SOUTH PACIFIC PTY LTD
OWNER: HEZ PTY LTD
PROPERTY: LOT 7 DP 1037092 CESSNOCK ROAD
WESTON
AREA: 6727 SQ M
ZONING: 4(H) HUNTER EMPLOYMENT ZONE
PROPOSAL: STANDBY ELECTRICITY GENERATION
STATION

HEZ Planning Unit, reports:-

SUMMARY:

This report relates to a Section 96 Application 8/2006/1038/3 for an amendment to conditions 38 and 39 to allow for the temporary servicing of the approved Standby Electricity Generation Station at Lot 7 DP 1037092 off the HEZ Spine Road.

PROPOSAL:

The Section 96 Application seeks Council approval to vary two conditions attached to development consent 8/2006/1038/1 for the Standby Electricity Generation Station being as follows:

Condition 38

The registered proprietors of the land shall submit an application to Council for on site effluent (wastewater) collection system for the proposed facilities within the development.

Such application shall include system details, on site collection and disposal off site and ongoing management. The application shall be submitted to Council or the principal certifying authority for approval prior to the issue of a Construction Certificate for the buildings.

Condition 39

The applicant shall provide details of the proposed interim water supply to service the site. Such water supply shall include the following:

- i. Potable water usage and storage;*
- ii. Toilet/shower water usage; and*
- iii. Fire fighting storage and reticulation.*

Details of the proposed storage shall be submitted to Council prior release of the Construction Certificate for approval.

Significant construction works have been completed and it is intended that the facility be commissioned in March/April 2008.

From recent discussions with Hunter Water Corporation construction of reticulated water infrastructure within the HEZ is currently underway, with the reticulated sewer designs currently being finalised by Hunter Water. Therefore these services will not be available until after the proposed commissioning date of the standby electricity generation station.

A water supply to the site is necessary for toilet and shower facilities. The site will only be manned by one person and therefore, the normal onsite demand for these services is likely to be relatively low.

The interim services proposed to be provided onsite are outlined below:

- a) A temporary transportable unisex toilet to be positioned on site adjacent to the car parking area. This toilet will be maintained by an effluent removal contractor on a regular basis;
- b) A temporary emergency washdown shower to be positioned adjacent to the temporary toilet; and
- c) Water tanks with a capacity of 50,000 litres to be installed at the rear of the site adjacent to the transformers providing a temporary water supply in the case of an on site or bushfire emergency. (Refer to enclosures for relevant site plan).

Whilst no reticulated water is available to the site, it is noted that the buildings have been designed to afford a level of protection against both radiant heat and ember attack. In the event of a bushfire emergency, the Rural Fire Service has advised that additional fire fighting resources will be deployed to protect the structure. As no water services are currently available to the site there is no fire fighting requirement that the buildings be connected to a street fire hydrant system, although this will be required once water becomes available. Provision has been made in the design to connect the necessary hydrants to the street system once water is available and this will be conditioned accordingly.

In the longer term, once services are available to the site, the following facilities will be installed:

- A unisex toilet will be installed within a storage shed that has been erected on site within the south eastern corner and will be connected to sewer when available to the site. This storage shed was approved under the original DA and subsequent CC approval has also been issued by Council;
- A proprietary emergency washdown shower is also to be installed within this storage shed and connected to the reticulated water and sewer services; and
- A fire hydrant system and fire hose reel system will also need to be connected to the reticulated water service when available.

A final occupation certificate for the site will not be issued until these facilities are installed, although an interim occupation certificate will allow commissioning of the standby electricity generation station once the temporary facilities described above have been installed on site.

BACKGROUND:

Council at its meeting of 6 June 2007 approved development application 8/2006/1038/1 for a standby electricity plant with appropriate conditions. Subsequently a number of Construction Certificates have been approved and issued by Council to allow construction works to continue on site. The applicant has indicated the desire to commission the standby generation station in March/April 2008 as this is considered to be one of the peak demand periods for electricity in NSW.

SITE DESCRIPTION:

The subject site is known as part of Lot 7 DP 1037092 being off the HEZ Spine Road. The site is located along the southern side of Stage 2 of the HEZ Spine Road which is currently under construction and adjacent to the Energy Australia substation.

The subject site has an area of 6727m² with a frontage of 62 metres to the HEZ Spine Road. The site has been largely cleared of natural vegetation due to construction works occurring on site.

The HEZ estate is located to the south of the townships of Kurri Kurri and Weston, south west of Pelaw Main, north of Kearsley and east of Neath and Abermain. The broader site includes a number of natural watercourses, is covered with native bushland and is traversed by numerous gravel tracks, dismantled railway line and transmission line easements.

PUBLIC EXHIBITION:

Cessnock Development Control Plan 2006 – Chapter B.2 Public Notification and Advertising states that for minor modification of a development consent that a letter to potentially affected owners and occupiers be forwarded at the discretion of the Development Services Manager (DSM). This is subject to assessment criteria pursuant to Clause 2.3 of this Chapter. In this case the proposed modification is considered to be relatively minor in that two conditions of consent are being requested to be varied due to servicing of the HEZ estate being delayed. Furthermore the standby electricity generation station is located within the centre of the estate and no objections were received to the original application. Therefore, following consultation with the DSM notification was considered unnecessary in this case.

PLANNING ASSESSMENT:

Statutory Situation (S79C.a):

The subject site is zoned 4(h) Hunter Employment Zone pursuant to Cessnock Local Environmental Plan 1989. The proposal is permissible with the consent of Council.

This proposed infrastructure development satisfies the objectives of the 4(h) zone in that the proposal will specifically provide an essential service to operate large scale industrial development establishing within the estate during periods of peak electricity demand. The standby electricity generation station is also intended to supply power in peak demand times to the Lower Hunter region.

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

The modified proposal has been assessed in terms of provisions of Cessnock Development Control Plan 2006 – Chapter E6 – HEZ and relevant environmental strategies and found to satisfy relevant development controls, criteria and objectives.

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:

Provisions of the Environmental Planning and Assessment Act

The modification has been considered in accordance with Section 96 (1A) of the Environmental Planning and Assessment Act and the following comments are made:

- a) The modification is considered to be of minimal environmental impact as the proposal allows for provision of a temporary toilet facility which will be maintained on a regular basis by a contractor to ensure the surrounding environment is not impacted upon. The proposed toilet and shower facility will be positioned on a hard stand area adjacent to the car park and positioned 16 metres from the side boundary of the site. These facilities will remain on site until such time as reticulated services are provided to the site, to allow commissioning of the electricity substation to cater for upcoming peak demand periods. Once reticulated services are provided to the site the proponent will be required to connect within 90 days of the services being available, and this requirement will be conditioned. The facility is only manned by one person, therefore temporary facilities are considered to be acceptable for a short term period. The proposed water tanks are nestled to the rear of the site at the end of a gravel accessway and hence will not impact on designated landscaped areas nor have an adverse visual impact on the streetscape, etc..
- b) The proposal is the same development as per the original application submitted to Council. No changes are proposed to the buildings or structures on site and the access and car parking arrangements remain unchanged. The only change proposed is the installation of temporary toilet and shower facilities on site to allow commissioning of the plant in the short term.
- c) Cessnock DCP 2006 allows for applications under certain circumstances not to be notified and due to the minor nature of this modification and the location of the site within the HEZ estate, this application was deemed to satisfy this criteria.

REFERRALS:

Building

This application has been reviewed by HEZ's Building Consultant. This consultant has advised that:

"This condition (*condition no. 38*) was imposed by Council to provide for onsite effluent management as the subject site was unserviced. That is, no reticulated sewer system was available to the site on issuing of the development approval.

Due to site constraints on-site effluent treatment and disposal is not practicable. Therefore the effect of this condition was to provide for the installation of an effluent storage tank only which would need to be pumped out with wastewater transported off site for disposal. Installation of such a system would require approval under Section 68 of the Local Government Act, 1993.

The nature of the standby electricity generation station operation is such that only one employee is generally on site. A few additional personnel may visit from time to time to carry out programmed maintenance, repairs and the like.

Given that the permanent sewer system is expected to be made available to the site later this year, along with the low intensity of building occupancy, it is considered reasonable to allow this one manned standby electricity generation station to be serviced by the proposed temporary toilet facility.

The applicant has provided a construction management plan that detailed 8,000 litres of water storage to service the site during the construction phase. This storage will remain available on completion of construction and in addition the applicant proposes to provide water storage tanks to the rear of the site with a combined storage capacity of 50,000 litres.

It should be noted that this one manned standby electricity generation station will only have a single toilet facility with emergency wash down shower once the construction phase has ended. Water demand for these facilities is very low and will be easily met by the retained 58,000 litre temporary water storage.

However, once street hydrants are available the NSW Fire Brigades will assume a role in fire fighting for the Hunter Economic Zone. Therefore provision should be made for fire fighting equipment to be provided to the site and building.

It is considered reasonable then to support the existing temporary fire water storage in accordance with the Rural Fire Service advice. However, permanent fire hydrant and hose reel services should be provided for in the construction with final connection to the town water supply occurring once such water supply is made available to the site.

This amendment is not inconsistent with the provisions of the Building Code of Australia and therefore the attachment of the amended conditions is supported.”

NSW Rural Fire Services (RFS)

As previously stated, the application was referred to the Rural Bushfire Service for comment. The RFS have responded by advising that no additional water supplies are needed and in the event of a bushfire emergency additional resources will be deployed to protect the structure. (Refer to enclosures for copy of correspondence).

CONCLUSION:

The replacement of Conditions 38 and 39 to allow temporary toilet and shower facilities as well as water tanks upon the site has been assessed in accordance with provisions of Cessnock LEP 1989, Cessnock DCP 2006 – Chapter E6 – HEZ and relevant environmental strategies. In terms of relevant planning instruments applying to the HEZ estate these temporary measures are considered to be acceptable provided that permanent measures are installed once services become available. After due assessment of this application, the variation to these two conditions is considered to be appropriate along with a minor variation to Condition 1 to acknowledge an amended site plan depicting the location of these temporary facilities.

RECOMMENDATION that the Section 96 Application 8/2006/1038/3 for the proposed standby electricity station be approved subject to variation of conditions as follows:

Condition No.” 1

Compliance with conditions of original Development Application No. 8/2006/1038/1 dated 19/06/2007 and Development Application No. 8/2006/1038/2 dated 09/08/2007 except as modified below.

The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans numbered in the following table, the Statement of Environmental Effects prepared by Mike George Planning Pty Ltd dated November 2006 and any other information submitted in support of the application, except as modified by the conditions of this consent.

<i>Document</i>	<i>Prepared by</i>	<i>Dated</i>	<i>Ref</i>
<i>2006/08 – D – 004</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev B</i>
<i>2006/08 – D – 005</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev B</i>
<i>2006/08 – D – 006</i>	<i>GHD</i>	<i>13/10/06</i>	<i>Rev A</i>
<i>2006/08 – D – 007</i>	<i>GHD</i>	<i>13/10/06</i>	<i>Rev A</i>
<i>2006/08 – D – 008</i>	<i>GHD</i>	<i>13/10/06</i>	<i>Rev A</i>
<i>2006/08 – D – 009</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev B</i>
<i>2006/01 – C – 001</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev B</i>
<i>2006/08 – C – 002</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev A</i>
<i>2006/08 – C – 003</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev A</i>
<i>2006/08 – E – 001</i>	<i>GHD</i>	<i>02/11/06</i>	<i>Rev B</i>
<i>Air Quality Assessment</i>	<i>Pacific Air & Environment</i>	<i>November 2006</i>	<i>2303</i>
<i>Flora & Fauna Assessment</i>	<i>Harper Somers O’Sullivan</i>	<i>November 2006</i>	<i>23618</i>
<i>Bushfire Threat Assessment</i>	<i>Harper Somers O’Sullivan</i>	<i>November 2006</i>	<i>23618</i>
<i>Cultural Heritage Assessment</i>	<i>Harper Somers O’Sullivan</i>	<i>November 2006</i>	<i>23618</i>
<i>Landscape Plans</i>	<i>Harper Somers O’Sullivan</i>	<i>November 2006</i>	<i>23618</i>
<i>Proposed Stand-by Electricity Generation Station, Cessnock Road, Weston. Supplementary Information</i>	<i>Infratil Energy Australia</i>	<i>April 2007</i>	

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”

Amendment to Consent:

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans numbered in the following table, the Statement of Environmental Effects prepared by Mike George Planning Pty Ltd dated November 2006 and any other information submitted in support of the application, except as modified by the conditions of this consent.

Document	Prepared by	Dated	Ref
2006/08 – D – 004	GHD	02/11/06	Rev B
2006/08 – D – 005	GHD	02/11/06	Rev B
2006/08 – D – 006	GHD	13/10/06	Rev A
2006/08 – D – 007	GHD	13/10/06	Rev A
2006/08 – D – 008	GHD	13/10/06	Rev A
2006/08 – D – 009	GHD	02/11/06	Rev B
2006/01 – C – 001	GHD	02/11/06	Rev B
2006/08 – C – 002	GHD	02/11/06	Rev A
2006/08 – C – 003	GHD	02/11/06	Rev A
2006-08 –A- 001	GHD	11/02/08	Rev 9
Air Quality Assessment	Pacific Air & Environment	November 2006	2303
Flora & Fauna Assessment	Harper Somers O’Sullivan	November 2006	23618
Bushfire Threat Assessment	Harper Somers O’Sullivan	November 2006	23618
Cultural Heritage Assessment	Harper Somers O’Sullivan	November 2006	23618
Landscape Plans	Harper Somers O’Sullivan	November 2006	23618
Proposed Stand-by Electricity Generation Station, Cessnock Road, Weston. Supplementary Information	Infratil Energy Australia	April 2007	

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

Condition No. “38

The registered proprietors of the land shall submit an application to Council for onsite effluent (wastewater) collection system for the proposed facilities within the development.

Such application shall include system details, on site collection and disposal off site and ongoing management. The application shall be submitted to Council or the principal certifying authority for approval prior to the issue of a Construction Certificate for the buildings.

Reason

To ensure the ongoing environmental protection of the locality and ensure that wastewater treatment facilities do not have an adverse impact.”

Amendment to Consent:

A temporary unisex disabled toilet facility being provided on site to service all buildings prior to any occupation certificate being issued for any building or structure on the site. A permanent unisex disabled toilet facility and emergency wash down shower are to be provided within one of the buildings on site and connected to the reticulated sewer system within 90 days of such system being made available to the site. Full details of the location and construction of the required toilet and shower facilities are to be provided to Council and included in an application for a construction certificate

Reason:

To clarify the terms of consent with respect to management of effluent and wastewater facilities on site.

Condition No. “39

The applicant shall provide details of the proposed interim water supply to service the site. Such water supply shall include the following:

- i. Potable water usage and storage;*
- ii. Toilet/shower water usage; and*
- iii. Fire fighting storage and reticulation.*

Details of the proposed storage shall be submitted to Council prior to release of the Construction Certificate for approval.

Reason

To ensure adequate water supply is provided to the proposal.”

Amendment to Consent:

Interim water supply being provided to the site for potable water usage and storage, and toilet and shower water usage both during construction and until such time as the site is serviced by a mains reticulated water supply system.

A fire hydrant system and a fire hose reel system are required to be provided to serve the completed Generation Building (including control room) once a mains reticulated water supply is available. Full details of the required fire hydrant system and fire hose reel system prepared by a suitably qualified engineer must be submitted to Council and such systems installed ready for connection to the mains reticulated water supply system prior to the issue of any occupation certificate for the site. Completion of the fire hydrant system and the fire hose reel system must occur within 60 days of the mains reticulated water supply being made available to the site

Reason:

To provide appropriate water supply systems in the interest of both public health and fire safety.

To: ***The General Manager***
Corporate & Regulatory Services
Committee - 19 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
11 March 2008

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES

REPORT NO. 15/2008

SUBJECT: RESTRUCTURE OF ON-SITE SEWAGE MANAGEMENT PROGRAM

Joe Mills, On-Site Sewage Management Project Officer, reports:-

INTRODUCTION

Cessnock City Council currently has one field officer and one administration officer dedicated to running the Onsite Sewage Management program. The program is structured such that all onsite sewage management systems (OSSM) will be inspected every seven years regardless of the identified risk level.

This report is presented to Council for the purpose of outlining a proposed increase in fees/charges in the Onsite Sewage Management program that will enable Council to deliver a significant improvement in service delivery that will also mitigate the long-term risk of potential environmental harm.

BACKGROUND

The program was established following state-wide regulatory reforms introduced in 1998 to improve Council supervision of sewage management activities throughout New South Wales. All Councils were expected to operate systematic sewage management programs.

The Local Government Act 1993 (the Act) provides that landowners must obtain Council approval for the operation of a sewage management system on their land and must comply with conditions, including the performance standards for sewage management specified in Part 4 of the Local Government (Approvals) Regulation 1999.

Councils are required to keep an up to date register of all of the systems of sewage management in use within the Council area and must implement systematic risk assessment and performance management procedures that are appropriate to protect both public health and ecosystem health. The obligation to obtain and comply with an operating approval allows the Council to set performance standards and related maintenance or reporting requirements, and to recover an application fee or periodic renewal fee towards the cost of risk assessment and performance supervision.

When the local government regulatory reforms and guidelines for domestic sewage management were announced in 1998, the Department of Local Government Circular No. 98/28 recommended an initial fee of up to \$30 for an application for approval to operate a system of sewage management.

The recommended fee was intended to apply for the first year of operation, during which time it was expected that each Council would assess the actual costs involved in systematic sewage management risk assessment and performance management, and would develop appropriate local revenue policies.

Cessnock City Council initially applied a \$30 fee for an approval to operate, which was increased to \$35 for the financial year of 06/07 and is currently set at \$38.

There are approximately 4,316 septic tanks currently existing in Cessnock LGA and increasing by the month with the current breakdown by risk level as follows:

LOW 2839

MEDIUM 398

HIGH 1079

The risk categories are based on a desk top risk analysis of expected likelihood of a system to present environmental or public health risk given the system type, allotment size and locality to environmentally sensitive areas. There is currently no correlation of this risk analysis to inspection frequency.

The inspection program focuses on different geographic areas from across the Cessnock LGA each quarter. To promote an OSSM Program presence across all of the LGA, a number of inspections are defined per area per quarter. Areas that have a high incidence of OSSM (eg North Rothbury) have inspections allocated for every quarter.

Approximately 25% of inspections require reinspections due to deficiencies (age, hydraulic loading) of systems, non-compliance and a general lack of knowledge/education of the property owners and occupiers.

With current resources approximately 800 septic systems inspections can be undertaken per annum. At this rate **seven years** will be required to inspect all 4,316 septic systems by Council's On-Site Sewage Management Officer.

REPORT

It is proposed to revise the inspection program for the inspection of all onsite sewage management systems to a maximum of 4 years, providing a program that:-

- is consistent with the programs being offered by other Councils as highlighted in attachment 1;
- provides an improved level of service for resident cost;
- takes into consideration risk analysis vs inspection frequency;
- will reduce complaints through increased inspections of high risk premises;
- will result in less outlay for repairs and upgrades to systems with earlier identification of problems; and
- has the potential to reduce the risk of environmental harm caused from non-compliant systems.

It is proposed to maintain the low, medium and high risk classification as currently used for residential premises. The commercial classification will be simplified into 3 categories rather than the existing 5 categories which have proven to be confusing. It is considered that the proposed risk categories will assist in providing a more user friendly program for Council Officers, customer services and external customers alike.

The proposed inspection frequency is based on a risk analysis of the likelihood of environmental and/or community health impacts and providing a level of service to meet the proposed new fee structure.

CLASSIFICATION	NUMBER OF SYSTEMS	INSPECTION FREQUENCY	NUMBER INSPECTIONS PER YEAR
Residential - Low	2839	1 per 5 Years	568
Residential - Medium	398	1 per 3 Years	132
Residential - High	746	1 per 2 Years	373
Commercial Light	166	1 per 18 Months	110
Commercial	97	1 per Year	97
Multi Commercial	70	1 per Year	70
<i>Re-Inspections</i>		25%	338
TOTAL	4316		1688

Based on a 40 week inspection program, the revised program would required 42 inspections per week to be conducted by Council Officers.

The revised program would also allow Council to provide additional services to the community, which have become a component of the OSSM program but were never envisaged when the program was initially developed and resourced. However, they are services/functions which are considered to be a best fit with the overall objectives of the OSSM program.

These services/functions include:-

- Design and installation of connection to sewer programs for Kitchener, Ellalong and Millfield. Including the re- use of existing household septic tanks for storm water harvesting;
- Response to winery waste issues (odours, to environmental pollution);
- Design and implementation of education programs for On-Site Sewerage Management and stormwater concerns.
- Response to environmental and health emergencies; and

The revised program can only be delivered by the employment of an additional onsite sewage management officer and it is proposed that this position be funded by the additional revenue that would be generated by the revised fee structure.

The proposed changes to the fee structure are included in the enclosure document.

The OSSM program budget for 2007/2008 is **\$152,300** comprising \$147,300 from approvals to operate and \$5,000 from inspection fees.

The proposed fee increases would increase the revenue stream by \$131,135 in 2008/09.

Annual renewal to operate		
\$179,235 residential		
\$77,200 commercial.		\$256,435
Additional fee sources include		
Additional systems installed not currently registered	\$ 20,000	
Re-inspection fees/tank water storage inspection fee	\$7,000	
	Total	\$283,435

The additional \$131,135 in income would provide \$95,000 for one additional OSSM Officer (including salary, vehicle and on-costs) and \$36,000 for tank sampling and education programs.

Any surplus revenue from each year would be allocated to fast-tracking the inspection regime through the employment of part-time staff such that (high risk) residential systems are reduced to a one year inspection cycle.

Table 1

EXISTING 2007/2008		PROPOSED 2008/2009		
Application for Approval to Operate On Site Sewage Management System		Application for Approval to Operate On Site Sewage Management System		% Increase
Domestic Installation	\$38	Domestic Installation	\$45	18.4%
Commercial Installation		Commercial Installation		
To treat up to 2000 litres/day	\$100	3 or less tourist cabins/light industrial	\$100	-
To treat between 2000 & 5000 litres/day	\$160	General commercial/heavy industrial	\$300	87.5%
To treat between 5000 & 10000 litres/day	\$250	Multi commercial complex and/or includes Winery waste	\$450	80.0%
To treat between 10000 and 15000 litres/day	\$310			45.2%
To treat over 15000 litres/day	\$350			28.6%
Annual Extension or Renewal of Existing Approval		Annual Extension or Renewal of Existing Approval		
Domestic Installation	\$35	Domestic Installation	\$45	28.5%
Commercial Installation		Commercial Installation		
To treat up to 2000 litres/day	\$100	3 or less tourist cabins/light industrial	\$100	-
To treat between 2000 & 5000 litres/day	\$160	General commercial/heavy industrial	\$300	87.5%
To treat between 5000 & 10000 litres/day	\$250	Multi commercial complex and/or includes winery waste	\$450	80.0%
To treat between 10000 and 15000 litres/day	\$310			45.2%
To treat over 15000 litres/day	\$350			28.6%
Septic Tank/On-Site Sewerage Management System Inspection		Septic Tank/On-Site Sewerage Management System Inspection		
Follow-up inspection fee (per half hour or part thereof)	\$85	Reuse of wastewater tank for water storage inspection	\$85	-
Monitoring/Rescheduling/Reinspection fee	\$38	Monitoring/Rescheduling/Reinspection fee	\$50	31.6%
Extraordinary costs (including sampling)	At Cost	Advisory Service Fee (per half hour or part thereof)	\$85	-
		Extraordinary costs (including sampling)	At Cost	-

CONCLUSION

The public health and environmental impacts of sewage disposal have received considerable publicity in recent years. Anecdotal evidence suggests that there is a high failure rate of sewage disposal systems not operating in accordance with design specification as is demonstrated by a reinspection rate of 25% of all systems inspected.

The Cessnock Local Government Area has a large number of on-site sewage management systems and problems with sewage disposal are still evident throughout the Local Government Area, particularly in the unsewered villages where the environmental and public health impacts are significant. Children using irrigation areas, footpaths, streets and watercourses as recreational areas are particularly at risk.

The current level of service of one inspection per system at no less than seven (7) years for an annual fee of \$38.00 is not considered to be a satisfactory level of service.

Additional resources are needed to ensure a satisfactory environmental and public health outcome in relation to onsite sewage disposal systems. The alternative is that potential problems will develop to the point where more expensive management and rectification programs may be required in the future.

Additional resources can be funded through fee changes which will also allow for an increased frequency of inspection to high risk and commercial premises reducing the high number of complaints Council receives for these categories.

Community feedback on the proposed fee changes will be sought through the public exhibition of Council's fees and charges for 2008/09.

RECOMMENDATION that the report be noted and a further report be submitted to Council following the exhibition of Council's fees and charges for 2008/09.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 10 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
19 March 2008

DIRECTOR CORPORATE & REGULATORY SERVICES
REPORT NO. 16/2008

SUBJECT: FOOD REGULATION PARTNERSHIP

Environmental Health Co-ordinator, Ms J Lange, reports:-

PURPOSE

To provide Council with an update on the changes to the Food Act 2003 and Food Act Regulation 2004 as well as the food regulation partnerships to be established between Councils and the NSW Food Authority.

REPORT

On 1 January 2008 legislation amending the NSW Food Act 2003 commenced. The new legislation:-

- Clarifies the responsibilities of local government in relation to food regulation,
- Provides for a secure funding base to allow cost recovery of enforcement activities, and
- Establishes a food regulation forum

As part of these changes Councils must formally consider their role in food regulation with a view that formal partnerships between Councils and the NSW Food Authority will take effect from 1 July 2008 at which time Councils will be appointed as an enforcement agency under the Food Act 2008.

While Councils have, in the past, had the ability to regulate and inspect retail food outlets, this role has been voluntary. Under the revised legislation Councils will now have a mandated role in the retail and food service sector.

Councils are now required to consider one of three levels of food regulation responsibility these being:-

- Category A - Response to urgent food safety matters, urgent food recall investigations and six-monthly reporting on food regulation activities
- 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 foodborne illness investigations
- Category C – Includes category A & B responsibilities and other responsibilities determined in consultation with the Authority eg inspection of manufacturers and wholesalers.

The NSW Food Authority have advised that Category A appointments will be at the discretion of the Director General and will only be considered on written application considering a number of factors such as a Council's geographic location, previous food regulation activities and the size of the retail food business sector.

Cessnock Council has been providing a level of service consistent with a Category B level for many years and in some situations such as winery manufactures has been providing a Category C service. On this basis it is unlikely that Cessnock would be considered for a level of service not less than that of a Category B.

As part of the partnerships the NSW Food Authority will be providing support and assistance to Councils in the form of:-

- Assisting Councils to manage perceived conflicts of interest,
- Resource assistance in unforeseen circumstances,
- Technical advice,
- Effective communication i.e. monthly newsletters, regional and state food meetings, contacts database.
- Website for training resources, food recalls Q&A, real-time emails, food handler training resources etc
- Ongoing training and networking
- Enforcement Support
- Special projects grants program, and
- Environmental Health Officer career promotion.

CONCLUSION

Cessnock City Council has a long and recognised history of ensuring that retail food premises are maintained at a high standard producing safe food for consumption through inspections of retail and food service premises. There is a community expectation that Council will continue to set a high regulatory standard in this area allowing the region to maintain its standard as one of the Countries top food and wine localities.

A further report will be submitted to Council to formally adopt a level of food regulation partnership with the NSW Food Authority, this report will consider the implications to Council and include review Councils regulated premises inspection program.

RECOMMENDATION the information be received and noted

To: **The General Manager**
Corporate & Regulatory Services
Committee - 19 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
10 March 2008

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES

REPORT NO. 17/2008

SUBJECT: PROPOSED PUBLIC SWIMMING POOL INSPECTION AND EDUCATION PROGRAM

Trainee Environmental Health Officer, Ms S Elliott, reports:-

PURPOSE

Consideration is sought from Council for the introduction of an inspection and education program to monitor the hygiene of public swimming pools located in the Cessnock City Council area.

This report provides information on public health in relation to the hygiene of public swimming pools based on;

- Legislation
- Current inspection programs in regional Councils
- Available literature, and
- Reported outbreaks

This is further detailed in the following background information.

BACKGROUND

Public pools legislation in NSW

The NSW Public Health Act 1991 Section 82 allows for the making of regulations for "the closure of public swimming pools and public spas for any period during which they are a risk to public health" and the Public Health (Swimming Pools and Spa Pools) Regulation 2000 gives effect to the Act stipulating the requirements for operating public pools.

The requirements of the Regulation applies to pools "to which the public is admitted, whether free of charge, on payment of a fee or otherwise" and includes Council pools and leisure centres, places of accommodation such as caravan parks, hotels, motels, retreats, guesthouses, bed & breakfast; clubs, health resorts, gymnasiums and sport centres, schools, hospitals, learn-to-swim centres, workplaces and places of adult entertainment.

Under the Regulation the pool water as well as the pool surrounds, including toilets and change rooms, must be kept in a condition that prevents the transmission of scheduled medical conditions as listed in the Public Health Act.

The NSW Health Guidelines for Disinfecting Public Swimming Pools and Spa Pools is called up in the Regulation as a tool for compliance to the requirements of the Regulation. These guidelines are comprehensive in detailing disinfection, cleaning, construction and operational requirements.

Furthermore, Council has the option of issuing orders under the Local Government Act 1993 to keep premises in a healthy condition.

Micro-organisms

The NSW regulation requires public swimming pools to be maintained to prevent the transmission of scheduled medical conditions. Diseases associated with swimming pools that come under this schedule are cryptosporidiosis, giardiasis, legionella and malaria. Other common diseases and infections associated with public swimming pools are gastroenteritis, skin and wound infections, ear, nose and throat infections, plantar warts and athlete's foot. Most of the micro-organisms responsible for these diseases and infections are sensitive to chlorine (the most common chemical used for water disinfection).

Disease

Of all the pathogenic micro-organisms that can infect bathers, *Cryptosporidium parvum* appears to be the most common disease currently of concern to health authorities. Cryptosporidium is a protozoan parasite spread by contamination from animal and human faeces. The disease is known as cryptosporidiosis and has an incubation period of up to 12 days with the most common symptom being severe and profuse watery diarrhoea that can last for up to two weeks in adults with healthy immune systems. Cryptosporidiosis outbreaks associated with swimming pools occur throughout Australia as well as world wide. There is no specific treatment available for cryptosporidiosis, only treatment for the relief of symptoms (QLD Health, 2004).

Cryptosporidiosis is a notifiable disease across Australia (Aust. Gov. Dept. Health & Aging, 2003) and the results obtained from the years 2001-2006 show that NSW had the lowest average report at 6.5 notifications per 100,000 population, whereas QLD & NT who do not legislate specifically for public swimming pools, had the highest results at 22.7 & 69.5 respectively (Aust. Gov. Dept. Health & Aging, 2007).

Cryptosporidium contamination in public pools is not simple to overcome due to its resistance to chlorine. Guidelines suggest that rigorous control of water hygiene, public education and the implementation of faecal accident policies can prevent or minimise the likelihood of outbreaks.

Swimming pool related outbreaks

Water is an excellent vehicle for the transmission of disease and in particular public swimming pools enable infected persons to spread disease throughout the community. An example of how easily the disease can be exposed to a broad population was reported by NSW Health in 2005 where 89 infected people had collectively swum in 35 different public pools before the onset of symptoms, from this outbreak a total of 254 people were reported infected with cryptosporidiosis. A number of pools involved were identified as lacking in disinfectant records and inadequate superchlorination practices.

The result of an outbreak in Canberra 1998, with 364 cases of cryptosporidiosis, caused a total of 8 swimming pools to be kept closed until cleaning and testing processes returned a negative result for Cryptosporidium. The outbreak started with 41 cases, involving two swimming pools in January 1998 with the disease continuing to spreading from pool to pool up to March 1998. With each pool closure it was noted that reports of the disease dramatically declined within 14 days of closing (Beers *et al*, 1998).

In Georgia USA, at a trailer park swimming pool where 14 people were infected with E. coli, it was found that the pool was not listed with the local authorities for regular inspections and testing of the pool water and interviews with the pool operator revealed that chlorination levels and pool maintenance were inadequate to protect public health (Friedman *et al*, 1999).

Recommendations from reported outbreaks include the following:

- Frequent superchlorination of pools with large bather loads,
- Separate filtration systems for pools used by toddlers and the incontinent,
- Educating the public on hygienic requirements to prevent disease entering swimming pools,
- Education of public swimming pool operators on proper pool maintenance,
- Registration of public swimming pools with local authorities, and
- Regular inspections by Environmental Health Officers.

Disinfection by-products

Reports have suggested that disinfection bi-products trigger asthma and are possible carcinogens (Glauner *et al*, 2005). This has not been confirmed and reports, as yet, have not determined the affects that chloramines, in the atmosphere and water of treated swimming pools, have on human health. Exposure is through absorption, inhalation and ingestion (McLaren *et al*, 2001). Recommendations for reducing the levels of these bi-products have been ventilation (www.pwttag.org, 2005), improved adsorption-filtration and advanced oxidation processes (Glauner *et al*, 2005), pre-washing of bathers or reducing bather numbers (Judd & Bullock, 2003), frequent water change and appropriate filtering and super chlorination (NSW Health, 1996).

REPORT

At the present time Cessnock City Council does not conduct a routine inspection or education program for public swimming pool water quality, with water quality tests of these facilities undertaken on a complaint basis only.

An estimated total of 88 premises with public swimming pools have been identified in the Local Government Area using Council's tourist accommodation register and Council's mapping system, the Hunter Valley Tourist Information brochure, local Yellow Pages and local knowledge. A number of premises were identified with multiple pools, with one health resort containing five pools. As can be seen in table 1 below, the majority of pools service the tourist industry and a large proportion of these are self-contained accommodation and bed & breakfasts.

Table 1: Number of Identified Public Pools in the Cessnock LGA

Premises	Number
Council public pools	3
Learn-to-swim centres	2
Large high use resorts	7
Tourist accommodation	74
Other	2
Total	88

A survey conducted of nine Councils from the Hunter Regional Health Education Committee found that seven of the Councils conduct public swimming pool inspections. The duration of inspection programs ranged from 1 to 20 years, with the larger Councils of Lake Macquarie, Newcastle and Gosford conducting inspections for 10, 16 and 20 years respectively. The fees charged per inspection ranged from \$50 to \$150 with an average charge of \$100 annually. Port Stephens City Council has the largest number of public swimming pools with 62 and Dungog has the least with only two. The two Councils not conducting inspections nominated a minimal number of premises with public pools, indicating a relatively low risk to the public.

The survey also revealed that 78% of Councils conduct inspections and that Cessnock Council, though small in population has more public pools in its Local Government Area than any of the surveyed Councils. In consideration of this information a risk-based assessment of Cessnock's public swimming pools may be most appropriate in developing a manageable monitoring system. An example of how this can be achieved is detailed in Appendix 1.

IMPLICATIONS

Financial

The average inspection fee charged by other councils is \$100. Should Cessnock Council charge this fee per premises it would generate an annual income of \$8,800 for all premises. This would cover the initial program establishment costs of \$1,800 for test equipment and administration setup (Authority register) as well as the annual recurrent costs of approximately \$4,000 for equipment and the employment of a casual Environmental Health Officer.

Outbreak

As Cessnock draws an approximate number of 2.5 million short and long term stay visitors, there is a large number of tourist accommodation services and most of these provide recreational swimming facilities to guests. An outbreak amongst these swimming pools and associated negative media that could follow may pose a threat to individually affected tourist facilities as well as generate public perception that unhygienic conditions exist amongst public facilities in the area. This has the potential for significant ramifications to the tourist industry in the Cessnock area.

If Council continues without the inspection and education of public swimming pools then an outbreak could draw specific criticism and unwanted media attention to Council, especially on comparison to the level of regulation and inspection provided by other local Councils.

CONCLUSION

There is significant evidence that water borne disease associated with public pools is a health concern and the required control of hygiene in public pools is supported by legislation throughout Australia as well as health authorities in all states and territories of Australia.

To prevent disease affecting the public from the use of public swimming pools it is important to know the level of compliance amongst pool operators in regards to the requirements of the NSW Department of Health. This can be monitored through an inspection, education and water testing program which has been proven to be an effective method in controlling the spread of disease and would also be consistent with other Councils in the region.

To assist in determining the acceptability of such a program it would be appropriate to consult with all public swimming pool operators/owners in writing and through information sessions seeking feedback on the proposed program and the associated benefits that can be gained from a better understanding of the need for swimming pool hygiene.

An inspection program has the potential to be self funding through inspection and reinspection fees as well as covering the cost for an education and awareness program that may be developed should an inspection program be implemented.

Council's Management Plan 2006-2009 lists public health protection as part of its delivery services and activities, and also within it's vision statement; "*A safe, healthy environment where residents can enjoy a high quality life.*" The Management Plan also includes Council's charter from the NSW Local Government Act being; "*to provide directly or on behalf of other levels of government..... equitable and appropriate services and facilities for the community.*"

Having regard to the NSW Public Health Act 1991, it would be appropriate to include routine inspections of public swimming pools and spa pools as part of Council's services and activities to protect public health and provide a safe and healthy environment for those visiting and residing in the Cessnock LGA.

RECOMMENDATION that:-

1. The inspection fee be included in Council's Draft Fees and Charges 2008/09.
2. Council write to all public swimming pool operators and the Tourism Association sending feedback on the proposed public swimming pool inspection and education program.
3. A further report be submitted to Council after the consultation in relation to points 1 and 2 above has been completed.

To: **The General Manager**
Corporate & Regulatory Services
Committee - 19 March 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
7 March 2008