



Vincent Street
CESSNOCK 2325

26 May 2008

To All Councillors

You are hereby notified that the next Meeting of the City Planning Committee will be held in the Council Chambers, on Wednesday, 4 June 2008 immediately following the conclusion of the Corporate & Community 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 21 May 2008

(3) DEFERRED BUSINESS

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES

37/2008 8/2005/240/2 – 74 Church Street, Weston 2

(4) OFFICERS' REPORTS

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(5) QUESTIONS WITHOUT NOTICE.

DEFERRED BUSINESS

ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 37/2008

DEVELOPMENT APPLICATION NO: 8/2005/240/2
APPLICANT: ASQUITH & DE WITT P/L
OWNER: MR P TREVILLIEN
PROPERTY: LOT 1 , D.P 770815, 74 CHURCH ST WESTON
AREA: 13.76 HA
ZONING: 2(A) RESIDENTIAL
PROPOSAL: AMENDMENT TO CONDITIONS OF CONSENT
– TWENTY-SIX (26) LOT SUBDIVISION.

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

SUMMARY:

Council at its meeting of 7 February 2007 granted consent to a subdivision creating twenty-six (26) lots on Lot 1, D.P 770815, Church Street, Weston. The applicant has sought to modify the conditions of consent under the provisions of Section 96 of the Environmental Planning & Assessment Act with respect to conditions for the provision of road infrastructure, a Construction Management Plan, restrictions concerning development over land subject to the 1:100 year ARI flood event and the dedication of land adjoining Swamp Creek as a drainage reserve.

The principle issue in assessment of the modification has been the reduction in the requirements for road work associated with the subdivision. Discussions to date have focussed on the principles of nexus between the scale of the development and the works required.

The satisfaction of community concerns raised in the assessment of the original proposal relied upon compliance with the full extent of the works required by conditions 9, 10 & 11 of the original consent. The original conditions of consent addressed community objections with respect to dust and traffic hazards on Bailey's Lane, the existing unsatisfactory condition of Bailey's Lane and limited prospects of for improvements to be delivered in the short term by further development in the locality. The proposed amendment, if approved, would result in the retention of the existing unsatisfactory vehicle access to the twenty-six lot subdivision without proper regard to Section 79C of the Environmental Planning & Assessment Act .

The amendment proposes a construction limit of 400 metres over the length of Church Street to the intersection of Bailey's Lane. Any improvement to the remainder of Bailey's Lane would therefore rely upon Council and the scale and timing of future development to address the issues of dust and traffic safety raised by community objection to the amendment.

The balance of the proposed modifications, other than road works, were determined to be satisfactory in that they would not substantially alter the intent of the original development consent.

The modifications sought to the means of vehicle access would have the effect of substantially amending the basis on which Council supported the original proposal. The resulting subdivision would not be adequately serviced and the safety and amenity of existing residents significantly affected. It is recommended that the application to modify the original conditions of consent be refused.

PROPOSAL:

The original proposal was approved by Council at its meeting of 7 February, 2007 granting consent subject to conditions. The applicant has proposed to amend the following conditions of consent:

9. *The registered proprietor of the land shall construct a six (6) metre wide seal on an eight (8) metre wide gravel formation from Frame Drive within Bailey's Lane and Church Street to the northern boundary of the subject site in accordance with Council's 'Engineering Requirements for Development' to serve the subdivision. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the Civil Works.*

Reason

To provide appropriate means of access to the development.

The applicant has indicated that the extent of the works beyond the 400 metres offered from the development site are unreasonable based on traffic figures provided by TPK & Associates in June 2007.

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

- i) Construct concrete roll kerb and gutter on both sides of the road.*
- ii) Construct and gravel road to allow for an 8 metre wide carriageway.*
- iii) Place an 8 metre wide 2 coat bitumen seal.*
- iv) Construct an asphalt cul-de-sac head with a 9.5 metre radius*
- v) Form/topdress/grass seed footpath.*
- vi) 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.

The applicant has indicated that the need to provide full construction to include kerb and gutter is unreasonable based on the report provided by TPK & Associates in support of the amendment.

11. *The registered proprietor of the land shall construct the following at the intersection of Frame Drive and Bailey's Lane in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by the Development Services Manager prior to release of the Construction Certificate for the Civil Works.*
1. *Construct a shoulder widening on the western side of Frame Drive in accordance with Council's standard drawing SD18 for 80 kph speed environment.*
 2. *Construct a left turn treatment in accordance with Austroads Pt 5 'Intersections at Grade' Figure 5.16 desirable" requirements.'*
 3. *Place two (2) coat hot bitumen seal on new works.*
 4. *Construct drainage works as necessary.*

Reason

To ensure the public road facilities are upgraded to an appropriate standard as a result of additional requirements of the development.

The intersection works applied are considered by the applicant to be unreasonable based on the number of lots to be created.

- 15 *A construction management plan shall be submitted with the application for the Construction Certificate for the Civil Works. 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.

The applicant has requested that the requirements be met before the commencement of works rather than prior to release of a Construction Certificate for the works.

29. *The applicant shall dedicate all major watercourses as drainage reserves at no cost to Council. The area of required dedication shall be determined by the extent of inundation of the 1 in 100 year Average Recurrence Interval (ARI) flood event or the defined banks of the creek, whichever is the greater. This may require minor adjustments to lot boundaries.*

Note: Major watercourses shall be defined as those watercourses and natural flowpaths that have a flood velocity of 1 m/s and/or a flood discharge of 1m³/s for the 1 in 100 year ARI flood.

The applicant has requested that Council consider an extension of proposed minor filling in order that the restriction mentioned may be removed from the title to each of the lots affected.

- 32 *The applicant shall dedicate all major watercourses as drainage reserves at no cost to Council. The area of required dedication shall be determined by the extent of inundation of the 1 in 100 year Average Recurrence Interval (ARI) flood event or the defined banks of the creek, whichever is the greater. This may require minor adjustments to lot boundary*

Note: Major watercourses shall be defined as those watercourses and natural flowpaths that have a flood velocity of 1 m/s and/or a flood discharge of 1m³/s for the 1 in 100 year ARI flood.

Reason

To ensure the dedication and preservation of all major watercourses within public ownership.

The applicant has asked that the reserve be held in private ownership rather than dedicated to Council as drainage reserve.

A copy of the applicants submission, including an amended traffic study prepared by TPK & Associates and supporting documents are enclosed.

SITE DESCRIPTION:

The development site lies adjacent to Swamp Creek and Church Street, Weston in a locality characterised by small acreages. The area lies to the south of the Gingers Lane precinct which comprises lots of up to 2 hectares and smaller “lifestyle” lots of up to 4000 sq metres fronting Frame Drive and Baileys Lane to the West. The site is to be accessed via Church Street which is unformed and Bailey’s Lane to the Intersection with Frame Drive. Baileys Lane is approximately 740 metres long to the intersection of Church Street which is approximately 400 metres from the subject land.

The existing Bailey's Lane pavement from Frame Drive to Church Street consists of:

- 5m wide gravel pavement for a distance of 200 metres from the Frame Drive intersection.
- The next 145 m (approximate) length is a 3.5m wide sealed pavement.
- The next 145 m (approximate) length fronts "Lonsdale Place", a twelve lot subdivision, and has a 5m wide sealed pavement with roll kerb and gutter on the eastern side.
- The remaining 250m to the intersection with Church Street is a 4m wide gravel pavement.

The Church street section (400 metres) to the subject land is unformed.

The subject land is presently zoned 2(a) Residential, The site is intended to be rezoned under the provisions of the 2008 LEP Amendment to R5 – Minimum Lot size of 4 Hectares. A map of the extent of the proposed amendments is enclosed and indicates the reduction in future lot yield from undeveloped lots in the location should the "backzoning" occur.

PUBLIC EXHIBITION:

The amendment has been notified and exhibited in accordance with Council's Policy. Council received three (3) submissions with respect to the amendment which raised the following issues:

- The local road network is inadequate to serve the needs of the development .
- The conditions imposed by the original consent should not be "watered down" by deletion of the roadwork requirements.

The comments raised are consistent with those considered by Council at its meeting of 7 February, 2007 at which time concerns were raised regarding the capacity of Bailey's Lane to safely handle the additional traffic generation. In addition, the need to seal Bailey's Lane was raised due to the implications of additional dust and noise generation associated with the increase in traffic. The conditions of consent imposed by the original consent directly addressed the issues raised by requiring the sealing of Bailey's Lane.

PLANNING ASSESSMENT:

Section 79C – Environmental Planning & Assessment Act 1979 – Suitability of the site for the development.

The suitability of the site for the approved subdivision relied upon suitable measures being imposed to address the provision of safe and trafficable vehicle access. Based on the RTA's *Guide to Traffic Generating Development* the approved development gives rise to 234 additional vehicle trips per day and 22 peak hour vehicle trips on Bailey's Lane. It is considered that the deletion of the measures proposed to mitigate the impact of this additional traffic would result in the site no longer being suitable by virtue of inadequate road infrastructure..

The following comments relate to the Conditions of Consent that have been requested to be amended by the Section 96 application:

Condition 9

Condition 9 requires the construction of a 6m wide sealed pavement on an 8m wide gravel formation from Frame Drive within Bailey's Lane and Church Street to the northern boundary of the subject site.

In accordance with Council's Engineering Requirements for Development for semi-rural roads the road construction should consist of a 6m minimum wide carriageway and rolled kerb and gutter.

As Baileys Lane serves 18 lots of which 15 may have development potential it would seem reasonable to apportion the costs associated with upgrading Bailey's Lane and Church Street when they develop. The issue is that the current Section 94 Plan specific to contributions for urban road works in the vicinity is limited to providing \$789 (current figures) per additional lot created which will not address the scale of works required in the near future.

At present, there is no mechanism in place to ensure construction of the required works in the immediate future other than where Council undertakes the construction. Council does not have the funds to undertake the construction at this time.

Condition 10

Condition 10 requires the construction of Church Street across the frontage of the subject site to include an 8m wide sealed pavement, roll kerb and gutter on both sides of the road and a sealed cul de sac with 9.5m wide radius.

In accordance with Council's Engineering Requirements for Development for semi rural roads, the road construction should consist of a 6m wide carriageway with rolled kerb and gutter on both sides of the road.

The applicant requests that roll top kerb and gutter be required adjacent to the frontage of the subject site only.

This is considered satisfactory provided the roll kerb and gutter continues around the head of the cul-de-sac to provide effective drainage.

Condition 11

Condition 11 requires the construction of the intersection of Frame Drive and Bailey's Lane in accordance with Council's standard drawing SD18 with an Austroads Pt 5 "Intersections at Grade" Figure 5 "desirable" left turn treatment. A two (2) coat seal is to be placed on all works.

The applicant requests that no additional intersection works be required based on the fact that approximately 100 metres to the south of the intersection on Frame Drive, the single carriageway bridge limits traffic flow in the immediate vicinity thereby removing the need for intersection works.

The basis of determining the type of intersection required to be constructed at Bailey's Lane and Frame Drive was an assessment of the existing traffic generated by the neighbouring lots that gain vehicle access from Baileys Lane and the estimated traffic to be generated by the proposed development.

Once the subject land is fully developed it is estimated that Bailey's Lane would experience a total of approximately 45 vehicle trips per hour. In accordance with the Austroads "Guide to Traffic Engineering Practice" (Part 5: Intersections at grade) the proposed traffic generation from the subject site, in conjunction with the existing neighbouring lots that have direct access from Bailey's Lane, would warrant the construction of a Rural Type "B" intersection at the intersection of Frame Drive and Bailey's Lane.

A Type B intersection as outlined in Condition No. 11 would be costly to construct given the height of the road compared to the adjoining properties; the extent of the existing drainage in the vicinity and the need for retaining walls if land for road widening purposes is not dedicated. The intersection will benefit a number of properties with development potential which may contribute over time to its construction, however, to proceed with the subdivision as originally approved demands a Type B intersection in accordance with Austroads Part 5 "Intersections at Grade".

Condition 15

The applicant's request to amend this condition to require the Construction Management Plan to be submitted prior to the commencement of works rather than the issue of a Construction Certificate is supported. Council presently requires notice to be given of the intention to commence works such that the lodgement of a satisfactory Construction Management Plan may be confirmed prior to any work being undertaken.

Condition 29

The applicant proposes minor filling of Lots 1 – 5 to enable the removal of the requirement to create an 88B instrument over lots 1 to 5 restricting the finished floor height of the future dwellings on those lots to 500mm above the 1 in 100 year ARI level. The filling is of a minor nature and limited to the area at the southern most boundary of each lot. The fill does not extend into the 20 metre riparian buffer zone. The limited extent of the fill has been considered by Council's Roads, Bridges & Drainage Manager and may be dealt with by details submitted in conjunction with Construction Certificate for the Civil works.

Condition 32

The applicant proposes that this condition which requires the dedication of all major water courses as drainage reserves to Council be deleted.

It is in Council's best interest not to add this portion of land to its asset section and retain with the future owner of proposed lot 7. The Integrated Approval conditions imposed under the provisions of Part 3A of the *Rivers & Foreshores Act* controls the likely impact of any future use of the area adjoining Swamp Creek. The issue of ownership/responsibility for compliance with these conditions is not considered critical to the subdivision

CONCLUSION:

The modification to consent would result in unsatisfactory means of vehicle access being provided to the twenty-six lot subdivision. Council's support of the original proposal included the provision of works in the locality which addressed community concerns with regard traffic safety and amenity. In addition, the amendment would have the effect of placing unreasonable demands on Council to construct the required works if the subdivision proceeds. It is recommended that the proposed modification be refused.

RECOMMENDATION that the application to modify development consent 8/2005/240/1 for a twenty-six lot subdivision of Lot 1 D.P 770815 Church Street Weston under Section 96 of the Environmental Planning & Assessment Act, 1979 be refused for the following reasons:-

1. The modification to consent will result in unsatisfactory means of vehicle access to the proposed subdivision contrary to Section 79C of the Environmental Planning & Assessment Act, 1979.
2. The modification to consent will result in unreasonable demands for the provision of services on Council contrary to the provisions of the Cessnock Local Environmental Plan 1989.
3. The modification to consent is not considered to be in the public interest on the basis that it will adversely affect the nature and capacity of the existing road network in the locality.

To: **The General Manager**
Corporate & Regulatory Services
Committee – 21 May 2008

D FITZGERALD
ACTING DIRECTOR CORPORATE &
REGULATORY SERVICES
12 May 2008

MOTION **Moved:** Councillor Pynsent **Seconded:** Councillor Maybury
886 (21/05/2008)

RECOMMENDED that the application to modify development consent 8/2005/240/1 for a twenty-six lot subdivision of Lot 1 D.P 770815 Church Street Weston under Section 96 of the Environmental Planning & Assessment Act, 1979 be **DEFERRED** until the next meeting of Council, due to the report being the subject of an address to Council earlier in the evening.

OFFICER'S REPORTS

DIRECTOR CITY PLANNING REPORT NO. 38/2008

DEVELOPMENT APPLICATION NO: 8/2007/755/1
APPLICANT: MRS K R CULLEY
OWNER: MR T R & MR R J PRESCOTT
PROPERTY: LOTS 3 & 4 SECTION 15 DP 758576 NOS 17 -
19 CESSNOCK STREET KITCHENER
AREA: 2,007 SQUARE METRES
ZONING: ZONE NO 2(B) - VILLAGE ZONE
PROPOSAL: ALTERATIONS AND ADDITIONS TO
KHARTOUM HOTEL

Mr Rod Sandell , Senior Planning Assessment Officer , reports:-

SUMMARY:

Application has been received for alterations and additions to the existing hotel involving the provision of a large open-sided outdoor smoking area on the northern side of the building. The application has been notified to adjoining owner/occupiers in accordance with Council DCP 2006 and one objection was received. The applicant has been directed to submit amended plans in order to comply with Council's requirements for the development. The proposed development is recommended for refusal as the proposal does not comply with Council's requirements for a development of this nature and the applicant has not been prepared to submit amended plans to address the deficiencies of the proposal.

PROPOSAL:

The proposal seeks the construction of a large open-sided outdoor smoking area connected to the existing hotel and located on the northern side of the existing building. The extension measures seven (7) metres in width with an overall length of 21.58 metres and an area of approximately 146 square metres. The extension is of single storey construction and is proposed to be connected to the hotel at the same floor level with openings provided between the existing hotel and the addition. The front wall of the proposed additions are proposed to be constructed within 400mm of the Cessnock Road property boundary.

The addition is proposed to be constructed using treated timber and with a colorbond corrugated roof. The proposed additions have been designed with features such as selected handrailing and gables to match the existing Khartoum hotel.

The applicants have provided separate statements relating to the issues of the heritage value of the hotel and Council's requirement for an access to Cessnock Road. These matters are further discussed in the following report.

BACKGROUND:

The submission of the application for the proposed additions has coincided with an application to regularise the use of an unauthorised structure as an outdoor seating area (Development Application No. 8/2007/490/1). The present application should be considered in conjunction with this application in order to appreciate the overall impact of both developments and their interrelationship.

In relation to the present application the applicants have been advised that Council is concerned that the proposed additions/alterations to the hotel will be located over the principal access into the site from Cessnock Road. This access presently facilitates the servicing of the development and provides access to the on-site parking of vehicles for hotel patrons including those people who are accommodated within the hotel.

The applicant has been advised that should Council grant consent to the application it will require a sealed vehicular access from Cessnock Road to the rear of the subject land for servicing and parking of patrons vehicles. This would necessitate the relocation of the present access driveway and the applicant has been required to submit amended plans to show an alternative location for the access driveway. The applicant has not responded to the request for amended plans and has verbally indicated a reluctance to comply with this requirement.

SITE DESCRIPTION:

The subject site consists of two (2) lots with a frontage of forty (40) metres to Cessnock Road and a depth of over 50 metres and area of 2027 square metres. Lot 4 contains the Khartoum Hotel which is located at the front of the lot with an awning over the footpath and access within the footpath for a cellar beneath the hotel. The hotel contains a dining area, bistro and bar areas and a second level which contains accommodation for guests. Towards the rear of Lot 4 are several sheds for storage, a service yard and a parking/turning area for vehicles.

Lot 3 presently contains the unauthorised structure together with a pergola towards the front and in the middle of the lot in a fenced off area used as a beer garden. The rear of the lot appears to be used for the informal parking of vehicles. The rear of the two (2) lots adjoin a six (6) metre wide laneway running between Stanford and Heddon Streets.

Vehicular access to the rear of the subject lots is via an unsealed driveway from Cessnock Road. The rear laneway which is unsealed is also used for access into the rear of the two (2) lots.

PUBLIC NOTIFICATION (S79C.d):

The proposal has been notified in accordance with Council's DCP 2006 – Part B – Chapter B.3 Advertising and Notification Plan for a minimum period of fifteen (15) days and one submission was received from an adjoining owner/occupier. The objector has raised concern about the overall operation of the hotel with the creation of loud noise and music associated with the hotel's activities and specifically with the informal parking of patrons vehicles at the front of the hotel and adjoining dwellings.

At the present time there is no clearly defined footpath in Cessnock Road and hotel patrons park in front of the hotel and up to the Cessnock Road property boundary. The objector has stated it has been necessary for him to erect a fence on his Cessnock Road property boundary in order to prevent hotel patrons from parking on his property.

The objectors concerns are discussed further in the report.

STATUTORY SITUATION (S79C.a):

The zoning of the subject site is Zone No 2 (b) – Village Zone and under the provisions of the Cessnock Local Environmental Plan, 1989, development consent is required for the alterations and additions to the existing hotel in this zone.

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

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

a) The Likely Impacts of that Development

Context and setting – the subject site is located in the village of Kitchener and on Cessnock Road which is the main arterial road carrying traffic between Cessnock and other rural districts such as Quorrobolong. The Khartoum Hotel is the most significant building along this road frontage due in part to its setting amongst dated cottages within the village, its additional height (two storey), location at the street frontage and its recognisable interest as a building of some heritage value (discussed below).

The construction of the proposed addition/alteration has been designed to be in keeping with the existing hotel. The design of the additions have included features such as handrailings and gables on the roof to match and complement the adjoining hotel building.

The proposed alteration/addition however will be located over the primary access into the site which presently provides access to facilitate servicing of the development and the on-site parking of vehicles for hotel patrons including those people who are accommodated within the hotel.

The applicants have opposed the relocation of the existing access driveway off Cessnock Road and have stated that all access can be made available off the rear laneway. This is contrary to Council Policy and will result in service vehicles and patrons wishing to park within the grounds of the hotel to use the rear lane for access. This will adversely impact upon the amenity of residents within the area whose residential properties adjoin the laneway.

Heritage – the Khartoum Hotel is identified as a heritage item requiring further investigation (Schedule 4) under the Hunter Regional Environmental Plan, 1989 (Heritage).

Clause 13 of the Plan states that *“Council shall not grant consent to an application to carry out development on land in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.*

In this regard the application has been referred to Council’s Heritage Advisor who has indicated in general terms that while the proposed verandah will enhance the streetscape some of the details of the design of the additions such as the repeated gable and an aluminium balustrade could be improved. The Advisor has also requested that a Statement of Heritage Impact be submitted with the application. The applicant is opposed to the submission of this information.

Access and Traffic – no objection is raised to the continued use of the existing loading and unloading arrangement for the weekly deliveries of kegs and food to the front of the hotel. However access is presently available to the rear of the site from Cessnock Road and this principal means of access must be retained to cater for commercial vehicles servicing the hotel and for hotel patrons wishing to park their vehicles on the site including those occupying hotel accommodation. It is further noted that disabled access is not available to the hotel from the front of the building.

Council's Policy D5.3 (Development Applications Adjacent to Rear Lanes) adopted 30 November 2005 states:-

POLICY

1. Developments Proposing Access to Council's Road Network via a Rear Lane

Council as a matter of course will not give approval to developments proposing to use a rear lane as its principal access to Council's road network. Under section 79C(1) of the Environmental Planning and Assessment Act 1979, a lane is not considered to be "appropriately constructed infrastructure" to adequately address access, transport and traffic impacts.

For Council to consider development proposing access to Council's road network via a rear lane, the developer must convince Council that such access does not compromise safety and amenity, and all works required to upgrade the lane and the intersection(s) with the adjoining Council street are to be at full cost to the developer.

The applicant's proposal to use the rear laneway as their access to the site is contrary to this policy and they have not demonstrated that such access does not compromise the safety and amenity of those residents whose residential properties adjoin the laneway.

In terms of the provision of on-site car parking it is considered that no additional traffic is likely to be generated by the proposal as the additions to the existing hotel would essentially accommodate the existing clientele that smoke. The proposal to allow parking on the opposite side of Cessnock Road is not supported from a traffic/pedestrian management point of view particularly as an opportunity exists to formalise the parking that presently exists on the subject site. This should include the provision of a disabled car parking space on the subject site.

Social Impact in the Locality – the proposed development is likely to have a negative social impact on the health and safety of those residents whose properties adjoin the rear laneway as all vehicles accessing the hotel site will be encouraged to use the unsealed laneway to gain access to the hotel. This is likely to create an increase in noise and dust for those residents.

Site Design – the design of the proposed additions and alterations is considered unsatisfactory due to the location of the proposed development over the principal means of access into the site and the inadequate provision of access and facilities for the disabled. The applicants have proposed a substantial addition/alteration to the existing hotel, however, there has been no attempt to address the present lack of access into the hotel for the disabled and the lack of facilities for such persons.

Suitability of the Site for the Development

The subject site is suitable for the proposed development however the siting and design of the proposal is required to be amended if the application is to be approved. The applicant has shown a reluctance to amend the proposal to conform to Council's requirements for the development. Appropriate amendments to the design of the alterations/additions would also ensure the proposal is compatible with conserving the heritage significance of the site.

RECOMMENDATION that Development Application No. 8/2007/755/1 for alterations and additions to the Khartoum hotel on Lots 3 & 4 Section 15 DP 758576 Nos 17 – 19 Cessnock Road, Kitchener be refused for the following reasons:

1. Inadequate provision has been made for vehicular access onto the site for vehicles servicing the existing hotel and for the parking of vehicles generated by the hotel.
2. Inadequate provision has been made on the site for access and facilities for the disabled.
3. The proposed development is contrary to Council's Policy D5.3 (Development Proposing Access to Council's Road Network via a Rear Lane) and the applicant has not demonstrated that the use of such access does not compromise the safety and amenity of those residents whose residential properties adjoin the laneway.
4. The proposed development is likely to have an adverse impact on the amenity of the surrounding residential area as it will result in an increase in the use of the adjoining unsealed laneway by vehicles associated with the hotel resulting in an increase in noise and dust for residents.
5. Having regard to the circumstances of the case it is considered that an approval of the application would not be in the public interest.

To: ***The General Manager***
City Planning Committee –
4 June 2008

D FITZGERALD
DIRECTOR CITY PLANNING
8 May 2008

DIRECTOR CITY PLANNING REPORT NO. 39/2008

DEVELOPMENT APPLICATION NO: 8/2007/490/1
APPLICANT: KHARTOUM HOTEL
OWNER: T CULLEY & R PRESCOTT
PROPERTY: LOTS 3 & 4 SECTION 15 DP 758576 NOS 17 -
19 CESSNOCK ROAD KITCHENER
AREA: 2,027 SQUARE METRES
ZONING: ZONE NO 2(B) - VILLAGE ZONE
PROPOSAL: USE OF UNAUTHORISED STRUCTURE AS
AN OUTDOOR SEATING AREA

Mr Rod Sandell - Senior Planning Assessment Officer, reports:-

SUMMARY:

Application has been received to regularise the erection of an unauthorised structure as an outdoor seating area on the abovementioned site. The structure is located at the front of the site within the building line. The application has been notified to adjoining owner/occupiers in accordance with Council DCP 2006 and one objection was received. The proposed structure is recommended for refusal as it is out of character with development in the locality and has an adverse impact on the visual amenity of the streetscape and the adjoining heritage item.

PROPOSAL:

The proposal seeks to regularise the unauthorised erection and use of an existing structure as an outdoor seating area. The structure consists of a timber deck measuring approximately 4.2 metres square and located approximately 500mm off the ground on piers and bearers and joists. The structure is located in the north-western corner of the site at the Cessnock Road frontage with a 2.48 metre high reinforced concrete besser block wall on its northern and western sides. Steel posts are erected on top of the block wall to support a sailcloth above the deck. Electrical power cabling has been connected to the structure.

BACKGROUND:

The initial proposal sought approval of the existing structure as an outdoor stage to be used for musical purposes associated with functions at the Khartoum hotel. The adjoining yard area has been fenced off and developed as a beer garden and contains an existing covered pergola.

The application was amended to an outdoor seating area following advice provided by Council officers that an acoustic report would be required to accompany the application. It was considered that a noise nuisance would be created from the use of the structure as a stage.

SITE DESCRIPTION:

The subject site consists of two (2) lots with a frontage of forty (40) metres to Cessnock Road and a depth of over 50 metres and area of 2027 square metres. Lot 4 contains the Khartoum Hotel which is located at the front of the lot with an awning over the footpath and access within the footpath for a cellar beneath the hotel. The hotel contains a dining area, bistro and bar areas and a second level which contains accommodation for guests. Towards the rear of Lot 4 are several sheds for storage and a parking/turning area for vehicles. Lot 3 presently contains the unauthorised structure which is located on the Cessnock Road property boundary and thereby totally encroaching into the six (6) metre building line. Lot 3 also contains a pergola towards the front and in the middle of the lot in a fenced off area used as a beer garden. The rear of the lot appears to be used for the informal parking of vehicles. The rear of the two lots adjoin a 6 metre wide laneway running between Stanford and Heddon Streets which is unsealed and is used for access.

PUBLIC NOTIFICATION (S79C.d):

The proposal has been notified in accordance with Council's DCP 2006 – Part B – Chapter B.3 Advertising and Notification Plan for a minimum period of fifteen (15) days and one submission was received from an adjoining owner/occupier. The objector has raised concern about the unauthorised nature of the development and stated that the structure is an eyesore. The resident claims that over *'the past eighteen (18) months I have been subjected to missiles of alcohol cans – thongs – abuse from patrons and noise so high, I can't hear my TV and no privacy from peeping eyes.'*

The objectors concerns are discussed further in the report.

STATUTORY SITUATION (S79C.a):

The zoning of the subject site is Zone No 2 (b) – Village Zone and under the provisions of the Cessnock Local Environmental Plan, 1989, development consent is required for the existing structure which has been constructed without development consent. The structure does not represent exempt or complying development as it does not satisfy the criteria that must be satisfied eg the structure is located within the designated building line for this zone which is six (6) metres.

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:

b) The Likely Impacts of that Development

Context and setting – the subject site is located in the village of Kitchener and on Cessnock Road which is the main arterial road carrying traffic between Cessnock and other rural districts such as Quorrobolong. The Khartoum Hotel is the most significant building along this road frontage due in part to its setting amongst cottages within the village, its additional height (two storey), location at the street frontage and its recognisable interest as a building of some heritage value (discussed below).

The construction of the unauthorised structure comprising a 2.48 metre high besser block wall 4.42 metres in length along the Cessnock Road frontage and returning the same distance along the northern boundary of the site and then topped with steel posts 1.28 metres high and covered with a sail cloth visually detracts from the character and amenity of the existing streetscape. The structure is visually obtrusive when viewed from the street frontage due to its bulk and height and markedly detracts from the hotel as an item of heritage value.

Heritage – the Khartoum Hotel is identified as a heritage item requiring further investigation (Schedule 4) under the Hunter Regional Environmental Plan, 1989 (Heritage).

Clause 13 of the Plan states that *“Council shall not grant consent to an application to carry out development on land in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.*

In this regard it is concluded that the proposed development has an adverse impact on the Khartoum Hotel as a heritage item as its location at the street frontage and its construction in materials unsympathetic and incompatible with the hotel result in a structure which visually detracts from the heritage significance of the hotel in the village streetscape.

Noise and vibration – as indicated above the applicant has amended the application from a musical stage to an outdoor seating area. The proposal is opposed by the adjoining neighbour due to the close proximity of the structure to the adjoining dwelling. The location of the structure close to the adjoining dwelling has resulted in a loss of amenity for the residents occupying that dwelling.

Social Impact in the Locality – the retention of the existing structure will have a negative social impact in the locality as its location will provide a greater potential for use by hotel patrons and therefore a greater potential for conflict between hotel patrons and residents in the adjoining dwelling and in the adjoining urban village in general.

Site Design – the location of the proposed structure is contrary to Council’s Building Line Policy (B32.4 adopted 20 March 1996) which requires a building line of six (6) metres. In developed areas the objectives of the building lines policy are to ensure that new development enhances and makes a positive contribution to the character of the existing streetscape and environment.

No justification has been provided in respect of the location of the structure within the building line and it is considered that it makes a negative rather than positive contribution to the character of the existing streetscape and environment. The height and bulk of the structure dominates the frontage of Lot 3 and creates an overbearing impact for any pedestrians using the footpath area.

c) The Suitability of the Site for the Development

It is considered that it is the location of the proposed structure which is unsuitable in the circumstances of this case. The structure should not have been erected within the building line and due to its design, height and bulk is incompatible with the conservation of the heritage significance of the adjoining hotel.

RECOMMENDATION that:-

- A)** Development Application No. 8/2007/490/1 for the use of an existing structure as an outdoor seating area on Lots 3 & 4 Section 15 DP 758576 Nos 17 – 19 Cessnock Road, Kitchener be refused for the following reasons:
2. The existing structure has an adverse impact on the character of development in the locality and has an adverse impact on the visual amenity of the streetscape.
 3. The existing structure is unsympathetic and incompatible with the adjoining heritage item resulting in a structure which visually detracts from the heritage significance of the Khartoum hotel in the local streetscape.
 4. The location of the structure and its proposed use will adversely impact on the amenity of the adjoining residential property due to adverse noise impacts.
 5. The location of the existing structure is contrary to the provisions of Council's Building Line Policy (B32.4 adopted 20 March 1996) which requires a building line of six (6) metres.
 6. Having regard to the circumstances of the case it is considered that an approval of the application would not be in the public interest.
- B)** Proceedings be commenced seeking a demolition of the existing structure at the earliest possible time.

To: **The General Manager**
City Planning Committee -
4 June 2008

D FITZGERALD
DIRECTOR CITY PLANNING
8 May 2008

DIRECTOR CITY PLANNING REPORT NO. 40/2008

DEVELOPMENT APPLICATION NO: 8/2007/424/1
APPLICANT/OWNER: MR R J & MRS R D MACINTYRE
PROPERTY: LOT 22 DP 847827 NO. 4A NELSON STREET
GRETA
AREA: 4828 SQUARE METRES
ZONING: 1(C) - RURAL-RESIDENTIAL/RURAL (SMALL
HOLDINGS) ZONE
PROPOSAL: CHILD CARE CENTRE

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

SUMMARY:

Application has been received for the establishment of a large child care centre at the abovementioned address. The proposal has been notified to adjoining owner/occupiers in accordance with Council policy and two (2) submissions have been received from local residents objecting to the application. The concerns raised by residents include the adequacy of services for the development, the appropriateness of the centre in the locality and the impact of the proposal on the amenity of adjoining residents due to potential loss of privacy and increase in noise. These matters have been addressed and the application is recommended for approval.

PROPOSAL:

The proposed child care centre involves the erection of a single storey child care building approximately 23 metres wide and 45 metres in length and containing six (6) playroom areas, administration offices and staff facilities, kitchen, amenities and change rooms. There are also three (3) separate outdoor play areas. The applicant has advised that the centre will cater for a total of one hundred and six (106) children with a maximum of thirty (30) children in after school care, to be accommodated as follows:-

- 2 rooms each accommodating 20 children in the age range 3 – 6 years.
- 1 room accommodating 16 children in the age range 2 – 3 years.
- 2 rooms each accommodating 10 children in the age range 0 – 2 years, and
- 1 room accommodating 30 children of school age in an after school care facility.

The hours of operation of the child care centre will be from 6.30am to 6.30pm and there will be twelve (12) primary carers employed together with one clerical staff member and 2 cleaners.

A car parking area for thirty (30) vehicles is to be provided at the front of the site including two (2) disabled spaces and set down/pick up areas. The site is to be formally landscaped in accordance with the submitted landscape plan.

The application is accompanied by a noise impact assessment to determine the noise impact the operation of the child care will have on nearby residential receivers. The assessment considers vehicles entering and leaving the premises and manoeuvring on the site, site activity (children playing, crying, etc) and mechanical plant (air conditioning, kitchen exhaust).

SITE DESCRIPTION:

The subject site is rectangular in shape with a frontage of approximately 49 metres to Nelson Street and a depth of approximately 100 metres. The site is vacant and falls gently from Nelson Street to the north-eastern corner of the site and contains no significant vegetation.

PUBLIC NOTIFICATION (S79C.d):

The proposed development has been notified for a fifteen (15) day period to adjoining owner/occupiers in accordance with the provisions of Council's Development Control Plan 2006 (Part B – General Information – Chapter B.2 Public Notification and Advertising) and two (2) submissions have been received from the nearest residents to the east and north of the subject site.

Local residents are concerned about the provision of services to the development including water and sewage, the fencing of the property and the appropriateness of the use within the locality. Due to the size of the centre noise from the operation is a concern together with a potential for loss of privacy. Traffic management and the safety of the access into the site has been raised as well as the possibility that development may result in a reduction of property values in the area.

The grounds of objection from local residents will be discussed in detail in the following report.

STATUTORY SITUATION (S79C.a):

The zoning of the subject land is 1 (c) – Rural – Residential/Rural (Small Holdings) and under the provisions of the Cessnock Local Environmental Plan (LEP), 1989, as amended, the proposal is permissible only with the consent of Council within this zone.

The definition of a child care centre is contained within Clause 5(1) of the LEP and

“child care centre” means a building or place used for the purpose of caring for children and includes –

- a) a dwelling-house adapted for use solely for that purpose;*
- b) a public hall used for that purpose; or*
- c) part of a shop or factory used for that purpose,*

but does not include a dwelling being used as a domicile.

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

The proposed development is affected by Council's Cessnock Development Control Plan 2006 under the Part C: General Guidelines – C.1 Parking and Access. In this regard the applicant was required to submit a traffic impact study for the subject site. This study has been considered by Council officers and the car parking provision for the proposed development is deemed to be adequate. This matter will be discussed further in the following report.

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

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

a) The Provisions of the Cessnock Local Environmental Plan, 1989

The proposed child care centre conforms to the definition of a child care centre under Clause 5 of the Plan and is consistent with the following objectives of the 1 (c) – Rural- Residential/Rural (Small Holdings) zone:

- i) to enable small holdings development to be carried out on land which is suitable for that purpose, and
- ii) to enable other forms of development to be carried out on land within the zone if they are in keeping with the rural character of the locality and are compatible with existing or likely future small holdings.

The proposal is considered to be in keeping with the character of the locality and compatible with the rural/residential development that has taken place on these larger than normal lots.

b) The Likely Impacts of that Development

Context and Setting

The proposed centre is to be located in close proximity to the zoned village of Greta. Dwelling houses on large rural/residential lots of similar size to the subject site are situated on either side of the land on which the centre is to be established. The building will be set back approximately 36 metres from Nelson Street and with side boundary setbacks of over 10 metres to the eastern boundary, over 15 metres to the western boundary and over 18 metres to the northern boundary.

The proposed centre has been designed as a single storey building with slab on ground and brick veneer construction and with a low pitched roof of sheet metal cladding. When viewed from Nelson Street the building itself will not be out of character with the adjoining residential buildings. The car parking area provided between the building and Nelson Street will be extensively landscaped to soften the appearance of this large sealed area from the public road.

The dwelling adjoining to the east is of brick construction and located close to the common boundary with the subject lot. A metal fence 1.5m high is located on the boundary from the front of the dwelling to the rear of the lot adjoining the new centre. Both the fence and existing landscaping within the adjoining lot together with additional landscaping proposed within the new centre will act as a visual and to a lesser extent an acoustical privacy screen between the centre and the adjoining owners. Similar treatment is also proposed on the western and northern boundaries of the lot with the adjoining dwellings being located further away from the proposed centre. The proposed landscaping of the development is a key consideration in the proposal and a revised landscape plan is required to ensure an adequate density of plantings is provided.

Access and Traffic

Under Council's DCP 2006, Part C – General Guidelines, a total of thirty seven (37) car parking spaces are required for the proposed development. Thirty (30) car parking spaces plus three (3) spaces for set down/pick up are provided.

Vehicular access and the adequacy of the proposed car parking area have been assessed by Council officers following the submission of a Traffic Impact Study by the applicant. A requirement of any consent to be issued would be for the construction of kerb and gutter and a 1.2 metre wide concrete footpath across the frontage of the site which would be used by parents and carers as an additional set down and pick up area.

Council's DCP 2006 states, *Council may give consideration to varying the specified parking requirement, depending upon the nature and type of street frontage available for the setting down and picking up of children.*” It is considered that the thirty (30) car parking spaces and three (3) set down/pick up bays are satisfactory with respect to the number of car parking spaces for the proposed development given the formalised on-street parking to also be provided (minimum of five (5) vehicles).

The Traffic Impact Study report outlines that although the speed limit in Nelson Street is 60km/hour there are no reminder sign posts between the New England Highway and the railway line. The report suggests that to reduce the speeds of vehicles travelling on Nelson Street past the subject site that 60km/hour sign posts should be placed in the vicinity of the site. Should Council grant consent to the application it will be required that the matter be forwarded to the Local Traffic Committee to obtain the necessary approval to install 60km/hour speed signs in Nelson Street.

Utilities

A reticulated water service is available to the subject site. However the land is not directly serviced by sewer and cannot be serviced by gravity connection. Hunter Water have offered the proponent the option of servicing the development by way of a macerated sewage system involving the pumping of sewage to Hunter Water's mains.

Noise and Vibration

The applicant was advised during the initial processing of the application that the location of the centre within a rural/residential area would have an impact on the residential amenity of adjoining land owners due to the low density of adjoining development, low background noise levels and limited existing traffic movements. The potential impacts would arise from the proposed hours of operation, noise from the facility and increased traffic movements and a noise impact assessment was therefore required.

In response, the applicant provided a list of mitigation measures in order to provide acoustic protection for the adjoining neighbours. In addition the applicant proposed limited access to the outdoor play areas as a means of reducing any noise nuisance. Additional mitigation measures proposed by the applicant included:-

- a) an extensive vegetation buffer along each of the boundaries to reduce any noise impact and to provide a privacy screen
- b) a secondary fence inside the line of the vegetation to increase the separation of play areas to neighbouring dwellings
- c) the location and screening of air conditioning equipment as far as practical from adjoining residences and the connection of this unit to timers to ensure any noise impact is programmed to occur during allocated times of the day with least impact.

Submissions received from residents within the local area raise concerns about noise impacts and the adequacy of fencing. A noise impact assessment was recently submitted by the applicant. The report considered vehicles entering and leaving the premises and manoeuvring on the site, site activity (children playing, crying, etc) and mechanical plant (air conditioning, kitchen exhaust). The assessment concluded that provided a range of recommended noise control measures were adopted noise from the site will be either within the criteria or generally below the existing noise level in the area for the majority of the time. Such measures include the erection of acoustic fences 1800mm in height along the full length of the eastern and western site boundaries.

The proposed setbacks of the proposed centre from adjoining residences are considered adequate to ensure the visual and acoustic privacy of the occupiers provided adequate fencing and landscaping is undertaken. In this regard additional fencing and landscaping along the eastern boundary of the site including the relocation of the waste storage facility to its alternative location is required.

Natural Hazards

A Bushfire Hazard assessment report was submitted by the applicant and referred to the NSW Rural Fire Service for advice. The Service has issued a bush fire safety authority under Section 100B of the Rural Fires Act 1997 subject to a number of conditions which must be included in any consent granted by Council.

Safety and Security (Crime Prevention)

The design of the proposed development provides for a large open car park to the front of the entry to the child care centre with natural surveillance and visibility from a well trafficked public road (Nelson Street). The layout of the parking area for vehicular and pedestrian access is recommended in the Department of Community Services publication *Best Practice Guidelines in Early Childhood Physical Environments* as being the most appropriate for a child care centre.

In addition the centre will operate with a high number of staff before 9.30am and after 3.30pm to ensure the safety and security of children and staff attending the centre.

Social/Economic Impact

The proposed centre will create a number of positive social and economic benefits for the local community. The centre will create additional employment opportunities for persons in child care and provides parents of young children with access to childcare as there is presently no long day care facility in the area.

Suitability of the Site for the Development

The subject site is an appropriate site for the proposed development. It is a large, level site in close proximity to a residential area and it has been possible for the applicant to design the child care centre in accordance with highest standards of the government regulatory body and so as to have minimal impact on the amenity of the adjoining residential development.

CONCLUSION

The proposal for the erection of a new child care centre on the subject site is supported having regard to the provisions of the Cessnock Local Environmental Plan 1989 and Cessnock DCP 2006 and the proposed measures to mitigate the impact of the proposed development on the amenity of the adjoining rural/residential area. The design of the proposed building will be compatible with development within the surrounding area and will have a positive social and economic benefit for the local community

RECOMMENDATION that:-

- A** Development Application No. 8/2007/424/1 for the erection of a child care centre on Lot 22 DP 847827 No. 4A Nelson Street Greta be approved subject to compliance with the following conditions of consent:-

SCHEDULE 1

TERMS OF CONSENT

General

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

Reason

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

2. The proposed development shall be carried out strictly in accordance with the details set out on the application form, the Plans numbered Sheet A-01B, A-02A, A-03A dated May 2007 and Stormwater Drawing No. C03 (Job No. 07-221) dated 4/6/2007, the Statement of Environmental Effects dated May 2007, the recommendations contained within the Noise Impact Assessment (Report No. 07-1146-R1) prepared by Reverb Acoustics and dated May 2008 and any other information submitted in support of the application, except as modified by the conditions of this consent.

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

Reason

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

3. The applicant shall consider and adopt the summary of noise control recommendations contained within the Noise Impact Assessment (Report No. 07-1146-R1) dated May 2008 prepared by Reverb Acoustics when preparing the final building plans and specifications. The acoustic consultant shall be engaged to assist with the design, selection and location of any mechanical plant or equipment services to ensure that adequate acoustic attenuation is provided.

Reason

To ensure the buildings and associated plant and equipment is designed and constructed to ensure that appropriate noise control measures are implemented in order to protect the existing amenity of the neighbourhood.

4. The hours of operation of the proposed child care centre shall be restricted to 6.30am to 6.30pm from Monday to Friday.

Reason

To clarify the terms of Council's consent.

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

Reason

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

Design Considerations/Building Setbacks

6. 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.

7. The provision of additional boundary fencing in accordance with the recommendations contained within the Noise Impact Assessment (Report No. 07-1146-R1) prepared by Reverb Acoustics and dated May 2008 with the exception that the last six (6) metres of the fence be tapered down to a finishing height of 1metre at the Nelson Street property boundary.

Reason

To provide an additional privacy screen for the adjoining residents to the east of the subject site.

8. The proposed waste storage facility shown at the Nelson Street frontage of the site being removed and replaced with an additional landscaped area similar to that shown for the remainder of the site frontage. The designated waste storage facility shall become that area referred to on the submitted plans as "alternate waste storage area."

Reason

To provide a more practical and aesthetically appropriate location for the designated waste storage area for the proposed development.

Access, Carparking and Loading Arrangements

9. 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

10. 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

11. No advertising structures shall be erected and no advertising material shall be affixed or displayed on any building or land without the prior approval of Council.

Reason

To protect the scenic quality and character of the locality by controlling erection of advertising material.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

Landscaping

12. Prior to the issue of a Construction Certificate, the proponent shall submit to Council for approval, a revised landscape plan from a qualified landscape consultant providing for a more comprehensive planting schedule showing the inclusion of dense landscape plantings adjacent the adjoining dwellings and the outdoor living areas associated with each dwelling.

Reason

To ensure that adequate landscaping of the site has been provided to mitigate the visual and acoustic impact of the proposed development on adjoining rural/residential properties.

Access, Carparking and Loading Arrangements

13. The Registered Proprietors shall construct two (2) reinforced concrete access crossings from the kerb and gutter to the property boundary, including a layback in the kerb, in accordance with Council's Engineering Requirements for Development (available at Council's offices) and Australian Standard 2890.1 & 2 with respect to location, size and type of driveway. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the road works.

Reason

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

14. The registered proprietor of the land shall construct the following works along the property frontage and to link up with the existing kerb and gutter in Nelson Street, in accordance with Council's 'Engineering Requirements for Development'. The design is to be submitted on a set of plans, four (4) copies of which shall be submitted to and approved by 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 2 coat bitumen seal on road shoulders.
 - iv) Construct a 1.2m wide concrete footpath.
 - v) 60 km/hr speed sign posts on both sides of the road are to be placed in the vicinity of the southern boundary of the site.
 - vi) 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.

15. On-site car parking shall be provided for a minimum of thirty (30) vehicles and a set down/ pick up bay for three (3) vehicles and such being set out generally in accordance with Council's Car Parking Code. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the buildings.

Reason

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

16. Kerbing or dwarf walls 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 release of the Construction Certificate for the buildings.

Reason

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

17. All driveways, access corridors and carparking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The carparking areas shall be constructed with a base course of adequate depth to suit design traffic loadings with a sealed surface treatment or reinforced concrete, 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 buildings.

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.

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

Drainage and Flooding

19. 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.

20. 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 via an absorption pit 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.

DURING CONSTRUCTION

General

21. 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.

22. 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.

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

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

Reason

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

24. Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

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

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

Reason

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

25. 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.

26. 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.

27. 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.

28. The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

Reason

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

Building Construction

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

Reason

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

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

Reason

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

Site Works

31. The control of erosion and the prevention of silt discharge into drainage systems and waterways will be necessary in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements and the Department of Housing 'Soil and Water Management for Urban Developments'. Erosion control measures are to be implemented prior to the commencement of any earthworks and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

Reason

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

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

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

Reason

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

Scheduling of Inspection

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

Reason

To enable orderly scheduling of inspections

PRIOR TO OCCUPATION

General

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

Reason

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

35. 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 new dwellings created.

36. Upon completion of the works, a certificate shall be provided to Council from the acoustic consultant certifying that the works have been completed in accordance with the consultant's requirements and that the desired acoustic performance has been achieved.

Reason

To ensure that appropriate noise control measures are implemented in order to protect the existing amenity of the neighbourhood.

37. Prior to the issue of an Occupation Certificate the applicant shall provide Council with appropriate certification to confirm that all of the building, other 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.

38. 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

Building Construction

39. 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

40. 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.

Drainage and Flooding

41. 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.

42. 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.

Development Contributions, Monetary Bonds, Dedication of Land

43. The registered proprietors of the whole of the land shall, prior to endorsement and release of the Occupation Certificate at their costs and expense, enter a positive covenant over all of the land comprised in the development providing as follows:-
- a) Covenanting with the Council (the prescribed Authority) to at all times at their costs maintain, repair and keep the on-site stormwater detention facilities in a good and safe condition and state of repair in accordance with the approved design to the reasonable satisfaction at all times of the said Council having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention facilities in accordance with Condition No (-19), 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.

Building Construction

44. 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, Carparking and Loading Arrangements

45. 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.

ADVICE

1. The applicant is advised that Council shall not be responsible for the carrying out of maintenance on the crown road servicing the property. All benefiting users are wholly responsible for the ongoing maintenance of the road

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

Based on a road length of approximately 50 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- (i) Road fees - engineering plan checking and supervision of \$631.00.
- (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/or release of the Subdivision Certificate 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 \$492.00. per basin for basins less than 50m³. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's adopted fees and charges current at the time of payment.

Reason

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

SCHEDULE 2

Integrated Approvals

NSW Rural Fire Service Section 100B of the Rural Fires Act, 1997

Asset Protection Zone

The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants.

1. At the commencement of building works and in perpetuity the entire property shall be managed as an 'Inner Protection Area' as outlined within Planning for Bush Fire Protection 2006 and the Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

2. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of Planning for Bush Fire Protection 2006.

Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

3. The vehicular entry and exit points to the car park, and the driveway to the alternate waste storage area, shall be a minimum width of 4.0 metres.

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments.

4. An emergency / evacuation plan is to be prepared in compliance with section 4.2.7 of Planning for Bush Fire Protection 2006.

Design and Construction

5. A minimum 1.8 metre high radiant heat shield / fence, made of non-combustible materials shall be constructed along the western and northern boundary as shown on the site/landscape plan provided. A pedestrian access gate is to be provided in the north west section of the fence. All posts and rails shall be constructed of steel. The bottom of the fence is to be in direct contact with the finished ground level or plinth.

Landscaping

6. Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.

B The application be referred to Council's Local Traffic Committee's delegate to obtain the necessary approval to install 60km/hour signs in Nelson Street in the event of the development proceeding.

To: ***The General Manager***
City Planning Committee –
4 June 2008

D FITZGERALD
DIRECTOR CITY PLANNING
20 May 2008

DIRECTOR CITY PLANNING REPORT NO. 41/2008

**SUBJECT: MINUTES OF THE PLANNING REVIEW COMMITTEE MEETING HELD
22 MAY 2008**

A meeting of the Planning Review Committee was held on 22 May 2008 and reports as follows:

Attendees at the meeting included His Worship the Mayor, Councillor J. Clarence OAM (in the Chair) and Councillors Pynsent, Maybury, Troy and Parsons, the General Manager, Planning Services Co-Ordinator, Major Projects Co-Ordinator, Economic Development Manager and Strategic Land Use Planner.

Due to the absence of a quorum the Mayor adjourned the meeting at 6.40 pm to a time, date and place to be fixed.

Apologies were received from Councillors Ryan, Besoff, Smith, Davey, Bedford and Scott due to prior commitments.

RECOMMENDATION that Council endorse the report of the Planning Review Committee meeting held 22 May 2008.

To: **The General Manager**
City Planning Committee –
4 June 2008

D FITZGERALD
DIRECTOR CITY PLANNING
26 May 2008