



Vincent Street  
CESSNOCK 2325

29 July 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, 6 August 2008 immediately following the conclusion of the Corporate and 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 City Planning Committee Meeting held on  
16 July 2008

**(3) OFFICERS' REPORTS**

**DIRECTOR CITY PLANNING**

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**(4) QUESTIONS WITHOUT NOTICE.**

## OFFICER'S REPORTS

### DIRECTOR CITY PLANNING REPORT NO. 57/2008

**DEVELOPMENT APPLICATION NO:** 8/2005/240/2  
**APPLICANT:** ADW JOHNSON  
**OWNER:** MR P TREVILLIEN  
**PROPERTY:** LOT 1 D.P 770815, 74 CHURCH ST WESTON  
**AREA:** 13.76 HA  
**ZONING:** 2(A) RESIDENTIAL  
**PROPOSAL:** DEFERRED BUSINESS - CONSIDERATION OF ROADWORKS COST APPORTIONMENT

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

#### **SUMMARY:**

Council at its meeting of 21 May 2008 deferred consideration of Report No 37/2008 for the amendment of conditions of consent for a twenty six lot subdivision on the subject land pending consideration of a further report to Council. The previous report to Council recommended against the deletion of conditions with respect to improvements to Bailey's Lane which were necessary to establish safe and trafficable access to the twenty six lots to be created. The report concluded that deletion of roadwork requirements could not be supported neither the applicant nor Council had the resources to reconstruct Bailey's Lane to the required road standard .

The purpose of the further report was to provide Council with an assessment of the cost of constructing Baileys Lane and to provide the applicant with an opportunity to amend the application to enable the favourable determination of an amendment comprising only those conditions supported under the previous recommendation.

At the conclusion of further discussions with the applicant, the potential cost of Council's contribution to the required roadworks has been defined and the applicant has requested Council's consideration of the amendments supported by the previous report in determining the deferred matter. The final form of the amendment remains dependant upon the outcome of Council's consideration of the roadworks contribution. ( A copy of the applicants submission is attached)

#### **PLANNING ASSESSMENT:**

Council's resolution at its meeting of 21 May 2008 resolved as follows;

*“ 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** for a period of one (1) month to allow staff to:-*

- 1. to assess the cost of constructing Baileys Lane in accordance with the conditions of consent and to report that information back to Council, the discussions to include the intersection of Baileys Lane and Frame Drive; and*
- 2. to discuss with the applicant the option of separating the application to amend the conditions of consent given that the staff support the applicant's request to amend condition 15, condition 29 and condition 32 of the development consent.”*

**Cost of constructing Bailey’s Lane -**

With respect to part 1 of the resolution, the roadworks required under conditions of consent numbered 9, 10 and 11 of the original consent relating to the construction Bailey’s Lane and the intersection of Bailey’s Lane and Frame Drive have been costed in addition to the balance of the works to which the applicant has committed to undertake.

The overall cost of the civil roadworks required by the original consent is estimated to be \$1,220,500. The proponent has committed to a portion of the works, shown as Sections F to H by the attached plan, to the value of \$500,000 with the balance of works being subject to Council’s further consideration.

The scope of works associated with the cost estimates are defined by the attached plan which provides the location of the works in sections. (Sections A – H)

**Section A – B**

Intersection construction and gravel upgrade at the intersection of Frame Drive and Baileys Lane to achieve the nominated Type B intersection design standard \$250 000

**Section B – C**

Existing gravel section requiring the construction of a culvert, removal of vegetation and construction and sealing of two hundred and thirty meters (230m) of pavement. \$220 000

**Section A - C**

Construction of kerb and gutter from the existing south side of the road to Frame drive. \$130 000

**Section C - D**

Widen the existing road pavement, reseal and water table one side \$ 11750

**Section E – F**

Construct and seal 145 m of road pavement to the intersection of Baileys and Church Sts. \$108 750

**Section F – G**

Construction and sealing of approximately Four hundred meters (400m) of pavement \$320 000

**Section G – H**

Construction and sealing of Church Street to the subject land \$180,000

**Total Estimate of Costs - Sections A – H. \$ 1,220,500**

In order for the subdivision to proceed on the basis of works required by the original consent, Council would be committed to meeting the shortfall in required works with respect to Sections A to F of the attached plan. This involves two (2) principle components:

1. The establishment of a Type B Intersection on Bailey's Lane and Frame Drive, and
2. The reconstruction and sealing of Bailey's Lane to the intersection of Church Street.

With respect to part 1 of the above, the previous report to Council (No 37/2008 – copy attached) imposed a Type B intersection warranted by the addition of twenty six lots, however it may be argued that the imposition of the requirement is an unreasonable apportionment of the cost given that the intersection will be of a wider benefit over time and does not exclusively serve the development.

Previous consideration by Council's Roads, Bridges and Drainage Manager acknowledges that the accumulation of funds derived from Section 94 contributions will contribute to the broader route upgrade with the overall growth of rural-residential development in the area, therefore the intersection improvements in isolation without the upgrading of the bridge on Frame Drive and the intersection of Cessnock Road is unreasonable if other works with a direct nexus to the development are contributed. Should Council decide to undertake the intersection in isolation the reconstruction of the intersection to Type B standard is estimated to cost \$250,000.

With respect to part 2 of the above, the works provide for the reconstruction and sealing of Bailey's Lane from the intersection to the commencement of Church Street (Section B to F) and the commencement of works to be undertaken by the proponent (Section F to H).

The resultant road formation would be of a standard commensurate with Council's Engineering Requirements for Development and sufficient to provide for twenty six additional allotments.

The works comprising part 2 would need to be undertaken to enable construction of the subdivision as there is a direct need generated by the proposal, unlike the intersection works which may be part of a broader network upgrade, Bailey's Lane would require immediate improvement. The reconstruction and sealing of Section B to F of Bailey's Lane is estimated to cost \$470,500.

Costing has been provided for the works to be undertaken by the proponent which is approximately 600 metres of reconstruction and sealing of Church Street to the value of \$500,000.

***Amendment of conditions not attributed to the cost of roadworks -***

The applicant has requested that Council give consideration to the further support of an amendment to delete or amend conditions 10,11,15, 29 and 32 of the original consent. The request includes conditions not originally considered by Council's resolution of 21 May 2008 which was confined to further consideration of conditions 15, 29 and 32 on the basis of staff support for their deletion. The applicants submission in support of the request is attached.

Council's resolution of 21 May 2008 suggested that the applicant separate conditions 15,29 and 32 from the deferred amendment application in order that Council may consider determining the amendments favourably, this required the applicant to withdraw the roadworks provisions from the amendment application before Council.

The applicant has responded by requesting that the final form of the amendment be determined at such time as it is clear whether Council intends to commit to all or part of the cost associated with the development.

It is agreed that the final form of the amendment does depend on whether Council resolves to contribute to all or part of the required works and until such time as a resolution is obtained it is unclear which conditions are to be modified or deleted.

A number of options are suggested with respect to the determination of the deferred amendment application (Report No 37/2008);

1. Where Council decides not to contribute to the required works Council may determine the original amendment request (Report No 37/2008) by refusal in accordance with the recommendation to the meeting of 21 May 2008, or
2. Where Council decides to contribute in part to the required works, for example by the construction of Sections B to C and E to F, a staging plan be invited from the applicant in consultation with Council to enable release of a portion of the allotments approved commensurate with the nature and capacity of the resultant road standard. or
3. Where Council decides to contribute to the full balance of required works as specified by the original consent ( Section A to F of the attached plan)then the amendment may be determined by would modified to deletion all works for which Council is to be responsible.

Pending Council's resolution in relation to the above, Development Application 8/2005/240/2 will be reported to the Council Meeting of 20 August 2008.

**RECOMMENDATION** that Council give consideration to the cost estimates provided with respect to the apportionment of costs associated with the approved subdivision and resolve whether these are to be met by Council in part, in full or to remain the responsibility of the proponent.

To: **The General Manager**  
City Planning Committee –  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
24 July 2008

## **DIRECTOR CITY PLANNING REPORT NO. 58/2008**

**DEVELOPMENT APPLICATION NO:** 8/2008/26/1  
**APPLICANT:** KURRI KURRI RUGBY LEAGUE CLUB  
**OWNER:** CESSNOCK CITY COUNCIL  
**PROPERTY:** LOT 1 DP 758590, CORONATION STREET,  
KURRI KURRI  
**AREA:** 4.9 HECTARES  
**ZONING:** 6(A) OPEN SPACE ZONE  
**PROPOSAL:** AMENITIES BUILDING

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Assistant Planning Assessment Officer, Sarah Lancaster, reports:-

### **SUMMARY:**

Council is in receipt of an application for a new amenities building at the Kurri Kurri Rugby League Ground.

The applicant proposes to construct a two (2) storey brick veneer building for the purpose of facilitating an amenities building for use by the Kurri Kurri Rugby League Club and other community organisations. The proposal has the aims of facilitating an increase in the level of community participation in the club and encouraging supporter attendance.

The proposal meets the objectives of the 6(a) Open Space Zone and is recommended to Council for approval.

### **PROPOSAL:**

The proposed two (2) storey brick amenities building will be primarily used to facilitate warm up routines, changing rooms, store rooms and member viewing area. The venue is also indented to serve additional community and other sporting groups. The new addition is hoped to enhance community support for the local Rugby League Club and enhance supporter attendance.

The proposed amenities building is to be constructed in the area between the boundary fence on Allworth Street and fence to the football field. The proposed location, located in a position which looks centrally over the ground will facilitate viewing of the field by Club members.

The applicant has also indicated that the western elevation along Allworth Street is likely to include a mural of past and present footballers. A design has yet to be agreed upon and will be subject to approval by Council.

### **SITE DESCRIPTION:**

The subject land is located with boundaries to Hopetoun Street, Hampden Street, Coronation Street and Allworth Streets Kurri Kurri. The site currently contains a sports training facility, grand stand and storage areas for the Rugby League Club.



**PUBLIC EXHIBITION:**

In accordance with the Cessnock Development Control Plan 2006, the application was notified for a period of 15 days from the 4 July 2008 to the 18 July 2008 during which time no submissions were received.

**PLANNING ASSESSMENT:**

**Cessnock Local Environmental Plan 1989**

Pursuant to the Cessnock Local Environmental Plan 1989, the site is zoned 6(a) Open Space Zone with the proposed use being permissible with the consent of Council.

**Planning Assessment**

**Noise**

The amenities building is to be used for activities which are ancillary to the use of the ground. The applicant has indicated that the building will not be used for private parties or functions, but for community based activities, mainly rugby league games and training sessions. Hours of operation have not been specified but the proposed conditions of consent restrict the hours of operation to between 7:00am and 10:00pm Monday to Sunday. This will aid in reducing the impact on the surrounding residential neighbourhood.

**Parking**

No additional parking has been nominated as the use of the building will be ancillary to the current use of the site. The construction of the amenities building will generate the need for twelve (12) car parking spaces to be designated for the use.

**General Planning Assessment and Comment**

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

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

The impacts on the development facing adjoining properties along Allworth Street will be minimised through the planting of trees along this elevation. The applicant has also indicated that a mural is likely to be painted on this elevation, which will be subject to a separate approval. Other landscaping will also aid in minimising the visual dominance of the structure. The community will benefit through the additional facilities to be utilised by other community and sporting groups. The town will also gain economic benefits with the inclusion of additional facilities attracting other users to the site.

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

The site is located in the 6(a) Open Space Zone with the proposed use permissible. The amenities building will also serve the current use of the site as a sporting field. The site is suitably graded to allow for the inclusion of the building.

*79C(e) the public interest*

This facility will allow other community and sporting groups to use the site for other purposes. It will add an additional facility to accommodate community activities.

**CONCLUSION:**

The application before Council is for the construction of an amenities building at Kurri Kurri Rugby League Ground. The application is permissible with consent and meets the objectives of the 6(a) Open Space Zone, and is therefore recommended to Council for approval.

**RECOMMENDATION** that DA 8/2008/26/1 for an amenities building on Lot 1 DP 758590, Coronation Street, Kurri Kurri be approved by Council 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 proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Site Plan and Landscape Plan Drawing Number 2008-21-003, Floor Plan Drawing Number 2008-21-002 and Elevations Drawing Number 2008-21-001 Dated 20 April 2008 Drawn by GBDS, the Statement of Environmental Effects 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. All building work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

**Reason**

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

4. The facility shall operate during the following hours only:

Monday to Sunday from 7:00am till 10:00pm

Reason

*To minimise the impact of noise on the surrounding residential area.*

Building and 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, Carparking 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 carparks. It also allows for the removal or lopping of trees within three (3) metres of approved buildings. No other trees or vegetation shall be removed or lopped except with prior written consent of Council.

Reason

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

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

Building Construction

8. Engineers design details for the retaining walls are to be submitted to Council prior to the release of the Construction Certificate.

Reason

*To ensure retaining walls are adequately designed.*

Landscaping

9. A detailed landscaping plan shall be submitted to Council which utilises species which are native to the Kurri Kurri area.

Reason

*To ensure that landscaping of the site, in association with the proposed development, enhances the external appearance of the premises and is in accordance with existing species on the site.*

**DURING CONSTRUCTION**

General

10. 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.*

11. 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.*

12. Toilet facilities are to be provided prior to works commencing, 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 must be a sewage management facility approved by the NSW Department of Health and/or Council and operate in an environmentally responsible manner, free of nuisance or offence, and be appropriately serviced.

Reasons

*To ensure that suitable and environmentally sustainable toilet facilities are provided for all persons employed or visiting the site. To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.*

13. 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.*

14. 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.*

15. 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.*

16. 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.*

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

Reason

*To ensure the public road and footpath facilities are reinstated to an appropriate standard as a result of additional requirements of the development.*

Site Works

18. 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.*

19. 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.*

Building Construction

20. 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.*

21. 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 USE OR OCCUPATION**

General

22. 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 and other works have been constructed in accordance with the Development consent and Construction Certificate prior to the issue of the Occupation Certificate and use of the building.*

23. 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

24. 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.*

Drainage and Flooding

25. All roof water shall be conducted to a discharge point approved by Council, by means of a sealed pipeline having a minimum diameter of 90mm prior to use or occupation of the development.

Reason

*To ensure that roof water from the building does not affect the structural integrity of the building or inundate adjacent land.*

Site Works

26. 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.*

Access, Carparking and Loading Arrangements

27. On-site car parking shall be provided for a minimum of **twelve (12)** vehicles and such being set out generally in accordance with Council's Car Parking Code.

Reason

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

**ADVICE**

1. Any mural proposed for the Western Elevation which faces Allworth Street shall be subject to a separate application being lodged with Council for approval.

Reason

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

2. The applicant is to advise Subdivision and Engineering Co-Coordinator 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*

3. Where Council is the Principal Certifying Authority, the applicant shall pay engineering site supervision fees in accordance with Council's current fees and charges with the application for a Construction Certificate for the site. Initially, one (1) site visit only is expected for the proposal, however should further inspections become necessary as a result of incomplete works, then those site supervision fees will be separately invoiced. Council's current engineering site supervision fee is \$ **194.00**.

Reason

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

To: **The General Manager**  
City Planning Committee –  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
24 July 2008

## **DIRECTOR CITY PLANNING REPORT NO. 59/2008**

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

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Assistant Planning Assessment Officer, Sarah Lancaster, reports:-

### **SUMMARY:**

Council received an application to subdivide an existing 20 hectare parcel of land in to two (2) separate parcels pursuant to the provisions of Clause 12(3) of Cessnock Local Environmental Plan 1989, which was recommended to Council for refusal.

The determination of the application was deferred at the Council meetings of the 26 April 2008 pending an inspection of the site. The matter was again deferred at the Council meeting of the 7 May 2008, at the request of the applicant to allow time for the lodgement of additional information.

This information has not been forthcoming and the development application is referred to Council with the original recommendation of refusal.

### **PROPOSAL:**

The application seeks Councils consent for a two (lot) subdivision of the subject land under the provisions of Clause 12(3) of the Cessnock Local Environmental Plan 1989. The lot currently has an area of 20.13 hectares. The proposed allotments are to have areas of 2.02 hectares and 18.11 hectares. The site is currently occupied by three (3) tourist accommodation buildings. The subdivision proposes to separate one (1) of the tourist accommodation buildings on the smaller allotment of 2 hectares, with the remaining two (2) buildings located on the residual lot of 18 hectares.

### **BACKGROUND:**

The application was first recommended to Council for refusal at the Council meeting of the 16 April 2008. At this meeting Council resolved that the application be deferred until the following meeting pending an inspection of the site. A copy of the Council report is included in the Attachments.

The application was then deferred at the subsequent Council meeting of the 7 May 2008. The applicant requested that Council defer the matter pending the lodgement of additional information. Since this date the applicant has been contacted and advised that if the additional information was not submitted then the original report be referred to Council for determination, with the original recommendation of refusal.

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

1. The application is inconsistent with the objectives of the 1(a) Rural (A) Zone (S79C(1)(a)(i)).
2. The application is inconsistent with the provision of Clause 12(3) of Cessnock Local Environmental Plan 1989 (S79C(1)(a)(i)).
3. The application is inconsistent with the provisions of Part D, Chapter 1.4.1 of Cessnock Development Control Plan 2006 (S79C(1)(a)(iii)).
4. The proposal will create the potential for land use conflict (S79C(1)(b)).
5. The proposal is not considered to be a suitable form of development in the 1(a) Rural 'A' Zone (S79C(1)(c)).
6. The proposed development will not be in the public interest (S79C(1)(e)).

To: **The General Manager**  
City Planning Committee –  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
25 July 2008

## **DIRECTOR CITY PLANNING REPORT NO. 60/2008**

**DEVELOPMENT APPLICATION NO:** 8/2008/420/1  
**APPLICANT:** PHILIP HOPE-JONES  
**OWNER:** OAKVILLE INVESTMENTS PTY LTD  
**PROPERTY:** PT LOT 80 DP 755255, 434 OLD NORTH ROAD, ROTHBURY  
**AREA:** 36.1 HECTARES  
**ZONING:** 1 (V) RURAL (VINEYARDS)  
**PROPOSAL:** SKYDIVING DROP ZONE

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Development Assessment Officer, Ms K Swan, reports:-

### **SUMMARY:**

An application has been received to operate a tandem skydiving business from a site situated at 434 Old North Road, Rothbury. The application was exhibited for public comment with five (5) public submissions being received objecting to the proposal.

Two key issues have been identified in the assessment of this proposal:

1. Objection from the Commonwealth Department of Defence in relation to the proposed development: and
2. Concern over the apparent non-compliance with Clause 8.1.1 of Councils Aerodrome Policy No.A3.3 – Cessnock Airport Policy & User Guidelines

The applicant and the Department of Defence were afforded the opportunity to liaise together to resolve the grounds of objection. However, the Department of Defence have maintained their objection to this proposal and it is therefore recommended that Council refuse the application.

### **PROPOSAL:**

The application is for the operation of a 'tandem' sky diving business, involving a parachutist drop zone and associated training and administration facilities at Part Lot 80 DP 755255, 434 Old North Road, Rothbury.

It is proposed that patrons meet on site before being transported via mini bus to Cessnock Airport. The patrons would then board specially fitted Cessna aircraft before rising to a maximum height of 14000 feet and disembarking the aircraft in the vicinity of the drop zone.

The proposed operating times are between 8.00am and 5.00pm, seven (7) days per week. It should be noted that ninety percent of the operation has been anticipated to be undertaken over weekends. The applicant has forecasted that between 40-60 tandems per week would take place, equating to approximately 2000 tandems annually. A total of twelve (12) staff would be employed as part of this development comprising three (3) ground staff, four (4) tandem masters, four (4) camera people and one (1) bus driver.

The application seeks Council approval for a six (6) month trial period. The trial period was proposed by the applicant in response to the concerns raised by the Department of Defence.

Defence has provided Council with two recommended options in terms of their objection to this proposal;

1. First and foremost it is noted that Defence have maintained their objection to the proposal.
2. Should Council continue to approve this application (despite the Defence objection), a series of operational conditions are recommended for the sky diving enterprise, which will be submitted to Council should approval be recommended.

**BACKGROUND:**

The subject land has historically been used as cattle grazing and for low intensity agricultural purposes. The land is currently owned by Oakville Investments who also own adjoining lots to the east, west and south.

The applicant has been operating tandem skydiving operations out of the Balloons Aloft site situated off Wine Country Drive, Rothbury, approximately five kilometres to the north east of this proposed location. Approval was granted to this operation on June 19, 2002 under Development Application 8/2002/18/1.

Similar issues of safety, traffic and land use conflict were considered during the assessment of this previous application. The Department of Defence initially raised objection to this proposal but later supported approval of the development subject to certain conditions and restrictions being placed on the operator. This previous application was to the east than the current application and was therefore a greater distance from the Singleton Military Area.

**SITE DESCRIPTION:**

The drop zone has been proposed to operate from existing cattle grazing land at 434 Old North Road, Rothbury. The site is situated approximately 4.7km west along Old North Road, from the Wine Country Drive intersection. The site is 3.5 kilometres from the Singleton Military Area, 9.5 kilometres from the Cessnock Airport and 0.37 kilometres from the nearest habitable residence at Sweetwater Villas.

The site is predominantly clear of vegetation, consisting mainly of grassland used for cattle grazing purposes. Two discontinued farm buildings are located on the site. The buildings are in a poor state of repair, with the applicant proposing to recondition the buildings for use as administrative, training and amenity use. The buildings are positioned within the north-eastern section of the site, approximately 50 metres and 80 metres from Old North Road. The buildings can be partially viewed from the road, but are mainly obscured from view by the tree line adjacent to the road.

The actual drop zone is to be located towards the centre of the site. The drop zone has approximate dimensions of 250m x 250m and an area of 625 square metres. The peak of the drop zone would be an estimated 50m south of the proposed administration facilities on site.

**PUBLIC EXHIBITION:**

This particular application was referred to the Manager of Cessnock Airport, Hunter Valley Vineyards Association, Australian Department of Defence and to the Civil Aviation Safety Authority.

The application was exhibited for public comment with a total of seven (7) submissions received. Five (5) of the submissions were objections, with a further two (2) submissions from the Cessnock Airport Manager Mr Alan Pope and the Hunter Valley Vineyards Association being in support of the proposal.

The five (5) objections can be summarised as follows:

- Noise – particularly associated with planes flying over neighbouring properties and ascending / descending quickly
- Noise – from participants and support crew congregating on site
- Operating hours – dawn and dusk drops affecting the quiet amenity of the area
- Traffic – in particular the state of Old North Road
- Zoning of the land – consistency with zone objectives / definition of use
- Artificial lighting in the area
- Lack of amenities for participants on site

The public objections have been addressed below;

### Noise

#### *Aircraft overhead*

Concern has been raised about the potential noise generation from the aircraft ascending and descending from the airport and over properties in proximity to the proposed drop zone. Advice received from various aviation experts have indicated that type of aircraft used for this operation (Cessna), and the nature of use, will not generate any excessive noise (over and above existing aircraft utilising the airport). At a minimum height of 10,000 feet the noise affectation is not considered to be of a significant threat to surrounding properties.

#### *Participants and support crew on site*

The noise from support crew and participants at the actual Old North Road drop zone location is also of concern for objectors. At any one time it has been estimated that thirty (30) people could be on site during peak periods, with participants and spectators staggering arrival and departure from the site. The key observation area for support crew would be from the car park area to the north of the site, adjacent to Old North Road.

The site is situated 0.37 kilometres from the nearest residential building (located at the Sweetwater villas) to the north on Old North Road, 0.97 kilometres from a residential dwelling to the north west and also to the east (both on Old North Road), as well as 1.9 kilometres from the nearest dwelling to the south west situated on Deasys Road. The potential for noise affectation from observers or even participants descending from the sky would not be expected to be of significant impact to surrounding areas.

### Operating hours – disturbance of area

The operating hours are proposed to be restricted to between 8.00am and 5.00pm, seven (7) days per week. It should be noted that 90% of the operation would be undertaken over weekends. The weekend period is the busiest time of tourist activity associated with the vineyards. The proposal would generate an increase of patronage to the area, however as the previous consent for a similar use has shown, this increase in tourist patronage can be absorbed into the area.

Traffic

Patrons would arrange their own transportation to the site with a mini bus being used to transport patrons from the Old North Road site to the Cessnock Airport. During peak times, this could equate to between 4-6 mini bus trips per hour and approximately seventeen (17) vehicular trips per hour. There is satisfactory area onsite for vehicle parking.

Old North Road is a predominantly gravel road and during periods of high rainfall is prone to road closure caused by the flooding of the causeway at the eastern end of the road. Although sky diving is an activity that generally operates during favourable weather conditions, there is the potential for the additional traffic movements generated by the proposal to have an adverse impact upon the condition of the eastern end of Old North Road during heavy rainfall periods. However, the standard of the road was assessed as suitable to accommodate the traffic that would be generated by the proposed development.

Zoning objectives

The subject land is situated within the 1(v) Rural (Vineyard) zone and the proposed development is consistent with zone objectives. While the intended use is directly associated with vineyard use, the proposed development does not negate the potential for viticultural use of the subject land and is compatible with existing forms of low intensity tourism in the area.

Lighting of the area

The hours of operation are between 8.00am and 5.00pm. There are no dawn or dusk sky diving operations proposed with this operation.

While it is acknowledged that the use of external lighting may be required, any such lighting will be associated with the two administrative and training buildings on site. The lighting is not expected to be of significant nuisance to adjoining land uses.

Lack of amenities

The application proposes the use of enviocycle units to service patrons. Additional information regarding onsite waste disposal was requested but no additional details were submitted. However, the site has adequate area for the onsite treatment and disposal of waste and this issue could be addressed through consent conditions if the application were to be approved by Council.

Additional Objection Comments

Objectors to the proposal were informed of the applicant's request for a six (6) month trial and two (2) of the original objectors provided further comment. Both objectors maintained their objection to the proposal and raised the following additional concerns:.

- Skydiving is not compatible with rural-residential amenities'
- Skydiver safety
- Concerns with regard to Defence aerial operations overhead and the risk factors associated with parachutists operating within this area

**PLANNING ASSESSMENT:**

All relevant planning matters including those 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:

CESSNOCK LOCAL ENVIRONMENTAL PLAN 1989

The subject land is zoned 1(v) Rural (Vineyard). The proposed activity is not explicitly defined under the provisions of the LEP and is therefore an innominate use. The previous development application for the 'Just Jump' site operating out of the Balloons Aloft site was defined as a 'Tourist Recreation Facility'. However, this definition no longer exists.

In accordance with Clause 9 of the LEP, the proposal is generally consistent with the objectives of the zone. The drop zone is a low impact land use, whereby potential future viticultural land use of the site will not be affected by the proposal.

AUSTRALIAN DEPARTMENT OF DEFENCE OBJECTION

The application was referred to the Department of Defence for comment in view of the sites' proximity (3.5km) to the Singleton Military Area. Defence issued a "strong objection" (dated 30<sup>th</sup> June 2008) to the proposal based on the grounds of;

*"Defence strongly objects to the proposed parachute drop zone as it is possible that fast jets loaded with ordnance will fly over the proposed drop zone and perform bombing activities from differing directions and at varying heights, as such it is possible that an aircraft collision and/or parachutist-aircraft collision could occur"*

The applicant was advised that based on the serious safety risks raised within the objection received from the Department of Defence, Council would be unlikely to support approval of the proposal.

To address the issues raised in the objection and to seek a possible compromise, Council facilitated a meeting between the applicant and representatives from the Department, including Technical and Range experts from both Williamstown RAAF and Singleton Military bases. During this meeting, both parties discussed the issues noted in the objection and whether the Defence operations and the sky diving enterprise could co exist.

From the meeting, it was agreed that both parties would further liaise and discuss possible mitigation measures to ensure:

- (a) the safety of participants of sky diving, the military and surrounding residents: and
- (b) the long term viability of the SMA within the area.

Following a review of all information, including various submissions by the applicant, the Department of Defence have confirmed '*that it does not support the parachute activity proposal due to public safety concerns*'.

The Department have further advised that *'live firing and military activities are conducted at and around the Singleton Military Area'* and the potential *"for parachutists to be blown across the eastern boundary of (the) Singleton Military Area"* (however minimal) still remains a possibility. This would *"not only put their safety at risk, but could jeopardise the ability for Defence to undertake Military activities at the time"*. The Department's objection was submitted in consultation with various Defence personnel, as well as aviation bodies including; Civil Aviation Safety Authority (CASA) and Air Services Australia (AsA).

The Department of Defence has advised that should Council consider to consent to the application, notwithstanding the Department's objection, then the Department would require strict operating restrictions to be imposed.

#### COUNCIL POLICY

Clause 8.1.1 of Councils Aerodrome Policy No.A3.3 – Cessnock Airport Policy & User Guidelines'. This Clause requires *'All parachutists ... to be landed off the airport and outside the airport CTAF'*. The CTAF refers to the Common Traffic Advisory Frequency.

The Policy enabled parachutists to operate from Cessnock Airport provided that the drop zone was located a minimum of five (5) nautical miles away; otherwise referred to as the CTAF distance. The CTAF has since been removed. For the benefit of air space users, a new definition is referred to when certain types of radio transmissions are to be enacted (which were formerly required within the CTAF range). This is now defined as 'operating in the vicinity of a non controlled aerodrome', which under Civil Aviation Regulations 166(1) is defined as a distance of ten (10) nautical miles (18.52 kilometres).

The subject site is located approximately 5.13 nautical miles (9.5 kilometres) from the airport. The applicant has been advised of this issue and has made repeated statements disputing the validity of considering the CTAF to be a boundary mark and the subsequent distance of ten (10) nautical miles. The applicant has noted that the CTAF was formerly a boundary marker (of 5 nautical miles); however this is no longer applicable since aviation documents have since rescinded the notion of the CTAF as a boundary line. They have further stated that the Council Policy was established in the view that the CTAF applies to a distance of five (5) nautical miles and this proposal has consequently been created in the spirit of the intention of that Policy.

The Civil Aviation Safety Authority (CASA) was contacted for comment in regards to this issue. CASA have confirmed that *'...there is no restriction on aircraft operations in the area of the proposed parachute drop site'*. CASA would require parachutist operators *'to broadcast their intentions of the Cessnock CTAF prior to commencing dropping operations because of the requirements of CAR 166 (1). In addition, they would be expected to exercise caution when departing or arriving Cessnock aerodrome.'*

CASA have no objection or policy limiting the operation of sky diving landings within ten (10) nautical miles. The essence of the Council Policy was to restrict parachutists to landing a minimum distance of five (5) nautical miles, so therefore it can be considered that the proposal satisfies the intention of Council Policy.

Council should consider changing the existing Aerodrome Policy referencing the CTAF and instead stipulate a minimum exact distance that parachutists must land from the airport.

**CONCLUSION:**

Having regard to the comments by the Department of Defence it is acknowledged that approval of this application would generate the possibility of severe risk to public safety, particularly by way of existing military aerial operations in the vicinity of the area, as well as the potential for parachutists to drift onto military land where live ammunition and ordnance are located. In addition, the Department is concerned for the potential loss of time and resources in terms of a stray parachutist drifting onto their land and the subsequent retrieval process that would need to be undertaken.

Therefore, it is recommended that Council refuse this application.

**RECOMMENDATION** that Development Application No 8/2008/420/1 – Proposed drop zone on Part Lot 80 DP 755255 No. 434 Old North Road ROTHBURY be refused subject to the following reasons:-

1. The application does not comply with section 79C (1) (c) of the Environmental Planning and Assessment Act 1979, in terms of its proximity to the Singleton Military Area, and subsequent unsuitability of the site for this type of development.
2. The application does not comply with section 79C (1) (d) of the Environmental Planning and Assessment Act 1979, in terms of the submission received objecting to the proposal from the Commonwealth Department of Defence. This objection relates to public safety in terms of the risk to injury and/or loss of life, and impact to military operations in the area.
3. The application does not comply with section 79C (1) (e) of the Environmental Planning and Assessment Act 1979; consent would not be in the public interest as shown through the public objections to the proposal.

To: **The General Manager**  
City Planning Committee -  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
25th July 2008

## **DIRECTOR CITY PLANNING REPORT NO. 61/2008**

**SUBJECT: FIRE DAMAGED BUILDING - LOT 18, DP 11020, 82 ANZAC AVENUE, CESSNOCK**

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Acting Senior Building Fire Safety Officer, Mrs P Beatty, reports:-

### **INTRODUCTION**

This report recommends the service of a Notice and if no representations are made by the owner, then a subsequent Demolition Order be served to have a fire damaged building on the abovementioned subject property removed. The report also recommends that Council delegate authority to the General Manger to serve Demolition Orders where a building has been fire damaged and is or is likely to become a danger to the public.

### **REPORT**

Recently complaints have been received by Council regarding the potential danger to neighbourhood residents and the general public from the fire damaged dwelling located at Lot 18, DP 11020, 82 Anzac Avenue, Cessnock.

Inspection of the building by Council Officers revealed that the unoccupied building has been severely damaged by fire and smoke. The building has suffered significant structural damage and is beyond viable repair.

In view of the extent of fire damage that the building has sustained, it is considered that the building is now a danger to the public. Contact with the owner has resulted in the owner giving an undertaking to erect a safety fence around the building by 29 July 2008 and the building demolished by 30 September 2008. To legally enforce the undertakings proposed by the owner, Council would need to issue a Demolition Notice and Order. It is therefore recommended that Council serve a Demolition Notice on the owner of the subject property, giving the owner seven (7) days to make representation to Council as to why a Demolition Order should not be given. The terms of the proposed Order will include a demolition period of sixty (60) days. Should the owner of the building make further representations in regard to the Notice, then such representations will be the subject of a further report to Council.

### **DEMOLITION ORDER DELEGATIONS**

Council has not delegated authority to the General Manager to serve Orders to demolish buildings and therefore a report must be submitted to Council to obtain authorisation to issue a Demolition Order. If the recipient of a Proposed Order objects, then a second report to Council would be required for further consideration. This process delays the resolution of problems with fire damaged buildings which may be a danger to the public.

Council is periodically in receipt of complaints regarding fire damaged buildings, the ability to expedite the process to have the matter resolved would be beneficial.

It is therefore proposed that Council delegate authority under Section 377 of the Local Government Act, 1993 to the General Manager to serve Demolition Notice and Orders on fire damaged buildings, where the building is or is likely to become a danger to the public. It is also proposed that in accordance with the provisions of Section 378 of the Local Government Act, 1993 the General Manager will further delegate this authority to the Director City Planning.

**RECOMMENDATION** that:-

1. Council resolve to exercise its powers pursuant to Section 121B(2) (to demolish or remove a building) of the Environmental Planning and Assessment Act, 1979 for the fire damaged building located at:-

Premises: Lot 18, DP 11020  
82 Anzac Avenue  
CESSNOCK NSW 2325

Owner: Aptimex Pty Ltd

A Notice of Intention to serve an Order will be issued, allowing seven (7) days for the owner to make representations as to why the Order should not be given or as to the terms of the Order, then a Demolition Order pursuant to Section 121B(2) provisions will be issued, allowing sixty (60) days for compliance.

2. In reference to recommendation 1, Council delegate authority in accordance with Section 377 of the Local Government Act, 1993 to the General Manager to sign and serve the Notice and Order on Council's behalf.
3. Council delegate authority to the General Manager under the provisions of Section 377 of the Local Government Act, 1993 to serve Orders under Section 121B(2) "to demolish or remove a building" where the building has been fire damaged and "is or is likely to become a danger to the public."

To: ***The General Manager***  
City Planning Committee -  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
24 July 2008

## **DIRECTOR CITY PLANNING REPORT NO. 62/2008**

**DEVELOPMENT APPLICATION NO:** 8/2006/659/1  
**APPLICANT:** MARSHALL SCOTT  
**OWNER:** KA JOHNSON & MR SAINTY  
**PROPERTY:** LOT 130 DP 755272 NO 27 CAGNEY ROAD  
LAGUNA  
**AREA:** 97 HECTARES  
**ZONING:** 1(A) RURAL  
**PROPOSAL:** TWO (2) LOT SUBDIVISION

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

### **SUMMARY:**

The application is for a two (2) lot rural subdivision of the subject lot to create allotments of 44ha and 53ha. The report is before Council as the proposal will result in a total of four (4) dwellings having access from a right of carriageway.

The application was notified for a period of fifteen (15) days and no submissions were received during this period.

Both proposed lots have access and frontage to a road and comply with the provisions of the Cessnock Development Control Plan 2006. However, access to one (1) of the future dwellings will only be possible via the right of carriageway. This is an increase of one (1) dwelling utilising a right of carriageway. The proposal does not result in any increase in the current number of lots utilising a right of carriageway, which is three (3) lots.

In addition, both lots have an area greater than the forty (40) hectare minimum lot size requirement under the provisions of the Cessnock Local Environmental Plan 1989.

The application is recommended for approval, subject to appropriate conditions of consent.

### **BACKGROUND:**

The right of carriageway over a track in use (DP 1078288) was registered with the NSW Land Property Information on 11.2.2005 which benefits Lots 69 and 130 755272 and Lot 21 DP 846085. The Section 88B instrument provides significant detail in relation to the maintenance of this track in use.

DA8/2005/1169 – Two (2) Lot Subdivision utilising the Provisions of Clause 12(4) on Lots 78 and 79 DP 755272 Nos 75 & 77 Cagney Road Laguna – Approved 27.4.06. The Subdivision Certificate was released on 19.10.06. This lot utilises the abovementioned right of carriageway.

### **SITE DESCRIPTION:**

The subject property is located approximately 15km from the Village of Wollombi and is an irregular shape with access off Cagney Road. The site contains a dwelling-house and several ancillary buildings. The valley floor is cleared and grassed with dense vegetation on the slopes and ridges.

The development site is located in the hilltops of Laguna, approximately 1km north of the Finchley Track on Moores Road which then changes to Cagney Road.

All roads leading to the site are in good condition and comply with Council's and the Rural Fire Services requirements for access.

**PUBLIC EXHIBITION:**

Under the Public Notification and Advertising Plan, the application was notified for a period of fifteen (15) days from 27 July 2006 to 10 August 2006. No submissions were received during this period.

**PLANNING ASSESSMENT:**

**Cessnock Local Environmental Plan**

Under Clause 9 of this Plan, the proposed subdivision of 1(a) zoned land is permissible with the consent of Council. The proposal complies with the objectives of the zone.

Under Clause 12(1) of this Plan, the minimum lot size of land zoned 1(a) Rural is forty (40) hectares. The applicant proposes the following lot sizes: -

- Lot 3 – 44 ha
- Lot 4 - 53 Ha

**Cessnock Development Control Plan 2006**

D.1 Subdivision Guidelines

Access

Clause 5.1 – “Roads & Access” requires that no more than two (2) lots should derive access from a right of carriageway. The principle behind this standard is to limit the extent of the obligations faced by future owners with respect to maintenance liabilities and other issues arising from the ongoing use of private roads as a primary form of access.

The right of carriageway already serves three (3) lots, one (1) lot in excess of the maximum number of lots permissible to utilise a right of carriageway. The proposal would result in a total of four (4) dwellings utilising a right of carriageway.

Applicants Submission

*“With regard to Part D of the Cessnock Development Control Plan 2006 - "A maximum of two (2) rural lots may gain access from a Right of Carriageway". It should be noted that proposed Lots 3 & 4 are both accessed by a Council Public Road known as Cagney Road (highlighted in yellow on the plan attached) further access to the ridge county of both lots is gained by a proposed right of access which will only benefit Lots 3 & 4 (highlighted pink). Proposed Lot 4 requires no other easements to access its land. However proposed Lot 3 will require an easement over part of an existing right of carriageway over a track in use (D.P.1078288) to gain access to the preferred building envelope (highlighted green). This right of carriageway only benefits Lot 69 D.P.755272 and Lot 21 D.P.849085 outside this subdivision. These rights were granted by my clients in 2004 as an act of generosity to those two (2) neighbours, it will be a miscarriage of justice if this action now becomes an impediment. However I believe that by virtue of both lots having access to the formed public road that the guidelines contained in the Development Control Plan are satisfied”.*

*“Access to Lot 3 is a well constructed and gravelled track which the owners have maintained and recently improved with the addition of gravel and drainage works”.*

*“The standard of this track we believe would satisfy Council's and the Rural Fire Service's requirements. No trees are to be removed as part of this development. The access track within Lot 4 does cross one (1) depression, however due to the very small catchment and topography there is no defined watercourse (ie. no banks/stream bed etc), accordingly it falls outside the definition of a watercourse supplied by the Department of Natural Resources (now Department of Water and Energy) as being of a concern to them”.*

*“The reason for the irregular shaped lot is purely for agricultural reasons. Proposed Lot 4 encompasses all of the productive agricultural land, including grazing paddocks, large orchard, irrigation including lines and dams together with the dwelling. The owners wish to retain all of the above features within one lot”.*

*“Proposed Lot 3 is a "bush lot" which has very little if any agricultural value”.*

*“The situation is that both lots as proposed have direct access to a constructed public road being Cagney Road, thereby satisfying the DCP. An internal Right of Access is proposed that partly benefits Lot 4 and then Lot 3, again this is acceptable to the DCP. An existing Right of Carriageway denoted (B) on the proposal plan benefits our land plus other "upstream" lots which could be construed as contrary to the DCP, however this right of carriageway is not essential to the proposal”.*

*“Please be advised that the configuration as proposed is the result of careful design and consideration by the owners to protect the agricultural activity and has merit”.*

#### Assessment Officers Comments

The proposed subdivision complies with the provisions of the Cessnock DCP as both lots have frontage and access to a road.

However, the proposal results in one (1) additional dwelling gaining access off a right of carriageway. Currently there are three (3) lots and subsequent dwellings utilising a right of carriageway. The proposal will result in one (1) additional dwelling utilising a carriageway. Council's DCP does not refer to the number of dwellings utilising a right of carriageway, but the number of lots. The proposal does not increase the number of lots gaining access from the right of carriageway.

Cagney Road ends in such a manner that has resulted in the creation of several landlocked allotments, which forced the legal creation of a right of carriageway to gain access to these lots and their dwellings. The Section 88B Instrument for this right of carriageway contains details of maintenance and the apportionment for each lot so it is clear to the owners what their requirements are. This right of carriageway is in very good condition for the number of vehicles that use it.

There are no other lots utilising the right of carriageway that can be subdivided as they do not have enough land area to comply with the forty (40) hectare minimum lot size requirements of the LEP.

All roads to the subject site are in good condition and comply with the requirements of Council and the NSW Rural Fire Service.

In the light of the above it is recommended that the application be approved subject to appropriate conditions of consent.

## **NSW Rural Fire Service**

The proposed development constitutes “integrated development” under Section 91 of the Environmental Planning and Assessment Act 1979 due to the requirement for approval by NSW Rural Fire Service under Section 100B of the Rural Fires Act 1997. Accordingly the application was referred to the NSW Rural Fire Service (RFS) for assessment and general terms of approval.

The RFS is prepared to grant a Bush Fire Safety Authority subject to the following conditions:-

1. Any future development of individual allotments identified as bush fire prone land within the new subdivision may be subject to Section 79BA of the EP&A Act 1979 and further assessment as outlined within Planning for Bushfire Protection, 2001.

### Comment

If approved, when an application for a dwelling is lodged, the application will need to be referred to the local Rural Fire Service for comment on the proposal.

### **CONCLUSION:**

It is recommended that the application be approved as the proposal does not increase in the number of utilising the right of carriageway and none of these lots can be subdivided.

**RECOMMENDATION** that Development Application No 8/2006/659/1 – Proposed Two (2) Lot Subdivision of Lot 130 DP 755272 No 27 Cagney Rd Laguna, be approved subject to the following conditions:-

## **SCHEDULE 1**

### **Conditions of Approval**

#### **TERMS OF CONSENT**

##### General

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans Numbered DWG.No. 17747PROP4.dwg, Dated 05/07/2006, 1 Sheet, and Plan Numbered DWG.No. 17747c.DWG, Dated 16/01/2007, 1 Sheet, Drawn by Marshall Scott, as amended in red or where modified by any 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*

Access, Carparking and Loading Arrangements

2. 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.*

Development Contributions, Monetary Bonds, Dedication of Land

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

Reason

*To enable the linen plan to be legally made.*

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

General

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

Reason

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

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

Reason

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

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

Reason

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

Development Contributions, Monetary Bonds, Dedication of Land

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

<b>CONTRIBUTION TYPE</b>	<b>\$</b>
District Open Space	\$1072
District Community Facilities (Halls)	\$657
District Community Facilities (Libraries)	\$175
District Community Facilities (Bushfire)	\$49
District Roads – Rural Areas	\$817
Studies (Plan Preparation)	\$62
Plan Administration	233
<b>TOTAL</b>	<b>\$3,066</b>

At this time the total contribution required is **\$3,024** and is to be paid prior to the release of the **Subdivision** Certificate.

**NOTE:**

- i) A copy of the Residential Section 94 Contributions Plan may be inspected at Council's Customer Services Section, Administrative Building, Vincent Street, Cessnock or can be accessed on Council's Website: [www.cessnock.nsw.gov.au](http://www.cessnock.nsw.gov.au)
- ii) The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be indexed at the time of actual payment in accordance with the Consumer Price Index – All Groups – Sydney. Indexation of contributions for payment occurs quarterly, on the first working day of December, March, June and September

Reason

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

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

Reason

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

Section 88B Instrument

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

Reason

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

**SCHEDULE 2**

*Integrated Approvals*

**NSW Rural Fire Service**

**Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997**

1. Any future development of individual allotments identified as bush fire prone land within the new subdivision may be subject to Section 79BA of the EP&A Act 1979 and further assessment as outlined within Planning for Bushfire Protection, 2001.

To: ***The General Manager***  
City Planning Committee –  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
23 July 2008

# DIRECTOR CITY PLANNING REPORT NO. 63/2008

## SUBJECT: HUNTLEE NEW TOWN - HEADS OF AGREEMENT & VOLUNTARY PLANNING AGREEMENT FOR STAGE 1 OF DEVELOPMENT

Bo Moshage, Landuse Planning Manager, reports:-

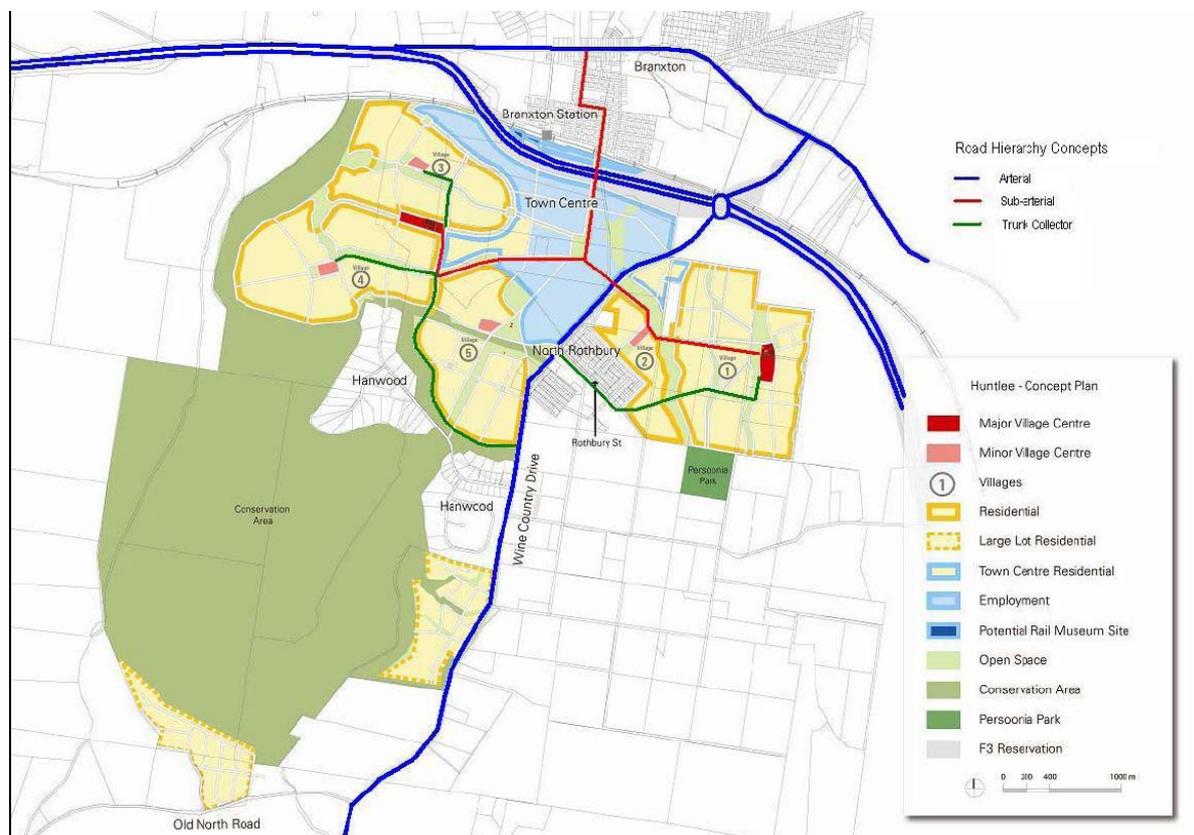
### BACKGROUND

At its meeting held 6 February 2008 Council considered a report regarding the Huntlee New Town proposal and resolved to forward a submission to the Department of Planning regarding the matters discussed in that report.

During the intervening period the proponent, LWP Property Group P/L (LWP Group), has been in negotiations with Council with regard to formalising a local Voluntary Planning Agreement (VPA).

General agreement has been reached on the principles and content of the VPA between Council and the LWP Group, which includes those matters that would normally be included in any Section 94 Contribution Plan. However, given the scale of the proposed development, the proponent, in discussion with the Department of Planning (DoP), has advised that they will now only be seeking an approval for Stage 1 of the Huntlee New Town concept plan. A revised request by the proponent to enter into a VPA for Stage 1 of the development at Huntlee has now been made.

The Stage 1 offer provides infrastructure and developer contributions for the development of 1,392 residential and 300 large lot residential lots representing Stage 1 of the overall Huntlee New Town Development. This report summarises the key elements of the offer made by LWP Group and recommends that Council agree to enter into a VPA and commence formal negotiations with the LWP Group on the final content and makeup of this document.



Huntlee New Town concept plan under consideration by the DoP

## **HEADS OF AGREEMENT**

The 'Heads of Agreement' document sets out the matters and facilities that will be included in the Voluntary Planning Agreements. In terms of the community facilities and infrastructure to be provided or monetary contributions made towards the provisions of such, the heads of agreement includes the provision of:

### *Community facilities*

- two (2) neighbourhood centres (on land 5,000m<sup>2</sup> each);
- multi-functional centre comprising library (approx.2,400m<sup>2</sup>), cultural centre, youth centre, aquatic centre (approx. 4,200m<sup>2</sup> + 700m<sup>2</sup> gymnasium) (on land up to 9,000m<sup>2</sup>);
- two (2) community halls comprising 700m<sup>2</sup> each (on land 2,500m<sup>2</sup> each); and
- one (1) cemetery columbarium wall (100 niches).

### *Recreation*

- neighbourhood parks (totalling land 21 hectares);
- district parks (totalling 60 hectares);
- landscape and neighbourhood park maintenance (3 year period);
- town park (on land 4 hectares);
- town park maintenance (3 year period);
- public open space and cycleways; and
- shelters, benches, tennis courts (4 in Huntlee + 2 in Miller Park), 4 netball courts, 3 off-leash dog areas, 1 BMX track / skate park and 4 indoor basketball courts (within the multi-functional centre).

### *Education*

- land only for three (3) public preschools (on land 1,000m<sup>2</sup> each).

### *Local Roads*

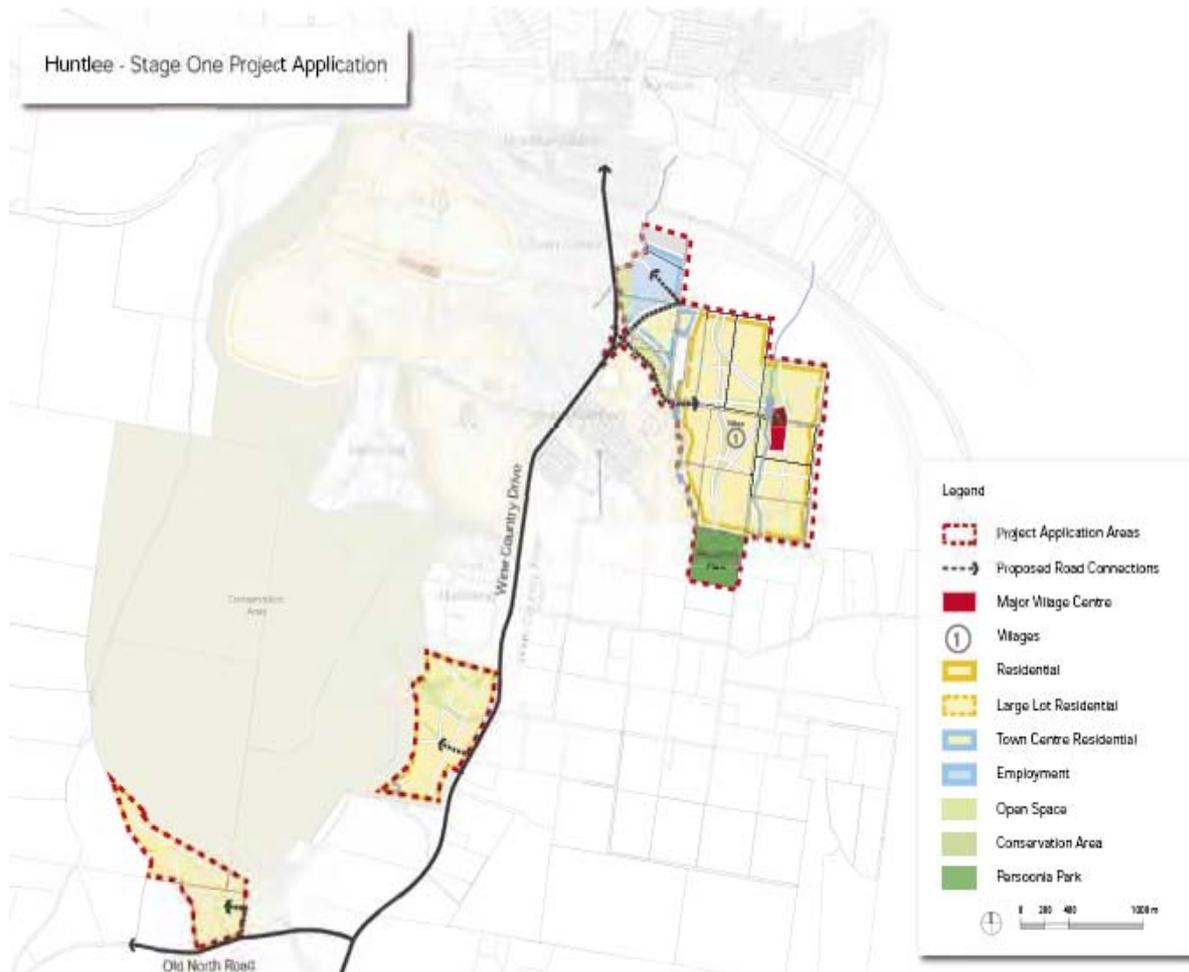
- contribution to upgrade Old North Road;
- contribution to new bridge over Black Creek; and
- upgrade Rothbury Street.

The total contribution is valued at approximately \$136.9 million dollars. While the 'Heads of Agreement' is not a legally binding document, it does provide the basis for the negotiations between the proponent and Council regarding the Voluntary Planning Agreements required for future stages of the Huntlee New Town development. The overall 'Heads of Agreement' schedule is provided in the enclosure document.

## **VOLUNTARY PLANNING AGREEMENT - STAGE 1**

As part of the concept plan lodged with the DoP for the Huntlee New Town under Part 3A of the Environmental Planning and Assessment Act, the proponent, in discussions with the DoP, is seeking approval for Stage 1 only.

Stage 1, is located predominantly on the eastern side of North Rothbury and includes the two rural residential precincts on the western side of Wine Country Drive and the northern side of Old North Road respectively. It incorporates Village 1 (with a major village centre), 1,392 residential lots, 300 rural / residential lots, *Persoonia* Park, various open space areas (primarily along existing watercourses), town centre residential lands and a portion of the employment lands (23.1 hectares located on the northern side of the Wine Country Drive deviation).



### Stage 1 of the Huntlee New Town Concept Plan

The by LWP Group has made an offer to enter into a local VPA for Stage 1. The VPA for Stage 1, for either monetary contributions or works in kind, would include the provision of:

#### *Community facilities*

- one (1) neighbourhood centre (on land 5,000m<sup>2</sup>);

#### *Recreation*

- neighbourhood parks (total land area to be confirmed);
- landscape and neighbourhood park maintenance (3 year period);
- public open space and cycleways (on a monetary contribution per lot basis); and
- shelters, benches, tennis / netball courts, off-leash dog areas, BMX track, skate park and indoor basketball courts.

*Education*

- land only for one (1) public preschools (land 1,000m<sup>2</sup>).

*Local Roads*

- contribution to upgrade Old North Road;
- contribution to new bridge over Black Creek; and

The offer made for the Stage 1 VPA identifies a value of \$11.462 million dollars and can be viewed in the enclosure document. This must now be written into a formal and legally binding document in accordance with the *Environmental Planning & Assessment (EPA) Act 1979*, with the assistance of solicitors acting for both Council and the proponent. The *EPA Act* requires that a VPA must be notified for a minimum of 28 days for public comment before it can be formally entered into by Council. A further report will be presented for council's consideration following the conclusion of the exhibition period and receipt of any submissions.

**CONCLUSION**

The 'Heads of Agreement' provides Council with a basis for further negotiations between the proponent and Council with the subsequent Stages of the Huntlee New Town development. The required public services and facilities are based on the impact of the likely population as a result of the development, while acknowledging the existing surrounding development.

The offer made for Stage 1 is specifically detailed to address the required public services and facilities for that stage. The offer will now be written into a formal document.

**RECOMMENDATION** that:-

1. Council agree to enter into a Voluntary Planning Agreement (VPA) for Stage 1 of the Huntlee New Town development and commence formal negotiations with the LWP Group on the final content and makeup of this document.
2. A further report be presented to Council following the conclusion of these negotiations.

To: **The General Manager**  
City Planning Committee –  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
30 July 2008

# **DIRECTOR CITY PLANNING REPORT NO. 64/2008**

**SUBJECT: RANGER ENFORCEMENT POLICY**

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Acting Regulatory Services Manager (Rangers), Mr Colin Davis, reports:-

## **SUMMARY**

The purpose of this report is to seek Council's adoption of a comprehensive Ranger Enforcement Policy. The policy is designed to promote fairness, integrity and good public administration in the investigation of complaints about unlawful activity.

## **BACKGROUND**

Council's Charter is committed to serving the community with fairness, equity, trust, impartiality and integrity in all dealings.

The NSW Ombudsman has identified that many Councils have difficulties dealing successfully with complaints about unlawful activity. Some of the issues they have identified relate to delaying or not investigating complaints about unlawful activity, failing to take appropriate enforcement action despite clear evidence of unlawful activity, not informing complainants of the outcome of investigations and the reasons for decisions on enforcement action and not responding consistently to similar situations. The NSW Ombudsman's Enforcement Guidelines for Councils have been used in the framing of this policy and for developing operational procedures to address compliance issues.

The NSW Department of Local Government encourages all Councils to have in place enforcement policies and complaint handling policies and procedures. The Department of Local Government also state that all Councils should exercise all of their enforcement powers in a fair, transparent, consistent and accountable manner.

## **STATUTORY RESPONSIBILITIES**

### **Legislative Implications**

Council has an obligation under Section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory power is carried out consistently and without bias.

## **COMMENTS**

The purpose of the policy is:

- to assist Council staff to act promptly, consistently and effectively to unlawful activities;
- to ensure transparency, procedural fairness and natural justice principles are adhered to;
- to confirm that Cessnock City Council has a minimal tolerance approach to unlawful activity; and
- to give a high priority to the education and creation of awareness within the community.

The number of complaints received and dealt with by the Ranger Service are significant and varied and highlight the need for a consistent, transparent approach. The adoption of a Ranger Enforcement Policy will effectively respond to community expectations to ensure equity and impartiality in Council's handling of enforcement matters. The Policy will also address probity issues and satisfy the requirements of the Department of Local Government, the ICAC and the NSW Ombudsman in relation to local government enforcement matters.

Although enforcement of legislation has always been the responsibility of the Ranger Service much more emphasis now needs to be placed on the development of education programs as a proactive preventative measure. This is reinforced within the policy.

The Policy when adopted will apply to all staff and to Councillors when dealing with Council's regulatory responsibilities and illegal activities.

**RECOMMENDATION** that:-

1. Council adopt the Ranger Enforcement Policy dated August 2008.
2. That the Policy be reviewed within 12 months of being adopted.

To: **The General Manager**  
City Planning Committee -  
6 August 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
30 July 2008