



Vincent Street  
CESSNOCK 2325

9 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, 16 July 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  
2 July 2008

**(3) OFFICERS' REPORTS**

**DIRECTOR CITY PLANNING**

48/2008	8/2007/618/1 - 20 Maculata Place, The Vintage, Rothbury	3
49/2008	Restructure Of On-Site Sewage Management Program	10
50/2008	Strategic Review of Permanent Residential Development: Vintage Balance Land and Golden Bear Sites: Crofts Report	12
51/2008	Rezoning Application 18/2007/1: Vintage Balance Land Proposed Extension to Clause 17 Cessnock Local Environmental Plan 1989	17
52/2008	Rezoning Application 18/2005/4: Golden Bear Proposed Extension to Clause 17 Cessnock Local Environmental Plan 1989	24
53/2008	Dollar for Dollar Grant Scheme	30
54/2008	Voluntary Planning Agreement: Offer by Greta Estates Pty Ltd in Connection with Rezoning of Land at Greta	31

**(3) OFFICERS' REPORTS (contd)**

**DIRECTOR CITY PLANNING**

*PAGE NO.*

55/2008	Rezoning of Land at Kitchener – Kitchener Precinct	33
56/2008	8/2008/161/1 – 108-112 Barton Street and 36 Victoria Street Kurri Kurri	40

**(4) QUESTIONS WITHOUT NOTICE.**

## OFFICER'S REPORTS

### DIRECTOR CITY PLANNING REPORT NO. 48/2008

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

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Planning Consultant, Tamai Davidson, reports:

#### **SUMMARY**

At its meeting of 16 April, 2008, Council considered the abovementioned Development Application, which was recommended for refusal, and resolved the following:

*“that DA 8/2007/618 for the Change of Use from a Dwelling to Conference Facility and ancillary tourist accommodation on Lot 86, DP 270293, 20 Maculata Place, The Vintage, Rothbury, be **DEFERRED** for 1 month for the applicant to negotiate with Council regarding issues that have arisen within the report.”*

A copy of the original report to Council is included in the enclosure document for Council's reference.

Discussions were held with the applicant and additional information was submitted for Council's consideration. The application was then re-notified to all affected landowners. As a result, Council received 15 submissions by way of objection, a number of which reiterated the concerns raised in their initial submissions. Copies of the submissions are contained in the enclosure document.

Having regard to the additional information and submissions received the application is recommended to Council for refusal on the basis of land use conflict, conflict with the intention of the Vintage Masterplan, local amenity, noise, traffic, precedent and non-compliance with Cessnock DCP 2006.

#### **PROPOSAL**

The application proposes the change of use of an existing dwelling to a 16 seat conference facility and ancillary five (5) bedrooms of accommodation. The application seeks consent for groups to utilise the dwelling for conferences and accommodation in a golf resort environment (The Vintage). No alterations to the existing building are proposed.

A summary of the additional information provided by the applicant is contained below in the planning assessment. The information relies heavily on a proposed 'contractual agreement', which formed part of the original submission to Council, and in which it is proposed to contain the following restrictions of use:

*“a) persons attending the conference facility at any one time not exceed sixteen (16) persons;*

*b) persons utilising overnight accommodation at any one time not exceed ten (10) persons;*

*c) maximum number of vehicles permitted on the premises not exceed four (4); and*

*d) restriction on the hours of operation of outside areas.*

*It is intended that the contractual agreement would therefore require all users of the proposed development to co-ordinate travel to the site in such a way that the maximum number of vehicles to the site would not exceed four (4). It is expected that this could be achieved by car-sharing or small people mover.”*

The information also relies on the assumption that the proposed use is “...considered consistent with that of the use of a dwelling for short stay accommodation, the proposed use is consistent with that of other developments operating within the Vintage for similar purposes.”

This assumption is refuted below in the planning assessment.

### **PUBLIC EXHIBITION**

The application and additional information was notified to those persons who originally made submissions for a period of fifteen (15) days, after which time 15 submissions by way of objection were received. The key issues raised in the submissions are:

- Residential Amenity Impacts
- Adverse traffic and parking impacts
- Operational Issues
- Noise Impacts
- Security Concerns
- Inconsistent with Master Plan for Vintage
- Precedent

In most instances, the above issues reiterate those concerns raised in the original submissions.

Many submissions reference the additional information and conclude that the proposed ameliorative measures are unrealistic and naïve and fail to provide any new information that would change peoples’ views. The recurring theme of the submissions relates to the potential for conflict between the proposed development and existing residential developments in the precinct and that the proposed development would compromise the guaranteed residential amenity and lifestyle the Vintage community offered.

### **PLANNING ASSESSMENT**

#### **Statutory Situation (S79C.a)**

The application form completed and lodged with Council clearly requests consent for a “16 seat conference facility and ancillary accommodation.” The additional information provided in support of the application relies on the assumption that the “*impacts of this use would be no greater than would arise from a family using their dwelling as their principle place of residence.*”

However, conference facilities and dwellings are a separately defined land-use activities because they have different patterns of use and different impacts upon the surrounding environment.

### **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:

#### **Residential Amenity**

The public submissions place emphasis upon a key consideration for current owners for buying into the Vintage community, that of buying a 'known' residential neighbourhood character. The commercial nature of the proposal is seen to be out of character with the existing character of the residential precinct and incompatible with the established residential use.

Submissions point out that the additional information is flawed in its assumption that the proposed use is similar to existing situations where dwellings are rented out for short stay accommodation. The additional information provided by the applicant states:

*"In view of the fact that the development proposed is considered to be consistent with other uses where dwellings are leased for short term accommodation, it is considered that the potential for adverse impact to existing residents of the Vintage will be negligible..."*

*The proposed use of the dwelling for the purpose of a conference facility and ancillary accommodation is considered to be consistent with other similar operations within the Vintage site. That is, we are aware of a number of existing residential dwelling houses which are offered to the general public for the purposes of short stay accommodation to individuals and groups. In view of the fact that the conference facility and ancillary accommodation is unlikely to be used on a daily basis, the intermittent nature of the proposed development is unlikely to adversely impact upon residents of the area."*

A number of submissions acknowledge that dwellings are leased for short term accommodation, and are controlled strictly by the Vintage Realty who are the managing agents. The lease of dwellings for accommodation is clearly a different use to that of a conference facility which is separately defined in Cessnock Local Environmental Plan 1989. The issue of whether or not these dwellings have obtained Council consent for short term stay (tourist accommodation) is not a matter for consideration in the assessment of this DA. This matter is being investigated separately and Council has sent letters to the Vintage Design Review Committee and General Manager advising that Council will be investigating the issue of dwellings being used for tourist accommodation without the consent of Council (see enclosures for copy of this letter).

The contention by the applicant that a dwelling and a conference facility will have the same impact is not considered supported. The applicant, whilst focussing on a small number of dwellings which are leased for tourist accommodation, fails to acknowledge those owners who are permanent residents within the estate and the impact that the proposed development could have upon the existing level of amenity enjoyed by those land owners.

## **Traffic Issues**

The applicant states:

*“The assumptions made by Council in relation to traffic are based on a scenario where each of the guests to the conference facility and ancillary accommodation were to individually drive their own motor vehicle. As detailed in the Statement of Environmental Effects tendered with the original Development Application, it is proposed that the following conditions will form part of a contractual agreement between the owner/operator and user(s) of the facility:*

- a) persons attending the conference facility at anyone time not exceed sixteen (16) persons;*
- b) persons utilising overnight accommodation at anyone time not exceed ten (10) persons;*
- c) maximum number of vehicles permitted on the premises not exceed four (4); and*
- d) restriction on the hours of operation of outside areas.*

*It is intended that the contractual agreement would therefore require all users of the proposed development to co-ordinate travel to the site in such a way that the maximum number of vehicles to the site would not exceed four (4). It is expected that this could be achieved by car-sharing or small people mover.”*

It is contended that any such ‘contractual agreement’ would be extremely difficult to enforce, given there is no onsite manager, and is naïve in assuming that 16 persons, most likely unrelated given normal conferencing situations, will always coordinate their travel arrangements such that there are never more four (4) vehicles. There is no information which details how this is to be enforced, who will count the number of persons being accommodated, and ensure that hours of operation in outside areas are restricted. Given the number of occupants, the large range of activities and extensive facilities, the risk of excessive noise generation is considered to be high. This method of traffic control is considered to be unacceptable and not considered to be achievable in practical terms.

## **Operational Issues**

The applicant states:

*“As detailed in the Statement of Environmental Effects submitted with the original Development Application, the development is aimed at providing an ideal venue for small group meetings, team building workshops, golf enthusiasts, or groups requiring a weekend getaway in the vineyards district.*

*The conference facility and ancillary accommodation use will be operated by the users of the facility. That is, there are to be no staff in relation to the proposed conference facility and ancillary accommodation. Furthermore, there is no liquor licensing proposed in consequence of the proposed development. As such, the proposed use is consistent with other dwellings used for the purposes of short stay accommodation in the Vintage estate.”*

It is considered that the proposed use is far from consistent with the use of the majority of dwellings in The Vintage. The fact that the proposal suggests group meetings, team building workshops, etc., clearly differentiates its use from that of a residential dwelling. Groups of up to 16 persons meeting and 10 persons being accommodated in a single dwelling is inconsistent with the existing use of the majority of residential dwellings within the Vintage. This is clearly evident through the submissions received and their clear opposition to this type of use.

In relation to the issue of staffing, it can only be assumed that attendees to the conference facility will provide, prepare and clear away their own food and supply their own linen. An unorthodox and unlikely scenario to occur given the fact that potentially 16 persons may be attending the facility.

## **Precedent**

The applicant states:

*“The proposed use of the dwelling for the purpose of a conference facility and ancillary accommodation is considered to be consistent with other similar operations within the Vintage site. That is, we are aware of a number of existing privately owned residential dwelling houses within the Vintage estate that are offered to the general public for the purposes of short stay accommodation to individuals and groups. It is also noted that none of these residence have Council approval for such use. The potential for the proposed development to be cited as a precedent is considered irrelevant. That is, any proposal to establish a development of a similar nature is required to seek development consent from Council. The proposed development would therefore be assessed on its ability to comply with the prevailing provisions of Council's Statutory and non-statutory planning instruments and in particular Section 79C of the Environmental Planning and Assessment Act, 1979 and the accompanying Regulation. The approval of the proposed development would have no bearing on the assessment of another development application for a similar type development.*

Again, the argument put forward is considered flawed on the basis that the proposed use is unlike any other approved use within The Vintage development. There are currently no other residential dwellings within the Vintage approved for, or being utilised, in the manner proposed under this application. Conference facilities are available in Golf Clubhouse, where appropriate car parking, servicing and amenities are provided.

As previously stated, the issue of other dwellings within the Vintage community being used for short term stay (without Council approval) is being separately investigated.

## **Noise**

The applicant states:

*“It is considered that claims that the residential amenity of the precinct will be adversely impacted by the proposed development in terms of noise are unsubstantiated. That is, conferences at the proposed facility would occur during the day. As such, it is considered that any potential noise generated by clapping, speeches, vehicle movements etc would be emitted at times when residential occupation of the precinct were at there lowest (ie residents at work, attending to daily chores etc). Furthermore, as the facility will limit accommodation to a maximum of 10 persons at night, then it is considered that the noise would be generally consistent with that of a large family residence. As the dwelling is located at the end of a cul-de-sac; is oriented towards the golf course; and is unlikely to be utilised 7 days per week, then it is argued that noise is unlikely to adversely impact residents of the area.”*

The application seeks no limitation on the time at which conferences are to occur, with potential night time conferencing, although only 10 persons may stay on site. Even if conferencing was limited to day time hours, this has the effect of impinging on the residential enjoyment of the neighbourhood by residents. In the majority of residential environments, residents would not be expected to co-exist with conference facilities (and associated clapping, speeches etc) all activities which are not characteristic of a residential environment. The associated noise from the proposed development is not characteristic of any typical residential environment and is therefore unacceptable in terms of its potential negative impact on the residents of the neighbourhood.

## **Security**

The applicant states:

*“Security of the gated estate will not be undermined by the proposed development. That is, the proposed development comprising of a small scale conference facility and ancillary short-term accommodation will be operated in accordance with the by-laws contained in the Community Management Statement for The Vintage development. The General Rules and Code of Conduct within 'The Vintage' Residential Estate provides relevant extracts from the by-laws contained in the Community Management Statement for The Vintage development.*

*All guests to the development will be required to agree with the General Rules and Code of Conduct within 'The Vintage' Residential Estate as part of the contractual agreement between the owner/operator and the client/guest. It is envisaged that such agreement will ensure that the proposed conference facilities development will appropriately assimilate with the virtues of The - Vintage Estate, and accord with other existing tourist related accommodation uses occurring within The Vintage.”*

While the above statement is acknowledged, there is still valid concern over the lack of management of these conference events to ensure the Code of Conduct applicable to the Vintage is enforced.

## **Master Plan for the Vintage**

The applicant states:

*“The Master Plan for the Vintage identifies the precinct in which the small scale conference facility and ancillary accommodation is proposed as a precinct for residential development. It is considered that the proposed use is consistent with that of other dwellings within the estate for the purpose of short stay accommodation to individuals and groups. As the proposed use is considered consistent with that of the use of a dwelling for short stay accommodation, the proposed use is consistent with that of other developments operating within the Vintage for similar purposes.”*

As discussed, it is not considered that the proposed use is consistent with the residential use of other dwellings within the Vintage community. The issue of some dwellings being used as short term stay (tourist accommodation) is being investigated separately by Council as unauthorised uses.

The complete additional information provided by the applicant is contained in the enclosure document for reference.

## **REFERRALS**

The application was referred to Council's Building Assessment Officers who determined that should the application be approved, the building would be required to have installed Essential Fire Safety Measures in accordance with the Building Code of Australia (BCA) requirements, including, emergency lighting, exit signs, automatic smoke detection and alarm system and required exit doors. The building would also need to provide disabled access in accordance with the Building Code of Australia (BCA) Clause D3.2. This Clause requires disabled access to be provided from Carparking areas.

Due to access being required to all common areas, provision for disabled accessible sanitary facilities is therefore applicable to the building. Any such facility should comply with AS1428.1.

For a Class 3 building the BCA requires sound attenuation between sole occupancy units in accordance with Part F5.

The applicant has not been required to address these requirements at this point in time given that the proposal is not being recommended for approval.

**CONCLUSION**

The application before Council proposes to establish a commercial conference facility which has been clearly demonstrated to be inconsistent with the current residential land use pattern in the vicinity at The Vintage. The argument used in support of the application is flawed in its assumption that the proposed use is similar to that of a residential dwelling. It has been demonstrated that this is not the case.

The proposal has the potential to create negative environmental impacts in terms of traffic & parking, residential amenity, noise, and waste. The proposal has generated significant community opposition and is not considered to be in the public interest. The application is therefore recommended to Council for refusal.

**RECOMMENDATION** that Development Application 8/2007/618/1 for the Change of Use from a Dwelling to Conference Facility and ancillary tourist accommodation on Lot 86 DP 270293, 20 Maculata Place, The Vintage, Rothbury, be refused for the following reasons:

1. The proposed conference facility and ancillary accommodation will adversely impact on the residential amenity of the neighbourhood through increased traffic generation, insufficient on-site parking, noise issues and create a negative social impact in the residential precinct. (S79C(1)(b))
2. The proposed conference facility and ancillary accommodation is not considered to be a suitable form of development in an identified and established residential precinct. (S79C(1)(c))
3. The proposed conference facility and ancillary accommodation is inconsistent with the provisions of Clause 10(1)(a)(ix) of the Cessnock Local Environmental Plan 1989 in that the proposed development will create significant additional traffic. (S79C(1)(a)(i))
4. The proposed conference facility and ancillary accommodation is inconsistent with the provisions of the Cessnock DCP 2006 - Part E, Chapter E.2 (The Vintage) in that Clause 2.3.1.2 requires single residential allotments to be accommodated by dwellings. (S79C(1)(a)(iii))
5. The proposed conference facility and ancillary accommodation fails to satisfy the provisions of the Cessnock DCP 2006 - Part C, Chapter C.1 (Parking and Access) in that inadequate parking has been provided on-site. (S79C(1)(a)(iii))
6. The proposed development would not be in the public interest. (S79C(1)(a)(e))

To: **The General Manager**  
City Planning Committee –  
16 July 2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
27 June 2008

## **DIRECTOR CITY PLANNING REPORT NO. 49/2008**

**SUBJECT:     RESTRUCTURE OF ON-SITE SEWAGE MANAGEMENT PROGRAM**

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

### **PURPOSE**

This report recommends that Council modifies its Onsite Sewerage Management (OSSM) program.

### **BACKGROUND**

Council at its meeting of 19 March 2008 considered a report outlining a proposed increase in fees/charges in the Onsite Sewerage Management program to enable Council to deliver a significant improvement in service delivery that will also mitigate the long-term risk of potential environmental harm. Council adopted the recommendation:-

- That the report be noted and a further report be submitted to Council following the exhibition of Council's fees and charges for 2008/2009.

A copy of the report is included in the Attachments.

### **REPORT**

Community feedback on the proposed fee changes was sought through the public exhibition of Council's fees and charges for 2008/09. No comments or submissions were received.

The revised OSSM program will have a maximum turnover for the inspection of all onsite sewage management systems of four years and will have the additional benefits of:

- Improved level of service for resident cost with a four (4) year maximum turnover,
- Reduced number of commercial system classifications from 5 to 3 categories to reduce confusion,
- Allowing for risk based level of service with increased inspection frequencies for high and medium risk systems,
- Implementation of education programs and materials, and
- Reduced environmental and public health risk from deficient systems.

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

The new fees will generate an additional \$131,135 in income which provides \$95,000 for one additional OSSM Officer (including salary, vehicle and on-costs) and \$36,000 for tank sampling and education programs.

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

**RECOMMENDATION** that:

1. Council endorse the revised onsite sewage management program to establish an inspection program based on risk analysis with a maximum inspection turnover of 4 years.
2. One additional permanent onsite sewage management officer position is created.
3. An update report is provided to Council after the revised program has been in place for 12 months.

To: **The General Manager**  
City Planning Committee -  
16 July 2008

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

## **DIRECTOR CITY PLANNING REPORT NO. 50/2008**

**SUBJECT: STRATEGIC REVIEW OF PERMANENT RESIDENTIAL DEVELOPMENT:  
VINTAGE BALANCE LAND AND GOLDEN BEAR SITES:CROFTS  
REPORT**

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### **SUMMARY**

This report presents a summary of the findings of a report prepared by Planning Consultant, David Crofts, Principal, Strategy Hunter and its relationship with 2 rezoning applications currently being considered by Council, known colloquially as Vintage Balance Land (VBL) and Golden Bear.

The report is titled: "Strategic Review – Permanent Residential Development Vintage Balance Land and Golden Bear" (June 2008).

Council will recollect the detail of the report presented at a briefing held on the matter on 25 June, 2008.

### **SITE DESCRIPTION**

The report relates spatially to land described as VBL and Golden Bear. These sites are currently the subject of 2 separate rezoning applications for permanent residential development (and other specific uses). Both applications seek to extend the provisions of clause 17 of Cessnock Local Environmental Plan 1989 (LEP 1989) over land to which they apply with the primary objective of facilitating permanent residential development. The applications apply over the following lands, a locational reference to which is included in the enclosure document:

#### **Vintage Balance Land**

Pt Lot 1102 DP 1101455 Wine Country Drive  
Pt Lot 1301 DP 1077114 Wine Country Drive  
Pt Lot 1305 DP 1077114 Wine Country Drive  
Lot 21 DP 1044459 Wine Country Drive  
Lot 23 DP 1044459 Wine Country Drive  
Pt Lot D DP 182933 Palmers Lane  
Lot 2411 DP 1060722 McDonalds Road.

#### **Golden Bear**

Lots 1 to 4 DP 869651 Wine Country Drive

### **BACKGROUND**

Council's adopted strategic policy position on permanent residential development in the Vineyards District is that it not be supported beyond the current provisions in LEP 1989 (i.e. 1 dwelling per 40 hectares or vacant existing holding as well as enabling the development of 'The Vintage' through the existing provisions of clause 17). This strategic position has also been advocated by the Hunter Valley Wine Country Industry Association (HVWIA), formerly the Hunter Valley Vineyard Association, and Wine Country Tourism. Council's strategic position in this respect was emphasised in the adoption of the Synergy Report in 2005.

The 2005 Synergy Report commissioned by Council investigated the appropriateness of permanent residential development in the Vineyards District, recommending that it not be supported beyond the current provisions in Cessnock LEP 1989. Council adopted the Synergy Report and its recommendations on 5 July, 2006.

Despite Council's strategic position in relation to permanent residential development in the Vineyards District, Council will recall its current position on Golden Bear which has been to support the preparation of a draft LEP to exhibition with the primary objective of furthering permanent residential development at the site. Council is yet to form a position on the VBL which proposes a significant extension to the existing 'Vintage' community over additional land.

At a meeting held on 7 September 2008, the Minister indicated that the rezoning application should be considered concurrently with the 'Vintage Balance Land' (VBL) rezoning application. The Minister also advised that Council needed to address the strategic circumstances that would justify a shift in Council's adopted policy position in relation to permanent residential development in the Vineyards District.

Council commissioned David Crofts of Strategy Hunter to undertake the required investigations.

A workshop on David Crofts' draft report was attended on 16 June 2008 by the two proponents and members of the HVWIA and Wine Country Tourism. As this workshop was not considered to be a public meeting, the minutes of the meeting are considered to be confidential and are therefore contained within the confidential enclosure document for Councillors.

As previously indicated, a briefing was also held with Councillors on 25 July 2008.

#### **DAVID CROFTS' REPORT SUMMARY**

A copy of David Crofts' report (the Crofts Report) has been distributed to all Councillors. The report's executive summary is included in the enclosure document.

On the matter of changes since the adoption of the 2005 Synergy Report, the Crofts Report specifies that a number of 'strategic' changes have occurred; viz:

*"Since the production of the Synergy Report a number of changes have occurred.*

*As land supply in other locations in the Lower Hunter has become more constrained, Cessnock is being recognised as an area which can accommodate additional urban growth. The growth of local employment, through initiatives such as the Hunter Employment Zone, has increased the focus on Cessnock.*

*The Lower Hunter Regional Strategy has been finalised and recognises an increased role for Cessnock in accommodating urban growth. Relative to the draft Strategy (available at the time of the Synergy Report), the final Strategy provides for a considerable increase in the supply and diversity of land for urban development in the Cessnock LGA. Significant among the changes is the potential release of land for around 7000 lots at Huntlee, just south of Branxton. The proposed 2000 lot Anvil Creek golf course residential resort south of Greta was also not included in the draft Strategy, but was included in the final Strategy. The final Strategy maintained a policy to focus growth around existing Centres, to limit urban expansion and to contain any urban expansion as much as possible to extensions of existing urban areas.*

*Also since 2005, the Cessnock City Wide Settlement Strategy (CWSS) has been reviewed in the light of the finalisation of the Lower Hunter (Settlement)(sic) Strategy. The 2007 draft CWSS considers the supply and demand for residential land in the City and concludes that the Lower Hunter Regional Strategy provides for more than sufficient residential land to meet demand. Significant urban land releases are proposed at Bellbird North, Huntlee and Anvil Creek/South Greta in both the LHRS and draft 2007 CWSS.*

*Additionally, Wine Country has gained further depth in its tourism product since the Synergy Report, including the development of the Crowne Plaza Hotel and Convention Centre and the growth of entertainment events.*

*In summary, the strategic framework applying at the time of the Synergy Report has strengthened with the publication of the final Lower Hunter Regional Strategy and the draft 2007 City Wide Settlement Strategy. As a result of the former document, the quantity and diversity of land identified for residential development in the vicinity of the Vineyards has increased substantially”.*

The Crofts Report makes reference to the implications of this ‘strengthened’ strategic framework to the proposed development at VBL and Golden Bear. The report indicates that a permanent full time residential population of sufficient size to justify urban community services (such as the combined development of VBL and Golden Bear) would not only be inconsistent with the local and regional planning framework, it would also lead to difficulties with service provision, due to limited resources for service delivery and the infrastructure needs of identified future urban areas.

The likely high income of the future residents of the proposed developments is acknowledged by the Crofts Report, citing that it may lead to a lower demand on Government provided community services, such as health, because the residents would be more likely to purchase privately delivered services relative to a more conventional residential development. However, the report indicates that there will still be a demand on such urban services in a location not identified for future urban development, with consequent inefficiencies and additional costs in the delivery of services generally.

On these grounds the Crofts Report clearly indicates that it is not desirable for Council to support additional permanent full time residential housing at either the VBL or the Golden Bear. This comment is qualified by stating that if a similar proposed development was located adjacent to an existing urban area, this concern would not be sustained, as the development could utilise the service delivery framework provided for that urban area.

The specific recommendations of the Crofts Report are as follows:

“

1. *Council reaffirm that wine and viticulture is the unique tourism anchor of the area; and it is for this reason that other development must be consistent with the rural and viticultural character of the District, and that conflict with viticultural operations be minimised.*
2. *Council acknowledge that since its consideration of the Synergy Report:*
  - *The Lower Hunter Regional Strategy has substantially increased potential land for urban development in Cessnock and reaffirmed a focus on existing centres, to limit urban expansion and to contain any urban expansion as much as possible to extensions of existing urban areas; in order to achieve sustainability objectives and to achieve efficiencies in the supply of urban infrastructure and community services, such as human services.*
  - *The Cessnock City Wide Settlement Strategy (CWSS) has been reviewed in the light of the finalisation of the Lower Hunter Settlement Strategy and the supply and demand for residential land in the City and concludes that the Lower Hunter Regional Strategy provides for more than sufficient residential land to meet demand.*
  - *Wine Country tourism continues to face competition and that further product diversification and depth is required which is complementary to “wine and viticulture” as the anchor product*

3. *Council note that that additional permanent residents on the subject sites will create a demand for additional urban community (human) services which can not be delivered efficiently, and that such development is inconsistent with Lower Hunter Regional Strategy and the Cessnock City Wide Settlement Strategy, in contrast to a location adjacent to existing or proposed urban areas.*
4. *Council note the economic benefits of the proposed developments, however due to their location being not adjacent to an existing or proposed urban area (and inconsistency with Local and Regional planning strategy), Council not agree to additional residential development for permanent residents in the Vintage and Golden Bear lands (and the Vineyards District generally).*
5. *Council note that the Macroplan report, produced for the Golden Bear and Vintage Balance Land proponents, estimates that only 20% of the dwellings proposed for permanent residents on Golden Bear are likely to be occupied by permanent residents, and that the proposed development on the Vintage Balance Land has similar characteristics; a possible potential market exists for the remaining 80% of the proposed dwellings as tourist accommodation units, which could assist in supporting the costs of the golf and tourist resort facilities on site (subject to confirmation through economic and market analysis).*
6. *The Cessnock Local Environmental Plan be amended to permit the strata titling and community titling of tourist accommodation units within the Vintage Balance and Golden Bear lands in order to expand the options for financing tourism development.*
7. *Council consider the merits of amending Clause 52 of the Cessnock Local Environmental Plan 1989 on a location specific basis as necessary (or replacing the LEP Clause with a more flexible Development Control Plan provision) to permit the necessary quantum of tourist accommodation to achieve a viable tourism development. However, this adjustment should be done consistent with other planning considerations, such as managing landscape impact, which would have to be applied to a development assessment in any case.*
8. *A landscape and urban design strategy be developed for Wine Country Drive from Branxton south to Cessnock which is consistent with a tourism area with a unique rural and viticultural character.*
9. *Council develop a Vineyard Tourism and Development Strategy in conjunction with Wine Country Tourism.*
10. *Council develop a City vision and associated strategies to provide a strategic anchor for the planning and development of the City in order to assist the orderly development of the Local Government Area, and to permit it to assess innovative development proposals within a consistent frame of reference”.*

#### **COMMENT**

The Crofts Report has outlined the current lack of a strategic vision generally for the Vineyards District and the need for the strategic management, in terms of landscape and urban design, of the transport corridor between Branxton and Cessnock.

Irrespective of the political environment associated with the extension of the F3, given the continuing traffic pressure on the New England Highway, its establishment at some future stage is likely. Considering its proposed proximity to the Vineyards District, this will place considerable focus on the Branxton to Cessnock roadway as the gateway location to the

internationally renowned Vineyards District. This will mean that the Golden Bear and VBL sites will play a critical future role in establishing the detail of the approach and gateway entry to the Vineyards District.

Together with the review suggested for the Branxton to Cessnock corridor, it is considered essential that a strategic vision be developed with key stakeholders in the interests of the long term sustainability of the Vineyards District. This is supported by both the Hunter Valley Wine Industry Association and Wine Country Tourism.

The Crofts Report also outlines the fact that Wine Country Tourism continues to face competition and that further product diversification and depth is required which is complementary to “wine and viticulture” as the anchor product. To this end, the Crofts Report recommends that Council develop a Vineyard Tourism and Development Strategy in conjunction with Wine Country Tourism.

### **CONCLUSION**

The subject land is located such that it is highly likely to be the main entry/gateway into the Vineyards District in the future, especially with the eventual establishment of the F3 extension. The Golden Bear and Vintage developments provide the opportunity for two high quality resorts to be established that frame the ‘tourist gateway’ and enhance the reputation of the Hunter Vineyards District as a tourist destination of international repute.

Therefore, it is recommended that Council embrace the opportunity to guide the development of built form and landscape through the preparation of a Landscape and Urban Design Strategy between Branxton and Cessnock. The ability to guide future development proposals in this location through a well founded strategic framework will add considerably to sustainability of the Vineyards District in the long term.

Council also needs to develop a vision for the Vineyards District in conjunction with key stakeholders with such vision to provide a strategic anchor for the future planning and development of the Vineyards District.

**RECOMMENDATION** that the report be noted.

To: **The General Manager**  
City Planning Committee –  
16 July 2008

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

## **DIRECTOR CITY PLANNING REPORT NO. 51/2008**

**SUBJECT: REZONING APPLICATION 18/2007/1: VINTAGE BALANCE LAND  
PROPOSED EXTENSION TO CLAUSE 17 CESSNOCK LOCAL  
ENVIRONMENTAL PLAN 1989**

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### **SUMMARY**

An application has been received which applies to land colloquially described as 'Vintage Balance Land' (VBL). VBL lies immediately to the east of the existing 'Vintage' development. The application was amended to include Beggars Bridge Vineyard to the north of the 'Vintage' bounded by McDonalds Road to the north and west. For the purposes of this report, the lands are referred to separately when relevant.

The application, including the addendum, seeks to extend the spatial provisions of clause 17 Cessnock Local Environmental Plan 1989 (LEP 1989) to land to which the application applies, the primary objective of which is to facilitate additional permanent residential development and its subdivision.

Whilst neither the original application nor the addendum, which incorporates Beggars Bridge Vineyard, are not supported on town planning grounds, the report recommends that the original application which applies to the VBL land only (ie the exclusion of Beggars Bridge Vineyard) be supported for other reasons, primarily to ensure the longer term economic sustainability of the existing 'Vintage' development.

### **CONTEXT: EXISTING 'VINTAGE DEVELOPMENT'**

'The Vintage' is an existing tourist recreation facility integrated with permanent residential development.

'The Vintage' is the subject of an operational development consent granted by Council on 13 December, 1996. Several amendments have been made to the original consent dating between May 2001 and August 2005.

The current amendment (August, 2005) provides, in part, for the following:

- Stage 1: 18 hole golf course including informal play areas 1 and 2; country club and associated parking; a maximum of 223 residential lots; a maximum of 21 rural-residential lots and associated residue lots.
- Stage 2: Tennis and fitness centre; a maximum of 147 residential lots and associated residue lots.
- Stage 3: Special residential precincts incorporating a resort hotel precinct to a maximum of 150 units and resort communities having a maximum of 335 resort accommodation units; a maximum of 112 residential lots; a maximum of 19 rural-residential lots; development of community facilities and development of tourist recreation (commercial) facilities.

This 'generic' staging and detail is duplicated in Council's current DCP (Cessnock DCP 2006) for the site.

The existing 'Vintage' development site is subject to the provisions of clause 17 of LEP 1989 which permits the subdivision of land and the erection of dwelling-houses, villas, duplexes and the like on allotments so created where, the subdivision is, in the opinion of the Council, required as an integral part of a major tourist recreation facility.

**BACKGROUND**

Council's adopted strategic policy position on permanent residential development in the Vineyards District is that it not be supported beyond the current provisions in LEP 1989 (ie 1 dwelling per 40 hectares or vacant existing holding as well as enabling the development of 'The Vintage' through the existing provisions of clause 17). This strategic position has also been supported by the Hunter Valley Wine Country Industry Association (HVWIA) (formerly the Hunter Valley Vineyard Association) and Wine Country Tourism. Council's strategic position in this respect was emphasised in the adoption of the Synergy Report in 2005 (C&RS Report 98/2006).

The 2005 Synergy Report commissioned by Council investigated the appropriateness of permanent residential development in the Vineyards District, recommending that it not be supported beyond the current provisions in Cessnock LEP 1989. Council adopted the Synergy Report and its recommendations on 5 July 2006.

At a meeting held on 7 September 2008, the Minister for Planning indicated that the 'Vintage Balance Land' (VBL) and 'Golden Bear' rezoning applications should be considered concurrently. The Minister also advised that Council needed to address the strategic circumstances that would justify a shift in Council's adopted policy position in relation to permanent residential development in the Vineyards District.

Council commissioned David Crofts of Strategy Hunter Pty Ltd, to undertake the required investigations. The findings of the Crofts Report are documented in Director City Planning Report 50/2008.

The 'VBL' rezoning application has been held in abeyance pending the finalisation of the Crofts Report.

**SITE DESCRIPTION**

The application, including the addendum, applies over the following lands, a locational reference to which is included in the enclosure document:

**Vintage Balance Land**

Pt Lot 1102 DP 1101455 Wine Country Drive  
Pt Lot 1301 DP 1077114 Wine Country Drive  
Pt Lot 1305 DP 1077114 Wine Country Drive  
Lot 21 DP 1044459 Wine Country Drive  
Lot 23 DP 1044459 Wine Country Drive  
Pt Lot D DP 182933 Palmers Lane

Council's property information system shows Lot 21 in the ownership of Hunter Water Corporation. A representative of Vintage Developments has advised that the Corporation's land has been held in trust for a sewerage treatment plant to be established in association with 'The Vintage'. Council is advised that the land was transferred to the HWC for this purpose. Council has also been advised that the land is no longer required to be held by the Corporation for a sewerage treatment plant and that it is to be transferred back to the owner of 'The Vintage'. Council has viewed a copy of a Deed of Agreement between Hunter Water Corporation and the owner of the 'Vintage' to this effect.

The land collectively occupies an area of approximately 140 hectares

## **Beggars Bridge Vineyard**

Lot 2411 DP 1060722 McDonalds Road.

The land is 24.3 hectares in size.

### **PROPOSED LAND USES**

#### **Original Application (Vintage Balance Land)**

The original VBL application seeks to extend clause 17 of LEP1989 over the VBL to enable further development and subdivision over additional land, including:

- A 9 hole extension of the existing golf course
- A 200 unit Village Resort, consisting of an aged care development
- 160 'Vintage style' residential lots
- 40 rural residential lots
- A small commercial/retail facility
- Viticultural activity

The proposed spatial extension to Clause 17 is required to permit the residential components of the proposed development.

The proponent has indicated that the development of the site in this manner will only be possible if permanent residential occupation of the site in the manner proposed is able to occur. The suggestion by the Crofts Report that the development could be realised through the reintroduction of community and strata title subdivision provisions at the site is strongly disputed by the proponent.

#### **Application Addendum (Beggars Bridge Vineyard)**

The rezoning application was amended to include land currently occupied by Beggars Bridge Vineyard.

The addendum also seeks to spatially extend the application of clause 17 to the site to permit the development of the land as proposed.

Land uses proposed at this site include:

- A rural residential precinct comprising up to 50 residential dwellings
- Conversion of the existing dwelling/cellar door into a tourist facility incorporating a restaurant and conference facility
- Provision of a new point of vehicle access from McDonalds Road to service the proposed residential component of the development. It is intended to retain the current access off McDonalds Road which services the dwelling/cellar door. This access point is intended to service the proposed restaurant and conference centre

It is also proposed to retain the current vineyard at the site.

#### **CLAUSE 17 CESSNOCK LEP 1989**

A figure in the enclosure document illustrates the current spatial extent of clause 17.

The primary objective of clause 17 is to enable the development and subdivision of permanent residential development in association with major tourism development. It is critical that these land uses are fully integrated across a development site.

The relevant extract of clause 17 of Cessnock LEP 1989 is cited as follows:

*“17 Subdivision of land within Zone No 1 (v) in conjunction with major tourism development*

- (1) This clause applies to land shown cross-hatched on the map.*
- (2) Notwithstanding clauses 15 (1) and 16 (1), the Council may grant consent to the subdivision of land and the erection of dwelling-houses, villas, duplexes and the like on the allotments so created where the subdivision is, in the opinion of the Council, required as an integral part of a major tourist recreation facility.*
- (3) The provisions of clauses 16 (2) and 24 shall not apply to or in respect of any allotments created or buildings erected in accordance with the provisions of subclause (2).”*

The reference to clauses 15(1) and 16(1) is a reference to the subdivision of land and the establishment of dwelling-houses thereon generally in the 1(v) Rural (Vineyards) zone. Clause 16(2) relates to the establishment of manager's residences within the 1(v) Rural (Vineyards) zone and clause 24 relates to dual occupancy development. A copy of these LEP clauses are contained in the enclosure document for reference purposes.

The existing clause 17 provisions will transfer to Schedule 1 (Local Provisions) in the new City Wide LEP (Draft Cessnock LEP 2008) being prepared.

### **PLANNING ASSESSMENT**

All relevant planning matters have been taken into consideration in the assessment of this application with the following matters of particular relevance:

#### **Cessnock LEP 1989**

The land is zoned 1(v) Rural (Vineyards) under the Cessnock LEP 1989. Under the provisions of this zone, dwelling-houses are permitted on lots having an area of not less than 40 hectares (ha) or on vacant existing holdings. Subdivision of land into lots less than 40 ha is prohibited. 'Integrated tourist development' is permitted in this zone to a maximum density of 1.5 tourist accommodation units per ha (Clause 52). It is noted that the 1(v) Rural (Vineyards) zone will change to a RU1 Primary Production Zone under Draft Cessnock LEP 2008.

The development proposed at VBL and at Beggars Bridge requires amendment to Council's planning instrument to proceed, both in terms of the type and density of development proposed as well as its subsequent subdivision. The exception is that tourism land uses are permissible with consent under the current zoning.

### **VINTAGE BALANCE LAND**

#### **Crofts Report**

The Crofts Report considered whether or not strategic circumstances have changed since the 2005 Synergy Report\* to an extent which would give rise to a recommendation that Council's current strategic policy position on permanent residential development in the Vineyards District be amended at VBL and at the site referred to as Golden Bear (see Director City Planning Report 50/2008).

(\* The 2005 Synergy Report investigated the appropriateness of permanent residential development in the Vineyards District, recommending that it not be supported beyond the current provisions in Cessnock LEP 1989. Council adopted the Synergy Report and its recommendations on 5 July 2006).

## **BEGGARS BRIDGE VINEYARD**

As previously indicated, the land currently occupied by Beggars Bridge Vineyard was lodged as an addendum to the original VBL application.

The location of the land relative to the VBL is illustrated in the enclosure document. The proponent has been unable to establish how the proposed development of the site would be integrated into the existing 'Vintage' development. It is considered that the development, if approved, would result in an isolated pocket of residential development.

Concerns are also raised about the depth of the site in so far as its ability to provide adequate separation for any potential future residents from adjoining vineyards. Whilst it is not a requirement of DCP 2006 that the separation of vineyards and public place or permanent residential development be considered at the same site, the Vineyards District chapter of DCP 2006 was not written taking into consideration the density of permanent residential development proposed at the site. Concerns are raised about the ability for any permanent residents to be adequately protected from the impacts associated with spray drift emanating from the management of the existing vineyard, which is proposed to be retained.

The proposed conversion of the existing dwelling/cellar door into a tourist facility incorporating a restaurant and conference facility is a permissible land use under the current 1(v) zoning.

## **SUSTAINABILITY AT THE VINTAGE AND PRESENTATION**

Projected monetary and fiscal analyses (commercial in confidence) have been provided to illustrate the commercial relationship between the existing 'Vintage' development and the development of VBL. It is evident from those documents that the long term economic sustainability of the existing 'Vintage' development is heavily reliant upon the subsequent successful development of VBL.

The golf club is the key driver of the Vintage project. It is an internationally branded and recognised golf course, and funds the maintenance of community and recreational facilities on site for residents, ie pool, tennis courts, gym, BBQ facilities, maintenance of the road verges to Vintage Drive and the main entrance from McDonalds Road. The golf club budget also importantly maintains the golf course interface to the residential lots which forms a major part of the aesthetics for owners' land in the Vintage.

Analysis shows that the development of the land for a further 9 golf holes and the development of the land for permanent residential development, coupled with an associated increase in golf club membership, is critical to the long term future of the golf club. Whilst increases in golf club membership are not solely reliant on future permanent residents joining the club, those residents do and will play a key role in its numbers. Increased club membership can be sourced through a variety of other mechanisms, including options to make membership more attractive.

Without a strong club membership, operational budget cuts are likely. If this occurs, it could be argued that the maintenance of the development generally will be compromised, lowering the general standard and visual appeal of the site. It is important that the current high standard of maintenance be continued in this gateway location. It is therefore essential that the golf club operations be sustainable and affordable to the project on an ongoing basis.

The various residential communities within 'The Vintage' are maintained by each Community Association and therefore their parks and presentation should always remain at a high standard.

The high quality and visual appeal of development and landscape needs to be guaranteed in any support for VBL. Council should examine the adoption and application of the existing 'Vintage' Architectural and Landscape Guidelines over the Vintage Balance Land.

The ability to foster the development of a vital and dynamic 'landscape' in this gateway location is also considered to be a significant opportunity in furthering the development of the site.

### **STRATEGIC PLANNING MATTERS**

Irrespective of the political environment associated with the extension of the F3, given the continuing traffic pressure on the New England Highway, its establishment at some future stage is likely. Considering its proposed proximity to the Vineyards District, this will place considerable focus on the Branxton to Cessnock roadway as the gateway location to the internationally renowned Vineyards District. This will mean that the land described as VBL will play a critical future role in establishing the detail of the approach, the entry, to the Vineyards District. It will be one of the first sites viewed by the visitor to the area.

Regardless of whether Council supports the VBL application or not, it is vital that a strategic planning review associated with landscape and urban design, including the interface with the road environment, be undertaken for the area contained between Branxton and Cessnock. The existing rural and viticultural character of the Vineyards District are key elements of this environment. Should Council support the VBL application, the need for this strategic review is paramount. Should Council support the application it is essential that this review occur concurrently with the draft LEP and prior to any gazettal of an LEP for the site.

The Crofts Report has outlined the current lack of a strategic vision generally for the Vineyards District. Together with the review suggested for the Branxton to Cessnock corridor, it is considered essential that a strategic vision be developed with key stakeholders in the interests of the long term sustainability of the Vineyards District. This is supported by both the Hunter Valley Wine Industry Association and Wine Country Tourism.

The Crofts Report also outlines the fact that Wine Country Tourism continues to face competition and that further product diversification and depth is required which is complementary to "wine and viticulture" as the anchor product. To this end, the Crofts Report recommends that Council develop a Vineyard Tourism and Development Strategy in conjunction with Wine Country Tourism.

### **CONCLUSION**

The development of the site is considered to be important to the longer term sustainability of the site. Critical in that equation is the ability to continue to maintain community areas and facilities to a high standard, enabling 'The Vintage' to retain and enhance its current vibrancy and appeal.

The site is located in a significant gateway location which will be further highlighted with the eventual establishment of the F3. Council should embrace the opportunity to guide the development of built form and landscape through the preparation of a Landscape and Urban

Design Strategy between Branxton and Cessnock. The ability to guide future development proposals in this location through a well founded strategic framework will add considerably to sustainability of the Vineyards District in the long term.

**RECOMMENDATION** that:

- A. Council support the preparation of a draft local environmental plan and its exhibition to extend Cessnock LEP 1989 clause 17 (or equivalent in Draft Cessnock LEP 2008 or Cessnock LEP 2008 as is relevant at the time) over land colloquially described as Vintage Balance Land, described spatially in this report.
- B. To maintain a high quality of visual appeal and design, Council examine the adoption and application of the existing 'Vintage' Architectural and Landscape Guidelines over the Vintage Balance Land.
- C. Council not support the preparation of a draft local environmental plan to extend Cessnock LEP 1989 clause 17 (or equivalent in Draft Cessnock LEP 2008 or Cessnock LEP 2008 as is relevant at the time) over land described as Lot 2411 DP 1060722 McDonalds Road, Pokolbin.
- D. A Landscape and Urban Design Strategy be developed for Wine Country Drive from Branxton south to Cessnock which is consistent with a tourism area with a unique rural and viticultural character.
- E. Council develop a vision for the Vineyards District in conjunction with key stakeholders with such vision to provide a strategic anchor for the planning and development of the Vineyards District.
- F. Council develop a Vineyard Tourism and Development Strategy in conjunction with the Hunter Valley Wine Industry Association, Wine Country Tourism and other relevant stakeholders.
- G. Council give consideration in the 2009/2010 financial year to providing funds as a priority for the development of a Vineyard Tourism and Development Strategy and a Vineyards District Vision outlined in this report.
- H. Council request the Minister for Planning to prohibit further rezoning applications for permanent residential development through the listing of the Vineyards District, as identified by the current 1(v) zoning, in Schedule 2 of State Environmental Planning Policy (Rural Lands) 2008.

To: **The General Manager**  
City Planning Committee –  
16 July 2008

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

## **DIRECTOR CITY PLANNING REPORT NO. 52/2008**

**SUBJECT: REZONING APPLICATION 18/2005/4: GOLDEN BEAR  
PROPOSED EXTENSION TO CLAUSE 17 CESSNOCK LOCAL  
ENVIRONMENTAL PLAN 1989**

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### **SUMMARY**

The application applies to land colloquially described as 'Golden Bear'. 'Golden Bear' is located in close proximity to the existing 'Vintage' development on the eastern side of Wine Country Drive.

The application seeks to extend the spatial provisions of clause 17 Cessnock Local Environmental Plan 1989 (LEP 1989) to land to which the application applies, the primary objective of which is to facilitate additional permanent residential development and its subdivision in association with major tourism development.

The application was considered by Council at its meeting of 19 July, 2006 where it was resolved to support the application through the preparation of a draft local environmental plan. A copy of the Council Report (Director Strategic & Community Services Report 98/2006) and associated minute is included in the enclosure document.

It is considered that the likely significant economic benefits to the LGA provide a strong rationale for its support. The advantages of attracting a Jack Nicklaus signature development to the locality are considerable. The report recommends that Council continue to support the application accordingly.

### **BACKGROUND**

After consideration of Director Strategic & Community Services Report 98/2006, Council resolved to support the preparation of a draft local environmental plan to extend clause 17 over the site to facilitate the development and further subdivision of 300 permanent residential lots.

A section 54 (Environmental Planning & Assessment Act, 1979: the Act) notice was provided to the Department of Planning accordingly and the application was referred to relevant parties pursuant to section 62 of the Act.

The Planning Minister, the Hon Frank Sartor MP, wrote to Council during July 2007 raising concerns about the proposed development of the site, stating, amongst other things, the Government's objection to adhoc rezoning without strategic justification. A copy of the Minister's letter is provided in the enclosure document.

At a meeting held on 7 September 2008, the Minister indicated that the rezoning application should be considered concurrently with the 'Vintage Balance Land' (VBL) rezoning application. The Minister also advised that Council needed to address the strategic circumstances that would justify a shift in Council's adopted policy position in relation to permanent residential development in the Vineyards District.

The 2005 Synergy Report commissioned by Council investigated the appropriateness of permanent residential development in the Vineyards District, recommending that it not be supported beyond the current provisions in Cessnock LEP 1989. Council adopted the Synergy Report and its recommendations on 5 July, 2006.

Council commissioned David Crofts of Strategy Hunter Pty Ltd, to undertake the required investigations. The findings of the Crofts Report are documented in Director City Planning Report No. 50/2008.

The 'Golden Bear' application has been held in abeyance pending the finalisation of the Crofts Report.

### **SITE DESCRIPTION**

The application applies over Lots 1 to 4 DP 869651 Wine Country Drive, a locational reference to which is included in the enclosure document.

The land occupies an approximate area of 238 hectares.

### **PROPOSED LAND USES**

The 'Golden Bear' development is proposed to be designed and branded by world renowned golfer, Jack Nicklaus; hence its name.

Golden Bear proponents state that they are targeting a premium market with an international clientele. They indicate that a high quality, 'prestige' resort is proposed

From the documentation provided by the proponent, the following development is proposed:

- An 18 hole golf course
- Hotel and club house
- Resort villas and recreation facilities for 250 guests
- 300 residential lots
- Viticultural activity

A Jack Nicklaus 'signature' golf course is intended as one of a limited number of elite standard Jack Nicklaus Golf Clubs around the world. A copy of a contractual agreement between Nicklaus Design and the proponent for the construction and operation of the 'signature' golf course has been sighted.

A signature golf course is the highest level of design that a particular organisation can offer. It must be always personally designed by an organisation's most astute designer and bears his or her name and is sealed with the person's signature to differentiate itself in quality from other courses. A signature golf course is intended to be a long lasting legacy of the designer.

Should Council proceed to support the application it is critical that this calibre of development is achieved, otherwise the outcome will be a 'standard' golf course residential estate which is likely to detract from this important gateway location in the Vineyards District.

The proponent has indicated that the development of the site in this manner will only be possible if permanent residential occupation of the site in the manner proposed is able to occur. The suggestion by the Crofts Report that the development could be realised through the reintroduction of community and strata title subdivision provisions at the site is strongly disputed by the proponent.

### **CLAUSE 17 CESSNOCK LEP 1989**

A figure in the enclosure document illustrates the current spatial extent of clause 17.

The primary objective of clause 17 is to enable the development and subdivision of permanent residential development in association with major tourism development. It is critical that these land uses are fully integrated across a development site.

The relevant extract of clause 17 of Cessnock LEP 1989 is cited as follows:

- “17. Subdivision of land within Zone No 1 (v) in conjunction with major tourism development*
- (1) This clause applies to land shown cross-hatched on the map.*
  - (2) Notwithstanding clauses 15 (1) and 16 (1), the Council may grant consent to the subdivision of land and the erection of dwelling-houses, villas, duplexes and the like on the allotments so created where the subdivision is, in the opinion of the Council, required as an integral part of a major tourist recreation facility.*
  - (3) The provisions of clauses 16 (2) and 24 shall not apply to or in respect of any allotments created or buildings erected in accordance with the provisions of subclause (2).”*

The reference to clauses 15(1) and 16(1) is a reference to the subdivision of land and the establishment of dwelling-houses thereon generally in the 1(v) Rural (Vineyards) zone. Clause 16(2) relates to the establishment of manager’s residences within the 1(v) Rural (Vineyards) zone and clause 24 relates to dual occupancy development. A copy of these LEP clauses are contained in the enclosure document for reference purposes.

The existing clause 17 provisions will transfer to Schedule 1 (Local Provisions) in the new City Wide LEP (Draft Cessnock LEP 2008) being prepared.

### **PLANNING ASSESSMENT**

All relevant planning matters have been taken into consideration in the assessment of this application with the following matters of particular relevance:

#### **Cessnock LEP 1989**

The land is zoned 1(v) Rural (Vineyards) under the Cessnock LEP 1989. Under the provisions of this zone, dwelling-houses are permitted on lots having an area of not less than 40 hectares (ha) or on vacant existing holdings. Subdivision of land into lots less than 40 ha is prohibited. ‘Integrated tourist development’ is permitted in this zone to a maximum density of 1.5 tourist accommodation units per ha (Clause 52). It is noted that the 1(v) Rural (Vineyards) zone will change to a RU1 Primary Production Zone under Draft Cessnock LEP 2008.

The development proposed at Golden Bear requires amendment to Council’s planning instrument to proceed, both in terms of the type and density of development proposed as well as its subsequent subdivision. The exception is that tourism land uses are permissible with development consent under the current zoning.

#### **Crofts Report**

The Crofts Report (see Director City Planning Report No. 50/2008) considered whether or not strategic circumstances have changed since the 2005 Synergy Report to an extent which would give rise to a recommendation that Council’s current strategic policy position on permanent residential development in the Vineyards District be amended at ‘Golden Bear’ and at the site referred to as VBL.

The ‘Golden Bear’ application is unable to be supported on planning grounds, the rationale for which is established in the Crofts Report and in Director Strategic & Community Services Report 98/2006.

**Director Strategic & Community Services Report No. 98/2006**

The application was originally considered by Council at its meeting of 19 July 2006 where it was resolved to support the application through the preparation of a draft local environmental plan. As previously indicated, copy of the Council Report (Director Strategic & Community Services Report No. 98/2006) and associated minute is included in the enclosure document.

Whilst Council resolved to support the application at this time, the officer's recommendation was that it not be supported, largely because of its inconsistency with Council's adopted strategic position on permanent residential development in the Vineyards District but also on the basis that the proposal was likely to have significant adverse impacts on Aboriginal heritage, threatened flora and fauna and the rural character and scenic amenity of the locality. These reasons remain valid planning considerations.

***JACK NICKLAUS SIGNATURE DEVELOPMENT***

The economic benefits to the locality emanating from the development of the site as proposed would undoubtedly be significant. Coupled with the existing Greg Norman designed golf course at the neighbouring 'Vintage', the Cessnock LGA is potentially able to become an international golfing destination.

If continued Council support is forthcoming for the application, it will be essential that Council investigate the various legal methods available to ensure the delivery of a Jack Nicklaus signature development at the site. Such investigation should occur prior to any gazettal of an LEP for the site.

It is critical that this calibre of development is achieved. Council should be wary of approving a standard golf residential estate in this location as it will not only visually detract from the locality but it will also require the provision of infrastructure and human services which are more efficiently delivered in or peripheral to an existing urban centre. In contrast, it is considered that the likely financial means of 'Golden Bear' residents will result in a low 'pull down' on services, with many of them provided through private supply.

The ability to foster the development of a vital and dynamic 'landscape' in this gateway location is also considered to be a significant opportunity.

***STRATEGIC PLANNING MATTERS***

Irrespective of the political environment associated with the extension of the F3, given the continuing traffic pressure on the New England Highway, its establishment at some future stage is likely. Considering its proposed proximity to the Vineyards District, this will place considerable focus on the Branxton to Cessnock roadway as the gateway location to the internationally renowned Vineyards District. This will mean that the land described as 'Golden Bear' will play a critical future role in establishing the detail of the approach, the entry, to the Vineyards District. It will be one of the first sites viewed by the visitor to the area.

Regardless of whether Council continues to supports the 'Golden Bear' application or not, it is vital that a strategic planning review associated with landscape and urban design, including the interface with the road environment, be undertaken for the area contained

between Branxton and Cessnock. The existing rural and viticultural character of the Vineyards District are key elements of this environment. Should Council continue to support the 'Golden Bear' application, the need for this strategic review in the short term, is paramount. Should Council continue to support the application it is essential that this review occur concurrently with the draft LEP and prior to any gazettal of an LEP for the site.

The Crofts Report (Director City Planning Report No. 50/2008) outlined the current lack of strategic vision generally for the Vineyards District (and for the LGA generally). Together with the review suggested for the Branxton to Cessnock corridor, it is considered essential that a strategic vision be developed with key stakeholders in the interests of the long term sustainability of the Vineyards District.

The Crofts Report also outlines the fact that Wine Country Tourism continues to face competition and that further product diversification and depth is required which is complementary to "wine and viticulture" as the anchor product. To this end, the Crofts Report recommends that Council develop a Vineyard Tourism and Development Strategy in accordance with Wine Country Tourism.

### **CONCLUSION**

The development of the site to create a Jack Nicklaus signature product is considered to be in the long term economic interests of the LGA; potentially adding significantly to international visitors and assisting the LGA to position itself as a golf tourism destination. If supported, Council should seek the necessary guarantees to ensure that a Jack Nicklaus signature product is, in fact, what is delivered.

Planning matters raised in Director Strategic & Community Services Report No. 98/2006 will need to be tabled for particular consideration in any future planning for the site and should be fully investigated prior to an LEP gazettal at the site

The site is located in a significant gateway location which will be further highlighted with the eventual establishment of the F3. Council should embrace the opportunity to guide the development of built form and landscape through the preparation of a Landscape and Urban Design Strategy between Branxton and Cessnock. The ability to guide future development proposals in this location through a well founded strategic framework will add considerably to sustainability of the Vineyards District in the long term.

### **RECOMMENDATION** that:

- I. Council continue to support the preparation of a draft local environmental plan and its exhibition to extend Cessnock LEP 1989 clause 17 (or equivalent in Draft Cessnock LEP 2008 or Cessnock LEP 2008 as is relevant at the time) over land colloquially described as 'Golden Bear', described spatially in this report.
- J. Prior to gazettal of any LEP, Council investigate the legal mechanisms possible to guarantee that if the site is developed as proposed, the product delivered is a Jack Nicklaus Signature Development.
- K. A Landscape and Urban Design Strategy be developed for Wine Country Drive from Branxton south to Cessnock which is consistent with a tourism area with a unique rural and viticultural character. The development and adoption of the Strategy to occur prior to the determination of any development applications for development of the site.

- L. Council develop a vision for the Vineyards District in conjunction with key stakeholders with such vision to provide a strategic anchor for the planning and development of the Vineyards District.
- M. Council develop a Vineyard Tourism and Development Strategy in conjunction with the Hunter Valley Wine Industry Association, Wine Country Tourism and other relevant stakeholders.
- N. Council give consideration in the 2009/2010 financial year to providing funds as a priority for the development of a Vineyard Tourism and Development Strategy and a Vineyards District Vision outlined in this report.
- O. Council request the Minister for Planning to prohibit further rezoning applications for permanent residential development through the listing of the Vineyards District, as identified by the current 1(v) zoning, in Schedule 2 of State Environmental Planning Policy (Rural Lands) 2008.

To: ***The General Manager***  
City Planning Committee –  
16 July 2008

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

## DIRECTOR CITY PLANNING REPORT NO. 53/2008

**SUBJECT: DOLLAR FOR DOLLAR GRANT SCHEME**

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Planning Assistant, Ms Donna Lorriman, reports:

### REPORT

At its meeting held on 19 March 2008, Council adopted the report of the Dollar for Dollar Grants Scheme to provide monetary funds towards the repair or replacement of roofing, guttering and drainage of heritage items listed on the Cessnock Local Environmental Plan, 1989 and the Hunter Regional Environmental Plan (Heritage), 1989. Council's budget for the 2007/2008 Grant Scheme allocated \$7,500 to the grants scheme while a further \$7,500 from the NSW Heritage Office was made available on a dollar for dollar basis.

Five (5) projects were funded for the 2007/2008 Dollar for Dollar Grant Scheme. All projects were successfully completed and a total of \$4290 was contributed to owners of local heritage items on a dollar to dollar basis. Details of the projects funded are as follows:

SITE/ORGANISATION	DESCRIPTION	COST \$	GRANT \$
Endeavour Museum – 2894 Wollombi Road, Wollombi (Voirrey Cochrane)	Repairs to corrugated iron roof of museum, repair all box gutters and flashings, check leaks over rear passage near cell area, reseal all external gutters and valleys, replace all deteriorated roof sheets and ridges where needed.	\$2,090	\$1,000
Mines Rescue Station – 53-55 Armidale Street, Abermain (Glen Chatman)	Replacement of guttering at downpipes.	\$6,468	\$1,000
Abermain Hotel – 27 Charles Street, Abermain (Cate Cook or Ian Plater)	Replacement and repairs to Hotel's guttering and downpipes.	\$1,375	\$690
Wollombi Cottage – 2883 Wollombi Road, Wollombi (Mary Blazey)	Repairs to the rear wall of the cottage before it falls away.	\$1,200	\$600
Mulla Villa Guest House – 3174 Great North Road, Wollombi	Replacement of guttering	\$3,960	\$1,000
<b>TOTAL</b>		<b>\$15,073</b>	<b>\$4,290</b>

Community feedback expressed positive support for financial assistance received through this grant scheme which provided opportunity for owners of heritage buildings to maintain their property.

**RECOMMENDATION** that this report is received and noted.

To: **The General Manager**  
City Planning Committee - 16 July  
2008

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
27 June 2008

## **DIRECTOR CITY PLANNING REPORT NO. 54/2008**

**SUBJECT: VOLUNTARY PLANNING AGREEMENT: OFFER BY GRETA ESTATES PTY LIMITED IN CONNECTION WITH REZONING OF LAND AT GRETA**

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Manager Strategic Planning, Mr Bo Moshage, reports:

### **SUMMARY**

Greta Estates Pty Limited have submitted an offer to Council to enter into a Voluntary Planning Agreement under Section 93F of the Environmental Planning and Assessment Act. The offer is intended to provide developer contributions for the development of 1,364 dwellings at Greta, which are over and above that required by the current Section 94 Plan. This report summarises key elements of the offer by Greta Estates Pty Ltd and recommends that Council agree to enter into the draft Voluntary Agreement after formal notification.

### **REPORT**

The agreement proposes to make contributions towards the provision of services and facilities required as a result of development of the land, which are over and above that required by the current Section 94 Plan.

The offer relates to Draft Amendment 119 to the Cessnock Local Environmental Plan 1989 (Anvil Creek), which was endorsed by Council at its meeting of 12 December 2007.

The VPA is legally binding on both parties and covers development area covered by the rezoning. The planning agreements generally provides for either monetary contributions or works in kind, covering the provision of the following outcomes:

- Construction of an oval, training area, amenities block and carparking;
- The provision of a "Heritage Park" incorporating public open space, community centre, amphitheatre accommodating 600 people, projection facilities together with heritage walk inclusive of pathways and timber boardwalks, picnic settings, parks, benches, electric BBQs and playground facilities.
- Acquisition and embellishment of local open space and other community infrastructure;
- Contributions to:
  - Greta Multi-Purpose Centre;
  - Kurri Kurri District Aquatic Centre;
  - District Dry Facilities at Kurri Kurri Aquatic Centre;
  - City Library Facilities;
  - Cessnock Performing Arts Centre;
  - Cessnock Indoor Sports Facility / Basketball Stadium;
  - Carparking and streetscape improvements at Cessnock, Kurri Kurri and Greta.
- Provision of bus / car interchange within the development;
- Contributions to major roads, bridgeworks (including the replacement of Anvil Creek Railway Bridges);
- Traffic management, cycleways and pedestrian facilities.

The value of the proposed contributions and works amount to \$13.429 million dollars in addition to the dedication of 6.43ha of public open space for a proposed "Heritage Park". Maintenance of the Heritage Park and Community Buildings will also be provided by the developer for 10 years.

The Environmental Planning and Assessment Act requires that a Planning Agreement must be notified for a minimum of 28 days for public comment before it is formally entered into by Council.

A copy of the letter of offer to enter into a Voluntary Planning Agreement is contained in the enclosure document.

**RECOMMENDATION** that:

1. Council accept the offer to enter into a Voluntary Planning Agreement for a contribution of approximately \$13.429 million dollars towards the provision of services and facilities and the undertaking of works in connection with the development of 1364 dwellings at Greta.
2. A copy of the draft voluntary planning agreement be made available for inspection by the public for a period of 28 days in accordance with the provisions of the Environmental Planning and Assessment Act.
3. Should no objections be received during the notification period that Council:
  - Enter into the Greta Estates Voluntary Planning Agreement included in the attachments; and
  - Authorises the execution of the Agreement, and authorises the General Manager to sign the Planning Agreement in the attachments.

To: **The General Manager**  
City Planning Committee -  
16 July 2008

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

## **DIRECTOR CITY PLANNING REPORT NO. 55/2008**

**SUBJECT: REZONING OF LAND AT KITCHENER - KITCHENER PRECINCT**

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Senior Strategic Planner, Mr Darryll Quigley, reports:

### **PURPOSE**

The purpose of this report is to provide an overview of the comments and submissions received in response to the public exhibition of the Kitchener rezoning proposal (the draft Plan). The report also recommends that the draft Plan be forwarded to the Department of Planning with a request for the Minister for Planning to make the plan, subject to the exhibition and finalisation of the draft Section 94 Contributions Plan and Development Control Plan (DCP) for the Kitchener development area, and Voluntary Planning Agreement for vegetation offsets.

### **BACKGROUND**

Further to Council's resolution of 18 January 2006, 'Written Authorisation' in respect to the exhibition and reporting functions of the Director General for the Kitchener draft LEP were received by Council on 15 March 2006. This was detailed in a report to the 24 January 2007 meeting of Council, where Council resolved to place the draft Plan on public exhibition.

The draft LEP for the Kitchener Precinct was placed on public exhibition between 31 January and 2 March, 2007. This report provides an overview of the responses received and finalises any outstanding issues from the consultation with the public authorities.

It is recommended that the draft LEP be forwarded to the Department of Planning in order that the Minister may make the Plan, subject to Council resolving to support the Development Control Plan and Section 94 Contributions Plan. However, it should be noted that the developer, the Department of Planning (DoP) and Council have agreed that the draft LEP will not be forwarded to the Minister for making unless and until the Section 94 Plan, Development Control Plan and Voluntary Planning Agreement for vegetation offsets have all been finalised.

### **RESPONSE TO GOVERNMENT AGENCIES CONSULTATION**

This section of the report describes the manner in which any outstanding issues from Government agencies have been resolved.

#### ***NSW Department of Environment & Climate Change (DECC)***

The proposal recommends removal of significant amounts of the vegetation within the study area due to the isolation and relatively small size of the representations, making full retention unsustainable over time once further urban development occurred around them. It is considered that some vegetation could be removed subject to agreement being reached on an offset package.

With a biodiversity offset ratio of 4:1 on a 'like for like' basis having been agreed with DECC, the final arrangements for offset provisions are still being finalised. It is understood that the Johnson Property Group are currently investigating offset areas which will comply with this ratio.

Once agreement is reached on the biodiversity offset package, it is envisaged that the terms of the agreement will be reflected in a Voluntary Planning Agreement (VPA), which will be drafted by the proponent in consultation with DoP and DECC.

Should Council resolve to proceed with this rezoning DECC will be advised that the draft LEP has been forwarded to the Department of Planning for finalisation, and it is expected that final arrangements will be made prior to the plan being forwarded to the Minister for making.

***Hunter Water Corporation (HWC)***

The proposal was included in the HWC Cessnock Water Supply Servicing Strategy and the Cessnock Waste Water Treatment Plant (WWTP) is currently being upgraded and is likely to have sufficient capacity to service the development.

HWC does not have any other objections to the rezoning of this land and notes that Johnson Property Group and Regional Land Pty Ltd have initiated a process to prepare water and sewer servicing strategies for the site.

***Roads and Traffic Authority (RTA)***

The RTA did not object to the exhibition of the draft LEP but required additional traffic assessment investigations to be undertaken prior to finalisation of the draft LEP. This work has now been completed, and on 29 May 2008 the RTA wrote to Council advising that it had no objection to the rezoning proceeding, subject to the developer agreeing to undertake certain works as part of the subdivision of the land and subject to RTA requirements being incorporated into a 'Deed Containing Agreement' for Transport Infrastructure.

The developer has agreed to undertake the required works at subdivision stage, with the railway level crossing on Vincent Street / Quorrobolong Road to be upgraded to bells, lights and boom gates. Further, the draft LEP contains a requirement that development is not permitted until satisfactory arrangements have been made for provision of necessary infrastructure, and that funding sources have been identified.

With regard to the local road network, contributions are to be levied on a per lot basis under the draft Section 94 Plan.

***RESPONSE TO PUBLIC EXHIBITION***

The draft LEP was placed on public exhibition between 31 January and 2 March, 2007. Council received two (2) submissions from the public.

***The current water supply to Abernethy is insufficient and that the proposed rezoning of Kitchener will not improve the situation.***

***Comment***

Hunter Water does not object to the rezoning, given that the proponent has initiated a process to prepare water and sewer servicing strategies for the site.

***Abernethy and in particular Murray Street will be utilised by residents to access Lake Road, Leggetts Drive and the F3 Freeway, without any additional works being undertaken.***

***Comment***

The draft Section 94 Contributions Plan for the proposed rezoning, includes additional works to be carried out in Murray Street, given the additional impacts of traffic created by the proposal.

**The Department of Planning requires a residential density of 15 dwellings per hectare for every released area for higher density town development.**

**Comment**

The Lower Hunter Regional Strategy states “(n)ew urban release areas will be planned to achieve an average yield of 12 dwellings per hectare.” The area comprising the rezoning is approximately 108 hectares, with approximately 1,000 lots proposed, equating to an average yield of 9.26 lots per hectare. The figure is somewhat lower than the planned yield, due to environmental considerations such as surrounding vegetation (bushfire restrictions) and internal creeklines and exiting vegetation.

**The proposed 1500m<sup>2</sup> allotments around the perimeter of the site should be reduced to 1000m<sup>2</sup>, with a 30 metre wide Asset Protection Zone (15 metres road + 15 metres tennis court, pool, gazebo, etc.,) prior to any residential buildings, leaving an area of 700m<sup>2</sup> for building. This could be achieved following an agreement reached with Forests NSW to clear the understorey and flammable fuels 30 metres into the forest.**

**Comment**

In correspondence from Forests NSW no such agreement has been reached and they have stated that “... fire mitigation measures for such a development should be located on lands within the precinct as part of the development controls for the intended purpose.”

Additionally, the placement of various structures within the front setback isn't desirable with regard to streetscape, passive surveillance of the street and forest, or bushfire safety.

**An opportunity exists to increase the density yield by reducing the minimum lot size of Kitchener to 450m<sup>2</sup>.**

**Comment**

The minimum lot size of Kitchener is currently 450m<sup>2</sup>.

**The proposed road pattern is excessively wide and outdated.**

**Comment**

The proposed road pattern reflects the existing pattern of Kitchener and as such, compliments the existing pattern, integrating the new residential areas with the older ones. Given the limited vehicle movements along the perimeter of the proposal, some reduction to those road widths may be possible.

**The existing vegetation within the proposed rezoning is not special from the surrounding national park or state forest and should not hinder the rezoning of the land for human habitation.**

**Comment**

In addition to the offset package between the proponent and DECC being finalised, the riparian zones are to be rehabilitated that will see significant plantings of the Hunter Lowland Redgum Forest that occurs naturally there in the longer term.

**All surface drainage water shall be retained on-site.**

**Comment**

The draft DCP contain measures requiring the provisions of water sensitive urban design for all residential development.

***That the proposed ‘riparian areas’ are little more than backed-up blocked drains, not requiring specified buffer areas.***

**Comment**

All the data presented to Council would suggest otherwise and correspondence from the Department of Natural Resources (now Department of Water & Energy) dated 5 June 2006, required the retention of vegetation of significance, a 40m riparian corridor, asset protection zones ranging between 20 to 30m and revegetation 20m either side of on site watercourses.

As discussed above, the existing vegetation has some merit and an off-set arrangement between the proponent and DECC is to be finalised. It is likely that this arrangement will involve the retention of vegetation along the creeklines, plus some regeneration works.

**SECTION 117 DIRECTIONS**

The proposed rezoning has considered and meet all the requirements of the environmental planning instruments and directions under Section 117. The relevant Section 117 Directions are discussed below, with any inconsistency justified.

**1.2 Rural Zones**

The Kitchener precinct is identified for future urban development in both the draft City Wide Settlement Strategy (CWSS) 2007 and the Lower Hunter Regional Strategy (LHRS) and for this reason is considered to be consistent with this Direction.

**2.3 Heritage Conservation**

From the reports supplied and the comments received from the Local Aboriginal Land Council, there is little in the way of indigenous heritage significance. However, by adopting the provisions of CLEP 2008, Clause 5.10 Heritage conservation, (8) Places of Aboriginal heritage significance, any subsequent discoveries will be required to be appropriately addressed.

**3.1 Residential Zones**

The Kitchener Precinct is identified for future urban development in both the CWSS and the LHRS and is considered to be consistent with this Direction.

**3.3 Home Occupations**

The draft LEP provides for Home Occupation as ‘permissible with consent’ in the 2(c) Residential (Development Control Area) Zone. Following the gazettal of draft CLEP 2008 the residential area is likely to be zoned RU5: Village, within which Home Occupation is ‘permissible without consent’, in accordance with the Direction.

The draft LEP would be inconsistent with the Direction, until such time as Council incorporated the Kitchener Precinct into the new Cessnock LEP 2008.

### **3.4 Integrating Land Use and Transport**

The Kitchener Precinct is identified for future urban development in both the CWSS and the LHRS. The Precinct is in close proximity to Cessnock (5.5 klm) a major regional centre in the Lower Hunter and therefore deemed to be consistent with the Direction.

### **4.2 Mine Subsidence and Unstable Land**

Correspondence from Mine Subsidence Board dated 13 March 2003, stated that “(t)he Board has no objections to the proposed rezoning for the subject areas”.

### **4.4 Planning for Bushfire Protection**

The subject site is bushfire prone as are the surrounding lands to the north, east and south. The NSW Rural Fire Service did not object to the proposal, but noted that future residential and potential ‘Special Fire Protection Purpose’ developments will be required to comply with the *Rural Fires Act 1997*.

The original report supporting the proposal was prepared under *Planning for Bushfire Protection 2001* and not the revised *Planning for Bushfire Protection 2006*. The report has been reviewed and stated by the consultant as also complying with the new guidelines.

The consultant’s report was reviewed to ensure compliance with ‘Planning for Bushfire Protection 2006’ and provides suitable asset protection zones, perimeter roads (two-way access) and contains provision for adequate water supply for fire fighting purposes.

### **5.1 Implementation of Regional Strategies**

The draft LEP is consistent with a LHRS released by the Minister for Planning, with the Kitchener Precinct being identified for future urban development.

### **6.2 Reserving Land for Public Purposes**

The draft LEP proposes to rezone the entire area 2(c) Residential (Development Control Area), however, the subsequent amendment to CLEP 2008, is likely to include the following zones:

- RU5: Village zone;
- B1: Neighbourhood Centre zone; and
- RE1: Public Recreation zone.

The RE1: Public Recreation zone is considered to be the most appropriate for the creeks, drainage lines and riparian areas that are to be dedicated at no cost to Council.

### ***DRAFT KITCHENER SECTION 94 CONTRIBUTION PLAN***

The draft Section 94 Contributions Plan supports the draft LEP and Area Plan for Kitchener development area, and sets out Council’s position in relation to the levying of contributions for the provision of public amenities and services for this area.

The draft Kitchener s.94 plan covers the development of the Kitchener release area, assuming the creation of 1000 allotments over the next 15 to 20 years.

The draft Kitchener Plan seeks contributions towards the provision of local public facilities and amenities that are required as a direct result of development within the Kitchener Residential Area, providing for the following local public services and amenities:

- two local parks and local sportsground facilities;
- neighbourhood centre;
- transport interchange; and
- contributions to major roads, drainage and level rail crossing works.

The works identified in the draft s.94 Plan are reflected in the draft DCP provisions and strategic planning for the release areas which have been identified through local environmental study and subsequent rezoning processes. Total contributions payable on a per lot basis are \$14,882.00.

A summary of the contribution rates proposed for the various facilities within the draft Kitchener s.94 Plan are included in the enclosure document.

Following submissions, their consideration and whether any changes are required to the instruments, a report will be forwarded to Council to adopt of the Section 94 Contribution Plan and Development Control Plan.

### **DRAFT KITCHENER DEVELOPMENT CONTROL PLAN**

It is proposed to prepare an amendment to the Cessnock Development Control Plan 2006 for the Kitchener area. The purpose of the DCP amendments are to satisfy the development requirements of the Kitchener Residential Area LEP. The Draft LEP outlines a series of matters which are to be addressed in the DCP, including:

- traffic and access movements,
- stormwater and water management,
- streetscape and subdivision design requirements,
- community facilities including passive and active open space and community buildings,
- means of addressing natural and environmental hazards (including bushfire considerations), and
- identification and design of key urban sites within Kitchener, including the village centre, visually significant locations, interface between Werakata National Park and Aberdare State Forest and Kitchener.

These matters have been identified in the Kitchener Local Environmental Study and accompanying Structure Plan as items for consideration.

### **PUBLIC EXHIBITION**

The draft Kitchener Section 94 Plan and Development Control Plan will be placed on public exhibition for a minimum of 28 days. The exhibition material will be available for viewing at the following locations:

- Council's Administration Building (Customer Service Section);
- Cessnock Public Library;
- Council's website at [www.cessnock.nsw.gov.au](http://www.cessnock.nsw.gov.au)

At the end of the exhibition period, all submissions will be considered and any necessary adjustments to the draft plan(s) finalised.

**CONCLUSION**

Having regard for the issues raised in submissions, it is considered the draft amendment be referred to the Department of Planning with a request for the Minister for Planning to make the plan, subject to the exhibition and finalisation of the draft Section 94 Contributions Plan and Development Control Plan (DCP) for the Kitchener development area, and Voluntary Planning Agreement for vegetation offsets.

**RECOMMENDATION** that:

1. The draft Local Environmental Plan be referred to the Department of Planning on the basis that that it will not be forwarded to the Minister for making until such time as the accompanying draft section 94 plan and Development Control Plan have been exhibited and finalised by Council and the Department of Environment and Climate Change has finalised a Voluntary Planning Agreement with the proponent regarding the removal of vegetation on-site;
2. The relevant Government agencies and members of the public who made submissions in respect of the draft LEP be advised of Council's decision.

To: **The General Manager**  
City Planning Committee -  
16 July 2008

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

## **DIRECTOR CITY PLANNING REPORT NO. 56/2008**

**DEVELOPMENT APPLICATION NO:** 8/2008/161/1  
**APPLICANT/OWNER:** ALDI STORES  
**PROPERTY:** 108-112 BARTON STREET AND 36 VICTORIA STREET KURRI KURRI  
LOTS 6-8 SEC 29 DP 758590 & LOT 1 DP 623730  
**AREA:** 5,061m<sup>2</sup>  
**ZONING:** 3A GENERAL BUSINESS  
**PROPOSAL:** DEMOLISH EXISTING BUILDINGS AND CONSTRUCT OF NEW SHOP (SUPERMARKET) WITH ASSOCIATED PARKING AND ADVERTISING

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Senior Development Planner Peter Giannopoulos reports:

### **SUMMARY**

The application proposes the demolition of the existing buildings and the construction of a 1,506m<sup>2</sup> Aldi supermarket with seventy-four (74) on-site parking spaces on the south west corner of Barton Street and Victoria Street.

Four objections and one submission in support were received following notification. One objection has been withdrawn and the applicant has made changes to the development to address the concerns of the objectors.

The development has been designed in a manner that is complementary to the existing streetscape and mitigates the impacts of the development. With the exception of an above awning advertising sign that is contrary to both Council's signage requirements and the State Environmental Planning Policy for advertising signage, the development is considered suitable for approval.

It is recommended that the application be approved but not the non-compliant advertising sign.

### **SUBJECT SITE**

The subject site consists of four (4) allotments that are located on the south side Barton Street Kurri Kurri. The buildings on the subject site consist of, two dwellings, a disused Salvation Army hall and a tyre retailing workshop.

The site is bounded to the north by Barton Street, to the east by Victoria Street, to the south by a laneway.

The surrounding land is typically characterised by commercial land uses to the north and west and residential uses to the south. To the east, opposite Victoria Street is residential zoned land with a mixed land use pattern consisting of dwellings, a Parish Hall and a school.

### **PROPOSAL**

Proposed is the demolition of the existing buildings and the construction of a 1,506m<sup>2</sup> supermarket. The supermarket has been designed specifically for occupation by the Aldi supermarket chain.

The supermarket is to be located on the western part of the site with the car parking areas to the east. The loading dock will be located at the southern end of the store. The building entrance is on the east side of the building facing the car parking. Vehicular access is restricted to a single point, mid way along the Barton Street frontage.

Landscaping measures will be provided throughout the 74 space car park and along the northern, western, and southern boundaries.

The supermarket trading hours are proposed as follows:

- Monday-Wednesday 9.00am to 7.00pm
- Thursday 9.00am to 9.00pm
- Friday 9.00am to 7.00pm
- Saturday 8.30am to 6.00pm
- Sunday 9.00am to 5.00pm

Originally the applicant proposed unrestricted delivery hours but in response to an objection on the grounds of noise, the applicant has agreed to the following delivery the hours:

- Monday- Saturday 9.00am to 10.00pm
- Sunday & Public Holidays 8.00am to 10.00pm

### ***PUBLIC EXHIBITION***

The application was notified for a period of fifteen (15) days. In response, five submissions were received, four in objection and one in support of the development. One of the objections was on the solitary ground that the dust during construction would impact on a swimming pool. The objector has made contact with Aldi who have agreed to pay for the costs of cleaning the pool and the objection has now been withdrawn.

The other grounds of objection are discussed below:

**1. *Noise from deliveries***

Initially the delivery hours were unrestricted. Following the notification of the application the applicant has agreed to restrict the hours of delivery and construct acoustic fencing that will result in adherence to the Industrial Noise Policy. The matter of noise is discussed later in this report.

**2. *Illuminated signage impacts***

It is proposed to restrict the hours of illumination so that the signs are not illuminated beyond delivery hours, to address this objection.

**3. *The absence of a solid fence along the southern boundary will result in loss of privacy***

This matter has been addressed, the applicant proposes 1.8 metre high acoustic fence along the rear boundary. The fence will be solid and not transparent (lapped and capped timber) this will provide for privacy as well as noise attenuation.

**4. *Construction of retaining walls may cause damage to our building***

The above matter has been addressed by the inclusion of a standard construction condition.

**5. *Retaining wall on Barton Street frontage should be setback to prevent graffiti***

The applicant has addressed graffiti by treating the walls with graffiti proofing.

## **PLANNING ASSESSMENT**

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

### **Cessnock Local Environmental Plan 1989 (LEP 1989)**

The subject site is within the 3(a) General Business Zone of the Cessnock Local Environmental Plan 1989 and shops are permissible with development consent. The objectives of the General Business 3(a) zone are:

- a. To encourage the provision of retail commercial and business services, and associated development such as parking, dwellings, service industries and the like;
- b. To encourage development associated with tourism;
- c. To encourage the concentration of retailing and other related uses and services; and
- d. To encourage improvement in pedestrian networks and pedestrian amenity in business centres.

The development is considered to be consistent with the above objectives because of the following:

- The proposed development will provide for increased retail services within an established commercial precinct and assist in the concentration of commercial activities in the Kurri Kurri CBD.
- The development is not aimed at the tourist sector but will provide services that will support tourism.
- As the development is located in the Kurri Kurri CBD, it provides for the spatial concentration of retailing and services.
- The development will provide connection of car parking areas and pedestrian access and the renewal of buildings contributes positively to the character and appearance of the Kurri Kurri CBD.

### **State Environmental Planning Policy No 64 'Advertising and Signage' & Chapter D5 of Cessnock Development Control Plan 2006 - Outdoor Advertising**

One of the proposed signs is to be located above an awning of the building. Under the provisions in Chapter D5 - Outdoor Advertising of the Cessnock Development Control Plan 2006 (DCP) signs above roofs or awnings are prohibited. Council's Outdoor signage provisions in the DCP are in accordance with State Environmental Planning Policy No 64 'Advertising and Signage' (SEPP 64). There is no definition of a roof/sky advertisement or above awning sign in the DCP but a roof/sky advertisement is defined in SEPP 64. One of the proposed signs fits the definition of a roof/sky advertisement:

*"roof or sky advertisement" means an advertisement that is displayed on, or erected on or above, the parapet or eaves of a building.*

The provisions of SEPP 64 require that any roof or sky advertisement must be consistent with Council's DCP.

#### **21 Roof or sky advertisements**

*(1) The consent authority may grant consent to a roof or sky advertisement only if:*

*(a) the consent authority is satisfied: ...*

*(ii) that the advertisement **improves the finish and appearance of the building and the streetscape, and...***

***(c) a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct and the display of the advertisement is consistent with the development control plan.***

The applicant has requested that the sign be approved, however it is clearly contrary to the provisions of Councils Advertising provisions in the DCP and therefore prohibited under the DCP and SEPP 64. It should be noted that the recently constructed KFC on the opposite side of Barton Street was originally proposed with an above roof sign but was required to comply with the DCP and SEPP 64.

### **Car Parking**

The proposed supermarket building has a gross floor area of approximately 1,500m<sup>2</sup>, with 1,060m<sup>2</sup> to be used as retail floor space and 440 m<sup>2</sup> of warehouse area. The number of parking spaces proposed exceeds Council's car parking requirement as contained in Chapter C.1. of the Cessnock Development Control Plan 2006 (DCP). The DCP requires:

- 1 space per 15m<sup>2</sup> gross floor area for shops and general business over 1,000m<sup>2</sup>; and
- 1 space per 300m<sup>2</sup> or 1 space per employee (whichever is the greater) for the warehouse area.

On the basis of the proposed floor area, the required car parking is as follows:

- 71 spaces (70.67) required for the 1060m<sup>2</sup> of retail floor area; and
- 2 spaces (1.47) required for 440m<sup>2</sup> of warehouse area.

The total parking requirement is 73 spaces and the development provides 74 off street parking spaces. The parking layout and dimensions comply with the requirements of Council's DCP and AS2890.1.

### **Noise**

The applicant proposes to control the noise impacts of the development by restricting the hours of trade, the delivery hours and providing an acoustic fence along the southern boundary of the site. The acoustic fence will provide a barrier between the development and the residential properties that are further south. There is a laneway to the south that provide a 6 metre wide buffer to the residential properties.

Initially there was concern about the proposed delivery hours, which were unrestricted however the amended hours are reasonable, they are:

- Monday- Saturday 9.00am to 10.00pm
- Sunday & Public Holidays 8.00am to 10.00pm

The acoustic report that accompanies this submission indicates that with the installation of a solid 1.8m noise barrier is installed along the site's southern boundary that noise will not exceed the criteria specified within the Industrial Noise Policy (INP). Consequently it is considered that the proposal adequately addresses noise impacts.

**Crime and Safety**

A report has been prepared by the applicant to address crime and safety through environmental design. The report recommends that the following be employed:

1. Any evidence of anti social behaviour such as graffiti, rubbish etc be removed immediately.
2. The boundary of the premises be subject to regular (daily) physical checks and evidence of anti social behaviour be removed immediately.
3. Graffiti resistant treatment applied on walls and retaining walls.
4. A gate be installed to prevent access to the loading dock area.

The report also recommends that future considerations for the site if crime activity becomes a systematic issue are:

1. Security guards be employed during times when issues are most apparent.
2. Gates to the car park if the area becomes a congregation place after hours.

The applicant's submission is considered adequate in respect to the provision of crime prevention measures however it is considered that conditions should be added to ensure that:

- only vandal proof bins are used;
- to ensure that gates to the car park will be installed at the request of the police or Council.

**Visual impact and Streetscape**

The development has been designed with a gable roof with a gable end facing the main frontage. The roof of the building will be a dark colour with an earthy coloured walls and retaining walls. The building will also have glazing that will feature prominently on the building façade.

The development has been architecturally designed, and provides a design that is conventional and sympathetic to the residential elements in the built environment. The design provides a mixture of materials, articulated finishes that when combined with the shape of the building should reduce visual bulk, particularly as viewed from the frontage of the site.

The substantial scale of the building will be evident when viewed from Victoria Street, however it will have a significant setback of more than 56 metres. The significant setback will reduce the impact of the building and ensure that it is not overbearing.

The relationship of the building with the laneway to the south will be relatively poor. The retaining wall will be an elongated retaining wall with acoustic fencing above it. The benefits that the fencing provides in respect to noise attenuation and territorial reinforcement (safety) are considered to outweigh the relatively minor impact on what is the least significant frontage of the site.

Below: Photo montage (perspective)



### **CONCLUSION**

The proposed development is in accordance with Council's Environmental Planning Instruments and is proposed in a manner that provides adequate mitigation of the likely future impacts of the development. The development is considered reasonable with the exception of the advertising signage which is clearly contrary to Council's DCP and the SEPP 64. The signage is not considered a critical issue that should prevent the approval of the overall development accordingly it is recommended that the development be approved without the approval of the non-compliant signage.

**RECOMMENDATION** that the application to demolish existing buildings and construct of new shop (supermarket) with associated parking on 108-112 Barton Street and 36 Victoria Street Lots 6-8 Sec 29 DP 758590 & Lot 1 DP 623730 Kurri Kurri be approved with the following conditions:

### **CONDITIONS**

#### **TERMS OF CONSENT**

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 Plans prepared by Sutters Job No 7790, External Finishes, DA 03 Rev G and 05 Rev F, Insite Landscape Plan LD60 Rev B, and External Illumination Plan Job I271A Drawing No ESK01 Rev A and any other information submitted in support of the application, except for the advertising sign '3' or as otherwise 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.

Reason

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

4. No external PA system or amplified system may be provided without the consent of Council.

Reason

*To confirm the terms of consent and prevent noise impacts.*

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

Reason

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

6. Lighting must be provided within the car park and the site for the security of the premises after dark. The lighting must be connected to a self-activating system to provide suitable illumination of the common parking area and along the adjacent laneway at all hours after dark.

Reason

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

7. All air conditioning and plant equipment including ducting must be hidden from public view. If such equipment is placed outside the building or on the roof of the building, further approval must be obtained from Council.

Reason

*To ensure that the plant equipment does not result in a detrimental visual impact.*

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

Reason

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

9. All external rubbish bins must be designed to be vandal proof.

Reason

*To provide for safety and security.*

Access, Car parking and Loading Arrangements

10. 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.*

Health and Food Hygiene

11. Premises which are used for the sale, storage and preparation for sale of food for human consumption shall comply fully with the provisions of the "Food Act, 2003", the "Regulations" thereunder, the Food Standards Code and Australian Standard 4674-2004, "Design, construction and fit-out of food premises"

Reason

*Any premises in which food is handled for sale must be constructed so that food, equipment, appliances, fittings and packaging materials on the premises are protected from likely contamination and so as to permit the premises to be easily cleaned.*

12. All walls of the food premises shall be of solid construction.

Reason

*To prevent access and harbourage of vermin in voids or cavities within the wall frame.*

13. A designated cupboard or locker is to be provided for the storage of staff clothing and personal belongings.

Reason

*To prevent the risk of cross contamination of food products and food preparation areas.*

14. Any refrigerated or cooling chamber which is of sufficient size for a person to enter, is required to meet the requirements of the Building Code of Australia and must have: -
- i. a door which is capable of being opened by hand from inside without a key; and
  - ii. internal lighting controlled only by a switch which is located adjacent to the entrance doorway inside the chamber; and
  - iii. an indicator lamp positioned outside the chamber which is illuminated when the interior light is switched on; and
  - iv. an alarm that is –
    - a) located outside but controllable only from within the chamber; and
    - b) able to achieve a sound pressure level outside the chamber of 90 dB(A) when measured 3m from the sounding device.The door required by (i) above must have a doorway with a clear width of not less than 600mm and a clear height not less than 1.5m.

Reason

*To protect the safety of persons and to ensure the chamber complies with the requirements of the Building Code of Australia.*

15. The developer must provide waste storage facility with hard impervious surface, graded and drained to a waste system in accordance to Hunter Water requirements and with a hose tap connected to the water supply.

Reason

*To allow adequate storage for the disposal of all waste generated at the site.*

Advertising

16. No advertising structures, other than those approved by this consent, 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 the erection of advertising material.*

17. The advertising signs are to be maintained and kept in good order.

Reason

*To ensure the amenity of the area is not compromised.*

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

Reason

*To protect the existing amenity of the neighbourhood.*

19. All internally illuminated advertising signs must not be illuminated between the hours of 10.00pm and 7.00am.

Reason

*To reduce lighting impacts on adjoining properties.*

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

Access, Car Parking and Loading Arrangements

20. 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 an all weather surface treatment, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

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

Reason

*To ensure the orderly and efficient use of on-site parking facilities and ensure that adequate provision is made on-site for the loading and unloading of goods.*

21. The registered proprietors of the land shall construct the following works in Barton Street and Victoria Street, generally in accordance with engineering plans prepared by Hughes Trueman, Drawing No 06S017KK. All works shall be in accordance with Council's 'Engineering Requirements for Development' and RTA requirements. The design shall be set out on a set of plans, four (4) copies of which are to be submitted to and approved by council's Development Services Manager prior to the release of the Construction Certificate for the civil works.

- Construct kerb and gutter
- Construct and gravel road shoulders
- Place asphaltic concrete wearing surface on road shoulders
- Line marking and signage as required
- Construct drainage works
- Construct concrete footpath 1.2 metres wide and 75 millimetres thick for the full frontage of the development to Barton Street and Victoria Street
- Topdress and turf footway

Reason

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

22. The registered proprietors of the land shall construct the following within the unnamed laneway in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by council's Development Services Manager prior to the release of the Construction Certificate for the civil works.

- Construct kerb and gutter
- Construct and gravel road shoulders
- Place two (2) coat hot bitumen seal on road shoulders
- Construct drainage works

Reason

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

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

Reason

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

24. 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 the issue of the Construction Certificate.

Reason

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

Drainage and Flooding

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

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

General

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

Mondays to Fridays	7.00am to 6.00pm
Saturdays	8.00am to 1.00pm
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.*

27. 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.*

28. 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.*

29. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:-

- (a) stating that unauthorised entry to the work site is prohibited, and

- (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

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

This clause does not apply to:

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

Reason

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

- 30. 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

- 31. 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.*

- 32. 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.*

Building Construction

- 33. 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.*

Site Works

34. 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.*

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

Reason

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

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

Reason

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

37. Prior to commencement of any works within the road reserve, 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 the Occupation Certificate.

Reason

*To enable orderly scheduling of inspections.*

**PRIOR TO USE OR OCCUPATION**

General

38. A 1.8metre high lapped and capped timber fence with no gaps shall be constructed along the southern boundary of the site adjoining the laneway as outlined in acoustic report number 99204-55 Version A prepared by Wilkinson Murray Pty Limited dated May 2008, prior to the issue of an Occupation Certificate.

Reason

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

Access, Car Parking and Loading Arrangements

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

Reason

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

40. All car parking spaces, vehicular access and loading/unloading facilities shall be completed prior to the issue of an Occupation Certificate.

Reason

*To ensure the orderly and efficient use of on-site parking facilities and ensure that adequate provision is made on-site for the loading and unloading of goods.*

41. 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 the issue of an Occupation Certificate and maintained appropriately 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.*

42. All parking and loading bays shall be permanently marked out on the pavement surface, with loading bays and visitor parking facilities shall be clearly indicated by signs prior to issue of an occupation certificate and the marking must be maintained appropriately for the life of the development.

Reason

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

Drainage and Flooding

43. The registered proprietor of the land shall ensure that connection of the stormwater drainage to the kerb inlet pit in the unnamed laneway is carried out in accordance with the following:
- the connection point into the existing drainage pit will be required to be sealed by the use of mortar ensuring that no material can enter the drainage system around the connection point. The connection of the PVC pipe is to be flush with the interior of Council's drainage pipe so that there are no obstructions within Council's drainage pipe.
  - Any excess mortar or concrete rubble caused from the connection into the pit is to be removed at the expense of the person/s undertaking the works from both the footpath and from within the pit.

- When working within the footpath, appropriate signage is to be displayed warning pedestrians of the works. The owners of the above property shall hold Cessnock City Council indemnified against any claims arising out of damage or injury to property or persons in the performance of the proposed works.
- Any disturbance to underground services is to be restored / replaced at the expense of the person/s undertaking the works.
- All disturbed areas within the footpath are to be restored to at least the condition before the commencement of any works. This expense is to be borne by the owner of the property.
- An inspection of the stormwater connection into the pit will be required by a Council employee. The Subdivision and Engineering Co-Ordinator shall be notified at least 48 hours before the time of inspection.
- All works are to be carried out in accordance with Cessnock City Council's 'Engineering Requirements for Development.'

Construction works are to be completed prior to the use or occupation of the development.

Reason

*To ensure that adequate connection to the Council stormwater system is provided and Council's drainage asset is preserved, in accordance with current Council requirements.*

44. All drainage works required to be undertaken in accordance with this consent shall be completed prior to use or occupation of the development.

Reason

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

45. 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.*

46. 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 issue of an Occupation Certificate.

Reason

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

Subdivision

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

Reason

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

**POST OCCUPATION**

48. The supermarket trading hours are limited to the following hours only:-

- Monday-Wednesday 9.00am to 7.00pm
- Thursday 9.00am to 9.00pm
- Friday 9.00am to 7.00pm
- Saturday 8.30am to 6.00pm
- Sunday 9.00am to 5.00pm

Reason

*To clarify the terms of the consent.*

49. Deliveries to the store are to be limited to the following hours only:-

- Mondays to Saturdays 7.00am to 10.00pm
- Sundays & Public Holidays 8.00am to 10.00pm.

Reason

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

Noise

50. The Laeq 15 minute operating noise level of the premises, including machinery, plant, equipment and vehicle movements when measured at the boundary of the worst affected residential premises shall comply with the following:-
- 7.00am – 6.00pm Monday to Saturday or 8.00am – 6.00pm Sundays and Public Holidays (Daytime) 46 dB(A)
  - 6.00pm -10.00pm (Evening) 45 dB(A)
  - Outside the abovementioned hours (Night time) 40 dB(A)

Reason

*To ensure the project specific noise levels are not exceeded so as to protect the amenity of the neighbourhood.*

Health

51. Upon commencement of trading, as part of Council's Regulated Premises audit program, all business involved in the sale of food at this site are required to be listed on Council's Regulated Premises Register and will be subject to an annual registration/renewal fee each financial year and a separate inspection fee when inspections are conducted by Councils Environmental Health Officers.

Reason

*To ensure compliance with the provisions of the Public Health Act of 1991, Food Act 2003 and Food Regulation 2004, Food Standards Code and broadly that all public health, food handling and safety practices, and environmental issues are being addressed.*

Safety

52. If Council or the NSW Police consider that there is a need to gate the car parking entrance in order to aid community safety and make a request in writing, then the operator must construct gates to car park entrance in accordance with any specified time period for completion of the works.

Reason

*To provide territorial reinforcement and facilitate community safety.*

Vehicular Access, Parking and Loading

53. Proposed parking areas, service bays, truck docks, driveways and turning areas shall be maintained clear of obstructions and be used exclusively for purposes of car parking, loading/unloading, and vehicle access respectively for the life of the development. Under no circumstances are such areas to be used for the storage of goods or waste materials.

Reason

*To ensure that the proposed/required parking, loading/unloading facilities and associated driveways are able to function efficiently for their intended purposes.*

**ADVICE**

1. 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 \$187.00

Reason

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

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 \$305.00 per basin for basins less than 50m<sup>3</sup>. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's adopted fees and charges current at the time of payment.

Reason

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

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

Based on a road length of approximately 70 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- (i) Road fees - engineering plan checking and supervision of \$ 1070.40
- (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.*

4. 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.*

To: **The General Manager**  
City Planning Committee –  
16 July 2008

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