



Vincent Street  
CESSNOCK 2325

12 August 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, 20 August 2008 immediately following the conclusion of the Corporate and Community Committee Meeting, for the purpose of transacting the undermentioned business.

**B R MORTOMORE  
GENERAL MANAGER**

**AGENDA:**

PAGE NO.

**(1) APOLOGIES.**

**(2) CONFIRMATION OF MINUTES.**

Minutes of the City Planning Committee Meeting held on 6 August 2008

**(3) OFFICERS' REPORTS**

**DIRECTOR CITY PLANNING**

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**(4) QUESTIONS WITHOUT NOTICE.**

# **OFFICER'S REPORTS**

## **DIRECTOR CITY PLANNING REPORT NO. 65/2008**

**SUBJECT: RANGER SERVICES REVIEW**

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

### **SUMMARY**

The purpose of this report is to inform Council of actions taken in relation to the review of Ranger Services and the measures that are currently being implemented to ensure that Council provides a Ranger Service that can better respond to the community and Council's needs.

The principle objective of the review is to be able to provide the best service possible to Council's clients.

### **REPORT**

The review of the Ranger Service commenced in February 2008. The purpose of the review is to examine all procedures and work practices to ensure a more effective and efficient service, address legislative requirements, probity issues, WorkCover and OH & S requirements.

The following initiatives have been implemented as a result of the review:-

1. Upgrade of the Kurri Kurri Animal Shelter. Specifically works identified for the physical security and protection of animals and security for staff.
2. The implementation of EFTPOS for all transactions at the Animal Shelter. The Animal Shelter is now completely cash free.
3. The employment of a consultant to undertake a review of all standard operating procedures and practices. Mr Steve Larsen (Secretary of the Australian Institute of Local Government Rangers & Training Officer for Rangers through the Local Government and Shires Association) is currently preparing a comprehensive Operating Manual and procedures for the Ranger Service. This Manual will set a minimum standard for the operation, duties, functions and responsibilities of each individual within the Ranger Service and is expected to be completed and operational by 1 September 2008.
4. Revision of position descriptions and delegations.
5. Implementation of procedures for the storage and use of lethobarb in accordance with the requirements of the NSW Department of Health.
6. Implementation of a Ranger Enforcement Policy. This Policy was adopted by Council at the Council Meeting held on 6 August 2008.

**CONSULTATION**

- Mr Steve Larsen - Secretary of the Australian Institute of Local Government Rangers & Training Officer for Rangers through the Local Government and Shires Association
- NSW Department of Health Duty Pharmacist

**STATUTORY RESPONSIBILITIES**

**Legislative Implications**

Council has an obligation under Section 8 of the Local Government Act 1993 to ensure that the exercise of its regulatory power is carried out consistently and without bias. The Independent Commission Against Corruption (ICAC) have also produced publications on the prevention of corruption in the carrying out of local government regulatory responsibilities.

The review of Ranger Services and the implementation of the outcomes will ensure that Council has undertaken reasonable steps and actions to ensure compliance with its legislative and regulatory obligations.

**Financial Implications**

Council has expended approximately \$20,000 on the review of Ranger Services. This expenditure was accommodated within the 2007/08 budget for Corporate & Regulatory Services. The implementation of the review outcomes, which will be undertaken by Council staff, is accommodated by the 2008/09 City Planning budget.

**RECOMMENDATION** that the report be received and noted

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
11 August 2008

## **DIRECTOR CITY PLANNING REPORT NO. 66/2008**

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

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Assistant Planning Assessment Officer Sarah Lancaster reports:-

### **SUMMARY:**

The application is for the subdivision of an existing 20 hectare parcel of land into two (2) separate parcels pursuant to the provisions of Clause 12(3) of the Cessnock Local Environmental Plan 1989 and was recommended to Council for refusal.

At the Council Meeting held on 6 August 2008 Council resolved that:

*“Development Application No 8/2007/958/1 – Proposed Two (2) Lot Subdivision on Lot 1092 DP 558562, 160 Londons Road Lovedale, be bought back to Council with appropriate conditions of approval”.*

Should Council be of a mind to support the application, appropriate conditions are set out in the enclosure document.

### **CONCLUSION:**

In determining this application, Council should consider the number of tourist accommodation developments within the Cessnock Local Government Area and the precedent that will be established by allowing the subdivision of rural zoned land to be facilitated through the excision of tourist accommodation buildings and holiday cabins.

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

1. The application is inconsistent with the objectives of the 1(a) Rural (A) Zone (S79C(1)(a)(i)).
2. The application is inconsistent with the provision of Clause 12(3) of Cessnock Local Environmental Plan 1989 (S79C(1)(a)(i)).
3. The application is inconsistent with the provisions of Part D, Chapter 1.4.1 of Cessnock Development Control Plan 2006 (S79C(1)(a)(iii)).
4. The proposal will create the potential for land use conflict (S79C(1)(b)).

5. The proposal is not considered to be a suitable form of development in the 1(a) Rural 'A' Zone (S79C(1)(c)).
6. The proposed development will not be in the public interest (S79C(1)(e)).

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
11 August 2008

## **DIRECTOR CITY PLANNING REPORT NO. 67/2008**

**DEVELOPMENT APPLICATION NO:** 8/2007/365/2  
**APPLICANT/OWNER:** COUNTY PROPERTY HOLDINGS PTY LTD  
**PROPERTY:** LOT 75 DP 755260 JOHN RENSHAW DRIVE  
BUTTAI  
**AREA:** 128.5 HECTARES  
**ZONING:** RURAL 1(A)  
**PROPOSAL:** AMENDMENT TO CONSENT TO ENABLE  
COMBINED QUARRYING ACTIVITY ON  
ADJOINING LOT 76.

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

### **SUMMARY:**

Application has been received for an amendment to the consent to use an existing road off John Renshaw Drive to haul gravel from the Benwerrin quarry in association with the rehabilitation of the quarry. The amendment seeks to enable the Benwerrin quarry and an approved adjoining quarry (on Lot 76) to be operated as a single quarry to minimise the impact of the quarry operations on the environment and the local community. The amendment is to be considered concurrently with a similar amendment to the consent for the approved quarry on Lot 76.

The proposal was exhibited in accordance with Council's Development Control Plan requirements and three (3) submissions have been received. The issues raised by residents in respect of the amendment have been addressed and the application is recommended for approval.

### **PROPOSAL:**

The proposed amendment involves changes to the consent to use the existing road (part of Old Buttai Road) off John Renshaw Drive to haul gravel from the Benwerrin quarry in association with its rehabilitation and for the quarry to be operated in conjunction with the adjoining approved quarry as a single quarry. The amendment will enable material won from either quarry to be processed in either quarry and for material won to be transported via either approved haulage route to John Renshaw Drive or to George Booth Drive. This will necessitate the establishment of a new section of haul road between the two (2) quarries. To minimise disturbance to the natural environment an existing four wheel drive track will be utilised.

The amendment has been proposed following the establishment and signing of a Mediation Agreement (copy attached) between those local residents directly affected by the quarry operations (Mr & Mrs Weldon (Lot 741) and Mr & Mrs Stevenson (Lot 742)), the Black Hill Environment Protection Group, the Buttai Community Development Group, County Property Holdings and Daromin Engineering and Cessnock City Council. The Agreement sets down the terms of agreement including the primary issues and demands of the community and the quarry operator's offer in response. The proposed amendment to the consent has been prepared to facilitate the enactment of the agreement.

The proposal involves amendments to conditions 1, 8 and 21 of the consent and the inclusion of a new condition which specifies the standard of road construction for a section of haul road to be established between the two (2) quarries.

**BACKGROUND:**

Development Consent for a gravel quarry on the site and service roads (Development Application No. D74/73/3) was granted by Council on 2 March 1973. The consent contained a requirement that stated, *provided that the area which is being quarried is reinstated to the satisfaction of Council when the quarrying operations are completed.*” Access to the quarry was approved through Lots 41, 42 and 94 and then via Lings Road through to John Renshaw Drive.

The access route now proposed to be used in the present application is via Old Buttai Road which was originally surveyed and dedicated to the public on 9 January 1974. The remaining portion of the access road is a Crown Road reserve.

**SITE DESCRIPTION:**

The subject site is located off John Renshaw Drive and then via Old Buttai Road. It is situated approximately 10 kilometres south of East Maitland and 2.5 kilometres south of John Renshaw Drive and on the western side of Lings Road.

Lot 75 has an area of approximately 128.5 hectares and remains as a vacant site with a large open gravel quarry and several dams located towards the eastern side of the site. Some evidence is also available on the site of previous coal mining activity although rehabilitation work on the site has been undertaken by the Department of Mineral Resources. The site has been substantially degraded due to mining and quarrying activities that have occurred on the site since the 1940's.

**PUBLIC EXHIBITION:**

The proposed development was advertised for a period of thirty (30) days from 28 June 2008 until 30 July 2008 in accordance with Council's Development Control Plan 2006 (Part B – General Information, Chapter B.2 – Public Notification & Advertising). Three (3) submissions were received being one (1) from a local resident and two (2) from The Black Hill Environment Protection Group and The Buttai Community Development Group.

The following provides a summary of the matters raised in the submissions together with relevant comment:-

**GENERAL**

In relation to the general concerns raised by the Community Groups the following points are made:-

- It is confirmed that the primary reason for the current Section 96 applications is to facilitate the Buttai Quarries Mediation Agreement.
- As the proposed amendments have been extensively advertised an opportunity has been provided to any interested parties to comment on the applications.
- The Community Consultative Committee will be meeting on Monday, 11 August 2008 and will discuss the Quarry Management Plan prepared by the applicant.

- Council gave consideration to the impact of the quarry operation on the Stevenson (Lot 741) and Weldon (Lot 742) families when it consented to the application on 5 March 2008. The relevant condition of consent (condition 4) stated:-

a) *The applicant shall:-*

*ii) Upon receipt of a request to purchase within six (6) months from the commencement of commercial operation of the quarry from the owners of Lot 741 and Lot 742 DP 876393 purchase the property.”*

This condition was previously agreed to by the parties and it is not considered that a change is warranted.

### **SPECIFIC CONCERN RAISED**

- Residents have asked that the all-weather crossing of Buttai Creek referred to in the Mediation Agreement should be constructed for residents of the area before commencement of commercial extraction and transportation via the western section of Old Buttai Road.

Comment:

There are several families at Buttai who presently use the western end of Old Buttai Road to gain access to John Renshaw Drive particularly when localised flooding prevents residents using the existing crossing of Buttai Creek. The haul route from Lot 75 will utilise the western end of Old Buttai Road which is a local road maintained by Council once a year.

During negotiation of the Mediation Agreement it was considered that the simultaneous use of the western end of Old Buttai Road by both haulage vehicles and residents vehicles would create an unacceptable traffic conflict and that the Old Buttai Road crossing of Buttai Creek should be upgraded to an all weather access to ensure residents access to John Renshaw Drive. In this regard the quarry operator offered to contribute in the form of a culvert or other suitable material for the construction of the access and Council would otherwise be responsible for the construction of the crossing.

The existing crossing of Buttai Creek can be utilised at the present time except in times when the creek floods. Further discussions with Council's Works Department are necessary to determine the extent of works and to establish a timeframe for the work to be undertaken.

- The request for Council to actively monitor compliance with the conditions of consent for the combined quarry operation and apply the same monitoring requirements to Lot 75 is noted. As stated the conditions relating to monitoring and reporting of the quarry operation on Lot 76 will now also be applicable to Lot 75 and Council will employ its Compliance officers to ensure compliance with the conditions of consent.



**OTHER AMENDMENTS TO LOT 75 (BENWERRIN)**

- a) The hours of operation of the quarrying activity should be consistent with the conditions that have previously been imposed for the quarry on Lot 76.

Comment:

As the quarry is to operate as a single entity it is considered appropriate that a condition be placed on the consent for Lot 75 the same as that applicable to Lot 76. i.e:-

*“The hours of operation of the quarry shall be as follows:*

- i) 6.00am to 6.00pm Monday to Saturday*
  - ii) Operation of the drilling and mobile equipment to be restricted to RL95m or below between the hours of 6.00am and 7.00am). No operation permitted on Sundays and Public Holidays.*
  - iii) Blasting 9.00am – 3.00pm Monday to Friday.*
- b) Condition 8(c) of the consent refers to underscrubbing works to improve sight distance at the intersection of the haul road with John Renshaw Drive. This may be proposed on privately owned land.

Comment:

This is an existing condition that can be qualified by amending the condition to make reference to the underscrubbing only being undertaken within the existing road reserve.

- c) Under the consent the applicant is required upon receipt of a request purchase within six (6) months from the commencement of commercial operation of the quarry from the owners of Lots 741 and 742 DP 876393 these properties. As the commercial operation can not go ahead until the roadworks and signage adjacent these lots has been completed it is suggested that the following wording be added to this condition:-

*“Should the quarry operator purchase Lots 741 and 742 DP 876393, in accordance with condition 4, they are not required to comply with conditions 8(b), 8(d) and 8(f).”*

Comment:-

There is no objection to this amendment to this condition of consent as it will further clarify when these requirements are to be satisfied.

The Community Groups have also pointed out several corrections that need to be undertaken in relation to the conditions. These corrections are included in the draft modified consents which have been recommended to Council.

**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:

**a) The Provisions of any Environmental Planning Instrument**

**Hunter Regional Environmental Plan, 1989.**

The primary objective of this plan is to *'promote the balanced development of the region, the improvement of its urban and rural environments and the orderly and economic development and optimum use of its land and other resources, consistent with conservation of natural and man made features and so as to meet the needs and aspirations of the community.'* (Clause 2)

This objective proposes to regulate activities to ensure that reserves of coal, other mineral resources and low cost extractive resources such as sand, gravel, clay and the like are developed to their full potential.

The Plan also identifies in a map (Map 4(a)) that the Blackhill area is one area of the Lower Hunter containing an important road base material resource.

The objectives and principles contained within the Hunter Regional Environmental Plan, 1989 and as referred to above have been considered in the following report.

**Cessnock Local Environmental Plan 1989**

The subject land is zoned No. 1(a) – Rural "A" Zone and the relevant objective of this zone is (e) *to ensure that the type and intensity of development is appropriate in relation to:-*

- i) the rural capability and suitability of the land;*
- ii) the preservation of the agricultural, mineral and extractive production potential of the land;*
- iii) the rural environment (including scenic resources); and*
- iv) the costs of providing public services and amenities.*

The objectives and principles contained within the Cessnock Local Environmental Plan, 1989 and as referred to above have also been considered in the following report.

**b) The Provisions of any Development Control Plan**

The application has been considered under the Cessnock Development Control Plan (DCP) 2006 –Part C – General Guidelines Chapter 4 – Land Use Conflict and Buffer Zones.

The Plan identifies quarries as a Category C activity and recommends a minimum self-contained buffer distance of 1000 metres from Category A land uses ie dwelling houses. The plan identifies potential conflicts between these land uses as noise, dust, vibration, blast over-pressure fly-rock from blasting and disruption and contamination of ground and surface waters.

The nearest dwellings are located in excess of 1,000 metres from the existing quarry wall where the quarry operation will occur. A direct impact in terms of dust and noise and vibration however will occur for those residents of Lots 741 and 742 due to the transport to and from the site of quarry product and materials being transported to the site. The consent requires the applicant to acquire these lots.

**c) The Likely Impacts of that Development**

**Access, Transport and Traffic**

The proposed amendment involves the establishment of a new section of haulage road between the two (2) quarries by utilising an existing track at the rear of the Benwerrin quarry. The use of the existing track will minimise any clearing for the haul road and its location at the rear of the quarry will maximise its distance from residences and minimise the impact of any dust that may be created from its usage.. In addition, the haul road will be screened from view of residences and John Renshaw Drive due to natural vegetation at the rear of the quarry.

The new section of haulage road will be required to be constructed to the same standard as the existing haul road on Lot 75.

**Noise, Dust and Vibration**

The proposed amendment will enable the adjoining quarries to operate as a single entity. This should result in a minimisation of those activities which create noise, dust and vibration associated with a quarry operation.

**Aboriginal Archaeology**

The proposed amendment relates to alterations to the existing consent and the provision of a new haulage road link between Lots 75 and 76 which will follow a well established track. It is therefore considered that there is unlikely to be any impact on Aboriginal heritage as a result of the proposed development.

**Economic Impact**

The formal approval of a gravel haul route from Lot 75 to John Renshaw Drive to serve both quarries will provide the owner and operator of the quarry with several positive economic outcomes with the most obvious being an efficient means of transporting any remaining product from either quarry to external clients.

**Cumulative Impacts**

The subject site contains a gravel quarry with limited remaining reserves. The site adjoins Lot 76 on which a new quarry is presently being established for a twenty (20) year term. The two (2) quarries are held in the same ownership and there are positive benefits for both the community and the quarry owner/operator in operating the quarries in conjunction with one another rather than operating independently. The cumulative impact of these quarry developments are therefore likely to be minimised due to their common ownership and operation.

**CONCLUSION:**

As previously stated the proposed amendment to the consent conditions has been submitted to facilitate the Mediation Agreement signed by local residents, community groups, the applicant/owner and Council.

It will enable material won from either quarry to be processed in either quarry and for material won to be transported via either approved haulage route to John Renshaw Drive or to George Booth Drive. The proposal will necessitate the establishment of a new section of haul road between the two (2) quarries. To minimise disturbance to the natural environment an existing four wheel drive track will be utilised.

**RECOMMENDATION** that the proposed amendment pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979, as amended, to Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Blackhill be approved subject to compliance with the following amended conditions of consent:-

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Environmental Impact Statement dated August 2007, and Noise & Air Assessments from Insite dated February 2007 and March 2007 respectively and any other information submitted in support of the application, except as modified by the conditions of this consent.

Reason

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

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.

Amended Condition No. 1

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Environmental Impact Statement dated August 2007, and Noise & Air Assessments from Insite dated February 2007 and March 2007 respectively, **the Section 96 modification from Insite dated June 2008 (which implement a Mediation Agreement that the approved quarries on Lots 75 and 76 will operate as a single quarry)** and any other information submitted in support of the application, except as modified by the conditions of this consent.

Reason

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

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.

8. The registered proprietors of the land shall construct the following within the Crown Road extending from 50 metres south of the subject property boundary in a northerly direction for a distance of 380 metres (being the combined frontage of Lot 741 and 742 and 50 metres north of Lot 741) in accordance with Council's policy "Road standards for Crown Road Transfers" and 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 Haul Road.
- a) Construct and gravel 320mm road base with a 6m wide carriageway and 1m wide road shoulders
  - b) Place two (2) coat bitumen seal 6m wide for the full length.
  - c) Selective under scrubbing works to improve sight distance at the Quarry Road/ Old Buttai Road intersection.
  - d) Signage displaying "limit noise" and/or "limit compression braking" being erected near the existing dwellings on lot 741 and 742 DP 876393 adjacent to the entrance to the quarry.
  - e) Construct drainage works
  - f) Signage for an enforceable 40km/hour speed zone on the sealed sections of the haulage route in the vicinity of Lots 741 and 742 DP 876393.

Reason

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

Amended Condition No. 8

8. The registered proprietors of the land shall construct the following within the Crown Road extending from 50 metres south of the subject property boundary in a northerly direction for a distance of 380 metres (being the combined frontage of Lot 741 and 742 and 50 metres north of Lot 741) in accordance with Council's policy "Road standards for Crown Road Transfers" and 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 Haul Road.
- a) Construct and gravel 320mm road base with a 6m wide carriageway and 1m wide road shoulders
  - b) Place two (2) coat bitumen seal 6m wide for the full length.
  - c) Selective under scrubbing works **within the road reserve** to improve sight distance at the Quarry Road/ Old Buttai Road intersection.
  - d) Signage displaying "limit noise" and/or "limit compression braking" being erected near the existing dwellings on lot 741 and 742 DP 876393 adjacent to the entrance to the quarry.
  - e) Construct drainage works
  - f) Signage for an enforceable 40km/hour speed zone on the sealed sections of the haulage route in the vicinity of Lots 741 and 742 DP 876393.

**Should the respective landowners of Lot 741 and 742 DP 876393 agree to sell their properties to the quarry operator in accordance with condition 4, the quarry operator is not required to comply with conditions 8(b), 8(d) and 8(f).**

Reason

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

21. Haulage of gravel from quarrying operations on Lot 75 DP 755260 via the proposed access route to John Renshaw Drive shall be restricted to a *maximum* of 60 loads/day or 120 truck trips/day and shall be conducted in a manner that minimizes impacts on the local road network.

Reason

*To reduce associated impacts on the Buttai Valley and its residents as well as the local road network.*

Amended Condition No. 21

21. Haulage of gravel from quarrying operations on Lot 75 DP 755260 **and Lot 76 DP 755260** via the proposed access route to John Renshaw Drive **and the existing access route from Lot 76 DP 755260 to George Booth Drive** shall be restricted to a **combined** *maximum* of 60 loads/day or 120 truck trips/day and shall be conducted in a manner that minimizes impacts on the local road network.

Reason

*To reduce associated impacts on the Buttai Valley and its residents as well as the local road network.*

New Conditions

- 3(a) The hours of operation of the quarry shall be as follows:
- i) Operating hours 6.00am – 6.00pm Monday to Saturday.
  - ii) (Operation of the drilling and mobile equipment to be restricted to RL95m or below between the hours of 6.00am and 7.00am). No operation permitted on Sundays and Public Holidays.
  - iii) Blasting 9.00am – 3.00pm Monday to Friday.

Reason

*To minimise the impact of the proposed quarry operations on the existing environment and the Buttai Valley and its residents.*

- 6(a) The registered proprietors of the land shall construct an all-weather access haul road between Lots 75 and 76 DP 755260 in the location shown in the Section 96 application from Insite dated June 2008 to a Category “B” standard with a 6 m wide carriageway and 1m wide road shoulders in accordance with Council’s “Engineering Requirements for Development” Pt 4.5.13 (available at Council offices). The proposed haul road shall be designed so as to minimise clearing along the existing track. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the haul road.

Reason

*To minimise the impacts of the construction of the haul road on the existing environment and the Buttai Valley and its residents.*

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
5 August 2008

## **DIRECTOR CITY PLANNING REPORT NO. 68/2008**

**DEVELOPMENT APPLICATION NO:** 5/1995/80124/3  
**APPLICANT/OWNER:** DAROMIN ENGINEERING PTY LTD  
**PROPERTY:** LOTS 76, 77 & 84 DP 755260, LOTS 1 & 2 DP 34957, LOT 3 DP 809377 AND LAND IN DP 977069 LINGS ROAD AND GEORGE BOOTH DRIVE BLACKHILL  
**AREA:** 131 HECTARES (LOT 76 ONLY)  
**ZONING:** RURAL 1(A)  
**PROPOSAL:** APPLICATION TO AMEND CONSENT

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

### **SUMMARY:**

Application has been received for an amendment to the consent for an approved gravel quarry on the subject land to be operated in conjunction with the adjoining Benwerrin quarry and in association with the rehabilitation of the Benwerrin quarry. The amendment seeks to enable the approved quarry and the Benwerrin quarry to be operated as a single quarry to minimise the impact of the quarry operations on the environment and the local community. The amendment is to be considered concurrently with a similar amendment to the consent for the approved quarry and rehabilitation on Lot 75.

The proposal was exhibited in accordance with Council's Development Control Plan requirements and three (3) submissions have been received. The issues raised by residents in respect of the amendment have been addressed and the application is recommended for approval.

### **PROPOSAL:**

The proposed amendment involves changes to the consent for the approved gravel quarry by enabling it to operate in conjunction with the adjoining the Benwerrin quarry and in association with its rehabilitation. The amendment will result in the two (2) quarries being operated as a single quarry. The amendment will enable material won from either quarry to be processed in either quarry and for material won to be transported via either approved haulage route to John Renshaw Drive or to George Booth Drive. This will necessitate the establishment of a new section of haul road between the two (2) quarries. To minimise disturbance to the natural environment an existing four wheel drive track will be utilised.

The amendment has been proposed following the establishment and signing of a Mediation Agreement (copy attached) between those local residents directly affected by the quarry operations (Mr & Mrs Weldon (Lot 741) and Mr & Mrs Stevenson (Lot 742)), the Black Hill Environment Protection Group, the Buttai Community Development Group, County Property Holdings and Daromin Engineering and Cessnock City Council. The Agreement sets down the terms of agreement including the primary issues and demands of the community and the quarry operator's offer in response. The proposed amendment to the consent has been prepared to facilitate the enactment of the agreement.

The proposal involves amendments to conditions 1 and 70 of the consent and the inclusion of a new condition which specifies the standard of road construction for the section of haul road to be established between the two (2) quarries.

**BACKGROUND:**

The original application for the development of a gravel quarry on Lot 76 was lodged with Council in August 1990 via Development Application No. 118/690/165. Consent to the proposal was granted by Council on 24 August 1993 but was subject to an appeal in the Land and Environment Court. The application was deemed to be refused by the Court as it was considered by the Court that among other issues the haul route via Lings Road was unacceptable.

Development Application 118/695/124 was made on 9 June 1995 and maintained the same quarry plan as that previously consented to by Council but indicated that the haul route from the quarry would be located to the south following an existing fire trail and public road reserve until it intersected with George Booth Drive. The consent was issued to the applicant on 7 April 1997.

**1997 Appeal to Land & Environment Court**

An Appeal was lodged by Beanie and Myrtle Jones (then owners of Lot 75) with the Land & Environment Court on 21 May 1997, against Council's decision to grant consent to the quarry. This appeal was resolved on 28 August 1997 by consent orders and resulted in an amendment to Condition 13 and the introduction of a new Condition 13A. The underlying intent of the appeal and resultant conditions was that the owners of Lot 75, 40 and 42 could have the opportunity to comment on the quarry operation plan before Council approved it.

**SITE DESCRIPTION:**

The subject site consists of a principle lot (Lot 76) having an area of 131 hectares together with a number of lots owned by Coal and Allied through which access to George Booth Drive has been constructed. Lot 76 is rectangular in shape and the approved quarry site is located on an elongated ridge or spur running in a south-west to north-east direction. The maximum elevation of the ridgeline is 120m AHD rising up from a height of approximately 50 AHD. The land is predominantly covered in an open Eucalypt forest on moderate to very steep slopes.

**PUBLIC EXHIBITION:**

The proposed development was advertised for a period of thirty (30) days from 28 June 2008 until 30 July 2008 in accordance with Council's Development Control Plan 2006 (Part B – General Information, Chapter B.2 – Public Notification & Advertising). Three (3) submissions were received being one (1) from a local resident and two (2) from The Black Hill Environment Protection Group and The Buttai Community Development Group.

The following provides a summary of the matters raised in the submissions together with relevant comment:-

**GENERAL**

In relation to the general concerns raised by the Community Groups the following points are made:-

- It is confirmed that the primary reason for the current Section 96 applications is to facilitate the Buttai Quarries Mediation Agreement.
- As the proposed amendments have been extensively advertised an opportunity has been provided to any interested parties to comment on the applications.



- The Community Consultative Committee will be meeting on Monday, 11 August 2008 and will discuss the Quarry Management Plan prepared by the applicant.
- Council gave consideration to the impact of the quarry operation on the Stevenson (Lot 741) and Weldon (Lot 742) families when it consented to the application on 5 March 2008. The relevant condition of consent (condition 4) stated:-

d) *The applicant shall:-*

*ii) Upon receipt of a request to purchase within six (6) months from the commencement of commercial operation of the quarry from the owners of Lot 741 and Lot 742 DP 876393 purchase the property.”*

This condition was previously agreed to by the parties and it is not considered that a change is warranted.

### **SPECIFIC CONCERN RAISED**

- Residents have asked that the all-weather crossing of Buttai Creek referred to in the Mediation Agreement should be constructed for residents of the area before commencement of commercial extraction and transportation via the western section of Old Buttai Road.

Comment:

There are several families at Buttai who presently use the western end of Old Buttai Road to gain access to John Renshaw Drive particularly when localised flooding prevents residents using the existing crossing of Buttai Creek. The haul route from Lot 75 will utilise the western end of Old Buttai Road which is a local road maintained by Council once a year.

During negotiation of the Mediation Agreement it was considered that the simultaneous use of the western end of Old Buttai Road by both haulage vehicles and residents vehicles would create an unacceptable traffic conflict and that the Old Buttai Road crossing of Buttai Creek should be upgraded to an all weather access to ensure residents access to John Renshaw Drive. In this regard the quarry operator offered to contribute in the form of a culvert or other suitable material for the construction of the access and Council would otherwise be responsible for the construction of the crossing.

The existing crossing of Buttai Creek can be utilised at the present time except in times when the creek floods. Further discussions with Council's Works Department are necessary to determine the extent of works and to establish a timeframe for the work to be undertaken.

- The request for Council to actively monitor compliance with the conditions of consent for the combined quarry operation and apply the same monitoring requirements to Lot 75 is noted. As stated the conditions relating to monitoring and reporting of the quarry operation on Lot 76 will now also be applicable to Lot 75 and Council will employ its Compliance officers to ensure compliance with the conditions of consent.

**OTHER AMENDMENTS TO CONSENT FOR LOT 76**

- a) Condition 1 of the consent should be amended to make reference to the signed Mediation Agreement which forms the basis for the amendments proposed.

Comment:

There is no objection to the inclusion of a reference to the Mediation Agreement within the consent.

- b) Condition 70 requires modification to be consistent with the proposed amendment to condition 21 for Lot 75.

Comment:

Condition 70 will be amended to be consistent with the approval for Lot 75.

- c) A new condition should be included to ensure the new section of haul road is constructed to the same standard as other sections of the haul road.

A new condition will be added so that a specific standard for the haul road consistent with other sections of the road are required.

The Community Groups have also pointed out several corrections that need to be undertaken in relation to the conditions. These corrections are included in the draft modified consents which have been recommended to Council.

**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:

- a) **The Provisions of any Environmental Planning Instrument**

**Hunter Regional Environmental Plan, 1989.**

The primary objective of this plan is to *'promote the balanced development of the region, the improvement of its urban and rural environments and the orderly and economic development and optimum use of its land and other resources, consistent with conservation of natural and man made features and so as to meet the needs and aspirations of the community.'* (Clause 2)

This objective proposes to regulate activities to ensure that reserves of coal, other mineral resources and low cost extractive resources such as sand, gravel, clay and the like are developed to their full potential.

The Plan also identifies in a map (Map 4(a)) that the Blackhill area is one area of the Lower Hunter containing an important road base material resource.

The objectives and principles contained within the Hunter Regional Environmental Plan, 1989 and as referred to above have been considered in the following report.

### **Cessnock Local Environmental Plan 1989**

The subject land is zoned No. 1(a) – Rural “A” Zone and the relevant objective of this zone is (e) *to ensure that the type and intensity of development is appropriate in relation to:-*

- v) *the rural capability and suitability of the land;*
- vi) *the preservation of the agricultural, mineral and extractive production potential of the land;*
- vii) *the rural environment (including scenic resources); and*
- viii) *the costs of providing public services and amenities.*

The objectives and principles contained within the Cessnock Local Environmental Plan, 1989 and as referred to above have also been considered in the following report.

#### **b) The Provisions of any Development Control Plan**

The application has been considered under the Cessnock Development Control Plan (DCP) 2006 –Part C – General Guidelines Chapter 4 – Land Use Conflict and Buffer Zones.

The Plan identifies quarries as a Category C activity and recommends a minimum self-contained buffer distance of 1000 metres from Category A land uses ie dwelling houses. The plan identifies potential conflicts between these land uses as noise, dust, vibration, blast over-pressure fly-rock from blasting and disruption and contamination of ground and surface waters.

The nearest dwellings are located in excess of 1,000 metres from the existing quarry wall where the quarry operation will occur. A direct impact in terms of dust and noise and vibration however will occur for those residents of Lots 741 and 742 due to the transport to and from the site of quarry product and materials being transported to the site. The consent requires the applicant to acquire these lots.

#### **c) The Likely Impacts of that Development**

##### **Access, Transport and Traffic**

The proposed amendment involves the establishment of a new section of haulage road between the two (2) quarries by utilising an existing track at the rear of the Benwerrin quarry. The use of the existing track will minimise any clearing for the haul road and its location at the rear of the quarry will maximise its distance from residences and minimise the impact of any dust that may be created from its usage.. In addition, the haul road will be screened from view of residences and John Renshaw Drive due to natural vegetation at the rear of the quarry.

The new section of haulage road will be required to be constructed to the same standard as the existing haul road on Lot 75.

##### **Noise, Dust and Vibration**

The proposed amendment will enable the adjoining quarries to operate as a single entity. This should result in a minimisation of those activities which create noise, dust and vibration associated with a quarry operation.

### **Aboriginal Archaeology**

The proposed amendment relates to alterations to the existing consent and the provision of a new haulage road link between Lots 75 and 76 which will follow a well established track. It is therefore considered that there is unlikely to be any impact on Aboriginal heritage as a result of the proposed development.

### **Economic Impact**

The formal approval of a gravel haul route from Lot 75 to John Renshaw Drive to serve both quarries will provide the owner and operator of the quarry with several positive economic outcomes with the most obvious being an efficient means of transporting any remaining product from either quarry to external clients.

### **Cumulative Impacts**

The subject site contains a gravel quarry with limited remaining reserves. The site adjoins Lot 76 on which a new quarry is presently being established for a twenty (20) year term. The two (2) quarries are held in the same ownership and there are positive benefits for both the community and the quarry owner/operator in operating the quarries in conjunction with one another rather than operating independently. The cumulative impact of these quarry developments are therefore likely to be minimised due to their common ownership and operation.

### **CONCLUSION:**

As previously stated the proposed amendment to the consent conditions has been submitted to facilitate the Mediation Agreement signed by local residents, community groups, the applicant/owner and Council.

It will enable material won from either quarry to be processed in either quarry and for material won to be transported via either approved haulage route to John Renshaw Drive or to George Booth Drive. The proposal will necessitate the establishment of a new section of haul road between the two (2) quarries. To minimise disturbance to the natural environment an existing four wheel drive track will be utilised.

**RECOMMENDATION** that the proposed amendment pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979, as amended, to Development Application No. 118/695/124/3 for the approved quarry on Lot 76, DP 755260 Off Lings Road and John Renshaw Drive Blackhill be approved subject to compliance with the following amended conditions of consent:-

1. 'The development is to be carried out generally in accordance with the proposal set out in the Environmental Impact Statement, the Addendum Report dated March 1996, the Archaeological Survey dated July, 1996, the document titled "Response to Issues Raised by Cessnock City Council" dated September 1996, provided by E.R.M. Mitchell McCotter Pty. Ltd., the details of the Section 96 Modification contained within the Buttai Quarry – Section 96 Modification document prepared by ERM dated June 2007, and as modified by the following conditions of consent.'

At no time during construction or operation of the quarry is it to encroach any closer than 70 metres to the common boundary of any adjoining lot or portion. This buffer does not apply to the boundary with the existing Lot 75.

At no time during construction or operation of the quarry is it to encroach below the 100m contour line except on the current boundary with Lot 75. This separation distance is to be indicated in the detailed quarry plan to be submitted to Council, and is to remain clear of any development other than dams for control of runoff water, sedimentation control structures and the like. Initial plant and amenities are also not to be located within this 70 metre buffer. A quarry operation plan identifying this buffer zone is to be submitted to Council for approval as set out in Condition 13.'

Amended Condition No. 1

1. 'The development is to be carried out generally in accordance with the proposal set out in the Environmental Impact Statement, the Addendum Report dated March 1996, the Archaeological Survey dated July, 1996, the document titled "Response to Issues Raised by Cessnock City Council" dated September 1996, provided by E.R.M. Mitchell McCotter Pty. Ltd., the details of the Section 96 Modification contained within the Buttai Quarry – Section 96 Modification document prepared by ERM dated June 2007, **the Section 96 modifications from Insite dated June 2008 (which implement the signed Mediation Agreement that the approved quarries on Lots 75 and 76 in DP 755260 will operate as a single quarry)**, and as modified by the following conditions of consent.'

At no time during construction or operation of the quarry is it to encroach any closer than 70 metres to the common boundary of any adjoining lot or portion. This buffer does not apply to the boundary with the existing Lot 75.

At no time during construction or operation of the quarry is it to encroach below the 100m contour line except on the current boundary with Lot 75. This separation distance is to be indicated in the detailed quarry plan to be submitted to Council, and is to remain clear of any development other than dams for control of runoff water, sedimentation control structures and the like. Initial plant and amenities are also not to be located within this 70 metre buffer. A quarry operation plan identifying this buffer zone is to be submitted to Council for approval as set out in Condition 13.'

70. Haulage of gravel from quarrying operations on Lot 76 DP 755260 via the approved haulage route to George Booth Drive shall be restricted to a *maximum* of 60 loads/day or 120 truck trips/day and shall be conducted in a manner that minimizes impacts on the local road network.

**Amended Condition No. 70**

70. Haulage of gravel from quarrying operations on Lot 76 DP 755260 **and Lot 75 DP 755260** via the approved haulage route to George Booth Drive **and the proposed access route to John Renshaw Drive** shall be restricted to a **combined** *maximum* of 60 loads/day or 120 truck trips/day and shall be conducted in a manner that minimizes impacts on the local road network.

**New Condition**

The registered proprietors of the land shall construct an all-weather access haul road between Lots 75 and 76 DP 755260 in the location shown in the Section 96 application from Insite dated June 2008 to a Category “B” standard with a 6 m wide carriageway and 1m wide road shoulders in accordance with Council’s “Engineering Requirements for Development” Pt 4.5.13 (available at Council offices). The proposed haul road shall be designed so as to minimise clearing along the existing track. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the haul road.

**Reason**

*To minimise the impacts of the construction of the haul road on the existing environment and the Buttai Valley and its residents.*

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
11 August 2008

## **DIRECTOR CITY PLANNING REPORT NO. 69/2008**

**SUBJECT: VOLUNTARY PLANNING AGREEMENT BETWEEN THE WINTEN PROPERTY GROUP AND CESSNOCK CITY COUNCIL**

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### **SUMMARY**

This report requests Council to authorise the execution of the Agreement, and authorises the Mayor and General Manager to fix the Seal and to counter-sign the Planning Agreement.

### **BACKGROUND**

At the Council Meeting held on 18 June 2008 Council considered a report pertaining to the offer by the Winten Property Group to enter into a Voluntary Planning Agreement providing for either monetary contributions or works in kind towards the provision of the following outcomes:

The Planning Agreement relates to Development Application 8/2007/757 and to Draft Amendment 120 to the Cessnock Local Environmental Plan 1989 (Cliftleigh Precinct), which was endorsed by Council at its meeting of 1 August 2007.

The Planning Agreement generally provides for either monetary contributions or works in kind, covering the provision of the following outcomes:

- Rehabilitation of Testers Hollow to provide passive open space and wetlands, including a five (5) year maintenance period;
- Playing fields, amenities and car parking at Testers Hollow;
- Testers Hollow local park and playground;
- Testers Hollow neighbourhood centre / child care facility;
- Land for the proposed Hilltop Park;
- Contributions towards library services;
- Contributions towards aquatic facilities;
- Traffic management / cycle ways / pedestrian facilities;
- Major road and bridge works; and
- Contribution towards public car parking provision in the Kurri Kurri CBD.

The report recommended that Council agree to enter into the draft Voluntary Agreement after formal notification and Council resolved as follows:

1. Council accept the offer to enter into a Voluntary Planning Agreement for a contribution of approximately \$14.836 million dollars towards the provision of services and facilities and the undertaking of works in connection with the development of 977 dwellings at Cliftleigh.
2. A copy of the voluntary planning agreement, be 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 which may preclude adoption, Council resolve to submit the Cliftleigh Voluntary Planning Agreement to the Department of Planning in accordance with the provisions of the Environmental Planning and Assessment Act, 1979.

**REPORT**

The Planning Agreement was publicly exhibited for a period of 28 days and no submissions were received.

In accordance with the Council resolution at the Council Meeting on 16 July 2008, subject to no objections being received it was resolved that Council submit the Cliftleigh Voluntary Planning Agreement to the Department of Planning in accordance with the provisions of the Environmental Planning and Assessment Act, 1979.

However, in an oversight the Council resolution failed to authorise the Mayor and General Manager to fix the Seal and sign the Planning Agreement.

As no submissions were received during the notification of the Planning Agreement it is recommended that Council authorise the execution of the Agreement, and authorise the Mayor and General Manager to fix the Seal and to counter-sign the Planning Agreement with the Winten Property Group.

**RECOMMENDATION** that Council authorises the execution of the Agreement, and authorises the Mayor and General Manager to fix the Seal and to counter-sign the Planning Agreement

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
14 August 2008



## **DIRECTOR CITY PLANNING REPORT NO. 70/2008**

**DEVELOPMENT APPLICATION NO:** 8/2008/334/1  
**APPLICANT:** MR J CALLAGHAN  
**OWNER:** MR J & MRS A CALLAGHAN  
**PROPERTY:** LOTS 9 & 10 SECTION C DP 4080 VINCENT STREET CESSNOCK  
**AREA:** 1837 SQUARE METRES  
**ZONING:** ZONE 3 (C) - CENTRE SUPPORT  
**PROPOSAL:** ALTERATIONS AND ADDITIONS TO HOTEL

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### **SUMMARY:**

The development application proposes alterations and additions to Pedens Hotel, which is adjacent to Council's Performing Arts Centre. The proposal will result in a development which will complement Council's Performing Arts Centre and make a significant contribution towards the continued revitalisation of this precinct within the Cessnock Commercial Centre.

The application is recommended for approval.

The application is reported to Council because of a shortfall in on-site car parking.

### **PROPOSAL:**

The proposed alterations and additions to the existing hotel will extend the building toward the "Centrelink" building immediately adjoining to the north and toward the existing informal car parking area at the rear of the site in the area presently occupied by a beer garden.

The proposal will result in an increase of approximately 210m<sup>2</sup> to the general licensed floor area of the hotel being lounge, bar, tab and gaming areas together with the inclusion of two (2) smokers areas; an additional area of restaurant dining of 105m<sup>2</sup> and a reduction of the area of existing beer garden of 140m<sup>2</sup> and its replacement with a smaller area of outdoor dining. The applicant has stated that the proposed extension to the existing restaurant is intended to improve the quality of the facility whilst maintaining the existing seating numbers (120).

The alterations to the existing building will involve the replacement of existing windows in the hotel with new aluminium framed windows and aluminium framed doors on the extension of the building along Vincent Street and an extension to an existing awning in the pedestrian courtyard in Castlemaine Street.

The proposal includes the provision of a car parking area for twenty (20) vehicles with a driveway with access (entry/exit) off Cumberland Street and exit into Castlemaine Street. It is proposed that two (2) car parking spaces previously approved in Castlemaine Street be relocated to the west where a concrete podium exists. Loading/unloading and collection of refuse is suggested to occur within the driveway area outside the busy times of the hotel.

The owners of the hotel have also provided a statement outlining the intended operation of the hotel including hours of trade involving no alcohol sales before 10.00am and close at midnight and 10.00pm Sundays. The restaurant will be available seven (7) days a week for lunch and dinner and for breakfast Saturday and Sunday plus some public holidays at 7.00am.

The proposed development initially included the provision of a bottleshop however this has now been removed from the application. Expected staffing of the hotel is proposed to increase from present employment of six(6) to approximately thirty three (33).

## **BACKGROUND**

### Trading Hours of Hotel

Application was received in June 2000 under Development Application No. 8/2000/560/1 to extend the trading hours of the hotel from midnight closing time until 3.00am Monday to Saturday and from 10.00pm closing to midnight on Sundays. At its meeting on 20 September 2000 Council granted consent to the application subject to the approval being granted on a provisional basis for twelve (12) months and its operation being reviewed at the expiration of that time. Council's records do not indicate that a review of the trading hours of the hotel has occurred since that time.

### Approval of Multi-purpose Community Centre

The proposed alterations and additions to the hotel are located adjacent Council's multi-purpose community centre on the southern side of Castlemaine Street. The centre is a Council initiative to bring together under one roof, a central, civic facility to house the multitude of community organisations and user groups currently spread out across the city including the Samaritans central offices, senior citizens, theatre and performance groups and dance and leisure groups. The centre will operate on two (2) levels and include a 472 seat theatre, offices and facilities for Samaritans (135m<sup>2</sup>) and senior citizens (126m<sup>2</sup>), and a café (100m<sup>2</sup>) on the ground floor and over 400m<sup>2</sup> of first floor space for offices and performance areas.

A car parking area for approximately fifty three (53) car parking spaces will be located behind the proposed community centre and it is proposed that Castlemaine Street be closed and an additional twenty one (21) spaces be provided in this street. The only access to the car park for the centre will be from the intersection of Cumberland Street with Castlemaine Street and it is also intended that the loading/unloading area for the centre be provided at the western end of Castlemaine Street through the paved pedestrian walkway.

### **SITE DESCRIPTION:**

The subject site consists of two (2) lots with a 22.6 metre frontage to Vincent Street, a depth of approximately 80 metres and an area of approximately 1837 square metres. The site is occupied by a two (2) storey hotel at the Vincent Street frontage and two (2) car garage at the rear of the lot. The subject lot has frontage to Vincent, Castlemaine and Cumberland Streets.

The hotel contains a manager's residence and nine (9) accommodation rooms at the first floor level and existing hotel facilities including bar and lounge areas, tab and games room and indoor dining area and outdoor beer garden. The existing garage is located within an informal unsealed car parking area. Vehicular access to the car parking area was previously available via Castlemaine Street however the construction of the multi-purpose centre has necessitated the provision of an access directly off Cumberland Street in addition to the existing access.

### **PUBLIC EXHIBITION:**

The proposed development was not required to be advertised or notified under Council's DCP 2006.

**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:

**a) The Provisions of any Environmental Planning Instrument**

**Cessnock Local Environmental Plan, 1989**

The subject land is zoned 3 (c) – Centre Support Zone and under the provisions of the Plan the proposed alterations and additions to the hotel and bottleshop are permissible with the consent of Council. The proposal is also consistent with the following objectives of the zone:

- a) to encourage a wide range of land uses which support or are related to the functions of the Cessnock, Kurri Kurri and Weston business centres, and
- b) to ensure that the design and layout of the development is sympathetic with any adjoining residential development.

The following development principles are contained in **Clause 27 of the Plan:**

The Council shall not grant consent to development on land within Zone 3(c) unless it is satisfied that:

- (a) the development is designed and arranged in a manner which:
  - (i) achieves an effective relationship with adjoining development, having regard to the functions of the centre in which the development is proposed to be situated,
  - (ii) wherever practicable, contributes to a pedestrian network and provides amenity and comfort for pedestrians,
  - (iii) retains opportunities for through site links for pedestrians,
  - (iv) wherever practicable, enables integration and connection of parking areas, including access for pedestrians,
  - (v) contributes to an overall improvement to the character, appearance and functioning of the centre in which the land is situated, and
  - (vi) is compatible with traffic management (including service vehicles) proposals adopted by the Council for the centre in which the land is situated, and
- (b) the development, by its nature, orientation, height, design and operation will not adversely affect the amenity of any residential development in the vicinity.

The proposed development has been designed and arranged so as to be compatible with the adjoining multi-purpose community centre. The owner/applicant has indicated his intention to operate the hotel hours in conjunction with the centre and its functions. At the same time the previous closure of Castlemaine Street at the Vincent Street frontage centre has been designed to cater for outdoor entertaining, café dining and to facilitate access for pedestrians between the centre and hotel. It was also intended during consideration of the centre that the hotel would also be able to utilise the loading area at the western end of Castlemaine Street to service its development.

The proposal is also consistent with the provisions contained within Schedule 1 of the Plan relating to additional aims for business centres.

b) **The Provisions of Any Development Control Plan**

**Car Parking and Access**

Chapter C.1 of the Cessnock Development Control Plan (DCP) 2006 applies to the proposed development. As stated above the proposal will result in an increase of approximately 210m<sup>2</sup> to the general licensed floor area of the hotel being lounge, bar, tab and gaming areas together with the inclusion of two (2) smokers areas; an additional area of restaurant dining of 105m<sup>2</sup> and a reduction in the area of existing beer garden of 140m<sup>2</sup> and its replacement with a smaller area of outdoor dining. Applying the provisions of the DCP it has been calculated that the proposed additions generate an additional parking requirement of **three (3) spaces**, calculated as follows:

- Dining area of 105 m<sup>2</sup> generates **no additional parking** requirement because the seating capacity is not being increased and this will be reinforced through the conditions of consent.
- General licensed area of 210m<sup>2</sup> generates an additional parking requirement of 38 spaces. This excludes the smokers areas which are for the purpose of accommodating hotel patrons and do not generate patronage in their own right.
- The reduction in the area of the beer garden by 140 m<sup>2</sup> attracts a reduction in onsite parking requirement of 35 spaces.

It is not proposed to charge a s.94 contribution for the 3 additional parking spaces on the basis that the additional parking requirement is addressed through the formalisation of the existing parking area to provide twenty (20) onsite parking spaces. The formalisation of the existing parking area increases the onsite parking capacity and will improve the functionality of the onsite/onstreet parking arrangements within this precinct.

Council's Local Development Committee (Traffic) considered the proposal at its meeting on 19 May 2008. The Committee advised that it did not object to the proposed development but that, parking spaces shall be provided in accordance with Council's DCP 2006, including those for the disabled." The Committee further resolved to apply additional parking restrictions to the development and did "not support the removal of parking spaces or raised concrete island in Castlemaine Street to accommodate the proposed exit or any loss of parking associated with the proposed exit."

The applicant has submitted a Parking Assessment Report in support of the application. The report involved conducting parking surveys which indicated that there remains a substantial amount of on-street parking available in the locality during peak trading periods. The report is consistent with the Roads and Traffic Authority's Guide to Traffic Generating Developments which calls for the adoption of observed parking rates with regard to development of the type proposed due to a reliance on parking surveys that predate the introduction of random breath testing and the effects this has had on driver behaviour at this type of venue.

The Parking Assessment Report also notes that as a result of the adjoining development of the multi-purpose community centre, Castlemaine Street will be developed for 90 degree car parking which will allow for additional on-street car parking immediately adjacent the rear of the hotel. The report concludes that there is an adequate amount of on-street parking to satisfy the increase in demand generated by the proposed development.

The Local Development Committee's views concerning the management of traffic on-site and in the vicinity of the site are generally supported with the exception of the hotel's access to Castlemaine Street. Access to the proposed car parking area off Cumberland Street has been provided due to the present loss of the access to Castlemaine Street from the hotel's informal parking area due to Council's construction of the Performing Arts Centre.

The removal of the hotel's existing and proposed driveway exit into Castlemaine Street will restrict the movement of service vehicles associated with the hotel. This may result in larger delivery vehicles and garbage vehicles reversing out into Cumberland Street, if this were the only access into and out of the site, and this would be undesirable from a traffic management point of view. The option of delivery vehicles unloading in Castlemaine Street was rejected by the proponent.

The hotel's existing access into Castlemaine Street will result in the removal of two (2) spaces and will provide an alternative service access to the hotel other than the loading/unloading area that may also be available in Castlemaine Street.

In addition, the traffic and parking report submitted in conjunction with the application for the multi-purpose community centre adjoining indicated that the peak demand for parking would be in the evening when the auditorium is in operation and the demand would be for 58 spaces. The centre provides 54 spaces on the site and approximately 20 spaces in Castlemaine Street. As persons attending functions at the auditorium may also be dining at the hotel restaurant on the same evening the parking demand will be reduced as it can be satisfied through use of the parking spaces on either site.

Under the above circumstances and having regard to the economic and social benefits the proposed development will have on the commercial precinct in this locality it is considered that Council accept the proposed development on the basis of the proposed on-site car parking provision.

**c) The Likely Impacts of that Development**

**i) Context and Setting**

The proposed development has been designed to directly relate to the adjoining multi-purpose community centre presently under construction to the south. The proposed alterations and additions to the hotel will enhance the relationship and compatibility with the adjoining centre by improving the visual appeal, amenity and streetscape within the locality of the centre. Together the two projects have the potential to revitalise the commercial precinct at this end of the Cessnock commercial centre.

**ii) Heritage**

The existing building does not appear in Schedule 3 of the Cessnock LEP, 1989 as an “item of environmental heritage”. The City of Cessnock Heritage Study by Penelope Pike, Meredith Walker & Associates in 1993 identified the significance of the building as “a relatively intact building, one of a group of intact pubs which distinguish the towns of the city of Cessnock L.G.A., and which are closely associated with the development of those towns and their economy, particularly mining. An important part of the townscape of the main street of Cessnock.”

The proposed alterations and additions to the two (2) storey hotel will not significantly alter the Vincent Street façade of the building on this streetscape. The proposed new entry off Vincent Street has been setback to distinguish this feature from the principle façade.

**iii) Safety, security and crime prevention**

The proposed development will provide safety and security for its patrons through a number of measures. These will include the curtailing of late night trading hours, the installation of security cameras (20) within the hotel and the enclosure of the existing narrow alley between the hotel and the adjoining Centrelink building. This will be utilised predominantly for storage and access to the first floor.

The proposal will also provide some security and safety for persons occupying public areas in between the hotel and the community centre. The hotel additions will enable natural surveillance and visibility into the areas to be used for outdoor theatre, entertainment and dining in association with the centre thereby reinforcing territoriality and reducing the fear of crime within the precinct.

**iv) Social & economic impact in the locality**

The proposed development will result in a number of positive social and economic benefits for the local community. The proposal in conjunction with the development of the multi-purpose community centre has the potential to revitalise the commercial area in this precinct and together with other hotels and the Ex-Services Club may become the entertainment precinct for the commercial area.

The project will provide employment for local tradespeople during construction of the alterations and additions and as indicated by the owner/applicant will result in a significant increase in the number of staff to be employed when completed.

**CONCLUSION:**

The proposed development in conjunction with the construction of the multi-purpose community centre on the opposite side of Castlemaine Street will have a positive influence in revitalising the commercial area in this locality. The proposed additions and alterations to the hotel have been specifically designed to take advantage of its proximity to the centre and for the operation of the hotel to be compatible with the functioning of the centre.

The proposal will result in a shortfall in on-site car parking for the development under Council's DCP 2006. Under the circumstances it is considered that the overall benefits of the development outweigh the likely shortfall in on-site car parking.

**RECOMMENDATION** that Development Application No. 8/2008/334/1 for alterations and additions to the existing hotel on Lots 9 and 10, Section C, DP 4080, Vincent Street, Cessnock be approved subject to compliance with the following conditions of consent:-

### **TERMS OF CONSENT**

#### General

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

#### Reason

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

2. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans numbered CN 2552 2-CC 1100 Revision A dated July 2008, Statement of Environmental Effects dated 18/04/2008, Parking Assessment Report dated August 2008 and any other information submitted in support of the application, except as modified by the conditions of this consent.

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

#### Reason

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

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

#### Reason

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

4. No advertising structure shall be erected and no advertising sign or material shall be affixed or displayed on any building or land without the prior development approval of the Council. A separate application is to be made on the prescribed form.

Reason

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

5. The proposed restaurant and outdoor dining area to be restricted to a seating capacity of one hundred and twenty persons.

Reason

*To limit the seating capacity of the proposed dining areas in accordance with the owner/applicants operational statement.*

Food Surveillance

6. 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.*

7. 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.*

8. Hand washing facilities - Hand washing basins shall be provided in sufficient number in close proximity to where food is prepared; with a permanent supply of warm running potable delivered through a single outlet provided to each, together with a sufficient supply of soap and hand drying facilities.

Reason

*To ensure adequate handwashing facilities are available for food handlers to wash hands.*

9. 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.*



10. 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.*

11. Where any proposed cooking or heating equipment being considered for installation, has a combined capacity exceeding 8 kilowatts or 29 megajoules/hour, then an approved mechanical exhaust ventilation (M.E.V.) system will be required.

Such equipment which is specifically designed to cater for the removal of odours, vapours or emissions from such area and equipment, shall comply with the requirements of the relevant Australian Standard No. 1668 Part 2. Detailed plans and specifications of the equipment as proposed are to be submitted to the Principal Certifying Authority (PCA) for approval with the Construction Certificate.

Reason

*The equipment upon installed in such a manner as not to cause danger or a nuisance to occupants of the building or the surrounding residential area must fully meet and perform to the requirements of Australian Standard No. 1668. Part 2.*

12. Suitable hand drying facilities are to be provided within all work and amenities areas. These may include single use paper towels, air dryers or other approved hand drying facilities.

Reason

*To promote good hygiene practices, and reduce the risk of cross infection.*

13. The routine cleaning and sanitising of all common areas and facilities, and the laundering of all linen is to be carried out strictly in accordance with recommended industry guidelines using approved occupational health and safety practices.

Reason

*To minimise the health and safety risks from possible cross contamination sources for patrons and staff alike.*

14. 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. The annual fee includes random operational inspections where required by Council's Regulatory Services officer, at no additional charge.

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.*

Access, Carparking and Loading Arrangements

15. 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*

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

General

16. A Waste Management Plan in accordance with Council's DCP 40 "Waste Management and Minimisation" shall be submitted by the Principal Certifying Authority (PCA) with the application for the Construction Certificate. The management plan shall include:
- (a) The volume and type of waste to be generated
  - (b) Where the waste is to be stored and treated on site
  - (c) How the residue is to be collected and disposed of
  - (d) On going management of the Waste Management Plan

Reason

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

Food Surveillance

17. “All premises which are used for the storage, preparation and serving of food for human consumption shall comply with the provisions of the “Food Act, 2003”, the “Regulations” thereunder and Australian Standard 4674-2004, “Design, construction and fit-out of food premises”.

Please note: A detailed plan of the layout and a schedule of equipment to be installed for the kitchen/bar/restaurant area shall be submitted to the Principal Certifying Authority (PCA) for consideration and approval prior to issue of the Construction Certificate.

The plan is also to detail all floor, wall, ceiling and bench/counter/servery surface types and finishes. Such plans should also detail all equipment and the provision of the required hand washing facilities associated with each operation.

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.*

18. A separate cleaning sink is to be provided and located outside of areas where open food is handled and shall be shown on the floor plan prior to the issue of the Construction Certificate.

Reason

*To ensure adequate facilities for the cleaning of equipment and reduce the potential for the transfer of micro-organisms and to ensure compliance with the requirements of Australian Standard 4674-2004 ‘Design, construction and fit-out of food premises’.*

Design Considerations/Building Setbacks

19. The proposed building shall be provided with access and facilities for the disabled in accordance with AS 14281.1. Full details shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to release of the Construction Certificate for the building.

Reason

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

Building Construction

20. Plans showing the extent of excavation and/or filling together with details of the method of retaining, draining and stabilising the disturbed areas shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.

Reason

*To determine that satisfactory arrangements have been made to reduce environmental and building damage.*

21. Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000 the whole of the existing building is to be upgraded to comply with Sections C, D & E of the Building Code of Australia (BCA). The upgrading plans and specifications are to form part of the stamped approved Construction Certificate.

Reason

*To ensure the required fire safety measures have been installed in the building and are operable prior to occupation of the building. To comply with the prescribed requirements of the Environmental Planning and Assessment Act.*

Access, Carparking and Loading Arrangements

22. The Registered Proprietors of the land shall construct a reinforced concrete access crossing in Castlemaine Street 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. Any required alterations to on-street parking in Castlemaine Street shall be in accordance with Council's requirements and at full cost to the developer. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the building.

Reason

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

23. On-site car parking shall be provided for a minimum of twenty (20) vehicles and such being set out generally in accordance with Council's Car Parking Code. Full details shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to release of the Construction Certificate for the buildings.

Reason

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

24. One (1) car parking space shall be designated and signposted for use by disabled persons for the life of the development. Full details shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to release of the Construction Certificate for the building.

Reason

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

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

Reason

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

26. All driveways, access corridors and carparking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The car parking areas shall be constructed with a base course of adequate depth to suit design traffic loadings with a sealed 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 for the building.

Reason

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

27. 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. Full details shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to release of the Construction Certificate for the building.

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

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

Reason

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

29. A detailed drainage design for the disposal of roof and surface water from the site, including any natural runoff currently entering the property and connection to the existing drainage system in accordance with Council's 'Engineering Requirements for Development' (available at Council's offices). Such layout shall include existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development. Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the building/s.

Reason

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

Site Works

30. A construction management plan shall be submitted to the Principal Certifying Authority (PCA) for approval with the application for the Construction Certificate. The management plan shall include:
- (a) Details of sedimentation and erosion control
  - (b) Details of provision of truck and machinery wash down areas. **Note:** All trucks and machinery must be free from all foreign material where such material is likely to cause pollution. An area must be set aside for the cleaning of concrete agitator trucks.
  - (c) Details of dust mitigation on building sites and access roads
  - (d) Location and phone number of the site office
  - (e) Details regarding provision of areas set aside for the storage/stockpiling of:
    - (i) Construction refuse
    - (ii) Construction materials
    - (iii) Raw materials such as sand, soil, mulch and the like
    - (iv) Details regarding the provision of facilities for workers associated with the development.

**Note:** All protection and control of earthworks shall be carried out in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements and the Department of Housing 'Soil and Water Management for Urban Developments'.

Reason

*To reduce the environmental impact on the site during the construction period.*

**DURING CONSTRUCTION**

General

31. 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.*

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

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

Reason

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

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

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

Reason

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

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

Reason

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

35. All building materials, plant and equipment is to be placed on the building site. Building materials, plant and equipment (including water closets), are not to be placed on footpaths, roadways, public reserves etc.

Reason

*To ensure pedestrian and vehicular access is not restricted in public places.*

36. 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

37. 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.*

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

Reason

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

Site Works

39. 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.*

40. 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.*

41. Filling shall not be placed on land 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.*

**PRIOR TO OCCUPATION**

General

42. Prior to the issue of an Occupation Certificate the applicant shall provide Council with appropriate certification to confirm that all of the building, other works and associated development have been constructed strictly in accordance with the provisions of the Development Consent and Construction Certificate.

Reason

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



43. Occupation or use of premises for the purposes approved by this consent shall not commence until all conditions of this consent have been complied with and the Occupation Certificate has been issued.

Reason

*To ensure compliance with the provisions of the Environmental Planning and Assessment Act, 1979, and Council's terms of consent.*

44. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water and to ensure the free flow of water away from the building and adjoining properties.

Reason

*To reduce the risk of environmental and building damage.*

45. Lighting shall be provided within the development in accordance with Australian Standards and shall not cast light or glare onto the public road network or surrounding residential neighbourhood.

Reason

*To ensure that the lighting of the proposed development does not adversely impact on the adjoining road network or residential amenity of the local neighbourhood.*

Fire Safety

46. The building must comply with the Fire Safety provisions applicable to the approved use. The applicant shall provide Council and the Fire Commissioner with a copy of the Final Fire Safety Certificate and the Fire Safety Schedule relating to the required fire safety measures in accordance with Division 4 of the Environmental Planning and Assessment Regulation 2000 prior to occupation of the building or issue of an Occupation Certificate. The final Fire Safety Certificate and the Fire Safety schedule are to be prominently displayed in the building. This condition MUST be complied with prior to the Occupation Certificate being issued and/or the building being occupied.

Reason

*To ensure the required fire safety measures have been installed in the building and are operable prior to occupation of the building. To comply with the prescribed requirements of the Environmental Planning and Assessment Act.*

47. Bollards/approved barriers shall be provided adjacent to egress doors and paths of travel that are likely to be obstructed by vehicles, plant or equipment associated with the use of the premises.

Reason

*To provide the occupants with a safe passage from the building.*

Access, Carparking and Loading Arrangements

48. The vehicular entrance and exit driveways and the direction of traffic movement within the site shall be clearly indicated by means of reflectorised signs and pavement markings prior to occupation of the building and for the life of the development. “Stop” restrictions and associated pavement markings shall be installed at the exit to the public road system.

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.*

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

Reason

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

50. The existing “No Stopping” parking restrictions on Cumberland Street at Castlemaine Street to be extended over the Cumberland street access. In this regard the applicant is to make separate written application to Council’s Traffic Committee for approval to extend the “No Stopping” parking restrictions on Cumberland Street.

Note: All signposting required to be installed on the public road system as part of the development consent shall be carried out by council at the developer’s full cost.

Reason

*To ensure all work undertaken within the public road system is to an appropriate standard.*

Drainage and Flooding

51. 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.*

52. The registered proprietor of the land shall submit a report and a works-as-executed (WAE) drawing of the 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 the issue of an Occupation Certificate.

Reason

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

Scheduling of Inspections

53. 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.*

54. 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.*

Site Works

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

Reason

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

Subdivision

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

Reason

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

**POST OCCUPATION OPERATIONAL REQUIREMENTS**

Site Management

57. There being no interference with the amenity of the neighbourhood by reason of the emission of any offensive noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.

Reason

*To prevent environmental pollution, to ensure observance of appropriate public health standards and to protect the existing amenity of the neighbourhood.*

**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.*

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
6 August 2008

## DIRECTOR CITY PLANNING REPORT NO. 71/2008

**DEVELOPMENT APPLICATION NO:** 8/2005/240/2  
**APPLICANT:** ADW JOHNSON  
**OWNER:** MR P TREVILLIEN  
**PROPERTY:** LOT 1 DP 770805, 74 CHURCH STREET, WESTON  
**AREA:** 13.76 HA  
**ZONING:** 2(A) RESIDENTIAL  
**PROPOSAL:** DEFERRED BUSINESS – CONSIDERATION OF ROADWORKS COST APPORTIONMENT

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

Council at its meeting of 6 August 2008 considered an officer report in relation to the costs associated with the roadwork conditions imposed in the granting of consent for a twenty-six (26) lot subdivision on Lot 1, D.P 770815, 74 Church St, Weston.

Council resolved to apportion the roadwork costs associated with the development and to require the development of a Section 94 Contributions Plan to be applied to future development in the location. Council's resolution stated:

1. Council enters into a shared agreement with the developer of the land as follows:-

<b>Section A – B</b>		
Intersection construction and gravel upgrade at the intersection of Frame Drive and Baileys Lane to achieve the nominated Type B intersection design standard	\$250,000	Council (Not required at this stage)
<b>Section B – C</b>		
Existing gravel section requiring the construction of a culvert, removal of vegetation and construction and sealing of two hundred and thirty meters (230m) of pavement.	\$220,000	Council
<b>Section A - C</b>		
Construction of kerb and gutter from the existing south side of the road to Frame drive.	\$130,000	Council (Not required at this stage)
<b>Section C - D</b>		
Widen the existing road pavement, reseal and water table one side	\$ 11,750	Council
<b>Section E – F</b>		
Construct and seal 145 m of road pavement to the intersection of Baileys and Church Sts.	\$108,750	Council
<b>Section F – G</b>		
Construction and sealing of approximately Four hundred meters (400m) of pavement	\$320,000	Developer
<b>Section G – H</b>		
Construction and sealing of Church Street to the subject land	\$180,000	Developer

2. A Section 94 Plan be developed for the area.

The above resolution of Council has both budgetary and resource implications for Council's adopted urban roads program and strategic planning program. Therefore, it is intended to provide a further report to Council detailing the options with respect to budgeting the works within the existing urban roads programme, the timing of the required works, the timing and need for the development of a Section 94 Contributions Plan for the area and proportion of the costs likely to be recovered from contributions levied on future development.

The purpose of this report is to inform Council that it is intended to provide a further report at such time as the details of a suitable shared cost agreement with the developer have been finalised.

It is also recommended that any amendment of the conditions of development consent under the provisions of Section 96 of the Environmental Planning & Assessment Act, 1979 be deferred pending the consideration by Council of the officer report on the budgeting and resourcing implications of the proposed shared cost agreement with the developer and the preparation of a s.94 plan.

**RECOMMENDATION** that:-

1. Council note the report; and
2. The further amendment of the conditions of development consent under the provisions of Section 96 of the Environmental Planning & Assessment Act, 1979 be deferred pending the consideration by Council of a report on the budgeting and resourcing implications of the proposed shared cost agreement with the developer and the preparation of a s.94 plan.

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
12 August 2008

## **DIRECTOR CITY PLANNING REPORT NO. 72/2008**

**SUBJECT: VOLUNTARY PLANNING AGREEMENT BETWEEN GRETA ESTATES  
PTY LIMITED AND CESSNOCK CITY COUNCIL**

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### **SUMMARY**

This report requests Council to authorise the Mayor to sign the Planning Agreement and to authorise the Mayor and General Manager to fix the Seal to the Planning Agreement.

### **BACKGROUND**

At the Council Meeting held on 16 July 2008 Council considered a report pertaining to the offer by Greta Estates Pty Ltd to enter into a Voluntary Planning Agreement providing for either monetary contributions or works in kind towards the provision of the following outcomes:

- Construction of an oval, training area, amenities block and car parking;
- 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;
  - Car parking 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 report recommended that Council agree to enter into the draft Voluntary Agreement after formal notification and Council resolved as follows:

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 1,364 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.

**REPORT**

The Planning Agreement is currently on public exhibition which ends on 20 August 2008.

In accordance with the Council resolution at the Council Meeting on 16 July 2008, subject to no objections being it was resolved that Council:

- Enter into the Greta Estates Voluntary Planning Agreement; and
- Authorises the execution of the Agreement, and authorises the General Manager to sign the Planning Agreement in the attachments.

However, in an oversight the Council resolution failed to authorise the Mayor to sign the Planning Agreement and failed to authorise the Mayor and General Manager to fix the Seal to the Planning Agreement.

It is recommended that Council authorises the execution of the Agreement, and authorises the Mayor and General Manager to fix the Seal and to counter-sign the Planning Agreement with Greta Estates Pty Ltd, subject to no submissions being received during the notification period. Should any submissions be received by Council than this matter will be the subject of a further report to Council.

**RECOMMENDATION** that should no objections be received during the notification period that Council authorises the execution of the Agreement, and authorises the Mayor and General Manager to fix the Seal and to counter-sign the Planning Agreement.

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

**D FITZGERALD**  
**DIRECTOR CITY PLANNING**  
14 August 2008