



Vincent Street  
CESSNOCK

28 April 2017

## ORDINARY ENCLOSURES FOR COUNCIL

**WEDNESDAY, 3 MAY 2017**

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### PLANNING AND ENVIRONMENT

**PE18/2017 Class 1 Appeal in the NSW Land and Environment Court  
(Ref: 2017/102797) against Council's refusal of  
Development Application 8/2016/288/1 proposing use of  
a marquee for up to 52 days per calendar year**

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country  
Drive, LOVEDALE**

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**PE19/2017 Class 1 Appeal in the NSW Land and Environment Court  
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Development Application 8/2016/287/1 proposing partial  
demolition of existing building and construction of a  
workers accommodation building containing 5  
bedrooms and shared facilities**

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country  
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'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE



Schwartz Family Co Pty Ltd  
CARE 3.10/55 Miller Street  
PYRMONT NSW 2009

Contact: Ms Sarah Hyatt  
Our Ref: DA 8/2016/288/1  
Your Ref: 1237

Dear Sir/Madam

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION  
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

Pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, Cessnock City Council hereby gives notice that **Development Application 8/2016/288/1** has been determined by the refusal of consent, subject to the reasons listed in Schedule 1.

<b>Date of determination:</b>	20 February 2017
<b>Description of development:</b>	Use of Existing Marquee for a Maximum of 52 days per year for the purpose of holding Functions and Events in conjunction with the Existing Approved Tourist Resort
<b>Property description:</b>	LOT: 3 DP: 1073823, LOT: 0 SP: 80443 39 Lovedale Road LOVEDALE, 430 Wine Country Drive LOVEDALE
<b>Applicant:</b>	Schwartz Family Co Pty Ltd
<b>Owner:</b>	Schwartz Family Co Pty Ltd

If you have any further enquiries regarding this notice of determination, please contact Ms Sarah Hyatt, Senior Planning Assessment Officer, of Council's Planning and Environment (02) 4993 4206.

Yours faithfully

  
Janine McCarthy  
Development Services Manager  
rl

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ABN 60 919 148 928

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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**ADVICE:**

The following matters are included as advice relative to this Application:

- (a) The applicant has the right to appeal this determination in accordance with the provisions of Section 97 of the Environmental Planning and Assessment Act 1979.
- (b) The applicant has the right to request a review of this determination in accordance with the provisions of Section 82A of the Environmental Planning and Assessment Act 1979.
- (c) The Planning Assessment Commission has not conducted a public hearing in respect of this Application.

**ABBREVIATIONS:**

AS	Australian Standard
BCA	Building Code of Australia
CA	Certifying Authority
CC	Construction Certificate
DA	Development Application
EP&A Act	Environmental Planning & Assessment Act 1979
EP&A Regulation	Environmental Planning & Assessment Regulation 2000
PCA	Principal Certifying Authority
OC	Occupation Certificate
OSD	On Site Detention
RMS	Roads and Maritime Services
SEPP	State Environmental Planning Policy
WAE	Works as Executed

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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**Reasons for Refusal**

Development Application No. 8/2016/288/1 is refused for the following reason:

- a) Insufficient information has been submitted to allow a full assessment of the application including:
  - a. Structural Certification for the marquee which certifies that the marquee can withstand the force of flood waters without creating debris capable of damaging downstream properties has not been provided, and
  - b. A report from an approved bushfire consultant addressing the appropriateness of the development under Planning for Bushfire Protection 2006 being a report that details the work (if any) required to ensure compliance has not been provided (Section 79C(1) *Environmental Planning and Assessment Act, 1979*).

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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**Report To Ordinary Meeting of Council - 16 November 2016**

**Planning and Environment**

**Report No. PE77/2016**

**Planning and Environment**



**SUBJECT:** **DA 8/2016/287/1 PROPOSING PARTIAL DEMOLITION OF  
EXISTING BUILDING AND CONSTRUCTION OF A  
WORKER'S ACCOMMODATION BUILDING CONTAINING  
FIVE (5) BEDROOMS AND SHARED FACILITIES**

**39 LOVEDALE ROAD, LOVEDALE**

**RESPONSIBLE OFFICER:** **Senior Planning Assessment Officer - Sarah Hyatt**  
**Development Services Manager - Janine McCarthy**

<b>APPLICATION NUMBER:</b>	8/2016/287/1
<b>PROPOSAL:</b>	Partial demolition of existing building and construction of a worker's accommodation building containing five (5) bedrooms and shared facilities
<b>PROPERTY DESCRIPTION:</b>	Lot 3, DP 1073823
<b>PROPERTY ADDRESS:</b>	39 Lovedale Road, Lovedale
<b>ZONE:</b>	RU4 Primary Production Small Lot
<b>OWNER:</b>	Schwartz Family Co Pty Ltd
<b>APPLICANT:</b>	Schwartz Family Co Pty Ltd

**RECOMMENDATION**

1. That Council determine Development Application No. 8/2016/287/1 proposing the partial demolition of existing building and construction of a worker's accommodation building containing five (5) bedrooms and shared facilities at Lot 3, DP1073823, 39 Lovedale Road, Lovedale, pursuant to Section 80 of the Environmental Planning and Assessment Act, 1979, by refusing to grant consent for the reasons detailed in this report.
2. That the General Manager be delegated to investigate and commence proceedings if necessary, to have the existing building demolished in accordance with Council's adopted Compliance and Enforcement Policy.

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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## **REASON FOR REPORT**

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Development Application No 8/2016/287/1 is being referred to Council for determination as the Application is recommended for refusal and the refusal is considered to be merits-based.

Specifically, the application is recommended for refusal for the following reasons:

- The subject site is not suitable for the proposed development due to the high hazard flood status of the land and the unacceptable risk to life and property.
- The development is inconsistent with the *Cessnock Local Environmental Plan 2011*, specifically the objective of the RU4 Primary Production Small Lots zone, as it fails to maintain the ecological sustainability of the Vineyards District as a result of the APZ's requirements to protect the development in the event of a bushfire.
- The development is inconsistent with the *Cessnock Local Environmental Plan 2011*, specifically Clause 7.3 Flood Planning, as the site is not compatible with the land's high risk flood hazard; intensification of development will increase the potential flood affectation of other properties in vicinity of the subject site; and suitable evacuation measures cannot be provided.
- The proposed development is inconsistent with Chapter E.3 Vineyards district of the Cessnock Development Control Plan 2010, specifically the development fails to meet the objectives of Chapter E.3 Vineyards District of the Cessnock DCP 2010; is not considered to be suitably sited having regard to the proximity of the development to Black Creek; and does not meet the side setback requirements.
- The proposed development is not in the public interest due to the unacceptable risk to life associated with the site being categorised as a high hazard floodway.

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## **EXECUTIVE SUMMARY**

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Council is in receipt of Development Application No. 8/2016/287/1 seeking approval for the partial demolition of existing building and construction of a worker's accommodation building containing five (5) bedrooms and shared facilities at 39 Lovedale Road, Lovedale.

In September 2014, Council officers identified possible unauthorised building works whilst undertaking a site inspection for an unrelated proposal. A subsequent review of Council's records identified that development consent had not been obtained for the worker's accommodation building. Accordingly, Council issued a show cause letter providing the owner fourteen (14) days to address the authorised works. A Building Certificate was lodged by the applicant in November 2014, which was subsequently refused in October 2015 due to reasons associated with the structural and fire safety requirements of the Building Code of Australia, and flooding concerns. In accordance with Council's adopted Compliance and Enforcement Policy, a Notice of Intent to Serve an Order, followed by an Order, were issued by Council, requiring the demolition of the building. The applicant appealed the Order in the NSW Land and Environment Court, however, the appeal was ultimately discontinued, and

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**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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the applicant lodged the Development Application the subject of this report. At the same time, the applicant lodged a separate Development Application seeking approval to retain and permanently use a marquee erected on the site for 52 days per year which had also been identified as being unauthorised. At the time of writing this report, the marquee the subject of a separate DA, remains undetermined.

The Development Application has been assessed against the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulations 2000, relevant Environmental Planning Instruments and Council policies. The outcome of this assessment is detailed further in this report.

The Development Application was publicly exhibited, and no submissions were received.

The development has been found to be inconsistent with the objectives of the RU4 Primary Production Small Lots zone under the *Cessnock Local Environmental Plan 2011* (CLEP 2011), namely the development fails to maintain the ecological sustainability of the Vineyards District due to the clearing required to establish and maintain Asset Protection Zone's (APZ).

The proposed development is not considered to be appropriately sited given the degree of flood affectation and the high hazard flood category. Development for the purposes of worker's accommodation on the land will provide a habitable building within a high hazard floodway, contrary to the provisions of both the CLEP 2011 and the NSW Floodplain Development Manual 2005.

The application was referred to the NSW Rural Fire Service (RFS) for review as the proposed development triggers construction requirements for development located within the Flame Zone. Bush fire safety APZ's recommended by the RFS, particularly the APZ to the south-east of 6m conflicts with the Controlled Activity Approval (CAA) (Approval No. 20ERM2014/1150), issued by DPI Water in relation to the approval for a bottling plant adjoining the proposed development (via Development Consent 8/2014/427/1, issued on 14 July 2015). A Vegetation Management Plan (VMP) was approved in conjunction with the CAA for the adjoining bottling plant requiring restoration of the riparian vegetation on the banks of Black Creek. Compliance with the bush fire safety measures for the development the subject of this application would require the removal of the riparian vegetation associated with the VMP for the bottling plant.

The application is inconsistent with the requirements of Chapter E.3 Vineyards District of the Cessnock Development Control Plan 2010 (DCP). Particularly, the proposed development is not considered to be suitably sited and proposes a significant variation to the setback requirements of Section 3.2.5.2 of the DCP, proposing a 6m setback (a variation of 88 percent) to the east/south-east, and a 10m setback (a variation of 80 percent) to the north.

Based on the assessment, it is recommended that the Development Application be refused subject to the reasons for refusal included in this report.



**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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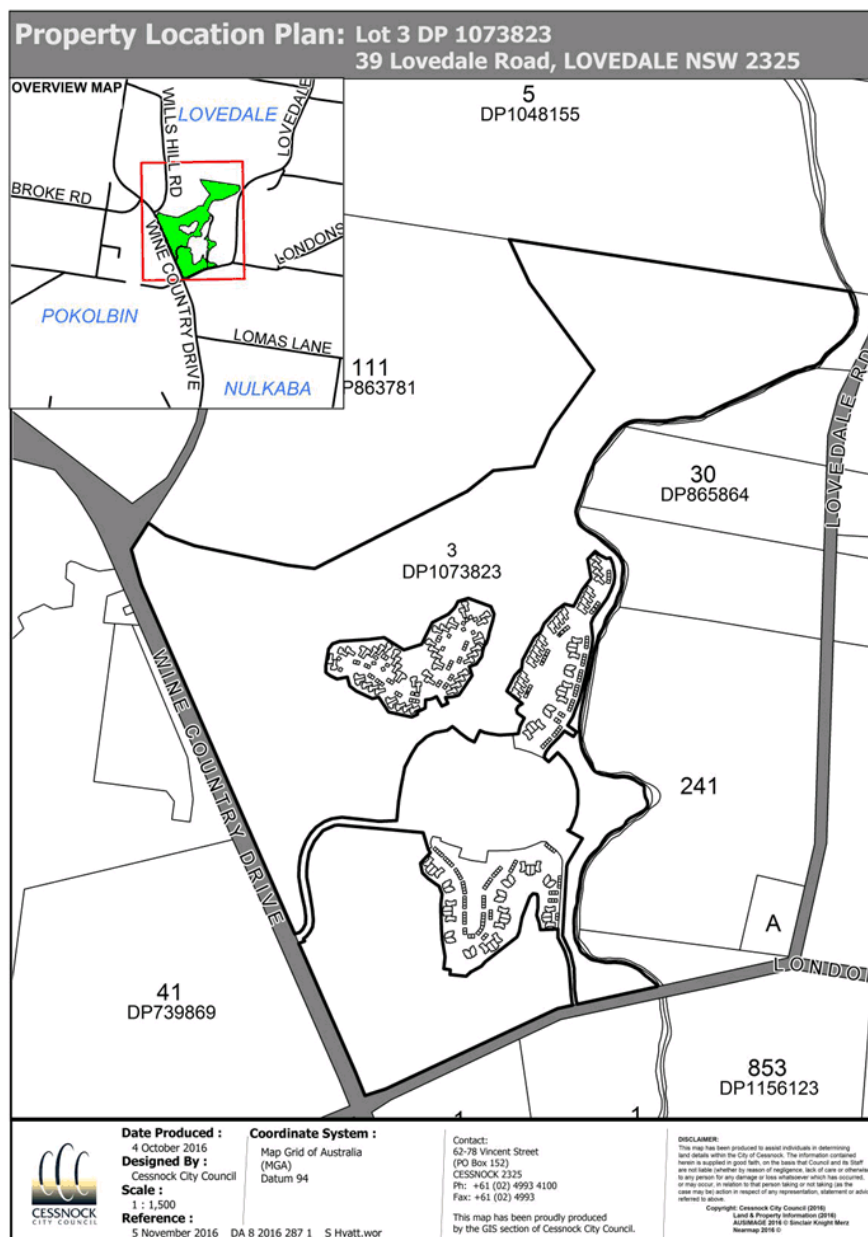
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**LOCATION MAP**



**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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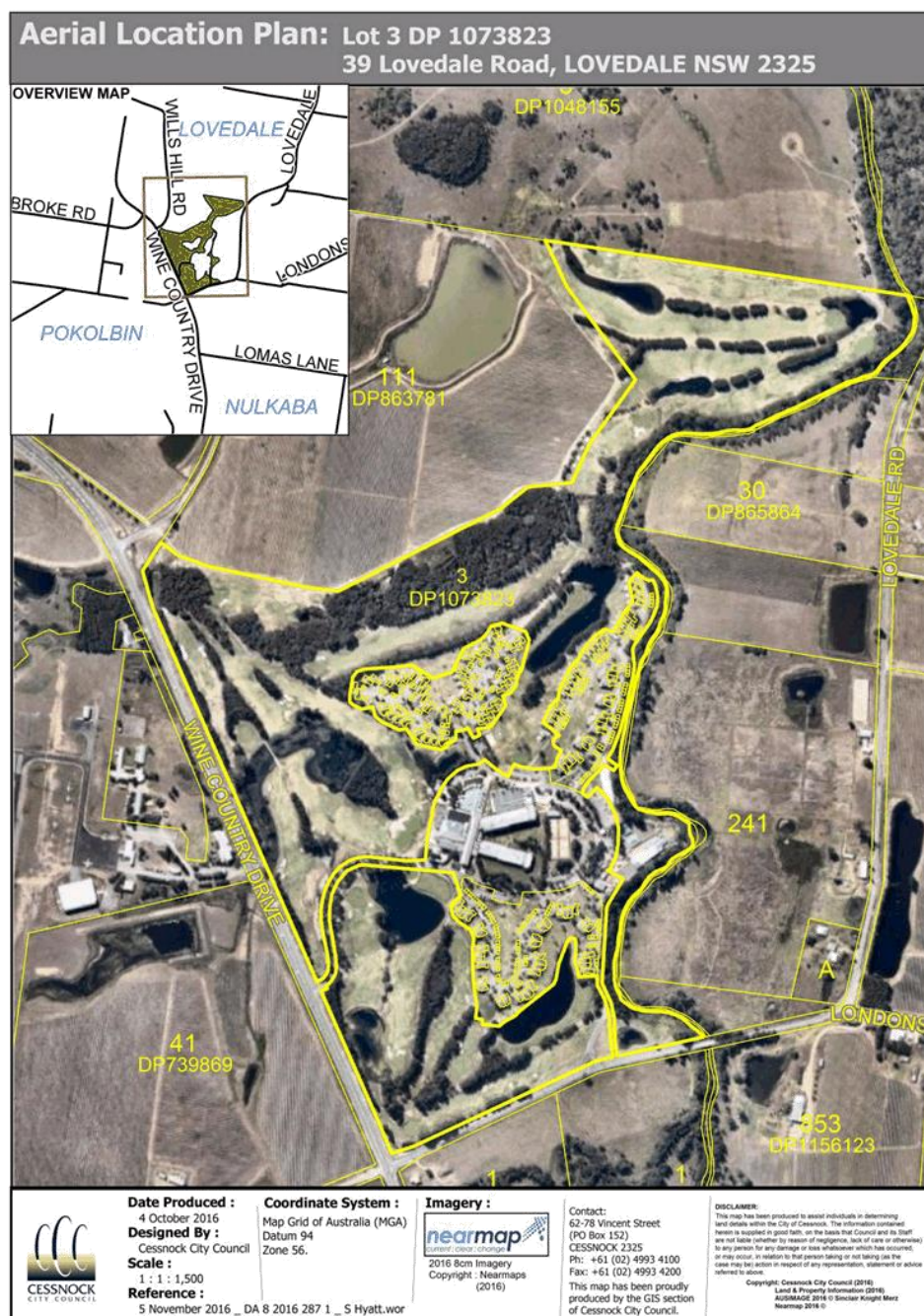
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**AERIAL**



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## **SITE DESCRIPTION AND LOCALITY**

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The subject site is commonly known as 39 Lovedale Road, Lovedale, and is legally described as Lot 3, Deposited Plan 1073823.

The subject site is located on the eastern side of Wine Country Drive, north of Lovedale Road. The site has a frontage of 985m to Wine Country Drive, 470m to Lovedale Road and an overall site area of approximately 50.8 hectares. Black Creek forms the eastern boundary of the subject site. Vehicular access to the site is available from both Wine Country Drive and Lovedale Road.

The subject site is identified as 'Crowne Plaza Hunter Valley', which consists of a hotel, 175 serviced apartments, an 18 hole golf course and ancillary guest facilities including restaurant and spa. Recent development consents (DC) issued over the site include the following:

- DC 8/2015/643/1 proposing alterations and additions to the existing hotel and swimming pool configuration, approved 10 March 2016;
- DC 8/2015/282/1 proposing construction of a storage building, approved 10 June 2015;
- DC 8/2014/427/1 for a bottling plant, approved 14 July 2015;
- DC 8/2013/893/1 proposing construction of plant rooms, cool room, sauna and pool bar, approved 3 February 2014;
- DC 8/2013/661/1 proposing alterations and additions to the existing golf course and gazebo, approved 19 November 2013; and
- DC 8/2013/28/1 proposing extension to the bistro area & new awning and subsequent modification, originally approved 8 May 2013 and modification approved 3 October 2013.

The surrounding properties are characterised by viticultural development and grazing, and the Cessnock Aerodrome is located directly opposite the site.

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## **HISTORY**

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### **History of Unauthorised Development on the Site**

In September 2014, whilst undertaking a site inspection for an unrelated matter, Council officers identified possible unauthorised building works on the site, consisting of a building which was being used for worker's accommodation, and a marquee. The unauthorised developments were referred to Council's Development Compliance Officers for further investigation. A subsequent review of Council's records indicated that development consent had not been obtained for the unauthorised development.

Correspondence in the form of a show-cause letter was sent to the property owner on 16 September 2014 by Council's Development Compliance Officer. The owner was provided with 14 days to address the unauthorised works, and to advise Council of their intentions in respect of the matter.

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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A Building Certificate was subsequently lodged in November 2014 in relation to the worker's accommodation building and marquee. Following an assessment of the application, the Building Certificate was refused in October 2015. The following reasons were given for the refusal of the Building Certificate:

1. *The existing marquee and worker's accommodation building are located close to the bank of Black Creek, a third order prescribed stream, and is inconsistent and contrary to the Water Management Act, 2000.*
2. *Land on which the worker's accommodation building is located is flood affected. It is contrary to the provisions of the NSW Floodplain Development Manual to construct buildings for habitable purposes below the 1 in 100 year flood level.*
3. *The location of the marquee and worker's accommodation building in close proximity to Black Creek is contrary to the provisions of the Cessnock Local Environmental Plan 2011 in relation to flood planning.*
4. *The location of the marquee and worker's accommodation building is contrary to the provisions of the Cessnock Development Control Plan 2010 for the Vineyards District due to its location in proximity to Black Creek.*
5. *The marquee and worker's accommodation building do not comply with the deemed to satisfy provisions of the Building Code of Australia.*

Following the refusal of the Building Certificate, a Notice of Intent to Serve an Order, followed by an Order, were issued by Council in accordance with Council's adopted Compliance and Enforcement Policy, requiring the demolition of the buildings/structures. The applicant appealed the Order in the NSW Land and Environment Court, however, the appeal was ultimately discontinued, and the applicant lodged the Development Application the subject of this report. At the same time, the applicant lodged a separate Development Application seeking approval to retain and use the marquee erected on the site permanently for 52 days per year. At the time of writing this report, the Development Application in relation to the marquee is yet to be determined, as the assessment is ongoing.

**History of Development Application**

The history of the subject Development Application is summarised in the following table:

Date	Action
16 May 2016	Development Application lodged with Council.
18 May 2016	Referrals sent to the following internal officers and external agencies: <ul style="list-style-type: none"><li>• Strategic Flooding and Drainage Engineer,</li><li>• Building Services,</li><li>• Ecologist (Development Assessment), and</li><li>• NSW Department of Primary Industries Water.</li></ul>

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20 May 2016	<p>An additional information request is sent to the applicant requesting information in relation to the following matters:</p> <ul style="list-style-type: none"> <li>• Confirmation that the application seeks consent for the demolition of the existing building,</li> <li>• Clarification in relation to the use of the worker's accommodation building being ancillary to the dominant use of the land for the purposes of hotel or motel accommodation,</li> <li>• Request for advertising fees, and</li> <li>• Confirmation as to whether the application as lodged constitutes 'integrated development' under the requirements of the S.100B of the <i>Rural Fires Act, 1997</i>.</li> </ul>
23 May 2016	<p>Additional information is lodged by the applicant in response to Council's request of 20 May 2016, which confirms the following:</p> <ul style="list-style-type: none"> <li>• Partial demolition of the existing building is proposed with the foundations and lower walls to remain,</li> <li>• The worker's accommodation is only for building workers who are engaged in the construction of the new works on site, and</li> <li>• The application is not lodged as 'integrated development'.</li> </ul>
25 May – 24 June 2016	Application is publicly exhibited. No submissions received.
30 May 2016	Referral sent to NSW Rural Fire Service for review as the construction requirements within the Bushfire Report submitted with the application recommend a construction rating of BAL Flame Zone.
30 May 2016	Referral advice received from Council's Strategic Flooding and Drainage Engineer confirming the 1 percent AEP flood level over the site as 55.84m AHD having a velocity of 1.84m/sec.
31 May 2016	Application referred to Council's Consultant Development Engineer.
2 June 2016	Referral advice received from Council's Ecologist, with further comments deferred pending comments from NSW Rural Fire Service in relation to APZ requirements and NSW DPI Water in relation to the works required under the current VMP.



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7 June 2016	<p>Advice received from Council's Consultant Development Engineer that the application is not supported from an engineering perspective for the following reason:</p> <ul style="list-style-type: none"> <li>• <i>Construction of a habitable building at the proposed location within high hazard floodway would represent an unacceptable risk to life.</i></li> </ul>
6 July 2016	<p>Confirmation received from the applicant's representative that <i>'the application as made relates to the worker's accommodation being used for and in conjunction with the existing approved hotel use and is therefore permissible with consent. The use of the rooms is only for building workers (i.e. staff) accommodation being ancillary to the principal hotel accommodation use. The dominant and principal activity remains as hotel accommodation'</i>.</p>
10 August 2016	<p>Advice received from NSW Rural Fire Service.</p>
18 August 2016	<p>Referral comments received from NSW DPI Water. This response confirms that the proposed activity is exempt from S.91E of the <i>Water Management Act, 2000</i> and does not require a controlled activity approval.</p>
23 August 2016	<p>Referral advice received from Council's Building Services Team Leader confirming that the application is satisfactory in relation to building matters, subject to the imposition of standard conditions of consent.</p>
5 September 2016	<p>Referral advice received from Council's Ecologist that the application is not supported for the following reasons:</p> <p><i>The encroachment of the required Asset Protection Zones would be in conflict with the requirement of DPI Water to establish and maintain the vegetation along the portion of Black Creek subject to the VMP.</i></p> <p>By way of clarification, it is noted that the approval for a bottling plant adjoining the proposed development (Development Consent 8/2014/427/1, issued on 14 July 2015) required a Vegetation Management Plan (VMP) issued in conjunction with the Controlled Activity Approval from DPI Water. The VMP specifies the restoration and maintenance of the riparian vegetation on the banks of Black Creek.</p>

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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20 September 2016	Advice is sent to the applicant, outlining that Council is not in a position to support the current application as the development proposes an unacceptable risk to life; the APZ requirements conflict with the requirement of the VMP to revegetate Black Creek; and the development is inconsistent with Chapter E.3 Vineyards District of the Cessnock DCP 2006.  Accordingly, it is recommended that the application be withdrawn, and the applicant is afforded 14 days to provide advice as to their intentions in respect of the application.
30 September 2016	Advice received from the applicant confirming that they do not wish to withdraw the application, and requesting that the application be determined.
10 October 2016	Additional referral advice received from Council's Consultant Development Engineer in relation to the flood affection of the land and content of the NSW Government Floodplain Development Manual.
10 October 2016	Planning assessment finalised.

**DETAILS OF THE PROPOSED DEVELOPMENT**

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Development Application No 8/2016/287/1 seeks approval for the partial demolition of existing building and construction of a worker's accommodation building containing five (5) bedrooms and shared facilities at 39 Lovedale Road, Lovedale.

The worker's accommodation is considered ancillary to the dominant use of the land for the purpose of hotel accommodation, providing overnight accommodation on-site for workers employed at 'Crowne Plaza'.

Specifically, the proposed development involves:

- Partial demolition of the existing building,
- Construction of a worker's accommodation building with concrete block walls, aluminium windows and colourbond roof,
- Five (5) bedrooms, each with ensuite,
- Shared kitchen, and
- Partly covered patio/deck area.

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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**ASSESSMENT**

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***Environmental Planning and Assessment Act 1979 – Section 79(C)(1)***

In determining a Development Application, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the Development Application on the subject property:

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

The Environmental Planning Instruments that relate to the proposed development are:

1. State Environmental Planning Policy No. 55 – Remediation of Land
2. State Environmental Planning Policy No. 44 – Koala Habitat Protection
3. State Environmental Planning Policy (Rural Lands) 2008
4. Cessnock Local Environmental Plan 2011

An assessment of the proposed development under the Environmental Planning Instruments is provided below:

**1. State Environmental Planning Policy No. 55 – Remediation of Land**

The aim of the policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7(1) of *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land*, is relevant to the assessment of this Development Application.

Clause 7(1) requires that consent not be granted until Council has considered whether the land is contaminated. If the land is contaminated, the Council needs to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The subject site currently contains a sizeable tourist recreation facility comprising a hotel, 175 serviced apartments, an 18 hole golf course and ancillary guest facilities including restaurant and spa. Recent approvals issued over the site include construction of a storage building, alterations and additions to the hotel and swimming pool configuration, bottling plant, signage, alterations to the existing golf course including gazebo and construction of plant rooms, cool room, sauna and pool bar. No evidence of contamination was observed during consideration of previous development applications over the site or during recent inspections of the site.

As there is no historical evidence of the site being previously used for a purpose which would result in the land being contaminated, further testing of the site in respect of contamination is not warranted in this instance.

**2. State Environmental Planning Policy No. 44 – Koala Habitat Protection**

State Environmental Planning Policy No. 44 – Koala Habitat Protection, aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

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SEPP 44 applies to the proposal as the land meets the criteria outlined in Clause 6 for the reasons:

- the subject land is located within the Cessnock LGA (listed within Schedule 1);
- the site is land in relation to which a development application has been made; and
- the site (comprising both the subject land and adjoining land), is in the same ownership and has an area of more than 1 hectare.

An assessment of the application has concluded that the vegetation on the site does not constitute koala habitat within the meaning of SEPP 44. Accordingly, no further assessment is required under SEPP 44.

**3. State Environmental Planning Policy (Rural Lands) 2008**

The development is located on land to which SEPP (Rural Lands) applies. Clause 7 specifies the following Rural Planning Principles to guide development on rural land:

- the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed development is generally consistent with the planning principles outlined within clause 7, with the exception of subclause (e). As outlined previously within this report, in accordance with the CAA issued by DPI Water in relation to the development consent for the bottling plant, native vegetation along the bank of Black Creek is required to be revegetated in accordance with the approved VMP. The APZ's required to protect the building the subject of this application in the event of a fire, conflict with the VMP requirements.

As outlined previously, the subject site is currently being used as a tourist recreation facility, and the development the subject of this application is not of such a size or significance to warrant justifiable concerns under the SEPP.

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

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**4. Cessnock Local Environmental Plan 2011**

**4.1 Permissibility**

The subject site is zoned RU4 Primary Production Small Lots under the provisions of CLEP 2011. The proposed development is considered ancillary to the dominant use of the land for the purposes of hotel or motel accommodation by providing accommodation for workers employed on the site.

Planning Circular (PS 13-001) issued on the 21 February 2013 by the then Department of Planning and Infrastructure provides guidance on when a development is considered to be ancillary. The Circular defines ancillary use as:

*'a use that is subordinate or subservient to the dominant purpose.'*

Further guidance is provided in the Circular in order to clarify the definition:

- *'if a component serves the dominant purpose, it is ancillary to that dominant purpose;*
- *if a component serves its own purpose, it is not a component of the dominant purpose but an independent use on the same land. It is a dominant use in its own right. In such circumstances, the development could be described as a mixed use development'*

In this instance, the dominant purpose/development on the land is the hotel or motel accommodation. The worker's accommodation building is considered to provide a service to the hotel or motel accommodation, and does not serve its own purpose. The worker's accommodation building would not exist on the site but for the hotel or motel accommodation.

Development for the purpose of an ancillary land use is permissible with consent. In this instance, it has been demonstrated that the worker's accommodation building services the hotel or motel accommodation by providing accommodation to workers employed at the site.

**4.2 Objectives**

The objectives of the RU4 zone are as follows:

- *To enable sustainable primary industry and other compatible land uses.*

The proposed land use is considered to be acceptable in this instance, as the worker's accommodation is ancillary to the use of the site for the purposes of hotel or motel accommodation. The proposed worker's accommodation building will not unduly restrict the use of the land for primary industry or another compatible land use in the future.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

The proposed worker's accommodation building will support the employment of persons at 'Crowne Plaza', by providing accommodation. Whilst it is noted that the land is not currently utilised for primary industry purposes, the worker's accommodation building is considered

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ancillary to the existing use of the land for hotel or motel accommodation which generates employment opportunities.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

As detailed in the assessment below, development within the surrounding locality is dominated by viticulture and grazing. In considering the future use of adjoining land to the east, the siting of the development in the proposed location, i.e., 6 metres from the east/south-eastern boundary, may result in a land use conflict.

- *To maintain prime viticultural land and enhance the economic and ecological sustainability of the vineyards district.*

The subject land is not currently used for viticultural development.

Concerns have been raised by Council's Ecologist (Development Assessment) in relation to conflicts between the required APZ's and the requirement to rehabilitate the bank of Black Creek in accordance with the requirements of DPI water under the VMP endorsed in conjunction with the establishment of the adjoining bottling plant.

Black Creek is identified within Schedule 1 – Vineyards District Landscape and Design Guidelines of Chapter E.3 of the DCP as significantly contributing to the landscape character of the Vineyards District. Given the conflict between the required APZ's and the requirements to rehabilitate and maintain the bank of Black Creek, the proposed development is not considered to maintain the ecological sustainability of the Vineyards District.

- *To encourage appropriate tourist development (including tourist-related retail) that is consistent with the rural and viticultural character of the Vineyards District.*

The worker's accommodation building is considered ancillary to the dominant use of the site for the purposes of hotel or motel accommodation, and will support the continued use of the site for tourist related development.

- *To enable the continued rural use of land that is complementary to the viticultural character of the land.*

The subject site is not currently used for viticultural activities. Use of the land for worker's accommodation is complementary and will support the existing use of the land.

**4.3 Relevant Clauses**

The Development Application was assessed against the following relevant clauses of CLEP 2011:

- *Clause 2.7 Demolition requires consent*

The application seeks consent to partly demolish the existing structure on the site in order to facilitate the reconstruction of the proposed development above the 1 in 100 year flood level.

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Any demolition would be required to be undertaken in accordance with the relevant Australian Standards.

- *Clause 5.9 & 5.9AA Preservation of Trees/Vegetation and Preservation of Trees/Vegetation not covered by a DCP*

Removal of vegetation from the site is proposed as part of the application. Council's Ecologist has reviewed the proposed development which is not supported from an ecological perspective given the conflict between the required APZ's and the requirement to revegetate the bank of Black Creek in accordance with DPI Water requirements and the VMP for the approved bottling plant.

- *Clause 7.3 Flood planning*

In part, Clause 7.3 states as follows:

*'(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding'.*

In assessing the impact of the proposed development in accordance Clause 7.3 and the NSW Government Floodplain Development Manual, consideration must be given to the impact of the proposed development on flood behaviour, the risk to property and the risk to life. Each of these matters are addressed below. The outcomes of this assessment demonstrate that the proposed development is inconsistent with Clause 7.3 and the requirements with the NSW Government Floodplain Development Manual.

**Impact on flood behaviour**

Figure L2 (below) from the NSW Government Floodplain Development Manual provides provisional hydraulic hazard categories based on flood depth and velocity. Using the current flood data available for the site, with flooding with a depth of 800mm to 1m, and a velocity up to 1.84m/sec, the site would be categorised as a high hazard floodway. The depth and velocity of flows through the subject site have been plotted on the figure below identified by the red lines.

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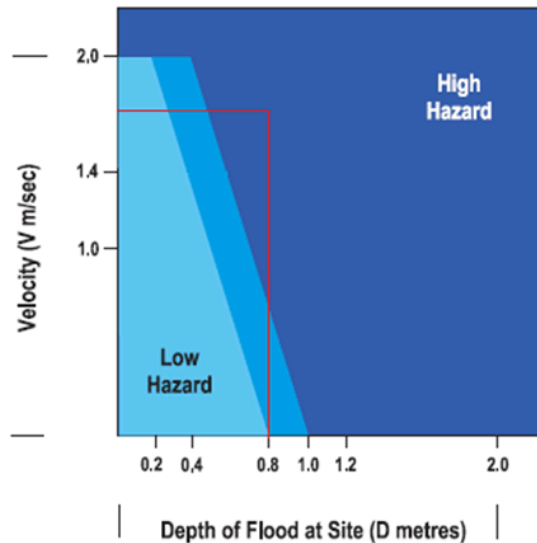


Figure L2 - Provisional Hydraulic Hazard Categories  
NSW Government Floodplain Development Manual

The NSW Government Floodplain Development Manual defines floodways as:

*'...areas conveying a significant proportion of the flood flow and where partial blocking will adversely affect flood behaviour to a significant and unacceptable extent.'*

Based on the flood level and velocity for the site, the application is not supported due to the likely significant and unacceptable adverse impact on flood behaviour.

**Risk to property**

Figure L1 from the NSW Government Floodplain Development Manual provides approximate thresholds where the velocity/depth relationship is likely to prevent evacuation by vehicle, evacuation by wading, and where damage to structures is likely. The depth and velocity of flows through the subject site have been plotted on the figure below identified by the red lines.

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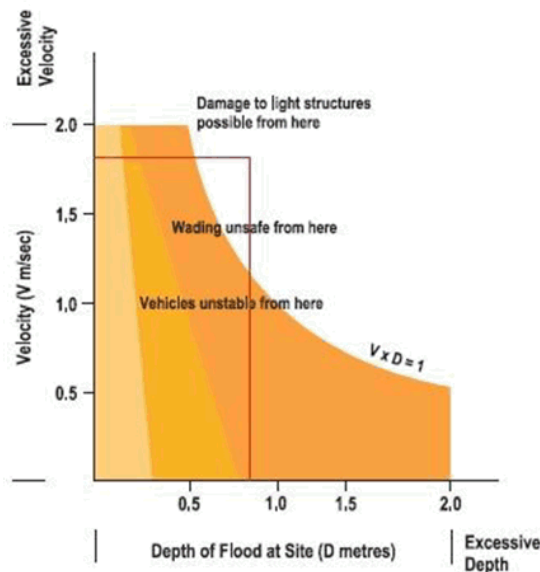


Figure L1 NSW Government Floodplain Development Manual

From the figure above, it has been identified that flooding with a depth of 800mm to 1m, and a velocity up to 1.84m/sec, may result in damage to the proposed structure. Further, adverse effects on flood behaviour due to blockage of the floodway are likely to cause detrimental increases in the potential flood affectation of the development site and nearby properties. Floodwaters are likely to be diverted onto adjoining land and/or affecting flood depths / flood levels on adjoining land. Based on the flood level and velocity for the site, the application is not supported due to the likely detrimental increases in the potential flood affectation of other development or properties within the vicinity of the subject land.

Risk to life

An assessment of the proposed development utilising current flood data and the figures within the NSW Government Floodplain Development Manual, has identified that safe evacuation of the proposed building during the 1 in 100 year event will not be possible via vehicle or foot. Refuge within the building will also not be possible due to possible damage to the structure due to flood waters.

Construction of a habitable building at the proposed location within a high hazard floodway would represent an unacceptable risk to life. As neither safe evacuation nor safe refuge can be provided in the building's current location, it is considered that the proposed development cannot incorporate appropriate measures to manage risk to life from flood. The application is not supported as the proposed development is located within a high hazard floodway and cannot incorporate appropriate measures to manage risk. The proposed development is not considered to be compatible with the flood hazard of the land.

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**(a)(ii) The Provisions of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)).**

No Draft Environmental Planning Instruments are relevant to the application.

**(a)(iii) The Provisions of any Development Control Plan**

**Cessnock Development Control Plan 2010**

The following is an assessment of the proposal's compliance with the numerical standards in the relevant chapters of Cessnock Development Control Plan 2010:

**Chapter C.1 Parking and Access**

The following provisions of Chapter C.1 apply to the proposed development:

- 1.2 Car Parking Standards
- 1.4.1 Access to the Site
- 1.4.2 Car Park Design

Under the provisions of the DCP, there is no specific car parking rate applicable to worker's accommodation. As such, the most suitable rate which best fits the proposed use would be a self-contained dwelling which requires 0.5 spaces for each bedroom. Based on the worker's accommodation building containing five (5) bedrooms, a total of 2.5 parking spaces would be required to be provided. Suitable area is available on the site to accommodate car parking for the proposed development. Should the application be supported, conditions would be required requesting details for the car parking area and access prior to the issue of a construction certificate.

Overall, the application is consistent with the requirements of Chapter C.1 – Parking and Access of the DCP.

**Chapter C.5 Waste Management and Minimisation**

Demolition is required to be undertaken in accordance with the relevant Australian Standards. Waste generated during demolition and construction shall be separated into recyclable and non-recyclable materials and where possible shall be reused on-site. All other materials shall be disposed of at an appropriate facility. The application is consistent with the requirements of Chapter C.5 – Waste Management and Minimisation.

**Chapter E.3 Vineyards District**

**Objectives**

The objectives of Chapter E.3 – Vineyards District are:

- (a) to maintain prime viticultural land and promote the economic and ecological sustainability of the Vineyards District;**

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- (b) to recognise and protect vineyards and wineries (dominant land uses) from inappropriate uses in the zone;*
- (c) to encourage appropriate tourist development consistent with the rural and viticultural character of the Vineyards District;*
- (d) to minimise conflict between viticultural and non-viticultural land uses by the sympathetic location and design of those uses, and the maintenance of the rural/viticultural character of the landscape;*
- (e) to enable the continued rural use of land which is complementary to the viticultural character of land within the Vineyards District;*
- (f) to protect the water quality of receiving streams and to reduce land degradation;*
- (g) to actively promote the need to conserve and enhance the biodiversity of the Vineyards District; and*
- (h) to conserve the Aboriginal archaeology and European heritage of the Vineyards District.*

The intent of Chapter E.3 is to ensure that compatible development does not restrict the future use of adjoining land for the purposes of viticulture through appropriate siting and design, and to protect vegetation within the Vineyards District.

As detailed within this report, the proposed development is inconsistent with the setback requirements of Chapter E.3, and is inappropriately positioned on the site. Chapter E.3 requires a minimum side setback of 50 metres for public place development, including buildings that contain a habitable component. The proposed side setback to the north and south-east of 10m and 6m respectively, significantly impact upon the potential of adjoining land to be used for viticultural purposes. While land on the opposite side of Black Creek is outside of the identified Vineyards District area for the purposes of Chapter E.3, predominant land uses within this area include commercial vineyards. As such, land adjoining the site could potentially be used for viticulture in the future. The siting of the development within 50m of the property boundary may impact on development of adjoining land.

The vegetation on the site was found to be a degraded form of River-flat Eucalypt Forest Endangered Ecological Community. Re-building of the worker's accommodation building in the same location is not likely to have any significant impact. However, the APZ's recommended by RFS, particularly the 6m APZ to the south-east, will encroach upon the area to be rehabilitated as part of DPI Water's requirements under the VMP approved in conjunction with the bottling plant on the site. The VMP encompasses an area of the bank of Black Creek starting upstream of the bottling plant extending downstream to the location adjacent to the proposed workers accommodation building. Significant revegetation and weed management is required to be undertaken in accordance with the VMP. Advice received from DPI Water highlights that APZ's will conflict with the proposed riparian corridor. It is also noted that DPI Water hold security deposits totalling \$140,000 for the VMP works to ensure they are completed and maintained. The application as proposed is not supported as the encroachment of the required APZ's would be in conflict with the requirements of DPI Water and the approved VMP.

In summary, it is concluded that the application does not support the protection or conservation of biodiversity within the Vineyards District as required by aim (g) of Chapter E.3.



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*Provisions*

The following provisions of Chapter E.3 – Sections 3.2 and 3.3 apply to the proposed development. A brief assessment of the proposed development against the relevant provisions is outlined in the following table:

Provision	Assessment	Complies?
3.2.1 Consideration of Surrounding Land Uses	Land surrounding the subject site is predominantly used for viticulture and grazing. The siting of development is required to take into account existing and potential land uses on adjoining land. As detailed in this assessment, the proposed development is not considered to be suitably sited having regard to the requirements of Sections 3.2.3, 3.2.5 and 3.2.7.	No
3.2.2 Soils Analysis	In accordance with this section of the DCP, applications are required to be accompanied by a viticultural soils analysis. In this instance, the site is already occupied by a large scale tourist facility, and therefore, no soils analysis is required.	Yes
3.2.3 Building Siting and Design	The objectives of this section in part aim 'to ensure that development is appropriately sited and designed having regard to the opportunities and constraints of a site and its surround and the special qualities of the Vineyards District'.  The siting of the proposed development within such close vicinity of Black Creek is considered to be inappropriately sited having regard to the opportunities and constraints of the site and the guidelines contained within Appendix 1 of the DCP (2010). APZ's required to protect the proposed development in the event of a bushfire will result in clearing within the bank of Black Creek. As noted, the requirement to establish and maintain APZ's contradicts the requirements of DPI Water under the endorsed VMP relating to the bottling plant to rehabilitate and maintain vegetation along Black Creek.	No
3.2.5 Front and Side Development Setbacks	A minimum side setback of 50 metres is required for public place development, including buildings that contain a habitable component.  The objectives of Section 3.2.5.2 aim 'to minimise the impact on the viticultural potential of adjoining land'. Therefore, land adjoining the subject site to the east has the potential to be used for viticulture into the future. Approval of accommodation, i.e., a residential use, within 50m of the boundary could reduce the potential viticultural land use of the adjoining property.	No

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	<p>The riparian vegetation along Black Creek may assist in mitigating potential impact (for example spray drift and light spill), in order to establish a suitable buffer between future vines and the habitable building, however, an acceptable vegetative buffer is at odds with requirements to provide suitable bush fire safety APZ's.</p> <p>The application proposes a 6m (variation 88%) setback to the east/south-east and a 10m (variation 80%) setback to the north, both failing to meet the 50m setback requirements of the DCP.</p> <p>Variations of 88% and 80% respectively are considered to be significant variations.</p>	
3.2.7 Ground Spraying and Aerial Spraying Considerations	Figure 1(i) of the Section 3.2.7 requires a 50m setback to a boundary where there are no existing or approved vineyards on the adjoining land. As detailed under the assessment for Section 3.2.5, the proposed development does not meet the setback requirements. Therefore, the proposed development is considered to be inconsistent with Section 3.2.7, potentially resulting in land use conflicts should the adjoining parcel be development for viticultural purposes	No
3.3 The need to Revegetate Components of the Vineyards District (no net loss)	Should the application be approved, APZ's required to protect the proposed development in the event of a bushfire would result in the removal of native vegetation, which contradict the requirements of DPI Water and the VMP relating to the bottling plant. Replacement vegetation could be provided elsewhere on the site should approval be granted; however, as noted this would be contrary to DPI Water's requirements under the VMP.	Yes
3.3.5 Aboriginal Archaeology	The proposed development will not result in any additional disturbance to the ground, therefore, an Aboriginal Heritage Assessment is not required in this instance.	Yes
3.3.8.1 Waste Water	The subject site is currently connected to a pump to sewer system.	Yes
3.3.8.2 Solid Waste	Waste management has been addressed in accordance with Chapter D.5 of the DCP and found to be satisfactory.	Yes
3.3.12 Car Parking	Car parking is provided on the site in accordance with requirements of Chapter C.1 – Section 1.2.	Yes

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***(a)(iia) The Provision of any Planning Agreement that has been entered into under Section 94F, or any draft Planning Agreement that a developer has offered to enter into under Section 93F***

No such agreement has been proposed as part of this application.

***(a)(iv) The Regulations***

There are no matters prescribed by the Regulations that apply to this development.

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

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact upon the built environment or economic conditions of the locality. However, the outcomes of this assessment demonstrate that the proposed development is likely to result in a significant impact upon the natural environment within the locality. In particular, the proposed development will result in conflict between the required APZ's to protect the building in the event of a bushfire and the area of Black Creek to be revegetated in accordance with DPI Water's requirements under the VMP relating to the bottling plant. Siting a habitable building within a high hazard floodway will result in an unacceptable risk to life and property, and is considered to result in a negative social impact. People residing within the proposed accommodation will be placed at a significant risk in the event of flood water inundating the site with evacuation by vehicle or foot not possible due to the water level and velocity of flows.

***(c) The suitability of the site***

As demonstrated by the assessment within this report, the site is considered to be unsuitable for the proposed development. Specifically, the subject site is unsuitable due to the land being identified as a high hazard floodway. Locating a habitable building within a high hazard flood way would result in an unacceptable risk to life and property. The site is also constrained by the bank of Black Creek to the north and east. Locating the development within 6m of the bank of the creek will impact upon the requirement to revegetate and maintain the area of the bank adjacent to the building in accordance with the requirements of DPI Water under the VMP. The constraints on the site, flood affection and proximity of Black Creek, render the proposed location unsuitable to accommodate the development.

***(d) Any submissions made in accordance with this Act or the Regulations***

The Development Application was publicly exhibited between 25 May and 24 June 2016.

No submissions were received during the exhibition period.

***(e) The public interest***

The public interest is served through the detailed assessment of this Development Application under the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulation 2000*, *Environmental Planning Instruments* and *Council Policies*.

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Based on the assessment within this report, the proposed development is contrary to the public interest as locating a habitable building within a high hazard floodway will result in an unacceptable risk to life, which is contrary to the requirements of the CLEP 2011 and the NSW Government Floodplain Development Manual.

## **RISK IMPLICATIONS**

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### **Local Government Act 1993 – Sections 731 and 733**

The following information is provided for information purposes:

The subject land has been identified as being flood prone. The impact of flooding is a primary issue in the planning assessment warranting refusal of the application.

Section 731 of the Local Government Act 1993 states as follows:

*'A matter or thing done by the Minister, the Director-General, a Council, a Councillor, a member of a committee of the Council or an employee of the Council or any person acting under the direction of the Minister, the Director-General, the Councillor a committee of the Council does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, and for and on behalf of the Minister, the Director-General, the Council or a Committee of the Council, subject a Councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand:*

In part, Section 733 of the Local Government Act 1993 states as follows:

- (1) *A Council does not incur any liability in respect of:*
- (a) *any advice furnished in good faith by the Council relating to the likelihood of any land being flooded or the nature or extent of any such flooding, or*
  - (b) *anything done or omitted to be done in good faith by the Council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.*

Amongst other things, Section 733 of the Act applies to the assessment and determination of development applications.

## **SECTION 94 CONTRIBUTIONS**

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Section 94 Contributions are not payable for the proposal.

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**INTERNAL REFERRALS**

The Development Application was referred to the following Council officers for comment:

Officer	Comment
Strategic Flooding and Drainage Engineer	Details were provided in relation to flood levels over the site. From the flood extent mapping available, the 1 in 100 year 1% AEP flood level is 55.84m AHD having a velocity of 1.84m/sec.
Building Services	The application is considered satisfactory in relation to building matters. The application is supported from a building perspective subject to standard conditions being imposed on the notice of determination.
Ecologist (Development Assessment)	<p>The application is not supported from an ecological perspective for the following reason:</p> <p><i>The application as proposed is not acceptable as the encroachment of the required APZ's would be in conflict with the requirements of DPI Water to establish and maintain the vegetation along the portion of Black Creek subject to the VMP.</i></p>
Consultant Development Engineer	<p>The application is not supported from an engineering perspective for the following reasons:</p> <ul style="list-style-type: none"><li>• <i>Development of a habitable building within a high hazard floodway will have significant and unacceptable adverse effects on flood behaviour,</i></li><li>• <i>Development of a habitable building within a high hazard floodway will detrimentally increase the potential flood affectation of other development or properties adjacent to the site,</i></li><li>• <i>The development cannot incorporate appropriate measures to manage risk to life from flood, and</i></li><li>• <i>The proposed development is not considered to be compatible with the flood hazard of the land.</i></li></ul>

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**EXTERNAL REFERRALS**

The Development Application was referred to the following external agencies for comment:

Agency	Comment
NSW Rural Fire Service	The application was referred to the NSW Rural Fire Service for review as the construction rating recommended within the Bushfire Assessment Report submitted with the application, recommend BAL Flame Zone. Comments and recommended conditions were received.
NSW Department of Primary Industries Water	<p>The application was referred to DPI Water as nominated integrated development under the provisions of S.91E(1) of the <i>Water Management Act, 2000</i> (WM Act). DPI Water confirmed that the proposed activity is exempt from the requirements of the WM Act.</p> <p>In their correspondence, DPI Water advised that a CAA has been issued in the vicinity of the proposed development. As an approval condition relating to the bottling plant, a VMP was required covering an area of Black Creek starting upstream of the bottling plant extending downstream to the location adjacent to the proposed development. Concerns were raised by DPI Water that the APZ's required by NSW Rural Fire Service would conflict with the riparian corridor required to be maintained in accordance with the VMP. It was also noted that DPI Water hold security deposits totaling \$140,000 for these works.</p>

**CONCLUSION**

The Development Application has been assessed in accordance with Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* and all relevant instruments and policies.

Assessment of the application has highlighted the following issues in respect of the proposal,

- The subject site is not suitable for the proposed development,
- The development is inconsistent with the *Cessnock Local Environmental Plan, 2011*, specifically the objective of the RU4 Primary Production Small Lots zone,
- The development is inconsistent with the *Cessnock Local Environmental Plan, 2011*, specifically Clause 7.3 Flood Planning,
- The proposed development is inconsistent with Chapter E.3 Vineyards District of the *Cessnock Development Control Plan 2010*, and
- The proposed development is not in the public interest.

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Based on the assessment, it is recommended that Development Application No. 8/2016/287/1 be refused, subject to the reasons for refusal included in this report, and that the General Manager be delegated to investigate and commence proceedings if necessary, to have the existing building demolished in accordance with Council's adopted Compliance and Enforcement Policy.

**ENCLOSURES**

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- 1** Architectural Plans
- 2** Floor Plan (Confidential)

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**REASONS FOR REFUSAL**

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Development Application 8/2016/287/1 proposing the partial demolition of existing building and construction of a workers accommodation building containing five (5) bedrooms and shared facilities at 39 Lovedale Road, Lovedale, is refused for the following reasons:

1. The subject site is not suitable for the proposed development for the following reasons:
  - a. The subject site is located within a high hazard floodway.
  - b. Intensification of habitable development within a high hazard floodway will result in increased risks to life and property (Section 79C(1)(c) *Environmental Planning and Assessment Act, 1979*).
2. The development is inconsistent with the *Cessnock Local Environmental Plan, 2011* specifically the objective of the RU4 Primary Production Small Lots zone, as the development fails to maintain the ecological sustainability of the Vineyards District as a result of the APZ's requirements to protect the development in the event of a bushfire which conflicts with the Controlled Activity Approval to rehabilitate the bank of Black Creek adjacent to the development site (Section 79C(1)(a)(i) *Environmental Planning and Assessment Act, 1979*).
3. The development is inconsistent with the *Cessnock Local Environmental Plan, 2011* specifically Clause 7.3 Flood Planning for the following reasons:
  - a. The development of the site is not compatible with the lands high risk flood hazard.
  - b. Intensification of development will increase the potential flood affectation of other properties in vicinity of the subject site.
  - c. The development cannot incorporate appropriate measures to manage risk to life from flood (Section 79C(1)(a)(i) *Environmental Planning and Assessment Act, 1979*).
4. The proposed development is inconsistent with Chapter E.3 Vineyards District of the Cessnock Development Control Plan 2010. Specifically, the development fails to meet the objectives of Chapter E.3 Vineyards District of the Cessnock DCP 2010; is not considered to be suitably sited having regard to the proximity of the development to Black Creek; and fails to meet the side setback requirements (Section 79C(1)(a)(iii) *Environmental Planning and Assessment Act, 1979*).
5. The proposed development is not in the public interest (Section 79C(1)(e) *Environmental Planning and Assessment Act, 1979*).



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## PLANNING AND ENVIRONMENT

### PLANNING AND ENVIRONMENT NO. PE77/2016

**SUBJECT: DA 8/2016/287/1 PROPOSING PARTIAL DEMOLITION OF EXISTING  
BUILDING AND CONSTRUCTION OF A WORKER'S  
ACCOMMODATION BUILDING CONTAINING FIVE (5) BEDROOMS  
AND SHARED FACILITIES**

**39 LOVEDALE ROAD, LOVEDALE**

Councillor Gray declared a Non-Pecuniary – Less Than Significant Conflict for the reason that his daughter in-law is an employee at Crowne Plaza. Councillor Gray remained in the Chamber and participated in discussion and voting.

Councillor Dagg declared a Non Pecuniary - Significant Conflict for the reason that a business owned by a close relative provides services for the proponent for which they receive payment. Councillor Dagg left the Chamber and took no part in discussion and voting.

Councillor Dagg left the meeting, the time being 7.56pm

**MOTION**                      **Moved:** Councillor Burke                      **Seconded:** Councillor Stapleford  
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#### **RESOLVED**

1. That Council determine Development Application No. 8/2016/287/1 proposing the partial demolition of existing building and construction of a worker's accommodation building containing five (5) bedrooms and shared facilities at Lot 3, DP1073823, 39 Lovedale Road, Lovedale, pursuant to Section 80 of the Environmental Planning and Assessment Act, 1979, by refusing to grant consent for the reasons detailed in this report.
2. That the General Manager be delegated to investigate and commence proceedings if necessary, to have the existing building demolished in accordance with Council's adopted Compliance and Enforcement Policy.

## REASONS FOR REFUSAL

Development Application 8/2016/287/1 proposing the partial demolition of existing building and construction of a workers accommodation building containing five (5) bedrooms and shared facilities at 39 Lovedale Road, Lovedale, is refused for the following reasons:

1. The subject site is not suitable for the proposed development for the following reasons:
  - a. The subject site is located within a high hazard floodway.
  - b. Intensification of habitable development within a high hazard floodway will result in increased risks to life and property (Section 79C(1)(c) *Environmental Planning and Assessment Act, 1979*).

This is page 15 of the Minutes of the Ordinary Council Meeting held on 16 November 2016 confirmed on 14 December 2016

.....General Manager .....Chairperson

**'Crowne Plaza', 39 Lovedale Road and 430 Wine Country Drive, LOVEDALE**

2. The development is inconsistent with the *Cessnock Local Environmental Plan, 2011* specifically the objective of the RU4 Primary Production Small Lots zone, as the development fails to maintain the ecological sustainability of the Vineyards District as a result of the APZ's requirements to protect the development in the event of a bushfire which conflicts with the Controlled Activity Approval to rehabilitate the bank of Black Creek adjacent to the development site (Section 79C(1)(a)(i) *Environmental Planning and Assessment Act, 1979*).
3. The development is inconsistent with the *Cessnock Local Environmental Plan, 2011* specifically Clause 7.3 Flood Planning for the following reasons:
  - a. The development of the site is not compatible with the lands high risk flood hazard.
  - b. Intensification of development will increase the potential flood affectation of other properties in vicinity of the subject site.
  - c. The development cannot incorporate appropriate measures to manage risk to life from flood (Section 79C(1)(a)(i) *Environmental Planning and Assessment Act, 1979*).
4. The proposed development is inconsistent with Chapter E.3 Vineyards District of the Cessnock Development Control Plan 2010. Specifically, the development fails to meet the objectives of Chapter E.3 Vineyards District of the Cessnock DCP 2010; is not considered to be suitably sited having regard to the proximity of the development to Black Creek; and fails to meet the side setback requirements (Section 79C(1)(a)(iii) *Environmental Planning and Assessment Act, 1979*).
5. The proposed development is not in the public interest (Section 79C(1)(e) *Environmental Planning and Assessment Act, 1979*).

FOR	AGAINST
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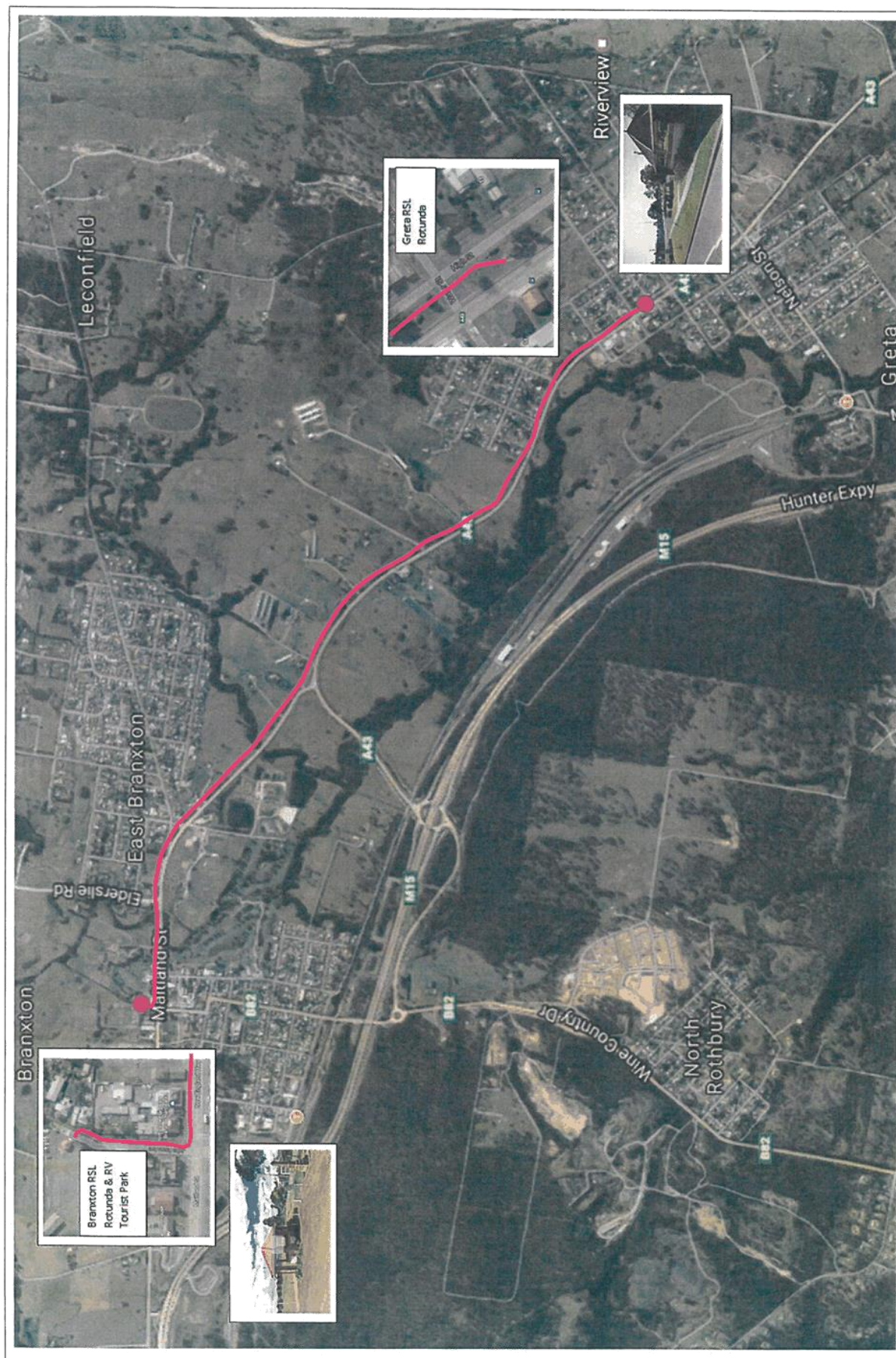
Councillor Olsen	
Councillor Doherty	
Councillor Dunn	
Councillor Fagg	
Councillor Stapleford	
Councillor Suvaal	
Councillor Fitzgibbon	
Councillor Gray	
Councillor Burke	
Councillor Sander	
Councillor Lyons	
Councillor Pynsent	
<b>Total (12)</b>	<b>Total (0)</b>

**CARRIED UNANIMOUSLY**

*Councillor Dagg returned to the meeting, the time being 7.58pm*

This is page 16 of the Minutes of the Ordinary Council Meeting held on 16 November 2016 confirmed on 14 December 2016

.....General Manager .....Chairperson





31 March 2017

Cr Bob Pynsent  
Mayor  
Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2535



Dear Cr Pynsent

**Re: Queen's Baton Relay Celebration Communities**

Thank you for your letter regarding the Queen's Baton Relay (QBR) route and, more specifically, your offer for Cessnock City Council to host the Baton.

The Gold Coast 2018 Commonwealth Games (GC2018) is an exciting opportunity for all of Australia and I recognise the importance of ensuring as many people can be part of the celebrations as possible. As such, a significant amount of planning has been undertaken by GC2018 organisers to deliver a route which includes as many communities as possible but at the same time remaining true to its original objective of a more tangible and intimate relay model, focusing on quality engagement and not quantity.

It has taken more than 12 months of consultation with state and local governments in every state and territory, including social, sporting, tourism and cultural representatives, to determine the domestic sector of the QBR.

Communities have been selected through a collaborative decision process with state/territory governments based on geographic challenges and predetermined dates. Other factors considered included the geographical location of communities and accessibility to surrounding communities, an event for small and large communities, scenic and historical attributes, sporting fixtures, events, transport modes and seasonal weather patterns among other considerations.

Unfortunately, given Australia's vast geography, time, budgetary and accessibility considerations, it is not logistically possible for the Baton to reach every community across the country.

In total, the Queen's Baton will visit 180 communities across every Australian state and territory.

Confidential

Gold Coast 2018 Commonwealth Games Corporation (GOLDOC)

PO Box 8177, GCMC QLD 9726, Australia P +61 7 5618 2018 F +61 7 5618 2000 E info@goldoc.com W gc2018.com



Page 1 of 2

If the Baton is not passing through someone's town, there are other ways people can get involved. People can travel to a nearby town or city to see the Queen's Baton or attend any of the public celebrations. For Cessnock, the closest celebration community is Newcastle with the celebration on 3 February 2018. Information on other Australian Celebration Communities can be found at [gc2018.com/qbr](http://gc2018.com/qbr).

There will also be an online element to the QBR so people can follow the Baton's journey as it travels through the Commonwealth and Australia.

Furthermore, the Baton does not need to visit a specific community for an individual to be given the opportunity to carry the Baton. Batonbearers can be nominated from anywhere in Australia and GOLDOC will endeavour to place them in a proximate community.

Yours sincerely

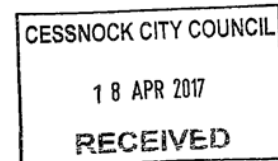
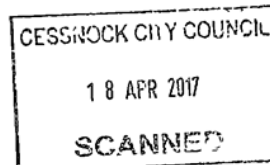
A handwritten signature in dark ink, appearing to read 'P. Beattie', with a stylized flourish at the end.

The Hon. Peter Beattie AC  
**Chairman**



April 12, 2017

Stephen Glen  
General Manager  
Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2325



Dear Mr Glen,

Thank you for your inquiry regarding progress at Tester's Hollow.

I am pleased to report progress has been made, and work is due to start next year.

I have lobbied hard to ensure the commitment of \$15 million made by the Liberals before the election is delivered, and have met with Minister for Infrastructure and Transport Darren Chester and written to him several times.

In response to my latest inquiry, today I received notice that work will begin next year.

I enclose the media release I received, and also one I released myself.

I welcome the announcement, but am disappointed that the NSW Government has only committed \$2million to the project.

I will keep a watching brief on the progress to ensure the solution is adequate to alleviate flooding.

If you have any thoughts on the announcement, please share them with me. I can make further representations on your behalf if required.

Yours sincerely,

A handwritten signature in cursive script that reads 'Meryl Swanson per'.

Meryl Swanson  
Member for Paterson

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PO Box 6022 Parliament House Canberra ACT 2600  
Tel (02) 6277 4248 | Fax (02) 6277 8487



E [meryl.swanson.mp@aph.gov.au](mailto:meryl.swanson.mp@aph.gov.au)  
[www.merylswanson.com.au](http://www.merylswanson.com.au)

**Darren Chester**

Minister for Infrastructure and Transport

**Melinda Pavey**

NSW Minister for Roads, Maritime and Freight

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## Joint Media Statement

12 April 2017

### Testers Hollow Upgrade on Track

- Refinements to previous studies and survey work to be undertaken on Testers Hollow upgrade prior to construction.
- Fixing the road will keep communities connected to jobs, schools and vital services at all times
- New South Wales Government to provide proposal to Australian Government on how federal funding can be utilised to deliver the project.

The Australian Government is expecting to receive a proposal on improving flood immunity on Cessnock Road at Testers Hollow within weeks.

Federal Minister for Infrastructure and Transport Darren Chester said the imminent report from the New South Wales Government would be the basis of future works and reaffirmed the Australian Government's \$15 million commitment to the project.

"Flooding at Testers Hollow has a big impact on local communities, so we are working on a project to raise and realign Cessnock Road to ensure communities stay connected to jobs, schools and emergency services at all times," Mr Chester said.

"We are working with the New South Wales Government to see this road upgraded in the most effective way possible and look forward to receiving a proposal in coming weeks on how this joint commitment can be used to progress the project."

New South Wales Minister for Roads, Maritime and Freight, Melinda Pavey said further planning and design steps must be taken before work can start.

"We understand the impact of road closures on local communities in terms of longer commutes and isolation from essential services, and it's an issue I am keen to see addressed soon," Mrs Pavey said.

"Further studies are required to ensure that the solution to the flood problem at Testers Hollow does not negatively impact surrounding areas and our joint funding commitment will be used to refine previous flood modelling and carry out important geotechnical and survey work to finalise the preferred option

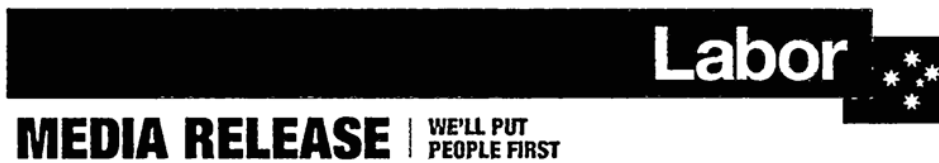
"Once this is complete we can then undertake the work. Early works should start in mid-2018 with construction expected to start in 2019."

The \$17 million project will receive \$15 million from the Australian Government, with the remainder being funded by the New South Wales Government.

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#### Media Contacts

For Mr Chester:	Kate Barwick	0408 072 809
For Mrs Pavey:	Lance Northey	0438 436 343



April 12, 2017

**MERYL SWANSON MP  
FEDERAL MEMBER FOR PATERSON  
TESTER'S HOLLOW WORK TO START NEXT YEAR**

Member for Paterson Meryl Swanson has welcomed the announcement that work on raising the road at Tester's Hollow will start next year, but slammed the NSW Government for its meagre \$2million contribution to the \$17million project.

"The Liberals were forced into an election promise of \$15million after Labor committed to raising the road at Tester's Hollow during last year's election campaign.

"But all we've seen from the state is spin and a meagre \$2million.

"It remains to be seen whether that will be adequate to raise the road to make a significant difference, but at least it is a first step."

Ms Swanson claimed the announcement as a "win", having lobbied hard since the election for the Coalition commitment to be realised.

"I have met with Minister Darren Chester and written to him several times seeking updates and also to Minister Melinda Pavey.

"My latest inquiry to Minister Chester last week was answered with this announcement today.

"After the rain we've had recently, I know our community will be relieved to hear that something is finally happening after all these years."

**MEDIA CONTACT: Alysson Watson 0432 953 904**



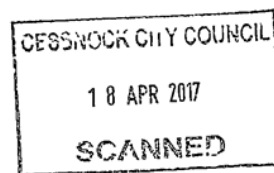


**THE HON JOEL FITZGIBBON MP**

FEDERAL MEMBER FOR HUNTER  
SHADOW MINISTER FOR AGRICULTURE, FISHERIES & FORESTRY  
SHADOW MINISTER FOR RURAL & REGIONAL AUSTRALIA

13 April, 2017

Mr Stephen Glen  
General Manager  
Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2325



Dear Mr Glen

**TESTERS HOLLOW – FUNDING COMMITMENT**

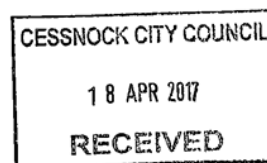
Thank you for your letter dated 24 March, 2017 regarding funding for Testers Hollow.

I am pleased that a funding announcement has since been forthcoming. While a big question mark hangs over the quantum of the NSW Government's contribution, it is great to be making progress.

I look forward to construction beginning. Let's hope it doesn't take too long.

Yours sincerely

**Joel Fitzgibbon MP**



Electorate Office. 3 Edward Street, PO Box 526  
CESSNOCK NSW 2325

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Facsimile 02 4991 2322

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Joel Fitzgibbon

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Facsimile 02 6277 8556

Fitzhunter

Australian Labor Party

Country Labor - Thinking outside of the City

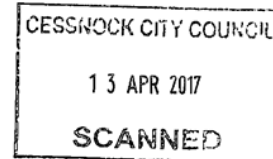
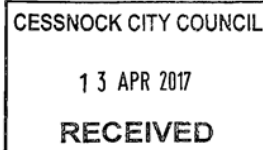
## Clayton Barr, MP

STATE MEMBER FOR THE ELECTORATE OF CESSNOCK

Our Ref CB2-CessnockCityCouncil-Roa170331-1151

31 March 2017

Mr Stephen Glen  
General Manager  
Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2325



  
Dear Mr Glen

Thank you for Council's letter, dated 23 March 2017 (your ref: BN5/2017), calling for an urgent meeting regarding Heddon Greta Traffic issues.

Accordingly, representations have been made on behalf of Council to the Minister for Roads, Maritime and Freight, the Hon Melinda Pavey, MP, seeking a meeting with a senior management representative from Roads and Maritime Services to discuss Heddon Greta traffic issues, in particular relating to the commuter parking issues.

I shall contact you again once I have received a response to my representations.

Yours sincerely



**CLAYTON BARR, MP**  
State Member for the  
Electorate of Cessnock  
Shadow Minister for Finance,  
Services and Property



PARLIAMENT OF NEW SOUTH WALES LEGISLATIVE ASSEMBLY

118 Vincent Street (PO Box 242)  
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Australian Labor Party

Country Labor - Thinking outside of the City

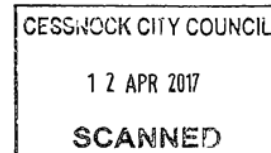
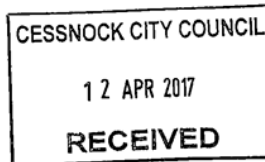
## Clayton Barr, MP

STATE MEMBER FOR THE ELECTORATE OF CESSNOCK

Our Ref CB2-CessnockCityCouncil-Roa170403-1151

3 April 2017

Mr Stephen Glen  
General Manager  
Cessnock City Council  
PO Box 152  
CESSNOCK NSW 2325



*Stephen*  
Dear Mr Glen

Thank you for Council's letter, dated 23 March 2017 (your ref: MM3/2017), seeking urgent State Government funding assistance to undertake road improvement works along the link roads between The Hunter Expressway and Cessnock.

Accordingly, representations have been made on behalf of Council to the Minister for Roads, Maritime and Freight, the Hon Melinda Pavey, MP.

I shall contact you again once I have received a response to my representations.

Yours sincerely

**CLAYTON BARR, MP**  
State Member for the  
Electorate of Cessnock  
Shadow Minister for Finance,  
Services and Property



PARLIAMENT OF NEW SOUTH WALES LEGISLATIVE ASSEMBLY

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