



6 December 2022

To All Councillors

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993, that the next Ordinary Meeting of Council will be held in the Council Chambers, on Wednesday, 14 December 2022 at 6.30pm, for the purposes of transacting the undermentioned business.

AGENDA:

PAGE NO.

- (1) **ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS**
- (2) **OPENING PRAYER**
- (3) **RECEIPT OF APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE**
Leave of absence has been granted to:
Councillor Karen Jackson - 1 December 2022 to 4 February 2023 Inclusive
- (4) **CONFIRMATION OF MINUTES OF PREVIOUS MEETING**
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- (6) **PETITIONS**
- (7) **PUBLIC ADDRESS**
- (8) **CONSIDERATION AND ADOPTION OF ALL REPORTS BY ENGLOBO**
- (9) **NOTICE OF INTENTION TO DEAL WITH MATTERS IN CONFIDENTIAL SESSION**
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(17) COUNCILLORS' REPORTS

**(18) REPORT OF THE CONFIDENTIAL SESSION OF THE ORDINARY COUNCIL
MEETING ON 14 DEC 2022**

‡ - Denotes that Report is for notation only.



Principles for Local Government

Exercise of functions generally

The following general principles apply to the exercise of functions by Councils:

- a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- e) Councils should work co-operatively with other Councils and the State government to achieve desired outcomes for the local community.
- f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- g) Councils should work with others to secure appropriate services for local community needs.
- h) Councils should act fairly, ethically and without bias in the interests of the local community.
- i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

Council's Values

- Integrity
- Accountability
- Respect
- Excellence
- Teamwork

Our Community's Vision

Cessnock will be a cohesive and welcoming community living in an attractive and sustainable rural environment with a diversity of business and employment opportunities supported by accessible infrastructure and services which effectively meet community need.

Cessnock – thriving, attractive and welcoming.

Our Community's Desired Outcomes

- A connected, safe and creative community.
- A sustainable and prosperous economy.
- A sustainable and healthy environment.
- Accessible infrastructure, facilities and services.
- Civic Leadership and effective governance.



Council Code of Conduct

Council adopted its current Code of Conduct on 1 November 2022. This Code provides details of statutory requirements and gives guidance in respect of the way in which pecuniary and conflict of interest issues must be disclosed. Councillors took an oath or affirmation at the commencement of their term of office under section 233A of the *Local Government Act 1993* (NSW) and are therefore obligated under Council's Code of Conduct to disclose and appropriately manage their conflicts of interest.

Generally, the Code outlines the following issues:

1. Councillors are under an obligation at law to disclose any interest they may have in any matter before the Council as soon as practicable and to refrain from being involved in any consideration or to vote on any such matter where required and out outlined in the Code of Conduct.
2. Councillors must disclose any interest in any matter noted in the business paper prior to or at the opening of the meeting.
3. The nature of the interest shall be included in the disclosure.
4. Councillors shall immediately and during the meeting disclose any interest in respect of any matter arising during the meeting which is not referred to in the business paper.
5. All disclosures of interest shall be recorded in the minutes of the meeting.
6. All disclosures of interest shall as far as is practicable be given in writing.
7. Any member having a pecuniary or non-pecuniary significant conflict of interest shall leave the meeting and remain absent while the subject of the interest is being considered by Council.
8. The meeting shall not discuss any matter in which a Councillor has a pecuniary or non-pecuniary significant conflict of interest while the Councillor is present at the meeting.



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**MINUTES OF ORDINARY COUNCIL MEETING OF THE CESSNOCK CITY COUNCIL
HELD IN COUNCIL CHAMBERS ON WEDNESDAY, 16 NOVEMBER 2022,
COMMENCING AT 6.30PM**

PRESENT: His Worship the Mayor, Councillor J Suvaal (in the Chair) and Councillors Dunn, Jurd, Hawkins, Olsen, Burke, Moores, Jackson, Sander, Grine, Hill, Paynter.

IN ATTENDANCE: General Manager
Director Planning and Environment
Director Corporate and Community Services
Acting Director Works and Infrastructure (Infrastructure Manager)
Development Services Manager
Strategic Planning Manager
Chief Finance Officer
Help Desk Support Officer
Media & Communication Coordinator
Corporate Governance Officer

Pastor Amanda Francis – New Vine Church Branxton delivered the Prayer.

**APOLOGY/LEAVE
OF ABSENCE:**

MOTION

Moved: Councillor Burke
Seconded: Councillor Hawkins

328

RESOLVED that the Leave of Absence granted to Councillor Watton be noted.

That a Leave of Absence be granted to Councillor Jackson from 1 December 2022 to 14 February 2023.

FOR

AGAINST

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Olsen
Councillor Jurd
Councillor Suvaal

Total (12)

Total (0)

CARRIED UNANIMOUSLY

MINUTES:

MOTION

Moved: Councillor Burke
Councillor Sander

Seconded:

329

RESOLVED that the Minutes of the Ordinary Meeting of Council held on 19 October 2022 and the Minutes of the Extraordinary Meeting held on 12 October 2022, as circulated, be taken as read and confirmed as a correct record.

FOR

AGAINST

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Olsen
Councillor Jurd
Councillor Suvaal
Total (12)

Total (0)

CARRIED UNANIMOUSLY

DISCLOSURES OF INTEREST

DISCLOSURES OF INTEREST NO. DI10/2022

SUBJECT: DISCLOSURES OF INTEREST

RECOMMENDATION

That Councillors now disclose any interests and reasons for declaring such interest in the matters under consideration by Council at this meeting.

WI73/2022 Minutes of Local Traffic Committee Meeting held 17 October 2022 – Councillor Hawkins declared a Non Pecuniary Less Than Significant Conflict for the reason that he lives in the vicinity of the school in Item TC40/2022. Councillor Hawkins advised that he would remain in the Chamber and participate in discussion and voting as the conflict has not influenced him in carrying out his public duty because the matter does not affect his ability to carry out his public duty.

PETITIONS

NIL

ADDRESS BY INVITED SPEAKERS

The following people addressed the meeting of Council:

Speakers	Report	Page No.	Duration
Cameron Hume - Representative – NSW Audit Office	CC86/2022 - Annual Financial Statements for the Year Ended 30 June 2022	198	7 mins
Jennifer Hayes – Independent Chair Audit & Risk Committee	CC86/2022 - Annual Financial Statements for the Year Ended 30 June 2022		

CORPORATE AND COMMUNITY NO. CC86/2022

SUBJECT: ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2022

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Dunn

330

RESOLVED

1. That the Annual Financial Statements, incorporating the Auditor's Reports for the year ended 30 June 2022, be received and the information be noted.
2. That Council notes the Audit Office of NSW issued a qualified audit opinion with respect to the year ended 30 June 2022 due to Council not recognising Rural Fire Service fleet assets in the General Purpose Financial Statements, which aligns to the existing Policy Position and Council resolution relating to this matter
3. That Council reaffirms its position in regards to not recognising RFS fleet assets; that RFS fleet assets are not controlled by Council; that rural firefighting equipment is vested in, under the control of and the property of the State and notes the significant sector wide campaign on this issue.
4. That Council reaffirms its complete support of and commitment to local RFS brigades and that Councils position in regards to asset recognition does not impact on that support or the volunteers within the LGA.

FOR

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Suvaal

Total (10)

AGAINST

Councillor Olsen
Councillor Jurd

Total (2)

CARRIED

Councillor Jurd left the meeting, the time being 7.21pm

Councillor Jurd returned to the meeting, the time being 7.22pm

Speakers	Report	Page No.	Duration
Jennifer Hayes – Independent Chair Audit & Risk Committee	GMU30/2022 - Audit and Risk Committee Annual Report 2021-22	116	7 mins

GENERAL MANAGER'S UNIT NO. GMU30/2022

SUBJECT: AUDIT AND RISK COMMITTEE ANNUAL REPORT 2021-22

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
331
RESOLVED

That Council receives and notes the Audit and Risk Committee's Annual Report for the period from 1 July 2021 to 30 June 2022.

FOR	AGAINST
Councillor Jackson	Councillor Olsen
Councillor Moores	Councillor Jurd
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Suvaal	
Total (10)	Total (2)

CARRIED

***CONSIDERATION AND ADOPTION OF ALL REPORTS BY ENGLOBE
OR INDIVIDUALLY WITH NOMINATED EXCEPTIONS***

All reports were considered individually.

MAYORAL MINUTES

MAYORAL MINUTES NO. MM15/2022

SUBJECT: ANZ BRANCH CLOSURE - CESSNOCK

MOTION **Moved:** Councillor Suvaal

332

RESOLVED

1. That Council condemns the decision by ANZ to close its Cessnock Branch in April 2023;
2. That Council notes the significant impact this will have on their customers in the Cessnock LGA, especially the elderly and disabled;
3. That Council calls on ANZ to reverse this decision and commit to keeping the Cessnock Branch open;
4. That Council writes to ANZ notifying them of this request; and
5. That Council writes to Dan Repacholi MP, Federal Member for Hunter, seeking advice on what more can be done to stop big banks from closing branches in regional communities.

FOR

AGAINST

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Olsen
Councillor Jurd
Councillor Suvaal
Total (12)

Total (0)

CARRIED UNANIMOUSLY

MAYORAL MINUTES NO. MM16/2022

SUBJECT: MODIFICATION 20 TO THE HUNTLEE MAJOR PROJECT APPROVAL

MOTION Moved: Councillor Suvaal

333

RESOLVED

1. That Council write to the Minister for Planning outlining its frustration with the Department of Planning and Environment for having approved the 'Urban One' allotments under Modification 20 to the Huntlee Stage 1 Major Project and that the Minister reverse the Department's decision, as outlined in this Mayoral Minute;
2. That Council forwards a copy of the correspondence to the State Member, Mr Clayton Barr MP, with a request for him to make representations to the NSW Minister for Planning, on Council's behalf.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

MOTIONS OF URGENCY

MOTIONS OF URGENCY NO. MOU11/2022

SUBJECT: MOTIONS OF URGENCY

Nil

GENERAL MANAGER'S UNIT

GENERAL MANAGER'S UNIT NO. GMU31/2022

SUBJECT: MINUTES OF THE AUDIT AND RISK COMMITTEE MEETING HELD 27 OCTOBER 2022

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Sander
334
RESOLVED

That the Minutes of the Audit and Risk Committee Meeting held 31 August 2022 be adopted as a resolution of the Ordinary Council.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

PLANNING AND ENVIRONMENT

PLANNING AND ENVIRONMENT NO. PE65/2022

SUBJECT: DEVELOPMENT APPLICATION NO. 8/2022/113/1 PROPOSING ALTERATIONS AND ADDITIONS TO THE 'BELLBIRD HOTEL'

388 WOLLOMBI ROAD, BELLBIRD

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
335
RESOLVED

1. **That:**

- (i) **Development Application No. 8/2022/113/1 proposing alterations and additions to the 'Bellbird Hotel' at 388 Wollombi Road, Bellbird, be approved pursuant to Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions contained in this report.**

- (ii) **The reasons for the decision (having regard to any statutory requirements applying to the decision), are as follows:**
 - **The proposal is a permitted land use in the B1 zone under the *Cessnock Local Environmental Plan 2011*,**
 - **The proposal is consistent with the objectives of the B1 zone under the *Cessnock Local Environmental Plan 2011*,**
 - **The proposal is consistent with the relevant provisions contained within the relevant State Environmental Planning Policies,**
 - **The proposal is generally compliant with the provisions of the *Cessnock Development Control Plan 2010*,**
 - **The proposal incorporates adequate measures to ensure the development will not result in any adverse impacts on the natural and built environments,**
 - **The proposal incorporates adequate measures to ensure the development will not result in any adverse impacts on the social and economic locality,**
 - **The proposal is suited to the site, having regard to the prevailing character of development in the area, and**
 - **The proposal is consistent with the public interest.**

- (iii) **The details contained above be publicly notified pursuant to Section 2.22 and Clause 20(2) of Schedule 1 of the *Environmental Planning and Assessment Act 1979*.**

2. **That the General Manager hold discussions with the applicant/owner of the site, as part of the section 138 process, with a view to increasing the provision of on street parking in Waratah Street.**

Councillor Mitchell Hill left the meeting, the time being 07:42 PM

FOR**AGAINST**

Councillor Jackson
 Councillor Moores
 Councillor Dunn
 Councillor Burke
 Councillor Grine
 Councillor Sander
 Councillor Hawkins
 Councillor Paynter
 Councillor Olsen
 Councillor Jurd
 Councillor Suvaal
Total (11)

Total (0)

CARRIED UNANIMOUSLY

CONDITIONS OF CONSENT

CONDITIONS OF CONSENT

1. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2022/122/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Ground Floor Plan, Project No. 649, Drawing No. DD201, Revision 10	Skelcon	26/07/2022
First Floor Plan, Project No. 649, Drawing No. DD202, Revision 5	Skelcon	26/07/2022
Elevations – Sheet 1, Project No. 649, Drawing No. DD300, Revision 4	Skelcon	26/07/2022
Elevations – Sheet 2, Project No. 649, Drawing No. DD301, Revision 4	Skelcon	26/07/2022
Sections – Sheet 1, Project No. 649, Drawing No. DD400, Revision 4	Skelcon	26/07/2022
Kitchen Elevations, Project No. 649, Drawing No. DD401, Revision 4	Skelcon	26/07/2022
Bar Area, Project No. 649, Drawing No. DD402, Revision 3	Skelcon	26/07/2022
TAB, Project No. 649, Drawing No. DD403, Revision 3	Skelcon	26/07/2022
Corridor, Project No. 649, Drawing No. DD404, Revision 3	Skelcon	26/07/2022

Bistro, Project No. 649, Drawing No. DD405, Revision 3	Skelcon	26/07/2022
Kitchen, Project No. 649, Drawing No. DD406, Revision 3	Skelcon	26/07/2022
Kids Play, Project No. 649, Drawing No. DD407, Revision 3	Skelcon	26/07/2022
Bistro Hallway, Project No. 649, Drawing No. DD408, Revision 1	Skelcon	26/07/2022
Landscape Plan L02, Project No. GSP210297-DA, Revision C	GSP	January 2022
Plant Schedule, Project No. GSP210297-DA, Revision C	GSP	January 2022

Document Title	Prepared By	Dated
Statement of Environmental Effects	Insite	06/06/2022
Noise Impact Assessment	Reverb Acoustics	June 2022
Statement of Heritage Impact	Contemporary Heritage	May 2022
Waste Management Plan	Insite	10/01/2022
Traffic and Parking Assessment	Intersect Traffic	December 2021
Plan of Management	Bellbird Hotel	December 2021
BCA Report	SureScope Building Certifiers	-
Bushfire Assessment Report	Newcastle Bushfire Consulting	25/01/2022
Access Report	Lindsay Perry Access	16/12/2021

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

2. CC, PC & Notice Required

In accordance with the provisions of Section 6.6 and 6.7 (cf previous Section 81A) of the *EP&A Act 1979* construction works approved by this consent must not commence until:

- a) A *CC* has been issued by a Certifier (being Council or a registered certifier); and
- b) A *PC* has been appointed by the person having benefit of the development consent; and
- c) If Council is not the *PC*, notify Council no later than two (2) days before building work commences as to who is the appointed *PC*; and
- d) At least two (2) days before commencement of building work, the person having benefit of the development consent is to notify Council as to the intention to commence building work.

3. Compliance with the BCA

Any building works required to ensure compliance with the *BCA* or current building and construction standards not specified in the submitted/approved plans, must not result in material affectation to existing heritage fabric and building features.

If such upgrading works are likely to impact existing fabric and features, further approval from Council is required.

4. BCA Compliance

Pursuant to Section 4.17(11) (cf previous s 80A) of the *EP&A Act 1979* all building work must be carried out in accordance with the requirements of the *BCA*.

5. Bushfire Protection

The development shall be constructed/completed in accordance with the Bushfire Assessment Report prepared by Newcastle Bushfire Consulting dated 25 January 2022 which forms part of this consent.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Certifier, prior to issue of a Construction Certificate.

6. Local Traffic Committee Approval

Any application involving the installation of, or amendment to, regulatory signage, linemarking and/or traffic control devices, will require approval of the Council Local Traffic Committee. Full details shall be submitted to council for approval by the Council Local Traffic Committee, prior to the issue of a CC, and subsequent Section 138 Roads Act Approval.

7. Amended Plans Required

Details and location of the proposed garbage room are to be provided to the Certifier prior to the issue of a CC. Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, are to be constructed of solid material, cement rendered and trowelled to a smooth even surface, and subject to the following requirements:

- a) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room
- b) Garbage rooms must be vented to the external air by natural or mechanical ventilation

Such details must be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

8. Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a CC.

9. Cessnock Section 7.12 Levy Development Contributions Plan

A total monetary contribution of \$7,500.00 is to be paid to Council, pursuant to Section 7.12 of the *EP&A Act 1979*, such contribution is to be paid prior to the issue of any CC.

- i) This condition is imposed in accordance with the provisions of *Cessnock Section 7.12 Levy Contributions Plan 2017 (as amended)*. A copy of the document is available on Council's website at www.cessnock.nsw.gov.au or may be inspected at Councils' Customer Services Section, Administration Building, Vincent Street Cessnock.
- ii) The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be indexed at time of actual payment in accordance with the Consumer Price Index. Indexation of contributions for payment occurs quarterly.

Any party intending to act on this consent should contact Council prior to the date of payment to determine the indexed amount payable.

10. Car Parking – Commercial/Industrial

The design of the vehicular access and off street parking facilities must comply with, but not be limited to *AS 2890.1-2004 Parking Facilities – Off-Street Car Parking*, *AS 2890.2-2002 Parking Facilities – Off-Street commercial vehicles facilities*, and *AS 2890.3-1993 Parking Facilities – Bicycle parking facilities*. Details demonstrating compliance with these Standards are to be included on the plans submitted in association with a CC application.

A design certificate satisfying these requirements is to be issued by a suitably qualified professional engineer and submitted to the Certifier prior to the issue of a CC.

11. Disabled Car Parking Spaces

A total of one (1) car parking spaces for use by persons with a disability must be provided as part of the total car parking requirements.

Plans demonstrating compliance with this requirement and the following Australian Standards are to be submitted to, and approved by, the Certifier prior to the issue of a CC.

- * AS/NZS 2890.1:2004 Parking Facilities – Off street car parking
- * AS/NZS 1428.1:2009 Design for access and mobility – General requirements for access – New building work
- * AS/NZS 1428.4.1:2009 Design for access and mobility – Means to assist the orientation of people with vision impairment – Tactile ground surface indicators.

12. Parking – Delivery Vehicles

A separate off-street loading/unloading facility with capacity to accommodate the largest delivery vehicle likely to deliver goods to and from the premises shall be provided for all loading and unloading of vehicles wholly within the property. Such facility shall be constructed clear of the car parking area and driveways.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

13. Parking – Minimum Requirement

Onsite car parking shall be provided for a minimum of seven (7) vehicles and such being set out generally in accordance with Council's Development Control Plan.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

14. Road – Fees

The applicant shall lodge payment of fees as follows:-

- a) Road fees - engineering plan checking
- b) Road fees – PC certification of works

Final fee amounts will be levied on accurate dimensions contained within the engineering plans.

The fees shall be payable prior to the issue of a CC / *Section 138* for the Construction Works and shall be in accordance with Council's adopted fees and charges current at the time of payment.

15. Road – Road Widening Requirement

The registered proprietor of the land shall construct the following in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by Council prior to issue of a CC / *Section 138* for the civil works.

- a) Construct 8.5 metre wide road pavement within Waratah Street reserve from Abbotsford Street to subject Lot 200 DP: 1243053 for approx. 138 metres
- b) Construct rolled kerb and gutter
- c) Construct a minimum of 8.5 metre radius turning head at the termination of Waratah Street
- d) Place Asphalt on new works
- e) Construct indented parking bays along Lot 100 DP 1243811 frontage
- f) Construct drainage works as necessary
- g) Construct necessary concrete vehicular access crossovers to property boundary

- h) Construct concrete footpath 1.2 metre wide, 100mm thick with SL72 reinforcement from Abbotsford Street to subject Lot 200 DP: 1243053
- i) All new works to neatly merge with existing infrastructure
- j) Topdress and turf footpath

16. OSD System

A stormwater drainage design, incorporating on site stormwater retention / detention facilities, prepared by a qualified practising Civil Engineer must be provided to the Certifier prior to the issue of a CC. The design must be prepared / amended to make provision for the following:

- a) The design must be generally in accordance with the stormwater drainage concept plan SY21-038, prepared by SKY Engineering & Project Management and dated 05/05/2022
- b) Comply with Council's Engineering Requirements for Development.
- c) All plumbing within the site must be carried out in accordance with *AS 3500.3.2003 Plumbing and Drainage – Stormwater Drainage*
- d) Overflow pipeline(s) must be provided for any rainwater tank(s) to discharge by gravity to the Council drainage system. Where OSD facilities are required by this consent, the overflow pipelines must be discharged by gravity to the OSD storage tank(s)
- e) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets
- f) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- g) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system
- h) Stormwater must be discharged by gravity to the kerb and gutter of a public road or to Council's piped drainage system
- i) Stormwater must be discharged by gravity directly into Council's piped drainage system
- j) All redundant stormwater pipelines within the footpath area must be removed, and the footpath and kerb reinstated
- k) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm

Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.

17. Stormwater – Detailed Design Requirements

A detailed drainage design shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property, 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.

The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

18. Stormwater – Detention Requirement

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

Detailed plans, specifications and copies of the calculations, including existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development, shall be prepared by an engineer suitably qualified and experienced in the field of hydrology and hydraulics. The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

19. Food Premises

The construction and operation of the food premises shall comply with all applicable legislation, regulation and standards including:

- a) *Food Act 2003*
- b) *Food Regulation 2015*
- c) *Food Standards Australia and New Zealand – Food Standards Code 2003*
- d) AS 4674-2004 for Design, Construction and Fit out of Food Premises
- e) AS 1668.2-2002 – The use of ventilation and air conditioning in buildings
- f) *BCA*.

Details submitted in association with the CC application are to demonstrate compliance with this requirement, and shall include the following:

- a) a separate floor and sectional plan detailing:
 - i) the kitchen/cafe area floor, wall, and ceiling surface finishes
 - ii) location of the required handwash basin/s and cleaning sinks/s
 - iii) location of dry and cold storage areas,
 - iv) fit-out details for the kitchen and servery, including proposed refrigeration and cooking equipment
 - v) designated cupboard or locker for the storage of staff clothing and personal belongings
 - vi) location of the bar area.

The details are to be approved by the Certifier as satisfying this requirement prior to the issue of a CC.

20. Building works to comply with BCA - Heritage Buildings or Buildings Within Conservation Area

Any building works required to ensure compliance with the BCA or new building standards not specified in the submitted/approved plan must not damage existing fabric and building features.

If such upgrading works will potentially impact on existing fabric and features, details of the works must be submitted and approved by Council's Heritage Advisor prior to issue of a Construction Certificate.

21. External colour scheme for heritage building

The external colour scheme is to be both sympathetic and appropriate to the architectural style and period of the building.

Prior to the issue of any Construction Certificate, a schedule of colours is to be submitted to and approved by Council's Heritage Advisor.

22. Retention of original detail and fabric

The existing original door opening and associated brick archway (inclusive of the lintel bar, bricks, profile, timber jamb and opening dimensions) to the new hallway (i.e. situated between the existing internal stairs and the proposed bar extension), shall be retained.

Prior to the issue of any Construction Certificate, amended plans demonstrating compliance with this condition shall be submitted to the satisfaction of Council's Heritage Advisor.

23. Acoustic Report and Acoustic Fencing

Prior to the issue of a CC, plans and documentation shall be submitted to, and approved by the Certifier confirming that the recommendations specified in the Acoustic Report prepared by Reverb Acoustics, dated June 2022, have been implemented in the final design of the proposed development.

PRIOR TO COMMENCEMENT OF WORKS

The following conditions are to be complied with prior to the commencement of works on the subject site:

24. Construction and Traffic Management Plan

The applicant must prepare a Construction Management and Traffic Management Plan incorporating the following matters. The plan must be submitted to and approved by the *PC* as satisfying these matters prior to the commencement of works.

- a) A plan view of the entire site and frontage roadways indicating:
 - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
 - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
 - iii) The locations of proposed work zones in the frontage roadways.
 - iv) Location of any proposed crane, concrete pump, truck standing areas on and off the site.
 - v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
 - vi) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.
 - vii) An onsite parking area for employees, tradespersons and construction vehicles as far as possible.
 - viii) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
 - ix) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
 - x) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a Chartered Civil Engineer.
- b) During excavation, demolition and construction phases, noise generated from the site must be controlled.
- c) All site works must comply with the work health and safety requirements of SafeWork NSW.
- d) During excavation, demolition and construction phases, toilet facilities are to be provided on site, at the rate of one (1) toilet for every twenty (20) persons or part of twenty (20) persons employed at the site.

- e) All traffic control plans must be in accordance with the TfNSW publication *Traffic Control Worksite Manual* and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of six (6) weeks prior to the proposed activity being undertaken.

25. Demolition Proposed

Consent is granted for the demolition, subject to strict compliance with the following conditions:

- (a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.
- (b) Written notice is to be given to the Council prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours, contact telephone number, and licence number of the demolisher.
- (c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- (d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves, etc). Access to the site must be restricted to authorised persons only, and the site must be secured against unauthorised entry when work is not in progress, or the site is otherwise unoccupied.
- (e) Demolition is to be carried out in accordance with the relevant provisions of AS 2601:2001: Demolition of structures.
- (f) The hours of demolition work are limited to between 7.00am and 5.00pm on Monday to Saturday. No demolition work is to be carried out on Sundays and public holidays.
- (g) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of the WorkCover Authority and the Office of Environment and Heritage.
- (h) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- (i) During demolition, public property (footpaths, roads, reserves, etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition. No materials shall be stockpiled on footpaths or road carriageways.

(j) All vehicles leaving the site with demolition materials must have their loads covered, and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves, etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.

(k) The burning of any demolished material on site is not permitted, and offenders will be prosecuted.

(l) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense.

(m) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works, and must be maintained at all times.

(n) Prior to demolition, a Work Plan must be prepared in accordance with the relevant provisions of AS 2601:2001 Demolition of structures by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance, and the disposal methods for hazardous materials.

(o) If the building contains asbestos, an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:

- (i) A SafeWork licensed contractor must undertake removal of all asbestos.
- (ii) During the asbestos removal, a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a visible position on the site to the satisfaction of Council, and AS 2601:2001: Demolition of structures.
- (iii) Waste disposal receipts must be provided to Council as proof of correct disposal of asbestos laden waste.
- (iv) All removal of asbestos must comply with the requirements of the WorkCover Authority.

An asbestos clearance certificate prepared by a qualified occupational hygienist must be provided to Council at the completion of the demolition works.

26. Site is to be Secured

The site must be secured and fenced prior to works commencing. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public property to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property.

Separate approval is required to erect a hoarding or temporary fence on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed.

27. Erection of Signs

Prior to the commencement of building work, subdivision work or demolition work, a sign must be erected in a prominent position on the site on which the work is being carried out. The sign must state:

- a) the name, address and telephone number of the principal certifier for the work;
- b) the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside of working hours; and
- c) state that unauthorised entry to the work site is prohibited.

The sign must be maintained while the work is being carried out, but must be removed when the work has been completed

28. Public Liability Insurance

Any person or contractor undertaking works on public property must take out Public Risk insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within, public property. The Policy is to note, and provide protection for Cessnock City Council as an interested party, and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property. The insurance shall also note the location and the risk.

29. Road Opening Permit

Under Section 138 of the *Roads Act 1993*, should any work on the verge, footpath, public road reserve, or public reserve (open space) be required, a "Road Opening Permit" will need to be obtained from Council. In this regard, the applicant is to make a formal application to Council. The Permit application is to be submitted to, and approved by, Council prior to works commencing.

30. S138 Roads Act Approvals

Under Section 138 of the *Roads Act 1993*, should any work on the verge, footpath, or public road reserve be required, a S138 Roads Act Approval will need to be obtained from Council. In this regard, the applicant is to make a formal application to Council. The S138 application is to be submitted to, and approved by, Council prior to works commencing.

31. Relocation of Services

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. In the event that existing services are required to be relocated the proprietor shall make application to obtain any necessary approval from the relevant service authority prior to commencement of any works.

32. Toilet Facilities

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

Each toilet provided must be a sewage management facility approved by the NSW Department of Health and/or Council, and operate in an environmentally responsible manner, free of nuisance or offence, and be appropriately serviced.

33. Road - Bonds

The applicant shall pay the following:-

a) A performance and maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater. To be held by council for a period of 12 months.

It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts.

The bond shall be payable prior to the issue of a *Section 138* approval.

The bond may be used to meet any costs referred to above, and on application being made to the Council by the person who provided the bond, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the bond within 6 years of the date of issue of practical completion for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the *Unclaimed Money Act 1995*.

34. Inspection of Vegetation to be Removed

No more than one week prior to tree removal, trees are to be inspected to ensure that there are no nests or hollows present. If nests or hollows are present, a qualified and experienced ecologist is to inspect the nest/hollow before tree removal to determine if it is active.

35. Removal of Street Trees

Any works associated with tree removal and/or relocation must be approved and undertaken by Council or its approved contractors. Any such works are subject to additional fees and charges in accordance with Council's adopted fees and charges.

36. Heritage site induction ('toolbox talks')

Prior to the commencement of any works, all contractors, tradesmen and the like, shall be given a heritage site induction ('toolbox talk').

The heritage site induction shall be delivered by a suitably qualified Heritage Consultant and shall ensure that all contractors, tradesmen and the like, are made aware that:

- i) The site contains an item of heritage significance.
- ii) All conservation works to the heritage item are to be undertaken in accordance with the Schedule of Conservation Works and undertaken by suitably qualified tradesmen.
- iii) There are statutory obligations under the *National Parks and Wildlife Act 1974* and *Heritage Act 1977* for all works to cease and Council notified of any unexpected built archaeological or Aboriginal archaeological finds during works.

37. Photographic Archival Recording

Prior to the commencement of any works, including the dismantling of fabric or demolition, a Photographic Archival Recording shall be undertaken of the interior and exterior of the building and submitted to Council.

Written confirmation must also be obtained from Council's Heritage Advisor, confirming that the Photographic Archival Recording is of an acceptable quality that satisfies the requirements of this condition.

The Photographic Archival Recording shall be prepared in accordance with the guidelines "*Archival Recording of Heritage Items Using Film or Digital Capture*" published by the Heritage Council of NSW.

One complete copy of the Photographic Archival Recording shall be submitted to Council and should contain (for digital projects):

- a) A brief report or introduction which explains the purposes of the Photographic Archival Recording and gives a brief description of the subject site, as well as details of the sequence in which images were taken. The report may also address the limitations of the photographic record and may make recommendations for future work;
- b) Plans of the building marked up to indicate where the photographs were taken and the direction of the photograph;
- c) The report should include all technical details including camera and lenses, image file size and format, technical metadata associated with the images, and colour information;
- d) Catalogue sheets, photographic plan, supplementary maps;
- e) Colour thumbnail image sheets (e.g. A4 page with six images by six images) showing images and reference numbers. The thumbnail sheets should be processed with archivally stable inks on archivally acceptable photographic paper and cross referenced to catalogue sheets;
- f) One full set of 10.5x14.8cm (A6) colour prints OR, if a large project, a representative set of selected images processed with archivally stable inks on archivally acceptable photographic paper.
- g) A CD or DVD containing electronic image files saved as RAW and JPEG files with associated metadata, and cross-referenced to catalogue sheets.

The report should be presented on archival quality paper in a suitable archival binder and slipcase, and all storage of individual components must be in archival quality packaging suitable for long term storage.

DURING WORKS

The following conditions are to be complied with during works.

38. Construction Hours

Excavation, building or subdivision work must be restricted to the hours of 7.00am and 5.00pm on Monday to Saturday inclusive. Work is not to be carried out on Sundays and public holidays.

39. Site is Securely Fenced

The site must be appropriately secured and fenced at all times during works.

40. Approved Plans Kept On Site

A copy of the approved plans must be kept on site for the duration of site works and be made available upon request.

41. Construction Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment and Heritage *Noise Guide for Local Government*.

42. Road – Obstruction of Footpath Restriction

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

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

43. Erosion and Sediment Controls

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", and Landcom's Soils and Construction Manual - April 2004. 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.

44. Stormwater Runoff

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

45. Waste Management

Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.

46. Building Materials on Site

All building materials, plant and equipment are 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.

47. Demolition

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

48. Clearing of Development Footprint

Vegetation must be cleared from the periphery of vegetated areas first, progressing from east to west, to enable any resident fauna to relocate to adjacent areas of retained vegetation.

49. Ecologist Onsite

If the trees to be cleared contain any active nests or hollows then a qualified and experienced ecologist must supervise the clearing of the tree to ensure that the tree is lowered slowly to the ground and care is given to any fauna present.

50. Reduction of Rising Damp and Salt Attack in Buildings Constructed Prior to 1920

To avoid potential damage caused by rising damp and migrating salt, no concrete slab is to be laid directly on the ground either within the building or external to the building directly adjacent to the exterior walls.

51. Conservation works to be overseen by Heritage Consultant

A Heritage Consultant experienced in conserving buildings of significance is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project.

The Heritage Consultant is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The Heritage Consultant is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project.

Evidence and details of the above commission on the above terms are to be provided to Council's Heritage Advisor prior to commencement of work on site. The heritage consultant must sign off the completed project and submit a final report to Council's Heritage Advisor specifying how the heritage conditions are satisfied prior to the issue of an Occupation Certificate or the commencement of the use, whichever is earlier.

52. General Heritage

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing heritage item.
- (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction.
- (c) All conservation and adaptation works are to be in accordance with the Articles of the Australia ICOMOS Burra Charter (2013).
- (d) New services are to be surface mounted rather than chased-in to existing walls to minimise impact on significant heritage fabric.
- (e) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.

53. No Demolition of Extra Fabric

Alterations to, and demolition of, the existing building shall be limited to that documented on the approved plans (by way of notation) or conditioned in this consent.

No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

Should any portion of the existing building which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of this damaged portion are to cease and written notification given to Council.

No work is to resume until the written approval of Council is obtained. Failure to comply with the provisions of this condition may result in the Council instituting legal proceedings.

54. Uncovering of Concealed Architectural Features or Detailing

Should any concealed architectural features or detailing, not previously noted in the DA documentation, be discovered during demolition or building works, all works are to immediately cease and the architectural features or detailing to be photographically recorded and Council's Heritage Advisor is to be contacted for advice.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Principal Certifier, prior to issue of an Occupation Certificate (as specified within the condition):

55. Roads – Concrete Crossing

The registered proprietors shall construct and maintain a concrete access crossing from the kerb and gutter in Waratah Street to the property boundary, in accordance with Council's "Engineering Requirements for Development" and AS 2890.1. A S138 Roads Act Approval is required from Council prior to any construction commencing within the road reserve. The access crossing is required to be constructed prior to the issue of an OC for the whole of the building. Where a Partial OC is issued the crossing shall be completed within six (6) months from the date of the Partial OC.

Construction of the crossing will require inspections to be undertaken by Council. The applicant shall pay Council engineering site supervision fees in accordance with Council's current Fees & Charges, prior to the inspections being undertaken.

The initial fee will facilitate approval of the application and one (1) construction inspection (steel and formwork inspection).

A final inspection will be required upon completion of the driveway and restoration of all disturbed footway areas. (A separate fee will be required to be paid when the final inspection is booked.) Should further inspections become necessary as a result of unsatisfactory or defective works, additional inspection fees will be charged in accordance with Council's current Fees & Charges.

The applicant is to advise Council at least 48 hours prior to inspection of works within the footpath and/or road reserve.

56. Certification of Fire Services

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 OC.

The Final Fire Safety Certificate and the Fire Safety Schedule are to be prominently displayed in the building.

57. Parking – Completion

Car parking areas shall be completed prior to the issue of an OC.

58. Parking – Loading Facility Requirement

Loading/unloading facilities shall be constructed prior to the issue of an OC.

59. Disabled Access/Parking

The proposed development shall be provided with vehicular access and parking for the disabled in accordance with *AS 1428.1* and *AS 2890.6*. The access shall be provided prior to issue of an OC.

60. Parking – Kerb/Dwarf Wall

Kerbing or dwarf walls, having a minimum height of 100mm, shall be 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.

Construction shall be completed prior to the issue of an OC.

61. Parking – Maintenance

All parking and loading bays shall be permanently marked out on the pavement surface, prior to issue of an OC. All loading bays and visitor parking facilities shall be clearly indicated by signs.

62. Completion of Car Park

Prior to the issue of an *OC*, the *PC* must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant *AS* and the following have been implemented within the property, where applicable:

- a) The car park has been completed, line marked and all signage relating to car parking erected
- b) A notice has been clearly displayed at the Wollombi Road and Waratah Street frontage to indicate that visitor parking is available within the property, with access from Waratah Street
- c) Sign(s) have been erected that clearly indicate to the drivers of vehicles, both on and off the property, which driveway they are to use to enter or leave the subject land
- d) Sign(s) have been erected that clearly indicate to the drivers of vehicles, both on and off the property, the location and means of access to the car parking area(s)

Certification by a qualified practising Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance with the above and relevant *AS*'s must be provided to the *PC* prior to the issue of an *OC*.

63. Completion of Road Works

Prior to the issue of an *OC*, the *PC* must ensure that all approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with Council's S138 Roads Act Approval.

Works-as-Executed plans of the extent of roadworks, including any component of the stormwater drainage system that is to revert to Council, certified by a registered surveyor, together with certification by a qualified practising Civil Engineer, to verify that the works have been constructed in accordance with the approved design and relevant *AS*, must be provided to Council prior to the issue of an *OC*.

The Works-as-Executed plan(s) must show the as-built details in comparison to those shown on the plans approved with the road works permit. All relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

64. Completion of Landscape Works

All landscape works, including the removal of all noxious weed species, are to be undertaken in accordance with the approved landscape plan and conditions of Development Consent, prior to the issue of an *OC*.

65. Positive Covenant – OSD

Prior to the issue of an *OC*, a positive covenant must be created under Section 88E of the *Conveyancing Act 1919*, burdening the owner(s) with the requirement to maintain the onsite detention and onsite retention/re-use facilities on the property.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a) The proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the onsite stormwater detention facilities (“OSD”).
- b) The proprietor shall have the OSD inspected annually by a competent person.
- c) The Council shall have the right to enter upon the land referred to above, at all reasonable times, to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures which comprise the OSD, or which convey stormwater from the said land, and recover the costs of any such works from the proprietor.
- d) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD, or failure to clean, maintain and repair the OSD.

The proprietor, or successor, must bear all costs associated with the preparation of the subject 88E instrument. Proof of registration with the NSW Department of Lands must be submitted to, and approved by, the *PC* prior to the issue of an *OC*.

66. New Stormwater System Proposed

Prior to the issue of an *OC*, the *PC* must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant *AS*.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a licensed plumber or qualified practising civil engineer, that the drainage system has been constructed in accordance with the approved design and relevant *AS*, must be provided to the *PC* prior to the issue of an *OC*.

67. Works-As-Executed Plan

Two (2) copies of a *WAE* plan prepared by a registered surveyor (both marked up in red), must be submitted to, and approved by, the *PC*, clearly showing all aspects of the constructed drainage and / or *OSD*. The plan must include:

- a) Sufficient levels and dimensions to verify the constructed storage volumes
- b) Location and surface levels of all pits
- c) Invert levels of the tanks, internal drainage line, orifice plates fitted, and levels within the outlet control pit
- d) Finished floor levels of all structures and driveways
- e) Verification that trash screens and/or GPTs have been installed
- f) Locations and levels of any overland flow paths
- g) The *WAE* plan information should be shown on a stamped copy of the approved civil works drawings
- h) Surface levels of pits and surrounding ground levels
- i) Levels of spillways and surrounding kerb
- j) Floor levels of buildings, including garages

- k) Top of kerb levels at the front of the lot
- l) Dimensions of stormwater basins and extent of inundation
- m) 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 PC prior to the issue of an OC.

68. Compliance with Acoustic Report

Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Reverb Acoustics Pty Ltd, dated June 2022.

Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Certifier prior to the issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

ONGOING USE

The following conditions are to be complied with as part of the ongoing use of the premises.

69. Operational Procedure Requirements

All operational procedures as outlined in the approved Plan of Management (dated December 2021), are to be adhered to in perpetuity.

70. Submission of Annual Fire Safety Statement

An annual Fire Safety Statement must be given to Council and the New South Wales Fire Brigade commencing within twelve (12) months after the date on which the initial Interim / Final Fire Safety Certificate is issued.

71. Outdoor Lighting

All outdoor lighting must not detrimentally impact upon the amenity of other premises and adjacent dwellings and road reserve, and must comply with, where relevant, *AS 1158.3:2005 Lighting for roads and public spaces – Pedestrian Area (Category P) lighting – Performance* and design requirements and *AS 4282:1997 Control of the obtrusive effects of outdoor lighting*.

72. No painting or rendering of masonry or stone

No painting or rendering shall be permitted to masonry or stone surfaces which have not previously been painted or rendered

73. Loading to Occur on-site

All loading and unloading operations are to be carried out wholly within the site, and not from the footpath or roadway for the life of the development.

The loading dock must be used in connection with the approved use.

All loading and unloading operations must be carried out via the entrance in Waratah Street.

74. Noise Complaints

Where a noise complaint is received by Council from a place of different occupancy and the noise source is proven by a Council Officer to be non-compliant, the Council may employ a consultant to measure noise emanating from the property, and to recommend (if necessary) appropriate actions to ensure compliance.

The consultant must be a member of the Australian Acoustical Society, Engineers Australia, or the Association of Australian Acoustical Consultants. The cost of such appointment and associated work shall be borne by the applicant, who shall also ensure the recommendations of the acoustic consultant are implemented.

75. Hours of Operation

The use of the outdoor dining area/beer garden is subject to the following hours of operation:

- Monday to Sunday: 7:00am to midnight

76. Plan of Management

The Plan of Management is to be a working document which is required to be reviewed on an annual basis.

The Plan of Management is to be kept onsite and provided to Council Officers for review, upon request.

77. Complaint/Incident Register Kept Onsite

Formulation and implementation of a complaints/incident handling register detailing the following (at a minimum):

- Name of the person responsible for the overall management of the site and their contact mobile phone number;
- Confirmation that the mobile phone of the person responsible for the overall management of the site will remain switched on during extended trading hours;
- Details of each complainant including name, address, contact details, time and nature of the complaint;
- Action undertaken to address the complaint;
- Follow up contact with the complainant to advise of outcome of action taken to address the complaint;

- All incidents of damage to property;
- All incidents involving criminal/antisocial behaviour on the site; and
- Implementation of any relevant actions to ensure similar issues do not re-occur.

In the event the register is updated, this is to be done within seven (7) days of the complaint / incident occurring.

The complaints handling register is to be kept on the site at all times, and made available to Council officers for inspection, if required.

78. Orderly Dispersal of Patrons

The proprietors of the venue are responsible at all times for the orderly dispersal of patrons from the venue.

79. Management Responsibilities for Patron Behaviour

Management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. Management is responsible for the control of noise and litter generated by patrons of the premises, and shall ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council.

80. No Amplified Music/Entertainment in Outdoor Area

No amplified music/entertainment is permitted to be played in the outdoor area.

ADVISORY NOTES

(a) Disability Inclusion Act

This application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979*. No guarantee is given that the proposal complies with the *Disability Inclusion Act 2014*. The applicant/owner is responsible for ensuring compliance with this, and other, anti-discrimination legislation. The *Disability Inclusion Act 2014* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references *AS 1428.1 - Design for Access and Mobility*. *AS1428 Parts 2, 3 & 4* provide the most comprehensive technical guidance under the *Disability Inclusion Act 2014* currently available in Australia.

(b) “DIAL BEFORE YOU DIG” DIAL 1100

Before any excavation work starts, contractors and others should phone the “Dial Before You Dig” service to access plans/information for underground pipes and cables. www.dialbeforeyoudig.com.au

(c) Other Approval and Permits

The applicant shall apply to Council for all necessary permits including crane permits, road opening permits, hoarding or scaffolding permits, footpath occupation permits, and/or any other approvals under *Section 68 (Approvals)* of the *Local Government Act, 1993* or *Section 138 of the Roads Act, 1993*.

(d) Site Contamination Issues during Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about site contamination, Council must be immediately notified by the applicant, and works must cease. Works must not recommence on site until approval is granted by Council.

(e) Impact of Below Ground (Sub-surface) Works – Non-Aboriginal Relics

If any archaeological relics are uncovered during the course of the work, all works shall cease immediately in that area, and the OEH Heritage Branch shall be contacted. Depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the *NSW Heritage Act 1977*, may be required before further works can continue in that area.

(f) Aboriginal Heritage

As required by the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the Heritage Division of the Office of Environment and Heritage (OEH) must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *Heritage Act 1977* to obtain the necessary approvals/permits from the Heritage Division of the OEH.

Note: The *National Parks and Wildlife Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and/or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

PLANNING AND ENVIRONMENT NO. PE66/2022

**SUBJECT: OUTCOME OF PUBLIC EXHIBITION - PLANNING PROPOSAL
18/2021/6 TO AMEND CESSNOCK LEP CONSERVATION ZONES**

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Sander
336

RESOLVED

- 1. That Council endorses the Planning Proposal as an amendment to the Cessnock Local Environmental Plan 2011.**
- 2. That the General Manager notify submission makers of Council's decision.**

FOR

AGAINST

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hawkins
Councillor Paynter
Councillor Olsen
Councillor Jurd
Councillor Suvaal

Total (11)

Total (0)

CARRIED UNANIMOUSLY

PLANNING AND ENVIRONMENT NO. PE67/2022

SUBJECT: URBAN GROWTH MANAGEMENT PLAN - INTERIM REVIEW

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Grine
337
RESOLVED

1. That Council notes and adopt the issues raised in the submissions received during the exhibition period.
2. That Council notes and adopts the Urban Growth Management Plan.
3. That Council amend table 2 and the associated calculation in table 9 of the Revised Urban Growth Management Plan to indicate that in 21/22 there is 15 years supply in Commuter Urban Category.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

PLANNING AND ENVIRONMENT NO. PE68/2022

SUBJECT: HUNTLEE PLANNING AGREEMENT DRAFT DEED OF VARIATION 3

Councillor Hill returned to the meeting, the time being 7.44pm

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Sander
338

RESOLVED

1. That Council publicly notify the Draft Third Deed of Variation to the Planning Agreement for Huntlee Stage 1 for a minimum period of 28 days.
2. That Council delegate authority to the General Manager to execute the Deed of Variation unless unresolved written objections are received during the notification period.

FOR	AGAINST
Councillor Jackson	Councillor Jurd
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Suvaal	
Total (11)	Total (1)

CARRIED

PLANNING AND ENVIRONMENT NO. PE69/2022

SUBJECT: AGRITOURISM PLANNING REFORMS

Councillor Hawkins left the meeting, the time being 7.46pm

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke

339

RESOLVED

1. **That Council advise the Department of Planning and Environment that Council:**
- (a) **confirms the inclusion of “agritourism” as a permissible land use within the RU2 Rural Landscape and RU4 Primary Production Small Lots zones within *Cessnock Local Environmental Plan 2011*;**
 - (b) **no longer seeks to incorporate optional Clause 5.24 within *Cessnock Local Environmental Plan 2011*; and**
 - (c) **seeks the entirety of the RU4 Primary Production zone to be mapped on the Agritourism and Farm Stay Accommodation Exempt and Complying Development Map to prohibit exempt and complying development for the purposes of Agritourism within the zone.**

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (11)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY

CORPORATE AND COMMUNITY NO. CC87/2022

SUBJECT: ANNUAL REPORT 2021-22

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Sander
340
RESOLVED

1. That Council receives and notes the Annual Report for 2021-22.
2. That Council notes the Annual Report has been posted on Councils website.
3. That Council notes the link to the Annual Report has been forwarded to the Minister for Local Government as required by Section 428 of the *Local Government Act 1993*.

FOR	AGAINST
Councillor Jackson	Councillor Jurd
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Paynter	
Councillor Olsen	
Councillor Suvaal	
Total (10)	Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC88/2022

SUBJECT: SEPTEMBER 2022 REVIEW OF THE 2022-26 DELIVERY PROGRAM

Councillor Hawkins returned to the meeting, the time being 7.487pm

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Hill
341

RESOLVED

- 1. That Council notes the progress in implementing the 2022-26 Delivery Program as at 30 September 2022.**
- 2. That Council approves changes to the Operational Plan actions and targets as outlined in the report.**

FOR	AGAINST
Councillor Jackson	Councillor Jurd
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Suvaal	
Total (11)	Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC89/2022

SUBJECT: QUARTERLY BUDGET REVIEW STATEMENT - SEPTEMBER 2022

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Dunn
342
RESOLVED

1. That Council receives the September 2022 Quarterly Budget Review Statement in accordance with Clause 203 of the Local Government (General) Regulation 2021.
2. That Council notes that the September 2022 Quarterly Budget Review Statement reflects a forecast operating surplus for the year of \$39.7m or \$14,393 excluding capital income.
3. That Council notes that the September 2022 Quarterly Budget Review Statement reflects a forecast capital expenditure budget of \$73.5m.
4. That Council approves proposed changes to the 2021-22 operating and capital budgets as presented in the Quarterly Business Report September 2022.
5. That Council notes that the Quarterly Budget Review Statement forecasts five of the six key performance indicators will exceed Office of Local Government benchmarks.

FOR	AGAINST
Councillor Jackson	Councillor Jurd
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Suvaal	
Total (11)	Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC90/2022

SUBJECT: SCHEDULE OF ORDINARY MEETINGS OF COUNCIL FOR 2023

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Hill
343
RESOLVED

That Council adopts the schedule of Ordinary Meetings of Council for 2023:

15 February 2023	15 March 2023	19 April 2023
17 May 2023	21 June 2023	19 July 2023
16 August 2023	20 September 2023	18 October 2023
15 November 2023	13 December 2023	

FOR

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Jurd
Councillor Suvaal
Total (11)

AGAINST

Councillor Olsen

Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC91/2022

SUBJECT: WARD BOUNDARIES - VARIATION IN ENROLMENTS - UPDATE

MOTION **Moved:** Councillor Sander **Seconded:** Councillor Burke
344
RESOLVED

1. That Council acknowledges that an elector enrolment variation of greater than 10% currently exists with the variation as at 20 September 2022 being 18.82%.
2. That Council keeps the elector enrolment variation under review and if the variation still exists at the end of the first year of the new Council term (December 2022) Council then commence the process to alter the ward boundaries for effect at the 2024 Council election.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC92/2022

SUBJECT: MINUTES OF THE STRATEGIC PROPERTY & COMMUNITY FACILITIES COMMITTEE MEETING HELD 26 OCTOBER 2022

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Dunn
345

RESOLVED

1. That the Minutes of the Strategic Property and Community Facilities Committee of 26 October 2022 be adopted as a resolution of the Ordinary Council.
2. That Council enters into an in-principle agreement expiring 31 December 2023 to sell lots 14, 15 and 16 in DP15069 to the proponent subject to the successful grant funding submission by the proponent.
3. That Council defer the sale of properties in Cessnock Street, Aberdare to allow for further discussion around affordable housing options.
4. That the General Manager provide a report to the Strategic Property & Community Facilities Committee outlining the options and funding opportunities to provide affordable housing on Council owned land within the Cessnock Local Government Area.
5. That Council subject to completion of any action detailed in the report to Strategic Property & Community Facilities Committee to prepare property for sale, authorise the sale by private treaty of the following land:
 - Lot 8 DP 255269 - 10 Redgrove Court East Branxton;
 - Lot 9 DP 253077 - 1A Lee-ann Crescent Cessnock;
 - Lot 1 DP 38256810 - Embelton Street Weston;
 - Lot 20 Sec D DP 1846 - 45 Yates Street East Branxton.
6. That authority is granted to the General Manager to negotiate the sale of Lot 8 DP 255269 - 10 Redgrove Court East Branxton; Lot 9 DP 253077 - 1A Lee-ann Crescent Cessnock; Lot 1 DP 38256810 - Embelton Street Weston; and Lot 20 Sec D DP 1846 - 45 Yates Street East Branxton, for not less than 95% of a current market valuation prepared by a certified practicing valuer and execute all relevant documentation to effect the transaction.
7. That the net proceeds of the sales of Lot 8 DP 255269 - 10 Redgrove Court East Branxton; Lot 9 DP 253077 - 1A Lee-ann Crescent Cessnock; Lot 1 DP 38256810 - Embelton Street Weston; and Lot 20 Sec D DP 1846 - 45 Yates Street East Branxton are to be credited to the Property Investment Fund and allocated in accordance with the Property Investment & Development Policy.

FOR

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Olsen
Councillor Suvaal

Total (11)**AGAINST**

Councillor Jurd

Total (1)***CARRIED***

CORPORATE AND COMMUNITY NO. CC93/2022

SUBJECT: INVESTMENT REPORT - OCTOBER 2022

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Hill
346
RESOLVED

That Council receives the Investment Report for October 2022 and notes that:

- **Investments are held in accordance with Council’s Investment Policy, which is in accordance with the Ministerial Investment Order.**
- **Council’s month end cash and investments balance was \$79,515,632.**

FOR	AGAINST
Councillor Jackson	Councillor Jurd
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Suvaal	
Total (11)	Total (1)

CARRIED

CORPORATE AND COMMUNITY NO. CC94/2022

SUBJECT: RESOLUTIONS TRACKING REPORT

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Grine
347
RESOLVED

That Council receives the report and notes the information in the Resolutions Tracking Report.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE

WORKS AND INFRASTRUCTURE NO. WI71/2022

SUBJECT: TENDER T2023-05 CAMP ROAD GRETA - ROAD CONSTRUCTION

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Hill

348

RESOLVED

1. That Council declines to accept any Tender for the construction of 410m of Camp Road Greta.
2. That Council notes the proposed adjustment of the pavement design that will allow the works to be delivered internally providing the most cost effective outcome based on the approved project budget.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE NO. WI72/2022

SUBJECT: NOTES OF THE INQUORATE COMMUNITY ENGAGEMENT, AWARDS AND GRANTS COMMITTEE MEETING HELD 20 OCTOBER 2022

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Sander

1. That the notes from the inquorate meeting of the Community Engagement, Awards and Grants Committee held on 20 October 2022 be noted.
2. That the Dollar for Dollar Grant Scheme Guidelines be reviewed in preparation for the 2023-2024 funding round and to be considered includes in-kind contributions and application funding amount limits.
3. That Council provides funds through the Community Facilities - Dollar for Dollar Grant Scheme to:
 - Abermain Plaza Hall Section 355 Committee in the amount of \$6,522
 - Branxton Community Hall Section 355 Committee in the amount of \$186
 - Coalfields Local History Association Inc. in the amount of \$886
 - Crawfordville Community Hall, Millfield Section 355 Committee in the amount of \$3,000.
 - Wollombi Valley Progress Association in the amount of \$1,047
4. That Council advertises a second round of the Community Facilities Dollar for Dollar Grant Scheme in early 2023 with the surplus funding of \$18,359.
5. That Council provides funds through the Sporting Facilities - Dollar for Dollar Grant Scheme to:
 - Cessnock Dog Club in the amount of \$3,474
 - Cessnock Rugby League Football Club in the amount of \$9,091
 - Greta Branxton Colts Rugby League Football Club in the amount of \$3,636
 - Wollombi Valley Pony Club in the amount of \$3,636
 - Wollombi Valley Tennis & Sports Association in the amount of \$2,553
6. That Council advertises a second round of the Sporting Facilities - Dollar for Dollar Grant Scheme in early 2023 with the surplus funding of \$7,610
7. That Council provides funds through the Community and Cultural Development - Dollar for Dollar Grant Scheme to:
 - Central Hunter Community Broadcasters (2CHR) in the amount of \$1,400
 - The Spirit of Giving Fundraising Hub Inc in the amount of \$3,000
 - Rotary Club of Cessnock in the amount of \$2,111.14
 - Cessnock Seniors Citizens Association in the amount of \$800
 - Cessnock District Rescue Squad in the amount of \$2,836.37
 - Early Links Inclusion Support Service in the amount of \$1,467.27
 - Abermain Eisteddfod Society in the amount of \$3,000

- Richmond Vale Railway Museum in the amount of \$900
 - Sculpture in the Vineyards in the amount of \$3,000
8. That the remaining \$15,170.22 funds from the Community and Cultural Development - Dollar for Dollar Grant Scheme be allocated at the next Quarterly Budget Review to Council's 2022-2023 community and cultural development programs supporting for example Seniors Festival, NAIDOC Week, Youth Week, Reconciliation Week, Carols in the Park.
 9. That the Committee undertake a review of the Dollar for Dollar Grant Scheme Guidelines for Community and Cultural Development to enhance opportunities for local community groups to make an application for project funding.
 10. That the General Manager writes to all applicants advising them of the outcome of their application and thanking them for their contribution, ongoing support and commitment to the enhancement of community facilities, sporting facilities, community, arts and culture, in the Cessnock Local Government Area.

AMENDMENT Moved: Councillor Olsen **Seconded:** Councillor Jurd

That the report be sent back to the Committee for a full quorum to consider.

FOR	AGAINST
Councillor Paynter	Councillor Jackson
Councillor Olsen	Councillor Moores
Councillor Jurd	Councillor Dunn
	Councillor Burke
	Councillor Grine
	Councillor Sander
	Councillor Hill
	Councillor Hawkins
	Councillor Suvaal
Total (3)	Total (9)

The Amendment was PUT and LOST.

The Motion was then PUT and CARRIED.

MOTION Moved: Councillor Burke **Seconded:** Councillor Sander

349

RESOLVED

1. That the notes from the inquorate meeting of the Community Engagement, Awards and Grants Committee held on 20 October 2022 be noted.
2. That the Dollar for Dollar Grant Scheme Guidelines be reviewed in preparation for the 2023-2024 funding round and to be considered includes in-kind contributions and application funding amount limits.
3. That Council provides funds through the Community Facilities - Dollar for Dollar Grant Scheme to:
 - Abermain Plaza Hall Section 355 Committee in the amount of \$6,522
 - Branxton Community Hall Section 355 Committee in the amount of \$186

- Coalfields Local History Association Inc. in the amount of \$886
 - Crawfordville Community Hall, Millfield Section 355 Committee in the amount of \$3,000.
 - Wollombi Valley Progress Association in the amount of \$1,047
4. That Council advertises a second round of the Community Facilities Dollar for Dollar Grant Scheme in early 2023 with the surplus funding of \$18,359.
 5. That Council provides funds through the Sporting Facilities - Dollar for Dollar Grant Scheme to:
 - Cessnock Dog Club in the amount of \$3,474
 - Cessnock Rugby League Football Club in the amount of \$9,091
 - Greta Branxton Colts Rugby League Football Club in the amount of \$3,636
 - Wollombi Valley Pony Club in the amount of \$3,636
 - Wollombi Valley Tennis & Sports Association in the amount of \$2,553
 6. That Council advertises a second round of the Sporting Facilities - Dollar for Dollar Grant Scheme in early 2023 with the surplus funding of \$7,610
 7. That Council provides funds through the Community and Cultural Development - Dollar for Dollar Grant Scheme to:
 - Central Hunter Community Broadcasters (2CHR) in the amount of \$1,400
 - The Spirit of Giving Fundraising Hub Inc in the amount of \$3,000
 - Rotary Club of Cessnock in the amount of \$2,111.14
 - Cessnock Seniors Citizens Association in the amount of \$800
 - Cessnock District Rescue Squad in the amount of \$2,836.37
 - Early Links Inclusion Support Service in the amount of \$1,467.27
 - Abermain Eisteddfod Society in the amount of \$3,000
 - Richmond Vale Railway Museum in the amount of \$900
 - Sculpture in the Vineyards in the amount of \$3,000
 8. That the remaining \$15,170.22 funds from the Community and Cultural Development - Dollar for Dollar Grant Scheme be allocated at the next Quarterly Budget Review to Council's 2022-2023 community and cultural development programs supporting for example Seniors Festival, NAIDOC Week, Youth Week, Reconciliation Week, Carols in the Park.
 9. That the Committee undertake a review of the Dollar for Dollar Grant Scheme Guidelines for Community and Cultural Development to enhance opportunities for local community groups to make an application for project funding.
 10. That the General Manager writes to all applicants advising them of the outcome of their application and thanking them for their contribution, ongoing support and commitment to the enhancement of community facilities, sporting facilities, community, arts and culture, in the Cessnock Local Government Area.

FOR

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Suvaal
Total (9)

AGAINST

Councillor Paynter
Councillor Olsen
Councillor Jurd

Total (3)

CARRIED

WORKS AND INFRASTRUCTURE NO. WI73/2022

SUBJECT: MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING HELD 17 OCTOBER 2022.

Councillor Hawkins declared a Non Pecuniary Less Than Significant Conflict for the reason that he lives in the vicinity of the school in Item TC40/2022. Councillor Hawkins remained in the Chamber and participated in discussion and voting.

MOTION **Moved:** Councillor Hill **Seconded:** Councillor Burke
350

RESOLVED

1. **That the Minutes of the Cessnock Local Traffic Committee Meeting of 17 October 2022 excluding TC40/2022 be adopted as a resolution of the Ordinary Council.**
 - **TC39/2022 - That Council authorises the temporary regulation of traffic on Broke Road, McDonalds Road, Palmers Lane and Wine Country Drive, Pokolbin for A Day on the Green in accordance with Various Roads Pokolbin _ A Day on the Green Traffic Control Plans.**
 - **TC41/2022 - That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads Huntlee Stages 32 – 33 – 34 - 42 _ Signage & Line Marking Diagrams.**
 - **TC42/2022 - That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads Huntlee Stage 4 _ Signage & Line Marking Diagrams.**
2. **That Council not endorse TC40/2022 noting concerns around the one way street and revert to previously approved TC49/2021.**

Councillor Jackson left the meeting, the time being 8.18pm

Councillor Jackson returned to the meeting, the time being 8.25pm

Councillor Paynter left the meeting, the time being 8.26pm

FOR

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Suvaal
Total (9)

AGAINST

Councillor Olsen
Councillor Jurd

Total (2)

CARRIED

BUSINESS OF WHICH WRITTEN NOTICE HAS BEEN GIVEN

BUSINESS WITH NOTICE NO. BN31/2022

SUBJECT: GROWING TEMPORARY EVENTS

WITHDRAWN

BUSINESS WITH NOTICE NO. BN32/2022

SUBJECT: MAYORAL CAR

Councillor Paynter returned to the meeting, the time being 8.30pm

MOTION **Moved:** Councillor Olsen **Seconded:** Councillor Jurd

When the Mayor is performing his duties in another role other than Mayor of Cessnock, the Mayoral Car is passed onto the Deputy Mayor to fulfil the roles required as Acting Mayor.

FOR

Councillor Olsen
Councillor Jurd

Total (2)

AGAINST

Councillor Jackson
Councillor Moores
Councillor Dunn
Councillor Burke
Councillor Grine
Councillor Sander
Councillor Hill
Councillor Hawkins
Councillor Paynter
Councillor Suvaal

Total (10)

The Motion was PUT and LOST.

BUSINESS WITH NOTICE NO. BN33/2022

SUBJECT: PERMANENT SECURITY CCTV CAMERAS - HUNTLEE DISTRICT PARK

Councillor Jurd sought leave to move the Motion on behalf of Councillor Watton.

The Mayor advised that leave was granted to do that.

MOTION Moved: Councillor Jurd **Seconded:** Councillor Olsen
351

RESOLVED

That the General Manager:

- 1. Liaise, support and work alongside LWP (Huntlee), to install a fully operational, CCTV Security Camera System within the new Huntlee District Park (similar to Bridges Hill Park);**
- 2. Research appropriate, relevant grants that may be able to assist in further protecting this community asset with said surveillance technology**

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

CORRESPONDENCE

CORRESPONDENCE NO. CO21/2022

SUBJECT: CC58/2022 - ACCOUNTING TREATMENT - RURAL FIRE SERVICE FLEET

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Sander
352
RESOLVED

That Council notes the correspondence received from the Hon. Wendy Tuckerman MP, Minister for Local Government and Jamie Parker, MP – Greens Spokesperson for Local Government, in response to Council’s request to support NSW Councils’ call to amend the *Rural Fires Act 1997*.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

CORRESPONDENCE NO. CO22/2022

SUBJECT: BN21/2022 - ADDRESSING HOMELESSNESS AND BASIC SERVICES FOR THE NEEDY IN CESSNOCK LGA

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
353
RESOLVED

That Council notes the correspondence received from the Hon Natasha Maclaren-Jones MLC, Minister for Families and Communities, Disability Services.

FOR	AGAINST
Councillor Jackson	
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Olsen	
Councillor Jurd	
Councillor Suvaal	
Total (12)	Total (0)

CARRIED UNANIMOUSLY

COUNCILLORS REPORTS

NIL

The Meeting Was Declared Closed at 8.57pm

CONFIRMED AND SIGNED at the meeting held on 14 December 2022

.....**CHAIRPERSON**

.....**GENERAL MANAGER**

Disclosures Of Interest

Report No. DI11/2022

Corporate and Community Services



SUBJECT: *DISCLOSURES OF INTEREST*

RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*

RECOMMENDATION

That Councillors now disclose any interests and reasons for declaring such interest in the matters under consideration by Council at this meeting.

SUMMARY

The provisions of Chapter 14 of the Local Government Act, 1993 regulate the way in which Councillors and nominated staff of council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions, voting on that matter, and require that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

ENCLOSURES

There are no enclosures for this report.

Notice of Intention to Deal With Matters in Confidential Session

Report No. NI7/2022

Corporate and Community Services



SUBJECT: *NOTICE OF INTENTION TO DEAL WITH MATTERS IN CONFIDENTIAL SESSION.*

REPORT CC96/2022 - BLACK CREEK CHANNEL LAND ACQUISITION

RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*

RECOMMENDATION

1. That Council considers in Confidential Session the following matters in accordance with Sections 10A (2) (c) of the *Local Government Act 1993*:

Report CC96/2022 – Black Creek Channel Land Acquisition as the report deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
2. That Council requests the Mayor in accordance with Clause 14.22 of Councils Code of Meeting Practice to report on these matters to the meeting in Open Session following completion of the Confidential Session.

SUMMARY

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in Confidential Session. The reports are incorporated in the “Confidential” business paper which has been circulated to Councillors.

Section 10A of the *Local Government Act 1993* requires the General Manager to identify those matters listed on the business paper which may be categorised as confidential as per the Act.

ENCLOSURES

There are no enclosures for this report.

Mayoral Minute

Report No. MM17/2022

General Manager's Unit



MAYORAL MINUTE No. MM17/2022

SUBJECT: MINUTES OF THE ORGANISATIONAL AND GENERAL MANAGERS PERFORMANCE REVIEW COMMITTEE MEETING HELD ON 9 NOVEMBER 2022

RECOMMENDATION

That the Minutes of the Organisational and General Managers Performance Review Committee of 9 November 2022 be adopted as a resolution of the Ordinary Council.

MINUTES OF THE ORGANISATIONAL AND GENERAL MANAGERS PERFORMANCE REVIEW COMMITTEE MEETING OF CESSNOCK CITY COUNCIL HELD ON 9 NOVEMBER 2022, COMMENCING AT 2.04PM

PRESENT: The Mayor, Councillor Suvaal
Councillors Dunn and Grine

IN ATTENDANCE: Christian Morris, LGLNSW
Darrylen Allan – Human Resource Manager
Councillors Jurd, Sander and Hill
Belinda McNab – Executive Assistant to Mayor (Minute taker)

APOLOGIES: Councillors Olsen, Burke and Paynter

LISTED MATTERS

- a. General Managers performance Agreement – Christian Morris
- b. Draft Organisational Structure review – Ken Liddell

Councillor Moores arrived at 2:25pm

Mayoral Minute

Report No. MM17/2022

General Manager's Unit



RESOLUTIONS

1. That the committee noted the process for setting General Manager performance agreement. Next meeting to be held 30 November to finalise performance agreement.

Moved: Councillor Dunn

Seconded: Councillor Grine

2. The committee endorses retention and support continuation of 3 Directorate structure as outlined by the General Manager.

Moved: Councillor Dunn

Seconded: Councillor Grine

GENERAL BUSINESS

NIL

..... **CHAIRMAN**

Meeting Closed at 2.56 pm.

ENCLOSURES

There are no enclosures for this report.

Mayoral Minute

Report No. MM18/2022

General Manager's Unit



MAYORAL MINUTE No. MM18/2022

SUBJECT: MINUTES OF THE ORGANISATIONAL AND GENERAL MANAGERS PERFORMANCE REVIEW COMMITTEE MEETING HELD ON 30 NOVEMBER 2022

RECOMMENDATION

That the Minutes of the Organisational and General Managers Performance Review Committee of 30 November 2022 be adopted as a resolution of the Ordinary Council.

MINUTES OF THE ORGANISATIONAL AND GENERAL MANAGER'S REVIEW COMMITTEE MEETING OF CESSNOCK CITY COUNCIL HELD ON 30 NOVEMBER 2022, COMMENCING AT 3.32PM

PRESENT: The Mayor, Councillor Jay Suvaal (Chair)
Councillors Dunn (via Teams) and Grine

IN ATTENDANCE: Darrylen Allan – Human Resource Manager
Councillors, Sander, Hill, Olsen, Burke and Paynter. Councillor Moores arrived at 3:50pm
Belinda McNab – Executive Assistant to Mayor (Minute taker)
Christian Morris – LGNSW via Teams (for listed matter a.)

APOLOGIES:

LISTED MATTERS

- a. General Managers Performance Agreement Draft document review

RESOLUTIONS

1. That the committee endorses the Mayor to finalise documentation in relation to the General Manager's Performance Agreement in consultation with General Manager.

Moved: Councillor Burke

Seconded: Councillor Grine

GENERAL BUSINESS

NIL

..... **CHAIRMAN**

Meeting Closed at 4.43 pm.

ENCLOSURES

There are no enclosures for this report.

Motions of Urgency

Report No. MOU12/2022

Corporate and Community Services



SUBJECT: *MOTIONS OF URGENCY*

RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*

RECOMMENDATION

That Councillors now indicate if there are any matters of urgency which they believe should be conducted at this meeting of Council.

SUMMARY

Under Clause 10.5 of Council's Code of Meeting Practice, business may be transacted at a meeting of Council even *though* due notice of the business has not been given to the Councillors. This can only happen if a motion is passed to have the business transacted at the meeting, the Mayor rules that the business is of great urgency and the business notified in the agenda for the meeting has been disposed of.

Only the mover of such a motion can speak to the motion before it is put.

ENCLOSURES

There are no enclosures for this report.

General Manager's Unit
Report No. GMU32/2022
General Manager's Unit



SUBJECT: *MINUTES OF THE AUDIT AND RISK COMMITTEE MEETING HELD 8 NOVEMBER 2022*

RESPONSIBLE OFFICER: *Internal Auditor - Arun Varghese*

RECOMMENDATION

That the Minutes of the Audit and Risk Committee Meeting held 8 November 2022 be adopted as a resolution of the Ordinary Council.

MINUTES OF AUDIT & RISK COMMITTEE MEETING OF CESSNOCK CITY COUNCIL HELD IN ANTE ROOM ON TUESDAY, 8 NOVEMBER 2022, COMMENCING AT 9.30AM

PRESENT: Jennifer Hayes – Independent Chair
William Middleton – Independent Member
Damien Connor – Independent Member
Mayor Suvaal
Councillor Paynter

IN ATTENDANCE: Ken Liddell – General Manager
Robert Maginnity – Director Corporate & Community Services
Cameron Clark – Acting Director Works & Infrastructure
Darrylen Allan – Human Resources Manager
Arun Varghese – Internal Auditor
Matthew Plumridge – Chief Financial Officer (via Teams)
Robyn Keegan – Minute Taker

INVITEES: Kim Fatcher – Management Accountant
India Anderson – Senior Business Support Officer

APOLOGIES

Moved: Jenni Hayes **Seconded:** Mayor Suvaal

That Apologies are accepted from:

Furqan Yousuf – Audit NSW
Cameron Hume – External Auditor – RSM Australia
Peter Mickleson – Director Planning & Environment
Councillor Watton
Councillor Olsen

CARRIED UNANIMOUSLY

ACKNOWLEDGEMENT OF COUNTRY

The Independent Chair delivered an Acknowledgement of Country.

The Independent Chair advised the Committee that all reports are confidential.

CONFIRMATION OF MINUTES

MINUTES:

MOTION

Moved: Damien Connor
Seconded: Jenni Hayes

RESOLVED that the Minutes of the Audit & Risk Committee held on 9 August 2022, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

MOTION

Moved: Mayor Suvaal
Seconded: Jenni Hayes

RESOLVED that the Minutes of the Audit & Risk Committee held on 31 August 2022, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

MOTION

Moved: Mayor Suvaal
Seconded: Jenni Hayes

RESOLVED that the Minutes of the Extraordinary Audit & Risk Committee held on 27 October 2022, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

DISCLOSURES OF INTEREST

COMMITTEE DISCLOSURE OF INTEREST NO. ACCDI6/2022

SUBJECT: **DISCLOSURES OF INTEREST**

Nil

BUSINESS ARISING FROM THE MINUTES

SUBJECT: BUSINESS ARISING FROM THE PREVIOUS MINUTES AND RESOLUTIONS OUTSTANDING

MOTION ***Moved:*** Jenni Hayes ***Seconded:*** Damien Connor

RESOLVED

That the Audit and Risk Committee take the Resolutions and Actions from previous Audit and Risk Committee meetings as noted.

CARRIED UNANIMOUSLY

LISTED MATTERS

LISTED MATTERS - COMMITTEE NO. ACCLM30/2022

SUBJECT: REVIEW OF STATUTORY COMPLIANCE AND REPORTING PROTOCOL 2022

MOTION ***Moved:*** Bill Middleton ***Seconded:*** Councillor Paynter

RESOLVED

That the Audit and Risk Committee note the 2022 review of Council's Compliance and Reporting Protocol.

CARRIED UNANIMOUSLY

General Manager's Unit
Report No. GMU32/2022
General Manager's Unit



LISTED MATTERS - COMMITTEE NO. ACCLM31/2022

SUBJECT: REVIEW OF PRIVACY MANAGEMENT PLAN 2022

MOTION **Moved:** Jenni Hayes **Seconded:** Damien Connor

RESOLVED

That the Audit and Risk Committee notes the Privacy Management Plan 2022 and the actions taken by Council around privacy and personal information protection.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM32/2022

SUBJECT: COMPLIANCE MANAGEMENT REGISTER 2021-2022

MOTION **Moved:** Mayor Suvaal **Seconded:** Councillor Paynter

RESOLVED

That the Audit and Risk Committee notes the results of the Compliance Management Register during 2021–22.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM36/2022

SUBJECT: QUARTERLY BUDGET REVIEW STATEMENT - SEPTEMBER 2022

MOTION **Moved:** Jenni Hayes **Seconded:** Mayor Suvaal

RESOLVED

1. That the Audit and Risk Committee receives the Quarterly Budget Review Statement Q1 September 2022 and endorses its presentation to Council in accordance with Clause 203 of the Local Government (General) Regulation 2005.
2. That the Audit and Risk Committee notes that the Quarterly Budget Review Statement Q1 September 2022 reflects a forecast operating surplus for the year of \$39.7m or \$14,393 excluding capital income.

General Manager's Unit
Report No. GMU32/2022
General Manager's Unit



3. That the Audit and Risk Committee notes that the Quarterly Budget Review Statements Q1 September 2022 reflects a forecast full year capital works program of \$73.5m.
4. That the Audit and Risk Committee notes that the Quarterly Budget Review Statement Q1 September 2022 forecasts five out of six key performance indicators to exceed Office of Local Government benchmarks, with the Own Source Operating Revenue Ratio slightly below due to natural disaster grants.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM33/2022

SUBJECT: INTERNAL AUDIT REPORT NOVEMBER 2022

MOTION **Moved:** Jenni Hayes **Seconded:** Damien Connor

RESOLVED

That the Audit and Risk Committee notes:

- The Internal Audit Report for November 2022;
- That 3 recommendations were added and 11 recommendations were implemented during the period;
- That 57 recommendations are open as at 24 October 2022, with 18 overdue; and
- That no privacy breach reported during the Q1 2022-23.

CARRIED UNANIMOUSLY

Councillor Paynter left the meeting at 11.04am.

General Manager's Unit
Report No. GMU32/2022
General Manager's Unit



LISTED MATTERS - COMMITTEE NO. ACCLM34/2022

SUBJECT: 2022-01 DRIVES24 - INTERNAL AUDIT REPORT

MOTION **Moved:** Mayor Suvaal **Seconded:** Bill Middleton

RESOLVED

That the Audit and Risk Committee receives the DRIVES24 Internal Audit Report and notes that the audit is complete, in accordance with the Strategic Internal Audit Plan 2020-23, and that three recommendations were made.

CARRIED UNANIMOUSLY

LISTED MATTERS - COMMITTEE NO. ACCLM35/2022

SUBJECT: AUDIT AND RISK COMMITTEE SELF ASSESSMENT 2022

MOTION **Moved:** Mayor Suvaal **Seconded:** Jenni Hayes

RESOLVED

That the Audit and Risk Committee notes the results of the self-assessment performance review undertaken as per Clause 16 of its Charter.

CARRIED UNANIMOUSLY

The Meeting Was Declared Closed at 11.19am

PRESENTATION

Proposed Guidelines for Risk Management and Internal Audit for Local Government in NSW	Internal Auditor – Arun Varghese	Presentation only (10 minutes)
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The Presentation was completed at 11.35am

General Manager's Unit
Report No. GMU32/2022
General Manager's Unit



CONFIRMED AND SIGNED at the meeting held on 7 February 2023

.....**CHAIRPERSON**

.....**GENERAL MANAGER**

ENCLOSURES

There are no enclosures for this report.

General Manager's Unit
Report No. GMU33/2022
General Manager's Unit



SUBJECT: *AUDIT AND RISK COMMITTEE INDEPENDENT CHAIR*

RESPONSIBLE OFFICER: *Internal Auditor - Arun Varghese*

SUMMARY

This report provides information to Council regarding the re-appointment of the Independent Chair of Council's Audit and Risk Committee.

RECOMMENDATION

That Council notes the re-appointment of the Independent Chair of the Audit and Risk Committee.

BACKGROUND/REPORT

The Independent Chair of the Audit and Risk Committee was appointed in January 2020 for a three-year term ending 31 December 2022. Clause 8 of the Audit and Risk Committee Charter provides for the re-appointment of independent members by the General Manager for a subsequent term, provided the total period of continuous membership does not exceed eight years.

The current Chair has been re-appointment for another two years for the period from January 2023 to December 2024 with a remuneration of \$15,000 per annum (ex GST), including travel, for all meetings. The remuneration and the terms of appointment remains the same as the current appointment.

OPTIONS

Nil

CONSULTATION

General Manager
Director Corporate and Community Services

STRATEGIC LINKS

a. Delivery Program

The Audit and Risk Committee is crucial to the organisation's governance framework. The appointment of the Independent Chair will enable the committee to continue to operate effectively. This is in line with the community's desired outcome of "*Civic Leadership and Effective Governance.*"

b. Other Plans

NIL

IMPLICATIONS

a. Policy and Procedural Implications

The re-appointment was conducted in accordance with Audit and Risk Committee Charter.

b. Financial Implications

Funds are available within the internal audit budget.

c. Legislative Implications

Section 428A to the *Local Government Act 1993* mandates Councils to have an Audit, Risk and Improvement Committee.

d. Risk Implications

NIL

e. Environmental Implications

NIL

f. Other Implications

NIL

CONCLUSION

Council re-appointed the current Independent Chair for two years, from January 2023 to December 2024. This re-appointment is referred to Council for noting.

ENCLOSURES

There are no enclosures for this report.

General Manager's Unit
Report No. GMU34/2022
General Manager's Unit



SUBJECT: *ANNUAL CODE OF CONDUCT COMPLAINTS REPORT*
RESPONSIBLE OFFICER: *Human Resources Manager - Darrylen Allan*

SUMMARY

Under the Procedures for the Model Code of Conduct, Council's Complaints Coordinator must provide an Annual Code of Conduct Report to the Council and the NSW Office of Local Government on a range of code of conduct complaint statistics.

The purpose of this report is for Council to note the Annual Code of Conduct Complaints Report for the period 1 September 2021 to 31 August 2022.

RECOMMENDATION

That Council notes the Annual Code of Conduct Complaints Report for the period 1 September 2021 to 31 August 2022.

BACKGROUND

Under Part 11, Clause 11.1 of the Procedures for the Administration of the Code of Conduct, Council's Complaints Coordinator is required to provide a report to Council on Code of Conduct Complaints and statistics within 3 months of the end of September each year. The period covered in this Annual Code of Conduct Report is from 1 September 2021 to 31 August 2022.

Annual Code of Conduct Complaints statistics are also required to be provided to the NSW Office of Local Government by 31 December 2022.

REPORT/PROPOSAL

Table 1: Annual Code of Conduct Complaints Report

Number of Complaints			
1	a	The total number of complaints received in the period about councillors and the General Manager (GM) under the code of conduct	4
	b	The total number of complaints finalised in the period about councillors and the GM under the code of conduct	2
Overview of Complaints and Cost			
2	a	The number of complaints finalised at the outset by alternative means by the GM or Mayor	0
	b	The number of complaints referred to the Office of Local Government under a special complaints management arrangement	0
	c	The number of code of conduct complaints referred to a conduct reviewer	3
	d	The number of code of conduct complaints finalised at preliminary assessment by conduct reviewer	0
	e	The number of code of conduct complaints referred back to GM or Mayor for resolution after preliminary assessment by conduct reviewer	0
	f	The number of finalised code of conduct complaints investigated by a conduct reviewer	2
	g	The number of finalised code of conduct complaints investigated by a conduct review committee	0
	h	The number of finalised complaints investigated where there was found to be no breach	0
	i	The number of finalised complaints investigated where there was found to be a breach	2
	j	The number of complaints referred by the GM or Mayor to another agency or body such as the ICAC, the NSW Ombudsman, the Office or the Police	1
	k	The number of complaints being investigated that are not yet finalised	3

	I The total cost of dealing with code of conduct complaints within the period made about councillors and the GM including staff costs	\$65,650
Preliminary Assessment Statistics		
3	The number of complaints determined by the conduct reviewer at the preliminary assessment stage by each of the following actions:	
a	To take no action (clause 6.13(a) of the 2020 Procedures)	0
b	To resolve the complaint by alternative and appropriate strategies (clause 6.13(b) of the 2020 Procedures)	0
c	To refer the matter back to the GM or the Mayor, for resolution by alternative and appropriate strategies (clause 6.13(c) of the 2020 Procedures)	0
d	To refer the matter to another agency or body such as the ICAC, the NSW Ombudsman, OLG or the Police (clause 6.13(d) of the 2020 Procedures)	0
e	To investigate the matter (clause 6.13(e) of the 2020 Procedures)	3
Investigation Statistics		
4	The number of investigated complaints resulting in a determination that there was no breach , in which the following recommendations were made:	
a	That the council revise its policies or procedures	0
b	That a person or persons undertake training or other education (clause 7.40 of the 2020 Procedures)	0
5	The number of investigated complaints resulting in a determination that there was a breach in which the following recommendations were made:	
a	That the council revise any of its policies or procedures (clause 7.39 of the 2020 Procedures)	0
b	In the case of a breach by the GM, that action be taken under the GM's contract for the breach (clause 7.37(a) of the 2020 Procedures)	0
c	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 (clause 7.37(b) of the 2020 Procedures)	2

General Manager's Unit

Report No. GMU34/2022

General Manager's Unit



d	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 and that the matter be referred to OLG for further action (clause 7.37(c) of the 2020 Procedures)	0
6	Matter referred or resolved after commencement of an investigation (clause 7.20 of the 2020 Procedures)	0
Categories of misconduct		
7	The number of investigated complaints resulting in a determination that there was a breach with respect to each of the following categories of conduct:	
a	General conduct (Part 3)	2
b	Non-pecuniary conflict of interest (Part 5)	0
c	Personal benefit (Part 6)	0
d	Relationship between council officials (Part 7)	2
e	Access to information and resources (Part 8)	1
Outcome of determinations		
8	The number of investigated complaints resulting in a determination that there was a breach in which the council failed to adopt the conduct reviewers recommendation	0
9	The number of investigated complaints resulting in a determination that there was a breach in which the council's decision was overturned following a review by the Office	0

N/A

CONSULTATION

General Manager

STRATEGIC LINKS

a. Delivery Program

This report links to the Delivery Program; *Action 5.3.5 - Carry out governance functions, provide advice and conduct education programs to comply with legislation and best practice.*

b. Other Plans

Part 11, Clause 11.1 of the Procedures for the Administration of the Model Code of Conduct requires an Annual Code of Conduct Complaint Report to the Council and to the NSW Office of Local Government.

IMPLICATIONS

a. Policy and Procedural Implications

This Report is provided to ensure conformance to the Procedures for the Administration of the Model Code of Conduct published by the NSW Office of Local Government

b. Financial Implications

The cost of complaint handling is provided in the Table1 above (\$65,650).

c. Legislative Implications

N/A

d. Risk Implications

Providing this Annual Code of Conduct Complaint Report is considered to be effective open and transparent governance. This report is in keeping with Council's adopted strategic risk related to minimising NSW State Government Intervention.

e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

The report is provided for Council's information in accordance with the Procedures for the Administration of the Model Code of Conduct.

ENCLOSURES

There are no enclosures for this report.

General Manager's Unit
Report No. GMU35/2022
General Manager's Unit



SUBJECT: *RE-DETERMINATION OF COUNCIL'S ORGANISATION STRUCTURE*
AUTHOR: *Human Resources Manager - Darrylen Allan*

SUMMARY

The purpose of this report is to re-determine Council's organisation structure in accordance with Section 332 and 333 of the *Local Government Act 1993* (the Act).

RECOMMENDATION

- 1. That following review and consultation with the General Manager, Council has determined that the existing three (3) directorate organisational structure under the General Manager will remain.**
- 2. That the senior staff positions within Council remain unchanged being the General Manager, Director of Corporate and Community Services, Director of Planning and Environment and the Director of Works and Infrastructure.**

BACKGROUND

In accordance with Section 333 of the Act "the organisation structure may be re-determined by the Council from time to time. It must be re-determined within 12 months after any ordinary election of Council."

The ordinary local government elections took place on 4 December 2021. This report addresses the process Council has undertaken to review and redetermine the organisational structure as required by the Act.

REPORT

Section 332 and Section 333 of the Act contain provisions with respect to determining the organisational structure. In accordance with Section 333 of the Act "the organisation structure may be re-determined by the Council from time to time. It must be re-determined within 12 months after any ordinary election of Council."

Section 332 of the Act requires that;

- (1) A Council must, after consulting the general manager, determine the following-*
 - (a) the senior staff positions within the organisation structure of the council,*
 - (b) the roles and reporting lines (for other senior staff) of holders of senior staff positions,*
 - (c) the resources to be allocated towards the employment of staff.*

General Manager's Unit

Report No. GMU35/2022

General Manager's Unit



(1A) The general manager must, after consulting the council, determine the positions (other than the senior staff positions) within the organisation structure of the council.

Council's Organisational and General Manager's Performance Review Committee has responsibility for identifying the most appropriate and effective organisational structure capable of delivering strategic objectives of the organisation and making recommendations to Council of the senior staff positions within the organisational structure, the roles and reporting lines of senior staff positions and the resources to be allocated towards the employment of staff (undertaken as part of adopting the annual budget).

On 9 November 2022, the Organisational and General Manager's Performance Review Committee met to discuss the organisational structure. The General Manager presented a draft organisational structure (Confidential Enclosure 1) with no changes at the Director level, but the introduction of new resources at a Manager level in the areas of Asset Management and Media and Community Engagement and a new Business Improvement specialist. There are also some proposed changes in reporting lines to reduce the direct reports to the General Manager.

The Committee resolved to recommend to Council that the existing three (3) directorate organisational structure under the General Manager remain.

CONSULTATION

Executive Leadership Team
Management Team

Council has an obligation under the *Local Government (State) Award 2020* to consult with its employees and the unions to which they belong where a definite decision has been made to introduce changes to the organisation structure. The formal consultation process associated with this proposed structure will commence in February 2023 noting that there are no proposed redundancies only increased resources in the areas of Asset Management, Media and Community Engagement and Business Improvement.

The organisation structure was tabled at the 7 December 2022 Staff Consultative Committee as part of the consultation process.

STRATEGIC LINKS

a. Delivery Program

The Delivery Program 2022-2026 - *Civic Leadership and Effective Governance, 5.3.7 Continue to manage Council governance functions and statutory requirements.*

b. Other Plans

IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

Additional Employee Costs will be associated with the proposed new positions.

c. Legislative Implications

This Report is provided to ensure adherence with Section 332 and 333 of the *Local Government Act 1993*.

d. Risk Implications

N/A

e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

The organisation structure review is submitted for Council's consideration.

ENCLOSURES

- 1** Proposed Organisation Structure - *This matter is considered to be confidential under Section 10A(2) (a) of the Local Government Act, as it deals with personnel matters concerning particular individuals. (Proposed Organisation Structure)*

Planning and Environment

Report No. PE70/2022

Planning and Environment



SUBJECT: *DEVELOPMENT APPLICATION 8/2021/21939/1 PROPOSING A 327 LOT SUBDIVISION TO OCCUR IN 3 PHASES*

33 GOVERNMENT ROAD, CESSNOCK

RESPONSIBLE OFFICER: *Principal Development Planner - Sarah Hyatt
Development Services Manager - Janine Maher*

APPLICATION NUMBER:	8/2021/21939/1
PROPOSAL:	327 lot subdivision to occur in 3 phases
PROPERTY DESCRIPTION:	Lot 33 DP 1004648
PROPERTY ADDRESS:	33 Government Road, Cessnock
ZONE:	RU2 Rural Landscape / R2 Low Density Residential
OWNER:	Mr R M Davies
APPLICANT:	Land Specialists Pty Ltd

RECOMMENDATION

1. That:

- (i) Development Application No. 8/2021/21939/1 proposing a 327 lot subdivision to occur in 3 phases at Lot 33, DP 1004648, 33 Government Road Cessnock, be refused pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, for the reasons contained in this report.
- (ii) The reasons for the decision (having regard to any statutory requirements applying to the decision), are as follows:
 - Insufficient information has been submitted in order to undertake a full assessment of the development;
 - The proposal does not comply with the provisions of Clause 6.1 of the *Cessnock Local Environmental Plan 2011*. Accordingly, Council has no ability to grant consent to the proposal;

- Council is unable to lawfully consent to the proposed access through community land under the provisions of the *Local Government Act 1993*. In the absence of these access points, the subdivision has no legal and physical access; and
- The proposal is inconsistent with the provisions of Chapter E.12 Government Road Precinct of the Cessnock Development Control Plan 2010.

(iii) In considering community views, the following is relevant:

- The application was publicly exhibited in accordance with Council's Community Participation Plan resulting in one (1) submission being received.
- The issues raised in the submission may be relevant to the proposal, however, insufficient information has been submitted to enable a comprehensive assessment of the application. Accordingly, it has not been possible to draw informed conclusions as to the relevance of the issues identified by the objector.

(iv) The details contained above be publicly notified pursuant to Section 2.22 and Clause 20(2) of Schedule 1 of the *Environmental Planning and Assessment Act 1979*.

2. That Council notify in writing the persons who made a submission with regard to the proposed development, of Council's decision.

REASON FOR REPORT

Development Application No. 8/2021/21939/1 is being referred to Council for determination as the application was previously called-up by three (3) Councillors and subsequently considered by Council at their meeting of 20 April 2022.

PREVIOUS CONSIDERATION BY COUNCIL

At its meeting of 20 April 2022, Council considered a report relating to Development Application No. 8/2021/21939/1 (Report PE22/2022), proposing a 336 lot subdivision (at the time of referral to Council), at 33 Government Road, Cessnock.

At its meeting, Council resolved as follows:

'That the report be deferred to the next available meeting to allow for further discussion between the applicant and Council staff'.

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Following Council's consideration of the application, Council officers issued correspondence to the applicant on 26 April 2022 outlining the outstanding matters and offering to arrange a meeting to discuss the issues. Such meeting was held with the applicant on 17 May 2022. In addition, a subsequent meeting was held between Council's Director Planning and Environment, Development Services Manager, Principal Development Planner, and the applicant and their representative on 13 September 2022. Over the course of these meetings, the following items were discussed in relation to the application and outstanding information:

- Requirement to submit a detailed site investigation report in relation to contamination,
- Additional survey work required to be undertaken in relation to ecology,
- A koala SEPP assessment in accordance with the relevant State Environmental Planning Policy,
- Amended landscape plan demonstrating appropriate plant species,
- Further details regarding cut/fill and final levels to achieve development above the 1% AEP,
- Land owner's consent for works over Council owned land, and
- Organising a subsequent meeting with Transport for NSW (TfNSW) to discuss traffic modelling and intersection requirements.

Following the initial meeting on 17 May 2022, the applicant was afforded to 3 June 2022 to submit outstanding information. It should be noted that following consideration of the matters previously raised, the resulting number of lots has reduced from 336 to 327 as shown in the amended subdivision plan attached to this report.

Following submission of the amended information, referrals were undertaken internally within Council, and externally to TfNSW for comment.

The following table outlines the matters required to be addressed and provides a discussion of the additional information submitted by the applicant, including a statement as to whether the issue has been addressed to Council's satisfaction:

Matters Raised	Consideration of additional information	Satisfactorily addressed?
Ecology		
Confirmation of Biodiversity Offset Agreement	Agreement was received from the Department of Planning Industry and Environment (DPIE) on the 22 February 2022, supporting the use of Clause 34A under the <i>Biodiversity Conservation Regulation 2017</i> . However, it has been confirmed that the Clause 34A agreement is not in place and a Voluntary Planning Agreement (VPA) is required in order to set aside the offset land.	No

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<p>Updated ecological assessment relevant to this specific development</p>	<p>An addendum to the 2008 Ecological Assessment Report (EAR) was submitted as per Council's request. An assessment of the additional information indicated two (2) additional matters required to be addressed:</p> <ul style="list-style-type: none"> • Consideration of off-site impacts within the total impact area assessed in the report, and • Inclusion of a 5-Part Test for the Heath Wrinklewort (<i>Rutidosia heterogama</i>). <p>Following a further request for clarification, it is considered that the development is sufficient from an ecology perspective provided a Clause 34A agreement is in place.</p>	<p>Partly, however a Clause 34A agreement is not in place</p>
<p>Consideration of <i>'Development adjacent to the National Parks and Wildlife Service Lands: Guidelines for consent and planning authorities'</i> (NPWS 2020)</p>	<p>The EAR has provided further comments in relation to the Guidelines. No further information is required.</p>	<p>Yes</p>
<p>Potential encroachment of the development on the National Park and means of restricting access</p>	<p>The EAR states that, in order to address light pollution issues, the residential component of the subdivision will be set back 50m from the National Park. It also suggests that a vegetative buffer will be provided along the eastern boundary line to further reduce any impact on the park. In the event the application was recommended for approval, a condition of consent could be applied, to ensure all external lighting is directed away from the park. Furthermore, to help reduce the spread of exotic species, a consent condition could be applied requiring that perspective landowners receive a guide to residential plantings. Further access restrictions could be applied through conditions to minimise impact on the National Park.</p>	<p>Yes</p>
<p>Koala assessment undertaken in accordance with <i>State Environmental Planning Policy (Koala Habitat Protection) 2021</i></p>	<p>An assessment against the relevant provisions of the SEPP has been undertaken. While the land does constitute high potential koala habitat; it does not constitute core koala habitat. Therefore, no further provisions of the SEPP apply.</p>	<p>Yes</p>

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Inclusion of native species in the landscape plan	The landscape plan is considered satisfactory.	Yes
A dewatering procedure for the existing farm dams	Additional information has not been submitted in this regard. However, in the event the application was recommended for approval, a condition of consent could be applied to address this matter.	Yes
Environmental Health		
Detailed Site Investigation to address potential contamination	<p>A Detailed Site Investigation (DSI) was submitted and reviewed by Council's Environmental Health Officer. In summary, the DSI identified the following:</p> <ul style="list-style-type: none"> • Hydrocarbon contamination in surface soils from an area of fill near the Council depot in the south-eastern boundary. It is noted that an exposure pathway is considered to exist for human health and the environment and remediation is required; • Elevated microbiological contamination was reported above the adopted criteria in six (6) soil samples and one (1) sediment sample collected down-gradient from the effluent transpiration bed; and • Microbiological contamination potentially associated with ducks/birds using the dam and/or from the effluent transpiration bed located upgradient from the dams. <p>In conclusion, the site can be made suitable for the proposed residential development subject to the following remediation works:</p> <ul style="list-style-type: none"> • Preparation of a Remediation Action Plan (RAP) to guide the remediation and/or management of hydrocarbon and microbiological contamination; and • Inclusion of an Unexpected Finds Protocol within the Construction Environmental Management Plan which is to be implemented during earthworks. 	Yes

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	In the event the application was recommended for approval, a condition of consent could be applied to address this requirement.	
Engineering		
Site specific flood assessment	<p>The flood assessment does not state the flood levels, velocities or depth of water for the 1% or PMF flood event, hence it is unclear as to the extent of earthworks required for building areas to be above the flood level.</p> <p>The Northrop report and Council's adopted flood study prescribe the adopted flood levels however, flood levels for the city-wide data that affects the site only demonstrates potential flooding. The assessment does not provide the flood levels for the 1% and PMF.</p>	No
Access	<p>Information has not been received to demonstrate legal access.</p> <p>Further, the two (2) proposed intersections are in close proximity to each other (less than 100m apart), and both connect to Alkira Avenue.</p> <p>In the event of an emergency incident impacting the development, the lack of separation of these intersections will result in conflicting traffic movements, leading to congestion.</p> <p>The proposed eastern access will create a four-way intersection at Alkira Avenue and Bevan Street. The Austroads guide to Traffic Management – Part 6 Intersections, Interchanges and Crossings, identifies 4 way intersections as less safe than 'T' intersections. The proposed intersection also requires the acquisition of land to the east which is in different ownership.</p> <p>The TIA proposes the primary access as being via Alkira Avenue, Bevan Street and Aston Avenue. The TIA has not assessed the impact of the development on these roads, particularly regarding road widths and intersection treatments.</p>	No
Drainage	The proposed swale drain at the rear of the southern and western lots would not be supported as this has the potential to	No

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	be tampered with long term. Inter-allotment drainage is to be provided as pit and pipe construction.	
Traffic		
Revised Traffic Impact Assessment	<p>Amended information was referred to TfNSW for review. Comments received from TfNSW indicate that additional information is required prior to providing a final response. An amended TIA and full concept plans of any intersection treatment is required prior to TfNSW being able to finalise a response.</p> <p>Following submission of further information, TfNSW requested additional information including:</p> <ol style="list-style-type: none"> 1. An updated TIA to identify an appropriate intersection treatment for the Maitland Road and Old Maitland Road intersection, and 2. Scoping paper to set out traffic volumes (existing), traffic generation rates (development), traffic splits/distributions and proposed growth rates that will be used to support three modelling scenarios (existing; existing plus development; and existing plus development plus 10 year design horizon). <p>It is understood that these matters have not yet been resolved and discussions are continuing with TfNSW. Council has not received a formal response from TfNSW to date.</p>	No
Planning		
Revised subdivision layout in accordance with Chapter D.1 of the Cessnock Development Control Plan	An amended subdivision plan was submitted to address the requirements of Chapter D.1 in relation to allotment width. This plan provides for a variety of lots widths and shapes ranging from battle-axe lots to lots exceeding the minimum width requirement. This is considered to be satisfactory.	Yes
Land owners consent for works over Council owned land	Owner's consent has not been obtained for works over the RE1 land which includes the access road into the subdivision. This matter is further complicated due to the classification of the land as 'community' rather than	No

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	<p>'operational'. In order for works to be undertaken on community land the development is required to be identified in a Plan of Management. The portion of land in question is not covered by a specific plan of management. Further, roads are not identified in the general plan of management.</p> <p>Legal advice has been obtained (included as a Confidential Enclosure), which confirms the above. This advice also states that, pursuant to the provisions of the <i>Local Government Act 1993</i>, Council cannot lawfully grant landowner's consent. In order for the works to be undertaken, the portion of land is required to be reclassified as operational. In order for this to occur, a Planning Proposal would be required.</p>	
<p>Satisfactory Arrangement for State Infrastructure Contributions</p>	<p>Confirmation of Satisfactory Arrangements required by Clause 6.1 of the <i>Cessnock Local Environmental Plan 2011</i>, has not been received. It is understood that the planning agreement is yet to be exhibited.</p>	<p>No</p>

Given the delays in the processing of the application, the applicant was advised on 5 September 2022 that pursuant to Clause 55 of the *Environmental Planning and Assessment Regulation 2000*, no further information would be accepted and the matter would be reported back to Council for further consideration/determination.

The applicant was subsequently afforded an opportunity to withdraw the application, and the timeframe stipulated by Council expired on 10 November 2022. To date, the application has not been withdrawn by the applicant.

There are critical matters associated with this application, some of which preclude Council from granting consent to the proposal. Importantly, Council has no power to approve the application in the absence of compliance with Clause 6.1 of the *Cessnock Local Environmental Plan 2011*. In addition, Council has obtained legal advice which outlines that Council is unable to lawfully consent to the proposed access through community land under the provisions of the *Local Government Act 1993*. In the absence of these access points, the subdivision has no legal and physical access.

On the basis of the above, the application is referred to Council for further consideration/determination, with a recommendation that the application be refused.

EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 8/2021/21939/1 seeking approval for a subdivision creating 327 lots to occur in 3 phases, at 33 Government Road Cessnock.

The Development Application has been assessed against the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 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 one (1) submission in objection to the proposed development was lodged with Council in response to the public exhibition period. The issues and concerns raised in the submission are addressed in the following report.

The application does not provide sufficient information to properly assess the impacts of the development. Specifically, insufficient information has been provided in relation to ecology, traffic and engineering. As such, a full assessment of the application cannot be undertaken and the extent of the potential impact of the development on these matters cannot be determined.

In accordance with Clause 6.1 Arrangements for designated State public infrastructure of the *Cessnock Local Environmental Plan 2011*, 'development consent must not be granted for the subdivision of land in an urban release area...unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated state public infrastructure'. In this instance, Council cannot grant consent to the application as correspondence has not been received confirming that the requirements contained within Clause 6.1 have been complied with.

It is also noted that works are proposed over adjoining land, for which owner's consent cannot lawfully be granted pursuant to the provisions of the *Local Government Act 1993*. As such, legal and physical access cannot be provided from the street network to the proposed subdivision.

Finally, a Clause 34A agreement is not in place to address offset/biodiversity requirements, pursuant to the *Biodiversity Conservation Regulation 2017*.

In summary, there are critical matters associated with this application, some of which preclude Council from granting consent to the proposal, as outlined above. Therefore, it is recommended that the Development Application be refused subject to the reasons for refusal included in this report.

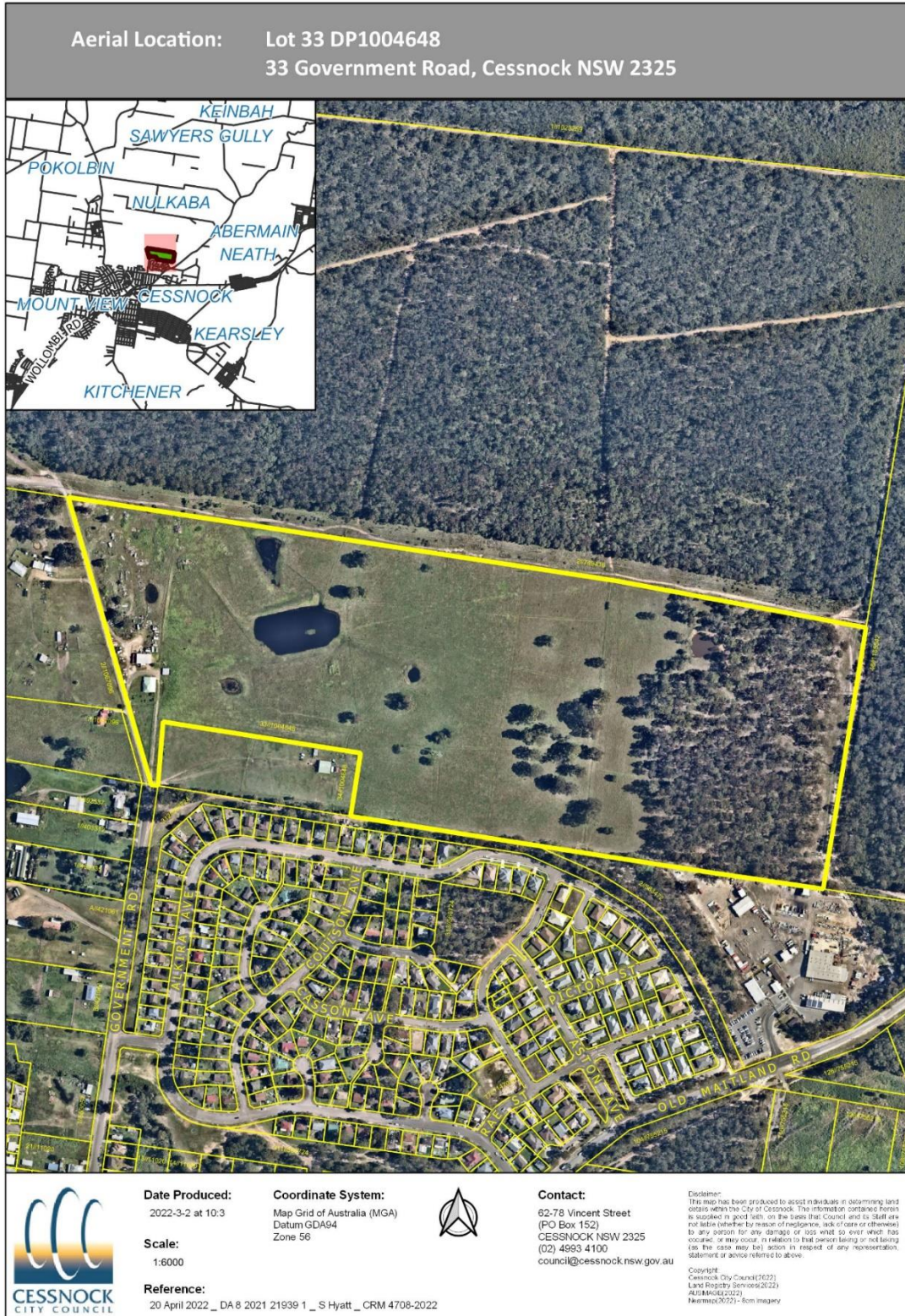


LOCATION MAP





AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 33 Government Road, Cessnock and is legally described as Lot 33 Deposited Plan 1004648.

The subject site is located on the northern end of Government Road. The site has a frontage to Government Road which connects to a Right of Access 13.0175m wide which provides access to Lot 34 DP 1004648; a depth of 334.94m; and an overall site area of 30.02ha. Vehicular access to the site is available from the Government Road frontage.

The subject site is currently occupied by a dwelling house and ancillary outbuildings. It is noted that approval has been granted for a two (2) lot subdivision which will result in the RU2 portion of the site subdivided from the R2 portion of the land to form separate lots, further resulting in the current split zoning being resolved.

The locality generally consists of residential lots containing single dwellings. Of note within the surrounding area include the following:

- Hunter Water sewerage treatment works to the north,
- Werakata National Park to the east, and rural land to the west,
- Council's works depot to the south-east, and
- Public reserve which runs along the eastern side of Government road and forms part of the southern boundary to the site prior to connecting to Old Maitland Road to the south-east.

The following map identifies the zonings relevant to the locality:

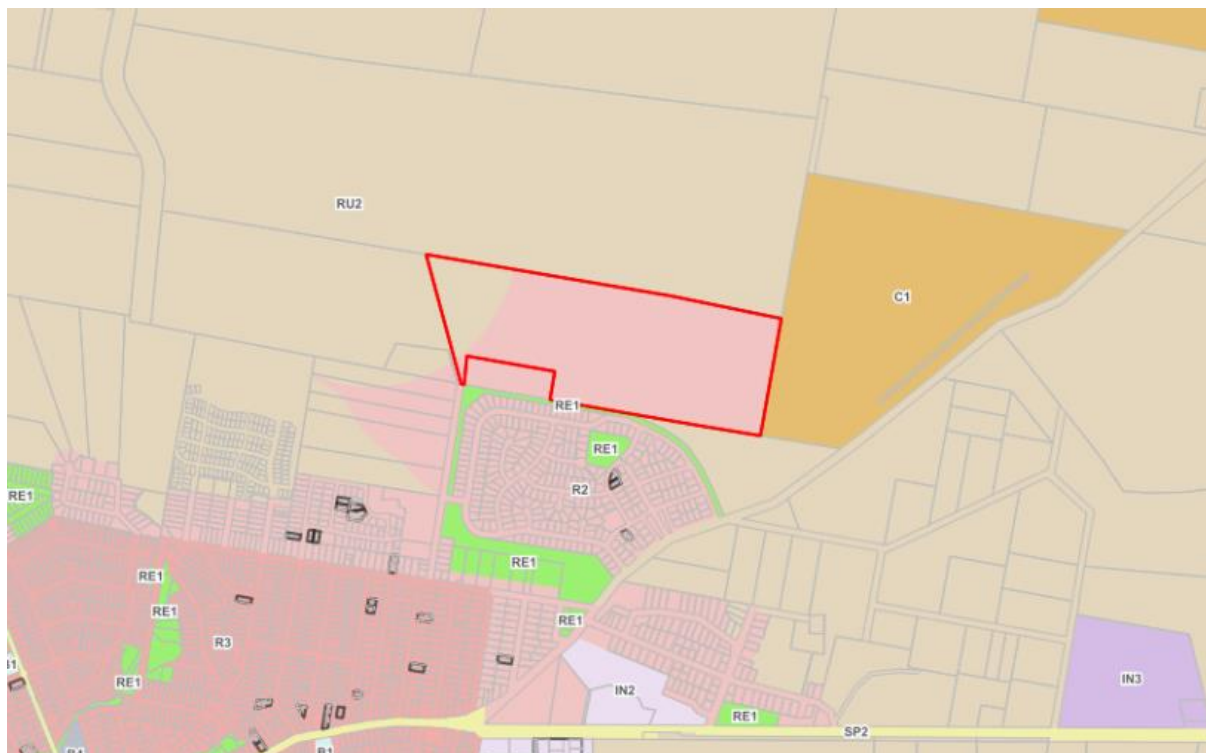


Figure 1: CLEP 2011 Zoning Map

HISTORY

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

Date	Action
19 October 2021	Development Application 8/2021/21939/1 formally lodged with Council for assessment.
18 November 2021	Application publicly exhibited for a period of 14 days.
2 December 2021	Notification concludes with one (1) submission received, objecting to the proposed development.
6 December 2021	Request for additional information (RFI) sent to applicant recommending that the application be withdrawn until such time as the items raised in the RFI could be resolved.
14 December 2021	Initial response to RFI provided by applicant. No additional information was submitted to address the matters raised in the RFI.
17 December 2021	Clarification was provided to the applicant to matters raised in the response back to Council dated 14 December. The applicant was again requested to withdraw the application with an additional 7 days provided.
18 January 2022	Correspondence received from the applicant, with additional information still not provided. The applicant was advised that the application would be reported to the Development Assessment Unit for determination based on the information submitted to date.

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14 February	Application called to Council for determination in accordance with the provisions of Development Practice Note G3 – Delegations for Determination of Development Applications.
20 April 2022	Application referred to Council for consideration/determination, with a recommendation that the application be refused. Council resolved as follows: <i>‘That the report be deferred to the next available meeting to allow for further discussion between the applicant and Council staff’.</i>
26 April 2022	Correspondence issued to the applicant outlining the outstanding matters and offering to arrange a meeting to discuss the issues.
17 May 2022	Meeting held with applicant to discuss outstanding matters. Applicant given until 3 June 2022 to provide amended information.
26 May 2022	Meeting held between Council, TfNSW and the Applicant.
5 June 2022	Additional information submitted and referred internally and externally for comment.
2 August 2022	Referral response received from TfNSW requiring additional information.
9 August 2022	Request send to applicant to withdraw application, with matters still unresolved.
13 September 2022	Meeting held between Council’s Director Planning and Environment, Development Services Manager, Principal Development Planner, and the applicant and their representative. Additional time was extended for the applicant to submit further information.
16 September 2022	Additional information received including legal opinion on the use of ‘community’ land.
27 October 2022	Council received own legal opinion in relation to use of community land for the purposes of a road. Advice confirms that pursuant to the <i>Local Government Act 1993</i> , Council cannot lawfully consent to the use of the land for this purpose.
3 November 2022	Final request to withdraw application following receipt of legal advice, and allowing an additional seven (7) days for the application to be withdrawn.
11 November 2022	Application is not withdrawn, assessment finalised.

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2021/21939/1 seeks approval for the subdivision of Lot 33 DP 1004648 into 327 lots in 3 phases.

The development is proposed in the following phases:

- Phase 1 containing 167 lots plus detention basin,
- Phase 2 containing 104 lots plus detention basin, and
- Phase 3 containing 56 lots.

ASSESSMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

Section 1.7 of the *Environmental Planning and Assessment Act 1979*, prescribes as follows:

'This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 (BC Act) and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.'

Biodiversity Conservation Act 2016

The Flora and Fauna Report submitted as part of the development application was prepared in 2007 to guide the development of the site-specific chapter for the Cessnock Development Control Plan. The report did not contain specific details of the current development application. Furthermore, it provided ecological data for the site that was over 13 years old, which is not considered representative of the site in its current ecological conditions. Accordingly, the applicant was requested to submitted an addendum to the Ecological Assessment Report (EAR). The addendum to the EAR states that the proposed development will result in the following impacts; removal of 8.99 ha of native vegetation, nine (9) hollow bearing trees and dewatering and infill of six (6) dams.

Agreement was received from the Department of Planning Industry and Environment (DPIE) on the 22 February 2022, supporting the use of Clause 34A under the *Biodiversity Conservation Regulation 2017*, which sets aside the provisions of the *Biodiversity Conservation Act 2016* in place of providing agreed offsets under the previous offset scheme. However, it has been confirmed that the Clause 34A agreement is not in place and a Voluntary Planning Agreement (VPA) is required in order to set aside the offset land. Prior to the Biodiversity Conservation Division (BCD) confirming the 34A agreement is in place, the VPA is required to be executed. Confirmation from BCD is required confirming the Clause 34A agreement is in place prior to determining the application to ensure that the provisions of the BC Act have been legally set aside. Council is not in receipt of any such confirmation/agreement.

Section 4.15 Evaluation

In determining a Development Application, the consent authority is to take into consideration the following matters prescribed within s4.15 of the *Environmental Planning and Assessment Act 1979*, as are of relevance to the development the subject of the development application:

(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 (Koala Habitat Protection) 2021*
2. *State Environmental Planning Policy (Resilience and Hazards) 2021,*
3. *State Environmental Planning Policy (Transport and Infrastructure) 2021*
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 (Koala Habitat Protection) 2021

The aim of the State Environmental Planning Policy (Koala Habitat Protection) 2021 (Koala SEPP) is to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This policy is applicable to the Cessnock LGA.

An assessment has been undertaken against the requirements of the SEPP. The land does not constitute core koala habitat. Accordingly, no further provisions of the SEPP apply.

2. State Environmental Planning Policy (Resilience and Hazards) 2021 (previously State Environmental Planning Policy No. 55 – Remediation of Land)

The aim of State Environmental Planning (Resilience and Hazards) (SEPP) 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.

Section 4.6 of the SEPP is relevant to the assessment of this development application. Section 4.6 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.

Additional information in the form of a Detailed Site Investigation (DSI) was submitted confirming that the site is suitable for the proposed development following recommended remediation works.

3. State Environmental Planning Policy (Transport and Infrastructure) 2021 (previously State Environmental Planning Policy (Infrastructure) 2007)

Section 2.122 - Traffic generating development applies to the proposed development being a subdivision of land with more than 200 allotments.

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The application was referred to Transport for NSW (TfNSW) for comment. An additional information request was received requiring the applicant to provide traffic modelling of key intersections. TfNSW have responded requiring an amended Traffic Impact Assessment including sensitivity testing of the traffic analysis and concept design for any required intersection upgrade. Accordingly, it is still unclear as to the full impact of the proposed development and extent of intersection upgrades required.

4. Cessnock Local Environmental Plan 2011

4.1 Permissibility

The subject site is zoned R2 Low Density Residential and RU2 Rural Landscape under the provisions of *Cessnock Local Environmental Plan (CLEP) 2011*. The application proposes subdivision which is permitted by virtue of Clause 2.6 Subdivision – consent requirements.

4.2 Objectives

The application proposes the subdivision of the R2 zoned land only. Development Consent has been granted to a two (2) lot subdivision under Development Consent No. 8/2021/21623/1, proposing the subdivision of the RU2 land from the R2 land. As such, the objectives of the R2 zone are relevant to this application and are considered below:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposed development will provide additional land availability in close proximity to the CBD of Cessnock. Proposed lots range from 450m² to 2,400m²; however, the majority of the lots are 450m² with frontages of around 15m. The subdivision provides for additional housing incorporating a range of lots which would provide for the varied needs of community. Accordingly, the proposed development is considered to be consistent with this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development provides for land which can be used to provide facilities or services for the residents. Accordingly, the proposed development is consistent with this objective and provides for suitable variation in lot sizes and shapes which would encourage facilities or services into the area.

4.3 Relevant Clauses

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

- Clause 4.1 Minimum subdivision lot sizes

The subject land is identified on the minimum lot size map as having a minimum lot size of 450m². The application proposes lots ranging from 450m² to 2,400m².

Accordingly, the application is consistent with the requirements of clause 4.1.

- Clause 5.21 Flood planning

The subject site is identified as being flood prone land, and is partly affected by the 1% Annual Exceedance Probability (AEP), as identified in the below figure:



Figure 2: 1% AEP Flood Extent

A suitable Flood Impact Assessment has not been submitted to allow a full assessment of the application to be undertaken. Accordingly, Council cannot be satisfied that the proposed development is consistent with the requirements of this clause.

- Clause 6.1 Arrangements for designated State Public Infrastructure

The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure prior to the subdivision of land in an urban release area in order to satisfy needs that arise from the development.

In accordance with this clause, ***'development consent must not be granted for the subdivision of land... unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made'***. Correspondence has not been received from the Department of Planning and Environment to this effect. As such, Council cannot consent to the application in its current form.

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- Clause 6.2 Public Utility Infrastructure

Prior to granting development consent, Council must be satisfied that essential infrastructure is available or that arrangements have been made to provide the infrastructure. The subject land is located adjacent to established residential development to the south, with services available for connection. The applicant is required to consult with the relevant agencies to ensure that arrangements are made to connect services to any further development on the land.

In this regard, Council is satisfied that satisfactory arrangement can be achieved in accordance with clause 6.2.

- Clause 6.3 Development control plan

The subject land is located within an urban release area. In accordance with this clause, a development control plan is required to guide the further development of the site. Chapter E.12 Government Road Precinct of the Cessnock Development Control Plan 2010 specifically applies to the site and contains guidelines in respect to the further intensification of development. The details of the DCP are further considered below.

The application is consistent overall with clause 6.3.

- *Clause 7.2 Earthworks*

Clause 7.2 seeks to ensure that any earthworks do not result in an adverse impact on the environment, neighbouring properties or heritage items. Earthworks proposed are considered to be minor/reasonable and will not result in any detrimental impact upon the surrounding environment.

The application is consistent overall with clause 7.2.

- *Clause 7.4 Airspace operations*

The subject site is identified on the Obstacle Limitation Surface map as having an Obstacle Limitation Height of 140m AHD to 109m AHD. The final levels of the site will range from 75m AHD to 85m AHD, with future development on the lots able to fall under the Obstacle Limitation Surface.

The application is consistent with the requirements of clause 7.4.

- *Clause 7.5 Groundwater vulnerability*

This clause aims to ensure that development on land zoned RU2 does not impact upon the groundwater system by means of depletion or contamination. In accordance with the requirements of this clause, the proposed development will not result in the contamination of the ground water system with all development proposed by this application being contained within the R2 zoned portion of the land.

Overall, the proposed development is consistent with clause 7.5.

- (a)(ii) *The Provisions of any proposed 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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).***

Environmental Planning and Assessment Regulation 2021

It is noted that the *Environmental Planning and Assessment Regulation 2021* came into force on 1 March 2022.

Notwithstanding the commencement of the *Environmental Planning and Assessment Regulation 2021*, Schedule 6 prescribes relevant savings, transitional and other provisions. In particular, the following savings provision is relevant to consideration of this application:

3 *Development applications and applications for complying development certificates*

The 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022.

It is noted that the subject application was lodged prior to 1 March 2022. Therefore, the provisions of the *Environmental Planning and Assessment Regulation 2000* continue to apply, and the application has been assessed with consideration given to these provisions.

- (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 relevant numerical standards in Cessnock Development Control Plan 2010 (DCP).

Part C: General Guidelines

Chapter C.3 – Contaminated Land

The requirements of this development in respect to contamination have been discussed previously in this report (refer to consideration of SEPP Resilience and Hazards). The contaminated land chapter in the DCP has been prepared in accordance with the requirements of SEPP Resilience and Hazards. Sufficient information has been submitted to demonstrate the site is suitable for the proposed development subject to remediation works.

Chapter C.4 – Land use conflict and buffer zones

The proposed development is listed as a Category A. It is noted that the Cessnock Waste Management Facility, Council Depot and Hunter Water Sewage Treatment Plant are located within close proximity to the site. Suitable separation distances are proposed with lots set back from the boundary to the depot, and the detention basin located in the north eastern corner of the site, thereby providing further separation of land uses.

Accordingly, the proposed development is consistent with the requirements of Chapter C.4

Chapter C.5 Waste management and minimisation

Waste generated during construction will consist of greenwaste and stockpiled soil.

Where possible this will be reused on site or alternatively taken to a facility approved for disposal.

Chapter C.9 Development on flood prone land

The purpose of this chapter is to provide information and development controls needed to prepare and assess development applications on land identified as flood prone. To give effect to the controls, the chapter identifies hazard classifications (H1-H6) and hydraulic categories based on the NSW Floodplain Development Manual 2005.

In order to confirm the flood affectation of the land, a flood study was requested from the applicant. To date, a suitable flood study has not been submitted. Accordingly, Council is not able to determine whether the development is able to comply with the requirements of Chapter C.9.

Part D: Specific Guidelines

Chapter C.1 Subdivision guidelines

The relevant provisions of this chapter of the DCP are considered in the table below:

Part D: Specific Development			
Chapter 1: Subdivision Guidelines – 1.7 Specific requirements for R2 and R3 Residential Subdivision			
Provision	Required	Provided	Complies?
1.7.1 Element 1: Lot Size and Shape	Each lot must comply with the minimum area shown on the lot size map of CLEP 2011. In this case, the minimum area is 450m ²	450mw to 2,400m ²	Yes



	Minimum width of 18m at the building line	It is noted that 82.5% of lots proposed do not meet the minimum width requirements of 18m. In this instance, the extent of the proposed variation is considered to be reasonable given a variety of lots widths ranging from battle axe lots to lots which exceed the minimum width requirement are proposed. In this instance the variation is reasonable given a variety of lot sizes and shapes are proposed catering for a variety of housing options.	No
	Minimum depth of 20m	All lots are able to meet the depth requirement of the DCP.	Yes
1.7.4 Element 4 – Local Street Design	<p>Street designs require the following road reserve and carriageway widths based on the number of lots :</p> <p>10-200 lots – road reserve of 18m and carriageway width of 8m</p> <p>200-400 lots - road reserve of 20m and carriageway width of 11m</p>	<p>The civil plans demonstrate a ring road and a series of connecting roads running north to south. Dimensions of each road are not shown however a typical section demonstrates 3 variations, as follows:</p> <ul style="list-style-type: none"> • 20m road reserve, 11m pavement, 4.5m footpath reserve, shared path on one side • 18m road reserve, 8m pavement, 5m footpath reserve, 2m shared path on one side • 18m road reserve, 8m pavement, 5m footpath reserve, 2m shared path on one side, swale drainage. 	Yes

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		It is noted that access to the development is from Alkira Avenue, and crosses land which is in separate ownership. The application has not been lodged over this site, nor has owner's consent been provided. Legal advice has been obtained in this regard which states that Council cannot lawfully grant landowners consent for construction over the Council owned land.	
1.7.5 Element 5: Pedestrians and cyclists	Footpaths shall be provided on one side of streets with traffic volumes between 300 vehicles per day	Suitable footpaths have been accommodated throughout the subdivision.	Yes
1.7.6 Element 6: Solar Access and Lot Orientation	Lot sizes reflect reasonable consideration of the impact of topography and aspect to maximise solar access. Lots are of a suitable shape to permit the location of a dwelling-house with suitable solar access and private open space	Majority of the proposed lots face either east or west with a northern aspect available along the side boundary. At least 80% of lots are able to achieve a direct northern aspect to private open space areas.	Yes
7.7.7 Element 7 – Stormwater	Stormwater shall drain by gravity to Council's system which may require interallotment drainage.	The applicant has submitted a stormwater management concept plan that demonstrates 2 bio detention basins to collect flows via pits and pipes constructed in the roadways. Easements are shown through necessary proposed lots and drains modelling submitted with water quality targets achieved.	Yes

Part E: Specific Areas

Chapter E.12 Government Road Precinct



Part E: Specific Areas

Chapter E.12 Government Road Precinct

Provision	Required	Provided	Complies?
12.3.1 Site Contamination and other geotechnical constraints	Carry out any additional testing recommended in the Remediation Options for Potential Contamination prepared by Douglas Partners prior to residential subdivision of the Government Road Precinct	Council's Environmental Health Officer has reviewed the Detailed Site Investigation Report submitted. Following remediation works, the subject land is suitable to accommodate the proposed development. Accordingly, Council can be satisfied that the land is suitable for the intended residential subdivision.	Yes
12.3.2 Stormwater and Flood Management	Residential development should not occur below the 1% AEP flood line. Habitable floor levels should be designed a minimum of 500mm above peak 1% AEP flood levels on site. Stormwater management for the development will comply with the requirements of Cessnock Development Control Plan 2010.	Council's Principal Development Engineer has reviewed the application. In order to determine the flood affectation of the land, a Flood Study was requested. The applicant has failed to submit the required information. As such, Council cannot be satisfied that the development will occur above the 1% AEP. Information submitted in relation to stormwater is also not considered to be satisfactory with the proposed swale drain at the rear of the southern and western lots not supported.	No No

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<p>12.3.3 Flora and Fauna Management</p>	<p>Development consent for a principal development application which proposes the removal of native vegetation from within the Precinct shall not be granted until transfer of the proposed offset site and other associated actions, as detailed in the Biodiversity Offset Assessment Report (BOAR) (RPS Harper Somers O’Sullivan, June 2008), has been effected.</p>	<p>Council’s Ecologist has reviewed the application. While the Department of Planning and Environment (DPE) have supported the use of Clause 34A under the <i>Biodiversity Conservation Regulation 2017</i>, arrangements are not in place to offset land.</p>	<p>No</p>
<p>12.3.4 Bushfire Management</p>	<p>Specific assessment shall be undertaken at appropriate times throughout the development process as development of the site progresses in accordance with the current standards of the Rural Fire Service (RFS).</p>	<p>A Bushfire Assessment Report was submitted with the application. As the application related to development classified as a special fire protection purpose (i.e., subdivision of land), the application was referred to the NSW RFS for General Terms of Approval (GTA’s). A request for additional information from RFS was received on 2 February 2022, with elements of the vegetation classification not supported. Following submission of additional information, GTA’s have been issued.</p>	<p>Yes</p>
<p>12.3.6 Subdivision of Land</p>	<p>All development applications for land subdivision are to satisfy the provisions of Cessnock Development Control Plan 2010, Part D – Chapter 1 Subdivision Guidelines.</p>	<p>Consideration has been given to the provisions of Chapter D.1 in this report.</p>	<p>Yes</p>

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(a)(iia) *The provision of any Planning Agreement that has been entered into under Section 7.4, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4*

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

(a)(iv) *The provisions of the regulations*

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

(b) *The likely impacts of that 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, given insufficient information has been submitted in order to undertake a complete assessment, the full extent of any potential impacts of the development on the natural and built environments are unknown.

The proposed development is considered to be suitable from a social and economic perspective. However, in the absence of confirmation from Biodiversity Conservation Division that the provisions of the *Biodiversity Conservation Act 2016* have been set aside, Council cannot be satisfied that appropriate arrangements are in place to resolve impacts relating to the natural environment. In addition to this, concerns in relation to flooding remain unresolved.

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

As demonstrated by the above assessment; the subject land is not considered suitable to accommodate the proposed development. While contamination issues have been resolved, the subject land does not benefit from legal access to connect the subject land to the closest public road. Therefore, the current design is considered to result in a development which would be landlocked with no legal or physical access.

Further, sufficient information has not been submitted to addresses potential flooding of the site. Therefore, Council cannot be satisfied that development on the land will not result in an increased risk to life and property. Insufficient information has also been submitted in order to confirm that suitable arrangements are in place to set aside the requirements of the *Biodiversity Conservation Act 2016*. Accordingly, Council cannot be satisfied that removal of vegetation from the site has been appropriately addressed

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

The Development Application was publicly exhibited between 18 November 2021 and 2 December 2021. One (1) submission was received in objection to the proposal during the exhibition period, representing 1.7% of the households notified.

The following table outlines the issues raised in the submission lodged with Council, along with a response to each matter:

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Issue/s	Comment/s
Roadworks	
<ul style="list-style-type: none"> No consultation on road works impacting surrounding property 	Roadworks proposed by the application are primarily internal to the site. Until such time as Council and TfNSW are able to finalise comments in relation to the proposal, the extent of offsite roadworks are currently unknown.
Access	
<ul style="list-style-type: none"> Access being restricted during construction and during use 	Traffic delays may be experienced during construction; however these impacts are considered to be short term.
Environmental Impacts	
<ul style="list-style-type: none"> Noise and pollution Ability to utilise property 	During construction, noise and dust associated with works may occur. In the event the application could be approved, Council would ensure that adequate conditions would be imposed on any approval requiring the adoption of appropriate mitigation measures. While these may impact upon use of surrounding property; the impacts are considered to be short term.

(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.

Based on the above assessment, it is considered that the proposed development is not in the public interest.

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SECTION 7.11 CONTRIBUTIONS

Section 7.11 Contributions are payable for the proposal.

In the event the application could be approved, Section 7.11 Contributions totalling \$6,520,000.00 would be payable, in accordance with the following:



DO NOT USE THIS CALCULATOR FOR DISTRICT CATCHMENTS, SECONDARY DWELLINGS AND SENIORS LIVING

DA number:	8/2021/22288/1
Property address:	33 Government Road, Cessnock
DA Planner:	Sarah Hyatt
Date	15/11/2022

Local Area Catchment:	Government Road		
How many existing lots/dwellings?	1		
How many lots/dwellings proposed?	327		
Net increase in lots/dwellings	326		
Contributions:	per lot	Total	fee code
Open space and recreation facilities	\$10,626.00	\$3,464,076.00	830
Community Facilities	\$1,050.15	\$342,348.90	831
Cycleway Facilities	\$4,985.00	\$1,625,110.00	832
Roads and Traffic	\$3,052.19	\$995,013.94	833
Plan Administration	\$286.66	\$93,451.16	834
Total contributions	\$20,000.00	\$6,520,000.00	

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INTERNAL REFERRALS

The Development Application was referred to the following Council officer/s for comment:

Officer	Comment
Principal Development Engineer	Council's Principal Development Engineer has not been able to undertake a full assessment of the application due to insufficient information being provided.
Waste Officer	<u>No objection raised.</u>
Traffic Engineer	Council's Traffic Engineer has not been able to undertake a full assessment of the application due to insufficient information being provided.
Ecologist	Council's Ecologist has undertaken a full assessment of the application; however, it is noted that a Clause 34A agreement is not in place.
Senior Environmental Health Officer	Sufficient information has been submitted in relation to contamination. No objections are raised.
Open Space and Community Facilities	Suitable street tree species have been selected. No objections are raised.

EXTERNAL REFERRALS

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

Agency	Comment
NSW Rural Fire Service	General Terms of Approval have been issued
Transport for NSW	The application was referred to TfNSW for comment, pursuant to Section 2.122 Traffic generating development of <i>State Environmental Planning Policy (Transport and Infrastructure) 20021</i> . TfNSW have requested additional information on multiple occasions. Additional information has been provided; however, TfNSW's concerns remain unresolved.

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CONCLUSION

The Development Application has been assessed in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and all relevant instruments and policies.

There are critical matters associated with this application, some of which preclude Council from granting consent to the proposal. Importantly, Council has no power to approve the application in the absence of compliance with Clause 6.1 of the *Cessnock Local Environmental Plan 2011*. In addition, Council has obtained legal advice which outlines that Council is unable to lawfully consent to the proposed access through community land under the provisions of the *Local Government Act 1993*. In the absence of these access points, the subdivision has no legal and physical access.

On the basis of the above, the application is referred to Council for further consideration/determination, with a recommendation that the application be refused, subject to the reasons contained in this report.

ENCLOSURES

- 1 ➡ Plan of Subdivision
- 2 Legal Advice - *This matter is considered to be confidential under Section 10A(2) (g) of the Local Government Act, as it deals with advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. (Legal Advice)*

REASONS FOR REFUSAL

An assessment of the application has been carried out in accordance with Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The proposal is considered to be inconsistent with the matters for consideration under the Act. Accordingly, the application is recommended for refusal based on the reasons outlined below:

1. Insufficient information has been submitted to allow a full assessment of the application including:
 - a. Clause 34A Agreement is not in place to offset the requirements of the *Biodiversity Conservation Regulation 2017*,
 - b. The flood assessment does not state the flood levels, velocities or depth of water for the 1% or PMF flood event so it is unclear of the earthworks required for building areas to be above the flood level,
 - c. A suitable Traffic Impact Assessment including an assessment of the access and impact of the development on existing intersections,
 - d. The proposed fails to provide suitable drainage along the rear of the southern and western lots, and
 - e. Owner's consent to lodge the application over land not in the same ownership where works are proposed.
2. The proposed development fails to provide evidence that satisfactory arrangements are in place for the provision of State public infrastructure in accordance with Clause 6.1 Arrangements for Designated State Public Infrastructure of the *Cessnock Local Environmental Plan 2011* (Section 4.15(1)(a)(i) *Environmental Planning and Assessment Act 1979*).
3. The proposed development in its current form is inconsistent with the requirements of Chapter E.12 Government Road Precinct of the Cessnock Development Control Plan 2010 for the following reasons:
 - a. The proposed development fails to demonstrate that development can occur above the 1% AEP flood level (Section 12.3.2 Stormwater and flood management),
 - b. The application has not adequately addressed impacts on biodiversity as a result of the proposed development, or that suitable offset arrangements are in place (Section 12.3.3 Flora and Fauna Management),
4. The subject site is not considered suitable for the following reasons:
 - a. Insufficient information has been submitted in order to determine the impact of flood waters,
 - b. Legal access cannot lawfully be obtained to connect the proposed subdivision to the public road network, and

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- c. Arrangements are not in place to offset the impact of the development on biodiversity, resulting in an unacceptable impact on biodiversity present on the site (Section 4.15(1)(c) *Environmental Planning and Assessment Act 1979*).

- 5. The proposed development is not considered to be in the public interest (Section 4.15(1)(e) *Environmental Planning and Assessment Act 1979*).

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SUBJECT: *SECTION 8.2 REVIEW OF DETERMINATION IN RESPECT OF COUNCIL'S DECISION TO REFUSE DEVELOPMENT APPLICATION NO. 8/2022/372/1, PROPOSING A TWO (2) LOT TORRENS TITLE SUBDIVISION*

39 CONGEWAI STREET, KEARSLEY

RESPONSIBLE OFFICER: *Team Leader Development Services - Peter Giannopoulos
Development Services Manager - Janine Maher*

APPLICATION NUMBER:	8/2022/372/2
PROPOSAL:	Section 8.2 Review of Determination in respect of Council's decision to refuse Development Application No. 8/2022/372/1, proposing a two (2) lot Torrens Title subdivision
PROPERTY DESCRIPTION:	Lot: 2, Sec: 20, DP: 758555
PROPERTY ADDRESS:	39 Congewai Street, Kearsley
ZONE:	R2 – Low Density Residential
OWNER:	Mr G R & Mrs K E Triebel
APPLICANT:	Marshall Scott Pty Ltd

RECOMMENDATION

1. That:

- (i) The Section 8.2 Review of Determination in respect of Council's decision to refuse Development Application No. 8/2022/372/1 proposing a two (2) lot Torrens Title subdivision at 39 Congewai Street, Kearsley, be approved pursuant to Sections 8.2, 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions contained in this report.
- (ii) The reasons for the decision (having regard to any statutory requirements applying to the decision), are as follows:
 - The application can be lawfully determined within the review period which concludes on 24 February 2023.

- The proposed amendments to the application are such that the development is considered substantially the same development as that which was originally considered and determined by Council.
- The amended proposal, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instrument, being the *Cessnock Local Environmental Plan 2011*.
- The amended proposal, subject to the recommended conditions, is consistent with the objectives of the *Cessnock Development Control Plan 2010*.
- Subject to the recommended conditions, the amended proposal will be provided with adequate essential services, as required under the *Cessnock Local Environmental Plan 2011*.
- The amended proposal is considered to be of an appropriate scale and form for the site, and is consistent with the character of the locality.
- The amended proposal, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The amended proposal is a suitable and planned use of the site, and its approval is consistent with the public interest.

(iii) In considering community views, the following is relevant:

All matters raised in the submissions have been taken into consideration including drainage, infrastructure, suitability and general amenity issues associated with the application. These matters have been assessed in conjunction with the development proposed, and subject to the terms and conditions of the consent, the development is deemed suitable for approval.

(iv) The details contained above be publicly notified pursuant to Section 2.22 and Section 20(2) of Schedule 1 of the *Environmental Planning and Assessment Act 1979*.

2. That Council notify in writing the persons who made a submission with regard to the proposed development, of Council's decision.

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REASON FOR REPORT

The Section 8.2 Review of Determination in respect of Council's decision to refuse Development Application No. 8/2022/372/1, is being referred to Council for determination as the original Development Application was determined by Council. In this regard, under Section 8.3(6) of the *Environmental Planning and Assessment Act 1979*, a review of a determination or decision made by Council is to be conducted by Council and may not be conducted by a delegate of Council.

EXECUTIVE SUMMARY

Council is in receipt of a Section 8.2 Review of Determination in respect of Council's decision to refuse Development Application No. 8/2022/372/1, proposing a two (2) lot Torrens Title subdivision at 39 Congewai Street, Kearsley.

The Section 8.2 Review of Determination will be referred to in this report as the 'amended application'.

The amended application has been assessed against the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021*, relevant Environmental Planning Instruments and Council policies. The outcome of this assessment is detailed further in this report.

The amended application was publicly exhibited and two (2) submissions were received. The submissions received were in objection to the proposal. The issues and concerns raised in the submissions are addressed in the following report.

The development proposed in conjunction with the amended application is consistent with the objectives of the R2 Low Density zone under the *Cessnock Local Environmental Plan 2011* (CLEP 2011).

It is proposed to retain the existing dwelling on Proposed Lot 21, and adequate private open space and carparking has been provided to support the retention of the existing dwelling. The proposed subdivision is capable of complying with the specifications and requirements of Planning for Bush Fire Protection 2019, with General Terms of Approval and a Bushfire Safety Authority obtained from the NSW RFS.

The proposed two (2) lot subdivision does not result in any significant adverse impacts to the surrounding natural or built environment; the proposal is not contrary to the public interest; and the site is considered suitable for the proposed development.

The Section 8.2 Review of Determination is capable of being determined because it remains within the review period which concludes on 24 February 2023. The proposed amendments to the application are such that the development is considered substantially the same development as that which was originally considered.

Based on the assessment, it is recommended that the Section 8.2 Review of Determination be approved, subject to the conditions of consent included in this report.

BACKGROUND

The original development application (Council Reference DA No. 8/2022/372/1), was lodged with Council on the 19 April 2022, and proposed a two (2) lot Torrens Title subdivision.

The application was subject to a proposed variation under Clause 4.6 of the *Cessnock Local Environmental Plan 2011* as one of the lots (Proposed Lot 21) did not meet the minimum area standard of 450m². In this regard, Proposed Lot 21 was 411.9m², which was 38.1m² below the minimum lot size (a variation of 8.4%).

The development application was considered by Council at its meeting of 17 August 2022, whereby Council determined to refuse the application on three grounds, these being:

- (i) *Proposed Lot 21 does not comply with the minimum lot size.*
- (ii) *The development is not in keeping with the local village amenity.*
- (iii) *The site is not considered a suitable location for an intensification of development sought.*

The Section 8.2 Review of Determination was lodged on 20 September 2022. The application for review seeks to amend the proposed plan of subdivision to enlarge proposed Lot 21 so that it complies with the minimum lots size.

Section 8.2 Review of Determination requests that the determination be reviewed and that approval be granted.



LOCATION MAP





AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 39 Congewai Street, Kearsley, and is legally described as Lot 2, Section 20, Deposited Plan 758555.

The subject site is located on the eastern side of Congewai Street, to the north of Caledonia Street, Kearsley. The site is rectangular in shape with a frontage of 19.8m to Congewai Street, a depth of 50.29m and an overall site area of approximately 1011.7m². The site adjoins an unformed 6m wide laneway to the east.

The site slopes down from the rear (eastern) boundary to Congewai Street, representing a change in level of approximately 2.5m. The land is predominately cleared with a small stand of trees in the north-eastern part of the site and a single tree on the western boundary.

Vehicle access to the site is available from Congewai Street.

The subject site is currently occupied by a single-storey weatherboard clad dwelling and ancillary structures.

The subject site is located on the north western fringe of Kearsley Village. To the south and east of the site is predominantly characterised by single-storey dwellings, including traditional miners' cottages along with housing renewal. The area has predominantly 'quarter acre' lots and the built form possesses low site coverage, and the area is devoid of kerb and gutter. Land opposite Congewai Street is Crown land that is in a vegetated state; further south of the Crown land (opposite Caledonia Street) is George Jeffery Park - a Council reserve used for active recreational purposes. Caledonia Street is an arterial road that links Cessnock to a number of rural settlements that lie generally to the east of Cessnock.

There are no recent development consents issued in relation to the property.

The below photographs depict the site:



Figure 1: View of site from Congewai Street



Figure 2: Rear laneway (looking north east)



Figure 3: View of site from rear laneway

HISTORY

The history of the Section 8.2 Review of Determination is summarised in the following table:

Date	Action
17/8/2022	Original Development Application determined by Council by way of refusal
20/9/2022	Section 8.2 Review of Determination submitted
25/10/2022	Council staff meet with applicant to discuss application
31/10/2022	Internal and external referrals initiated
7/11/2022-21/11/22	Development Application publicly exhibited
15/11/2022	Engineering referral completed
18/11/2022	Site inspection undertaken
19/11/2022	NSW Rural Fire Service provide GTA's
22/11/2022	Assessment of application completed

DETAILS OF THE PROPOSED DEVELOPMENT

The proposal seeks a Review of Determination under Section 8.2 of the *Environmental Planning and Assessment Act 1979* for a two (2) lot subdivision of land.

The original Development Application (Council Reference No. 8/2022/372/1) sought approval for the Torrens Title subdivision to create two (2) lots. The application proposed the retention of the existing 3 bedroom dwelling, with provision made for private open space and parking on Proposed Lot 21. A new battle axe access handle of 3.75m in width and 25.62m in length is proposed to be located along the northern boundary of Proposed Lot 21.

The original application provided for two lots:

- Previously Proposed Lot 21 with a site area of 411.9m² (38.1m² below the minimum lot size, a variation of 8.4% to the prescribed minimum lot size); and
- Previously Proposed Lot 22 with a site area of 502.8m² excluding the access handle (599.8m² total area, including the access handle) (lot exceeding the minimum lot size requirement by 52.8m²).

Under the original application, Proposed Lot 21 did not comply with the minimum lot size requirement prescribed under Clause 4.1 of the *Cessnock Local Environmental Plan 2011*. Subsequently, the application sought to vary the minimum lot size.

As permitted under Section 8.3 (3) of the *Environmental Planning and Assessment Act 1979*, the applicant has amended the proposed development in conjunction with the Section 8.2 Review of Determination. The proponent has amended the subdivision layout in order to remedy the non-compliance with the prescribed minimum lot size standard.

The new subdivision layout proposes the following:

- Proposed Lot 21, with an area of 450m²; and
- Proposed Lot 22, with an area of 456m² excluding the access handle (561.6m² total area, including the access handle).

As outlined above, both lots comply with the minimum lot size standard.

Compliance with the minimum lot size development standard addresses one of the grounds of refusal contained in the determination relating to the original development application, being that Proposed Lot 21 was below the minimum lot size standard.

ASSESSMENT

Division 8.2 of the *Environmental Planning and Assessment Act, 1979*

Division 8.2 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) allows an applicant to request a review of determination.

Section 8.3 requires that any determination or decision cannot be reviewed after the period within which any appeal may be made to the Court has expired, if no appeal was made. The review period in this instance is not extended by COVID 19 extension provisions, and is therefore a 6 month period which will lapse six (6) months from the date of the determination relating to the initial development application.

The development application was refused by Council at its meeting of the 17 August 2022 and the notice of determination was issued on the 24 August 2022. Therefore, the review period ends on 24 February 2023, and the decision relating to the Section 8.2 Review of Determination, must be finalised before this date.

In this case the applicant has submitted an amended plan which is enabled through section 8.3(3) of the EP&A Act. Section 8.3(3) enables the applicant to amend a development provided the consent authority is satisfied that the development is substantially the same:

8.3(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

The amended plans show an increase in area to proposed Lot 21 of 38.1m² - achieved by relocating the dividing boundary by 2.3 metres. The shape, access, construction works, configuration and dimensions of the proposed lots remain essentially similar to the original subdivision layout. Taking these matters into account, it is concluded that due to absence of any significant or material change to the development, the modified development is substantially the same as the original.

It should also be noted that Section 8.3(6) of the EP&A Act prevents a delegate of Council determining an application that was determined by Council. In this regard, Section 8.3(6) states as follows:

8.3(6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.

On the basis of the above, the Section 8.2 Review of Determination is referred to Council for determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.15 Evaluation

In determining an amended Development Application under section 8.3, the consent authority is to take into consideration the following matters prescribed within s4.15 of the *Environmental Planning and Assessment Act 1979*, as are of relevance to the development the subject of the development application:

4.15(1)(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 (Resilience & Hazards) 2021*
Chapter 4: Remediation of Land
2. *Cessnock Local Environmental Plan 2011*

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

1. State Environmental Planning Policy (Resilience & Hazards) 2021
Chapter 4: Remediation of Land

State Environmental Planning Policy (Resilience & Hazards) 2021 – Chapter 4: Remediation of Land, provides planning guidelines for remediation of contaminated land. Section 4.6(1) of the SEPP is relevant to the assessment of this Development Application.

Section 4.6(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 is located in an established residential area and deemed suitable for residential use. An existing dwelling is located on site, and the site has not been used for any known potentially contaminating activities. No evidence of contamination was observed during inspection of the site.

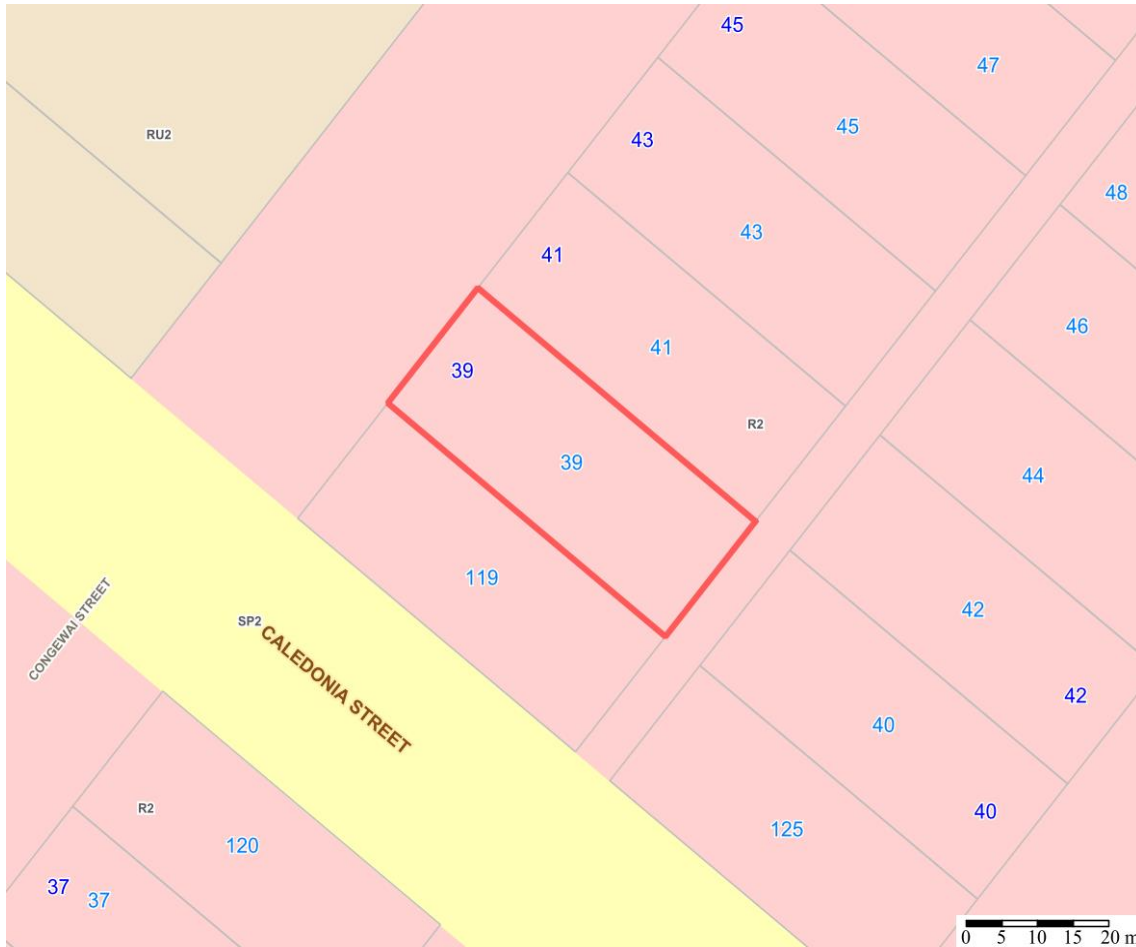
As there is no historical evidence of the site being previously used for a purpose which would result in the land being contaminated, no further investigation is warranted.

The proposal is therefore acceptable in terms of the requirements under the SEPP.

2. Cessnock Local Environmental Plan 2011

2.1 Permissibility

The subject site is zoned R2 Low Density Residential under the provisions of the *Cessnock Local Environmental Plan (CLEP) 2011*, as depicted in the below map:



Development for the purpose of a subdivision is a permitted land use in the R2 Low Density Residential zone, with consent, by virtue of Clause 2.6 of the CLEP 2011, which states as follows:

2.6 Subdivision requirements

- (1) Land to which this Plan applies may be subdivided, but only with development consent.

As this clause applies to all land within the Cessnock Local Government Area (LGA), subdivision is permitted with consent in the R2 zone.

2.2 Objectives

The objectives of the R2 Low Density Residential zone, and a response to each, are identified in the following table:

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Objective	Comment
<i>'To provide for the housing needs of the community within a low density residential environment.'</i>	The proposed development is consistent with this objective, as the subdivision will provide increased opportunity for housing within the locality.
<i>'To enable other land uses that provide facilities or services to meet the day to day needs of residents.'</i>	N/A – the proposal is for a residential subdivision only.

2.3 Relevant Clauses

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

2.6 Subdivision requirements

As outlined previously, development consent is sought for the proposed subdivision as required under this clause.

4.1 Minimum Lot Size

The Lot Size Map prescribes a minimum lot size of 450m² over the subject land. The application proposes the following lot sizes:

- Proposed Lot 21 = 450m²; and
- Proposed Lot 22 = 456m² excluding the access handle (561.6m² total area, including the access handle).

In the current layout both lots comply with the minimum lot size requirements prescribed within clause 4.1.

7.2 Earthworks

The proposed development requires earthworks to be carried out on the site in order to construct the required driveway. Although the earthworks are considered minor in nature and ancillary to the development, it is considered that the considerations under section 7.2(3) are required to be considered. These are:

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- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any measures proposed to minimise or mitigate the impacts referred to in paragraph (g).*

Consideration has been given to the existing drainage patterns and soil stability in the locality of the development, and the existing and likely amenity of adjoining properties. It is considered that, subject to the recommended conditions of consent, the earthworks proposed by this development will have negligible impacts, and the development is therefore consistent with the objectives of section 7.2, which are:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
- (b) to allow earthworks of a minor nature without requiring a separate development consent.*

Council's Development Engineer has reviewed the application and has identified that the application is considered to be suitable having regard for the proposed earthworks.

4.15(1)(a)(ii) *The provisions of any proposed 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 Planning Secretary 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 relevant numerical standards in Cessnock Development Control Plan (DCP) 2010.

Discussion of any variations to the standards is provided after the compliance tables:



Part C: General Guidelines			
C.1 Parking and Access			
Provision	Required	Provided	Complies?
1.2 Car Parking standards	2 parking spaces per 3+ bedroom dwelling. 1 parking space per 2 bedroom dwelling.	The existing dwelling has 3 bedrooms. Therefore, the existing dwelling requires the provision of 2 parking spaces. Adequate space exists on site to accommodate the required 2 car parking spaces.	Yes

Part D: Specific Development			
D.1: Subdivision Guidelines			
Section 1.7 Specific Requirements for R2 & R3 Residential Subdivision			
Provision	Required	Provided	Complies?
Element 1: Lot size and shape	Each lot must comply with the minimum area shown on the lot size map of CLEP 2011. In this case, the minimum lot size is 450m ²	Proposed Lot 21 = 450m ² ; and Proposed Lot 22 = 456m ² excluding the access handle (561.6m ² total area, including the access handle).	Yes
	Minimum width of 18m at the building line	Proposed Lot 21 = 16.115m (variation of 10.47%) Proposed Lot 22 = N/A	No Refer to the discussion below
	Minimum depth of 20m	Proposed Lot 1 = 25.62m Proposed Lot 22 = 22.67m	Yes
	The dimensions for accessways (handles) for battle-axe shaped allotments are as follows: Maximum Length 60 metres Minimum Width 3.5 metres Minimum width of shared access corridor 5.0 metres	Length: 25.62m Width: 3.75m Not a shared corridor	Yes
	Maximum cut or fill required of 1.0m from the natural ground level	Minor cut and fill will result from the construction of the battle axe handle	Yes

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<p>Element 2: Accessway (handle) Design</p>	<p>Accessways (handles) shall have a minimum sealed width of 3.0 metres</p>	<p>3m concrete accessway proposed</p>	<p>Yes</p>
	<p>Accessways (handles) shall not serve more than 5 lots.</p>	<p>Only to serve a single lot</p>	<p>Yes</p>
	<p>The following standards apply to lots with battle-axe handles: <i>Minimum width of battle-axe handle of 3.5m for 1 allotment</i></p>	<p>Battle axe handle width of 3.75m</p>	<p>Yes</p>
	<p>Accessways (handles) shall be sited away from noise and visually sensitive components of existing and future dwelling-houses</p>	<p>The battle axe handle is located adjacent to a neighbouring driveway and over 6m from the dwelling</p>	<p>Yes</p>
	<p>Where possible accessways (handles) shall be located on the south side of existing and future dwelling-houses.</p>	<p>Refer to below discussion</p>	<p>No</p>
	<p>Accessways (handles) shall provide interest and variety and avoid lengthy straight sections.</p>	<p>The proposed access handle is not considered to be lengthy and as such this does not apply</p>	<p>N/A</p>
	<p>Where the site is steep or fronts a local collector or higher order road (greater than 3,000 vehicles per day) or a highly pedestrianised area, accessways (handles) shall be designed so that vehicles can be driven both onto and off the property in a forward direction</p>	<p>N/A</p>	<p>N/A</p>
	<p>Where vehicles would otherwise have to reverse more than 50 metres, a turning area shall be provided to enable the vehicles to enter and leave the site in a forward direction and reduce the need to reverse over long distances.</p>	<p>This will be considered in conjunction with any future application for the development of the rear lot. As such, this control is not applicable to this development</p>	<p>N/A</p>

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Element Heritage	3:	N/A – no heritage items adjacent	
Element 4: Local Street Design		N/A – no proposed streets	
Element Pedestrian and Cyclists	5:	N/A – no street is proposed and therefore there is no requirement for a footpath	
Element 6: Solar Access and Lot Orientation		To be designed and orientated to achieve maximum energy efficiency	<p>Good solar access is available to the proposed vacant lot. This provides an opportunity for the future development to accommodate a house with good energy efficient design and solar access to the future open space. The proposed development does not reduce the solar access to any existing dwelling.</p> <p>Yes</p>
Element Stormwater Management	7:	Inter-allotment drainage is required if site topography prevents discharge of stormwater directly to the street gutter or a Council controlled pipe system	<p>It is proposed to drain Lot 22 via the concrete driveway within the battle axe to Congewai Street which is a legal point of discharge.</p> <p>Council's Development Engineers have assessed this as satisfactory, however, a condition of consent will be imposed that requires further details prior to SWC being issued, detailing the required pits and pipes.</p> <p>Yes</p>
Element 8: Utility Services		Ability to connect to essential services, make arrangements for connection during construction	<p>The proposed development is considered to be 'infill' development and is located within the residential township of Kearsley. Utilities and services are within close proximity to the subject site and able to be connected to the development should it be approved</p> <p>Yes</p>

Variations Proposed to Provisions

Lot width

As outlined in the above table, the width of Proposed Lot 21 does not comply with the standard prescribed, i.e., a minimum width of 16.115m is proposed, whereas a minimum width of 18m is required.

Notwithstanding the variation to the minimum width, Proposed Lot 21 is able to accommodate the existing dwelling whilst continuing to provide good amenity in terms of solar access; privacy and outlook; adequate private open space; and car parking on the site.

Given that the proposed lot is occupied by a dwelling and its adequacy for such a purpose is suitably demonstrated, the non-compliance with the minimum width control is therefore supported. It should be noted that this requirement has been varied significantly and on numerous occasions in the past.

Access handle location

The proposed access handle is not on the south side of the dwelling, therefore this is a variation to the DCP. However, it should be noted that the development does not propose a single, shared access but two separate access driveways. One is to the south of the driveway; and the other is to the north.

The variation does not present any concerns, and strict compliance with this provision does not have any discernable benefits. It is considered that the development has been designed in a suitable manner and there is no reason to require compliance with this requirement. It should be noted that this requirement has been varied significantly and on numerous occasions in the past, particularly with respect to subdivision applications which propose the retention of the existing dwelling.

4.15(1)(a)(iia) The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No such agreement has been proposed in conjunction with this application.

4.15(1)(a)(iv) The provisions of the regulations

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

4.15(1)(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

The likely environmental impacts of the development are discussed below:

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Bushfire

The entire site is identified as bushfire prone land (Buffer Category) on Council's bushfire mapping system and the proposed subdivision is classified as a "special fire protection purpose" requiring approval under *Section 100B* of the *Rural Fires Act 1997*.

Under section.4.14 of the EP&A Act, development consent can only be granted on bush fire prone land where the consent authority is satisfied that the development conforms to *NSW Rural Fire Service Guidelines Planning for Bushfire Protection (PBP) 2019* (PBP 2019).

The application has been lodged as "integrated development" under the provisions of Section 4.46 of the *Environmental Planning and Assessment Act 1979*, and was referred to the NSW Rural Fire Service. The NSW RFS originally issued General Terms of Approval on 21 June 2022 and were consulted again in respect to the Section 8.2 Review of Determination. On the 19 November 2022 the NSW RFS reissued its General Terms of Approval and a fire safety certificate.

4.15(1)(c) *The suitability of the site for the development*

The original assessment report concluded that the site was considered suitable for the proposed development.

However, in refusing the application, it was clear that Council had concerns about the suitability of the site and the village amenity, and determined that the development application did not warrant approval. Two of the three grounds of refusal refer to site suitability. These are grounds of refusal 2 and 3, which are as follows:

- (ii) *The development is not in keeping with the local village amenity.*
- (iii) *The site is not considered a suitable location for an intensification of development sought.*

In respect to ground (ii) the incompatibility with the local village amenity, it is considered that the development is one of low scale and low impact. The applicant proposes one additional residential allotment in an area that has mixed character, which includes detached dwellings, sporting fields, a community hall, a petrol station, a public school and a hotel. The impact of one additional lot in this context is not considered significant or detrimental.

Although there are relatively uniform characteristics within the Village of Kearsley, it is not considered that this development will disrupt those characteristics. It should be recognised, that the characteristics include 'quarter acre' lots, and the housing stock consists mostly of single detached dwellings, with low site coverage and single-storey construction. The development has little impact on the streetscape as any future development will be nestled behind the existing built form, away from public view. Furthermore, it should be noted that there are different types of housing within the locality, and there are other properties that have been developed by subdivision and dual occupancy developments within the Village of Kearsley.

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It is considered that the subject site is appropriately zoned in an area that is suitably serviced for residential intensification. The amended application is consistent with Council's policies and strategic visions, including providing housing diversity and increasing housing supply. It should also be recognised that in respect to the above grounds, it is not possible for the applicant to address Council's concerns without abandoning the development proposal altogether.

Having regard to the above, it is considered that the application has not been altered in a significant manner and that the merits of the development warrant the granting of approval.

The applicant has provided a detailed submission, a complete copy of which is provided in Enclosure 2. The applicant's submission makes the following comments in respect to site suitability:

Applicant's submission:

In response to items 2 and 3 in Council's determination regarding DA8/2022/372/1, table 1 and figure 1 identifies historical development in the existing urban area of Kearsley. According to Cessnock City Council's records there have been fourteen (14) cases that either involve subdivision, residential development of more than one (1) dwelling on one lot or a combination of the two types. Table 1 and figure 1 demonstrate that there has been historical infill development in the existing urban area of Kearsley.

TABLE 1: Surrounding historical infill development in Kearsley

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Number	Address	Lot/ DP/ SP	Development Consent details
1	79 Allandale Street	Lot 101/102 DP1284029	Subdivision of one (1) lot into two lots. DA8/2020/85/1 approved 19/6/2020.
2	7 Millfield Street	Lot 101/ 102 DP1210389	Dual occupancy – 8/2010/613/1 approved 26/11/2010 & Subdivision DA8/2010/834/1 approved 4/4/2011.
3	11 Millfield Street	Lot 111 / 112 DP1203347	Two (2) lot Subdivision DA8/2004/507/1 approved 19/7/2004, and DA8/2013/249/1 for combined subdivision and relocated dwelling was approved on the 21/8/2013.
4	52 Pokolbin Street	Lot 152 / 151 DP1088239	Erection of a single storey dwelling for dual occupancy (detached) & carport DA8/2000/437/1 approved 15/12/2000.
5	43 Allandale Street	SP82543	Erection of a detached dual occupancy DA8/2006/151/1 approved 8/11/2006.
6	59 Allandale Street	Lot 101 DP1151980	Two (2) lot subdivision DA8/2003/1080/1 approved on the 1/12/2003.
7	41 Allandale Street	Lot A DP400124	Historical subdivision Council clerk's certificate number 1102 dated 20 th of September 1956.
8	149 Caledonia Street	Lot B DP400124	Dual Occupancy DA8/2003/1465/1 approved on the 23/4/2004.
9	25 Tomalpin Street	Lot 131 / 132 DP1110075	Subdivision of one (1) lot into two (2) lots. DA8/2005/1035/1 approved 17/2/2006.
10	36/ 36A Pokolbin Street	SP91327 / Lot 2 DP1168154	Two lot Subdivision DA8/2009/556/1 approved 18/3/2010, attached dual occupancy DA8/2012/9/1 approved on the 11/2/2012 and Strata Subdivision of attached dual occupancy DA8/2015/37/1 approved on the 10/2/2015.
11	9 and 11 Mulbring Street	Lot 201/ 202 DP847013	One (1) into two (2) lot Subdivision 5/1994/38/1 approved 4/5/1994.
12	15 Allandale Street	Lot 8 Section 6 DP758555	Complying Development Certificate for a detached dual occupancy 9/2012/145/1 approved 7/11/2012.
13	19 Allandale Street	Lot 1 DP58038 / B DP389598	Historical Subdivision of one lot into two lots, prior to 1974.
14	6 and 6A Lakes Road	Lot 200/ 201 DP1110298	Two (2) lot subdivision DA8/2004/1065/1 approved by the Land and Environment Court of NSW 6/9/2006.

Figure 1 Map of Surrounding infill development



Although Kearsley has not been developed to the same scale as other urban areas of Cessnock there has been continuous development regarding small scale infill subdivisions and associated residential development. Claims made by the Councillors in the meeting on the 17th of August regarding DA8/2022/372/1 do not represent historical patterns of development in Kearsley that are demonstrated in table 1 and figure 1. Moreover, the adopted zoning and minimum lot size reflect the historical patterns of residential development in the locality of Kearsley, which this proposal complies with. As demonstrated in table and figure 1 there has been ongoing residential development within the existing urban footprint of Kearsley, which demonstrates that this proposed subdivision is in keeping with the local amenity. Furthermore, since there has been continuous intensification at the scale proposed in Kearsley for decades, this site is a suitable location for an intensification of development sought. Since this proposal complies with the Cessnock LEP 2011 and Cessnock DCP 2010, and is similar to numerous historical developments in the existing urban area, DA8/2022/372/1 is in public interest and should be supported by Cessnock City Council.....

Comments made in the Council meeting referred to the lack of amenities and services in Kearsley and that additional development will impact residents lifestyle.

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Amenities

Statements by Councillors at the Council meeting stated that this proposal is inappropriate due to the lack of amenities and community facilities. West of the urban area of Kearsley are extensive sports grounds and children's play equipment area, as part of George Jeffery Park, which is a substantial size and requires ongoing costs regarding maintenance. Being able to facilitate growth in the existing urban area will create the opportunity for more rate payers in the locality that will lead to better maintenance of existing community resources. During the Council meeting there were references to the lifestyle that people have bought into Kearsley for, of which this proposal for subdivision threatens. This proposal for one additional lot does not reduce the amenity or lifestyle that people have bought into in Kearsley since this proposal is in accordance with the Cessnock LEP 2011, Cessnock DCP 2010 and there were no concerns raised by Council during the assessment process regarding impacts on amenity. It should be noted that the owners do wish to construct a dwelling on proposed lot 22 in future and that they intend to have it as a long-term lease, will contribute to easing the local housing crisis.

Comments were made by the Councillors highlighting that existing residents want dwellings on large lots within the existing urban fabric of Kearsley and do not want additional development in the existing urban footprint. Despite Council's assertions it is demonstrated in figure 1 and table 1 there has been numerous historical infill developments in the existing urban footprint of Kearsley. Given that this proposal is similar to existing development and is in accordance with the existing planning rules, refusal of this proposal is contrary to the Cessnock LEP 2011 that was adopted by Council and historical forms of development in Kearsley.

Services

There are existing commercial uses in the urban area of Kearsley including a service station/ convenience store, a pub and primary school.

Commercial Uses

Comments were made by Councillors that there is limited access to commercial uses and public transport in Kearsley as a reason for refusal. There is a service station and associated convenience store on the corner of Allandale Street and Mulbring Street. Although there is no public transport through Kearsley, the proposed development is 4.3 kilometres from Vincent and the Cessnock CBD, which is the approximate distance east from Vincent Street that Bellbird is from Vincent Street to the west. Bellbird is expected to accommodate a substantial expansion of future residential development of Cessnock and residents are expected to commute by car for grocery shopping and to access services with very limited or non-existent public transport options. Hence levelling this argument for a two lot subdivision in Kearsley by the Councillors does not reflect the reality of the existing urban footprint of Cessnock.

Kearsley Public School

Kearsley Public School is a small primary school providing Kindergarten to year 6 education. Due to the small catchment the population of the school is small and they are continually struggling to find students to fill classrooms to keep the existing teaching staff. Although this subdivision is for one additional lot, permitting development in the urban area of Kearsley does promote the potential for additional students providing more demand for students at Kearsley Public School maintaining the viability of the school.

4.15(1)(d) Any submissions made in accordance with this Act or the regulations

The Section 8.2 Review of Determination was publicly exhibited between 7 and 21 November 2022.

Two (2) submissions were received during the exhibition period from separate households. The submissions received were both in objection to the proposal.

The following table outlines the issues raised in the submissions lodged with Council, along with a response to each matter:

Issue/s	Comment/s
Amenity	
<ul style="list-style-type: none"> Development will result in light and noise impacts on bedroom/bedroom window from vehicle use of proposed driveway. 	<p>The development proposes two driveways, each will be used exclusively for the purposes of a single lot. The southern driveway is existing and the development proposal does not alter the manner in which that driveway will be used.</p> <p>There is a buffer to the house to the north. A driveway, carport and shed on the adjoining dwelling separate the dwelling on that property from the proposed driveway. Furthermore, boundary fencing is likely to provide a level of shielding from noise and lights that are referred to in the submission.</p> <p>The impact associated with a residential driveway in a residential area, is not considered significant.</p>
<ul style="list-style-type: none"> Development will impact level of privacy, loss of light and over shading 	<p>The development will not directly result in the loss of privacy, overshadowing or loss of daylight. Any future development on the proposed vacant lot will be required to comply with the requirements that apply under Council's planning controls.</p>
<ul style="list-style-type: none"> Parking will be issue in this small street and we need to stay as a small village 	<p>The development proposed will not directly generate additional car parking. On-site car parking is proposed for the existing dwelling and the proposed lot has sufficient land to accommodate a dwelling, open space, access and on-site parking.</p>
Engineering	
<ul style="list-style-type: none"> Congewai Street is a narrow road with only 5 homes in it. 	<p>Consideration has been given to traffic and access for the development proposal and it is considered that, subject to the recommended conditions of consent, the development is acceptable and the site is suitable for the development proposed.</p>
<ul style="list-style-type: none"> When it rains Congewai Street holds a lot of water as we are at the bottom of Caledonia street this causes corrosion. 	<p>This ground of objection refers to existing drainage issues associated with drainage patterns and overland flows which are unrelated to the development that is proposed.</p>

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	The development, subject to the recommended conditions of consent, will be suitably drained.
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<ul style="list-style-type: none"> There is nothing to say what the investor from Sydney is going to build or do with the DA. 	<p>This is a statement rather than a valid ground of objection.</p> <p>This comment correctly identifies that there is no certainty as to the manner in which the site will be developed in the future. However, any future development will need to comply with the applicable planning controls.</p>
<ul style="list-style-type: none"> Subdivision of land should not be permitted in Kearsley village. 	The current planning provisions allow for this type of subdivision to occur.

4.15(1)(e) The public interest

The public interest is served through the detailed assessment of this amended Development Application under the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021*, Environmental Planning Instruments and Council Policies.

Based on the above assessment, it is considered that the proposed amended development is consistent with the public interest.

SECTION 7.11 CONTRIBUTIONS

Section 7.11 Contributions are payable for the proposal.

In the event the application is approved, Section 7.11 Contributions totalling \$18,971.80 (Cessnock District Catchment) would be payable, in accordance with the following:

Cessnock District Catchment	
Contribution Type	Amount Payable
Open Space and recreation facilities	\$8,147.96
Community Facilities	\$1,262.94
Cycleway Facilities	\$7,788.60
Roads and Traffic	\$1,449.42
Plan Administration	\$322.87
Total	\$18,971.80

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INTERNAL REFERRALS

The Section 8.2 Review of Determination was referred to the following Council officer for comment:

Officer	Comment
Development Engineer	No objection has been raised to the proposal, subject to the imposition of standard engineering conditions.

EXTERNAL REFERRALS

The Section 8.2 Review of Determination was referred to the following external agency for concurrence:

Agency	Concurrence	Outcome
NSW Rural Fire Service	The application was lodged as "integrated development" under the provisions of Section 4.46 of the <i>Environmental Planning and Assessment Act 1979</i> and was referred to the NSW Rural Fire Service for concurrence.	General Terms of Approval under Division 4.8 of the <i>Environmental Planning and Assessment Act 1979</i> , and a Bush Fire Safety Authority under section 100B of the <i>Rural Fires Act 1997</i> , have been issued.

CONCLUSION

The Section 8.2 Review of Determination has been assessed in accordance with Section 8.3 and 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and all relevant instruments and policies.

The application can be determined within the review period which concludes on 24 February 2023. The proposed amendments to the application are such that the development is considered substantially the same development as that which was originally considered.

The amended development is consistent with the objectives of the R2 Low Density Residential zone under the CLEP 2011. There is no variation proposed to the minimum lot size development standard. The design and layout of the subdivision does not impact the amenity of the existing dwelling as adequate private open space and car parking is available on the site.

The amended proposal does not result in any significant adverse impacts on the surrounding natural or built environment, and the site is considered suitable for the proposed development. The amended development is not contrary to the public interest.

Based on the assessment of the Section 8.2 Review of Determination, it is recommended that the Application be approved, subject to the conditions of consent included in this report.

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ENCLOSURES

- 1 ⇨ Plan of Subdivision
- 2 ⇨ Applicant's submission
- 3 Submissions - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy. (Submissions contain Personal Information)*

CONDITIONS OF CONSENT

1. General Terms of Approval

All General Terms of Approval issued by the NSW Rural Fire Service dated 19 November 2022 shall be complied with prior, during and at the completion of the development, as required.

A copy of the General Terms of Approval is attached to this determination notice.

2. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2022/372/2 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Plan of Proposed Subdivision Ref No. 23280-2 DET	Marshall Scott Pty Ltd	29.08.2022

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

3. SWC, PC & Notice Required

In accordance with the provisions of Section 6.6 and 6.7 (cf previous Section 81A) of the *EP&A Act 1979* construction works approved by this consent must not commence until:

- a) A *SWC* has been issued by a Certifier (being Council or a registered certifier); and
- b) A *PC* has been appointed by the person having benefit of the development consent; and
- c) If Council is not the *PC*, notify Council no later than two (2) days before building work commences as to who is the appointed *PC*; and
- d) At least two (2) days before commencement of building work, the person having benefit of the development consent is to notify Council as to the intention to commence building work.

PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

The following conditions are to be complied with prior to the issue of a Subdivision Works Certificate by Council.

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4. Cessnock City Wide Development Contributions Plan

A contribution pursuant to the provisions of Section 7.11 of the *EP&A Act 1979* for the services detailed and for the amount detailed must be made to Council prior to the issue of any *SWC*:

Cessnock District Catchment	
Contribution Type	Amount Payable
800 Open Space and recreation facilities	\$8,147.96
801 Community Facilities	\$1,262.94
802 Cycleway Facilities	\$7,788.60
803 Roads and Traffic	\$1,449.42
804 Plan Administration	\$322.87
Total	\$18,971.80

A copy of the *Cessnock City Wide Infrastructure Contributions Plan* may be inspected at Council's Customer Services Section, Administration Building, Vincent Street, Cessnock or can be accessed on Council's website at www.cessnock.nsw.gov.au.

The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan. This amount shall be indexed at the time of actual payment in accordance with the Consumer Price Index. Indexation of contributions for payment occurs quarterly.

Any party intending to act on this consent should contact Council prior to the date of payment to determine the indexed amount payable.

5. Amended Plans Required

The plans submitted in association of the *SWC* application must incorporate the following amendments:

- a) Necessary pits and pipes are required to be shown on the plan to demonstrate collection and discharge of surface runoff from Lot 22 to the legal point of discharge.

The plans must be submitted to and approved by the Certifier as satisfying these required amendments prior to the issue of the *SWC*.

6. Car Parking - Residential

The design of the vehicular access for both Lots and off street parking facilities for the existing dwelling must comply with *AS 2890.1:2004 Parking Facilities – Off-Street Car Parking*. Details demonstrating compliance with this Standard are to be included on the plans submitted in association with a *SWC* application.

A design certificate satisfying these requirements is to be issued by a suitably qualified professional engineer and submitted to the Certifier prior to the issue of a *SWC*.

7. Stormwater – Detailed Design Requirements

A detailed drainage design shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property, 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.

The plans submitted are to demonstrate compliance with this requirement and be approved by the Certifier prior to the issue of a SWC.

8. Access Construction – Requirements

The registered proprietor of the land shall construct a 3m wide concrete battle axe handle with upright kerb from the front site boundary to the usable portion of proposed Lot 22.

Necessary drainage pits and pipes to be installed within the concrete driveway to ensure collection and discharge of surface water to Congewai Street in accordance with Council's 'Engineering Requirements for Development' to serve the subdivision.

9. Section 50 – Hunter Water Act 1991

Evidence shall be submitted to Council that the registered proprietors of the land on whose behalf the application was made have complied with the requirements of Section 50 of the *Hunter Water Act 1991*.

Such evidence shall be submitted to Council prior to the release of the final plan of survey for the subdivision and the SWC.

PRIOR TO COMMENCEMENT OF WORKS

The following conditions are to be complied with prior to the commencement of works on the subject site/

10. Erection of Signs

Prior to the commencement of building works, subdivision work or demolition work, a sign must be erected in a prominent position on the site on which the work is being carried out. The sign must state:

- a) the name, address and telephone number of the principal certifier for the work;
- b) the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside of working hours; and
- c) state that unauthorised entry to the work site is prohibited.

The sign must be maintained while the work is being carried out, but must be removed when the work has been completed.



11. Public Liability Insurance

Any person or contractor undertaking works on public property must take out Public Risk insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within, public property. The Policy is to note, and provide protection for Cessnock City Council as an interested party, and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property. The insurance shall also note the location and the risk.

12. S138 Roads Act Approvals

Under Section 138 of the *Roads Act 1993*, should any work on the verge, footpath, or public road reserve be required, a S138 Roads Act Approval will need to be obtained from Council. In this regard, the applicant is to make a formal application to Council. The S138 application is to be submitted to, and approved by, Council prior to works commencing.

13. Relocation of Services

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. In the event that existing services are required to be relocated the proprietor shall make application to obtain any necessary approval from the relevant service authority prior to commencement of any works.

DURING WORKS

The following conditions are to be complied with during works.

14. Construction Hours

Excavation, building or subdivision work must be restricted to the hours of 7.00am and 5.00pm on Monday to Saturday inclusive. Work is not to be carried out on Sundays and public holidays.

15. Construction Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority document *Noise Guide for Local Government*.

16. Location of Council Pipes

During all phases of demolition, excavation and construction, it is the full responsibility of the applicant and their contractors to:

- a) Ascertain the exact location of the Council stormwater drainage pipeline and associated pits traversing the site in the vicinity of the works;
- b) Take measures to protect the in-ground Council stormwater drainage pipeline and associated pits;
- c) Ensure dedicated overland flow paths are satisfactorily maintained through the site.

Stormwater drainage pipes can be damaged through applying excessive loading (such as construction machinery, material storage, and the like). All proposed structures and construction activities must be sited fully clear of Council's stormwater drainage pipes, pits, easements, watercourses and overland flow paths on the site.

If the Council pipeline is uncovered during construction, all work must cease, and the *PC* and Council must be contacted immediately for advice. Any damage caused to the Council stormwater drainage system must be immediately repaired in full as directed, and at no cost to Council.

17. Erosion and Sediment Controls

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', and Landcom's Soils and Construction Manual - April 2004. 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.

18. Stormwater Runoff

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

19. Waste Management

Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.

20. Building Materials On Site

All building materials, plant and equipment are 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.

PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions are to be complied with prior to issue of a Subdivision Certificate by Council.

21. Requirement for a Subdivision Certificate

Prior to the issue of a SC, the applicant shall submit an original plan of subdivision in an electronic format for Council's endorsement.

The plan of subdivision must show street names and house numbering as allocated by Council. The following details are also to be submitted:

- a) Evidence that all conditions of Development Consent have been satisfied;
- b) Evidence of payment of all relevant fees;
- c) All surveyor's or engineer's certification required by the Development Consent;
- d) Lot numbers to correspond with street numbering;
- e) Evidence that the battle axe driveway has been completed in accordance with this consent;
- f) Evidence that the car parking area within proposed Lot 21 has been completed in accordance with this consent.
- g) Evidence that an external clothes line is provided within the rear yard of the dwelling within proposed Lot 21.

22. All Services Provided Within Lots

A registered surveyor shall provide certification that all services (eg drainage, stormwater, water supply, gas, electricity, telephone) as constructed are contained within each lot, or within appropriate easements to accommodate such services. The certification is to be provided to the PC, prior to the issue of a SC.

23. Access Road – Completion

The access battle axe driveway shall be completed prior to issue of a SC.

24. Car Parking – Completion

Car parking area within proposed Lot 21 shall be completed prior to the issue of a SC.

25. Bitumen Crossing

The registered proprietors shall construct and maintain two (2) bitumen sealed access crossings, of a minimum width of 3m, from the edge of the road formation in Congewai Street to the boundaries of proposed Lots 21 & 22, in accordance with Council's 'Engineering Requirements for Development' and AS 2890.1. A S138 Roads Act approval is required from Council prior to any construction commencing within the road reserve. The access crossing is required to be constructed prior to the issue of a SC.

Construction of the crossing will require inspections to be undertaken by Council. The applicant shall pay Council engineering site supervision fees in accordance with Council's current Fees & Charges, prior to the inspections being undertaken.

The initial fee will facilitate approval of the application and one (1) construction inspection (gravel in place but prior to sealing of the crossing).

A final inspection will be required upon completion of the driveway and restoration of all disturbed footway areas. (A separate fee will be required to be paid when the final inspection is booked.). Should further inspections become necessary as a result of unsatisfactory or defective works, additional inspection fees will be charged (\$200.00 per inspection).

The applicant is to advise Council at least 48 hours prior to inspection of works within the footpath and/or road reserve.

26. Fencing

Prior to the issue of a SC, a 1.8-metre-high solid sheet metal or lapped timber paling fence must be installed between the proposed Lots to ensure privacy (along the battle-axe driveway and at the rear of proposed Lot 21).

Any other side or rear boundary fencing is to be erected in accordance with the *Dividing Fencing Act 1991* and where possible to a height of 1.8 metres.

ONGOING USE

The following conditions are to be complied with as part of the ongoing use of the premises.

27. Stormwater – Impact on Adjoining Land

Any works shall not be undertaken in such a manner that obstructs natural drainage from adjoining land.

Any works shall not be undertaken in such a manner that surface water will be diverted to adjoining land.

28. Driveways to be Maintained

All access crossings and driveways shall be maintained in good order for the life of the development.



ADVISORY NOTES

A. “DIAL BEFORE YOU DIG” DIAL 1100

Before any excavation work starts, contractors and others should phone the “Dial Before You Dig” service to access plans/information for underground pipes and cables. www.dialbeforeyoudig.com.au

B. Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

C. Other Approvals and Permits

The applicant shall apply to Council for all necessary permits including crane permits, road opening permits, hoarding or scaffolding permits, footpath occupation permits, and/or any other approvals under *Section 68 (Approvals)* of the *Local Government Act, 1993* or *Section 138 of the Roads Act, 1993*.

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SUBJECT: *APPOINTMENT OF COUNCIL EXTERNAL ALTERNATE MEMBERS TO THE HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL*

AUTHOR: *Development Services Manager - Janine Maher*

SUMMARY

In accordance with Council's resolution from the meeting of 20 July 2022, Council officers carried out an Expressions of Interest process, calling for suitable external members to act as Council's alternate Hunter and Central Coast Regional Planning Panel (RPP) representatives, for a period of three (3) years. These members are called upon in circumstances where current members declare a conflict of interest.

This report recommends that Council endorses two external alternate members to represent Council and participate in any briefings and meetings scheduled for the Hunter and Central Coast RPP in respect of any Development Application, S4.55 Application, and Planning Proposal in circumstances where a member has declared a conflict of interest, for a period of three years.

RECOMMENDATION

- 1. That Council endorses two external alternate members to represent Council and participate in any briefings and meetings scheduled for the Regional Planning Panel in respect of any Development Application, S4.55 Application, and Planning Proposal in circumstances where a member has declared a conflict of interest, for a period of three years, and advise the RPP Panel Secretariat of these appointments.**
- 2. That the General Manager determine which external alternate member will represent Council in circumstances where a member has declared a conflict of interest, taking into account their area/s of expertise.**

BACKGROUND AND REPORT

Council's Current RPP Members

Council's current appointed Hunter and Central Coast RPP members, and their appointment timeframes, are outlined below:

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Member	Type of member	Expiry of membership
Mayor Suvaal	Full member	End of current term of Council
Councillor Sander	Full member	End of current term of Council
Councillor Burke	Alternate member	End of current term of Council
Councillor Jackson	Alternate member	End of current term of Council

Council's previous two (2) external alternate members, and their membership timeframe/s, are outlined below:

Stephen Leathley	External alternate member	Expired on 6 November 2022
Robert Bisley	External alternate member	Expired on 6 November 2022

In accordance with Clause 11(1) of Part 4 of Schedule 2 of the *Environmental Planning and Assessment Act 1979*, each appointment to the RPP is for a maximum of three (3) years.

It is noted that it is *not mandatory* for Council to nominate members to the RPP. If a council fails to nominate one or more council members, a panel may still exercise its functions in relation to the area of the council concerned.

'Sydney & Regional Planning Panels Operational Procedures' (January 2020) and 'Sydney District and Regional Planning Panels Code of Conduct' (August 2020)

Council is increasingly experiencing situations where Council's permanent and alternate Councillor RPP members are declaring conflicts of interest in respect of matters referred to the RPP for consideration.

The 'Sydney & Regional Planning Panels Operational Procedures' (January 2020) and 'Sydney District and Regional Planning Panels Code of Conduct' (August 2020), both address issues relating to conflicts of interest.

In part, Section 5.2 of the 'Sydney & Regional Planning Panels Operational Procedures' (January 2020), states as follows:

'To avoid any perceptions of bias, and to meet the requirements of the Code of Conduct, councillors who have deliberated or voted on a matter that is to come before the Planning Panel (such as a submission from the council on a DA for regionally significant development, a related voluntary planning agreement or a planning proposal), must stand aside from their place on the Planning Panel and allow council's nominated alternative member to take their place'.

The 'Sydney District and Regional Planning Panels Code of Conduct' (August 2020), also addresses conflicts of interest, in detail. Of particular relevance is Section 3.19(b), which states as follows:

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'The following situations are considered to represent a conflict of duties for panel members (however this list is not exhaustive):

(b) councillor members where they have deliberated or voted on, or otherwise considered, a matter, and/or been present when such consideration is undertaken, in their role at council and that matter, or a related matter, subsequently comes before the panel. Matters which are considered to be related to a panel matter include, but are not limited to:

- a planning proposal for the site*
- a voluntary planning agreement for the development or planning proposal*
- a Masterplan for the development or planning proposal*
- a Plan of Management for the development*
- property matters related to the site, including leases, licences, purchase of land, disposal of land and management of lands*
- legal matters related to the site, development or proposal*
- consideration on whether to make a submission to the panel on a DA for regional development'*

Due to the above provisions, it is becoming increasingly common for Council's permanent and alternate Councillor RPP members to declare a conflict of interest in respect of the consideration of a development application. This is mainly due to their previous involvement in a Planning Proposal for the site the subject of the development application.

If these types of situations occur, it is necessary for Council's permanent and alternate Councillor RPP members to declare a conflict of interest and stand aside from their place on the Planning Panel. This can mean that Council is unrepresented on the RPP.

Expressions of Interest for External Alternate Applicants

At its meeting of 20 July 2022, Council resolved unanimously as follows:

- 1. That the General Manager make arrangements for an Expressions of Interest process to occur calling for suitable external members to act as Council's alternate Hunter and Central Coast Regional Planning Panel (RPP) representatives to participate in any briefings and meetings scheduled for the RPP in respect of any Development Application, S4.55 Application, and Planning Proposal, in circumstances where Council's permanent and alternate Councillor member/s has declared a conflict of interest, for a period of three (3) years.*
- 2. That a further report on the Expressions of Interest outcomes, be provided to Council for consideration and/or endorsement of external alternate members to the Hunter and Central Coast Regional Planning Panel.*

In accordance with the above resolution, Council staff carried out an Expressions of Interest process calling for suitable external applicants to act as Council's alternate representatives, in the event current members declare a conflict of interest.

Expressions of Interest were sought from interested persons between 28 August and 25 September 2022.

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Advertisements calling for Expressions of Interest were placed in newspapers circulating in both the local and wider Hunter region, including the Newcastle Herald and the Advertiser; and a notice was published on Council's website.

In response to the advertisement, Council received a total of two (2) Expressions of Interest, both of which were complete and could therefore be considered.

Council staff carried out an evaluation of the Expressions of Interest against the following criteria:

Number	Selection Criteria
1	Expertise in one or more of the following areas: Planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.
2	A good working knowledge of relevant State and Local Government legislation, including the NSW <i>Environmental Planning and Assessment Act 1979</i> ; and knowledge/understanding of the planning process, including the assessment of complex developments.
3	Availability to service the proposed contract
4	Price
5	Reside in either the Cessnock LGA or the Hunter Region

The evaluation is attached to this report as Confidential Enclosure 1.

The evaluation concluded that both applicants have the necessary experience, knowledge and experience to fulfil the requirements of the RPP alternate member. In addition, both applicants have the ability to service the proposed contract.

Accordingly, this report recommends that Council endorse two (2) external alternate members, to represent Council and participate in any briefings and meetings scheduled for the Regional Planning Panel in respect of any Development Application, S4.55 Application, and Planning Proposal where a member has declared a conflict of interest, for a period of three (3) years.

Should Council resolve to endorse the recommended external alternate members, the successful candidates will be notified in writing.

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OPTIONS

1. *Appoint external alternate members*

Option 1 is preferred as the appointment of external alternate members will ensure that Council is represented during all RPP meetings.

2. *Do not appoint external alternate members*

This option is not preferred as this would mean that Council would not be represented on the RPP in the event Council's usual member/s has/have declared a conflict of interest.

CONSULTATION

Director Planning and Environment
Principal Development Planner

STRATEGIC LINKS

a. Delivery Program

Objective 5.3: *Making Council more responsive to the community*

b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

The implications for Council's participation on the Hunter and Central Coast RPP are outlined in the report.

b. Financial Implications

In the event Council resolves to appoint external representatives to the RPP as a result of the Expressions of Interest process, Council would incur ongoing costs associated with these appointments as Council would be responsible for paying the external representatives for their time and associated travel expenses, but only in the event they are required to represent Council at a scheduled RPP meeting.

Council previously appointed two (2) suitably qualified and experienced external applicants to act as Council's alternate Hunter and Central Coast Regional Planning Panel (RPP) representatives in 2019. At this time, a budget was created for the RPP on an annual basis. Such budget continues to exist, and \$12,000 has been set aside in the 2022/23 budget for this purpose. This amount covers attendance at the RPP meeting, travel to/from the RPP meeting, and general expenses such as parking (in the event a meeting is required to be held in person).

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c. Legislative Implications

N/A

d. Risk Implications

The appointment of external alternate members will ensure that Council is represented during all RPP meetings.

e. Other Implications

N/A

CONCLUSION

This report recommends that Council endorse two (2) external alternate members to represent Council and participate in any briefings and meetings scheduled for the Regional Planning Panel in respect of any Development Application, S4.55 Application, and Planning Proposal in circumstances where a member has declared a conflict of interest, for a period of three years.

The appointment of external alternate members will ensure that Council is represented during all Regional Planning Panel meetings.

ENCLOSURES

- 1** Evaluation of Expressions of Interest - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy. (Contains Personal Information Relating to the Applicants)*

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SUBJECT: ***OUTCOME OF PUBLIC EXHIBITION OF PLANNING PROPOSAL 18/2022/2/1 TO AMEND CESSNOCK LOCAL ENVIRONMENTAL PLAN 2011 RURAL ZONES RU2 AND RU5.***

RESPONSIBLE OFFICER: ***Strategic Planner - Alex Worthing
Strategic Planning Manager - Martin Johnson***

SUMMARY

The purpose of this report is to advise Council of the outcome of public and agency consultation carried out in relation to the Rural Zones (RU2 Rural Landscape and RU5 Village) Planning Proposal and seek Council's endorsement for the finalisation of this amendment to Cessnock LEP.

RECOMMENDATION

- 1. That Council endorses the Planning Proposal as an amendment to the Cessnock Local Environmental Plan 2011.**
- 2. That the Council notify those persons who made submissions of Council's decision.**

BACKGROUND

The *Cessnock Local Environmental Plan 2011* is Council's primary planning instrument and came into force on 23 December 2011. The LEP 2011 contains provisions that manage development on land in the Cessnock Local Government Area (LGA); however, the instrument has not been comprehensively reviewed since 2011.

Council's Strategic Planning Team is carrying out a comprehensive review of the LEP 2011, which involves reviewing the instrument to ensure it:

- is current and accurate;
- is responsive to emerging forms of development and market trends;
- reflects the objectives contained in the Draft Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036; and
- addresses the outcomes of endorsed local strategies, such as the Cessnock 2027 Community Strategic Plan (CSP) and Local Strategic Planning Statement (LSPS) 2036.

Due to the overall complexity of the project, the comprehensive LEP review is progressing in seven themes, as follows:

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- employment land;
- conservation land;
- residential land;
- recreation land;
- rural land;
- special purpose land; and
- miscellaneous matters

Each theme is subject to one or more planning proposals, which will examine and make recommendations regarding amendments to relevant zone objectives, permissible land uses, clauses and land use mapping. Relevant sections of the Cessnock Development Control Plan (DCP) 2010 will also be amended concurrently, where possible.

The Rural zones Planning Proposal implements the recommendations of the Cessnock City Council Local Strategic Planning Statement adopted by Council in 2020. The Rural Theme Planning Proposal was referred to Council for consideration on 20 April 2022 under PE25/2022. At the meeting, Council resolved to obtain a Gateway determination from DPE in respect of the proposal and then place the proposal on public exhibition. Council also resolved to receive a report back on the Planning Proposal following public exhibition.

A Gateway determination was requested by Council staff on 21 April 2022 and was subsequently issued by DPE on 4 August 2022.

Consultation occurred with government agencies between 1 September and 10 November 2022. The proposal was publicly exhibited between 14 September and 26 October 2022.

Exhibition resulted in 12 submissions and 2 agency responses. These are addressed at **Enclosure 2**.

REPORT/PROPOSAL

The Planning Proposal (**Enclosure 1**) relates to the 'Rural land theme' of the comprehensive LEP 2011 review. The Planning Proposal recommends various amendments to the Cessnock RU2 Rural Landscape and RU5 Village Zone Objectives, land use tables, clauses and maps. The planning proposal also applies to any land that is not serviced by reticulated sewerage network.

Proposed amendments to Zone Objectives

Zone objectives set out the purpose of the zone, reflect the intended land uses and are used by Council to help determine if a development application (DA) is consistent with the intended planning outcomes for the area. Mandatory zone objectives are included to ensure consistency in how zones are applied across NSW. Council may also add or modify a limited number of additional local objectives to supplement mandatory objectives where appropriate.

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This planning proposal seeks to make minor amendments to the LEP 2011 zone objectives for RU2 and RU5 Zoned land, in accordance with the recommendations of the Rural Lands Issues paper (included in **Enclosure 1**). The proposed amended zone objectives are consistent with the NSW Department of Planning guidance for zone objectives.

A full list of amendments proposed to the RU2 and RU5 Zone Objectives are provided in the Planning Proposal. The amendments relate to minor word changes to ensure that development is compatible with the rural character.

Proposed LEP 2011 Land Use Table Amendments

Land use tables list the various forms of development that are considered to be compatible with the objectives of the zones and therefore permitted with or without consent. The land use tables also list development that is not compatible with the objectives of the zones and these are listed as prohibited development. Certain land uses are mandated as permissible or prohibited in each zone. Additional land uses may be included if, in Council's opinion, the mandated uses do not satisfactorily address the local intent of the zone.

The planning proposal seeks to amend the LEP 2011 land use tables for RU2 and RU5 Zoned land, in accordance with the recommendations of the Rural Lands Issues paper. The proposed land use table amendments will enable greater flexibility for compatible development to occur within the rural zones, while prohibiting uses that are considered incompatible. A full list of permissible and prohibited land uses, along with amendments proposed to the rural zones is provided in the Planning Proposal however the key amendments are summarised below.

Amend the RU2 Rural Landscape Zone Land Use Table to:

• **Permit**

Secondary dwellings, Plant nurseries

• **Prohibit**

Advertising structures, Amusement centres, Backpackers' accommodation, Boat launching ramps, Boat sheds, Caravan parks, Centre-based child care facilities, Correctional centres, Dual occupancies, Function centres, Health consulting rooms, Hospitals, Hotel or motel accommodation, Jetties, Local distribution premises, Neighbourhood shops, Open cut mining, Places of public worship, Port facilities, Pubs, Public administration buildings, Registered clubs, Respite day care centres, Restaurants or cafes, Rural supplies, Self-storage units, Service stations, Serviced apartments, Veterinary hospitals, Development which cannot be characterised into any land uses defined in the SI

Amend the RU5 Village Zone Land Use Table to:

• **Permit**

Building identification signs, Business identification signs, Early education and care facilities, Home-based child care, Water supply systems,

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• Prohibit

Boarding houses, Extensive agriculture, High technology industries, Intensive plant agriculture.

Although not included in the Planning Proposal, amendments are currently being made by the NSW Department of Planning and Environment (DPE) that are intended to provide sustainable long-term economic growth in rural zones. These changes will allow small-scale tourism and commercial uses related to primary production in rural zones under new land use terms including *farm experience premises* and *farm gate premises*. These land uses include the ability to operate cafes and hold functions, when connected to primary production activity carried out on a commercial farm. The proposed LEP amendments currently being considered by Council will not impact on the DPE amendments, however the new land use terms will offer alternatives to uses such as *function centres* and *restaurants or cafes*, which are stand-alone uses that don't necessarily have any relationship to farm activities.

Proposed LEP 2011 clause Amendments

The planning proposal seeks to amend LEP clauses in accordance with the recommendations of the Rural Lands Issues paper.

A full list of amendments proposed to LEP 2011 clauses are provided in the Planning Proposal however the key amendments are summarized below.

• Revise clause 4.1 Minimum Lot Size (4A)

A new clause is proposed that will apply to land that is not serviced by reticulated sewer. The proposed clause will ensure that subdivision and subsequent development of land may only occur where land is of a sufficient size to safely accommodate on-site waste water management systems.

The proposed amendment is in response to concerns raised by Council's Environmental Health team over the potential for unsafe environmental health outcomes arising from inadequate or unsuitable on-site waste water management systems on undersized or otherwise incompatible lots.

The proposed amendments will remove the T2 and T3 areas established under the existing clause 4.1(4A). The proposed replacement clause will create a minimum lot size of 4000m², or the underlying minimum lot size (whichever is larger) for subdivision of land that is not connected to sewer. Subdivision of unsewered land would also be subject to a merit assessment, to ensure that finished lots are suitable for on-site waste water management systems.

The figure of 4000m² is taken from NSW EPA guidance that new subdivisions for residential development involving on-site sewage management require a minimum of 4000 - 5000 m² total area per household to reduce impacts in the medium to long term.

As the existing and proposed clauses relate solely to ensuring the effective operation of onsite waste management systems, any further consideration of broader issues related to minimum lot sizes will be carried out as part of subsequent LEP amendments.

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- Delete clause 7.13 Dual occupancies on land in Zone RU2

This clause establishes conditions under which dual occupancies may be approved in the RU2 zone. Amendments to the land use table proposed under the planning proposal include prohibiting dual occupancies in the RU2 Rural Landscape zone, as they are inconsistent with a number of planning priorities outlined in Council's LSPS and have potential to increase land use conflicts on rural land. This clause will no longer be valid in the event of a prohibition of this land use within the zone.

Proposed mapping amendments

The planning proposal seeks to amend the LEP 2011 Land Use Zone Map and Minimum Lot Size Map in relation to various parcels of land in the LGA. The proposed amendments seek to address minor anomalies or inconsistencies. Rezoning of rural land for infill development has not been considered under the current Comprehensive LEP review. Mapping will also be amended, in the event that Council adopts the revised clause 4.1, which will remove areas identified as 'T2' and 'T3' from Lot Size Maps. Mapping amendments are included in **Enclosure 1**.

Post-exhibition edits

The Planning Proposal was amended as a result of submissions received during the exhibition period, to change *airstrips* from a permissible to a prohibited use in the RU2 zone. *Airstrips* are a use that is more common in remote rural areas, where a commercial airport is not readily accessible. Cessnock LGA has access to a registered airport (Cessnock Airport) within the LGA, Newcastle Airport and several smaller airports in surrounding LGAs. In this context, *airstrips* are considered unnecessary in Cessnock LGA. Minor formatting and typographical errors were also identified during the exhibition period. These did not have any impact on the outcome of the planning proposal and have been amended accordingly in the final version for consideration by Council.

A response to all submission received is in **Enclosure 2**.

OPTIONS

Council has the following options:

1. Council resolve to support the recommendations of this report. **This is the recommended option.**
2. Request changes to the Planning Proposal. This option may delay the proposed amendments.

CONSULTATION

To ensure the range of issues relevant to rural zoned land in the LGA were identified and considered in the Planning Proposal, an issues paper was prepared and circulated to relevant internal stakeholders including Councils Principal Development Planner, Development Services Team Leader and Environmental Health Team Leader.

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This Planning Proposal was publicly exhibited in accordance with the Gateway determination and Council's Community Participation Plan. Exhibition included a media release, social media notices, newspaper advertisement in the Cessnock Advertiser, posters at villages and exhibition page on Council's website with the option of contacting the project officer or FAQs for input or additional information. Printed copies of the exhibition material were also available at the Cessnock Council administration building and Cessnock and Kurri Kurri Libraries.

Consultation occurred with government agencies between 1 September and 10 November 2022. The proposal was publicly exhibited between 14 September and 26 October 2022. Twelve public submission were received in response to the exhibition period. A summary of issues raised in the submission and a response to these concerns is included at **Enclosure 2** to this report. Two response to the Planning Proposal consultation were received from a state government agency. A summary of agency feedback is provided at **Enclosure 1** to this report.

STRATEGIC LINKS

a. Delivery Program

The Planning Proposal is consistent with the following themes and objectives of the Cessnock 2036 Community Strategic Plan (CSP):

- Objective 3.1 – Protecting and enhancing the natural environment and rural character of the area. This objective focuses on the conservation and preservation of the natural environment and rural character while balancing the impact of development to ensure a sustainable

b. Other Plans

The Cessnock Local Strategic Planning Statement 2036 (LSPS) sets out the 20-year vision for land use in the local area. It establishes the special character and values of the LGA that are to be preserved and how change will be managed into the future.

The planning proposal is consistent with the planning priorities and principles of the LSPS, notably Action 5, which outlines the need to review the LEP 2011 to bring about the following outcomes:

- To ensure that land-uses are compatible with the rural landscape.

Hunter Regional Plan 2036

The Planning Proposal is consistent with the following directions of the Hunter Regional Plan (HRP) 2036:

- Direction 10: Protect and enhance agricultural productivity
- Direction 13: Plan for greater land use compatibility

Direction 10 of the HRP identifies the need to protect locations that can accommodate agricultural enterprises from incompatible development. Many of the proposed amendments contained in this Planning Proposal apply to productive rural lands and seek to reinforce their productivity through protection from incompatible development.

Planning and Environment

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Planning and Environment



Direction 13 of the HRP 2036 identifies the potential for compatibility issues to arise as a result of the continued growth of the Hunter region. This Planning Proposal seeks to amend the rural zone objectives land use tables of the LEP 2011, to prevent land uses which are likely to cause conflict in the rural zones.

Draft Hunter Regional Plan 2041

The Planning Proposal is consistent with the following Strategies and Priorities of the draft Hunter Regional Plan:

- Dwellings on rural lands that are not a primary residence or associated with agriculture should be limited to avoid conflicts with agricultural activities
- Rural land should principally facilitate agriculture, given its importance to the regional economy.

Greater Newcastle Metropolitan Plan 2036

The Planning Proposal is consistent with the following strategies of the Greater Newcastle Metropolitan Plan (GNMP) 2036:

- Strategy 13 Protect rural amenity outside urban areas

This Strategy recognises the importance of rural areas for agricultural production and highlights the need to protect these from urban development to sustain long-term agricultural viability. This Planning Proposal aligns with the Actions of the GNMP, by seeking to enable the growth of the agricultural sector by directing urban development away from rural areas and managing the number of new dwellings in rural areas.

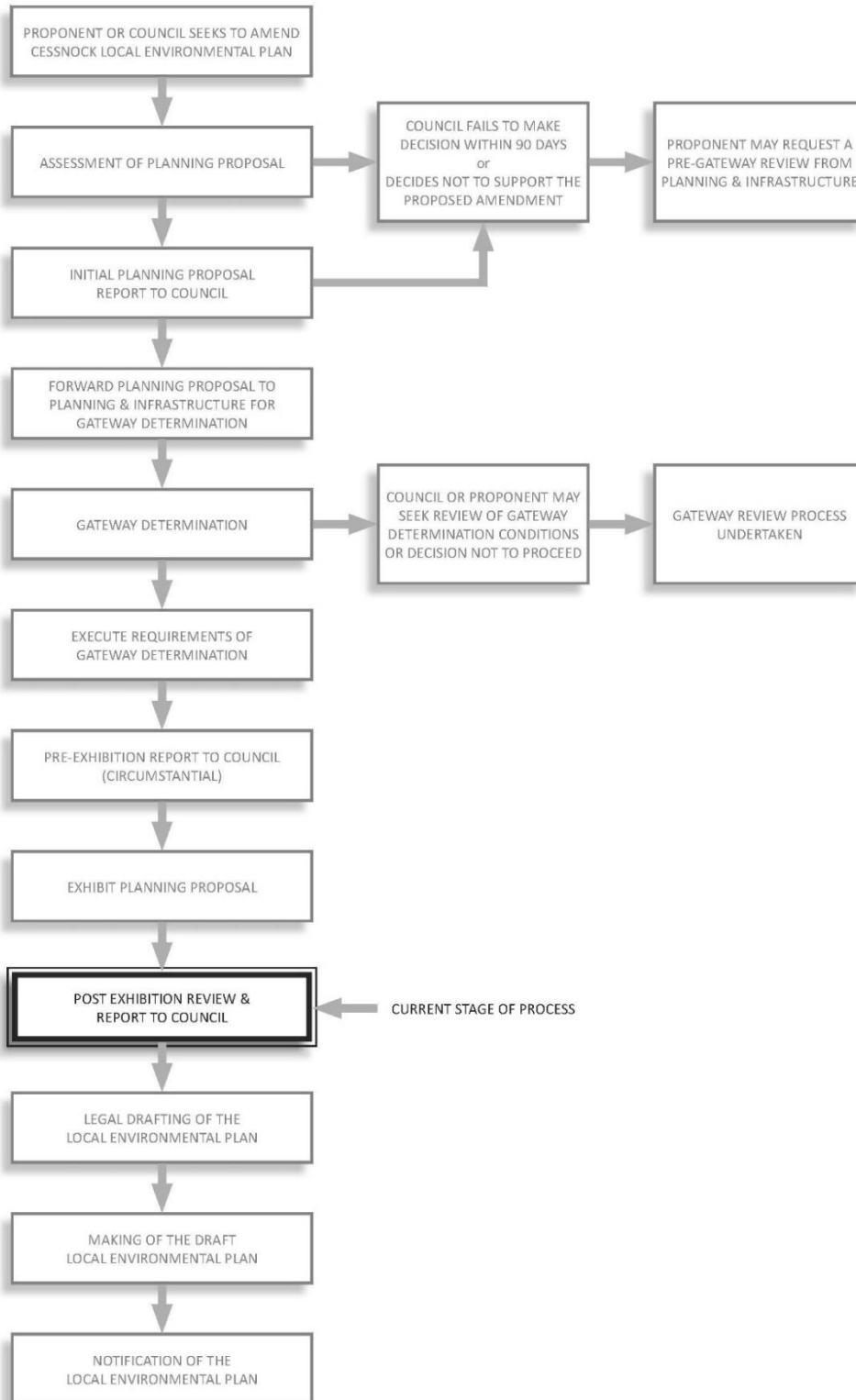
IMPLICATIONS

a. Policy and Procedural Implications

The status of the Planning Proposal is identified in the following process flow chart:



PLAN MAKING PROCESS - LOCAL ENVIRONMENTAL PLAN



Planning and Environment

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Planning and Environment



b. Financial Implications

Nil

c. Legislative Implications

The Planning Proposal has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the Department of Planning Industry and Environment's Guide to Preparing a Planning Proposal.

d. Risk Implications

Nil

e. Environmental Implications

Nil

f. Other Implications

Nil

CONCLUSION

This report and the associated planning proposal relate to the rural land theme of the comprehensive LEP 2011 review. The Planning Proposal recommends various amendments to the Cessnock RU2 Rural Landscape Zone and RU5 Village Zone land use tables, LEP 2011 clauses and LEP 2011 maps. It is recommended that Council endorse the planning proposal as an amendment to the LEP 2011.

ENCLOSURES

- 1 ➡ Rural zones planning proposal
- 2 ➡ Summary of submissions

Planning and Environment

Report No. PE74/2022

Planning and Environment



SUBJECT: *COMPREHENSIVE LEP REVIEW 2022 - PLANNING PROPOSAL 18/2022/4 HERITAGE THEME*

RESPONSIBLE OFFICER: *Strategic Planning Undergraduate - Olivia Lewis-Curnoe
Strategic Planning Manager - Martin Johnson*

SUMMARY

The purpose of this Report is to provide an overview of the Planning Proposal and seek Council's endorsement to forward the Planning Proposal to the Department of Planning and Environment. The Planning Proposal makes administrative amendments to Schedule 5 Environmental Heritage of the *Cessnock Local Environmental Plan (LEP) 2011* and the associated maps to ensure the heritage related information in the LEP remains current.

As the Planning Proposal is correcting minor errors or anomalies the proposal can be approved as an 'expedited amendment' under section 3.22 of the *Environmental Planning and Assessment Act 1979* and does not require public exhibition.

RECOMMENDATION

That Council endorse the Planning Proposal 18/2022/4 - Administrative Amendments to Schedule 5 Environmental Heritage and Associated Maps and request an expedited amendment from the Department of Planning and Environment pursuant to Section 3.22 of the *Environmental Planning and Assessment Act 1979*.

BACKGROUND

Schedule 5 Environmental Heritage of the Cessnock LEP lists items and areas of heritage significance in the Cessnock Local Government Area. Each item or place, must meet criteria specified by the NSW Office of Environment and Heritage (OEH) prior to being listed as an item of significance. Each item in the LEP is allocated an item name, address, property description (lot and deposited plan number) and an item number. The item number then corresponds with a notation on the LEP maps to indicate the location of the item. The Cessnock LEP currently contains over 200 heritage items.

Expedited amendment

The most common process to amend an LEP is to prepare a Planning Proposal through the Gateway process. This involves sending the Planning Proposal to the Department of Planning and Environment to receive a Gateway determination, exhibition of the proposal and referral back to the Department of Planning and Environment. This process can take a minimum of six months, often longer, depending on the complexity of the Planning Proposal.

The *Environmental Planning and Assessment Act 1979* contains provisions for planning proposals that are of a minor nature or correcting an obvious error to be expedited under a quicker process. These proposals are considered to be of an administrative nature and will not have a significant impact. Expedited proposals are not required to be publicly exhibited and the assessment time from the Department of Planning and Environment is often much quicker.

Planning and Environment

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This Planning Proposal consists of minor amendments that meet the criteria for an expedited amendment as they are correcting obvious errors or anomalies.

REPORT/PROPOSAL

The Planning Proposal consists of 63 minor amendments to heritage items in the Cessnock Local Environmental Plan 2011. The amendments aim to:

- Correct mapping anomalies to ensure that the mapping of heritage items aligns with property boundaries
- Correct item names, property descriptions and address details to reflect changes, such as subdivisions, that have occurred
- Correct mapping and property description anomalies where items cover more than one lot

OPTIONS

1. Council resolve to support the recommendations of this Report an request an expedited assessment from the Department of Planning and Environment. This is the recommended option.
2. Request changes to the Planning Proposal. This option may delay the proposed amendments.

CONSULTATION

As the Planning Proposal is correcting minor anomalies and is being undertaken as an 'expedited amendment' the proposal is not required to be publicly exhibited. The amendments in the Planning Proposal are administrative in nature and should not have a significant impact on Council or the community. Council's Heritage Advisor has been consulted in preparing this planning proposal.

STRATEGIC LINKS

a. Delivery Program

The Planning Proposal is consistent with the following objectives in the Community Strategic Plan:

- 1.4.1 We have thriving cultural precincts throughout the Local Government Area that celebrate our heritage and culture.
- 1.4.2 We have a diverse program of cultural and heritage activities
- 3.1 Protecting and enhancing the natural environment and rural character of the area
- 3.1.2 Our area's rural character and heritage is protected- The area's heritage is well conserved

Planning and Environment

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Planning and Environment



b. Other Plans

The planning proposal is consistent with the following planning priorities and principles in the Cessnock Local Strategic Planning Statement:

- Heritage-based tourism is facilitated and promoted
- Our villages retain their unique qualities that reflect their histories

This Planning Proposal will ensure that information available on heritage items in the Cessnock Local Government area is consistent and up to date. This will assist in appropriately protecting heritage items in the Cessnock area.

IMPLICATIONS

a. Policy and Procedural Implications

This Report has regard to the provisions of the *Environmental Planning and Assessment Act and Regulations*. This Planning Proposal will be undertaken as an 'expedited amendment' in accordance with section 3.22 of the *Environmental Planning and Assessment Act 1979*. This Section of the Act allows for Planning Proposals that are correcting an obvious error to be undertaken in a shorter timeframe and without public exhibition.

b. Financial Implications

Finalisation of the Planning Proposal will be met through funds in the Strategic Land Use Planning Budget. The proposal is not required to be publicly exhibited.

c. Legislative Implications

This Report has regard to the provisions of section 3.22 of the *Environmental Planning and Assessment Act 1979*.

d. Risk Implications

As the proposal is correcting minor anomalies there is minimal risk to Council in proceeding with the Planning Proposal.

e. Environmental Implications

The Planning Proposal will assist in protecting heritage by ensuring that information available on heritage items is consistent and up to date.

f. Other Implications

Nil

CONCLUSION

The Planning Proposal consists of minor amendments to ensure that Schedule 5 Environmental heritage and the associated maps in the LEP remain current. This will allow Council and the community to have accurate information when making decisions on the management of heritage items in the Cessnock area.

Planning and Environment

Report No. PE74/2022

Planning and Environment



ENCLOSURES

[1](#) Planning Proposal - Heritage Theme

Planning and Environment

Report No. PE75/2022

Planning and Environment



SUBJECT: *DEVELOPMENT APPLICATION PERFORMANCE MONITORING REPORT - SEPTEMBER 2022*

RESPONSIBLE OFFICER: *Business Support & Customer Relations Manager - Roslyn Ashton*

SUMMARY

The purpose of this report is to provide Council with the September 2022 quarter data in relation to development performance monitoring and provide an overview of development activity within the Cessnock Local Government Area.

RECOMMENDATION

That Council receives and notes the Development Performance Monitoring Report for the September quarter 2022/23.

BACKGROUND

Each year, the NSW Department of Planning and Environment analyses data from each Council in NSW to provide comprehensive information on the operation of the local development assessment system for development applications, modification of consents and complying development. This information is available on the NSW Planning Portal. [Local Development Performance Monitoring \(LDPM\) | Planning Portal](#)

REPORT/PROPOSAL

Data outlined in this report provides details of Council's local development performance during the period of 1 July 2022 to 30 September 2022. The NSW Planning performance dashboard provides additional ePlanning reporting in relation to development assessment, data for each NSW Council can be monitored. [NSW Planning Performance Dashboard | Planning Portal](#)

Highlights

- Council continued to see an increase in development activity across the Cessnock local government area during the reporting period with 263 development applications received and a further 45 modifications received during the September quarter. There were 250 applications processing (waiting to be assessed) as at 30 September 2022.
- A total of 280 development applications were assessed during the reporting period with a further 46 modifications also assessed and determined.
- Median and average days to process development applications have increased as a result of the number of applications received, increased applications processing and difficulties recruiting Planners and Building Surveyors
- The highest level of development activity during the quarter was in Cessnock.
- The total value of approved development applications and complying development activity within the Cessnock LGA for the September quarter is \$144,306,221.
- 293 Residential dwellings were approved in the September quarter (Based on ABS data) and 43 Subdivision lots were approved.

FINANCIAL YTD SEPTEMBER 2022



Development Applications
RECEIVED

263



Development Applications
DETERMINED

280



Development Applications
MEDIAN DAYS

51



Development Applications
MEAN (AVG) DAYS

73



The ABS **residential buildings approved** to be built in the financial year 2022-23 SEP FYTD

293



Lots approved during the financial year 2022-23 SEP FYTD

43



FINANCIAL YTD SEPTEMBER 2022



Determination Body
COUNCIL STAFF

97%



Determination
GRANTING CONSENT

96%

Construction Certificates

46 percent

Principal Certifying
Authority
Market Share

Occupation Certificates

25 percent

Principal Certifying
Authority
Market Share



\$80,548,036

Development Applications
Value for approvals
(Development Applications only)

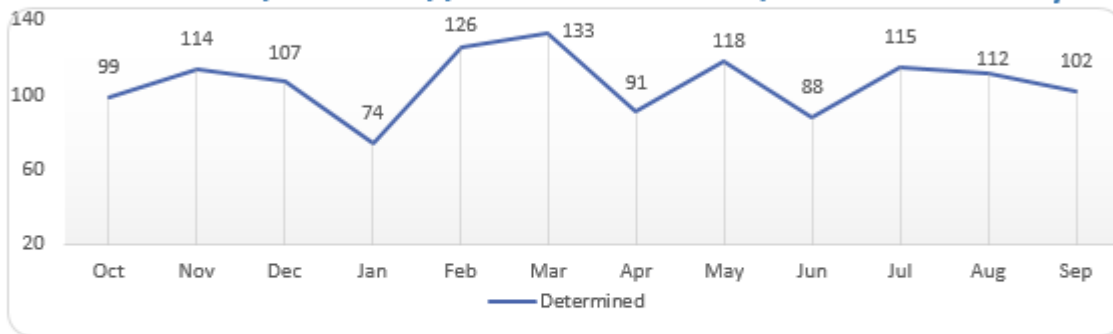


\$63,758,185

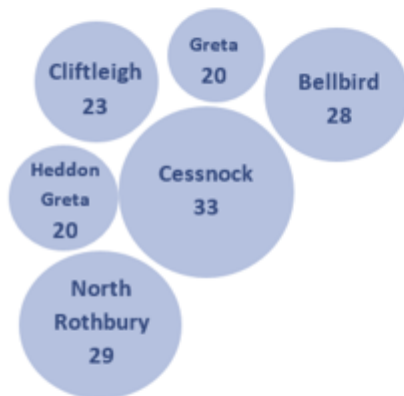
Complying Development
Value for approvals
(Council & Private Certifiers)

FINANCIAL YTD SEPTEMBER 2022

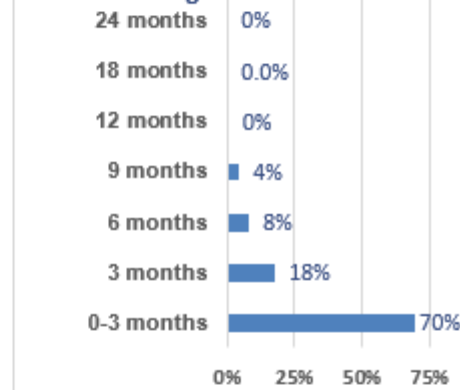
12 Month comparison of applications determined (DAs & Modifications)



No of Developments by Location



Development Applications Percentage of undetermined



Register of Development Applications with Variations to Development Standards (Last Updated 30/09/2022)

DA number	Lot/SEC/DP Lot/DP	Property Details	Development Standard to be varied	Extent of variation	Date DA Determined
8/2022/256/1	LOT 9 SEC 7 DP 8027	48 Fleet St, Branxton 2325	Clause 4.1 – Minimum Subdivision Lot Size	9.17%	28/07/2022
8/2022/13/1	Lot 7 Sec A DP 5015	16 Stephen St, Cessnock 2325	Clause 4.1 – Minimum Subdivision Lot Size	6.60%	16/08/2022

<https://www.cessnock.nsw.gov.au/Plan-and-build/Planning/Planning-matters>

Legal Appeals - 2022/2023 – As at 30/09/2022

Application type (DA, Modification)	Council reference number	Legal appeal class	Legal Appellant	Legal appeal determination date dd/mm/yyyy	Legal appeal outcome
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There have been no appeals during the reporting period 1 July 2022 – 30 September 2022.

Planning and Environment

Report No. PE75/2022

Planning and Environment



CONSULTATION

The following were consulted in the preparation of this report:

NSW Planning – Local Development Performance Monitoring
NSW Planning Portal performance dashboard
Civica – Authority and MasterView reports
Director Planning and Environment
Compliance Services Manager
Development Services Manager

STRATEGIC LINKS

a. Delivery Program

The report is linked to Objective 3.1.6 “Continue to efficiently and effectively process development applications, and respond to planning related enquiries.”

b. Other Plans

Nil

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

Nil

c. Legislative Implications

Nil

d. Risk Implications

Nil

e. Environmental Implications

N/A

f. Other Implications

Nil

Planning and Environment

Report No. PE75/2022

Planning and Environment



CONCLUSION

The report is provided for information and outlines an overview of the performance of Development Assessment for the period 1 July 2022 to 30 September 2022.

ENCLOSURES

There are no enclosures for this report

SUBJECT: *RENT RELIEF - CESSNOCK AIRPORT*
RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*

SUMMARY

The purpose of this report is for Council to consider providing rent relief to Cessnock Airport tenants due to the impact of runway and taxiway works to be undertaken for the final reseal of the runway.

RECOMMENDATION

That Council approve rent relief to existing Airport licence and lease holders for a total of one month, for a total of \$25,560.

BACKGROUND

In March 2019 Council applied for grant funding under the Restart NSW Growing Local Economies Fund and was advised in April 2020 that its application for funding was successful. The purpose of the project is to undertake significant infrastructure upgrades to Cessnock Airport, to unlock business investment growth.

On 20 October 2021, Council accepted tender no. 2021-11 for the Cessnock Airport Runway and Taxiway Renewal Works.

REPORT/PROPOSAL

Works to be undertaken under Tender 2021-11 for the Airport Runway and Taxiway Renewal includes a final shutdown of the airport runway between 11 January and 26 January 2023 inclusive. Works to be undertaken in this period is a final reseal of the runway. Existing licence holders will be unable to have use of runways and taxiways as per agreements with Cessnock Airport.

There are 28 agreements impacted by these works with the maximum amount of rent relief equaling \$25,560. As this amount exceeds the General Manager's delegation, the relief must be approved by the Council.

It is recommended that one months of rent relief be provided to all airport tenants in recognition of the lack of service for the closure of the runway.

OPTIONS

Council can choose to accept the recommendation or refuse the recommendation. Refusal of the recommendation could lead to legal redress from licence holders unable to use the airport as per licence agreements.



CONSULTATION

Airport Coordinator
Works & Operations Manager
Property staff
Airport Licence Holders

STRATEGIC LINKS

a. Delivery Program

N/A

b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

Adjustments to Rental Income will be included as part of the budget review process. There are no long term financial impacts to this relief.

c. Legislative Implications

N/A

d. Risk Implications

Refusal to provide relief may expose Council to legal cases due to no performance of existing agreements.

e. Environmental Implications

N/A

f. Other Implications

N/A

Corporate and Community

Report No. CC95/2022

Corporate and Community Services



CONCLUSION

Due to proposed runway works at Cessnock Airport, it is recommended to provide rental relief to airport licence holders. The amount exceeds the General Manager's delegation requiring a council resolution.

ENCLOSURES

There are no enclosures for this report.

Corporate and Community

Report No. CC97/2022

Corporate and Community Services



SUBJECT: *COUNCIL RECESS PERIOD - DELEGATION TO MAYOR AND GENERAL MANAGER*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

SUMMARY

This report seeks Council's approval for recess arrangements and to provide the Mayor and the General Manager with delegations over the proposed recess period.

RECOMMENDATION

1. That Council be in recess from 15 December 2022 to 31 January 2023.
2. That Council pursuant to Section 377 of the *Local Government Act 1993*, delegate authority to the Mayor and the General Manager jointly to exercise any function of Council during the recess period.
3. That a list of matters considered, if any, under such delegated authority be submitted for Council's information to the February 2023 meeting.

BACKGROUND

There are no meetings proposed to be held in January 2023 so Council should adopt a recess period and to determine what delegated authorities will be granted to the Mayor and the General Manager specific to the recess period to deal with any urgent matters during that time.

REPORT/PROPOSAL

The date for the first ordinary meeting of Council in 2023 is scheduled for 15 February 2023 and it proposed that the recess period of Council be from the day after the December 2022 meeting until the end of January 2023.

There may be urgent matters that arise, such as development applications under the standard process which would require Council to determine between the last Ordinary Meeting in 2022 and the first Ordinary Meeting in 2023. In this regard, it is considered prudent to delegate authority to the Mayor and the General Manager to determine those matters that cannot wait until the first Ordinary Meeting scheduled in February 2023.

In addition, any other function of Council should be delegated to ensure the effective and efficient operations of the Council continue during the recess period, if required. This recess period has been in effect in previous years, and did not eventuate in any undue impact on operations, or unintended use of the delegations.

This practice recognises that many Councillors and Council staff take leave over this period, but still enables Council to function effectively, whilst also satisfying the requirements of the *Local Government Act 1993*.



OPTIONS

N/A

CONSULTATION

General Manager

STRATEGIC LINKS

a. Delivery Program

This report is linked to the Community Strategic Plan, specifically, the key objective of *Civic Leadership and Effective Governance*.

b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

N/A

c. Legislative Implications

Section 377 of the *Local Government Act 1993* provides for delegations from Council.

d. Risk Implications

N/A

e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

To ensure effective and efficient processing of development applications and other functions of Council during the recess period, delegated authority should be granted to the Mayor and the General Manager for the recess period.

Corporate and Community

Report No. CC97/2022

Corporate and Community Services



ENCLOSURES

There are no enclosures for this report

Corporate and Community

Report No. CC98/2022

Corporate and Community Services



SUBJECT: *2024 LOCAL GOVERNMENT ELECTION - ENGAGEMENT OF NSW ELECTORAL COMMISSIONER*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

SUMMARY

In accordance with the *Local Government Act 1993* (Act), councils can choose to outsource to a third party or have the NSW Electoral Commission (NSWEC) conduct the elections.

Council is required to decide 18 months prior to the next ordinary election if it wishes to have the 2024 Local Government Election administered by the NSWEC, with a decision required by 13 March 2023.

RECOMMENDATION

That Council resolves:

- 1. pursuant to s. 296(2) and (3) of the Local Government Act 1993 that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.**
- 2. pursuant to s. 296(2) and (3) of the Local Government Act 1993, as applied and modified by s. 18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of the Council.**
- 3. pursuant to s. 296(2) and (3) of the Local Government Act 1993, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.**

BACKGROUND

The next local government elections are scheduled for September 2024. Since 2012 and in accordance with the Act, councils have been able to choose to conduct elections themselves by outsourcing to a third party provider or resolve to have the NSWEC conduct the elections on their behalf (Section 296 of the Act).

By 13 March 2023, each council in NSW must resolve whether its general manager will administer the 2024 local government elections, or enter into an arrangement with the NSWEC to administer all of Council's elections, polls and constitutional referenda.

Where councils have resolved to enter into an election arrangement with the NSWEC, the contract with the NSWEC must be finalised no later than 15 months before the next ordinary elections, being 13 June 2023.

Corporate and Community

Report No. CC98/2022

Corporate and Community Services



REPORT/PROPOSAL

In accordance with Sec 296AA of the Act, Council is required to decide whether the 2024 elections are to be administered by another electoral services provider engaged by the council or have the NSWEC conduct the elections for Council.

If a council resolves to adopt an electoral services provider other than the NSWEC, the resolution must state whether the general manager has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider.

The 2012 elections were outsourced to a private contractor, and subsequent elections in 2016 and 2021 Council elected to engage the NSWEC. For 2024 it is recommended that Council again engage the NSWEC for the conduct of the election. The recommendation to this report supports this position.

Councils wishing to make a resolution that an election arrangement be entered into for the NSWEC to administer all elections, polls and referenda under section 296(3) of the Act should use the model resolution, which is outlined in the recommendation to this report.

OPTIONS

N/A

CONSULTATION

Executive

[OLG Circular 22-35 – Councils’ decisions on the administration of their September 2024 ordinary elections](#)

STRATEGIC LINKS

a. Delivery Program

This report is linked to the Operational Plan, Objective 5.3 “*Making Council More Responsive to the Community*” and specifically cl 5.3.5 “*to carry out governance functions to comply with legislation and best practice*”.

b. Other Plans

NA

IMPLICATIONS

a. Policy and Procedural Implications

NA

Corporate and Community

Report No. CC98/2022

Corporate and Community Services



b. Financial Implications

The net cost to Council of the 2021 election was approximately \$400,000, with the State providing support for some of the additional expenses associated with the election. At this stage, it is not possible to estimate the quantum of electoral expenditure for 2024 with any certainty, with cost anticipated to exceed the cost of the last election. An allocation for the 2024 ordinary election will be factored into the 2024-25 budget forecast once a clearer cost estimate is known. Council's operating budgets includes a yearly allocation of \$80,000 to reserve to offset the cost impact in election years.

c. Legislative Implications

Local Government (General) Regulation 2021
Local Government Act 1993

d. Risk Implications

Engaging the NSWEC to conduct the 2024 elections provides certainty and expertise in provision of electoral services and ensures Councils meets its obligation under Act.

e. Other Implications

N/A

CONCLUSION

Council is required to decide within 18 months prior to the next ordinary election if it wishes to utilise the services of the Electoral Commissioner in conducting the 2024 local government election. It is recommended that this be the preferred course of action.

ENCLOSURES

There are no enclosures for this report.

SUBJECT: *REVIEW OF PRIVACY MANAGEMENT PLAN 2022*
RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*
Senior Legal and Governance Officer - Esma Eftimova

SUMMARY

The purpose of this report is to present to the elected Council the review of the Privacy Management Plan (Plan) (**Enclosure 1**) and rescind the 2020 Plan.

RECOMMENDATION

1. That Council place the draft Privacy Management Plan 2022 on public exhibition for a period of 28 calendar days.
2. That a further report be presented at a Council meeting following the public exhibition period for consideration of any relevant submissions.
3. That Council adopt the draft Privacy Management Plan 2022 the day after the public exhibition period concludes if no relevant submissions are received.
4. That Council revokes the Privacy Management Plan 2020 from the date the revised draft is adopted.

BACKGROUND

The *Privacy and Personal Information Protection Act 1998* (NSW) (PIIP Act) requires all councils to prepare a Plan outlining their practices to ensure compliance with the requirements of that Act, the *Health Records and Information Privacy Act 2002* (HRIP Act) and [Privacy Code of Practice for Local Government](#) issued 20 December 2019. In particular, the objective of this Plan is to:

- Inform the community about how their personal information will be used, stored and accessed after it is collected by the Council; and
- Ensure Council officials are aware of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

Council's 2019 Plan was last reviewed and adopted by Council on 17 June 2020.

REPORT/PROPOSAL

The 2022 review of the Plan includes the following amendments:

- A summary of the Information Privacy Principles (IPPs) and Health Privacy Principles (HPPs) – clause 5;
- Extension of the timeframe for amending one's '*Name and Address Record*' from 24 hours to 3 business days due to changes in organisational systems and processes – clause 6.6;

Corporate and Community

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Corporate and Community Services



- Clarification about:
 - the difference between privacy complaints and other categories of complaints – clause 7.3;
 - Council’s ability to refer internal reviews to the Privacy Commissioner – clause 7.9;
 - Council’s approach to dealing with anonymity and anonymous customers – clauses 5.16 - 5.17, 10.4;
 - Council’s approach to unsolicited information – clause 11.2;
 - Collecting personal or health information directly or indirectly from an individual, and providing relevant examples 11.6 – 11.8;
 - How Council ensures collected personal information is accurate, up-to-date and complete – clauses 11.34 – 11.35, 11.39, 15.4;
 - Council’s default position to not collecting Individual Healthcare Identifiers – clauses 12.4 – 12.6;
 - The General Identifiers Council collects and uses – clause 16.2; and
 - The definition of sensitive information – clause 16.8;
- Elaboration of:
 - the functions and operations Council performs, in particular around committees and unreasonable customers, including provision of an example – clauses 11.3 - 11.4, 11.22 – 11.23, 11.36;
 - the documents via which Council collects personal and health information – clause 11.5;
 - the requirement for Council to inform individuals how their information is being used – clause 11.44;
 - the general uses of personal and health information collected by Council – clause 15;
 - Council’s right to seek legal counsel in the context of disclosing personal information – clauses 16.15 – 16.66;
 - additional systems and databases Council uses for information management – clause 17.5;
 - additional Public Registers which contain personal information Council holds – clause 18.5;
 - Council’s approach to receiving personal information via its social media channels – clause 19;
- Outline of the operations and provision of services by Cessnock Youth Centre & Outreach Service (CYCOS) in the context of collection, use and disclosure of personal and health information – clause 23;
- Outline of the functions performed by Rangers (clause 24) and Executive Assistants (clause 25) in the context of collection, use and disclosure of personal and health information;

Corporate and Community

Report No. CC99/2022

Corporate and Community Services



- Outline of the arrangement Council has entered into with other agencies for the exchange, use and disclosure of personal and health information – clause 26; and
- Council may refer an internal review to the Privacy Commissioner under section 54(3) PIPP Act to be undertaken by the Privacy Commissioner. This may occur due to a lack of resources, the privacy complaint being concurrent with another type of complaint, or if the complaint relates to actions of senior Council Officials or the Privacy Contact Officer.
- Updated templates titles, clauses, document categories, timeframes and other references (all throughout the Plan).

To complement the Plan, Council reviewed its [Privacy Statement](#) which is available on Council's website. Governance reviewed the resources published on Council's [intranet](#) to provide staff with information and guidance in regard to their privacy obligations.

OPTIONS

Section 33(4) of the PPIP Act requires that Council review its Plan from time to time.

CONSULTATION

- Governance Team
- Managers
- Key Staff
- Audit and Risk Committee (report presented on 8 November 2022)
- Executive Leadership Team (report presented on 11 November 2022)

STRATEGIC LINKS

a. Delivery Program

Adopting the Plan is consistent with the community's desired outcome of *Civic Leadership and Effective Governance* and in particular Objective 5.3 *Making Council more responsive to the community*.

b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

The Plan required internal administrative changes to enable staff to readily implement it.

b. Financial Implications

Council is committed to providing access to personal information free and without excessive delay where possible.

c. Legislative Implications

The Plan operates in accordance with the following:

- [Privacy and Personal Information Protection Act 1998 \(NSW\)](#)
- [Government Information Public Access Act 2009 \(NSW\)](#)
- [Health Records and Information Privacy Act 2002 \(NSW\)](#)
- [Privacy Code of Practice for Local Government](#)

d. Risk Implications

Council could potentially be at risk of legal action if it breaches any of its obligations under the PPIP Act and this could lead to reputational risks and loss of confidence in Council.

e. Environmental Implications

N/A

f. Other Implications

Council's Privacy Contact Officer and other key staff with relevant delegations were asked to complete the free e-learning the Information and Privacy Commissioner has developed:

- Access Training for Decision Makers Under the GIPA Act
- The Contract Register and Contract Disclosures
- Privacy Complaints Handling Under the PPIP Act
- Towards Open Government Information in NSW
- Open Data

The '*Privacy Complaints Handling under the PPIP Act*' was the module staff were urged to complete as a priority.

CONCLUSION

Council is required by legislation to adopt a Plan to ensure that personal information is collected, stored and used in accordance with the PPIP Act and HRIP Act. The Plan reflects current legislative and best practice guidelines.

ENCLOSURES

- 1 [⇒](#) Draft Privacy Management Plan 2022

Corporate and Community

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Corporate and Community Services



SUBJECT: *MISUSE OF COUNCIL RESOURCES - MARCH 2023 STATE ELECTION, AND NOTIFICATION RELATING TO ILLEGALLY PLACE ELECTION SIGNAGE ON PUBLIC LAND*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

SUMMARY

The purpose of this report is to remind Council officials to be aware of their obligations in relation to the use of Council resources in the lead up to the March 2023 State elections and to advise of Councils intention in regards to election signage illegally placed on public land.

RECOMMENDATION

1. That Council notes the obligations of Councillors, staff and other Council officials in relation to the use of Council resources and electoral material in the lead up to the March 2023 State elections.
2. That the community, election candidates and electoral parties in the 2023 State election are aware that Council intends to use any and all avenues available under relevant legislation, including the issuing of penalty notices, for illegally placed election signage on public land.

BACKGROUND

The Office of Local Government has released Circular 22-33 *Misuse of Council Resources – March 2023 State Election*, which includes information in relation to use of council resources and regulatory powers in regards to election signage prior to State elections publications.

Council officials must not use Council resources, property (including intellectual property), and facilities for the purposes of assisting their election campaign or the election campaign of others unless the use is lawfully authorised and proper payment is made where appropriate.

Council should also ensure that any regulatory powers exercised in relation to election activities such as election signage is done in an impartial and even-handed way and in accordance with established procedures and practices.

REPORT/PROPOSAL

This report provides a reminder of the obligations of Council officials in relation to the use of Council resources in the lead up to the March 2023 State elections. Council officials must use Council resources lawfully, ethically, effectively and carefully keeping in mind Council's Code of Conduct and other policies such as the Policy for payment of expenses and the provision of facilities to mayors and councillors.

The key points relating to this report are that:

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- Under the Code of Conduct, the following **must not** be used for the purpose of assisting anyone's election campaign:
 - council resources, property or facilities (unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility); and
 - council letterhead, council crests and other information that could give the appearance it is official council material.
- Breaches of Council's Code of Conduct may result in disciplinary action.
- Council and council officials should be mindful of the need to maintain community confidence in the integrity of the performance of the council's functions and activities in the lead-up to elections. Council should be mindful of how the community may perceive any activities or actions during this time.
- Council officials should ensure that any exercise of regulatory powers in relation to election activities such as election signage is undertaken in an impartial and even-handed way and in accordance with established procedures and practices.

During and after the recent 2021 Local Government and 2022 Federal elections, significant impact was experienced on Councils resources, particularly in regards to compliance responding to illegally placed election signage on public land.

This was not only costs associated with investigation and impounding processes for such signage, but also the diversion of resources from other activities and the actual cost of storage and disposal of any impounded signage which was not able to be recycled and was required to be disposed of at the Cessnock Waste Management Centre. There is also the visual impact experienced in the community because of the proliferation of election signage, both on public and private land.

Following the May 2022 Federal election Council wrote to all parties which had election signage impounded seeking information in regards the authorising officer or individual responsible for placement of the signage and reminding of the legislative requirement and penalties applicable for such illegal activity.

Whilst Council did not pursue the individuals under the relevant legislation with the issuing of penalty notices, all parties were put on notice that Council intended to take all actions available for future elections. Such action can include the issue of a penalty notice to the individual who illegally places signs on public land, either by location or per sign, as well as significantly higher penalties if the registered party or candidate did not provide information in regards to whom the offending individual may have been.

It is the intention that for the March 2023 State election and future elections, Council will use any and all avenues available under relevant legislation, including the issuing of penalty notices, for illegally placed election signage on public land.

A copy of the circular is provided at **Enclosure 1**



OPTIONS

N/A

CONSULTATION

Executive
Manager Compliance

STRATEGIC LINKS

a. Delivery Program

This report is linked to the Community's Desired Outcome Objective 5 "Civic Leadership and Effective Governance".

b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

Misuse of Council resources may constitute a breach of Council's Code of Conduct and result in disciplinary action under the Code or action by the OLG and/or other regulatory agencies.

b. Financial Implications

Illegally placed election signage has the potential to divert compliance resources from other activities and functions during an election. Relevant legislation allows Council to issue penalty notices for any illegally placed signage that has been impounded, with the penalty able to be issued to either to the registered electoral party or the actual individual who placed the signage illegally on public land.

c. Legislative Implications

Local Government Act 1993
Local Government (General) Regulation 2021
Electoral Act 2017
Environmental Planning and Assessment Act 1979
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
Public Spaces (Unattended Property) Act 2021

d. Risk Implications

The proliferation of election signage, particularly signage on public land can provide a source of frustration for members of the public and have both a reputational and resource implication on Council in managing complaints, investigation and/or removal of signage during and after an election and disposal of any signage impounded.

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e. Environmental Implications

Proliferation of election signage, particularly illegally placed signage, at the last local and federal elections created an adverse visual impact on the community, as well as the cost to dispose of any impounded signage at the Waste Management Centre, as the signs could not be recycled.

f. Other Implications

N/A

CONCLUSION

The report provides a reminder of the obligations of Council officials in relation to the use of Council resources and the intention to pursue costs for impounded signage in the lead up to and during the 2023 State elections.

ENCLOSURES

[1](#) Circular 22-33 Misue of Council Resources

SUBJECT: *DISCLOSURES OF INTERESTS IN WRITTEN RETURNS*
RESPONSIBLE OFFICER: *Senior Governance and Finance Officer - Eliza Spooner*
Chief Financial Officer - Matthew Plumridge

SUMMARY

Clause 4.24 of Council's Code of Conduct (the Code) requires the General Manager to keep a register of returns lodged by Councillors and designated persons and to table them at a meeting of Council and Clause 4.21 requires that such returns are to be lodged with the General Manager within 3 months after becoming a Councillor or designated person.

The purpose of this report is to table returns received from designated persons for the period 1 August 2022 – 31 October 2022.

RECOMMENDATION

That Council notes the tabling of the disclosures of interests written returns for the period 1 August 2022 – 31 October 2022 in accordance with Council's Code of Conduct.

BACKGROUND

Part 4 of the Code governs matters concerning pecuniary interests and disclosures of interests in written returns. The General Manager must keep a register of returns lodged and table them at a meeting of Council.

REPORT/PROPOSAL

Clause 4.21 of the Code requires Councillors and designated persons to lodge a written return in the form set out in schedule 2 of the Code within three months after becoming a Councillor or a designated person.

Clause 4.8 of the Code provides that designated persons are:

- (a) *The General Manager;*
- (b) *Senior staff for the purposes of section 332 of the Act;*
- (c) *A person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest;*

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- (d) *A person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.*

Clause 4.24 of the Code requires the General Manager to keep a register of returns lodged with them and clause 4.25 requires the General Manager to table such returns at the first meeting of Council after the last day the return is required to be lodged.

Returns in this period have been received from:

Designated Staff	Return
Cameron Clark - Infrastructure Manager	Commencing
David Moloney – Director Works and Infrastructure	Exiting
Ken Liddell – General Manager	Commencing

The register of returns is available for public inspection at Council's Administration Centre at 62-78 Vincent St, Cessnock in accordance with the *Government Information (Public Access) Act 2009* (NSW). To book an appointment to view the register, please e-mail council@cessnock.nsw.gov.au with your requested inspection time.

OPTIONS

N/A

CONSULTATION

Designated persons were provided the Self-Help Guide from the Office of Local Government to assist them in the completion of their returns.

STRATEGIC LINKS

a. Delivery Program

Completion of the written returns for the period links to the community's desired outcome of "*Civic Leadership and Effective Governance*", and in particular, it links to:

- strategic direction 5.3.7 within the Delivery Program 2017-2021 – *continue to educate staff on statutory compliance obligations*, and
- strategic action 5.3.7 within the Operational Plan 2020-2021 – *continue to educate staff on statutory compliance obligations*.

b. Other Plans

N/A

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IMPLICATIONS

a. Policy and Procedural Implications

Clause 4.24 of the Code requires the General Manager to keep a register of returns lodged and clause 4.25 requires the General Manager to table such returns at the first meeting of Council after the last day the returns are required to be lodged.

On the day following the meeting, the register of returns may be accessed by members of the public (at Council's Administrative Centre) during business hours.

At all other times, the register of returns is available for inspection in accordance with the *Government Information (Public Access) Act 2009 (NSW)*. To book an appointment to view the register, please e-mail council@cessnock.nsw.gov.au with your requested inspection time.

b. Financial Implications

N/A

c. Legislative Implications

N/A

d. Risk Implications

Failure to table the register of pecuniary interest returns would constitute a breach of Council's Code of Conduct.

e. Environmental Implications

N/A

f. Other Implications

Tabling the register of returns and allowing access to it demonstrates Council's commitment to openness and transparency, and is a crucial element of Council's civic leadership and effective governance.

CONCLUSION

Tabling of the register of returns satisfies Council's requirements under the Code.

ENCLOSURES

There are no enclosures for this report.

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SUBJECT: *RESOLUTIONS TRACKING REPORT*

RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*

SUMMARY

The enclosure contains pending actions from previous meetings as well as completed actions for period 8 November 2022 to 5 December 2022.

RECOMMENDATION

That Council receives the report and notes the information in the Resolutions Tracking Report.

ENCLOSURES

- 1 ➡ Completed Actions
- 2 ➡ Outstanding All

SUBJECT: *INVESTMENT REPORT - NOVEMBER 2022*

RESPONSIBLE OFFICER: *Management Accountant - Kim Futcher*

SUMMARY

Section 625 of the *Local Government Act 1993*, Clause 212 of the *Local Government (General) Regulation 2021* and Council's Investment Policy requires a monthly report to Council detailing all money invested.

RECOMMENDATION

That Council receives the Investment Report for November 2022 and notes that:

- Investments are held in accordance with Council's Investment Policy, which is in accordance with the Ministerial Investment Order.
- Council's month end cash and investments balance was \$80,627,703.

BACKGROUND

The *Local Government Act 1993*, the *Local Government (General) Regulation 2021* and Council's Investment Policy requires a monthly report to Council detailing all money invested.

REPORT

Statement by the Responsible Accounting Officer

The Responsible Accounting Officer has certified that this report is produced in accordance with Clause 212 of the *Local Government (General) Regulation 2021* and that all investments have been made in accordance with the *Local Government Act 1993*, *Local Government (General) Regulation 2021* and Council's Investment Policy.

General Investment Commentary

Council monitors and manages its cash and investment portfolio by taking into consideration credit ratings of financial institutions, interest rates offered for periods of investment, counterparty exposures and cash flow requirements.

Following assessment of projected cash flow requirements, surplus funds are invested in accordance with Council's Investment Policy. Investment returns of the portfolio to the end of November 2022 are exceeding original budgets already and closing the gap towards the benchmark rate. As older term deposits mature and new term deposits are invested, yields are increasing compared to the last few years as demonstrated on Table 1 below.

Interest rates have started to increase compared to previous unprecedented low levels of the past 2 years. The official cash rate of the Reserve Bank of Australia (RBA) was increased to 2.85% during a scheduled RBA Board meeting held on 1 November 2022. This is an increase of 0.25% from earlier rate of 2.65% in October 2022, the seventh increase in as many months.

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The cash rate was previously held at 0.10% since November 2020. Returns will continue to be monitored and any adjustment to budgeted income will be reported in future quarterly budget reviews.

Council recently engaged Prudential Investment Services Corp for investment advice. In the November 2022 Economic and Investment Portfolio Commentary for Cessnock City Council, Prudential note *“The market’s peak cash rate expectation dropped by 25bps over the past month, with projections falling from a 4%pa peak rate to 3.75%pa over the coming cycle”*.

In summary of Council’s investments Prudential also advise, *“Council has a well-diversified portfolio invested predominantly among a range of term deposits and senior ranked floating rate notes from highly rated government and Australian bank issuers. Council also has exposure to a wide range of asset classes, including international and domestic shares via the NSW TCorp Medium Term Growth Fund. It is expected that Council’s portfolio will achieve above benchmark returns over the medium/long term with prudent investment selection.”*

Investment Portfolio Information

Table 1 Total cash and investments held by Council as at 30 November 2022

Invest No	Financial Institution Investment Held With	Invest Type	Interest Coupon Term	Maturity / Next Coupon Date	Current Coupon Rate	Par Value \$'000
	Commonwealth Bank	CASH			2.50%	9,279
	Commonwealth Bank	At Call			2.85%	41
1243	AMP Bank	At Call			0.50%	501
1410b	National Australia Bank	TD	442	15-Dec-22	0.40%	1,000
1437a	National Australia Bank	TD	435	15-Dec-22	0.42%	1,000
1472	AMP Bank	TD	735	14-Sep-23	0.75%	1,000
1474	Westpac Bank	TD	448	12-Jan-23	0.42%	4,000
1475	Westpac Bank	TD	462	09-Feb-23	0.50%	4,000
1476	Westpac Bank	TD	476	16-Mar-23	0.56%	4,000
1477	National Australia Bank	TD	490	13-Apr-23	0.80%	4,000
1478	Suncorp Bank	TD	518	15-Jun-23	0.90%	3,000
1480	Commonwealth Bank	TD	441	11-May-23	1.05%	3,000
1481	AMP Bank	TD	490	13-Jul-23	1.35%	4,000
1483	Commonwealth Bank	TD	533	12-Oct-23	2.81%	4,000
1484	Suncorp Bank	TD	504	21-Sep-23	2.85%	4,000
1485	Bank Of Queensland	TD	236	31-Jan-23	3.15%	5,000
1486	Commonwealth Bank	TD	365	08-Aug-23	3.98%	5,000
1487	Commonwealth Bank	TD	323	27-Jun-23	3.86%	5,000
1488	Commonwealth Bank	TD	158	23-Jan-23	3.28%	2,000
1489	Westpac Bank	TD	365	27-Sep-23	4.66%	4,000
1490	Westpac Bank	TD	729	25-Sep-24	4.91%	4,000
1491	National Australia Bank	TD	84	29-Dec-22	3.40%	1,000
1492	National Australia Bank	TD	80	29-Dec-22	3.40%	2,000
1493	Suncorp Bank	TD	532	18-Apr-24	4.61%	2,000
1463	Treasury Corporation	Growth Fund				3,806
TOTAL						80,628

Table 2 Level of funds held and the percentage invested with financial institutions

Financial Institution	Credit Rating	Institution Maximum	Amount \$'000	% of Portfolio
Commonwealth Bank	AA-	40%	19,000	26.84%
Westpac Bank	AA-	40%	20,000	28.25%
National Australia Bank	AA-	40%	9,000	12.71%
Suncorp Bank	A+	40%	9,000	12.71%
AMP Bank	BBB	5%	5,000	7.06%
Bank Of Queensland	BBB+	10%	5,000	7.06%
Treasury Corporation	Unrated	10%	3,806	5.37%
TOTAL			70,806	100.00%

In accordance with the current Investment Policy, figures in Table 2 above exclude cash and at call balances in Council's main operating account held with Commonwealth Bank of Australia and AMP Bank.

In November 2021, AMP Bank's rating was downrated. In error, Council still was treating these investments at their previous rating.

As per our Investment Policy, Council can now only hold 5% of our portfolio in AMP investments nor for any longer than 12 months. The current investments are covered by the grandfathering provisions of the Policy with no more investments able to be made at this level of rating.

As investments mature and/or total quantum of investments rise then Council will return to its agreed investment limits.

Investment in NSW Treasury Corporation (TCorp)

During August 2021, Council invested an amount of \$4m in TCorp's Investment Management (TCorpIM) Medium Term Growth Fund, in line with Council's Investment Policy. TCorpIM Funds are specifically designed to meet the needs of NSW public sector clients. The fund strategy is to provide a balanced exposure to growth and defensive assets, with medium return potential over the medium term and with moderate risk of negative annual returns. The minimum suggested timeframe for investment in the fund is 3-7 years however Council may redeem its investment at any time.

TCorpIM Funds are unit trusts. Distributions are made annually and are automatically reinvested into the fund to buy additional units. Distributions for the year ended 30 June 2022 were \$90,025 providing an additional 97,919.39 units as at that date.

The balance of Council's investment as at 30 June 2022 was \$3,666,665 with 3,994,579.95 units. As this investment is held for medium to long-term capital appreciation, gains or losses will only be realised on redemption of the investment. However due to accounting requirements any unrealised gains or losses will be processed between investments and the operating statement. The unrealised loss on this investment for the 2021-22 financial year was \$423,360.

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Each month Council processes returns based on statements from TCorp. The preliminary November unrealised return was an increase of \$61,676 or 1.65%, bringing the Year to Date (YTD) returns to \$139,131 or 3.79%. Rates of return will fluctuate each month and possibly be negative from time to time with the medium-term investment horizon.

The fund performance summary as at 31 October 2022 is provided below. The November summary was not available at the time of preparing this report. The benchmark used by TCorp is CPI + 2.00% p.a. (over rolling 7 years).

Table 3 NSW Treasury Corporation Performance Summary

	10 year (% pa)	7 year (% pa)	3 year (% pa)	1 year %	FYTD %	1 month %
TCorpIM Medium Term Growth Fund	4.51	3.17	0.73	(4.92)	2.11	2.10
Benchmark: CPI + 2.0% p.a. (over rolling 7 years)	4.37	4.37	5.28	8.44	3.12	0.77
Return above benchmark p.a.	0.14	(1.20)	(4.55)	(13.36)	(1.01)	1.33

Table 4 Investment types, risk assessment, amount and percentage invested compared to the total

Investment Type	Risk Assessment		Amount	% of
	Capital	Interest	\$'000	Portfolio
Term Deposits	Low	Low	67,000	83.10%
Cash/At Call Deposits	Low	Low	9,822	12.18%
Capital Growth Fund	Medium	Medium	3,806	4.72%
TOTAL			80,628	100.00%

Table 5 Comparison of interest rates, earnings and balances this year to last year

Performance Measures	This Year	Last Year
Investment Portfolio Average Interest Rate (year to date)	2.15%	0.38%
BBSW Average Interest Rate (year to date) *	2.20%	0.03%
Actual Investment Interest Earned (for the current month)	\$147,046	\$19,018
Actual Investment Interest Earned (year to date)^	\$573,372	\$89,378
Revised Budget Investment Interest (year to date)	\$158,384	\$87,500
Original Budget Investment Interest (annual)	\$380,122	\$210,000
Revised Budget Investment Interest (annual)	\$580,122	\$210,000
TCorp unrealised movement (year to date)	3.79%	(0.33%)

Investment and Cash Balances (Par Value) #	This Year	Last Year
Opening Balance as at 1 July	\$73,415,666	\$54,388,548
Closing Balance as at 30 November	\$80,627,703	\$68,937,927

* BBSW 90 day Bank Bill Reference Rate (performance measure as per Council's Investment Policy)

^ Excludes TCorp unrealised returns

Excludes Section 355 Committee cash held



Graph 1 Actual interest earned compared to revised budget and actual interest last year

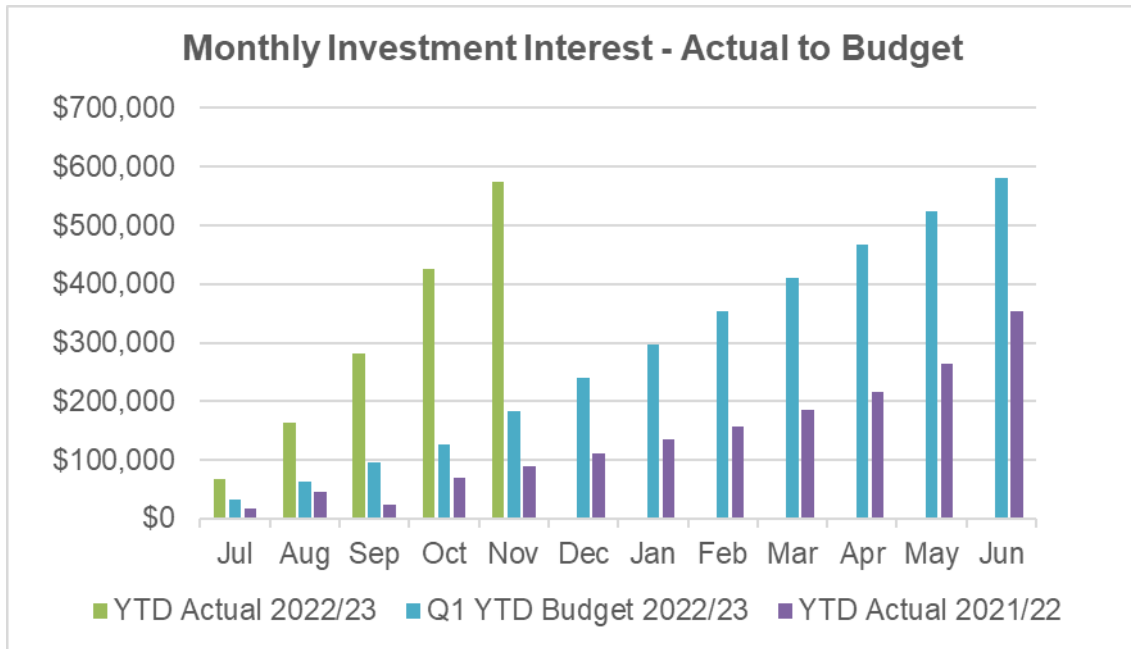


Table 6 Internal and external restrictions over cash and investments held

Month End Totals \$'000	November 2022	October 2022	September 2022	August 2022	July 2022	June 2022*
Developer contributions	25,012	24,540	24,493	24,151	20,590	23,699
Committed developer contributions	3,605	3,373	3,296	3,197	2,961	2,733
RMS contributions	247	332	366	416	634	624
Specific purpose unexpended grants	4,940	7,390	7,785	7,311	8,386	7,332
Domestic waste management reserve	430	430	430	430	430	430
Stormwater management	1,013	915	928	912	824	825
External Restrictions	35,247	36,980	37,298	36,417	33,825	35,643
Month End Totals \$'000	November 2022	October 2022	September 2022	August 2022	July 2022	June 2022*
Plant and vehicle replacement	3,410	3,471	3,442	3,768	3,768	3,714
Employees leave entitlement	2,446	2,446	2,446	2,446	2,840	2,446
Carry over works	1,028	1,102	1,127	1,519	427	2,267
Bridge replacement	471	467	467	470	519	455
Insurance provisions	948	1,282	1,282	1,282	1,282	1,282
Miscellaneous and property	857	805	805	805	425	805
Grant Fund Leverage	90	90	90	91	112	115
Operations and programs	365	428	400	318	343	318

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Month End Totals \$'000	November 2022	October 2022	September 2022	August 2022	July 2022	June 2022*
Property investment fund	3,122	3,136	3,150	3,164	3,199	3,199
Civil Works	428	1,409	1,650	1,482	1,736	1,515
Waste depot and rehabilitation	9,454	9,454	9,454	9,454	9,454	9,454
Committed projects (SRV)	1,469	1,831	1,831	1,849	1,872	1,345
Security deposits and bonds	4,219	4,098	4,020	3,652	3,546	3,551
Financial Assistance Grant in Advance	-	-	-	-	-	6,115
Internal Restrictions	28,307	30,019	30,164	30,694	29,523	36,581
Unrestricted	17,074	12,593	17,588	12,891	12,298	1,227
Total Cash & Investments	80,628	79,592	85,050	80,002	75,646	73,451

*Figures for June 2022 represent final audited balances.

External restrictions decreased by \$1.7m during the month of November as a result of capital expenditures associated with grant funded projects.

Internal restricted funds also decreased by \$1.7m due to absorption of higher than expected insurance premiums above budget and also lower than expected margins on Transport for NSW works reflected in the civil works reserve.

Unrestricted funds have increased by \$4.5m compared to last month as expected aligned to the quarterly instalment notices for rates and annual charges falling due.

Increases to cash balances can be expected during months when rate instalments are due (August, November, February and May). Monthly expenditure is relatively static throughout the year, with the exception where major payments are made for such things as contracts, insurances or other significant items.

Restrictions over cash and investments are subject to change and will only be final once audited and published in the annual financial statements.

CONSULTATION

Director Corporate and Community Services
 Chief Finance Officer
 Management Accountant
 Finance staff

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STRATEGIC LINKS

a. Delivery Program

Investment returns are an integral part of funding sources for future services and community expectations within the Delivery Program and Operational Plan. This report is a part of the organisation's governance framework – providing feedback on the progress against the investment policy and budget adopted by Council. This is in line with the community's desired outcome of: "*Civic Leadership and Effective Governance*" and more specifically links to strategic direction:

5.3.2: Our Council's processes are efficient and transparent

5.3.3: Our Council is financially sustainable.

IMPLICATIONS

a. Policy and Procedural Implications

Investments are held in accordance with Council's Investment Policy.

b. Financial Implications

Investment returns are included in Council's Delivery Program and Operational Plan. Amendments are effected through the Quarterly Budget Review process. Investment portfolio performance is detailed within the report with comparisons to prior year and budget.

A portion of the portfolio and its associated investment income is restricted as it relates to funds from developer contributions, payments in advance for grant projects, Domestic Waste Management, and stormwater management income to be applied to specific purposes and not available for general operational projects.

c. Legislative Implications

This report meets Council's statutory obligations under the *Local Government (General) Regulation 2021* and the *Local Government Act 1993*.

d. Risk Implications

Investment risks are detailed within this report.

e. Other Implications

There are no environmental, community, consultative or other implications to this report.

CONCLUSION

The report details investments held at month end and meets Council's reporting obligations.

ENCLOSURES

There are no enclosures for this report.

Works and Infrastructure

Report No. WI74/2022

Works and Infrastructure



SUBJECT: *2021/22 KURRI KURRI AQUATIC AND FITNESS CENTRE PERFORMANCE REVIEW*

RESPONSIBLE OFFICER: *Recreation and Community Facilities Coordinator - Nathan Eveleigh*

SUMMARY

The purpose of this report is to provide a review of the performance of Belgravia Health & Leisure Group Pty Ltd (Belgravia) against agreed Key Performance Indicators (KPI) for the management of the Kurri Kurri Aquatic & Fitness Centre (KKAFC) under tender T1819-13.

RECOMMENDATION

That Council notes the performance of Belgravia Health & Leisure Group Pty Ltd in respect to Year 3 of the contract for the management of the Kurri Kurri Aquatic & Fitness Centre.

BACKGROUND

Council owns three aquatic facilities within the Cessnock LGA:

- Branxton Pool;
- Cessnock Pool; and
- Kurri Kurri Aquatic & Fitness Centre (KKAFC).

Branxton and Cessnock pools are seasonal pools opened between October and March each year and operated by Council. KKAFC is a year round, indoor aquatic and fitness centre, managed under contract T1819-13 by Belgravia Health & Leisure Group Pty Ltd (Belgravia).

At its Ordinary Meeting of 19 June 2019, in consideration of the awarding of the tender contract to Belgravia, Council resolved:

That the General Manager report to Council annually on the management performance as per Key Performance Indicators (KPI's) set by Council regarding the Kurri Kurri Aquatic & Fitness Centre.

This report provides a summary of the performance of Belgravia with regard to this resolution.

REPORT/PROPOSAL

The COVID-19 pandemic significantly affected operations with the KKAFC closed from 5 August 2021 to 11 October 2021 due to COVID-19 lockdown restrictions.

Upon re-opening, the KKAFC operated with significantly reduced capacity (4m² rule, restrictions on learn to swim and other programs and lane capacities) and increased operational costs affected a number of KPI's being met.

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A slow return to programs brought on by the impact of COVID-19 resulted in extended suspension of memberships and slow program uptake. The total combined attendance across the venue was 70,116 and down by 26% compared to 2020/21.

KKAFC MANAGEMENT PERFORMANCE

Monthly contract management meetings are held between Council and Belgravia, with KPI areas of assessment reviewed for:

- Attendance
- Meetings with key stakeholders
- Report progress against the Business Plan and Annual Operational Report
- Reduction of utility consumption
- Implementation of environmental efficiencies, and
- Customer Experience

These KPI's align with Belgravia's Business and Operational Plan for KKAFC and ensure compliance with the conditions of the tender contract, industry and regulatory requirements and standards.

Overall, Belgravia met or exceeded the majority of the KPI's.

Belgravia continues to offer promotions and adapt to the market and industry shortage of suitably qualified staff to ensure a sustainable operating model to ensure a continuation of services and detailed information on Belgravia's performance is contained within confidential Enclosure 1.

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Key Performance Indicator	Goal	KPI Met
Attendances	Increased attendance by 2.5% compared with 2020/21.	No. COVID-19 lockdowns August – October 2021, ongoing capacity and program restrictions affected attendances throughout 2021/22 financial year. The total combined attendance across the venue was 70,116 and down by 26% compared to 2021/22.
Meetings with key stakeholders	<ul style="list-style-type: none"> A minimum of 2 meetings are held each year with respective user groups to agree on matters relating to the use of the Centre by the club/s. Engage one new user group per financial year. 	Yes. Several member breakfasts and Community Forums for other community providers were held in 2021/22 to promote Belgravia’s programs and increase options to external providers to utilise KKAFC.
Report progress against the Business Plan and Annual Operational Report	<ul style="list-style-type: none"> Contract meetings are attended, reports are received on time and address the progress of targets against the Business Plan and Annual Operational Report 	Partial – contract meetings attended and reports received. A number of reports were received after the due date.
Reduction of utility usage	<ul style="list-style-type: none"> Reduced water usage 3% reduction in electricity consumption 	Yes.
Customer Experience	<ul style="list-style-type: none"> Net Promoter Score (Ask Nicely Program) – >45 Mystery Shopper Result – >80 	Yes – 12 month average Net Promoter score was 57.5%. Mystery shopper 12 month average result was 90%.

OPTIONS

N/A

CONSULTATION

Open Space & Community Facilities staff
Belgravia Health & Leisure Group Pty Ltd

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STRATEGIC LINKS

a. Delivery Program

- 1.2 Strengthening community culture
 - 1.2.4 Provide and manage a range of community, sporting and aquatic activities.
- 3.2 – Better utilisation of existing open space
 - 3.2.4 Provide and maintain recreation facilities, streetscapes and public open space.

b. Other Plans

Nil

IMPLICATIONS

a. Policy and Procedural Implications

N/A

b. Financial Implications

2021/22 is year 3 of 5 under the initial contract period under tender T1819-13.

c. Legislative Implications

The following legislation effects the management and operation of the KKAFC.

- *Local Government Act 1993*
- *Local Government Regulation (General) 2021*
- *Civil Liability Act 2002*
- *Public Health Act 2010*
- *Commission for Children and Young People Act 1998*
- *Child and Young Persons (Care and Protection) Act 1998*
- AS/NZS 2416.1:1010 Water Safety Signs and beach safety flags – Specifications for water safety signs used in workplaces and public areas

d. Risk Implications

Continued compliance with the following industry documents will assist to minimise risks associated with aquatic facility operation and aims to ensure a safe and enjoyable experience for all patrons.

- RLSSA Guidelines for Safe Pool Operations
- Office of Local Government – NSW Health Practice Note 15 – Water Safety
- NSW Guidelines for Public Swimming Pools and Spa Pools – draft 2022

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KKAFC has recently undertaken the annual Royal Life Saving Society of Australia Facility Safety Assessment. KKAFC achieved a score of 93% which strongly reflects the commitment and priority Belgravia has to ensuring the facilities are maintained to the highest standards of safety for its members and staff.

e. Environmental Implications

Nil

f. Other Implications

There are a multitude of health, social and economic benefits that are attributable to the availability of an aquatic facility, including the opportunities they provide for children and adults to learn essential swimming and water safety skills, the contribution to healthier lifestyles and, importantly, the avenues they provide for social connections.

Health Implications: It has been widely acknowledged that local government has a role in addressing health issues. Although Council does not deliver individualised health programs, it does provide some of the infrastructure to enable the community to socialise and participate in recreational activities.

Recreation provides opportunities for people to have fun, be healthy, experience adventure, socialise, learn skills, develop self-esteem and achieve a positive sense of identity. Recreation ultimately contributes to the quality of a person's life and their ability to be involved in their community.

Economic Implications: Council's aquatic facilities generate significant economic benefits for their patrons and for the Australian health care system. Increased physical activity, in the form of swimming and other aquatic exercise, leads to a valuable improvement in health outcomes and thereby improves economic impacts.

CONCLUSION

The performance of Belgravia Health & Leisure Group Pty Ltd was reviewed and met or exceeded the majority of the agreed KPI's with the main exception of attendance due to the impacts of the COVID-19 pandemic and associated lockdowns and capacity restrictions.

ENCLOSURES

- 1** 2021/22 KKAFC Annual Report - *This matter is considered to be confidential under Section 10A(2) (di) of the Local Government Act, as it deals with commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it.*

Works and Infrastructure

Report No. WI75/2022

Works and Infrastructure



SUBJECT: *CESSNOCK LGA HALL BOOKING/MANAGEMENT*
RESPONSIBLE OFFICER: *Recreation and Community Facilities Coordinator - Nathan Eveleigh*
Economic Development & Tourism Manager - Tony Chadwick

SUMMARY

The purpose of this report is to provide information in regards to the implications, resourcing requirements, funding opportunities and processes necessary to overhaul the current practices Council has adopted relating to hall bookings, maintenance and potential promotions following a notice of motion by Council.

RECOMMENDATION

1. That Council notes the information contained within the report with regard to the implications and resourcing requirements required to overhaul the current practices has adopted relating to hall bookings, maintenance and potential promotions;
2. That Council completes a hall booking trial using the Bookeasy system at four community halls; and
3. That if the hall booking trial is successful, that Council implements the Bookeasy system at all community halls in consultation with the s355 volunteer management committees as resources allow.

BACKGROUND

Council, at its 20 April 2022 meeting resolved:

That the General Manager prepare a report to council outlining the implications, resourcing requirements, funding opportunities and processes necessary to overhaul the current practices Cessnock City Council has adopted relating to hall bookings, maintenance and potential promotions. The following points are to be considered:

1. *Adopt a more streamlined, user-friendly online system (potential to link in across platforms i.e. social media sites) enabling customers to clearly and efficiently make their hall selection and booking.*
2. *Research appropriate grants and/or other funding streams that will enable new systems to be incorporated, updated and relevant.*
3. *Provide valid training, support and assistance where applicable for volunteers looking after council halls to help ensure standards are met across all halls (i.e. cleaning, maintenance, customer service etc.).*

The purpose of this report is to respond to Items within the resolution.

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REPORT/PROPOSAL

Streamlined and user-friendly online hall booking system

Three options are available to Council with regard to hall bookings:

1. Status Quo – Continue the current system of manual bookings and payments with s355 volunteer management committees;
2. Utilise the existing Bookeasy system operated by the Hunter Valley Visitor Information Centre for booking accommodation and tours; or
3. Procure a purpose built venue and event management system.

Bookeasy Hall Booking System

The Bookeasy system is currently used by the Hunter Valley Visitor Information Centre (HVVIC) to make live real time bookings and booking reservations for accommodation, tours and activities. The Bookeasy system is capable of accepting bookings for Councils community halls via a website, with payments made online or over the phone via credit card. The booking is then confirmed and the system updates the website to show that a facility is booked.

The fees associated with operating this system include:

- \$0 annual software licence fee;
- \$5,000 to add a booking module to Council's website;
- 2.0% booking commission charged on all bookings; and
- System implementation cost of 0.4 Full Time Equivalent (FTE) Council staff member for 2 months (112 hours).

The implementation costs are estimated to be one staff member for 2 days per week for 2 months. The 112 staff hours are required to take photographs of each hall, create a hall description, update Councils website and to create a contract with the applicable s355 volunteer management committee that allows Council to book the halls on their behalf. The HVVIC staff will implement the project in consultation with the Open Space and Community Facilities team.

Should the Bookeasy system be utilised for bookings at Council owned/managed community facilities, it is proposed to trial the system at four community halls in the first instance. These halls include Bellbird community hall, Millfield Community Hall, Greta Arts and Sports Community Hall, and Kurri Kurri Senior Citizens Centre. Pending the success of the initial trial period, the online booking system can then be rolled out to further facilities.

Purpose built venue and event management system

There are a variety of purpose built venue and event management systems that can be used to manage the use of community facilities. Uses include room bookings, hall bookings, sports field bookings, venue hire, pool lane bookings, issuing event permits and management of community facilities.

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The fees associated with operating this system include:

- \$30,000 annual software licence fee;
- \$70,000 implementation fee (contractor only);
- 35 cent fee per ticket sold;
- No fee is applied to free tickets; and
- System implementation cost of 0.6 FTE Council staff member for 4 months.

The average implementation timeframe to transfer multiple community facilities and halls to the new system is estimated at 4 months. The system is usually website browser based and hosted at an Australian Data Centre.

The Open Space and Community Facilities team would be required to implement the project and manage the new system on behalf of Council.

Potential grants and other funding streams

NSW and Australian Government grant programs typically fund new capital infrastructure, upgraded capital infrastructure or social programs. Grants are not usually available for projects that are deemed normal business for Council's or that are operational in nature.

There are currently no suitable grant programs that could fund a new hall booking system, therefore Council would need to fund any costs associated with delivering the project.

Provide training, support and assistance to volunteers

Three volunteer training inductions have been offered in November 2022, covering a number of aspects of their role as a member of a section 355 committee including financial, governance & WHS responsibilities. Continued individual training, support and assistance will be provided to s355 volunteers by relevant Council officers to ensure standards are met across all halls (i.e. cleaning, maintenance, customer service etc.) and volunteers can confidently undertake their roles into the future.

OPTIONS

The following options are available to Council:

1. Complete a hall booking trial using the Bookeasy system at four community halls. If the trial is successful implement the Bookeasy system at all community halls in consultation with s355 volunteer management committees; or
2. Do not implement an online hall booking system.

Option 1 is recommended.

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CONSULTATION

- Economic Development and Tourism Manager
- Information Technology Manager
- Recreation & Community Liaison Officer
- City of Newcastle
- Dungog Shire Council
- Lake Macquarie City Council
- Maitland City Council
- Port Stephens Council
- Singleton Council
- Abermain Plaza Hall s355 volunteer management committee
- Branxton Community Hall s355 volunteer management committee
- Crawfordville/Millfield s355 volunteer management committee
- Ellalong Community Hall s355 volunteer management committee
- Greta Arts & Sports Community Hall s355 volunteer management committee
- Kearsley Community Hall s355 volunteer management committee
- Kurri Kurri Senior Citizens Hall s355 volunteer management committee
- Laguna Community Hall s355 volunteer management committee
- North Cessnock s355 volunteer management committee
- Pokolbin s355 volunteer management committee
- Weston s355 volunteer management committee
- Wollombi s355 volunteer management committee

A summary of the feedback from s355 committees when facilitating public meetings throughout July, August & September to re-form the volunteer management committees for the community halls listed above found that:

- 6 of the 12 committees were supportive of an online booking system if it made their roles easier;
- Multiple committees would still like to screen or make a final determination of applications/reservations before they are approved to ensure that information supplied is legitimate and hirers are not providing false or misinformation in order to hire a facility that could damage the facility;
- Some committees do not have access to the internet or smart device in order to review and approve online bookings;
- Some facilities are heavily booked already and do not have availability for additional bookings.

STRATEGIC LINKS

a. Delivery Program

Objective 1.2.4f – Support community groups to manage facilities in conjunction with Council by providing assistance and advice within resources where appropriate.

b. Other Plans

Nil

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IMPLICATIONS

a. Policy and Procedural Implications

A review of the s355 Volunteer Management Committee Guidelines will be needed should an online booking system be implemented within Council's community halls.

b. Financial Implications

If option 1 is endorsed then the project will be implemented using existing Economic Development and Open Space and Community Facilities team resources and budgets.

If the purpose built venue and event management system is pursued then a funding source for \$30,000 in annual fees and \$70,000 for implementation will need to be identified and recorded via either the quarterly budget review process, or considered in the 2023/24 budget.

c. Legislative Implications

Nil

d. Risk Implications

With an older demographic of volunteers, there is risk around barriers to technology and broader risks across the community for people who do not have access to technology and online bookings and payments.

There is a concern among many s355 volunteer committee's that online bookings could bring bookings of a higher risk to facilities, causing damage and additional cost to council to repair damage as online reservations can be made with no contact with the s355 volunteers.

Individual procedures will also need to be agreed to between Council and the s355 volunteer committees around timeframes from making a reservation to booking approvals and how to access keys and completing inductions for hirers etc.

e. Environmental Implications

Nil

f. Other Implications

Nil

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CONCLUSION

At minimal cost, Council can implement the Bookeasy booking platform utilised by the HVVIC to make live real time hall bookings via Council's website. Customers will be able to make payments online or via credit card, with funds deposited into the s355 volunteer management committee or Councils bank accounts automatically.

HVVIC staff will work with customers, s355 volunteer management committees and Open Space and Community Facilities Team staff to implement and operate the Bookeasy system.

ENCLOSURES

There are no enclosures for this report

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



SUBJECT: *MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING HELD 21 NOVEMBER 2022.*

RESPONSIBLE OFFICER: *Traffic Engineering Officer - Nathan Goodbun
Principal Engineer - Traffic and Transport - Warren Jeffery
Acting Executive Assistant to Director Works and Infrastructure - Tracey Cocking*

RECOMMENDATION

That the Minutes of the Cessnock Local Traffic Committee Meeting of 21 November 2022 be adopted as a resolution of the Ordinary Council.

- TC43/2022 – That Council note the advice of the Local Traffic Committee regarding the Technical Review of proposed temporary regulation of traffic on Dalwood and McMullins Roads in East Branxton, in accordance with the Dalwood Road East Branxton _ The Bike Traffic Control Plans.
- TC44/2022 - That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads North Rothbury Stages 1 to 4 _ Signage & Line Marking Diagrams.
- TC45/2022 – That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads North Rothbury Stages 35 to 38 & 41 _ Signage & Line Marking Diagrams.
- TC46/2022 - That Council authorises installation of intersection controls at Kesterton Rise, North Rothbury in accordance with the Kesterton Rise North Rothbury _ Signage & Line Marking Diagram.
- TC47/2022 - That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads Rothbury ARIA Stage 1 _ Signage & Line Marking Diagram.
- TC48/2022 - That Council authorises the installation of a children’s crossing, regulatory parking controls and associated signage and line marking on Branxton Street, Nulkaba in accordance with the Branxton Street Nulkaba _ Signage & Line Marking Diagram.
- TC49/2022 - That Council authorises the installation of regulatory signage and line marking on Roads MC04 & MC09, Bellbird in accordance with the Various Roads Bellbird _ Signage & Line Marking Diagram.
- TC50/2022 – That Council authorises the installation of a pedestrian refuge and associated signage and line marking on Ferguson Street, Cessnock in accordance with the Ferguson Street Cessnock _ Signage & Line Marking Diagram.

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- **TC51/2022 - That Council authorises the installation of line making on Mount View Road, Cessnock in accordance with the Mount View Road Cessnock _ Line Marking Diagram.**
- **TC52/2022 - That Council authorises the installation of shared path signage and line marking on various streets, in the Cessnock LGA in accordance with the Shared Path Projects _ Signage & Line Marking Diagram.**
- **TC53/2022 - That Council authorises the installation of intersection controls including associated signage and line marking on Station Street and Scott Street, Weston in accordance with the Station & Scott Streets Weston _ Signage & Line Marking Diagram.**
- **TC54/2022 - That Council resolves that, in accordance with the Cessnock Local Traffic Committee Terms of Reference, the 2023 meeting dates for the Cessnock Local Traffic Committee are:**
 - **20 February 2023**
 - **20 March 2023**
 - **17 April 2023**
 - **15 May 2023**
 - **19 June 2023**
 - **17 July 2023**
 - **21 August 2023**
 - **18 September 2023**
 - **16 October 2023**
 - **20 November 2023**
 - **18 December 2023**

***MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING OF CESSNOCK CITY COUNCIL
HELD ON MONDAY, 21 NOVEMBER 2022, COMMENCING AT 9.40AM***

OPENING: The meeting was opened at 9.40am

PRESENT: Councillor J Hawkins (in the Chair)
Senior Constable A Sweeney (NSW Police Force - Central Hunter LAC)
Ms L Makejev – Transport for NSW

IN ATTENDANCE: Mrs T Cocking – Senior Business Support Officer
Mr W Jeffery – Principal Engineer - Traffic & Transport
Mrs F Pankhurst – Senior Business Support Officer
Ms A Shelton – Roads Safety Officer

Works and Infrastructure

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APOLOGIES

RESOLVED that the apologies tendered for unavoidable absence be accepted on behalf of:

Mr Clayton Barr MP – NSW State Member

CONFIRMATION OF MINUTES

NOTED that the Minutes of the Local Traffic Committee held on 17 October 2022, as circulated, were previously confirmed as a true and correct record.

DISCLOSURES OF INTEREST

Nil

BUSINESS ARISING FROM PREVIOUS MINUTES

Nil

LISTED MATTERS

SUBJECT: **DALWOOD & MCMULLINS ROADS, EAST BRANXTON
TEMPORARY REGULATION OF TRAFFIC
THE BIKE**

REPORT NO.: **TC43/2022**

REFERENCE: **45/2022/5/1**

MATTER: Council has received an application for the temporary regulation of traffic for 'The Bike' bicycle race, and has assessed the application together with the associated Traffic Control Plans (TCP's).

Technical review of the event traffic guidance schemes is sought to allow approval for the temporary regulation of traffic for the event under Section 115 of the *Roads Act 1993*.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- Event rescheduled to June 2023, resubmission and assessment will be required as per the amended date.
- NSW Police will arrange a meeting of external stakeholders as the proposed event spans multiple council areas with varying traffic control requirements; Cessnock, Maitland, Port Stephens, Dungog, Singleton.
- Applicant to clarify whether the proposed activity is a as 'race' or 'non-race'. If a race approval from the Commissioner of Police under section 115 of the *Road Transport Act 2013* will be required.

Works and Infrastructure

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RECOMMENDATION

That Council note the advice of the Local Traffic Committee regarding the Technical Review of proposed temporary regulation of traffic on Dalwood and McMullins Roads in East Branxton, in accordance with the Dalwood Road East Branxton _ The Bike Traffic Control Plans.

SUPPORT: Unanimous

SUBJECT: **VARIOUS ROADS, NORTH ROTHBURY
STAGES 1 TO 4
REGULATORY PARKING & INTERSECTION CONTROLS**

REPORT NO.: **TC44/2022**

REFERENCE: **DOC2022/167785**

MATTER: Approval is sought for installation of regulatory parking, line marking, and intersection controls, in association with the ongoing Huntlee development.

DISCUSSION: The matter was described as per the report and discussed as follows:

- Huntlee is State Significant Development, hence Council is not the DA approving body.
- Council currently working with the Developer in processing back-captures of historical Huntlee traffic management matters.
- Discussion regarding vehicle parking issues at Haverty Avenue (where the garbage truck is having difficulties turning) will be subject to specific consultation and a separate future report to LTC for installation of appropriate regulatory parking controls.

RECOMMENDATION

That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads North Rothbury Stages 1 to 4 _ Signage & Line Marking Diagrams.

SUPPORT: Unanimous

Works and Infrastructure

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SUBJECT: **VARIOUS ROADS, NORTH ROTHBURY
STAGES 35 TO 38 & 41
REGULATORY PARKING & INTERSECTION CONTROLS**

REPORT NO.: **TC45/2022**

REFERENCE: **DOC2022/132534**

MATTER: Approval is sought for installation of regulatory parking, line marking, and intersection controls, in association with the ongoing Huntlee development.

DISCUSSION: The matter was described as per the report, without further discussion.

RECOMMENDATION

That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads North Rothbury Stages 35 to 38 & 41 _ Signage & Line Marking Diagrams.

SUPPORT: Unanimous

SUBJECT: **KESTERTON RISE, NORTH ROTHBURY
INTERSECTION CONTROLS**

REPORT NO.: **TC46/2022**

REFERENCE: **110/2022/17/1**

MATTER: Approval is sought for installation of intersection controls on a private access road intersecting with Kesterton Rise, North Rothbury, in association with the ongoing Huntlee development.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- Proposed connection to Wine country Drive/HEX connector road discussed and it was noted that TfNSW requirements for the state road intersection treatment will apply.
- The need to monitor the operating performance of Kesterton Rise when the state road connection is operating to consider whether future parking restrictions are warranted.

RECOMMENDATION

That Council authorises installation of intersection controls at Kesterton Rise, North Rothbury in accordance with the Kesterton Rise North Rothbury _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

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SUBJECT: **VARIOUS ROADS, ROTHBURY**
ARIA STAGE 1
REGULATORY PARKING & INTERSECTION CONTROLS

REPORT NO.: **TC47/2022**

REFERENCE: **DOC2022/167790**

MATTER: Approval is sought for installation of regulatory parking, line marking, and intersection controls, in association with the ongoing Huntlee development.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- Proposed treatments for this future development supported;
- It was noted that the Developer has provided a fresh signage plan showing NO STOPPING signage for the new pedestrian refuge on Traders Way - to be installed in compliance with applicable standards, guidelines, and technical directions.

RECOMMENDATION

That Council authorises installation of regulatory parking and intersection controls on various roads within Huntlee, in accordance with Various Roads Rothbury ARIA Stage 1 _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



SUBJECT: **BRANXTON STREET, NULKABA
CHILDRENS CROSSING**

REPORT NO.: **TC48/2022**

REFERENCE:

MATTER: A recent inspection by Council Officers identified potential modifications to improve the operation of the children's crossing, bus stop and kiss-and-drop areas in Branxton Street, Nulkaba, which will increase safety around Nulkaba Public School.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- Proposed treatments supported,
- General discussion regarding the operation of 'Kiss and Drop'/'Kiss and Ride" zones and their interrelationship with NO PARKING restrictions.
- The presence of newly installed connecting concrete pathway to the children's crossing was noted.

RECOMMENDATION

That Council authorises the installation of a children's crossing, regulatory parking controls and associated signage and line marking on Branxton Street, Nulkaba in accordance with the Branxton Street Nulkaba _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



SUBJECT: *ROADS MC04 & MC09, BELLBIRD
REGULATORY SIGNAGE AND LINE MARKING*

REPORT NO.: *TC49/2022*

REFERENCE: *4/2018/859/2*

MATTER:

Development consent (8/2018/859/1) has been provided for the construction of a residential development off Ruby Street, Bellbird. Included in the conditions of consent is the construction of an internal road network including a four-way intersection. Approval is sought for the regulatory signage and line marking associated with the development.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- Discussion regarding impact on the legacy road network of the URA Development as a whole,
- It was noted that LTC was only assessing this particular proposed treatment and that Council's Development Service Team and Strategic Planning Team deal with the Developer regarding traffic impact assessments.

RECOMMENDATION

That Council authorises the installation of regulatory signage and line marking on Roads MC04 & MC09, Bellbird in accordance with the Various Roads Bellbird _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



SUBJECT: *FERGUSON STREET, CESSNOCK
PEDESTRIAN REFUGE*

REPORT NO.: *TC50/2022*

REFERENCE: *CPW-2022-004*

MATTER: On 6 May 2021, Council was advised by the NSW Department of Planning & Environment of its success in gaining a Public Spaces Legacy Program grant for a shared path linking Bridges Hill Park with several schools and parks in Cessnock and Nulkaba.

A component of this project is the installation of a pedestrian refuge on Ferguson Street, near Henderson Avenue.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- It was noted that community consultation regarding the proposed treatments was carried out by the relevant CCC Project Manager,
- Proposed treatments supported – noting the requirement for regulatory KEEP LEFT sign on pedestrian refuge island.

RECOMMENDATION

That Council authorises the installation of a pedestrian refuge and associated signage and line marking on Ferguson Street, Cessnock in accordance with the Ferguson Street Cessnock _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

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Works and Infrastructure



SUBJECT: MOUNT VIEW ROAD, CESSNOCK
LINE MARKING

REPORT NO.: TC51/2022

REFERENCE: CRM 25468/2022

MATTER: Council has received representations from residents of Links Avenue, Cessnock, regarding non-compliance with parking regulations on Mount View Road during school zone times.

Previous resurfacing works on Mount View Road resulted in the inadvertent failure to reinstate 24m of BB centre line in the vicinity of Links Avenue. It is proposed to re-mark this BB centre line and extend existing E1 edge line to delineate the travel lane.

DISCUSSION: The matter was described as per the report and discussed as follows:

- This location was inadvertently omitted from the pre-meeting site inspections schedule,
- Noted additional visibility and safety issues caused by illegally parked vehicles on Links Avenue at the intersection of Mount View Road, particularly during morning and afternoon school zone times,
- It was determined that the parking issues at Links Avenue will be investigated and be subject to a separate future report to LTC for installation of appropriate regulatory treatments to increase safety and amenity at the location.
- Proposed Mount View Road line marking treatments recommended.

RECOMMENDATION

That Council authorises the installation of line making on Mount View Road, Cessnock in accordance with the Mount View Road Cessnock _ Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



SUBJECT: **VARIOUS STREETS, CESSNOCK LGA
SHARED PATH SIGNAGE & LINE MARKING**

REPORT NO.: **TC52/2022**

REFERENCE:

MATTER: Council, having been successful in gaining grant funding from several sources, is currently delivering multiple shared path projects within the Local Government Area. To allow for the completion of these projects and for the subject pathways to operate as shared paths, Local Traffic Committee approval is required for the regulatory signage and line marking.

DISCUSSION: The matter was described as per the report, without further discussion.

RECOMMENDATION

That Council authorises the installation of shared path signage and line marking on various streets, in the Cessnock LGA in accordance with the Shared Path Projects _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

SUBJECT: **STATION & SCOTT STREETS, WESTON
INTERSECTION CONTROLS**

REPORT NO.: **TC53/2022**

REFERENCE: **CRM 17485/2022**

MATTER: Concerns have been raised by local road users regarding the configuration of the intersection at Station and Scott Streets, Weston, possibly leading to confusion for some unfamiliar road users, as the major route through the intersection does not follow the straight alignment, as with a normal T-intersection, and priority is not clearly defined by intersection controls.

DISCUSSION: The matter was described as per the report, and discussed as follows:

- Proposed treatments supported – with the NSW police representative noting that the proposed GIVEWAY sign should be installed so as to not be obscured by the adjacent overhanging tree foliage.

RECOMMENDATION

That Council authorises the installation of intersection controls including associated signage and line marking on Station Street and Scott Street, Weston in accordance with the Station & Scott Streets Weston _ Signage & Line Marking Diagram.

SUPPORT: Unanimous

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



SUBJECT: CESSNOCK LOCAL TRAFFIC COMMITTEE MEETING SCHEDULE FOR YEAR 2023

REPORT NO.: TC54/2022

REFERENCE:

MATTER: In accordance with the Cessnock Local Traffic Committee Terms of Reference, meetings will be conducted as required on the third Monday of the month, subject to preparation of technical reports and recommendations.

DISCUSSION: The matter was described as per the report, with no discussion.

RECOMMENDATION

That Council resolves that, in accordance with the Cessnock Local Traffic Committee Terms of Reference, the 2023 meeting dates for the Cessnock Local Traffic Committee are:

- 20 February 2023
- 20 March 2023
- 17 April 2023
- 15 May 2023
- 19 June 2023
- 17 July 2023
- 21 August 2023
- 18 September 2023
- 16 October 2023
- 20 November 2023
- 18 December 2023

SUPPORT: Unanimous

CLOSURE:

The meeting was declared closed at 11:45am.

Works and Infrastructure

Report No. WI76/2022

Works and Infrastructure



ENCLOSURES

- [1](#) ⇨ TC44/2022 Various Roads North Rothbury Stages 1 to 4 Signage & Line Marking Diagrams
- [2](#) ⇨ TC45/2022 Various Roads North Rothbury Stages 35 to 38 & 41 _ Signage & Line Marking Diagrams
- [3](#) ⇨ TC46/2022 Kesterton Rise North Rothbury Signage & Line Marking Diagram
- [4](#) ⇨ TC47/2022 Various Roads Rothbury ARIA Stage 1 Signage & Line Marking Diagram
- [5](#) ⇨ TC48/2022 Branxton Street Nulkaba _ Signage & Line Marking Diagram
- [6](#) ⇨ TC48/2022 Technical Direction TDT 2002 12c _ Stopping & Parking Restrictions at Intersections & Crossings
- [7](#) ⇨ TC49/2022 Various Roads Belbird Signage & Line Marking Diagram
- [8](#) ⇨ TC50/2022 Ferguson Street Cessnock _ Signage & Line Marking Diagram
- [9](#) ⇨ TC50/2022 Technical Direction TDT 2011 01a Pedestrian Refuges
- [1](#) ⇨ TC51/2022 Mount view Road Cessnock Line Marking Diagram
- [0](#)
- [1](#) ⇨ TC52/2022 Shared Path Projects _ Signage & Line Marking Diagram
- [1](#)
- [1](#) ⇨ TC52/2022 Cessnock CBD to Bridges Hill Park Shared Path _ Route Diagram
- [2](#)
- [1](#) ⇨ TC52/2022 Bridges Hill Park to Nulkaba Shared Path _ Route Diagram
- [3](#)
- [1](#) ⇨ TC52/2022 Branxton to Greta Shared Path _ Route Diagram
- [4](#)
- [1](#) ⇨ TC52/2022 Greta Railway Station to Greta Township Shared Path _ Route Diagram
- [5](#)
- [1](#) ⇨ TC52/2022 Weston Public School Precinct Shared Path _ Route Diagram
- [6](#)
- [1](#) ⇨ TC52/2022 Rosehill Estate to Crawfordville Park Shared Path _ Route Diagram
- [7](#)
- [1](#) ⇨ TC52/2022 Pelaw Main to Log of Knowledge Park Shared Path _ Route Diagram
- [8](#)
- [1](#) ⇨ TC52/2022 Cessnock CBD to West Cessnock Public School Shared Path _ Route Diagram
- [9](#)
- [2](#) ⇨ TC53/2022 Station & Scott Streets Weston _ Signage & Line Marking Diagram
- [0](#)
- [2](#) ⇨ TC54/2022 Local Traffic Committee _ Terms of Reference
- [1](#)

Works and Infrastructure
Report No. WI77/2022
Works and Infrastructure



SUBJECT: *EXTRA ORDINARY MINUTES OF CESSNOCK LOCAL TRAFFIC COMMITTEE MEETING 8 DECEMBER 2022*

RESPONSIBLE OFFICER: *Traffic Engineering Officer - Nathan Goodbun
Principal Engineer - Traffic and Transport - Warren Jeffery*

RECOMMENDATION

That the Minutes of the Cessnock Local Traffic Committee Meeting of 8 December 2022 be adopted as a resolution of the Ordinary Council.

- **TC55/2022** - That Council authorises the temporary regulation of traffic on Paynes Crossing Road, Wollombi for the Wollombi Public Holiday Markets events in accordance with the Paynes Crossing Road Wollombi _ Traffic Control Plan.

MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING OF CESSNOCK CITY COUNCIL ON THURSDAY, 8 DECEMBER 2022

OPENING: The agenda was emailed to voting members 8 November 2022.

PRESENT: Councillor J Hawkins (in the Chair)
Senior Constable A Sweeney (NSW Police Force - Central Hunter LAC)
Ms J Makejev (TfNSW)

DISCLOSURES OF INTEREST

Nil

LISTED MATTERS

SUBJECT: *PAYNES CROSSING ROAD, WOLLOMBI
TEMPORARY REGULATION OF TRAFFIC
WOLLOMBI MARKETS*

REPORT NO.:

REFERENCE: *46/2022/7/1*

MATTER: Council has received a late application for the temporary regulation of traffic in connection with an existing development consent for the Wollombi Public Holiday Markets, and has assessed the application together with the associated Traffic Management Plan (TMP) and Traffic Control Plans (TCPs).

Approval is sought under Section 116 of the *Roads Act 1993*, to regulate traffic on various roads in Wollombi in connection with this application.

Works and Infrastructure

Report No. WI77/2022

Works and Infrastructure



DISCUSSION: The matter was considered by each voting member as per the report with no comments provided.

RECOMMENDATION

That Council authorises the temporary regulation of traffic on Paynes Crossing Road, Wollombi for the Wollombi Public Holiday Markets events in accordance with the Paynes Crossing Road Wollombi _ Traffic Control Plan.

SUPPORT: Unanimous

CLOSURE: Closing date for the comments to Council being close of business 9 December 2022.

ENCLOSURES

There are no enclosures for this report

Works and Infrastructure

Report No. WI78/2022

Works and Infrastructure



SUBJECT: *MINUTES OF THE ROADS REVIEW COMMITTEE MEETING HELD ON 30 NOVEMBER 2022*

RESPONSIBLE OFFICER: *Principal Engineer Roads Infrastructure - Rabiul Awal
Acting Infrastructure Manager - Jules Bosco*

RECOMMENDATION

1. That the Minutes of the Roads Review Committee Meeting held on 30 November 2022 be adopted as a resolution of the Ordinary Council.
2. That Council allocates \$65,000 in 2023/24 financial year for the survey, investigation, design and cost estimate for the construction of 720m section of Bellamy Street, Millfield as per Council's Rural Unsealed Road Standard (Rural Road type C as per table 4.5.13 of Engineering Requirements for Development).

MINUTES OF ROADS REVIEW COMMITTEE MEETING OF THE CESSNOCK CITY COUNCIL HELD IN ANTE ROOM ON WEDNESDAY, 30 NOVEMBER 2022, COMMENCING AT 2.30PM

PRESENT: The Mayor, Councillor Suvaal
Councillor Dunn
Councillor Burke
Councillor Grine (alternate)
Ken Liddell, General Manager

ABSENT: Councillor Olsen

IN ATTENDANCE: Rabiul Awal, Principal Engineer Roads
Cameron Clark, Acting Director Works and Infrastructure
Jules Bosco, Acting Infrastructure Manager
Councillor Sander
Councillor Hill
India Anderson – Minute Taker
Robyn Larsen – Minute Taker

INVITEES: *Nil*

APOLOGIES

That Councillor Watton's leave of absence be noted.

Works and Infrastructure

Report No. WI78/2022

Works and Infrastructure



CONFIRMATION OF MINUTES

MINUTES:

MOTION

Moved:

Councillor Burke

Seconded:

Councillor Dunn

RECOMMENDED that the Minutes of the Roads Review Committee held on 14 September 2022, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

OFFICER'S REPORTS

OFFICER'S REPORTS NO. RRCOR4/2022

SUBJECT: DRY CREEK ROAD ELLALONG

MOTION

Moved:

Councillor Dunn

Seconded:

Councillor Grine

RECOMMENDATION

1. That Council accept ownership and maintenance responsibility of approximately 230m section (terminating at northern boundary of Lot 108 DP 755225) of Dry Creek Road, Ellalong.
2. That Council contact Crown Lands to transfer the ownership of this section of Dry Creek Road to Council.
3. That Council notify Mr Coffey of the outcome of his request once the matter is resolved by Council.

CARRIED UNANIMOUSLY

OFFICER'S REPORTS NO. RRCOR5/2022

SUBJECT: BELLAMY STREET MILLFIELD

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke

RECOMMENDATION

1. That Council continues undertaking emergency maintenance works along this section of Bellamy Street Millfield (terminating around 100m from western boundary of Lot 101 DP 755241).
2. That Council allocates \$65,000 in 2023/24 financial year for the survey, investigation, design and cost estimate for the construction of 720m section of Bellamy Street, Millfield as per Council's Rural Unsealed Road Standard (Rural Road type C as per table 4.5.13 of Engineering Requirements for Development).
3. That Council seeks grant funding opportunities from NSW and Australian Governments for the construction of Bellamy Street to Council's standard.
4. That Council includes construction of 720m section of Bellamy Street in Council's 10 Year Local Road Construction Program pending external grant funding is received.
5. That Council takes maintenance responsibility of approximately 660m Unsealed section of Bellamy Street Millfield (terminating around 100m from western boundary of Lot 101 DP 755241) once it is brought to Council's Rural Unsealed Road Standard.
6. That Council notify Mr Brigden of the outcome of his request once the matter is resolved by Council.

CARRIED UNANIMOUSLY

The Meeting Was Declared Closed at 2.47pm

ENCLOSURES

There are no enclosures for this report.

Correspondence

Report No. CO23/2022

Corporate and Community Services



SUBJECT: *CC58/2022 - ACCOUNTING TREATMENT - RURAL FIRE SERVICE FLEET*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

RECOMMENDATION

That Council notes the correspondence received from the State Member for Cessnock Clayton Barr MP and the Member for Balmain Jamie Parker MP in response to the accounting treatment of RFS fleet assets.

At its Ordinary Meeting of 20 July 2022 Council considered CC58/2022 – Accounting Treatment – Rural Fire Service Fleet and resolved:

1. That Council write to the State Member for Cessnock Clayton Barr MP, the Treasurer the Hon. Matt Kean MP, Minister for Emergency Services and Resilience the Hon. Stephanie Cook MP and the Minister for Local Government The Hon. Wendy Tuckerman MP:
 - Expressing Council’s objection to the NSW Government’s determination on ownership of Rural Fire Service (RFS) assets;
 - Advising of the impact of the Government’s position on Council finances of this accounting treatment;
 - Informing that Council will not carry RFS asset stocktakes on behalf of the NSW Government and will not record RFS assets in Council’s financial statements;
 - Calling on the NSW Government to take immediate action to permanently clear up inequities and inconsistencies around the accounting treatment of RFS assets by acknowledging that rural firefighting equipment is vested in, under the control of and the property of the RFS; and
 - Amending s119 of the *Rural Fires Act 1997* so that the effect is to make it clear that RFS assets are not the property of councils.

2. That Council write to the Shadow Treasurer Daniel Mookhey MLC, the Shadow Minister for Emergency Services Jihad Dib MP, the Shadow Minister for Local Government Greg Warren MP, the Greens Spokesperson for Local Government Jamie Parker MP and the leaders of the Shooters, Fishers and Farmers, Animal Justice and One Nation parties Robert Borsak MLC, Emma Hurst MLC and Mark Latham MLC:
 - Advising Members of Council’s position, including providing copies of correspondence to NSW Government Ministers; and
 - Seeking Members’ commitment to support NSW Councils’ call to amend the *Rural Fires Act 1997* as set in correspondence.

Correspondence

Report No. CO23/2022

Corporate and Community Services



3. That Council write to the Auditor General advising that notwithstanding any overtures of future qualified audits, Council will not carry out RFS stocktakes on behalf of the NSW Government and will not record RFS assets in Council's financial statements, noting that the State Government's own Local Government Accounting Code of Practice and Financial Reporting provides for councils to determine whether or not they record RFS assets as council assets.
4. That Council promotes these messages via its digital and social media channels and via its network.
5. That Council reaffirms its complete support of and commitment to local RFS brigades noting that Council's action is entirely directed towards the NSW Government's nonsensical position that rather than being owned and controlled by local brigades, RFS assets are somehow controlled by councils, which Council consider to be a cynical financial sleight of hand abdicating the NSW Government's responsibilities at the cost of local communities.
6. That Council affirms its support to Local Government NSW (LGNSW) and requests that LGNSW continue advocating on Council's behalf to get clarification finally from the State Government about the accounting treatment of RFS assets.

Correspondence has been forwarded by the State Member for Cessnock, Clayton Barr MP, from the Parliamentary Secretary for Police & Emergency Services, on behalf of the Minister for Emergency Services & Resilience and Minister for Flood Recovery.

Correspondence has been received from the Member for Balmain, Jamie Parker MP regarding representations made to the Minister for Local Government.

Copies of the correspondence are attached to this report.

Council has previously noted correspondence in relation to this matter as follows:

- Council Meeting 21 September 2022:
 - o Greg Warren, MP – Shadow Minister for Local Government
 - o Jamie Parker, MP – Greens Spokesperson for Local Government
 - o Geoff Provest, MP – Parliamentary Secretary for Police & Emergency Services on behalf of Stephanie Cooke, Minister for Emergency Services & Resilience and Minister for Flood Recovery
- Council Meeting 16 November 2022:
 - o Greens Spokesperson for Local Government, Jamie Parker MP
 - o Hon. Wendy Tuckerman MP, Minister for Local Government

ENCLOSURES

- [1](#) Clayton Barr MP
- [2](#) Jamie Parker MP

Correspondence

Report No. CO24/2022

Corporate and Community Services



SUBJECT: *LGNSW 2022 SPECIAL CONFERENCE - RESPONSE TO RESOLUTION 85 - HON. WENDY TUCKERMAN MP - STORMWATER LEVY REVIEW MOTION 2 JUNE 2021 REPORT FLOCLM11/2021*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

RECOMMENDATION

That Council notes the correspondence to Darriea Turley AM, President LGNSW received from the Hon. Wendy Tuckerman MP, Minister for Local Government in response to Resolutions raised at the LGNSW Special Conference 2022, and in particular Resolution 85– Review of the Stormwater Management Services Charge submitted by Council.

Following the 2022 LGNSW Special Conference, the Hon. Wendy Tuckerman MP, Minister for Local Government has provided responses to resolutions raised.

Resolution 85: Cessnock – Review of the NSW Stormwater Management Services Charge;

That Local Government NSW calls upon the NSW State Government to review the pricing and associated guidelines for the NSW Stormwater management Services Charge.

The Hon. Wendy Tuckerman MP provided the following response:

While the Local Government Act and Regulation provides the legal framework for councils to raise the NSW Stormwater management Services Charge (SMSC), it is noted that any changes to the existing cap on the charge or guidelines will need to be informed by the important policy work being undertaken by the Environment Energy and Science group (EES) within the Department of Planning and Environment as part of the NSW Government's 2018-2020 NSW Marine Estate Management Strategy.

This Strategy, which outlines the NSW Government's commitment and policy to protect and improve the quality of waterways, is being led by the Marine Estate Management Authority, in partnership with local government and others, and is supported by over \$45.7 million of government funding.

Any review of the pricing and associated guidelines for the SMSC should not be undertaken until the above policy work is complete.

Refer to **Enclosure 1** for responses to all resolutions made to the Minister.

ENCLOSURES

[1](#) Response to Conference Resolution 85 _ Hon Wendy Tuckerman MP