



10 October 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, 19 October 2022 at 6.30pm, for the purposes of transacting the undermentioned business.

AGENDA:

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- (1) **ACKNOWLEDGEMENT OF TRADITIONAL LAND OWNERS**
- (2) **OPENING PRAYER**
- (3) **RECEIPT OF APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE**
- (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**
 - NI6/2022 Notice of Intention to Deal with matters in Confidential Session.
 - Report WI70/2022 - Large Sites Electricity Contract Impacts
 - Report GMU28/2022 - Consideration of Final Investigation Report - Code of Conduct Complaint
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MEETING ON 19 OCT 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 16 September 2020. 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 s233A 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 and to refrain from being involved in any consideration or to vote on any such matter
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 notification
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 declarations of interest shall be recorded by the General Manager
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, 21 SEPTEMBER 2022,
COMMENCING AT 6.30PM**

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

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

A minute's silence was held to acknowledge the passing of Queen Elizabeth II

APOLOGY/ LEAVE OF ABSENCE:

MOTION

Moved: Councillor Sander
Seconded: Councillor Dunn

249

RESOLVED that the apology tendered on behalf of Councillor Jackson, for unavoidable absence, be accepted.

That the Leave of Absence from Councillor Olsen be noted.

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

CARRIED UNANIMOUSLY

MINUTES:

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

250

RESOLVED that the Minutes of the Ordinary Meeting of Council held on 17 August 2022 and the Extraordinary Meeting of Council held on 7 September 2022, as circulated, be taken as read and confirmed as a correct record.

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

CARRIED UNANIMOUSLY

DISCLOSURES OF INTEREST

DISCLOSURES OF INTEREST NO. DI8/2022

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.

PE52/2022 – Development Application No. 8/2021/21052/1 proposing a boundary adjustment 0 Thomas Street and 34 Mitchell Street, North Rothbury and PE53/2022 – Development Application No. 8/2021/21491/1 proposing a boundary adjustment 0 Thomas Street and 16 Thomas Street, North Rothbury - Councillor Watton declared a Pecuniary Interest for the reason that he is a landowner in the village of North Rothbury in which his land backs onto the privately owned laneways. Councillor Watton advised that he would leave the Chamber and take no part in discussion and voting.

WI62/2022 – Minutes of Local Traffic committee Meeting held on 15 August 2022 – Councillor Burke declared a Pecuniary Interest for the reason that he is the organiser of the Cessnock Stomp Festival. Councillor Burke advised that he would leave the Chamber and take no part in discussion and voting.

PETITIONS

NIL

ADDRESS BY INVITED SPEAKERS

Councillor Watton declared a Pecuniary Interest for the reason that he is a landowner in the village of North Rothbury in which his land backs onto the privately owned laneways. Councillor Watton left the chamber and took no part in discussion and voting.

Councillor Watton left the meeting, the time being 6.36pm

The following people addressed the meeting of Council:

Speakers	For / Against	Report	Page No.	Duration
Leeanne Sim	Against	PE53/2022 - Development Application No. 8/2021/21491/1 proposing a boundary adjustment 0 Thomas Street and 16 Thomas Street, North Rothbury	128	3 mins

PLANNING AND ENVIRONMENT NO. PE53/2022

SUBJECT: DEVELOPMENT APPLICATION NO. 8/2021/21491/1 PROPOSING A BOUNDARY ADJUSTMENT

0 THOMAS STREET AND 16 THOMAS STREET, NORTH ROTHBURY

MOTION

251

RESOLVED

Moved: Councillor Hill

Seconded: Councillor Dunn

1. That:

- (i) Development Application No. 8/2021/21491/1 proposing a boundary adjustment at 0 Thomas Street and 16 Thomas Street North Rothbury, 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:
 - As submitted, the application does not provide sufficient information for Council to determine if the boundary adjustment is satisfactory with respect to the likely social and economic impacts in the locality (pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).

- As submitted, the application does not provide sufficient information for Council to determine if the application is in the public interest (pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*).
 - As submitted, the application does not establish that the boundary adjustment will promote the orderly and economic use and development of land (pursuant to Section 1.3 (c) - Objects of Act, *Environmental Planning & Assessment Act 1979*).
 - As submitted, the application is not consistent with the zone objective of land zoned 'RU5 Village' under the provisions of the *Cessnock Local Environmental Plan, 2011- 'to ensure that development is compatible with the amenity, functioning and scale of a rural village'* (pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
- (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*
- (iv) In considering community views, the following is relevant:
- The application was publicly exhibited in accordance with Council's Community Participation Plan resulting in four (4) submissions being received.
 - The issues raised in the submissions may be relevant to the proposal, however, insufficient information has been submitted with respect to the future re-subdivision of the lot created to enable a comprehensive response to an objection.

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

REASONS FOR REFUSAL

1. As submitted, the application does not provide sufficient information for Council to determine if the boundary adjustment is satisfactory with respect to the likely social and economic impacts in the locality (pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).
2. As submitted, the application does not provide sufficient information for Council to determine if the application is in the public interest (pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*).
3. As submitted, the application does not establish that the boundary adjustment will promote the orderly and economic use and development of land (pursuant to Section 1.3 (c) - Objects of Act, *Environmental Planning & Assessment Act 1979*).

4. As submitted, the application is not consistent with the zone objective of land zoned 'RU5 Village' under the provisions of the Cessnock Local Environmental Plan, 2011- 'to ensure that development is compatible with the amenity, functioning and scale of a rural village' (pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979).

FOR	AGAINST
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Jurd	
Councillor Suvaal	
Total (10)	Total (0)

CARRIED UNANIMOUSLY

Councillor Watton returned to the meeting, the time being 6.42pm

Mr Anthony Williams	For	PE54/2022 - Development Application No. 8/2021/22087/1 proposing alterations and additions to existing cellar door and restaurant and use as a function centre 1693 and 1727 Broke Road, Pokolbin	147	3 mins
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EXTENSION OF TIME

Moved:

Councillor Hawkins

Seconded:

Councillor Sander

252

RESOLVED

That an extension of 1 minute be granted to allow Mr Williams to complete his presentation.

FOR

AGAINST

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

Total (0)

CARRIED UNANIMOUSLY

EXTENSION OF TIME

Moved:
Seconded:

Councillor Hawkins
Councillor Paynter

[253]

RESOLVED

That a final extension of 1 minute be granted to allow Mr Williams to complete his presentation.

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

CARRIED UNANIMOUSLY

PLANNING AND ENVIRONMENT NO. PE54/2022

SUBJECT: DEVELOPMENT APPLICATION NO. 8/2021/22087/1 PROPOSING ALTERATIONS AND ADDITIONS TO EXISTING CELLAR DOOR AND RESTAURANT AND USE AS A FUNCTION CENTRE

1693 AND 1727 BROKE ROAD, POKOLBIN

MOTION

254

RESOLVED

Moved: Councillor Dunn

Seconded: Councillor Burke

1. That:

- (i) Development Application No. 8/2021/22087/1 proposing alterations and additions to existing cellar door and restaurant and use as a function centre at 1693 and 1727 Broke Road Pokolbin, 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 proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instrument, being the *Cessnock Local Environmental Plan 2011 (CLEP)*.
 - The proposed development is, subject to the recommended conditions, consistent with the objectives of the *Cessnock Development Control Plan 2010 (DCP)*.
 - Subject to the recommended conditions, the proposed development will be provided with adequate essential services required under the *Cessnock Local Environmental Plan 2011 (CLEP)*.
 - The proposed development is considered to be of an appropriate scale and form for the site, and is consistent with the character of the locality.
 - The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
 - The proposed development is a suitable and planned use of the site and its approval 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*.

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

CARRIED UNANIMOUSLY

CONDITIONS OF CONSENT

CONDITIONS OF CONSENT

1. Design Quality of Development

In order to ensure consistency of design quality:

The approved design (including an element or detail of that design) or materials, finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.

- a) In the event that the approved plans incorporate inconsistencies of detail between the relevant plans and elevations, the details shown in the elevations shall take precedence.

2. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2021/22087/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Survey Job Reference: 1659-DWG-203-02002 Project: Alterations & Additions Revision: A	ATB Morton (NSW)	16/08/2021
Proposed Site Plan – Part A Job Reference: 1659-DWG-203-02003 Project: Alterations and Additions Revision: E	ATB Morton (NSW)	18/02/2022

Car Parking Plan Job Reference: 1659-DWG-203-02009 Project: Alterations and Additions Revision: A	ATB Morton (NSW)	18/02/2022
Landscape Concept Job Reference: 1659-DWG-203-02013 Project: Alterations and Additions Revision: A	ATB Morton (NSW)	18/02/2022
Existing Floor Plan Job Reference: 1659-DWG-203-03001 Project: Alterations and Additions Revision: C	ATB Morton (NSW)	16/08/2021
Proposed Floor Plan Job Reference: 1659-DWG-203-03002 Project: Alterations and Additions Revision: E	ATB Morton (NSW)	18/02/2022
Existing Roof Plan Job Reference: 1659-DWG-203-03003 Project: Alterations and Additions Revision: C	ATB Morton (NSW)	16/08/2021
Proposed Roof Plan Job Reference: 1659-DWG-203-03004 Project: Alterations and Additions Revision: E	ATB Morton (NSW)	18/02/2022
Elevations (North and South) Job Reference: 1659-DWG-203-04001 Project: Alterations and Additions Revision: E	ATB Morton (NSW)	18/02/2022
Elevations (East and West) Job Reference: 1659-DWG-203-04002 Project: Alterations and Additions Revision: E	ATB Morton (NSW)	18/02/2022
Sections Job Reference: 1659-DWG-203-05001 Project: Alterations and Additions Revision: E	ATB Morton (NSW)	18/02/2022
Operational Areas Plan (as amended in red)	ATB Morton (NSW)	18/02/2022

Job Reference: 1659-DWG-203-12002 Project: Alterations and Additions Revision: A		
External Colour Selections Job Reference: 1659-DWG-203-10001 Project: Alterations and Additions Revision: B	ATB Morton (NSW)	18/02/2022

Document Title	Prepared By	Dated
Statement of Environmental Effects (as amended in red) Alterations and Additions to Existing Cellar Door Premises/Restaurant and Introduction of Function Centre Ref: 1094_SEE	WPP Pty Ltd	15/10/2021
Response to Request for Information	WPP	18/02/2022
Waste Minimisation and Management Plan	Daniel Picton	12/03/22

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

3. 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.

4. Access and Facilities for People with a Disability

The development is to be provided with access and facilities for people with disabilities in accordance with the provisions of the Disability (Access to Premises – Buildings) Standard 2010.

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.

5. Local Traffic Committee Approval

Any application involving the installation of, or amendment to, regulatory signage, line marking 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 an CC, and subsequent Section 138 Roads Act Approval.

6. 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.

7. Security for Cost of Damage and Completion of Public Work

Prior to issue of a CC authorising the carrying out of any work in accordance with this development consent, the applicant must provide security to the Council for the payment of the cost of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
- c) remedying any defects in any such public work that arise within six (6) months after the work is completed.

The security is to be for an amount that is the greater of \$5000 or 5% of the estimated cost of carrying out the development and may be provided by way of:

- a) cash deposit with the Council, or
- b) an unconditional bank guarantee in favour of the Council.

The security may be used to meet any costs referred above and on application being made to the Council by the person who provided the security, 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 security within six (6) years of the date of issue of the OC or SC for the development the Council may pay the balance to the Chief Commissioner of State Revenue under the *Unclaimed Money Act 1995*.

8. Cessnock Section 7.12 Levy Development Contributions Plan

A total monetary contribution of \$8990.00 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.

9. 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.

10. Disabled Car Parking Spaces

A total of two (2) 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.

11. 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.

12. Parking – Minimum Requirement

Onsite car parking shall be provided for a minimum of fifty-three (53) 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.

13. 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.

14. Road – Engineering Requirements

All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & AS2890.2 - Parking Facilities.

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.

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 a compliant design for a CHR/BAL intersection treatment on Broke Road, maintaining a 2m wide shoulder.
- b) Place Asphalt on new works
- c) Construct drainage works as necessary.
- d) Local Traffic Committee approval of line marking

16. 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.

17. Stormwater – Discharge

The applicant shall collect all roof and stormwater runoff from the impervious areas on site, and any other drainage entering the site, and discharge it to Council's satisfaction in accordance with Council's 'Engineering Requirements for 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 the CC.

18. 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.

19. Outdoor Lighting

Prior to the issue of a CC, the Certifier must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises, adjacent dwellings and the road reserve, and that the outdoor lighting complies with the relevant provisions of *AS 1158.3:2005 Pedestrian area (Category*

P) lighting – Performance and design requirements and AS 4282:1997 Control of the obtrusive effects of outdoor lighting.

20. Operational Plan of Management

A Plan of Management is to be provided to the Certifier prior to the issue of a CC. The Plan of Management is to cover (but is not limited to) the following issues:

Security Management

The plan must specify security patrol, surveillance, and other security and response methods, and security management of the public and private domain within and surrounding the site.

Patron Management

Patrons must be prevented from removing glass, opened cans, bottles or alcohol from the premises (except from any approved cellar door).

Signs must be placed in clearly visible positions within the premises, requesting patrons upon leaving to do so quickly and quietly, having regard to the amenity of the area.

The management/licensee is responsible for the control of noise and litter generated by patrons of the premises, and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council. If so directed by Council, the management/licensee is to employ private security staff to ensure that this condition is complied with.

Waste Collection

The collection of waste and recycling must only occur between 8.00am and 10.00pm daily.

21. Section 68 Approval

Application shall be made to Council under Section 68 of the *Local Government Act 1993* to Install, Construct or Alter an Onsite System of Sewage Management.

The application shall be accompanied by the required documentation, as specified under Clause 26 of the *Local Government (General) Regulation 2005*. The design of the onsite sewage management system shall be in accordance with the Environmental Health Protection Guidelines and AS/NZS 1547-2012 (The application form and further information is available on Council's website www.cessnock.nsw.gov.au).

The Section 68 application shall be considered and approved by Council prior to the release of a CC for the development.

PRIOR TO COMMENCEMENT OF WORKS

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

22. 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.

23. 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.

24. Soil and Water Management Plan

The applicant must prepare a Soil and Water Management Plan, being compatible with the Construction Management and Traffic Management Plan referred to in this Development Consent and 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) Minimise the area of soils exposed at any one time
- b) Conservation of top soil
- c) Identify and protect proposed stockpile locations
- d) Preserve existing vegetation. Identify revegetation technique and materials
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner
- f) Control surface water flows through the site in a manner that:
 - i) Diverts clean-runoff around disturbed areas
 - ii) Minimises slope gradient and flow distance within disturbed areas
 - iii) Ensures surface run-off occurs at non-erodible velocities
 - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

25. 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.

26. 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.

27. Soil and Water Management Plan Implemented

The requirements of the Soil and Water Management Plan shall be in place prior to the commencement of demolition works and/or construction works and shall be maintained throughout the demolition and/or construction process.

28. Nominated Location of Waste

The location and facilities for the collection, storage and disposal of waste generated within the premises shall be submitted to the *PC*, prior to the commencement of works.

29. 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.

30. 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*.

DURING WORKS

The following conditions are to be complied with during works.

31. 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.

32. 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.

33. Implementation of Soil and Water Management Plan

The requirements of the Soil and Water Management Plan must be maintained at all times during the works, and any measures required by the Soil and Water Management Plan shall not be removed until the site has been stabilised.

Materials from the site are not to be tracked into the road by vehicles entering or leaving the site. At the end of each working day, any dust/dirt or other sediment shall be swept off the road and contained on the site, and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily, and defects or system failures are to be repaired as soon as they are detected.

34. 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.

35. 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.

36. 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 SafeWork Authority. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.

37. Bushfire Protection

The following bush fire protection measures are to be implemented at the commencement of building works, and maintained for the life of the development:

a) Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

At the commencement of building works, and in perpetuity, the property around the asset shall be managed as follows in accordance with Appendix 4 of *Planning for Bush Fire Protection 2019* and the NSW Rural Fire Service's document *Standards for Asset Protection Zones*:

- i) South for a distance of 50m as an 'Inner Protection Area'
- ii) West for a distance of 50m as an 'Inner Protection Area'

b) Landscaping

The intent of measures is for landscaping to be designed and managed to minimise flame contact and radiant heat to buildings, and the potential for wind-driven embers to cause ignitions. To achieve this, the following conditions shall apply:

Landscaping to the site is to comply with Table 7.4a and Appendix 4 of *Planning for Bush Fire Protection 2019* and the NSW Rural Fire Service's document *Standards for Asset Protection Zones*.

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):

38. All Services Provided

Certification that all services as required (eg water supply, gas, electricity, telephone, sewer), are available to the site, shall be submitted to the PC prior to issue of an OC.

39. Certification of Fire Services

The buildings 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 Fire Safety Certificate and the Fire Safety Schedule relating to the required fire safety measures, in accordance with **Section 41 and Part 11 of the *Environmental Planning***

and Assessment (Development, Certification and Fire Safety) Regulation 2021, prior to occupation of the building or issue of an OC.

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

40. 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*.

41. Acoustic Report Recommendations Complied With

A certificate must be submitted to and approved by Council's Environmental Health team prior to the issue of an *OC* or before the commencement of the use (whichever is earlier). The certificate must be prepared by an accredited Acoustic consultant, and must certify that the recommendations in the approved acoustic report have been complied with and the desired acoustic performance achieved.

42. Parking – Signage

Signs shall be clearly displayed within the site indicating the availability of car parking at the rear, for the life of the development, prior to the issue of an *OC*. Note: AS 1742.1 requires the use of white lettering on blue background for such signage.

43. Parking – Completion

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

44. Parking – Loading Facility Requirement

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

45. 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*.

46. 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.

47. Inspection for Onsite Sewage Management

Prior to the use of the premises for the purposes approved by this consent, and prior to the issue of an *OC*, a satisfactory final inspection report from the Council must be received by the *PC*, verifying the associated onsite wastewater management system has been supplied and installed in accordance with the approval under Section 68 of the *Local Government Act 1993*.

48. Drainage Works

All drainage works required to be undertaken in accordance with this consent shall be completed prior to issue of an OC for the development.

49. Flooding – Evacuation Management Plan

The applicant shall prepare a flood emergency evacuation and management plan for the proposed development. The plan should advise occupants of flood evacuation procedures and emergency contact telephone numbers. The management plan should avoid the letting of the premises during periods of flood emergency or when flood warnings are issued. The applicant should contact Council and the State Emergency Service for advice in the preparation of the management plan.

The evacuation procedures should be permanently fixed to the building in a prominent location, and kept up to date at all times.

The management plan shall be submitted to, and approved by, Council prior to the issue of an OC.

50. Private Water Supply – Drinking Water Management System

An appropriate drinking water management system, in compliance with NSW Health requirements and the *Public Health Act 2010* and *Regulation 2012* is to be provided.

ONGOING USE

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

51. Hours of Operation

The property is to be open for business and used for the purposes approved only within the following hours:

Cellar Door	10am – 5pm daily
Restaurant	12 noon – 3pm Thursday – Monday 6pm – 9pm Friday and Saturday (The restaurant shall not operate should a function be booked during these times)
Function Centre	10am - 10pm (upon booking)

52. Occupant Capacity

The seating capacity of the restaurant/function centre is restricted to a maximum of 110 patrons at any one time.

A notice is to be displayed in the premises stating that:

- a) The maximum total occupancy of the premises allowed by this consent is 110 persons.

53. 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.

54. Operation of the Premises

The operation of the premises shall be managed in accordance with the following:

- a) The maximum number of patrons permitted in the function/restaurant premises at any one time is 110 persons.
- b) A copy of the current development consent with the approved hours of operation must be kept in the premises, and must be produced upon demand for inspection by any member of the Police Service, Council Officer, or Special Investigator.
- c) Speakers must not be installed, and music must not be played in any of the outdoor areas associated with the premises, including the public domain. The sound emitted from any speakers located within the premises must not be audible at the boundary of any affected receiver.
- d) CCTV surveillance cameras must be strategically installed, operated and maintained throughout the premises, in accordance with the policies and standards adopted by the Office of Liquor, Gaming and Racing with particular coverage to:
 - i) principal entrances and exits

55. Maintenance of Landscaping

Landscaping shall be maintained in accordance with the approved plan in a healthy state, and in perpetuity, by the existing or future owners and occupiers of the development.

If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

ADVISORY NOTES

56. 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.

57. Responsibility for Other Consents/Agreements

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Marlien Brandjes	For	PE55/2022 - Development Application No. 8/2021/21261/1 proposing the Construction of a function centre, amphitheatre, manager's residence, tourist and visitor accommodation comprising two x 2 bedroom cabins and eight tented cabins, associated car parking and landscaping works 427 Pokolbin Mountains Road, Pokolbin	190	3 mins
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PLANNING AND ENVIRONMENT NO. PE55/2022

SUBJECT: DEVELOPMENT APPLICATION NO. 8/2021/21261/1 PROPOSING THE CONSTRUCTION OF A FUNCTION CENTRE, AMPHITHEATRE, MANAGER'S RESIDENCE, TOURIST AND VISITOR ACCOMMODATION COMPRISING TWO X 2 BEDROOM CABINS AND EIGHT TENTED CABINS, ASSOCIATED CAR PARKING AND LANDSCAPING WORKS

427 POKOLBIN MOUNTAINS ROAD, POKOLBIN

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Hill
255
RESOLVED

1. That:

- (i) Development Application No. 8/2021/21261/1 proposing the construction of a function centre, amphitheatre, manager's residence, tourist and visitor accommodation comprising two x 2 bedroom cabins and eight tented cabins, associated car parking and landscaping works 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 proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instrument, being the *Cessnock Local Environmental Plan 2011*.
 - The proposed development is, subject to the recommended conditions, consistent with the objectives of the Cessnock Development Control Plan 2010.
 - Subject to the recommended conditions, the proposed development will be provided with adequate essential services required under the *Cessnock Local Environmental Plan 2011*.
 - The proposed development is considered to be of an appropriate scale and form for the site, and is consistent with the character of the locality.
 - The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.

- The proposed development 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 the scale and character of the development, traffic, parking and access, on-site waste water disposal, noise and lighting issues associated with the application. These matters have been assessed along with the manner in which the development is 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 development.

FOR	AGAINST
Councillor Moores	Councillor Paynter
Councillor Dunn	Councillor Watton
Councillor Burke	Councillor Jurd
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Suvaal	
Total (8)	Total (3)

CARRIED

CONDITIONS OF CONSENT

1. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2021/21261/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Revision A Drawing No's: • AR-050 – AR-051 (Rev A) • AR-060 – AR-061 (Rev A)	Tecture – Architecture and Interior Design	21 December 2021

Drawing No's: <ul style="list-style-type: none"> • AR-120 – AR-126 • AR-140 – AR-143 • AR-160 – AR-166 • AR-220 – AR-222 	Tecture – Architecture and Interior Design	21 December 2021
Drawing No's: <ul style="list-style-type: none"> • AR-241 • AR-260 – AR-264 • AR-270 	Tecture – Architecture and Interior Design	11 December 2021

Document Reference	Prepared By	Dated
Noise Impact Assessment	Muller Acoustic Consulting (MAC)	December 2020
Operational Noise Management Plan	Muller Acoustic Consulting (MAC)	May 2021
Aboriginal Due Diligence Assessment Report Project No: HN000159-A	Heritage NOW	11 December 2020
Biodiversity Development Assessment Report	Peak Land Management	May 2021

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

2. General Terms of Approval

All General Terms of Approval issued by the NSW Rural Fire Service dated 15 May 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.

3. 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.

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. Private Water Supply – Safe Supply

If the proposed development cannot be connected to a potable water supply then the applicant must demonstrate that the drinking water supplied to the premises will consistently meet the *Australian Drinking Water Guidelines 2011* and any subsequent amendments to the Guidelines.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

6. 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*.

7. Cessnock Section 7.12 Levy Development Contributions Plan

A total monetary contribution of **\$29,560.10** 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 Council's 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.

8. Security for Cost of Damage and Completion of Public Work

Prior to issue of a *CC* authorising the carrying out of any work in accordance with this development consent, the applicant must provide security to the Council for the payment of the cost of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
- c) remedying any defects in any such public work that arise within six (6) months after the work is completed.

The security is to be for an amount that is the greater of \$5000 or 5% of the estimated cost of carrying out the development and may be provided by way of:

- a) cash deposit with the Council, or
- b) an unconditional bank guarantee in favour of the Council.

The security may be used to meet any costs referred above and on application being made to the Council by the person who provided the security, 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 security within six (6) years of the date of issue of the *OC* or *SC* for the development the Council may pay the balance to the Chief Commissioner of State Revenue under the *Unclaimed Money Act 1995*.

9. Retaining Wall

Where a retaining wall is in excess of 600mm in height and/or within 900mm of a property boundary, separate detailed drawings are to be submitted in conjunction with the *CC*, specifying wall heights, heights of retaining walls, proposed mounding and stabilisation treatment, and landscaping for the elevations of the building.

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*.

10. Amended Plans Required

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

- a) Design and construction recommendations outlined in the Geotechnical Investigation Report R.001.DftA prepared by Douglas Partners dated 3 September 2021 (Rev 0) is to be considered in the detailed design.
- b) Stormwater overflow provision is to be provided for the existing dam north of the access road to convey downstream in large storm events.

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

11. 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.

12. Disabled Car Parking Spaces

A minimum of one (1) parking space associated with the function centre and one (1) parking space associated with the tourist accommodation 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.*

13. 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.

14. Parking – Minimum Requirement

Total on-site car parking shall be provided for a minimum of thirty-one (31) 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.

15. 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.

16. Road – Engineering Requirements

All driveways, access corridors and car parking areas are to be designed in accordance with *AS2890.1 & AS2890.2 - Parking Facilities*.

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*.

17. 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 a 6m wide stabilised gravel pavement formation from the intersection of Pokolbin Mountains Road with Watagan Track to the property access point;
- b) Place two (2) coat hot bitumen seal on new works where grade exceeds 6%;
- c) Construct drainage works as necessary.

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. Stormwater – Discharge (General)

The applicant shall collect all roof and stormwater runoff from the impervious areas on site, and any other drainage entering the site, and discharge it to Council's satisfaction in accordance with Council's 'Engineering Requirements for 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 the *CC*.

20. Geotechnical Certification

A comprehensive geotechnical engineering report assessing the impact and safety of the proposed works shall be prepared by a suitably experienced and qualified geopractitioner, and submitted to the Certifier with an application for a CC. The report must include the results of subsurface investigations involving either test pits to rock, or preferably the drilling of cored boreholes (to 1m below the proposed final excavation level). The report shall provide:-

- a) An indication of the nature and depth of any uncontrolled fill at the site
- b) An indication of the nature and condition of the material to be excavated
- c) Indications of groundwater or seepages
- d) Required temporary measures for support of any excavations deeper than 1m adjacent to property boundaries
- e) Statement of required excavation methods in rock and measures required to restrict ground vibrations
- f) Other geotechnical information or issues considered relevant to design and construction monitoring.

21. Access Roads

The registered proprietors shall provide details of an all-weather access road from the property boundary to the proposed development. The access road will need to be constructed to 4m wide, 100mm thick pavement with 1m wide clear verges either side. All works are to be in accordance with Council's 'Engineering Requirements for Development' and NSW Rural Fire Service 'Planning for Bushfire Protection' to serve the proposed 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.

22. Exterior Lighting Generally

Prior to the issue of a CC, an exterior lighting plan is to be submitted and approved by the Certifier. The design and position all exterior/outdoor lighting is to minimise any detrimental impact upon the amenity of other premises, adjacent dwellings and the road reserve, and in accordance with the relevant provisions of:-

- *AS 4282:1997 Control of the obtrusive effects of outdoor lighting.*

23. Landscaping

The Landscape Plan prepared by Conus Landscape Architecture dated 29 January 2021 (Landscape Concept Master Plan, Issue C, DWG No LDA02 and Plant Schedule & Details Issue C, DWG No LDA03) must be updated so that only local native species of local provenance grown by a specialist native plant nursery are used for landscaping. Native species are to be characteristic of the native species recorded on the site in the Biodiversity Development Assessment Report by Peak Land Management dated May 2021. Evidence that this must be submitted to and approved by Councils Ecologist prior to CC.

24. Ecosystem credit retirement conditions

- a) Prior to issue of CC the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.
- b) The requirement to retire credits in (a) may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)¹.
- c) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of (a) must be provided to the consent authority prior to CC.

Table 1: Ecosystem credits required to be retired – like for like

Impacted plant community type	Number of ecosystem credits	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
PCT 1602: Spotted Gum - Narrow-leaved Ironbark shrub -grass open forest of the central and lower Hunter	19	Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. OR Any IBRA subregion that is within 100 Kilometers of the outer edge of the impacted site.	Hunter-Macleay Dry Sclerophyll Forests. This includes PCT's: 922, 1178, 1588, 1589, 1600, 1601, 1602, 1608

¹ Note that prices of credits in the Biodiversity Offsets Payment Calculator are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

25. Species credit retirement conditions

- a) Prior to issue of CC the class and number of species credits in Table 2 must be retired to offset the residual biodiversity impacts of the development.
- b) The requirement to retire credits in (a) may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of species credits, as calculated by the BAM Credit Calculator (BAM-C).
- c) Evidence of the retirement of credits or payment to the BAM-C in satisfaction of Table 2 requirements must be provided to the consent authority prior to CC.

Table 2: Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Anthochaera phrygia</i> Regent Honeyeater	4	Anywhere in NSW

¹ Note that prices of credits in the Biodiversity Offsets Payment Calculator are subject to change. The amount payable to discharge an offset obligation will be determined at the time of payment.

26. Construction Environmental Management Plan (CEMP)

A Construction Environmental Management Plan (CEMP) is to be prepared in accordance with the details outlined in the Biodiversity Development Assessment Report by Peak Land Management dated May 2021. The CEMP is to be submitted to and approved by Council's Ecologist prior to issue of any Construction Certificate.

27. Section 68 Approval

Application shall be made to Council under Section 68 of the *Local Government Act 1993* to Install, Construct or Alter an Onsite System of Sewage Management.

The application shall be accompanied by the required documentation, as specified under Clause 26 of the *Local Government (General) Regulation 2005*. The design of the onsite sewage management system shall be in accordance with the Environmental Health Protection Guidelines and *AS/NZS 1547-2012* (The application form and further information is available on Council's website www.cessnock.nsw.gov.au).

The Section 68 application shall be considered and approved by Council prior to the release of a CC for the development.

28. 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.

29. Mechanical Exhaust System

Details of any proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the *BCA* and *AS 1668 Parts 1 and 2* (including exhaust air quantities and discharge location points) are to be provided to the Certifier prior to the issue of a CC.

30. Smoke Free Premises

The construction and fit out of the premises shall comply with the *Smoke-Free Environment Act 2000* and *Smoke-Free Environment Regulation 2016*. Details demonstrating compliance with this condition are to be provided to the Certifier prior to the issue of a CC.

31. Accessibility Management Plan

An Accessibility Management Plan must be prepared demonstrating compliance with *BCA Part D3 "Access for People with a Disability"* and the *BCA* adopted version of *AS1428*. The report and any relevant plans and specifications are to be submitted with the application for a CC and approved by the Certifier as complying with the *BCA* and *AS*'s prior to the issue of a CC.

32. Cooling Towers

If a water cooling process or recirculating type is to be installed, the system and maintenance program shall comply with the provisions of:

- a) *AS 3666 of 2002 and Parts 1-2 inclusive*
- b) *Public Health Act 2010 and the Public Health Regulation 2012*
- c) *AS 3666.1:2002 and 3666.2:2002 respectively*
- d) *AS 1470*
- e) *AS 1657*
- f) *Australian and New Zealand Standards 1892.1 and 2865*

Detailed plans and specifications for the design, installation, maintenance, and operation of the facilities are required to be submitted including

- a) Details on the locations of all plant and equipment
- b) Specifications for the design, installation, maintenance, and operation of the facilities

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

Prior to commencement of use, the owner or occupier of the premises must apply to Council for the registration of water cooling systems/warm water systems installed on the premises in accordance with the *Public Health Regulation 2012*.

33. Acoustic Screen

Details of the acoustic screen within the amphitheater must be provided with the CC and is to comply with the recommendations of the Noise Impact Assessment Report (prepared by Muller Acoustic Consulting (MAC) dated December 2020.

PRIOR TO COMMENCEMENT OF WORKS

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

34. Construction and Traffic Management Plan

The applicant must prepare a Construction and Traffic Management Plan incorporating the following matters. The plan must be submitted to and approved by the Certifier 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 *RMS* 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.

35. Soil and Water Management Plan

The applicant must prepare a Soil and Water Management Plan, being compatible with the Construction and Traffic Management Plan referred to in this Development Consent and incorporating the following matters.

- a) Minimise the area of soils exposed at any one time
- b) Conservation of top soil
- c) Identify and protect proposed stockpile locations
- d) Preserve existing vegetation. Identify revegetation technique and materials
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner
- f) Control surface water flows through the site in a manner that:
 - i) Diverts clean-runoff around disturbed areas
 - ii) Minimises slope gradient and flow distance within disturbed areas
 - iii) Ensures surface run-off occurs at non erodible velocities
 - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

The plan must be submitted to and approved by the Certifier as satisfying these matters prior to the commencement of works.

The requirements of the Soil and Water Management Plan shall be in place prior to the commencement of demolition works and/or construction works and shall be maintained throughout the demolition and/or construction process.

36. 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.

37. 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.

38. 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*.

39. 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.

40. Temporary Marking of Asset Protection Zone

The boundaries of the Asset Protection Zone within the areas of native vegetation on the site must be clearly delineated using temporary protective fencing or brightly coloured tape. Clearing works or other development activities must not occur beyond the boundaries of the approved Asset Protection Zone.

41. Retention of Hollow-bearing Trees

No hollow-bearing trees are to be removed to achieve the Asset protection Zone. Trees to be removed for the Asset protection Zone must be clearly marked by a qualified and experienced ecologist prior to removal to ensure that only trees below 25 cm DBH are removed.

DURING WORKS

The following conditions are to be complied with during works.

42. 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.

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*.

43. Virgin Fill To Be Used

All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste, and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities, and which do not contain sulphate ores or soils.

44. Implementation of Soil and Water Management Plan

The requirements of the Soil and Water Management Plan must be maintained at all times during the works, and any measures required by the Soil and Water Management Plan shall not be removed until the site has been stabilised.

Materials from the site are not to be tracked into the road by vehicles entering or leaving the site. At the end of each working day, any dust/dirt or other sediment shall be swept off the road and contained on the site, and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily, and defects or system failures are to be repaired as soon as they are detected.

45. 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.

46. 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.

47. Protective Fencing - Vegetation

All tree protection fencing and signage must remain in place until completion of construction works.

48. Tree Protection

Stockpiling or storage or mixing of materials (including soil), vehicle parking, disposal of liquids, machinery repairs, refuelling and the siting of any new offices or sheds must not occur within the drip line of retained trees during any stage of the development.

49. Clearing of Development Footprint

During construction works all vehicles must be washed before entering the site to prevent the spread of exotic species.

50. Supervision of Tree Removal

Tree removal and lopping of branches must be performed under the supervision of a qualified and experienced ecologist to ensure that no nests or hollows are removed. Trees must be removed in such a manner so as to prevent damage to surrounding trees to be retained.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Principal Certifying Authority, prior to issue of either an Interim or Final Occupation Certificate (as specified within the condition):

51. Roads – Gravel Crossing

The registered proprietors shall construct and maintain a gravel access crossing from the edge of the road formation in Watagan Creek Track 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 development.

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.

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.

52. All Services Provided

Certification that all services as required (eg water supply, gas, electricity, telephone, sewer), are available to the site, shall be submitted to the *PC* prior to issue of an *OC*.

53. Parking – Completion

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

54. Parking – Loading Facility Requirement

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

55. 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*.

56. Completion of Road Works

Prior to the issue of an *OC*, the *PC* must ensure that all approved roads, 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 practicing 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.

57. 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*.

58. Stormwater – Plan of Management

The registered proprietor of the land shall prepare a Plan of Management for the OSD facilities within the development. The plan shall set out all design and operational parameters for the detention facilities, including design levels, hydrology and hydraulics, inspection and maintenance requirements, and time intervals for such inspection and maintenance. The plan shall be submitted to the *PC* for approval prior to the issue of an *OC*.

59. Drainage Works

All drainage works required to be undertaken in accordance with this consent shall be completed prior to issue of an *OC* for the development.

60. Quality Assurance

Prior to issue of a *SC*, the applicant is to submit a digital copy of all test results confirming compliance with Council's development engineering requirements.

61. Native Revegetation

An area of at least 5 ha on the lot, outside of the Asset Protection Zone, must be revegetated with native shrubs and small trees via planting with native species to replace the 5 ha of native vegetation removed. The density of planting must be at least one shrub or small tree per square metre. The plants used for planting are to be only native species of local provenance grown by a specialist native plant nursery to enhance foraging opportunities for native fauna. Native species are to be characteristic of the native plant communities discussed in the Biodiversity Development Assessment Report (BDAR) by Peak Land Management dated December 2020, and include feed tree species from Table 16 of the BDAR. The area must be fenced if livestock are kept

on the lot. Evidence that this has occurred is to be provided to Council's Ecologist prior issue of the Occupation Certificate.

62. 88B Instrument – Native Revegetation Area

An 88B instrument must be created for the area required to be revegetated with native vegetation and must state that the area is not to be grazed or cleared (as defined under the Section 60C of the Local Land Services Act 2013). Evidence that this has occurred must be provided to Council's Ecologist prior issue of the Occupation Certificate.

63. Delineation of Asset Protection Zones

The boundaries of the Asset Protection Zone must be permanently delineated using fencing, posts, bollards or similar. Evidence that this has occurred must be provided to Council's Ecologist prior to issue of any Occupation Certificate.

64. Removal of Trees within Asset Protection Zones

Evidence that only those trees marked within the Asset Protection Zone have been removed must be provided by the ecologist who marked the trees and supervised the clearing to the satisfaction of Council's Ecologist prior issue of the Occupation Certificate.

65. Acoustic Report Recommendations Complied With

A certificate must be submitted to and approved by Council's Environmental Health Team prior to the issue of an OC or before the commencement of the use (whichever is earlier). The certificate must be prepared by an accredited Acoustic consultant, and must certify that the recommendations in the approved acoustic report have been complied with and the desired acoustic performance achieved.

66. Inspection for Onsite Sewage Management

Prior to the use of the premises for the purposes approved by this consent, and prior to the issue of an OC, a satisfactory final inspection report from the Council must be received by the PC, verifying the associated onsite wastewater management system has been supplied and installed in accordance with the approval under Section 68 of the *Local Government Act 1993*.

67. Food Premises

Council must be notified that the premises is being used for the preparation, manufacture, or storage of food for sale, and an inspection of the completed fit out is to be conducted by Council prior to the issue of an OC.

68. 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 the conditions of this consent prior to the issue of an OC.

69. Completion of Parking/Loading Bay

All car parking, disabled access parking and loading facilities shall be marked out and clearly indicated by signs. The parking requirements secured in this consent shall be completed prior to the issue of an OC.

70. Trade Waste Disposal

Prior to the issue of an OC and/or commencement of the use of the building, whichever is earlier, the owner must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. footpaths, roadways, plazas, and reserves at any time.

ONGOING USE

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

71. Hours of Operation

The function centre is to be used for the purpose approved only within the following hours:

- Monday – Sunday (inc. public holidays) 8:00am to 10:00pm

72. Occupant Capacity

The seats/capacity of the function centre is restricted to a maximum of 60 patrons at any one time.

A notice is to be displayed in the premises stating that the maximum total occupancy of the premises allowed by this consent is 60 persons/seats.

73. Outdoor Music

Outdoor music within the courtyard and amphitheater is to be restricted to acoustic music and instruments only, with no amplification or PA systems permitted.

74. Parking Areas to be Kept Clear

At all times, the loading area, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.

75. Maintenance of Landscaping

Landscaping shall be maintained in accordance with the approved plan in a healthy state, and in perpetuity, by the existing or future owners and occupiers of the development.

If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

76. 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.

77. Road – Advice

The applicant is advised that Council will not accept responsibility for the road access. In this respect, the care, control and maintenance thereof, is the sole responsibility of the user/s, in perpetuity.

78. Restraint of Cats and Dogs

Any cats on the property must be kept indoors at all times to protect the native fauna on the site. Any dogs must be kept within a securely fenced area. Fences must be able to prevent the dogs from entering areas of native vegetation on the site.

79. Weeds Listed in Biosecurity Regulation

The weeds, Lantana (*Lantana camara*), Prickly Pear (*Opuntia stricta var. stricta*) and Fireweed (*Senecio madagascariensis*) on the site must be removed.

80. Maintenance of Native Revegetation Area

The area required to be revegetated with native vegetation must be maintained in good health for the life of the development. Any trees and shrubs that die must be replaced with the same species and be of local provenance grown by a specialist native plant nursery.

81. Fencing

Any new fencing using wire must be constructed with plain wire. Barbed wire must not be used in any new fencing on the site. Any new fencing must be designed and erected so that native fauna movement is not impaired or restricted to reduce the chance of native fauna being injured.

82. Retention of Native Vegetation outside of Asset Protection Zones

All native vegetation on the site outside of the approved Asset Protection Zone and access road must be retained in a natural state and not cleared, picked (as defined in the Biodiversity Conservation Act 2016) or disturbed in any way.

83. Tourist Accommodation

A register shall be kept of all lettings of sites/units giving the name of the occupier, their home address, the date of the commencement of occupation, and the date of departure. This shall be made available to Council officers at all times.

Mr Jack Peterkin	Against	PE57/2022 - Planning Proposal to Rezone Land at 532 Main Road, Cliftleigh from RU2 Rural Landscape to R2 Low Density Residential.	264	3 mins
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PLANNING AND ENVIRONMENT NO. PE57/2022

SUBJECT: PLANNING PROPSOAL TO REZONE LAND AT 532 MAIN ROAD, CLIFTLEIGH FROM RU2 RURAL LANDSCAPE TO R2 LOW DENSITY RESIDENTIAL.

MOTION **Moved:** Councillor Hill **Seconded:** Councillor Grine
256

RESOLVED

That the report be deferred to allow for structure plan to be submitted to Council prior to its consideration.

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

CARRIED UNANIMOUSLY

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

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
257

RESOLVED

that having read and considered the reports in the agenda related to items

GMU19/2022	Audit and Risk Committee Charter	52
GMU20/2022	Minutes of the Audit and Risk Committee meeting held 9 August 2022	55
GMU21/2022	Minutes of the Audit and Risk Committee meeting held 31 August 2022	64
GMU22/2022	Pilot Job Shuttle Program	66
GMU24/2022	Proposal to Close Council Offices Between Christmas and New Year	81
‡ PE59/2022	Development Application Performance Monitoring Report – June Quarter 2021-2022	277
‡ CC71/2022	Response to Business with Notice BN21/2022 - Council Facilities Appropriate for the Provision of Laundry and Shower Facilities for People Experiencing Homelessness in Cessnock LGA	284
CC74/2022	Reviewed Code of Conduct and Procedures	297
CC75/2022	Draft Councillor and Staff Interaction Policy.....	301
‡ CC76/2022	Bi-Annual Complaint Handling Report - January to June 2022	306
‡ C77/2022	Disclosure of Interest in Written Returns	311
‡ CC78/2022	Investment Report - August 2022	314
‡ CC79/2022	Resolutions Tracking Report	323
WI56/2022	Tender T2022-012 Cessnock Sportsground Grandstand Seating...	324
‡ CO13/2022	CC58/2022 - Accounting Treatment - Rural Fire Service Fleet	366
‡ CO14/2022	BN29/2021 - North Rothbury Reticulated Sewer Scheme.....	368
‡ CO15/2022	MM12/2022 - Testers Hollow and Buchanan Road.....	369
‡ CO16/2022	OLG Response - Code of Conduct Complaint	371
‡ CO17/2022	MM10/2022 - Parking Advocacy - Amendment to Rule 197 of the Road Rules 2014.....	372
‡ CO18/2022	UB2/2021 - Urgent Business - Response Standing Down of Paxton Fire Station.....	373

Council adopt the recommendations as printed for those items.

FOR**AGAINST**

Councillor Moores

Councillor Dunn

Councillor Burke

Councillor Grine

Councillor Sander

Councillor Hill

Councillor Hawkins

Councillor Paynter

Councillor Watton

Councillor Jurd

Councillor Suvaal

Total (11)**Total (0)*****CARRIED UNANIMOUSLY***

MAYORAL MINUTES

Nil

MOTIONS OF URGENCY

MOTIONS OF URGENCY NO. MOU9/2022

SUBJECT: MOTIONS OF URGENCY

Nil

GENERAL MANAGER'S UNIT

GENERAL MANAGER'S UNIT NO. GMU19/2022

SUBJECT: AUDIT AND RISK COMMITTEE CHARTER

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
258
RESOLVED

That Council adopts the Audit and Risk Committee Charter.

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

CARRIED UNANIMOUSLY

GENERAL MANAGER'S UNIT NO. GMU20/2022

SUBJECT: MINUTES OF THE AUDIT AND RISK COMMITTEE MEETING HELD 9 AUGUST 2022

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

259

RESOLVED

That the Minutes of the Audit and Risk Committee Meeting held 9 August 2022 be adopted as a resolution of the Ordinary Council.

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

CARRIED UNANIMOUSLY

GENERAL MANAGER'S UNIT NO. GMU21/2022

SUBJECT: MINUTES OF THE AUDIT AND RISK COMMITTEE MEETING HELD 31 AUGUST 2022

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

260

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

	Total (0)
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CARRIED UNANIMOUSLY

GENERAL MANAGER'S UNIT NO. GMU22/2022

SUBJECT: PILOT JOB SHUTTLE PROGRAM

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

261

RESOLVED

1. That Council endorses the proposed Cessnock to Wine Country Pilot Job Shuttle Program as outlined in this report.
2. That Council endorses the submission of fully funded grant applications for the implementation of the Cessnock to Wine Country Pilot Job Shuttle Program.

FOR

AGAINST

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

Total (0)

CARRIED UNANIMOUSLY

GENERAL MANAGER'S UNIT NO. GMU23/2022

SUBJECT: BUSINESS ACTIVATION AND FACADE IMPROVEMENTS

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Sander

262

RESOLVED

1. That Council notes activities completed since 2020 to revitalise and support Cessnock Local Government Area (LGA) business precincts; and
2. That Council notes planned activities to revitalise and support Cessnock LGA business precincts.

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

CARRIED UNANIMOUSLY

GENERAL MANAGER'S UNIT NO. GMU24/2022

SUBJECT: PROPOSAL TO CLOSE COUNCIL OFFICES BETWEEN CHRISTMAS AND NEW YEAR

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

263

RESOLVED

1. That Council notes its offices, including Libraries will close from 12 noon Friday, 23 December 2022 and reopen on Tuesday, 3 January 2023.
2. That Council notes that the Cessnock Performing Arts Centre will close from 12 noon Friday, 23 December 2022 and re-open on Monday, 9 January 2023.

FOR

AGAINST

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

Total (0)

CARRIED UNANIMOUSLY

PLANNING AND ENVIRONMENT

PLANNING AND ENVIRONMENT NO. PE51/2022

SUBJECT: S4.55(1A) APPLICATION PROPOSING TO MODIFY DEVELOPMENT CONSENT NO. 8/2018/921 WHICH ORIGINALLY GRANTED APPROVAL FOR THE CONSTRUCTION OF A LIGHT INDUSTRIAL DEVELOPMENT. THE APPLICATION SEEKS TO DELETE CONDITION 9 AND AMEND CONDITION 10 WHICH RELATE TO THE CONSTRUCTION OF KERB AND GUTTER

47 WERMOL STREET, KURRI KURRI

MOTION **Moved:** Councillor Hill **Seconded:** Councillor Grine
264
RESOLVED

1. That:

- (i) Section 4.55(1A) Application No. 8/2018/921/4 proposing to modify Development Consent No. 2018/924, seeking to delete Condition 9 and amend Condition 10 relating to kerb and gutter works at 47 Wermol Street Kurri Kurri, be refused pursuant to Section 4.55(1A) 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:
- The modification will result in unacceptable environmental impacts in relation to street drainage associated with stormwater runoff and erosion control.
 - The modification will result in ongoing damage to the road pavement in Wermol Street which will adversely impact on traffic safety within the street.
 - The modification is inconsistent with Council's policy position in relation to the construction of kerb and gutter associated with commercial and industrial development.
 - The modification is not in the public interest given the impact of unmanaged stormwater drainage on adjoining properties and public road infrastructure.
- (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 organise a briefing on the relevant council resolution regarding kerb and guttering requirements for commercial and industrial development

FOR**AGAINST**

Councillor Moores

Councillor Dunn

Councillor Burke

Councillor Grine

Councillor Sander

Councillor Hill

Councillor Hawkins

Councillor Paynter

Councillor Watton

Councillor Jurd

Councillor Suvaal

Total (11)**Total (0)*****CARRIED UNANIMOUSLY***

PLANNING AND ENVIRONMENT NO. PE52/2022

SUBJECT: DEVELOPMENT APPLICATION NO. 8/2021/21052/1 PROPOSING A BOUNDARY ADJUSTMENT

0 THOMAS STREET AND 34 MITCHELL STREET, NORTH ROTHBURY

Councillor Watton declared a Pecuniary Interest for the reason that he is a landowner in the village of North Rothbury in which his land backs onto the privately owned laneways. Councillor Watton left the chamber and took no part in discussion and voting.

Councillor Watton left the meeting, the time being 7:13 pm

MOTION **Moved:** Councillor Hill **Seconded:** Councillor Sander
265
RESOLVED

1. **That:**

- (i) **Development Application No. 8/2021/21052/1 proposing a boundary adjustment at 0 Thomas Street and 34 Mitchell Street, North Rothbury, 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:**
 - **As submitted, the application does not provide sufficient information for Council to determine if the boundary adjustment is satisfactory with respect to the likely social and economic impacts in the locality (pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).**
 - **As submitted, the application does not provide sufficient information for Council to determine if the application is in the public interest (pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*).**
 - **As submitted, the application does not establish that the boundary adjustment will promote the orderly and economic use and development of land (pursuant to Section 1.3 (c) - Objects of Act, *Environmental Planning & Assessment Act 1979*).**
 - **As submitted, the application is not consistent with the zone objective of land zoned ‘RU5 Village’ under the provisions of the *Cessnock Local Environmental Plan, 2011- ‘to ensure that development is compatible with the amenity, functioning and scale of a rural village’* (pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).**

(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*

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

- The application was publicly exhibited in accordance with Council's Community Participation Plan resulting in two (2) submissions being received.
- The issues raised in the submissions may be relevant to the proposal, however, insufficient information has been submitted with respect to the future re-subdivision of the lot created to enable a comprehensive response to an objection.

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

FOR	AGAINST
Councillor Moores	
Councillor Dunn	
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Jurd	
Councillor Suvaal	
Total (10)	Total (0)

CARRIED UNANIMOUSLY

REASONS FOR REFUSAL

1. As submitted, the application does not provide sufficient information for Council to determine if the boundary adjustment is satisfactory with respect to the likely social and economic impacts in the locality (pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).
2. As submitted, the application does not provide sufficient information for Council to determine if the application is in the public interest (pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*).
3. As submitted, the application does not establish that the boundary adjustment will promote the orderly and economic use and development of land (pursuant to Section 1.3 (c) - Objects of Act, *Environmental Planning & Assessment Act 1979*).

4. As submitted, the application is not consistent with the zone objective of land zoned '*RU5 Village*' under the provisions of the *Cessnock Local Environmental Plan, 2011- 'to ensure that development is compatible with the amenity, functioning and scale of a rural village'* (pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).

Councillor Watton returned to the meeting, the time being 7:15 pm

PLANNING AND ENVIRONMENT NO. PE56/2022

**SUBJECT: PLANNING PROPOSAL 18/2020/3/1 - COMPREHENSIVE LEP
REVIEW - RECREATION ZONES**

MOTION **Moved:** Councillor Hill **Seconded:** Councillor Sander
266
RESOLVED

That the report be deferred to the next Ordinary Council meeting.

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

CARRIED UNANIMOUSLY

PLANNING AND ENVIRONMENT NO. PE58/2022

SUBJECT: HUNTLEE DEVELOPMENT CONTROL PLAN AMENDMENT

MOTION **Moved:** Councillor Hill **Seconded:** Councillor Sander
267
RESOLVED

1. That Council places Draft Chapter 17 Huntlee of the Cessnock Development Control Plan 2010 on public exhibition for a minimum period of 28 days.
2. That Council receives a further report following public exhibition of Draft Chapter 17 Huntlee of the Cessnock Development Control Plan 2010.

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

CARRIED

PLANNING AND ENVIRONMENT NO. PE59/2022

**SUBJECT: DEVELOPMENT APPLICATION PERFORMANCE MONITORING
REPORT - JUNE QUARTER 2021-2022**

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
268
RESOLVED

That Council receives and notes the Development Performance Monitoring Report for the June quarter 2021/22.

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY

CORPORATE AND COMMUNITY NO. CC71/2022

SUBJECT: RESPONSE TO BUSINESS WITH NOTICE BN21/2022 - COUNCIL FACILITIES APPROPRIATE FOR THE PROVISION OF LAUNDRY AND SHOWER FACILITIES FOR PEOPLE EXPERIENCING HOMELESSNESS IN CESSNOCK LGA

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
269
RESOLVED

1. That Council notes the findings of the investigation into Council facilities appropriate for the provision of laundry and shower facilities for people experiencing homelessness in Cessnock LGA.
2. That Council notes the investigation found existing facilities with both toilet and showers to be not suitable for the reasons documented in this report.
3. That Council notes the correspondence from Clayton Barr, MP.

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC72/2022

SUBJECT: ELECTION OF DEPUTY MAYOR - 2022/2023

MOTION **Moved:** Councillor Burke **Seconded:** Councillor Dunn
270
RESOLVED

That the election of Deputy Mayor be held and determined by open ballot with the term of office to be from 22 September 2022 until the September 2023 Ordinary meeting.

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

CARRIED UNANIMOUSLY

The Mayor advised the meeting that only one nomination had been received from Councillor Moores which has been accepted and declared Councillor Moores as the Deputy Mayor.

CORPORATE AND COMMUNITY NO. CC73/2022

SUBJECT: MINUTES OF THE STRATEGIC PROPERTY & COMMUNITY FACILITIES COMMITTEE MEETING HELD 16 AUGUST 2022

MOTION **Moved:** Councillor Watton **Seconded:** Councillor Dunn
271

RESOLVED

1. That the Minutes of the Strategic Property and Community Facilities Committee of 16 August 2022 be adopted as a resolution of the Ordinary Council.
2. That the buildings are demolished from the site located at 204-218 Vincent Street, Cessnock, using the funding from the Property Development Fund.
3. That the General Manager commence the advancement of the Civic Park for the site located at 204-218 Vincent Street, and 2 Cessnock Street, Cessnock.
4. That the General Manager provide a further report come to the Strategic Property Review Committee outlining a proposed timeline associated with delivering a civic park including any current design and development concept plans for the site.
5. That Council grant a licence over part Lot: 32 DP: 627860 35 Bowen Street, Branxton to Branxton Preschool Inc for a term of 21 years subject to public exhibition, with a license fee of \$5000 (plus CPI + additional outgoings) in accordance with section 46A and 47 of the Local Government Act 1993 be put in place for a 5 year period. After this initial 5 year period, the ongoing base licence fee will be reconsidered within the Strategic Property and Community Facilities Committee meeting.

Councillor Jurd left the meeting, the time being 7:42 pm

Councillor Jurd returned to the meeting, the time being 7:43 pm

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC74/2022

SUBJECT: REVIEWED CODE OF CONDUCT AND PROCEDURES

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
272

RESOLVED

1. That Council places the revised Code of Conduct and Procedures for the Administration of the Code of Conduct on public exhibition for 28 days.
2. That Council adopts the Code of Conduct and Procedures for the administration of the Code of Conduct if no submissions are received with effective from 1 November 2022.
3. That Council revokes the current Code of Conduct and Procedures for the administration of the Code of Conduct with effect from the date the revised draft is adopted.

FOR

AGAINST

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

Total (0)

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC75/2022

SUBJECT: DRAFT COUNCILLOR AND STAFF INTERACTION POLICY

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
273
RESOLVED

1. That Council adopts the Draft Councillor and Staff Interaction Policy.
2. That Council revokes the Councillor Access to Information and Interaction with Staff Policy 2020.

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC76/2022

SUBJECT: BI-ANNUAL COMPLAINT HANDLING REPORT - JANUARY TO JUNE 2022

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
274
RESOLVED

That Council notes the Bi-annual Complaint Handling Report for the period 1 January 2022 to 30 June 2022 and that of the 16 complaints received there were 4 substantiated.

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC77/2022

SUBJECT: DISCLOSURE OF INTEREST IN WRITTEN RETURNS

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
275
RESOLVED

That Council notes the tabling of the annual disclosures of interests in written returns the period of 1 July 2021 – 30 June 2022 in accordance with Council’s Code of Conduct.

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC78/2022

SUBJECT: INVESTMENT REPORT - AUGUST 2022

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
276
RESOLVED

That Council receives the Investment Report for August 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 \$80,002,044.**

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

CARRIED UNANIMOUSLY

CORPORATE AND COMMUNITY NO. CC79/2022

SUBJECT: RESOLUTIONS TRACKING REPORT

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
277
RESOLVED

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

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

CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE

WORKS AND INFRASTRUCTURE NO. WI56/2022

SUBJECT: TENDER T2022-012 CESSNOCK SPORTSGROUND GRANDSTAND SEATING

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
278
RESOLVED

That Council accepts the tender (T2022-012) from Camatic Pty Ltd for the lump sum of \$285,372.67 (including GST) for the Cessnock Sportsground Grandstand Seating.

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

CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE NO. WI57/2022

SUBJECT: TENDER T2022-011 CESSNOCK REGIONAL BMX FACILITY

MOTION **Moved:** Councillor Sander **Seconded:** Councillor Grine

279

RESOLVED

1. That Council accepts the tender (T2022-011) from Bolla Contracting Pty Ltd for stage one works for the lump sum of \$412,830 (including GST) for the Cessnock Regional BMX Facility.
2. That Council note stage two works for the Cessnock Regional BMX Facility are conditionally accepted upon Federal Government funding.

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

	Total (0)
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CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE NO. WI58/2022

SUBJECT: CESSNOCK AIRPORT GRANT PROJECT UPDATE

MOTION **Moved:** Councillor Grine **Seconded:** Councillor Burke
280
RESOLVED

That Council notes the report and approves borrowing up to an additional \$1,200,000 to complete the Cessnock Airport Upgrade.

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

CARRIED

WORKS AND INFRASTRUCTURE NO. WI59/2022

SUBJECT: COOPER AND CHARLTON STREETS CESSNOCK INTERSECTION

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Watton

281

RESOLVED

1. That Council notes the results of the investigations undertaken at the Cooper and Charlton Streets Intersection; and
2. That the General Manager organise a briefing on this report in conjunction with the CBD Master Plan and the future direction of traffic flows within the CBD precinct.

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

	Total (0)
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CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE NO. WI60/2022

SUBJECT: NSW STATE GOVERNMENT ACCELERATED INFRASTRUCTURE FUND (ROUND 3)

MOTION **Moved:** Councillor Hawkins **Seconded:** Councillor Moores
282

RESOLVED

1. That Council endorses the nomination of the following infrastructure projects for Round 3 of the state government's Accelerated Infrastructure Fund:
 - Road widening – Wollombi Road (Francis Street to West Avenue)
 - Road Widening – Wollombi Road (Abbotsford Street to Francis Street)
 - Intersection improvements – Wollombi Road / Abbotsford Street /Cox Street
 - Intersection improvements – Wollombi Road / Bellbird North Access; and
2. That the General Manager be authorised to apply for the best combination of those project(s) that provide Council with the best possible application against the grant criteria; and
3. That Council provide approval of co-funding for the AIF nomination, from borrowing within the developer contributions plan.

FOR	AGAINST
Councillor Moores	Councillor Watton
Councillor Dunn	Councillor Jurd
Councillor Burke	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Suvaal	
Total (9)	Total (2)

CARRIED

WORKS AND INFRASTRUCTURE NO. WI61/2022

SUBJECT: WORKING WITH CESSNOCK CORRECTIONAL CENTRE

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

283

RESOLVED

That Council notes the outcome meeting with Correction Officers as to the opportunities for inmates to be used to undertake works for Council

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

	Total (0)
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CARRIED UNANIMOUSLY

WORKS AND INFRASTRUCTURE NO. WI62/2022

SUBJECT: MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING HELD 15 AUGUST 2022.

Councillor Burke declared a Pecuniary Interest for the reason that he is the organiser of the Cessnock Stomp Festival. Councillor Burke left the Chamber and took no part in discussion and voting.

Councillor Burke left the meeting, the time being 7:38 pm

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Sander
284
RESOLVED

That the Minutes of the Cessnock Local Traffic Committee Meeting of 15 August 2022 be adopted as a resolution of the Ordinary Council.

- **TC33/2022 - That Council authorises the temporary regulation of traffic on Wollombi Road, Vincent Street, Edward Street, Cooper Street and Charlton Street, Cessnock for the Stomp Festival in accordance with Various Roads Cessnock CBD _ Stomp Festival Traffic Control Plans.**

FOR	AGAINST
Councillor Moores	
Councillor Dunn	
Councillor Grine	
Councillor Sander	
Councillor Hill	
Councillor Hawkins	
Councillor Paynter	
Councillor Watton	
Councillor Jurd	
Councillor Suvaal	
Total (10)	Total (0)

CARRIED UNANIMOUSLY

Councillor Burke returned to the meeting, the time being 7:38 pm

WORKS AND INFRASTRUCTURE NO. WI63/2022

SUBJECT: REQUEST FOR SPONSORSHIP - KEARSLEY COMMUNITY DAWN SERVICE COMMITTEE INC.

MOTION **Moved:** Councillor Hawkins **Seconded:** Councillor Grine
285

RESOLVED

1. That Council provides sponsorship to Kearsley Community Dawn Service Committee Inc. for the community morning tea to be attended by the Minister for Veterans, the Hon. David Elliott MP, to the value of \$600, with funding from operational budgets within the Open Space and Community Facilities section;
2. That the Kearsley Community Dawn Service Committee Inc. provide an acquittal of the sponsorship within 60 days of the event.

FOR

AGAINST

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

Total (0)

CARRIED UNANIMOUSLY

BUSINESS OF WHICH WRITTEN NOTICE HAS BEEN GIVEN

BUSINESS WITH NOTICE NO. BN26/2022

SUBJECT: EXTRA POLICE PRESENCE - BRANXTON/WARD C

MOTION **Moved:** Councillor Watton **Seconded:** Councillor Jurd
286
RESOLVED

That Council write to the NSW Police Commissioner, Karen Webb, Minister for Police and State Member for Cessnock requesting additional police presence in areas of high development and growth in the Cessnock Local Government Area including Branxton, Huntlee, Bellbird, Heddon Greta and Cliftleigh.

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

CARRIED UNANIMOUSLY

BUSINESS WITH NOTICE NO. BN27/2022

SUBJECT: KITCHENER SCHOOL PATHWAYS

MOTION **Moved:** Councillor Jurd **Seconded:** Councillor Hawkins
287
RESOLVED

1. That Council notes that the improvement of footpaths around Kitchener State School is currently in the Delivery Program.
2. That Council notes the community's concerns associated with students walking safety around the school.

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

CARRIED UNANIMOUSLY

COUNCILLOR REPORTS

NIL

CORRESPONDENCE

CORRESPONDENCE NO. CO13/2022

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

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
288
RESOLVED

That Council notes the correspondence received from Greg Warren, MP – Shadow Minister for Local Government; Jamie Parker, MP – Greens Spokesperson for Local Government and Geoff Provest MP, Parliamentary Secretary for Police and Emergency Services on behalf of the Minister, in response to Council's correspondence relating to a request to support NSW Councils' call to amend the *Rural Fires Act 1997*.

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

CARRIED UNANIMOUSLY

CORRESPONDENCE NO. CO14/2022

SUBJECT: BN29/2021 - NORTH ROTHBURY RETICULATED SEWER SCHEME

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
289
RESOLVED

That Council notes the correspondence received from the Managing Director of Hunter Water, Darren Cleary.

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

CARRIED UNANIMOUSLY

CORRESPONDENCE NO. CO15/2022

SUBJECT: MM12/2022 - TESTERS HOLLOW AND BUCHANAN ROAD

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
290
RESOLVED

That Council notes the correspondence received from Kylie Sullivan – Senior Government Services Office for Transport for NSW and Clayton Barr, MP – State Member for Cessnock.

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

CARRIED UNANIMOUSLY

CORRESPONDENCE NO. CO16/2022

SUBJECT: OLG RESPONSE - CODE OF CONDUCT COMPLAINT

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
291

RESOLVED:

That Council notes the confidential letter received from the Office of Local Government (OLG) regarding the Code of Conduct Complaint referred to them concerning the conduct of Councillor Ian Olsen and that the OLG have advised they will not be taking any further action under the misconduct provisions of the *Local Government Act 1993*.

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

CARRIED UNANIMOUSLY

CORRESPONDENCE NO. CO17/2022

SUBJECT: MM10/2022 - PARKING ADVOCACY - AMENDMENT TO RULE 197 OF THE ROAD RULES 2014

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
292
RESOLVED

That Council notes the correspondence received from the Member for Cessnock, Clayton Barr MP received from The Hon. Sam Faraway, MLC, regarding the Parking Advocacy – Amendment to Rule 197 of the Road Rules 2014.

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

CARRIED UNANIMOUSLY

CORRESPONDENCE NO. CO18/2022

SUBJECT: UB2/2021 - URGENT BUSINESS - RESPONSE STANDING DOWN OF PAXTON FIRE STATION

MOTION **Moved:** Councillor Dunn **Seconded:** Councillor Burke
293
RESOLVED

That Council notes the correspondence received from Clayton Barr, MP on behalf of Geoff Provest, MP the Parliamentary Secretary for Police and Emergency Services, regarding the Standing Down of Paxton Fire Station.

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

CARRIED UNANIMOUSLY

The Meeting Was Declared Closed at 7.55pm

CONFIRMED AND SIGNED at the meeting held on 19 October 2022

.....**CHAIRPERSON**

.....**GENERAL MANAGER**

Disclosures Of Interest

Report No. DI9/2022

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. NI6/2022

Corporate and Community Services



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

REPORT WI70/2022 - LARGE SITES ELECTRICITY CONTRACT IMPACTS

REPORT GMU28/2022 - CONSIDERATION OF FINAL INVESTIGATION REPORT - CODE OF CONDUCT COMPLAINT

REPORT GMU29/2022 - CONSIDERATION OF FINAL INVESTIGATION REPORT - CODE OF CONDUCT COMPLAINT

RESPONSIBLE OFFICER: *Chief Financial Officer - Matthew Plumridge*

RECOMMENDATION

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

Report WI70/2022 – Large Sites Electricity Contract Impacts as the report deals with advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

GMU28/2022 - Consideration of Final Investigation Report - Code of Conduct Complaint and GMU29/2022 - Consideration of Final Investigation Report - Code of Conduct Complaint as the reports contain alleged contraventions of any code of conduct requirements applicable under Section 440.

2. That Council requests the Mayor in accordance with Clause 14.21 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.

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

ENCLOSURES

There are no enclosures for this report.

Motions of Urgency

Report No. MOU10/2022

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.

SUBJECT: *APEX PARK MASTERPLAN*
RESPONSIBLE OFFICER: *Economic Development & Tourism Manager - Tony Chadwick*

SUMMARY

The purpose of this report is to seek the adoption of the Apex Park Masterplan following a 28 day public exhibition period.

Council received 20 public submissions and completed an internal review that has resulted in proposed changes to the draft Apex Park Masterplan as exhibited. The changes have been detailed in this report for Council's consideration.

RECOMMENDATION

1. That Council adopts the Apex Park Masterplan as exhibited, with the amendments outlined in this report; and
2. That Council requests the General Manager contact Hunter Water Corporation requesting technical, financial and project management support to complete the drainage channel naturalisation portion of the Apex Park Masterplan.

BACKGROUND

At the Meeting of 16 February 2022 Council in considering Report GMU4/2022 resolved:

1. *That Council endorses the concept of turning Apex Park into an iconic gateway site.*
2. *That Council places the Concept Masterplan on public exhibition for a minimum period of 28 days and invite public submissions.*
3. *That this report be returned to Council for endorsement at the completion of public exhibition.*

This report addresses item 3 of the resolution by providing a summary of the community feedback and the proposed changes to Apex Park Masterplan in response to the feedback.

REPORT/PROPOSAL

Apex Park has a total site area of 0.84 hectares (ha) and is made up of the following lots:

- Lot: A DP: 369757, Size 0.640ha
- Lot: 1 DP: 359456, Size 0.078ha
- Lot: 1 DP: 657198, Size 0.079ha
- Lot: 1 DP: 339020, Size 0.044ha

The location of Apex Park is shown in **Figure 1** below.



Figure 1 – Apex Park Strategic Location (shown in red)

Consistent with Cessnock Community Strategic Plan 2036, Cessnock Local Strategic Planning Statement 2036 (LSPS), Cessnock Commercial Precinct Public Domain Plan and Greater Cessnock Jobs Strategy 2036, Council has sought to develop a masterplan for Apex Park to become an iconic gateway site that attracts visitors and connects residents.

Public Exhibition

Council received 20 formal public submissions and completed an internal review of the draft Apex Park Masterplan as exhibited from 1 – 31 March 2022.

Minor wording and formatting changes have been incorporated into the Apex Park Masterplan as well as the recommended changes listed in Table 1. Recommended changes to the draft Apex Park Masterplan are based on feedback received during the public exhibition period.



Table 1 – Proposed changes to the draft Apex Park Masterplan

Submission Ref	Summary of submission received	Proposed Change/Outcome
Internal Review	<p>Consider adding an electric vehicle charging point next to building 3.</p> <p>Remove the trees to allow an awning to be added to the kiosk building. Customer service windows should be added to the existing building.</p> <p>Change page 12 item 3 to read: Upgrade the existing building. Upgrades include restoring the internal toilet and shower, added a kitchenette, add customer service windows for kiosk operation, add external public toilets, add an awning for all weather customer service and install solar panels for the EV charging points.</p>	<p>Add an electric vehicle charging point next to building 3.</p> <p>Remove the 3 trees next to building 3 to allow an awning to be added to the building.</p> <p>Add two customer service windows to building 3 that face the park.</p> <p>Change page 12 item 3 to read: Convert and upgrade the existing storage building to a multipurpose kiosk with internal and external toilets. Upgrades include restoring the internal toilet and shower, adding a kitchenette, adding two customer service windows for kiosk operation, adding external public toilets, adding an awning for all weather customer service and installing solar panels for the EV charging points.</p>
DOC2022/031247	<p>Comment: Great concept.</p> <p>Feedback: After travelling to some other country towns last year, some of whom had some lovely parks, is to ensure that parking can cater for those travelers who may tow a caravan/trailer for example.</p>	<p>The current parking design on page 12 allows for drive through parking with a trailer.</p> <p>No action required.</p>
DOC2022/029847	<p>Pedestrian access to the pool and to the park from Allandale road needs to be considered. The lights and pedestrian crossing are not enough. There needs to be a foot bridge over to the pool or something else that goes directly from the pool to the park and vice a versa. It is such a busy street with school buses dropping and picking up kids from the pool it is unsafe</p>	<p>Change item 4 on page 19 to create a physical barrier from vegetation to encourage pedestrians to cross at the lights.</p>

General Manager's Unit

Report No. GMU25/2022

General Manager's Unit



Submission Ref	Summary of submission received	Proposed Change/Outcome
	<p>for children and families to cross that road and impractical to go up to the traffic lights to cross. We need to make this safe for all the community. I hope you give this serious consideration and listen to what the community needs and wants.</p>	<p>A foot bridge over Allandale Road is out of scope of this project.</p>
<p>DOC2022/033029</p>	<p>The increased maintenance cost which will be needed of council. I concede a concrete drain isn't the nicest thing to look at however but to suggest changing that with extra vegetation and earth works which will need consistent and extra maintenance is just something should heavily consider when voting on this master plan. Council can ill afford unnecessary expenditure.</p> <p>The removal of historical trees like the jacarandas and palms. Now I know the palms were located there on this park less than 15 years ago but they are such a gate way tree in a gate way location. These along with the 70+ year old jacarandas should be preserved on site. The bloom of colour which enriches the area every spring is something to behold and should not be lost during this park upgrade.</p> <p>Mayor Shakespeare monument. This arch way should be retained on site and not moved any further. It should be incorporated into the park's transformation, if it is a good enough space to put artwork why not a memorial arch way</p>	<p>Noted.</p> <p>Noted.</p> <p>The archway is to be relocated to Cessnock pool where the arch was originally located.</p> <p>Page 16 Note 1 to read "Existing bridge arch to be relocated to Cessnock Pool"</p>
<p>DOC2022/034932, DOC2022/034289 and DOC2022/035267</p>	<p>Overall we are supportive of the design and the concept of upgrading Apex Park.</p> <p>Page 9 – 02 Parking & Linkages: The vehicle access from Cessnock Motor Group needs to be able to take heavy vehicles (vehicle transporters).</p> <p>Page 9 – 02 Parking & Linkages: Can we consider providing vehicle access from Allandale Rd into the Park or via Church St.</p>	<p>Noted.</p> <p>Pavement strength is to be considered during detailed design.</p> <p>Access from Church Street is beyond the scope of this project due to private land ownership.</p>

General Manager's Unit

Report No. GMU25/2022

General Manager's Unit



Submission Ref	Summary of submission received	Proposed Change/Outcome
	<p>Page 10 – 05 Vegetation: Don't retain or relocate the two palms. The large tree of the three shown can be removed if required for the design. You might be able to sell the palms. We have no problem with removing the Jacaranda trees as they cause a lot of mess when defoliating.</p> <p>Page 12 – Item 12 Grevillia Tree: Removing the Grevillia tree and the green space around the tree could allow for additional parking spaces to be created.</p> <p>Page 12 – Item 3: Accessible toilets is a good idea for this building but lock them at 9pm to prevent attracting undesirable people.</p> <p>Lighting is essential.</p> <p>No food and beverage outlets should be allowed to operate in this park other than for events.</p> <p>Ensure drainage is considered as water pools in some parts of the site.</p> <p>Page 12: Please provide Hotel Cessnock vehicle access to the western side of the building.</p> <p>Please ensure vegetation doesn't cover Hotel advertising signs.</p>	<p>Remove the palms from the design. Page 16 Notes 2, 3 and 4 to be deleted.</p> <p>There is no significant reason to remove this tree.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>This will be addressed in the detailed design stage.</p> <p>Hotel Cessnock vehicle access to be added on page 12.</p> <p>Noted.</p>
<p>DOC2022/035822</p>	<p>As a local resident I have never spent any time at Apex Park and I believe this is because there is just not enough elements of interest to draw people in to use the space. This Plan has considered the park space being connected, a place to gather, and really builds on the great work of Council at Bridges Hill Park, linking through the city, through Apex Park, the adjacent Pool and Splash Pad and on to the vineyard area with the new shared pathways to be constructed.</p> <p>The only element I would like further consideration on is the access to the sides of the channel. Currently fenced, I do think this provides protection for people, from young</p>	<p>Noted.</p> <p>Access to the drain will be restricted as previously noted above.</p>

General Manager's Unit

Report No. GMU25/2022

General Manager's Unit



Submission Ref	Summary of submission received	Proposed Change/Outcome
	<p>children to those with disabilities that may unexpectedly run away from parents/carers, to the elderly or late night wanderers who may accidentally fall into the channel if it is not fenced.</p>	
<p>DOC2022/037090</p>	<p>I think something does need to be done with Apex Park in relation to parking amenities, public amenities and the telling of our indigenous history as well as any other history connected with the park.</p> <p>I am, however, very, very concerned with any tampering with the storm water channel. All best plans made cannot guarantee there will not be a flow on effect of flooding caused by any alteration of the current channel. The cost of any damage caused to properties whether business or private homes that may come as a result of any alteration will not be borne by the Council but will be borne by the business owner and/or ratepayer via higher insurance premiums (that is if they will be able to get insurance coverage once flood mitigation plans are changed).</p> <p>Further there appears to be no fencing planned that I can see which would ensure a "stop gap" to the road for children at this very busy traffic area in Cessnock.</p> <p>On another note there is nowhere in Cessnock for passing tourists with a caravan to stop near the main shopping precinct with a dump point or ability to fill up with water. Most caravan tourists when passing through a regional town like to stop to buy a coffee, have a look around the town and have access to facilities such as dump point and a tap. Maybe Council could consider looking into this. However, the entrance to Apex Park as it is currently or as suggested in the proposed Masterplan wouldn't be suitable for a caravan to enter or exit.</p> <p>Why remove all the current trees, surely there is history with some of the species of trees?</p>	<p>Noted.</p> <p>Expert flooding advice has been considered in the current design. Noted.</p> <p>Change item 4 on page 19 to create a barrier from vegetation to encourage pedestrians to cross at the lights.</p> <p>Dump points and caravan parking is being addressed as a separate matter. Noted.</p> <p>The channel widening requires some tree removal.</p>

General Manager's Unit

Report No. GMU25/2022

General Manager's Unit



<p>DOC2022/ 041687</p>	<p>Council's desire to beautify the Apex Park corner is commendable, but making the site look different without generating a significant increase in site usage, is a waste of money. It is difficult to see how the design elements presented in the plan would convert a rarely used site into a year round community hub.</p> <p>Much has to be done by Council to convince the community that there is merit in spending money on a new park instead of fixing roads, addressing flooding issues and fully maintaining recreation facilities.</p> <p>Little thought has been given to how the design elements would function in a serious wet weather event. The design allows for dry and wet weather access to the deep drain which is a serious and potentially deadly, design failure.</p> <p>I have lived most of my life in Cessnock. I was never taken to the park site as a child. I did not take my children there. I can see little in the current proposal that would entice me to take my grandchildren there. No play equipment and possibly no toilet is a concern but more important, is the issue of safety around the drain. With nowhere to play, children will be drawn to the drain by the two sets of open steps. Rain garden plantings along the edge of the drain seem insufficient to keep children from exploring close to the drain edge. Open seating at the top of the steps seems potentially dangerous and what looks like an open edge to the drain on the northern end of the gateway platform is a death trap.</p> <p>It is disappointing that only one plan is under consideration.</p> <p>The Arch and the historic markers represent an important and relevant piece of Cessnock's history and both relate directly to this corner site. Positioning the Arch and the historic markers in the redeveloped Apex Park is the right thing to do. The location would provide an opportunity to learn a significant story about the history of Cessnock. The Arch and the historic markers fit naturally with the symbolism of the red posts in the plan. Arranging the posts into a circle represents the lost band rotunda and</p>	<p>Noted.</p> <p>Noted.</p> <p>Access to the drain will be removed from the design.</p> <p>Noted.</p> <p>Noted.</p> <p>The archway is to be relocated to Cessnock pool where the arch was originally located.</p>
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General Manager's Unit

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General Manager's Unit



	<p>red gums. These symbols neatly identify a popular gathering place and reinforce common cultural identities of the past.</p>	
DOC2022/038537	<p>I would like to fully support the Draft Apex Park Concept Masterplan as the current Apex Park is in urgent need to be completely re-modelled and updated with modern facilities. This area is located on the busiest intersection in our City and it is an eyesore. The present Apex Park gives visitors the impression that they are visiting a town stuck in the past (1950's).</p> <p>I really like the Aboriginal theme which is very respectful.</p> <p>The new park will be an attractive area for the many visitors to our valley to stop and explore our town and businesses rather than just driving through the town.</p> <p>I would suggest that the plan should future proof the new park by providing a number of Electric Vehicle charging stations. Many people I know are strongly considering buying an electric vehicle over the next few years. This EV Charging station would make the new park a must stop for electric car travellers.</p> <p>Just as the Bridges Hill Park is an outstanding success, I believe that this park update will enhance the image of Cessnock City and will be well received by visitors and local citizens.</p>	<p>Noted.</p> <p>Two Electric Vehicle charging stations to be added to the design as previously shown.</p> <p>Noted.</p>
DOC2022/044914	<p>Firstly, we congratulate Cessnock City Council for taking steps to update this park, long overdue, and as suggested, it could become the focal point to Central Cessnock for residents and tourists alike.</p> <p>In the 03 Masterplan, page 2, item 3, please upgrade existing building to provide public amenities not demolish.</p> <p>The Cessnock Men's Shed and Lions Club use the existing building for storage. These organisations require continued access to the building.</p> <p>We do believe there is some merit, if deemed to be more aesthetically pleasing, to screen off the said building somehow for privacy as part of the area's upgrade.</p>	<p>Noted.</p> <p>The existing building will be upgraded and not demolished.</p> <p>Noted.</p> <p>Noted.</p>

General Manager's Unit

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	<p>Finally, the draft also seeks to determine a name for the park. Many of us remember a large APEX PARK sign at the front entrance, where about now unknown. With respect to Elders past and present, and as APEX has had a direct and indirect continuing traditional community association with this site for over 40 years, we believe the name should be maintained as APEX PARK, for posterity.</p>	<p>The park name will remain as Apex Park.</p>
<p>DOC2022/045287</p>	<p>After reviewing the Draft Apex Park Masterplan we would firstly like to congratulate you on this initiative.</p> <p>This alongside the new pool facilities will be a great new focal point for the town at that intersection. We believe it will encourage more people into Cessnock being such a prominent position. We also believe it will potentially start a ricocheting affect down Vincent St for beautification, Hunter Water with the canal and the carpark behind the IGA building.</p> <p>Well done! We wish you the best with this project that will hopefully be the start of a facelift for Cessnock.</p>	<p>Noted.</p>
<p>DOC2022/045328</p>	<p>We have studied your concept plan for Apex Park and cannot wait to see how this space transforms. The master plan presented on council's website encompasses many unique aspects and demonstrates inclusion and diversity.</p> <p>Cessnock Community Leo's Club is in the planning stages of a community vegetable garden, with the vision of 'food is free' with the goal of providing free, fresh organic produce to Cessnock residents. Cessnock Community Leo's Club plan to fundraise to complete this project and manage the gardens with our team of volunteers. Our plan involves local schools, other community groups and residents, connecting community and developing skills. The garden will be implemented with sustainable land and water management strategies, including native companion planting to support animal habitat.</p> <p>We are asking if Cessnock City Council would like to consider allocating space for Cessnock</p>	<p>Noted.</p> <p>Apex Park does not have the room to incorporate a community garden. Council to consider provision of alternate opportunities.</p>

General Manager's Unit

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	Community Leo's Club to implement our project as a part of Apex Park.	
SD2022/ 001121	<p>Council money should not be used to fund this project.</p> <p>Consider safety and how children can be kept out of the stormwater drain.</p> <p>Don't move the historical arch.</p> <p>Don't put steps into the drain due to flooding.</p> <p>Lights at night is wasteful.</p>	<p>Noted.</p> <p>Previously addressed above.</p> <p>Previously addressed above.</p> <p>Previously addressed above.</p> <p>Noted.</p>
DOC2022/ 045339	<p>We believe that the draft concept masterplan will achieve the objectives for the redevelopment of the site of the existing Apex Park and neighboring unutilised land.</p> <p>This is a gateway site and needs to be a highlight for people travelling to the area, encouraging them to stop and explore the local area. Cessnock currently lacks a foundation for its aboriginal heritage and the masterplan will acknowledge the Wonnarua people and the importance of the site at Black Creek.</p> <p>The existing Bridges Hill Park was recently upgraded and includes an acknowledgement of the Wonnarua people at it's entrance with a "welcome panel", totem poles and Koyiyang campfire.</p> <p>Apex Park needs to complement Bridges Hill park in this aspect and there needs to be a connectivity between the two sites.</p> <p>The park should have a culturally significant name, though we need to be sensitive to the contribution of the Apex Club and the Shakespeare Memorial stand.</p> <p>While it will be sympathetic to the plan to remove the concrete bedding for the existing water channel, we should not lose sight of the importance of these drains and the work done during the great depression. Acknowledgement of this contribution to this part of our heritage should be maintained at other sites along the water channel.</p>	<p>Noted.</p> <p>Noted. Specific wording will be developed during the detailed design phase in consultation with the Aboriginal and Torres Straights Advisory Committee.</p> <p>Noted.</p> <p>Noted.</p>

General Manager's Unit

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General Manager's Unit



	<p>We are not sure whether the designers of the plan clearly understand the impact of the channel during rainy periods. The waters in the channel rise very quickly, with the water becoming both deep and rapid moving. We envisage there would be safety issues if the nature of the channel was changed and if the fencing protection was removed. There needs to be a clear understanding of the safety issues if changes and variations were implemented.</p> <p>There should be a visual connection between the Park and Cessnock Swimming Pool across the road as these two form the gateway to the vineyards. The two sites need to be complementary and have a natural flow between them.</p> <p>The installation of public toilets should be included as part of the development. This provides not only another reason to stop but creates a facility which is currently lacking in the Cessnock CBD area.</p> <p>The creation of the pop-up facility should be considered as part of the initial works. This can be as simple as a drive in area which can be used for parking for a mobile coffee shop or for putting an annexure or temporary structure in for information etc.</p> <p>If changes are made to the existing structure of Apex Park, it is important that there is sensitivity shown, particular if items are being taken away. Where-ever possible, these should be relocated to a similar situation.</p> <p>Name of Apex Park – need to re-name an existing park or a new park Apex Park.</p> <p>Alderman Shakespeare Memorial Arch. We understand that Apex Park was previously named Shakespeare Park and was dedicated in the memory of Joseph Shakespeare who was mayor of Cessnock from 1931 to 1933. Alderman Shakespeare was injured in a mining accident shortly before his death in 1935 at the age of 51. The Memorial Arch is listed on the Monument Australia website and they would need to be advised if the monument is moved.</p>	<p>Channel access has been removed in the revised design.</p> <p>Noted.</p> <p>Public toilets are being added to building 3.</p> <p>Building 3 is being upgraded to include customer service windows, a kitchenette and internal toilets to allow kiosk operations.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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General Manager's Unit

Report No. GMU25/2022

General Manager's Unit



	<p>The palm trees. One of the palm trees was donated quite a few years ago. There was controversy at the time due to the high cost of the moving of the palm to the Apex Park location. The move was funded by Council.</p> <p>The concreting of the water channel was completed as part of the employment plan during the Great Depression. We need to ensure that this aspect of our heritage is preserved somewhere further along the channel.</p> <p>Not sure of the history of the existing bridge but should be preserved and relocated.</p> <p>It is noted that sandstone is being used throughout the site. It is recommended that the sandstone is not in sawn in "blocks" as it is at Bridges Hill Park but should be rounded to give a more natural look which would be more in keeping with the overall proposed theme of the park.</p> <p>We agree with the concrete decking over the channel at the intersection of Allandale Road and Maitland Road in order to create the gateway image.</p> <p>There was previously a small service station located on the block of land directly opposite Cessnock Swimming Pool. The storage tanks below the service station may not have been removed during the demolition of the service station and may still be under ground. If they are still in situ, this may cause environment issues if they are damage either during and after proposed upgrade of the park.</p> <p>It is recommended that close thought is given for safe and easy access for those who utilise the car parks near the proposed park, who want to go to the Swimming Pool. At the moment this is haphazard and can be dangerous particularly for younger children. Patrons of the Pool should be encouraged to use the traffic lights though the design of the park and parking spots.</p> <p>The lighting of the park at night is a great idea for both aesthetic and safety reasons.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Previously addressed above.</p> <p>Noted.</p>
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General Manager's Unit

Report No. GMU25/2022

General Manager's Unit



<p>DOC2022/ 045333</p>	<p>I believe this will add another picnic and relaxation place for all of Cessnock and visitors under the current pandemic.</p> <p>A fantastic place for outdoor picnic and able to utilise the Pool in the summer months. Visitors are always looking for areas like this to meet their families and will be nice to send them to the newly formed Apex Park so they can go back to their friends and family for repeat visitation to the area.</p> <p>If the drain has all the concrete taken away how are you going to control the flood water when we have serious floods.</p> <p>Adding public toilets is a great idea as there are no public toilets except Coles, Woolworths or council chambers from Monday – Friday 9-5pm.</p> <p>Consider a pop-up van for coffee on busy weekends, and build an amphitheatre for weekend live music.</p> <p>It would be great to have a safe over pass from Apex Park to the pool for pedestrians and cyclists.</p>	<p>Noted.</p> <p>Noted.</p> <p>A flood and hydraulic engineer has determined that the channel widening will not have a negative impact on water flows during a flood.</p> <p>Noted.</p> <p>Noted.</p> <p>An overpass is out of scope of this project.</p>
<p>DOC2022/ 049509</p>	<p>Community groups utilise the storage shed at Apex Park and they should be allowed to keep access to the shed.</p> <p>I am not recommending that the archway be relocated in the short term, but perhaps a note made within the Apex Masterplan about the archway for easy future reference.</p>	<p>Noted.</p> <p>Noted.</p>
<p>DOC2022/ 040316 DOC2022/ 040311 DOC2022/ 040309</p>	<p>The original location of the Shakespeare memorial arch in Shakespeare Park was at the Cessnock Pool site.</p> <p>Shakespeare Park history provided.</p>	<p>The arch is to be relocated to the Cessnock Pool site.</p>

Apex Park Masterplan (**Enclosure 1**) is now presented to Council for adoption following the public exhibition period.

OPTIONS

Nil

CONSULTATION

Internal

- Councillors
- Acting General Manager
- Economic Development Officer
- Hunter Valley Visitor Information Centre Coordinator
- Principal Community Planner
- Senior Strategic Planner
- Open Space and Community Facilities Manager

External

- Community – 28 day public exhibition
- General Manager – Cessnock Motor Group
- Owner – Hotel Cessnock
- Chief Executive Officer – Mindaribba Local Aboriginal Land Council
- Terras Landscape Architects
- Civil Engineer - Royal Haskoning DHV

STRATEGIC LINKS

a. Delivery Program

This report aligns with the following Delivery Program 2022 – 2026 actions:

- A connected, safe, and creative community;
 - 1.1 Promoting social connections and wellbeing, and
 - 1.2 Strengthening community culture.
- A sustainable and prosperous economy;
 - 2.1 Diversifying and growing our economy,
 - 2.2 Achieving more sustainable employment opportunities, and
 - 2.3 Increasing tourism opportunities and visitation in the area.
- A sustainable and healthy environment;
 - 3.2 Better utilisation of existing open space.

b. Other Plans

This report aligns with the following plans:

- Greater Cessnock Jobs Strategy 2036;
 - Priority 6 Grow the visitor economy,
 - Priority 10 Create vibrant centres, and
 - Priority 11 Build a strong, positive profile for the Cessnock LGA.

- Cessnock Local Strategic Planning Statement 2036;
 - Planning Priority 4: Our community is safe, healthy and active,
 - Planning Priority 7: Urban development is encouraged in areas with existing infrastructure,
 - Planning Priority 18: Our areas of biodiversity and biodiversity corridors are enhanced and protected,
 - Planning Priority 24: Our Aboriginal cultural heritage is protected and celebrated, and
 - Planning Priority 28: Our commercial centres and villages are tourist destinations in their own right.

- Cessnock Commercial Precinct Public Domain Plan;
 - Create a Gateway to the Vineyards,
 - Naturalise the Hunter Water drainage channels, and
 - Create a Green Ribbon – Urban Connector.

- Hunter Valley Destination Management Plan;
 - Priority 4: Develop Destination Experiences, and
 - Priority 5: Developing the Visitor Economy and Place-making.

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

Adopting the Masterplan will not have any direct financial impacts. Masterplan implementation will need to be considered against existing commitments within the Delivery Program.

c. Legislative Implications

Nil



d. Risk Implications

Risk	Risk Ranking	Proposed Treatment	Proposed Risk Ranking
Reputation - Reduced visitors to Cessnock LGA and Cessnock CBD	C2 Medium	Adopt the recommendation	C1 Low
Reputation - Reduced investment attraction to Cessnock CBD	C2 Medium	Adopt the recommendation	C1 Low

e. Environmental Implications

When the Masterplan is implemented the drainage channel will be naturalised with appropriate vegetation and additional trees planted in accordance with the landscaping plan.

f. Other Implications

Nil

CONCLUSION

The Apex Park Masterplan will provide the platform to transform this under-utilised Park into an iconic gateway site that provides a positive welcome to our visitors and a place to relax for our resident.

Council received 20 public submissions and completed an internal review that has resulted in proposed changes to the draft Apex Park Masterplan as exhibited. The Apex Park Masterplan Final Design (**Enclosure 1**) is now presented to Council for adoption.

ENCLOSURES

- [1](#) Apex Park Masterplan Final Design

General Manager's Unit

Report No. GMU26/2022

General Manager's Unit



SUBJECT: *HUNTER VALLEY DESTINATION MANAGEMENT PLAN
2022 - 2030*

RESPONSIBLE OFFICER: *Economic Development & Tourism Manager - Tony
Chadwick*

SUMMARY

The purpose of this report is to seek Council's endorsement for the public exhibition of the *draft Hunter Valley Destination Management Plan 2022 - 2030 and draft Hunter Valley Destination Management Plan Situational Analysis 2022*. The Hunter Valley Destination Management Plan outlines the vision, strategic framework and priorities that will guide a strong, sustainable, diverse, and resilient Hunter Valley visitor economy for years to come.

RECOMMENDATION

- 1. That Council places draft Hunter Valley Destination Management Plan 2022 - 2030 and draft Hunter Valley Destination Management Plan Situational Analysis 2022 on public exhibition for a period of 28 days.**
- 2. That a further report outlining any public submissions received be prepared for Council's consideration following the exhibition.**

BACKGROUND

The Hunter Valley Destination Management Plan (DMP) supports Cessnock City and Singleton Councils objectives of increasing tourism opportunities and yield, building resilience and supporting tourism operators as well as attracting new investment and encouraging product diversity.

It also ensures the region continues to be a highly sought-after destination by visitors. In this DMP, two communities with much in common – Cessnock and Singleton – have joined together to develop a vision to further enhance the Hunter Valley as a highly desirable and diverse destination. The plan will guide our actions over the next eight years to strengthen and grow the burgeoning visitor economy in a way that is sustainable and in line with the community's expectations. It will allow both local governments to work together with industry, the community and other stakeholders in an aligned and strategic way.

The existing Hunter Valley DMP was adopted by Council on 7 May 2014. Since 2014, the visitor economy and visitor trends have changed significantly, increasing the need for a new and refocused Plan.

REPORT/PROPOSAL

Tourism makes an important economic contribution to the Hunter Valley. The visitor economy is the fourth largest industry in the Cessnock LGA, contributing \$501m of economic output each year. It employs as many as 2900 people and continues to grow.

General Manager's Unit

Report No. GMU26/2022

General Manager's Unit



The Hunter Valley is also home to significant landmarks and lands important to the Aboriginal people of the region, in particular the Wonnurua/Wannurah people. This rich and ancient cultural history holds the potential to work with Aboriginal peoples and organisations to support efforts to develop cultural experiences.

For these reasons it is important to create a plan to manage the growth of the visitor economy in order to ensure opportunities are fully capitalised on and that growth is managed in a strategic way which benefits the entire community through the creation of jobs and enhancing the lifestyle of those who live in our area.

To ensure that global visitor economy trends and industry insights were captured in the Hunter Valley DMP, Council utilised tourism industry experts Destination Marketing Store as project consultants. Following extensive community, government and industry engagement the Draft Hunter Valley DMP 2022 – 2030 has been developed (refer enclosures 1 and 2).

The goal of the Hunter Valley DMP is to grow the Hunter Valley Visitor Economy from \$641M in 2020 to \$958M by 2030 (aligning with the NSW Visitor Economy Strategy 2030 targets).

This goal will be achieved by:

- Encouraging greater regional dispersal;
- Increasing visitor spend by 25%;
- Increasing the average length of stay from 2.55 days to the NSW average of 3.3 days;
- Increasing mid-week visitation by 20%;
- Increasing the number of available beds by 10%;
- Doubling the number of bookable experiences; and
- Doubling international visitation.

The key objectives driven by the strategic framework and priority projects will be to:

- Showcase and build the region's internationally renowned food and wine and events position;
- Enhance and diversify the experience offering;
- Attract new markets to the Hunter Valley; and
- Enrich the perception of the Hunter Valley as a diverse and rich destination.

The Hunter Valley DMP is supported by the Situational Analysis document which contains detailed visitor data, visitor demographics and provides a background in understanding the area and factors that were considered during the preparation of the Hunter Valley DMP.

The *draft Hunter Valley Destination Management Plan 2022 - 2030 and draft Hunter Valley Destination Management Plan Situational Analysis 2022* is now presented to Council to enable the documents to be publicly exhibited for 28 days prior to adoption.

OPTIONS

N/A

General Manager's Unit

Report No. GMU26/2022

General Manager's Unit



CONSULTATION

Hunter Valley community - 336 tourism surveys completed 6 workshops held, 18 One on One/Small Group Sessions, 25 consultations attended by 13 Food & Wine Businesses, 22 Tourism Businesses, 3 Major Events businesses, and the following:

General Manager – Cessnock City Council
Director Planning – Cessnock City Council
Principal Strategic Planner – Cessnock City Council
Strategic Planner – Cessnock City Council
Senior Environmental Planner – Cessnock City Council
Visitor Centre Coordinator – Cessnock City Council
Senior Visitor Centre Officer – Cessnock City Council
HV Visitor Centre Officers – Cessnock City Council
Economic Development Team – Singleton Council
Senior Visitor Centre/Customer Team Leader – Singleton Council
Visitor Centre Officers – Singleton Council
Destination Marketing Store
Chief Executive Officer - Hunter Valley Wine and Tourism Association
Business Development Specialist – Hunter Valley Wine and Tourism Association
Community Engagement Officer
Communications and Media Officer
President - Around Hermitage Association
Vice President – Around Hermitage Association
Committee Members – Cessnock Business Chamber
President – Wollombi Valley Chamber
Vice President – Wollombi Valley Chamber
Vice President – Singleton Business Chamber
Secretary – Broke Fordwich Tourism Association
Committee Member – Hunter Valley Culinary Association
Project Manager – Kurri Kurri Towns with Heart
Chief Executive Officer – Mindaribba Local Aboriginal Land Council
Chief Executive Officer – Ungooroo Aboriginal Corporation, WUPA at Wannaruah and NATOC Representative
Chief Executive Officer – Wonnarua Aboriginal Nation Corporation
Visitor Services Team Leader – National Parks and Wildlife Service Newcastle
Visitor Services Team Leader – National Parks and Wildlife Service Blue Mountains (Yengo)
Area Manager Werakata – National Parks and Wildlife Service
Services Coordinator – TAFE Cessnock
Services Coordinator – TAFE Kurri Kurri
Services Coordinator – TAFE Singleton
Chief Executive Officer – Alloggio
Business Development Officers – Regional NSW
Regional Projects – Events Lead - Hunter JO
Regional Projects – Cycling Lead – Hunter JO
Regional Manager – Newcastle Airport
General Manager - Destination Sydney Surrounds North
Industry Development Manager - Destination Sydney Surrounds North
Manager – Belford Land

STRATEGIC LINKS

a. Delivery Program

This report aligns with the following Delivery Program 2022 – 2026 actions:

- A Sustainable and Prosperous Economy;
 - 2.1 Diversifying and growing our local economy;
 - 2.2 Achieving more sustainable employment opportunities; and
 - 2.3 Increasing tourism opportunities & visitation.

This report aligns with the following Operational Plan 2022 – 2026 actions:

- 2.1.3 Provide support for activation of commercial centres, business engagement, promotion and support of business growth;
- 2.2.2 Create skilled and employment ready workforce; and
- 2.3.1 Collaboratively identify markets and promote the local government areas tourism industry; and
- 2.3.2 Promote and grow the Hunter Valley's Visitor Information Centre.

b. Other Plans

This report aligns with the following plans:

- NSW Visitor Economy Strategy 2030;
- Destination Sydney Surrounds North Destination Management Plan;
- A 20-Year Economic Vision for Regional NSW;
- Hunter Regional Plan 2041;
- Greater Newcastle Metropolitan Plan 2036;
- Hunter Regional Economic Development Strategy 2018 – 2022;
- Cessnock City Council Public Domain Plan;
- Greater Cessnock Jobs Strategy 2036;
- Cessnock City Council Trails Strategy; and
- Cessnock City Council Cycling Strategy.

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

No direct financial impacts will result from endorsing the Hunter Valley Destination Management Plan 2030.

c. Legislative Implications

Nil



d. Risk Implications

Risk	Risk Ranking	Proposed Treatment	Proposed Risk Ranking
Financial - A reduction in future Council grant funding	D4 Medium	Adopt the recommendation	D2 Low
Reputation - Reduced visitors to the Cessnock LGA	D2 Low	Adopt the recommendation	E1 Low

e. Environmental Implications

Nil

f. Other Implications

Nil

CONCLUSION

This report demonstrates the need to create a plan that will guide the growth and prosperity of the Cessnock LGA's visitor economy toward 2030. The *draft Hunter Valley Destination Management Plan 2030* supports our community vision of a sustainable and prosperous economy.

The updated Hunter Valley DMP will allow the Hunter Valley to step up to the next level, evolve the way we develop and market our key experiences to grow the visitor economy for the benefit of the whole community and most importantly for the visitors to have amazing memorable experiences.

This report seeks Council endorsement to place the *draft Hunter Valley Destination Management Plan 2022 - 2030 and draft Hunter Valley Destination Management Plan Situational Analysis 2022* on public exhibition for 28 days.

ENCLOSURES

- 1 ➡ DRAFT Hunter Valley Destination Management Plan 2022-2030
- 2 ➡ DRAFT Situational Analysis Hunter Valley Destination Management Plan 2022

General Manager's Unit
Report No. GMU27/2022
General Manager's Unit



SUBJECT: *VISITOR ECONOMY GRANTS AND SPONSORSHIP PROGRAM 2022 ROUND 1 APPLICATIONS*

RESPONSIBLE OFFICER: *Economic Development & Tourism Manager - Tony Chadwick*

SUMMARY

The purpose of this report is to inform Council of the applications received under Round 1 of the 2022 Visitor Economy Grants and Sponsorship Program and to seek Council's endorsement to offer conditional sponsorship funding for the purpose of attracting events, conferences and projects to the Cessnock Local Government Area (LGA).

RECOMMENDATION

1. That Council notes the Visitor Economy Grants and Sponsorship Program 2022 Round 1 applications.
2. That Council endorses the following funding bids to attract events under the Council Visitor Economy Grants and Sponsorship Program.
 - a. HELMSBRISCOE Annual Transport Conference \$10,000
 - b. HELMSBRISCOE Annual Supplier Conference \$7,500
 - c. Kurri Kurri Speedway - Centenary of Speedway Event \$3,000
 - d. 2023 Hunter Valley Airshow \$20,000
 - e. Royal Australasian College of Surgeons Annual Conference \$5,000
 - f. Plan Your Event Hunter Website \$8,000

BACKGROUND

At its Ordinary Meeting of 18 May 2022, Council resolved (GMU12/2022, resolution 118):

1. *That Council endorses the creation of the Visitor Economy Grants and Sponsorship Program with an annual budget allocation of \$50,000 from the existing Tourism Related Activities budget.*
2. *That Council endorses the Visitor Economy Grants and Sponsorship Program Guidelines.*
3. *That Council places unspent funds from the Visitor Economy Grants and Sponsorship Program into the Miscellaneous & Property Reserve (Tourism Related Projects Reserve).*
4. *That Council allocates an annual budget of \$47,600 from the existing Tourism Related Activities budget to implement actions from the Hunter Valley Destination Management Plan.*
5. *That the General Manager provides a report to Council every 12 months on the outcomes of the Visitor Economy Grants and Sponsorships Program.*

General Manager's Unit

Report No. GMU27/2022

General Manager's Unit



6. *That Council notes the savings achieved from 1 July 2022 from the Companion Management Agreement will also be allocated to the Miscellaneous & Property Reserve (Tourism Related Projects Reserve) at the end of each financial year.*

This report addresses item one of the above resolution by presenting to Council the Visitor Economy Grants and Sponsorships Program 2022 Round 1 grant applications.

Visitor Economy Grants and Sponsorship Program

The \$50,000 annual Visitor Economy Grants and Sponsorship Program is a targeted program aimed at growing the visitor economy in areas where opportunities exist and maximum benefits are achieved. Data shows that increasing the visitor's length of stay or encouraging overnight visitation provides the greatest economic benefit to the region. The program also recognises that at certain times of the year accommodation availability is limited and additional activities during these periods may have a negative benefit to the region by reducing customer satisfaction and driving up costs.

Grant and sponsorship applications are reviewed and selected based on the assessment criteria shown in table 1.

Table 1 - Visitor Economy Grants and Sponsorship Program assessment criteria

Weighting	Assessment Criteria Description
20%	Alignment to Council's adopted strategies and plans.
20%	Job creation within the Cessnock LGA.
20%	Value for money.
15%	The number of visitors, residents and businesses supported by the project, or the number of bed nights booked as a result of the project.
10%	How the project boosts visitation from Tuesday to Thursday during off-peak periods.
5%	Project co-contribution amount.
5%	Measures and key performance indicators provided by the applicant for the project.
5%	Acknowledgement for Council's support as part of the project.
100%	Total

The Visitor Economy Grants and Sponsorship Program opens for applications from 1 to 31 August each year (round one). If funds remain available after round one, an additional secondary round of applications will be accepted from 1 to 28 February in the following calendar year.

REPORT/PROPOSAL

Round 1 2022 Visitor Economy Grants and Sponsorship Program Applications

Council received 8 grant applications under Round 1 of the Visitor Economy Grants and Sponsorship Program. An overview of the grant applications is shown in table 2 below.



Table 2 - Visitor Economy Grants and Sponsorship Program Applications

Application Reference	Project #	Project Title / Funds Requested / Event Details
DOC2022/119648	1	HELMSBRISCOE Annual Transport Conference Funds Requested: \$10,000 Direct Event Expenditure: \$350,000 Event Days: 3 (all mid-week) Room Nights: 540
DOC2022/119648	2	HELMSBRISCOE Annual Supplier Conference Funds Requested: \$7,500 Direct Event Expenditure: \$200,000 Event Days: 3 (all mid-week) Room Nights: 308
DOC2022/128471	3	Kurri Kurri Speedway - Centenary of Speedway Event Funds Requested: \$20,000 Direct Event Expenditure: \$30,000 Event Days: 1 (weekend) Event attendance: 3,000
DOC2022/135006	4	2023 Hunter Valley Airshow Funds Requested: \$25,000 Direct Event Expenditure: \$1,500,000 Event Days: 2 (weekend) Event attendance: 20,000
DOC2022/127541	5	Women's Network Golf Event Funds Requested: \$6,500 Direct Event Expenditure: \$10,000 Event Days: 1 (mid-week) Event attendance: 30
DOC2022/130580	6	Royal Australasian College of Surgeons Annual Conference Funds Requested: \$15,000 Direct Event Expenditure: \$200,000 Event Days: 3 (partial mid-week) Room Nights: 450
DOC2022/133682	7	Dalwood Estate Opera in the Vines Ineligible due to location outside Cessnock LGA
DOC2022/141474	8	Plan Your Event Hunter Website Funds Requested: \$12,000 Businesses promoted: 40+ Target market: Events for 20-200 people Expected outcome: 3+ events booked every week Direct annual benefit: \$321,360

Using the Visitor Economy Grants and Sponsorship Program assessment criteria shown in table 1 the applications received the following scores out of 100.

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Table 3 - Visitor Economy Grants and Sponsorship Program Assessment Score

Project #	Project Title	Requested Funding	Score out of 100
1	HELMSBRISCOE Annual Transport Conference	\$10,000	74
2	HELMSBRISCOE Annual Supplier Conference	\$7,500	68
3	Kurri Kurri Speedway - Centenary of Speedway	\$30,000	28
4	2023 Hunter Valley Airshow	\$25,000	79
5	Women's Network Golf Event	\$0	20
6	Royal Australasian College of Surgeons Annual Conference	\$15,000	60
7	Dalwood Estate Opera in the Vines	\$0	N/A
8	Plan Your Event Hunter Website	\$12,000	67

Grant applications with a score of 60 or higher represent good value for money, high return on investment and strong alignment to the program guidelines. After considering the available program funding, application scores and benefits, a proposed funding amount has been provided against each project as shown in table 4. The new funding amounts have resulted in some project scores changing slightly as the value for money rating changed.

Table 4 – Proposed Funding Assessment Score

Project #	Project Title	Proposed Funding	Score out of 100
1	HELMSBRISCOE Annual Transport Conference	\$10,000	74
2	HELMSBRISCOE Annual Supplier Conference	\$7,500	68
3	Kurri Kurri Speedway - Centenary of Speedway	\$3,000	39
4	2023 Hunter Valley Airshow	\$20,000	79
5	Women's Network Golf Event	\$0	N/A
6	Royal Australasian College of Surgeons Annual Conference	\$5,000	69
7	Dalwood Estate Opera in the Vines	\$0	N/A
8	Plan Your Event Hunter Website	\$8,000	73

After considering the 8 applications received against the Visitor Economy Grants and Sponsorship Program Guidelines, the following funding offer and conditions are recommended:

- HELMSBRISCOE Annual Transport Conference \$10,000
 - Condition 1 – Funding is paid after the conference is held
 - Condition 2 – The conference must be held within the Cessnock LGA
- HELMSBRISCOE Annual Supplier Conference \$7,500
 - Condition 1 – Funding is paid after the conference is held
 - Condition 2 – The conference must be held within the Cessnock LGA
- Kurri Kurri Speedway - Centenary of Speedway \$3,000
 - Condition 1 – The event is held at Kurri Kurri Speedway
- 2023 Hunter Valley Airshow \$20,000
 - Condition 1 – The event is held at Cessnock Airport

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- Royal Australasian College of Surgeons Annual Conference \$5,000
 - Condition 1 – Funding is paid after the conference is held
 - Condition 2 – The conference must be held within the Cessnock LGA
- Plan Your Event Hunter Website \$8,000
 - Condition 1 – First payment of \$4,000 made once the website is operational
 - Condition 2 – Second payment of \$2,000 is made when 40 businesses are promoted on the website.
 - Condition 3 – Third payment \$2,000 is made 12 months after launching the website.

If all funding offers are accepted and the events, conferences and projects proceed then approximately \$2,600,000 in direct expenditure will occur as a result of these projects.

OPTIONS

N/A

CONSULTATION

Community and business via grant program promotion
Visitor Information Centre Coordinator
Economic Development Officer
Economic Development Digital Officer

STRATEGIC LINKS

a. Delivery Program

This report aligns with the following Delivery Program 2022 – 2026 actions:

- A Sustainable and Prosperous Economy;
 - 2.1 Diversifying and growing our economy,
 - 2.2 Achieving more sustainable employment opportunities, and
 - 2.3 Increasing tourism opportunities and visitation in the area.

b. Other Plans

This report aligns with the following plans:

- Greater Cessnock Jobs Strategy 2036;
- Hunter Regional Economic Development Strategy 2018 – 2022; and
- Hunter Valley Destination Management Plan.

IMPLICATIONS

a. Policy and Procedural Implications

Nil



b. Financial Implications

An annual budget allocation of \$50,000 is available for the Visitor Economy Grants and Sponsorship Program. Table 5 shows the proposed financial year funding allocation.

Table 5 – Proposed Financial Year Funding Allocation

Project #	22/23	23/24	24/25	Total
1	-	\$10,000	-	\$10,000
2	-	\$7,500	-	\$7,500
3	-	\$3,000	-	\$3,000
4	\$20,000	-	-	\$20,000
5	-	-	-	
6	-	\$5,000	-	\$5,000
7	-	-	-	
8	\$4,000	\$4,000	-	\$8,000
Total	\$24,000	\$29,500	-	\$53,500

Unspent funds from the annual Visitor Economy Grants and Sponsorship Program will be placed into the Miscellaneous & Property Reserve (Tourism Related Projects Reserve) at the end of each financial year.

c. Legislative Implications

Nil

d. Risk Implications

Risk	Risk Ranking	Proposed Treatment	Proposed Risk Ranking
Reputation – Council fails to support projects that grow the visitor economy	C1 Low	Adopt the recommendation	D1 Low
Reputation – Council is unable to deliver assigned actions from the Hunter Valley DMP	C1 Low	Adopt the recommendation	D1 Low

e. Environmental Implications

Nil

f. Other Implications

Nil

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CONCLUSION

Round 1 of the 2022 Visitor Economy Grants and Sponsorship Program has resulted in 8 grant applications totaling \$96,000. Of these applications 6 events, conferences and projects are proposed to be financially supported to a value of \$53,500.

If all funding offers are accepted and the events, conferences and projects proceed then approximately \$2,600,000 in direct expenditure will occur primarily in the low visitation mid-week periods.

This report seeks Council endorsement to offer Visitor Economy Grants and Sponsorship Program funding to applicants.

ENCLOSURES

There are no enclosures for this report.

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SUBJECT: *DEVELOPMENT APPLICATION NO. 8/2021/21810/1
PROPOSING THE CONSOLIDATION OF FIVE (5) LOTS INTO
ONE (1) LOT, CONSTRUCTION OF A SERVICE STATION,
CONVENIENCE STORE, CAR WASH FACILITY AND FAST
FOOD PREMISES ('HUNGRY JACKS') TO OPERATE 24
HOURS PER DAY, 7 DAYS A WEEK*

157-159 WOLLOMBI ROAD CESSNOCK

RESPONSIBLE OFFICER: *Development Services Manager – Janine Maher*

APPLICATION NUMBER:	8/2021/21810/1
PROPOSAL:	Consolidation of five (5) lots into one (1) lot, construction of a service station, convenience store, car wash facility and fast food premises ('Hungry Jacks') to operate 24 hours per day, 7 days a week
PROPERTY DESCRIPTION:	Lot A DP 15893, Lot 1 DP 161770, Lot 2 DP 554693, Lot 3 DP 554693 and Lot 101 DP 549686
PROPERTY ADDRESS:	157-159 Wollombi Road Cessnock
ZONE:	B4 Mixed Use Zone
OWNER:	OTR 323 Pty Ltd
APPLICANT:	SLR Consulting

RECOMMENDATION

1. That:

- (i) **Development Application No. 8/2021/21810/1 proposing the consolidation of five (5) lots into one (1) lot, construction of a service station, convenience store, car wash facility and fast food premises ('Hungry Jacks') to operate 24 hours per day, 7 days a week at 157-159 Wollombi Road, Cessnock, 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 B4 zone under the *Cessnock Local Environmental Plan 2011*,
- The proposal is consistent with the objectives of the B4 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, and any variations are considered minor in nature,
- 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) In considering community views, the following is relevant:

- Measures are able to be implemented to ensure the development does not result in any unacceptable impact as a result of traffic, noise and lighting,
- The social impacts of the development have been adequately addressed and considered acceptable,
- The subject land is considered suitable for the development, and
- Sufficient information has been submitted to allow a full assessment of the proposed development.

(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. 8/2021/21810/1 is being referred to Council for determination as it has been called-up by three (3) Councillors.

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EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 8/2021/21810/1 seeking approval for the consolidation of five (5) lots into one (1) lot, construction of a service station, convenience store, car wash facility and fast food premises ('Hungry Jacks') to operate 24 hours per day, 7 days a week.

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 with two (2) submissions received from one (1) household. The issues and concerns raised in the submissions are addressed in the following report.

An acoustic report has been submitted with the application which demonstrates that with the adoption of appropriate mitigation measures, the development will not result in any significant adverse noise impacts. A Plan of Management has also been submitted in support of the application, outlining measures to address any anti-social behaviour. Notwithstanding, it is considered that a 12 month trial period (relating to the proposed operating hours of the development) be imposed as a precautionary measure given that existing residential development is located within the locality.

Based on the assessment, it is recommended that the Development Application be approved subject to a 12 month trial period relating to the proposed operating hours (being 24 hours per day, 7 days a week) and the conditions of consent contained in this report.



LOCATION MAP



AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 157-159 Wollombi Road, Cessnock and comprises five (5) allotments legally described as follows:

- Lot A DP 15893,
- Lot 1 DP 161770,
- Lot 2 DP 554693,
- Lot 3 DP 554693, and
- Lot 101 DP 549686.

The subject site is located on the southern side of Wollombi Road. The site has a frontage to Wollombi Road of approximately 72 metres; with an overall site area of 7,542 m². Vehicular access to the site is available from the Wollombi Road frontage.

The subject site is currently vacant; however, previously contained a bakery (known as 'Sylvester's Bakery') which was destroyed by fire.

The below photograph depicts the site:



Figure 1: The subject site viewed from the corner of Wollombi and Mount View Roads

Surrounding properties are characterised by residential development immediately to the north and east of the site and commercial/retail premises to the north east and south east. Commercial/retail premises within the locality included Aldi, Big W, Repco, Supercheap Auto and a local automotive business. To the west of the site is St Patrick's Primary School and a dental surgery.

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Relevant development consents issued in relation to the property include:

Development Consent Reference No.	Date development consent issued	Description of approved development
8/2018/595/1	6 September 2018	Demolition of Structures

HISTORY

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

Date	Action
3 July 2020	Pre-lodgement meeting held with the applicant and Council staff.
10 September 2021	The development application is lodged with Council.
23 September 2021	The application is referred internally to Council officers and to Transport for NSW (TfNSW), Natural Resource Access Regulator (NRAR) and NSW Police.
29 September 2021	Community Planning referral received requesting additional information. The applicant is requested to lodge additional information to address Community Planning comments.
12 October 2021	Application commences notification.
28 September 2021	Waste Services referral received.
6 October 2021	The applicant lodges additional information in response to Council's request for information.
11 October 2021	The application is referred back to Community Planning to consider the submitted additional information.
13 October 2021	Development Engineering referral received with additional information required.
18 October 2021	Community Planning referral received with additional information required
26 October 2021	Referral received from NRAR advising the development is exempt from requiring a Controlled Activity Approval (CAA).
9 November 2021	Notification ends with two (2) submissions received from one (1) household.
16 November 2021	The applicant is requested to lodge additional information in relation to engineering and social impact.

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1 December 2021	Environmental Health referral received with additional information required.
2 December 2021	The applicant is requested to lodge additional information relating to site contamination, external lighting and waste-water disposal.
14 December 2021	The application is referred to Strategic Planning for comment.
18 December 2021	Strategic Planning referral received.
17 February 2022	TfNSW referral received.
8 March 2022	All outstanding information and amended plans lodged by the Applicant and referred internally for officer assessment.
30 March 2022	Development Engineering referral received with additional information required. Additional information requested from applicant.
17 April 2022	Environmental Health referral received.
19 April 2022	Community Planning referral received.
21 June 2022	NSW Police comments received.
25 July 2022	Additional information received and referred back to Development Engineering for review.
10 August 2022	Traffic Engineer referral received.
12 August 2022	Development Engineering referral received.

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2021/21810/1 seeks approval for the consolidation of five (5) lots into one (1) lot, construction of a service station, convenience store, car wash facility and fast food premises ('Hungry Jacks') to operate 24 hours per day, 7 days a week.

Specifically, the application includes the following works:

- Consolidation of five (5) lots into one (1) lot,
- Construction of a service station comprising:
 - a fuel canopy,
 - Three (3) double sided fuel bowsers, and
 - main control building (total Gross Floor Area (GFA) of 499m²) including a convenience store, customer service counter, storeroom, cool room and amenities.

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- Food and drink premises ('Hungry Jacks') located inside the main control building,
- Dual lane drive-thru (accommodating 15 vehicles) plus two (2) waiting bays,
- Automatic drive-thru car wash facility for a single vehicle including queuing space for seven (7) vehicles,
- Dual vacuum bay, and
- Associated parking, landscaping, signage and fencing.

ASSESSMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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:

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 and Hazards) 2021*
2. *State Environmental Planning Policy (Industry and Employment) 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 (Resilience and Hazards) 2021

The aim of the policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. 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.

The subject site was previously occupied by a bakery (known as 'Sylvester's Bakery') which was destroyed by fire. Damaged remains of the former building were subsequently removed under Development Consent 8/2018/595/1 approved by Council on 6 September 2018. The old bakery buildings contained asbestos and following demolition and removal of the buildings and asbestos materials, a clearance certificate was issued by Practical Environmental Solutions (a licenced assessor) on 1 August 2018.

Notwithstanding, site investigation works and a Preliminary Site Investigation (PSI) report have been lodged with the application (prepared by WSP dated June 2020).

A total of 18 boreholes were sampled over the site. Borehole BH17 (shown in Figure 3 below) detected a small sample of material containing asbestos. The PSI recommends that further asbestos testing be undertaken at this location. This has been included in the recommended conditions.



Figure 3: Site investigation borehole locations (Preliminary Site Investigation SWP June 2020)

The site is considered suitable for the proposed development in its current state.

2. State Environmental Planning Policy (Industry and Employment) 2021

This policy aims to ensure that signage is compatible with the character of the area, provides effective communication in suitable locations, and is of high quality. Section 3.6 of the SEPP requires a consent authority to be satisfied that the signage meets the aims of the SEPP and the assessment criteria in Schedule 5. Considering the aims and assessment criteria, signage proposed by this application is consistent with the requirements of the SEPP.

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

In accordance with the provisions of this SEPP, the development application was referred to TfNSW for comment as the development:

1. Has frontage to a classified road (Section 2.119), and
2. Is categorised as traffic generating development (Schedule 3 Traffic-generating development to be referred to TfNSW).

TfNSW has considered the application raising no objection to the proposed development.

4. Cessnock Local Environmental Plan 2011

4.1 Permissibility

The subject site is zoned B4 Mixed Use under the provisions of the *Cessnock Local Environmental Plan (CLEP) 2011*, as depicted in the below map:



Figure 4: Zoning map CLEP 2011

The proposed development is categorised as a ‘service station’ and ‘food and drink premises’ under the CLEP 2011, which are defined as follows:

service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following—

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,
- (b) the cleaning of motor vehicles,
- (c) installation of accessories,
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),
- (e) the ancillary retail selling or hiring of general merchandise or services or both.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

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- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

The development satisfies the above definition, as the premises will offer for sale fuel, basic goods and includes an ancillary car wash. The development will also sell food on a commercial basis for consumption mainly off site.

Service stations and food and drink premises are permitted land uses within the B4 zone with consent.

4.2 Objectives

The objectives of the B4 zone, and a response to each, are identified in the following table:

Objective	Comment
<i>To provide for a mixture of compatible land uses</i>	A service station and food and drink premises are considered suitable within the zone, providing fuel, basic goods, car wash facilities and additional fast food options within the Cessnock CBD.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<p>The subject land is located within walking distance of other business, offices, residential, retail and other developments located within the Cessnock CBD. A service station and food and drink premises are considered suitable uses within the zone, having regard to development within the vicinity of the subject land.</p> <p>While the development is located within close proximity to residential development, the adoption of mitigation measures contained within the Acoustic Report will ensure that the development remains compatible and does not create any adverse impacts with respect to noise.</p>

4.3 Relevant Clauses

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

- *Clause 5.21 Flood planning*

The subject site is identified as being partially affected by the 1% Annual Exceedance Probability (AEP), as identified in the below figure:



Figure 5: Flood mapping

An assessment has been undertaken of the proposal against the provisions contained in Clause 5.21 of the Cessnock LEP 2011, as follows:

Provision	Compliance
<p><i>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</i></p> <p><i>(a) is compatible with the flood hazard of the land, and</i></p>	<p>As depicted in the above figure, a small portion of the site is identified as being flood prone land, and is partly affected by the 1% AEP.</p> <p>The flood hazard across the site ranges from H1 to H5 along the rear boundary.</p> <p>The proposed development has been located outside of the flood affected portion of the land. The finished floor level of the service station and food premises are above the flood planning level.</p> <p>It is considered that the proposal is compatible with the flood hazard of the land.</p>
<p><i>(b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</i></p>	<p>As outlined above, the proposed building footprint is located outside of the flood affected portion of the site. Accordingly, the proposal is not expected to adversely affect flood behavior or depths.</p>
<p><i>(c) incorporates appropriate measures to manage risk to life from flood, and</i></p>	<p>As the development footprint is not located within the flood affected portion of the site, a Flood Emergency Response Plan is not required.</p>
<p><i>(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation,</i></p>	<p>The proposal is not likely to adversely affect the environment or cause avoidable erosion, siltation,</p>

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<i>destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</i>	destruction of riparian vegetation, or a reduction in the stability of river banks or watercourses.
<i>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</i>	The proposal is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

The proposal satisfies the provisions of Clause 5.21 for the reasons outlined above.

- 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. Accordingly, the proposed development is consistent with this clause.

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).*

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 Applications submitted before 1 March 2022

The 2000 Regulation continues to apply instead of this Regulation to the following applications submitted but not finally determined before 1 March 2022—

- (a) a development application,*
- (b) an application for a complying development certificate,*
- (c) a modification application,*
- (d) an application to modify a complying development.*

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.

4.15(1)(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 the Cessnock Development Control Plan (DCP) 2010. Discussion of any variations to the standards is provided after the compliance table:

Part C: General Guidelines

Chapter 1: Parking and Access

In accordance with Chapter C.1 of the DCP, the following parking requirements apply to the development:

- Service Stations – 6 spaces per working bay PLUS
– 1 space per 20m² of gross floor area (GFA) for a convenience store
- Take-Away Food and Drink Premises – 1 space per 12m² of gross floor area PLUS
– 1 space per 3 seats PLUS
– an area for queuing of cars for a drive-thru facility
- Car Wash – no provisions for parking stipulated under the CDCP

The service station does not propose any work bays and as such, parking is only required for the convenience store contained within the main control building.

The service station component of the main control building occupies 249.5m². Based on a parking rate of 1 space per 20m², a total of 13 parking spaces are required.

While this chapter of the DCP stipulates parking requirements for take-away food and drink premises, Chapter E.16 Cessnock Commercial Precinct, provides for a dispensation to the car parking requirement for take away food and drink premises. These provisions prevail over the requirements of Chapter C.1 (Parking and Access). As such, there is no requirement to provide on-site parking for the proposed Hungry Jacks.

Notwithstanding, the Hungry Jacks premises is essentially a take-away food premises with no in-house seating. In accordance with the 'RTA Guide to Traffic Generating Developments', a drive-thru facility is required to provide queuing for a maximum of 12 vehicles. The proposed dual lane drive-thru facility provides for 15 queuing spaces plus two (2) waiting bays. The proposal satisfies this requirement.

While there are no provisions contained in Councils DCP for parking associated with car wash facilities, the 'RTA Guide to Traffic Generating Developments' requires queuing for a maximum of five (5) vehicles for a single lane car wash. The proposed automatic car wash will accommodate only one (1) vehicle at a time and a queuing capacity for seven (7) vehicles. There is also a separate vacuum bay accommodating parking for two (2) vehicles. The proposal satisfies the 'RTA Guide to Traffic Generating Developments'.

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In summary, under the provisions of Chapter C.1 – Parking and Access, parking is only required for the convenience store component of the development. A total of 13 parking spaces are required in accordance with Council's DCP; 21 spaces have been provided consistent with the requirements of this chapter.

Part C: General Guidelines

Chapter 3: Contaminated Lands

Contamination has been addressed in accordance with the provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021*.

Part C: General Guidelines

Chapter 5: Waste Management and Minimisation

In accordance with the DCP, a waste management plan was submitted in conjunction with the application addressing the removal and management of waste from the site during both the construction and operational phase.

It is proposed to engage a private waste collection contractor to service the site. Waste is not proposed to be collected from site between the hours of 10:00pm and 7:00am.

The application is considered to be consistent with the requirements of this part of the DCP.

Part C: General Guidelines

Chapter 8: Social Impact Assessment and Crime Prevention through Environmental Design Guidelines (CPTED) for Proposed Development

A Social Impact Assessment (SIA) (prepared by Mara Consulting, dated August 2021), was submitted in conjunction with the application.

Following a preliminary assessment of the SIA, Council requested the applicant to undertake further community consultation and following this, a supplementary SIA report was submitted (prepared by SLR, dated 19 February 2022). A Plan of Management (POM) has also been submitted which adopts a number of management strategies to mitigate any potential social impacts including anti-social behavior and crime prevention.

The proposal is supported from a Community Planning perspective subject to compliance with the following matters, all of which have been included in the recommended conditions of consent:

- *Installation of 24 hour CCTV and associated signage indicating that CCTV surveillance is in 24 hour operation.*
- *Access control systems for counter areas and staff only access areas.*
- *Back to base duress alarm system.*
- *Maintaining an Incident Register (recording and responding to complaints, vandalism and graffiti).*
- *The car parking areas at the site between the entry and fuel forecourt as well as in front of the car wash facility (car parks 9 to 21) are to be blocked off overnight to encourage*

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either drive-thru purchases or parking only directly in front of the convenience store building and a temporary barrier (e.g. removable bollards) is to be erected at those closed parking areas between the hours of midnight and 6am, daily.

- *Litter patrols to be conducted by staff four (4) times daily to collect litter on site and along Wollombi Road to Darwin Street, and Wollombi Road to Miller Street, Cessnock*
- *Any recommendations from NSW Police.*

The application was also referred to NSW Police for comment.

NSW Police advised that following a review of the proposal with reference to Crime Prevention through Environmental Design (CPTED) principles, the proposed development is classified as a 'medium crime risk'. No objection to the development was raised; however, the following recommendations were made. These are included in the recommended conditions attached to this report:

- *The provision of pay before you pump during the hours of darkness,*
- *The provision of a night window to allow for payment of fuel during hours of darkness, and*
- *Security measures be implemented to protect staff and customers.*

Notwithstanding comments provided by Council's Community Planner and the NSW Police to the proposal, it is considered that a 12 month trial of the 24 hour operation (for all components of the development) be imposed as a precautionary measure to monitor any likely social impacts.

Having regard to the above, the proposal is considered to satisfy the requirements of Council's DCP.

Part C: General Guidelines

Chapter 9: Flood Planning

A small portion of the site is identified as being flood prone land, and is partly affected by the 1% AEP.

The proposed development has been located outside of the flood affected portion of the land and the finished floor level of the service station and food premises are above the flood planning level.

The proposed development has been sited in accordance with the requirements outlined in the Cessnock Development Control Plan 2010 and the following table details compliance with the DCP:

Provision	Provided	Complies?
Non-habitable floor levels are to be no lower than the 1% AEP flood	The floor level of the building is above the 1% AEP.	Yes
Parts of the building constructed at or below the Flood Planning Level are to be constructed with materials	The floor level of the building is above the 1% AEP.	Yes

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identified as 'suitable' in the Flood Compatible Building Guidelines		
Electrical fixtures such as power points, light fittings and switches are sited above the Flood Planning Level unless they are on a separate circuit (with earth leakage protection) to the rest of the building	As the floor level of the building is above the 1% AEP, all electrical fixtures are above the flood planning level.	Yes
Any hazardous material is to be stored above the Flood Planning Level	Any hazardous materials located within the building are able to be located above the flood planning level.	Yes
If intensifying development that incorporates a habitable use on flood prone land it must be demonstrated that users of the development are able to safely self-evacuate to an area outside of the floodplain in the event of a flood without traversing flood waters of a higher hazard classification	The development is located above the flood planning level. Flood free evacuation is available to Wollombi Road.	Yes
A structural assessment is required by a suitably qualified engineer to demonstrate the structure would be safe to withstand hydraulic loads (including debris) in a 1:100 ARI event	Not applicable as all buildings are located above the Flood Planning Level.	Yes

Part D: Specific Guidelines

Chapter 5: Outdoor Signage

The following relevant provisions of Chapter D.5 are considered in the table below:

Provision	Required	Provided	Complies?
5.2.1 Type of signs and their allowable locations	A-frame, banners, below awning, business directory, business identification, fascia, flagpole, internal, special event (temporary), political (temporary), projected wall, real estate (temporary), special event and window.	The application proposes internal directional signage, business identification signs and flagpoles.	Yes

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<p>5.2.3 Maximum Number of Signs</p>	<p>Signage within the commercial area is restricted to: 2 post supported signs, 2 wall signs and 2 entrance signs.</p>	<p>A total of 2 post supported signs are located at the front of the site and comply with the numerical standards of the DCP.</p> <p>The application also proposes 7 wall signs. The total signage area compared to the elevation is provided below:</p> <ul style="list-style-type: none"> • North-east elevation: 259m2 elevation area and 20m2 signage (8%), • North-western: 144m2 elevation area and 14m2 signage (9.7%), • South-western elevation: 259m2 elevation area and 14.8m2 signage (5.7%) <p>Whilst numerically the variation to the number of wall signs is significant (250%), taking into consideration the percentage of the elevation the signage accommodates, the variation is considered to be reasonable.</p> <p>The signage is incorporated into the elevations of the building and will not be intrusive.</p>	<p>No variation proposed –</p>
<p>5.3.1 Business Identification Signs</p>	<p>Maximum of 1 business identification sign is permitted, it shall not exceed 1m2, shall not be higher than 2m above ground level, and may</p>	<p>The application proposes 5 business identification signs consisting of the business logo. While this is a numerical variation to the DCP</p>	<p>No variation proposed –</p>

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	only contain particulars relating to the business.	(400%), overall the percentage of each elevation to be occupied for the purposes of signage is relatively low with the backdrop of the building able to be seen through the majority of the sign. Signage will also be more than 2m above ground; however, all signage will be professionally fitted and secured to the building and is consistent with other signage in the area. In this instance, the variation to the DCP is considered to be reasonable.	
5.3.4 Fascia Signage	Must be contained within the fascia and not extend outside. Must not be illuminated.	One (1) fascia sign is proposed on the north-eastern elevation of the fuel canopy and advertises the business name. The sign will not extend outside the area of the fascia; however, is proposed to be illuminated. In this instance, the sign is considered to be acceptable in that the signage is not visually dominating and is consistent with the character of signage in the locality.	No variation proposed –
5.3.6 Flush Wall Signs	Must be attached to the wall, not covering any opening. Must not project more than 300mm. Shall not occupy more than 20% of the above ground elevation.	A total of 7 flush wall signs are proposed on 3 of the 4 elevations. While the number of signs per elevation is non-compliant, the proposed signage will not project more than 300mm from the wall,	No variation proposed. –

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		<p>not extend above or beyond the elevation, and occupy less than 20% of the elevation.</p> <p>In this instance, the proposed variation is considered acceptable with the signage not considered to be visually dominating.</p>	
<p>5.3.7 Post, Pole or Pylon Signs (including banners and flags)</p>	<p>Shall be located within the proposed site. Maximum signage area of 8m² and 8m high. Signage shall also not protrude above the dominant skyline when viewed from surrounding areas.</p>	<p>There are 2 proposed pylon signs with areas of:</p> <ul style="list-style-type: none"> • 16m² (100% variation) • 10.6m² (20% variation) <p>The overall height of each sign is 7.995 metres, which complies.</p> <p>While the variation is significant, signage proposed is consistent with existing service station signage within the CBD and is considered acceptable given the location of the site within the Cessnock commercial precinct. The signage is of a high standard and will not detract from the visual interest of the development.</p>	<p>Yes/No variation proposed -</p>
<p>5.3.10 Projected Wall Signage</p>	<p>Maximum signage area of 2m². Projection shall not exceed 2500mm and be located at least 2600mm from the ground.</p>	<p>There are no projected wall signs proposed.</p>	<p>N/A</p>

In summary, while some of the signage proposed is non-compliant with the numerical standards contained in the DCP, it is considered that the signage proposed as part of the application has been professionally designed, will be professionally installed, and is generally

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in keeping with the character of signage within the locality. A condition of consent has been recommended to ensure that illumination of the signage is low-lumen and will not cause distraction to passing motorists. In this instance, signage proposed as part of this application is considered to be acceptable.

Part E: Specific Areas

Chapter 16: Cessnock Commercial Precinct

The purpose of this Chapter is to provide specific standards for development within the Cessnock Commercial Precinct. It provides detailed provisions specific to the Precinct that support the land use provisions provided in the Cessnock LEP 2011. In this instance, the following provisions apply:

Provision	Required	Provided	Complies?
16.1.8 Design Quality: Addressing the Street and Public Domain	<ol style="list-style-type: none"> 1. Legible and accessible entry points. 2. Development with a blank wall is not acceptable. 	The design of the proposed development incorporates a legible entrance point, with a connection point provided to Wollombi Road. No blank walls are proposed with suitable variation in materials and colours accommodated.	Yes
16.1.9 Active Street Frontages and Awnings	<ol style="list-style-type: none"> a. The ground floor level at the same level as the footpath. b. At minimum, 70% of the ground floor frontage is to be transparent glazing. c. Foyer spaces are not to occupy more than an 8m-width of a street frontage. d. Enclosed glazed shopfronts are preferred to open shopfronts, except for food and drink premises, which are encouraged to provide open shopfronts. e. Security grilles may only be fitted internally behind the shopfront and are to be fully retractable 	The development is located at the same level as the footpath and incorporates suitable glazing. Whilst open shopfronts are preferred for food and drink premises, the nature of the business and operational requirements dictate the design to be enclosed, whilst still accessible from the street. In this instance, this design is considered to be acceptable.	Yes

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	and at least 50% transparent when closed.		
16.1.10 Building Materials, Finishes and Colours	Use of a combination of colour and texture to provide visual interest.	The design of the development is considered to incorporate suitable materials and colour variation, consistent with the requirements of the DCP.	Yes
16.1.11 Built Form, Setbacks and Street Hierarchy	<p>1. 0 (zero) m setback.</p> <p>2. Each building facade is to be well articulated to differentiate between the base, middle and top.</p> <p>3. No windows are permitted on side or rear boundaries that abut another site.</p>	<p>The Cessnock Masterplan, Public Domain Plan and the Cessnock Development Control Plan envisage a zero-lot setback along the street frontage in the subject location along with a specific built form. These controls are intended to reinforce the existing street character in the location and present an attractive gateway to the Cessnock Commercial Precinct from Aberdare Road.</p> <p>Whilst strictly not consistent with the requirements of the DCP in terms of the 0m zero setback, it is considered that the final design results in a well-articulated building with a high-quality street frontage, providing connectivity between this site and surrounding businesses.</p>	No
16.1.12 Height in Storeys	Maximum of 6 storeys.	The proposed development is less than 6 storeys, thereby complying with the requirements of the DCP.	Yes
16.1.13 Parking and Access	Control No.2 states : ' <i>No parking is required for</i>	Discussed previously in this report. No parking is	Yes

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	<i>development in the Commercial Precinct for the purposes of a neighbourhood shop (less than 90sqm in size), restaurant or café, take away food and drink premises, or small bar’.</i>	required for the food and drink premises (Hungry Jacks) component of the development.	
16.1.14 Pedestrian and Bike Network	Provision of through-site links and bike parking spaces.	While the nature of the site is constrained such that through-site pedestrian and bike linkages are not possible, a condition of consent has been imposed requiring the construction of a pedestrian path along the full frontage of the site to facilitate pedestrian and bicycle access to the site. Bicycle parking has been identified on the submitted plans.	Yes
16.1.16 Public Open Space and Landscaping	Landscape design should utilise plants that are suited to the soils and climate of the region.	Suitable landscaping has been identified on the landscape plan submitted with the application.	Yes

It is considered that the development (while proposing a variation to the zero front setback requirement under the DCP) generally satisfies the underlying objectives of the DCP and will result in a high quality development providing appropriate business services within the Cessnock CBD.

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.

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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*

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact on both the natural and built environments, and the social conditions of the locality.

It is noted that the proposed development will result in positive economic impacts. Specifically, the development will result in increased short-term employment opportunities during construction and ongoing employment opportunities for the life of the development.

In addition to the matters considered and addressed previously in this assessment report, the following matters are also considered relevant:

Social Impacts, Crime and Anti-Social Behaviour

The submitted Social Impact Assessment and additional information demonstrates adequate community engagement undertaken with the affected community.

The key negative impacts identified by the affected community through consultation were:

- Does not support any new petrol stations in Cessnock,
- Would prefer more family friendly developments such as bowling alley or cinema, and
- Would like to roads improved generally in Cessnock.

On a positive note, the proposed development will provide for additional employment opportunities and improve the visual amenity of a site that has been unoccupied for a number of years.

A Plan of Management (PoM) has been submitted with the application addressing the following controls in order to minimise risk associated with anti-social behavior and crime:

Measure	Implementation	Suitability of Control
Security - CCTV	CCTV surveillance cameras will be installed in and around the premises in strategic places including within the building and refuelling areas. All cameras will operate 24 hours a day, 7 days a week. CCTV Cameras will remain in working condition at all times. If damage to CCTV Cameras occurs repairs will be undertaken as soon as practicable. CCTV footage of any security incident on the	CCTV is considered to be suitable in recording activities at the premises, allowing identification of offenders, and as a measure of discouraging anti-social behavior.

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	<p>site can be copied and made available to Police as required. Management will also ensure that the coverage will be operated with due regard to the privacy and civil liberties of all persons within the development.</p> <p>Staff will be encouraged to assist with passive surveillance of all areas of the development by providing efficient reporting systems for any security or safety concerns on a regular basis.</p>	
Lighting	<p>Perimeter lighting will be provided around the premises and car park to enable clear vision and will be designed in such a manner so as to prevent concealment and shadowing.</p>	<p>Lighting is considered to be suitable in discouraging anti-social behavior and allowing clear lines of sign during hours of darkness.</p>
Access Control	<p>The service station will utilise an intruder alarm, access control and CCTV system to monitor access within the site and building.</p> <p>The car parking areas of the site between the entry and fuel forecourt as well as in front of the car wash facility (car parks 9 to 21) are to be blocked off overnight to encourage either drive-thru purchases or parking only directly in front of the convenience store building. A temporary barrier (e.g. removable bollards) are to be erected in the abovementioned parking areas between the hours of 12 midnight and 6am, daily.</p>	<p>Access control are considered appropriate given the 24 hour daily operation.</p>
Signage	<p>Clearly identifiable signage will be installed in and around the building to indicate which areas are open to customers and members of the public and</p>	<p>Signage is considered to be suitable in discouraging anti-social behavior and informing patrons of security measure in place.</p>

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	<p>which areas are restricted. Warning signs, at strategic locations are to be placed around the premises, at entry / exits to warn people of security measures.</p>	
Noise management	<p>Staff will be encouraged to minimise customer noise whilst on site and report any negative behaviour. Reports of all noise complaints will be documented in a register and kept on site. Staff will be encouraged to ensure that customers behave in an appropriate manner whilst on the site and do not disturb the neighbourhood when exiting the premises late at night/ early morning.</p> <p>Excessive noise within the drive-through will not be tolerated and customers will not be served if they cannot keep noise levels reasonable. In extreme cases, Police will be called for any customers refusing to comply.</p>	<p>Staff training is a suitable and necessary measure in relation to noise management.</p>
Money handling	<p>An independent security company will be employed to undertake all movement of cash to and from the premises.</p>	<p>Measure considered to be appropriate.</p>
Litter	<p>Staff will ensure that the footpaths, landscaped garden beds, hardstand areas, building entry and immediate surrounds are kept clean and clear of litter. Bins will be located through-out the premises for general waste. This will help mitigate the potential litter impact upon the surrounding environment.</p> <p>Vandalism and graffiti will be removed (where possible) within 24 hours.</p>	<p>Litter patrol frequencies are considered to be suitable in order to minimise litter associated with the operation in the area immediately surrounding the development.</p> <p>A litter patrol schedule will be imposed as a condition of consent.</p>

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<p>Staff Training</p>	<p>All staff will be trained in relevant security measures. Staff training days will be held on a regular basis to reinforce safety and security procedures. Training will ensure that in the event of a robbery, theft or anti-social behaviour, staff act in a manner to best protect customers, fellow staff members and themselves. Employees will be encouraged to report any suspicious activity or persons in and around the area to the Management and / or Local Police.</p>	<p>Staff training is a suitable and necessary measure in relation to security and the safety of staff and customers.</p>
<p>Incident Reporting</p>	<p>An incident register will be held on site. This will monitor any complaints and will be made available to Police when requested. All incidents including vandalism and graffiti will be recorded, together with the response time taken to repair or remove the property affected or offending material. The frequency of incidents together with the respective response will be included in the regular site performance reviews to ensure the maintenance of acceptable standards</p>	<p>All staff are to be familiar with the process of recording incidents and are to be provided with the required training.</p>

Subject to the imposition of suitable conditions of consent and compliance with the submitted Plan of Management, it is considered that any likely social impacts resultant from the development will be acceptable. The development is considered suitable in the location.

Noise

A Noise Impact Assessment (NIA) Report (prepared by Muller Acoustic Consultants, dated August 2021) was submitted in support of the application.

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Noise monitoring and modelling was undertaken and a total of 24 affected receivers were identified. Potentially affected receivers were identified as residential, commercial, educational and medical. Noise generating activities were identified as the following:

- Customer light and heavy vehicles,
- CON building goods deliveries,
- Waste collection,
- Fuel deliveries,
- Mechanical plant,
- COD operations
- Car wash facility, and
- Car vacuum facility.

Both attended and unattended noise monitoring was undertaken from 30 July 2020 to 5 August 2020. A map is provided below identifying receiver locations and monitoring equipment. No exceedances were identified. Background noise levels (LA90) taken at L1 were found to be: day 51 dBA, evening 44 dBA and night 33 dBA.



Figure 6: Noise monitoring locations (from MAC Consulting Noise Assessment dated August 2021)

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The modelling was reviewed by Council officers and determined to be compliant, subject to the implementation of attenuation measures outlined within the report. The recommended attenuation measures are detailed as follows:

- Mechanical plant located on the roof top of the control building is to be surrounded by acoustic screens constructed to an RL of 600mm above the top of the highest item of plant on each rooftop and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (ie, colour bond, lapped and capped timber or equivalent),
- Construction of an impervious barrier along the south western corner of the control building drive-thru lane. The barrier is to be constructed to an RL of 1.8m above the relative ground level of the forecourt and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (ie, colour bond, lapped and capped timber or equivalent),
- Construction of a canopy with impervious barrier along the eastern and western sides of the vacuum bay. The canopy is to be constructed to an RL of 2.0m above the relative ground level of the forecourt and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (ie, colour bond, lapped and capped timber or equivalent),
- Construction of a 2.5 metre high lapped and capped timber fence along the eastern boundary of the subject site (adjoining 161 Wollombi Road Cessnock) for a distance of approximately 40 metres, returning along the rear boundary of 161 Wollombi Road Cessnock for a distance of approximately 15 metres in accordance with the addendum to the Noise Assessment Report dated 27.9.22, and
- Construction of an impervious barrier surrounding the control building service yard. The barrier is to be constructed to an RL of 2.5m above the relative ground level of the forecourt and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (ie, colour bond, lapped and capped timber or equivalent); materials consistent with those described above.

Overall, the proposed development was found to be compliant.

Traffic

A Traffic Impact Assessment (TIA) has been undertaken and lodged in support of the proposed development.

The TIA identifies the following traffic generation rates (conducted in August 2020 between 7-9.30am and 3.30-6.30pm which captures the expected peak times):

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Location	Weekday Morning		Weekday Afternoon	
	Existing	+ Dev	Existing	+ Dev
Wollombi Road				
- east of Darwin Street	1,340	+ 30	1,470	+ 30
- east of Mount View Road	1,300	+ 70	1,440	+ 70
- west of Mount View Road	840	+ 45	935	+ 45
- west of Helen Street	835	+ 20	935	+ 20
Mount View Road				
- north of Wollombi Road	550	+ 20	595	+ 20
Helen Street				
- north of Wollombi Road	30	+ 20	20	+ 20
Darwin Street				
- south of Wollombi Road	600	+ 10	6105	+ 10

The TIA concluded that traffic flows on Wollombi Road (resultant from the development) would increase from 20 to 70 vehicles per hour (two way) during peak periods, traffic flows on Mount View Road and Helen Street would increase by 20 vehicles per hour (two way) during peak periods and traffic flows on Darwin Street would increase by 10 vehicles per hour (two way) during peak periods. This is expected to be accommodated by the existing road network, with minimal impact on the operation of the adjacent intersections.

The application was also referred to TfNSW for comment. Wollombi Road (MR694) is a classified road. TfNSW reviewed the information provided and raised no objection to the development, and did not provide any requirements in relation to the classified road network as no significant impact is expected.

Accordingly, the proposed development will not result in an unacceptable impact on the road network, with treatments proposed to direct and control traffic around the development site.

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

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development. Specifically, the proposed development is compatible with surrounding land uses and will not result in any unreasonable impact on the surrounding locality.

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

The development application and accompanying information was placed on public exhibition between 12 October 2021 and 9 November. It is noted that extensive neighbor notification was undertaken with 17 surrounding properties notified.

As a result of the notification process, two (2) submissions were received representing one (1) household. The submissions received represent 6% of the notified households.

The issues raised in the submissions along with Council’s comments/responses to each of the issues raised, are detailed below.

Issue/s	Comment/s
<ul style="list-style-type: none"> • Social implications on the proximity of a fast food premises adjacent a primary school. 	<p>There is no legislation restricting the establishment of fast food outlets within close proximity to schools.</p> <p>Notwithstanding, the school adjacent to the site is a primary school and is fully secured by a palisade fence and locked gates. Students are not permitted to leave the grounds unless accompanied by a parent or guardian and as such, exposure/access to the premises will be controlled.</p>
<ul style="list-style-type: none"> • Sufficient community consultation was not undertaken in preparation of the submitted SIA. 	<p>The initial SIA lodged with the application was determined not to have undertaken adequate community consultation. As a result, the applicant undertook additional survey / consultation with 100 surrounding properties consulted. Suitable consultation has been undertaken in accordance with Chapter C.8 of the DCP as outlined in this report.</p>
<ul style="list-style-type: none"> • Traffic impacts on the locality and specifically with close proximity to a school zone. 	<p>A TIA has been lodged with the application and assessed by Council officers as being acceptable. The application was also referred to TfNSW who did not raise any objections.</p>
<ul style="list-style-type: none"> • Inadequate on-site parking. 	<p>Parking has been adequately addressed in accordance with Chapters C.1 and E.16 of the DCP. Sufficient parking has been accommodated on site for the convenience store whilst a dispensation has been applied to the take away food and drink premises in accordance with Chapter C.18.</p> <p>Accordingly, adequate parking has been provided.</p>
<ul style="list-style-type: none"> • Obtrusive lighting impacts on locality 	<p>An appropriate condition of consent has been imposed ensuring all lighting will be installed and operated in accordance with <i>AS 4282-1997 Control of the obtrusive effects of outdoor lighting</i> and shall be maintained for the life of the development.</p>

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- Land Use conflict with adjoining land uses

It is not considered that the proposed development will result in any land use conflict concerns. Suitable separation distance have been incorporated into the design of the development with appropriate mitigation measure also adopted.

- Contamination risk associated with the development on the adjacent Black Creek drainage channel

The adjoining Black Creek (to the south) is a concrete lined channel. All waste water generated by the development will be required to be discharged to the sewer.

Underground petrol tanks are to be constructed and bunded in accordance with the relevant Australian Standards and appropriate conditions of consent have been imposed ensuring this.

The application was referred to NRAR who advised that the development was exempt from requiring a CAA.

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4.15(1)(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 will provide development on land that has been vacant for a number of years, and is therefore consistent with the public interest.

SECTION 7.12 CONTRIBUTIONS

Section 7.12 Contributions are payable for the proposal. In the event the application is approved, Section 7.12 Contributions totalling \$22,612.02 would be payable, in accordance with the contributions plan requirements.

INTERNAL REFERRALS

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

Officer	Comment
Development Engineer	Following submission of additional information, application supported subject to conditions.
Community Planner	Following submission of additional information, application supported subject to conditions.
Environmental Health Officer	Following submission of additional information, application supported subject to conditions.
Strategic Planning	Application supported.

EXTERNAL REFERRALS

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

Agency	Comment
TfNSW	Advice provided and considered by Council's Development Engineer in relation to traffic and access. No objection.
NSW Police	No objection subject to conditions.

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.


The development seeks approval to operate extended hours, being 24 hours per day, 7 days per week. It is considered that a 12 month trial of the 24 hour operation should be imposed as a precautionary measure given that existing residential development is located within the locality. The 12 month trial period will enable Council to confirm that the extended hours do not result in land use conflict.

The proposed development is considered appropriate, with impacts associated with the development appropriately addressed and where possible mitigated via the implementation of appropriate measures.

It is noted that the proposed development will result in positive economic impacts. Specifically, the development will result in increased short-term employment opportunities during construction and ongoing employment opportunities for the life of the development.

Based on the assessment, it is recommended that the Development Application be approved subject to a 12 month trial period for the hours of operation relating to the drive-thru component of the proposal, and the conditions of consent contained in this report.

ENCLOSURES

- 1** Public Submissions - *This matter is considered to be confidential under Section 10A(2) (j) of the Local Government Act, as it deals with Council Policy. (as it contains personal information for those who made a submission)*
- 2**  Architectural Plans

CONDITIONS OF CONSENT

SCHEDULE 1

CONDITIONS OF CONSENT

1. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2021/21810/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Plan Ref: JN1409 sk01d	ADS Architects	28 February 2022
Roof Plan Ref: JN1409 sk02c	ADS Architects	28 February 2022
Elevation Plan Ref: JN1409 sk03b	ADS Architects	18 August 2021
Elevation Plan Ref: JN1409 sk04a	ADS Architects	15 August 2021
Elevations Ref: JN1409 sk05b	ADS Architects	18 August 2021
Signage Ref: JN1409 sk06a	ADS Architects	17 August 2021

Document Title	Prepared By	Dated
Noise Assessment	Muller Acoustic Consulting	August 2021
Statement of Environmental Effects	SLR Consulting Pty Ltd	August 2021
Addendum to Noise Assessment	Muller Acoustic Consulting	27 September 2022
Waste Management Plan	SLR Consulting Pty Ltd	August 2021
Plan of Management	SLR Consulting Pty Ltd	8 March 2022

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

2. Time Limited Approval – 24 Hour Trading

- a. This consent authorises the extended operating hours of the drive-thru, service station (fuel bowsers and night pay window only) and car wash components of the development for twenty four (24) hours per day, seven (7) days a week, subject to paragraphs (b) to (c) of this condition below and the other conditions contained in this development consent.

- b. Pursuant to Section 4.17 (1)(d) (cf previous s 80A) of the EP&A Act, 1979, this consent is limited to a period of 12 months from the date of commencement of the use authorised by this consent. Notice of the commencement date must be provided in writing to Council prior to the use commencing. At the expiration of the trial period, the operating hours of the drive-thru, service station (fuel bowsers and night pay window only) and car wash shall revert to the same operating hours approved for the development, being: (a) The drive-thru, service station (fuel bowsers and night pay window only) and car wash shall operate between the hours of 5.00am until 11pm, seven days per week.
- c. Should the applicant wish to continue operating the drive-thru, service station (fuel bowsers and night pay window only) and car wash components of the development consistent with the extended operating hours beyond the approved 12 month period, an application must be submitted to Council for its consideration and approval prior to the expiration of the 12 month period that allows 24 hour trading but no earlier than a 6 month period from the date of commencement of operations under this consent. Council's consideration of the proposed continuation of the extended operating hours will be based upon, amongst other things, the operator's compliance with the conditions of this development consent and any substantiated complaints received by the Council and/or NSW Police.

3. 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.

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*.

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.

5. 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.

6. Security for Cost of Damage and Completion of Public Work

Prior to issue of a CC authorising the carrying out of any work in accordance with this development consent, the applicant must provide security to the Council for the payment of the cost of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
- c) remedying any defects in any such public work that arise within six (6) months after the work is completed.

The security is to be for an amount that is the greater of \$5000 or 5% of the estimated cost of carrying out the development and may be provided by way of:

- a) cash deposit with the Council, or
- b) an unconditional bank guarantee in favour of the Council.

The security may be used to meet any costs referred above and on application being made to the Council by the person who provided the security, 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 security within six (6) years of the date of issue of the OC or SC for the development the Council may pay the balance to the Chief Commissioner of State Revenue under the *Unclaimed Money Act 1995*.

7. Cessnock Section 7.12 Levy Development Contributions Plan

A total monetary contribution of \$22,612.02 is to be paid to Council, pursuant to Section 7.12 (cf previous s 94A) of the *Environmental Planning and Assessment Act 1979*, such contribution is to be paid prior to the issue of a Construction Certificate in respect of the proposed development.

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- i) This condition is imposed in accordance with the provisions of *Cessnock S94A Levy Development Contributions Plan 2017*. A copy of the document is available on Council's website at www.cessnock.nsw.gov.au or maybe inspected at Councils' Customer Services Section, Administration Building, Vincent Street Cessnock.
- ii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

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

8. Waste Water – Car Wash

Prior to issue of a CC, a detailed design plans are to be prepared by a Hydraulic Engineer and submitted to the Certifier demonstrating how waste water from the car wash will be discharged to the sewer.

9. Asbestos Testing

Prior to issue of a CC, further asbestos testing is to be undertaken by a suitably qualified professional in accordance with the Preliminary Site Investigation Report (prepared by WSP dated June 2020). In the event that there are asbestos findings, the affected area of the site shall be remediated and a clearance certificate issued by a licensed assessor.

10. Soil and Water Management Plan Required

Detailed plans and specification to ensure that there is adequate protection to prevent contamination of soil or water during demolition and construction. The plans and specifications must be to the satisfaction of the Certifier and approved by the Certifier prior to the issue of the CC.

11. Acoustic Construction Detail

The plans and information submitted in association with the CC application must incorporate sufficient detail to demonstrate compliance with the following acoustic measures as outlined in the Noise Assessment Report prepared by Muller Acoustic Consulting, dated August 2021:

- a. Mechanical plant located on the roof top of the control building is to be surrounded by acoustic screens. The screens are to be constructed to an RL of 600mm above the top of the highest item of plant on each rooftop and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (i.e., colour bond, lapped and capped timber or equivalent);
- b. Construction of an impervious barrier along the south western corner of the control building drive-thru lane. The barrier is to be constructed to an RL of 1.8m above the relative ground level of the forecourt and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (i.e., colour bond, lapped and capped timber or equivalent);
- c. Construction of a canopy with an impervious barrier along the eastern and western sides of the vacuum bay. The canopy is to be constructed to an RL of 2.0m above the relative ground level of the forecourt and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (i.e., colour bond, lapped and capped timber or equivalent);
- d. Construction of an impervious barrier surrounding the control building service yard. The barrier is to be constructed to an RL of 2.5m above the relative ground level of the forecourt and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (i.e., colour bond, lapped and capped timber or equivalent).
- e. Construction of a 2.5 metre high lapped and capped timber fence along the eastern boundary of the subject site (adjoining 161 Wollombi Road Cessnock) for a distance of approximately 40 metres, returning along the rear boundary of 161 Wollombi Road Cessnock for a distance of approximately 15 metres in accordance with the addendum to the Noise Assessment Report dated 27.9.22.

The plans must be submitted to and approved by the Certifier as satisfying these requirements prior to the issue of the CC.

12. Retaining Wall

Where a retaining wall is in excess of 600mm in height and/or within 900mm of a property boundary, separate detailed drawings are to be submitted in conjunction with the CC, specifying wall heights, heights of retaining walls, proposed mounding and stabilisation treatment, and landscaping for the elevations of the building.

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. 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.

14. Disabled Car Parking Spaces

A total of one (1) car parking space 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.

15. Parking – Minimum Requirement

Onsite car parking shall be provided for a minimum of twenty-one (21) 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.

16. Detailed Landscape Plan

A detailed Landscape Plan prepared by a suitably qualified person must be submitted and approved by the Certifier, prior to the issue of a CC. The plan must include:

- a) A detailed planting schedule including species by botanical and common names, quantities, pot sizes and estimated size at maturity
- b) Details of planting procedure
- c) Details of earthworks including mounding, retaining walls and planter boxes
- d) A landscape maintenance schedule for the owner/occupier to administer over the determined time frame

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- e) Details of drainage and watering systems including detailed specification and plans including; proposed material, make/model, dimensions, quantities
- f) The landscaping of the site is to be designed to:
 - i) Be low maintenance with a mixture of native and exotic species
 - ii) Be designed for a safe level of transparency
 - iii) Include trees and shrubs known to be fauna food sources where possible
 - iv) Not interfere with sight lines for vehicles entering or exiting the site (at full height – post establishment)
- g) Details of proposed turf species, turf underlay, quantity

17. 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.

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

18. Outdoor Lighting

Prior to the issue of a CC, the Certifier must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises, adjacent dwellings and the road reserve, and that the outdoor lighting complies with the relevant provisions of *AS 1158.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements* and *AS 4282:1997 Control of the obtrusive effects of outdoor lighting*.

19. Mechanical Exhaust System

Details of any proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the *BCA* and *AS 1668 Parts 1 and 2* (including exhaust air quantities and discharge location points) are to be provided to the Certifier prior to the issue of a CC.

20. Air Conditions Units

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997*.

Details demonstrating noise attenuation measures in this regard are to be submitted to the Certifier prior to the issue of a CC.

21. Garbage Room / Waste Storage Areas

Details and location of the proposed garbage room and waste storage/collection areas 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
- c. A supply of hot and cold water mixed through a centralised mixing valve must be available to the bin storage area
- d. Must be constructed in a manner to prevent the entry of vermin.
- e. Be provided with adequate light and ventilation.

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

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22. Smoke Free Premises

The construction and fit out of the premises shall comply with the *Smoke-Free Environment Act 2000* and *Smoke-Free Environment Regulation 2016*. Details demonstrating compliance with this condition are to be provided to the Certifier prior to the issue of a CC.

23. Underground Petroleum Storage Systems (UPSS): New or Modified Service Stations - Design

- a. Prior to issue of a CC, the detailed design specification of the Underground Petroleum Storage System (UPSS) and leak detection system must be submitted to the CA showing compliance with the UPSS Regulation and consistency with industry best practice as set out in Australian Standard AS 4897-2008: The design, installation and operation of underground petroleum storage systems. This includes, but is not limited to, provision of ground water monitoring wells, loss monitoring and mandatory pollution protection equipment comprising of non-corrodible secondary containment tanks and associated pipework and over fill protection devices.
- b. The applicant must ensure that the design of the UPSS and leak detection system is undertaken by a Duly Qualified Person, which is defined in the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 (UPSS Regulation 2019). The design is to be certified by the Duly Qualified Person as satisfying this requirement prior to the issue of CC.

24. Waste Management Plan

A Waste Management Plan is to be provided to the Certifier prior to the issue of a CC. The Waste Management Plan is to be prepared in accordance with the following:

- a) Estimated quantities of materials that are reused, recycled, removed from the site
- b) On site material storage areas during construction
- c) Materials and methods used during construction to minimise waste
- d) Nomination of end location of all waste generated

All requirements of the approved Waste Management Plan must be implemented during the construction of the development.

25. Crime Prevention Through Design

The following Crime Prevention Through Environmental Design (CPTED) principles shall be incorporated into the building and maintained through the life of the development.

- a) Back to base alarm systems.
- b) Access control system that allows staff to remotely lock external entry points from the service counter.

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- c) Installation and use of 24 hour CCTV covering areas of public use, loading dock and building entry/exit points and associated signage indicating that CCTV surveillance is in 24 hour operation.
- d) Installation of bollards along the store frontage.
- e) Lighting is required to be designed in accordance with the Australian and New Zealand *Lighting Standard AS 1158*. A lighting maintenance policy should be established. Security lighting should be installed in and around the building, and such shall not impact on any adjoining premises. The lighting should be vandal resistant - especially external lighting.
- f) The provision of a night window to allow for payment of fuel during hours of darkness.

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

26. Bicycle Storage to be Provided

The bicycle storage area must accommodate a minimum of four (4) bicycles and be design in accordance with *AS 2890.3:1993 Parking Facilities – Bicycle parking facilities*.

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.

27. Amended Plan of Management

The Plan of Management (PoM) prepared by SLR Consulting Pty Ltd, dated 8 March 2022 is to be amended, prior to issue of the CC, to include the following:

- a. A litter patrol schedule to be conducted by staff four (4) times daily to collect litter on site and along Wollombi Road (to Darwin and Miller Street) Cessnock.
- b. The provision of a 'pay before you pump' system during the hours of darkness.
- c. Transactions associated with the payment of fuel are to occur through the night pay window between the hours of 10.00pm and 5.00am.
- d. Customer ordering displays are to be continually set at the lower volume setting to minimise noise disturbance.

28. Roadworks

The registered proprietors of the land shall construct the following for the full frontage of the subject land, for a distance of approximately 72 metres 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 the release of the S138 Roads Act Approval.

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- e) Construct a new concrete footpath 1.5 metres wide, 100mm thick with SL82 reinforcement.
- f) Topdress and turf footpath.

29. 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 on Drawing No. 190269 C01 to C07 (Revision D) prepared by Richmond and Ross Pty Ltd dated 4 February 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.

30. 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.

31. Stormwater – Construction Management Plan Requirement

A construction management plan shall be submitted with the application for the *CC* and approved by the Certifier as satisfying the below requirements:

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

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

32. 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.

33. 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.

34. 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 issue of the CC.

PRIOR TO COMMENCEMENT OF WORKS

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

35. 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

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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.

36. 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.

37. 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.

38. Road - Bonds

The applicant shall pay 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.

A fee in accordance with Council's current fees and charges is to be paid prior to the final inspection of works and subsequent bond return.

If no application is made to the Council for a refund of any balance remaining of the bond within six (6) years of the date of issue of a compliance certificate for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the *Unclaimed Money Act 1995*.

39. Excavation Protection of Adjoining Property

If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:

- a) Must preserve and protect the adjoining building from damage
- b) Must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished
- c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated, or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

40. Shoring and Adequacy of Adjoining Property

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense:

- i. protect and support the building, structure or work on adjoining land from possible damage from the excavation; and
- ii. if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation.

This condition does not apply if the person having the benefit of the development consent own the adjoining land or the owner of the adjoining land gives written consent to the condition not applying.

41. 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.

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- 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.

42. 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;

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- 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.

43. Nominated Location of Waste

The location and facilities for the collection, storage and disposal of waste generated within the premises shall be submitted to the *PC*, prior to the commencement of works.

44. Soil and Water Management Plan Implemented

The requirements of the Soil and Water Management Plan shall be in place prior to the commencement of demolition works and/or construction works and shall be maintained throughout the demolition and/or construction process.

DURING WORKS

The following conditions are to be complied with during works.

45. 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.

46. Acoustic Measures - Construction

All construction recommendations contained within the Acoustic Report (prepared by Muller Acoustic Consulting dated August 2021) *Section 5.2 Noise Attenuation Assumptions* are to be incorporated into the construction phase of the development.

47. Site is Securely Fenced

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

48. 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.

49. 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*.

50. 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.

51. Contaminated Land

During earthworks, an *unexpected finds protocol* must be prepared and implemented if potentially contaminated materials are identified, to allow for their appropriate management. Any assessment and remediation of potentially contaminated materials must be undertaken by an appropriately qualified and experienced environmental professional.

Any waste generated during the redevelopment, including demolition materials and excavated soil, must be assessed for potential offsite reuse/disposal opportunities in accordance with the NSW EPA *Waste Classification Guidelines (2014)* and current resource recovery exemptions/orders

52. 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.

53. Service Station – Onsite Treatment of Forecourt Runoff - Installation

- a. Installation of the service station forecourt and run-off treatment must be undertaken in accordance with the approved detailed design specification and NSW EPA Practice Note: Managing run-off from service station forecourts and is to be overseen by a Duly Qualified Person, which is defined in the POEO (Underground Petroleum Storage System) Regulation 2019.

Note: All ground surfaces within the service station forecourt must be made of impervious material (asphalt is not suitable). High risk contamination zones must be delineated with a physical divide and covered by a canopy with 10-degree overhang.

- b. High contamination risk zone/s must be graded to an underground containment vessel (i.e. treatment system). The underground containment vessel must:
 - i. Be designed and constructed to ensure it is compatible with petroleum products and other likely water pollutants;
 - ii. Have a minimum capture volume of the capacity of the largest compartment of a delivery tank using the service stations; or 9000L, whichever the greatest; and
 - iii. Be fitted with a high level audible and visual alarm.

- b. Drainage inlets located within the service station forecourt area must be provided with signage indicating the fate of flow such as “flows to stormwater system via treatment”.

54. Service Station – Management of Forecourt run-off via Containment Vessel

- a. Installation of the service station forecourt and run-off treatment must be undertaken in accordance with the details approved under the CC and the NSW EPA Practice Note: Managing run-off from service station forecourts and is to be overseen by a Duly Qualified Person, which is defined in the UPSS Regulation 2019.

Note: All ground surfaces within the service station forecourt must be made of impervious material (asphalt is not suitable). High risk contamination zones must be delineated with a physical divide and covered by a canopy with 10-degree overhang.

- b. High contamination risk zone/s must be graded to an underground containment vessel (i.e. sump/tank). The underground containment vessel must:
 - i. Be designed and constructed to ensure it is compatible with petroleum products and other likely water pollutants;
 - ii. Have a minimum capture volume of the capacity of the largest compartment of a delivery tank using the service stations; or 9000L, whichever the greatest; and
 - iii. Be fitted with a high level audible and visual alarm.

- c. Drainage inlets located within the service station forecourt area must be provided with signage indicating the fate of flow such as “flows to containment sump”.

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55. Underground Petroleum Storage Systems (UPSS): New or Modified Service Stations - Installation

- a. The UPSS and leak detection system must be installed in accordance with the detailed design specification approved under the CC.
- b. The groundwater monitoring wells must be:
 - i. Sealed to exclude surface water;
 - ii. Properly installed to target the hydrocarbon contamination of concern;
 - iii. Constructed to prevent cross-contamination with other groundwater monitoring wells;
 - iv. Clearly marked to indicate their presence;
 - v. Properly secured

56. Excavations and Backfilling

All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a professional engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage
- b) If necessary, underpin and support the building in a manner certified by a professional engineer.
- c) Give at least seven (7) days' notice to the adjoining owner before excavating, of the intention to excavate

The principal contractor, owner builder, or any person who needs to excavate and undertake building work, must first contact "Dial Before You Dig" and allow a reasonable period of time for the utilities to provide locations of their underground assets.

57. Virgin Fill to be Used

All fill used with the proposal shall be virgin excavated material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste, and which has been excavated from areas of land that are not contaminated with human made chemicals as a result of industrial, commercial, mining or agricultural activities, and which do not contain sulphate ores or soils.

58. Stormwater – Impact on Adjoining Land – Natural Drainage

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

59. Stormwater – Impact on Adjoining Land – Surface Water

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

60. 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.

61. Removal of Contaminated Soil

Any soil proposed to be disposed of off-site must be classified, removed and disposed of in accordance with the New South Wales Environment and Heritage *Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-liquid Wastes 1999* and the *Protection of the Environment Operations Act 1997*.

Any soil which fails to meet the criteria is not to be disposed of off-site unless agreed to in writing by the Environment Protection Authority. Results of testing are to be forwarded to Cessnock Council for acknowledgement before any off-site disposal, and before proceeding with any construction works.

62. 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 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):

63. Roads – Concrete Crossing

The registered proprietors shall construct and maintain two (2) concrete access crossings from the kerb and gutter in Wollombi Road 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.

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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.

64. Parking – Provision

Car parking areas must be completed in accordance with the approved plans with twenty-one (21) car parking spaces provided prior to the issue of an *OC*.

65. Parking – Loading Facility Requirement

Loading/unloading facilities shall be constructed and linemarking associated with tanker filling must be completed prior to the issue of an *OC*.

66. 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*.

67. 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
- 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, on the property, the location and means of access to the car parking areas.

Certification by a qualified practicing 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*.

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68. 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*.

69. Reinstate Road Reserve Verge

The applicant shall construct/reconstruct the unpaved road reserve verge with grass - species and installation shall be approved by Council prior to issue of an *OC*.

70. 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.

71. Road – Access Completion

Construction of all access roads, road works (including the removal and restoration of redundant vehicular crossings, etc), driveways, access corridors, car parking areas and loading bays, including the provision of appropriate line marking and other traffic management devices, are to be completed prior to issue of an OC.

An R2-14L 'ALL TRAFFIC (LEFT SYMBOLIC) ONLY' sign shall be installed on the existing median island directly opposite to the proposed site exit crossover.

An R2-4n 'NO ENTRY' sign facing the Mount View Road intersection shall be installed at the site exit crossover.

72. Road – Removal of Redundant Infrastructure

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

73. 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.

74. 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*.

75. 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*.

76. Stormwater – Plan of Management

The registered proprietor of the land shall prepare a Plan of Management for the OSD facilities within the development. The plan shall set out all design and operational parameters for the detention facilities, including design levels, hydrology and hydraulics, inspection and maintenance requirements, and time intervals for such inspection and maintenance. The plan shall be submitted to the *PC* for approval prior to the issue of an *OC*.

77. Drainage Works

All drainage works required to be undertaken in accordance with this consent shall be completed prior to issue of an *OC* for the development.

78. Underground Petroleum Storage Systems (UPSS): New or Modified Service Stations – Commissioning Report

- a. Prior to the issue of any *OC*, a commissioning report must be submitted to the *PCA*, and must certify that the UPSS was:
 - i. Installed in accordance with the detailed design specification (enter details to identify document),
 - ii. Tested (including Equipment Integrity Testing (EIT)) and commissioned by duly qualified persons in accordance with the UPSS regulation 2019;
 - iii. For a modified UPSS, the person responsible must also include current “as built” drawings, dates of commencement and completion of the modification; and
 - iv. If a UPSS is removed, replaced or decommissioned, a Validation Report must be provided to Council within 60 days of the removal or the completion of remediation.

A validation report must be kept a minimum seven years from the date of creation or after the decommissioning of a UPSS.

- b. Prior to the issue of any *OC*, a report must be submitted to the *PCA* and Council relating to the design, installation and testing of the groundwater monitoring wells. The report must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant, certified by one of the schemes identified in Section 7.1 of Cessnock City Council Contaminated Land Policy – Land Use Planning, 26/03/2020.

The front cover of the report must include the details of the consultant’s certification.

- c. Prior to the issue of any *OC*, a Fuel System Operation Plan (FSOP) in accordance with Regulation 18 of the UPSS Regulation 2019 must be submitted to and approved by the *CA*. The FSOP must, as a minimum, address the following matters:
 - i. Specific information about the storage system, including identifying the 'person responsible' for the system;
 - ii. Loss monitoring and detection procedures;

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- iii. Incident management procedures;
- iv. Details about system maintenance;
- v. Current 'as built' drawings for the system;
- vi. A plan of the storage site. The plan must also include information on storage system, all buildings and associated infrastructure, all fences and gates, all groundwater monitoring wells, any unsealed ground surfaces and all drainage and services;
- vii. A copy of industry standards that have been followed in constructing and maintaining the UPSS;
- viii. A copy of the specifications of the design and installation of the system and any modification; and
- ix. An inventory of employee site induction and incident management training that has been undertaken on site.

79. Service Station – Commissioning of Onsite Treatment of Forecourt Runoff

- a. Prior to the issue of the *OC*, a Comprehensive Monitoring and Management Plan for the treatment device must be developed by a suitably qualified person and submitted to the *PC*. The Comprehensive Monitoring and Management Plan must:
 - i. Demonstrate ongoing compliance with Class 1 requirements of European British Standard BSEN 857-1:2002; and
 - ii. Provide a water quality monitoring program to monitor the effectiveness of the treatment device on the receiving environment. At a minimum, the water quality monitoring program must:
 - i. Identify suitable monitoring and sampling location(s), including stormwater discharge outlet points;
 - ii. Require measurement of the total petroleum hydrocarbons (TPHs) at the sampling locations at six monthly intervals in accordance with the most current version of the publication 'Approved Methods for the Sampling and Analysis of Water Pollutants in New South Wales' and in accordance with the ANZECC Guidelines;
 - iii. Require visual inspections of storm water discharge outlet points after rainfall events to identify the presence of hydrocarbons;
 - iv. Identify responsible persons and contact details;
 - v. Require review and update at six monthly intervals, for the lifetime of the treatment device;
 - vi. Provide for corrective actions if the system fails or becomes noncompliant with the manufacturers recommendations of the European British Standard BSEN 857-1:2002; and
 - vii. Record the results from 6 monthly TPH measurement and visual monitoring. Findings must be kept on-site and made available to an Authorised Officer upon request.
- b. Prior to the issue of an *OC*, certification must be submitted to the *CA* demonstrating that all treatment devices shown in the approved Detailed Design Specification have been installed on-site in accordance with the manufacturers recommendations and is adequately sized for the type and volume of storm water treated.

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- c. Prior to the issue of any *OC* a commissioning report must be completed and submitted to the *CA*, authorised by a Duly Qualified Person, which is defined in the Protection of the Environment (Underground Petroleum Storage Systems) Regulation 2019 that includes:
 - i. The date of completion of the installation of the Treatment Device; and
 - ii. Certification installation of the service station forecourt and run-off treatment was undertaken in accordance with the approved detailed design specification and NSW EPA Practice Note: Managing run-off from service station forecourts.

80. Service Station – Commissioning of Forecourt run-off Containment Vessel

Prior to the issue of any *OC* a commissioning report must be completed and submitted to the *CA*, authorized by a Duly Qualified Person, which is defined in the UPSS Regulation 2019, and includes:

- b. The date of completion of the installation of the Containment Vessel; and
- c. Certification installation of the service station forecourt and run-off treatment was undertaken in accordance with the approved Detailed Design Specification [enter details to identify document] and NSW EPA Practice Note: Managing run-off from service station forecourts.

81. Food Premises

Prior to the issue of an *OC*, an inspection of the completed premises is to be conducted by the *PC* certifying that the food premises has been constructed in accordance with the approved plans.

82. Acoustic Report Recommendations Complied With

A certificate must be submitted to and approved by Council’s Environmental Health Team prior to the issue of an *OC* or before the commencement of the use (whichever is earlier). The certificate must be prepared by an accredited Acoustic consultant, and must certify that the recommendations in the approved acoustic report (and any addendums to the report) have been complied with and the desired acoustic performance achieved.

An *OC* must not be issued until the *PC* has verification that the certification above is to the satisfaction of Council’s Environmental Health Team.

83. All Services Provided

Certification that all services as required (eg water supply, gas, electricity, telephone, sewer), are available to the site, shall be submitted to the *PC* prior to issue of an *OC*.

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84. Works Confined to Site

Prior to the issue of an *OC*, the *PC* must be satisfied that a survey certificate prepared by a registered surveyor must provide certification that the location of the building in relation to the boundaries of the allotment is consistent with the building location approved with the *DA*.

85. Finish of Excavated &/or Filled Areas Around Site

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

86. Lots to Be Consolidated

All allotments involved in this proposal must be consolidated into one allotment. Evidence of registration shall be submitted to Council or the Certifier prior to the issue of an *OC*.

87. Waste Management Plan

Prior to the issue of an *OC*, the *PC* must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

88. Waste Disposal

Prior to the issue of an *OC* and/or commencement of the use, whichever is earlier, the *PC* must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on the public way, e.g. footpaths, roadways, reserves, at any time.

ONGOING USE

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

89. Plan of Management - Operational Procedure Requirements

All operational procedures as outlined in the amended Plan of Management (required in Condition No. 27 of this consent) are to be adhered to in perpetuity. The Plan of Management is to be reviewed on an annual basis.

90. Number of Employees

More than three (3) employees shall be at the premises at any one time on a Friday and Saturday night. Alternatively, where fewer staff are rostered on, regular security patrols (minimum of 1 per hour), shall occur to ensure the safety and security of staff and the premises.

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A register shall be kept and made available on request detailing the number of staff rostered on or the frequency of security patrols undertaken and the time these occurred.

91. 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.

92. 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.

93. 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.

94. Security Patrols

Implementation of a night security patrol service shall be implemented during the initial 12 months of operation. Where anti-social behavior or crime have been identified as an ongoing issue, regular security patrols shall be implemented and included in the Plan of Management as part of its annual review.

95. 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.

96. Orderly Dispersal of Patrons

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

97. Fuel Delivery and Waste Collection

Fuel deliveries and waste collection are restricted and must not occur outside the hours of 7.00am and 10.00pm.

98. Service Station – Operation of Onsite Treatment of Forecourt Runoff

- a. The Comprehensive Monitoring and Management Plan, must be implemented on an ongoing basis for the lifetime of the treatment system and updated regularly to maintain currency.
- b. Spills occurring in the forecourt area must be spot cleaned using a suitable absorbent material only. The forecourt is not to be hosed or washed to the forecourt or storm water drainage systems.

99. Service Station – Operation of Forecourt run-off Containment Vessel

- a. Wastewater generated in high contamination risk zone/s must be managed in accordance with Practice Note: Managing run-off from service stations forecourts (NSW Environment Protection Authority, 2019) and collected and appropriately stored for removal in an underground containment vessel as per the approved Detailed Design Specification [enter details to identify document].
- b. Wastewater from high contamination risk zone/s stored in an underground containment vessel is classified as liquid waste and must only be removed off site by a NSW Environment Protection Authority licenced contractor and disposed of at an appropriate facility.
- c. Records of removal and disposal by licenced contractor and disposal at an appropriate facility must be held either electronically or in hardcopy form that is accessible on-site, either as a dedicated document or as part of other site

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management procedures and must be made available to the Council or other Appropriate Regulatory Authorities when requested.

- d. Spills occurring in the forecourt area must be spot cleaned using a suitable absorbent material only. The forecourt is not to be hosed or washed to the forecourt or storm water drainage systems.

100. Underground Petroleum Storage System (UPSS): Remediation, Decommissioning & Validation

The UPSS Validation Report must be kept for seven years from the date of creation or decommissioning.

101. Waste Management

All waste and recycling storage are to be located wholly within the dedicated bin storage area.

Waste collection must be carried out at sufficient intervals to ensure that the facility is kept in a safe and healthy condition.

102. Underground Petroleum Storage System (UPSS): New or Modified Service Stations – Ongoing Use

- a. The Fuel System Operation Plan (FSOP) must be held either electronically or in hardcopy form, either as a dedicated document or as part of other site management procedures, and must be available to the Council or other Appropriate Regulatory Authorities when requested.
- b. Should repairs be required to the UPSS system during the operational phase, the system must not be recommissioned unless it satisfies the requirements outlined in the UPSS Regulation 2019.
- c. All reports provided to Council must exempt Council from any claim for copyright that may restrict Council's ability to provide information to the public in accordance with the Government Information (Public Access) Act 2009.

103. Removal of Graffiti

The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within forty-eight (48) hours of its appearance.

104. Hours of Operation

Hours of operation relating to the proposed use are as follows:

Food and Drink Premises: 5am to 11pm, 7 days per week

Service Station/Convenience Store/Main control Building: 5am to 11pm, 7 days per week

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Drive Thru, Service Station (fuel bowsers and night pay window only) and Car Wash: 24 hours per day, 7 days a week for the first 12 months and subject to Condition 2. Following the expiration of the 12 month period referred to in Condition 2, the approved hours of operation are 5:00am until 11pm, 7 days a week.

105. 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.

Tanker filling to be wholly on site and within an area linemarked for tankers while filling/unloading.

106. Approved Signage Maintenance

The approved signs must be maintained in a presentable and satisfactory state of repair.

The level of illumination and/or lighting intensity used to illuminate the sign/s is to be minimised to ensure that excessive light spill or nuisance is not caused to any nearby premises or the road reserve.

No A-frame signs or sandwich boards are to be used in associated with the occupancy, either on the street or on private property, without the consent of Council.

107. 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*.

108. Maintenance of Landscaping

Landscaping shall be maintained in accordance with the approved plan in a healthy state, and in perpetuity, by the existing or future owners and occupiers of the development.

If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

An annual report shall be submitted to Council, for the three (3) years following issue of the OC, certifying that the landscaping works have been satisfactorily maintained.

109. Night Pay Window

Transactions associated with the payment of fuel are to occur through the night pay window between the hours of 10.00pm and 5.00am.

110. Customer Ordering Displays

Customer ordering displays are to be continually set at the lower volume setting to minimise noise disturbance.

111. Litter Control

Management must ensure that the forecourt, car parking area and the surrounds of the building are to be kept clean and free of litter. Regular litter patrols are to be undertaken in accordance with the prescribed schedule contained in the Plan of Management.

112. Odour/Air Quality

Activities associated with the development are to be conducted in a manner so there is no interference to the existing and future amenity of residents and the neighbourhood in general.

113. Emissions

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

114. Storage of Hazardous Material

All hazardous material stored on the site is to be located above the Flood Planning Level.

115. Restricted Access to Car Park

The car parking area on the site (between the entry and fuel forecourt, and in front of the car wash facility - car parks 9 to 21) are to be blocked off overnight to encourage either drive-thru purchases or parking only directly in front of the convenience store building. A temporary barrier (e.g. removable bollards) are to be erected in the abovementioned parking areas between the hours of 12 midnight and 6am daily.

116. Acoustic Validation Assessment Report

An acoustic validation assessment report must be submitted to Council, and approved by Council's Environmental Health Team, within 28 days of the commencement of the use. The certificate must be prepared by an accredited acoustic consultant and must certify that noise emissions meet the relevant criteria as specified in the approved Acoustic Report, prepared by MAC Consulting dated August 2021. The report must also confirm that all noise attenuation measures set out in the approved Acoustic Report have been implemented.

117. Food Premises

The food business is to be registered with Council. The business will be placed upon *Council's Regulatory Inspection Register* and will be subject to routine inspections

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. 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 fences 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.

D. 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*.

E. Responsibility for Other Consents/Agreements

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.



F. 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.

G. 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.

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SUBJECT: ***DEVELOPMENT APPLICATION NO. 8/2021/22142/1
PROPOSING DEMOLITION OF EXISTING STRUCTURES
AND CONSTRUCTION OF A FOOD AND DRINK PREMISES
(‘MCDONALDS’) TO OPERATE 24 HOURS A DAY, 7 DAYS A
WEEK***

217-219 VINCENT STREET, CESSNOCK

RESPONSIBLE OFFICER: *Development Services Manager – Janine Maher*

APPLICATION NUMBER:	8/2021/22142/1
PROPOSAL:	Demolition of existing structures and construction of a food and drink premises (‘McDonalds’) to operate 24 hours a day, 7 days a week
PROPERTY DESCRIPTION:	Lot 1 DP 75904
PROPERTY ADDRESS:	217-219 Vincent Street, Cessnock
ZONE:	B4 Mixed Use
OWNER:	Cessnock QSR Pty Ltd
APPLICANT:	KDC Planning Development Property

RECOMMENDATION

1. That:

- (i) Development Application No. 8/2021/22142/1 proposing the demolition of existing structures and construction of a food and drink premises (‘McDonalds’) to operate 24 hours a day, 7 days a week, at 217-219 Vincent Street, Cessnock, 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 B4 zone under the *Cessnock Local Environmental Plan 2011*,

- The proposal is consistent with the objectives of the B4 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, and any variations are considered minor in nature,
 - 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) In considering community views, the following is relevant:
- Measures are able to be implemented to ensure the development does not result in any unacceptable impact as a result of behaviour, noise or odour,
 - Solutions are proposed to direct traffic to and from the site,
 - The subject land is considered suitable for the development; and
 - Sufficient information has been submitted to allow a full assessment of the proposed development.
- (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. 8/2021/22142/1 is being referred to Council for determination as it has been called-up by three (3) Councillors.

PREVIOUS CONSIDERATION BY COUNCIL

At its meeting of 17 August 2022, Council considered the report relating to Development Application No. 8/2021/22142/1 (Report PE44/2022), proposing demolition of existing structures and construction of a food and drink premises ('McDonalds') to operate 24 hours a day, 7 days a week at 217-219 Vincent Street, Cessnock.

At its meeting, Council resolved as follows:

That the report be deferred to allow for further discussion with the applicant regarding the building location and the traffic management on the site and impacts on local residents.

A meeting was held on 29 August 2022 between staff, McDonalds and the applicant during which Council's resolution was explained and discussed.

Following the meeting, the applicant was requested to respond, in writing, to Council's resolution. A copy of the letter submitted by the applicant is attached as an Enclosure to this report.

Consequently, the application is returned to Council for consideration/determination.

EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 8/2021/22142/1 seeking approval for the demolition of existing structures and construction of a food and drink premises ('McDonalds') to operate 24 hours a day, 7 days a week at 217-219 Vincent Street, Cessnock.

It is proposed that the restaurant will be accessible to the public between 5:00am and midnight, and the drive-thru will be available 24 hours.

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.

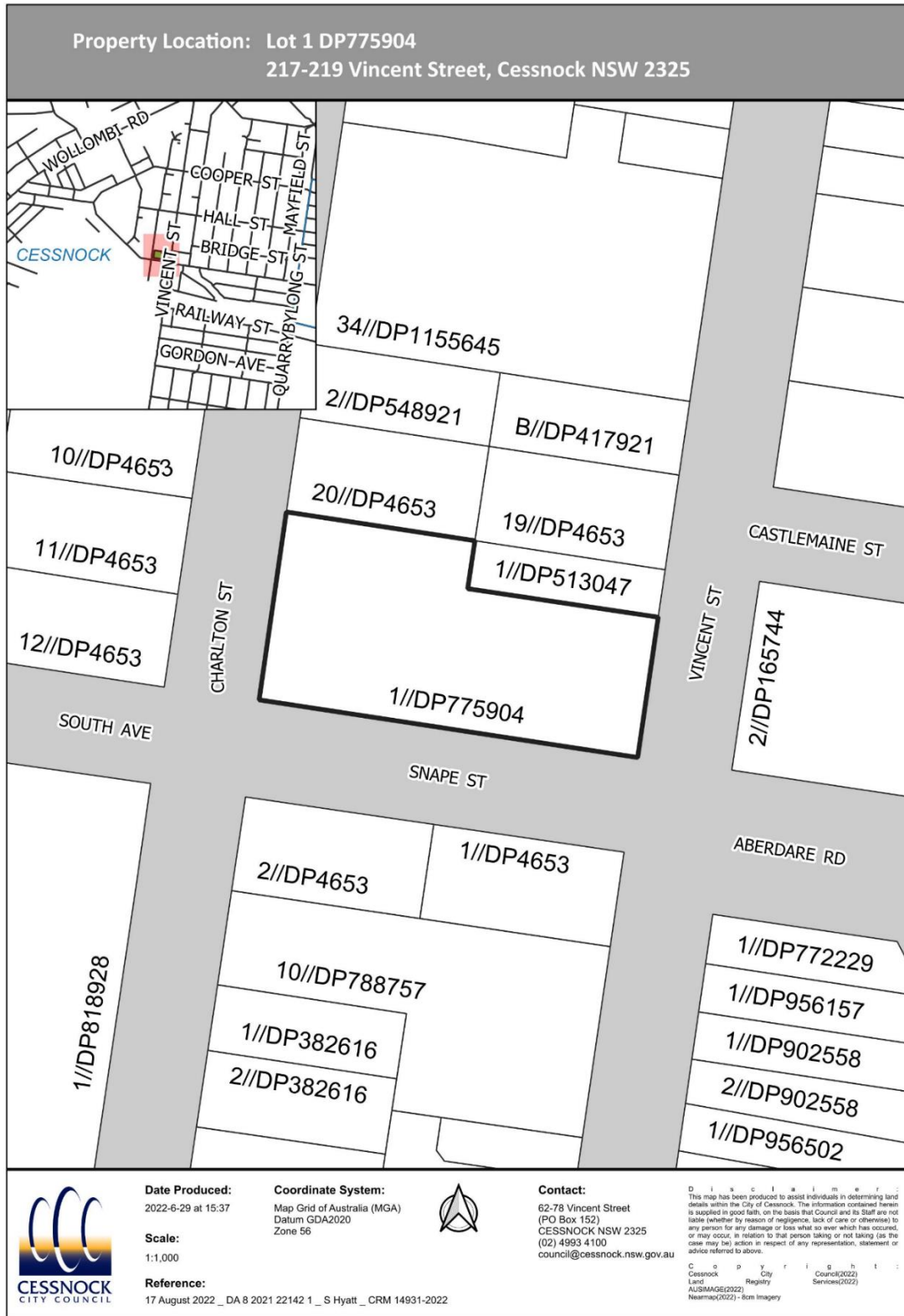
The Development Application was publicly exhibited on two (2) occasions. During the first exhibition period, seven (7) submissions were received from four (4) households; and during the second exhibition period, three (3) submissions were received from two (2) households. In summary, submissions were received from a total of four (4) households, and all were in objection to the proposal. The issues and concerns raised in the submissions are addressed in the following report.

As outlined above, it is proposed that the drive-thru component of the proposal will operate 24 hours per day, 7 days a week. An acoustic report has been submitted with the application which demonstrates that with the adoption of appropriate mitigation measures, the development will not result in any significant adverse noise impacts. A Plan of Management has also been submitted in support of the application, outlining measures to address any anti-social behaviour. Notwithstanding, it is considered that a 12 month trial of the 24 hour operation of the drive-thru component should be imposed as a precautionary measure given that existing residential development is located within the locality.

Based on the assessment, it is recommended that the Development Application be approved subject to a 12 month trial period for the hours of operation relating to the drive-thru component of the proposal, and the conditions of consent contained in this report.



LOCATION MAP





AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as 217-219 Vincent Street, Cessnock, and is legally described as Lot 1 Deposited Plan 775904.

The subject site is located on the western side of Vincent Street, on the corner of Vincent, Snape and Charlton Streets. The site has a frontage to Vincent Street of 30.1m; Snape Street of 90.4m; and Charlton Street of 40.2m; with an overall site area of 2,808.98m². Vehicular access to the site is available from the Charlton and Snape Street frontages.

The subject site currently contains a disused building, previously used as a hardware shop.

The below photographs depict the site:



Figure 1: Subject site on the corner of Snape and Vincent Streets



Figure 2: Site from Vincent Street frontage



Figure 2: Rear of site from Charlton Street frontage



Figure 4: Site from intersection of Snape and Charlton Streets

The surrounding properties are characterised by commercial development including the Cessnock Performing Arts Centre, licensed premises and shops.

Relevant development consents issued in relation to the property include:

Development Consent Reference No.	Date consent issued	Description of approved development
8/1999/1207/1	19 May 1999	Advertising structure
8/2003/756/1	10 July 2003	Alterations to existing shed
8/2004/1360/1	17 November 2005	Shop extension
8/2007/736/1	21 November 2007	Replacement of timber floor with concrete slab

HISTORY

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

Date	Action
23 November 2021	Application lodged
29 November 2021	Application referred internally for comment
	Application referred externally to Subsidence Advisory for General Terms of Approval and Transport for NSW (TFNSW) for comment
30 November 2021	Social Impact referral received with additional information requested
	Contributions Planner referral received
01 December 2021	Traffic referral received with additional information requested
02 December 2021	Application referred internally to Heritage Advisor for comment
03 December 2021	Application commences notification
06 December 2021	Application referred internally to Flooding Engineer for comment
08 December 2021	Engineering referral response received with additional information requested

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09 December 2021	Application referred to Ausgrid and NSW Police for comments
	Application referred internally to Strategic Planning for comment
	Additional information request by TfNSW
13 December 2021	Flood Engineer referral received
	General Terms of approval received from Subsidence Advisory
14 December 2021	Additional information forwarded to TfNSW
15 December 2021	Environmental Health referral received
20 December 2021	Strategic Planning referral received
21 December 2021	TfNSW referral response received with comments provided for Council's consideration
	Application re-referred to Development Engineer for comment following Flood Engineer referral and advice from TfNSW
22 December 2021	Notification period extended to 4 February as additional information provided for community consideration
24 December 2021	Ausgrid comments received
13 January 2022	Updated referral response received from Development Engineer following Flooding Engineer referral and advice from TfNSW - additional information required
18 January 2022	Heritage referral received
4 February 2022	Notification ends with eight (8) submission received from five (5) households
14 February 2022	Referral response received from NSW Police
22 February 2022	Additional information request forwarded to applicant
28 April 2022	Additional information submitted by applicant in response to request for information
02 May 2022	Application re-referred internally to Community Planner and Environmental Health for comment
17 May 2022	Application re-referred externally to TfNSW for comment
	Community Planning referral response received
	Information requested from applicant to inform TfNSW referral response and provided same day from applicant
25 May 2022	Referral response received from Environmental Health
27 May 2022	Referral Response received from TfNSW
30 May 2022	Application re-referred internally to Traffic Engineer and Development Engineer for comment
31 May 2022	Application commences re-notification due to additional information being provided
01 June 2022	Referral response received from Traffic Engineer
06 June 2022	Amended Engineer referral received
15 June 2022	Notification ends with three (3) submissions received from two (2) households

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2021/22142/1 seeks approval for the demolition of existing structures and construction of a food and drink premises ('McDonalds') to operate 24 hours a day, 7 days a week. It is proposed that the restaurant will be accessible to the public between 5:00am and midnight, and the drive-thru will be available 24 hours.

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Specifically, the application includes the following works:

- Demolition of existing shed, boundary walls, office building, concrete hardstand and one (1) tree,
- McDonald's operation including McCafe and PlayPlace (total Gross Floor Area (GFA) of 348m² and seating capacity of 68),
- 34 parking spaces and bike rack (4 bikes),
- Dual lane drive-thru (accommodating 12 vehicles) plus two (2) waiting bays,
- Vehicle crossings from Charlton and Snape Streets,
- Pedestrian pathway connecting Vincent Street to the development,
- Loading/delivery bay,
- Solar panels,
- Landscaping, and
- Signage.

ASSESSMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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:

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 and Hazards) 2021*
2. *State Environmental Planning Policy (Industry and Employment) 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 (Resilience and Hazards) 2021*

The aim of the policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Section 4.6 of the SEPP, is relevant to the assessment of this Development Application.

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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.

The subject site has historically been used for a hardware store. No evidence of contamination was observed during inspection of the site. A Preliminary Site Investigation was undertaken, the results of which conclude that the site is unlikely to be contaminated. The site is considered suitable for the proposed development in its current state.

2. State Environmental Planning Policy (Industry and Employment) 2021

This policy aims to ensure that signage is compatible with the character of the area, provides effective communication in suitable locations, and is of high quality. Section 3.6 of the SEPP requires a consent authority to be satisfied that the signage meets the aims of the SEPP and the assessment criteria in Schedule 5. Considering the aims and assessment criteria, signage proposed by this application is consistent with the requirements of the SEPP.

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

In accordance with Section 2.48, the application was referred to Ausgrid for comment as the development is proposed to be carried out within 5m of an overhead electricity power line. Correspondence was received from Ausgrid who have considered the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development. Ausgrid raised no objection to approval of the application and recommended conditions of consent.

4. Cessnock Local Environmental Plan 2011

4.1 Permissibility

The subject site is zoned B4 Mixed Use under the provisions of the *Cessnock Local Environmental Plan (CLEP) 2011*, as depicted in the below map:



Figure 5: Zoning map CLEP 2011

The proposed development is categorised as a ‘food and drink premises’ under the CLEP 2011, which is defined as follows:

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Pursuant to Clause 2.7, consent is also sought to demolish the existing structures on the site in order to facilitate the proposed development. Clause 2.7 provides for demolition works to occur, with development consent.

The development satisfies the above definition, as the premises sells food on a commercial basis for both consumption on and off the site/premises.

Development for the purpose of food and drink premises is a permitted land use in the B4 zone with consent.

4.2 Objectives

The objectives of the B4 zone, and a response to each, are identified in the following table:

Objective	Comment
<i>To provide for a mixture of compatible land uses</i>	A food and drink premises is considered a suitable use within the zone, providing additional fast food options within the Cessnock CBD.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<p>The subject land is located within walking distance of other business, office, residential, retail and other developments located within the Cessnock CBD. A food and drink premises is considered a suitable use within the zone, having regard to development within the vicinity of the subject land which includes a number of licensed premises, the Cessnock Performing Art Centre and other retail premises.</p> <p>While the development is located within close proximity to residential development in Charlton Street, the adoption of mitigation measures contained within the Acoustic Report will ensure that the development remains compatible and does not create any adverse impacts with respect to noise.</p>

4.3 Relevant Clauses

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

- *Clause 2.7 Demolition requires development consent*

In accordance with Clause 2.7, demolition works require consent. The application seeks consent to demolish the existing structure on the site in order to facilitate the proposed development. Demolition shall be undertaken in accordance with the relevant Australian Standards.

The proposed development is consistent with this clause.

- *Clause 5.10 Heritage conservation*

While the subject land does not contain a heritage item and is not location within a conservation area, the objectives of this clause include:

- (a) to conserve the environmental heritage of Cessnock,*
- (b) to conserve the heritage significant of heritage items and heritage conservations area, including associated fabric settings and views'*

In respect of the above, a number of heritage items are located within the vicinity of the site including the Royal Oak Hotel (south), CPAC (Commercial Builds former Cinema) (east) and Aberdare Tavern (Pedens) (north-east).

The application has been referred to Council's Heritage Advisor who has not raised any concerns in relation to the proposed development.

- *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:

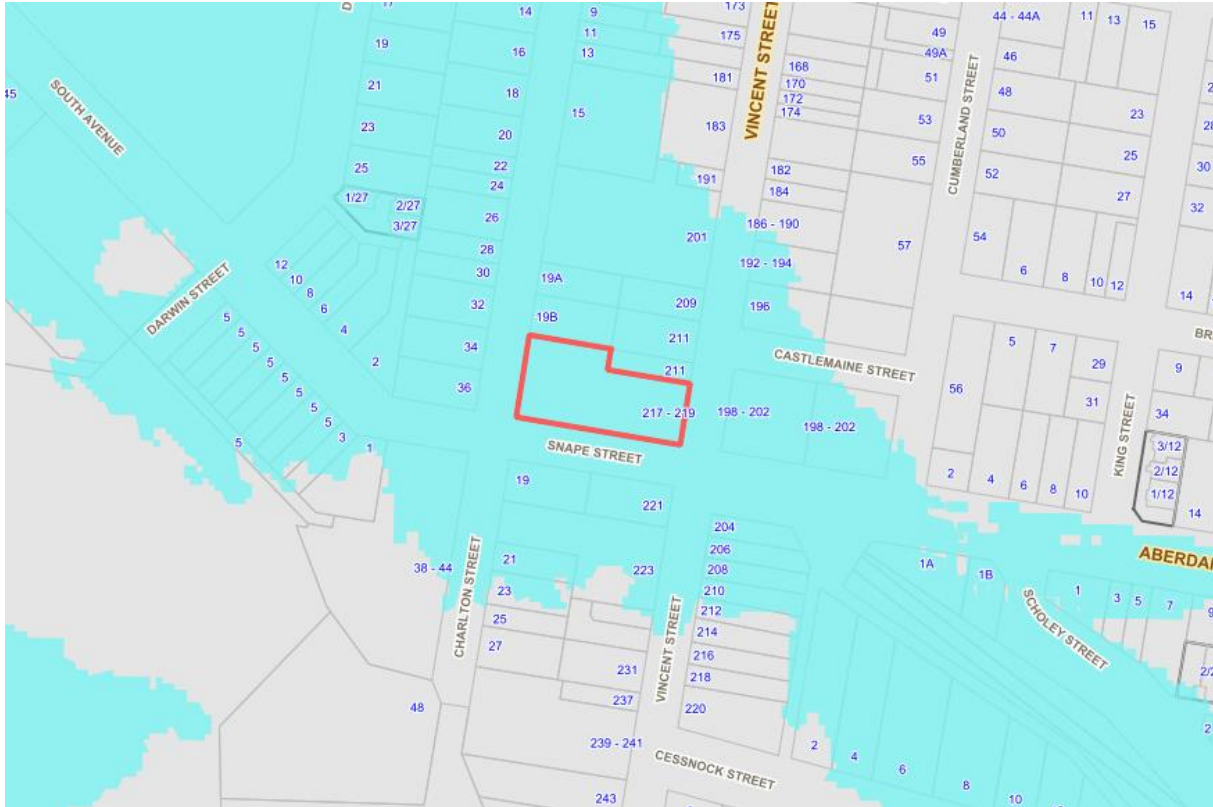


Figure 6: Flood mapping

An assessment has been undertaken of the proposal against the provisions contained in Clause 5.21 of the Cessnock LEP 2011, as follows:

Provision	Compliance
<p>(2) <i>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</i></p> <p>(a) <i>is compatible with the flood hazard of the land, and</i></p>	<p>As depicted in the above figure, the subject site is identified as being flood prone land, and is partly affected by the 1% AEP.</p> <p>The maximum flood hazard at the site is H4. The proposed development has been sited in accordance with the requirements outlined in the Cessnock Development Control Plan 2010.</p> <p>The proposed building footprint is less than that occupied by the existing structures on the site. Hence the overall blockage risk on the site has decreased, and the proposed building is not expected to adversely affect flood behavior or depths.</p> <p>It is considered that the proposal is compatible with the flood hazard of the land.</p>
<p>(b) <i>is not likely to significantly adversely affect flood behaviour</i></p>	<p>As outlined above, the proposed building footprint is less than that occupied by the existing structures on</p>

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<i>resulting in detrimental increases in the potential flood affectation of other development or properties, and</i>	the site. Accordingly, the proposal is not expected to adversely affect flood behavior or depths.
<i>(c) incorporates appropriate measures to manage risk to life from flood, and</i>	The development requires a Flood Emergency Response Plan. This has been imposed as a condition of consent in the draft notice of determination contained within this report. The potential evacuation routes in events associated with the 1% AEP & PMF would be vehicular evacuation via the Charlton Street entry/exit. Pedestrian evacuation is possible via both Charlton and Vincent Streets.
<i>(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</i>	The proposal is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation, or a reduction in the stability of river banks or watercourses.
<i>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</i>	The proposal is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

The proposal satisfies the provisions of Clause 5.21 for the reasons outlined above.

- *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. Accordingly, the proposed development is consistent with this clause.

- *Clause 7.4 Airspace operations*

The subject site is identified on the Obstacle Limitation Surface map as having an Obstacle Limitation Height of 170-180m AHD.

The proposed development will have a maximum height of 76.795m AHD for the building and 77.832m AHD for the proposed pylon sign. As such, neither the building nor signage will penetrate the Obstacle Limitation Surface.

The application is consistent with the requirements of clause 7.4.

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).*

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 *Applications submitted before 1 March 2022*

The 2000 Regulation continues to apply instead of this Regulation to the following applications submitted but not finally determined before 1 March 2022—

- (a) a development application,*
- (b) an application for a complying development certificate,*
- (c) a modification application,*
- (d) an application to modify a complying development.*

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.

4.15(1)(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 the Cessnock Development Control Plan 2010. Discussion of any variations to the standards is provided after the compliance table:

Part C: General Guidelines

Chapter 1: Parking and Access

In accordance with Chapter C1 of the DCP, the following parking requirements for takeaway food and drink premises are applicable:

- one space per 12m² GFA; plus
- one space per three seats; plus
- an area for queuing of cars for a drive through facility is required.

However, the rates prescribed within the 'RTA Guide to Traffic Generating Developments' differ to that in the DCP, with the greater of the following applicable:

- 1 space per 2 seats (internal), or
- 1 space per 3 seats (internal and external)

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The restaurant is proposed to provide a maximum of 68 seats, which under the DCP equates to 52 spaces including two (2) accessible spaces. A total of 34 spaces are provided, with a shortfall of 18 spaces equating to a variation of 34.6% to the requirements of the DCP. In addition, the proposed dual lane drive-through facility provides queuing for up to 12 vehicles with an additional two (2) waiting bays.

In accordance with the 'RTA Guide to Traffic Generating Developments', 34 spaces would be required. The proposal satisfies this requirement.

In this instance, the variation to the car parking requirements is considered to be reasonable for the following reasons:

- The proposal provides for both drive-thru and dine-in options,
- The premises will have a high turnover of vehicles with different options available for accessing and purchasing food,
- A drive-thru facility is provided with capacity to accommodate 12 vehicles with an additional two (2) waiting bays, and
- Car parking provided on site is consistent with the rates identified within the 'RTA Guide to Traffic Generating Developments'.

Accordingly, the adoption of the rates within the 'RTA Guide to Traffic Generating Developments', is considered to be suitable.

Part C: General Guidelines

Chapter 5: Waste Management and Minimisation

In accordance with the DCP, a waste management plan was submitted in conjunction with the application addressing the removal of waste from the site during operation. It is noted that demolition of the existing structure is proposed which shall be undertaken in accordance with relevant standards. Materials shall be disposed of at an appropriate facility.

It is proposed to engage a private waste collection contractor to service the site. Further, McDonalds have recognised the need to address waste within their operations via the adoption of a national Recycling and Using Recycled Materials Plan. Some of the measures from this plan that are proposed to be implemented as part of the development include:

- Cardboard carton recycling,
- Used cooking oil recycling,
- Use of McDonalds preferred waste supplier to ensure standards are complied with including:
 - Compliance with relevant environmental legislation,
 - Maintaining and reporting waste volumes on a store by store basis,
 - Provision of alternatives to landfill disposal as they become available,
 - Notification of breaches to legislation, and
 - Assistance with ongoing efforts to reduce waste and minimise pollution.

Waste is not proposed be collected from site between the hours of 10:00pm and 7:00am.

The application is considered to be consistent with the requirements of this part of the DCP.

Part C: General Guidelines

Chapter 6: Access and Mobility

Compliance with the Building Code of Australia, National Construction Code, Australian Standards and Disability (Access to Premises – Buildings) Standards will provide an environment which is considered accessible under the Building Codes. However, whilst this legislation focuses on the physical aspects of the building design and construction, the Disability Discrimination Act (DDA) goes further. The DDA focuses on the people who use the building, and the way the premises are administered.

An access report was submitted in conjunction with the application. This demonstrates that the development is able to comply with adequate space to achieve a compliance design. Two (2) non-compliances were noted being:

- The delivery area is not provided within sufficient turning space, and
- The door to the delivery area is not provided within sufficient circulation space both internally and externally.

The matters have been included in the recommended conditions of consent, with complying designs to be shown on Construction Certificate documentation.

The application meets the requirements of this part of the DCP.

Part C: General Guidelines

Chapter 8: Social Impact Assessment and Crime Prevention through Environmental Design Guidelines (CPTED) for Proposed Development

A Social Impact Assessment (SIA) (prepared by Mara Consulting, dated January 2021), was submitted in conjunction with the application.

An assessment of the proposal and the SIA was undertaken by Council's Community Planner, who considered that the submitted SIA was in accordance with the requirements of the Cessnock Development Control Plan, Part C General Guidelines, Chapter 8, 'Social Impact Assessment & Crime Prevention through Environmental Design Guidelines for a Proposed Development'.

The proposal is supported from a Community Planning perspective subject to compliance with the following matters, all of which have been included in the recommended conditions of consent:

- *Development and implementation of a site-specific Plan of Management, which shall be reviewed at least annually and shall include Crime Prevention by Environmental Design measures,*
- *The eastern car parking area of the site, along Vincent Street, Cessnock, is to be blocked off with a substantive temporary barrier during the drive-thru only operating periods,*

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- Litter patrol is to occur at least daily from the premises along Snape Street to Charlton Street, along Aberdare Road to Cumberland Street, and 70 metres either side of the premises boundary along Vincent Street, Cessnock, and
- Implementation of a night security patrol service during the initial 12 months of operation is recommended and upon completion of that period, its continuation be considered as part of the Plan of Management annual review.

The application was also referred to NSW Police for comment.

NSW Police advised that following a review of the proposal with reference to Crime Prevention through Environmental Design (CPTED) principles, the proposed development is classified as a 'medium crime risk'. No objection to the development was raised, however the following recommendations were made. These are included in the recommended conditions attached to this report:

- Access to the children's playground be restricted during hours of darkness, and
- Increase the number of staff on Friday and Saturday nights and/or utilisation of security patrols.

Notwithstanding that both Council's Community Planner and the NSW Police did not object to the proposal, it is considered that a 12 month trial of the 24 hour operation of the drive-thru component should be imposed as a precautionary measure given that existing residential development is located within the locality.

Having regard to the above, the proposal is considered to satisfy the requirements of Council's DCP.

Part C: General Guidelines

Chapter 9: Flood Planning

The subject site is identified as being flood prone land, and is partly affected by the 1% AEP. The maximum flood hazard at the site has been identified as H4 and falls within the Floodway Category. As such, the following Group B controls within the DCP apply:

Provision	Provided	Complies?
Non-habitable floor levels are to be no lower than the 1% AEP flood	Conditions of consent have been imposed on the draft notice of determination to ensure the proposed development is constructed at or above RL70.24m AHD.	Yes, subject to conditions
Parts of the building constructed at or below the Flood Planning Level are to be constructed with materials identified as 'suitable' in the Flood Compatible Building Guidelines	Materials chosen for the construction of the building are considered to be suitable in accordance with the Flood Compatible Building Guidelines.	Yes
Electrical fixtures such as power points, light fittings and switches are sited above the Flood Planning Level unless they are on a separate circuit (with	Certification will be required to be provided to the Certifier prior to the issue of an Occupation Certificate, confirming that all electrical fixtures are above the flood planning level. A condition of consent has	Yes, subject to conditions

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earth leakage protection) to the rest of the building	been imposed on the draft notice of determination to ensure compliance with this provision.	
Any hazardous material is to be stored above the Flood Planning Level	Any hazardous materials located within the building are able to be located above the flood planning level. A condition of consent has been imposed on the draft notice of determination to ensure compliance with this provision.	Yes, subject to conditions
If intensifying development that incorporates a habitable use on flood prone land it must be demonstrated that users of the development are able to safely self-evacuate to an area outside of the floodplain in the event of a flood without traversing flood waters of a higher hazard classification	In accordance with the DCP, a Flood Evacuation Plan is required for the premises. A condition of consent has been imposed on the draft notice of determination to ensure compliance with this provision.	Yes, subject to conditions
A structural assessment is required by a suitably qualified engineer to demonstrate the structure would be safe to withstand hydraulic loads (including debris) in a 1:100 ARI event	Materials chosen for the construction of the building are considered to be suitable in accordance with the Flood Compatible Building Guidelines. Accordingly, it is considered that the building is able to withstand hydraulic loads. A structural assessment is not required in this instance.	N/A

Part D: Specific Guidelines

Chapter 5: Outdoor Signage

The following relevant provisions of Chapter D.5 are considered in the table below:

Provision	Required	Provided	Complies?
5.2.1 Type of signs and their allowable locations	A-frame, banners, below awning, business directory, business identification, fascia, flagpole, internal, special event (temporary), political (temporary), projected wall, real estate (temporary), special event and window.	The application proposes internal directional signage, business identification signs and flagpoles.	Yes
5.2.3 Maximum Number of Signs	Signage within the commercial area is restricted to: 2 post supported signs, 2 wall signs and 2 entrance signs.	The application proposes 9 wall signs in total. The total signage area compared to the elevation is provided below: <ul style="list-style-type: none"> North: 156m² elevation 1.8m² signage (2.8%), South: 163m² elevation 4.4m² signage (2.7%), 	No variation proposed –



		<ul style="list-style-type: none"> • East: 113m2 elevation 5.5m2 signage (4.8%), and • West: 113m2 elevation 1.8m2 signage (1.5%). <p>Whilst numerically the variation to the DCP is significant (350%), taking into consideration the percentage of the elevation the signage accommodates, the variation is considered to be reasonable.</p> <p>The signage is incorporated into the elevations of the building and will not be intrusive.</p> <p>The signs are relatively small and will fit with the character of existing signage in the locality.</p>	
5.3.1 Business Identification Signs	Maximum of 1 business identification sign is permitted, it shall not exceed 1m2, shall not be higher than 2m above ground level, and may only contain particulars relating to the business.	<p>The application proposes 5 business identification signs consisting of the business logo. While this is a numerical variation to the DCP (400%), overall the percentage of each elevation to be occupied for the purposes of signage is relatively low with the backdrop of the building able to be seen through the majority of the sign.</p> <p>Signage will also be more than 2m above ground; however, all signage will be professionally fitted and secured to the building and is consistent with other signage in the area.</p> <p>In this instance, the variation to the DCP is considered to be reasonable.</p>	No variation proposed –
5.3.4 Fascia Signage	Must be contained within the fascia and not extend outside. Must not be illuminated.	One (1) fascia sign is proposed on the southern elevation and advertises the business name. The signage is inconsistent	No variation proposed –

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		<p>with the DCP, in that the sign will extend outside the area of the fascia and is proposed to be illuminated.</p> <p>In this instance, the sign is considered to be acceptable in that the signage is not visually dominating and is consistent with the character of signage in the locality.</p>	
5.3.6 Flush Wall Signs	<p>Must be attached to the wall, not covering any opening. Must not project more than 300mm. Shall not occupy more than 20% of the above ground elevation.</p>	<p>A total of 4 flush wall signs are proposed on 2 of the 4 elevations. While the number of signs per elevation is non-compliant, the proposed signage will not project more than 300mm from the wall, not extend above or beyond the elevation, and occupy less than 20% of the elevation.</p> <p>In this instance, the proposed variation is considered acceptable with the signage not considered to be visually dominating.</p>	<p>No variation proposed. –</p>
5.3.7 Post, Pole or Pylon Signs (including banners and flags)	<p>Shall be located within the proposed site. Maximum signage area of 8m² and 8m high. Signage shall also not protrude above the dominant skyline when viewed from surrounding areas.</p>	<p>The proposed pylon sign has a signage area of 10.2m² (variation of 27.5%) and an overall height of 8m. The proposed variation is considered to be minor with the pylon sign displaying the McDonalds 'M' which is considered to add visual interest and articulation when compared to regular shaped signage designs. The signage is not considered to be inconsistent with the character of signage within the area.</p> <p>In addition, two flagpoles are proposed which have an overall height of 8m and approximate signage area of 2m²; which comply with</p>	<p>Yes/No</p>

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		the requirements of the DCP.	
5.3.10 Projected Wall Signage	Maximum signage area of 2m ² . Projection shall not exceed 2500mm and be located at least 2600mm from the ground.	One (1) projected wall sign is proposed which extends 500mm from the wall of the building and has a signage area of 400mm x 400mm or 1.6m ² . In this instance, signage proposed is consistent with the DCP.	Yes

In summary, it is considered that the signage proposed as part of the application has been professionally designed, will be professionally installed, and is generally in keeping with the character of signage within the locality. A condition of consent has been recommended to ensure that illumination of the signage is low-lumen and will not cause distraction to passing motorists. In this instance, signage proposed as part of this application is considered to be acceptable.

Part E: Specific Areas

Chapter 16: Cessnock Commercial Precinct

The purpose of this Chapter is to provide specific standards for development within the Cessnock Commercial Precinct. It provides detailed provisions specific to the Precinct that support the land use provisions provided in the Cessnock LEP 2011. In this instance, the following provisions apply:

Provision	Required	Provided	Complies?
16.1.8 Design Quality: Addressing the Street and Public Domain	<ol style="list-style-type: none"> 1. Legible and accessible entry points. 2. Development with a blank wall is not acceptable. 	The design of the proposed development incorporates a legible entrance point, with a connection point provided to Vincent Street via a landscaped path. No blank walls are proposed with suitable variation in materials and colours accommodated.	Yes
16.1.9 Active Street Frontages and Awnings	<ol style="list-style-type: none"> a. The ground floor level at the same level as the footpath. b. At minimum, 70% of the ground floor frontage is to be transparent glazing. c. Foyer spaces are not to occupy more than an 8m-width of a street frontage. d. Enclosed glazed shopfronts are preferred to 	The development is located at the same level as the footpath and incorporates suitable glazing. Whilst open shopfronts are preferred for food and drink premises, the nature of the business and operational requirements dictate the design to be enclosed, whilst still accessible from	Yes

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	<p>open shopfronts, except for food and drink premises, which are encouraged to provide open shopfronts.</p> <p>e. Security grilles may only be fitted internally behind the shopfront and are to be fully retractable and at least 50% transparent when closed.</p>	<p>the street. In this instance, this design is considered to be acceptable.</p>	
16.1.10 Building Materials, Finishes and Colours	<p>Use of a combination of colour and texture to provide visual interest.</p>	<p>The design of the development is considered to incorporate suitable materials and colour variation, consistent with the requirements of the DCP.</p>	Yes
16.1.11 Built Form, Setbacks and Street Hierarchy	<p>1. Om setback.</p> <p>2. Each building facade is to be well articulated to differentiate between the base, middle and top.</p> <p>3. No windows are permitted on side or rear boundaries that abut another site.</p>	<p>The Cessnock Masterplan, Public Domain Plan and the Cessnock Development Control Plan envisage a zero-lot setback along both street frontages in the subject location along with a specific built form. These controls are intended to reinforce the existing street character in the location and present an attractive gateway to the Cessnock Commercial Precinct from Aberdare Road.</p> <p>When the operational requirements of the proposed food and drink premises were incorporated into the building design and layout envisaged by the controls, it resulted in a poor outcome for the street and location.</p> <p>Advice was provided by Council officers to the applicant prior to lodgement of the application to site the building at the back of the site and provide a high-quality landscaped streetscape on the corner. This design improved the connectivity between the</p>	No

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		two historic buildings (the Royal Oak and the CPAC buildings), and provided a significantly improved public realm, gateway and streetscape. Whilst strictly not consistent with the requirements of the DCP, it is considered that the final design results in a high-quality landscaped street frontage, providing connectivity between this site and surrounding businesses.	
16.1.12 Height in Storeys	Maximum of 6 storeys.	The proposed development is less than 6 storeys, thereby complying with the requirements of the DCP.	Yes
16.1.13 Parking and Access	Parking provided in Accordance with Chapter C.1.	Discussed previously in this report.	No variation proposed –
16.1.14 Pedestrian and Bike Network	Provision of through-site links and bike parking spaces.	Pedestrian linkages are provided from Vincent Street through the site. Bike parking facilities have been provided, consistent with the requirements of the DCP.	Yes
16.1.16 Public Open Space and Landscaping	Landscape design should utilise plants that are suited to the soils and climate of the region.	Suitable landscaping has been identified on the landscape plan submitted with the application.	Yes

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.

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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*

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact on both the natural and built environments, and the social conditions of the locality.

It is noted that the proposed development will result in positive economic impacts. Specifically, the development will result in increased short-term employment opportunities during construction and ongoing employment opportunities for the life of the development. Approximately \$5 million dollars will be injected into the local economy during construction, and total wages generated by the new McDonalds operation will be approximately \$1 million per year.

In addition to the matters considered and addressed previously in this assessment report, the following matters are also considered relevant:

Odour Assessment

An Odour Assessment prepared by Todoroski Air Sciences, was submitted in conjunction with the application.

The primary source of potential odour was identified as being from using both the hot plate and deep-fryer. The rate of odour emissions from the cooking process would vary throughout the day, depending on the demand with peak times generating more odour. Other potential odour sources have been noted as being from storage and handling of waste at the site and from the storage of raw materials at the site.

To manage the primary odour source, a ventilation extraction system with ventilation hoods positioned above the cooking and deep-frying points in the kitchen, is proposed to be installed. The kitchen ventilation extraction system would be equipped with standard kitchen filtration equipment to manage the air stream. The air emissions from the cooking processes will be captured and dispersed into the ambient air via a roof-top exhaust point positioned at a nominal height of approximately 6 metres above ground level.

With regard to local dispersion conditions, the assessment noted the following:

- windroses indicate reasonably high wind speeds and the wind directions are well distributed throughout the year;
- potential emissions from the exhaust point will most likely be subject to similar wind patterns and be well distributed throughout the year; and
- it is unlikely for a single receptor to remain downwind of the operations for extended periods of time and overall, the prevailing dispersion conditions allow for odour from the proposed development to be well dispersed.

In conclusion, the assessment report noted that given the nature of the odour source; the existing land use; the receiving environment; prevailing winds; and the efficient ventilation system, it is unlikely that the operation of the proposed development would create any ongoing problems. As such, odour impact associated from the proposal is considered to be reasonable.



Social Impacts, Crime and Anti-Social Behaviour

The submitted Social Impact Assessment demonstrates adequate community engagement was undertaken with the affected community.

The key negative impacts identified by the affected community through consultation were:

- Traffic and parking impacts,
- Antisocial behaviour,
- Litter, and
- Noise impacts.

The key positive social impacts identified by the affected community through consultation were:

- Employment opportunities, and
- Improved visual amenity.

A Plan of Management (PoM) has been submitted with the application. In order to minimize risks where possible, the following control measures are proposed to be implemented:

Measure	Implementation	Suitability of Control
CCTV	CCTV surveillance cameras will be installed in and around the premises in strategic places including (but not limited to) the drive-thru facility and cashiers' / service areas. This system will have automated recording technology, long video storage capacity, video motion detection and advanced camera technology allowing clear video resolution and coverage. All cameras will be in operation 24 hours a day.	CCTV is considered to be suitable in recording activities at the premises, allowing identification of offenders, and as a measure of discouraging anti-social behavior.
Lighting	Perimeter lighting will be provided around the premises and car park to enable clear vision and will be designed in such a manner so as to prevent concealment and shadowing.	Lighting is considered to be suitable in discouraging anti-social behavior and allowing clear lines of sign during hours of darkness.
Signage	Clearly identifiable signage will be installed in and around the building to indicate which areas are open to customers and members of the public and which areas are restricted. Warning signs, at strategic locations are to be placed around the premises, at entry / exits to warn people of security measures.	Signage is considered to be suitable in discouraging anti-social behavior and informing patrons of security measure in place.

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Security	High quality door and window locks are to be fitted to all openings. No fewer than three (3) staff members will be present at any one time.	Recommendations from NSW Police include more than three (3) people being at the premises at any one time on Friday and Saturday nights. A condition of consent has been imposed on the draft notice of determination requiring compliance with this recommendation. A register is to be kept detailing the number of staff rostered on an/or the times security patrols are undertaken. This will be required to be made available to Council officers upon request. Door fittings proposed are considered acceptable.
Ejection of patrons	Patrons who are intoxicated, drunk or disorderly will be ejected from the premises.	All staff are to be familiar with the process associated with ejecting patrons, and are to be provided with the required training.
Hold-up procedure	Details actions to be undertaken in the event of a hold-up.	All staff are to be familiar with the hold-up procedure and are to be provided with the required training.
Money handline	An independent security company will be employed to undertake all movement of cash to and from the premises.	Measure considered to be appropriate.
Theft	In the event that theft occurs involving a customer, every effort must be made to assist the customer in any way possible. Incidents involving staff members must also be documented on the Incident Report Form and any necessary policy reports must be completed. A list of all items missing must be recorded.	All staff are to be familiar with the process of recording incidents and are to be provided with the required training.
Weapons	Weapons will not be permitted at any time, unless in the hands of authorised personnel or Police.	All staff are required to be provided with the required training.
Litter	The following litter patrols will be undertaken by staff: <ul style="list-style-type: none"> • After sunrise, • After breakfast period (approximately 11am), • After lunch period (approximately 3pm), • Before sunset, • Additional patrol on Saturday and Sunday mornings. 	Litter patrol frequencies are considered to be suitable in order to minimise litter associated within the operation in the area immediately surrounding the development.

Noise

An Acoustic Report prepared by MAC was submitted in support of the application.

Potentially affected receivers were identified as residential, temporary accommodation, commercial as well as a child care centre. Noise generating activities were identified as the following:

- Customer light vehicles
- Truck consumable deliveries
- Drive-thru operations
- Waste collection
- Mechanical plant

Both attended and unattended noise monitoring was undertaken from 23 November to 1 December 2020. A map is provided below identifying receiver locations and monitoring equipment. Background noise levels (LA90) taken at L1 were found to be: day 47 dBA, evening 39 dBA and night 34 dBA. Attended noise monitoring found the LA90 to be 51dBA at 3:38pm on 23 November 2020.



Figure 7: Noise monitoring locations (from MAC Consulting Noise Assessment dated January 2021)

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The modelling was reviewed by Council officers and determined to be compliant, subject to the implementation of attenuation measures outlined within the report. The recommended attenuation measures are as follows:

- *implement boundary fences/retaining walls as early as possible to maximise their attenuation benefits to surrounding receivers,*
- *toolbox and induction of personnel prior to shift to discuss noise control measures that may be implemented to reduce noise emissions to the community,*
- *where possible use mobile screens or construction hording to act as barriers between construction works and receivers,*
- *all plant should be shut down when not in use. Plant to be parked/started at farthest point from relevant assessment locations,*
- *operating plant in a conservative manner (no over-revving),*
- *Conditions have been provided in the recommended conditions to ensure compliance with the acoustic report,*
- *selection of the quietest suitable machinery available for each activity,*
- *avoidance of noisy plant/machinery working simultaneously where practicable,*
- *minimisation of metallic impact noise,*
- *all plant is to utilise a broadband reverse alarm in lieu of the traditional hi frequency type reverse alarm, and*
- *undertake letter box drops to notify receivers of potential works.*

A sleep disturbance assessment of typical L_{Amax} noise levels was undertaken using noise levels of a customer yelling and the slamming of a car door upon residential receivers (R1-R4) and the accommodation provided at the adjoining hotel. Measurements were all found to be compliant against the PNTLs, again with attenuation measures in place.

Modelled noise emissions from construction noise was shown to exceed noise levels at residential receptors, the accommodation at the adjoining hotel, and the childcare centre (CC1). Noise management measures were included within the assessment to reduce the potential impacts.

A request for further information was made with regard to specific noise concerns associated with patrons at the premises. Clarification was received referencing the originally submitted acoustic report regarding compliance with Project Trigger Levels, the design of the proposal, proposed mitigation measures, traffic modelling and maximum noise trigger level modelling. A review of this information was undertaken by Council's Environmental Health Officer who considered the response to be adequate, with noise associated impacts able to be suitably mitigated through the implementation of attenuation measures.

Traffic

A Traffic Impact Assessment (TIA) prepared by Colston Budd Rogers & Kafes Pty Ltd was submitted with the application.

The TIA identifies the following traffic generation rates:

Table 1: Existing Weekday Morning and Afternoon + Development Two Way (sum of both directions) Traffic Flows				
Location	Weekday Morning		Weekday Afternoon	
	Existing	+Dev	Existing	+Dev
Snape Street				
- west of Charlton Street	845	+45	745	+45
- west of Site Access	715	+35	660	+40
- west of Vincent Street	715	+75	650	+85
Aberdare Street				
- east of Vincent Street	725	+50	655	+50
Charlton Street				
- north of Site Access	40	+10	45	+10
- north of Snape Street	70	+130	55	+135
- south of Snape Street	230	+10	200	+10
Vincent Street				
- north of Snape Street	635	+15	870	+15
- south of Snape Street	375	+10	435	+20
Site Access				
- east of Charlton Street	20	+140	10	+145
- north of Snape Street	0	+70	0	+75

The report concluded that even with the increase in traffic generation from the subject development, the LOS of both intersections remains unchanged. Additionally, a 'keep clear' zone is proposed in front of the Snape Street access to ensure vehicles are able to enter/exit the via Snape Street during traffic queues. To prevent any right turns movements to and from the subject site, a concrete median on Snape Street with associated signage is proposed to be installed. This will restrict only left-in left-out movements from Snape Street. Based on Austroads Guide to Traffic Management and vehicle generation, a CHR(s) turn treatment on Snape St at Snape/Charlton St intersection is required. The application was also reviewed by Council's Traffic Engineer, confirming the requirement for a CHR(s) turn treatment to be provided. Any amendment or alterations to signage, linemarking or traffic control devices are required to be approved by Council's Local Traffic Committee. Detailed plans of the intersection design, road treatments and signage as detailed above will need to be submitted to and approved by Council's Local Traffic Committee. A condition of consent has been imposed on the draft notice of determination in respect of this matter.

The application was also referred to TfNSW for comment. Vincent Street and Aberdare Road (MR220) are both classified state roads. TfNSW reviewed the information provided and raised no objection to the development, and did not provide any requirements in relation to the classified road network as no significant impact is expected.

Accordingly, the proposed development will not result in an unacceptable impact on the road network, with treatments proposed to direct and control traffic around the development site.

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

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development. Specifically, the proposed development is compatible with surrounding land uses and will not result in any unreasonable impact on the surrounding locality.



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

The Development Application was publicly exhibited on two (2) separate occasions as detailed below:

- 3 December 2021 to 4 February 2021 (noting that additional information was made available and therefore, the closing date was extended to allow for consideration of this information, as well as the Christmas/New Year period); and
- 31 May 2022 to 15 June.

During the first exhibition period, seven (7) submissions were received from four (4) households; and during the second exhibition period, three (3) submissions were received from two (2) households. In summary, submissions were received from a total of four (4) households, and all were 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
24 Hour Operations	
<ul style="list-style-type: none"> • Increased vandalism, litter and noise. • Anti-social behaviour 	<p>A PoM has been submitted with the application which recognises the need to implement measures relating to the operation of the site. Litter patrols will be carried out at regular intervals to ensure that the surrounding area is free from packaging associated with the store as detailed previously in this report.</p> <p>In addition, standard procedures will be put in place to control anti-social behavior from the site as detailed in this report.</p>
Noise	
<ul style="list-style-type: none"> • Noise from customers leaving the site • Noise from ordering at the drive-thru • Road noise as a result of increase traffic movements • Noise from delivery vehicles and waste collection • Sleep disturbance 	<p>An Acoustic Report and addendum report were submitted with the application. This information was reviewed by Council’s Environmental Health Officer who deemed the proposed development to be suitable, subject to the implementation of mitigation measures outlined in the report.</p> <p>Specifically, in relation to the collection of waste: waste will only be collected between the hours of 7:00am and 10:00pm to minimise impact on nearby properties.</p> <p>A sleep disturbance assessment was carried out using noise levels of a customer yelling and slamming of a car door from the closest residential receivers. Levels were all found to be compliant.</p>

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Traffic

- Traffic will impact an already dangerous situation due to increase traffic flow
- Traffic Report is deficient as there is no 24/7 projection for the increased road traffic
- No entry/exit in Charlton Street is acceptable

A Traffic Impact Assessment was undertaken in support of the application. As a result of the increase in traffic flows, a CHR will be required at the intersection of Snape and Charlton Streets. Further, to ensure the safety of road users, access to the site from Snape Street is restricted to left in/left out.

It is not considered a suitable outcome to restrict all traffic to/from the site from Snape Street.

The Acoustic Report considers noise associated with the operations of the site. Clarification was received referencing the originally submitted acoustic report regarding compliance with Project Trigger Levels, the design of the proposal, proposed mitigation measures, traffic modelling and maximum noise trigger level modelling. A review of this information was undertaken by Council's Environmental Health Officer who considered that the response was adequate, with noise impacts associated with vehicle movements able to be suitably mitigated through the implementation of noise attenuation measures.

Site Suitability

- Suitability of the site to accommodate the proposed development
- Flooding
- Mine subsidence

The subject site is located in the B4 Mixed use zone. The proposed development is permissible with consent pursuant to the Cessnock LEP 2011.

The proposed development is consistent with clause 5.21 of the LEP and Chapter C9 of the DCP in relation to the flood affectation of the land.

As part of the assessment process, the application was forwarded to Subsidence Advisory, who raised no objection to the development and provided General Terms of Approval.

Odour

- Smell associated with cooking food

An Odour Assessment was undertaken by Todoroski Air Sciences and submitted in support of the application.

In conclusion, the assessment noted that given the nature of the odour source; the existing land use; the receiving environment; prevailing winds; and the efficient ventilation system, it is unlikely that the operation of the proposed development would create any ongoing problems.

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Insufficient Information

- Acoustic report fails to consider increased traffic noise
The Acoustic Report and Traffic Impact Assessment were reviewed by relevant Council officers and were considered acceptable.
- Traffic report fails to considered increased traffic on Charlton Street
The location of sensitive receivers and noise monitoring locations are shown in Figure 7 of this report. This demonstrates that adequate consideration was given to the potential noise impact of the development on properties located in Charlton Street.
- Noise assessment levels not taken from Charlton Street
In respect to traffic surveys, suitable modelling has been undertaken as well as an adequate projection of increased movements as a result of the development. In this instance, traffic modelling is considered to be acceptable. Whilst it is acknowledged that monitoring was undertaken under non-normal circumstances due to the COVID lockdown, the conclusions were based on an average survey count, and this approach is considered suitable by both Council officers and TfNSW.
- Traffic surveys conducted through COVID

Property Values

- Decrease in property values
This is not a planning consideration under s.4.15 of the EP&A Act.

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4.15(1)(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 consistent with the public interest.

SECTION 7.12 CONTRIBUTIONS

Section 7.12 Contributions are payable for the proposal.

In the event the application is approved, Section 7.12 Contributions totalling \$39,753.14 would be payable.

INTERNAL REFERRALS

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

Officer	Comment
Development Engineer	Following submission of additional information, application supported subject to conditions.
Flooding Engineer	Application supported.
Environmental Health Officer	Application supported subject to conditions.
Community Planner	Following submissions of additional information, application supported subject to conditions.
Strategic Planning	Application supported.

EXTERNAL REFERRALS

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

Agency	Comment or concurrence?	Outcome
TfNSW	Comment	Advice provided and considered by Council's Development Engineer in relation to traffic and access, with recommendations incorporated and suitable conditions imposed.
Mine Subsidence	Concurrence	General Terms of Approval received which are incorporated into the recommended conditions of consent.
NSW Police	Comment	Comments received raising no objection to the proposal.

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Ausgrid	Comment	Comments received raising no objection to the proposal with recommended conditions of consent incorporated into the draft notice of determination.
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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.

The development seeks approval to operate extended hours, with the restaurant accessible to the public between 5:00am and 12 midnight, and the drive-thru available 24 hours. It is considered that a 12 month trial of the 24 hour operation should be imposed as a precautionary measure given that existing residential development is located within the locality. The 12 month trial period will enable Council to confirm that the extended hours do not result in land use conflict.

The proposed development is considered appropriate, with impacts associated with the development appropriately able to be addressed and where possible mitigated via the implementation of relevant measures.

It is noted that the proposed development will result in positive economic impacts. Specifically, the development will result in increased short-term employment opportunities during construction and ongoing employment opportunities for the life of the development. Approximately \$5 million dollars will be injected into the local economy during construction, and total wages generated by the new McDonalds operation will be approximately \$1 million per year.

Based on the assessment, it is recommended that the Development Application be approved subject to a 12 month trial period for the hours of operation relating to the drive-thru component of the proposal, and the conditions of consent contained in this report.

ENCLOSURES

- [1](#) ➡ Applicant's Response to Council Resolution
- [2](#) ➡ Amended Plans - Acoustic Fence Details

CONDITIONS OF CONSENT

SCHEDULE 1

CONDITIONS OF CONSENT

1. General Terms of Approval

All General Terms of Approval issued by Subsidence Advisory (Reference TBA21-04726 Dated 13 December 2021) 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. 8/2021/22142/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site/Roof Plan, Project No. 2750, Drawing No. 0201, Issue I	Webber	20 September 2022
Demolition Plan, Project No. 2750, Drawing No. 0202, Issue F	Webber	20 September 2022
Site Parking and Setout, Project No. 2750, Drawing No. 0203, Issue J	Webber	20 September 2022
Landscape Plan, Project No. 2750, Drawing No. 0204, Issue H	Webber	20 September 2022
Floor Plan – Ground, Project No. 2750, Drawing No. 0302, Issue G	Webber	20 September 2022
West Elevation / East Elevation, Project No. 2750, Drawing No. 0401, Issue H	Webber	20 September 2022
South Elevation / North Elevation, Project No. 2750, Drawing No. 0402, Issue H	Webber	20 September 2022
Floor Plan – Site Signage, Project No. 2750, Drawing No. 0602, Issue E	Webber	20 September 2022
Floor Plan – COD Plan, Project No. 2750, Drawing No. 0603, Issue E	Webber	20 September 2022

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Signage, Project No. 2750, Drawing No's. 0604, 605, 606, Issue E	Webber	20 September 2022
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Document Title	Prepared By	Dated
Statement of Environmental Effects	SLR	November 2021
Access Report	Indesign Spaces	March 2022
Odour Assessment	Todoroski Air Sciences	April 2022
Plan of Management	SLR	April 2022
Traffic Report and Addendum	Colston Budd Rogers & Kafes Pty Ltd	October 2021 / April 2022
Waste Management Plan	McDonalds	Undated
Social Impact Assessment & Consultation Report	Mara Consulting	January 2021
Preliminary Site Investigation	Cardno	23 November 2020
Acoustic Report	MAC Consulting	January 2021

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

3. Time Limited Approval – 24 Hour Trading for Drive-Thru Component

- a. This consent authorises the extended operating hours of the drive-thru component of the food and drink premises for twenty four (24) hours per day, seven (7) days a week, subject to paragraphs (b) to (c) of this condition below and the other conditions contained in this development consent.
- b. Pursuant to Section 4.17 (1)(d) (cf previous s 80A) of the EP&A Act, 1979, this consent is limited to a period of 12 months from the date of commencement of the use authorised by this consent. Notice of the commencement date must be provided in writing to Council prior to the use commencing. At the expiration of the trial period, the operating hours of the drive-thru component shall revert to the same operating hours approved for the restaurant component of the development, being: (a) The drive-thru component of the food and drink premises shall operate between the hours of 5.00am until 12 midnight, seven days per week.
- c. Should the applicant wish to continue operating the drive-thru component of the development consistent with the extended operating hours beyond the approved 12 month period, an application must be submitted to Council for its consideration and approval prior to the expiration of the 12 month period that allows 24 hour trading but no earlier than a 6 month period from the date of commencement of operations under this consent. Council's consideration of the proposed continuation of the extended operating hours will be based upon, amongst other things, the operator's compliance with the conditions of this development consent and any substantiated complaints received by the Council and/or NSW Police

4. CC, PC & Notice Requirements

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

5. 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*.

6. Requirements of Electricity Supply Authority

The applicant shall comply with the requirements specified by the Electricity Supply Authority, Ausgrid as detailed within their correspondence dated 14 December 2021
Reference: 1900111572.

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

7. 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.

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. Security for Cost of Damage and Completion of Public Work

Prior to issue of a *CC* authorising the carrying out of any work in accordance with this development consent, the applicant must provide security to the Council for the payment of the cost of the following:

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- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
- c) remedying any defects in any such public work that arise within six (6) months after the work is completed.

The security is to be for an amount that is the greater of \$5000 or 5% of the estimated cost of carrying out the development and may be provided by way of:

- a) cash deposit with the Council, or
- b) an unconditional bank guarantee in favour of the Council.

The security may be used to meet any costs referred above and on application being made to the Council by the person who provided the security, 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 security within six (6) years of the date of issue of the Occupation Certificate or Subdivision Certificate for the development the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.

10. Amended Plans Required – Access Compliance

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

- a) Compliance with the Compliance Report – Development Approval prepared by Indesign Spaces dated 15 March 2022,
- b) The Delivery area is to be provided with sufficient turning space, and
- c) The door to the Delivery area is to be provided with sufficient circulation space both internally and externally.

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

11. Cessnock Section 7.12 Levy Development Contributions Plans (2020)

A total monetary contribution of \$39,753.14 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 Council's 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.

12. Hoarding Application

A hoarding application for the erection of a Class A (fence type) or Class B (overhead type) hoarding along the street frontage complying with WorkCover requirements must be received by Council. The relevant application shall be submitted to Council with a footpath occupancy fee based on the area of footpath to be occupied. A Public Risk Insurance Policy with a minimum cover of twenty (20) million dollars in relation to the occupation of, and works within, Council's road reserve, for the full duration of the proposed works, must be obtained with a copy also provided to Council. The Policy is to note Council as an interested party and nominate the location of works. Hoardings shall not be erected until written approval has been received from Council. The copy is to be provided to Council prior to the issue of a CC.

13. 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.

14. Disabled Car Parking Spaces

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*

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- * *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.*

15. 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.

16. Parking – Minimum Requirement

On-site car parking shall be provided for a minimum of 34 vehicles (including disabled car parking) 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.

17. Bicycle Storage to be Provided

The bicycle storage area must accommodate a minimum of four (4) bicycles and be design in accordance with *AS 2890.3:1993 Parking Facilities – Bicycle parking facilities.*

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. Road Works Required

The applicant must bear the cost of construction of the following works:

- a) Stormwater Drainage connection to Council's drainage system in Snape Street in accordance with the approved plans.

Development Consent does not give approval to undertake any works on Council property. An application must be made to Council for a S138 Roads Act Approval to construct these works. Detailed engineering drawings (plans, sections and elevation views) and specifications of the works required by this Condition must accompany the application form.

The Roadworks Approval request / application must be submitted to, and approved by, Council prior to the issue of a CC.

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These works must be constructed in accordance with the conditions of the Roadworks Permit and be completed prior to the issue of an OC.

Note: The cost of adjustment or relocation of any public utility service shall be borne by the owner/applicant. Where the finished levels of the new works will result in changes to the existing surface levels, the cost of all necessary adjustments or transitions beyond the above scope of works shall be borne by the owner/applicant.

19. 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 Civil Works and shall be in accordance with Council's adopted fees and charges current at the time of payment.

20. Road – Engineering Requirements

All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & AS2890.2 - Parking Facilities.

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.

21. Road – Construct

The registered proprietors 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 the release of the S138 Roads Act Approval.

- (a) Construct CHR(s) intersection treatment on Snape Street at Snape and Charlton Street intersection
- (b) Construct median island on Snape Street prohibiting right turn movements to subject development
- (c) Install R2-14L, 'ALL TRAFFIC (LEFT SYMBOLIC) ONLY' sign on the median island
- (d) Place Asphalt overlay along site frontage on Snape Street and Charlton Street from subject site access to Charlton/Snape Street intersection. Extent of works to be determined in consultation with Council.
- (e) Construct 1.5 meters wide concrete footpath along subject site frontage from Vincent Street to Charlton Street

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- (f) Construct a new pram ramp on western side of Charlton/Snape Street intersection and reconstruct the existing pram ramp on eastern side of Charlton/Snape Street intersection
- (g) Turf and top dress the footpath area.

22. Stormwater – Collection and Discharge Requirements

The registered proprietor of the land shall collect all roof and stormwater runoff from the site and discharge it to Council's stormwater drainage system in Snape Street in accordance with Council's 'Engineering Requirements for Development' (available at Council's Offices). Full details shall be submitted to, and approved by, the Certifier prior to the issue of a CC for the building/s.

23. 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.

24. Flood Risk Management Report

A Flood Risk Management Report, prepared by a qualified practising Civil Engineer and satisfying all the following requirements must be provided to the Certifier prior to the issue of a CC. The report must be prepared / amended to make provision for the following:

- a) The report must be generally in accordance with the Scenario F2 recommendation of the Flood Impact Assessment prepared by Cardno and dated 24/10/2021.
- b) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. The flood impacts on the site shall be assessed for the 100-year ARI storm event. The precautions shall include, but not be limited, to the following:
 - i) Flood warning signs / depth indicators for areas that may be inundated
 - ii) A flood evacuation strategy
 - iii) On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood planning level.

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25. Flooding – Floor Level

The applicant shall ensure that the floor level of the proposed building is at or above RL70.24m Australian Height Datum (AHD).

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

26. Flooding – Hazardous Materials

All hazardous materials stored at the site, as defined in the Protection of the Environment Operations Act, 1997, shall be stored at a level not less than RL 70.74m AHD, or suitable bunding placed around such materials to a minimum of RL 70.74m AHD.

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

27. Flooding – Signage

Prior to the issue of an OC, a flood warning sign of durable material and permanently affixed shall be located in a prominent location within the building and car park. The sign shall advise occupants/patrons that the subject site is subject to inundation during times of flood.

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

28. Existing Street Tree Removal and Relocation

A street tree plan, indicating proposed removal or relocation of existing street trees impacted by the proposal, shall be submitted and approved prior to issue of CC. Existing street trees requiring removal and/or relocation are subject to Council's adopted fees and charges. All works must be undertaken by Cessnock City Council or Cessnock City Council approved contractors.

29. 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*

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- 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

30. Mechanical Exhaust System

Details of any proposed mechanical exhaust systems, detailing compliance with the relevant requirements of Clause F4.12 of the BCA and *AS 1668 Parts 1 and 2* (including exhaust air quantities and discharge location points) are to be provided to the Certifier prior to the issue of a CC.

31. Air Conditions Units

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997*.

Details demonstrating noise attenuation measures in this regard are to be submitted to the Certifier prior to the issue of a CC.

32. Acoustic Report and Acoustic Fencing

Prior to the issue of a CC, plans shall be submitted to, and approved by the Certifier confirming that the recommendations specified in the Acoustic Report prepared by MAC Consulting, dated January 2021, have been implemented in the final design of the proposed development.

Note: the fencing/barrier is to be constructed to an RL of 2.5m reducing to 1.5m at the proposed entry above the relative ground level of the drive-thru lane and consist of materials with a surface density of at least 10kg/m², and not contain any gaps (ie, colour bond, lapped and capped timber or equivalent). The plans submitted to, and approved by the Certifier shall demonstrate compliance with this requirement.

33. Outdoor Lighting

Prior to the issue of a CC, the Certifier must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises, adjacent dwellings and the road reserve, and that the outdoor lighting complies with the relevant provisions of *AS 1158.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements* and *AS 4282:1997 Control of the obtrusive effects of outdoor lighting*.

34. Plan of Management

The Plan of Management (PoM) for the operation is to be amended to include the following noise considerations:

- A specific time period for collection of skip bins and other plant vehicles entering the site, ie: not before the hours of 7:00am nor on weekends, is to be documented within the PoM;
- Detail to ensure the *Customer Ordering Displays* remain at low volume settings;
- The nomination of a staff position/s, on each shift, responsible for noise management; and
- The processes/procedures and responsibility of the ventilation extraction system.

The PoM shall incorporate Crime Prevention by Environmental Design measures. The amended PoM shall be submitted to and approved by Council prior to the issue of a CC.

35. Smoke Free Premises

The construction and fit out of the premises shall comply with the *Smoke-Free Environment Act 2000* and *Smoke-Free Environment Regulation 2016*. Details demonstrating compliance with this condition are to be provided to the Certifier prior to the issue of a CC.

36. Garbage Room

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.

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37. Detailed Hardscape Plan

A detailed Hardscape Plan prepared by a suitably qualified person, must be submitted and approved, prior to the issue of a CC. The plan must include:

- a) Location of all proposed and existing hardscape furniture, including but not limited to; retaining walls, fencing, bollards, signs, entrance features, monuments, playgrounds, seats, benches, shelters, BBQ's, amenities, lighting, bin cabinets, paving and footpaths, stairways, handrails
- b) A detailed specification which includes; proposed material, make/model, dimensions, quantities, colour scheme
- c) Details of installation procedure for each type of furniture
- d) The Hardscape is to be designed to:
 - Be low maintenance, and vandal proof
 - Be non-obstructive
 - Apply the principles of 'Crime Prevention Through Environmental Design' (CPTED)
 - Playgrounds are to adhere to current relevant Australian Standards for playground design and installation
- e) A maintenance schedule for the owner/occupier to administer over the determined time frame.

38. Photographic Archival Recording

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

The Photographic Archival Recording shall be prepared and produced in a digital format and shall contain:

- 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;
- b) A plan of the building and site marked up to indicate where the photographs were taken and the direction of the photograph;
- c) A complete set of digital image files saved as JPEG or TIFF files with associated metadata, and cross-referenced to catalogue sheets.

The Photographic Archival Recording shall be submitted to Council on a suitable portable electronic storage device (such as USB), or uploaded to a suitable file-sharing platform that is freely accessible. The digital version of the Photographic Archival Recording shall be arranged as a single parent folder containing the report, reference plans saved as individual PDF documents. All electronic image files shall be arranged by their file type and saved as individual files, grouped in separate sub-folders, as set out below:

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- Photographic Archival Recording - [Property Address]
- Report and Reference Plans – [Property Address]
- Electronic Image Files – JPEG – [Property Address]

39. 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 issue of the CC.

PRIOR TO THE COMMENCEMENT OF WORKS

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

40. 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.

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- 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.

41. 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.

42. 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.

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43. 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.

44. Section 138 Roads Act 1993 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.

45. 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.

46. 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.

47. Demolition Proposed

Consent is granted for the demolition of existing structures currently located on the property, 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.

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- (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.

48. Approval Required for Equipment in Road Reserve

An application for any of the following on public property (footpaths, roads, reserves) shall be submitted to, and approved by, Council prior to the commencement of works.

- a) Construction zone
- b) A pumping permit
- c) Mobile crane
- d) Skip bins

49. Nominated Location of Waste

The location and facilities for the collection, storage and disposal of waste generated within the premises shall be submitted to the *PC*, prior to the commencement of works.

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50. 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.

51. Shoring and Adequacy of Adjoining Property

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense:

- i. protect and support the building, structure or work on adjoining land from possible damage from the excavation; and
- ii. if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation.

This condition does not apply if the person having the benefit of the development consent own the adjoining land or the owner of the adjoining land gives written consent to the condition not applying.

DURING WORKS

The following Conditions are to be complied with during works:

52. Acoustic Fencing

An impervious barrier along the western boundary of the drive-thru lane (as per Figure 3 within the Noise Assessment prepared by MAC Consulting and in accordance with the stamped approved plans) is to be constructed within the initial stages of *works*. The barrier is to be constructed as per the design specifications submitted to Council prior to CC, and as described within the MAC Noise Assessment.

The construction of the acoustic fencing shall be completed within 6 weeks from commencement of construction works on site, to maximise attenuation benefits to surrounding receivers.

53. 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.

54. Site is Securely Fenced

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

55. 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.

56. Excavation and Backfilling

All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a professional engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage
- b) If necessary, underpin and support the building in a manner certified by a professional engineer.
- c) Give at least seven (7) days' notice to the adjoining owner before excavating, of the intention to excavate

The principal contractor, owner builder, or any person who needs to excavate and undertake building work, must first contact "Dial Before You Dig" and allow a reasonable period of time for the utilities to provide locations of their underground assets.

57. 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*.

It is recommended that the following additional measures be implemented:

- Toolbox and induction of personnel prior to shift to discuss noise control measures that may be implemented to reduce noise emissions to the community,
- Where possible construction personnel to use mobile screens or construction hording to act as barriers between construction works and receivers,
- All plant should be shut down when not in use. Plant to be parked/started at farthest point from relevant assessment locations,
- Plant shall be operated in a conservative manner (no over-revving),
- Selection of the quietest suitable machinery available for each activity,
- Avoidance of noisy plant/machinery working simultaneously where practicable;
- Minimisation of metallic impact noise,
- All plant shall utilise a broadband reverse alarm in lieu of the traditional high frequency type reverse alarm, and
- Letter box drops are to be undertaken to notify receivers of potential works.

58. Mechanical Plant Noise Attenuation

The mechanical AC plant and mechanical ventilation plant shall be located on the plant deck of the operation and surrounded by the roof parapet. The roof parapet is to extend a minimum of 300mm above the top of the highest plant item and is to block the line of sight to the top of the highest plant item.

59. 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.

60. Construction Vehicles

Construction material and vehicles shall not be placed on public footpaths. The use of footpaths or roadways shall be undertaken in accordance with the prevailing kerbside restrictions, the Australian Road Rules and Council's Parking Code.

61. Erosion and Sediment Control

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.

62. Contaminated Land

During earthworks, an *unexpected finds protocol* must be prepared and implemented if potentially contaminated materials are identified, to allow for their appropriate management. Any assessment and remediation of potentially contaminated materials must be undertaken by an appropriately qualified and experienced environmental professional.

Buildings and structures proposed for demolition must first be subjected to hazardous materials (HAZMAT) assessment. If hazardous materials are identified during building demolition, a clearance certificate is required for surface soils prior to construction commencing.

Any waste generated during the redevelopment, including demolition materials and excavated soil, must be assessed for potential offsite reuse/disposal opportunities in accordance with the NSW EPA *Waste Classification Guidelines (2014)* and current resource recovery exemptions/orders.

63. Protection of Existing Trees

No trees on public property (footpaths, road reserves, etc) are to be removed or damaged during construction, including for the erection of any fences, hoardings or other temporary works, unless specifically approved in this consent.

Damaged or removed street trees must be reinstated with approved street tree planting at the developer's cost prior to the final inspection being carried out.

64. 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 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.

65. 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.

66. 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.

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67. Floor Level Certification

The floor level of the proposed building shall be certified by a registered surveyor as being not less than the 100 year Average Recurrence Interval (ARI) flood level.

The floor level shall therefore be certified as being not less than RL 70.24m Australian Height Datum (AHD).

68. 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.

69. 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.

70. 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 ISSUE OF AN OCCUPATION CERTIFICATE

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

71. Roads – Concrete Crossing

The registered proprietors shall construct and maintain a concrete access crossing from the kerb and gutter in Snape Street and Charlton 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).

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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.

72. 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.

73. All Services Provided

Certification that all services as required (eg water supply, gas, electricity, telephone, sewer), are available to the site, shall be submitted to the PC prior to issue of an OC.

74. Parking – Loading Facility Requirement

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

75. 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.

76. Parking – Provision

Thirty-four (34) car parking spaces shall be provided prior to the issue of an OC.

77. Parking – Bicycle Parking

Bicycle parking racks to accommodate four (4) bicycles shall be provided prior to the issue of an OC.

78. Completion of the 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:

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- 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 Snape Street and Charlton Street frontage to indicate that visitor parking is available within the property, with access from Snape Street and Charlton 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*.

79. Reinstate Road Reserve Verge

The applicant shall construct/reconstruct the unpaved road reserve verge with grass - species and installation shall be approved by Council prior to issue of an *OC*

80. 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.

81. Road – Removal of Redundant Infrastructure

All redundant vehicular accesses shall be removed, and the footpath, road shoulders and kerb and gutter, where applicable, restored to match existing conditions at no cost to Council, prior to use of the building or issue of an *OC*.

82. Drainage Works

All drainage works required to be undertaken in accordance with this consent shall be completed prior to issue of an *OC* for the development.

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83. Certification of Electrical Fittings

All electrical fittings and electrical outlets are to be installed and certified by a registered surveyor as being not less than 500mm above the 100 year Average Recurrence Interval flood level. The fittings / outlets are to therefore be installed at a level of RL 70.74m Australian Height Datum or higher. The certification shall be submitted to the *PC* prior to issue of an *OC*.

84. Flood Risk Management Plan

Prior to the issue of an *OC*, the *PC* is to receive from a suitably qualified and practising professional engineer, a certificate of compliance certifying that all aspects of the flood risk management plan have been completed in accordance with the approved design and relevant *AS*.

85. Food Premises

Prior to the issue of an *OC*, an inspection of the completed premises is to be conducted by the *PC* certifying that the food premises has been constructed in accordance with the approved plans.

86. Acoustic Report Recommendations Complied with

A certificate must be submitted to and approved by the Certifier prior to the issue of an *OC* demonstrating that all measures detailed in the Acoustic Report prepared by MAC Consulting, dated January 2021, have been constructed/installed/completed.

The certificate must be prepared by an accredited acoustic consultant, and must certify that the recommendations in the approved acoustic report have been complied with and the desired acoustic performance achieved.

87. 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*.

88. Waste Management Plan

Prior to the issue of an *OC*, the *PC* must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

89. Waste Disposal

Prior to the issue of an *OC* and/or commencement of the use, whichever is earlier, the building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on the public way, e.g. footpaths, roadways, plazas, reserves, at any time.

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90. Trade Waste Disposal

Prior to the issue of an OC and/or commencement of the use, whichever is earlier, of the building the owner must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. footpaths, roadways, plazas, and reserves at any time.

91. Flooding – Evacuation Management Plan

The applicant shall prepare a flood emergency evacuation and management plan for the proposed development. The plan should advise occupants of flood evacuation procedures and emergency contact telephone numbers. The management plan should avoid the letting of the premises during periods of flood emergency or when flood warnings are issued. The applicant should contact Council and the State Emergency Service for advice in the preparation of the management plan.

The evacuation procedures should be permanently fixed to the building in a prominent location, and kept up to date at all times.

The management plan shall be submitted to, and approved by, Council prior to the issue of an OC.

92. Signage

Advisory signage shall be erected at strategic locations throughout the site, including but not limited to the entries/exits of the site and drive-thru facility, to communicate the following:

- Customers to have consideration for neighbouring residents and minimise noise whilst on site;
- No heavy vehicles (trucks and buses) are to be served at the drive-thru window;
- Signage installed to indicate car parking speed levels and to request customers reduce vehicle noise at all times.

ONGOING USE

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

93. Operational Procedure Requirements

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

94. Plan of Management

The PoM shall be reviewed on an annual basis.

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95. Number of Employees

More than three (3) employees shall be at the premises at any one time on a Friday and Saturday night. Alternatively, where fewer staff are rostered on, regular security patrols (minimum of 1 per hour), shall occur to ensure the safety and security of staff and the premises.

A register shall be kept and made available on request detailing the number of staff rostered on or the frequency of security patrols undertaken and the time these occurred.

96. 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.

97. Access to Play Equipment

Access to the playground shall be closed off from public use between the hours of 10:00pm and 6:00am daily.

98. Removal of Graffiti

The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within forty-eight (48) hours of its appearance.

99. Hours of Operation

Hours of operation relating to the approved use, are as follows:

Restaurant: 5:00am until 12 midnight, 7 days a week.

Drive-thru 24 hours per day, 7 days a week for the first 12 months and subject to Condition 3. Following the expiration of the 12 month period referred to in Condition 3, the approved hours of operation are 5:00am until 12 midnight, 7 days a week.

100. 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*.

101. Approved Signage Maintenance

The approved sign/s must be maintained in a presentable and satisfactory state of repair.

The level of illumination and/or lighting intensity used to illuminate the sign/s is to be minimised to ensure that excessive light spill or nuisance is not caused to any nearby premises or the road reserve.

102. Parking Areas to be Kept Clear

At all times, the loading area, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.

103. Driveways to be Maintained

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

104. Maintenance of Landscaping

Landscaping shall be maintained in accordance with the approved plan in a healthy state, and in perpetuity, by the existing or future owners and occupiers of the development.

If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

An annual report shall be submitted to Council, for the three (3) years following issue of the OC, certifying that the landscaping works have been satisfactorily maintained.

105. Acoustic Validation Assessment Report

An acoustic validation assessment report must be submitted to Council, and approved by Council's Environmental Health Team, within 28 days of the commencement of the use. The certificate must be prepared by an accredited acoustic consultant and must certify that noise emissions meet the relevant criteria as specified in the approved Acoustic Report, prepared by MAC Consulting dated January 2021. The report must also confirm that all noise attenuation measures set out in the approved Acoustic Report have been implemented.

106. 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.

107. Customer Ordering Displays

Customer ordering displays are to be continually set at the lower volume setting to minimise noise disturbance.

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108. Food Premises

The food business is to be registered with Council. The business will be placed upon *Council's Regulatory Inspection Register* and will be subject to routine inspections.

109. Odour/Air Quality

Activities associated with the development are to be conducted in a manner so there is no interference to the existing and future amenity of residents and the neighbourhood in general.

110. Emissions

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

111. Closure of Car Park

The eastern car parking area of the site, along Vincent Street, Cessnock is to be blocked off with a substantive temporary barrier during the drive-thru only operating periods (12:00am to 5:00am).

112. Litter Patrol

Litter patrols are to be carried out by staff from the premises along Snape Street to Charlton Street; along Aberdare Road to Cumberland Street ; and 70 metres either side of the premises boundary along Vincent Street, as follows:

- After sunrise,
- After breakfast period (approximately 11am),
- After lunch period (approximately 3pm),
- Before sunset,
- Additional patrol on Saturday and Sunday mornings.

113. Litter Control

Management must ensure that the forecourt, car parking area and the surrounds of the building are to be kept clean and free of litter.

114. Security Patrols

Implementation of a night security patrol service shall be implemented during the initial 12 months of operation. Where anti-social behavior or crime have been identified as an ongoing issue, regular security patrols shall be implemented and included in the Plan of Management as part of its annual review.

115. 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.

116. Orderly Dispersal of Patrons

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

117. 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.

ADVICE

(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.

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(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.

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SUBJECT: *PLANNING PROPOSAL 18/2020/3/1 - COMPREHENSIVE LEP REVIEW - RECREATION ZONES*

RESPONSIBLE OFFICER: *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 Recreation Zones Planning Proposal and seek Council's endorsement to forward the updated Planning Proposal to the Department of Planning and Environment (DPE) to finalise the plan.

RECOMMENDATION

1. That Council notes the outcome of consultation with public agencies and the community in relation to the Recreation Land Planning Proposal.
2. That Council endorses the Planning Proposal as an amendment to the Cessnock Local Environmental Plan 2011.
3. That the General Manager 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:

- employment land;
- environmental land;

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

Each theme will be 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 Recreation Zones Planning Proposal was referred to Council for consideration on 20 October 2021 under PE55/2021. 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. A Gateway determination was requested by Council staff on 1 November 2021 and was subsequently issued by DPE on 30 March 2022.

Consultation occurred with government agencies between 5 April and 26 May 2022. The proposal, together with the government agency responses, was publicly exhibited between 16 June and 20 July 2022.

Exhibition resulted in nine submissions and these are addressed at **Enclosure 1**.

REPORT/PROPOSAL

The Planning Proposal (**Enclosure 2**) relates to the 'recreation land theme' of the comprehensive LEP 2011 review. The Planning Proposal recommends various amendments to the Cessnock RE1 Public Recreation Zone and RE2 Private Recreation Zone land use tables and LEP 2011 maps.

Proposed LEP 2011 Land Use Table Amendments

The RE1 and RE2 Zone land use tables list the various forms of development that are considered to be compatible with the objectives of the zone 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.

The SILEP mandates certain land uses 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.

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The recreation land Planning Proposal recommends the following amendments to the RE1 and RE2 Zone land use tables and LEP maps.

- Amend the RE1 Public Recreation Zone Land Use Table to:
 - **permit** emergency services facilities, entertainment facilities, function centres, information and education facilities, markets, restaurants or cafes and signage; and
 - **prohibit** heliports and respite day care centres.

- Amend the RE2 Private Recreation Zone Land Use Table to:
 - **permit** amusement centres, building identification signs, business identification signs, entertainment facilities, function centres, information and education facilities, markets, restaurants or cafés; and
 - **prohibit** helipads.

- Amend the LEP 2011 Land Use Zone Map, Minimum Lot Size Map and Land Reservation Acquisition Map in relation to various parcels of land in the LGA.

The proposed RE1 Public Recreation Zone and RE2 Private Recreation Zone land use table amendments will enable greater flexibility for compatible employment generating development to occur within the recreation zones, while prohibiting uses that are considered incompatible with the zone objectives.

Public exhibition has not resulted in any changes to the Planning Proposal in relation to the RE1 Public Recreation Zone or RE2 Private Recreation Zone land use tables.

Proposed LEP 2011 Map Amendments

The Planning Proposal includes a number of amendments to the LEP maps and these relate to various properties presently zoned recreation, or proposed to be zoned recreation. The mapping amendments relate to one or more of the following themes:

- apply a RE1 Public Recreation Zone to an existing park, playground or open space in the LGA;
- apply an environmental zone to recreation land containing known Endangered Ecological Communities, consistent with Council's current E-Zone review;
- address the historical use of the RE1 Zone as a default zone to sterilise land, e.g. buffer land and/or waterways;
- rectify the incorrect application of the RE1 Zone to private properties;
- apply a RE2 Zone to private golf courses and other private outdoor recreation facilities; and

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- apply or remove the acquisition designation from various parcels of land in accordance with Council's adopted Recreation and Open Space Strategic Plan.

The LEP 2011 mapping amendments reinforce the role of recreation and open space in Cessnock's towns and villages by applying a consistent zoning regime and broadening the scope of permissible development in open space land in the LGA.

Map amendments 67 to 70 were identified subsequent to the October 2021 Council meeting and, in consultation with DPE, included in the Planning Proposal for the purpose of consultation with the land owners and community.

As a consequence of land owner, government agency and community consultation, amendments have been made to the Planning Proposal and these are set out in the table below.

Map Amnt. No.	Relates To	Reason
8	Poppethead Park 30 Cessnock St Kitchener	Map amendment 8 has been excluded from the Planning Proposal on the basis of an inconsistency with Ministerial Direction 4.4, remediation of contaminated land. The land formally contained a colliery. In accordance with the Ministerial Direction, the proposed rezoning must be supported by a preliminary contamination investigation.
9	Bailey Park Abermain 198 Cessnock Rd Abermain	Map amendment 9 has been excluded from the Planning Proposal pending further investigation in Council's forthcoming Environmental Land Planning Proposal. Biodiversity Conservation Division (BCD) has recommended the site is rezoned C2 Environmental Conservation.
29	Wollombi Recreation Ground 66 Christina St Wollombi	Map amendment 29 has been updated to reflect that the whole site should be zoned RE1 Public Recreation. Council has recently acquired the BCD 2021 Threatened Ecological Communities (TEC) mapping, which indicates very little of the site contains TECs.
32	1A Kalingo St Bellbird 2 Ruby St Bellbird 342 Wollombi Rd Bellbird	Map Amendment 32 has been updated to exclude 342 Wollombi Road Bellbird on the basis of inconsistency with Ministerial Direction 4.4, remediation of contaminated land. Lot 51 has a history of agricultural/horticultural activities. In accordance with the Ministerial Direction, the proposed rezoning must be supported by a preliminary contamination investigation.
33	Land at Vincent St Cessnock Land at Quorrobolong Rd Cessnock 85 Railway St Cessnock	Map Amendment 33 has been split into two sites, 33A and 33B. Site 33B, land at Quorrobolong Rd Cessnock, is proposed to be zoned RE2 Public Recreation on the basis the site contains a rifle range.

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39	44 Boomerang St Cessnock 1A Doyle St Cessnock	Map Amendment 39 has been updated to exclude the following sites pending further investigation in the forthcoming update to Council's Recreation and Open Space Strategic Plan: <ul style="list-style-type: none"> • Lot 1 DP 1103032 (1A Doyle St Cessnock) • Lot 1 DP 392509 (Henderson Ave Cessnock) • Lot 32 DP 455973 (33 Ferguson St Cessnock) • Lot 33 DP 455974 (Ferguson St Cessnock)
40	11 Duguid Cl Cessnock 159 Alkira Ave Cessnock 68 Anzac Ave Cessnock 70-76 Anzac Ave Cessnock 78 Anzac Ave Cessnock 80 Anzac Ave Cessnock 82 Anzac Ave Cessnock 41 Anzac Ave Cessnock 360 Old Maitland Rd Cessnock 362 Old Maitland Rd Cessnock 364 Old Maitland Rd Cessnock 366 Old Maitland Rd Cessnock	Map Amendment 40 has been split into sites 40A and 40B. Site 40A (11 Duguid Cl Cessnock) is proposed to be zoned C2 Environmental Conservation and R2 Low Density Residential. Site 40B (being the balance of site 40) is proposed to be zoned C3 Environmental Management on the basis the principal site constraint is flooding.
44	Land at Aberdare St Weston Land at Gover St Weston Land at Hospital Rd Weston Land at Lang St Weston 175 Northcote St Kurri Kurri 177 Northcote St Kurri Kurri 385 Lang St Kurri Kurri	Map Amendment 44 has been updated to exclude Lot 147 DP 755259 (land at Lang Street Weston) on the basis of potential inconsistency with Ministerial Direction 4.4, remediation of contaminated land. The site previously contained a quarry. In accordance with the Ministerial Direction, the proposed rezoning must be supported by a preliminary contamination investigation.
45	Land at Mitchell Avenue Kurri Kurri	Map amendment 45 has been updated to reflect that the whole of the site should be zoned C2 Environmental Conservation (rather than C3 Environmental Management). BCD has recommended Zone C2 on the basis the site contains biodiversity value.
50	Land at Leconfield St Stanford Merthyr Land at Pokolbin St Pelaw Main 8 Tomalpin St Pelaw Main	Map amendment 50 has been updated to reflect that the whole site should be zoned C2 Environmental Conservation. Council has recently acquired BCD's Biodiversity Values mapping. The mapping demonstrates the presence of biodiversity value across the site.
54	Land at William Tester Dr Clifftleigh 19 Main Rd Clifftleigh 21 Main Rd Clifftleigh 64 William Tester Dr Clifftleigh	Map amendment 54 has been excluded from the Planning Proposal on the basis of inconsistency with Ministerial Direction 4.4, remediation of contaminated land. The land formally contained a colliery. In accordance with the Ministerial Direction, the proposed rezoning must be supported by a preliminary contamination investigation.
62	298 Cessnock Road Abermain	Map amendment 62 has been excluded from the Planning Proposal in accordance with condition 1(b) of the Gateway determination. The proposed amendment is considered in another Planning Proposal currently being progressed by Council.

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64	49B Aberdare Road Cessnock	Map Amendment 64 has been excluded from the Planning Proposal following community and agency consultation. While the site is identified for acquisition in the Cessnock Recreation and Open Space Strategic Plan, the proposed acquisition is considered cost prohibitive.
69	1A Short Street Cessnock 1B Short Street Cessnock	Map Amendment 69 has been updated to exclude 1A Short Street Cessnock on the basis that the land contains the Northern Coalfields Community Care depot and that the existing IN2 Light Industrial Zone is more appropriate, whilst the present use is operating from the site.

OPTIONS

Council has the following options:

1. Council resolve to support the recommendations of this report and submit the Planning Proposal to the Department of Planning, Industry and Environment for finalisation.
This is the recommended option.
2. Request changes to the Planning Proposal.
This option may delay the proposed amendments.
3. Not support the recommendation of this Report for the following reasons:

(To be provided by Council).

CONSULTATION

Relevant internal stakeholders consulted in relation to the issues paper included Council's Open Space and Recreation Team, Community Planning Team, Development Services Team, Building Team and Council's Senior Environmental Planner. Councillor briefings were also held in relation to the Planning Proposal on 15 September 2021 and 14 September 2022.

The Planning Proposal was publicly exhibited in accordance with the Gateway determination and Council's Community Participation Plan, between 16 June 2022 and 20 July 2022. Nine submissions were received in response to the exhibition period. A summary of concerns raised in the submissions and a response to these concerns is included as an enclosure to this report.

Consultation with relevant public agencies occurred in accordance with the Gateway determination between 5 April 2022 and 26 May 2022. A copy of agency feedback is provided at Appendix 3 of the Planning Proposal.

Subsidence Advisory

SA NSW advised that some of the nominated lots are in the Bellbird-Millfield, Tomalpin and Maitland West Mine Subsidence District. Under the Environmental Planning and Assessment Act 1979, development within a proclaimed mine subsidence district requires approval from SA NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017*.

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The risk of subsidence on the undermined lots varies and some sites have surface mining features such as drifts and shafts. In order to manage mine subsidence risks; future surface development on sites within the mine subsidence district should be referred to SA NSW for assessment prior to approving any Development Application.

SA NSW will assess future applications for surface development in accordance with the relevant SA NSW policies at the time of application.

Planning Response: The comments from SA NSW are noted. No development is proposed within the allotments at this point in time.

Hunter Water Corporation

Hunter Water has no objections to the various amendments to the Cessnock LEP, including RE1 Public Recreation Zone and RE2 Private Recreation Zone land use tables and LEP maps. Hunter Water notes that many of the land parcels subject to these amendments are not currently serviced by Hunter Water. Hunter Water requests that Council informs future potential property owners to contact Hunter Water to confirm connection and servicing requirements prior to purchase.

Planning Response: The comments from Hunter Water Corporation are noted.

Biodiversity Conservation Division of the Department of Planning and Environment

The Biodiversity Conservation Division (BCD) of the Department of Planning and Environment has recommended that:

- the proposed amendments to the land use table be replaced with a clause under Schedule 1, Additional Permitted Uses, of the *Cessnock Local Environmental Plan 2011*; and

Planning Response: The proposal recommends expanding the range of development permitted with consent in recreation zones to enable options for additional, compatible development to occur. Such development would be subject to Council approval and assessed for compatibility against relevant local plans, including the Cessnock Development Control Plan 2010 and Cessnock Local Environmental Plan 2011. In Zone RE1, Council would have full control of the development application and assessment process.

Enabling a greater range of compatible land uses in recreation zones is not uncommon among councils in NSW. For example, in the Hunter Region, entertainment facilities are permitted with consent in Zone RE1 in the following LGAs – Lake Macquarie, Muswellbrook, and Upper Hunter.

Restaurants and cafes are permitted with consent in Zone RE1 in the following Hunter LGAs – Lake Macquarie, Newcastle, Port Stephens, Great Lakes (Mid-Coast), Singleton and Upper Hunter.

An alternative option is for Council to consider permitting additional land uses for individual sites in the LGA through the Additional Permitted Use (APU) provisions of the LEP. However, this would involve an individual planning proposal each time Council

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resolved to give effect to an APU for a specific site. Therefore this approach is not recommended.

- parcels with biodiversity value (listed below) should be zoned C2 Environmental Conservation.
 - Map Item 8 – 30 Cessnock Street Kitchener that are proposed to be zoned RE1;
 - Map Item 9 – Bailey Park, Abermain that are proposed to be zoned RE1;
 - Map Item 30 – Various R2 / RE1 parcels at Cessnock / Bellbird that are proposed to be zoned C3;
 - Map Item 36 – Kendall, Cambage and Sparke Street Bellbird that are proposed to be zoned C3;
 - Map Item 45 – Mitchell Avenue Kurri Kurri that are proposed to be zoned C3; and
 - Map Item 63 – Quorrobolong Road Kitchener that are proposed to be zoned RU2 and SP2.

Planning Response:

- ***Map Amendment 8 has been removed from the Planning Proposed due to a potential inconsistency with Ministerial Direction 4.4, Remediation of Contaminated Land.***
- ***Map Amendment 9 has been excluded pending further investigation in the Environmental Land Planning Proposal associated with the Comprehensive LEP review.***
- ***In relation to Map Amendment 30 and 36, the C3 Environmental Management Zone considered by Council staff to be the most appropriate land use zone for the site, on the basis that flooding constrains the majority of the land. In accordance with LEP Practice Note PN 09-002, the C3 Environmental Management Zone is the most appropriate to reflect the flood hazard.***
- ***In relation to Map Amendment 45, the Planning Proposal has been amended to reflect the C2 Environmental Conservation Zone, on the basis the land contains biodiversity value.***
- ***In relation to Map Amendment 63, the site is presently zoned RU2 Rural Landscape and SP2 Infrastructure. The Planning Proposal does not seek to amend the land use zones that apply to the site. Further consideration will be given to the appropriate land use zone for the site in the Environmental Land Planning Proposal associated with the Comprehensive LEP review.***

Mindaribba Local Aboriginal Land Council

No written response was received from Mindaribba Local Aboriginal Land Council within the specified agency consultation timeframe.

NSW Rural Fire Service

No written response was received from NSW Rural Fire Service within the specified agency consultation timeframe.

STRATEGIC LINKS

a. Delivery Program

The Planning Proposal is consistent with the following themes and objectives of the Cessnock 2027 Community Strategic Plan (CSP):

- Objective 3.1 – Protecting and enhancing the natural environment and rural character of the area
- Objective 3.2 – Better utilisation of existing open space
- Objective 5.2 – involving more community participation in decision making

Objective 3.1 and 3.2 of the CSP focus on the conservation and preservation of the natural environment while balancing the impact of development to ensure a sustainable and healthy community. The Planning Proposal seeks to apply appropriate land use zones to protect our environmental amenity, waterways and green corridors, which connect our open space areas.

Objective 5.2 of the CSP focuses on involving the community in decision making processes affecting their future. Consultation is an important component of the Planning Proposal process and ensures outcomes align with the community's expectations in relation to recreation and open space areas and the environment.

b. Other Plans

Hunter Regional Plan 2036

The Planning Proposal is consistent with the following directions of the Hunter Regional Plan (HRP) 2036:

- Direction 14 - protect and connect natural areas; and
- Direction 18 - enhance access to recreational facilities and connect open spaces

Direction 14 of the HRP 2036 identifies the need to strengthen biodiversity corridors. Many of the proposed amendments contained in the Planning Proposal relate to land that contains important environmental characteristics, including significant vegetation, threatened species or endangered ecological communities. To this land, the Planning Proposal is seeking to apply an environmental zone, consistent with Council's comprehensive environmental zone review.

Direction 18 of the HRP 2036 outlines the need for Council's to expand on the recreational facilities that already exist to create a 'green grid' across the Hunter Region. The first step in this process is to accurately reflect (through the LEP) the correct location of public and private open space in the Cessnock Local Government Area.

Greater Newcastle Metropolitan Plan 2036

The Planning Proposal is consistent with the following strategies of the Greater Newcastle Metropolitan Plan (GNMP) 2036:

- Strategy 7 – respond to the changing land use needs of the new economy;
- Strategy 10 – create better buildings and great places; and
- Strategy 11 – create more great public spaces where people come together.

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Strategy 7 of the GNMP 2036 identifies the need to build capacity for new jobs in areas well serviced by public transport and close to established centres. The proposed RE1 Public Recreation Zone and RE2 Private Recreation Zone land use table amendments will enable greater flexibility for compatible employment generating development to occur within the zones, while prohibiting uses that are considered incompatible. Employment generating uses that are considered compatible with the recreation zones include: entertainment facilities, function centres, information and education facilities, markets and restaurants or cafes.

Strategy 10 of the GNMP 2036 identifies the need to improve the amenity of our centres and urban renewal corridors through place making initiatives that strengthen the connection between people and the places they share. The Planning Proposal will reinforce the role of recreation and open space in Cessnock's towns and villages by applying a consistent zoning regime and broadening the scope of permissible development in open space land throughout the LGA.

Strategy 11 of the GNMP 2036 identifies the need to create and activate public spaces in strategic centres that are suitable for community events like markets, festivals, commemorations and assemblies. The proposed RE1 Public Recreation Zone and RE2 Private Recreation Zone land use table amendments will enable greater flexibility for community events, markets and assemblies to occur by permitting entertainment facilities, function centres, information and education facilities, markets and restaurants or cafes in the recreation zones.

Cessnock Local Strategic Planning Statement 2036

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 endorsed LSPS, notably Action 5, which outlines the need to review the LEP 2011 to bring about the following outcomes:

- To provide flexibility for new tourism development in suitable locations.
- To ensure permitted development is consistent with the objectives of each zone.
- To examine the urban release areas and rezone riparian corridors to an appropriate environmental zone.
- To ensure significant riparian corridors and water bodies are zoned to an appropriate environmental zone.
- To ensure that the zoning and land-uses for land that is significantly affected by natural hazards (e.g. flooding and bushfire) reflect the risk.
- To ensure major events are permitted in strategic centres and other suitable locations.
- To enable land-uses that support events, such as tourist and visitor accommodation, function centres, to be permissible in strategic centres and other suitable locations.

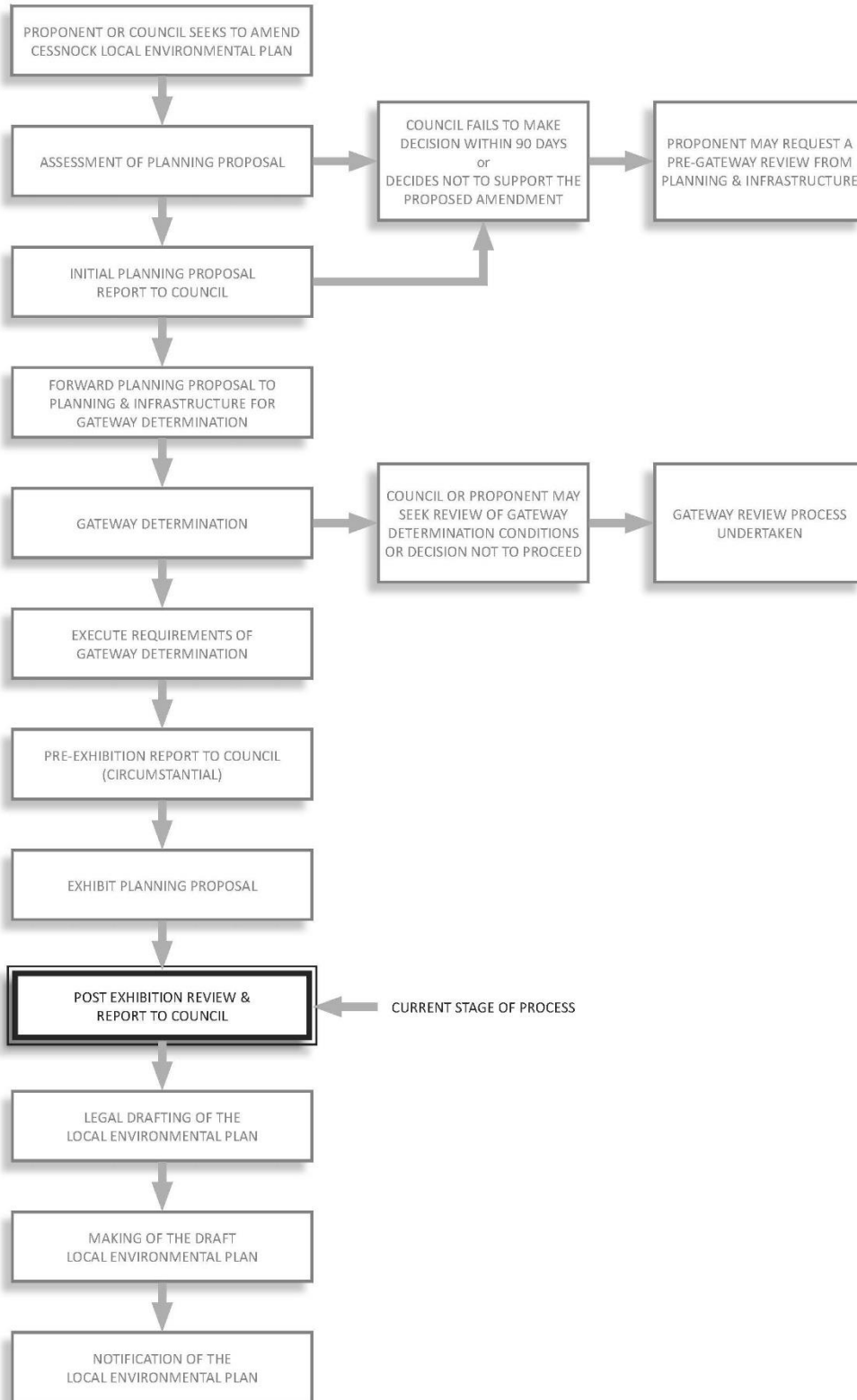
IMPLICATIONS

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



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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

Many of the proposed amendments contained in the Planning Proposal relate to land that contains important environmental characteristics, including significant vegetation, threatened species or endangered ecological communities. To this land, the Planning Proposal is seeking to apply an environmental zone, consistent with Council's comprehensive environmental zone review.

f. Other Implications

Nil

CONCLUSION

This report and the associated planning proposal relate to the recreation land theme of the comprehensive LEP 2011 review. The Planning Proposal recommends various amendments to the Cessnock RE1 Public Recreation Zone and RE2 Private Recreation Zone land use tables and LEP 2011 maps. It is recommended to forward the Planning Proposal to the Department of Planning and Environment (DPE) to finalise the LEP.

ENCLOSURES

- [1](#) Summary of Issues Raised During Public Exhibition
- [2](#) Planning Proposal

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SUBJECT: *PLANNING PROPOSAL 18/2021/4 MOLLY WORTHINGTON NETBALL COURTS - UPDATE*

RESPONSIBLE OFFICER: *Strategic Planning Manager - Martin Johnson*

SUMMARY

The purpose of this report is to provide Council with an update of advice received from the Department of Planning and Environment (DPE) in relation to the Planning Proposal to reclassify the Molly Worthington Netball Courts. The report also seeks Council endorsement on how to proceed.

RECOMMENDATION

That Council advise the Department of Planning and Environment that it wishes to withdraw the Planning Proposal.

BACKGROUND

The Molly Worthington Netball Courts site was identified by Council's Strategic Property and Community Facilities Committee for review and was subsequently tabled for reclassification and rezoning at the Ordinary meeting of Council on 15 May 2019.

A planning proposal was subsequently forwarded to DPE on 24 July 2020. The proposal included the reclassification and rezoning of the Molly Worthington Netball Courts site along with several other sites identified by Council for reclassification and rezoning.

A Gateway determination was issued for the planning proposal on 10 November 2020, PP_2020_CESSN_003_00. However, condition 1(a) of the Gateway determination required Council to remove the Molly Worthington Netball Courts site from the planning proposal. In the letter supporting the Gateway determination, DPE advised that the reclassification of the Molly Worthington Netball Courts site was considered premature. Further, DPE advised that the proposal for the Molly Worthington Netball Courts site was inconsistent with Practice Note PN 16-001 and that an alternative site for the public open space facilities should be secured prior to progressing with any reclassification and rezoning of the land.

In response, at the Ordinary meeting of Council held on 19 May 2021 when considering Report W130/2021 Council resolved to endorse Booth Park, at 37 Hopetoun Street Kurri Kurri, as the alternative location for the netball courts and proceed to lodge a new planning proposal with DPE to reclassify the Molly Worthington Netball Courts site from Community to Operational Land.

A planning proposal was subsequently submitted to DPE seeking a Gateway determination. In March 2022 DPE issued a re-submit Gateway determination requesting further information from Council. On 15 June 2022 Council endorsed a response to DPE regarding the additional information. This response as subsequently submitted to DPE and the Planning Proposal updated.

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On 27 September 2022 DPE provided Council with additional advice on how they intend to proceed with the Planning Proposal.

REPORT/PROPOSAL

On 27 September 2022 DPE advised that they were considering refusing the Planning Proposal to reclassify Molly Worthington Netball courts at the Gateway Determination stage.

DPE has stated that Council pursuing an alternative use of the site has some merit. However, seeking to change the land from 'community' to 'operational' while retaining the RE1 Public Recreation zone is not supported. Council has indicated that it intends to rezoning the site in the future however this is not part of the current planning proposal. Essentially a proposed zoning needs to be determined and justified by supporting studies. Without a concurrent rezoning it is unclear to the public and DPE why Council is pursuing the reclassification and what the interim use on the site will be until the site is rezoned.

It is unclear to DPE why the reclassification is being pursued in isolation to a rezoning when Council intends to submit a rezoning planning proposal in the future and has not indicated an intention to change the land use between now and then.

DPE has also advised that the standalone reclassification (without a concurrent rezoning) does not sufficiently demonstrate consistency with the objectives/priorities/actions in relevant regional plan(s). The planning proposal also does not sufficiently demonstrate how the reclassification will facilitate uses on the site under the existing RE1 Public Recreation zone i.e the netball courts are currently permitted in the RE1 zone and with the current community land classification.

A concurrent rezoning of the site would need to be supported by relevant technical studies. These studies such as traffic and economic impact require funding and time to complete. The DPE has also advised that they will not support a deferral of the planning proposal while relevant technical studies are undertaken to justify a change in zoning. The alternative option is for Council to withdrawal the existing planning proposal and resubmit once the relevant information is prepared if Council wishes to pursue the reclassification.

Should Council decide to proceed with the planning proposal and DPE refuses to issue a Gateway determination (effectively canceling the planning proposal), Council does have the ability to request a review of the decision.

OPTIONS

Council is now presented with the following options:

1. Withdraw the current Planning Proposal and advise DPE of this decision.

This is the recommended option

2. Not withdraw the Planning Proposal.

This will likely result in DPE refusing the Planning Proposal.

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3. Request the Planning Proposal be deferred while studies to support a rezoning are completed.

This is not the recommended option. The DPE has also advised that they will not support a deferral of the planning proposal while relevant technical studies are undertaken to justify a change in zoning. This will likely result in DPE refusing the Planning Proposal.

4. Withdraw the current Planning Proposal, advise DPE of this decision and engage a consultant to prepare studies to support a rezoning and reclassification of the site.

If Council wishes to pursue the reclassification, supporting studies to justify a rezoning will need to be prepared. The Council resolution would need to nominate a zoning on the site such as B2 Local Centre.

Supporting studies including (but not limited to) Traffic Impact Assessment, Economic Impact Assessment and Contamination Assessment would need to be completed. An estimated cost to complete these studies is \$50,000 to \$75,000.

A new planning proposal including a rezoning and reclassification can be submitted once supporting studies are completed.

CONSULTATION

This report has been prepared following advice from DPE.

The proposal has not yet been publicly exhibited as it has not received Gateway determination.

STRATEGIC LINKS

a. Delivery Program

Objective 3.2 Better utilisation of existing open space.

b. Other Plans

The following Strategic Plans are relevant to the proposal. Each of these is addressed in detail in the Planning Proposal.

- Hunter Regional Plan 2036
- Draft Hunter Regional Plan
- Greater Newcastle Metropolitan Plan 2036
- Cessnock Local Strategic Planning Statement
- Recreation Open Space Strategic Plan
- Kurri Kurri District Strategy

IMPLICATIONS

a. Policy and Procedural Implications

This report has regard to the provision of the *Environmental Planning and Assessment Act 1979* and associated Regulations.

b. Financial Implications

As the Planning Proposal is Council initiated fees have not been charged.

If Council wishes to pursue the reclassification, supporting studies to justify a rezoning will need to be prepared. The Council resolution would need to nominate a zoning on the site such as B2 Local Centre. Supporting studies including (but not limited to) Traffic Impact Assessment, Economic Impact Assessment and Contamination Assessment would need to be completed. An estimated cost to complete these studies is \$50,000 to \$75,000

Preparing the new planning proposal and managing a consultant to complete the supporting studies would be funded from the Strategic Planning Consultants budget. This is likely to impact on other projects currently being delivered by the Strategic Planning Section as staff time and resources will be redirected to this planning proposal. Projects such as the comprehensive LEP and DCP review and Villages Strategy may be impacted, meaning their delivery will be delayed. The current Consultant budget within the Strategic Planning Section is fully committed to 2022-23 Operational Plan and Work Program projects. The use of the Consultant budget will mean that projects already underway or programmed for 2022-23 will be either delayed or deferred.

c. Legislative Implications

This report has regard to the provisions of the *Environmental Planning & Assessment Act 1979* and its Regulations. Practice note *PN 16-001 Classification and reclassification of public land through a local environmental plan* has also been considered.

d. Risk Implications

If Council does not withdraw the Planning Proposal there is a risk DPE will refuse the planning proposal.

e. Environmental Implications

Nil

f. Other Implications

Nil

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CONCLUSION

DPE has advised that the Planning Proposal is likely to be refused as it does not include a concurrent rezoning. Council now must determine whether to withdraw the planning proposal prior to DPE determining the Gateway request.

ENCLOSURES

There are no enclosures for this report

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SUBJECT: *COMMUNITY PARTICIPATION PLAN REVIEW*

RESPONSIBLE OFFICER: *Strategic Planning Manager - Martin Johnson*

SUMMARY

The purpose of this report is to outline proposed amendments to the Community Participation Plan (CPP) and seek Council's endorsement for its public exhibition.

RECOMMENDATION

- 1. That Council place the draft Community Participation Plan on public exhibition for a minimum period of 28 days.**
- 2. That Council receive a further report following public exhibition of the draft Community Participation Plan.**

BACKGROUND

In 2018, amendments to the *Environmental Planning and Assessment (EP&A) Act, 1979* mandated the requirement for all NSW planning authorities to have a Community Participation Plan (CPP). For the purposes of the Act, Council is a Planning Authority, therefore must have an adopted CPP.

Council's current CPP was adopted in November 2019. It outlines how and when Council will engage with the community on strategic and statutory planning matters, as legislated by the *EP&A Act, 1979*. The document also outlines best practice guidelines for planning matters that are not legislated by the *EP&A Act, 1979*. It provides guidance on how long and where Council will notify developments or planning matters and how the community can have a say on planning and development matters.

Changes in legislation, engagement techniques and communication platforms have triggered a need to review the current document. This has also presented an opportunity to make the document clearer for the public to read and participate in planning matters.

REPORT/PROPOSAL

The revisions to the CPP are proposed to make it clearer and easier for community members to understand how they are able to participate in the planning process.

The amendments as contained within the draft CPP (**Enclosure 1**) are outlined below.

Simplification of content

The changes made to the document are to streamline the reading experience of the public, making it concise and only contain essential information.

Planning and Environment

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Planning and Environment



Criteria for submissions and/or objections

The draft CPP introduces criteria for what a submission should contain and guidelines for what constitutes a submission as opposed to an objection, and how group submissions (e.g. petitions) will be considered.

Opportunities for inclusive communication

Changes have been made to provide opportunities and assist people with difficulty writing or low levels of literacy to be assisted in making a submission.

Newspaper notification

As a result of amendments to the *EP&A Act, 1979* in 2020, it is no longer mandatory to notify statutory documents in newspapers. The amendments to the CPP seek to reflect this change.

Council will no longer use the newspaper for the purposes of notifying all planning matters. However, use of newspapers advertisements will still be an optional notification / communication strategy for some larger scale projects (at Council's discretion).

Strategic planning and development application projects will still be required to be exhibited in public venues such as libraries and on the Council website.

Development not requiring notification

The *EP&A Act, 1979* enables Councils, through their CPPs, to identify types of development applications that will not require public notification.

A range of development types are proposed to be included in the CPP for this purpose (subject to particular criteria being met). The majority of the uses proposed to be exempted from notification are predominantly those which might be permissible as complying development (such as dwelling houses, two lot residential subdivisions, dual occupancies, changes of use etc.). As complying development, they can be approved by Council or a Private Certifier without notifying adjoining land holders.

The removal of notification requirements for similar developments that follow the Development Application (DA) approval pathway is proposed to ensure a consistent approach is applied for all applicants proposing similar types of development, irrespective of the approval pathway.

This change is also proposed to encourage greater levels of engagement at the strategic planning stage, typically where decisions relating to land use planning permissibility and location are made.

OPTIONS

The options of Council are:

1. To endorse the draft CPP for public exhibition for a period of 28 days. The draft CPP provides a streamlined and consistent approach to notification and consultation of planning related matters - this is the recommended option.

Planning and Environment

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Planning and Environment



2. Not support the changes to the draft CPP and continue using the current document. The current CPP is outdated and difficult to interpret. This option is not recommended.

CONSULTATION

The draft CPP has been developed in consultation with staff from:

- Strategic Planning;
- Development Services;
- Building Services;
- Community Engagement; and
- Community Planning.

A Councilor briefing was provided on 7 September 2022.

It is proposed that the draft CPP is publicly exhibited for a period of 28 days, as per the current CPP requirements for this type of planning document.

STRATEGIC LINKS

a. Delivery Program

The draft CPP reflects key themes of the Delivery Programs and aligns with objectives and actions:

- 1.1 Promoting social connections and wellbeing
 - 1.1.3 Continue implementation of the Disability Inclusion Action Plan
- 5.3 Ensuring Council is accountable and responsive to the community:
 - 5.3.3 Efficiently and effectively process development applications and respond to planning enquiries
 - 5.3.6 Undertake Service Delivery reviews and implement recommendations to improve productivity throughout Council
 - 5.3.7 Continue to manage Council governance functions and statutory requirements

b. Other Plans

The draft CPP has a direct link to future strategic plans, masterplans or amendments to existing strategic plans as it defines how Council will engage with the community on planning related matters, where Council acts as Planning Authority under the *EP&A Act, 1979*.

The draft CPP guidelines are consistent with Council's Community Engagement Strategy.

IMPLICATIONS

a. Policy and Procedural Implications

The draft CPP applies to the Planning and Environment Directorate and specifically relate to the processes utilised to undertake public exhibition and receiving submissions/objections across the range of planning matters managed by Development Services and Strategic Planning.

The changes to development proposed to be exempted from notification will have the most significant impact to Development and Building Services. It will reduce approval waiting times and reduce administrative processing.

b. Financial Implications

There will be a reduced cost for public exhibition as Council will less frequently pay for advertisement in local newspapers.

c. Legislative Implications

The draft CPP was developed in line with the relevant provisions of the *EP&A Act, 1979*, the *Environmental Planning and Assessment Regulation 2021*, and the *Local Government Act, 1993* (in relation to reclassification of public land).

d. Risk Implications

Nil

e. Environmental Implications

Nil

f. Other Implications

Nil

CONCLUSION

The proposed changes to the CPP streamline the document, removing unnecessary information, thereby making it easier for the general public to understand.

Inclusion of additional developments not requiring notification will fast track specific DAs and reduce some of the administration burden of Council's Development and Building Services.

ENCLOSURES

[1](#) Draft Community Participation Plan

Corporate and Community

Report No. CC80/2022

Corporate and Community Services



SUBJECT: *MINUTES OF THE ABORIGINAL AND TORRES STRAIT ISLANDER ADVISORY COMMITTEE MEETING OF THE CESSNOCK CITY COUNCIL HELD 23 SEPTEMBER 2022*

RESPONSIBLE OFFICER: *Community & Cultural Development Manager - Natalie Drage*

RECOMMENDATION

1. That the Minutes of the Aboriginal and Torres Strait Islander Advisory Committee meeting held on 23 September 2022 be adopted as a resolution of Ordinary Council.
2. That Council adopt the Aboriginal and Torres Strait Islander Advisory Committee Charter.
3. In reviewing the Draft Consultation Protocol for the Referral of Matters to the Cessnock City Council Aboriginal and Torres Strait Islander Advisory Committee the General Manager consider preparing a briefing to the Aboriginal and Torres Strait Islander Advisory Committee on Development Applications and consultation.

MINUTES OF THE ABORIGINAL AND TORRES STRAIT ISLANDER ADVISORY COMMITTEE MEETING OF THE CESSNOCK CITY COUNCIL HELD IN THE SENIOR'S MEETING ROOM AT CESSNOCK PERFORMING ARTS CENTRE ON FRIDAY, 23 SEPTEMBER 2022, COMMENCING AT 9.15AM

PRESENT: Councillor Burke
Councillor Watton
Councillor Grine
Uncle Richard Edwards (Community Representative)
Ms Tara Dever (Community Representative)
Ms Lucy Reed (Community Representative)
Ms Cheryl Kitchener (Community Representative)
Ms Tracey Skene (Community Representative)

IN ATTENDANCE: Mr Martin Johnson - Acting Director Planning and Environment (Strategic Planning Manager)
Mr Matthew Plumridge - Acting Director of Corporate and Community Services (Chief Financial Officer)
Ms Kate Harris - Recreation and Open Spaces Manager
Ms Natalie Drage – Community & Cultural Development Manager
Mr Lyall Green – Vegetation and Civic Space Coordinator
Ms Ellen Murphy – Minute Taker

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APOLOGIES

Mayor Suvaal
Mr Ken Liddell (General Manager)
Ms Sonia Sharpe (Community Representative)

ACKNOWLEDEMENT OF COUNTRY

The meeting was chaired by Councillor Burke.

CONFIRMATION OF MINUTES

MINUTES:

RECOMMENDED that the Minutes of the Aboriginal and Torres Strait Islander Advisory Committee held on 11 July 2022, as circulated, be taken as read and confirmed as a correct record.

DISCLOSURES OF INTEREST

Nil

LISTED MATTERS

LISTED MATTERS - COMMITTEE NO. AACLM3/2022

SUBJECT: COMMITTEE CHARTER AND CONSULTATION PROTOCOL FOR THE REFERRAL OF MATTERS TO THE COMMITTEE

MOTION **Moved:** Ms Skene **Seconded:** Ms Kitchener

RECOMMENDATION

1. **That the Cessnock City Council Aboriginal and Torres Strait Islander Advisory Committee Charter be adopted.**
2. **That the Draft Consultation Protocol for the Referral of Matters to the Cessnock City Council Aboriginal and Torres Strait Islander Advisory Committee be tabled at the next Committee meeting.**
3. **That the General Manager consider preparing a briefing to the Aboriginal and Torres Strait Islander Advisory Committee on Development Applications and consultation.**

Discussion:

The Committee discussed the Charter and amended item 10.1 Meeting Schedule to read 'The Committee will meet at least four (4) times per year and where possible meet once every two months or as otherwise resolved by the Committee and at various locations across the Cessnock LGA'.

The amended Cessnock City Council Aboriginal and Torres Strait Islander Advisory Committee Charter is enclosed within the Minutes.

In regards to the Draft Consultation Protocol for the Referral of Matters to the Cessnock City Council Aboriginal and Torres Strait Islander Advisory Committee and the schedule for matters that require referral to the Committee, discussed was scoping opportunities to include items related to Land Use Planning and Development Applications. An example was provided for Tweed Shire Council being considered as best practice for consultation with Aboriginal and/or Torres Strait Islander peoples.

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Report No. CC80/2022

Corporate and Community Services



LISTED MATTERS - COMMITTEE NO. AACLM4/2022

SUBJECT: ABORIGINAL CULTURAL AND SPIRITUAL PRINCIPALS RELATING TO ABORIGINAL INTERNMENT REQUIREMENTS

MOTION **Moved:** Ms Kitchener **Seconded:** Uncle Richard Edwards

RECOMMENDATION

That feedback be brought back to the November meeting of the Aboriginal and Torres Strait Islander Advisory Committee in regards to Aboriginal cultural and spiritual practices and requirements for burial and cremation.

Discussion:

The Committee discussed the importance of this item and requested that a copy of the Cemeteries & Crematoria NSW Fact sheet titled Licence conditions – Religious, cultural and spiritual principles be forwarded to the Committee.

Mr Lyall Green – Vegetation and Civic Space Coordinator left the meeting at the conclusion of the report.

Note: At the conclusion of the meeting a date was unable to be agreed to for the proposed November meeting given availabilities and will be held 9:15am on 2 December 2022.

LISTED MATTERS - COMMITTEE NO. AACLM5/2022

**SUBJECT: ABORIGINAL CULTURAL HERITAGE MANAGEMENT PLAN -
CONSULTATION DOCUMENTATION FEEDBACK**

MOTION **Moved:** Uncle Richard Edwards **Seconded:** Ms Reed

RECOMMENDATION

That the Committee hold an additional online meeting in late October to workshop and provide feedback on the draft Memorandum of Agreement, community engagement strategy and engagement notification letter with Virtus Heritage.

Discussion:

The Committee discussed item 5.2 within the Memorandum of Agreement for the preparation of the Aboriginal Cultural Heritage Management Plan and will further consider at the online meeting to be held 2pm on 26 October 2022.

CORRESPONDENCE

Nil

The Meeting Was Declared Closed at 10.16 am

ENCLOSURES

[1](#) Cessnock City Council Aboriginal and Torres Strait Islander Advisory Committee Charter

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Report No. CC81/2022

Corporate and Community Services



SUBJECT: ***CESSNOCK PERFORMING ARTS CENTRE
REFURBISHMENT (QUOTE NUMBER 2022-113)***

RESPONSIBLE OFFICER: ***Community & Cultural Development Manager - Natalie
Drage***

SUMMARY

The purpose of this report is to present Council with the evaluation of tender's submitted for the Cessnock Performing Arts Centre Refurbishment (Quote Number 2022-113). The tender process has been managed by Public Works Advisory and recommended by Public Works Advisory is the tender submitted by North Construction & Building Pty Ltd and is \$2,465,775.53 (includes GST).

RECOMMENDATION

- 1. That Council accepts the tender from North Construction & Building Pty Ltd in the lump sum amount of \$2,465,775.53 (includes GST) for the Cessnock Performing Arts Centre Refurbishment (Quote Number 2022-113).**
- 2. That Council notes \$2,475,060 (excludes GST) has been secured for Cessnock Performing Arts Centre refurbishment construction works.**

BACKGROUND

In 2019 an investigation commenced for the refurbishment of the Cessnock Performing Arts Centre (CPAC) and a concept design prepared by SHAC Pty Ltd (Architects) was tabled to Council's now disbanded Cultural Facilities Committee (Report CFCCLM8/2019, meeting held 24 October 2019).

SHAC Pty Ltd were engaged September 2020 to develop detailed architectural drawings and prepare the required studies for the refurbishment. The refurbishment includes the internal areas previously occupied by Samaritans Foundation and for the ground floor includes relocation of the box office and co-locating with a newly created retail space. Accessibility has also been considered and includes for the ground floor construction of a new ramp and entrance area adjacent to Aberdare Road. The design also includes the installation of a secondary lift connecting the refurbished ground floor with the first floor. For the first floor, the refurbishment includes a maker's space, art exhibition space and a secure art store room. The existing first floor program room will be preserved enabling activities such as drama, dance and music. The refurbishment also includes replacement of Aluminium Composite Panels on the external façade of the building and areas within the venue.

Development Consent was issued 23 February 2021 and the Construction Certificate was issued 10 March 2022, meaning the project is construction ready.

Public Works Advisory were engaged March 2022 to project manage the tender process and to oversee the construction works.

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REPORT

Tender Process

The tendering process was conducted in accordance with the *Local Government (General) Regulation 2021* (the *Regulation*). In accordance with clause 169 of the *Regulation*, Public Works Advisory called for tenders from a list of suitable contractors prequalified by the Buy NSW Scheme for Construction Works over \$1M.

Public Works Advisory invited five contractors to submit a tender via NSW Government E-Tendering portal. A mandatory pre-tender meeting was held at CPAC on 19 July 2022. Tenders were invited on 29 June 2022 and closed 9.30 am on 11 August 2022. Tenders were received from the following companies:-

1. Axis Construction Pty Ltd, Arndell Park
2. MARS Building Pty Ltd, Beresfield
3. North Construction & Building Pty Ltd, Waratah

A Tender Evaluation Plan consistent with the *Regulation* and the Conditions of Tendering in the Request for Tender documents was prepared by Public Works Advisory and endorsed by the Public Works Advisory Tender Evaluation Committee prior to close of tenders.

The evaluation criteria method was price only as all the invited contractors were prequalified. However, the recommended tenderer had to include:-

- satisfactory performance,
- work health safety and environmental management, and
- financial capacity.

To assess tenders against the evaluation criteria, the Public Works Advisory Tender Evaluation Committee used information obtained from the tender documents. The confidential Tender Recommendation Report provided by Public Works Advisory is **Enclosure 1**.

- No late tenders were received.
- All tenderers qualifications and departures (anomalies) from the Request for Tender (RFT) were assessed and added to original tender amounts.
- All tenders were deemed conforming to the Tender Requirements.

The tender from North Construction & Building Pty Ltd was identified as the preferred tender and progressed to the due diligence stage of evaluation. Referee reports and third party financial assessments were considered to be acceptable including a financial check being undertaken by Equifax within the last quarter and with Central Coast Council for a much higher value project. The financial check is provided in Appendix D of the Enclosure.

The Public Works Advisory Tender Evaluation Committee considers North Construction & Building Pty Ltd capable of completing the contract satisfactorily.

TIME FRAME

The Request for Quote provided for a suggested contract period of 30 weeks from the date of commencement. If Council awards the tender and contract documents are exchanged by the close of October 2022 and taking into consideration industry wide construction closure during parts of January this could result in a contract concluding near to July 2023. However, the actual program dates will be confirmed once the contract documentation has been signed by the parties and further confirmation on the availability of building materials.

OPTIONS

There are two options available to Council in regards to this tender. They are:

Option 1

1. That Council accepts the tender from North Construction & Building Pty Ltd in the lump sum amount of \$2,465,775.53 (includes GST) for the Cessnock Performing Arts Centre Refurbishment (Quote Number 2022-113).

This is the recommended option.

Option 2

1. That Council decline to accept the tender from North Construction & Building Pty Ltd in the lump sum amount of \$2,465,775.53 (includes GST) for the Cessnock Performing Arts Centre Refurbishment (Quote Number 2022-113).

Option 2 is not recommended as the Public Works Advisory tender process has achieved a beneficial outcome and will enable delivery of the project in line with the 2022-2023 Operational Plan and the funding deeds in place with the NSW Government.

CONSULTATION

Internal Consultation:

- Team Leader Contracts and Tendering
- Project Manager Infrastructure
- Curator of Creative and Performing Arts
- Infrastructure Manager

External Consultation:

- SHAC Pty Ltd (Architects)
- Public Works Authority

STRATEGIC LINKS

a. Delivery Program

This report links to the Community Strategic Plan – Cessnock 2036 and the community's desired outcome for a connected, safe and creative community.

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The 2022-2026 Delivery Program Objective 1.2 Strengthening Community Culture lists the action 1.2.3 Continue implementation of the Community Infrastructure Strategic Plan.

The 2022-2023 Operational Plan includes action 1.2.4.a Complete stage 1 refurbishment works for the creation of a cultural hub at Performance, Arts, Culture, Cessnock (PACC) and continue to pursue funding opportunities ensuring the facility remains a high-quality cultural venue.

b. Other

The 2031: A Vision for the Future, Community Infrastructure Plan adopted by Council on 15 June 2016 includes action number 8: The inclusion of art gallery space within the CPAC to be investigated and should include a determination as to whether the CPAC should be a space primarily for arts and cultural services.

STATUTORY IMPLICATIONS

c. Policy and Procedural Implications

The tender process has been carried out in accordance with:

- Council’s Procurement Policy
- Council’s Procurement Guidelines
- Tendering Guidelines for NSW Local Government 2009
- NSW Government – Code of Practice for Procurement 2005

d. Financial Implications

The CPAC refurbishment is primarily funded by repealed developer contribution funds and NSW Government grants.

Acceptance of the tender and a contingency amount to administer the contract is funded as shown in Table 1 below.

Table 1 – CPAC Refurbishment

Funding Opportunity/Income Source	Amount
Remaining repealed Contribution Plan Funds (Endorsed by Council 20 May 2020)	\$563,760
Resources for Region Round 7 (Maker’s and gallery exhibition space)	\$309,700
Stronger Country Communities Fund Round 4 (Accessible ramp)	\$200,000
Creative Capital – Medium to Large Projects (Ground floor refurbishment)	\$1,257,039
Proceeds from the sale of the former art gallery (Property Investment Fund)	\$144,561
TOTAL (GST Excluded)	\$2,475,060

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The tender supplied by North Construction & Building Pty Ltd without GST is \$2,241,614.12 and with GST is \$2,465,775.53.

Also available in the event additional contingency is required is \$250,000 set aside for the CPAC and these funds are held in the miscellaneous and property reserve. If access to these funds are required the matter will be reported to Council.

e. Legislative Implications

Public Works Advisory has the authority to undertake procurement arrangements for public bodies under the *Public Works and Procurement Act 1912 No 45* and the *Public Works and Procurement Regulation 2019*.

Acceptance of the tender from North Construction & Building Pty Ltd is in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.

The tender process has followed the legislative provisions referenced in Council's Procurement Policy and CCC Procurement Procedure which are as follows:

- *Local Government Act 1993*
- *Local Government (General) Regulation 2021*

In particular, reference is made to Part 7, Division 4, Clause 178 of the *Local Government (General) Regulation 2021* (Acceptance of tenders):

1. After considering the tenders submitted for a proposed contract, the Council must either:
 - (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
 - (b) decline to accept any of the tenders.
2. A Council must ensure that every contract it enters into as a result of a tender accepted by the Council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the Council (as provided for in section 55 (2A) of the Act), the Council is not required to enter into any contract in order to carry out the requirements of the proposed contract.
3. A Council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:
 - (a) postpone or cancel the proposal for the contract,
 - (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
 - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,

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- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
 - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
 - (f) carry out the requirements of the proposed contract itself.
4. If a Council resolves to enter into negotiations as referred to in sub clause (3) (e), the resolution must state the following:
- (a) the Council's reasons for declining to invite fresh tenders or applications as referred to in sub clause (3) (b)–(d),
 - (b) the Council's reasons for determining to enter into negotiations with the person or persons referred to in sub clause (3) (e).

Note: Where "tender" referred to above may be substituted with 'quote'.

f. Risk Implications

Council's exposure to business risks has been managed by Public Works Advisory mandating provision of the following information to be included in the tender submission:

- Financial capacity
- Previous experience
- Management and staff resources
- Quality assurance
- Work health & safety system and insurances.

Regarding safety, the Contractor is required to prepare a site-specific Safety Management Plan including:

- Traffic Control Plans. Traffic issues will be managed through the construction period in accordance with these plans.
- Requirements for on-site workers to have current general construction induction cards (white card) and licenses/tickets and inducted to the site.
- Safe Work Method Statements, which are kept on site and the subject of tool box talks.

g. Other Implications

Resolved by Council on 21 July 2021 was a change of name from Cessnock Performing Arts Centre (CPAC) to Performance, Arts, Culture, Cessnock (PACC) and the replacement of signage is included in the tender. Once the signage has been replaced and installed the facility will complete its transition to its new name and will be known as Performance, Arts, Culture, Cessnock (PACC).

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CONCLUSION

Acceptance of the tender from North Construction & Building Pty Ltd in the lump sum amount of \$2,465,775.53 (includes GST) offers the best value for money for the CPAC Refurbishment. The contract sum is to be fully funded from the project budget identified in this report.

ENCLOSURES

- 1** Tender Recommendation from Public Works Advisory for Cessnock Performing Arts Centre Refurbishment - *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.*

Corporate and Community

Report No. CC82/2022

Corporate and Community Services



SUBJECT: *RATES SUBSIDY POLICY REVIEW*

RESPONSIBLE OFFICER: *Chief Finance Officer – Matthew Plumridge*

SUMMARY

The purpose of this report is to allow Council to consider proposed amendments to the Rates Subsidy Policy following the scheduled Policy review timeline. This Policy will ensure that Council remains fair, reasonable and transparent when dealing with the ratepayers of the Local Government Area (LGA).

RECOMMENDATION

1. **That Council places the revised Rates Subsidy Policy on public exhibition for a period of 28 days.**
2. **If there are no public submissions received that the Rates Subsidy Policy be automatically adopted at the end of the exhibition period.**

BACKGROUND

Council's Rates Subsidy to Community Organisations Policy (Policy) provides a framework for Council's recognition of, and assistance to, rate-paying local community organisations who contribute to the betterment of the LGA. Council can provide financial assistance to these organisations in the form of an annual rates subsidy.

REPORT/PROPOSAL

The current Policy was last revised on 17 April 2019, where significant changes were made to document the principles for granting the subsidy and also to document the process.

In the Policy, the following definitions apply:

Community Organisation means all voluntary community groups, service organisations, community services, sporting groups, arts organisations, heritage societies and other organisations that come under the definition of "not-for-profit".

Not-for-profit means a non-government group or organisation that is not operating for the profit or gain of its individual members, whether those gains would be direct or indirect.

The grant of a rates subsidy by Council is governed by the provisions of the *Local Government Act 1993* (the Act). Council has decision-making authority for approval of the grant of a rates subsidy under section 356 of the Act. Section 377(q) of the Act stipulates that Council cannot delegate this authority.

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Changes to the current policy for consideration

The current adopted Policy does not specify any responsibilities around the compliance, monitoring and review; reporting; and records management. The revised Policy proposes responsibilities for each of those functions.

The current adopted Policy does not specify dates by which the applications need to be received by Council. The revised Policy suggests an adjustment to those dates to allow Council staff to process the applications in time for the monthly council meeting.

OPTIONS

The following are options available to Council:

Option 1 – preferred option

- 1. That Council places the draft Rates Subsidy Policy on public exhibition for a period of 28 days.**
- 2. If there are no public submissions received that the Policy be automatically adopted at the end of the exhibition period.**

Option 2

Council considers the Policy and proposes amendments.

Option 3

That Council continues with the current adopted Policy with no changes.

CONSULTATION

Rates Team
Finance Operations and Administration Coordinator
Director Corporate & Community Services

As the Policy has a significant effect on the community, it is considered that public exhibition will be required. At the end of that exhibition period, Council may adopt the Policy or seek further amendment and/or consultation.

STRATEGIC LINKS

a. Delivery Program

The rates policies are consistent with 'Objective 5.3 – Ensuring Council is accountable and responsive to the community of Cessnock Delivery Program 2022-2026 and the following Strategic Direction:

- Our Council's processes are efficient and transparent.

This report also links with the community's desired outcome of: "*Civic Leadership and Effective Governance*"

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b. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

The proposed changes provide a clear, objective and transparent approach to the administration of the rates subsidy that Council is able to grant to eligible community organisations.

b. Financial Implications

Council currently budgets for a total rates subsidy amount each financial year. There will be a risk of the actual total rates subsidy quantum exceeding the budgeted amount if there are more applications received than anticipated, and Council resolves to grant those applications.

c. Legislative Implications

The Policy is in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021* and as a result there is no legislative impact.

d. Risk Implications

The new Policy provides a clear, standardised and transparent methodology for the administration of rates subsidies granted to eligible community organisations. Given the proposed new eligibility principles and the proposed new annual application process, there may be a critical reaction from some stakeholders in the community who are sceptical of change in general. This reaction will be mitigated by an explanation of the enhanced efficacy, clarity and objectivity of the draft policy over the current policy.

e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

The revised Rates Subsidy Policy establishes a governing framework for the determination and administration of requests for the grant of a rates subsidy to community organisations under section 356 of the *Local Government Act 1993*, ensuring consistency, equity, transparency and financial sustainability in order to maximise benefit to the community of the Cessnock Local Government Area.

ENCLOSURES

[1](#) Draft - Rates Subsidy Policy

Corporate and Community

Report No. CC83/2022

Corporate and Community Services



SUBJECT: ***ANNUAL UNREASONABLE CUSTOMER CONDUCT REPORT***

RESPONSIBLE OFFICER: ***Chief Financial Officer - Matthew Plumridge***

SUMMARY

The purpose of this report is to present the Annual Unreasonable Customer Conduct Report for the period 1 October 2021 to 30 September 2022 (Reporting Period) as per the Unreasonable Customer Conduct (UCC) Policy.

RECOMMENDATION

That Council notes the Annual Unreasonable Customer Conduct report for the period 1 October 2021 to 30 September 2022, and that two individuals were deemed to have displayed unreasonable behaviour as defined in the Policy.

BACKGROUND

The UCC Policy was adopted by Council on 18 September 2019 and this report is provided in accordance with clause 21.1 of the Guideline which provides:

- 21.1 *An information report will be presented to the elected Council annually detailing the number of persons deemed to have behaved unreasonably, why they were deemed unreasonable and how Council is handling/managing each Customer in response to their behaviour, including any restrictions imposed and the review date.*

REPORT/PROPOSAL

For the Reporting Period the UCC Register showed that two individuals were deemed to have displayed unreasonable behaviour as defined in the Policy.

There were eight people who had previously been deemed unreasonable prior to the adoption of the UCC Policy and this reporting period, two of which have since had their restrictions lifted and six which have no expiry date for various reasons.

Due to the ongoing and serious nature of the unreasonable persistence and unreasonable arguments of these six UCCs, Council has imposed restrictions to the effect that correspondence/enquiries in relation to that specific matter will be noted with no action to be taken and this has no expiry date at this stage. This is to ensure Council can manage the UCC in a manner that is safe for staff and other customers. Those affected by ongoing restrictions have the ability to request a review of the restriction; however it would need to be supported by an extended period of exemplary behaviour in accordance with the UCC Policy.

The UCC Policy outlines the following restrictions that Council may impose when Unreasonable Conduct has been established:

6.1. Changing or Restricting a Customer's Access to Council Services or Facilities

6.1.1. Incidents involving Unreasonable Customer Conduct will generally be managed by limiting or adapting the ways that Council interacts with and/or delivers services to Customers by restricting:

- i. Who they have contact with – e.g. limiting a Customer to a sole contact person/Council Official.*
- ii. What they can raise with Council – e.g. restricting the subject matter of communications that Council will consider and respond to.*
- iii. When they can have contact – e.g. limiting a Customer's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with Council.*
- iv. Where they can make contact – e.g. limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the office.*
- v. How they can make contact – e.g. limiting or modifying the forms of contact that the Customer can have with Council. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to Council premises, contact through a representative only, taking no further action or terminating Council services altogether.*

6.1.2. When using the restrictions provided in this section, Council recognises that discretion will need to be used to adapt them to suit a Customer's personal circumstances, level of competency, literacy skills, etc. In this regard, Council also recognises that more than one strategy may need to be used in individual cases to ensure their appropriateness.

Categories of Behaviour:

As per the UCC Policy the following are the behaviour categories:

- Unreasonable persistence;
- Unreasonable demands outside the scope of Council's scope and capacity for provision of services;
- Unreasonable lack of cooperation;
- Unreasonable arguments; and
- Unreasonable behaviours.

Table 1 shows the number of UCCs dealt with in the current and previous reporting periods.

Table 1 – UCC Comparative

Behaviour Category	Current Period (1 Oct 21 – 30 Sep 2022)	Previous Period (1 Oct 20 – 30 Sep 2021)	Previous Period (19 Sep 19 – 30 Sep 2020)
Unreasonable arguments	0	0	1
Unreasonable behaviours	2	5	7
Total	2	5	8

Restrictions:

Most restrictions have a 12 month review date at which time the customer is invited to outline any reasons to support their restriction being lifted.

In the Reporting Period, the Public Officer imposed various types of restrictions including contacting Council in writing only and restricted access to Council facilities.

- One was restricted to contact in writing only to the Public Officer for unreasonable behaviour regarding their matter, they were given a 12 month restriction with a review to remove or extend after 12 months.
- One was expelled from Council's Waste Depot for unreasonable behaviour with a 12 month restriction from entering the specific facility.

Table 2 – Restriction Summary

Restriction Imposed	Current Period (1 Oct 21 – 30 Sep 2022)	Previous Period (1 Oct 20 – 30 Sep 2021)	Previous Period (19 Sep 19 – 30 Sep 2020)
Warning Issued only	0	1	3
In writing to the Public Officer	1	2	1
Noted / No Action	0	0	1
Restricted from using Council Facility	1	2	2
Restricted contact at all Council facilities	0	0	1
Total	2	5	8

Restrictions Reviewed in previous 12 months:

When the Public Officer reviews any restrictions imposed the customer is invited to provide reasons to support their restriction being lifted. The table below shows the number of restrictions reviewed in the reporting period, with four restrictions reviewed of which one was restricted prior to the UCC Policy being adopted in September 2019.

Corporate and Community

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Table 3 – Restrictions Reviewed

Review Date	Type of Behaviour	Type of Restriction	Review Outcome
1/10/2021	Unreasonable behaviours	Pool Expulsion	Restriction Removed
1/10/2021	Unreasonable behaviours	Pool Expulsion	Restriction Removed
23/03/2022	Unreasonable behaviours	Restrict contact at all Council facilities	Restriction Removed
19/07/2022	Unreasonable behaviours	Restricted from using Library facilities	Restriction Removed

There are two outstanding restrictions due for review in the next 12-month reporting period, all for unreasonable behaviours.

Table 4 – Restrictions Remaining

Review Date	Type of Behaviour	Type of Restriction
11/10/2022	Unreasonable behaviours	Waste Depot expulsion
04/04/2023	Unreasonable behaviours	In writing to the Public Officer only

OPTIONS

N/A

CONSULTATION

Executive Leadership Team
Governance Team

STRATEGIC LINKS

a. Delivery Program

Council’s UCC Policy and Guidelines are 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

This report is provided in accordance with clause 21.1 of the Guidelines of the Unreasonable Customer Conduct Policy, which requires an annual report to Council on customers deemed to have exhibited unreasonable conduct in accordance with the Policy.

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b. Financial Implications

N/A

c. Legislative Implications

N/A

d. Risk Implications

The appropriate management of UCC assists to ensure the safety of Council employees and users of Councils facilities, and outlines the expected standards of behaviour for both Council officials and customers.

e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

This report is provided to Council on customers deemed to have exhibited unreasonable conduct in accordance with the Policy.

ENCLOSURES

There are no enclosures for this report.

Corporate and Community

Report No. CC84/2022

Corporate and Community Services



SUBJECT: *INVESTMENT REPORT - SEPTEMBER 2022*

RESPONSIBLE OFFICER: *Chief Finance Officer – Matthew Plumridge*

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 September 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 \$85,050,255.

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 September 2022 were 1.50% per annum, below the benchmark of 1.69% of the Investment Policy. It is likely until term deposits are renewed that the performance will be below the benchmark however new investments are returning higher yields than over the last few years as demonstrated on Table 1 below.

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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 2.35% during a scheduled RBA Board meeting held on 6 September 2022. This is an increase of 0.50% from earlier rate of 1.85% in August 2022, the fifth increase in as many months. 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 has recently engaged Prudential Investment Services Corp for investment advice. In the September 2022 Economic and Investment Portfolio Commentary, Prudential note "The market increased its cash rate expectation over the past month, pricing in a 4% cash rate by the end of the 2022/23 Financial Year, up from an expected 3.85% in August."

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 September 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			0.00%	10,841
	Commonwealth Bank	At Call			0.01%	41
1243	AMP Bank	At Call			0.50%	501
1410b	National Bank	TD	442	15-Dec-22	0.40%	1,000
1435a	National Bank	TD	392	06-Oct-22	0.40%	1,000
1436a	National Bank	TD	400	20-Oct-22	0.40%	1,000
1437a	National Bank	TD	435	15-Dec-22	0.42%	1,000
1471	Macquarie bank	TD	392	06-Oct-22	0.40%	1,000
1472	AMP Bank	TD	735	14-Sep-23	0.75%	1,000
1473	National Bank	TD	399	20-Oct-22	0.40%	2,000
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 Bank	TD	490	13-Apr-23	0.80%	4,000
1478	Suncorp Bank	TD	518	15-Jun-23	0.90%	3,000
1479	Commonwealth Bank	TD	282	10-Nov-22	0.59%	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
1463	Treasury Corporation	Growth Fund				3,667
TOTAL						85,050

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%	22,000	29.86%
Westpac Bank	AA-	40%	20,000	27.15%
National Bank	AA-	40%	10,000	13.57%
Suncorp Bank	A+	40%	7,000	9.50%
Macquarie Bank	A+	40%	1,000	1.36%
AMP Bank	BBB	5%	5,000	6.79%
Bank Of Queensland	BBB+	10%	5,000	6.79%
Treasury Corporation	Unrated	10%	3,667	4.98%
TOTAL			73,667	100.00%

Corporate and Community

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Corporate and Community Services



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 rate.

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.

TCorp operates pooled funds, whereby its clients' investments are combined with those of other investors. This pool is used to buy investments that are managed on behalf of all investors in the fund. TCorpIM Funds are unit trusts. Upon investing in a fund, investors are allocated units in the fund. The value of an investment in the fund will vary as the fund's daily unit price changes to reflect increases or decreases in the market value of the fund's underlying assets.

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, and gains or losses will only be realised on redemption of the investment, any unrealised gains or losses will be processed between investments and equity in the accounts, not through the operating statement. The unrealised loss on this investment for the 2021-22 financial year was \$423,360.

Each month Council processes returns based on statements from TCorp. The September unrealised return was a loss of \$72,102 or -1.93%, bringing the Year to Date (YTD) returns to \$599 or 0.02%. 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 30 September 2022 is provided below. 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	4.36	3.14	0.09	(7.47)	0.02	(1.93)
Benchmark: CPI + 2.0% p.a. (over rolling 7 years)	4.33	4.31	5.13	7.56	1.93	0.64
Return above benchmark p.a.	0.03	(1.17)	(5.04)	(15.03)	(1.91)	(2.57)

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	50,000	76.86%
Cash/At Call Deposits	Low	Low	11,383	17.50%
Capital Growth Fund	Medium	Medium	3,667	5.64%
TOTAL			65,050	100.00%

Table 5 Comparison of interest rates, earnings and balances this year to last year

Performance Measures	This Year	Last Year
Portfolio Average Interest Rate (year to date)	1.50%	0.38%
BBSW Average Interest Rate (year to date) *	1.69%	0.02%
Actual Investment Interest Earned (for the current month)	\$118,885	(\$22,351)
Actual Investment Interest Earned (year to date)^	\$271,296	\$23,342
Budget Investment Interest (year to date)	\$95,031	\$52,000
Original Budget Investment Interest (annual)	\$380,122	\$210,000
TCorp unrealised movement (year to date)	0.02%	(0.90%)

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 September	\$85,050,255	\$61,115,280

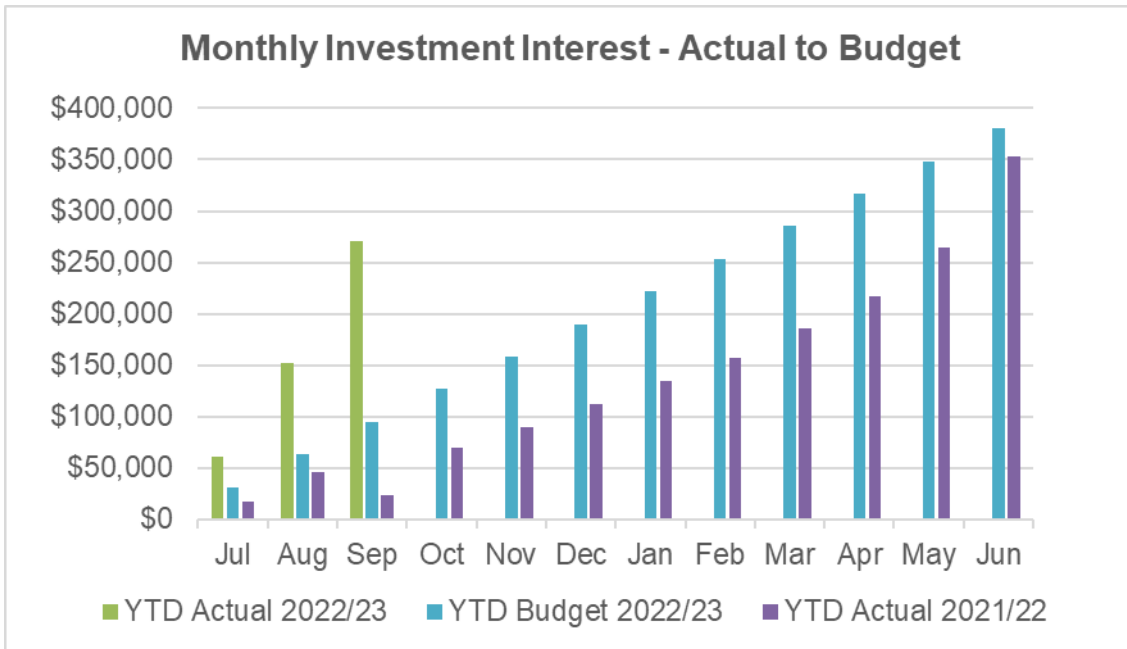
* BBSW 90 day Bank Bill Reference Rate (performance measure as per Council's Investment Policy)

^ Excludes TCorp unrealised returns

Excludes Section 355 Committee cash held



Graph 1 Actual interest earned compared to budget for this year and last year



Corporate and Community

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Corporate and Community Services



Table 6 Internal and external restrictions over cash and investments held

Month End Totals \$'000	September 2022	August 2022	July 2022	June 2022*	May 2022	Apr 2022
Developer contributions	24,493	24,151	20,590	23,699	25,226	24,619
Committed developer contributions	3,296	3,197	2,961	2,733	904	1,236
RMS contributions	366	416	634	624	809	817
Specific purpose unexpended grants	7,785	7,311	8,386	7,332	9,363	6,769
Domestic waste management reserve	430	430	430	430	430	430
Stormwater management	928	912	824	825	606	472
External Restrictions	37,298	36,417	33,825	35,643	37,338	34,343
Month End Totals \$'000	September 2022	August 2022	July 2022	June 2022*	May 2022	Apr 2022
Plant and vehicle replacement	3,442	3,768	3,768	3,714	2,979	2,941
Employees leave entitlement	2,446	2,446	2,840	2,446	2,840	2,840
Carry over works	1,127	1,519	427	2,267	462	1,140
Bridge replacement	467	470	519	455	706	644
Insurance provisions	1,282	1,282	1,282	1,282	1,282	1,282
Miscellaneous and property	805	805	425	805	185	185
Grant Fund Leverage	90	91	112	115	94	101
Operations and programs	400	318	343	318	343	743
Property investment fund	3,150	3,164	3,199	3,199	3,211	3,225
Civil Works	1,650	1,482	1,736	1,515	2,121	2,634
Waste depot and rehabilitation	9,454	9,454	9,454	9,454	6,833	6,833
Unexpended loan funds	-	-	-	-	85	85
Committed projects (SRV)	1,831	1,849	1,872	1,345	1,609	1,107
Security deposits and bonds	4,020	3,652	3,546	3,551	3,734	3,726
Financial Assistance Grant in Advance	-	-	-	6,115	6,115	6,115
Internal Restrictions	30,164	30,694	29,523	36,581	32,599	33,601
Unrestricted	17,588	12,891	12,298	1,227	11,760	9,008
Total Cash & Investments	85,050	80,002	75,646	73,451	81,697	76,952

*Figures for June 2022 have been updated to represent draft balances prior to external audit.

External and internal restricted funds have remained stable between August and September.

Overall cash and investments, and subsequently unrestricted funds, have increased in September as a result of lower than expected operating and capital expenditure. 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.

Corporate and Community

Report No. CC84/2022

Corporate and Community Services



CONSULTATION

Director Corporate and Community Services
Chief Finance Officer
Management Accountant
Finance staff

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.

Corporate and Community

Report No. CC84/2022

Corporate and Community Services



CONCLUSION

The report details investments held at month end and meets Councils reporting obligations.

ENCLOSURES

There are no enclosures for this report.

Corporate and Community
Report No. CC85/2022
Corporate and Community Services



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 13 September 2022 to 10 October 2022.

RECOMMENDATION

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

ENCLOSURES

- 1 ➡ Completed Actions
- 2 ➡ Outstanding All

Works and Infrastructure

Report No. WI65/2022

Works and Infrastructure



SUBJECT: *174 - 178 LANG STREET, KURRI KURRI*

RESPONSIBLE OFFICER: *Infrastructure Manager - Cameron Clark*

SUMMARY

Council has received an application for the re-alignment of a public laneway at 174 – 178 Lang Street, Kurri Kurri, that currently services the commercial buildings.

This report seeks Council’s approval to issue an “in principle” land owners consent letter to allow the developer to formally submit the DA.

RECOMMENDATION

- 1. That Council authorise the Common Seal of Cessnock City Council to be affixed to the Land Owners Consent letter;**
- 2. That Council authorise the Mayor and the General Manager to execute the Plan of Road re-alignment if required;**
- 3. That following the determination of the proposed DA and associated consent conditions relating to the proposed closed road and the land vesting in Council, Council grant to the General Manager delegated authority to negotiate the sale (based on an independent valuation) by private treaty with the adjoining landowner.**

BACKGROUND

Council received a proposed DA documentation package as part of pre-submission consultation from JNA Advisory acting on behalf of a private land owner for the re-alignment of an unnamed laneway comprising approximately 459 m2 of land adjoining Barton Street, Kurri Kurri.

The subject site is located at heart of the B2 Local Centre zone. It is abutted on all boundaries by public roads and properties with a similar zoning.

The site is currently in two separate components. The eastern component, is currently occupied for the entirety of the property by a two-storey retail development containing a medium format supermarket, and supporting specialty retail. The parcel of land to the East, currently is majority on-grade carparking, along with a single storey dwelling house.

A council laneway divides the land parcel.



REPORT/PROPOSAL

The existing functionality of the laneway will not be impacted by the proposed realignment for the purposes of vehicle access from Victoria Street to Barton Street.

It is noted that as part of the road re-alignment process necessary actions will be undertaken by JNA Advisory to meet the requirements of the service authorities. These actions will commence after Council makes its determination on the DA.

The surrounding area's built form and open space network is analysed below, with specific reference to the prevailing subdivision pattern, and the resultant built outcomes.

Lang Street

Adjacent the subject site to the West on Lang Street is the heritage listed Kurri Kurri Hotel. This is a 3-Storey building with verandahs addressing North and West. Along the shared boundary is a blank wall treatment. To the East along Lang street are a series of single storey retail buildings, with verandahs addressing the main street.

Hampden Street

The subject site does not address Hampden street, however is visible in the backdrop to the Kurri Kurri Hotel located directly abutting the site. The rear setback of the Hotel is currently open paved areas, creating a visual corridor to any development on the subject site.

Works and Infrastructure

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Works and Infrastructure

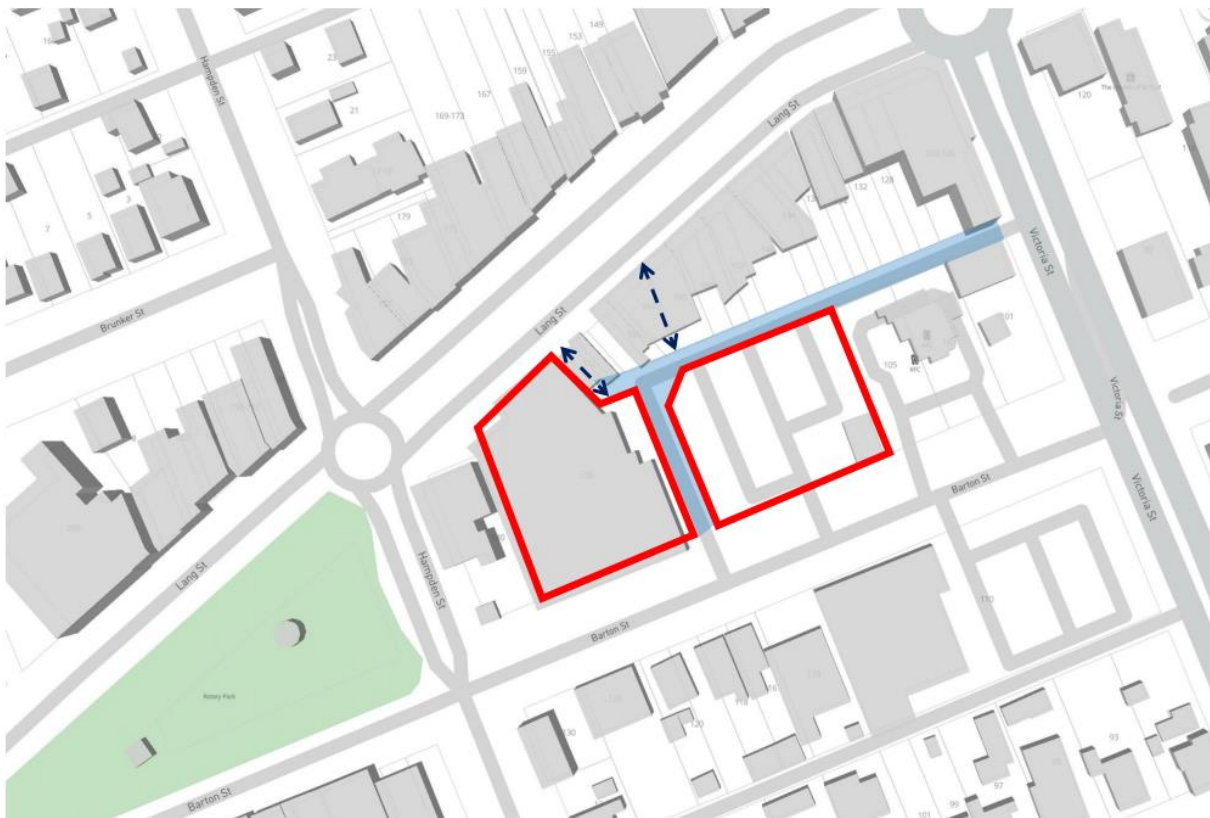


Barton Street

This street is characterized by a wide apron width, and well setback building forms. The existing building on the site addresses the street with some small format retail to the Western edge.

To the east of the subject site is the on-grade parking for an existing fast food restaurant. Directly facing the subject site at the Eastern end is an Aldi Supermarket and it's on-grade parking. Facing the site along the Eastern end are a series of single storey Commercial and residential premises.

The internal boundary of the property addresses an existing public lane and the rear servicing zones of the commercial properties addressing Lang Street



Kurri Kurri District Plan and Commercial Centre Masterplan

Cessnock Council has prepared a detailed District plan and commercial centre masterplan for Kurri Kurri.

Kurri Kurri Commercial Centre Masterplan

Figure 11 – Existing and Proposed Cycle and Pedestrian Network

4.1 Kurri Kurri Commercial Centre Masterplan

Overview

The Kurri Kurri Commercial Centre Masterplan has been developed based on a response to the findings of the detailed analysis presented under separate cover. A focus has been placed on the development of the Commercial Centre and connectivity throughout the Study Area.

The Masterplan has been separated into the following key projects:

- Project 1: Lang Street Upgrades
- Project 2: Barton Street Upgrades
- Project 3: Rotary Park Improvements
- Project 4: Molly Worthington Park Improvements
- Project 5: Pedestrian Arcade
- Project 6: Wayfinding and Public Art
- Project 7: Street Tree Masterplan

For detailed information, refer to the Kurri Kurri Commercial Centre Masterplan written document.

Kurri Kurri Master Plan Key:

1. Streetscape upgrades to Lang Street between Alexandra Street and Allworth Street to create sense of arrival to the Commercial Centre.
2. Streetscape Improvements including street tree planting to Allworth Street.
3. Streetscape upgrades to Lang Street between Allworth Street and Hampden Street.
4. Upgrades to Rotary Park.
5. Streetscape upgrade to Barton Street fronting Rotary Park between Allworth and Hampden Streets.
6. Streetscape Improvements to Barton Street, including street tree planting.
7. Streetscape Improvements including street tree planting to Hampden Street.
8. Proposed pedestrian connection between Lang Street and Barton Street.
9. Streetscape upgrades to Lang Street between Hampden and Victoria Streets.
10. Work with landowner to improve existing lighting, safety and amenity.
11. Streetscape improvements including street tree planting to Mitchell Avenue.
12. Streetscape upgrades to Victoria Street.
13. Playground
14. Reconfiguration of existing netball courts.
15. Streetscape upgrades to Lang Street between Victoria Street and Merthy Street to create sense of arrival to the Commercial Centre.
16. Installation of pedestrian refuge at centre of road to improve pedestrian safety when crossing Lang Street.
17. Streetscape upgrade to create sense of arrival into Commercial Centre.
18. Bike lane and median upgrade at the intersection of Barton and Victoria Street allowing for safer bike crossing.

Figure 17 – Kurri Kurri Commercial Centre Masterplan



Kurri Kurri Commercial Centre Masterplan Constraints and Opportunities

The subject site lies at the centre of the Commercial Core and therefore has the ability to form a key part of achieving the masterplan goals.

As a large consolidated block, this presents an opportunity to enhance the masterplan objectives

OPTIONS

Option 1 – Council endorses the request for “Land Owners Consent” and delegates authority to the General manager to sign the letter understanding the DA will then have to be determined by Council and if successful consent conditions will dictate that the necessary property sale and or equivalent process will need to be followed to allow the laneway to be re-aligned in accordance with the approved DA documentation and associated consent conditions.

Recommended by Council Officers.

Option 2 – Council deny request for letter confirming land owners consent and proposed DA will not be able to be submitted.

Works and Infrastructure

Report No. WI65/2022

Works and Infrastructure



CONSULTATION

Internal

CCC Works & Infrastructure Directorate

External

To be completed during DA process.

STRATEGIC LINKS

This matter is a routine road administrative function and as such is not a specific action within the Delivery Program.

a. Other Plans

NIL.

IMPLICATIONS

a. Policy and Procedural Implications

NIL

b. Financial Implications

All costs associated with the re-alignment of the laneway and sale of land process will be borne by the applicant, who has been made aware of this requirement.

c. Legislative Implications

NIL

d. Risk Implications

NIL

e. Environmental Implications

NIL

f. Other Implications

NIL

CONCLUSION

Council has received a proposed application for a development in Kurri Kurri that includes a parcel of land that a Council owned laneway bisects. The Proposed development details the relocation of the laneway to the western end of the site from its current location which does not impact the functionality for the community.

Works and Infrastructure

Report No. WI65/2022

Works and Infrastructure



Based on a detailed review of the documentation provided it is the recommendation of Council Officers that land owners consent be issued as it will allow full consideration of the impacts in the DA process where additional consultation will occur and Council has the ability to nominate conditions of consent that will adequately managed the risk associated with the proposed development and the re-alignment of the laneway.

ENCLOSURES

There are no enclosures for this report



SUBJECT: *PEDESTRIAN ACCESS - ELIZABETH STREET, ABERMAIN - OUTCOME OF COMMUNITY CONSULTATION*

RESPONSIBLE OFFICER: *Infrastructure Manager - Cameron Clark*

SUMMARY

The purpose of this report is to update Council on the outcome of consultation with local residents regarding options to reinstate pedestrian access under the South Maitland Railways viaduct at Elizabeth Street, Abermain.

RECOMMENDATION

1. That Council notes that the physical space available under the viaduct on Elizabeth Street, Abermain precludes safe simultaneous use by pedestrians, cyclists and motorists.
2. That Council maintains the existing sign posted prohibition of pedestrian access under the viaduct on Elizabeth Street, Abermain.

BACKGROUND

At Councils Ordinary Meeting of 18 May 2022, Council resolved WI35/2022:

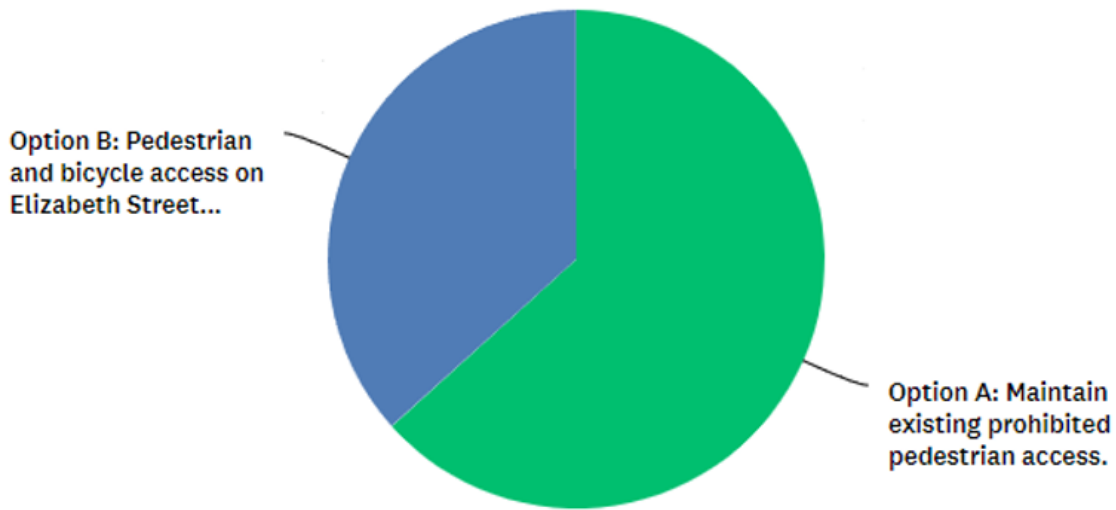
- 1) That the General Manager arrange for community consultation to take place at an appropriate location.
- 2) That a further report come back to Council taking into consideration the community feedback from the onsite meeting.

REPORT/PROPOSAL

Pursuant to the above resolution community consultation was undertaken at the Abermain Plaza Hall and online through Have Your Say. A survey with two options was presented to residents. These options were labeled Option A or B (A. Underpass to remain vehicle only with no pedestrian access. B. Traffic management installed to make pedestrian only with emergency access). The following results of the survey are:

Responses to Digital Engagement

ANSWER CHOICES	RESPONSES	NUMBER OF RESPONSES
Option A: Maintain existing prohibited pedestrian access	63.33%	19
Option B: Pedestrian and bicycle access on Elizabeth Street (vehicle access for emergencies only)	36.67%	11
TOTAL	100%	30



Two additional written submissions were received, both indicating preference for Option B.

ANSWER CHOICES	RESPONSES	NUMBER OF RESPONSES
Option A: Maintain existing prohibited pedestrian access	59.37%	19
Option B: Pedestrian and bicycle access on Elizabeth Street (vehicle access for emergencies only) 2 additional written responses	40.63%	13
TOTAL	100%	32

OPTIONS

There are two options available to Council, noting that pedestrian and vehicular access cannot coexist at the location.

Option 1

That the existing prohibition of pedestrians on Elizabeth Street be maintained, given that amenable alternate pedestrian access is available at Charles Street, where concrete pathway is provided for pedestrians adjacent the underpass. Similarly, there is concrete pathway on the southern side of Maitland Road between Elizabeth Street and Charles Street, which is serviced by a pedestrian bridge over Swamp Creek. This is the preferred option.

Option 2

Change the access to an exclusive pedestrian only access, prohibiting vehicles from using Elizabeth St and being required to gain access to the area through Charles St.

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As detailed in the related report to the Ordinary Meeting of Council of 18 May 2022 (WI35/2022), given that Elizabeth Street is a one-way street, carrying only 129 southbound vehicles daily (data obtained March 2022), it is considered that the diversion of the Elizabeth Street traffic movements onto Charles Street would not cause a significant adverse impact the performance of Charles Street, or the service level of the intersection of Charles Street and Cessnock Road.

In order to deliver on this option, a report will need to be prepared to the Local Traffic Committee to seek consent for the regulation of traffic under Part 8 of the *Roads Act 1993* to provide for the safe exclusive use of Elizabeth Street, Abermain, by bicyclists and pedestrians, whilst maintaining provision for access by motor vehicles in emergency situations only.

CONSULTATION

Consultation consisted of;

- Letter to adjacent residents
- Social Media (Facebook & Instagram)
- Posters located in local businesses
- QR code to SurveyMonkey



- Survey with two options was presented. These options were labeled Option A or B (A. Underpass to remain vehicle only with no pedestrian access. B. Traffic management installed to make pedestrian only with emergency access)
- Community meeting 5th July (Cancelled to due extreme weather event and rescheduled)
- **Community meeting was held 16th August**

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Full Engagement Report is enclosed.

STRATEGIC LINKS

a. Delivery Program

Delivery Program 2022-26: The recommendation of this report is consistent with the following strategic objectives;

- 1.3.5: Improve safety of the road network;
- 4.1.2: Continue implementation of the Traffic & Transport Strategy;
- 4.1.3: Continue implementation of the Pedestrian Access & Mobility Plan;
- 4.1.4: Continue implementation of the Cycling Strategy;
- 4.1.7: Continue implementation of the Section 7.11 City Wide Contributions Plans;
- 4.2: Improving the road network;
- 5.2: Encouraging more community participation in decision making; and
- 5.3: Ensuring Council is accountable and responsive to the community.

b. Other Plans

Cessnock City Council - Road Safety Strategic Plan 2020-2024: The recommendation of this report is consistent with the following strategic objectives:

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- 4.1.2 Ensure Council's road infrastructure works comply with Austroads Design Guidelines, Australian Standards and Transport for NSW Technical Directions
- 5.2.1 Ensure compliant road design that delivers safe and efficient road and transport infrastructure that meets demand;
- 5.2.2 Ensure design and construction of new or upgraded road and transport infrastructure associated with development is processed through Local Traffic Committee and Local Development Committee (Traffic) to facilitate mandatory compliance with Austroads Design Guidelines, Australian Standards and Transport for NSW Technical Directions; and
- 5.3.1 Review, assess and respond to road safety concerns brought to Council's notice from members of the community.

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

As the proposal is only at the conceptual stage, no estimation of detailed cost has been undertaken. Should it be determined to proceed with Option 2, the works required consist mainly of signage, line marking, concrete island construction and some landscaping works estimated to cost \$15,000.

Option 1 involves no additional costs as the treatment is already authorised and in place

c. Legislative Implications

- *Roads Act 1993* – Section 5 – Right of passage along public road by members of public;
- *Roads Act 1993* – Section 7 – Roads Authorities;
- *Roads Act 1993* – Part 8 – Regulation of Traffic by Roads Authorities
- *Road Rules 2014* – Part 14 – Rules for Pedestrians;
- *Road Rules 2014* – Part 15 – Additional Rules for Bicycle Riders; and
- *Civil Liability Act 2002* – Part 5 – Liability of Public and Other Authorities.

d. Risk Implications

Safety Risk: Both options 1 and 2 create a safe environment for all road users as they provide physical separation of motor vehicle traffic from pedestrians.

Any attempt to restore the pre-intervention situation where cars and pedestrians intermix at the pinch point would not likely be supported through the Local Traffic Committee process.

Should Council seek to unilaterally take this course of action and as a result person/s are killed or injured, Council would likely be excluded from the liability protections afforded to public authorities under Part 5 of the *Civil Liability Act 2002*.

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e. Environmental Implications

N/A

f. Other Implications

N/A

CONCLUSION

Having confirmed that the subject length of Elizabeth Street cannot safely accommodate simultaneous use by pedestrians, cyclists and motorists and that access by one user-group is to the exclusion of the other, it is necessary for Council to exercise its regulatory functions as a roads authority and install the appropriate treatment at the location.

In performing this task Council is faced with balancing the needs of different road users. If this balancing exercise is to be guided exclusively by the results of the specific community responses on this matter, the decision to leave the road as it is – Option 1, would prevail.

However, if Council prefers to adopt an innovative approach and opts to implement the Option 2 treatment, based on the low volume of motor vehicle traffic using Elizabeth Street, it is likely that people will eventually accept the situation and walking and cycling movements in the area will likely increase as a result of the provision of a safer road environment.

ENCLOSURES

- [1](#) Elizabeth Street Abermain - Engagement Report _ T Griffiths (redacted)
- [2](#) Elizabeth Street Abermain _ Written Submissions

Works and Infrastructure

Report No. WI67/2022

Works and Infrastructure



SUBJECT: *CESSNOCK POOL DISABILITY ACCESS IMPROVEMENT AND SOLAR ENERGY FOR PUBLIC POOLS*

RESPONSIBLE OFFICER: *Open Space and Community Facilities Manager - Kate Harris*

SUMMARY

The purpose of this report is to provide information on Cessnock Pool in regards to improving access from the car park and opportunities to install solar lighting. The report also provides an update on the provision of solar panels at each of Council's three aquatic facilities.

RECOMMENDATION

That Council notes the information contained within the report.

BACKGROUND

On 17 November 2021 Council resolved:

1. ***That the General Manager bring a report back to Council with options and costs on:***
 - ***Improving access from the disability carpark adjacent to the pool***
 - ***Mounting solar lights on the two pillars at the front entrance of the pool***
2. ***The report include an update and timeframe on the installation of solar energy for the 3 pool complexes.***

This report provides information in response to this resolution.

REPORT/PROPOSAL

Outlined below is information addressing items 1 and 2 of Council's resolution.

1a) Improved Access from Car Park

Access from the car park was affected periodically during the 2021/22 season during the initial construction phase of the splash pad to run necessary infrastructure from the new plant room to the splash pad.

With the splash pad construction now complete, access for people with a disability or mobility issues are able to gain access via the gate immediately adjacent to the marked disabled car spaces in the car park, or via the ramp to the northern side of the main entry of Cessnock Pool.

Signage is displayed on the gate at the car park for those patrons needing to access. Regular patrons are well known to staff who are more than happy to assist those who need to enter or leave via these gates.

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No further accessibility improvements are able to be achieved at the entrances to the site due to the heritage status of the building and alterations not being permitted.

1a) Installation of Solar Lighting

There is existing external lighting in place at the pool. These lights are outside of the entry building over the main entry stairs and street lighting to the northern side of the entry building.

Preliminary heritage advice in regards to mounting solar lights on the two pillars at the entrance to the pool is that lamp fittings could be considered, subject to appropriate detailing and should be an authentic recreation of the original lamps installed in the 1930's.

Costs associated with the installation of solar lighting is addressed within the financial implications section of this report.

2) Solar Panel Systems

As part of Council's Revolving Energy Fund, solar panel systems were installed in late March 2022 at Branxton and Cessnock Pool.

Due to the timing of the installation, Council has not seen the full benefit of the panels with the pools in full operation, but the two systems combined have generated 12,000kWh between 1 June and 26 September 2022, saving approximately \$1,300 in energy costs across both sites.

Significant discussions and a variation to the current tender contract will be required in order to install a solar system at Kurri Kurri Aquatic & Fitness Centre so that Council can obtain its return on investment. The current tender contract is due to expire in June 2024, with 2 further 5 year options available as part of the current tendered contract.

It is expected that negotiations will take place when reviewing the renewal of the contract.

OPTIONS

Nil

CONSULTATION

- Open Space & Community Facilities staff
- Community & Cultural Engagement staff
- Strategic Planning staff
- Environment & Sustainability staff

STRATEGIC LINKS

a. Delivery Program

This report has links to Council's 2022-2026 Delivery Program:

- Objective 1.2.4 – Provide and manage a range of community, sporting and aquatic activities.
- Objective 3.1.5 – Continue the implementation of the Carbon Management & Energy Reduction Strategy

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- Objective 3.2.4 – Provide and maintain recreation facilities, streetscapes and public open space

b. Other Plans

- Cessnock Pool Masterplan (2019)

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

The cost for the supply and installation of suitable heritage solar lights is estimated at \$3,000.

There is currently no identified budget for the installation of solar lighting at Cessnock Pool.

c. Legislative Implications

Heritage approval would be required under section 5.10 (3) of the Cessnock Local Environmental Plan 2011 should for the installation of solar lighting on the pillars proceed.

d. Risk Implications

Nil

e. Environmental Implications

Solar lighting systems provide security and illumination in needed areas when grid power is unattainable or too costly to bring to a site.

The installation of solar lighting would be for aesthetics (i.e. supplementary lighting) only and would not remove the need for the existing lighting to be retained.

f. Other Implications

Nil

CONCLUSION

Improving accessibility into Cessnock Pool is limited due to heritage constraints. Solar lighting can be achieved however this is currently unfunded. Installation of solar panels has been a valuable addition to Branxton and Cessnock Pools with the full benefits to be determined after the pool season in 2022/2023.

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ENCLOSURES

There are no enclosures for this report.

Works and Infrastructure

Report No. WI68/2022

Works and Infrastructure



SUBJECT: *MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING HELD 19 SEPTEMBER 2022.*

RESPONSIBLE OFFICER: *Infrastructure Manager - Cameron Clark*

RECOMMENDATION

That the Minutes of the Cessnock Local Traffic Committee Meeting of 19 September 2022 be adopted as a resolution of the Ordinary Council.

- TC34/2022 - That Council authorises the temporary regulation of traffic on Broke Road, McDonalds Road, Gillards Road, Halls Road and Wine Country Drive, Pokolbin for Hope Estate Concert events in accordance with Various Roads Pokolbin _ Hope Estate Events Traffic Control Plans.
- TC35/2022 - That Council authorises the installation of regulatory signage and line marking on Moorebank Drive, Ridgeview Drive and Colombard Street, Cliftleigh, in accordance with the Moorebank Drive Cliftleigh_ Signage & Line Marking Diagram.
- TC36/2022 - That Council authorises the installation of regulatory signage and line marking on Averys Lane, Balgownie Circuit and Loch Lomond Avenue, Heddon Greta, in accordance with the Averys Lane Heddon Greta_ Signage & Line Marking Diagram.

MINUTES OF LOCAL TRAFFIC COMMITTEE MEETING OF CESSNOCK CITY COUNCIL HELD IN COUNCIL CHAMBERS ANTE ROOM ON MONDAY, 19 SEPTEMBER 2022

OPENING: The meeting was opened at 9.33am

PRESENT: Councillor James Hawkins (in the Chair)
Mr John Markulin – TfNSW
Senior Constable Amy Sweeney – NSW Police Force

IN ATTENDANCE: Sergeant John Cassidy – NSW Police Force
Mr Richard Ingall – Rover Coaches
Ms Linda Makejev - TfNSW (by Zoom)
Mr David Moloney – Director Works and Infrastructure
Ms Jules Bosco – Principal Development Engineer
Mr Nathan Goodbun – Engineering Officer
Mr Warren Jeffery – Principal Engineer Traffic & Transport
Ms Alison Shelton – Road Safety Officer
Mrs Tracey Cocking – Minute Taker

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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 15 August 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: **VARIOUS ROADS, POKOLBIN
TEMPORARY REGULATION OF TRAFFIC
HOPE ESTATE CONCERTS**

REPORT NO.: **TC34/2022**

REFERENCE: **46 2022 5 1**

MATTER

Council has received an application for the temporary regulation of traffic in connection with an existing development approval for Hope Estate Concert events, and has assessed the application along with the associated Traffic Management Plan (TMP) and Traffic Control Plans (TCP's).

Consent is sought under Section 116 of the *Roads Act 1993*, to regulate traffic on various roads in Cessnock in connection with this application.

DISCUSSION: The matter was described as per the report, and discussed as follows.

Amended Traffic Control Plans were submitted by the applicants representative on 16 September 2022 for consideration.

It was noted that:

- The proposed portable / temporary traffic control signals for the intersection of Lovedale Road and Wine Country Drive are required only for event ingress. The TCP requires

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modification to reflect the intersection as having four legs, all of which need to be controlled.

- The proposed wayfinding signage by means of Intersection Direction signage is not considered an appropriate measure for temporary signage. Alternatively, it is recommended that Variable Message Signs with appropriate messaging be in place at:
 - Broke Road approaching Wine Country Drive; and
 - McDonalds Road approaching Wine Country Drive.
- Any reference to camping in the TMP is a contingency measure for future events and does not relate to the applications currently being considered.
- The TfNSW representative provided in-principle support, pending consultation with relevant TfNSW personnel.

RECOMMENDATION

That Council authorises the temporary regulation of traffic on Broke Road, McDonalds Road, Gillards Road, Halls Road and Wine Country Drive, Pokolbin for Hope Estate Concert events in accordance with Various Roads Pokolbin _ Hope Estate Events Traffic Control Plans.

SUPPORT: Unanimous

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SUBJECT: *MOOREBANK DRIVE, CLIFTLEIGH INTERSECTION CONTROLS*

REPORT NO.: *TC35/2022*

REFERENCE: *CRM 15149/2022*

MATTER: A recent customer enquiry has identified the need for the installation of priority controls at several intersections in Cliftleigh. The intersections have recently been constructed as part of an approved Development Consent, however the intersections have not been provided with regulatory controls.

DISCUSSION: The matter was described as per the report, and discussed as follows:

It was noted that:

- The plan is to be amended to reduce the length of BB line marking to 10m on each intersection approach, with the exception of:
 - 20m of BB on Moorebank Drive south of Colombard Street; and
 - Continuous BB on Ridgeview Drive between Moorebank Drive and Hilltop Grove.
- The existing street trees along Ridgeview Drive do not impact on sight distances.

RECOMMENDATION

That Council authorises the installation of regulatory signage and line marking on Moorebank Drive, Ridgeview Drive and Colombard Street, Cliftleigh, in accordance with the Moorebank Drive Cliftleigh_ Signage & Line Marking Diagram.

SUPPORT: Unanimous

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SUBJECT: *AVERYS LANE, HEDDON GRETA
INTERSECTION CONTROLS*

REPORT NO.: *TC36/2022*

REFERENCE:

MATTER: A recent inspection by Council officers has identified a non-controlled four way intersection in the Averys Village Estate. The intersection has recently been constructed as part of an approved Development Consent, however the four-way intersection has not been provided with controls.

DISCUSSION: The matter was described as per the report, and discussed as follows:

It was noted that:

- The plan is to be amended to include:
 - 20m of BB on Averys Lane on the southern approach to Balgownie Circuit/Loch Lomond Avenue; and
 - 29m of BB on Averys Lane on the northern approach to Balgownie Circuit/Loch Lomond Avenue.

RECOMMENDATION

That Council authorises the installation of regulatory signage and line marking on Averys Lane, Balgownie Circuit and Loch Lomond Avenue, Heddon Greta, in accordance with the Averys Lane Heddon Greta_ Signage & Line Marking Diagram.

SUPPORT: Unanimous

CLOSURE: *The meeting was declared closed at 10.20am*

ENCLOSURES

- [1](#) ➡ Moorebank Drive Clifitleigh - Signage & Line Marking Diagram
- [2](#) ➡ Averys Lane Heddon Greta - Signage & Line Marking Diagram

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Report No. WI69/2022
Works and Infrastructure



SUBJECT: *MINUTES OF THE ROADS REVIEW COMMITTEE MEETING HELD ON 14 SEPTEMBER 2022*

RESPONSIBLE OFFICER: *Infrastructure Manager - Cameron Clark*

RECOMMENDATION

That the Minutes of the Roads Review Committee Meeting held on 14 September 2022 be adopted as a resolution of the Ordinary Council.

MINUTES OF ROADS REVIEW COMMITTEE MEETING OF THE CESSNOCK CITY COUNCIL HELD IN COUNCIL ANTE ROOM ON WEDNESDAY, 14 SEPTEMBER 2022, COMMENCING AT 3.34PM

PRESENT: The Mayor, Councillor Suvaal (joined meeting 3.36pm)
Councillor Dunn (joined via Teams)
Councillor Grine (Alternate)
Councillor Moores (Alternate – joined meeting 3.45pm)
Ken Liddell, General Manager

IN ATTENDANCE: Councillor Sander
Councillor Jurd
Councillor Hill
Cameron Clark - Infrastructure Manager
David Moloney – Director Works & Infrastructure
Rabiul Awal – Principal Engineer
Robert Maginnity – Director Corporate & Community Services
Robyn Larsen – Corporate Governance Officer - Minute Taker

INVITEES: Nil

The meeting was inquorate until such time as the Mayor joined the meeting.

It was decided that Councillor Grine take the responsibilities of Chair for the meeting until the Mayor arrived.

Councillor Grine gave the Acknowledgement of Country.

APOLOGIES

That the leave of absence submitted by Councillor Olsen be noted.

At 3.36pm the meeting became quorate when the Mayor arrived.

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CONFIRMATION OF MINUTES

MINUTES:

MOTION

Moved: Councillor Grine
Seconded: Councilor Dunn

RECOMMENDED that the Minutes of the Roads Review Committee held on 13 July 2022, as circulated, be taken as read and confirmed as a correct record.

CARRIED UNANIMOUSLY

OFFICER'S REPORTS

OFFICER'S REPORTS NO. RRCOR3/2022

SUBJECT: PRIORITISING ROADWORKS

MOTION

Moved: Councillor Grine **Seconded:** Councillor Moores

RECOMMENDATION

That the Committee notes road renewal and replacement prioritisation.

CARRIED UNANIMOUSLY

The Meeting Was Declared Closed at 4.06pm

ENCLOSURES

There are no enclosures for this report.

Notices Of Motion

Report No. BN28/2022

General Manager's Unit



NOTICES OF MOTION No. BN28/2022

SUBJECT: *PENSIONER RATE DISCOUNTS FOR DVA'S PENSIONERS*

COUNCILLOR: *Ian Olsen*

MOTION

That the General Manager prepare a report for Council outlining the implications and how Council can treat all pensioners as equal with the pensioner rates discount that's currently in place so the that the Department of Veteran Affairs Pensioners are entitled to the same discount.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 19 October 2022.

RATIONALE

I recently found out about this issue and was amazed to find how we treat our service men and women. We need to rectify this even if it costs our council and the Federal Government won't accept it. This is a blight on our society for not treating all equal.

We have many who served our country and are put onto different levels of payments due to the duties performed but due to not having a Centrelink number they are not entitled to the same benefits and this needs to be changed.

SOURCE OF FUNDING:

Not required.

DELIVERY PROGRAM:

Our community 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 needs.

Sgd: Ian Olsen

Date: 4 October 2022

ENCLOSURES

There are no enclosures for this report

Notices Of Motion

Report No. BN29/2022

General Manager's Unit



NOTICES OF MOTION No. BN29/2022

SUBJECT: *FOOTPATH FROM MULBRING STREET TO COLLIERY STREET, ABERDARE*

COUNCILLOR: *Ian Olsen*

MOTION

That the General Manager brings a report back to Council with costs for a concrete footpath on the North Side of Aberdare Road from Mulbring Street to Colliery Street Aberdare with the view of adding it to the next budget.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 19 October 2022.

RATIONALE

I have had complaints from residents of all ages who find it difficult to walk on the current footpath due to the uneven surface and feel they have waited long enough for it to continue to the end of Aberdare.

SOURCE OF FUNDING:

Not required.

DELIVERY PROGRAM:

Our community 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 needs.

Sgd: Ian Olsen

Date: 29 September 2022

ENCLOSURES

There are no enclosures for this report

Notices Of Motion

Report No. BN30/2022

General Manager's Unit



NOTICES OF MOTION No. BN30/2022

SUBJECT: *BRIEFING WITH GENERAL MANAGER*

COUNCILLOR: *Ian Olsen*

MOTION

The General Manager organise a briefing session with Councillors before Christmas to outline his plans and direction, he has for Cessnock Local Government Area which is to include:-

1. How the General Manager plans to ensure all budgeted works will be completed annually.
2. What plans the General Manager has for the staffing structure of Council.
3. Explain any changes to how Council will repair and build our roads.
4. How Council can improve our customer services.
5. How the General Manager wants Councillors to operate in the system, ie continue as we do now or do you have a better option.
6. Council improvements that can assist applicants with DA's.

It is my intention to move the above motion at the next Ordinary Meeting of Council on 19 October 2022.

RATIONALE

Our new General Manager has been in the seat now for over 6 weeks and has had time to learn how Cessnock Council operates and I believe it is time he told Councillors what his vision is to lead Cessnock over the coming 5 years.

SOURCE OF FUNDING:

Not required.

DELIVERY PROGRAM:

Our community 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 needs.

Sgd: Ian Olsen

Date: 29 September 2022

ENCLOSURES

There are no enclosures for this report

Correspondence

Report No. CO19/2022

Corporate and Community Services



SUBJECT: *MM12/2022 - TESTERS HOLLOW AND BUCHANAN ROAD*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

ECOMMENDATION

That Council notes the correspondence received from Jenni Aitchison MP, Shadow Minister for Regional Transport and Roads.

At its Ordinary Meeting of 20 July 2022 Council considered MM12/2022 – Testers Hollow and Buchanan Road and resolved:

1. **That Council write to Transport for NSW, the NSW Minister for Regional Transport and Roads, the Hon. Sam Farraway MLC, and the NSW Shadow Minister for Regional Transport and Roads, Jenny Aitchison MP requesting they consider amending the new road design for Testers Hollow to make it flood free by raising the new road height given the current height was below the recent flood level.**
2. **That Council request, that due to recent population and traffic growth, Transport for NSW keep the current road at Testers Hollow open, which would make it 4 lanes (2 each way) with the ability to run contra flow on the new road in the event of future flood events.**
3. **That Council request the Transport for NSW take on Buchanan Road / Mount Vincent Road as a State road, noting the increased traffic from the Hunter Expressway, access to the new Maitland Hospital and local development, as well as it being the major thoroughfare when Testers Hollow is closed.**
4. **That Council contact Maitland Council to arrange a joint delegation then request a meeting with the NSW Minister for Regional Transport and Roads regarding the issues above.**
5. **That a copy of these letters and requests be sent to the State Member, Mr Clayton Barr MP, with a request for him to make representations to the NSW Minister for Regional Transport and Roads, on Council's behalf, in regard to these urgent issues.**

Correspondence has been received from Jenni Aitchison MP, Shadow Minister for Regional Transport and Roads offering full support of the pursuit of road reclassification of Mt Vincent/Buchanan Road from a Local to State road status.

Council has previously noted correspondence in relation to this matter at Council Meeting 21 September 2022, as follows:

- Kylie Sullivan – Senior Government Services Officer for Transport for NSW advising that a meeting will be organised between the Mayor and Anna Zycki, Regional Director, North – Transport for NSW.

Correspondence

Report No. CO19/2022

Corporate and Community Services



- Clayton Barr, MP – State Member for Cessnock, advising that representations has been made to the Hon Sam Faraway, MLC – Minister for Regional Transport and Roads.

A copy of the correspondence from Jenny Aitchison MP is attached to this report.

ENCLOSURES

[1](#) Response - Jenny Aitchison MP

Correspondence

Report No. CO20/2022

Corporate and Community Services



SUBJECT: *BN24/2022 - AIR B&B'S*

RESPONSIBLE OFFICER: *Director Corporate & Community Services - Robert Maginnity*

RECOMMENDATION

That Council notes the correspondence received from Felicity Greenway, Acting Deputy Secretary Planning Policy, on behalf of the Hon. Anthony Roberts MP, Minister for Planning and Minister for Homes.

At its Ordinary Meeting of 17 August 2022 Council considered BN34/2022 – Air B&B's and resolved:

That Council contact the Minister for Planning & Homes, Honourable Anthony John Roberts, MP and The State Member for Cessnock, Mr Clayton Barr, MP regarding the increase in the number of homes and units being turned into Air B&B's in the Cessnock Local Government area to discuss the introduction of controls and measures to stop the loss of housing to local residents. Plus also imposing regulations on the change of use of a house or unit into an Air B&B, rating etc as are imposed on motels. Any measures that may be used to stop the loss of housing for local residents. With the high number of homeless and the rising costs of rentals and living expenses that are causing more problems for the region as well as the State.

Correspondence has been received from Felicity Greenway, Acting Deputy Secretary Planning Policy, Department of Planning and Environment, on behalf of the Hon. Anthony Roberts MP, Minister for Planning and Minister for Homes, advising Council that the Department is to undertake a comprehensive review of the short-term rental accommodation (STRA) Policy within two years of it taking effect.

A copy of the correspondence is attached to this report.

ENCLOSURES

[1](#) Response - BN24/2022 - Felicity Greenway on Behalf of Hon. Anthony Robert MP