

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL
Deferred Business

Panel Reference	2016HCC069
DA Number	8/2016/557/1
LGA	Cessnock City Council
Proposed Development	Staged Development - Integrated Tourist Development in Seven (7) Stages Proposing an 18 Hole Golf Course, 50 Room Hotel, 250 Serviced Apartments, 300 Residential Lots and Ancillary Function Centre & Aboriginal Heritage Centre, Retail & Food Outlet and Spa & Recreation Facilities - Masterplan Approval and Stage 1 - Four (4) Lot Community Title Subdivision
Street Address	Wine Country Drive, Lovedale NSW
Applicant/Owner	Capital Hunter Pty Ltd
Date of DA lodgement	7 September 2016
Number of Submissions	3
Recommendation	Determined by the granting of consent, subject to conditions.
Regional Development Criteria (Schedule 4A of the EP&A Act)	<p>Pursuant to the requirements of Schedule 4A of the Environmental Planning and Assessment Act 1979 and Clause 22 of the State Environmental Planning Policy (State and Regional Development) 2011, this application is referred to the Regional Planning Panel for determination as the application is defined as 'General Development' with a capital investment value exceeding \$20,000,000.</p> <p>The application submitted to Council indicates a value of \$101,250,000 for the concept masterplan.</p>
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 44 – Koala Habitat Protection • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Infrastructure) 2007 • Cessnock Local Environmental Plan 2011
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Development Plans • Copy of Submissions • Statement of Environmental Effects • Concept Plan of Management • Applicant Letter, 24 April 2018 • RMS Correspondence • Applicant Response Letter, Deferral Notice, 8 June 2018 • Updated Plans, Flood Information • Revised Concept & Management Plan, Hunter Development Brokerage (HDB) Pty Ltd, 2 October 2019
Report prepared by	Kristen Wells, Senior Planning Assessment Officer Richard Forbes, Team Leader Development Services

Report date	Original Report 8 May 2018 Addendum Report 1 - 27 November 2018 Addendum Report 2 – 30 September 2019 Briefing Notes to Panel – 16 October 2019 Addendum Report 3 – 20 November 2019
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Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Previous Consideration by the Hunter and Central Coast Regional Planning Panel at their meeting of 11 December, 2018 and briefing of 16 October, 2019

Development Application No. 8/2016/557/1 seeks consent for a concept masterplan for staged development involving an integrated tourist/residential development within Lots 2 – 4 DP 869651 and Lot 11 DP 1187663; and approval for Stage 1, being the community title subdivision of the subject site into 4 super lots to establish the boundaries for the various future stages under the concept masterplan.

All future stages (2 – 7 inclusive), will be subject to lodgement and approval of separate development applications pursuant to Section 83B(4)(a) of the *Environmental Planning and Assessment Act 1979*, at which time, the impact of those stages will be assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*.

A planning agreement for the subject site has been executed between the applicant and the NSW Department of Planning and Environment. The Satisfactory Arrangements Certificate (SAC) issued 18 April, 2017 satisfies the provisions for the granting of development consent under Clause 6.1 of Cessnock Local Environmental Plan 2011.

A copy of the initial assessment report is attached.

The matter has been reported to the Panel on two previous occasions, 24 May 2018 and 11 December 2018, at which time determination was deferred pending consideration of additional information.

At their meeting of 11 December 2018, the Panel requested that Council staff provide a briefing on the issues raised by the Panel, prior to a final assessment report being prepared. The briefing was held on 16 October 2019, at which time Council's assessment report with respect to the deferred matters, was considered.

The current report is presented in response to the deferral matters raised 11 December 2018, in addition to the matters raised at the briefing held on 16 October 2019.

The deferral notice from the Panel meeting of 11 December, 2018 required the submission of the following information:

1. *A comprehensive and self-contained document addressing the requirements and considerations under Clause 6.3(2) of Cessnock Local Environmental Plan 2011, and having regard to the requirements of the former section 83C(3) of the Environmental Planning and Assessment Act 1979. In particular the document needs to provide sufficient detail and commitments, relative to a DCP level, to provide a clear framework for future development and for the assessment of future applications.*
2. *Prior to a further report being prepared for the Panel, the panel requests a briefing from Council staff on the information provided by the applicant.*
3. *That Council provide, as part of any future report to the Panel, recommended conditions relating specifically to the concept application, in addition to those conditions relating to the Stage 1 community title subdivision application.*

A copy of the "Record of Deferral" (dated 11 December, 2018), is attached.

It is considered that the matters raised by the Panel at their meeting of 11 December 2019 have been satisfactorily addressed by the applicant, and on this basis, it is recommended that the development application be approved, subject to conditions of consent.

ASSESSMENT OF DEFERRED MATTERS

The issues raised by the Panel on 11 December 2018, are addressed as follows;

1. ***Documentation addressing the requirements and considerations under Clause 6.3(2) of Cessnock Local Environmental Plan 2011***

Pursuant to Clause 6.3(2) of the Cessnock LEP 2011, "development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land". A site specific DCP as outlined in Clause 6.3 of the Cessnock LEP 2011, has not been adopted for development site.

However, by virtue of Section 83C(2) of the *Environmental Planning and Assessment Act 1979*, an applicant may satisfy this requirement by the making and approval of a concept development application. Section 83C, *Environmental Planning and Assessment Act 1979* *Concept development applications as alternative to DCP required by environmental planning instrument*, provides the following:

- (1) *An environmental planning instrument cannot require the making of a concept development application before development is carried out.*
- (2) *However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.*
- (3) *Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.*

In this instance, the proponent has provided a document titled, “Integrated Tourist, Golf and Residential Development – Concept and Management Plan”, (referred herein as the ‘Concept and Management Plan’) dated 2 October 2019 under Section 83C, in lieu of an adopted site specific DCP.

The document submitted has been the subject of a number of revisions and has been considered by Council officers, particularly from a strategic planning viewpoint given the significance of the proposal in the vineyards district.

It is concluded that the revised document achieves the purpose of addressing the requirements prescribed in (a)-(j) of Clause 6.3(3) of the instrument. The document provides a staging summary, outline of transport and infrastructure, landscape detail and concept urban design guidelines in sufficient detail to guide the assessment of future applications for the proposed stages of the development.

It is considered that the subject application meets the requirements of Clause 6.3 of the Cessnock LEP 2011 based on the following assessment:

DCP requirement	Proposed
(a) <i>a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing</i>	<p>A staging summary and plan has been included in Section 3 of the applicant’s Concept and Management Plan. The staging plan satisfactorily details the anticipated release of land, infrastructure and essential services for the subdivision.</p> <p>A summary of the staging plan and infrastructure provision is provided below:</p> <p>Stage 1: Four (4) Lot Community Title Subdivision, and concept masterplan;</p> <p>Stage 1 is proposed to create 4 super lots under a community title subdivision, to allocate land for particular uses. Whilst the stage will ensure legal and physical access will be provided to all four super lots, no actual work is required for this to take place on the site</p>

	<p>as part of this stage.</p> <p>The applicant seeks approval in stage 1 for the concept masterplan. Under the concept masterplan, the applicant sets out the future works to occur which will require separate development approval prior to commencement.</p> <p>Based upon the proposed lot configuration of the community title subdivision, the future works (proposed under the masterplan) are summarised as follows:</p> <ul style="list-style-type: none"> • Land within the proposed Lot 3 will be subdivided in future to accommodate 300 single dwelling units, • Proposed Lot 4 is intended for hotel and tourist accommodation (300) and associated sporting/recreational facilities forming the prime feature of the development. • A water treatment plant will be erected on the southernmost section within Lot 1. • The remainder of the subject site being proposed Lot 2 will contain the 18 hole Golf Course and regeneration of vegetation. <p>Stage 2: 18 Hole Golf Course;</p> <p>This stage will see the creation of the golf course, implementation of landscaping, creation of environmental offsets and connection to necessary services, including:</p> <ul style="list-style-type: none"> • Install service connections to the site • Potable water • Grey water • Electricity • Telecommunications • Establish water quality control • Construct intersection treatment to site <p>The specific design details of the road connection are not finalised; however Condition 31 in the draft notice of determination has been prepared, stating the following:</p> <p><i>Prior to lodgement of a development application for stage 2, the applicant is to consult with Roads & Maritime Services (RMS) regarding future access arrangements from Wine Country Drive. Evidence of consultation is to be provided to Council.</i></p> <p><i>Access to development proposed under stage 2 of the development shall be via a four (4) way,</i></p>
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single lane circulating roundabout on Wine Country Drive servicing both the subject development and the proposed development of the 'The Vintage' balance land (located to the west of the subject land on Wine Country Drive). The roundabout design shall be approved by Council in consultation with the RMS in conjunction with any development application for stage 2.

No residential development shall access Wine Country Drive prior to satisfactory arrangements having been completed under stage 2 of the development proposal.

Stage 3: 50 Room Hotel and Club House including ancillary Function Centre and 50 Residential Lots;

Stage 3 will comprise the construction of internal access roads to residential allotments as well as the construction of the 50 room tourist hotel (and a restaurant, clubhouse and golf shop) on proposed lot 401; 50 residential lots on proposed lots 303 and 304 are also proposed. Service connection will be extended to each lot.

Stage 4: 70 Serviced Apartments, 70 Residential Lots, Spa and Recreation Facilities;

This stage will consist of the construction of 70 tourist and visitor accommodation units (and supporting infrastructure such as day spa, swimming pool) on proposed lot 402. The stage will also propose the construction of 70 residential lots and dwellings on proposed lots 304 and 305.

Stage 5: 65 Serviced Apartments and 65 Residential Lots;

Stage 5 will propose the construction of 65 tourist and visitor accommodation units on proposed lot 402. The stage will also propose the construction of 65 residential lots and dwellings on proposed lot 301.

Stage 6: 60 Serviced Apartments and 60 Residential Lots;

Stage 6 will propose the construction of 60 tourist and visitor accommodation units on Lot 402 as well as the construction of 60 residential lots and dwellings on proposed lot 301.

Stage 7: 55 Serviced Apartments and 55 Residential Lots;

	<p>The final stage will seek consent for the construction of 55 tourist and visitor accommodation units on proposed lot 402, as well as the construction of 55 residential lots and dwellings on proposed lot 302.</p> <p>The applicant provided this final comment with regard to infrastructure provision:</p> <p><i>“The connection of services to each lot is part of Stage 3 and occupation certificates will not be released until all lots are serviced.</i></p> <p><i>The construction of dwelling components will be proposed in Stages 4, 5, 6 and 7. The staging of the development will enable roads and infrastructure to be progressively developed in a cost efficient and effective manner, and minimise site disturbance from engineering works by concentrating construction into finite areas of the overall site.</i></p> <p><i>The provision of infrastructure including adequate access and all services to service each stage will form part of each subsequent development application and will be assessed in relation to the impacts and requirements of that stage of the development.</i></p> <p><i>At this stage of the development detailed design of the tourist complex has not been determined as title is required to the super lot to create an identity to underpin the required investment in design.”</i></p>
<p><i>(b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists</i></p>	<p>An overall transportation strategy is detailed in the applicant's Concept and Management Plan in Section 4 and Figure 11. The transport movement hierarchy adequately details the location of access roads, intersections, pathways and trails. The plan also considers a possible future connection to Council's proposed shared cycleway in Wine Country Drive, consistent with the <i>Cessnock Cycling Strategy 2016</i>.</p> <p>The proposed road reserve widths for the main road (25m wide), secondary road (20m wide) and shared pathway (3m wide) have been reviewed by Council's Principal Development Engineer and are all deemed acceptable in accordance with necessary standards.</p> <p>As depicted in the transport/road hierarchy plan, internal accessibility for pedestrians, cyclists, disabled persons and golfers will be facilitated through linkages between streets, vegetation corridors and the golf course.</p> <p>The applicant has indicated that provision for public transport shall be accommodated on the main collector</p>

	<p>road access by providing bus shelters on each side of the road within intended bus bay areas.</p> <p>On-site parking will be provided in accordance with Council's requirements as provided in the Cessnock DCP – C1 Parking and Access. Parking is to be screened from perimeter access roads by either built form or landscaping consistent with the proposed golf course.</p> <p>Regarding vehicular access into the site, Condition 31 of the draft notice of determination is provided on the consent to ensure that the access to the site is confirmed by the RMS prior to any works being undertaken on site. The letter provided as appendix J in the statement of environmental effects (and re-confirmed in appendix 6) confirm that RMS is satisfied that access to the development may be suitably provided however due to the complexity of negotiations with adjoining landowners the access details cannot be confirmed for this stage of the development.</p>
<p><i>(c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain</i></p>	<p>The Landscaping Strategy, contained within Section 5 of the Concept and Management Plan provides a detailed overall strategy for landscaping within the proposal.</p> <p>The landscaping strategy divides landscaping controls into five precincts:</p> <ul style="list-style-type: none"> • Entrance/Main Street precinct • Resort/hotel/clubhouse complex • Residential community precinct • Riparian corridors • Bush regeneration corridors. <p>Each precinct contains its own landscaping objective and requirements customised to the area. The precincts are required to use high percentages of vegetation from the preferred list of plantings within Part E.3 of the Cessnock Development Control Plan 2006.</p> <p>Furthermore, adequate provision has been given to screening the development from visually prominent public locations, including Wine Country Drive.</p> <p>The proposed landscaping strategy provides sufficient detail in this regard.</p>
<p><i>(d) a network of passive and active recreational areas</i></p>	<p>The indicative layout plan identifies areas of passive and active recreational spaces.</p> <p>An 'open and recreation space strategy' is included in Section 6 of the applicant's Concept and Management</p>

	<p>Plan.</p> <p>The residential precincts area will provide approximately 1.5 ha of land allocated to establish formal recreation spaces. These spaces will be strategically located to cater to the needs of permanent residents (and visitors), and would include:</p> <ul style="list-style-type: none"> • Community open spaces including an informal playground, kids' play areas, play courts; • Recreational facilities such as walking/jogging track; adult outdoor gym/exercise area; and • Gathering places such as BBQs. Boardwalks and seating places adjoining a water feature. <p>The Concept and Management Plan identifies the location of these active and passive recreational areas. This provision is deemed to have been met.</p>
<i>(e) stormwater and water quality management controls</i>	<p>A water management strategy is included in Section 7 of the applicant's Concept and Management Plan. The strategy includes stormwater and water quality management objectives and controls. Confirmation should be obtained from Council's development engineers regarding the adequacy of the proposed water management objectives and controls.</p>
<i>(f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected</i>	<p>The proposed subdivision layout takes into consideration identified natural hazards as follows:</p> <p><i>Bushfire</i></p> <p>General Terms of Approval have been issued by RFS confirming that the development is capable of meeting the 'Planning for Bushfire Protection Guidelines' 2006.</p> <p>Future development must be assessed in accordance with the NSW Rural Fire Service's 'Planning for Bushfire Protection Guidelines' 2006 and provide Asset Protection Zones (APZs) configured in accordance with the Guidelines.</p> <p><i>Flooding</i></p> <p>The land is partially affected by the 1% AEP flood modelling.</p> <p>Future development must comply with the controls in flood affected areas outlined in Part C.9 Development on Flood Prone Land and Part D.1: Subdivision Guidelines of the Cessnock DCP 2010.</p> <p><i>Flora and Fauna</i></p> <p>Any proposed tree removal shall be considered as part</p>

	<p>of subsequent development applications for future stages.</p> <p><i>Riparian Corridors</i></p> <p>A Vegetation Management Plan (VMP) must be submitted with any future development application to subdivide the land that will result in an impact on a riparian corridor.</p> <p>The VMP shall identify a strategy to appropriately manage the natural watercourse and riparian vegetation.</p> <p>Appropriate measures shall include:</p> <ul style="list-style-type: none"> • the implementation of a core riparian zone and vegetated buffer combined into a single vegetated riparian zone (VRZ) in accordance with the Department of Primary Industries - Office of Water Guidelines for riparian corridors on waterfront land; • a restriction on vegetation removal within the VRZ; • no buildings other than posts & rails are permitted within the VRZ <p><i>Salinity</i></p> <p>Salinity level investigations and appropriate amelioration responses must be submitted with the Stage 2 development application and each subsequent stage, to determine the suitability of footing design and road pavement design parameters with respect to rock outcrops, soft/saturated soils, erosion potential and salinity.</p> <p>Section 8.3 of the Concept and Management Plan satisfactorily details this provision.</p>
<p><i>(g) detailed urban design controls for significant development sites</i></p>	<p>Design controls for significant development sites are provided in Section 10 of the applicant's Concept and Management Plan, including objectives and controls for residential development and tourist and visitor accommodation. The proposed objectives and controls are adequate at the concept stage to assess the range of development proposed within the site.</p> <p>The design concept summary of each precinct is outlined below:</p> <p><u>Golf course (stage 2)</u></p> <p>The golf course will be designed to attract international championships and will be a flagship feature of the</p>

area. The exact design of the course is not yet known; however the design concept explains that the intention is for a world-class brand to develop the course within the portion of the land that has been set aside as part of proposed lot 2 within the stage 1 subdivision. The design concept stated that: *"The golf course would adopt a design philosophy to enhance the natural environment...: The four key objectives of the golf course design include:*

- *"blend in with residential areas and tourist facilities to form a pristine landscape that stimulate overall spatial awareness;*
- *incorporate on-site natural features and identified archaeological/heritage sites within the design to create unique courses that are both visually appealing and challenging to stroke play;*
- *enhance the amenity and aesthetic quality of outdoor public and semi-public spaces;*
- *be of a standard so as to attract national and international visitors, guests and tournaments."*

Resort/Clubhouse Precinct (stage 3)

The resort/clubhouse precinct is to be situated within proposed lot 4 under the stage 1 subdivision. The design concept guideline describes the resort/clubhouse precinct as 'the activity core' and will provide the following facilities:

- *"clubhouse building with ancillary retail/restaurant;*
- *5-star resort complex with varying types of accommodation including conventional in-house hotel rooms and suites (50); apartments 1-2 bedroom villas (250);*
- *cultural centre; and*
- *communal spaces such as function/conference, day spa and recreational facilities, with ancillary retail."*

The final design for this precinct is as yet undetermined. The masterplan has therefore set the location and type of use for this precinct. The detail to accompany any future development application have been specified by the Concept & management Plan.

The plan will require that building siting, orientation and site planning should take advantage of the north facing aspect, pedestrian circulation, and links to the clubhouse, recreation facilities and golf courses. Additional prescriptive controls, including restricting the height of the building (s) and setback to adjoining

	<p>precincts have also been provided.</p> <p><u>Tourist villas (stages 3-7)</u></p> <p>The tourist villas comprise up to 250 self-contained villas. The design concept guidelines requires the villas to adopt an 'eco' theme. This can be achieved through the use of landscaping. Specific controls include:</p> <ul style="list-style-type: none"> • <i>“Façade materials, finishes and colour scheme that accentuate the eco-friendly theme;</i> • <i>Avoid obtrusive or dominant roof forms;</i> • <i>Maximum 8.5m (or 2 storey) building height;</i> • <i>Front articulation to reduce building mass;</i> • <i>Adequate separation between villas to complement the tranquility/enclosed environment.”</i> <p><u>Residential precinct (stages 3 -7)</u></p> <p>The urban design guidelines also details requirements for the residential precinct. The information outlines both lot size and the design of the actual dwellings. Importantly, the developer will have complete control over the urban design principals of the residential development. The developer will build all dwellings before reselling completed packages to private owners. By ensuring that the developer builds all dwellings (and associated features, including landscaping and driveways etc), a consistent design theme can be achieved and managed by the controlling developer.</p> <p>Notwithstanding this, the Concept and Management Plan contains a series of design controls intended to guide urban design of the residential precinct. These include:</p> <ul style="list-style-type: none"> • Permitting only single dwellings. No residential flat buildings or attached and semi attached dwelling will be permitted. • No more than 300 lots will be permitted; lots will average 750m² in size, frontages will be required to be between 17-22m. • Each lot will be required to have direct access to public road network; • Building height is limited to 8.5m (two storeys); • All residences will be designed in accordance with the overall design theme adopted by the developer. It is envisaged that this will be high-end architectural given that the dwellings are in associated with a proposed international golf course. • Dwelling configuration plans based on lot orientation have been included in the Concept and Management Plan.
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<i>(h) measures to encourage higher density living around transport, open space and service nodes</i>	<p>The land is zoned SP3 Tourism, and densities are to be guided by the minimum lot size map of the Cessnock LEP 2011. The Urban Release Area, due to its location within the vineyards district area, is largely proposed as a low density precinct.</p> <p>A community management statement and design guideline shall be prepared and approved prior to the commencement of stage 3 works (community buildings) and stage 4 (the first of any stage incorporating individual buildings on residential sized lots).</p>
<i>(i) measures to accommodate and control appropriate neighbourhood commercial and retail uses</i>	<p>No 'stand-alone' neighbourhood commercial or retail uses are set out in the concept plan. In light of this, it is considered that this requirement of the LEP is not applicable to the development. Design Controls for tourist and visitor accommodation (hotel/clubhouse complex/villas) are provided in Section 10 of the applicant's Concept and Management Plan. The proposed objectives and controls are considered satisfactory.</p>
<i>(j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking</i>	<p>Facilities and services are generally considered in Section 11 of the applicant's Concept and Management Plan. Traffic management facilities are considered as a component of the Transportation Strategy in Section 4 of the plan. Parking rates for each component of the development is considered in Section 10 of the plan. Parking rates are consistent with the existing parking requirements set out the Cessnock DCP 2010. The proposed objectives and controls are considered satisfactory.</p> <p>Councils Principal Development Engineer has reviewed parking provisions for the site and confirms that adequate parking can be provided on site.</p>

It is considered that this matter has been satisfactorily addressed by the applicant.

2. *Prior to a further report being prepared for the Panel, the panel requests a briefing from Council staff on the information provided by the applicant*

A briefing to the Panel was provided by Council staff on 16 October 2019. The matters for particular attention were noted and provided by record of briefing notes as follows;

- *Update since last meeting;*
- *Draft concept and management plan in content;*
- *Construction impacts to be considered in Councils assessment;*
- *Concept and management plan to be locked into conditions of consent, if approved;*

- *Check terms within the Concept and management plan eg, dwelling and short terms accommodation numbers align with what has been applied for;*
- *RMS requirements to be certain and clear.*

In response to the above, the applicant has finalised the Concept and Management Plan based upon feedback received at the briefing. Council staff have reviewed the Concept and Management Plan and confirm that the plan is consistent with the development proposed and has been adopted by the draft conditions of development consent. The remaining issues raised by the Panel at the briefing, are addressed below:

- *Construction impacts to be considered in Council's assessment*

With respect to the assessment of construction impacts associated with the development, the Panel requested that Council's assessment give consideration to all construction related impacts associated with the "staged development", following from the judgement of the Court of Appeal vide (*Bay Simmer Investments Pty Ltd v State of New South Wales [2017] NSWCA 135*).

Specifically, the Panel outlined that the impacts of construction activities should not be delayed for assessment to another time/subsequent DA, by reason that a determination under s 79C (s 4.15), requires the consent authority to take into consideration all likely impacts of "that development" inclusive of all of the construction phases.

Council notes that subsequent amendments under s 4.22 (cf previous s 83B), provides as follows;

4.22 Concept development applications (cf previous s 83B)

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

Note : The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).

The applicant has indicated to Council that they intend to rely upon the provisions of s 4.55 (5) to the extent that further development applications will be subject to the assessment of construction impacts in consideration of the merits of future applications under s 4.15. Correspondence from the applicant dated 19 November 2019 is attached to the addendum report.

As outlined in the applicant's submission with reference to the "Bay Simmer" decision, under s 4.22 (5), the consent authority may limit its consideration of the future impacts of the development to the extent that Council;

need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

The applicant has accordingly provided no further detail on the likely construction impacts of future development. It is the applicant's contention that only the impact associated with Stage 1 need be considered as part of this subject application. All future impacts will be addressed when subsequent development application for future stages are lodged.

Notwithstanding the above, condition 19 of the draft conditions of consent provides requirements for Construction and Traffic Management for all future stages. This condition manages the construction phase impacts for all future stages.

- *RMS requirements to be certain and clear*

In response to the request of the Panel for RMS requirements to be certain and clear, it is noted that a final response was provided by the RMS, dated 31 October 2017, in respect of the application. The RMS raised no objection to the Stage 1 subdivision and concept masterplan provided that no new access is approved in Stage 1.

The referral was accompanied by a series of advice requirements, concerned with future intersection treatment to the site. These are outlined below:

'Roads and Maritime recommends that the following matters should be considered by Council in determining this development:

- *It is recommended if the CHR option is pursued as the treatment, a plan be prepared to show that both CHR's (for 'The Vintage' and Golden Bear) can be accommodated on Wine Country Drive within the allocated road lot frontage for each development, compliant with Austroads and RMS standards, including tapers, turn lanes, transitions, sight distances etc.*
- *It is also recommended that the traffic report be updated to show the CHR's for both developments, including trip generation for each, is an appropriate outcome for a 20 year life.*
- *Whilst previous advice relates to the provision of a CHR for each development, it is noted that Council's preferred treatment remains a four way intersection in the form of a roundabout. Roads and Maritime recommend that funding of the roundabout be considered including the developers enter a Voluntary Planning Agreement to ensure equitable contributions towards the upgrade, to Council and Roads and Maritime's satisfaction'.*

All advice recommendations from the RMS have been assessed and these are considered to address the likely future use of the site. As originally reported, the RMS are satisfied that a range of options concerning traffic turn treatment, can be accommodated.

The options include a four way roundabout built in conjunction with the development of "The Vintage" balance lands, or via a CHR intersection (constructed solely by the proponent). The four way roundabout option is the preferred option and has been imposed by Condition 31 in the Draft Notice of Determination.

3. ***That Council provide, as part of any future report to the Panel, recommended conditions relating specifically to the concept application, in addition to those conditions relating to the Stage 1 community title subdivision application***

Recommended conditions of development consent are attached to this report as a Draft Notice of Determination (conditions of consent).

CONCLUSION

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

As outlined in the report, it is considered that the proponent has addressed the deferred matters (11 December, 2018). The matters raised at the Panel briefing held 16 October, 2019, have also been addressed and discussed within the report.

It is recommended that consent be granted for the concept masterplan and Stage 1 works comprising creation of four (4) 'super lots' to accommodate future stages. All future stages (Stages 2 – 7), will be subject to submission and consideration of separate Development Applications pursuant to Section 83B(4)(a) of the *Environmental Planning and Assessment Act 1979*, at which time, the impact of those stages will be assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*.

CONDITIONS OF CONSENT

1. Staged Approval

Pursuant to Section 4.22 of the *Environmental Planning and Assessment Act 1979*, development consent is granted only to works the subject of Stage 1, i.e., the creation of 4 super lots under a Community Title subdivision.

This consent does not authorise the carrying out of development on any part of the site concerned unless consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, pursuant to S4.22(4)(a) of the *Environmental Planning and Assessment Act 1979*.

Subsequent Development Applications are therefore required to be submitted to, and approved by Council for Stages 2-7 of the proposed development summarised as follows:

STAGE	DEVELOPMENT WORKS
2	18 hole golf course
3	50 room hotel and club house including ancillary function centre and 50 residential lots
4	70 serviced apartments, 70 residential lots, spa and recreation facilities
5	65 serviced apartments and 65 residential lots
6	60 serviced apartments and 60 residential lots
7	55 serviced apartments and 55 residential lots

CONDITIONS OF CONSENT REFERENCE TABLE

STAGE	CONDITION/S
All	2 - 31
1	32 - 34
2	35 - 38

ALL STAGES

The following conditions of consent relate to all stages of the approved development:

2. General Terms of Approval

All General Terms of Approval issued by NSW DPI Water and RFS shall be complied with prior, during and at the completion of the development, as required.

The General Terms of Approval include the following:

- a) NSW RFS (Reference Number D16/4114 DA16120205084JM, dated 26 April 2017).

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

3. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2016/731/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Proposed Staged Subdivision	HDB Planning Design Development	Amendment 16.10.2018
Proposed Plan of Subdivision, Sheets 1 - 5	HDB Planning Design Development	24/10/2018

Document Title	Prepared By	Dated
Statement of Environmental Effects	HDB Planning Design Development	1 September 2016
Bushfire Threat Assessment	HDB Planning Design Development	July 2016
Concept and Management Plan	HDB Planning Design Development	2 October 2019

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

4. Vehicle Access

This approval does not grant or imply consent to establish any new and/or additional vehicular access onto Wine Country Drive. Reference is made to email correspondence from the applicant, dated 15 December, 2017 confirming that no new and/or additional access is to be constructed in conjunction with Stage 1 of the development.

Where the existing access is proposed to be utilised for any construction traffic in Stage 1 of the development, the applicant is to provide a Construction Management Plan (CMP) detailing the manner in which construction traffic access to Wine Country Drive is to be managed to the satisfaction of Council and Roads & Maritime Services (RMS) prior to the commencement of any operations.

If the CMP is required for Stage 1, the CMP shall incorporate all requirements (a-e) as outlined in condition 16 of this consent.

5. CC, PCA & Notice Required

In accordance with the provisions of Section 4.19 of the *EP&A Act 1979* construction works approved by this consent must not commence until:

- a) A CC has been issued by the consent authority, Council or an accredited certifier; and
- b) A PCA has been appointed by the person having benefit of the development consent in accordance with Section 109E of the *EP&A Act 1979*; and

- c) If Council is not the *PCA*, notify Council no later than two (2) days before building work commences as to who is the appointed *PCA*; 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.

6. BCA Compliance

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

7. Connection to the Reticulated Water and Sewer System

The subject development will be serviced by an independent water and sewer utility operator. Prior to issue of an *OC* for all stages and use of any approved building, evidence shall be provided from the independent water and sewer utility operator that the development has been connected to and has approval for use of the reticulated water and sewer system.

8. Private Water Supply – Drinking Water Management System

Development applications for each stage shall be accompanied by 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.

9. Built Form

A colours and materials schedule shall accompany the development application for each stage of the development. A colour palette utilising primarily warm earthy tones and mid-toned neutrals shall be utilised, with the use of more vibrant primary colours limited to smaller accents at ground level to assist with the visual identification of entries.

10. Car Parking and Access

The development application for each stage shall be accompanied by a detailed Traffic and Parking Impact Assessment prepared by an appropriately qualified professional.

The assessment shall incorporate a review of traffic data and the road network, if required to account for any road networks changes affecting the capacity of the road network at the date of lodgement of the development application.

11. Onsite Parking

On-site car parking is to be provided in accordance with the requirements for each stage. The number of car parking spaces shall be provided within each stage in accordance the requirements of Chapter C.1 Access and Parking of the Cessnock Development Control Plan 2010 or the applicable standard at the date of lodgement.

The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition.

Detailed plans shall accompany a development application for each respective stage of the development confirming that the car parks are designed to comply with AS/NZS

2890.1:2004 - Parking Facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking Facilities - Off-street parking for people with disabilities.

12. Bicycle and Motorcycle Parking

Bicycle parking and motorcycle parking is to be provided in accordance with the requirements for each stage. The parking shall be provided in accordance with the requirements of the Cessnock Engineering Requirements for Development or the applicable standard at the date of lodgement of the application.

13. Bus and Coach Parking

Bus and coach parking is to be provided in accordance with the requirements for each stage. The parking shall be provided in accordance with the requirements of Cessnock Engineering Requirements for Development or the applicable standard at the date of lodgement of the application.

14. Servicing

Detailed plans demonstrating the location and operation of service areas shall accompany the development application for each stage.

15. Service Infrastructure

The development application for each stage shall be accompanied by documentation from service and telecommunication providers which details the available network capacity and upgrades required and which confirms that satisfactory arrangements can be made for the provision of services to the development, including the payment of any contributions towards necessary upgrades.

16. Construction and Traffic Management Plan

Prior to commencement of site works for each respective stage of development the developer must prepare a Construction Management and Traffic Management Plan incorporating the following matters.

- 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.

17. Noise Impacts

The development application for each stage must provide a report from a suitably qualified acoustical consultant assessing the impacts of existing noise levels on the buildings proposed in the respective stage. The report shall include acoustic measures to ensure internal noise levels within the proposed buildings are in accordance with Australian Standard 'AS 2107 – 2000 Acoustics – Recommended design sound levels and reverberation times for building interiors'.

18. Section 7.11 Contributions

Pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979, development applications for any stage will be required to pay the applicable contribution as detailed in the relevant plan.

Note: The contribution which will be payable for each stage of the development under Section 7.11 of the Environmental Planning and Assessment Act, 1979. Alternatively, the

developer may enter into a Voluntary Planning Agreement for the undertaking of 'works in kind' in lieu of payment or part payment of a contribution.

19. Landscaping

Each stage of the development shall be accompanied by a Landscape Plan prepared by an appropriately qualified professional which provides details of landscaping, street tree planting, paving and other public domain works and/or works within private property, to be implemented at no cost to Council.

The Landscape Plan for each stage shall be consistent with the Landscaping Strategy, detailed within the Concept and Management Plan (dated 2 October 2019), Chapter 5.

20. Open Space

The provision of street trees, lighting, furniture, pavement finishes, recreation areas and landscaping through all stages shall be in accordance with the Concept and Management Plan (date 2 October 2019) and shall be implemented at no cost to Council.

21. Safety and Security

A formal crime risk assessment (Crime Prevention through and Environmental Design) will be required to be prepared for each stage with a particular emphasis on publicly accessible areas, including at night.

22. Licensing

The development application for any stage which includes a licensed premises must provide details of each licensed premises proposed, the location and scale of which shall be confirmed in consultation with the NSW Police and Council.

23. Advertising Signage

The location of signage shall be detailed as part of the development application for each stage and should reflect an overall consistent graphic design approach. The design approach should encourage front-lit signage, and prohibit poorly designed and highly intrusive signage, including moving LED displays and the like. All signage shall be in general accordance with the relevant Council DCP at the date of lodgement of the application.

24. BASIX

Where necessary, all development applications for each stage shall be supported by a BASIX Certificate prepared in accordance with the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

25. Stormwater

Development applications for each stage shall be accompanied by a Stormwater Management Plan which includes details of connections to the existing drainage infrastructure, any infrastructure upgrades and details of stormwater harvesting for reuse within the development.

26. Flood Mitigation

A flood assessment prepared by a qualified hydraulic engineer shall accompany the development application for each stage of the project.

27. Outdoor Lighting

Development applications for each stage shall be accompanied by an outdoor lighting report that certifies 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*.

28. Waste Management Plan

Development applications for each stage shall be accompanied by a Waste Management Plan. 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.

29. Waste Management

During all stages of development, 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.

30. Building Materials On Site

During all stages of development, 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.

31. Aboriginal and Historical Archaeology

Prior to lodgement of a development application for each stage, the applicant shall submit a copy of the Aboriginal Management Plan (endorsed by the Local Aboriginal Land Council) to Council.

The recommendations and considerations of the endorsed Aboriginal Management Plan are to be addressed within each of the future development applications submitted in accordance within the staged concept plan.

STAGE 1

The following conditions of consent relate to Stage 1 of the approved development:

32. Requirement for a Subdivision Certificate

Prior to the issue of a SC, the applicant shall submit an original plan of subdivision plus six (6) copies for Council's endorsement. The plan of subdivision must show street names and house numbering as allocated by Council. The following details are also to be submitted:

- a) Evidence that all conditions of Development Consent have been satisfied
- b) Evidence of payment of all relevant fees
- c) The 88B instrument plus six (6) copies
- d) All surveyor's and engineer's certification required by the Development Consent
- e) Evidence 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 Board (Corporation) Act 1991.
- f) Provide certification that all services (drainage, stormwater, water supply, gas, electricity, telephone) are contained within each lot, or within appropriate easements to accommodate such services.

33. Road Closure Notice

Prior to the issue of the Subdivision Certificate, the applicant shall provide evidence to Council that the unnamed crown public road 20.115m wide and 10.06m wide within the site has been closed. Evidence of the road closure and a copy of the consolidated DP is to be submitted to Council.

34. Plan of Management

The applicant is to submit a plan of management for the four (4) super lots community title prior to the release of a subdivision certificate. The plan is to state the following;

"Access Rights for the original proprietor and owner of the community lots - complete and unrestricted access by foot or motor vehicle over Community Property".

STAGE 2

The following conditions of consent relate to Stage 2 of the approved development:

35. Water

Prior to lodgement of a development application for Stage 2, the applicant is to submit details of the waste water solution, authorised by Hunter Water, that will address the waste water needs for the whole site over all stages.

36. Vegetation Management Plan

Prior to lodgement of a development application for Stage 2, the applicant must prepare and submit to Council and obtain approval for a Vegetation Management Plan (VMP) for the area to be revegetated with native shrubs and small trees. The VMP is to be prepared by a suitably qualified and experienced Ecologist. The primary objective of the plan is to be weed management, regeneration of native vegetation and if necessary replanting. Implementation of the VMP must commence immediately following issue of the CC. In preparing and implementing the VMP the following criteria must be addressed:

- a. A suitably qualified and experienced professional bush regeneration contractor is to be engaged to carry out any revegetation planting, restoration and maintenance weed control specified in the VMP. The minimum qualifications and experience required for the bush regeneration contractor are a TAFE Certificate IV in Conservation and Land Management (or equivalent) and three years demonstrated experience (for site supervisor) and a TAFE Certificate 2 in Conservation and Land Management and one year demonstrated experience (for other personnel).
- b. A site plan must be prepared at an appropriate scale, clearly showing the area to which the VMP applies, existing vegetation and extent of dominant weed infestations.
- c. A description of existing native vegetation, assessment of ability to regenerate and rehabilitation methods must be provided.
- d. A schedule of works must be prepared detailing the sequence and duration of works necessary for the regeneration, any revegetation and maintenance works. All primary weed control must be undertaken in the first year following commencement of the VMP, with secondary weed control undertaken in the second following commencement of the VMP. If natural regeneration has not occurred within one (1) year of implementation of the VMP then replanting must occur. A minimum of 90% survival rate of plantings is required, with replacement planting to occur if required to achieve this.
- e. The location and type of fencing or other suitable method of restricting access of livestock into the area to which the VMP applies must be identified if livestock are to be kept on the lot.
- f. Photo monitoring points, details of plant survival and occurrence of natural regeneration are to be used as part of the monitoring of the area and included in each monitoring report.
- g. Monitoring reports on the progress of the VMP are to be submitted to and approved by Council's Ecologist once every six (6) months for the duration of the VMP.

37. Aboriginal and Historical Archaeology

Prior to lodgement of a development application for Stage 2, the applicant shall submit a copy of the Aboriginal Management Plan (endorsed by the Local Aboriginal Land Council) to Council.

The recommendations and considerations of the endorsed Aboriginal Management Plan are to be addressed within each of the future development applications submitted in accordance within the staged concept plan.

38. Vehicular Access

Prior to lodgement of a development application for stage 2, the applicant is to consult with Roads & Maritime Services (RMS) regarding future access arrangements from Wine Country Drive. Evidence of consultation is to be provided to Council.

Access to development proposed under stage 2 of the development shall be via a four (4) way, single lane circulating roundabout on Wine Country Drive servicing both the subject development and the proposed development of the 'The Vintage' balance land (located to the west of the subject land on Wine Country Drive). The roundabout design shall be approved by Council in consultation with the RMS in conjunction with any development application for stage 2.

No residential development shall access Wine Country Drive prior to satisfactory arrangements having been completed under Stage 2 of the development proposal.

ADVISORY NOTES

1. Road Widening

Local Road Widening to Wine Country Drive is required under the provisions of the Cessnock LEP, 2011 (Land Reservation Acquisition Map - Sheet LRA_005). Any improvements proposed by the Masterplan shall exclude the area of land depicted by the Map as required for future road widening purposes.

2. 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.