

**JOINT REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST REGION**

Panel Reference	2017HCC057
DA Number	8/2017/662/1
LGA	Cessnock City Council
Proposed Development	Construction of tourist accommodation (72 units) including a function centre and ancillary works
Street Address	Palmers Lane, Pokolbin
Lot/DP	Lot 22 DP 791884 and Lot 40 DP 755255
Applicant/Owner	Hephzibah Hunter Valley Investment Pty Ltd
Date of DA lodgement	07/11/2017
Number of Submissions	Seven (7)
Recommendation	Approval, subject to conditions
Regional Development Criteria (Section 4.5 of the EP&A Act)	The proposal has a capital investment value of \$35,704,185, exceeding the threshold pursuant to Part 2 of Schedule 7 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> .
List of all relevant s4.15(1)(a) matters	• <i>State Environmental Planning Policy No 44 – Koala Habitat Protection</i> • <i>State Environmental Planning Policy No 55 – Remediation of Land</i> • <i>State Environmental Planning Policy No 64 – Advertising and Signage</i> • <i>State Environmental Planning Policy (Rural Lands) 2008</i> • <i>Cessnock Local Environmental Plan 2011</i> • <i>Cessnock Development Control Plan 2010</i>
List all documents submitted with this report for the Panel's consideration	• Signed application form • Lodgement plans (Morris-Nunn Architects; 19 September 2017; 9 sheets) • Landscape drawings (Spackman, Mossom & Michaels; 28 September 2017; 10 sheets) • Proposed Right of Access (Spackman, Mossom & Michaels; 28 February 2018; 2 sheets) • Aboriginal Heritage Assessment (Myall Coast Archaeological Services; 3 March 2017) • Agricultural Report (Neil Nelson Agvice; 26 February 2018) • Bushfire Hazard Assessment Report (Building Code & Bushfire Hazard Solutions; 27 September 2017) • Crime Risk Assessment (JW Planning; April 2017) • Ecological Assessment (BIOCM; 25 October 2017) • Flood Study (WMA Water; 6 January 2016) • Noise Impact Assessment (Spectrum Acoustics; February 2018) • Preliminary Effluent Disposal Assessment (revision 1) (Douglas Partners; April 2018) • Preliminary Site Investigation (Contamination) (Douglas

	Partners; September 2017) • Social Impact Assessment (JW Planning; no date) • Statement of Environmental Effects (JW Planning; no date) • Stormwater Concept Management Plan (Northrop; 10 October 2017) • Traffic Impact Assessment (Seca Solutions; 26 September 2017) • Waste Minimisation and Management Plan
Report prepared by	Luke Mannix, Senior Planning Assessment Officer
Report date	22 October 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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)? Not Applicable
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

EXECUTIVE SUMMARY

A Development Application has been submitted for the construction of tourist accommodation (72 units), together with a function centre and ancillary landscaping and civil works, at Palmers Lane, Pokolbin (refer to location map below). The proposed works have an estimated cost of \$35,704,185. As such, the application is required to be determined by the Hunter and Central Coast Joint Regional Planning Panel (JRPP).

The primary development site is known legally as Lot 22 DP 791884 and has an area of 48.56ha. The land is generally rectangular but is dissected by the Palmers Lane road reserve. As this section of road is unformed, the site is accessed via a right of accessway burdeoning Lot 40 DP 755255 to the south (NB: this land is also subject to this application for road works). The site has historically been used for agricultural grazing and as such there are large sections of cleared land, with scattered woodlands located in the south-western and north-eastern sections and around the intermittent creekline that runs through the centre of the site. The creek is a 3rd order stream and the site also includes a number of small farm dams. With the exception of boundary fencing and power lines, there are no physical structures located on the land.

The application seeks to construct 72 tourist accommodation units within two buildings, each of which are proposed to be a maximum of two-storeys in height. Each unit would contain space for a double bed, siting area, small kitchenette, outdoor courtyard, bathroom and laundry

facilities. The function centre, which includes reception, kitchen and restaurant, board room and amenities, is located 120m south of the accommodation and would also be a maximum of two-storeys in height. The primary materials used would be timber and metal corten, with a sloped living roof proposed for the function centre. The remaining development comprises of ancillary landscaping (comprising of fruit and pasture planting and native revegetation along the creek and southern and eastern boundaries) traffic and parking works (including 115 parking spaces) and waste water management systems.

Nearby affected property owners were notified of the proposal and, taking into account the application is nominated integrated development, it was also advertised in the Cessnock Advertiser. The application was on exhibition from 29 November 2018 to 4 January 2018 (a minimum of 30 days allowing for public holidays), and at the conclusion of the exhibition period, seven (7) submissions were received. Internal Council referrals were also undertaken, with comments and recommended conditions integrated within the assessment. Finally, the application is integrated development pursuant to Section 4.46 of the Act and hence requests were sent to RFS and DPI Water for general terms of approval.

The following is a summary of the relevant Section 4.15(1) matters considered by Council:-

- Environmental Planning Instruments (EPI's):-
 - The application is considered to comply with the relevant and applicable State Environmental Planning Policies (SEPPs), including Clause 7 of SEPP 55 (remediation of land) and Part 2 of SEPP 44 (Koala habitat protection).
 - Pursuant to the Cessnock Local Environmental Plan 2011 (CLEP), the application is considered to be permissible in land zoned RU4 and satisfies the objectives of the zone. Furthermore, the proposal complies with the relevant clauses of the CLEP, specifically Clauses 7.2, 7.3 and 7.6.
- Draft EPIs –draft amendments to the CLEP were exhibited under the Joint Cessnock and Singleton 'Vineyard's District' Planning Proposal. The amendments would potentially have prohibited serviced apartments on the subject land, however, Council at its meeting of 7 November, 2018 resolved not proceed with the Joint Cessnock and Singleton 'Vineyard's District' Planning Proposal and undertake further strategic analysis, including a precinct based approach to land use planning in the Cessnock RU4 Primary Production Small Lots Zone.
- Cessnock Development Control Plan 2010 (DCP) – the application is consistent with the relevant provisions under the DCP.
- Planning agreements – there are no planning agreements, or draft planning agreements, relating to the site or the application.
- The Regulations – no prescribed matters are applicable to this application.
- Likely impacts – it is considered that significant adverse impacts are unlikely as a result of the proposed development.
- Site suitability – the site is considered to be suitable for the proposed development.
- Any submissions – Council exhibited the application for a minimum of 30 days, and a total of seven (7) submissions were received. In accordance with the Act, the comments made were taken into consideration.
- Public interest – the application is considered to be consistent with the public interest.

RECOMMENDATION

That Development Application No. 8/2017/662/1 proposing the construction of tourist accommodation (72 units), function centre/restaurant and ancillary works at Palmers Lane Pokolbin (Lot 22 DP 791884, and Lot 40 755255), be determined pursuant to Section 4.16 of the Act, by the granting of consent subject to the conditions contained at the end of the report.

LOCATION MAP

An overview map of the area around the subject site. The subject site is highlighted in green and is located at the intersection of Palmer's Lane and Broke Road. Other roads shown include Cedar Creek, Rotherbury, and Broke Road. Land parcels are labeled with their respective numbers, such as 9//755255, 7//755255, 42//755255, 85//755255, 1//377544, 6//755255, 125//755255, 29//755255, 2//875966, 1//261053, 2//261053, 3//261053, 103//755255, 104//755255, 105//755255, 106//755255, 107//, 1//626591, 21//791884, 109//, 22//791884, 81//718789, 40//755255, 822//746940, 17//239452, and 155//.

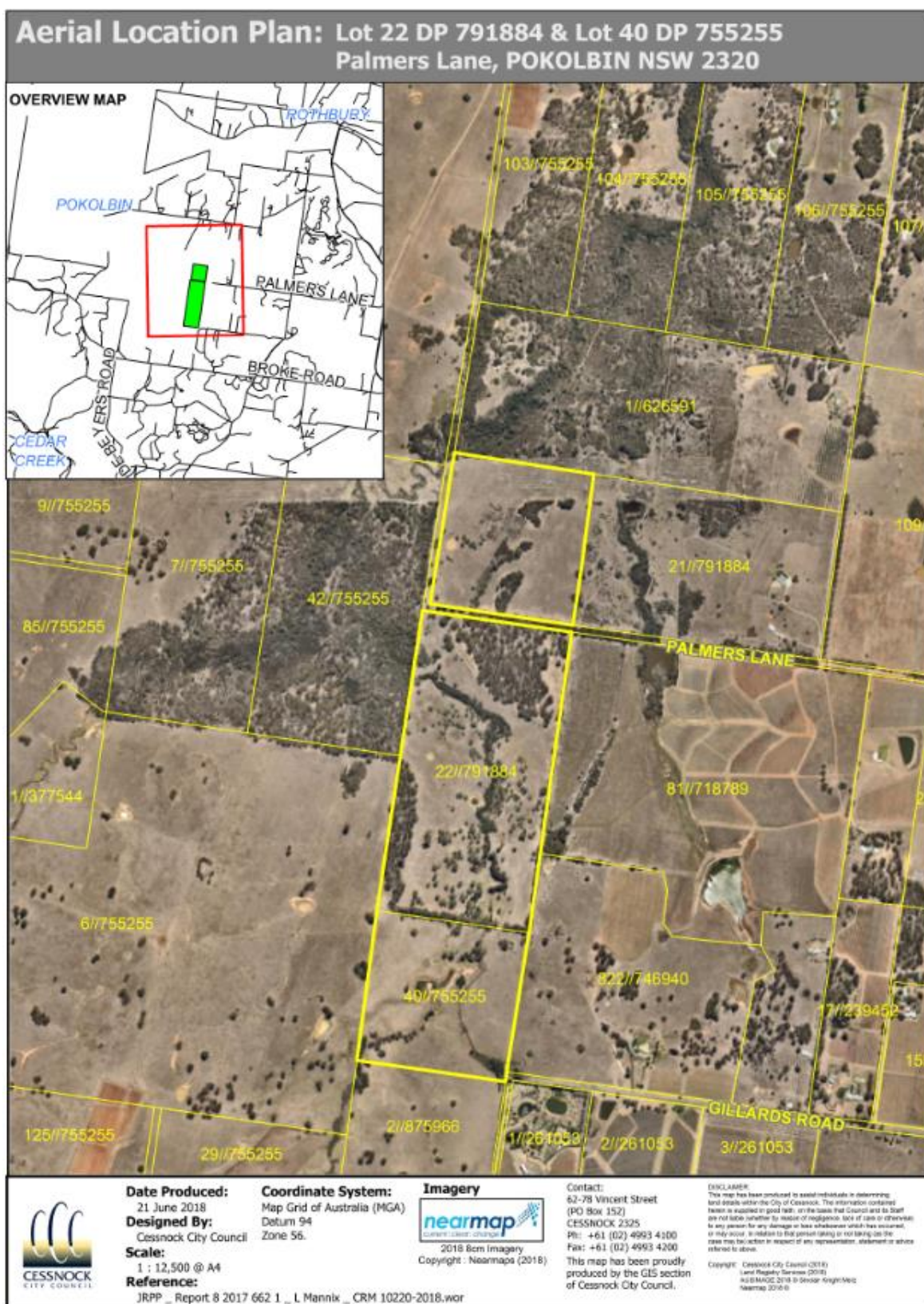


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AERIAL



SITE DESCRIPTION AND LOCALITY

The subject site relates primarily to Lot 22 DP 791884. The site is a 48.56ha parcel of land located at the western end of Palmers Lane, which is unformed and separates the site into northern and southern sections. It has historically been used for grazing purposes and contains no development, although electricity easements are located in the northern section.

The site has a gentle undulation, with a small hill located near Palmers Lane and a creek running roughly south-north through its southern section. The creek, which is a 3rd order stream, is a tributary of Mary Annes Creek that eventually flows into Black Creek near Rothbury to the north. Whilst the majority of the site has been cleared for agricultural purposes, a notable portion of vegetation exists on the site, particularly along the creek line, around the small hill, and on the western and southern boundary of the southern section. Photographs of the site are contained in Figures 1-6 below.

Whilst the site is split by Palmers Lane, which is under the care and control of Council, the nearest formed section of the road is 675m to the east and therefore is not used for access. Instead, the site is accessed by a right of way on Lot 40 DP 755255 (also subject of this application) from Gillards Road. The majority of Gillards Road is a sealed two lane demarcated road under the care and control of Council, however approximately 230m of the final section of the road to Lot 40 is unsealed.

The area surrounding the site is characterised by rural development, typically vineyards with wineries and tourist facilities (such as cellar doors). Tourist accommodation and a function centre/restaurant is located on Gillards Road at the intersection with McDonalds Road.

Figure 1: Approximate area of proposed function centre/restaurant (looking west).



Figure 2: Approximate area of internal road between the function centre/restaurant and serviced apartments (looking south). Note tree with bird nest in the upper-left hand corner.



Figure 3: Approximate area of proposed serviced apartments (looking north-east).



Figure 4: Approximate area of proposed creek crossing (looking south)



Figure 5: Existing right of accessway on Lot 40 from site boundary (looking south)



Figure 6: Approximate drop-off area and internal road towards creek crossing (looking north-west)



HISTORY

Relevant Approvals

The subject site has historically been used for agricultural purposes, primarily land grazing.

Whilst there is no known planning history on Lot 22, it is noted that development consent was granted for the construction of a single dwelling on Lot 40 in 2008 (Council Reference Development Consent No. 8/2008/304/1). Where relevant, this development has been considered in the assessment of the application.

Development Application

Council held pre-lodgement discussions with the proponent on 1 July 2016 and 10 March 2017. It should be noted that whilst these discussions included a number of development options on the site, they contained similar components (serviced apartments, function centre and restaurant). Section 5.0 of the Statement of Environmental Effects (JW Planning; no date; p. 46) details the proponents responses to the issues raised during these discussions.

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

Date	Action
07/11/2017	The application is lodged.
13/11/2017	The application is allocated to an assessment officer.
21/11/2017	Internal and external referrals are issued to the relevant bodies. Letters were sent to RFS and DPI Water.
29/11/2017	Public exhibition commenced for a minimum of 30 days. A total of seven (7) submissions were received.
07/12/2017	A written request for further information was issued by Council to the applicant in accordance with Clause 54 of the Regulations. This related to BASIX certificates, Noise Impact Assessment, Agricultural/Viticulture Soil Analysis, signage detail and the submission of an objection to DCP height requirements.
02/01/2018	Another written request for further information was issued by Council to the applicant requesting additional details on wastewater treatment and clarification on information in the submitted effluent report.
18/01/2018	An initial response to the written request issued on 7/12/18 was received from the applicant relating to BASIX requirements, signage and height objection.
20/03/2018	A written response from the applicant was received with respect to the Noise Impact Assessment, as well as a response to the matters raised in the submissions.
23/04/2018	A written response from the applicant was received with respect to agricultural assessment and effluent disposal. Following the receipt of this information, a further internal referral was issued to Council's Environmental Health Officer.

24/04/2018	A written request for further information was issued by Council to the applicant requesting additional ecological details.
31/05/2018	A written response from the applicant was received with respect to ecological details. Following the receipt of this information, the matter was further reviewed by Council's Ecologist.
28/08/2018	A meeting was held between the applicant and Council officers in respect of concerns regarding the layout of the serviced apartments. The applicant was requested to provide additional information relating to the floor plan of the serviced apartments.
04/10/2018	Amended plans received showing alterations to the layout of the serviced apartments, including accessible units.
22/10/2018	Assessment finalised.

DETAILS OF THE PROPOSED DEVELOPMENT

Development Application No. 8/2017/662/1 seeks approval for the construction of tourist accommodation, consisting of 72 units, together with a function centre/restaurant, and associated landscaping and civil works.

The built development would be isolated to the south-western portion of the site, situated between the creek line and the western boundary. The units would be situated within two buildings, both with a height of two-storeys, and each unit contains space for a double bed, sitting area, kitchenette, outdoor courtyard, bathroom and laundry facilities. The function centre/restaurant would also be two-storeys, however with a sloping roof and therefore the first floor is significantly smaller than the ground floor. The building would comprise of reception, function room, board room and ancillary amenities and back of house/kitchen area.

The proposed units would be constructed of a mixture of timber cladding and screening with small amounts of metal corten used around the entry. The function centre/restaurant would be constructed predominately of metal corten, with native planting utilised on the sloping roof. Glazing would be implemented behind areas of metal corten screening.

The proposed landscaping would utilise native species (including those typically found within Central Hunter ironbark, spotted gum and grey gum forest ecosystems) mainly around the creek line and car parking areas. Native vegetation would also be replanted around the southern and eastern boundaries. Fruit trees, grape vines and pasture crops such as wheat and canola would be used around the units and function centre/restaurant. Landscaping is also proposed along the right of accessway on Lot 40. Pedestrian paths would be constructed adjacent to roads as well as in between the units and function centre. The applicant proposes to remove minimal amounts of vegetation as part of the proposal.

The civil works include upgrades to the right of way on Lot 40, as well as internal roads and parking areas. The internal road would include creek crossings. A total of 115 parking spaces would be provided, 42 around the accommodation and 73 around the function centre/restaurant. A drop off area would also be created at the entrance to the site.

SECTION 4.15(1) ASSESSMENT

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

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

The following EPI's are applicable to the assessment of the application:

- SEPP 44 – Koala Habitat;
- SEPP 55 – Remediation of Land;
- SEPP 64 – Advertising and Signage;
- SEPP (BASIX) 2004;
- SEPP (Infrastructure) 2007;
- SEPP (Rural Lands) 2008; and,
- Cessnock LEP 2011.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

SEPP 44 aims to encourage the conservation and management of natural vegetation providing habitat for koalas and applies to land within Cessnock City Council. The development controls under Part 2 apply to the land that is the subject of this application, given it is more than 1ha, and subsequently a stepped assessment must be undertaken before granting consent. Firstly, the consent authority must be satisfied that land to which this policy applies is not potential koala habitat, and if the land is potential Koala habitat, then it must be satisfied the land is not core koala habitat. If the land is core koala habitat, then consent cannot be granted until a Plan of Management is prepared and applies to the site.

It is noted that the Ecological Assessment (BIOCM; 25 October 2017; pp. 52-54, 56) includes an assessment of the impact on Koala habitat pursuant to the *Environmental Protection and Biodiversity and Conservation Act 1999* (EPBC Act) and makes mention of SEPP 44. This assessment includes a survey of Koala habitat and potential activity, which concluded that there were Koala feed tree species within the sample sites but no trace of Koala activity. Subsequently, it is summarised in the report that, irrespective of the lack of Koala population, secondary habitat is present and therefore it must be considered that a Koala population may use the site in future.

Based on the information submitted within the assessment and pursuant to the definitions in SEPP 44, Council considers that the site befits land defined as potential Koala habitat, but is not core Koala habitat. Subsequently, there are no matters under Part 2 of the SEPP that restrict Council from granting consent to the proposal. Furthermore, taking into account the minimal removal of vegetation and regeneration works proposed, the application is considered to satisfy the SEPP's objectives. Therefore the proposal is consistent with the SEPP.

State Environmental Planning Policy No 55 – Remediation of Land

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

Clause 7(1) is relevant to the assessment of this Development Application. It requires that consent not be granted until the consent authority has considered whether the land is contaminated. If the land is contaminated, the consent authority 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 application is supported by a Report on Preliminary Site Investigation (Contamination) (Douglas Partners; September 2017). The report comprises of a brief desktop review and a site inspection of the development area (indicated as stage 1 in the report) and makes reference to legislative requirements and best practice guidance. It is noted that the past use of the site has been agricultural (primarily grazing with dams likely constructed in the mid 1990's) and no contamination was observed on-site, nor is the site listed on any contaminated lands register. However, potential contaminants were hypothesised, including filling associated with dam construction and herbicide application on the site and adjoining properties. From this, it was concluded that the presence or absence of contamination can only be confirmed by further investigations, including environmental sampling and chemical testing. If present, the report considers that the potential contaminants would be amendable with remediation, if required. The site is summarised as being suitable for the intended use, subject to further investigation and localised remediation if required.

Council officers have considered the site investigation and desk top studies provided with the application and, in general, agree with the conclusion that contamination of the site is unlikely due to the past uses. The proposal is therefore consistent with the objectives of the SEPP. Notwithstanding this, advice has been imposed on the draft determination notice to ensure that the applicant is aware of their responsibilities should additional contamination be discovered.

State Environmental Planning Policy No 64 – Advertising & Signage

SEPP 64 aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality and finish. Part 2 of the SEPP includes requirements that development must satisfy prior to granting consent, including an assessment against the criteria of Schedule 1.

It has been noted by Council officers that no signage detail has been provided and the applicant has advised that no signage has been designed at this stage. Subsequently the provisions in this SEPP are not applicable.

Taking into account the proposed use, it is considered highly likely that signage or advertising would be utilised in the future. Furthermore, given the sensitive site location within the 'Vineyards District', any signage would need to be particularly designed to ensure it is compatible with the desired viticultural character. Therefore, Council would ideally prefer to receive signage detail with the application for the use to guarantee the design is appropriate against the SEPP, as well as Council's signage policies. Nevertheless, bearing in mind this detail has not been prepared and any future signage that is likely to impact on the character of the area would require a

separate Development Application, it is considered that this information is not vital to the assessment of this application.

Therefore, it is considered there are no matters within this SEPP that apply to the current application. Notwithstanding this, advice has been imposed on the draft determination notice to ensure that the applicant is aware that any future signage, other than that satisfying the exempt development code, requires separate consent from Council.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The Regulations make provisions to encourage sustainable residential development (the BASIX scheme) and this SEPP aims to ensure consistency in the implementation of the scheme throughout the state. It should be noted that a BASIX affected building is defined as any building that contains one or more dwellings, but does not include a hotel or motel. Further to this, a dwelling in relation to a BASIX affected building means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being used, as a separate domicile. Under the Regulations, a BASIX certificate must accompany any application for the erection of a BASIX affected building.

The applicant highlighted that the proposal involves the construction of serviced apartments, which does not meet the definition of a dwelling. Subsequently, the proposal is not BASIX affected development and a certificate is not required under the Regulations. It is noted that the National Construction Code (NCC) provides clarity of building classifications. It states that Class 1 buildings (i.e. dwellings) includes Class 1b buildings, being a boarding house, guest house or hostel that has a floor area less than 300m² and ordinarily has less than 12 people living in it. Where buildings are more than 300m² in floor area or is capable of having more than 12 people living in it, it would be considered a Class 3 building. Council considers that Class 3 buildings are not BASIX affected buildings and hence BASIX certificates are not required to support applications for this purpose.

Therefore, the proposed development is not considered to be BASIX affected and as such the requirements of this policy do not apply.

State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure and makes provisions for identifying matters for consideration, as well as consultation with relevant public authorities, during the assessment process. In line with this, Clause 104 includes additional consultation and assessment requirements for traffic-generating development. Schedule 3 defines traffic-generating development, which for tourist facilities is development with a capacity of a minimum 200 motor vehicles with access to any road, or a minimum 50 motor vehicles with access to a classified road.

It is noted that the applicant states that the site is not traffic-generating development and therefore no further consultation or assessment under Clause 104 is required. It is noted that the site is directly accessed from Gillards Road, an unclassified road under the care and control of Council, and the development makes provisions for 115 parking spaces. Taking this into account, the proposal does not satisfy the traffic-generating development definition and the matters under Clause 104 are not

applicable. It is also considered that there are no other matters within the SEPP that are related to the application.

State Environmental Planning Policy (Rural Lands) 2008

This policy applies to rural zoned land in Cessnock City Council and aims:-

- a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- c) *to implement measures designed to reduce land use conflicts,*
- d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

It should be noted that the Rural Planning Principles are identified under Part 2 of the SEPP. It is considered that Council's land zone objectives within the CLEP are consistent with objectives of this SEPP and the Rural Planning Principles. Given the proposal is compliant with the objectives of the land zoning (refer to assessment below), it is also considered that the proposal is compliant with the objectives of this SEPP. Consequently there are no matters within the policy that restrict the proposed development.

Cessnock Local Environmental Plan 2011

The CLEP 2011 applies in this instance and an assessment of the applicable clauses has been undertaken below:

Clause 2.3 Zone Objectives & Land Use Tables

Pursuant with subclause (2), the consent authority must have regard to the relevant land zone objectives when determining applications. Furthermore, the land zone table outlines the development that may be carried out with consent and prohibited development within a zone. The subject site is zoned RU4 Primary Production Small Lots under the provisions of the CLEP and the following assessment is provided.

Permissibility

Within the Statement of Environmental Effects (JW Planning; no date; p. 34), the applicant has identified the following relevant uses, with the CLEP definitions added:-

Tourist and Visitor Accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) *backpackers' accommodation,*
- (b) *bed and breakfast accommodation,*
- (c) *farm stay accommodation,*
- (d) *hotel or motel accommodation,*
- (e) *serviced apartments,*

but does not include:

- (f) camping grounds, or*
- (g) caravan parks, or*
- (h) eco-tourist facilities.*

Function Centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

Restaurant or Café means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided

It is noted that the above uses are expressly identified as permitted with consent on RU4 land under part 3 of the land use table. Serviced apartments are listed under the group term of tourist and visitor accommodation, and are defined as follows:-

Serviced Apartments means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents

It is noted that serviced apartments are not explicitly identified as being permitted with consent under part 3 of the land use table; however, through virtue of being included under the group definition of 'tourist and visitor accommodation', the use is permissible.

It is noted that an objection was received during the exhibition period opposing the applicant's definition of the development as serviced apartments. To support this, the objector has highlighted that the drawings do not provide sufficient detail of kitchen or laundry facilities and hence it cannot be considered as self-contained. The objector further states that the use would be best defined as hotel or motel accommodation, given the self-contained element is not necessary to this definition. The objector concludes the application should be characterised on this basis and, noting that hotel or motel accommodation is explicitly prohibited on RU4 land under part 4 of the land use table, the application should be refused.

Therefore, the primary question surrounding permissibility relates to whether the development satisfies the serviced apartments or hotel or motel accommodation definition.

In accordance with the definition outlined above, it is considered that, in order to meet the serviced apartment definition, the development must be self-contained. Following a meeting between the applicant and Council officers to discuss this issue, amended plans were submitted by the applicant showing facilities within the units, including a kitchenette and laundry. This is illustrated in Figure 7 below.

The floor plan shows a small apartment with the following numbered areas and features:

- 01:** Bathroom containing a toilet, sink, and a folding seat.
- 02:** Entry area with a coat closet.
- 03:** Kitchen area with a sink and a stove.
- 04:** Dining area with a table and two chairs.
- 05:** Living area with a sofa and a coffee table.
- 06:** Bedroom with a bed.
- 07:** Hallway connecting the rooms.
- 08:** Storage area or closet.
- 09:** Laundry circulation zone, 1550 deep.
- 10:** Kitchen circulation zone, 1550 deep.
- 11:** A large window or balcony area.

- LEGEND**
- 01 - Deck
 - 02 - Circular seating
 - 03 - Breakfast Bar (table is on wheels, & can be moved for a view while eating)
 - 04 - Drawer fridge & microwave under bench
 - 05 - 2 element cooktop
 - 06 - Kitchen bench 4200 mm long
 - 07 - Small sink
 - 08 - Backside table
 - 09 - Poles
 - 10 - Laundry bench
 - 11 - Dirty clothes storage beneath bench
 - 12 - Combined washer & dryer beneath bench
 - 13 - Entry
 - 14 - Bathroom
 - 15 - Courtyard Garden

Based on the information provided within the amended plans, Council considers that the proposal is suitably self-contained and therefore complies with the definition of serviced apartments. In relation to the remaining matters within the serviced apartments definition, Council officers are satisfied that the accommodation would be aimed at tourist and visitors on a commercial basis with cleaning and servicing to be undertaken by employees of the accommodation operator.

Considering the above, the proposal is considered to satisfy the definition of serviced apartments. Given this use falls under the group term of tourist and visitor accommodation and is not expressly prohibited under the CLEP, it is a permitted form of development on RU4 zoned land.

Objectives

In accordance with subclause (2), an assessment of the proposal against the RU4 objectives is provided below:-

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

The proposal is expected to include some level of primary production, such as vines and orchards as indicated on the landscaping plans (Spackman, Mossop & Michaels; 28 September 2017), however these would not be used for commercial purposes. Nonetheless, tourist and visitor accommodation has been recognised as land uses compatible to primary industry. Furthermore, through an assessment of planning matters discussed further in this report, it is considered that the proposal would not affect primary industry within the area through either its construction or operation.

It is therefore considered that the application satisfies this objective.

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

As noted above, the application does not propose primary industry but rather tourist accommodation and function centre/restaurant. Nonetheless, it is considered that the proposal would result in significant employment opportunities.

It is therefore considered that the application satisfies this objective.

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

It is important to note that Council's DCP, particularly Chapters C.4, D.4 and E.3, provide requirements for buffers and setbacks to reduce land use conflict. As discussed further below, the application is compliant with these requirements and therefore land use conflicts are sufficiently mitigated. Furthermore, the surrounding land uses do not consist of noticeably polluting uses that would conflict with the proposed development.

It is therefore considered that the application satisfies this objective.

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

The application is supported by an Agricultural Report (Neil Nelson Agvise; 26 February 2018), which concluded that the land is not prime agricultural land. In addition to this, it is considered that the proposal would have beneficial economic effects and neutral ecological impacts through extensive revegetation (see discussion under likely impacts below). As such, the proposal is not considered to

adversely impact the availability of prime viticultural land, whilst enhancing the economy and ecological sustainability of the district.

It is therefore considered that the application satisfies this objective.

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

The applicant has highlighted this objective within the Statement of Environmental Effects (JW Planning; no date; p. 34) and therefore it is insinuated that the proposal is compliant with the objectives of the RU4 zone on this basis. Further to this, the requirements of relevant State and local planning provisions have been considered, and it is concluded that the tourist development would be appropriate on this site. In particular, it is worth noting that the proposal would not have adverse impacts on the rural and viticultural character of the district.

It is therefore considered that the application satisfies this objective.

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

As highlighted above, the proposal would not significantly reduce availability of prime agricultural land, nor would it adversely impact on the operations of adjoining agricultural land. Therefore the application would disadvantage the continued rural use of the area.

It is therefore considered that the application satisfies this objective.

Summary

The proposal satisfies the above objectives of the RU4 zone. Furthermore, it is considered that the proposed accommodation is consistent with the definition of a serviced apartment, which is permissible in the zone under the group definition of tourist and visitor accommodation. As function centres and restaurants are also permitted in RU4 land, the proposal is consistent with the CLEP land use table.

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. The proposal would include some earthworks in association with the construction of the building and civil works. Subsequently, this clause applies to the application.

Before granting consent, matters listed under subclause (3) must be considered. These are described in greater detail below:-

- *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

The site has generally gentle slopes towards the creek. More specific to the area of development, it is generally flat, with the accommodation being situated on a slight up-slope towards the western boundary. An internal road would also cross the 3rd order stream. Given the relatively gentle sloping nature of the development area, it is

considered that the proposed building works would not significantly impact on soil stability or drainage patterns. Furthermore, taking into account that appropriate design details of the road would be secured prior to the issue of Construction Certificate via a condition of consent, the proposed creek crossing is also unlikely to result in significant harm on existing drainage through the creek.

- *the effect of the proposed development on the likely future use or redevelopment of the land*

The application proposes building works associated with tourist accommodation. It is also noted that the application intends to utilise a number of agricultural and natural landscaping options. The effect on the land from this use is not considered to preclude redevelopment or other uses on the site in the future.

- *the quality of the fill or the soil to be excavated, or both*

Soil contamination has been assessed under SEPP 55 (see above) and it is considered that the soil would be of appropriate quality for the development. Additionally, it is likely that cut will be reused on the site as fill and, given the likely satisfactory nature of the soil, this would also be acceptable. Notwithstanding this, a condition of consent has been imposed on the draft determination notice to ensure that any fill brought on site is of appropriate quality and soil is appropriately removed. Therefore the quality of soil, both for fill and excavation, is likely to be acceptable.

- *the effect of the proposed development on the existing and likely amenity of adjoining properties*

Noting that the site is significantly separated from adjoining land owners, the level of earthworks is unlikely to have a noticeable impact on the amenity of neighbours.

- *the source of any fill material and the destination of any excavated material*

As described above, a condition of consent has been imposed on the draft determination notice in respect of the quality of fill and cut material.

- *the likelihood of disturbing relics*

The application was supported by an Aboriginal Heritage Assessment (Myall Coast Archaeological Services; 3 March 2017). The report sought to identify whether Aboriginal objects are, or are likely to be present, as well as determining whether the proposal is likely to cause harm to Aboriginal objects (if present).

From the desk top study, the report found that no Aboriginal objects exist on the site. Furthermore, during a visual assessment, no objects were discovered and, taking into account the pastured nature and areas of poor subsoil among drainage lines, it was determined that subsurface objects were unlikely. Based on this, it was considered that the Aboriginal archaeological significance of the site is low and no harm to Aboriginal objects is expected as a result of the proposal.

Taking the above information into account, it is considered that the likelihood of disturbing Aboriginal relics would be low. Nonetheless, noting the recommendations of the report (p. 40), advice has been imposed on the draft determination notice in respect of Aboriginal objects and the developer's responsibilities regarding the *National Parks and Wildlife Act 1974*.

With respect to other post-colonial relics, given the lack of use in this period, it is unlikely that European heritage items exist on the site.

- *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

The site contains an intermittent creek, which is defined as a 3rd order stream. The proposed building works would be at least 90m from the creek line and an internal road would cross the creek. Given the distance and relatively small amount of earthworks associated with the building works, together with suitable mitigation measures such as erosion control, the potential impact on the creek from this element would be minimal. However, it is noted in the Concept Stormwater Management Plan (Northrop; 10 October 2017; p. 2) that fill would be required to an extent of 1.7m above invert level of the creek to facilitate culverts and appropriate height for floodwater access. Given the nature of the stream, the extent of works and its proximity to the creek, there is the likelihood that earthworks may result in adverse impacts to the waterway. Mitigation measures to avoid these impacts are discussed below.

The site is not located within close proximity to any known drinking water catchment or environmentally sensitive area. Therefore no potential adverse impact on these components are likely as a result of the earthworks.

- *any measures proposed to minimise or mitigate the impacts referred to in paragraph (g)*

The supporting Concept Stormwater Management Plan provides information on the creek crossing, as well as management measures relating to stormwater quantity and quality. Council's Development Engineer has provided comments on this document and consider that the stormwater quality measures proposed are appropriate, provided detailed design is secured. In this regard, conditions of consent have been imposed on the draft determination notice in respect of detailed stormwater measures, together with conditions of consent relating to structural and hydrological details of the creek crossing.

Therefore, provided the recommended conditions of consent are secured in the final determination, the earthworks are unlikely to result in adverse impacts to the waterway on the site.

Summary

Council Officers have taken into account the matters for consideration under subclause (3) and the proposal is deemed to comply with the objectives of Clause 7.2.

Clause 7.3 Flood Planning

This clause, which applies to land below the Flood Planning Level (FPL, being the 1:100 ARI plus 0.5m freeboard), seeks to minimise the flood risk to life and property whilst allowing development that is compatible with a land's flood hazard. It also aims to avoid significant adverse impact on flood behavior and the environment.

The subject site is not covered by any of Council's adopted flood studies. However, the applicant has undertaken a localised flood study (WMA Water; 6 January 2016)

that has identified areas along the creek being inundated during a 1:100 ARI event. Based on this information, parts of the site are considered to be below the FPL, and hence the requirements of Clause 7.3 are applicable.

The consent authority must be satisfied with respect to the matters listed under subclause (3) prior to granting consent. These matters are described below:-

- *the development is compatible with the flood hazard of the land*

The figures in the flood study illustrates the level of inundation on the site during the 1:20 ARI, 1:100 ARI and Probable Maximum Flood (PMF) events. The area with the highest flood hazard is along the creek line, noting that none of the proposed buildings would be inundated during the 1:100 ARI event. In addition, as noted in the Concept Stormwater Management Plan (Northrop; 10 October 2017; p. 2), the creek crossing would be designed to be above the 1:100 ARI flood event. Finally, as noted under the matters below, the development is not likely to significantly impact flood behavior, adversely impact the environment or add to the risk to life from flood.

Therefore, it is considered that the development would be compatible with the flood hazard of the land.

- *the development is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties*

As noted above, the only development that would be inundated during the 1:100 ARI event is the road network. As the area of development is relatively low and culverts would be implemented to allow floodwaters to pass through the development, it is considered potential adverse impacts would be unlikely. Furthermore, it is noted that whilst the function centre/restaurant would be inundated during the PMF event, due to the relatively low risk of occurrence and severity, the impact to flood behaviour would be minimal.

- *the development incorporates appropriate measures to manage risk to life from flood*

It is considered that the only habitable element (i.e., not commercial), are the accommodation units. Based on the information within the flood study, the tourist accommodation buildings would be built approximately to the edge of the PMF flood event and hence are unlikely to be inundated at any point. Furthermore, whilst the function centre/restaurant would be inundated during the PMF event, this is considered to be a low sensitive use and therefore the risk to life would be negligible.

Notwithstanding the above, it is noted that the internal road would cross the creek, which is subject to flooding and therefore may result in the development being isolated in the event of a flood. Whilst this is noted, it is considered that flooding timeframes would be low due to the relatively small catchment area. Furthermore, a condition of consent has been imposed on the draft determination notice requiring the preparation of a flood evacuation management plan (prior to the issue of an Occupation Certificate) to ensure this is considered in the management of the premises.

Therefore, it is considered that the threat to life from flooding is negligible or appropriately mitigated to a negligible level.

- *the development 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*

The proposal would include revegetation of the riparian corridor. Subsequently, it is considered that any adverse environmental impact on the waterway as a result of the construction works would be outweighed by the beneficial planting. In addition to this, erosion and sedimentation would be controlled by a soil and water management plan. Conditions of consent have been imposed on the draft determination notice in respect of the revegetation planting and soil and water management.

- *the development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding*

As the internal road would cross the creek, the development would be isolated during the 1:20 ARI event. However, given the expected timeframe for a flood event is relatively low, together with the submission of a suitable evacuation management plan as outlined above, the social and economic costs associated with flooding are likely to be insignificant.

Summary

Taking into account the above matters, it is considered that the proposed development would satisfy the objectives of Clause 7.3

Clause 7.4 Airspace Operations

The subject site is located within the 190-210m airspace affected land under the Obstacle Limitations Surface Map. Considering the low height of the buildings, it is considered that the development would not penetrate the Limitation or Operations Surface and subsequently, consultation with the relevant Commonwealth body is not required. There are no matters within this clause that restricts the application.

Clause 7.6 Tourist & Visitor Accommodation in Certain Rural and Environmental Zones

Under this clause, consent must not be granted for development relating to tourist and visitor accommodation on RU4 land unless the lot has an area of more than 10ha. At 48.56ha, the site satisfies this requirement and therefore there are no matters that restrict the application.

(a)(ii) The Provisions of any Draft Environmental Planning Instrument

As discussed, Cessnock City Council, in conjunction with Singleton Council, considered a joint planning proposal to amend their respective Local Environmental Plans. The amendments related to all land zoned RU4 Primary Production Small Lots in both LGAs and intended to standardise the objectives and land use tables of the RU4 zone so that there is effectively no arbitrary planning boundary within the 'Vineyards District'. The proposed amendment had potential to prohibit serviced apartments on RU4 land under the land use table. Subsequent to the exhibition period, Council resolved at its meeting of 7 November, 2018 not to proceed with the amendment and to undertake further strategic analysis of the 'Vineyards District'.

It is noted that there are draft SEPPs in relation to koala habitat, remediation and rural lands. Whilst these draft EPIs have been through public exhibition, it is noted within the explanation of intended effects that the provisions relating specifically to this application are unlikely to change. Therefore, it is considered that these draft EPIs do not adversely impact the assessment undertaken above.

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

Cessnock Development Control Plan 2010

The following chapters of the DCP apply to the proposal:

- C.1 Parking & Access;
- C.2 Flora & Fauna;
- C.3 Contaminated Lands;
- C.4 Land Use Conflict & Buffer Zones;
- C.5 Waste Management & Minimisation;
- C.6 Access and Mobility;
- C.8 Social Impact Assessment and CPTED Guidelines;
- C.9 Development on Flood Prone Land;
- D.4 Purpose-Built Rural Tourist Accommodation; and,
- E.3 Vineyards District.

C.1 Parking & Access

This chapter seeks to guide developers on Council's requirements for off-street parking with the aim of ensuring development satisfies the expected parking demand, not only through quantity of parking but also quality of parking.

1.2 Car Parking Standards

The proposed development includes tourist accommodation units in the form of serviced apartments and a function centre/restaurant. Under the DCP provisions, these uses attract the following parking rates:-

- Serviced apartments – 1 space per unit plus 1 space per 2 employees
- Function centre – 1 space per 5 seats
- Restaurant – 1 space per 7m² or 1 space per 3 seats, whichever is the greater

The application is supported by a Traffic Impact Assessment that includes a breakdown of the parking demand (Seca Solution; 26 September 2017; p. 7). The assessment outlines that the accommodation would comprise of 72 units and 35 staff would be employed, totaling 90 parking spaces for the serviced apartments. In addition, the report considers the restaurant parking standard and has calculated 395m² of gross floor area (based on the ground floor area), which totals 57 spaces. Subsequently, the total parking required under the DCP as calculated by the applicant is 147 spaces.

The above calculation is acknowledged, and it is agreed that the restaurant standard utilised by the applicant would be the most applicable, as this would be the most common purpose of the space. Notwithstanding this, the calculations do not factor in the first floor boardroom. It is considered appropriate to calculate the requirement as a function centre and, whilst no figure on seating has been provided, it is assumed

the 44m² area could seat 12 people in a normal boardroom setting. Therefore an additional 3 parking spaces would be required. Furthermore, it has been noted within the Statement of Environmental Effects (p. 25) that the proposed function room has been designed to cater for 200 people. When this is calculated at the restaurant standard (i.e. 1 space per 3 seats), this equals 67 parking spaces. As this is greater than the floor space calculation, it should be considered over the applicant's figure pursuant to the DCP.

Based on the assessment carried out by Council officers, the following number of parking spaces are required under the DCP.

Serviced Apartments	Function Centre/Restaurant	Board Room	TOTAL
90	67	3	160

The application proposes to provide a total of 115 spaces, which is a reduction of 45 spaces from Council's requirements (or a 28.1% variation).

1.3 Qualifications & Exceptions to Parking Standards

The DCP advises that in the case of mixed uses on a site, the parking requirement for each use will be calculated and added together to provide the total requirement. However, Council is capable of reviewing this requirement if it can be demonstrated that the time of peak demand for uses do not coincide with one and other. Furthermore, due consideration is to be given if there is cross-use (in other words if the function centre and/or restaurant would also serve the serviced apartment customers).

The transport assessment provides arguments for the reduction in parking (p. 7), which are as follows:-

- The facility has been designed to accommodate the demands of international travellers and hence the majority will be arriving by bus. Furthermore, given the popular tourist nature of the surrounding area, the report considers that many would also arrive by bus to utilise the accommodation. As such, the demand for individual parking spaces would be limited.
- The restaurant would provide dining facilities for visitors and therefore there would be cross-use between the land uses.

Based on these arguments, the supporting assessment then assumes that 50% of accommodation guests would arrive by car and also assumes that 50% would utilise the restaurant facilities. It is then concluded from these assumptions that the total parking demand is more likely to be 83 parking spaces, and as 115 spaces are proposed, the development would over-satisfy the expected parking demand.

Council's Development Engineer has assessed the information in relation to parking and, whilst acknowledging the cross-use, has not expressly agreed with the applicant's reduced figures. However, it is noted that Council has previously accepted off-street parking reductions of up to 25% for similar tourist development in the area. On the basis of this precedent, the reduction in the provision of onsite parking is considered acceptable.

In considering the variation, it is further noted that the proposed first floor boardroom would primarily be used outside of peak demand times for the restaurant

(predominately business hours). Therefore it is considered that these 3 parking spaces would be absorbed by the provisions of the restaurant. With respect to cross-use between the function centre/restaurant and the accommodation, it is generally accepted that there would be cross-use between the two that would negate the need to provide parking for both uses. However, it is noted that the restaurant is capable of being used as a function centre separate from the accommodation and therefore this cross-use may not always occur. Whilst bearing this in mind, it is noted that the amount of parking near the function centre/restaurant would total 73 spaces, which is more than the DCP requirements. Therefore it is accepted that if there were functions separate from the accommodation, sufficient parking would be provided to satisfy the expected demand of this use. Finally, whilst the number of parking spaces available near the accommodation would be significantly under Council's DCP requirement for serviced apartments, it does include space for coaches and buses to drop off visitors if necessary.

Overall, it is considered that the proposal satisfies the objectives of the DCP chapter.

1.4 Design Guidelines for Off-Street Vehicular Parking Areas

This section outlines requirements with respect to site access, car park design, including disabled parking, service areas, internal roads and landscaping.

With regards to access, it is noted that the applicant proposes to utilise the existing right of accessway that burdens Lot 40 and connects with Gillards Road, part of which is unformed. As part of the development the right of accessway would be upgraded to a 5.5m wide sealed road with a .5m shoulder on the western side and drainage swale on the eastern side, giving a usable width of 6m. Council's Development Engineer has assessed the accessway and considers that the concept is appropriate, subject to the imposition of conditions of consent in relation to a detailed design. Furthermore, conditions of consent have been imposed on the draft notice of determination requiring the formation of the unformed section of Gillards Road. Subsequently, it is considered that with these recommended conditions of consent, proposed access to the site will be appropriate.

The proposed internal roads would be a mixture of sealed and unsealed material 3.5m wide. This includes 280m of gravel road from the site access point to the function centre/restaurant car park and 240m of gravel road from the function centre/restaurant car park to the serviced apartment car park. It is noted that concerns were raised in submissions with respect to the width and material of the internal road. Whilst the concerns are noted, provided the roads are built to specific standards in accordance with Council's DCP, the internal road is considered acceptable. In this regard, a condition of consent has been imposed on the draft determination notice to ensure appropriate details are submitted prior to the issue of a Construction Certificate.

With respect to car parking design, conditions of consent have been imposed on the draft determination notice in order to ensure appropriate details are submitted prior to the issue of a Construction Certificate. It should be noted that this includes the appropriate provision of accessible spaces in accordance with the DCP. Service parking is also proposed for both the function centre/restaurant and serviced apartments. It is considered that the location and amount of servicing area is sufficient; however, noting that no turning area is proposed, concern is raised in respect of the ability of service vehicles to both enter and exit the site in a forward direction without a significant length of reversing. Therefore, a condition of consent has been imposed on the draft determination notice to ensure loading/unloading

areas are designed to accommodate the turning path of appropriate vehicles. It is also recommended that appropriate details be provided prior to the issue of a Construction Certificate.

The applicant has submitted landscape drawings (Spackman, Mossop & Michaels; 28 September 2017; 10 sheets) identifying landscaping around the proposed car parking areas and along both external and internal roads. It is considered that the species chosen would be appropriate to the area, given they are native species typical of the surrounding environment. Furthermore, their location would be appropriate in mitigating the visual impact of the internal roads and parking network.

Overall, it is considered that the information provided, together with specific conditions of consent where required, satisfies the access and parking requirements of the DCP.

C.2 Flora & Fauna Survey Guidelines

This chapter seeks to provide technical guidance on the preparation of flora and fauna surveys associated with ecological reports, as well as defining triggers for the need for such reports. It is intended to be read in conjunction with other guidelines. The DCP identifies that where a proposal will affect certain vegetation or habitat communities, or there is likely to be a significant impact in accordance with the requirements of the Act, an assessment of flora and fauna impacts would be required.

Council's mapping system has identified Endangered Ecological Communities (EECs) on the site, with Lower Hunter Spotted Gum – Ironbark Forests and Central Hunter Swamp Oak Forest being located within the vicinity of the proposed development. In addition, whilst Council has no evidence of threatened species being located on the site, evidence of threatened species has been identified on the lot at 252 Deasys Road to the west. Finally, a number of waterways exist on the site, including the 3rd order stream. As such, it is considered that a flora and fauna report would be required to assess the likely ecological impact, if any.

In accordance with the above, an Ecological Assessment was submitted in support of the application (BIOCM; 25 October 2017). The report identified the EECs, threatened fauna species and possible threatened flora species on the site through two survey periods in late 2016. From the survey, the following is noted:-

- The native vegetation on the site was identified as Central Hunter Valley Eucalypt Forest and Woodland, a critical EEC, Lower Hunter Spotted Gum – Ironbark Forest EEC and River-flat Eucalypt Forest EEC. These vegetation communities are illustrated in figure 1 of the report.
- Nine threatened fauna species were identified, being:-
 - Masked Owl;
 - Speckled Warbler;
 - Grey-crowned Babbler;
 - Varied Sitella;
 - Dusky Woodswallow;
 - Little Bentwing-bat;
 - Eastern Bentwing-bat;
 - Grey-headed Flying-fox; and,
 - Squirrel Glider

- A Wedge-tail Eagle nest was identified on the site, however this is not listed as a threatened or endangered species under any relevant legislation.
- One threatened flora species was tentatively identified, being *Eucalyptus glaucina*.
- A total of 28 hollow-bearing trees were recorded on the site.

Council's Ecologist assessed the standard of the ecological report and concluded that the flora and fauna survey undertaken is consistent with the requirements of the DCP chapter.

Further to this, it is noted that the Landscape Plans (Spackman, Mossop & Michaels; 28 September 2017; 10 sheets) indicate only three small trees are to be removed to facilitate the building. It is also likely that other areas of vegetation may be removed to facilitate the internal road, however this is not expected to be significant. On the other hand, 3.2ha of land is proposed to be revegetated to native forest as a result of the development, along with other mitigation measures as recommended within the ecological report (pp. 60-61). Considering the tree removal would be negligible and exceedingly outweighed by the proposed revegetation, the proposal is not expected to impact on any significant flora or fauna species.

Overall, the submitted application is considered to satisfy the requirements of this Chapter.

C.3 Contaminated Lands

The issue of contamination has been addressed previously in this report.

C.4 Land Use Conflict & Buffer Zones

This chapter seeks to provide guidance when considering applications that may conflict with surrounding development or sensitive areas, or conversely may be affected by surrounding land uses. This includes recommended buffer distances to mitigate any potential conflict.

The DCP divides development into three categories, Category A being the most sensitive uses and Category C being the most abrasive uses. The application proposes tourist accommodation in the form of serviced apartments and a function centre/restaurant, together with ancillary roadworks. The accommodation units are considered to fall under Category A, whilst the function centre/restaurant, given the potential for noise and light disruptions, falls under Category B. It is noted that the surrounding uses are primarily rural/viticultural uses as well as ancillary tourist development. The category for viticulture depends on the scale and intensity of the use and, considering the lots directly adjoining the site are of low to moderate scale, they are taken to be Category B uses under the DCP.

Under section 4.3.11 of this chapter, it is recommended that a minimum distance of 100m separates tourist facilities from Category A uses in rural areas (i.e. dwellings on adjoining rural properties). It is noted that the proposed units would be 250m from the eastern boundary and 800m from the nearest dwelling. Taking this into account, the development is considered to satisfy this requirement.

In addition to the above requirement, it is noted that other buffer distances are applicable under chapter D.4 and E.3 of the DCP. These matters are discussed further below.

Overall, the proposed development is considered to be compliant with the relevant requirements of this DCP chapter.

C.5 Waste Management & Minimisation

This chapter seeks to reduce the demand for waste disposal through development and looks to provide guidance to developers on how to avoid and minimise waste. Most applicable to this application, Section 5.11 of this chapter provides criteria for food premises and serviced apartments.

A waste management plan has been submitted (JW Planning; no date). Waste generated during construction of the development, including green waste, shall be separated into recyclable and non-recyclable materials and where possible shall be reused on-site. All other materials shall be disposed of at an appropriate facility.

It is noted that both the function centre/restaurant and accommodation include servicing areas with the functional design assessed under Chapter C.1 above. A condition of consent is recommended to secure refuse collection prior to occupation of the development.

Overall, it is considered that the application satisfies the DCP requirements in this chapter.

C.6 Access & Mobility

This chapter applies to tourist and visitor accommodation units identified as Class 1a or 1b. Pursuant to the NCC, the proposed development would comprise of Class 3 (serviced apartments) and Class 6 (function centre/restaurant) buildings. As such, the requirements of this DCP do not apply to the application. Nonetheless, equal access and compliance with relevant national codes and legislation is discussed under likely impacts below.

C.8 Social Impact Assessment and Crime Prevention through Environmental Design Guidelines for Proposed Development

This chapter aims to provide guidelines on social impact assessments as well as advice on the development that would trigger the need to submit an assessment. Through this, it seeks to ensure that any adverse social impacts are considered and mitigated prior to the assessment of the application. The proposed development includes tourist accommodation servicing more than 20 people and therefore a social impact assessment is required.

Pursuant to the DCP requirements, a Social Impact Assessment (JW Planning; no date) was submitted in support of the application. In addition to this, a Crime Risk Assessment was also submitted (JW Planning; April 2017). As well as providing context to the site and the proposed development, the reports provide a social profile of the area (including crime), assessment of the expected impacts, and mitigation and monitoring measures. Within the report, the following important points are noted:-

- It is calculated that the Cessnock LGA will increase in population to 69,250 by 2036. Much of the increase is expected in urban release areas and special tourist zoned land.

- Whilst the Cessnock LGA has a relatively high level of socio-economic disadvantage, the area surrounding the development has a relatively low level of socio-economic disadvantage. For instance, weekly household income, education and unemployment rates are generally lower compared to Cessnock LGA as a whole.
- Crime statistics are provided for the Cessnock LGA and, with the exception of break and enter of non-dwellings, crime is generally located within the denser settlements of the LGA (such as Cessnock, Kurri Kurri, Weston etc.)
- The report identifies the nearest properties effected and expected impacts. These include construction and operational impacts. In summary, the social impacts would be low and the economic impacts would include significant increases to the Cessnock economy, including construction jobs and at least 35 operational jobs.
- The following mitigation measures were proposed:-
 - Lighting – possible impacts may result from the internal access roads, car parking and pathways and soft appropriate lighting is proposed;
 - Noise – possible impacts may result from the use of the function centre/restaurant; however this is expected to be mitigated by the distance to neighbours and conditions of consent; and,
 - Anti-social behaviour – possible impacts associated with the on-site sale and consumption of alcohol. As the consumption of alcohol would not be taken off-site and licensing requirements would need to be met, this is not considered to be significant.

Council's Community Planner assessed the proposal with respect to expected social impacts and raised no objection. It is noted that no detail has been provided with respect to community engagement and therefore it is assumed that none has been provided, contrary to the DCP requirements under Section 8.5 of this chapter. Given the relatively low impact nature of the proposal and the appropriate social context of the location, officers considered that undertaking community consultation would not be required irrespective of the DCP provisions.

Subsequently, it is considered that the social assessment satisfies the objectives of the DCP chapter and the proposal would not result in significant adverse social impacts.

C.9 Development on Flood Prone Land

This chapter relates to flood prone land and provides requirements on development in addition to the CLEP requirements. It is noted that this chapter was endorsed on 22 November 2017 after this application was lodged; however, pursuant to the savings provisions under section 1.5 of the chapter, since the application will be determined after the chapter comes into effect, it shall be determined as though the provisions apply.

This chapter introduces flood hazard classifications (H1-H6) to land that has been subject to a flood study relating to the 1:100 ARI event. It also introduces hydraulic categories (flood fringe, flood storage and floodway). Development controls based on the hazard and hydraulic category are also provided under section 3 of the chapter.

Under section 3, it is noted that roads and earthworks are acceptable in all hazard categories; however in H5 & H6 hazard categories requires a merit based assessment. With respect to hydraulic categories, fill associated with roads in

floodway areas (i.e. the highest category) are permissible provided they would not significantly alter the flow patterns.

The site is not identified on Council's flood mapping, indicating that no flood study has been undertaken on the site by Council. However, a minor flood assessment report has been prepared and submitted in support of the application (WMA Water; 6 January 2016). Whilst the report does not indicate the hazard or hydrologic categories similar to the DCP provisions, it provides details of the flood level and velocity during a 1:100 ARI event. It is noted that the only component of the development that would be located within the 1:100 ARI event, are parts of the internal road network, which includes fill to ensure the road level is above expected floodwaters.

Whilst hazard and hydraulic categories of the site are not provided within the flood assessment, it is assumed that the area of the creek crossing has a high hazard level and the hydraulic category would be a floodway. Considering a creek crossing with appropriate culverts – secured through conditions of consent – would be in place, no adverse impact on the flow patterns of flood water is expected.

Overall, it is considered that the DCP permits the construction of the road within the flood hazard and hydraulic category and, with appropriate details secured through conditions, no adverse impact on flood waters is expected.

D.4 Purpose-Built Rural Tourist Accommodation

This chapter applies to development for tourist accommodation and provides guidelines for the establishment and ongoing use of new rural tourist accommodation. Below is an assessment of the planning provisions under Sections 4.5, 4.6 and 4.7 of this chapter.

4.5.1 Impact on Adjoining & Nearby Properties

The DCP aims to ensure tourist accommodation does not prejudice nearby working farms or other rural activities at nearby properties.

As a general rule, the DCP recommends that tourist accommodation should be setback 200m from the boundary. The proposed accommodation would be 100m from the western boundary and the function centre/restaurant would be 80m from the southern boundary and therefore would not be compliant with the recommended standard. It should be noted however that there are other setback provisions under this chapter and Chapter E.3 discussed below.

The area surrounding the site is predominately grazing pasture land to the west and south of the site with viticulture activity towards the east. The agricultural uses to the south and west are not considered to be intensive in nature. Grape production to the east is likely to require pesticide and insecticide application that may adversely affect tourist accommodation, however the nearest vines are 270m from the subject boundary and approximately 600m from the proposed accommodation units.

Whilst the development would encroach on the western and southern setback requirements under this chapter, it is noted that there would be vegetation buffers between the units and the boundary. As the adjoining uses do not involve significant intensive agriculture, together with the vegetation screening, the potential for conflict between land uses is significantly reduced. Therefore, it is considered that the

proposed tourist development would not prejudice adjoining viticultural activities or other nearby rural properties.

In summary the proposal would satisfy the objectives of the provision irrespective of the variation to the setback requirement.

4.5.2 Site Location

This section seeks to ensure that the site chosen for the proposed development is suitable for tourist accommodation purposes and lists the guidelines that should be considered when determining the site location. Matters to be considered under this section, such as flora and fauna, land contamination, accessibility, cultural relics etc. are considered elsewhere in the DCP or relevant EPI. It should be noted that the application is not inconsistent with any matters listed.

4.5.3 Water Supply

The DCP seeks to ensure development has made adequate arrangements for water supply. It has been noted that the site is currently not connected to the Hunter Water network, but does contain a number of small dams, two of which are located around the development area.

It is understood that the development would provide potable water through extending the Hunter Water main to the site whilst water for landscaping purposes would be collected from roof runoff and stored in a number of tanks, totaling 50kL, as well as treated wastewater. Council officers have had informal discussions with Hunter Water and the applicant has made enquiries with Hunter Water prior to the lodgement of the application, and no objection was raised by Hunter Water regarding the applicant's proposal. Taking this into account, water supply would be satisfactory and a condition of consent has been imposed on the draft determination notice requiring submission of a Section 50 Certificate under the *Hunter Water Act 1991*, prior to the issue of a Construction Certificate.

4.5.4 Effluent Management

The DCP aims to manage the treatment of effluent where no access to public facilities is possible to ensure there would be no adverse impacts on the site or downstream. Noting that no existing sewerage network is connected to the site, the provisions of this section apply.

The applicant proposes to install an on-site sewage management system to treat and dispose of wastewater on-site. Following a request for additional information, a revised Preliminary Effluent Disposal Assessment (Douglas Partners; April 2018), was prepared to assist in the design of the system and support the application. The report indicates a number of tests to determine the soil capability for on-site effluent disposal, as well as other constraints such as vegetation and waterbodies. The report recommends areas for dispersion, taking into account soil depth, soil capability, buffer areas and recommended sizing based on future use, as well as recommended investigations to determine the suitability of wastewater reuse.

Council's Environmental Health team have reviewed the report and it is accepted that the site is capable of supporting an on-site sewage management system reflective of the size of the proposed development. However a number of matters remain to be considered, which can be dealt with during detailed design under a Section 68 application pursuant with the *Local Government Act 1993*. A condition of consent has

been imposed on the draft determination notice requiring the submission and approval of such an application, prior to the issue of a Construction Certificate.

4.5.5 Land Management & Flooding

The DCP seeks to address hazards such as landslip and major erosion as a result of building works, together with provisions around building within flood prone land. Noting the existing provisions discussed with respect to flooding, these matters under this section of the DCP are not relevant.

The site does not contain significant slopes and therefore there are no hazards associated with land slips or significant erosion expected as a result of the proposal. Furthermore, a condition of consent has been imposed on the draft determination notice requiring submission of a Soil and Water Management Plan to ensure appropriate mitigation against adverse impacts.

It is noted that the development would require approval from DPI Water (previously DECC&W) for works within 40m of a stream bank and this has been addressed below under Section 4.46 matters.

In consideration of the above, the application is consistent with the provisions of this section.

4.5.6 Bushfire

This section relates to development of bush fire prone land for the purposes of tourist accommodation. It should be noted that the development is considered a special fire protection purpose under Section 100B of the *Rural Fires Act 1997* and therefore general terms of approval have been sought and provided by the RFS (discussed further under Section 4.46 of the Act below).

The application is supported by a Bushfire Hazard Assessment Report (Building Code & Bushfire Hazard Solutions; 27 September 2017), which assesses the application against the Planning for Bushfire Protection document and includes a number of recommendations (pp. 19-21). As noted above, the RFS have also assessed the development and, subject to their general terms of approval being attached to the notice of determination, have no objection to the proposed development.

4.5.7 Flora & Fauna Ecosystem

This section seeks to reinforce the provisions of Chapter C.2 of the DCP. As indicated above, the application is supported by an Ecological Assessment (BIOCM; 25 October 2017) that is consistent with Chapter C.2. Therefore the application is also consistent with this section.

4.5.8 Cultural Heritage

As outlined under Clause 7.2 of the CLEP, an Aboriginal Heritage Assessment (Myall Coast Archaeological Services; 3 March 2017) has been submitted in support of the application. The report concluded that the Aboriginal archaeological significance of the site is low and no harm to Aboriginal objects is expected as a result of the proposal. Further to this, whilst no study of the European significance has been undertaken, the site has had minimal development beyond agricultural grazing and is

not listed as a heritage item. Subsequently, it is considered that the likelihood of European relics being located on the site, is low.

Therefore, it is considered that the proposal would not disturb Aboriginal or European heritage items, and as a result there are no matters within this section that restrict the proposal.

4.5.9 Scenic Character

This section seeks to ensure proposals, including signage, fit in to the rural or natural setting without adversely affecting the visual character. Noting that no signage is currently proposed and would be subject of a separate application (if proposed in the future), the provisions relating to signage do not apply.

The site is currently undeveloped, having previously been used for agricultural grazing. The surrounding area to the west is similar in character whilst land to the east includes more intensive viticulture and ancillary tourist development; however, the built development is noticeably scattered amongst vines and fruit trees. Subsequently the area has a noticeably rural character, which is vital in attracting visitors and contributing to the tourist economy of the area.

Whilst Palmers Lane dissects the site, this area of road is unformed and the nearest formed, accessible section of Palmers Lane is 700m from the site boundary and approximately 1,100m from the development area. The site is accessed from a right of accessway from Gillards Road, which has a cul-de-sac ending 450m from the boundary of the site and approximately 680m from the development area. Whilst the area only contains gentle slopes in general, it is noted that the closest hill is located at Scarborough Wine Company land, 1,050m to the south-east. Other views of the development area are private residences, including 700m to the south-east and the 1,400m to the south. Figures 7 and 8 illustrate the views in the area:

Figure 8: Proposed development and nearest views: (A) Palmers Lane; (B) dwelling; (C) Gillards Road; (D) Scarborough Wine Company; and, (E) dwelling.

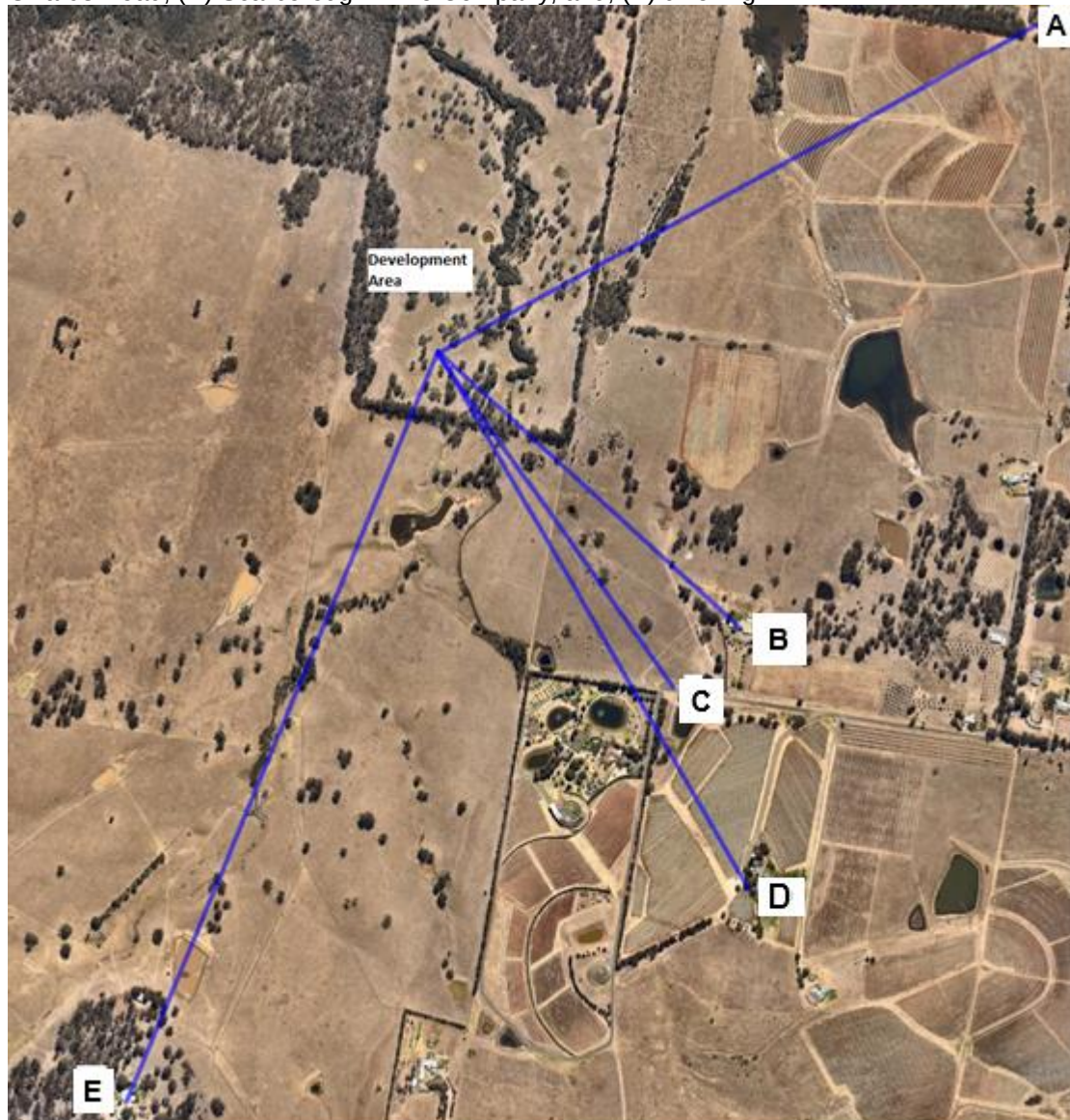


Figure 9: Photographic views from publicly accessible areas
PALMERS LANE



GILLARDS ROAD



Taking into account the above, the site is considered to be relatively isolated from prominent public views. Furthermore, the area for development is located on a gentle downslope and not on a ridge or prominent position. Therefore, whilst the development is quite large, the siting is considered to be suitable to mitigate any adverse visual impact.

With respect to materiality, it is noted that the buildings would utilise timber, grass roof and rustic metal corten. This is considered to be compatible with the rural character. Furthermore, revegetation is proposed along the southern and eastern boundaries, as well as along the creek. This would adequately assimilate the building within the natural landscape and provide sufficient visual buffers from nearby views.

Overall, the impact on the rural character is considered to be appropriate, taking into account the significant setback and lack of public views towards the buildings. Therefore the proposal satisfies the objectives of this section.

4.5.10 Access & Parking

This section aims to provide matters for consideration in addition to, and in support of Chapter C.1. As outlined above, the application is consistent with the requirements of Chapter C.1, subject to recommended conditions of consent. It should be noted that these conditions include provision of adequate details surrounding the access road and internal road. Therefore, provided these conditions are attached to the final consent, it is considered that the proposal would comply with the requirements under this chapter.

4.5.11 Social & Economic Effect

This section intends to highlight social and economic factors associated with rural tourist accommodation. As discussed above, a Social Impact Assessment has been submitted in support of the application (JW Planning; no date), which satisfies the requirements of Chapter C.8. It is therefore considered that there are no matters within this section that would impede approval of the proposal.

4.5.12 Waste Management

This section aims to reinforce the requirements of Chapter C.5, which are discussed above. The proposal is compliant with Chapter C.5 and therefore there are no matters that restrict the approval of the application.

4.5.13 Density and Scale of Development

This section seeks to ensure that the scale of development does not unreasonably affect rural character or the natural environment, and it therefore aims to enforce maximum density standards for rural tourist accommodation. This is to ensure that density and frequency of development does not upset the reason for its uniqueness, being the rural character.

The guidelines include the following relevant provisions for land zoned RU4:-

- Council shall not grant consent to development for tourist accommodation where it exceeds one tourist unit per hectare. However, Council may grant consent for development of 1.5 units per hectare where a proposal seeks to establish and maintain native vegetation corridors, or maintain and establish at least 6,000m² of native vegetation on the site.

- For lots exceeding 40ha, a maximum of 20 tourist accommodation buildings at 1.5 units per hectare is permissible.
- Council shall not grant consent for tourist accommodation that exceeds a floor space ratio of 0.1:1.
- Council shall not grant consent for tourist accommodation where land is less than 10ha. It is noted that this has been considered under Clause 7.6 of CLEP above.

The application seeks to construct 72 units within two tourist accommodation buildings. Given the site measures 48.56ha, this equals to 1.48 units per hectare. The maximum floor space is also calculated at 48,560m² based on the site area, which the proposed development is substantially under. It should be noted that Figure 5 in the Ecological Assessment (BIOCM; 25 October 2017; p. 58) includes a conceptual regeneration plan. This plan indicates revegetation of the riparian corridor and the visually significant southern and eastern boundaries totaling 3.2ha of revegetation.

Taking the above into account, the application is compliant with the density requirements of the DCP provided the revegetation planting is secured as per Figure 5 of the Ecological Assessment. Accordingly, conditions of consent have been imposed on the draft determination notice to secure a vegetation management plan for the revegetation planting in accordance with Figure 5 in the Ecological Assessment (Biodiversity Conservation Monitoring Pty Ltd; 25 October 2017).

4.6 Wellbeing of Occupants

It is considered that matters in relation to building structure details, construction specification and fire safety standards would be dealt with under the Building Code of Australia (BCA) and relevant Australian Standards during the Construction Certificate stage. Furthermore, prescribed conditions identifying compliance with the BCA have been imposed on the draft determination notice. On this basis, the proposal would be consistent with these provisions.

The size and spacing of the tourist units is considered to be appropriate for the needs of the visitors, considering stays would be short in nature. Additionally, each unit would be serviced with bathrooms to an acceptable standard, including water saving measures captured in section J of the BCA assessed through the Construction Certificate stage, along with considerations of noise separation of individual rooms.

It is noted that the function centre/restaurant would include a kitchen to serve diners and guests and it is understood that the apartments would also be self-sufficient. Council's Environmental Health Officers have assessed the application with respect to food safety and it is considered that, with recommended conditions of consent requiring the kitchen to be fit to relevant standards, the proposal would be acceptable. Finally, with respect to disabled access requirements under this section, these matters are discussed under likely impacts below. It is considered that suitable provisions will be made with respect to disabled access.

Overall, it is considered that the application is consistent with the requirements in this section.

4.7 Good On-going Management

This section of the DCP aims to ensure management, staff and operational processes and resources are equipped to sustain sound environmental management practices for the operating life of the development. It is noted that this includes water management, effluent management, land management, bushfire, ecosystem, waste management, fire safety and food handling.

It is considered that certain aspects, such as effluent management, bushfire management, fire safety and food handling would be dealt with either under conditions of consent (for example, Section 68 approvals) or legislation outside of the planning process. With respect to ecological or land management, it is considered that suitable conditions in the vegetation management plan would ensure no adverse impact on the site overall.

Therefore the application is consistent with the requirements in this section of the DCP.

Summary

Council officers have assessed the application against Chapter D.4 of the DCP and it is considered that the proposal is generally consistent with the requirements within.

E.3 Vineyards District

This chapter applies to land within the Vineyards District, as illustrated in Figure 1 of the Chapter, and zoned RU4 pursuant to the CLEP. The subject land is located within this area and hence the below requirements (listed under 3.2 and 3.3 of the DCP) are applicable.

3.2.1 Consideration of Surrounding Land Uses

This section aims to reduce the potential for land use conflict between properties through enforcing buffer distances. It should be noted that these distances are in addition to the requirements under Chapter C.4 and D.4 of the DCP as discussed above. These distances are provided under section 3.2.7 and are detailed below.

3.2.2 Soils Analysis

This section seeks to ensure that land that is suitable for viticultural purposes is not alienated from this purpose by built development, and outlines that applications must be accompanied by a report identifying the soil types and assessing the expected impact. The section also relates to contamination matters, however this has been previously discussed under SEPP 55 above.

In accordance with the DCP requirements, an Agricultural Report (Neil Nelson Agvice; 26 February 2018) was submitted in support of the application. The report classified the soil into the following classes, based on the Soil Conservation Classification:-

- Class IV - Land not capable of cultivation on a regular basis owing to considerable limitations including; soil erosion, shallowness, rockiness and saline drainage lines. Agricultural production often limited to grazing with minimal disturbance and low productivity.

- Class V - Land not capable of cultivation on a regular basis owing to increasing limitations to production and sustainability including; soil erosion, shallowness, rockiness and saline drainage lines. Few agricultural production options due to the physical limitations and soil disturbance best limited to prevent erosion and degradation.

The report concluded that the property, primarily due to the relative poor nature of the soil, has limited areas suited to the growth of agricultural crops such as vines on a commercial basis. It is also highlighted that the adjoining creek more than likely suffers from salinity and waterlogging which has an effect on future agricultural prospects.

Based on the information provided to Council, it is considered that the land is not prime agricultural land. Therefore the proposed development is unlikely to adversely affect the agricultural capability of the land. Overall, there are no matters within this section that restrict the proposed development.

3.2.3 Building Siting and Design

This section seeks to ensure that development is appropriately sited and designed and requires that all built development in visually significant areas have due regard to the surrounding landscape features. It should be noted however that the subject site is not located within the visually significant area. This section also outlines that development shall have regard to the Vineyards District Landscape and Design Guidelines in Appendix 1 of Chapter E.3 (the Guidelines).

Given the proposed development is not located in the visually significant area, a visual impact assessment has not been requested. Additionally, as noted under Chapter D.4 above, the visual impact of the development is considered acceptable and consequently a separate assessment of the visual impact is not considered necessary. An assessment of the building site and design requirements provided under Section 5 of the Guidelines, has been undertaken. This is summarised below.

Provision	Required	Provided
5.1 Standard Principles	Unobtrusive and comfortable building within the landscape	The building is located a significant distance from a public road and is not situated on a ridgeline or on a prominent point; rather, it is located on a gentle slope towards a creek line within existing vegetation. Therefore the buildings are considered to be unobtrusive within the landscape. Furthermore, given the materials and revegetation proposed, the buildings are considered to be comfortable within the landscape.
	Materials that blend with the landscape	The proposed materials include timber in the tourist

		accommodation and metal corten with a native grass roof in the function centre/restaurant. It is also noted that the metal corten would have earthy, rustic colouring. This is considered to be acceptable within the landscape.
	Responsive design to the rural environment and character of existing buildings	The proposed design, considering the sloping roof and curved function of the building, together with the rustic materials utilised, is considered to adequately respond to the rural environment. Furthermore, the landscaping is considered to add positively to the natural character of the environment. There are no existing buildings in the area that significantly add to the character for the development to reference.
	Large areas of glazing should be avoided	The eastern façade of the function centre/restaurant contains a significant level of glazing. However, considering it would be set behind the metal corten screening, the impact would not be significant on the rural character, and is therefore considered acceptable.
	Integral landscaping with native species	The proposal includes landscaping that utilises primarily orchards, grape vines and crops, which invokes the rural character of the site. The proposal also includes enhancement of the native plant communities along the boundaries and the creek line. Considering the landscaping would utilise rural character with a mixture of native screening, the landscaping would be

		acceptable.
	Respect heritage item	N/A
	Complement heritage item	N/A
5.2 Standard Design Requirements	Front setback is to be a minimum of 75m	The subject site does not front any public road. Nevertheless, the development is located more than 75m from any boundary.
	Side setback is to be a minimum of 50m	The proposed development is located more than 50m from any boundary.
	Height of buildings shall not exceed two (2) storeys with a wall height restriction of 7.2m, unless otherwise approved with a written objection from the applicant	The proposed buildings are two-storeys in height. In this regard, the function centre/restaurant would be 8.31m high and the accommodation, whilst varying in height due to the slope, would have a maximum height of 9.8m from the natural ground level, thereby exceeding the height requirement. Following requests by Council officers, the applicant submitted a written objection and outlined the following justification:- 1. The proposed accommodation buildings are located a significant distance from the closest neighbouring properties. Given this, the level of exceedance will not be noticeable to surrounding land owners, nor will the exceedance have a measurable impact on surrounding land owners. 2. The proposed accommodation is two storeys in height, which

		conforms with the requirements of Part 5.2. The height of the building reflects the desire of the proponent to provide high quality and spacious accommodation for guests. A reduction in the height of the building will impact on the quality of the accommodation on offer within the proposal. 3. The proposed serviced apartments are of a high quality design incorporating a wide range of materials to ensure they sit comfortably within the landscape. The building height is part of the high quality design. An amendment to the building height will negatively impact on the design appearance of the proposed buildings. It is acknowledged that the development is sufficiently separated from the public realm, thereby ensuring that any height variation is not noticeable. Furthermore, the buildings comply with the other requirements of the Guidelines. Therefore it is accepted that the height of the proposed buildings would not have a significant impact on the visual setting of the area.
5.3 Shed	Siting	N/A
	Design	N/A

Overall, it is considered that the proposed buildings are adequately sited on the land and would not have any adverse visual impact on the rural character. Therefore the application satisfies the requirements of this section.

3.2.4 Development Densities

The requirements under this section mirror those under Chapter D.4. Considering the proposal is compliant with those requirements, it is considered to be compliant with this section.

3.2.5 Front and Side Setbacks

This sections aims to provide a visually appealing landscape consistent with the character of the area, whilst also minimising the impact on viticultural potential. As such, new development is required to be at least 75m from the front boundary and 50m from side boundaries.

The subject site does not front a road reserve and subsequently the front boundary is difficult to determine. Nonetheless, the proposed built development is setback more than 75m from the nearest boundaries. Subsequently, the proposal is sufficiently separated from adjoining properties to mitigate any conflict with potential viticulture activities. Furthermore, as outlined above and in Chapter D.4, no adverse impact on the scenic character is expected.

Therefore, it is considered that the application satisfies the requirements and objectives of the section.

3.2.6 Requirements for the Establishment of New/Expanded Commercial Vineyards

This section relates to applications for new or additional vineyards for commercial production and aims to ensure these are undertaken in an appropriate manner. Whilst vines are proposed, these are considered to be for landscape aesthetics as opposed to any commercial activity. Therefore, it is considered that the requirements of this section would not be applicable. In any sense, it is considered that no adverse impact on the proposed or existing accommodation is expected due to the scale of the vines proposed.

Overall, there are no matters within the application that conflict with this section of the DCP.

3.2.7 Ground Spraying and Aerial Spraying Considerations

As indicated under section 3.2.1 above, this section seeks to prevent any adverse impact from adjoining vines on new development, as well as ensuring new development does not sterilise the opportunity for adjoining vines. To that effect, principal public access is to be at least 100m from adjoining vines and 50m from adjoining boundaries where the property has no vines.

The proposed tourist accommodation contains the principal public space in between the two tourist accommodation buildings (containing hot tub, yoga decks etc. as shown on the landscaping plan). Balconies of the units would also face west to the adjoining property; however, the boundary is at least 100m from the building and the adjoining property contains no vines. Finally, there are other areas where visitors would congregate (car park, pathways, landscaped gardens), however these would

not be highly frequented. Furthermore, there would be no congregating area within 100m of an adjoining vineyard or 50m from the boundary where there is no vineyard.

Overall the proposed open areas are sufficiently separated from adjoining properties in compliance with the requirements of this section.

3.2.8 Noise Generation and Odour Considerations

The DCP aims to reduce the potential for conflict between noise generating development and noise sensitive development with human habitation components. It outlines that appropriate acoustic reports need to be submitted to support development proposing human habitation components where there are existing wineries.

The subject site is located in a predominately rural area with surrounding development including vacant agricultural land, commercial vines, private residences and wineries with ancillary tourist development. It is particularly important to note that the function centre/restaurant would be approximately 700m from the nearest residence. Additionally, the tourist accommodation would be approximately 950m from the nearest winery building, approximately 650m from the nearest commercial vine and 130m from the proposed function centre/restaurant. Therefore there are significant distances between the elements of human habitation and noise generating development, both on the site and on adjoining properties.

Nonetheless, following the receipt of a number of submissions raising objections on the basis of noise impacts, a Noise Impact Assessment was submitted in support of the application (Spectrum Acoustics; February 2018). The report highlighted that the ambient noise levels were measured at the western-most point of Palmers Lane (as indicated in Figure 1 in the report). The findings show that the noise measured was typical of rural areas, with nighttime background level determined as 30dB(A). Taking into account regular state guidelines, noise levels should not be above the background level plus 5dB. Therefore, the report concludes that if noise levels are below this level at the nearest receptor, then no adverse impact is expected.

The report highlighted two nearby dwellings, being 179 Gillards Road and 424 Palmers Lane (see Figure 1 in the report). Assuming the loudest noise would be a DJ or small band playing during a function, the report found that the proposal would not result in noise above 35dB(A) at these dwellings. Furthermore, assuming the general noise of tractors, the report found that machinery operating on the nearest vines would not result in noise greater than 35dB(A) at the proposed accommodation. Consequently, the report concludes that no adverse noise conflict is likely between the proposed development and any adjoining land owner.

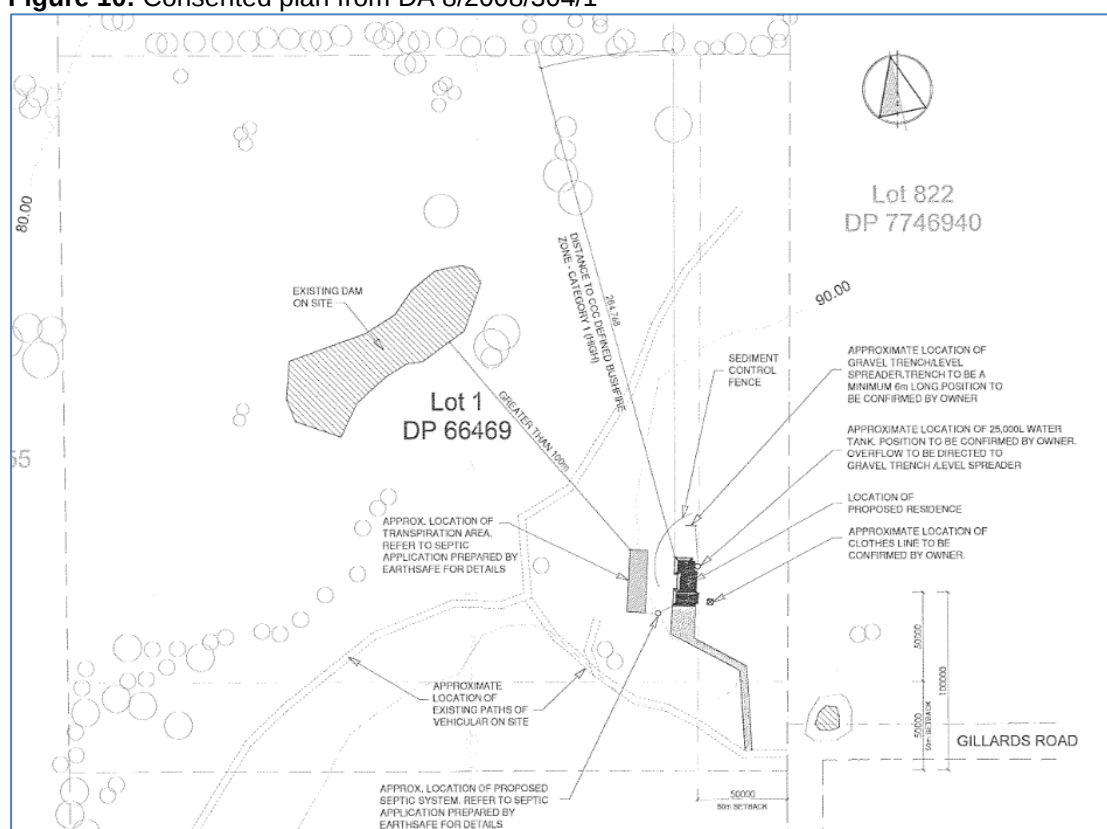
In addition to the above, it is noted that development consent has previously been granted by Council for a dwelling on Lot 40, being part of this application and on land directly to the south of the primary development area (see Figure 9 relating to DC No. 8/2008/304/1, below). There has not been an assessment of whether works have physically commenced and therefore it has not been determined whether the consent is still valid. Nonetheless it is noted that the approved dwelling would be 265m from the boundary with adjoining Lot 22, and hence the distance is estimated to be approximately 400m from the function centre/restaurant. Whilst the impact on this dwelling has not been determined in the applicant's supporting information, given the finding of the acoustic report and the separation between the developments, no significant adverse impact from noise is expected in the event the dwelling is constructed.

Council's Environmental Health Officer has considered the noise impact of the development and, based on the findings in the assessment, it is considered that no significant impacts from noise would affect adjoining properties. It is also considered that management restrictions through the liquor licensing process and conditions of consent to limit the hours of operation would mitigate any adverse noise impact on adjoining owners. Therefore, the proposal is considered acceptable in terms of noise impacts.

With respect to odour, it is noted that the proposed development complies with the relevant setback provisions under this chapter of the DCP. Additionally, no significant intensive uses are in operation in the vicinity of the site to significantly impact the proposed development in terms of odour. Therefore the impact on the development from odour is considered to be negligible.

In summary, it is considered that the impact from the development with respect to noise on existing and likely dwellings in the area would be acceptable. Likewise, there would be no noticeable impact from adjoining uses on the proposed development with respect to noise and odour. Subsequently, the application is consistent with the objectives of this section.

Figure 10: Consented plan from DA 8/2008/304/1



3.2.9 Development alongside Main Road 220

This section relates to development in the vicinity of Main Road 220, which is known as Wine Country Drive. The development is more than 5km from Wine Country Drive and therefore the application would not be contrary to the objectives of this section.

3.2.10 Development in the Vicinity of Cessnock Airport

The subject site is 5km from the Cessnock airport and therefore it is unlikely there would be conflict between the development and the use of the airport. As such the application is not considered to be contrary to the objectives of this section.

3.2.11 Singleton Military Area

This section relates to the hatched area in Figure 3 of the DCP and seeks to ensure that consideration is given to the potential impacts of activities from the military area. The subject site is located in this area and therefore the requirements are applicable.

The proposed development area is appropriately 5.2km from the boundary of the Singleton Military Area. It is acknowledged that noise is likely from the military operations; however the distance would mitigate a significant portion of the noise. Furthermore, it is important to note that the proposed serviced apartments would only be occupied for relatively short intervals and therefore any adverse impact of the military area on the development would be reduced.

Therefore, whilst the noise impact of the Singleton Military Area is considered, the adverse impact is not considered to be significant.

3.3.1 Why is there a Need to Plant more Trees/Shrubs in the Vineyards District

This section seeks to provide context to the requirement for tree planting in the area and contains no requirements for considerations with new applications. Subsequently, there are no matters within this section that would restrict approval of the development.

3.3.2 Native Vegetation Corridors and Mass Plantings

This section aims to promote the establishment and enhancement of native vegetation corridors in the area. It is noted that the section has the same requirements as density of development pursuant with Chapter D.4. As outlined above, the proposal would require the planting of vegetation to meet the proposed density on the site and the applicant proposes to undertake this as per the information in the Ecological Assessment (BIOCM; 25 October 2017; p.58). It is noted that the information requested under this section has not been provided by the applicant; however, a condition of consent has been imposed on the draft determination notice to ensure this is provided with the vegetation management plan prior to the issue of a Construction Certificate.

Therefore, due to the recommended condition of consent, the application is considered to satisfy this section.

3.3.3 Clearing of Vegetation

Through this section, the DCP aims to foster the principle of no net loss of vegetation within the Vintage District, as well as draw attention to the need for consent for tree clearing.

It is noted that some tree clearing is proposed in this application; however it is also noted that there would be significant levels of replanting, as well as the management

of existing strands of vegetation to ensure there is no net loss. Furthermore, conditions of consent are recommended to secure this planting and management.

Therefore it is considered that the application satisfies the objective of this section.

3.3.4 Flora and Fauna Considerations

This section outlines the legislative requirements for Council to consider the impact of development on flora and fauna and encourages developers to enter into dialogue with Council to determine the requirements for assessment. It is noted that this was undertaken with the pre-lodgement meetings and subsequently an acceptable ecological assessment has been completed. It is considered that there are no matters that restrict approval of the application.

3.3.5 Aboriginal Archaeology

The aim of this section is to recognise and conserve Aboriginal archaeology in the area and requires the applicant to consider the need for an archaeological study to assess the likelihood of relics on the site.

As noted under Clause 7.2 of the CLEP and Chapter D.4 above, a suitable Aboriginal Heritage Assessment (Myall Coast Archaeological Services; 3 March 2017) has been submitted in support of the application and no adverse impact on Aboriginal heritage items is expected. Therefore it is considered that the application complies with the objectives and requirements of this section.

3.3.6 European Heritage

Similar to the above section, this section seeks to ensure development considers European heritage. As noted under Clause 7.2 of the CLEP and Chapter D.4 above, no European heritage is likely on the site and therefore the application would be compliant with the objectives of this section.

3.3.7 Water Management Plan

The objective of this section is to ensure water is appropriately managed in an environmentally sensitive manner and is not detrimental to downstream users or adjoining properties. To this effect, applicants are required to consider water movements through the site, its collection and use as well as discharge, including wastewater.

The site contains a 3rd order stream and development, with the exception of roads, would be outside of this area. It is understood that Hunter Water would provide potable water for use in the accommodation and kitchen and it has also been noted that the applicant intends to capture water through the stormwater design, which is intended to be used in landscaping maintenance. Finally, wastewater would be treated and dispersed on site, with Council's Environmental Health Officers considering the proposal acceptable subject to Section 68 approvals.

Overall, it is considered that water management has been appropriately considered and the development is not expected to result in significant adverse impacts on the water system in the area.

3.3.8 Disposal of Waste

Through this section, Council seeks to ensure that waste, both water waste and solid waste, is appropriately handled. Noting that solid waste is discussed under Chapter C.5 and wastewater matters have been discussed under Chapter D.4 and section 3.3.7 above, it is considered that the proposal would be compliant with this section.

3.3.9 Servicing

This section relates to the provision of water supply, electricity and telecommunications to new development. As discussed under 3.3.7, Hunter Water would provide potable water supply and it is also considered that electricity and telecommunications could feasibly be extended to the site. In this regard, conditions of consent have been imposed on the draft determination notice to secure services prior to the issue of an Occupation Certificate.

Therefore it is considered that suitable services would be secured via conditions of consent.

3.3.10 Outdoor Lighting

This section recognises the important value of the night sky and seeks to control outdoor lighting to minimize sky-glow in the district. This section requires that outdoor lighting details are to be provided with applications and, where development is proposed adjacent to major roads, lighting is not to adversely impact on traffic.

The development area is 700m from Palmers Lane, an unsealed road serving local traffic, and 450m from Gillards Road, a no-through sealed road serving local traffic. It is considered that the proposal is sufficiently distant from major roads so that no adverse impact from lighting is expected on traffic.

The Statement of Environmental Effects (JW Planning; no date; p.32) states that low level lighting is used throughout the site to provide a safe and secure environment whilst ensuring minimal light pollution. Further to this, the applicant has indicated in an email that any adverse light pollution from either the development or vehicles travelling to the development would be mitigated by landscape screening along the boundaries and right of accessway. Subsequently, whilst no specific detail has been provided, the applicant considers that no adverse impact to either the visual environment or neighbouring property is expected.

It is acknowledged that the proposal would result in increases in light levels in the area; however, it is also considered that the level of vegetation existing on the site (which will be enhanced and maintained through recommended conditions of consent) as well as proposed planting along the main access road, would mitigate the expected impact. Notwithstanding this, it is considered that appropriate lighting details should be submitted and approved prior to the construction of the development and this would be secured through a condition of consent.

Overall, it is considered that the impact of outdoor lighting from the development would be acceptable and therefore the proposal is compliant with the objective of this section.

3.3.11 Fencing

Where fencing is proposed, this section seeks to ensure fencing is consistent with the rural character of the area.

It is noted that the Statement of Environmental Effects (p. 37) indicates that proposed fencing is identified on the architectural plans; however, neither the architectural plans nor the landscape plans indicate any proposed fencing. Notwithstanding this, it is noted that certain fencing can be constructed without Council consent under the SEPP (Exempt and Complying Development Codes) 2008. Advice has been imposed on the draft determination notice highlighting that any future fencing, other than that satisfying exempt development, requires further consent from Council.

3.3.12 Car Parking

It is noted that the provisions under this section match those required under Chapter C.1. As discussed above, the application is compliant with these requirements and therefore the application is considered to be compliant with this section of the DCP.

3.3.13 Section 94 Contributions

Section 7.11 (previously Section 94) developer contributions are applicable and this is discussed further below. It is considered that there are no matters within this section that restrict the proposed development.

Summary

Council has taken into consideration Chapter E.3 of the DCP and it is considered that the application would be compliant with the relevant requirements.

(a)(iia) Any Planning Agreement or any draft Planning Agreement

No such agreement exists between the owner and Council and none has been proposed as part of this application.

(a)(iv) The Regulations

It is considered that there are no matters that relate to the proposed development or the subject site under the Regulations.

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

It should be noted that general natural and environmental impacts, as well as the social and economic impacts, have been addressed within other matters under Section 4.15(1)(a) considerations above. However, additional impacts are noted and addressed further below.

Visual Impact

The figures illustrated under section 4.5.9 of Chapter D.4 of the DCP identify the areas where the proposed development is likely to be visible from, as well as the views from publicly accessible areas. It is considered that the proposed development is unlikely to be visible from these public areas, given the siting of the site adjacent to

the creek and sufficient vegetation buffering. Furthermore, considering the separation of the development from these public views, if the development was visible, the impact on the existing character would be negligible. Therefore any visual impact from public areas is considered acceptable.

It is also noted in figure 1 under section 4.5.9 that a number of private views have been identified, the highest of these points being Scarborough Wine Company land located 1,050m to the south-east (identified as 'D' in figure 1). Figure 10 below shows the view of the subject site from this locale and, whilst the elevation affords greater views towards the proposed development, it is still considered that the vegetation and distance would adequately mitigate any significant adverse impact.

Therefore, having considered the visual impact on the existing character of the area, it is considered that any impact would be negligible.

Figure 11: Views from Scarborough Wine Company customer car park



Potential Impacts on Adjoining Properties

It is considered that the proposal has the potential to adversely impact on adjoining properties in terms of noise, light pollution, dust, traffic, odour, impacts on visual amenity and general land use conflict. It is noted that, with the exception of traffic and dust, these impacts have been considered under Chapters D.4 and E.3 of the DCP and are considered acceptable. Furthermore, traffic matters are considered under likely impacts below and deemed to be acceptable. In relation to dust, it is expected that this would mostly result from traffic using the internal, gravel roads. It is considered that, through appropriate conditions of consent, the road would be appropriately constructed and managed to mitigate the potential for significant levels of dust to be raised. Additionally, given the separation from nearby sensitive

residential receptors, any dust raised is unlikely to significantly impact on adjoining properties.

Therefore, Council has considered the potential impacts to adjoining properties and it is deemed that no adverse impact is expected.

Traffic Impacts

In addition to the matters discussed under Chapter C.1, Council has considered the wider impact on the transport network. Palmers Lane, a local road under the care and control of Council, has an 8m wide gravel formation and is unformed up to 700m west of the subject site. Gillards Lane is a local road under the care and control of Council and has a sealed formation width of 7m with gravel shoulders. Approximately 230m at the end of Gillards Road is unformed and an unformed right of accessway leads to the primary development site across Lot 40.

The Traffic Impact Assessment (Seca Solutions; 26 September 2017) submitted with the application provided a description of the existing road network, including traffic flows, and then assessed the expected impact of the proposed development on the road network. The report also included an assessment of the impact on the intersection of Gillards Road and McDonalds Road, approximately 2.3km east of the subject site. Overall, it concluded that the road network would adequately accommodate the expected traffic increase from the proposed development.

Council's Development Engineer has reviewed the traffic assessment and provided an additional assessment of the expected traffic impacts. The expected trip generation is reproduced in the table below, illustrating the peak trips and daily trips from the proposed development.

Table 1: Expected trip generation, utilising the RMS's Guide to Traffic Generating Development.

	Peak Trips	Daily Trips
Function Centre/ Restaurant (395m ²)	20 peak trips	237 daily trips
Tourist Accommodation (72 Units)	29 peak trips	216 daily trips
Total	49	435

It is noted that the applicant has attributed a 50% discount for cross-use; however, so Council may consider a 'worst-case' scenario, the totals in table 3 are considered appropriate. Considering the current standard of Gillards Road, together with upgrades to the unformed section, it is considered that the application is not expected to have a significant adverse impact on the road. In addition to this, Council's Development Engineer included a right and left turn assessment at the intersection of Gillards Road and McDonalds Road and, utilising the Austroads standards and Council's own engineering requirements, it was determined that the traffic generation does not warrant upgrades to the intersection.

Overall the level of traffic generated is not considered to adversely impact the safe use of the existing road network.

Natural Environment

In addition to the DCP requirements of flora and fauna assessments under Chapter C.2, D.4 and E.3, Council must also consider the relevant provisions under the Act. Prior to August 2017, these provisions were primarily under Section 5A of the Act;

however, since the adoption of the *Biodiversity Conservation Act 2016*, this has been replaced by Section 1.7 (previously 5AA) which gives effect to that legislation. Whilst all this is noted, the new provisions do not apply to Cessnock City Council pursuant to the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*. Subsequently, the old provisions known as Section 5A are applicable, taking into consideration the *Threatened Species Conservation Act 1995* (TSC) and the national *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The supporting Ecological Assessment (BIOCM; 25 October 2017) includes an assessment against the above legislation. The assessment identified a number of threatened fauna species and one possible threatened flora species, together with a number of EECs and a CEECs (see the discussion in Chapter C.2 of the DCP). Notwithstanding this, it is acknowledged that the proposed building works have been located away from these environmentally sensitive areas and a significant level of revegetation is proposed to be carried out. Furthermore, whilst some impacts on the threatened species are expected from the use of the land (light and noise for instance) these are considered to be relatively minor, especially when considering the beneficial environmental impacts through revegetation. Finally, recommended conditions of consent would secure the beneficial impacts to ensure there are no noticeable adverse impacts on the natural environment.

Council's Ecologist noted that the site includes a Wedge-tail Eagle nest in the and requested further assessment of the impact on the species. Whilst noting that the species is not a threatened or endangered species in NSW, the applicant still provided mitigation measures to reduce the development impacts. In addition to these measures, it is noted that the tree would not be removed and the tourist accommodation building would be at least 60m from the tree. It is considered that, with conditions of consent restricting the construction phase of the development and with minor changes to the internal road and pathway, no significant adverse impact to the species is expected.

In summary there are no significant adverse impacts on the natural environment expected.

Equal Access Issues

Whilst noting that Chapter C.6 of the DCP is not strictly applicable to the proposal, it does highlight the importance in improving access for people with a disability. It also outlines the requirements of the national *Disability Discrimination Act 1992* (DDA), which intends to ensure that people with a disability shall be able to enter and use any public building, facility or service in an equitable manner. In addition to the DDA, there are requirements in the BCA and Australian Standards relating to access and mobility.

The Statement of Environmental Effects (JW Planning; no date; p.36) indicates that the proposal is DDA compliant. However it should be noted that following amendments to the floor plan to provide self-contained facilities stairs were introduced into the units, thereby affecting the movement of disabled persons within the units. To counter this, the applicant has provided four accessible units and included a layout showing compliance with the BCA and Australian Standards, which would satisfy Council should Chapter C.6 be applicable. Additionally, the proposal would otherwise need to comply with the BCA, including disabled access and movement requirements. Therefore it is considered that the accommodation and function centre would provide suitable equal access.

In terms of external attributes, it is considered that a condition of consent should be imposed on the draft determination notice requiring an accessibility management plan demonstrating compliance with the Part D3 of the BCA and AS 1428. Additionally disabled parking, designed to the relevant Australian Standards, would be secured through recommended conditions of consent.

Overall no adverse impacts to equal access are expected subject to conditions of consent.

Economic Impact

The supporting Social Impact Assessment (JW Planning; no date; pp. 16-17) includes an assessment of the economic impacts. This report indicates that, during the construction phase, 292 jobs and \$93,480,048 is expected to be generated. It also notes that production generates wider employment, totaling 227 jobs that are not specific to the Cessnock area. Finally, the operation would generate 35 jobs, being both casual and permanent employees but does not include contractors required on an as-needs basis.

Further to the above information, the positive flow-on benefits of tourist accommodation to the wider area is acknowledged. In this regard, guests visit adjoining wineries, distilleries, restaurants and other tourist related development. Based on this, it is considered that the proposed development will have positive economic impacts within the Cessnock LGA and wider area.

Construction

It is acknowledged that the proposed development has the potential to result in adverse environmental impacts during construction; however, conditions of consent have been imposed on the draft determination notice to mitigate these impacts (erosion measures, hours of construction and a Construction and Traffic Management Plan for example). Furthermore, given the generally small timeframe of the works, no significant lasting impacts are expected.

Overall the expected impacts from the construction works would be minimal.

(c) *The suitability of the site*

The subject site is considered suitable for the proposed tourist accommodation and function centre/restaurant for the following reasons:-

- The proposed serviced apartments and function centre/restaurant are permissible in the RU4 zone and the application satisfies the objectives of the zone;
- The proposal meets the relevant prescriptive standards. For example, the site is over 10ha as per Clause 7.6 of the CLEP, and would have an acceptable level of density as per the DCP;
- There are no significant on-site constraints, such as flooding, bushfire, contamination and ecological constraints;
- The surrounding area does not contain significantly incompatible land uses and the development would be appropriately separated from nearby sensitive uses to reduce potential conflict; and,
- Potential adverse impacts are expected to be suitably mitigated through the design of the development and recommended conditions of consent.

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

The development application and accompanying information was placed on public exhibition between 29 November 2017 and 4 January 2018 (allowing for public holidays).

As a result of the notification process, seven (7) submissions were received. The issues raised in the submissions along with Council's comments/responses to each of the issues raised, are detailed below.

ISSUE	COMMENT
Objection to the characterisation of development as 'serviced apartments'	The objection considers that the proposed development is better defined as hotel or motel accommodation, which is prohibited in the RU4 zone. This is based on the units not being self-contained, given they lack kitchen space and laundries in the proposed plans. Council officers requested that the applicant address this issue/concern as a result of assessment of the application. In response, the applicant submitted amended plans clearly demonstrating that the serviced apartments are self-contained, and are therefore consistent with the definition.
Density of development	The objection notes that the development has a density of 1.5ha. It is also noted that only the Ecological Assessment makes mention of revegetation in line with DCP requirements (BIOCM; 25 October 2017; p.58). Therefore it is not considered that sufficient detail of the planting has provided to permit the density of development in line with the DCP. The applicant has acknowledged this and reconfirmed the developer's desire to revegetate. It is Council's opinion that a suitably worded condition of consent would secure the planting in line with the requirements of the DCP and the Ecological Assessment, which has been drafted within the vegetation management plan. Therefore, with this condition the proposal would be acceptable.
Length, height and location of building and visual impact, plus compatibility with rural character	Council Officers have assessed the visual impact of the development under Chapter D.4 and E.3 of the DCP and note that the site is considerably screened by existing vegetation. Furthermore, the development will be considerably separated from public views. Therefore it is deemed that the impact on the rural character would be negligible. In any sense, it is considered that the materiality would ensure the proposal would sufficiently integrate with the existing natural character. Based on the above, it is considered that refusing the proposal due to the scale and design of the building, would be unreasonable.
Current safety levels of Gillards Road, including flooding	A number of objections raised the current safety standard of the road, primarily around a curve in the road approximately 1.8km from the site. The reserve contains a number of trees close to the road and is understood to be subject to flooding. The objections highlight that the development would contravene Clause 7.3 of the CLEP as the development is non-compatible

	with the hazard. It is noted that the area under question is not mapped as being below the FPL; however, based on the evidence provided in the objections it can be assumed that the road would be inundated during the 1:100 ARI event. Notwithstanding this, it is considered that the area of human habitation is outside of the flood planning area and therefore the risk to life is reduced to an acceptable level. Furthermore, it is considered that any flood evacuation plan, which should be secured through condition, would include warnings with flood waters and possible alternative evacuation routes. Therefore, whilst parts of the site are flood prone, this is not considered severe enough to restrict the proposed development and the development would still be compatible with the flood hazard of the land. It is noted that the line of sight through the curved road of Gillards Road is limited due to trees. It is also acknowledged that collisions with native fauna is a possibility. However, it is also noted that there is sufficient signage indicating the curve in the road, animal warnings and suggested speed limits to reduce the likelihood of collision. Therefore it is considered that Gillards Road is suitably safe for future traffic associated with the proposed development.
Impact to Gillards Road and the use of alternative public roads for primary access	Strong opposition is raised to the use of Gillards Road for the proposed development, with the following noted:- • The road, which was partly funded by landowners, was not constructed to fund major development; • Repairs are needed to the road and with the expected increases in traffic volumes, these upgrades will be required prior to works; • The impact of heavy vehicles on Gillards Road; and, • There are other access points, including Palmers Lane, Deasys Road and an unnamed lane south towards Broke Road. These should be explored before it is deemed that Gillards Road is acceptable. An assessment of the impact of traffic on the local road network has been undertaken and is discussed under other likely impacts above (Section 4.15(1)(b)). In summary, Council's Development Engineer has assessed this against the relevant standards and the road would satisfy the expected demand. Furthermore, whilst it is recognised that road upgrades were done previously, this does not preclude future development along Gillards Road with Section 7.11 contributions collected and allocated for the purpose of road upgrades as appropriate. Finally, it should be noted that the unformed section of Gillards Road would be upgraded to the appropriate width and standard to satisfy the expected load. Regarding heavy vehicles, it is most likely that these vehicles would be used during construction and, bearing in mind the temporary nature and current state of the road, the level of

	impact would be acceptable to the safe operation of the road. Larger vehicles that may be used during operation of the development include service vehicles and 22-seater buses and, considering the expected demand of these services plus the acceptable width and standard of the road, no adverse impact is expected from these vehicles. With respect to utilising other roads for access, the following is noted:- • Palmers Lane – 700m of this road is unformed and contains EEC, which would need to be cleared to allow access from Palmers Lane. Furthermore, Palmers Lane suffers from areas of flooding as indicated in the flood study (WMA Water; 6 January 2016) that would require specialized crossings. Subsequently, the formation of Palmers Lane would be significantly constrained. Furthermore, Palmers Lane is unsealed to the intersection of McDonalds Road and therefore it is likely that this would require upgrade works to satisfy the traffic increase, thereby adding to the cost of development. • Deasys Road – 1.6km of the road is unformed and significant amounts of clearing would be required. Upgrading this road to service the proposed development is considered to be significantly constraining, together with additional internal roads towards the preferred development area. • Unnamed lane – it is noted that part of this lane is not in Council's ownership and also includes a building over part of the road. Hence there are significant constraints in bringing this road back into use. In summary, whilst it is acknowledged that other roads can be used, there are significant constraints in doing so. Furthermore, the application does not propose to obtain access to the site from roads other than Gillards Road, and Council can only assess the application on the basis of what has been lodged. Overall it is considered that refusing the application on the basis of impact on the surrounding road network, would be unreasonable.
Inadequate access arrangements	Strong opposition was raised against the use of the right of accessway on Lot 40, noting that:- • The access is prone to flooding; • It is not certain that the existing right of accessway exists; and, • Difficulties complying with the bushfire protection measures. With respect to flooding, it is noted that the applicant has

	prepared a flood study which includes the accessway (WMA Water; 6 January 2016). The area is not flood prone and based on this, flooding of the accessway is not considered relevant. Furthermore, once constructed, it is noted that the accessway would be 6m wide and hence compliant with the requirements of the planning for bushfire protection document as indicated in RFS's general terms of approval. Finally, Council has received evidence in the form of the Deposited Plan for 455255 which illustrates the existing right of accessway from Gillards Road to the development area via Lot 40. Given this land is included in the application with appropriate land owners consent, this is acceptable. In addition to the above, conditions of consent would ensure the accessway is appropriately constructed to RFS and Council's standards. As such, it is considered that there is no reason for the application to be refused based on the use of the accessway.
Parking and traffic	The objections indicate that the Traffic Impact Assessment (Seca Solutions; 26 September 2017) incorrectly calculates the parking rate. In any sense, the proposal fails to meet the required standard and arguments such as cross-use are not considered sufficient justification. There are also concerns over the provisions of bus parking spaces. Council officers have calculated the parking spaces required under the provisions of the DCP and note that there are errors. These have been factored into the assessment. Nonetheless, it is considered that some level of cross-use between the accommodation and function centre/restaurant is more than likely. Furthermore, it is noted that the parking area to the front of the function centre/restaurant would satisfy the DCP requirements for restaurants. Therefore, if there is a function it is expected that the parking space provided would be sufficient. With respect to bus parking, it should be noted that Council has no standards for the provision of spaces for the parking of buses. Nonetheless, it is noted in the landscape plans that there is space for bus manoeuvring around the car park adjacent to the accommodation building. The provision of bus manoeuvring has been included in the recommended conditions of consent with respect to the design of the internal access roads, and hence it is considered that buses can be suitably accommodated on site. The objections also highlight that the internal roads are not consistent with the relevant standards in terms of width. Noting this objection, a condition of consent has been imposed on the draft determination notice requiring lodgement of this information.
Impacts from noise	With respect to noise, it is noted that this issue has been assessed under Chapter E.3 of the DCP above. In summary, the nearest residence to the physical development is 700m and based on the assessment of the Noise Impact Assessment (Spectrum Acoustics; February 2018), no significant increase in noise is expected.

	It is also noted that objections to noise reference traffic impacts. The nearest residence is approximately 120m from the existing Gillards Road and as such, is considered to be currently subject to a level of noise from traffic. It is acknowledged that the proposal would increase the traffic on Gillards Road and therefore would increase the existing noise level; however, the increase would still not be significant enough to result in an unacceptable impact on this residence. Furthermore, the nature of the traffic, being mostly personal vehicles, small buses and occasional service vehicles, predominately during daylight hours, would not be incompatible with the rural area. Therefore, whilst the objection is noted, the level of noise is not significant to cause undue effects on nearby properties.
Impacts from lighting	The proposed lighting impacts were considered under Chapter E.3 of the DCP. In summary, it was considered that with appropriate landscaping, including along the right of accessway, and conditions of consent providing details on lighting, no significant adverse impacts to adjoining properties was expected.
Conflict with commercial vineyards	The expected conflict between the proposal and adjoining development is assessed in Chapter C.3, D.4 and E.3 of the DCP. In summary, it is noted that there are significant distances between the proposed development and adjoining uses. Furthermore, the proposal complies with relevant setbacks in the DCP provided to reduce potential land use conflict. Therefore, it is considered that the likelihood of conflict with adjoining uses is low. An objection highlights that new vines are likely on the adjoining property (196 Gillards Road); however, no detail has been provided within a Development Application and therefore minimal weight can be attributed to this. In any sense, the proposal is significantly distanced from the boundary with 196 Gillards Road, and therefore it is unlikely that there would be adverse impacts should any vines be planted in the future.
Effluent disposal	A number of the objections raise concern with the disposal of effluent from the proposed development, bearing in mind the location of constraints such as soil permeability and waterway setbacks. Council's Environmental Health Officers have considered the application and note some concerns; however, it is also considered that a number of these issues are handled under the Section 68 application process under the <i>Local Government Act 1993</i>. Overall, it is considered that there are appropriate measures to handle the level of waste expected from the development and these details will be determined under the Section 68 process.
Provision of utilities	A number of the objections raised concerns over the provision of utilities, such as water and electricity. Whilst these are discussed under Chapters D.4 and E.3 of the DCP, it is considered that suitable conditions of consent would ensure that these matters are secured prior to the use of the development. In particular, it is important to note that Hunter Water have been

	notified by the applicant and generally have no concerns in relation to the proposal.
Inconsistencies in the supporting information	In an objection it is stated that a number of inconsistencies are made between supporting plans, including mentions of stage 1 and stage 2 development. This has been noted by Council officers and the applicant has clarified that the development is not related to a staged development application pursuant to Division 4.4 of the Act. Therefore, the current proposal relates to the construction of tourist accommodation (72 units) together with a function centre/restaurant and ancillary civil works as indicated on the architectural plans. Any further development would be subject to a future Development Application and assessed appropriately at that time.

(e) *The public interest*

The proposed tourist accommodation and function centre/restaurant is considered to be in the public interest for the following reasons:-

- The proposed tourist accommodation and function centre would support the wider Vineyards District without adversely impacting the provisions of public facilities, such as roads;
- The proposed buildings would not be visible from the public realm or any area of significant views, thereby not affecting the sensitive rural character of the area;
- No adverse impact to the biodiversity of the region is expected; and,
- No adverse social or economic impacts are expected. Rather, the proposal would provide beneficial economic impacts.

OTHER PLANNING MATTERS

Division 4.8 of the Act – Integrated Development (formerly s91)

The applicant has indicated that the development requires further approvals pursuant to Section 4.46 of the Act. The following referrals were undertaken in accordance with this division of the Act and the relevant matters in the Regulations.

Approval Body	Date	Comments
RFS	21/12/2017	The subject site is located in bushfire prone land and proposes tourist accommodation, which is listed as a special fire protection purpose under s100B of the <i>Rural Fires Act 1997</i> . The RFS issued general terms of approval ensuring that the application would satisfy the planning for bushfire protection document.
DPI Water	31/08/2018	The proposal includes roadworks over the unnamed creek, which is a 3 rd order stream. The NRAR issued their general terms of approval to satisfy this section.

Section 7.11 of the Act – Developer Contributions (formerly s.94)

Under Section 7.11 of the Act, if the consent authority is satisfied that development will or is likely to require the provision of or increase the demand for public amenities, development consent may be granted subject to payment of developer contributions. To that effect, Council's Tourism Section 94 Contributions Plan applies to tourist related development, including tourist accommodation, restaurants and other tourist facilities. The plan also indicates other relevant matters, such as the timing of the contributions payment.

It is considered that the proposed accommodation and function centre/restaurant would result in an increase in public facilities, given it would attract visitors and customers. It should also be noted that the proposal includes three uses capable of being utilised separate of each other, being serviced apartments, restaurant and the first floor board room function centre. Subsequently, it is considered that a condition of consent is reasonable requiring monetary contributions pursuant to the Tourism Section 94 Plan and that this figure should be a total of each of these uses added together, as illustrated in the table below:

Contribution Type	Amount Payable
Vineyards Roads and Bridges	\$168,288.42
Tourist Information and Signage	\$125,123.58
Plan Preparation and Administration	\$12,161.32
TOTAL	\$305,573.32

INTERNAL AND EXTERNAL REFERRALS

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

Referral Officer	Date	Comments
Community Planning	08/01/2018	CPTED matters were considered and no objection to the development was raised.
Development Engineer	04/12/2017	The following matters were considered:- • Roads and traffic – overall, the level of traffic generated would not adversely impact the surrounding road network, subject to some upgrades along Gillards Road. • Access and parking – the proposed right of accessway is considered adequate. The short fall in parking is also considered to be acceptable. • Stormwater – the concept plan is considered to be acceptable. • Flooding – the proposed road would be prone to flooding. Subject to appropriate details and an appropriate evacuation plan, the proposal would be acceptable. Overall, subject to conditions, no objections are raised to the proposal.
Environmental Health Officers	11/12/2017	Officers assessed the proposal with respect to contamination, noise and wastewater treatment capability, including wastewater from the kitchen in the function centre/restaurant. The following additional information was requested:- • The estimated hydraulic load did not account for the 200 patrons at functions. Instead the wastewater allowances were for accommodation rooms, welcome hall and non-resident staff. The hydraulic load for the function centre is potentially an extra 8,000mL/day when there is an event with 200 guests in the function centre. This is based on 1 function per day and would be more if there is 2 functions a day proposed. This additional hydraulic load may have implications on the land available for wastewater disposal. • The proposed development does not have measurements of where the accommodation and function centre/restaurant are to be situated. • The approximate location of where the

		wastewater management system is to be proposed should be provided. Confirmation, if possible, where future development may be undertaken to assist for the Stage 1 capability assessment as land north of the Stage 1 land area may potentially be used in the OSSM assessment.
	04/05/2018	The applicant submitted a revised effluent disposal report as well as a noise assessment. It was also noted that the applicant had clarified that the application was not staged and that any further development would be subject to a future Development Application. Following the receipt of the additional information there were still a number of concerns relating to wastewater, but it was considered that these matters can be addressed under a Section 68 application. Furthermore, no concerns were raised with respect to contamination or noise impacts. Overall no objection is raised based on environmental health matters subject to the recommended conditions of consent.
Ecologist	20/04/2018	An ecological assessment was undertaken based on the information submitted with the application. It was noted that the site has been used for farming in the past, however a number of threatened species and EECs have been identified on the site and therefore a suitable assessment must be made of the development's impact. It was requested that the following further information be received:- - A wedge-tailed eagle nest was recorded on the site however the impact of the proposed development on this species was not assessed. An assessment of the impact on this species is required. - A vegetation management plan is required. - A fauna management plan is required. - A map showing the locations of the survey quadrats and walking transects, plus the location of fauna survey sites, is required.
	23/07/2018	Following the submission of additional information, the proposal is acceptable 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 other relevant instruments and policies.

As outlined in the report, the assessment has taken into consideration the relevant planning provisions and the proposal is supported based on the following:

- There are no matters within a SEPP that restrict the proposal from being granted development consent;
- The proposed development is consistent with the CLEP 2011. In particular, it is considered that the proposal is permissible on the land and would suitably meet the objectives of the zone;
- Council officers have assessed the proposal against the requirements of the CDCP 2010 and determined that it is consistent with the prescriptive provisions;
- It is noted that the proposal may result in some impacts, such as traffic and parking, noise, lighting and general land use conflict. However, after considering these impacts, it is considered that no significant adverse effects are likely to result from approval of the proposed development;
- Whilst a number of objections have been received, these have been considered pursuant to Section 4.15(1)(d) and the matters raised are not considered sufficient to refuse the application; and
- Overall, the application is considered to be in the wider public interest.

It is therefore recommended that the application be approved subject to the conditions contained at the end of this report.

CONDITIONS OF CONSENT

SCHEDULE 1

TERMS OF CONSENT

1. Approved Plans and Documents

Development must be carried out strictly in accordance with DA No. 8/2017/662/1 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site A Precinct Plan (1604-DA1.02PRE)	Morris-Nunn Architects	19 September 2017
Site Plan A (1604-DA1.03PRE)	Morris-Nunn Architects	19 September 2017
Site Plan B (1604-DA1.04PRE)	Morris-Nunn Architects	19 September 2017
Reception – Floor Plans (1604-DA2.01PRE)	Morris-Nunn Architects	19 September 2017
Reception – Elevations (1604-DA2.02PRE)	Morris-Nunn Architects	19 September 2017
Elevations (Accommodation) (1604-DA3.03PRE)	Morris-Nunn Architects	19 September 2017
Master Plan (landscaping) (L.DA.100.1 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 1 (L.DA.101 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 2 (L.DA.102 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 3 (L.DA.103 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 4 (L.DA.104 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 5 (L.DA.105 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 6 (L.DA.106 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 11 (L.DA.107 rev D)	Spackman, Mossop and Michaels	28 September 2017
Landscape Detail Design Plan 12 (L.DA.108 rev D)	Spackman, Mossop and Michaels	28 September 2017
Figure 5 – Conceptual Regeneration Plan	BIOCM	No date
Proposed Right of Access – Landscaping (Sheet 1)	Spackman, Mossop and Michaels	28 February 2017
Proposed Right of Access – Section (Sheet 2)	Spackman, Mossop and Michaels	28 February 2017
Accommodation – Ground Floor (DA 3.01 rev A)	Dylan Wood Architects	1 October 2018
Accommodation – First Floor (DA 3.02 rev A)	Dylan Wood Architects	1 October 2018

Accommodation – Typical Apartment Plan & Sections (DA 3.03 rev A)	Dylan Wood Architects	1 October 2018
Accommodation – Accessible Apartment Plan x 4 (DA 3.04 rev A)	Dylan Wood Architects	1 October 2018

Document Title	Prepared By	Dated
Letter with Concept Stormwater Management Plan (reference NL167098)	Northcop	10 October 2017
Erosion and Sediment Control Plan (C01DA rev A)	Northcop	9 October 2017
Stormwater Management and Levels Plan (C02DA rev A)	Northcop	9 October 2017
Civil Works Plan – Right of Access (C03DA rev A)	Northcop	9 October 2017
Road Cross Sections (C04DA rev A)	Northcop	9 October 2017
Ecological Assessment	BIOCM	25 October 2017
Noise Impact Assessment	Spectrum Acoustics	February 2018

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 RFS (21 December 2017 ref no. D17/4275) 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, PCA & Notice Required

In accordance with the provisions of Section 6.6 (cf previous s 81A) 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 6.5 (cf previous s 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.

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 Principal Certifying Authority, 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. Tourism S94 Contributions Plan

A contribution pursuant to the provisions of Section 7.11 (cf previous s 94) of the *EP&A Act 1979* for the services detailed and for the amount detailed must be made to Council prior to the issue of a CC:

Contribution Type	Amount Payable
Vineyards Roads and Bridges	\$168,288.42
Tourist Information and Signage	\$125,123.58
Plan Preparation and Administration	\$12,161.32
TOTAL	\$305,573.32

A copy of the Tourism Section 94 Contributions Plan may be inspected at Council's Customer Services Section, Administration Building, Vincent Street, Cessnock or can be accessed on Council's website at www.cessnock.nsw.gov.au.

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

7. Vegetation Management Plan

A Vegetation Management Plan shall be submitted to and deemed acceptable by Council's Ecologist prior to issue of a CC. The Vegetation Management Plan is to include all of the area labelled as 'Map Unit 1 Central Hunter Ironbark – Spotted Gum – Grey Box Forest open forest to woodland, Map Unit 2 Scattered trees and isolated woodland patches derived from Spotted Gum/Grey Box/Red Gum forest and woodland (with the exception of the areas within the Asset Protection Zones and roads), Map Unit 3 Lower Hunter Spotted Gum – Ironbark Forest in the Sydney Basin Bioregion and Map Unit 4

River Oak Riparian Forest River-Flat Eucalypt Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions' on Figure 1 and all areas labelled as 'Eucalypt forest regeneration, Riparian corridor regeneration and Eucalypt forest windrow regeneration and enhancement' on Figure 5 of the Ecological Assessment by Biodiversity Conservation Monitoring Pty Ltd (dated 25 October 2017).

The following criteria must be addressed in the Vegetation Management Plan:

- a) A brief summary of the findings of the Ecological Assessment, specific aims, quantifiable objectives, specific measurable targets, plant species to be used, planting densities, how the plants will be cared for, proposed ground preparation, fencing details and details of weed control techniques
- b) The site must be divided into management zones to allow management of areas with different management requirements (eg weed control).
- c) The plan is to be implemented by qualified and experienced bush regenerators.
- d) The plan is to be divided into primary, secondary and maintenance phases of management works. A schedule of works will need to be provided outlining what works will be performed in each management phase, what sequence the works will occur in and the duration of each of the works.
- e) The plan is required for a period of at least five (5) years. A monitoring report on the progress of the Vegetation Management Plan's implementation shall be prepared and submitted to Council at six monthly intervals until the end of the five (5) year period.
- f) Plants used for revegetation are to be native species grown from seed of local provenance, sourced from a plant nursery specialising in growing native plants. Species used are to be characteristic of Central Hunter Ironbark – Spotted Gum – Grey Box Forest, River-flat Eucalypt Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions and Lower Hunter Spotted Gum – Ironbark Forest Endangered Ecological Communities. Native plants that do not naturally occur in the local area are not be used.
- g) Monitoring will need to include 10m by 10m quadrats and photographs from fixed photo points. Details such as dominant species recorded, native species diversity, survival of tube stock (if relevant) and weed cover are to be recorded, in addition to general observations on the effectiveness of the works.
- h) All plans in the plan will need to include a north arrow and scale.

A refundable bond will be required to the amount of 20% of the total cost of vegetation works for the Vegetation Management Plan (site preparation, plant costs, fencing, etc.). The total amount of the bond will be recoverable at a rate of 20% per year over 5 years where maintenance and survival rates are satisfactory to Council. This bond is to be paid to Council prior to the issue of a CC.

8. Conservation Agreement

All of the native vegetation on the site outside of the proposed Asset Protection Zones, including the areas to be replanted, are to be protected via a Conservation Agreement under the *Biodiversity Conservation Act 2016*. The land protected by the Conservation Agreement is to be protected and retained in a natural state in perpetuity to provide protection for the native vegetation and threatened fauna species recorded on the site. The land is not to be grazed, mown, slashed, poisoned, or disturbed, except for the purposes of restoring the native vegetation, educating visitors to the site about the threatened flora and fauna on the site and removing exotic species. Evidence that this has occurred is to be provided to Council's Ecologist prior to the issue of a CC.

9. Fauna Management Plan

A Fauna Management Plan is required to be submitted to the satisfaction of Council's Ecologist prior to issue of a CC. The Fauna Management Plan is to include:

- a) A program of pre-construction and construction monitoring of identified threatened species and the Wedge-tailed Eagle's nest to ensure that threatened fauna species and Wedge-tailed Eagles using the nest are not impacted by pre-construction or construction works.
- b) A program for regular weekly monitoring of the tree used by Wedge-tailed Eagle throughout the spring and summer preceding construction, including an outline of adaptive management responses to minimise potential impacts on this species or any other species that could potentially use the nest.
- c) Habitat enhancement measures to improve and maintain habits for listed species.
- d) Specific and quantifiable key performance indicators, which are to be used to assess the success of management measures.
- e) Costings and timing for all measures and adaptive strategies to arrest any declines in usage of the site by listed species (or other parameters measured).
- f) Costings and timing for all rehabilitation measures proposed to increase habitat for listed species is to be included, including lead in times for development of suitable stock for plantings.
- g) Consideration of sub-regional context for listed species for on-site management of populations in fragmented landscapes.

10. Landscape Plan

All Landscape Drawings by Spackman Mossop Michaels (dated 28 September 2017) approved as part of this consent are to be revised so that no crop species (Wheat, Canola, Sorghum, Corn), flower fields or invasive exotic species are planted within 20m of intact native vegetation or areas to be

managed as part of the Vegetation Management Plan. Planting of native vegetation or fruit trees within 20m of native vegetation or areas to be managed as part of the Vegetation Management Plan would be acceptable. Revised plans are to be submitted to and approved by the CA prior to the issue of the CC.

11. Amended Plans Required – Internal Roads

All plans approved under this consent that show roads or tracks within 50m of the Wedge-tailed Eagle nest tree (as shown in Figure 4 'Significant fauna recorded' of the Ecological Assessment by Biodiversity Conservation Monitoring Pty Ltd dated 25 October 2017) are to be revised so that all roads and tracks are located more than 50 m from the tree. Revised plans are to be submitted to and approved by the CA prior to the issue of the CC.

12. Car Parking

On-site car parking shall be provided for a minimum of one hundred and fifteen (115) vehicles, of which a total of three (3) spaces shall be reserved for the use by persons with a disability, and such being set out generally in accordance with Council's Development Control Plan.

The design of the vehicular access and off street parking facilities must comply with:-

- AS 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.

Details, including a design certificate, satisfying these requirements is to be issued by a suitably qualified professional engineer and submitted to the CA prior to the issue of a CC.

13. Servicing/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 facilities shall be constructed clear of the car parking area and driveways and designed to avoid long distances of reversing.

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

14. Roadworks Bond

The applicant shall lodge payment of fees and contributions as follows:-

Based on a road length of approximately 230 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- a) Road fees - engineering plan checking and supervision of \$9,800.00.
- b) A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).
- c) A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).

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. If no contract price is submitted, Council will estimate the value of construction works.

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

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 the Construction Certificate for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the *Unclaimed Money Act 1995*.

15. Formation of Gillards Road

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 for the civil works.

- a) Construct 230m of Gillards Road, from the end of the existing formation to the end of the road reserve.
- b) Construct a turning circle at the end of the Gillard Road reserve.
- c) Place two (2) coat hot bitumen seal on new works.
- d) Construct drainage works as necessary.

Under the *Roads Act 1993*, a S138 Roads Act Approval will need to be obtained from Council for the above works. In this regard, the applicant is to make a formal application to Council and the S138 application is to be submitted to, and approved by, Council prior to works commencing.

16. Access within the Right of Carriageway

The registered proprietor of the land shall construct an access road within the right of carriageway easement for access contained within Lot 40 to service Lot 22 in accordance with the approved plans, Council's 'Engineering Requirements for Development' and RFS requirements to serve the service apartments and function centre/restaurant.

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

17. Internal Access Roads

The registered proprietors shall provide details of an all-weather access road from the property boundary to the approved serviced apartments and function centre/restaurant. The access road will need to be constructed to 4m wide, 100mm thick pavement with 1m wide clear verges either side and ensure appropriate space for the movement of 22-seater buses as a minimum. 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 CA as satisfying this requirement prior to the issue of a CC.

18. Creek Crossing Requirements

The registered proprietor of the land shall provide structural and hydraulic design details of the approved road crossing of the 3rd order stream. Such crossing shall be designed and constructed in accordance with Council's 'Engineering Requirements for Development' and shall include flood warning signage, depth indicators and reflective guideposts in accordance with AS 1743. The detailed plans, specifications, and copies of the calculations, including existing and proposed surface levels, catchments and conduit sizing appropriate for the development, prepared by a professional engineer and submitted to, and approved by, the CA prior to the issue of a CC.

Please note it is the developer's responsibility to ensure that all approvals from other authorities are obtained for the works prior to construction.

19. Detailed Stormwater Design Requirements

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 on-site 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 CA as satisfying this requirement prior to the issue of a CC.

20. Flooding – Fencing

Any fencing proposed across the required floodway or overland flowpath shall be of an open mesh or rod style with an open area of not less than 80%.

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

21. Accessibility Management Plan

An Accessibility Management Plan must be prepared for the approved building 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 CA as complying with the BCA and AS’s prior to the issue of a CC.

22. Food Premises

The construction and operation of areas involving food preparation in the development 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 CA as satisfying this requirement prior to the issue of a CC.

23. Outdoor Lighting

Prior to the issue of a CC, the CA 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*.

In addition to the above, all lighting onsite must be low watt lighting set close to the ground, downward pointing and not located within 50 metres of the Wedge-tailed Eagle nest tree as shown in Figure 4 'Significant fauna recorded' of the Ecological Assessment by Biodiversity Conservation Monitoring Pty Ltd dated 25 October 2017.

24. 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 CA prior to the issue of a CC.

25. 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 CA prior to the issue of a CC.

26. 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 CA 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*.

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. 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 a CC.

If the approved 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.

29. Acoustic Report – Certification Requirement

Prior to the issuing of any CC, Certification is to be submitted to the CA, confirming that the recommendations from the Reverb Revised Noise Impact Assessment (Report No.17-2052-R3), have been incorporated into the design of the site and that the design and plant equipment will achieve the project specific noise goals.

PRIOR TO COMMENCEMENT OF WORKS

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

30. 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 CA 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.

31. 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.

- 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 CA 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.

32. Vegetation Management Plan and Fauna Management Plan

The Vegetation Management Plan and the Fauna Management Plan are to be implemented prior to works commencing.

33. Protection of Vegetation

No clearing is to be undertaken outside of the development area, including the Asset Protection Zone, on the site. Prior to the commencement of works, areas outside this area are to be clearly delineated using protective fencing or brightly coloured tape to prevent encroachment of clearing works into the native vegetation.

34. 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.

DURING WORKS

The following conditions are to be complied with during works.

35. 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 and Heritage Noise Guide for Local Government.

36. 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.

37. 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.

38. 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.

39. Protection of Trees to be Retained

Any trees to be retained within 20m of the development footprint are to be fenced after clearing has been completed and prior to construction works beginning. The fencing is to encompass the maximum possible area within the drip line of the canopy and remain in place until completion of construction works. All areas within the fencing are to be covered with woodchip mulch to a depth of 100mm. Tree protection signage is to be attached to the fencing surrounding the retained trees.

All workers on the site are to be made aware of the location and significance of the native vegetation on the site and are to be advised to avoid impacting on the area.

40. Stockpiling, Storage etc.

Stockpiling, storage or mixing of materials (including soil), vehicle parking, disposal of liquids, machinery repairs and refuelling is not to occur within the native vegetation to be retained as shown in Figure 1 of the Ecological Assessment by Biodiversity Conservation Monitoring Pty Ltd dated 25 October 2017.

41. Construction Impacts on the Wedge-Tail Eagle Nest

All works on site including construction works are not to occur during the Wedge-tailed Eagle nesting season (June to October).

All works on site are to stop if Wedge-tailed Eagles are observed using the nest tree.

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):

42. 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 PCA prior to issue of an OC.

43. 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.

44. 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.

45. 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.

46. 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.

47. Completion of Works in Gillard Road

Prior to the issue of an OC, the PCA 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.

48. Completion of Access Road and Internal Roadworks

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.

49. Completion of Creek Crossing

The registered proprietors of the land shall construct the road crossing of the 3rd order stream in accordance with the approved plans and any relevant condition of consent prior to issue of an OC.

50. 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 *PCA*, 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*.

51. Completions of Stormwater Management System

Prior to the issue of an *OC*, the *PCA* 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 *PCA* prior to the issue of an *OC*.

52. Stormwater Plan of Management

The registered proprietor of the land shall prepare a Plan of Management for the stormwater 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 *PCA* for approval prior to the issue of an *OC*.

53. Flooding Evacuation Management Plan

The applicant shall prepare a flood emergency evacuation and management plan for the approved 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*.

54. Drinking Water Management System

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

55. Nest Boxes

At least 10 nest boxes are to be installed in the retained native vegetation on the site outside of the Asset Protection Zones. Nest boxes are to be a variety of types and sizes to provide additional habitat for the threatened fauna recorded on the site. Evidence of this is to be provided to the *CA* prior to the issue of an *OC*.

56. Compliance with Acoustic Report

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.

ONGOING USE

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

57. Hours of Operation

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

Monday – Sunday (inc. public holidays) 7am to 12pm

The LAeq* noise level emitted from the premises must not exceed the background noise level in any octave band centre frequency (31.5Hz– 8k Hz inclusive) by more than 5dB during operating hours at any nearby affected residence.

**For the purposes of this condition, the LAeq can be taken as the level of noise equivalent to the energy-average of noise levels occurring over a measurement period.*

58. Occupant Capacity

The seating capacity of the function centre/restaurant is restricted to a maximum of 200 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 200 persons/seats.

All seating is to be provided within the restaurant and no external seating on the terrace is permitted without further Development Consent.

59. 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.

60. Discharge into Waterways

No waste water, chemicals or other substances harmful to the environment shall be permitted to discharge to the waterway that runs through the site, or to Council's stormwater system. Only clean, unpolluted water is permitted to discharge. Waste oil shall be stored in a covered and suitably bunded area, pending regular removal to a waste oil recycler.

61. 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.

62. 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.

63. 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.

64. Noxious Weeds

All noxious weeds on the site, including *Ageratina adenophora* (Crofton Weed), *Cortaderia selloana* (Pampas Grass), *Lycium ferocissimum* (African Boxthorn), *Senecio madagascariensis* (Fireweed) and *Opuntia stricta* (Common Prickly Pear) are to be removed from the site.

65. Fencing

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

ADVISORY NOTES

A. Road Advice

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

B. 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.

C. “Dial Before You Dig” Dig 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

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*.

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

E. 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.

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.

G. Signage and Fencing Advice

The application has been determined on the basis of the information submitted by the applicant and therefore no signage or fencing has been approved under this consent. The holder of this consent is to be aware that should any fencing or signage be proposed that does not comply with the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, it will be subject to a future Development Application.

SCHEDULE 2



NSW RURAL FIRE SERVICE



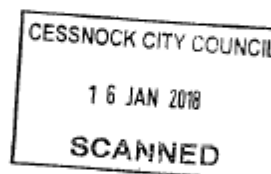
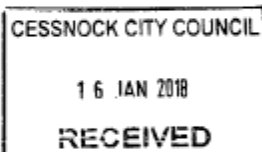
The General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Your reference: DA 8/2017/662/1
Our reference: D17/4275

21 December 2017

Attention: Luke Mannix

Dear Sir/Madam,



Integrated Development - Proposed Construct New Tourist Accommodation (72 Units) Including Function Centre and Ancillary Works - LOT: 22 DP: 791884, LOT: 40 DP: 755255 Palmers Lane POKOLBIN

Reference is made to Council's correspondence dated 15 August 2017 seeking general terms of approval for the above application for integrated development in accordance with Section 91 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service advises that this response is be deemed to be a bush fire safety authority subject to the following conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

- At the commencement of building works and in perpetuity the Asset Protection Zones proposed around the structures shall be consistent with those nominated in the document 'Constraints Overlay, 22 Palmers Lane, Pokolbin NSW', prepared by Building Code & Bushfire Hazard Solutions, Ref: 170316B, Rev: A, dated 25/09/2017. They shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- The Asset Protection Zones shall be consistent with Appendix 5 of 'Planning for Bush Fire Protection 2006', including as follows:
 - Suitable impervious areas being provided immediately surrounding the building such as courtyards, paths and driveways;
 - Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
 - Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;

Postal address
NSW Rural Fire Service
Records Management
Locked Bag 17
GRANVILLE NSW 2141

Street address
NSW Rural Fire Service
Planning and Environment Services (East)
42 Lamb Street
GLENDENNING NSW 2761

T 1300 NSW RFS
F (02) 8741 5433
E csc@rfs.nsw.gov.au
www.rfs.nsw.gov.au



- Maximum tree cover should be less than 15%, and maximum shrub cover less than 15%;
- Planting should not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters);
- When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such timber garden furniture way from the building; and
- Use of low flammability vegetation species.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

- Where a reticulated water supply complying with AS2419 – 2005 is not provided, a 50,000L litre static water supply shall be provided to the serviced apartments and a 10,000L static water supply be provided to the function centre within the subject property. Where this supply is a water tank it shall be plumbed so that 50% of this volume is dedicated for firefighting activities and comply with the following:
 - A suitable connection for firefighting purposes is made available and located within the IPA and away from the structure. A 65mm Storz outlet with a gate or Ball valve is provided.
 - Gate or Ball valve and pipes are adequate for water flow and are metal rather than plastic.
 - Underground tanks have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is supplied within 4 metres of the access hole.
 - Above ground tanks are manufactured of concrete or metal and raised tanks have their stands protected. Plastic tanks are not used. Tanks on the hazard side of a building are provided with adequate shielding for the protection of fire fighters.
 - All above ground water pipes external to the building are metal including and up to any taps. Pumps are shielded.
 - That a 5hp or 3kW petrol or diesel firefighting pump set with suitable suction and supply hoses (inc. 38 mm storz fittings) and two (2x) 30 metre long delivery hose lines with a nozzle are maintained and available for each firefighting static water supply.
- Electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.

- The proposed function centre and serviced apartments shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone area' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

- The access within the Right of Carriage Way and within the subject site shall comply with the following requirements of section 4.1.3 (1) & 4.2.7 of PBP:
 - Internal roads are two-wheel drive, sealed, all-weather roads;

- Traffic management devices are constructed to facilitate access by emergency service vehicles and suitable turning provisions are incorporated in the design.
- A minimum vertical clearance of four metres to any overhanging obstructions, including tree branches, is provided.
- Curves have a minimum inner radius of six metres and are minimal in number to allow for rapid access and egress.
- The minimum distance between inner and outer curves is six metres.
- Maximum grades do not exceed 15 degrees and average grades are not more than 10 degrees.
- Crossfall of the pavement is not more than 10 degrees.
- Roads do not traverse through a wetland or other land potentially subject to periodic inundation (other than flood or storm surge).
- Roads are clearly sign-posted and bridges clearly indicate load ratings.
- The internal road surfaces and bridges have a capacity to carry fully loaded firefighting vehicles (15 tonnes).

The intent of measures for fire trails is to provide suitable access for fire management purposes and maintenance of APZs.

- An access way consistent with the requirements for fire trails as outlined under section 4.1.3 (3) of 'Planning for Bush Fire Protection 2006' shall be provided between the proposed tourist accommodation and function centre and the identified Riparian Corridor to the east.

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments.

- Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Landscaping

- Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.
- A landscape plan prepared by a qualified landscape architect /landscape consultant and certified by a suitably qualified bush fire planning and design consultant shall be submitted to Council or the principal certifier for approval with the construction certificate. The landscape plan and certification shall demonstrate compliance the requirements of Appendix 5 of 'Planning for Bush Fire Protection 2006' and the Rural Fire Service 'Standards for asset protection zones' as conditioned under the Asset Protection Zones in the General Terms of Agreement in this Bush Fire Safety Authority. The plan is to include the location of all proposed and existing planting, delineating existing trees to be retained, removed or transplanted. The plan should include a detailed planting schedule which includes species listed by botanical and common names, quantities of each species, pot sizes, and the estimated size of the plant at maturity.

If you have any queries regarding this advice, please contact Josh Calandra, Development Assessment and Planning Officer, on 1300 NSW RFS.

Yours sincerely,



Jason Maslen
Team Leader, Development Assessment and Planning
Planning and Environment Services (East)