

JRPP No.	2010HCC033
DA No.	DA 10/1100
PROPOSAL PROPERTY	Bunnings Warehouse Development No.1a Minmi Road and No.12 Sandgate Road (Robert Street), Wallsend Lot 2, DP 234315 Part Lot 1, DP 552405 Lot 21, DP 588346
APPLICANT REPORT BY	Bunnings Group Ltd Nexus Environmental Planning Pty Ltd

Assessment Report and Recommendation

Executive Summary

Proposed Development

The proposed development consists of the following main elements:

- a retail warehouse
- a timber trade supplies area
- a nursery and bagged goods area
- a general goods yard
- Café, selling pre-packaged food and drinks, with no food being prepared on the premises
- 389 parking spaces, comprising 377 standard car parking spaces, 8 spaces for people with a disability, vehicle circulation areas, 4 trailer bays, delivery and loading bays, 19 motorcycle parking spaces and racks for 6 bicycles
- landscaping throughout the open areas of the site
- a wetland conservation area

Referral to Joint Regional Planning Panel

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, the application is referred to the Joint Regional Planning Panel as the proposed development has a capital investment value of more than \$10m. The application submitted to Council nominates the value of the project as \$14.978m.

Permissibility

The site is zoned 4(a) Urban Services pursuant to the Newcastle Local Environmental Plan 2003. The proposal is categorised as a Bulky Goods Retail Outlet which is permissible within the 4(a) Urban Services zone subject to development consent. Landowner's consent has been provided. The proposal is Integrated Development under the *Environmental Planning and Assessment Act, 1979* as the proposed development requires a Controlled Activity Approval pursuant to the *Water Management Act 2000*.

Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 from 11 October 2010 to 10 November 2010. The application was notified for 30 days because the development is 'nominated integrated development'. Seven submissions were received. Six objected to the proposed development and one was in favour of the proposed development.

Key Issues

- Whether the proposed development is suitable for the site.
- Whether the proposed development would have an adverse impact on the flood regime of the locality.
- Whether the proposed wetland meets the requirements of both Council and the Department of Environment and Heritage (Office of Water).
- Whether there is contamination of the site from previous use of the site to warrant site remediation.
- Whether suitable landscaping can be provided.
- Whether the layout of the proposed development would have an unacceptable acoustic impact on adjoining sensitive land uses.
- Whether the proposed access to and from Robert Street is acceptable.
- Whether the amount of fill to be imported to the site is suitable in that it would potentially impact on the flood regime of the area and the existing wetland area of the site.
- Whether adequate information has been provided with regard to the road works which would be required external to the site.

Recommendation

Grant approval to DA 10/1100, subject to conditions in Appendix A

1. Background

At the time of lodgement of this application a portion of the western section of the site was classified as community land and, hence, the proposed development was not permitted on that portion of the site until such time as that land was reclassified as operational land. The Council has amended Newcastle Local Environmental Plan 2003 to reclassify that part of the site which was community land to operational land.

2. Site and Locality Description

The site is owned by Newcastle City Council. To avoid any perceived conflict of interest, Council has engaged Nexus Environmental Planning Pty Ltd to assess the development application and prepare this report to the Joint Regional Planning Panel.

The site's address is 1A Minmi Road and 12 Sandgate Road (Robert Street), Wallsend. Its real property description is:

1A Minmi Road - Lot 2, DP 234315 and Part Lot 1, DP 552405

12 Sandgate Road - Lot 21, DP 588346.

The combined area of the lots is 55,579m².

The site is vacant and has little in the way of improvements. Access is available from both Sandgate Road (Robert Street) and Minmi Road.

The site is vegetated with a variety of native and exotic plants and there appears to be a small number of open drains traversing its western end.

The site has been filled adjacent to the Sandgate Road (Robert Street) frontage.

The site generally falls away to the west, towards its boundary with the Ironbark Creek reserve. Around 70 - 80% of the site appears low lying. Existing levels are below Minmi Road.

Much of the site is flood prone land with a significant section of the western portion of the site being identified as floodway.

3. Project Description

The proposed development is for a Bunnings Warehouse development which adopts the recognised and established Bunnings Warehouse development model.

The Capital Investment Value of the proposed development is \$14.978m.

The Statement of Environmental Effects prepared by Insite Planning states:

“Bunnings has lodged a development application seeking consent to build and open a bulky goods retail outlet, including a retail warehouse building, nursery and bagged goods area, timber trades yard, open yard, café, vehicle parking and circulation areas and loading area, landscaping and to erect 11 business identification signs, at the corner of Minmi Road and Sandgate Road (Robert Street), Wallsend.

The proposal features:

- 8,935m² retail warehouse
- 1,862m² timber trade supplies area
- 2,808m² nursery and bagged goods area
- 1,164m² general goods yard
- Café, selling pre-packaged food and drinks, with no food being prepared on the premises
- 389 parking spaces, comprising 377 standard car parking spaces, 8 spaces for people with a disability, vehicle circulation areas, 4 trolley bays and delivery and loading bays, 19 motorcycle parking spaces and racks for 6 bicycles
- Extensive landscaping throughout the open areas of the site
- 4,130m² wetland conservation area

The development will be supplemented by landscaping, pedestrian access from Robert Street and traffic management improvements to the nearby road network.

The proposal is integrated as the wetland restoration and associated earthworks required in the floodway to Ironbark Creek are defined as a controlled activity by the Water Management Act 2000. An approval is required from the NSW Office of Water under section 91 of that Act”.

Since the lodgement of the application, the applicant, in response to issues raised by Council Officers, has made changes to the plans of the proposed development; however, those changes are minor in nature with the above elements essentially remaining the same.

Extensive cut and fill activity would be required to make good a development platform for the proposed development. The civil engineering report accompanying the development application indicates that:

- preliminary cut volume is 21,070 m³, and
- preliminary fill volume is 72,650 m³

resulting in a net importation of 51,580 m³ of fill to the site.

The plans of the proposed development indicate that part of the proposed development would be cantilevered over the floodway of the creek which adjoins the site.

Plans of the proposed development are provided at **Appendix B**.

Vehicular access to the site would be via a purpose built access at Minmi Road. Plans lodged with the application indicated that a separate entrance and exit to the site would be located in Robert Street, however, this proposed access is considered suitable for emergency use only and suitable conditions of consent have been recommended to ensure that the Robert Street access to the site is used for emergency purposes only. Pedestrian access to the site would be available via entries on both Minmi Road and Robert Street. The buildings would be fully accessible to all staff and visitors.

4. Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 from 11 October 2010 to 10 November 2010. The application was notified for 30 days because the development is 'nominated integrated development'.

In response to the public exhibition seven submissions have been received, six objecting to the proposed development and one in favour of the development.

The submissions raised the following issues:

- The proposed entry and exit from Robert Street is inappropriate in that it would create increased traffic congestion and traffic safety issues in Robert Street.

Comment:

The original design of the proposed development proposed an entry and exit point in Robert Street. Considerable concern has been raised with regard to the impact such an entry and exit point would have on the amenity of the residents of Robert Street and the impact additional traffic in Robert Street would have with regard to resident safety.

This issue has been discussed by the Hunter Regional Development Committee with the conclusion that the proposed access on Robert Street should be used as an emergency access only and gated at both ends during normal operations.

It is recommended that a condition of consent be provided to ensure that the plans of the proposed development are modified as part of the Construction Certificate application to show the access on Robert Street as being for emergency access only.

- The proposed development would result in unacceptable acoustic impact to the adjoining residential development by virtue of additional heavy vehicle movements associated with the proposed development.

Comment:

The applicant has provided additional acoustic impact assessment and, in particular, has provided details of the measures which would be undertaken to ensure that the acoustic integrity of the adjoining residential development would be maintained. The proposed measures would include providing a suitable landscaped buffer between the rear boundary of the adjoining residential development and the access road to the delivery bay, the erection of an acoustic fence, and limiting of the hours when deliveries could be made to the proposed facility.

Council's Senior Environmental Protection Officer raised no objection to the modified application and states:

This review takes account of the additional information contained in the letter prepared by Indigo Acoustics "Re: Response to Comments from Council re Bunnings Store at Wallsend" dated 14 July 2011.

Noise

The submission explains that noise generating activities are the same for daytime and evening periods. It follows then that further assessment against daytime project noise criteria is unnecessary since it has been demonstrated that evening goals are met, and these are more stringent than the daytime criteria.

The location of the proposed acoustic fence along the delivery vehicle service road is shown on a plan and construction of this fence to appropriate design standards will be confirmed through conditions of consent.

Assessment of carpark noise is shown to be based on noise levels from a comparable existing carpark. For the purposes of modelling, a single figure representing the acoustic centre of the space has been used.

Traffic noise levels at Robert Street are affected by traffic from other nearby busier streets. Increases in traffic volumes and the associated noise at Robert Street are predicted to result in a 0.5 dB(A) exceedence of the DECC's traffic noise goal of 55dB(A) (described by the consultant as "negligible") and monitoring in the area demonstrates that the existing levels in the area are closer to 60dB(A) on most days "indicating that the traffic on Robert Street, generated by Bunnings, will have no impact on existing traffic noise levels".

Suitable conditions of consent have been recommended (refer to Appendix A) to ensure that appropriate acoustic mitigation measures would be in place as part of the proposed development.

- The proposed development would result in unacceptable glare impact from lighting in the car park and from the proposed signage on the proposed built form.

Comment:

The proposed development would include lighting of the car park area and the building itself. With suitable mitigation measures in place to prevent unacceptable light spill from the site to adjoining development, there should be no unreasonable impact due to glare from lighting associated with the proposed development. Suitable conditions of consent have been recommended.

- The proposed development would preclude strategic development of the remaining industrial lands in the vicinity of the site and, in particular, preclude access from those other lands to Minmi Road.

Comment:

Council's Strategic Planning Services has indicated that:

'It is highly unlikely that Council would create an access road across the subject site (1a Minmi Road) to connect the Daracon land with Minmi Road. Creating an access road would significantly reduce the opportunities for Industrial development on the site, given that the portion near Iron Bark Creek is affected by flooding. Creating an access road would cause fragmentation of an industrial lot. This would be against the recommendations of the Newcastle Industrial Land Analysis. The Newcastle Industrial Land Analysis recommends that industrial land be retained for future industrial development. This is particularly important given that the Newcastle Industrial Land Analysis noted that Newcastle may have a shortage of Industrial land available to meet future demand.'

Council does not intend to create a master plan or development control plan for the area given that a significant number of industrial lots are already developed.'

- The proposed development removes the ability of the Council to provide a planned cycleway across the site to link to the Minmi growth corridor.

Comment:

Council's Strategic Planning Services has indicated that:

'It is highly unlikely that council would create a planned cycle way between the subject site and Daracon land given the costs involved in constructing a bridge over Iron Bark Creek. The easement between the site and Daracon land would not be the ideal location for a cycle way as the path would be between two industrial developments [with] little passive surveillance. A more suitable location for a cycle path would be an off-road path along Minmi Road. This would provide easy access and surveillance from passing traffic.'

- The proposed development would have an unacceptable impact on the flood regime of the Wallsend catchment to the detriment of other land uses in the vicinity of the site.

Comment:

Council's Senior Development Officer (Engineering) has assessed the proposed development with regard to its potential impact on the flooding regime of the area. It is concluded that the proposed development, suitably conditioned, would not have an adverse impact on the flood regime of the catchment. This aspect of the proposed development is discussed in more detail in Section 6 of this report.

- The proposed development would have unacceptable impact on the rural views enjoyed by adjoining residential development.

Comment:

The site is currently vacant and a number of adjoining residents have views across the site. The site is zoned 4(a) Urban Services and the planning controls anticipate use of the site for a development such as that which is proposed. As such, it is to be expected that development of the site for such purposes would impact on the views currently obtained, however, the loss of view is not considered to be an impact which would warrant refusal of the application.

- The site contains asbestos and there is potential for adverse health impacts if that asbestos is disturbed as part of the proposed development.

Comment:

Site remediation measures have been proposed which would ensure that any contamination of the site is remedied as part of the development process. This issue is discussed in more detail in the discussion of State Environmental Planning Policy No.55 - Remediation of Land in Section 6 of this report.

- The proposed landscaping involves tube stock which would take a considerable time to provide adequate visual screening of the proposed development.

Comment:

The landscape plans submitted with the application have been assessed by the Council's Landscape Architect. It is recommended that an amended Landscape Plan be submitted with the Construction Certificate application addressing conditions recommended by the Council Landscape Architect such that the proposed landscaping would be satisfactory.

- The proposed development is out of keeping with the visual appearance of the area.

Comment:

The environs of the site comprise a mixture of development types including residential, open space, and industrial development. The proposed development would provide a built form which is different to other development forms in the area, however, that proposed built form is consistent with that envisaged by the

planning controls for the area. The proposed development, although different in appearance to residential and other industrial development in the environs of the site, is considered to be reasonable and acceptable for the site.

- whether the proposed development is suitable for the site.

Comment:

As discussed above, the site is zoned 4(a) Urban Services and the proposed development is permissible in the zone. The site has good access to the local area and the greater Newcastle area. Although significant earthworks are required to make good the site for the proposed development, the assessment undertaken by the applicant and the relevant assessment authorities has concluded that the site is suitable for the proposed development.

- whether the proposed development would have an adverse impact on the flood regime of the locality.

Comment:

Council's Senior Development Officer (Engineering) has raised no objection to the proposed development subject to conditions relating to the potential impact the development may have on the flood regime of the area. The NSW Office of Water has also provided its General Terms of Approval for the proposed development.

With the recommended conditions of consent in place, there should be no significant impact to the flood regime of the locality.

- whether the proposed wetland meets the requirements of both Council and the Department of Environment and Heritage (Office of Water).

Comment:

The NSW Office of Water has provided its General Terms of Approval for the proposed wetland.

- whether there is contamination of the site from previous use of the site to warrant site remediation.

Comment:

The issue of site contamination is discussed above in relation to SEPP 55. Council's Senior Environment Protection Officer has concluded that, with the recommended conditions of consent in place, the contamination identified on the site should be treated in a suitable manner.

- whether suitable landscaping can be provided.

Comment:

A landscape plan has been submitted with the application. Council's Landscape Architect has requested amendment to that landscape plan and conditions of consent have been recommended to give effect to the requirements of the Landscape Architect.

- whether the layout of the proposed development would have an unacceptable acoustic impact on adjoining sensitive land uses.

Comment:

The original proposal provided for access for delivery trucks to be immediately adjacent to the rear boundary of adjoining residential land. Council has resolved to require a setback from the boundary of adjoining residential land to the amended access for delivery vehicles. An acoustic fence is also proposed on that boundary to assist in the mitigation of acoustic impact from trucks delivering materials to the site. A condition of consent is recommended limiting the times when delivery and dispatch vehicles can enter the site.

- whether the proposed access to and from Robert Street is acceptable.

Comment:

The original proposal contained a vehicular access to the site from Robert Street. The access was considered to be inappropriate due to potential issues with regard to patrons of the facility using local roads to access the site and the commensurate noise and amenity impacts associated with such an access.

Conditions have been recommended to ensure that the access to the site from Roberts Street is for emergency vehicles only and that this entrance to the site is gated at both ends during normal operations.

- whether the amount of fill to be imported to the site is suitable in that it would potentially impact on the flood regime of the area and the existing wetland area of the site.

Comment:

As noted above, Council's Senior Development Officer (Engineering) and the NSW Office of Water have raised no objection to the amount of fill to be imported to the site subject to strict conditions of consent as recommended.

- whether adequate information has been provided with regard to the road works which would be required external to the site.

Comment:

The Hunter Regional Development Committee and the Roads and Traffic Authority have reviewed the proposed development and have required significant road works to be undertaken as part of the proposed development to ensure that vehicle, bicycle and pedestrian access to the site is suitable for a development the size of that which is proposed. Those proposed road works are identified in the recommended conditions of consent.

5. Referrals

Statutory Referrals

The proposal is “Integrated Development” as the proposed development requires a Controlled Activity Approval pursuant to the *Water Management Act 2000*. The application has been reviewed by the NSW Office of Water which provided its General Terms of Approval for the proposed development. The General Terms of Approval are incorporated into the recommended conditions of consent for the proposed development.

The Roads and Traffic Authority has reviewed the application and has raised no objection to the proposed development provided certain matters are included as conditions of development consent. The recommendations of the Roads and Traffic Authority are contained in the recommended conditions of consent.

The Hunter Regional Development Committee has reviewed the application and has raised no objection to the proposed development provided certain matters are addressed as conditions of development consent. Many of the recommendations of the Committee overlap with those of the Roads and Traffic Authority and are contained in the recommended conditions of consent.

The Awabakal Local Aboriginal Land Council (LALC) has reviewed the application and has undertaken a site inspection. The Awabakal LALC is satisfied that there are no areas of cultural significance on the site and supports the development of this area. Suitable conditions of consent have been recommended to ensure that, during the undertaking of earthworks on the site as part of the proposed development, a representative of the Awabakal LALC is on site.

The NSW Rural Fire Service has reviewed the application and raised no objection to the proposed development subject to conditions relating to bush fire safety. Recommended conditions are contained in the recommended conditions of consent.

Internal Referrals

Internal referral was made with the following:

- Compliance Services Unit with reference to State Environmental Planning Policy 55 - Remediation of Land, ecology, acid sulfate soils, and acoustic impact.

- Senior Development Officer (Traffic) concerning the proposed vehicular access to the site, car parking, and the design of the proposed internal delivery road and loading dock.
- Heritage Officer concerning the impact of the proposed earthworks on the archaeological and aboriginal heritage significance of the site.
- Landscape Architectural Services Team with regard to the proposed landscaping of the site.
- Senior Development Officer (Engineering) with regard to the impact the proposed development would have on flooding and stormwater.

6. Section 79C Considerations

(a)(i) the provisions of any environmental planning instrument

Newcastle Local Environmental Plan 2003 (NEP 2003)

The site is within the 4(a) Urban Services zone under the provisions of NLEP 2003.

The proposed development is a bulky goods retail outlet which is defined as follows:

‘bulky goods retail outlet means a building or place used for the sale by retail or auction, or the hire or display, of items (whether goods or materials) which are of such a size, shape or weight as to require:

- (a) a large area for handling, storage or display, and*
- (b) direct vehicular access to and loading facilities at the building or place for use by members of the public, for the purpose of loading items into their vehicles after purchase,*

but does not include use of a building or place for the sale of foodstuffs or clothing or a building or place elsewhere defined in this plan.’

Bulky goods retail outlets are permitted in the 4(a) Urban Services zone with the consent of the Council.

Clause 8 of NEP 2003 states:

‘Requirements for development

In addition to the other heads of consideration set out in section 79C (1) of the Act, the consent authority must have regard to the following particular matters before granting consent to proposed development:

- (a) the relevant aims and general objectives of this plan,*
- (b) the relevant zone objectives nominated by this plan for the particular zone in which the land concerned is situated, as shown on the zoning map,*

(c) *any other relevant provision of this plan.'*

The relevant General Aims and Objectives of LEP 2003 are discussed in **Appendix C**. The proposed development is consistent with relevant general aims and objectives.

- Zone objectives

The objectives of the 4(a) Urban Services zone are:

- '(a) To accommodate a wide range of light industrial, transport and storage activities which do not adversely affect the amenity of the neighbourhood.*
- (b) To accommodate a wide range of employment-generating uses and associated support facilities with good access to the arterial road network for freight movement.*
- (c) To accommodate sales and storage operations requiring extensive space such as bulky goods retail outlets, which will not prejudice the viability of local centres, district centres or the Newcastle City Centre.'*

Comment:

The proposed development would provide a large bulky goods retail outlet which would not prejudice any district centres such as the Newcastle City Centre. The proposed development is considered to be consistent with the objectives of the zone.

- Acid Sulfate Soils

Clause 25 of NLEP 2003 deals with Acid Sulfate Soils. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The site is identified as Class 3 on Acid Sulfate Soils Map.

An Acid Sulfate Soils Management Plan has been submitted with the application and has been assessed by the Council's Senior Environmental Protection Officer who states:

'Acid Sulfate Soil Management Plan

Investigations have revealed the presence of ASS [Acid Sulfate Soil] on the site. The Management Plan describes measures for soil management when ASS or PASS [Potential Acid Sulfate Soil] is to be excavated. While this provides general principles for management, the information falls short of the minimum standards for detail described in the Acid Sulfate Soil Manual. There is no description of any monitoring program for soils or groundwater or contingency procedures to be implemented at the site to deal with unexpected events or in the event of failure of management procedures. Section 4.1 of the submitted Plan contains the statement "For

preliminary purposes until detailed ASS assessment is undertaken at a later date", which indicates that further assessment is anticipated. A consent requiring the preparation of a more detailed plan to address these shortcomings will be provided.'

Conditions of consent have been recommended to ensure that acid sulfate soils are treated correctly during the excavation and construction stage of the development process.

- Bush Fire Prone Land

Clause 26 of NLEP 2003 requires the consent authority to be satisfied with the measures proposed to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.

The Newcastle Bush Fire Prone Land Map indicates that the site partly contains Category 1 Vegetation and is partly located within the 100m buffer to that Category 1 Vegetation.

The application has been assessed by the NSW Rural Fire Service which has raised no objection to the proposed development subject to conditions of consent relating to:

- evacuation and emergency management
- design and construction
- landscaping.

Conditions of consent recommended by the NSW Rural Fire Service are contained in the recommended conditions of consent.

- Heritage

Part 4 of NLEP 2003 deals with the impact development may have on heritage items, sites of aboriginal significance and sites of non-aboriginal heritage significance.

Clause 31 of NLEP 2003 states:

'Development affecting places or sites of Aboriginal heritage significance

Before granting consent for development that is likely to have an impact on a place of Aboriginal heritage significance or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, the consent authority shall:

- consider a heritage impact statement, which addresses the heritage impact of the proposed development, and*
- notify local Aboriginal communities of the proposed development and take into consideration any comments received in response within 21 days from the date of notification.'*

Council's Heritage Officer has assessed a Heritage Impact Statement submitted with the application and states that:

'Any impacts are considered to be minor and manageable via consent conditions.'

The application has been assessed by the Awabakal LALC which has advised that there are no known or suspected Aboriginal sites of significance associated with the site. The LALC has, however, suggested that a representative of the Land Council be present on the site when earthworks are to be undertaken. A condition of consent has been recommended requiring a representative of the Awabakal LALC to be present on the site during the undertaking of bulk earthworks.

Clause 32 of LEP 2003 states:

'Development affecting archaeological sites or relics of non-Aboriginal heritage significance

- (1) Before granting consent for development that will be carried out on an archaeological site of a relic that has non-Aboriginal heritage significance, the consent authority shall consider a heritage impact statement which addresses the heritage impact of the proposed development.*
- (2) This clause does not apply if the proposed development does not involve disturbance of below-ground deposits and the consent authority is of the opinion that the heritage significance of any above-ground relics would not be adversely affected by the proposed development.'*

The Council's Heritage Officer states:

'The potential impact on non-Aboriginal archaeological materials has been assessed in the archaeological report authored by AHMS dated 12 August 2010, and supplementary review by EJE Architecture dated December 2010. The supplementary review addresses matters raised by Sarah Cameron in internal advice of September 2010.

The supplementary report is of relevance and states "it can therefore be assumed that the excavation may uncover some evidence of the former farm building and the general layout of the farm if remains still exist" where bulk excavation reaches a depth of RL 3.1. The report recommends that the bulk excavation be monitored for insitu remains of the former farm buildings in the south east corner of the site.

CONCLUSION

It is reasonable to expect that disturbance of relics may occur as part of the bulk excavation phase for the development. An Exception permit will be required to cover this work. The applicant will need to obtain this and forward a copy to Council before the Construction Certificate is released and prior to site works occurring.

The application has been assessed against the heads of consideration at Part 4, Cl. 27 (a), Cl. 32, and Cl. 33 of the Newcastle LEP 2003 to assess the extent to which it achieves the objectives at Part 1, (5) Aim 1, Objectives (a)-(g) of the LEP. The application meets the relevant objectives and is recommended for approval.'

A condition of consent has been recommended to manage the heritage and archaeological issues identified.

State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) applies to the site.

The applicant has provided an assessment of the site with regard to contamination and has also provided a peer review of the assessment. Council Senior Environmental Protection Officer has reviewed the documents forwarded with the application relating to site contamination and states:

'Contamination

Section 5 of the peer review report describes the limited amount of leachability testing that has been conducted on the contaminated material and provides the comment "DP strongly recommends that all fill that is to be capped should be placed above the groundwater table". I have contacted Douglas Partners and confirmed that this recommendation has not been made as a result of information that there was any intention to place contaminated material below groundwater, but is precautionary in nature. Douglas Partners describe it as being a matter of principle that contained contaminated soil should preferably be above groundwater to minimise the risk of contamination. This recommendation will be converted into a consent condition.

The peer review finds that "the proposed cap and contain strategy would be technically feasible, environmentally justifiable and consistent with relevant laws, policies and guidelines, in accordance with the requirements outlined in S.4.3.1 of the guidelines for the NSW Site Auditor Scheme 2nd Edition (DEC 2006)". Council's conditions of consent, including the requirement for a Site Audit Statement, should address the various points raised in the DP report.'

Conditions of consent have been recommended to ensure that the treatment of contamination on the site is undertaken in accordance with recognised guidelines and in a manner consistent with the requirements of SEPP 55.

State Environmental Planning Policy No. 64 – Advertising and Signage

Compliance with SEPP 64 is discussed in detail in **Appendix D**. The proposed identification signage would be consistent with the aims of SEPP 64.

(a)(ii) the provisions of any proposed instrument

Draft Newcastle Local Environmental Plan 2011 (draft NLEP 2011)

Council has adopted draft NLEP 2011 which aims to repeal NLEP 2003.

The site is within the IN2 Light Industrial zone of draft NLEP 2011. The proposed development would be classified as 'Hardware and building supplies' which is defined as:

***hardware and building supplies** means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.*

Hardware and building supplies are permissible with consent in the IN2 Light Industrial zone.

Draft NLEP 2011 is based on the 'Standard Instrument' which contains certain development standards relating to floor space ratio, building height and the like, none of which are relevant to the proposed development.

The draft NLEP 2011 has been exhibited and has been submitted to the Department of Planning and Infrastructure with a request that the Plan be made. There are no provisions within that draft instrument which would affect the proposed development over and above those which currently apply under NLEP 2003.

(a)(iii) the provisions of any development control plan

Newcastle Development Control Plan 2005 (NDCP 2005)

There are a number of development controls relating to the proposed development contained in NDCP 2005. Following is a discussion of the relevant sections of NDCP 2005.

Element 3.1 - Public Participation

The proposal has been notified to the public in accordance with Element 3.1 of NDCP 2005. Seven submissions were received. Six objected to the proposed development and one was in favour of the proposed development.

Element 4.1 - Parking and Access

The Council's Senior Development Officer (Traffic) has reviewed the amended proposal and has raised no objection to the proposed development subject to conditions. Those conditions form part of those recommended by the Hunter Regional Development Committee.

Element 4.2 - Contaminated Land Management

Refer to above discussion of SEPP 55.

Element 4.3 - Flood Management

Part of the site is flood prone land. The Council's Senior Development Officer (Engineering) has reviewed the proposed development, has raised no objection to the proposed development subject to conditions of consent, and states:

'Flood Management

This site has been identified as in a flood prone area and a flood information certificate was prepared for the site by Council on 5 February 2007. A supplementary figure was prepared summarising the minimum requirements of the Flood Management Element of the Newcastle DCP 2005. The flood prone part of the site has been divided into floodway and flood fringe areas. Filling or building works which could significantly impede flood conveyance is not permitted within the floodway area. Cumulative flood impact studies undertaken by Council have demonstrated that filling of the flood fringe areas will not have a significant impact on local flood levels.

Since the certificate was issued there has been the large flood of June 2007 which affected the Wallsend area. Council have also completed the flood studies for the Hunter River and the Wallsend catchment. The predicted flood levels for the Hunter River have not changed but the predicted flood levels for the Wallsend Ironbark Creek catchment have changed with a lowering of predicted flood levels adjacent to this site. The estimated Probable Maximum Flood (PMF) level for the local catchment is now 4.81m AHD and the 1% Annual Exceedence Probability (1 in 100 annual chance) event level is now 2.56m AHD.

Council have also adopted the Floodplain Risk Management Plan for the Wallsend Commercial Centre which recommends the widening of the existing Ironbark Creek channel adjacent to this site to 55m wide and the enlargement of the existing Minmi Road bridge to improve catchment discharge to the downstream wetlands. The funding and timing of the channel improvements have still to be determined.

The proposed development plans have a setback which allows for the future construction of the wider channel. Within the identified floodway area the plans show a proposed wetland area designed to control discharges from the development site and a suspended slab with support columns to suit. There will be no significant filling or blockage of the floodway area.

The proposed building floor level has been set at 4.8m AHD which provides a 1 metre flood freeboard above the highest predicted 1 in 100 annual chance flood event for Hunter River flooding and satisfied Council's requirements. This level also equates to the predicted PMF level for the local catchment providing flood refuge for flash flood events.'

Conditions of consent have been recommended to ensure that the proposed development is constructed in accordance with the flood management element of DCP 2005.

In addition, because the proposed development works require a Controlled Activity Approval pursuant to the *Water Management Act 2000*, the NSW Office of Water has been consulted and has provided its General Terms of Approval which have been incorporated into the recommended conditions of consent.

Element 4.4 - Landscaping

A landscape plan has been submitted with the application. Council's Landscape Architect has reviewed the landscape plan and has recommended that a modified landscape plan be prepared which addresses certain issues identified. Suitable conditions of consent have been recommended to ensure that an amended landscape plan is submitted which addresses the concerns raised by the Council's Landscape Architect.

Element 4.5 - Water Management

A stormwater drainage concept plan has been submitted with the application. Council's Senior Development Officer (Engineering) has reviewed the information submitted, raised no objection to the proposed development, and states:

'Stormwater Management

A Stormwater Management Plan has been prepared by C & M Consulting Engineers which documents the proposed stormwater controls for site discharges addressing quantity and quality requirements as specified in the Water Management Element of the Newcastle DCP 2005.

Runoff controls proposed include a 30,000 litre rainwater tank, gross pollutant traps, hydrodynamic separators to remove any site generated oil and grease from the carpark areas, sediment basins and a shallow wetland with a surface area of approximately 4,750 m² treating site runoff prior to discharging to Ironbark Creek.'

Conditions of consent have been recommended to ensure that the proposed development is constructed in accordance with the water management element of NDCP 2005.

Element 4.6 - Waste Management

Bunnings has adopted a standard practice based on experience and commitment to reduce waste and optimise resource use. Documents submitted with the development application state:

'Bunnings has appointed SITA Environmental Solutions as its recycling and waste provider for NSW/ACT, VIC/TAS/SA, and WA.

The appointment of SITA Environmental Solutions will enable Bunnings to ensure consistent services for all sites and to effectively manage both our general waste and recycling requirements. SITA will also provide detailed reporting for compliance with Bunnings/Wesfarmers sustainability requirements.

In 2006 Bunnings conducted a Waste Review at a range of Bunnings stores nationwide which incorporated a six month recycling and waste collection trial.

The Bunnings review showed that improving the way in which Paper & Cardboard, Plastic and Timber are recycled can save money and significantly reduce Bunnings impact on the environment.

Importantly, governments are scheduled to increase dramatically landfill costs in the next few years with the aim of reducing waste to landfill and facilitating recycling initiatives. Future landfill cost increases make the introduction of recycling now both prudent and cost effective.

Implementing the findings of the Waste Review, Bunnings requires each state to have the following services in place:

- *Paper & Cardboard Recycling*
- *Plastic Recycling*
- *Timber Recycling*
- *General Waste*

Additional services that SITA also recommend to each site includes:

- *Co-mingled Container Recycling*
- *Fluorescent Tube Recycling*
- *Battery Recycling*
- *Security Paper Recycling*
- *Sanitary*
- *Green Waste Recycling'*

Element 4.7 - Outdoor Advertising

The proposed development incorporates standard Bunnings business identification signage as shown on the plans of the proposed development, that signage including a pylon sign. Assessment of the proposed signage has been undertaken above in discussion of SEPP 64.

Element 4.10 - Tree Management

The proposed development would occupy the majority of the site, apart from the floodway of the adjoining creek. As such, there is no scope to retain any of the existing vegetation on that part of the site where the built form is proposed. The landscape plan provided with the application, when modified in accordance with recommended conditions of consent, would provide for replacement trees in those sections of the site which are able to accommodate landscaping.

Element 7.1 - Industrial Development

- Design and appearance of developments

The objective of this Element is:

- *To promote industrial development that is both functional and attractive in the context of its local environment through appropriate design.*

With regard to the design of the build form, the Statement of Environmental Effects states:

'The building has been designed as a simple linear box form enclosing the main warehouse and sales area with this portion of the development having the greatest height to the top of the parapet wall of 11.5m. The store entrance has a gable pitch roof enclosure with the height of 10.295m. The outdoor Yard to the north-western end and the south-eastern end Nursery have a 4.975m high wall and fence to enclose these areas. The Nursery has a series of sails of Forrest Green colour for protection as well as a canopy over the outdoor area. There is also a canopy over the Goods Inward area at the rear of the building. The walls are painted Bunnings corporate colours of Bunnings White and Bunnings Building Green. This is a standardised form that is used for all Bunnings Stores and allows for signage and instant brand recognition. The building walls are painted precast concrete. The roof is zincalume sheeting with translucent profiled roof lights. The canopies are painted compressed fibre cement fascias and zincalume roof sheets.'

The proposed built form is considered to be consistent with the above objective of the control element.

- 7.1.6 Building setbacks

For corner lots in the 4(a) zone a 3 metre setback is required for the front building setback and a 2 metre setback for the secondary frontage. The proposal would comply with these setback controls.

- 7.1.7 Neighbourhood amenity

The objective of this sub-clause is:

‘To facilitate the development of a wide range of industrial, service and storage activities which do not have a materially detrimental effect on the amenity of adjoining residential areas.’

In assessing a development proposal that adjoins or is located in close proximity to residentially zoned land, or land currently used for residential purposes, Council will have particular regard to the following:

‘the nature of the proposed operation,’

Comment:

The proposed development is located adjacent to residential development in Robert Street. The main body of the development, including car parking and loading and unloading facilities is located such that there would be limited impact to the adjoining residential development. The only potential for impact is associated with the entrance for delivery vehicles which passes in close proximity to the adjoining residential development.

The original plans of the proposed development have been amended such that the delivery vehicle access is now located away from the boundary with adjoining residential development, that road is excavated into the site, and suitable acoustic screening and landscaping are proposed. As discussed below, the proposed mitigation measures would ensure that significant impact to adjoining residential development would be avoided.

“the bulk and scale of development and the possible overshadowing effects;”

Comment:

The proposed development is located such that it would not cast shadow onto the adjoining residential development.

The scale of the development is consistent with that which is envisaged by the controls which relate to the 4(a) Urban Services zone.

‘the need for side and rear boundary setbacks’

Comment:

As indicated above, the plans of the proposed development have been amended such that the delivery vehicle access is located away from the boundary with adjoining residential development, that road is excavated into the site, and suitable acoustic screening and landscaping are proposed for the setback area. Council's Senior Environmental Protection Officer has reviewed the proposed acoustic mitigation measures and has raised no objection to the proposed development.

It is considered that the proposed setbacks would be suitable.

'the provision of landscaping and its effectiveness in screening the proposed development'

Comment:

Council's Landscape Architect has raised no objection to the proposed development subject to an amended landscape plan being submitted. A condition of consent has been recommended to ensure that an amended landscape plan is submitted.

'the level of car parking proposed to be provided'

Comment:

Council's Senior Development Officer (Traffic) has raised no objection to the proposed development and conditions of consent have been recommended.

'the hours of operation proposed'

Comment:

The proposed hours of operation are 7:00am to 9:00pm weekdays and 8:00am to 6:00pm on weekends. The proposed operating hours are consistent with development envisaged in the 4(a) Urban Services zone.

A condition of consent has been recommended to ensure that delivery and dispatch vehicles do not enter the site other than between the hours of 7:00am and 10:00pm.

'the impact of noise and other emissions'

Comment:

Council's Senior Environmental Protection Officer has reviewed additional acoustic impact assessment undertaken by the applicant and has raised no objection to the proposed development on acoustic impact grounds subject to conditions of consent which have been incorporated into the recommended conditions of consent.

(a)(iia) the provisions of any planning agreement or draft planning agreement.

There are no planning agreements which apply to this development.

(a)(iv) the provisions of the Regulations.

Not applicable.

(a)(v) the provisions of any coastal management plan.

Not applicable.

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

Impact on the Natural Environment

The proposed development would necessitate the reshaping of a large section of the site to accommodate the proposed built form and associated car parking. The landscape plan submitted with the application, suitably modified as per recommended conditions of consent, would depict suitable replacement trees for those which would be lost as part of the development of the site.

There is significant potential for impact to the environment during the construction stage of the proposed development by way of earthworks, however, suitable conditions have been recommended to ensure that appropriate sediment and erosion control measures are implemented such that sediment laden waters do not enter the Council stormwater system.

Both the NSW Office of Water and the Council's Senior Development Officer (Engineering) have raised no objection to the proposed modification to the natural environment as part of the proposed works subject to conditions of consent which have been recommended.

In regard to ecology, Council's Senior Environment Protection Officer states:

'Ecology

The Additional Wetlands Detail Report prepared by Abel Ecology dated 22 June 2011 provides information on the proposed compensatory or regenerated wetland area near Ironbark creek. The proposed compensatory wetland area is supported by the preliminary use of the biobanking calculator, Council is satisfied the proposed regenerated wetland area is appropriate compensation for the removal of freshwater wetland endangered ecological community.'

Impact on the Built Environment

Impact to the built environment would be limited to roadworks and the like which would be required to give effect to suitable site access. Suitable conditions of consent have been recommended to ensure that works associated with the proposed development meet the requirements of both the Hunter Regional Development Committee and the Roads and Traffic Authority.

Social Impacts

The Statement of Environmental Effects submitted with the development application, when addressing the social and economic impact of the proposed development states:

'Council's Social Impact Assessment Policy applies to the development and is addressed below.

The key aim of the policy is to ensure development applications consider potential social impacts, in the interests of the developer, the broader community and Newcastle's future.

The policy mentions several key determining factors for assessing social impact. One that is relevant to the proposal is adding employment opportunities to those already available in a locality. Business or industrial development requires comment to be made in a statement of environmental effects, not a separate social impact statement.

As recommended in the policy's matrix, the following matters are addressed:

Access and mobility: the development is designed to meet relevant standards for the nature of the proposal. The means provided for people to access the site include by foot, cycle or vehicle Access for people with disabilities is designed according to relevant Australian Standards.

Employment: additional full and part time positions for up to 160 team members will be offered thus increasing opportunities for people to join the Bunnings team and serve their local community.

Local economic effects: the proposal will likely compete with the three hardware stores and a small number of building supply outlets in proximity to the site. The proposal is likely to complement Wallsend by offering a different retail experience to that on offer in Wallsend, providing opportunity to go shopping for a range of items on the same journey at these two locations.

Property values: it would be imprudent to speculate on the effect the proposal may have on property values.'

As detailed above, it is considered that, on balance, the proposed development would have a positive social impact in that the economy of the local area would be stimulated thus providing for a commensurate increase in the social well being of the residents of the locality.

Economic Impact

In addition to the above socio-economic impacts, the economic impact would be positive in that employment opportunities would be available to the local community during the construction stage of the proposed development and also in the operation of the facility.

(c) the suitability of the site for the development.

The site is currently vacant. The proposed use is permissible, with consent, in the 4(a) Urban Services zone and the site is located such that good vehicular access is available to the immediate environs of the site and the wider Newcastle community. The proposed development, with mitigation measures in place to limit impact to the environment of the site and the adjoining residents, is considered to be suitable for the proposed facility.

(d) any submissions made.

This report has addressed the various concerns raised in the submissions received in response to Council's public notification procedures.

(e) the public interest.

The public interest is served by the development of land within its environmental capacity. The site is currently vacant and is located within the 4(a) Urban Services zone within which the proposed development is permissible with consent. The proposed development, suitably conditioned as recommended, would enhance the site and at the same time allow for the productive use of the site. The proposed development would provide a significant boost to the local economy. It is in the public interest that the site be utilised as proposed.

7. Conclusion

Subject to various conditions, the proposal is acceptable having regard to the considerations under Section 79C of the *Environmental Planning and Assessment Act 1979*.

8. Recommendation

That the Joint Regional Planning Panel grant consent to Development Application 10/1100, subject to the conditions contained in Appendix A.