

THE CITY OF NEWCASTLE

<b>JRPP No.</b>	2010HCC044
<b>DA No.</b>	DA 10/1511
<b>Proposal</b>	Demolition of existing structures and erection of multi-level residential flat buildings containing 102 units and a 112 room boarding house.
<b>Property</b>	Lots 2 & 1, DP 1050041, 121-123 Union Street, Cooks Hill
<b>Recommendation</b>	The JRPP defer determination of the Development Application No10/1511 to a future date in October.
<b>Applicant</b>	ADW Johnson
<b>Report By</b>	Future City Group – Newcastle City Council

### **Supplementary Assessment Report and Recommendation**

#### **Executive Summary**

##### **Proposed Development**

In response to the JRPP's recommendation, an amended development application has been received seeking consent to demolish existing structures and erect multi-level residential flat buildings containing 102 units and a 112 room boarding house at 121 and 123 Union Street, Cooks Hill.

##### **Joint Regional Planning Panel Determination - JRPP (28 July 2011)**

The Joint Regional Planning Panel considered the original application on 28 July 2011 and resolved the following:

*'That the Joint Regional Planning Panel defer determination of the subject matter until receipt of the following:*

- 1) Certification from a competent person of the building heights of all proposed buildings on the site, clearly stating the proposed building heights in relation to existing ground level and distinguishing complying and non-complying elements with shading and/or colouring;*
- 2) Investigation and advice on the feasibility of vehicular access to the site from Union Street;*
- 3) Clarification of boundary offsets;*
- 4) Advice on the opportunity to re examine alternative design of the proposed dwellings in the North Western corner of the development to improve the privacy and amenity of the existing adjoining dwellings;*
- 5) A review advice responding to Mark Waugh's traffic comments dated 22nd July 2011 in relation to the proposed development;*
- 6) Further consideration of the opportunity to provide a wider range of dwelling types including more 2 and 3 bedroom dwellings, noting that the current proposal is overwhelmingly single bedroom dwellings;*
- 7) Certification from a competent person of the proposed gross floor areas of the proposed development;*
- 8) Provision of a local character statement for the boarding house component of the proposed development, given that such consideration applies under Clause 54A(3) of the current SEPP.'*

The applicant has submitted information addressing the above matters (**Appendix A**) including an amended development proposal which incorporates a new vehicular access to Union Street and redesign of the proposed dwellings in the North West corner of the site.

#### Amended proposal

The applicant has described the amended proposal in the following terms:

- *'Demolition of the existing Bimet Executive Lodge Accommodation and associated structures,*
- *Construction of a residential flat development containing a total of 102 units, being:*
  - *83 one bedroom units*
  - *6 two bedroom units*
  - *13 three bedroom units*
- *all heights above the 10m height guidelines as well as FSR's have been qualified,*
- *all setbacks have been dimensioned'.*
- *Construction of a boarding house containing 112 bedrooms and a manager's residence,*
- *At grade and basement car park for the residential flat building containing 115 car parks, 21 visitor car parks and bicycle racks,*
- *At grade/semi basement car park for the boarding house containing 13 car parks and 23 motorcycle parks,*
- *Provision for 123 bicycle racks/storage for the boarding house,*
- *A two lot into a two lot Torrens title sub division.'*

The applicant's written submission (**Appendix A**) outlines the specific amendments made to the proposed development as follows:

*'Based upon comments and points of clarification from the Joint Regional Planning Panel (JRPP) we write to confirm that the following changes have been made to the proposed development at 121-123 Union Street, Cooks Hill (DA 10/1511):*

- *a left in/left out access has been provided to Union Street at the North West corner of the site,*
- *the provision of vehicular access to Union Street has pushed the northern wall of the North-West Building away from the northern boundary by more than 4 metres,*
- *the Gross Floor Area (GFA) of the North-West Building has been reduced thus reducing the overall GFA of the proposal,*
- *the apartment mix in the North-West Building has been revised as follows;*
  - *removal of 8 x 1 bedroom apartments on the southern side of the circulation corridor,*
  - *addition of 3 x 3 bedroom apartments on the southern side of the circulation corridor,*
  - *fixed angle vertical screens have been provided to windows facing north on the North-West Building to mitigate any privacy issues,*
  - *all north facing ground floor decks on the North West Building have been removed,*
  - *apartments 103, 203 and 303 have been re-orientated east rather than north,*
  - *a single storey pergola structure has been provided over the new Union Street access driveway to provide screening and a structure for vine planting over. The single storey pergola also provides an appropriate link to the*

*neighbouring single storey residential dwelling to the north and links into the garden and park theme of the proposal,*

- visitor car parking orientation has been revised as a result of the access driveway,*
- the proposed large scale trees have been retained to the visitor car park,*
- the Union Street basement parking has been reduced by 2 x car parks to comply with council codes and allow level access to Union Street at the north west of the site,*
- a controlled two way access road has been provided between the proposed boarding house building and middle strip apartment building to provide access and egress for all vehicles in the Residential Flat Building,*
- bicycle parking has been provided to the Boarding House Building at a rate of 1 bike per room- areas are noted on the plans.'*

#### Response to matters raised by JRPP

The applicant has submitted a written response (**Appendix A**) to the eight matters raised by the JRPP. These are discussed briefly below under the relevant headings and in more detail in the Section 79C Considerations section of this report:

- 1) **Certification from a competent person of the building heights of all proposed buildings on the site, clearly stating the proposed building heights in relation to existing ground level and distinguishing complying and non-complying elements with shading and/or colouring.**

The applicant has submitted plans which have been annotated with the Development Control Plan 2005 (DCP) building height above existing ground level. The elevations and cross- sections identify non-complying sections in shading and also dimensions.

The applicant has also submitted certification from a registered surveyor verifying that the cross-sections and elevations accurately depict the height of the proposed amended development in relation to existing ground levels.

The plans also depict the height plane under SEPP 65 – ‘Design Quality of Residential Flat Development’ which is taken from the levels at the boundary.

In addition, the plans depict a line of a previously approved development application on the site. This development was assessed in 2004 under a superseded planning regime and the consent would appear to have now lapsed. Accordingly, this is not considered relevant to the consideration of this development application.

- 2) **Investigation and advice on the feasibility of vehicular access to the site from Union Street.**

The applicant has submitted an amended proposal that provides for a left in/left out access to Union Street at the North West corner of the site.

- 3) **Clarification of boundary offsets.**

The applicant has submitted amended development plans (**Appendix B**) which indicate the boundary offsets of the proposed amended development to both existing and proposed property boundaries.

- 4) **Advice on the opportunity to re examine alternative design of the proposed dwellings in the North Western corner of the development to improve the privacy and amenity of the existing adjoining dwellings.**

The amended proposal provides for a redesign of the proposed dwellings in the North West corner of the site as follows:

- Fixed angle vertical screens have been provided to windows facing north on the North-West Building to mitigate any privacy issues,
- All north facing ground floor decks on the North West building have been removed,
- Proposed dwelling Nos 103, 203 and 303 have been re-orientated East rather than North.

- 5) **A review advice responding to Mark Waugh's traffic comments dated 22nd July 2011 in relation to the proposed development.**

The applicant has submitted a response to the submission by Better Transport Futures (BTF) Pty Ltd dated 22 July 2011. This response prepared by TPK & Associates Pty Ltd, dated 9 August 2011, is attached at **Appendix A**.

- 6) **Further consideration of the opportunity to provide a wider range of dwelling types including more 2 and 3 bedroom dwellings, noting that the current proposal is overwhelmingly single bedroom dwellings.**

The applicant's written submission (**Appendix A**) discusses the proposed dwelling mix. The amended plans provide for the removal of 8 x 1-bedroom dwellings on the southern side of the circulation corridor and the addition of 3 x 3-bedroom dwellings on the southern side of the circulation corridor.

- 7) **Certification from a competent person of the proposed gross floor areas of the proposed development.**

The applicant has submitted a report prepared by a registered surveyor certifying the calculations of gross floor area and resultant floor space ratio (FSR) (**Appendix A**).

- 8) **Provision of a local character statement for the boarding house component of the proposed development, given that such consideration applies under Clause 54A(3) of the current SEPP.**

The applicant has submitted a local character statement prepared by ADW Johnson

## **1.0 Consultation**

The amended development proposal was publicly exhibited in accordance with the relevant requirements of Element 3.1 - Public Participation of the NDCP 2005 from 26 August to 9 September 2011. In response to public exhibition 110 submissions were received in relation to the proposal. Their content is summarised below:

- Car parking – including safety concerns with additional traffic, existing problems with on-street car parking, lack of adequate on site car parking for this development and potential risk from additional car fumes and safety concerns for the residents.
- Overshadowing the adjoining school.
- Exceeds maximum Floor Space Ratio.
- Exceed maximum height and concessions cannot be justified.
- Bulk and Scale.

- Proposal fails the local character test.
- Not compatible with the Cooks Hill Heritage Conservation Area.
- Not compatible with the local area.
- Security and crime.
- Devaluation of property values.
- Construction phase and potential impact on School.
- Concerns about future residents of the boarding house.
- The proposal does not comply with the current version of the State Environmental Planning Policy (Affordable Rental housing) 2009.
- Impact on National Park.
- Concerns about the high concentration of lower social housing in the immediate area.
- Lack of green space for the proposed development.
- The uses of landscaping to justify the variation in height.

Most of the above issues have been addressed in the original Assessment Report. The majority of the submissions remain concerned about the potential traffic impacts that the proposal will have on the local road network, the bulk and scale of the buildings and the variation in height.

The issues of height and density are discussed in more detail in Section 79c Considerations of this report.

#### Key Issues

The main issues identified in the assessment and/or raised in the submissions are as follows:

- Whether the proposed development is compatible with the existing urban character of the area, particularly in relation to dwelling density, height and building bulk;
- Whether the proposed development is satisfactory in relation to potential traffic impacts associated with the proposed development;
- Whether the proposed development is satisfactory in terms of overshadowing impacts onto the adjoining preschool playground area to the south;
- Whether the proposed development is appropriate given that the site adjoins a heritage conservation area, and;
- Whether the proposed variation to Council's ten metre height limit is acceptable in the circumstances of this case.

#### Recommendation

**The JRPP defer determination of the Development Application No10/1511 to a future date in October 2011.**

#### **1. Section 79C Considerations**

***This assessment under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (NSW) is limited to consideration of those matters arising from the resolution of the JRPP's meeting of 28 July 2011 and the amended plans. The original comprehensive assessment report prepared by Council officers and submitted to the JRPP addresses the overall development. This report is to be considered in conjunction with the original report in terms of the complete assessment of the application. This report prevails only where the assessment has been revised.***

**(a)(i) any environmental planning instrument**

State Environmental Planning Policy (Affordable Rental Housing) 2009

- Local Character Test

Clause 54A(3) -savings and transitional provisions of the SEPP states:

*'If an existing application relates to development to which Division 1 or 3 of Part 2 applied, the consent authority must not consent to the development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.'*

This clause applies to the subject application. The applicant has submitted a detailed character statement that considers the compatibility of the boarding house with both the existing character and future character of the area. The report concludes:

*'The existing character of the locality is predominantly residential in nature, however, this is not completely uniform with the Grammar School adjoining the site to the south west and the extensive National Park open space lands located opposite the site to the North West. The residential building types vary throughout the locality from single storey detached dwellings, through medium density two storey town house developments up to larger 3 storey residential flat buildings. The adjoining Cooks Hill Heritage Conservation Area is not uniform with a diversity of architectural expression reflecting the full range of design change over time'*

*The desired future character according to the relevant planning documents centres around taking advantage of the location relative to commercial centres of The Junction and Market Town as well as the Newcastle CBD. Access to shops and services is an opportunity to make a significant contribution to compact settlements and the benefits that follow. The site has been included within a substantial growth precinct for this reason. The planning controls however require consideration to be given to the existing character in achieving these planning objectives and the design has implemented a number of elements to achieve this.*

*In summary, it is considered that the proposed boarding house will be consistent with the existing and desired future character of the area and at the same time contribute to desired planning outcomes for affordable housing and compact settlements.'*

The character statement only relates to boarding house component and does not form part of the assessment of the urban housing development. The relationship of the overall development to the character and amenity of the locality is, however, still a consideration under Section 79(C)(b) –‘the likely impacts of the development’.

A submission of objection argues that the proposed boarding house fails the local character test for the following reasons:

- '(a) Exceedance of the DCP (2005) height restriction with a flat roof structure compared with much shorter roof structures in the surrounding area.*
- (b) The proposed increase in “affordable housing” in the area would create the highest density of affordable housing in the Hunter, adjacent to an existing primary school.*
- (c) Parking is already at a premium in the locality and, unlike in a different locally (sic), the increase in on-street parking generated from the generous parking concessions could not be tolerated in the local streets.'*

In support of reason (b), reference is made to a 'Social Mix Study' prepared by the CEO of a community organisation. This submission is discussed later in this report. Similarly, exceedance of the building height and the parking issue are discussed later in this report.

Another comprehensive submission is critical of both the methodology and rationale of the submitted character assessment with specific reference to a number of decisions of the NSW Land & Environment Court.

The public exhibition period of the amended proposal expired at the close of business on Friday 9 September, 2011 and submissions were collated on Monday 12 September, 2011. The deadline for the drafting of this report was Thursday 15 September, 2011. The applicant has not had sufficient time to finalise and submit responses to the various issues raised in the submissions. Similarly, Council officers have not had sufficient opportunity to exam in depth the various Land and Environment Court decisions cited and to ascertain their relevance, if any, to the assessment and determination of this development application. Accordingly, Council officers' consideration of this matter stands deferred.

#### Newcastle Local Environmental Plan 2003

- Diversity of housing types

Item 6 of the JRPP resolution of 28 July, 2011 requested the applicant 'give further consideration of the opportunity to provide a wider range of dwelling types including more 2 and 3 bedroom dwellings, noting that the current proposal is overwhelmingly single bedroom dwellings'.

Objective (a) of the 2(b) Urban Core zone is:

*'(a) To provide for a diversity of housing types that respect the amenity, heritage and character of surrounding development and the quality of the environment.'*

The applicant has made the following comment in this regard:

*'We note that the zone objectives for the 2(b) Urban Core zone are that the zone is to provide for (a "...diversity of housing types"). The zone does this by permitting within it the full range of housing types including boarding houses, town houses, villa, detached dwellings, dual occupancies and residential flat buildings. The zone objectives (and the LEP overall controls) do not specifically identify that a mix of 1, 2, or 3 (or other number) bedroom dwellings is required in respect of any particular site, similarly the objectives (and the LEP overall controls) do not identify what the mix of housing types should be for a site. This allows the market to respond to housing needs'.*

It is agreed with the applicant that the LEP does not stipulate a specific housing mix within a site but rather aims to provide a range of housing types within the wider 2(b) Urban Core zoned area. Accordingly, the provision of dwelling types is considered acceptable in relation to the LEP. Notwithstanding this, the submitted amended plans provide for an additional 3 x 3-bedroom dwellings in lieu of 8 x 1-bedroom dwellings.

The submission prepared by the CEO of 'of a community organisation providing support services to boarding houses across the Hunter, accommodation and support options to vulnerable members to our community, and involved in community planning for many years' raises concerns regarding the likely negative social impact of the proposal on existing and new residents of the precinct. The submission notes that the support documentation for the application fail to mention that:

*'The DA states: "...adds to the diversity of affordable housing choice. . " - 450 people already reside in NSW Housing, boarding house and affordable housing within 20-130m of the proposed development. This development will certainly not add anything to the diversity of affordable housing choice – only compounding and exacerbating to the existing high density Department of Housing, boarding house, low cost, affordable housing. This overdevelopment will inevitably lead to the creation of a "ghetto effect" with over 928 residents in low cost affordable housing within a 20-130m radius. This level of development will create the highest density affordable housing precinct in Newcastle, across the Hunter Valley. NSW Housing precinct in Hamilton South is set on 13 hectares and accommodates 1,338 tenants in 785 units. This DA proposes 540 residents on 1.02 hectares and 980 residents in NSW Dept Housing, aged, disabled and boarding house accommodation within a 2.2 hectare precinct in Corlette, Union and Parkway Ave. This DA exceeds density levels of many older public and affordable housing developments in Western*

*Sydney earmarked for demolition as planning experts realize the catastrophic social impact created by poor planning instruments and overdevelopment of low cost affordable housing precincts. Boarding house accommodation does little to enhance long term sustainable housing options with average stays of 3-6 month duration and occupants not subject to adherence to tenancy agreements. Many boarding houses receive referrals from those transitioning from support services or interim care providers eg. women's refuges, homeless drop-ins, juvenile justice, probation and parole, immigration departments, rehabilitation providers and psychiatric care facilities. The DA refers to application for Youth and Community Services licensing for residents under the age of 18. Therefore the age range of the 224 transient boarding house occupants will include 14 to over 65's years, with occupants not subject to adherence to tenancy agreements. The DA identified the impact of anti-social behaviour on residents of the proposed DA and adjoining residents. Council identifies that issues of policing antisocial and illegal behaviour will be most difficult, requesting the Developer submit a residential behavioural management plan prior to the occupancy certificate being released by Council'.*

The Socio-Economic Impact Assessment submitted in support of the application states:

*'The residential units will be available for private sales to the open market. The units will likely appeal to retirees and aged persons singles, couples and families who are attracted to the convenient location of the site with easy access to desirable facilities, services and attractions'.*

The Assessment also states the following for the boarding house component:

*'The boarding house component is likely to appeal to a mix of students, full time professionals, aged persons and person in receipt of government assistance (ie disability pension) based on patronage of their other operations'*

While the proposal is seeking consent for 112 boarding house rooms and a number of 1 and 2 bedrooms dwellings this does not necessarily indicate that the market will be for a lower social economic group. There is no direct evidence that the construction of the proposed dwellings would have a detrimental social impact on the local area.

It is agreed with the applicant that a range of people will take up residence in the proposed development, including students, retirees and professionals. There is no evidence that the sole market for the dwellings will be a lower social economic group and no evidence that the construction of the proposed dwellings will have a detrimental social impact on the local area.



**(a)(ii) the provisions of any draft environmental planning instrument**

Draft Newcastle Local Environmental Plan 2011

Objection was raised to the proposed development on the grounds that it is not consistent with the Draft Newcastle Local Environmental Plan (DNLEP) 2011 in the following respects:

- The area is designated as a medium density residential area under the DNLEP, not a Substantial Growth Precinct.
- The height restriction for the site is 10m which the objector believes equates to a 2 storey building.
- The FSR for the site is 0.9.

The objector feels that DNLEP states that the height limit is the maximum allowable building height for each property and therefore cannot be exceeded.

The DNLEP is based upon the State Governments' 'Standard Instrument' LEP whereby Council must utilise set zone descriptions. Under the DNLEP 2011, the subject site is located within a R3 Medium Density Residential Zone, noting that the R4 High Density Residential zone is proposed within 'growth corridors' with building heights and densities well above those proposed for the subject site.

As outlined in the previous assessment report to the JRPP, *'the site is located as a Substantial Growth Precinct identified under the Newcastle Urban Strategy and the NDCP, 2005.'* On the relevant DNLEP - Height of Building Map the maximum building height for the subject site is 10m which provides for a scale of development over 2-storeys. Under the Newcastle DCP (NDCP), 2005 the maximum building is also 10m. Similarly, the maximum FSR for the site under the DLEP is 0.9; the same maximum as presently exists under the NDCP.

The DNLEP provides that a development standard can be varied if it is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development is considered to be compatible with the objectives of the substantial growth precinct in that it provides for increased residential density in close proximity to services, thereby supporting sustainable urban form and encouraging alternate forms of transport. Objection was raised to the proposed development on the grounds that it represents an overdevelopment of the site. While the development does represent a departure from the existing development on the site, it is clear that the proposed development is consistent with the likely future character of the site and that intended when the strategic plan and control document were developed.

**(a)(iii) any development control plans**

Newcastle Development Control Plan (DCP) 2005

a) Element 4.1 - Parking and Access

The revised residential unit mix for the urban housing building component of the development (proposed Lot 1) results in a different parking demand as follows:

- 83 x 1-Bed at 1 space per dwelling = 83 spaces
- 6 x 2-Bed at 1 space per dwelling = 6 spaces
- 13 x 3-bed at 2 space per dwelling = 26 spaces

- Visitor parking at 1 space for first 3 units and 1 space for every 5 thereafter = 21 spaces.

Therefore, a total of 115 residential spaces and 21 visitor spaces are required (total 136 spaces). The proposed development provides for 115 residential parking spaces and 21 visitor parking spaces (total 136 spaces) and therefore complies with the DCP.

It is noted that 16 parking spaces in the central building carpark are 'stacked' configuration. However, these could be utilised by the 3-bedroom units that require two parking spaces each.

The DCP requires bicycle parking at a rate of 1 space per dwelling plus visitor parking at one space per 10 dwellings. This equates to 112 bicycle parking spaces. The plans for the proposed residential flat development denote bicycle racks and storage compartments within the basement parking area, as well as an external visitor bicycle parking area, which are considered an acceptable arrangement.

The DCP requires motorcycle parking at a rate of 1 space per 20 car parking spaces. This equates to seven spaces required. The plans identify 8 motorcycle parking spaces. In relation to the boarding house component of the development (proposed Lot 2) SEPP (Affordable Rental Housing) 2009 requires bicycle parking at one space per boarding room and motorcycle parking at one space per five rooms. This equates to 112 bicycle parking spaces and 23 motorcycle parking spaces required. The plans provide for 23 motorcycle parking spaces within the basement parking area. The plans also provide for 81 internal bicycle spaces (basement and store rooms) as well as 42 external bicycle parking spaces (123 total). The boarding house is thus well catered for in relation to bicycle storage.

Concern has been raised regarding the proposed development's parking requirements in relation to increased on-street parking demand during the winter sporting months. The proposed development provides on-site parking as required under Council's DCP and SEPP (Affordable Rental Housing) 2009. The development is not relying on the availability of on-street parking to meet the parking requirements. Accordingly, it is considered that seasonal on-street parking demand is not relevant to the consideration of the application.

It is noted that the application would not comply with the current version of the SEPP (Affordable Housing 2009) whereby the site being in an accessible area, i.e. within 400 metres of a regular public transport bus service, would be required to provide 0.2 spaces per boarding room, i.e. 23 spaces being 10 more spaces than actually provided. However, the application is being assessed against the version of the SEPP in place at the time of lodgement of the application and it meets those requirements.

#### b) Element 5.2 – Urban Housing

- Gross Floor Area

The report prepared by de Witt Consulting submitted by the applicant in response to item 7 of the last resolution of the JRPP calculates an FSR of 0.871:1 for the residential flat building component of the development. This complies with the maximum FSR under the Development Control Plan of 0.9:1. The report calculates an FSR of 1.385:1 for the boarding house component of the development. This complies with the maximum FSR of 1.4:1 (allowing for SEPP bonus of 0.5:1).

Concern has been raised in submissions that the calculations of Gross Floor Area (GFA) excluded some areas including balconies, such opinion being supported by commentary from two 'independent' town planners engaged by the authors of the submission.

The definition of GFA under the DCP is:

***'Gross Floor Area (GFA): the sum of the floor area of each storey of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:***

*(a) the area of a mezzanine within the storey, and*

*(b) habitable rooms in a basement, and*

*(c) any shop, auditorium, cinema and the like, in a basement or attic,*

***but excludes:***

*(d) any area for common vertical circulation, such as lifts and stairs, and*

*(e) any basement:*

*i) storage, and*

*ii) vehicular access, loading area, garbage and services, and*

*(f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*

*(g) car parking to meet any requirements of the consent authority (including access to that car parking), and*

*(h) any space used for the loading or unloading of goods (including access to it), and*

*(i) terraces and balconies with outer walls less than 1.4 metres high, and*

*(j) voids above a floor at the level of a storey or storey above.'*

While the outer end walls of the balconies exceed the 1.4 metres in clause (i) the elevation to the street is an open face incorporating a balustrade. Therefore, it would be unreasonable to include these balconies into the gross floor area of the proposal as all three outer walls do not exceed 1.4m and thereby enclose the balconies. Council has consistently taken the approach to not include non-enclosed balconies within the GFA. This approach is consistent with the *Residential Flat Design Code* (Department of Planning 2002 p3) which excludes balconies, irrespective of the height of any outer walls, from the calculation of floor space.

While the outer walls of the balconies contribute marginally to the bulk and scale of the proposed buildings when viewed from side elevations, the openness of the balconies when viewed from Union Street would have minimal impact on the perceived bulk and scale.

It is noted in the submissions of objections that no garage areas have been included in GFA and this warrants further discussion. As per the definition above, any parking spaces and access to meet Council's requirements are not included in GFA; however any excess parking is. The proposed development provides the required parking as per the DCP and State Environmental Planning Policy (Affordable Rental Housing) 2009 other than the

residential flat building component which provides an excess of 1 motorcycle parking space. This space of 3m<sup>2</sup> is located under the building and should be included in GFA.

The remaining areas in the garage areas consist of mechanical services, garbage areas, general storage, cleaners store, lobby and laundry. As per the definition of GFA above, mechanical services are excluded from GFA as are 'basement' areas used for storage, garbage and services.

Under the DCP, basement garage is defined as follows:

***'Basement garage: is a garage normally used for the parking of vehicles with the floor constructed below the street level.'***

According to this definition the garage to the boarding house would be a basement garage. Likewise the garage to the residential building facing Union Street would be a basement garage. However, the central building garage is effectively at ground level and therefore is not considered a basement garage.

To avoid any doubt over GFA compliance on the basis of what constitutes a basement garage the following GFA calculations have included garage areas as follows:

- Residential buildings – Garbage storage areas, general storage (individual storage is for bicycle parking), cleaners storage and lobbies – This equates to 138m<sup>2</sup>
- Boarding house – Cleaner/garbage storage and laundry – This equates to 29m<sup>2</sup>.

For the residential flat component of the development the additional 138m<sup>2</sup> and 3m<sup>2</sup> (excess motorcycle parking) combined with the submitted GFA calculated by deWitt Consulting results in an overall GFA of 6,616.2m<sup>2</sup>. Based upon a site area of 7,435.5m<sup>2</sup> equates to an FSR of 0.89:1 which still complies with the maximum of 0.9:1.

For the boarding house component of the development the additional 29m<sup>2</sup> combined with the submitted GFA calculated by deWitt Consulting results in an overall GFA of 4,039.8m<sup>2</sup>. Based upon a site area of 2,895.5m<sup>2</sup> this equates to an FSR of 1.4:1 which complies with the maximum of 1.4:1.

The submissions also propose that *'if the FSR is to be calculated as two distinct developments, as per the architect's instructions to deWitt Consulting, then the access handle would need to be excluded from the site area of the units.'* Furthermore, it is suggested that the FSR should be calculated for the site as a whole. Reference is made to the provisions of the Draft Newcastle Local Plan, 2011

The objectors submit that if these aspects are taken into consideration of the FSR calculation, the FSR for the apartment buildings exceeds the FSR for the site.

The draft NLEP, 2011 was adopted by Council in June, 2011 and has been forwarded to the Department of Planning and Infrastructure for consideration. It is anticipated that it will be gazetted in late 2011 or early 2012. While the draft NLEP is reasonably imminent, its provisions are not certain and could be amended including the abovementioned clause; having regard given the above circumstances, it is considered unreasonable to require compliance with the definition of site area under the draft NLEP.

It is correct that clause 4 (c) of the draft NLEP, 2011 indicates that battle axe handles should be excluded from the FSR calculation. However, both the current planning instrument the Newcastle Local Environmental Plan 2003 and the Newcastle Development

Control Plan 2005 do not have a definition for site area and the Newcastle City Centre Local Environmental Plan 2008 has the following definition:

*'site area means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other'*

- Building Height

The definition of building height is clarified within Element 5.2 -Urban Housing of the Newcastle DCP, 2005 to address sloping sites as follows.

*'Building height is measured vertically from existing ground level prior to the commencement of any works to the highest point of the building excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

*On sloping sites the height plane follows the slope of the site.'*

The 'existing ground level' is defined under the DCP as follows:

*'Existing ground level: The ground level in existing immediately prior to the commencement of proposed building or site works, taken at the lower side of a sloping block''*

The applicant has provided the following submission in relation to height:

*'The attached plans show the height calculated based on the literal wording of the request of the JRPP. However we make the following observation in relation to the DCP definition of 'existing ground level'.*

*The subject site has undergone excavation as a result of the existing Bimet lodge development. This has had the effect of reducing the ground level of the site; this is most prominent in the North East corner of the site. (However the site boundary reflects the pre existing natural ground level). This has an impact when calculating height. It is perhaps more correct to interpret the definition of 'existing ground level' under the DCP as being the original ground level in existence 'immediately prior to the commencement of proposed building or site works...' that is to say that the existing ground level as it was immediately prior to the Bimet lodge building works.*

*To provide assistance in the consideration of interpreting the definition of height we have also turned to the DOPI publication 'Residential Flat Design Code – Tools for improving the design of residential flat buildings'. This is a document specifically referenced for consideration when making an assessment under SEPP 65. The document says that:*

*'height is the distance above ground taken from each point on the boundary of the site'.*

*Having regard to the above discussion on the DCP and in reference to the Residential Flat Design Code it is considered that the most appropriate method of calculating height is ground at the boundary. In relation to the subject site this is in fact natural ground level before the Bimet lodge was constructed. This is also considered appropriate because it is at a site's boundaries that a development has the potential to have its greatest impact.*

*In addition, the Residential Flat Design Code approach to height is a more common sense approach to the interpretation of height. Otherwise, to provide as an extreme*

*example, height could be measured from the bottom of an existing swimming pool on the site as this is 'existing ground' at that point.*

*Accordingly in addition to the attached plans showing the building heights as measured from existing ground in its literal interpretation the plans have also been marked to show the height as considered more appropriately measured from the existing levels at the boundary of the site.*

*The extent to which the buildings sit outside of the control height (however defined) is considered to not have a significant impact on the amenity of neighbours or streetscape noting the proposed setbacks, measures taken to protect privacy and shadow diagrams.'*

It is considered that the DCP height controls apply from the current topography. Applying height controls to some pre-existing condition relies on unknown speculation. In this regard, the heavy dashed line in blue on the section plans best demonstrates the proposal's departure from the DCP maximum height limit of 10m.

However, it is considered reasonable when considering any variation to the height guidelines of the DCP to take into account such localised features as retaining walls and the like. Such sudden changes in the topography of a site can result in dramatic numerical non-compliance with DCP controls compared to a consistent slope, when in reality the actual perceived impact from the same height development upon surrounding areas is effectively the same.

*'It is therefore agreed with the applicant that the concept of taking a height plane between the levels at the boundaries of the site (i.e. SEPP 65 approach) is not unreasonable in the circumstances and provides for a more practical means of establishing the actual perceived height impacts when viewed from surrounding properties and within the streetscape. This is particularly evident in the North East corner of the site where excavation and retaining has occurred. This results in a DCP exceedance of 1.68m when taking height from existing ground level at the bottom of the retaining wall cut but only 540mm when taking a height plane from the boundary. The latter dimension is considered a more useful measure to determine impacts upon surrounds.*

*However, a submission of objection has cast doubts on the adequacy of the submitted plans and cited a number of examples of allegedly misleading information. According to the submission:*

*'To address the query about "shading the non-complying elements" the developer provided a series of plans. These plans contain a myriad of heights, including each floor level, the 10 metre height plane, the SEPP 65 height plane, the height of previously approved development, the height of a nearby boarding house and even the height of nearby social housing. Close inspection of these figures actually show the shaded regions to contradict one another indicating that, again, the building heights have been misrepresented.*

*An example of the misrepresentation of the building heights is shown in the copies of the North East Elevation and Section D, which are repeated in Figures 1 and 2, respectively. In Figure 1, the shaded region of the building, which is claimed to be the only section of the building above the 10 m height restriction, shows a maximum height exceedance of 785 mm. Also shown in this Figure is the location of Section D. Figure 2 shows Section D, but this section shows the exceedance along the Northern boundary of the same building to be 1.7 m above the height restriction (1 m different to the presented Northern East Elevation). As Section D is actually close to the centre of the*

*building, it would be expected that at the “highest point of the building” would actually be greater than 1.7 m above the height restriction. The reason for the different shaded regions, in the two views is obviously because the architect has shaded the region above the 10 m height restriction when measured in accordance with the SEPP 65 definition. However, to achieve consistency with the DCP (the source of the 10 m height restriction) the distance must be the “vertical distance” to the ground.'*

*The objector refers to a number of allegedly misleading statements made in the supporting documentation of the application.*

Council officers' consideration of this aspect of the proposal presently stands deferred pending the receipt of a response from the applicant in respect of the abovementioned issues. The applicant has been unable to provide a submission prior to the expiration of the deadline for the drafting of this report.

- Variation of the maximum building height.

The DCP 2005 provides for a maximum building height of 10m for the subject site. However, the provisions of the DCP also allow the maximum height limit to be varied where:

*'...where a written request has been received from the applicant that seeks to justify the variation by demonstrating:*

- *compliance with the height and/or FSR controls is unreasonable or unnecessary in the particular circumstances; OR*
- *the height of the proposed building is equivalent to or less than the height of a building on an adjacent site; OR*
- *the variation is minor and would satisfy the objectives and performance criteria of this section; AND*
- *other requirements of this Element relating to streetscape, daylight, sunlight and privacy are satisfied.'*

The objectors to the proposal are concerned that the applicant's supporting documentation does not in fact contain a 'written request' and the submitted justification has not satisfactorily demonstrated that compliance with the height control is unreasonable or unnecessary in the particular circumstances of this case. Once again, references have been made to decisions of the NSW Land & Environment Court in this regard.

Council officers' consideration of this matter presently stands deferred pending a response from the applicant.

#### **(a) Newcastle Urban Strategy**

Element 5.2 - Urban Housing of the Newcastle DCP, 2005 strengthens the neighbourhood visions and objectives of the Newcastle Urban Strategy (NUS). The NUS identifies density precincts based upon walkable catchments to commercial centres and railway stations. The NUS identifies the site to be within the highest density Substantial Growth Precinct, in this case based upon its proximity to The Junction Commercial Centre. The NDCP 2005 identifies that a Substantial Growth Precinct 'promotes a significant increase in the number

and diversity of dwellings and new built form'. The density FSR controls within Element 5.2 are based upon the NUS density precincts with an FSR of 0.9:1 assigned to the Substantial Growth Precinct.

The proposed development is consistent with the principles of the NUS by locating higher density residential development within close proximity to The Junction commercial centre and also the Newcastle City Centre. The site also has the advantage of good access to public open space. In accordance with the NUS it is considered that the location is ideal for such a development. A submission received during the public notification period indicated that the applicant is using the substantial growth precinct as justification for exceeding the height. The applicant has made the argument that the proposed development is consistent with aims and objectives of the NUS. The site is unique given the size of the property and its close proximity to shops, beaches and the adjacent park.

## **(b) The likely impacts of the development**

### Density

The density of the proposed development has been confirmed to be within the DCP and SEPP guidelines and is considered acceptable.

### Bulk and Scale

As discussed in the previous Assessment Report to the JRPP, bulk and scale of the development is considered acceptable. The amended proposal further increases the setback on northern side for the building facing Union Street, thus enhancing the relationship with the adjacent properties. The amended plans are considered appropriate in terms of bulk and scale.

### Boundary Offsets

The applicant has provided the following comments in relation to boundary offsets:

*'The attached plans clearly show dimensioned offsets.'*

*In relation to the concern about offsets to the proposed new boundaries we advise that these offsets are also shown on the attached plans. Offsets from these boundaries comply with the minimum requirements under the Building Code of Australia. Compliance with boundary offsets relative to any DCP control is not necessary given that the boundaries are internal of the site and that on merit assessment the appropriate building separation distances have been achieved'.*

It is agreed with the applicant that the boundary setback provisions under the DCP should only apply to the perimeter of the development site. The purpose of the envelope is to minimise impacts on surrounding properties and therefore is not applicable to the proposed internal subdivision boundaries. The internal setbacks between buildings are controlled under SEPP 65 and the Residential Flat Design Code and are considered acceptable as outlined in the previous assessment report to the JRPP.

Submission has been received that the boundary setback of the amended building in the north-west corner of the site is inadequate. This issue is addressed in the following section of this report dealing with visual privacy.



### Visual privacy

The JRPP expressed concerns about the proposed dwellings in the North West corner. In response, the site has been redesigned in order to provide for increased privacy to the adjoining residential properties to the north of the site. The proposed ground level dwellings have a raised planter box along the northern edge while the upper level dwellings have utilised fixed directional screening and have been reorientated on an East-west axis to achieve increased privacy to the north. These design modifications, along with the increased boundary setback (due to the new access driveway) are considered an improvement over the previously considered proposal and negate the requirement for any additional privacy screening as previously recommended.

A number of submissions have expressed concerns that the increase in height will adversely affect to the visual privacy of the school and the adjoining residents. The school is surrounded by a 1.8 metre fence with direct views from the surrounding street and the park adjacent to the school and the development site. The proposed increase in height is not expected to have any detrimental impact on the school.

Adjoining residents have indicated that *'for the central building this equates to an additional 2 levels of apartments. While this does not violate the numerical criteria on privacy, it does contribute to further reductions in privacy'*. The proposed variation in height would have minimal impact on privacy given the setback of the buildings from the northern boundary. A number of privacy screens have been included on the northern section of the 'middle' building to ensure that adequate privacy is maintained for the adjoining residents.

### Acoustic privacy

The new vehicular crossing to Union Street has the potential to impact upon the acoustic amenity of the adjoining residential properties to the north.

The applicant has submitted an acoustic report prepared by Reverb Acoustics which assesses impacts upon these properties. The report recommends a 1.8m high acoustic fence being erected in the North West corner of the site to a point at least 10m past the end of the carpark entry. Council's Compliance Services Unit has reviewed the acoustic report and concurs with this recommendation.

### Overshadowing adjoining school

Objection was raised to the proposed development on the grounds that it would overshadow the adjoining school site to the south. It is reasonable to expect that the type of development envisaged for a Substantial Growth Precinct will generate some impact. The DCP does not specify any specific solar access requirements for non-residential landuse; however it is evident that solar access is still an important consideration in this regard.

The application has been supported by detailed shadow diagrams which identify that the school site will experience some overshadowing impacts, predominantly between 9am and 12 noon. After 12 noon the majority of buildings and the outdoor area within the school will receive solar access for the remainder of the day.

As outlined previously, the shadow analysis identifies that the proposed development, albeit that it exceeds the DCP height limit, would result in less overshadowing impact than the DCP envelope (ie a compliant development). This is because the proposed buildings

are set back over 8m from the southern boundary, well in excess of the DCP minimum of 4m, with the upper level of the central building set back further again.

The issue of overshadowing has been addressed in greater details within the submitted report 'Urban Design Assessment Report of Building Heights' (**Appendix C**). The report addresses the potential impact on the school with the following statement:

*'The approach adopted here to assessing overshadowing impacts is similar to that for overlooking. The degree of overshadowing caused by a development which complies with Council's height and setback controls is compared to the degree of overshadowing caused by the proposal.'*

*Figures 7 – 13 show shadows at hourly intervals between 9.00am and 3.00pm in mid-winter. Shadows cast by the proposed development are shown in dark grey. Those cast by a similar development which extends further south-west towards the school, but is within Council's height and setback controls, are shown in orange. The latter building envelopes are actually well within Council's controls, with a setback of 4m from ground level to 10m and gaps between Buildings B and C and C and E equal to those of the proposal. (A complying development could extend to the boundary line up to a height of 6m before setting back 4m and could extend along the full length of the side boundary, minus the front setbacks required at Union Street and Corlette Street.)*

*At every hour, between 9.00am and 3.00pm, the proposed development results in less overshadowing of the school than a similar complying development. The degree of difference increases during the day. Between midday and 1.00pm, when pupils are most likely to be outdoors, the difference is quite apparent (and as noted above would be more so if a complying option extended along the full length of the boundary).*

*It is also noted that much of the school site adjoining the side boundary is occupied by buildings and shade structures, trees planted within the school's land and a wide sealed pathway. Little useable external area is impacted by overshadowing.*

*Mid-winter shadow impacts on Corlette Street itself begin about 11.00am and reach a small part of the front yards of a small number of properties opposite the subject site between about 2.30pm and 3.00pm. Buildings D and E, which cast these shadows, are generally a little under Council's 10m height limit. As expected, 10m high buildings with the same setback from Corlette Street as the proposal would cast longer shadows. Again, the proposed development results in lesser overshadowing than a complying building envelope. (The difference would be even more pronounced if the complying envelope came closer to the street boundary, as permitted by the DCP controls.)*

*In summary, the proposal causes less overshadowing than would a development adopting Council's height and setback controls. The additional height of the proposal beyond 10m has no adverse overshadowing impacts'.*

Overall, the proposed development will cause less overshadowing of neighbouring properties and the adjoining school than would a development complying with Council's height and setback controls. The additional height of the middle building will have minimal impact on the adjoining school, this is clearly demonstrated by the applicant's overshadowing diagrams and is further supported by the 'Urban Design Assessment Report of Building Heights'. It is therefore considered that the proposed development

maintains adequate and acceptable levels of solar access for adjoining development and could not reasonably be refused on the grounds of overshadowing.

#### Impact on the National Park

Concerns have been raised about the potential impact that the proposal will have on the adjacent park. The concerns relate to loss of views from the park to Strzelecki headland and the undulating rise of Cooks Hill. While the proposal will have some impact on distance views across the parkland, it is not considered to be significant. In addition, the construction of the units with views across National Park is likely to have a positive impact on the park by providing more passive surveillance for the park. Overall, regardless of whether the park is used for passive recreation or non-passive recreation the proposed development is unlikely to have a significant impact on the end users of the park.

#### Landscaping

The applicant argues that the landscaping along the northern side of the development will adequately screen it from the existing dwellings along the southern side of Tooke Street and some of Union Street. A number of submissions indicated that the use of landscaping should '*not be used as a justification for exceeding the height limit*'. While it is acknowledged that the scale of the development is different to the residential dwellings along Tooke Street, the proposed development is considered appropriate given the building's setback from the northern boundary. The applicant has not suggested that landscaping is a justification for increasing the height of the buildings. Rather, the inclusion of a good quality landscaping plan, along with sufficient area to enable the planting to survive, will contribute to the overall development.

#### Traffic

- Vehicular access to Union Street

Item 2 of the JRPP resolution required the applicant to investigate and seek advice on the feasibility of vehicular access to the site from Union Street further consultation has been carried out with Council's Traffic and Transport section. The Traffic and Transport section initially expressed concern with regard to the provision of an access to Union Street, primarily on the grounds of potential for loss of on-street parking. Upon reconsideration of the matter, the Traffic and Transport section approves a Union Street, access, acknowledging that any loss of kerbside parking would only result from an access that permits right turn movements for northbound vehicles on Union Street.

The applicant has subsequently submitted the amended proposal that provides for a left in/left out access to Union Street. The access to Corlette Street has been retained. A Council flooding engineer has advised that during extreme flood events like the Probable Maximum Flood event the Union Street frontage would be impassable with flood depths of about 2 metres. Given the extreme flood hazard it is considered critical to maintain an escape path to higher ground via the Corlette Street frontage.

A Council traffic engineer has reviewed the amended proposal and provided the following comments:

*The proposed left in/left out Union Street access has been reviewed on traffic grounds and is supported with the following points noted:*

- a) The access is located in close proximity to the existing Union Street access for Bimet Lodge*

- b) *The access is located clear of the school pickup set-down activity and the 40 km/h school zone;*
- c) *The access is located near the northern property boundary and therefore removed as far as practical from the existing traffic signals at Union Street and Parkway Avenue and the resulting vehicle queues during peak periods;*
- d) *The access will result in a net reduction in the number of vehicles using Corlette Street to enter/exit the site. The traffic report in Figure 1 estimates a reduction during the peak of up to 29 to 28 vehicles in the am and pm period respectively;*
- e) *The restricting of the access to left in/ left out will negate any loss of kerbside parking on the western side of Union Street adjacent to National Park and;*
- f) *The access is an at-grade facility removing the need for any vehicle ramp and therefore minimising vehicle speeds upon exit in the interests of improved pedestrian safety;*

*It is recommended that this access be controlled via the implementation of a 'Site Access Management Plan' that confines the access to a left in / left out operation. This in turn should be supplemented with the installation of appropriate signage within the site at the entry/exit. The provision of a concrete central median in Union Street to prevent right turn movements is not supported, as it is considered it would encourage U-turn vehicle manoeuvres and therefore adversely impact on traffic safety. An appropriate condition has been recommended in relation to this matter.'*

Based upon this advice, the new access to Union Street is considered acceptable.

The internal reconfiguration resulting from the provision of a Union Street access has resulted in a 30m section of one-way aisle near the eastern extremity of the at-grade car park. The Council traffic engineer considers this acceptable as it complies with AS 2890.1 – Parking Facilities with passing areas at either end. The narrower carriageway would also restrict internal traffic speeds thereby facilitating pedestrian safety.

Objection was raised to the proposed development on the grounds of increased traffic congestion on the Tooke Street/Union Street intersection. In particular the objector was concerned about the operation of the intersection during seasonal sporting events in National Park where traffic congestion is increased. The introduction of the Union Street access/egress provides the option for future residents to avoid this intersection in times of heavier congestion. It is considered that residents of the development would quickly adapt their driver behaviour in this regard.

- Mark Waugh's Traffic Comments of 22 July, 2011

Item 5 of the JRPP resolution requested 'a review advice' responding to Mark Waugh's traffic comments dated 22nd July 2011 in relation to the proposed development. The applicant's consultant TPK & Associates has provided a written response (**Appendix A**) to the issues raised by Better Transport Futures (BTF) Pty Ltd dated 22 July 2011. In addition a Council traffic engineer has provided the following advice in response to the seven dot points raised:

Dot Pt No.1

BTF – *'Whilst the overall traffic numbers stated for the site using the appropriate codes are relatively small, this is shown to cause problems at nearby intersections.'*

Comment – *‘The introduction of a Union Street vehicle access will serve to reduce the number of vehicles utilising Corlette Street and in turn congestion at nearby intersections.’*

Dot Pt No.2

BTF – *‘The poor performance is NOT addressed, by either the proponent’s proposal, or by Council’s assessment report.’*

Comment – *‘Refer Dot Pt No. 1. Subject to a driver’s origin and destination a number of options are available to either enter or exit the site. Consequently a general spreading of vehicles should occur across a number of intersections, thereby minimising impacts during peak periods.’*

Dot Pt No.3

BTF – *‘The reported performance by the proponent’s traffic consultant at the junction of Tooke Street with Union Street is NOT satisfactory; and remains unaddressed.’*

Comment – *‘Refer Dot Pt No. 1 & 2. The spreading of vehicles should occur across a number of intersections during peak periods thereby minimising impacts on the Union /Tooke Street intersection. Furthermore the future installation of traffic signals at the Union /Parry Street intersection will encourage vehicles to utilise this intersection for exiting the site during peak periods over the Union /Took Street intersection’*

Dot Pt No.4

BTF – *‘Also of concern is that the performance is sensitive to the assumption about parking and traffic generation, based on the land use activity nominated for the proposal.’*

Comment – *‘The traffic generation has been based on the RTA’s Guide to Traffic Generating Developments and is considered acceptable. The parking provision complies with SEPP (Affordable Housing) 2009 and Element 4.1 Council’s DCP 2005.’*

Dot Pt No.5

BTF – *‘The assessment of parking allows details of the affordable housing SEPP to be ignored, with no justification. Parking needs to be provided in accordance with the SEPP, or alternatively using traditional rates as nominated in Council’s own DCP requirements.’*

Comment – *“Refer Dot Pt No. 4. The applicant proposes 13 vehicle parking spaces over and above that required under the SEPP (Affordable Housing) 2009 for the Boarding House component of the development”*

Dot Pt No.6

BTF – *‘The ongoing operation and performance of Corlette Street is also of particular concern in relation to its environmental capacity given its local street status, and high levels of existing parking and pedestrian activity.’*

Comment – *‘Refer Dot Pt No. 1. Vehicle numbers in Corlette Street post development will be within environmental capacity guidelines for a local street as defined under the RTA’s Guide to Traffic Generating Developments’*”

Dot Pt No.7

BTF –*‘Additionally, Council’s solution for treatment of Corlette Street contradicts the proponents stated reasons for use of this local street, and does not address the problems at Tooke/Union (Rather it appears to ignore it).’*

Comment – *‘Refer Dot Pt No. 1, 2 & 3. The widening of Corlette Street across the frontage of the site remains a requirement, despite the inclusion of a Union Street access in the interests of minimising congestion and improving driver sight lines.’*

A number of submissions raised concerns about the potential impact that the proposed development would have on the existing road network, including Union Street and Parkway Avenue and Union Street and Took Street intersection.

Council’s Senior Traffic Consultant has provided the following additional comments after reviewing the public submissions including the additional report prepared by objector’s traffic consultant:

‘Union Street / Parkway Avenue Intersection

*I agree with TPK in their submission on this intersection. The intersection currently has the highest level of control possible for an intersection in that it is a signalised intersection for which the design and phasing was approved by the RTA. Any amendments to phasing would be carried out by the RTA. As relatively new signals I assume the RTA would be reviewing phasing regularly as traffic patterns alter over time as a result of the installation of the signals. It is assumed as the RTA approved the geometric design that it complies with their requirements.*

*More significantly the likely additional traffic generated by this development on this intersection for any one movement is not likely to be in excess of 20 vph during peak periods. This would be well less than 10 % of the total peak hour traffic movements currently experienced by the intersection and therefore would not have any significant impact on the operation of the signals.*

Union Street / Tooke Street Intersection

*The Union Street / Tooke Street intersection currently operates near capacity and would require future amendment as a result of just background traffic growth. This development is likely to accelerate the need to review the intersection due to the additional traffic on the intersection. However it is my opinion that it would be unreasonable that the developer contribute full cost of any required upgrade as existing traffic conditions contribute to the problems occurring at the intersection.*

*I also believe that considering options for upgrading this intersection requires further analysis of the whole road network in this area. For instance the provision of a roundabout or signals at Tooke Street may actually encourage a rat run along Tooke Street which may not be in the best interest of the overall road network as it would introduce non local traffic into the area. Therefore I agree with TPK in that I believe provision of intersection upgrades along Union Street is a road network consideration for the road authority (Council) to carry out. However I do agree that*

*any development contributing to demand on these intersections should pay a fair contribution to these works.*

*S94 contributions were introduced into planning legislation to ensure developers contributed to necessary infrastructure upgrades and I would contend that part of the \$ 345,000 worth of S94 contributions to be paid by this development would be available to Council's traffic managers to undertake necessary adjustments to this intersection as a result of any negative impact experienced post development. This would then represent the applicant's fair contribution to the upgrading of the intersection which could occur when required and in the best interest of the overall road network.*

*One of the typical behavioural characteristics of local traffic drivers is that they get to know the best and safest routes to access the main transportation routes therefore tend to adjust their routes through the local road network to suit their needs. This is an accepted practice which tends to minimise the impact a development has on intersections approaching capacity. In this case I believe many local traffic drivers will tend to avoid the Tooke Street intersection and development traffic is more likely to be distributed more widely through the local traffic network than indicated in the traffic assessment by TPK. As such I believe that the overall impact of the development on the Tooke Street / Union Street intersection will not be significant and best managed by traffic management controls determined by the road authority (Council).*

#### Corlette Street

*The matter of the environmental capacity of Corlette Street was considered by TPK in its amended advice of April 2011. It was found that with the development the environmental capacity of Corlette Street was not exceeded. The provision of an additional access off Union Street will result in lower traffic flows in Corlette Street therefore reducing the impact on Corlette Street again. It is my opinion that Corlette Street has sufficient capacity to cater for the additional traffic from the development whilst still maintaining an acceptable level of amenity within the street.*

*Council has proposed that Corlette Street be widened along the frontage of the development but remain 'throttled' at the Grammar School. This is not a requirement for capacity but is designed to improve vehicular sight lines from the proposed exits of the development. Widening the road however may increase vehicle speeds along the street therefore the idea in leaving Corlette Street throttled at the school was to reduce the speed environment at this location. It may also as a consequence discourage vehicles using this section of Corlette Street though this is not the reason for throttling the road in front of the school.*

*I am of the belief that there is an overreaction to the safety implications this development has in regard to the adjacent school. Whilst understandable the facts are that school set down and pick up areas are one of the most chaotic traffic locations during the school AM and PM peaks however the majority (nearly all) dangerous traffic movements (vehicle and pedestrian) are carried out by the parents dropping or picking up children from the school. Many traffic management practices such as reduced speed zones, school crossings etc have been implemented at these school areas however the facts are that parents continue to flaunt the road rules by performing unsafe vehicle movements, double parking, ignoring parking controls etc that all contribute to the unsafe road environment and can not be effectively managed by traffic practitioners or for that matter the school*

*through traffic management plans. The additional traffic from this development will not significantly impact on this environment for the following reasons;*

- 1. The school AM and PM peaks are generally less than 30 minutes each;*
- 2. The PM peak traffic generation period from the development is likely to be between 4 pm and 5 pm which does not coincide with the school PM peak (3 pm) which is the most chaotic time;*
- 3. The likely AM peak traffic generation from the development is also likely to be between 7 am and 8.30 am which may overlap the school peak however both the AM peak for the development and the school will be lower than the PM peak flows because the traffic flows will be spread over a longer time period.*

*Whilst I understand the concern raised by the school and parents I do not believe the existence of the school adjacent to the site warrants refusal of this application on traffic safety grounds.*

*In reviewing the submissions received on the amended application the only additional point raised to those points already raised by Mark Waugh involves the weekend peaks associated with the winter netball season and the use of National Park opposite the development site. These have not been required to be addressed by the applicant for the following reasons;*

- 1. The peak traffic generation from the development is expected to occur during weekday AM and PM peaks and not weekends. On weekends peak traffic flows from the site are expected to be much lower particularly during the weekend netball peak. Therefore Council accepts the impact of the development on the weekend traffic will be within acceptable limits.*
- 2. The proposal complies with Council's requirements regarding on-site parking therefore does not expect a significant on street parking demand from the proposal.*

In summary, the traffic impacts of the revised proposal have been extensively assessed and are considered acceptable.

## **2.0 Conclusion**

The applicant has submitted additional information as requested by the JRPP on 28 July 2011. This information along with the amended plans has been placed on public notification and 110 submissions have been received in response. The public exhibition period of the amended proposal expired close of business on Friday 9 September, 2011 and submissions were collated on Monday 12 September, 2011. The deadline for the drafting of this report was Thursday 15 September, 2011.

The applicant has not had a sufficient time to finalise and submit responses to the various issues requiring further clarification. Similarly, Council officers have not had sufficient opportunity to exam in depth the various Land and Environment Court decisions cited and to ascertain their relevance, if any, to the assessment and determination of this development application.

Given the significance of the proposed development and in the interest of procedural fairness, it is requested that the determination of the application be deferred.



### **3.0 Recommendation**

That the application is deferred until a later date to allow the applicant and Council officers to respond to the concerns raised during the public notification of the amended plans.