

THE CITY OF NEWCASTLE

JRPP No.	2010HCC044
DA No.	DA 10/1511
Proposal	Demolition of existing structure and erection of multi-level residential flat buildings containing 102 units and a 112 room boarding house.
Property	Lots 2 & 1, DP 1050041, 121-123 Union Street, Cooks Hill
Applicant	ADW Johnson
Report By	Future City Group Newcastle City Council

Final Assessment Report and Recommendation

This Assessment Report supersedes the original and supplementary Assessment Report submitted to the Joint Regional Planning Panel (JRPP) meeting of 28 July, 2011 and 22 September, 2011, respectively.

Executive Summary

Proposed Development

An application has been received seeking consent to the demolition of the existing building and the erection of a mixed urban housing development and boarding house development and two lot subdivision at 121 and 123 Union Street, Cooks Hill.

The Statement of Environmental Effects prepared by ADW Johnson describes the original proposal as follows:

'Demolition of the existing Bimet Lodge Executive accommodation and associated structures:

- *Construction of a residential flat development containing a total of 107 units, being:*
 - *91 one bedroom units ranging from 50sqm to 54sqm*
 - *12 two bedroom units ranging from 80sqm to 90.5sqm*
 - *4 three bedroom units ranging from 109sqm to 134sqm*
- *Construction of a boarding house containing 112 bedrooms and a manager's residence;*
- *At grade and basement car park for a total of 153 vehicles and a two lot into two lot Torrens Title subdivision. The two lots consist of lot 1 being 7,435.5m² and lot 2 being 2,895.5m². The proposed boarding house will be located on lot 2 and the residential flat buildings will be located on lot 1.'*

The applicant has submitted information 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.

Joint Regional Planning Panel Resolution - 28 July 2011

The Joint Regional Planning Panel considered the 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 J**) 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 Proposed Development

The applicant's written submission (**Appendix J**) 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 J**) to the eight matters raised by the JRPP. These are discussed briefly below under the relevant headings and in more detail in the 'Section 79(1) C 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 J**.

- 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 J**) 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 J**).

- 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 and is discussed on page 27 of this report.

Joint Regional Planning Panel resolution of 22 September 2011

The JRPP considered the application for the amended proposal on 22 September 2011 and resolved as follows:

'It is resolved in the interests of procedural fairness that the matter be deferred until 27 October 2011 to enable the applicant to provide additional information requested by Council officers and the officers to complete their comprehensive assessment report in accordance with the EP&A Act for consideration by the Panel.'

These issues have been addressed by the applicant and reviewed by Council Officers and are discussed within this report.

The applicant has submitted a covering letter dated 28 September and two amended reports, Miller Union Street Development Urban Design Assessment of Building Heights and the Supplementary Character Report in response to issues raised (**Appendix G, H and I**).

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 development has a capital investment value of more than \$10,000,000. The application submitted to Council nominates the value of the project as \$35,500,000.

Permissibility

The site is zoned 2 (b) Urban Core pursuant to Newcastle Local Environmental Plan 2003 (NLEP 2003). The proposal is categorised as an *urban housing development* under NLEP 2003 and *boarding house* under the Affordable Rental Housing State Environmental Planning Policy and is permissible within the zone subject to development consent. All required owner(s) consent has been provided. The proposal is classified as local development.

Consultation

The original development proposal was publicly exhibited in accordance with the Newcastle Development Control Plan 2005 (NDCP 2005) from 3 to 17 November 2010. In response, 300 submissions, including 101 form letters, were received in relation to the proposal. The content of these submissions is summarised below:

- Increased impact of noise and traffic
- Social impacts from boarding house
- Privacy issues for residents along Tooke Street and for the adjoining school
- On-street parking impacts on surrounding streets and the potential loss of on street car parking
- Over development of the site
- Concerns about exceeding the 10 metre height limit in terms of increased bulk and scale
- Potential amenity impacts on the adjoining school and safety for school children.
- Potential decrease in property prices
- Potential impacts on the heritage conservation area.

The amended development proposal was publicly exhibited from 26 August to 9 September 2011. In response, 110 submissions were received in relation to the amended 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.

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. Other issues raised during the public exhibitions of the original plans and the amended plans are discussed.

Through out this report in 'Section 79C(1) Considerations' section 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

Grant approval to DA 10/1511, subject to conditions in APPENDIX A.

1. Background

A development application was lodged on the site in 2004 seeking consent for the construction of an urban housing project comprising a total of 32 dwellings (28 x 2-bedroom and 4 x 3-bedroom), with 68 parking spaces, at 123 Union Street, Cooks Hill. This application was approved by Council and has now lapsed.

The site is currently occupied by Bimet Lodge (a motel) and associated car parking.

2. Site and Locality Description

The subject property comprises of lots 1 and 2, DP 1050041 known as 121 and 123 Union Street, Cooks Hill, respectively. The total area of land is 1.03 hectares and is relatively flat in nature.

The site is located on the eastern side of Union Street, between Tooke Street and Parkway Avenue and the Newcastle Grammar School to the south-west. To the west, the site is opposite National Park and, to the east, the site is opposite a medium density housing complex. Figure 1 shows the location of the site.



Figure 1 - Location of the site

3. Original Project Description

The original project was seeking consent to the demolition of the existing building and the erection of a mixed urban housing development and boarding house development and two lot subdivision.

The Statement of Environmental Effects prepared by ADW Johnson describes the original proposal as follows:

'Demolition of the existing Bimet Lodge Executive accommodation and associated structures:

- *Construction of a residential flat development containing a total of 107 units, being:*
 - *91 one bedroom units ranging from 50sqm to 54sqm*
 - *12 two bedroom units ranging from 80sqm to 90.5sqm*
 - *4 three bedroom units ranging from 109sqm to 134sqm*
- *Construction of a boarding house containing 112 bedrooms and a manager's residence;*
- *At grade and basement car park for a total of 153 vehicles and a two lot into two lot Torrens Title subdivision. The two lots consist of lot 1 being 7,435.5m² and lot 2 being 2,895.5m². The proposed boarding house will be located on lot 2 and the residential flat buildings will be located on lot 1.'*

3.1 Amended Project Description

The amended proposal involves the demolition of the existing Bimet Lodge and the construction of three multi-storey residential flat buildings, two boarding houses and associated car parking. A total of 102 residential flats (83 one bedroom units, 6 two bedroom units and 13 three bedroom units), 112 boarding house rooms plus a manager's residence, and 153 on-site car parking spaces are proposed.

It is also proposed to re-subdivide the site into two Torrens title lots. The two lots consist of lot 1 being 7,435.5m² and lot 2 being 2,895.5m². The proposed boarding house will be located on lot 2 and the residential flat buildings will be located on lot 1.

The development has been broken down into a number of buildings across the site ranging from three to five storeys, with the boarding houses located closer to Corlette Street and the residential units facing Union Street. Vehicular access into the site will be via two driveways off Corlette Street and one driveway off Union Street.

The proposed residential flat development facing Union Street contains a basement car park and consists of two main buildings. The amended proposal provides for a left in/left out access 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 proposed buildings facing Union Street are separated by a 12 metre wide main entrance to the urban housing development. This area has been designated as communal open space. The basement car park is set back appropriately 8.9 metres from the property boundary. The next level is set back appropriately 6.9 metres and will contain a number of entry points, decks and is well landscaped with views towards the National Park sporting fields.

A driveway proposed adjacent to the north-east boundary of the site will provide vehicular access to an at grade carpark for the 13 spaces with provision for motorcycle and bicycle parking located beneath the northern boarding house.

Another driveway proposed adjacent to the south-west boundary will provide vehicular access to the following facilities:

- A basement carpark containing 56 spaces and provisions for motor-cycle parking and bicycle parking, to be located under the proposed residential flat buildings facing Union Street.
- A ground level carpark containing 45 single spaces plus eight tandem spaces and provisions for motor cycle parking and bicycle parking, to be located beneath the proposed urban housing building to be sited in the 'middle' of the site.
- An open, at grade carpark for 23 vehicles.

The proposed 'middle' urban housing building contains a mixture of four and five storeys, consisting of ground level car parking and three to four levels of residential apartments. The southern and northern part of the building consists of four storeys while the middle section contains five storeys. The 'middle' building is well set back from the southern and northern boundaries.

The proposed development is seeking to vary the 10 height limit for the 'middle' residential flat building. The height of the middle building is proposed to be 15 metres. The 15 metre component of the proposal has been located at the centre of site and has been set back

about 15 metres from the northern boundary. A number of other buildings across the site also exceed the 10 metre height limit.

Plans and elevations for the proposed amended development are provided in **APPENDIX B**.

4. Consultation

The original proposal was publicly exhibited in accordance with the relevant requirements of Element 3.1 - Public Participation of the NDCP 2005 from 3 to 17 November 2010. In response 300 submissions, including 101 form letters, were received in relation to the proposal. Their content is summarised below:

- Increased impact of noise and traffic
- Social impacts from boarding house
- Privacy issues for residents along Tooke Street
- On-street parking impacts on surrounding streets and the potential loss of on street car parking
- Over development of the site in terms of bulk and scale
- Concerns about exceeding the 10 metre height limit
- Potential amenity impacts on the adjoining school
- Potential impacts on the heritage conservation area.

The amended development proposal was publicly exhibited from 26 August to 9 September 2011. In response 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.

The majority of the submissions received in relation to the amended plans 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 submissions received are discussed within this report. The issues of height and density are discussed in more detail in Section 79C Considerations of this report.

5. Referrals

External

The application was referred to the following agencies:

- NSW Police Force (Newcastle Local Area Command)
- Hunter Water Corporation.

Internal

The application was also referred to the following professional areas of Council:

- Environmental Services
- Traffic Engineering
- Stormwater/Flooding Engineering
- Social Planning
- Heritage Officer
- Building Assessment Team
- Urban Design Consultative Group (State Environmental Planning Policy 65 Committee).

The comments received from the referrals provided in **APPENDIX E**.

6. Section 79C(1) Considerations

The application has been assessed having regards to the relevant matters for consideration under the provisions of Section 79C(1) of the *Environmental Planning and Assessment Act, 1979*, as detailed hereunder.

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

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

The proposed development is subject to the provisions of SEPP 55 and, accordingly, the development requires assessment under this Policy.

Council's Compliance Service Unit (CSU) requested additional information in accordance with this Policy. The officer indicated that:

'The initial Statement of Environmental Effects prepared by ADW Johnson Pty Ltd provided a letter from Coffey Geotechnics regarding preliminary geotechnical advice showing extensive fill across the site. Compliance Services subsequently requested further information and received a Phase 1 and limited Phase 2 Environmental Site Assessment prepared by RCA Australia dated June 2011.

The Phase 1 and limited Phase 2 Environmental Site Assessment prepared by RCA Australia dated June 2011 identifies uncontrolled fill material and building demolition waste as the potentially contaminating activities on the site. Eighteen soil samples were analysed for a range of contaminants of concern from ten sampling points across the site at depths between approximately 0.2m and 2.1m. When assessed against the contamination guidelines for residential land use with minimal soil access (HIL 'D'), one soil sample revealed elevated levels of polycyclic aromatic hydrocarbons (PAH) with a single sample at 'hotspot' concentrations, and one other

soil sample also revealed elevated levels of lead. Flat and moulded sheet fibre cement fragments were seen on site during sampling and some soil samples taken tested positive for asbestos fibres. The Environmental Site Assessment proposed on-site management and capping of the contaminated soils, with off-site disposal possible for the removal of excess fill material, following site works. Due to the elevated level of contaminants (including the widespread identification of asbestos and suspected ACM) found during the limited sampling undertaken, Council recommended further sampling and required the preparation of a Remedial Action Plan and a long-term environmental management plan for the ongoing management of contamination on the site. As part of the RAP, an occupational health and safety plan and a construction environmental management plan were required to address exposure of workers and neighbouring school, and residents.

Council also raised some additional technical issues in relation to contamination which were subsequently responded to in a further letter from RCA Australia dated 5 July 2011.

Following further discussions with the applicant and RCA Australia, Council also received a Remedial Action Plan (RAP) dated July 2011. The RAP proposed on-site management and capping of the contaminated soils, with off-site disposal possible for the removal of excess fill material, following site works. As the proposed development covers approximately 75% of the site, this would constitute the major capping of the contaminated soils with hardstand structures or permanent paving. The remaining 25% landscaped areas are proposed to be capped with 0.5m of clean fill with a marker layer on top of the contaminated soils beneath the clean fill.

A Long-Term Environmental Management Plan (LEMP) dated July 2011 was also submitted by RCA Australia addressing the ongoing management of the capped contaminants during the operational phase of the development.

The LEMP also included a Construction Management Plan and an Asbestos Management Plan. These plans describe the procedures for addressing the occupational health and safety of workers during construction site activities and future maintenance work which intrudes into the contaminated soils following completion of the development.

Following review of these plans, Compliance Services is satisfied that the proposed remediation is acceptable to make the land suitable for the proposed development. However some of the details of the proposed RAP and associated plans need further consideration and amendment prior to final adoption and implementation. In this regard, Compliance Services have discussed these details with RCA Australia. In addition, the LEMP should only be finalised upon completion of the remediation, to ensure the details of the plan reflect the as built, completed remediation details for ongoing reference by future occupants of the site.

In order to ensure the RAP and associated plans are appropriately amended and finalised in accordance with NSW guidelines, Compliance Services recommends the involvement of a NSW Environment Protection Authority accredited site auditor and an appropriately qualified occupational hygienist. In this regard, the proposed conditions of consent require the RAP and associated construction plans to be reviewed and approved by these experts prior to commencement of any construction work.

In addition, other conditions have been recommended to ensure that the site is appropriately validated on completion of the construction and remediation and prior

to occupation of the site. The production of a site audit statement would then provide the final certification of the suitability of the site for the proposed use and include reference to the finalized LEMP for the ongoing management of contamination on the site.

The normal practice of Council would be for the site audit statement and the LEMP to be referenced in any s149 certificate issued for the site. In addition, Compliance Services has recommended the inclusion of a notation to be placed on the s88B instrument for the site'.

Based on the preliminary contamination report Council's Compliance Services Unit is satisfied that the contamination issues identified can be addressed by way of the conditions recommended in **Appendix A**.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development (SEPP65)

As required under *clause 50 of the Environmental Planning and Assessment Regulation 2000*, the application has been supported by a design verification report prepared by a qualified designer (architect) outlining how the development achieves the design quality principles. The application has also been supported by extensive photomontage analysis and other information requirements of the Regulations.

SEPP 65 requires the consent authority to consider the advice of the relevant design review panel concerning the design quality of the residential flat development. The UDCG is the constituted SEPP 65 panel for The City of Newcastle. The UDCG has reviewed the proposed development against the ten design quality principles on two occasions, firstly pre lodgement and secondly the originally submitted design. The UDCG was generally supportive of the proposal with their advice as discussed in greater detail below under the respective design quality principles.

(i) Context

The site is located within a Substantial Growth Precinct identified under the Newcastle Urban Strategy and the Newcastle Development Control Plan (NDCP) 2005. It is envisaged that this precinct will support higher density development such as that proposed. It is noted that there is a number of residential flat buildings within the vicinity of the subject site (approximately 130m to the south). Accordingly the proposed development would not be inconsistent with the existing context. The proposed development is therefore considered acceptable in relation to the context and the UDCG raised no concerns in relation to context.

(ii) Scale

The UDCG provided the following advice in relation to scale:

'The height and scale of the buildings have been modulated both horizontally and vertically with maximum height located at the centre of the site. The group considered the management of scale to be acceptable to the location.'

The scale of the proposed development is larger than adjoining development. However, the design principle of the SEPP states:

'In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.'

The site is located within a Substantial Growth Precinct identified under the Newcastle Urban Strategy and the NDCP 2005. Having regard to the scale of development envisaged for this precinct, the scale of the proposed development is considered acceptable.

(iii) Built Form

The UDCG provided the following advice in relation to built form:

'The group were generally supportive of the amended, segmented design with smaller 'blocks' located to the northern end in the proximity of low scale housing. Limitation of walkways resulting from the segmented arrangement is considered to improve the overall appearance.'

As such, the proposed built form is considered acceptable.

(iv) Density

The UDCG provided the following advice in relation to density:

'Despite the substantial number of dwelling units, the built form, set out and graduated scale are considered to successfully integrate the accommodation within the site and setting.'

The design principle states:

'Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density.'

The site is located within a Substantial Growth Precinct identified under the Newcastle Urban Strategy and the Newcastle Development Control Plan 2005. Having regard to the density of development envisaged for this precinct, the density of the proposed development is considered acceptable.

(v) Resource, energy and water efficiency

The UDCG provided the following advice in relation to density:

'The alignment, setout and floor plans of the residential buildings are considered to facilitate effective natural lighting and cross ventilation. Fixtures proposed in the applicant's submission are considered to assist in minimizing energy consumption. The group recommended relocation of vehicle access to the visitor's car park as a means of improving the landscape quality of the interstitial space between the central block and the boarding house. Improved quality of this space is considered a means of enhancing use of the zone for natural ventilation and shade by the flanking buildings.'

The current amended design has maintained the vehicle access to the visitor carpark between the central urban housing building and boarding housing but has reduced the width to provide for increased landscaping. This is considered an acceptable solution.

The application has been supported by a detailed stormwater management plan which includes water reuse within the development. The proposed amended design is considered acceptable in relation to resource, energy and water efficiency.

(vi) Landscaping

The UDCG considered that the landscape plan for the complex was *'well considered and within the context of available areas for landscaping the spatial arrangements, plant selection and finishes are considered to be quite appropriate to the proposed development'*.

The Group noted the following points:

'The Group noted that the area between the central residential block and the Corlette street boarding house development is currently proposed to accommodate a relatively wide two-way road serving the visitor parking to the central and Union Street residential blocks. It was considered desirable to either remove this roadway in favour of an access via the internal roadway serving the central block, or if this option is not adopted, then to create a much narrower roadway which would impose 'traffic calming' on the use of this driveway. In either case, the area of land won should be densely landscaped to provide additional screening between the boarding house and the central residential block. The former option was considered to be the preferable of the two, as this also helps resolve issues of acoustic imposition of vehicles using this roadway, and allows the visitor parking to be secured and managed by the residents of the residential blocks, rather than leaving it open.

The visitor car park was also noted to be capable of accommodating additional shade landscaping, which was considered to be highly desirable. In addition to this, the northern wall of the car park (excepting any opening for the access of vehicles) should be softened by a strip of landscaping between the car park pavement and the blank northern ground floor of the car park.

It was noted that a moderately large area between the western and central residential blocks which was capable of deep soil planting was finished with decomposed granite trafficable material. While some area is desirable for recreation spaces and access, given the extent of hard surfaces because of the podiums above car parking, it was suggested that greater opportunity might be taken for quality deep soil planting in these areas of natural ground.'

The current amended design has maintained the vehicle access to the visitor carpark between the central urban housing building and boarding house but has reduced the width to provide for increased landscaping. While the visitor carpark could potentially be accessed by passing through the central building's carpark, this would require passing through the carpark's controlled access roller door.

Additional shade trees have been included adjacent to the northern boundary. However, a strip adjoining the building is not considered possible in terms of vehicular manoeuvring.

While it would be possible to provide additional soft landscaping within the communal areas it is also considered desirable to maintain a balance of trafficable areas to avoid damaging grassed areas.

The proposed landscaping incorporates tree planting that would assist in reducing the apparent bulk of the development and would provide for increased screening for adjoining properties. On balance, it is considered that the proposed landscaping for the site is of a high quality design and would complement the aesthetic quality and amenity for the development and surrounds.

(vii) Amenity

The UDCG considered the proposed development to be generally acceptable in relation to amenity other than:

'The extent of clear glass balcony balustrades was of concern. Refinement of the design should allow for some level of privacy, clothes drying etc.'

A condition of consent has been included within the Draft Schedule of Conditions (**APPENDIX A**) requiring obscure glazing to the balconies facing Union Street to ensure adequate privacy to the balcony areas for future occupants and to provide screening of clothes drying from the street.

(viii) Safety and Security

The proposed development provides for passive surveillance of the street and communal areas. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety. As such, the proposed development is considered acceptable in relation to safety and security.

(ix) Social dimensions and housing affordability

The proposed development provides for a mix of residential accommodation which supports social mix and housing affordability.

(x) Aesthetics

The UDCG provided the following advice in this regard:

'The design development of the initial scheme has provided aesthetic outcomes more responsive to the setting. The segmentation of long buildings and the physical separation of northern sections of the outer buildings have improved the perceived bulk and scale of the overall complex.'

'The group noted the general softening of external colours an aspect serving to reduce the stark white expression of the initial scheme.'

The Group raised a concern regarding the privacy of balconies. However, this has been addressed as a condition of consent to require obscure glazing.

In relation to the ten design quality principles of the SEPP the UDCG concluded:

'The group generally considered the proposal to have addressed previous issues. It is recommended that vehicle access to the visitor carpark be reconsidered with preference given to access through the central basement carpark. Further development of landscaping between buildings is also recommended, particularly in association with relocation of vehicle access to the visitor's carpark. Modification of glazed balustrades is also considered a benefit to the appearance of the complex when occupied. These aspects of the proposal are able to be accommodated within localized design amendment.'

A condition of consent has been included within the Draft Schedule of Conditions (**APPENDIX A**) requiring obscure glazing to the balconies facing Union Street to ensure adequate privacy to the balcony areas for future occupants.

In summary, the amended design is considered to be acceptable in relation to the 10 design quality principles of SEPP 65.

In addition to consideration of the design quality principles, Clause 30 of the SEPP also requires Council to have regard to the publication '*Residential Flat Design Code*' (RFDC) produced by the NSW Department of Planning and Infrastructure. The relevant quantitative guidelines under the RFDC are discussed below.

Building Separation

For buildings up to 4 storeys in height the RFDC recommends separation of 12m between habitable rooms. This distance is generally achieved between all buildings within the site, including the boarding house component of the development. The northern and southern ends of the central urban housing building 'step' closer to the boarding house. However, these walls are devoid of openings and therefore can reasonably be considered non-habitable and comply with the recommended separation distance of 9m.

Open space

The RFDC recommends landscaping to a minimum of 25% of the site area. The proposed development provides 25% landscaping (more if narrow garden beds are included) of which the majority is deep soil zone.

Apartment layout

The RFDC outlines desirable unit depths to promote improved solar access and cross ventilation. In this regard the RFDC nominates a maximum depth of 8m for single aspect apartments and 15m for cross-over apartments. All apartments comply with these depths.

Balconies

The RFDC indicates that balconies should be a minimum depth of 2m. The balconies of all units are at least 2m deep in part.

Solar access

The RFDC indicates that it is preferable if 70% of units receive a minimum of three hours of sunlight in mid winter. In dense urban areas two hours may be acceptable. All units in the proposed development have good solar access and would achieve three hours of sunlight.

Natural ventilation

The RFDC indicates that it is preferable if 60% of residential units are naturally cross ventilated and 25% of kitchens should have access to natural ventilation. The Code indicates that corner apartments and double aspects apartments achieve the best cross ventilation. On this basis some 70% of the proposed development's units have good cross-ventilation. Of the apartments that have a single aspect, the relatively shallow apartment depth should still maintain acceptable natural ventilation. All kitchens have access to natural ventilation.

The proposed development is considered acceptable in relation to the guidelines of the RFDC and in general terms is considered a good residential flat development design.

State Environmental Planning Policy No 71—Coastal Protection (SEPP 71)

This SEPP applies to the Newcastle Local Government Area. The proposed residential flat development and boarding house application is consistent with this Policy.

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

This SEPP applies to the Newcastle Local Government Area and is applicable to the dwellings proposed. The applicant has submitted a BASIX Certificate demonstrating that the design of the proposed dwellings complies with energy rating requirements. A consent condition will ensure compliance with the submitted Certificate.

State Environmental Planning Policy (Infrastructure) 2007

This SEPP applies to the Newcastle Local Government Area but, having regard to the provisions of clause 104 – Traffic Generating development and Schedule 3, the application does not involve any elements requiring consideration under the provisions of this SEPP.

State Environmental Planning Policy (Major Development) 2005

The SEPP applies to the Newcastle Local Government Area and under clause 13C (b) of the SEPP, the proposal is required to be referred to the JRPP as noted earlier.

The State Environmental Planning Policy (Affordable Rental Housing) 2009

Part of the proposal is subject to the provisions of this SEPP. That part has been assessed against the provisions of the SEPP and is considered to be consistent with the aims of the SEPP.

The SEPP adopts the definitions of the *(Standard Instrument- Principal Local Environmental Plan)* which defines a 'boarding house' as:

' a building:

- (a) that is wholly or partly let in lodgings, and*
- (b) that provides lodgers with a principal place of residence for 3 months or more, and*
- (c) that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, a serviced apartment, seniors housing or hotel or motel accommodation'.

Division 3 - Boarding Houses

Clause 26 Land to which Division applies

The site is zoned 2(b) Urban Core which is equivalent to Zone R3 Medium Density Residential and the site is also within the R3 Medium Density Residential zone in the draft

Newcastle Local Environmental Plan 2011 (dLEP 2011). Accordingly, Division 3 - Boarding House applies to the subject site.

Clauses 27 and 28

A boarding house is a use which is permitted on the site with the consent of the Council.

Clause 29 Standards that cannot be used to refuse consent

This clause of the SEPP provides a number of standards which cannot be used to refuse consent. Those standards are discussed in relation to the proposal below:

(1) Density/Scale

The maximum FSR for the site is 0.9:1. However, residential flat buildings are permissible within the zone and the site does not contain a heritage item. As such, the land benefits from clause 29(1)(c)(i), allowing for an additional 0.5:1 given the existing FSR is less than 2.5:1. The proposed boarding house consequently complies with the FSR of 1.4:1 resulting from this clause.

The proposed residential flat development is under the FSR control of 0.9:1. The FSR for the residential flat development is 0.88:1.

(2a) Building Height

The DCP provides for a maximum building height of 10m for the subject site. The northern boarding house component exceeds the 10 metre height limit by 0.5 metres.

The supplementary Urban Design Assessment Report submitted by the applicant makes the following statement for the boarding house buildings fronting Corlette Street:

'The extent to which the development exceeds the 10 metre height limit on this frontage is minimal – a maximum of 0.5 metres for Building D and no exceedance for Building E. There are therefore no visual impacts resulting from non-complying heights on Corlette Street. Both buildings are setback 5.5 metres from the Corlette Street boundary and the setback zone is deep soil, allowing for substantial low-maintenance planting.

The two buildings facing Corlette Street are separated by a gap of 6.1 metres. Building E has a deep recess 7 metres wide at about its midpoint. This massing reduces the scale of the development and is complemented by facade modulation using a variety of shading and screening devices and a related diverse palette of finishes and colours. The overall result is a well-mannered presentation to Corlette Street. Whilst the scale of the proposal is different to that of the buildings around it, it is considered to be in harmony with them and the character of the street'.

The proposed height of the urban housing development will be discussed in more detail in Building design and appearance (page 38 of this report)

(2b) Landscaped Area

Landscaping of all setbacks will be compatible with existing streetscapes and is considered acceptable.

(2c) Solar Access

The proposed communal living areas receive the minimum of 3 hours of direct sunlight between the hours of 9am and 3pm in winter. The proposed development therefore complies with this provision.

(2d) Private Open Space

Private open space is provided within the site in accordance with the private open space requirements. Additionally, the site benefits from the National Park sporting fields being located immediately to the west, providing additional active and passive recreational opportunities.

(2e) Parking

The proposal provides 13 on-site visitor car parking spaces which exceeds the requirement for car parking. The proposal to exceed the number of car parking spaces for the boarding house is supported and should alleviate any potential on-street car parking issues. Parking is also proposed for the on-site manager.

(2f) Accommodation Size

All rooms are single occupancy and each room is at least 12m². A recommended consent condition will ensure each room is occupied by only one boarder.

Clause 30 Standards for boarding houses.

This clause of the SEPP contains a list of development standards which must be satisfied by the proposed development. These standards are discussed below:

'(a) if a boarding house has five or more boarding rooms, at least one communal living room will be provided,'

Comment:

The proposed development complies with this development standard. There are a number of communal lounge rooms provided throughout the development. The northern building contains a large kitchen/dining room and a lounge area opposite the main entry. The southern building contains a kitchen and dining room area, a laundry, and two lounge areas. Additional communal open space is also provided at ground level between the southern building and the northern boundary.

'(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,'

Comment:

The proposed development complies with this development standard. The proposed development does not include any boarding room that exceeds 25m².

'(c) no boarding room will be occupied by more than two adult lodgers,'

Comment:

The boarding house is proposed to be managed in such a way that only one lodger will occupy each room. An appropriate condition (Refer to **APPENDIX A** Draft Schedule of conditions) has been recommended in this regard.

'(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,'

Comment:

The proposed development includes both private and communal bathrooms and kitchen facilities for the use of the lodgers.

'(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,'

Comment:

The boarding house shall accommodate up to 112 lodgers, and an on-site manager's residence is provided.

'(f) if the boarding house is on land within a zone where residential flat buildings are permissible, no new car parking for lodgers will be provided on the site,'

Comment:

Although residential flat buildings are permissible within the zone, the provision of additional car parking spaces for the boarding house component is supported and should alleviate any potential pressure for on-street car parking. The applicant has lodged a State Environmental Planning Policy (SEPP 1) Objection which seeks to demonstrate that the inclusion of additional car parking for the boarding house is beneficial for the development and the community. The applicant's SEPP No 1 Objection has demonstrated that the standard is unreasonable and unnecessary in this instance. The request to vary the number of car parking spaces for the boarding house is supported.

'(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,'

Comment:

Not applicable.

'(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.'

Comment:

Bike racks have been accommodated at the front of the southern boarding house facing Corlette Street. There has been provision made for motorcycle parking within the under-croft parking area of the northern boarding house. The proposal will provide a total of 23 motor-cycle parking spaces which complies with the above provisions.

The NSW Government introduced amendments to SEPP (Affordable Rental Housing) on 20 May 2011, including the following revised standards for boarding houses:

- *Boarding houses need to be compatible with the design character of the area in which they are to be located.*
- *Boarding houses proposed in regional areas must be accessibly located within 400 metres of a local centre or mixed-use zone.*
- *Higher parking standards.*

Notwithstanding these revisions, under the savings and transitional provisions of Amendment 2011 existing development applications for boarding houses lodged before the changes took effect may still be assessed under the repealed and amended provisions subject to Council considering whether the design of the development is compatible with the character of the local area.

In this context, the proposal is considered compatible with the character of the local area given that the site is surrounded by a range of housing types. To the north of the site along Tooke Street are a number of single storey residential dwellings while to the east is mixture of urban housing developments. To the south of the site is a school. A number of multi-level urban housing developments also exist along Parkway Avenue.

Directly opposite the site to the west is the National Park sporting field. The proposed urban housing development is therefore considered appropriate in terms of bulk and scale and the character of the area. The character of the area is discussed in more detail under the State Environmental Planning Policy No 65 section of this report.

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 report 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 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 applicant has provided the following statement in relation to this submission:

‘The Land and Environment Court test cited in Section 7.0 -- “Is the proposal’s appearance in harmony with the buildings around it and the character of the street?” – applies most directly to consideration of the relationship between the proposed development and the Inner Area surrounding it. The most sensitive relationship is with the Heritage Conservation Area adjoining the subject site. The proposed development is of course larger in scale than the detached dwellings in the Conservation Area, an inevitable outcome of its higher density zoning. Whilst the proposal is not the same as its heritage neighbours, it is considered to be in harmony with them and the streets in the immediate vicinity of the site by virtue of its massing, articulation and architectural treatment. It is noted that the setbacks from the side boundary which adjoins the Heritage Conservation Area have been increased to as much as 17 metres for the proposed central building.

Importantly, the proposal does not attempt to replicate elements of existing buildings. It stands as contemporary architecture which is sympathetic to its neighbours. Heritage architects Heritas state that it is important to be able to read the Conservation Area separately from development on the subject site. They also note that the Conservation Area has many styles within it and that the proposed development will simply add another adjoining layer’.

In the Land and Environment Court Case *Peninsula Developments Australia Pty Ltd v Pittwater Council* [2011] NSWLEC 1244 Commissioner Tuor quoted from a previous decision by Commissioner Roseth SC in *Project Venture Development v Pittwater Council*

2005 NSWLEC 191. The judgement provides principles to assess the compatibility between what is proposed and what exists.

'There are many dictionary definitions of compatible . The most apposite meaning in an urban design context is capable of existing together in harmony . Compatibility is thus different from sameness . It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve'

The court cases cited in the submission by The Cooks Hill Community Group (CHCG) have been carefully reviewed. However, the applicant has clearly demonstrated that the proposed development is appropriate given the existing character of the area.

The proposal is not contrary to the provisions of any other relevant State Environmental Planning Policy.

Newcastle Local Environmental Plan 2003 (NLEP 2003)

- Clause 16 Zonings

The site is zoned 2(b) Urban Core pursuant to NLEP 2003 (see figure 2). The proposal is categorised as an 'urban housing development under NLEP 2003 and boarding house development under the State Environmental Planning Policy (Affordable Rental Housing) 2009. Both urban housing and boarding houses are permissible within the zone subject to development consent.



Figure 2 - Zoning of the site

The objectives of the zone are:

- (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.*
- (b) *To accommodate a mix of home-based employment-generating activities that are compatible in scale and character with a predominantly residential environment.*
- (c) *To accommodate a limited range of non-residential development of a scale and intensity compatible with a predominantly residential*

- environment which does not unreasonably detract from the amenity or character of the neighbourhood or the quality of the environment.*
- (d) *To require the retention of existing housing stock where appropriate, having regard to ESD principles'.*

The proposed development complies with the objectives of NLEP 2003 in that the development is providing a range of housing types from one and two bedroom units and some three bedroom units. The inclusion of the boarding house component adds to the diversity of housing choice. It is considered that the development is acceptable in terms of its impact on the character of the neighbourhood and its impact on the quality of the environment.

- 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 NLEP 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 NLEP. Notwithstanding this, the submitted amended plans provide for an additional 3 x 3-bedroom dwellings in lieu of 8 x 1-bedroom dwellings.

- Clause 33 - Development in the vicinity of a heritage item or heritage conservation area

The subject property lies adjacent to the Cooks Hill Heritage Conservation Area (HCA) (see figure 3), and opposite National Park. There are no heritage listed items on the subject site.



Figure 3: Cooks Hill Conservation Area

The application was supported by a Heritage Assessment Report given the site's close proximity to Cooks Hill HCA. A number of objections raised concerns about the potential impact of the proposed development on the Cooks Hill HCA. The application was referred to Council's Heritage Officer, who provided the following comments:

'The development is arranged into three separate blocks, with the highest block – a five storey component located towards the centre of the site, flanked by buildings of three and four storeys. The greatest setback to any single boundary is the north boundary.'

A Heritage Impact Statement as amended supports the proposal for a number of reasons as set out in Chapter 7 of that report. The HIS notes that the "breakdown of forms along both street frontages results in amassing that respects the context of smaller residential blocks in the area," (Heritas: 18). The HIS is supportive of the setbacks to boundaries, and the revised landscape treatment which now includes additional vegetation screening between the Boarding houses on Bruce

Street and the rear yards of the housing in Tooke Street . An aspect of the development that was previously identified as a potential detrimental impact on the HCA – that is the contrast in the height of the building proposed with the lower scale of housing stock in the HCA. To this extent, additional vegetation and landscape design treatments have been proposed which will ameliorate this impact. The HIS notes “The proposal of two large mature trees in the visitors car park will contribute to the visual buffering of car-parking along the northern boundary of the site,” (Heritas:18). I support the additional landscape treatment on the basis that it will minimise the obtrusiveness of the development when it is viewed from the houses on Tooke Street, a concern I raised in my assessment of the original proposal.

‘My concern, similar to concerns raised by the Cooks Hill Resident’s Group, regarding the dramatic scale departure of the proposal, especially to Union Street and Corlette Streets, has been attenuated by the revised landscaping design and amended colour scheme for the Union Street apartments. Additional photo montages illustrate that the height variation, when seen in the context of the total streetscape, are not of major concern and are acceptable given the mitigation measures now proposed by the applicant. It is noted that the revised landscaping to Union Street will merge the development into the context in a more sympathetic manner than previously proposed. The HIS notes “The inclusion of large trees...will soften the development within the streetscape,” (Heritas: 18). Again, “the positioning of four large trees at the pedestrian site access entrance on Union Street serves to minimise the built form to the north from that access point, reducing the bulk at that end of Union Street to a scale more in keeping with the existing residential pattern in the southern end of the Heritage Conservation Area.” This effect can be seen in the photo montages presented in the Urban Design report and in the documentation submitted by CDKS.’

In terms of compatibility of any proposed development with the character of the nearby heritage conservation area, the Heritage Officer has provided the following comments:

‘Owing to the amendments made to the landscaping design and the colour scheme I am generally comfortable with the proposal in terms of the scale, form, orientation, setbacks, materials and detailing of the proposed development. I am of the view that the development now before council has merit on urban design grounds and as is generally compatible with the edge of the Cooks Hill Heritage Conservation Area.’

‘The proposed development has been amended to address heritage concerns and I am generally now comfortable with the scale and bulk of the development and its relationship with the edge of the adjacent Cooks Hill Heritage Conservation Area.’

The proposal is therefore considered acceptable on these grounds.

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

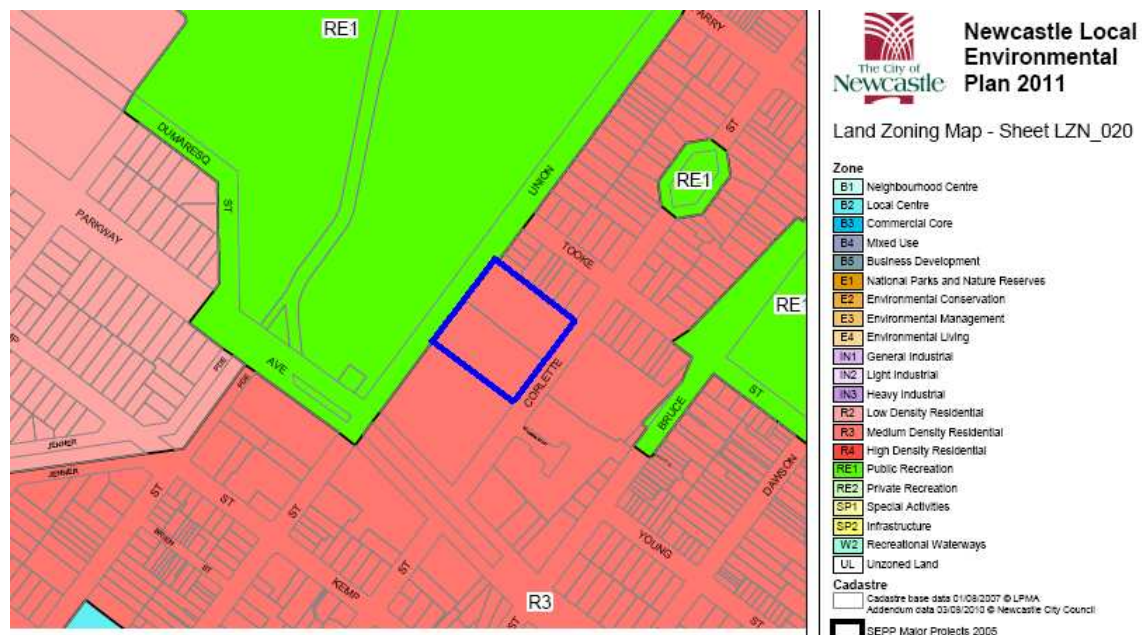
Draft Newcastle Local Environmental Plan 2011 (DNLEP 2011)

The subject property is included within the R3 Medium Density Residential zone under the provisions of the DNLEP, within which zone the proposed amended development is permissible with Council's consent.

The draft objectives of the R3 zone are to provide for:

- *'To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow some diversity of activities and densities if:
the scale and height of proposed buildings is compatible with the character of the locality, and
there will be no significant adverse impact on the amenity of any existing nearby development.*
- *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:
has regard to the desired future character of residential streets, and
does not significantly detract from the amenity of any existing nearby development.'*

The proposed amended development is consistent with the objectives of the Draft Local Environmental Plan 2011. The proposed amended development will provide the appropriate density and choice of housing stock which is consistent with the above objectives. The development is also providing for an appropriate increase in residential density that will support the local shopping centres of The Junction and the West CBD.



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 previously, *'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 2005 (NDCP 2005)

a) Element 3.1 - Public Participation

Both the original and amended proposals were notified in accordance with this Element. Issues raised in the submissions received are discussed in this report.

b) 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 NDCP.

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 NDCP 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 NDCP 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 NDCP 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.

c) Element 4.2 - Contamination

The applicant submitted a Phase 1 and Phase 2 Environmental Site Assessment. This was reviewed by Council's Compliance Services Unit and is discussed in detail under State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55) section of this report.

d) Element 4.3 - Flood Management

Council's Senior Stormwater Engineer has provided the following comments in terms of flood management:

'The site has been identified by Council as in a flood prone area. The calculated 1 in 100 annual chance (1% AEP) flood level for the site is 2.7 m AHD with an estimated Probable Maximum Flood level of 4.9 m AHD. The site has also been identified as a flood storage area. During the June 2007 flood event floodwater was recorded as reaching a peak level of 3.5 m AHD in this part of the catchment.

To address the local flooding issues and the development requirements of the Flood Management element of the Newcastle DCP 2005 Northrop Engineers prepared a flood report for the applicant.

The proposed minimum floor level for occupiable rooms in the development is 3.8 m AHD. To address local flood impacts the development has been designed to fill no more than 20 percent of the site area as required in the DCP.

The basement carpark under the western unit block has been designed to keep floodwaters out up to RL 3.0 m AHD and provide safe evacuation to upper floor levels for larger flood events. Parking under the middle unit block has been set at RL 2.5 m AHD as a low hazard area for the design 1% AEP flood event while providing flood storage areas for larger flood events.

The site will have access to flood free land on Corlette Street and incorporate onsite flood refuge areas. It is recommended that a flood emergency response plan be prepared and instigated for the site to ensure residents are aware of the flood risk and appropriate response measure are provided".

Conditions are recommended to ensure that the submitted flood emergency response plan is developed and implemented as part of the site development works. (refer **APPENDIX A.**)

e) Element 4.4 - Landscaping

As required under this Element, the application has been supported by a comprehensive Landscape Concept Plan and design report prepared by a landscape architect. The amended plans make a minor amendment to the landscaping plan with a new driveway on the north east corner of the site.

The landscape concept plan demonstrates that the site will be suitably landscaped to compensate for the loss of tree canopy cover. The planting schedule provides for additional planting on site. The landscaping plan is consistent with Element 4.4. The area available for deep soil landscaping is 2,061m² which equates to just over 25%. A copy of the Landscape Concept Plan has been included in **APPENDIX D.**

f) Element 4.5 Water Management

Council's Senior Stormwater Engineer has provided the following comments in terms of water management:

'The designers have proposed a number of roofwater collection tanks with onsite reuse for toilet flushing, laundry usage and external irrigation. Overflow from the tanks and surface drainage will be collected and directed into gravel retention trenches located in the landscaped areas. Excess stormwater will be piped to the existing stormwater system in Union Street"

The proposed site stormwater system has been designed to comply with the requirements of the water management element of Council's current DCP'.

Conditions are recommended to ensure that the submitted Concept Drainage Plan is implemented as part of the site development works. (refer **APPENDIX A**).

g) Element 4.6 - Waste Management

As required under this element, a Waste Management Plan has been provided with the application. The proposal provides for a bin storage area on the western side of the southern building. The applicant has demonstrated that a heavy ridged vehicle (HRV) can access the site and leave in a forward direction.

A contractor is proposed to be engaged to collect waste on a weekly basis. Monitoring of designated garbage and recycling areas will also be undertaken by the onsite manager. Based on the submitted information, the proposal is considered to be acceptable.

h) Element 4.10 - Tree Management

The application was supported by an Arborist Report which examined the existing vegetation on the site in accordance with this Element. The Arborist Report provided the following comments:

'The proposed developments footprint will impact on the vast majority of trees onsite with only trees six trees being located outside of building footprints. Of these retainable trees only trees three trees are worthy of retention. A number of trees located within the proposed building footprint are of a suitable size and species to be considered for transplanting within the proposed landscape works.

Trees located on adjoining properties to the north will not be affected by works as long as proposed works do not extend any further north than the existing retaining wall which runs the majority of the length of the northern boundary. The TPZ of trees located along the adjoining school's boundary will not be impacted upon by more than 10% with the exception of tree numbered 61. Approximately 20% of the TPZ of tree 61 may be affected by proposed works, however given the hardy nature of this species and the current good health of the tree it is anticipated with the proper supervision and tree protection methods that tree 61 will not suffer negatively'.

The Arborist made a number of recommendations which have been included in the draft conditions of consent. These recommendations include the following:

- *'Utilise transplantable trees where possible within proposed landscape works. This can be done by extracting the trees wrapping the root ball and storing onsite with a maintenance regime in place until such time as the proposed landscaping works are undertaken. Trees that are unable to be used onsite should be offered to tree transplanting companies which will generally remove from site at no cost.*
- *Ensure works along the northern boundary do not encroach any further than the existing brick retaining wall to protect trees on adjoining properties.*

- *Trees located on the southern boundary within the Grammar School's grounds must be protected. A suitably qualified arborist must be engaged to prepare a tree protection plan and make recommendations for the tree's ongoing health during and post construction.*
- *Trees that are removed are to be dismantled and mulched with the mulch being utilised within the proposed landscape works.*
- *Ensure all tree removal work is carried out by or supervised by a qualified tree worker (AQF Level 3 or equivalent) in accordance with the NSW WorkCover Code of Practice for the Amenity Tree Industry, 1998.*
- *Undertake appropriate NATSPEC quality replacement plantings to replace lost canopy cover and amenity. Refer to Landscape Architects drawings for suggested species'.*

i) Element 5.2 – Urban Housing

This Element 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 amended 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 initial public notification queried the given density precinct noting that the school site to the south (Grammar School) was nominated as a Limited Growth Precinct, which would mean the subject development was inappropriately located between a low density area to the south and the low density heritage conservation area to the north. The NUS in fact does not assign any density to school sites with the site shown uncoloured on the precinct maps. Redevelopment of such a site would be considered on a merits based approach. However it would be expected that the school site could support densities consistent with a Substantial Growth Precinct. Accordingly the given density for the subject site is not inconsistent with the density regime under the NUS, being located contiguous with higher density emanating from The Junction commercial centre.

Objection was raised to the proposal on the grounds that it represents an overdevelopment of the site. While the development does represent a departure from the current development on the site it is clear that the proposed amended development is consistent with the desired future character for the site. This issue is discussed in further detail below under building height and floor space ratio.

Another submission received during the public notification period indicated that the applicant is using the substantial growth precinct as justification for exceeding the height. In response, the applicant has made the argument that the proposed

development is consistent with aims and objectives of the NUS. It is also noted that the site is unique given the size of the property and its close proximity to shops, beaches and the adjacent park.

The proposed amended 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.

This Element applies to the urban housing building component of the development. A boarding house is a separately characterised landuse under the NLEP 2003; however the urban housing guidelines have also been applied, as considered relevant, to the boarding house component of the development.

Building form

The proposed amended development is considered acceptable in relation to the NDCP guidelines on building form. The development establishes a scale and form appropriate for its respective residential precinct. The proposal achieves an active street frontage, provides for appropriate building depth and bulk and also provides for high quality landscaping.

Minimum street frontage

The subject site readily complies with the minimum site frontage of 15m with street frontages of approximately 100m.

Streetscape and front setbacks

The proposed amended development complies with the minimum front setback of 5m. In terms of streetscape the NDCP provides the following objective for the Substantial Growth Precinct:

'To ensure that new development makes a positive contribution to the desired built form of the precinct.'

It is considered that proposed amended development provides a well articulated and active street front of a scale and form consistent with the desired built form for this precinct.

Side and rear setbacks

The NDCP requires a minimum side set back of 4m for buildings over 6m in height. The buildings fronting Union and Corlette Street are set back 5m from the northern boundary, and the central building is set back 15m from the boundary. The buildings are set back 8.4m from the southern boundary.

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 NDCP 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.

A 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.

Usable Open space

The NDCP requires that a dwelling above ground level have a balcony as private open space of a minimum dimension 2m and minimum area of 8m². All units are considered above ground units and comply other than unit types denoted 'B' and 'E' on the submitted plans (**APPENDIX B**). Unit type 'B' provides for balconies of 9m² although part of the balcony is below 2m in depth. Unit type 'E' are located on the upper level and provide light-well style courtyards of 6m². The NDCP does not distinguish balcony requirements based upon apartment size and the proposed balconies are considered satisfactory for smaller 1-bedroom apartments. Furthermore, the provisions of high quality communal open space within the development readily compensates for any minor shortfalls in the provision of private open space.

As part of SEPP 65 considerations, Council's Urban Design Consultative Group (UDCG) raised no concerns in regard to the provision of private open space and the private open space is considered satisfactory in relation to the RFDC. The provision of private open space within the development is therefore considered acceptable.

Landscaping / Communal open space

The NDCP requires a minimum of 25% of the site at ground level to be landscaped, with landscaped areas being a minimum of 3m wide. Furthermore, a minimum of 25% of the landscaped area is required to be a deep soil zone.

The applicant has submitted a comprehensive landscape plan and report. The proposal provides for 25% landscaping (more if areas less than 3m wide were included) with the majority of this landscaping being a deep soil zone.

Building design, appearance and height

The NDCP requires that buildings within the Substantial Growth Precinct '*enhance and make a positive contribution towards the desired built form.*' The proposed amended development is of a contemporary architectural style with well articulated building form both horizontally and vertically. While the development is clearly more intensive than current development on the site, it is considered acceptable in terms of the desired built form for the area. The development still responds to characteristics of the area such as generous setbacks to all boundaries with substantial landscaping.

The NDCP provides for a maximum building height of 10m for the subject site. The boarding house component adjoining Corlette Street exceeds the 10 metre height limit by 0.5 metres. The residential flat buildings adjoining Union Street exceed the height limit by up to 1.5m. The central urban housing building exceeds the height limit by up to 4.8m with the upper level sitting entirely above the height limit. Sheet DA-523 A within **APPENDIX B** provides a diagrammatic building mass envelope superimposed over the development. The diagram demonstrates that the proportion of building mass exceeding the height limit on the buildings fronting Union and Corlette Street is relatively minor in terms of overall building mass.

A number of submissions were received raising concern regarding the proposed height of the development, particularly given the non-compliance with the NDCP guidelines.

The NDCP states:

'The maximum height limit may be varied 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 height of the proposed amended development is not comparable to any adjoining buildings and therefore the other points need to be considered.

The applicant has submitted the following justification for seeking a variation to the height limit guidelines of the NDCP:

- 'the provision of setbacks are well in excess of the minimum required;*
- the additional height does not create more overshadowing (see height report);*
- more open space and landscaping opportunities are created including a landscaped entry from Union Street. This entry provides a thematic link to National Park through to an internal park and breaks down the building forms at the northern end of the Union Street Frontage;*
- Flood planning only allows for a basement car park to 20% of the site. This has been located under the Union Street Buildings. All other parking to meet the DCP must be 'at grade' (RL of 2.5);*
- The additional height at the central building has been designed as a recessive element to compliment the overall building composition- see 3D renders submitted. This element is effectively self shadowing as indicated in the shadow diagrams;*
- The additional height does not constitute an overdevelopment. It is well considered in terms of design, approach, urban consideration, texture, form and sustainability; and*
- The alternative of spreading the buildings over the site to reduce height would create more bulk, scale and privacy issues'.*

The flooding constraints on the site are not considered to justify a departure from the height guidelines in their own right but it does mean that the applicant is constrained in exploring alternative design solutions such as underground basement parking.

The maximum height limit under the NDCP of 10m does not distinguish between allotment sizes and it is agreed with the applicant that the size of the subject site provides opportunity to explore alternative design solutions for the distribution of floor space yield over the site.

In addition to the above justification for seeking a variation to the height limit, the applicant has also submitted a detailed 'Urban Design Assessment of Building Heights' prepared by Geoff Baker. The Report states the following:

'Newcastle DCP 2005 allows the height limit to be exceeded where its imposition can be demonstrated to be either unreasonable or unnecessary. The following note from the DCP as it appears on Council's web site is relevant:

'.....However, some local circumstances may apply to any particular development site or proposal that warrant separate consideration outside the framework of NDCP 2005. Accordingly, compliance with the provisions does not guarantee development approval, nor will non compliance with the provisions necessarily result in refusal of an application.'

The Report examined the likely material and visual impacts of the proposed and states as follows:

'This analysis examines two primary types of issues related to the proposed building heights.

- 1) Material impacts – overlooking and overshadowing.*
- 2) Visual impacts – the perception of increased height.*

Material impacts generally relate to immediately adjoining neighbours. Because the development shares two side boundaries with neighbours and Council's height limit permits development to a height of 10 metres and relatively small side boundary setbacks, it is to be expected that there will be some potential for overlooking, given the density of development permitted on the site. Similarly there will be some degree of overshadowing of the neighbour to the southwest under Council's controls.

An important consideration for both overlooking and overshadowing is to the degree to which they are increased by the portion of the proposal which exceeds Council's height limit and more generally whether the proposed impacts are acceptable as measured against established standards. Visual impacts relate to the way the building will be seen from surrounding areas and generally focuses on impacts from the public realm. The issue is the degree to which visual impacts are increased by that part of the proposed development which exceeds Council's height limit and whether they are acceptable.'

It is considered that the methodology followed in the Urban Design Assessment is sound having identified the primary issues and having considered the likely impacts from the non-compliant component of the development.

The Urban Design Assessment concludes:

'Council's planning instruments allow the height control to be exceeded where it can be shown that compliance with the control is unreasonable or unnecessary. Hydrological constraints play a major role in the design of the proposed

development, imposing a minimum RL for habitable floors and a maximum area of the site which can be built on. These limitations tend to drive the buildings upwards. A development of lesser density and/or lesser setbacks from its neighbours (as permitted under Council's controls) could resolve the flooding issues and remain beneath the height plane, but it would either not realise the full potential of the site or increase impacts on the neighbours. It would be unreasonable to require strict compliance with the height control under these circumstances'

'This report documents in detail the reasons why the height of the proposed development is satisfactory. In summary:

- Any potential for overlooking of adjoining properties has been carefully managed and the proposed additional height does not significantly increase this potential and does not have any unacceptable impacts. The overlooking of Union and Corlette Streets and Union Park is considered advantageous in terms of safety and security*
- The proposal causes less overshadowing of neighbours than would a development adopting Council's height and setback controls*
- Portions of the proposed development exceeding 10m in height which are visible from the public realm in close proximity to the site are generally limited to Union Street. Their extent is not considered significant given the active recreation uses opposite*
- Portions of the proposed development exceeding 10m in height which are visible in more distant views will generally only be seen from National Park. These impacts are considered acceptable given that the park does not comprise passive recreation uses in the vicinity of the proposed development and that the building height will be below the horizon line of the coastal ridge to the east in the majority of views*

.....The site is within Council's 'Substantial Growth Precinct'. Within the context of the proposed development, and given the findings of this report, Council's 10m height limit is considered both unreasonable and unnecessary.'

The Urban Design Assessment also included a 3D analysis of the building envelope and an analysis of the shadowing impacts generated from the NDCP building envelope compared to the proposed amended development. The analysis identifies that the development as proposed, with generous side setbacks, albeit with non-compliant building height, provides for improved solar access for the school site to the south when compared to the NDCP building envelope (i.e. a compliant development).

Having regard to the applicant's submission it is considered that the proposed amended development provides for a better overall planning outcome than what could reasonably be expected from an alternate design of compliant building height but increased footprint. It is accepted that the higher portions of the proposed amended development are located centrally on the site, thereby minimising visual impact and the increased setbacks from boundaries (particularly the north) provide for improved privacy.

It would appear the only alternative option would be to reduce density. However this would be contrary to Council's urban consolidation objectives under the NUS or alternatively propose a lower building form with reduced side setbacks which would

result in increased privacy impacts and apparent bulk to adjoining properties. It is considered that the flooding environment on the site constrains further alternative design solutions such as basement parking.

Furthermore, as outlined in this report, Council's UDCG has raised no objection to the proposed scale.

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 unreasonably or unnecessary in the particular circumstances of this case

In summary, it is considered that the applicant's written submission, (i.e. a 'written request') including the two Urban Design Assessment Reports, has adequately justified that the compliance with the height control is unnecessary and unreasonable in the circumstances and has demonstrated that the requirements relating to streetscape, daylight, sunlight and privacy are satisfied. The applicant has demonstrated that the objectives are achieved, in particular that the height relates to the desired future built form and that the privacy and overshadowing of adjoining properties is satisfactory. It is therefore considered that the height of the proposed development is acceptable in this instance.

Definition of Building Height

Item 1 of the JRPP resolution of 28 July, 2011 required 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;*

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 NDCP 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 NDCP 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 NDCP 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 NDCP 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 NDCP 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 applicant has provided the following comments regarding the objector's allegation that the plans are misleading:

'With regard to the objectors comment that the architects have misrepresented height and that shaded areas contradict one another we note that it was the intention of the resubmitted drawings to show the impact of the height of the development relative to the surrounding lots as well as internally.'

To address these two aspects we have shown the following:

- All four boundary elevations with the elevation cut line at the boundary. A height line is shown 10m above the existing ground line at that relevant boundary. This is clearly indicated on the elevations: for example the Northern Elevation has a 10m height plane that clearly notes "10m HEIGHT PLANE AT NORTHERN BOUNDARY".*
- The intention of this is to show what the impact of height is relative to neighbouring properties.*
- We have provided 6 sections through the site that clearly show the height of the buildings at the section cut line.*

The heights at the sections will differ from the elevations due to the varying points at which the elevation or section cut planes are taken. All these heights have been checked and qualified by a registered surveyor (deWitt Consulting Height Report). The current submitted plans and appropriate revisions are referenced in deWitt's Height Report.

The plans clearly show the areas over the 10m height guide as shaded portions. We clearly state and define the two guiding height principals: Council's DCP and SEPP 65. Again, all heights and dimensions have been checked and qualified by a registered surveyor (deWitt Consulting August 11 Height Report).

The DCP allows for a variation when it can be demonstrated that the height control is unnecessary or unreasonable. The project Architect has designed the buildings in a responsible manner that considers all the necessary factors: site constraints, design, approach, urban consideration, texture, form and sustainability. This approach has been supported on two occasions by the UDCG. In particular the central height has provided the opportunity to step the building away from the boundaries'.

Floor space ratio

The DCP nominates a maximum Floor Space Ratio (FSR) for the site of 0.9:1. The boarding house component of the development benefits from a 0.5:1 bonus under SEPP (Affordable Rental Housing) 2009, resulting in a maximum FSR of 1.4:1 for that component of the development. The applicant has applied the 0.9:1 FSR to proposed Lot 1 which contains the residential flat buildings and the 1.4:1 FSR to proposed Lot 2 which contains the boarding house. This is considered the appropriate method of determining the maximum floor space yield.

The urban housing building component of the development on proposed Lot 1 results in a density of 0.88:1 and therefore complies. The DCP requires excess parking to be included in the Gross Floor Area (GFA). The proposed development provides an excess of 3 parking spaces for the urban housing building component which results in an additional 39m² of additional GFA. This equates to an FSR of 0.89:1 and therefore the proposal still complies.

The boarding house component of the development on proposed Lot 2 results in an FSR of 1.37:1 and therefore complies. Clause 30(1)f) of SEPP (Affordable Rental Housing) 2009 (at the time the development application was lodged) stated:

'if the boarding house is on land within a zone where residential flat buildings are permissible, no new car parking for lodgers will be provided on the site.'

The proposed boarding house component of the development incorporates 13 parking spaces equating to 168m² of additional GFA. If this area was included as GFA the resultant FSR is 1.42:1 which is marginally over the maximum FSR of 1.4:1.

Under the DCP the GFA excludes any car parking to meet any requirements of the consent authority. The DCP stipulates a parking rate for boarding houses of 1 space per 2 bedrooms; however this is negated by operation of the SEPP. Given that Council seeks a higher parking rate than that provided, it is considered that the provided parking should not be included in GFA calculations. Therefore, the proposed boarding house is considered to comply with the maximum FSR.

A number of submissions received raised objections to the proposed development on the grounds that it represented an overdevelopment of the site. Given that the proposal complies with the FSR, the overall development cannot reasonably be considered an overdevelopment of the site. This matter was also considered under the guidelines for building height and, as concluded, is considered acceptable.

Furthermore, the report prepared by de Witt Consulting submitted by the applicant in response to item 7 of the resolution of the JRPP of 28 July, 2011 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 NDCP 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.

Some submissions of objection note 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 amended 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 3m² 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 NDCP, '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 138m²
- Boarding house – Cleaner/garbage storage and laundry – This equates to 29m².

For the residential flat component of the development the additional 138m² and 3m² (excess motorcycle parking) combined with the submitted GFA calculated by deWitt Consulting results in an overall GFA of 6,616.2m². Based upon a site area of 7,435.5m² 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 29m² combined with the submitted GFA calculated by deWitt Consulting results in an overall GFA of 4,039.8m². Based upon a site area of 2,895.5m² 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 and reference is made to the provisions of the Draft Newcastle Local Plan, 2011.

The objectors submit that if these aspects are taken into consideration in 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’

The above definition for site area is deemed the most appropriate for this application

Solar access and other energy requirements

The application has been supported by a BASIX Certificate as required and is considered acceptable.

The proposed residential flat buildings are generally orientated in a north-south direction. The units on the northern ends of the building would receive good solar access. The remaining residential units are cross-over type design and therefore would still collectively enjoy good solar access throughout the day.

In summary it is considered that the proposed amended development maintains adequate levels of solar access for adjoining development and could not reasonably be refused on the grounds of overshadowing.

Views and Visual Privacy

Objection was raised to the proposed amended development on the grounds that it would impact upon the privacy of surrounding properties, particularly properties adjoining to the north.

The NDCP requires a minimum 9m separation to be provided between the windows of habitable rooms of facing dwellings that abut a public or communal street. This distance is to be increased to 12m for windows above first floor level. The proposed amended development readily satisfies this separation distance across Corlette Street to dwellings on the opposite side of the street.

The NDCP also requires that direct views between living area windows of adjacent dwellings are to be screened or obscured where:

- 'Ground and first floor windows are within an area described by taking a 9m radius from any part of the window of the adjacent dwelling. An area so defined is described as a 'privacy sensitive zone'.
- Other floor windows are within a privacy sensitive zone described by a 12m radius.'

Furthermore, the NDCP requires that direct views from living rooms of dwellings into the principal area of private open space of other dwellings are to be screened or obscured within a privacy sensitive zone described by a 12m radius. If privacy sensitive zones cannot be achieved the DCP requires appropriate screening.

The dwellings to the north of the site predominantly front Tooke Street, with Council's aerial mapping identifying rear setbacks of at least 13m to the rear walls of these dwellings. This, combined with the 5m setback of the proposed development, results in separation distances of at least 18m, thereby readily complying with the privacy sensitive zone. Furthermore, existing and proposed landscaping should ensure additional screening between the development and the adjoining properties.

Item 4 of the JRPP resolution of 28 July, 2011 expressed concerns about the proposed dwellings in the North West corner. In response, the proposed development 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 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.

In relation to the adjoining school to the south the NDCP does not provide any specific privacy requirements for non-residential landuse. The buildings are set back over 8m from the southern boundary and are generally not orientated in this direction. The landscape concept plan includes extensive planting adjacent to the southern boundary. Privacy impacts on the school site are considered acceptable.

The proposed amended development is considered to not affect any important view corridors.

Fencing and walls

The proposed fencing and walls that are orientated to public streets are considered acceptable in relation to streetscape appearance and maintaining surveillance of the street.

In relation to side boundary fences, the submitted Landscape Concept Plan identifies a 1.8m high double lapped and capped paling fence to part of the boundary. The remainder will either be retained or replaced. It is noted that part of the existing northern fencing comprises a 2.3m high metal fence which appears in good condition. The plan does not identify any fencing to the southern boundary. To maintain adequate privacy it is considered that as a minimum a 1.8m high fence should be erected on side boundaries. This has been addressed within the recommended conditions of consent (**Appendix A**).

Carparking

The provision of carparking has been discussed under Element 4.1 - Parking and Access. The access and parking areas are well integrated into the development and streetscape is considered acceptable in relation to the NDCP guidelines.

Heritage considerations

The site does not contain a heritage item nor is it within a Heritage Conservation Area (HCA). The site does adjoin the Cooks Hill HCA. This has been discussed in greater detail in consideration of NLEP 2003 Clause 33 earlier in the report.

Landscape design, security, services and site services

As indicated previously in this report, the application has been supported by a detailed Landscape Concept Plan and design report. The proposed development incorporates extensive landscaping along street frontages, side boundaries and internal communal areas. The proposed landscaping is of an adequate scale to assist in mitigating the apparent bulk of the development and also provides for increased privacy screening to adjoining properties. The proposed landscaping is considered acceptable in relation to the NDCP guidelines.

The security of the proposal is considered acceptable in relation to the NDCP guidelines and includes adequate entry control, including gates into communal landscaped areas and roller doors to basement car parks. The dwellings provide passive surveillance of the streets and internal communal areas.

The proposal is considered acceptable in relation to the NDCP guidelines relating to services. The proposed amended development incorporates storage for dwellings at the front of carparking spaces and shared entries to the buildings serve under the required maximum of 12 dwellings. Central bin storage areas are provided. A condition of consent has been recommended in the draft schedule of conditions (**APPENDIX A**) requiring group type mail boxes to be provided.

Subdivision

The proposed subdivision of the site is considered acceptable in relation to the proposed built form.

(a)(iia) - any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

(a)(iv) - any matters prescribed by the regulations

The proposal is considered to be satisfactory in this regard.

(b) - the likely impacts of the development

Density

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

Bulk and Scale

As discussed throughout this report, the 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.

Acoustic privacy

The proposed 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 Assessment prepared by Reverb Acoustics which assesses impacts upon these properties. The Assessment 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 Assessment and concurs with this recommendation.

The likely acoustic impacts of the proposal have been assessed by Council's Compliance Service Unit and are considered to be satisfactory subject to the recommended conditions of consent in **Appendix A**.

The Environmental Protection Officer has advised detailed assessment is as follows:

'The Acoustic Assessment prepared by Reverb Acoustics dated September 2010 has calculated the potential traffic noise impacts from nearby Union Street on the proposed residential units. The Acoustic Assessment prepared by Reverb Acoustics has also included other existing urban environment noise sources such as mechanical plant, people on the street, nearby sporting events, and site vehicles. The Acoustic Assessment prepared by Reverb Acoustics also noted the noise levels within the existing acoustic environment, dominated by traffic noise and urban noise sources, will exceed, within the internal spaces of the proposed development, the recommended criteria set out in Australian Standard, AS/NZS 2107 2000 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors .

The Acoustic Assessment prepared by Reverb Acoustics has provided a series of recommended acoustic treatments of windows and walls to ensure internal noise levels within the proposed development are satisfactory. In addition because peak vehicle noise was predicted to be above the sleep arousal criterion an acoustic fence along the north site boundary adjacent of the car park ramp is

recommended. The recommended acoustic treatments require incorporation into the design of the proposed residential development and a sign-off from a suitably qualified acoustical consultant is required. The implementation of the acoustic measures for the proposed residential buildings shall be addressed by an appropriate consent condition.

The proposed carpark exhaust or ventilation system has the potential to generate adverse noise impacts for neighbouring residential properties. A letter prepared by Reverb Acoustics dated 5 June 2011 has recommended a sound pressure level noise limit for the proposed carpark exhaust to ensure the plant complies with the night time project specific noise criteria. To ensure the plant does not exceed the recommended sound pressure level limit, a sign-off from the acoustic consultant is required. Certification of the carpark exhaust plant, in compliance with the recommended sound pressure level limit, will be addressed by an appropriate condition of consent.

Council also raised concern regarding the potential impacts of construction noise and vibrations. At Council request, Reverb Acoustic prepared a Construction Noise and Vibration Management Plan Residential Development 121-123 Union Street Cooks Hill NSW, Reverb Acoustics dated June This Management Plan outlines potential impacts and provides mitigation measures. Early excavation and piling is only expected to last approximately 10 weeks. The total project duration is projected to be approximately 70 weeks.'

Overshadowing of adjoining school

Objection was raised to the proposal 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 NDCP 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 proposal, albeit that it exceeds the NDCP height limit, would result in less overshadowing impact than the NDCP 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 NDCP 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 I**). 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'.

The submission by the Cooks Hill Community Group (CHCG) cites a Land and Environment case where overshadowing was a significant issue for a proposed development that was exceeding the height limit of a Development Control Plan. The applicant has provided the following statement:

'The relevant principal in this case is that a DCP and a LEP are the focal points for decision making but are not determinative. Accordingly the application should be considered on its merits having regards to the planning controls contained with these documents'

The cited court case is not relevant, in this instance, given that the areas of non-compliance will have minimal impact on overshadowing. 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, which is 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 National Park.

The submitted 'Supplementary Urban Design Assessment of Building Height' considered the likely impact on National Park in the following terms:

'The visual impact of the additional Union Street facade height from National Park is also considered negligible. The part of National Park opposite the development is an active recreation facility with multiple sports fields and courts. It is entirely open and devoid of trees, benches or other similar elements associated with passive recreation. Any visual consequences resulting from the modest amount of additional height proposed for Buildings A and B are considered immaterial because the open space is used for sporting activities, rather than passive recreation. Even if passive recreation facilities were to be introduced to this part of the park they would undoubtedly include additional tree plantings and the proposed development would have no significant adverse impacts.'

Objectors to the proposed development have prepared a photomontage which purports to show the proposal in its context as seen from National Park. There is reason to be concerned that this image does not accurately reflect either the existing context or the proposal. The row of trees along the edge of National Park adjacent to Union Street is not shown and there is no background vegetation taller than the single storey houses in the Conservation Area between the proposal and Tooke street. The top floor of the development is shown as white against a grey background, which increases its visual prominence. In addition, the hill and ridgeline in the background are cut out of the montage, which further exaggerates the visual impact of the proposal'.

The concerns relate to loss of views from the National 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.

A number of Land and Environment cases have been cited by Cooks Hill Citizens Group reflecting landscaping as a significant issue. The main principle from these

cases is that the use of landscaping should not be the primary means to safeguard against overlooking or the primary means to mitigate against bulk and scale. These cases are not considered relevant in the assessment of this application because the setback of the proposed buildings from adjoining properties is considered adequate. The bulk and scale of the proposed buildings are also deemed appropriate and has been discussed at length throughout this report.

Traffic

- Traffic Report

Council's Senior Traffic Consultant raised concerns about the original traffic report and requested additional information and clarification on a number of key points. A revised traffic report was submitted and reviewed by the officer. The officer provided the following comments:

'Having reinspected the site and read the arguments presented in the traffic report about the traffic conditions during school periods I am willing to support the proposal for the following reasons;

- *The AM peak for the school lasts approximately 30 minutes only but will coincide with the development peak. However provided suitable sight lines in accordance with AS2890.1-2004 are provided there is no reason why a suitable road safety environment would not exist at the site.*
- *The PM peak for the school will not coincide with PM development peak and provided suitable sight lines in accordance with AS2890.1-2004 are provided there is no reason why a suitable road safety environment would not exist at the site.'*

The officer is of the opinion that the narrow section of Corlette Street has some traffic management advantages in that it will slow traffic in the vicinity of the school and will discourage development traffic from heading south past the school, particularly during the school peaks. Therefore despite initial concerns, Council is now of the opinion that at least the section of Corlette Street along the school frontage should not be widened. However, widening of the section of Corlette Street along the frontage of the development may encourage vehicles to access the site from the north as well as improve driver visibility in the region of the proposed accesses and is recommended.

A number of conditions have been recommended and these conditions have been included in draft conditions of consent (refer to **APPENDIX A**).

- Vehicular access to Union Street

Item 2 of the JRPP resolution of 28 July, 2011 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. However, following reconsideration of the matter, the Traffic and Transport Section now supports 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 hydraulic 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 proposed 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 of 28 July, 2011 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 J**) 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 amended 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.

Social and Economic Impacts

- Social Impact

Documentation submitted with the development application includes a Social Impact Comment (SIC) in accordance with Council's adopted Social Impact Assessment Policy. The SIC states that the proposed development will contribute in a positive manner to an increased diversity and quantity of housing style and choice and will increase the resident population in accordance with Council's urban consolidation objectives.

Crime and public safety issues have also been considered in the SIC. The application was also referred to the Crime Prevention Officer, Newcastle Local Area Command of NSW Police, however no response has been received to date.

The SIC was reviewed by Council's Senior Strategist (Community Planning) who raised a number of points of concerns. These concerns are summaries below:

'The boarding house proposal notes (p.20-21 SIA) that the likely "profile of the boarding house will be:

- *70% student orientation (university, TAFE and senior high school as defacto boarders)*
- *20% professional people*
- *5% single men and women aged 50 years and over*
- *5% other including persons on pensions (other than aged), part-time employees and people with a mild disability."*

In terms of boarding house amenity, the provision of open space for residents is quite limited and does offer the opportunity to link with the kitchen and dining room areas. There does not appear to be any consideration for the provision of open space where residents can sit or socialise in the sun. Within the boarding house complex, both kitchen and dining room areas overlook car entry points which may be good for passive surveillance but not necessarily providing a reasonable level of amenity for residents.

There is also a question as to whether either of the communal living rooms of the boarding houses receives adequate winter sunlight as defined under the SEPP. The communal living areas also appear to be quite limited in size compared to the number of residents.

A Plan of Management (POM) is recommended by the Land and Environment Court (as a planning principle) to encourage consistent, adequate and appropriate consideration of and decision making in regards to the social impacts of development proposals. Therefore, potential issues of amenity, safety and security can be comprehensively addressed at a number of levels within a POM'.

The applicant provided the following response:

'A number of issues have been raised in regards to the amenity of the boarding hours for future occupants. Council's review commented on the provision of open space, location of communal living rooms and the location of the kitchen and dining rooms. The provisions of communal space is consistent with the requirements of the Affordable Rental Housing SEPP and hence can not be considered ground for refusal. The location and size of internal communal areas

such as living rooms, kitchen and dining rooms is largely determined by security and function. The main point of entry for the boarding house building is adjacent to these communal spaces and this should not be altered within the overall design, as any change would compromise active and passive surveillance of these areas'.

The proposed boarding house complies with the provisions of the Affordable Rental Housing SEPP and provides for a reasonable level of amenity for the future occupants.

Council's Senior Strategist recommended a condition requiring the proposed development obtain a licence under s12 of the *Youth and Community Services Act, 1973* if such a licence is required under that Act. A condition has been included in the draft schedule of conditions (**APPENDIX A**) and should ensure that any necessary approvals are obtained from relevant authorities.

A number of submissions raised concerns about the potential negative social impact of the proposed boarding house. The applicant submitted a draft plan of management which has been incorporated into the recommended conditions of consent. A number of other conditions have been recommended to ensure that the proposed facility is managed to minimise any potential impact on adjoining residents.

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 cumulative negative social impact of the proposal on existing and new residents of the precinct. The submission notes that the support documentation for the application fails 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 submission was reviewed by Council's Senior Strategist (Community Planning) who made the following comments.

'The submission made by Cooks Hill Community Group covers a wide range of points. I note that this submission states that the boarding house will have 224 lodgers. The boarding house is single person occupancy for all rooms and is stated to have 112 lodgers.'

'A number of points raised in this submission in regards to the potential profile of residents, the reasons for requiring such accommodation, and issues around tenure and lack of tenancy agreements are noted. There is a high level of awareness in the community services sector of the challenges associated with boarding houses and this has been recognised by recent reports such as;

- NSW Interdepartmental Committee (IDC) on Reform of Shared Private Residential Services Boarding House Reform Discussion Paper (December 2010)*
- NSW Ombudsman, More than board and lodging: the need for boarding house reform, (August 2011)*

As a condition of consent, it was previously recommended that a complaints mechanism for boarding house residents be outlined. I would also suggest the inclusion of operational standards, as proposed by the IDC, in regards to

- Record keeping requirements eg receipts for tariffs and fees charged*
- Arrangements for establishing and managing tenancy agreements*
- Residents rights to service providers and advocates*
- Power of entry for monitoring purposes'*

During the initial public notification Council received a letter from the NSW Housing in which, part, states:

'Housing NSW does not object to the development itself and commends the redevelopment of the site for a range of housing types and sizes, particularly the boarding house component that will offer housing for people housing need that are not able to be fully accommodated by the private sector, Housing NSW or community housing. This is fully supported'

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.

The concern raised by the objectors regarding a possible reduction in property values in the vicinity of the site as a result of the proposed development is not considered to be justified. The proposal will not adversely impact on the amenity of the adjoining premises or the neighbourhood generally and, accordingly, is not likely to detract from current market values. Indeed, the proposed development may well lead to an increase in the value of nearby properties as it will serve to confirm redevelopment potential.

- Economic Impacts

The total cost of the development exceeds \$34 million dollars. The project is expected to have a significant flow on effect on the local economy in terms of construction jobs, accommodation and raw materials.

The applicant has provided the following statement on the economic benefits of the proposal:

'Using the total project cost of \$25.9 million, the potential employment⁴ and consequential income effects are summarised as follows:

Employment: Direct 162 jobs Indirect 260 jobs

Income (\$2010) Direct \$8,150,000

Indirect \$13,080,600'

In summary, the proposed development would not be likely to have any unreasonable social or economic impacts in the locality.

(c) the suitability of the site for development

The site is within a Mine Subsidence District. The Mine Subsidence Board has assessed the proposal and has issued their General Terms of Approval subject to conditions of consent as attached at **APPENDIX A**.

The possible impact of localised flooding on the proposal was discussed earlier in this report.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

The site is located between Union Street and Corlette Streets and, as the Statement of Environmental Effects submitted with the development application states, is located in close proximity to public transport, educational, recreational, and retail and commercial sectors within a suburb of relatively flat topography that encourages pedestrian and bicycle movements

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

This report has addressed the various concerns raised in the submissions received in response to the public notification and referral procedures under the Act and Regulation.

(e) the public interest

The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

Conclusion

The proposed development is seeking a variation to Council's 10 metre height limit. While this is a significant concern for surrounding residents, the applicant has demonstrated that compliance with the 10 metre height limit under the Newcastle Development Control Plan is unreasonable and unnecessary, in this case. Other concerns about increased traffic and potential social impacts have been addressed throughout this report.

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the *Environmental Planning & Assessment Act, 1979* (as amended) and is considered to be acceptable subject to compliance with appropriate conditions.

Accordingly, it is recommended that the application be approved on the basis of the submitted plans, subject to the nominated conditions of consent.

Recommendation

That the Joint Regional Planning Panel grant consent to DA 10-1511, subject to the conditions contained in Appendix A.

APPENDIX A - Conditions of Consent

A General Conditions

A1 The proposed development being carried out strictly in accordance with:

- (a) the details set out on the submitted plans prepared by CKDS Architecture,
 - DA – 104, Issue AC, dated 18 August 2011
 - DA – 201, Issue AL, dated 18 August 2011
 - DA – 202, Issue AH, dated 18 August 2011
 - DA – 203, Issue AE, dated 18 August 2011
 - DA – 204, Issue AE, dated 18 August 2011
 - DA – 205, Issue AE, dated 18 August 2011
 - DA – 206, Issue AE, dated 18 August 2011
 - DA – 311, Issue AC, dated 18 August 2011
 - DA – 312, Issue AC, dated 18 August 2011
 - DA – 411, Issue AC, dated 18 August 2011
 - DA – 412, Issue AC, dated 18 August 2011
- (b) The Statement of Environmental Effects dated October 2010 prepared by ADW Johnson, and the following reports:
- (c) The applicant's letter by CKDS Architecture (outlining amended proposal) received 22 August 2011
- (d) The applicants' letter by ADW Johnson, dated 18 August 2011
- (e) Urban Design and Assessment of Building Heights Report dated 5th May 2011
- (f) Heritage Impact Assessment Report, prepared by Heritas dated 26 October and the amended Heritage Report dated 2 May 2011
- (g) External Finishes – Perspective and photomontage prepared by CKDS Architects
- (h) Northrop Engineering – Additional information letter dated 7 April 2011
- (i) Concept Stormwater Management Strategy and Flooding Report, Revision B, dated Sept. 2010, prepared by Northrop.
- (j) Supplementary letter report from Northrop to CKDS Architecture dated 7/04/2011.
- (k) Proposed Stormwater and Levels Plan prepared by Northrop, Drawing No. C02DA, Rev. E, dated 23/08/11.
- (l) Traffic Management and Safety Consultants dated October 2010 and the supplementary traffic reports dated April 2011 and 9 August 2011.
- (m) Preliminary Geotechnical and Environmental Advice dated 25 August 2010 prepared by Coffey Geotechnics
- (n) Arborist Report prepared by Terras Landscape Architects (revision D)
- (o) BASIX Report
- (p) Building Compliance Report dated October 2010.
- (q) State Environmental Planning Policy 65 – Design Quality of Residential Flat Development – Compliance Report – dated 27 October 2010.
- (r) Socio-Economic Impact Assessment dated November 2010
- (s) Phase 1 and Limited Phase 2 Environmental Site Assessments prepared by RCA Australia, June 2011.

and on the Application form, except as otherwise provided by the conditions of this consent.

Note: Any proposal to modify the terms or conditions of this consent whilst still maintaining substantially the same development to that approved, will require the submission of a formal application for Council's consideration in

accordance with the provisions of Section 96 of the *Environmental Planning and Assessment Act, 1979*.

Reason: To confirm and clarify the terms of Council's approval.

- A2 The proposed boarding house development being operated in accordance with the definition of a 'boarding house' contained in the State Environmental Planning Policy (Affordable Rental Housing) 2009) being:

'a building:

- (a) that is wholly or partly let in lodgings, and
- (b) that provides lodgers with a principal place of residence for 3 months or more, and
- (c) that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
- (d) that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more ledgers, but does not include backpackers' accommodation, a group home a serviced apartment, seniors housing or hotel or motel accommodation.'

Reason: To confirm the terms of Council's approval and the basis of Council's consideration under State Environmental Planning Policy (Affordable Rental Housing) 2009.

- A3 The boarding house component of the development having a maximum of one boarder per boarding room (total of 112 boarders).

Reason: To confirm and clarify the terms of Council's approval.

- A4 The boarding house manager shall be provided with a designated room and carparking space on site. Contact details of the boarding house manager, including a mobile phone number, shall be available to the public by way of signage near the entrance of the boarding house. The contact details shall be kept up to date.

Reason: To confirm and clarify the terms of Council's approval.

- A5 The proposed development being carried out in accordance with the recommended acoustic treatment outlined in the following reports:

- (a) Noise Impact Assessment prepared by Reverb Acoustics, dated September 2010,
- (b) Reverb Acoustics letter to Parkway Accommodation Pty Ltd C/- CKDS Architecture Pty Ltd regarding additional information request related to car park exhaust fans noise, dated 5 June 2011,
- (c) Construction Noise & Vibration Management Plan Residential Development 121-123 Union Street Cooks Hill NSW prepared by Reverb Acoustics dated June 2011,
- (d) Letter to Parkway Accommodation Pty Ltd C/- CKDS Architecture Pty Ltd regarding Council Concerns – Construction Activities Residential Development 121-123 Union Street, Cooks Hill prepared by Reverb Acoustics dated 13 July 2011
- (e) Letter to Parkway Accommodation Pty Ltd C/- CKDS Architecture Pty Ltd regarding Design Change – New Driveway NW Corner of Site Residential Development 121-123 Union Street, Cooks Hill prepared by Reverb Acoustics dated 17 August, 2011.

Written certification from the said consultant confirming that the recommended acoustic treatment has been implemented in accordance with the requirements is to be submitted to the Principal Certifying Authority prior to the commencement of any noise generating activity within the premises

Reason: To ensure that appropriate noise control measures are implemented

A6 The recommendations of the Arborist Report prepared by Terras Landscaping shall be complied with including the following conditions:

- (a) Utilise transplantable trees where possible within proposed landscape works. This can be done by extracting the trees wrapping the root ball and storing onsite with a maintenance regime in place until such time as the proposed landscaping works are undertaken. Trees that are unable to be used onsite should be offered to tree transplanting companies which will generally remove from site at no cost.
- (b) Ensure works along the northern boundary do not encroach any further than the existing brick retaining wall to protect trees on adjoining properties.
- (c) Trees located on the southern boundary within the Grammar School's grounds must be protected. A suitably qualified arborist must be engaged to prepare a tree protection plan and make recommendations for the tree's ongoing health during and post construction.
- (d) Trees that are removed are to be dismantled and mulched with the mulch being utilised within the proposed landscape works.
- (e) Ensure all tree removal work is carried out by or supervised by a qualified tree worker (AQF Level 3 or equivalent) in accordance with the NSW WorkCover Code of Practice for the Amenity Tree Industry, 1998.
- (f) Undertake appropriate NATSPEC quality replacement plantings to replace lost canopy cover and amenity.

Reason: To confirm and clarify the terms of Council's approval.

A7 An appropriate form of on-site management with responsibility for the operation, administration, cleanliness and fire safety of the premises, including compliance with the Plan of Management and Emergency Management and Evacuation Plan, must be provided to the premises. The name and 24 hour contact phone number of the accommodation manager or resident caretaker must be prominently displayed in the reception area of the premises.

Reason: To confirm and clarify the terms of Council's approval.

B Conditions which must be satisfied prior to the demolition of any building or Construction

B1 Nil.

C Conditions which must be satisfied prior to the issue of any construction certificate

C1 Section 94A Levy

A total monetary contribution of \$345,745 being paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note: i) This condition is imposed in accordance with the provisions of the *Newcastle City Council S94A Development Contributions Plan 2006* operational from 15 January 2007. A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

ii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

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

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

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

Reason: To assist Council in the provision of public facilities within the local government area in response to the additional demand likely to result from the proposed development.

C2 All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent being implemented and a comprehensive landscape design plan and specification in respect thereof being prepared by a qualified landscape designer and being submitted with a Construction Certificate application.

Note: i) The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Council's adopted Newcastle Development Control Plan, 2005 and is to include cross sections through the site where appropriate, proposed contours or spot levels, botanical names, quantities and container size of all proposed trees, shrubs and ground cover, details of proposed soil preparation, mulching and staking as well as treatment of external surfaces and retaining walls where proposed, drainage, location of taps and the nominated maintenance periods.

- ii) A Landscape Practical Completion Report is required to be submitted to the Principal Certifying Authority by the consultant responsible for the landscape design plan prior to occupation of the premises or any portion of the premises that is the subject of this consent. The report is to verify that all landscape works have been carried out in accordance with the approved landscape design plan to a high professional standard and that an effective maintenance program has been commenced.

Reason: To ensure that adequate and appropriate provision is made for landscaping of the site in association with the proposed development, to enhance the external appearance of the premises and to contribute to the overall landscape quality of the locality.

- C3 Fences being constructed in a high quality presentation style of attractive appearance and of sufficient height to afford adequate privacy to residents in accordance with the performance criteria and provisions of Council's adopted Newcastle Development Control Plan, 2005. Full details are to be included in the documentation for a Construction Certificate application.

Reason: To ensure proposed fences and screen walls provide adequate privacy and do not unreasonably detract from the external appearance of the development.

- C4 The applicant complying with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's certificate of compliance is to be included in documentation for a Construction Certificate application.

Reason: To ensure that water supply and sewerage services are properly connected to the proposed development in the public interest.

- C5 On-site parking accommodation being provided for a minimum of 136 cars (115 resident & 21 visitor) and 7 motorbikes for the residential units, as well as 13 car, 23 motorbike and 113 secure bicycle spaces for the boarding house. Such facilities being set out generally in accordance with the minimum parking layout standards indicated in *Australian Standard AS 2890.1-2004 & 2890.6-2009 "Parking facilities and Element 4.1 of Council's Newcastle DCP 2005*. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure the provision of adequate on-site parking facilities commensurate with the demand likely to be generated by the proposed development.

- C6 All proposed driveways, parking bays and vehicular turning areas being constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. All driveways and manoeuvring areas are to be designed in accordance with Australian Standards AS 2890.1 – 2004 'Parking facilities – Off-street car parking' Full details are to be included in documentation for a Construction Certificate application.

Reason: To facilitate the use of vehicular access and parking facilities and to minimise any associated noise and dust nuisance.

- C8 All external ramps and pathways within the site required to be accessible for persons with disabilities being designed and constructed in accordance with AS.1428 – 'Design for Access and Mobility'. Kerb ramps are to be provided adjacent to disabled parking bays. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure appropriate disabled persons access is provided for this development in accordance with the appropriate standards.

- C9 Landscaping and any other obstructions to visibility should be kept clear of or limited in height to 0.6 m in the 2.5 metre by 2 metre splay within the property boundary each side of the driveway entrance. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure adequate sight distance to traffic on the frontage road and sight distance to pedestrians on the frontage road footway.

- C10 Wheel stops being provided along the front of parking spaces in accordance with AS 2890.1 Parking. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure safe and convenient use of on-site parking and to minimise vehicular and pedestrian conflict.

- C11 A pavement design report for the construction of the internal access driveway and carpark is to be prepared and certified by a practising geotechnical engineer, and such being included in documentation for a Construction Certificate application.

Reason: To ensure the future integrity of the internal road network and carpark of the development.

- C12 Appropriate signage being erected within the site at the Union Street vehicular access clearly indicating left turn movements only are permitted upon exit and no right turn in manoeuvres are permitted from Union Street. Full details to be included in the documentation for a Construction Certificate application.

Reason: To control vehicular movements/activity in association with the operation of this development in the interest of public safety and road efficiency.

- C13 Prior to the release of the Construction Certificate the applicant shall prepare an operational Plan of Management for the boarding house. The operational Plan of Management shall address the following as a minimum:

- (a) Maintenance and fire safety in the building;
- (b) Measures to ensure that guest numbers do not exceed those proposed numbers;
- (c) Measures to minimise unreasonable impact to the habitable areas of adjoining premises;
- (d) Proposed staffing arrangements, including location and contact details of the site manager or resident caretaker;
- (e) Prominent display of appropriate house rules eg guest behaviour, activities and noise, visitor policy, operating hours of outdoor common areas, use of alcohol and/or drugs;
- (f) Waste minimisation and recycling; and

- (g) Professional cleaning details and vermin control (as a minimum, shared facilities such as kitchens and bathrooms shall be cleaned to a professional standard at least once a week.)
- (h) Safety and security measures for all residents may include but not be limited to such things as: Internal signage indicating the property caretaker or manager and contact number, emergency contact numbers for essential services such as fire, ambulance, police, and utilities such as gas, electricity, plumbing, installation of perimeter lighting, appropriate fencing and secure gates, all residents to have own room keys, keys for security entrance doors be made available to essential services such as fire brigade in case of emergency and suitable provision be provided for residents to ring emergency services in the event of an emergency, i.e. provision of a landline telephone.
- (i) Record keeping requirements eg receipts for tariffs and fees charged
- (j) Arrangements for establishing and managing tenancy agreements
- (k) Residents rights to service providers and advocates
- (l) Power of entry for monitoring purposes

Reason: To ensure that the proposed boarding house is managed in an appropriate way to minimise disturbance to the adjoining residents and the internal occupants of the facility.

C14 The development being designed to satisfy the requirements of the flood management element of the Newcastle DCP 2005 as outlined in the Concept Stormwater Management Strategy and Flooding Report, Revision B, dated Sept. 2010, prepared by Northrop Engineers. Full details to be included in documentation for a Construction Certificate application.

Reason: To minimise the extent of property damage and the risk of injury in the event of future flooding of the site.

C15 All stormwater runoff from the proposed development being managed in accordance with the requirements of the Water Management Element 4.5 of the Newcastle Development Control Plan 2005 and the associated Technical Manual as indicated on the Proposed Stormwater and Levels Plan prepared by Northrop Engineers, (Drawing No. C02DA, Rev. E, dated 23/08/11). Full details to be included in documentation for a Construction Certificate application.

Reason: To ensure that site stormwater runoff is properly managed in a safe and sustainable manner.

C16 Any alteration to natural surface levels on the site being undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties as a result of the development. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure that any such proposed works do not disrupt existing natural stormwater flows in the vicinity.

C17 A flood emergency response plan being prepared by independent consultants experienced in flood management and put in place by the applicant prior to occupation of the site for its intended use. The plan to be updated and maintained by the occupiers; to include an education and awareness component for the residents and detailed evacuation procedures where required; to interface with the local State Emergency Services plan (where appropriate) and to include provisions for any third parties likely to be involved.

The flood emergency response plan should address the following components:

- (a) likely flood behaviour
- (b) potential flood warning
- (c) education awareness program
- (d) evacuation and evasion procedures
- (e) evacuation routes and flood refuges
- (f) flood preparedness and awareness procedures for residents and visitors

Considerations should include the full range of flood risks, the proposed use of the site, site access constraints and local area evacuation routes to high ground. As much as possible, the plan should be aimed at self-directed evacuation or evasion to minimise the draw on limited State Emergency Services resources. Full details to be included in documentation for a Construction Certificate application

Reason: To adequately manage the risk of life, property and all potential adverse flood impacts within the flood environment.

- C18 A copy of the stormwater drainage design plans approved with the Construction Certificate with "work as executed" levels indicated, shall be submitted to the Principal Certifying Authority and Newcastle City Council prior to occupation of any part of the development. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

Reason: To ensure the stormwater system is constructed in such a manner that achieves the design's objectives.

D Conditions which must be satisfied prior to the commencement of any development work

- D1 Prior to commencement of site works the developer submitting to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.

The Construction Traffic Management Plan is to be prepared by a Roads & Traffic Authority accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3 – 2002. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve.

Reason: To control vehicular and pedestrian traffic movements in the public road reserve during the construction phase

- D2 The remedial action plan prepared by RCA Australia dated July 2011 and any associated plans on which it relies being reviewed and approved by a NSW Environment Protection Authority accredited site auditor prior to commencement of any construction work.

Reason: To ensure the details of the remediation complying with the appropriate environmental and public health standards.

- D3 Prior to the commencement of any works, the principal site contractor is to provide written notification to the all surrounding and adjoining landowners of the intention to

start works, advising details of the scheduling of works and nominating a contact person for any enquires. In addition, the principal site contractor is to operate a telephone complaints line during the remediation and construction phases for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by vehicle or mobile plant associated with site works. The principal site contractor is also to erect prominent signage at access points to the site indicating the name of the principal site contractor and a 24-hour telephone contact number. A log of complaints received on the telephone complaints line and any action taken in response is to be made available to Council officers upon request.

Reason: To facilitate contact between affected parties and the principal site contractor during the construction period and ensure that environmental impacts or incidents arising from site operations are monitored and addressed promptly.

- D4 A dilapidation survey being conducted by a suitably qualified consultant on all buildings considered to be at risk of damage from site works as determined by the said consultant, the required consultant's report to be submitted to Council prior to the commencement of site works.

Reason: To confirm the terms of consent and allow assessment of vibration impacts on neighbouring properties if required.

E Conditions which must be satisfied during any development work

- E1 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Reason: To confirm a condition of consent prescribed by the *Environmental Planning & Assessment Regulation 2000*.

- E2 If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land (including any public road or place), the person causing the excavation to be made:

- a) must preserve and protect the building from damage, and
- b) if necessary, must underpin and support the building in an approved manner, and
- c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Reason: To confirm a condition of consent prescribed by the *Environmental Planning & Assessment Regulation 2000*.

- E3 Construction/demolition work that generates noise that is audible at residential premises being restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm;
- Saturday, 8:00 am to 1:00 pm;

With no noise from construction/demolition work to be generated on Sundays or Public Holidays.

Reason: To prevent 'offensive noise' from construction/demolition sites in order to safeguard the amenity of the neighbourhood

- E4 No construction/demolition work being undertaken on a Public Holiday or on a Saturday or Sunday adjacent to a Public Holiday

Reason: To safeguard the amenity of the neighbourhood.

- E5 Council's 'PREVENT POLLUTION' sign being erected and maintained in a conspicuous location on or adjacent to the property boundary so that it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of construction work.

Note: Council's 'PREVENT POLLUTION' sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter at 282 King Street Newcastle or at the Master Builders Association office.

Reason: To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

- E6 Building demolition being planned and carried out in accordance with Australian Standard AS 2601 - 2001 – 'The Demolition of Structures'.

Reason: To minimise the risk of injury or damage to property as a result of the proposed demolition.

- E7 Any building waste containers used in association with the proposed demolition being located on the site where possible.

Note: Where this is not feasible, application must be made for Council's approval to position the container on the adjacent public road in accordance with Council's adopted Building Waste Container Policy.

Reason: To ensure that such containers are so positioned as to not endanger pedestrian or vehicular traffic movement.

- E8 The owner/demolisher ensuring that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

Reason: To ensure that the proposed demolition is undertaken in a manner that does not intrude upon adjacent public or private property.

- E9 All demolition material incapable of being reused in restoration works being removed from the site and the site being cleared and levelled.

Note: Where reusable building materials are to be stored on site for use in future building works, such materials are to be neatly stacked at least 150 mm above the ground.

Reason: To safeguard the amenity of the neighbourhood and ensure compliance with appropriate public health and hygiene standards.

E10 A Hazardous Substances Management Plan being prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard AS2601: 2001 – 'The Demolition of Structures.' A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.

Reason: To ensure hazardous substances are identified and recommendations made for their appropriate management during demolition.

E11 The demolition works being undertaken in accordance with Australian Standard AS2601: 2001 – 'The Demolition of Structures' and the following requirements:

- (a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development;
- (b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by WorkCover NSW;
- (c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request;
- (d) Seven working days notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and Workcover NSW telephone number (49212900).
- (e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

Reason: To ensure demolition works including the removal or handling of hazardous substances is undertaken in accordance with appropriate standards and to protect public health and the environment.

E12 A dwelling type vehicular crossing 6m wide being constructed across the public footway at the proposed driveway entrances/exits at no cost to Council and in accordance with Council's A17 Series (Concrete Vehicular Crossings) design specifications and such crossing being properly maintained.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the *Roads Act 1993*. For further information contact Council's Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

Reason: To ensure the provision of adequate clearly defined and properly constructed means of all-weather vehicular access to the site in order to encourage the use of on-site parking facilities and in the interest of maximising vehicular and pedestrian safety and convenience.

E13 Any redundant existing vehicular crossings being removed at no cost to Council and the public footway and kerb being restored to match the existing infrastructure and being completed prior to the issuing of a Final Occupation Certificate for the proposed development.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the *Roads Act 1993*. For further information contact Council's Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

Reason: To clarify site access arrangements in the interest of traffic and pedestrian safety, as well as road efficiency, to maximise kerbside parking opportunity and to ensure that reinstatement work is undertaken to an appropriate standard.

E14 Any necessary alterations to public utility installations being at the Developer/Demolisher's expense and to the requirements of both Council and the appropriate authorities.

Reason: To ensure that any required alterations to public utility infrastructure are undertaken to acceptable standards and without demands on public sector resources.

E15 No work within the public road being commenced until Council's separate written approval has been obtained pursuant to Section 138 of the *Roads Act 1993*.

Note:

- 1) A separate road works application is required for the works to be undertaken in the public road.
- 2) Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be submitted to Council for approval with the Road Works application.
- 3) An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council's Development & Environment Section in order to confirm this fee.

Reason: To ensure that any work within the public road is carried out in accordance with Council's and the Roads and Traffic Authority's requirements and under Council supervision.

E16 A temporary protective crossing being provided over the footway for vehicular traffic before building operations are commenced. This approval does not permit access to the property over any adjacent private or public land.

Reason: To ensure public safety and protection of public assets.

E17 All vehicular movement to and from the site being in a forward direction.

Reason: To ensure that the proposed development does not give rise to vehicle reversing movements on or off the public road with consequent traffic accident potential and reduction in road efficiency.

E18 Appropriate erosion protection and soil stabilisation measures being designed and implemented during site works in accordance with the requirements of the *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1* (the "Blue Book") published by Landcom, 2004.

Reason: To control soil erosion and prevent sedimentation of surrounding lands.

E19 Appropriate dust control measures being implemented prior to the commencement of works and being maintained during the period of construction to control dust generated from construction activities, soil stockpiles and exposed areas. A record outlining procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions, will be maintained on-site and made available to Council officers upon request

Reason: To ensure appropriate dust control measures are implemented in order to protect the existing amenity of the area.

E20 Any excavated material to be removed from the site being assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) '*Waste Classification Guidelines Part 1: Classifying Waste*'.

Reason: To prevent environmental pollution and to ensure observance of appropriate health standards.

E21 Any fill material imported into the site being Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.

Reason: To ensure that any imported fill is of an acceptable standard for environmental protection purposes.

E22 Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.

Reason: To ensure that any imported fill is of an acceptable standard for environmental protection purposes.

E23 A revised construction management plan being prepared by an appropriately qualified consultant and the health aspects of the plan reviewed and agreed by an Occupational Hygienist. The plan is to address the management of contamination during the construction and remediation works on site, and is to include the health and safety procedures and any air monitoring requirements to ensure environmental health standards are met. The plan is to be submitted to the NSW Environment Protection Authority accredited site auditor for approval and the approved plan is to be submitted to Council and the Principal Certifying authority prior to the commencement of any

construction work on the site. All construction works are to be carried out in accordance with the approved plan.

Reason: To ensure management controls are implemented and enforced in order to maintain compliance with appropriate environmental and public health standards.

E24 All remediation works on the site being carried out in accordance with the Remedial Action Plan approved by the site auditor, and the conditions of this consent.

Reason: To ensure the site is suitable for the intended use and to comply with public health standards.

E25 Continuous monitoring of vibration levels in accordance with the Department of Environment Climate Change and Water NSW guidelines being conducted on any commercial buildings, school buildings, and residential buildings identified as being likely to be unreasonably impacted by vibration due to site works as determined by a suitably qualified consultant. The vibration monitoring system being designed and operated to allow immediate notification to the site supervisor of vibration levels which are likely to result in the guideline levels being exceeded at any of the affected buildings.

Reason: To confirm the terms of consent, allow assessment of vibration impacts on neighbouring properties and ensure compliance with the relevant assessment criteria.

E26 All air, noise and vibration monitoring results obtained from monitoring conducted during the remediation and construction on the site is to be made available to Council officers upon request.

Reason: To minimise the potential for environmental pollution and protect the amenity of the neighbourhood.

F Conditions which must be satisfied prior to any occupation or use of the building

F1 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works being restored to match existing conditions at the Developer's/Demolisher's expense.

Reason: To ensure that the required restoration is undertaken to acceptable standards and without demands on public sector resources.

F2 Prior to selection and installation of mechanical plant, including car park exhausts, noise emission data for mechanical plant items are to be reviewed by an appropriately qualified acoustic professional to ensure cumulative Sound Power Levels within the rooftop plant room does not exceed 65dB(A) at a distance of 1m in accordance with the recommendations of the Reverb Acoustics report dated September 2010. Certification of the appropriateness of the equipment and installation location by an appropriately qualified acoustic professional is to be prepared and submitted to the Principal Certifying Authority and Council prior to the issue of any occupation certificate.

Reason: To ensure appropriate selection of mechanical plant and noise control measures in order to protect the existing amenity of the neighbourhood.

- F3 A revised long term management plan being prepared for the ongoing management of contamination remaining on site following remediation. The plan being submitted to the NSW Environment Protection Authority accredited site auditor for review and approval and reference in the site audit statement. A copy of the plan being submitted to Council and the PCA prior to issue of any occupation certificate.

Reason: To ensure ongoing management controls are implemented and enforced in order to maintain compliance with appropriate environmental and public health standards.

- F4 A Validation and Monitoring report and a Site Audit Statement certifying the land is suitable for the intended use being submitted to Council and the Principal Certifying Authority upon completion of remediation and validation works and prior to issue of issue of any occupation certificate.

Reason: To ensure the site remediation is completed and the site is suitable for the intended use.

- F5 A 'Site Access Management Plan' being prepared by the applicant to address the operation of the Union Street vehicular access and such stipulating that this access is to operate as a left-in /left out access only. Under no circumstance are vehicles permitted to make right turn in or right turn out manoeuvres. The Plan is to be implemented prior to any occupation of the residential units.

Reason: To control vehicular movements/activity in association with the operation of this development in the interest of public safety and road efficiency.

- F6 The Developer designing and constructing the following works within Corlette Street and Union Street adjacent to the site at no cost to Council and in accordance with Council's guidelines and design specification, such works to be completed prior to issue of any occupation certificate:

- (a) Road pavement
- (b) Road shoulder pavement
- (c) Kerb and gutter
- (d) Footway formation
- (e) Foot paving
- (f) Associated drainage works

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to commencement. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Note: An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council's Development & Building Services Section in order to confirm this fee.

Reason: To ensure that public road facilities are upgraded to an appropriate standard having regard to the additional traffic movement likely to be generated by the proposed development and suitably authorised.

- F7 The developer designing and constructing the widening of Corlette Street to match the existing kerb alignment at the Tooke Street intersection along the frontage of the site at no cost to Council and in accordance with Council's current construction requirements. Such works are to be completed prior to issue of any occupation certificate.

Reason: To ensure that public road facilities are upgraded to an appropriate standard having regard to the additional traffic movements likely to be generated by the proposed development.

Note: The Developer is advised to confer with Council's Development & Building Services Section in order to confirm Council's design requirements and construction standards prior to the commencement of the civil works within the public road.

- F8 Bus shelters being provided in accordance with Council's requirements and at no cost to Council at the bus stops designated as servicing the subject development. These bus stops are the 4 closest in Union St (either direction of the development site on both sides of the road) and the 2 closest to the site in Parkway Ave (each side of the road). Full details shall be submitted and approved with the application under section 138 of The Roads Act 1993. Such works are to be completed prior to issue of any occupation certificate.

Note: This may require rectification or replacement of existing structures to ensure that they meet Council and the Newcastle Buses & Ferries standards

Reason: To ensure that adequate and appropriate facilities are provided for residents utilising public transport.

- F9 A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and Newcastle City Council prior to occupation of any part of the development. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

Reason: To ensure the stormwater system is constructed in such a manner that achieves the design's objectives.

- F10 The proposed visitor parking bays being clearly indicated by means of signs and/or pavement markings.

Reason: To encourage the use of the proposed on-site car parking facilities and thereby minimise kerbside parking in the adjacent public road as a result of the proposed development.

- F11 The vehicular entrance and exit driveways and the direction of traffic movement within the site being clearly indicated by means of reflectorised signs and pavement markings.

Reason: To ensure that clear direction is provided to the drivers of vehicles entering and leaving the premises in order to facilitate the orderly and efficient use of on-site parking spaces and driveway access and in the interest of traffic safety and convenience.

- F12 The developer being responsible for the provision of additional regulatory signage and all adjustments to and/or relocation of existing regulatory signage as part of this development at no cost to Council and in accordance with Council requirements, such works to be implemented prior to issue of any occupation certificate.

Note: Alterations to regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval.

Reason: To ensure that public road facilities are upgraded to an appropriate standard having regard to the additional traffic movement and pedestrian activity likely to be generated by the proposed development.

- F13 Written certification from a Practicing Geotechnical Engineer that the internal access driveway and carpark has been constructed in accordance with the geotechnical requirements is to be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure the future integrity of the internal access driveway and carpark of the development.

- F14 An acoustic fence being constructed above ground level along the northern boundary of LOT: 2 DP: 1050041 adjacent to the Corlette Street car park entrance. A fence must extend from the North-East corner of LOT: 2 DP: 1050041 and continue west for 20 metres or a greater distance if required by the certifying acoustic consultant. The fence is to be a lapped and capped timber fence or materials with similar or greater acoustic properties, to a height of 1800mm, and maintained such that no significant gaps exist in the fence.

Reason: To ensure appropriate noise control measures are implemented and amenity of the area is protected.

- F15 An acoustic fence being constructed above ground level along the northern boundary of LOT: 2 DP: 1050041 adjacent to the Union Street car park entrance. A fence must extend from the NW corner of LOT: 2 DP: 1050041 and continue east for 10 metres past the end of the carpark entry or a greater distance if required by the certifying acoustic consultant. The fence is to be a lapped and capped timber fence or materials with similar or greater acoustic properties, to a height of 1800mm, and maintained such that no significant gaps exist in the fence.

Reason: To ensure appropriate noise control measures are implemented and amenity of the area is protected.

- F16 The fencing to the northern side boundary is to be otherwise a minimum 1.8 m high, lapped timber paling fence, or equivalent, being erected in consultation with the adjoining owners involved.

Note: Any dispute which may arise between the developer and the adjoining property owners in respect of this matter is to be resolved in accordance with the provisions of the *Dividing Fences Act, 1991*.

Reason: To minimise any adverse impact which the proposed development may have upon the neighbouring dwellings in terms of noise nuisance or loss of privacy.

- F17 A 1.8 m high, lapped timber paling fence, or equivalent, being erected along the southern boundary of the site in consultation with the adjoining owners involved.

Note: Any disputation which may arise between the developer and the adjoining property owners in respect of this matter is to be resolved in accordance with the provisions of the *Dividing Fences Act 1991*.

Reason: To minimise any adverse impact which the proposed development may have upon the neighbouring dwellings in terms of noise nuisance or loss of privacy.

- F18 The balustrades of unit balconies facing Union Street on Levels 01 and 02 are to be constructed of obscure glazing which are to be installed prior to the issue of an Occupation Certificate for these units.

Reason: To ensure adequate levels of privacy for occupants.

G Conditions which must be satisfied prior to the issue of any Subdivision Certificate

- G1 Submission to the Principal Certifying Authority of a Subdivision Certificate Application accompanied by the appropriate fees as required by the Principal Certifying Authority. The application is to be supported by a survey plan of subdivision, seven copies thereof and a Section 50 Certificate from the Hunter Water Corporation.

Reason: To ensure compliance with the requirements of the *Environmental Planning and Assessment Act 1979*.

- G2 An easement to drain water, 3 metres wide, from proposed Lot 2 (boarding house site) through proposed Lot 1 (residential flat development site) being created and piped.

Note: All associated survey and legal expenses in this regard are to be borne by the Developer.

Reason: To ensure that stormwater from the site can be adequately drained and to minimise the risk of future flooding of the subject property and adjacent property.

- G3 Reciprocal rights of carriageway being created over proposed Lot 1 (residential flat development site) and proposed Lot 2 (boarding house site) to cover service vehicle manoeuvring areas.

Reason: To ensure adequate servicing rights are secured in respect of the proposed lots.

- G4 The appropriate notation being placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* being submitted to Council setting out the terms of easements as required by this consent. Council in addition to the owner of the land benefited by the easement is to be a party whose consent is needed to release or vary easements.

Reason: To ensure that the required easements and/or 'Rights of Carriageway' are properly registered against the title of the land and are only released, varied or modified at a future date with the concurrence of Council.

- G5 An appropriate covenant being registered on the title of the land subject to this development under Section 88B of the *Conveyancing Act 1919* which refers to the requirement to implement the provisions of the long term environmental management plan for the management of remaining contamination on the property and such being lodged with Council for certification and being registered with the Land Titles Office prior to occupation of the premises, it being noted that the instrument is unable to be released, varied or modified without the concurrence of the Council of the City of Newcastle.

Reason: To ensure the site is suitable for the intended use and the development complies with appropriate environmental and public health standards.

- G6 Written evidence of approval by the Mine Subsidence Board being obtained and submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure the structural stability of any proposed development having regard to underground mine workings.

H Conditions which must be satisfied during the ongoing use of the development

- H1 Appropriate lighting being provided for the car park and pedestrian pathways in accordance with AS 1158 - Lighting and AS 4282 - 'Control of the Obtrusive Effects of Outdoor Lighting,' such being installed prior to the occupation of the portion of the premise the subject of this application.

Reason: To ensure that adequate and appropriate lighting facilities are provided for the proposed development.

- H2 Appropriate arrangements being made for the collection of waste (recyclable and non-recyclable) from the development and such arrangements being in place prior to the occupation of the premises the subject of this development application.

Reason: To ensure suitable garbage removal arrangements are provided in association with the proposed development in the interest of public safety.

- H3 Separate bins being provided within the proposed development to enable the on-site separation of recyclable and non-recyclable garbage, such arrangements being in place prior to the occupation of the premises the subject of this development application.

Reason: To ensure suitable garbage arrangements are provided in association with the proposed development in accordance with Council's Waste Minimisation Policy.

- H4 The maximum size vehicle that shall access the development is to be a heavy rigid vehicle (HRV) 12 metres in length as defined in Australian Standard AS 2890.2 – 2002 – 'Parking facilities – Off-street commercial vehicle facilities'. Under no circumstances should any vehicle larger than this enter the site.

Reason: To control vehicular activity associated with this development in the interest of public safety and amenity.

- H5 All vehicular movement to and from the site being in a forward direction.

Reason: To ensure that the proposed development does not give rise to vehicle reversing movements on or off the public road with consequent traffic accident potential and reduction in road efficiency.

- H6 Proposed parking areas, driveways, vehicular ramps and turning areas being maintained clear of obstruction and being used exclusively for purposes of car parking and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

Reason: To ensure the proposed/required parking, facilities and associated driveways are able to function efficiently for their intended purpose and are not otherwise used in a manner which detracts from the overall appearance of the development.

- H7 The use and occupation of the premises including all plant and equipment installed thereon, not giving rise to any "offensive noise", as defined under the *Protection of the Environment Operations Act, 1997*, as amended.

Note: Should Council consider that offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic consultant's report recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming that the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council before the expiration of the nominated period.

Reason: To ensure that appropriate noise control measures are implemented if required.

- H8 There being no interference with the amenity of the neighbourhood by reason of the emission of any vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.

Reason: To prevent environmental pollution, to ensure observance of appropriate public health standards and to protect the existing amenity of the neighbourhood.

- H9 Any liquid wastes from the premises, other than stormwater being discharged to the sewers of the Hunter Water Corporation in accordance with that authority's requirements.

Reason: To prevent environmental pollution and to ensure observance of appropriate public health standards.

- H10 If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land (including any public road or place), the person causing the excavation to be made:

- a) must preserve and protect the building from damage, and
- b) if necessary, must underpin and support the building in an approved manner, and

- c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Reason: To confirm a condition of consent prescribed by the *Environmental Planning & Assessment Regulation 2000*.

- H11 No work within the public road being commenced until Council's separate written approval has been obtained.

Note:

- 1) A separate road works application is required for the works to be undertaken in the public road.
- 2) Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be submitted to Council for approval with the Road Works application.
- 3) An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council's Development & Environment Section in order to confirm this fee.

Reason: To ensure that any work within the public road is carried out in accordance with Council's and the Roads & Traffic Authority's requirements and under Council supervision.

I Other Agency Conditions

- I1 The applicant must obtain a licence under Section 12 of the *Youth and Community Services Act, 1973* if such a licence is required under that Act.

Reason: To ensure the owner of the premises does not commit an offence under the *Youth and Community Services Act, 1973* and to ensure that persons with a disability are accommodated in housing of a sufficient standard that provides for their health, comfort, safety and proper care.

- I2 Working drawings and specifications of the proposed buildings being submitted to the NSW Mine Subsidence Board for approval prior to an application for a Construction Certificate. Any requirements of the Board are to be complied with.

Reason: To ensure that structural stability of the proposed development having regard to underground mine workings.

J Advisory Notes

- J1 Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:

- a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.

- b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and form 7 of schedule 1 to the Regulations.
- c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act and Form 7 of Schedule 1 to the Regulations.

Reason: To advise of matters to be resolved prior to the commencement of work.

- J2 A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

Reason: To ensure compliance with Clause 172 of the *Environmental Planning and Assessment Regulation 2000*.

- J3 Prior to the occupation of a new building, or, occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 155 of the *Environmental Planning and Assessment Regulation 2000*.

Reason: To ensure compliance with Section 109M of the *Environmental Planning and Assessment Act 1979*, as amended.