

JRPP No.	2011HCC022
DA No.	11/0527
Proposal	Seven storey 'Seniors Housing' development including 47 self care apartments, basement carpark and associated landscaping
Property	LOT: 1 DP: 1131868 No. 58 Edith Street Waratah NSW 2298
Recommendation	Refusal
Applicant	EJE Architecture
Report by	Future City Group - City of Newcastle Council

Assessment Report and Recommendation

Executive Summary

Proposed Development

The application comprises 47 'Seniors Housing' self care apartments, being a seven storey building (inclusive of a basement carpark). The proposal is made in accordance with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH). The 47 'seniors housing self care apartments are comprised of 3 x 1 bedroom dwellings and 44 x 2 bedroom dwelling.

Referral to Joint Regional Planning Panel (JRPP)

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, the application is referred to the JRPP as the development has a capital investment value of more than \$10,000,000. The application was lodged and not determined by the Panel prior to the amendments to the Environmental Planning and Assessment Act, 1979 taking effect on 1 October 2011. The application submitted to Council nominates the value of the project as \$17,797,500.

Permissibility

The site is zoned 2 (a) Residential under the Newcastle Local Environmental Plan 2003 (LEP2003) and is proposed to be zoned R2 Low Density Residential under the draft Newcastle Local Environmental Plan 2011 (DLEP2011). The proposal is categorised as a 'urban housing' development and is permissible within the 2 (a) Residential zone subject to development consent. All required owner(s) consent has been provided.

Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 (NDCP2005) from 27 May 2011 until 10 June 2011. In response to public exhibition 75 letters were received in relation to the proposal, 73 in support, 1 in conditional support and 1 in objection. Following amendments to the proposal, the application was re-notified from 29 November 2011 until 13 December 2011. In response to the second notification period, 30 letters were received re-iterating support for the proposal.

The proposal is 'integrated development' in accordance with the Rural Fires Act 1997 and was referred to an 'Urban Design Consultative Group' in accordance with the provisions of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP65).

Key Issues

The main issue identified in the assessment was as follows:

- Scale of variation proposed to planning controls, specifically height and floor space ratio.
- Appropriateness of density, bulk and scale having regard to the current and future zoning of the land.

Recommendation

That the Joint Regional Planning Panel refuse to grant consent to DA 11/0527 for a 'Seven storey 'Seniors Housing development including 47 self care apartments, basement carpark and associated landscaping' at No. 58 Edith Street Waratah, for the following reasons:

1. The proposed development is not consistent with the provisions of the Newcastle Urban Strategy, Draft Newcastle Local Environmental Plan 2011 and Newcastle Development Control Plan 2005 with respect to height and floor space ratio. To allow a variation of the scale proposed by this application would be to affect a general change in the planning regime for the site beyond that contemplated by the planning controls [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].
2. The proposed development is not consistent with the objectives of the 2(a) Residential zone of the Newcastle Local Environmental Plan 2003. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].
3. The proposed development is not consistent with the objectives of the R2 Low Density Residential zone of the Draft Newcastle Local Environmental Plan 2011. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].
4. The proposed development is not consistent with Clause 33 (a) and (c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].

1. Background

Subject site

This application is located with the existing Maroba landholding, which is currently developed with the following:

- *Maroba Manor* - a residential care facility with 98 beds, providing a mix of specific and general nursing care needs.
- *Maroba Lodge Hostel* - 55 bed home offering a high level of individual care to residents. The hostel contains a 12 bed boutique dementia specific unit and respite services.
- *Maroba Terrace Village* - 23 self care units, ranging from 1-3 bedroom homes.

The most recent addition to the complex was DA 06/1603, to erect a new residential care facility, comprising 98-beds, (i.e. the Maroba Manor), under State Environmental Planning Policy - Seniors Living at 40-58 Edith Street and 13 Myall Road, Waratah. The application was approved by the Councillors on 15 May 2007, and has been completed. The existing building is essentially two storeys in height, with a central three-storey element. Due to the slope of the land, the existing development is viewed as two to three storeys in height from Edith Street, and is one to two storeys in height when viewed from the west. The building has a maximum overall height to the ridge-top of 13.5 metres, when viewed from Edith Street. However, in the context of SEPP SH, the proposal has a maximum height of approximately 9.4 metres (i.e. height is defined under the SEPP as being from natural ground level to the ceiling of the upper floor).

Application Chronology

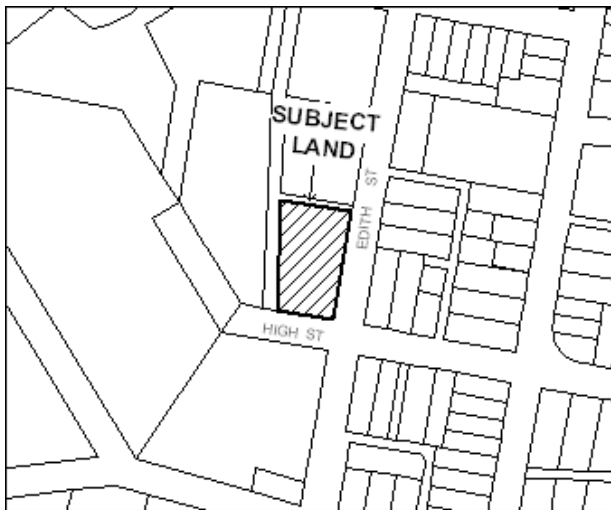
March 2010	-	Prelodgement meeting held between Council staff and applicant. Applicant advised that Council staff were unlikely to support the degree of variation proposed to height and FSR.
11 May 2011	-	Development application lodged with Council.
27 May 2011	-	Public exhibition (14 days).
14 July 2011	-	Briefing to JRPP on assessment status.
29 July 2011	-	Applicant advised that Council officers were not in a position to support the degree of variation being sought in relation to height and floor space ratio. It was recommended that the application be withdrawn. The applicant was also advised of other assessment matters to be resolved that were not determinative, should they wish to progress the application to the JRPP.
22 September 2011	-	Applicant confirmed that they did not intend to withdraw application.
22 November 2011	-	Additional information submitted by applicant, responding to the issues that were raised by Council officers that were not considered to be determinative.
29 November 2011	-	Public exhibition of amended plans (14 days).

2. Site and Locality Description

The subject property comprises Lot 1 DP 1131868, No.58 Edith Street Waratah. The site has an area of approximately 3,005m² and 72 metre frontage to Edith Street. The site is currently vacant with no significant vegetation.

The site is located at the south eastern section of the Maroba landholding. The existing Maroba development is predominantly 1-2 storey development, with small three storey element for the newest development on site, the Maroba Manor.

Directly to the north of the site is the existing Maroba development, and further north is a small number of residences, Myall Road and Wrightson Reserve. To the north of Wrightson Reserve is the Mater Hospital. The site is bound to the east by Edith Street, further east is established low density residential development. The site is bound to the south by High Street. Further south and west of the site is Braye Park. The site is topographically positioned towards the bottom of a hill and currently drains to the existing infrastructure in Edith Street to the east.



3. Project Description

The application comprises 47 'Seniors Housing' self care apartments, being a seven storey building (inclusive of a basement carpark). The proposal is made in accordance with SEPP SH. The applicant nominates the value of the project as \$17,797,500.

The original proposal lodged with Council comprised 47 'seniors housing' self care apartments, comprising of 4 x 1 bedroom dwellings and 43 x 2 bedroom dwelling. As many of the 2 bedroom units also contained studies that were configured as bedrooms, it was considered that the original proposal contained 115 bedrooms. The plans demonstrated that the building has a proposed gross floor area of 2.1:1 and a total height of 21.9m.

Following the initial assessment and concerns raised by Council staff and the Urban Design Consultative Group (UDCG), the applicant made amendments including:

- The unit configuration was amended to 3 x 1 bedroom dwellings and 44 x 2 bedroom dwelling.
- The overall height was reduced to 21.25m.

- The upper levels of the building were refined, and the units previously located in the north-western projection of the building were relocated to the south, as suggested by the UDCG.
- Amendments were made to the proposed studies to ensure that these studies were not configured similar to a bedroom, therefore resulting in a total number of bedrooms of 91.
- Level 1 layout was amended to increase the size of the Community Room, which reduced the number of units on this level by one.
- The private open space area for unit 1.10 was also increased to comply with the requirements of the SEPP SH.
- Additional openings in carpark to improve natural light and ventilation.
- Additional contamination information and social comment was supplied.

A copy of the amended plans is appended at **Attachment A**.

4. Consultation

The application was publicly exhibited in accordance with NDCP2005 from 27 May 2011 until 10 June 2011. In response to public exhibition 75 letters were received in relation to the proposal, 73 in support, 1 in conditional support and 1 in objection.

The content of the submissions of support are summarised below:

- a) Urgent need for seniors housing of this nature increasing in the Hunter, noting long waits for similar accommodation.
- b) Proposal fits into streetscape and the height of the complex will balance landscape between Braye Park and the Mater Hospital, and is consistent with the existing complex.
- c) Design of high quality.
- d) Will reduce anti social behaviour in adjoining park by increased surveillance.
- e) Accessible to facilities, including the Mater Hospital and public transport.
- f) Advantage is that ongoing support would be readily available and would relieve pressure on other services. Smooth transition between facilities on the Maroba site reduces stress to seniors who require additional care, which provides security for seniors.
- g) Quality and appreciation of existing complex.
- h) Development will form a natural health precinct with the hospital.
- i) Not likely to overshadow any adjacent buildings.
- j) Affordability of units and that the size of the development will ensure an economy of scale to benefit the future purchaser.
- k) Ability for seniors to access views and adjoining parkland, which would be unaffordable in the inner city.
- l) Enhance and add value to the area and will be an asset.
- m) Make available other housing for younger members of community.
- n) Seniors can live together safe from dangers of outside world.
- o) Allows seniors in area to gain accommodation close to family and friends
- p) Apartment allows them to entertain family and friends and design of complex, thereby allowing social interaction.

The conditional letter of support noted that a safety traffic management plan should be prepared to address existing traffic issues, and noted the limited on street parking in the vicinity.

The matters raised in the objection received were:

- a) Negatively impact on quality of life.
- b) Overshadowing.

- c) Loss of privacy.
- d) Loss of views to Braye Park.
- e) On street parking impacts into High street.
- f) Noise and parking during construction.
- g) Impact value of property.

Following amendments to the proposal, the application was re-notified from 29 November 2011 until 13 December 2011. In response to the second notification period, 30 letters were received re-iterating support for the proposal. The matters raised in these letters are summarised below:

- a) Blends well with present landscape and surrounding developments.
- b) Modifications further enhance the building and make it extremely suitable to fit into the Edith Street location.
- c) Impressed with the action of Maroba carrying out the suggestions of the Urban Design Consultative Group.
- d) Need for development, meeting the increasing needs of the community.
- e) Architectural concept pleasing.
- f) Support concept of ongoing aged care support, which is also adjacent to park.
- g) Provide jobs for community, including construction jobs.

5. Referrals

The proposal was referred to the following external agencies:

- NSW Rural Fire Service (RFS) - Integrated development (Special Protection Use)
- NSW Police Force - General comment sought from in relation to Crime Prevention through Environmental Design

General Terms of Approval have been issued by the RFS. No comments were received from the NSW Police Force.

The following internal referrals were made to Council officers:

- Urban Design Consultative Group - SEPP65
- Strategic Planning
- Social Planning
- Environmental Services (Compliance)
- Stormwater Engineering
- Traffic Engineering
- Building Surveyor

The comments received from the referrals are appended at **APPENDIX B – Referral Comments**, and are discussed in the assessment.

6. Section 79C Considerations

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

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

Newcastle Local Environmental Plan 2003

Clause 16 - Zonings

The site is zoned 2 (a) Residential under the Newcastle Local Environmental Plan 2003 (LEP2003). The proposal is categorised as a 'Seniors Housing' development and is permissible within the 2 (a) Residential zone subject to development consent.

Below is an extract of the LEP2003 zoning map as it relates to the site.



The objectives of this zone are:

- 'To accommodate a diversity of housing forms that respect the amenity, heritage and character of surrounding development and the quality of the environment.'*
- 'To accommodate home-based business and community facilities that do not unreasonably or significantly detract from the amenity or character of the neighbourhood and the quality of the environment.'*
- 'To require the retention of existing housing stock where appropriate, having regard to ESD principles.'*

The applicant makes the following comments in the Statement of Environmental Effects (SoEE) in relation to the zone objectives:

'The proposal remains consistent with objective (a) given that it will provide an architecturally designed senior's living residential building within an established residential and seniors living / hospital precinct. The proposal will facilitate the extension of the existing Maroba seniors living development on a vacant brownfield site. The proposal has been designed in accordance with the sites natural topographical features and surrounding development and will contribute to the character of the area. Objectives (b) and (c) are not particularly relevant to the proposal.'

It is considered that the proposal, which proposes to significantly vary the height and density requirements of the Newcastle Urban Strategy, Newcastle Development Control Plan 2005 and Draft Local Environmental Plan 2011, is not consistent with the zone objectives of the 2(a) residential zone. This consideration has been made noting that the proposal is generally inconsistent with the existing character, and future character of the surrounding development, as envisaged by the current planning controls. It is noted that the area has not been identified in any strategic documents as a 'seniors living / hospital precinct'.

While it is noted that the topography of the surrounding land and appearance of the Mater Hospital does present some potential rationale for the built form in terms of general visual appearance, it is not considered that this hospital prescribes the future character of residential development in the area. It must be acknowledged as surrounding land in the vicinity of the site currently envisages residential development at a low density scale, any other future residential development would be at a significantly different scale to this proposal. This will inherently result in this development having a substantial contrasting visual impact to surrounding lands.

Clause 25 - Acid Sulfate Soils

The site is identified as Class 5 on the Acid Sulfate Soils mapping. Accordingly, the proposal is considered to be satisfactory having regard to this clause.

Clause 26 - Bush fire prone land

The proposal has received a Bushfire Safety Authority from the NSW Rural Fire Service and is considered to be satisfactory in relation to bushfire.

Part 4 - Environmental Heritage conservation

The site does not contain any heritage items, and is not within a heritage conservation area. It is not considered that there are any heritage matters that would render the proposal unsuitable.

State Environmental Planning Policy (Major Development) 2005

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, the application is referred to the JRPP as the development has a capital investment value of more than \$10,000,000, and it was lodged prior to the changes applying from 1 October 2011.

State Environmental Planning Policy (State and Regional Development) 2011

The new State Environmental Planning Policy (State and Regional Development) 2011 sets out the functions of regional panels in determining applications for regional development. These functions have been transferred from Part 3 of the SEPPMD, which has been repealed.

The most significant change to the regional development classes is that the Capital Investment Value (CIV) threshold for general development has been raised from \$10 million to \$20 million. This means that from 1 October new development applications lodged for development with a CIV under \$20 million will generally be determined by Council.

Development applications for development with a CIV between \$10 million to \$20 million lodged with Council before 1 October 2011 and not determined will continue to be determined by the relevant Regional Panel.

Accordingly, the Joint Regional Planning Panel remains the determining authority for this application.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH)

The development is proposed under the provisions of SEPP SH. The proposed development is permissible under the provisions of the SEPP SH on land zoned primarily for urban purposes which allows dwelling-houses (i.e. both the current and draft LEPs allow dwelling-houses). It is noted that the development is not proposed on land which would require a *site compatibility certificate* under Clause 24 of the SEPP SH.

The SEPP SH allows for several types of housing for seniors including the proposed '*serviced self-care housing*'. '*Serviced self-care housing*' is defined in Clause 13 of the SEPP as:

'seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.'

The proposal's compliance with the requirements of the SEPP SH are summarised in the below table.

Applicable Clause	Discussion
Clause 26 Location and access to facilities	<p>The applicant makes the following comments in the SoEE:</p> <p><i>'In response to sub clauses (1) and (2) there is public transport availability on Edith Street within 400 metres of the site (confirmed by Traffic Report in Appendix C) that provides access to all necessary services including shops, bank service providers, other retail and commercial services, community services and recreation areas.</i></p> <p><i>It is noted that the proposal will allow Maroba to provide residents with already established high quality health care associated with the existing Maroba</i></p>

	<p><i>development. It is also noted that the Mater Hospital is within 400m of the subject site.</i></p> <p><i>The pedestrian pathway along Edith Street that provides access to the public transport and Mater Hospital remains consistent with sub clauses (2), (3) and (4).'</i></p> <p>It is noted that the traffic report refers to bus stops in Edith Street, just north of Platt Street being approximately a 400 metre walk from the site. It is also noted that there are bus stops in Myall Road and Bridge Street located closer than this distance.</p> <p>In this regard the proposal is considered to be acceptable.</p>
Clause 27 Bush fire prone land	The NSW Rural Fire Service have issued their <i>General Terms of Approval</i> and, as such, it is considered that the development is acceptable having regard to the bushfire prone land provisions under this clause.
Clause 28 Water and sewer	The proposal can be adequately serviced with water and sewer.
Clause 29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply	<p>This clause requires the consent authority to consider whether the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:</p> <p><i>'(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,</i></p> <p><i>(iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</i></p> <p><i>(v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development'</i></p> <p>In terms of consideration (i), it is considered that the site maybe suitable for low density residential development, including 'Seniors Housing'.</p> <p>As detailed above, the site satisfies Clause 26 of the SEPP in terms of public transport services, and therefore to some extent satisfies consideration (ii). However, as discussed in this assessment, the site has not been identified for substantial residential growth. This is due to the site not meeting the 'SAFE' criteria, as it is not within a walkable distance to a commercial centre or railway station (800m).</p>

			Considerations relating to bulk, scale, built form and character are discussed later in this assessment.
Clause 30	Site analysis		The applicant prepared a site analysis in accordance with this clause.
Clause 33	Neighbourhood amenity and streetscape		<p>This clause specifies:</p> <p><i>'The proposed development should:</i></p> <ul style="list-style-type: none"> <i>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</i> <i>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</i> <i>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</i> <ul style="list-style-type: none"> <i>(i) providing building setbacks to reduce bulk and overshadowing, and</i> <i>(ii) using building form and siting that relates to the site's land form, and</i> <i>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</i> <i>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</i> <i>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</i> <i>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</i> <i>(f) retain, wherever reasonable, major existing trees, and</i> <i>(g) be designed so that no building is constructed in a riparian zone.'</i> <p>It is considered that the proposal is inconsistent with (a) and (c). Strategically, this area is not identified for substantial residential growth, therefore it is not envisaged nor expected in Council's Strategic Plans that the area will undergo a significant transition.</p> <p>It must be acknowledged as surrounding land in the vicinity of the site envisages residential development at a low density scale, any other future development would be at a significantly different scale to this proposal. This will inherently result in this development having a contrasting visual impact to surrounding lands.</p>

Clause 34 Visual and acoustic privacy	It is considered that the proposal is generally acceptable in relation to visual and acoustic privacy considerations. However, it is noted that the recommendations from the Urban Design Consultative Group are valid, in terms of privacy and security between units.
Clause 35 Solar access and design for climate	It is considered that the proposal is generally acceptable in relation to solar access considerations.
Clause 36 Stormwater	Council's Stormwater Engineer has reviewed the proposal, and it is considered to be satisfactory in relation to stormwater management.
Clause 37 Crime prevention	It is considered that the proposal is satisfactory in relation to crime prevention considerations.
Clause 38 Accessibility	Subject to the detailed considerations that would normally occur with a Construction Certificate, it is generally considered that the proposal is acceptable having regard to accessibility.
Clause 39 Waste management	The proposal has identified garbage will be collected via private contractor utilising the internal road network. This is considered satisfactory noting that vehicles can gain forward entry and exit from the site.
Clause 40 Development standards—minimum sizes and building height	<p>This clause specifies development standards, as discussed below:</p> <ul style="list-style-type: none"> - Site size - The site provides the minimum requirement of 1,000 square metres. - Site frontage - The site provides the minimum site frontage of 20 metres wide, when measured at the building line. - Height in zones where residential flat buildings are not permitted - The site is currently zoned 2(a) residential, in which zone a 'residential flat building' is not separately defined, but rather is included in the definition 'urban housing'. As 'urban housing' is permissible in the 2(a) residential zone, this clause does not apply to the proposal.
Clause 41 Standards for hostels and self-contained dwellings	<p>This clause specifies that a consent authority must not consent to a development application for the purpose of a self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.</p> <p>In this regard, the applicant makes the following comments in the SoEE:</p> <p><i>'The proposed development remains consistent with clauses 41(1) and 42(2) in terms of compliance with Schedule 3 considerations including:</i></p> <ul style="list-style-type: none"> - <i>Siting standards for wheelchair access;</i> - <i>Security;</i> - <i>Mail service;</i> - <i>Private Car accommodation (refer to Section 5 of this SoEE and Appendix C);</i> - <i>Accessible entry;</i>

	<ul style="list-style-type: none"> - <i>Interior design compliance with relevant Australian Standards;</i> - <i>Bedroom, bathroom, toilet, surface finishes, door hardware and ancillary item compliance with relevant Australian Standards; and</i> - <i>Design of living room, kitchen, access to kitchen, main bedroom, bathroom and toilet, lifts, laundry, storage and garbage storage remains consistent with the relevant Australian Standards.'</i> <p>It is considered that the proposal could comply with the requirements, subject to conditions of consent.</p>
Clause 45 Vertical villages	<p>The applicant has not applied for a 'vertical village' and accordingly does not benefit from the 'bonus' floor space that this clause allows. It is noted that in order for a development to be considered to be a 'vertical village', at least 10% of the dwellings for the accommodation of residents in the proposed development will be affordable places.</p>
Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings	<p>This clause specifies that a consent authority must not refuse consent on specific grounds, which are discussed below:</p> <p><i>'(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)'</i></p> <p>The proposed building is higher than 8 metres. Accordingly, the consent authority is able to refuse this development on the basis of height.</p> <p><i>'(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less'</i></p> <p>The application proposes an FSR of greater than 0.5:1. Accordingly, the consent authority is able to refuse this development on the basis of FSR.</p> <p><i>'(c) landscaped area: if:</i> <i>(i) in the case of a development application made by a social housing provider—a minimum 35 square metres of landscaped area per dwelling is provided, or</i> <i>(ii) in any other case—a minimum of 30% of the area of the site is to be landscaped'</i></p> <p>The proposal complies with this requirement.</p> <p><i>'(d) Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a</i></p>

	<p><i>sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres'</i></p> <p>The proposal complies with this requirement.</p> <p><i>'(e) solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter'</i></p> <p>The proposal complies with this requirement.</p> <p><i>'(f) private open space for in-fill self-care housing: if:</i> <i>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</i> <i>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,</i> <i>Note. The open space needs to be accessible only by a continuous accessible path of travel (within the meaning of AS 1428.1) if the dwelling itself is an accessible one. See Division 4 of Part 4.'</i></p> <p>The proposal complies with this requirement.</p> <p><i>'(h) parking: if at least the following is provided:</i> <i>(i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider, or</i> <i>(ii) 1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider.'</i></p> <p>The proposal complies with this requirement.</p>
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State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP65)

Pursuant to SEPP65, the original proposal, as well as the amended proposal was referred to Council's Urban Design Consultative Group (Design Review Panel) constituted under Part 3 of the SEPP.

The comments in relation to the original proposal are detailed below:

'1. Context

The Maroba Seniors Living Development is located on the Western side of Edith Street in Waratah. Edith Street has two traffic lanes and is quite busy, acting as a link between suburbs of Newcastle, the Pacific Highway and Industrial Drive. There are traffic lights at Platt Street and at the entrance to the Mater Hospital further North. On the East side of Edith Street, the majority of the development opposite the site is post-Second World War, single storey, weatherboard dwellings. Opposite the Maroba Nursing Home is Saint Phillips Anglican Church and Pre-School. These church buildings are set well back from Edith Street and have mature trees in a landscaped area on the street boundary.

On the Western side of Edith Street to the North of the Maroba development on the corner of Platt Street, is the NBN Telethon Mater Institute. It is a two storey building of contemporary design with metal panel cladding. Immediately beside the Mater Institute to the South, is Wrightson Reserve. This is a large turfed area which has no obvious current use.

To the South of Wrightson Reserve are the independent living villas of the Maroba site known as the Maroba Terraces. Moving further South there are then 4 houses before the intersection of Edith Street with Myall Road. On the South side of Myall Road, the Maroba site has frontage to Edith Street. This portion of the site is occupied by a two storey nursing home, in the centre of the building, it has a three storey loft space. This building is rather bland with repetitive, engaged brick piers and uniform window openings to the various patient rooms.

Immediately South of this building is the site for the Maroba Seniors Living Self Care Apartments. This site is currently vacant land. Further to the South the topography rises as part of Braye Park.

The site for this development is unique, as it forms part of the larger scale development that has occurred along the West side of Edith Street. This development includes the recently expanded Mater Hospital. Ordinarily buildings of this scale would be out of context with the single storey, residential development opposite the site in Edith Street. The Maroba site together with the Mater Institute and the Mater Hospital, forms a consolidated group of larger scale buildings which sit more or less below the ridgeline to the West. Given the extent of the large scale development that has already occurred along the West side of Edith Street, the development of the subject site with a building of the scale proposed, is considered acceptable in the context of the existing development.

2. Scale

The scale of the apartment building is much larger than that of the adjoining nursing home to the North. The height of this development is also much greater than the other buildings within the Maroba site. The majority of these existing buildings are single and two storey structures, more in-keeping with traditional seniors living.

The proposed apartment building consists of 1 level of semi-basement carparking and 6 levels of apartment accommodation above. From Edith Street, the building is seven storeys in height as the basement parking sits above ground on this elevation. The building steps back on the upper levels at intervals to appear less confronting from the street and at the North and South elevations.

To Edith Street, the building presents a lower base of 3 storeys (1 storey carparking, 2 storeys apartment living). These lower levels of the building are expressed as rendered volumes with continuous wall planes and openings, formed by masonry piers and blade columns. The carpark storey is expressed as face brickwork, below this rendered base, with small, punched openings for ventilation louvers.

Above the 3 storey base, the upper storeys of the building are expressed in a more lightweight and open construction, with the floor planes of the balcony slabs exposed and slender columns used as support structure. The materials also change to face brickwork and lightweight cladding. On the upper storeys low pitched metal roofs are used as the building steps back in height towards its centre. There are also areas where aluminum louvers have been used to provide a degree of privacy and sun screening.

While the apartment building is considerably higher than the adjacent nursing home, the scale of the building must also be read against the height of the topography (Braye Park to the South and West) and also the substantial construction of the Mater Hospital to the North.

In terms of topography and the existing development in Edith Street, the apartment site stands on a higher ground at the South extremity, moving North, the land falls away before rising again to another ridge forming the North extremity on which the Mater Hospital has been constructed. This apartment building and the Mater Hospital will form the two termination points between which lower scale development runs almost continuously between these two "bookends".

3. Built Form

The building has been designed with an base of 3 storeys, with the upper 4 levels expressed in a markedly different and lighter vocabulary. The fourth floor forms a transition between the base and the upper levels. The 3 storey base has been developed with contemporary forms, with precise and simple wall planes using rendered masonry elements. The balcony structures project forward from the main building wall at intervals, creating an interesting modulation along the street frontage. The ramp and stairs that give access to the main floor level, also adds visual interest.

The upper storeys are less successful as a design of recessive elements in an attempt to avoid an inappropriate scale and to reduce the impact of the height on Edith Street. While this strategy may be supportable in principle, the composition requires further refinement before reaching a satisfactory building form. These higher elements of the building will be seen from many vantage points and are therefore very important.

The north-western projection of the plan is of concern because of its negative amenity impacts on adjoining west-facing units and Level 1 Community Room in the centre of the block, -in particular winter overshadowing, and visual and acoustic privacy, -as discussed below under 'Amenity'.

The pitched roofs where the building steps back in height, also seem incongruous with a building of this scale. As noted previously, this building will be seen with reference to the Mater Hospital, therefore the use of more commercial building techniques, would create a more appropriate scale. A closer visual relationship to the lower storeys is also suggested to form a more consistent expression.

4. Density

We have been advised that this proposal does not comply with the current or draft Newcastle LEP. The floor space ratio for this development is 2.1 to 1. The permissible floor space ratio is 0.6 to 1. The height of this building is 21.9ms. The permissible height limit for this location is 8.5ms. These non-compliances with the numerical controls need to be considered in relation to the context and particularly the existing development, not only on this site but also that of the Mater Hospital.

Given the scale of the development of the hospital and the relatively, large areas of open space immediately adjacent to the site with Wrightson Reserve and Braye Park, the density of this development is not considered out of context.

With regard to the height of the proposal, its sitting below the higher topography ameliorates what would otherwise be a significant issue. As the landform continues to rise to the South and West of this development, its height is less conspicuous than otherwise would be the case. The height of the proposal has been set with regard to a compatible relationship with the ridgeline of Braye Park, it is therefore considered generally acceptable.

5. Resource, Energy and Water Efficiency

The Applicants advise that storm water harvesting will be included in the development, as well as water saving devices in terms of showers, taps, appliances, etc. The upper level apartments have been designed so that natural ventilation will be effective for the majority of the year, particularly as this site is open to the strong, moderating North East breezes during the summer months.

The Applicants advise that each of the apartment owners will be given the option of installing air conditioning. It is assumed that this will be a split-system with the condensers located on the balconies. It will be necessary to provide suitable screening for these air conditioning units so that they are not

visible. The apartments on the lower levels (Levels 1 and 2) are generally single sided dwellings where natural ventilation will not be effective.

The Applicants advise that generally their experience with the existing residents is that there is generally a low usage of air conditioning and this occurs primarily for heating during the winter months.

Due to the semi-basement nature of the carpark, it was suggested that more natural light and ventilation be provided to this area. This will make this space more attractive and remove the need for any mechanical ventilation.

6. Landscape

The landscape proposal as it presents from the street is well considered with tree species selected of a sufficient scale that they will not be unduly dwarfed by the scale of the building. It was suggested that the applicant might discuss with Council opportunities for enhanced street tree planting along the substantial street front occupied by Moroba. Incorporation of some additional trees would assist in unifying the street visually and would lessen the visual impact of moderately high traffic volumes.

It was noted that the landscape plan proposes a high palisade metal fence around the three boundaries apart from the Edith Street frontage. The applicant indicated that this notation was incorrect, and that no fence was proposed on the western side of the building. Given that Moroba has an ongoing lease over the Hunter Water Corp land that effectively runs through its property holdings, and which forms the western boundary to the subject site, the Group strongly recommended that the adjacent land parcels controlled or owned by Moroba be incorporated in the subject landscape plan for several reasons. Firstly it is important to provide an accessible pathway between the proposed units and the other residences in the complex, as well as recreational and other facilities that residents will frequently access. This landscaped path should be carefully sited and its surrounds planned to take advantage if its potential to provide a very pleasant landscape interlude between these destination points.

Secondly, this space forms the interface between Bray Park and the proposed residences, and an integrated design which reflects any future landscape plans for the Park as well as the needs of the residents is very desirable.

Thirdly, the deletion of the fence and incorporation of additional area into the landscape plan gives opportunity for the larger tree plantings on the western side of the building to be moved further away from the proposed private courtyards on the western side of the building, which are otherwise likely to be heavily shaded at ground level. Although generally shading western sun is desirable- especially in summer, in this instance some of the dwellings are orientated only to the west and rely on this orientation for any winter sun penetration. This matter was considered worthy of further landscape design consideration as part of the moored landscape design development.

In response the applicant indicated that the landscape plan did not fully address the intent - which was along the lines suggested by the Group, and that a further landscape plan for the larger area under reference would be developed.

7. Amenity

The Applicants advise that one of the prime considerations for potential occupants is the support services available within the existing Maroba site and also the proximity to the Mater Hospital. The access to 24 hour on-site care was considered of prime importance to the purchasers of the apartments.

The Applicants advised that the majority of the seniors living market were seeking two or three bedroom units, which has been reflected in the apartment mix within the development. These bedroom numbers were most desirable for both single and married purchasers. We were advised that while the phenomenon of “down sizing” is often mentioned in the media, in reality most seniors are looking for larger apartments, with two to three bedrooms all of reasonable size. The “down sizing” is realistically more applicable to the style of living where the responsibility for the maintenance of free-standing houses is removed. The seniors also seek the greater security provided within an apartment building.

The majority of units have good access to natural light and ventilation. The Group expressed concern regarding the North-West arm of the building which extended beyond the main body of the development. The projection of the building in this direction would tend to overshadow a number of the units immediately adjacent, along the Western side of the building. This North-West projection would also shade the large patio and the Community Room on Level 1, making these spaces less desirable for much of the year. The Group suggested that the units occupying this North West projection could possibly be relocated in other parts of the building, particularly where the setbacks occur on the North and South sides of the building as it steps back in height. The Community Room should be relocated to avoid problems of overshadowing and visual and acoustic privacy.

It was noted that both lifts open into narrow corridors rather than into the more spacious lobbies placed at the side of the lifts. It was suggested that it would be much more pleasant and convenient if the lifts could open into these larger spaces where there are opportunities to wait and for people to circulate.

On the upper levels of the building, the units are only served by a single lift, ie. the cross-over nature of the apartments prevents access to both lifts. It was suggested that a link between the two lifts be provided, desirably at level 6, so that in periods of maintenance or emergency breakdown, access to the apartments at this level can be provided via the lifts without reliance on the stairs, and the levels below can be accessed by walking down rather than up stairs.

It is recommended that storage space be provided for all units at basement level, particularly for larger items for which most residents will require some stored outside units.

8. Safety and Security

The Applicants advised that security was a key attraction for potential occupants. An apartment building with secure entrances with only residents given access to the internal spaces is considered highly desirable. The Group noted that security would need to be considered for the external stairs

and ramp to Edith Street. These stairs currently give access to a verandah. Access from this point would be available to the private balconies to the units on either side of the street entrance compromising security.

The deep recess of the Southern entry doors was also considered undesirable. It was suggested that these entrance doors be moved closer to Edith Street.

9. Social Dimensions

The Applicants advise that there is almost an overwhelming demand for this style of development due to the “baby boomers” now reaching retirement age. The development is not only located conveniently in relation to the other services available at Maroba and the Mater Hospital, but also its proximity to the centre of Newcastle, Newcastle University and the shopping facilities in relatively close proximity at Waratah and Kotara. The current residents of Maroba enjoy the fact that the convenient location of the development, means that contact with friends, relatives and family living in the Newcastle area is quite convenient and therefore more frequent.

Maroba advised that there is a range of on-site recreational facilities also available, including café, hairdressing, cinema, “mens’ shed” and different opportunities for dining. Maroba also run a mini bus to serve the needs of the residents with visits to local shopping centres and other facilities and events.

It was also noted that the position of the Community Room in relation to the adjoining apartments, is a cause for concern. The Community Room being placed in the middle of the residential portion of the building, with apartments adjoining on both sides, would restrict the successful use of this space, particularly for night-time activities. Ideally this Room would be located at the roof-top level where it would offer good views and sunlight.

The Group suggested that improvement to the amenity of the carpark would create further opportunities for social contact during washing of cars, etc.

10. Aesthetics

The forms and materials selected for the building are generally acceptable with the comments noted previously regarding the upper portion of the building. Concern was expressed with the use of transparent, glass balconies which can become unsightly due to the uses that permanent residents sometimes make of these spaces. The Group acknowledged the conflict between the desire to obtain the views and the need for privacy from the street. It was suggested that a combination of solid upstands to a height of approximately 600mm or obscure glass to a similar height, could be a means of resolving this issue. The Group acknowledges and encourages the use of balconies for outdoor drying of clothes and other recreational activities, however these uses should not detract from the overall presentation of the building. It is often difficult to foresee the many and varied uses to which balconies are often put.

Concern was also expressed by the Group to the upper levels of the buildings, where the balconies appear quite exposed, not only to the surrounding houses, but also to the weather. It was suggested that more enclosure will create more desirable and useful outdoor living areas.

As noted previously, the stepping-back in height in several increments and the use of low pitched metal roofs, has created awkward visual results. It was suggested that a more resolved and regular development of the upper storeys of the building will create a more satisfactory appearance. The resolution of these upper levels would need to be conducted in conjunction with the redistribution of some of the apartments from the North West arm of the building as previously suggested. Generally, the Group found the visual and aesthetic expression of the building acceptable with further refinement needed in regard to the items noted.

Recommendation:

While this building stands outside the current planning controls set by Council, the Group considers that the unique context of this site is the dominant consideration. It was also noted that Maroba runs as a not-for-profit organisation and has a long and distinguished history of providing high quality care for seniors living on this site.

Also considered was the density and scale of development that has already occurred on the Mater Hospital site immediately to the North, as well as the substantial development that has already occurred on the Maroba site. With these considerations, the Group believes that the proposed development is acceptable, in terms of location, height, scale and density.

There are a number of detail matters noted in this report which require further attention by the Applicants. Provided these matters are satisfactorily addressed, this development should provide much needed seniors living, as well as a positive contribution to the surrounding neighbourhood.'

It is noted that the amended plans at Appendix A made a number of modifications to address the matters raised by the Panel. These amended plans were referred to the Panel, and the following comments were made in this regard:

1. Context

The context was described in the previous Minutes of the Urban Design Consultative Group for this project.

2. Scale

While the design has been altered from the scheme previously reviewed by the Group, many of the comments previously made regarding scale in relation to the context are still applicable. The scale of the Apartment building is much larger than that of the Nursing Home to the North and the other buildings within the Maroba site.

The lower storeys of the building remain largely unaltered. The lower two storeys (Basement and Level One) are expressed as a face-brick volume, treated as a solid mass with individual openings. The level immediately above this face-brick base (Level 2) has been treated as a transition to the upper levels with an open verandah.

The higher levels of the building (Levels 3, 4 and 5) are expressed as rendered volumes with a balance of continuous wall planes and openings. The balcony treatment consists a variety of solid balustrades and semi-

transparent glass balustrades. The top storey of the building (Level 6) has been designed as a lighter element, setback from the main walls of the building, with more slender pergola elements and verandah roofs. It has been roofed with a low-pitched (flat) roof.

The light-weight construction previously proposed for the upper levels of the building has been removed, giving the building a more consistent and cohesive treatment. The pitched roofs have also been removed which were considered of a more domestic scale not in-keeping with the building of this size. The Group considers that the building now forms a compatible relationship in terms of scale to the context of the topography and the larger building at the Mater Hospital to the North.

3. Built Form

The revised proposal has been amended to respond to the comments of the Group. As noted, the lightweight elements previously proposed for the upper storeys of the building have been removed. These forms have been replaced with a more harmonious treatment using blade columns, continuous wall planes with openings, masonry piers, etc., to provide a more consistent and substantial appearance. The Group considered that the revised treatment as now proposed, is a more acceptable presentation for a building of this size. The treatment of the upper storeys which can be seen from many vantage points has been simplified and is better integrated with the lower portions of the building.

The Group's concerns regarding the projecting North-West arm of the building have been addressed. This portion of the building has been reduced in height to a single storey and the overshadowing issues have therefore been largely removed. In conjunction with this re-planning, the internal arrangements for the Community Room and adjoining Terrace have been improved and refined from the previous scheme. The Group considers this solution now provides a satisfactory outcome.

4. Density

There has been no change to the density from the scheme previously presented. The Group's previous comments therefore are unaltered.

5. Resource, Energy and Water Efficiency

These measures remain as previously proposed. The Group's previous comments are unaltered.

The Applicants have responded to the Group's suggestion regarding improvement to the natural light and ventilation to the Carpark area. These changes should work effectively to make this space more attractive and increase the potential for social interactions as residents meet entering and leaving their vehicles, washing and cleaning of cars, etc.

6. Landscape

The Group's comments regarding the landscape are largely unaltered. The main concern of the previous proposal was regarding the interface between Bray Park and this development. It was suggested that the landscape design

could include a concept to extend the landscaping over the Hunter Water Corporation land immediately to the West of the site.

7. Amenity

The revised proposal has addressed a number of recommendations contained in the Group's previous minutes.

The possibility of privacy being compromised by residents moving along the raised bridge between this proposal and the existing facility was raised. It was suggested that the Western side of this bridge be glazed with either obscure glass or solid panels so that overlooking into the Units on Level One is avoided.

The level of transparency of the glass used for the balconies was discussed. The Group recommended that the glass selected needed to be at least semi-transparent to avoid the everyday items (that inevitably appear on balconies), creating an unsightly appearance and also to give the residents, particularly on the lower levels, some privacy from the street.

The Group repeated its suggestions that the mail collection area be provided with some amenity (eg. seat, shade or wind protection, adequate space, etc.) so that this facility which is visited most days by most residents, can also offer the opportunity for casual, social interaction.

The Applicants have responded to the Group's suggestion regarding access to lifts during maintenance. The internal planning has been altered so that on Level 5 access to both lifts is available. With this arrangement should one lift be out of action for maintenance, residents will still have the opportunity of an alternative lift.

A provision for storage in the Carpark area was also discussed. The Applicants noted that with the recent changes to the Disability Access code, considerable space now exists within each parking bay for storage. It is assumed that those spaces that do not require wheelchair access, will be able to take advantage of the wheelchair maneuvering space provided beside each car park.

8. Safety and Security

The majority of the Group's former comments have now been addressed by the Applicants.

The Group queried the precise arrangement for the divisions between adjoining Units on the balconies. It was suggested that further consideration be given to the visual, acoustic and security requirements for the walls that divide balconies between adjoining Units. The current arrangement appears to offer very limited privacy and would not be a barrier in terms of security.

9. Social Dimensions

The Applicants have addressed the issues noted in the previous minutes of the Group. The lift arrangement has been altered so that larger lobbies are available to assist in circulation and also for casual, social interaction as people enter and leave the lifts.

10. Aesthetics

The Applicants have further refined the selection of the materials and colours, in-keeping with the revisions of the facades. The Group considered the treatment of the forms together with the colours and materials selected, are now an improvement on the previous scheme. As noted, the Group stated that particular attention would need to be given to the selection of the glass balustrade to ensure the correct degree of transparency to provide privacy for the residents and to avoid personal possessions often placed on the balconies becoming an unattractive feature.

The Group expressed concern regarding the treatment of the Entry ramp on Edith Street. The Group suggested that this element would be more successful if treated as a landscape element. With the potential for graffiti (at street level), maintenance of landscaping, etc., the clean, white cement render shown on the images would not be successful in the long term. The Group suggested that consideration of split-face masonry, stone or other landscape material would be a more successful material choice for this element.

Overall, the Group considered that the revised three-dimensional treatment of the building was much more successful and integrated design than the previous proposal. There is now consistent expression between the lower and upper storeys of the building, with the scale of the forms, variety and massing suitable for the context particularly in relation to the Mater Hospital buildings on the adjacent ridge.

Recommendation:

As noted previously, the proposal is in excess of the current controls for the site, particularly in respect to height. However, the Group accepted the proponent's argument that the uniqueness of the topography of the site coupled with the scale of the Mater Hospital at the northern end of the street rendered the proposal acceptable in urban design terms, and there are no adverse impacts arising from overshadowing or loss of views.

Apart from the relatively minor matters of detail noted in this report, which require further refinement, the proposed development is otherwise acceptable.

Whether Council is able to support the proposal in the absence of a "spot rezoning" of the site to allow the proposed height is a matter for Council's consideration rather than the Group's.

As detailed by the UDCG, the proposal is generally acceptable having regard to the design quality principles contained in the SEPP65.

Consideration of the 'Residential Flat Design Code' is also required by this policy. In this regard, the applicant has provided a 'Compliance Statement', which demonstrates that the proposal is generally consistent with the requirements of this code, including building depth, daylight access and ventilation.

State Environmental Planning Policy 55 - Remediation of Land

The following comments have been made by Council's Compliance Services Unit in relation to contamination issues:

'The preliminary contamination assessment prepared by Coffey dated 28 March 2007 has confirmed the presence of some uncontrolled "bottom ash slag" fill present in places on the site. As the sampling was conducted when the previous building was still present, only limited access was available and the extent of the fill material was not determined. The assessment prepared by Coffey dated 28 March 2007 acknowledges that the nature and extent of contamination is not known in the statements:

"inspection and additional testing should be conducted on fill material encountered at the site during earthworks to identify any possible deleterious and contaminated material that differs from those encountered during the current investigation" and "the contamination assessment should be used as an indication of contaminants present at the site only".

Coffey conducted further investigation to assess the extent and nature of fill material and provide remediation recommendations. Eight test pits were sampled and analysed. The investigation showed that fill occurs on site from depth ranging from approximately 0.2m in the south-western part up to 1.6m in the north-western part of the site. There is also a fill mound on the western boundary with is about 2m in height and has an approximate volume of 360m³. When assessed against the contamination guidelines for residential land use with garden/accessible soil (HIL 'A'), TP4 revealed elevated levels of copper and lead and TP5 showed elevated levels of Total Petroleum Hydrocarbons and Polycyclic Aromatic Hydrocarbons. Two suspected asbestos fragments were also tested, and one sample tested positive for the presence of chrysotile and amosite asbestos.

The Remedial Action Plan prepared by Coffey dated 18 November 2011 proposed remediation strategy involves the following works:

- Emu-picking of visible asbestos fragments from the surface if the site*
- Delineation of the previously identified restricted and hazardous waste hot-spots through test pitting and soil sampling*
- Bulk excavation of the fill materials and disposal to appropriately licensed disposal facilities*

Following remedial works, the resulting excavations will be inspected to confirm that, visually the fill materials have been removed to the extent practical. Soil samples will also be taken for validating purposed and compared to adopted residential soil investigation levels. A site validation report will be prepared, documenting findings and providing an assessment of the suitability of the site for the proposed development. This measure will be addressed by an appropriate consent condition.'

Accordingly, it is considered that the proposal is satisfactory having regard to this policy.

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

Draft Newcastle Local Environmental Plan 2011 (DLEP2011)

- Land Use Table

Under the DLEP2011, the site is proposed to be zoned R2 Low Density Residential. The proposal is categorised as a 'Seniors Housing' development, which is identified as a form of 'residential accommodation' under the DLEP2011. 'Residential accommodation' is permissible within the R2 Low Density Residential zone subject to development consent.

The objectives of this zone are:

- *'To provide for the housing needs of the community within a low density residential environment*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment'*

It is considered that the proposal is not consistent with the objectives of the R2 zone, specifically, that it is not considered that the proposal is consistent with a 'low density residential environment.'

- Clause 4.3 Height of Buildings

The DLEP2011 contains a height development standard for the development site. This clause of the DLEP2011 states:

(1) The objectives of this clause are to:

- (a) ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy, and*
- (b) allow reasonable daylight access to all developments and the public domain.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.'

The DLEP2011 map identifies this site as having an 8.5 metre height limit. The proposal does not comply with this control proposing a maximum height of 21.25 metres. Consideration of this draft control is discussed later in this report.

- Clause 4.4 Floor Space Ratio

The DLEP2011 contains a floor space ratio (FSR) development standard for the development site. This clause of the DLEP2011 states:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate density of development consistent with the established centres hierarchy,*

(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the centres hierarchy.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The DLEP2011 map identifies this site as having an 0.6 FSR limit. The proposal does not comply with this control proposing an FSR of 2.1:1. Consideration of this draft control is discussed later in this report.

- Clause 5.13 Acid Sulfate Soils

The site is identified as Class 5 on the Acid Sulfate Soils mapping. Accordingly, the proposal is considered to be satisfactory having regard to this clause.

- General comments regarding the status of the draft Instrument

Council resolved on 21 June 2011 that:

- '1. The revised draft Newcastle Local Environmental Plan 2011 and accompanying maps be adopted as Newcastle Local Environmental Plan 2011.*
- 2 The draft Newcastle Local Environmental Plan 2011 be referred to the Department of Planning and Infrastructure to obtain Parliamentary Counsel's opinion on whether it may be legally made.*
- 3 The adopted draft Newcastle Local Environmental Plan 2011 be referred to the Minister for Planning and Infrastructure for gazettal upon completion of the legal drafting, with a request that it not be made until draft Newcastle Development Control Plan 2011 becomes effective and if required Newcastle-specific provisions in relation to tree pruning and removal are included in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.'*

It should also be noted that the applicant made a submission on the DLEP 2011 requesting that the height and FSR on the subject site be increased and the proposed zoning changed. The submission was seeking Council to rezone the site to R4 High Density Residential and also to allow residential flat buildings in the R2 zone to allow development under the Seniors Housing SEPP.

In consideration of this request, the following outcome was noted by the Council report dated 21 June 2011:

'The Residential Development Strategy prescribes where higher density residential densities may occur is based on proximity to commercial centres and transport nodes. The site is not within walking distance of either type of activity centre. The R4 High Density Zone is only applied to the identified growth/renewal corridors.

Residential flat buildings are currently permissible in the 2(a) zone and should be re-instated as a permissible land use in the equivalent R2 zone.'

Accordingly, the request in relation to the DLEP2011 was partially supported. In terms of the final draft accepted by Council, the zoning of the site remained unchanged at R2 Low Density Residential, as it is the equivalent zone to the current 2(a) zoning.

It was considered that zoning for high density in this location should only be considered after an in-depth review of the Residential Development Strategy.

In terms of the status of this draft instrument, it is considered that in relation to this site, that the DLEP2011 should be given reasonable weight, particularly noting that the proposed development controls are re-inforcing that which is already in place in the current urban housing DCP. The weight given to this instrument is further enhanced by the most recent indications provided by the Department of Planning that this draft instrument is likely to be made in the first quarter of 2012.

(a)(iii) any development control plans

Newcastle Development Control Plan (NDCP2005)

a) Element 3.1 Public Participation

The proposal was notified in accordance with this policy. The submissions received are discussed in this assessment.

b) Element 4.1 Parking and Access

Access to the site is to be via an existing access off Myall Street and an existing access off Edith Street. The Edith Street access is a left out only access and as an existing access no objection is raised to the access arrangements. The existing access was deemed suitable during previous assessment for parts of the complex previously approved and it is considered it provides the safest access to the site.

Reference is made to the previous comments made in relation to SEPP SH, as the provisions of this policy override the parking requirements of the NDCP2005.

Council's Engineer has made the following comments in relation to the proposal:

'Traffic Generation

The traffic impact statement has addressed the issue of additional traffic in the road network from the development. It has determined that the traffic generation is likely to be only in the order of up to 10 vehicles per hour. As an aged care facility this proposal typically does not generate much additional traffic. This is less than 10 % of the weekday peak hour traffic on Edith Street and as such falls within the normal weekly and seasonal variations in peak hour traffic. Therefore the additional traffic will have no noticeable impact on the efficiency of the local road network.'

The proposal is considered to be satisfactory in relation to carparking and traffic considerations.

c) Element 4.2 Contaminated Land Management

Reference is made to the previous comments made in relation to SEPP55.

d) Element 4.5 Water Management

Council's Engineer has made the following comments in relation to the proposal:

'The proposal is required to comply with Element 4.5 of NDCP 2005. With a roof area of approximately 1200 m² on a 3000 m² lot the proposal is required to provide in the order of 14 m³ of stormwater discharge control.

The plans by Michael Fitzgerald show a 50 m³ re-use / retention tank which is considered to comply with Council's requirement. No objection is raised to the drainage design.

The proposal is considered to be satisfactory in relation to stormwater management.

e) Element 4.6 Waste Management

The proposal has identified garbage will be collected via private contractor utilising the internal road network. This is considered satisfactory noting that vehicles can gain forward entry and exit from site.

f) Element 5.2 Urban Housing

It is considered that this element of the NDCP2005 applies, insofar as consideration of the residential density and height.

The subject site is identified as being within a 'limited growth precinct', and has a floor space ratio of 0.6:1 and height limit of 8.5 metres. In relation to these controls, discussion is contained later in this report.

In relation to setbacks, the proposal complies with the 5 metre front setback for the 'limited growth precinct'. In terms of side and rear setbacks, they are specified by a 'building envelope', defined by:

'Planes projected at 45 degrees from a height of 4.5 metres above natural ground level at the side boundaries, to a maximum of 8.5 metres.'

Noting the proposed height of 21.25 metres, the proposal does not comply with this building envelope.

It is noted that the SEPP SH overrides DCPs in relation to matters including landscaping, solar access and private open space.

(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.

(b) the likely impacts of the development

Height and Floor Space Ratio Variation

The development application proposes a height of 21.25 metres and an FSR of 2.1:1. In considering the merit of this proposal, Council officers have assessed the proposal in accordance with the planning framework that would ordinarily apply to residential development. Accordingly, consideration has been made to the LEP2003, the Newcastle Urban Strategy (NUS), NDCP2005 and DLEP2011. As detailed previously in the report, the site has the following planning controls:

- Under the DLEP2011, the site is proposed to have an 8.5 metre height limit and a maximum FSR of 0.6:1.
- The site is located in a 'Limited Growth Precinct' in accordance with Council's adopted Residential Density Strategy (RDS) contained in the NUS. The RDS is implemented via controls in the NDCP2005 with a 8.5m height limit and a maximum FSR of 0.6:1 nominated for a 'Limited Growth Precinct'.

In relation to these proposed variations, the applicant provides the following justification:

'It has been identified that the proposed development exceeds the height guidelines under Council's DCP of 8.5m. It has also been identified that the proposal as it sits on its immediate site has a FSR of 2.1:1 which exceeds Council's FSR of 0.6:1. Under normal circumstances departures of this type are not readily supported. However, the proposal presents a unique set of circumstances that are considered to enable the development to be supported. These are:

- *The site is uniquely positioned in terms of its topography and separation from other residential forms and together within the context of the overall streetscape noting the taller built forms of the Mater Hospital it is considered that the proposed height and FSR will sit comfortably on this site and within the overall context of the street and locality.*
- *The proposed additional height has no impact on surrounding neighbours in terms of privacy or overshadowing.*
- *The proposed density is considered acceptable noting that future residents will be well catered for on site by the existing Maroba facilities and noting the social benefits that are also documented in this report. In particular there is a strong social argument to support greater density noting the benefits of maximising existing aged care facilities and the community need for additional seniors housing on a not for profit basis.'*

In terms of height, the application is therefore seeking a 12.75 metre variation to Council's residential height limit for the site. It is noted that the SEPP SH also has controls for height. Pursuant to Clause 50 of this SEPP SH, a consent authority must not refuse consent on building height: if all proposed buildings are 8 metres or less in height, (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys). However, as the proposed building is higher than 8 metres, the consent authority is able to refuse this development on the basis of height, should it be considered to be inappropriate.

In relation to FSR, it is also noted that the SEPP SH has provisions relating for FSR. The table below analyses the proposals compliance against the various applicable planning policies.

Planning policy	FSR control	Allowable Gross Floor Area (based on site area of 3005m ²)	Variation proposed in m ²	Variation proposed in ratio terms
Allowable FSR under NDCP2005 for urban housing	0.6:1	1803 m ²	4574 m ²	1.5:1
Allowable FSR under DLEP2011	0.6:1	1803 m ²	4574 m ²	1.5:1
SEPP SH	Council could not refuse if no greater than 0.5:1	1502 m ²	4875 m ²	1.6:1
SEPP SH (If used 'vertical village' clause)	bonus of 0.5, i.e. 1.1:1	3305.5 m ²	3071.5 m ²	1:1

NOTE: Floor space proposed 6,377m² or FSR 2.1:1 and the site area is 3005m².

NOTE: The applicant has not sought approval as a vertical village, and this option would require the provision of affordable places. This aspect has been included in the table for comparison purposes only.

In the applicant's 'Economic and Social Analysis Report', it states:

'The SEPP calls for the setting aside of regular planning provisions and the focused and specific assessment of the project on the basis of good urban design, design suited to seniors, and access to support services. The Maroba proposal meets these criteria.'

It is noted that the SEPP SH aims to amend local provisions in the interest of providing incentives for Seniors Housing development, up to the standards specified within the SEPP. As detailed above, the proposal is significantly beyond the 'bonuses' that the SEPP SH provides.

Accordingly, the assessment of this application centres on whether a 250% variation to the FSR control, and a 150% variation to the height control can be supported. In this regard, noting that the controls were informed by the NUS, this document is firstly considered.

The applicant makes the following comments in relation to the NUS:

'The Newcastle Urban Strategy has been adopted by Newcastle City Council as a means of providing direction to future development patterns throughout the

city of Newcastle. The Strategy is designed to analyse, influence and determine:

- Land use, transport and development practices;
- Corresponding social, economic and ecological impacts;
- Social and economic trends and their implications for city growth;
- Role each neighbourhood and district plays, e.g. residential, industrial or commercial areas; and
- Roles Newcastle plays locally, regionally and globally.

The proposed development is consistent with this Strategy, by providing much needed seniors housing strategically located close to the established Maroba facility, the Mater Hospital and public transport.'

Council's Strategic Planning Services have provided the following comment in relation to the proposal, specific to its context with the NUS.

'The Newcastle Urban Strategy (NUS) outlines the expected development of Newcastle based on the principles of New Urbanism and discusses the expectations of Waratah in relation to neighbourhood identity.

The NUS specifies residential densities based on SAFE Criteria which measures the actual on-ground distance from defined centres and railways stations. The NUS states that a District Centre Residential Density (DCRD) should apply to land within 800m of a District Centre or railway station, a Neighbourhood Centre Residential Density (NCRD) should apply to land 400m from a Neighbourhood Centre. A Standard Residential Area (SRA) is to apply to the areas outside the DCRD and NCRD areas. In regard to the subject site, as it is not within a DCRD or NCRD, a SRA applies to the site.

The Floor Space Ratio (FSR) controls within the Newcastle Development Control Plan 2005 are based upon the principles of the NUS, a SRA resulting in a FSR of 0.6:1 under the DCP. Although the site is within a SRA, the SAFE Criteria, which considers the spatial experiences of the walking route, must also be addressed to determine if an increase in height and FSR is warranted. It should be noted that the applicant has failed to address within the Statement of Environmental Effects (SEE) the SAFE criteria in their request for increased height and FSR.

Council staff have undertaken an assessment of the SAFE criteria for the subject site:

Safe: *The walk from the subject site to the Waratah commercial centre and Waratah Railway Station is relatively safe with footpaths available on at least one of side of the road. However, a main road (Edith Street) needs to be crossed. There is a shortage of safe marked pedestrian crossing on Edith Street near the subject site with the only safe crossing considered to be the signalised intersection at Platt Street.*

Accessible: *Footpath levels serving the subject site are located at street level with ramp crossings.*

Friendly: *For the most part the paths serving the subject site are friendly, being located in a low density residential area, with adequate surveillance.*

Efficient: *The most direct route to both the Waratah Railway Station and the Waratah commercial centre is approximately 1,400m, well over the recommended walkable distance in the NUS (800m).*

From Council officers analysis of the SAFE criteria it has been determined that the proposed development does not meet the SAFE criteria as the walkable distance between the subject site and the commercial centre or railway station is more than the walkable distance outlined in the NUS (800m).

The submitted SEE (page 47) presents a case that the site warrants a higher density and increased height due to proximity to the Mater Hospital and existing Maroba facilities. While Council recognises the benefits being close to a hospital can provide it is considered that the Hospital and the existing Maroba cannot reasonably provide the same level of services or benefits as a commercial centre or train station that would warrant a higher density in accordance with the principles of the NUS. It is therefore considered that the points presented in the SEE do not justify a density variation from the Newcastle DCP 2005.

The points presented in the SEE to support a variation to the height have some merit and it is considered that strict compliance with the maximum height limit of 8.5m is not critical on this site. Accordingly some variation could be considered on merit, however the scale of development as proposed is considered excessive for a SRA under the NUS. A scale consistent with the density and comparable to the existing Maroba facility would appear more appropriate.'

This proposal involves a 250% variation to the FSR control, and a 150% variation to the height control. In a recent Land and Environment Court decision, CSA Architects Pty Ltd v The City of Sydney Council[2011] NSWLEC 1065, the Commissioner Brown noted:

'In my view, to allow an FSR of around 1.9:1 when the maximum FSR is 1:1 would be to effectively abandon the numerical requirements for FSR in DCP - Part G and DCP 1997 even allowing for the general flexibility available for a DCP and the specific requirements that allow for variations in DCP - Part G and DCP 1997.'

Having regard to the NUS, NDCP2005 and DLEP2011, it has been concluded that the degree of variation sought in relation to height and floor space ratio (FSR) is excessive to what can be supported. In considering the requested variations, which are significantly beyond the context of the current planning scheme, it was considered inappropriate for a development application to be used as an alternative to the plan making power under Part 3 of the Environmental Planning and Assessment Act 1979 (NSW).

To allow a variation of the scale proposed by this application would affect a general change in the planning regime for the site beyond that contemplated by the planning controls. Accordingly Council officers recommend this application be refused.

Streetscape and visual impacts

It is noted that the considerations relating to appropriate height and density are in many respects different to the considerations of the potential streetscape and visual impacts of the proposal.

In relation to streetscape and visual impact, the applicant makes the following comments in the SoEE:

'In terms of aesthetics, the proposed development will result in an enhanced outcome from that of an unattractive brownfield site. Given the established development along the western side of Edith Street, which includes the large built form of the Mater Hospital to the north, parkland and the existing Maroba development to the south, the built form of the proposal will complement this existing development and contribute to the established streetscape character.'

The comments from the UDCG assesses in further detail the visual impacts of the proposal. It is noted that comments were also made in the submissions of support, including that the proposal fits into streetscape and the height of the complex will balance landscape between Braye Park and the Mater Hospital.

It is considered that the comments from the UDCG are reasonable in relation to likely visual impacts of the proposal, and that the proposal is unlikely to have any significant streetscape impacts. It is however noted that the resulting visual impacts are in excess of what is envisaged for this area, which has lower density residential zones. It must be acknowledged as surrounding land in the vicinity of the site currently envisages residential development at a low density scale, any other future development would be at a significantly different scale to this proposal. This will inherently result in this development having a contrasting visual impact to surrounding lands.

Overshadowing, Privacy and Loss of Views

In terms of overshadowing, it is noted that given the orientation of the site, that the proposal will comply with Council's residential criteria for solar access.

In terms of loss of privacy and loss of views, while it is noted that the nearest adjoining residential properties are on the other side of Edith Street, that the proposal being 21.25 metres has the potential to have impacts further to that which a development complying with the 8.5 metre height standard would. It is noted that the separation of Edith Street does to some extent ameliorate this impact. However, it must be acknowledged as surrounding land in the vicinity of the site currently envisages residential development at a low density scale, this development is likely to result in a stark interface between low and higher density residential development.

Social Impacts

The applicant provided a Social Impact Comment in the Statement of Environmental Effects, as detailed below:

'The demand for aged care including self care accommodation in NSW is well beyond available supply. This is widely acknowledged by all levels of government and is the experience of service providers. Maroba advises that there is the equivalent of a 45 year waiting list to get into Maroba. The demand is not only because of the lack of supply but it is an acknowledgment of the reputation of Maroba and of the excellent location of Maroba within the Newcastle LGA, being a central location to provide for aged care relative to their families living within broader Newcastle and relative to services.'

Maximising the available accommodation on this site is considered to make good planning sense, particularly noting that Maroba are able to offer a high

level of service to these future occupants. It makes good economic sense to consolidate accommodation for aged persons onto the Maroba site, it allows Maroba to more cost effectively deliver its services than if it were to have a number of facilities scattered around the city. This is particularly important for a not for profit organisation. The following observations are made in relation to the desired outcome:

- Reduced capital housing cost can be achieved through economies of scale which will result in more affordable accommodation for seniors. Given that Maroba is a not for profit organisation, this is particularly relevant.*
- Efficient and cost effective operations with direct access to the higher care facilities of Maroba for seniors within self care apartments (for examples access to prepared meals). Again, given that Maroba is a not for profit organisation, this is particularly relevant.*
- Reducing capital costs and improving cost effectiveness will allow Maroba to offer improved services and facilities to occupants.*
- The proposal is consistent with the principles of aging in place with the ability to move from the proposed self care facilities to nursing facilities within the same facility.*

It should also be noted that there is an opportunity for social interaction between Maroba and the Waratah West Primary School on the north western side of Braye Park. Maroba management has held discussions with the school principal and it was agreed by both parties that this matter should be investigated. This interaction is also encouraged given that there is an existing pathway across Braye Park between the two facilities.

There are strong social and economic grounds that support the proposed development. It is considered that this can be achieved without significant adverse impact on the amenity of the area.'

Following the concerns raised by Council officers in relation to the proposed height and FSR of the proposal, the applicant submitted an additional report, being an 'Economic and Social Analysis Report'. This report provides the following comments:

'The location of the 47 Independent Living Units (ILU) within the wider Maroba complex provides the following benefits to residents:

- Ability to progress over time from an independent care facility to a low care facility and then a high care facility, on the same site;*
- Ability for partners with different care levels to be accommodated within easy and close proximity;*
- Ability to access high level specialist medical and emergency care from neighbouring Mater Hospital; and*
- Ability to access on-site visits by a range of medical practitioners.'*

'Maroba and the proposed addition of 47 ILU is a local attempt to address the needs of seniors living in a very directed and targeted manner. It allows for people to age in their homes, in the confidence and comfort provided by a managed and supported community, with the ability to progress to higher levels of care as time and need dictate.'

'Economic and Social Analysis Report' also discusses the Senior Novocastrian Policy and the Newcastle 2030 Community Strategic Plan:

'While the development at Maroba exceeds the provisions established in the DCP and the new LEP for residential accommodation, Council's other agendas

of social and environmental sustainability should also be considered. The planning framework did not conceive the level of demand for seniors housing or the range of issues and impacts development outside the standard provisions might generate. A wider view of the social benefits is worthy of consideration.'

'The 2030 Community Plan, while not a statutory planning instrument like an LEP, is a fundamental and significant frame of reference for this project. The document itself, was widely communicated, exhibited and developed via community input, and subsequently endorsed by Council. It states in strategy 7.1c that Council will "integrate Newcastle 2030 principles, objectives and strategies in the City of Newcastle corporate planning framework". Furthermore, that is the most comprehensive, up-to-date, and community based document produced by Council. Any argument that the 2011 Draft LEP and its provisions which apply to the site reflect more recent community values and expectations for the site are fallacious. The 2011 Draft LEP is a response, not to a comprehensive planning investigation and consultation, but to the direction of the NSW government to bring the city wide LEP into the standard and template form. Indeed the aim was not to substantially change zones and provisions as part of the exercise.'

'The Newcastle 2030 Community Plan recognizes the importance of community input and engagement and states in strategy 7.2 that it should "provide opportunities for genuine and representative community engagement in local decision making." In regard to Maroba, this process of consultation and engagement has been thorough. The process included:

- Consideration and evaluation by the Council's Urban Design Consultative Group which supported the proposal.*
- Advertising and exhibition of the project for public consideration and comment. The exhibition attracted 73 letters of support, one conditional letter of support and one letter in objection.*
- Posting of details of the proposal on the Maroba web site and in other communications material which resulted in the establishment of a waiting list specifically for these units of 157 individual and couples.*

If Council is committed to this strategy, and its policy of open and inclusive community engagement, then there is a valid expectation that the views of the local community in this regard will be taken into consideration. While certainly not the only consideration, it is valid grounds for Council to determine that the provision of a DCP can be exceeded if community support and benefit justify that exceedance. This is most certainly the experience with determinations by the Minister, the Planning Assessment Commission and in case law on this matter across NSW.'

The variation proposed to the height and FSR is also discussed in the 'Economic and Social Analysis Report', weighed against the social benefits. This report cites previous approvals under Part 3A of the Act, as well as court decisions in this regard, which are argued to have relevance to the consideration of this application.

It is agreed that these decisions reinforce the statutory requirement of consent authorities to consider the social impacts and the public interest of development applications pursuant to Section 79C of the Act. It is noted that the proposal is likely to have positive social benefits. However, the relevance of these decisions in terms of statutory planning controls, and the weight to which planning controls are given in relation to the social impacts, is questioned. Nonetheless, as detailed below, each of

these cases had a significantly different context and statutory planning environment to the current proposal.

Case referenced	Statutory planning context	Comment
Sir Moses Montefiore Jewish Home	<p>The development was a 'Seniors Housing' proposed lodged as Part 3A project, and is located in the Randwick Local Government Area.</p> <p>This application proposed an FSR of 1.29:1 (37,307m²), where the requirement was 1.24:1 (36,307m²).</p> <p>In terms of height, the development had the benefit of a site compatibility certificate from the Department of Planning under the SEPP, which specifically referenced 6 storey buildings, with which the proposal complied.</p>	<p>While the proposal did not comply with the Council's DCP height control, the site compatibility certificate override these controls in this case.</p> <p>In terms of the FSR (0.05), the variation requested was significantly smaller than the variation being proposed by Maroba (1.5:1).</p>
Cardinal Freeman Village	<p>The development was a 'Seniors Housing' proposed lodged as Part 3A project, and is located in the Ashfield Local Government Area.</p> <p>There were no specific height controls for the site.</p>	<p>As there was no existing statutory controls, it is not considered that the context of this case is similar to the Maroba proposal.</p>
Benevolent Society v Waverley Council	<p>This development was a 'Seniors Housing' development proposed under Part 4 of the Act in the Waverley Local Government Area.</p> <p>In terms of height, the development had the benefit of a site compatibility certificate from the Department of Planning under the SEPP, which specifically referenced buildings up to 10 stories, with which the proposal complied.</p>	<p>While the proposal did not comply with the Council's DCP height control, the site compatibility certificate override the controls in this case.</p>

Accordingly, it is not considered that the examples cited allay the concerns regarding the degree of variation proposed, and the potential compromising of Council's planning framework.

The applicant's 'Economic and Social Analysis Report' states:

'On balance, [the proposal] delivers such substantial social benefits that the fact that it "breaks the planning" is of secondary consideration, particularly noting that such variations do not result in adverse impacts and indeed has support of Councils Urban Design Consultative Group.'

While Council officers note that the proposed development would have social benefits as suggested by the applicant and letters of support, it becomes a matter of whether these social benefits are of greater weight than maintaining the integrity of Council's adopted planning controls.

In this regard, the following matters are noted:

- Council's strategic framework does not currently recognise the site or its surrounds as having a 'special case' in relation to the proximity to the Mater Hospital. Accordingly, it is difficult in a statutory planning sense to vary the controls so significantly.
- The SEPP SH is designed to assist in the provision of seniors accommodation. It is noted that this SEPP does not require proximity to hospitals, or existing facilities which can share resources, nor transition between levels of care. Accordingly, the proposal, while it may benefit operationally from these services and provide a higher level of service to end users, does not have the affect of making compliance with Council's adopted standards unreasonable or unnecessary.
- The proposed density and height bonuses of the SEPP SH do not extend to the variation proposed.

Council officer's assessment of this application concludes, within the context of the lower density and height development standards permitted by the SEPP, that the site may be appropriate for Seniors Housing development. However, the scale of the proposed variations to the adopted planning controls is not supported. It is not considered that the planning controls are of secondary importance to social benefits and on balance it would not serve the public interest to vary Council's adopted planning controls to the extent proposed under the subject application.

Noise

The acoustic report addresses both received road traffic noise and noise from neighbouring commercial activity and its impact on the future occupants of the proposed development, and the impact of site noise sources on the nearest residential neighbours and the occupants of the building.

A range of noise control recommendations are provided addressing both building design elements and mechanical plant treatments in order to satisfy the adopted criteria. The consultant describes these guidelines as

“preliminary in that the selection of building materials depends on the user / client requirements, space limitations, budgetary constraints and practicalities that relate to the acoustic design of suites. Adequate building design may be achieved through many different combinations of materials, all of which may achieve the same result, subject to review by us.”

The SEE makes the statement “EJE have confirmed that the development plans (Appendix A) satisfy the recommendations made” (page 55) although no evidence is presented that the acoustic consultant has given his approval. It is considered appropriate that the acoustic consultant should sign-off on the proposed attenuation measures in accordance with the terms of the report.

(c) the suitability of the site for development

In terms of site constraints, the site is identified as bushfire prone and is within a Mine Subsidence District. Having regard to these considerations, it is considered that the site is suitable for the proposal. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

It is considered that the proposal is satisfactory having regard to concerns surrounding climate change.

As demonstrated by the applicant, the site is accessible to facilities, including the Mater Hospital and public transport. In this regard the applicant makes the following comment:

'Newcastle Buses and Ferries operate two bus routes along Bridge Street, Myall Road and Edith Street in the vicinity of the Maroba Aged Care facility. The two services provide reasonably close access to buses which connect with other routes and facilities. Bus stops are located on both sides of Edith Street just north of Platt Street, approximately a 400m walk from the proposed self care apartments.'

The applicant states that an advantage of the location is that ongoing support would be available within the existing facilities of the Maroba site and would relieve pressure on other services.

Council officer's assessment of this application concludes, within the context of the lower density and height development standards permitted by the SEPP SH, that the site may be appropriate for Seniors Housing development. However, the scale of the proposed variations to the adopted planning controls is not supported.

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

Reference is made to the summary of issues in Section 4 of this report. This assessment report has addressed the concerns raised, with the exception of the following matters which are responded to below.

- i) The following comments were provided in letters of support for the proposal:
 - Urgent need for seniors housing of this nature increasing in the Hunter, noting long waits for similar accommodation.
 - Will reduce anti social behaviour in adjoining park by increased surveillance.
 - Quality and appreciation of existing complex.
 - Development will form a natural health precinct with the hospital.
 - Affordability of units and that the scale will ensure an economy of scale to benefit the future purchaser.
 - Ability for seniors to access views and adjoining parkland which would be unaffordable in the inner city.
 - Enhance and add value to the area and will be an asset.
 - Make available other housing for younger members of community.
 - Seniors can live together safe from dangers of outside world.

- Allows seniors in area to gain accommodation close to family and friends
- Apartment allows them to entertain family and friends and design of complex, thereby allowing social interaction.

Comment:

Notwithstanding the benefits that may or may not result from this development, it is considered that the planning framework is the primary consideration in the assessment of this application. The strategic policies in place, including the NUS and DLEP2011, were formulated having regard to social and economic considerations.

- ii) The following comments were provided in the letter of objection to the original notification period:
- impact value of property
 - negatively impact on quality of life

Comment:

The concern relating to potential impacts on the value of property is not a matter of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979.

In terms of the concerns regarding the impacts on quality of life, this is likely to relate to matters previously discussed, being overshadowing, privacy and loss of views. The assessment concluded that the separation of Edith Street does to some extent ameliorate this impact. However, it must be acknowledged as surrounding land in the vicinity of the site currently envisages residential development at a low density scale, any other development would be at a significantly different scale to this proposal. This is significant, as it would result in a stark interface between low and higher density residential development.

It is noted that this submission was not re-iterated during the second notification period.

(e) the public interest

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

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development. The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

7. Conclusion

Subject to various issues, the proposal is unacceptable against the relevant considerations under section 79C.

8. Recommendation

That the Joint Regional Planning Panel refuse to grant consent to DA 11/0527 for a 'Seven storey 'Seniors Housing development including 47 self care apartments, basement carpark and associated landscaping' at No. 58 Edith Street Waratah, for the following reasons:

1. The proposed development is not consistent with the provisions of the Newcastle Urban Strategy, Draft Newcastle Local Environmental Plan 2011 and Newcastle Development Control Plan 2005 with respect to height and floor space ratio. To allow a variation of the scale proposed by this application would be to affect a general change in the planning regime for the site beyond that contemplated by the planning controls [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].
2. The proposed development is not consistent with the objectives of the 2(a) Residential zone of the Newcastle Local Environmental Plan 2003. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].
3. The proposed development is not consistent with the objectives of the R2 Low Density Residential zone of the Draft Newcastle Local Environmental Plan 2011. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].
4. The proposed development is not consistent with Clause 33 (a) and (c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979].

APPENDIX A – Plans and Elevations

APPENDIX B – Referral Comments

Comments from External Agencies

Agency	Comments
NSW Rural Fire Service	The Rural Fire Service granted a 'Bushfire Safety Authority' for the proposal, subject to conditions.

Comments from Internal Departments

Department	Comments
Council Engineer	<p><u>Flooding</u></p> <p>The site is not flood prone.</p> <p><u>Stormwater</u></p> <p>The proposal is required to comply with Element 4.5 of Newcastle Development Control Plan 2005. With a roof area of approximately 1200 m² on a 3000 m² lot the proposal is required to provide in the order of 14 m³ of stormwater discharge control.</p> <p>The plans by Michael Fitzgerald show a 50 m³ re-use / retention tank which is considered to comply with Council's requirement. No objection is raised to the drainage design.</p> <p><u>Traffic Generation</u></p> <p>The traffic impact statement has addressed the issue of additional traffic in the road network from the development. It has determined that the traffic generation is likely to be only in the order of up to 10 vehicles per hour. As an aged care facility this proposal typically does not generate much additional traffic. This is less than 10 % of the weekday peak hour traffic on Edith Street and as such falls within the normal weekly and seasonal variations in peak hour traffic. Therefore the additional traffic will have no noticeable impact on the efficiency of the local road network.</p> <p><u>Parking</u></p> <p>The traffic report has shown that the proposed development has a 1 space deficiency in regard to the parking requirements of SEPP Housing for seniors or people with a disability 2004 which it says is acceptable on the basis that not everyone will own a car. Whilst the argument is not valid given the parking rates adopted in the SEPP already cater for this lower car ownership rate I am willing to accept a 1 space variation on the following basis;</p> <ol style="list-style-type: none"> 1. The development itself is a large development therefore parking demand rates would be expected to be lower than for smaller development; 2. The variation being sought is only small; 3. Staffing of the facility is low and the proposal utilises existing staff that already use parking facilities on the rest of the site. Therefore some cross use of facilities would be expected thereby lowering parking demand especially for staff. <p>The scale of plans does not allow full compliance checks with the SEPP and AS 2890.1-2004 though it appears there is plenty of room on site to comply. Compliance with the SEPP and AS2890.1 should be confirmed prior to issue of a Construction Certificate.</p> <p>Note the ambulance bay has been provided within the existing complex which is to remain.</p> <p>NOTE: Following these comments the proposal was later amended to comply with the SEPP.</p> <p><u>Access</u></p> <p>Access to the site is to be via an existing access off Myall Street and an existing access off Edith Street. The Edith Street access is a left out only access and as an existing access no objection is raised to the access arrangements. The</p>

	<p>existing access was deemed suitable during previous assessment for parts of the complex previously approved and it is considered it provides the safest access to the site.</p> <p><u>Other</u></p> <p>The proposal has identified garbage will be collected via private contractor utilising the internal road network. This is considered satisfactory and I am satisfied forward entry and exit from site will occur. The site is also in close enough proximity to public transport facilities and the pedestrian facilities in the vicinity of the site are already satisfactory.</p> <p><u>Recommendation</u></p> <p>This development is recommended for approval on the basis that it is not considered to have an adverse impact on existing traffic conditions in this vicinity and can meet the requirements of SEPP Housing for seniors and people with a disability.</p>
Environmental Comments (Compliance Services Unit)	<p><u>Noise</u></p> <p>The acoustic report addresses both received road traffic noise and noise from neighbouring commercial activity and its impact on the future occupants of the proposed development, and the impact of site noise sources on the nearest residential neighbours and the occupants of the building.</p> <p>A range of noise control recommendations are provided addressing both building design elements and mechanical plant treatments in order to satisfy the adopted criteria. The consultant describes these guidelines as</p> <p><i>"preliminary in that the selection of building materials depends on the user / client requirements, space limitations, budgetary constraints and practicalities that relate to the acoustic design of suites. Adequate building design may be achieved through many different combinations of materials, all of which may achieve the same result, subject to review by us."</i></p> <p>The SEE makes the statement "EJE have confirmed that the development plans (Appendix A) satisfy the recommendations made" (page 55) although no evidence is presented that the acoustic consultant has given his approval. It is considered appropriate that the acoustic consultant should sign-off on the proposed attenuation measures in accordance with the terms of the report. A consent condition to this effect will be recommended.</p> <p><u>Contamination</u></p> <p>The preliminary contamination assessment prepared by Coffey dated 28 March 2007 has confirmed the presence of some uncontrolled "bottom ash slag" fill present in places on the site. As the sampling was conducted when the previous building was still present, only limited access was available and the extent of the fill material was not determined. The assessment prepared by Coffey dated 28 March 2007 acknowledges that the nature and extent of contamination is not known in the statements:</p> <p><i>"inspection and additional testing should be conducted on fill material encountered at the site during earthworks to identify any possible deleterious and contaminated material that differs from those encountered during the current investigation" and "the contamination assessment should be used as an indication of contaminants present at the site only".</i></p> <p>Coffey conducted further investigation to assess the extent and nature of fill material and provide remediation recommendations. Eight test pits were sampled and analysed. The investigation showed that fill occurs on site from depth ranging from approximately 0.2m in the south-western part up to 1.6m in the north-western part of the site. There is also a fill mound on the western boundary with is about 2m in height and has an approximate volume of 360m³. When assessed against the contamination guidelines for residential land use with garden/accessible soil (HIL 'A'), TP4 revealed elevated levels of copper and lead and TP5 showed elevated levels of Total Petroleum Hydrocarbons and Polycyclic Aromatic Hydrocarbons. Two suspected asbestos fragments were also tested, and one sample tested positive for the presence of chrysotile and amosite asbestos.</p> <p>The Remedial Action Plan prepared by Coffey dated 18 November 2011 proposed remediation strategy involves the following works:</p> <ul style="list-style-type: none"> • Emu-picking of visible asbestos fragments from the surface if the site

	<ul style="list-style-type: none"> • Delineation of the previously identified restricted and hazardous waste hot-spots through test pitting and soil sampling • Bulk excavation of the fill materials and disposal to appropriately licensed disposal facilities <p>Following remedial works, the resulting excavations will be inspected to confirm that, visually the fill materials have been removed to the extent practical. Soil samples will also be taken for validating purposes and compared to adopted residential soil investigation levels. A site validation report will be prepared, documenting findings and providing an assessment of the suitability of the site for the proposed development. This measure will be addressed by an appropriate consent condition.</p> <p><u>Construction</u></p> <p>The potential impacts associated with the construction phase of the development are not addressed in SEE. For a construction of this magnitude it is appropriate that a CEMP be prepared and this measure will be addressed by an appropriate consent condition.</p>
Strategic Planning	<p><u>Strategic Directions</u></p> <p>The Newcastle Urban Strategy (NUS) outlines the expected development of Newcastle based on the principles of New Urbanism and discusses the expectations of Waratah in relation to neighbourhood identity.</p> <p>The NUS specifies residential densities based on SAFE Criteria which measures the actual on-ground distance from defined centres and railways stations. The NUS states that a District Centre Residential Density (DCRD) should apply to land within 800m of a District Centre or railway station, a Neighbourhood Centre Residential Density (NCRD) should apply to land 400m from a Neighbourhood Centre. A Standard Residential Area (SRA) is to apply to the areas outside the DCRD and NCRD areas. In regard to the subject site, as it is not within a DCRD or NCRD, a SRA applies to the site.</p> <p>The Floor Space Ratio (FSR) controls within the Newcastle Development Control Plan 2005 are based upon the principles of the NUS, a SRA resulting in a FSR of 0.6:1 under the DCP. Although the site is within a SRA, the SAFE Criteria, which considers the spatial experiences of the walking route, must also be addressed to determine if an increase in height and FSR is warranted. It should be noted that the applicant has failed to address within the Statement of Environmental Effects (SEE) the SAFE criteria in their request for increased height and FSR.</p> <p>Council staff have undertaken an assessment of the SAFE criteria for the subject site:</p> <p>Safe: The walk from the subject site to the Waratah commercial centre and Waratah Railway Station is relatively safe with footpaths available on at least one of side or the road. However, a main road (Edith Street) needs to be crossed. There is a shortage of safe marked pedestrian crossing on Edith Street near the subject site with the only safe crossing considered to be the signalised intersection at Platt Street.</p> <p>Accessible: Footpath levels serving the subject site are located at street level with ramp crossings.</p> <p>Friendly: For the most part the paths serving the subject site are friendly, being located in a low density residential area, with adequate surveillance.</p> <p>Efficient: The most direct route to both the Waratah Railway Station and the Waratah commercial centre is approximately 1,400m, well over the recommended walkable distance in the NUS (800m).</p> <p>From Council officers analysis of the SAFE criteria it has been determined that the proposed development does not meet the SAFE criteria as the walkable distance between the subject site and the commercial centre or railway station is more than the walkable distance outlined in the NUS (800m).</p> <p>The submitted SEE (page 47) presents a case that the site warrants a higher density and increased height due to proximity to the Mater Hospital and existing Maroba facilities. While council recognises the benefits being close to a hospital can provide it is considered that the Hospital and the existing Maroba cannot reasonably provide the same level of services or benefits as a commercial</p>

	<p>centre or train station that would warrant a higher density in accordance with the principles of the NUS. It is therefore considered that the points presented in the SEE do not justify a density variation from the Newcastle DCP 2005.</p> <p>The points presented in the SEE to support a variation to the height have some merit and it is considered that strict compliance with the maximum height limit of 8.5m is not critical on this site. Accordingly some variation could be considered on merit, however the scale of development as proposed is considered excessive for a SRA under the NUS. A scale consistent with the density and comparable to the existing Maroba facility would appear more appropriate.</p> <p><u>Draft Newcastle LEP 2011</u></p> <p>The consultant ADW Johnson made a submission on the draft Newcastle LEP 2011 requesting that the height and FSR on the subject site be increased and the proposed zoning changed. It was requested that the height controls be increased from 8.5m and the FSR controls increased from 0.6. The submission from ADW Johnson also requested that the proposed zone under the draft LEP 2011 be change from R2 Low Density Residential to R4 High Density Residential to allow Residential Flat Buildings.</p> <p>Council staff have proposed not to alter the height and FSR controls for the subject site in the draft Newcastle LEP 2011 as the current controls are consistent with surrounding land uses. In addition to this, the draft Newcastle LEP 2011 is intended to be a conversion from the 2003 LEP. As a result the height and FSR which have been proposed in DA 11/0527 substantially exceeds the height and FRS controls in both the current Newcastle DCP 2005 and also the draft Newcastle LEP 2011.</p> <p>It is not proposed to alter the proposed zoning under the draft Newcastle LEP 2011 for the subject site and it is likely that the subject site will be zoned R2 Low Density Residential when the draft Newcastle LEP 2011 is gazetted.</p> <p><u>Conclusion</u></p> <p>Strategic planning have considered the application and determined that in terms of height and FSR the proposal is not compatible with Councils strategic direction for the area identified under the Newcastle Urban Strategy. A slight variation in height may be acceptable however, the substantial variation which is proposed is considered to be not in keeping with the principles of the Newcastle Urban Strategy.</p>
Community Planning	<p><i>'I have concerns regarding safe pedestrian access across driveways and roads adjacent to the development.</i></p> <p><i>The condition of the footway also requires consideration as there is potential for seniors to be walking side by side or for mobility aids ie scooters, electric wheelchairs to be using the footway. The footway needs to be wide enough to accommodate such movements and should be considered in the development assessment.</i></p> <p><i>Within the proposed developed, there is one common room of 65m² which is inadequate to accommodate the potential 115 residents of the development at one time. Communal spaces with seniors living developments are important for residents to build social connections and reduce social isolation. Communal spaces are also important to encourage friends and family to visit the residents at home. The size of the communal spaces within this development is considered inadequate to accommodate the residents and their visitors. There is one toilet and no bathrooms associated with the common room which will may restrict the use of the space.</i></p> <p><i>The outdoor area at the rear of the proposal appears to be a green screen rather than a useable open space for residents. Passive open spaces are important for older people to maintain a high quality of life and sense of wellbeing. These spaces also provide important areas for social connections between residents. The outdoor area is too small to accommodate the number of residents proposed to be accommodated on the site.</i></p> <p><i>There are no facilities shown in the outdoor areas including seating, tables, BBQs etc that can be used by the residents and by their visiting friends and families. In order for the outdoor areas to be useable, facilities are required.</i></p> <p><i>The units should be designed to be adaptable to allow for residents to age in place. It is difficult to clearly assess this from the plans provided and I have concerns regarding the circulation spaces within some bathrooms based on the</i></p>

	<p>layouts</p> <p><i>It is not clear from the application as to who will be providing services onsite to these units as residents age in place. The SEE (p.51) states that there will be no additional service movements. Residents are highly likely to require external services such as Community Health and Palliative Care and these would generate additional service movements. Anecdotally these external services are already experiencing difficulties in accessing residential flat buildings of higher densities due to parking difficulties for health providers and challenges in getting equipment into the building.</i></p> <p><i>The Social and Economic Impacts (p.57) state that residents will have access to a 'high level of service'. However a number of areas are not further addressed within the Social Impact comments:</i></p> <ul style="list-style-type: none"> <i>• Who will provide these services and what are they?</i> <i>• Will there be a fee for service in 'affordable seniors living housing'(p.8)?</i> <i>• Will there be any initiatives to support residents who are not able to afford fee for service?</i> <i>• Is this intended to be provided in house or from external providers?</i> <i>• If the expectation is on external providers, is there evidence that these providers (eg GPs, Home and Community Care (HACC) providers) have existing capacity to service the additional residents?</i> <i>• The location of the proposal near a public hospital does not address the capacity of external agencies to provide the services required.</i> <p><i>Whilst the proposal will address a need for age accommodation, the development does not comply in a number of areas and the applicant has not addressed the potential for social impacts.'</i></p> <p>Following amendment to plans and additional assessment from the applicant, the following additional comments were provided -</p> <p><i>'There has been a significant improvement in the provision of community space within this building (as shown Level 1 Floor Plan) with the addition of:</i></p> <ul style="list-style-type: none"> <i>• A small kitchen area</i> <i>• Storage</i> <i>• Larger toilet space</i> <i>• Direct access to the terrace area and BBQ.</i> <p><i>I note:</i></p> <ul style="list-style-type: none"> <i>• a path leading off the terrace to Braye Park. A gate is not shown on these plans. I assume that this would be a "secure" gate if possible.</i> <p><i>Carpark exhaust near the terrace – how high is this exhaust stack? Would these fumes impact significantly on residents either on the terrace or on higher floors?'</i></p>
Building Surveyor	No comments in relation to the development application. Conditions of consent recommended.