



Vincent Street
CESSNOCK 2325

23 June 2008

To All Councillors

You are hereby notified that the next Meeting of the City Planning Committee will be held in the Council Chambers, on Wednesday, 2 July 2008 immediately following the conclusion of the Corporate and Community Committee Meeting, for the purpose of transacting the undermentioned business.

**B R MORTOMORE
GENERAL MANAGER**

AGENDA:

PAGE NO.

(1) APOLOGIES.

(2) CONFIRMATION OF MINUTES.

Minutes of the City Planning Committee Meeting held on
18 June 2008

(3) DEFERRED BUSINESS

42/2008	8/2008/6/1 - 46-54 Buckland Avenue, Cessnock	2
---------	---	---

(4) OFFICERS' REPORTS

DIRECTOR CITY PLANNING

46/2008	8/2008/13/1 - 3 & 5 Buckland Avenue, Cessnock	21
47/2008	HEZ Association	41

(5) QUESTIONS WITHOUT NOTICE.

DEFERRED BUSINESS

DIRECTOR CITY PLANNING REPORT NO. 42/2008

DEVELOPMENT APPLICATION NO:	8/2008/6/1
APPLICANT:	RESITECH (A SERVICE AGENCY OF THE DEPARTMENT OF HOUSING)
OWNER:	DEPARTMENT OF HOUSING
PROPERTY:	LOTS 1-5 DP 12682 46-54 BUCKLAND AVENUE CESSNOCK
AREA:	
ZONING:	RESIDENTIAL 2(A)
PROPOSAL:	CONSTRUCTION OF THIRTEEN (13) X TWO (2) BEDROOM (SENIORS HOUSING) SELF-CONTAINED RESIDENTIAL UNITS

Senior Planning Assessment Officer, Mr R Sandell, reports:-

SUMMARY:

Application has been received for the erection of a seniors housing development comprising thirteen (13) x two (2) bedroom self-contained dwellings in a part single storey and part two storey construction. The proposed development has been notified to adjoining owner/occupiers in accordance with the Cessnock Development Control Plan 2006 and one petition has been received with the signatures of seven (7) residents of Mackellar Street raising concerns about the proposal.

The application has been assessed under the provisions of State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004 and Cessnock Development Control Plan 2006 and is considered satisfactory. The concerns raised by local residents have also been addressed and it is recommended that the application be approved.

The applicant, Resitech, acts on behalf of the Crown in relation to this application and Section 116C of the Environmental Planning and Assessment act, 1979 states:-

"A consent authority, in respect of a development application made by on behalf of the Crown, must not:-

- a) refuse its consent to the application, except with the written approval of the Minister, or*
- b) impose a condition of its consent, except with the written approval of the Minister or the applicant.*

The applicant has been provided with a copy of the draft conditions of consent and has issued its formal acceptance of the conditions.

PROPOSAL:

The proposed development comprises the following:-

- Construction of self-care seniors housing development comprising 13 x 2 bedroom self-contained dwellings, nine (9) of which will be wheelchair accessible dwellings and six (6) of which will be disabled/adaptable dwellings.
- Provision for a total of nine (9) on-site parking spaces, comprising five (5) garages and four (4) visitor spaces in a centrally located open parking area; and

- Provision of open space in the form of landscaped courtyards for ground floor dwellings and balconies for first floor dwellings.

The proposed unit development will be constructed in five (5) buildings with single storey units fronting both Buckland Avenue and Mackellar Streets. A single storey duplex and separate dwelling will front Buckland Avenue and a single storey duplex will front Mackellar Street. Two (2) buildings each containing four (4) units in a two (2) storey configuration will be located at the rear of the single storey units.

The proposed buildings will be constructed using selected face brickwork on the external walls, metal 'Colorbond' sheeting as the roofing material and powder-coated aluminium windows.

SITE DESCRIPTION:

The subject site is located on the south eastern corner of the intersection of Buckland Avenue and Mackellar Street.

The subject site is generally rectangular in shape with a total development site area of approximately 3,061 square metres. The site is currently vacant and has frontage to Buckland Avenue of 76.2m (which has not been constructed) and frontage to Mackellar Street of 40.235m, a common southern boundary of 40.169m and a common eastern boundary of 76.2m.

The site slopes approximately 4 metres from its south-western corner at the Buckland Avenue frontage, towards its north-eastern corner at Mackellar Street. The site is clear of all vegetation, except grasses. Vacant lands immediately surround the development site and a natural watercourse is located on adjoining land to the east. Development in the surrounding locality is primarily residential and consisting of predominantly single storey detached dwellings of brick veneer construction.

Reticulated water and sewerage services are available to the site.

PUBLIC NOTIFICATION (S79C.d):

The application has been notified in accordance with Council's Development Control Plan 2006 for a period of twenty-two (22) days. One (1) letter with seven (7) signatures from residents in Mackellar Street has been received in response to the notification. Residents are seeking clarification on a number of points as follows:-

1. What will the criteria be for being classified as "Aged or Disabled"?

Comment: Under Clause 8 of SEPP (Housing for Seniors or People with a Disability) 2004 seniors are any of the following:-

- a) people aged 55 or more years,
- b) people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 of the Commonwealth) is provided,
- c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

Under Clause 9 of the Policy, people with a disability are "*people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life*".

2. Can the criteria for this classification be changed in the future to accommodate general or low income families?

Comment: This is matter for consideration by the Department but Clause 18(1) of the Policy states that development under the SEPP can only be carried out for the accommodation of the following:-

- a) seniors or people who have a disability,
- b) people who live within the same household with seniors or people who have a disability,
- c) staff employed to assist in the administration of and provision of services to housing provided under this Policy”.

Further, under Clause 18 (2) of the Policy, a consent authority (ie Council) must not consent to a development application unless:

“a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and

b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act, 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1)’.

3. Will the Department’s ‘grounds and gardens’ be maintained by the Department of Housing or by the residents?

Comment: The Department has advised that it will engage local contractors to ensure that common landscaped areas within the development are continually maintained to a satisfactory standard.

4. The stormwater drainage from the development, will this be drained into the open area between Myra and Mackellar Streets?

Comment: Council will require the provision of water tanks and stormwater detention within the site in accordance with its requirements for unit development. This will ensure the collection of stormwater which will then be conveyed to the stormwater easement referred to by residents.

5. As this is housing for the aged and disabled, why are there two storey units, surely flights of steps would be difficult for most aged or disabled residents to manage?

Comment: The Department caters for a wide range of housing needs and many people 55 years of age and over are not restricted by a two storey unit development. Similarly, some disabled persons, such as hearing impairment, may not be restricted from accessing a two storey unit development.

The concerns raised by local residents have been referred to the Department of Housing who have provided a response to the petition.

STATUTORY SITUATION (S79C.a):

The proposed development is located within the Residential 2(a) zone and under the provisions of the Cessnock Local Environmental Plan 1989 the proposal is permissible with the consent of Council. The development also falls within the definition of ‘Seniors Housing’ under the State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004 and is required to comply with the provisions of this policy together with Council’s Development Control Plan 2006 (Part D Specific Development – Chapter D.2).

RELEVANT ISSUES (S79c(b)(c)&(e)):

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

a) The Provisions of Any Environmental Planning Instruments

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

Under the terms of the Policy ‘*seniors*’ are people aged 55 years or more and ‘*people with a disability*’ are people of any age who, as a result of an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full and active life.

‘*Seniors Housing*’ is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability and includes a group of self-contained dwellings as proposed in this application.

The proposed development conforms with the general requirements of the policy in that nine (9) of the dwellings will be wheelchair accessible dwellings, with six (6) being disabled/adaptable dwellings.

Specific Requirements

- 1) Location and Access to Facilities (Clause 26) – the Policy requires that Council must not consent to an application for seniors housing unless it is satisfied that residents will have access to:-
 - i) shops, banks and other retail and commercial services that residents may reasonably require, and
 - ii) community services and recreation facilities, and
 - iii) the practice of a general practitioner

The Policy further states that the access to such facilities may be in the form of a transport service located at a distance of not more than 400 metres from the site of the proposed development by means of a suitable access pathway and have an overall average gradient along this distance of not more than 1:14. The Policy also requires that the transport service will take residents to a place that is located at a distance of not more than 400 metres from the facilities referred to above and that such service is available to and from the development site during daylight hours at least once each day from Monday to Friday.

The proposed development generally satisfies these requirements. It is approximately 395 metres from the bus stop in Buckland Avenue where Rover Coaches operates a local bus service with regular scheduled bus services (Route 169) on Tuesdays, Wednesdays and Fridays to and from the Cessnock city centre. In addition Cessnock Community Transport Inc also provides alternative transport arrangements and activities for residents and Rover Coaches also operate an extensive school bus service which is also available to local residents.

Design requirements

- 1) **Site Analysis** (Clause 30) – this clause states that Council must not consent to an application unless it is satisfied that the applicant has taken into account a site analysis prepared by the applicant containing information about the site and its surrounds and is accompanied by a written statement explaining how the design of the proposed development has regard to the site analysis and design principles set out in Division 2 of the Policy.

The information submitted with the application is considered to be adequate for the purpose of this clause and was supported by the officer inspection of the site.

- 2) **Design of residential development** (Clause 32) – this clause requires Council to take into consideration a set of design principles for new residential development based on:-

- a) **Neighbourhood amenity and streetscape** – the proposal has been designed with single storey dwellings facing Buckland Avenue and Mackellar Street and the two storey component of the development located at the rear of the site facing vacant open space land to the east. The design of the proposed development complements the character of neighbouring residences by adopting a predominantly single storey form of construction with similar street setbacks.

Council's Building Line policy on corner lots requires a six (6) metre building line to the principle street and 4 metres to the secondary street. The application proposes a 4 metre setback to Buckland Avenue and a 6 metre setback to Mackellar Street. Although the principle street address is Buckland Avenue, the proposed building lines are supported given that this section of Buckland has not been constructed and Mackellar Street will be the primary frontage for access purposes. The existing dwellings opposite the development site in Mackellar Street also observe a 6 metre front setback.

- b) **Visual and Acoustic privacy** – the proposed unit development does not directly adjoin any other residential properties and in conjunction with the design has ensured that the visual and acoustic privacy of neighbours in the vicinity of the site have been preserved.

- c) **Solar access and design for climate** – the siting of the proposed development will have no impact on the access of sunlight into the living areas and open space areas of adjoining properties. All living areas of the proposed units and open space areas have been designed with a northern or eastern orientation to maximise solar access.

d) **Stormwater** – the applicant has submitted stormwater details incorporating the provision of a 2000 litre water tank for each dwelling unit and stormwater detention in accordance with Council requirements. Final plans for the stormwater detention and conveying of stormwaters to the Council's drainage easement will be required prior to the commencement of the development.

e) **Crime prevention** – fencing is to be provided along all site boundaries and along the boundaries of all private open space areas to provide a level of safety and security for residents. The design of the development will also allow for general surveillance of common areas and the central car parking area from the dwellings.

f) **Accessibility** – the proposed development provides safe pedestrian links that give access to transport services and provide a secure environment for pedestrians and motorists with convenient access for residents and visitors.

g) **Waste management** – the applicant has submitted a waste management plan in accordance with the Cessnock DCP 2006 (Part C – General Guidelines, Chapter C.5 – Waste Management & Minimisation) in order to maximise recycling during the construction of the development.

Development standards to be complied with

1) Development Standards – minimum sizes and building height – Council is unable to grant consent to an application unless the development complies with the following standards of the Policy:-

- (a) the size of the site must be at least 1,000 square metres
- (b) the site frontage must be at least 20 metres wide measured at the building line
- (c) the height of proposed buildings is less than 8 metres.

The proposal complies with the above standards.

2. Self-contained dwellings – standards concerning access and useability

Under Clause 41 of the Policy Council is unable to grant consent to a development unless the development complies with a range of specific standards relating to access and usability. The applicant has provided details demonstrating compliance with the standards referred to in Clauses 52 to 72 of the Policy.

Standards that cannot be used to refuse development consent for self-contained dwellings (Div. 4 - Clause 50)

The SEPP states that Council must not refuse to grant its consent to a development if certain criteria are satisfied. The proposed development complies with all of these criteria:-

- a) building height where buildings are 8 metres or less in height.
- b) density and scale where expressed as a floor space ratio, ie standard requires 0.5:1 or less and proposed is 0.5:1.
- c) landscaped area proposed is 35% of area of site (minimum of 30% of the area of the site to be landscaped is requirement).

- d) deep soil zones – the Policy states that not less than 15% of the site is to be available as a deep soil zone which are those parts of the site not built on, paved or sealed where there is soil of sufficient depth to support the growth of trees and shrubs. Proposal sets aside 18% of site as deep soil zones.
- e) solar access – requirement is for 70% of living areas and main private open space areas to receive a minimum of 3 hours of sunshine between 9am and 3pm in mid-winter and this has been achieved.
- f) private open space – requirement is for minimum 15m² per dwelling and for one area minimum dimension of 3m x 3m accessible from living area. Minimum open space per dwelling achieved is 66m² and minimum 3 x 4.1m accessible from living area.
- g) car parking – requirement is for minimum 1 car space per each 5 dwellings. Nine (9) car parking spaces have been provided.

b) The Provisions of any Local Environmental Plan

Cessnock Local Environmental Plan, 1989

The subject land is zoned Residential 2(a). The proposed development falls within the definition of a residential flat building and is permissible only with the consent of Council in the zone under the provisions of the Cessnock Local Environmental Plan 1979. The objectives of the zone are:-

- a) *primarily to provide for low density residential development;*
- b) *to enable residential flat buildings which are compatible with single dwelling development;*
- c) *to provide for other forms of development which may appropriately be located in a residential zone; and*
- d) *to ensure non-residential development is of a type, scale and character which will maintain residential amenity.*

The proposed development is consistent with objectives a) and b) of the zone. It should be noted that Clause 5 (3) of SEPP (Housing for Seniors or People with a Disability) provides that the provisions of the Policy prevail where any inconsistency exists between the Policy and the Plan.

c) The Provisions of any Development Control Plan

The proposal is required to comply with the provisions of the Cessnock Development Control Plan 2000 (Part D – Specific Development, Chapter D.2 – Urban Housing) unless otherwise covered by the SEPP.

Design Elements – Building Design and Appearance

With regard to the rear boundary setback the wall of the two storey dwelling units are setback 2.1m from the eastern boundary. The required setback is 2.38m and the applicant has requested a variation to this requirement as the eastern boundary adjoins a drainage reserve which will not be built upon. The variation represents a minor encroachment into the rear boundary setback and is supported in the circumstances.

The proposed development satisfies the remaining provisions of the Cessnock Development Control Plan 2000 – Urban Housing.

The Likely Impact of that Development

Access and Traffic – car parking provided for the proposal exceeds the requirements of SEPP (Housing for Seniors or People with a Disability) 2004. Only three (3) car parking spaces are required under the SEPP while nine (9) spaces have been provided including five (5) garages. The standard satisfied in this regard recognises that a significantly lower requirement for on-site car parking is necessary for seniors and people with a disability than with normal residential unit development.

Buckland Avenue, adjacent to the development, is an unformed roadway. Mackellar Street, adjacent the northern boundary of the proposed development, is sealed but without kerb and gutter and no formed footway adjacent the development site. Both streets are to be constructed to a full width roadway including concrete kerb and gutter both sides, seeding of footpaths and construction of a 1.2m wide concrete footpath adjacent the development site.

Social Impact in the Locality – the proposal will result in a number of positive benefits to segments of the Cessnock community as it will give the Department of Housing an opportunity to meet the needs of the aging population by providing purpose built accommodation for aged people and people with a disability. In addition the new housing will result in more accessible housing becoming available and improvements to the sustainability of housing in the locality through improved energy and water efficient housing designs.

Economic Impact in the Locality – the proposed development will contribute in a positive economic way to the Cessnock economy through the employment of personnel for the construction of the development, the local sourcing of construction materials, on-going consumption from new additional households and the more efficient use of land resources, existing infrastructure and existing services.

Suitability of the Site for the Development – the subject site is suitable for the proposed development due to its proximity to transport infrastructure providing access to the commercial centre of Cessnock. The site is also in close proximity to Cessnock Hospital.

The constraints of the site are its present access to Buckland Avenue. The construction of the northern end of Buckland Avenue incorporating the sealed road, kerb and gutter and the provision of a concrete footpath will facilitate access to the transport infrastructure for residents of the unit development.

CONCLUSION

The proposed development has been considered under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and Cessnock Council's DCP 2006 and in complying with these requirements will contribute in a positive way to the natural and built environment.

The design of the proposed development using a mixture of single and two (2) storey unit development will minimise the impact of the proposal on the nearby residential development and result in a positive contribution to the streetscape.

RECOMMENDATION that Development Application No. 8/2008/6/1 for the construction of thirteen (13) x two (2) bedroom (Seniors Housing) residential units on Lots 1-5 DP 12682 Nos 46-54 Buckland Avenue, CESSNOCK; be approved subject to compliance with the following conditions:-

SCHEDULE 1

TERMS OF CONSENT

General

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans numbered 0720 DA (Job No. BF89H, Sheets D1 – D5) dated 19/10/2007 and Stormwater Plan (Job No. 07-681) dated 11/9/07, the Statement of Environmental Effects dated December 07 and any other information submitted in support of the application, except as modified by the conditions of this consent.

Note: Any proposal to modify the terms or conditions of this consent, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application under Section 96 of the Environmental Planning and Assessment Act 1979 for Council's consideration. If amendments to the design result in the development not remaining substantially the same as that approved by this consent, a new development Application will have to be submitted to Council.

Reason

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

2. The proposed self-contained dwellings shall be occupied exclusively by "seniors or people with a disability " as defined under Clauses 8 and 9 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 in accordance with Clause 18 of the Policy.

In this regard the applicant is required to register a restriction as to user against the title of the property on which the development is to be carried out, in accordance with section 88E of the Conveyancing Act, 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in Clauses 8 and 9 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Reason

To confirm the terms of approval and the basis of Council's consideration under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

3. All building work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

4. The applicant shall comply with the requirements of the Hunter Water Corporation Ltd in respect of any building or structure proposed to be erected over any services or stormwater drain under the Corporation's control and in relation to the amplification of the sewer and water supply to the proposed development.

Reason

To ensure compliance with the Hunter Water Corporation requirements for the supply of water and sewerage to the proposed development.

Design Considerations/Building Setbacks

5. Lighting of the development shall not project glare onto adjoining properties or roadways.

Reason

To ensure that lighting of the land does not adversely affect the environmental quality of adjoining land nor create a hazard to motorists.

6. A group mailbox shall be provided at the street frontage within the property boundaries in accordance with the requirements of Australia Post such to clearly display individual unit numbers and the required house number.

Reason

To ensure appropriate and suitably located letterboxes are provided.

Building Construction

7. Excavations or filling against boundaries are to be adequately retained by retaining walls.

Reason

To reduce the risk of damage to adjoining properties

8. Development shall be undertaken strictly in accordance with all commitments specified in the current BASIX Certificate.

Reason

Compliance with the Environmental Planning and Assessment Regulation 2000.

Access, Carparking and Loading Arrangements

9. All access crossings and driveways shall be maintained in good order for the life of the development.

Reason

To ensure that a safe adequate all-weather access is available to the development

Drainage and Flooding

10. Any alterations to existing surface levels on the site shall be undertaken in such a manner as to ensure that no additional surface water is drained onto or impounded on adjoining properties.

Reason

To ensure that such alterations to surface levels do not disrupt existing stormwater flows in the vicinity.

Site Works

11. This consent allows the removal of trees and other vegetation from the site of approved buildings, structures, permanent access ways and carparks. It also allows for the removal or lopping of trees within three (3) metres of approved buildings. No other trees or vegetation shall be removed or lopped except with prior written consent of Council.

Reason

To ensure that only trees and vegetation directly affected by the development are removed from the site, and to grant approval for such removal.

Landscaping

12. Landscaping works shall be carried out in accordance with the details indicated on the submitted landscape design plan, except as required to be modified under the terms of this consent.

Reason

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

Roadworks

13. The registered proprietor of the land shall construct the following works along the property frontage to Buckland Avenue under the Roads Act and in accordance with Council's 'Engineering Requirements for Development'. The design is to be submitted on a set of plans, four (4) copies of which shall be submitted to and approved by the Development Services Manager prior to any works taking place within the road reserve.

- * Construct full width sealed roadway.
- * Construct concrete kerb and gutter to both sides.
- * Construct and gravel road shoulders.
- * Place 2 coat bitumen seal on road shoulders.
- * Construct drainage works where necessary, including the extension of the existing 375mm RCP located at the north west corner of the intersection of Brown Street and Buckland Avenue. A kerb inlet pit is to be constructed, at the northern point of a kerb return at this intersection, to receive the existing stormwater pipe and direct it to the eastern side of Buckland Avenue, thence to Mackellar Street to connect to the "easement to drain water" on Lot 20 DP 9164.
- * Construct a 1.2m wide concrete footpath adjacent to the subject site.

Reason

To ensure that adequate provision is made for vehicular and pedestrian movements to meet expected demand generated by the development, in accordance with current Council requirements.

14. The registered proprietor of the land shall construct the following works along the property frontage to Mackellar Street under the Roads Act and in accordance with Council's 'Engineering Requirements for Development'. The design is to be submitted on a set of plans, four (4) copies of which shall be submitted to and approved by the Development Services Manager prior to any works being undertaken in the road reserve.

- * Construct concrete kerb and gutter.
- * Construct and gravel road shoulder.
- * Place 2 coat bitumen seal on road shoulder.
- * Construct drainage works where necessary.
- * Construct a 1.2m wide concrete footpath adjacent to the subject site.

Reason

To ensure that adequate provision is made for vehicular and pedestrian movements to meet expected demand generated by the development, in accordance with current Council requirements.

15. On-site car parking shall be provided for a minimum of four (4) vehicles and such being set out generally in accordance with Council's Car Parking Code.

Reason

To ensure that adequate provision has been made for manoeuvring and parking of vehicles within the development or on the land, to meet the expected demand generated by the development.

16. All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The car parking areas shall be constructed with reinforced concrete, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

Reason

To ensure the orderly and efficient use of on-site parking facilities and ensure that adequate provision is made on-site for the loading and unloading of goods.

DURING CONSTRUCTION

General

17. If the soil conditions require it:-
- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and
 - (b) adequate provision must be made for drainage.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

18. Toilet facilities are to be provided prior to works commencing, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be a sewage management facility approved by the NSW Department of Health and/or Council and operate in an environmentally responsible manner, free of nuisance or offence, and be appropriately serviced.

Reasons

To ensure that suitable and environmentally sustainable toilet facilities are provided for all persons employed or visiting the site. To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

19. Construction, demolition and associated work shall be carried out only between the times stated as follows:-

Mondays to Fridays	7.00a.m. to 6.00p.m.
Saturdays	8.00a.m. to 1.00p.m.
Sundays & Public Holidays	No construction work to take place.

Reason

To ensure that the environmental quality of adjoining land is not adversely affected, such as by the generation of excessive noise levels.

20. A container of at least one (1) cubic metre capacity shall be provided and maintained from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste.

Reason

To ensure that waste generated by the building works is contained and does not pollute the surrounding environment.

21. All building materials, plant and equipment is to be placed on the building site. Building materials, plant and equipment (including water closets), are not to be placed on footpaths, roadways, public reserves etc.

Reason

To ensure pedestrian and vehicular access is not restricted in public places.

22. The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

Reason

To ensure that any required alterations to utility infrastructure are undertaken to acceptable standards at the developer's cost.

Scheduling Of Inspections

23. The applicant is to advise Council's Subdivision and Engineering Co-ordinator at least 48 hours prior to commencement of construction of on-site detention or external road works together with the approved contractor's name and address.

Reason

To enable orderly scheduling of inspections.

Building Construction

24. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards.

Reason

To ensure that all excavations on the site are maintained in a safe condition.

25. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

Reason

To ensure that all excavations on the site are maintained in a safe condition.

Site Works

26. The control of erosion and the prevention of silt discharge into drainage systems and waterways will be necessary in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements and the Department of Housing 'Soil and Water Management for Urban Developments'. Erosion control measures are to be implemented prior to the commencement of any earthworks and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

Reason

To ensure protection of the environment by minimising erosion and sediment.

PRIOR TO OCCUPATION

General

27. All of the building, other works and associated development must be constructed strictly in accordance with the provisions of this Development Consent prior to occupation and use of the dwellings.

Reason

To ensure that the building and other works have been constructed in accordance with the Development consent prior to occupation and use of the building.

28. The applicant shall make satisfactory arrangements with the Energy Supplier, the Hunter Water Corporation and telecommunications authorities in regard to the provision of services provided by those authorities to the development.

Reason

To ensure that adequate services are provided to each dwelling created.

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

Based on a road length of approximately 50 metres of road shoulder works in Mackellar Street and approximately 87 metres full road construction in Buckland Avenue. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- (i) Road fees - engineering plan checking and supervision of \$2,652.01.
- (ii) A performance bond of a minimum of \$1000 or 5% of the road contract construction costs, whichever is greater (transferable).
- (iii) A road maintenance bond of a minimum of \$1000 or 5% of the road contract construction costs, whichever is greater (refundable).

It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.

The fees and bonds shall be payable prior to the commencement of work and shall be in accordance with Council's adopted fees and charges current at the time of payment.

Reason

To meet costs associated with the approval of engineering plans and inspection of construction works.

Drainage and Flooding

30. All drainage works required to be undertaken in accordance with this consent shall be completed prior to use or occupation of the development.

Reason

To ensure that on site stormwater runoff is properly collected and conveyed to an appropriate drainage facility.

31. The registered proprietor of the land is to provide a stormwater detention facility within the boundaries of the site to reduce the peak stormwater discharge from the developed lot to that of the peak stormwater discharged from the undeveloped lot for all storm events from the 1 in 1 year to the 1 in 100 year Average Recurrence Interval (ARI) storm event. A detailed drainage design generally in accordance with the approved stormwater plan shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property. Details of on-site storage and the method of controlled release from the site and connection to an approved drainage system in accordance with Council's 'Engineering Requirements for Development'.

The detailed plans, specifications and copies of the calculations, including existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development shall be prepared by an engineer suitably qualified and experienced in the field of hydrology and hydraulics. Full details shall be prepared in consultation with and submitted to Council prior to commencement of work on the site.

Note: Construction shall be completed prior to the occupation of the development.

Reason

To ensure that the development is adequately drained and will not increase the flood hazard or flood damage to other properties or adversely affect flood behaviour.

32. The registered proprietor of the land shall submit a report and a works-as-executed (WAE) drawing of the stormwater detention basin(s) and stormwater drainage system. The WAE drawings shall be prepared by a registered surveyor and shall indicate the following as applicable:

- * invert levels of tanks, pits, pipes and orifice plates
- * surface levels of pits and surrounding ground levels
- * levels of spillways and surrounding kerb
- * floor levels of buildings, including garages
- * top of kerb levels at the front of the lot
- * dimensions of stormwater basins and extent of inundation
- * calculation of actual detention storage volume provided

The plan shall be accompanied by a report from the designer stating the conformance or otherwise of the as constructed basins in relation to the approved design.

The WAE plan and report shall be submitted to Council prior to the occupation of the development.

Reason

To ensure the stormwater detention system has been constructed in accordance with the design plans.

33. The registered proprietor of the land shall prepare a Plan of Management for the on-site stormwater detention facilities within the development. The Plan of Management shall set out all design and operational parameters for the detention facilities including design levels, hydrology and hydraulics, inspection and maintenance requirements and time intervals for such inspection and maintenance. The plan shall be prepared in consultation with and be submitted to Council prior to the occupation of the development.

Reason

To ensure the on-going maintenance and operation of the on-site stormwater detention facilities in accordance with the approved design.

34. The registered proprietors of the whole of the land shall, prior to occupation of the site at their costs and expense, enter a positive covenant over all of the land comprised in the development providing as follows:-

- a) *Covenanted with the Council (the prescribed Authority) to at all times at their costs maintain, repair and keep the on-site stormwater detention facilities in a good and safe condition and state of repair in accordance with the approved design to the reasonable satisfaction at all times of the said Council having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention facilities in accordance with Condition No (33), and*
- b) *Providing that the liability under the said Covenant will jointly and severally bind the registered proprietors of the proposed dwellings, and*
- c) *Providing that the Cessnock City Council (the prescribed Authority) will be the person entitled to release or modify the Covenant.*

All costs associated with the Covenant, including any legal costs payable by Council, are to be paid by the owner on whose behalf the applicant has lodged the application.

Reason

To ensure that on-site stormwater detention facilities are maintained to an appropriate standard.

35. The applicant shall pay Detention Basin(s) engineering checking and site supervision fees in accordance with Council's adopted fees and charges prior to commencement of construction on the site. Council's current fee is \$492.00 per basin for basins less than 50m³. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's adopted fees and charges current at the time of payment.

Reason

To ensure that the developer meets all costs associated with the approval of engineering plans and the inspection of detention basin works associated with the development.

Building Construction

36. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water and to ensure the free flow of water away from the building and adjoining properties.

Reason

To reduce the risk of environmental and building damage.

Access, Carparking and Loading Arrangements

37. The proposed visitor parking bays shall be clearly indicated by means of signs and/or pavement markings for the life of the development.

Reason

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

Site Works

38. All retaining walls and associated drainage shall be installed and completed prior to use or occupation of the building.

Reason

To ensure that filling placed on land does not affect natural drainage.

Consolidation

39. A plan of consolidation of all lots included within the bounds of the development shall be registered at the Land & Property Information office, Sydney, prior to commencement of occupation of the premises.

Reason

To ensure that the proposed development is managed as a single entity by the owner or owners.

ADVICE

1. CHILD SAFETY INFORMATION

Each year in New South Wales approximately 150 children are admitted to hospital with scald injuries caused by hot tap water.

Statistics indicate that 93% of hot tap burns occur in the bathroom. Most household water heaters supply HOT WATER at 65 to 75 degrees Celsius.

At 60 degrees Celsius it takes ONE SECOND for a child to incur third degree burns. At 50 degrees Celsius it takes FIVE MINUTES for a child to incur third degree burns.

The temperature of hot water delivered to bathrooms can be reduced by installing one of the following devices:-

- (a) a tempering device
- (b) a thermostatic mixing valve
- (c) a temperature control device

Council recommends that one of the above devices be installed during construction to reduce the risk of scalding in the bathroom.

To: **The General Manager**
City Planning Committee –
18 June 2008

D FITZGERALD
DIRECTOR CITY PLANNING
29 May 2008

MOTION **Moved:** Councillor Pynsent **Seconded:** Councillor Besoff
908 (18/6/2008)

RECOMMENDED that Director City Planning Report No. 42/2008 be **DEFERRED** and a site inspection be held of the site and on that occasion an Engineer from the Council be in attendance so that Councillors can look at some of the drainage issues that have been raised by the surrounding residents.

CARRIED

OFFICER'S REPORTS

DIRECTOR CITY PLANNING REPORT NO. 46/2008

DEVELOPMENT APPLICATION NO: 8/2008/13/1
APPLICANT: RESITECH (A SERVICE AGENCY OF THE
NSW DEPARTMENT OF HOUSING)
OWNER: DEPARTMENT OF HOUSING
PROPERTY: LOTS 45 & 46 DP 12682 NOS 3 & 5
BUCKLAND AVENUE CESSNOCK
AREA: 1376 SQUARE METRES
ZONING: RESIDENTIAL 2 (A)
PROPOSAL: DEMOLITION OF EXISTING DWELLINGS
AND CONSTRUCTION OF FIVE (5) X TWO (2)
BEDROOM (SENIORS HOUSING) SELF-
CONTAINED DWELLINGS

Senior Planning Assessment Officer, Mr Rod Sandell, reports:-

SUMMARY:

Application has been received for the demolition of two (2) dwellings and the erection of a seniors housing development comprising five (5) x two (2) bedroom dwellings in a single storey construction. The proposed development has been notified to adjoining owner/occupiers in accordance with the Cessnock Development Control Plan 2006 and eighteen (18) letters of objection have been received raising concerns about the proposal.

The application has been assessed under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and Cessnock Development Control Plan 2006 and is considered satisfactory. The concerns raised by local residents have been addressed and it is recommended that the application be approved.

PROPOSAL:

The proposed development comprises:-

- Demolition of two (2) existing dwelling houses and ancillary structures;
- Construction of an in-fill self-care seniors housing development comprising 5 x 2 bedroom self-contained dwellings, all of which will be wheelchair accessible dwellings and three (3) of which will be disabled/adaptable dwellings;
- Provision for a total of five (5) on-site parking spaces, comprising three (3) garages and two (2) visitor spaces; and
- Provision of open space in the form of landscaped private open space areas.

The proposed development consists of three (3) buildings. Two (2) of the dwellings will face Buckland Avenue, in approximately the same location as the existing dwellings, and the other three (3) dwellings will face Mills Crescent.

The proposed buildings will be constructed using selected face brickwork on the external walls, metal 'Colorbond' sheeting as the roofing material and powder-coated aluminium framed windows.

SITE DESCRIPTION:

The subject site is located on the western side of Buckland Avenue near the intersection with Mills Crescent. The site has frontages to Buckland Avenue and Mills Crescent, both of which are flush bitumen sealed roads with upright concrete kerbs and gutters.

The site has an area of 1,416 square metres. It is an irregular shape with a primary frontage of 30.48 metres (m) to Buckland Avenue, a rear secondary frontage of 22.86m to Mills Crescent and side boundaries of 35.23m (southern), 42.66m (northern) and 18.695m (western). The site slopes approximately 3m from the north-western corner towards the south-eastern corner at Buckland Avenue.

The subject site is currently occupied by two detached single storey fibre cement clad dwelling houses with tiled roofs. On-site vegetation includes some small to medium sized trees and a large Eucalypt tree within the frontage to Mills Crescent. There is a medium sized bottlebrush tree along the Buckland Avenue frontage to the site. There are no street trees along the Mills Crescent street frontage of the site.

PUBLIC NOTIFICATION (S79C.d):

The application has been notified in accordance with Council's Development Control Plan 2006 for a period of nineteen (19) days. Eighteen (18) submissions were received from local residents objecting to the application.

The Department of Housing was provided with copies of the submissions and has provided a response to the matters raised by local residents.

The grounds of objection are:

6. *There is already a large proportion of residential units occupied by Department of Housing clients in the local area - this is against the Department's policy to have so many units and residents in such a close proximity.*

Comment: The Department recognises the need to reduce the concentration of public housing in the locality however the present applications arise from a need to meet the demands of an ageing population and a more diverse client group. This issue was also addressed by the Department in its recent presentation to Council. and the separate comment provided by the Department.

2. *The proposal will increase traffic movements near and at the intersection of Buckland Avenue with Mills Crescent creating additional traffic conflict at this intersection and in proximity to the local park which is well used.*

Comment: Council's Engineers have advised that the proposed five (5) unit development would generate approximately 10 vehicle trips per day and 1 vehicle peak hour trip based on the RTA's "Guide to Traffic Generating Development". It is considered that the local street network can accommodate the increase in traffic generated by the development.

3. *The proposal results in three (3) walkway entrances and two (2) driveway entrances over the 23 metre frontage of Mills Crescent which leaves no street parking available.*

Comment: Mills Crescent is provided with kerb and gutter and the walkway entrances provide sealed pedestrian access from the dwellings to the grassed road reserve only. Adequate kerbside parking for two (2) vehicles remains available. In addition, the proposed development provides onsite parking for five (5) vehicles even though only one (1) is required under the SEPP.

4. *Why are the units of two (2) bedroom design, how many people will occupy them and how can we be assured that they will always be aged or disabled?*

Comment: This is a matter for consideration by the Department but Clause 18(1) of the Policy states that development under the SEPP can only be carried out for the accommodation of the following:-

- a) seniors or people who have a disability,
- b) people who live within the same household with seniors or people who have a disability,
- c) staff employed to assist in the administration of and provision of services to housing provided under this Policy”.

Further, under Clause 18 (2) of the Policy, a consent authority (i.e. Council) must not consent to a development application unless:

“a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and

b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act, 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1)’.

5. *The proposed development is too far from amenities and facilities that people living in the dwellings will require.*

Comment: Clause 26 of the SEPP requires that Council must not consent to an application for seniors housing unless it is satisfied that residents will have access to a range of amenities and facilities including shops, banks and other retail and commercial services that residents may reasonably require as well as community services and recreation facilities, and the practice of a general practitioner. Access to such facilities can be in the form of a transport service located within 400 metres from the site of the proposed development. In this regard bus stops are located nearby in Buckland Avenue providing access to close to the local bus service operated by Rover Coaches.

6. *The proposed development will devalue properties within the vicinity of the development site.*

Comment: There is no evidence to support the view that the development of public housing will reduce the value of neighbouring properties. The proposal results in the removal of older housing stock and its replacement with more contemporary dwellings and may in fact result in an increase in the value of surrounding properties.

7. *The proposal will have an adverse impact on existing utilities.*

Comment: The subject site is located within a fully serviced urban area and will result in a minor increase in demand for these services. Water and sewage services are available through the Hunter Water Corporation who have advised that the proposal will result in an amplification of those services at the applicant’s expense.

8. *How will local residents be protected from the removal of asbestos associated with the demolition of the existing houses?*

Comment: All demolition works will be required to be carried out in accordance with Australian Standard AS 2601-2001 “Demolition of Structures” with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting will be handled and disposed of in accordance with the requirements of the NSW Workcover Authority which will ensure the health and safety of adjoining residents during the demolition process.

9. *The proposed development should be redesigned with units 4 and 5 turned around and a common driveway access from Buckland Avenue to reduce the number of entrances in Mills Crescent and restrict short cut access through unit site thereby providing more privacy for residents.*

Comment: The proposed dwellings have been designed with frontages to the two (2) streets in keeping with the character of dwellings in the surrounding residential area and to provide natural surveillance to the street. A shortcut through the site will be discouraged through the installation of fencing which will also serve to define the boundaries of the site and the areas set aside for private open space.

10. *The proposal will have an adverse impact on the adjoining property to the south due to loss of privacy and drainage issues.*

Comment: The adjoining dwelling to the south is located approximately 900mm off the common boundary with the subject lot and has kitchen and dining rooms and an access doorway on the northern side of the dwelling facing the proposed development. A new 1.8m high Colorbond fence will be erected on the boundary and two (2) of the attached new dwellings will be setback 1.45m off this common boundary to improve the privacy to each dwelling.

In terms of drainage Council will require the provision of water tanks and stormwater detention within the site in accordance with its requirements for unit development. Stormwater will then be conveyed to the Council’s stormwater drains in Buckland Avenue. In addition, it is recommended that as the setback from the proposed development to the adjoining residence to the south is a sealed pathway, a kerb is required to be constructed on top of the small retaining wall on this boundary to reduce the risk of excess stormwater being conveyed into the adjoining premises.

11. *The proposal will result in the relocation of an elderly lady who has lived in her existing Department of Housing dwelling for 43 years and is becoming anxious at having to move.*

Comment: This is an issue that has been addressed by the Department in its role as the tenant’s landlord.

STATUTORY SITUATION (S79C.a):

The proposed development is located within the Residential 2(a) zone and under the provisions of the Cessnock Local Environmental Plan 1989 the proposal is permissible with Council’s consent. The development also falls within the definition of ‘Seniors Housing’ under the State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004 and is required to comply with the provisions of this policy together with Council’s Development Control Plan 2006 (Part D Specific Development – Chapter D.2) for any additional requirements.

RELEVANT ISSUES (S79c(b)(c)&(e)):

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

b) The Provisions of Any Environmental Planning Instruments

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

Under the terms of the Policy '*seniors*' are people aged 55 years or more and '*people with a disability*' are people of any age who, as a result of an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full and active life.

'*Seniors Housing*' is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability and includes a group of self-contained dwellings as proposed in this application.

The proposed development conforms with the general requirements of the policy in that all five (5) of the dwellings will be wheelchair accessible dwellings with three (3) being disabled/adaptable dwellings.

Specific Requirements

- 1) Location and Access to Facilities (Clause 26) – the Policy requires that Council must not consent to an application for seniors housing unless it is satisfied that residents will have access to:
 - iv) shops, banks and other retail and commercial services that residents may reasonably require, and
 - v) community services and recreation facilities, and
 - vi) the practice of a general practitioner

The Policy further states that the access to such facilities may be in the form of a transport service located at a distance of not more than 400 metres from the site of the proposed development by means of a suitable access pathway and have an overall average gradient along this distance of not more than 1:14. The Policy also requires that the transport service will take residents to a place that is located at a distance of not more than 400 metres from the facilities referred to above and that such service is available to and from the development site during daylight hours at least once each day from Monday to Friday.

The proposed development is assessed as satisfying these requirements. It is approximately 21 metres from the bus stop in Buckland Avenue where Rover Coaches operates a local bus service with regular scheduled bus services (Route 169) on Tuesdays, Wednesdays and Friday. This service provides access to Cessnock city centre and to the hospital. In addition Cessnock Community Transport Inc also provides alternative transport arrangements and activities for residents and Rover Coaches also operates an extensive school bus service which is also available to local residents.

Design requirements

- 1) **Site Analysis** (Clause 30) – this clause states that Council must not consent to an application unless it is satisfied that the applicant has taken into account a site analysis prepared by the applicant containing information about the site and its surrounds and is accompanied by a written statement explaining how the design of the proposed development has regard to the site analysis and design principles set out in Division 2 of the Policy.

The information submitted with the application is considered to be adequate for the purpose of this clause and was supported by the officer inspection of the site.

- 2) **Design of residential development** (Clause 32) – this clause requires Council to take into consideration a set of design principles for new residential development based on:-

- a) **Neighbourhood amenity and streetscape** – the proposal has been designed with two (2) single storey dwellings facing Buckland Avenue and three (3) dwellings facing Mills Crescent. The design of the proposed development complements the character of neighbouring residences by adopting a single storey form of construction with similar street setbacks.

Council's Building Line policy on corner lots requires a six (6) metre building line to the principle street and 4 metres to the secondary street. The principle street address is Buckland Avenue and the 6 metre building line has been provided to this street with a 4 metre building line to Mills Crescent in accordance with the policy.

The Mills Crescent streetscape is presently dominated by a large Eucalypt (Eucalyptus Nicholii). The retention of this tree is considered inappropriate due to its size and its proximity to the proposed dwellings. It has therefore been recommended that it be removed and replaced with a tree of more appropriate size and in scale with aged and disabled dwellings.

- b) **Visual and Acoustic privacy** – the proposed development has been designed to maintain visual and acoustic privacy to adjoining properties and within the development. Design solutions include appropriate building setbacks and heights, dwelling layouts, placement and sizes of window openings, fencing heights and location and landscaping.

- c) **Solar access and design for climate** – the design and siting of the proposed development will ensure that adequate access has been provided for sunlight into dwelling living areas and the private open space areas of the proposed dwellings as well as those on adjoining properties.

- d) **Stormwater** – the applicant has submitted stormwater details incorporating the provision of a 2,240 litre water tank for each dwelling unit and stormwater detention in accordance with Council requirements. Final plans for the stormwater detention and conveying of stormwaters to the Council's drainage easement will be required prior to the commencement of the development.

- e) **Crime prevention** – fencing is to be provided along all site boundaries and along the boundaries of all private open space areas to provide a level of safety and security for residents. The design of the development will also allow for general surveillance of common areas and the central car parking area from the dwellings.

f) **Accessibility** – the proposed development provides safe pedestrian links that give access to transport services and provide a secure environment for pedestrians and motorists with convenient access for residents and visitors.

g) **Waste management** – the applicant has submitted a waste management plan in accordance with the Cessnock DCP 2006 (Part C – General Guidelines, Chapter C.5 – Waste Management & Minimisation) to cover the demolition stage involving the demolition of the existing two (2) fibro clad dwelling houses and the construction stage of the development.

Development standards to be complied with

1) Development Standards – minimum sizes and building height – Council is unable to grant consent to an application unless the development complies with the following standards of the Policy:-

- (a) the size of the site must be at least 1,000 square metres
- (b) the site frontage must be at least 20 metres wide measured at the building line
- (c) the height of proposed buildings is less than 8 metres.

The proposal complies with the above standards.

2. Self-contained dwellings – standards concerning access and useability

Under Clause 41 of the Policy Council is unable to grant consent to a development unless the development complies with a range of specific standards relating to access and usability. The applicant has provided details demonstrating compliance with the standards referred to in Clauses 52 to 72 of the Policy.

Standards that cannot be used to refuse development consent for self-contained dwellings (Div. 4 - Clause 50)

The SEPP states that Council must not refuse to grant its consent to a development if certain criteria are satisfied. The proposed development complies with all of the prescribed criteria, which are:-

- h) building height where buildings are 8 metres or less in height.
- i) density and scale where expressed as a floor space ratio The standard requires 0.5:1 or less and the proposed fsr is 0.34:1.
- j) landscaped area is a minimum of 35m² per dwelling and this had been achieved.
- k) deep soil zones – the Policy states that not less than 15% of the site is to be available as a deep soil zone which are those parts of the site not built on, paved or sealed and where there is soil of sufficient depth to support the growth of trees and shrubs. The proposal sets aside 15.7% of site as deep soil zones.
- l) solar access – requirement is for 70% of living areas and main private open space areas to receive a minimum of 3 hours of sunshine between 9am and 3pm in mid-winter and this has been achieved.

- m) private open space – requirement is for minimum 15m² per dwelling and for one area minimum dimension of 3m x 3m accessible from living area and this has been achieved.
- n) car parking – requirement is for minimum 1 car space per each 5 dwellings. Five (5) car parking spaces have been provided.

b) The Provisions of any Local Environmental Plan

Cessnock Local Environmental Plan, 1989

The subject land is zoned Residential 2(a) and under the provisions of the Cessnock Local Environmental Plan 1989 the proposed development is defined as a residential flat building, which is permissible only with the consent of Council. The objectives of the zone are:-

- e) *primarily to provide for low density residential development;*
- f) *to enable residential flat buildings which are compatible with single dwelling development;*
- g) *to provide for other forms of development which may appropriately be located in a residential zone; and*
- h) *to ensure non-residential development is of a type, scale and character which will maintain residential amenity.*

The proposed development is consistent with objectives a) and b) of the zone. It should be noted that Clause 5 (3) of SEPP (Housing for Seniors or People with a Disability) provides that the provisions of the Policy prevail where any inconsistency exists between the Policy and Council's LEP.

c) The Provisions of any Development Control Plan

The proposal is required to comply with the provisions of the Cessnock Development Control Plan 2006 (Part D – Specific Development, Chapter D.2 – Urban Housing) unless otherwise covered by the SEPP. The proposed development satisfies the relevant provisions of the Cessnock Development Control Plan 2006 – Urban Housing.

The Likely Impact of that Development

Access and Traffic – car parking provided for the proposal exceeds the requirements of SEPP (Housing for Seniors or People with a Disability) 2004. Only one (1) car parking space is required under the SEPP while five (5) spaces have been provided including three (3) garages. The standard satisfied in this regard recognises that a significantly lower requirement for on-site car parking is necessary for seniors and people with a disability than with normal residential unit development.

Social Impact in the Locality – the proposal will result in a number of positive social benefits in that it improves both the quantity and quality of housing stock available to meet the needs of an ageing population by providing purpose built accommodation for aged people and people with a disability. In addition the new housing will also meet current accessibility standards and sustainable housing standards having regard to energy and water consumption.

Economic Impact in the Locality – the proposed development will have a positive short-term economic impact on the local economy through the employment of personnel for the demolition and construction of the development and the potential for local sourcing of construction materials. Longer term benefits arise from the ongoing consumption associated with new additional households and the more efficient use of land resources and existing infrastructure and services.

Suitability of the Site for the Development – the subject site is suitable for the proposed development given the zoning of the land and its proximity to public transport infrastructure which provides access to the commercial centre of Cessnock. The site is also in close proximity to Cessnock Hospital.

CONCLUSION

The proposed development has been considered under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and Cessnock Council's DCP 2006 and in complying with these requirements will contribute in a positive way to the natural and built environment.

The design of the proposed development will minimise the impact of the proposal on the nearby residential development and result in a positive contribution to the streetscape.

RECOMMENDATION that Development Application No. 8/2008/13/1 for the construction of five (5) x two (2) bedroom (Seniors Housing) self-contained dwellings on Lots 45 & 46 DP 12682 Nos 3-5 Buckland Avenue, Cessnock; be approved subject to compliance with the following conditions:-

SCHEDULE 1

TERMS OF CONSENT

General

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Plans numbered Project 0719 (Job No. BF8BG, Sheets D1-D3, Rev B) dated 19/10/07 and Stormwater Plan (Job No. 07-680) dated 6/9/07 and any other information submitted in support of the application, except as modified by the conditions of this consent.

Note: Any proposal to modify the terms or conditions of this consent, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application under Section 96 of the Environmental Planning and Assessment Act 1979 for Council's consideration. If amendments to the design result in the development not remaining substantially the same as that approved by this consent, a new development Application will have to be submitted to Council.

Reason

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

2. All building work must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

3. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates:-
- (A) in the case of work for which a principal contractor has been appointed:
 - (i) has been informed in writing of the name and licence number of the principal contractor, and
 - (ii) where required has submitted an insurance certificate with the name of the insurer by which the work is insured under Part 6 of that Act,
 - (B) in the case of work to be done by an owner-builder:
 - (i) has been informed in writing of the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, has submitted a copy of the owner builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause 1 of this condition becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development has been given written notice of the updated information.

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

4. The proposed self-contained dwellings shall be occupied exclusively by “seniors or people with a disability “ as defined under Clauses 8 and 9 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 in accordance with Clause 18 of the Policy.

In this regard the applicant is required to register a restriction as to user against the title of the property on which the development is to be carried out, in accordance with section 88E of the Conveyancing Act, 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in Clauses 8 and 9 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Reason

To confirm the terms of approval and the basis of Council’s consideration under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

5. The applicant shall comply with the requirements of the Hunter Water Corporation Ltd., in respect of any building or structure proposed to be erected over any services or stormwater drain under the Corporation's control and in relation to the amplification of the sewer and water supply to the proposed development.

Reason

To protect the Corporation's infrastructure for site development works.

Design Considerations/Building Setbacks

6. Lighting of the development shall not project glare onto adjoining properties or roadways.

Reason

To ensure that lighting of the land does not adversely affect the environmental quality of adjoining land nor create a hazard to motorists.

7. A group mailbox shall be provided at the street frontage within the property boundaries in accordance with the requirements of Australia Post such to clearly display individual unit numbers and the required house number.

Reason

To ensure appropriate and suitably located letterboxes are provided.

Building Construction

8. Excavations or filling against boundaries are to be adequately retained by retaining walls.

Reason

To reduce the risk of damage to adjoining properties.

9. Development shall be undertaken strictly in accordance with all commitments specified in the current BASIX Certificate.

Reason

Compliance with the Environmental Planning and Assessment Regulation 2000.

Access, Carparking and Loading Arrangements

10. All access crossings and driveways shall be maintained in good order for the life of the development.

Reason

To ensure that a safe adequate all-weather access is available to the development.

Drainage and Flooding

11. Any alterations to existing surface levels on the site shall be undertaken in such a manner as to ensure that no additional surface water is drained onto or impounded on adjoining properties.

Reason

To ensure that such alterations to surface levels do not disrupt existing stormwater flows in the vicinity.

Site Works

12. The provision of a 100mm high concrete kerb above the proposed retaining wall and level of the sealed pathway on the southern side of units 2 and 3.

Reason

To ensure that during periods of heavy rainfall surface waters do not enter the adjoining residential property to the south.

13. This consent allows the removal of trees and other vegetation from the site of approved buildings, structures, permanent access ways and carparks. It also allows for the removal or lopping of trees within three (3) metres of approved buildings. No other trees or vegetation shall be removed or lopped except with prior written consent of Council.

Reason

To ensure that only trees and vegetation directly affected by the development are removed from the site, and to grant approval for such removal.

Landscaping

14. Landscaping works shall be carried out in accordance with the details indicated on the submitted landscape design plan, except as required to be modified under the terms of this consent.

Reason

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

15. The removal of the large Eucalyptus Nichollii on the Mills Crescent frontage of the site and its replacement with a more appropriate advanced tree eg Waterhousia Floribunda or similar.

Reason

To ensure that appropriate landscaping is provided in accordance with the scale and nature of the development.

Access, Carparking and Loading Arrangements

16. On-site car parking shall be provided in accordance with the stamped approved plans and such being set out generally in accordance with Council's Car Parking Code.

Reason

To ensure that adequate provision has been made for manoeuvring and parking of vehicles within the development or on the land, to meet the expected demand generated by the development.

17. All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The car parking areas shall be constructed with reinforced concrete, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

Reason

To ensure the orderly and efficient use of on-site parking facilities and ensure that adequate provision is made on-site for the loading and unloading of goods.

DURING CONSTRUCTION

General

18. If the soil conditions require it:-
- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and
 - (b) adequate provision must be made for drainage.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

19. If the excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:-
- (a) must preserve and protect the building from damage, and
 - (b) if necessary, must underpin and support the building in an approved manner, and
 - (c) must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

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

In this clause, **allotment of land** includes a public road and any other public place.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

20. If the work involved in the erection or demolition of a building:-
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (b) building involves the enclosure of a public place,

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

Reason

To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

21. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, however must be removed when the work has been completed.

Reason

This is a prescribed condition under Section 80A(11) of the Environmental Planning and Assessment Act, 1979.

22. Toilet facilities are to be provided prior to works commencing, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be a sewage management facility approved by the NSW Department of Health and/or Council and operate in an environmentally responsible manner, free of nuisance or offence, and be appropriately serviced.

Reasons

To ensure that suitable and environmentally sustainable toilet facilities are provided for all persons employed or visiting the site. To ensure that the development, when constructed, will comply with the Environmental Planning and Assessment Act, 1979.

23. Construction, demolition and associated work shall be carried out only between the times stated as follows:-

Mondays to Fridays	7.00a.m. to 6.00p.m.
Saturdays	8.00a.m. to 1.00p.m.
Sundays & Public Holidays	No construction work to take place.

Reason

To ensure that the environmental quality of adjoining land is not adversely affected, such as by the generation of excessive noise levels.

24. A container of at least one (1) cubic metre capacity shall be provided and maintained from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste.

Reason

To ensure that waste generated by the building works is contained and does not pollute the surrounding environment.

25. All building materials, plant and equipment is to be placed on the building site. Building materials, plant and equipment (including water closets), are not to be placed on footpaths, roadways, public reserves etc.

Reason

To ensure pedestrian and vehicular access is not restricted in public places.

26. The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

Reason

To ensure that any required alterations to utility infrastructure are undertaken to acceptable standards at the developer's cost.

Building Construction

27. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards.

Reason

To ensure that all excavations on the site are maintained in a safe condition.

28. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

Reason

To ensure that all excavations on the site are maintained in a safe condition.

29. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001 "Demolition of Structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, being handled, conveyed and disposed of in accordance with guidelines and requirements from NSW Workcover Authority. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.

Reason

To ensure that all wastes including asbestos waste is handled and disposed of safely and in an appropriate manner.

Site Works

30. The control of erosion and the prevention of silt discharge into drainage systems and waterways will be necessary in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements and the Department of Housing 'Soil and Water Management for Urban Developments'. Erosion control measures are to be implemented prior to the commencement of any earthworks and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

Reason

To ensure protection of the environment by minimising erosion and sediment.

Scheduling of Inspections

31. The applicant is to advise Subdivision and Engineering Co-Ordinator at least 48 hours prior to commencement of any construction works on site or associated with the site, together with the approved contractor's name and address.

Reason

To enable orderly scheduling of inspections.

PRIOR TO OCCUPATION

General

32. All of the building, other works and associated development must be constructed strictly in accordance with the provisions of this Development Consent prior to occupation and use of the dwellings.

Reason

To ensure that the building and other works have been constructed in accordance with the development consent prior to occupation and use of the building.

33. The applicant shall make satisfactory arrangements with the Energy Supplier, the Hunter Water Corporation and telecommunications authorities in regard to the provision of services provided by those authorities to the development.

Reason

To ensure that adequate services are provided to each dwelling created.

Access and Car Parking

34. The Registered Proprietors shall construct the following works:-
- (a) four (4) reinforced concrete access crossings from the kerb and gutter to the property boundary, including a layback in the kerb, and
 - (b) concrete footpaths within the road reserve in Buckland Avenue and Mills Crescent from the development site to the bus stop in Buckland Avenue.

Such works shall be undertaken in accordance with Council's Engineering Requirements for Development (available at Council's offices) and Australian Standard 2890.1 & 2 with respect to location, size and type of driveway.

Reason

To ensure the provision of safe, adequately defined and properly constructed means of vehicular access from the road to the development.

Drainage and Flooding

35. All drainage works required to be undertaken in accordance with this consent shall be completed prior to use or occupation of the development.

Reason

To ensure that on-site stormwater runoff is properly collected and conveyed to an appropriate drainage facility.

36. The registered proprietor of the land is to provide a stormwater detention facility within the boundaries of the site to reduce the peak stormwater discharge from the developed lot to that of the peak stormwater discharged from the undeveloped lot for all storm events from the 1 in 1 year to the 1 in 100 year Average Recurrence Interval (ARI) storm event. A detailed drainage design shall be prepared for the disposal of roof and surface water from the site, including any natural runoff currently entering the property. Details of on-site storage and the method of controlled release from the site and connection to an approved drainage system in accordance with Council's 'Engineering Requirements for Development'.

The detailed plans, specifications and copies of the calculations, including existing and proposed surface levels, sub-catchments and conduit sizing appropriate for the development prepared by an engineer suitably qualified and experienced in the field of hydrology and hydraulics. Full details shall be prepared in consultation with and submitted to Council prior to commencement of work on the site.

Note: Construction shall be completed prior to the occupation of the development.

Reason

To ensure that the development is adequately drained and will not increase the flood hazard or flood damage to other properties or adversely affect flood behaviour.

37. The registered proprietor of the land shall submit a report and a works-as-executed (WAE) drawing of the stormwater detention basin(s) and stormwater drainage system. The WAE drawings shall be prepared by a registered surveyor and shall indicate the following as applicable:

- * invert levels of tanks, pits, pipes and orifice plates
- * surface levels of pits and surrounding ground levels
- * levels of spillways and surrounding kerb
- * floor levels of buildings, including garages
- * top of kerb levels at the front of the lot
- * dimensions of stormwater basins and extent of inundation
- * calculation of actual detention storage volume provided

The plan shall be accompanied by a report from the designer stating the conformance or otherwise of the as constructed basins in relation to the approved design.

The WAE plan and report shall be submitted to Council prior to the occupation of the development.

Reason

To ensure the stormwater detention system has been constructed in accordance with the design plans.

38. The registered proprietor of the land shall prepare a Plan of Management for the on-site stormwater detention facilities within the development. The Plan of Management shall set out all design and operational parameters for the detention facilities including design levels, hydrology and hydraulics, inspection and maintenance requirements and time intervals for such inspection and maintenance. The plan shall be prepared in consultation with and be submitted to Council prior to the occupation of the development.

Reason

To ensure the on-going maintenance and operation of the on-site stormwater detention facilities in accordance with the approved design.

39. The registered proprietors of the whole of the land, prior to occupation of the site and at their costs and expense, enter a positive covenant over all of the land comprised in the development providing as follows:-

- a) *Covenanting with the Council (the prescribed Authority) to at all times at their costs maintain, repair and keep the on-site stormwater detention facilities in a good and safe condition and state of repair in accordance with the approved design to the reasonable satisfaction at all times of the said Council having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention facilities in accordance with Condition No (37), and*
- b) *Providing that the liability under the said Covenant will jointly and severally bind the registered proprietors of the proposed dwellings, and*
- c) *Providing that the Cessnock City Council (the prescribed Authority) will be the person entitled to release or modify the Covenant.*

All costs associated with the Covenant, including any legal costs payable by Council, are to be paid by the owner on whose behalf the applicant has lodged the application.

Reason

To ensure that on-site stormwater detention facilities are maintained to an appropriate standard.

40. The applicant shall pay Detention Basin(s) engineering checking and site supervision fees in accordance with Council's adopted fees and charges prior to commencement of construction on the site. Council's current fee is \$492.00 per basin for basins less than 50m³. Final fee amounts will be levied on accurate dimensions contained within the engineering plans and in accordance with Council's adopted fees and charges current at the time of payment.

Reason

To ensure that the developer meets all costs associated with the approval of engineering plans and the inspection of detention basin works associated with the development.

Building Construction

41. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring onto adjacent private or public property. The finished ground around the perimeter of the building is to be graded to prevent ponding of water and to ensure the free flow of water away from the building and adjoining properties.

Reason

To reduce the risk of environmental and building damage.

Access, Carparking and Loading Arrangements

42. All redundant vehicular accesses shall be removed and the footpath, road shoulders and kerb and gutter, where applicable, restored to match existing conditions at no cost to Council prior to use of the building or issue of an Occupation Certificate for the building.

Reason

To ensure that vehicular access to the development occurs efficiently and safely in accordance with approved plans and unnecessary accesses are restored at no cost to Council.

43. The proposed visitor parking bays shall be clearly indicated by means of signs and/or pavement markings for the life of the development.

Reason

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

Site Works

44. All retaining walls and associated drainage shall be installed and completed prior to use or occupation of the building.

Reason

To ensure that filling placed on land does not affect natural drainage.

Consolidation

45. A plan of consolidation of all lots included within the bounds of the development shall be registered at the Land and Property Information office, Sydney, prior to commencement of occupation or use of the premises.

Reason

To ensure that the proposed development is managed as a single entity by the owner or owners.

To: **The General Manager**
City Planning Committee –
2 July 2008

D FITZGERALD
DIRECTOR CITY PLANNING
29 May 2008

DIRECTOR CITY PLANNING REPORT NO. 47/2008

SUBJECT: HEZ ASSOCIATION

HEZ Business Unit reports:-

BACKGROUND

Council will recall at its meeting held on 12 December, 2007 it noted Report No. 113/2007 which discussed some of the issues related to the legal title structure and functions of the Hunter Economic Zone Association (*HEZ Association*).

The estate management approach proposed by the HEZ Pty Ltd (*Developer*) requires a third party to be responsible for estate management of the HEZ Industrial Estate (*Estate*). Owners of land in the Estate will be members of the HEZ Association.

Considerable discussion has taken place over the past 4 years as to the legal framework that needs to be established for the HEZ Association to ensure that the ecological and environmental management of the Estate is ongoing in the long term and does not place an onerous burden on Council. The issues relating to estate management are complex in nature and substantial advice has been received both from legal and technical experts in respect of these matters including detailed submissions from the Developer. An extensive enclosure document (with detailed index) comprises the relevant advices and submissions pertaining to the final outcomes and recommendations in this report. Please note that the developer's legal advice is subject to legal privilege and therefore only contained within the confidential enclosure document for Councillors.

HEZ Association

The estate management approach proposed by the Developer requires the HEZ Association to undertake the estate management functions. It is considered that these estate management functions include (without limitation):

- management of estate infrastructure such as maintenance of road verges, drainage structures, etc;
- collecting dues from members (that will be applied towards defraying estate-wide costs); and
- estate-wide operations including environmental monitoring, modeling and management, bushfire protection, habitat conservation and protection of retained habitats, animal pest control programs, weed eradication programs, bushland revegetation / regeneration programs.

Existing Planning Regime and Approvals

Development within the Hunter Economic Zone is assessed pursuant to Cessnock LEP 1989, DCP 2006 – Part E.6 HEZ, and the Environmental Management Strategies (EMS). The philosophy behind the planning regime is to promote environmentally sustainable development and in this respect the Master EMS articulates a number of principals including sustainability, strategic assessment, cumulative impact assessment, adaptive management and industrial ecology (Refer to Enclosure 1). Appendix F of the Master EMS looks at the roles and responsibilities of a management structure for the Estate.

It was envisaged that an association would be created which would provide the funds for an estate manager to take an entrepreneurial and progressive approach to managing the Estate, while not derogating from Council's oversight powers. Initially it was thought that the association could be formed under the guise of a Community Title Management scheme however the Developer indicated a reluctance for such a scheme due to concerns about its complexity, lack of flexibility and marketability (Confidential Enclosure 10). The Developer was advised that Council may be prepared to look at alternate schemes if their effectiveness could be demonstrated and not expose Council to any unreasonable risk in having to perform these tasks in the short or long term.

Components of EMS important for HEZ estate development

To some extent normal NSW development application assessment and licensing processes will adequately protect the environment. However, some important aspects which will not be covered by such a minimalist approach, at least if there is to be orderly development of the HEZ estate. They are presently covered by the Environmental Management System (EMS) for HEZ.

An estate of the size and type envisaged for HEZ will generate many environmental effects having two types of cumulative impacts: those from projects developing in HEZ upon the surrounding areas of Cessnock; and, the broader scale impacts of the HEZ development as a whole on the lower Hunter environment, and vice versa.

Cumulative impacts are unlikely to be critical initially, but, if not handled carefully in the long term, could present real impediments to the full development of the HEZ area.

Several crucial factors are needed to manage cumulative impacts effectively:

- An **environmental quality modelling** regime;
- An **environmental quality monitoring and meteorological/hydrological program**;
- A **management mechanism** ;
- An **enforcement mechanism**.

The HEZ area is dominantly woodland in which habitat and biological diversity needs to be protected. An extensive ecological constraints mapping study is the basis of a construed concurrence arrangement under both NSW and Commonwealth legislation.

The establishment of a **database of baseline environmental quality** is essential for effective assessment. Areas that need ongoing attention in this respect are:

- The ecological constraints mapping/bushfire protection;
- Air quality;
- Water quality and site specific water quality guidelines;and
- Noise

These databases need long-term reliable custodianship.

It was one of Council's founding principles for HEZ that '**industrial ecology**' would be pursued in the estate. It is a cornerstone of sustainability. Early establishment of registers of energy and materials usage and wastes will be an important component of developing industrial ecology in HEZ. Down the track some entrepreneurial skill will be essential in the development of any effective industrial ecology.

All of the above functions, require the establishment of an effective **HEZ estate management function**.

Important environmental monitoring and development requirements

Some important environmental monitoring requirements for HEZ are summarized here:

- Monitoring of air quality;
- Monitoring of water quality and flows;
- Monitoring of noise background in the environs,;
- Monitoring of compliance with bushfire requirements;

It is vital that such monitoring be sustained and used as feed back to modelling.

There is an urgent need to establish site specific water quality guidelines for the HEZ location. An initial 6-month water quality monitoring study in 2002 found that the quality of streams in HEZ did not meet the objective specified in the *Guidelines for Fresh and Marine Waters in Australia and New Zealand (2000)*. This will require more survey and test work. It is an important requirement if Hebburn Lake is to be preserved. Currently best practice on-site water management is required and no discharge of process water is likely to be allowed by the DECC, but this will not be adequate in the longer term.

Impact of light from the estate on local wildlife needs to be addressed.

Arrangement for implementation of this essential monitoring and study program rest on the development of an estate management regime.

The EMS relies to a considerable extent on the HEZ Association performing the nominated functions (eg monitoring, modelling, data collection and retention, etc). Cumulative environmental impacts and pursuit of industrial ecology are not adequately managed through existing planning and environmental controls, which apply only on a project-by-project basis. Management of the estate as a whole is needed.

Legal advice and Negotiations to date

The Developer has proposed an estate management approach and title regime (Confidential Enclosure 2 & 3) which is modelled on the Norwest Management Scheme. There are similarities between some of the functions that the HEZ Association will be required to carry out for the Estate and those undertaken by the estate manager for the Norwest Management Scheme. These similarities include:

- maintenance of landscaping and the association lot; and
- marketing and promotion of the Estate.

A key difference is that estate manager for the Norwest Management Scheme is not required to undertake any estate wide environmental management or ecological works as is the case for the Estate.

Council's solicitor reviewed the documents and formed the view that it did not provide adequate safety in terms of a legal mechanism to ensure that all of the estate management functions (to be performed by the HEZ Association) would be undertaken in perpetuity and that Council should not accept it in it's current proposed form (Enclosure 4).

A further legal advice from Makinson and d'Apice in support of the association structure and commenting on Council's solicitors concerns was tabled for Council's consideration (Confidential Enclosure 7). The legal advice was supplied by the Developer.

Further dialogue was entered into between the two representing solicitors however it was evident that a negotiated agreement was unlikely. Given the disparity in the respective legal positions it was determined to seek independent third party legal advice to explore potential alternatives to resolve the matter or at the very minimum better inform Council's decision making process.

Sydney based law firm Maddocks were selected as they had local government law and planning expertise. Maddocks were provided with relevant Council documentation about the Estate and the respective legal opinions from Council's and HEZ solicitors and asked to comment on the functionality and risk associated with the Developer's proposed estate management approach. The Maddocks advice (Enclosure 11) canvassed a number of options and recommended a hybrid approach which in their opinion *would "best balance risk and objective fulfilment in a way that CCC would be comfortable."*

The hybrid approach Maddocks supports is summarised below:

- *An estate manager would be established in line with the proposed HEZ approach.*
- *The developer and the estate manager and CCC enter into legal agreement with CCC in respect of the performance of the required functions. Those contractual arrangements would give CCC a contractual basis to enforce the functions and overcome risks associated with CCC being unable to enforce some functions because of an absence of power or contractual nexus.*
- *Each development consent issued for the HEZ to include comprehensive conditions that are consistent with the hybrid approach. In some respects this may duplicate the contractual arrangements in terms of enforcement capability but that is not undesirable from CCC's perspective.*
- *Easements and covenants be recorded against the title to the HEZ land that are consistent with the hybrid approach. These will supplement the other aspects of the hybrid approach. The precise nature of the easements and covenants will be determined by CCC's assessment of development applications and the requirement to create these easements and covenants will appear in development consents."*

On the basis of this advice Council staff recommenced discussions with the Developer in relation to the estate management approach and title regime proposed in order to give Council and the community greater certainty about the detailed estate management functions that would be undertaken for the life of the Estate. At a meeting held in February 2008 between the respective parties a potential way forward was discussed. This proposal involved the parties entering into a 'Services Deed' that would identify tasks that would need to be undertaken to perform the required estate management functions.

To aid further discussion, Maddocks prepared a draft 'Services Deed' (Enclosure 12) and the Developer prepared a draft of the services schedule (Enclosure 13) that identifies the estate management tasks.

The Developer indicated that it had concerns about the terms of the draft 'Services Deed'. Council officers were of the view that the schedule setting out the estate management tasks supplied by the Developer did not comprise a comprehensive list of the roles/functions that the HEZ Association is required to perform. A second iteration of the documents were drafted with a view to addressing each of the parties concerns. Maddocks prepared a draft Memorandum / Deed Outline (Enclosure 16) and HEZ an addendum schedule of obligations (without prejudice) for discussion (Enclosure 14).

Council current position in respect to HEZ

The major challenge in determining the most appropriate framework for the documentation envisaged by the hybrid approach proposed by Maddocks is that the strategic documentation (quite rightly) indicates the various concepts and principals that should be adhered to, and gives general direction as to what needs to be done in terms of environmental modelling and monitoring. The strategic documentation does not give any detail as to how this should occur nor adopt any performance standards.

In order to achieve some certainty for all stakeholders about the estate management functions / tasks to be performed by the HEZ Associations tasks (and to ensure the EMS principals are achieved), Council officers compiled a comprehensive list of all functions / tasks which they consider are required of the HEZ Association either through the relevant HEZ DCP, EMS documents, Council's development consents, Department Environment and Climate Change assumed concurrence and the approved action issued pursuant to the Environment Protection Biodiversity Conservation Act (EPBC) by Department Environment and Water Resources. Two detailed schedules were prepared for discussion Schedule 1 fell within the ambit of Cessnock City Council while Schedule 2 detailed the requirements arising from the EPBC approval and the resultant Conservation Management Plans (Enclosure 15).

It is intended through use of the schedules prepared by Council's officers that greater clarity and certainty would be available to the HEZ Association, subsequent developers, Council and other government authorities as well as the community generally because they would provide a better outline of the totality of the HEZ Association responsibilities.

Schedule 1 it is acknowledged has an area of conflict between bushfire protection and ecological protection however Council is open to further discussion to resolve this matter. The staging/timing of some other HEZ Association functions listed in Schedule 1 may also be negotiable. Initially due to the small number of operations within the Estate the environmental impact is not likely to be significant and HEZ Association funding will be limited due to number of members. If agreement is reached on a more detailed description of the estate management functions, Council may consider a staged implementation approach to enable ongoing development and sale of allotments within the Estate as long as the HEZ Associations responsibility for future long term estate wide environmental management is not compromised or diminished.

The specific details relating to the maintenance of estate wide infrastructure in respect to roads and associated facilities do not need to form part of any Memorandum / Deed at this stage as this will be subject to a separate detailed Road Maintenance Deed in which Council must be satisfied with the terms prior to it accepting formal dedication of the roads.

The form of the Memorandum / Deed is a point of contention as is evident in the Makinson and d'Apice response (Confidential Enclosure 17) to the Deed / Memorandum Outline issued by Maddocks. The format is open for further legal consideration however a combination of a binding agreement for schedule 1 matters with a non binding for schedule 2 may be appropriate given that those matters are covered by a separate approval from the federal regulation body.

HEZ PTY LTD current Position

The Developer provided Council with their considered position in respect of this matter in the letter from Makinson and d'Apice dated 3 June 2008 (Confidential Enclosure 17).

The Developer is not prepared to agree to the schedules as proposed by Council as they believe they are too prescriptive and onerous and place an unnecessary cost impost on the association and it's members. In lieu of these schedules the Developer has indicated that they are prepared to commit to those objectives and actions that they have submitted as part of their 3A Application to the Minister and have provided a modified outline of the contents for a non-binding Memorandum of Understanding for Council's consideration (Annexure to Confidential Enclosure 17).

HEZ Part 3A Application

The Part 3A Application of which the Statement of Commitments forms a part has not been formally exhibited, assessed or determined by the Department of Planning. On preliminary inspection the strategies referenced in the statement of commitments are still not clear as to the specific nature and extent of the HEZ Association's role in respect to estate management particularly as it relates to environmental monitoring, modelling, management and performance.

The commitments in terms of Estate Management of Flora and Fauna matters are more prescriptive as they are reflective of the existing assumed concurrence issued by DECC and also the EPBC approved Action and resultant conservation management plans issued by DEWR (these provisions are very similar to those listed in Council's proposed schedule 2).

Acceptance of the approach proposed by the Developer's lawyers would not result in the greater clarity and certainty about the precise nature of the estate management functions that Council officers' have been seeking. It is considered that the Developer's position would make estate management for the Estate generally align with other conventional industrial estates within New South Wales rather than adopting a more comprehensive environmental responsible approach that would be more in line with the particular circumstances and objectives of the Estate.

Release of Subdivision Certificates

Central to the Developer's proposed estate management approach is the title to land in the Estate being burdened by a covenant that:

- prohibits any development unless the HEZ Association has given prior approval to the proposed development; and
- requires all land owners in the Estate to be members of the HEZ Association.

It is expected that all land sale contracts relating to land sales in the Estate entered into by the Developer will require prospective purchasers to become a member of the HEZ Association. Council has not been given any information and material by the Developer to confirm that this is in fact the case.

As stated previously Development Application approvals to date have imposed individual environmental management and monitoring conditions. Estate wide monitoring and management of cumulative impacts cannot be managed through the individual consent process.

The relevance of the estate management approach to the subdivision of land in the Estate is obvious because Council is now being requested to release subdivision certificates to enable transfer of Title of individual lots.

Prior to individual lots being created, it would be prudent for Council to be satisfied with the legal structure of the proposed estate management approach and this includes the nature of the HEZ Association and its roles/functions. The ability of Council to insist on greater clarity and certainty in relation to the estate management functions will be diminished if the release of the subdivision certificates is permitted without the documentation pressed for by Council officer's being finalised and signed.

Flexibility can be built into any negotiated agreement which enables amendment to the estate management roles/functions should the Part 3A Application be approved. The Developer may await the outcome of the Part 3A Application, complying with the Department's Association requirements and seeking release of the subdivision certificates at that time if a negotiated agreement cannot be reached between Council and the Developer at this time. It is recognised that there may be commercial drivers which operate to cause the Developer to insist on the early release of the subdivision certificates,.

Maddocks most recent opinion (Enclosure 18) provides comment in respect to the relevance of estate management issues to the release of subdivision certificates and also considers the key risks associated with the various estate management approaches.

CONCLUSION

Council officers and the Developer concur that the formation of the HEZ Association is a legal requirement as its existence is already enshrined in current approvals. Council officer's consider that the corporate structure of the HEZ Association and title regime are acceptable if augmented by an additional legal agreement (Deed/MoU) which provides greater clarity and certainty in respect to specific environmental and ecological functions to be performed for the duration of the Estate.

Several attempts have been made to negotiate a solution but the type of documentation, its enforcement capability and the functions/timing to be included are still currently in dispute but may be advanced by further negotiation. The recommendation seeks Council endorsement for the current position put by Council officers which is considered consistent with the current planning framework and provides direction to the developer for consideration of future options.

RECOMMENDATION that:-

1. Council advise HEZ PTY LTD that the concept of the HEZ Association as proposed being a company limited by Guarantee under the Corporations Act with every owner required to be a member of the Association pursuant to an 88b Instrument is an acceptable title structure for development within HEZ but contingent upon a separate HEZ Deed being entered into by HEZ Pty Ltd, the HEZ Association and Council for estate management functions in the future.
2. The final content of the Deed be reported to Council for approval prior to its execution by all parties.

3. Subdivision certificates for individual allotments within HEZ will not be released until a Deed as referred to in Points 1 and 2 has been executed.
4. Council inform the Dept of Planning of negotiations to date and any unresolved issues concerning the HEZ Association as part of its formal response to the exhibition of the Part 3A Application for Precinct 1 of HEZ, specifically the need to detail and quantify the Association's overall ecological and environmental management and reporting functions in any subsequent determination.

To: **The General Manager**
City Planning Committee -
2 July 2008

D FITZGERALD
DIRECTOR CITY PLANNING
24 June 2008