

<b>JRPP No.</b>	2010HCC025
<b>DA No.</b>	10/0904
<b>Proposal</b>	Alteration and additions to Shopping Centre including bowling entertainment facility, retail space, carparking and loading dock
<b>Property</b>	LOT: 19 DP: 876517 No.89 Park Avenue Kotara
<b>Applicant</b>	Westfield Management Limited
<b>Submission</b>	Three
<b>Recommendation</b>	Approval
<b>Report By</b>	Melissa Thomas - Senior Development Officer (Planning)

### **Assessment Report and Recommendation**

#### **Executive Summary**

##### **Proposed Development**

The proposal is for a new indoor bowling entertainment facility at an existing shopping centre complex, Westfield Kotara. The indoor bowling facility will be connected to the approved cinema complex via escalators and will include ancillary entertainment like interactive games, lounge/bar, food and beverage operations. A number of additional 'lifestyle' retail tenancies are also proposed adjacent to the entry to the bowling facility. The floor space of the proposed indoor bowling facility is 2,150m<sup>2</sup> with ancillary storage and service areas, and the additional retail floor space is 601m<sup>2</sup>. The proposal also includes modifications to the loading dock area and an additional level of carparking, located in a void between carparking levels 2 and 3.

##### **Referral to Joint Regional Planning Panel**

The proposal is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to clause 13C of State Environmental Planning Policy (Major Development) 2005, because it has a capital investment value of more than \$10,000,000. The application submitted to Council nominates the value of the project as \$12, 500, 000.

##### **Permissibility**

The site is zoned 3(b) District Centre pursuant to the Newcastle Local Environmental Plan 2003. The proposal is categorised as a 'shop' and is permissible within the 3(b) District Centre zone subject to development consent. All required owner(s) consent has been provided. The proposal is local development.

##### **Consultation**

In accordance with Council's Notification Development Control Plan Element 4.1 - Public Participation of the Newcastle Development Control Plan (NDCP) the application was notified from 3 August 2010 to 17 August 2010 and received three submissions.

The proposal was referred to the NSW Roads and Traffic Authority (RTA) pursuant to State Environmental Planning Policy (Infrastructure) 2007 (Clause 104 - Traffic Generating Development). On the 27 September 2010, the RTA requested additional information from the applicant. Upon the submission of the additional information, on the 2 December 2010, the RTA advised that there was no objection to the proposal.

## Key Issues

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

- Whether the development would have an adverse impact on the amenity of the adjacent residential area; and
- Whether development would have any adverse impacts on traffic generation or circulation in and around the shopping complex.

## Recommendation

**Grant approval to DA-10/0904 - Alteration and additions to Shopping Centre including bowling entertainment facility, retail space, carparking and loading dock at No.89 Park Avenue Kotara subject to conditions contained in Appendix A.**

### **1. Background**

In August 1999, the Land and Environment Court granted planning consent for the upgrade and expansion of the existing shopping centre. In addition to the retail extensions approved under this consent, approval was given for a new cinema complex providing an important entertainment facility for residents within the region. This consent was not commenced by the applicant.

On 30 November 2004, development consent was granted to carry out a major expansion of Westfield Kotara, providing for additional retail space, cinemas, additional car parking, and a revised carpark layout and vehicular access arrangement. The approved scheme provided for 24,000m<sup>2</sup> of additional net lettable floor area, eight cinemas with total seating for 2,200 persons, 595 additional car parking spaces and modified vehicle access arrangements. Subsequent to the original approval, a modification pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 was approved, involving a reduction in overall cinema seats from 2,200 to 1,375 with the introduction of a G-Max digital cinema and two gold class cinemas with a gold class lounge.

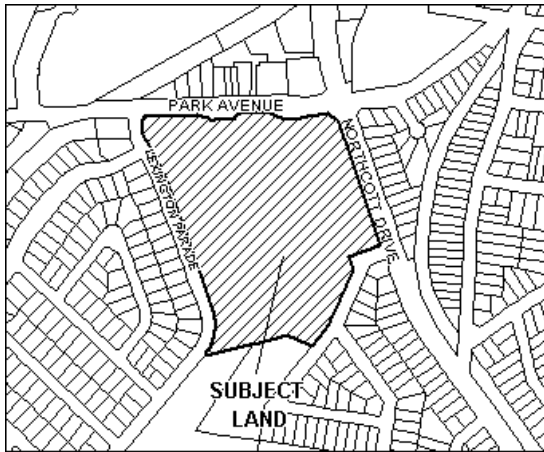
The centre currently has a leaseable area of some 64,789m<sup>2</sup> comprising some 62,259m<sup>2</sup> of retail/storage space and a 2,535m<sup>2</sup> gym. The centre has approval for an additional 4,281m<sup>2</sup> of retail/storage space (David Jones extension, which is currently being completed) and a 1,375 seat cinema complex. In June 2010, a development application for a controlled parking system was approved by Newcastle Council.

### **2. Site and Locality Description**

The subject property comprises Lot 19, DP 876517 and is a large irregularly shaped allotment located on the southern side of Park Avenue, between Northcott Drive and Lexington Parade. It has frontages of 285m to Park Avenue, 197m to Northcott Drive, 196m to Cynthia Street and 375m to Lexington Parade, with a total area of 83,750m<sup>2</sup>.

The site is currently occupied by a multi level shopping centre, with associated car parking. The Centre has vehicular access points off each of its frontages, with the main vehicular entry off Park Avenue by means of a signal controlled intersection.

The general form of development in the immediate area consists of a mixture of commercial/retail activities, including a bulky goods complex to the north of the site. Hudson Park adjoins the site on the southern boundary. Residential development is located to the east and west and there is a high school and a primary school nearby.



**Subject Land:** Map 315 – K12 as Gregory's Street Directory, 25<sup>th</sup> Edition

### 3. Project Description

The proposal is for a new indoor bowling entertainment facility at an existing shopping centre complex, Westfield Kotara with a capital investment of \$12, 500, 000. The Statement of Environmental Effects (SoEE) prepared by Ingham Planning describes the proposal in the following terms:

*'a new indoor bowling entertainment facility at Westfield Kotara. The indoor bowling facility will be connected with the approved cinema complex via escalators and will include ancillary entertainment like interactive games, lounge/bar, food and beverage operations. A number of additional lifestyle retail tenancies are also proposed adjacent to the entry to the bowling facility.'*

*The primary changes to the floor space of the centre include the construction of a new floor level adjacent to Northcott Parade, extending below the approved cinema foyer and to a new modified loading dock area. The modified loading dock will retain access via the existing access ramp.*

*The floor space of the proposed indoor bowling facility is 2,150 sqm with ancillary storage and service areas. The proposed additions to Westfield Kotara include a relatively minor increase in retail floor space of 601 sqm with the provision of new specialty retail tenancies adjoining the mall leading to the bowling facility.'*

An additional level of carparking with 138 spaces is also proposed, located in an existing void between carparking levels 2 and 3. A copy of the current amended plans is appended at APPENDIX B - Plans and Elevations.

The applicant has advised that there is no proposed change to the previously approved hours of operation for the shopping centre. The bowling alley and associated retail space will operate in accordance with the approved hours of operation for the cinema and entertainment lifestyle precinct within the centre. The approved hours of operation for the cinema in accordance with DA03/2991 are detailed in a condition of consent as shown below:

*'Condition 3.23:*

*The hours of operation of the proposed retail shopping extensions the subject of this consent being restricted to between the hours of:*

9.00 am and 5.30 pm Monday to Wednesday;

9.00 am and 9.00 pm Thursday;

9.00 am and 5.30 pm Friday;

9.00 am and 5.00 pm Saturday; and

10.00 am and 4.00 pm Sunday; except on other late night trading days when trading may continue to 9.00pm, such days to be restricted to the ten days prior to 25 December and five additional trading days each calendar year around Easter, Mothers' Day and Fathers' Day. Trading hours for any other special event will require the submission of a separate application for the consideration of Council.

The proposed Cinemas and Entertainment and Leisure Precinct, defined as being the retail shop adjacent to the Cinema on Level 3 and the Food Court below the Cinema on Level 2 (not including the food court balcony) is to be restricted to between the hours of 9.00am and 12 midnight, seven days per week, with the exception of Movie Marathons, such events to take place on not more than four nights during the first year of operation and to be the subject of review by Council thereafter, the parking for Movie Marathons to be confined to the car parks accessed directly off Park Avenue and Northcott Drive, with egress only to Park Avenue.

(Note: This condition allows a trial period for movie marathons to be held on four occasions during the first year of the cinemas operating. A formal application under section 96 of the Act may be made to Council to amend this condition to allow Movie Marathons in following years.)

**Reason:** To confirm the terms of consent and protect the amenity of the neighbourhood.'

#### 4. Consultation

In accordance with Council's Development Control Plan the application was notified by letters to surrounding residents from 3 August 2010 to 17 August 2010 and received three submissions.

The matters raised were:

- Increased impact of noise and traffic
- Traffic and noise in evening hours
- On-street parking impacts on surrounding streets
- On-street parking of staff working late hours and associated noise impacts
- All exits from the complex at night should be via the Park Avenue entrance and not through residential streets
- Large fence similar to that on Lexington Parade should be constructed on Cynthia Street to reduce noise impacts
- Centre has reached capacity
- Hours of operation
- Present closing times of the gates on Lexington Parade should remain unchanged
- Construction Noise, experiences of vibration and damage to property in the past
- Temporary bus stop on Northcott Avenue has not been moved to permanent location. Concerns relating to damage to property and garbage

The objectors' concerns are addressed under the relevant matters for consideration in the following sections of this report.

## 5 Referrals

The proposal was referred to the NSW Roads and Traffic Authority (RTA) pursuant to State Environmental Planning Policy (Infrastructure) 2007 (Clause 104 - Traffic Generating Development). On the 27 September 2010, the RTA requested additional information from the applicant. Upon the submission of the additional information, on the 2 December 2010, the RTA advised that there was no objection to the proposal.

The proposal is not identified as 'integrated development' and does not require any concurrences.

The proposal received internal comments from the following professional areas:

- Environmental Services (Compliance Services Unit)
- Traffic Engineering
- Stormwater/Flooding Engineering

The comments received from the referrals are appended at APPENDIX C – Referral Comments.

## 6. Section 79C Considerations

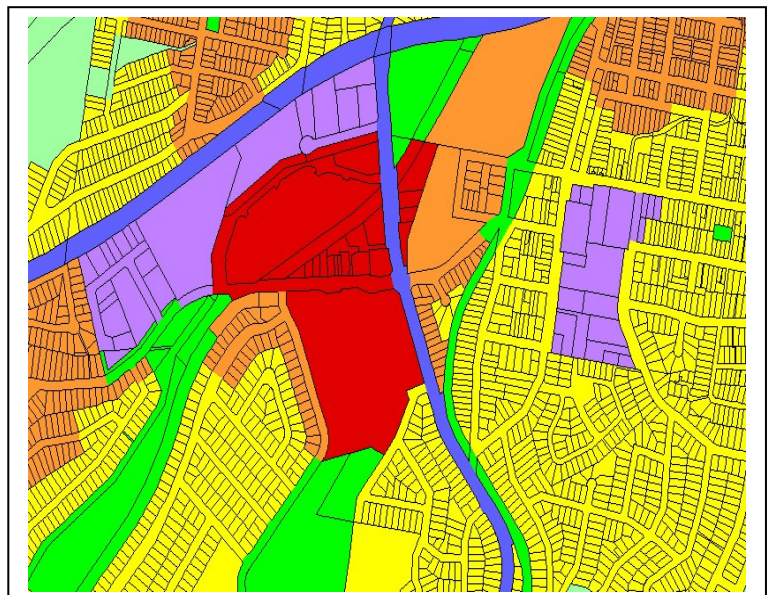
The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning & Assessment Act, 1979, as detailed hereunder.

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

#### Newcastle Local Environmental Plan 2003

- Clause 16 - Zonings

The subject property is included within the 3(b) District Centre zone under the provisions of the Newcastle Local Environmental Plan, 2003, within which zone the proposed development is permissible with Council's consent.



	1(a) Rural Residential Zone
	2(a) Residential Zone
	2(b) Urban Core Zone
	3(a) Local Centre Zone
	3(b) District Centre Zone
	3(c) City Centre Zone
	3(d) Mixed Use Zone
	4(a) Urban Services Zone
	4(b) Port and Industry Zone
	4(c) Steel River Zone
	5(a) Special Uses Zone
	5(b) Special Uses Reservation Zone
	6(a) Open Space and Recreation Zone
	7(a) Conservation Zone
	7(b) Environmental Protection Zone
	7(c) Environmental Investigation Zone
	8(a) National Parks Zone

Layer legend

The objectives of the zone are:

- 'a) To provide for a compatible mix of retail, commercial, recreational and other compatible employment activities that could reasonably be expected to service a district with a population in the order of 20,000–30,000 people and maintain the hierarchy of urban centres throughout the City of Newcastle.
- b) To recognise and not prejudice the viability of the Newcastle City Centre as the pre-eminent retail, commercial, administrative, social, cultural and recreational centre of the City of Newcastle and the Hunter Region.
- c) To encourage a compatible and balanced mix of residential and commercial development above or adjacent to core retail frontages that contributes to a safe, attractive, friendly, accessible and efficient pedestrian environment.
- d) To conserve and enhance the built character and cultural heritage of district centres to reinforce their character and improve their vitality and viability.
- e) To ensure that new development has regard to the character and amenity of adjacent residential areas.'

In relation to the objectives, the SoEE states:

*'With respect to the zoning of the subject site and the zone objectives, the proposed development is permissible if the consent authority is of the opinion that it will provide a range of retail and commercial activities which it could reasonably expect not to disadvantage or detrimentally affect the life or existence of the Newcastle CBD. The expansion of the entertainment and lifestyle facilities at Westfield Kotara ensures that the centre has a major retail trade influence over the population within the local district and also serves the needs of people within a number of districts surrounding Kotara.'*

*Central business districts are made up of a number of important components including office, commercial, entertainment and retail facilities. The Land and Environment Court proceedings held in respect to the previously approved development for the site along with the previously approved scheme by Newcastle City Council examined the issue of economic impact in detail. It is considered that the economic impact of the proposed development will not be detrimental to the viability of the Newcastle CBD. The proposal is not inconsistent with the objectives of the*

*3(b) zone and, on merit, represents an appropriate extension to the sub-regional centre of Kotara.'*

In the context of the Land and Environment Court decision and previous approvals granted by Council made in relation to development on the site, it is considered that the proposed development remains consistent with the objectives of the zone.

- Clause 23 - Access to arterial roads

It is noted that the site has existing access points to a classified road; however the proposal does not include any new access points. Accordingly, further consideration of this clause is not applicable.

- Clause 25 - Acid Sulfate Soils

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

- Clause 26 - Bush fire prone land

Having regard to the nature of the existing development and proposed additions, it is considered that the proposal is acceptable in relation to bushfire.

#### State Environmental Planning Policy (Major Development) 2005

As previously discussed, the proposal is identified as 'Regional Development' in accordance with this policy.

#### State Environmental Planning Policy (Infrastructure) 2007

As previously discussed, the proposal was referred to the NSW Roads and Traffic Authority (RTA) pursuant to State Environmental Planning Policy (Infrastructure) 2007 (Clause 104 - Traffic Generating Development).

#### State Environmental Planning Policy 55 - Remediation of Land

There have been previous reports identifying issues relating to contamination on the site; however this issue has been previously addressed under former development applications. It is not considered that this project has any specific requirements in relation to contaminated land management noting the additions are contained within the existing development footprint.

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

#### Draft Newcastle Local Environmental Plan 2011

The subject property is included within the B2 Local Centre Zone under the provisions of the Draft Newcastle Local Environmental Plan, 2011, within which zone 'retail premises' are permissible with Council's consent.

The draft objectives are:

- a) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- b) To encourage employment opportunities in accessible locations.*

- c) *To maximise public transport patronage and encourage walking and cycling.*
- d) *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- e) *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.'*

In the context of the Land and Environment Court decision and previous approvals granted by Council made in relation to development on the site, it is considered that the proposed development is acceptable.

#### *Clause 4.3 Height of buildings*

This clause prescribes a maximum height limit of 14 metres for the site. It is noted that the existing building (including the approved cinema) is in excess of this height limit, and that the proposed additions are not increasing the overall height of the building. Accordingly, it is considered that the proposal is acceptable.

It is noted that as this development standard is within a draft instrument only, that the procedural formality of State Environmental Planning Policy 1 - Development Standards is not applicable to this application.

#### *Clause 4.4 Floor space ratio*

This clause prescribes a maximum floor space ratio (FSR) of 2.0:1 for the site. The FSR of the site, including the proposed additions, complies with this requirement. The site currently has an FSR of less than 1.0:1.

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

#### Newcastle Development Control Plan 2005

##### a) Element 3.1 Public Participation

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

##### b) Element 4.1 Parking and Access

The proposal involves the construction of a 10 lane bowling alley with a floor space of 2150m<sup>2</sup> and an additional 601m<sup>2</sup> of retail space.

The Development Control Plan requirements in relation to the additions are as follows:

Requirement	Required
Shopping centres with over 30,000m <sup>2</sup> GLFA, 4.1 spaces per 100m <sup>2</sup> GLFA	24.6 spaces
Bowling alleys - 3 spaces per alley	30 spaces
<b>TOTAL:</b>	54.6 spaces
Number of spaces proposed:	138 spaces



It is considered that the additions to the centre provides sufficient additional carparking based on the DCP requirements.

In accordance with the DCP requirements, 7 motorcycle spaces and at least 7 bicycle spaces are required for the addition, and this requirement will form part of the conditions of consent.

c) Element 4.2 Contaminated Land Management

There have been previous reports identifying issues relating to contamination on the site; however this issue has been previously addressed under former development applications. It is not considered that this project has any specific requirements in relation to contaminated land management noting the additions are contained within the existing development footprint.

c) Element 4.3 Flood Management and Element 4.5 Water Management

Council's Senior Engineer has provided the following comments:

*'The existing carpark shown on the Level 1 Plan is subject to flooding and has been addressed in an earlier DA for the major renovations onsite. This DA appears to have only very minor works proposed at this level, namely a proposed pedestrian ramp. As such I agree with the comments provided in the SEE section 6.5.6 that there will be no significant flood impacts resulting from the proposed works.'*

*I also agree that proposed works involve no net increase in impervious area on the site and that any new drainage proposed needs to be connected to the existing drainage network on the site. It is recommended that standard condition 3.90 be imposed to address this issued.*

*Council does not currently have any information on possible changes to local flooding due to climate change for this site. Council is currently studying this issue and future flood studies may change when climate change scenarios are considered. The site has a minimum ground level of approximately 21 m AHD and is well above current estimates of sea level rise. The NSW Government adopted a sea level rise policy which estimates sea levels will rise by 0.9m by the year 2100. It is possible that rainfall patterns will change with more intense rainfall but at this stage no reliable information is available addressing this issue. Should reliable information become available Council would need to review current flood level estimates.'*

It is considered that the proposed additions to the existing shopping centre are acceptable in terms of flood and water management.

e) Element 4.10 Tree Management

It is noted that no removal of trees will be required by this application, further to that which has been approved by the cinema development application.

f) Element 6.1 Commercial Development

The proposal is considered to be satisfactory having regard to this DCP element. The Traffic Impact Assessment required by this element of the DCP has been provided.

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

Not applicable.

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

The proposal is considered to be satisfactory.

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

**a) Hours of operation**

The bowling alley and associated retail space are proposed to operate in accordance with the approved hours of operation for the cinema and entertainment lifestyle precinct. This would allow this area, considered to be an extension of the entertainment precinct, to operate from 9.00am and 12 midnight, seven days per week. The recommended conditions of consent exclude the bowling alley and associated retail being open for extended hours during movie marathons.

The requested hours of operation are considered to be reasonable in the context of the cinema approval, as they will operate in conjunction with one another. The areas for parking and exiting of the centre will be managed similarly to the cinema by conditions of consent.

**b) Visual Appearance**

The Statement of Environmental Effects provides the following comments in relation to the proposal:

*'The proposed built form is suspended on piers above ground level and provides an elongated built form extending adjacent to the Northcott Drive frontage to a height similar to the existing north-eastern roof deck at the corner of Northcott Drive and Park Avenue. The built form is generally consistent with the maximum height of the shopping centre but is below the approved cinema complex that extends above the proposed bowling alley.*

*Although the proposal expands the building envelope of the shopping centre, visually it will not be out of character with the scale and bulk of existing development within the centre and is consistent with a size of this large land parcel within Kotara.*

*The built form is setback behind the existing trees and vegetation that extend along the Northcott Drive frontage which screens and softens the overall built form when viewed from the major arterial road.*

*The landscape treatment will be enhanced along the Northcott Drive frontage and appropriate façade treatment will be used to break up the overall bulk of the new indoor bowling facility extension.*

*The proposed built form is setback around 50 metres from the closest dwelling on the opposite side of Northcott Drive and is compatible to the built form of the*

*existing north eastern carpark structures setback from those residential properties opposite Northcott Drive. However, in this case the proposed built form is less exposed to the street being behind the established landscaped edge and lower to the street given the increasing height as the road extends uphill from the Northcott and Park Avenue intersection.*

*The proposed built form includes a façade to part of the reconfigured loading dock which will provide improved amenity to the closest dwellings on the opposite side of Northcott Drive.*

*The proposed façade treatment is intended to be consistent and compatible with the remainder of the shopping centre, and further improve, the street landscape works carried out to date within the commercial centre.'*

Concern was originally raised by Council officers in relation to the proposed setback and visual appearance of the building to Northcott Drive. In response to the concerns, the applicant made the following amendments to the proposal:

- Proposed metal feature cladding panels to the facade to step out approximately 150mm to provide depth and character to the building façade.
- Proposed translucent architectural polycarbonate panels that will activate the façade with a controllable low level 'Glo' effect.
- Proposed metal blade screening to part of the loading dock to match those on the Park Avenue facade, this will improve the general loading dock amenity and tie in existing building façade elements.

Council officers have noted that openings in the building are not desirable, as this form of building activation, while potentially improving the visual appearance of the structure are likely to create impacts to the residential properties on the other side of Northcott Drive. Accordingly, it is considered that the proposal is acceptable in terms of visual appearance.

#### c) Carparking and Traffic

As previously discussed in the assessment, the proposal is considered to be satisfactory in terms of carparking provision.

In relation to traffic impacts, the proposal has been reviewed by the Regional Development Committee (RDC) who has been satisfied through appropriate modelling that the increased traffic generated by the proposal will not adversely impact on the local road network.

The 3 submissions received during the public notification period raised traffic generation and car parking in the residential streets as a concern. The RDC has requested advanced traffic modelling to be carried out on the network to show the proposal will not adversely impact on traffic flows during peak hours. As per the RTA advice dated 2 December 2010 the applicant has satisfied the RTA that this will be the case.

Accordingly, it is considered that the proposal is satisfactory in relation to parking and traffic.

d) Acoustic Impacts

In relation to construction and plant acoustic issues, reference is made to the comments made from Council's Compliance Services Unit attached at Appendix C. Conditions of consent are recommended to manage this issue.

The potential acoustic impacts of the loading dock have also been considered. The applicant advises *"the current loading dock is entirely open to the street with no visual or acoustic screening. The proposed loading dock provides shielding to the unloading platforms behind the proposed building extensions which should provide both an improved visual and acoustic amenity."*

The applicant also submits that "utilisation of the loading dock is unlikely to intensify with servicing requirements for bowling and 5 – 6 shops considered minor to the existing utilisation". It is accepted that on balance the significant acoustic shielding to be achieved by the bowling alley building and the corresponding reductions in noise emanating to residential receivers should compensate for any minor increase in utilisation of the loading dock.

It is noted that the proposal will potentially increase the number of persons that will be within the entertainment precinct until midnight. In this regard it has been taken into consideration that the entrances to this precinct are from within the centre carparking areas. Impacts from customers leaving the site on foot can be managed by the centre security staff by way of monitoring patrons leaving the premises. A Management Plan in relation to these matters is a recommended condition of consent. It is noted that given the design, nature and location of the proposal, pedestrian traffic along residential streets is not likely to be a significant noise creator.

In relation to traffic noise, the applicant has drawn attention to the existing consent condition (DA 03/2991) relating to the closure of the driveways from the centre to Cynthia Street at 6pm. The enforcement of this condition will ensure that any increased traffic as a result of this development should not be impacting upon residential amenity of those houses to the south of the centre during evening and night. The traffic analysis determines predicted traffic increases associated with the proposed development will be relatively minor compared with existing volumes. Considering the existing high traffic volumes in the area and the corresponding noise environment, it is unlikely that these changes would significantly affect the amenity of neighbouring residences during daytime.

Based on the assessment, it is considered that the proposal is satisfactory in terms of acoustic impacts.

e) Social and Economic Impacts in the Locality

The applicant provided a Social Impact Comment in the Statement of Environmental Effects:

*'The following issues has been addressed in accordance with Council's Social Impact Assessment Policy:*

**ACCESS**

*Clause 1.2 of the policy requires consideration be given to disabled access and mobility. It is considered that appropriate access to existing lift facilities will be*

*provided in accordance disabled access provisions of the Building Code of Australia.*

#### **CRIME & PUBLIC SAFETY**

*Specialist advice has been sort by Westfield in the field of safety and security measures for the entire shopping complex. In considering the matter of crime and public safety, reference has been made to the Crime Prevention Guidelines released by DUAP in April 2001. The DUAP Guidelines identify four principles that can be used in the design of a development to prevent or minimise crime. They are Surveillance, Access control, Territorial reinforcement and Space Management.*

#### **EMPLOYMENT**

*The proposed extensions to Westfield Kotara will result in new employment opportunities within the centre during both the construction and operational phases of the development. The type of jobs created will be well suited to a variety of people within the local and regional population.'*

Given the minor nature of the additions in the context of the existing development, it is not considered that the proposal would be likely to have any significant social or economic impacts in the locality. It is noted that the proposal may increase competition to existing businesses, but that this would not be a reason for refusal of the application.

#### **(c) the suitability of the site for development**

It is considered that the site is suitable for the proposed development, noting the existing development on the site. It is considered that the site is well serviced by public transport options.

In terms of site constraints, the site is identified as bushfire prone. It is considered that in the context of the existing development, that the proposal is satisfactory in relation to this issue. The site is not within a Mine Subsidence District

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

It is not considered that the proposal will increase the risk of the proposal in relation to climate change.

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

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

- On-street parking of staff working late hours and associated noise impacts

It is noted that previous approvals have required the specific provision of a staff carparking area, however noting that some staff may park on the street. This issue will also be a potential concern for the approved cinemas. It is considered that this issue can be ameliorated to some extent by educational strategies and security. This will form part of the Management Plan required as a recommended condition of consent.

- All exits from the complex at night should be via the Park Avenue entrance and not through residential streets

This will form part of the Management Plan required as a recommended condition of consent.

- Large fence similar to that on Lexington Parade should be constructed on Cynthia Street to reduce noise impacts

The applicant has responded to this request by noting that the proposal does not extend toward Cynthia Street, the proposed extension is a redevelopment of the existing loading dock structure extending out toward the main traffic road of Northcott Drive.

It is not considered that this proposal warrants the requirement of such a fence.

- Centre has reached capacity

It is noted that the proposal is within the floor space ratio specified by the draft Newcastle Local Environmental Plan 2011.

- Present closing times of the gates on Lexington Parade should remain unchanged

There is no proposal to change this condition as part of this development application.

- Temporary bus stop on Northcott Avenue has not been moved to permanent location. Concerns relating to damage to property and garbage

It is noted that some of the submissions raised concerns about the existing operation of the Westfield Shopping Centre. The concerns relate to previous approvals and alleged non-compliance with conditions of consent imposed by Council. The issue of alleged non-compliance with conditions of consent is a separate issue and was not considered in the assessment of this proposal.

#### **(e) the public interest**

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

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

## **7. Conclusion**

Subject to various conditions, the proposal is acceptable against the relevant considerations under section 79C.

## **8. Recommendation**

That the Joint Regional Planning Panel grant consent to DA10/0904, subject to the conditions contained in Appendix A.

## **APPENDIX A - Conditions of Consent**

### **A General Conditions**

A1 The proposed development being carried out strictly in accordance with the details set out on the following plans:

- Level 1 Plan, Level 1M Plan, Level 2 Plan numbered KO-01.1004-1006 Rev A dated July 2010 prepared by Westfield Design and Construction Pty Limited
- Level 2 Retail Plan numbered KO-01.1007 Rev B dated Oct 2010 prepared by Westfield Design and Construction Pty Limited
- Level 2M Plan numbered KO-01.1008 Rev A dated July 2010 prepared by Westfield Design and Construction Pty Limited
- Level 3/Roof Plan numbered KO-01.1009 Rev B dated Nov 2010 prepared by Westfield Design and Construction Pty Limited
- Northcott Drive Elevation numbered KO-01.1010 Rev B dated Nov 2010 prepared by Westfield Design and Construction Pty Limited
- Hudson Park elevation, Park Ave Elevation, Sections A&B numbered KO-01.1011-1013 Rev A dated July 2010 prepared by Westfield Design and Construction Pty Limited
- Statement of Environmental Effects dated June 2010 Job No.09199 prepared by Ingham Planning
- The applicant's written submission dated 10 November 2010

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

**Note:** Any proposal to modify the terms or conditions of this consent whilst still maintaining substantially the same development to that approved, will require the submission of a formal application for Council's consideration in accordance with the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979.

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

A2 The hours of operation of the bowling alley and retail areas the subject of this consent being restricted to between the hours of 9.00am and 12 midnight, seven days per week.

**Reason:** To confirm the terms of consent and protect the amenity of the neighbourhood.

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

B1 Nil.

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

#### **C1 Section 94A Levy**

A total monetary contribution of \$125,000 being paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be



payable prior to the issue of a Construction Certificate in respect of the proposed development.

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

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

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

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

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

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

C2 Additional on-site parking accommodation being provided for a minimum of 138 vehicles, 7 motorcycle spaces and at least 7 bicycle spaces and such being set out generally in accordance with the minimum parking layout standards indicated in Element 4.1 of Council's adopted Newcastle Development Control Plan 2005. Full details to be included in documentation for a Construction Certificate application.

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

C3 The proposed alterations and additions to the existing shopping centre being examined by an appropriately qualified fire engineer and confirmation that the design conforms with the design intent of the fire engineered solutions for the existing building, along with full details of any necessary works to achieve such conformity, being submitted with the required Construction Certificate application.

**Reason:** To ensure the fire protection of the building will be appropriate for the proposed use in accordance with Clause 94 of the Environmental Planning and Assessment Regulation 2000.

- C4 Prior to the release of the Construction Certificate, the applicant submitting a report from a suitably qualified technical lighting expert that demonstrates that the new lighting will not adversely impact on adjoining residents. All lights poles are to have suitable shielding to prevent light spillage and are to comply with AS 4282-1997- Control of the Obtrusive Effects of Outdoor Lighting.

**Reason:** To ensure that the installation and operation of the proposed floodlights conform with the appropriate lighting standards to minimise any adverse impacts on the amenity of nearby residents.

- C5 The building being provided with adequate means of access for persons with disabilities in order to comply with the Building Code of Australia and the Disability Discrimination Act 1992.

In this regard, the applicant is to submit a design detail which has been certified by a qualified Access Advisor\* with the application for a Construction Certificate.

**Note:** i) Compliance with the Building Code of Australia only can still leave a building professional or building owner in contravention of the Disability Discrimination Act 1992.

ii) \* A qualified Access Advisor is a current member of -  
Association of Consultants in Access Aust Inc  
326 Autumn Street, HERNE HILL, VIC. 3218.  
Ph (03) 5221 2820  
[www.access.asn.au](http://www.access.asn.au)

iii) A qualified Access Advisor should carry current and relevant public liability and public indemnity insurances for the practice of their trade.

**Reason:** To ensure compliance with the provision of the Environmental Planning and Assessment Act, 1979 and the Building Code of Australia and the Disability Discrimination Act 1992 in relation to the provision of equity in access for disabled persons.

- C6 The applicant complying with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's certificate of compliance is to be included in documentation for a Construction Certificate application.

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

- C7 Prior to the issue of a construction certificate or commencement of site works (whichever occurs first), a construction noise and vibration management assessment is to be undertaken by a suitably qualified consultant and submitted to the Principal Certifying Authority. The noise and vibration assessment is to be undertaken in accordance with NSW DECCW Guidelines and is to detail measures to minimise the impact of the development and make recommendations regarding methods for controlling any unacceptable impacts on surrounding land users. Should the construction noise and vibration assessment identify that there may be significant vibration impacts at particular buildings, a dilapidation survey is to be undertaken at

these buildings prior to commencement of works. A vibration monitoring program is also to be prepared and implemented for those potentially affected buildings in order to manage the impacts. A copy of the plan is to be kept on the site and made available to authorised Council officers upon request.

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

C8 Prior to the issue of a Construction Certificate or commencement of site works (whichever occurs first), the proponent preparing and submitting to the Principal certifying Authority and Council an Environmental Management Plan (EMP) for construction/demolition works on the site, such to be kept on site and made available to authorised Council officers upon request. The EMP is to include but not be limited to:

- a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
- b) A water management strategy, detailing control and management of surface water.
- c) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.
- d) A noise and vibration management program. This would cross reference with the required detailed noise and vibration assessment ensuring implementation of the identified control measures.
- e) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
- f) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

**Reason:** To prevent environmental pollution and to ensure compliance with relevant provisions of the Protection of the Environment Operations Act 1997.

C9 The design and construction of the proposed development being in accordance with the relevant requirements of the *Australian Standard 4674-2004 Design, Construction and Fit-Out of Food Premises*. Full details are to be included in the documentation for the Construction Certificate application.

**Reason:** To ensure safe and suitable food for human consumption under the provisions of the Food Act 2003 and the Food Regulations 2004.

C10 Detailed landscape design plans for the development area being submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate. The required plans are to include the following:

- Location of protective fencing for trees to be retained;
- Tree protection notes;
- Plant schedules;
- NATSPEC requirements;
- Planting preparation notes;
- Planting details;
- Staging notes; and

**Reason:** To ensure that adequate and appropriate landscaping is provided in association with the development.

- C11 Street trees not being removed, pruned, root pruned or injured without prior consent from Council. The written advice of Council's City Arborist is to be obtained for guidelines on the protection of trees and tree roots prior to commencing construction works.

**Reason:** To ensure that existing trees within the public domain and their critical roots are protected from mechanical damage, compaction or any other adverse impacts resulting from construction activity.

- C12 During construction existing street trees and all other trees likely to be affected by the development, being protected by enclosure with a 1.8m high chainmesh fence. The required fencing is to be erected prior to works commencing on site and is to be retained until all building works are completed. The enclosed area is to remain free of materials, machinery, vehicles or site sheds. A plan is to be submitted showing the locations of protective fencing and prohibited areas with the application for a Construction Certificate.

**Reason:** To protect the public tree assets and their critical roots from mechanical damage, compaction or any other adverse impacts resulting from construction activity.

- C13 The Developer instituting appropriate erosion protection and soil stabilisation measures in association with the proposed site works. Such measures to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the "Blue Book") published by Landcom, 2004. Full details to be included in the documentation for a Construction Certificate application.

**Reason:** To control soil erosion and prevent sedimentation of surrounding lands both private and public.

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

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

**Note:** The required plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve. The plan is to be prepared in accordance with Australian Standard 1742.3 – 2002.

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

**E Conditions which must be satisfied during any development work**

- E1 Construction/demolition work that generates noise that is audible at residential premises being restricted to the following times:
- Monday to Friday, 7:00 am to 6:00 pm;
  - Saturday, 8:00 am to 1:00 pm;

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

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

- E2 No construction/demolition work being undertaken on a Public Holiday or on a Saturday or Sunday adjacent to a Public Holiday

**Reason:** To safeguard the amenity of the neighbourhood.

- E3 Council's "PREVENT POLLUTION" sign being erected and maintained in a conspicuous location on or adjacent to the property boundary so that it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of construction work.

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

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

- E4 The applicant operating a 24-hour telephone complaints line during the demolition and construction phases of the development for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by vehicle or mobile plant associated with site works. The proponent is to notify Council and neighbouring residential and commercial premises of the complaints line telephone number and proposed program of works by way of letter at least two weeks prior to commencement of works on site and by prominent signage at access points to the site. A log of complaints received on the telephone complaint line and action taken in response is to be made available to Council officers upon request.

**Reason:** To ensure that environmental impacts or incidents arising from site operations are addressed promptly and are properly monitored.

- E5 Stormwater being conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for adequacy and cleared of any obstructions by a suitably qualified person.

**Reason:** To prevent damage to property and to prevent the creation of unhealthy or dangerous conditions.

- E6 Any excavated material to be removed from the site being assessed, classified, transported and disposed of in accordance with the NSW Department of Environment and Climate Change's Waste Classification Guidelines.

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

- E7 Any demolition/waste building material incapable of being reused or recycled being disposed of at Council's Waste Management Facility or other approved site.

**Reason:** To prevent indiscriminate dumping or use of demolition/waste building material for purposes of unauthorised land fill.

- E8 All metallic waste bins and vehicle trays used for the removal, storage or transport of demolition, excavation or construction material being lined with absorbent matting (eg. conveyor belting insertion rubber).

**Reason:** To minimise potential noise impacts arising from the proposed works.

- E9 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

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

- E10 The placing of building materials or the carrying out of building operations upon or from Council's footway or roadway is prohibited unless prior consent in writing is obtained from Council.

**Reason:** To maintain pedestrian passage and public safety.

- E11 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 confirm a condition of consent prescribed by the Environmental Planning & Assessment Regulation 2000.

- E12 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, but must be removed when the work has been completed.

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

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

- F1 Any necessary alterations to public utility installations being at the Developer/Demolisher's expense and to the requirements of both Council and the appropriate authorities.

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

- F2 Should new mechanical ventilation and/or air conditioning plant be installed on the roof of the subject building, as shown on the submitted plan KO-01.1009B, appropriate noise controls measures are to be implemented to achieve operational noise goals listed in the letter by The Acoustic Group 28 April 2008. Written certification from the said consultant confirming that these noise goals are being achieved is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

- F3 All parking and loading bays being permanently marked out on the pavement surface with loading bays being clearly indicated by signs.

**Reason:** To facilitate the orderly and efficient use of on-site parking and loading/unloading facilities.

- F4 Appropriate lighting being provided for driveways and pedestrian pathways in accordance with AS 1158 - Lighting and AS 4282 - Control of the Obtrusive Effects of Outdoor Lighting, such being installed prior to the occupation of the portion of the premise the subject of this application. The following measures shall be implemented:

- Ensure light levels are appropriate for the users, activities and tasks of an area. Higher levels may be required for vulnerable areas.
- Vandal resistant external lighting should be installed.
- Adequate, uniform lighting should cover the premises. The emphasis should be on installing low glare/ high uniformity lighting levels.
- Lighting sources should be compatible with requirements of any surveillance system installed.
- A limited level of lighting should be left on at night to allow for casual surveillance from the street.

**Reason:** To ensure that adequate and appropriate lighting facilities are provided for the proposed development and to ensure consistency with Crime Prevention Through Environmental Design principles.

- F5 Additional on-site parking accommodation being provided for a minimum of 138 vehicles, 7 motorcycle spaces and at least 7 bicycle spaces and such being set out generally in accordance with the minimum parking layout standards indicated in Element 4.1 of Council's adopted Newcastle Development Control Plan 2005. This on-site parking accommodation shall be provided prior to the occupation of the portion of the premise the subject of this application.

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

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

- H1 The use and occupation of the premises including all plant and equipment installed thereon, not giving rise to any "offensive noise", as defined under the Protection of the Environment Operations Act, 1997, as amended.

**Note:** Should Council consider that offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an

acoustic consultant's report recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming that the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council before the expiration of the nominated period.

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

- H2 No flashing, chasing or scintillating lighting or promotional material of a visually intrusive nature being installed or displayed on the exterior of the premises.

**Reason:** To ensure compliance with the provisions of Council's adopted Outdoor Advertising Sign Code and to protect the existing amenity of the neighbourhood.

- H3 Any liquid wastes from the premises, other than stormwater being discharged to the sewers of the Hunter Water Corporation in accordance with that authority's requirements.

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

- H4 A Security Management Plan being prepared and implemented for the proposed 'Entertainment and Leisure Precinct'. The Security Management Plan is to be prepared in consultation with Council's Social Planner and/or Community Safety Officer, NSW Police, tenants of the Entertainment Leisure Precinct, a community representative and a representative from a local school/youth organisation. The Security Management Plan is to be submitted with the application for a Construction Certificate and is to including, but not limited to, the following details:

- a) The development and identification of strategies for the management of the Centre after hours (including noise and movement) to prevent disturbance to the surrounding neighbourhood, minimise crime and anti-social behaviour and develop effective responses to such incidents. These strategies are to be incorporated into a comprehensive 'Extended Hours Trading Plan'. The Extended Hours Trading Plan is to also include restrictions on access points to the car park after normal trading hours (ie. closure of gates in Lexington Parade and Cynthia Street).
- b) Appointment of a Westfield Security Manager to oversee all security staff operating within the Centre. Security personnel are to be appropriately trained and available to the Centre 24-hours a day. Patrolling strategies are to be developed with an increased presence after hours.
- c) Education strategies to minimise noise from staff leaving the premises during night hours.
- d) Strategies to foster the responsible service of alcohol.
- e) Installation of CCTV and other infrastructure to manage security of the entertainment precinct and carpark.



The Security Management Plan shall be implemented prior to the occupation of the portion of the premise the subject of this application and for the life of the development.

**Reason:** To ensure appropriate measures are incorporated into the development to assist in crime prevention.

**I Other Agency Conditions**

Nil.

**J Advisory Notes**

- J1 Any proposed business identification sign or advertising sign, being designed in accordance with the provisions of Council's adopted Newcastle Development Control Plan, 2005 and being the subject of a separate Development Application approved prior to erection or placement in position.

**Reason:** To advise of the necessity to submit further applications to Council in respect of proposed signage in order that any such proposals may be properly assessed in accordance with relevant heads of consideration under the Environmental Planning and Assessment Act, 1979.

- J2 Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:

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

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

- J3 Prior to the occupation of a new building, or, occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building. An application for an Occupation Certificate must be set out in the form of the relevant part of Form 12 of the Environmental Planning and Assessment Regulations and must be accompanied by the relevant information required by Form 12.

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

- J4 A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

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

## **APPENDIX B – Plans and Elevations**

## APPENDIX C – Referral Comments

### Comments from External Agencies

Agency	Comments
NSW Roads and Traffic Authority	

### Comments from Internal Departments

Department	Comments
Environmental Services (Compliance Services Unit)	
Council Traffic Officer	
Council Stormwater/Flooding Engineer	