

JRPP No:	2011SYE024
DA No:	107/10
PROPOSED DEVELOPMENT:	Demolition of the existing buildings and construction of a single storey supermarket (Woolworths) with mezzanine ancillary office, signage, café with basement (154 spaces), ground level (56 spaces) and rooftop parking (108 spaces) – 17 – 31 Roseberry Street, Balgowlah.
APPLICANT:	Fabcot Pty Ltd
REPORT BY:	Nayeem Islam, Manly Council

Assessment Report and Recommendation

DA #	107/10
Site Address	17 – 31 Roseberry Street, Balgowlah.
Proposal	Section 96 (2) Modification Demolition of the existing buildings and construction of a single storey supermarket (Woolworths) with mezzanine ancillary office, signage, café with basement (154 spaces), ground level (56 spaces) and rooftop parking (108 spaces) –.
Officer	Nayeem Islam

<u>Application Lodged:</u>	30 November 2011 (Section 96 Modification)
<u>Applicant:</u>	Fabcot Pty Ltd
<u>Owner:</u>	Fabcot Pty Ltd
<u>Estimated Cost:</u>	\$15.9M (Original Development)
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Industrial
<u>Surrounding Development:</u>	Light Industrial, Bulky Goods retail & retail.
<u>Heritage:</u>	Not Applicable

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR SECTION 96 (2) MODIFICATION OF THE ORIGINAL APPLICATION FOR THE DEMOLITION OF THE EXISTING BUILDINGS AND CONSTRUCTION OF A SINGLE STOREY SUPERMARKET (WOOLWORTHS) WITH MEZZANINE ANCILLARY OFFICE, SIGNAGE, CAFÉ WITH BASEMENT (154 SPACES), GROUND LEVEL (56 SPACES) AND ROOFTOP PARKING (108 SPACES).
2. THE SECTION 96 (2) APPLICATION WAS NOTIFIED TO ALL ADJOINING AND NEARBY PROPERTY OWNERS AND NINETEEN (19) SUBMISSIONS RECEIVED.
3. THE APPLICATION WAS REFERRED TO THE BALGOWLAH PRECINCT COMMUNITY FORUM FOR COMMENTS.
4. SITE INSPECTION IS RECOMMENDED.
5. THE APPLICATION IS RECOMMENDED FOR CONDITIONAL **APPROVAL**.

LOCALITY PLAN



Introduction

Site Location and Description:

The subject site is commonly known as 17 -31 Roseberry Street Balgowlah and consists of five separate lots legally known as Lot 2 & 3, DP 229826, Lot 2 & 3 DP 701462 & Lot 10 DP 811755. The site has an overall area of 7333m² (Survey Plan by Lockley Land Title Solutions dated 13 March 2007) with dual street frontages to Roseberry Street (west) and Hayes Street (north). The site currently accommodates an industrial factory and warehouse and was used by a pharmaceutical company for manufacturing and warehouse. The double storey building fronting Roseberry street was used as the administration section with the warehouse building and loading dock located at the rear along the west of the site. The northern section of the site consists of the off-street car parking area with landscaping, with vehicular access from Roseberry Street. Vehicular access for the warehouse is off Hayes Street.

The subject sites adjoin a three storey factory/office building to the north. To the west of the site are a number of two storey buildings which face Condamine Street and are part of the Industrial area. The uses of these buildings vary from bulky goods retail and light industrial usage. A number of these buildings have roof top parking.

Site Burdens and constraints

The subject site is located on land considered to be affected by Type 5 Acid Sulphate soils and a preliminary Acid Sulphate Soils Investigation Report has been submitted with the application. An acid sulphate soil management plan will need to be prepared for the site.

The subject site is affected by a 9.3m wide easement for drainage passing through the northern section of the site. Part of this easement consists of an open section of drainage channel and rest under a culvert. A Stormwater Management Plan has been submitted with the application.

The Manly Lagoon Floodplain management study dated June 1996 included an interim policy which identifies Condamine Street and Roseberry Street as being located within a 1 in 100 year flood prone area. As such any new development is to be considered carefully and on merit where the finished floor level/lowest level is located lower than RL3.2 AHD. The lowest level of the proposed basement car park is RL5.20. The applicant submitted a Flood Study, as requested by Council's Engineer.

The subject site is not located within an area identified as being prone to Landslip. The site is also not within an area identified as being Bushfire Prone.

The site is not located within any Conservation Area and is not an Item of Environmental Heritage under the Manly Local Environmental Plan, 1988. There is no Items of Environmental Heritage in the vicinity of the subject site.

Access to the proposed site

The main access to the proposed development is from Hayes Street and includes the driveway to the basement level. The exit from the basement level car park is proposed to be to Roseberry Street. The entry to and from the public roof top parking is via a ramp off Roseberry Street and adjoins No. 33 Roseberry Street. The entry to the loading dock is located to the south of the roof top ramp.

Background

The Joint Regional Planning Panel (JRPP) at its meeting of 28 October 2011 resolved to approve the application for the demolition of the existing buildings and construction of a single storey supermarket (Woolworths) with mezzanine ancillary office, signage, café with basement (154 spaces), ground level (56 spaces) and rooftop parking (108 spaces) at 17 – 31 Roseberry Street Balgowlah, subject to **49 non-standard** and **107 standard conditions**. The consent for the development was issued by Council on the 9 November 2011.

Proposal

The applicant has now submitted an application under the provisions of Section 96 (2) of the Environmental Planning and Assessment Act 1979. The proposed **Section 96 (2)** modification application requests the following changes to the consent:

- **Include** Drawing/Plan No. A107 – Sections, SH1 dated 30 November 2010, received by Council on 30 November 2010.
- **Include** the following to the list of documents approved: Phase 1 & Phase 2 Environmental Site Assessment prepared by Geo Logix Pty Ltd dated March 2010 and May 2010 respectively and received by Council on 20 April 2010 and 30 November 2010 respectively.
- **Deletion** of Condition No **ANS 13** which states as follows:

ANS 13

Site Contamination – Remedial Action Plan Occupational Health and Safety

A Remedial Action Plan is to be provided to the Accredited Certifier/Council prior to the issue of any Construction Certificate. The remedial action plan must be developed in accordance with the *Contaminated Land Management Act, 1997* and consider all risks to Occupational Health and Safety, the land, public health and surrounding community. The RAP must be approved by an accredited site auditor under *the Contaminated Land Management Act 1997* and a copy is to be submitted to Council's satisfaction prior to commencement of any works. All works carried out on site must be in accordance with an approved RAP and OH&S plan and any additional Workcover NSW requirements.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

- Amend Condition No. **ANS 14**. The consent Condition reads as follows:

ANS 14

Ground Water

A Groundwater Management Plan is to be provided to the Accredited Certifier/Council prior to the issue of Construction Certificate. The Plan must demonstrate how contaminated groundwater resulting from the construction dewatering will be appropriately disposed of. This plan should include any proposed treatment to be

applied to the water prior to being discharged and copies of any relevant approvals from the respective authorities. Council requires the groundwater at this site to be sampled and analysed for pH and any contaminants of concern. The analytical results must comply with ANZECC Guidelines for 95% Protection of Freshwater. This Groundwater Management Plan shall be received by the consent authority and approved prior to the issue of Construction Certificate. A copy is to be submitted to Council.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

The applicant requests that the condition be **amended** to read as follows:

"If dewatering is required on site, water will require general aesthetic treatment and will require authority approval prior to discharging.

As part of gaining authority approval a Groundwater Management Plan may be appropriate."

- Amend Condition No. **ANS 15**. The consent condition reads as follows:

ANS 15

Site Contamination - General

All works associated with the contaminated land must be in accordance with the requirements of:

- Contaminated Land Management Act, 1997
- Protection of the Environment Operations Act, 1997
- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation, 2008
- State Environmental Planning Policy 55 *Remediation of Land*
- Occupational Health and Safety Act, 2000
- Requirements of Workcover NSW.

The recommendations of the Phase I Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated March 2010 and received by Council on 20 April 2010 are to be fully complied with.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety and to comply with the Consultants report.

The applicant requests that the condition be **AMENDED** to read as follows:

ANS 15

Site Contamination - General

All works associated with the contaminated land must be in accordance with the requirements of:

- Contaminated Land Management Act, 1997
- Protection of the Environment Operations Act, 1997
- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation, 2008
- State Environmental Planning Policy 55 *Remediation of Land*
- Occupational Health and Safety Act, 2000
- Requirements of Workcover NSW.

The recommendations of the Phase 2 Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated May 2010 and received by Council on 30 November 2010 are to be fully complied with.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety and to comply with the Consultants report.

- **Deletion** of Condition No **ANS 16** which states as follows:

ANS 16

Site Contamination – Validation Report Review

No Works in terms of footings, scaffold, structures or the like are permitted to commence until the land appurtenant to the consent has been remediated and validated in accordance with the Remedial Action Plan and associated Stage 1 Construction Certificate. An accredited site auditor under *the Contaminated Land Management Act 1997* shall review the Validation Report prepared by the contaminated land consultant and issue a Statutory Site Audit Statement that clearly states that the site is suitable for the proposed development. The accredited auditor shall consult with Council prior to finalising and issuing the Site Audit Statement. The accredited site auditor shall provide Council with a copy of the Site Audit Report and Statutory Site Audit Statement, confirming the suitability of the site for the proposed development prior to the issuing of a Stage 2 Construction Certificate for the proposed construction works post demolition and remediation.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

- **Deletion** of Condition No **ANS 19** which states as follows:

ANS 19

Site Contamination – Remediation Variation

The applicant shall inform Council in writing of any proposed variation to the remediation works. Council shall approve these variations in writing prior to commencement of any variations to remediation works.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

- **Deletion** of Condition No **ANS 24** which states as follows:

ANS 24

At the intersection of Condamine Street and Hayes Street, the existing left turn slip lane into Hayes Street shall be extended on its approach from Condamine Street, within the road reserve. The works shall be designed in accordance with the Roads and Traffic Authority's (RTA) Road Design Guide. The design shall be submitted to the RTA for consideration and approval prior to the issue of the Construction Certificate for the building by the Accredited Certifier/Council and commencement of any road works. This permits demolition and remediation etc while the road designs are finalised.

The proposed slip lane works shall be fully constructed and operational prior to the release of any Occupation Certificate by the Principal Certifying Authority. All costs relating to the slip lane is to be borne by the applicant.

Reason: To improve traffic movement in the surrounding streets as a result of the proposed development.

- **Deletion** of Condition No **ANS 27** which states as follows:

ANS 27

The relocation of the existing bus stop, including the bus shelter on the eastern side of Condamine Street adjacent to the site on the approach to the traffic signals at Condamine Street and Balgowlah Road, to the departure side of the intersection south of Balgowlah Road. This will require consideration by the Manly Traffic Committee and endorsement by Council. The applicant is to fully fund the bus stop relocation. These works need to be undertaken prior to the opening and operation of the Woolworths development.

Reason: To improve traffic movement in the surrounding streets as a result of the proposed development.

- **Amend Condition No. ANS 29.** The consent condition reads as follows:

ANS 29

To slow all traffic movements and increase the safety of pedestrians crossing Roseberry Street, a raised intersection platform shall be constructed at the intersection of Roseberry Street and Hayes Street. The design and construction are to be to the satisfaction of Council's Urban Services.

Reason: To improve the safety of pedestrians as a result of the proposed development.

The applicant requests that the condition be **AMENDED** to read as follows:

"A raised platform and pedestrian refuge is to be constructed on the Hayes Street approach to the intersection of Hayes Street and Roseberry Street. The design and construction are to be to the satisfaction of Council's Urban Services."

- **Amend Condition No. ANS 32.** The consent condition reads as follows:

ANS 32

Servicing Management Plan

All deliveries to the site and all waste collection from the site must be contained within the hours of 7:00am and 7:00pm, Monday to Sunday, without the prior consent of Council. All deliveries to the site and waste collection from the site must not use Roseberry Street between Balgowlah Road and Hayes Street. Truck movements are restricted to Condamine - Kenneth - Roseberry Streets for approaching the site and Roseberry - Kenneth - Condamine Streets on departing the site.

Reason: To ensure amenity of the surrounding locality is maintained and the hours of deliveries are consistent with those in the surrounding locality.

The applicant requests that the condition be **AMENDED** to read as follows:

"All deliveries to the site and all waste collection from the site must be contained within the hours of 5:00am and 10:00pm, Monday to Sunday, without the prior consent of Council. All deliveries to the site and waste collection from the site must not use Roseberry Street between Balgowlah Road and Hayes Street. Truck movements are restricted to Condamine - Kenneth Roseberry Streets for approaching the site and Roseberry - Kenneth - Condamine Streets on departing the site."

- **Amend Condition No. ANS 35.** The consent condition reads as follows:

ANS 35

Food and beverage packaging

All takeaway food and beverage packaging used at the premises shall be recyclable packaging or biodegradable packaging.

For the purposes of this condition;

Recyclable packaging is packaging for which collection or drop off facilities are available to a reasonable proportion of purchases, potential purchases or users of the product in the area which the product is sold (Standards Australia, 1999).

Biodegradable packaging is packaging which is able to be broken down by micro-organisms in the presence of oxygen (aerobic) to carbon dioxide, water biomass and mineral salts or any other elements that are present (mineralisation). Alternatively, the breakdown of organic substances by micro-organisms without the presence of oxygen (anaerobic) to carbon dioxide, methane, water and biomass (Standards Australia, 2006)

Takeaway food and beverage packaging is packaging used for food and beverages prepared and/or packed on the premises and excludes:

- a. Packaging that constitutes, or forms an integral part of, the packaging in which goods are sealed prior to sale ; and
- b. Barrier packaging which is essential for health and/or food safety (for example cling wrap, bags for barbecued chicken, or packaging to meet food safety requirements).

Reason: To reduce the overall environmental impact of the use

The applicant requests that the condition be **AMENDED** to read as follows:

"All takeaway food and beverage packaging used at the on site cafe shall be recyclable packaging or biodegradable packaging."

- **Amend** Condition No. **ANS 40**. The consent condition reads as follows:

ANS 40

A Parking Management Plan is to be prepared and submitted to Council for approval prior to the issue of any Occupation Certificate to include the following elements:

- The public parking area is to be the ground level parking accessed off Hayes Street. This parking area shall at all times maintain a minimum of 56 car parking spaces. This parking area and its pedestrian access is to be provided with adequate lighting for security reasons.
- The public parking area at ground level shall remain open 24 hours a day, seven (7) days a week with no boom gate controls. This public parking area is to be provided free of charge with no time limit and appropriate restrictions on the title.
- Access to the basement and roof top parking areas are to be available during the hours of business operation. These parking areas are to provide at least three (3) hours free parking. Any reduction to these hours or installation of any boom gate or similar is to be the subject separate development application to council.

Roseberry Street and Hayes Street On-street Parking

The arrangement of the on-street parking on Roseberry Street and Hayes Street are to be as follows:

- The car parking on the western side of Roseberry Street shall be retained, except for the vehicular crossings and sufficient turning space therefrom.
- The car parking on the eastern side of Roseberry Street shall be removed to facilitate sufficient width of roadway for two (2) vehicles to pass.
- All on-street parking in Hayes Street except directly adjacent to the subject site shall be retained.

Plans are to be amended accordingly and submitted to the Accredited Certifier/Council prior to the issue of Construction Certificate.

Reason: To effectively manage impacts on traffic flows and minimise congestion and provide safe and secure public parking.

The applicant requests that the condition be **AMENDED** to read as follows:

"A Parking Management Plan be prepared and submitted to Council prior to the issue of any Occupation Certificate to include:

- The public parking are shall at all times maintain a minimum of 56 car parking spaces;*
- Public parking on the roof level shall remain open 24 hours a day, seven days a week. This parking to be provided free of charge with no time limit and appropriate restrictions on title; and*
- Access to the ground level and basement car parks to be available during business hours.*

The arrangements of the on-street parking on Roseberry Street and Hayes Street are to be as follows:

- On the southern side of Hayes Street, between the Roseberry Street and the site access (total of 3 spaces lost); and*
- On the eastern side of Roseberry Street, between the Hayes Street and Kenneth Road (total of 14 spaces lost);*
- On the western side of Roseberry Street where the roof top car park and loading dock access will be provided (loss of 3 spaces). An additional 3 spaces would be created on the western side of Roseberry Street with the closure of existing driveways and removal of "No Parking" restrictions. Thus there would be no net loss of parking on the western side of Roseberry Street."*

- **Amend** Condition No. **ANS 47**. The consent condition reads as follows:

ANS 47

The height of the building is not to exceed 11.0 metres above the existing ground level, with the exception of the lift overrun. Plans are to be notated accordingly prior to the issue of Construction Certificate.

Reason: to comply with the requirements of the DCP.

The applicant requests that the condition be **AMENDED** to read as follows:

"The height of the building is not to exceed 11.0 metres above the existing ground level, with the exception of the lift overrun and the supermarket condenser platform. Plans are to be notated accordingly prior to the issue of Construction Certificate."

- **Deletion** of Standard Condition No **DA 7 (2Q01)** which states as follows:

7 (2AQ01)

A report prepared by an air pollution control consultant specifying odour control and other air impurity control methods is to be submitted to the Council/Accredited Certifier for approval, prior to the issue of the Construction Certificate. All works required must be implemented prior to the use commencing.

Reason: To ensure compliance with legislation, and to protect public health and amenity.

- **Deletion** of Standard Condition No **DA 30 (2MS03)** which states as follows:

30 (2MS03)

A BASIX Certificate is required to reflect all the approved works. All commitments embodied within the BASIX Certificate must be incorporated in drawings submitted with the Construction Certificate.

Reason: To ensure the development complies with the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Applicant's Supporting Statement

In support of the application, the applicant has submitted the following documents:

- Statement of Environmental Effects, prepared by Urbis, dated 30 November 2010 and received by Council on 30 November 2010.
- Environmental Site Assessment Report, prepared by Geo_Logix Environmental Consultants dated 14 May 2010 and received by Council on 30 November 2010.
- Traffic Effects Report, prepared by Colston Budd Hunt & Kafes Pty Ltd dated 26 November 2010 and received by Council on 30 November 2010.
- Drawing No. A107 Issue DA 2 – Section – SH1 , S96 Issue, dated 30 November 2010 and received by Council on 30 November 2010.

Precinct Community Forum Comments

The Section 96 (2) Modification application was referred to the Balgowlah Precinct Community Forum for comments. No comments have been received at the time of writing this report.

Engineers Comments

Comments on this application are to be provided by Council's Traffic Section.

Building Comments

No additional conditions.

Transport Planners Comments

My comments on the proposed modifications below for your information:

- Condition ANS 24 – I have spoken with the RTA regarding this since Condamine Street is an RTA road. The RTA has questioned who put this condition in. Apparently the RTA has previously asked for this road access to be closed off? Could you please clarify this so that I can get back to the RTA with a response?
- Condition ANS 29 – I don't have any objections to this and agree with the proposed modification.
- Condition ANS 40 – I don't necessarily agree with this proposed modification but their proposal might be able to be substantiated by their parking management plan so there might be room for negotiation. However, by relocating public car parking area to roof level rather than ground level and basement car parking might be of disadvantage to those people we are already taking street parking away from, which is a concern.

Health Comments

The Section 96 (2) Modification application was assessed by Environmental Health on 16th February 2011. Council's Environmental Health department advises the plans and supporting documentation have been reviewed and consideration of condition amendment. Comments and conditions are provided below. Should approval be favoured in all other

aspects please ensure all Environmental Health conditions recommended are attached to any consent granted.

ANS13 Agree, condition to be deleted and replaced with the following two (2) conditions:

Asbestos Management Plan

An Asbestos Management Plan developed by a suitably qualified Occupational Hygienist, Occupational Health and Safety and Environmental Scientist shall be submitted to Council's written satisfaction prior to the issue of Construction Certificate.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

145 (4CD07) Asbestos Management - General

ANS14 Disagree, condition to remain.

ANS15 Agree, condition to be amended as follows:

Site Contamination – General

All works associated with contaminated land must be in accordance with the requirements of:

- Contaminated Land Management Act, 1997
- Protection of the Environment Operations Act, 1997
- State Environmental Planning Policy 55 *Remediation of Land*
- Occupational Health and Safety Act, 2000

The recommendations of the Phase 2 Environmental Site Assessment Report prepared by Geo Logix Ptd Ltd dated May 2010 and received by Council on 30 November 2010 are to be fully complied with.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

ANS16 Agree, condition to be deleted.

ANS19 Agree, condition to be deleted.

ANS32 Disagree, condition to remain.

7 (2AQ01) Disagree, condition to remain.

Waste Comments

The request is to amend Condition No. ANS 35 – the Waste Educators believe that this condition should remain in its original form. This condition is consistent with the conditions imposed on the Stocklands development (i.e Coles). The condition allows for the exemption of pre-packaged food and barrier packaging.

Traffic Consultants Comments

The following comments were received from Council's Traffic Consultant in response to the Section 96 (2) Modification application. The comments were updated in response to the comments received by Council from the Roads and Traffic Authority (RTA) on 11 March 2011.

INTRODUCTION

1. Development Consent (DA107/1877) was granted on 28 October 2010 for "Demolition of existing buildings and construction of a supermarket (Woolworths) with

first floor ancillary office, signage, café on the ground level with basement (154 spaces), ground level (56 spaces) and rooftop parking (108 spaces)." An application has been made under Section 96(2) for a modification of the consent conditions. This report has been prepared to review the proposed changes to the conditions relating to traffic and parking considerations, being Conditions 24, 27, 29, 32 and 40. The application under Section 96(2) has been made by Urbis, in a submission dated 30 November 2010, and supported on traffic issues in a letter prepared by Colston Budd Hunt & Kafes dated 26 November 2010.

CONDITION NO. ANS 24 – SLIP LANE

2. The submission by Colston Budd Hunt & Kafes (CBHK) supports the deletion of Condition ANS 24 for the following reasons:
 - The proposed development would result in a small increase in traffic turning left from Condamine Street into Hayes Street, with this level of increase not warranting the works;
 - To extend the slip lane would involve starting the slip lane prior to the turn from Condamine Street into Burnt Bridge Deviation, which could confuse southbound traffic in Condamine Street as it may mistake the slip lane from the southbound lane on Condamine Street.
 - There is insufficient room within the existing road reserve of Condamine Street to provide a slip lane in accordance with RTA Guidelines.
3. CHBK recommend: *"It is proposed to provide a slip lane as shown on Figure 1".* Figure 1 of the CBHK letter shows a slip lane provided within the road reserve of Condamine Street. This slip lane is a new work. While the Applicant is asking for Condition ANS 24 to be deleted, it is also suggesting that the road layout shown on Figure 1 of the CBHK letter be the works proposed to be undertaken by the applicant, in lieu of the Applicant meeting the full requirements of ANS 24.
4. The essential difference between what is required by ANS 24 and what is proposed in Figure 1 is that Figure 1 shows works able to be accommodated within the existing road reserve, but not meeting the requirements of the RTA's *Road Design Guide*.
5. The original concern expressed by the RTA about the traffic implications of the approved development is that additional traffic turning left from Condamine Street into Hayes Street could result in an increased incidence of accidents. The vertical alignment of Hayes Street was one of the concerns, whereby drivers making a left turn into Hayes Street might decelerate to such an extent as to cause rear-end accidents with following vehicles proceeding southbound in Condamine Street. The RTA expressed a preference for Hayes Street to be closed at Condamine Street, should the development be approved, so that such accidents did not occur. The Council assessment of this option did not favour such a road closure because of the resulting reduction in accessibility, as well as the impact of additional traffic diverted to Balgowlah Road and Kenneth Street.
6. The report by Christopher Hallam & Associates Pty Ltd titled *"Manly Industrial Master Plan – Traffic and Access Assessment"* dated November 2010 included in its recommendations:

"At Hayes Street/Condamine Street, construct left-turn slip lane into Hayes Street (this is a consent condition for the Woolworths development)".
7. The proposed slip lane does relate to the traffic impact of the Woolworths development. It is a substantially better option than closing Hayes Street. These issues were taken into account in the formulation of the consent conditions. However

the Applicant's concern about fitting in the works within the existing road reserve, to meet the requirements of the *Road Design Guide*, is reasonable. A change to the condition is recommended, with the deletion of the words "The works shall be designed in accordance with the Roads & Traffic Authority's (RTA) Road Design Guide". The intent of the resulting condition is to provide improved traffic safety with some form of left-turn slip lane, but without requiring any change to the road reserve boundary. Figure 1 (CBHK) would be a reasonable starting point in the development of an appropriate design, although the design and location of the triangular island in Hayes Street might need to be revised. It is also recommended that the Reasons for this condition include the addition of the words "and to reduce accident potential".

8. The letter from the Roads & Traffic Authority dated 8 March 2011 has been considered, on the Section 96 Application. It should be noted the clear statement that "Council is both the consent authority for the development and the approval authority for Condamine Street, Balgowlah." This indicates that it is up to Council to suggest – and approve – any slip lane on the approach from Condamine Street into Hayes Street. It is also noted the statement that "The RTA has reviewed its previous requirement to provide a slip lane at the intersection of Condamine Street and Hayes Street and advises that it is no longer required." There are two comments to be made: Firstly, if the RTA is not the approval authority for Condamine Street, then its views on the desirability of a slip lane are of limited relevance. Secondly, to be best of the knowledge of this author, the RTA have never recommended the construction of a slip lane here. It came from recent traffic studies for Council in the area, to improve the safety of the access into Hayes Street, at a time when the RTA were keen on closing Hayes Street. The desirability of the slip lane remains.
9. If the RTA consider Council to be the approval authority for Condamine Street, this needs to be reflected in the wording of the condition.
10. It is recommended that condition ANS 24 should be altered to read:

"At the intersection of Condamine Street and Hayes Street, the existing left turn slip lane into Hayes Street shall be extended on its approach from Condamine Street, within the road reserve. The design shall be submitted to Manly Council for consideration and approval prior to the issue of the Construction Certificate for the building by the Accredited Certifier/Council and commencement of any road works. This permits demolition and remediation etc while the road designs are finalized.

The proposed slip lane works shall be fully constructed and operational prior to the release of any Occupation Certificate by the Principal Certifying Authority. All costs relating to the slip lane are to be borne by the applicant.

Reason: To improve traffic movement in the surrounding streets as a result of the proposed development and to reduce accident potential."

11. It is envisaged that the applicant will enter into discussions with Council to develop an appropriate slip lane design that improves the existing situation, while staying within the existing road reserve. Figure 1 would be an appropriate starting point. The complete deletion of Condition ANS 24 is not recommended.

CONSENT CONDITION NO. ANS 27 – BUS SHELTER RELOCATION

12. With Condition 24 to remain, in altered form, there is no need to alter Condition ANS 27.

CONSENT CONDITION NO. ANS 29 – TREATMENT OF HAYES STREET/ROSEBERRY STREET INTERSECTION

13. It is not agreed that the works recommended in ANS 29 are unclear, as claimed by CBHK. The issues and options were considered by the JRPP. A raised platform at an intersection is an accepted traffic calming treatment, similar to the provision of thresholds at the start of a street, to provide a visual and physical measure to reduce traffic speed and alert drivers to the presence of the intersection. The latter would be of greater benefit for drivers on Roseberry Street than on Hayes Street. Intersection platforms typically provide a raised surface with a different surface to the standard road pavement.
14. The *“Manly Industrial Master Plan – Traffic and Access Assessment”* dated November 2010 includes in its Recommended Master Plan:

“At Hayes Street/Roseberry Street, construct a raised intersection platform (this is a consent condition for Woolworths)”.

15. No change to Condition ANS 29 is recommended.

CONSENT CONDITION NO. ANS 32 – DELIVERY HOURS

16. The proposed amendment to this condition is not discussed in the CBHK letter of 26 November 2010. The Urbis report recommends an extension of delivery hours to 5.00am to 10.00pm, Monday to Sunday. They claim that the acoustic assessment by Reverb Acoustics shows that deliveries can be received “via the loading dock between 5.00am and 11.00pm without resulting in adverse impacts in terms of noise generation for the surrounding locality”. This Acoustic issue is not considered in this review of traffic matters. It is understood that it primarily relates to residential amenity concerns.

17. The Urbis report also comments:

“It is therefore proposed to amend the delivery hours and waste collection on site so as to avoid the potential for additional traffic congestion during peak traffic periods which the condition if left unchanged would otherwise give effect to”.

18. From a traffic perspective, it might be argued that any additional site traffic during existing peak periods is not a good outcome. Clearly with the potential traffic generation of a Woolworths development, this argument is unsustainable. The question is whether some delivery traffic during the peak periods would have an unacceptable impact. It is considered that this would not be the case. Condition ANS 32 can be reviewed on noise/residential amenity grounds, but there are no substantive traffic considerations in such a review.

CONSENT CONDITION NO. ANS 40 – CAR PARKING, ON-SITE AND ON-STREET

19. The proposed changes to this condition are in two parts: On-site Parking and On-street Parking. Looking at On-site Parking, the consent condition requires that the most convenient ground level parking be made public parking, instead of making the roof top parking public parking, which had been the applicant’s original proposal. The Urbis submission claims *“Fabcot Pty Ltd entered into a Deed with Manly Council on 25 June 2010 where by the Council accepted an offer from Fabcot to provide 105 public parking spaces as a means of satisfying part of the demand for parking in the vicinity particularly given that some on street parking would be restricted.”* The legality of this Deed and the extent to which it needs to be considered is not taken into account in the following traffic/parking assessment.
20. The JRPP appeared to put substantial weight on the convenience value of the existing on-street parking in Roseberry and Hayes Streets, whereby drivers could conveniently search for vacant parking, park there, and walk to their destinations. While the roof top

parking was better than nothing, it is not as good as on-street parking, given the time to drive in/out, park and walk down stairs to reach the street. The JRPP fully considered this convenience issue in its deliberations and determination, and concluded that it was more appropriate to have the 56 spaces at ground level than to have 105 less convenient spaces on the roof top.

21. CHBK state, in support of the variation in the condition:

“The requirement to provide unrestricted public parking within the at-grade car park will result in those spaces being occupied by employees in the area, to the detriment of shoppers to the approved supermarket who require accessible and high turnover spaces. Thus provision of public parking will displace shoppers to the roof top car park that will create inefficiencies in car park circulation and usage...”

22. The Urbis submission relies in its recommendation for a variation on the Deed between the applicant and Council *“where the Council accepted an offer from Fabcot to provide 105 public parking spaces...”*. The recommendation by Urbis and CBHK to reduce this public parking on the roof top from 105 spaces to 56 spaces is not exactly consistent with this Deed, or the original proposal to Council. The applicant would clearly realize that the 56 spaces referred to in ANS 40 is the number of spaces physically able to be provided at the ground level.
23. Looking at the argument put by CBHK, it appears that it is acceptable to remove convenient on-street public parking to enable the development to proceed, but once the consent is granted, the needs of shoppers at the site should take precedence over the needs of existing users of the public parking. In its deliberations and consent conditions, the JRPP did not agree with this approach, and considered the removal of convenient on-street parking as justifying the alternative provision of public parking at ground level rather than at roof top level.
24. The users of on-street parking in Roseberry and Hayes Streets would include both workers in the area as well as visitors, where the latter would generally have shorter stays. If all of the drivers who currently park on-street, in spaces to be removed, relocated to the 56 space site parking area, there would still be spare spaces for Woolworths shoppers. The suggestion by CBHK that the condition *“will create inefficiencies in car park circulation and usage”* appears to suggest that there are problems in the approved design. In its consideration of the proposal, the RTA expressed a preference for the roof top parking area to be linked to the other parking. In the assessment of the proposal, it was accepted that this was not possible to achieve.
25. From a purely traffic engineering perspective, the creation of a 105 space public parking area on the roof of the development is an acceptable trade-off for the removal of on-street parking. However the deliberations and decisions of the JRPP needed to go beyond purely traffic engineering perspectives. In their consideration of the public interest, they considered that it was more important to replace the lost on-street parking with convenient ground level parking. This remains a valid trade-off of the issues involved. For this reason, changes to this part of ANS 40 are not recommended.
26. ANS 40 includes the statement that *“The car parking on the western side of Roseberry Street shall be retained, except for the vehicular crossings and sufficient turning space therefrom”*. This needs to be considered in the light of the applicant’s original parking submission, where the on-street spaces to be removed were detailed. The CBHK letter states the on-street spaces that they recommend for removal. Their recommendations are accepted. However this does not appear to require any changes to condition

ANS40, since there are no inconsistencies. When the Parking Management Plan is submitted to Council, detailing these spaces to be lost, the acceptance of these details is recommended.

27. It follows that no changes to ANS 40 are recommended.

CONDITION NOS. 25, 26 AND 27

Separate to the S 96(2) Application, Woolworths has sought clarification on conditions 25, 26 and 27, which replicate conditions in the Bunnings DA consent. The JRPP repeated these conditions because the works related to traffic impact from the Woolworths development. Should the Bunnings development not proceed, there needed to be certainty that these works would be undertaken, just for the Woolworths development. Since there is not a Section 94 Contributions Plan for this area, it is difficult for Council to specify proportional contributions. Two party discussions between Woolworths and Bunnings might reach an agreement on cost sharing, but this is not the responsibility of Council. Council's interest is to ensure that the works are undertaken prior to the opening of either development.

Planning Comments

The Joint Regional Planning Panel (JRPP) at its meeting of 28 October 2011 resolved to approve the application for the demolition of the existing buildings and construction of a single storey supermarket (Woolworths) with mezzanine ancillary office, signage, café with basement (154 spaces), ground level (56 spaces) and rooftop parking (108 spaces) at 17 – 31 Roseberry Street Balgowlah, subject to 49 non-standard and 107 standard conditions. The consent for the development was issued by Council on the 9 November 2011. The applicant has now submitted an application for the modification of the consent under Section 96 (2) of the Environmental Planning and Assessment Act 1979. The applicant seeks modification/deletion of fourteen (14) conditions of consent; inclusion of an additional drawing/plan and a document relating to Site Assessment. These are addressed as follows:

- ***Include Drawing/Plan No. A107 – Sections, SH1 dated 30 November 2010, received by Council on 30 November 2010.***

Comment:

The drawing (No A107 – Sections, SH1) clarifies the height of the lift over-run. The drawing identifies the height of the lift over-run and supermarket condenser platform to be up to a height of RL 19.25, which would be about 11.75m above ground level for the lift over-run and about 12.0 metres for the Condenser. This relates to Condition No. ANS 47, which the applicant requests to be modified. The proposed heights are considered to be acceptable as the heights are only nominally above the height limit for a limited area only and will not have any adverse impact on the development as a whole. The proposed drawing is considered to be acceptable and can be **included** as part of the approved drawings.

- ***Include the following to the list of documents approved: Phase 1 & Phase 2 Environmental Site Assessment prepared by Geo Logix Pty Ltd dated March 2010 and May 2010 respectively and received by Council on 20 April 2010 and 30 November 2010 respectively.***

Comment:

The applicant has now submitted a Phase 2 Environmental Site Assessment Report and Council's Health Officer has no objection to its **addition** to the bundle of documents as part of the consent.

- ***The applicant has requested the deletion of original Condition No ANS 13, which states as follows:***

ANS 13

Site Contamination – Remedial Action Plan Occupational Health and Safety

A Remedial Action Plan is to be provided to the Accredited Certifier/Council prior to the issue of any Construction Certificate. The remedial action plan must be developed in accordance with the Contaminated Land Management Act, 1997 and consider all risks to Occupational Health and Safety, the land, public health and surrounding community. The RAP must be approved by an accredited site auditor under the Contaminated Land Management Act 1997 and a copy is to be submitted to Council's satisfaction prior to commencement of any works. All works carried out on site must be in accordance with an approved RAP and OH&S plan and any additional Workcover NSW requirements.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

Comment:

Council's Health Officer agrees with the **deletion** of the condition but wants it replaced with two (2) new conditions as follows:

New ANS 13

Asbestos Management Plan

An Asbestos Management Plan developed by a suitably qualified Occupational Hygienist, Occupational Health and Safety and Environmental Scientist shall be submitted to Council's written satisfaction prior to the issue of Construction Certificate.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

And additional conditions as follows:

CONDITION TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

145 (4CD07)

Asbestos Management - General

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Occupational Health and Safety Act 2000,
- The Occupational Health and Safety Regulation 2001,
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)],
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/>], and
- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. Those involved with work to asbestos should be made aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.

Reason: To ensure the health of site workers and the public.

- **The applicant has requested for the amendment to original Condition No. ANS 14. The original consent Condition reads as follows:**

ANS 14

Ground Water

A Groundwater Management Plan is to be provided to the Accredited Certifier/Council prior to the issue of Construction Certificate. The Plan must demonstrate how contaminated groundwater resulting from the construction dewatering will be appropriately disposed of. This plan should include any proposed treatment to be applied to the water prior to being discharged and copies of any relevant approvals from the respective authorities. Council requires the groundwater at this site to be sampled and analysed for pH and any contaminants of concern. The analytical results must comply with ANZECC Guidelines for 95% Protection of Freshwater. This Groundwater Management Plan shall be received by the consent authority and approved prior to the issue of Construction Certificate. A copy is to be submitted to Council.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

Comment:

Council's Health Officer has required this condition to be **retained**. The applicant is currently in discussion with Council's Health Officer and submitting additional information to resolve the issue of Groundwater Management.

- **The applicant has requested for amendment to original Condition No. ANS 15. The original consent condition reads as follows:**

ANS 15

Site Contamination - General

All works associated with the contaminated land must be in accordance with the requirements of:

- *Contaminated Land Management Act, 1997*
- *Protection of the Environment Operations Act, 1997*
- *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation, 2008*
- *State Environmental Planning Policy 55 Remediation of Land*
- *Occupational Health and Safety Act, 2000*
- *Requirements of Workcover NSW.*

The recommendations of the Phase I Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated March 2010 and received by Council on 20 April 2010 are to be fully complied with.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety and to comply with the Consultants report.

Comment:

Council's Environmental Health Officer raises no objection to the **amendment** of the condition as follows:

ANS 15

Site Contamination - General

All works associated with the contaminated land must be in accordance with the requirements of:

- Contaminated Land Management Act, 1997
- Protection of the Environment Operations Act, 1997
- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation, 2008
- State Environmental Planning Policy 55 *Remediation of Land*
- Occupational Health and Safety Act, 2000
- Requirements of Workcover NSW.

The recommendations of the Phase 2 Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated May 2010 and received by Council on 30 November 2010 are to be fully complied with.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety and to comply with the Consultants report.

- ***The applicant has requested the deletion of original Condition No ANS 16 which states as follows:***

ANS 16

Site Contamination – Validation Report Review

No Works in terms of footings, scaffold, structures or the like are permitted to commence until the land appurtenant to the consent has been remediated and validated in accordance with the Remedial Action Plan and associated Stage 1 Construction Certificate. An accredited site auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Statutory Site Audit Statement that clearly states that the site is suitable for the proposed development. The accredited auditor shall consult with Council prior to finalising and issuing the Site Audit Statement. The accredited site auditor shall provide Council with a copy of the Site Audit Report and Statutory Site Audit Statement, confirming the suitability of the site for the proposed development prior to the issuing of a Stage 2 Construction Certificate for the proposed construction works post demolition and remediation.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

Comment:

Council's Environmental Health Officer has agreed to the **deletion** of this condition in view of the Phase 2 Environmental Site Assessment Report submitted by the applicant.

- ***The applicant has requested the deletion of the original Condition No ANS 19 which states as follows:***

ANS 19

Site Contamination – Remediation Variation

The applicant shall inform Council in writing of any proposed variation to the remediation works. Council shall approve these variations in writing prior to commencement of any variations to remediation works.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

Comment:

Council's Environmental Health Officer has agreed to the **deletion** of this condition in view of the Phase 2 Environmental Site Assessment Report submitted by the applicant.

- **The applicant has requested for the deletion of the original Condition No ANS 24, which states as follows:**

ANS 24

At the intersection of Condamine Street and Hayes Street, the existing left turn slip lane into Hayes Street shall be extended on its approach from Condamine Street, within the road reserve. The works shall be designed in accordance with the Roads and Traffic Authority's (RTA) Road Design Guide. The design shall be submitted to the RTA for consideration and approval prior to the issue of the Construction Certificate for the building by the Accredited Certifier/Council and commencement of any road works. This permits demolition and remediation etc while the road designs are finalised.

The proposed slip lane works shall be fully constructed and operational prior to the release of any Occupation Certificate by the Principal Certifying Authority. All costs relating to the slip lane is to be borne by the applicant.

Reason: To improve traffic movement in the surrounding streets as a result of the proposed development.

Comment:

Council does not agree with the deletion of the above condition. Council's Traffic Consultant is of the view that the slip lane is definitely a better option than closing off Hayes Street. The RTA has indicated in their letter dated 8 March 2011 that Council is the approval authority for Condamine Street. This contradicts the earlier policies that indicated that all main roads are controlled by the RTA. As per the Manly Local Environment Plan (MLEP) 1988, Condamine Street is a main road and is designated as MR No. 164 on the MLEP 1988 map. The issue of slip lane has risen from recent traffic studies conducted by Council. Council's Traffic Consultant has recommended that the condition is to be **amended** as follows:

ANS 24

At the intersection of Condamine Street and Hayes Street, the existing left turn slip lane into Hayes Street shall be extended on its approach from Condamine Street, within the road reserve. The design shall be submitted to Manly Council for consideration and approval prior to the issue of the Construction Certificate for the building by the Accredited Certifier/Council and commencement of any road works. This permits demolition and remediation etc while the road designs are finalised.

The proposed slip lane works shall be fully constructed and operational prior to the release of any Occupation Certificate by the Principal Certifying Authority. All costs relating to the slip lane are to be borne by the applicant.

Reason: To improve traffic movement in the surrounding streets as a result of the proposed development and to reduce accident potential.

- **The applicant has requested the deletion of Condition No ANS 27, which states as follows:**

ANS 27

The relocation of the existing bus stop, including the bus shelter on the eastern side of Condamine Street adjacent to the site on the approach to the traffic signals at Condamine Street and Balgowlah Road, to the departure side of the intersection south of Balgowlah Road. This will require consideration by the Manly Traffic Committee and endorsement by Council. The applicant is to fully fund the bus stop relocation. These works need to be undertaken prior to the opening and operation of the Woolworths development.

Reason: To improve traffic movement in the surrounding streets as a result of the proposed development.

Comment:

This is a condition which has also been included in the Bunnings development at 164 Condamine Street (DA 16/10). It is considered that this condition is to be **retained** in its original form. The applicant is to discuss with the developers of Bunnings development as to how they could share the costs of the works. If for some reason the Bunnings does not proceed with the development, the applicant will be required to carry out the works.

- **The applicant has requested amendment of Condition No. ANS 29, which states as follows:**

ANS 29

To slow all traffic movements and increase the safety of pedestrians crossing Roseberry Street, a raised intersection platform shall be constructed at the intersection of Roseberry Street and Hayes Street. The design and construction are to be to the satisfaction of Council's Urban Services.

Reason: To improve the safety of pedestrians as a result of the proposed development.

Comment:

Council's Traffic Consultant does not agree to the proposed amendment and states that "a raised platform at an intersection is an accepted traffic calming treatment, similar to the provision of thresholds at the start of a street, to provide visual and physical measure to reduce traffic speed and alert drivers to the presence of the intersection". He further states that it would be of greater benefit for drivers on Roseberry Street than on Hayes Street. It is also to be noted that this platform was also included in the *Manly Industrial Master Plan – Traffic and Access Assessment* dated November 2010 and recently adopted by Council.

It is therefore considered that this condition is to be **retained** in its original form.

- **The applicant has requested amendment of Condition No. 32, which states as follows:**

ANS 32

Servicing Management Plan

All deliveries to the site and all waste collection from the site must be contained within the hours of 7:00am and 7:00pm, Monday to Sunday, without the prior consent of Council. All deliveries to the site and waste collection from the site must not use Roseberry Street between Balgowlah Road and Hayes Street. Truck movements are restricted to Condamine - Kenneth - Roseberry Streets for approaching the site and Roseberry – Kenneth – Condamine Streets on departing the site.

Reason: To ensure amenity of the surrounding locality is maintained and the hours of deliveries are consistent with those in the surrounding locality.

Comment:

The applicant has requested that the delivery hours be extended to be from 5:00am to allow for deliveries to occur outside the peak periods and also allow for bread and milk deliveries to occur prior to store opening at 7:00am. This issue was further discussed with the applicant and Council received an e-mail from the applicant, on 10 March 2010, suggesting that deliveries to the site could be restricted between 5:00am – 7:00am for non-articulated vehicles (i.e. no semi-trailers) and permitting all types of

vehicles between 7:00am to 10:00pm. The applicant further states that deliveries between 5:00am -7:00am will primarily be for bread and milk deliveries via small trucks and vans.

A check with Warringah Council regarding the Coles Supermarket located at Koorala Street, Manly Vale and at the northern end of Roseberry Street has revealed that there are no restrictions (by way of development consent conditions) relating to delivery hours or hours of operation for the Coles supermarket. It is understood that the supermarket voluntarily closes at 10:00pm. It is to be noted that this supermarket (Coles at Manly Vale) is surrounded by residential developments.

Having regard to the location of the proposed supermarket, the proposed restrictions (as suggested by the applicant), for deliveries between 5:00am and 7:00am is considered to be reasonable and satisfactory. However this should be for a trial period of 12 months and at the end of twelve months the delivery times could be reviewed on request. It is therefore considered that the condition is to be **amended** as follows:

ANS 32

Servicing Management Plan

All deliveries to the site and all waste collection from the site must be contained within the following hours:

Monday to Sunday

5:00am – 7:00am: deliveries by non-articulated vehicles (small trucks & vans) only.

7:00am – 9:00pm: deliveries and waste collection by all types of vehicles.

The above delivery & waste collection hours are for a trial period of twelve (12) months from the date of operation of the supermarket. At the end of twelve (12) months the applicant is to submit a Section 96 (1A) Modification application to Council to modify the condition.

All deliveries to the site and waste collection from the site must not use Roseberry Street between Balgowlah Road and Hayes Street. All truck movements are restricted to Condamine - Kenneth - Roseberry Streets for approaching the site and Roseberry – Kenneth – Condamine Streets on departing the site.

Reason: To ensure amenity of the surrounding locality is maintained and the hours of deliveries are consistent with those in the surrounding locality.

- ***The applicant has requested amendment of Condition No. 35, which states as follows:***

ANS 35

Food and beverage packaging

All takeaway food and beverage packaging used at the premises shall be recyclable packaging or biodegradable packaging.

For the purposes of this condition;

Recyclable packaging is packaging for which collection or drop off facilities are available to a reasonable proportion of purchases, potential purchases or users of the product in the area which the product is sold (Standards Australia, 1999).

Biodegradable packaging is packaging which is able to be broken down by micro-organisms in the presence of oxygen (aerobic) to carbon dioxide, water biomass and

mineral salts or any other elements that are present (mineralisation). Alternatively, the breakdown of organic substances by micro-organisms without the presence of oxygen (anaerobic) to carbon dioxide, methane, water and biomass (Standards Australia, 2006)

Takeaway food and beverage packaging is packaging used for food and beverages prepared and/or packed on the premises and excludes:

- c. Packaging that constitutes, or forms an integral part of, the packaging in which goods are sealed prior to sale ; and
- d. Barrier packaging which is essential for health and/or food safety (for example cling wrap, bags for barbecued chicken, or packaging to meet food safety requirements).

Reason: To reduce the overall environmental impact of the use.

Comment:

The applicant in their submission has requested that this condition should apply to the proposed café only and that it be modified accordingly.

Council's Waste Educator's have advised that this condition should be retained in its original form and it is consistent with the conditions imposed on the Stocklands development (Coles). It is to be noted that it allows for the exemption of pre-packaged food and barrier packaging. It is therefore considered that the condition is to be **retained** in its original form as it applies to the whole site.

- ***The applicant has requested amendment of Condition No. 40, which states as follows:***

ANS 40

A Parking Management Plan is to be prepared and submitted to Council for approval prior to the issue of any Occupation Certificate to include the following elements:

- *The public parking area is to be the ground level parking accessed off Hayes Street. This parking area shall at all times maintain a minimum of 56 car parking spaces. This parking area and its pedestrian access is to be provided with adequate lighting for security reasons.*
- *The public parking area at ground level shall remain open 24 hours a day, seven (7) days a week with no boom gate controls. This public parking area is to be provided free of charge with no time limit and appropriate restrictions on the title.*
- *Access to the basement and roof top parking areas are to be available during the hours of business operation. These parking areas are to provide at least three (3) hours free parking. Any reduction to these hours or installation of any boom gate or similar is to be the subject separate development application to council.*

Roseberry Street and Hayes Street On-street Parking

The arrangement of the on-street parking on Roseberry Street and Hayes Street are to be as follows:

- *The car parking on the western side of Roseberry Street shall be retained, except for the vehicular crossings and sufficient turning space therefrom.*
- *The car parking on the eastern side of Roseberry Street shall be removed to facilitate sufficient width of roadway for two (2) vehicles to pass.*
- *All on-street parking in Hayes Street except directly adjacent to the subject site shall be retained.*

Plans are to be amended accordingly and submitted to the Accredited Certifier/Council prior to the issue of Construction Certificate.

Reason: To effectively manage impacts on traffic flows and minimise congestion and provide safe and secure public parking.

In support of the modification of the condition, the applicant by e-mail dated 23 December 2010 justified the modification of the condition as follows:-

"It is proposed that this Condition be amended to provide the public car parking in a more appropriate location and in accordance with the terms of the Deed between Council and Fabcot.

In this respect it is requested that:

- the public car parking remain on the roof top of the development, and that this parking remain unrestricted in time limits.*
- the ongrade and basement car parking be retained as on grade and basement car parking. This car parking may be limited in time to 3 hours free parking.*

If the on grade car parking is to be untimed public car parking then the following would be likely:

- the on grade spaces will be in high demand and will be filled by either staff (who typically arrive at the site early in the morning), or by customers who are constantly entering and leaving the site. As a result it is likely that these spaces would be extremely difficult to access for users of local businesses.*
- If this requirement is upheld, then the requirement for Woolworths to provide the 105 additional public spaces on the roof is negated. The Deed between Woolworths and Council does not require Woolworths to provide additional roof top spaces should the on grade spaces be retained as all day public car parking. On this basis surely the net public benefit would be greater if the 105 roof top car parking spaces were provided as proposed in both the DA application and the Deed between Fabcot and Council."*

Comment:

It is considered that to obtain maximum efficiency, encourage proper use of parking and reduce adverse impacts on the locality, short term parking should be close to the supermarket. The 56 car parking spaces proposed on the ground level with entry from Hayes Street would be best suited for short term parking and for the customers of the supermarket and when this ground level car park is full; there is easy access to the basement car park for customers. The ground level car park and the basement car park are to be for a minimum three (3) hours free parking. This will enable quick turnover of vehicles and will not clog the streets. This will be no different to the parking restrictions in nearby Warringah Mall at Brookvale and Stocklands Development at Balgowlah, both of these developments have three (3) hours of free parking. The Coles Supermarket in Manly Vale within the Warringah Council local government area, which is located at the northern end of Roseberry Street, also has ground level parking for customers – this parking is also free of cost for customers with time limits but there are no boom gates.

The long term parking on the roof top is proposed for 105 car parking spaces, this will compensate for the seventeen (17) on-street parking spaces lost. All day parking on the rooftop will take the pressure off the roads and footpath. It will also provide parking for the staff of the surrounding businesses and residents. As stated by the applicant a deed of agreement has been signed between the applicant and Council to have the 105 car parking spaces on the rooftop as a 24 hour public parking with no time limit.

The proposed ramp system will function efficiently if the rooftop parking is for long term parking rather than limited time parking.

It is considered that the condition to restrict the ground level parking to a public parking area, open 24 hours seven (7) days a week with no boom gates is restrictive and is not consistent with the other supermarket developments in the vicinity and therefore should be **amended** as requested by the applicant.

- ***The applicant has requested amendment of Condition No. 47, which states as follows:***

ANS 47

The height of the building is not to exceed 11.0 metres above the existing ground level, with the exception of the lift overrun. Plans are to be notated accordingly prior to the issue of Construction Certificate.

Reason: to comply with the requirements of the DCP.

Comment:

The drawing (No A107 – Sections, SH1), submitted with the Section 96 (2) Modification application, clarifies the height of the lift over-run. The drawing identifies the height of the lift over-run and supermarket condenser platform to be up to a height of RL 19.25, which would be about 11.75m above ground level for the lift over-run and about 12.0 metres above the existing ground level for the Condenser. The proposed heights are considered to be acceptable as the heights are only nominally above the height limit and will not have any adverse impact on the development. It is to be noted that the Development Control Plan for the Industrial Zone 1991, (Industrial DCP), states that “lift overruns higher than 11 metres will be considered”. It is therefore considered that the condition be **amended** as follows:

ANS 47

The height of the building is not to exceed 11.0metres above the existing ground level, with the exception of the lift overrun and the supermarket condenser platform which are not to exceed RL19.25. Plans are to be amended accordingly prior to the issue of Construction Certificate.

- ***The applicant has requested the deletion of Standard Condition No. 7 (2Q01), which states as follows:***

7 (2AQ01)

A report prepared by an air pollution control consultant specifying odour control and other air impurity control methods is to be submitted to the Council/Accredited Certifier for approval, prior to the issue of the Construction Certificate. All works required must be implemented prior to the use commencing.

Reason: To ensure compliance with legislation, and to protect public health and amenity.

Comment:

The applicant has requested that this condition is to be deleted as the applicant is of the opinion that “due to the location of the proposed development being of a commercial nature and a considerable distance from the nearest residential dwellings”, a report specifying odour control and other impurity control methods is not necessary.

Council's Environmental Health Officer considers that the condition should be retained considering the variety of uses within the proposed development. The condition is therefore to be **retained** in its original form.

- ***The applicant has requested the deletion of Standard Condition No. 30 (2MS03), which states as follows:***

30 (2MS03)

A BASIX Certificate is required to reflect all the approved works. All commitments embodied within the BASIX Certificate must be incorporated in drawings submitted with the Construction Certificate.

Reason: To ensure the development complies with the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Comment:

No objection is raised to the deletion of this condition as it was included in error. BASIX Certificates are only required for residential developments in NSW. The proposed development is for a supermarket and cafe and there is no residential associated with the development. The condition is therefore to be **deleted**.

Environmental Planning & Assessment Act 1979 – Section 79C(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

Section 79 C (1)(a) the provisions of:

- (i) ***any environmental planning instrument,***

Manly Local Environmental Plan 1988:

The site is in zone No 4 – The Industrial Zone which permits refreshment rooms; retail outlets for bulky goods, light industrial with the consent of Council.

Under the original zoning of the land a supermarket was not permissible and was a prohibited use within the zone. However, Council received an application for re-zoning of the sites. Council at its Ordinary meeting of 14 December 2009 resolved as follows:

“That, due to the nature of the proposal and its predication on certain management regime for on-street/off-street parking which will directly involve the Council, Council subject to an appropriate Probity Management Plan and Deed:

1. Endorse Option 3 comprising part Enterprise Corridor zone (B6) and part Light Industry zone (IN2) as the preferred land use zoning option for the study area, and
2. Endorse draft Amendment No. 79 to Manly Local Environmental Plan 1988 as exhibited and submit the draft plan to the Director General of Planning for the preparation of a report to the Minister under the provisions of Section 69 of the Environmental Planning and Assessment Act 1979 recommending the making of the plan.”

The draft Amendment (Item No.2 above) was sent to the Director General of Planning and Council is currently working towards finalising Item No. 1 of Council’s resolution as part of the consolidated Manly LEP.

Amendment No. 79 to Manly Local Environmental Plan 1988 was signed by the Minister and gazetted on 27 August 2010. The Amendment No. 79 to the Manly LEP 1988 aims to permit a “Supermarket” as development which may be carried out with development consent on land known as 17 and 31 Roseberry Street, Balgowlah.

In view of the amendment to the Manly LEP 1988, the proposed use of the site for the purposes of a Supermarket is permissible with the consent of Council.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Industrial Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

- (a) *to provide for suitable industrial activities in order to increase local employment opportunities;*

The proposed development is not an industrial activity, however, with the amendment to the Manly Local Environmental Plan (LEP) 1988 which was gazetted on 27 August 2010, the proposed use of the site as a "supermarket" is a permissible use within the zone. It is envisaged that the proposed development will increase the opportunity for local employment. The subject site has been vacant since "Blackmores" pharmaceutical company sold and left the site.

- (b) *to minimise negative visual impact of development by limiting the size and scale of buildings and having regard to suitable landscaping; and*

The proposed size and scale of the development is acceptable and will not have an adverse impact on the locality. With regards to landscaping the amended plans received on 16 September 2010 the proposed development has increased the landscaping within the subject site and not relying wholly on Council land to provide landscaping as was the case with the original plans. Parts of the building have been setback from the Roseberry street frontage and this has provided an acceptable streetscape for the zone. It is also to be noted that the amended plans have set the bulk of the building to the west and has also oriented the first floor level office block in an east-west direction which has reduced the bulk of the development as viewed from Roseberry Street.

It should be noted that Clause 2 under Appearance of Council's Development Control Plan for the Industrial Zone, 1991, requires that "setback areas are to be landscaped with trees set in lawn or other ground cover". The amended plans have provided for six (6) *Fraxinus griffithii* within the subject property facing Roseberry Street. However, Council's Landscape Officer has recommended that the proposed trees are to be deleted and replaced with native species from Council's list of Endemic Plants from the Manly Locality. A condition to this effect is included in the original consent.

- (c) *to encourage the provision of industrial activities by permitting specific office and subsidiary activities in association with the primary industrial use.*

The proposal is not for an industrial use; however, the Amendment No.79 to the Manly LEP 1988 permits the use of the subject land as a supermarket. The proposal also includes a retail café at the corner of Hayes and Roseberry Streets; this is a permissible use in the current Manly LEP.

Clause 33 - Development of land identified on Acid Sulphate Soils Planning Map

The subject site is located on Class 5 land as identified on the Acid Sulphate Soils Planning Map within the Manly Local Environmental Plan 1988. The subject site is located within 500m from Class 3 or 4 lands which may lower the watertable below 1 metre in Class 1, 2, 3 or 4 lands. The proposed works are likely to impact upon Acid Sulphate Soils. The applicant has submitted an Acid Sulphate Soil Management Plan, prepared by Geo_Logix, Environmental Consultants dated March 2011 and received by Council on 21 March 2011. This is currently being checked by Council's Health Officer.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no draft environmental planning instrument applicable to the subject site.

Section 79C(1)(a)(iii) - any development control plan,

Manly Development Control Plan for the Industrial Zone, 1991:

The following is an assessment of the proposal's compliance with the numerical standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Comment:

The Section 96 (2) Modification will not alter the provisions of the Development Control Plan for the Industrial Zone, 1991 (DCP 1991). The proposed increase to the height of the lift over-run and supermarket condenser platform is acceptable as it is in conformity with the provisions of the DCP 1991.

Section 79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F,

There is no planning agreement under Section 93F of the Act.

Section 79C(1)(a) (iv)- the regulations

The proposal complies with the regulations.

Section 79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The likely impacts of the development were assessed in the assessment of the original application. The Section 96 (2) modification will not alter the impacts of the development on both the natural and built environments and also not have any adverse impact on the social and economic aspects of the locality.

Section 79C(1) (c)- the suitability of the site for the development,

The proposed development is considered to be suitable for the site. It is to be noted that the subject site was rezoned for the purposes of a supermarket. The Section 96 (2) modification application will not change the use of the site.

Section 79C(1) (d)- any submissions made in accordance with this Act or the regulations

The Section 96 (2) modification application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with nineteen (19) submissions received from D Bowman of 169 Balgowlah Road, Balgowlah; B Houston of 5 Lodge Street, Balgowlah; V Jackson of unknown address;; R Calloway of unknown address; J Kaill of 1/383 Sydney Road, Balgowlah; J Maccioni (2 letters), Executive Committee Strata 7225, 27-31 Campbell Parade, Manly Vale; R Townsend of unknown address; T Jeckeln of 30b Hill Street, Fairlight; S Taylor of 16 Melbourne Street, Fairlight; R Anderson & L Mallett of 6/125 Balgowlah Road, Fairlight; H G Boutin & T A van der Straaten of 163 Balgowlah Road, Balgowlah; D Herringer of 4 Daintrey Street, Fairlight; B & S Douglas of 52 Boyle Street, Balgowlah; Warringah Council, 725 Pittwater Road, Dee Why; Kathryn Hales of 173 Balgowlah Road, Balgowlah; C Gordon & A Gordon of 1/175 Balgowlah Road, Balgowlah;

Georgia of unknown address; The Murtaghs of unknown address, P O Box 196, Collaroy NSW 2097 and a Confidential submission raising the following concerns:

Concerns raised by D Bowman include the following:

- *Currently delivery and garbage collections are restricted to the hours of 7:00am to 10:00pm seven days/week. I am frankly appalled that this was even permitted to occur weekends. For Woolworths to want to extend this to 5:00am to midnight seven days/week is unconscionable.*
- *Residents of Balgowlah Road are bombarded with garbage trucks and delivery trucks at all hours at present. This is very disturbing to sleep patterns and intrudes significantly on amenity. Truck drivers do not care about the noise they make – they only want to do their job as quickly as possible.*

Comment on submission:

- The current condition, ANS 32, requires that all deliveries to site must be contained within the hours of 7:00am and 7:00pm, Monday to Sunday. The applicant requests the hours to be amended to between 5:00am and 10:00pm, Monday to Sunday. This issue is addressed under Planning comments.
- Condition No. 32 also stipulates truck movements to Condamine-Kenneth-Roseberry streets for approaching the site and Roseberry-Kenneth-Condamine Streets for departing the site. No deliveries and waste collection trucks are to use Roseberry Street between Balgowlah Road and Hayes Street.

Concerns raised by B Houston include the following:

- *The proposed development is an inappropriate use of the site. It is far too big.*
- *It will cause traffic problems, particularly when Bunnings is open. Roseberry Street is a hassle now.*
- *We do not need another Supermarket in this area. I am sure Council is aware of all the present outlets which should be more than sufficient to satisfy both present and future needs. I can walk to two and within 5 minutes drive to at least another five.*

Comment on submission:

- The above concerns relate to the original development and were addressed at that stage.
- The issue of parking within the site and on-street parking is addressed under Planning comments.

Concerns raised by R Calloway include the following:

- *Changing the original delivery and garbage collection hours from 7am -10pm to 5am – midnight, seven days/week will have a devastating impact to residents.*
- *The lengthy duration of these hours will create noise pollution at unacceptable hours; impacting on resident's right to quiet, privacy, peace and sleep. It will damage the direct environment not only through noise and air pollution, but will also impact on traffic density and therefore the safety of the area.*
- *Traffic within the area will be greatly affected by the oversized delivery vehicles, which are slow, loud and cumbersome.*
- *To create unrestricted rooftop parking and not be able to make this available at ground level as suggested by the JRPP is evidence of the incompetence and broken promises that Woolworths is renowned for.*

Comment on submission:

- It is unclear where the objector resides, as the proposed delivery trucks do not enter any residential area of Manly Council. It will however cross a section of residential area of Warringah Council.

- This issue was taken into consideration when the original application was assessed. The issue relating to extension of delivery hours is addressed with the Planning comments.
- There is no change to the roof top parking in the amendment application. The application is to convert the ground level parking to customer parking as originally proposed. The Environmental Planning and Assessment Act 1979 permit applicants to apply for modification of consent.

Concerns raised by J Kaill of 1/383 Sydney Road include the following:

- *JRPP stipulated that all deliveries and waste collection must take place between 7am to 7 pm (7days/week) to protect the amenity of the residents.*
- *JRPP stipulated that the public parking be provided at ground level, accessible 24 hours/day 7 days /week with no time limit, restrictions or fees and no boom gates. The reason given at the meeting was that any parking spots lost from the surrounding streets as a result of this development should be compensated for at the same grade – ground level. Woolworths now seek to overrun this ruling and relocate the public parking to the rooftop of their customer parking structure. They have also removed the words no boom gates. The JRPP also stipulated that customer parking in the basement and rooftop should free for at least the first 3 hours – Woolworths have omitted this 3 hours free parking in their requested modification. If customers are not allowed 3 hours minimum free parking you can be sure they will all pile into the free unrestricted public car park wherever it ends up being located.*
- *The JRPP has already ruled on these matters, how can Woolworths now change these points back to what they wanted before the JRPP ruled the opposite.*
- *If the JRPP ruled on the approval based on this development was over 10 million dollars, then why is Manly Council allowed to accept changes or amendments to the proposed DA. Should these decisions again be approved by the JRPP and not Council.*

Comment on submission:

- The issues raised in the submission have been addressed in the Planning Comments above.
- The issue of three (3) hour free parking is recommended for the ground level and basement parking. These areas will be used as Woolworths (supermarket) customer parking. The 105 rooftop parking will be dedicated as public parking and will be available as long term parking and will be available 24hours a day, seven (7) days a week.
- The Section 96 (2) modification will be determined by the Joint Regional Planning Panel as per the Planning Circular PS 10-009 issued on 18 May 2010.

Concerns raised by J Maccioni of 27-31 Campbell Parade, Manly Vale on behalf of the Executive Committee, Strata 7225 include the following:

- *I was left discouraged that the JRPP dismissed residents' calms that the proposal would have an unacceptable impact on traffic because "the expert advice before the Panel is otherwise".*
- *The expert groups in their submissions to approve the Woolworths development had turned a blind eye to the impact on Warringah residents.*
- *Given that Mr Clements and Mr Stray were emphatic that even deliveries to Bunnings between 7:00am and 7:00pm, Monday to Friday, was excessive and contravened various Acts, it is difficult to comprehend how the MIAP could seriously countenance Woolworths proposal for deliveries and waste collection between 5:00am and 10:00pm, Monday to Sunday. The reason given for Condition No. ANS 32 was "to ensure amenity of the surrounding locality is maintained and the hours of deliveries are consistent with those in the surrounding locality.*

- *What has happened to the Master Plan Manly Council was developing for Roseberry Street area?*
- *I assume because Kenneth Road is the boundary between Manly and Warringah Councils, not one of the expert bodies made any mention in the whole 87 pages of possible impacts the DA would have on the Manly Vale Community.*
- *I would implore the Panel to seriously consider the serious negative impact this DA would have on the community from a traffic standpoint. Campbell Parade and Quirk Road would become an even more overloaded rat run.*

Comment on submission:

- The comments raised in the letter relate to the original application. The issue of traffic was considered in the original application.
- The current application is for the modification of some of the conditions relating to on - site parking and delivery times. These issues have been addressed in the Planning comments above.

Concerns raised by R Townsend of unknown address include the following:

- *I cannot believe the gall and insensitivity that Woolworths are displaying, to immediately attempt to run roughshod over the concerns of the residents who spoke against the development, not just in its original form, but even with the watered down amendments to delivery times and parking, which were finally passed by the JRPP.*
- *Traffic reports which were presented to Council and to the JRPP did not give any indication of the impact on residents outside of peak times, nor to impact on narrow residential streets up to 1 km from the site.*
- *Traffic along both Balgowlah Road and Kenneth Street is relatively heavy, particularly during morning peak, but this is not when most shoppers are going to visit their local supermarket.*
- *The main traffic variance impact is more likely to occur outside of peak times, with ongoing delays in Roseberry Street, which will ultimately flow on to both Balgowlah Road, Kenneth Street and then on to surrounding neighbourhood streets.*

Comment on submission:

- The Section 96 (2) modification application has been lodged as per the provisions of the Environmental Planning and Assessment Act 1979.
- Traffic Report was submitted with the original application and was assessed by Council's Traffic Consultant. Comments were also received from the Roads and Traffic Authority. In support of the application, the applicant submitted an additional report from Colston Budd Hunt & Kafes Pty Ltd, Traffic Consultant. This report was sent to Council's Traffic Consultant and the RTA and comments received. These comments are included in the report above.
- The Section 96 (2) Modification application will not change the amount of traffic to the development. The changes requested only relate to certain conditions relating to location of free public parking and customer limited time parking.

Concerns raised by T Jeckeln of 30b Hill Street, Fairlight include the following:

- *I would like to strongly oppose any Section 96 application changes proposed by Woolworths.*
- *Manly Council should ensure that the decisions decided by the JRPP are adhered to without any changes.*

Comment on submission:

- The submission has not raised any issues regarding the proposed modifications.

- The JRPP is the determining authority under the Act as the proposal exceeds \$10 million.

Concerns raised by S Taylor of 16 Melbourne Street, Fairlight include the following:

- *I object to this DA and the way it appears to be progressing. It was bad enough when this DA was approved but now it appears that this approval was a waste of time as the conditions on which it was approved are being altered to suit the developer "on request".*
- *Why are the approved conditions being ignored?*

Comment on submission:

- The Section 96 (2) modification application has been lodged as per the provisions of the Environmental Planning and Assessment Act 1979.
- It is for the determining authority to look at all the issues and make a determination.

Concerns raised by J Maccioni (2nd letter) of 27-31 Campbell Parade, Manly Vale include the following:

- *There are numerous findings in the original report worth revisiting. These are Page 13 Clause 7, Page 14 Clause 7, Page 18 Clause 4, Page 19 Clause 2.0, Page 20 Clause 3.0, Page 44 Clause 1, Page 44 Clause 1, Page 45 Clause 1 and Page 48 Clause 1.*
- *In my opinion it is clear from the above excerpts of findings determined by Manly Council, Council's Traffic Consultant and the RTA, and subsequently approved by the JRPP, that Woolworths' comment to justify the proposed modification to ANS32 is erroneous and without merit. The approval makes it quite clear that concerns about additional traffic congestion are totally unwarranted as capacity is adequate for all options, including deliveries and waste collection, between 7:00am and 7:00pm.*

Comment on submission:

- The original Condition No. ANS 32 required all deliveries to the site and all waste collection from the site to be contained within the hours of 7:00am and 7:00pm Monday to Sunday. The applicant in their Section 96 modification application has requested for the delivery hours to be modified to be contained within the hours of 5:00am and 10:00pm. The reason given by the applicant is that deliveries of milk and bread are needed to be brought to the site prior to the supermarket opening. This is considered to be reasonable request and as a compromise, the hours between 5:00am and 7:00am is considered to be satisfactory for small vans to deliver bread and milk to the supermarket.
- It is considered that all deliveries to the site and waste collection from the site should cease at 9:00pm. It is recommended that the condition be altered to reflect the above.

Concerns raised by R Anderson and L Mallett of 6/125 Balgowlah Road, Fairlight include the following:

- *We read with disbelief the news that Woolworths was applying to change two of the conditions mandated by the JRPP with regards to their proposed development in Roseberry Street i.e. the need to re-instate their original delivery and garbage collection hours to 5am – 10pm, seven days/week and the free unrestricted parking to the rooftop.*
- *These two provisos are needed to ensure that the people who live in the immediate area do not lose their amenity of life – a basic right which should be maintained by those representing them in the local area.*

Comment on submission:

- The issue of delivery hours have been addressed above. The concern raised is a non issue for the objector as delivery trucks are not permitted to use Balgowlah Road (see second section of Condition No. ANS 32).
- There is no change to the 105 rooftop unrestricted public parking spaces. The issue of the ground level parking has been addressed under "Planning Comments" above.

Concerns raised by H G Boutin & TA van der Straaten of 163 Balgowlah Road, Balgowlah include the following:

- *Deletion of Condition No. ANS 24 (Extension to the left turn slip lane into Hayes Street). This condition was imposed to improve traffic movement in the surrounding streets.*
- *As residents of Balgowlah Rd we have already suffered loss of amenity in the wake of the recent Stockland development which has caused a massive increase in local traffic.*
- *The idea for a slip lane was strongly supported at the initial focus group meeting for the Balgowlah Light Industrial Area Master Plan. As such, any road works or improvements that encourage customers to access the development site via Hayes St rather than Kenneth Rd or Balgowlah Rd should be supported.*
- *Deletion of Condition No. 27 (Relocation of bus shelter). The applicant claims that this condition is rendered redundant if ANS24 is deleted. It is not clear to us that the relocation of the bus shelter is in any way related to the extension of the slip lane.*
- *The bus shelter in question appears to refer to the shelter adjacent to the Bunnings site. This condition should be upheld.*
- *Modification of ANS 32 (all deliveries to the site and waste collection from the site must be contained within the hours of 7am to 7pm and must not use Roseberry Street between Balgowlah Road and Hayes Street). The JRPP imposed this condition expressly to protect the amenity of the residents in the surrounding locality and to ensure the delivery hours are consistent with the surrounding businesses.*
- *The applicant now has the audacity to request these delivery/waste collection hours be extended to 5am – 10pm without causing adversely noise generation for the surrounding neighbourhood.*
- *Allowing massive noisy delivery trucks to drive past people's homes from 5am until 10pm every day is beyond unreasonable. We strongly object to this modification – the original condition of consent must be upheld.*
- *Modification of ANS 40 (Parking) – In the conditions of consent the JRPP stipulated that the public parking is to be at ground level accessed off Hayes St and available free of charge with no time limit 24 hours a day, 7 days a week with no boom gate control. The customer parking is to be located in the basement and on the roof top and to be free for at least 3 hours.*
- *The applicant now wants to relocate the public parking to the roof level and has omitted the conditions that stipulate no boom gates on the public parking and the 3 hour minimum free customer parking.*
- *We object vehemently to all of these modification requests. The public parking was proposed to compensate for the removal of street parking and therefore should be provided at ground level. If these modifications are approved 17 car spaces on the street will be lost in order to improve the traffic flow and access to the site.*

Comment on submission:

- The issue of slip lane has been addressed by Council's Traffic Consultant. RTA has indicated that the approval authority for Condamine Street is the Council and therefore the condition has been amended such that the design of the slip lane can be submitted to Council.

- Condition No. 27 is to be retained and the applicant is required to discuss with Bunnings as to share the cost of the works. It is understood that the two applicants have already started some dialogue regarding this issue.
- As regards hours of delivery and waste collection, the issue has been addressed above and condition modified accordingly.
- Condition No. 40 – parking issues. It is considered that the customer parking is best suited for the ground level and basement, with 3 hour parking limit and the 24 hour free public parking to be on the roof top. The condition is to be modified accordingly. This issue has been addressed under “Planning Comments”.

Concerns raised by D Herringer of 4 Daintrey Street, Fairlight include the following:

- *As a local resident I object to the increase in large vehicle movements and truck noise before 7am and after 7pm which will result from this change.*
- *I also wish to object to the application for a change in the parking facilities as approved in the DA as this will result in an unwelcome increase in traffic congestion and severely disadvantage residents in the area.*

Comment on submission:

- This issue has been addressed under planning comments above. It is considered that between 5:00am and 7:00am deliveries to the supermarket would be by small trucks which will not be any different to the current situation. Bigger trucks and semi-trailers would be permitted between 7:00am and 9:00pm every day.
- It is considered that with customer parking on the ground level and 24hr free rooftop parking will lead to a decrease in traffic as the movements will be quicker and less queuing on local roads.

Concerns raised by B & S Douglas of 52 Boyle Street, Balgowlah include the following:

- *Change of deliveries and waste collection from 7am to 7pm to 5am to 10pm – 7 days a week. We believe that the allowance of trucks in this area as early as 5am or until 10pm is unacceptable, obviously resulting in loud noise often while attempting to sleep.*
- *Allowing such deliveries and waste collection from 7am to 7pm, while still sometimes impacting on sleep at the earliest starting time, we think is much more reasonable and is a better compromise.*
- *We see the whole Woolworths development, involving the taking away of parking on the east side of Roseberry St as an incredible intrusion on the small businesses (fruit & vees shop etc.) towards and around the south side of Roseberry St.*
- *We sincerely believe that any loss of income that these businesses suffer due to the change of parking arrangements due to the operation of the new Woolworths should be compensated by Woolworths to these businesses and hope that this does in fact occur.*
- *At the very least, the requirement that free public parking be provide on the ground level should be enforced.*

Comment on submission:

- The issue of deliveries and waste collection has been addressed under “Planning Comments”. It should be noted the path of travel of delivery trucks and waste collection is restricted to the northern section of Roseberry Street. The second paragraph in the condition states that “all truck movements are restricted to Condamine - Kenneth - Roseberry Streets for approaching the site and Roseberry – Kenneth – Condamine Streets on departing the site”.
- A compromise solution is recommended to allow small vans to the site between the hours of 5:00am and 7:00am daily.

- There is no change proposed to the existing parking on the southern side of Roseberry Street. It seems the objector is confused with the development proposal – any changes to on-street parking proposed affects only those spaces located north of Hayes Street. The objector would still be able to use the parking spaces in front of the “fruit & veges shop”.
- Free parking on the roof top is for long term parking. A three hour time limit on the ground level and the basement level would allow short term parking for people visiting other businesses in the area.
- Only seventeen (17) on street parking spaces will be lost, this is more than compensated for by the provision of 105 rooftop parking spaces.

Concerns raised by Warringah Council, Civic Centre Dee Why include the following:

Warringah Council discussed this matter at its meeting of 14 December 2010 and resolved as follows:-

That Council:

- Notes the applicant’s advice to Manly Council that potentially 30 trucks per day will make deliveries and collect garbage from the Roseberry Street supermarket site;*
- Submits, on behalf of Warringah residents in Roseberry Street and Kenneth Roads at Manly Vale, an objection to Manly Council to Woolworths’ Section 96 Modification of Consent requesting permission for deliveries between 5:00am and 10:00pm, seven days per week, which is contrary to the JRPP’s ruling on this application for truck access between 7:00am and 7:00pm to prevent loss of amenity to residents in close proximity to the supermarket development;*
- Provides its submission to Manly Council by the current deadline of 22 December 2010 (an extension is pending) and supplies a copy to Warringah Councillors.*

Comment on submission:

- The applicant in their submitted Statement of Environmental Effects with the original application has stated that - “The expected number of deliveries per day will be between 20 and 30. The majority of these will be by small trucks and vans. The average unloading time is about 30 minutes. With appropriate management, the two space dock will cater for this level of activity.” There is no change to the number of delivery trucks/vans in the Section 96 (2) modification application. The issue was dealt with in the determination of the original application.
- This issue has been dealt with earlier in the report and it is recommended that the condition be amended to allow for small vans/trucks be allowed to deliver to the site between the hours of 5:00am and 7:00am on a 12 month trial basis. It is to be noted, however, that a check with Warringah Council has revealed that the “Coles Supermarket” located on Koorala Street, at the northern end of Roseberry Street, which is within the Warringah Council area, do not have any restrictions on hours of operation and delivery hours. This supermarket (Coles at Manly Vale) is surrounded by residential flat buildings and the delivery area is very close to the Residential Flat Buildings at the rear (north).

In contrast the proposed Woolworths Supermarket is surrounded by Industrial developments and is located within the Industrial zone under the Manly Local Environmental Plan 1988. An amendment to the LEP (Amendment No. 79) was gazetted on 27 August 2010 which permitted a “Supermarket” as development which may be carried out with development consent on land known as 17 and 31 Roseberry Street, Balgowlah.

- No further submissions were received from Warringah Council.

Concerns raised by K Hales of 173 Balgowlah Road, Balgowlah include the following:

- *Deletion of Condition No. ANS 24 (Extension to the left turn slip lane into Hayes St). I believe we should be doing everything we can to encourage customers to access the site via Hayes St.*
- *Any road improvements that will encourage customers to access the development site via Hayes St rather than Kenneth Rd or Balgowlah Rd should be supported. Please uphold this condition.*
- *Deletion of ANS 27 (Relocation of bus shelter). The reason for this condition of consent is to improve traffic movement in surrounding streets and as such should be upheld.*
- *Modification of ANS 32 (All deliveries to the site and waste collection from the site must be contained within the hours of 7am to 7pm and must not use Roseberry |St between Balgowlah Rd and Hayes St). The JRPP imposed this condition expressly to protect the amenity of the residents in the surrounding locality and to ensure the delivery hours are consistent with surrounding businesses.*
- *The applicant has absolutely no regard for the residents who will have to endure the noise, congestion and pollution created by some 30 delivery vehicles every day, not to mention the waste and recycling collection trucks. Allowing massive noisy delivery trucks to drive past people's homes from 5am until 10pm every day is totally unacceptable and I object strongly to this modification.*
- *Modification of ANS 40 (Parking) – In the conditions of consent the JRPP stipulated that the public parking (56 car spaces) is to be at ground level accessed off Hayes St and available free of charge with no time limit 24 hours a day, 7 days a week with no boom gate control. The customer parking is to be located in the basement and on the roof top and to be free for at least 3 hours. I object to all of these modification requests.*
- *Arrangement of street parking on Roseberry and Hayes Streets. If these modifications are approved 17 car spaces on the street will be lost in order to improve the traffic flow and access to the site. I object to this request.*

Comment on submission:

- The issue of slip lane has been addressed by Council's Traffic Consultant. RTA has indicated that the approval authority for Condamine Street is the Council and therefore the condition has been amended such that the design of the slip lane can be submitted to Council. The condition regarding slip lane is to be retained and only amended to reflect the approval authority for the slip lane design.
- Condition No. 27 is to be retained and the applicant is required to discuss with Bunnings as to share the cost of the works. It is understood that the two applicants have already started some dialogue regarding this issue.
- As regards hours of delivery and waste collection, the issue has been addressed above and condition modified accordingly.
- Condition No. 40 – parking issues. It is considered that the customer parking is best suited for the ground level and basement, with 3 hour parking limit and the 24 hour free public parking to be on the roof top. The condition is to be modified accordingly. This issue has been addressed under "Planning Comments".
- The proposal always required the removal of on-street parking in Roseberry Street. The Section 96 modification has detailed the spaces that are required to be removed to maintain the flow of traffic in the street. The 17 spaces are to be compensated by the provision of 105 car spaces at the roof top of the development. These spaces are to be handed over to Council and maintained as free public parking available to the public 24 hours/7 days a week.

Concerns raised by C and A Gordon of 1/175 Balgowlah Road, Balgowlah include the following:

- *I vehemently oppose the condition relating to deliveries and waste collection. The noise of trucks will have a severe negative impact on residents who live in the vicinity.*
- *There is a high density of apartments (in close proximity) on Kenneth Road and Roseberry Street. The sleep disturbance that they will experience on a daily basis is unacceptable.*
- *Due to the many businesses already operating on Roseberry Street and Hayes Street, I feel that free parking on the ground level of Woolworths must be retained.*
- *As Woolworths will be responsible for the reduction of public parking spaces on the 2 roads, it must remain easy for the public to access these businesses with suitable alternative free parking. I object to the proposed taking of yet more street parking on Hayes Street (southern side).*

Comment on submission:

- The issue of deliveries and waste collection has been addressed under “Planning Comments”. It should be noted the path of travel of delivery trucks and waste collection is restricted to the northern section of Roseberry Street. The second paragraph in the condition states that “all truck movements are restricted to Condamine - Kenneth - Roseberry Streets for approaching the site and Roseberry – Kenneth – Condamine Streets on departing the site”.
- A compromise solution is recommended to allow small vans to the site between the hours of 5:00am and 7:00am daily.
- Parking on the ground level will still remain but it will be time restricted to 3 hours.
- As discussed above, the proposal always required the removal of on-street parking in Roseberry Street. The Section 96 modification has detailed the spaces that are required to be removed to maintain the flow of traffic in the street. The 17 spaces are to be compensated by the provision of 105 car spaces at the roof top of the development. These spaces are to be handed over to Council and maintained as free public parking available to the public 24 hours/7 days a week.
- The removal of the 17 on-street parking spaces on Roseberry Street between Hayes and Kenneth Road is likely to improve the flow of traffic on that street.

Concerns raised in a confidential submission include the following:

- *In regards to the provision of 56 free public car spaces on the supermarket’s ground level, to compensate local residents and businesses for the loss of on-street parking near the Woolworths. I understand the developer now seeks to move all public parking to the complex’s rooftop level and lift any restrictions on how long other spots will be provided for free.*
- *The potential loss of parking at street level would negatively impact small and medium sized businesses in the area surrounding Woolworths supermarket.*
- *Concerns about the negative impact on parking the businesses will experience during construction of the Woolworths supermarket.*
- *From my own personal experience, whilst the Stockland centre was being built, I found it extremely difficult to get parking when I was trying to patronise local Sydney Rd shops and my hairdresser on Sydney Rd, Balgowlah. Our tenants are concerned that their business will be negatively impacted whilst any Woolworths supermarket is being built, if parking provisions are not allowed for the many construction workers that will be required.*
- *The biggest problem with delivery trucks is that they arrive prior to the stipulated time and sit outside the delivery dock with engines idling and refrigeration units running. The noise from the trucks and refrigeration units would disturb the amenity of residents and most notably residents’ sleep.*

Comment on submission:

- As discussed above, the applicant has requested that the 56 car parking spaces provided on the ground level are to be on a three (3) hour time limit for short turn - around of vehicles. If the 3 hour limit was put on the roof top level parking it would be very likely that there would be queues forming at peak hours and this would disrupt the flow of traffic on Roseberry Street. The 105 roof top car parking spaces are to be handed over to Council as a public car park and is to remain free parking 24 hours a day and 7 days a week. It would definitely benefit the workers in the area who would be able to park without having to drive around the area looking for on-street parking and this would in turn likely to free up the on-street parking in the area.
- A condition of consent (ANS 33) requires the applicant to submit a Construction Management Plan (CMP) prior to any works commencing on site. The CMP is to include construction traffic management, parking of workers vehicles, street parking and employment of traffic controllers during construction.
- As regards delivery trucks, it is to be noted that the site provides for two (2) semi-trailers to be on the site at any one time. Whilst one is unloading, the other could be waiting at the second spot waiting for its turn. Both the truck spots are wholly contained within the subject site.

Concerns raised by G Masca of unknown address include the following:

- *Your approval of the development proposal for a new Woolworths in Roseberry St, Balgowlah is a disgrace to the community.*
- *Roseberry St has been a well loved Street with its small business bakery and fruit shop. By going ahead with this proposal, these shops will no longer be.*
- *We already have 2 Coles supermarkets in the area and definitely don't need another. We have been absolutely fine with 2, why destroy small businesses that rely on this money to support their family just for a Woolworth's that is not necessary.*
- *I believe you should take a step back and let the community tell you what they want. This proposal just destroys the meaning of community. The council itself is destroying the community.*

Comment on submission:

- It seems that the objector is not aware of the proposal. There is no proposal to change anything on the southern section of Roseberry Street. The bakery and the fruit & vegetable shop could still operate without any changes to the on-street parking in front of those premises.
- As regards how many supermarkets an area wants, it is a matter of market demand. Obviously, the applicant must have done its market survey to know that there is a demand for the supermarket.
- Council did communicate with the community in the LEP amendment (Amendment No. 79) stage as well as when the original DA was lodged. All concerns raised were taken into consideration and objectors had an opportunity to express their concerns to the JRPP at the public meeting held on 28 October 2010.

Concerns raised by The Murtaghs of unknown address (P O Box 196 Collaroy NSW 2097) include the following:

- *The Section 96 Modification proposal, which aims to overturn the JRPP conditions, would be disastrous for the neighbouring residents.*
- *The proposal to change the available delivery hours to between 5am and 10pm is outrageous, given that this development is so close to high density residential blocks. The noise and chaos created by large trucks charging down residential streets, and negotiating small roundabouts near the site, will intrude on hundreds of residents' right to peaceful amenity.*

- *The proposal to overturn the JRPP requirements regarding parking is unreasonable and unfair to local residents and business owners in the area. The requirement that public parking be at ground level, and available 24 hours free of charge, was a small step to compensate for the loss of on-street parking. It is a great concern that the applicant should now seek to change the JRPP requirements and thereby impose greater difficulties for local businesses and residents.*

Comment on submission:

- The issue of delivery hours have been addressed above. The proposed supermarket is not located within a residential area as stated; rather it is located within the Manly Industrial area under the Manly Local Environment Plan 1988. The recommended condition revises the hours of operation, permitting only small vans and trucks between the hours of 5:00am and 7:00am.
- The issue of public parking on the ground level has been addressed under "Planning Comments" above. It is considered that the 24 hour free of charge parking on the ground level would not work to the benefit of customers of the supermarket as well as the neighbouring developments. The number of on-street parking removed is 17 and this is to be compensated by 105 parking spaces on the roof top with access via a lift. This roof top parking is to be handed over to Council and maintained as a public car park. The benefit to the community outweighs the deletion of the few on-street parking taken away by the development.

Section 79C(1) (e) the public interest.

The proposed modifications are considered in the public interest.

Section 96 (2) of the Environmental Planning and Assessment Act 1979

Section 96 (2) of the Environmental Planning and Assessment Act 1979, states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- it has notified the application in accordance with:*
 - the regulations, if the regulations so require, or*
 - a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*
- it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be."*

With regards to the above it is considered that the proposed modifications to the original consent, is substantially the same development as the original development that has been consented to. The modifications requested were notified in accordance with Council's DCP for Notification, and nineteen (19) submissions received and addressed above. All matters relating to the proposed modification in terms of impact on neighbouring properties and streetscape have been considered and the application is supported subject to conditions.

CONCLUSION:

The application has been assessed having regard to Section 79C and 96 (2) of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Industrial Zone 1991 and is considered to be satisfactory and recommended for **Conditional Approval**.

RECOMMENDATION

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the Development Application No. 107/10 for the demolition of the existing buildings and construction of a single storey supermarket (Woolworths) with mezzanine ancillary office, signage, café with basement (154 spaces), ground level (56 spaces) and rooftop parking (108 spaces) at 17 - 31 Roseberry Street, Balgowlah be modified, subject to the original conditions of consent, with the addition of Drawing /Plan No. A 107 – Section SH1 and additional documents, **deletion** of Condition Nos. ANS 13, ANS 16, ANS 19 and Standard Condition No. 30 (2MS03); **amendment** of Condition Nos. ANS 15, ANS 24, ANS 32, ANS 40 and ANS 47; **retention** of Condition Nos. ANS 14, ANS 27, ANS 29, ANS 35 and Standard Condition No. 7 (2AQ01) and **addition** of Condition Nos. ANS 13 (new) and Standard Condition No. 145 (4CD07) as follows:-

Documents relating to consent.

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and documentation.

Plans affixed with Council's stamp relating to Development Consent No. 107/10

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
A101 – Basement Floor Plan	DA3 – 14 September 2010	16 September 2010
A102 – Ground Floor Plan	DA3 - undated	16 September 2010
A103 – First Floor Plan	DA3 – 14 September 2010	16 September 2010
A105 - Elevations	DA3 – 14 September 2010	16 September 2010
LDA-001 – Landscape Plan	DA3 – 14 September 2010	16 September 2010
LDA-D01 – Landscape Details	DA3 – 15 September 2010	16 September 2010
A107 - Sections – SH1	DA2 – 30 November 2010	30 November 2010

Documentation affixed with Council's stamp relating to Development Consent No. 107/10

- Design Statement – Architecture & Landscape Architecture, prepared by Scott Carver dated 4 March 2010 and received by Council on 20 March 2010.
- Compliance Table – Development Control Plan for the Industrial Zone.
- Assessment of Signage to Relevant Policies and Dwg. Nos. A901, A902 and A903 dated 5 March 2010, all received by Council on 20 March 2010.
- Noise Impact Assessment, prepared by Reverb Acoustics, dated July 2009 and received by Council on 20 April 2010.
- Economic Impact Assessment prepared by Urbis dated March 2010 and received by Council on 20 April 2010.
- Report on Traffic Aspects, prepared by Colston Budd Hunt & Kafes Pty Ltd dated March 2010 and received by Council on 20 April 2010.
- Arboricultural Impact Assessment, prepared by Redgum Horticultural, dated 6 July 2009 and received by Council on 20 April 2010.

- Geotechnical Assessment Report, prepared by Douglas Partners dated July 2009 and received by Council on 20 April 2010.
- Phase I Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated March 2010 and received by Council on 20 April 2010.
- Preliminary Acid Sulphate Soils Investigation and Waste Classification Assessment, prepared by Environmental Investigation Services dated 2 July 2009 and received by Council on 20 April 2010.
- Access Report, prepared by Morris-Goding Accessibility Consulting, dated 2 March 2010 and received by Council on 20 April 2010.
- Building Code of Australia Capability Statement, prepared by Davis Langdon, dated 5 March 2010 and received by Council on 20 April 2010.
- Balgowlah Trolley Management Plan, prepared by Woolworths, undated and received by Council on 20 April 2010.
- Flood Study & Flood Level Predictions for Burnt Bridge Creek, prepared by Richmond + Ross Pty Ltd, Job Ref: 05-0511 dated March 2010 and received by Council on 16 June 2010.
- Transport Delivery Management Plan, prepared by Woolworths, undated and received by Council on 16 June 2010.
- Additional Traffic comments, prepared by Colston Budd Hunt & Kafes Pty Ltd dated 10 June 2010 and received by Council on 16 June 2010.

Except as amended by

Plans affixed with Council's stamp relating to Development Consent No. 107/10 – Section 96 Modification

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
A107 - Sections – SH1	DA2 – 30 November 2010	30 November 2010

Documentation affixed with Council's stamp relating to Development Consent No. 107/10 – Section 96 (2) Modification

- Phase 2 Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated May 2010 and received by Council on 30 November 2010.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

Non-Standard Conditions of Consent – Section 96 (2) Modification

New ANS13

Asbestos Management Plan

An Asbestos Management Plan developed by a suitably qualified Occupational Hygienist, Occupational Health and Safety and Environmental Scientist shall be submitted to Council's written satisfaction prior to the issue of Construction Certificate.

Reason: To ensure compliance with legislation and to protect public and environmental health and safety.

ANS14

Retained as original.

ANS15

Site Contamination - General

All works associated with the contaminated land must be in accordance with the requirements of:

- Contaminated Land Management Act, 1997
- Protection of the Environment Operations Act, 1997
- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation, 2008
- State Environmental Planning Policy 55 *Remediation of Land*
- Occupational Health and Safety Act, 2000
- Requirements of Workcover NSW.

The recommendations of the Phase 2 Environmental Site Assessment Report prepared by Geo_Logix Pty Ltd dated May 2010 and received by Council on 30 November 2010 are to be fully complied with.

Reason: *To ensure compliance with legislation and to protect public and environmental health and safety and to comply with the Consultants report.*

ANS16

Deleted

ANS19

Deleted

ANS24

At the intersection of Condamine Street and Hayes Street, the existing left turn slip lane into Hayes Street shall be extended on its approach from Condamine Street, within the road reserve. The design shall be submitted to Manly Council for consideration and approval prior to the issue of the Construction Certificate for the building by the Accredited Certifier/Council and commencement of any road works. This permits demolition and remediation etc while the road designs are finalised.

The proposed slip lane works shall be fully constructed and operational prior to the release of any Occupation Certificate by the Principal Certifying Authority. All costs relating to the slip lane are to be borne by the applicant.

Reason: *To improve traffic movement in the surrounding streets as a result of the proposed development and to reduce accident potential.*

ANS27

Retained as original.

ANS29

Retained as original

ANS32

Servicing Management Plan

All deliveries to the site and all waste collection from the site must be contained within the following hours:

Monday to Sunday
5:00am – 7:00am: deliveries by non-articulated vehicles (small trucks & vans) only.
7:00am – 9:00pm: deliveries and waste collection by all types of vehicles.

The above delivery & waste collection hours are for a trial period of twelve (12) months from the date of operation of the supermarket. At the end of the twelve (12) months, the applicant is to submit a Section 96 (1A) Modification application to Council to modify the condition.

All deliveries to the site and waste collection from the site must not use Roseberry Street between Balgowlah Road and Hayes Street. All truck movements are restricted to Condamine - Kenneth - Roseberry Streets for approaching the site and Roseberry – Kenneth – Condamine Streets on departing the site.

Reason: To ensure amenity of the surrounding locality is maintained and the hours of deliveries are consistent with those in the surrounding locality.

ANS35

Retained as original

ANS40

A Parking Management Plan be prepared and submitted to Council prior to the issue of any Occupation Certificate to include:

- The public parking area at ground level shall at all times maintain a minimum of 56 car parking spaces;
- Public parking on the roof level (105 spaces) shall remain open 24 hours a day, seven days a week. This parking to be provided free of charge with no time limit and appropriate restrictions on title; and
- Access to the ground level and basement car parks to be available during supermarket operating hours.

The arrangements of the on-street parking on Roseberry Street and Hayes Street are to be as follows:

- On the southern side of Hayes Street, between the Roseberry Street and the site access (total of 3 spaces lost); and
- On the eastern side of Roseberry Street, between the Hayes Street and Kenneth Road (total of 14 spaces lost);

On the western side of Roseberry Street where the roof top car park and loading dock access will be provided (loss of 3 spaces). An additional 3 spaces would be created on the western side of Roseberry Street with the closure of existing driveways and removal of “No Parking” restrictions. Thus there would be no net loss of parking on the western side of Roseberry Street.

Reason: To effectively manage impacts on traffic flows and minimise congestion and provide safe and secure public parking.

ANS47

The height of the building is not to exceed 11.0metres above the existing ground level, with the exception of the lift overrun and the supermarket condenser platform which are not to exceed RL19.25. Plans are to be amended accordingly prior to the issue of Construction Certificate.

7 (2AQ01)

Retained as original.

30 (2MS03)

Deleted

145 (4CD07) - CONDITION TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

Asbestos Management - General

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Occupational Health and Safety Act 2000,
- The Occupational Health and Safety Regulation 2001,
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)],
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/>, and
- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. Those involved with work to asbestos should be made aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.

Reason: To ensure the health of site workers and the public.

Assessment Planner: Nayeem Islam