

JRPP No.	2012 - STH016
DA No.	DA No. 192/2012
PROPOSED DEVELOPMENT	Demolition of existing buildings/structures, new Masters home improvement centre with associated car parking and signage, lot consolidation, boundary adjustment and road closure. Various Properties in Shandan Circuit, Albion Park Rail Shellharbour Local Government Area
APPLICANT	Hydrox Nominees Pty Limited
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Assessment Report and Recommendation

1. PURPOSE OF REPORT

The purpose of this report is to seek a determination from the Joint Regional Planning Panel (JRPP) of a development application for the demolition of existing buildings/structures, new Masters home improvement centre with associated car parking and signage, lot consolidation, boundary adjustment. A road will be formally closed as part of the development.

The reference to the road being closed in the application is to provide context and an explanation as to what the development will encompass however it is not a matter that is assessed under the provisions of the *Environmental Planning and Assessment Act 1979* for reasons provided in section 6 of this report.

The JRPP is the determining authority for this development application as the development has a Capital Investment Value of \$17,571,000 with Council having an interest in the application, being landowner/roads authority for Shandan Circuit.

It is important to note that this report was prepared and finalised concurrent to Council's draft *Shellharbour Local Environmental 2011* being processed by the Department of Planning and Infrastructure for gazettal. The Department advised Council during the assessment of this application that the making of the Plan is imminent. Accordingly, attention is drawn to the savings provisions contained in the Plan in the event that the Plan is made prior to or during consideration and determination of this application. The savings provisions enable a development application to be determined 'as if this Plan has been exhibited but had not commenced'. The provisions are contained in clause 1.8A of the draft Plan.

2. RECOMMENDATION

It is recommended that the JRPP approve DA No. 192/2012 subject to:

- a. the consent being 'deferred' and
- b. consent conditions provided at the end of this report.

3. BACKGROUND

The development application was prepared by several technical experts coordinated by Urbis. The proposal was the subject of pre-development consultations with Council.

During early consultations with Council, it was noted that a road closure is required. This is a separate and legal process to that of a development application made under the *Environmental Planning and Assessment Act 1979* (EPA Act 1979).

To this end, Council questioned if an application could be legitimately processed and determined.

The application was supported by a comprehensive legal opinion which in summary concluded subject to satisfactory assessment, a deferred commencement style consent could be issued.

The legal opinion submitted by the applicant was peer reviewed by an accredited environmental lawyer on behalf of Council.

In short, there appears to be no issue with using the deferred commencement provisions within the EPA Act 1979 to determine the application subject to the road closure being resolved and that the two processes are kept distinctly separate. The legal advice is discussed again later in section 6 of this report.

The application was submitted to Council on 20 June 2012 and exhibited for a 21 day period (exceeding Council's normal minimum 14 day period) having regard to the size, scale and nature of the application.

The exhibition was held from 5 to 25 July 2012, inclusive. In response, 14 submissions were received. There was also a further submission from an owner of a neighbouring business who engaged planning consultants to prepare a submission on his behalf. Whilst received some time after the closure date observing that the application was still under assessment at the time, the comments made in that submission are also explored in this report.

The submissions are detailed and discussed later in this report in section 9.9.

The application has been assessed in accordance with the EPA Act 1979 and is now referred to the JRPP for determination.

4. THE SITE

The site is located in an area colloquially known as the 'Central Business Park'.

It lies south of the Princes Highway and includes a significant part of Shandan Circuit. It falls about 6m in height from the south to the north, towards the Highway and is mostly vacant land and road reserve.

The site comprises 19 lots and road reserve and is legally described as:

- Lot 1 in DP 1123534
- Lot 109 in DP 1008414
- Lots 2-17 and 20-22 in DP 1039969

Street addresses are 2-4, 8-12, 20, 13-45 and 51-55 Shandan Circuit, Albion Park Rail.

There is a car yard hardstand area on Lot 2, DP 1039969 (next door to the former Wilson's Holden dealership), light industrial building and associated car parking on Lots 1 and 22, DP 1039969 and hardstand and other improvements on Lot 11, DP 1039969.

The site has an area of approximately 31,122 square metres, less the area of land that is to be dedicated back to Council as public.

The Shandan Circuit part of the Central Business Park has no connection to the other part of the estate which includes Shaban St and Durgadin Drive. As a consequence, an informal access has been created over land comprising the site between Shandan Circuit and Shaban Street.

A site plan is attached to this report.

5. SURROUNDING LAND & CONTEXT

The site has direct Princes Highway exposure.

Surrounding development is essentially light industrial with some bulky goods. Fronting the Highway nearby is the Kollaras complex (wholesale and distribution centre), 'United Mitre 10' hardware and trade centre building (which also includes an Autobarn and a Safety product business), a used car yard, vacant land and the former Wilsons Holden dealership.

The estate contains a variety of light industrial developments/uses including car repairs, solar tint sales and installations, furniture sales, pet warehouse and picture frame manufacture to name a few. The estate contains a broad collection of landuses.

The south coast railway is located on the northern side of the Highway. The area further north west contains another industrial estate in Industrial Road, Oak Flats.

Residential development does not immediately adjoin the development site.

6. PREDEVELOPMENT CONSULTATIONS & LEGAL CONSIDERATIONS

6.1 General

Prior to the application being submitted to Council, the applicant made both informal and formal enquiries including attending a prelodgement meeting on 26 April 2012. At that meeting a number of issues were raised with the applicant for further and detailed exploration including but not limited to various Environmental Planning Instruments such as State Environmental Planning Policies, *Illawarra Regional Environmental Plan No. 1* (now deemed SEPP), *Shellharbour Local Environmental Plan 2000*, *Draft Shellharbour Local Environmental Plan 2011* and Development Control Plans, Council Policies, and a variety of issues such as crime prevention and security which are normally canvassed in a statement of environmental effects and section 79C assessment made pursuant to the EPA Act 1979.

Significant to Council however was the issue of the road closure that is, whether or not, subject to a satisfactory s79C assessment, consent could be issued using deferred provisions in the EPA Act 1979.

In this regard, Hydrox Nominees Pty Ltd submitted a legal opinion from Corrs Chambers and Westgarth (hereafter 'Corrs') which in summary concludes a deferred commencement style consent (assuming satisfactory assessment) could be issued, with a condition requiring the partial road closure of the road to be effected prior to the consent becoming operational.

The advice includes a number of other comments and recommendations. These are discussed below given that Council received a late submission from an objector who took issue with the Corrs legal advice.

Council's Manager Property and Recreation is aware of the application and commented that a separate process concerning the road closure is required and is in train and furthermore the creation of a new road will require dedication of that road to Council at cost to the developer. A condition can be imposed to this effect.

6.2 Corrs Comments/Recommendations

In summary, Corrs expressed the following opinion:

- Council has the power to make application to partially close the road.
- If the road is closed, the road will become operational land which will enable Council to sell, lease or licence the land.
- Council must provide owner's consent for the making of a development application.
- Council is at liberty to concurrently engage in the statutory process of the road closure and assess a development application.
- To ensure that there is no administrative law challenge on the basis of apprehended bias of way of prejudgement that the following occur:
 - the road closure and development application assessment be kept entirely separate.
 - a proper s79C assessment is to be made of the proposed development.
 - an independent valuation of the land should be obtained by Council for the road, once closed.
 - the Council report and resolution regarding any agreement to sell the former public road must refer to any public interest.
 - while not mandatory, Council may wish to engage an independent town planner to assess the application and write the report to Council.
 - adhere to notification requirements including exhibition of amended plans.
 - ensure proper notification is provided by the Minister for the road closure and proper process is followed.

6.3 Council's Review of Corrs' Opinion

Council engaged an independent accredited environmental lawyer during the assessment of the application to review the Corrs opinion.

The review concluded:

- That Council provide owner's consent to the making of the development application before the s79C assessment is completed (owner's consent was provided on 1 July 2012).
- That the report to the JRPP contain a statement that the Council may stand to benefit financially as a result of the road closure is an irrelevant matter for the purposes of an assessment under s79C.
- It is agreed that the JRPP can determine the application pending the closure of Shandan Circuit.
- There is nothing inherently wrong with Council exercising its functions under the EPA Act 1979 and the *Roads Act 1993* providing that full effect is given to each statutory regime and that the two processes are kept separate.
- With respect to the comment regarding the appointment of an independent town planner, the lawyer comments that the author of the Corrs advice was not aware at the time of preparing the advice that the JRPP, not Council would be the consent authority and in this regard is agreement that this is not mandatory and that it

...is reasonable, in the circumstances, for Council to not follow that particular recommendation in the Corrs advice, and there is no suggestion by not following that recommendation that the Corrs advice is wrong in its entirety. I have no reason to doubt the case law analysis undertaken by the author of the Corrs advice or the conclusions reached.

With reference to the comment about adhering to the notification requirements, the notification in this instance exceeded the norm being 21 days as opposed to 14 days.

The plans were amended during and as a result of the assessment. The changes were made to address issues with car parking dimensions, footpath width, and drainage design.

The changes to the development to address these concerns are considered insignificant and essentially reduce the floorspace with amenities being repositioned in a mezzanine level and thus incorporation of a lift to address accessibility issues. The appearance and nature of the development remain materially the same as originally submitted to Council. The changes do not raise new issues and are not related to the concerns raised in objections.

During the assessment of the application it was also noted by Council's Traffic Engineer that part of the development site did not appear to be included in the road closure proposal. The application and consideration thereof is however unaffected as the site plan for the development correctly showed the extent of the proposed development. The proposed plan of consolidation submitted with the application also correctly showed the proposed alignment to be dedicated to Council. As mentioned earlier, the road closure process is under other legislation, is separate and independent to the processing of the development application.

7. DETAILED DESCRIPTION OF PROPOSAL

The proposal includes the following:

- Demolition of existing buildings and structures.
- Home improvement centre including:
 - General sales and main floor area for a range of products including hardware, timber, building materials and supplies, décor and home decoration materials, kitchen and bathroom products and fittings.

- Entry and administration areas inclusive of amenities.
 - Garden and nursery centre including plants, gardening products and related items and equipment.
 - Trade area and sales inclusive of a drive in loading area.
 - Café.
 - Car parking for 340 vehicles.
 - Landscaping along the Highway.
 - Service and waste areas.
 - Rainwater storage tanks.
 - Pump room.
 - 12m internally illuminated pylon sign.
- Lot consolidation and dedication of new road. Whilst Shandan Circuit is being formally closed, this component of the development is a separate matter and is not subject to the section 79C assessment under the EPA Act 1979.

The fact that there may be some financial benefit gained by Council as a result of the road closure is irrelevant to the development application and assessment of DA No. 192/2012.

The overall size of the building is 13,145 square metres. The whole development site is 36,274 square metres (this area includes the road to be dedicated and residue of the former road reserve).

The home improvement centre is one building divided into three operational areas which include general sales, garden and nursery sales and the trade area sales. The building is articulated along the western façade with the main entry facing the car park. The garden centre is located adjacent to the Highway.

The centre is to operate from 6.00am to 10.00pm Monday to Friday and 6.00am to 9.00pm Saturday and Sunday.

Vehicular and service access is proposed to be provided by the realigned Shandan Circuit which will connect Colden Drive and the Princes Highway to Shaban Street in the estate.

Parking will be at grade accommodating 340 spaces inclusive of eight accessible spaces and three trailer spaces. Parking has been provided on the basis of one space per 38.6 square metres of floor area.

A perimeter road will provide access to the loading areas and garbage collection area. The perimeter road satisfactorily accommodates a 19m semi-trailer and 12.5 large rigid truck, the largest types of vehicles which are expected to service the development.

The signage is typical to Masters developments elsewhere. A 12m high pylon sign is proposed on the Highway frontage. Illuminated signage is also proposed on the western (front), eastern and northern (facing the Highway) façades. The plans attached to this report illustrate the location of the signs relative to the building.

A landscape plan accompanied the proposal. Whilst there has been some change to the site layout to address issues with car parking and drainage as mentioned earlier, the landscape design has been assessed as satisfactory by Council. If the development is approved, the plan can be easily adjusted to reflect the changes for the overall development of the site.

8. PLANNING FRAMEWORK

The following are relevant planning controls that have been considered in the assessment of this application.

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy No. 55 Remediation of Land

State Environmental Planning Policy No. 33 Hazardous and Offensive Development

State Environmental Planning Policy No. 64 Advertising and Signage

Illawarra Regional Environmental Plan No. 1 (Deemed SEPP)

Shellharbour Local Environmental Plan 2000

Draft State Environmental Planning Policy (Competition) 2010

Draft Shellharbour Local Environmental Plan 2011

Illawarra Regional Strategy

Shellharbour Floodplain Risk Management Development Control Plan

Shellharbour Industrial Development Control Plan

Shellharbour Waste Minimisation Development Control Plan (Amendment 1)

Shellharbour Advertising and Identifications Signs Development Control Plan

Shellharbour Section 94 Contributions Plan 2005 (Amendment 1) dated 14 September 2006

Shellharbour Notifications Policy Development Control Plan

Shellharbour Landscape Guidelines

Shellharbour Car Parking Policy

Shellharbour Stormwater Policy

Hereafter all State Policies are referred to as SEPP's, Local Environmental Plans as LEP's and Development Control Plans as DCP's.

9. ASSESSMENT

This application has been assessed in accordance with s79C of the EPA Act 1979. The following comments are made with respect to the relevant provisions of EPA Act 1979 and development proposal.

9.1 (1) (a) (i) The provisions of any Environmental Planning Instrument

9.1.1 *State Environmental Planning Policy (Infrastructure) 2007*

The development is classed as traffic generating development pursuant to Schedule 3 of the SEPP. Accordingly, the application was referred to the Roads and Maritime Services (RMS) (formerly the Roads and Traffic Authority) in accordance with Clause 104.

The RMS responded via letter 18 July 2012 raising a number of concerns but at the same time recommending a number of conditions of consent.

Noting that the RMS commented that it had 'strong concerns' regarding the potential impact of the development on the Highway but simultaneously recommended conditions for approval, Council was concerned that the result of the referral was somewhat ambiguous.

The RMS' concerns were subsequently relayed to the applicant with a view to exploring the concerns in detail to eliminate any ambiguity and ensure that the impacts of the development were acceptable.

The RMS's concerns related to:

- the potential impacts of the development on the signalised intersection at Colden Drive and the Highway,
- the traffic generation from the development being understated,
- the analysis not exploring the link between Shandan Circuit and Shaban St and impact the link would have, and
- that desirable stopping sight distances were unlikely to be achieved.

The applicant engaged Colston Budd Hunt and Kafes (CBHK) to undertake further investigations including an amended SIDRA analysis. A further report was submitted to the RMS for consideration.

In response, the RMS via a letter dated 9 August 2012, concluded that impacts of the development are acceptable and that stopping sight distances can be achieved.

The RMS is also recommending the inclusion of a condition of consent which will require details of the drainage (design) to be connected to that of the RMS' to be submitted to the RMS for concurrence/consent under s138 of the *Roads Act 1993* prior to issue of a Construction Certificate. A condition to this effect is included in the conditions which follow section 12 'Conclusion' in this report.

Council's Traffic Engineer reviewed the traffic supplementary report by CBHK raised no issue with the proposal subject to compliance with the inclusion of the condition as recommended by the RMS.

9.1.2 State Environmental Planning Policy No. 55 Remediation of Land

Whilst this SEPP is likely to have been considered when the original subdivision was proposed, a Phase 1 Environmental Site Assessment was undertaken by Environmental Investigation Services (EIS). The report recommended that:

- *EIS consider that a detailed intrusive investigation should be undertaken at the site, with particular emphasis on the areas of deep fill (former creek/drainage channel and south-west section). The investigation should also include assessment in the vicinity of the mechanics workshops and possible oil/water separator.*
- *The overgrown areas should be mowed to allow better inspection of the ground surface in particular in the south-east section of the site, where stockpiles of rubbish were partly obscured. The grass also restricted inspection of the site of the former shed. Surface inspection and intrusive soil investigation should be undertaken in these areas to better assess the contamination risks.*

The report concluded that:

Based on the scope of the work undertaken for this assessment EIS consider that the site can be made suitable for the proposed commercial/industrial development provided that the recommendations detailed above are suitable addressed.

In the Statement of Environmental Effects (SEE) at page 22, there is a comment that indicates that Hydrox Nominees is prepared to meet a condition of consent that it is prepared to undertake a Phase 2 Environmental Site Assessment prior to the issue of a Construction Certificate. Such a condition is recommended and included in the conditions following the Conclusion section in this report (section 12).

Council's Environmental Officer reviewed the SEE and Phase 1 report and concurs with the recommendation made by EIS.

9.1.3 State Environmental Planning Policy No. 33 Hazardous and Offensive Development

The SEE commented that this SEPP does not apply to the development as it is not an industrial development or industrial in nature however it will be selling products that are potentially hazardous in nature.

Irrespective, the issue was explored with the applicant advising in writing that the quantities of goods that could be perceived as dangerous will be less than the screening threshold in the SEPP.

It is therefore recommended that a condition of consent be imposed to limit goods to be kept below the screening threshold of the SEPP.

This is consistent with other similar developments considered elsewhere in the State by the JRPP including the Masters proposal within the Camden Local Government Area (Gregory Hills).

9.1.4 State Environmental Planning Policy No. 64 Advertising and Signage

See also section 9.3.4 of this report.

The Free Standing Pylon Sign

One of the SEPP's main objectives is to ensure that signage is "compatible with the desired amenity and visual character of an area".

The proposed free standing sign will be 12m high. It is recognised that the size of the structure will be significant however in the overall context it is not out of keeping with the area or overwhelmingly objectionable.

The Kollaras building is a substantial structure generally at about 11m in height and in part reaching 12 metres (over the entry). The Mitre 10 building benefits from a reduced Highway setback (this was a policy variation) which was approved at an Ordinary Meeting of Council. This building is setback only 1.2m and is 52m long, 8.25m high with 10.180m on the parapet features.

The Masters proposal includes:

- a 4.61m landscape strip
- 8.39m permitter access/circulation road which is a paved area next to the development
- 13m setback from the property boundary to the garden area, and
- 41m -50m setback between the main building to the Highway property boundary.

Whilst select areas of the external building façade will be painted a corporate blue, the development does not have the benefit of 'wall' exposure as is the case with the Mitre 10 building nearby. Due to the reduced setback to the Highway, the Mitre 10 building is relatively imposing.

As such, a single slim pylon sign is not considered an unreasonable proposal for the context of the development also having regard to its setting near a busy roundabout and the speed at which traffic passes the site (80km per hour). The actual wall of the building proper is over 40m from the Highway at the closest point. The fence and walls associated with the garden centre component are closer at about 13m.

The applicant has indicated in Appendix D of the SEE report that illumination will be associated with hours of trade. Accordingly, a condition of consent can be imposed to reinforce this point and ensure that the level of illumination does not cause glare of nuisance to passing traffic.

The pylon sign is located on the development site and will serve to identify the site and be located close the point of entry into the estate.

There are no special features in the locality or important views that need to be observed. It will not obstruct views or other signage in the area.

It is envisaged that if the development is approved, that the signage will be approved for the life of the development.

Other Signage

Signage is located on building facades and within the development site itself. Façade signage consists of lettering and whilst large is proportional to the scale of the building, noting also the distance of the signage when viewed from Shandan Circuit and the Highway.

The signage throughout the site serves to provide direction and instruction to customers with respect to matters such as trolley return locations, loading dock location, parking for trailers, accessible parking, trade entry and so on. These are considered acceptable and desirable to facilitate traffic and operational management.

Conclusion

Overall it is considered that the signs are consistent with the aims, objectives and Schedule 1 assessment criteria of the SEPP.

9.1.5 Illawarra Regional Environmental Plan No. 1 (IREP No. 1) (Deemed SEPP)

Whilst this Plan applies to the site, there are limited applicable provisions. Of relevance is Part 17, relating to high rise buildings in the region. Under clause 139(3) where a building is proposed to exceed 11m, the Director General of the Department of Planning and Infrastructure must grant concurrence. This function has been formally delegated to Shellharbour City Council. This delegation was recently confirmed as a result of other assessments made for other buildings exceeding the 11m height limit in the Local Government Area.

The definition of height as contained in the IREP No. 1 is reproduced below:

***height**, in relation to a building which has ceilings, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.*

When considering a proposal greater than 11m, the following must be taken into account. SEPP No. 1 does not apply as the clause within the IREP No. 1 has a built in variation mechanism.

- a. the height, scale, bulk and density of the proposed building*
- b. the external appearance and materials used on the exterior of the proposed building*
- c. the relationship of the proposed building to the streetscape or landscape*
- d. the effect of the proposed building on public amenity, including pedestrian amenity*
- e. the effect of the proposed building on wind patterns and wind velocity in public places*
- f. the effect of the proposed building on overshadowing of public places*
- g. the effect of the proposed building on views from public places*
- h. the effect of the proposed building on any item of the environmental heritage in the vicinity, and*
- i. the effect of reflections from the exterior of the proposed building on roads, public places and buildings in the vicinity.*

The development does not exceed 11m in height having regard to the definition contained in the IREP No. 1.

The parapet feature extends to 11m above the proposed ground level. The ridge line of the building is proposed to site at 23.57m AHD which is 9.57m above the proposed building finished floor level.

Typically controls aimed to control height are to control the size and scale of the development taking into account the context of a locality as is evidence by the heads of consideration extracted from the IREP No. 1 above.

The proposal is not dissimilar to existing development in the area. Further noting that the development is effectively 'side on' with the short side of the development fronting the Highway, the visual impact of the proposal is considered largely internal to the Central Business Park estate. Whilst development in the estate is predominantly smaller industrial units, there are substantial buildings already approved on the periphery of the estate and this Masters proposal is not dissimilar or out of context in this regard.

It is not envisaged that the building will impact on wind patterns in the locality, overshadow public places or cause reflection and glare nuisance. It does not affect items of environmental heritage or pedestrian amenity.

The relatively small protrusion of the parapet feature which is confined to the centre of the development largely as a result of cutting and filling the site to take into account the 6m fall, is considered insignificant to the development as a whole.

9.1.6 Shellharbour Local Environmental Plan 2000 (SLEP 2000)

Zoning & Characterisation of Development

Under the provisions of the SLEP 2000, the site is zoned 4(a) Light Industrial. The road is uncoloured or 'unzoned'. Clause 7 of the SLEP 2000 adopts the Model Provisions 1980. Whilst the Model Provisions have been repealed there are transitional provisions in place taking into account that there are a number of existing Environmental Planning Instruments that refer to the Model Provisions.

Clause 14 of the Model Provisions makes reference to development on public roads and states that development consent is required and that the land takes on the zone characteristics of the land that adjoins.

Accordingly, the unzoned land in this instance is being treated as if it is zoned 4(a) Light Industrial.

Under clause 10(3) of the SLEP 2000, the objectives of the zone must be taken into account in the assessment of a development application. The objective of the zone is:

To provide for a wide variety of light industrial uses which are generally compatible with nearby residential neighbourhoods.

The proposal is not considered inconsistent with the objective noting that the term light industrial uses is designed to capture a range of uses, whilst seeking to ensure that any residential development is not adversely affected. There is no immediate adjoining residential development with housing being located some distance from the site.

The development has been characterised as *bulky goods*. With respect to components of the development, if they were allowed to operate independently and in isolation to the Masters development, definitions of *refreshment room* and *plant nursery* could also be applied to those components. None of these are expressly prohibited.

*Bulky goods means large goods which **in the opinion of Council** are of such a size, weight or shape as to require a large area for handling, storage or display but does not include food and grocery items.*

Plant nursery means a building or space used for the growing and wholesale or retail selling of plants whether or not ancillary products are sold there.

Refreshment room means a restaurant, café, tea room eating house or the like.

Council has consistently applied the bulky goods definition and characterised the Bunnings, Magnet Mart and Mitre 10 developments as bulky goods. Whilst it is acknowledged that a customer can purchase a packet of nails or a single tin of paint, a customer may also purchase large and bulky items such as bath tubs, planks of timber, bags of cement and so on.

The items contained in these (Bunnings/Masters) types of stores are of such a volume, shape and size that there is a need for a large area for display, handling etc. In this regard, **in the opinion of Council** the proposal can be reasonably characterised as bulky goods.

The café is to be contained within the Masters building, will have the same opening hours as the Masters development and will only be accessed through the main entry of the store. There is no intention to operate the café component independent to the Masters store. With respect to the floorspace that will be made available to the café relative to the overall complex and how it is to be operated, it is agreed that there is a reasonable argument that it is ancillary to the development and will provide for shopper's amenity and comfort.

Clause 34 of the SLEP 2000

Under this clause, Council must be satisfied that there is a need for the development in the zone with respect to the availability of other land and that the development will not adversely affect other development in nearby business centres. The clause is reproduced below.

34 Bulky goods retailing within Zones 4 (a) and 4 (a3)

Despite any other provision of this plan, the Council may consent to development of land within Zone 4 (a) or 4 (a3) for the purpose of retailing of bulky goods but only if it has considered:

- a. the availability of suitable lands in any nearby business centre, and*
- b. the impact of the development on the predominantly industrial nature of Zone 4 (a) or 4 (a3), and*
- c. the effect of the development on the viability of the nearby business centre.*

The applicant explored this clause and responded as follows:

To fully satisfy Clause 34 a) of the Shellharbour LEP 2000, we have undertaken an assessment of the suitability, availability and commercial viability of sites within business centres in Shellharbour LGA to accommodate the proposed development. It is necessary for all three criteria to be satisfied for the proposed development to work and thus for the land to be "suitable".

To accommodate a 13,500sqm home improvement centre together with requisite car parking and servicing areas would need a site of at least 3ha. Given the requirements of this type of business it would not be commercially viable to disaggregate the car parking facilities from the bulky goods unit. Similarly, given the modest floorspace turnover per square metre of this operator and the non-Metropolitan location of Shellharbour City LGA, it would not be financially feasible to develop a two storey development incorporating stacked car parking and bulky goods floorspace.

As previously indicated the proposed development would serve a large trade area. On this basis it would only be appropriate for it to be accommodated in large centres which serve correspondingly large catchments and a higher order role in the provision of goods and services. Such centres should be a minimum of Major Centre level (as defined in the SRCCS) which serve trade areas containing at least 60,000 people. There are three centres of this size or greater in Shellharbour LGA: Shellharbour City Centre (Major Regional Centre), Warilla Grove (Major Town Centre) and Albion Park (Major Town Centre).

With respect to Shellharbour City Centre, Appendix 1 of this letter provides an assessment of potential sites on which to accommodate the proposed development. This assessment indicates that there are no suitable, available or viable sites within the City Centre on which the proposed development could be accommodated.

We note that both Warilla Grove and Albion Park are defined under the B2 Local Centre zoning in the draft Shellharbour LEP 2011. The objectives of this zoning include:

"To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area."

Given the higher-order shopping role performed by Masters, with individual stores requiring a trade area of at least 100,000 people, this would clearly cater for more than local shopping needs as envisaged by this zoning. However, for the purposes of this letter we have included an assessment of potential sites within Warilla Grove and Albion Park Major Town Centres.

In Albion Park, there are several vacant plots within the centre zoning but all are less than 1ha and are therefore of an insufficient size to accommodate the proposed development. Even comprehensive development of the Albion Park Village Shopping Centre itself, which constitutes the largest plot in the centre, would not yield a site of sufficient size notwithstanding the need to re-provide the existing floorspace which totals 5,570sqm³, less than half the size of the proposed home improvement centre.

There is insufficient space to accommodate the proposed development within Warilla Park Major Town Centre. Commercial centre zoned land within Warilla Park comprises approximately 4.5ha in total and there is 13,840sqm of floorspace existing. On this basis, a comprehensive redevelopment of the centre is the only way the proposed development could possibly be accommodated.

Note that the Shellharbour Super Centre and surroundings is zoned for B5 Business Development uses in the draft Shellharbour LEP 2011 and therefore does not constitute a "business centre". No assessment of sites within this area is required in order to fulfil the requirements of Clause 34 (a).

On the basis of this analysis, we conclude that there are no suitable lands available within existing centres in the Shellharbour LGA on which the proposed development could be accommodated.

In regard to parts b) and c) of Clause 34, we note the following:

- *The subject site is an appropriate location at which to accommodate a Masters store given that it comprises an existing cluster of bulky goods and commercial trading operations. This is consistent with our previous advice and recommended zoning for the area as contained in the SRCCS and SELS.*
- *The proposed development would not adversely impact on the vitality or viability of nearby business centres. It would provide an alternative offer that may divert some trade from existing businesses in the short-term but these are predominately not located in centres and over time any loss of trade would be made good by growth in household expenditure in the trade area. It would thus increase competition and would widen choice for residents.*
- *The subject site is largely vacant and partially in use for automotive sales uses. The redevelopment of the site would therefore not result in the loss of any existing industrial businesses directly.*
- *There are a number of other vacant plots in the Central Business Park which would still be available to allow new industrial uses into the area in the future, if there was sufficient demand. This is unlikely given the existing quantum of vacant land in the Central Business Park (5.6ha based on the SELS) and historically low levels of take-up which are likely to be a facet of falling demand for industrial lands since the GFC6 and the provision of better quality, better located industrial lands elsewhere.*
- *Industrial market conditions are currently very weak in the Wollongong and Illawarra Regions. Based on Hill PDAs research since the GFC there has been a 15-25% decrease in values across the market. Unimproved land values have decreased as much as 20-30%. Over the past four years, both the cumulative number and value of industrial property transactions has fallen.*

- *Demand for industrial land is likely to fall further as the impact of the scaling back of production at the BlueScope Steel Plant is felt. This is likely to negatively impact upon demand for industrial space from local companies which provide a support role to the steelworks.*
- *There is significant zoned industrial land elsewhere in Shellharbour and Wollongong LGAs, including Kembla Grange (110ha of undeveloped land), Unanderra (200ha) and Illawarra Regional Airport (235ha). Within this context the development of a Masters store on the subject site would not have significant impact on the availability of industrial land in the wider area.*

In the context of falling demand for industrial land and the existing supply and availability of industrial land, and given the current non-industrial use of the subject site, we consider that the proposed development is consistent with Clause 34 of the Shellharbour LEP 2000.

With respect to clause 34, Council has considered the impacts of the development and in context believes that the impacts are acceptable.

Clause 84

This clause is reproduced below.

84 Development in the vicinity of Illawarra Regional Airport

Despite any other provision of this plan, consent must not be granted to development on land affected by restrictions as indicated in the plan titled "Airport Height Limitation and Noise Exposure Forecast Plan" dated 17 April 1998 and held in the office of the Council unless:

- a. the consent authority determines the proposal is acceptable in relation to building height, noise exposure, lighting and bird hazard management, and*
- b. where a proposal does not comply with that plan, the Civil Aviation Safety Authority has been given notice of the proposal and any comments made by it to the consent authority within 28 days of its being notified have been taken into consideration by the consent authority.*

The proposal is considered acceptable with respect to height, noise exposure, lighting and bird hazard management.

The overall height of the development is satisfactory noting that it does not intrude into the obstacle height limitations specified for the area/site. The limitation is set at RL 52m AHD. The top of the building is shown at 25m AHD.

9.2 (1)(a)(ii) The provisions of any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority

9.2.1 State Environmental Planning Policy (Competition) 2010

In July 2008, the Australian Competition and Consumer Commission (ACCC) stated that planning laws acted as

artificial barriers to the establishment of new supermarkets, which had the likely consequence of impacting on competition. It was also found that objection processes under planning laws were used by some supermarkets as a means to deter new

entrants and protect existing businesses that than a way of identifying legitimate planning concerns. (Competition Reform & the planning System: The Draft Competition SEPP, Lindsay Taylor Lawyers, September 2010)

In August 2008, the Productivity Commission published an inquiry report that examined various methods of improving the retail tenancy market in Australia which acknowledged the merit of planning controls but commented that there should be an examination into ways of relaxing controls that limit competition and restrict retail space and its use.

In December 2008 the Council of Australian Governments (COAG) recognised the importance of competitive benefits that can be secured through planning systems.

In May 2009, the NSW Department of Planning and the NSW Better Regulation Office jointly published an issues paper titled *Promoting Economic Growth and Competition through the Planning System*. Following receipt of submissions a report was published in April 2010 which recommended the making of the SEPP.

With respect to development applications, the draft SEPP states that the following considerations may not be taken into account by a consent authority:

- the commercial viability of a proposed development and
- the likely impact of a proposed commercial development on the commercial viability of other commercial development unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of facilities and services available to the local community.

In summary the SEPP aims to reduce uncertainty and encourage prospective market entrants.

The status of the SEPP is unknown. Further references to this Draft SEPP are made later in this report in discussions associated with economic impacts.

9.2.2 Draft Shellharbour Local Environmental Plan 2011

The draft SLEP 2011 has been exhibited on two occasions. As mentioned in section 1 of this report, has recently been submitted to the Department of Planning and Infrastructure for gazettal (legal making). In this regard, the making of the draft SLEP 2011 is considered imminent.

The draft proposes to zone the area IN2 Light Industrial which permits bulky goods premises, garden centres, hardware and building supplies. The definitions are reproduced below.

Bulky goods premises means a building or place the principal purpose of which is the sale, hire or display of bulky goods, begin goods that are of such size or weight as to require:

- a. *A large area for handling, display or storage and*
- b. *Direct vehicular access tot eh site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,*

and including goods such as floor and window supplies, furniture, household electrical; goods, equestrian supplies and swimming pools, but does not include a building or

pace used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods".

Garden centre means a building or place the principle purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may, if ancillary to the principal place for which the building or place is used include a restaurant or café and the sale of any the following:

- a. outdoor furniture and furnishings, barbeques, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas*
- b. pets and pet supplies*
- c. fresh produce.*

Hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or material such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

The draft SLEP 2011 also contains development standards. It makes reference to an 11m height control for the site but contains an exceptions clause to enable the consent authority to consider variations on merit and to allow for some flexibility. The draft also contains a floor space ratio control of 1:1. This floor space control is not exceeded.

With reference to height, the draft includes the following definition which is different to that contained in the IREP No. 1 referred to earlier:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae. Satellite dishes, masts, flagpoles, chimneys, flues and the like.

Whilst the issue of height has been explored earlier in this report, it is noted that the component of the building that exceeds 11m is essentially limited to the middle of the building where there is a parapet over the entry. The height exceedence at this point is about 13m. Noting the location of this exceedence (in the middle of the building) and the location and nature of adjoining developments, the height is considered acceptable and unlikely to have an adverse impact on adjoining development or the character of the area.

The cut/fill in order to achieve the desired floor level to address drainage and flooding issues (across the 6m fall of the site), is a contributing factor to the height non-compliance.

Albeit that the building is in part over 11m, it is not dissimilar in scale or nature to other similar buildings nearby.

Predominantly, the façade is compliant and does not exceed 10.7m when measured to the highest point above natural ground level.

9.3 (1) (a) (iii) Development Control Plans

9.3.1 Shellharbour Floodplain Risk Management Development Control Plan

The applicant engaged ACOR Consultants Pty Limited, who prepared a *Flood & Stormwater Drainage Report*, Report No. SY110209-120605-C, dated 7 June 2012. The report concludes that from the assessment of the available data and information covering

mainstream flooding and local flooding regimes at the development site, that the flood impacts will be minimal with regard to loss of flood storage, flood levels and velocities and cumulative impacts.

The report recommends certain design criteria to be applied to the proposed development including:

- a minimum floor level of RL 14. AHD
- building components to be flood compatible for building components below 14m AHD
- the design of the building must be structural adequate
- flood safety and evacuation measures must be designed into the development, and
- management of the home improvement centre to including storage of materials at or above 14m AHD.

Council's Subdivision Development Engineer reviewed the report and generally agreed with the conclusions drawn however requested details of the hydraulic model and a justification for the 1 hour storm event noting that this is not the critical storm duration.

The engineer commented with respect to the additional information, revised of plans and additional information with respect to flooding and drainage:

Surface water that bypasses the stormwater detention system will discharge from the site via the designated overland flow paths and emergency overland flow underground pip draining at the rear (east) of the site. This will ensure protection of the building from inundation up to the 100 year ARI storm event. Upstream existing overland flood flow will be contained with the new realigned Shandan Circuit road reserve.

A proposed building finished floor level of RL 14m AHD provides refuge above the 100 year ARI storm event accommodating 500mm freeboard. Evacuation is provided with reliable access for pedestrians within the site during the 100 year ARI. The submitted road reserve floodway capacities indicate water depth in the gutter will not exceed 0.2m for the critical year ARI design rainfall, this is acceptable.

9.3.2 Shellharbour Industrial Development Control Plan 2006

The proposal is generally consistent with the DCP with the following exceptions.

- the landscape setback from Shandan Circuit will be less than the 3.5m
- a landscape bay is not provided every five car parking spaces
- the building height does not comply with reference to the definition of height contained in the DCP, and
- Cut and fill exceeds the minimum 1.5m

Each of the non-compliances is discussed in turn below.

The development will require the removal of existing street trees. Council's Landscape Technical Officer and Tree Management Officer raised no issue with the removal of the trees noting that they will be replaced as a result of new planting associated with the development.

The setback to Shandan Circuit is about 2m. The area provided is adequate to enable the inclusion of trees and landscaping. Unlike most typical small industrial developments to which the DCP was envisaged to apply, the extent of the frontage to the newly aligned road and the Highway is significant.

The intent of providing landscaping for developments is to soften and enhance development and mitigate any adverse impacts including large expanses of paved areas.

Noting the change in level between the Shandan Circuit carriageway and new car park, the change in level combined with landscaping that is proposed are considered adequate measures in this instance with respect to the scale and nature of the development proposed. The plans have been endorsed by Council's Landscape Technical Officer. The provision of another 1.5m in area for the Shandan frontage and additional bays within the car park to achieve numerical compliance is unlikely to have any significant impact relative to the scale of the development. The departure from the standards contained in the DCP will not result in adverse or exacerbate any negative impacts.

On balance whilst the scale of the earthworks is extensive and is required to address a 6m fall, the site is also large. The change in level has been appropriately addressed and is required to address flooding issues to achieve a minimum floor level for the development.

The issue of height has been discussed previously.

9.3.3 Shellharbour Waste Minimisation Development Control Plan (Amendment 1)

The DCP requires all proposals seeking demolition and construction to be accompanied by a waste management plan. A waste management plan was included in the DA submission as Appendix F attached to the SEE.

Council's Team Leader - Waste Management reviewed the plan and raised no concerns with the plan. It was noted in the referral that being a commercial proposal, a private commercial arrangement can be entered into with a waste provider.

In the event that development consent is granted, it is recommended that the approved suite of documents refer to the waste management plan as well as incorporate standard conditions referring to waste management during and post construction.

9.3.4 Shellharbour Advertising and Identifications Signs Development Control Plan

The following signage is proposed:

- An internally illuminated 12m high pylon sign.
- Illuminated façade signs
 - 16 x 3.590 sign and 8.64 x 3.590m logo on the western elevation above entry
 - 6.77 x 1.5m Masters sign and logo on the northern and eastern elevations.
- Non illuminated signs
 - The word 'trade' over the trade component 4.72 x 1.5m (western elevation), and
 - The word 'garden' over the garden centre 6.23 x 1.5m (western elevation).

The following are the key controls that apply to the proposal:

- total sign area not to exceed 10% of each elevation and relate to the scale of the building
- one pole sign is permitted with a maximum height of 7m with maximum area of 4 square metres (free standing signs are included in the 10% calculation)
- corporate colours are counted within the 10%, and
- strong colours eg fluorescent are not permitted.

With respect to the lettering, the 10% requirement is satisfied inclusive of the pylon sign. The colour choice being 'blue' is a Master's signature colour and therefore clearly a corporate colour.

Similarly is Bunnings' green and red and the use of blue and orange for Mitre 10 etc. Whilst the blue is corporate, Council has allowed other developments to use corporate colours.

The issue at hand is whether or not the colour choice is reasonable in context. In this instance the colour selection is not considered objectionable with due regard to the site context and rainbow of colours that has progressively emerged in the estate.

The free standing sign has been explored earlier in this report in section 9.1.4.

9.3.5 Section 94 Contributions Plan 2005 (Amendment 1) dated 14 September 2006

Council's Section 94 Accountant has advised that contributions are not applicable. Given that one development is being constructed and the proposal involves demolition of existing development, no contribution is payable. This advice was confirmed by the Group Manager, City Strategy.

The Plan, in simple terms, levies for each tenancy or unit. In this regard, there is in reality no additional tenancy to be created. There are no special levies or benefit areas that apply to the development or site.

9.4 (1) (a) (iiia) Any draft planning or planning agreement that has been entered into

There are no agreements in place.

9.5 (1) (a) (iv) The Environmental Planning and Assessment Regulation 2000

The proposal is not within the Coastal zone. Demolition is proposed and as such it will be necessary to include a reference to the relevant Australian Standard.

9.6 (1) (a) (v) Any Coastal Zone Management Plan

None relevant to the proposal/site.

9.7 (1) (b) Likely Impacts of the Development

The key impacts are discussed below.

9.7.1 Traffic, Access and Car Parking

The main customer access is from the realigned Shandan Circuit. The lots that do not form part of the development application/proposal will retain access via the realigned Shandan Circuit.

Vehicles will enter the estate and via a signalised intersection at Colden Drive/Princes Highway. By turning into Shandan Circuit, access will be available to the Master's site via two driveways.

The customer car park will provide for 340 car parking spaces inclusive of 8 accessible spaces and three trailer spaces. The car park is at grade.

The trade sales area has been designed to accommodate vehicle movements into the building for loading and to circulate within the building in a forward direction before exiting the building into the customer car park.

Vehicle manoeuvring will be managed by directional signage comprising line marking and signage to assist customers in navigating through the car park.

Service vehicles will access the site via the road network similarly to customers however a ramped driveway in the south west corner will provide for ingress/egress. A turning area is provided adjacent to the building to allow for vehicles to exit in a forward direction.

Servicing is expected to be via a range of trucks. Two loading areas are provided along the southern boundary of the site.

Servicing including waste removal will require vehicles to enter and exit the site though the access point and will circulate through the service area which includes the waste management waste compactor areas.

A service lane surrounds the southern and eastern parts of the site and allows for loading into the garden centre.

CBHK undertook an assessment of the access arrangements and proposed closure of Shandan Circuit. As a result it was found that the development is likely to have weekday afternoon and Saturday peaks. With respect to anticipated traffic volumes and location of the intersection, the assessments concluded that the impacts on the Highway were acceptable and that the intersection would operate at a 'good' level of service and any queuing would be acceptable and not require any changes to Highway geometry and road design.

With respect to car parking, Council's *Car Parking Policy 1992* does not specifically refer to this type of development instead referring to conventional retail and office type uses with requirements of one space per 35 and 40 square metres respectively.

The proposal will provide parking at a rate of one space per 38.6 square metres. Council has accepted one space per 60 square metres (gross) for the Mitre 10 development nearby, one per 50 square metres for a bulky goods development at 144 Shellharbour Road and elsewhere. With regard to the car parking proposed and Master's experience concerning the operation of its home centres, the provision is considered reasonable and acceptable.

The internal layout, circulation areas and car parking spaces have been assessed as satisfactory by Council's Subdivision Development Engineer.

9.7.2 Social Impact

An assessment was made with reference to Crime Prevention Through Environmental Design principles (CPTED). To enhance security and safety there are a number of key CPTED principles which must be considered including:

- Natural surveillance - to ensure that there are opportunities to view into the site by residents, passers by, surrounding businesses and so on.
- Access control - to control who and when the site can be entered, using defined entry points, security, fencing etc.
- Territorial reinforcement and ownership and space management.
- Space management - ensure that space is properly used and maintained.

Council's Community Safety Officer concluded as a result of her CPTED assessment that the SEE and design has taken into account the CPTED principles and incorporated appropriate materials, landscaping lighting, fencing and controlled access however has acknowledged that the area is a graffiti hot spot and recommends that any graffiti should be removed as soon as possible to reduce the notoriety sought by offenders and decrease likelihood of appearing again. The Community Safety Officer is also recommending that any outer fence should be transparent and difficult to climb.

9.7.3 Economic Impact

An economic impact assessment was prepared by HillPDA which concluded (amongst other things) that:

- *The area which would be serviced by the proposed masters Home Improvement Centre is a high growth area, particularly due to the West Dapto urban release area nearby. As a result of population and expenditure growth in the surrounding area there is a significant need for additional hardware and bulky goods floorspace of 67,3000 square metres in 2014.....the proposed Masters Home Improvement Centre would contribute towards meeting this need.*
- *The proposed development would not adversely impact upon the trading performance of any existing retail centres. Growth in hardware and bulky goods expenditure alone is sufficient to justify a Masters store and in any case its major competitor would be existing Bunnings stores....*
- *The proposed development is on a site which is largely vacant and currently generates very little economic activity. A Masters Home Improvement Centre would support 150 jobs on the site directly in addition to an estimated 330 jobs during years during construction. It would generate some \$46M in economic activity through the construction process. This is particularly important given the recent redundancies announced in the Illawarra regional by BlueScope Steel*

In Council's assessment of the proposed development, Council's Strategic Planner commented that the report did not identify or explain what factors determined the primary and secondary trading areas, that the forecasts did not appear to accord with the Retail & Commercial Centres Study undertaken by the same consultants and did not address how industrial land and uses can be accommodated/protected. Accordingly a supplementary report was commissioned by the applicant and submitted to Council.

In summary the trade areas for the development comprise a primary trade area and secondary trade area. The primary area is envisaged to capture trade from the local government areas of Shellharbour and Kiama and the southern end of Wollongong. The secondary area is envisaged to capture the northern areas of Wollongong.

To justify the catchment, Hill PDA explains that there is no equivalent Masters store. The closest equivalent is Bunnings, furthermore, Masters is considered to be unique in that the range of products sold is not typically found in centres and are purchased infrequently and people are prepared to travel greater distances for their purchase (sometime referred to as higher order goods).

Location and accessibility also are determinants of the trade area along with topographical constraints which limit the extent of trade from the west.

The Retail and Commercial Centres Study commissioned by Council is discussed in the section 9.9 of this report.

The Illawarra Regional Strategy applies to the three local government areas including Shellharbour and proposes to ensure that there is sufficient land to accommodate housing and employment needs. The proposal will take up employment lands however as mentioned elsewhere, the development is also a reallocation of bulky goods floorspace from the Magnet Mart building. In terms of employment generation, the development proposal is expected to allow for an 'additional 130-150 jobs on site' (page 24, Urbis SEE).

9.8 (1) (c) Suitability of the Site

Whilst the site requires modification with regard to site levels to address flooding and the road realignment, the site is considered suitable for the proposal.

The zone both under the current plan and proposed plan permit the development, it is located amongst similar development and is not located in an area that raises incompatibility issues with respect to noise, traffic and amenity issues.

The site is sufficient large to provide adequate parking, setbacks and circulation areas for a range of vehicles.

9.9 (1) (d) Submissions

9.9.1 Political donations

Council placed a notice in the local newspaper, wrote to adjoining owners and placed signs on the development site. In the newspaper notice, Council advised that any written submission must indicate whether or not a reportable donation of gift has been made in the past two years to a councillor or Council employee. The same advice was provided in letters to adjoining owners. The advice indicated if donations were made, the submission must be accompanied by a statement.

There was no such statement in any of the submissions. Accordingly, it is taken that there have been no donations or gifts.

9.9.2 Objections

The development was notified for a period of 21 days as opposed to the normal 14 day period. In response, 14 submissions were received raising a number of issues which are summarised and addressed below.

The development is not properly characterised. It is not a bulky goods development and can be better described as a shop which is prohibited in the zone.

A café and drink business is not permissible in the zone. How can the applicant deny that this will be a McDonalds? The terminology is 'cute and allows the applicant to skirt around regulations and planning schemes'.

Comment

The characterisation and relevant planning definitions are reproduced earlier in this report. Importantly, the *Bulky goods* definition uses the expression 'in the opinion of Council'

*Bulky goods means large goods which **in the opinion of Council** are of such a size, weight or shape as to require a large area for handling, storage or display but does not include food and grocery items.*

The definition seeks to exclude supermarkets and the like. It does not expressly prevent refreshment rooms which is separately defined and identified as a permissible use.

Council, in considering how to best describe the development with regard to the definitions contained in the current planning regime is of the view that the bulky goods definition is the best fit. This is consistent with how other similar developments namely Bunnings, Magnet Mart and Mitre 10 were considered and assessed.

Within the overall development there are a number of activities/uses that are typically conducted which could be separately defined including educational establishments (if courses (such as DIY style) are offered), warehousing, sales of timber, hardware and building supplies, refreshment rooms (sausage sizzles, coffee/food sales), nursery garden product display and sales etc however, the operation of the centre is such that the components are related, interconnected and rely on each other to provide facility for people building renovating and fitting out their homes and it would not be unreasonable to expect people to spend some time in the centre and thus require access to amenities such as toilets as well as modest food and drink.

The fact that customers can eat something whilst frequenting the centre is incidental to the overall development. It is unlikely that the café component would be the destination trip for customers noting that it will not be able to operate independent to the trading hours of the Masters store. Irrespective, a refreshment room is a permissible use and is not considered an unreasonable proposition in the context of the development.

Details of who will operate the cafe component of the development were not provided in the written documentation accompanying the application. During discussions throughout the processing of the application the question was posed to the applicant who advised that an operator has not been identified at that time.

The proposal does not adequately address Clause 34 in the SLEP 2000.

Clause 34 of the SLEP 200 states s that development of land zoned 4(a) for bulky goods may only be allowed if:

- a. *the availability of suitable lands in any nearby **business centre**, and*
- b. *the impact of the development on the predominantly industrial nature of Zone 4 (a) or 4 (a3), and*
- c. *the effect of the development on the viability of the nearby business centre.*

To accommodate a Masters complex with 13,500 floor space, associated car parking and serve areas, the site requires about 3ha.

With regard to the area required and appropriately zoned (business) land there is no suitable land of a suitable size available for the development. Options were considered and explored by the applicant and tabled in an appendix attached to a supplementary report prepared by Hill PDA.

The development site is largely vacant with the exception of some buildings/hardstand which are to be demolished. The redevelopment of the site therefore does not result in a loss of industrial business in a direct way.

Observing that there is significant industrial zoned land in and Shellharbour the Masters store take up of land is unlikely to have a significant impact on the availability of industrial land in the wider area.

The proposal is inconsistent with strategic documents namely the Shellharbour Retail and Commercial Centres Study and the Shellharbour Employment Lands Study.

Comment

These studies were put to Council in August 2008 and September 2009 respectively. Council resolved to use them as a strategic policy basis for the review of the SLEP 2000 and DCP's and noted that they are intended to 'inform development proposal/application conceptualisation and assessment'.

Hill PDA prepared these studies and the Economic Impact report for Hydrox Nominees Pty Ltd Masters proposal. Council observed that there were some references between the reports that appeared at first glance to be inconsistent and warranting explanation.

Hill PDA advised that the methodology in the Centres Study and the Economic Impact report were different with regard to purposes of each report.

The Centres Study sought to consider supply and demand for bulky goods at a local area level (Shellharbour only) whilst the Economic Impact report was to address the impact of Masters store thus requiring different assumptions and approaches. Accordingly, they are not directly comparable.

Specifically, the differences are:

- Trade areas - to calculate demand for bulky goods floorspace in the Shellharbour area, only Shellharbour and a limited area in Kiama were used where as for the Masters proposal, the trade area was taken to be the whole Illawarra.
- Population - the Study used projections on dwelling forecasts sourced from 2006 Council data and some assumptions. The population for the Economic Impact report was based on more recent NSW Department of Planning and Infrastructure projections which were not available when the Centres Study was undertaken.
- Changes in bulky goods floorspace supply - Magnet Mart ceased to trade since the Centres Study. As such the former retailer accounted for about 9,200 square metres of floor area.
- Different growth rates have been assumed.
- Different price bases were used - 2009 data as opposed to 2006 figures for the Centres Study.

The Centres Study recommended a B6 Enterprise Corridor zoning for the Central Business Park under the standard LEP template. Based on the standard template zoning, this would permit with consent garden centres, hardware and building suppliers and landscaping building suppliers. Although Council did not adopt the recommendation, the development of a Masters store on the site is consistent with the advice in the Centres Study. Whilst the Study stated that bulky goods should be prohibited in industrial zones this was based on an assumption that the area would be zoned B6 as opposed to IN2.

Hill PDA completed the Shellharbour Employment Lands Study on behalf of Council in 2009. The Study also recommended that the Central Business Park be rezoned for B6 Enterprise Corridor use (and SP2). Whilst this Study sought to resist bulky goods development in industrial zones, it assumed that the site and surrounds would be rezoned to B6 which is non-industrial. The Study nonetheless supported bulky goods in the B6 zone including the development site.

The proposal is inconsistent with the NSW Draft Centres Policy 2009.

Comment

The NSW Draft Centres Policy was released in 2009. It supported the development of strong activity centres and stipulates that bulky goods should be accommodated in centres, where possible. Where suitable sites are not available in centres they should be clustered in B5 or edge of centre locations. This is in recognition that bulky goods retailers require large areas for the handling, display and storage of goods and direct vehicular access by members of the public. They are therefore attracted to locations that offer lower site costs offsetting lower retail turnovers relative to floor area.

There is limited B5 land zoned in the draft SLEP 2011 located to the west of the Shellharbour City Centre and it is effectively developed. There is no scope to accommodate a Masters complex in this location.

The Centres Policy also seeks to allow new entrants into the retail market by ensuring that the supply of floorspace accommodates market demand. In this respect, although the development is not within a centre as such, it would allow for bulky goods floorspace to be met locally in a cluster of similar businesses.

Bulky goods should not be located in industrial areas.

Comment

The floor space required for bulky goods is relatively significant. To locate such large premises in commercial areas is not possible with respect to the available supply and value of commercially zoned land.

The zone permits the use.

The Economic Impact Analysis is inadequate, a detailed analysis should be made.

Comment

The Hill PDA report accompanying the application provided an impact analysis with regard to potential impacts on existing centres. Notwithstanding this, a supplementary report provided a more detailed discussion on the likely trading impacts which could eventuate from the proposed development.

The conclusion reached was:

...any short term economic impacts in terms of trade diversion would predominately fall on out of centre locations and only a marginal proportion may fall on existing retailers in centres. Of the marginal proportion of impact which may fall on in-centre retailers, there would be on small independent stores which are not main anchors. Even then any impacts would be on a small number of retailers in a thin category of goods. The

proposed development would have no significant impact on the overall trading performance of any centre.

On the basis of the significant forecast growth in household retail expenditure on hardware and related products forecast for the trade area, and given that any trade diversion which may occur would largely fall upon business which are not located in centres, the proposed development is acceptable in economic impact terms. It would increase competition in the hardware and bulky goods sector and allow residential greater choice as to where they undertake (sic) such shopping trips without adversely impacting upon the vitality or viability of any existing centre. In this sense it would therefore provide a positive impact for residents in the trade area.

Masters should undertake sequential testing to demonstrate why they are unable to locate in an identified bulky goods centre.

Comment

An objector commented that Council should require Masters to undertake sequential testing to demonstrate why they are unable to locate in an identified bulky goods centre. In terms of the NSW Draft Centres Policy, this establishes that a sequential approach should be adopted towards land rezoning in edge or out of centre locations. It is understood that the purpose of this approach is to ensure that:

The availability of in-centre sites is first assessed. Only when it can be demonstrated that no alternative in centre site exists for new retail development should edge of centre sites be considered. This is in view of in centre sites being the preferred location for new retail development. (HillPDA, Albion Park Masters Additional Economic Work, page 4).

A supplementary HillPDA report explains that the application is not a land rezoning application and therefore does not trigger the need for a gateway and sequential sites assessment.

Observing that Magnet Mart operated from the area selling bulky goods until its closure in January 2009, the proposed Masters development in effect constitutes a replacement of former bulky goods floorspace.

The jobs forecast/estimates are inaccurate and could result in job losses.

Comment

The Masters proposal will result in construction jobs and jobs associated with the operation of the centre. The concern lies with the scenario that was experienced as a result of the Magnet Mart store which allegedly resulted in job losses in other businesses nearby and ultimately those employed by Magnet Mart. The future success or otherwise of a business is dependent on a number of factors and is not an area that is typically explored within a s79C assessment.

The development will negatively impact smaller retailers.

Comment

The development will impact on other businesses however in the assessment of a proposal care must be taken to ensure that impact is not taken to be business competition. Smaller specialty traders may be impacted upon however large stores such as Bunnings carry a limited line of product which is designed to capture majority trade. Speciality stores typically carry product that is different and cannot be obtained or easily acquired in larger chains.

It is pre-emptive to rely on the draft SLEP 2011 in light of the legislative review of the planning system 'overhaul'.

Comment

A consent authority cannot defer consideration of a development application on the basis that the legislative framework is under review or may change in the future. The assessment must be made with regard to the planning controls and any drafts that prevail and that have proceeded to exhibition phase. In the event that a draft instrument is gazetted, there are typically savings and transitional provisions in place that enable a proposal to be assessed under the 'rules' that prevailed at the time of lodgement.

The height of the building and sign exceed 11m. The proposal should be amended to comply.

Comment

The issue of height has been explored earlier. The 11m height control is not a prohibition. The provisions contained in the IREP No allow for variation with regard to certain heads of consideration. Further, as noted earlier, the proposal does not measure 11m when applying the definition contained in the IREP No. 1 as such does not exceed 11m. With respect to the DCP, the controls contained in a DCP can be varied however any variation must be properly justified and it must be demonstrated that there are no adverse impacts.

The 3.95m wide 12m high pylon sign and building parapet intrusion located at the centre of the building are in the scale with the development and locality generally and represent relatively minor height intrusions. They will not result in overshadowing, impact on heritage, significant streetscapes, landscapes or view corridors.

There is reason to comply with height controls with regard to the regional airport nearby.

Comment

The site is located several kilometres from the regional airport located at Albion Park Rail. Whilst the site is in proximity to the airport, the building and sign do not intrude into the obstacle height limitations stipulated for the airport/flight paths. As mentioned previously, the obstacle height limitation map shows the area having a limitation of RL 52. The tallest part of the building (very top of the parapet) is well below this at 25m AHD.

The landscape plan is 'not finished'. Landscaping does not comply.

Comment

The author of this report is unsure what is intended or meant by the statement 'not finished'.

Council's Landscape Technical Officer is satisfied with the plan and has endorsed the design. There is a good selection of trees, shrubs and ground covers.

The departures from the normal standards are discussed earlier in this report. The departure from the numerical controls will not result in an inferior design.

The intersections into the estate will become 'bottlenecks'.

Comment

The traffic reports submitted in support of the application have been reviewed both by Council's Traffic Engineer and the RMS. Both authorities are satisfied with the information contained therein and the conclusions reached in those reports including that the main intersection will operate at a "B" or good level of service.

The Masters development makes no attempt to encapsulate the surrounding business and create a master planned estate - the realigned road will provide a connection to the East West link as opposed to connecting the two sections of the estate.

Comment

It is possible that Shandan Circuit will provide a through connection however the road geometry should assist in controlling traffic through the estate. The connection between the two parts of the estate is considered beneficial for business particularly so as it will allow for east travelling customers to turn into the estate via the traffic lights into Colden Drive as opposed to using the roundabout and returning along the Highway or accessing the estate circuitously via the East West link.

The Masters operating hours are beyond that of most businesses in the estate.

Comment

The trading hours are relatively extensive. The centre is to operate from 6.00am to 10.00pm Monday to Friday and 6.00am to 9.00pm Saturday and Sunday.

The hours of trade have been selected on the basis of experience elsewhere and are essentially a business decision.

In terms of a planning assessment, the issue at hand is whether or not these hours of trade will have adverse impacts with regard to amenity as a result of traffic, noise, lighting glare and so on. Observing that the development is located adjacent to a busy Highway and in an industrial estate and is some distance from residential development, the longer trading hours are unlikely to cause adverse impacts on surrounding and nearby development.

The additional trade outside conventional hours will have some benefit by enhancing passive surveillance of the locality and offer exposure of other businesses nearby.

The underlying concern with respect to this comment *may* be that other traders cannot compete having to open longer hours and thus having to pay wages and overheads or that Masters may in fact attract more business being open later. This issue is one of commercial competition, which is a matter that the draft Competitions SEPP mentioned earlier in this report, is seeking to ensure does not become a planning consideration.

Commercial Viability

The decision to locate a business in an area whether a small shop or retail chain is a business decision based on a number of factors. From a planning perspective, Council and consent authorities must be assured that the business is permissible and that there are no adverse impacts. Whilst economic considerations must be taken into account, competition and potential viability of the proposed business and other businesses are generally not accepted as legitimate planning concerns (as reinforced by the draft Competitions SEPP) and court decisions (*Kentucky Fried Chicken v Gantidis* (1979) 140 CLR 675 and *Fabcot Pty Ltd v Hawkesbury City Council* (1997) 93 LGERA 373). It is noted however that clause 34 of the SLEP 2000 makes reference to viability however in the context of 'centres'.

The road closure is being 'considered and accessed (sic) concurrently with Council's assessment of the DA'. There is a conflict of interest.

Whilst the road closure is acknowledged and is required to enable the development to occur, it is not a matter for consideration under s79C of the EPA Act 1979. This process is irrelevant to the assessment of the application.

The road closure is being separately administered by Council's Property Manager.

The fact that this development application is being considered and determined by a JRPP not Council provides for a further layer of transparency.

The proposal does not comply with the Industrial DCP.

Comment

The departures from the DCP are explored earlier in this report.

Variations to controls contained in a DCP can be considered by a consent authority subject to the consent authority being satisfied that a departure from the controls will not result in any adverse impacts and that the underlying purpose of the control is not undermined.

An alternative connection between the two parts of the estate should be pursued.

Comment

This issue arose after closure of the formal exhibition period via representations to a Shellharbour City Councillor.

The objector made a suggestion of an alternative link between the two parts of the estate.

The disconnected nature of the estate has long been problematic with evidence of informal access between the two sections being created to address accessibility issues. Clearly, a formal connection will be beneficial linking the two parts of the estate.

The alternative suggestion put forward by the objector impacts on the development site layout and would warrant a major redesign. From a traffic perspective with regard to the location of an intersection so close to the Highway (as was illustrated in the alternative), it would be highly unlikely that such a proposal would receive support from the RMS. Irrespective, the suggestion was tabled for discussion purposes.

Hydrox Nominees Pty Ltd stated that it would pursue the development as submitted but agreed with the objector that a connection between the two parts of the estate will be beneficial.

There has been significant flooding in the area in recent years. Information submitted with the application does not provide any certainty and seems to underplay the flooding at the Highway and Colden Drive.

Flooding was investigated in the context of Council's requirements outlined in the *Floodplain Risk Management DCP*. Whilst there were recent relatively significant local flood events, which Council is aware of, Council's engineers assessed the application and information submitted and concludes that the design of the development including associated infrastructure is adequate and will not exacerbate impacts.

9.10 (1) (e) Public Interest

The proposal is considered to be within the public interest. The inclusion of the additional bulky goods floorspace will introduce a greater choice for customers in the region and may also provide some spin off effects to other businesses in the estate. Additionally, there will be employment opportunities and a connection created in a disconnected industrial estate.

10. Other Considerations

There are a number of restrictions on title that need to be considered including but not limited to the inclusion of requiring on-site detention systems, building material selection, fencing and so on. Clause 78 of the SLEP 2000 states:

78 Suspension of restrictions on land

1. *For the purpose of enabling development to be carried out in accordance with this plan or in accordance with a consent granted under the Act, the operation of any covenant, agreement or like instrument imposing restrictions on the development shall not apply to the development.*

Irrespective, the proposal is not inconsistent with the restrictions however with respect to drainage and changes to site levels, Council has the ability to vary the requirements contained in the s88B instrument created under the *Conveyancing Act 1919*.

These restrictions were put in place for the original estate and on the assumption that the lots would be built on individually. Therefore the s88B will have limited relevance in the future, if the Master's proposal proceeds. Accordingly, it is recommended that a condition be imposed requiring all irrelevant restrictions to be expunged from title prior to registration of the new lots.

To ensure that access is provided to land adjoining the development site (Lot 1 in DP 1039969) noting that the road is to be realigned and will not provide frontage at the point of access, it will be necessary to create a right of carriageway (reciprocal) to ensure that legal and practical access is maintained for that lot. Refer to the plan of consolidation attached to this report.

11. Referrals

During the assessment a number of internal and external technical referrals were made seeking expert opinion on key issues. These have been discussed throughout the report. In summary internal referrals were made to:

- Strategic Planner (economic impact)
- Tree Management Officer
- Landscape Technical Officer
- Section 94 Accountant
- Team Leader - Building (City Development)
- Traffic Engineer
- Development & Subdivision Engineer
- Environment Officer
- Community Safety Officer
- Community Planner
- Manager Property & Recreation

External Referrals were made to

- RMS
- Sydney Water (the application was referred to Sydney Water based on advice contained in a recent letter from this agency with respect to the scale and nature of the proposal however no response was received)
- Council's nominated solicitor to review legal opinion by Corrs
- TCG Planning

The application was referred to TCG Planning for a procedural audit to ensure that due process was followed concerning administration of the development application.

TCG advised Council by way of a report dated 24 August 2012 that processing of the development application to date was in accordance with the relevant provisions of the EPA Act 1979 and Regulation 2000 and that a s79C assessment is required.

12. Conclusion

Whilst there have been a number of submissions objecting to the development, the proposal is considered satisfactory with key issues satisfactory addressed and resolved.

Whilst not fully numerically compliant, it represents a suitably designed employment generating development on an appropriate site that is not expected to have any unacceptable significant adverse impacts on adjoining properties or the environment.

Accordingly, the development is able to be recommended to the JRPP for approval subject to the draft development consent conditions shown below.

DEVELOPMENT CONSENT CONDITIONS

Mr Brad McAndrew
Hydrox Nominees Pty Ltd
PO Box 8000
BAULKHAM HILLS NSW 2153

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Issued under the Environmental Planning & Assessment Act 1979 Section 81(1)(a)

Being the applicant of Development Application No. 192/2012 (JRPP Reference STH 016)
for consent to the following development:

**LOT 1, DP 1123534
LOT 109, DP 1008414
LOTS 2-17, 20-22, DP 1039969**

2-4, 8-12, 20,13-45 & 51-55 SHANDAN CIRCUIT, ALBION PARK RAIL

BUILDING CODE OF AUSTRALIA

BUILDING CLASSIFICATION: Class 6
10b (signage structures)

Determination date of consent (Date of JRPP Meeting)

In accordance with section 80 of the Act the Development Application has been determined by the GRANTING OF CONSENT BY WAY OF A DEFERRED COMMENCEMENT BY THE SOUTHERN REGIONAL JOINT REGIONAL PLANNING PANEL ON (INSERT DATE) SUBJECT TO THE CONDITIONS DESCRIBED BELOW.

This development consent has been divided into different parts according to where, during the development process, each condition may be most relevant. Some conditions may be appropriate to more than one part. All conditions must be complied with.

DEFERRED MATTER

The partial road closure of Shandan Circuit must be formally executed prior to this consent becoming operational. This matter must be attended to within 24 months of the date of the JRPP meeting. To convert this consent to an operational consent, evidence of the road closure must be submitted to City Development. Upon this matter being addressed, this consent will be reissued with approved plans with references to this deferred matter being deleted.

PART A - ADMINISTRATIVE CONDITIONS

A1 Construction Certificate & PCA Notification *Environmental Planning & Assessment Act 1979 Section 81A*

Before any site works, building or use is commenced, the person having the benefit of the development consent must:

- a. obtain a Construction Certificate from Shellharbour City Council or other accredited certifier
- b. appoint a Principal Certifying Authority.

A2 Prescribed Conditions

This development consent is subject to the prescribed conditions made under the *Environmental Planning & Assessment Regulation 2000*. This includes compliance with the *Building Code of Australia*.

A3 Development in Accordance with Plans

The development must be in accordance with the following except as modified by conditions of this consent.

Name of Plan	Prepared By	Drawing No./Revision	Drawing Date
Site Plan	Leffler Simes Architects	Job 3165 Issue F	7/9/12
Floor Plans	Leffler Simes Architects	Job 3165 Issue E	7/9/12
Roof Plan	Leffler Simes Architects	Job 3165 Issue E	7/9/12
Elevations	Leffler Simes Architects	Job 3165 Issue E	7/9/12
Section	Leffler Simes Architects	Job 3165 Issue D	7/9/12
General Arrangement Plan	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C1.10 Issue 1	14/9/12
New Shandan Circuit Grading Plan & Long Section	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C2.01 issue 1	14/9/12
New Shandan Circuit Stormwater Management Plan	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C2.02 issue 1	14/9/12
New Shandan Circuit Boundary Adjustments	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C2.03 issue 1	14/9/12
New Shandan Circuit Cross Sections	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C3.01 Issue 1	14/9/12
Site Grading Plan	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C5.01 Issue 1	14/9/12
Site Stormwater Management Plan	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C5.02 issue 1	14/9/12
Sitework Sections	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C6.01 Issue 1	14/9/12
Site Stormwater Management Plan	ACOR Consultants Pty Limited	Project SY 11 0209 Drawing C7.01 issue 1	14/9/12
Soil Erosion & Sediment Control Details	ACOR Consultants Pty Limited	Project SY11 0209 Drawing C7.02 - issue 1	14/9/12
Landscape Cover Sheet	Site Image	Job SS12-2454, Drawing Number 000, Issue B	May 2012

Development Application No. 192/2012
Proposed "Masters' Development, Shandan Circuit, Albion Park Rail

Name of Plan	Prepared By	Drawing No./Revision	Drawing Date
Landscape Plan	Site Image	Job SS12-2454, Drawing Number 101, Issue B	May 2012
Landscape Plan	Site Image	Job SS12-2454, Drawing Number 102, Issue B	May 2012
Landscape Plan	Site Image	Job SS12-2454, Drawing Number 103, Issue B	May 2012
Landscape Plan	Site Image	Job SS12-2454, Drawing Number 104, Issue A	May 2012
Landscape Details	Site Image	Job SS12-2454, Drawing Number 501, Issue B	May 2012
Statement of Environmental Effects (inclusive of Appendices)	Urbis	Job Code SA 4590	June 2012
Waste Management Plan	Hydrox Nominees Pty Limited	Report	May 2012
Flood & Drainage Report	ACOR Consultants Pty Limited	Project SY11 0209 Doc 12065 D	August 2012
Additional Economic Advice	Hill PDA	Letter/Report	August 2012
Letter - Traffic response to RMS	Colston Budd Hunt & Kafes Pty Limited	Letter/Report	August 2012

A4 Compliance with Notations on Drawings

Works must comply with any specific plan annotations by Shellharbour City Council with respect to the approved plans listed above.

PART B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

B1 Building Design to Address Potential Flooding

The Construction Certificate drawings must clearly show that the floor level is to be constructed at **14m AHD**.

Any portion of the building below this level that may be subject to inundation must be built from flood compatible materials. Compliance with Appendix 1 of the *Shellharbour Flood Plain Risk Management Development Control Plan* is required. Alternatively, details provided by a suitably qualified building designer or Structural Engineer which can be certified as flood compatible are acceptable. Full details or certification must be provided with application for a Construction Certificate.

B2 Geotechnical Report

A final geotechnical report, prepared by a suitably qualified and experienced geotechnical engineer must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

The report must cover, but not be limited to the following:

- extent and stability of proposed embankments including those acting as retarding basins
- recommended Geotechnical testing requirements
- level of geotechnical supervision for each part of the works as defined under AS 3798 - *Guidelines on Earthworks for Commercial and Residential Developments*

- d. the level of risk to existing adjacent structures/buildings as the case may be, as a result of a construction contractor using vibratory rollers anywhere within the site the subject of these works. In the event that vibratory rollers could affect adjacent structures/buildings, high risk areas must be identified on a plan and the engineering plans listed in Condition A3 must be amended to indicate that no vibratory rollers shall be used within that zone
- e. the impact of the installation of services on overall site stability and recommendations on short term drainage methods, shoring requirements and other remedial measures that may be appropriate during installation
- f. the preferred treatment of any unstable areas within privately owned allotments, and
- g. requirement for subsurface drainage lines.

B3 Car Parking Spaces - Dimensions

All car parking spaces must have minimum dimensions of 2.6m x 5.4m adjacent to a 6.6m wide access aisle.

Car parking spaces for people with disabilities must be provided at the rate of one car parking space for each 100 spaces or part thereof (BCA D3.5). Disabled car spaces must be 2.4m in width and include adjacent shared area as per AS 2890.6:2009 Parking facilities *Part 6: Off-street parking for people with disabilities*.

B4 Road Design (Realigned Shandan Circuit)

- a. The grading and layout of all roads and lots must be such as to ensure the absence of trapped low points and to ensure that overland flow is passed safely over public land.
- b. The road pavement must be designed with one layer of asphalt having a minimum thickness of 50mm AC 14. The pavement design for the proposed roads must be carried out by a qualified Geotechnical/Civil engineer in accordance with AUSTROADS *Guide to Pavement Technology*.
- c. All vertical and horizontal alignment of all streets and all street intersections within the development must have site distance provided in accordance with 'AUSTROADS' requirements.
- d. The geometric design of all roads, traffic facilities, intersection treatments, mid-block devices and entry features must be such as to permit a 19m single unit truck to manoeuvre in order to enter and leave each road traveling in a forward direction and without leaving the carriageway. Details must be submitted with the Construction Certificate Application.
- e. The relevant drawings must be annotated and properly referenced. These drawings must be submitted with application for a Construction Certificate for approval by the Certifying Authority.

B5 Road Drainage Plans (Realigned Shandan Circuit)

Road and drainage plans, prepared by a suitably qualified Engineer, in accordance with Council's Standards (Subdivision Design Code), must be submitted to the Certifying Authority for approval prior to the release of the Subdivision Construction Certificate. All road and drainage work must then be constructed in accordance with Council's construction standards and approval at no cost to Council.

All stormwater pipes within the road reserves and within drainage easements intended to be dedicated to Council must be installed generally to the HS3 standard in accordance with the current edition of AS 3725 - *Design for Installation of Buried Concrete Pipe*.

B6 Traffic Committee - Signposting and Line Marking Plan

Prior to the issue of a Construction Certificate, a Signposting and Line Marking Plan must be lodged with the City of Shellharbour Traffic Committee for written concurrence. This plan must detail all facilities, signage and line-marking required within and surrounding the development.

The plan must include a give way sign and associated line marking at the intersection of Shaban Street and Shandan Circuit.

B7 Fencing - Adjacent to Shandan Circuit

This condition is required to address pedestrian/vehicular safety given change in level.

The developer must submit details of the proposed barrier fence adjacent to the eastern boundary of Shandan Circuit. The fence must comply with Austroads *Guide to Road Design* and relevant Australian Standards and the *Building Code of Australia* to ensure the safety of vehicles travelling on Shandan Circuit and pedestrians. Further, the fence is not to obstruct visibility into the site and should be designed taking into account passive surveillance opportunities. Details of the fence must be provided with application for the Construction Certificate.

Any other fencing adjacent to the building and garden areas etc must be a maximum of 1.8m in height, open style metal or mesh (garden) and be coloured black.

B8 Roof Mounted Equipment

All roof mounted equipment shown on the approved plans, must have a colour finish that matches that of the overall roof finish. Details must be shown on Construction Certificate drawings.

B9 Further Investigations - Phase 2 Environmental Site Assessment

Further detailed intrusive investigations must be undertaken of the site in accordance with section 9.3 of the Stage 1 Environmental Assessment *Proposed Warehouse Development*, Report Reference E25208KHrpt dated October 2011, by EIS. This work must be undertaken and completed with a report submitted to both the Principal Certifying Authority and Council prior to issue of a Construction Certificate. Any recommendations in that report, must be incorporated into site management practices for the construction phase of the development and for the construction of the building

B10 Construction Traffic Management Plan (CTMP)

Prior to issue of the Construction Certificate, a CTMP detailing vehicle routes, number of trucks, hours of operation, access arrangements and traffic control must be submitted to and approved by the Certifying Authority.

B11 Utilities - Electricity Supply

Consent for this development is conditional upon satisfactory arrangements being made with from the relevant electricity provider for the provision of electricity supply to the development. Written confirmation from the relevant electricity provider must be submitted to the Certifying Authority prior to the release of the Construction Certificate for the development.

Note: The electricity provider may require a capital contribution to be paid towards making electricity supply available to the development.

B12 Roads & Maritime Services

Prior to the issuing of the Construction Certificate, plans of the proposed drainage system, showing the connection to the RMS' drainage system, and supporting information must be submitted to the RMS for section 138 consent under the *Roads Act 1993* and submitted to Council for section 138 consent under the *Roads Act 1993*.

An application fee in accordance with Council's *Fees & Charges* will apply.

See also Part D of this consent.

B13 Access for People with a Disability

Access for people with disabilities must be provided to and within the building in accordance with the *Building Code of Australia* and Australian Standard 1428 (and as amended from time to time) and Part D3 (for sanitary compartments).

Detailed plans verifying compliance must be submitted to the Principal Certifying Authority for approval with the application for a Construction Certificate.

B14 Energy Efficiency Report

An Energy Efficient Report prepared by an architect or other suitably qualified person must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate. The Energy Efficiency Report must verify that the building has been designed in accordance with section J (Energy Efficiency) of the *Building Code of Australia*.

B15 Ancillary Café

Plans and specifications must be prepared and submitted to the Principal Certifying Authority for approval detailing the construction and fit out of the cafe or any part of the premises to be used for the manufacture, preparation or storage of food for sale demonstrating compliance with the *Food Act 2003* and the *Food Regulations 2004* (incorporating the Food Standards Code).

B16 Bond - New Street Trees

A deposit of \$5000 must be lodged with Council prior to the issue of the Construction Certificate to ensure that the street trees are maintained for a six month period following the issue of the Occupation Certificate. A bank guarantee may be lodged with Council where the bond is \$2,000 or more.

B17 Street Tree Inspection Fee

The developer must lodge with Council an inspection fee of \$80 in accordance with Council's *Fees and Charges* for:

- street tree inspection prior to occupation of the development
- street tree inspection following completion of the maintenance period

prior to the issue of the Construction Certificate.

B18 Long Service Levy

The Long Service Levy must be paid prior to the issue of the Construction Certificate.

Note: This is a levy imposed by the NSW Government and administered by the Long Service Payments Corporation for the purpose of long service payments to building and construction workers.

B19 Landscape Plan Required

Two copies of a Landscape Plan prepared by a landscape architect reflecting the amended site layout (architectural and civil drawings) and dimensions consistent with the design principles in the plans prepared by Site Image, Job No. SS12-2454, Drawings 000, 101, 102, 103, 104 and 501, dated May 2012 must be submitted for approval to an Accredited Certifier prior to the issue of the Construction Certificate.

B20 Drainage Design

- a. A detailed drainage design of the site must be submitted and approved by the Certifying Authority prior to the release of the Construction Certificate. The plan must be generally in accordance with plans listed in the schedule in Condition A3 of this consent. The plan must indicate the method of disposal of all stormwater and must include existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines.
- b. Stormwater drainage and interallotment drainage must as a minimum be designed for the critical flood event with an average recurrence interval of 1 in 20 years with satisfactory provision for safe passage or runoff generated by the critical flood event with an average recurrent interval of 1 in 100 years. The conveyance and discharge of runoff generated by the critical flood event with an average recurrent interval of 1 in 100 years may be over public land.
- c. Pits must be located at all junctions, changes of grade or direction in addition to this installed at a maximum spacing of 30m along a length of pipe. All drainage pits should be self flushing and at the same level as the invert of the outlet pipe. This is to ensure rainwater does not pond within the stormwater system. All pits must have flush fitting grates. All pits larger than 600mm x 600mm are to be grated galvanised steel grid hinged and be heavy duty type where traffic loading is expected. Pits deeper than 0.9m must have step irons.

B21 On site Detention & Tank Details

- a. Onsite detention storage must be provided for stormwater runoff from the development. The storage must be designed in accordance with Shellharbour City Council's *Requirements for On-Site Detention Storage*. Details must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.
- b. The onsite detention tank must incorporate lockable grates, access for maintenance and a suitably graded invert to prevent 'ponding'. This requirement and full details must be reflected on the Construction Certificate plans and specifications.
- c. The onsite detention tank must be able to withstand the anticipated traffic loadings such as the 19m Articulated Vehicle as defined in *AS 5100 Part 2 Bridge Design - Design Loads*. Written certification from a suitably qualified civil and/or structural engineer confirming this requirement must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.
- d. Full routing and runoff calculations must be submitted to the Certifying Authority for approval with the design and must be to the satisfaction of Council. The use of triangular hydrographs to determine detention storage is unacceptable.

B22 Drainage Easement & Engineer's Details

The walls of any structure adjoining the easement boundary must be designed by a suitably qualified engineer to withstand all forces should the easement be excavated to existing pipe invert level. This may require footings to be designed such that they are set to a minimum 300mm below pipe invert level, or alternatively founded on sound rock. Details must be submitted to the Certifying Authority prior to issue of the Construction Certificate.

B23 Soil and Water Management Plan

Prior to the issue of the Construction Certificate, the applicant must submit to and obtain the Certifying Authority approval of a Soil and Water Management Plan and Statement which clearly identifies site features, constraints and soil types together with the nature of the proposed land disturbing activities and also specifies the type and location of erosion and sediment control measures and also rehabilitation techniques that are necessary to deal with such activities.

The plan must take into account the requirements of Landcom's publication '*Managing Urban Stormwater - Soils and Construction (2004)*' also known as the 'Blue Book', and must be compatible with the construction management plan required by this consent thus ensuring the following objectives are achieved, namely:

- a. To minimise the area of soils exposed at any one time.
- b. To conserve topsoil for reuse on site.
- c. To identify and protect proposed stockpile locations
- d. To preserve existing vegetation and identify revegetation techniques and materials.
- e. To control surface water flows through the development construction site on a manner that:
 - i. Diverts clean run-off around disturbed areas.
 - ii. Minimises slope gradient and flow distance within disturbed areas.
 - iii. Ensures surface run-off occurs at non-erodible velocities.

- iv. Ensures disturbed areas are promptly rehabilitated.
- g. Trap sediment on site to prevent off site damage. Hay bales are not to be used as sediment control devices. To ensure regular monitoring and maintenance of erosion and sediment control measures and rehabilitation works until the site is stabilized (includes landscaping).
- h. Specific measures to control dust generated as a result of construction activities on site.
- i. Temporary sediment ponds must be fenced where the batter slope exceeds 1 vertical to 5 horizontal.
- j. Design scour protection for the 100 year ARI event at all inlet and outlet structures.

See Condition C6.

B24 Retaining Walls

All retaining walls must be designed by a practising structural engineer and must form part of the Construction Certificate application.

B25 Fire Resistance

The *Type of Construction* proposed for the building must comply with Section C of the *Building Code of Australia*. Details of the proposed *Type of Construction* for the building must be submitted with the Construction Certificate for assessment.

B26 Fire Egress

The requirements of Section D of the *Building Code of Australia* concerning exit requirements in the event of a fire must be complied with. Details of how the building will comply with Section D must be submitted with the Construction Certificate for assessment.

B27 Car Parking Spaces - Number & Allocation

Car Parking must be provided in accordance with the approved plans. In this regard there must be 340 car parking spaces, eight accessible spaces and three trailer spaces. Under no circumstances are car parking areas to be used for display, garbage disposal or other uses.

B28 Car Park Engineer Designed Pavement

All car parking areas, manoeuvring areas and the access aisle must be paved, drained and marked. The pavement must be designed by a qualified civil engineer and certified to be satisfactory for the expected traffic loadings from a development of this size and type. *AUSTROADS Guide to Pavement Technology* can be used as the design guideline for the pavement design.

The laybacks and crossings must be designed to accommodate industrial vehicles. In this regard they must be constructed to an industrial standard with the work carried out by Council or a Council approved contractor at the Developer's expense, including all alteration to public infrastructure where necessary.

B29 Fencing Materials

Fences that will be visible from the street must be constructed of high quality building materials and be of a high architectural standard to complement the building design. In this regard, Colorbond®, plain galvanised chain wire, barbed wire, lattice, timber paling or similar materials are not acceptable. Dark coloured fencing for example, "Diplomat" style or similar is considered acceptable. For security purposes and to enhance passive surveillance, a darker colour will enable vision through such a fence as opposed to light colours.

Details of the proposed method of fencing must be submitted to the Certifying Authority prior to issue of the Construction Certificate.

B30 Site Illumination

The illumination of the proposed signs must comply with AS 4282 - Control of Obtrusive effects of Outdoor Lighting.

B31 Waste Storage Area

The waste storage area must have sufficient size to store separate waste bins for both landfill and recyclables waste streams. Details of the waste storage area must be submitted to the Certifying Authority prior to issue of the Construction Certificate.

B32 Section 138 Roads Act 1993

For works proposed within the road reserve, the requirements of section 138 of the *Roads Act 1993* apply. In this regard:

- a. if a driveway is proposed, a Driveway Application must be made, or
- b. if any other works are proposed and/or occupation of the road reserve proposed, a Road Opening Application must be made.

Approval is also required where it is proposed to:

- a. pump concrete from within a public road reserve
- b. stand a mobile crane within the public road reserve
- c. use part of Council's road/footpath area
- d. pump stormwater from the site to Council's stormwater drains
- e. store waste containers, skip bins and/or building materials on part of Council's footway or roadway.

The application must be made prior to any works commencing within the road reserve and an application fee in accordance with Council's *Fees and Charges* will apply.

B33 Screening of Waste Storage Area

Waste bins must be located so as to not be visible from all street frontages.

B34 Site Management Plan

Prior to the issue of the Construction Certificate, the applicant must submit to and obtain approval for a construction and site management plan from the Certifying Authority that clearly sets out the following:

- a. what actions are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like
- b. the proposed method of loading and unloading excavation machines, building materials and formwork within the site
- c. the proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period
- d. how it is proposed to ensure that soil/excavated materials is not transported on wheels or tracks of vehicles or plant and deposited on the roadway
- e. the proposed method of support to any excavation adjacent to adjoining buildings or the road reserve. The proposed method of support is to be certified by an accredited certifier in civil engineering and

B35 Protection of Public Places

- a. Where the work involves the erection or demolition of a building and the work is likely to or will cause pedestrian or vehicular traffic in public places (eg a footpath) to be obstructed, diverted, rendered inconvenient and enclosed, or similar, a Class B hoarding must be erected between the work site and/or over the public place.

If a hoarding is not necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any hoarding, fence or awning must be removed when the work has been completed.

Any proposed hoarding, fence or awning proposed within the road reserve will require a specific approval under section 138 of the *Roads Act 1993*. An application fee will apply in accordance with Council's *Fees and Charges*.

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

B36 Public Liability

Before the issue of the Construction Certificate, the owner or contractor must provide evidence to Council of a Public Risk Insurance Policy with a minimum cover of \$20M in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works. The Policy is to note Council as an interested party.

B37 Protection of Street Trees

Any existing street trees to be retained must be enclosed with temporary protective fencing to prevent any activities, storage or the disposal of materials within the fenced area. Details of the design and location of the vegetation protective fencing must be shown on the construction plans and must be approved by the Accredited Certifier prior to the issue of the Construction Certificate. The protective fence(s) must:

- a. be located a minimum of 1.5m from the base of the tree
- b. have a minimum height of 1.5m
- c. be clearly marked at all times with the use of high visibility plastic hazard tape.

Any street tree that is damaged or removed during works must be replaced.

PART C – PRIOR TO COMMENCEMENT OF WORKS

C1 Site Facilities

Toilet facilities must be provided at the work/development site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. The toilets must be in place prior to the commencement of work.

C2 Dilapidation Report

It is the applicant's responsibility to notify Council of any existing damage to public areas in the vicinity of the development site through the submission of a Dilapidation Report supported with suitable photographic records.

This Report must be submitted to Council no less than 14 days prior to the commencement of work.

C3 Structural Details

The following structural details must be provided to the Principal Certifying Authority prior to commencing work:

- a. structural engineer's design for all reinforced concrete footings and slabs
- b. structural engineers design for all structural steel beams, framing and connections
- c. roof truss and bracing details
- d. manufacturer's specifications for any patented construction systems.

C4 Protection Fencing

The vegetation/street tree protection fencing must be installed prior to works commencing.

C5 Disconnection of Utilities

Contact must be made with service providers such as Sydney Water, Energy, Telecommunication companies etc for their approval with regard to disconnection of all services prior to the commencement of demolition works. All redundant services must be removed at the cost of the developer.

C6 Soil and Water Management Plan

The measures required by Condition 23 which are required prior to the commencement of works, must be implemented.

PART D – DURING DEMOLITION/CONSTRUCTION WORKS

D1 Noise

Construction noise levels emitted during works must be restriction to comply with the construction noise guidelines set out in Chapter 171 of the NSW EPA's Environmental Noise Control Manual.

D2 Demolition - WorkCover & Occupational Health & Safety Act

Demolition work must:

- a. be carried out in accordance with the requirements of the WorkCover Authority of New South Wales
- b. be carried out in accordance with the *Occupational Health and Safety Act 2000*
- c. be carried out by a WorkCover licensed contractor where demolition work involves the removal of any materials containing asbestos.
- d. be carried out in accordance with AS 2601-1991: *The Demolition of Structures*.

D3 Disposal of Hazardous Material

Special arrangements are required for the disposal of hazardous building materials, particularly asbestos. For information on where hazardous materials can be disposed contact Council's Waste Services Department on 4221 6111.

D4 Demolition - Dust

Dust must be suppressed during demolition of the existing building (see Part B of this consent).

D5 Hours of Work During Demolition/Building Work

Noise generating activities, including demolition, excavation, construction and delivery of equipment and materials, must only be carried out between:

- 7.00am to 5.00pm Mondays to Fridays
- 8.00am to 1.00pm Saturdays

unless otherwise agreed to by Council in writing. Work must not be carried out on Sundays or public holidays.

D6 Road Construction and Road Drainage Construction

The site manager must arrange for a satisfactory inspection by Shellharbour City Council of the following works:

- a. all road drainage works prior to backfilling of the work, and
- b. all road construction inspections as per Council's *Subdivision Design Code*.

D7 Geotechnical Testing

Geotechnical testing to verify that the pipe trench bedding and backfill complies with the requirements for HS3 bedding/backfill.

D8 Waste Management

The management of waste must comply with the approved Waste Management Plan. All receipts such as waste disposal dockets must be retained (refer Part E). Any variations to the Waste Management Plan must have prior written approval of Council.

D9 Storage of Materials

Building materials and equipment must not be stored on the road reserve/footpath area.

D10 Survey Certification

A report from a registered surveyor must be provided to the Certifying Authority on completion of the ground floor slab formwork **prior to the concrete being poured**.

The report must certify all of the following:

- a. the distance of the structure to all boundaries of the allotment(s) and are in accordance with the approved plans
- b. the height of the floor level/s in relation to the natural ground level are in accordance with the approved plans. In this regard, the report must certify that the floor level of the building will be at 14m AHD.

Note: Australian Height Datum must be used.

D11 Building Height - Survey Certification

The building must not exceed the height shown on the approved plans.

A report from a registered surveyor must be provided to the Certifying Authority on completion of the slab and any supporting structures etc, prior to covering the roof and installing the parapets, certifying that the height of the building will be strictly in accordance with the approved plans.

D12 Cut/Fill

The cut and fill areas on the development site must:

- a. be suitably retained
- b. be in accordance with the approved plans
- c. have a maximum grade of 45° (1:1) where there is no retaining wall or no other method of stabilising the cut/fill area
- d. not exceed 1m in depth outside the external walls of a building, unless otherwise approved in writing by Council.

D13 Retaining Walls

Any retaining wall must be located wholly within the property, including footings and agricultural drainage lines. Construction of retaining walls or associated drainage work along common boundaries must not compromise the structural integrity of any existing structures.

D14 Connection to Council Pit

Connection to the Council pit on Shandan Street and connection to the Council culvert adjacent to the Princes Highway is to be made through the hole that is to be neatly made by cutting or drilling. Any reinforcement encountered is to be cut away. The connection must not protrude the inner surface of the Council pit or culvert and the junction must be finished with 2:1 cement mortar. **The Certifying Authority must arrange for a satisfactory inspection by Shellharbour City Council prior to backfilling.** At least one working day's notice is required for the inspection and is to be arranged through Council's Customer Services. An inspection fee will apply in accordance with Council's *Fees & Charges*.

D15 Excavation & Drainage Easement

There must be no loss of support of any drainage easement on adjoining land as a result of excavation of the site.

D16 Vehicular Layback

An industrial standard vehicular layback crossing and driveway must be constructed at the points of access. This work must be carried out by Council, or a Council approved contractor, at the developer's expense, including all alterations of public infrastructure where necessary.

D17 Redundant Crossings & Infrastructure

All redundant vehicular layback crossing/s must be removed. All new work (eg kerb and gutter) must be designed to integrate and match the existing system and must comply with Council's *Subdivision Design Code*. This work must be carried out by Council, or a Council approved contractor, at the developer's expense, including all alterations of public infrastructure where necessary.

D18 Street Lighting

The developer must submit a Public Lighting Design Brief to Council for approval for the provision of street lighting on all new public roads dedicated to Council. A street lighting design plan must be prepared by an accredited service provider for contestable works in NSW and submitted to the Energy provider for approval prior to construction. All street lighting must comply with Integral Energy Street Lighting Policy and illumination requirements. All costs associated with the installation of street lighting must be borne by the developer.

D19 Works In, On or Over a Public Road

In accordance with section 142(i)(a) of the *Roads Act 1993* the person who has a right to the control, use or benefit of a structure or work in, on or over a public road (namely a footpath crossing), must maintain the structure or work in a satisfactory state of repair.

D20 Protection Fencing

The vegetation/street tree protection fencing must be maintained intact at all times throughout the period of building work on the site. Machinery, structures, storage/disposal of any building materials and the like, must not be located within the fenced area at any time.

D21 Signage

The location and dimensions of the signage must be in strictly in accordance with the approved plans.

D22 Approved External Materials & Colours

The external treatment/appearance of the development must be in accordance with the approved plans. The paint selected must be graffiti resistant or easily cleaned/matched to enable removal of graffiti or painting over graffiti as the case may be.

D23 Works

All of the works required to be carried out under the conditions of this consent must be maintained at all times in good order and repair.

PART E - PRIOR TO OCCUPATION

E1 Occupation Certificate

All conditions in Parts A, B, C, D & E of this consent are preconditions for the purpose of section 109H of the *Environmental Planning & Assessment Act 1979*.

Compliance with all preconditions must be verified by the Principal Certifying Authority prior to issue of a final Occupation Certificate. The building must not be used until the Principal Certifying Authority issues an Occupation Certificate.

E2 Road Dedication

Prior to issue of the Occupation Certificate, Benkelman beam testing must be undertaken on all roads proposed for dedication as road reserve. Testing must be carried out in accordance with the current version of the Shellharbour City Council Subdivision Code at the time of issue of this consent. The acceptance criteria will be based on the tolerable deflections as specified by AUSTROADS at the time of issue of this consent.

At the time immediately prior to Shandan Circuit to become a designated gazetted public road an inspection is to be undertaken by Council to determine that the road is in satisfactory condition. The road is to be handed over to Council at no cost to Council prior to issue of the Occupation Certificate.

E3 Legal and Practical Access to Lot 1 in DP 1039969

Reciprocal rights of carriageway must be created over the development site to enable legal and practical access to Lot 1 in DP 1039969. This must be reflected in an 88B Instrument associated with the Deposited Plan.

E4 Energy Efficiency Certification

An Energy Efficient Certificate prepared by an architect or other suitably qualified person must be submitted to the Principal Certifying Authority prior to issue of an Occupation Certificate. The Energy Efficiency Certificate must verify that the building has been constructed in accordance with the Energy Efficient Report (required by this Consent refer to Part B) and complies with section J (Energy Efficient) of the *Building Code of Australia*.

E5 Works As Executed Plans - Stormwater Drainage

Works as Executed plans must be submitted to the PCA by a qualified engineer, licensed plumber, or registered surveyor, certifying compliance of all drainage works with the approved design plans. This plan must verify surface and invert levels on all pits, invert levels and sizes of all pipelines, and finished surface levels on all paved areas. All levels must relate to Australian Height Datum.

E6 Traffic Committee - Signposting and Line Marking Plan

Written concurrence and implementation of the Signposting and Line Marking Plan must be achieved prior to issue of the Occupation Certificate.

E7 Sydney Water Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer www.sydneywater.com.au > *Building and Developing* > *Developing your Land* > *Water Servicing Coordinator* or telephone 13 2092 for assistance. Please make early application for the Certificate as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

E8 Verification of Waste Management

Documentation verifying that all waste streams were managed in accordance with the Waste Management Plan must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate. All records, such as waste disposal dockets or photographic evidence, must be retained by the Principal Certifying Authority.

E9 Fire Safety Schedule Part 9 Environmental Planning & Assessment Regulation 2000

On completion of the building work, the owner of the building must submit to Council an annual fire safety statement from a competent person with respect to each statutory fire safety measure included in the Fire Safety Schedule.

The fire safety statement must certify that each statutory fire measure:

- a. has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such an inspection and test, and
- b. was or was not (as at the date on which it was inspected and tested) found to have been designed and installed, and to be capable of operating, to a standard not less than that required by or under this Regulation or by the Council.

E10 Site Facilities - Australia Post

Location points for mail delivery must satisfy the requirements of Australia Post. Street numbers must be obtained from Council's GIS Department during normal office hours, and clearly displayed on the premises, prior to the issue of an Occupation Certificate.

E11 Completion of Landscape Works

The land subject of this consent must be landscaped in accordance with the approved Landscape Plan prior to the issue of an Occupation Certificate. Landscape or turf areas must not be reduced or replaced with hard impermeable surfaces. Any variations to the design or species used must be authorised by Council in **writing before any changes are made**.

A report from a suitably qualified person must be provided to the Principal Certifying Authority on completion of the landscape works certifying that the landscape is in accordance with the approved landscape plan.

E12 Street Trees

Prior to the issue of an Occupation Certificate, seven trees must be planted on the Council footpath reserve (in accordance with the landscape plan), as follows:

- a. 75 Litre *Cupaniopsis anacardioides*
- b. planted at least 2m from the driveway and street light poles and 2m from services, stormwater outlets and signage
- c. trees must be set back a minimum 900mm from the back of the kerb or midway between the footpath and kerb. Where the tree is less than 900mm from the footpath, root barriers must be installed
- d. 1m x 1.5m timber edging installed at the base of the tree constructed from the back of the kerb
- e. two hardwood stakes with 50mm hessian ties, fixed in a figure 8, to support each tree
- f. minimum 75mm depth of organic mulch applied a minimum 600mm diameter surrounding the base of the trunk.

E13 Street Tree Pre-Occupation Inspection

The street tree/s must be inspected by Council prior to the occupation of the development. It is the responsibility of the developer to notify Council for the street tree inspection. In this regard, Council must issue a satisfactory inspection report prior to the issue of an Occupation Certificate.

E14 Repairs to Public Infrastructure

Any damage to public infrastructure, other than that previously noted in the Dilapidation Report (refer Part C), shall be the responsibility of the owner of the property and must be repaired and reinstated prior to the issue of the Occupation Certificate. This work must be carried out by Council, or Council approved contractor, at the developer's expense.

E15 Inspection of Stormwater Pipes

All stormwater pipes within road reserves and within drainage easements intended to be dedicated to Council must be inspected by CCTV. A copy of the CCTV inspection must be recorded on video tape and submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate. Damaged pipes must either be replaced or repaired to the Principal Certifying Authority's satisfaction prior to the issuing of an Occupation Certificate.

E16 Final Geotechnical Report

A final geotechnical report prepared by a suitably qualified and experienced geotechnical consultant must be submitted to the Certifying Authority prior to the issue of the Occupation Certificate. The report must include, but is not necessarily limited to:

- a. All earthwork operations
- b. A fill plan showing extent and depth of fill
- c. Certification that all earthworks within the site have complied with the *Subdivision Design Code*. This must include appropriate test results, and test location diagram and date of testing
- d. Certification that all recommendations contained in geotechnical reports lodged in support of this development have been satisfied
- e. The exact extent of any restricted building zones or any other restrictions affecting any of the allotments. Particular attention must be paid to the location of drainage lines, which must be burdened with a title restriction in the Section 88B Instrument
- f. identification of all land affected by landslip or instability constraints (if applicable), and
- g. verify that the pipe trench bedding and backfill complies with the requirements for HS3 bedding/backfill.

PART F - PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

F1 Expungement of Superfluous Restrictions, Covenants and the Like

All irrelevant easements and title restrictions must be expunged prior to registration of land title(s).

No structures, including footings, eaves or overhangs will be permitted in any proposed new easements.

F2 Final Plan

Prior to the release of the final plan of subdivision, it will be necessary to obtain a Subdivision Certificate. In this regard, it will be necessary to submit:

- a. an application for a Subdivision Certificate
- b. a satisfactory final plan of subdivision, an electronic copy and six paper prints together with an original 88B Instrument and two paper copies for endorsement by the Principal Certifying Authority. All sections of the plan, the signatures and seals section of the plan, including the original and copies, (except for the General Manager's date and signature) must be completed prior to lodging the plan.

The electronic copy should be in Map Grid of Australia 1994 Zone 56 (GDA94) coordinates and must contain closed linework of boundaries and easements.

It can be submitted in DXF, DWG, DGN or MapInfo TAB format. This requirement is dependant on the complexity of the Subdivision and is at the discretion of the Subdivision & Development Officer or the Manager Land & Geographic Information Systems, Shellharbour City Council.

- c. fees appropriate at the time of submission of the application.

PART G - AFTER ISSUE OF OCCUPATION CERTIFICATE/DURING OCCUPATION

G1 State Environmental Planning Policy No. 33 - Hazardous & Offensive Development

The storage of goods on the site which exceed the quantities listed in 'Table 1 - Screening Method To Be Used' on page 21 of the Applying SEPP 33 (Hazardous and Offensive Development Application Guidelines - Second Edition, dated 1997), is prohibited.

Furthermore, the development is prohibited from transporting to and from the site any dangerous goods which exceed the quantities listed in 'Table 2 - Transporting Screening Thresholds' on page 21 of the Applying SEPP 33 (Hazardous and Offensive Development Application Guidelines - Second Edition, dated 1997).

G2 Location of Waste Receptacles

The landfill and recyclable waste bins must be stored in the waste storage area/s located in accordance with the approved plans. At no time are the bins to be located within the car parking, landscaping or manoeuvring areas.

G3 Street Tree Bond Refund

The street tree bond will be returned following a six month maintenance period, commencing from the date of the issue of the Occupation Certificate, provided that the street tree/s remains in a satisfactory condition. In the event that any street trees are found damaged, dying or removed, Council will have the option to retain the whole or part of the bond. The developer/Principal Certifying Authority must notify Council for a reinspection of the street tree/s.

G4 Repairs and Maintenance

Any graffiti must be removed within 24-48 hours of detection. The building and site must be maintained in good order and repair for the life of the development.

G5 Maintenance of Road & Drainage Works

The developer must maintain the road and drainage works for a defects liability period of 12 months from the date of registration of the final plan of subdivision. Road and drainage must be maintained to its original construction condition for this liability period.

G6 Lighting

Site lighting including signage must be synchronised with trading hours of the Masters store.

G7 Café

The café must not trade independently or outside trading hours approved for the Masters store.

G8 Storage & Display of Goods

Under no circumstances are goods to be stored and displayed in the car park, access, service areas, waste areas and landscape beds etc. All product sold must be contained within the building and designated garden and trade areas.

G9 Flammable and Combustible Liquids

The storage and handling of flammable and combustible liquids must be in accordance with relevant Australian Standards. Material safety data sheets must be obtained from the manufacturer and kept on the premises for each hazardous substance.

G10 Spill Response Kits

Kits must be kept and be properly maintained for accidental spills of liquids kept on the premises.

G11 Hours of Trade

Hours of trade are Monday to Friday 6.00am to 10.00pm, Saturday and Sunday 6.00am to 9.00pm unless otherwise agreed to by Council in writing.

G12 Offensive Noise

The use and operation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the protection of the *Environmental Operations Act 1997*.

REASONS FOR THE IMPOSITION OF CONDITIONS

1. To minimise any possible adverse environmental impacts of the proposed development.
2. To ensure that the amenity and character of the surrounding area is protected.
3. To ensure that the design and siting of the development complies with the provisions of Environmental Planning Instruments and Council's Codes and Policies.
4. To ensure that the development does not conflict with the public interest.

Advisory Notes - Project Specific
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ANP1 Compliance with *Building Code of Australia*

Council has not carried out a detailed assessment of this application with regard to compliance with the *Building Code of Australia*.

The Principal Certifying Authority, prior to determining the Construction Certificate application, must assess compliance with the *Building Code of Australia* and all related standards and legislation.

ANP2 Sydney Water - Contribution

Sydney Water (Illawarra Branch) may require a contribution towards new water and sewerage services or amplification of the existing system for the development, the subject of this consent.

ANP3 Fire Safety

Fire safety measures should be clearly marked on the floor plans prior to submitting the Construction Certificate application to the Principal Certifying Authority for assessment.

ANP4 Services & Equipment

Services and Equipment must be installed as required by Section E of the *Building Code of Australia*. Details of proposed 'Services and Equipment' should be submitted to the Principal Certifying Authority with the Construction Certificate application.

ANP5 Exit Signs & Emergency Lighting

Exit signs and an emergency lighting system must be installed throughout the building. (*Building Code of Australia*, Section E4.)

ANP6 Exit Door Swing

The required exit door must swing in the direction of a person seeking egress from the building. (*Building Code of Australia*, D2.20).

ANP7 Disability Discrimination

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. This consent does not relieve the applicant, Principal or other Certifying Authority, or any other person with regard to their obligations to ensure compliance with this legislation.

ANP8 Landscape Inspection Fee

If Council is appointed the Principal Certifying Authority, landscaping will be inspected. An inspection fee will be charged in accordance with Council's *Fees and Charges*.

Advisory Notes – General

AN1 Critical Stage Mandatory Inspections

Mandatory inspections of the building work must be carried out by the Principal Certifying Authority at various stages of construction in accordance with clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

It is recommended that you discuss with your Principal Certifying Authority the occasions when the building work is to be inspected prior to work commencing.

AN2 Erection of Signs

The principal contractor and the Principal Certifying Authority will need to have a sign (or signs) erected and maintained on the development site that provides their name and contact telephone number (during and outside work hours for the principal contractor), and stating that unauthorised entry to the site is prohibited. The principal contractor and Principal Certifying Authority can have separate signs or they can both use one sign if they choose.

A maximum penalty of 10 penalty units applies for failure to erect and maintain sign(s) detailing principal contractor and Principal Certifying Authority identification.

AN3 WorkCover Authority

The requirements of WorkCover Authority must be satisfied at all times.

AN4 Obstacle Height Limitation - Airport

There are height limitations relating to the operation of the airport for developments/activities/construction that may involve cranes, plant or machinery in the Shellharbour Local Government Area. Further details can be obtained from Council concerning the obstacle height limitations.

AN5 Failure to Comply with Consent

Failure to comply with any of the conditions of consent may result in a Penalty Infringement Notice being issued against the owner/applicant/builder. Substantially greater penalties may be imposed by the Court for non compliance

AN6 Lapsing of Development Consent

In accordance with section 95 of the *Environmental Planning & Assessment Act 1979*, the development approval lapses five years after the approval date unless building, engineering or construction work relating to the building has physically commenced.

AN7 Right to Appeal

If you are dissatisfied with this decision, section 97 of the *Environmental Planning & Assessment Act 1979* gives you the right to appeal to the Land & Environment Court within six months after the date on which you receive this notice.

AN8 Review of Determination

If you are dissatisfied with this decision, section 82A of the *Environmental Planning & Assessment Act 1979* provides that you may request Council to review its determination. The request cannot be made after the time limit for making of an appeal under section 97 expires.

AN9 To Vary Development Consent

The plans and/or conditions of this consent are binding and may only be varied upon **application** to Council under section 96 of the *Environmental Planning & Assessment Act 1979*. The appropriate fee shall accompany the application and no action shall be taken on the requested variation **unless and until** the **written** authorisation of Council is received by way of an amended consent.

AN10 Prescribed Payment System Tax Obligations

You may have a taxation obligation under the Prescribed Payment System. For more information, contact the Australian Taxation Office on telephone 132866.

AN11 Development within Vicinity of a High Pressure Gas Main

Contact Dial Before You Dig on 1100 or www.dialbeforeyoudig.com.au. Proposed works in the vicinity of any high pressure gas main must be directed to:

Jemena Asset Management Pty Ltd
PO Box 6507
SILVERWATER NSW 2128

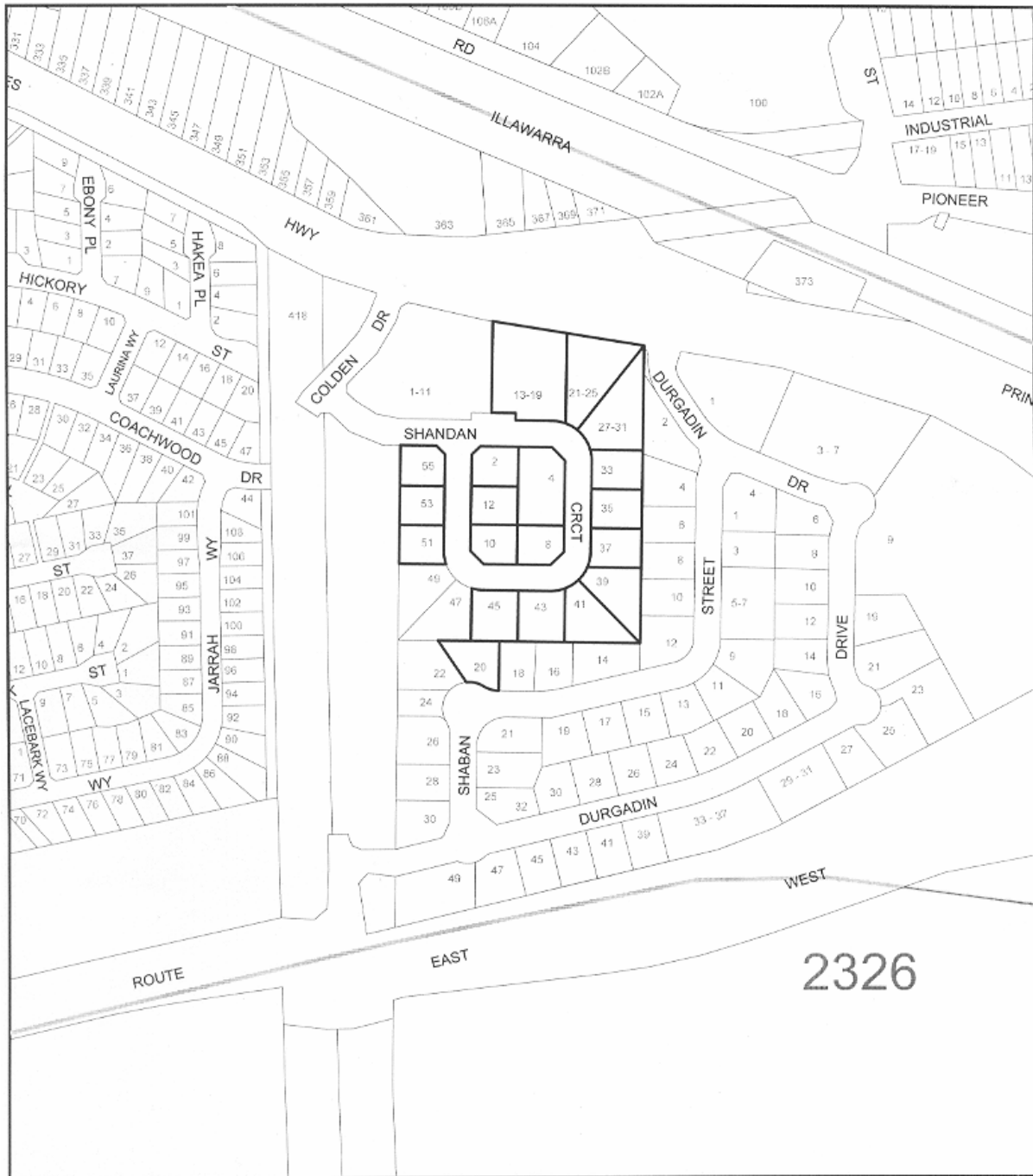
Attention: Land Services Department

Grant Meredith
Group Manager City Development

On behalf of Michael Willis, General Manager

Development Application No. 192/2012
Proposed "Masters' Development, Shandan Circuit, Albion Park Rail

Attachment 1 - Site Plan

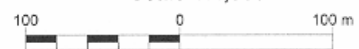


DA 192/2012

This map is supplied on the understanding that Council will not be responsible for any loss or damage which may result from any use made of such information as a result of errors or omissions contained in the map.



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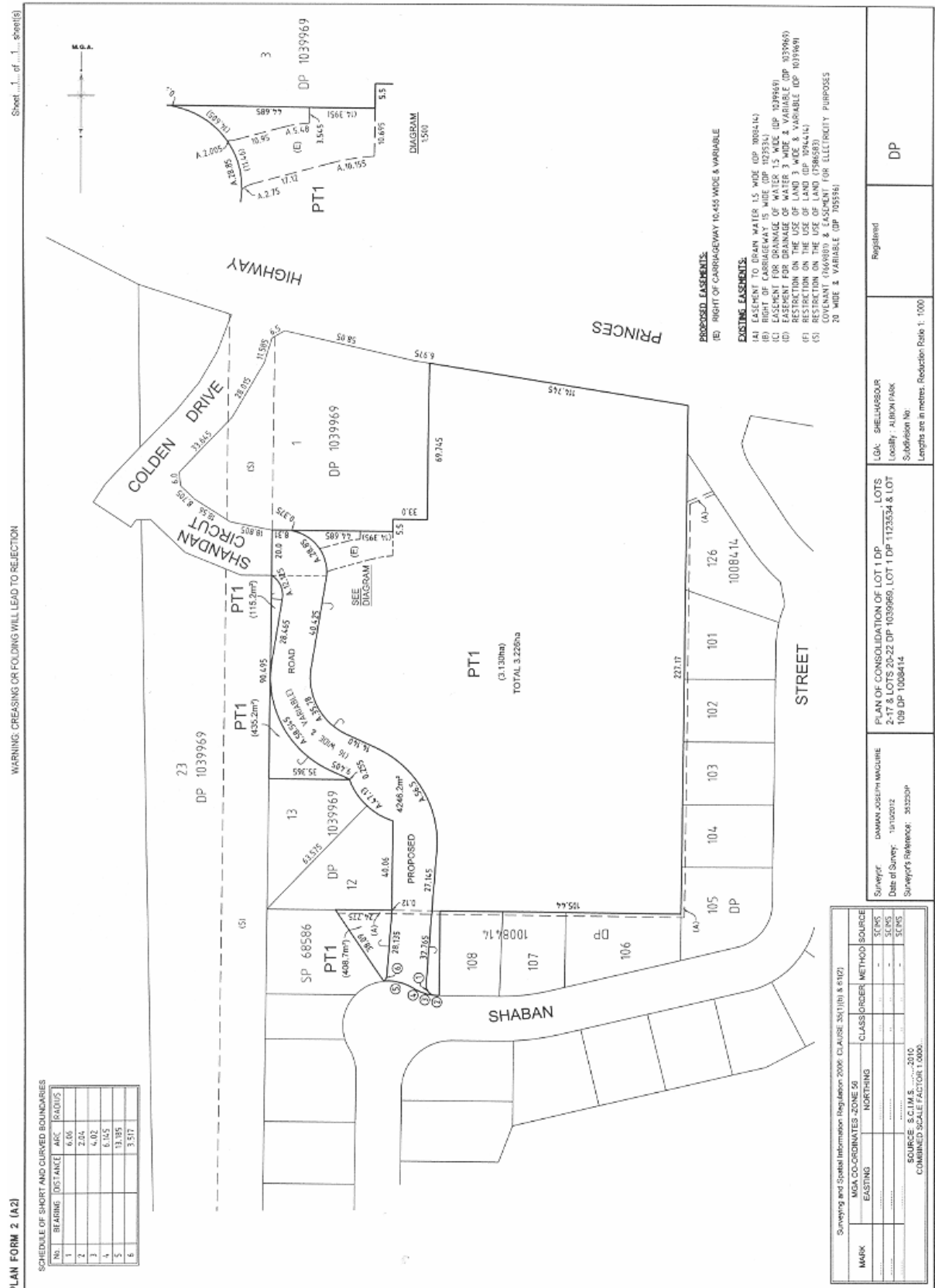


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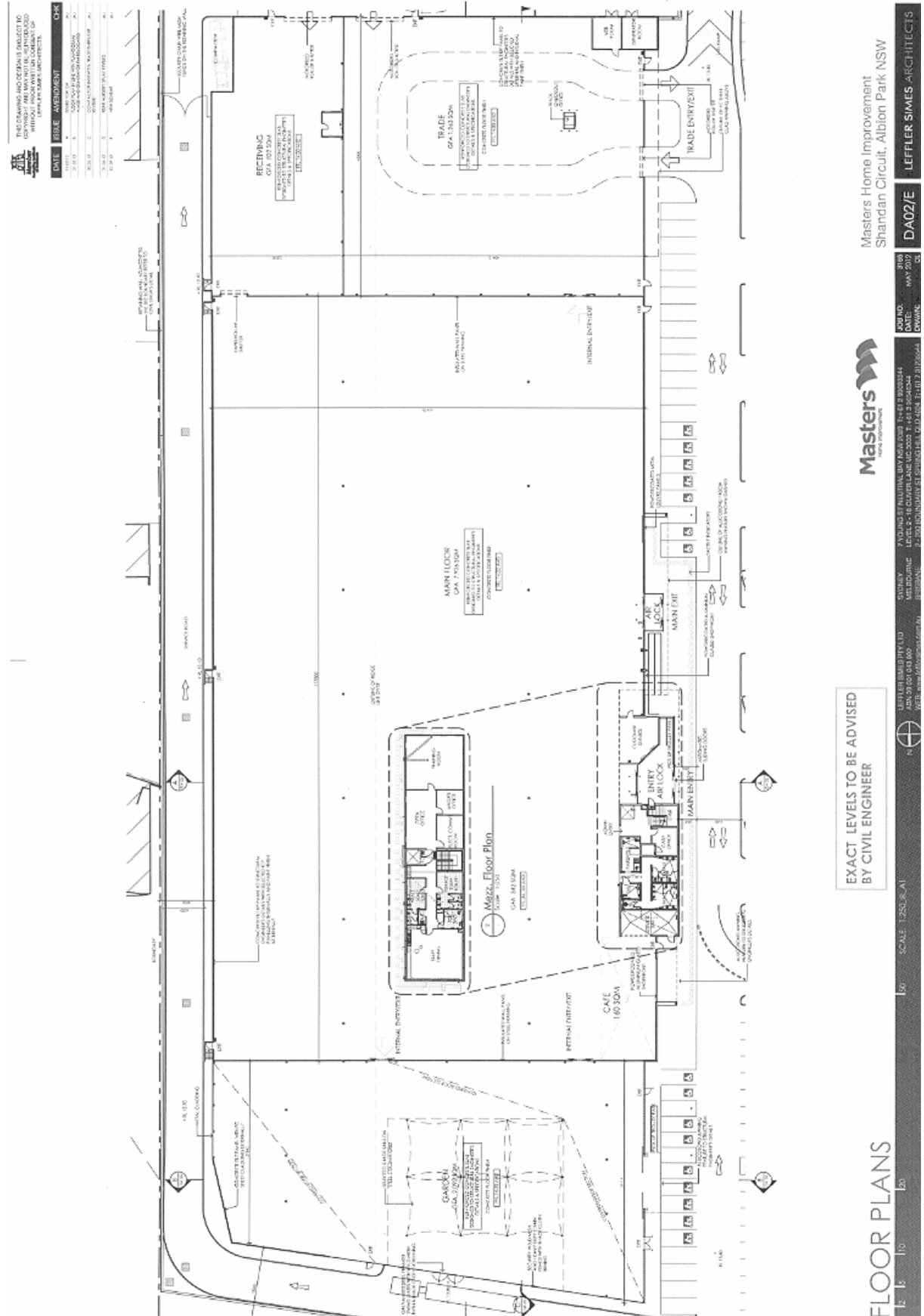
Attachment 2 - Plan of Consolidation



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Attachment 3 - Plans Masters Development (Page 2 of 5)



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Development Application No. 192/2012
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Attachment 3 - Plans Masters Development (Page 5 of 5)

