



19 August 2013

Council's Reference: DA 533.1/2012
Our Reference: DHB/08-084E

The General Manager
Fairfield City Council
Administration Centre
86 Avoca Road
WAKELEY NSW 2176

Attention: Ms Sunnee Cullen

Dear Sunnee,

re: Section 96(2) application to modify development consent DA 533.1/2012

1. INTRODUCTION

We write with reference to the development consent to DA 533.1/2012 relating to the Stockland Wetherill Park Shopping Centre at No's 561 – 583 Polding Street, Wetherill Park.

Stockland wishes to modify the above consent under the relevant provisions of Section 96 of the Environmental Planning and Assessment Act, 1979.

The requested modification results from the process of detailed design and construction planning and management. It includes minor changes primarily which alter the internal layout of the approved development with some changes to external elements.

Importantly, the proposed modifications do not alter the appearance of the approved development, the traffic performance or the parking impacts of the development to any significant extent.

The development as modified remains substantially the same as the development originally approved and the proposed modification is assessed as being of minimal environmental impact.

BBC Consulting Planners has been requested by Stockland to prepare the supporting information for the Section 96 Application. This correspondence forms part of the Section 96 application. Accompanying this submission is:

- a completed Section 96 form;
- a set of the amended plans, prepared by Stockland;



- a letter from MGAC relating to access implications of modifications;
- a letter from McKenzie Group Consulting regarding the BCA implications of the modifications; and
- a cheque to cover the application fee associated with the Section 96(2) application.

Relevant details of the proposed modification of the consent are provided below.

2. LAND TO WHICH THIS SECTION 96(1A) MODIFICATION APPLICATION RELATES

This Section 96 application is made in relation to the consent detailed below in Section 3. The consent applies to land known as No's 561 – 583 Polding Street, Wetherill Park ("the site"). The land to which this DA relates comprises Lot 102 in Deposited Plan 1034345 and Lot 1 in Deposited Plan 867772.

3. CONSENT SOUGHT TO BE MODIFIED

The consent sought to be modified is that granted by the Sydney West Joint Regional Planning Panel on 11 December 2012.

As described on the Notice of Determination, consent was given to:

"Alterations and additions to Stockland Wetherill Park Shopping Centre comprising 5,665m² of additional gross leaseable floor area (GLFA) located at ground level and three (3) levels of deck car parking above and associated works (Stage 2)."

4. DETAILS OF THE PROPOSED MODIFICATIONS TO THE CONSENT

4.1 Basis for Section 96 Modification

Since the approval of DA 533.1/2012 the development (including Stages 1 and 2) has undergone detailed design with input from various fire safety, building code, access, services, traffic and architectural professionals. Consideration has also been given to construction issues.

As a result, a number of changes to the design are proposed as outlined below.

Overall, the proposed design changes will maintain the intent and integrity of the approved development. The environmental performance, amenity, access and presentation of the approved development are also maintained and improved by the proposed amendments.

4.1 Requested Design Modifications

The proposed changes to the development have been highlighted on the Section 96 Drawings by cloud notations and descriptions. A description of the proposed changes, on a drawing-by-drawing basis is as follows. The changes are noted on the drawings.

DA-000 - Location Plan & Drawing List Issue B

1. Notation added

DA-002 Demolition - Basement Plan Issue C

1. Ramp deleted, plant & stair layout revised.

DA-003 Demolition - Ground Floor Plan Issue C

1. Demolish existing building
2. Demolish existing amenities
3. Extent of demolition adjacent to supermarket revised

DA-004 Demolition - Level 1 Plan Issue C

1. Extent of demolition revised

DA-005 Demolition - Level 2 Plan Issue C

1. Extent of demolition revised

DA-201 Proposed Basement Floor Plan Issue E

1. Travelator and associated parking arrangement modified
2. Access ramp deleted & carparking reconfigured

DA-202 Proposed Ground Floor Plan Issue M

1. Carwash replaces existing building
2. Stairs revised
3. Food court, back of house and amenities generally revised
4. Shop revised
5. Supermarket revised

DA-203 Proposed Level 1 Plan Issue G

1. Stair and ducts reconfigured
2. Additional roof plant to supermarket

DA-204 Proposed Level 2 Plan Issue F

1. Stair and ducts reconfigured

DA-205 Proposed Level 3 Plan Issue F

1. Roof tops to lower deck shown

DA-206 Proposed Roof Plan Issue C

1. Roof tops to lower deck shown

DA-301 Elevations/Sections Sheet 1 Issue D

1. Awnings added

DA-302 Elevations/Sections Sheet 2 Issue E

1. Awnings added

DA-501 Landscape Plan Issue B

1. Architectural background plan revised to reflect changes

4.1.1 Key Statistics

A comparison of the key development statistics of the approved development and the proposed modification follows:

| | Approved Development (additional) | Proposed Modification |
|---------------------|-----------------------------------|------------------------------------|
| Gross Lettable Area | 5,664m ² | No increase |
| Building Height | | small addition for plant extension |
| Car Parking (total) | 2,648 | 2,637 |

There is no overall change in the GLA at the centre resulting from this modification.

4.1.2 Amendment to Conditions Relating to Design Changes

The approved development is subject to 62 conditions and advisory notes. Condition 1 of the consent refers to the **approved plans** for the development. This Section 96 modification seeks consent to the amended drawings to include the drawings referred to above. An amendment to Condition 3 is necessary to capture the revised drawings and documentation lodged with this Modification Application.

4.1.3 Changes to Condition 46 Regarding Car Parking

The car parking space reduction incorporates 9 spaces lost as a result of the recent modification application for DA1253.1/2010 as a result of the KFC car park rearrangement. An additional 2 spaces have been lost as a result of design development. It is noted that there is a surplus of some 37 parking spaces as a result of the reduced GLA in the Stage 1 S96 applications. Stockland will retain the surplus of the additional 26 parking spaces.

Consequently Council is requested to modify condition 46 to read (new words shown in **bold and underlined**; deleted words shown in ~~strikethrough~~):

46. Car Parking

The following car parking shall be provided in accordance with Chapter 12 of the Fairfield City-Wide Development Control Plan 2006:

- a. **2637** ~~2648~~ off-street car parking spaces for staff and visitors; **including**
- b. 53 off-street car parking spaces for disabled persons (minimum width 3.8m).

Each space shall be permanently line marked and maintained free from obstruction at all times. Staff, company and visitor vehicles shall be parked in the spaces provided on the subject premises and not on adjacent footway or landscaping areas.

The intent of this condition is that the 53 disabled places are included in the total parking allocation of 2,637 parking spaces. This total number included 53 spaces for disabled persons. This correct interpretation of the consents has been confirmed by Council in and email from Mr Mark Stephenson dated 7 March 2013.

4.2 Amendment to Other Conditions

4.2.1 Condition 257 – During Construction or Demolition

Condition 25 relates to the demolition and construction working hours and states the following:

25. During Construction or Demolition

During the construction or demolition period, the applicant must ensure that any building work is to be carried out within the following hours.

- *Monday - Friday between the hours of 7:00am to 6:00pm and Saturday between 8:00am and 1:00pm in all zones. No work may be carried out on Sundays or public holidays.*
- *Activities which don't cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997.*

Note: *on the spot penalties up to \$1,500 will be issued for any non-compliance with the requirement.*

Proposed changes to this condition are highlighted below with new words shown in **bold and underlined** and deleted words shown in ~~strike through~~ in bold below:

25. During Construction or Demolition

During the construction or demolition period, the applicant must ensure that any building work is to be carried out within the following hours.

- *Monday - Friday between the hours of 7:00am to 6:00pm and Saturday between 8:00am and **3:00pm** ~~4:00pm~~ in all zones. No work may be carried out on Sundays or public holidays.*
- *Activities which don't cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 **can take place outside the above hours**.*

Note: *on the spot penalties up to \$1,500 will be issued for any non-compliance with the requirement.*

This Section 96 modification requests that Condition 25 be altered as detailed above to align with Consent Condition 45 (as modified) of development consent 1253.3/2010, as these works will be performed sequentially. The building contractor has requested the demolition and construction working hours stipulated in Condition 25 of DA 533.1/2012 (as above) and Condition 45 of DA 1253.3/2010 are aligned due to the sequential construction of these works.

After review of the definition of "offensive noise" and considering the management/consultation requirements to work within these conditions, the building contractor has also requested an extension to the Saturday working hours as it is critical to maintaining programme and finish the project in a timely manner.

5. PRESCRIBED FORM

The prescribed requirements for a Section 96 application are set out in Clause 115 of the Environmental Planning and Assessment Regulation 2000. Fairfield City Council has integrated these requirements into a form for its own administrative purposes. A completed copy of this form accompanies this letter.

6. RELEVANT PROVISIONS OF SECTION 96

Section 96(2) of the *Environmental Planning and Assessment Act, 1979* ("EP&A Act") states as follows:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

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

This application is made pursuant to Section 96(2). However it is considered that it involves minimal environmental impact. The proposed amendments do not in themselves give rise to environmental impacts, other than those which can be described as minimal.

In particular, the modification does not significantly alter the appearance of the development, does not alter the use of the approved floor levels and does not alter the layout of each level to any significant extent. No additional adverse impacts will result from the proposed modification and no prejudice will be caused to any adjoining land. The proposed modification seeks to incorporate matters that have arisen from a detailed review of the fire safety, traffic, services, BCA and other detailed aspects of the design.

In relation to Section 96(2)(a), Council can be satisfied that the development as approved will still be substantially the same development when modified in accordance with this application. It is fundamentally the same development and does not alter the layout of the approved development to any significant extent.

In relation to Section 96(2)(b) and (c) it is expected that Council will consult with any relevant authorities and notify the application in accordance with these provisions.

Section 96(3) of the EP&A Act further states:-

"In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application."

Compared with the approved development, the proposed modification will create the same environmental impacts as those outlined in the Statement of Environmental Effects which accompanied the DA.

The following section assesses the proposed modifications under the relevant heads of consideration of Section 79C of the Environmental Planning and Assessment Act 1979.

7. ENVIRONMENTAL EFFECTS

Compared with the approved development, the proposed modification will create similar environmental impacts to those outlined in the Statement of Environmental Effects which accompanied the original DA to which this Section 96 application relates. The following subsection assesses the proposed modifications under the relevant heads of consideration of Section 79C of the Environmental Planning and Assessment Act 1979.

7.1 Section 79C(1)(a) – Statutory Planning Considerations

The relevant matters listed under Section 79C(1) of the Environmental Planning and Assessment Act, 1979, as amended, are addressed below.

| Section 79C(1) Considerations | Comment |
|---------------------------------------|---|
| (a) Statutory Planning Considerations | The development, as modified, is permissible with consent under Fairfield Local |

| Section 79G(1) Considerations | Comment |
|--|---|
| | <p>Environmental Plan 2013 and is consistent with the various planning controls.</p> <p>In relation to the Fairfield City Wide DCP, the only relevant matter is car parking. In this regard, the development, as modified, will maintain a surplus of car parking relative to GLA. In the last Section 96 approval for Stage 1, there was a surplus of some 37 cars as a result of the reduced GLA. Stockland will retain the surplus of 26 bays.</p> |
| (b) Environmental, Social and Economic Impacts | All relevant potential impacts of the proposal are addressed in this correspondence. |
| (c) Suitability of the Site | The site is suitable for the development both as approved and as modified. |
| (d) Submissions | Any relevant representations will need to be considered by the consent authority. |
| (e) Public Interest | <p>The public interest is best served by development that is consistent with the planning controls applying to the land on which the development is to be carried out, by the provisions of facilities and services that are in demand, and which are attractive, well designed, well managed and environmentally efficient and responsive, and by the orderly and economic use and development of land. Having regard to these matters, it can be concluded that the proposal is in the public interest.</p> |

The economic impacts of the proposed modification to the Franklins supermarket area have been considered by MacroPlan Dimasi in their report dated August 2013 submitted with this application. This report concludes that:

The proposed S96 amendment will not add any additional floorspace to the centre and does not increase the number of supermarkets at the centre.

The S96 amendment will improve the quality of its offer, to the betterment of the surrounding community.

The proposed amendment is estimated to result in a very minor increase in centre sales, in the order of \$2.1 million or 0.6%, resulting in minimal trading impacts across the surrounding centres network.



A larger modern supermarket of 4,300 sq.m increase competition with the existing supermarket at the centre resulting in greater price competition for essential food and grocery items. There would be no loss of provision of retail facilities to the community with an overall improvement in the retail offer at the centre.

Having regard to the above, the modification is considered to be in the public interest and will not give rise to any adverse social or economic impacts.

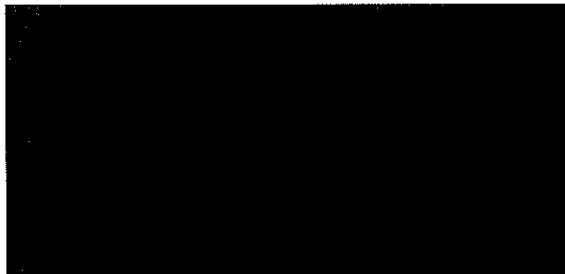
The modification for which consent is sought will not alter the original findings made in relation to DA 533.1/2012 regarding the reasonableness and appropriateness of the proposal when considered in the light of the matters listed in Section 79C(1) of the Environmental Planning and Assessment Act, 1979. It will have no significant impacts on the form, appearance or operational implications of the approved development and will have minimal environmental impacts.

The Section 96 application has merit and is worthy of favourable consideration by Council.

We trust that you will find the application acceptable. If any further details are required, or if further justification is required in support of the requested modification, please do not hesitate to contact the undersigned on 9211 4099.

Yours faithfully,

BBC Consulting Planners



Dan Brindle
Director



21 November 2013

Council's Reference: DA 533.2/2012
Our Reference: DHB/08-084E

The General Manager
Fairfield City Council
Administration Centre
86 Avoca Road
WAKELEY NSW 2176

Attention: Mr Liam Hawke

Dear Sir,

re: Modification Application No. 533.2/2012 - Section 96(2) application to modify development consent DA 533.1/2012

1. INTRODUCTION

We write with reference to Modification Application No. 533.2/2012 for the development consent to DA 533.1/2012 relating to the Stockland Wetherill Park Shopping Centre at No's 561 – 583 Polding Street, Wetherill Park in response to your letter dated 7 November 2013.

We advise as follows.

Floor Space Ratio

Council Comment:

In accordance with Clause 4.4 of Fairfield Local Environmental Plan 2013 (LEP) the maximum Floor Space Ratio (FSR) for the subject site is 0.57:1. It is understood that the proposal seeks an FSR which is greater than the development standard.

If the applicant wishes to seek a variation of the development standard the applicant is required to address Clause 4.6 'Exceptions to Development Standards' within the LEP. In this regard, a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating the following, is to be submitted:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Response:

The S96 application does not seek an FSR which is greater than the development standard. The existing centre with the approvals under consent to DA 1253.1/2010 and consent to DA 533.1/2012 result in a GFA that exceeds the FSR of 0.57:1. The S96 does not seek to vary this. The modification application does not result in a further breach of a development standard.

Even if it did, an objection pursuant to clause 4.6 of the LEP would not be required because the application is for the modification of a consent not the granting of a consent. In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) the Court of Appeal held that s.96 is "a free-standing provision" such that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard".

The application addresses the provisions of the relevant environmental planning instrument enabling Council to take this into consideration in its assessment of the application.

Council Comment:

Furthermore to this, the submitted Statement of Environmental Effects indicates that the proposal will not increase the gross floor area as originally approved under DA No. 533.1/2012. Notwithstanding, it is noted that the proposal seeks to undertake internal alterations and configurations to the layout, specifically the food court and existing supermarket. The applicant is required to demonstrate that the proposal does not seek to increase the approved floor area under the original consent.

Response:

The submitted SEE states that the application does not increase the approved GLA as the approval is expressed in terms of GLA not GFA. The changes in internal arrangements do not result in an increase in the approved GLA.

GFA is defined as:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*

(j) voids above a floor at the level of a storey or storey above.

Given that the modification deals with internal alterations, there is not change to the GFA associated with the application.

Height

Council Comment:

The proposal seeks to construct additional plant area along the western elevation of the subject site. The applicant is required to provide an elevation or section of this area to ensure that the proposal does not exceed the maximum building height of 18m (Clause 4.3 of LEP 2013) and the additional height will not be detrimental to the streetscape.

Response:

The height of the new plan will not exceed the height of the existing plant on the site. This can be seen from the attached section (Attachment 1). The height of the plant room roof is RL46.1m and the existing ground level is RL36m. Thus the height of the plant room building is approximately 10.1 metres. This is well below the maximum of 18m.

Carparking

Council Comment:

The applicant seeks to amend several areas which are designated for car parking spaces and (as indicated within the Statement of Environmental Effects) will result in a minor reduction of two (2) spaces. It is requested that the applicant provide the total number of car parking spaces for each of the areas where the layout is proposed to be modified in order to ascertain that the number of car parking will not be further reduced.

Response:

Condition 46 of the consent deals with car parking and requires the provision of 2,637 parking spaces (as modified). This will provide sufficient assurance to Council that the approved car parking spaces will be provided and supersedes the requirement for parking numbers to be identified on the drawings.

Proposed New Car Wash

Council Comment:

It is not clear in the submitted information if the proposal seeks to rebuild the existing car wash facility on the subject premises. If the proposal seeks a new car wash facility then details are to be provided for the new structure. Otherwise, this could be subject to a separate application for Council to consider.

Response:

The car wash facility will be rebuilt and will be of similar proportions to the existing facility. The design of this facility has not been completed and will be dependent on the plant and equipment chosen for the facility. The building is internal to the site and would be of single storey construction. It is considered acceptable for approval to be given to this replacement facility in the location and footprint shown with the details of the design to be resolved at



construction certificate stage. Any reasonable design and configuration of this facility at the location shown would be acceptable on environmental grounds.

Acoustic Report

Council Comment:

Given that the proposal seeks additional plant area along the western elevation, it is requested that a statement be provided from a qualified acoustic consultant that certifies the proposed modifications (sought under this application) will not alter/impact the findings and recommendations from the previously approved acoustic reports for stages 1 and 2 at the site.

Response:

Advice responding to this request has been provided by Renzo Tonin & Associates and is contained in Attachment 2.

Objections

A summary of the points raised in the objection are as follows:

- 1) A concern with the increased flow along Polding Street and Conrad Street during the construction phase of the development.
- 2) We have noticed increased numbers of staff parking in our street and believe this will worsen during construction with parking by staff and construction workers
- 3) Concern over shopping trolleys and rubbish left scattered along Conrad Street by shoppers. Stockland Management could take this matter up with their retail tenants perhaps implementation of paid trolleys may be answer to this growing problem.
- 4) Internal traffic flow should be considered when considering the expansion development proposal of the Stockland Shopping Centre.
- 5) There appears to be no improvements to the traffic flow in Polding Street and Restwell Road. More parking places must attract more shoppers and cars. Therefore more traffic in these two streets. The current situation can be bedlam now in peak periods.

These issues relate to the approved development rather than the modifications proposed as part of this application. The modification application includes no changes to site access and no significant implications on parking availability or traffic generation. The modifications will not impact off site to any significant extent.

In relation to Points 1 and 2, there is a condition of consent requiring the preparation of a Construction Management Plan (condition 11) and a Construction Traffic Management Plan (condition 12) which will be submitted to Council. These will address measures to ensure that amenity of the surrounding areas will not be adversely affected. Other conditions include controls on the construction process.

In relation to Point 3, Stockland holds regular discussions with tenants and will discuss ways of managing shopping trolleys with new tenants to the development.



Points 4 and 5 deal with matters already addressed in the consideration of the development application with conditions of consent imposed by council and the RMS in relation to traffic management. The proposed modification does not require any further conditions in this regard.

We trust that this responds adequately to your request for additional information. If any further details are required, or if further justification is required in support of the requested modification, please do not hesitate to contact the applicant or the undersigned on 9211 4099.

Yours faithfully,

BBC Consulting Planners

A handwritten signature in black ink, appearing to read 'Dan Brindle', written in a cursive style.

Dan Brindle
Director



ATTACHMENT 1



ATTACHMENT 2

TF010-02F03 (rev 0) Review of Stage 2 S96 Modifications

20 November 2013

MS JULIA CAIN

Stockland (Project Management)
Level 28, 133 Castlereagh Street
Sydney NSW 2000

Dear Julia,

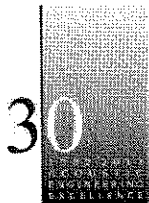
**RE: STOCKLAND WETHERILL PARK STAGE 2 – ACOUSTIC REVIEW OF
SECTION 96 MODIFICATIONS TO SUPERMARKET PLANT ROOM AND
CONDENSOR DECK**

Renzo Tonin & Associates have reviewed the following Section 96 modification drawings for the proposed supermarket plant room and condenser deck:

- Drawing no. M210-AA004719-B, dated 18 July 2013
- Drawing no. CA2952-ADDZ-1183-A, dated 19 August 2013
- Drawing no. CA2952-ADDZ-1185-A, dated 18 July 2013
- Drawing no. DA-000-C, dated 29 August 2013
- Drawing no. DA-201-F, dated 29 August 2013
- Drawing no. DA-202-N, dated 29 August 2013
- Drawing no. DA-203-G, dated 15 August 2013
- Drawing no. DA-204-F, dated 1 August 2013
- Drawing no. DA-205-F, dated 1 August 2013
- Drawing no. DA-206-C, dated 1 August 2013

In addition, a review of the previous Stage 2 operational noise assessment report [ref. TF010-02F02 (rev 0), dated 4 July 2012] prepared by Renzo Tonin & Associates was also undertaken.

Based on the review of the above drawings it is concluded that although the proposed plant room and condenser deck have increased in size, with the appropriate noise mitigation measures, as recommended in-principle in Section 7 of the previous noise assessment report, noise emission levels from mechanical plant would be reduced at the nearest affected noise sensitive residential receivers along Wheller Street.



Therefore, the in-principle recommendations outlined in the previous noise assessment report would be applicable for the proposed modifications and would not require any amendments as a result of the S96 changes.

Yours sincerely,



RENZO TONIN & ASSOCIATES (NSW) PTY LTD

Michael Chung

Senior Engineer / Team Leader

Environmental Acoustics Team