

Monday 16 June 2014

**Subject:** Development Application DA14/0063 - Northern retail expansion of Tweed City Shopping Centre including reconfiguration and expansion of retail space to the north and west of the centre resulting in an increase of gross floor area from 57,969m<sup>2</sup> to 78,628m<sup>2</sup>, demolition of existing car park, dwellings and to the existing shopping centre building, development of basement, at grade and multi-level parking, new signage, access amendments to the centre, new loading docks and upgrade to site infrastructure (JRPP) at Lot 22 DP 23659; No. 24 Kirkwood Road TWEED HEADS SOUTH; Lot 5 DP 830973; No. 24A Kirkwood Road TWEED HEADS SOUTH; Lot 21 DP 23659; No. 26 Kirkwood Road TWEED HEADS SOUTH; Lot 20 DP 23659; No. 28 Kirkwood Road TWEED HEADS SOUTH; Lot 19 DP 23659; No. 30 Kirkwood Road TWEED HEADS SOUTH; Lot 4 DP 781506; No. 34 Minjungbal Drive TWEED HEADS SOUTH; Lot 5 DP 781506; No. 36 Minjungbal Drive TWEED HEADS SOUTH; Lot 6 DP 1119624; No. 38 Minjungbal Drive TWEED HEADS SOUTH; Lot 13 DP 23659; No. 42 Kirkwood Road TWEED HEADS SOUTH; Lot 12 DP 23659; No. 44 Kirkwood Road TWEED HEADS SOUTH; Lot 11 DP 23659; No. 46 Kirkwood Road TWEED HEADS SOUTH; Lot 2 DP 804871; No. 48-50 Kirkwood Road TWEED HEADS SOUTH; Lot 8 DP 23659; No. 52 Kirkwood Road TWEED HEADS SOUTH; Lot 1 DP 781517; No. 58 Minjungbal Drive TWEED HEADS SOUTH; Lot 2 DP 781518; No. 60 Minjungbal Drive TWEED HEADS SOUTH; Lot 1 DP 524806; No. 62 Minjungbal Drive TWEED HEADS SOUTH

**File Reference:** DA14/0063

**Date of occurrence:** 16 June 2014

The applicant was forwarded draft conditions of consent for the above referenced development on Tuesday, 3 June 2014 in accordance with Council's policy on the provision of draft conditions.

The draft conditions were issued on the following basis:

- *That the conditions are issued on a without prejudice basis; and*
- *That the issuing of draft conditions of consent is not part of a negotiation process for an applications' approval. Notwithstanding this, applicants should be able to provide feedback about whether draft conditions are comprehensible, reasonable, capable of compliance and have lawful foundation.*

These conditions were discussed over the phone with the applicants planning consultant (David Hoy) on Tuesday 10 June and an email response was received on Wednesday 11 June. This email queried a number of the draft conditions. As some of these conditions were provided from various units within Council it was considered appropriate to refer back to the

original author where applicable in order to provide a detailed response to the applicant. The applicant's response (reproduced in *italics*) and Council Officer comments have been provided below;

- *Condition 12 – DEXUS presence is for dedication not to occur as DEXUS wish to maintain control of the maintenance of the bus bay works in Kirkwood Road. Necessary easements/rights of carriage way would create to facilitate bus access.*

No significant concerns are raised if the bus bay remains as private land, however if the existing water main requires relocation to within private property as a consequence of the works in Kirkwood Road, then dedication would still be necessary. It is likely that some vertical realignment of the water main may be necessary (which would be OK) but if horizontal realignment is required, that's when dedication would need to be considered.

In lieu of road dedication, a Right of Carriageway will be required to be created. This needs to cover the bus bay as well as the pedestrian thoroughfare area.

Also, any public infrastructure constructed as part of the bus bay (eg: stormwater lines) that will be located within private property, will need to be covered by an appropriate easement.

Amendment of Condition 12 to reflect these requirements has been undertaken . See below.

The bus bay works in Kirkwood Road that encroach into the site, as well as the associated pedestrian footpath area, shall be covered by a Right of Carriageway. Any public infrastructure constructed as part of the bus bay (eg: stormwater lines) that will be located on private property, will need to be covered by an appropriate easement.

However, if any water mains require relocation into private property, then appropriate road dedication would then be required.

ALSO - POC0860 has now been included (addressing Right of Carriageway + creation of easements) as Condition 148.

The proposed amendment is considered acceptable subject to the above provisions.

- *Condition 31 – This appears to be a standard condition best imposed on residential development. The DA includes a detailed stormwater management concept that reflects pre-lodgement discussions with Council's engineers. The concept includes provisions for on-site detention consistent with the intent of the current condition. We suggest that a specifically worded condition reflecting the proposal may be better in this instance*

Council officers have reviewed this request and advised the following;

'This condition is more appropriate for commercial/industrial development than residential (extensive impervious areas). The SWMP-P outlined basic details of a proposed onsite detention system, which was acceptable. However, a higher level of detail is required for CC/s68 approval. This condition sets out the requirements (additional to D7) that need to be

complied with. I think this condition is relevant and I don't think it will be a problem for the applicant to comply with it. Removing it is not supported.'

It is not recommended that this condition be amended.

- *Condition 41 - An overall landscape concept plan was submitted to Council recently and therefore question the need for this condition*

This condition has been applied to ensure consistency across both this application and the previously approved DA13/0554. Whilst the applicant has recently submitted a landscape concept plan, it is not verified that this has been approved.

- *Condition 45 – DEXUS requires copies of the documents referred to in the proposed condition*

Council officers are searching records with respect to this matter. It is noted that the proponent should have access to such documents under previous DA approvals.

- *Condition 68 – can the words “Where applicable” be added to the start of this condition.*

No objection to the modified wording for **Condition 68**. A sign re asbestos removal is only required where removal is actually happening (eg historical houses along Kirkwood Road)

- *Condition 75 – can the words “at the boundary” be changed to “at the closest external wall”*

I have no difficulty with the revised wording for **Condition 75**. The usual and long standing requirement is noise levels within the residential property ie external to the dwelling. I do not see any problem with the revised requirement the max level at the external wall. Probably means higher levels OK in front yard.

- *Condition 87 – request deletion (this was agreed for the DA13/0554). For a project of this nature, this type of equipment is essential. The CMP submitted with the DA specifically calls for a Noise and Vibration management plan to be prepared*

No objection to deletion of proposed **Condition 87**. I note the requirement for a noise and vibration management plan to minimise impacts by this activity. Vibration equipment would be essential to placement of suspended slabs etc for parking along the Kirkwood frontage.

- *Condition 128 – replace the word “an” occupation certificate with “the relevant” occupation certificate*

This requirement needs to be complied with upon completion of public infrastructure works, which must be completed prior to occupation of any part of the development. If the applicant seeks clarification, then the condition should refer to the first OC.

In this regard it is noted that the applicant has not provided any advice as to how many OC's are to be issued or who defines the relevance of any given occupation certificate.

See below for amendment.

Prior to the issue of the first Occupation Certificate a defect liability bond (in cash **or** unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the public infrastructure works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act (as set out in Councils Fees and Charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

- *Condition 136 – question relevance given no subdivision works proposed.*

Condition is considered relevant - however the term 'subdivision' should have been altered. See below for amendment;

Upon completion of all civil infrastructure works pertaining to the site (eg – road and sewer works), Work as Executed plans are to be provided to Council in accordance with Councils Development Design Specification, D13 as well as a CCTV inspection of the stormwater pipes and sewerage system that are to be dedicated to Council as public infrastructure including joints and junctions to demonstrate that the standard of the system is acceptable to Council.

Specific matters to be addressed:

- The plan shall include manhole location and depths, sewer line lengths and gradients shown in percentage, dimensions to structures and junction points with details.
- A junction sheet including depth, distance to downstream manhole and offset type and distance shall be submitted to Council.
- A post video of the sewer line shall be completed with WinCAN DVD and datafile and submitted to Council for review prior to practical completion.
- All WAE information shall meet Council's Approval prior to the release of certificate of practical completion.

The plans are to be endorsed by a Registered Surveyor OR Consulting Engineer certifying that:

- a) The plans accurately reflect the work as executed.
- b) All stormwater lines, sewer lines, services and structures are wholly contained within the relevant easements or boundaries.

**Note:** Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

- *Conditions 162-168 – question relevance as no subdivision works proposed.*

**Condition 162:** OK to delete as I have already included the same condition but with a 'POC' reference.

**Condition 163:** OK to delete as this is already covered by other condition.

**Condition 164** OK to delete.

**Conditions 165 - 168** A relocation of 'POCNS01' conditions into POC0765 is recommended. These conditions relate to Works-as-Executed information. There are already 2 other conditions referring to WAE information (136 & 143), so to reduce confusion, it is suggested these conditions be included in POC0765.

Note that I have also deleted the 'Prior to Issue of Subdivision Certificate' heading.

David O'Connell  
Development Assessment Unit

74210