

JOINT REGIONAL PLANNING PANEL (Sydney East Joint Regional Planning Panel)

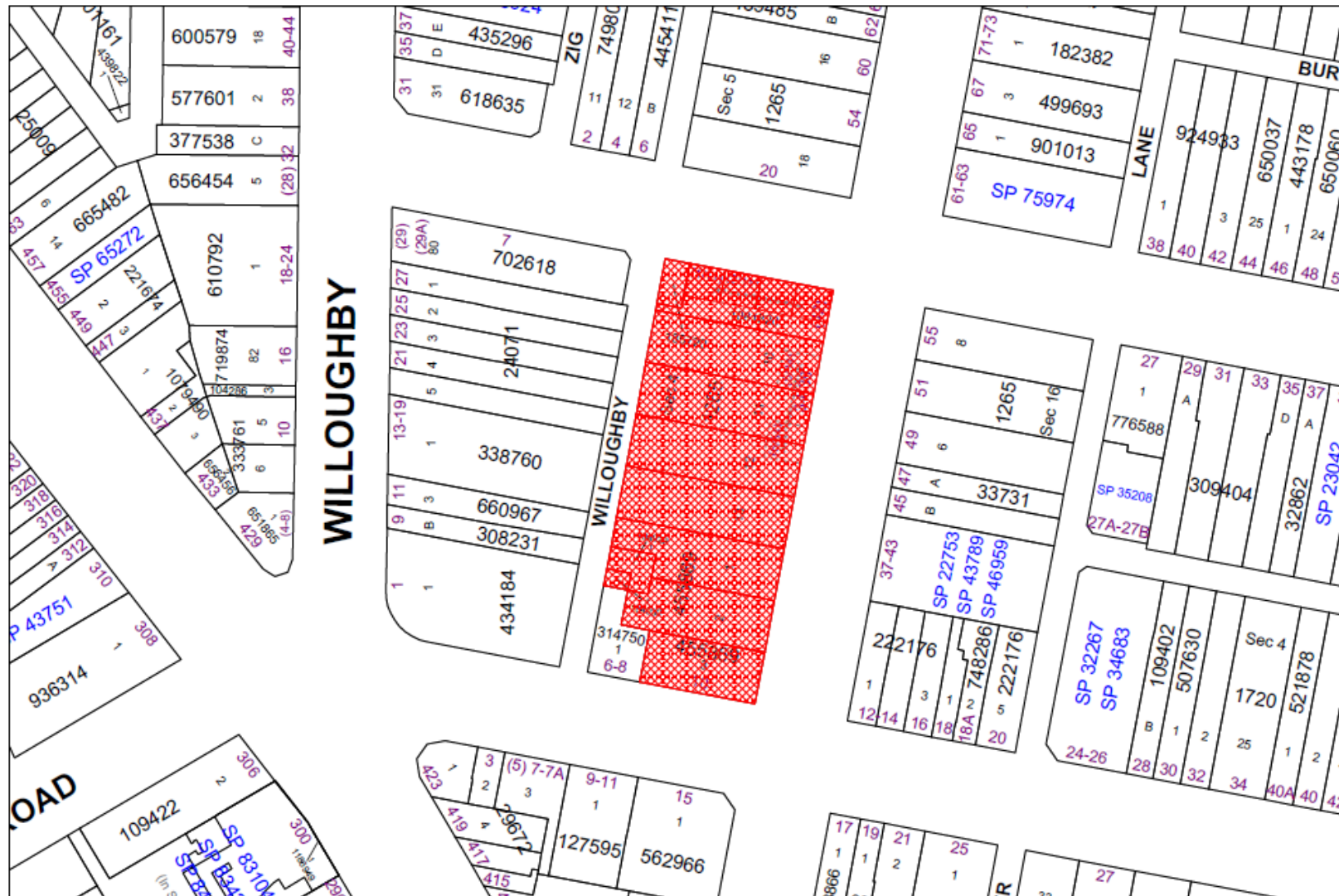
ASSESSMENT REPORT

JRPP No	2014SYE146
DA Number	DA65/13
Local Government Area	North Sydney Council
Proposed Development	Modification of consent pursuant to S.96(2) for demolition of existing structures and construction of a 6 level mixed use building to contain a public car park, supermarket, arcade, specialty stores and substations and erection of signage
Proposed Modification	Modify width and size public lifts and lobbies and increase lift overrun by 280mm, reduce parking by 8 spaces and reduce accessible parking spaces from 8 to 6 spaces and reconfigure the design and layout of specialty stores and arcade.
Plans Ref:	4058_DA003(C), 4058_DA011(C), 4058_DA012(D), 4058_DA013(D), 4058_DA014(C), 4058_DA015(C), 4058_DA016(C), 4058_DA017(C), 4058_DA020(D) and 4058_DA031(C) all dated 3.11.2014 and received by Council on 5.11.2014.
Street Address	10 Falcon Street and 34-43 Alexander Street, Crows Nest
Applicant/	Fabcot Pty Ltd
Owner	Fabcot Pty Ltd, North Sydney Council
Number of Submissions	Nil
Date of Report	10 February 2015
Report by	Kerry Gordon – Kerry Gordon Planning Services On behalf of North Sydney Council
Recommendation	Approval of modification

Assessment Report and Recommendation



LOCATION MAP



EXECUTIVE SUMMARY

Development consent was granted for demolition of existing structures and construction of a 6 level mixed use building to contain a public car park, supermarket, arcade, specialty stores and substations and erection of signage. Subsequently a construction certificate was issued and demolition/construction of the development has commenced.

A modification application has been lodged seeking to amend the width and size of the lifts and lobbies throughout the development, increase the height of the lift overrun by 280mm, reduce the parking provision by 8 spaces, reduce the provision of accessible parking spaces from 8 to 6 spaces and reconfigure the design of the specialty stores and arcade. As a consequence of the modifications, it is also sought to amend conditions A1 and C28.

The application was notified and no submissions were received in response to the notification.

Then application is referred to the Sydney East Joint Regional Planning Panel for determination under the provisions of Clause 21 of SEPP (State & Regional Development) 2011 and Schedule 4A of the Environmental Planning & Assessment Act 1979 and the proposed modification under S.96(2) relates to Council development with greater than \$5M Capital Investment Value (CIV).

It is considered that the modifications sought are satisfactory and accordingly the modification is recommended for approval.

HISTORY

Development consent was granted for demolition of existing structures and construction of a 6 level mixed use building to contain a public car park, supermarket, arcade, specialty stores and substations and erection of signage. Subsequently a construction certificate was issued and demolition/construction of the development has commenced.

DESCRIPTION OF PROPOSAL

Application is made to modify the consent for the demolition of existing structures and construction of a 6 level mixed use building to contain a public car park, supermarket, arcade, specialty stores and substations and erection of signage. The modifications sought are described in detail following:

- Modification to increase the width of each lift and the size of the lobby at each level in the car park to improve lift efficiency and pedestrian safety, separating the lobby from the car circulation area;
- Subsequent changes to the layout of the parking levels in proximity to the modified lifts;
- Increase in height of lift overrun by 275mm as a result of the increased width of lift requiring a larger motor room;
- Reduction of parking provision by 8 spaces from 296 to 288 spaces as a result of the changes in parking layout;
- Reduction in the provision of accessible parking spaces from 8 to 6 and their relocation as a result of the changes in the parking layout;
- Provision of bollards for separation between the car and pedestrian circulation areas for safety;
- Reconfiguration of the layout of the arcade and specialty stores due to the changes in the lifts;
- Resultant change in condition A1 to reflect the amended plan numbers; and
- Resultant change in condition C28 to reflect the reduced number of accessible parking spaces.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B3 Commercial Core
- In Vicinity of Item of Heritage – Crows Nest Hotel
- Height 19.15m

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 55 - Contaminated Lands

SEPP No. 64 - Advertising Signs

SEPP (Infrastructure)

SREP (Sydney Harbour Catchment)

Local Development

POLICY CONTROLS

DCP 2013

DESCRIPTION OF SITE AND LOCALITY

The subject site is comprised of 11 allotments (Lots 1-3, DP 455869, Lots 10-13, DP 1265, Lot 1, DP 1081820, Lot 1 DP 185720, Lot 1 DP 104029 and Lot 1 DP 104030) and is an irregular shaped allotment occupying the street block surrounded by Falcon Street, Alexander Street, Burlington Street and Willoughby Lane, with the exception of Nos. 6-8 Falcon Street (Lot 1 in DP 314750). The site was previously occupied by a Woolworths supermarket (southern half) and a mixed use building containing a public car park and shops to Burlington Street and part of Alexander Street frontage (northern half). The site also contained a large substation fronting Willoughby Lane. The site is currently a construction site.

The site is located in an area of mixed uses, predominantly retail, with some commercial and residential use. Properties to the west of the site front Willoughby Road and contain a mix of uses in largely 2 storey building, including the Crows Nest Hotel (3 storey), a range of shops and a café. There are currently 5 dwellings at the first floor level of No. 29 Willoughby Road (corner of Burlington Street) and 2 approved dwellings at the first floor level of No. 11 Willoughby Road (opposite the proposed loading dock). Immediately to the south-west of the site is a 2 storey shop occupied by a café at ground level. To the south of the site are 2-4 storey buildings containing largely commercial uses. To the east of the site are a series of 1-4 storey buildings containing a mix of retail and commercial uses and restaurants. To the north of the site is a 3 storey building with retail uses at ground level and commercial uses above. Diagonally opposite the site to the north-east is a 3 storey mixed use building with commercial uses at ground level and residential above.

INTERNAL REFERRALS

Development Engineering

No objections raised by the Development Engineer subject to a standard condition which requires compliance of the parking layout with AS 2890.1.

Comment: The approved conditions already include this condition of consent.

EXTERNAL REFERRALS

Nil

OTHER REFERRALS

Nil

SUBMISSIONS

Nil

CONSIDERATION

The relevant matters for consideration under Section 79C and 96(2) of the *Environmental Planning and Assessment Act 1979*, are assessed following:

SECTION 96(2)

(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.*

Subsections (1) and (1A) do not apply to such a modification.

- (3) 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.*

Section 96(2), as above, permits development consents to be modified subject to the modified development being substantially the same as the approved development, relevant consultations being carried out and notification being carried out in accordance with the DCP and submissions received being considered. Section 96(3) also requires modifications to be assessed having regard to the requirements of section 79C(1).

The proposed modifications are minor and largely internal (with the exception of the changes in relation to the lift). The changes proposed do not alter the use, bulk and scale or design of the development to a significant degree and as such the essence of the development as modified remains the same as for the development as approved. It is therefore considered that the modified development would be substantially the same as the approved development.

The modification did not require consultation with the Minister or other authority or approval bodies.

The modification application was notified in accordance with Council's DCP and no submissions were received.

The modifications requested are addressed in relation to the matters for consideration under section 79C(1) in the remainder of the report and the modifications sought are considered to be acceptable.

It is noted that as a result of the requested modifications it is necessary to modify condition A1 which identifies the approved plans and condition C28, which specifies the number of accessible parking spaces to be provided.

DISABILITY DISCRIMINATION ACT

The Disability Discrimination Act (DDA) requires Council to have regard to the equity of access to development when assessing a development application. In order to achieve equitable access, an appropriate accessible path of travel would need to be provided to and throughout each retail premises from the footpath and the car park and for accessible paths of travel to be provided throughout the public car park. Accessible parking spaces and toilet facilities would also need to be provided.

The modifications sought do not alter the accessibility of the development with regard to accessible paths of travel or provision of accessible toilet facilities, with condition C1, which requires an accessible entrance to Woolworths from Alexander Street to be provided and for accessible entrance into each shop fronting Burlington Street, to be retained.

The proposal, however, seeks to alter the provision of accessible parking spaces on the site, reducing them from 8 accessible spaces (which equated to 2.7% of the total approved spaces) to 6 spaces, along with reducing the total overall spaces by 8 spaces, from 296 spaces to 288 spaces. As such the accessible parking spaces are now proposed to equate to 2% of the total spaces. DCP 2013 requires the provision of 1-2% of total parking spaces to be accessible spaces and as such the amended development would remain consistent with the DCP.

Therefore it is considered that the proposal makes appropriate provision for disabled persons, subject to the approved conditions.

SEPP 55

The provisions of SEPP 55 require consideration as to whether the site is contaminated and requires remediation. A review of the history of uses on the site for the development application found uses including residential, car park, retail and theatre which did not raise any concerns that the site may be contaminated and as such additional investigation is not warranted in this case.

SREP 23 & DCP

The SEPP applies to the subject site as identified on the Sydney Harbour Catchment Map. The site is not identified:

- (a) within the Foreshores and Waterways Area;
- (b) as a strategic foreshore site;
- (c) as a heritage item;
- (d) within the wetlands protection area;

and therefore only Part 1 is applicable. Part 1 identifies aims of the plan from (a) to (h). The aims set out in Part 1 of the SEPP have been considered and the application is consistent with these aims, it being noted that the site is located some distance from the foreshore and waterways and the development will not be visible from either the foreshore or the waterways.

SEPP 64

SEPP 64 applies to applications including advertising structures/signage that will be visible from any public place and the approved development includes several signs and/or advertising structures that will be visible from public places. However, no modification is sought to the approved signage and as such no additional assessment under SEPP 64 is required.

SEPP INFRASTRUCTURE

The modifications sought does not alter the assessment of the approved development against the requirements of SEPP Infrastructure.

NORTH SYDNEY LEP 2013

North Sydney Local Environmental Plan 2013 (NSLEP 2013) was made and published on 2 August 2013 and commenced on 13 September 2013.

1. Permissibility within the zone

NSLEP 2013 zoned the subject site B3 Commercial Core. Commercial premises, which includes retail premises, are a permissible use with consent under the B4 Zone, however a car park is not. Notwithstanding this, a car park is permissible on the subject site pursuant to Schedule 1 -Additional Permitted Uses, which permits a car park on the subject site. As such the entire proposal is permissible with consent.

2. Commercial Core Zone Objectives

The following objectives are applicable to the Commercial Core zone and consideration is given to compliance with the objectives below:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

The amended proposal provides for a range of retail uses on the subject site, along with a Council car park that will service the Crows Nest community, satisfying the objective.

- *To encourage appropriate employment opportunities in accessible locations.*

The site is accessible by public transport with buses running along Falcon Street and the Pacific Highway and the proposal provides employment opportunities, satisfying the objective.

- *To maximise public transport patronage and encourage walking and cycling.*

The amended proposal does not alter the ability of patrons to walk or cycle to the property and as such the modifications do not alter the proposal's compliance with this objective.

- *To prohibit further residential development in the core of the North Sydney Centre*

The site is not in the core of the North Sydney Centre and as such the objective is not relevant to the assessment of the application.

- *To minimise the adverse effects of development on residents and occupiers of existing and new development.*

The modifications proposed do not change the impact of the development upon residents and occupiers of existing and new development.

3. Building Height

Clause 4.3 addresses heights of buildings and a maximum height of 19.15m applies to the subject site. The approved development has a maximum height at the lift overrun of RL 116.77 having a height above existing ground level of 18.66m, complying with the height control.

The amended proposal seeks to raise the height of the lift overrun by 275mm to RL 117.045, a height of 18.935m, complying with the height limit.

4. Heritage Conservation

Clause 5.10 addresses heritage conservation and the modifications sought are either internal or so minor as to not be discernible from the heritage item in the vicinity of the site (Crows Nest Hotel) and as such will not result in any unacceptable impact upon the heritage significance of the item.

4. Earthworks

Clause 6.10 addresses earthworks and is of relevance to the application, however the amendments do not alter the extent of excavation and as such no new assessment of the impact of the proposed earthworks is warranted.

DEVELOPMENT CONTROL PLAN 2013

Part B - Section 2 – Commercial & Mixed Use Development

1. Function

Section 2.2 addresses function and in particular, the provision of a variety of non-residential spaces and maximising public transport use.

These provisions are not relevant to the assessment of the modifications proposed.

2. Environmental Criteria

Section 2.3 addresses environmental criteria and in particular, clean air, noise, wind speed, reflectivity, artificial illumination, awnings, solar access, views, acoustic privacy, vibration and visual privacy. These provisions are not relevant to the assessment of the modifications proposed.

3. Quality Built Form

Section 2.4 addresses quality built form and in particular, context, site consolidation, setback, podiums, building design, skyline, junction and termination of streets, streetscape, entrances and exits and night time appearance. These provisions are not relevant to the assessment of the modifications proposed.

4. Quality Urban Environment

Section 2.5 addresses quality urban environment and in particular, accessibility, safety and security, illumination, vehicular access, car parking and garbage storage. These provisions are not relevant to the assessment of the modifications proposed.

5. Efficient Use of Resources

Section 2.6 addresses efficient use of resources and in particular, energy efficiency and waste management. These provisions are not relevant to the assessment of the modifications proposed.

Part B - Section 10 – Car Parking and Transport

Section 10 sets parking rates for different uses and for supermarkets in Crows Nest requires 4 spaces per 100m² of GFA and for other retail uses requires 1 space per 400m² of GFA. 1-2 % of parking spaces are to be accessible spaces.

The proposal provides 4,051m² of supermarket space (inclusive of administration area) and 500m² of specialty store space, requiring 162 spaces for the supermarket (104 spaces over the amount demanded by the previously existing supermarket on the site) and 1.25 spaces for the specialty stores. The approved development provided a total of 296 parking spaces (8 accessible) and was assessed as providing an additional 164 spaces over that provided in the existing Council car park, of which 60 spaces were to be provided in excess of that demanded by the larger supermarket and specialty stores.

As such, the reduction in parking spaces by 8 spaces proposed in this modification will reduce the increased capacity of the proposed Council car park (beyond that demanded by the larger supermarket and specialty stores) to 52spaces. Therefore, as the proposal still provides for a significant number of parking spaces in excess of that demanded by the supermarket and specialty retail stores, the reduction in parking is supported.

The reduction in accessible parking spaces from 8 to 6 reduces the percentage of accessible spaces to 2%, which remains compliant with the DCP control and as such is also supported.

Part C - Section 3 – St Leonards/Crows Nest Planning Area

The site is located in the Crows Nest Town Centre and the significant elements for this area addresses land use, topography, natural features, views and streetscape, none of which are altered by the proposed modifications.

The desired future character identified for the area addresses the number of storeys and setbacks for development, along with accessibility and none of these are altered by the proposed modifications.

The desired built form identified for the area addresses subdivision, setbacks, podiums, building design, noise, awnings and the design of certain components of car parking and none of these are

altered by the proposed modifications.

SECTION 94 CONTRIBUTIONS

A section 94 contribution condition was included in the consent based on the increased size of retail premises on the subject site. The modifications proposed do not increase the size of the retail space and as such the existing condition remains valid.

APPLICABLE REGULATIONS

All applicable regulations have been considered in this assessment.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

CONCLUSION

The modifications sought in this application are relatively minor and result from the intention to improve lift access and efficiency for users of the supermarket and car park on the site. The resultant changes to parking numbers and layout and the minor increase in the height of the lift overrun are acceptable and as such the modification sought is supported.

RECOMMENDATION

PURSUANT TO SECTION 96 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT Development Application No. 65/2013 for demolition of existing structures and construction of a 6 level mixed use building to contain a public car park, supermarket, arcade, specialty stores and substations and erection of signage on land at No. 10 Falcon Street and Nos 34-42 Alexander Street, Crows Nest, be modified as follows:-

Deletion of Conditions A1 and C28 and their replacement with the following conditions:

A. *Conditions that Identify Approved Plans*

Development in Accordance with Plans/documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan Ref	Rev	Description	Author	Date	Received
4058_DA000(B)	B	Cover Sheet	Nettleton Tribe	05.08.2013	07.08.13
4058_DA001(A)	A	Existing Development	Nettleton Tribe	28.02.2013	15.03.13
4058_DA002(A)	A	Demolition Plan	Nettleton Tribe	28.02.2013	15.03.13
4058_DA003(C)	C	Site Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA011(C)	C	Basement Level B1 Floor Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA012(D)	D	Ground Level Floor Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA013(D)	D	Carpark Level P1 Floor Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA014(C)	C	Carpark Level P2 Floor Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA015(C)	C	Carpark Level P3 Floor Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA016(C)	C	Carpark Level P4 Floor Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA017(C)	C	Roof Plan	Nettleton Tribe	03.11.2014	05.11.14
4058_DA020(D)	D	Elevations	Nettleton Tribe	03.11.2014	05.11.14
4058_DA021(C)	C	Signage Elevations	Nettleton Tribe	24.10.2013	28.10.13
4058_DA031(C)	C	Sections	Nettleton Tribe	03.11.2014	05.11.14
4058_DA032(B)	B	Sections	Nettleton Tribe	05.08.2013	07.08.13
4058_DA090(B)	B	Shadow Diagrams	Nettleton Tribe	05.08.2013	07.08.13
4058_DA091(C)	C	Development Areas - GFA	Nettleton Tribe	24.10.2013	
4058_DA092(B)	B	Artist Impressions	Nettleton Tribe	05.08.2013	07.08.13
4058_DA093(B)	B	Artist Impressions	Nettleton Tribe	05.08.2013	07.08.13
4058_DA094(A)	A	Artist Impressions	Nettleton Tribe	24.10.2013	28.10.13

Plan Ref	Rev	Description	Author	Date	Received
4058_DA095(A)	A	Artist Impressions	Nettleton Tribe	24.10.2013	28.10.13
4058_SK183	-	Corner Analysis 3: Plans and Sections	Nettleton Tribe	undated	-
4058_SK188	-	Corner Analysis Perspective	Nettleton Tribe	undated	-
4058_SK189	-	Corner Analysis Perspective	Nettleton Tribe	undated	-
DA03	1	Concert Sediment & Erosion Control Plan	Northrop	22.2.2013	-
DA04	4	Concert Stormwater Management Plan	Northrop	22.2.2013	-

Document Title	Rev	Author	Date
Statement of Environmental Effects		TPG NSW Pty Ltd	March 2013
Response to Council Request	-	TPG NSW Pty Ltd	5.8.2013
Response to Council emails dated 17 and 19 September 2013 requesting information	-	TPG NSW Pty Ltd	14.10.2013
Response to JRPP meeting minutes	-	TPG NSW Pty Ltd	23.10.2013
Access Review	V3	MGAC	20.2.2013
Waste Management and Minimisation Plan	-	TPG NSW Pty Ltd	March 2013
Crime Prevention Through Environmental Design Report	-	TPG NSW Pty Ltd	March 2013
Energy Efficiency Performance Report Section J	C	Northrop	29.08.2012
General Notes and Drawing Schedule	1	Northrop	22.2.2013
Urban Design Report		GMU	29.7.2013
Transport Report	7004/3	Colston Budd Hunt & Kafes Pty Ltd (CBHK Pty Ltd)	February 2013
Response to Traffic Matters	-	Colston Budd Hunt & Kafes Pty Ltd (CBHK Pty Ltd)	21.6.2013
Vehicle Swept Paths	-	Colston Budd Hunt & Kafes Pty Ltd (CBHK Pty Ltd)	13.6.2013
Trolley Management Plan	-	Woolworths and Trolley Tracker	undated
Economic Impact Assessment	-	Location IQ	6.6.2013
Heritage Impact Statement	-	GB&A Pty Ltd	February 2013
Heritage Response	-	GB&A Pty Ltd	18.6.2013
Preliminary Groundwater Assessment	-	EIS	January 2009
Additional Groundwater Assessment	-	EIS	12.2.2009
Lift Transport Arrangements	-	Cardno ITC	21.2.2013
Noise Impact Assessment	-	SLR Pty Ltd	26.7.2013

Document Title	Rev	Author	Date
Response to Matters Raised by Council Review	-	SLR Pty Ltd	26.7.2013
Peer Review on Acoustic Report	-	The Acoustic Group	10.10.2013

In the case of any inconsistency between the above documents, the information contained in the document with the later date shall prevail. In the case of any inconsistency between the above documents and the conditions of consent, the requirements of the conditions of consent shall prevail.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Accessible parking spaces to be provided

C28. A total of six (6) accessible parking spaces shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)



Kerry Gordon, Kerry Gordon Planning Services
ASSESSMENT OFFICER
