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## Joint Regional Planning Panel (JRPP) Meeting 12 March 2015

**2014SYW005/DA0703/13 – Construction of a multi-storey building consisting of an entertainment facility, recreational facilities (indoor), pub, shop, bulky goods premises, restaurants/cafes and associated parking**

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<b>JRPP No:</b>	2014SYW005
<b>Council DA No:</b>	DA0703/13
<b>Council:</b>	Hawkesbury City Council
<b>Property Address:</b>	8 Groves Avenue, Mulgrave, 2756
<b>Legal Description:</b>	Lot 1 DP: 1038365
<b>Applicant:</b>	Montgomery Planning Solutions
<b>Owner:</b>	Planet Warriewood Pty Ltd
<b>Zoning:</b>	B6 Business Corridor
<b>Area:</b>	7,330m <sup>2</sup>
<b>Proposal:</b>	Entertainment Facility, Recreation Facilities (Indoor), Pub, Shop, Bulky Goods Premises, Restaurants or Cafes – Construction of a multi-storey building consisting of an entertainment facility, recreational facilities (indoor), pub, shop, bulky goods premises, restaurants/cafes and associated parking
<b>Capital Investment Value:</b>	\$22,141,297.00
<b>Date Received:</b>	24 December 2013
<b>Exhibition Dates:</b>	16 to 31 January 2014
<b>Submissions:</b>	Nine
<b>Date Formal:</b>	11 April 2014
<b>Assessing Officer:</b>	Andrew Johnston – Senior Town Planner
<b>Key Issues:</b>	– Traffic and Parking – Owner's consent – Adequacy of supplied information

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### **Overview of Report**

#### **1.0 Executive Summary**

This application seeks approval for the construction of a multi-storey building consisting of an entertainment facility, recreation facilities (indoor), pub, bulky goods premises, shop, restaurants/cafes and associated parking at 8 Groves Avenue, Mulgrave. The creation of a shared median turning lane within Groves Avenue, a classified road, is also proposed with the application.

The application meets the criteria for determination by the Joint Regional Planning Panel (JRPP) as the development has a Capital Investment Value (CIV) in excess of \$20 million.

A number of issues have been identified in the assessment of this application including:

- The development proposes building work, seeks to alter easements and nominates access arrangements without the consent of adjoining properties;

- The proposed traffic arrangements along Mulgrave Road are not supported by the Roads and Maritime Services (RMS); and
- The development will generate unreasonable traffic and parking impacts.

Insufficient information has been provided in support of the application. These matters have been raised with the Applicant however a formal response has not been provided.

The proposal is unacceptable for the reasons detailed in this report and is recommended for refusal.

## **Development Description**

### **2.0 Description of Proposal**

Pursuant to Section 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's approval for the construction of a multi-storey building consisting of an entertainment facility, recreational facilities (indoor), pub, shop, bulky goods premises, restaurants/cafes and associated parking at the subject property.

The JRPP's reference number for the application is 2014SYW005 whilst Council's reference number is DA0703/13.

The four-storey building is to have a height of approximately 27.6m and contain the following:

- Cinema with 10 screens;
- Bowling alley and amusement centre;
- Tavern;
- Bottleshop;
- Restaurants/cafes;
- Retail space/bulky good premises;
- Car parking consisting of 370 spaces.

The complex is to operate seven days a week, with the following hours nominated for the various components of the development:

<b>Use</b>	<b>Hours of Operation</b>
Cinemas	9:00am to 12:00am (midnight)
Bowling alley, laser skirmish and amusement centre:	9:00am to 12:00am (midnight)
Tavern:	10:00am to 12:00am (midnight)
Bottle shop:	10:00am to 10:00pm
Bulky goods premises:	9:00am to 10:00pm
Restaurants:	9:00am to 10:00pm

Specific uses for the retail tenancies are not known at this stage.

Altered traffic arrangements, including the creation of a shared central turning lane and the removal of street parking, are proposed within Groves Avenue to cater for the development.

Vehicular access to the basement car park and loading dock is available from a right of way over the adjoining property at 16 Mulgrave Road, which contains a number of industrial/business units.

Pedestrian access to the complex is available from eastern and western entries and basement lifts.

## **Background**

### **3.0 Site Description and History**

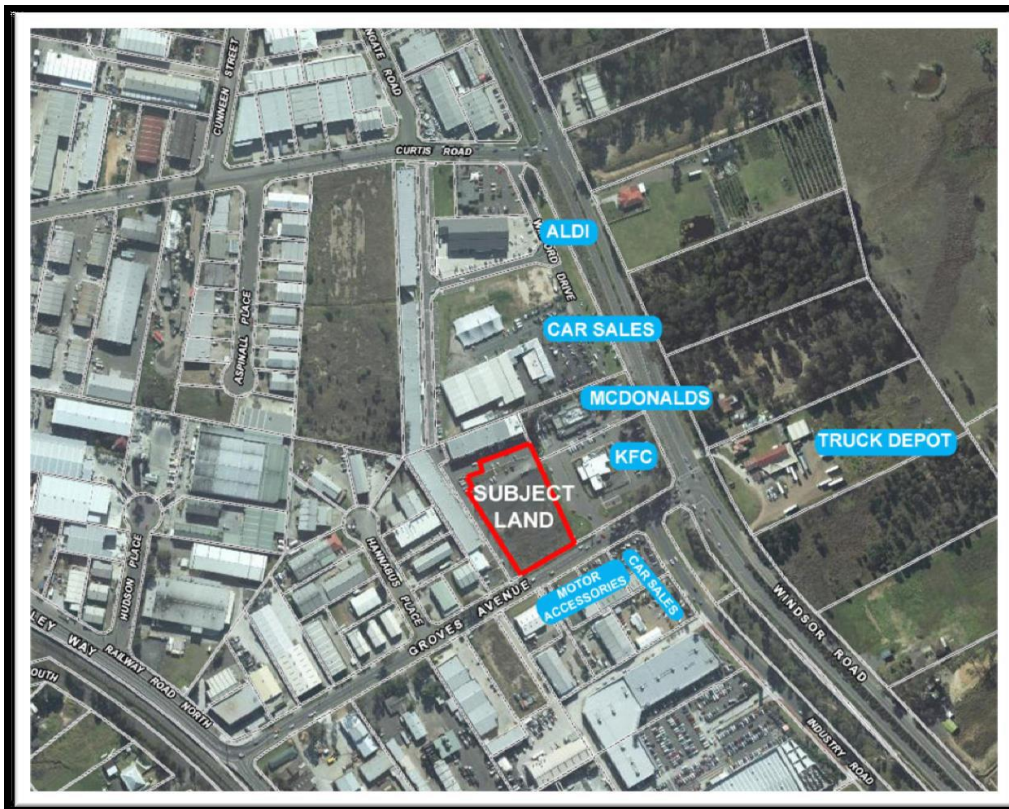
#### **3.1 Site and Locality Description**

The subject property is legally described as Lot 1 DP: 1038365 and has an area of approximately 7,330m<sup>2</sup>. The land is located within the McGraths Hill Business Park, on Groves Avenue between Windsor Road and Hawkesbury Valley Way. The site is approximately 2.5km from Windsor.

The land is currently vacant, save for security fencing.

Industrial and commercial development generally dominates the locality. Along the western boundary of the site is a private road known as Calverts Boulevard. This private road is located within 16 Groves Road, which contains a number of industrial/business units. The land to the east of the site, 242-246 Windsor Road, is currently leased from Council by fast food outlets KFC and McDonald's.

Rural residential land is located on the eastern side of Windsor Road.



### 3.2 Development History

The site is currently vacant. Development Consent No. DA0640/08 approved the construction of a two-storey building consisting of a hotel, restaurant and shops however this consent was not enacted and lapsed on 28 July 2014.

Development Consent No. M1711/00 approved 12 industrial units on the adjoining properties at 16 and 18 Mulgrave Road. The subject land was included in this consent, with a conceptual outline of a tavern shown and stormwater constructed through the site. A series of easements for stormwater, access and parking were also registered over the property.

## Assessment

### 4.0 Council Policies, Procedures and Codes to Which the Matter Relates

- Hawkesbury Local Environmental Plan 2012 (HLEP 2012)
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55)
- State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP No. 64)
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP No. 20)
- Hawkesbury Development Control Plan 2002 (HDCP 2002)

### 5.0 Section 79C Matters for Consideration

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 79C of the EP&A Act:

#### 5.1 Environmental Planning Instruments

##### **Hawkesbury Local Environmental Plan 2012**

The subject property is zoned B6 Enterprise Corridor under the HLEP 2012.

The HLEP 2012 contains the following definitions that are relevant to the proposed development:

***entertainment facility*** means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

***recreation facility (indoor)*** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

***pub*** means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

**shop** means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

**bulky goods premises** means a building or place the principal purpose of which is the sale, hire or display of bulky goods, being 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 to the 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 place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.

**restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

The various components of the development are permissible within the B6 Enterprise Corridor.

The cinema would be defined as an 'entertainment facility', the bowling alley/amusement centre as 'recreation facilities (indoor)', the tavern as a 'pub' and the food shops as 'restaurants/cafes'.

The bottle shop would be defined as a 'shop' whilst the large commercial tenancy may be either defined as either a 'bulky goods premises' or a 'shop'. In this regard the site specific provisions of Schedule 1(6) of the HLEP 2012 permit shops on this land.

No height limit is established for the site under Clause 4.3 of the HLEP 2012

The objectives of the B6 Enterprise Corridor are:

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.

The property is located in close proximity to Windsor Road and will provide significant employment opportunities. However, the methodology used in the prepared Economic Impact Assessment is flawed and accordingly the development's impact on nearby town centres has not been adequately demonstrated.

The development will result in adverse traffic and parking impacts and is seen to represent an overdevelopment of the site. The proposal does not represent orderly development and fails to satisfy the objectives and provisions of the HLEP 2012.

## **State Environmental Planning Policy (Infrastructure) 2007**

Groves Avenue is a classified road owned and maintained by the RMS. It provides connection from Windsor Road to Hawkesbury Valley Road, which are also RMS roads.

The application involves alterations to Groves Avenue to cater for the proposed development. The altered traffic arrangements include the creation of a central turning lane and the removal of street parking within Groves Avenue. The concurrence of the RMS is required for these works to their road.

On account of the floor area and the number of parking spaces, the proposal is also defined as 'traffic generating development' under Clause 104 and Schedule 3 of the Infrastructure SEPP.

The RMS have reviewed the proposal and advised that they do not support the proposed shared turning lane on road safety and traffic efficiency grounds. Instead the provision of a right turning bay from Groves Avenue into the Calvert Boulevard is recommended by the RMS.

This option has not been considered in the application's supporting documentation.

The prepared Traffic and Parking Report is based on the provision of the shared turning lane and also relies on a number of flawed assumptions regarding parking and access (see Sections 5.3 and 6.1 of this report). For these reasons it is considered that the development will generate unreasonable traffic safety, road congestion and parking implications for the locality.

It should be noted that the proposal was also referred to the Local Traffic Committee however they advised that this was a matter for RMS only.

## **State Environmental Planning Policy No. 55 – Remediation of Land**

Clause 7(1) of SEPP No. 55 outlines a consent authority "*must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose".*

The subject property is currently vacant and has previously been used for commercial purposes. The site is not included in any listings of contaminated land, there is no history of uses that may lead to contamination and significant excavation will be required to accommodate the development.

The land is considered suitable for commercial usage.

## **State Environmental Planning Policy No. 64 – Advertising and Signage**

The provisions of this Policy were considered in the assessment of this application. An indicative signage plan was requested of the Applicant but has not been provided.

## **Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River**

The subject land falls within the boundary of SREP No. 20. This Policy aims “*to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context*”. SREP No. 20 requires an assessment of development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

The property is located within an established commercial/industrial area and the development will not significantly impact upon the Hawkesbury-Nepean River in either a local or regional context.

### **5.2 Draft Environmental Planning Instruments**

Not applicable.

### **5.3 Development Control Plans**

#### **Hawkesbury Development Control Plan 2002**

The proposal has been considered against the provisions of the HDCP 2002:

##### **Part A Chapter 3: Notification:**

The proposal was notified from 16 to 30 January 2014 in accordance with Part A Chapter 3 of the HDCP 2002. In addition to notifying nearby properties, a site sign was also placed onsite to inform the public of the development.

A total of nine submissions were received in response to the notification of the development. The matters raised in these submissions are detailed in Section 7 of this report.

The matters raised in these submissions are generally discussed within the body of this report.

##### **Part C Chapter 2: Car Parking**

Based on size and nature of the proposed development, Part C Chapter 2 of the HDCP 2002 requires approximately 404 car parking spaces for the development. A total of 370 spaces are to be provided onsite.

The proposal therefore fails to comply with the numerical controls of Part C Chapter 2 of the HDCP 2002.

The submitted Traffic and Parking Report justifies this non-compliance based on the availability of parking within the locality. However, this parking is located on adjoining private land that is not legally accessible to the subject site. Furthermore, the report relies on reciprocal parking rights with adjoining properties whilst disregarding parking easements that burden the site. For these reasons the prepared justification for this non-compliance is not supported.

The proposal's non-compliance with Council's parking controls is seen as evidence that it represents an overdevelopment of the site.

### Part C Chapter 3: Signage:

The provisions of Part C Chapter 3 of the HDCP 2002 were considered in the assessment of this application. An indicative signage plan was requested of the Applicant but has not been provided.

#### 5.4 Planning Agreements

Not applicable.

#### 5.5 Regulations

Matters specified under the EP&A Regulations 2000 have been considered in the assessment of this application.

The application proposes building work, seeks to alter easements and nominates access arrangements without the written consent of adjoining property owners at 16 and 18 Groves Avenue.

#### 5.6 Likely impacts of the Development, including Environmental Impacts on both the Natural and Built Environments, and Social and Economic Impacts in the Locality

Inadequate information has been submitted to determine the environmental, social and economic impacts of the development.

The development relies on adjoining properties for access, parking and stormwater without obtaining the consent of the adjoining owners. The proposal will therefore create unreasonable land use conflicts and safety issues with neighbouring properties

#### 5.7 Suitability of the Site for the Development

Inadequate information has been submitted to determine the environmental, social and economic impacts of the development.

#### 5.8 Public Notification

See Section 7 of this report.

#### 5.9 The Public Interest

Whilst permissible, the proposal represents an overdevelopment of the site and the traffic arrangements in Groves Avenue are not supported by RMS. For these reasons the approval of this application would not be in the public interest.

#### 6.0 Referrals

##### 6.1 Internal

Engineering –The intersection modelling within the Traffic and Parking Report assumes that 25% of the traffic to the development will access the site from 1A Curtis Road. However this access is not legally constituted and with additional traffic the intersection of Windsor Road and Groves Avenue will have an unacceptable level of efficiency.

Requested information regarding the servicing of the site has not been provided.



Building – The Senior Building and Development Officer has raised no objection to the proposal.

Infrastructure – Council's Tradewaste Technical Officer has raised no objection to the proposal. No head works contributions are payable for the development.

Environment – The Environmental Health Coordinator has raised no objection to the proposal subject to the imposition of conditions.

## 6.2 External

Police – Comments received from the Windsor Local Area Command were referred to the Applicant for comment however a response has not been received.

A plan of management for the tavern has not been received.

Economic Consultant – The Economic Impact Assessment submitted in support of the application was referred to a consultant for review. Council has subsequently been advised that the prepared report fails to properly consider the development's impact on existing town centres and is therefore inconsistent with the objectives of the B6 Enterprise Corridor zone.

## 7.0 Public Consultation

The proposal was notified under Part A Chapter 3 of the HDCP 2002 from 16 to 30 January 2014. A total of nine submissions were received in response to the notification of this application. The issues raised in these submissions are summarised below:

- Impacts of increased traffic on existing location and intersections;
- Heavy vehicle traffic manoeuvres using proposed central lane could block access to traffic in Groves Avenue;
- No traffic management plan prepared;
- Adequacy of parking on site;
- Reduced parking along Groves Avenue;
- Use of adjoining properties for parking;
- Adequacy of the facilities for service vehicles;
- Design and appearance;
- Crime prevention and patron safety including inadequate lighting;
- Accessibility (public transport);
- Economic impact;
- Heritage and social impact (on patronage for Regent Cinema in Richmond);
- Social impact of liquor outlets;
- Oversupply of liquor outlets;
- Inconsistent with the NSW State Government's planning policy of "The Right Place for Business and Services: Planning Policy" (not located with an identified 'centre' and inconsistent with integrated land use and transport objectives);
- Inconsistent with the NSW State Government's North West Subregion Draft Subregional Strategy ("Draft Subregional Strategy");
- Oversupply of food and entertainment premises;
- Competition/over servicing due to existing cinemas (Richmond, Rouse Hill) and tenpin bowling facilities (South Windsor, Castle Hill);
- Poor interaction with adjoining development;
- Main entrance is located near adjoining car park with high volumes of traffic;

- Pedestrian safety;
- Construction impacts ;
- Notification of application over Christmas/New Year period; and
- Adequacy and validity of submitted information.

The matters of traffic, parking, design, pedestrian safety, economic impact and relationship with adjoining properties are discussed within the body of this report.

### **Financial Implications**

Based on the supplied estimated value-of-works of \$22,141,297.00 a Section 94A Development Contribution of \$221,412.97 would be payable should the development be approved.

### **Conclusion**

The application has been assessed in accordance with the provisions of the EP&A Act with all matters specified under Section 79C(1) having been taken into consideration. Whilst permissible, insufficient information and plans have been provided to allow for the full and proper assessment of the application.

The proposal development will generate unreasonable traffic safety, road congestion and parking impacts and is therefore recommended for refusal.

### **Recommendation**

**That Sydney West Joint Regional Planning Panel as the consent authority pursuant to Clause 80(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. DA0703/13 for the construction of a multi-storey building consisting of an entertainment facility, recreational facilities (indoor), pub, shop, bulky goods premises, restaurants/cafes and associated parking on Lot 1 DP: 1038365, known as 8 Groves Avenue, Mulgrave, for the following reasons:**

### **Reasons for Refusal**

1. The Roads and Maritime Services do not support the proposed shared median turning lane within Groves Avenue on road safety and traffic efficiency grounds.
2. The development will generate unreasonable traffic safety, road congestion and parking impacts for the locality.

Particulars:

- (a) The intersection modelling within the Traffic and Parking Report assumes that 25% of the traffic to the development will access the site from 1A Curtis Road (Lot 1 DP: 270412). However this access is not legally constituted and with additional traffic the intersection of Windsor Road and Groves Avenue will have an unacceptable level of efficiency.
- (b) Onsite parking fails to comply with the numerical controls of Part C Chapter 2 of the Hawkesbury Development Control Plan 2002.

- (c) The Traffic and Parking Report fails to adequately address the loss of street parking with the construction of the median turning lane.
  - (d) The development relies on parking within adjoining privately owned properties.
  - (e) The Traffic and Parking Report does not address the servicing of the site.
3. The proposal does not represent orderly development and therefore fails to satisfy the objectives of the Hawkesbury Local Environmental Plan 2012.
  4. The proposal represents an overdevelopment of the site.
  5. The development will create land use conflicts with adjoining properties.
  6. Owners' consent for access, parking and stormwater arrangements has not been provided in accordance with Clause 49(1)(a) of the Environmental Planning and Assessment Regulation 2000.
  5. Inadequate information has been provided to allow for a full and proper assessment of the development:

Particulars:

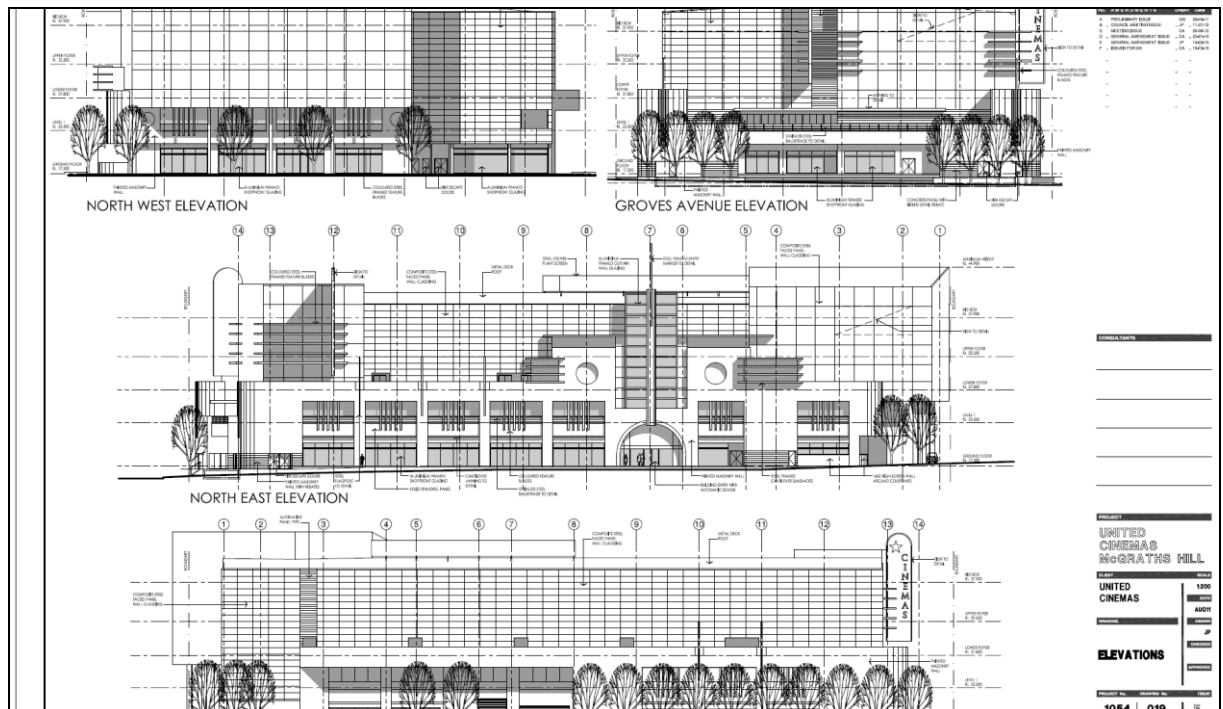
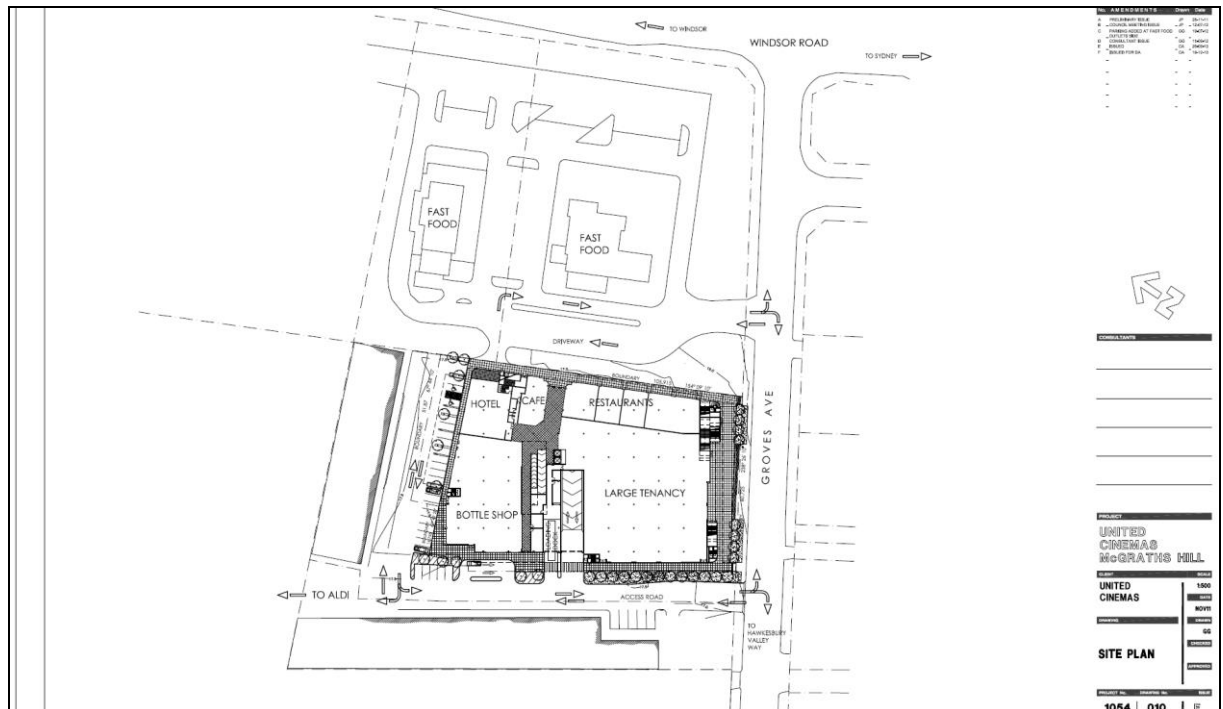
- (a) Inadequate information has been provided to allow for the assessment of the proposed drainage.
- (b) A plan of management for the pub has not been received.
- (c) The prepared Economic Impact Assessment fails to properly consider the development's impact on existing town centres and is therefore inconsistent with the objectives of the B6 Enterprise Corridor zone.

**Attachments**

Attachment 1 – Plans of the Proposal

Attachment 2 – Submissions

## Attachment 1 – Plans of the Proposal



## **Attachment 2 – Submissions**