

COUNCIL ASSESSMENT REPORT

Panel Reference	2016HCC033
DA Number	DA/731/2016
LGA	Lake Macquarie
Proposed Development	Staged Development - Stage 1 Retail Premises (Demolition of Existing Coles and construction of new Coles and specialty shops) - Stage 2 Service Station concept
Street Address	Lot 103 DP 1115833, Lot 101 DP 1115833 46 and 56 Wilsons Road, MOUNT HUTTON NSW 2290
Applicant/Owner	CHARTER HALL HOLDINGS PTY LTD
Date of DA lodgement	6 May 2016
Number of Submissions	Seven objections (includes 40 form letters)
Recommendation	Approval (Deferred Commencement) subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	General Development that has a capital investment value of more than \$20 million.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> Staged Development - Environmental Planning and Assessment Act 1979 Lake Macquarie Local Environmental Plan 2014 Lake Macquarie Development Control Plan 2014 Lake Macquarie Development Contributions Plan (Charlestown 2015) <p>External Referrals</p> <ul style="list-style-type: none"> Water Management Act 2000 Mine Subsidence Compensation Act 1961 SEPP Infrastructure 2007
List all documents submitted with this report for the Panel's consideration	<p>Attachment A: Proposed Conditions of Consent</p> <p>Attachment B: Plans of Development</p> <p>Attachment C: Agency Submissions</p> <p>Attachment D: Written request for variation under Clause 4.6</p>
Report prepared by	Carlos A Ferguson
Report date	8 December 2016

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? Yes / ~~No~~

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? Yes / ~~No~~ / ~~Not Applicable~~

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? Yes / ~~No~~ / ~~Not Applicable~~

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? ~~Yes~~ / ~~No~~ / ~~Not Applicable~~

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? Yes / ~~No~~

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

Key Dates:	DA Lodged: 6 May 2016 Additional Information submitted: 16 September 2016 Concept Plan added: 13 October 2016
Submission Period:	First submission period: 24 May 2016 to 1 July 2016 Second submission period: 19 October 2016 to 2 November 2016
Zoning:	B2 Local Centre (LMLEP 2014)
Approval Bodies:	NSW Office of Water NSW Roads and Maritime Services Mine Subsidence Board
Concurrence Body:	Nil
Referral Agencies:	Hunter Water Ausgrid
CIV:	\$27,975,815 (incl GST)

Relevant Section 79C Matters

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment (EPA) Act 1979 have been considered within the assessment report.

The proposal has been assessed against all relevant State Environmental Planning Policies, Council's Local Environmental Plan 2014 and Development Control Plan 2014.

The following key issues relating to the development have been identified and assessed within the assessment report, and conditions have been recommended where necessary for inclusion in any consent granted by the Panel to ensure desired outcomes are achieved and potential impacts are minimized:

- Proposal is Staged Development under Part 4, Division 2A of EPA Act 1979
- Pedestrian amenity and compliance with Mount Hutton Town Centre Area Plan
- Shopping trolley management and impact on Scrubby Creek
- Variation to 10m height limit under Clause 4.6
- Noise
- Flooding and stormwater management

Legislative Clauses

The following legislative clauses are relevant to the proposal and require the consent authority to be satisfied in regards to a particular matter:

State Environmental Planning Policy 19 – Bushland in Urban Areas

Clause 9 requires the consent authority to take into account retention of bushland on the site, or the effect of development on bushland within land zoned for public open space (such as Scrubby Creek).

Comment – The proposed development does not propose any vegetation removal within Scrubby Creek and vegetation within the adjoining RE1 zoned land will be protected though conditions recommended regarding retention and protection of existing vegetation and requirements for additional planting within the Scrubby Creek reserve. The proposal is considered to satisfy the requirements of Clause 9.

State Environmental Planning Policy 55 – Remediation of Land

Clause 7 requires the consent authority to be satisfied that potential contamination has been considered, and if the land is contaminated, 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.

Comment – The applicant submitted a preliminary site investigation, which identified potential contamination of the site due to previous fill and an existing service station. A detailed investigation was submitted, which advised that the site was considered suitable for the development, subject to recommended actions. It is considered that the documentation is satisfactory, and recommended condition 30 of any consent requires the development to be undertaken in accordance with the approved contamination report.

State Environmental Planning Policy 64 – Advertising and Signage

Clause 8 requires the consent authority to be satisfied that the signage is consistent with the objectives of the SEPP and is consistent with the criteria in Schedule 1.

Comment – The development proposes a pylon sign and flush wall signage. The proposed signage has been assessed against the criteria in Schedule 1 and the requirements of LMDCP 2014, and is considered to be satisfy these requirements subject to recommended condition 25 of any consent.

State Environmental Planning Policy (Infrastructure) 2007

The following clauses in this Policy are relevant:

Clause 45 Development likely to affect an electricity transmission or distribution network

This clause was considered relevant to the proposal, and sub-clause (2) requires the consent authority to give written notice to the electricity supply authority and take into consideration any response received.

Comment – The application was referred to Ausgrid, who provided a response with their requirements dated 9 June 2016. These requirements are included in recommended condition 26 of any consent.

Clause 104 Traffic Generating Development

The proposal is considered to be traffic generating development as defined in Schedule 3 of the this Policy. Sub-clause (3) requires the consent authority to give written notice to the Roads and Maritime Services (RMS), and take into consideration, any submission provided by RMS, accessibility of the site and any potential traffic safety, road congestion or parking implications

Comment – The proposed access and parking arrangements are considered suitable for the development, and the RMS advised on 14 November 2016 that they did not have any objections to the amended staged development proposal.

Lake Macquarie Local Environmental Plan 2014

The following clauses in this Plan are relevant:

Clause 2.3 – Zone objectives and Land Use Table

Sub-clause (2) requires the consent authority to have regard to the zone objectives when determining a development application.

Comment – As detailed in Council's Section 79C assessment, the development is considered to be consistent with the objectives of the B2 Local Centre zone, subject to the recommended conditions.

Clause 4.6 – Exceptions to development standards

The development will have a maximum height of 13.1m, which exceeds the 10m height limit that applies to the subject land under LMLEP 2014. The applicant has sought a variation to the height limit. Sub-clause (4) requires the consent authority to be satisfied that:

- The applicant has submitted a written request that adequately demonstrates that compliance with the development standard is unreasonable/unnecessary and that there are sufficient environmental planning grounds to justify variation to the standard
- The proposal will be in the public interest and consistent with the objectives of the zone and relevant development standard

Comment – The applicant has submitted a written request under Clause 4.6, which is supported by a Visual Impact Assessment and associated perspectives. It is considered that the written request adequately satisfies the requirements of Clause 4.6, and that the proposed height variation is reasonable in this instance.

Clause 7.2 – Earthworks

The proposal includes minor earthworks associated with the development. Sub-clause (3) requires the consent authority to consider specified matters for consideration.

Comment – The proposal is considered to satisfy the matters for consideration in this clause, and that the proposed earthworks are not likely to have any significant or adverse impacts, particularly on adjoining properties.

Clause 7.3 – Flooding

The site is mapped within a Flood Planning Area under LMLEP 2014. Sub-clause (3) requires the consent authority to be satisfied that the development is compatible with the flood hazard of the land, will not significantly adversely affect flood behavior of other development/properties and incorporates appropriate measures to manage risk

to life from flood. Further, the consent authority must be satisfied that the development will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or reduction in stability of river banks or watercourse and is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Comment – As detailed in the Section 79C Assessment, the proposal has been reviewed by Council's Subdivision Engineer and is considered to be consistent with the matters listed above, and is not likely to adversely impact flooding on the subject site or any other properties.

Clause 7.11 – Development for the purpose of bottle shops

Sub-clause (2) requires the consent authority, having considered information on the community social profile, social impact and any proposed mitigation measures, is satisfied that the development will not have a significant adverse impact on the surrounding area.

Comment – As detailed in the Section 79C Assessment below, Council has received public submissions raising concern regarding the potential for adverse social impacts. The applicant has submitted a Social Impact Assessment (SIA) in support of the proposal, which determines that the proposal is not likely to increase the density of liquor licences in the area beyond identified risk levels, nor have a significant or adverse impact on the local community. Council staff have reviewed the SIA, which is considered to adequately address the possible social impacts from the proposal, and concurs with the findings and recommendations of the report, subject to recommended conditions 36 and 37 of any consent.

Clause 7.21 – Essential Services

Sub-clause (1) requires the consent authority to be satisfied that essential services (water, electricity, sewage and stormwater management) are available.

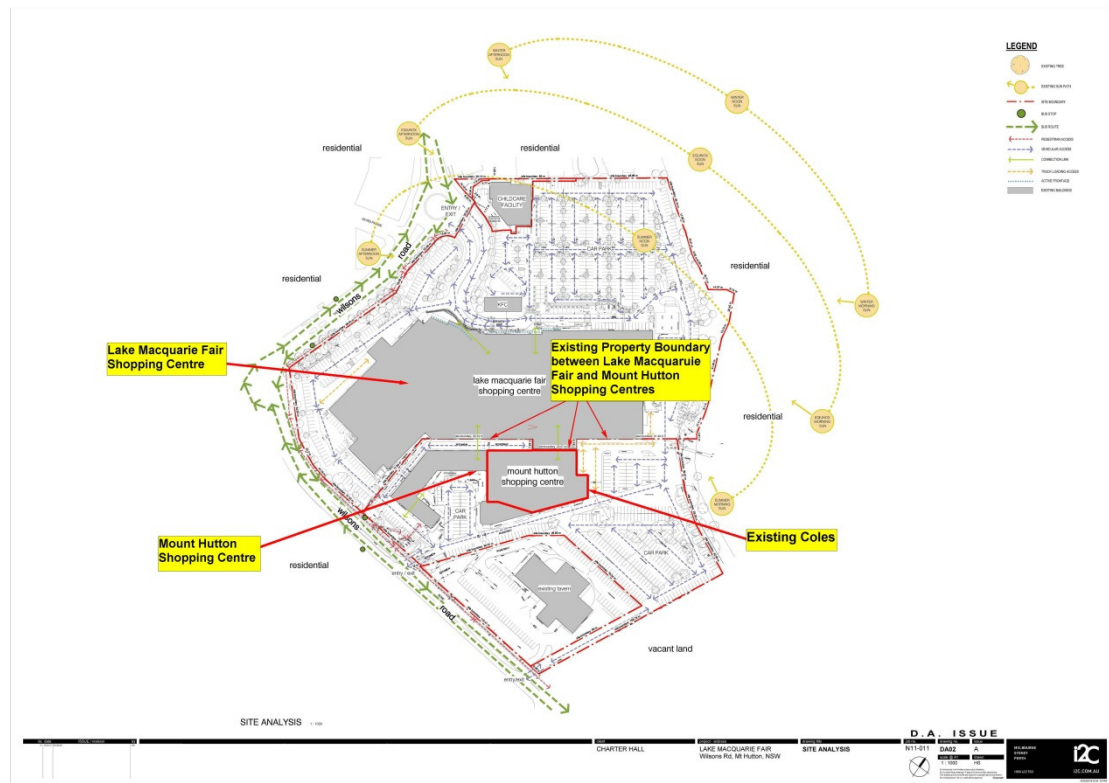
Comment – Following assessment of the proposal, it is considered that essential services are available to the site and proposed development. In particular, Hunter Water have endorsed the plans, provided their Notice of Requirements and advised that the proposal is not likely to adversely impact their water or sewerage infrastructure.

Project Overview

This Development Application seeks consent for a Staged Development at 46 and 56 Wilsons Road Mount Hutton, under the provisions of Division 2A of the Environmental Planning and Assessment Act (EPA Act).

The subject land contains the Mount Hutton and Lake Macquarie Fair shopping centres, which are located on separate lots, as shown below:

Figure 1: Existing Site Plan



Stage 1

Stage 1 proposes a redevelopment of the Mount Hutton Shopping Centre, involving demolition of the existing Coles supermarket and construction of a new Coles building and additional specialty shops.

The works associated with the Stage 1 redevelopment are proposed to be undertaken in the following steps:

- Relocation of Coles loading dock (subject to separate DA/730/2016)
- Construction of new Coles building (4370m²)
- Demolition of Coles and existing Specialty Retail Premises (3300m² and 503m², respectively)
- Construction of new Specialty Retail Premises (1743m²)

Stage 2

Stage 2 proposes a Concept Plan for a new Service Station. As per the Staged Development provisions of the EPA Act, a detailed proposal of the Service Station will be subject to a separate development application.

Figure 2: Proposed Stage 1 Site Plan

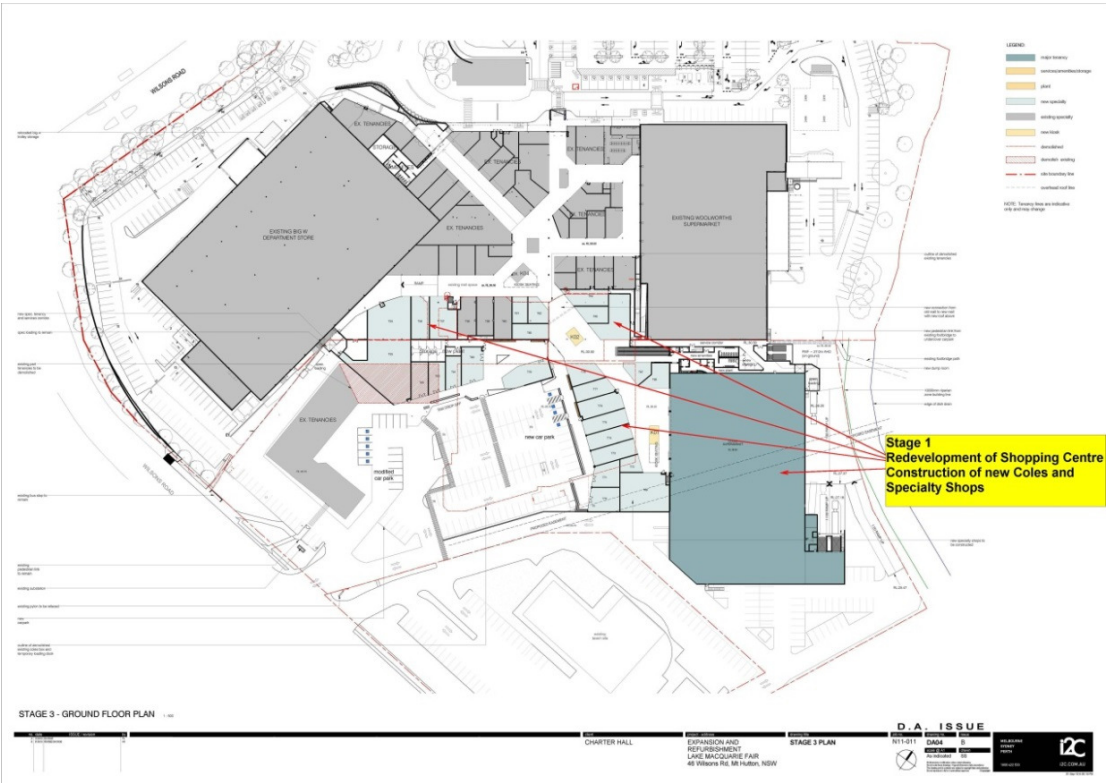
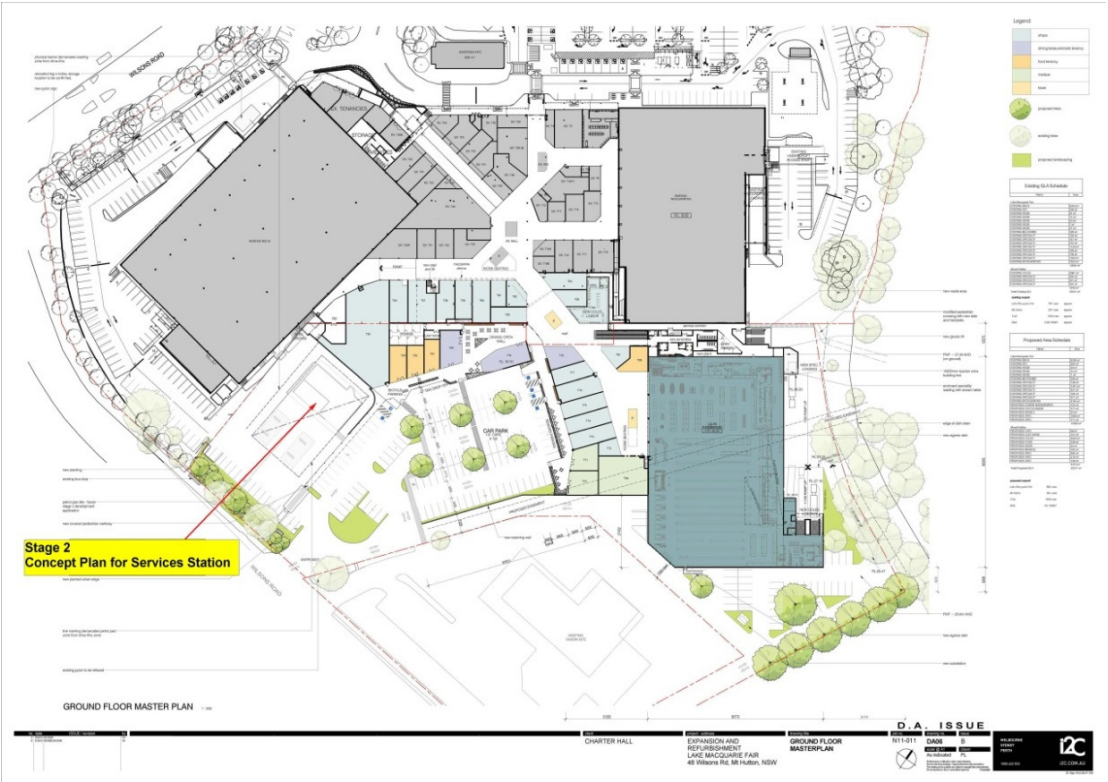


Figure 3: Proposed Stage 2 Site Plan



The redevelopment will increase the total gross leasable floor of the shopping centre by approximately 1743m², including an increase to Coles of 849m² and specialty stores by 894m². The redevelopment will include an internal pedestrian connection between the Lake Macquarie Fair and Mount Hutton shopping centres, which are currently separated by an internal service road.

The redevelopment will include dining/restaurant/café tenancies (T78-T80), food tenancies (T68, T81-T83), medical tenancies (T69-71), general retail premises and the addition of a Coles Liquor premises (T64).

There are currently 1,038 parking spaces within the site. The redevelopment will maintain 1,025 parking spaces on the site.

The redevelopment will include external improvements to the north and north-east elevations of the Lake Macquarie Fair shopping centre, which is occupied by Woolworths, to match the proposed additions.

The development will involve building works over both Lots 101 and 103 DP 1115833, and will include lot consolidation as part of the proposal.

The development will include drainage works on the adjoining Council owned land (56A Wilsons Road, being Lot 31 DP 831676) for drainage works involving an additional pipe and improvement to the existing headwall. Owners consent for works on this land has been provided.

Signage

The development will propose signage as shown on the elevation plans, including:

- One fascia sign over the proposed new entry for centre branding.
- One large fascia sign for the supermarket on the north-east elevation facing Scrubby Creek.
- Three smaller fascia signs (general) and one larger fascia sign (supermarket) on the south-east and south-west elevations.
- Signs for each of the specialty shops facing the proposed internal car parking area.
- A new 10m high pylon sign to replace the existing pylon sign.

The applicant has submitted an assessment of the proposed signage against the criteria listed in Schedule 1 of State Environmental Planning Policy 64.

Minor Works DA

The applicant has lodged a separate application (DA/730/2016) for a temporary loading dock and minor works, which will facilitate operation of the existing Coles during construction of the new Coles. The minor works also include a new entry into the Woolworths under-croft parking area and a service lift for the existing loading dock off Wilsons Road.

It is considered that the works proposed by DA/730/2016 are not dependent on this DA (or vice versa) and Council has no concerns considering each DA on their own merit. This matter was discussed with the Panel at the briefing held on 28 July 2016.

Location

The subject site for the proposed development is located within the suburb of Mount Hutton and is comprised of 46 and 56 Wilsons Road Mount Hutton, being Lots 101 and 103, DP 1115833, respectively.

The plans show the Mount Hutton shopping centre as being located on 56 Wilsons Road, and the Lake Macquarie Fair shopping centre being located on 46 Wilsons Road.

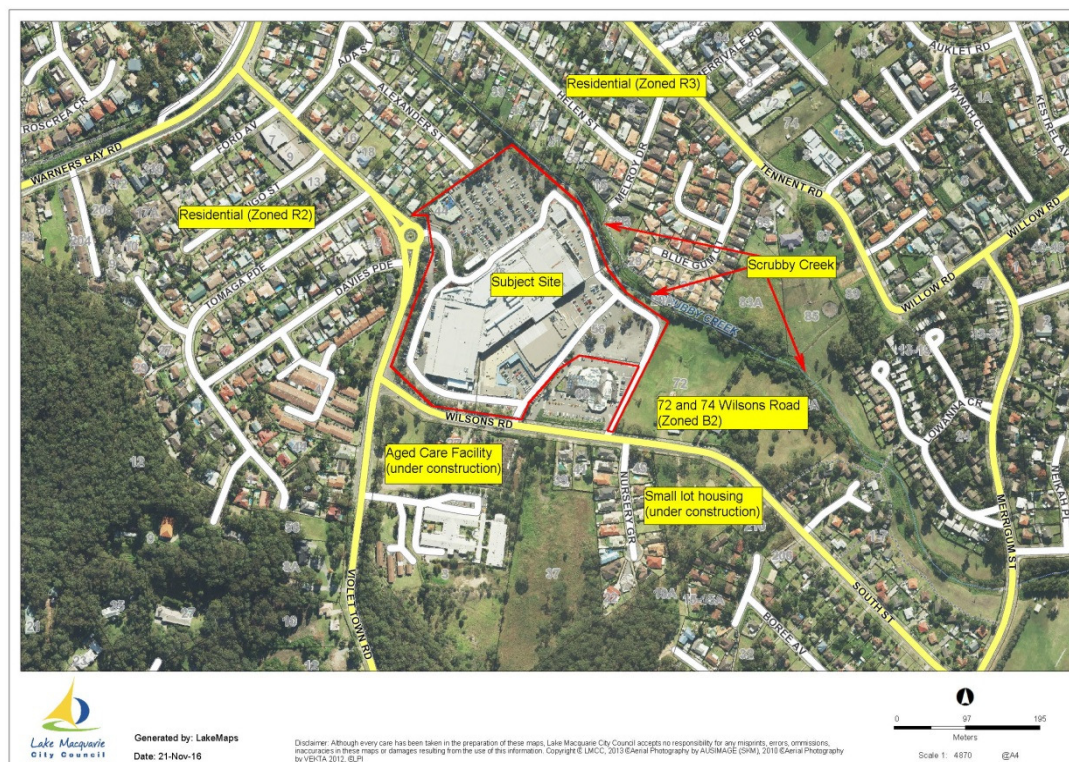
The site has three vehicle entry/exit points, being a round-a-bout off Wilsons Road at the north-west corner of the site, and two off Wilsons Road at the south east corner (on either side of the Lake Macquarie Tavern).

The north-east boundary of the site adjoins Scrubby Creek which runs in an easterly direction to the Jewells SEPP 14 wetlands. The south-east corner of the site adjoins the Lake Macquarie Tavern, which is a single storey building also containing a bottle shop.

The development site also adjoins 72 Wilsons Road, which is a B2 zoned parcel of land containing an existing dwelling with an area of 1.57 hectares.

The site is in close proximity to a number of significant residential developments currently under construction, including a Seniors Housing/Aged Care Facility at 3 Violet Town Road (at the corner of Wilsons Road) and a Small Lot Housing development at 53 Wilsons Road. It is also noted that there have been a number of medium density residential developments within the R3 zoned land to the north of the shopping centre, particularly in the vicinity of the Tennent Road area.

Figure 4: Aerial Photo/Site Location Map



Site Constraints

The site has been identified as being subject to the following constraints:

- Flood Planning Area under Lake Macquarie Local Environmental Plan 2014
- Within a Mine Subsidence District
- Burdened by easements for Council drainage, electrical sub-station, underground cable and various inter-allotment easements
- Identified as being potentially contaminated

These constraints are addressed within Council's Section 79C assessment.

ASSESSMENT

KEY ISSUES

Staged Development Concept Plan for Service Station

The applicant amended the development application on 13 October 2016 to include a Concept Plan for a Service Station, and requested that the application be treated as Staged Development under the provisions of Part 4, Division 2A of the Environmental Planning and Assessment Act (EPA Act).

Stage 1 will be for the Shopping Centre redevelopment, including the new Coles and Specialty Shops. Stage 2 is a Concept Plan for a Service Station. A separate development application will be required for the detailed Service Station proposal.

In support of this Concept Plan, the applicant has submitted plans with a proposed building footprint, elevations and rendered perspectives (shown below) of the proposed Service Station. It is noted that the Service Station building will also contain a food premises (KFC).

Figure 5: Service Station Concept



AERIAL VIEW

CHARTER HALL
LAKE MACQUARIE FAIR - PETROL PAD

PERSPECTIVE

CONCEPT PLANNING

CONCEPT SHOWN ONLY & SUBJECT TO CHANGE. NOT FULL SITE OR ESTABLISHMENT DESIGN. FOR INFORMATION ONLY. NOT FOR CONSTRUCTION. FOR FURTHER INFORMATION & ALL EXISTING SITE INFORMATION, INCLUDING TITLE BOUNDARIES, TO BE COMPARISONED WITH ALL INFORMATION APPROPRIATE. ONLY & SUBJECT TO CHANGE.

PROJECT

NT11-011

DRAWING NO.

SK01.06

MEL

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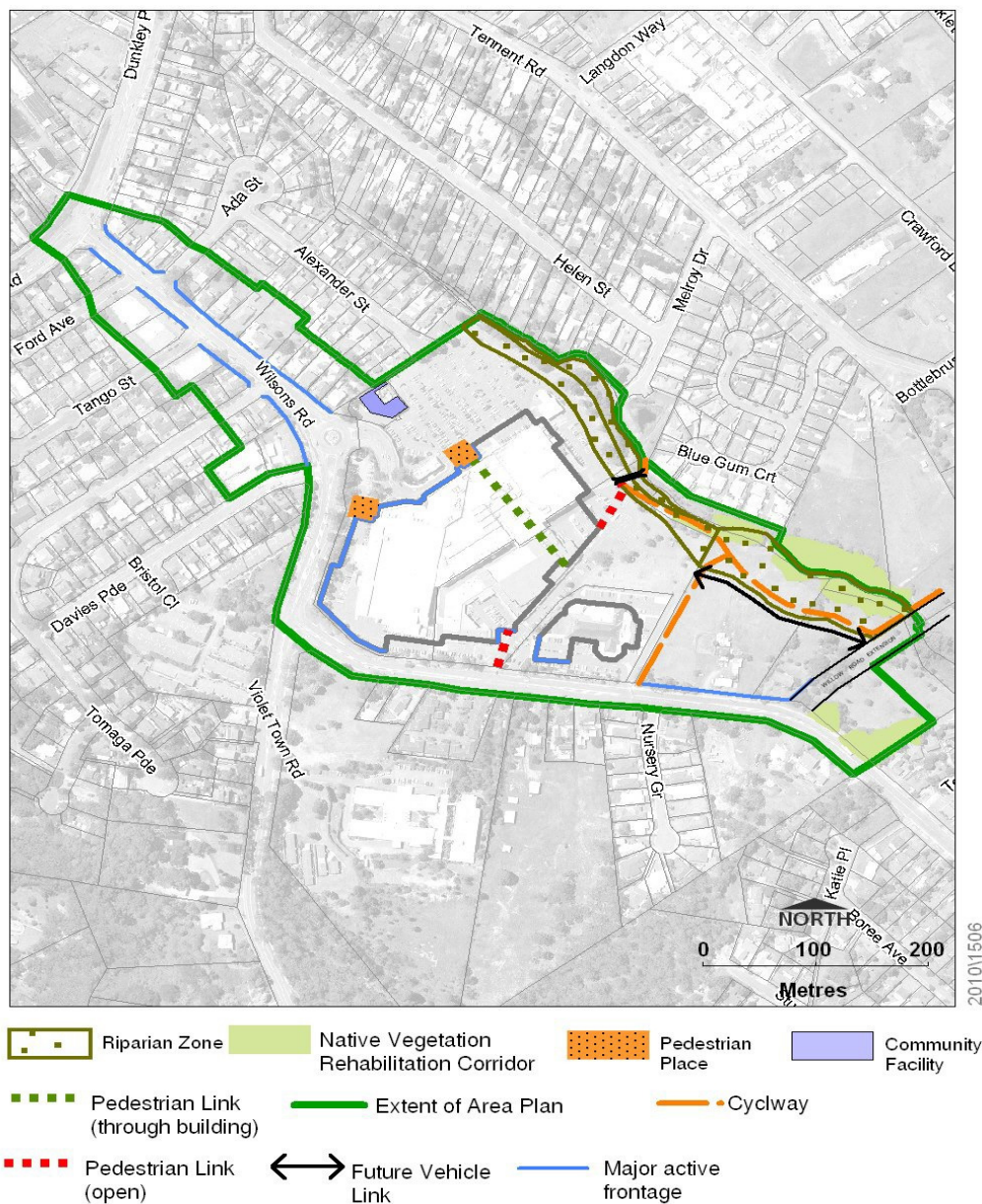
These heads of consideration have been addressed as part of Council's Section 79C Assessment below, and it is considered that sufficient information has been provided with this application to assess the proposed Concept Plan and determine the proposed location and building footprint are acceptable, subject to recommended conditions.

Pedestrian Access

A primary issue for this proposal is pedestrian access. The Mount Hutton Town Centre Area Plan (shown below) identifies three key pedestrian links through the site, being:

- An internal link between the shopping centres
- Off Wilsons Road (near the existing bus stop)
- Off Scrubby Creek (via existing and proposed pathways)

Figure 6: Mount Hutton Centre Structure Plan



Key objectives of the Town Centre Area Plan include prioritising pedestrian connectivity and amenity, and providing an attractive and active streetscape along the Wilsons Road frontage.

The applicant has advised that one of the main objectives of this proposal is to improve the pedestrian connectivity between the shopping and provide an attractive entry to the Mount Hutton shopping Centre, as shown below and in Figure 2.

Figure 7: Proposed new entry into Shopping Centre



EXTERNAL PERSPECTIVE OF SOUTHERN ENTRY

It is agreed that the development will provide a huge improvement to the internal pedestrian linkage between the shopping centres and general overall amenity.

However, Council is not satisfied that the current plans achieve the objectives of the Town Centre Area Plan with regard to the Wilsons Road and Scrubby Creek pedestrian entries.

Wilsons Road Pedestrian Entry

As can be seen from the Service Station concept (Figure 5), the proposed pedestrian entry off Wilsons Road will be narrow (approx. 2m) and located between the KFC Take Away vehicle exit and parking spaces.

Council staff are of the view that locating a Service Station along the Wilson Street frontage is not ideal from a streetscape or pedestrian amenity perspective, and would prefer to see retail and office development facing Wilsons Road in accordance with the Town Centre Area Plan.

The desired future character is stated in the Town Centre Area Plan as being that:

“The standalone shopping centre should be sleeved by smaller scale retail and office units, along the Wilsons Road aspect. These should incorporate rendered and painted finishes, low pitched roofs and deep cantilever awnings, and tree planting in the front setback on Wilsons Road.”

The proposed Service Station also raises the following concerns:

- Will increase the amount of traffic around the Wilsons Road pedestrian entry, including petrol trucks and vehicles using the KFC drive through
- Does not provide sufficient width or amenity for an acceptable pedestrian access into the development.

The application has been reviewed by Council's Integrated Planning Section and Urban Design and Landscape Planner, who have raised similar concerns with the pedestrian access outcomes at both the Wilsons Road and Scrubby Creek entries.

However, it is noted that the proposed location for the Service Station could potentially provide a number of positive outcomes, including:

- Crime Risk Prevention benefits due to longer operating hours, increased lighting, surveillance (including CCTV) and guardianship of the pedestrian entry, noting the path from the property boundary to the new shopping centre entry is approximately 60m.
- The proposed Service Station will be visible from the street, which will be of benefit to passing vehicles. The existing service station located near Scrubby Creek is not easily visible from Wilsons Road.
- Requiring the Service Station to be located to the rear of the site would result in it being located within a flood prone area with minimal setback to Scrubby Creek, which would raise significant environmental concerns.

In particular, the CPTED benefits of additional activity, surveillance and guardianship of the pedestrian entry are considered significant given the proposed Coles will operate 24 hours a day.

Following assessment of the proposal, it is considered that while the proposed location for the Service Station is not ideal from a street activation perspective, these concerns do not warrant refusal of the application subject to acceptable pedestrian access outcomes being achieved at the Wilsons Road and Scrubby Creek entries.

In this regard, it is considered that the following changes are required to the Service Station in order to adequately provide for safe and comfortable pedestrian access:

- The proposal must provide a pedestrian walkway with a minimum width of 4m. This will likely require removal or re-orientation of the adjoining parking spaces, however the development has parking surplus to Council's requirements and Council's Area Plan seeks to prioritise pedestrian amenity.
- Provision of landscaping and seating along the pedestrian walkway.
- Provide increased separation between the Service Station/vehicle accessway and pedestrian walkway, or alternatively incorporate the retail areas of the building (shop and food premises) into the walkway, with an awning extending over the pedestrian area.

It is considered that these outcomes can be achieved to an acceptable level as part of a separate application required by any consent, while still maintaining consistency with the Concept Plan for the Service Station.

Council is satisfied that the proposed Service Station can make acceptable provisions for pedestrian access and amenity, and a condition relating to the Concept Plan has been recommended in this regard.

Scrubby Creek Pedestrian Entry

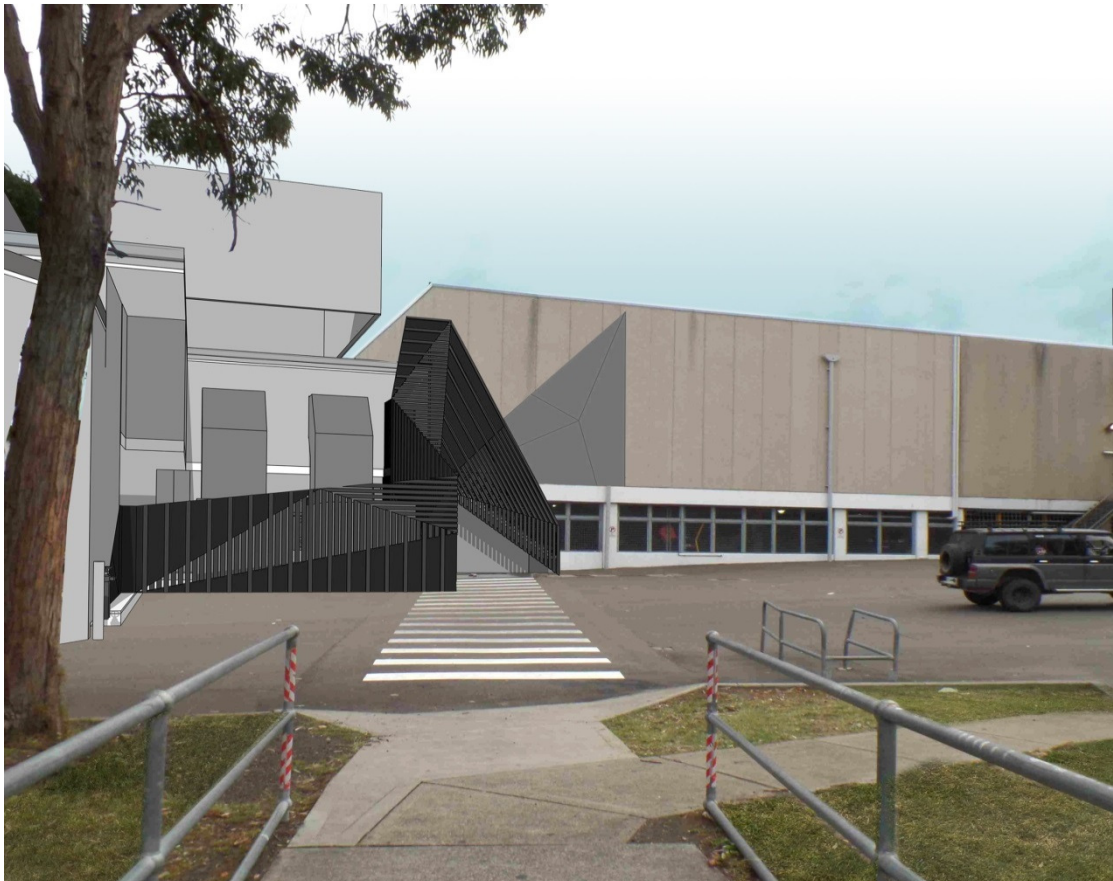
The development proposes to maintain the existing pedestrian entry off Scrubby Creek, with some architectural treatment to improve the appearance, as shown in the figures below.

It is noted that the development proposes a new waste area adjoining the pedestrian entry. This raises significant concerns with regard to pedestrian and visual amenity, crime risk (additional concealment opportunities) and safety (waste vehicle/pedestrian conflicts).

Figure 8: Existing pedestrian entry off Scrubby Creek



Figure 9: Proposed pedestrian entry off Scrubby Creek



It is considered that the proposed Service Station and resulting impact on pedestrian amenity off Wilsons Road emphasises the need for quality pedestrian access off Scrubby Creek. In addition, a key objective of the current Town Centre Area Plan is:

“To ensure that development addresses and overlooks Scrubby Creek and the open space areas.”

This is further supported by recent reviews of the Mount Hutton Town Centre and Precinct Area Plans by Council’s Integrated Planning Section, which have identified that a significant increase in pedestrian activity via Scrubby Creek can be expected as a result of the following future development on:

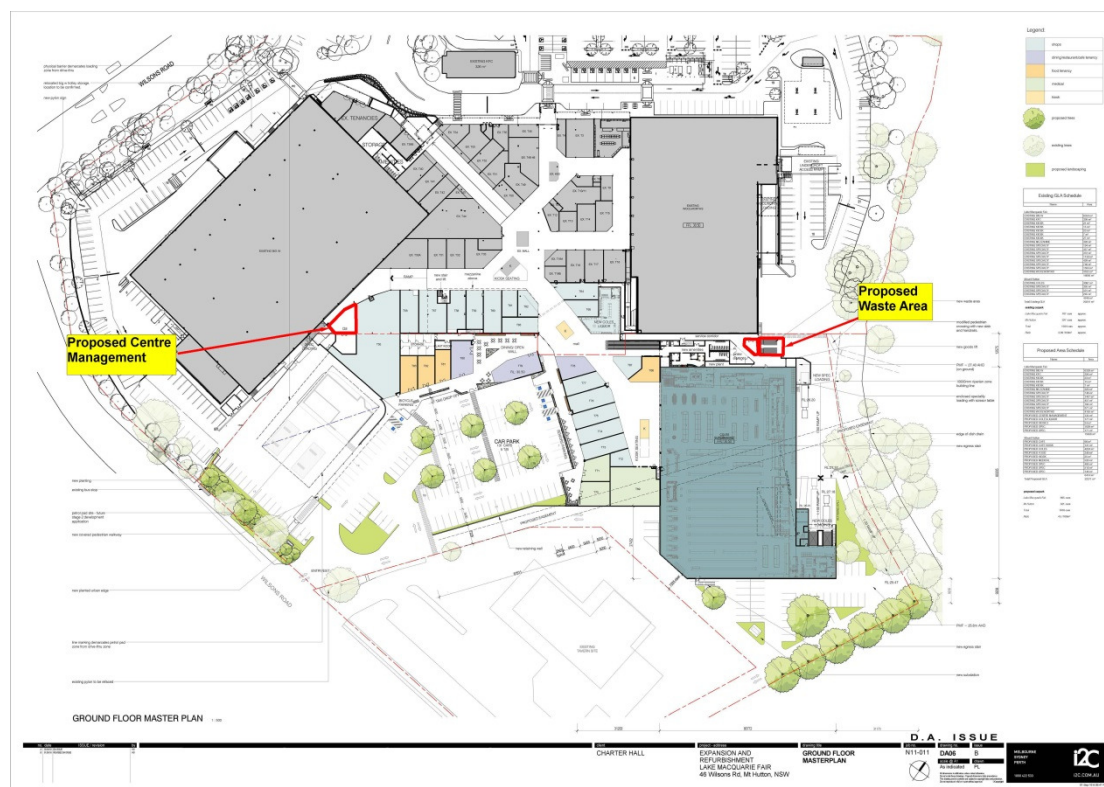
- 72 and 74 Wilsons Road which is envisioned to have residential areas and pathways fronting Scrubby Creek
- Medium density development in the R3 zoned land north (eg Tennant Road) and east (eg South Street/Lowanna Crescent) of the subject site

While these recent reviews are in the process of being reported to Council for amendments to the Mount Hutton Town Centre and Precinct Area Plans, it is noted that they have minimal weight with regard to this assessment as they have not been publicly exhibited, nor are imminent or certain.

Despite this, it is considered that due to the location of the new waste area, that the development as proposed does not adequately achieve the objectives of the Town Centre Area Plan relating to Scrubby Creek and pedestrian access and amenity.

Council’s review of the proposal has identified that there may be the opportunity to relocate the new waste area to the existing loading dock off Wilsons Road, in the location of the proposed Centre Management Office (both are shown in the figure below). While this would result in the waste area being located closer to the street frontage, it would be within an existing loading dock and partially screened by the proposed Service Station and Big W building.

Figure 10: Site plan showing location of waste area and Centre Management



Having the Centre Management Office overlooking the Scrubby Creek pedestrian entry would provide improved surveillance and visual amenity, open up the ground floor entry and reduce opportunity for concealment (consistent with the recommendations of the applicants CPTED report), and would provide a significant improvement to the overall amenity of the Scrubby Creek entry/façade.

This issue has been discussed with the applicant, who disagrees with Council's assessment of the adequacy of the proposed entry off Scrubby Creek. The applicant has argued that relocating the proposed Waste Area to the Wilsons Road loading dock would have adverse operational impacts on the shopping centre, in particular regarding food premises having to pass a greater number of tenancies to get to the waste area.

Council has reviewed the applicants response, however it is considered that these issues could be resolved and do not justify acceptance of the current pedestrian access arrangements.

Council acknowledges the overall benefits to the town centre presented by the proposal, but would not be supportive of development that provides compromised pedestrian outcomes to both the Wilsons Road and Scrubby Creek entries.

It is considered that relocation of the waste area would achieve an outcome consistent with the objectives of the Town Centre Area Plan, and Council is satisfied that the issue can be resolved through conditions of consent.

In this regard, Council has recommended a deferred commencement condition requiring relocation of the new waste area to the satisfaction of Council prior to the issue of any Construction Certificate. It is considered that this condition satisfies the Newbury Principles, as it defines a specific planning outcome relating to the development, with sufficient flexibility to ensure that it can reasonably be achieved.

Shopping Trolleys

Council's assessment and public submissions have identified concerns regarding the dumping of shopping trolleys in Scrubby Creek. The dumping of trolleys into the creek has serious impacts on the operation, amenity and environmental quality of the Creek, and has been an on-going concern with the site and been subject to previous discussions between Council, Centre Management and the local community.

The proposal will relocate Coles closer to Scrubby Creek, and has the potential to exacerbate the issue. However, the proposal also provides an opportunity to implement measures to improve the situation.

This issue has been discussed with the applicant, and a draft Shopping Trolley Management Plan has been submitted providing details on management and collection of Shopping Trolleys in and around the site.

The application has also been reviewed by Council's Sustainability Section, who have recommended that some control system such as wheel locks or GPS tracking be utilised to reduce the incidence of shopping trolley theft and dumping.

In discussions with the applicant, it was suggested that a radio frequency wheel locking system is preferable, due to cost and ease of implementation. It is noted that Coles Belmont has implemented this system due to shopping trolley theft and dumping in Lake Macquarie. Feedback from Belmont Coles has been positive in that the system reduces shopping trolley theft, and that costs associated with retro-fitting the shopping trolleys has been offset by reduced costs in replacing stolen trolleys.

It is considered reasonable to impose a condition requiring a radio frequency wheel locking system or similar be implemented as part of this development, and that the Shopping Trolley Management Plan submitted be amended to reflect this. A proposed condition is included in this regard, and has been discussed and agreed to by the applicant.

Subject to these conditions/actions, it is considered that the development will reduce the incidence of shopping trolley dumping in Scrubby Creek, and will have a beneficial impact on the environmental quality, amenity and function of the watercourse.

SECTION 79C: POTENTIAL MATTERS FOR CONSIDERATION

Section 79C(1)(a)(i) the provisions of any Environmental Planning Instrument

State Environmental Planning Policies

State Environmental Planning Policy 33 – Hazardous and Offensive Development

A Preliminary Hazard Analysis has not been submitted for the proposed Service Station as part of this application.

There are no initial environmental concerns, and given the Service Station is a concept plan under the Staged Development provisions of the EPA Act, it is considered reasonable for this documentation to be required as part of a separate development application for the Service Station, and conditioned accordingly.

State Environmental Planning Policy 55 – Remediation of Land

Council's property records identify the site as being potentially contaminated, and it is noted that the site has an existing Service Station.

The applicant has provided a Preliminary Site Investigation with the application, which identified the need for further investigation due to the existing service station, some landfill near existing structures and car park and other potential contaminants (fluorescent light fittings, lead paint etc).

A Targeted Site Investigation has been submitted advising that the site is suitable for the proposed development, subject to a number of recommendations including:

- Preparation of a Hazardous Materials Survey prior to demolition.
- Installation of groundwater monitoring wells across the site, particularly with regard to the Caltex Service Station and identified slag filling.

The application has been reviewed by Council's Waste, Environmental and Rangers Section with regard to contamination, and no objections have been raised with regard to the documentation or recommendations.

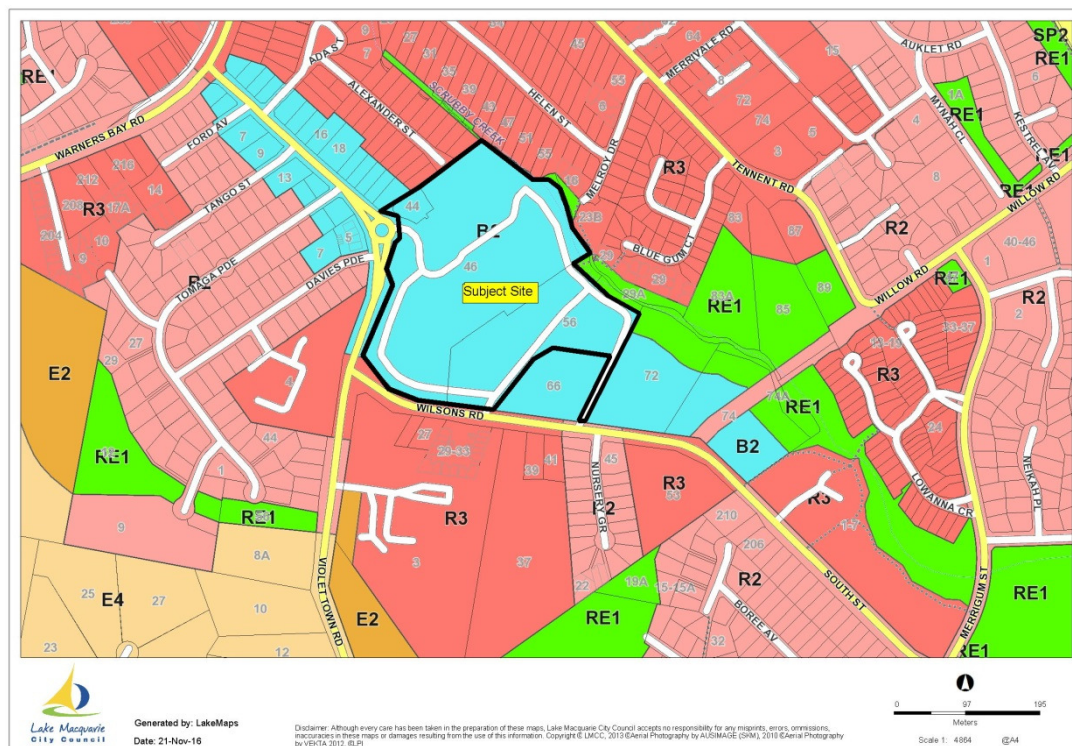
It is considered that the proposal is suitable for the site and that the application satisfies the requirements of SEPP 55.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

Zoning

The development will be located on land zoned B2 Local Centre under LMLEP 2014, as shown in the figure below.

Figure 11: Zoning Map



Definition

Under the definitions of LMLEP 2014, the proposed Coles supermarket and specialty shops are considered to be “Retail Premises”, while the proposed service station fits the separate definition of “Service Station”.

Permissibility

The Land Use Table does not list Retail Premises or Service Stations as being prohibited in the B2 Zone. The development is therefore permissible on the subject site with development consent.

Objectives

The proposed development is considered to be consistent with the relevant objectives of the B2 zone, which include:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To create spaces that are accessible and are a central focus for the community.*

The proposal involves a redevelopment of the existing shopping centre and will provide a range of business opportunities and employment in a central accessible location to the local community.

The proposed entry area will provide a visually attractive feature entry to the southern part of the shopping centre and the development will also improve pedestrian connectivity through the site, particularly with regard to access from Scrubby Creek.

The proposal, subject to recommended conditions, is consistent with the broader pedestrian linkages identified within the Mount Hutton Precinct Area Plan.

Clause 4.5 – Height of Buildings

The site is subject to a 10m height limit under the LEP height maps. The proposed development will have a maximum height exceeding 10m, and does not comply with the LEP height limit.

The applicant has submitted a written request for a variation to the height limit under Clause 4.6 in support of the application.

Clause 4.6 – Exemptions to Development Standards

The development will have a maximum height of 13.1m (representing a 31% increase to the 10m LEP height limit), which relates to the plant area on the roof of the proposed Coles building. It is noted that the height variation extends over the entire Coles building, which will have a maximum height of 12.5m.

The applicant has submitted a written request for the proposal variation to the height limit under the provisions of Clause 4.6. Council has considered the applicants request against the Department of Planning Guidelines for Varying Development Standards and case law relating to the use of Clause 4.6, which has identified the heads of consideration listed below.

Following review of the applicant's written variation request and the merits of the proposal, the application is considered to satisfy the requirements of Clause 4.6, and that the proposed variation should be supported in this instance.

- *Consistency with the zone objectives*

As discussed above, the development is consistent with the zone objectives as it involves redevelopment of an existing shopping centre in the B2 Local Centre zone, which will provide improved retail/business activity and pedestrian connectivity in an accessible and central location.

- *Consistency with the objectives of the height standard*

The objectives of the height limits imposed by Clause 4.3 Height of Buildings in LMLEP 2014 are to:

(a) to ensure the height of buildings are appropriate for their location

(b) to permit building heights that encourage high quality urban form

The proposed building will maintain a similar roof line to the existing Woolworths building, and will be single storey with an under-croft parking area. This is similar to the remainder of the shopping centre, which is primarily single storey with a small mezzanine level, and consistent with the DCP section controls in the Mount Hutton Town Centre Area Plan.

The proposed height facilitates improved pedestrian connectivity between the two shopping centre components, which is a key objective of the Mount Hutton Town Centre Area Plan, and will result in a better outcome for the built environment.

The development is also considered suitable with regard to the surrounding visual catchment. Council's Scenic Management Guidelines identify that the key natural features of the local area as being the vegetated ridges and hillsides surrounding Mount Hutton and more broadly as being view corridors to the lake, coast and western ranges.

The applicant has submitted a Visual Impact Assessment, which has provided perspectives from a number of locations around the development, particularly the residential area to the north and Wilsons Road.

The perspectives show that the development is not likely to have a significant visual impact when viewed from these locations, and does not dominate the existing natural landscape features.

Figure 12: Perspective from Blue Gum Crescent (north east of site)



Figure 13: Perspective from Melroy Drive (north east of site)



Further, the Visual Impact Assessment identifies that the development provides an opportunity to improve landscaping within Scrubby Creek and along Wilsons Road, which will soften and improve the visual appearance of the shopping centre.

The development is considered to be suitable for the location in terms of the visual impact and relationship to existing development, and facilitates improved urban form, and is consistent with the objectives of Clause 4.3.

- *Whether the development standard has been consistently applied or abandoned*

The existing shopping centre exceeds the 10m height limit and has a maximum height of 12.3m in sections, which establishes some precedence for variations to the height limit in the town centre.

Both the proposed and existing shopping centre components comprise of a single retail level with an under-croft parking area, which is consistent with the

recommendations of the DCP section controls in the Mount Hutton Town Centre Area Plan.

The proposed height of the development is consistent with the established height of existing development within the Mount Hutton town centre.

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Following review of the proposal and the applicant's written variation request, it is considered that strict compliance with the 10m height limit is unnecessary in this instance.

The proposed building is consistent in height with the existing roof line of the shopping centre, and as discussed above is not likely to have any significant visual impact, as it is considered the proposed new roof elements will visually integrate with the existing roof elements in design and colour.

It is considered that strict compliance with the height limit is unnecessary in this instance given the history of development approvals on the site.

- *that there are sufficient environmental planning grounds to justify contravening the current development standard.*

In terms of justifying sufficient environmental planning grounds for the variation, it is noted that the building provides a significant improvement in pedestrian connectivity between the shopping centre components, and the additions when considered in their full operational context greatly improve integration of the complex.

In this regard, the existing shopping centres are at different levels and are separated by a service road. The only pedestrian access currently between the shopping centre parts is via the service road and large stairwell.

The applicant has identified that one of the key drivers for the redevelopment was to improve the pedestrian access between the Lake Macquarie Fair and Mount Hutton Shopping Centres.

The proposed levels and roof height of the development are a result of the existing car park levels, the need to facilitate a suitable grade for pedestrian access between the shopping centres and across the site and the height of the existing shopping centre areas.

It is considered that the proposal presents significant benefit to the existing shopping centre and pedestrian amenity, and that there are sufficient environmental planning grounds for the proposed height variation.

Clause 7.3 – Flood Planning

The development site is partly identified as a Flood Planning Area in Council's Local Environmental Plan 2014. The 2013 Jewells Wetland Flood Study identifies that the northern part of the site, that adjoins Scrubby Creek, is subject to flooding. The Flood Study identifies this area as a flood fringe area. Flood fringe areas are defined as areas that if filled or blocked will not have any significant effect on the flood pattern or flood levels. The site also contains two piped drainage systems that convey stormwater from Wilsons Road to Scrubby Creek.

The applicant's consultant has modelled the impacts of the development on flooding using the data from the Jewells Wetland Flood Study. The modelling has demonstrated that the development will not impact on flood levels in Scrubby Creek.

The applicant proposes to increase the capacity of the piped drainage system on the site, by the construction of an additional 1050mm pipe and increasing the capacity of the inlet system. The new Coles building will be built over the piped drainage system. Council has accepted this outcome, subject to the land owner being responsible for any future maintenance to the pipes under the building. Any stormwater flows in excess of the capacity of the piped system will be conveyed around the Coles building by an overland flow path. Council's engineers are satisfied that the proposal will not increase flooding in the locality.

Clause 7.11 – Bottle Shops

The proposed development will include a Coles Liquor shop selling take away alcohol, and is subject to the provisions of this Clause.

The applicant has submitted a Social Impact Assessment (SIA) and Crime Risk Assessment in support of the proposal, which considered the potential impact of the proposed bottle shop.

The SIA identified that there are a number of existing liquor outlets in the area including:

- A BWS (Woolworths) within the Lake Macquarie Fair shopping centre.
- The Lake Macquarie Tavern and associated bottle shop on the adjoining property, 66 Wilsons Road.
- Take-away liquor sales from ALDI, located 400m from the subject site.

The SIA quotes research into the impact of licence density on rates of assault that identifies a threshold density of take away liquor outlets (0.75 per 1,000 population), beyond which it was found that a sharp increase in adverse impacts was expected.

The SIA notes that liquor licence density in the local area, broader area and LGA in general would not approach or exceed the identified threshold risk level for liquor licence density as a result of the proposal.

The SIA concludes that, although the local area surrounding the site is identified as containing pockets of significant social disadvantage, the proposal is not considered likely to have a significant or adverse social impact on the community, subject to the recommendations in the report.

Council's Community Planner has reviewed the application, and it is considered that the SIA adequately addresses the possible social impacts, and concurs with the recommendations and conclusions of the SIA subject to recommended conditions.

It is noted that the application has been referred to the NSW Police, who at the date of this report had not provided any comments in relation to the proposal.

It is considered the SIA appropriately addresses the matters for consideration in Clause 7.11(2), and that the proposed bottle shop is not likely to have a significant adverse impact on the surrounding area, subject to the recommendations of the SIA.

Clause 7.21 – Essential Services

It is considered that essential services and infrastructure are available to the site, and can be connected to the proposed development. For further details, please see Hunter Water and Ausgrid responses in Submissions section later in this report.

Section 79C(1)(a)(ii) the provisions of any draft EPI

There are no draft instruments which affect the development proposal. It is noted that there is currently a review of the Mount Hutton Town Centre and Precinct Area Plans, and changes are in the process of being reported to Council. However, these changes have not been publicly exhibited, and are not imminent and certain, and do not carry significant weight with regard to this assessment.

Section 79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)

Lake Macquarie Development Control Plan 2014

Part 10.6 – Mount Hutton Town Centre Area Plan

The site is located within the area subject to the Mount Hutton Town Centre Area Plan. The proposed Structure Plan (Figure 6) and Sections 1.3-1.5 of the Area Plan identify the following key features relevant to the site and proposal:

- Direct pedestrian entries from Wilsons Road and Scrubby Creek
- Pedestrian link between the two shopping centre components
- Future Shared Path/Cycleway along Scrubby Creek
- Future development to the corner of Wilsons Road and Violet Town Road

Section 2 of the Area Plan also identifies potential block and section plans for future development within the town centre.

Figure 12: Block Controls for Subject Site



It is noted that Council's Integrated Planning section is currently reviewing and drafting amendments to the Mount Hutton Precinct and Town Centre Area Plans, which are in the process of being reported to Council.

Although the draft amendments do not carry significant or determining weight with regard to determination of this application, they have been given consideration as part of this assessment as they highlight the importance of the pedestrian entry facing Scrubby Creek and likely increase in pedestrian traffic from future development to the north and east of the site.

As previously discussed in the Key Issues section of this report, the development raises significant concern with regard to the pedestrian entries to the site, particularly off Scrubby Creek. Further, the development proposes a significant departure from the Block controls in Section 2.

In particular, the new Coles Building will be located in the eastern corner of the site, where the block controls do not show any building footprint.

Additionally, the proposed Service Station will be located along the Wilsons Road frontage where Section 1.2 identifies a preference for retail and local services (health consulting rooms/personal services), and the block controls recommend two storey development.

As discussed in the key issues section of this report, it is considered that issues relating to the pedestrian entries off Wilsons Road and Scrubby Creek can be resolved through conditions of consent, and that the proposed location for the Service Station is acceptable.

A key feature of the proposal is to provide a new entry into the southern part of the shopping centre and internal walkway between the shopping centre components that is attractive for pedestrians and at a suitable grade from both Wilsons Road and Scrubby Creek, into the development through to the northern part of the shopping centre.

The proposal will significantly improve the pedestrian amenity between the shopping centres, which is currently a major constraint of the site. These improvements are considered to be consistent with the desired internal pedestrian paths identified in the Structure Plan.

On balance, it is considered that the overall improvement proposed by the development justifies the variation to the block controls in the Area Plan.

Additionally, it is noted that the proposal does not impact future development at the corner of Wilsons Road and Violet Town Road and achievement of built to street outcomes identified by the Town Centre Area Plan.

Section 3.1 - Scrubby Creek Reserve

The key objectives of this Section relevant to the proposal are to:

- *To ensure that development addresses and overlooks Scrubby Creek and the open space areas*
- *To provide pedestrian and cycle paths along Scrubby Creek*
- *To minimise the impacts of flooding of Scrubby Creek*
- *To minimise the volume and rate of stormwater leaving a development site*
- *To ensure that Scrubby Creek and associated riparian vegetation is maintained and rehabilitated, in order to contribute to water quality, and to mitigate sedimentation of Jewells Wetland*

As discussed in this report, it is considered that the proposal makes suitable provisions regarding flooding, stormwater management and the environmental quality of Scrubby Creek. Conditions have also been recommended to ensure that the development provides a suitable frontage to Scrubby Creek.

This section recommends that a Shared Path be provided along Scrubby Creek, connecting the pedestrian entry along that frontage to the rear of 72 and 74 Wilsons Road.

Council's recent review of the Mount Hutton Town Centre and Precinct Area plans highlight the importance of this recommendation, due to future development in the surrounding area likely to significantly increase pedestrian numbers accessing the site via Scrubby Creek.

The proposal is for a major redevelopment of the site, and given that improving pedestrian access is a key issue for this proposal and an objective of the Area Plans, it is considered reasonable that it be required as part of this development.

A condition is recommended requiring the Concept Plan and future DA for Stage 2 to identify a location for the Shared path along the Scrubby Creek frontage, in accordance with the Town Centre Area Plan.

The development, subject to recommended conditions, is considered to be consistent with the relevant objectives of this section.

Section 3.2 - Public Space at Centro Lake Macquarie

This Section requires a direct, open-air pedestrian walkway from the bus stop along Wilsons Road to the shopping centre entry with a minimum width of 4m.

The proposed Stage 1 redevelopment will not reduce the existing pedestrian widths around the specialty shops fronting Wilsons Road.

A condition has been imposed requiring Stage 2 to provide direct pedestrian access from the bus stop to the new entry with a minimum width of 4m, in accordance with this Section.

Section 5.2 – Parking Provision – Stand-Along Shopping Centre

The proposal complies with this Section, as the development provides under-croft parking and a Crime Risk Assessment has been provided with recommendations regarding visibility around the car park and pedestrian area.

Section 6.1 – Setbacks on Wilsons Road

The proposed development will provide setbacks consistent with the block controls, which shows parking and vehicular access between the street boundary and development.

Section 6.2 – Side and Rear Setbacks

The development complies with the 3m setback recommended for side and rear boundaries.

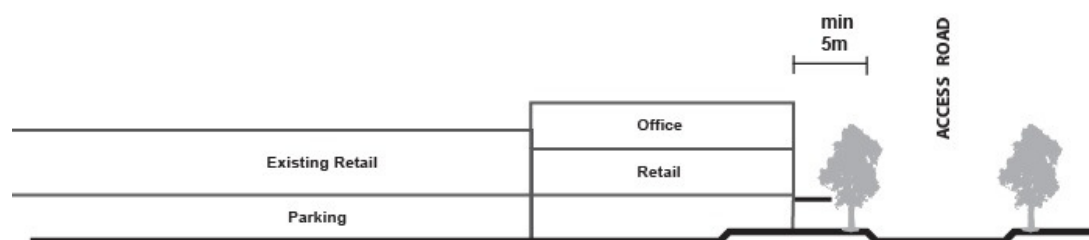
The development is not consistent with the footprint and setbacks shown in the block controls, and Council's Urban Design/Landscape Planner has raised concern with the setback and design to Scrubby Creek. Additionally the proximity of the loading dock raises concern regarding noise impacts on residences on the other side of Scrubby Creek.

It is agreed that a larger setback to Scrubby Creek would be preferable. However, the proposal seeks to provide a suitable grade for pedestrian linkage through the shopping centre, which is a significant improvement to the existing function and amenity of the development and does not warrant refusal of the application.

Section 6.3 – Maximum Building Height

This Section requires the maximum number of storeys to comply with the Block controls, which are shown in the figure below.

Figure 13: Section controls for development site



As discussed in consideration of the Clause 4.6 variation, the proposal exceeds the 10m LEP height limit, but will provide a single level of retail with under-croft parking, which is considered to be consistent with the objectives of the Block controls shown above.

Part 4 – Development in Business Zones

The site is zoned B2 Local Centre and is subject to the relevant requirements of the general Development in Business Zones chapter. The development is considered to be consistent with the objects of this Part, as detailed below:

Section 2.4 - Cut and Fill

The proposed development will involve some minor cut and fill. In particular, the proposed internal car park (located off the new entry area) will be filled approximately 2m to create a suitable grade into the development between the existing Lake Macquarie Fair and Mount Hutton shopping centres.

The access along the south east boundary to the Coles under-croft parking area (between the development and the Tavern) will approximately maintain the existing levels, as will the rear car parking area.

The proposed earthworks are not likely to have any significant or adverse impacts, particularly with regard to adjoining properties. The development complies with the objectives of this Section, and has been reviewed by Council's Subdivision Engineer, who has not raised any concerns in this regard.

Section 2.5 – Mine Subsidence

The site is identified as being within a Mine Subsidence District. The Mine Subsidence Board has issued General Terms of Approval for the development dated 27 June 2016, with endorsed plans.

Section 2.8 – Stormwater Management

The applicant has submitted a Water Cycle Management Plan for the site, which addresses stormwater detention, stormwater harvesting and stormwater quality. The

development does not propose to include any stormwater detention. The development is located adjacent to Scrubby Creek in the mid-section of the catchment. There are existing flooding problems located on Scrubby Creek just upstream of the development site. The applicant's consultants have demonstrated that the provision of stormwater detention on this site may increase flooding upstream of the site by delaying the release of stormwater, such that it may exacerbate the flood peak from the upstream catchment. The site is currently fully paved so the new development will not increase the peak stormwater flow off the site. In addition the development includes a 20,000 litre stormwater storage tank for the reuse of stormwater, which will provide a minor reduction in flows. Council's engineers support the proposed stormwater strategy and are satisfied that it will not worsen any existing flooding problems.

The development will include a 20,000 litre stormwater harvesting tank. The stormwater will be used for toilet flushing and other general use on the site. In addition a Gross Pollutant Trap and Oil Separator will be provided to treat stormwater on the site. These facilities will result in a net increase in stormwater quality leaving the site compared to the existing situation.

Section 2.9 – Catchment Flood Management

The part of the site that adjoins Scrubby Creek has been identified as a flood fringe area, as it is affected by shallow flooding from Scrubby Creek. The new Coles building will be located partly within the flood fringe area. Flood modelling has demonstrated that the location of the building in this area will not impact on flood levels in Scrubby Creek.

The access to the undercroft parking below the Coles building and the Coles building itself are all located a minimum of 500mm above the 100 year flood level, which meets Council's DCP requirements. A new 1050mm diameter pipe will be provided to convey stormwater flows from Wilsons Road to Scrubby Creek. The pipe will increase the capacity of an existing Council drainage system and reduce the extent of overland flows on the site. Council's engineers are satisfied that the development will manage stormwater in accordance with Council's DCP requirements.

Section 2.10 – Lake Flooding and Tidal Inundation

The site is not subject to Lake flooding, tidal inundation or sea level rise.

Section 2.21 Utility Infrastructure

The proposal has identified existing utility infrastructure, and it is considered that the development makes suitable provisions in this regard. The development is consistent with the requirements of this Section.

Section 3.5 – Non-discriminatory Access

The development triggers the requirement for an access audit under this Section, due to the scale and nature of the proposal. The applicant has submitted certification from an Access Consultant (McKenzie Audit) advising that the development can comply with the relevant accessibility requirements. The application has been reviewed by Council's Senior/Disabled Access Officer, who has not objected to the development subject to the development complying with this review and AS1428.1 and AS2890.6 (parking). Conditions have been recommended in this regard.

Section 3.6 – Lighting

The development will require external lighting of pedestrian areas in accordance with this Section and the Crime Risk Assessment. This Section requires at least 20 lux

illumination of main pedestrian areas. The development also proposes lighting of external signage. Council recommends a lighting condition be imposed requiring pedestrian areas within the be well lit, while ensuring outdoor lighting does not have any obtrusive impacts on surrounding residential areas.

Section 5.5 Car Parking Rates

Under the provisions of this section, the overall shopping centre post-development would require 577 parking spaces. It is noted that under the RMS guidelines, that 970 spaces would be required.

The applicant has provided a Traffic and Parking Assessment, which estimates the demand of the shopping centre post-development as 950 parking spaces.

The site currently has 1038 parking spaces, and 1025 will be retained as part of this development, which significantly exceeds Council and RMS requirements.

It is noted that some conditions of consent, particularly relating to improvement of pedestrian access may result in the loss of some parking spaces. However, the development will still exceed the requirements of RMS guidelines and the estimated demand by the Traffic Report, and it is considered that given the circumstances that pedestrian access should be prioritised.

Section 6.19 – Solar Access and Orientation

The development is considered to maintain suitable solar access within the site and to adjoining properties, in accordance with the objectives of this Section.

Section 6.20 – Energy Efficiency and Generation

The development will provide solar panels on the roof of the proposed Coles building, and is considered to be consistent with the objectives of this Section.

Section 6.21 Visual Privacy

The proposed development is not likely to impact the visual privacy of any dwellings surrounding the site, and complies with this Section.

Section 6.25 – Safety and Security

The development requires a Crime Risk Assessment under this Section. The applicant has submitted a Crime Risk Assessment in support of the proposal.

The Crime Risk Assessment identified a low risk rating for the development following a CPTED assessment, subject to a number of recommendations.

In particular, the report identified recommendations relating to improvement of visual surveillance and concealment opportunities around the pedestrian entry off Scrubby Creek. As identified in this report, this is a key concern. The Crime Risk Assessment recommends that visually permeable material be utilised in the under-croft parking areas, particularly for the corner of the Woolworths car park.

Additionally, the report (page 11) identifies that the Coles and specialty loading docks, which are in close proximity to the Scrubby Creek pedestrian entry, are not located near any active office spaces or facilities that would provide a high level of active surveillance.

Council's recommendation that the proposed waste area be relocated, and suggestion to locate the Centre Management Office over the Scrubby Creek pedestrian entry to improve the visual amenity and safety of the area, is considered to be consistent with the Crime Risk Assessment recommendations.

Council's CPTED Officer has reviewed the application, and does not object to the proposal subject to the recommendations of the Crime Risk Assessment and standard graffiti and lighting replacement conditions.

It is considered that the proposal is consistent with the CPTED principles, subject to recommended conditions.

Section 7.1 – Landscape Design

The applicant has submitted a Landscape Plan as per the requirements of this Section. The application has been reviewed by Council's Landscape and Urban Design Planner, who has raised concerns with the size/scale of proposed tree species. A condition has been recommended in this regard.

Section 7.2 – Street Trees and Streetscape Improvements

The Wilsons Road reserve contains a number of mature native trees, which are to be retained as part of the development.

The Stage 1 proposal will retain the existing footpaths between the bus stop and Wilsons Road pedestrian entry. One of those (the most direct path) will be deleted as part of Stage 2.

Council's Landscape and Urban Design Planner has raised concern that not providing a direct pedestrian path will result in people walking through gardens where possible.

It is considered that this issue can be further improved through a separate application for Stage 2, and the recommended conditions will address this matter.

Section 7.3 – Landscape and Tree Planting in Front Setback Areas

Council's Landscape and Urban Design Planner is generally satisfied with the planned planting within the Wilsons Road frontage, and it is considered that the proposal complies with the objectives of this Section.

Section 7.4 – Landscape and Tree Planting in Car parks

The development is considered to provide satisfactory landscaping and tree planting within the car parking areas, consistent with the objectives of this Section.

Section 8.1 – Demolition and Construction Waste Management

The redevelopment proposed by Stage 1 of this development will be undertaken in the steps identified in the Precis section of this report. Further details regarding demolition and construction waste management during the proposed construction steps will be required prior to issue of a construction certificate. A condition has been recommended in this regard.

Section 8.2 – Waste Management

The development will utilise commercial waste contractors to manage operational waste. It is noted that larger retail premises (Coles, Woolworths, Big W) manage their own waste, with the Centre managing waste from the smaller retailers.

During construction, Coles will have a temporary loading dock (subject to DA/730/2016) to assist in interim waste management.

Due to Council's recommendation that the proposed waste area be relocated, conditions have been recommended that further details regarding waste management be submitted prior to the issue of any Construction Certificate.

Section 8.5 – Erosion and Sediment Control

An amended Erosion and Sediment Control Plan has been submitted to Council, and reviewed by Council's Erosion and Sediment Control Officer. It is considered that the proposal is consistent with the requirements of this Section, subject to recommended conditions.

Section 8.6 – Air Quality

The proposed development is considered to be in accordance with the objectives of this Section.

The proposed loading docks servicing Coles and specialty shops (which will utilise smaller vehicles) will replace the existing loading dock and is not considered likely to result in increased air quality impacts.

The proposed Service Station will have a setback of approximately 60m to residences opposite the site on Wilsons Road. Given this separation, it is considered the proposal is not likely to generate significant or adverse air quality impacts. However, further consideration of this issue will be undertaken as part of a separate application.

Section 8.7 – Noise and Vibration

The proposed development will include a number of noise generating areas and equipment. In particular, plant from the new Coles building will be located on the roof, and the new Coles and Specialty Shop loading docks will be located approximately 40m from residences to the north.

The applicant has submitted an Acoustic Assessment and supplementary information in support of the proposal, which concludes that the development will comply with the guidelines of the Industrial Noise Policy (INP), subject to recommended conditions.

The application has been reviewed by Council's Waste, Environment and Ranger Section, who has raised concern with the documentation provided. The applicant has since provided further clarification, which is considered to be satisfactory.

It is considered that the proposed development is consistent with the requirements of this Section and the INP, and is not likely to unreasonably impact nearby residences subject to recommended conditions.

Part 9.17 – Signage

The proposed signage includes a 10m pylon sign to replace the existing shopping centre pylon sign, and business identification signs (flush wall) on the façade of the proposed building. The proposed Service Station will also likely include a pylon sign, with fascia and flush wall signs likely for both the Service Station and KFC. These will be addressed as part of a future development application, but do not raise any significant concerns at this stage.

The development is considered to be consistent with the objectives of this Section subject to recommended conditions, as detailed below.

Section 17.3 – Specific Sign Dimensions

- Pylon Sign

This section requires pylon signs to have a maximum height of 6m, with a minimum clearance of 2.6m, a maximum width of 3.75m and a minimum depth of 1m.

Comment

The proposed pylon sign will be 10m in height, and approximately 3.3m in width. The proposal exceeds the recommended maximum height of 6m.

The existing pylon sign being replaced has an approximate height of 8m. There is an existing pylon sign at the round-a-bout at the north-west corner of the site, which is approximately 10m in height.

In assessing a reasonable height for the pylon sign, it should be noted that the proposed Service Station will likely include a pylon sign for pricing as part of a separate application. This will increase the number of pylon signs along the Wilson Road frontage.

Given the circumstances, it is considered reasonable to require the proposed pylon sign to have a similar height to the existing, to ensure the proposed/future signage is not visually dominant and is consistent with the objectives of the Signage DCP chapter.

A condition has been recommended in this regard.

- Flush Wall Signs

This section requires flush wall signs to take up a maximum of 25% of wall space for each frontage, and to have a minimum height 2.6m above ground level.

Comment

The proposed flush wall signs will have areas ranging from 25sqm (for the supermarket sign on the north-east elevation) to 6sqm. The proposed signs have a suitable height and do not exceed 25% of the available wall area for the respective elevations, and are considered to be appropriately sized and located.

- Facia/Awning Signs

This section requires Facia Signs to not project 300mm out from the facia, and must integrate with the building design. There is no specific size limit recommendation.

Comment

The proposed awning signs have an approximate size of 3x1m, and are considered to be appropriately sized and location and comply with the requirements of this section.

Section 17.4 – Illumination

The proposed signage is intended to be illuminated on a 24 hour basis.

This section requires that signs do not emit excessive glare or reflection. From the perspectives provided as part of the Visual Impact Assessment, it is noted that proposed signage does not appear to be clearly visible from nearby residences due to the existing vegetation along Scrubby Creek.

However, a condition is recommended requiring the signs to comply with AS4282-1997, and for certification from a lighting consultant that the proposed illuminated signage does not exceed the recommended lux levels at nearby residences.

Mount Hutton Streetscape Master Plan

The site is subject to the Mount Hutton Streetscape Master Plan. The Master Plan identifies the Wilsons Road frontage as Street Type C.

The application has been reviewed by Council's Urban Design and Landscape Planner, who has recommended a number of conditions regarding proposed streetscape works, including landscaping and pedestrian pathways.

The proposal is considered to be consistent with the Streetscape Master Plan subject to recommended conditions.

Section 94 Contributions Plan – Charlestown 2015

The development is subject to the Charlestown 2015 Section 94 Plan and triggers the requirement for contributions. The application has been referred to Council's Development Contributions Team, who has advised that the Section 94 applicable to the development is \$783,470.40. A condition has been recommended in this regard.

It is noted that the contributions required under the Charlestown Plan relate primarily to Capital Road Works, and do not relate to the Shared Path identified in the Town Centre Area Plan. The contributions schedule is attached to proposed condition 46.

Section 79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

Section 79C(1)(a)(iv) any matters prescribed by the regulations

Nil.

Section 79C(1)(b) the likely impacts of the development

Built

The development will result in a number of benefits to the built environment, particularly through pedestrian access and amenity improvements between the Lake Macquarie Fair and Mount Hutton Shopping Centres.

The proposal, subject to recommended conditions, is also considered to be consistent with the objectives and strategic direction of the Mount Hutton Town Centre Area Plan in LMDCP 2014.

Conditions regarding management of construction works associated with the proposed development have been recommended to reduce the potential for impact on nearby residences.

Natural

The development will retain existing vegetation along Scrubby Creek and conditions will be imposed regarding additional planting along the creek. The development has also been reviewed by Council's Subdivision Engineer, and is considered will not adversely impact stormwater discharge or flooding along Scrubby Creek and the eastern part of the site.

The proposed service station concept will have a setback of approximately 190m to Scrubby Creek, and it is considered that reasonable stormwater and environmental measures can be implemented as part of a future DA to avoid any potential for adverse impacts on the creek.

The development will also implement a Shopping Trolley Management Plan, including a wheel lock system, which will reduce the incidence of trolley theft and dumping. The development is not likely to have any significant or adverse impacts on the natural environment.

Social

The proposal for the shopping centre redevelopment and bottle shop has the potential for broader social impacts due to the nature and location of the development.

These matters have been addressed by Social Impact and Crime Risk Assessments submitted by the applicant in support of the application. Following assessment of the proposal, Council considers that the conclusions and recommendations of these reports are reasonable, and that the development is not likely to have a significant or adverse social impact on the community subject to recommended conditions.

Economic

The proposal involves an extension to the existing shopping centre, and is expected to result in additional employment generation and economic activity.

It is noted that the proposed Coles, bottle shop and service station will be in competition with similar existing businesses on and around the site. It is considered that Draft State Environmental Planning Policy (Competition) 2010 and previous case law (such as *Fabcot Pty Ltd v Hawkesbury City Council* (1997) 93 LGERA 378) demonstrate that competition between individual businesses should be separate from the "economic impact" of a development.

The development is not likely to have any detrimental economic impacts on the local community.

Section 79C(1)(c) the suitability of the site for development

Does the proposal fit the locality?

The proposal involves a redevelopment of the existing shopping centre, and is considered suitable with regard to its context within the surrounding locality.

Are the site attributes conducive to development?

The proposal is generally suitable for the site with regard to its constraints and existing development. However, as identified in this report, Council maintains concerns regarding the Wilsons Road and Scrubby Creek pedestrian entries, and has sought to resolve these matters through conditions to be imposed on any consent.

Section 79C(1)(d) any submissions made in accordance with this Act or the Regulations?

Public submissions

The application has been publicly exhibited on two occasions. The first was for a period of 30 days ending on 1 July 2016. The extended period was due to the

application triggering the Advertised Development provisions (approval from NSW Office of Water (NOW) required under the Water Management Act). However, NOW have subsequently advised that the proposal is considered exempt from their provisions under that Act.

The second exhibition period was for a period of 14 days ending on 2 November 2016.

Council has received written objections from seven individuals or groups, including, form letters with 40 signatures and a submission from the Mount Hutton/Windale Residents Action Group. It is also noted that some individuals have made multiple submissions during the assessment period. The key issues raised in the public submissions are listed below, along with the relevant assessment comments:

Condition of Scrubby Creek (Shopping Trolleys)

A number of submissions were received raising concern regarding the existing condition of Scrubby Creek due to the dumping of shopping trolleys, and the potential for the development to exacerbate the problem. The submissions raised concern regarding the on-going nature of the problem and the extent of action taken to date.

The submissions also identified a lack of Council policy regarding this issue, and suggest that the development should address on-going management of Scrubby Creek.

Town Planners Comment

Council is aware of existing issues and concerns relating to the condition of Scrubby Creek. It is considered that this application presents an opportunity to improve the situation, albeit it is acknowledged that it is difficult to completely eliminate the irresponsible actions of individuals elect to dump trolleys beyond the centre boundaries.

As previously discussed in this report, the applicant has provided a draft Shopping Trolley Management Plan in response to this issue. Following review of the draft Management Plan, it is considered reasonable to additionally require implementation of a wheel locking system to minimise shopping trolley theft and dumping. A condition is recommended in this regard, requiring amendments to the draft Shopping Trolley Management Plan prior to the issue of any Construction Certificate. This has been discussed with the applicant, who has agreed to the amendments to the draft Management Plan and the subsequent conditioning of any consent.

It is considered that these measures will ensure that the development appropriately responds to these concerns, and will have a beneficial impact on the Scrubby Creek environment.

With regard to policy concerns, Council is currently reviewing the issue of shopping trolley management across the LGA, and is in the process of considering potential changes to Lake Macquarie Development Control Plan 2014. However, this is not yet a draft and does not have any weight with regard to assessment of this application.

Any broader consideration of policy responses to this issue and on-going management of Scrubby Creek are beyond the scope of this Section 79C assessment.

Hunter Water Infrastructure

A number of submissions raised concern regarding the inadequacy of existing Hunter Water infrastructure in the area, particularly the sewer along Ada Street, and

associated amenity impacts on residences. These submissions raised concern that the additional infrastructure demands resulting from the development would exacerbate these impacts.

Town Planners Comment

The application has been referred to Hunter Water, who have endorsed the plans submitted with the application and provided their Notice of Requirements to the applicant. Further, in discussions with Hunter Water's Developer Services Engineer, it was noted that the proposal is not expected to significantly increase demand on Hunter Water's water or sewerage infrastructure.

It is considered that the application has demonstrated that suitable infrastructure is available for the proposed development. Further consideration of Hunter Water's existing infrastructure is beyond the scope of this Section 79C assessment.

Flooding

A number of submissions raised concern regarding flooding issues affecting Scrubby Creek and surrounding properties, and the potential for the development to adversely impact flooding on and around the site.

Town Planners Comment

As previously mentioned in this report (LMLEP 2014 Clause 7.3 and LMDCP 2014 Sections 2.8 and 2.9), Council's Subdivision Engineer has reviewed the application and it is considered that the proposal makes adequate provisions for the management of stormwater and flooding, and will not adversely impact flooding around the site.

Noise

Submission raised concern about noise from the development, particularly from the proposed loading bay and its proximity to dwellings along Blue Gum Court to the north-east and the potential for adverse noise impacts.

Town Planners Comment

The proposed loading bay will replace the existing Coles loading bay. The loading bay setback to dwellings along Blue Gum Court will be reduced from approximately 100m to 45m. The applicant has submitted an Acoustic Assessment addressing noise from the development. This report identifies that the proposed loading bay area will comply with the Industrial Noise Policy, subject to recommended measures including screening in the form of a solid 2.2m high wall around the loading bay and restricting loading hours to 7am to 10pm.

It is noted that the loading bays are not likely to have any visual impact on the nearby dwellings, due to existing vegetation along Scrubby Creek. Following review of the potential noise issues and Acoustic Assessment, it is considered that the conclusions and recommendations of the report are reasonable in this instance.

A condition has been recommended requiring Acoustic certification to ensure that the recommended measures are implemented and are effective.

Traffic generation

Submissions raised concern regarding additional traffic potentially generated by the proposal.

Town Planners Comment

The proposed development will maintain existing access arrangements, and approximately 1025 parking spaces will be maintained across the site (minor reduction of 13 spaces), which significantly exceed Council's and Road and Maritime Service's (RMS) parking requirements.

The application has also been reviewed by Council's Traffic Engineer and RMS, who have not raised any objections to the proposed development. The proposed access and parking arrangements are considered suitable for the development.

Crime Risk associated with Bottle Shop and 24 hour operation of supermarket

A submission was received from/on behalf of the adjoining property (66 Wilsons Road) raised concern regarding the Bottle Shop and proposed 24 hour operation for the proposed supermarket, particularly with regard to crime risk, social impacts, anti-social behaviour, staff safety and property damage.

Town Planners Comment

The applicant has submitted Social Impact and Crime Risk Assessments in support of the proposal. As discussed previously in this report, these assessments conclude that the proposal is not at significant risk of generating adverse social or crime risk impacts, subject to the recommendations of those reports.

It is noted that the proposed bottle shop will maintain regular business hours, and the extended 24 hour operation will only apply to the Coles supermarket. Additionally, the Crime Risk Assessment identifies that existing security, which operates on-site from 8.30am to 10.30pm 7 days per week with after hours patrols, will be extended as a result of the proposed Coles trading hours.

The application has been reviewed by Council's Community Planner (Social Impact and CPTED), who does not object to the proposal subject to the following recommendations (conditions 36 and 37):

- The take-away liquor store is to prepare a plan of management detailing provisions in relation to responsible service of alcohol, pricing points to minimise the availability of bulk discount liquor, appropriate trading hours, amenity impacts, and responsible promotion of alcohol (as per the mitigation measures identified in Section 6.1 of the SIA). The management plan should be developed in accordance with the Shopping Centre Management, and lodged and approved by Council prior to occupation;
- That the measures identified by the Crime Risk Assessment (prepared by NEAL Consulting Solutions, dated 17 October 2016) are implemented.

The application has also been referred to the NSW Police, who have not provided comment at the date of this report.

Following review of the application, it is considered that the development will include suitable measures to reduce any potential for adverse social or crime risk impacts.

Submissions from public authorities

Hunter Water

The application was referred to Hunter Water for comment due to the potential demands and impact on their infrastructure. Hunter Water responded on 28 July 2016, advising that they had provided the applicant with a Notice of Formal Requirements for Proposed Development dated 24 May 2016. It is also noted that Hunter Water endorsed the plans prior to lodgement of the application.

In discussion with Hunter Waters Developer Services Engineer, it was advised that the proposal was not likely to significantly increase demand on Hunter Water's water or sewerage infrastructure.

NSW Roads and Maritime Services

The application was referred to RMS under the Infrastructure SEPP, including after amendment of the application to include the Service Station Concept Plan.

The RMS advised on 14 November 2016 that they did not have any objection to the proposal.

NSW Police

The application was referred to the NSW Police on 17 October 2016. At the date of this report, a response from NSW Police had not been received.

Ausgrid

The application was referred to Ausgrid under the Infrastructure SEPP, who provided a response dated 9 June 2016. Their response did not raise any objections to the proposal subject to recommended requirements being met. These have been included as recommended conditions.

NSW Office of Water

The application was referred to NOW under the Water Management Act, who advised on 15 July 2016 that the proposal is considered to be exempt from the requirement for a Controlled Activity Approval.

Mine Subsidence Board

The MSB issued their approval on 27 June 2016, subject to conditions. These have been included in the draft conditions recommended by Council.

Section 79C(1)(e) the public interest

The proposal raises a number of public interest concerns, particularly regarding its context within the town centre, public pedestrian access to and through the site, the bottle shop, and impact on Scrubby Creek, including existing concerns regarding shopping trolley management.

Following assessment of the proposal, it is considered that the development will suitably addresses these concerns subject to recommended conditions, and that approval of the application is in the public interest.

CONCLUSION

This application is for redevelopment of the existing Mount Hutton and Lake Macquarie Fair shopping centres. The application is for Staged Development, with Stage 1 involving demolition of the existing Coles and construction of a new Coles and specialty shops. Stage 2 involves a concept plan for a Service Station, with further details to be subject to a separate application.

Following assessment of the application, Council has identified outstanding concerns with the proposed pedestrian access points off Wilsons Road and Scrubby Creek, and it considered that they do not achieve the objectives of the Mount Hutton Town Centre Area Plan to its fullest potential.

However, the proposal presents significant benefits to the existing shopping centres. On balance, it is considered reasonable to resolve the concerns regarding pedestrian access with recommended conditions of consent, which are attached to this report.

This includes deferred commencement condition Part A, which will need to be satisfied prior to the consent becoming operational. Upon satisfactory resolution of Part A, the conditions detailed in Part B will ensure appropriate operational conditions are in place.

Subject to these conditions, it is considered that the development will satisfy the objectives of Act in promoting orderly and economic development of the land, and that approval of the application will be in the public interest.

RECOMMENDATION

That DA/731/2016 be approved subject to the granting of a deferred commencement consent as detailed in Part A and Part B attached.

ENDORSEMENT

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to assess and review the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.

Carlos Ferguson
Development Planner
Lake Macquarie City Council

I have reviewed this report and concur with the recommendation.

John Andrews
Chief Development Planner
Development Assessment and Compliance

Attachment A: Draft Conditions of Consent

Attachment B: Plans of Development

Attachment C: Agency Submissions

Attachment D: Clause 4.6 Written Request for Variation