

**JOINT REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST**

Panel Reference	2016HCC050
DA Number	2016/00733
Local Government Area	Newcastle
Proposed Development	Alterations and additions to shopping centre, involving the construction of an additional 6,295m ² retail space, associated car parking and the relocation of Kmart Auto.
Street Address	89 Park Avenue, Kotara Lot 19 DP 876517
Applicant/Owner	Applicant - Scentre Limited Owners - Scentre Limited
Date of Lodgement	4 July 2016
Number of Submissions	Two
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the Act)	The proposal is listed within Schedule 4A of the <i>Environmental Planning and Assessment Act 1979</i> , being development with a capital investment value over \$20 million. The proposed development has a capital investment value of \$100,101,129.
List of All Relevant s79C(1)(a) Matters	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • Newcastle Local Environmental Plan 2012 (LEP) <p>Development Control Plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 (DCP) • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	<p>Appendix A - Conditions of consent</p> <p>Appendix B - Documents submitted with the application</p> <p>Appendix C - RMS letter</p> <p>Appendix D - 4.6 Variation request</p> <p>Appendix E - Urban Design Consultative Group Minutes</p>
Report by	Newcastle City Council
Report date	2 March 2017

Yes

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

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

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

No

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

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

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

A development application (DA2016/00733) has been lodged with Council, seeking consent for alterations and additions to an existing shopping centre (Westfield Kotara). The development involves the:

- construction of an additional 6,295m² of retail space;
- construction of 197 additional car parking spaces;
- relocation of Kmart Auto;
- re-configuration and additional loading dock, ramps and roof circulation;
- lift relocation;
- associated landscape works and signage.

The proposal was placed on public exhibition for a period of 14 days from 18 July to 1 August 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Two submissions were received during the notification period.

The application was referred to the Roads and Maritime Services (RMS) in accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007. The RMS raised no objections to the development. However RMS has also provided comments for Council's consideration in relation to the Northcott Drive intersection, the need for a masterplan, construction works and the existing drainage system.

The key issues raised in the assessment relate to:

- Height
- Bulk and Scale
- Design and visual impact
- Landscaping and trees
- Access, loading and traffic generation

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposed development is listed within Schedule 4A of the EP&A Act with the proposed development having a capital investment value (CIV) of \$100,101,129. The application was originally lodged with a construction value of \$88,713,865 and the submission of amended plans during the assessment period generated an amended Quantity Surveyor's report that established the final CIV of \$100,101,129.

The application is recommended for approval, subject to the conditions contained in **Appendix A**.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for alterations and additions to the existing Westfield Kotara shopping centre, located at 89 Park Avenue Kotara. The alterations include the construction of an additional 6,295m² of retail space, associated car parking and relocation of Kmart Auto.

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with section 23G and Schedule 4A of the EP&A Act, as the development has a CIV over \$20 million.

2. BACKGROUND

A number of developments have occurred that have increased the size of the shopping centre and the type of facilities contained within the shopping centre. The approved development on the site includes:

- 81,751m² retail floor space (gross leasable floor area)
- eight cinemas with a total seating capacity for 1,375 persons
- 2,963 car spaces

In March 2011, development consent (DA2010/0904) was granted to construct a new indoor bowling facility and ancillary entertainment facilities. The consent provides for an additional 138 car spaces to be positioned within a new car park deck between car park levels two and three. There have been a number of modifications to this consent, the latest of which was approved in December 2015. The bowling alley has not been constructed to date.

In October 2015, development consent (DA2015/0837) was granted for alterations and additions to the shopping centre, including additional retail space (1,621m²) at two levels adjacent to the David Jones tenancy and a reduction in car parking by 32 spaces. This development is currently under construction.

3. SITE DESCRIPTION

The subject property comprises Lot 19, DP 876517 (89 Park Avenue Kotara) and is currently occupied by a large multi-level retail and commercial shopping centre. The site has a total area of 83,750m² (see Figure 1 below) and is irregular in shape. It is located on the southern side of Park Avenue, between Northcott Drive and Lexington Parade. It has frontages of 285m to Park Avenue, 197m to Northcott Drive, 196m to Cynthia Street and 375m to Lexington Parade.



Figure 1: The subject site.

The centre has vehicular access points off each of its frontages, with the main vehicular entry off Park Avenue by means of a signal controlled intersection. There are a number of vehicular and pedestrian access points into the centre including two access points in Park Avenue, two access points in Cynthia Street, one access point at ground level and one access point at third floor level at Lexington Parade.

With the exception of the food court at level three facing onto Park Avenue, the building has an internalised character. A number of external access ramps dominate the building along the Northcott Drive frontage to the east. The centre faces onto Cynthia Street, a residential area and public park to the south, with a loading dock, blank panels and ground level car parks screened with trees and landscaping. To the west, the centre also faces onto Lexington Parade, a residential area with blank concrete fencing and upper level car parks screened with trees. To the north, the centre faces onto Park Avenue, which contains a mixture of commercial and retail activities, including a bulky goods complex. Hudson Park adjoins the site on the southern boundary. Residential development is located to the east and west of the site. The zoning and photos of the site are shown in Figures 2 to 17 (below).

The site is subject to a number of environmental constraints (as mapped on Council's GIS system) including:

- Flood prone land
- Contaminated land
- Bushfire Prone - Category 1 and Buffer - southern part of site
- REMS Vegetation - Alluvial Tall Moist Forest - southern part of site
- Acid sulfate soil - Class 5

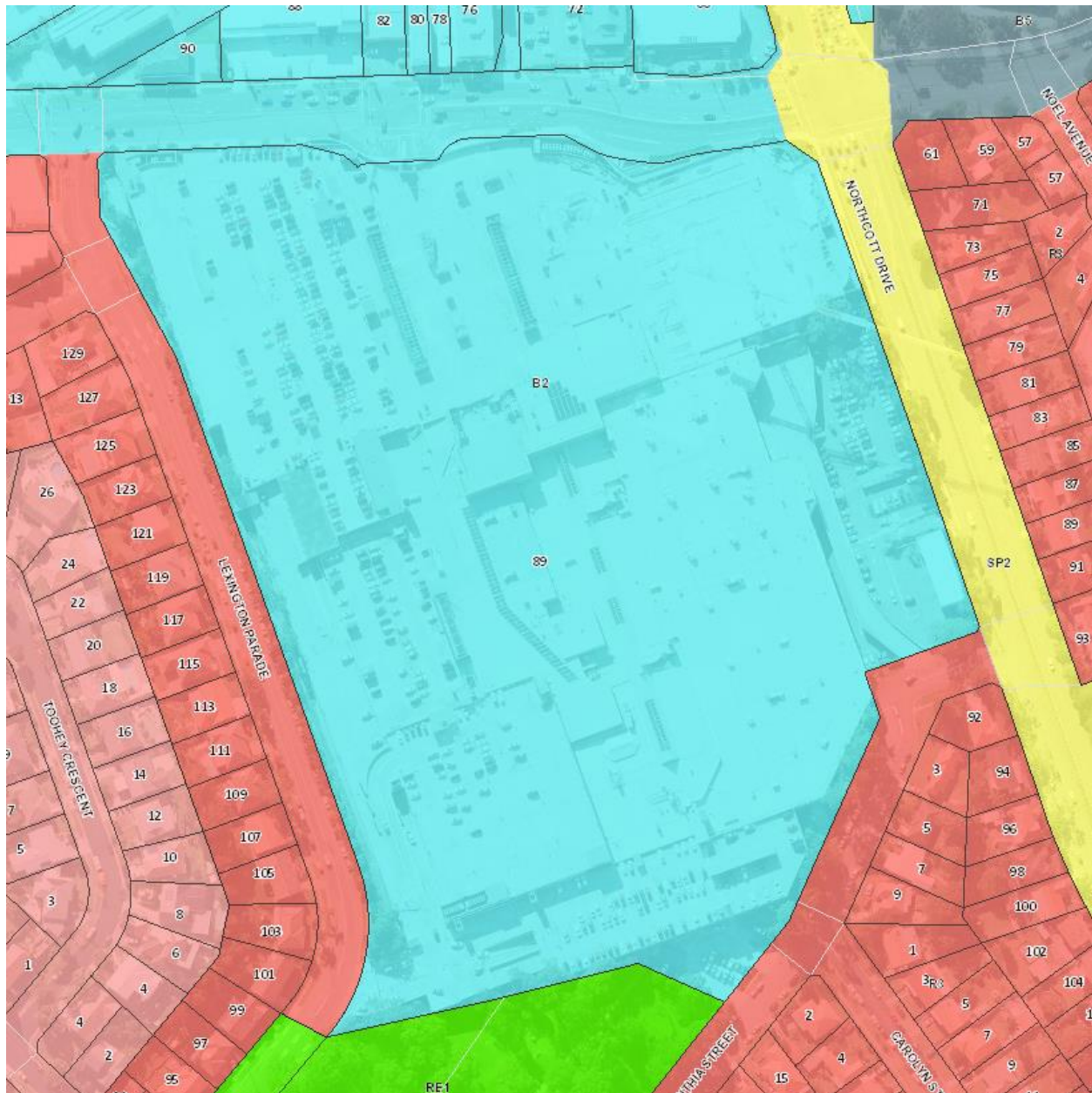


Figure 2: Zoning of the site (B2 Local Centre in light blue, R3 Medium Density Residential in salmon pink, R2 Low Density in light pink, RE1 Public Recreation in green and SP2 Infrastructure in light yellow).



Figure 3: View looking west from Northcott Drive to the bus stop near the pedestrian entrance to the site. All trees in this view are to be retained.



Figure 4: Alternative view from Northcott Drive looking west with bus stop in foreground and the large tree to be removed on the right.



Figure 5: Alternative view from Northcott Drive with ramps and the large tree to be removed.



Figure 6: View from Northcott Drive looking north-west from the existing car park entrance. The existing loading dock ramp (accessed from Cynthia Street) is centrally positioned.



Figure 7: View from Northcott Drive looking south-west. Kmart Auto is located to the left. The small gum tree is to be removed.



Figure 8: View from Northcott Drive looking south with street trees to be retained.



Figure 9: Loading dock entrance in Cynthia Street.



Figure 10: View to Hudson Park from Cynthia Street at the southern end of Westfield. This area of the park is identified as bushfire prone and is located within a floodway.



Figure 11: View looking north at the corner of Cynthia Street and Northcott Drive. With the exception of the street tree (far right) all trees are scheduled for removal.



Figure 12: View of existing screen trees and landscaping to Northcott Drive.



Figure 13: View looking north of the existing Kmart Auto.

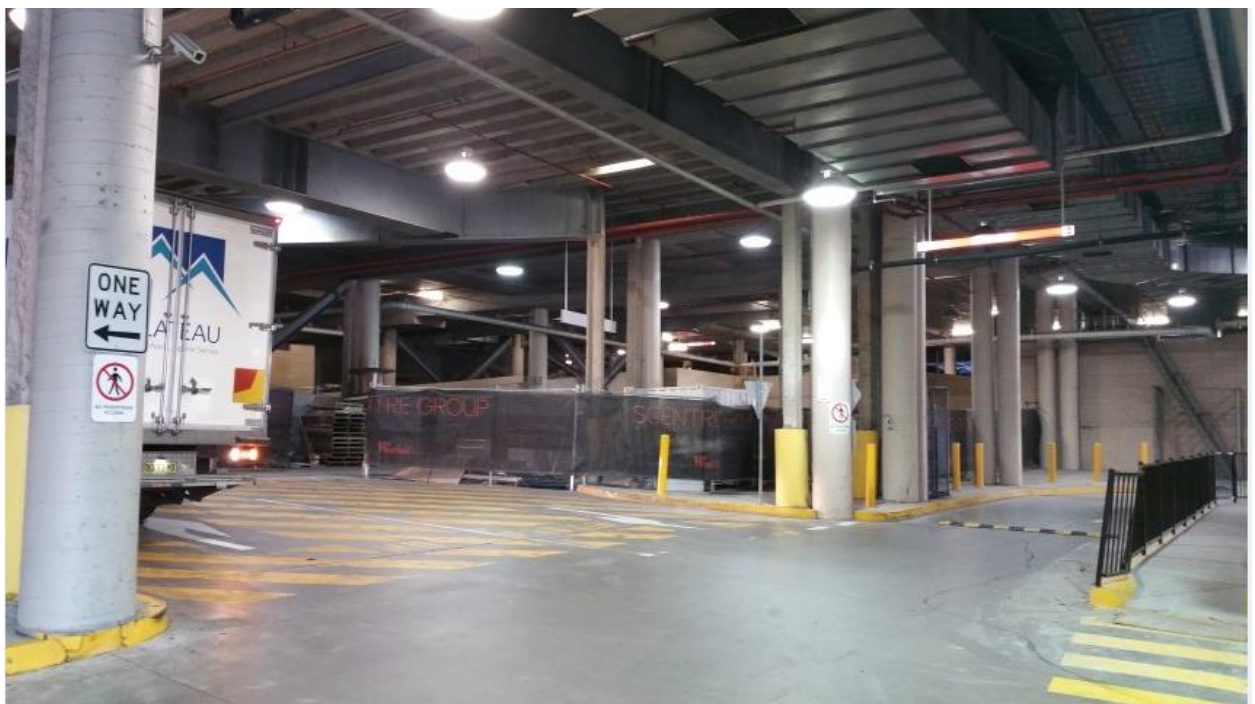


Figure 14: View within the centre of the storage area allocated for the re-location of Kmart Auto. This storage area was previously allocated as a bus stand area for the centre but was never implemented.

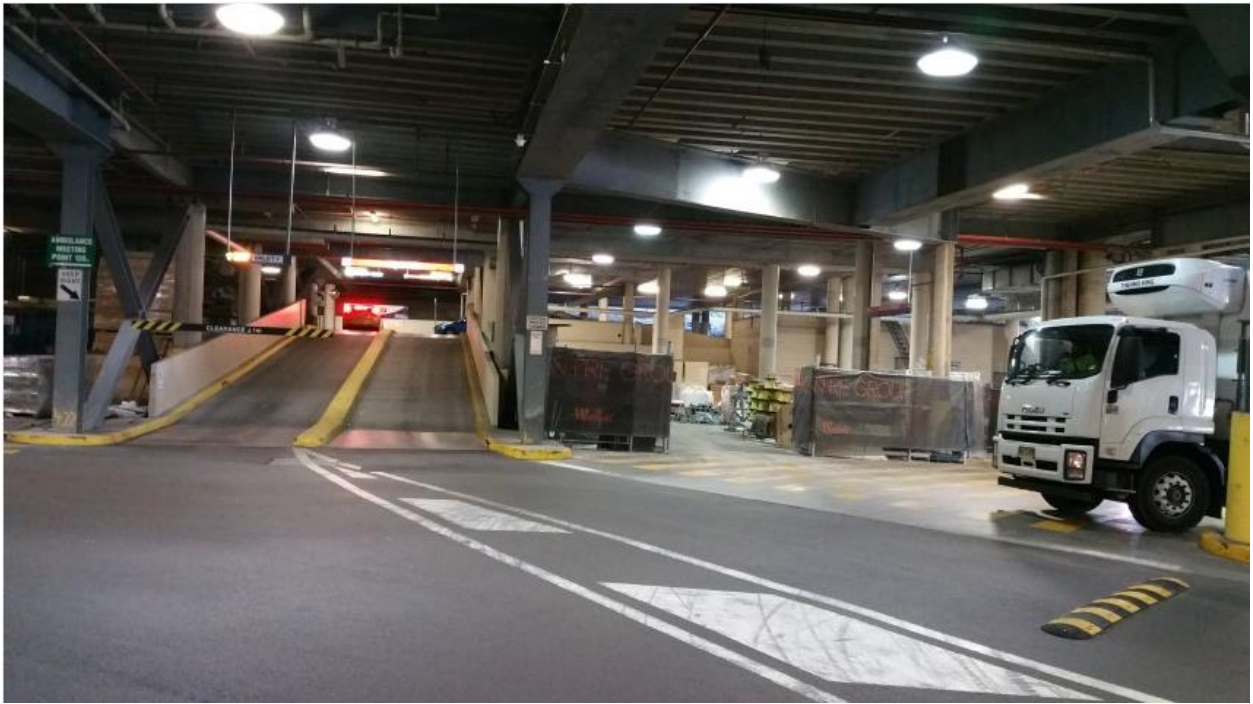


Figure 15: Location of proposed new Kmart Auto on the right.



Figure 16: View of the existing pedestrian access to Northcott Drive looking east from the car park.



Figure 17: View of the pedestrian access from Northcott Drive, with all trees to be retained.

4. PROPOSAL

The proposal is for alterations and additions to the existing shopping centre, including:

- the construction of an additional 6,295m² of retail space at levels two and three to create a third retail mall consisting of 3,259m² mini majors (retail floor space) and 3,566m² of speciality shops and kiosk floor-space;
- an additional 197 car parking spaces at levels one (8 spaces) and three (189 spaces);
- the relocation of Kmart Auto to the former storage area within the north-west corner of level one;
- the re-configuration of the level two loading dock area and construction of a new loading dock at level three;
- the construction of an additional loading / car access ramp from the level one loading dock to level three; and a car access "*speed ramp*" from level one to level two which will link with the existing north-east car park;
- the relocation of the lift adjacent to the southern mini-major (level one to level three);
- the provision of a level three car-parking link to the southern car park to facilitate complete roof circulation;
- 76m² of new storage area floor-space at levels one and two;
- associated landscape works including the removal of 16 trees and the planting of 12 replacement trees along the Northcott Drive and Cynthia Street site frontages;
- pedestrian access pathways to Northcott Drive and Kmart Auto;
- new signage to Cynthia Street and Northcott Drive frontages.

The primary change to the retail floor space is the construction of a new retail mall on level two, that runs parallel with the existing dual mall extending from the centre court to a proposed relocated Kmart store near the Northcott Drive boundary of the site. This is accessed from the central mall in two locations. The new mall will comprise the relocated

Kmart store, two mini-major tenants and 30 - 35 new and reconfigured speciality shops. Other additions include a new mini-major tenancy, a food speciality area and a children's play area, all on level three.

At level two the retail area measures a maximum of 180m length (south - north) and 106m depth (west - east). At level three, the retail area measures approximately 56m length (south - north) and 72m depth west - east. The ramp from the level two to level three car parking area is approximately 105m in length.

Design comments

Council's Urban Design Consultative Group (UDCG) provides independent, expert advice to Council about the quality of urban design and amenity of developments. The application was presented to the UDCG meeting on the 21st September 2016 due to the size and scale of the development and the following issues were raised:

- the sustainability of the roof top parking area and the need for shade trees;
- removal of trees and the lack of ground level landscaping;
- lack of pedestrian amenity from the street and visitor arrival experience;
- the need for improvements to safety and wayfinding for pedestrians;
- the amenity of retail spaces facing the carpark.

A number of design changes have been made during the assessment phase to address these concerns including:

- Improvements to the external facade through the addition of a lightweight treatment consisting of metal battens with climbers. This is a significant improvement upon the original scheme and a departure from the former box like additions to the centre.
- The speed ramp was initially proposed with a light grey concrete facade with a plain appearance. The speed-ramp has been redesigned with a dark brown colouration with the use of metal battens to cover the ramp and allow for the green climbers to grow up the ramp. This is considered to have a more recessive appearance, complementing the batten framework of the entrance corner on Cynthia St and Northcott Drive.
- The facade palette advocated horizontal metal cladding in beige tones at lower levels with vertical grey fibre cement panelling at upper levels. The revised palette indicates dark grey vertical panelling to the lower levels with lighter grey at upper level. This use of consistent vertical panelling is an improvement to the existing appearance of the building.

The amendments to the design have been broadly supported. However, concerns were also raised in regards to the level of compensatory planting for the removal of the trees and the treatment of the rooftop parking area. This issue is further discussed under section 5.1.2.1 below - LEP Clause 5.9, relating to trees and vegetation.

5. PLANNING ASSESSMENT

5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

5.1.1 Section 23G – Joint Regional Planning Panels

Section 23G and Schedule 4A (3) of the EP&A Act requires the Joint Regional Planning Panel (JRPP) to determine applications for general development over \$20 million in CIV.

The capital investment value of the application is \$100,101,129. The application is to be determined by the Hunter and Central Coast Regional Planning Panel.

5.1.2 Section 79C Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.79C (1) EP&A Act as follows:

5.1.2.1 Section 79C(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 and 21 of the SEPP require the Joint Regional Planning Panel to exercise Council consent functions for development included in Schedule 4A of the Act. This includes development applications which exceed \$20m CIV. The application is therefore submitted to the Hunter and Central Coast Joint Regional Planning Panel for determination as the development has a CIV of \$100,101,129.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

Traffic Generation

Schedule 3 of the ISEPP, relates to traffic generating development and requires certain applications to be referred to the RMS. The application was referred to the RMS under Clause 104 due to the size of the development (over 4000m² of shops) and the number of parking spaces in the development. The RMS provided a response on 16 February 2017 stating they have no objection to the development. However, they provided the following comments:

- *'The intersection of Northcott Drive and Park Avenue is considered the critical intersection affected by trips generated by Westfield Kotara, with potential impacts on the efficiency of the State road network. The intersection has been assessed and is currently satisfactory, but nearing capacity.'*

When assessing individual movements, the right turn from Northcott Drive into Park Avenue has been observed as currently providing a poor level of service.

- *Roads and Maritime will reiterate that ongoing incremental development of Westfield Kotara has potential to create additional pressure on the adjacent intersections and impact on the efficiency of the surrounding road network. Incremental developments have a cumulative effect on the surrounding State road network and signalised intersections.*

It is recommended that Council refer all future applications for Westfield Kotara to RMS for comment irrespective of size. RMS are unlikely to support any future applications without a Masterplan of the site being submitted and approved prior. The Masterplan shall detail all future anticipated development and trip generation so that the cumulative impacts of the development can be assessed. This will allow the State road and signalised intersections impacted by the traffic generated by Westfield Kotara to be appropriately analysed.'

The RMS also provided advice to Council with regard to ensuring appropriate traffic measures are in place during construction and to ensuring that discharged stormwater does not exceed the capacity of the Northcott Drive stormwater discharge system.

In addition, Council's Traffic Engineer provided a detailed assessment of the traffic implications of the proposal. This assessment had regard to the relevant heads of consideration outlined under the RMS's '*Guide to Traffic Generating Developments*' and the proposal was found to be acceptable, subject to the inclusion of recommended conditions of consent (this includes conditions 5, 6, 7, 54, 56, 57, 58, 79, 97, 101, 102, 103, 104, 105, 106 and 113).

Newcastle Local Environmental Plan 2012

Clause 1.3 - Land to which Plan applies

Newcastle Local Environmental Plan 2012 (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned B2 Local Centre under the LEP. The objectives of this zone are;

- *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 provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.*

The proposed development is defined as retail premises under the LEP and is permissible in the zone. The proposal is considered to be acceptable having regard to the objectives of this zone, in that the development will encourage employment opportunities and will provide a range of retail and business uses. In addition, there are a number of local and regional strategic planning documents that highlight the importance of Kotara as a local centre.

Clause 4.3 - Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 14m. The objectives of this clause are:

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- b) *to allow reasonable daylight access to all developments and the public domain.*

The proposed development has a maximum height of 24m.

The applicant has submitted a Clause 4.6 variation request as it is considered to be unreasonable or unnecessary in the circumstances of the case to comply with the 14m height limit. The Clause 4.6 variation is addressed in detail below.

Clause 4.4 - Floor Space Ratio

The site has an existing area of 83,750m² and a gross floor area (GFA) of 81,751m². The proposal for an additional 6,295m² GFA, results in a total GFA of 88,046m². The proposed floor space ratio is 1.051:1 which complies with the maximum 2:1 floor space ratio for the site.

Clause 4.6 - Exception to Development Standards

The objective of Clause 4.6 is to provide a degree of flexibility in applying certain development standards to achieve better outcomes from development. Subclause 2 allows consent to be granted for development even though the development would contravene a development standard.

Subclause 3 requires a written request from the applicant that seeks to justify the contravention of the development standards by demonstrating:

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

The applicant has submitted a written request (**Appendix D**) contending that enforcing compliance would be unreasonable and unnecessary in this case.

Clause 4.6(4) states that consent must not be granted for development that contravenes a standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated under clause 4.6(3), and the development is in the public interest. It is considered that the applicant has provided sufficient information to address the matters in clause 4.6(3).

The proposed variation to the height standard is consistent with the two objectives of the height of buildings development standard as follows:

- (a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy*

The development improves the appearance of the existing shopping centre to the street and is consistent in style with recent approvals granted on the site. The scale and form of the proposed development is consistent with the planned role and function of Kotara as a significant centre within the Newcastle Local Government Area (LGA). The site has been subject to extensive transformation since its establishment. The strict application of a 14 metre height control from existing ground level does not reflect the centre's role and function in the LGA.

While the buildings exceed the height limit, there have been historic exceedances. The proposal is consistent with the approved bowling alley (DA2010/0904), 6.5 - 10 m above

the 14 metre height control and lower than the approved cinema box 14.715 metres above the 14 metre height control.

Up until the gazettal of the LEP in 2012 there was no statutory height control applicable to the site. Historically, there was an urban design review for all buildings over 14m within the Hunter region under the provisions of the Hunter Regional Environmental Plan 1989. The objective was not to stipulate a maximum height standard but to ensure proposals were subject to public comment and reviewed for urban design, for their local impact and for regional significance.

The LEP adopted 14m as the maximum building height standard for all commercial land within the Kotara local centre even though existing buildings at the site were in excess of 14m in height.

It is noted that the additional height of the Level 3 retail space, common mall and loading dock occupies an area of approximately 5,300m² on a site of around 83,750m² or the equivalent of 6.3% of the total site area of the shopping centre. The additional height sought would occupy a very small portion of the overall Westfield Kotara building.

The additional height proposed from the Level 3 extensions will predominantly be perceived from Northcott Drive. The site has a natural fall from Cynthia Street to Park Avenue when viewed from the public domain. The proposed development is consistent with the approved height and built form of the modified cinema extensions under DA2010/0904.

In the proceedings *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*, Commissioner O'Neill expressed the opinion that an appropriate methodology for determining the existing ground level on excavated sites where existing buildings are to be demolished, is to utilise the existing ground levels at the boundaries of the development site where the boundaries adjoin the public domain.

In the proceedings *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*, Commissioners Pearson and Smithson agreed with the approach taken by Commissioner O'Neill in Bettar. O'Neill notes in the judgement that such an approach '*places the proposed building in its context, rather than relying on the present built form of any existing development on the site.*'

The relevant Land and Environment Court judgements do not replace the LEP definition of existing ground level with a definition applying existing ground levels around the perimeter of the site. Rather, the judgements adopt a practical approach in assessing and determining whether to support a Clause 4.6 variation to the maximum building height standard. In the Stamford proceedings the Court did not ultimately resolve the merits of the Clause 4.6 building height variation as it refused the application on other grounds.

It is considered that the proposed built form is generally consistent with the maximum height of the approved shopping centre and well below the approved cinema complex (RL 51.2) that extends above the predominant rooftop level. The elements of the proposed development that exceed 14m in height are setback from Northcott Drive at a similar distance to the existing cinema box.

(b) to allow reasonable daylight access to all developments and the public domain

The proposed development will minimise overshadowing upon adjoining residents and open space areas. The proposal will maintain appropriate daylight access to all surrounding development and the public domain. The elements of the proposed development that exceed 14m in height are substantially setback from Northcott Drive and are over 80 metres from residential development in Cynthia Street.

The development does not result in any overshadowing of residential properties or areas of the public domain. Overshadowing arising from those portions of the proposed development that are over 14m in height is predominantly limited to the rooftop area and carpark on the existing site.

Does the development achieve a better planning outcome?

In connection with the objective of providing for appropriate flexibility, the objectives of Clause 4.6 of the LEP include the concept of achieving better outcomes for and from development. In this case, a better urban design outcome is achieved through the appropriate distribution of additional built form on the subject site.

The proposed development is comfortably within the allowable Floor Space Ratio on the subject land. The location of the additional built form is considered to be a better planning outcome than distributing building mass closer to the southern end of the development which would create additional overshadowing on the public domain. The shadow diagrams illustrate that additional overshadowing falls predominantly on the existing commercial zoned land.

The proposed additions have been located so as to form a logical extension to the built form on the subject site. The additional height at Level 3, adjoining the existing cinema box, has been designed to reduce the overall mass and scaling of the building and provide a desirable contextual response to the shopping centre development.

From a streetscape perspective, the proposal provides an appropriate transition of development from the highest development adjacent to Park Avenue in the north stepping down to the south towards Hudson Park and the adjoining residential development.

The proposed development is consistent with the aims of the LEP. Kotara is mixed-use centre catering for residential, commercial, industrial, educational, bulky goods and major retail land uses. Kotara is well served by a local bus route and the Adamstown and Kotara train stations are located within 1km of the centre. It is evident that Kotara has played and will continue to play a major role in the urban structure of Newcastle and the Hunter region, including being a major employment centre. The proposed development would help reinforce this status.

The proposed extensions are unlikely to have any unreasonable impact on the viability of the Newcastle CBD. The proposed development supports the ongoing investment and renewal of the LGA.

For the above reasons, it is considered that the objectives of the development standard have been met in terms of achieving a better planning outcome.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The planning objectives for the height controls seek to ensure a scale of development that makes a positive contribution towards the built form of Kotara, consistent with the role of the established centre's hierarchy within the LGA.

The numerical non-compliance with the height control results in no additional increase in environmental impact and provides an appropriate transition to the overall built form, being an approach that has been endorsed by Council's Urban Design Consultative Group. It is considered appropriate to apply height standards with some degree of flexibility on large significant sites such as the Westfield Kotara site.

One of the objectives of the *Environmental Planning and Assessment Act 1979* is “the promotion and co-ordination of the orderly and economic use and development of land”. The height of the building, comprising up to three levels of retail development is consistent with a modern shopping centre within a significant urban centre. It promotes the orderly and economic use and development of commercial land.

The development is comfortably within the Floor Space Ratio applicable to the land. The development optimises retail development improving its vitality and viability, particularly in locations well served by public transport as is the case with the Kotara commercial centre.

The development is in the public interest as it is consistent with the objectives of clause 4.3 of the LEP (height of buildings) and with the B2 Local Centre zone objectives, in that it will encourage employment opportunities and provide a range of retail, business, entertainment and community uses for the locality. The development will have a positive contribution towards the desired built form of the B2 Local Centre zone as it will assist with maintaining the hierarchy of urban centres throughout the city of Newcastle.

In summary, it is considered that the applicant's written request under clause 4.6(3) of the LEP has adequately addressed the matters required to be demonstrated by the clause and the proposed development will be in the public interest because it is consistent with the objectives of the height of buildings development standard and the objectives for development within the relevant B2 Local Centre zone.

Clause 5.9 - Preservation of Trees and Vegetation

The proposal involves the loss of a number of significant trees. The applicant's arborist has provided the following statement regarding the proposed tree removal:

'The large lemon-scented gum that will need to be removed has a crown area of approximately 280m² and a crown volume of nearly 3,000 m³. Tree 5 alone will require a significant amount of new tree planting to adequately compensate for its removal. By contrast, the other trees that will need to be removed to accommodate the proposed development range in height from 7 to 10 metres and have a crown usually less than 20m². Replacing the trees with minimum 100 litre super advanced trees on a one for one basis is considered reasonably adequate compensation for their removal.'

There is limited ground level space in which to plant the number of trees required to adequately compensate the trees that will need to be removed, particularly tree no. 5.

The roof top parking area provides a significant opportunity for tree planting. Newcastle City Council has previously identified a goal of 50 percent shade in commercial car

parking (Newcastle City Council, 2006). Tree shade will help mitigate the urban heat island effect of the contributed to by the bulk and surface of the car park area. Trees will also reduce ambient temperature through their evapotranspiration providing a more pleasant parking environment for users and importantly decreasing the production of smog from venting fuel tanks whilst filtering particulate matter and absorbing gaseous emissions from vehicle exhaust fumes.

Appropriately sized species of trees would need to be selected to maximise the benefit for cost and tree pits that provide for adequate soil volumes would need to be incorporated into the design. Water sensitive urban design principles could be incorporated to capture and use stormwater from the site for tree irrigation.

*Of particular concern are trees 37 and 39, *Corymbia Citriodora* (Lemon-scented Gum), located on Cynthia Street, near the corner of Northcott Drive. The AIA has identified these two trees as having a high retention value, however the proposed development will require their removal. There are a number of issues preventing the retention of these trees include:*

The landscaping statement advises that;

- The trees will conflict with the proposed loading dock and the turning areas required to allow trucks to safely in and out of Cynthia Street.*
- Structural investigations indicate the existing retaining wall directly adjacent these trees will need to be demolished as it cannot support the extension of the driveway crossing.*
- Retention of the trees will result in the loss of a number of car parking spaces as the existing retaining wall will not allow new spaces in this area to meet the required standards.*
- If these trees are removed, the services of an arborist on-site during construction will not be required.*

*Existing trees 5, 6 and 28, 40 are also required to be removed. These trees have moderate to low retention value. To compensate for the loss of existing trees to this corner of the development, 12 new trees are proposed to be planted to Cynthia Street and Northcott Drive. These include 3 *Corymbia Citriodora* (Lemon-scented Gum) and 9 *Banksia integrifolia* (Coast Banksia). The proposed tree planting will help to mitigate views towards the proposed development, and re-establish the existing landscape character in the future.'*

Compensatory Trees and Roof Top Treatment

Due to site constraints it is accepted that it is not possible to provide full compensatory planting at ground level. As an alternative, the Urban Design Consultative Group recommended the potential use of the rooftop for solar shading or shade tree planting. The provision of shade planting is also consistent with the arborist's comments above.

In response, the applicant has expressed a preference to explore the provision of rooftop solar shading. It is acknowledged that a significant number of tree plantings could impact upon car parking numbers, which would be undesirable. Accordingly, it is recommended that there be flexibility to provide shade trees or solar shading, but it is also

recommended that elements of both be provided on site to comply with the Newcastle Urban Forest Policy and provide adequate compensatory tree planting. It is accepted that some adjustments may have to be made to the pedestrian pathways and car parking to accommodate these features (refer to recommended conditions).

Northcott Drive Landscaping

The proposed design originally incorporated blank facades that utilised existing and compensatory trees to visually screen its bulk and appearance. The revised scheme has, to some extent, departed from a reliance on screen trees to the construction of a facade consisting of dark brown metal batten framework and climbing plants.

At the corner of Northcott Drive and Cynthia Street, battens extend 25m in width, including provision for climbing plants. To the southern elevation, the frame extends the width of the elevation and also includes climbing plants. The design of the corner also includes indicative signage consisting of "Westfield" lettering attached to the batten frame. Beneath, there is a sign consisting of the word "KOTARA", of silver lettering mounted on a gabion wall. The signage is considered recessive within the facade and of high quality. Generally, the design of this corner contributes to the streetscape and a sense of arrival to the Westfield complex.

The car park and pedestrian access to Northcott Drive is heavily landscaped and includes the use of metal battens, climbing plants and signage to create a sense of arrival. At level one, (street level) the extent of compensatory tree planting and landscaping is also considered to be of high quality. In addition, the proposed pedestrian access will be improved through the provision of ramps.

Upper Level Landscaping

Council's Urban Design Consultative Group also recommended the continuation of the landscaping to the upper levels of the building due to its plain appearance, mass and high visibility to residential properties. Given the shortfall in the compensatory tree planting (see above) and general landscaping coverage on the site, green walls are recommended to be provided to the eastern and southern elevation of the mini-major at level three. These are the most prominent elevations to residential properties to the east and south. The green walls would also be visible travelling to the north along Northcott Drive. It is accepted that some adjustments may have to be made to the level three mini major, pedestrian pathways and car parking to accommodate these features.

It is recommended that planting be provided to the top of the eastern wall of the level three car park to cascade over the wall, softening the hard edges of the upper levels (refer to recommended conditions). This only applies to the areas where not recessed behind the proposed speed ramp or metal battens.

Council's Landscaping Officer has advised that, in order for the rooftop planting to be successful, the following factors should be considered in plant selection:

- Vegetation that thrives over the long term
- Provide aesthetic appeal
- Provide environmental benefits - such as reduced heating and cooling costs and biodiversity
- Species adapted to a containerised environment
- Good wind and drought tolerance

- Lack of limb drop
- Appropriate mature size
- Fruit, flowers and leaves that will not cause maintenance/public health issues when they drop, or attract birds/bats/insects etc
- Appropriate irrigation, drainage and water proofing
- Demonstration of an appropriate maintenance regime
- Appropriate and safe access for maintenance activities
- Design with public safety and public amenity in mind

In addition, structural engineering must take into consideration the weight of the roof garden/green walls and the requirement for irrigation, drainage and water proofing.

Conclusion

The combination of the proposed ground level landscaping, battens with climbing plants, compensatory trees and roof top planting will ensure a high quality scheme that will also be an improvement to the current site conditions, with the addition of modern landscaping and green walls.

Clause 6.1 - Acid Sulfate Soils

The subject site is identified as containing Class 5 Acid Sulphate Soils (ASS). Accordingly, any works within 500m of Class 1, 2, 3 or 4 ASS require consideration under clause 6.1 of the LEP. As there are no Class 1 - 4 ASS within 500m of the site, an acid sulfate soils management plan is not required.

Clause 6.2 - Earthworks

There are no significant changes to the ground level proposed as part of the development. As a result there will be minimal impacts on environmental functions or drainage.

5.1.2.2 Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the application.

5.1.2.3 Section 79C(1)(a)(ii) any development control plan (and section 94 plan)

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below.

Part 3.10 - Commercial Uses

The main objectives of Section 3.10 are to ensure developments:

1. Enhance the economic viability of commercial centres.
2. Encourage commercial development that has a positive contribution to surrounding development.

The applicant has addressed this policy within the submitted Statement of Environmental Effects, as follows:

'Since the 1980's, Westfield Kotara (previously known as Garden City) was identified in State and Council and planning policy as a "sub-regional" centre. Westfield Kotara has historically been identified as the second primary retail centre for Newcastle behind the CBD.

It is estimated that the total shopping centre floor space of 5,855m² (since increased by 400m²) will create demand for around 250 ongoing jobs to service the new shops. Allowing for some transfer of employment between old and new shops, the net gain in employment as a result of the proposed expansion of Westfield Kotara is 213 jobs).

In addition to retail employment, the redevelopment is expected result in approximately 313 direct construction jobs (for one year... based on a projected construction cost of approximately \$89 million for the proposed development (since increased to \$101m).

The proposed expansion is modest in scale, adding 5,855m² (see above) or a 9% increase in retail floor space at the centre. This additional floor-space has the potential to generate around \$52 million in retail turnover, of which \$41 million is expected to be sourced from expenditure by trade area residents.'

The submitted Economic Impact Statement identifies that:

'Another key consideration.... is the development's effect on the Newcastle CBD, particularly in terms of the revitalisation of the City Centre.

As set out in the Newcastle City Council's "The City Centre Vision" the primary purpose of the Newcastle CBD is to function as the commercial core for the Lower Hunter Region. It will serve as the dominant employment, residential and administrative hub. Retailing in the CBD has been classified as a secondary function. Planning strategies have adopted the view that retail in the CBD should be tailored towards boutique / niche retailing which provides a unique offering, distinct from existing retail providers and that caters to the attributes and demand drivers of the CBD market. This includes retail uses that services daily needs of residents, workers and visitors to the CBD and further build the CBD as an evening destination for dining, leisure and entertainment.

The expansion of Kotara will not undermine the vision set forth for the Newcastle CBD, nor will it change Kotara's role as a stand-alone suburban shopping centre. The additional retailing resulting from the proposed expansion of Westfield Kotara will be focussed on fashion and other discretionary retailing and accommodation of international retailers which is not the core strategy for retailing in the CBD.

In conclusion, there is sufficient market demand to support the proposed expansion of Westfield Kotara and the community will benefit through access to a broader range of retail shops, including new-to-market retailers. The sustainability of the retail centres hierarchy will be preserved and no one centre is expected to accrue adverse impacts from the proposed development. Of importance, the revitalisation of the Newcastle CBD, and in particular the planned East End project, will not be affected by the Westfield Kotara development.

Overall, the proposed expansion is an appropriate development that addresses a range of market, retailer and consumer needs and will provide a positive contribution to the retail landscape in Newcastle.'

The proposed development will result in a significant economic benefit to Newcastle and the surrounding region and the development is unlikely to have any unreasonable impact on the viability and function of the Newcastle CBD. The development is considered to be consistent with the objectives of section 3.10 of the DCP.

Part 3.10.01 - Street activation

The pedestrian entrances would be improved by the proposed development, by making them more attractive and to create a sense of arrival. The enhancement to the Northcott Drive entrance through the provision of additional landscaped batten walls, signage and lighting will improve safety and navigation across the car park as well as improve the appearance of the entrances. Improvements to the pedestrian signage adjacent to the relocated Kmart Auto, that will assist with wayfinding and encouraging greater pedestrian access to the centre, are also proposed.

Part 4.02 - Bush Fire Protection

The southern part of the site abuts a Vegetation Category 1 area of trees within the public parkland and a portion of the development area is within a 100m vegetation buffer of these trees. A bushfire threat assessment has been submitted that identifies that the proposed development complies with the aims and objectives of Planning for Bushfire Protection 2006.

Part 4.10 - Flood Management

This site is affected by flooding from the local catchment draining across Hudson Park and through the existing Westfield carpark. The site experienced significant flooding during the June 2007 'Pasha Bulka' storm event which involved 1 in 100 year ARI flood levels. For storms larger than a 1 in 2 year ARI event the existing HWC culvert would start to surcharge.

A flood study was undertaken for a previous major site upgrade (DA2003/2991) which quantified the flood risk. The consent issued for that development required the preparation and implementation of a flood emergency response plan.

The applicant has relocated the proposed Kmart Auto facility clear of the floodway and has stated that, as there will be no change to the existing flood risk within the site, there is no need for any flood management improvements.

Council's Flood Engineer has advised that this position is acceptable.

The proposed building floor levels are all above the local flood levels. A condition has been recommended requiring that the existing flood emergency response plan be updated to allow for the new development (refer to recommended conditions).

Part 3.0 - Stormwater Management

The proposed scheme will utilise the existing stormwater infrastructure. Council's Engineer advises that the development will not result in additional hard surface areas and

that there would not be additional stormwater run-off. Depending on the extent of the level three car park planting, trees could moderate some storm water runoff.

However, although there will be no increase in site impermeable area, Council requires that the new building include stormwater management controls to reduce site discharge and minimise site generated pollutants. This could include stormwater collection and reuse on the site. Conditions are recommended to require compliance with the DCP requirements.

Part 4.04 - Safety and Security

The applicant has stated that specialist advice has been provided with regard to safety and security measures for the whole of the centre. In addition, the applicant has addressed the Crime Prevention Guidelines released by the Department Urban Affairs and Planning in April 2001 as follows:

'Surveillance - The proposal provides for improved interaction with and casual surveillance of uses within the revitalised shopping precinct.

Access Control - The proposed extensions will enhance existing pedestrian and vehicle parking areas as well as provide for an improved access arrangement from existing and new parking areas. The proposed extensions will channel pedestrians between the existing shopping centre and the new retail precinct as well as to and from the modified and expanded carpark areas. The new pedestrian crossing points are located generally in a direct desire line for shoppers moving between the retail tenancies.

Territorial reinforcement - The public are given a sense of ownership of pedestrian circulation areas and quality lighting, materials and finishes are proposed to be used to make the centre feel cared for and protected by its users.

Space management - The internal and external areas of the shopping centre will be maintained in a comfortable, clean and coordinated manner by Centre Management. Maintaining the centre in such a way is not only important for crime prevention and safety but is important to the commercial viability of the centre. '

Additional details of the pedestrian pathways through the centre have been provided. The application meets the safety and security objectives of section 4.04 of the DCP in this regard.

Part 4.05 - Social Impact

The proposed extension to Westfield Kotara will result in new employment opportunities within the centre, during both the construction and operational phases of the development.

The applicant states that the type of jobs created will be well suited to a variety of people within the local and regional population.

The Economic Impact Statement (p.29) states that:

'The proposed expansion of Westfield Kotara will have a positive impact on employment opportunities, both locally and in the broader economy.

- *Employment generated during the construction phase of the project and its flow-on effects on employment. The flow-on employment results from increased demand for materials, services and products from a range of suppliers during the construction of the centre.*
- *Total full-time and part-time employment generated to service the new retail shops at the centre. There would also be flow-on employment (multiplier effects generated by increased demand for goods and services as a result of increased consumption by the employees at the centre.*

It is estimated that the total shopping centre floor-space of 5,855m² will create demand for around 250 ongoing jobs to service the new shops. Allowing for some transfer of employment between old and new shops, the net gain in employment as a result of the proposed expansion of Westfield Kotara is 213 jobs (refer Table 5.5).

In addition to retail employment, the redevelopment is expected result in approximately 313 direct construction jobs (for one year)...based on a projected construction cost of approximately \$89 million for the proposed development.

Many of the new job positions in Westfield Kotara are likely to be taken up by local residents and almost all from metropolitan Newcastle.

There would also be multiplier effects that would generate additional jobs throughout the wider economies.'

It is noted that the above statement was made prior to amendments to increase floor-space by 400m². Also, due to some significant design changes, the revised CIV of the development has increased to \$100,101,129.

The development is likely to have a positive social impact through the creation of employment and strengthening of Kotara as a strategic centre.

Part 5.01 - Soil Management

A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been recommended to be placed on the consent to ensure such measures are in place for the entire construction period.

Part 5.02 - Land Contamination

The site is identified as being potentially contaminated as it sits upon the location of a former quarry. The extent of the development involves only piling works and this does not trigger further assessment under State Environmental Planning Policy No. 55 - Remediation of Land. No concerns are raised in regards to contamination.

Part 5.03 - Tree Management

This has been assessed in detail under clause 5.9 of the LEP.

Part 7.01 - Building Design Criteria

The site has historically been a shopping centre surrounded by the residential suburb of Kotara. The centre has incrementally grown over the years. The built form is suspended on piers projecting over the existing ground level car park. It has an elongated built form extending adjacent to the Northcott Drive frontage with a similar height to the existing north-eastern roof deck at the corner of Northcott Drive and Park Avenue.

The extension is proposed to be built up to the property boundary which adjoins a landscaped strip to Northcott Drive and Cynthia Street, measuring approximately 5m in width. To Northcott Drive this strip includes buffer trees and shrubs, a public footway and a landscaped strip with street trees. The building would be located approximately 30m from the nearest residential properties at 71 - 91 Northcott Drive, to the east. The Northcott Drive properties are elevated approximately 5m or higher than ground level at the site boundary. Given this distance and variation in the height plane, the building would not have an unduly dominant impact upon residential properties in Northcott Drive.

The building is to be located 20m from the nearest residence at 92 Northcott Drive on a similar height plane. Facing this neighbour the facade has a lightweight design being constructed of metal battens with landscaped climbing plants. The general outlook for this neighbour is considered an improvement over the existing outlook which is currently of the loading dock entrance.

The development represents a logical extension to the retail centre by utilising the void space above the car park whilst presenting a high quality lightweight façade to the sensitive Cynthia Street and Northcott Drive corner. It is noted that the building would be significantly lower than the existing cinema box and the built form and scale of the building is generally consistent with the built form at the site.

Council's Urban Design Consultative Group recommended a number of improvements to the pedestrian pathways within the centre, which have been included in the final design. However, the amenity for both pedestrians and workers at the level one car park is presently poor, with access to light and outlook to be further reduced as the building is extended. Accordingly, it is recommended that visual screening to improve pedestrian amenity is provided between the walkway outside the retail tenancies (refer to recommended conditions).

Conclusion

As discussed previously the proposed lightweight facade treatment consisting of metal battens with climbing plants, is a significant improvement upon the original scheme and is a significant departure from the former box like additions to the centre. Together with the additional green facade and landscape treatment (secured by recommended conditions), the building would have a contemporary appearance and make a significant contribution to improving the streetscape.

Part 7.07.08 - Solar Access

A public submission was received stating that that the development will impact upon the neighbouring residential gardens at 92 Northcott Drive and 3 - 9 Cynthia Street in mid-winter. However, the submitted shadow plans indicate that the extent of overshadowing is acceptable and will not cause a significant impact.

Part 7.01.09.12 - Noise

The proposed development includes the provision of new loading docks at levels one and three, and new access ramps to the upper level car parking. A new speed ramp from the existing north-east parking area from level three to the level one parking area is proposed. There will be improvements to the circulation on the rooftop car parking with the option for complete circulation. There are a number of new plant locations on the level three rooftop car parking area and the new mall area. These proposed changes to the existing centre have the potential to impact upon nearby residential occupiers through additional noise.

The new level two loading dock is positioned 70m closer to residential homes. There is a distance of 20m from the entrance of the loading dock to the nearest residential occupier at 92 Northcott Drive. From the level three loading dock, there is a potential impact upon residential occupiers on the eastern side of Northcott Drive. Council's Environmental Health Officer highlighted concerns about this aspect of the proposal.

Subsequently, a Noise Impact Assessment was submitted, identifying that the potential noise impacts from the first level loading dock do not exceed EPA guidelines. However, compliance with the project specific noise criteria is dependent on the installation of a 2.5m high acoustic barrier along the eastern and southern loading dock walls. An acoustic wall has been proposed to meet this requirement.

The new level three loading dock area includes an access ramp and traffic controls. The Noise Impact Assessment concludes that the potential noise impacts from the third level loading dock do not exceed EPA guidelines. However, compliance with the project specific noise criteria is dependent on the installation of a 1.5m high acoustic barrier along the eastern side of the upper part of the access ramp and carpark area. An acoustic wall has been proposed to meet this requirement.

A review of the level three loading dock traffic control arrangement raised potential noise concerns as trucks would be required to accelerate to negotiate the access ramp and idle at the boom gate at the top of the ramp. The Noise Impact Assessment provided a brief analysis of the potential noise impacts associated with the access ramp. However, Council's Environmental Health Officer remains concerned about the potential noise impacts due to the overall traffic control arrangement and recommends the use of the loading dock and access ramp is limited to between 7:00am and 10:00pm daily (refer to recommended conditions).

No details of acoustic plant have been provided as part of the application. The Noise Impact Assessment recommends that potential plant noise issues are best resolved during the construction phase through an acoustic certification process. Council's Environmental Protection Officer concurs with this advice and a condition has been recommended to this effect (refer to recommended conditions).

The Noise Impact Assessment also identifies and assesses the potential noise impact of traffic and car parking and concludes that the potential noise impacts do not exceed EPA guidelines.

The applicant has requested various hours of operation for different elements of the development. Following advice from Council's Environmental Protection Officer, recommended hours of operation are specified in recommended conditions.

The development is considered to have an acceptable impact upon residential amenity on the basis that the recommended mitigation measures, such as limited hours of

operation and the installation of acoustic barriers, are implemented as part of the development approval.

Part 7.01.11 - Utilities and services

A Site Waste Management Plan has been submitted with the application and is considered to be acceptable. However, no waste minimisation plan in relation to the demolition of the building has been submitted and a condition has been recommended to address this issue.

Part 7.02 - Landscape, Open Space and Visual Amenity

This has been assessed in detail in previous sections of this report.

Part 7.03 - Traffic, Parking and Access

Background

The shopping centre operation is heavily oriented to private car use and is considered to not particularly pedestrian friendly at present. Northcott Drive and Park Avenue are major roads with Northcott Drive being a six lane divided road in the vicinity of the site. Park Avenue is a four lane road with additional turn lanes at intersections. The intersections of Northcott Drive (the main centre access); and Lexington Parade, with Park Avenue, are both controlled by signals.

All other intersections in the vicinity of the site are priority intersections. Vehicles moving between Northcott Drive and Cynthia Street have to turn left in and out of Cynthia Street due to the median in Northcott Drive. There is a substantial level difference between the north and southbound carriageways of Northcott Drive in the vicinity of Cynthia Street.

The main vehicular entrance to the centre is provided via a signal controlled intersection with Park Avenue, located about half way between Northcott Drive and Lexington Parade. A left ingress only is provided to the multi deck car park from Park Avenue, between the main access and Northcott Drive. The main pedestrian entrance to the centre is also located on Park Avenue, between the two vehicular accesses. A bus bay is provided in front of this entrance.

The centre has two driveways off Lexington Parade, an entrance opposite Princeton Avenue and an entry / exit adjacent to the southern boundary of the site.

The centre has an egress to Northcott Drive, between Cynthia Street and Park Avenue. This access is limited to left turns only due to the median in Northcott Drive. The centre has three driveways off Cynthia Street. The driveway closest to Northcott Drive accesses service areas and is restricted to use by service vehicles. The other two accesses connect to parking and provide for both entry and exit.

Improvements to Traffic Circulation

The Park Avenue access driveway provides connections to the two main car park structures, located either side of the access fronting Park Avenue. The accesses off Lexington Parade, Cynthia Street and Northcott Drive primarily provide access to the ground level and under-croft parking, as well as to the roof parking. The parking within the centre is to be interconnected making it possible to access areas without leaving the

site. Access from the rooftop parking level to level three will need to cross the servicing access point. This intersection is to be controlled by traffic signals and Council's Traffic Engineer advises that these measures are acceptable.

There is also an additional "*speed ramp*" proposed from the level one to level two car parking areas, enabling easier access into and out of the centre.

These improvements are considered to be a major benefit for vehicular access and will enhance the useability and access arrangements of the centre.

Public Transport

The site is well serviced by public transport with bus stops located in Northcott Drive, Park Avenue and Lexington Parade, all within the nominal 400m radius of the shopping centre. There is a bus stop to the south side of Park Avenue which is conveniently located outside the main pedestrian entrance. There is also a bus stop on the north side of Park Avenue, which is located 60m from pedestrian intersections. For north bound travellers, there is a bus stop adjacent to the pedestrian entrance on Northcott Drive.

Pedestrian Access

The centre is heavily car orientated and pedestrian accessibility to the centre is relatively poor and not clearly visible. It is also notable that there is no evident access integration between Westfield Kotara and the nearby Domain commercial operation, with pedestrians needing to navigate across the busy Park Avenue intersection.

However, as detailed previously, some improvements to pedestrian pathways are proposed which will assist with way finding and safety in and out of the centre.

Bicycle Accessibility

The centre is heavily car orientated and bicycle accessibility to the centre is relatively poor. There are cycle lanes on Park Avenue travelling east-west.

Council's Traffic Engineer advises that in the absence of a more strategic review of bicycle transport within Kotara, there appears little scope to request improvements associated with this development.

Servicing

Council's Traffic Engineer raised concerns in relation to the potential for vehicle conflict associated with heavy vehicles accessing the proposed Loading Dock area on Level 3 and light vehicles utilising the car park access ramps. In response to this issue, the applicant is proposing to implement a service vehicle traffic access management plan.

Traffic Generation

The applicant's traffic consultant analysed the traffic generation associated with the shopping centre to determine the impacts on the performance of the local road network. In this regard traffic counts measured the number of vehicles entering and exiting the centre and found the following:

- 2,795 vehicles per hour (two way) in the Thursday afternoon peak hour and;

- 3,440 vehicles per hour (two way) in the Saturday midday peak hour.

Applying a 15% reduction for passing trade (in accordance with RMS guidelines) results in an estimated net increase in traffic generation of 245 and 295 vehicles per hour (two way) during the Thursday afternoon and Saturday midday peak periods respectively.

At the request of the RMS the traffic consultant modelled the performance of the local road network post development. This modelling has confirmed that intersections continued to operate at an acceptable level of service although the Northcott Drive/Park Avenue intersection was operating at or near capacity. The RMS letter dated 16 February 2017 confirms that the Authority raises no objection to the proposed development.

Parking rates and layout

The parking rate of 3.8 spaces per 100m² gross leasable floor area (GLFA) is a site specific parking rate previously established for the Westfield Shopping Centre following extensive surveys. This parking rate has been accepted by Council for the determination of the parking requirements for recent applications approved at this site. Accordingly it is accepted that this parking rate can be utilised for the assessment of this application.

The application proposes an increase in GLFA of 6,295m² coupled with an increase in parking of 197 spaces.

An increase in floor area of 6,295m² at a parking rate of 3.8 spaces per 100m² GLFA equates to a parking requirement of 239 spaces for the subject development. In applying this parking requirement to the site, consideration of the parking requirements of previous development approvals was required to be made. The applicant has provided a table that summarises the parking requirements for the site based on previous approvals. Factoring in this application it was determined that the resulting on-site parking provision for the entire Westfield Shopping Centre is 3,122 spaces.

Parking is therefore considered acceptable and an appropriate condition has been recommended for this application requiring a minimum parking provision of 3,122 spaces for the centre as a whole.

The car park layout/configuration has been reviewed and is considered acceptable, generally complying with relevant parts of Australian Standard 2890.

Part 7.05 - Energy Efficiency

This clause requires that all buildings achieve appropriate energy efficiency. In regard to the principles of Ecologically Sustainable Development (ESD), the applicant has provided the following information:

- Appropriate design of building form and orientation;
- Solar absorption for external materials;
- Selection of appropriate materials to minimise occupant discomfort and minimise unwanted heat losses and gains;
- Provision of insulation to roof, walls and facades;
- Installation of building management system to control air conditioning operation,
- Lighting operation and monitor energy consumption;
- Provision of low energy electric lighting with reduction in artificial lighting levels (apart from security lighting) outside normal working hours;

- Specification of pre-cut and made to measure building materials to minimise wastage;
- Specification of nontoxic materials where possible;
- Extended open air roof top car park areas provide natural ventilation.

When these measures are coupled with energy efficiency requirements of the Building Code of Australia it is considered that the proposed development is compliant with this part of the DCP.

Part 7.06 - Stormwater

The existing site drainage infrastructure collects runoff from the building roofs and at-grade car park and discharges to twin 1500mm concrete box culverts (Council owned trunk drainage system within an easement) which traverse the site from Hudson Park to Northcott Drive. The trunk drain continues off-site to the north where it discharges to Styx Creek.

Although there will be no increase in site impermeable area, Council requires that the new building includes stormwater management controls to reduce site discharge and minimise site generated pollutants. This could include stormwater collection and reuse on the site. Conditions are recommended to require compliance with the DCP requirements.

Part 7.08 - Waste Management

A Waste Management Plan has been submitted detailing the collection, loading and removal of different types of waste from the new loading docks, car-parking and retail areas.

A Site Waste Management Minimisation Plan has not been submitted detailing the potential recycling, re-use and disposal of materials used during the demolition and construction phase of the project. A condition has been recommended for inclusion on the consent to address this issue.

Part 8.00 - Public Participation

The application was notified for a period of 14 days and two submissions were received which are discussed in section 5.1.3.9 of this report.

Section 94A Development Contributions Plan

The application attracts a Section 94A Contribution pursuant to Council's Section 94A Development Contributions Plan 2009. Under the plan, a contribution of 1% of the cost of development would be payable to Council. A condition has been recommended to be placed on the consent in this regard.

5.1.2.4 Section 79C(1)(a)(iia) Planning agreements

No planning agreements are relevant to the proposal.

5.1.2.5 Section 79C(1)(a)(iv) the regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act* and *Regulation 2000*. In addition, compliance with AS 2601 – Demolition of Structures has been recommended to be included in the conditions of consent for any demolition works.

Hunter Regional Plan 2036

The Hunter Regional Plan is a 20 year blueprint for the future of the Hunter. Kotara is identified in the Strategy as a strategic centre that is a focus for economic growth in the region.

The submitted Statement of Environmental Effects identifies that:

'The Hunter Regional Plan identifies goals, directions and actions to guide strategic planning for land use and infrastructure across the whole of the Hunter region, including the metropolitan area.

Kotara is one of the major employment centres of the Hunter region. Kotara is already a major strategic centre where employment, shops, services and entertainment is provided to Newcastle and the wider region.

Retailing is a primary land use in any successful major centre. In regard to the Hunter Region, both Westfield Kotara and Charlestown have been historically identified in planning policy as being sub-regional centres. Both major centres continue to play a significant role in the economic growth and development of the Hunter Region.

Westfield Kotara performs a sub-regional role in the hierarchy of retail activity in Newcastle and in this regard is second only in importance to Newcastle CBD. The primary trade area for Westfield Kotara includes suburbs such as Kotara, Adamstown, Adamstown Heights, Merewether, The Junction, New Lambton, Kahibah and parts of the suburbs of Broadmeadow, Lambton, and Charlestown.

A hierarchy of urban centres, headed by Newcastle as the pre-eminent centre in the Hunter Region, has always been a key component of both State and Local planning instruments and policies for the Lower Hunter region for over 35 years. Kotara's role as a major sub-regional centre has always been acknowledged in these instruments.'

The proposal is consistent with the provisions of the Hunter Regional Plan in providing an opportunity for further retail growth that promotes vibrant, liveable communities.

Lower Hunter Regional Strategy 2009

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the region's population over the next 25 years. Kotara has been identified within the Strategy as a standalone suburban shopping centre and projecting 1200 new jobs in the future. The proposal is consistent with the objectives of this strategy.

The Newcastle Urban Strategy (adopted by Council on 11th March 1998)

With reference to the impact of the development on the vitality of Newcastle City Centre, the strategy identifies that:

'The role of the city centre's retail land uses has changed over the past 20 years. Historically, the city centre was the sole regional retail centre in the Lower Hunter, but the gradual development of larger suburban retail centres (such as Kotara and Charlestown) has resulted in a significant diversion of trade away from the city centre. Even so, there remains significant potential to revitalise retail uses in the city centre and to capture retail trade from workers and residents.'

The submitted Statement of Environmental Effects identifies that:

'The Urban Strategy aimed to provide "a framework for more sustainable urban form and structure". With respect to existing commercial centres the Background Report to the Urban Strategy states that: "The regional commercial centres in Newcastle are the CBD (Central Business District) and Kotara. There are indications of continuing suburbanisation of retail activities, with strong growth in suburban centres.'

The proposed alterations and additions to Westfield Kotara shopping centre are consistent with the vision and future role of Kotara as identified in Council's planning strategies.

Local Planning Strategy 2015

Council's Local Planning Strategy acknowledges Kotara Westfield as the largest shopping complex in the LGA.

The submitted Statement of Environmental Effects identifies that the visions and objectives for Kotara include:

'Kotara will grow to accommodate a mix of employment generating uses including a regional major local centre, a mix of business and warehouse uses, bulky goods and light industrial uses. The mix of employment uses will support the viability of the centre and improved transport options while providing for the needs of the community.'

Objectives

- *Mixed use development encouraged to create a town centre integrated with the shopping centre with improved links to the urban fabric.*
- *Better manage transport to, from and through Kotara.*
- *Facilitate better public transport services, i.e. rail as well as bus. Ideally the railway station would be moved to be in proximity to and integrate with the commercial centre but otherwise improve connections to the commercial centre.*
- *Facilitate improved pedestrian and cycling links to the centre from within Kotara and from surrounding suburbs and also cycle links to other major centres including Charlestown.*
- *Public parks are activated by development addressing parks rather than 'turning backs' to the park.'*

The development is consistent with the Local Planning Strategy. However it is noted that there is opportunity for improved pedestrian and cycling links to the centre.

The Employment Lands Strategy 2013

The Employment Lands Strategy prepared by Hill PDA for Council (and updated in 2013) specifically discusses Westfield Kotara as Newcastle's stand-alone shopping centre. It

states that the centre plays a sub-regional role with respect to retail provision, particularly for higher order goods and bulky household items. The centre rivals both Newcastle City Centre and Charlestown for retail dominance.

The Employment Lands Strategy identifies the future role for Kotara as a major regional centre and notes that:

'Kotara is poorly served by public transport, placing significant stress on the surrounding road network and residential areas.

In light of the possibility for greater housing provision and the subregional role presently being played by Kotara with respect to retail, we consider there to be opportunity for Kotara to grow and diversify in the future so that it accommodates a range of uses. Additional uses may include commercial office space, smaller government office facilities as well as entertainment. Should Kotara grow sustainably in this way there is the potential for it to become a Major Regional Centre in Newcastle's Centre hierarchy.

Whilst the draft Centres Policy's typology identifies the potential growth of stand-alone centres to town centres, as Kotara is presently providing a subregional retail role (i.e. serving a broad catchment across various LGA boundaries in the Lower Hunter Region) the centre may be best placed to aspire to be Newcastle's first Major Regional Centre. It is important to note however that in keeping with this Strategy's general planning principles, the centre's growth should only be encouraged subject to the provision of adequate public transport services and improvements to the road network without adverse impact to surrounding centres or existing higher order centre (i.e. Newcastle City Centre - page 139).'

The development is consistent with the Employment Lands Strategy. As identified above and raised by the RMS, there is a clear issue regarding the growth of the centre and the need for improvements to the road network and public transport services to the centre.

5.1.2.6 Section 79C(1)(a)(v) Coastal management plan

No Coastal Management Plan applies to the site or to the proposed development.

5.1.2.7 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

A detailed discussion of the impacts of the development has been made in this report. As previously stated the development is likely to have a positive social impact through the creation of employment and added vitality to Westfield Kotara as a prime retail destination. The additional landscaping and signage on the site and the modernisation of the external facades with green walls will improve the aesthetics of the building. Further enhancements to the building, as per the recommended conditions of consent, should add to the aesthetic appearance of the centre.

The noise and traffic impacts of the proposal are considered to be minor in the existing context of the site and appropriate mitigation measures have been included through the provision of acoustic walls and limited hours of operation for the loading docks. These measures are included in the recommended conditions of consent.

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

The site is suitable for the proposed development as it is identified as a strategic centre that provides employment and services for the broader community. The development of the site is consistent with the Hunter Regional Plan and the Lower Hunter Strategy. The site has been identified for development of this scale and is not affected by significant environmental constraints.

5.1.2.9 Section 79C(1)(d) any submissions made in accordance with this act or the regulations

The application was notified and advertised in accordance with the Regulations and two submissions were received raising the concerns listed in the table below.

Issue
Objectives of the B2 Local Centre zone
<p>The development does not meet the objectives of the B2 Local Centre zone in that:</p> <ul style="list-style-type: none"> • The centre would serve a catchment that is much wider than the “local area” and would have a sub-regional focus which is inconsistent with the first objective of the zone. The economic impact assessment states that the centre would serve the whole of the metropolitan region of Newcastle. • It does not contain any form of residential development. It does not maintain a hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre. The hierarchy of centres is expressed in Councils Local Planning Strategy which identifies this centre as a local centre (major). The size of the centre is clearly approaching a sub-regional centre status that has the potential to adversely impact on the hierarchy of centres. The economic impact assessment justifies the development on the basis of the decline of Newcastle City centre and its redevelopment would be complementary to the role of Westfield Kotara. It is considered that the development would compete with the city centre and prejudice the longer term viability of the centre. • The development is inconsistent with the draft Plan for Growing Hunter City in that the continued incremental expansion of the centre, including this centre has resulted in a centre that is too large for the local centre role and is more like a strategic centre. In this regard, Kotara is not a strategic centre as defined in the draft plan. The proposed development is not consistent with the identified centres strategy in the draft Plan for Growing Hunter City
<p><u>Comment</u></p> <p>The development is consistent with the objectives of the zone and other strategic policies (see detailed assessment in the report).</p>
Public transport
<p>The development does not maximise public transport patronage and encourage walking and cycling because of the size of the centre and the relatively poor public transport accessibility compared to other larger centres.</p>
<p><u>Comment</u></p>

Councils Traffic Engineer has advised that without a more strategic overview of the area, there is little scope to suggest positive improvements to public transport, pedestrian access or bicycle access linked to this development. However, as detailed in the report, significant improvements to pedestrian pathways through the centre are included in the proposal.

Bulk and scale

- The development represents an inappropriate intensity of development particularly opposite low density residential development in Northcott Drive. The bulk and scale of the development on the Northcott Drive frontage is considered excessive adjoining a residential area with a minimal building setback and inadequate opportunity for effective landscaping to screen the building and associated structures such as ramps and loading docks and car parking.
- The site has been developing in an incremental manner with no overall masterplan or overall site development plan for the development. There is no certainty for the local community as to what the centre is going to end up like. This certainty should be provided particularly given the B2 local centre zoning.

Comment

The bulk and scale of the development have been considered in detail and are found to be an appropriate response, maximising the development potential of the site.

There is no statutory requirement to provide a masterplan for this development. However, RMS have recommended that any further significant development on the site should require a Masterplan to be submitted given the potential for traffic generation to significantly impact upon local traffic conditions.

Impact on residences

- The development has a potential for adverse impacts on nearby residential areas through excessive noise associated with the ramp to the new loading dock and loading dock activities.
- Development around Westfield Kotara has historically caused considerable discord with local residents to date. There have been significant concerns expressed regarding amenity of local residents particularly with regards to traffic and parking and noise. We are not aware of any consultation with the local community on this major expansion of the centre. The development should not be approved until this consultation has occurred.
- The Kmart Auto will cause additional noise and disturbance to residential occupiers.
- Noise and disturbance, light pollution and noise breakout from the car parking areas.
- Noise and disturbance from air conditioning units.
- Noise and disturbance from demolition.

Comment

- Council's Environmental Health Officer has advised that the development would have an acceptable impact upon adjacent residential occupiers. However, as previously discussed, a number of mitigation measures have been recommended to minimise any noise impacts on the neighbours, such as limited hours of operation for the loading docks and the installation of acoustic barriers.
- In addition to Council's statutory consultation requirements as part of the application, the applicant stated they have held meetings with residents

<p>regarding this development.</p> <ul style="list-style-type: none"> • The Kmart Auto business has now been relocated internally within the north-west area of the site. • The level one car parking area will be as existing and it is anticipated that there will not be any further disturbance to residential occupiers. Due to its elevated location, the level three car park is unlikely to have an impact upon residential occupiers. • Details of air conditioning plant have not been detailed within the submission. On level three, there is an indicative location for the mini major and the drawings indicate the likelihood of air conditioning plant on the roof. The Acoustic report indicates these are unlikely to have a significant impact upon residential neighbours. Council's Environmental Health Officer has advised that subject to suitable conditions, the impact is acceptable. • The development is subject to a number of conditions regarding demolition, some of which limit hours of operation.
Parking
<ul style="list-style-type: none"> • Parking has always been a critical issue at this centre and a source of considerable community concern. It is clear that the proposed development is dependent on parking that has yet to be provided with no clear description as part of the application of the timing of the provision of this parking and its associated development. This is particularly so in the context of changes to previous approvals. It is considered that there is uncertainty as to the adequacy of parking for the proposed development in the context of all other approvals. • Careful consideration should be given to the adequacy of the applicant's parking rate of 3.8 spaces per 100m² GLA compared to the DCP rate of 4.1 spaces per 100m².
<p><u>Comment</u></p> <p>As previously discussed, it is considered that the proposed parking provision is sufficient to meet the anticipated demand and a detailed assessment has been made in this regard. In addition, consultation has occurred with the RMS as part of this process.</p>

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

The development is in the public interest as it will allow for the creation of additional employment opportunities. It will provide additional services and facilities to a significant retail centre and will improve the appeal of the existing centre, which has positive economic benefits for the region. The development will result in an improved visual appearance to the street through providing clearer and safer entrance points for pedestrians, which will improve the safety of the site. The development will set a contemporary standard for high quality retail development which is in the public interest.

6. CONCLUSION

Subject to a number of relevant conditions as recommended in the attached draft condition schedule, the proposal is considered to be acceptable against the relevant heads of consideration under section 79C of the *Environmental Planning and Assessment Act 1979*.

7. RECOMMENDATION

- A. THAT the Hunter and Central Coast JRPP, as the consent authority, notes the applicant's request under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, regarding the development standard at Clause 4.3 Height of Buildings, and JRPP considers the objection to be justified in the circumstances and to be consistent with the aims and objectives of the relevant LEP clauses; and**
- B. THAT the Hunter and Central Coast JRPP, as the consent authority, determine to grant development consent to DA2016/00733 (2016HCC050) for alterations and additions to the existing shopping centre to create an additional 6,295m² retail space, associated car parking and relocation of Kmart Auto at 89 Park Avenue Kotara, Lot 19 DP 876517 pursuant to Section 80 of the EP&A Act subject to the conditions in Appendix A; and**
- C. THAT those persons who made submissions be advised of the determination.**