

Our ref: 16006

CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD

Height of Buildings - Clause 4.3 of Newcastle Local Environmental Plan 2012

This request for variation to the maximum height control under the Newcastle Local Environmental Plan 2012 accompanies a development application (DA) for extensions to the Westfield Kotara shopping centre.

1.0 Standard objected to

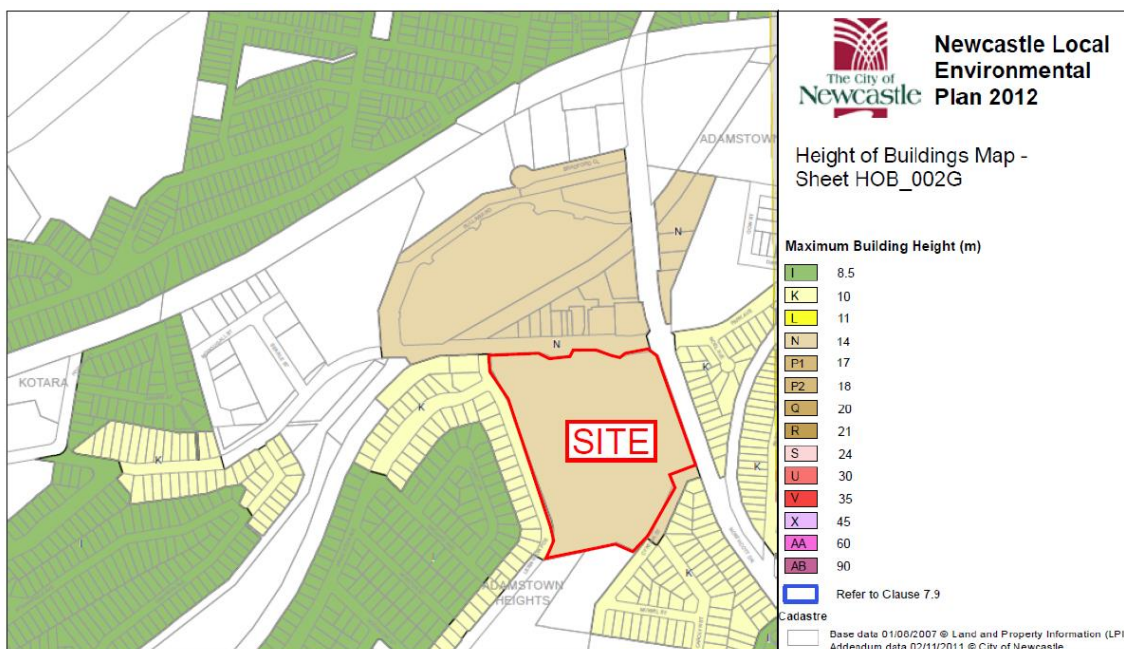
This request relates to Clause 4.3 Height of Buildings which states:

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (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 extract below of the height of Building Map indicates that a 14 metre height control applies to the commercially zoned land known as Westfield Kotara.



The 'building height' or 'height of building' means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues etc.

Urban and Regional Planning, Environmental Planning and Statutory Planning
Registered Office: Lyndhurst, Suite 19, 303 Pacific Highway, Lindfield N.S.W 2070
Telephone: (02) 9416 9111 Facsimile: (02) 9416 9799
email: admin@inghamplanning.com.au
A.C.N. 106 713 768

www.inghamplanning.com.au



2.0 Clause 4.6 Exceptions to Development Standards

The Newcastle LEP 2012 has been prepared in light of the NSW standard planning instrument (also known as the Standard Instrument LEP). An application to vary a development standard can be made under Clause 4.6. This clause was modelled along the lines of the previous SEPP 1 and aims to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for development by allowing flexibility in particular circumstances.

Clause 4.6 states as follows:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

These matters are considered below.

2.1 Would requiring compliance with the development standard be unreasonable and unnecessary in the circumstances?

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 point test for consideration of a SEPP 1 objection set out in *Winten Property Group Ltd v North Sydney Council* (2001). The aim of this test is to determine whether requiring compliance with the standard would be unreasonable or unnecessary in the circumstances. The Chief Judge advised that the requirement to demonstrate that an objection is well founded could be satisfied in any of the following ways:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*



As outlined in Section 1, the objective of the standard is to ensure that the height of development ensures that the *“scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy”*.

The objectives of the standard is also to minimise overshadowing, impact on amenity and privacy on adjoining residents and open space areas. The proposal will maintain appropriate daylight access to all developments and the public domain.

The subject site (Westfield Kotara) is part of the Kotara commercial centre and has been recognised as a sub-regional shopping centre for over 50 years. The centre occupies a large parcel of commercially zoned land (83,750 sqm) at the intersection of regional roads known as Northcott Drive and Park Avenue, Kotara.

The provision of an additional mini-major at Level 3 within an existing major commercial centre of Newcastle LGA will assist in accommodating a high quality national tenant within an accessible recognised major centre of Newcastle.

It is considered that that the proposed built form makes a positive contribution towards the built form of Kotara in accordance with the role of the established centre’s hierarchy of Newcastle LGA.

As illustrated on the elevations accompanying the development application, the proposed built form is suspended on piers above ground level and provides an elongated built form extending adjacent to the Northcott Drive frontage to a height similar to the existing north-eastern roof deck at the corner of Northcott Drive and Park Avenue (RL35.7 or RL37 to top of parapet edge).

A raised roof area extending to RL 39.7 over a frontage length of approximately 20 metres at the southern end of Kmart (adjacent to the proposed loading dock) is provided for mezzanine and plant room area.

A central glazed skylight roof along the alignment of the new mall is setback within the site and also extends to a height of around RL 41.0.

The proposed extension to the built form (ie. one mini-major) on Level 3 adjacent to the existing cinema complex extends above the 14 metre height control to predominantly around RL 44.9. This is below the existing height of the adjoining cinema box that extends to a height of up to RL 51.2. Furthermore, it is consistent with the approved height and built form of the previously modified cinema extensions under DA 10/0904. A comparison of the previously approved bowling alley DA extensions and the proposed development is illustrated in DA Drawing No. 01.5303 (see **Annexure 1**).

The built form is generally consistent with the maximum height of the existing approved shopping centre but is below the approved cinema complex that extends above the predominant rooftop level.

It is noted that the additional height of the Level 3 retail space occupies an area of approximately 3,049 sqm on a site of around 83,750 sqm or the equivalent of 3.6% of the total



site area of the shopping centre. The additional height occupies a very small portion of the overall Westfield Kotara site.

From a streetscape perspective, the existing shopping centre development occupies the mass of development adjacent to the south-eastern side of the intersection of Park Avenue and Northcott Drive. The new mini major will be setback similar to the alignment of the cinema box and substantially obscured by the upper built form of the centre. There is no significant streetscape impact created by the additional height of the mini major at Level 3.

The location of the additional built form as proposed is considered 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.

Furthermore, the shopping centre site is surrounded by a regional road network that provides an additional buffer between the built form on either side of Northcott Drive. The height of the proposed development when viewed from Northcott Drive is considered compatible with approved and existing built form and with the form of a modern regional shopping centre in a commercial urban environment.

It is considered that the proposed additions have been carefully designed in a location which forms a logical extension to the built form on the subject site. The additional height at Level 3 that adjoins the existing cinema box has been carefully designed to reduce the overall mass and scaling of the building and provide a desirable contextual response to the shopping centre development.

The additional height above the numerical control of 14 metres is predominantly a single mini major that assists in enhancing the entertainment and lifestyle precinct existing at Level 3, providing a new entry point adjacent to additional roof top parking.

In view of the above, it is considered that the objectives of the development standard have been met in this case.

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* provide:

"The objects of this Act are:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land"*

Strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote proper management and orderly development of land as it would unnecessarily restrain the development of an important major commercial centre within the Newcastle LGA.



3.0 Conclusion

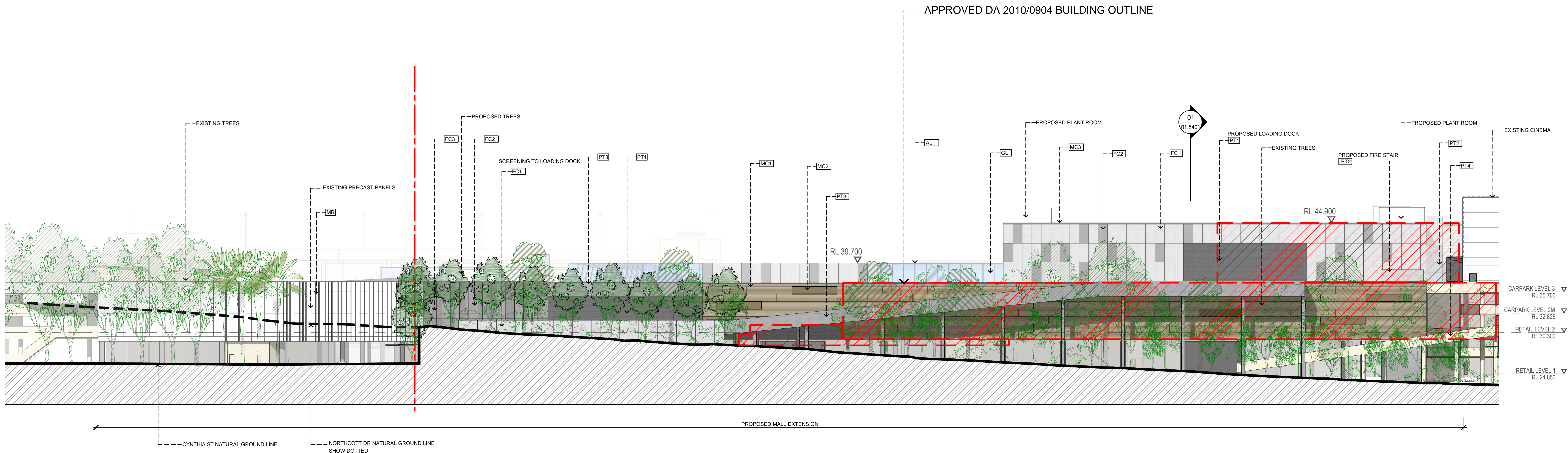
The proposed development satisfies the test established by the Land and Environment Court as being appropriate for consideration of “unreasonable or unnecessary” circumstances in the application of Clause 4.6 variation requests.

It is considered that there are sufficient environmental planning grounds to vary the numerical standard in the circumstances of the case. Requiring strict compliance would hinder attainment the relevant objects of the EP&A Act.

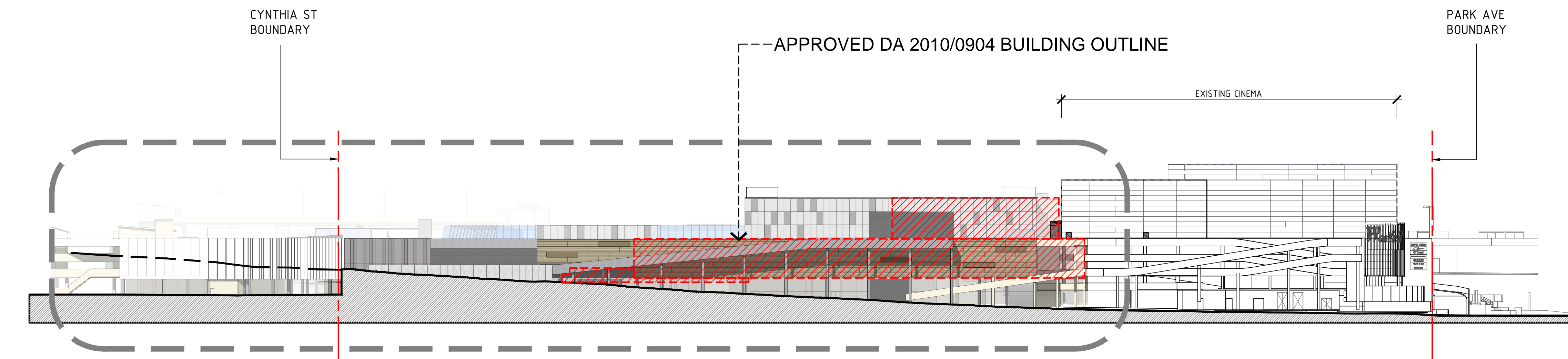


ANNEXURE 1

Comparison Drawing of Approved Bowling Alley DA and Proposed DA
Drawing 01.5303 by Scentre Design and Construction



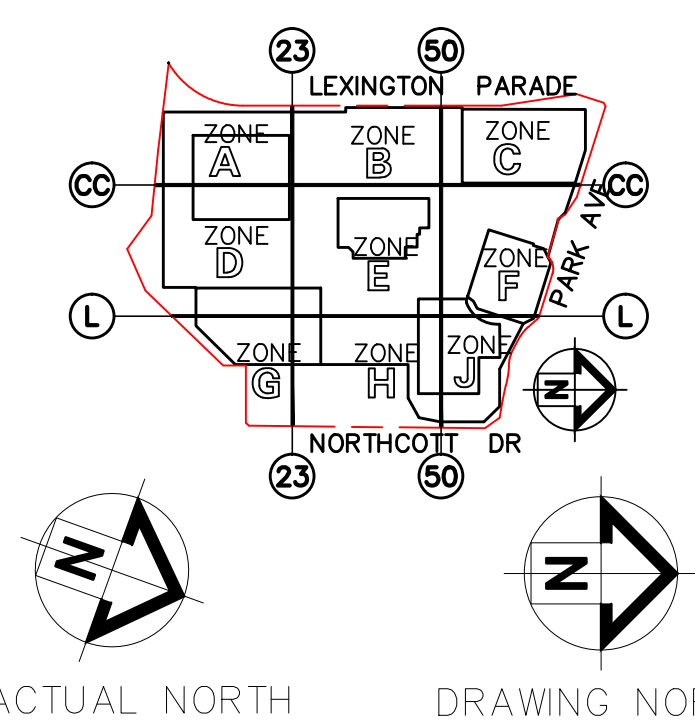
1 PART NORTHCOTT DR ELEVATION
1:200



2 OVERALL NORTHCOTT DR ELEVATION
1:500

MATERIAL SCHEDULE

FC 1 FIBRE CEMENT PANEL COLOUR 1	FC 2 FIBRE CEMENT PANEL COLOUR 2	FC 3 FIBRE CEMENT PANEL COLOUR 3	MC 1 CORRUGATED METAL CLADDING COLOUR: BEIGE, OR SIMILAR	MC 2 METAL CLADDING COLOUR: BRONZE, OR SIMILAR
MC 3 METAL CAPPING COLOUR: CHARCOAL, OR SIMILAR	MB METAL BLADE FINS	PT 1 PAINT FINISH ON MASONRY COLOUR: DARK GREY	PT 2 PAINT FINISH ON MASONRY COLOUR: LIGHT GREY	PT 3 PAINT FINISH TO CONCRETE COLOUR: LIGHT GREY
PT 4 PAINT FINISH TO CONCRETE COLOUR: MATCH EXISTING CARPARK	AL ALUMINUM FRAME COLOUR: CHARCOAL, OR SIMILAR	GL GLASS		



- NOTES:
- This document describes a Design Intent only.
 - Written dimensions take precedence over scaling and are to be checked on site.
 - Refer to all project documentation before commencing work.
 - Refer any discrepancies to the Project Design Manager.
 - Copyright is retained by Scentre Design and Construction.
 - Written authority is required for any reproduction.

SCENTRE GROUP

Scentre Design and Construction Pty Limited
85 Castlereagh Street Sydney NSW 2000
Phone (02) 9358 7000 Fax (02) 9028 8500
GPO Box 4004 Sydney NSW 2001
ACN 160 087 285

EAST ELEVATION
COMPARISON

KOTARA
SCHEME 14E

DEVELOPMENT
APPLICATION

Project No. 10708 Drawing No. 01.5303 Revision 5
Drawing Scale 1:200 @ A0
Plot Date 15/09/2016