

COUNCIL ASSESSMENT REPORT

Panel Reference	2017HCC021
DA Number	DA/251/2013/A
LGA	Lake Macquarie City Council
Proposed Development	Building Products Warehouse and Showroom, Bulky Goods Premises, Restaurant, Signage, Demolition And Consolidation/Subdivision, as a Staged Development
Street Address	20 Pacific Highway, Bennetts Green Lot 1 DP 1214343 (formerly 4B South Street, WINDALE - Lot 10 DP 1013486, Lot 11 DP 1013486, Lot 12 DP 1013486, Lot 13 DP 1013486, Lot 14 DP 1013486)
Applicant	Bennetts Green Spotlight 2 Pty Ltd C/o Urbis
Owner	Bennetts Green Spotlight Property 2 Pty Ltd
Date of lodgement	10 July 2017
Number of Submissions	2 Submissions
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The Section 4.55(2) application relates to development approved under 2013HCC002 which was assessed by the JRPP based on a CIV of \$38 million and the owner of the land at the time being Lake Macquarie City Council (hence being above the \$5 million threshold for Council Related Development).
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Lake Macquarie Local Environmental Plan 2014 • Lake Macquarie Development Control Plan 2014 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 64 – Advertising and Signage • State Environmental Planning Policy (Infrastructure) 2007
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects including plans & documents (Appendix A) Request for Information Response 1 (Appendix B) Request for Information Response 2 (Appendix C) Additional Information (Appendix D) External Agencies/Authorities Responses (Appendix E) Public Submissions (Appendix F) Planning response to issues raised in public submissions (Appendix G) Recommended Conditions (Appendix H)
Report prepared by	Brian Gibson, Senior Development Planner, Lake Macquarie City Council
Report date	6 September 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

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

Yes

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?

**Not
Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

**Not
Applicable**

Conditions

Have draft conditions been provided to the applicant for comment?

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

Yes

Executive Summary

Date Lodged:	10 July 2017
Submission Period:	26 August 2017 to 11 September 2017
Zoning:	B7 Business Park (Lake Macquarie Local Environmental Plan 2014)
Approval Bodies:	NSW Office of Environment & Heritage Roads & Maritime Services NSW Department of Industry - Water Subsidence Advisory NSW
Referral Agencies:	Hunter Water Corporation Ausgrid NSW Police NSW Rural Fire Service
CIV:	\$38,435,000

Legislative Clauses:

State Environmental Planning Policy 55 – Remediation of Land

The consent authority must not grant consent unless it has considered whether the land is contaminated, and if so, whether the land is suitable in its contaminated state for the purpose for which development is proposed, and if the land requires remediation to be made suitable for the development.

The parent assessment considered a Phase 1 Contamination report which stated the site is suitable for commercial development subject to condition.

The modified development does not change this assessment nor consent conditions.

State Environmental Planning Policy 64 – Advertising and Signage of Land

The consent authority must not grant consent to an advertisement which has an area greater than 20m² unless the proposal addresses the assessment criteria in Schedule 1, is deemed acceptable in terms of its impact, was advertised in accordance with the Act and referred to the Roads & Maritime Services (RMS) based on frontage to a classified Road.

The parent consent granted three Pylon signs measuring 9m along the frontage to the Pacific Highway/Newcastle Inner City Bypass.

The application to modify the consent retains signage largely of the same height and scale, and generally the same location. The RMS advised of no objection in correspondence dated 13 August 2018.

State Environmental Planning Policy (Infrastructure) 2007

Division 5 Electricity Transmission or distribution

Clause 42 *Notification of Electricity Substation Development* requires written notice from the electricity supply authority with regard to the intention to install a substation.

The application to modify the development consent was referred to Ausgrid, who responded advising of no objection, outlining its requirements for obtaining approval for changes to the network.

Division 17 Roads & Traffic

Clause 101 requires the consent authority not to grant consent to development on land that has a frontage to a classified road unless it has considered the point of access and other traffic performance and safety issues.

The development fronts the Pacific Highway and the Newcastle Inner City Bypass, both of which are designated as classified Roads.

Clause 104 requires the consent authority when considering traffic-generating development to consult with the RMS and to take into consideration any of its requirements.

The parent application obtained conditional concurrence from the RMS.

The application to modify consent obtained concurrence from the RMS on Monday, 13 August 2018 subject to conditions.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

Part 7 Additional local provisions

Clause 7.1 Acid Sulfate soils

The site is mapped as Class 5 Acid Sulfate Soils.

The consent authority must not grant consent unless an acid sulphate soils management plan has been considered. In this regard, the assessment of the parent application determined it unlikely the water table will be intercepted, however to take a precautionary approach a standard condition was imposed requiring management of any exposed Acid Sulphate Soils.

The proposed modifications do not change this assessment and recommended conditions.

Clause 7.2 Earthworks

The consent authority must consider before granting consent the implications of the proposed development on the environment/locality in relation to earthworks.

The parent development involved earthworks in the form of excavation/fill up to 3m. The assessment of the parent application determined the cutting/filling of the site as acceptable noting the retaining wall details, landscape treatments and public safety measures. Additionally, conditions were imposed to address asbestos contamination of part of the site.

The proposed modifications do not change this assessment and recommended conditions.

Clause 7.3 Flood Planning

The site is partially mapped at the northern end as 'Flood planning area' in the Flood Planning Map of the LMLEP 2014.

The consent authority must not grant consent unless it is satisfied the development is compatible with the flood hazard, will not significantly affect flood behaviour, incorporates appropriate measures to manage risk to life, will not significantly affect the environment, and result in unsustainable social and economic costs.

The parent development proposed car parking, access roads, buildings and landscaping at the northern end of the site. The design of the development was deemed acceptable with regard to potential flooding.

The proposed modifications have been considered and are supported, with no changes to the recommended conditions.

Clause 7.21 Essential Services

The consent authority must not grant consent unless it is satisfied the required essential services are available to serve the development.

The parent assessment determined the site had access to the required essential services.

The proposed modifications do not change this assessment and recommended conditions.

PROJECT DESCRIPTION

The application to modify Development Consent DA/251/2013 incorporates the following changes:

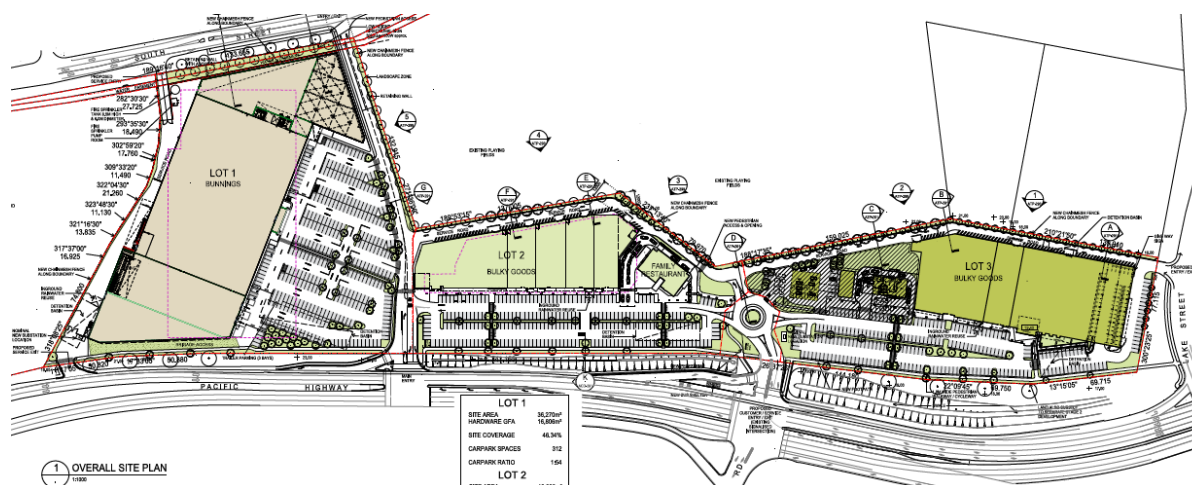


Figure 1: City of Lake Macquarie

- Modification of the approved 'building products warehouse and showroom', increasing from 13,538 sqm to 16,806 sqm to facilitate occupation by Bunnings Warehouse in Lot 1.
- Minor amendment to the bulky goods envelope and tenancy divisions with a change in overall GFA from 5,630 sqm to 5,508 sqm (Stage 1).
- Reorientation and minor adjustment to the restaurant envelope with no changes to the approved GFA, (modifications are to access and parking arrangements).
- Removal of part of the bulky goods premises to accommodate changes to the internal traffic layout and operations,
- Amendments to access/circulation/parking and stormwater management.
- The relocation of the translocation zone for the *Grevillea Parviflora* from within the development site to Tulootaba reserve to the south.
- Adding an additional Pylon sign internally within the site.

In addition to the Section 4.55(2) application being lodged, two additional applications have been lodged with respect to the development site. These applications will be determined by Lake Macquarie City Council (LMCC), however will be required to reflect the outcome of any Section 4.55(2) determination.

The applications are:

- DA/1188/2017 – Service Station and Take Away Food & Drink Premises

The application seeks consent for the erection and operation of a Service Station and a separate Take Away Food & Drink Premises. An excerpt of the plans is provided at Figure 2.

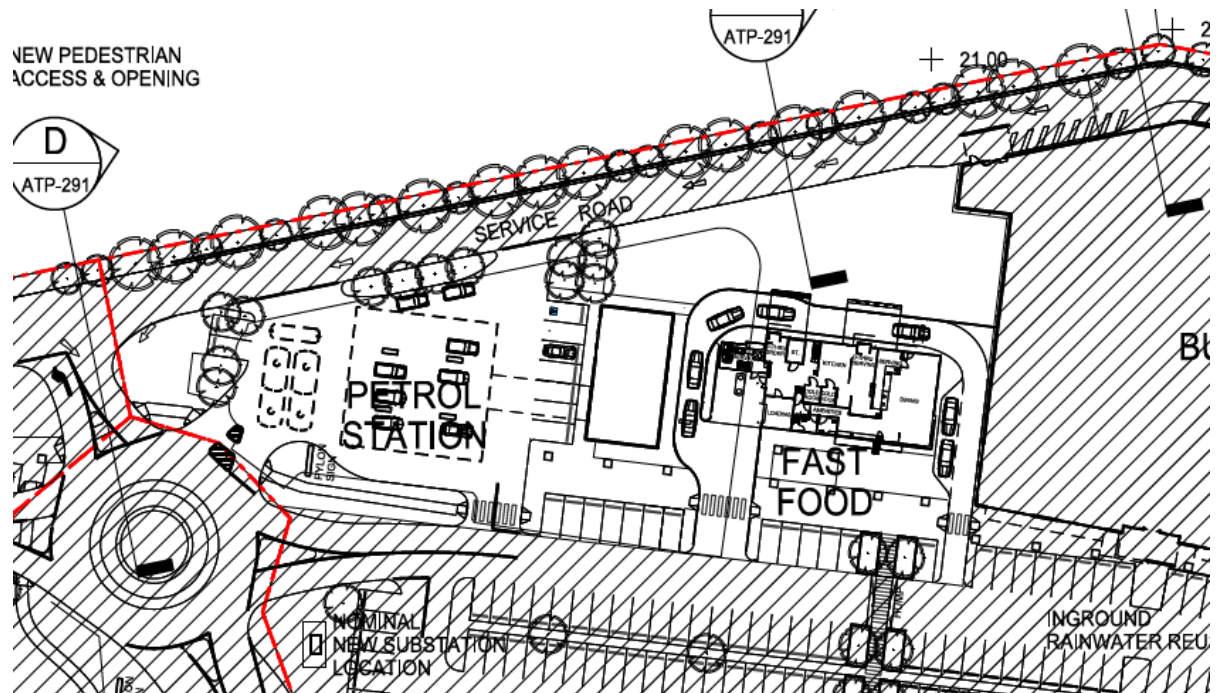


Figure 2: Plans for DA/1188/2017

- DA/1191/2017 – Stage 2 of Bulky Goods Units

The application seeks consent for the erection and operation of three bulky goods units providing 7,571m² of GFA. An excerpt of the plans is provided at Figure 3.

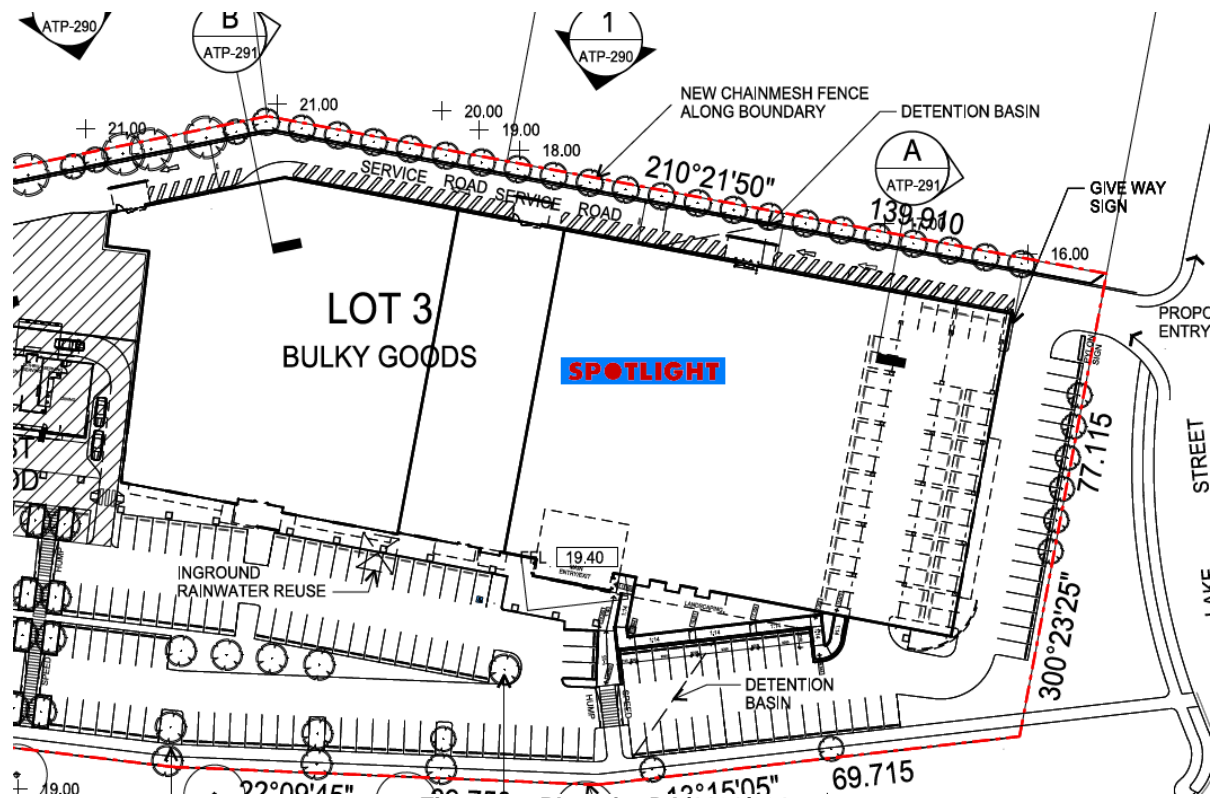


Figure 3 – Plans for DA/1191/2017

Site & Locality

The development site is located at Bennetts Green in the eastern side of the city, adjoining the Pacific Highway between Charlestown and Belmont. Figure 4 below identifies the

location of the development site relative to the City of Lake Macquarie.

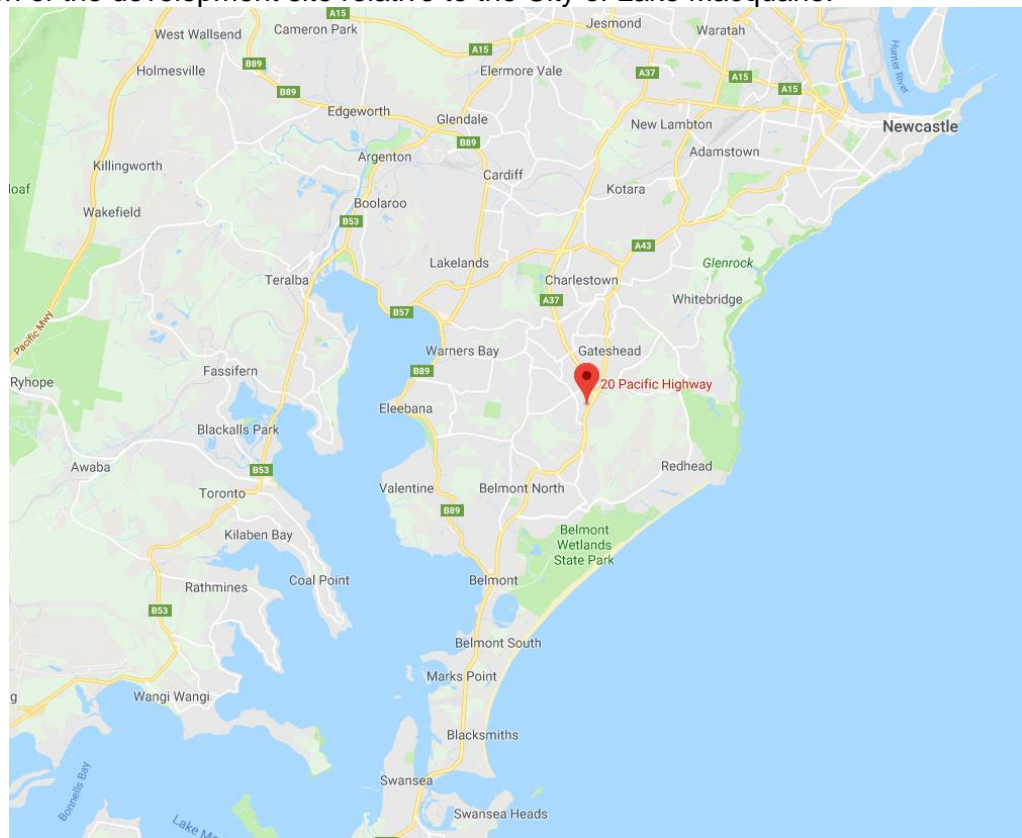


Figure 4: City of Lake Macquarie

Figure 5 provides detail of the development site and its boundaries relative to the Bennetts Green.



Figure 5: Boundaries of the development site

Figure 5 above identifies the boundaries of the land included in the parent application. The boundaries for the site remain the same with the exception of the completion of the subdivision creating the development lot now known as 20 Pacific Highway, Bennetts Green. That part of the development site on which the proposed changes are to be undertaken is shown below in Figure 6.



Figure 6: Boundaries of land as subdivided

Background

On 5 March 2015 the Hunter & Central Coast Joint Regional Planning Panel (JRPP) granted conditional consent to a staged development (S80(4) of the EP&A Act, 1979) as follows:

The development involved a design to accommodate a Masters home improvement store, had a CIV of \$38.4 million, and incorporated land owned by Lake Macquarie City Council (LMCC).

Following determination of the development application, the sale (transfer) of land from LMCC to Hydrox Nominees Pty Ltd (being a subsidiary of Woolworths) proceeded as conditions of sale were met. Construction of the development, however did not commence as Woolworths closed the Masters home improvements stores shortly thereafter in 2016.

Consequently Hydrox Nominees sought to dispose the land to other parties, inclusive of the existing development consent.

In late 2016 LMCC was advised that Hydrox Nominees had agreed to Bennetts Green Spotlight 2 Pty Ltd (being a subsidiary of Spotlight Group Holdings (SGH), being the owner of the Spotlight and Anaconda stores), purchasing the land.

Discussions regarding changes to the approved development proceeded through early 2017 with consultants acting for SGH and Bunnings.

Hunter & Central Coast Joint Regional Planning Panel

The Hunter & Central Coast Joint Regional Planning Panel (JRPP) held a briefing for the proposed development on 31 August 2017. The key issues discussed were:

- Changes to the siting of development, access and internal circulation compared to the original approval.
- Some questions were asked about the external appearance of the development, and reduced setbacks and landscaping to street frontages, and particularly to the adjoining residential properties to the north. It was noted the building footprint has extended and there appears to be limited softening of this. These issues should be considered and addressed in the assessment, and comparison provided on street frontage between approved and proposed.
- Some further discussion is required to support the proposal being “substantially the same” development, and its compliance with section 96 of the EP&A Act 1979.
- Changes to the translocation area were discussed, and it was noted comments from OEH have not yet been received.
- RMS comments yet to be received, and these may have an impact on access points.
- The assessment should consider whether the JRPP recommended any changes to the approved plans by way of conditions when the original application was determined, and how these, where relevant, are incorporated into the modification
- Consideration should be given to application of the Vegetation in Non-Rural Areas SEPP 2017, and any savings and transitional arrangements.
- Stormwater assessment should consider the stormwater impacts of removal of the detention basin in the south-west corner of the site.

Assessment Report

Assessment Report Contents

1. Key issues raised at RPP Briefing
2. Substantially the same
3. Concurrence/Integrated Referrals
4. Section 4.15: Potential Matters for Consideration
5. Conclusion
6. Recommendation

1. KEY ISSUES RAISED AT RPP BRIEFING

- *Changes to the siting of development, access and internal circulation compared to the original approval.*

Refer to comment under Project Description, Background and section 2.

- *Some questions were asked about the external appearance of the development, and reduced setbacks and landscaping to street frontages, and particularly to the adjoining residential properties to the north. It was noted the building footprint has extended and there appears to be limited softening of this. These issues should be considered and addressed in the assessment, and comparison provided on street frontage between approved and proposed.*

Refer to section 4 of the report for detailed comment.

- *Some further discussion is required to support the proposal being "substantially the same" development, and its compliance with section 96 of the EP&A Act.*

Refer to section 2 of the report.

- *Changes to the translocation area were discussed, and it was noted comments from OEH have not yet been received.*

The NSW Office of Environment & Heritage (OEH) has endorsed the changes to the translocation through reissuing its concurrence to the development.

Refer to section 3 of the report for further comment.

- *RMS comments yet to be received, and these may have an impact on access points.*

The RMS has issued its conditional approval for the modified development.

Refer to section 3 of the report for further comment.

- *The assessment should consider whether the JRPP recommended any changes to the approved plans by way of conditions when the original application was determined, and how these, where relevant, are incorporated into the modification*

Conditions were imposed requiring design amendments in relation to footpaths (16), Landscape outcomes (33), treatment of the Acoustic wall (35), Fencing style and location (38), and the number and height of Pylon signs (39). These conditions were imposed following negotiations with the applicant of the parent application, and consented to the imposition of the conditions.

In terms of the current application, the conditions are being maintained though have been adjusted to work with the amended design/layout. Other conditions are recommended to address aspects of the design (refer to the report and the recommended modified consent conditions in Appendix H).

- *Consideration should be given to application of the Vegetation in Non-Rural Areas SEPP 2017, and any savings and transitional arrangements.*

The City of Lake Macquarie is not a nominated Local Government Area to which this policy applies.

- *Stormwater assessment should consider the stormwater impacts of removal of the detention basin in the south-west corner of the site.*

Refer to section 4 of the report for detailed comment.

2. SUBSTANTIALLY THE SAME

Section 4.55(2) – Is the modification substantially the same?

Section 4.55(2) of the Act provides:

(2) *Other modifications*

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

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

Under 4.55(2)(a) Council must be satisfied that the development proposed in the modification application is essentially or materially the same as the currently approved development. It is important to note that to satisfy 4.55(2)(a) it is a question of fact and not a merits based assessment. The merits based assessment is undertaken under s4.15 of the Act and is addressed later in this report.

Having regard to ‘substantially the same’ test the following excerpt from Gadens Lawyers has been considered

<https://www.planning.org.au/newsletters/id/1476/idString/sskxy40865>:

The term ‘substantially the same’ has been the subject of numerous Land and Environment Court cases. The first thing to be aware of is that the Court consistently describes the section 96 modification provision as “beneficial and facultative”. It is designed to assist the modification process rather than to act as an impediment to it; “It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision” (see *North Sydney Council v Michael Standley & Associates Pty Limited* [1998]). Therefore, councils need to exercise caution in demanding that a full DA be lodged – the modification power is there for a reason – namely, to avoid the full DA process that is always otherwise available.

Relevant caselaw from the Land & Environment Court, (again paraphrased from

Gadens Lawyers advice) provides:

A proposal can only be regarded a modification if it involves “alteration without radical transformation” (*Sydney City Council v Ilencase Pty Ltd [1984]*). So if the proposed changes result in a “radical transformation”, they will need to be dealt with as a new development application, rather than a modification application. Obviously, the term “radical transformation” is a very broad term, leaving much scope to change a development consent via s.96.

If the proposed modification is doing more than simply correcting minor errors, the consent authority must also be “satisfied” that the modified development will be “substantially the same development” as authorised by the original development consent.

This means that, among other things, you must compare the proposed modified development against the development as it was originally approved. In a 1999 case *Moto Projects (No 2) Pty Ltd v North Sydney Council* the Land and Environment Court gave some additional guidance that any comparison involves consideration of quantitative and qualitative elements of the development. In practical terms then, these principles mean that you should:

- Consider the numerical differences in all key aspects of the development;
- Consider non-numerical factors (eg in visual impact, traffic impacts or changed land uses);
- Consider any changes relating to a material and essential feature of the approved development.

These decisions may not be black-and-white and will often involve some degree of subjectivity. Furthermore, while there are a wealth of cases applying the “substantially the same” test each case is only useful for illustrating how these rules have been applied. As each case turns on its own facts, consent authorities and courts are not necessarily obliged to take the same approach even when confronted with apparently similar factual situations.

Therefore quantitative and qualitative elements of the development have been considered in the context of the original development consent. The Original Development incorporated a Building Products Warehouse and Showroom, Bulky Goods Premises, Restaurant, Signage, Demolition and Consolidation/Subdivision, as a Staged Development.

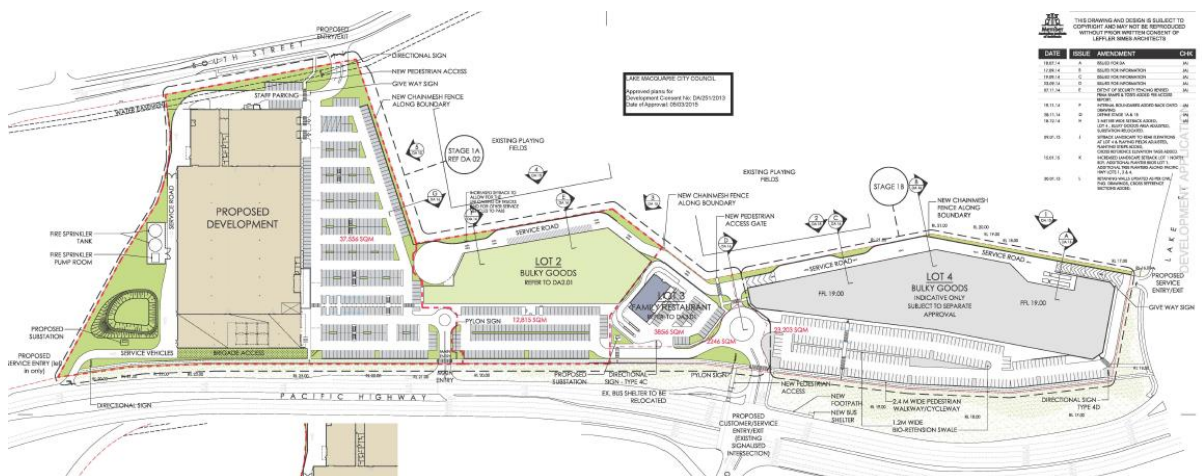


Figure 8: Approved Site Plan under DA/251/2013

Since the granting of consent, the subdivision separating the development site from

Council's playing fields to the west, Council land to the north-west (PCYC) and south.

The Modified Development incorporates the same land uses, intersections and internal layout. The modified layout is generally aligned with the original layout, though notable changes being the increase in GFA with the change of operator from Masters to Bunnings for the Building Products Warehouse and Showroom, and the internal division of the Bulky Goods Premises, reconfiguring of the restaurant, adjustments to the internal layout of the car park and access aisles, moving the mid-block access to the south, and subsequent changes to the delivery arrangements.

Note two separate DAs apply to the Service Station & Take Away Food & Drink Premise, and the Stage 2 Bulky Goods Units.

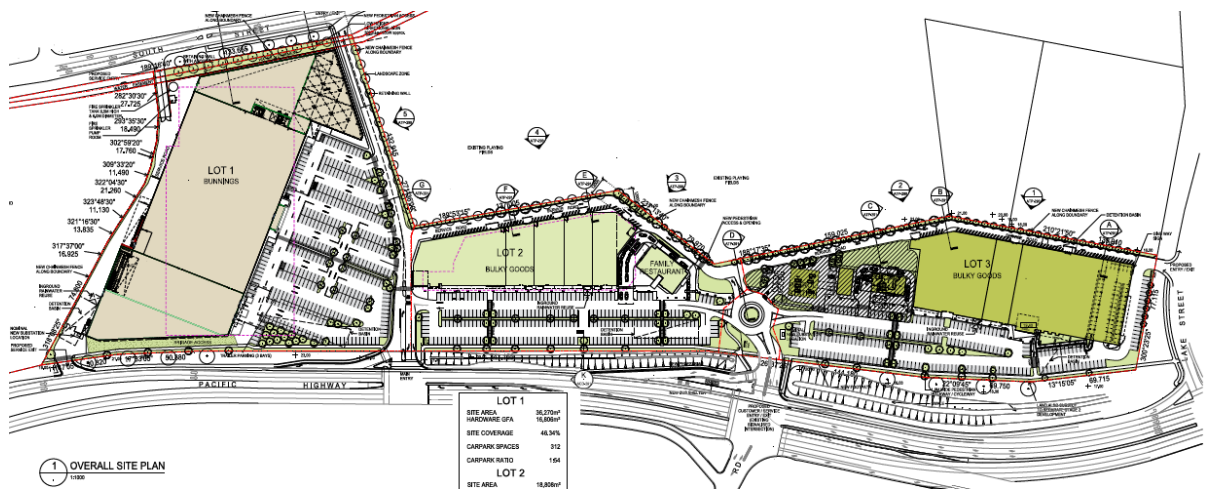


Figure 9: Proposed Modified Layout

The proposed modification seeks to undertake the development generally in the same manner, though tailoring the design to accommodate the needs of the proposed operators and the requirements of the RMS.

The applicant provided the following comments in support of the modified development being substantially the same development as that originally consented to:

- The modifications will not alter the nature of the development
- The original land uses are retained within their approved locations
- It involves alteration without radical transformation
- The site coverage increases by 2.5% or approximately 2000m², noting the land parcel is approximately 80,000m²
- The modifications do not result in any substantial environmental, economic or social impacts
- The development remains suitable for the site

Legal advice (Norton Rose Fulbright – 23/11/2017) on behalf of the applicant reviewed the modified development by comparing it to the original in context to purpose, development footprint, access and parking, traffic generation, acoustic impacts, and other changes. Based on this review the advice then addressed the development from a quantitative and qualitative analysis perspective and concluded the modification is capable of being determined under s4.55(2) of the EP&A Act, 1979.

The quantitative analysis in the legal advice noted:

- i. Do not consider the quantitative differences are of sufficient scale and extent it fails the substantially the same test; and
- ii. The increase in development footprint and car parking are minor, and the

overall scale of the development as modified will remain consistent with that which was approved.

The qualitative analysis in the legal advice noted:

- i. There is no change to the nature of the land use, or broadly, to the arrangement or intensity;
- ii. While some matters of detail have changed, the substance of the development remains materially or essentially the same;
- iii. The built form continues to comply with Council's 5m setback in the DCP, and whilst the Bunnings building extends closer to South Street the amenity outcomes are considered better through the relocation of the nursery to the western side, improved landscaping and a reduction in the required acoustic wall.
- iv. The traffic generation of the scheme is similar to the approved development, with amendments both by the applicant and enforced by the RMS improving efficiency.

It is the Assessment Officer's opinion the proposed modification is 'substantially the same', as it is quantitatively and qualitatively the same development by virtue of the modified development fundamentally retaining the same characteristics and outcomes.

3. CONCURRENCE/INTEGRATED REFERRALS

Threatened Species Development – Concurrence

The modified development was referred to the NSW Office of Environment & Heritage (OEH) requesting it revise the existing concurrence issued for DA/251/2013. In correspondence dated 29 March 2018 OEH advised it had revoked the previously issued concurrence and issued a new concurrence, (as attached to the correspondence), for the modified development.

A copy of the correspondence is attached as Appendix E.

Integrated Development

The original application was nominated as Integrated Development in relation to the Roads Act 1993, Water Management Act 2000 and Coal Mine Compensation Act 2017. The matter was referred to the Roads & Maritime Service (RMS), NSW Water and Subsidence Advisory NSW seeking their respective General Terms of Approval (GTAs).

1.1 Roads Act 1993

The application for the modified development was referred to the RMS. In correspondence dated 13 August 2018 the RMS advised of no objection to the modified development subject to conditions.

A copy of the correspondence is attached as Appendix E.

1.2 Water Management Act 2000

The application for the modified development was referred to NSW Water (Department of Primary Industries). In correspondence dated 12 February 2018 NSW Water advised the GTAs issued on 19 April 2013 remain valid with no amendments necessary.

A copy of the correspondence is attached as Appendix E.

1.3 Coal Mine Compensation Act 2017

The amended application was referred to Subsidence Advisory NSW for review. In correspondence dated 19 July 2018 Subsidence Advisory NSW issued its GTAs for the modified development.

A copy of the correspondence is attached as Appendix E.

4. Section 4.15: Potential Matters for Consideration

An assessment in relation to Section 4.15 of the Environmental Planning & Assessment Act 1979 is as follows:

4.15(a)(i) the provisions of any Environmental Planning Instrument (EPI)

State Environmental Planning Policy 55 – Remediation of Land

The consent authority must not grant consent unless it has considered whether the land is contaminated, and if so, whether the land is suitable in its contaminated state for the purpose for which development is proposed, and if the land requires remediation to be made suitable for the development.

The parent assessment considered a Phase 1 Contamination report which stated the site is suitable for commercial development subject to condition.

The modifications do not change this assessment and consent conditions.

State Environmental Planning Policy 64 – Advertising and Signage of Land

The consent authority must not grant consent to an advertisement which has an area greater than 20m² unless the proposal addresses the assessment criteria in Schedule 1, is deemed acceptable in terms of its impact, was advertised in accordance with the Act and referred to the RMS based on frontage to a classified Road.

The parent consent granted three Pylon signs measuring 9m in height along the frontage to the Pacific Highway/Newcastle Inner City Bypass.

The application to modify the consent retains signage largely of the same height and scale, and generally the same location. The RMS advised of no objection in correspondence dated 13 August 2018.

State Environmental Planning Policy (Infrastructure) 2007

Clause 42 *Notification of Electricity Substation Development* requires written notice from the electricity supply authority with regard to the intention to install a substation. The site plans provide nominal locations for two substations.

The application to modify the development consent was referred to Ausgrid, who responded advising of no objection subject to the imposition of conditions.

Division 17 Roads & Traffic

Clause 101 requires the consent authority not to grant consent to development on land that has a frontage to a classified road unless it has considered the point of access and other traffic performance and safety issues. The development fronts The Pacific Highway and the Newcastle Inner City Bypass, both of which are designated as classified Roads.

Clause 104 requires the consent authority when considering traffic-generating development to consult with the RMS and to take into consideration any of its requirements.

The application to modify consent obtained concurrence from the RMS on Monday, 13 August 2018 subject to conditions.

State Environmental Planning Policy (Infrastructure) 2007

Development Likely to affect an electricity transmission or distribution network

The application to modify the development consent was referred to Ausgrid for

comment. A response (attached as Appendix E) under Clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007 raised no objection to the development subject to the proponent consulting further with regard to the development in relation to existing infrastructure and network capacity. Should consent be granted to the modified development it is recommended to maintain a condition of consent.

State Environmental Planning Policy (State & Regional Development) 2011

The Section 4.55(2) application relates to development approved under 2013HCC002 which was assessed by the JRPP based on a CIV of \$38 million and the owner of the land at the time being Lake Macquarie City Council, (hence being above the \$5 million threshold for Council related development).

Lake Macquarie Local Environmental Plan 2014

Part 1 Preliminary

Clause 1.2 Aims of Plan

The aims of the Plan are:

- a) to recognise the importance of Lake Macquarie and its waterways, including the coast, as an environmental, social, recreational and economic asset to Lake Macquarie City and the Hunter and Central Coast regions,
- b) to implement a planning framework that protects areas of significant conservation importance, while facilitating development and public facilities in appropriate areas, that are accessible to a range of population groups, to accommodate Lake Macquarie City's social and economic needs,
- c) to promote the efficient and equitable provision of public services, infrastructure and amenities,
- d) to facilitate a range of accommodation types throughout Lake Macquarie City so that housing stock meets the diversity of community needs and is affordable to as large a proportion of the population as possible,
- e) to apply the principles of ecologically sustainable development,
- f) to encourage development that enhances the sustainability of Lake Macquarie City, including the ability to adapt to and mitigate against climate change.

An assessment of the proposed development has found it to be consistent with the aims of LEP2014.

Clause 1.9A Suspension of Covenants, Agreements and Instruments

There are no agreements, covenants or other similar instruments that restrict the carrying out of that development with the exception of an easement for a water supply pipeline along the development sites frontage with South Street.

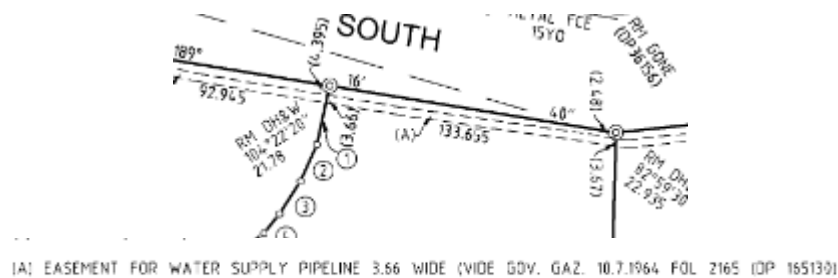


Figure 10: Boundaries of land as subdivided showing water supply easement

The development has been designed with no buildings encroaching the easement excepting access driveways, services and landscaping – refer to Figure 11 below.

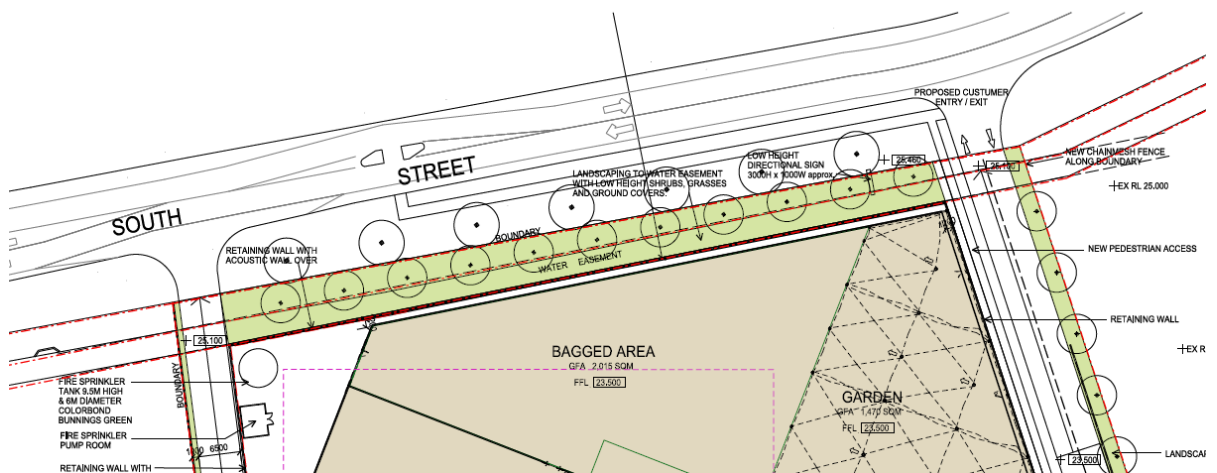


Figure 11: Development showing water easement

The parent application was referred to Hunter Water for comment. In correspondence dated 20 March 2013 Hunter Water identified issues with the pipe contained within the easement. Condition 71 was imposed requiring construction plans to be endorsed by Hunter Water prior to release of the Construction Certificate.

The modified application was referred to Hunter Water following lodgement of the application with no response received. The applicant has recently undertaken direct discussions with Hunter Water, with it expected details of its endorsement of the modified proposal will be presented at the RPP meeting. It is recommended condition 71 be maintained for the purposes of the modified application.

Part 2 Permitted or Prohibited Development

Clause 2.3 Zone Objectives and Land Use Table

Zoning

The land is zoned B7 – Business Park as per Figure 12 below.

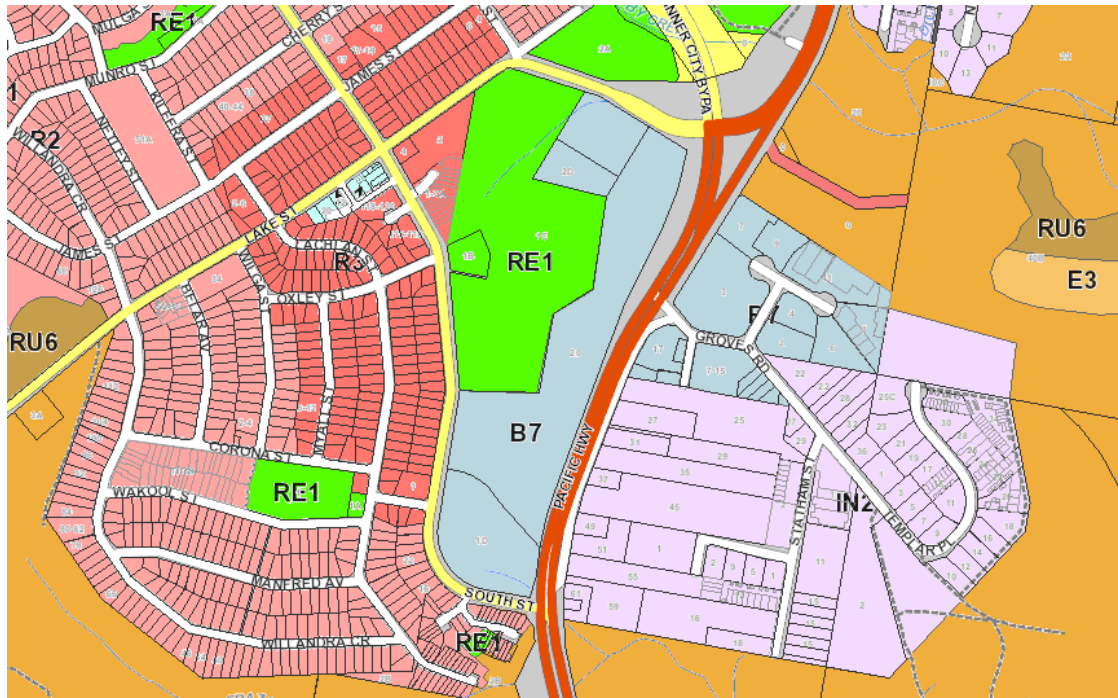


Figure 12: Land Zoning map under LMLEP 2014

Zone Objectives

The following zone objectives apply:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To enable bulky goods premises and commercial uses that do not undermine the function of existing and future urban centres.
- To provide opportunities for high technology industries, scientific development and research activities.

The proposed development is considered to achieve/support the zone objectives as follows:

- The proposed modification maintains land uses (Bulky Goods & Building Products Warehouse and Showroom) that support the zone objectives.
- The proposed modification maintains the Restaurant which will provide services to meet needs of employees.
- The development, as assessed under the parent consent, does not undermine the functions of urban centres within the City of Lake Macquarie.

Permissibility

The development as approved under the parent consent is a staged development for a Building Products Warehouse and Showroom, Bulky Goods Premises, Restaurant, Signage, Demolition And Consolidation/Subdivision.

The following definitions related to the Lake Macquarie Local Environmental Plan

2004 given the parent approval was assessed under this Local Environmental Plan:

Building Products Warehouse and Showroom means a building used predominantly for warehousing or distribution of building materials, supplies, plumbing supplies, air-conditioning systems, swimming pools and the like, with an ancillary component for the sale of such goods, materials or supplies by retail or auction.

Bulky Goods Premise means a building or place used for the sale by retail, wholesale or auction of (or for the display or hire of) goods or materials that are of such a size, shape or weight as to require:

- (a) a large area for handling, storage or display, or
 - (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading items into their vehicles after purchase,
- but does not include a building or place used for the sale of foodstuffs or clothing.

Restaurant means a building or place, principally providing food to seated paying customers and may include take-away, footway dining, kiosk and drive-through services.

Under the LMLEP 2014 (standard instrument) the applicable definitions for these land uses are:

bulky goods premises means a building or place the principal purpose of which is the sale, hire or display of bulky goods, being goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, and
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

and including goods such as floor and window supplies, furniture, household electrical goods, equestrian supplies and swimming pools, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.

garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may include a restaurant or cafe and the sale of any of the following:

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,
- (b) pets and pet supplies,
- (c) fresh produce.

hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

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

The land uses and related works as approved under the parent consent are permissible within the B2 zone subject to development consent.

Clause 2.5 Additional Permitted Uses for Particular Land

The land is not identified in Schedule 1.

Clause 2.6 Subdivision – Consent Requirements

The modified development does not seek further subdivision of the land.

Clause 2.7 Demolition Requires Development Consent

This clause provides that demolition may only be carried out with development consent.

The modified development proposes demolition of all existing structures located on the land. A condition was imposed in the parent consent for demolition and is recommended to be retained.

Clause 2.8 Temporary Use of the Land

The proposed development does not incorporate any temporary use of the land.

Part 3 Exempt and Complying Development

The part of LEP2014 is not applicable to the development.

Part 4 Principal Development Standards

Clause 4.1 to 4.2C

Clauses 4.1 to 4.2C are not applicable to the development.

Clause 4.3 Height of Buildings

The Height of Building Maps under Clause 4.3 of LMLEP 2014 identify a maximum height of 15m. An excerpt of the map is shown in Figure 13 below.



Figure 13: Height of Building excerpt from the LMLEP 2014 Maps

The objectives of clause 4.3 are as follows:

- (a) to ensure the height of buildings are appropriate for their location,
- (b) to permit building heights that encourage high quality urban form.

The development has a maximum building height of 12.9m as detailed in Figure 14.

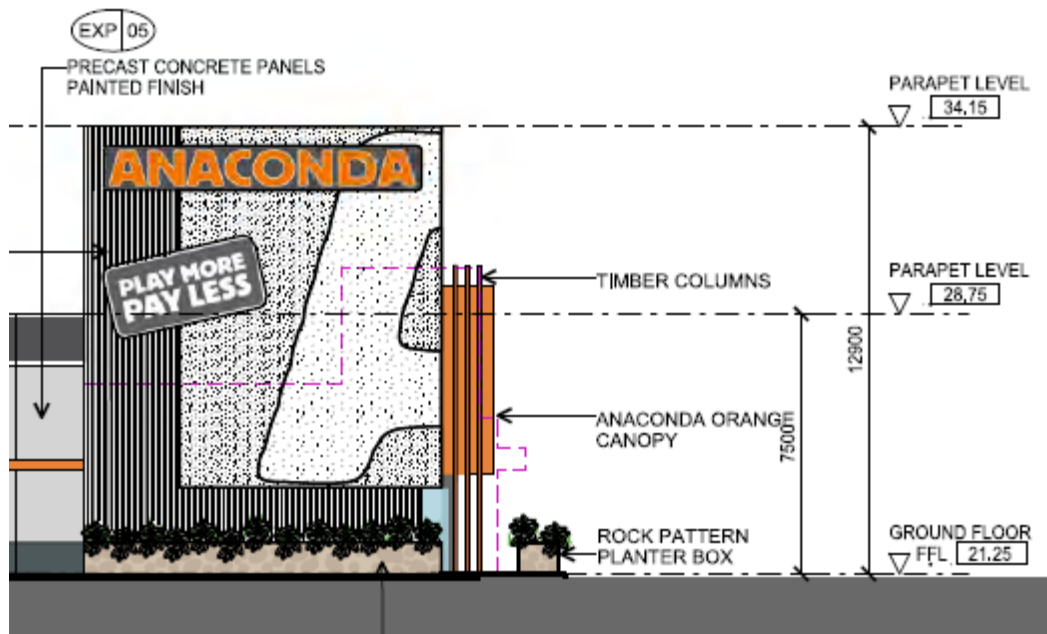


Figure 14: Proposed maximum height of building

The application to modify Development Consent DA/251/2013 therefore complies with the maximum height of building as permitted for the land.

Clauses 4.4 to 4.5

Not adopted.

Clause 4.6 Exceptions to development standards

Clause 4.6 is not applicable to the development.

Part 5 Miscellaneous provisions

Clauses 5.1 to 5.8

Clauses 5.1 and 5.8 are not applicable to the development.

Clause 5.9 & 5.9AA

Repealed.

Clause 5.10 Heritage Conservation

The development site is not mapped as a heritage site nor as being part of the sensitive Aboriginal landscape.

Clauses 5.11 to 5.13

Clauses 5.11 to 5.13 are not applicable to the development.

Clauses 5.14 and 5.15

Not adopted.

Part 7 Additional local provisions

Clause 7.1 Acid Sulfate Soils

The site is mapped as being affected by “Class 5” within the Acid Sulfate Soils Map of LEP2014. The development will not intercept the water table.

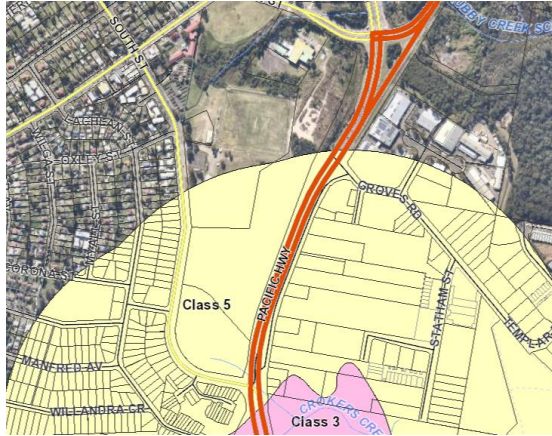


Figure 15: Acid Sulfate Soils Map excerpt from LMLEP 2014

Subclause 2 requires development consent for the carrying out of works on land shown on the Acid Sulfate Soils Map.

Subclause 3 provides that development consent must not be granted unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual.

Subclause 4, however provides that development consent is not required whereby a preliminary assessment of the proposed works identifies an acid sulfate management plan is not required for the works.

Under the assessment of the parent application it was advised:

“Part of the site at the southern end will be excavated (approximately two metres) which may expose Acid Sulphate Soils. It is unlikely that the water table will be intercepted, however to take a precautionary approach a standard condition can be imposed requiring management of any exposed Acid Sulphate Soils.”

Condition 36 was imposed in the parent consent, it is recommended this condition be maintained.

Clause 7.2 Earthworks

The development proposes cuts of up to 2 metres at the western end of the Building Products Warehouse, and 2-3 metres along the western boundary with the sporting fields. Fill of up to 3 metres is also proposed on the western boundary in the vicinity of the PCYC, through the northern end of the site, and at the eastern end of the Building Products Warehouse.

Subclause 2 requires development consent for earthworks. Subclause 3 requires before granting development consent matters be considered as follows:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

- (b) the effect of the development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Council's Development Engineer has assessed the modified proposal in relation to earthworks and endorses the development.

Clause 7.3 Flood Planning

The Flood Planning maps identify the site being subject to flooding at the northern end.



Figure 16: Flood Map excerpt from LMLEP 2014

At the northern end the development the floor levels and car park areas have been designed to achieve levels appropriate to address flood levels. The driveway crossing at Lake Road during a 1 in 100 year flood event will be flooded thus preventing access for both customer and delivery vehicles (approximate depth of 200mm). Customer vehicles will have alternative means of accessing the site during such an event, though the Bulky Goods Units delivery vehicles will need to postpone access until flood waters have receded.

At the southern end of the site, whilst not mapped as flood prone issues were identified under the Parent application with regard to 1 in 100 year flood levels in Crokers Creek. The creek has a varying bank level that falls from 25m AHD in the west to 12m AHD in the east. The development is cut in at the western end and slightly filled at the eastern end resulting in a FFL of 23.5m AHD (same FFL as the previously designed building). Consequently the development cannot comply with a set minimum height being relative to the highest point of Crokers Creek. The applicant has however provided a report detailing flood mitigation measures. Condition 19 was imposed in the parent consent, which is recommended to remain unchanged for the

purposes of the modified design.

Council's Development Engineer is satisfied with the modified design with no additional conditions recommended.

Clause 7.4 Coastal Risk Planning

The site is not mapped as being part of the Coastal Risk Zone.

Clause 7.5 Terrestrial Biodiversity

The development site is not mapped on the Terrestrial Biodiversity Map.

Clause 7.6 Limited Development on Foreshore Area

The development site is not mapped as containing any foreshore area under LEP2014.

Clause 7.7 Development on Sensitive Aboriginal Landscape Areas

The development site is not mapped as being part of the sensitive Aboriginal landscape.

Clause 7.8 Air Space Operations

The development does not penetrate the limitation or operations surface for Lake Macquarie airport.

Clause 7.9 Service Stations in Certain Zones

The proposed development does not incorporate a service station.

Note, the proposed Service Station as shown on the plans is subject to a separate application (DA/1188/2017).

Clause 7.10 Residential development in certain business zones

As the development site does not contain any land zoned B1, B2, B3 or B4 the Clause does not apply.

Clauses 7.11 – 7.19

Clauses 7.11 to 7.19 are not applicable to the development.

Clauses 7.20 Development on Environmentally Sensitive Land

The development site is not identified as environmentally sensitive land on the Environmentally Sensitive Land map.

Clause 7.21 Essential Services

Subclause 1 requires development consent not be granted to development unless services essential for the development are available or adequate arrangements have been made to make them available.

In this regard, the required essential services and infrastructure are available to accommodate the development as demonstrated by:

- Hunter Water endorsed the plans for the parent application. Endorsement of the modified application is expected prior to the RPP meeting of 20 September 2018.
- Ausgrid provided correspondence dated 14 August 2017 confirming the development can be serviced with regard to electricity. The conditions imposed

in the parent consent are to remain unchanged

- Stormwater management will occur in accordance with DCP2014 requirements. Council's Development Engineers are satisfied subject to amended conditions, with the stormwater design.
- The RMS advised on 8 August 2018 of no objection to the proposed site access in relation to the classified road network, subject to the imposition of amended conditions.
- No objection is raised to the point of access regarding the local road network.

Clause 7.22 – 7.23

Clauses 7.22 to 7.23 are not applicable to the development.

4.15(a)(ii) the provisions of any draft EPI

The following draft environmental planning instruments are relevant to this development:

SEPP 44 – Koala Habitat

Amendments to SEPP 44 – Koala Habitat were exhibited from 18 November 2017 – 3 March 2018. The proposed amendments relate to updating definitions of koala habitat, the list of tree species and applicable Council areas as well as the development assessment process. Based on the assessment of development site characteristics, the amendments do not have any implications for the proposal.

Draft SEPP Environment

The draft SEPP Environment was exhibited from 31 October 2017 – 31 January 2017. The proposed new SEPP relates to the protection and management of the natural environment, with a particular focus on water catchments, urban bushland and Waterways.

With regard to water catchments, Lake Macquarie City Council is not included in Sydney Water Drinking Catchment and therefore the draft provisions do not apply.

The development site is mapped as part of the 'Urban Bushland Land Application Map' under the draft SEPP (note, Lake Macquarie City Council is currently an area to which SEPP 19 applies). The site does not meet the provisions for 'land zoned or reserved for public open space' under SEPP 19 nor does it meet the new 'public bushland' term under the draft SEPP.

For Waterways, the provisions of the draft SEPP mainly apply to Sydney Harbour and Canal Estates. These provisions have no implications for the proposal based on what it is or do not apply to the Lake Macquarie City Council area.

4.15(a)(iii) the provisions of any Development Control Plan (DCP)

Development Control Plan 2014

The following sections of Development Control Plan 2014 (DCP 2014) are considered relevant to this proposal.

Part 5 – Development in Industrial, Business Park and Infrastructure Zones

Section 2 – Context & Setting

2.1 Site Analysis

Adequate information has been provided to assess the modified development in terms

of the site characteristics.

2.2 Scenic Values

The modified development raises no issues in relation to the visual impact assessment outcomes under the parent development. The building designs of the modified proposal have no additional impact following improved elevations which present to the Pacific Highway being lodged.

2.3 Geotechnical

The modified application raises no additional geotechnical matters.

2.4 Mine Subsidence

The amended application was referred to Subsidence Advisory NSW. On 19 July 2018 Subsidence Advisory NSW issued its GTAs for the amended application.

2.5 Contaminated Land

The modified development is consistent with the assessment of the parent development. A condition for an Asbestos Control Plan is recommended.

2.6 Acid Sulphate Soils

Refer to comment under Section 7.1 of the LMLEP 2014.

2.7 Stormwater Management

A satisfactory Stormwater Management Plan has been provided with the modified development proposal. It is recommended the conditions of consent be updated to reflect the endorsed stormwater plans.

2.8 Catchment Flood Management

Refer to assessment comment under Section 7.3 of the LMLEP 2014.

2.9 Lake Flooding & Tidal Inundation

N/A

2.10 Natural Water Systems

The parent development assessed the proposal in relation to riparian setbacks and the condition of Crokers Creek. The modified development maintains the outcomes in terms of a hard edge along the southern boundary, and the conditions of consent with regard to the rehabilitation of Crokers Creek.

2.11 Bushfire

The parent application was referred to the RFS under Section 79BA of the Environmental Planning & Assessment Act, 1979. The RFS provided conditions under S.79BA which were imposed in the development consent.

The amended proposal along with a revised Bushfire Threat Assessment were referred to the RFS for review. On 27 August 2018 the RFS provided updated conditions under S.79BA (refer to Appendix E). It is recommended these conditions replace those imposed under the parent development consent.

2.12 Flora & Fauna

The modified development proposes no changes to the outcomes of the parent

development excepting:

- Translocation of the *Grevillea parviflora* subsp. *Parviflora* (Gpp)

Due to design issues, the applicant and Council agreed the approved translocation zone be relocated to enable an improved outcome.

The new translocation zone is located within Council's Tulootaba Reserve to the south of the development. Council's Property Department has granted owner's consent to the translocation, (referral dated 30 November 2017), subject to the applicant entering into a licence and appropriate yearly fee.

The Office of Environment & Heritage endorsed the new translocation zone and revoked its existing Concurrence conditions and issued a new Concurrence. The new Concurrence conditions are recommended in the draft conditions.

- Clearing of the site

The applicant has sought to modify conditions with regard to release of the Construction Certificate, by permitting site clearing to occur prior to the release of the Construction Certificate for the super structure. Council is agreeable to this outcome. This change is reflected in the draft conditions.

- Hollow Bearing Trees.

The applicant has requested where required, tree clearing be permitted outside the preferred clearing period. Council has agreed to this request through recommending condition 30 be updated to provide a methodology for tree clearing outside the preferred periods.

2.13 Preservation of Trees & Vegetation

The modified development is consistent with the measures incorporated in the parent consent.

2.14 European Heritage

N/A

2.15 Aboriginal Heritage

N/A

2.16 Natural Heritage

N/A

2.17 Social Impact

An Access Audit was submitted for the modified development. No changes are proposed/required to the existing development consent conditions.

With regard to the Windale Master Plan as prepared by Council and endorsed by Housing NSW and Land & Housing Corporation, the modified development maintains the outcomes as achieved in the parent development.

2.18 Economic Impact

An assessment of the parent development by Council's Economic Development

Manager raised no objections to the proposal. The amended proposal is deemed to be substantially the same as the parent development, excepting an increase in floor area of approximately 5,000m², (approximately 25% on the approved GFA).

Section 3 – Development Design

3.1 Streetscape

The modified development will incorporate similar built forms and footprints as the parent development. Initially concerns were held regarding the eastern elevation of the Building Products Warehouse & Showroom to the Pacific Highway, however an amended design has improved the built form to the public realm.

The Bulky Goods Units are setback from the Pacific Highway behind car parking.

3.2 Street Setback

The Building Products Warehouse & Showroom, Restaurant and the Bulky Goods under Stage 1 as well as the Stage 2 components comply with the setback to the street.

3.3 Building Bulk

The modified development will incorporate similar built forms and footprints as the parent development. The building designs incorporate awnings, openings, and vertical and horizontal colour treatment to soften the extent of continuous walls that exceed 15m in length.

Perimeter and internal landscaping, combined with building setbacks will provide a suitable presentation of the proposed building bulk.

3.4 Energy Efficiency & Generation

The modified development is consistent with the measures incorporated in the parent consent.

3.5 Solar Access & Orientation

The modified development has no impact in terms of solar access to adjoining development.

3.6 Landscape Design

The landscape plans for the modified development have been reviewed and deemed acceptable. This has followed a collaborative approach between the applicant and Council's Landscape Architect. Updated conditions of consent are recommended.

3.7 Street Tree Planting

Street tree planting as required by conditions of consent under the parent consent will be maintained for the modified development.

3.8 Landscape and Tree Planting in Front Setback Areas

Landscaping and tree planting are proposed within the front setback along the frontages to the Pacific Highway, Lake Street and South Street. The landscape treatment of the site has been endorsed by Council's Landscape Architect.

3.9 Landscape and Tree Planting in Car Parks – B7 Zone

The modified development is general consistent with the parent development. The landscaping of the car park, whilst not strictly in accordance with the controls, has been endorsed by Council's Landscape Architect. The landscape plans have been

revised following feedback from Council, and have been cross checked against the civil drawings.

3.10 Fencing

The modified development maintains fencing along the southern boundary with Tulootaba Reserve and Council's sporting fields. The fence at the southern boundary is proposed to be a chain mesh fence, consistent with the parent development consent.

Fencing along the boundary with the sporting fields and PCYC is required to be a black palisade fence. The origin of this fencing style was to reduce 'break through' of mesh fencing. The applicant has raised concerns with this fencing style, given its cost as well as the institutional appearance it generates.

Discussions with Council's Community Planning identified the need for a palisade fence is reduced by the finished levels of the service delivery road. It was also advised if a concrete pathway is provided from South Street, through the sports fields to the pedestrian link adjoining the Restaurant this may also reduce likely 'break through points'.

The draft conditions have been amended to reflect these discussions.

3.11 Traffic & Transport

The parent development qualified as Traffic Generating Development in relation to Schedule 3 and Clause 104 of SEPP (Infrastructure) 2007. The RMS provided GTAs for the development.

The modified development was referred to the RMS, with GTAs being received on 14 August 2018. In order to reach agreement, the intersections off the Pacific Highway were amended to ensure network performance and safety.

3.12 Design of Parking & Service Areas

The car park layout has been redesigned to meet the needs of the operator of the Building Products Warehouse and Showroom, and to be aligned with the intersection upgrades required by the RMS.

Delivery arrangements to and within the site have been modified to meet the needs of the operator of the Building Products Warehouse and Showroom. The delivery arrangements for the Bulky Goods Units have also been modified.

The above arrangements have been endorsed by the RMS and Council's Traffic Engineer.

3.13 Bike Parking & Facilities

It is recommended condition 44 be updated to require details of bicycle racks for the Building Products Warehouse & Showroom and Bulky Goods Units.

Additionally a locker, shower and change room is to be provided the Building Products Warehouse.

3.14 Motorbike Parking

A draft condition is recommended with regard to the provision of motor bike parking throughout the development.

3.15 Car Parking Rates

The parking requirements are as follows for Stage 1:

Building Products Warehouse and Showroom at 2 per tenancy plus 1 per 50m²

16,806m² GFA = 338.12 parking spaces

Bulky Goods Units 1-5 at 2 per tenancy plus 1 per 40m²

5508m² GFA = 147.7 parking spaces

Restaurant at 1 per 25m²

546m² GFA = 21.84 parking spaces

Subtotal for Stage 1 = 507.66

The parking requirements for Stage 2 are as follows (subject to separate consent):

Bulky Goods Units 6-8

7,571m² GFA = 195.275

Service Station at 1 per 60m²

170m² GFA = 2.83

Take Away Food & Drink Premises at 1 per 25m²

298m² GFA = 11.92

Subtotal for Stage 2 = 210

Total = 718

The development provides a total of 840 parking spaces (546 for Stage 1) which satisfies car parking requirements for both the total development and the individual stages (subject to consent).

3.16 Non-Discriminatory Access

An Access Audit was submitted for the modified development. No changes are proposed/required to the existing development consent conditions.

3.17 Safety & Security

An updated CPTED report was submitted with the modified development. The recommendations of the CPTED report are supported. No changes are proposed/required to the existing development consent conditions.

3.18 Cut & Fill

The modified development generally maintains the extent of proposed cut and fill, with minor adjustments to accommodate design changes. Similarly landscape outcomes to address retaining walls have been maintained or improved relative to the parent development.

Note, the minor level changes in the vicinity of the south east corner of the adjoining sports fields necessitated a change in translocation zone for the Gpp to Tulootaba reserve to the south.

Section 4 – Operational Requirements

4.1 Demolition & Construction Waste Management

An amended Waste Management Plan was submitted with the application to modify

the development consent. The Plan is satisfactory, with no amendments to the conditions of consent required.

4.2 Waste Management

An amended Waste Management Plan was submitted with the application to modify the development consent. The Plan is satisfactory, with no amendments to the conditions of consent required.

4.3 On-Site Sewerage Management

N/A

4.4 Liquid Trade Waste & Chemical Storage

The modified development is consistent with the measures incorporated in the parent consent.

4.5 Erosion & Sediment Control

The development qualifies as a Category 3 Development, requiring a Soil & Water Management Plan.

An amended Soil and Water Management Plan was submitted for the modified proposal. The amended plans satisfactorily addresses the requirements of Section 4.5 and condition 18 has been updated.

4.6 Air Quality

The modified development is consistent with the measures incorporated in the parent consent.

4.7 Noise & Vibration

An acoustic report was submitted for the modified development. Compliance with the report's recommendations will protect the amenity of neighbouring areas. The existing conditions are to be maintained.

9.17 Signage

Revised signage detail has been provided with the application, in part to meet the changes required by the modified development. A SEPP64 assessment was provided as part of the documentation.

The proposed development incorporates three 9m Pylon signs located along the Pacific Highway frontage and Lake Street consistent with the parent development consent. A further 3m pylon sign is proposed at the South Street entry, which is larger than the approved sign by 1m.

Flush wall signs are proposed:

- Building Products Warehouse & Showroom – banner signs are proposed on each elevation. The banners signs do not exceed 25% of the wall area of each elevation.
- Bulky Goods – The occupant for Tenancy 1 is known, and therefore above awning and flush wall signage is detailed.

For the other tenants above awning signage is nominated, equating to approximately 25% of the frontage of each Unit.

All flush wall and above awning signage is considered proportional to the

walls/elevation for each occupant/tenant.

Subject to separate consent, a 6m Pylon sign is proposed as part of the development application for the Service Station, (positioned within the pad site for the Service Station). Additionally flush wall signage for the Bulky Goods Units 6-8 are also subject to separate consent, (though are consistent/similar with the signage proposed for Bulky Goods Units 1-5).

No details of internal directional signage has been provided, however this can be conditioned.

There are no objections to the proposed revised signage as part of the modification. In this regard, the draft conditions are to be updated to address these changes.

Pursuant to Clauses 17 and 18 of the SEPP, the application was referred to the RMS as the proposal incorporates signage that exceeds 20m² and is within 250 metres of a classified road. The RMS advised in correspondence dated 13 August 2018 of having no objection to the proposed signage scheme subject to conditions being imposed in any consent.

The application to modify the development consent was Advertised Development in accordance with Clause 17(3)(b) of SEPP64.

4.15(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

A Voluntary Planning Agreement (VPA) was offered by the developer as part of the parent development application. In accordance with a condition of consent the VPA was entered into by Lake Macquarie City Council and the applicant following the granting of consent.

The application to modify the development consent seeks no changes to the VPA. Implementation of the provisions of the VPA in preparation of enabling the release of a future Construction Certificate have commenced.

4.15(a)(iv) any matters prescribed by the regulations

The application to modify the development consent was advertised and notified in accordance with the Regulations.

4.15(b) the likely impacts of the development

The likely impacts of the development have been considered in detail under an assessment of the LMLEP 2014 and DCP2014.

4.15(c) the suitability of the site for development

Does the proposal fit the locality?

The modified development is considered to similarly be compatible with the locality as the parent development. The modified development is seen to have no additional impacts, and in particular areas achieve an improved outcome.

Further assessment comment is outlined in Sections 2 and 3 of DCP1.

Are the site attributes conducive to development?

Issues with the site attributes were identified and highlighted through the assessment under Sections 2.1, 2.2, 2.7 and 3.6 of Development Control Plan No. 1 in the assessment report for the parent development application.

The site attributes were considered under the parent application. These site attributes

have been reviewed in the context of the modified development and where required plans have been amended and/or conditions updated.

4.15(d) any submissions made in accordance with this Act or the Regulations?

Public submissions:

The section 4.55(2) application was advertised development, being a Threatened Species Development, and was advertised and notified to adjoining properties from 17 August 2017 to 11 September 2017.

From the advertisement and notification of the application Council received two submissions. A copy of the submissions is attached as Appendix F.

A summary of the issues identified are provided below:

- The Mount Hutton Residents Action Group require the development to incorporate a Trolley Management Plan, noting one has not been submitted with the documentation for the application nor has one been conditioned by Council.
- The PCYC requested a meeting to discuss the following matters:
 - a. Sight Lines –loss of visibility from main roads
 - b. Access & Security – vehicle and pedestrian links
 - c. Stormwater – no impact on PCYC
 - d. 12m Pylon Signs with provision for PCYC
 - e. Social Community Benefits under conditions
 - f. Delivery Time Frame

Appendix G provides planning comment as a response to the issues raised.

Submissions from public authorities:

A copy of the following responses are attached as Appendix E.

Roads and Maritime

The RMS provided its GTAs for the development in correspondence dated 13 August 2018.

Ausgrid

Ausgrid in correspondence dated 14 August 2017, advised of no objection to the modified development.

NSW Police

No response has been received to Council's referral dated 17 July 2017.

Department of Primary Industries - Water

On 14 February 2018, Water advised the GTAs issued under the parent consent are unchanged.

NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service (RFS) pursuant to 79BA of the Environmental Act 1979. In correspondence dated 27 August 2018 the RFS recommended conditions of consent.

Subsidence Advisory NSW

On 19 July 2018 Subsidence Advisory advised of its GTAs for the modified development.

NSW Office of Environment & Heritage

The NSW Office of Environment & Heritage issued its Concurrence, subject to conditions, on 29 March 2018.

4.15(e) the public interest

Additional requirements matters have been raised by Council Departments that differ to the parent consent as granted. These matters are summarised as follows:

Traffic Generating Development

Due to the expected traffic accessing the site from the west through the South Street entrance, an intersection upgrade to a BAR right turn treatment and a AUL left turn treatment into the site is required at the customer entrance on South Street as per Austroads Guidelines.

Comment: The applicant has consented to this requirement.

Road Design

A 14m minimum pavement width is required along the full street frontage in South Street. The pavement will require an AC14 asphalt overlay placed for the full road frontage for the development along South Street and extend an additional 40m north of the customer entrance to the development.

Kerb and gutter will be required to be constructed for the full street frontage of the site in South Street, extending to connect with the existing kerb and gutter to the south, and for the 40m pavement extension on the northern side of the entrance.

Comment: The applicant has consented to these requirements.

It was further required a 14 metre road width, with kerb and gutter be extended approximately 200m north along South Street to connect to the existing kerb and gutter.

Comment: The applicant has not consented to this requirement.

Pedestrians and Cyclists

The development is likely to attract school students from Hunter Sports High School walking or cycling along the Pacific Highway to the proposed fast foods outlets. The lack of walking and cycling facilities on the west side of the Pacific Highway will make this activity hazardous. It is considered that a pathway facility will need to be provided along the west side of Pacific Highway between the intersection with Oakdale Road and the Pacific Highway/ Newcastle Inner Bypass traffic signals. The alternate routes utilising the existing Newcastle Inner City Bypass overpass are approximately 500 metres longer and are unlikely to be utilised. Should a pathway facility not be provided along the Pacific Highway, Council and RMS will inherit a significant liability and the risk of a serious incident occurring involving a student is considered to be high. A potential route could utilise the neglected road reserve area to the north of the Pacific Highway/Newcastle Inner City Bypass intersection, in conjunction with Council rehabilitating the area.

Comment: The applicant is not agreeable to this requirement, however has consented to improved pedestrian facilities in Lake Street in relation

to access from the High School.

The proposed footpath at the South Street customer access should be extended to the existing path to the north of the site at Tulootaba Reserve along the eastern side of South Street.

Comment: The applicant is not agreeable to this requirement.

A footpath extend from the existing footpath adjoining the Mick Bird Oval driveway in South Street through to the pedestrian access way on the western boundary of the development.

Comment: The applicant is agreeable to this requirement contingent on the Palisade boundary fence being replaced with a chain mesh fence. The Palisade fence was requested under the parent consent by Council's Community Planning Department to prevent breakthrough openings, however with a footpath creating a more practical desire line the applicant argues the use of a softer chain mesh fence is more suitable both visually and for the purpose separation/safety. Council's Community Planning Department is agreeable to this outcome.

Public Transport

In addition to the requirements of the existing DA related to bus stops in Iona Street and Pacific Highway, the existing bus stops on South Street are to be upgraded to meet DDA requirements and are to have bus seats installed.

Comment: The applicant is not agreeable to this requirement where additional works are required, ie. extension of road pavement, kerb and gutter and footpath approximately 200m along South Street fronting Mick Bird Oval.

Having regard to the above requirements, it has been necessary to negotiate outcomes with the applicant for works beyond those imposed in the parent consent. Whilst there may be some merit arguments as to the necessity for the works, as well as public safety issues, cost factors and fairness principles must be considered. The overall balance is the development provides improved outcomes above that achieved in the parent consent.

Consequently the development is in the public interest.

5. Conclusion

An assessment of the application to modify Development Consent No. 251/2013 found it to be substantially the same as the original development, consistent with the zone objectives and satisfactory in terms of relevant clauses of the LMLEP 2014, and generally compliant with DCP2014. The assessment focussed on a number of issues in relation to urban design, landscaping, signage, connection to the adjoining road network, access, car parking, manoeuvring, and flooding.

The modified development is well designed and provides employment and retail services to the City and the broader region. The development has been assessed by various external stakeholders, with no objections raised subject to condition.

Accordingly, it is recommended the modified consent be granted to the proposed development.

6. Recommendation

It is recommended application No. 251/2013/A seeking to modify Development Consent No. 251/2013 being for a 'Building Products Warehouse and Showroom, Bulky Goods Premises, Restaurant, Signage, Demolition And Consolidation/Subdivision, as a Staged Development' be approved subject to the recommended modified consent conditions as listed in Appendix H.

Endorsement

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

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



Brian Gibson
Senior Development Planner
Lake Macquarie City Council

I have reviewed this report and concur with the recommendation.



Andrew Leese
Acting Chief Development Planner
Lake Macquarie City Council