

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>2017HCC031</b>
<b>DA Number</b>	<b>DA/764/2014/A</b>
<b>LGA</b>	<b>Lake Macquarie City Council</b>
<b>Proposed Development</b>	Section 4.55(2) – Modification to Shops and Restaurants (Alterations and Additions to Stockland Glendale Shopping Centre)
<b>Street Address</b>	10 Stockland Drive, Glendale (Lot 1 DP 860494)
<b>Applicant</b>	Stockland Development c/- Paradigm Planning
<b>Owner</b>	The Trust Company Limited
<b>Date of lodgement</b>	22 May 2017
<b>Number of Submissions</b>	Nil
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	The Section 4.55(2) application relates to development approved under 2014HCC014 which was assessed by the former Hunter & Central Coast Joint Regional Planning Panel (JRPP) based on a CIV of \$45 million at time of lodgment (hence being above the \$20 million threshold).
<b>List of All Relevant s4.15(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• Lake Macquarie Local Environmental Plan 2014</li> <li>• Lake Macquarie Development Control Plan 2014</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	Statement of Environmental Effects & supporting documents (Appendix A) Development Plans (Appendix B) Revised Letter of Offer (Appendix C) External Agencies/Authorities Responses (Appendix D) Recommended Conditions (Appendix E)
<b>Report by</b>	Brian Gibson, Senior Development Planner, Lake Macquarie City Council
<b>Report date</b>	1 November 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?

**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)?

**Not  
Applicable**

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### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

## EXECUTIVE SUMMARY

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<b>Date Lodged:</b>	30 August 2017
<b>Submission Period:</b>	6 September 2017 to 21 September 2017
<b>Zoning:</b>	B3 Commercial Core (Lake Macquarie Local Environmental Plan 2014)
<b>Approval Bodies:</b>	Roads & Maritime Services Subsidence Advisory NSW
<b>Referral Agencies:</b>	Ausgrid NSW Police Sydney Trains
<b>CIV:</b>	\$45,000,000

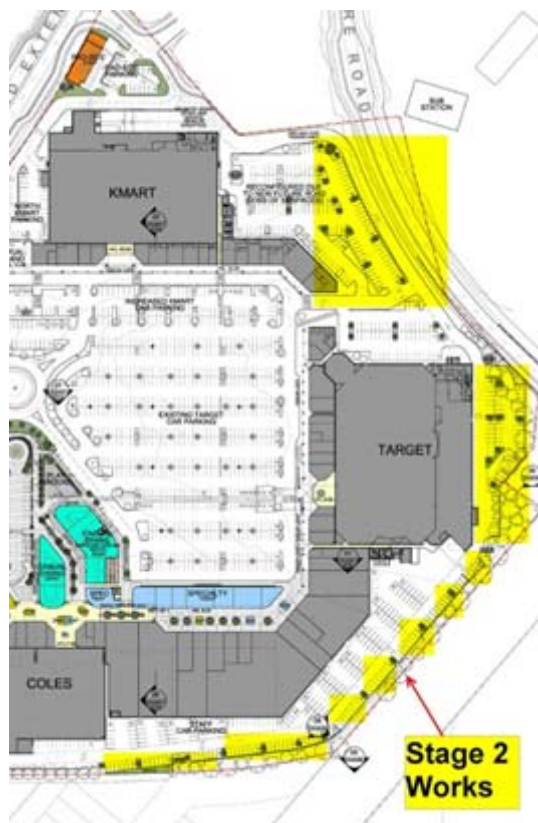
The application under section 4.55(2)(a) of the Environmental Planning & Assessment Act, 1979, seeks to modify the approved alterations and additions to the Stockland Shopping Centre at 10 Stockland Drive, Glendale. The modification seeks to change the layout of shops and dining areas as approved, modify the approved changes to the car park works and access ways, and create a Stage 2 for the car parking works associated with the land dedication proposed under the draft Planning Agreement (PA) and LMTI works. A site plan is detailed below in Figure 1.



- Retention of the existing car park arrangement in front of Kmart and Target including the internal roundabout
- Reconfiguration of the proposed casual dining area to be more compact and reduce the extent of intrusion into the centre of the site
- Minor reduction to the retail floor space of the proposed new enclosed mall area, from 7680m<sup>2</sup> Gross Leasable Area (GLA) to 6251m<sup>2</sup> GLA
- Expansion of the Coles supermarket into the First Choice Liquor store space
- Adding a service/leisure level/floor space (1252m<sup>2</sup>) above the new dining area
- Creation of Stage 2 of the development to reconfigure the car park required to enable the subdivision of land to be dedicated to Council for LMTI works to facilitate the new road for the Pennant Street bridge. The Stage 2 works will be subject to the revised Letter of Offer dated and the PA required by condition 7.

- Addition of conditions to set aside the requirements for road work extensions to Stockland Drive under DA/4413/2004 (Kmart DA). The Stage 1 LMTI works as completed by Council included the road works under condition 8 of DA/4413/2004.

are to be offset by the cash contribution and land dedication as prescribed in the revised Letter of Offer and which to form the basis of the PA.

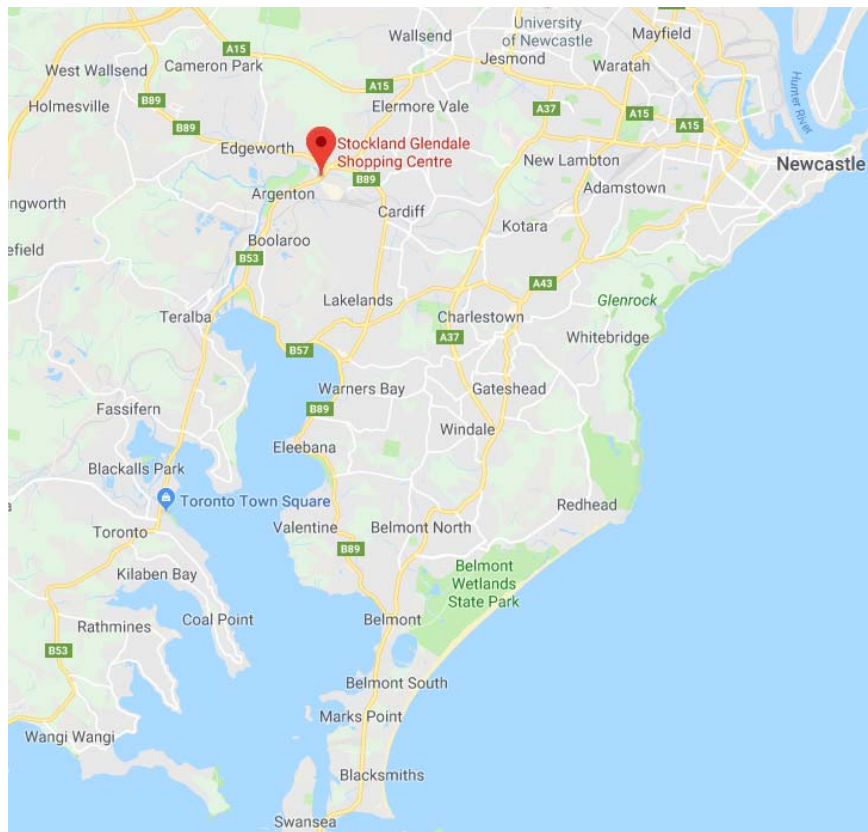


**Figure 2:** Stage 2 car park changes



## **SITE & LOCALITY**

The development site is located at Glendale in the north-western part of the city. Figure 3 below identifies the location of the development site relative to the City of Lake Macquarie.



**Figure 3:** City of Lake Macquarie

The application is lodged over 10 Stockland Drive Glendale, being Lot 1 in DP 860494. The site has an area of approximately 19.6 hectares, and adjoins the Sydney-Newcastle Rail corridor to the south, residential area to the south-west and Lake Road to the north-west. The site also adjoins the future proposed railway station, bus interchange and road/Pennant St overpass which are part of the Lake Macquarie Transport Interchange (LMTI). The site is zoned B3 Commercial Core under Lake Macquarie Local Environmental Plan (LMLEP) 2014. Figure 4 below provides detail of the development site.



**Figure 4:** The development site as highlighted

## **BACKGROUND**

On 24 July 2015, the Hunter and Central Coast Joint Regional Planning Panel approved DA/764/2014 (2014HCC014) for Shops and Restaurants, consisting of additions and alterations to the existing Stockland Glendale Shopping Centre. The approved development provided for an additional 7680m<sup>2</sup> of gross leasable floor area (GLFA) to the existing shopping centre (total GLFA of 51,109m<sup>2</sup>).

The approved development had a Capital Investment Value of \$45 million.

The consent included a Letter of Offer to enter into a PA dated 4 June 2015, with Condition 7 requiring a PA generally in the terms of the letter of offer to be entered into prior to the commencement of works. The PA related to the payment of monetary contributions and transfer of land to Council for road works associated with Stage 1 of the Lake Macquarie Transport Interchange (LMTI), consisting of a new road around the eastern (rear) part of the shopping centre. Council has completed these road works since the granting of the parent consent.

A pre-lodgement meeting was held on 23 February 2017 between the applicant and Council officers to discuss the PA and this proposal to modify the approved alterations and additions to the shopping centre.

As part of the application to modify the parent consent and to reflect the construction of Stage 1 of the LMTI, a revised Letter of Offer has been submitted. Concurrently the applicant submitted (18 September 2017) a draft PA in response to Condition 7, which Council is in the process of reviewing, prior to placing on public exhibition.

As part of the negotiations over the application to modify the parent consent and the revised Letter of Offer, it has been agreed the application will incorporate the deletion of the roads works under DA/4413/2004 and a subdivision to facilitate a land transfer for future LMTI works. Refer to sections 4 and 5 of this report.

The development consent granted on 24 July 2015 is not due to lapse until 24 July 2020. An application to modify the development consent may be considered.

## **LEGISLATIVE CLAUSES**

### ***State Environmental Planning Policy 19 – Bushland in Urban Areas***

Clause 9 of the SEPP requires the consent authority to not grant development consent unless it has taken into account the need to retain any bushland on the land, the effect of the proposed development on bushland zoned or reserved for public open space purposes and, any other matters which are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

An assessment has determined the vegetation to be removed within the development site is not remnant vegetation nor is representative of the structure and floristics of the natural vegetation.

With regard to vegetation on the adjoining public land, zoned RE1 Public Recreation, the proposed development has no impact due to the existing level change and setbacks. Also conditions were imposed in relation to construction impacts.

### ***State Environmental Planning Policy 55 – Remediation of Land***

Clause 7 requires a consent authority to 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 Stage 1 Preliminary Site Investigation report which provided an assessment of potential contamination of the site. On the basis of this report, consent was granted subject to a specific condition requiring the monitoring the works.

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

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

#### **Division 5 Electricity Transmission or distribution**

Clause 45 *Determination of development application – other development* requires the consent authority under Division 5 'Electricity transmission or distribution networks' to give written notice to the electricity supply authority for the area inviting comments about potential safety risks before determination. This is in relation to works that are immediately adjacent to an electricity substation or other related infrastructure.

The application to modify the development consent was referred to Ausgrid, who responded advising of matters to be considered at the design stage.

This modification does not alter Ausgrid requirements and does not impact on Ausgrid assets.

#### **Division 15 Railways**

Clause 85 'Development immediately adjacent to rail corridors' requires before determination that the consent authority must give written notice to the rail authority for the rail corridor and take into consideration any comments received.

The application was referred to Sydney Trains for comment on 6 September 2017, however to date no reply has been received.

#### **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 Lake Road which is designated as a classified Road.

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

The parent application obtained conditional concurrence from RMS.

The application to modify consent was referred to the RMS on 5 September 2017 and the amended application referred on 29 May 2018. To date no response has been received.

### ***Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)***

#### **Part 5 Miscellaneous provisions**

##### Clause 5.10 Heritage Conservation

Sub-clause (4) requires a consent authority to consider the effect of the proposed development on the heritage significance of the item concerned prior to granting consent. Sub-clause (5) provides a consent authority may require a heritage management document to be prepared which assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.

The development site adjoins heritage items 97 - Great Northern Railway and 98 – Cardiff Railway Workshops under Schedule 5 of LMLEP 2014.

The modifications do not change the assessment undertaken for the parent development application. There are no changes to the recommended conditions.

#### **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 sulfate soils management plan has been considered. In this regard, the assessment of the parent application determined it unlikely the water table will be intercepted and lowered by 1 metre, as such it was deemed there will be no impact on adjacent ASS areas.

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 cut along parts of the south-western, southern and south-eastern boundaries to accommodate additional parking, and regrading of part of the car park area fronting K-Mart and Target.

The modifications seek to reduce the extent of changes to the internal car park, by retaining existing at grade parking and access ways. The cut around the perimeter is unchanged

The recommended conditions are to be amended to reflect the revised works.

##### 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.

Under the parent development the works were considered 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 modifications do not change this assessment and recommended conditions.

## **RECOMMENDATION**

The modification application DA/764/2014/A, being for Shops and Restaurants at the Stockland Glendale Shopping Centre, is considered to be to a suitable development having regard to the relevant legislation, the site constraints and characteristics, impacts on the environment and neighbouring land uses (refer to the attached Assessment Report).

It is recommended modification application DA/764/2014/A be approved subject to the conditions as listed in Appendix E.

# ASSESSMENT REPORT

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## Assessment Report Contents

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

## 1. KEY ISSUES RAISED AT RPP BRIEFING

The following matters were identified in the minutes of the Hunter & Central Coast briefing of 12 October 2017 for the application:

- *Previous approval*  
Comment: Refer to the Executive Summary for discussion regarding the differences between parent consent and the modified development. Also, refer to Section 2 of this report for discussion of the modified development in terms of substantially the same.
- *Pedestrian amenity versus traffic distribution – ensure pedestrian experience and safety not compromised*  
Comment: Improved pedestrian links have been achieved through the development and connecting to external linkages. These links have been achieved with satisfactory safety, and yet allow improved vehicle movement/efficiency.  
  
Refer to comment under section 5.1 of Part 4, and section 4.2 of Part 8 of DCP 2014 in Section 5 of this report.
- *Pad – either delete or receive full details of use, envelope, design etc. to enable proper assessment*  
Comment: The pad site proposed in the north-east corner of the site, at the rear of K-Mart, has been deleted and is replaced with car parking
- *Request applicant consider possible future link to railway station*  
Comment: Through the Glendale Town Centre Area Plan (Part 10.8 of DCP 2014) key stakeholders identified the preferred location for the Glendale train station, being to the south-west of Target. The parent consent recognised a future link to the preferred location would require works to address access, including demolition and construction of part of the shopping centre, and reconfiguring access ways and car parking. It is considered the modified design does not preclude future links to the train station.  
  
Note, the State government has not identified funding nor issued any approvals in relation to the Glendale train station.
- *If parking beyond what required, provide better landscape and tree solution in carparks;*  
Comment: The modified development will provide 2324 car parking spaces, which is similar to the existing parking provisions for the shopping centre pre-development. Under RMS Guide to Traffic Generating Development the modified development is required to provide a minimum of 2162 car parking spaces, therefore a surplus of 162 car parking spaces.  
  
The modified development has been reviewed to identify opportunities for increased landscaping and improved amenity, coupled with reinforcing the objectives/intent of the Glendale Town Centre Area Plan. The first row of parking space parallel with the spine of the new mall, on the cinema side of the new 'main street' access way will



compensate for the loss of the existing landscaping. This will result in a loss of 18 car parking spaces.

Additional landscaping is also recommended on the northern side of the new shared zone parking area fronting the casual dining precinct. This will likely reduce the total parking numbers by a further 2-4 spaces.

Further changes, whilst desirable in front of the specialty shops located between Target and the casual dining precinct, would warrant significant changes to the layout and likely cause a significant reduction in car parking, ie. 27 car parking spaces.

Refer to condition 22B in the recommended conditions contained in Appendix E, which requires additional landscaping in the place of car parking spaces.

- *Need to understand any changes in VPA provision and mechanisms to provide certainty*

Comment: Refer to comment under section 4 of the report.

## 2. SUBSTANTIALLY THE SAME

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

Section 4.55(2)(a) 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*

Under 4.55(2)(a) the consent authority must be satisfied the development proposed in the modification application is essentially or materially the same as the originally 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.

With regard to ‘substantially the same’ test, Gadens Lawyers advise (<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 case law from the Land & Environment Court (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 Ilenace 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 alterations and addition to the existing Stockland Glendale Shopping Centre (refer to Figure 5 below) which included additional specialty retail, a new food court and new ‘main street’ restaurant strip linking the cinema precinct and the main Chopping Centre through the carpark. The approved expansion increased the existing GLA of 50,803m<sup>2</sup> by 7,680m<sup>2</sup> to a total of 58,483m<sup>2</sup> GLA. A reconfiguration of the car park layout provided 2275 car parking spaces.

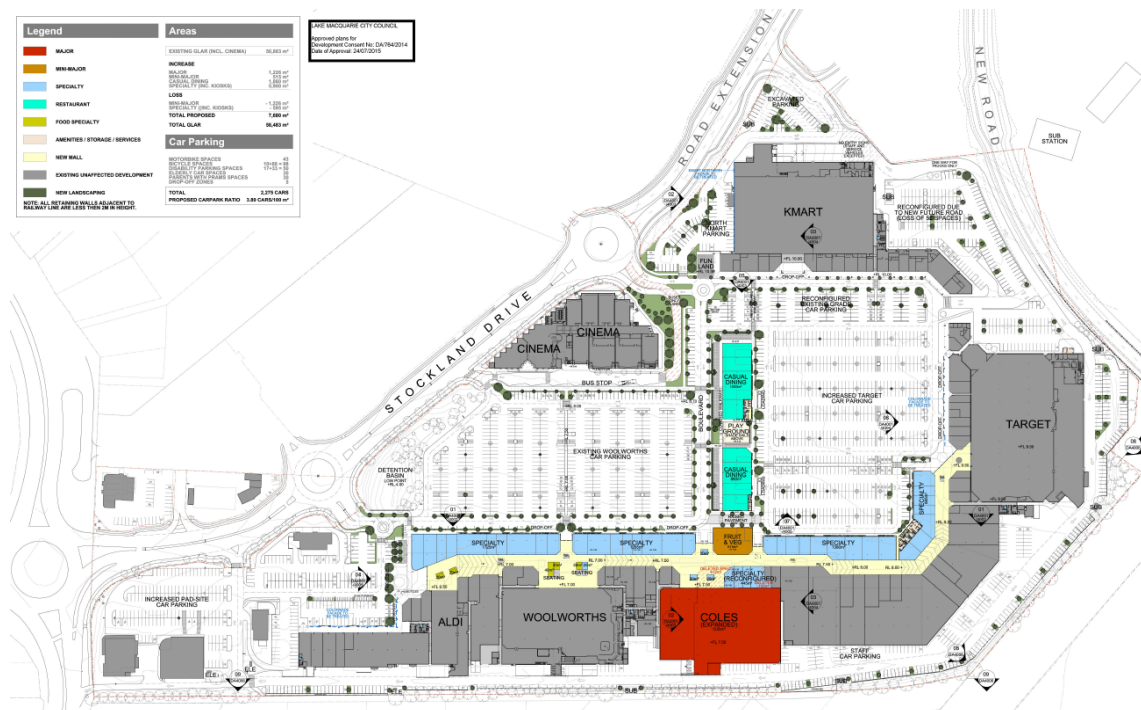


Figure 5: Approved Site Plan under DA/764/2014

The development consent as granted has not been commenced through construction works.

The Modified Development incorporates the same land uses and general internal layout, and maintains existing intersection arrangements off Stockland Drive. The relevant changes seeks to modify the layout of the additional shops and dining areas and create a Stage 2 for the car parking works associated with the land dedication proposed under the draft PA and LMTI works. The modification to the design will reduce the additional GLFA from 7680m<sup>2</sup> (approved) to 6251m<sup>2</sup>, and reduce the amount of changes to the internal road network. Figure 6 below provides details of the revised layout.

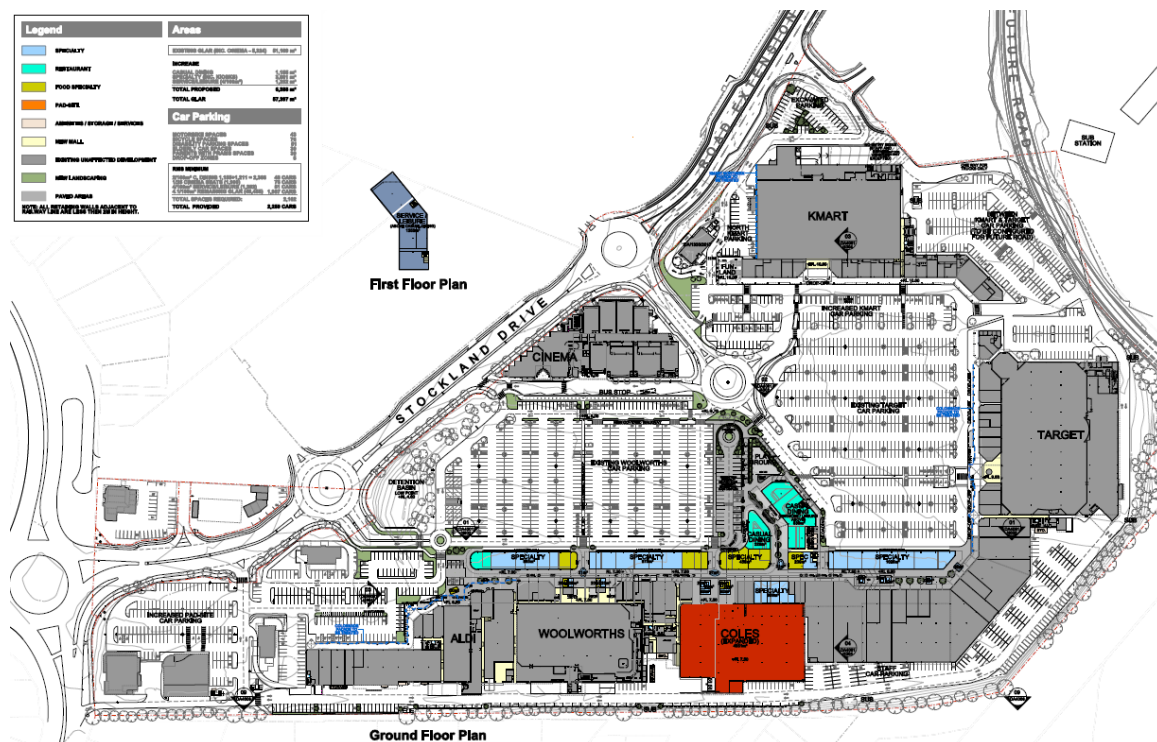


Figure 6: Proposed Modified Layout

Note, new developments have been approved under separate consent since the granting of consent for DA/764/2014. These include a car wash to the south of the detention basin under DA/215/2016 and a restaurant to the north of K-Mart under DA/1330/2017.

The applicant provided the following comment in relation to section 4.55(2)(a):

*The changes result in a small reduction in the amount of additional floor space proposed but the development remains substantially the same as that approved.*

A quantitative analysis considers the differences are of sufficient scale and extent that it does not fail the substantially the same test, noting:

- The overall layout and purpose of the development as modified will remain consistent with that which was approved;
- The reduction to the development's gross leasable floor area; and
- The changes to the development's footprint and car parking are minor, and where changes have occurred these result from a reduction in the scale and works required.

A qualitative analysis notes:

- There are no change to the nature of the land use, or broadly, to its arrangement or intensity;
- While some matters of detail have changed, the substance of the development remains materially or essentially the same;
- The built forms continue to comply with Council's Glendale Town Centre Area Plan DCP 2014;
- The traffic generation of the scheme is similar to the approved development.

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. INTEGRATED REFERRALS**

#### **Integrated Development**

The original application was identified as Integrated Development in relation to the Roads Act 1993, and Coal Mine Compensation Act 2017. The matter was referred to the Roads & Maritime Service (RMS), 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 on 5 September 2017, with a follow up referral on 25 May 2018.

To date no response has been received (refer to comment under Section 5 of the report). It is noted RMS did not raise any objections to the parent DA.

##### **1.2 Coal Mine Compensation Act 2017**

The amended application was referred to Subsidence Advisory NSW for review. In correspondence dated 6 September 2017 Subsidence Advisory NSW issued its GTAs for the modified development.

A copy of the correspondence is attached as Appendix D.



#### 4. LETTER OF OFFER / PLANNING AGREEMENT

Under the parent consent the applicant submitted a Letter of Offer (LoO) under section 7.7(3) (formerly 93I(3)) of the Environmental Planning and Assessment Act (Act), 1979. As per the provisions of section 7.7(3) of the Act, the applicant sought the imposition of a condition with regard to the preparation of a PA should consent be granted. Under the terms of the LoO Stockland Development Pty Ltd, subject to a PA, would make the following contributions to Lake Macquarie City Council:

(a) the payment of a monetary contribution to the Council towards road works associated with Section 1 of Stage 1 of the LMTI comprising:

- (i) Part 1A-extension to Stockland Drive;
- (ii) Part 1B-extension to Stockland access road; and
- (iii) Part 1C Stockland Drive, Pennant Street and Glendale Drive roundabout (Road Works).

The contribution by Stockland for the Road Works was \$1,919,400, less the agreed cost to Stockland of reconfiguring its car park to allow for the transfer of the LMTI Land being an amount of \$913,500.

The amount of total monetary contribution to be paid by Stockland under the PA, excluding indexation, was \$1,005,900; and

(b) the transfer of the LMTI land to the Council for the purpose of road widening associated with Section 2 of Stage 1 of the LMTI.

The monetary contribution was partly in lieu of an access road as required by Conditions 8 of Development Consent No. 4413/2004 dated 13 September 2005 (a provision to this effect was to be included in the PA and that Stockland would make separate application to Council for the deletion of Conditions 8 in relation to Development Consent No. 4413/2004).

The transfer of the LMTI Land to Council requires Stockland to effect the subdivision of the site with costs as agreed in the PA.

Council endorsed the Letter of Offer at its meeting of 9 June 2015. At the granting of development consent a condition was imposed requiring a PA to be entered into prior to the release of the first or any Construction Certificate.

As part of the modified application, the applicant sought to revise the LoO noting the Stage 1 Section 1 works of the LMTI have been completed, and to update the monetary contributions relative to inflation.

Additionally it was intended for the modified application to address the matters relating to the deletion of condition 8 of DA/4413/2004 and the subdivision and transfer of land to Council to enable works in relation to Stage 1 Section 2 of the LMTI.

A revised LoO was provided to Council on 17 October 2018 (refer to Appendix C). This revised LoO followed negotiations between Council and Stockland and is satisfactory to both parties.

It has been agreed as the provisions of the revised LoO are generally in accordance with the LoO approved in the parent consent, the revision does not require Council endorsement. Council endorsement will be required to progress the exhibition of the PA and for its adoption and attachment of the Council seal.

It is recommended condition 7 be updated to reflect the revised LoO dated 17 October 2018. This condition will still require the PA to be entered into prior to the release of the first Construction Certificate.

Concurrently with the application to modify the development consent, the applicant submitted a draft PA. Should consent be granted to the modified development, the applicant will need to update the draft PA in line with the present LoO.

## 5. 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 19 – Bushland in Urban Areas***

Under the parent application the development was assessed against the provisions of SEPP 19 – Bushland in Urban Areas. The outcomes of the assessment were:

- The native vegetation proposed for removal is a mix of endemic and non-endemic species, which were planted as part of the initial site development in 1995/1996. Therefore the vegetation is neither a remainder of natural vegetation nor is representative of the structure and floristics of the natural vegetation.
- With regard to vegetation on the adjoining public land, zoned RE1 Public Recreation, the development has no impact due to the existing level change (the development site varying from being at grade to 3-5 metres lower), with excavations being setback from the existing boundary and having no impact on the root zones of existing native vegetation on the adjoining land.

#### ***State Environmental Planning Policy 55 – Remediation of Land***

The parent assessment considered a Stage 1 Preliminary Site Investigation report which provided an assessment of potential contamination of the site. Based on this report, consent was granted subject to a specific condition requiring the monitoring of the works.

The works under the modified development do not change this assessment nor consent conditions.

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

Division 5 Electricity transmission or distribution

Clause 45 'Determination of development application – other development' under Division 5 'Electricity transmission or distribution networks' requires the consent authority to give written notice before determination to the electricity supply authority for the area inviting comments about potential safety risks. This is in relation to works that are immediately adjacent to an electricity substation or other related infrastructure.

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

Division 15 Railways

Clauses 85 'Development immediately adjacent to rail corridors' requires before determination that the consent authority must give written notice to the rail authority for the rail corridor and take into consideration any comments received.

The application was referred to Sydney Trains for comment on 6 September 2017 however no reply was received. Similarly under the parent assessment Council received no reply from Sydney trains to Council's referral.

Note: In relation to Clause 86 'Excavation in, above or adjacent to rail corridors', the

applicant stated under the parent application no excavations greater than 2 metres are proposed within 25m of the rail corridor.

#### 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 has direct frontage to Lake Road.

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 was referred to the RMS on 5 September 2017 and the amended application referred on 29 May 2018. To date no response has been received.

The development site has access off a secondary road, being Stockland Drive. The proposed changes involve a reduction in the GLFA and seek to improve the efficiency of the car park to minimise any offsite impacts on Stockland Drive and Lake Road.

#### ***State Environmental Planning Policy (State & Regional Development) 2011***

The Section 4.55(2) application relates to development approved under 2014HCC014 which was assessed by the JRPP based on a CIV of \$45 million.

#### ***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 development has found it to be consistent with the aims of LMLEP 2014.

##### Clause 1.9A Suspension of Covenants, Agreements and Instruments

Under the parent assessment a drainage easement in favour of Council was identified within the development site, with the Restriction As To User (RATU) on the development site requiring the owner of the land to “maintain, repair or replace drainage pipes on the site at no cost to Council”. Figure 7 details the RATU as it relates to the Deposited Plan 860494.

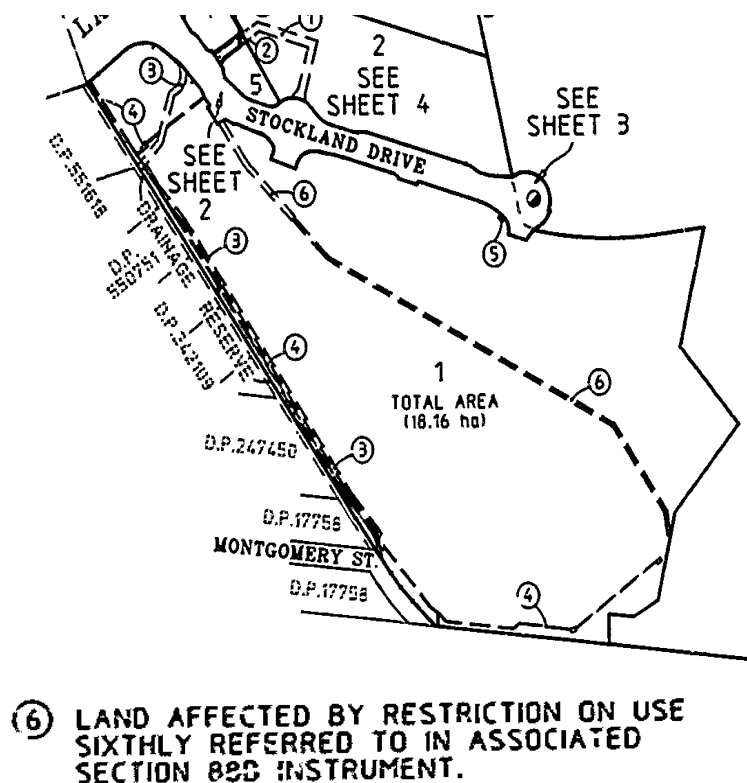


Figure 7: Excerpt from Deposited Plan No 860494

The modified development will have a reduced impact on the RATU, as identified in Figure 8 below.

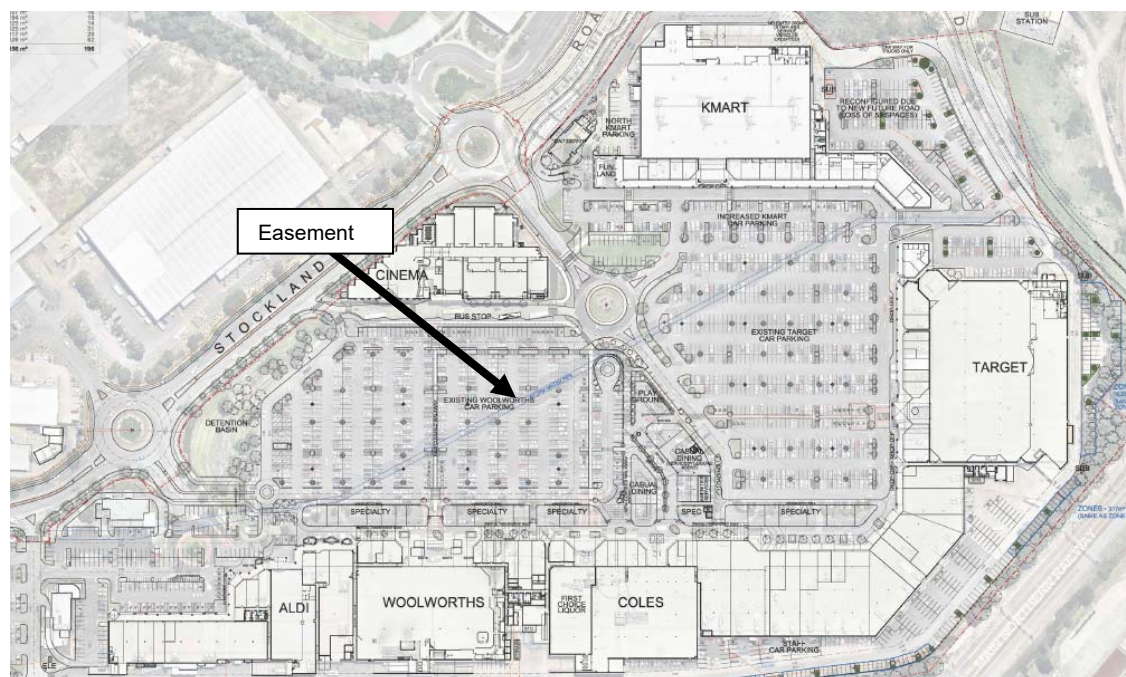


Figure 8: Approximate position of drainage easement under DP 860494

Under the parent assessment Council’s Development Engineering Department advised supported the encroachment as based on the RATU it is the land owner’s responsibility



to repair any damage or undertake any maintenance on the stormwater pipes. This provision of the RATU cannot be transferred to any leasee as per the Conveyancing Act, 1919.

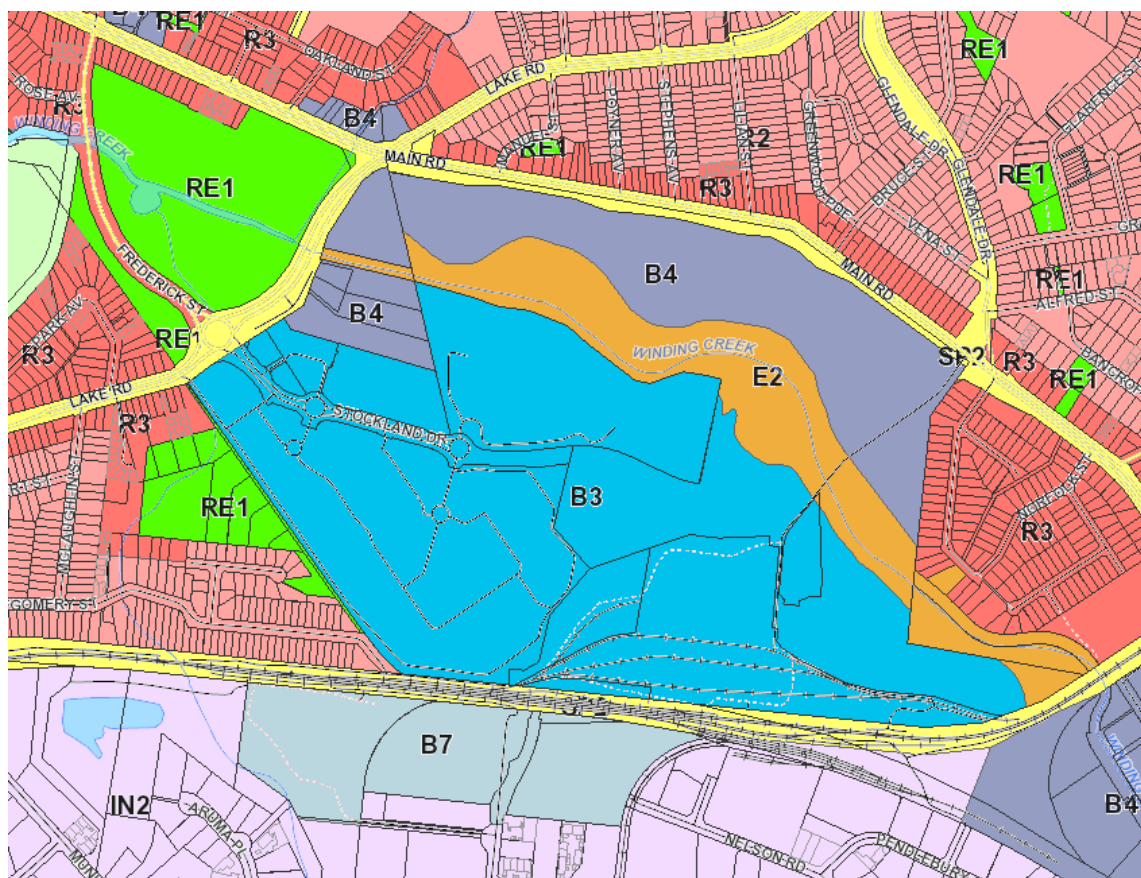
Therefore, whilst the modification has a reduced impact on the easement, the outcome is the same and is supported.

## **Part 2 Permitted or Prohibited Development**

### Clause 2.3 Zone Objectives and Land Use Table

#### *Zoning*

The land is zoned B3 Commercial Core as per Figure 9 below.



**Figure 9:** Land Zoning map under LMLEP 2014

#### *Zone Objectives*

The following zone objectives apply:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To create urban centres and public spaces that are safe, accessible, welcoming and are a central focus for the community.
- To provide for housing as part of mixed use developments.
- To strengthen the roles of Charlestown, Glendale and Morisset as regional centres.

#### *Permissibility*

The parent development consent as, approved under Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004), was for shops and restaurants with a playground as an ancillary land use. The following definitions related to LMLEP 2004:

*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.*

*shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, food, goods, merchandise or materials.*

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

*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.*

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

The land uses and related works as approved under the parent consent are permissible within the B3 zone subject to development consent.

In addition, the modified development includes the first floor service/leisure floor space as an ancillary development. This is proposed as a business premises by the applicant which is defined as:

*business premises means a building or place at or on which:*

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
- (b) a service is provided directly to members of the public on a regular basis,*

*and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.*

A business premises is a permissible use within the B3 zone with consent.

Having regard to the zone objectives, the proposed development is considered to achieve/support these as follows:

- The modification maintains land uses (shops and restaurants) that support the zone objectives.
- The modified development will combine with the existing business, office, entertainment and community services located at the shopping centre to enhance the strategic regional centre as a central focus for the community.
- The modification will provide increased employment adjoining a public transport interchange.
- The modified development provides improved access to public transport, and pedestrian links throughout the Shopping Centre.
- The development, as assessed under the parent consent, does not undermine

the functions of urban centres within the City of Lake Macquarie.

#### 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 seeks subdivision of the land, refer to comment under section 4.1 of LMLEP 2014.

#### Clause 2.7 Demolition Requires Development Consent

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

The modified development includes demolition required to facilitate the works. A condition was imposed in the parent consent for demolition and is recommended to be retained.

#### Clause 2.8 Temporary Use of Land

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

### **Part 3 Exempt and Complying Development**

This part of LMLEP 2014 is not applicable to the development.

### **Part 4 Principal Development Standards**

#### Clause 4.1 Minimum subdivision lot size

The subdivision of land under Clause 2.6 of LMLEP 2014 must comply with the minimum subdivision lot size map. The minimum subdivision lot size map does not specify a minimum area for the development, as shown in Figure 10 below.

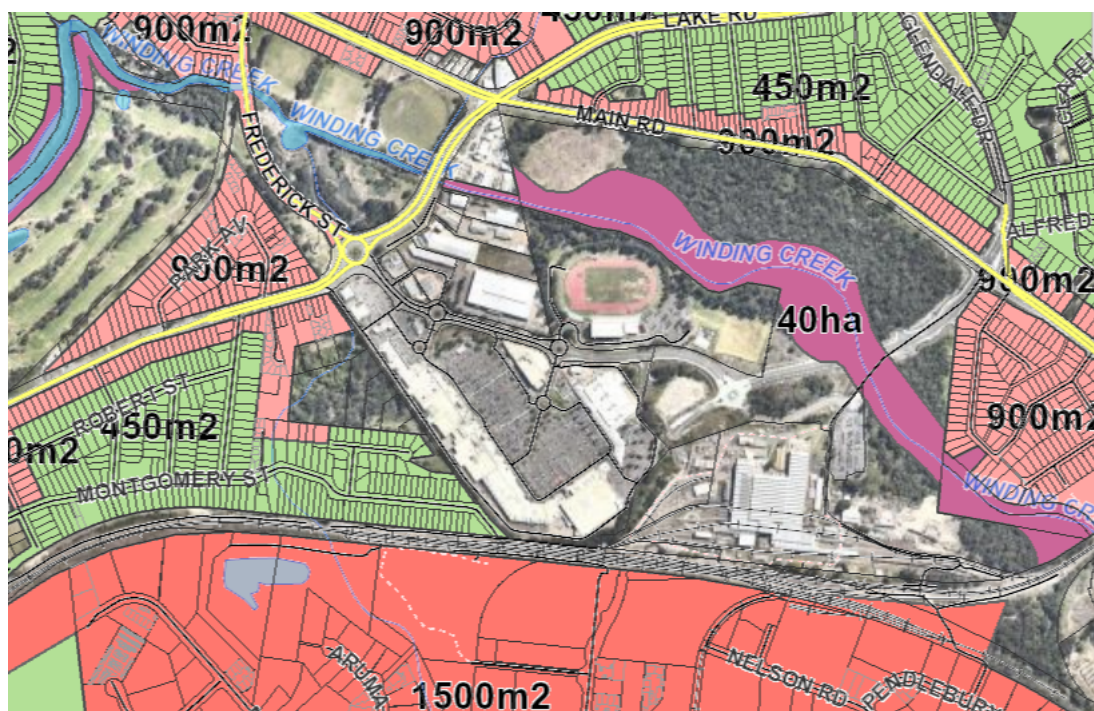


Figure 10: Minimum subdivision lot size map under LMLEP 2014

The modification involves subdivision to create the land to be dedicated to Council for future Stage 1 Section 2 LMTI works and is subject to the draft PA. For additional



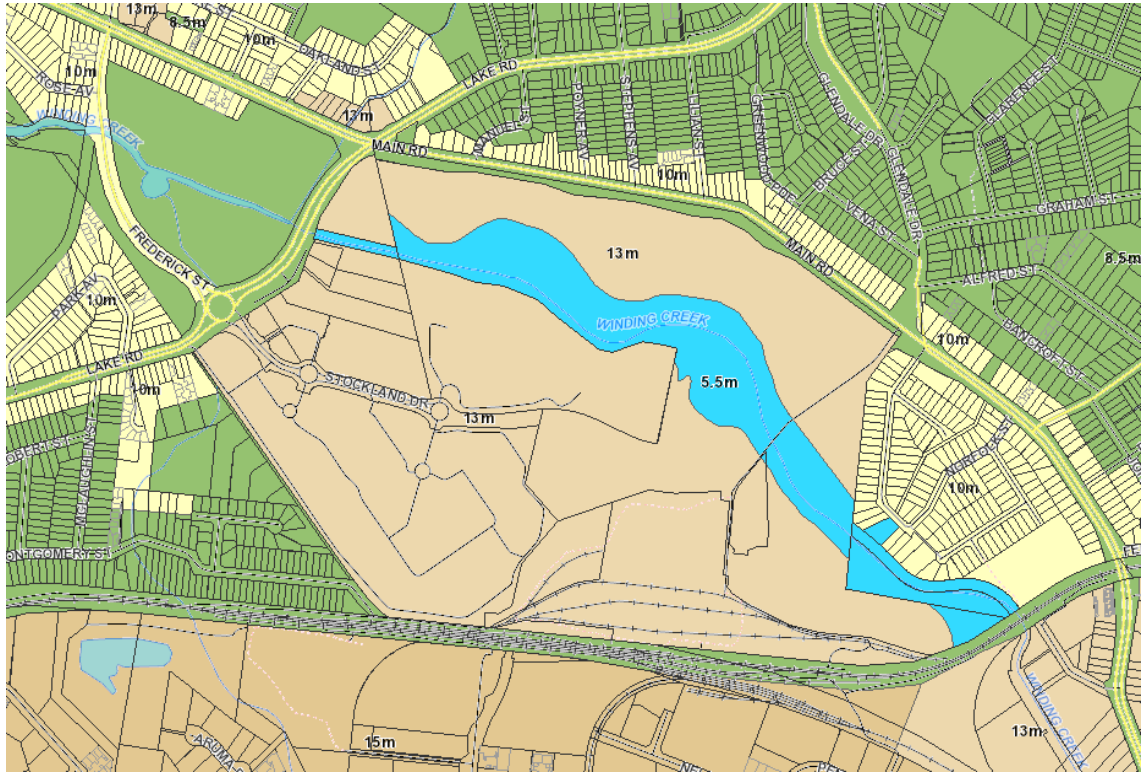
comment refer to section 4 of this report.

#### Clauses 4.1AA to 4.2C

Clauses 4.1AA 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 identifies a maximum height of 13m. An excerpt of the map is shown in Figure 11 below.

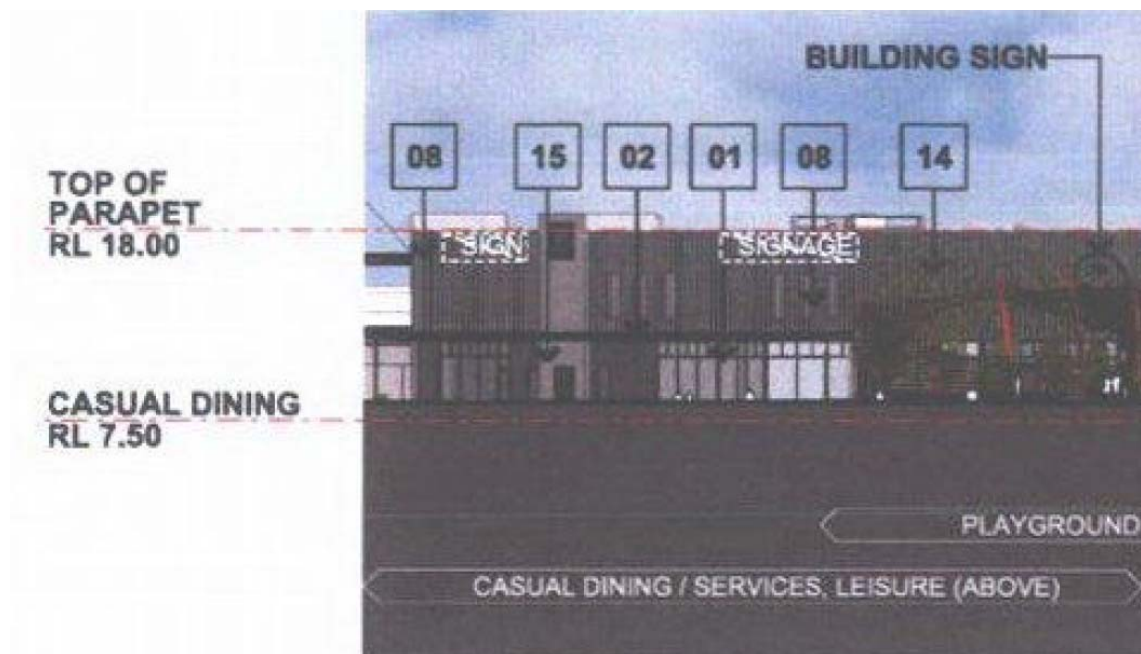


**Figure 11:** Height of Building excerpt from LMLEP 2014 Maps

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 11.5m as detailed in Figure 12.



**Figure 12:** Proposed maximum height of building

The modified development complies with the maximum height of building under LMLEP 2014.

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.

The development site however adjoins heritage items 97 - Great Northern Railway and 98 – Cardiff Railway Workshops as listed under Schedule 5 of LMLEP 2014.

The modifications do not change the assessment undertaken for the parent development application. No further assessment or conditions of consent are required.

Clauses 5.11 to 5.13

Clauses 5.11 to 5.13 are not applicable to the development.

Clauses 5.14 and 5.15

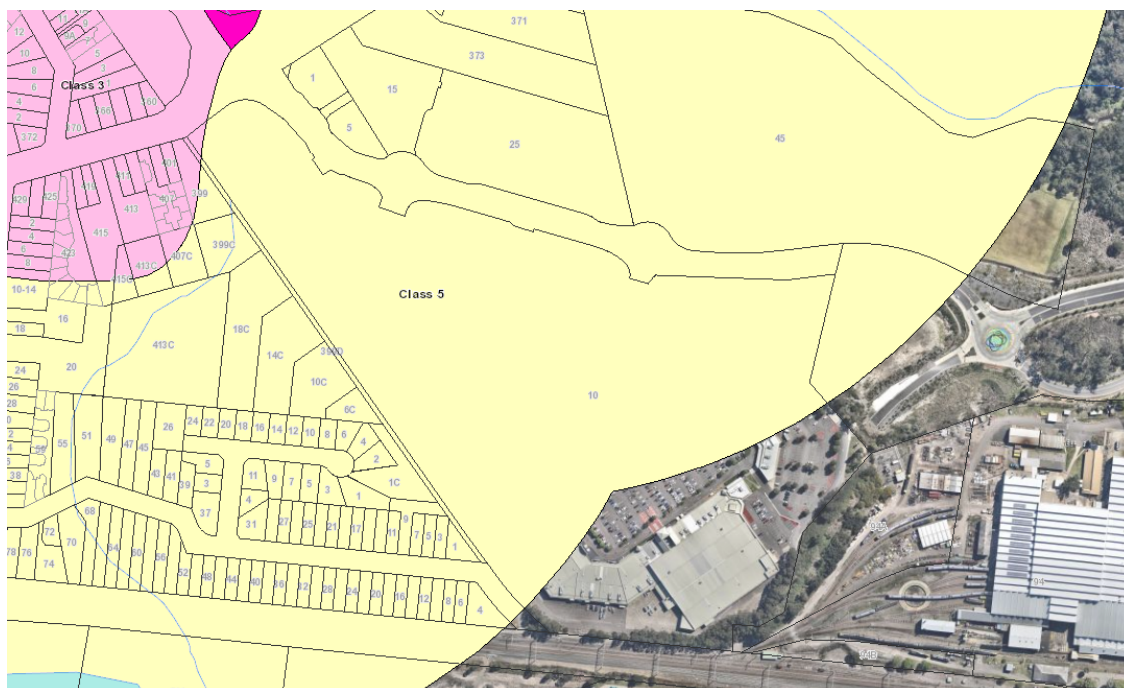
Not adopted.

**Part 7 Additional local provisions**

Clause 7.1 Acid Sulfate Soils



The development site has been identified as “Class 5” within the Acid Sulfate Soils Map of LMLEP 2014 as shown in Figure 13 below. Sub-clause 2 requires development consent for the carrying out of works on land shown on the Acid Sulfate Soils Map.



**Figure 13:** Acid Sulfate Soils Map excerpt from LMLEP 2014

Sub-clause 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.

Sub-clause 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:

*“The development site has been identified as “Class 5” within the Acid Sulfate Soils Map (see Figure 13), where although no ASS are expected within the site, proposed works may have an effect on any ASS within the adjacent lots. However, it is considered that the proposed works are NOT likely to lower the water table by 1 metre, as such there will be no impact on adjacent ASS areas.”*

The modifications do not change the assessment undertaken for the parent development application. No further assessment or conditions of consent are required.

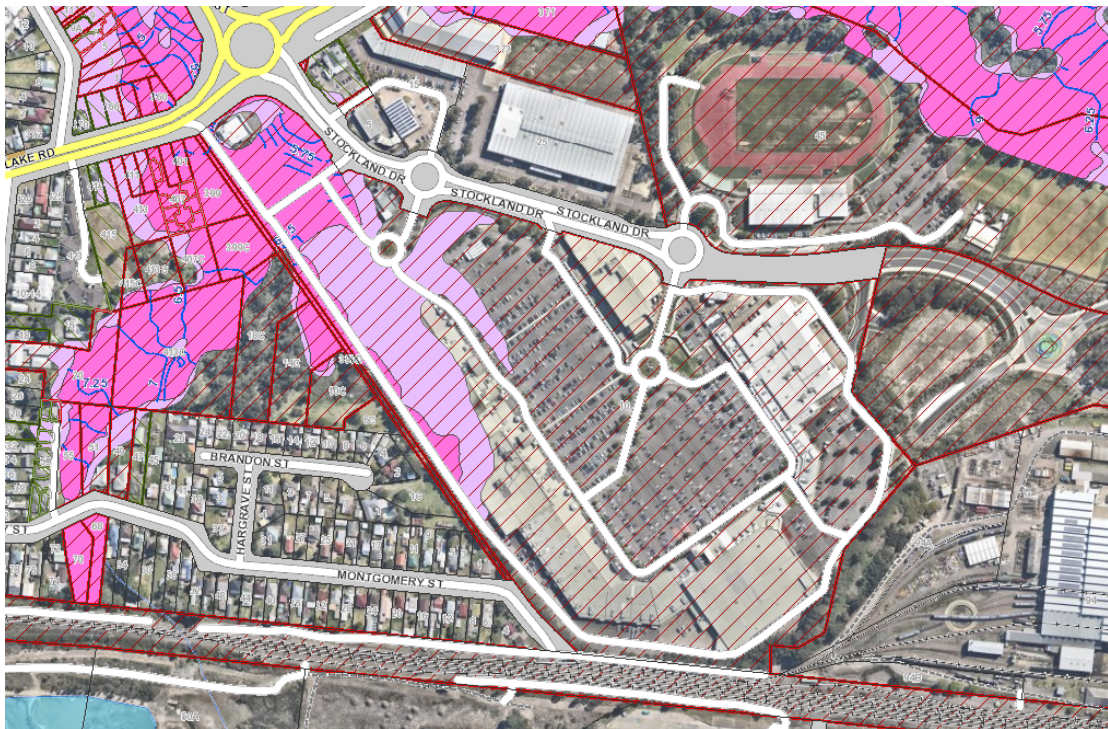
### Clause 7.2 Earthworks

The parent development proposed cut and fill works along the south-western, southern and south-eastern boundaries to accommodate additional parking. These works were accepted from an engineering perspective.

The modified development proposes no changes to the works consented to under the parent development.

### Clause 7.3 Flood Planning

The Flood Planning maps identify the northern end of the site being subject to flooding, as shown in Figure 14 below.



**Figure 14:** Flood Map excerpt from LMLEP 2014

The modified development has reduced the building footprint at the northern end and proposed changes to the external car park and access ways which have no implications in terms of flooding in comparison to the parent development.

#### Clauses 7.4 – 7.20

Clauses 7.4 to 7.20 are not applicable to the development.

#### Clause 7.21 Essential Services

The required essential services and infrastructure are available to accommodate the development as demonstrated below:

- Hunter Water endorsed the plans for the modified application on 4 September 2017.
- Ausgrid provided correspondence dated 27 September 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 requirements under DCP 2014. Council's Development Engineers are satisfied with the stormwater design subject to amended conditions.
- The modified development is generally consistent with the parent consent having regard to the proposed site access in relation to the classified road network.
- The points of access to the local road network are unchanged, however internal changes have been made to the access ways, car park layout, and pedestrian movement to ensure minimal impact on the local road network, efficiency of vehicle movements and public safety.

#### 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). Refer to comment under SEPP 19 regarding the removal of native vegetation and the adjoining land zoned public open space.

For waterways, the provisions of the draft SEPP mainly apply to Sydney Harbour and Canal Estates. These provisions have no implications for the modified development 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 4 – Development in Business 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.

###### 2.3 Geotechnical

The modified application raises no additional geotechnical matters having regard to the parent assessment.

###### 2.4 Cut & Fill

The development will retain the existing parking area between Kmart and Coles, and does not involve the regrading approved under the parent consent.

The modification will not alter the retaining walls required for the car parking along the southern boundary, which will be undertaken as part of the stage 2 works.

###### 2.5 Mine Subsidence

Subsidence Advisory NSW issued its GTAs for the modified application on 6 September 2017.

###### 2.6 Contaminated Land

Refer to comment under SEPP 55.

###### 2.7 Acid Sulfate Soils

Refer to comment under Section 7.1 of LMLEP 2014.

###### 2.8 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.

###### 2.9 Catchment Flood Management

Refer to assessment comment under Section 7.3 of LMLEP 2014.

###### 2.10 Lake Flooding & 2.11 Tidal Inundation

Not applicable to this development

###### 2.12 Bushfire

Under the parent development the site was identified as being partially mapped as a buffer zone under the Bushfire Prone Land Map 2011, as identified in Figure 15.





**Figure 15: Bush Fire Hazard Map - 2011**

The buffer related to an isolated pocket of vegetation, approximately two hectares in areas located to the north-west. It was noted the works are internal to the development, are shielded from the hazard, and are at a distance greater than 140 metres from the hazard no further assessment is required.

The revised bushfire mapping (2018) as shown in Figure 16 below identifies the buffer zone over the development site as reduced, hence the modified development raises no concerns in terms of bushfire threat.



**Figure 16: Bush Fire Hazard Map - 2018**

### 2.13 Flora & Fauna

The parent assessment noted the development site is not mapped (2015 mapping which is current) as being part of an EEC, native vegetation corridor or that it contains remnant native vegetation.

Refer to comment above under SEPP 19 and below under section 2.14 with regard to the modified development.

### 2.14 Preservation of Trees & Vegetation

The modified development application proposes no changes to the removal of existing native trees located around the southern and south-western perimeter of the site as approved under the parent consent. The modified development however due to deleting the regrading of the internal car park will allow the retention of maturing native shade trees.

#### 2.15 European Heritage

Refer to additional comment under Clause 5.10.

#### 2.16 Aboriginal Heritage & 2.17 Natural Heritage

Not applicable to the development.

#### 2.18 Social Impact

The modified development maintains the outcomes as achieved in the parent development with regard to access to public transport, retail services and facilities. The modified development also provides improved pedestrian access (refer to Section 3 of Part 4 of DCP 2014 for comment).

#### 2.19 Economic Impact

The assessment of the parent development identified the improvements to the centre being consistent with the economic principles identified within Council's Lifestyle 2030 Strategy, particularly the enhancement of the Glendale-Cardiff Regional Centre. The development was also identified as generating in excess of 600 jobs during construction and the operational phases. Approximately 800 further jobs will be created in the community through supplier induced multiplier effects.

The existing Stockland Shopping Centre is a key component for the growth and expansion of the commercial and retail services, employment and a driver for improved transport connections through the LMTI.

The changes to the development will not have negative impact on these outcomes.

#### 2.20 Lot Amalgamation

Not applicable to this development.

#### 2.21 Utility Infrastructure

Refer to comment under Clause 7.21 of LMLEP 2014.

#### 2.22 Sites Where a Concept Plan is required

Refer to comment under section 4.1 of Part 10.8 of DCP 2014.

### ***Section 3 – Streets and Public Spaces***

#### 3.1 Pedestrian Lanes & 3.2 Pedestrian Links Through Buildings

Refer to section 4.2 of Part 10.8 of DCP 2014 for comment.

#### 3.3 Footpath Dining

Footpath dining is proposed internally within the development, though not within any adjoining public road reserves. A condition is recommended to ensure/maintain adequate pedestrian thoroughfares are provided where footpath dining is proposed.

#### 3.4 Streetscape Improvements

The parent consent did not include public domain works, though landscaping was approved along the boundary with the extension of Stockland Drive and the southern and south-western boundaries. The modified development makes no changes in this

regard.

### 3.5 Non-discriminatory Access

An Access Audit was submitted for the modified development. Conditions are recommended having regard to the modified design.

### 3.6 Lighting

The modifications do not change the assessment undertaken for the parent development application. No changes to existing condition 36 are recommended.

## ***Section 4 – Active Street Frontage***

### 4.1 Ground Floor Residential Uses in the Business Zones

Not applicable to this development.

### 4.2 Ground Floor Levels

The development site has finished floor levels at grade with the external levels, and therefore the provisions of this control do not apply.

### 4.3 Ground Floor Entries

The modified development provides adequate entry statements to the mall.

### 4.4 Ground Floor Glazing

The modified development incorporates increased glazing along the external elevations. As a consequence it is recommended condition 8 of the parent consent, which required an increase in glazed openings, be deleted.

### 4.5 Street Awnings

Due to the layout and setting of the shopping centre, awnings along the street frontage are not applicable. The development does however incorporate extensive awnings throughout the shopping centre to provide pedestrians protection for the weather.

## ***Section 5 – Access And Parking***

### 5.1 Traffic and Vehicle Access

The parent development provided a Traffic Impact Statement. A revised Traffic Impact Statement was submitted with the application for the modified development.

The development has been reviewed by Council's Development Engineering team and the Asset Management Traffic & Infrastructure team. Both teams raised no objections to the proposed layout, following negotiated changes to address improved pedestrian movements/linkages and facilitating efficient traffic movements. A condition has been recommended

In particular, the changes include relocating the pedestrian crossing located between K-Mart and the cinemas to reduce congestion extending to the Stockland Drive roundabout. Additionally, the pedestrian crossings around the existing internal roundabout have been located to achieve more direct links, improve pedestrian safety and support efficient vehicle movement (refer to comment in section 4.2 of Part 10.8 of DCP 2014).

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, however to date no response has been received. The existing GTA's will remain on the consent.

### 5.2 Design of Parking And Service Areas



The car park layout fronting Target and K-Mart is being retained under the modified development as opposed to the regrading under the parent consent, with the only changes addressing new access ways and pedestrian movements. The car parking around the perimeter is being retained as approved, excepting the reconfiguration of the car park between Target and K-Mart following the subdivision of land to facilitate Stage 1 Section 2 of the LMTI.

Delivery arrangements to and within the site have only been modified to address the changes to the new restaurants and specialty shops. The delivery arrangements for the remainder of the development are unchanged.

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

### 5.3 Bike parking and Facilities

A condition of the parent consent requiring the provision of an adequate number of bike parking spaces is to be retained.

### 5.4 Motor Bike Parking

The modified development maintains the number of motor bike parking spaces approved under parent consent.

### 5.5 Car Parking Rates

The existing Centre has 2,317 parking spaces, with the approved development providing 2,275 parking spaces based on the RMS Guide to Traffic Generating Developments in relation to the approved 58,483m<sup>2</sup> GLA.

The modified development reduces the GLA to 57,397m<sup>2</sup>, being a reduction of 1,086m<sup>2</sup>. The resulting development under the RMS criteria requires a minimum 2162 parking spaces, however proposes 2324 car parking spaces. This equates to an excess of 162 parking spaces.

As a consequence of the development having an excess in car parking numbers, it is recommended a reduction in the number of car parking spaces be considered to provide additional landscaping areas in critical locations. Refer to comment under Section 1 of this report., which includes reference to condition 22A to provide improved landscape outcomes.

## ***Section 6 – Development Design***

### 6.1 Front Setbacks – Shopping Centres In B1 and B2 zones

Not applicable to this development.

### 6.2 Front Setbacks – Main Street Shops in B1, B2 and B3 zones

The shopping centre does not have a traditional setting and layout, being well setback from street fronts behind large expanses of car parks. The modified development is generally in keeping with the approved footprint of the parent consent.

### 6.3 Front Setbacks – B4 zone

Not applicable to this development.

### 6.4 Façade Articulation

Condition 8 of the parent consent required the development to provide improved façade treatments. The modified development incorporates improved façade treatments of the specialty shops and restaurants.

It is recommended condition 8 be deleted.

## 6.5 Building Exteriors

The modified development enhances the appearance of the shopping centre through an updated look which is compatible with the distinct and dominant form of the 1990s buildings. The exterior details vertical and horizontal articulation, openings and glazing to break up the long eastern elevation, defined entry statements which link in with pedestrian access points, and the creation of a landscaped plaza and playground as focal points.

## 6.6 Building Separation

Not applicable as the development is not mixed use.

## 6.7 Side and Rear Setbacks

The modified development maintains the side and rear setbacks as approved under the parent consent.

## 6.8 Minimum Landscaped Area

The modified development generally maintains the landscape outcomes in the internal car park and around the perimeter as approved under the parent consent.

## 6.9 Building Depth

The modified development generally maintains the building depth as approved.

## 6.10 Maximum Occupied Area

The modified development complies with this control, having limited floor space above ground level.

## 6.11 Setbacks from Residential zoned land

The modified development does not change the approved setbacks from adjoining residential land, noting they are compliant.

## 6.12 Building Height

The modified development complies with the maximum number of storeys (3).

## 6.13 Building Height at the Street

The development is not a traditional shopping centre in its setting and layout, with new works being setback from the primary street as are the main buildings.

## 6.14 Floor to Ceiling heights

The modified development, including the ground floor and upper floor, provides adequate floor to ceiling height for commercial uses.

## 6.15 Roofs

The new roof lines sit below the existing roof line of the shopping centre, are articulated and are suitable from an urban design perspective.

## 6.16 Views

The new works have no impact on external residential development.

## 6.17 Balconies and Communal Open Space

Not applicable to this development.

## 6.18 Planting on Structures

There is no planting on structures.

#### 6.19 Solar Access and Orientation

The new works have no impact on external residential development.

#### 6.20 Energy Efficiency and Generation

The parent development incorporated naturally ventilated mall area, skylights for natural lighting and north facing restaurants. The modified development retains these features.

The development will be subject to a Section J report at the construction certificate stage.

#### 6.21 Visual Privacy

This section is not applicable as the development does not contain any residential dwellings. Additionally the new shops and restaurants are centrally located within the development and do have any direct line of sight with external dwellings.

#### 6.22 Acoustic Privacy

This section is not applicable as the development does not contain any residential dwellings. Additionally the new shops and restaurants are centrally located within the development and do have any direct line of sight with external dwellings.

#### 6.23 Front Fences

No front fencing was considered under the parent development nor is proposed under the modified development.

#### 6.24 Side and Rear Fences

The modified development maintains fencing under the parent consent.

#### 6.25 Safety and Security

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

### ***Section 7 – Landscape***

#### 7.1 Landscape Design

The modified landscape design has been reviewed by Council's Landscape Architect, with conditions recommended.

#### 7.2 Street Trees and Streetscape Improvements

Street tree planting was not a requirement of the parent consent.

#### 7.3 Landscape and Tree Planting in Front Setback Areas

Landscaping in the front setback is only proposed for the area adjoining the extended Stockland Drive.

#### 7.4 Landscape and Tree Planting in Car Parks

The modified development consent reduces the extent of the regrading of the internal car park and therefore allows the retention of existing plantings. There are no changes to the approved landscaping of the car parking along the southern and south-western perimeter.

### ***Section 8 – Operational Requirements***

#### 8.1 Demolition and 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.

### 8.2 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.

### 8.3 On-Site Sewage management

Not applicable to this development.

### 8.4 Liquid Trade Waste and Chemical Storage

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

### 8.5 Erosion and 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 8.5 and condition 11 has been updated.

### 8.6 Air Quality

The modified development is consistent with the measures incorporated in the parent consent. The existing conditions are to be maintained.

### 8.7 Noise and Vibration

The modified development is consistent with the measures incorporated in the parent consent. The existing conditions are to be maintained.

## **Part 8 – Subdivision**

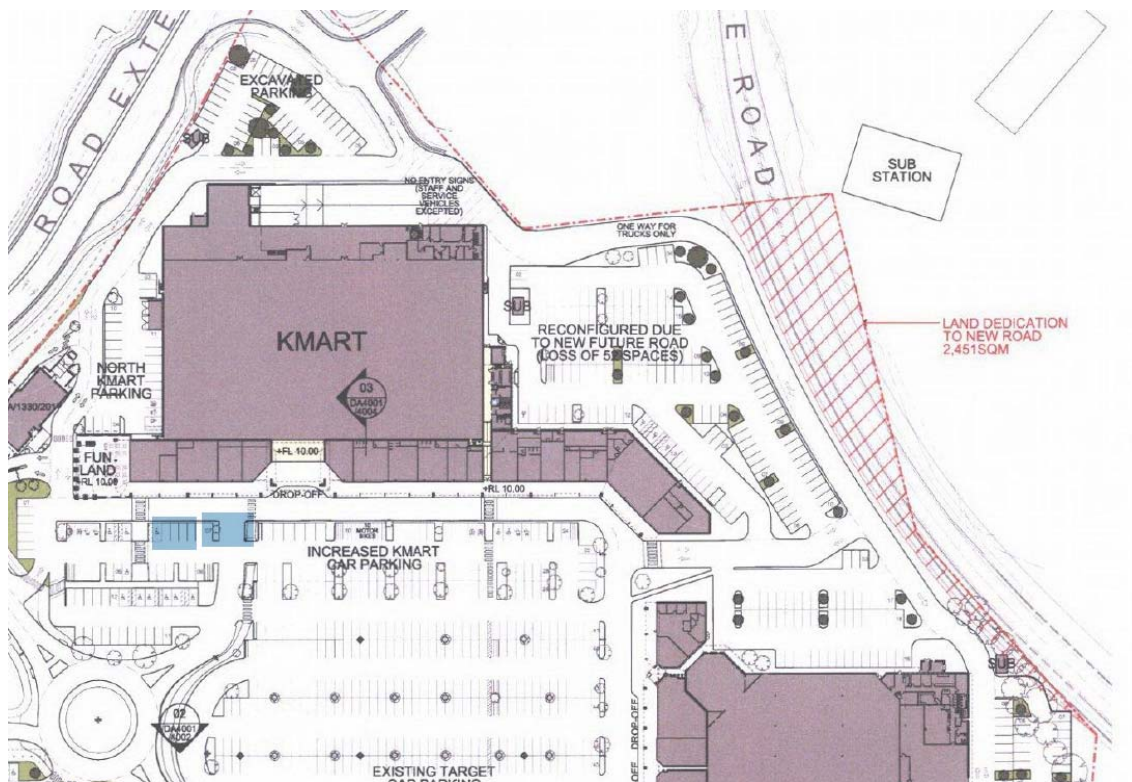
### ***Section 2 – Context & Setting***

Refer to comment under section 2 of Part 4 of DCP 2014.

### ***Section 3 – Subdivision Design***

#### 3.8 Lot Sizes and Dimensions – B3 Commercial Core

This application includes subdivision of the portion of land (approx. 2,451m<sup>2</sup>) in the eastern car park (see Figure 17 below) to be dedicated to Council for LMTI Stage 1 Section 2 road works.



**Figure 17: Land to be dedicated for LMTI Stage 1 Section 2 works**

The subdivision will be undertaken as part of the stage 2 car park reconfiguration works associated with this development, and the timing of subdivision and dedication of this land will be controlled through the terms of the PA.

The land is not subject to a minimum lot size under clause 4.3 of LMLEP 2014. The proposed subdivision is considered to satisfy the objectives in Section 3.8 of this Part, in particular that the subdivision will not impact the use of the reconfigured car park or impact the efficient use or orderly development of the subject land.

The addition of the subdivision to this modification application is supported. Conditions are recommended specific to the subdivision.

#### **Section 3.18 to 3.31**

Refer to related comment in sections 2, 3, 4, 5, 6, 7 and 8 of Part 4 of DCP 2014.

#### ***Section 4 – Subdivision Construction***

Refer to comment under section 8 of Part 4 of DCP 2014.

#### **Part 9.17 – Signage**

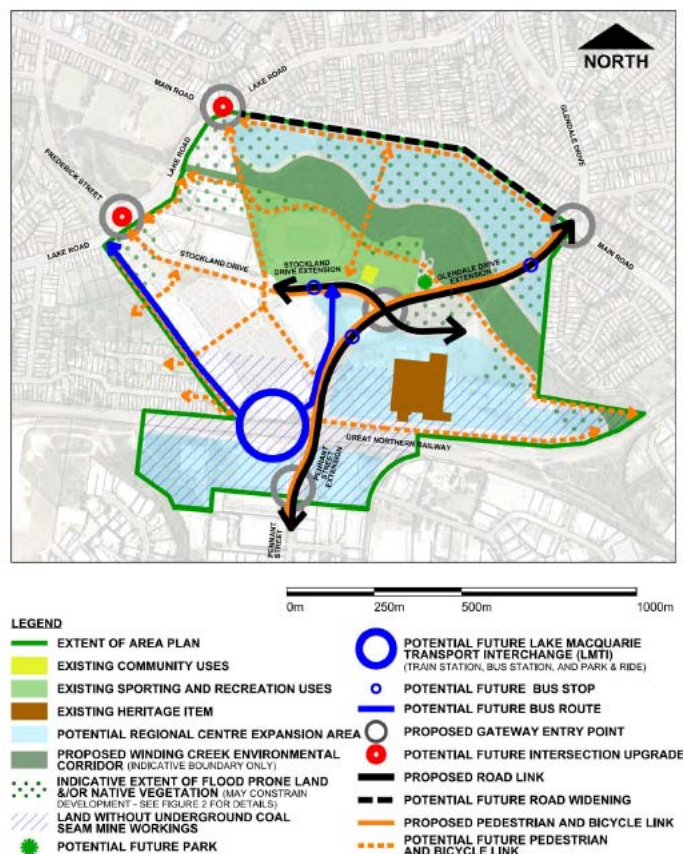
The application proposes no additional signs as part of the modified development. Signage zones have been nominated on the elevations of the buildings however consent is not sought. Therefore the condition contained in the parent consent requiring separate consent for any advertising structures or signs on the site is to be retained.

#### **Part 10.8 – Glendale Town Centre Area Plan**

The site is subject to the provisions of the Glendale Town Centre Area Plan and the Glendale regional centre structure plan. The structure plan in Figure 18 below identifies the subject land as being adjacent to the future LMTI (particularly the train station and



bus station) and providing future pedestrian links from the LMTI to Stockland Drive.



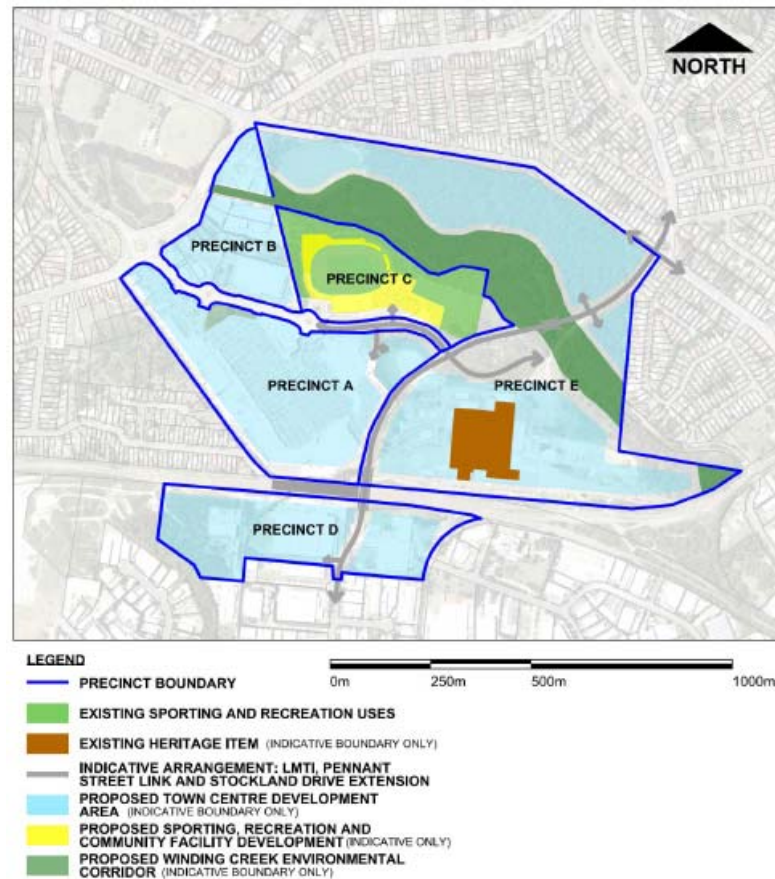
**Figure 18:** Glendale Regional Structure Plan

The modified development will maintain the improved pedestrian link between Coles and Kmart through the existing car parking area. Whilst the approved development is considered to have provided a more direct pedestrian path, the modified development provides improved pedestrian movement through the car park as well as allowing for efficient vehicle movements, and is considered to be an interim stage until future infill development (as indicated by the applicant) completes the pedestrian link between Coles and Kmart.

The modified development does not preclude the future connections to the LMTI nor road upgrades. Additionally, the subdivision seeks to facilitate the Stage 1 Section 2 LMTI works.

The Area Plan identifies in Figure 19 below the shopping centre as being contained within Precinct A.





**Figure 19:** Precinct boundaries of Glendale regional centre

Development in Precinct A is subject to seven principles, which the modified development is considered to remain consistent with. Those of which are relevant to the proposal are listed below:

*Principle 1 – To ensure future development integrates with the potential future LMTI*

The modified development will improve pedestrian connectivity through the car park, which is a positive aspect as the LMTI train station will have a pedestrian connections through the shopping centre. The proposal will also stage car parking reconfiguration and subdivision to assist in land dedication to Council to facilitate Stage 1 Section 2 LMTI road works (refer to comment in Section 4 of this report).

*Principle 2 – To deliver a grid-based internal road network*

The modified proposed will improve links between Coles and Kmart, and assist in facilitating a grid-based internal network as part of future development.

*Principle 3 – To deliver a mixture of main street-style development and enclosed shopping malls*

The modified proposal will create a new enclosed mall in front of Coles/Woolworths. New access roads will be created adjoining this enclosed mall, the elevation of which details glazing, awnings, landscaping and entry statements. The design also creates an 'mainstreet' around the casual dining precinct, consistent with the long term objectives of this Part.

*Principle 5 – To enhance passive surveillance within the precinct and of the surrounding area*

The new enclosed mall areas proposed by this application will provide a greater level of

surveillance and connectivity between the malls and car park area. It is noted the RPP included condition 8 in the original consent, requiring the external facades of the mall areas to further address the presentation to the car park area.

The modified design is considered to satisfy these concerns, and it is recommended condition 8 be deleted.

*Principle 7 – To provide open-air, landscaped areas within the precinct such as plazas*

The modified development provides an open air shopping mall, with a defined dining precinct and playground. These areas will be predominantly roofed (with some transparent roofing), however the side facades will provide extensive openings, with internal and external landscaping. Council's Landscape Architect has reviewed the proposal and is satisfied with the modified landscaping arrangements.

#### Section 4.1 Concept Plan

The Area Plan recommends a concept plan be lodged for development within Precinct A consistent with the Precinct Plan. Given the proposal is a modification to an approved infill development and is considered to satisfy the relevant objectives of this part, a concept plan is not necessary.

Having regard to the precinct plan, shown below in Figure 20, the modified development is generally consistent and does not preclude future development warranting a reconfiguration to accommodate the LMTI.

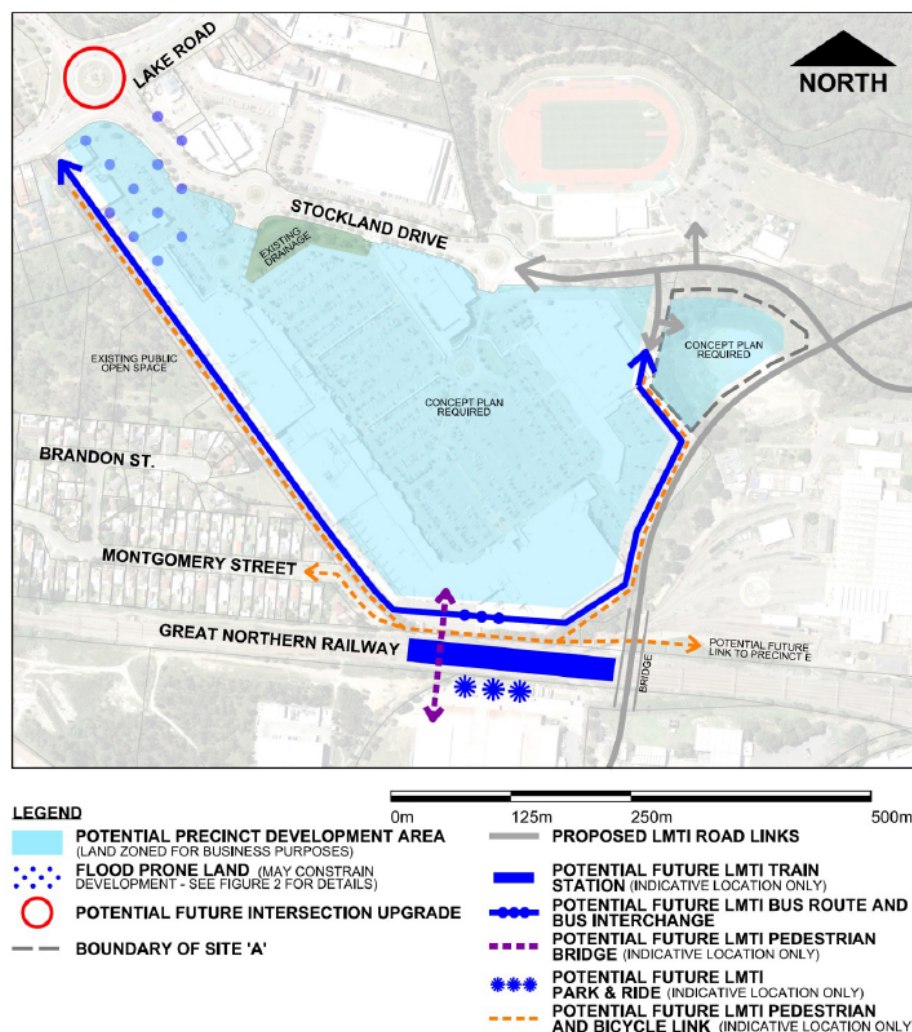


Figure 20: Precinct Plan: Precinct A

## Section 4.2 Pedestrian and Bicycle Links

The modified development incorporates improved pedestrian links which allow for improved safety, and efficient vehicle movement within the centre. Figure 21 below details the modified arrangements. Of note is the improved link between K-Mart and Coles/Woolworths, and the creation of the casual dining precinct as a central hub with pedestrian links fanning out to the cinemas, the bus interchange, the various specialty stores, the supermarkets and discount department stores.

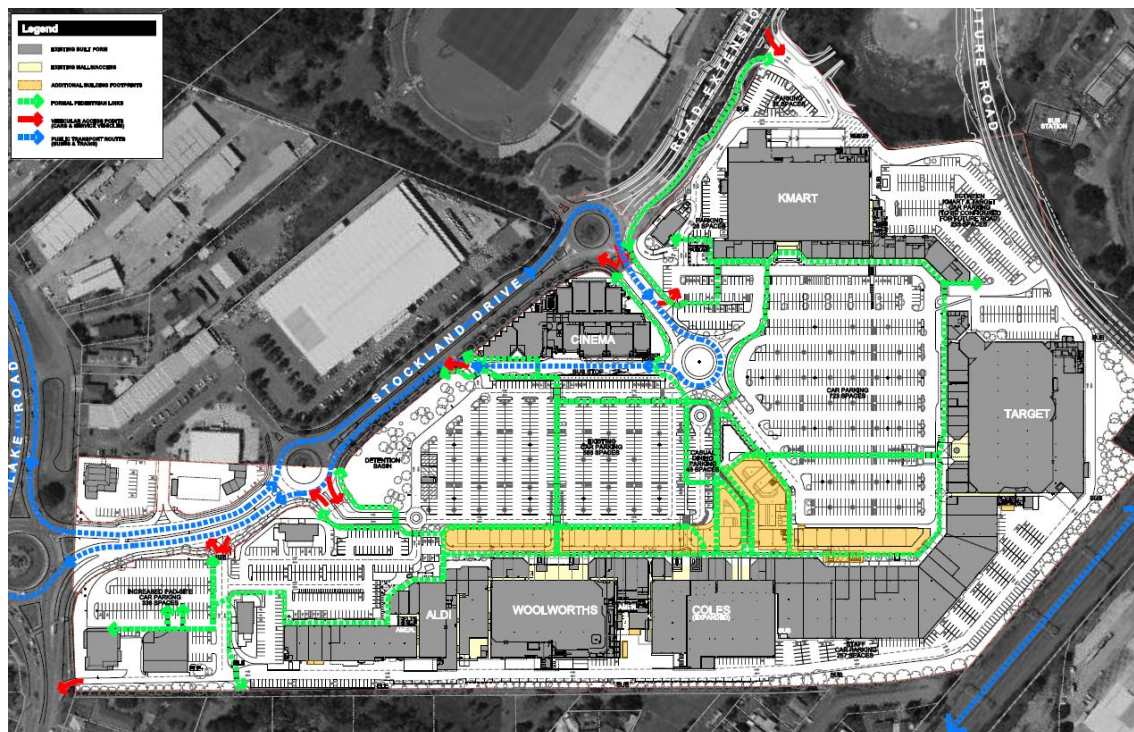


Figure 21: Precinct Plan: Precinct A

External pedestrian and bicycle links are maintained, however the modified development provides improved links to the Glendale athletics centre Stockland Drive heading to Main Road, Cardiff. These links are consistent with the Glendale regional centre structure plan (Figure 18) and the Precinct A concept plan (Figure 19).

**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**

Refer to comment under Section 4 of this report.

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

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



#### **4.15(b)            the likely impacts of the development**

The likely impacts of the development are considered below:

- Built Environment –        The development is consistent with the design guidelines of the Glendale Town Centre Area Plan under Part 10.8 of DCP 2014, and is suitable with regard to the both the streetscape character and that of development on adjoining land. The modified development does not have a significant or adverse impact on the built environment.
- Natural Environment –    The tree removal and stormwater arrangements are considered acceptable. The development is not likely to have a significant impact on the natural environment.
- Social Impact –            The development will upgrade the existing shopping centre, providing an additional playground and improved pedestrian access and is likely to have a positive social impact.
- Economic –                The proposal is likely to have a positive economic impact through the creation of jobs and increase economic activity during both the construction period and operation of the development.

#### **4.15(c) the suitability of the site for development**

##### **Does the proposal fit the locality?**

The proposed additions to the shopping centre will not have adverse impacts on the character of the broader Glendale Town Centre, and the development is suitable with regard to existing development on the site and adjoining properties and the physical and environmental constraints of the site. The modified development is therefore considered suitable. The modified development has no additional impacts beyond the parent development, and in particular areas achieves an improved outcome.

##### **Are the site attributes conducive to development?**

The site attributes have been reviewed in the context of the modified development and are considered conducive to the development.

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

**Public submissions:**

The section 4.55(2) application was notified to adjoining properties and submitters as per the original application from 6 September 2018 to 21 September 2018. Council received no submissions.

**Submissions from public authorities:**

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

Ausgrid

Ausgrid provided comment on 27 September 2017. No objections were raised to the proposal, but general advice was provided regarding matters that required consideration at the design stage prior to construction works. The existing condition in the parent consent is therefore unchanged.

NSW Police

The application to modify the development consent was referred to NSW Police for comment. To date Council has not received a response (no response was received for the parent development application).

Notwithstanding, a revised CPTED report submitted with the application has been deemed to adequately address safer by design principles typically considered by NSW Police. Condition 16 in Appendix E has been updated to reflect the recommendations of the revised CPTED report.

Roads and Maritime

The application to modify consent was referred to RMS on 5 September 2017 and the amended application referred on 29 May 2018. To date no response has been received.

The parent consent was determined based on no objection raised by RMS, which did not specify any conditions to be imposed.

Subsidence Advisory NSW

The parent application was referred to NSW Subsidence Advisory as Integrated Development under Mine Subsidence Compensation Act, with General Terms of Approval received and included in the consent conditions. Consequently, the application to modify the development was referred to the NSW Subsidence Authority.

In correspondence dated 6 September 2017 NSW Subsidence Authority provides revised General Terms of Approval. These have been included in the recommended conditions.

Sydney Trains

The application was referred on 6 September 2017 to Sydney Trains under State Environmental Planning Policy (Infrastructure) 2007 for development immediately adjacent to rail corridors. To date no response has been received.

The parent consent was determined based on no response from Sydney Trains. No conditions were specified.



#### **4.15(e) the public interest**

##### **Glendale Regional Centre Master Plan**

The assessment of the parent application considered the Glendale Regional Centre Master Plan (GRCMP), as at the time of determination the Glendale Town Centre Area Plan was in draft form. The parent development was considered consistent with the GRCMP.

With the adoption of the Glendale Town Centre Area Plan under DCP 2014, an assessment of the modified development has determined it compliant with the Plan and hence meets the broader objectives/requirements of the GRCMP.

##### **City Council Glendale Contributions Plan (2015)**

At the time of determination of the parent application the Lake Macquarie City Council Development Contributions Plan – Citywide (2004) Glendale Catchment did not levy for employment generating development, hence no contributions applied to the alterations and additions to the Glendale shopping centre.

As part of the determination the applicant provided an offer to enter into a PA (under section 7.7(3) of the Environmental Planning and Assessment Act, 1979). The offer included monetary contributions and land dedication in lieu of obligations under condition 8 of DA/4413/2004 and in relation to addressing the benefits gained by the shopping centre in relation to Section 1 of Stage 1 of the LMTI.

The Lake Macquarie City Council Glendale Contributions Plan (2015) was adopted after the approval of the parent consent. Whilst this plan levies for employment generating development, no conditions are recommended for contributions under this plan based on the standing of the offer by the applicant to enter into a PA.

Refer to comment under section 4 of the assessment report with regard to a LoO and PA.

##### **Lake Macquarie Coastal Zone Management Plan**

Council's assessment has considered the Lake Macquarie Coastal Zone Management Plan (October 2015). The Plan contains a four year action plan, and identified coastal, estuary and Swansea Channel areas and states its aim as being to deliver the objectives of the Lake Macquarie Community Strategic Plan.

The modified development will provide appropriate measures for stormwater management and erosion and sediment control, complying with the relevant controls in DCP 2014. In this regard, the modified development is not likely to have any impact on the coastal zone or estuary processes and does not raise any concern with regard to the aims and objectives of the Coastal Zone Management Plan.

##### **Greater Newcastle Metropolitan Plan 2036**

The expansion of the Stockland shopping centre under the modified development is consistent with the outcomes for the North West Lake Macquarie catalyst area in the Greater Newcastle Metropolitan Plan.

## **6. CONCLUSION**

An assessment of the application to modify development application DA/764/2014 found it to be substantially the same as the original development, consistent with the zone objectives and satisfactory in terms of relevant clauses of LMLEP 2014, and to be generally compliant with DCP 2014. The assessment focussed on issues in relation to urban design, landscaping, pedestrian access, car parking, vehicle access and impacts on the adjoining road network.

The modified development is well designed and is an improvement on the parent consent by virtue of its reduced impacts on the environment. The modified development will continue to enhance Glendale's standing as a strategic centre within the lower hunter region through the increased employment and retail services.

Additionally, the modified development and the revised Letter of Offer recognises the completion of Section 1 of Stage 1 of the LMTI, continues to address the benefit of the LMTI to the Stockland Glendale Shopping Centre, and seeks to facilitate Section 2 of Stage 1 works.

Therefore, as the modified development is in the public interest it is recommended consent be granted subject to conditions listed in Appendix E.

## **7. RECOMMENDATION**

It is recommended modification application DA/764/2014/A being for 'Shops and Restaurants' be approved subject to the modified conditions as listed in Appendix E.

## Endorsement

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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.



Elizabeth Lambert  
**Chief Development Planner**  
**Development Assessment and Compliance**