

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

Panel Reference	2017HCC034
DA Number	DA2016/00733.01
Local Government Area	NEWCASTLE CITY COUNCIL
Approved Development	Alterations and additions to shopping centre, involving the construction of an additional 6,295m ² retail space, associated car parking and the relocation of Kmart Auto.
Street Address	89 Park Avenue, Kotara
Modified Development Description	Changes to floor plan layout, car parking and access, landscaping and conditions of consent.
Applicant/Owner	Applicant - Scentre Limited Owners - Scentre Custodian Pty Ltd
Date of Section 96 lodgement	21 September 2017
Number of Submissions	None
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the Act)	The application is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 ' <i>regional development</i> ' of State Environmental Planning Policy (State and Regional Development) 2011 as the modification is a Section 96(2) application, for a proposed development listed within Schedule 4A of the EP&A Act, being general development over \$20 million. The proposed modified development has a capital investment value of \$102,101,129.
List of All Relevant s79C(1)(a) Matters	Environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Newcastle Local Environmental Plan 2012 Development Control Plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's	Appendix A - Conditions of consent Appendix B - Documents submitted with the application Appendix C - RMS letter

consideration	Appendix D - Hunter Water letter
Report by	Newcastle City Council
Report date	1 February 2018

Summary of s79C matters

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

Legislative clauses requiring consent authority satisfaction

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

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

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

Conditions

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

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

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development Application No. 2016-00733.01 has been lodged with Council seeking modifications to the development consent granted by the Hunter and Central Coast Joint Regional Planning Panel on 16 March 2017 for:

- Modifications to the internal configuration of retail floor space with no overall change to the approved addition of 6,295m² of retail floor space.
- Additional 81 car spaces on Mezzanine Level 1M resulting in a total surplus parking of 92 spaces over the site.
- Modification to servicing and loading dock arrangements.
- Relocation of existing access driveway on Northcott Drive by 15 metres (towards the Park Avenue intersection).
- Relocation of Kmart Auto to a location similar to the existing Kmart Auto tenancy adjacent to Northcott Drive.
- Modified landscape treatment to Northcott Drive frontage, including removal of additional existing trees and replanting of native trees.
- Modification to Condition 13 & 14 to reflect timing in accordance with Hunter Water advice.
- Modification of Condition 25 to provide solar panel roof installation and shading to Level 3 carpark in lieu of compensatory planting.
- Modification of Condition 59 relating to hours of construction/demolition works.
- Modification to Condition 73 to amend the timing of the installation of the visual treatment of ramp.
- Modification of Condition 90 to remove reference to green wall and shade trees on rooftop and split condition to reflect timing.

The modification proposal was placed on public exhibition for a period of 21 days from 26 September 2017 to 16 October 2017 in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012. No submissions were received during the notification period.

The application is recommended for approval, as the proposed modified development will result in a development that is substantially the same as the approved scheme.

The application is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 '*regional development*' of State Environmental Planning Policy (State and Regional Development) 2011 as the modification is a Section 96(2) application, for a proposed development listed within Schedule 4A of the EP&A Act, being general development over \$20 million. The proposed modified development has a capital investment value of \$102,101,129.

1. INTRODUCTION

This report provides a detailed overview of the modified development proposal for alterations and additions to the existing Shopping Centre (Westfield Kotara) at 89 Park Avenue, Kotara. The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 23G and Schedule 4A EP&A Act, as the proposal is a Section 96(2) EP&A Act modification to a development that was previously approved by the Hunter and Central Coast JRPP. The development is of a type classified under Schedule 4A of the EP&A Act as '*general development over \$20 million*', with the capital investment value of works (as per the modified proposal) being \$102,101,129.00.

2. BACKGROUND

A number of developments have been approved in recent years that have increased the size of the shopping centre and the type of facilities contained within Westfield Kotara. The approved development on the site includes:

- 88,046m² retail floor space (gross leasable floor area);
- Eight cinemas with a total seating capacity for 1,375 persons; and
- 3,133 car spaces.

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

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

In March 2017 development consent DA2016/00733 was granted for alterations and additions to the existing shopping centre, including:

- The construction of an additional 6,295m² of retail space at levels two and three to create a third retail mall consisting of 3,259m² mini majors (retail floor space) and 3,566m² of speciality shops and kiosk floor-space;
- An additional 197 car parking spaces at levels one (8 spaces) and three (189 spaces);
- The relocation of kmart auto to the former storage area within the north-west corner of level one;
- The re-configuration of the level two loading dock area and construction of a new loading dock at level three;
- The construction of an additional loading / car access ramp from the level one loading dock to level three and a car access "*speed ramp*" from level one to level two, which will link with the existing north-east car park;
- The relocation of the lift adjacent to the southern mini-major (level one to level three);

- The provision of a level three car-parking link to the southern car park to facilitate complete roof circulation;
- 76m² of new storage area floor-space at levels one and two;
- Associated landscape works including the removal of 16 trees and the planting of 12 replacement trees along the northcott drive and cynthia street site frontages;
- Pedestrian access pathways to northcott drive and kmart auto;
- New signage to cynthia street and northcott drive frontages.

3. SITE DESCRIPTION

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



Figure 1: The subject site

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

- Flooding
- Contamination
- Bushfire Prone - Category 1 and Buffer - southern part of site
- REMS Vegetation - Alluvial Tall Moist Forest - southern part of site
- Acid sulfate soil - Class 5

4. PROPOSAL

This application seeks consent for modifications to the approved alterations and additions to the existing shopping centre (as detailed below):

PROPOSED MODIFICATION	ASSESSMENT
Modifications to the internal configuration of retail floor space with no overall change to the approved addition of 6,295m ² of retail floor space.	The changes are mainly internal and do not impact on the function and use of the site or cause additional impacts to neighbouring properties.
Additional 81 car spaces on Mezzanine Level 1M resulting in a total surplus parking of 92 spaces over the site.	A detailed assessment of the changes to the parking layout and access arrangements for the modified development has been undertaken. The revised proposal is considered acceptable and the additional parking on the site is supported. In addition the RMS did not raise any objections to the relocation of the access driveway on Northcott Drive.
Modification to servicing and loading dock arrangements.	
Relocation of existing access driveway on Northcott Drive by 15 metres (towards the Park Avenue intersection).	
Relocation of Kmart Auto to a location similar to the existing Kmart Auto tenancy adjacent to Northcott Drive.	
Modified landscape treatment to Northcott Drive frontage, including removal of additional existing trees and replanting of native trees.	The proposed amendment is acceptable subject to additional compensatory planting in Hudson Park (refer to section 5.03 for further discussion).
Modification to Condition 13 & 14 to reflect timing of Hunter Water Compliance Certificate to be prior to Final Occupation Certificate rather than Construction Certificate.	Hunter Water have raised no concerns over this change. Refer to Appendix D .
Modification of Condition 25 to provide solar panel roof installation and shading to Level 3 carpark instead of 50% solar roof shading or shade tree planting.	The applicant provided numerous designs to Council in an attempt to comply with this condition. The proposed solar roof shading was considered to be visually dominant on the streetscape due to the bulk, scale and position of the proposed structures. The applicant has now proposed the installation of solar panels on the roof and some structures to allow shading of a number of car spaces. Given that the original intent of this condition was to provide a more amenable roof space for customers and to encourage a better

	environmental outcome, the proposed amendment to this condition is supported. Council will be required to assess the final plans for this area and an additional condition (condition 90.2) has been recommended to ensure that the shade structures are installed prior to the issue of the Occupation Certificate for Kmart.
Modification of Condition 59 relating to extended hours of construction/demolition works.	The amendment is not supported due to potential noise impacts on the nearby residential area.
Modification to Condition 73 to amend the timing of the installation of the visual treatment of ramp (ie prior to Occupation Certificate for "Kmart" on Level 2 instead of Final Occupation Certificate).	This amendment is supported.
Modification of Condition 90 to remove reference to green wall and shade trees on rooftop and split condition to reflect timing (ie prior to Occupation Certificate for "Kmart" on level 2 instead of Final occupation)	This amendment is supported as a better environmental outcome will be achieved on the site with the provision of solar shading and solar panels. The proposed landscaping to Northcott Dr and Cynthia St will create a 'green wall' effect when the landscaping is fully established, which will offset the removal of the green wall condition.

The applicant submits that the proposed amendments are the result of further refinement of the design and planned operation of the approved shopping centre and will result in a development that is substantially the same as the approved scheme. The majority of the proposed modifications do not result in any significant additional impacts. Accordingly, it is considered that the majority of the elements of the modified proposal remain acceptable.

The submitted plans are attached at **Appendix B**.

5. PLANNING ASSESSMENT

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

5.1.1 Section 23G – Joint Regional Planning Panels

Section 23G and Schedule 4A (3) of the EP&A Act requires the Joint Regional Planning Panel (JRPP) to determine applications for general development over \$20 million. The capital investment value of the modified application is \$102,101,129. The application is to be determined by the Hunter and Central Coast Regional Planning Panel, as the modification is a Section 96(2) application relating to a development that was originally approved by the JRPP.

5.1.2 Section 79C Evaluation

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

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

State Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 and 21 of the SEPP require the Joint Regional Planning Panel to be the determining authority for development included in Schedule 4A of the Act. The JRPP is the determining authority for section 96(2) applications for regional development.

State Environmental Planning Policy (Infrastructure) 2007

Traffic Generation

Schedule 3 of the ISEPP, relates to traffic generating development and requires certain applications to be referred to the RMS. The application was referred to the RMS under Clause 104 due to the size of the development (over 4000m² of shops) and the number of parking spaces in the development. The RMS provided a response on 25 October 2017 stating they have no objection to the proposed modified development.

In addition, Council's Traffic Engineer provided a detailed assessment of the traffic implications of the modified proposal, finding the proposal to be acceptable.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

SEPP 55 provides planning guidelines for remediation of contaminated lands. Clause 7(1) (b) and (c) of SEPP 55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The site is listed on Council's land contamination register as the site previously contained a service station. As part of a development application for extension to the centre in 1997 the report by Hyder Consulting '*Environmental Site Validation, Former Service Station Garden City Kotara*' dated March 1997, was submitted to Council. The report concluded that the site is suitable for its intended use with negligible risk to human health or the environment.

On this basis, Council is satisfied that the site is suitable in its current state for the purpose of the proposed development.

State Environmental Planning Policy No 64—Advertising and Signage

This policy aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area and is of high quality design and materials. Consent cannot be granted unless advertising structures are consistent with the objectives of the Policy and has been assessed in accordance with the assessment criteria in Schedule 1 of the SEPP. The modified proposal remains acceptable having regard to this policy.

Newcastle Local Environmental Plan 2012

Clause 1.3 – Land to which Plan applies

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

Clause 2.3 Land Use Table - Zoning

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

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for residential development that maintains active retail and business frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.*
- *To maintain the hierarchy of urban centres throughout the City of Newcastle and not prejudice the viability of the Newcastle City Centre.*

The modified proposal remains acceptable having regard to the objectives of the zone in that the development will encourage employment opportunities and will provide a range of retail and business uses. In addition, there are a number of local and regional strategic planning documents that highlight the importance of Kotara as a local centre.

Clause 4.3 Height of Buildings

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

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

The proposed development has a maximum height 24.6m. The internal reconfiguration of retail floor space and new mezzanine parking level 1M results in an increase to the approved building height of 600mm (ie RL 45.500) over the Level 3 part of the shopping complex. The new height remains below the height of the adjoining cinema complex and it is considered that the amended overall height of the development when viewed from Park Avenue, Northcott Drive and Lexington Parade is substantially the same as previously approved. The additional 600mm in height of Level 3 does not create any unreasonable overshadowing impacts beyond the existing shopping site boundaries.

While the application only involves a proposed modification to a development consent, the applicant has submitted a Clause 4.6 variation request that addresses the proposed variation from the 14m height limit. The submitted variation request is considered below.

Clause 4.4 Floor Space Ratio

This clause prescribes a maximum floor space ratio (FSR) of 2.0:1 for the site. The site has an existing area of 83,750m² and 88,046m² retail floor space (gross leasable floor area).

The site currently has an approved FSR of less than 1.051:1, which complies with the maximum 2:1 floor space ratio for the site.

The retail floor space (6,295m²) of the current approved development remains unchanged. The modification proposes alterations to the layout and configuration of the retail floor space, but no additional floor space is proposed, resulting in no changes to FSR.

The proposed configuration of the retail floor space will not result in any significant additional impacts upon the surrounding area.

Clause 4.6 - Exception to Development Standards

While the application only involves a proposed modification to a development consent, the applicant has submitted a Clause 4.6 variation request that addresses the proposed variation from the 14m height limit. Though Clause 4.6 is considered to be not directly relevant to a proposed modification, the clause provides a framework for assessing the proposed height increase.

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

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

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

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

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

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

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

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

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

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

excess of 14m in height. The additional height sought would occupy a very small portion of the overall Westfield Kotara building.

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

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

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

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

Does the development achieve a better planning outcome?

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

The proposed development sits comfortably within the current built form on the subject land. The location of the additional height is considered to be a better planning outcome than distributing building height closer to the southern end of the development which would create additional overshadowing on the public domain. The submitted shadow diagrams illustrate that additional overshadowing falls predominantly on the existing commercial zoned land. From a streetscape perspective, the proposal provides an appropriate transition of development from the highest development adjacent to Park Avenue in the north, stepping down to the south towards Hudson Park and the adjoining residential development.

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

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

The planning objectives for the height controls seek to ensure a scale of development that makes a positive contribution towards the built form of Kotara, consistent with the role of the established centre's hierarchy within the LGA. The numerical non-compliance with the height control results in no additional increase in environmental impact and provides an appropriate transition to the overall built form, being an approach that has been endorsed by Council's Urban Design Consultative Group. It is considered appropriate to apply height standards with some degree of flexibility on large significant sites such as the Westfield Kotara site.

The height of the building, comprising up to three levels of retail development is consistent with a modern shopping centre within a significant urban centre. It promotes the orderly and economic use and development of commercial land.

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

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

The proposed development satisfies the test established by the Land and Environment Court as being appropriate for consideration of "unreasonable or unnecessary" circumstances in the application of Clause 4.6 variation requests. It is considered that there are sufficient environmental planning grounds to vary the numerical standard in the circumstances of the case. Requiring strict compliance would hinder attainment of the relevant objects of the EP&A Act.

Clause 6.1 Acid Sulfate Soils

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

Clause 6.2 Earthworks

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

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

Draft State Environmental Planning Policy Coastal Management

It is considered that the modified proposal remains satisfactory in respect of the provisions of Draft State Environmental Planning Policy (Coastal Management) 2016.

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

4.01 - Flood Management

The modified proposal remains satisfactory having regard to this section.

Council's Engineer has made the following comments in relation to the request:

"The proposal to relocate the Kmart Auto building is clear of the predicted 1% Annual Exceedance probability (AEP) flood extent. As such it is acceptable to Council from a floor management perspective. No new or revised conditions are required."

5.01 - Soil Management

The modified proposal remains satisfactory having regard to this section.

5.02 - Land Contamination

The modified proposal remains satisfactory having regard to this section.

5.03 - Tree Management

The proposed modification to the approved development results in an amended landscape treatment to Northcott Drive and Cynthia Street frontage, including the removal of additional trees and replanting of native trees.

Two street trees within the verge of Northcott Drive are proposed to be removed. These trees are identified as *Lophostemon confertus* (Brushbox) and have been assessed as having a moderate retention value; however the proposed development requires their removal. There are a number of issues preventing the retention of these trees, these include:

- The trees conflict with the proposed driveway entrance for the car park. Retention of the trees will result in a lack of access to the car park from Northcott Drive.
- The existing trees have been lopped in the centre for the power lines resulting in a poor presentation of the canopy and visual appearance of these trees.
- The existing trees have exposed structural roots.

A number of existing trees within the site (19 in total) are also required to be removed along Northcott Drive. These trees have moderate to low retention value. The proximity of the existing trees and the new building works will result in significant impacts to these trees and will result in substantial root disturbance.

A total of 18 new trees are proposed to be planted along Cynthia Street and Northcott Drive. To compensate for the loss of these trees, it is recommended that additional compensatory planting (20 in total) be undertaken on Hudson Park, which is in close proximity to the site. Hudson Park is utilised by staff and customers and is considered the most appropriate location for additional planting, given the limited opportunity for additional planting on the subject site. Westfield has contributed to tree planting on Hudson Park in the past and this arrangement is considered an appropriate outcome in this instance. A condition is recommended to be included on the consent in this regard.

7.03 - Traffic, Parking and Access

Council's Engineer has made the following comments in relation to the modified proposal:

"Under DA2016/00733 a total of 3133 spaces are provided on-site representing an 11 space surplus. DA2016/00733.01 proposes a further 81 parking spaces without any increase in floor area. This represents an overall parking surplus of some 92 spaces resulting in a total onsite parking provision of 3214 spaces."

The application is considered acceptable on traffic grounds and the overall number of parking spaces and the amendments to the access arrangements on the site are supported. No changes are required to existing conditions and the modified proposal is satisfactory in relation to the DCP.

7.06 Stormwater and 7.07 Water Efficiency

The modified proposal remains satisfactory having regard to this section.

7.08 - Waste Management

The modified proposal remains satisfactory having regard to this section.

7.09 Outdoor Advertising and Signage

The modified proposal remains satisfactory having regard to this section.

8.00 - Public Participation

The modified proposal was notified in accordance with this policy. The application was notified for period of 14 days and no submissions were received.

Section 94A Development Contributions Plan

The modified development application attracts a Section 94A Contribution pursuant to Council's Section 94A Development Contributions Plan 2009. Under the plan, a contribution of 1% of the cost of development would be payable to Council. A condition has been recommended to reflect the amended cost of development.

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

No planning agreements are relevant to the proposal.

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

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979 and Regulation 2000*. The modified application remains acceptable.

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

The potential impacts of the development including social, environmental and economic have been considered in the assessment of the original development application. The modification will not result in any significant additional impacts. The loss of additional trees will be compensated by additional planting in Hudson Park and the additional parking proposed on the site will have social benefits for the staff and customers of the shopping centre.

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

The site is considered to be suitable for the proposed development as it is zoned B2 Local Centre and the development will encourage employment opportunities and will provide a range of retail and business uses in a suitable location.

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

The modified application was notified in accordance with the Regulations. No submissions were received.

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

The proposed modifications do not significantly alter the development for which the development consent was granted and will not result in any significant changes to the overall development previously approved by Newcastle City Council. The changes will not create any unreasonable impacts on the surrounding locality. The modifications will provide for improvements to the internal operations of the complex and the overall design and appearance of the shopping centre. The development will provide additional services and facilities to a significant retail centre and will improve the appeal of the existing centre, which has positive economic benefits for the region.

The development will set a contemporary standard for high quality retail development which is in the public interest.

6. CONCLUSION

The modified proposal is considered to be acceptable against the relevant heads of consideration under section 79C of the *Environmental Planning and Assessment Act 1979*, subject to a number of new and modified conditions as recommended in the attached condition schedule (**Appendix A**) .

7. RECOMMENDATION

THAT the Hunter and Central Coast JRPP, as the consent authority, determine to grant modified consent to DA2016/00733 (2016HCC050) at 89 Park Avenue Kotara, Lot 19 DP 876517 pursuant to Section 96(2) of the EP&A Act subject to the recommended conditions in **Appendix A**.