

**DETERMINATION AND STATEMENT OF REASONS**  
HUNTER AND CENTRAL COAST JOINT REGIONAL PLANNING  
PANEL

<b>DATE OF DETERMINATION</b>	1 February 2018
<b>PANEL MEMBERS</b>	Jason Perica (Chair), Michael Leavey, Stuart McDonald, Cr. John McKenzie,
<b>APOLOGIES</b>	Kara Krason
<b>DECLARATIONS OF INTEREST</b>	Jason Dunn declared a conflict of interest, as his clients are tenants of the applicant and involved in negation regarding this application.

Public meeting held at Travelodge Newcastle, 12 Steel St, Newcastle on 1 February 2018, opened at 4pm and closed at 4.45pm.

**MATTER DETERMINED**

2017HCC034 – Newcastle – Section 96 to DA2016/00733.01 at 89 Park Avenue, Kotara (AS DESCRIBED IN SCHEDULE 1)

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the Section 96 Modification application as described in Schedule 1 pursuant to section 96 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

**REASONS FOR THE DECISION**

The Panel generally agreed with the balancing of environmental assessment as contained in the Council assessment report. While a Masterplan for the site is still favoured by the Panel to guide future substantive work, the proposal did not increase the GFA.

The additional parking within the envelope was positive, as was the continued commitment to solar panelling on the roof, the relocation of the Auto servicing and internal rationalisation of space. The removal of trees without approval during construction was unfortunate and of concern, although it was noted the landscaped solution was acceptable and an additional condition regarding compensatory planting in a nearby park was negotiated between Council and the applicant.

A Clause 4.6 Variation request was not needed as the proposal was a modification application, although the Panel considered the height non-compliance related to the new works, which was minor and acceptable in this instance.

The reasons for variation to recommended conditions are outlined below. The main condition for the applicant was the construction hours. However, it is noted the existing condition allows reasonable flexibility in terms of allowing works which do not generate noise impact on neighbours, while further refinement to the condition (as below) allows reasonable further flexibility, if reviewed and approved by Council. Changing the core construction hours was not favoured by the Panel, as these provide a consistent policy framework for the LGA, balancing economic and construction considerations with respite and amenity issues for residents.

## CONDITIONS

The development application was approved subject to the recommended conditions in the Council Assessment Report with the following amendments:

- (a) The two recommended additional conditions be amended to refer to “applicant” rather than “developer” and the word “a” before “new trees” be deleted in the second new condition.

*Reason: For consistency and clarity.*

- (b) Condition 2 be amended to ensure it refers to the latest plans and information lodged with the proposal, as assessed.

*Reason: For accuracy.*

- (c) Condition 59 be amended by inclusion of the following sentence at the end of the condition: “Despite the above, in exceptional circumstances, the Council may allow additional construction hours, provided prior approval is sought and subsequently given by Council in writing.”





*Reason: To uphold the integrity of the construction hours consistently applied in the LGA, while allowing some flexibility in exceptional circumstances, if reasonable and approved by Council.*

- (d) Recommended Condition 25 be amended so the first sentence instead states: “A comprehensive solar plan shall be prepared, generally consistent with the approved plan, with any improvements where possible, that demonstrates shading for the proposed Level 3 carpark and any coverage above the new and existing roof space, while providing details to ensure the structural elements reduce visual impact from the surrounding streets and safety from potential car impact, together with a maintenance regime.

*Reason: To ensure the outcome is generally consistent with the plans lodged and negotiated with Council, while allowing improvements and refinement having regard to practical considerations, and ensuring details meet the intended effect.*

- (e) Recommended condition 73, 90.1 and 90.2 be amended to refer to “issue of the occupation certificate for the major tenant on level 2 (Kmart), or issue of the occupation certificate for the level 3 carpark, whichever occurs first”, rather than just “issue of the occupation certificate for the major tenant on level 2 (Kmart)”.

*Reason: To ensure rational and reasonable timing for the provision of the ramp treatment and landscaping.*

PANEL MEMBERS	
 Jason Perica (Chair)	 Cr. John McKenzie
 Stuart McDonald	 Michael Leavey

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017HCC034 – Newcastle - DA2016/00733.01 at 89 Park Avenue Kotara
2	PROPOSED DEVELOPMENT	Modification to approved Alterations and additions to shopping centre, involving the construction of an additional 6,295m <sup>2</sup> retail space, associated car parking and the relocation of Kmart Auto
3	STREET ADDRESS	89 Park Avenue, Kotara
4	APPLICANT/OWNER	Applicant - Scentre Limited / Owners - Scentre Custodian Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 96(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy No 55 – Remediation of Land</li> <li>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>Newcastle Local Environment Plan 2012</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Newcastle Development Control Plan 2012</li> <li>Section 94A Development Contributions Plan 2009</li> </ul> </li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>Section 79C of the EPA Act 1979</li> <li>The suitability of the site for the development</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 19 January 2018</li> <li>Written submissions during public exhibition: Nil</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Support – Nil</li> <li>Object – Nil</li> <li>On behalf of the applicant – Tom Taylor, Chris Barnett, Nicky Foster, David Winley, Sony Lim, Matthew Fisk</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing Meeting 12 October 2017</li> <li>Briefing meeting 30 November 2017</li> <li>Site inspection 1 February 2018 (and with prior DA)</li> <li>Final briefing meeting to discuss council's recommendation, 1 February at 3:00 pm. Attendees: Panel members: Jason Perica (Chair), Michael Leavey, Stuart McDonald, John McKenzie Council assessment staff: Sam Coles, Murray Blackburn-Smith</li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report