

**MODIFICATION APPLICATION REFERENCES**

<b>File No:</b>	DA/731/2016/B
<b>Proposal:</b>	Retail Premises - Shopping Centre Redevelopment - Demolition Of Existing Coles and Construction Of New Coles and Specialty Shops
<b>Address:</b>	46 & 56 Wilsons Road, Mount Hutton
<b>Lot/DP:</b>	Lots 101 & 103 in DP 1115833
<b>Estimated Cost of Works/Capital Investment Value:</b>	N/A
<b>Applicant:</b>	Robert Hain
<b>Owner's Consent:</b>	Yes – Application form signed.
<b>Assessing Officer:</b>	Jonathan Ford

**PRECIS**

The proposal is for the removal of Condition 26 imposed on the original development consent (extract below):

***Bus Shelter***

*The existing bus shelter along Wilsons Road shall upgraded to be consistent with the proposed development, in accordance with Council's Standard Drawing EGSD-801.*

*An approval under s138 of the Roads Act 1993 shall be obtained from Council prior to the issue of any Construction Certificate for these works.*

*Prior to the issue of a Compliance Certificate/Occupation Certificate a certificate shall be issued by the contractor stating that the bus shelter installation has been undertaken in accordance with the Council's Standard Drawing EGSD-801.*

The applicant has submitted legal documentation asserting that the condition is invalid.

This report assesses the proposal against relevant State, Regional and Local Environmental Planning Instruments and Policies.

## **CLASSIFICATION OF DEVELOPMENT**

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The proposal has been lodged as an amendment to DA/731/2016/B in accordance with Section 4.55 of the Environmental Planning and Assessment Act. The proposed modification is considered consistent with subclause (1) – Modifications involving minor error, misdescription or miscalculation.

## **REFERRALS**

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The application was referred to Council's Development Contributions team for assessment. Confirmation was provided that the proposed works (bus shelter) are reflected in the *Lake Macquarie City Council Development Contributions Plan Charlestown Contributions Catchment – 2015*. An email extract from Council's Development Contributions Coordinator is provided below:

*I confirm the section 94 contribution levied includes a levy for bus shelters and as such the condition (No.26) relating to the construction of the bus shelter can be removed.*

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

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### **Section 4.55 – Modification of Consents – Generally**

#### **Subclause (1) - Modifications involving minor error, misdescription or miscalculation**

Section 4.55, Subclause (1) provides:

*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 a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.*

The applicant's assertion that the imposition of a condition of consent for the construction of a bus shelter, combined with an imposition of a developer contributions levy requiring payment for the same works, is supported. Condition 26 was imposed in error hence the application is considered to be within the scope of Section 4.55 (1).

## **Recommendation**

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The proposal is recommended for approval, subject to the conditions imposed on the original consent.

### **Determination**

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The development has been determined under Delegated Authority (Development Planner) in accordance with the recommendation of this report.

### **Required Amendments**

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The following amendments will be undertaken as part of the approved modification:

- Deletion of Condition 26 – Bus Shelter.

### **Staff endorsement**

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

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

Signed:



Jonathan Ford  
**Development Planner**  
**Development Assessment and Compliance**