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13 December 2011

Mr Sam Haddad  
Director General  
NSW Department of Planning & Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000

Attention: Brent Devine (Environmental Planner - Metropolitan and Regional Projects North)

Dear Mr Haddad

**SECTION 96(1A) APPLICATION TO MODIFY DEVELOPMENT CONSENT DA 32-04-2006  
MOD 5  
STATION STREET MULLUMBIMBY, SUPERMARKET DEVELOPMENT**

This statement has been prepared on behalf of the applicant Fabcot Pty Ltd and accompanies an application to the Department of Planning and Infrastructure (the Department) under section 96(1A) of the *Environmental Planning & Assessment Act, 1979* (the Act) to modify Development Consent DA 32-04-2006 approved by the Minister for Planning on 6 November 2006 and later modified by the Minister on 27 June 2007 (MOD 1), 12 January 2009 (MOD 2), 13 April 2010 (MOD 3) and 22 July 2011 (MOD 4).

DA 32-4-2006 was approved under the provisions of State Environmental Planning Policy No.8 – Surplus Public Land (SEPP 8)(now repealed). The DA approved:

- Subdivision (2 lot boundary adjustment).
- Construction of a supermarket, including a bottle shop.
- Associated car parking, on site waste management system and landscaping.

The current modification application is submitted to the Minister for Planning as the original consent authority for the approved DA. The application seeks to modify the Stage 2 Conditions of Consent to remove the requirement to provide additional parking spaces. The modification also seeks to delete several Stage 2 conditions to remove unnecessary duplication of conditions which have already been satisfied as part of Stage 1, and which would no longer be required if the additional car parking is deleted. It is also noted that the On-site Sewage Management System (OSMS) was never commissioned as the site has been connected to Council's sewerage network. The approved plans associated with the OSMS are no longer required, and are also proposed to be deleted as part of this application.

As the proposed modification is minor in nature and will not result in any alterations to the development as approved, we request that the application be approved under delegated authority.

This submission identifies the consent, describes the proposed modifications and provides an assessment of the likely impacts in terms of the matters for consideration contained in section 96(1A) and 79C of the Act and demonstrates that the development as modified will be substantially the same development as the development originally granted development consent and will have minimal environmental impact. It is accompanied by the following:

- Section 96 application form and fee; and
- Parking Assessment prepared by Halcrow (**Attachment A**).

This statement should be read in conjunction with the original Statement of Environmental Effects (SEE) prepared by Kate Singleton Pty Ltd dated 24 April 2006 and subsequent section 96 Applications prepared by JBA Planning.

## 1.0 BACKGROUND

Consent was granted for the development to be carried out in two stages. Stage 1 comprised the majority of the works. Stage 2 comprises the installation of a meat preparation department and chicken cooking appliances, the provision of 13 additional car parking spaces, waste water management and landscaping of the Stage 2 car park. Stage 1 of the development has now been complete and the supermarket began operating in June 2011.

As part of the Stage 2 development, Fabcot is required to provide 13 additional parking spaces and associated landscaping works. However, since the opening of the supermarket earlier this year, it has become apparent that there is sufficient parking on the site, and the 125 existing spaces more than adequately cater for the demand generated by the supermarket.

The proposed modification is discussed at Section 4.0. A justification for the reduction in carparking spaces is provided at Section 6.0.

## 2.0 SITE DESCRIPTION

The site is shown at **Figure 1** below. The site is legally described as Lot 1 DP1121508 (formerly part Lot 3 DP 223650 and part Lot 11 DP 850902) and is located at Station Street, Mullumbimby in Byron Shire Council. The site has an area of 1.004ha and was vacant railway land prior to the construction of the supermarket. The site is bounded by vacant State Rail Authority land to the north, a former Telstra Depot to the south, the Casino-Murwillumbah railway line to the east and Station Street to the west.

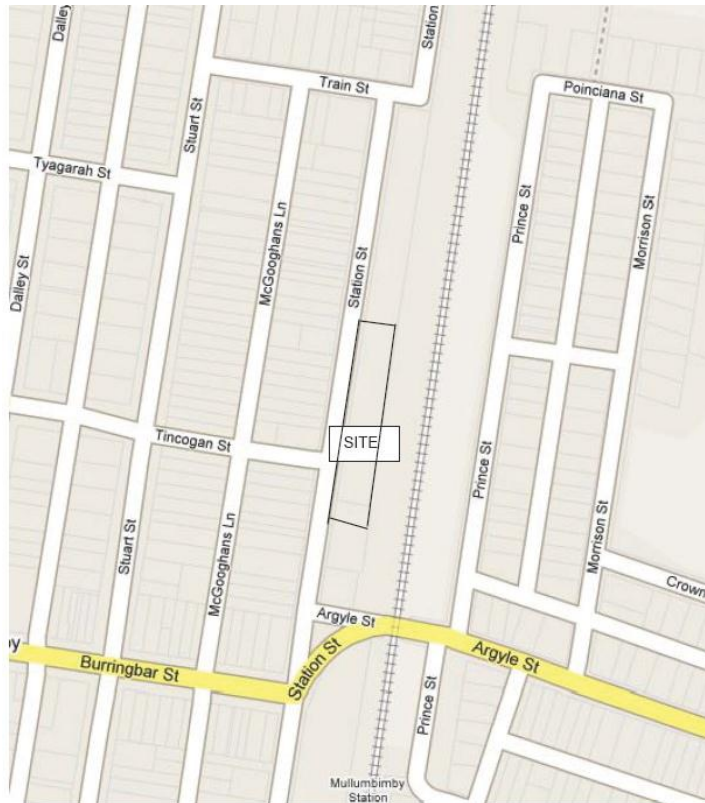


Figure 1 – Site Plan

### 3.0 CONSENT TO BE MODIFIED

The proposal seeks to modify Development Consent DA 32-04-2006 which was approved by the Minister for Planning on 6 November 2006 and later modified by the Minister on the 27 June 2007 (MOD 1), 12 January 2009 (MOD 2), 13 April 2010 (MOD 3) and 22 July 2011 (MOD 4).

### 4.0 PROPOSED MODIFICATION

As detailed in Section 1.0, the additional 13 parking spaces required under Condition H7 would be surplus to requirements. As a result, this application seeks to modify the conditions of consent to remove the requirement to provide these spaces, and the associated Stage 2 landscaping works. The existing landscaping treatment of the area that was earmarked to accommodate the additional parking spaces is consistent with the approved Stage 1 Landscape Plan.

This application also seeks to delete a number of Stage 2 conditions to eliminate unnecessary duplication where Stage 1 conditions (which have already been satisfied) are replicated in the Stage 2 consent, and which are no longer required if the Stage 2 parking spaces are deleted. It also seeks to delete the approved OSMS plans, as the site has been connected to Council's sewerage network.

#### 4.1 Modifications to Conditions of Consent

The proposed amended wording to the relevant conditions is identified below. Words proposed to be deleted are shown in ~~***bold italics and struck through***~~ and words to be inserted are shown in **bold and underlined**.

#### A1 Development Description

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Stage 2 of the proposal involves:

- a. Installation of a meat preparation department and chicken cooking appliances within the supermarket.
- b. ~~Provision of an additional 13 parking spaces;~~
- c. Waste Water Management - relies on reticulated sewerage disposal being made available to the site; (Note: this has occurred)
- d. ~~Landscape – further landscaping throughout the Stage 2 car park.~~

## A2 Development Description

The development shall be in accordance with development application number DA32-4-2006 as submitted by the Applicant on 24 April 2006, as modified by MOD32-3-2007, DA32-4-2006 MOD 2, DA32-4-2006 MOD 3, and DA32-4-2006 MOD 4, DA32-4-2006 MOD 5 and in accordance with the following:

Statement of Environmental Effects entitled Proposed Subdivision and Construction of a Supermarket at Part Lot 3 DP 223650 & Part Lot 11 DP 850902, Station Street, Mullumbimby prepared by Kate Singleton Town Planning Consultant, dated April 2006.			
Section 96(1A) Application to Modify Development Consent DA 32-4-2006 (MOD 22-3-2007) prepared by Kate Singleton Town Planning Consultant, dated 14 March 2007.			
Section 96(2) Application to Modify Development Consent DA 32-4-2006 entitled Station Street Mullumbimby, Super Market Development prepared by JBA Urban Planning Consultants dated April 2008.			
Section 96(2) Application Amendments entitled Station Street Mullumbimby, Super Market Development prepared by JBA Urban Planning Consultants dated June 2008.			
Correspondence from JBA Urban Planning Consultants dated 7 August 2008.			
Correspondence from JBA Urban Planning Consultants dated 19 September 2008.			
Correspondence from JBA Urban Planning Consultants dated 19 November 2008.			
Section 96(1A) Application Amendments entitled Station Street Mullumbimby, Super Market Development prepared by JBA Urban Planning Consultants dated February 2010			
<b>Section 96(1A) Application Amendments entitled Station Street Mullumbimby, Super Market Development prepared by JBA Urban Planning Consultants dated December 2011</b>			
Architectural (or Design) Drawings prepared by Suturs Architects Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
DA-01	L	Site Plan – Stage 1	07/04/10
<del>DA-01a</del>	<del>A</del>	<del>Site Plan – stage 2</del>	<del>07/04/10</del>
Landscape Drawings prepared by ERM			
Drawing No.	Revision	Name of Plan	Date
0080245.SC01	K	Landscape Concept Plan Stage 1	03/02/10
<del>0080245.SC02</del>	<del>B</del>	<del>Landscape Concept Plan Stage 2</del>	<del>07/04/10</del>
<b>On-site Sewage Management System Drawings prepared by BRW Enterprises (QLD) Pty Ltd</b>			
<del>6009-H1</del>	<del>6</del>	<del>Site Plan Waste Water Treatment Plan and Details</del>	<del>26/11/09</del>
<del>6009-H2</del>	<del>6</del>	<del>Site Plan Waste Water Treatment Plan and Details</del>	<del>30/11/09</del>
<del>6009-H3</del>	<del>7</del>	<del>Elevation of on-site Sewage Management System Table and Details</del>	<del>30/11/09</del>
<del>6009-H4</del>	<del>A</del>	<del>Ground Floor Drainage First Floor Sanitary Plumbing Trade Waste Calculations</del>	<del>13/10/09</del>

<del>6009-H5</del>	<del>C</del>	<del>Roof Plan Site Plan — Water and Fire Services</del>	<del>13/10/09</del>
<del>6009-H6</del>	<del>C</del>	<del>Ground Floor, Level 1 and 2 Water and Fire Services</del>	<del>13/10/09</del>
<del>6009-H7</del>	<del>A</del>	<del>Suspended Drainage Diagrammatics and Detail</del>	<del>13/10/09</del>
<del>6009-H8</del>	<del>A</del>	<del>Water and Fire Service Diagrammatics</del>	<del>13/10/09</del>
<del>6009-P&amp;ID</del>	<del>6</del>	<del>P&amp;ID Plan</del>	<del>30/11/09</del>
<del>Site Based Management Plan</del>	<del>Version 7.0</del>	<del>Site Based Management Plan, Woolworths Supermarket, Mullumbimby NSW</del>	<del>December 2009</del>
Survey Drawings prepared by Canty's Surveyors			
Drawing No.	Revision	Name of Plan	Date
1184		Plan of Proposed Subdivision of Lot 3 DP 223650 & Lot 11 DP 850902 (Railway Land) Station Street, Mullumbimby Shire of Byron Parish of Brunswick, County of Rous	8/02/2007

except for:

- (1) any modifications which are 'Exempt Development' as identified in Byron Local Environmental Plan 1988 or as may be necessary for the purpose of compliance with the BCA and any Australian Standards incorporated in the BCA;
- (2) otherwise provided by the conditions of this consent.

The following Stage 2 conditions are proposed to be deleted, in light of the proposed modifications and to eliminate unnecessary duplication with Stage 1 conditions that have already been satisfied:

- H4 Outdoor Lighting
- H6 Erosion and Sedimentation Control
- H7 Number of Car Spaces
- H8 Car Park and Service Vehicles Layout
- H9 Landscape Plan
- H13 Security Bond – Protection of Works
- H14 Certificate of Compliance – Water Management Act 2000
- H15 Water and Sewerage Section 68 Approval Required
- I1 Notice to be Given Prior to Excavation
- I3 Construction Management Plan
- I4 Traffic & Pedestrian Management Plan
- I5 Noise and Vibration Management Plan
- I6 Dust Management Plan
- I7 Construction Waste Management Plan
- I8 Contact Telephone Number
- I9 Public Safety Requirements
- I10 Services Searches
- I11 Use of lights and reflectivity materials
- I12 Demolition, Excavation and Construction Impacts
- I13 Crane and other aerial operations
- I15 Physical access to Railcorp facilities

- I16 Maintenance of Development
- I17 General access to the RailCorp's Facilities for maintenance and work purposes (eg road closures, access clearances)
- J1 Erosion and Sediment Control
- J4 Wiring in flood prone buildings
- J5 Approved Plans to be On-site
- J6 Site notice
- J7 Contact Telephone Number
- J8 Outdoor Lighting
- J9 Protection of Trees – Street Trees
- J10 Protection of Trees – On-site Trees
- J11 Hours of Work
- J12 Construction Noise Objective
- J13 Construction Noise Management
- J14 Vibration Criteria
- J15 Vibration Management
- J16 Impact of Below Ground (sub-surface) Works – Non-Aboriginal Relics
- J16 Impact of Below Ground (sub-surface) Works – Aboriginal Relics
- J18 Water Conservation
- J19 Builder's Rubbish
- K4 Structural Inspection Certificate
- K5 Road Damage
- K6 Registration of Easement
- K7 Water to be Connected
- K8 Car parking areas to be completed and signs to be provided
- K9 Sealed driveway in accordance with the Roads Act

The following conditions will be retained for Stage 2 to cover the Stage 2 meat preparation areas and chicken cooking appliances:

- H11 Design of Food Premises
- J2 Disposal of Seepage and Stormwater
- K1 Fire Safety Certificate
- K2 Annual Fire Safety Statement
- K3 Mechanical Ventilation

## 5.0 SUBSTANTIALLY THE SAME DEVELOPMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify a development consent if:

*“(a) it is satisfied that the proposed modification is of **minimal environmental impact**, and  
(b) it is satisfied that the development to which the consent as modified relates is **substantially the same development** as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).”*

The amendment sought will result in a development that is the same as the development for which the consent was originally granted. The modification will not result in any changes to the land use, built form or key elements of the design. The deletion of the car parking spaces does not change the essential categorisation and form of the development. Furthermore, the modification will have minimal environmental impacts, with no additional environmental impacts beyond those considered in the original application, as detailed in Section 6.0 of this report.

## 6.0 ENVIRONMENTAL ASSESSMENT

The following is our assessment of the environmental effects of the proposed development. The assessment includes only those matters under section 79C(1) that are relevant to the proposal. The SEE submitted with the original DA addressed the proposed development's level of compliance against the relevant planning instruments. Generally, the proposed modifications as described in Section 4, do not give rise to any material alteration to the assessment against the plans assessed as part of the original application. Consideration has however been given to the potential impact that the proposed modification will have on traffic and parking.

### *Traffic and Parking*

A Parking Statement has been prepared by Halcrow (refer to **Attachment A**) to determine whether the existing 125 spaces provided as part of Stage 1 are sufficient to meet demand.

A parking demand survey was undertaken during the supermarket's peak trading periods (Thursday afternoon and Saturday morning). The survey identified that the car park has significant capacity, even during these times. For the Thursday peak period, the highest demand occurred at 4:00pm, with a total parking demand of 71 spaces representing approximately 57% of the available capacity. On Saturday, the peak parking demand was 81 spaces, or approximately 66% of the available capacity. The survey demonstrates that even during the busiest period, there were a total of 51 spaces available.

The report concludes that there is sufficient spare parking capacity available within the site to accommodate existing parking demand, as well as some growth of parking demand in the future. As a result, the removal of the condition requiring the provision of 13 additional spaces will not create any adverse effects on the availability of parking spaces, now or in the future.

### *Landscaped Open Space*

The additional 13 spaces are not required for the operation of the supermarket, and it is considered that the area set aside to accommodate the additional parking has more value as open space, providing a buffer between adjoining residential dwellings and a public recreation area. A photograph of the space is provided at **Figure 2**. It is noted that the fencing shown in the photograph will be removed to enable public access to the space.

The existing landscaping treatment is consistent with the Stage 1 Landscape Concept Plan prepared by ERM.





Figure 2 – View of the space reserved for additional parking, showing established landscaping

## 7.0 CONCLUSION

In accordance with section 96(1A) of the Act, the proposed modification involves a minor reduction to the approved number of parking spaces, and will not result in any changes to the existing parking arrangements. The modifications are of minimal environmental impact and result in a development that will be substantially the same as the originally approved development.

In light of the above, we recommend that the Department of Planning and Infrastructure approve the proposed modifications as described in this submission. We trust that this information is sufficient to enable a prompt assessment of the proposed modifications.

Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or [ktudehope@jbaplanning.com.au](mailto:ktudehope@jbaplanning.com.au).

Yours faithfully



Kate Tudehope  
*Urban Planner*