NSW GOVERNMENT | Planning & Infrastructure

MODIFICATION REQUEST: Cabarita Mixed Use Development Lots 184-187 & 191-194 DP 259164 and Lots 20-23 DP 31208 (07_0179 MOD 1)

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

December 2011

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NSW Government
Department of Planning & Infrastructure

EXECUTIVE SUMMARY

The Director-General, as delegate to the Minister for Planning on 2 December 2009, approved a mixed use development at Tweed Coast Road and Hastings Road, Cabarita Beach/Bogangar in the Tweed local government area. This approval comprised a part 3 and part 4 storey mixed use development including a 2310m² supermarket, 1106m² of retail specialty shops, shop top housing incorporating 40 residential apartments and combined parking for 204 cars.

On 12 October 2011, WA Stockwell Pty Ltd submitted an application to modify the part 3A project approval pursuant to Section 75W of the Environmental Planning and Assessment Act 1979.

The proponent seeks to increase the size of the supermarket and decrease the area of speciality retail, resulting in a minor ($24m^2$) reduction in overall floor space area, new staging of the development into two stages, relocation of the pedestrian connection, altering the location of the lobby of the residential apartments, installation of a travelator and lift, replacement of the supermarket mezzanine office with a new dedicated office level and air conditioning plant area, rearrangement of car parking, relocation of the loading bay and access on Hastings Road and altered floor levels which reflect the flood limits dictated by the Council recent flood mapping.

The proposal was referred to the Council and placed on the department's website, with no other formal notification undertaken. No objections to the proposal have been received. The Council has raised no objections to the proposed modification.

The local depressed market for residential apartments prompted the proponent to request the approval be modified to allow for its implementation over two stages. Stage 1 comprises the supermarket and speciality shops retail component together with the entire parking related to both stages. Stage 2 is to comprise the shop top housing (40 residential units), to be deferred until market conditions for new residential units improve. The revised residential lobby area frontage to Tweed Coast Road will accommodate automatic teller machines as an interim 'active' use until the Stage 2 residential development is implemented. The entire car park will become operational during stage 1 and the residential parking allocation set aside for Stage 2 will be available for retail parking as an interim Stage 1 use. Conditions ensure that the Stage 1 structural requirements adequately cater for a future implementation of the residential development in Stage 2.

The proposal also redistributes floor space area between the supermarket and speciality retail uses with consequential changes to the conditions of approval including S94 Contributions and staging of the contributions. Tweed Shire Council has agreed with the revised contributions schedule in the amended conditions and staging of the contributions but reqested to be kept informed about progress towards implementation of Stage 2.

The proposed modification, although now to be implemented over two stages, provides an overall superior urban design outcome for the site and locality. The modifications are contextually minor and will not result in any significant adverse impact or in any substantial changes to the proposal that was originally approved. They also represent an overall improvement to the approved proposal, especially in urban design terms.

It is recommended that this modification request be approved, subject to amended conditions.

1. BACKGROUND

This report assess a proposal to modify Major Project 07_0179 involving a mixed use development at Lots 184-187 & 191-194 DP 259164 and Lots 20-23 DP 31208 Tweed Coast Road and Hastings Road, Cabarita Beach/Bogangar, in the Tweed Local Government Area pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Modification of an approval under Section 75W in Part 3A is enabled virtue of Clause 3 of Schedule 6A of the EP&A Act, 1979.

On 2 December 2009, the Director-General, as delegate to the Minister for Planning approved a part 3 and 4 storey mixed use development comprising the following:

- ground level commercial component encompassing a 2310m² supermarket and 1106m² of retail speciality shops
- 40 upper level residential units (shop top housing)
- ground level public forecourt
- pedestrian thoroughfare
- landscaped podium
- site landscaping
- basement and surface car parking for 204 vehicles
- loading bay
- three access points from Hastings Road
- excavation works, and
- signage

There have been no previous modifications to this approval. The subject site is shown in Figures 1 and 2 below.

Figure 1: Project Location

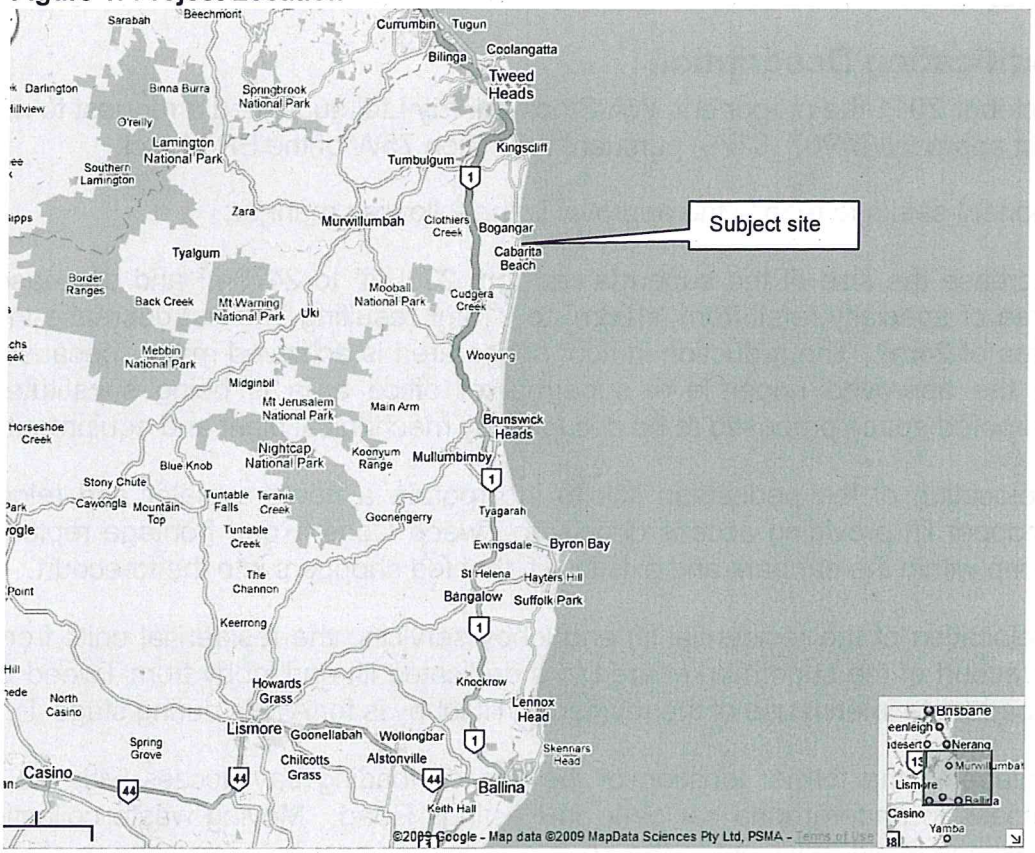

Figure 2: Aerial photo of the site

2. PROPOSED MODIFICATION

2.1 Modification Description

On 12 October 2011 the proponent, WA Stockwell Pty Ltd, submitted a request to modify the project approval (MP07_0179) pursuant to section 75W of the EP&A Act.

The proponent seeks to modify the approval in the following manner:

- Increase the size of the supermarket from 2310m² to 2479m² and decrease the area of specialty retail from 1106m² to 913m² resulting in a net decrease in floor area of 24m². The reduction in floor space area is achieved mainly because part of the approved upper level supermarket office area is being substituted by unroofed space proposed to be occupied by mechanical plant and equipment.

- Relocation of the pedestrian link to incorporate a new travelator and relocated shopper lift providing access directly to Tweed Coast Road frontage replacing a ramp within the car park and existing lift that fed shoppers into the forecourt.

- Relocation of the residential lift and lobby servicing the residential units from the forecourt of the supermarket area to a dedicated lift and lobby from Tweed Coast Road (note interim use of the residential lift lobby is for ATMs during stage 1).

- Swapping the former location of the service loading bay access with the main access to underground car park on Hastings Road. Moving waste collection to Hastings Road, adjacent to the open air car park access. Segregation of loading bays and parking access is maintained.

- New supermarket office level (incorporating stair fire egress from the landscaped roof) and new plant area in the location previously occupied by mezzanine office, resulting in an increase in wall height at the Hastings Street frontage.

- Staging of the development to allow implementation over two stages, including corresponding staged payment of the Section 94 contributions. Stage 1 comprises the retail/supermarket component. Stage 2 comprises the shop top housing residential component (40 residential apartments).

- Altering the flood freeboard requirement for the basement car park to be within the limits provided for under the Council's current flood mapping (no resulting change to maximum building height).

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Section 75W of the EP&A Act provides that a proponent may request the Minister to modify the approval of a project. The Minister's approval is not required if the project as modified will be consistent with the original approval. As the proposed modification seeks to change the terms of the Minister's determination through amending the conditions of approval, the modification requires formal application and approval.

3.2 Environmental Assessment Requirements

Section 75W of the EP&A Act provides the Director-General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. The minor nature of modification rendered the issuing of any further environmental assessment requirements as unnecessary.

3.3 Delegated Authority

Under the Instrument of Delegation, effective 1st October, 2011, from the Minister for Planning and Infrastructure, the Executive Director, Major Project Assessments, is the determining authority for this Section 75W modification application where:

- the council has not made an objection, and
- there are less than 25 public submissions objecting to the proposal, and
- a political disclosure statement has not been made in relation to the application.

There have been no submissions received from the public. The Tweed Shire Council has made a submission only to recommend conditions and has not made an objection to the proposal (refer Section 4.1). No political disclosure statement is provided for this application.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

While section 75W of the EP&A Act does not require a modification request to be publicly exhibited, the proposed modification was forwarded to Tweed Shire Council for comment. A copy of the request for modification was also placed on the Department's website. No public submissions have been received.

Tweed Shire Council has responded and provided a number of comments on the proposed amendments to the approval. These comments are outlined in Section 5 below.

5. ASSESSMENT

The proponent is seeking amendment to a number of aspects and conditions that relate to this approval. The specific matters will be dealt with in turn under the headings as follow:

Changes in floor area and elevation of the supermarket and specialty retail

Two factors main need to be considered: the socio economic impacts of the redistribution of floor space area and the resulting physical changes to the layout of the development relative to access and urban design outcomes.

Socio economic impacts

The proposal increases the size of the supermarket from 2310m² to 2479m² while also decreasing the area of specialty retail from 1106m² to 913m², resulting in an overall decrease of 24m² in floor space area (as a result of the reduction in office area). The supermarket's internal mezzanine office (formerly 200m^2) is substituted with a new enclosed floor (176m^2) of supermarket office space, plus a fire egress and access from the landscaped roof. This enables freed up former mezzanine office space to be occupied by enclosed mechanical plant.

A socio-economic impact assessment commissioned by the proponent advises that the proposal presents a minor redistribution in floor space of about 200m² between the supermarket and specialty retailers. This represents a difference of less than 1% market share respectively.

In the original assessment the centre was forecast to achieve a turnover of $21.86M in June 2011 - the centre's assumed first full year of trading. The supermarket's share was for a turnover of $16.21M. The resulting productivity level was anticipated to be $7,682/m². The floor space revisions result in a small decline in the forecast productivity level of the supermarket of about 9%, down to $7,039/m². This decline is due to the floor area of the supermarket increasing while the turnover is predicted to remain the same. This continues to represent a healthy productivity level according to the authors of the socio economic assessment report.

The specialty retailers were forecast to contribute $5.62 million to the overall centre's turnover. Productivity is expected to slightly increase to $6,667/m² because floor area is reduced relative to the assumed constant level of turnover from the original assessment.

The socio economic assessment concludes that the redistribution of floor space in the development will not result in any changes to the overall turnover of the centre and that the increase in supermarket floor space does not change the intended function of the supermarket. The supermarket is smaller than a full line supermarket and was predicted to be unlikely to meet all the food shopping needs of the locality. The report also predicts that the redistribution of floor space will not result in any changes to the total centre turnover nor result in any excessive impacts on the existing retail network serving Tweed Shire.

The Council's submission raises no objection to this redistribution of retail space.

Physical changes to the supermarket layout

The Council requires a minimum clearance height of 4.7 metres along an existing vehicular laneway easement used to access neighbouring properties. This laneway dissects the site's centre from north to south. The laneway provides service vehicle access to the rear of the properties fronting Tweed Coast and Hastings Roads. The original approval includes conditions to maintain vehicular access through the site to neighbouring properties. The slightly revised layout in this modification results in the building being cantilevered over the laneway. The underside clearance will maintain a minimum 4.7m height clearance (as provided for in the original approval) to cater for the council's requirements.

The mezzanine office on the Hastings Road frontage is redesigned to incorporate a separate office level for the supermarket and a rooftop mechanical plant area. This increases the street wall height by about 1 metre (skillion roof level RL 14.55, previously RL 13.6 – refer drawing DA-20). A new enclosed roofed stairwell (maximum height RL 16.35), setback from the street frontage, provides fire escape egress from the landscaped roof area and access from the supermarket office level below. This stair element will be capped with a maintenance hatch at the roof level during Stage 1 with fire egress from the rooftop landscaped area provided when Stage 2 is implemented (refer drawing DA-21). These elements represent minor increases to the height of the façade and to this part of the site (the previously approved maximum height of the development is not increased). As was the case in the original approval, this façade is detailed with windows to the supermarket office area as well as incorporating decorative screening for the remaining office façade area above the car park and loading dock entries.. New decorative and acoustic screening is added around the plant area. This represents an acceptable treatment for the façade of a services area of a retail complex to a secondary street.

Relocation of pedestrian connection and installation of travelators and lifts

The original approval provided for pedestrian access through the site from Hastings Road via a walkwaway that diverted at right angles to access a lift and a ramp. The ramp and lift brought pedestrians up to the centre of the forecourt area requiring pedestrian through traffic to compete with shoppers in the forecourt. This ramp access is to be removed and replaced with a new travelator and lift relocated to better cater for the change in levels between Hastings Road and Tweed Coast Road and to improve direct through site access for pedestrians (refer to Figure 3 below).

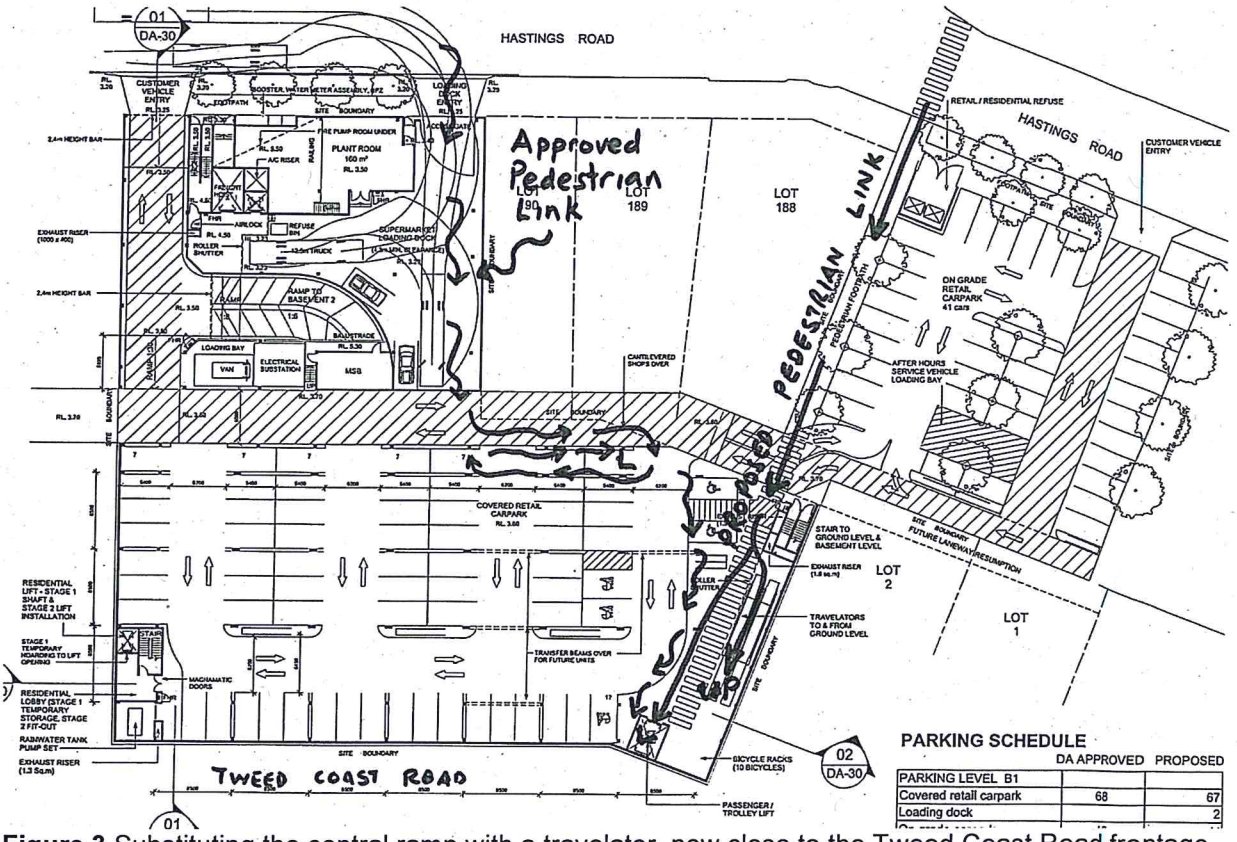

Figure 3 Substituting the central ramp with a travelator, now close to the Tweed Coast Road frontage, together with the direct access route from Hastings Road provides for a substantial improvement.

The new travelator and lift, combined with the revised proposed pedestrian link, will provide for a safe, legible, publicly accessible, illuminated, signposted and much more direct pedestrian connection between Hastings Road and Tweed Coast Road. Marked foot crossings will provide safer crossing points where pedestrian vehicle interaction occurs on the site (over the laneway access). The lift also provides alternative access for persons with a disability and for shoppers. The relocated lift will provide access to the outer forecourt on the Tweed Coast Road frontage rather than at the rear of the forecourt, making the lift more legible to Tweed Coast Road users. The pedestrian pathway has visual surveillance from the car park and continual video surveillance along its route to provide secure access through the development. In all respects, this represents a superior urban design outcome than the original approved scheme.

Council has no objections to this revised proposal, being consistent with an aim of Tweed Shire Council DCP B19 – Bogangar/Cabarita Beach Locality Plan.

Relocation of the residential lobby

The main residential access lobby is to be relocated from the internal forecourt area of the development onto the Tweed Coast Road elevation. This segregates residents from shoppers, advantaging residents with exclusive 24 hour direct access from the street and avoiding the need to access their apartments via the shopping forecourt.

The relocated residential lobby will provide a street address, legibility for visitors and significantly improve safety for the future residents. Note that the residential lobby will not be needed until the Stage 2 shop top housing is constructed. In the meantime, the proponent has agreed to the Department's request to provide an active interim use of the lobby by installing Automatic Teller Machines (ATMs) to face the street. A condition of approval (F10) has been included for the residential lobby to be reinstated prior to the issue of an occupation certificate for the shop top housing in Stage 2.

Council has advised that it has no objection to this proposal and to the interim use of the residential lobby area for ATMs.

Relocation of loading dock access

In the original approval the loading dock in Hastings Road was shared by waste removal vehicles. The revised loading access point and internal dock area is utilised solely for the servicing of the centre, avoiding conflict between service vehicles and some parking and laneway users as was the case in the previously approved scheme. A new waste management collection area is located on the site with direct access to Hastings Road adjacent to the northern outdoor car park.

The engineering report provided with the application confirms compliance with turning manoeuvring for the loading dock area in accordance with *AS 2890.2-2002 Off Street commercial vehicle facilities.* Articulated vehicles can enter and exit the site in a forward direction and carry out a slow speed reverse turn manoeuvre into the loading dock in one movement on the designated pavement area.

The car parking set out is altered as a consequence with some increase in the paved areas of the lower basement parking area and minor additional excavation in the northern side of the basement. The total numbers of car parking spaces (204) remain unchanged.

The car park set out and entry point of the ground level car park to the north of the site is amended as a result of the new garbage collection point on Hastings Road. Council advises that the relocation of the waste collection area to the outdoor car park and the resulting access for its waste management services is acceptable.

The revised loading access and internal parking arrangements will not cause any adverse impact on the locality; will improve internal vehicle movements and improve separation of service vehicles from resident and shoppers cars. The revised loading arrangements are an improvement to the approved scheme as it avoids the need for any large truck access to the supermarket loading dock via the internal laneway. The minor increase in the area of the basement car park does not provide for any increased parking and the altered layout will not generate any additional impact on the amenity of the locality. Waste collections are infrequent and will not cause undue disturbance to the neighbourhood. The Council will address timing and frequency of collections in its consideration of a Waste Management Plan for the development in accordance with Condition C3 of the approval.

Flooding and design levels

The development's design flood level is proposed to be lowered to RL 3.50m AHD. This amendment complies with the Council's current (recently updated) DCP Tweed Shire Council Development of Flood Liable Land Maps which locate the site within a Q100 flood zone with a flood level of RL 2.90m AHD. The proposed basement car park and loading dock entry will also provide flood free access to the required minimum level in accordance with the Council DCP requirements. Condition B16 is amended to specify RL3.0 AHD in order to reflect this compliance with Council's updated flood mapping in its DCP.

The resulting revised floor levels maintain the important direct street level pedestrian access at the speciality retail shopfronts to Tweed Coast Road (RL 7.60 AHD). A slight ramping of the forecourt area is required in order to get from the forecourt entry on Tweed Coast Road to the supermarket entrance (RL 8.30AHD). The resulting ramp grades are well within all accessibility limits. There is no change in the overall maximum height of the building, the revised floor levels being absorbed into the retail and service levels. There are no adverse urban design consequences from the alteration of floor levels throughout the modified proposal.

Staging of the development.

The modification proposes that the development be able to be implemented over two stages. The first stage comprises the supermarket and speciality retail and all of the proposed parking areas, followed by the residential units in a second stage, when justified by market demand for apartments.

Consequently the proponent requests that Section 94 and Section 64 contribution payments are correspondingly staged.

Council does not object to the staging of the proposal generally, but is concerned that the residential component of the project may not be constructed in a reasonable time period due to the depressed local market for residential units. The Council's concern is that a lack of residents in occupation will affect the viability of the supermarket/retail centre if the residential development is not constructed concurrently.

The proponent has agreed to provide an annual update to the Council via the Certifying Authority as to the anticipated timeframe for delivery of the residential component. A condition has been imposed for the proponent to provide this advice to the Council. The general terms of this condition are acceptable to the Council and to the proponent.

The staging of the development not only involves the need to maintain an active street frontage for the residential lobby access (as previously reported), but also has implications for the interim use of car parking. The residential parking component is combined in the same basement car parking area which is to be constructed under the Stage 1 retail component. Another, smaller, open air, retail only parking area is located at ground level, outside of the building footprint, to the north of the building. The basement spaces are shown on the plans as separately allocated for either residential or retail uses. Pending the construction of the residential units in Stage 2, the allocated residential parking will be utilised, in the interim, by the retail uses. Interim retail use of the residential parking area is acceptable since the provision and use of surplus car parking does not contravene Council's controls (which do not restrict car parking to a maximum requirement for retail use). The Stage 2 description incorporated into the modified approval clearly specifies the number of residential spaces required to be allocated for the residential use when the Stage 2 residential component is constructed. This re-allocation of parking is further specified in a new condition (F11) that enables the interim use of residential parking for retail uses but specifies that the parking is to be returned to residential use prior to the issuing of an occupation certificate for Stage 2. The general conditions of the approval relating to construction management and environmental mitigation will also continue to apply to both stages.

The extent of the Stage 1 development should also ensure sufficient means to allow Stage 2 to be implemented without the need for major disruption to the supermarket or retail functions of the new shopping centre. Condition C1A has been added to the approval to ensure that the roof over the shopping areas in Stage 1 will be adequate to support the residential development in Stage 2 and that vertical service and structural requirements for Stage 2 are adequately catered for within Stage 1.

The request for staging of the S94 contributions for the proposal merely provides for the payments to be appropriately staged. A revised condition for the altered Section 64 and 94 payments is included in the modification to the approval to reflect the staging of the proposal. The Council has provided the revised calculations for these amended conditions.

6. CONCLUSION AND RECOMMENDATIONS

The socio-economic impact assessment supports the minor change in the redistribution and minor decrease (24 m²) of floor space between the supermarket and specialty shops. The proposed modification remains generally consistent with the original approval. The design changes are unlikely to affect the viability of the centre, cause impact to the streetscape or restrict access arrangements of the laneway.

The need for staging of the proposal is a reflection of the acknowledged depressed market circumstances for new residential apartments in the north east of the State. The implementation of Stage 1 should not preclude ability to construct Stage 2 in the future. The request for staging of the development and staged contribution payments is reasonable, under the circumstances and has been catered for in the amended conditions.

The revised pedestrian and access arrangements provide for much improved pedestrian, shopper and resident outcomes, particularly by reference to safety and other desirable urban design improvements, as discussed.

The modification of the approval has also been assessed by reference to the original application. The Department is satisfied that the resulting proposed modifications are acceptable and will achieve a better design outcome than the original approval. The proposed modifications do not alter the fundamental nature of the approved project nor introduce any detrimental impacts on the site or the locality. Therefore the department recommends that the modification application be approved subject to amended and additional conditions.

Endorsed by:

S. P. Czeref 21/12/2011

Steve Czeref
A/Team Leader
Metropolitan and Regional Projects North

Heather Warton
Director
Metropolitan and Regional Projects North

21/12/2011.