

## **Submission**

In relation to

### **Application to Modify Approval**

### **Major Project MP08\_0042**

### **Proposed Commercial & Retail Building**

### **92 Manning Street, Tuncurry**

Prepared for:

**JR Richards Waste Management Services Pty Ltd**

**May 2010**

Project: 7090

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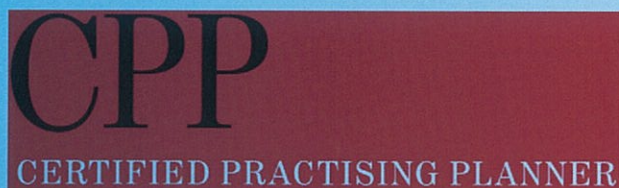
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## 1. Introduction

On 24 November 2009, the Director General of the NSW Department of Planning (under delegation from the Minister for Planning) granted approval to Major Project Application 08\_0042 for a proposed commercial and retail building on land at 92 Manning Street, Tuncurry (Lot 1 DP 301489).

The project was approved subject to Conditions, including Condition B35 which involved the payment of monetary contributions under Section 94 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) prior to issue of a Construction Certificate.

Condition B35 states as follows:

**B35 Section 94 Monetary Contributions - Additional Services and/or Facilities**

In accordance with Section 94 of the *Environmental Planning and Assessment Act (1979)*, a monetary contribution shall be paid to the Council prior to the issue of a Construction Certificate. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

Code	Contributions Plan	Facility	Quantity	Unit	Rate	Amount
GLW-07	Great Lakes Wide	Headquarters Building	\$10,120.00	\$1 non res	\$0.001	\$10,120.00
FD04	Forster District	Major roads Inner Zone	340	one way trips	\$481.60	\$163,744.00
FD09	Forster District	Tuncurry Parking	90	spaces	\$15,904.00	\$1,431,360.00
					Total	<b>\$1,605,224.00</b>

Contribution rates are subject to indexation. The rates shown above are applicable until 30 June following the date of approval. Payment made after 30 June will be at the indexed rates applicable at that time.

The Contributions Plans and the Standard Schedule for Section 94 Plans may be viewed on Council's web site [www.greatlakes.nsw.gov.au](http://www.greatlakes.nsw.gov.au) or at Council's offices at Breese Parade, Forster.

The development was declared a "Major Project" under the provisions of Clause 6 of the former *State Environmental Planning Policy (Major Projects) 2005*.

The application was subject to assessment under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Minister for Planning is the consent authority for the project and for any subsequent modifications to consent.

On 14 April 2010, the owner of the land wrote to Great Lakes Council requesting a reduction in Section 94 contributions for car parking. That request was the subject of a report to the Ordinary Meeting of Great Lakes Council on 27 April 2010 on the matter. The report suggested that a revised rate of car parking could be assessed as per the RTA's Guide to Traffic Generating Developments. Consideration of the matter was deferred by Council at the meeting of 27 April 2010, with the matter to be considered at a Strategic Meeting of Council on 11 May 2010.

At the meeting of 11 May 2010, it was resolved as follows:

*That Council agree to a reduction in the required level of car parking to 50 spaces based on:*

- 1. Advice received in relation to the review of the Car Parking Code to align it with the RTA Standards;*
- 2. A development of this scale will initiate the implementation of the Employment Lands Strategy which will bring substantial economic benefit to the Tuncurry Town Centre.*

## 2. Site Description

The site comprises land known as Lot 1 DP 301489, 92 Manning Street, Tuncurry. The site is located on the western side of Manning Street between Lake and South Streets. The site is located opposite the 'Bi-Lo' supermarket complex.

The main frontage of the site is to Manning Street (eastern boundary), with a secondary frontage to Manning Lane (western boundary). The major pedestrian access route is off the main road, Manning Street. Secondary pedestrian access is via the rear/west of the site, off Manning Lane, which also serves as the single means of vehicular access to the site.

Great Lakes Council has indicated that Manning Lane will be widened in the future, changing to a two (2) way, 6 metre wide road with 1.65 metres of footpath on each side of the lane. The widening of Manning Lane and the construction of the footpath is included within the Forster District Development

Contributions Plan 2009, which specifically nominates 92 Manning Street for the acquisition and construction of footpath. At this stage, the exact timeframe for the widening of Manning Lane is unknown. The Section 94 contributions plan, however, identifies a time frame of 2013 for this work which coincides with the timeframe for construction of the public car park on Lot 6 Sec 7, Manning Lane.



Figure 1: Site locality and aerial photograph. North to top of page. (Source: Department of Lands, 2010)

### 3. The Proposed Modification

The proposed modification relates specifically to the Section 94 contributions for car parking which were levied under Condition B35 and referenced within the Statement of Commitments.

As indicated in Condition B35 of the approval, car parking contributions were calculated in relation to (a deficiency of) ninety (90) car spaces and amount to a total of \$1,431,360. The rate of car parking contributions is generally calculated correctly having regard to literal interpretation of the Section 94 Contributions Plan and the rates of car parking required by Great Lakes Council's Car Parking Policy.

In the circumstances of this development, however, the rate of car parking required by Great Lakes Council's Car Parking Policy is considered to be excessive. Most importantly, detailed financial consideration of the project by the owner has revealed that the contributions payable for the shortfall in car parking (when assessed/calculated using Council's Policy) will threaten the financial viability of the project to the extent that the project cannot proceed if the current rate of car parking contribution payable is maintained.

The proposed modification seeks amendment to the table to Condition B35 to reflect the revised car parking calculations as set-out below:

Code	Contributions Plan	Facility	Quantity	Unit	Rate	Amount
GLW-07	Great Lakes Wide	Headquarters Building	\$10,120.00	\$1 non res	\$0.001	\$10,120.00
FD04	Forster District	Major Roads Inner Zone	340	one way trips	\$481.60	\$163,744.00
FD09	Forster District	Tuncurry Parking	50	spaces	\$15,904.00	\$795,200.00
					Total	\$969,064.00

## 4. Environmental Planning & Assessment Act 1979

The proposed modification has been submitted under the provisions of Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Section 75W of the EP&A Act relates to modification of project approvals by the Minister and states as follows:

(1) *In this section:*

**Minister's approval** means an approval to carry out a project under this Part, and includes an approval of a concept plan.

**modification of approval** means changing the terms of a Minister's approval, including:

(a) revoking or varying a Condition of the approval or imposing an additional Condition of the approval, and

(b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.

(2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*

(3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*

The proposed modification relates only to variation of a condition of consent for the proposed development. The environmental impacts of the proposed modifications are negligible and additional environmental assessment requirements in accordance with Clause 75W(3) of the EP&A Act are not considered necessary in the circumstances of this case.

## 5. Car Parking Analysis

Section 94 contributions for the proposed development are provided within the Forster District Development Contributions Plan, and in particular Section 11 of that plan, the “Tuncurry Parking Plan”.

The Tuncurry Parking Plan provides the following comment regarding new commercial development:

*“new commercial development will be required to provide parking in accordance with Council’s code at the time of development consent. Where it is not practicable to provide all the parking on-site, then contributions will be payable to enable Council to increase the amount of public parking accordingly”.*

Great Lakes Council’s Car Parking Policy suggests the following rates of carparking for retail and commercial buildings:

- Retail – 1 space per 20m<sup>2</sup> gross leasable floor area; and
- Commercial floor space above – 1 space per 30m<sup>2</sup> gross leasable floor area.

The number of car parking spaces calculated for the development under the Council’s Car Parking Policy is one hundred and six (106). Sixteen (16) spaces have been provided on site through the approved development, which leaves a shortfall of ninety (90) spaces according to the Council’s Car Parking Policy.

While the Council’s Car Parking Policy provides a table of car parking rates for a range of developments, the Policy does not provide any explanation of how it is intended to apply or provide any criteria for site/development specific car parking rates. In other words, the Policy is applied to all developments within the local government area, regardless of location and context.

The simplistic application of the car parking rates contained within the Council’s Car Parking Policy is inherently inaccurate when applied to larger developments, such as that proposed, and an analysis of the site/development context is necessary. This is particularly relevant in determining the “reasonable” contributions pursuant to Section 94 of the EP&A Act (see discussion under Section 6 below).

As stated within the report to the Ordinary Meeting of Great Lakes Council on 27 April 2010, Council has advised that the proposed development could be assessed under the RTA's Guide to Traffic Generating Developments (the RTA Guide) which provide a more appropriate rate of car parking (see Appendix A).

Application of the RTA car parking rates to the proposed development would result in the following car parking calculation:

- 2997m<sup>2</sup> GFA of commercial space @ 1 space per 40m<sup>2</sup> = **74.9** spaces.
- 205m<sup>2</sup> GFA of retail floor space @ 1 space per 16m<sup>2</sup> = **12.8** spaces
- Minus **16** spaces provided on site
- Total shortfall = **72** spaces (71.74)

The above calculation is based on the rate outlined for an unrestrained situation in Sections 5.6 and 5.7 of the RTA Guide.

The rates outlined in Section 5.6 of the RTA Guide (which relates to office and commercial developments) are based on a survey – “Land Use Traffic Generation - Data and Analysis 1 - Office Blocks” – which assumes 100% occupancy. Although the rates outlined in the RTA Guide are based on gross floor area (GFA), Table 3.1 to the survey referred to above indicates that gross lettable/leasable floor area was utilised to derive the applicable rate of car parking.

If car parking rates were calculated using gross lettable/leasable floor area for the office/commercial floor space of the building, the area would calculate at approximately 2845m<sup>2</sup>. In relation to the calculations above, the total numbers of car parking spaces required would reduce by the order of about four (4) car parking spaces. The shortfall would also reduce accordingly.

The first objective of Section 12.1 of Great Lakes Council's Development Control Plan No.51 – Forster/Tuncurry Town Centres (DCP 51), is as follows:

*To provide an adequate level of on site car parking based upon **anticipated occupancy rates** and proximity to public transport.*

The anticipated occupancy rate of not only the development, but the overall Tuncurry Town Centre, is a critical consideration in relation to this issue. The RTA Guide states several times that if appropriate data is available, the provision of parking can be based on the 85<sup>th</sup> percentile (that is, 85% of) peak parking demand.

The use of the 85<sup>th</sup> percentile peak parking demand is consistent with the current vacancy rates of at least 17.8% which are experienced in the Tuncurry Town Centre (Hill PDA, 2009). It is reasonable to assume that a vacancy rate of at least 15% (which is slightly less than the rate assessed by Hill PDA for the Tuncurry Town Centre) will be experienced by the proposed commercial and retail building. In this circumstance, parking provision based upon 85% of peak parking demand appears to be conservative figure for the building.

Based on a conservative occupancy rate of 85%, the required car parking would be as follows:

- 2997m<sup>2</sup> GFA of commercial floor space @ 1 space per 40m<sup>2</sup> = **74.9** spaces.
- 205m<sup>2</sup> GFA of retail floor space @ 1 space per 16m<sup>2</sup> = **12.8** spaces
- = **87.7** spaces x 0.85 (occupancy rate) = **74.5** spaces
- Minus **16** spaces provided on site
- Total shortfall = **59** spaces (58.58)

As stated within Section 12.1 of DCP 51, “*the amount of parking provided is related to the size of the development, however, parking provisions should be considered in relation to the local context*”.

It should also be recognised that a significant proportion of the workforce in the Great Lakes Area may not be reliant on cars for their transport to and from their place of work.

The size and layout of Forster and Tuncurry facilitates an easy commute by walking or bicycle. Generally, the entire residential area of Tuncurry is within

easy walking distance of the site. A significant part of Forster is also within a relatively easy walk or bicycle ride of the site.

This is confirmed by the Australian Bureau of Statistics census data which states that the major differences between the method of travel to work of Great Lakes Council area and the Hunter Statistical Division were:

- A larger percentage of people who worked at home (7.1% compared to 4.1%);
- A larger percentage of people who walked only (5.7% compared to 3.3%), and;
- A smaller percentage of car- as driver commuters (57.5% compared to 64.8%). (Profile.id, 2010)

Travel to work (includes multi-mode journeys)	Great Lakes Council area							
	2006				2001			
	number	%	Hunter Statistical Division %	number	%	Hunter Statistical Division %	Change 2001 to 2006	
<b>Enumerated data</b>								
Train	13	0.1	1.0	12	0.1	1.0	1	
Bus	40	0.4	1.3	58	0.6	1.5	-18	
Tram or Ferry	6	0.1	0	0	0	0	6	
Taxi	4	0	0.1	6	0.1	0.2	-2	
Car - as driver	6,117	57.5	64.8	5,112	54.0	61.9	1,005	
Car - as passenger	747	7.0	6.4	687	7.3	6.9	60	
Truck	285	2.7	1.7	326	3.4	2.2	-41	
Motorbike	61	0.6	0.7	58	0.6	0.7	3	
Bicycle	131	1.2	0.8	102	1.1	0.9	29	
Walked only	601	5.7	3.3	610	6.4	3.3	-9	
Other	146	1.4	1.0	178	1.9	1.4	-32	
Worked at home	751	7.1	4.1	753	8.0	4.7	-2	
Did not go to work	1,487	14.0	13.1	1,359	14.3	13.4	128	
Not stated	245	2.3	1.8	210	2.2	1.8	35	
<b>Total</b>	<b>10,634</b>	<b>100.0</b>	<b>100.0</b>	<b>9,471</b>	<b>100.0</b>	<b>100.0</b>	<b>1,163</b>	

Source: Australian Bureau of Statistics, Census of Population and Housing, 2006, 2001, 1996, and 1991.

**Figure 1: 2006 census data**

**[Derived from the Census question, 'How did the person get to work on Tuesday, 8 August 2006?' (Source: Profile.id)]**

The proposed commercial building is located within the Tuncurry Town Centre which is easily accessible by both bicycle and walking. The entire population of Tuncurry resides within a radius of about 1.5 kilometres of the proposed development. It is reasonable to assume that a greater than average proportion

of workers and customers originating from this area will utilise alternative transport such as walking or bicycle. Similarly, a large proportion of the Forster population resides within a radius of about 5 kilometres of the site and it can be expected that bicycle usage would be greater than average for workers and customers originating from this area.

While the exact proportion of workers and customers utilising alternative transport cannot be accurately determined, it is reasonable to assume that workers utilising alternative transport (such as bicycles and walking) would exceed the census average for the Great Lakes area (i.e. 6.9%). This proportion of the workforce is accommodated on site through the provision of twelve (12) bicycle racks within the undercover car parking area.

Therefore, having regard to the above census information and consideration of the central location of the site, a further reduction in car parking demand would be reasonable and justified. Even assuming that only 75% of the twelve (12) available bicycle spaces were regularly utilised (not considering other transport such as walking, car pool etc), this would suggest a displacement of nine (9) car parking spaces. Again, this figure would be a conservative estimate of the total number of workers and customers that would choose transport methods other than car.

The most reasonable rate of car parking for the proposed development would, therefore, be calculated as follows:

- 2997m<sup>2</sup> GFA of commercial floor space @ 1 space per 40m<sup>2</sup> = **74.9** spaces.
- 205m<sup>2</sup> of gross leasable retail floor space @ 1 space per 16m<sup>2</sup> = **12.8** spaces
- 74.9 + 12.8 = **87.7** spaces x 0.85 (occupancy rate) = **74.5** spaces
- Minus **9** spaces recognising alternative transport usage = **65.5** spaces
- Minus **16** spaces provided on site
- Total shortfall = **50** spaces (49.58)

## 6. Section 94 Contributions – Tuncurry Parking

Under the provisions of the Tuncurry Parking Plan section of the Forster Contributions Plan, there are two (2) sites identified for the construction of ground level car parking (see Figure 2 below), with one of the proposed sites (area 'A') located directly behind the proposed development.

According to the contributions plan, the proposed car park is expected to accommodate seventy (70) cars which is sufficient to accommodate the expected parking demand generated by the proposed development. In addition, the construction of the car park also involves the widening of Manning Lane and the construction of footpath. The car park also has scope for the provision of multi level car parking which would further increase the capacity of the car park if required in the future.

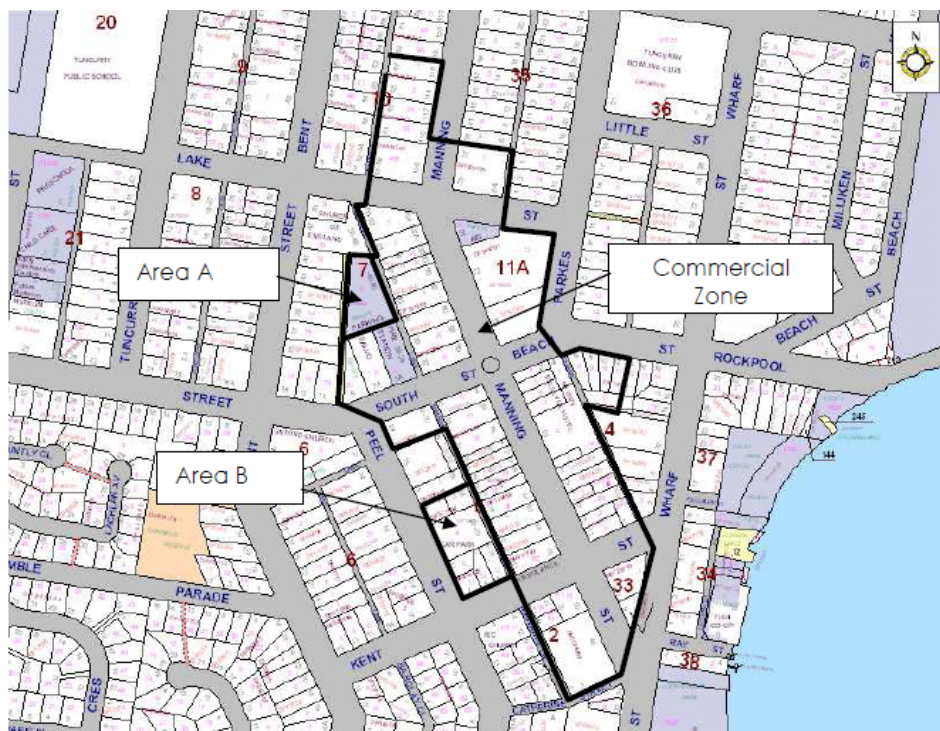


Figure 2: Tuncurry Parking Plan (Source: Draft Forster District Development Contributions Plan 2009)

The Tuncurry Parking Plan section of the Forster Contributions Plan was updated in 2009 and provides a current estimated cost of \$300,000 for the construction of 70 car spaces with Area 'A' plus \$150,000 for the widening and construction of Manning Lane.

Based on a shortfall of fifty (50) car spaces, the amount of contributions would total \$795,200. The proposed rate of contributions would, therefore, fund the immediate construction of Area 'A' and the widening of Manning Lane, as well as providing up to \$345,200 which could be allocated to expedite other projects within the locality, such as Area 'B'.

The Tuncurry Parking Plan section of the Forster Contributions Plan informed the application of contributions levied under the current Condition B35 of the development consent.

These contributions were levied in accordance with Section 94 of the Environmental Planning and Assessment Act 1979 (EP&A Act), which states as follows:

- (1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a Condition requiring:
  - (a) the dedication of land free of cost, or*
  - (b) the payment of a monetary contribution,*or both.*
- (2) A Condition referred to in subsection (1) may be imposed only to require a **reasonable** dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.*

Section 94(5) also states:

- (5) The consent authority may accept:
  - (a) the dedication of land in part or full satisfaction of a Condition imposed in accordance with subsection (3), or*
  - (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a Condition imposed in accordance with subsection (1) or (3).**

The calculations presented in Section 5 of this document represent a logical and well founded representation of the car parking demand that could 'reasonably' be expected as a result of the proposed development. On this basis, and within the terms of Section 94(2) of the EP&A Act, the imposition of a condition requiring the payment of a monetary contribution for a shortfall of fifty (50) car spaces would represent a reasonable contribution and would be inconsistent

with the provisions of Section 94(2) of the EP&A Act. Therefore, the retention of the current wording of Condition B35 of the approval requiring the payment of a greater contribution would, on balance, be unreasonable and exceed the likely parking demand of the development and threaten the financial viability of the project to the point where it may not proceed at all.

As acknowledged by the report to the Ordinary Meeting of Great Lakes Council on 27 April 2010 (which was eventually considered at Council's Strategic Meeting on 11 May 2010), the Tuncurry Town Centre is "struggling" and the proposed development would represent a significant boost to the locality. The second point of the resolution of Council's Strategic Meeting of 11 May 2010 reflects this fact.

The future viability of the Tuncurry Town Centre is vulnerable given the Council's recent approval of the out-of-town Tuncurry Convenience Centre which is to be located on the corner of Leo Street and The Lakes Way, approximately 1.2 kilometres north of the subject site.

Hill PDA was commissioned by Great Lakes Council (and AusPacific Property Group) to review the Economic Impact Assessment for the Tuncurry Convenience Centre (prepared by Pitney Bowes Pty Ltd). The results of the review have been provided by Great Lakes Council and conclude that a 40% decline in sales at the 'Bi-Lo' supermarket is anticipated. This is expected to result in a further reduction in pedestrian traffic and retail sales within other parts of the Tuncurry Town Centre. The reduction in retail sales will be accompanied by a reduction in commercial activity and a likely increase in vacancy rates throughout the Tuncurry Town Centre.

The Hill PDA peer review of the Economic Impact Assessment for the Tuncurry Convenience Centre states that traffic congestion and car parking are contributing factors to a considerable level of escape expenditure within the Tuncurry Town Centre. To enable the Tuncurry Town Centre to withstand the adverse impact of the Tuncurry Convenience Centre, it will be necessary for Council to implement immediate strategies (such as the business precinct plan suggested by Hill PDA).

The proposed level of car parking contributions (\$795,200) has the potential to provide immediate relief in terms of traffic and parking through the upgrading of Manning Lane, construction of 70 car spaces in Area 'A' as well as reallocation of existing Section 94 funds to the expedite the construction of Area 'B'.

These funds would otherwise be unavailable to Council and the general public if the proposed development was not economically feasible and the project did not proceed.

Therefore, the proposed development represents an important component of the future economic viability of the Tuncurry Town Centre, particularly following construction of the Tuncurry Convenience Centre. In these terms, the broader public benefit of the project is substantial. This should be considered in the assessment of the parking contributions that should "reasonably" be applied to the project, particularly in regard to the intent of Section 94(2) of the EP&A Act.

## 7. Conclusion

This application to modify the approval to Major Project MP08\_0042 has been submitted under Section 75W of the *Environmental Planning and Assessment Act 1979*.

The above discussion provides an analysis of the car parking demand that is likely to be generated by the proposed development. The revised calculations utilise the rates for car parking outlined in the RTA's Guide to Traffic Generating Developments. As a result, the rates of car parking have increased for the retail component of the development and reduced for the commercial component.

The analysis of car parking demand has also considered the specific circumstances of this development and incorporated anticipated vacancy rates combined with consideration of the local context and an analysis of census data on the patterns of transport use in the Great Lakes area.

The proposed development is a key component of the future economic viability of the Tuncurry Town Centre. The basis for this fact has been discussed in detail throughout this submission.

The retention of the current wording of Condition B35 of the approval requiring the payment of a greater contribution would, on balance, be unreasonable and exceed the likely parking demand of the development and threaten the financial viability of the project to the point where it may not proceed at all.

It is proposed to modify Condition B35 of the project approval such that section 94 contributions are payable for (a shortfall of) fifty (50) car spaces. This represents a “reasonable” application of the provisions contained within Section 94 of the EP&A Act.

The proposed modification will allow the proposed development to proceed, which would have otherwise have been unfeasible due to the financial imposition associated with the payment of substantial contributions required under the current Condition B35. The result of the proposed modifications will be the timely construction of the proposed development with the associated broader public benefit resulting from increased employment and retention of large scale commercial opportunities within the Tuncurry Town Centre. Such outcomes are within the broader public interest and warrant approval of the modification as proposed.

## References

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