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**Bayside Planning Panel**

**13/06/2017**

Item No	5.1
Application Type	Section 96(2) Application
Application Number	DA-2015/172/02
Lodgement Date	19 August 2017
Property	2 Merchant Street, Mascot - Lot 1 in DP 851974
Owner	Mr Bobby Kendrovski
Applicant	Haidari Lashta
Proposal	Section 96(2) Application to modify Development Consent 15/172, that approved the continued use of the site as an airport valet parking facility with a new ancillary kiosk and carwash, to now construct a first floor addition to the existing administration building and to increase the number of parking spaces from 42 to 72.
No. of Submissions	One submission and one petition with (21) signatures
Cost of Development	N/A
Report by	Christopher Mackey – Team Leader Development Assessment

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**Officer Recommendation**

- A. That the Panel resolve pursuant to Section 96(2) of the Environmental Planning & Assessment Act 1979, to modify Development Consent 15/172, as follows:
- 1 Modify Condition 1 to refer to the amended plans.
  - 2 Modify Condition 3 to ensure that the use and customer cars remain on site at all times;
  - 3 Modify Condition 13 to refer to maximum number of parking spaces permitted on site at any one time;
  - 4 Modify Condition 38 to refer to the Section 96(2) application;
  - 5 Add Condition 39, to specify that the first floor addition to the administration building cannot be used for residential purposes.
- B. That the objectors be advised of Council's decision.
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**Attachments**

- 1 Planning Assessment Report;
- 2 Site Plan Drawing No. 1/1, d28/3/2017, received by Council 5 April 2017;
- 3 Layout Plan, Drawing No LP.01, Revision E, prepared by EP Design, Dated 18 July 2016, Received by Council 19 August 2016

- 4 Site Elevation A & B, Drawing No. EL.S1, Revision E, prepared by EP Design, Dated 18 July 2016, Received by Council 19 August 2016;
  - 5 Site Elevation C & D, Drawing No. EL.S2, Revision E, prepared by EP Design, Dated 18 July 2016, Received by Council 19 August 2016.
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## Location Plan

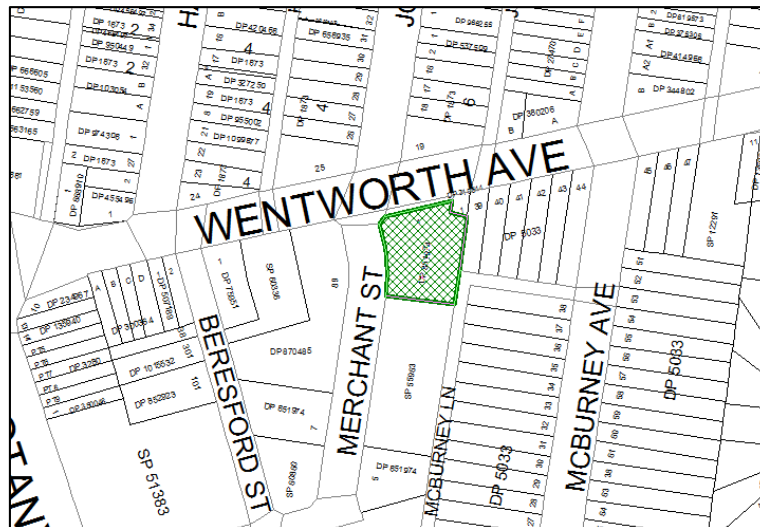


Figure 1: Locality Plan

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-15/172/02
<b>Date of Receipt:</b>	19 August 2016
<b>Property:</b>	2 Merchant Street, Mascot Lot 1 in DP 851974
<b>Owner:</b>	Mr Bobby Kendrovski
<b>Applicant:</b>	Haidari Lashta
<b>Proposal:</b>	Section 96(2) Application to modify Development Consent 15/172, that approved the continued use of the site as an airport valet parking facility with a new ancillary kiosk and carwash, to now construct a first floor addition to the existing administration building and to increase the number of parking spaces from 42 to 72.
<b>Value:</b>	N/A
<b>No. of submissions:</b>	One submission and one petition with (21) signatures
<b>Author:</b>	Christopher Mackey – Team Leader Development Assessment
<b>Date of Report:</b>	24 May 2017

### Key Issues

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This modification application relates to an approved airport valet car parking facility that currently operates in Mascot. The existing consent to be modified is the second consent, the first consent (DA13/152) being time limited to a period of 12 months.

The modification application seeks to construct an additional level to the administration building to accommodate staff kitchenette, customer waiting room, staff shower, storage room and external deck area.

The Section 96 application was notified to surrounding property owners for a fourteen (14) day period from 31 August 2016 to 14 September 2016. One submission was received opposing the proposed modification and one petition with 21 signatures was received, which raise a variety of different issues, with a particular emphasis on parking.

Amended plans were received on the 5 January 2017 for the existing administration building, Structural Engineers Certificate and Footings detail. Council received additional information on the 5 April 2017, being a revised traffic report and accompanying swept path diagrams.

The application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and it is recommended that the Panel resolve to modify Development Consent 15/172, subject to the modification to conditions.

### Recommendation

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A. That the Panel resolve pursuant to Section 96(2) of the *Environmental Planning & Assessment Act 1979*, to modify Development Consent 15/172, as follows:

- 1 Modify Condition 1 to refer to the amended plans.
- 2 Modify Condition 3 to ensure that the use and customer cars remain on site at all times;
- 3 Modify Condition 13 to refer to maximum number of parking spaces permitted on site at any one time;
- 4 Modify Condition 38 to refer to the Section 96(2) application;
- 5 Add Condition 39, to specify that the first floor addition to the administration building cannot be used for residential purposes.

B. That the objectors be advised of Council's decision.

## Background

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### History

**DA13/152** - Development Application No. 13/152 was approved by the former City of Botany Bay Council on the 19 December 2013 for the use of the land for the purposes of short and long term temporary parking with a valet service for persons travelling to the airport. This consent was granted with a twelve month time limited consent that expired on the 18 December 2014.

#### **DA-13/152/02 – s96(1A) Modification Application**

On 11 September 2014, a Section 96(1A) Modification Application was lodged seeking to modify Development Consent No. 13(152) to amend Condition No. 4 to allow for the site to be used permanently as an airport car parking facility and valet service. One objection against the proposal was received during the notification period which raised concerns regarding the mini-bus using residential streets such as Johnson Street (therefore breaching Condition No. 40 of the consent). Approval was granted by Council on 9 December 2014 and the consent issued 23 January 2014. The deletion of Condition No. 4 was not approved and the condition was amended to allow the consent to operate for a further 12 months until 8 December 2015, after which time the use shall cease without a further Development Application being submitted to, and approved by Council. Condition No. 40 relating to the mini-bus route, was amended to clarify the required route after the completion of the Westconnex enabling works.

**DA15/172** - Development Application No 15/172 for the continued use of the site as an airport valet parking facility with a new ancillary kiosk and carwash was then approved at the Council meeting of the former City of Botany Bay on 9 December 2015.

### Description of the Proposed S96 Modifications

The Section 96(2) application seeks to undertake the following changes:

#### Administration Building

The application seeks to construct a first floor addition to the existing administration building to accommodate new storage room, staff shower, staff kitchenette and customer waiting area.

### Car Parking

The application seeks to modify Condition 13, to increase the maximum number of cars that can be parked on site from 42 to 70. It is noted that 72 spaces are indicated on the plans, which includes 2 staff spaces as shared car wash bays and separate to the two approved shuttle spaces.

The additional cars are proposed in an at grade stacking arrangement (not a physical car stacker).

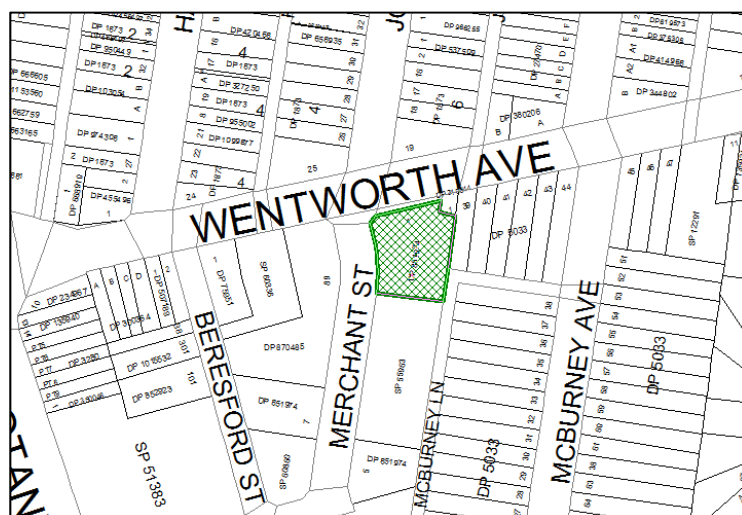
### **Site Description**

The subject site is located on the eastern side of Merchant Street and has a northern secondary frontage to Wentworth Avenue.

The subject site is legally described as Lot 1 on DP 851974 and is located at 2 Merchant Street, Mascot. The site is an irregular shaped allotment with a cut out in the north-east corner along Wentworth Avenue (owned by AusGrid). The total site area is 1,499.8sqm.

The site is surrounded by a mixture of residences and existing industrial uses including:

- No. 36 Wentworth Avenue (residential) to the immediate east;
- No. 4-10 Merchant Street (Vic's Meats) to the immediate south;
- No. 22 Wentworth Avenue/ 1 Merchant Street (Coffee Wholesaler) to the west across Merchant Street ;
- No. 90 Johnson Street diagonally across Wentworth Avenue to the north-west (residential); and
- No. 69 Johnson Street opposite the site to the north along Wentworth Avenue (residential).



**Figure 1. Locality Plan**



**Figure 2.** Front of the subject site to Merchant Street



**Figure 3:** Front of the subject site to Wentworth Avenue





**Figure 4:** Signage on the subject site



**Figure 5:** 'Left-turn only' signs from Merchant Street to Wentworth Avenue and vehicles turning right into Merchant Street from Wentworth Ave

## Referrals

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### Internal Referrals

The original development application was referred to Council's Development Engineer, Environmental Health Officer and Traffic Officer. Appropriate conditions were imposed on the development consent to address issues raised in their comments. Given the nature of the proposed modifications, an additional referral was sought only from Council's Development Engineer, who raised no objection to the proposal.

### External Referrals

The original application was referred to the NSW RMS and Sydney Water. Given the nature of the proposed modifications, an additional referral was sent to NSW RMS. In a letter dated 30 November 2016, RMS has advised it has no objection to the proposed modification application.

## Statutory Considerations

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### ***Environmental Planning and Assessment Act, 1979***

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### ***Section 96 Provisions***

Pursuant to Section 96(2) of the *Environmental Planning and Assessment Act 1979*, Council may only modify this consent if:

- (a) Council is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and**

The proposal primarily seeks to add a first floor to the existing administration building for a storage room, staff shower/kitchenette, customer waiting area and deck. Subject to a condition to ensure that this area is only used for administrative purposes and not residential use, the proposed modification is substantially the same as already approved.

The proposed increase in the number of cars to be parked on site at any given time is a 75% increase from 42 spaces to 72 spaces. There are no physical changes to the approved parking arrangement (other than required line marking) that will be adopted during peak demand times, as an at grade stacking arrangement. There is no change to the access driveways off Merchant Street and no physical car stackers are proposed. There is an expected increase in the intensity of the use as a result of the additional traffic movements to and from the site, however the use will remain as an airport valet car parking facility and there is no change to the hours of operation or staff numbers from that already approved.

The proposed modification to this development would result in a development which is materially and essentially the same development as that which was originally approved.

- (b) Council has consultant with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent**

No such consultation was required.



- (c) Council has notified the application in accordance with the regulations, if they so require, or in accordance with Part 2 of the BBDCP 2013.**

The Section 96 application was notified to surrounding property owners for a fourteen (14) day period from 31 August 2016 to 14 September 2016.

- (d) Council has considered any submissions made concerning the proposed modification within the period prescribed by the regulations.**

One submission was received and one (1) petition with 21 signatures was received, which raise a variety of different issues, with a particular emphasis on parking. These issues are discussed later in this report.

## **S.79C(1) - Matters for Consideration – General**

### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

#### Botany Bay Local Environmental Plan (BBLEP) 2013

The subject site is zoned IN2 Light Industrial in accordance with the provisions of BBLEP 2013. The use is permissible in the zone with the consent of Council. The proposed modification, which seeks approval to construct a first floor addition to the existing administration building and to increase the number of parking spaces from 42 to 72 does not alter the developments compliance with regard to floor space ratio, building height or any other relevant controls. The modification is consistent with the relevant objectives for development within the IN2 Light Industrial zone and is therefore acceptable.

#### Botany Bay Development Control Plan 2013

The proposed modification raises no concerns with respect to the objectives and controls contained in Part 6 – Employment Zones of the BBDCP 2013. The modification does not alter the developments compliance with the floor space ratio, building height, parking and vehicular access or landscape controls. The application proposes changes to the operation of the car park by permitting additional cars to be parked on site. In this regard, the application was referred to NSW RMS, and the RMS have advised of no objection to the proposed modifications. The application was also referred to Council's Traffic Engineer and as a result, further information was requested, including a revised Traffic report and swept path diagrams. Council's Traffic Engineer has advised there is no objection to the proposed modification, subject ongoing compliance with existing conditions of consent and site traffic manouvering requirements on site and in and out of the site.

The Section 96(1A) application is therefore acceptable with regard to the BBDCP 2013.

## **S.79C(1)(a)(ii) - Provisions of any Draft Environmental Planning Instruments**

There are no current Draft Environmental Planning Instruments applicable to this development.

## **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

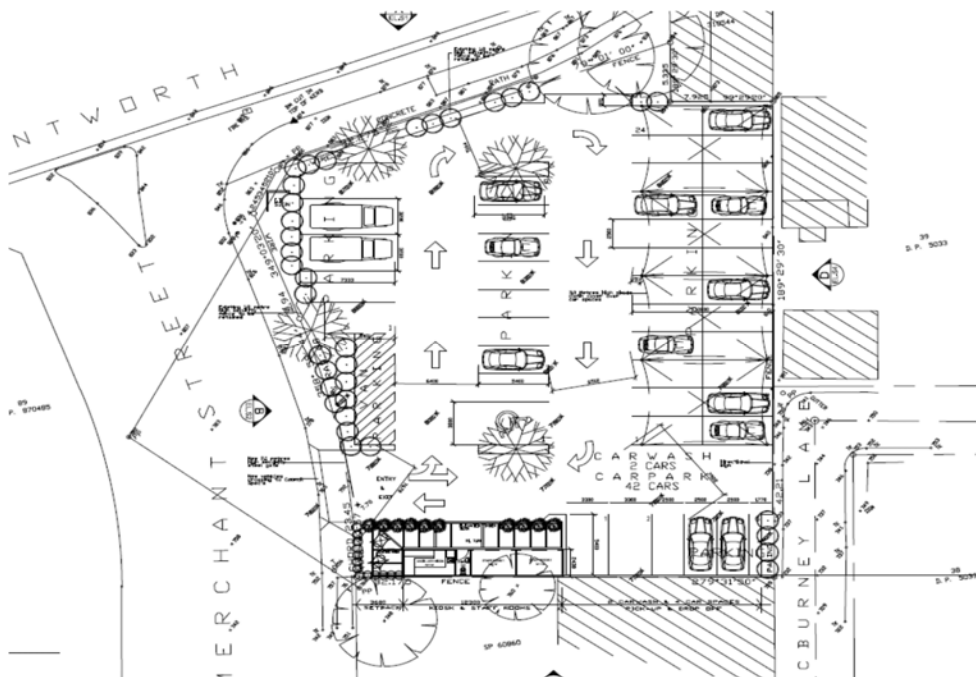
### **Botany Bay Development Control Plan 2013**

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

#### *Part 3A – Parking & Access*

#### **Car Park Layout**

The approved car park layout is as follows:



**Figure 6 – Approved Carpark layout**

The proposed car park arrangement under the Section 96(2) application is as follows:



**Figure 7 – Proposed Carpark layout**

Council's Traffic Engineer raised no objection with a stacked parking arrangement and increase in car spaces in principle, provided the vehicles enter and exit in a forward direction. A preference for a circulation lane at the perimeter of the site was highlighted, however shifting the aisle to the perimeter actually means that more cars need to be moved at one time as the number of stacked cars would be higher. The applicant has applied for this arrangement as it enables the mid aisle to remain free until such time as demand requires and then cars can be reversed back over the aisle to reach capacity. A condition requiring entry and exit in a forward direction has been imposed on the original consent and will remain.

#### *Part 3F – Tree Management*

There is no tree removal proposed as part of the development. The site has been landscaped as part of the original DA-13/152.

The provisions of Part 3F of the BBDGP 2013 are considered to be satisfied.

#### *Part 3G – Stormwater Management*

A condition has been imposed that the water from the approved car wash bays drain to the existing sewerage system in accordance with Sydney Water requirements. The original application was referred to Sydney Water who raised no objection subject to a condition requiring a Section 73 Certificate.

Part 3G of the BBLEP 2013 is considered to be satisfied.

*Part 3J – Development Affecting Operations at Sydney Airport*

The subject site is located within the 25-30 ANEF contour. This part is applicable to residential development only.

*Part 3K – Contamination*

The use is existing. Therefore the requirements of Part 3K were considered in the original assessment of the development application and are not required to be re-assessed.

*Part 3L – Landscaping*

There is no additional landscaping proposed.

A Landscape Completion Certificate was issued by Bobby Kendrovski dated 21 August 2014 certifying that the landscaping has been completed generally in accordance with the approved landscape plan.

The provisions of Part 3L of the BBDCP 2013 are considered to be satisfied.

*Part 6 – Employment Zones*

Control	Proposed	Complies Yes/No
<b>Part 6.2.5 – Mascot Industrial Precinct</b>		
<b>C1</b> Development must not adversely affect the operation or duplication of the Sydenham-Botany Goods railway line.	The use is existing and will not affect the operation or duplication of the Sydenham-Botany Goods railway line which has now commenced.	Yes
<b>C2</b> Development is not to impact adversely on the surrounding residential areas.	The use as an airport car parking facility and valet services is existing and has been approved under DA13/152 and under DA15/172. The use has operated without noise complaint. The additional traffic generation now proposed is not significant, being 9 vehicle trips per hour during peak periods.	Yes
<b>C3</b> Development which seeks the maximum building height under the Botany Bay Local Environmental Plan 2013 will penetrate the Obstacle Limitation Surface (OLS) and would need to be assessed by CASA, Airservices Australia & the Airlines before an application could	The existing height of 2.9m will be increased to 5.2 metres. As the proposed height increase is below the maximum height of buildings permitted under BBLEP 2013, being 7.5m, no referral is required to Sydney Airport. In addition, the proposed height is below 7.62	Yes

Control	Proposed	Complies Yes/No
be submitted to the Department of Infrastructure & Transport for their determination.	metres Building height Control of the Civil Aviation (Building Control) Regulation.	
<b>C4</b> Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).	This is applicable to residential development only.	N/A
<b>C6</b> All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'.	The site is not immediately adjacent to the rail corridor.	Yes

### **S.79C(1)(a)(iv) - Provisions of Regulations**

Regulation 92 has been considered and there are additional considerations relevant to this modification.

### **S.79C(1)(b) - Likely Impacts of Development**

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality. Matters relating to traffic impact and site operations have been addressed in this report and on balance are acceptable.

### **S.79C(1)(c) - Suitability of the site**

The subject site is not known to be affected by any natural hazards or other site constraints that are relevant to the proposed modification. Accordingly, it is considered that the site remains suitable to accommodate the development.

### **S.79C(1)(d) - Public Submissions**

In accordance with Part 2 of Botany Bay DCP 2013 – Notification and Advertising the development application was notified to surrounding property owners for a fourteen (14) day period from 30 November 2016 to 14 December 2016. A site notice was also erected at the commencement of this period. A total of one (1) submission and one (1) petition letter with 21 signatures were received, with the following concerns being raised:

- *The proposed development is not substantially the same development. The applicant is proposing to increase the car parking spaces from 42 to 70. The capacity and number of parking spaces, traffic movements and traffic impacts are proposed to increase by two thirds of the existing consent. Importantly, it is changing the nature of its operation into a stacked car park.*

Comment:

As outlined above in this report, the proposed modifications do not result in a radical transformation from the development as already approved. The proposed first floor space to the administration building does not change the use of that building and supports the approved use. The additional car parking spaces do not alter the direction of traffic flow to and from the site, or the existing approved access driveways. The hours of operation, number of employees are not proposed to increase. The use will remain as an airport valet car parking facility. The use will intensify as a result of the additional car parking spaces to be accommodated, however the proposed stacking arrangement is at grade, not a physical stacker, and only linemarking will be required to ensure the additional cars can be managed. On this basis, the proposed modifications to this development would result in a development which is materially and essentially the same development as that which was originally approved.

- *No assessment of the impact of a 66.6% increase in capacity and traffic movements has been undertaken by the applicant. We only have their word that it will be insignificant.*

Comment: An updated Traffic Report prepared by Terraffix dated 24 October 2016 was received by Council. This report indicates, based on the survey of the site between 13-19 July 2015, that the proposed additional car parking spaces will generate an additional 9 vehicle movements per hour (vph) during peak periods, concluding that the increase is minor and will not have any negligible or unacceptable impact on the road network serving the site in terms of road network capacity or traffic-related environmental effect. This amended report has been referred to NSW RMS and no objection has been raised to the proposed modification.

- *The applicant is relying on the original traffic report. The applicant claims that "the traffic report concluded that it will not negatively impact the current traffic conditions". The "traffic conditions" were as per the date of the report. I note that the report is dated 14 September 2015 based on a study of traffic movements from the car park observed for the period 13 July to 19 July 2015. The report is over 12 months old and the traffic survey was undertaken over 14 months ago. The Car stacker demonstrates the site is not suitable for scale of development. Traffic conditions have changed since then, In fact, the widening of Wentworth Avenue has begun in the vicinity of the site. Wentworth Avenue will now become an integral part of the Westconnex motorway. The layout of Wentworth Avenue as well as the intersection with Botany Road is now being reconfigured to accommodate a significant increase in traffic flows. We cannot rely on a historic and dated traffic report.*

Comment: As stated above, an amended traffic report has been received by Council and the survey in the updated report, is a reproduction of the survey taken in July 2015. That survey of the site and its operations is relevant to this application, as the operator was not

complying with Condition 13, so is a true reflection of what is now proposed. It is noted that the updated report now highlights those works proposed under the Westconnex project, further west of Beresford Street. No works are proposed at the frontage of the subject site and no alterations are proposed to the intersection of Wentworth Avenue/Merchant Street (other than a proposed bicycle path). This updated report was referred to NSW RMS for comment and no objection has been raised to the proposed modification.

- *The original traffic report omits the road services survey of the traffic flow and volume of traffic as part of Westconnex study and it omits in full any reference to Westconnex specifically in the incorporation of Wentworth Avenue in the project. The Westconnex website notes that:*

*“Sydney Kingsford Smith Airport and Port Botany are two of Australia’s most important international gateways. The roads around the airport and Port Botany are becoming increasingly congested due to rising numbers of passenger and freight vehicles. This proposal will support the development of Westconnex, which will improve access between this area and Western Sydney”*

Comment: This information has now been included in the Traffic report as noted above.

- *The acoustic report by Acoustic Logic Consultancy Pty Ltd does not note or take into consideration the additional noise caused by increase number of patrons/cars and the enlarged services outlet proposed. The report is highly selective, and is inconsistent with the nature of the operations being proposed. It does not consider that additional car spaces and facilities with 16 hour operations seven days per week would have any material impact on the neighbours. Further, it is not consistent with the types of traffic flow - volume noted by the Westconnex report and volume of people which will visit the site, directly from Wentworth Avenue to use the kiosk, toilets and car wash.*

Comment: The only people that will visit the site are customers. The site does not, nor is it proposed to operate a commercial car wash or café. These uses are strictly ancillary to the car parking operation. Therefore, the traffic generation identified by the applicant is a fair estimation of how many customers will access the site. The additional cars to be accommodated on site are only passenger vehicles, so there are no reversing beepers or any significant noise impacts arising from the additional proposed parking spaces.

- *I also note that the Traffic Report does not opine on the impact of increasing the number of parking spaces from 42 to 70. It states “Terraffic has been engaged by Merchant Property Group Pty Ltd to assess the current restriction on travel routes that apply to transportation of clients that currently utilise the parking station located at 2 Merchant Street, Mascot”. The report addressed Condition 40, not Condition 13. It was not engaged to assess the impact of a 70 car space stacked car parking operation at 2 Merchant Street, Mascot.*

Comment: As stated above, the updated Traffic Report was submitted to address the increase in parking on site.



- *The management of a stacked carpark is significantly different to that of a typical car park. It is in its nature a more intensive car parking operation, where the management of the parking spaces is critical to the operation of the carpark. No Management Plan has been submitted. We are only advised that it will operate like a “valet”, and that there are many of these in existence. We don’t doubt this but we are also confident that there are also many stacked parking management plans being used by stacked car parking operators. In which spots will cars be parked, what is the maximum number of cars that may need to be removed to access a car and how and where they will be moved to are only a few of the considerations that need to be considered in a management report. Will it be required to park any of these cars in Merchant Street or any other neighbouring street to manage the movement of cars in peak periods?*

Comment: The updated Traffic Report identifies that the valet parking system will remain on site as is already approved. Customers will continue to drop off their car and the valet will park the car. Cars will then be parked on a rotation so that when the customer returns to collect the vehicle, the car is ready and waiting at the pick up area. Condition 3 is an existing condition of consent that requires the use to be wholly located on the subject site and not on public land. It is recommended that Condition 3 be amended to specify that at no time are vehicles to leave the site in order to re-shuffle vehicles to accommodate more vehicles.

- *The applicant has claimed in his submission that he has been in breach of Condition 13. We request the Council to enforce compliance with all conditions of consent.*

Comment: The subject application is to amend Condition 13 to increase the number of parking spaces on site.

- *The proposed extension of the office is in fact designed to incorporate a car wash café by doubling the car washing capacity and expanding a “kiosk” including the construction of a significant decking area. Kiosk is nothing more than the first step towards offering a full retail outlet, servicing well beyond a cup of coffee to full meals, sit down café area for the car wash users, and of course servicing hire car and taxi drivers, especially when they change shifts. In effect the kiosk will provide an attractive feature for the site, as there are very few venues to change shifts let alone use toilets, sit in a staff room or use a retail outlet.*

Comment: The application does not seek to operate a commercial car wash or café. These uses are ancillary to the approved valet car parking operation and existing conditions of consent ensure that these ancillary uses remain as ancillary and that the site cannot advertise these uses. In addition, conditions are imposed on the existing consent to ensure the site cannot be used to provide a hire car service; that the site cannot be used as a taxi interchange or its facilities used as a taxi lunch room or for lunch breaks. These conditions are recommended to remain unaltered on the consent.

- *We had lodged our concern that the applicants true intentions is to expand its operation into a taxi station for taxi’s coming and going from the airport. The additional office space and ground floor facilities adds some weight to the convert.*

Comment: As stated above, this is not currently proposed under this application. Should the applicant wish to propose such a use, then a separate Development Application will be required.

- *Nowhere in this application does the applicant indicate compliance with Australian standards AS2890.1, AS2890.2, AS2890.5 (parallel parking) or AS2890.1 – car dimensions and minimum turning paths.*

Comment: The application is not required to demonstrate compliance with the Australian Standards for car parking, as the car parking areas are not able to be used by the public. The use is a valet car parking operation and as such, swept path diagrams are also not required, however have been provided to Council on the 5 April 2017, which demonstrate that with the additional car parking spaces as a stacked arrangement, cars being dropped off and manoeuvred into and out of car wash bays and shuttle parking spaces are acceptable.

### **S.79C(1)(e) - Public interest**

Granting approval to the proposed modifications will have no significant adverse impact on the public interest.

## **Conclusion**

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This subject Section 96(2) modification seeks amendment to conditions in order to increase the amount of car parking spaces on site from 42 to 72 and to construct a first floor addition to the administration building to accommodate staff kitchenette, customer waiting room, staff shower, storage room and external deck area.

The Section 96 application was notified to surrounding property owners for a fourteen (14) day period and one (1) submission was received and one (1) petition with 21 signatures, which raise a variety of different issues with particular reference to parking and traffic.

The application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and it is recommended that Council resolve to modify DA-15/172 generally in accordance with the proposal, with additional changes to other relevant conditions.

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## **Attachment**

### **Schedule 1 – Conditions of Consent**

## RECOMMENDATION

- A. That the Panel resolve pursuant to Section 96(2) of the Environmental Planning & Assessment Act 1979, to modify Development Consent 15/172, as follows:
- a) Modify Condition 1 to refer to the amended plans.
  - b) Modify Condition 3 to ensure that the use and customer cars remain on site at all times;
  - c) Modify Condition 13 to refer to maximum number of parking spaces permitted on site at any one time;
  - d) Modify Condition 38 to refer to the Section 96(2) application;
  - e) Add Condition 39, to specify that the first floor addition to the administration building cannot be used for residential purposes.
- B. That the objectors be advised of Council's decision.

**Premises: 2 Merchant Street, Mascot**

**DA No: 15/172/02**

## SCHEDULE OF CONSENT CONDITIONS

### GENERAL CONDITIONS

1. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Drawing No.	Author	Dated
<b>Site Plan Drawing No. 1/1 (<del>Sl.01, Revision C</del>) Dated 28/3/2017 (DA15/172/02)</b>	<b><del>EN Design</del></b>	<b><del>Dated 14/09/2015</del> <del>Received by</del> <del>Council 22/09/2015</del> <del>5 April 2017</del></b>
Proposed Plan (Drawing No. PP.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Roof Plan (Drawing No. RP.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Reflected Ceiling Plan (Drawing No. RC.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Site Elevation A & B (Drawing No. EL.S1, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Site Elevation C & D (Drawing No. EL.S2, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015

Elevation A (Drawing No. EL.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Elevation B & D (Drawing No. EL.02)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Elevation C (Drawing No. EL.03, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
<b><i>Layout Plan, Drawing No LP.01, Revision E,</i></b>	<b><i>EN Design</i></b>	<b><i>Dated 18 July 2016 Received by Council 19 August 2016</i></b>
<b><i>Site Elevation A &amp; B, Drawing No. EL.S1, Revision E</i></b>	<b><i>EN Design</i></b>	<b><i>Dated 18 July 2016 Received by Council 19 August 2016</i></b>
<b><i>Site Elevation C &amp; D, Drawing No. EL.S2, Revision E</i></b>	<b><i>EN Design</i></b>	<b><i>Dated 18 July 2016 Received by Council 19 August 2016</i></b>
<b><i>Elevation A, Drawing No. EL.01, Revision E</i></b>	<b><i>EN Design</i></b>	<b><i>Dated 18 July 2016 Received by Council 19 August 2016</i></b>
<b><i>Elevation C, Drawing No. EL.03, Revision E</i></b>	<b><i>EN Design</i></b>	<b><i>Dated 18 July 2016 Received by Council 19 August 2016</i></b>

#### Referenced Documents

<b>Drawing No.</b>	<b>Author</b>	<b>Dated</b>
Statement of Environmental Effects	-	Dated September 2015 Received by Council 22/09/2015
Traffic Report (Reference: 15050)	Terraffic Pty Ltd	Dated 14/09/2015 Received by Council 22/09/2015
Acoustic Report (Reference: 20151265.1/2109A/R0/TT)	Acoustic Logic	Dated 21/09/2015 Received by Council 22/09/2015
Model Site Waste Minimisation and Management Plan	-	Dated 21/09/2015 Received by Council 22/09/2015
Installation / Inspection Certificate – Essential Fire Safety Measures	Fire Compliance & Maintenance	Dated 03/03/2014 Received by Council 22/09/2015

Survey Plan (Reference: 43373PW)	Harrison Friedman & Associates Pty Ltd	Dated 03/12/12 Received by Council 22/09/2015
Cover (Drawing No. CO.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Location Plan (Drawing No. LO.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
Existing Plan (Drawing No. EP.01, Revision C)	EN Design	Dated 14/09/2015 Received by Council 22/09/2015
<b>Amended Traffic Report dated 24 October 2016 (DA15/172/02)</b>	<b>Terraffic Pty Ltd</b>	<b>Received by Council 8 November 2016</b>

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

#### **CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE**

2. The applicant must prior to the obtainment of the issue of a Construction Certificate, pay the following fees:-
  - a) Development Control Fee \$600.00
3. This consent relates to the use of land in Lot 1 on DP 851974 and, as such, the use must not encroach on to adjoining lands or the adjoining public place, ***inclusive of the parking by valet employees of customers vehicles. (DA15/172/02)***

#### **CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT AT WORK**

4. The consent given does not imply that works can commence until such time that: -
  - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by: -
    - i) The consent authority; or,
    - ii) An accredited certifier; and,
  - b) The person having the benefit of the development consent: -
    - i) Has appointed a principal certifying authority; and,
    - ii) Has notified the consent authority and the Council (if the Council is not the

consent authority) of the appointment; and,

- iii) The person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the erection of the building.

5. The approved site plan shall be amended to:

- a) Indicate 2 off-street car spaces to be provided for employee parking within the car park;
- b) Show the entry and exit driveway separated by a small median island inside the property boundary;
- c) Show the designated area for waste storage;
- d) The construction / design of the premises shall comply with the provisions of the Standard 3.2.3 of the Australian New Zealand Food Standards Code, *Food Act 2003 and Food Regulation 2010*.

6. Prior to the commencement of works, the applicant must inform Council, in writing, of:

- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
- b) The name and permit number of the owner-builder who intends to do the work;
- c) The Council also must be informed if: -
  - i) A contract is entered into for the work to be done by a different licensee; or
  - ii) Arrangements for the doing of the work are otherwise changed.

### **DURING CONSTRUCTION WORKS**

7. The consent given does not imply that works can commence until such time that:

- a) The person having the benefit of the development consent:-
  - i) Has appointed a principal certifying authority; and
  - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
  - iii) The person having the benefit of the development consent has given at least 2 days notice to the Council of the persons intention to commence the building works.

8. The following shall be complied with:

- a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- b) Stating the unauthorized entry to the work site is prohibited;

- c) Showing that unauthorized entry to the work site is prohibited;
  - d) The Development Approval number; and
  - e) The name of the Principle Certifying Authority including an after hours contact telephone number;
  - f) Any such sign is to be removed when the work has been completed.
9. The following shall be complied with during construction:
- a) Construction Noise
    - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the *Protection of the Environment Operations Act 1997*.
  - b) Level Restrictions
    - i) Construction period of 4 weeks and under:
 

the  $L_{10}$  sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20 dB(A).
    - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 

the  $L_{10}$  sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
  - c) Construction Time Restrictions
 

Monday to Friday      07:00 am to 05:00 pm

Saturday                07:00 am to 01:00 pm

No Construction to take place on Sundays or Public Holidays.
  - d) Silencing
    - i) All possible steps should be taken to silence construction site equipment.
10. The applicant shall conduct all construction and related deliveries wholly within the confines of the site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A OCCUPATION CERTIFICATE**

11. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.
- Make an early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.



Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

12. Prior to the issue of an occupation certificate for the car wash bays, the car wash bay area is to be bunded with a direct discharge to the sewer in accordance with Sydney Water requirements.
13. The site and use is restricted to a maximum of **42 72** car parking spaces and 2 car wash bays. The spaces are to be marked-up in accordance with the approved plan(s) as referenced at Condition No. 1. (**DA15/172/02**)
14. Prior to use and occupation of the kiosk and car wash bays, an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.

#### **CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT**

15. Landscaping is to be installed in accordance with Condition No. 11 and 30 of DA-13/152/02. The landscaping works are required to be installed within 6 months of the issue date of this consent. A certificate of completion is required to be issued by a Landscape Architect or person who installed the landscaping.
16. The hours of operation are limited to 5:00am until 11:00pm daily. Any variation shall require a further application to be submitted to and approved by Council.
17. The ancillary kiosk and car wash will be for customers of the airport valet parking only and these services will not be available or advertised to the general public.
18. Separate advertising of the ancillary kiosk and car wash facility as uses separate from the airport valet parking is not permitted and is not to be advertised as separate uses.
19. The ancillary kiosk is for the sale of coffee and pre-packaged food only. Preparation and cooking of food is not permitted.
20. The outdoor seating area is for customers of the airport valet parking only.
21. Not more than a maximum of 4 employees may work from the site at any time.

22. Two (2) off-street car spaces are to be provided for employee parking within the proposed car park.
- 23.
- a) The mini-bus transporting passengers to and from the airport shall use either of the following routes:
    - i) **To the airport:** Right onto Merchant, left onto Wentworth, right onto Botany Road and left onto General Holmes Drive / Merchant Street, Bronti Street, Botany Road, Mill Pond Intersection then right onto General Holmes Drive.
    - ii) **From the airport:** General Holmes Drive, right onto Botany Road, left onto Wentworth Avenue, right onto Merchant Street / Botany Road (from the north only), left turn into Bronti Street, then into Merchant Street.
  - b) When the Westconnex enabling works are complete, the mini-bus transporting passengers to and from the airport shall only use the following routes:
    - i) To the airport: Merchant Street, left into Wentworth Avenue, and straight into the tunnel.
    - ii) From the airport: turn right from the tunnel into Botany Road, left into Bronti Street, left into Merchant Street.
24. Vehicles and mini-busses are to enter and exit the site in a forward gear. There shall be no reversing onto Merchant Street.
25. The mini-bus is not to utilise residential streets such as Johnson Street when travelling to and from the airport.
26. The site is not to be used as a taxi-interchange / change-over and the amenities are not to be used to facilitate taxi bathroom or lunch breaks.
27. The use of the site for a hire-car service is not permitted. Any change to the approved use is to be approved by Council.
28. Any increase in parking, or alteration the parking layout as approved in the plans referenced at Condition No. 1 (including but not limited to stacked parking arrangements) is required to be approved by Council.
29. The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise.
30. The noise produced from the operation of the car wash bays is to be in accordance with the recommendations of the Acoustic Report, prepared by Acoustic Logic (Reference No: 20151265.1/2109A/R0/TT) as referenced at Condition No. 1.

31. The operation of all plant and equipment (other than that conditioned by the Acoustic Report) shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level.

The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

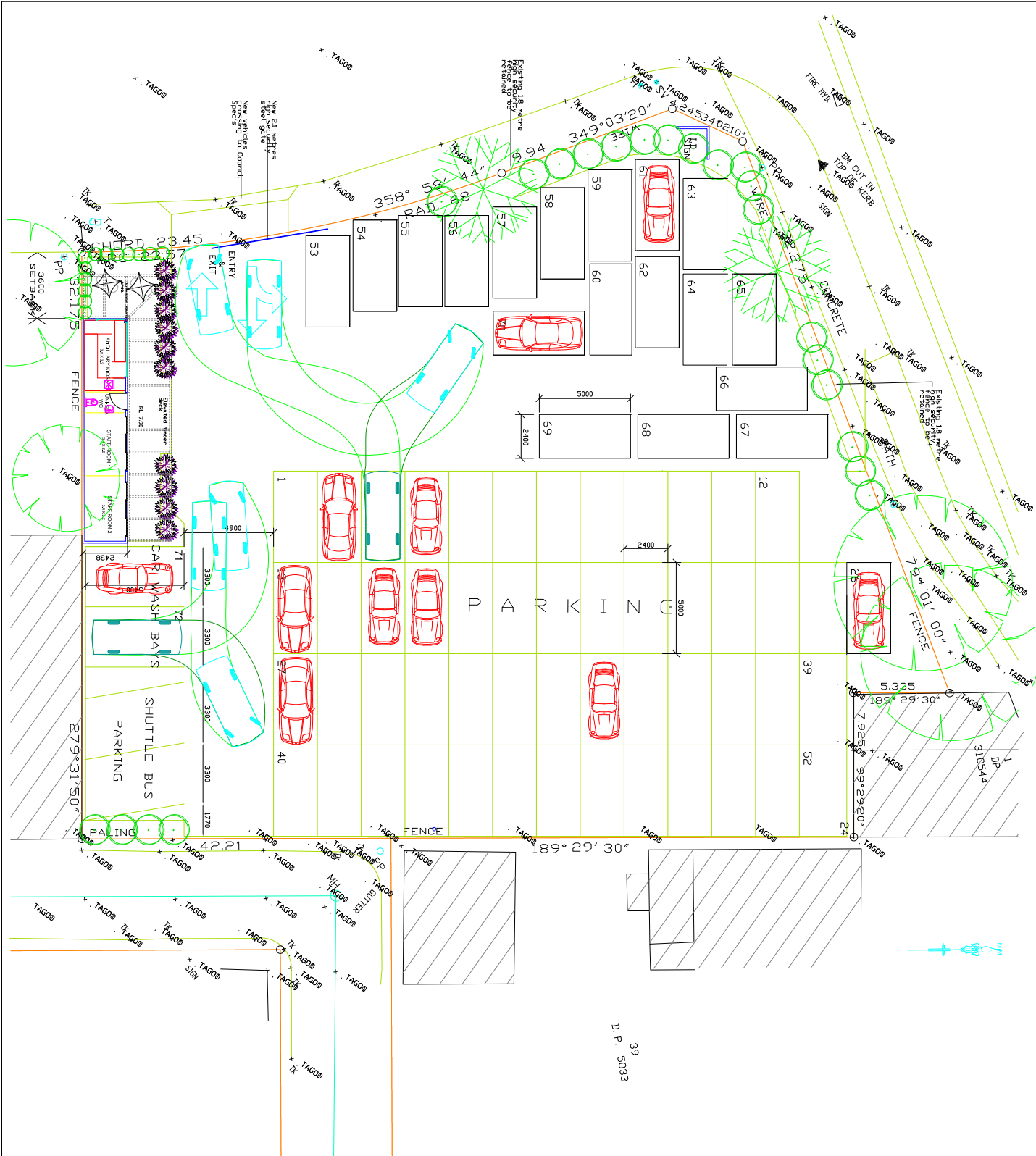
The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

32. The use of the premises shall not give rise to air impurities in contravention of the *Protection of the Environment Operations Act 1997* and shall be controlled in accordance with the requirements of this Act.
33. Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with *AS4282-1997 Control of the obtrusive effects of outdoor lighting*.
34. All intruder alarms shall be fitted with a timing device in accordance with the requirements of *Regulation 12A of the Noise Control Act, 1975*, and *AS2201, Parts 1 and 2 - 1978 Intruder alarm systems*.
35. No further signage, other than signage permitted as exempt or complying development, shall be installed or displayed at the premises without a development application being lodged with Council.
36. The ancillary kiosk must comply with the following conditions:
- a) The construction, use and operation of the premises shall comply with the provisions of the Standard 3.2.3 of the Australian New Zealand Food Standards Code, *Food Act 2003 and Food Regulation 2010*.
  - b) An application shall be made to Council for registration of the food premises prior to the issuing of the occupation certificate. These forms are available from Council.
  - c) An employee within the organisation must have completed the Food Safety Supervisor course.
  - d) All commercial tenants must keep written evidence on site of a valid contract with a licensed waste contractor for the regular collection and disposal of the waste and

recyclables that are generated on site.

- e) Between collection periods, all waste/recyclable materials generated on site must be kept in enclosed bins with securely fitting lids so the contents are not able to leak or overflow.
  - f) Bins must be stored in the designated waste/recycling storage room(s) or area(s) as per the plans amended by Condition No. 5. The waste containers are not to be over filled and the lids kept closed at all times except when material is being put in them. The occupier shall be responsible for cleaning the waste storage area, equipment, and waste collection containers.
  - g) No waste or waste containers shall be placed on the public way (e.g. footpaths, roadways, reserves etc.) at any time.
  - h) Premises which generate at least 50 litres per day of food waste or whose waste contain 20% of their or more of food waste must have that waste collected on a daily basis or must store that waste in a dedicated and refrigerated waste storage area until collection.
  - i) The waste and recycling management (including composting) and collection system, along with allocated responsibilities should be clearly outlined in contracts with cleaners, building managers and tenants.
37. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
38. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 15/172 received on 22 September 2015 **and as amended by Section 96(2) application DA15/172/01 received by Council 19 August 2016** and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council. **(DA15/172/02)**
39. **At no time shall any part of the administration building be used as a caretakers residence or for any other residential purposes. (DA15/172/02)**

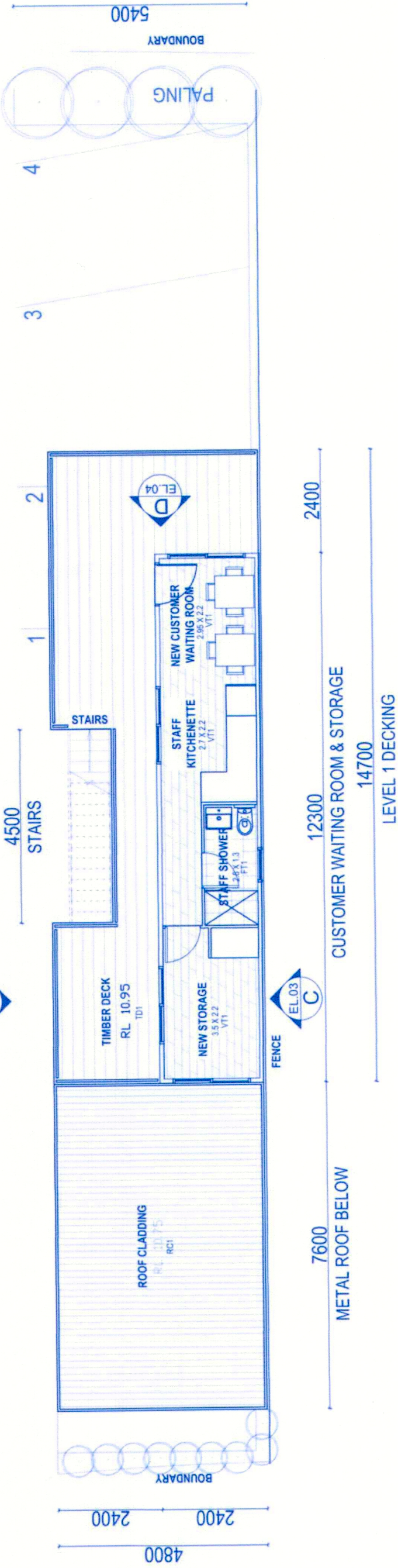


# SITE PLAN

PROPOSED 72 SPACE VALET  
PARKING ARRANGEMENT  
2 MERCHANT STREET  
MASCOT

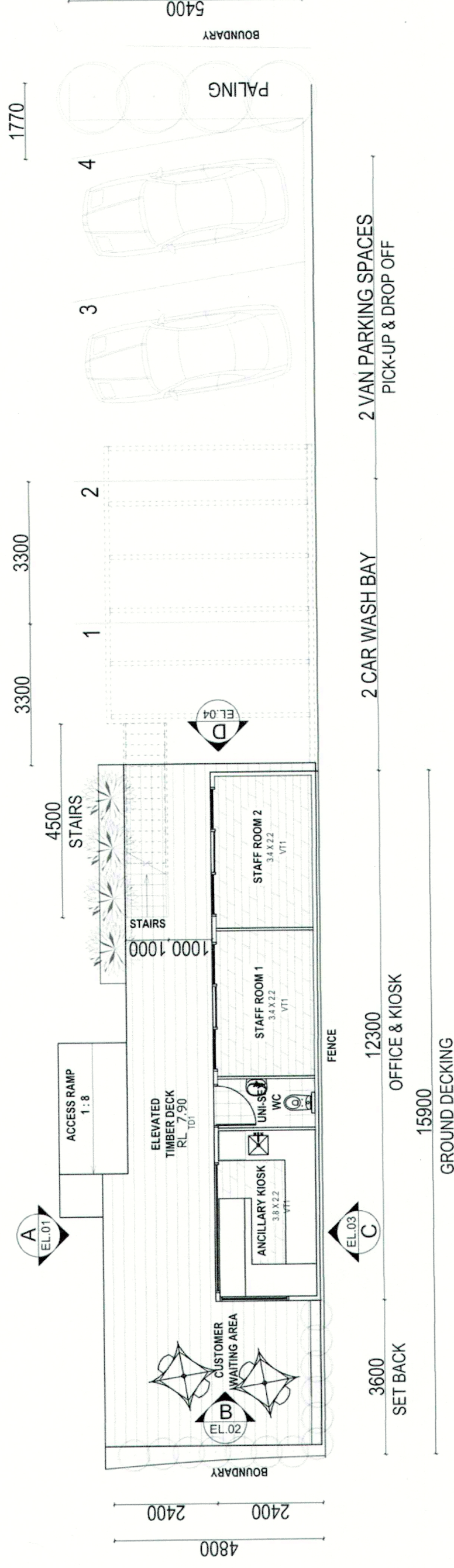
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DATE: 28/3/2017  
DWG. NO: 1/1







# CARWASH 2 BAYS CARPARK 72 CARS

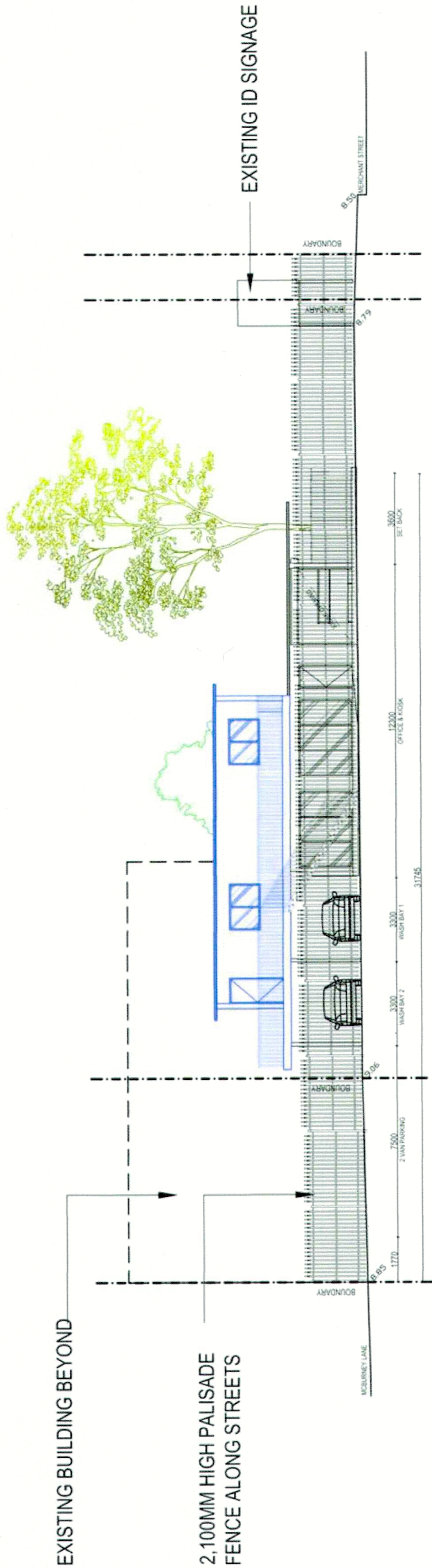
01 NEW PROPOSED LAYOUT PLAN- LEVEL 1  
SCALE 1 : 100



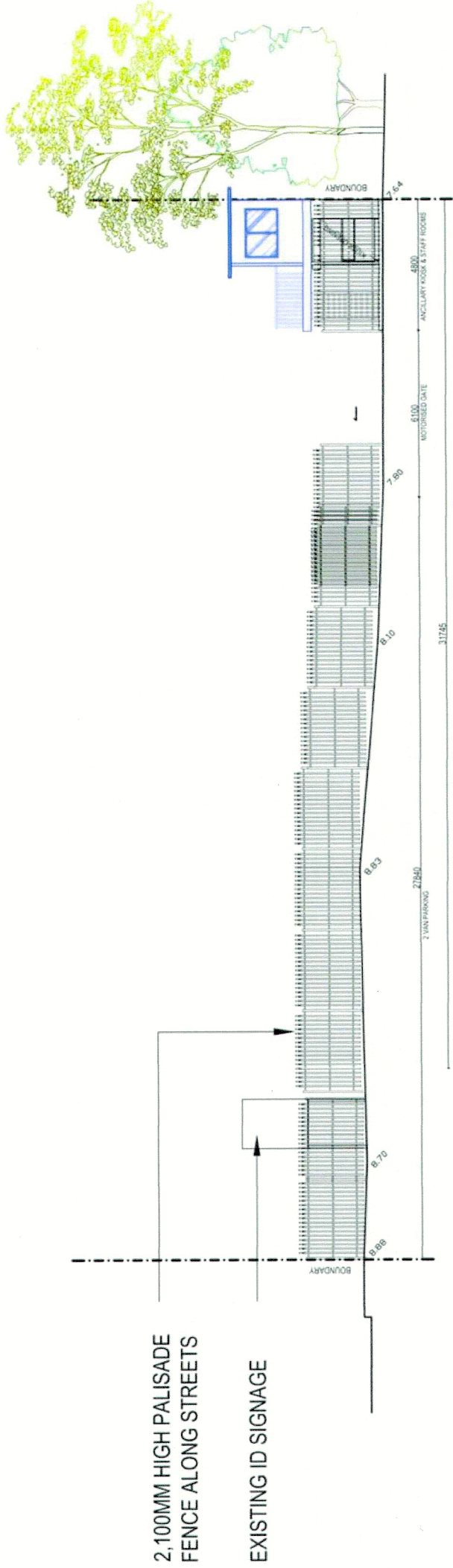
01 APPROVED LAYOUT PLAN- GROUND  
SCALE 1 : 100

<div></div> <div>20-24 Busaco Rd Marsfield NSW 2122  abn: 26458906867 p: 02 8542 5834 f: 02 8542 5834 m: 0430 330 558  en.shin1222@gmail.com endesign.architecture@gmail.com</div>	GENERAL NOTE: THE BUILDER SHOULD COMPLY WITH LOCAL AUTHORITY REQUIREMENTS AND ADHERE TO THE PROVISION OF THE BUILDING CODE AUSTRALIA, BUILDING SERVICE (N.S.W.) AND OTHER RELEVANT AUSTRALIAN STANDARDS.										
	ALL DIMENSIONS SHOWN ON THE DRAWING ARE TO BE CHECKED ON SITE BEFORE COMMENCING WORK AND QUERIES ARE TO BE DIRECTED TO THE DESIGN AUTHORITY. FIGURE DIMENSIONS ONLY ARE TO BE USED. WITH NO DIRECT SCALING FROM THE DRAWINGS ALLOWED. ALL LEVELS ARE TO BE CHECKED AND VERIFIED ON SITE BEFORE COMMENCING WORK.										
	THIS DRAWING IS COPYRIGHT AND IS THE PROPERTY OF EN DESIGN AND MUST NOT BE USED WITHOUT EN DESIGN'S DIRECT PERMISSION.										
	E	FOR SECTION 96	ES	18/07/16	<div>PROJECT NAME &amp; ADDRESS <b>AIRPORT PARKING &amp; SHUTTLE SERVICE</b> <b>2 MERCHANT ST MASCOT NSW 2020</b>  DRAWING TITLE <b>LAYOUT PLAN</b></div>						
	D	FOR SECTION 96	ES	03/05/16							
C	FOR DA APPROVAL	ES	14/09/15								
B	FOR DA APPROVAL	ES	08/09/15								
A	FOR CLIENT APPROVAL	ES	08/06/15								
ISSUE	DESCRIPTION	BY	DATE								
AMENDMENT											
DRAWING STATUS FOR SECTION 96		DATE 18.07.2016		SCALE 1: 100 @ A3		DRAWING NO. <b>LP.01</b>		ISSUE NO. <b>E</b>		<div></div> <div>NORTH</div>	





A SITE ELEVATION A  
SCALE 1 : 200



A SITE ELEVATION B  
SCALE 1 : 200



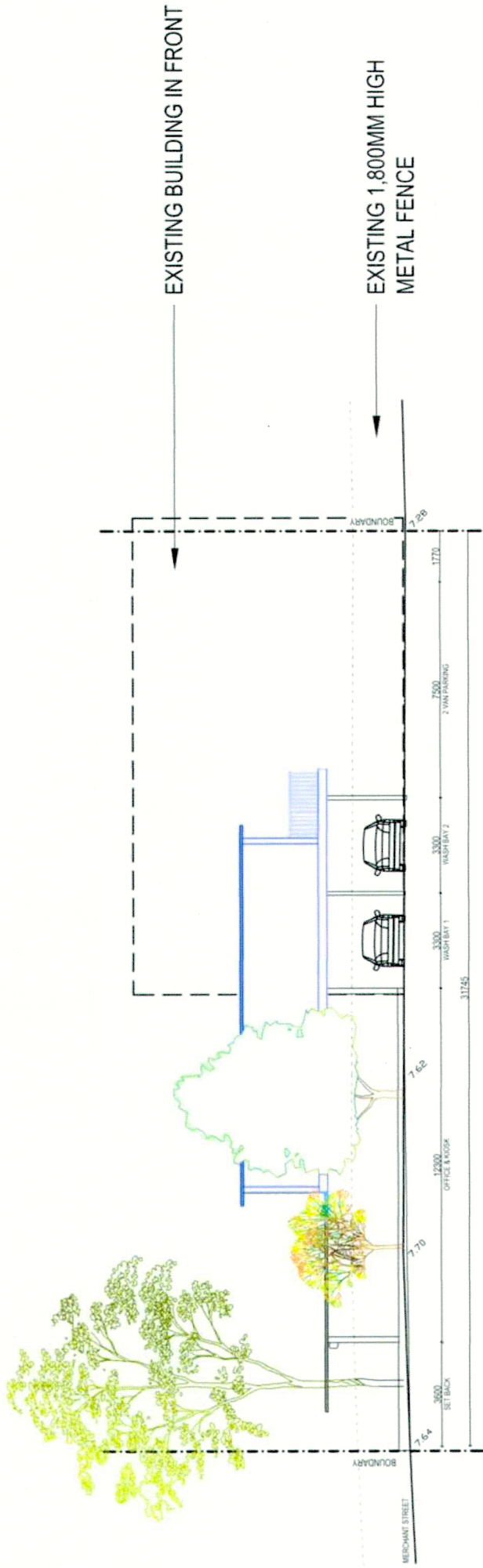
20-24 Busaco Rd  
Marsfield NSW 2122  
abn 26458916987  
p 02 8542 5834  
f 02 8542 5804  
m 0430 330 558  
en.shin1222@gmail.com  
endesign.architecture@gmail.com

GENERALLY, THE BUILDER SHOULD COMPLY WITH LOCAL AUTHORITY REQUIREMENTS AND ADHERE TO THE PROVISION OF THE BUILDING CODE AUSTRALIA, BUILDING SERVICE (N.S.W.) AND OTHER RELEVANT AUSTRALIAN STANDARDS.  
ALL DIMENSIONS SHOWN ON THE DRAWING ARE TO BE CHECKED ON SITE BEFORE COMMENCING WORK AND QUERIES ARE TO BE DIRECTED TO THE DESIGN AUTHORITY. FIGURE DIMENSIONS ONLY ARE TO BE USED, WITH NO DIRECT SCALING FROM THE DRAWINGS ALLOWED. ALL LEVELS ARE TO BE CHECKED AND VERIFIED ON SITE BEFORE COMMENCING WORK.  
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E	FOR SECTION 96	E S	18/07/16	PROJECT NAME & ADDRESS	DRAWING STATUS
D	FOR SECTION 96	E S	03/05/16	AIRPORT PARKING & SHUTTLE SERVICE	FOR SECTION 96
C	FOR DA APPROVAL	E S	14/09/15	2 MERCHANT ST MASCOT NSW 2020	DATE 18.07.2016
B	FOR DA APPROVAL	E S	08/09/15		SCALE 1 : 100 @ A3
A	FOR CLIENT APPROVAL	E S	08/08/15		DRAWING NO. EL.S1
ISSUE	DESCRIPTION	BY	DATE		ISSUE NO. E
AMENDMENT					

SITE ELEVATION A & B





A SITE ELEVATION C  
SCALE 1 : 200



A SITE ELEVATION D  
SCALE 1 : 200