

Confidential

18 February 2011

Our ref: WOL01310
Your ref: 10.2009.765.1 mr:mr

The General Manager
Wollondilly Shire Council
PO Box 21
PICTON NSW 2571

Attention: Michael Kelly

Email

Dear Sir

Advice re Proposed Tahmoor Town Centre Extension

Introduction

1 I refer to my letters of advice dated 23 December 2010 and 27 January 2011.

Advice Required

2 I am requested to advise Council whether the recent amendments that were made to the architectural plans and Statement of Environmental Effects (**SEE**) for the proposed development of the extension of the Tahmoor Town Centre now enable the proposed development to be characterised as a *general store* for the purposes of the *Wollondilly Local Environmental Plan 1991 (WLEP)*?

Background

3 On 27 January 2011, I advised Council regarding the amendments that needed to be made to the architectural plans and SEE to enable the proposed development to be characterised as a *general store*.

4 I have now been provided with:

- 4.1 an Addendum to the SEE prepared by Darryl Warry of Rein, Warry & Co dated 8 February 2011, and
- 4.2 an amended set of plans as follows:
 - 4.2.1 Plan A02 Issue G dated 1 February 2011,
 - 4.2.2 Plan A03 Issue D dated 24 August 2010,
 - 4.2.3 Plan A04 Issue G dated 13 December 2010,

- 4.2.4 Plan A05 Issue C dated 13 December 2010,
- 4.2.5 Plan A06 Issue D dated 1 February 2011, and
- 4.2.6 Plan A07 Issue D dated 1 February 2011.

Addendum to the SEE

- 5 The Addendum states that the areas of the Proposal which are not shown as general store are for the purpose of allowing the general store to operate by providing storage areas and ancillary uses, such as lay-by areas etc. In my view, the whole of development can be reasonably characterised by reference to the general store use in accordance with the relevant principles: see *Chamwell Pty Limited v Strathfield Council* [2007] NSWLEC 114.
- 6 The Addendum also identifies the nature of the range of items to be sold in the Big W. In my view, the range of items to be sold by retail in the Big W is sufficient to satisfy the requirement that it is a *range of general* (rather than specialty) *merchandise*: see *Maryland Development Co Pty Limited v Penrith City Council & Anor* (2001) 115 LGERA 75.
- 7 As advised in my letter dated 27 January 2011, if clause 37 of the WLEP is to be relied on to permit the Woolworths extension, the SEE must to be amended to provide *a detailed assessment of the proposed extension to the Woolworths against the planning controls in clause 37*.
- 8 Such a detailed assessment is required so that the Council could form an opinion as to whether the Woolworths extension *is necessary, ... due to planning, design, servicing or similar requirements relating to the optimum development of land*.
- 9 In my view, whilst the Addendum attempts to address the issue, it does not address the relevant question, namely whether the expansion is, in fact, the optimal development of the land over which the expansion will take place. The argument presented actually presupposes that this is the case and proceeds to argue why the supermarket would benefit from an expansion over York Street. In my view, the Council could not reasonably form the opinion that the test in cl37 is made out unless it is of that opinion the optimal development of the land over which the expansion will take place is a supermarket.

Amended Architectural Plans

- 10 I have reviewed the amended architectural plans referred to above and note that the references to retail space and commercial uses which are not for the proposed general store use have been removed.
- 11 Having regard to my comments above that the range of goods to be sold is general merchandise, I am satisfied that the architectural plans now show a proposal that has a number of aspects which are all for the same general store purpose.
- 12 Accordingly I am now of the view, that the Proposal as proposed on the documents referred to in this advice meets the definition of a general store as defined in the WLEP. In forming this view, I have also considered my previous letters of advice dated 23 December 2010 and 27 January 2011.
- 13 Once again I note that this advice has been prepared based on the documents referred to above. Any amendments to the Proposal must be reviewed within the context of the entire development application including any documents that I have not been provided. If you would like me to review any further documents relating to the development application, please let me know.
- 14 I trust the above advice assists.

15 Please call me or John Paul Merlino of my office on 8235 9707 if you have any further queries.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Lindsay Taylor'.

Dr Lindsay Taylor

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