

Confidential

27 January 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 letter of advice dated 23 December 2010 and to my telephone discussions with Michael Kelly.

Advice Required

- 2 I have been requested to advise Council regarding the amendments that would need to be made to the architectural plans and Statement of Environmental Effects (**SEE**) for the proposed development to enable the proposed extension of the Town Centre to be characterised as a *general store* for the purposes of the *Wollondilly Local Environmental Plan 1991 (WLEP)*.

Background

- 3 On 23 December 2010, I advised Council to the following effect.
- 3.1 The proposed development in development application No. 010.2009.765.001 (the **Proposal**) is not for the sole purpose of a general store.
 - 3.2 In order to ensure that the Proposal is permissible, the plans and the SEE must be amended so that the Proposal, in its entirety, is permissible.
 - 3.3 The amendments will need to show any areas of the proposed building that will not currently be used (including amendments to the development data shown on the plans).
 - 3.4 In order to characterise the Proposal as being for the purpose of a general store, the SEE must be amended to identify the nature of the items to be sold in the general store.

- 3.5 If clause 37 of the WLEP is to be relied on to permit the extension to the Woolworths store, the SEE must be amended to include analysis of those matters in clause 37 of the WLEP.
- 4 For the purposes of this advice I have separated the amendments required into two (2) categories:
 - 4.1 Amendments to Architectural Plans, and
 - 4.2 Amendments to SEE.

Amendments to Architectural Plans

- 5 The architectural plans that I have been requested to advise on are as follows:
 - 5.1.1 Plan A02 Issue F dated 13 December 2010,
 - 5.1.2 Plan A03 Issue D dated 24 August 2010,
 - 5.1.3 Plan A04 Issue G dated 13 December 2010,
 - 5.1.4 Plan A05 Issue C dated 13 December 2010,
 - 5.1.5 Plan A06 Issue B dated 24 August 2010, and
 - 5.1.6 Plan A07 Issue C dated 13 December 2010.
- 6 The architectural plans must be amended so that it is clear that the entire Proposal is for the general store use.
- 7 In particular, all references to retail space and commercial uses which are not for the proposed general store use must be removed. Any areas of the Proposal, particularly the additional retail space, that will not currently be used, should be identified as “unused”.
- 8 Any other areas of the Proposal which are proposed to be used must be characterised by reference to the general store: see *Chamwell Pty Limited v Strathfield Council* [2007] NSWLEC 114.
- 9 The amendments required to each individual architectural plan are as follows.

Plan A02 Issue F

- 10 The Development Data section must be amended as follows.
 - 10.1 The Retail Space must be nominated as 6284.88m². This is consistent with the size of the proposed general store use.
 - 10.2 The remaining 1844.78m² must be nominated as either an area that is proposed to serve the general store use or area that is not proposed to be used at this stage. As I understand it, this additional area is not proposed to serve the general store use and therefore it should not be nominated as Retail Space.
- 11 This plan must identify the above two areas within the total 8129.66m² of the proposed building.

Plan A06 Issue B

- 12 The North Elevation to Thirlmere Way must be amended to delete the reference to “FCL Stores”.
- 13 The South Elevation to Larkin St must be amended to:

- 13.1 remove the reference to “Restaurant” (noting that this is an area that has been nominated as “Storage” on Plan A04 Issue G, and these plans must also be consistent).
- 13.2 remove the references to “FCL Commercial” and “FFL Commercial” (noting that these areas are nominated as “Storage” on Plans A02 Issue F and A04 Issue G, and these plans must also be consistent).
- 14 The West Elevation to George St must be amended to remove the references to “Commercial FFL” on the Larkin Street façade.
- 15 Section A-A / North Elevation must be amended to:
 - 15.1 remove the reference to “Pet Centre Beyond”, and
 - 15.2 ensure that the references to “Suspended Ceiling to Retail Area” and “FCL Stores” are amended consistently with the general store use.

Amendments to SEE

- 16 It must also be made clear through the SEE that the Proposal is entirely for the purpose of a general store.
- 17 This means amending the SEE so that those parts of the Proposal situated on the land zoned 2(a) Residential A zone only relate to the general store use or will not be used.
- 18 The SEE should identify the nature of the range of items to be sold in the Big W and/or the Woolworths. The range of items to be sold by retail must be shown to be *a range of general* (rather than specialty) *merchandise*.
- 19 The SEE must also contain discussion regarding the mall and amenities, storage, back of house, loading dock and car parking aspects of the Proposal. The SEE must state that those aspects of the Proposal all serve the same purpose as the store itself.
- 20 The SEE must identify whether the additional 1844.78m² of floor area is proposed to be used. If it is, that use must be for the general store use. If no use is proposed, the SEE must identify those areas (in the amended plans) which are not proposed to be used.
- 21 If clause 37 of the WLEP is proposed to be relied on to provide an alternative source of permission for the extension to the Woolworths commercial building, the SEE must be amended to contain a detailed assessment of the proposed extension to the Woolworths against the planning controls in clause 37. Such a detailed assessment must provide sufficient information to the Council to 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*.

Qualification to this advice

- 22 I note that this advice is based on my review of the following documents:
 - 22.1 architectural plans referred to above,
 - 22.2 SEE prepared by Rein, Warry and Co, undated, and
 - 22.3 Report to the Sydney West Regional Planning Panel prepared by Michael Brown Planning Strategies dated November 2010.
- 23 I stress that any amendments made in accordance with my comments in this advice 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.

24 I trust the above advice assists.

25 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 read 'Lindsay Taylor'.

Dr Lindsay Taylor

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