

JOINT REGIONAL PLANNING PANEL
(Hunter and Central Coast Joint Regional Planning Panel)

JRPP No	2011HCC008
DA Number	210/2011/DA
Local Government Area	Greater Taree City Council
Proposed Development	Demolition of Motel, Service Station, Motel, three (3)Fast Food Outlets and Five (5) Commercial Units
Street Address	Princes Street Cundletown
Applicant/Owner	A and M Chehab
Number of Submissions	86 + 2 petitions
Recommendation	Refusal
Report by	Petula Bowden – Team Leader Development Services

Assessment Report and Recommendation

Owner: A and M Chehab

Lodgement Date: 12 October 2010

Capital Investment Value: \$11,522 681.00 (\$11.5 million)

Land Zoning: B6 Enterprise Corridor -Greater Taree City Council LEP 2010

Current use & Development: Motel and Restaurant

EXECUTIVE SUMMARY:

Brief Description of the Proposal:

This report considers a Development Application for a service station, motel, (3) fast-food outlets and (5) commercial units.

The subject land is zoned B6 Enterprise Corridor pursuant to Greater Taree City Council Local Environmental Plan 2010. The development is permissible with consent in this zone.

The development has an estimated capital investment of \$11.5 million. Accordingly the Joint Regional Planning Panel is the consent authority pursuant to State Environmental Planning Policy (Major Development) 2005 Clause 13A and 13B(2)(a). Despite the repeal of these clauses, as the development was lodged prior to 1 October 2011 the Joint Regional Planning Panel remains the consent authority for the development.

The Development Application was placed on public exhibition as required by the Environmental Planning and Assessment Act 1979. Eighty-six submissions and 2 petitions were received in objection to the development.

The Development Application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979 and is considered unacceptable.

It is therefore recommended that the Joint Regional Planning Panel refuse Development Application 210/2011.

Reason for Consideration by Joint Regional Planning Panel:

The application is being reported to the Joint Regional Planning Panel (JRPP) as it has a development value in excess of \$10 million pursuant to Schedule 4A 4(b) of the Environmental Planning and Assessment Act 1979, being development in which Council is the land owner and that has a capital investment value (CIV) of more than \$10 million.

The Hunter Central Coast Regional Planning Panel conducted an on-site inspection of the property on Thursday 14th of April 2011.

Site

The subject site is approximately 1.8 hectares in size and generally triangular in shape. The lot is situated on Princes Street near to the Cundletown on-ramp to the Pacific Highway. The northern boundary of the site immediately adjoins the future Cundletown by-pass road reservation. This parcel of land is included in the proposal for access purposes



Fig 1: Aerial Photograph of site and surrounds

The site is currently occupied by a single storey Motel and Restaurant, caretakers' residence, pool and maintenance shed. To the south of the site is located the Manning Valley Anglican College, and to the south-west a residential area. Access to the site is from Princes Street- a local road under the control of Council. There is no significant vegetation on the site, with the exception of some swamp oak forest on the adjoining lot 681.

Proposal

The subject Development Application seeks approval for a mixed-use development comprising a service station, motel, fast-food outlets and commercial units. Each of these components is described as follows:

Service Station:

The proposed service station is to be located within the site near to the future intersection on Princes Street, orientated internally to the site with vehicular access via the future 'by-pass' road. The service station will have a floor area of 1000m² with 6 petrol bowsers and associated underground tanks. The provision of 44 car parking spaces will service customers of both the service station and the adjoining commercial units. The height of the building will range from 6.5 to 9.5 m above natural ground level. The service station will be characterised by a significant architectural design feature to a height of 12.5m. An outdoor area on the submitted plans indicates outdoor dining facilities. The application to Council makes no reference to this component of the proposal.

Commercial Units:

The development proposes 5 commercial units with 100m² of floor space each. The units will have access from within the site and will share car parking spaces with the service station. A total of 18 spaces are located immediately adjacent to the commercial units. No information has been provided in regard to the likely future use of the units. The units will have a height of approximately 5m with the proposed lattice design feature extending to a height of 8m at its highest point.

Motel:

The proposed Motel is to be placed on the site in the southern-most corner adjacent to the Arkana Avenue dwellings and opposite the Manning Anglican School entrance.

The Motel is proposed to accommodate 100 units with an overall height of 16m and an additional roof treatment to accommodate the air conditioning plant and signage to a height of 18.5m. The motel will contain a ground floor service level and 4.5 floors of accommodation. The building will be rectangular in shape with a floor area of approximately 1026m² over each of the 5 floors (a total of 5130m²). A nominated 65 carparking spaces are to be allocated for the exclusive use of the Motel.

Fast Food Outlets:

A total of 3 fast-food outlets are proposed as components of the development. These restaurants will be oriented to the future by-pass road and have internal access from the site. Each is proposed to include a drive-through facility and will share an allocation of 69 car parking spaces. An additional 3 caravan parking spaces are proposed adjacent to the fast food restaurants. The restaurants will range in height between 6 and 7m above ground level.

Summary of uses:

Component	Height	Floorspace	Carparking	Hours of Operation	Employees
Service Station	6.5-9.5m	1000m ²	44	24hr	5
Commercial Units	5m	500m ²	See above	8am-6pm	8
Motel	18.5m	5130m ²	65	24hrs	18
Restaurants (fast-food)	6-7m	950m ²	69 +3	6am-midnight	21

Signage:

The mixed-use development proposes a number of advertising structures and signage panels. These are detailed below. To date no detail of the content of these signs has been presented to Council. Accordingly, when tenancies are to be separately occupied details of this signage will be required by Council. The following table summarises the number and size of the signs proposed.

Component	Flush wall sign	Pole sign	Canopy sign
Service Station	9000x1380 10000x1200	19500x4000	7500x800
Commercial Units	800x5000(x5)		
Motel	3170x2400 3170x2400 2085x7450 2090x745	19000	
Restaurants (fast-food)	1760x1440(x2) 2310x1860(x3) 2310x1095 (x2) 1760x1860 (x2)		

Compliance with Planning Controls:

The subject site is zoned B6 Enterprise Corridor pursuant to Greater Taree Local Environmental Plan 2010. See LEP extract below

“Zone B6 Enterprise Corridor

1 Objectives of zone

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.
- To provide for residential uses, but only as part of a mixed use development.

2 Permitted without consent

Home occupations

3 Permitted with consent

Backpackers' accommodation; Bulky goods premises; Business premises; Community facilities; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Landscaping material supplies; Light industries; Passenger transport facilities; Plant nurseries; Roads; Rural supplies; Shop top housing; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemeteries; Eco-tourist facilities; Electricity generating works; Farm buildings; Forestry; Home occupations (sex services); Industrial training facilities; Industries; Liquid fuel depots; Marinas; Mooring pens; Recreation facilities (outdoor); Registered clubs; Residential accommodation; Retail premises; Rural industries; Sex services premises; Tourist and visitor accommodation; Transport

depots; Truck depots; Waste disposal facilities; Waste or resource management facilities; Wharf or boating facilities”

The subject proposal is for the redevelopment of the site to include the following components:

1. Five (5) storey Motel comprising 100 rooms
2. Service Station
3. Three (3) Fast Food outlets, including drive-through facilities, and
4. Five (5) individual commercial units.

The proposal also provides for the demolition of the existing motel, signage, carparking and landscaping.

The development is consistent with the objectives of this zone.

The LEP defines a **Motel** to be:

*‘**hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:*

- (a) comprises rooms or self-contained suites, and*
- (b) may provide meals to guests or the general public and facilities for the parking of guests’ vehicles,*
- but does not include backpackers’ accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.’*

The proposed motel is permissible with development consent in the subject zone.

A **Service Station** is defined to be:

*‘**service station** means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:*

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,*
- (b) the cleaning of motor vehicles,*
- (c) installation of accessories,*
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),*
- (e) the ancillary retail selling or hiring of general merchandise or services or both’*

The proposed service station is permissible with development consent in the subject zone.

A **Fast Food Restaurant** is defined to be:

*‘**restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.’*

The proposed fast-food outlets are permissible with development consent in the subject zone.

The **Commercial Units** are defined as:

*‘**business premises** means a building or place at or on which:*

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.'

The proposed commercial units are permissible with development consent in the subject zone.

Each of the proposed components is considered permissible with development consent in the LEP 2010 B6 zone and the development as a whole is considered consistent with the objectives of the zone.

- *to promote businesses along main roads and to encourage a mix of compatible uses.*
- *to provide a range of employment uses (including business, office, retail and light industrial uses).*
- *to maintain the economic strength of centres by limiting retailing activity.*
- *to provide for residential uses, but only as part of a mixed use development*

The subject proposal is not categorised as Integrated Development.

History of DA

The subject application was submitted to Council on 12 October 2010 and proposed a development orientated towards Princes Street. The original plan is attached as Appendix 'A'. Further to initial assessment and community consultation the applicant was advised that there were numerous concerns with the Princess Street access arrangements and orientation of the development. The site layout was subsequently amended and a draft version presented to Council for comment.

Upon initial preliminary assessment of the 'amended' layout the applicant was presented with a written response from Council outlining remaining concerns. These issues included:

- access to Princes Street
- lack of caravan parking
- potential impact of signage
- the development needs to have a positive contribution to the Princes Street streetscape
- the back of the service station should not present to the round-a-bout
- need for a buffer to adjoining residential development
- consideration of basement parking

A further iteration of the layout was prepared and is the subject of this report.

Access road/by-pass:

A critical issue with the re-orientation of the development was ensuring a suitable access arrangement. Further to consultation with the applicant the development application was amended to include Lot 681 DP 617842, a parcel of land to the north of the site owned by Greater Taree City Council.

As previously mentioned Council staff met with the applicant and advised that there were concerns with the layout proposed, specifically with regard to the access

arrangements and that an alternate access should be considered. It was suggested that access to the proposed future Cundletown bypass road could be an alternative and serve to alleviate some of the traffic management issues associated with the Princes Street option.

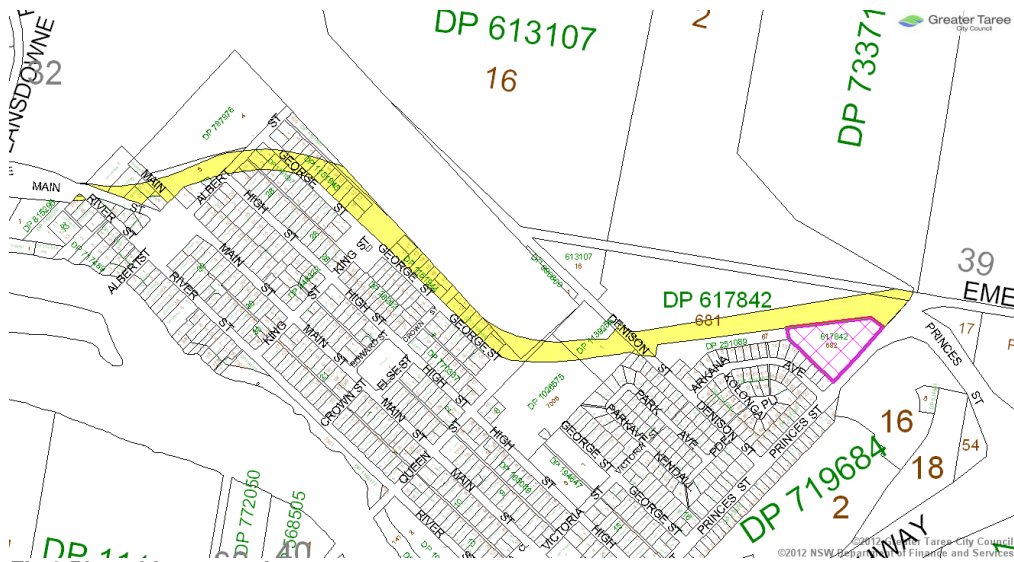


Fig 2 Plan of future road reserve

A report was presented to Council on 15 February 2012 which stated as follows:

"The Cundletown by-pass has been identified in Council's planning strategies for some time and will ultimately serve the future development of Brimbin. The granting of owners consent to propose access onto this road would effectively result in an amended layout for the proposed service centre and, subject to Joint Regional Planning Panel approval, the construction of part of the by-pass and roundabout on the corner of Princes Street.

Refusal to grant approval to the option of utilising the bypass road for access to the allotment may result in any future development of the site having access to Princess Street and therefore having a layout that would effectively 'turn-its-back' on the by-pass road.

It should be noted that upon construction of the by-pass road the subject site would have legal access."

Council subsequently resolved to endorse the Cundletown by-pass as an alternative to Princes Street; and grant consent as the owner of the land to the lodgment of the application amendment to include Lot 681 DP 617842 as part of the development proposal. The endorsement of this option was not based on any merit assessment of the access option.

Community Consultation

The original development proposal was notified in accordance with Council policy to adjoining and affected property owners and in the local press for a period in excess of 14 days. At the close of the exhibition period a total of 77 submissions and 2 petitions (containing 257 and 19 signatures respectively) had been received.

Issues raised in these submissions are summarized as follows:

Arkana Ave used as a u-turn bay	Given that access is denied to Princes Street it is unlikely that Arkana Ave would be utilized for these manoeuvres.
too close to fast food outlet at Chatham	The competing commercial interests are not a planning consideration, however it is agreed that social impacts could arise from reducing the viability of nearby businesses.
already too many empty businesses	This comment reflects the commercial situation in Taree, which will not be altered by this development
another service centre in close proximity	The Highway Service Centre is some 8 km's away. It is not envisaged that the proposed development will serve as a highway service centre due to limited access opportunities from the highway.
scale of hotel out of character with other Cundletown development	It is agreed that the proposed development is out of character with the scale of other development in Cundletown, and far exceeds the development density and scale of the existing development.
impact on existing businesses in Cundletown	As above
motel will not survive	The commercial viability of the development is not a planning consideration for Council.
noise from trucks entering and leaving	Given that there is no provision made for truck parking on the site it is unlikely that excessive numbers of trucks will frequent the development. It is also likely that trucks may park in nearby streets to enable them to use the facilities of the centre due to the lack of on-site parking. Access from the by-pass road will limit the noise impacts of traffic on nearby residents
noise and smell from fast food outlets	The location of the fast food outlets will minimize noise impacts on residential amenity
air, noise and visual pollution	These issues are controlled through conditions of consent and EPA monitoring.
decimation of feeding ground for yellow tailed black cockatoo	The fauna and flora assessment did not identify the on-site vegetation as potential habitat for the black cockatoo
impact on wetlands at rear of site	The area within lot 681 is not a nominated wetland
concern with drainage of the site	The engineering of the site will ensure that on-site drainage can be managed
out of character with the Cundletown village.	The scale of the development is considered out of character with the village of Cundletown

Upon receipt of the amended proposal the plans and supporting documentation were further notified and exhibited. Further to this an additional 9 submissions were received.

These submissions raised the following additional concerns:

excessive height of hotel and impact	The 5 storey and 18.5m height of the motel is
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on amenity	considered excessive and inconsistent with the bulk and scale established in an otherwise residential area.
use of commercial units	The initial uses of the commercial units will be the subject of separate development applications to Council. A condition of consent can be applied to ensure this.
inconsistent with SEPP 71 provisions	See SEPP 71 assessment below
economic sustainability of the development	Not a planning consideration
impact on adjoining rural enterprises	Negligible impact anticipated
zoning prohibits tourism and visitor accommodation	Tourist and visitor accommodation is prohibited in the B6 Enterprise Corridor Zone. While the definition of this use does include 'hotel or motel accommodation' 'tourist and visitor accommodation' is the higher order definition which also includes backpackers accommodation, bed and breakfast, farm stay and serviced apartments. Only hotel or motel accommodation is permitted in the B6 zone.
negative impact on value of nearby homes	Not able to be substantiated
proposes a round-a-bout for the Cundletown by-pass which has not been resolved by Council	The subject development would be required to provide construction of an access road and pay contributions towards a round-a-bout, until such time as the By-pass road is designed and constructed, at which time the round-about is constructed
social impact of the development and the potential to includes licensed premises	No social impact assessment addressing the likely impacts of the development accompanied the development proposal
needs consideration of scale, design and materials and finishes of the building to be consistent with the character of the locality.	The current scale of the development is inconsistent with the character of the locality. Material and finishes can be conditioned.

These issues are also addressed elsewhere in this report.

Strategic Compliance

Mid North Coast Regional Strategy (2006-31)

The proposal is considered to be inconsistent with a general objectives of the Mid North Coast Regional Strategy (2006-31) being, that fragmentation and out-of-centre retailing should be resisted unless compelling reasons exist in order to maintain the healthy retail and service functioning of particular centres in the Region.

The application does not address compliance or otherwise with this strategy.

Statutory Compliance

Environmental Planning and Assessment Act 1979

In determining a development application, the consent authority must take into consideration matters referred to in Section 79C(1) of the *Environmental Planning and Assessment Act 1979* as relevant to the development. The following section of this report summarises the relevant matters for consideration and provides a planning commentary.

Section 79C(1)(a)(i) any environmental planning instrument

State Environmental Planning Policies

State Environmental Planning Policy – Major Developments

In accordance with Part 3 of SEPP (Major Developments) 2005 development that has a capital investment value in excess of \$10 million is to be determined by the Joint Regional Planning Panel.

The JRPP was notified to the Development Application on 4 February 2011. An informal briefing to discuss the Development Application was held on 14 April 2011 at Council. The briefing was attended by JRPP members Krason, McCotter, and Fielding, Mayor Paul Hogan and Cllr David West and Council's Senior Leader Regulatory Services, Bruce Moore.

The briefing included a review of the plans, a discussion of the general locality, the significant issues raised during the exhibition process and a site visit.

State Environmental Planning Policy No. 55 – Remediation of Land

The purpose of this policy is to provide a state-wide planning approach to the remediation of land. In particular, this policy aims to promote the remediation of contaminated land for the purposes of reducing the risk of harm to human health or other aspects of the environment.

In accordance with clause 7 of SEPP55, following a search of Council records, the subject land is not identified as being potentially contaminated and is considered to be suitable for the intended use. The requirements of the SEPP are therefore satisfied.

State Environmental Planning Policy (Infrastructure) 2007

Pursuant to clause 104(3) of the *State Environmental Planning Policy (Infrastructure) 2007* (the 'ISEPP'), the proposal was referred to the NSW Roads and Maritime Services (RMS) for consideration and comment.

In response, and as detailed in their correspondence of 5 April 2012, the RMS advised that numerous modifications to the proposed plan were required and that additional information was required to enable a comprehensive assessment of the proposal.

Amended plans and an amended traffic report were provided in July 2012 and a final consideration provided on 22 August 2012. Of note within the response were the following comments:

- Access to/from the site remains an issue unless the proponent is prepared to construct the roundabout and a suitable road connecting to the vehicular access to the site. These works should be required by Council.
- RMS generally support the proposed development
- Council should ensure that the proposed access arrangements, to and from the proposed development, do not compromise the arterial status of the Cundletown by-pass when it is fully constructed.

The development as proposed is considered to be consistent with the provisions of the SEPP subject to the imposition of conditions to satisfy the RTA concerns.

SEPP 71- Coastal Protection

The Coastal Protection SEPP applies to the subject site as the land is within the coastal zone. In consideration of a DA within this zone Council must take into account the following matters as are relevant to this application:

Clause 8(d) the suitability of the development given its type, location and design and its relationship with the surrounding area, and

It is not considered that the development has been designed to minimise the visual impact on the streetscape nor include architectural features to incorporate the buildings into the locality. Despite being permissible in the zone, the intensification of development on the site to include a service station and fast food outlets is not considered appropriate in the locality. It is therefore considered inconsistent with Clause 8(d).

SEPP 64 Advertising and Signage

The proposed signs may be characterised as “business identification signs” for the purposes of SEPP 64. The signs are not therefore considered “advertising signs” for the purposes of assessment under SEPP 64.

Regional Environmental Plans

There are no regional environmental plans that apply to the land.

Local Environmental Plans

Greater Taree City Council 2010

The subject land is zoned B6 Enterprise Corridor pursuant to the provisions of the Greater Taree City Council 2010. See zoning map below:

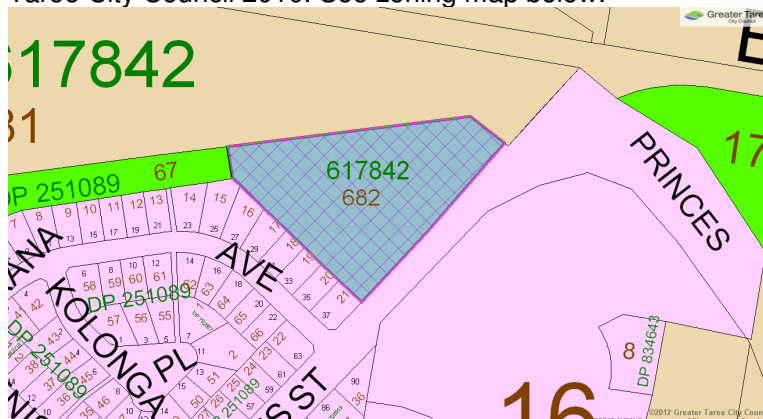


Fig 3: Zoning Map LEP 2010

The objectives of the zone are as follows:

Zone B6 Enterprise Corridor

- *to promote businesses along main roads and to encourage a mix of compatible uses.*
- *to provide a range of employment uses (including business, office, retail and light industrial uses).*
- *to maintain the economic strength of centres by limiting retailing activity.*
- *to provide for residential uses, but only as part of a mixed use development.*

Development for the purposes of a service station, motel, commercial units and fast food restaurants is not prohibited under the GTCC LEP 2010 and therefore can be permitted with consent.

The relevant provisions of the LEP are:

4.3 Height Of Buildings

The LEP requires that the height of a building is appropriate for the site and that it complements the streetscape of the area in which the building is constructed. The height of the building is not to exceed that height shown on the Height of Buildings Map. This map indicates the maximum height for this site to be 8.5m.

The subject development proposal does not comply with this provision. The height of the various components of the development all exceed this limit. No justification for the non-compliance with this LEP requirement nor request or the proposal to be considered under the provisions of Clause 4.6 of the LEP has been provided in the application.

The building height map (GTCC LEP) stipulates a maximum building height of 8.5 metres. The formulation of the height controls under the LEP would have had regard to appropriate heights for the natural environmental setting. The significant encroachment is considered to pose adverse impacts on the residential character of the locality. When the application was received by Council the applicant was requested to submit an addendum to the Statement of Environmental Effects addressing the permissibility of the development in terms of the LEP. The subsequent correspondence prepared did not address the height non-compliance.

4.4 Floor Space Ratio

The Floor space ratio for the site is 1:1. With a site area of 1.8ha and a total floor space of 7580m² the development does not exceed this limit.

7.4 Airspace Operations

The Obstacle Limitation Surface for this site is set by the LEP at 56m. The proposed development does not exceed this height.

Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

na

Section 79C(1)(a)(iii) any development control plan

Greater Taree Development Control Plan 2010

The relevant provisions of the DCP are outlined and addressed in the table below:

Issue	Criteria	Compliance	Comment
Carparking- <i>Take-away food and drink premises</i>	(a) Development with on-site seating and drive-through: 1 space per 8.3m ² of G.F.A; plus 1 space per 5 seats (internal & external). Note for drive-through facilities: <i>an exclusive area for queuing of cars is required (queue length of 5 to 12 cars measured from pick up point. This includes a minimum of 4 car spaces for cars queued from ordering point, plus 2 car spaces for cars waiting for orders past the pick up point area.</i>	950/8.3= 114 292/5 = 55 Total = 169	No provision has been made for cars to wait past the pick-up point. A total of 69 car spaces and 3 caravan parking spaces are proposed. A shortfall of 100 spaces. This provision does not comply with the DCP requirement.
<i>Motel</i>	1 space per unit/room; plus 1 space for any residential manager;; + 1 space per 3 non-resident employees; + 1 space per 6m ² for public entertainment/ function/reception room/bar or 1 space per 3 seats (whichever is the greater)	100 + 6 + 20 = 126	65 car parking spaces are allocated to the Motel. A shortfall of some 61 spaces This provision does not comply with the DCP requirement.
<i>Service Station</i>	6 spaces per work bay. 1 space per 20m ² of retail floor space (2 spaces minimum).	50	44 spaces are allocated to the service station. These spaces are also proposed to service the commercial units. A shortfall of 6 spaces.
<i>Business Premises</i>	1 space per 30m ² of N.F.A	500/30=17	No spaces are exclusively allocated to the commercial units. A shortfall of 17 spaces.
<i>Signage</i>	Council will support advertising sign proposals which promote innovation and originality in their design, style or character. The use of corporate identification and colours should not take precedence over Council's streetscape objectives. Corporate identification should be carefully selected and amended where necessary to retain the character of individual buildings and the surrounding locality.		No details of the proposed signage have been provided with the application. The number of signs proposed on the development are considered excessive and should reflect the mixed-use nature of the development as

	<p>Signage which is purpose-designed for a building should reflect the bulk and scale of the building and be focussed at the primary approach route for the development.</p> <p>All advertising must relate to the uses or activities carried out on the same land or which the advertising sign is to be erected.</p> <p>Illuminated signage will not be permitted.</p>		<p>opposed to a collaboration of individual uses. To that effect a more coordinated signage package is to be requested to be submitted for the separate consideration of Council if this application is approved.</p>
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Overall the development falls short of the DCP car parking requirements by 184 spaces.

A total of 20 flush wall signs, 2 pole signs and a canopy sign are proposed for the development. The proposed proliferation of signs on the site is considered incompatible with the established and desired amenity and visual character of the area.

It is considered that the proposed signs are of a scale, type and location that dominate the elevations and are not designed and located sympathetically with the buildings. DCP provisions seek to void excessive numbers of signs and repetition of content. The signage scheme proposed is not considered complementary to its host buildings or its surroundings, does not integrate with the building's form and, and dominates the building instead of complimenting the architectural features of the building.

DEVELOPER CONTRIBUTIONS

In 1992 Council adopted a Section 94 Contributions Plan for the LGA which included Stormwater Drainage. Based on the Section 94 Plan contributions will be payable based on the additional floorspace of the development.

Section 79C(1)(a)(iia) any planning agreement

There are no planning agreements applicable to the development proposal.

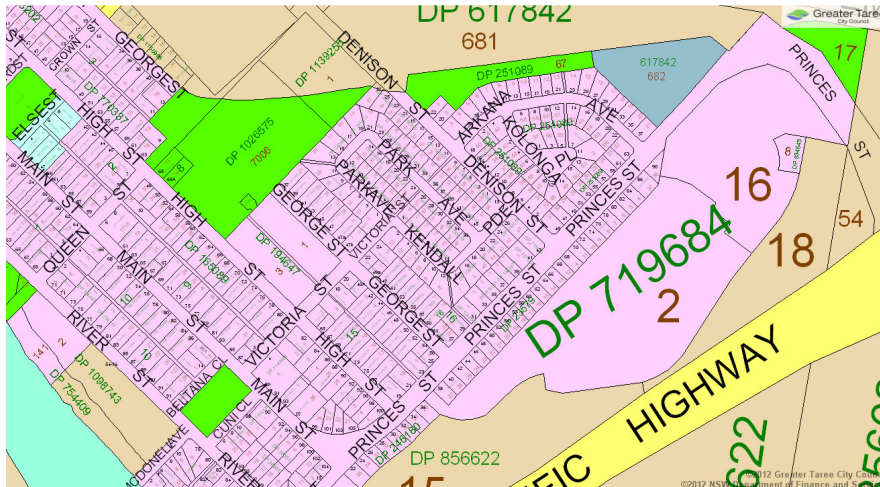
Section 79C(i)(a)(iv)the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

na

Section 79C(1)(b)the likely impacts of the development

Context and Setting

The subject land is located on the outskirts of the Cundletown township. Cundletown has a population of 1700. A contextual map showing the location of the Cundletown urban area and the pattern of surrounding development is provided below.



The development site is currently used as a Motel and Restaurant for the travelling public and visitors to the area. The property adjoins existing agricultural operations and agricultural land to the north and residential development to the south.

The proposed development is not likely to capture a large proportion of passing traffic due to having limited exposure on the highway. Accordingly it is expected that local residents would be attracted to the services. This is likely to occur at the expense of other service/commercial centres in the locality.

Design

The Statement of Environmental Effects submitted with the application does not address the design of the development in terms of any of the basic principles of development design within an urban context.

DCP 2010 specifically lists the following aims and objectives to guide development within the LGA.

The key aims of this plan are to:

Achieve a high architectural standard of development that is sympathetic with the environment;

Achieve a high level of environmental and social performance for all development;

To provide a framework of considerations against which development proposals can be consistently measured.

The objectives of this plan are to:

Ensure development responds to the features and qualities of the subject site;

Ensure development responds to the character and qualities of the surrounding neighbourhood;

Maximize the environmental performance of the development;

Minimize the negative impacts on the amenity of the adjoining properties;

Encourage quality, innovative and sustainable design.

The development makes no reference to how the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites. While planning controls, such as setbacks do not apply to the subject site it is considered that the relationship of new development to its existing and likely future context is a matter to be considered in the planning assessment.

The bulk of the development contrasts markedly with the lower density form of the existing residential developments in the vicinity. The bulk, scale and density of the proposed development will be totally out of character with the existing adjoining residential (including educational and aged care development) environment both now and in the future.

Access, Transport & Traffic

A traffic analysis was initially prepared by Mark Waugh Pty Ltd- Better Transport Futures and a subsequent review of the amended proposal prepared by Traffix. Their assessment concludes:

- The proposed carparking is sufficient to accommodate all parking demands on-site with no reliance on surrounding on-street parking.
- internal design is generally considered acceptable and will operate safely and efficiently
- a detailed assessment of the future Brimbin (future new town north of Taree) development and impacts of the Cundletown bypass will be required so that design of the site access (potential for turn bays) can be finalised
- confirmation of the road design for the Cundletown by-pass in the vicinity of the site will be required, and
- it should be considered reasonable that Council permit some level of access to Princes Street to enable a level of certainty for future redevelopment of the site.

The Roads and Maritime Services *Guide to Traffic Generating Development* estimates the two-way traffic volumes for the entire site to be in the order of 984 trips per hour. An appropriate reduction of about 30% for multi-purpose trips would reduce this generation to around 690 trips per hour. The traffic report indicates that access to the site will operate effectively but stated that the impact on the surrounding road network cannot be assessed until future traffic flows associated with the future by-pass have been determined.

Analysis in the original traffic report indicated that traffic generation from the site will have a minimal impact on the overall level of operation of the local road network.

Site Access

A new access is proposed to be constructed to service the development site to an intersection design standard as in accordance with the *Austroads Guide to Road Design* specifications and in accordance with the submitted Traffic Assessment. The vehicular access to the site will be provided via separate entry and exit driveways to the future Cundletown by-pass road.

Parking

The traffic report submitted indicates the development would require the provision of 244 car parking spaces, based on RMS figures. In accordance with Council's DCP 362 spaces are required. The Traffix report questions the assumptions of the original

traffic analysis on the basis of shared use parking and differing peak demands. It is Traffic's assumption that the only shared use of parking would be between the motel and retail uses, and that 221 spaces would be a more appropriate number.

The consultant however goes on to explain that the RMS figures are based on typical fast food and service station developments, and that there is likely to be a 32% reduction in traffic volumes associated with lower than average passing traffic volumes which will reduce the number of 'passing trade', and that similarly parking demands would also be expected to be reduced. *"A reduced demand of say 151 spaces is considered to represent the likely future demand associated with the development."*

The Traffic Authority of NSW "Functional Classification of Roads" nominates Princes Street as a sub-arterial road capable of carrying between 5,000 and 20, 000 vehicles per day. Passing traffic to the site is in the order of 5590 vehicles per day. As a local service centre not anticipated to attract significant traffic from the nearby Pacific Highway the car parking requirement with a reduction of 30% seems acceptable. With a requirement of 362 spaces according to the DCP, the reduction achieves a minimum of 253 spaces. Only 178 car parking spaces are proposed by the development, a deficit of 75.

Staffing estimates provided by the applicant indicate a total of 52 staff to service the site. No separate staff parking has been nominated on the site.

It is considered that the proposed rate of parking provision is incommensurate with likely demand.

Utilities

Water and Sewer

Water and sewer supply to the facility is proposed to be provided to the site via a combination of methods including use of Mid Coast Water's water supply system.

Stormwater

During construction all works areas will be bunded and fitted with siltation controls maintained to prevent the transport of sediments offsite. Council's erosion and sedimentation control policy provides the necessary guidelines in this regard. An erosion and sediment control plan addressing the construction phase will need to be prepared prior to the issue of a construction certificate.

Electricity

Electricity services have been identified as being available for connection to the development site. The proponent will need to liaise further with the local electricity provider, Essential Energy, in relation to the reticulation of electricity infrastructure to the site and any associated upgrades.

Telecommunications

Telecommunication services have been identified as being available for connection to the development site. The proponent will need to liaise further with the telecommunications provider (Telstra or their assignees) in relation to the reticulation of telecommunications infrastructure to the site and any associated upgrades.

Gas

The subject site is not serviced by a natural gas connection. Gas will be provided to the site via the installation of a LPG-gas tank. In the interest of mitigating any potential storage hazards, the physical siting of the proposed gas tank will need to be identified and clearly delineated on the final construction drawings prior to the issue of the Construction Certificate (CC).

Heritage

The subject land is not identified in Council's LEP Heritage schedule. No items of heritage significance are known to exist on the land. A standard condition of development consent may be imposed requiring agency notification if items of indigenous heritage are uncovered during construction works.

Flora & Fauna

The physical development site comprises highly disturbed land which is grassed and located on a residential fringe. A scattering of exotic plantings across the site are to be removed. Removal of these trees will have no detrimental impact on the flora and fauna located within the area.

A likely consequence of the inclusion of by-pass road in the development is that of an impact upon vegetation, as within such land exists a small stand of regenerating Swamp Oak Forest vegetation nominated as Swamp Oak Forest on Coastal Floodplain Endangered Ecological Community [EEC]. A Flora and Fauna Assessment prepared in support of the application includes a Section 5A threatened species impact assessment. This assessment identified 1 endangered population in the study area. The endangered species is *E.seeana*. The Section 5A assessment concluded that the proposal is unlikely to have a significant effect on *'Threatened species, population or ecological communities or their habitats within the locality.'*

The habitats within the subject site are considered highly fragmented, and any clearing required to facilitate the development is unlikely to impact upon fauna corridors in the locality and create further isolation of habitat. Despite this the proposal makes several recommendations for mitigation measures to be put in place to reduce potential impacts. These recommendations could be conditioned in any approval.

Waste

The submitted SEE makes no mention of waste management for the construction nor ongoing management of the development

Standard conditions of development consent should be imposed in this regard and given that the premises will be connected to sewer as part of the site servicing strategy, a waste management strategy will be required to be prepared and submitted to Council for approval prior to the issue of the Construction Certificate.

Noise & Vibration

An Acoustic Impact Assessment has been undertaken in support of the application.

The report reveals that the noise impacts on adjoining residential and educational development will be minimal with negligible exceedances to the appropriate amenity levels for noise impacts. Notwithstanding this, the report makes the following recommendations:

- Tanker deliveries should enter and exit the site in forward direction. The deliveries should only be conducted during the daytime period.
- A mitigation control by means of implementing a minimum of 2.5m high solid barrier walls along the south-western boundary of the development. The wall construction should be from masonry, insulated double colourbond steel, double lapped and capped timber, 12mm Perspex, 12mm glass or a combination of these materials. Gaps should be fully sealed to create a solid barrier.

The amended plans submitted to Council do not indicate the recommended acoustic wall in term of its location or design. The placement of an acoustic wall adjacent to the rear property boundary of a residential area is not considered appropriate due to the potential overshadowing and visual amenity impacts on the nearby dwelling houses. Any development consent for this proposal should include a condition which requires the placement of an alternate landscaping buffer and/or mound to achieve the desired acoustic attenuation.

Natural Hazards

The subject site is not known to be bushfire prone land. In addition a review of Council's flood maps has been undertaken and the land is not identified as being subject to inundation by floodwater. No adverse impacts have been identified that would preclude or impinge upon the operation of the development.

Underground Petroleum Storage Systems (UPSS)

The Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008 came into effect on 1 June 2008. Under the UPSS regulations the owner/operator is required to have in place:

- A system for monitoring and detecting leaks.
- Groundwater monitoring wells and a system for measuring them.
- An Environment Protection Plan for the site.
- Systems in place for record keeping, reporting of leaks and notifying council when the UPSS is decommissioned.

To this end, and given that it is not expected that the planning authority's technical expertise should extend beyond a broad understanding of the applicable industry specifications the DECCW Guideline on UPSS (Planning and Development Process for Sites with Underground Petroleum Storage Systems) recommends that:

- DECCW be advised of any approvals that involve the installation of UPSS,
- That a broad condition of consent that the minimum requirements of the UPSS Regulations are met,
- A new UPSS must prior to commissioning;
 - a) Be appropriately designed, installed and commissioned by duly qualified persons in accordance with the UPSS Regulation.
 - b) Have minimum mandatory pollution protection equipment installed, consistent with the Regulation, comprising non-corrodible secondary containment tanks and associated pipework and overfill protection devices.
 - c) Have groundwater monitoring wells installed and tested in accordance with the Regulations.
 - d) Have a certificate showing that any equipment integrity test (EIT) has been carried out in line with the written directions of duly qualified persons.

It is therefore proposed that should approval be granted that a condition of consent be imposed to ensure that the minimum requirements are met.

Safety, Security & Crime Prevention

The application was referred to the NSW Police Service for consideration and comment.

The comments provided noted that the application did not address issues such as lighting, security and hours of operation. It was further noted that the scale of the structures and location were concerning. It was stated that intensification of uses on the site would inhibit surveillance and space/activity management thus increasing crime opportunities. It was further considered that the development would be a major source of noise complaints from nearby residents and the school.

The ultimate Police recommendation was that the development not proceed in its present form or at the proposed location.

Economic Impact in the Locality

It is anticipated that the project will generate a number of permanent and casual employment positions offer an increased range of as well as day to day services for local residents. It is considered that the facility will provide for ongoing employment opportunities and have positive economic impact.

It is also relevant that a new draft State Environmental Planning Policy has been exhibited in relation to retail competition. The draft SEPP outlines its intention to encourage competition between retail businesses to place downward pressure on prices. If adopted in its current form the Plan will provide that:

- The commercial viability of a proposed development may not be taken into consideration by a consent authority, when determining development applications;
- The likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and
- Any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

The provisions of the draft SEPP supports the view that significant weight should not be given to the impact of new commercial development on the commercial viability of another commercial competitor.

Social Impact

No social impact assessment was formally prepared in support of the application. A number of submissions received noted the potential impact from a social perspective upon children at the nearby school, particularly in regard to access to fast-food. Given the isolated nature of the development with regard to other commercial development in Cundletown, the inadequate car parking provision, adverse impact on the streetscape and potential for crime activity the development proposal can not be supported on social grounds.

Site Design and Internal Design

The subject site is generally triangular in shape and has a frontage to Princes Street and a future frontage to the Cundletown By-pass Road. The southern boundary of the site adjoins the rear of properties along Arkana Avenue.

When first submitted the proposal gained access from Princes Street and presented the 3 proposed fast-food outlets and Service Station to Princes Street. The proposed Motel and Commercial units were to the rear of the site. See Appendix A.

In February 2012 the application was amended to include the adjoining lot 681 DP 617842, for the purpose of providing alternate access opportunities for the development.

In terms of internal circulation and traffic relief on Princes Street the amended proposal is preferable. The development however does appear to 'turn its back' on Princes Street, with both the Motel and Commercial units facing internally.

The design of the overall development is considered to be excessive in terms of both height and bulk and proposes unusual architectural elements which are considered inconsistent with the established residential character of the area and which do not positively contribute to the function and appearance of the development.

Construction

Management of construction impacts will be the responsibility of the builder (or site manager). If approved it is intended that a condition of development consent should be imposed requiring the preparation of a Construction Management Plan (CMP) to ensure that impacts likely to be experienced during the construction phase of the development are appropriately managed and mitigated.

Section 79C(1)(c) The suitability of the site for the development

The site is considered unsuitable for the proposed development, for the following reasons;

- it is inconsistent with the desired future character of the area,
- adverse site impacts have been identified,
- any identified negative externalities are considered to be incapable of being managed.

Section 79C(1)(d) Any submissions made in accordance with the Act or the Regulations

The proposal was twice advertised and notified each time for a period of fourteen (14) days in accordance with the *Environmental Planning and Assessment Act 1979*, and the *Environmental Planning and Assessment Regulations 2000*. A total of 86 submissions and 2 petitions of (257 and 19 signatures) were received. Issues raised in these submissions have been outlined and discussed throughout this report.

Section 79C(1)(e) The public interest

No policy statements from State or Federal Government are known to have any relevance to the assessment of this Development Application. The proposal is however considered to be inconsistent with the general objectives of the Mid North Coast Regional Strategy (2006-31).

For reasons already outlined in this report the development is considered not to be in the public interest.

Recommendation

The application has been assessed in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. The evaluation concludes that the proposal is unsatisfactory in terms of the matters for consideration identified in the legislation.

It is recommended that the proposal be refused on the following grounds:

1. The proposal is contrary to Clause 8(d) of State Environmental Planning Policy 71- *Coastal Protection*
2. *The Development does not comply with Clause 4.3 of Greater Taree City Council LEP 2010- Height of Buildings*
3. The development does not comply with Part G1.4 of Greater Taree City Council DCP 2010- Parking requirements for specific land uses
4. The proposal is incompatible with the context and setting of the locality.
5. The scale, density and aesthetics of the development are significantly out of character with the Cundletown built environment.
6. The development will have an unacceptable social impact
7. The development is not considered to be in the public interest