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TSC Ref: DA14/0171
Contact: Giles Hassall

29 September 2014

The General Manager
Tweed Shire Council
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Dear Sir/ Madam,

DEVELOPMENT APPLICATION FOR A PROPOSED GENERAL STORE (CHANGE OF USE) AT 136 – 150 DRY DOCK ROAD, SOUTH TWEED HEADS, DESCRIBED AS LOT 1 DP1074784

RESPONSE TO SUBMISSIONS RECEIVED DURING PUBLIC NOTIFICATION

We advise that we act on behalf of Mormatsal Investments Pty Limited ATF Wingham Plaza Unit Trust (“**Mormatsal**”) the landowner and Applicant for the abovementioned development application.

Reference is made to the abovementioned application, which concluded public notification on 28 April 2014. It is noted that an email from Mr Seth Philbrook dated 26 May 2014 confirms that a total of two (2) submissions were received during the public notification period.

The purpose of this correspondence is to provide a response to the main issues raised in the submissions to assist the assessing planning officers in their understanding of the Applicant’s views.. Specifically this correspondence seeks to address the following issues.

1. Economic Need and Impact; and
2. Compliance with the applicable objectives of the 6(b) Recreation Zone under the Tweed LEP 2000 as well as the Objectives of the R2 Recreation Zone under the Tweed LEP 2014

With respect to the two (2) submissions received, one submission received from the adjoining Palm Village Convenience Store and Bottle Shop raises concern that the proposed development if approved will negatively impact upon the viability of these tenancies. The second submission more broadly objects against the proposed General Store on the basis it is inconsistent with Clause 47 of the North Coast Regional Environmental Plan and Clause 17 of the Tweed Local Environmental Plan 2000 as well as undermine the established retail centres at Dry Dock Road (e.g. Palm Village), Tweed Heights, Banora Central and Banora Point.

To address the issues raised the Applicant has prepared a detailed Economic and Social Impact Assessment (EIA) dated August 2014 prepared by Leyshon Consulting (**Appendix A**), and

The Applicant has sought advice from Storey and Gough Lawyers regarding the recent decision of the Commissioner to refuse an application for a General Store (2,279m²

IGA Supermarket), within the existing Seagulls Club building located in Tweed Heads (**Appendix B**).

Further discussions regarding Items 1. and 2. (above) as well as a summary of the main points from the EIA and legal advice are outlined below:

1. ECONOMIC NEED AND IMPACT

With respect to the proposed General Store being inconsistent with Clause 47 of the North Coast Regional Plan and Clause 17 of the TLEP 2000 the following comments are provided.

Clause 37 of the NCREP states:

The objectives of this plan in relation to urban development are to:

- (a) *Provide for the orderly and economic release of urban land and identify growth centres; and*
- (b) *Promote the efficient commercial functioning of subregional and district centres.*

COMMENT

The proposed development seeks to re-use part of an existing building to provide a 460m² General Store, the proposed development will not unnecessarily preclude the orderly or economic release of urban land, nor is the subject site identified within a growth area. Furthermore, and as outlined in the EIA prepared by Leyshon Consulting the very low impacts of the proposed development (circa -0.3%) on Tweed City Shopping Centre (major district retail centre) will have no discernable impacts on the commercial functioning of this higher order centre. The aim of the General Store is to provide complementary services to customers and tourists who are using other facilities provided on site and not compete in the retail hierarchy of the local area.

Clause 17 of the TLEP 2000 States:

17 Social impact assessment

(1) Objective

- *to ensure proper consideration of development that may have a significant social or economic impact.*
- (2) *Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.*
- (3) *The socio-economic impact statement that the consent authority considers must do at least the following:*
- (a) *identify the likely future impacts of the development on the affected community,*
 - (b) *analyse the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services, and the like,*
 - (c) *determine if the impacts will cause a loss of amenity within the locality due to a net reduction in community services and facilities,*
 - (d) *determine and assess possible measures for the management or mitigation of likely impacts.*

COMMENT

The size of the proposed General Store at 460m² is not large enough to have a significant social impact hence sub clause (3) and the requirement to undertake a social impact assessment is not considered necessary.

With respect to the perceived impact of the development on the affected community which includes adjoining Palm Village Convenience Store and Bottle Shop as well the established retail hierarchy within the locality (e.g. Tweed Heights, Banora Central and Banora Point). The following conclusions have been drawn from the EIA:

- > *the population residing in the MTA is currently under-serviced as far as supermarket-type facilities are concerned;*
- > *the resident population of the MTA exhibits an older age profile, lower levels of mobility (as measured by car ownership) and low income levels. As such residents would significantly benefit from an improvement in local convenience retail services;*
- > *there is sufficient demand in the MTA to support both the proposed supermarket and the existing convenience store in the adjacent Palms Village;*
- > *the impacts of the proposed development on existing centres outside the MTA will be in the very low category of impact and thus will not pose any threat to the viability of these centres;*
- > *even if as a result of competition from the proposed development the existing convenience store in the adjacent Palms Village development were to cease trading (an outcome considered most unlikely), residents of the MTA would be substantially better off in terms of their access to basic supermarket facilities; and*
- > *the proposed development is consistent with the objectives of the Tweed Shire Retail Strategy as it will not pose a threat to any existing retail centre while improving basic retail facilities in an area where no centre is planned.*

In light of the above comments it is evident that the economic impacts of the proposed General Store are minimal and would not preclude Tweed Shire Council, as the consent authority, approving the development. The report concludes significant social gain would be achieved by approval of the General Store

2. COMPLIANCE WITH THE APPLICABLE ZONE OBJECTIVES TLEP 2000 & TLEP 2014

It is considered that the permissibility of the proposed General Store must be achieve compliance with the relevant planning instruments including the zone objectives. As outlined with in the submitted Statement of Environmental Effects the Primary and Secondary Objectives of the 6(b) Recreation Zone state:

Primary Objectives

'To designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.

Secondary Objectives

'To allow for other development that is compatible with the primary function of the zone

While the Objectives of R2 Recreation Zone are as follows:

'To enable land to be used for private open space or recreational purposes;

'To provide a range of recreational settings and activities and compatible land uses; and

'To protect and enhance the natural environment for recreational purposes

COMMENT

With respect to compliance with the above objectives the following comments are provided:

- > The Primary Objectives of the 6(b) Recreation Zone does provide the opportunity for compatible uses other than recreational purposes to occur from the subject site, in this regard, the proposed General Store by virtue of its size (460m²) is considered to be subservient to other recreational uses that will occupy the site. Accordingly the proposal does not sterilize zoned recreational land from being used for recreational purposes.
- > The application site comprises approximately 76,010m² (7.601ha) of land of which 460m² will be used for the purpose of providing a retail function, which equates to approximately 0.6% of the total site area. Accordingly 99.4% of the site remains available for use as private open space or recreational purposes;
- > A separate development application seeking approval for a Tavern, Café, Restaurant, Playground and Pontoon (DA_130669) is currently being assessed over the subject site. Draft Conditions of Approval have recently being provided to the Applicant, which assumes the application will be approved by Council. It should be noted that the General Store component by virtue of its scale would always remain subservient to these uses.

Given recent determination from the Land and Environment Court (LEC) in *North Sydney Leagues Club Pty v Tweed Shire Council* we believe there are distinct differences between the subject application and the Seagulls' case. To illustrate this point the following points of difference have been identified by Storey and Gough Lawyers:

- > *The proposed General Store with an area of 460m² is substantially smaller than the proposed IGA Store in Seagulls (2,279m²);*
- > *The size of the proposed General Store is similar to the kiosk or caravan park store referred to in the judgement and the scale of the proposed IGA supermarket was significantly different to a kiosk or caravan store;*
- > *The General Store would cater mainly for patrons of the recreational facilities that will be constructed on the property. There will be no separate entrance for the general public and no advertising visible from outside the property. Due to its integration into the proposed recreational facilities and its size, it will not be highly visible;*
- > *Commissioner Hussey found that the proposed IGA Supermarket was a "large supermarket" which would not be compatible with the recreational use of the land. The proposed 460m² General Store could not be regarded as a large supermarket. It will be similar to a kiosk or caravan park store and will be compatible with the other recreational uses on the land;*
- > *Due to its size, the proposed General Store will not introduce a large number of customers and associated activities, which was of concern to Commissioner Hussey. It will not be the primary or dominant use of the land but a subservient use in character with the other recreational use of the land.*
- > *Again, due to its size and location, the proposed General Store will not impact on any commercial centres in the locality, which was a concern of the Commissioner.*

3. CONCLUSION

We trust this information will be of assistance in Council's consideration of the application and would welcome the opportunity to meet with Council Officers to discuss the abovementioned issues.

Should you require any further clarification on this matter please contact me on (07) 5594 1322.

Yours faithfully



Giles Hassall
Senior Planner
For Cardno HRP

Enc:

Appendix A: EIA prepared by Leyshon Consulting
Appendix B: Legal Advice from Storey & Gough Lawyers

cc: Mormatsal Investments Pty Limited ATF Wingham Plaza Unit Trust