

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- a33 [PR-CM] Class 1 Appeal in Relation to Development Application DA12/0527 for Internal Alterations and Additions Comprising of a New General Store, Extension of Entrance and Car Park Reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads Wes

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0527 Pt3



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
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SUMMARY OF REPORT:

At its meeting on 16 May 2013, Council unanimously resolved to refuse Development Application DA12/0527 which sought approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket was proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m².

Council has been served notice of a Class 1 Merits Appeal against Council's refusal in the NSW Land and Environment Court. A telephone directions hearing has been set down for Monday 20 January 2014 and it is requested that Council's position on defending the Appeal be determined to enable engagement of solicitors and consultants.

RECOMMENDATION:

That Council in respect of its decision to refuse Development Application DA12/0527 for internal alterations and additions comprising of a new general store, extension of entrance and car park reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West determines to defend the Class 1 Appeal and engage the necessary solicitors and consultants.

REPORT:

The Development Application now subject to the Class 1 Merits Appeal sought approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket was proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m².

The application would have involved a change of use of part of the existing club to accommodate the supermarket. The application proposed works to the north eastern facade to improve the access for the IGA and this would involve the creation of an additional 314m² of floor area to the existing building. The application also incorporated an amended car parking layout.

The subject site is zoned 6(b) Recreation in accordance with Tweed Local Environmental Plan 2000 (TLEP 2000). In accordance with the current TLEP 2000 shops (by definition) are prohibited in this zone.

The subject site is proposed to be zoned RE2 Private Recreation under Draft LEP 2012. In accordance with the Draft LEP 2012 shops (by definition) and neighbourhood shops (of less than 300m²) will be prohibited in this zone. Only kiosks, markets and food and drink premises will be permissible.

The applicant lodged the application as a "general store" by definition (TLEP 2000) and sought Council's approval for this as a permissible land use. The applicant submitted legal advice to support this view and such advice was discussed in the original report.

Council assessed the original application for a supermarket on its merits having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

In undertaking that merit assessment the size, scale and relationship of the 1965m² supermarket with the existing Seagulls Club was considered. The proposed supermarket was proposed as a separate but complimentary use to the existing club and not an ancillary use and accordingly the merit assessment needed to review the development as a standalone business separate to the existing Seagulls Club. If the Seagulls Club for some reason was to cease operations the proposed supermarket would have been lawfully allowed to continue operations in accordance with their consent on the subject site. For that reason the proposed development for a supermarket was assessed as a separate use to that of the Seagulls Club.

Whether the development is legally defined as a general store or a shop the proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the strategic objectives for the Tweed;
- Satisfies the primary objective of the recreational zone;
- Satisfies the test of cumulative impact;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2012;
- Satisfies Council Retail Strategy; and
- Satisfies the general public interest and the impact the proposal would have on the existing commercial zones in the locality.

Accordingly the application was recommended for refusal with the following reasons:

1. The development is not considered to be consistent with Clause 4 - The aims of the Tweed Local Environmental Plan 2000 and the Strategic Planning documents that support the Local Environmental Plan.
2. The development is not considered to satisfy Clause 8(1)(a) – Consent Considerations of the Tweed Local Environmental Plan 2000 as the primary objective of the 6(b) Recreation Zone has not been met.
3. The development is not considered to satisfy Clause 8(1)(c) – Consent Considerations of the Tweed Local Environmental Plan 2000 as the development would have an unacceptable cumulative impact on the community, locality and catchment.
4. The development is not considered to satisfy Clause 17 of the Tweed Local Environmental Plan 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.
5. The development is not considered to comply with Council's adopted Retail Strategy.
6. The development is not considered acceptable having regard to Draft LEP 2012 as the proposed development would be prohibited in the zone and fails to satisfy the zone objectives of the RE2 Private Recreation zone.
7. The development is not considered acceptable having regard to the general public interest and the impact the proposed development would have on the existing commercial zones in the locality.

OPTIONS:

1. Defend the Appeal; or
2. Negotiate Consent Orders.

Council Officers recommend Option 1.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Council will be required to engage legal representation and specialist consultants regarding the Appeal. Legal costs will be incurred as a result of the Appeal.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council Report 16 May 2013 (ECM 3237954)
