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# **Development Application**

**10.2016.17**

**Proposed new supermarket and liquor outlet**

**36W-40W Fitzroy Street, Walcha**

**Exhibition Period:**

**15 March 2017 – 12 April 2017**

22 March 2017

To the General Manager  
Walcha Council  
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## **D2017/00080**

### **Development Application 10.2016.17**

#### **Proposed new Supermarket, 36W-40W Fitzroy Street, Walcha, NSW**

[REDACTED] Walcha and a resident in town, I wish to lodge this further objection to the proposed new supermarket at 36W-40W Fitzroy Street.

The proposed supermarket represents an over-development of the site, is out of place with the character of Walcha and will result in a number of detrimental impacts on the community. These impacts cannot be managed by simply introducing permit conditions. This development application must be refused by Council. Prior to considering any alternative proposals for the site the Council should advise the applicant to reduce the size of the development commensurate with the development potential of the site, and to assess and report on the various constraints affecting the property.

### **Economic Impacts**

Under Section 79C (1)(b) of the EP & A Act the Council is required to take into consideration the likely economic impacts and the public interest when determining a development application. Further, Section 5 (a) of the Act includes an objective to encourage the proper development of land for the purpose of promoting the economic welfare of the community:

#### **5 Objects**

The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iii) the protection, provision and co-ordination of communication and utility services,

## 79C Evaluation

### (1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the public interest.

In its report of the 8 March 2017, the Council acknowledged that the proposal will have a potential economic impact. However, the applicant and the Council have failed to assess what impact the development may cause and whether this will be in the public interest or not. The Council has therefore failed to exercise its duty in this regard under the Act.

There are numerous examples of Councils refusing development and rezoning applications due to economic impacts. In many cases, not only does the Council require the applicant to provide an Economic Impact Assessment, the Council also commissions an independent review of the applicant's report. Some examples include:

- **Eden, NSW - Bega Valley Shire Council.** In February 2014 the Council refused an application for a new development that incorporated a 1,098 sq m supermarket. In this case the Council hired a consultant to independently review the applicant's Economic Impact Assessment.
- **Bomaderry, NSW – Shoalhaven City Council.** In 2015 the Council commissioned an independent report to review the applicant's Economic Impact Assessment (EIA). The independent review recommended against the proposed new supermarket based development.
- **Kirrawee, NSW – Joint Regional Planning Panel / Sunderland Shire.** In 2014 the panel determined to refuse an application for a new supermarket based partly on economic impact grounds. In this case the applicant's EIA was peer reviewed at Council's expense.
- **Sunshine Bay, NSW – Land & Environment Court, 2007** (*Jetset properties v Eurobodalla Shire Council* [2007] NSWLEC 198). The Court refused an application for a new 2,900 sq m supermarket on the basis of economic impacts.
- **Pottsville, NSW - Land & Environment Court, 2007** (*Metricon Qld v Tweed Shire Council* [2008] NSWLEC 1453). The Court refused an application for a new supermarket, with economic impacts cited as a principle reason for refusal.

Given the size of the proposed development and the potential for significant impacts on the existing centre, the Council must require the applicant to submit an Economic Impact Assessment prior to making its determination.

## Township Character

The proposal does not fit nor enhance the character of Walcha. Its size, design and appearance does not contribute to the township character nor does it fit with the main street appearance. This is contrary to the Zone Objective of the Walcha LEP:

***“To encourage development in existing town centres that reflects or enhances their character.”***

The main street character in Walcha is created by small brick shops fronting the street, with verandas proving continuity along the streetscape. In this way pedestrian activity is encouraged along this strip. However, the proposed development detracts from this streetscape in a variety of ways:

- The new building is set well back from the main street, with a large car park facing the main street. This is inconsistent with the current streetscape where the shops front the street. The development creates a large hole along the streetscape.
- With the supermarket located at the rear, the main view of the site is that of a large unattractive and poorly landscaped car park. This car park and associated access driveways and crossing points will all be brightly lit at night, accentuating the poor visual amenity created by this proposed development.
- The continuity of verandas along the street is lost.
- It creates a busy vehicle crossover along the main street (Fitzroy Street), which introduces an unwanted interruption along this streetscape, creates a traffic hazard for pedestrians and discourages pedestrian movement along this retail strip.
- The size of the building is entirely out of scale with the streetscape.
- The proposed building is of a modern design, using modern materials and construction techniques that are out of place with the existing town character, the prevailing streetscape and the built environment.

Also of concern is the future of the existing tenancy at 14 Fitzroy Street. What will happen to this site when the current tenant vacates? This site is located in a prominent location along the town’s main retail strip. Is this building to remain vacant and allowed to deteriorate?

### **On-Site Car Parking Provision**

The development is significantly short of its required on-site car parking spaces.

Applying a minimum rate of 6.1 spaces per 100 sqm of GLFA, as prescribed under the RTA Guide to Traffic Generating Developments, the proposal should provide 122 car spaces. This is based on a GLFA of 1,997 sq m.

## 5.7 Retail.

### 5.7.1 Shopping centres.

#### Definition.

The term *shop* refers to a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or material.

#### Parking.

Table 5.2 indicates the minimum recommended level of off-street parking.

**Table 5.2**  
**Off Street Parking**

Gross leasable floor area (GLFA) m <sup>2</sup>	Car Parking Spaces per 100m <sup>2</sup> of GLFA
0-10,000	6.1
10,000-20,000	5.6
20,000-30,000	4.3
Over 30,000	4.1

It is noted that 6.1 spaces per 100 sq m GLFA is a conservative rate for a supermarket use. The RTA rate for Shopping Centres is based on an amalgam of different uses with different rates of parking requirements. The RTA notes that a supermarket generates parking demand at higher rate than that prescribed for a shopping centre (refer Section 5.7.1).

The RTA rates are based on the GLFA of the development. GLFA excludes the public areas in a shopping centre that are not leased to a tenant, such as stairs, public amenities, lifts, corridors. In this case there are no public areas, therefore the GLFA will equate to the GLFA of 1,997 sq m.

The applicant proposes to provide only 47 car parking spaces, at a rate of only **2.4 spaces per 100 sqm of GLFA**. The proposal is therefore **short 75 car spaces**, and provides less than half of the car spaces required (further evidence of the over-development of the site). This will have dire implications for the main street. The overflow demand for car spaces will therefore take spaces along a large stretch of the main street, depriving other retailers of convenient car parking spaces for their customers. This is unfair and will significantly impact on the viability of existing businesses.

These issues have not been adequately considered by either the applicant or the Council. The number of spaces proposed by the applicant are insufficient to meet the needs of the proposed development and will result in off-site impacts. This lack of car spaces is evidence of the over-development of the site and the inability to meet basic minimum requirements. As such the Council can only conclude that the site is unsuitable for the proposed development and has no option other than to refuse the current application under Section 79C (1) (c) of the Act.

#### 79C Evaluation

##### (1) Matters for consideration—general

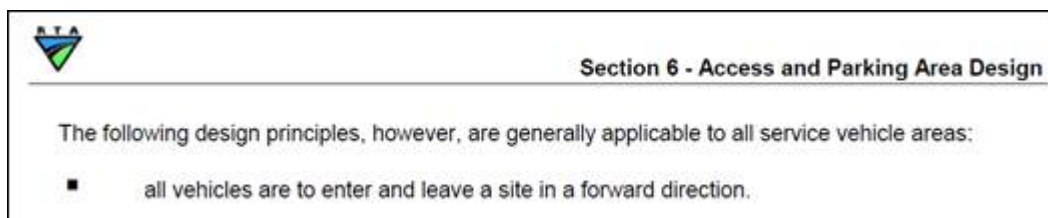
In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (c) the suitability of the site for the development.

It is also noted that other NSW regional Councils apply car parking rates for retail developments well in excess of the proposed rate of 2.4 spaces per 100 sqm of GLFA. For example the Lismore Council applies a rate of 4.4 spaces per 100 sq m for an individual shop in locations outside the Lismore CBD.

## Loading Facilities

Further evidence of the over-development of the site is the unsuitable arrangement for loading and unloading. In order to maximise the number of car spaces on the site (which are already grossly under-supplied), the applicant is proposing a loading treatment not in accordance with both the Safe Work Australia Traffic Management Guidelines for Shopping Centres and the RTA guidelines.



Trucks will be required to reverse out of the site into South Street, creating a safety hazard for vehicles travelling both north and south along South Street. Reversing trucks will also be a traffic hazard for pedestrians using South Street, including school children. This is an unacceptable arrangement and demonstrates that the applicant is trying to fit too much into a small space. There is no doubt that the site needs to be completely redesigned to resolve this significant traffic hazard so that the safety of cars and pedestrians travelling along South Street is protected.

It also appears from the plans that the footpath along South Street will at times be blocked by trucks as they use the loading dock. This is unacceptable. All loading should be undertaken completely within the boundary of the site, not overhanging the public footpath. Again, this is evidence that the site is unable to accommodate safely the proposed development.

Prior to determining this application the Council must receive a traffic management report by the applicant detailing the safe operation of loading facilities at the site.

## Traffic

The applicant has failed to provide the Council with appropriate traffic management details necessary to assess the suitability of the proposal at this site. This includes:

- **Loading Facilities** (discussed above).
- **Traffic Volumes.** The ability of local streets to accommodate increased traffic volumes.
- **On-site car parking** (discussed above).
- **Vehicle Ingress / Egress.**
  - The site has been designed with two one-way ingress and egress points. This is not a preferred approach as it creates a potential traffic hazard for cars disobeying entry / exit signs. Single entry and exit points should be avoided for car parks when catering for this many customers. This sub-optimal and hazardous arrangement has been proposed so as to maximise the development on the site. If there was sufficient space on the site to adequately accommodate the development, combined entry/exit points would have been included.

- It also creates a busy vehicle crossover along the main street (Fitzroy Street), which introduces an unwanted interruption along this streetscape, creates a traffic hazard for pedestrians and discourages pedestrian movement along this retail strip.

## Site Layout & Design

The layout and design of the site has been compromised to fit this large development on a small site.

- **Pedestrian Paths.** There is no provision for a dedicated pedestrian pathway from Fitzroy Street to the proposed supermarket. Pedestrian are required to weave their way through the car park, along the access driveways, placing themselves at risk of injury. This is unacceptable and is contrary to the zone objectives (refer below). A revised layout is required that provides for safe and convenient pedestrian paths to the proposed supermarket. This can't be treated as a simple condition on the permit. It will require a complete redesign of the site and may have consequences for the provision of on-site car parking.

<p><b>Zone B2 Local Centre</b></p> <p><b>1 Objectives of zone</b></p> <ul style="list-style-type: none"> <li>• To maximise public transport patronage and encourage walking and cycling.</li> </ul>
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- **Car Park Landscaping.** Landscaping and planting within the car park is minimal / non-existent in the pursuit of maximising the number of on-site car spaces. Without adequate planting this area will be an eye-sore and fails to create a pleasant shopping environment for the Walcha community. For example:
  - Typically shade trees are provided in car parks like this at a rate of 1 tree for each 6 parking spaces.
  - Landscape strips are also typically provided along boundaries to soften these interfaces.
- **Residential Interface.** The design and layout of this development fails to appropriately address the sensitive residential interface to the north.
  - There is no landscape buffer provided along the northern boundary.
  - A large blank concrete wall is proposed along the northern boundary, with only a 0.2 metre setback. This design will have a negative impact on the amenity of this area to the north.
  - Loading facilities are located along the northern boundary. This introduces noise and safety concerns in close proximity to a residential area.
  - Other noise generating plant and equipment are also located along or near this northern boundary.
  - Rubbish is be stored adjacent to the loading dock to the north of the site. This places nearby residents in close proximity to unpleasant smells.

The Council must require the applicant to redesign the development so that these issues of traffic & pedestrian safety and shopper and residential amenity are adequately addressed.

## Site Contamination

The Council has acknowledged that due to the site's previous use as a service station the land may be contaminated.

Under the Environmental Planning and Assessment Act 1979, when assessing this application the Council is to take into consideration the ***"likely impacts of that development, including environmental impacts on both the natural and built environments ..."*** [Clause 79C (1) (b)].

Given the probability of contamination of the site the Council is required to investigate the level of contamination at this site, assess the likely risks associated with the proposed development and determine what remediation works are required (if any). Until these matters are addressed, the Council is unable to determine the application and have failed to ***'act in good faith'***. (Refer Clause 145B, EP & A Act).

'SEPP 55 – Remediation of land' establishes best practice for dealing with contaminated sites through the planning and development process. These guidelines explain what a Council needs to do to demonstrate that a Council has carried out its planning functions in good faith.

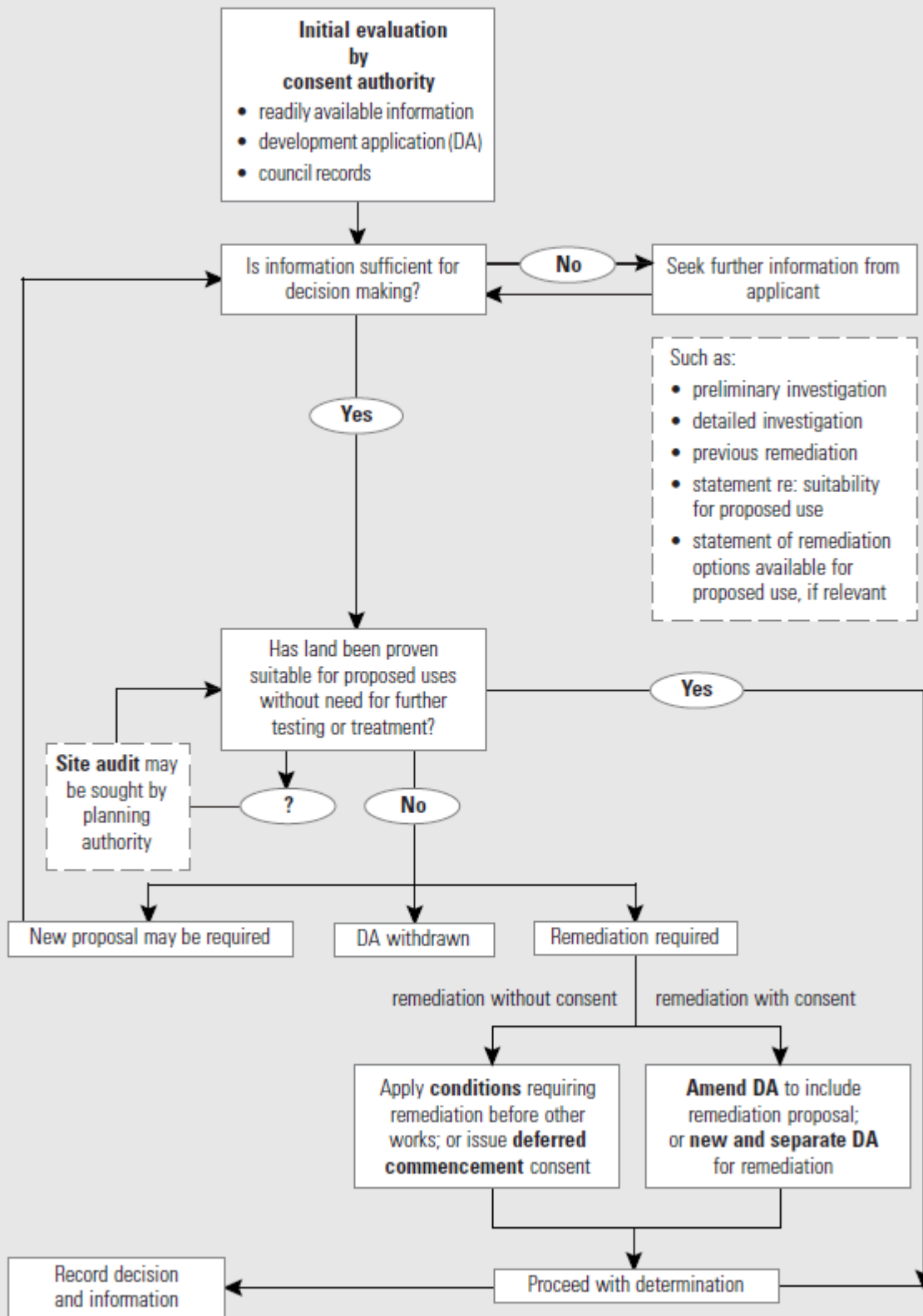
Under SEPP 55, where there is an indication that the land is, or may be, contaminated, the appropriate procedures outlined in these Guidelines should be followed. Given the Council has already acknowledged the possible contamination of the site the procedures outlined in the guidelines should be followed. Importantly, a 'Service Station' is listed under SEPP 55 as an activity that may cause contamination. The Council in exercising its planning duties in good faith are therefore required to demonstrate that ***"the land is suitable for the proposed use or can be made suitable, either by remediation or by the way the land is used."*** (Section 2.2).

Key requirements of SEPP 55 with respect to this application include:

- The planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination. (Section 2.1). In this case the Council has already determined that there is a possibility of site contamination.
- The planning authority should then carry out an investigation on the potential risk. (Section 3.3.2).
- Under these circumstances the applicant must also investigate the site and provide the planning authority with ***"the information it needs to carry out its planning functions"***. (Section 3.4)
- Once the level of contamination is known the planning authority must then make a decision as to whether the land should be remediated, or the use of the land be restricted, in order to reduce the risk. (Section 2.1)
- The steps are illustrated in the following extract from SEPP 55



**Figure 3. Options Available in the Development Application Process**



In summary, SEPP 55 states that:

#### 4.6 SUMMARY

In carrying out planning functions under the EP&A Act in relation to land that is, or may be, contaminated, planning authorities should take account of the principles summarised below.

- No planning decision should be made unless sufficient information is available to make the decision.
- Development applications should include sufficient information on past uses of the subject land to allow the suitability of the land for the proposed use to be assessed.
- Changes of use on contaminated land may proceed provided:
  - the land is suitable for the intended use, or
  - provisions are included in the planning instrument to require appropriate investigation or restrictions on any subsequent development applications, or
  - conditions are attached to the development consent to ensure that the subject land can and will be remediated to a level appropriate to its intended use prior to, or during, the development stage.

The Council must therefore not make a determination on the development application until all the required steps of SEPP 55 have been appropriately undertaken, as proof that it has exercised its planning duties in good faith in accordance with the Act.

I note that the failure of Sutherland Council to assess and resolve site contamination issues as required under SEPP 55 was one of the reasons cited by the JRPP (Sydney East Region) for rejecting an application for a new supermarket based development in Kirrawee, NSW in 2014. (JRPP No. 2014SYE002).

### Flood Planning

The Council has identified that the subject site is flood affected.

Under the Walcha LEP, Clause 6.2 (3), the Council must not grant consent unless the following requirements are satisfied:

- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
- (a) is compatible with the flood hazard of the land, and
  - (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
  - (c) incorporates appropriate measures to manage risk to life from flood, and
  - (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
  - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Section 79c(1)(b) of the EP & A Act also requires the Council to take into consideration:

- The suitability of the site for the development, and
- The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Given the land is subject to flooding and is most likely contaminated, the Council must assess and be entirely satisfied that the proposed development is compatible with the flood hazard of the land and that it will not have consequential impacts on the environment, before granting a permit. At this point in time the Council has insufficient information to reach such a conclusion. This is not a matter that can be managed by permit conditions and such an approach would be contrary to the LEP requirements.

## Conclusion

Under the Walcha LEP the proposed use is **not permitted** in this zone, unless it obtains development consent from the Council. Development consent is not a trivial matter, and requires the Council to exercise its planning duties in a responsible way, ensuring the proposal is in the best interests of the community.

In assessing this permit application the Council has an obligation to ensure that the proposed development:

- Meets the requirements of the EP & A Act.
- Satisfies all SEPPs that may apply.
- Is undertaken in accordance with the Walcha LEP.
- Can be suitably accommodated on the site.
- Will not result in unacceptable environmental, social or economic impacts.
- Constitutes the orderly and economic use and development of the site.
- Creates a safe and attractive environment for vehicles, shoppers and pedestrians.
- Is in keeping with the character of the streetscape and enhances the shopping environment for pedestrians and the local community.

- Meets its on-site car parking requirements, ensuring that any unmet demand for car spaces does impact nearby businesses.
- Addresses issues of flooding and site contamination.
- Has regard to the sensitive residential interface to the north of the site.

This submission demonstrates that the Council cannot approve this application with seriously compromising these important obligations and planning requirements. **The Council must therefore refuse this application.**

Should the applicant wish to lodge a fresh application, the Council should require the following additional information so that it can appropriately exercise its planning duty:

- An economic impact assessment.
- A site contamination report.
- A traffic management assessment.
- A flood management report.

Yours sincerely,

Regards,

