

DA/733/2011

6 February 2013



The Entrance Peninsula Precinct Committee
PO Box 349
THE ENTRANCE NSW 2261

Dear Sir/Madam

**Wyong Shire Council ats Hunter
Land and Environment Court Proceedings 10957 of 2012
Appeal against the refusal of Development Application DA/733/2011
Property - 447-449 The Entrance Road, Long Jetty**

Wyong Shire Council ("Council") is a consent authority for the purposes of the *Environmental Planning and Assessment Act 1979*.

On 22 August 2011 Council received Development Application DA/733/2011 ("the DA"), which sought consent to demolish an existing "Metro" service station on the above property, to remediate the property, and to establish a "BWS" liquor store on the property. On 14 March 2012 Council resolved to refuse the DA.

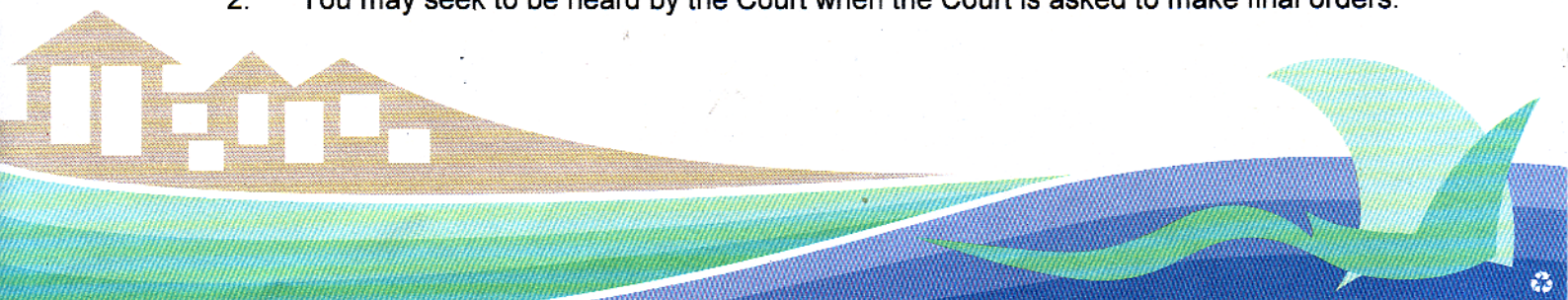
On 13 September 2012 the Applicant (Mr Hunter) commenced the above appeal proceedings in the Land and Environment Court of NSW.

Pursuant to a resolution of Council on 28 November 2012, Council has engaged in negotiations with the Applicant. Those negotiations have resulted in substantive agreement on the terms on which Council and the Applicant will seek to determine the proceedings.

One remaining issue in dispute between Council and the Applicant concerns the proposed erection of balloon signage on the roof of the building for a period of 6 weeks from the commencement of operation of the proposed liquor store.

In those circumstances, cl. 36 of the Court's *Practice Note – Class 1 Development Appeals* requires that Council inform you (as a person who objected to the DA) of the following:

1. The Court has listed the proceedings for a conciliation conference at 10.00am on 22 February 2013. The conciliation conference will be conducted by a Commissioner or Registrar of the Court, and is to be held at the Court's Sydney Registry (located at Windeyer Chambers, 225 Macquarie Street, Sydney).
2. You may seek to be heard by the Court when the Court is asked to make final orders.



3. Council and the Applicant will ask the Court to dispose of the appeal proceedings by upholding the appeal and the granting of consent to the DA subject to the conditions set out in the attached document titled "Draft Conditions of Consent" and (depending on the outcome of further negotiations and conciliation between Council and the Applicant on the balloon signage issue) possibly also subject to the following additional condition:

"The applicant is permitted to erect balloon signage on the roof of the building for a period of 6 weeks after the commencement of the operation of the liquor store, otherwise no additional advertising signs, including flags, banners, bunting, streamers, sandwich-boards, windvanes or other devices considered to be used as advertising media shall be erected on the site without the prior separate consent of Council".

Yours faithfully


Peter Fryar
Manager
DEVELOPMENT ASSESSMENT

Draft conditions of consent to DA/733/2011**COURT DETAILS**

Court Land and Environment Court of New South Wales
 Class 1
 Case number 10957 of 2012

TITLE OF PROCEEDINGS

Applicant **William Thomas HUNTER**
 Respondent **Wyong Shire Council**

Draft conditions of consent to development application DA/733/2012

Location: 447-449 The Entrance Road, Long Jetty
 Lot 340 DP 712201

Application No: DA/733/2012
Proposed Development: Demolition of an existing service station, remediation of the land, and construction of and use as a "large scale retail establishment" (being a BWS liquor store)

Approved Plans

- 1 The development is to be undertaken in accordance with the approved development plans and specifications listed below except as modified by any conditions of consent:

Title	Project No:	Drawing No.	Revision	Date	Drawn By
Proposed Site Plan	118N	03	02	25 November 2011	GWH Constructions Pty Ltd
Proposed Floor Plan	118N	04	02	25 November 2011	GWH Constructions Pty Ltd
Proposed Elevations	118N	05	03	12 August 2011	GWH Constructions Pty Ltd
Proposed Elevations	118N	06	03	12 August 2011	GWH Constructions Pty Ltd
Proposed Elevations	118N	07	03	12 August 2011	GWH Constructions Pty Ltd

Certificates – Application and Approval

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.
- 3 Prior to the occupation of the building, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.
- 4 Compliance with the conditions provided by the Roads and Maritime Services (former RTA) in their letter dated 17 October 2011.

Prior to Release of Construction Certificate:

The following conditions must be satisfied prior to the release of the Construction Certificate. Conditions may require the submission of additional information with the Construction Certificate Application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.

Dust Control Requirements

- 5 Prior to the issue of a Construction Certificate, suitable details must be provided for the approval of the Accredited Certifier of an appropriate system to control dust emissions from the site during construction works. The approved method of controlling dust emissions from the site is to be implemented and be maintained for the duration of construction works on the site.

Erosion and Sediment Control – Design Requirements

- 6 Prior to the issue of a Construction Certificate, design details for the control of soil erosion from the site must be provided for the approval of the Accredited Certifier. Required design details must comply with the requirements of Council's Policy E1 - Erosion and Sediment Control from Building Sites or 'Soils and Construction – Managing Urban Stormwater' (Blue Book).

Potentially Contaminated Land Requirements

- 7 Prior to the issue of a Construction Certificate, an appropriately qualified consultant must be engaged to carry out a detailed site investigation to determine the level of contamination of the site and to prepare a remedial contamination action plan. The remedial contamination action plan must be submitted to Council as the Consent Authority for approval. This should include the remediation of contamination that may extend beyond the subject site to adjoining properties as a result of the historical use of the site as a service station.
- 8 Prior to the issue of a Construction Certificate, an appropriately qualified consultant must be engaged to carry out remediation and validation of the contaminated site prior to construction of the proposed development.

- 9 Prior to the issue of a Construction Certificate and in accordance with Clause 17(2) of *State Environmental Planning Policy No 55 – Remediation of Land*, a notice of completion of remediation work must be provided to Council within thirty (30) days of the completion of remediation work. The notice must include particulars as specified by clause 18 of *State Environmental Planning Policy No 55*.

Roadworks - Design Requirements

- 10 Where conditions of this consent require approval from Council as the Roads Authority with the concurrence of the RMS, a completed Subdivision Construction Certificate application must be lodged with Council and be accompanied by detailed design drawings and supporting information. Fees and charges calculated in accordance with Council's Management Plan and must be paid prior to the issue of any consent under the *Roads Act 1993*. Prior to approval, the developer may be required to enter into a Works Authorisation Deed (WAD) with the RMS for any works and traffic control on State roads.
- 11 The submission to Council of Civil Works design drawings and specifications detailing the following design requirements:
- Reconstruction of the existing southern entry vehicle access crossing to a standard industrial and commercial gutter and footpath crossing. The works shall include a reduction to a maximum of 10m driveway entry width and the entry angle to no less than 70 degrees to improve pedestrian safety. Note: The works shall also include the removal of the existing entry kerb returns.
 - The adjustment and reconstruction of the footpath and footway area to suit the new reduced vehicle crossing width.
 - The provision of a speed hump within the driveway area to ensure low speed vehicle entry.
 - Prior to approval, the developer may be required to enter into a Works Authorisation Deed (WAD) with the RMS for any works and traffic control on State roads.

Required design drawings are to be prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* and must be approved by Council as the Roads Authority prior to the issue of a Construction Certificate.

- 12 The provision of a concrete central median, associated pavement marking and signage within the Central Coast Highway carriageway south approach from the end of the existing median north for the extent of the right turn bay. The design of the median shall be in accordance with the RMS requirements and Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development*. The design plans must be endorsed by the RMS, the Traffic Committee and approved by Council as the Roads Authority prior to the issue of a Construction Certificate.

- 13 The provision of additional civil works necessary to ensure satisfactory transitions to existing work as a result of work conditioned for the development at no cost to Council. Design plans are to be approved by the Roads Authority prior to the issue of a Construction Certificate.

Vehicle Access and Parking - Design Requirements

- 14 The loading dock shall be adequately sign posted and the truck turning movements delineated by pavement marking. The largest delivery vehicle shall be restricted to a non-articulated truck no more than 12.5 metres in length.
- 15 The design of the carpark shall be in accordance with AS/NZS2890 parts 1 and 6, and shall include the following;
- Pavement marking and/or signage to restrict parking spaces 3-5 for staff use only.
 - The provision of directional line marking and entry only and left turn exit only signage within the site at each access crossing.
 - The provision of wheelstops for all parking spaces.
 - The structural pavement design able to withstand anticipated loading.

The design shall be approved by the Council/Accredited Certifier prior to issue of a Construction Certificate.

- 16 The lighting design of the carpark and accesses shall be in accordance with AS/NZS1158 – Lighting for Roads and Public Spaces and AS4282:1997 – Control of the obtrusive effects of outdoor lighting. The design shall be submitted and approved by the Council/Accredited Certifier prior to issue of a Construction Certificate.

Stormwater Drainage - Design Requirements

- 17 Stormwater drainage works external to the site and discharging into a public system or public land requires approval from Council under Section 68 of the Local Government Act 1993. Detailed design drawings prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* must be approved by Council prior to the issue of a Construction Certificate. All other stormwater management works must be approved by the Accredited Certifier.
- 18 The provision of a stormwater system with water quality control facilities are required to treat stormwater runoff from the development. The design shall be in accordance with Australian Runoff Quality and Council's Development Control Plan 2005 Chapter 67 - *Engineering Requirements for Development*. Design plans must be submitted to and approved by the Principal Certifying Authority prior to issue of a Construction Certificate.

- 19 The stormwater drainage system servicing the building shall include the provision of a Rainwater Re-Use system to collect generated run-off from the roofed areas to service toilet flushing and landscaping within the site. The tank is to be installed in accordance with the requirements of the National Plumbing and Drainage Code AS/NZS 3500, shall include first flow diversion devices fixed to all inflows, be provided with a functioning pressure pump, and be plumbed to service all fixtures. The tank must be controlled such that supplemental flows from Council's water mains do not take place until the tank is at least 80% empty. Design plans must be approved by Principal Certifying Authority prior to issue of the Construction Certificate.

Structural Design Requirements

- 20 Any excavation adjacent to property boundaries, below the adjoining land level, requires the retaining of that land and the preservation and protection of any improvements or buildings upon that land including public roads and utilities from damage. If necessary, the improvements or buildings are to be supported in a manner designed by a suitably qualified Registered Structural Engineer. Any design proposals prepared in order to comply with this condition are to include geotechnical investigations and are to be submitted for the approval of the Accredited Certifier and in the case where excavation impacts upon public infrastructure, Council, prior to issue of the Construction Certificate.

Water and Sewer Services - Design Requirements

- 21 The developer must submit an application to Council under Section 305 of the *Water Management Act 2000* for any requirements for the obtaining of a Section 307 Certificate of Compliance. The application must be made prior to the issue of the Construction Certificate. **Note:** The Section 305 Notice may contain requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

Other Requirements

- 22 A Plan of Management shall be prepared which incorporates mitigation strategies. Such mitigation strategies should include (but not be limited to):
- Staff training and supervision to include regular updates and refreshers that cover legal obligations on the sale and supply of liquor to minors;
 - Refusal of service to intoxicated and disorderly persons;
 - Keeping an incident register; and
 - Management of any incidences of anti-social behaviour or nuisance on the site including the responses to such incidences and the review by the applicant of measures after any such incident in order to reduce the likelihood of any such incidence reoccurring on the site.

Prior to Commencement of Works:

The following conditions must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.

Demolition Requirements

- 23 Prior to the demolition of existing structures on site, all existing site services are to be disconnected, sealed and made safe. The sewer and water service is to be disconnected by a licensed plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector certifying that the works have been undertaken to the satisfaction of Council as the Water and Sewer Authority. Thiess Service's Customer Service Centre are also to be contacted on telephone number 1300 126 278 to arrange for the collection of the garbage bins.
- 24 Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work, must be undertaken by a person who carries on a business of such removal work in accordance with a licence issued under the provisions of Part 8.10 of the *Work Health and Safety Regulation 2011*.
- The person having the benefit of the consent must provide the Principal Certifying Authority with a copy of a signed contract before any development pursuant to the consent commences.
 - Any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed and if so, must specify the landfill site (that may lawfully receive asbestos) to which the material is to be delivered for disposal.

Erosion and Sediment Control Requirements

- 25 Prior to works associated with the development commencing, soil erosion and sediment controls measures are to be provided on the development site in accordance with Council's Policy E1 - Erosion and Sediment Control from Building Sites and Development Control Plan 2005, Chapter 67 – *Engineering Requirements for Development* and the approved development plans.
- 26 Prior to works associated with the development commencing, suitable sediment control kerb inlet trap devices are to be provided downstream of the development site adjoining locations such as kerb inlet drainage pits, in order to prevent any silt that may have left the site from entering the drainage system. The build up of silt and debris behind the required kerb inlet trap devices is to be removed from the site on a daily basis.
- 27 Prior to works associated with the development commencing, an appropriate sign to promote the awareness and importance of the maintenance of on-site sediment control techniques is to be provided on the most prominent sediment fence or erosion control device within the development site, for the duration of the project.

Protection of Adjoining Property Requirements

- 28 Prior to works associated with the development commencing, the applicant must supply the Principal Certifying Authority with a dilapidation report for the adjoining properties, which documents and photographs the condition of buildings and other improvements. The report must be submitted to and approved by the Principal Certifying Authority prior to the commencement of any works. **Note:** The report is to be made available by the Principal Certifying Authority in any private dispute between neighbours regarding damage arising from construction works upon the development site.

Roads - Preconstruction Requirements

- 29 Prior to commencing any works upon public roads the developer and their contractor will be required to:
- Obtain a copy of the Council approved Civil Works plans and pavement design (if applicable).
 - Obtain a copy of Development Control Plan 2005, Chapter 67 – *Engineering Requirements for Development*. This is Council's Specification for Civil Works and is available on Council's web site.
 - Arrange a meeting on-site with Council's Principal Development Construction Engineer on (02) 4350 5555.
- 30 The submission of a plan of management to Council for approval under the Roads Act/Local Government Act for any works for the development that impact on any public roads or public land for the construction phase of the development, prior to that section of work commencing. The plan is to include a Traffic Control Plan and/or a Work Method Statement for any works or deliveries that impact the normal travel paths of vehicles, pedestrians or cyclists or where any materials are lifted over public areas. This plan must be certified by an appropriately accredited/qualified person.

Site Requirements

- 31 Prior to works associated with the development commencing, the Principal Contractor (or Owner/Builder) is to erect a suitable sign in a prominent position on the development site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work, the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder) and stating that unauthorised entry to the site is prohibited. The required sign is to be maintained for the duration of works associated with the development. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated Principal Certifying Authority with respect to the development.

- 32 Prior to works associated with the development commencing, a suitable hoarding or safety fence between the work site and the public place is to be provided in accordance with Work Cover Authority requirements. The required hoarding/fencing is to remain in place during the construction phase of the development. Should the hoarding/fencing be required to be provided within the road reserve area, approval from Council under the Roads Act as the Roads Authority is required to be obtained prior to its erection.
- 33 Prior to works associated with the development commencing, it is the builder's responsibility to confirm the location and depth of the sewer main and connection point in relation to the floor level, to ensure that appropriate connection to the sewer can be achieved.

During Construction Works:

The following conditions must be satisfied during construction works.

Approved Plans

- 34 A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.

Demolition - Compliance Requirements

- 35 Any demolition work and the disposal of any asbestos materials must be in accordance with the requirements of WorkCover NSW and AS 2601-2001 – *The Demolition of Structures*. The asbestos materials are to be disposed of at an approved waste management facility in accordance with the procedures the facility has for the disposal of asbestos. Upon completion of these works, the Principal Certifying Authority is to be supplied with disposal receipts within seven (7) days to verify that this requirement has been complied with.

Contaminated Land Requirements

- 36 During the construction phase of the development, any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and required remediation must be notified to Council immediately upon discovery.

Site Requirements

- 37 Construction or demolition works involved with the development may only be carried out between the hours of 7.00 am and 5.00 pm Monday to Saturday with no construction or demolition works associated with the development permitted to be carried out at any time on a Sunday or a public holiday.
- 38 During the construction phase of the development, all building materials, plant and equipment must be placed on the site of the development in order to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure.

Prior to Release of Occupation Certificate:

The following conditions must be satisfied prior to the release of an Occupation / Subdivision Certificate.

Building Code of Australia – Compliance Requirements

- 39 Prior to the issue of the Occupation Certificate, the building shall be completed in accordance with the relevant provisions and requirements of the Building Code of Australia.

Contribution Payment Requirements

- 40 Prior to the issue of a Occupation Certificate, the payment to Council of contributions (as contained in the attached Schedule) under Section 94A and Council's Section 94 and Section 94A Contribution Plan. Council's contributions are adjusted in accordance with the section 94A contributions plan on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.

Dilapidation Rectification Requirements

- 41 Prior to the issue of an Occupation Certificate, any damage not shown in the Dilapidation Report submitted to and approved by the Principal Certifying Authority prior to site works commencing, will be assumed to have been caused as a result of the site works undertaken with respect to the development and must be rectified at the applicant's expense.

Disabled Access Requirements

- 42 Prior to the issue of an Occupation Certificate, access to and throughout the buildings shall comply with AS 1428.1-2009 and the objectives of the *Disability Discrimination Act 1992* (Commonwealth).

Landscaping Requirements

- 43 Prior to the issue of an Occupation Certificate, if the front setback area of the allotment is disturbed during construction of the development, the landscaping is to be reinstated suitably in accordance with the provisions of Council's Landscaping Policy and Guidelines.

Roads

- 44 All road signage and pavement marking works must be provided in accordance with the plans approved by the Local Traffic Committee and approved by Council prior to issue of the Occupation Certificate.
- 45 All additional civil works required to ensure satisfactory transitions to existing work as a result of work conditioned for the development works are to be approved by Council prior to issue of the Occupation Certificate.

- 46 All works within a public road such as kerb and guttering, road pavement, drainage, footpaths, cycleways and vehicular access crossings must be in accordance with Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development and approved by Council as the Roads Authority under the Roads Act 1993, prior to the issue of an Occupation Certificate.
- 47 Prior to release of the Occupation Certificate the restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation at no cost to Council, in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. All works must be approved by Council under the Roads Act.
- 48 Removable bollards are to be placed across Gladston Avenue to prevent vehicles accessing the proposed development. Access from Gladston Avenue is to be for emergency vehicles only in times of flood.

Security Requirements

- 49 Prior to issue of the Occupation Certificate, the developer must install a system of CCTV of a type and in locations on the site that will provide high-quality images of the car park and the buildings' exit point.

Statutory Certificate Requirements

- 50 Prior to the Issue of an Occupation Certificate, a Final Fire Safety Certificate, as required by Clause 153 of the Environmental Planning and Assessment Regulation, 2000, certifying that all the Fire Safety Measures within the building have been designed and installed in accordance with the relevant standard of performance as nominated by the Fire Safety Schedule issued with the Construction Certificate, is to be supplied for the approval of the Principal Certifying Authority. Such Final Fire Safety Certificate is also to be displayed within a prominent location within the building such as the main entry.

Stormwater

- 51 Certification of the constructed stormwater management system by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Vehicle Access and Parking

- 52 The construction of the carpark and accesses in accordance with AS/NZS2890. Certification of the construction by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Water and Sewer Services/Infrastructure

- 53 All water and sewer works for the development must be approved by Council prior to the issue of an Occupation Certificate.

Work as Executed Requirements

- 54 Prior to the issue of an Occupation Certificate, Works as Executed information for the development as identified in Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* is to be submitted to and approved by Council. The required Works as Executed information is to be submitted in hard copy and in electronic format in accordance with Council's 'CADCHECK' requirements.

Ongoing Operation:

The following conditions must be satisfied during use / occupation of the development.

Advertising Sign Requirements

- 55 The proposed advertising sign/s erected shall be in accordance with the approved plans and shall not be altered or modified without the prior separate consent of Council.
- 56 The approved advertising sign/s must be constructed and maintained in a presentable and satisfactory state of repair for the life of the development.
- 57 To maintain amenity for adjoining properties, illuminated advertising signs must be fitted with an automatic timing device to extinguish the illumination between the hours of 10.00pm and 7.00am.

Hours of Operation Requirements

- 58 For the purposes of preserving the amenity of neighbouring occupants and residents, hours of operation are restricted to between:
- 8.00am and 8.00pm Monday to Wednesday
 - 9.00am and 9.00pm Thursday to Saturday
 - 10.00am and 7.00pm Sunday
- 59 Any security alarm installed on the premises must be fitted with a 'cut-off' device limiting any sounding of the alarm to a maximum duration of ten (10) minutes, with no repeat sounding until manually reset; and or 'silently wired' to a security firm.

Commercial Operational Requirements

- 60 Deliveries to and from the site including waste collection must only take place after 7am or before 5pm.

Lighting Spill Requirements

- 61 All external lighting is to be of a type that minimises overspill into adjoining residential areas.

Site Appearance, Maintenance and Security Requirements

- 62 The owner/operator(s) of the site must maintain the external finishes of the building(s), structures, walls and fences for the life of the development and any graffiti must be removed in a timely manner..
- 63 The owner/operator(s) of the site must maintain the required CCTV for the life of the development.

Other requirements

- 64 All mitigation strategies identified in the Plan of Management shall be implemented and maintained for the life of the development.

SCHEDULE OF CONTRIBUTIONS (Condition 40)

Section 94A Levy

\$4400.00

DRAFT