

12 September 2013

**NSW Planning Assessment Commission Determination Report
Warnervale Town Centre, Woolworths Retail Project, Wyong LGA**

Background

The Warnervale Town Centre Site is a planned urban release area located approximately 5 km north east of the town of Wyong. A permanent train station for Warnervale is planned for the section of the northern railway line which runs through the Warnervale Town Centre site.

Project

This project seeks to develop a retail centre on a portion of the planned Warnervale Town Centre site, adjacent to the planned railway station. The centre would have spaces for a Woolworths supermarket, Big W store and a Cinema complex, and would include:

- 22,092 m² of retail floorspace;
- 3,608m² of commercial floorspace;
- 3,742m² of entertainment/cinema use;
- 3,669m² for amenities and circulation within the centre;
- 1,524 car parking spaces, including basement, at grade and on street parking;
- A 2,481m² privately owned civic square; and
- Associated works including construction of roads, subdivision, installation of infrastructure and use and fit out of the Woolworths and Big W stores.

Delegation to the Commission

On 23 August 2013 the proposal was referred to the Commission for determination under delegation from the Minister for Planning and Infrastructure.

Ms Gabrielle Kibble AO nominated Mr Garry Payne AM (chair) and Ms Jan Murrell to constitute the Commission to determine the project.

Department's Assessment Report

The Director-General's Environmental Assessment report considered the following issues:

- Legislative requirements;
- Retail Facility Design;
- The Civic Square;
- Roads, including the Main St, other internal roads and the dedication of roads;
- Centre and commuter car parking;
- Ecology and biodiversity;
- Drainage and Stormwater Management;
- European and Aboriginal Heritage;
- Relationship to adjoining sites;
- State Infrastructure and Local Development Contributions;
- Economic and social impacts;
- Traffic impacts;
- The principles of Ecological Sustainable Development and the objects of the *Environmental Planning and Assessment Act 1979*; and
- Other issues including cut and fill, contamination, bushfire risks, utilities infrastructure, signage, the cycle network and residential development.

The Department of Planning and Infrastructure's assessment found that the project's key issues related to internal road design and construction, the Civic Square, Main Street, the commuter car park, biodiversity, local infrastructure contributions and stormwater. Having

assessed the issues, the Department considered the project to be in the public interest, noting the retail and commercial space would meet the demands of a growing population. The Department recommended the project should be approved, subject to conditions.

Site Visit and Meetings

On Monday 2 September 2013 the Commission visited the site and surrounds.

Meeting with Wyong Shire Council

Following the site visit the Commission met with Wyong Shire Council, as Council had raised some concerns with the proposal. Council advised that it generally supported the proposal and that there was also community support for the development. Nonetheless, Council indicated it had concerns with some of the details of the proposal, in particular the ownership of the Main Street and Civic Square as well as the level of developer contributions to be provided. Council indicated that the proposed Main St should be owned by Council. Council noted that the street would need to accommodate drainage and services such as water and sewer and that the easements proposed by the Proponent were not sufficient and would create significant difficulties for Council. Council acknowledged that a strata lot for the basement car park was acceptable, but that it was essential that the Main Street, including footpaths was owned by Council.

In relation to the developer contributions payable, the Council sought a higher contribution. Council noted that planning for the centre had included residential units, which are not included in this application. Council confirmed that demand for units in this location does not exist, but indicated that the infrastructure calculations had assumed that additional developer contributions would be levied on residential units planned for the site. Council acknowledged that both local and state government would need to fund some of the infrastructure required, and noted the joint government funding for the main access road intersection. Council indicated that it considered a higher monetary road contribution should be provided by the Proponent in this instance and that further contributions should be payable at a later date when Council commences works on other roads it is collecting funds for.

Council suggested that some dedication of community space should be provided on site, noting there are two private squares included on site (separated by Main Street) and that at least one of these should be dedicated to Council. Council acknowledged that some other centres, including Rouse Hill have privately owned civic space, but suggested unlike Rouse Hill, this Proponent's landholdings were not sufficient to provide the incentive to make a suitable public space. Nonetheless Council suggested it would also be satisfied with an arrangement that allowed it to use the space for a peppercorn rent for twenty events a year.

Council also raised concerns that some technical details had not been resolved, particularly in relation to the roads and intersections to be constructed by the Proponent and the need for an interchange on site.

Meeting with the Proponent

On Tuesday 3 September 2013 the Commission met with representatives for the Proponent. The Proponent confirmed it was essential it retained ownership of the space below Main Street as this contained the basement car park and that additional levels of basement parking would likely be constructed in the future as more of the site is developed. The Proponent suggested that services running along Main Street could be accessed from the basement car park, but agreed that up to a metre below the road could be made available for services. The Proponent also requested that the footpaths along Main Street remain in its ownership.

The Proponent indicated that only 200 commuter car parking spaces were required to be constructed and requested that the conditions be amended to reflect this – rather than the 225 spaces required in the conditions drafted by the Department.

The Commission raised concerns about the ten year approval time frame provided in the draft conditions. The Proponent advised that the access deed for the construction of the access road had been finalised. Nonetheless the Proponent indicated that services, drainage and the required detention basin were all yet to be provided and that it considered the extended timeframe to be necessary given uncertainties and noting other examples where longer timeframes had been granted.

The Proponent raised concerns with the recommended contributions required, noting that it would be providing works in kind through the construction of roads and that the land value of the road and car park should be included in considering the value of contributions it would provide.

The Commission noted that the Council had requested ownership of the Civic Square, but had agreed access for markets and the like could be a suitable outcome. The Proponent indicated it was fundamentally opposed to this as dedication would prevent future development of the northern portion of the site and markets in the square would detract from sales in the shopping centre. The Proponent indicated it would be willing to negotiate a lease agreement with Council for civic functions and noted a number of developments where civic squares have been retained in private ownership. The Proponent also expressed frustration that Council had not progressed any plans for the Council land to the east of the site, making it impossible to plan an interface, or any servicing requirements.

The Commission noted Council's concerns regarding the proposed roundabout on road W05 and the steep grades on site. The Proponent agreed that further work would be done to manage the road gradients, noting the constraints of the hilly site. The Proponent raised concerns about the Council's request for a signalised intersection, in place of the proposed roundabout, suggesting this had not been raised in earlier discussions and noting that a change would require significant additional work. The Proponent also indicated the location of the roundabout was not expected to be a main cycle or pedestrian route.

The Commission asked about the level of activation along street fronts. The Proponent explained that it would activate the building frontage to access road W01 where possible, but that the steep grades made it unlikely it would attract significant pedestrian activity.

Both Council and the Proponent subsequently provided written comments on the draft conditions recommended by the Department.

Meeting with the Department

On Monday 9 September 2013 the Commission met with the Department to discuss the issues raised by Council and the Proponent, particularly the local developer contributions, the dedication of Main Street and associated footpaths, as well as the Civic Square and the 10 year approval condition drafted. The Department noted that a significant portion of the funding for the access road/intersection would now be provided by the State Government and agreed that a standard 5 year approval would be appropriate, given that progress had been made with the access road.

The options for dedicating Main Street roadway, or the road and footpaths were discussed. The Department and Commission agreed that it was not necessary for the Council to own the footpaths along Main Street and that an easement to allow Council access to services along with requirements for the footpaths to be publicly accessible, would provide a suitable outcome.

In relation to the ownership of the Civic Square, the Department acknowledged that if the Civic Square was not to be dedicated to Council, then it should not be recognised as works in kind. The Council's request for a peppercorn lease arrangement was discussed. It was agreed that access 20 times a year was unnecessary, but that use of the space on 12 days a year was considered reasonable. The public artwork proposed as a works in kind contribution was also discussed and it was agreed that as it would be provided on private land it did not represent a public benefit and should not be recognised as a local contribution.

The Department also advised that the conditions relating to contributions should reflect Table 10 and 11 of the assessment report. The Department subsequently provided updated conditions with revised section 94 contributions, and also requiring an agreement with Council for the use of the Civic Square 12 times a year.

Commission's Consideration

The Commission notes that there is generally support for the project, and that planning for the Warnervale Town Centre has been in progress for some time. Nonetheless a number of common issues were raised by both Council and the Proponent particularly related to the ownership of Main Street and the Civic Square, as well as the appropriate level of local infrastructure contributions that should be payable.

Dedication of Roads

In relation to the Main Street, Council wants to ensure it has unrestricted access to the road and footpaths, so it can install and maintain services in the road corridor in a timely and efficient manner. The Proponent sought to retain ownership of the footpaths as it suggested Council could charge unreasonable fees for tenants wanting to provide outdoor seating. The Proponent also indicated that it would be able to maintain the footpaths to a higher standard if they were retained in private ownership. The Commission does not accept the Proponent's argument regarding the outdoor seating charges, but has agreed the footpaths can remain in private ownership, as long as an easement allowing Council access to services is provided.

Civic Square

Council suggested the Civic Square should be dedicated to it, as public space, or advised that if this was not possible that an arrangement should be provided so that Council could use the space for events at minimal cost, 20 times a year. The Proponent opposed both these options suggesting that the use of the space for farmers markets or the like would detract from sales in the shopping centre. The Commission is mindful that being directly adjacent to the proposed railway station, the site occupies the prime location within the town's Civic Centre, as set out in the Warnervale Town Centre Development Control Plan 2012. The Commission acknowledges that Council owns land to the east of the site, and that a hill top park will eventually be provided by Council. Nonetheless the Commission considers that there is merit in providing a civic space in a more central location. The Proponent has sought to retain ownership of the square and the Commission has accepted this, but has added a condition requiring that the Council should be allowed use of the northern part of the square 12 times a year, with appropriate time for setup and dismantling. The Commission is satisfied this provides a reasonable balance, allowing the Proponent to maintain the square to its design standards, but ensuring the space is still available for civic and community uses (including markets) on a monthly basis.

Local Infrastructure Contributions

The level of Local Developer Contributions payable was a key concern for both Council and the Proponent. The Commission acknowledges Council's need for funding of local roads in the area. Nonetheless, both Council and the Department agreed that the full contribution for road and intersection works would be prohibitive to the development of the site. The

Commission has accepted the Department's argument that the road contributions for the site should be \$7.94 million and that the value of the roads to be constructed and dedicated, along with the contributions to be provided for the access road, should be deducted from the monetary amount payable to Council.

The Commission has also accepted the Department's recommended contributions for stormwater, studies and administration, but has not accepted that the Civic Square or Public Art should be considered as works in kind contributions – as they are to remain in private ownership. Consequently the discounting of road contributions recommended by the Department, for the Civic Square (\$830,000) and artwork (\$150,000), have not been accepted. The Commission has found that the contributions to be provided are those set out in Table 1. The Commission has also amended the conditions to require that the monetary contributions payable to Council are provided prior to the commencement of construction, as requested by the Council.

Table 1 – Local Infrastructure Requirements

Item	Value	Type
Stormwater	\$370,016.15	Monetary
Studies	\$8,160.95	Monetary
Administration	\$20,595.74	Monetary
Road works		
- Entry Road traffic signals	\$500,000	Monetary*
- Entry Road contribution	\$1,600,000	Monetary*
- Road W06 construction	\$1,650,000	Works in kind
- Road W05 construction	\$1,440,000	Works in kind
- Road W08 construction	\$630,000	Works in kind
- WTC road/intersection works	\$2,123,870	Monetary
<i>Subtotal - money payable to Council</i>	<i>\$2,522,642.84</i>	<i>Money to Council</i>
Total	\$8,342,642.84	Monetary and Works in Kind

*Monetary contributions subject to the Entry Road Deed of Agreement, not payable to the Council.

Length of approval

The Commission noted that the Department had recommended a condition requiring that if the project had not commenced, the approval would lapse ten years from the date it was granted. In support of this extended approval, the Proponent suggested that access and infrastructure may not be able to be resolved in the usual five year period. Given the work that is currently occurring for the access road intersection and the funding that has being invested by both local and state government authorities, the Commission considers that ten years is unwarranted. The Commission discussed this with the Department and the Department agreed that in light of the progress made to date, the extended approval was no longer necessary. Consequently the Commission has amended the condition, to provide a standard five years for the Proponent to commence the project.

Other issues

Council also raised some concerns about road grades and intersections to be provided on the site, and the standards they would be constructed to, as well as the interface with Council's land to the east of the site. The Commission considered these issues. The Commission notes that the steep site provides some challenges in relation to grades. The Proponent will need to work with Council to ensure the roads are constructed to the appropriate standards and grades and the Commission is satisfied these can be resolved

through the detailed design. In relation to the interface with Council's land to the east, the Commission agrees that further integration with the adjoining land would have been desirable but acknowledges that the combination of steep grades and lack of any detailed plans for the adjoining site, has restricted the Proponent's ability to provide greater connectivity between the sites.

Commission's Determination

The Commission has carefully considered the Department's assessment report and recommendation, including the issues raised in submissions and comments provided by the Council, Proponent and Department.

With the amendments discussed in this report, the Commission is now satisfied that the project would provide appropriate access to civic space and road infrastructure. The Commission also notes that the project will deliver 225 commuter car parking spaces for the future railway station adjoining the site. The Commission is satisfied that through a combination of works in kind for the construction and dedication of roads, and with the payment of ~\$2.5 million to Council, the proposal would provide a suitable contribution to local community infrastructure. The project would also cater to the apparent demand for a new shopping centre in the area and will commence the development of the planned Warnervale Town Centre. Consequently, the Commission has determined to approve the project, subject to conditions.

A black ink signature of Garry Payne AM, featuring a large, stylized 'G' followed by a horizontal line.

Garry Payne AM
Member of the Commission

A blue ink signature of Jan Murrell, written in a cursive style with the name 'Jan Murrell' clearly legible.

Jan Murrell
Member of the Commission