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Statement of Facts and Contentions

COURT DETAILS	
Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2016/00268732

TITLE OF PROCEEDINGS	
First Applicant	Retail Fuel Developments Pty Ltd
First Respondent	Ballina Shire Council ABN 53929887369

FILING DETAILS	
Filed for	Ballina Shire Council, Respondent 1
Legal representative	Clarissa Huegill
Legal representative reference	
Telephone	02 6681 4155
Your reference	CLH:160214

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (statement of facts and contentions.pdf)

[attach.]

chuegill001

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Applicant	Retail Fuel Developments Pty Ltd
Respondent	Ballina Shire Council
FILING DETAILS	
Filed for	Ballina Shire Council
Legal representative	Clarissa Huegll CH Law 2/130 Tamar Street PO Box 289, Ballina NSW 2478 DX 27462 BALLINA
Legal representative reference	CLH:160415
Contact name and telephone	Clarissa Huegll 6681 4155
Contact email	clarissa@chuegll.com
PART A: FACTS	

a) The Proposal

The proposal is to demolish all existing structures including the hardstand area and removal of two canopy island date palm trees to facilitate the construction of a new service station and ancillary retail (originally submitted for use by Coles Express but then revised for Freedom Fuel) and associated works. The service station is to operate 24 hours/ 7 day per week.

The site will require filling to a minimum level of RL 2.05m AHD and the minimum floor level of the kiosk structure is to be at RL 2.32m AHD. A retaining structure is to be constructed within the site along the northern boundary. It is estimated that the retaining structure will range in height between 600mm-800mm above the adjoining laneway. The fill is to be battered to existing ground levels of the other boundaries, including the western boundary.

The configuration of the development within the site will locate the "kiosk" (retail) building along the northern boundary with a setback to wall of 400mm. The retail building will have a height of approximately 4.5m on top of the retaining wall (total height of 5.1m - 5.3m above the Laneway) for a length of approximately 15m. The

remainder of the frontage to Winton Lane will be provided with an acoustic fence of 2.4m height, on top of the retaining wall (a total height of approximately 3m – 3.2m above the laneway).

The proposed vehicular access to the site is via a new driveway crossover to River Street and a new driveway crossover to Brunswick Street. The fuel bowser canopy is to be located centrally over the southern part of the site. On-site parking for 5 cars is proposed to the southern side of the proposed retail building and 1 additional car parking space is provided at the southern end of the fuel bowser canopy. A plant enclosure containing switchboards, air conditioning compressors and other plant is to be located adjacent to Winton Lane and to the east of the proposed retail building. A bin enclosure, loading bay and air compressor is to be located adjacent to Winton Lane and to the west of the proposed retail building.

b) The Site

The subject site is identified as Lot 8 in DP 1086670 No.323 River Street, Ballina. The site is located on the northern side of River Street approximately 470 metres west of the Kor Street/River Street intersection.

The site has a northern frontage to Winton Lane of 30.175m, a western frontage to Brunswick Street of 54.54m, a southern frontage of 30.175m to River Street and a western boundary of 54.295m providing a total site area of 1.641m².

The existing structures on the site are setback approximately 5.5m from the northern boundary, 4m from the eastern boundary and are built to most of the western boundary and part of the southern boundary.

The site has in the past been utilised for a range of uses, including "Ireland Honda" motor showroom and vehicle repair station with associated sealed forecourt for vehicle display. Vehicular access to the site is currently available from the Brunswick Street frontage and Winton Lane.

The site is low lying with existing ground levels between RL 1.4m AHD and RL 1.8m AHD.

c) The Locality

The area surrounding the site is characterised by commercial premises fronting the northern side of River Street (the former Pacific Highway). Land uses to the south of River Street comprise low and medium density dwellings.

To the north of the site, on the opposite side of Winton Lane is a detached two-storey dwelling house which is setback approximately 3m from Winton Lane and 2m from Brunswick Street. In the vicinity of the site, Winton Lane comprises a sealed pavement of approximately 7m width within a road reserve of approximately 10m width. Further to the north are other detached dwellings.

To the east of the site on the opposite side of Brunswick Street are detached dwellings located on both sides of Winton Lane. A vacant site is located to the east of the site, adjacent to River Street.

To the south of the site on the opposite side of River Street is a detached dwelling and multi-dwelling development. Presently rear to kerb angle car parking is provided along the frontage of River Street.

To the west is a commercial building which occupies the southern part of the site and provides a sealed car parking area at the rear (northern) part of the site. Further to the west is another commercial building with a similar configuration (setback from the northern boundary) and a motel development.

d) The Statutory Controls

Act

Environmental Planning and Assessment Act 1979

SEPP

SEPP 33 - Hazardous and Offensive Development

SEPP 55 - Remediation of Land

SEPP 71 - Coastal Protection

SEPP - (Infrastructure) 2007

LEP

Ballina Local Environmental Plan 2012 (the LEP). The land is zoned B4 - Mixed Use

Clause 1.2 - Aims of Plan

Clause 2.3 - Zone objectives and Land Use Table

Clause 4.3 - Height of buildings

Clause 4.4 - Floor space ratio

Clause 5.5 - Development within the coastal zone

Clause 7.1 - Acid Sulfate Soils

Clause 7.2 - Earthworks

Clause 7.3 - Road Planning

Clause 7.7 - Essential Services

DCP

Ballina Shire Development Control Plan 2012 (BDCP 2012)

Chapter 1 – Administration

Chapter 2 – General and Environmental Considerations

Chapter 2B – Floodplain Management

Chapter 6 – Commercial Development

Chapter 6A – Commercial Development – Ballina Town Centre

Chapter 8 – Other Development

e) Actions of the Respondent

On 25 January 2016, Development Application No. DA 2016/25 was lodged with the Respondent.

On 17 February 2016 the development application was advertised in the North Coast Advocate newspaper. The advertised closing date for submissions was 3 March 2016. Notification letters were also posted to adjoining land owners. During the exhibition period, Council received 12 submissions objecting to the proposal, including representations opposing the development from State member Tamara Smith and Federal member Justine Elliot (also attaching two petitions containing a total of approximately 650 names).

On 24 February 2016 the development application was referred to the NSW RMS for comment.

On 17 March 2016 Council received comments from NSW RMS raising a number of issues in relation to traffic impacts associated with the proposed development.

On 13 April 2016 the application was considered by the Local Traffic Development Committee (LTDC).

On 18 April 2016 Council advised the applicant that the LTDC supports the RMS submission and that a technical assessment by Council Officers considers that the proposal will have unacceptable impacts upon the Brunswick Street/ River Street intersection.

On 4 May 2016 the applicant provided a response to the matters raised in the NSW RMS and Council submissions. The response included amendments to the application to include works on River Street and Brunswick Street.

On 3 June 2016 NSW RMS provide further comments to Council to consider in determining the development application as the Consent Authority.

f) Determination

On 25 August 2016, the development application was determined at the Council Meeting, by way of refusal.

PART B: CONTENTIONS

1. The Public Interest

The proposed development will create unacceptable impacts upon the amenity of the area, which is not in the public interest.

Particulars

The proposed development does not provide an adequate setback or landscape screening to the northern wall of the proposed kiosk building or acoustic fence. The unscreened structures will create an adverse visual impact upon the residential amenity of the area. The bulk and scale of the structures are not consistent with the objectives of this element as expressed by the "desired future character statement" for Clause 4.7 Chapter 6a of Ballina DCP 2012. The exposed large expanse of blank wall and fence will be prone to graffiti type vandalism as it will not be able to be adequately screened with 3.5m of deep soil vegetation as required by the relevant control that applies to that frontage.

2. Suitability of the site

The proposed development is an overdevelopment of the site.

Particulars

The proposed development cannot contain works within the site required to provide suitable access nor can it provide the setbacks and landscape buffers required by Council's adopted Development Control Plan. Insufficient information was provided in relation to required earthworks and retaining structures. The proposed development does not provide adequate on-site car parking in accordance with Council's DCP 2012 Chapter 2. Inadequate information has been provided regarding whether the acoustic fence and landscaping at the north-eastern corner of the site will impact upon sight distance for vehicles utilising the intersection of Winton Lane and Brunswick Street.

3. Contamination

The development application does not contain sufficient information in relation to the actual current site contamination and any methods required to remediate the site to make it suitable for the proposed development.

Particulars

The Preliminary Site Investigation Report prepared by the applicant's consultant JBS&G Australia Pty Ltd identified several sources of potentially contaminating activities previously undertaken both on the site and in the vicinity of the site. A detailed site investigation has not been undertaken to provide the necessary information to enable Council to be satisfied, in accordance with Clause 7 of State Environmental Planning Policy No 55-Remediation of Land (SEPP 55), that the land is suitable or will be suitable, (after remediation) for the purpose for which the development is proposed to be carried out. Not undertaking a detailed site investigation prior to determination of a development application is also inconsistent with Council's Policy Statement No.18 titled - Management of Contaminated Land.

4. Dewatering

Insufficient information has been provided in order to properly assess the impact associated with dewatering of the site.

Particulars

The proposal is likely to require dewatering in order to install the underground tanks. Impacts of the dewatering activity including the ground water level, the extent of drawdown and potential contamination of the groundwater from the former service station site to the east have not been addressed. The issue of disposal of the ground water has also not been addressed.

5. Acid Sulfate Soil

Inadequate information has been provided to enable consent to be granted for works specified in Clause 7.1 of the LEP.

Particulars

The site is mapped as Class 2 on the LEP Acid Sulfate Soils Map. Development consent is required on Class 2 land for "works below the natural ground surface", and "works by which the water table is likely to be lowered". The proposal comprises both of those elements. Neither an acid sulfate soils management plan, nor a preliminary assessment prepared in accordance with the Acid Sulfate Soils Manual has been provided.

6. External Road and Drainage Infrastructure

Incomplete details have been provided in relation to the works to be undertaken within the River Street Road Reserve, which are necessary to provide access to the subject site.

Particulars

The applicant proposes external roadworks to alter the levels of the adjoining street to achieve suitable grades in order to provide vehicular access to the development site. Insufficient details have been provided to demonstrate the extent of the works required and the impacts created by those proposed works upon the availability of on street car parking, drainage, or pedestrian movements around the site.

SIGNATURE

Signature



Capacity

Consultant Town Planner on Behalf of Ballina Shire Council

Date of signature

5 October 2016