



## NOTICE OF MEETING

Notice is hereby given that a meeting of the

# DEVELOPMENT CONTROL UNIT

will be held at the Council Chambers, Breese Parade, Forster on

15 OCTOBER 2009 AT 2PM

The order of the business will be as detailed below (subject to variation by Council)

1. Apologies
2. Declarations of Pecuniary & Non-Pecuniary Conflicts of Interest
3. Confirmation of the Minutes from previously held meetings:  
*DCU* 8 October 2009
4. Consideration of Officers' Reports:  
Director Planning & Environmental Services
5. Late Business
6. Close of Meeting

\* **NB** If a Councillor wants to call in any Application for determination by Full Council, they must notify the General Manager's Secretary of the Item by 12.00 noon on Tuesday 13 October 2009.

**Keith O'Leary**  
**General Manager**

# GREAT LAKES COUNCIL

## COUNCIL STRATEGIC DIRECTION

Council has adopted a Vision, Mission and five Strategic Objectives to guide the overall direction of Great Lakes Council.

### VISION

#### ***Great Lakes.....***

*A leader in the provision of infrastructure and services which sustain and enhance the natural environment and achieve a quality lifestyle for residents and visitors.*

### MISSION

#### ***Providing governance which is:***

- *Effective*
- *Efficient*
- *Socially Just*
- *Transparent*
- *Visionary*

### STRATEGIC OBJECTIVES

#### **1. *Natural and Built Environment***

To plan for future growth while ensuring a healthy well managed natural environment.

#### **2. *Community and Social Wellbeing***

To provide opportunities for recreation and culture for all and to foster a safe and caring community.

#### **3. *Economic Development***

To plan for sustainable economic and tourism development.

#### **4. *Infrastructure Management***

To plan and manage infrastructure and assets to meet community needs.

#### **5. *Corporate Governance***

To ensure Council management and practices provide effective, efficient, socially just, transparent and visionary governance. To create long term financial viability while responding to the needs and demands of the community.

*The following is extracted from Council's adopted Code of Conduct. The Code applies to Councillors, members of staff and delegates of Council and also includes contractors and volunteers*

## GREAT LAKES COUNCIL

### CODE OF CONDUCT PRINCIPLES AND ETHICAL DECISION MAKING

- **Integrity** – You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.
- **Leadership** – You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of Council. *This means promoting public duty to others in the council and outside, by your own ethical behaviour.*
- **Selflessness** – You have a duty to make decisions solely in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*
- **Objectivity** – You must make decisions solely on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.*
- **Accountability** – You are accountable to the public for your decisions and actions and must consider issues on their merits, taking into account the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*
- **Openness** – You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. *This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.*
- **Honesty** – You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*
- **Respect** – You must treat others with respect at all times. This means not using derogatory terms toward others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.

#### Ethical Decision Making

Consider the following points when assessing a potential action or decision.

- Is the decision or conduct legal?
- Is it consistent with Council policy, Council's objectives and Council's Code of Conduct?
- What will the outcome be for yourself, your colleagues, Council and other interested parties?
- Does it raise a conflict of interest?
- Do you stand to privately gain or lose at the public expense?
- Can the decision be justified in terms of the public interest?
- Would the decision withstand public scrutiny?

**TABLE OF CONTENTS**

**CONSIDERATION OF OFFICERS' REPORTS: ..... 1**

**DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES ..... 1**

- 1 PES - DA493/2009 - Proposed Single Storey Dwelling and Detached Carport -  
Lot 34 DP 12013 Myola Road, The Branch..... 1
- 2 PES - DA420/2009 - Proposal to Convert Existing Garage/Shed to a Dwelling and  
Undertake Additions to Existing Building - 15 Avon Street, Stroud ..... 18
- 3 PES - DA33/2010 - Set Up and Sell Seafood from Mobile Van - 77 Stroud Street, Bulahdelah..... 25

## CONSIDERATION OF OFFICERS' REPORTS:

### DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

#### 1 PES - DA493/2009 - Proposed Single Storey Dwelling and Detached Carport - Lot 34 DP 12013 Myola Road, The Branch

Index: DA493/2009 & PK15465  
Author: David Underwood - District Building Surveyor  
DCU Meeting: 15 October 2009

---

#### DETAILS:

Date Received: 30 April 2009  
Applicant: Ms Angela Carpenter  
Owner: Mr Michael Van Den Blink  
Land: Lot 34 DP 12013, Myola Road, The Branch  
Area: 2991 m<sup>2</sup>  
Property Key: 15465  
Zoning: 1a - Rural under Great Lakes LEP 1996

#### SUMMARY OF REPORT:

- Development application received, neighbour notified and referred to various departments for comment
- Letters sent to applicant requesting additional information and raising concerns over the location of the proposal
- Letters of reply sent from applicant and a revised plan submitted
- Comments received from Internal and external departments
- Further site inspection undertaken in view of amended plans

#### SUMMARY OF RECOMMENDATION:

That the development application be approved subject to deferred commencement conditions specifying that a more detailed Geotechnical Engineer's Report be submitted confirming that the proposed location for the development will be suitable with regard to potential from long term erosion of the river embankment.

#### FINANCIAL/RESOURCE IMPLICATIONS:

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

**POLICY IMPLICATIONS:**

Nil.

**LEGAL IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court.

**LIST OF ANNEXURES:**

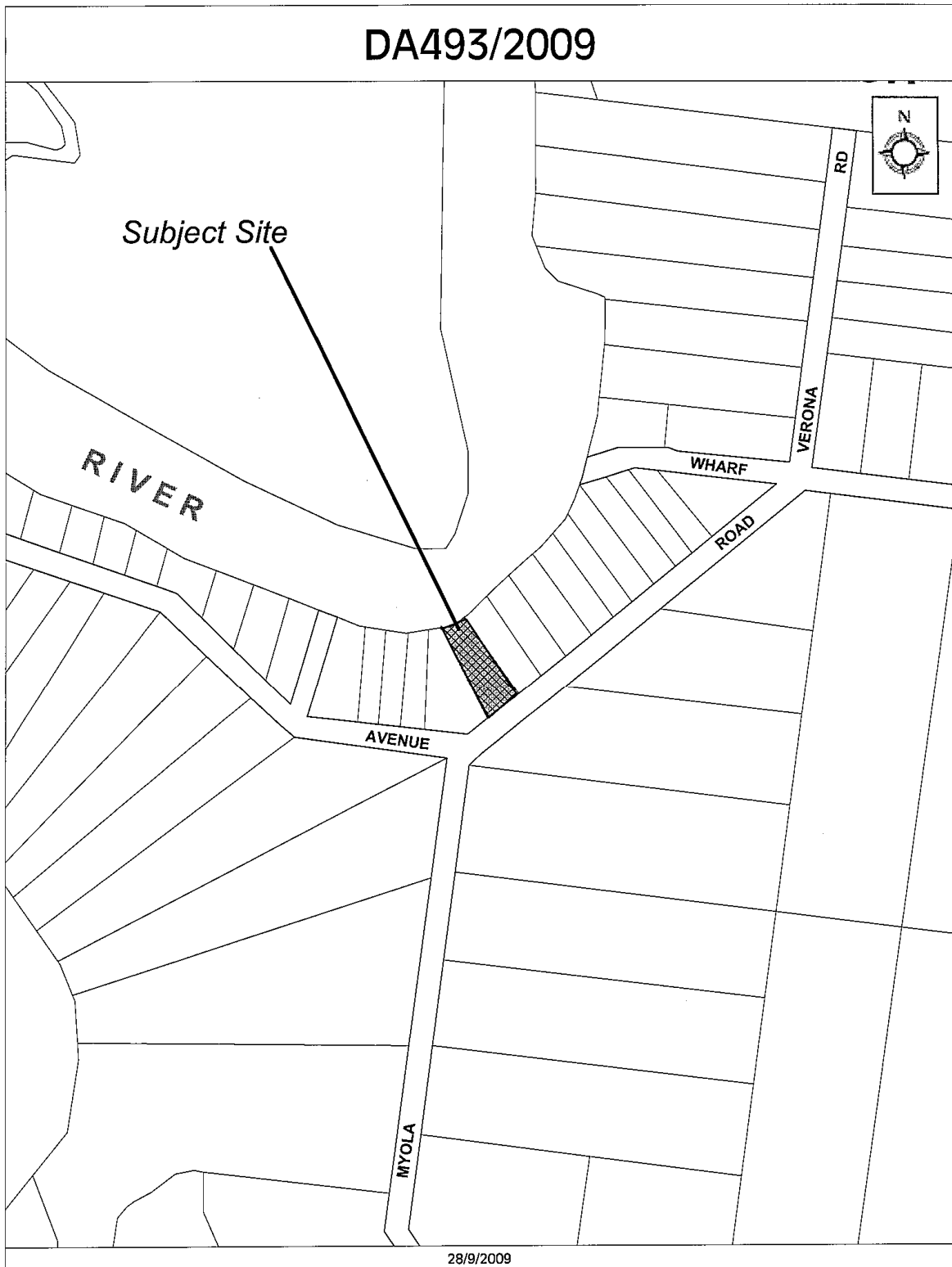
- A: Plans and Elevations
- B: Letter from Applicant in support of amended plan
- C: Current Geotechnical Engineer's Report

**LIST OF ATTACHMENTS:**

Nil.

---

**SUBJECT SITE AND LOCALITY:**



Disclaimer.  
This map was produced by Great Lakes Council using information from the Land Information Centre.  
Great Lakes Council accepts no responsibility either in contract or tort (or particularly in negligence) for any errors, omissions or inaccuracies whatsoever contained within or arising from this map.  
Copyright: Great Lakes Council  
Copyright: Land and Property Information N.S.W.

**BACKGROUND:**

30 April 2009	Development Application received by Council
13 May 2009	Application neighbour notified
13 May 2009	Application referred to NSW Rural Fire Services and to Council's internal departments for comment
19 May 2009	Comments received from Council's Transport Assets Branch
22 May 2009	Initial letter sent to applicant requesting additional plans and details
26 May 2009	NSW Rural Fire Services' comments received
3 June 2009	Letter and details received from applicant clarifying issues raised in initial letter dated 22 May 2009
4 June 2009	Further letter sent to applicant raising concerns over the proposed location of the development
7 July 2009	Letter received from applicant in support of current location
20 July 2009	Application referred to the Marine Parks Authority as it was found that the development location is within the buffer of the marine park area
1 September 2009	Letter submitted from applicant accompanied by amended plans indicating an increase in setback from dwelling to river bank
8 September 2009	Application re notified to neighbours
15 September 2009	Further site inspection undertaken

**PROPOSAL:**

The applicant proposes to construct a single storey dwelling and detached carport. The dwelling construction will consist of a combination of timber and steel with the external cladding proposed to be corrugated Zinalume. The carport will be constructed using steel frame and Zinalume roofing.

**SITE DESCRIPTION:**

The site is zoned 1(a) Rural and has an entitlement for the building of a dwelling. The lot is currently vacant and is bounded by the Branch River to the northwest, Myola Road to the southeast and vacant sites to the sides.

The subject site is currently fenced on the boundaries facing the road and the north east side.

**REPORT:**

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

***The provisions of any environmental planning instrument; any draft environmental planning instrument that is or was on public exhibition and which have been notified to the consent authority; any DCP; any matters prescribed by the regulations that apply to the Development Application on the subject land***

### **Great Lakes Local Environmental Plan 1996 (GLLEP 1996)**

The land is zoned 1(a) Rural under Great Lakes LEP 1996. The lot is an existing holding in accordance with clause 19 of Great Lakes Local Environmental Plan 1996 and as such a dwelling may be erected on the land only with the development consent of Council.

### **State Environmental Planning Policy No. 71**

Concerns have been raised with the applicant in regards to the location of the dwelling from the river embankment. The initial proposal was for the dwelling to be located at a distance of 6.3metres from the embankment which raised issues over compliance with the aims of SEPP 71. These aims include the following:

- Ensuring the visual amenity of the coast is protected.
- Protecting and preserving the marine environment.
- Manage the coastal zone in accordance with principles of ecologically sustainable development.
- To ensure that the type, bulk, scale and size of the development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area.

Discussions and correspondence with the applicant have led to an increase in setback from the river embankment going from 6.3 metres to 13 metres. Whilst it was strongly recommended that a minimum 20 metre setback be provided to address visual issues it is considered that as the development is for a single storey dwelling and as the embankment is approximately 5 metres high the visual impact on the river may be considered reasonable. These issues will be further discussed later in the report.

### **Council Policy - (Precedent)**

A search of Council's existing holding map revealed that there are approximately 43 existing holdings which front the Branch River and are capable of having dwellings erected on these sites (See copy of Existing Holdings Map on file). This raises concern given that approval of this application has the potential to set a precedent for other developments to follow in regards to distance from the Branch River embankment.

Council has historically requested a 40 metre setback in line with the Rivers and Foreshores Improvement Act. In December 2004 single dwellings became exempt under this Act and were no longer required to be referred, which left no specific guidelines with which Councils could insist on setback requirements.

This particular proposal which is currently intending to be setback 13metres from the river embankment and 21 metres from the Mean High Water Mark is being considered for approval based on the following points:

- The river embankment is approximately 5 metres above the river which assists in screening the development from the river area.
- The frontage of the site adjoining the river is quite narrow at approximately 15 metres which limits the area which can be viewed from the river.
- The design of the dwelling is narrow at the front with a wider area at the rear of the building. In addition the development is a modest single storey dwelling with the elevation facing the river having a maximum height of 4.5 metres.

- The application was also referred to the Marine Parks Authority as the site is located in the buffer area of the Marine Park. No comments or concerns have been raised by the Marine Parks Authority.

***The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality***

***Context and Setting***

The current proposal with its increased setback from the river is considered to have greatly improved the relationship of the development with regard to the presentation/contribution to the visual catchments of the Branch River area.

***Site Design and Internal Layout***

Whilst it has been recommended that the dwelling be located at least 20 metres from the river embankment it is considered that the current 13 metre setback could be considered favourable as the impact imposed on the locality would be reasonable.

***Views***

There are no unreasonable impacts on views or outlooks given that the development is the first one in the locality.

***Privacy (Aural and Visual)***

As the proposed dwelling is a single storey development and as the adjoining sites are undeveloped it is considered that the privacy relationships with the adjoining properties is acceptable.

***Overshadowing***

The proposed single storey dwelling will not unreasonably overshadow the adjoining sites.

***Visual Impact***

Given the increased setback from the river and the sympathetic nature of the proposed development it is considered that the development will not detract from the visual qualities of the neighbouring sites or the locality.

***Access, Transport and Traffic***

There were initial concerns over the legal access of the road which lead to a referral to Council's Transport Assets Branch. Council's Transport Assets have advised that the vehicular access is legal, however will be required to be upgraded to meet the requirements of the NSW Rural Fire Service requirements (refer below).

Council's Transport Assets Section advises:

*"Access to the proposed development is from Wharf Rd. and Myola Rd. which are privately owned roads in the residue of title of the Estate of the Late H. A. Veron. Wharf Rd. connects to the Branch Lane which is an existing dedicated gravel road. Previous development approval for dwelling construction within the subdivision has relied on the landowners providing evidence of registration of a caveat which entitles them to have an equitable right of carriageway to use the roads in DP 12013. The caveat has been previously forwarded to Council's Solicitor Mallik Rees for legal advice in relation to access. The following response was received:*

*"The Caveat merely notifies enquirers or persons intending to deal with the title that the landowners of DP 12013 claim equitable rights of carriageway over the roads created in that DP and on the information presently available to us, we believe a right of carriageway could be sustained by the owners against the owner of the land in the residue of title which appears to be the Estate of the Late H. A. Veron."*

*Based on the above advice, Council has previously approved dwelling applications without individual creation of separate Right Of Ways for each lot.*

*Wharf Road and Myola Road. are not dedicated public roads and are not maintained by Council; therefore Council has no interest in the roads other than to verify if legal access to the development site is achievable.*

*With regards to the standard of road construction required for access to the site, the applicant is required to comply with the Rural Fire Service Planning for Bushfire Protection Manual (Section 4.3.2 Property Access Roads)."*

### **Drainage**

Stormwater drainage will be disposed of on site so as to not affect any of the proposed building structures.

### **Flora and Fauna**

The application was referred to Council's Natural Systems Section who have commented as follows:

- *"There would be the removal of one (1) mature tree and the clearing of some native understorey plants for the construction of the dwelling;*
- *The entire property needs to be maintained as an Inner Protection Area (Asset Protection Zone) for bushfire protection. This will cause the under-scrubbing and maintaining of native vegetation over the entire lot;*
- *Side setbacks are down to 3.5-metres on each side of the proposed dwelling, which appears very small and may confer an unfair, future bushfire protection burden on the adjoining landholdings in order to protect this dwelling as the proposed setbacks do not appear to provide for adequate bushfire APZ widths to be maintained on the existing allotment. One of the adjoining lots is owned by Great Lakes Council – Lot 35);*
- *The active erosion of the bank of The Branch River may endanger the proposed dwelling and human occupation of the Lot may cause the increase in damaging bank recession and failure rates (through APZ establishment, foreshore access, etc);*
- *Sediment and erosion issues may arise during construction. The land slopes to the south-west into wetland habitats adjacent to The Branch River;*
- *Possible introduction of grazing stock and domestic predators to the land and subsequent impacts on native flora and fauna;*
- *Possible effects of development and human occupation of the land;*
- *Possible bank de-stabilisation and impacts on the riparian zone and foreshore of The Branch River from the construction of the dwelling with a 13-metre setback from the top of the highest point of the river-bank; and*
- *Creation of a damaging precedent elsewhere in The Branch non-urban lands that may lead to an escalation of development pressures at almost an urban density in a remote and significant rural setting and rural zone and where an intact and biologically important native vegetation and habitat remnant occurs. The implications of wider on-site effluent management, bushfire APZ and clearing on the landscape and The Branch River are pertinent issues in the determination of this individual DA, because it is likely to create and facilitate enhanced development pressures on equivalent landholdings. It may also establish a damaging precedent whereby foreshore setback is only 13-metres from the top of the river-bank, especially on a receding riverbank.*

1. *It is therefore considered that, the DA can be determined with appropriate conditions and in that manner, overt or measurable effects on the Marine Park would appear to be demonstrably and appropriately avoided. I understand that the Marine Park Authority has not objected to this development proposal.*

*Therefore, I am satisfied that all pertinent statutory questions associated with this individual proposal can be addressed. I am concerned about precedent, relating to:*

- *A relatively small setback (13-metres) from the top of an actively receding riverbank and would argue that a greater separation from the external façade of the dwelling and the top of the riverbank would be more appropriate and preferred;*
- *The very small side setbacks (3.5-metres) and possible deferral of bushfire protection clearing for any approved dwelling on the subject land to the adjoining Lots 33 and 35, which is inappropriate and problematic;*
- *Scattered and relatively ad hoc development of single dwellings on rural-zoned land that approximates residential densities across The Branch non-urban lands that ultimately and cumulatively causes clearing and fragmentation of significant native vegetation and habitat, causes harm and pollution of wetlands and riverine habitats/ foreshores and causes pollution risks associated with a plethora of individual on-site effluent management systems in a remote and significant natural area.*

*The Natural Systems and Estuaries Branch recommend that this DA individually can be **approved with conditions** provided that other planning, engineering and social issues are adequately and appropriately considered."*

### ***Climate Change***

Council's Engineering Department have not raised any issues relating to Climate change so as such no specific conditions or recommendations are required.

### ***Cumulative Impacts***

As previous mentioned the development will set a precedent in relation to the setback from the river embankment and as such will have cumulative impacts for other developments within the locality. Council with its assessment of future developments in the area will have to be mindful of the nature of the development in order to determine the relevant setback required from the river so as not to erode the natural scenic values of the river area.

### ***The Suitability of Site for the Development***

The subject site is located on a bend in the river so the potential erosion impacts on the steep river bank are of concern. The applicant submitted a Geotechnical Engineer's report on the original location of 6.3 metres from the embankment. This report it was felt was not conclusive in confirming that the subject site was suitable with regard to potential erosion. The report began by stating that it was a "limited geotechnical assessment". In addition the engineer stated that "the use of piling or piling will assist the long term stability of the footing system at the river frontage end of the building". This again raises questions of the long term suitability of the proposed location with regard to erosion.

In view of these queries with the geotechnical assessment it is recommended that a deferred commencement condition be imposed specifying that a more detailed Geotechnical Engineer's Report be submitted confirming that the proposed location for the development will be suitable with regard to potential from long term erosion of the river embankment.

The subject site is also located in a bushfire prone area and as such was referred to the NSW Rural Fire Service who have made recommendations which will be imposed as conditions of consent.

### ***Any Submissions Made in Accordance with the Act or Regulations***

The application was notified to adjoining owners in accordance with Council's Policy and no submissions were received.

### ***The Public Interest***

There are no issues that would unreasonably impact upon the public interest.

### **CONCLUSION:**

There have been concerns with the siting of the proposal however it is now considered that the proposed location and design will be suitable for the site subject to deferred commencement conditions being satisfied.

### **RECOMMENDATION:**

1. A report be prepared for Council with a view to amending the Building Setback Policy to include a setback requirement for riverfront properties in the building setback register.
2. It is recommended that DA 493/2009 for the Single Storey Dwelling and Detached Carport at Lot 34 DP 12013, Myola Road, The Branch be approved subject to the following conditions:

### **DEFERRED COMMENCEMENT CONDITION/S**

- A. This development consent does not operate until the consent authority is satisfied that condition B has been satisfactorily carried out. In this regard, the consent will not become operative until such time as the consent authority has notified the applicant that this condition has been satisfied.
- B. Submission of a detailed Geotechnical Engineer's Report being submitted to Council confirming that the proposed location for the subject development will be suitable with regard to potential from long term erosion of the river embankment.

Evidence required to satisfy the above deferred commencement condition/s must, in accordance with Clause 95(3) of the Environmental Planning and Assessment Regulation 2000, be submitted to Council within 2 years of the date of this consent.

The following conditions will apply following written notice given under Section 100(4)(b) of the Environmental Planning and Assessment Regulation 2000 that the deferred commencement condition/s have been satisfied and the date from which the consent operates:-

### **DEVELOPMENT CONSENT CONDITIONS**

The following condition/s have been applied to ensure that the development complies with the provisions of the Environmental Planning and Assessment Act and Regulations and Policies of Council:

**The following condition/s have been applied to ensure that the development complies with the provisions of the Environmental Planning and Assessment Act and Regulations and Policies of Council:**

1. The development being carried out in accordance with the details set out in the Development Application unless otherwise amended by these conditions of consent.

2. The building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority subject to the provisions of the Environmental Planning and Assessment Act 1979 and Regulation 2000) to verify compliance with this consent and the standards of construction detailed in the Building Code of Australia, at not less than the following stages prior to proceeding to the subsequent stages of construction:
  - a) Commencement of works.
  - b) Pier holes before they are filled with concrete.
  - c) Footings.
  - d) Steel reinforcement.
  - e) Steel columns/beams.
  - f) Framework including floor, wall and roof framing prior to fixing of internal lining.
  - g) Stormwater drains.
  - h) When all plumbing has been installed prior to covering in.
  - i) When drainage lines are laid in position and prior to covering in.
  - j) Wet area flashing prior to covering in.
  - k) Final.
3. Work on any building shall not commence until a Construction Certificate, complying in all respects with the provisions of the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Building Code of Australia, has been issued.
4. Development must be completed in accordance with Basix Certificate No 243270S unless otherwise amended prior to the issue of a final Occupation Certificate.
5. It is a condition of approval that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
6. Prior to commencement of construction and throughout the construction process until completion, adequate provision shall be made for the following measures (as applicable), to ensure compliance with the terms of the Consent:
  - a) Sediment control measures.
7. Building work that involves residential building work (within the meaning of the Home Building Act, 1989) must not be carried out unless the principal certifying authority:
  - a) in the case of work to be done by a licensed contractor:
    - (i) has been informed in writing of the licensee's name and contractor number; and
    - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act (in relation to insurance policies); or
  - b) in the case of work to be done by any other person:
    - (i) has been informed of the person's name and owner-builder permit number; or
    - (ii) has been given a declaration, signed by the owner of the land, that states that the market cost of the labour and materials involved in the work does not exceed \$5,000.
8. Structural drawings prepared by a suitably qualified and experienced Structural Engineer being submitted to and approved by the principal certifying authority prior to the issue of a construction certificate. The plans shall detail:
  - a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement of the cut and fill areas.
  - b) Footings of the proposed structure.

- c) Structural steel beams/columns.

Where it is proposed to use driven timber piles as part of any building footing system, the following certification from a professional engineer shall be provided prior to a footing inspection:

- i) The durability class (and/or chemical treatment grade) of all piles used within the footing system; and  
ii) That the driven piles have achieved the required bearing capacity.

**Note: Structural Engineer's details for footings are to be designed with regard to Geotechnical Reports undertaken for the subject site.**

9. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life or property.

10. Prior to the commencement of work, toilet facilities shall be provided within the site boundaries at the rate of 1 toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet shall be connected to the sewer.

Where the sewer is not available, chemical (portable WC) toilet(s) shall be provided or the toilets shall be connected to on-site sewage management system approved by Council.

11. Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied.

The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

12. The works are to be inspected during construction by Great Lakes Council to verify compliance with this consent and the Australian Standards. An inspection fee in accordance with Council's Fees and Charges Policy (currently \$192) is to be paid to Council prior to the issue of a Construction Certificate in cases where Council is not the Certifying Authority. Inspections are to be carried out at not less than the following stages prior to proceeding to the subsequent stages of construction:

- (a) Arrange inspections with Council's Building District Surveyor by calling (02) 6591 7291 when:

- all plumbing has been installed prior to covering in;
- internal drainage lines are laid in position and prior to covering in;
- external drainage lines are laid in position and prior to covering in.

- (b) Arrange inspection with Council's Environmental Health Officer by calling (02) 6591 7375 when installation of the on-site sewage management facility and associated disposal areas are complete.

13. The development is not to be used or occupied until it is completed in accordance with the approved plans and conditions of development consent.

14. Roof and wall material shall be of a subdued low-reflective colour installed in accordance with the manufacturer's details. The colour of the roof and wall material is to be approved by Council prior to the issue of any Construction Certificate (unpainted metal, zincalume, white or off-white materials are not acceptable).

15. The clearing of remnant native trees (as defined by the Native Vegetation Act 2003) for the construction and occupation of the approved development shall be restricted to that tree shown on the plan attached to the correspondence of Angela Carpenter to David Underwood (Great Lakes Council) dated 24 August 2009 and identified as "tree to be removed." All other remnant native trees on the land, including those identified on the above-mentioned plan shall be retained and protected on the land, free of direct and indirect impacts of development and occupation.
16. Reduction and suppression of the groundcover vegetation in the APZ shall be conducted in a manner that protects the trees that are to be retained and protected on the land (as required by these conditions) and sensitively manages rocks, logs, clumps of native groundcover vegetation and other features of significance for fauna.
17. The clearing works shall be conducted sensitively. Trees to be retained shall be protected from direct or indirect impacts as well as significant machinery activity in their root zone. Tree removal shall be conducted by selective directional felling only away from areas of natural open forest and those trees to be retained on the land.
18. Trees and shrubs removed from the study area shall be used in site landscaping either in log form or as mulch. No felled vegetation shall be wind-rowed and burnt.
19. Machinery operators shall inspect the crown, foliage and trunks of trees that require removal immediately prior to any felling to investigate the presence of koalas. If a koala is detected, the tree and no other surrounding trees shall be cleared until the animal has dispersed of its own free will from the area.
20. For the removal of any hollow-bearing trees that occur on the Lot, the following methods shall be adopted prior to, during and after their removal:
  - a. Removal of the nominated hollow-bearing habitat trees from the APZ shall be conducted with an appropriately trained and vaccinated ecologist in attendance, who shall inspect the hollows and recover any injured or displaced native fauna. Council's Senior Ecologist shall be informed prior to the removal operation. The trees shall be felled in a manner that minimises mortality risks and injury risks to resident fauna and the arborists shall inspect the hollows progressively as they work. Displaced animals shall be collected and assessed. If injured, the animal(s) shall be taken immediately to a vet or wildlife carer. If uninjured, the animal(s) shall be released in secure habitat as close as possible to the capture location in a manner that avoids further injury and harm.
  - b. The ecologist shall provide a report to Council's Senior Ecologist within one-week of the tree-clearing operation. This report shall outline the results of the fauna recovery operation including details of the hollows removed (number, entrance diameter, cavity length, cavity dimension), fauna species affected (including number, sex, breeding status) and evidence of former species presence.
  - c. An equivalent number of artificial nesting boxes shall be established on the land in the APZ to compensate for the removal of natural hollows during APZ establishment. These shall be demonstrably established prior to the issue of the Occupation Certificate.
21. Any landscaping of this lot shall give preference to the use of natural, indigenous flora species from all vegetative strata.
22. Access to the site for ingress/ egress shall be restricted to the existing track infrastructure and no new tracks shall be created on the land for any aspect associated with the construction and occupation of the approved dwelling.
23. Prior to the issuing of the Construction Certificate, a riverbank revegetation and landscaping plan shall be prepared and submitted to Great Lakes Council for review and approval. The plan shall be prepared by a qualified bushland regenerator/ riverbank restoration officer engaged by the registered proprietor of the land. The plan shall show clearly:

- a. The delineation and protection of the area within 13-metres from the top of the riverbank within a suitable fenced enclosure;
  - b. The preclusion of any introduction and the permanent exclusion of any grazing stock from that area within 13-metres from the top of the riverbank;
  - c. Details of a native vegetation revegetation program of the riverbank face and zone within 13-metres south of the top of the riverbank. This must include deep-rooted plantings of locally indigenous and suitable native vegetation including trees and shrubs and the recruitment of mangroves. The plan must include:
    - i. Details of plant species, quantities, densities and height and spread at maturity;
    - ii. Details of planting locations;
    - iii. Details of planting procedure and maintenance, including watering;
    - iv. Details of the use of soil stabilisation of actively eroding and exposed areas of the riverbank, including the use of geotextile fabric, wind fences, brush-matting and mulch; and
    - iv. Details of the type and quantity of soil and mulch material to be imported to the land;
24. Upon its approval and then in perpetuity, the Riverbank Revegetation and Landscaping Plan shall be fully implemented on the land by the Registered Proprietor of the Lot.
  25. No cats shall be introduced, kept, housed or released anywhere on this Lot.
  26. No barbed wire shall be used, introduced or permitted anywhere on this Lot, for any purpose.
  27. No native vegetation, either remnant or regrowth, present on any adjacent landholdings shall be harmed, cleared, modified or removed for any purpose outside the subject land other than for the approved upgrading of the relevant public access roads so as to meet bushfire protection or Great Lakes Council engineering standards.
  28. An application to install an on-site sewage management system must be submitted and approved by Great Lakes Council prior to the issue of a Construction Certificate.
  29. An approval to operate the on-site sewage management system must be obtained from Great Lakes Council prior to an Occupation Certificate being issued.
  30. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - (a) stating that unauthorised entry to the work site is prohibited; and
    - (b) showing the name, address and telephone number of the principal certifying authority for the work; and
    - (c) showing the name of the principal contractor and a telephone number at which that person may be contacted outside of working hours.

Any such sign is to be removed when the work has been completed.
  31. Buildings to be set out by a Registered Surveyor to ensure compliance with this consent, and the approved plan/s, and a copy of plan to be supplied to the principal certifying authority prior to the pouring of any concrete slabs / placement of flooring materials.
  32. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

33. To allow for emergency service's personnel and residents to undertake property protection activities unobstructed, pedestrian access 900mm wide (min) is to be provided to access all areas around the building and lot.
34. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
- The water source shall be made available or located within the inner protection area (IPA) and away from the structure.
  - A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
  - A 65mm Storz outlet with a gate or ball valve shall be provided.
  - In recognition that no reticulated water supply exists, a 20,000 litre water supply shall be provided for fire fighting purposes.
  - The water tank if located above ground shall be of a non-combustible material.
  - Underground tanks shall have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is to be supplied within 4 metres of the access hole.
  - Tanks and associated fittings on the hazard side of the building shall be provided with adequate shielding to mitigate the impact of flame contact and radiant heat and provide safe access for fire fighters.
  - The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are metal.
  - All associated fittings to the tank shall be non-combustible.
  - A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
  - An "SWS" marker shall be obtained from the local NSW Rural Fire Service and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
    - a) Markers must be fixed in a suitable location so as to be highly visible; and
    - b) Markers should be positioned adjacent to the most appropriate access for the static water supply
  - Reticulated or bottled gas is to be installed and maintained in accordance with Australian Standard AS/NZS 1596:2002: 'The storage and handling of LP gas' and the requirements of relevant authorities. Metal piping is to be used.
  - All fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and be shielded on the hazard side of the installation.
  - Gas cylinders kept close to the building shall have release valves directed away from the building. Connections to and from gas cylinders are to be metal. Polymer sheathed and flexible gas supply lines to gas meters adjacent to building are not to be used.

35. Property access roads shall comply with the following requirements of section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'. This includes Wharf and Myola Roads.
- At least one alternative property access road is provided for individual dwellings (or groups of dwellings) that are located more than 200 metres from a public through road.
  - Roads do not traverse a wetland or other land potentially subject to periodic inundation (other than a flood or storm surge).
  - A minimum carriageway width of 4 metres for rural-residential areas, rural landholdings or urban areas.
  - Any carriageway constriction along the property access road shall be no less than 3.5 metres in width and for a distance of no greater than 30m.
  - In forest, woodland and heath situations, rural property access roads have passing bays every 200 metres that are 20 metres long by 2 metres wide, making a minimum trafficable width of 6 metres at the passing bay.
  - A minimum vertical clearance of 4 metres to any overhanging obstruction, including tree branches.
  - Internal roads provide a loop road around any dwelling or incorporate a turning circle with a minimum 12 metre outer radius.
  - Curves have a minimum inner radius of 6 metres and are minimal in number to allow for rapid access and egress.
  - The minimum distance between the inner and outer curves is 6 metres.
  - The crossfall is not to exceed 10 degrees.
  - Maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads.
36. In recognition of the isolated location of the development an emergency/evacuation plan is to be prepared consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation plan'.
37. All exposed/external timber used in the development shall be of a fire resistant timber species as identified in RFS Development Control Note 001. These species include: Blackbutt, Kwila (Merbau), Red Iron Bark, Red River Gum, Silver Top Ash, Spotted Gum and Turpentine.
38. Construction on the eastern and western elevation(s) shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 3. The remaining elevations are to comply with Level 2 Construction under AS3959-1999. Full details indicating compliance being submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.
39. All Class 10 structures as defined per the Building Code of Australia 2006 attached to or within 10 metres of the habitable building shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 3.
40. Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building.

41. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials'.
42. External doors are to be sealed with draft excluders or weather strips to prevent the entry of embers.
43. The sub-floor shall be enclosed with non-combustible material to prevent the entry of embers.
44. No brushwood fencing shall be used.
45. Structure and shade materials in the inner protection area shall be non-combustible or have a Flammability Index no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials'.
46. Polycarbonate roof sheeting is to have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials'.
47. All new fencing shall be non-combustible.
48. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**The following group of condition/s have been applied to ensure that noise from the development does not create a nuisance and to ensure that reasonable levels of the amenity of the area are maintained during construction and after the erection of the building:**

49. There is to be no construction and/or demolition works, including deliveries on or to the site prior to 7.00 am or after 6.00 pm Monday to Friday, prior to 8.00 am and after 6.00 pm Saturday, and prior to 9.00 am and after 4.00 pm Sunday.

**The following conditions have been applied to ensure that adequate drainage is provided from the premises and to maintain adequate levels of health and amenity in the locality:**

50. Stormwater from roof areas shall be linked to a Council approved disposal system immediately before placement of any roofing materials.

Stormwater from roof areas shall be conveyed to on-site storage with overflow to either:

- a) Rubble trenches situated at least 3m from any building and constructed in a manner so as not to create erosion, siltation or topsoil removal from the site;
- b) A detention basin, settling pond or contour drain in such a way as to prevent sediments and other material being eroded from the site.

**The following condition/s have been applied to ensure compliance with the Building Code of Australia (BCA) and relevant Standards established by the Environmental Planning and Assessment Act 1979 and Regulations:**

51. Timber framing members shall comply with the relevant provisions of AS1684 - Residential Timber Framed Construction Code.
52. Bracing and tie-down to the proposed building is to be carried out in accordance with AS1684 (Residential Timber Framed Construction Code).

53. The stair and/or balustrade is to be constructed in accordance with the Building Code of Australia. Wire balustrade construction shall be in accordance with Table 3.9.2.1 BCA 2005. Wire spacings in this table are variable (60mm - 100mm) depending on strand thickness and spacing of supporting posts or rails.

The style of balustrade is to be submitted prior to the issue of a Construction Certificate and where wire balustrades are specified, details of the wire diameter, lay and support spacing are to be submitted. A report from the installer of any wire balustrade indicating that the balustrade meets all requirements of the BCA 3.9.2 and the AS1170.1 including any tensioning requirements is to be submitted prior to the issue of an Occupation Certificate.

54. Install in the building an automatic fire detection and alarm system, complying with the Building Code of Australia, being connected to the mains electrical power supply and having a standby power supply.
55. The proposed building or addition is to be protected from the infestation of termites in accordance with the Building Code of Australia and AS3660. Details of the method of protection are to be specified prior to the issue of a construction certificate. Upon completion of the building work, a durable notice must be permanently fixed to the building in a prominent location, such as a meter box or the like, indicating:
- a) the method of protection;
  - b) the date of installation of the system;
  - c) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
  - d) the installer's or manufacturer's recommendations for the scope and frequency of future inspections for termite activity.
56. The wet areas in the building shall be impervious to water as required by P2.4.1 of the Building Code of Australia (Housing Provisions). On completion of the waterproofing of the wet areas, the Principal Certifying Authority shall be furnished with a certificate from the person responsible, stating that the materials used are suitable for the situation, and that the application and/or installation has been carried out in accordance with Australian Standard AS 3740-1994 : Waterproofing of Wet Areas in Residential Buildings.

**The following condition/s have been applied to ensure compliance with Council's Erosion and Sediment Control Policy:**

57. An Erosion and Sediment Control Plan (ESCP) shall be prepared by the applicant (or applicant's agent) prior to a construction certificate being issued.
58. All site works shall be carried out in accordance with the Erosion and Sediment Control Plan. Implementation of the Erosion and Sediment Control Plan shall be supervised by personnel with appropriate training, or demonstrated knowledge or experience in erosion and sediment control.
59. Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping.
60. Stockpiles of construction and landscaping materials, and of site debris shall be located clear of drainage lines and in such a position that they are within the erosion containment boundary or are equivalently protected from erosion and do not encroach upon any footpath, nature strip or roadway.
61. Final site spoil shall be disposed of to the satisfaction of Council.
62. Stormwater from roof areas shall be linked to a Council approved stormwater disposal system immediately before placement of any roofing materials.

**2 PES - DA420/2009 - Proposal to Convert Existing Garage/Shed to a Dwelling and Undertake Additions to Existing Building - 15 Avon Street, Stroud**

**Index: DA420/2009 & PK18593**  
**Author: Building Surveyor - David Underwood**  
**DCU Meeting: 15 October 2009**

---

**DETAILS:**

Date Received: 19 March 2009  
Applicant & Owner: Mr David Bowtell  
Land: Lot 9 DP 715780, 15 Avon Street, Stroud  
Area: 2023m<sup>2</sup>  
Property Key: 18593  
Zoning: 2 Village under, Great Lakes LEP 1996

**SUMMARY OF REPORT:**

- History of details regarding the unauthorised occupation of the subject shed
- Development Application received and neighbour notified
- Letter sent to applicant regarding concerns over the suitability of the proposal within the Stroud Village
- A letter of response sent by applicant advising Council that an amended plan would be drawn
- Further letters sent by Council pursuing the amended plans to which no reply was received
- Recommendation that the development application be refused and that an Order be served

**SUMMARY OF RECOMMENDATION:**

That the development application be refused on the grounds of insufficient information and that an Order be served to cease using premises for the purposes of habitation and directing that certain works be undertaken to bring the building back into compliance with the original approval granted.

**FINANCIAL/RESOURCE IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

**POLICY IMPLICATIONS:**

Not applicable.

**LEGAL IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court.

**LIST OF ANNEXURES:**

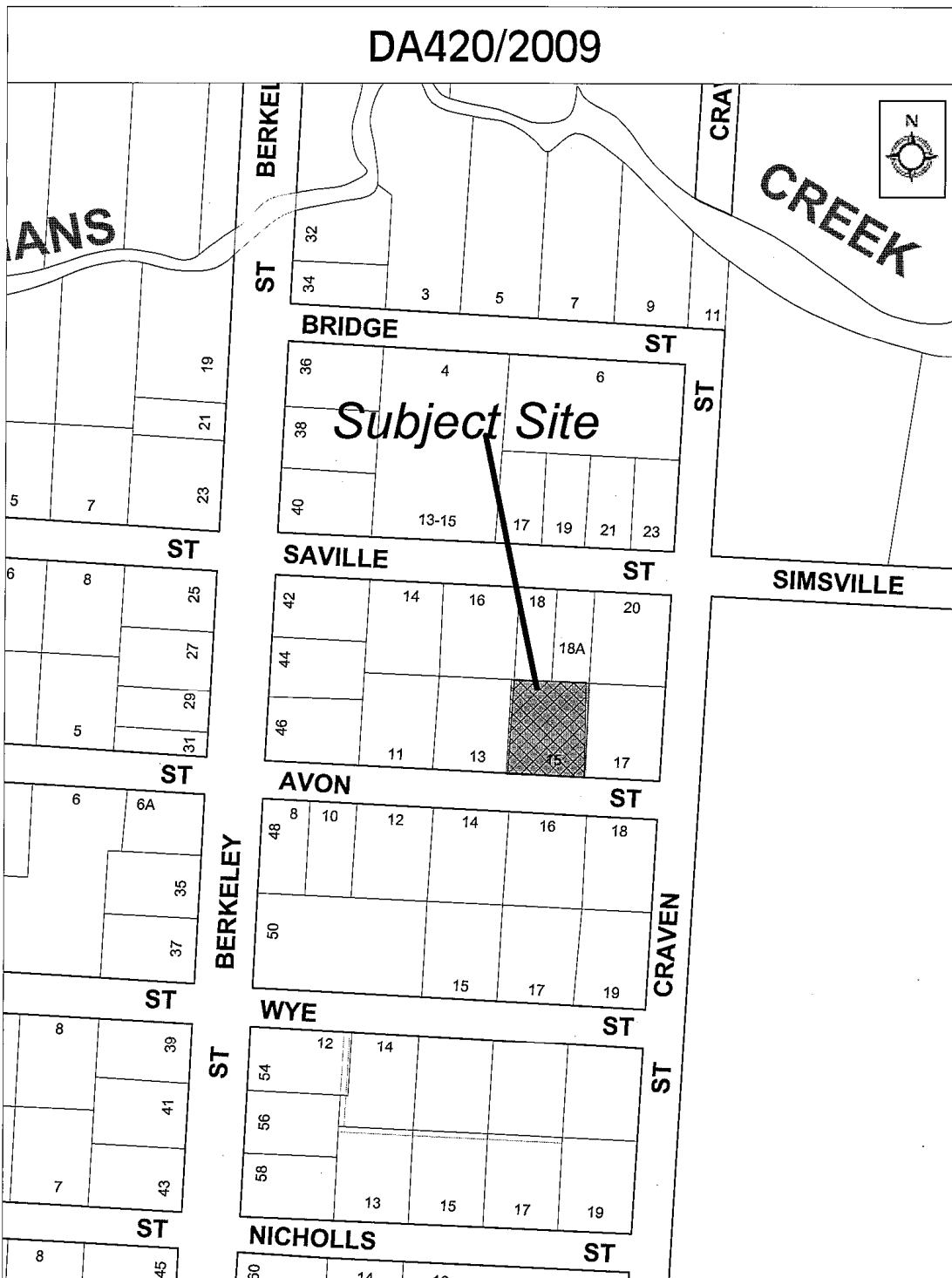
A: Plans and Elevations

**LIST OF ATTACHMENTS:**

Nil.

---

**SUBJECT SITE AND LOCALITY:**



Disclaimer:  
 This map was produced by Great Lakes Council using information from the Land Information Centre.  
 Great Lakes Council accepts no responsibility either in contract or tort (or particularly in negligence) for any errors, omissions or inaccuracies whatsoever contained within or arising from this map.  
 Copyright: Great Lakes Council  
 Copyright: Land and Property Information N.S.W.

**BACKGROUND:**

- 7 December 2007 Written complaint received by Council that the shed located at 15 Avon Street, Stroud is being utilised for occupation
- 24 September 2008 Letter sent to owner of 15 Avon Street advising that Notices will be served and in the event that an Order is served details of alternative accommodation
- 24 September 2008 Notices served, one requesting that shed cease being used for habitation and the other requesting that works be undertaken so as to bring the shed back into compliance with the original approval
- 15 October 2008 Property owner, Mr Bowtell, provides written response to Notices requesting that a 60 day period be given to allow him to lodge a development application
- 24 October 2008 A return letter is sent to Mr Bowtell advising him that an extension of 60 days is granted to allow him to lodge a development application
- 14 January 2009 A letter sent to Council from Mr Bowtell advising that he is getting ready to lodge a development application
- 13 March 2009 Letter sent from Council to Mr Bowtell advising him that Council intends to serve Order given that no development application has been received and that ample time has been granted to him to organise the lodgement
- 19 March 2009 Development application received to convert garage to dwelling and carry out an addition to existing shed/garage
- 2 April 2009 Development application neighbour notified
- 6 April 2009 A letter sent to applicant advising that concern is raised that the proposed development will be inconsistent with the character of the Stroud Village therefore an alternative design should be considered
- 16 April 2009 Letter of objection received
- 30 June 2009 Further letter sent to applicant requesting further details as no response has been received from previous letter dated 6 April 2009.
- 4 August 2009 Discussions held with applicant who was advised that current proposal is not consistent with Village area and that should the applicant wish to take the matter before a Development Control Unit Meeting that the recommendation in the current form would be for refusal
- 7 August 2009 Letter received by applicant advising that amended plan will be drawn up as he has been advised that the current proposal will not be supported
- 13 August 2009 Further letter sent to applicant advising that 30 days is permitted to provide amended details as previously requested in Council's letters dated 6 April and 30 June.

**Note:** Letters and Notices referred to in above background are located on Development Application file for reference.

## PROPOSAL:

The applicant proposes to convert the existing garage/shed into a dwelling plus proposes to undertake additions to the existing building. The existing garage/shed is constructed of a steel portal frame with corrugated iron walls and roof as indicated in photos on file.

## SITE DESCRIPTION:

The subject site is located to the northern side of Avon Street, Stroud. The existing metal shed is located in the north western corner of the site approximately 6 metres from the side western boundary. The vegetation on the site consists of managed lawn with small shrubs located toward the front of the site.

## REPORT:

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

***The provisions of any environmental planning instrument; any draft environmental planning instrument that is or was on public exhibition and which have been notified to the consent authority; any DCP; any matters prescribed by the regulations that apply to the Development Application on the subject land***

### ***Great Lakes Local Environmental Plan 1996 (GLLEP 1996)***

The land is zoned 2 Village under GLLEP 1996. The proposal is considered to be inconsistent with the character of the zone given that the objectives of the zone are to restrict development which is compatible with the residential character of village areas.

Whilst the subject site is not located within the Heritage Conservation Area it is located in the Village of Stroud which is a significant historical village where maintaining character is of utmost importance. To allow a metal shed to be utilised as a dwelling within the township would certainly lead to precedents for others to follow and would also undermine the village theme.

### ***Council Policy - Occupation of Outbuildings***

The objectives of this policy are to maintain reasonable standards for residential accommodation and reduce the possibility of unauthorised dwellings. In addition the requirements are that approval of outbuildings or similar structures on vacant land will not be given unless approval for the dwelling is obtained simultaneously and construction first commences on the dwelling.

This policy is in place so as to limit the potential for people to live in sheds or garage structures by not allowing approval of a shed until a dwelling has been first approved. It appears that for whatever reason the subject shed has been allowed to be approved without a dwelling. This being the case it certainly was not the intension of Council to allow the subject shed to be converted into a dwelling given the detrimental impact the shed will have on the village character. Furthermore, condition No.3 of the original Building Approval (BA591/93) states:

*"The Building approved herewith not to be used or adapted for human occupation."*

***The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality***

### ***Context and Setting***

The proposal is considered to be **unsatisfactory** having regard to the relationship to the regional and local context, the negative presentation/contribution to the streetscape and locality.

### **Site Design and Internal Layout**

The location of the subject shed complies with Council's current setback requirements. It should be noted however that should an application for a new dwelling have been lodged with Council it would have been encouraged that the dwelling be located in a more central location on the site given that there is potential for more separation from adjoining boundaries.

### **Views**

There are no unreasonable impacts on views or outlooks.

### **Privacy (Aural and Visual)**

The privacy relationship with the adjoining properties is generally considered to be reasonable given the residential nature of both uses.

### **Overshadowing**

Given the orientation of the site the current shed does not unreasonably overshadow the adjoining properties.

### **Visual Impact**

The design form and materials of construction do not complement the existing locality and are considered to be inappropriate having regard to the streetscape and the character of the village area.

### **Drainage**

Stormwater drainage can be conveyed to the street drainage system.

### **Flora and Fauna**

There is no impact on flora and fauna given that no vegetation is proposed for removal

### **Cumulative Impacts**

The proposal is considered to be unsatisfactory having regard to the potential to create an undesirable precedent in terms of visual detracting from the streetscape and the character of the village zone.

### **Any Submissions Made in Accordance with the Act or Regulations**

The application was notified to adjoining owners in accordance with Council's Policy and one (1) submission was received. The submission referred to the following issues:-

1. The shed is an 'eyesore' and even with the additions will still be a shed, just bigger.

**Comment:** *The additions proposed to the shed are not considered to have addressed the impact the proposal will create on the locality given that it is considered the structure will still very much present as a shed.*

2. People are not supposed to live in sheds in a village area. In addition the shed is not conducive to the surrounding homes.

**Comment:** *As is indicated in the background of this report the current owner has been living in the shed for some period. Council has taken the appropriate measures in trying to resolve the issue and to provide the property owner with ample time to lodge a development application for a reasonable proposal. It is now considered that the matter is not being resolved and action is warranted so as to provide certainty to residents that the occupation of sheds will not be permitted within the Stroud village area.*

*It is also agreed that the shed proposal as a dwelling is not conducive to the homes within the locality.*

3. The building was illegally built.

**Comment:** *Evidence appears to indicate that the current shed is larger than the original approved structure. In this regard an Order will be served directing the owner to reinstate the shed to the originally approved size in accordance with Building Approval No. 591/1993.*

4. I have no objection to a proper house on the block as long as it is in the middle of the block as are 99% of other residents in the historic town of Stroud.

**Comments:** *As mentioned previously should an application have been lodged for a new dwelling it would have been encouraged that the proposal be located centrally on the site so as to reduce the impact on adjoining properties.*

### **The Public Interest**

The proposal is inconsistent with development in the locality, considered to create an undesirable precedent for the area and therefore not in the public's best interest having regard to the standard of residential amenity for the locality.

### **CONCLUSION:**

The proposal to convert the existing shed/garage to a dwelling is not considered to be suitable for the site, the locality and does not maintain a reasonable relationship with neighbouring developments. Accordingly, the application is to be recommended for refusal.

### **RECOMMENDATION:**

It is recommended that DA 420/2009 for the proposal to convert the existing garage/shed to a dwelling and undertake additions to the existing building at Lot 9 DP 715780, 15 Avon Street, Stroud be:

1. Refused for the following reasons:
  - A. The development is not considered to be compatible with the general residential character of the village area and is considered contrary to the objective of the zone, as specified in Great Lakes Local Environmental Plan 1996.
  - B. The design and materials of the proposal are considered to be unsatisfactory having regard to the presentation/contribution of the development to the streetscape.
  - C. Approval of the use of the existing garage/shed as a dwelling within the Stroud village area would set an undesirable precedent for the area.
2. That Orders be served requiring that the garage/shed cease being used for habitation and that the works be undertaken to the garage/shed to bring it back into compliance with the original approval granted.
3. In the event that the Order is not complied with that the General Manager be given the Delegated Authority to instigate legal action.

**3 PES - DA33/2010 - Set Up and Sell Seafood from Mobile Van - 77 Stroud Street, Bulahdelah**

**Index: DA33/2010 & PK4168**

**Author: Senior Development Assessment Planner – Robyn Shelley**

**DCU Meeting: 15 October 2009**

---

**DETAILS:**

Date Received: 20 July 2009

Applicant: R H Foley

Owner: Bulah Hotel Pty Ltd

Land: Lot 7 DP 659965, 77 Stroud Street, Bulahdelah

Area: 5846m<sup>2</sup>

Property Key: 4168

Zoning: 2 Village, GLLEP 1996

**SUMMARY OF REPORT:**

Application received seeking consent to set up and sell seafood on Friday afternoons from the car park of the Plough Inn Hotel Bulahdelah. Application notified to adjoining landowners with one submission received in support of the proposal.

**SUMMARY OF RECOMMENDATION:**

That the development application be refused for the reasons outlined in this report.

**FINANCIAL/RESOURCE IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

**POLICY IMPLICATIONS:**

Nil.

**LEGAL IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment court requiring legal representation.

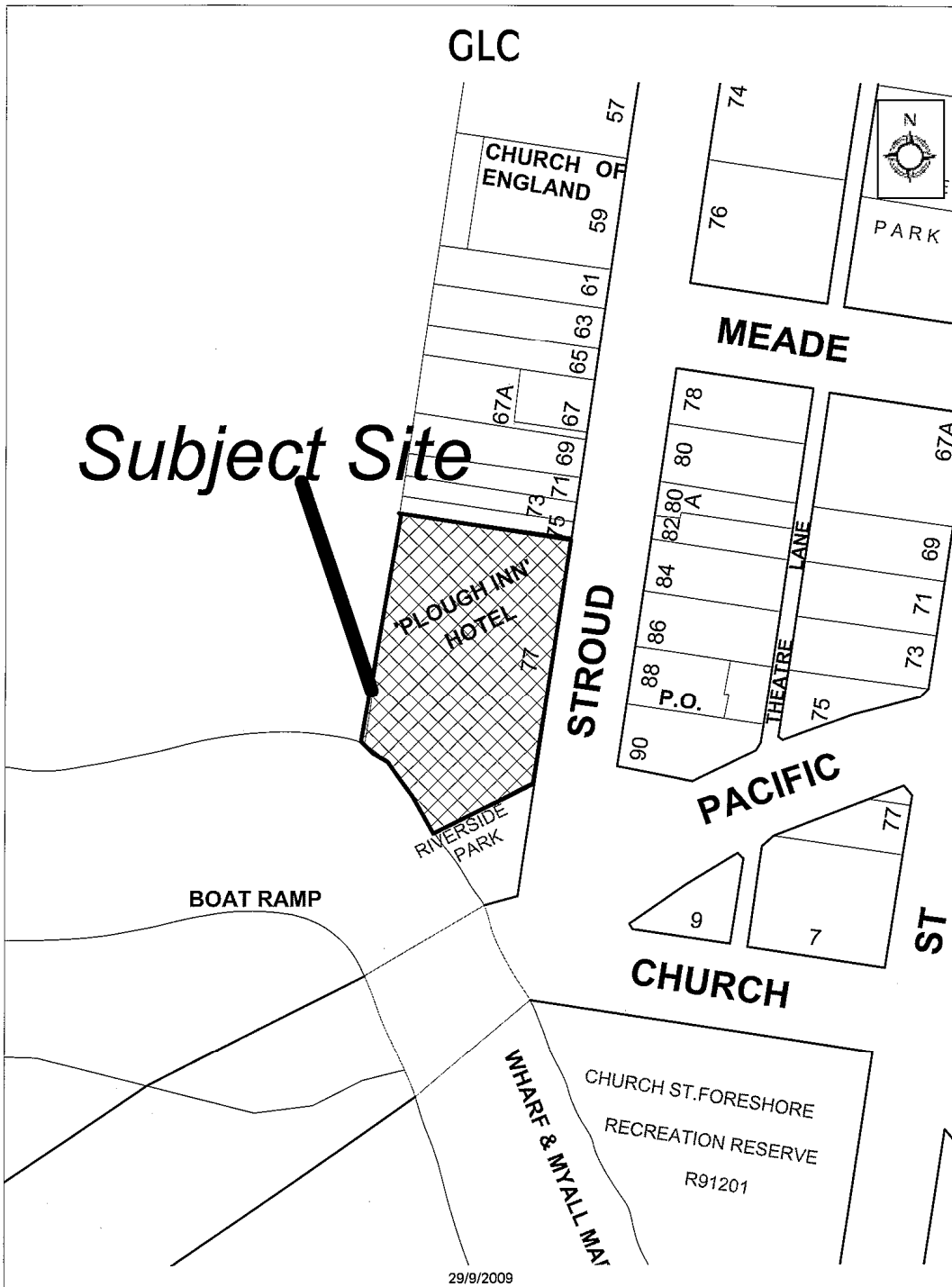
**LIST OF ANNEXURES:**

Nil.

---

---

**SUBJECT SITE AND LOCALITY:**



29/9/2009

Disclaimer:  
 This map was produced by Great Lakes Council using information from the Land Information Centre.  
 Great Lakes Council accepts no responsibility either in contract or tort (or particularly in negligence) for any errors, omissions or inaccuracies whatsoever contained within or arising from this map.  
 Copyright: Great Lakes Council  
 Copyright: Land and Property Information N.S.W.

## **BACKGROUND:**

The vehicle has been issued with a permit under Section 68 of the Local Government Act 1993 granting approval for the sale of seafood from a mobile van at markets and similar events.

Council's Regulatory Control Section, by letter dated 24 June 2009 ordered that the operators cease selling seafood from the roadside outside of the Plough Inn Hotel. Development Application No. 33/2010 was lodged in response to this order.

## **PROPOSAL:**

Development Application No. 33/2010 was lodged with Council on 20 July, 2009 seeking consent to set up and sell seafood on a Friday afternoons in the car park of the Plough Inn Hotel. The application was accompanied by a NSW Food Authority Licence, Certificate of Registration of business name; business insurance etc.

The application did not include a site plan or hours of operation. A letter was sent to the applicant on 5 August 2009 requesting submission of a site plan of the car park layout, an assessment of the current use of the hotel car parking area including an evaluation of how the proposal would impact upon patron car parking the proposed hours of operation and confirmation as to whether the fish sold is fresh or frozen.

It has been confirmed that the fish is fresh, however, at the time of writing this report, no further information had been received by Council.

## **SITE DESCRIPTION:**

The site is located on the Western side of Stroud Road, Bulahdelah. The car park is located on the southern side of the Plough Inn Hotel. The hotel is a two storey building. The ground floor consists of the hotel and the first floor is accommodation.

The hotel car park is unpaved and the parking spaces are not line marked.

## **REPORT:**

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

***The provisions of any environmental planning instrument; any draft environmental planning instrument that is or was on public exhibition and which have been notified to the consent authority; any DCP; any matters prescribed by the regulations that apply to the Development Application on the subject land***

### ***Great Lakes Local Environmental Plan 1996 (GLLEP 1996)***

The land is zoned 2 Village under the provisions of Great Lakes Local Environmental Plan 1996.

The objective of the zone is to restrict development to small scale developments which are compatible with the general residential character of village areas and which are unlikely to prejudice the viability of established shopping and commercial centres.

It is considered that a mobile van used for the sale of goods in the vicinity of the commercial precinct of the zone is not consistent with the objectives of the zone, as other commercial businesses are located within established shops and would be subject to the payment of rentals etc applicable to commercial centres.

## **Council Policy**

### **Car Parking**

The car parking policy requires provision of the following on-site car parking spaces for hotels:

- 1 space every 5m<sup>2</sup> of bar area, plus
- 1 space every 6m<sup>2</sup> of lounge area, plus
- 1 space per room, plus
- 1 space each 3 employees, plus
- 1 space every 20m<sup>2</sup> of gross floor area of a public dining room, plus
- 1 space every 20 seats of a function room

The applicant was requested, by letter dated 5 August, 2009, to submit a site plan of the car park layout detailing the area proposed to be utilised for the mobile food van, including an assessment of the current use of the car parking area and information addressing how the proposal would impact upon patron car parking. No details have been submitted to Council.

The hotel parking area has an area of approximately 830.5m<sup>2</sup>. The existing car parking area would accommodate approximately 23 cars.

The seafood van would be located in one of the car spaces and at least one to two more car parking spaces would be used for cars attending the van to purchase fish.

Therefore, it is probable that at least three of the hotel car parking spaces would be used for the purpose of the sale of fish for an undetermined time on Friday afternoon each week.

As details addressing the carparking requirements have not been submitted, it is not possible to gauge the impact of the mobile van on the carparking for the site.

### ***The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality***

#### **Context and Setting**

The proposal will not create an undesirable impact in terms of the scenic qualities or character and amenity of the locality and streetscape.

#### **Access, Transport and Traffic**

The application was referred to Council's Engineering Department who have commented as follows:

*"The existing area is an informal gravel car park used for parking for the Plough Inn Hotel. There is no linemarking or delineation of car spaces.*

*Although there are no specific guides on the use of a car park area for the selling of goods/services, the following points should be considered when assessing the application:*

- \* *The additional use of selling goods in the car park will generate additional pedestrian and vehicle traffic into the car park. The additional traffic must be managed in a suitable and safe manner;*
- \* *The existing car park has no allowance for pedestrian safety. Austroads Guide to Traffic Management Part 11 - Parking Section 6.5.2 outlines design principles to allow the safe interaction of vehicles and pedestrians. These principles include the location of pedestrian entrances and exits, restricting pedestrian movements, providing safe crossing points and planning the layout of parking aisles. The introduction of additional traffic and pedestrians results in a need for this issue to be addressed; and*

- \* *The type of facility proposed is difficult to categorise under AS2890.1, but it could be considered as a Parcel Pick-Up type operation. The existing car park would need to be upgraded to satisfy section 4.5 in terms of vehicles not interrupting the flow of other vehicles in the circulation roadway, and pedestrians being able to move around in the pick-up zone without being endangered by traffic. These issues would need to be addressed as part of any car park improvements.*

*It is recommended that in order to satisfy the points raised above, the car park would require formalisation through sealing the existing surface and providing line marking of car bays, aisles and pedestrian access points.*

*There would also be environmental benefits to the sealing of the gravel car park."*

### **Health**

The application was referred to Council's Environmental Health Section who have commented as follows:

*"While the van has been inspected by Council and approval was granted on 31 October 2008, to operate as a food vending vehicle at markets and similar events and complies with the National Code for Food Vending Vehicles, it is difficult to determine when the operation of a food vending vehicle becomes more a permanent premises and it would be more appropriate for operations to be undertaken from a commercial premises and comply with the full Australian Standard AS 4674-2004 Design, construction and fit-out of food premises. In these situations, consideration should be given to approved commercial premises to ensure that operations conducted by food vending vehicles do not impact on premises who are subject to construction and fit-out and ongoing commercial costs.*

*Concern is also raised in relation to the selling of seafood (which is a high-risk, potentially hazardous product) from an unsealed gravel carpark. Dust is constantly generated by wind as well as vehicles entering, exiting and manoeuvring in the carpark. Vehicles would be permitted to drive past and park directly next to the van also creating dust. It is considered that the seafood would not be able to be adequately protected from dust as doors on the van are required to be opened each time a customer is served. The food vending vehicle approval allows food to be sold from markets and special events, where vehicle access is controlled and restricted."*

### **Cumulative Impacts**

It is considered that the proposal may have the potential to create an undesirable precedent for the use of parking areas, reserves and the like for the sale of goods from mobile vans. Concern is raised that if this type of development is approved that other mobile vendors will want to establish themselves in commercial precincts, carparks and reserves within the local government area. It should be noted that Council receives many enquiries for these types of businesses and planning staff advise potential applicants that it is unlikely that their request would be supported.

### **The Suitability of Site for the Development**

The site is not considered suitable for the proposed development. The site is an unsealed car park and it is likely that cars will attend the site, park close to the van, causing dust to rise where fresh fish is being sold. There is also concern in relation to increasing pedestrian usage of the carpark and their safety. The applicant argues that the van has been granted a permit for the sale of fresh fish at markets and the like. However, when selling fish at markets the purchasers of the goods are walking and not attending the site in cars.

### ***Any Submissions Made in Accordance with the Act or Regulations***

The application was notified to adjoining owners in accordance with Council's Policy and one submission was received in support of the proposal.

### ***The Public Interest***

The proposal is considered to create an undesirable precedent for the locality and therefore not in the public's best interest having regard to the commercial precinct.

### **CONCLUSION:**

The proposal to sell fresh fish from a mobile van, in the unsealed car park of the Plough Inn Hotel is considered to set an undesirable precedent for the commercial precinct of Bulahdelah. It is acknowledged that the mobile van meets the health requirements for markets etc where people attend the van on foot however, it is considered undesirable for the van to be located in an unpaved carpark where cars are likely to attend the site for the sole purpose of purchasing fresh fish. Any approval of this application should be on the basis that the existing surface of the car park should be sealed and the car bays, aisles and pedestrian access points line-marked.

The site is not considered to provide safe pedestrian movement or entrance and exit points. The existing car park would require upgrading to satisfy section 4.5 of AS2890.1 in terms of vehicles not interrupting the flow of other vehicles in the circulation roadway, and pedestrian being able to move around in the pick-up zone without being endangered by traffic.

### **RECOMMENDATION:**

It is recommended that Development Application No. 33/2010 seeking consent to set up and sell seafood on Friday afternoons from a mobile van in the car park of Lot 7 DP 659965, 77 Stroud Street, Bulahdelah be refused for the following reasons:

1. The proposal will create an undesirable precedent for mobile food vans to be established in car parks, reserves and the like.
2. The additional use of the car park will generate additional pedestrian and vehicle traffic into the car park area, which has no allowance for pedestrian safety.
3. The seafood would not be protected in an unsealed car park.

**G J HANDFORD**  
**Director**  
**Planning and Environmental Services**