

**GREAT LAKES COUNCIL DCU MEETING
5 NOVEMBER 2009
ANNEXURES ONLY**

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

ANNEXURES:

A: Copy of report submitted to DCU Meeting held on 15 October 2009.

Subject: 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: 5846m²
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.

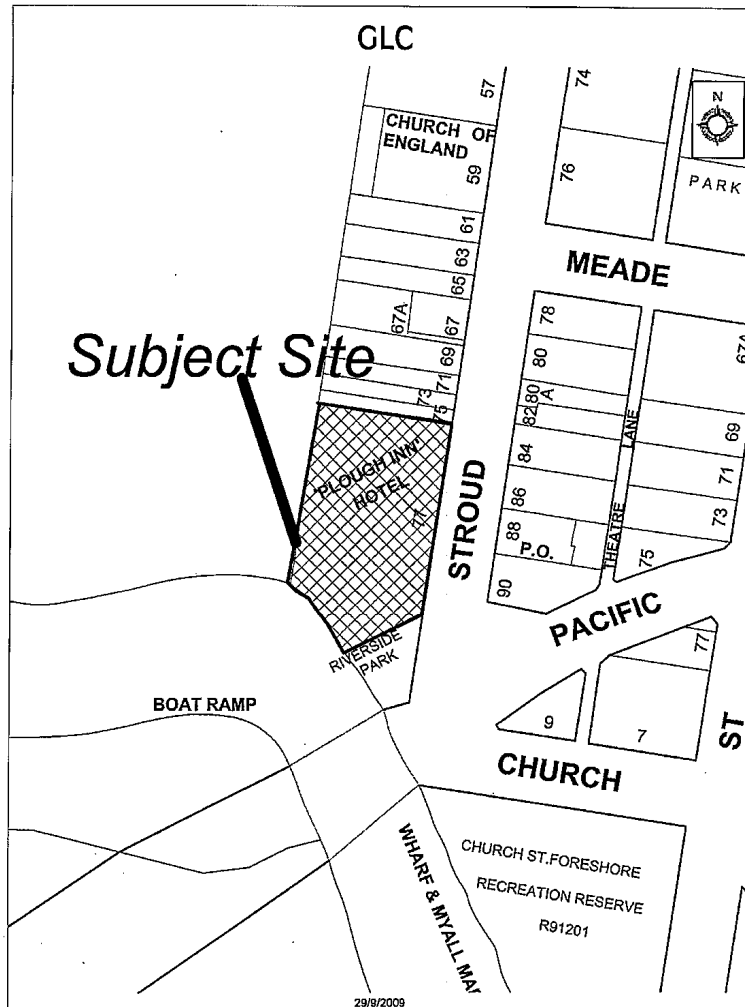
LIST OF ANNEXURES:

Nil.

LIST OF ATTACHMENTS:

Nil.

SUBJECT SITE AND LOCALITY:



29/8/2009

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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 5m² of bar area, plus
- 1 space every 6m² of lounge area, plus
- 1 space per room, plus
- 1 space each 3 employees, plus
- 1 space every 20m² 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 830.5m². 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.

ANNEXURES:

A: Nil.

2 PES - DA32/2010 - Music Festival - Lot 33 DP 800610, 311 Upper Monkerai Road, Monkerai

ANNEXURES:

A: Plans of the proposed development

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