

Items for Consideration of Council

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MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 90 of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
 - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest.

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1. **ORIGIN:** Development Assessment Unit

FILE REF: DA02/0820 Pt1

REPORT TITLE:

Development Application DA02/0820 for Penny Ridge Resort – Extensions to Existing Golf Pro Shop at Lot 1 DP 121377 No. 363 Carool Road, Carool

SUMMARY OF REPORT:

Council has received a development application for extensions to an existing golf pro shop to provide for a kitchen, bar and dining area at the Penny's Resort, Carool Road. Council previously approved a tourist resort on the site which included a golf course. The owner of the land, Mr James Penny has indicated that it is intended to offer memberships to the Golf Club and that the golf club/golf course will be promoted as "Tweed Greens Golf Club". This operation of the golf course as a golf club available to the public is considered to not be covered by the existing approval. It is recommended that the applicant be advised that the existing application is required to be amended to reflect the proposed use as a public golf course and a revised traffic study be submitted.

RECOMMENDATION:

That Council advises the applicant to amend Development Application DA02/0820 to seek approval for the operation of a Golf Club and that the amended application is required to be accompanied by a revised traffic study addressing the impacts of Club membership submitted within 21 days of being advised of this decision.

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REPORT:

Applicant: Sonia Macourt (Parameter Designs)
Owner: Penny Brothers Pty Ltd
Location: Lot 1 DP 121377 No. 363 Carool Road, Carool
Zoning: 1(a) Rural
Est. Cost: \$4,000

PROPOSAL

Council has received a development application for extensions to an existing approved pro shop which forms part of a tourist resort comprising a winery building, 16 accommodation units, 4 bungalows and a 18 hole golf course. The accommodation units, bungalows and winery building as previously approved are yet to be erected.

The extensions involve provision of a kitchen area, bar area and small dining area/lounge area for patrons using the golf course.

The golf course is being promoted as Tweed Greens Golf Club and discussions with the owner have indicated that it is intended to offer memberships to this golf club.

HISTORY

- 13 June 2000 Deferred commencement consent issued for tourist resort (K99/1450).
- 26 September 2000 Condition 3 of Schedule A satisfied by provision of satisfactory engineering design for driveway and parking area.
- 8 December 2000 Development consent for farm shed on property.
- 3 January 2001 Development consent granted for garage, swimming pool and golf pro shop. The golf pro shop was conditioned requiring 50% of accommodation units to be completed before it could be erected. This condition was placed on the consent to ensure the integration of the golf course as part of the tourist resort.
- 18 April 2001 Development consent for tourist resort amended to allow payment of Section 94 contributions for roads over 4 years, changes to staging of the development to allow the golf course and 4 bungalows to become Stage 1 rather than Stage 3, amendments to the requirements to upgrade Carool Road, amendments in relation to the requirement to seal parking areas and amendments to reword condition 62 in relation to use of the golf course as follows:-

“The golf course is restricted to guests visiting or staying at the resort”.

The original consent restricted the golf course to the guests staying at the resort. At the time of the lodgement and processing of the original development application and subsequent Section 96 applications the use of the golf course was a issue. The original consent restricted the golf course to use of guests staying at the resort only. The issue was of critical relevance at the time of the development application, and the applicant was requested on a number of occasions to clarify who

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will be using the golf course and what the term “guests visiting the site” meant in relation to the golf course usage.

The applicant’s consultant at the time of the original development application confirmed that the golf course was strictly for the use of guests staying at the resort, and a traffic report submitted indicated that the golf course would generate no vehicle trips as it would only be used by guests staying at the resort.

The applicant was advised by letter dated 15 August 2000 that if he wished to pursue this issue to allow guests not staying at the resort to use the golf course then he would need to submit a revised traffic report detailing trip generation and additional parking requirements generated by the use of the golf course by people outside those staying at the resort. No such report was provided. Notwithstanding the above concerns Council at its meeting of 18 April 2001 agreed to change the wording of the subject condition to allow guests visiting to use the golf course. At that time there was no indication by the applicant that it was intended to use the golf course as a club as would appear to be the case now.

The provision of a bar, kitchen and dining area to the pro shop in effect creates a club house which would allow the golf club to be operated independently from the resort.

Once again, concern is raised that the original and subsequent amendment were not approved on this basis and traffic analysis and payment of Section 94 contributions for roads do not reflect this.

The applicant was forwarded a letter on 12 June 2002 in relation to the current application requesting that this application be amended to seek approval for the use of the golf course by the general public and the submission of a revised traffic study detailing the additional traffic which will be generated by the golf club. It should be noted that the original traffic study indicated that the golf course would not generate any trips as guests staying at the resort would be the only one’s using it (see attached extracts from original application).

It is acknowledged that the owner has indicated during the processing of the various applications that he wishes guests visiting the resort to be able to use the golf course. Council officers sought clarification to this term on a number of occasions without any clear definition being provided nor any additional traffic analysis being provided.

A meeting on 19 June 2002 with the Mayor, General Manager, Mr James Penny (the owner) and Council’ Co-ordinator Development Assessment did not resolve this issue. Mr Penny at this meeting indicated that he is not prepared to amend his current application and provide additional traffic counts to reflect the future or proposed use as a Golf Club.

EVALUATION

The following matters are required to be addressed unde Section 79C of the Environmental Planning and Assessment Act, 1979.

(a) (i) Any Environmental Planning Instruments

Tweed Local Environmental Plan 2000 (TLEP 2000)

Under TLEP 2000 the subject land is zoned 1(a) Rural. The proposed development may be described as a recreation area and is permissible under the zoning.

The primary objectives of the 1(a) zone are: -

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- * *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- * *to protect rural character and amenity.*

The original approval was granted on the basis of a “tourist resort” under TLEP 2000. The definition of “tourist resort” is as follows: -

“a largely self contained holiday destination establishment which provides:-

- a. tourist accommodation; and*
- b. on site facilities to satisfy all or substantially all of the recreational, entertainment, dining and other holiday needs of its resident tourists”.*

State Environmental Planning Policies (SEPPs)

SEPP55 applies to the subject land. A site contamination report was submitted with the previous applications, which concluded the site is suitable for development.

North Coast Regional Environmental Plan 1988 (NCREP 1988)

The subject proposal is generally consistent with this plan.

(a) (ii) Any Draft Environmental Planning Instruments

No draft Environmental Planning Instruments apply to the proposal.

(a) (iii) Any Development Control Plans (DCPs)

DCP2 – Site Access and Parking Code. The additions to the golf pro shop will in effect create a small club house to support the existing golf course. The indication by the owner that memberships will be available and the golf course will be promoted as Tweed Green’s Golf Club changes the nature of the original approval. This could reasonably be expected to result in additional traffic and parking requirements for the overall development. The applicant has not provided any additional figures to allow Council to make a proper assessment of the impact of these changes.

The original application provided for a total of 82 on site parking spaces and 4 bus parking spaces. This was supported on the basis of the applicant’s submission, which in part stated: -

“For the purposes of providing an analysis of parking provision the use proposed for the site will entail a large degree of overlap. Essentially due to the location of the site there are a number of factors, which have a great impact on car, parking. These include: -

- *The fact the person visiting the site will multi-use the facilities on the site, this is especially relevant to the “winery buildings” which contains the restaurant and winery experience areas within it.*
- *Persons visiting the site will arrive in either bus or private car. The use of alternative transport modes (ie. Walking or cycling) is not expected to present a high proportion of trips due to the distance of the site from the coast or other more highly developed areas.*

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- *The proposed development is such that previous persons visiting the site will do so in groups. The facility is not a destination, which will attract a large number of single person trips.*

It is considered appropriate to consider the main car parking generators on the site as being: -

- *The winery and restaurant; and*
- *The accommodation units and bungalows*

Other uses on the site are ones, which will be used in conjunction with the above listed uses and will not necessarily attract a separate car parking demand. These would include the golf course and the animal farm area.”

It is evident now that the arguments, which Council supported above, are in contradiction to what is now proposed on site. If separate memberships are being offered for the golf course/golf club and the golf course is being promoted as Tweed Green's Golf Club then it is obvious that the facts on which the original application was assessed have changed and Council should require a revised traffic analysis to be submitted to evaluate both parking and in particular traffic generation rates from the proposal.

(b) Environmental Impacts

Land uses in the area comprise a combination of agricultural activities and rural residential development. A number of houses are located on either side of Carool Road. The development will not be visible from Carool Road.

The change in nature of the development, to that approved, can reasonably be expected to have impact in relation to traffic along Carool Road. A proper assessment of these impacts cannot be undertaken until the applicant submits a revised traffic analysis.

(c) Suitability of the Site for the Development

The extensions proposed are relatively minor and will be attached to the existing pro shop. The site is clear of vegetation and is considered suitable for the proposed development. The critical issue is the change in the nature of the use and the resultant traffic impacts on Carool Road.

(d) Public Submissions

The current application has not been advertised or notified to adjoining neighbours. From previous advertisements objections have been received in regards to the proposal and concerns raised regarding the use of the golf course. It is considered that should the applicant agree to amend the application to reflect the proposed use of the golf course then this application should be notified.

Submissions from Public Authorities

No submissions from any public authorities have been received nor is there a requirement to notify any.

Submission by owner of land

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The land owner Mr Penny has provided a submission claiming that Council in assessing the original application contributed trips to the golf course. Attached is the submission by Mr Penny.

The original application provided a traffic assessment which estimated vehicle trips for each stage over a 3 year period. This report clearly shows that zero trips were anticipated to be generated by the golf course. Attached is an extract from the report.

This is re-affirmed in a submission by the applicant on 7 April 2000 regarding parking demand where it is stated "*a private golf course for use by guests staying at the site*". An extract from this report is attached.

The application was determined on 7 June 2002. The figures provided in the report are threshold figures for the purpose of calculating Section 94 contributions and takes into account the cumulative increase of trips as the development becomes established. No trips were directly contributed to the golf course.

Other Submissions

A review of the file indicates no approval has been given for a sign. This matter will be further pursued with the owner and reported to Council if necessary.

(e) **The Public Interest**

The provision of tourist facilities and recreation facilities within the Tweed area is considered to be in the public interest however, contributions paid by developers for road and other utilities should be levied on an equitable basis so as not to provide any commercial advantage to a operator within the area and also ensure that adequate facilities and services can be provided by Council. Therefore, it is considered that the approval of the current application, which would in effect allow the establishment of, a golf club with a separate club house without the payment of full contributions is not in the public interest. The applicant should be requested to amend the current application and provide a revised traffic analysis to reflect the use of the site.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS

In the event that the applicant is dissatisfied with Council's determination of the application they may appeal to the Land and Environment Court or alternatively if a third party feels that there has been a breach of the Environmental Planning and Assessment Act, 1979 in Council's determination of the development application they may appeal to the Land and Environment Court.

It is considered that the operation of a golf club is not within the limits of the existing approval. This would open up the possibility of a third party challenging the use as a golf club.

OPTIONS

The following options are available to Council: -

1. Council could approve the application as submitted subject to conditions being applied.
2. Council could refuse the application.
3. Council could resolve to request the applicant to amend the current application to reflect the true, intended use as a golf club and submit a revised traffic analysis – within say 21 days. In

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the event of such a traffic analysis not being provided, then the current application would be recommended to Council for refusal at its meeting of 7 August 2002.

CONCLUSION

It is considered that the intent of Council when resolving upon the amendment of Condition 62 was not to allow a golf club with separate memberships to operate from the site or as part of the existing tourist resort approval. The operation or use of the golf club is considered to be outside the limits of the existing approval, particularly given statements made by the applicant in the original application and the basis for support of the previous application. It is therefore recommended that the applicant be requested to amend the current application for extensions to the pro shop to clearly provide for the use proposed and reflect the true traffic generation rates which could be expected from the development.

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